



# STATE OF IOWA

CHESTER J. CULVER, GOVERNOR  
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DEPARTMENT OF HUMAN SERVICES  
CHARLES J. KROGMEIER, DIRECTOR

August 28, 2009

## GENERAL LETTER NO. 21-A-6

ISSUED BY: Bureau of Human Resources, Division of Results Based Accountability

SUBJECT: Management Manual, Title 21, Chapter A, **EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION**, Title page, revised; Contents (page 1), revised; and pages 1 through 12, revised.

### Summary

This chapter is revised to reflect current policies and procedures on equal employment opportunity and affirmative action. Some of the revisions include:

- ◆ Adding sexual orientation and gender identity under the section, "POLICY STATEMENT."
- ◆ Adding a process for tracking reasonable accommodations.

### Effective Date

Immediately.

### Material Superseded

Remove the entire Chapter A from Management Manual, Title 21, and destroy it. This includes the following:

<u>Page</u>	<u>Date</u>
Title (page)	August 26, 2003
Contents (page 1)	August 26, 2003
1-15	August 26, 2003

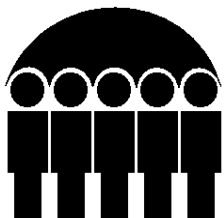
### Additional Information

Refer questions about this general letter to Bureau of Human Resources, Division of Results Based Accountability.

Revised August 28, 2009

Management Manual  
Title 21  
Chapter A

# **EQUAL EMPLOYMENT OPPORTUNITY/ AFFIRMATIVE ACTION**



Iowa  
Department  
of  
Human Services

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## **Policy Statement**

It is the policy of the Iowa Department of Human Services (the Department) to provide equal treatment in employment and provision of services to applicants, employees and clients without regard to race, color, national origin, sex, sexual orientation, gender identity, religion, age, disability or veteran status.

The Department shall provide equal opportunity for all in recruitment, hiring, training, promotion, transfer, compensation, and all other terms and conditions of employment without regard to protected category status.

It is the policy of the Department to assure that no person will be excluded from participation in, be denied the benefit of, or be otherwise subjected to discrimination for any services because of protected category status.

No facility operated by the Department may be used to promote any discriminatory practice, nor shall the Department become a party to any agreement that permits any discriminatory practice. The Department shall not grant, deny, or revoke a license, registration, or certification on the basis of protected-category status.

This chapter lists the policies that have been established to assist staff in meeting nondiscriminatory employment practice requirements.

## **Legal Basis**

The legislation listed below applies to the Department and covers all aspects of its personnel program:

- ◆ Section 503 of the Rehabilitation Act of 1963 prohibits discrimination in employment practices.
- ◆ Section 504 of the Rehabilitation Act of 1963 prohibits discrimination in the provision of services to persons based on a mental or physical disability.
- ◆ The Fair Labor Standards – Equal Pay Act of 1963 prohibits employers, on the basis of sex, from paying wages “at a rate less than the rate at which wages are paid to employees of the opposite sex... for equal work on jobs ... and which are performed under similar working conditions.”
- ◆ Title VI of the Civil Rights Act of 1964, as amended, prohibits discrimination in the provision of services based upon race, color, or national origin.
- ◆ Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination in employment to persons based on race, color, religion, sex, or national origin.

- ◆ The Iowa Civil Rights Act of 1965, as amended, prohibits discrimination in employment to persons on the basis of their race, creed, color, national origin, sex, sexual orientation, gender identity, disability or age (age includes anyone over the age of 18).
- ◆ The Age Discrimination Act of 1967 prohibits discrimination in employment to persons between the ages of 40 and 70.
- ◆ Title IX of the Educational Amendments of 1972 prohibits discrimination on the basis of sex in all federally assisted education programs. It applies to both students and employees.
- ◆ The State of Iowa Executive Order #15 of 1973 and Executive Order #18 of 2001 prohibit discriminatory practices in delivery of services and in all decisions affecting employment.
- ◆ The Americans With Disabilities Act of 1990, as amended, prohibits discrimination against persons with disabilities in all programs, activities and services provided or made available by state and local governments, regardless of whether those entities receive federal assistance.

### **Definitions**

**“Affirmative action”** is a process that consists of specific results-oriented procedures designed to effect change.

**“Affirmative action plan”** represents an agency’s commitment to ensure equal employment opportunity in all aspects of its operation affecting employees and applicants for employment. It is a planned management program which, to be effective, must have the support and commitment of all levels of staff. It includes an identification of:

- ◆ The agency’s specific equal employment opportunity problems,
- ◆ The necessary action steps designed to correct these problems, and
- ◆ Action steps required to remedy past discrimination.

The effectiveness of the plan is measured by the results it actually achieves, rather than by its intended results.

**“Bona fide occupational qualification doctrine”** is a statutory exception to what might otherwise be an unlawful employment practice. Section 703(e) of Title VII of the Civil Rights Act provides an exception for employer actions “in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the business or enterprise.”

**“Discrimination”** is an act or actions whose effects are adverse to the opportunities of one or more persons because of a legal protected class basis (race, color, sex, religion, disability, etc.) which under particular federal and state antidiscrimination laws are unlawful. Unlawful discrimination may be either intentional or unintentional adverse actions.

**“Discrimination complaint”** means a person’s complaint about the conduct, behavior, or adverse actions of another person at the Department and belief that the behavior was related to the complainant’s age, race, color, creed, national origin, religion, sex, sexual orientation, gender identity, physical or mental disability, political beliefs, or marital status.

**“Equal employment opportunity (EEO)”** is the right of all persons to apply and be evaluated for job opportunities without regard to their race, color, sex, national origin, religion, age, and mental or physical disability.

**“Essential job functions”** means the critical responsibilities for the position which must be performed with or without a reasonable accommodation.

**“Goals and timetables”** are numerical projections an employer makes of the representation minorities, women, and persons with a disability are likely to achieve in positions in which they have been underutilized through affirmative action efforts.

**“Has a record of such an impairment”** means that a person has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

**“Is regarded as having an impairment”** means a person who meets one of the following:

- ◆ The person has a physical or mental impairment that does not substantially limit major life activities but that is treated by a person as constituting such a limitation;
- ◆ The person has a physical or mental impairment that substantially limits the major life activities only as a result of the attitudes of others toward such impairment; or
- ◆ Has none of the impairments defined but is treated as having such an impairment.
- ◆ **“Major life activities”** is caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

**“Minority”** means a person or group differing in race, religion, or ethnic background, or who possesses characteristics of a minority racial or ethnic group identification.

**“Person with disability”** as defined under Americans with Disabilities Act (ADA) of 1990, as amended, means anyone who:

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

**“Physical or mental impairment”** is defined as:

- ◆ Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:
  - Neurological
  - Musculoskeletal
  - Special sense organs
  - Respiratory, including speech organs
  - Cardiovascular
  - Reproductive
  - Digestive
  - Genitourinary
  - Hemis and lymphatic
  - Skin
  - Endocrine
- ◆ Any mental or psychological disorder, such as mental retardation, organic brain damage, emotional or mental illness, and specific learning disabilities.

**“Protected classes”** refers to minority groups whose members have been subjected to large-scale employment discrimination in the past. Title VII, however, protects any person who is discriminated against because of their race, color, religion, sex, or national origin. Currently a person of a protected class would include anyone specifically covered under any civil rights legislation.

**“Qualitative efforts”** means improvements within the workforce which are non-numerical and designed to meet targeted Affirmative Action goals. These efforts are designed to enhance an environment towards welcoming and inclusive settings within the workforce.

**“Qualified handicapped person”** is when a person, with or without reasonable accommodations, can perform the essential functions of the job performed.

**“Quantitative efforts”** means the numerical make up of minorities, women, or persons with disability in a particular job category.

**“Reasonable accommodation”** requires an employer or service provider to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee, unless the employer or service provider can demonstrate that the accommodation would impose an undue hardship.

Examples of accommodations include, but are not limited to:

- ◆ Making facilities accessible to persons with a disability
- ◆ Position restructuring
- ◆ Modified work schedule
- ◆ Acquisition or modification of equipment or devices
- ◆ Readers for blind-visually impaired persons
- ◆ Interpretation for deaf persons

**“Retaliation”** occurs when a person feels that the person’s complaint or opposition to a discriminatory practice has resulted in some form of adverse action.

**“Underutilization”** means having fewer minorities, women, or people with a disability represented in a particular occupational category within an employer’s workforce as compared to the availability in the relevant labor force.

### **Posting of the Nondiscrimination Policy Statement**

The Diversity Program Unit, within the Division of Results Based Accountability, Bureau of Human Resources, will provide a poster detailing the Department’s commitment to affirmative action and equal employment opportunity. The poster shall be updated as necessary and include contact information.

The “Nondiscrimination Policy Statement” poster shall be posted in all Department offices and institutions in a site that is visible to the public and used for employment interviewing purposes.

Minimally, the poster shall be posted as defined by this policy. In larger institutions or areas, other signs should be posted at sites where Department information is shared with employees.

## **Affirmative Action**

The Department is required to fulfill the state's affirmative action guidelines. These guidelines include formulating targeted goals within timetables to address through quantitative numbers and qualitative environmental improvements within the workforce. (See [Definitions: "Quantitative efforts"](#) and ["Qualitative efforts."](#))

The Division of Results Based Accountability, Human Resources Bureau, will:

- ◆ Provide direction and support efforts to improve the work environment and bring awareness, acceptance, and understanding of the cultural, social, and economic differences within the workforce.
- ◆ Ensure progress in meeting affirmative action goals and timetables.

## **Affirmative Action Plan**

The Department's Affirmative Action Plan is a set of specific procedures that cover all phases of the employment process. Its purpose is to eliminate discrimination and underutilization of protected class persons and to facilitate the accomplishment of equal employment opportunity goals and objectives.

All affected employees shall adhere to the Affirmative Action Plan. The Affirmative Action Plan is distributed to division administrators, superintendents, service area managers, and personnel business managers. They will be responsible for making it available to any employee upon request.

Copies of the Affirmative Action Plan may be obtained from any of these individuals or by contacting the Division of Results Based Accountability, Human Resources Bureau, or through the Department Web site.

## **Annual Review of Plan**

The Division of Results Based Accountability, Human Resources Bureau, reviews and updates the Department's Affirmative Action Plan annually to ensure that its policies and procedures are providing the mechanisms to assist staff in meeting their responsibility of equal employment opportunity within the Department.

### **Progress on Affirmative Action Goals**

The Department of Administrative Services-Human Resource Enterprise provides the Department with quarterly progress reports of affirmative action goals. The Division of Results Based Accountability, Human Resources Bureau, ensures the accuracy of the reports and distributes activity reports to division administrators for central office and field staff.

### **Equal Employment Opportunity and Affirmative Action Complaints**

Complaints about discrimination may be filed with any of the following agencies:

- ◆ The Department's Division of Results Based Accountability,
- ◆ The Iowa Civil Rights Commission,
- ◆ The Equal Employment Opportunity Commission,
- ◆ The Department of Justice,
- ◆ The Department of Health and Human Services' Office for Civil Rights.

The employing unit shall forward copies of all complaints, decisions, or closures involving the Department to the Division of Results Base Accountability, Human Resources Bureau, within five days of receipt.

An initial complaint may implicate another employee or employees and complaint information processing must adhere to all confidentiality standards.

### **Complaint Response**

Upon receipt of any complaint, the supervisor involved shall immediately begin to document materials pertinent to the complaint. The Division of Results Based Accountability, Human Resources Bureau, will provide assistance at any point if requested. All official Department responses to civil rights complaints will be submitted through the Division of Results Based Accountability, Human Resources Bureau.

The Division of Results Based Accountability, Human Resources Bureau, will review responses and will send them to the Attorney General's Office for release. The Assistant Attorney General assigned to the Department will assume responsibility for the case and will notify the parties involved of when an official investigation will take place.

### **Process for Complaints Filed Internal to the Department**

When a complaint is filed "internal to the Department," this means that there is no involvement with outside agencies, such as:

- ◆ Federal Civil Rights Commission
- ◆ Iowa Civil Rights Commission
- ◆ Equal Employment Opportunity Commission
- ◆ Other federal or state agency

Upon receipt of the complaint, the administrator, manager, or supervisor shall:

- ◆ Document the details of the incident
- ◆ Date and sign the document
- ◆ Copy the complaint and forward it to the complainant's immediate supervisor and the Division of Results Based Accountability, Human Resources Bureau within five days. (If the complainant is alleging harassing or hostile conduct on the part of the complainant's supervisor, send a copy of the complaint to that supervisor's immediate superior.)

The Human Resources Bureau will

- ◆ forward copies of the complaint to:
  - The deputy director in the complainant's area if applicable;
  - The division administrator in the complainant's area if applicable; and
  - Department of Administrative Services Human Resource Enterprise if the complaint alleges workplace violence
- ◆ Evaluate the complaint and reviews options:
  - Consult with others as needed
  - Assign others to complete an internal investigation
  - Conduct an investigation
  - Document findings
- ◆ Distribute findings or retain copies to be made available to:
  - The director and deputy director of the Department;
  - The division administrator responsible for the complainant's area if applicable; and
  - The Department of Administrative Services-Human Resource Enterprise, if the complaint alleges workplace violence
- ◆ Provide additional follow-up as needed.

### **Process for Complaints Registered External to the Department**

When a complaint is filed "external to the Department," this means that the complainant has contacted:

- ◆ The Federal Civil Rights Commission, or
- ◆ The Iowa Civil Rights Commission, or
- ◆ The Equal Employment Opportunity Commission, or
- ◆ Another federal or state agency

Upon receipt of the complaint, the administrator, manager, or supervisor shall:

- ◆ Document the details of the incidents
- ◆ Date and sign the document
- ◆ Copy the complaint and forward it to the Division of Results Based Accountability, Human Resources Bureau within five days. If the complainant is alleging harassing or hostile conduct on the part of the complainant's supervisor, a copy of the complaint should be sent to that supervisor's immediate superior.

### **Accommodations for Persons with Disabilities**

The Americans with Disabilities Act (ADA) of 1990 prohibits discrimination against persons with disabilities in all programs, activities, and services provided or made available by state and local governments, regardless of whether those entities receive federal assistance.

### **Interviewing Facilities**

Hiring authorities shall ensure that special interviewing facilities are available and made known to persons with disabilities when the regular interviewing facilities are inaccessible to them.

The rights of employees in relation to provision of reasonable accommodations are the same as for applicants. Both must first meet the definition of a disability under the ADA.

- ◆ The supervisor must be prepared to discuss essential job functions with employees.
- ◆ If an essential function cannot be performed, the supervisor must then discuss the possible provision of reasonable accommodations that might enable the employee to perform essential functions.

- ◆ The supervisor must ensure that the form CFN 552-0574, *Request for Reasonable Accommodation*, is completed for all employee requests.
- ◆ It may be necessary to obtain more detailed medical information about the employee's disability when considering accommodations.

### **Employment Conditions**

Supervisors shall make reasonable accommodations to employment conditions for employees or job applicants whenever possible in order to hire or retain persons with disabilities. (See [Definitions: "Person with disability."](#)) Accommodations may consist of but are not limited to the following:

- ◆ Job restructuring;
- ◆ Work schedule modification;
- ◆ Acquisition or modification of equipment or devices;
- ◆ Providing readers or interpreters;
- ◆ Physical restructuring within the work unit.

An applicant **may** be denied employment if:

- ◆ The applicant is unable to perform the essential job functions of the position applied for, and
- ◆ There is no reasonable accommodation that would enable the applicant to perform the responsibility.

If an accommodation would enable the applicant to perform the essential functions, the cost of the accommodation, the impact on the work unit, and the nature of any applicable aid or adaptive device must then be taken into consideration. (See [Definitions: "Essential job functions."](#))

The supervisor or hiring authority must discuss the essential functions and discuss the possible provision of reasonable accommodations that might enable an employee or applicant to perform the essential functions. Meeting the essential job functions with or without an accommodation is a standard measure and condition for all employment.

If an accommodation request is made by an employee, the supervisor must ensure that a form CFN 552-0574, *Request for Reasonable Accommodation* is completed by the employee and forwarded to the Division of Results Based Accountability, Human Resources Bureau.

### **Determining Reasonability of Accommodations**

Determine whether or not an accommodation is “reasonable” based on the following criteria:

- ◆ Cost
  - Structural modification expense
  - Purchase price of adaptive aids or special devices
  - Expense of hiring interpreters/signers or readers
- ◆ Impact on the work unit
  - Affect of work schedule modification on unit operations
  - Affect of physical layout restructuring on the work unit
  - Availability of other employees to assume new or different job duties as a result of job restructuring.
- ◆ Nature of the aid or adaptive device
  - Availability of the aid or device
  - Aids or devices which become hazardous in particular work environments.

If an employing unit determines that an accommodation for an applicant or an employee with a disability is not reasonable, the employing unit must contact the Division of Results Based Accountability, Human Resources Bureau before a final decision is made.

The purpose of this policy is to ensure that accommodations are not considered unreasonable inappropriately. If accommodations are to be made, contact the Division of Results Based Accountability, Human Resources Bureau if there are concerns or questions. The Bureau will provide technical assistance when requested.

### **Documentation of Accommodations**

Whenever an applicant or an employee is denied an employment opportunity because a reasonable accommodation cannot be made for a person with a disability, a memo documenting the action will be sent to the Division of Results Based Accountability, Human Resources Bureau.

Whenever accommodations are made for an applicant or an employee, documentation of the action shall be kept and made available to the Human Resources Bureau. This will include the initial form CFN 552-0574, *Request for Reasonable Accommodation*.

The purpose of this policy is to have adequate information available in the event of an investigation or review as well as to identify patterns and problems.

### **Auditing and Reporting**

The Division of Results Based Accountability, Human Resources Bureau shall maintain and monitor information on employees with disabilities.