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## State of Minnesota

### Department of Labor and Industry

### 2018-2020 Affirmative Action Plan

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As requested by Minnesota Statute 3.197: This report cost approximately \$5,513 to prepare, including staff time, printing and mailing expenses.

Upon request, this material will be made available in an alternative format such as large print, Braille or audio recording. Printed on recycled paper.

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## Executive Summary

This Affirmative Action Plan meets the requirements as set forth in statute, in Administrative Rule, and by Minnesota Management and Budget, and contains affirmative action goals and timetables, as well as reasonable and sufficiently assertive hiring and retention methods for achieving these goals.

This Affirmative Action Review revealed underutilization of the following protected group(s) in the following job categories:

Table 1: Underutilization Analysis of Protected Groups

Job Categories	Women	Racial/Ethnic Minorities	Individuals with Disabilities
Officials & Administrators			
Professionals	X		
Office Clerical Paraprofessional			X
Technicians	X		
Skilled Craft	X	X	

Information about how to obtain or view a copy of this Plan will be provided to every employee of the agency. Our intention is to make every employee aware of the Department of Labor and Industry's commitment to affirmative action and equal employment opportunity. The Plan will also be posted on the agency's website and maintained in the Human Resources Office.

Affirmative Action Officer or Designee: Mary Babzys Date Signed: 8/8/18

Human Resources Director or Designee: [Signature] Date Signed: 8-8-18

Commissioner or Agency Head: [Signature] Date Signed: 8-8-18

## Organizational Profile

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The Department of Labor and Industry is committed to ensuring equitable, healthy and safe work and living environments in Minnesota. Through outreach, education and compliance efforts, we strive to improve the quality of life for Minnesota workers and their families. The agency employs approximately 441 workers throughout the state and oversees the state's programs for apprenticeship, construction codes and licensing, occupational safety and health, wage and hour standards, and workers' compensation.

## Statement of Commitment

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This statement reaffirms the Department of Labor and Industry is committed to Minnesota's statewide affirmative action efforts and providing equal employment opportunity to all employees and applicants in accordance with equal opportunity and affirmative action laws.

I affirm my personal and official support of these policies which provide that:<sup>1</sup>

- No individual shall be discriminated against in the terms and conditions of employment, personnel practices, or access to and participation in programs, services, and activities, or subject to harassment, on the basis of race, sex (including pregnancy), color, creed, religion, age, national origin, sexual orientation, gender expression, gender identity, disability, marital status, familial status, status with regard to public assistance, or membership or activity in a local human rights commission.
- The prohibition of discrimination on the basis of sex precludes sexual harassment, gender-based harassment, and harassment based on pregnancy.
- This agency is committed to the implementation of the affirmative action policies, programs, and procedures included in this plan to ensure that employment practices are free from discrimination. Employment practices include, but are not limited to the following: hiring, promotion, demotion, transfer, recruitment or recruitment advertising, layoff, disciplinary action, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. We will provide reasonable accommodation to employees and applicants with disabilities.
- This agency will continue to actively promote a program of affirmative action, wherever minorities, women, and individuals with disabilities are underrepresented in the workforce, and work to retain all qualified, talented employees, including protected group employees.
- This agency will evaluate its efforts, including those of its directors, managers, and supervisors, in promoting equal opportunity and achieving affirmative action objectives contained herein. In addition, this agency will expect all employees to perform their job duties in a manner that promotes equal opportunity for all.

It is the agency's policy to provide an employment environment free of any form of discriminatory harassment as prohibited by federal, state, and local human rights laws. I strongly encourage suggestions as to how we may improve. We strive to provide equal employment opportunities and the best possible service to all Minnesotans.

Commissioner or Agency Head:



Date Signed:

2-8-18

# **Individuals Responsible for Directing/Implementing the Affirmative Action Plan**

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## **A. Commissioner**

### **Responsibilities**

The Commissioner is responsible for establishing an Affirmative Action Program, including goals, timetables and compliance with all federal and state laws and regulations. The Commissioner, through the Commissioner of Minnesota Management & Budget (MMB), will report annually to the Governor and the Legislature the agency's progress in meeting its affirmative action goals and objectives.

### **Duties**

The duties of the Commissioner shall include, but not be limited to, the following:

- Appoint the Affirmative Action Officer or designee and include accountability for the administration of the agency's Affirmative Action Plan in his or her position description.
- Take action, if needed, on complaints of discrimination and discriminatory harassment.
- Issue a statement affirming the department's commitment to affirmative action and equal employment opportunity, and ensure that such a statement is disseminated to all employees.
- Make such decisions and changes in policies, procedures or physical accommodations as may be needed to implement effective affirmative action in the agency.
- Actively promote equal employment opportunity and incorporate diversity and inclusion principles in annual business plans, strategic plan, and agency's mission.
- Report annually to the Governor and the Legislature through the Commissioner of MMB the department's progress in affirmative action.
- Notify all contractors and sub-contractors with the department of their affirmative action responsibilities.
- Actively promote the enforcement of equal employment opportunity in affirmative and non-affirmative hiring decisions reviewed in the hiring process.
- Require that all agency directors, managers, and supervisors include responsibility statements for supporting affirmative action, equal opportunity, diversity, and/or cultural responsiveness in their position descriptions and annual objectives.

### **Accountability**

The Commissioner is accountable directly to the Governor and indirectly to the Commissioner of MMB for affirmative action matters.

**Name of individual(s) responsible**

**Ken Peterson**

**Email:** [Ken.peterson@state.mn.us](mailto:Ken.peterson@state.mn.us)

**Title:** Commissioner

**Phone:** 651-284-5010

**B. Affirmative Action Officer****Responsibilities**

The Affirmative Action Officer is directly responsible for developing, coordinating, implementing and monitoring the department's affirmative action program.

**Duties**

The duties of the Affirmative Action Officer shall include, but not be limited to, the following:

- Develop and administer the agency's Affirmative Action Plan.
- Develop and set agency-wide affirmative action hiring goals.
- Monitor agency compliance and fulfill all affirmative action reporting requirements.
- Disseminate the affirmative action policy to employees in the agency.
- Inform the Commissioner on progress in affirmative action and equal opportunity and report potential concerns.
- Act as the affirmative action liaison between the Agency, MMB, and the Governor's Office.
- Determine the need for affirmative action training within the agency and initiate the development of such training programs with the assistance of internal and external resources, as necessary.
- Review and recommend changes in policies, procedures, programs and physical accommodations to facilitate affirmative action and equal opportunity.
- Develop innovative programs to attract and retain protected group members in the agency.
- Support and participate in the recruitment of protected class persons for employment, promotion and training opportunities.
- Manage the agency's pre-hire review process.
- Review requests for non-affirmative non-justified hires in the Monitoring the Hiring process and refer unresolved issues to the Commissioner for final decision.
- Ensure supervisors and managers are making affirmative efforts to recruit and retain protected group candidates and employees.
- Oversee the administration of the Americans with Disabilities Act Title I and Title II.

- Receive requests for ADA accommodations and work with appropriate supervisors, unions, etc. to approve or deny the request, or provide alternative accommodations.
- Maintain records of requests for reasonable accommodations.
- Oversee the administration of the Agency Diversity Recruitment program.

### **Accountability**

The Affirmative Action Officer is accountable directly to the Human Resources Director and indirectly to the Commissioner for program impacts and for ongoing program activities and direction.

### **Name of individual(s) responsible**

**Name:** Mary Babaya

**Email:** mary.babaya@state.mn

## **C. Human Resources Director or Designee(s)**

### **Responsibilities**

The Human Resources Office is responsible for ensuring equitable and uniform administration of all personnel policies. Human Resources Directors are responsible for ensuring timely responses to all Americans with Disabilities Act (ADA) requests for accommodations to remove barriers to equal employment opportunity with the agency, assisting managers and supervisors in human resources management activities.

Staff within Human Resources who work on affirmative action and diversity issues are accountable to the Human Resources Director or designee.

### **Duties**

The duties of Human Resources shall include, but not be limited to, the following:

- Maintain effective working relationships with agency affirmative action officers and designees.
- Provide leadership to HR staff and others to ensure personnel decision-making processes adhere to equal opportunity and affirmative action principles.
- Provide guidance in the development and utilization of selection criteria to ensure they are objective, uniform, and job related.
- Assist in recruitment and retention of protected class persons and notify managers and supervisors of existing disparities
- Ensure an Affirmative Action Pre-hire Review process is implemented and followed by hiring managers and supervisors by working effectively with the affirmative action officer.



- Initiate and report on specific program objectives contained in the affirmative action plan.
- Ensure that the reasonable accommodation process is implemented and followed for all employees and applicants in need of reasonable accommodation.
- Assist supervisors, managers and the Affirmative Action Officer in affirmative recruitment of protected group members through career and job fairs and other recruitment efforts, as well as in selection and retention of protected group members.
- Assist supervisors, managers, affirmative action officers, and human resources staff in the intentional creation of Supported Worker positions that assist in reduction of agency costs by diverting supportive employment duties from higher skilled workers to a supported worker position and thus improve employee morale and retention of individuals with disabilities in integrated employment, to include support of the Connect 700 program
- Request recruitment assistance from MMB's Statewide Director of Diversity Recruitment and Retention in the diversity recruitment and retention of protected group members in hard to fill or executive level positions.
- Include responsibility statements for affirmative action/equal employment opportunity in position descriptions and annual performance objectives.

### **Accountability**

Human Resources staff are accountable to the Human Resource Director or designee(s). Additionally, Human Resources Department ensures that aggregate data and trends of complaints of illegal discrimination in hiring are provided and shared with the Affirmative Action Officer on a quarterly basis.

### **Name of individual(s) responsible**

**Name:** Laurie Jandro

**Email:** laurie.jandro@state.mn.us

## **D. Americans with Disabilities Act Title I Coordinator**

### **Responsibilities**

The Americans with Disabilities Act (ADA) Title I Coordinator is responsible for the oversight of the agency's compliance with the ADA Title I – Employment, in accordance with the ADA - as amended and the Minnesota Human Rights Act.

### **Duties**

The duties of the ADA Title I Coordinator shall include, but are not limited to, the following:

- Provide guidance, coordination, and direction to agency management with regard to the ADA in the development and implementation of agency policy, procedures, and practices to ensure agency employment practices and programs are accessible and nondiscriminatory.
- Provide training, technical guidance, and consultation to agency management and staff on compliance and best practices with regard to hiring and retention of individuals with disabilities as well as the provision of reasonable accommodations to employees and job applicants.
- Track and facilitate requests for reasonable accommodations for job applicants and employees, as well as members of the public accessing agency services, and report reasonable accommodations annually to MMB.
- Research case law rules and regulation and update Human Resources Director on evolving ADA issues. Meet bi-annually with State ADA Coordinators and provide updates on ADA.
- Ensure compliance with ADA reporting according to state and federal requirements.
- Assist the Affirmative Action Officer in designing and delivering specific ADA training for targeted groups.
- Submit reasonable accommodation reimbursement under the guidelines of the statewide accommodation fund.
- Provide reasonable accommodations to qualified individuals (as defined by ADA) with known physical or mental disabilities, to enable them to compete in the selection process or to perform the essential functions of the job and/or enjoy equal benefits and privileges. The ADA Coordinator and the Human Resources Director (HRD), in consultation with the employee and supervisor, and other individuals who may need to be involved must:
  - Discuss the purpose and essential functions of the particular job and complete a step-by-step job analysis;
  - Determine the precise job-related limitations;
  - Identify the potential accommodations and assess the effectiveness each would have in allowing the employee to perform the essential functions of the job; and
  - After discussion and review, select and implement the accommodations that are appropriate for both the employee and the employer using the Reasonable Accommodation Agreement.

## **Accountability**

The ADA Title 1 Coordinator is accountable to the Commissioner.

## **Human Resources Director**

**Name:** Laurie Jandro

**Email:** Laurie.jandro@state.mn.us

**Title:** HR Director

**Phone:** (651) 284-5279

## **E. Americans with Disabilities Act Title II Coordinator**

### **Responsibilities**

The Americans with Disabilities Act (ADA) Title II Coordinator is responsible for the oversight of the agency's compliance with the ADA Title II – Public Services, in accordance with the ADA - as amended and the Minnesota Human Rights Act.

### **Duties**

The duties of the ADA Title II Coordinator shall include, but not limited to, the following:

- Provide guidance, coordination, and direction to agency management with regard to the ADA in the development and implementation of agency policy, procedures, and practices to ensure agency services and programs are accessible and nondiscriminatory for the public.
- Provide training, technical guidance, and consultation to the agency's management and staff on compliance and best practices with regards and obligations to members of the public with disabilities as well as the provision of reasonable modifications to visitors.
- Track and facilitate requests for reasonable modifications for members of the public accessing agency services, and report reasonable modifications annually to MMB.
- Research case law rules and regulation and update Executive team on evolving ADA issues. Meet bi-annually with state ADA Coordinators and learn updates on ADA.
- Ensure compliance with ADA reporting according to state and federal requirements.
- Assist the Affirmative Action Officer in designing and delivering specific ADA training for Agency employees assisting ADA modifications for the public.
- Provide reasonable modifications to members of the public (as defined by ADA) with known physical or mental disabilities, to ensure equal access and privileges to programming and services. The ADA Title II coordinator in consultation with the member of the public in need of a modification shall:
  - Discuss the purpose and essential functions of a particular reasonable modification;
  - Identify the potential modifications and assess the effectiveness each request.
  - After discussion and review, select and implement the modifications that are appropriate for both the member of the public and the Agency. This review shall be documented and reported in the State ADA Annual Report.

### **Accountability**

The ADA Title II Coordinator is accountable to the Commissioner.

### **Human Resources Director**

**Name:** Laurie Jandro

**Email:** Laurie.jandro@state.mn.us

**Title:** HR Director

**Phone:** (651) 284-5279

## **F. Senior Managers and Facility Executive Team Leaders**

### **Responsibilities**

Agency senior managers and executive team leaders are responsible for implementing all aspects of the agency's Affirmative Action Plan and the agency's commitment to affirmative action and equal opportunity.

### **Duties**

The duties of senior managers and facility executive team leaders shall include, but not be limited to, the following:

- Identify problem areas and eliminate barriers that inhibit equal employment opportunity within their units and the agency.
- Communicate the equal opportunity employment policy and the affirmative action program and plan to all employees assigned to their units.
- Assist the Affirmative Action Officer in conducting periodic audits of hiring and promotion patterns to remove impediments to attaining affirmative action goals and objectives.
- Hold regular discussions with supervisors and employees to ascertain that the agency's equal employment opportunity policies are being followed.
- Inform and evaluate managers and supervisors on their equal employment opportunity efforts and results in addition to other job performance criteria.
- Demonstrate and practice a work environment free of discrimination and harassment for all employees.

### **Accountability**

Senior managers and executive team leaders are accountable directly to the appropriate Assistant Commissioner, the Deputy Commissioner and the Commissioner.

## **G. All Employees**

### **Responsibilities**

All employees are responsible for conducting themselves in accordance with the state of Minnesota's policy of equal employment opportunity by refraining from any actions that would subject any employee to negative treatment on the basis of that individual's race, creed, color, sex (including

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pregnancy), national origin, age, marital status, familial status, disability, sexual orientation, gender expression, gender identity, reliance on public assistance, membership or activity in a local human rights commission, religion, political opinions, or affiliations. Employees who believe they have been subjected to such discrimination or harassment are encouraged to use the agency's complaint procedure.

## **Duties**

The duties of all employees shall include, but are not limited, to the following:

- Exhibit an attitude of respect, courtesy and cooperation towards fellow employees and the public.
- Refrain from any actions that would adversely affect a coworker on the basis of their race, sex, color, creed, religion, age, national origin, disability, marital status, familial status, status with regard to public assistance, sexual orientation, gender identity, gender expression, or membership or activity in a local human rights commission.

## **Accountability**

Employees are accountable to their designated supervisor and indirectly to the agency's Commissioner. Employees are responsible for maintaining an environment free from harassment and discrimination. All employees are responsible for conducting themselves in accordance with the Affirmative Action Plan.

## **Communication of the Affirmative Action Plan**

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The following information describes the methods that the agency takes to communicate the Affirmative Action Plan to employees and the general public

### **Internal Methods of Communication**

- A memorandum detailing the location of the Affirmative Action Plan and the responsibility to read, understand, support, and implement equal opportunity. The Affirmative Action Plan will be sent from the agency's leadership or alternatively, the Affirmative Action Officer, to all staff on an annual basis.
- The agency's Affirmative Action Plan is available to all employees on the agency's internal website at <http://intranet.dli.mn.gov/> or in print copy to anyone who requests it. As requested, the agency will make the plan available in alternative formats.

- Nondiscrimination and equal opportunity statements and posters are prominently displayed and available in areas frequented and accessible to employees.

## External Methods of Communication

- The agency's Affirmative Action Plan is available on the agency's external website at [www.dli.mn.gov](http://www.dli.mn.gov) or in print copy to anyone who requests it. As requested, the agency will make the plan available in alternative formats.
- The agency's website homepage, letterhead, publications, and all job postings, will include the statement "an equal opportunity employer."
- Nondiscrimination and equal opportunity statements and posters are prominently displayed and available in areas frequented by and accessible to members of the public. Examples of posters displayed include: Equal Employment Opportunity is the law, Employee Rights under the Fair Labor Standards Act, and the Americans with Disabilities Act Notice to the Public.

## Underutilization Analysis and Affirmative Action Goals

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The method of establishing goals for the 2018-2020 plan included use of EEO Job Group categories, and a two-factor analysis of the workforce to determine underutilization. The two-factor analysis consisted of EEO job group availability percentages for women, minorities and people with disabilities from Minnesota Management and Budgets 2010 Labor Force Availability and DLI Agency Appointment Summary by EEO4 category data. DLI assessed internal workforce availability percentages or those available for promotion or transfer and are members of a protected group already in the agency's workforce. Using appointment data for Fiscal Year 2017 and Fiscal Year 2018, DLI weighted the percent of hires from external (U.S. Census) and internal DLI workforce.

EEO Job Group	% of external hires	% of internal hires
Officials & Administrators	00%	100%
Professionals	43%	57%
Technicians	25%	75%
Office/Clerical	25%	75%
Skilled Craft	83%	17%

*Through the utilization analysis, the agency has determined which job categories are underutilized for women, minorities, and individuals with disabilities within the agency and has set the following hiring goals for the next two years.*

## **Availability**

The agency determined the recruitment area to be statewide for all job categories. The agency has staff located throughout the state and determined it was best to use this type of analysis because hires in each EEO Job Category are located throughout the state and from both internal and external feeder groups.

Underutilization Analysis worksheets are attached in the appendix. In the public plan numbers less than 10 are indicated with "<10" in accordance with Minnesota Management and Budget's guidance on data privacy.

## **Women**

At the agency, the population of women has improved in the following job categories: officials and administrators, and has not improved in the following job categories: professionals, office/clerical, and technicians. There continues to be underutilization for the skilled craft job category. There has been a decrease in the underutilization in the professionals EEO job category due to the decrease of external hires of a total of 27 % (43% versus 70% in previous plan years).

The agency anticipates hiring in the professionals category during 2018-2020 and has set a goal of hiring 10 women to address the significant underutilization. The agency aims to achieve this goal by incorporating a variety of different recruitment and retention strategies during the plan year. Specifically, through recruitment efforts the agency will continue to partner with community and professional organizations, promote and source DLI professional vacancies through community and professional organizations further outlined in the agency's Recruitment Plan. The agency is also committed to improving retention efforts of women in professionals, through workforce planning, employee training and development plans, as well as develop career ladders and progression opportunities throughout the department to help increase movement and promotional opportunities within the agency.

The agency will reassess and increase this hiring goal as the plan years progress if the goal of 10 female hires has been reached.

## **Minorities**

At the agency, the population of minorities has improved in the following job categories: officials and administrators, professionals, office/clerical, and has stayed the same in the following job categories: technicians and skilled craft. DLI made strides in this category by eliminating disparities within the professionals, office/clerical and officials and administrators job groups. More successful results were noted in all job group categories, with the largest increase for technicians (+9.8%) and officials and

administrators (+5.39%). Most importantly, the agency is retaining employees in this group. Sustainability efforts include: implementation of physical work environment remodel emphasizing work space that promotes collaboration and community, continued efforts to promote agency Diversity Committee and programming. Agency will support and participate in the statewide Employee Resource Group (ERG) sponsored by MMB, and agency recognition events such as Employee of the Month and Dare to Soar. The agency will continue to participate in more diversity and inclusion initiatives geared towards building a diverse and inclusive workforce to better serve Minnesota's citizens.

### **Individuals with Disabilities**

At the agency, the population of individuals with disabilities has improved resulting in no underutilization in the following EEO job categories: officials & administrators, professionals, technicians, and skilled craft. The agency is still underutilized in the office clerical/paraprofessional EEO job category. The agency's population of individuals with a disability increased in 2015 and continued into 2018 when employees were asked to review and voluntarily update their disability status in employee self-service. Another factor for the improvement in this area is the active participation of DLI in the Governor's Connect 700 initiative. The agency has successfully hired and retained a good number of employees through this program.

## **Separation and Retention Analysis by Protected Groups**

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The agency is committed to the retention of all employees, including members of the following protected groups: women, racial/ethnic minorities, and individuals with disabilities. The agency will strive to affirmatively ensure equal employment opportunity by retaining a diverse composite of talented and qualified employees, with emphasis on under-represented individuals. To be successful, the responsibility for these retention efforts lies with all employees. The agency's retention strategy is a multi-faceted approach, guided by the agency management, Human Resources Director, and Affirmative Action Officer.

Table 2 Person's Responsible for Agency Retention Programs/Activities

Title	Contact Information
Human Resources Director	651-284-5279
Affirmative Action Officer	651-284-5155
DLI Managers and Supervisors	

The Agency will continue to analyze and review separation data for disparate impact on protected group employees. This will include reviewing non-certification trends, layoff trends, resignation trends, and disciplinary discharges. The appendix will include a separation report broken down by EEO4 job category. Below is a snapshot of the agency separations throughout the past two years as well as a narrative describing the separation analysis.



## **Women**

Women represent approximately 45.80% of the total agency workforce. The agency saw a total of 42 separations from FY 2017 and FY 2018. Women were 40.56% of all separations. This is proportionately lower relative to the total agency workforce representation. Of these separations, 67.78% was as a result of resignations, 41.99% as a result of retirements, and 16.66% as a result of death. It should be noted, the agency continues to experience the majority of turnover in its largest EEO job group, the professionals and secondly, the office clerical job category.

## **Minorities**

Minorities represent approximately 10.88% of the total agency workforce. The agency saw a total of 8 separations from FY 2017 and FY 2018. Minorities were 7.54% of all separations. This is proportionately lower relative to the total agency workforce representation. Of these separations, a majority was as a result of retirements and terminations without rights (unclassified positions ending). Overall, there has been some improvement with the turnover rate in this area.

## **Individuals with Disabilities**

Individuals with disabilities represent approximately 8.62% of the total agency workforce. The agency saw a total of 10 separations from FY 2017 and FY 2018. Individuals with disabilities were 9.43% of all separations. This is proportionately higher relative to the total agency workforce representation. Of these separations, 15.41% was as a result of retirement. A majority of the retirements coming from the professional EEO job group.

## **Program Objectives, Identified Barriers, and Corrective Action to Eliminate Barriers**

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The agency's Affirmative Action Program is designed to implement the provisions of this Affirmative Action Plan and meet requirements found in Minnesota Statutes, Chapter 43A.191, and Subdivision 2.

In pursuing the agency's commitment to affirmative action, the agency will take the following actions during 2018-2020.

**Objective #1: Recruit a high-performance workforce which reflects the increasing diversity of Minnesota. Seek to eliminate disparities of protected groups.**

**Future evaluation method**

The agency will evaluate and determine on a quarterly basis if the agency's recruiting and hiring strategies have reduced and improved the utilization of underrepresented populations. The affirmative action officer will partner with division managers and supervisors to communicate the progress of reaching our goals and revise hiring strategies as necessary.

Introduce revamped monthly affirmative action hiring goal reports to DLI managers and supervisors with the intention to create and implement unit-specific recruitment efforts focused on under-represented and protected groups. Utilize these new reporting tools to report on workforce diversity within each division, work unit, and job classification group. The agency will continue to explore ways to develop and maintain outreach with community groups.

Recruiting a high performance workforce which reflects the increasing diversity of Minnesota will continue to be an objective, as it is critical to ensuring that DLI achieves its mission of ensuring an equitable, healthy and safe work and living environment in Minnesota.

**Past evaluation method**

Discuss progress of achieving affirmative action goals with managers and supervisors on a consistent basis to raise awareness of progress or areas for improvement, and identify new strategies for outreach, recruitment, and partnership with community and diversity organizations.

Partner with MMB Statewide Executive Recruiters, to focus on establishing new and strengthening existing networking resources for the purpose of announcing job vacancies, and receiving referrals of under-represented populations.

**Person(s) responsible for program objectives**

The affirmative action officer will partner with division managers and supervisors to communicate the progress of reaching our goals and revise hiring strategies as necessary.

**Target dates for evaluation**

The Affirmative Action officer will review and analyze quarterly separation and hiring data to consistently measure progress towards diverse hiring goals. The agency aims at attaining this goal by the end of the fiscal year.

## **Objective #2: Enhance the agency's development and retention of a highly qualified, diverse workforce.**

### **Future evaluation method**

Retaining a high-performance workforce which reflects the increasing diversity of Minnesota was an objective in the previous affirmative action plan and continues to be an objective. It is critical that DLI achieves its mission of ensuring an equitable, healthy and safe work and living environment in Minnesota.

Conduct workforce planning, including forecasting future workforce composition, gap analysis, succession planning, knowledge transfer and cross training.

Encourage employees and supervisors to collaborate and create individual development plans to facilitate employee development, and identify training opportunities to help employees reach their career development goals.

Provide agency sponsored training opportunities as a result of the training gaps identified in the DLI Training Needs Assessment to promote and support employee development and engagement.

Use ideas from diversity and inclusion employee focus groups for attracting, recruiting, hiring, and retaining a diverse workforce at DLI, for example the Employee Resource Group (ERG) program.

Update DLI exit interview questionnaire to include questions pertaining to diversity and inclusion at the agency. Share exit interview results with division leadership to increase awareness about diversity retention efforts and its role in employee engagement and retention.

### **Past evaluation method**

Conduct workforce planning, including forecasting future workforce composition, gap analysis, succession planning, knowledge transfer and cross training.

Research mentorship program effectiveness and implementation; create a proposal and timeline for roll-out at DLI.

Encourage employees and supervisors to collaborate and create individual development plans to facilitate employee development, and identify training opportunities to help employees reach their career development goals.

### **Person(s) responsible for program objectives**

The Affirmative Action Officer will review and analyze quarterly separation and hiring data to consistently measure progress towards diverse hiring goals. Meetings with senior leadership will include discussion of strategies and how to best achieve progress if there are areas for opportunity, and/or continued successes.

### **Target dates for evaluation**

The agency aims at attaining this goal by the end of the fiscal year.

## **Objective #3: Promote and maintain a culture of diversity and inclusion for all DLI employees**

### **Future evaluation method**

Maintain an active Diversity Committee that will develop monthly communications for each historical month through lunch and learns, guest speakers, and other related events. By so doing provide programming to promote diversity awareness among DLI staff. Provide the committee with a budget for training and other costs incurred related to diversity committee sponsored events.

Utilize diversity and inclusion employee focus groups and ERGs to gather ideas and recommendations for ways to make DLI a welcoming and supportive place of work for all; and learn strategies for how to attract, hire, and retain a diverse workforce within DLI.

### **Past evaluation method**

This objective was set in the 2016-2018 Affirmative Action Plan and continues to be an important, ongoing goal for the Agency. Since the previous plan, there has been enhanced appreciation and recognition of diversity at the Department of Labor and Industry through consistent participation in Lunch and Learn celebrations, clearly communicated diversity and inclusion themes, and participation in Diversity Committee events. Notable diversity and inclusion events include:

- DLI's active participation and engagement in the Statewide Recruitment Fair, People of Color Recruitment Fair, MDVA – Veteran's Career Fair, volunteer at State Fair and State Capital Tours, DLI leadership represented at the MN PRIDE Events, DLI leadership supports the Diversity Committee and employee participation in Employee Resource Groups (ERGs).
- Diversity and Inclusion training will continue to be part of employee professional development plans. DLI is continuing to identify training and opportunities for employees to learn more

about themselves and others related to cultural competency and respectful workplace expectations.

### **Person(s) responsible for program objectives**

The Affirmative Action Officer will review and analyze quarterly separation and hiring data to consistently measure progress towards diverse hiring goals. Meetings with senior leadership will include discussion of strategies and how to best achieve progress if there are areas for opportunity, and/or continued successes.

### **Target dates for evaluation**

The agency aims at attaining this goal by the end of the fiscal year.

The agency will continue to develop and incorporate these efforts in the 2018-2020 plan years, and will evaluate on an ongoing basis, and adjust strategies and goals as appropriate.

### **Program Objectives for (Women)**

The following job categories have been identified as underutilized for women.

List job category name	Percent women employees in category	Percent women hired in category	Percent women separated in category
<i>Professionals</i>	<b>41.45%</b>	<b>32.14%</b>	<b>43.00%</b>
<i>Technicians</i>	<b>50.00%</b>	<b>0.00%</b>	<b>0.00%</b>
<i>Skilled Craft</i>	<b>2.27%</b>	<b>0.00%</b>	<b>0.00%</b>

The following corrective action plan will be used to eliminate the barriers for women in each category.

### **Recruitment action for women in this category**

The professional EEO job category continues to be the highest group where there is underutilization for women in the agency. The agency had more women separated than were hired in the last two fiscal years. The skilled craft EEO job group continues to be a challenge for DLI. Outcomes in this area are not a reflection of poor leadership or execution, but heavily impacted by composition of the immediate workforce. Many of the positions require specialized credentials and/or experiences and the applicant

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pools have a higher rate of mid-career or late career applicants. Positions in this job group are traditionally professions dominated by men. As an agency charged with creating programs and initiatives that train, retool and prepare the next generation of workers, focus toward apprenticeship and outreach programs has increased, with the goal to diversify and increase the workforce availability. The agency will encourage more females to apply for vacancies in this category. The agency will enhance outreach efforts that target women of color in this category (e.g. presentations at regional women professional groups and conferences, advertisement with women's publications, and women's job fairs.

### **Program Objectives for (Racial/Ethnic Minorities)**

The following job categories have been identified as underutilized for minorities.

List job category name	Percent Minorities employees in category	Percent Minorities hired in category	Percent Minorities separated in category
<i>Skilled Craft</i>	<b>2.27%</b>	<b>0.00%</b>	<b>0.00%</b>

The following corrective action plan will be used to eliminate the barriers for racial/ethnic minorities in each category.

### **Recruitment action for racial/ethnic minorities in this category**

Again, the skilled craft EEO job group continues to be a challenge for DLI. Outcomes in this area are not a reflection of poor leadership or execution, but heavily impacted by composition of the immediate workforce. Many of the positions require specialized credentials and/or experiences and the applicant pools have a higher rate of mid-career or late career applicants. Positions in this job group are traditionally professions dominated by white men. As an agency charged with creating programs and initiatives that train, retool and prepare the next generation of workers, focus towards apprenticeship and outreach programs has increased, with the goal to diversify and increase the workforce availability. The agency will encourage more people of color to apply for vacancies in this category. The agency will enhance outreach efforts that target racial/ethnic groups and people of color in this category. Some examples might be presentations at various people of color job fairs and career fairs, professional groups and conferences targeted for minority groups, and advertisement with racial/ethnic minority group's publications.

### **Program Objectives for Individuals with Disabilities**

The following job categories have been identified as underutilized for individuals with disabilities.

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List job category name	Percent individuals with disabilities employees in category	Percent individuals with disabilities hired in category	Percent individuals with disabilities separated in category
<i>Office/Clerical/Paraprofessional</i>	<b>8.79%</b>	<b>0.00%</b>	<b>15.65%</b>

The following corrective action plan will be used to eliminate the barriers for individuals with Disabilities in each category.

**Recruitment action for individuals with disabilities in this category:**

Underutilization did not exist in the Office/Clerical/Paraprofessional EEO job category during plan years 2016-2018. However, due to high rate of employees retiring in this job group and in relation to the number of new hires, underutilization for this job group resulted. Moreover, the workforce availability for this EEO job category is greater than the number of individuals in this group at the agency level. For that reason DLI will embark in recruitment efforts to improve the number of underutilization in this job group. The following recruitment efforts will be used.

- 1) Review of job postings for physical and sensory requirements and follow the Guidelines for Inclusive Job Postings.
  - a. The agency will review all job postings for physical and sensory requirements and determine if the qualifications for the position are job-related and consistent with business necessity. Additionally, our agency will edit language pertaining to physical and sensory requirements and change this language to reflect more inclusive language for job qualifications.
- 2) Self-Identification
  - a. At the time of application and once a year, our agency will communicate to our employees that we collect summary data related to the number of individuals who have applied for positions and who are in our workforce. We will inform employees that we collect this summary data to make determinations about where we need to improve in terms of recruitment, selection, or retention of individuals with disabilities.
- 3) Supported Worker
  - a. When our agency posts a position, we will review the position for tasks that can be completed by a Supported Worker. We will work with VRS or the MMB State ADA Coordinator to assist us in our efforts.
- 4) Connect 700-Hour Program

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- a. Where possible, our agency will utilize the Connect 700-hour program which allows our agency to hire an individual with a disability and provide them training. At the end of the training period our agency may hire the individual.

5) Go Accessible! Campaign

- a. Our agency will distribute marketing material and resources to our staff to remind them to create accessible electronic documents and systems, so that employees with disabilities coming into the workforce can contribute to the workforce and will be able to access similar information and resources as other employees.

6) Reasonable Accommodation

- a. We will prominently display on our career site that we will provide reasonable accommodation to qualified individuals with a disability who apply for our positions where needed. Once hired, we will educate employees and supervisors and managers on accommodating employees in the workplace.

7) Strategic Partnerships

- a. Our agency will build strategic partnerships with DEED - Vocational Rehabilitation Services ("VRS"), DEED - State Services for the Blind ("SSB"), and other state agency partners to conduct job evaluations and to assist in recruitment or referral of candidates to open positions. Our agency will work to inform VRS or SSB when a position is posted or prior to a posting if possible about the positions. Additionally, we will post positions for at least 7 days to ensure equal opportunity to apply for the position.

8) Self-Analysis

- a. Our agency will conduct periodic self-checks to determine if our systems or documents are accessible, language in our job postings is inclusive, and reasonable accommodations have been provided and staff have been trained on how to provide reasonable accommodations.

9) Reporting

- a. Our agency will conduct a quarterly analysis of the number of individuals with disabilities who have applied for positions and the number of individuals with disabilities hired.



## **Methods of Auditing, Evaluating, and Reporting Program Success**

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### **Pre-Employment Review Procedure/Monitoring the Hiring Process**

The Department of Labor and Industry will evaluate its selection process to determine if its requirements unnecessarily screen out a disproportionate number of women, minorities, or individuals with disabilities. The agency will use the Monitoring the Hiring Process Form for every hire to track the number of women, minorities, and individuals with disabilities in each stage of the selection process. Directors, managers, and supervisors will work closely with Human Resources and the Affirmative Action Officer in reviewing the requirements for the position, posting the position, and interviewing and selecting to ensure that equal opportunity and affirmative action is carried out. Directors, managers, and supervisors will be asked to document their hiring decisions and equal opportunity professionals will review for bias.

Any time the agency cannot justify a hire, the agency takes a missed opportunity. Agency leadership will be asked to authorize the missed opportunity. The agency will report the number of affirmative and non-affirmative hires as well as missed opportunities to Minnesota Management and Budget on a quarterly basis.

When candidates are invited to participate in the selection process, employees scheduling the selection process will describe the process format to the candidate (*e.g.*, interview process, testing process). All candidates will be provided information regarding the procedure to request reasonable accommodations if necessary to allow candidates with disabilities equal opportunity to participate in the selection process. For example, describe if interview questions are offered ahead of time or what technology may be used during a test. This allows for an individual with a disability to determine if they may need a reasonable accommodation in advance of the selection process.

All personnel involved in the selection process will be trained and accountable for the agency's commitment to equal opportunity and the affirmative action program and its implementation.

### **Pre-Review Procedure for Layoff Decisions**

The Affirmative Action Officer, in conjunction with the agency's human resources office, shall be responsible for reviewing all pending layoffs to determine their effect on the agency's affirmative action goals and timetables.

If it is determined that there is an adverse impact on protected groups, the agency will document the reasons why the layoff is occurring, such as positions targeted for layoff, applicable personnel policies or collective bargaining agreement provisions, or other relevant reasons. The agency will determine if other alternatives are available to minimize the impact on protected groups.

## **Other Methods of Program Evaluation**

The agency submits the following compliance reports to Minnesota Management and Budget as part of the efforts to evaluate the agency's affirmative action program:

- Quarterly Monitoring the Hiring Process Reports;
- Biannual Affirmative Action Plan;
- Annual Americans with Disabilities Act Report;
- Annual Internal Complaint Report; and
- Disposition of Internal Complaint (submitted to MMB within 30 days of final disposition).

The agency also evaluates the Affirmative Action Plan in the following ways:

- Monitors progress toward stated goals by job category through creation and distribution of the monthly EEO Job Group report which is distributed to all managers and supervisors;
- Analyzes employment activity (hires, promotions, and terminations) by job category to determine if there is disparate impact;
- Analyzes compensation program to determine if there are patterns of discrimination;
- Reviews the accessibility of online systems and websites, and ensures that reasonable accommodations can be easily requested; and
- Discusses progress with agency leadership on a periodic basis and makes recommendations for improvement.

## **RECRUITMENT PLAN**

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The objective of this recruitment plan is to ensure the agency's recruitment programs are publicly marketed, attract, and obtain qualified applicants, enhance the image of state employment, and assist in meeting the affirmative action goals to achieve a diverse workforce.

Below are various recruitment methods or strategies utilized by the agency during the past year (FY18).

### **Advertising Sources:**

- University of Minnesota job board (GoldPass)
- University of St. Thomas Law School
- William Mitchell Law School
- Minnesota State University-Mankato (Mavjobs)
- MNworks.net

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- JobConnect
- DLI Social Media (Twitter)
- State of MN LinkedIn page
- Carlson School of Management
- MNRecruiters.com
- MN Government Finance Officers Association
- University of Minnesota Humphrey Public Affairs
- 10K Lakes
- HIRED
- Statewide email list (diversity email distribution list reaching over 100 organizations through MMB)
- Association of State Budget Officers (NASBO)
- Department email list-servs which target program specific licenses (i.e. workers compensation adjuster email list-serv)

The agency will continue to utilize college and university job boards, in addition to industry specific list-servs, as these advertising methods are cost effective and reach the appropriate industry audience.

**Job and Community Fairs**

The agency attended the People Of Color job fair organized by MMB during FY18. The agency will participate in the Statewide Career and Recruiting event and in future job fairs as appropriate.

**College and University Recruitment Events**

The agency promoted and posted DLI job opportunities at college and university job boards as identified in the advertising sources listed above. However, no on-site college and university recruitment events were attended in the past year.

### **Internships**

The agency utilizes interns in the Vocational Rehabilitation Unit and Legal Services Unit.

Interns for the Vocational Rehabilitation Unit are recruited based on relationships previously built at college and universities that offer vocational rehabilitation undergraduate and graduate degree programs. The agency may also be contacted directly by students or college and university representatives based on past relationship building and outreach.

Interns for the Legal Services Unit are recruited through postings at metro area colleges and universities such as the University of Minnesota, William Mitchell, and St. Thomas Law School.

### **Supported Employment (M.S. 43A.191, Subd. 2(d))**

The agency supports the employment of individuals with disabilities and will review vacant positions to determine if job tasks can be performed by a Supported Employment Workers. We will work with community organizations that provide employment services to individuals with disabilities to recruit for these positions.

### **Additional Recruitment Activities**

The agency participated in the Urban Scholar and Right Track programs in FY 17 and FY18. The Right Track program connects Saint Paul high school youth and young adults with meaningful training, work experience and career exploration opportunities so they are prepared to thrive in the workplace. The Urban Scholar Program provides undergraduate students from diverse racial and ethnic backgrounds with a distinctive professional experience focused on gaining essential leadership skills and creating career pathways to positions of influence.

The agency will continue to partner with and support these programs by actively participating in the upcoming plan years.

## Appendix

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### Statewide Harassment and Discrimination Prohibited Policy, HR/LR Policy # 1436

#### OVERVIEW

##### Objective

To create a work environment free from harassment and discrimination based on protected class.

##### Policy Statement

Any form of harassment or discrimination based on protected class is strictly prohibited. Individuals who believe they have been subject to harassment/discrimination based on protected class or retaliation as described in this policy, are encouraged to file a report with an appropriate authority, as set forth in Section II of this policy.

Any form of retaliation directed against an individual who opposes or reports protected class harassment/discrimination, or who participates in any investigation concerning protected class harassment/discrimination, is strictly prohibited and will not be tolerated.

Violations of this policy by State employees will be subject to discipline, up to and including discharge. Violations of this policy by third parties will be subject to appropriate action.

*For issues related to sexual harassment, please refer to HR/LR Policy #1329: Sexual Harassment Prohibited. For issues not related to sexual harassment or harassment or discrimination based on protected class, please see HR/LR Policy #1432 Respectful Workplace.*

##### Scope

This policy applies to all employees of, and third parties who have business interactions with, executive branch agencies and the classified employees in the Office of the Legislative Auditor, Minnesota State Retirement System, Public Employee Retirement Association, and Teachers' Retirement Association.

##### Definitions and Terms

*Complainant:* An individual who reports protected class harassment, discrimination, or retaliation.

*Third party:* Individuals who are not State employees, but who have business interactions with State employees, including, but not limited to:

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- Applicants for State employment
- Vendors
- Contractors
- Volunteers
- Customers
- Business partners
- Unpaid interns
- Other individuals with whom State employees interact in the course of employees' work for the State, such as advocates, lobbyists, and representatives of individuals or entities with business with any branch of Minnesota state government

*Protected class harassment or harassment based on protected class:* Unwelcome conduct or communication that is based on actual or perceived membership in a protected class, including stereotypes of protected classes, that has a negative effect or is likely to have a negative effect on the complainant and/or on the workplace or public service environment.

*Protected class:* Protected classes under this policy are as follows:

- Race
- Color
- Creed
- Religion
- National origin
- Sex\* (includes pregnancy and pregnancy-related conditions)
- Marital status
- Familial status
- Receipt of public assistance
- Membership or activity in a local human rights commission
- Disability
- Age
- Sexual orientation
- Gender identity
- Gender expression
- For employees, genetic information

\*See HR/LR Policy #1329 Sexual Harassment Prohibited for specific information on harassment based on unwelcome conduct or communication of a sexual nature.

*Age:* The prohibition against harassment and discrimination based on age prohibits such conduct based on a person's age if the person is over the age of 18.

*Marital status:* Whether a person is single, married, remarried, divorced, separated, or a surviving spouse, and includes protection against harassment or discrimination on the basis of the identity, situation, actions, or beliefs of a spouse or former spouse.

*Familial status:* The condition of one or more minors living with their parent(s) or legal guardian, or the designee of the parent(s) or guardian with the written permission of the parent(s) or guardian. This also protects those who are pregnant or those who are in the process of securing legal custody of a minor from being harassed or discriminated against on that basis.

*Disability:* A physical, sensory, or mental impairment which materially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment.

*Genetic information:* Includes information about an individual's or their family members' genetic tests, family medical history, an individual's request for, or receipt of, genetic services, or the participation in clinical research that includes genetic services by the individual or their family member, and the genetic information of a fetus carried by an individual or a pregnant family member, and the genetic information of any embryo legally held by the individual or their family member using an assisted reproductive technology.

*Public service environment:* A location where public service is being provided.

*Membership or activity in a local human rights commission:* Participation in an agency of a city, county, or group of counties that has the purpose of dealing with discrimination on the basis of race, color, creed, religion, national origin, sex, age, disability, marital status, status with regard to public assistance, sexual orientation, or familial status, as defined by Minn. Stat. § 363A.03, subd. 23.

## **GENERAL STANDARDS AND EXPECTATIONS**

### **Prohibition of Protected Class Harassment and Discrimination**

Harassment of or discrimination against any employee or third party based on protected class in the workplace or public service environment, or which affects the workplace or public service environment, is strictly prohibited. Harassment of or discrimination against an individual because of their relationship or association with members of a protected class is also strictly prohibited.

Protected class harassment/discrimination may take different forms including verbal, nonverbal, or physical conduct or communication. Conduct based on protected class may violate this policy even if it is not intended to be harassing. Protected class harassment/discrimination under this policy includes, but is not limited to, the following behavior when it is based on actual or perceived membership in a protected class, including stereotypes of protected classes:

- Offensive jokes, slurs, derogatory remarks, epithets, name-calling, ridicule or mockery, insults or put-downs

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- Display or use of offensive objects, drawings, pictures, or gestures
- Physical assaults or threats
- Inappropriate touching of body, clothing, or personal property
- Following, stalking, intimidation
- Malicious interference with work performance
- Implicit or explicit preferential treatment or promises of preferential treatment for submitting to the conduct or communication
- Implicit or explicit negative treatment or threats of negative treatment for refusing to submit to the conduct or communication
- Discriminatory conduct based on an individual's actual or perceived protected class that segregates, separates, limits or restricts the individual from employment opportunities, including, but not limited to, hiring, promotion, compensation, disciplinary action, assignment of job duties, benefits or privileges of employment

### **Employee and Third Party Responsibilities and Complaint Procedure**

Harassment or discrimination based on protected class will not be tolerated. All employees and third parties are expected to comply with this policy.

Employees and third parties are strongly encouraged to report all incidents of protected class harassment or discrimination, whether the individual is the recipient of the behavior, an observer, or is otherwise aware of the behavior. Individuals are encouraged to report incidents as soon as possible after the incident occurs. Individuals may report to any of the following:

1. Any of the agency's managers or supervisors
2. The agency's affirmative action officer
3. The agency's human resources office
4. Agency management, up to and including the agency head

If the report concerns an agency head, the complainant may contact Minnesota Management and Budget, Enterprise Human Resources, Office of Equal Opportunity, Diversity, and Inclusion.

To ensure the prompt and thorough investigation of a report, the complainant may be asked to provide information in writing, which may include, but is not limited to:

1. The name, department, and position of the person(s) allegedly causing the harassment/discrimination
2. A description of the incident(s), including the date(s), location(s), and the identity of any witnesses
3. The name(s) of other individuals who may have been subject to similar harassment/discrimination
4. What, if any, steps have been taken to stop the harassment/discrimination



5. Any other information the complainant believes to be relevant

Individuals are encouraged to use the agency's internal complaint procedure, but may also choose to file a complaint externally with the Equal Employment Opportunity Commission (EEOC), the Minnesota Department of Human Rights (MDHR), or other legal channels.

### **Manager/Supervisory Responsibility**

Managers and supervisors must:

1. Model appropriate behavior
2. Treat all reports of protected class harassment/discrimination seriously
3. Appropriately respond to a report or problem when they receive a report of protected class harassment/discrimination, or when they are otherwise aware a problem exists
4. Immediately report all allegations or incidents of protected class harassment/discrimination to human resources or the agency Affirmative Action Officer
5. Comply with their agency's complaint and investigation procedures and/or the agency's Affirmative Action Plan

### **Human Resources Responsibilities**

Agency human resources must:

1. Model appropriate behavior
2. Distribute the Harassment and Discrimination Prohibited Policy to all employees, through a method whereby receipt can be verified
3. Treat all reports of protected class harassment/discrimination seriously
4. Comply with the agency's complaint and investigation procedures and/or the agency's Affirmative Action Plan

### **Affirmative Action Officer or Designees Responsibilities**

Agency Affirmative Action Officer/designee must:

1. Model appropriate behavior
2. Treat all reports of protected class harassment/discrimination seriously
3. Comply with the agency's complaint and investigation procedures and/or the agency's Affirmative Action Plan
4. Keep the agency apprised of changes and developments in the law and policy

### **Investigation and Discipline**

State agencies will take seriously all reports of protected class harassment/discrimination or retaliation, and will take prompt and appropriate action. When conducting an investigation, supervisors, human resources, and Affirmative Action Officers must follow their agency's investigation procedures.

State agencies will take prompt and appropriate corrective action when there is a violation of this policy.

Employees who are found to have engaged in conduct in violation of this policy will be subject to disciplinary action, up to and including discharge.

Third parties who are found to have engaged in conduct in violation of this policy will be subject to appropriate action. Appropriate action for policy violations by third parties will depend on the facts and circumstances, including the relationship between the third party and the agency. Agencies may contact MMB Enterprise Human Resources, Office of Equal Opportunity, Diversity, and Inclusion for assistance in determining appropriate action for third parties. MMB may refer agencies to the appropriate resources, which may include, for example, the Department of Administration with respect to policy violations by vendors or contractors.

Employees who knowingly file a false report of protected class harassment/discrimination or retaliation will be subject to disciplinary action, up to and including discharge.

### **Non-Retaliation**

Retaliation against any person who opposes protected class harassment/discrimination, who reports protected class harassment/discrimination, or who participates in an investigation of such reports, is strictly prohibited. Retaliation also includes conduct or communication designed to prevent a person from opposing or reporting protected class harassment/discrimination or participating in an investigation. Retaliation will not be tolerated. Any employee who is found to have engaged in retaliation in violation of this policy will be subject to discipline, up to and including discharge. Third parties who are found to have engaged in retaliation in violation of this policy will be subject to appropriate action.

### **Complaint Procedure for Processing Complaints Under the Harassment and Discrimination Prohibited Policy or the Sexual Harassment Prohibited Policy**

The Department of Labor and Industry has established the following complaint procedure to be used by all individuals alleging harassment, discrimination, or retaliation in violation of the Harassment and Discrimination Prohibited Policy or the Sexual Harassment Prohibited Policy. Coercion, retaliation, or

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intimidation against anyone filing a complaint or serving as a witness under this procedure is prohibited.

## Who May File

Any individual who believes that they have been subject to harassment, discrimination, or retaliation in violation of the Harassment and Discrimination Prohibited Policy or the Sexual Harassment Prohibited Policy is encouraged to use this internal complaint procedure.

If the individual chooses, a complaint can be filed externally with the Minnesota Department of Human Rights (MDHR), the U.S. Equal Employment Opportunity Commission (EEOC), or through other legal channels. The MDHR, EEOC and other legal channels have time limits for filing complaints; individuals may contact the MDHR, EEOC, or a private attorney for more information.

Retaliation against any person who has filed a complaint either internally through the complaint procedure or through an outside enforcement agency or other legal channels is prohibited.

Individuals who knowingly file a false complaint will be subject to disciplinary or corrective action.

The following are the procedures for filing a complaint:

1. The individual may, but is not required to, complete the "Harassment and Discrimination Prohibited/ Sexual Harassment Prohibited Policies Complaint Form" provided by the Affirmative Action Officer or designee. Individuals are encouraged to file a complaint within a reasonable period of time after the individual becomes aware that a situation may involve conduct in violation of the Harassment and Discrimination Prohibited Policy or the Sexual Harassment Prohibited Policy. The Affirmative Action Officer or designee will, if requested, provide assistance in filling out the form.
2. The Affirmative Action Officer or designee determines if the complainant is alleging conduct in violation of the Harassment and Discrimination Prohibited Policy or the Sexual Harassment Prohibited Policy; or if the complaint instead is of a general personnel concern or a general concern of respect in the workplace.
  - If it is determined that the complaint is not related to conduct that would violate the Harassment and Discrimination Prohibited Policy or the Sexual Harassment Prohibited Policy, but rather involves general personnel concerns or general concerns of respect in the workplace, the Affirmative Action Officer or designee will inform the complainant, in writing, within ten (10) business days.

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- If it is determined that the complaint is related to conduct that would violate the Harassment and Discrimination Prohibited Policy or the Sexual Harassment Prohibited Policy, the Affirmative Action Officer or designee will determine whether corrective action may be taken without an investigation. If it is determined that an investigation is necessary, the Affirmative Action Officer or designee shall investigate the complaint.
3. The Affirmative Action Officer or designee shall create a written investigation report of every investigation conducted. If the investigation shows sufficient evidence to substantiate the complaint, appropriate corrective action will be taken.
  4. Within (60) days after the complaint is filed, the Affirmative Action Officer or designee shall provide a written answer to the complainant, unless reasonable cause for delay exists. The complainant will be notified if the written answer is not expected to be issued within the sixty (60) day period. The written answer to the complainant must comply with the data privacy restrictions of the Minnesota Government Data Practices Act.
  5. Disposition of the complaint will be filed with the Commissioner of Minnesota Management and Budget within thirty (30) days after the final determination.
  6. The status of the complaint may be shared with the complainant(s) and respondent(s). All data related to the complaint are subject to the provisions of the Minnesota Government Data Practices Act.
  7. The Affirmative Action Officer or designee shall maintain records of all complaints, investigation reports, and any other data or information the Affirmative Action Officer or designee deems pertinent for seven (7) years after the complaint is closed.
  8. In extenuating circumstances, the employee or applicant may contact the State Affirmative Action Officer in the Office of Equal Opportunity at Minnesota Management and Budget for information regarding the filing of a complaint (for example, if the complaint is against the agency head or the agency Affirmative Action Officer).

**Department of Labor and Industry Harassment and Discrimination  
Prohibited/Sexual Harassment Prohibited Policies Complaint Form  
Template**

**Complaint of Discrimination/Harassment Form (see attached form)**

# **Statewide Sexual Harassment Prohibited Policy**

## **Statewide HR/LR Policy #1329: Sexual Harassment Prohibited**

### **Objective**

To create a work environment free from sexual harassment of any kind.

### **Policy Statement**

Sexual harassment in any form is strictly prohibited. Individuals who believe they have been subject to sexual harassment are encouraged to file a complaint with an appropriate authority. Any form of retaliation directed against an individual who complains about sexual harassment or who participates in any investigation concerning sexual harassment is strictly prohibited and will not be tolerated. Violations of this policy by State employees will be subject to discipline, up to and including discharge. Violations of this policy by third parties will be subject to appropriate action.

### **Scope**

This policy applies to all employees of, and third parties who have business interactions with, executive branch agencies and the classified employees in the Office of the Legislative Auditor, Minnesota State Retirement System, Public Employee Retirement Association, and Teachers' Retirement Association.

### **Definitions and Key Terms**

#### **Complainant**

An individual who complains about sexual harassment or retaliation.

#### **Public service environment**

A location that is not the workplace where public service is being provided.

#### **Sexual harassment**

Unwelcome sexual advances, unwelcome requests for sexual favors, or other unwelcome verbal, written, or physical conduct or communication of a sexual nature.

#### **Third party**

Individuals who are not State employees but who have business interactions with State employees, including, but not limited to:

- Applicants for State employment
- Vendors

- Contractors
- Volunteers
- Customers
- Business Partners

## **Exclusions**

N/A

## **Statutory References**

42 U.S.C. § 2000e, et al.  
M.S. Ch. 363A  
M.S. Ch. 43A  
Minn. Rule 3905.0500

## **GENERAL STANDARDS AND EXPECTATIONS**

### **I. Prohibition of Sexual Harassment**

Sexual harassment of any employee or third party in the workplace or public service environment, or which affects the workplace or public service environment, is strictly prohibited.

Sexual harassment under this policy is any conduct or communication of a sexual nature which is unwelcome. The victim, as well as the harasser, can be of any gender. The victim does not have to be of the opposite sex as the harasser. Sexual harassment includes, but is not limited to:

- Unwelcome sexual innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions, degrading sexual remarks, threats;
- Unwelcome sexually suggestive objects or pictures, graphic commentaries, suggestive or insulting sounds, leering, whistling, obscene gestures;
- Unwelcome physical contact, such as rape, sexual assault, molestation, or attempts to commit these assaults; unwelcome touching, pinching, or brushing of or by the body;
- Preferential treatment or promises of preferential treatment for submitting to sexual conduct, including soliciting or attempting to solicit an individual to submit to sexual activity for compensation or reward;
- Negative treatment or threats of negative treatment for refusing to submit to sexual conduct;
- Subjecting, or threatening to subject, an individual to unwelcome sexual attention or conduct.

## **II. Employee and Third Party Responsibilities and Complaint Procedure**

Sexual harassment will not be tolerated. All employees and third parties are expected to comply with this policy.

Employees and third parties are encouraged to report all incidents of sexual harassment. Individuals are encouraged to report incidents of sexual harassment as soon as possible after the incident occurs. Individuals may make a complaint of sexual harassment with:

- An agency supervisor;
- The agency's affirmative action officer;
- An agency's human resource office;
- Agency management, up to and including the commissioner.

If the complaint concerns an agency head, the complainant may contact Minnesota Management & Budget, Enterprise Human Resources, Office of Equal Opportunity, Diversity, and Inclusion.

To ensure the prompt and thorough investigation of a complaint of sexual harassment, the complainant may be asked to provide information in writing, which may include, but is not limited to:

- The name, department, and position of the person(s) allegedly causing the harassment;
- A description of the incident(s), including the date(s), location(s), and the presence of any witnesses;
- The name(s) of other individuals who may have been subject to similar harassment;
- What, if any, steps have been taken to stop the harassment;
- Any other information the complainant believes to be relevant.

Individuals are encouraged to use the agency's internal complaint procedure, but may also choose to file a complaint externally with the Equal Employment Opportunity Commission (EEOC) and/or the Minnesota Department of Human Rights (MDHR) or other legal channels.

## **III. Supervisor Responsibility**

Supervisors are responsible for the following:

- Modeling appropriate behavior;
- Treating all complaints of sexual harassment seriously, regardless of the individuals or behaviors involved;
- When a complaint of sexual harassment has been made to the supervisor, or when the supervisor is otherwise aware that a problem exists, the supervisor must appropriately respond to the complaint or problem;

- Immediately report all allegations or incidents of sexual harassment to human resources or the agency Affirmative Action Officer so that prompt and appropriate action can be taken;
- Complying with their agency's complaint and investigation procedures and/or their Affirmative Action Plan to ensure prompt and appropriate action in response to complaints of sexual harassment.

Supervisors who knowingly participate in, allow, or tolerate sexual harassment or retaliation are in violation of this policy and are subject to discipline, up to and including discharge.

#### **IV. Human Resources Responsibilities**

Agency human resources offices are responsible for the following:

- Modeling appropriate behavior;
- Distributing the sexual harassment policy to all employees, through a method whereby receipt can be verified;
- Treating all complaints of sexual harassment seriously, regardless of the individual(s) or behaviors involved;
- Complying with the agency's complaint and investigation procedures and/or their Affirmative Action Plan to ensure prompt and appropriate action in response to complaints of sexual harassment.

#### **V. Affirmative Action Officer or Designee Responsibilities**

Agency Affirmative Action Officer/designee is responsible for the following:

- Modeling appropriate behavior;
- Treating all complaints of sexual harassment seriously, regardless of the individual(s) or behaviors involved;
- Complying with the agency's complaint and investigation procedures to ensure the prompt and appropriate action in response to complaints of sexual harassment;
- Keeping the agency apprised of changes and developments in the law.

#### **VI. Investigation and Discipline**

All complaints of sexual harassment will be taken seriously, and prompt and appropriate action taken. When conducting an investigation, supervisors, human resources, and Affirmative Action Officers must follow their agency's investigation procedures. For a sample investigation procedure, please review the documents available on the [MMB Equal Opportunity, Diversity, and Inclusion website](#), including:

- Agency AAP Planning Guide
- For agencies with more than 25 employees



- For agencies with 25 or fewer employees

Timely and appropriate corrective action will be taken when there is a violation of this policy. Employees who are found to have engaged in sexual harassment in violation of this policy will be subject to disciplinary action, up to and including discharge.

Third parties who are found to have engaged in sexual harassment in violation of this policy will be subject to appropriate action. Appropriate action for policy violations by third parties will depend on the facts and circumstances, including the relationship between the third party and the agency. Agencies may contact MMB Enterprise Human Resources, Office of Equal Opportunity, Diversity, and Inclusion for assistance in determining appropriate action for third parties. MMB may refer agencies to the appropriate resources, which may include, for example, the Department of Administration with respect to policy violations by vendors or contractors.

Employees who knowingly file a false complaint of sexual harassment will be subject to disciplinary action, up to and including discharge.

## **VII. Non-Retaliation**

Retaliation against any person who reports sexual harassment or participates in an investigation of such reports is strictly prohibited. Retaliation will not be tolerated. Any employee who is found to have engaged in retaliation in violation of this policy will be subject to discipline, up to and including discharge. Third parties who are found to have engaged in retaliation in violation of this policy will be subject to appropriate action.

## **RESPONSIBILITIES**

### **Agencies are responsible for:**

- Adopting this policy.
- Disseminating this policy to agency employees through a method whereby receipt can be verified.
- Posting this policy in a manner that can be accessed by third parties.
- Including this policy in their Affirmative Action Plan.
- Implementing this policy, including developing:
  - An educational program;
  - A process for reporting complaints; and
  - A procedure under which complaints will be addressed promptly.
  - Enforcing this policy.

**MMB is responsible for:**

- Ensuring that state agencies carry out their responsibilities under this policy and updating this policy as necessary.

**FORMS AND SUPPLEMENTS**

See acknowledgement form, below, which can be used to verify receipt by agency employees.

**Acknowledgement**

I acknowledge that I have received and read the policy, Sexual Harassment Prohibited, and accompanying complaint procedure. I understand that sexual harassment and retaliation are strictly prohibited. I understand that if I engage in conduct in violation of the policy toward any State employee, applicant for employment, vendor, contractor, volunteer, customer, or business partner, I will be subject to disciplinary action, up to and including discharge.

I understand that if I believe that I have been subjected to sexually harassing or retaliatory conduct as defined by this policy by any State employee, applicant for employment, vendor, contractor, volunteer, customer or business partner, I am encouraged to report that behavior. I understand that I can make a report to agency managers/supervisors, agency human resources, or agency management, up to and including the commissioner. I understand that if my complaint concerns an agency head, I may contact Minnesota Management & Budget.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Employee Name: \_\_\_\_\_

**Statewide ADA Reasonable Accommodation Policy**

**Statewide HR/LR Policy #1433: ADA Reasonable Accommodation Policy**

**OBJECTIVE**

The goals of this policy are:

- To ensure compliance with all applicable state and federal laws;
- To establish a written and readily accessible procedure regarding reasonable accommodation, including providing notice of this policy on all job announcements;
- To provide guidance and resources about reasonable accommodations;
- To provide a respectful interactive process to explore reasonable accommodations; and
- To provide a timely and thorough review process for requests for reasonable accommodation.

## Policy Statement

State agencies must comply with all state and federal laws that prohibit discrimination against qualified individuals with disabilities in all employment practices. All state agencies must provide reasonable accommodations to qualified applicants and employees with disabilities unless to do so would cause an undue hardship or pose a direct threat. Agencies must provide reasonable accommodation when:

- A qualified applicant with a disability needs an accommodation to have an equal opportunity to compete for a job;
- A qualified employee with a disability needs an accommodation to perform the essential functions of the employee's job; and
- A qualified employee with a disability needs an accommodation to enjoy equal access to benefits and privileges of employment (e.g., trainings, office sponsored events).

## Scope

This policy applies to all employees of the Executive Branch and classified employees in the Office of Legislative Auditor, Minnesota State Retirement System, Public Employee Retirement System, and Teachers' Retirement System.

## Definitions

**Applicant-** A person who expresses interest in employment and satisfies the minimum requirements for application established by the job posting and job description.

**Americans with Disabilities Act (ADA) Coordinator-** Each agency is required to appoint an ADA coordinator or designee, depending on agency size, to direct and coordinate agency compliance with Title I of the ADA.

**Direct Threat-** A significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.

The determination that an individual poses a direct threat shall be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job.

**Essential Functions-** Duties so fundamental that the individual cannot do the job without being able to perform them. A function can be essential if:

- The job exists specifically to perform the function(s); or
- There are a limited number of other employees who could perform the function(s); or
- The function(s) is/are specialized and the individual is hired based on the employee's expertise.

**Interactive Process-** A discussion between the employer and the individual with a disability to determine an effective reasonable accommodation for the individual with a disability. To be interactive, both sides must communicate and exchange information.

**Individual with a Disability-** An individual who:

- Has a physical, sensory, or mental impairment that substantially limits one or more major life activities; or
- Has a record or history of such impairment; or
- Is regarded as having such impairment.

**Qualified Individual with a Disability-** An individual who:

- Satisfies the requisite skill, experience, education, and other job-related requirements of the job that the individual holds or desires; and
- Can perform the essential functions of the position with or without reasonable accommodation.

**Major Life Activities-** May include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

Major life activities also include the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

**Medical Documentation-** Information from the requestor's treating provider which is sufficient to enable the employer to determine whether an individual has a disability and whether and what type of reasonable accommodation is needed when the disability or the need for accommodation is not obvious. Medical documentation can be requested using the standardized Letter Requesting Documentation for Determining ADA Eligibility from a Medical Provider.

**Reasonable Accommodation-** An adjustment or alteration that enables a qualified individual with a disability to apply for a job, perform job duties, or enjoy the benefits and privileges of employment. Reasonable accommodations may include:

- Modifications or adjustments to a job application process to permit a qualified individual with a disability to be considered for a job; or
- Modifications or adjustments to enable a qualified individual with a disability to perform the essential functions of the job; or
- Modifications or adjustments that enable qualified employees with disabilities to enjoy equal benefits and privileges of employment.
- Modifications or adjustments may include, but are not limited to:
  - Providing materials in alternative formats like large print or Braille;
  - Providing assistive technology, including information technology and communications equipment, or specially designed furniture;

- Modifying work schedules or supervisory methods;
- Granting breaks or providing leave;
- Altering how or when job duties are performed;
- Removing and/or substituting a marginal function;
- Moving to a different office space;
- Providing telework;
- Making changes in workplace policies;
- Providing a reader or other staff assistant to enable employees to perform their job functions, where a reasonable accommodation cannot be provided by current staff;
- Removing an architectural barrier, including reconfiguring work spaces;
- Providing accessible parking;
- Providing a sign language interpreter; or
- Providing a reassignment to a vacant position.

**Reassignment-** Reassignment to a vacant position for which an employee is qualified is a “last resort” form of a reasonable accommodation. This type of accommodation must be provided to an employee, who, because of a disability, can no longer perform the essential functions of the position, with or without reasonable accommodation, unless the employer can show that it will be an undue hardship.

**Support Person-** Any person an individual with a disability identifies to help during the reasonable accommodation process in terms of filling out paperwork, attending meetings during the interactive process to take notes or ask clarifying questions, or to provide emotional support.

**Undue Hardship-** A specific reasonable accommodation would require significant difficulty or expense. Undue hardship is always determined on a case-by-case basis considering factors that include the nature and cost of the accommodation requested and the impact of the accommodation on the operations of the agency. A state agency is not required to provide accommodations that would impose an undue hardship on the operation of the agency.

## Exclusions

N/A

## Statutory References

- Rehabilitation Act of 1973, Title 29 USC 701
- Americans with Disabilities Act (1990)
- 29 C.F.R. 1630, Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act

## GENERAL STANDARDS AND EXPECTATIONS

### Individuals who may request a reasonable accommodation include:

- Any qualified applicant with a disability who needs assistance with the job application procedure or the interview or selection process; or
- Any qualified agency employee with a disability who needs a reasonable accommodation to perform the essential functions of the position; or
- A third party, such as a family member, friend, health professional or other representative, on behalf of a qualified applicant or employee with a disability, when the applicant or employee is unable to make the request for reasonable accommodation. When possible, the agency must contact the applicant or employee to confirm that the accommodation is wanted. The applicant or employee has the discretion to accept or reject the proposed accommodation.

The agency must abide by the Minnesota Government Data Practices Act, Chapter 13, in obtaining or sharing information related to accommodation requests.

### How to request a reasonable accommodation

An agency applicant or employee may make a reasonable accommodation request to any or all of the following:

- Immediate supervisor or manager in the employee's chain of command;
- Agency Affirmative Action Officer/Designee;
- Agency ADA Coordinator;
- Agency Human Resources Office;
- Any agency official with whom the applicant has contact during the application, interview and/or selection process.

### Timing of the request

An applicant or employee may request a reasonable accommodation at any time, even if the individual has not previously disclosed the existence of a disability or the need for an accommodation. A request is any communication in which an individual asks or states that he or she needs the agency to provide or change something because of a medical condition.

The reasonable accommodation process begins as soon as possible after the request for accommodation is made.

### Form of the request

The applicant or employee is responsible for requesting a reasonable accommodation or providing sufficient notice to the agency that an accommodation is needed.

An initial request for accommodation may be made in any manner (e.g., writing, electronically, in person or orally).

The individual requesting an accommodation does not have to use any special words and does not have to mention the ADA or use the phrase "reasonable accommodation" or "disability."

Oral requests must be documented in writing to ensure efficient processing of requests.

When a supervisor or manager observes or receives information indicating that an employee is experiencing difficulty performing the job due to a medical condition or disability, further inquiry may be required. Supervisors or managers should consult with the agency ADA Coordinator for advice on how to proceed.

When an employee needs the same reasonable accommodation on a repeated basis (e.g., the assistance of a sign language interpreter), a written request for accommodation is required the first time only. However, the employee requesting an accommodation must give appropriate advance notice each subsequent time the accommodation is needed. If the accommodation is needed on a regular basis (e.g., a weekly staff meeting), the agency must make appropriate arrangements without requiring a request in advance of each occasion.

### **The interactive process entails**

Communication is a priority and encouraged throughout the entire reasonable accommodation process. The interactive process is a collaborative process between the employee and/or applicant and the agency to explore and identify specific reasonable accommodation(s). (For information on the Interactive Process see the U.S. Department of Labor, Job Accommodation Network at <http://askjan.org/topics/interactive.htm>). This process is required when:

- The need for a reasonable accommodation is not obvious;
- The specific limitation, problem or barrier is unclear;
- An effective reasonable accommodation is not obvious;
- The parties are considering different forms of reasonable accommodation;
- The medical condition changes or fluctuates; or,
- There are questions about the reasonableness of the requested accommodation.

The interactive process should begin as soon as possible after a request for reasonable accommodation is made or the need for accommodation becomes known.

The process should ensure a full exchange of relevant information and communication between the individual and the agency. An individual may request that the agency ADA Coordinator, a union representative, or support person be present.

The agency ADA Coordinator shall be consulted when:

- Issues, conflicts or questions arise in the interactive process; and
- Prior to denying a request for accommodation.

### **Agency responsibilities for processing the request**

As the first step in processing a request for reasonable accommodation, the person who receives the request must promptly forward the request to the appropriate decision maker. At the same time, the recipient will notify the requestor who the decision maker is.

#### **Commissioner**

The commissioner of the agency or agency head has the ultimate responsibility to ensure compliance with the ADA and this policy and appoint an ADA Coordinator.

#### **ADA Coordinator**

The agency ADA Coordinator is the agency's decision maker for reasonable accommodation requests for all types of requests outside of the supervisors' and managers' authority. The agency ADA Coordinator will work with the supervisor and manager, and where necessary, with agency Human Resources, to implement the approved reasonable accommodation.

#### **Supervisors and Managers**

Agencies have the authority to designate the level of management approval needed for reasonable accommodation requests for low-cost purchases. For example:

Requests for standard office equipment that is needed as a reasonable accommodation and adaptive items costing less than \$100. [Agencies can adjust the dollar amount based on their needs]; and

Requests for a change in a condition of employment such as modified duties, or a change in schedule, or the location and size of an employee's workspace. [Agencies can choose to delegate specific requests to supervisors or managers or require these types of requests to work through the agency ADA Coordinator].

### **Analysis for processing requests**

Before approving or denying a request for accommodation, the agency decision maker with assistance from the agency ADA Coordinator will:

1. Determine if the requestor is a qualified individual with a disability;
2. Determine if the accommodation is needed to:
  - Enable a qualified applicant with a disability to be considered for the position the individual desires;
  - Enable a qualified employee with a disability to perform the essential functions of the position; or



- Enable a qualified employee with a disability to enjoy equal benefits or privileges of employment as similarly situated employees without disabilities;
3. Determine whether the requested accommodation is reasonable;
  4. Determine whether there is a reasonable accommodation that will be effective for the requestor and the agency; and
  5. Determine whether the reasonable accommodation will impose an undue hardship on the agency's operations.

An employee's accommodation preference is always seriously considered, but the agency is not obligated to provide the requestor's accommodation of choice, so long as it offers an effective accommodation, or determines that accommodation would cause an undue hardship.

### **Obtaining medical documentation in connection with a request for reasonable accommodation**

In some cases, the disability and need for accommodation will be reasonably evident or already known, for example, where an employee is blind. In these cases, the agency will not seek further medical documentation. If a requestor's disability and/or need for reasonable accommodation are not obvious or already known, the agency ADA Coordinator may require medical information showing that the requestor has a covered disability that requires accommodation. The agency ADA Coordinator may request medical information in certain other circumstances. For example when:

- The information submitted by the requestor is insufficient to document the disability or the need for the accommodation;
- A question exists as to whether an individual is able to perform the essential functions of the position, with or without reasonable accommodation; or
- A question exists as to whether the employee will pose a direct threat to himself/herself or others.

Where medical documentation is necessary, the agency ADA Coordinator must make the request and use the Letter Requesting Documentation for Determining ADA Eligibility from a Medical Provider. The agency ADA Coordinator must also obtain the requestor's completed and signed Authorization for Release of Medical Information before sending the letter to, or otherwise communicating with, the medical provider. The employee may choose not to sign the Authorization. However, if the employee chooses not to sign the Authorization, it is the employee's responsibility to ensure that the agency receives the requested medical information.

Only medical documentation specifically related to the employee's request for accommodation and ability to perform the essential functions of the position will be requested. When medical documentation or information is appropriately requested, an employee must provide it in a timely manner, or the agency may deny the reasonable accommodation request. Agencies must not request medical records; medical records are not appropriate documentation and cannot be accepted. **Supervisors and managers *must not* request medical information or documentation from an**

**applicant or employee seeking an accommodation.** Such a request will be made by the agency ADA Coordinator, if appropriate.

## **Confidentiality requirements**

### **Medical Information**

Medical information obtained in connection with the reasonable accommodation process must be kept confidential. All medical information obtained in connection with such requests must be collected and maintained on separate forms and in separate physical or electronic files from non-medical personnel files and records. Electronic copies of medical information obtained in connection with the reasonable accommodation process must be stored so that access is limited to only the agency ADA Coordinator. Physical copies of such medical information must be stored in a locked cabinet or office when not in use or unattended. Generally, medical documentation obtained in connection with the reasonable accommodation process should only be reviewed by the agency ADA Coordinator.

The agency ADA Coordinator may disclose medical information obtained in connection with the reasonable accommodation process to the following:

- Supervisors, managers or agency HR staff who have a need to know may be told about the necessary work restrictions and about the accommodations necessary to perform the employee's duties. However, information about the employee's medical condition should only be disclosed if strictly necessary, such as for safety reasons;
- First aid and safety personnel may be informed, when appropriate, if the employee may require emergency treatment or assistance in an emergency evacuation;
- To consult with the State ADA Coordinator or Employment Law Counsel at MMB, or the Attorney General's Office about accommodation requests, denial of accommodation requests or purchasing of specific assistive technology or other resources; or
- Government officials assigned to investigate agency compliance with the ADA.

Whenever medical information is appropriately disclosed as described above, the recipients of the information must comply with all confidentiality requirements.

### **Accommodation Information**

The fact that an individual is receiving an accommodation because of a disability is confidential and may only be shared with those individuals who have a need to know for purposes of implementing the accommodation, such as the requestor's supervisor and the agency ADA Coordinator.

### **General Information**

General summary information regarding an employee's or applicant's status as an individual with a disability may be collected by agency equal opportunity officials to maintain records and evaluate and report on the agency's performance in hiring, retention, and processing reasonable accommodation requests.

### **Approval of requests for reasonable accommodation**

As soon as the decision maker determines that a reasonable accommodation will be provided, the agency ADA Coordinator will process the request and provide the reasonable accommodation in as short of a timeframe as possible. The time necessary to process a request will depend on the nature of the accommodation requested and whether it is necessary to obtain supporting information. If an approved accommodation cannot be provided within a reasonable time, the decision maker will inform the requestor of the status of the request before the end of 30 days. Where feasible, if there is a delay in providing the request, temporary measures will be taken to provide assistance.

Once approved, the reasonable accommodation should be documented for record keeping purposes and the records maintained by the agency ADA Coordinator.

### **Funding for reasonable accommodations**

The agency must specify how the agency will pay for reasonable accommodations.

### **Procedures for reassignment as a reasonable accommodation**

Reassignment to a vacant position is an accommodation that must be considered if there are no effective reasonable accommodations that would enable the employee to perform the essential functions of his/her current job, or if all other reasonable accommodations would impose an undue hardship.

The agency ADA Coordinator will work with agency Human Resources staff and the requestor to identify appropriate vacant positions within the agency for which the employee may be qualified and can perform the essential functions of the vacant position, with or without reasonable accommodation. Vacant positions which are equivalent to the employee's current job in terms of pay, status, and other relevant factors will be considered first. If there are none, the agency will consider vacant lower level positions for which the individual is qualified. The EEOC recommends that the agency consider positions that are currently vacant or will be coming open within at least the next 60 days.

### **Denial of requests for reasonable accommodation**

The agency ADA Coordinator must be contacted for assistance and guidance prior to denying any request for reasonable accommodation. The agency may deny a request for reasonable accommodation where:

- The individual is not a qualified individual with a disability;
- The reasonable accommodation results in undue hardship or the individual poses a direct threat to the individual or others. Undue hardship and direct threat are determined on a case-by-case basis with guidance from the agency ADA Coordinator; or

- Where no reasonable accommodation, including reassignment to a vacant position, will enable the employee to perform all the essential functions of the job.

The explanation for denial must be provided to the requestor in writing. The explanation should be written in plain language and clearly state the specific reasons for denial. Where the decision maker has denied a specific requested accommodation, but has offered a different accommodation in its place, the decision letter should explain both the reasons for denying the accommodation requested and the reasons that the accommodation being offered will be effective.

### **Consideration of undue hardship**

An interactive process must occur prior to the agency making a determination of undue hardship. Determination of undue hardship is made on a case-by-case basis and only after consultation with the agency's ADA Coordinator. In determining whether granting a reasonable accommodation will cause an undue hardship, the agency considers factors such as the nature and cost of the accommodation in relationship to the size and resources of the agency and the impact the accommodation will have on the operations of the agency.

Agencies may deny reasonable accommodations based upon an undue hardship. Prior to denying reasonable accommodation requests due to lack of financial resources, the agency will consult with the State ADA Coordinator at MMB.

### **Determining direct threat**

The determination that an individual poses a "direct threat," (i.e., a significant risk of substantial harm to the health or safety of the individual or others) which cannot be eliminated or reduced by a reasonable accommodation, must be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job with or without reasonable accommodation. A determination that an individual poses a direct threat cannot be based on fears, misconceptions, or stereotypes about the individual's disability. Instead, the agency must make a reasonable medical judgment, relying on the most current medical knowledge and the best available objective evidence.

In determining whether an individual poses a direct threat, the factors to be considered include:

- Duration of the risk;
- Nature and severity of the potential harm;
- Likelihood that the potential harm will occur; and
- Imminence of the potential harm.

### **Appeals process in the event of denial**

In addition to providing the requestor with the reasons for denial of a request for reasonable accommodation, agencies must designate a process for review when an applicant or employee chooses to appeal the denial of a reasonable accommodation request. This process:

- Must include review by an agency official;
- May include review by the State ADA Coordinator; and/or
- Must inform the requestor of the statutory right to file a charge with the Equal Employment Opportunity Commission or the Minnesota Department of Human Rights.

### **Information tracking and records retention**

Agencies must track reasonable accommodations requested and report once a year by September 1st to MMB the number and types of accommodations requested, approved, denied and other relevant information.

Agencies must retain reasonable accommodation documentation according to the agency's document retention schedule, but in all cases for at least one year from the date the record is made or the personnel action involved is taken, whichever occurs later. 29 C.F.R. § 1602.14.

### **RESPONSIBILITIES**

#### **Agencies are responsible for the request:**

- Adoption and implementation of this policy and development of reasonable accommodation procedures consistent with the guidance in this document.

#### **MMB is responsible for:**

- Provide advice and assistance to state agencies and maintain this policy.

#### **Please review the following forms:**

- Employee/Applicant Request for ADA Reasonable Accommodation
- Authorization of Release of Medical Information for ADA Reasonable Accommodations
- Letter Requesting Documentation for Determining ADA Eligibility from a Medical Provider

### **REFERENCES**

- U.S. Equal Employment Opportunity Commission, *Enforcement Guidance*
- Pre-employment Disability-Related Questions and Medical Examinations at 5, 6-8, 20, 21-22, 8 FEP Manual (BNA) 405:7191, 7192-94, 7201 (1995).
- Workers' Compensation and the ADA at 15-20, 8 FEP Manual (BNA) 405:7391, 7398-7401 (1996).
- The Americans with Disabilities Act and Psychiatric Disabilities at 19-28, 8 FEP Manual (BNA) 405:7461, 7470-76 (1997).

- Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act (October 17, 2002), (clarifies the rights and responsibilities of employers and individuals with disabilities regarding reasonable accommodation and undue hardship).
- Disability-Related Inquiries and Medical Examinations of Employees (explains when it is permissible for employers to make disability-related inquiries or require medical examinations of employees).
- Fact Sheet on the Family and Medical Leave Act, the Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964 at 6-9, 8 FEP Manual (BNA) 4055:7371.

The Genetic Information Nondiscrimination Act (GINA) of 2008 and M.S. 181.974 prohibit employers from using genetic information when making decisions regarding employment.

Minnesota Human Rights Act (MHRA) prohibits employers from treating people differently in employment because of their race, color, creed, religion, national origin, sex, marital status, familial status, disability, public assistance, age, sexual orientation, or local human rights commission activity. The MHRA requires an employer to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, except when such accommodation would cause undue hardship or where the individual poses a direct threat to the health or safety of the individual or others. The MHRA prohibits requesting or requiring information about an individual's disability prior to a conditional offer of employment.

The Family and Medical Leave Act is a federal law requiring covered employers to provide eligible employees twelve weeks of job-protected, unpaid leave for qualified medical and family reasons.

Executive Order 14-14, Providing for Increased Participation of Individuals with Disabilities in State Employment, directs agencies to make efforts to hire more individuals with disabilities and report on progress.

## CONTACTS

Equal Opportunity Office at Minnesota Management and Budget via [ADA.MMB@state.mn.us](mailto:ADA.MMB@state.mn.us)

## Request for Reasonable Accommodation Form

<p>State of Minnesota – (Agency) _____ Date: _____</p> <p style="text-align: center;"><b>Employee/Applicant Request for Americans with Disabilities Act ("ADA") Reasonable Accommodation Form</b></p> <p>The State of Minnesota is committed to complying with the Americans with Disabilities Act ("ADA") and the Minnesota Human Rights Act ("MHRA"). To be eligible for an ADA accommodation, you must be 1) qualified to perform the essential functions of your position and 2) have a disability that limits a major life activity or function. The ADA Coordinator/Designee will review each request on an individualized case-by-case basis to determine whether or not an accommodation can be made.</p> <p>Employee/Applicant Name: _____</p> <p>Job Title: _____</p> <p>Work Location: _____ Phone Number: _____</p> <p><b>Data Privacy Statement:</b> This information may be used by your agency human resources representative, ADA Coordinator or designee, your agency legal counsel, or any other individual who is authorized by your agency to receive medical information for purposes of providing reasonable accommodations under the ADA and MHRA. This information is necessary to determine whether you have a disability as defined by the ADA or MHRA, and to determine whether any reasonable accommodation can be made. The provision of this information is strictly voluntary; however, if you refuse to provide it, your agency may refuse to provide a reasonable accommodation.</p> <p><b>Questions to clarify accommodation requested.</b></p> <p>What specific accommodation are you requesting? _____</p> <p>If you are not sure what accommodation is needed, do you have any suggestions about what options we can explore? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>If yes, please explain. _____</p>	<p><b>Questions to document the reason for the accommodation request (please attach additional pages if necessary).</b></p> <p>What, if any, job function are you having difficulty performing? _____</p> <p>What, if any, employment benefits are you having difficulty accessing? _____</p> <p>What limitation, as result of your physical or mental impairment, is interfering with your ability to perform your job or access an employment benefit? _____</p> <p>If you are requesting a specific accommodation, how will that accommodation be effective in allowing you to perform the functions of your job? _____</p> <p><b>Information Pertaining to Medical Documentation:</b> In the context of assessing an accommodation request, medical documentation may be needed to determine if the employee has a disability covered by the ADA and to assist in identifying an effective accommodation. The ADA Coordinator or designee in each agency is tasked with collecting necessary medical documentation. In the event that medical documentation is needed, the employee will be provided with the appropriate forms to submit to their medical provider. The employee has the responsibility to ensure that the medical provider follows through on requests for medical information.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p><small>This form does not cover, and the information to be disclosed should not contain, genetic information. "Genetic Information" includes: information about an individual's genetic tests; information about genetic tests of an individual's family members; information about the manifestation of a disease or disorder in an individual's family members (family medical history); an individual's request for, or receipt of, genetic services, or the participation in clinical research that includes genetic services by the individual or a family member of the individual; and genetic information of a fetus carried by an individual or by a pregnant woman who is a family member of the individual and the genetic information of any embryo legally held by the individual or family member using an assisted reproductive technology.</small></p> </div>
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### Employee/Applicant Request for ADA Reasonable Accommodation Form

## Evacuation Procedure for Individuals with Disabilities or Otherwise in Need of Assistance

A copy of the agency's weather and emergency evacuation plans can be found at:  
[http://intranet.dli.mn.gov/policies\\_alpha.aspx](http://intranet.dli.mn.gov/policies_alpha.aspx)

Managers and supervisors should review the emergency evacuation procedures with staff, including informing all staff that if additional assistance may be needed, and individuals with disabilities should contact the agency contacts below to request the type of assistance they may need.

Laurie Jandro, ADA Coordinator, 651-284-5279, [laurie.jandro@state.mn.us](mailto:laurie.jandro@state.mn.us)

Kathy Bartikoski, Safety Director, 651-284-5178, [Kathy.bartikoski@state.mn.us](mailto:Kathy.bartikoski@state.mn.us)

## Evacuation Procedures for Individuals with Mobility, Hearing, or Visual Disabilities:

Individuals with disabilities should follow the following procedures:

- Mobility disabilities (individuals who use wheelchairs or other personal mobility devices (“PMDs”)): Individuals using wheelchairs should be accompanied to the stairwell by two attendants when the alarm sounds. One attendant will notify the Safety Director of the whereabouts of the individual requiring assistance and the other attendant. The Safety Director will notify emergency responders how many individuals need assistance to safely evacuate.
- Mobility disabilities (individuals who do not use wheelchairs): Individuals with mobility disabilities, who are able to walk independently, may be able to negotiate stairs in an emergency with minor assistance. If danger is imminent, the individual should wait until the heavy traffic has cleared before attempting the stairs. If there is no immediate danger (detectable smoke, fire, or unusual odor), the individual with a disability may choose to wait at the area of rescue assistance until emergency responders arrive to assist them.
- Hearing disabilities: The agency’s buildings are equipped with fire alarm horns and strobes that sound the alarm and flash strobe lights. The strobe lights are for individuals with who are deaf and/or hard of hearing. Individuals with hearing disabilities may not notice or hear emergency alarms and will need to be alerted of emergency situations.
- Visual disabilities: The agency’s buildings are equipped with fire alarm horn/strobes that sound the alarm and flash strobe lights. The horn will alert individuals who are blind or have visual disabilities of the need to evacuate. Most individuals with visual disabilities will be familiar with their immediate surroundings and frequently traveled routes. Since the emergency evacuation route is likely different from the common traveled route, individuals with visual disabilities may need assistance in evacuating. The assistant should offer assistance, and if accepted, guide the individual with a visual disability through the evacuation route.

### **Severe Weather Evacuation Options:**

Building occupants shall move to the following areas of refuge: inner conference rooms, hallways, stairwells and lobbies (second and third floors only). No area of refuge shall have a window.

All personnel shall remain in the areas of refuge until the “all clear” signal to return to their work area is given. The “all clear” message will be announced via the public address system.

Two attendants shall move to an area of refuge with the employee and/or visitor with a disability. If it is necessary to move to another location, they will coordinate/assist with the relocation



**Department of Labor and Industry**

**Harassment and Discrimination Prohibited/  
Sexual Harassment Prohibited Policies  
Complaint Form**

Agency Name \_\_\_\_\_

Street Address \_\_\_\_\_

City, State Zip Code \_\_\_\_\_

Telephone Number \_\_\_\_\_

**Complainant (You)**

Complainant's Name \_\_\_\_\_ Job Title \_\_\_\_\_

Agency Department of Labor and Industry Telephone \_\_\_\_\_

Work Address \_\_\_\_\_ Division \_\_\_\_\_

City, State Zip Code \_\_\_\_\_ Manager \_\_\_\_\_

**Respondent (Person Against whom you are filing the complaint)**

Name \_\_\_\_\_ Respondent's Job Title \_\_\_\_\_

Agency \_\_\_\_\_ Respondent's Telephone \_\_\_\_\_

Work Address \_\_\_\_\_ Division \_\_\_\_\_

City, State Zip Code \_\_\_\_\_ Manager \_\_\_\_\_

## The Complaint

### Basis of Complaint

Place an "X" in the box for all that apply:

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> Race              | <input type="checkbox"/> Marital Status     | <input type="checkbox"/> Gender Expression           |
| <input type="checkbox"/> Sex               | <input type="checkbox"/> Gender Identity    | <input type="checkbox"/> Religion                    |
| <input type="checkbox"/> Familial Status   | <input type="checkbox"/> National Origin    | <input type="checkbox"/> Genetic Information         |
| <input type="checkbox"/> Age               | <input type="checkbox"/> Creed              | <input type="checkbox"/> Retaliation                 |
| <input type="checkbox"/> Color             | <input type="checkbox"/> Sexual Orientation | <input type="checkbox"/> Membership or Activity in a |
| <input type="checkbox"/> Sexual Harassment | <input type="checkbox"/> Reliance on Public | Local Human Rights                                   |
| <input type="checkbox"/> Disability        | Assistance                                  | Commission   |

Describe, in as much detail as possible, the conduct that you believe violates the Harassment and Discrimination Prohibited Policy or the Sexual Harassment Prohibited Policy. List dates, locations, names and titles of people involved. Explain why you believe the conduct was based on the item(s) checked in the "Basis of Complaint" section above. Use additional paper if needed and attach to this form. Attach any documents you believe may be relevant.

Date most recent act of discrimination/ harassment in violation of policy took place: \_\_\_\_\_

If you filed this complaint with another agency, give the name of that agency: \_\_\_\_\_

### Information on Witnesses Who You Believe Can Support Your Complaint

Witness Name	Witness Work Address	Witness Work Telephone

Additional witnesses may be listed in "Additional Information" or on a separate sheet attached to this form.

This complaint is being filed based on my honest belief that I have been subjected to conduct in violation of the Harassment and Discrimination Prohibited Policy or the Sexual Harassment Prohibited Policy. I hereby certify that the information I have provided in this complaint is true, correct, and complete to the best of my knowledge.

Complainant Signature \_\_\_\_\_ Date signed \_\_\_\_\_

Complaint Received by:  
(Affirmative Action Officer Signature) \_\_\_\_\_ Date signed \_\_\_\_\_

**NON-RETALIATION:** Retaliation against any person who reports conduct under the Harassment and Discrimination Prohibited Policy or the Sexual Harassment Prohibited Policy is strictly prohibited and will not be tolerated. If you believe that you have been subjected to retaliation, you are encouraged to report such behavior.

This material is available in alternative formats for individuals with disabilities by contacting

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Additional Information



# Department of Labor and Industry FY 2018-2020

## JOB CATEGORY AVAILABILITY/UTILIZATION/UNDERUTILIZATION ANALYSIS & ANNUAL GOALS

Worksheet for comparing incumbency to availability and setting goals to correct underutilization.

WOMEN				
Job Categories	AAP 2016-2018 Number Underutilized	AAP 2014-2016 Underutilized	Improved, Not Improved, Same	Numerical Difference in the Two Plans
Officials/Administrators	0	2	Improved	2
Professionals	16	9	Not Improved	-7
Office/Clerical	-3	-21	Not Improved	-18
Technicians	1	-2	Not Improved	-3
Skilled Craft	1	1	Same	0
Totals				

MINORITIES				
Job Categories	AAP 2016-2018 Number Underutilized	AAP 2014-2016 Underutilized	Improved, Not Improved, Same	Numerical Difference in the Two Plans
Officials/Administrators	-3	0	Improved	3
Professionals	-1	0	Improved	1
Office/Clerical	0	2	Improved	2
Technicians	0	0	Same	0
Skilled Craft	2	2	Same	0
Totals				

INDIVIDUALS WITH DISABILITIES				
Job Categories	AAP 2016-2018 Number Underutilized	AAP 2014-2016 Underutilized	Improved, Not Improved, Same	Numerical Difference in the Two Plans
Officials/Administrators	0	0	Same	0
Professionals	-3	9	Improved	12
Technicians	0	0	Same	0
Office/Clerical	1	0	Not Improved	-1
Skilled Craft	0	0	Same	0
Totals				

Source: American Fact Finder, operated by the U.S. Census Bureau. Labor Statistics for women and minorities compiled from the American Community Survey (2006-2010)., released in March of 2013. Statistics for individuals with disabilities are taken from OFCCP (Office of Federal Contract Compliance Programs) and are based upon data derived from the American Community Surveys (2006-2010).

