

These rules replace the Equal Employment Opportunity Policy dated 6/2/97 and the Sexual Harassment Policy dated 6/10/88.

INDEX

2.21.4001	SHORT TITLE
2.21.4002	POLICY AND OBJECTIVES
2.21.4003	DEPARTMENT OF ADMINISTRATION ROLE
2.21.4004	DEPARTMENT OR AGENCY ROLE
2.21.4005	EQUAL EMPLOYMENT OPPORTUNITY
2.21.4006	PRE-EMPLOYMENT INQUIRIES
2.21.4007	PRE-EMPLOYMENT MEDICAL EXAMINATIONS
RULES 8 THROUGH 11 RESERVED	
2.21.4012	SEXUAL HARASSMENT
2.21.4013	OTHER HARASSMENT
2.21.4014	RETALIATION

2.21.4001 SHORT TITLE (1) This subchapter may be cited as the nondiscrimination-equal employment opportunity policy. (History: Sec. 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 2000 MAR p. 3515, Eff. 12/22/00.)

2.21.4002 POLICY AND OBJECTIVES (1) It is the policy of the state of Montana that state government:

- (a) is an equal employment opportunity employer;
- (b) does not discriminate in employment based upon race, color, national origin, age, physical or mental disability, marital status, religion, creed, sex, sexual orientation, or political beliefs; and
- (c) implement and maintain an effective equal employment opportunity program which may include a written affirmative action plan.

(2) It is the objective of this policy to establish minimum standards for the implementation of an equal employment opportunity program for all executive branch agencies, in compliance with relevant state and federal laws, regulations, and executive orders. (History: Sec. 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 2000 MAR p. 3515, Eff. 12/22/00.)

2.21.4003 DEPARTMENT OF ADMINISTRATION ROLE (1) The department of administration shall:

- (a) develop equal employment opportunity (EEO) standards and guidelines and administrative systems to support the state EEO program;
- (b) provide EEO analyses, reports, and technical assistance needed by executive branch agencies to establish EEO programs;
- (c) provide follow up assistance where problem areas are identified;
- (d) provide training for managers and employees; and
- (e) encourage departments to make a commitment to provide training through upward mobility programs and/or through other

available training programs where there is evidence that there have been barriers to employment for those classes of people who have traditionally been denied EEO. (History: Sec. 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 2000 MAR p. 3515, Eff. 12/22/00.)

2.21.4004 DEPARTMENT OR AGENCY ROLE (1) Each department director or agency head shall appoint an EEO officer and an Americans with Disabilities Act (ADA) coordinator for the department. All executive branch departments are covered by this policy.

(2) The EEO officer is responsible for the development of the department EEO program, which may include a written affirmative action plan. The EEO officer shall work with managers to implement the program.

(3) Each department shall develop a written policy statement that includes at a minimum EEO, ADA, and the prohibition of sexual harassment provisions and a complaint resolution procedure for internal and external dissemination. A model policy statement poster and a model complaint resolution procedure are available from the state personnel division, department of administration. (History: Sec. 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 2000 MAR p. 3515, Eff. 12/22/00.)

2.21.4005 EQUAL EMPLOYMENT OPPORTUNITY (1) The state of Montana is an equal employment opportunity employer and prohibits discrimination based on race, color, national origin, age, physical or mental disability, marital status, religion, creed, sex, sexual orientation or political beliefs unless based on a bona fide occupational qualification (BFOQ). The state of Montana's prohibition of discrimination includes discrimination in hiring, firing, promotions, compensation, job assignments and other terms, conditions or privileges of employment.

(2) Any employee or applicant for employment with the state of Montana who believes he or she has been subjected to discrimination based upon any of these factors may contact the department EEO officer and also may contact the Montana human rights bureau and/or the federal equal employment opportunity commission (EEOC). Jurisdiction to address any one of the above types of discrimination complaints varies. For example, neither the EEOC nor the Montana human rights bureau considers discrimination complaints based on sexual orientation. (History: Sec. 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 2000 MAR p. 3515, Eff. 12/22/00.)

2.21.4006 PRE-EMPLOYMENT INQUIRIES (1) Except as may be required by the reasonable demands of a position, for example, a BFOQ, compliance with a lawful affirmative action plan, or government reporting or record-keeping requirements, the state of Montana may not elicit information concerning race, color,

national origin, age, physical or mental disability, marital status, religion, creed, sex, sexual orientation or political beliefs.

(2) The state of Montana may obtain information required for legitimate business purposes after employment. (History: Sec. 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 2000 MAR p. 3515, Eff. 12/22/00.)

2.21.4007 PRE-EMPLOYMENT MEDICAL EXAMINATIONS (1) The state of Montana requires pre-employment medical examinations only when necessary to determine ability to perform the physical duties of a particular position. Any pre-employment medical examination must be job-related.

(2) The state of Montana will require a pre-employment medical examination only after a conditional offer of employment has been made to a job applicant.

(3) The state of Montana shall maintain the results of the examination in separate files which are treated as confidential, except that supervisors and managers may be informed regarding necessary restrictions and accommodations and safety personnel may be informed if a disability might require emergency treatment.

(4) The results of the examination may not be used to refuse employment or to make a distinction in employment unless a reasonable medical evaluation establishes inability of the particular applicant to safely and efficiently perform the duties of the position with reasonable accommodation, if necessary. (History: Sec. 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 2000 MAR p. 3515, Eff. 12/22/00.)

Rules 8 through 11 reserved.

2.21.4012 SEXUAL HARASSMENT (1) Sexual harassment of employees, clients, customers, and any other persons is prohibited. It is the state of Montana policy to:

(a) provide employees with a work environment free of sexual harassment;

(b) communicate the state's sexual harassment prevention policy and reporting procedures to employees and supervisors;

(c) recognize the unique nature of complaints of sexual harassment;

(d) encourage early reporting by employees; and

(e) resolve complaints promptly, confidentially, and at the lowest management level possible.

(2) Sexual harassment includes unwelcome verbal or physical conduct of a sexual nature when:

(a) submission to the conduct is implicitly or explicitly made a term or condition of employment;

(b) submission to or rejection of the conduct is used as the basis for an employment decision affecting the individual; or

(c) the conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(3) Sexual harassment also includes harassment directed toward a person because of gender, a pattern of sexual favoritism, or harassment because of a person's sexual orientation.

(4) Examples of prohibited sexual harassment include, but are not limited to:

(a) propositions or pressure to engage in sexual activity;

(b) sexual assault;

(c) repeated intentional body contact;

(d) repeated sexual jokes, innuendoes, or comments;

(e) constant staring or leering;

(f) inappropriate comments concerning appearance;

(g) display of magazines, books, pictures, or electronic documents with a sexual connotation;

(h) a pattern of hiring or promoting sex partners over more qualified persons; or

(i) any harassing behavior, whether or not sexual in nature, directed toward a person because of the person's gender including, but not limited to, hazing employees working in nontraditional work environments. (History: Sec. 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 2000 MAR p. 3515, Eff. 12/22/00.)

2.21.4013 OTHER HARASSMENT (1) Harassment of employees, clients, customers, and any other persons because of a person's race, color, national origin, age, physical or mental disability, marital status, religion, creed, sexual orientation or political beliefs is prohibited. It is the state of Montana policy to provide employees, clients, customers, and any other persons with a work environment free of these forms of harassment.

(2) Examples of other prohibited harassment include, but are not limited to:

(a) coercion of employees, clients, or customers in the participation or non-participation in religious activities; or

(b) ethnic slurs, repeated jokes, innuendoes, or other verbal or physical conduct because of a person's nationality, race, color, age, physical or mental disability, marital status, religion, creed, sexual orientation or political beliefs if these actions create an intimidating, hostile or offensive working environment. (History: Sec. 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 2000 MAR p. 3515, Eff. 12/22/00.)

2.21.4014 RETALIATION (1) The state of Montana may not retaliate or allow, condone, or encourage others to retaliate against any applicant, or current or former employee for opposing unlawful discriminatory practices, filing a

discrimination complaint and/or testifying or participating in any other manner in a discrimination proceeding. (History: Sec. 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 2000 MAR p. 3515, Eff. 12/22/00.)

In addition to the above administrative rules, the following policy statements are intended to further clarify some of the protected classes identified in ARM 2.21.4002, Policy and Objectives.

EQUAL PAY

The state of Montana may not pay unequal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility that are performed under similar working conditions. Wage differentials are permitted on factors other than sex, for example, longevity, merit, and applicant or employee qualifications.

DISABILITY

The state of Montana does not discriminate against any applicant or employee in hiring, firing, promotions, compensation, job assignments and other terms, conditions, or privileges of employment due to physical or mental disability.

The state of Montana provides reasonable accommodation to an otherwise qualified applicant or employee with a known disability that prevents the individual from participating in the application process, competing in the selection process, performing the essential functions of the job, and enjoying equal benefits and privileges of employment. An accommodation that is not effective, creates undue hardship on a department, or endangers health or safety is not a reasonable accommodation.

Any otherwise qualified applicant for employment or employee with a disability who needs reasonable accommodation shall inform the department personnel officer, his or her immediate supervisor, or the department ADA coordinator of the nature of the disability and the accommodation requested. Employees with access to such information must maintain the confidentiality of the information to the extent reasonably possible and may not release the information to anyone who does not have the right or need to know.

Some communicable diseases, for example, HIV/AIDS, are physical disabilities. The state of Montana does not

discriminate against any applicant for employment or employee based upon communicable disease unless required to do so by the reasonable demands of the position. Prior to making any distinction based upon communicable disease, a department may evaluate:

- the duration of the risk;
- The nature and severity of the potential harm;
- the likelihood that the potential harm will occur; and
- the imminence of potential harm.

A department may evaluate these factors after obtaining the reasonable medical judgments of public health officials.

MATERNITY

The state of Montana may not discriminate against any applicant or employee in hiring, firing, promotions, compensation, job assignments and other terms, conditions or privileges of employment based upon a temporary disability resulting from pregnancy, childbirth, or related medical conditions.

The state of Montana may not terminate any employee due to pregnancy or childbirth.

The state of Montana shall grant a request by an employee for a reasonable leave of absence for maternity, pregnancy, childbirth, or related medical conditions. The state of Montana recognizes six calendar weeks as a reasonable period of recovery from the temporary disability due to childbirth. The state of Montana shall administer maternity leave in accordance with Montana's Disability and Maternity Policy, ARM 2.21.901, et seq., and the Family and Medical Leave Act (FMLA).

The state of Montana may not require any employee to take a mandatory maternity leave for an unreasonable length of time. If absenteeism due to pregnancy becomes excessive or if a pregnant employee is incapable of performing normal job duties, a department may require the employee to take maternity leave until the employee is capable of performing normal job duties on a regular basis. Prior to requiring maternity leave, a department shall assess whether a department can make any reasonable accommodation that allows the pregnant employee to continue to work.

A department shall reinstate an employee who has taken a reasonable leave of absence for maternity to her original or an equivalent job with equivalent pay and accumulated seniority and other benefits.

An employee requiring maternity leave shall provide a department with reasonable notice of the expected date of leave and may be required to provide 30 days advance notice of the need to take FMLA leave. An employee returning from maternity leave shall provide a department with reasonable notice of her intent to return to work. When a department receives notice of intent to work, the department shall reinstate the employee as soon as reasonably possible.

RELIGION

The state of Montana shall make reasonable accommodation for religious beliefs or practices. Any otherwise qualified applicant for employment or employee who requires reasonable accommodation may inform his or her immediate supervisor or the department EEO officer of the need for a religious accommodation. An accommodation that creates an undue hardship on a department is not a reasonable accommodation.

All employees with access to such information shall maintain the confidentiality of the information to the extent reasonably possible and may not release the information to anyone who does not have the right or need to know.

For additional information, see:

Policy 3-0165 Recruitment and Selection
Policy 3-0315 Disability and Maternity Leave

Recruitment and Selection Manual
Reasonable Accommodation Guide

If you have questions about this policy, contact your agency personnel officer.