

## Equal Employment Opportunity Policy

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### Policy

It is the policy of the State of North Carolina that race, religion, color, creed, national origin, sex, age, genetic information, political affiliation<sup>1</sup> nor disabling condition is to be considered in the:

- Recruitment and selection of new employees of the State,
- Selection of employees for promotion, training, career development, transfer, demotion for fiscal purposes, and/or reduction-in-force,
- Administration of disciplinary policies or termination for cause, and
- Establishment of rates of pay including the awarding of salary adjustments and/or annual salary increases

Advisory Note: Sex or gender stereotyping was held to be illegal in *Price Waterhouse v. Hopkins*, 490 U.S. 228, 250-51, 109 S. Ct. 1775, 104 L. Ed. 2d 268 (1989) and some courts have held that the prohibition against sex, or gender, discrimination prohibits discrimination because of gender non-conformity. Therefore, if an employee is treated differently because of gender stereotyping, the employee may have a claim for discrimination.

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### Special Provisions Relative to Age

Equal employment opportunity as to age applies only to persons who are age 40 or over. State and Federal laws forbid employment discrimination on the basis of age for these persons. It is unlawful “to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his/her compensation, terms, conditions, or privileges of employment, because of such individual’s age.”

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<sup>1</sup> Direct appeal to the State Human Resources Commission on the basis of political affiliation is provided only to employees who have achieved career status pursuant to G.S. 126-1A.

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### Special Provisions Relative to Disabled Persons

Equal employment opportunity for disabled persons includes the making of a reasonable accommodation to the known physical limitations of a qualified disabled applicant or employee who would be able to perform the essential duties of the job if such accommodation is made. This may include: making facilities used by employees readily accessible to and usable by such person; job restructuring (reassigning non-essential duties and/or using part-time or modified work schedules); acquisition or modification of equipment or devices; provision of readers or interpreters; and/or other similar actions. Agencies are required to make such adjustments for the known limitations of otherwise qualified disabled applicants and employees, unless it can be demonstrated that a particular adjustment or alteration would impose an undue hardship on the operation of the agency.

Whether an accommodation is reasonable must depend on the facts in each case. Factors to be considered in determining this include:

- the nature and cost of the accommodation needed;
- the type of the agency's operation, including the composition and structure of its work force; and
- the overall size of the agency or particular program involved, with respect to number of employees, number and type of facilities, and size of budget.

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### Special Provisions Relative to Communicable and Infectious Diseases

Persons with communicable or infectious disease, including Acquired Immune Deficiency Syndrome (AIDS), are disabled if the disease results in an impairment which substantially limits one or more major life activities. All of the statutory provisions relative to disabled persons with are applicable to persons with communicable and infectious diseases, including the requirement for a reasonable accommodation to the known limitations of an otherwise qualified applicant or employee.

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### Exceptions Necessary to Prevent the Spread of Disease

It is not discriminatory action under North Carolina law to fail to hire, transfer, or promote, or to discharge a disabled person because the person has a communicable disease which would disqualify a non-disabled person from similar employment. However, such action may be taken on that basis only when it has been determined necessary to prevent the spread of the communicable or infectious disease. There must be documentation of consultation with private physicians and/or public health officials in arriving at the determination. Concern for other employees who may fear working with the infected co-worker must never be the basis for the action, in the absence of a medically documented health hazard to other persons.

It must be remembered that AIDS, unlike most communicable diseases, has been shown to be transmitted only by exchange of body fluids through sexual contact, sharing of needles and syringes, or transfusion of infected blood. According to the U. S. Department of Health and Human Services, Public Health Service, no cases have been found where the AIDS virus has been transmitted by casual contact. There is no evidence that employing a person with AIDS would present a health hazard to other persons in the usual work place.

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### Special Provisions Relative to Genetic Information

The Genetic Information Nondiscrimination Act of 2008, a federal law, prohibits discrimination in the terms and conditions of employment against persons based on their genetic information. It is unlawful to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his/her genetic information.

“Genetic information” is defined as information about:

- an individual’s genetic tests (including genetic tests done as part of a research study);
- genetic tests of the individual’s family members (defined as dependents and up to and including 4th degree relatives);

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- genetic tests of any fetus of an individual or family member who is a pregnant woman, and genetic tests of any embryo legally held by an individual or family member utilizing assisted reproductive technology;
  - the manifestation of a disease or disorder in family members (family history);
  - any request for, or receipt of, genetic services or participation in clinical research that includes genetic services (genetic testing, counseling, or education) by an individual or family member.
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### Bona Fide Occupational Qualifications

Age, sex or physical requirements may be considered if they constitute a bona fide occupational qualification necessary for job performance in the normal operations of the agency. Whether such a requirement is a bona fide occupational qualification will depend on the facts in each case. This exemption will be construed very narrowly and the agency will have the burden of proving the exemption is justified.

Physical fitness requirements based upon pre-employment physical examinations relating to minimum standards for employment may be a reasonable employment factor other than age or sex; provided, however, that such standards are reasonably necessary for the specific work to be performed and are uniformly and equally applied to all applicants for the particular job category, regardless of age or sex.

A differentiation based on a physical examination may be recognized as reasonable in certain job situations which necessitate stringent physical requirements due to inherent occupational factors such as the safety of the individual employee or of other persons in their charge, or in those occupations which by nature are particularly hazardous. Job classifications which require rapid reflexes or a high degree of speed, coordination, dexterity and endurance would fall in this category.

To establish age, sex or physical requirements as a bona fide occupational qualification, it will be necessary to submit a recommendation to the Office of State Human Resources

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setting forth all facts and justification as to why the requirement should be considered as a reasonable employment factor in each of the classification in question.

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### Appeal Procedure

An applicant or employee alleging unlawful discrimination, harassment or retaliation based on race, religion, color, national origin, sex, age, disability, genetic information, or political affiliation may file an appeal if the applicant or employee believes he or she has been discriminated, harassed or retaliated against in the terms and conditions of employment in accordance with the Employee Grievance Policy found in Section 7 of this Manual.

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