

CF OPERATING PROCEDURE
NO. 60-15

STATE OF FLORIDA
DEPARTMENT OF
CHILDREN AND FAMILIES
TALLAHASSEE, March 15, 2016

Human Resources

EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION

This operating procedure establishes the Department's Equal Employment Opportunity, Affirmative Action Program and Workforce Diversity Plan in accordance with state and federal laws, rules, regulations and executive orders relative to Equal Employment Opportunity/Affirmative Action requirements.

BY DIRECTION OF THE SECRETARY:

(Signed original copy on file)

STEPHANIE REAVES
Human Resources Director

SUMMARY OF REVISED, ADDED, OR DELETED MATERIAL

The operating procedure has been updated to reflect departmental organizational changes instituted since the last edition of the operating procedure was published. In addition in accordance with federal rules and regulations, pregnancy has been added as a basis for discrimination.

This operating procedure supersedes CFOP 60-15 dated July 17, 2006.

OPR: ASHRC

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Chapter 1

GENERAL

1-1. Purpose. This operating procedure is a statement of equal employment opportunity and affirmative action policy implementing federally and state mandated rules. It provides departmental procedures for developing, implementing and maintaining the equal employment opportunity and Workforce Diversity Program.

1-2. Scope. The policy and procedures prescribed in this operating procedure pertain to all employment applicants and employees of the Department.

1-3. Equal Employment Opportunity Policy. In accordance with Federal and State laws, the Department assures to each applicant or employee an equal employment opportunity without regard to a person's age, race, color, sex, religion, national origin, genetic information, political opinions or affiliations, military status, marital status or disability, except as provided by law or when such requirement constitutes a bonafide occupational qualification necessary to perform the tasks associated with the position. Equal employment opportunity will be attained using both objective and subjective merit principles and shall apply to agency practices relating to recruitment, examination, appointment, training, promotion, demotion, compensation, retention, discipline, separation, or other employment practice.

1-4. Retaliation.

a. No person shall be retaliated against, harassed, intimidated, threatened, coerced or discriminated against for making a charge, testifying, assisting or participating in any manner in an investigation, proceeding or hearing, or for opposing alleged unlawful discriminatory practices prohibited by this policy or related state and federal laws, rules and regulations.

b. Retaliation of any kind against an individual for disclosing, in good faith, minor offenses or management concerns is prohibited.

c. Any applicant or employee who believes that he or she has been discriminated or retaliated against may file a complaint with the United States Equal Employment Opportunity Commission (USEEOC); the Florida Commission on Human Relations (FCHR); or the Department of Children and Families, Office of Civil Rights, 1317 Winewood Boulevard, Building 1, Room 110, Tallahassee, Florida 32399-0700, within 365 days of the action occurrence. All complaints shall be treated in accordance with the procedures set forth by law or by applicable rule.

1-5. Objectives of Equal Employment Opportunity/Affirmative Action Program. The major objectives of the Equal Employment Opportunity/Affirmative Action program are:

a. To employ a greater number of qualified minorities, women, aged and persons with disabilities in those jobs and position classes where under utilization exist.

b. To prevent discrimination.

c. To create a workforce more reflective of the population composition in the available labor market.

d. To ensure compliance with all applicable state and federal laws, rules, regulations and executive orders relative to Equal Employment Opportunity/Affirmative Action.

1-6. References of Authority.

a. 20 CFR, Part 1002.198, 1002.225–.226 (Title 38 U.S.C., Chapter 43), Employment and Reemployment Rights of Members of the Uniformed Services (USERRA) prohibits employers from discriminating against employees or applicants for employment on the basis of their military status or military obligations. It also protects the reemployment rights of individuals who leave their civilian jobs (whether voluntarily or involuntarily) to serve in the uniformed service.

b. 28 CFR, Chapter 42, Equal Employment Opportunity and Affirmative Action Guidelines for recipients of Law Enforcement Assistance Administration funds pursuant to Omnibus Crime Control and Safe Streets Act of 1968 and the Juvenile Justice and Delinquency Prevention Act of 1974.

c. 29 CFR 1602, Department of Labor, State and Local Governments Record Keeping, establishes minimal retention schedules and records requirements, including EEO-4 and related documentation.

d. 29 CFR, Part 1604, Equal Employment Opportunity Commission, pursuant to Title VII of the Civil rights Act of 1964, as amended, 42 U.S.C. 2000e et seq. prohibits employment discrimination on the basis sex, including pregnancy.

e. 29 CFR 1607, Equal Employment Opportunity Commission Uniform guidelines on Employee Selection Procedures, establishes uniform guidelines for complying with the requirements of federal laws prohibiting discrimination in employment on the basis of race, sex or ethnic group (national origin) unless justified by business necessity.

f. 29 CFR, Part 1630, Equal Employment Opportunity Commission, pursuant to Title I of the Americans with Disabilities Act (42 U.S.C. 12101, et seq.) (ADA), requiring equal employment opportunities for qualified individuals with disabilities, and sections 3(2), 3(3), 501, 503, 506(e), 508, 510, and 511 of the ADA as those sections pertain to the employment of qualified individuals with disabilities. The ADA Amendments Act of 2008 (ADAAA).

g. 29. CFR, 1635, Equal Employment Opportunity Commission, Genetic Information Nondiscrimination Act of 2008 (GINA), prohibits discrimination based on genetic information and not on the basis of a manifested condition.

h. 29 CFR, Part 1691, Equal Employment Opportunity Commission, establishes procedures for complaints of employment discrimination filed against recipients of federal financial assistance.

i. 41 CFR, Chapter 60, Office of Federal Contract Compliance Program, Equal Employment Opportunity (Executive Orders 11246, 11375, 11701 and 11758) prohibits employment discrimination on the basis of race, color, creed, sex, national origin, genetic information, disability and Vietnam era veterans' status and requires the development of an affirmative action plan to promote affirmative action in the employment and advancement of qualified women, Vietnam era veterans, minorities and persons with disabilities in covered government contracts and subcontracts.

j. 42 CFR 2000e, et sec, Title VII of the US Civil Rights Act of 1964, as amended, prohibits employment discrimination on the basis of race, color, religion, sex and national origin.

k. Chapter 60L, Personnel Rules, Florida Administrative Code (F.A.C.), sets forth the rules concerning the Department's personnel practices including compensation, hiring, promotion, demotion, classification, retention, discipline, leave and equal employment opportunity.

l. Chapter 60L-33.007, F.A.C., Equal Employment Opportunity and Affirmative Action, requires each state agency to develop and implement its affirmative action program, assuring equal employment opportunity.

m. Chapter 60L-36.004, F.A.C., establishes sexual harassment policy and procedures for handling complaints and for disciplining offenders.

n. Chapter 60Y, F.A.C., Rules of the Florida Commission on Human Relations, provides for the processing and settlement of discrimination complaints filed with the Commission or deferred to the Commission by the United States Equal Employment Opportunity Commission.

o. Chapter 112, Florida Statutes (F.S.), Section 112.043, prohibits discrimination in state employment on the basis of age.

p. Chapter 119.071(2)(g)1.a., F.S., protects the confidentiality of discrimination complaints and related records, exempting them from public disclosure pursuant to F.S. 119.071(2)(g)1. and s. 24(a), Art. I of the State Constitution, "all complaints and other records in the custody of any agency which relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, or marital status in connection with hiring practices, position classifications, salary, benefits, discipline, discharge, employee performance, evaluation, or other related activities be made exempt from public record requirements until a finding is made relating to probable cause, the investigation becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding."

q. Governor's Executive Order 81-69, prohibits sexual harassment in state gubernatorial agencies. Chapter 60L-36.004, F.A.C., implements requirements of this order and establishes policy and procedures prohibiting sexual harassment.

r. Governor's Executive Order 81-116, provides for the implementation and enforcement of state and federal EEO/AA laws.

s. Section 110.105, Florida Statutes (F.S.), establishes nondiscriminatory employment policy of the State of Florida.

t. Section 110.112, F.S., Affirmative Action: Equal Employment Opportunity requires each state agency to develop and implement affirmative action programs.

u. Section 110.201(3), F.S., requires state agencies to comply with all federal regulations necessary to receive federal funds.

v. The Florida Civil Rights Act of 1992, Chapter 760, F.S., prohibits discrimination in employment on the basis of race, color, national origin, sex, religion, age, marital status, or disability.

Chapter 2

LEGAL AUTHORITY FOR DEVELOPMENT AND IMPLEMENTATION
OF DEPARTMENT EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM2-1. Governor's Executive Order 81-116.

a. The State of Florida shall vigorously enforce state and federal civil rights laws relating to equal employment opportunity and affirmative action.

b. State government shall take voluntary affirmative action to identify and eliminate barriers to the full utilization of all Floridians in state employment. In pursuit of the goal of full utilization, the state shall recruit, train, hire and promote blacks, hispanics, disabled and other minority persons and women, pursuant to lawful workforce diversity plans.

c. The State of Florida shall re-examine existing employee selection methods and criteria to determine where changes can be made that will accommodate attempts to diversify the state work force while at the same time maintaining or increasing the quality of actual job performance.

d. Pursuant to Section 110.120, Florida Statutes and all other applicable laws, all state agencies shall report on the implementation, continuance, updating and results of agency workforce diversity plans. Each agency workforce diversity plan shall be developed in accordance with the guidelines of the Equal Employment Opportunity Commission set forth at 44 Fed. Reg. 4,422 (1979) and 43 Fed. Reg. 38,290 (1978).

2-2. State Employment Policy, Section 110.105, F.S.

a. It is the purpose of this chapter to establish a system of personnel management. This system shall provide means to recruit, select, train, develop and maintain an effective and responsible work force and shall include policies and procedures for employee hiring and advancement, training and career development, position classification, salary administration, benefits, discipline, discharge, employee performance evaluations, affirmative action and other related activities.

b. All appointments, terminations, assignments and maintenance of status, compensation, privileges and other terms and conditions of employment in state government shall be made without regard to age, sex, race, religion, national origin, genetic information, military status, political affiliation, marital status, or disability, except when a specific sex, age, or physical requirement constitutes a bona fide occupational qualification necessary to proper and efficient administration.

2-3. State Equal Employment Opportunity Affirmative Action Policy, Section 110.112, F.S.

a. It shall be the policy of the state to assist in providing the assurance of equal employment opportunity through programs of affirmative and positive action that will allow full utilization of women and minorities.

b. Each agency head shall develop and implement affirmative action programs.

c. An affirmative action-equal employment opportunity officer shall be appointed by each agency head.

d. Each agency head shall report annually to the Governor on implementation, continuance, updating and results of the agency affirmative action programs.

e. The state, its agencies and officers shall ensure freedom from discrimination in employment as provided by the Human Rights Act of 1992, by s. 112.044, F.S., and by this chapter.

f. Any individual claiming to be aggrieved by an unlawful employment practice may file a complaint with the Florida Commission on Human Relations as provided by s. 760.10(10), F.S.

Chapter 3

DESIGNATION OF RESPONSIBILITIES AND ACCOUNTABILITY

3-1. Purpose. This chapter establishes procedures to ensure timely and appropriate implementation and communication of the Department's Equal Employment Opportunity/Affirmative Action commitment through clearly identified responsibilities and accountability.

3-2. Assignment of Responsibility. The following responsibilities are delegated to designated staff:

a. Deputy Secretary/Assistant Secretaries/Program Office Directors/Facility Administrators. Deputy Secretary, Assistant Secretaries, Program Officer Directors, and Facility Administrators will implement, maintain and monitor affirmative action efforts within their organizational jurisdiction.

b. Regional Managing Directors and Facility Administrators. Regional Managing Directors and Facility Administrators will ensure Civil Rights compliance by implementing, maintaining and monitoring workforce diversity efforts in their respective geographical areas.

c. Program Administrators and Supervisory Personnel. Department program administrators and supervisory personnel will ensure that:

(1) Workforce diversity efforts are implemented, maintained and monitored in their respective organizational units.

(2) Personnel under their supervision are in compliance with applicable laws, rules, regulations and procedures.

(3) Personnel under their supervision attend Civil Rights training and functions when scheduled.

d. Human Resources Administrator for Civil Rights. The Human Resources Administrator for Civil Rights will develop policies and procedures to implement the Department's Equal Employment Opportunity/Affirmative Action program and will assure departmental and contracted client services provider compliance with applicable Civil Rights and HIPAA laws. The Civil Rights Manager will also:

(1) Collect workforce diversity data relative to employees/applicants by race, sex, classification, pay grade, age, disability and other information as required.

(2) Maintain workforce diversity records as required.

(3) Process complaints of discrimination in accordance with procedures established by this procedure..

(4) Serves as a liaison between the Department and the Florida Commission on Human Relations (FCHR), Equal Opportunity Commission (EEOC), and local 706 agencies. .

(5) Provide technical assistance and guidance to Departmental Personnel. .

(6) Develop an active recruitment program designed to recruit persons in identified under-utilized classes.

e. Civil Rights Officers. Employees responsible for overall coordination of Equal Employment Opportunity/Affirmative Action activities, including:

(1) Monitoring Civil Rights program functions.

(2) Investigating complaints of alleged discrimination.

(3) Coordinating preparation of required reports, including the district workforce diversity plan and reports required by CFOP 60-15, CFOP 60-16, and CFOP 60-17.

(4) Participating in and conducting Civil Rights related technical assistance activities.

(5) Ensuring that the Department's statement of policy (required by Chapter 60L-33.007, F.A.C.), federal Civil Rights posters and other related materials are displayed in appropriate areas for employees and the public in accordance with CFOP 60-15 and CFOP 60-16.

f. Training and Development. The Training and Talent Development Management unit will be responsible for providing civil rights training. Civil Rights Officers may assist with training, as appropriate.

3-3. Dissemination of Information. The Department's equal employment opportunity and affirmative action policy and commitment set forth in this operating procedure will be distributed to state and federal governmental agencies, community organizations and others in accordance with the provisions of this chapter.

3-4. Internal Distribution. Internal distribution of this operating procedure will include, but not be limited to, the:

- a. Secretary.
- b. Deputy Secretary.
- c. Chief of Staff.
- d. Assistant Secretary(s).
- e. Human Resources Director.
- f. Regional Managing Directors.
- g. Hospital Administrators.
- h. Civil Rights Officers.

3-5. External Distribution. External distribution of this operating procedure will include, but not be limited to the:

- a. Florida Department of Management Services, upon request.
- b. Office for Civil Rights, United States Department of Health and Human Services (HHS), Atlanta Regional Office and any other federal or state agency requesting a copy.

c. Community organizations and interested groups that request a copy, especially those representing or having considerable contact with minorities, women, the aged, disabled, and veterans.

Chapter 4

COMPLAINT PROCEDURES

4-1. Purpose. This chapter establishes uniform procedures for complaints of employment discrimination filed against the Department pursuant to Chapter 60L-33.007, F.A.C.

a. These procedures apply to departmental employees and applicants for employment who allege unlawful employment discrimination by reason of race, color, sex, pregnancy, religion, age, national origin, genetic information, disability, military or marital status.

b. Complaints from former employees of the Department must be filed with external agencies.

4-2. Accommodations. All complainants, witnesses, and other participants must be advised of their right to request reasonable accommodations for any phase of the complaint process. All correspondence issued to participants shall contain contact information for requesting accommodations.

4-3. Filing Complaints.

a. Employees and applicants for employment who believe that they have been discriminated against may file a written complaint of discrimination within 365 days of the alleged discriminatory action. All complaints will be treated in accordance with procedures set forth by law. Complaints may be filed with the following:

- (1) Human Resources Administrator for Civil Rights
Department of Children & Families
Office of Civil Rights
1317 Winewood Boulevard
Building 1, Room 110
Tallahassee, Florida 32399-0700
(850) 487-1901; TTY (850) 922-9220; Fax (850) 921-8470
- (2) Executive Director
Florida Commission on Human Relations
4075 Esplande Way, Room 110
Tallahassee, Florida 32399
(850) 488-7082; FRS 711; TDD ASCII (800) 955-1339
TDD Baudot (800) 955-8771; Fax (850) 488-5291
- (3) District Director, Miami District Office
United States Equal Employment Opportunity Commission
One Biscayne Tower
2 South Biscayne Boulevard, Suite 2700
Miami, Florida 33131
(305) 536-4491; TTY 1-800-669-6820; Fax (305) 808-1855

(4) District Director, Tampa Area Office
 United States Equal Employment Opportunity Commission
 501 East Polk Street, Room 1000
 Tampa, Florida 33602
 (813) 228-2310; TTY 1-800-669-6820; Fax (813) 228-2841

b. Employees of contracted providers who allege discrimination by a Department employee must file their complaint with the Equal Employment Opportunity Commission and/or the Florida Commission on Human Relations. They may also follow their company's internal complaint process.

4-4. Complaint Format. The complaint must contain:

- a. The basis for the complaint, e.g., race, color, religion, sex, age, national origin, genetic information, disability, military status, marital status or retaliation.
- b. The name, address and telephone number of the person (complainant) filing the complaint.
- c. The name and address of the Respondent along with the name(s) of the alleged discriminatory official(s) and the specific organizational unit(s) complained against.
- d. A description and date of the alleged discrimination.
- e. A written affirmation (signed) by the complainant.

4-5. Receipt of Complaints.

a. The Department's Office of Civil Rights is the Department's central complaint intake point for internally and externally filed employment discrimination complaints. Other departmental offices receiving notification of such complaints directly from an external agency or from an employee or applicant will immediately forward such notices or complaints to the Department's Office of Civil Rights, 1317 Winewood Boulevard, Building 1, Room 110, Tallahassee, Florida 32399-0700.

b. Within five days of receipt, the Office of Civil Rights will enter new complaints into the Civil Rights database and advise the appropriate Regional Civil Rights Officer accordingly.

4-6. Complaint Jurisdiction and Process.

a. External Complaints. All employment discrimination complaints that have been filed with federal or state enforcement agencies are under their respective jurisdictions subject to the federal or state laws and regulations governing such complaints. Determinations of the validity of these external complaints will be made by the external agency after review of the evidence and responses presented by the Department and the complainant.

b. Internal Complaints. All employment discrimination complaints that have been filed with the Department are under the jurisdiction of the Office of Civil Rights subject to the procedures contained in this operating procedure.

(1) Determination of the validity of internally filed complaints will be made by the Human Resources Administrator for Civil Rights after review of all available evidence and responses, including those contained in the investigative reports.

(2) Upon receipt of a written complaint filed internally, the Office of Civil Rights will send an acknowledgement of the complaint to the Charging Party, notifying the Regional Managing Director, Program Office Director, Deputy Secretary or Assistant Secretary(s) with line authority over the alleged

discriminatory official. The complaint will then be assigned and investigated in accordance with this operating procedure.

c. Internal Complaints Subsequently filed with an External Agency. Upon notification that an internal complaint has also been filed with an external agency, the Office of Civil Rights will send written acknowledgement of this notification to the charging party. The Office of Civil Rights shall further notify the charging party that all future communication will be with the external agency directly, not the Office of Civil Rights. Office of Civil Rights shall provide the charging party with a notice of filing (for the external complaint) and the identifying complaint reference numbers. After proper notification this complaint will continue to be investigated, as an external complaint.

d. Complaints Filed by Employees of Contracted Client Services Providers. Upon receipt of a complaint or inquiry made by a contracted client services provider employee alleging that a Department employee is harassing or discriminating against them, the provider's employee shall be referred to the appropriate external agency to file a complaint.

e. Management Review Request. Management may request an EEO review by contacting the Human Resources Director or the Human Resources Administrator for Civil Rights

4-7. Assignment of Complaints for Investigation.

a. Within five (5) calendar days of receipt of a complaint, the Office of Civil Rights will assign a case number, scan the documents received, enter and assign the complaint within the Office of Civil Rights Tracking System, and advise the Regional or Facility Civil Rights Officer accordingly.

b. The complaint will normally be assigned to the Regional/Facility Civil Rights Officer for investigation; however, in case of a conflict of interest, another department representative may be designated as the investigator at the discretion of the Human Resources Director or Human Resources Administrator for Civil Rights.

4-8. Scope of the Investigation.

a. The Civil Rights Officer will identify the issues raised in the complaint and ensure all allegations are investigated to the fullest.

b. The scope of the investigation must be determined by the Civil Rights Officer taking into consideration document requests and/or instructions from the Office of Civil Rights or external agency. The investigation will be comprehensive, separately addressing issue and allegation contained in the complaint.

c. Each allegation will be affirmed (supported) or denied (rebutted) and the reasons, affidavits and supporting documentation for each clearly presented and indexed appropriately. Minimally, each investigative report will reflect:

(1) In what manner charging party was treated and affected and why.

(2) In what manner others who were similarly situated were treated, affected and why.

(3) The Alleged Discriminatory Official's reasons for such actions or treatment and related policies and practices.

(4) If such actions, treatment, policies and/or practices were lawful and nondiscriminatory.

(5) The recommended position for the Department (respondent) relative to the merits of the complaint, i.e., “reasonable cause” or “no reasonable cause” to believe that an unlawful employment practice in violation of Title VII or other applicable employment discrimination laws has occurred as alleged.

4-9. Supporting Documentation and Evidence.

a. Notarized and sworn (or affirmed) statements will be utilized during the investigative process.

(1) A notarized statement is a statement *prepared by the witness* that gives an accounting of what the witness knows or does not know regarding the charging party’s allegations. Formats for such statements are prescribed in s. 117.05, F.S. Civil Rights Officers should familiarize themselves with this section to ensure that notarized statements are administered and accepted according to law requirements. Under no circumstances are Civil Rights Officers allowed to notarize a statement that has not been signed in the presence of the Civil Rights Officers.

(2) A sworn (or affirmed) statement is a written or verbal statement by complainant, witness, subject or other contact that is made while under oath. All Civil Rights Officers are required to be notaries. As such, they are authorized to administer oaths under s. 117.03, F.S.

(3) When administering an oath prior to a witness interview (whether tape recorded or not), the Civil Rights Officer should inform the interviewee of the following:

“I am (name). I am employed by the Department of Children and Families as a Civil Rights Officer. I am at (address, city, state) and the date is (give date). I am also a licensed notary in the State of Florida and am authorized to administer oaths. Please raise your right hand.” After witness raises right hand, continue with: “Do you swear (or affirm) to tell the truth, the whole truth, and nothing but the truth?”

b. Interviews will be conducted in an impartial, objective and factual manner. Each witness shall be informed that it is the intent of the Department to thoroughly and objectively investigate the complaint in an impartial and expeditious manner.

c. No direct contact with a charging party will be made when the charging party has filed with an external agency and is represented by an attorney.

(1) Requests for information or documentation will be addressed to the charging party’s attorney.

(1) Any attorney, representing any party or witness, must file a Notice of Appearance with the Department prior to appearing with their client at any interview conducted in relation to a complaint of discrimination. Counsel shall be permitted to file the Notice with the Civil Rights Officer at the time of the scheduled interview.

d. Interview notes may be made during the interview to ensure accuracy, clarity and completeness. Interview notes will be clearly marked with date, time and both interviewer’s and interviewee’s names. If interview conducted by someone other than the Civil Rights Officer, every attempt will be made for the Civil Rights Officer to obtain copies of or review and attest to the existence of documents supporting interview statements whenever possible.

e. Other evidence or information that is substantiated by personal observations of a witness can be used as supporting evidence.

f. Documents such as personnel records, reports, rules, regulations, manuals, policies, operating procedures, notarized statements and expert witness testimony constitute acceptable evidence.

4-10. Preliminary Review of Findings.

a. The Civil Rights Officer will review all issues identified in the complaint to ensure sufficient information has been received to address each allegation. The information and documents acquired during the investigation will be assessed to determine their significance and sufficiency as evidence contributing to a departmental finding of “no reasonable cause” or “reasonable cause” to believe that an unlawful act of employment discrimination, as alleged, has occurred.

b. The investigation must include a thorough review of the circumstances under which the alleged discrimination occurred; the treatment of the charging party as compared with the treatment of similarly situated individuals, and any policies and practices cited by the charging party which may be, or appear to be, discriminatory.

c. Inconclusive, uncorroborated evidence or hearsay testimony is insufficient rationale for “reasonable cause” determinations. In those situations without any substantial evidence or a preponderance of evidence to prove an allegation, the findings will be “no reasonable cause”.

d. Responses that cannot be substantiated by affidavits or other documents will not be included in the report.

e. Once a prima-facie discrimination complaint is established, respondent is required to produce lawful and nondiscriminatory reasons for its actions. It is up to the charging party to prove by a preponderance of evidence that such reasons are a pretext for unlawful discrimination. Civil Rights Officers are not advocates for the charging party or for the Alleged Discriminatory Official, but are departmental representatives responsible for obtaining facts and evidence upon which the Department can through due diligence arrive at a reasonable, compelling and prudent determination and position concerning the complaint.

4-11. Investigative Report Organization.

a. Format Order. Documentary evidence appears in the investigative report following the order in which the documents are referenced within the report, beginning with the charging party’s complaint of discrimination. Witness questions or document requests, the individual’s reply and documents submitted in response to such questions or document requests are kept together.

b. Tabs. Tab all information with tabs that are permanently affixed, clearly marked, and visible. Evidence so closely related that it appropriately belongs under only one letter tab will be identified as “Tab A”, “Tab B” and so forth.

c. Complaint Log. The complaint log will be completed within the Office of Civil Right Tracking System and is part of the investigative file.

d. Documents. All documents collected during the course of the investigation, including but not limited to affidavits, sworn statements, and routing sheets, shall be scanned by the Civil Rights Officer, and along with the Investigative Report, shall be attached to the applicable case information file within the Office of Civil Right Tracking System.

(1) Original supporting documents will be forwarded by the Civil Rights Officers to the Office of Civil Rights to be incorporated into the official Departmental file.

(2) All work papers, notes, and copies retained by the Civil Rights Officers may be destroyed after verification that the Office of Civil Rights has received hardcopies of the original documents and is able to retrieve the electronic complaint file from the Tracking System.

e. Telephone and Other Contacts. Telephone and other contacts will be entered in the Office of Civil Rights Tracking System.

4-12. Writing the Investigative Report.

a. Each allegation is separately numbered and listed in chronological order, with sub-heading if necessary. Re-phrasing is permitted for clarity.

b. The investigative report will be a narrative of what occurred so that someone who is not familiar with the case will be able to understand it.

c. Individuals mentioned in the Investigative Report will be first identified by complete name and job title. Thereafter, refer to the individual by abbreviated job title and last name, such as "Supervisor Jones."

d. Reports are prepared single-spaced, left justification, on letter-sized paper.

e. Identify facts that are non-disputed.

f. Use short sentences and plain language.

g. Avoid the use of acronyms.

h. Specify as many relevant dates as possible. State if unable to obtain specific dates.

i. If no information has been presented in response to a document request, or in support of an allegation, so state and provide explanation, e.g., "requested, did not provide," etc.

j. Identify any conflicts in the evidence.

k. The investigative report will include the following, to be submitted to the Office of Civil Rights via hardcopy and the Office of Civil Rights Tracking System:

(1) The complaint, any additional information that the charging party wishes to submit, pertinent law statutes, and a brief statement of the jurisdictional basis.

(2) Affidavit(s) and/or statement(s) by the alleged discriminatory official(s) in response to each allegation with any supporting documentation, if applicable.

(3) Affidavit(s) and/or sworn statement(s) by any witnesses testifying on behalf of either party.

(4) Statement of position by the respondent, along with any documents in support of that position.

(5) Records and documents gathered in evidence.

(6) Investigator's summary and recommendation of findings of "reasonable cause" or "no violation" to substantiate discrimination or retaliation allegations.

4-13 Submission of Report and Administrative Review.

a. External Complaints. All external complaint investigations will be completed within 45 days of receipt. Civil Rights Officers will complete a position statement within 25 days of receipt of complaint assignments and will forward statement to the Office of Civil Rights for review. The Office of Civil Rights will complete its review within 20 days of receipt from the field staff. All position statements shall be submitted to the Office of Civil Rights via the Civil Rights Tracking System, after appropriate legal review.

b. Internal Complaints. All internal complaint investigations will be completed within 180 days. Civil Rights Officers will complete an investigative report within 90 days after receipt of complaint assignments and will forward report to the Office of Civil Rights for final review. The Office of Civil Rights will complete its review within 90 days of receipt from the field staff. All investigative reports shall be submitted to the Office of Civil Rights via the Civil Rights Tracking System, after appropriate legal review.

c. Legal Review. Legal review shall be completed within three days for external complaints and five days for internal complaints.

d. Administrative Review.

(1) Upon receipt of the investigative report, the Office of Civil Rights will review the report to determine if there is a need for additional information or immediate corrective action. Edits not affecting the substantive findings of the Civil Rights Officer shall be made by Office of Civil Rights staff. Upon completion of report, the Human Resource Manager for Civil Rights will forward the report to the Human Resources Director for review and approval.

(2) If legal counsel, the Human Resource Administrator for Civil Rights, or the Human Resources Director determines the report to be insufficient or to require additional information, the report will be returned for further review, investigation or other appropriate action. Any objections and comments will be noted in writing to indicate the specific deficiencies cited or other reasons for further review.

4-14. Requesting Exceptions and Extensions. Requests for exceptions to the procedures described in this operating procedure or extensions of the time required to complete the investigative report may be made by the Civil Rights Officer to the Human Resource Administrator for Civil Rights. Such requests will include the reasons for the exceptions or extensions; any additional time needed; the anticipated completion date; and any recommended alternative procedure or action. The Civil Rights Officer will contact the Human Resource Administrator for Civil Rights when:

- a. Requesting technical assistance.
- b. Requesting an extension of the due date for the investigative report.
- c. Contacted by investigators outside of the agency
- d. There is a union grievance pending.
- e. There may be the appearance of a conflict of interest or other need to reassign responsibility for the investigation.
- f. Litigation has been initiated on behalf of charging party relating to the complaint.

g. Requesting exceptions, waiver or deviation from Equal Employment Opportunity/Affirmative Action procedures or reporting requirements.

4-15. Conclusion of Investigations. Investigations must be concluded within the following time limits:

- a. External complaints – thirty (30) days.
- b. Internal formal complaints – ninety (90) days.
- c. Internal informal complaints – fourteen (14) days.

4-16. Complaint Decision and Disposition. Based on the investigative report, findings and recommendations, the Human Resource Administrator for Civil Rights will determine the Department's position relative to each complaint.

a. Internal Complaints.

(1) If there is a finding of "no violation" or "no cause", the complaint will be dismissed, the complaint file closed, and the charging party and appropriate parties notified. The charging party has the option to file the complaint externally with one of the external agencies listed above.

(2) If there is a finding of "reasonable cause" or a letter of violation issued, conciliation will be initiated by Office of Civil Rights with the appropriate parties.

b. External Complaints.

(1) If the Department finds "no reasonable cause" or "no violation", the Office of Civil Rights will prepare a position statement supporting this finding and will submit this statement along with supporting documentation to the external agency that will make the final determination/disposition of the complaint.

(2) If the Department finds violation has occurred, the Office of Civil Rights will initiate conciliation in coordination with the appropriate parties.

(3) If the external agency issues a letter of violation or "reasonable cause", the external agency will initiate conciliation coordinated internally by the Office of Civil Rights with the appropriate Regional Managing Director or Facility Administrator.

(4) The external state and federal agencies will make final disposition of complaints filed with their agencies through dismissal, remedial or corrective action, voluntary compliance agreements, negotiated settlements, technical assistance, or enforcement proceedings.

c. Upon receipt of Initial Orders or relevant correspondence from the Division of Administrative Hearings, the information shall be faxed immediately to the applicable Regional/Facility Legal Office; mail the original to same and keep a copy for the complaint/case reading file.

4-17. Restricting Use of Information.

a. Information in the investigative report is confidential pursuant to s. 119.071(2) g, F.S. However, once the Department's position and the external agency's position has been determined relative to the merits of a complaint, certain materials may be obtained as part of the discovery process when suits are filed, or may be made available to charging parties.

b. Any request for review of investigative materials or reports are to be directed to the Human Resources Administrator for Civil Rights, who is the official custodian of such records.

Chapter 5

NONDISCRIMINATION AND
REASONABLE ACCOMMODATION FOR INDIVIDUALS WITH DISABILITIES

5-1. Purpose. This chapter sets forth the policy under which the Department ensures individuals with physical or mental disabilities are not discriminated against; and to provide reasonable accommodation for known disabling conditions.

5-2. Scope. The Rehabilitation Act of 1973 requires that the Department make “reasonable accommodation” to the known physical or mental disability of an otherwise qualified employee or applicant for employment, unless it is demonstrated that the accommodation would impose an undue hardship on the program or service operation. Nothing in these procedures should be construed as changing or limiting state personnel rules. If you have any questions, please contact the Office of Civil Rights.

5-3. Applicability. Applies only to applicants and employees with a disability as defined in this operating procedure.

5-4. Definitions. For the purposes of this operating procedure, the following terms shall be understood to mean:

a. Person with Disabilities is defined as one who:

(1) Has a physical or mental impairment that substantially limits one or more of such person’s major life activities;

(2) Has a record of such an impairment; or,

(3) Is regarded as having such impairment.

b. Physical or Mental Impairment.

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or;

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities.

c. Major Life Activities. Functions, such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

d. Has a Record of Such an Impairment. Has a history of, or has been classified (or misclassified) as having a mental or physical impairment that substantially limits one or more major life activities.

e. Is Regarded as Having Such an Impairment.

(1) Has a physical or mental impairment that does not substantially limit major activities but is treated by an employer as having such a limitation;

(2) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitude of an employer toward such impairment; or,

(3) Has none of the impairments defined in paragraph 5-4b of this operating procedure, but is treated by an employer as having such an impairment.

f. Qualified Person with Disabilities. With respect to employment, a person with disabilities who, with or without reasonable accommodation, can perform the essential functions of the position in question without endangering the health and safety of the individual or others and who, depending upon the type of appointing authority being used:

(1) Meets the experience and/or education requirements (which may include passing a written test) of the position in question; or,

(2) Meets the criteria for appointment under one of the special appointing authorities for disabled persons.

5-5. General Policy. Department officials and employees will give full consideration to the hiring, placement and advancement of qualified individuals with mental and physical disabilities. Department officials and agents will not discriminate against a qualified individual with a physical or mental disability.

5-6. Reasonable Accommodation.

a. All Department entities will make reasonable accommodation to the known physical or mental limitations of a qualified disabled applicant or employee unless demonstrated that such accommodation would impose an undue hardship on program operation.

b. Reasonable accommodation may include, but shall not be limited to:

(1) Making facilities readily accessible to and usable by persons with disabilities.

(2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, the provision of readers and interpreters and other similar actions.

5-7. Determining Undue Hardship. Since no formula exists for determining whether a program or service operation is required to provide a reasonable accommodation, a combination of factors will be considered for each decision concerning undue hardship. Undue hardship will be justified based on reasonableness, prudence and consistency. Such factors to be verified on a case-by-case basis are:

a. Size of Program.

(1) Number of employees.

(2) Number of facilities.

(3) Type of facilities.

(4) Overall budget.

(5) Amount of federal financial assistance.

b. Specific Type of Operation.

(1) Composition (nature of business or service).

(2) Organizational structure.

c. Nature and Cost of the Accommodation.

5-8. Employment Criteria.

a. The Department will not make use of any employment test or other selection criterion that screens out or tends to screen out qualified persons with disabilities or any class of persons with disabilities unless:

(1) The test score or other selection criterion, as used is shown to be job related for the position in question; and,

(2) Alternative job related tests or criteria that do not screen out or tend to screen out persons with disabilities are not available.

b. Department will select and administer employment tests so as to ensure that, when administered to an applicant or employee who has a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's ability to perform the position or type of positions in question rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

5-9. Pre-employment Inquiries.

a. Except as provided in paragraphs below, no pre-employment medical examination and no pre-employment inquiry will be made of an applicant as to whether the applicant is a person with disabilities or as to the nature or severity of a disability. Pre-employment inquiries, however, may be made into an applicant's ability to meet the medical qualification requirements, with or without reasonable accommodation, of the position in question, i.e., the minimum abilities necessary for safe and efficient performance of the duties of the position in question. The Department may also make an inquiry as to the nature and extent of a disability for the purpose of special testing.

b. Nothing in this section shall prohibit conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, provided that:

(1) All entering employees are subjected to such an examination regardless of disability or when the pre-employment medical questionnaire used for positions not routinely requiring medical examination indicates a condition for which further examination is required because of the job related nature of the condition.

(2) The results of such an examination are used only in accordance with the requirements of this chapter. Nothing in this section shall be construed to prohibit the gathering of pre-employment medical information for the purposes of special appointing authorities for disabled persons.

c. To enable and evaluate affirmative action to hire, place, or advance individuals with disabilities, applicants are invited to indicate whether and to what extent they are disabled, if:

(1) Stated clearly on any written questionnaire used for this purpose or made clear orally, if no written questionnaire is used, that the information requested is intended for use solely in conjunction with affirmative action.

(2) Stated clearly that the information is being requested on a voluntary basis, that refusal to provide it will not subject the applicant or employee to any adverse treatment and that it will be used only for affirmative action purposes.

d. Information obtained in accordance with this section as to the medical condition or history of the applicant shall be kept confidential except that:

(1) Managers, selecting officials and others involved in the selection process or responsible for affirmative action may be informed that the applicant is an individual with disabilities eligible for affirmative action.

(2) Supervisors and managers may be informed regarding necessary accommodation.

(3) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment.

(4) State and federal government officials investigating compliance with laws, regulations and instructions relevant to equal employment opportunity and affirmative action for individuals with disabilities shall be provided information upon request.

(5) Statistics generated from information obtained may be used to manage, evaluate and report on equal employment opportunity and affirmative action programs.

5-10. Physical Access to Buildings.

a. An agency shall not discriminate against qualified applicants or employees with disabilities due to the inaccessibility of its facility.

b. For the purpose of this section, a facility shall be deemed accessible if it is in compliance with the Architectural Barriers Act.

5-11. Types of Reasonable Accommodation. The types of actions to be taken in connection with reasonable accommodation are as varied as the needs of the individuals involved and the type of position in question. Reasonable accommodation may include, but is not limited to the following:

a. Modifying Written Examinations.

(1) Although many individuals with disabilities can demonstrate their qualifications through usual procedures, modifications may be necessary to enable those with certain disabilities to achieve test results commensurate with their abilities. Special arrangements made to avoid compounding the problems faced by competitors with disabilities are equalizing rather than preferential. The objective is to eliminate any artificial barriers that would prevent such persons from demonstrating their capabilities in the examination process. Modification of examination procedures may include any or all of the following:

(a) Modifying Test Administration Methods. Changing how a test is administered may be necessary. Consideration will be given to scheduling individual or small group testing, allowing extra time and using examiners specifically trained for this task. Accommodations may include reading to persons who are blind or persons with reading disabilities; writing for persons who have difficulties using their hands; and interpreting test instructions and questions, into sign language for the deaf.

(b) Modifying Exam Content. If an applicant's disability causes some part of a test to be unusable or inappropriate, the exam content may be modified or alternate materials developed to measure the same knowledge, skills and abilities without screening out applicants with disabilities. (Modifications to exams must have prior approval from the Department of Management Services or written delegation of authority by the Secretary.)

(2) Examinations will be offered in accessible facilities. If a thorough review of an examination facility indicates the presence of barriers (stairs, inaccessible parking, etc.) steps will be taken to remove those barriers. When this is not feasible, an alternate accessible location will be used.

b. Modifying Work Sites.

(1) Changes in the work environment may enable persons with disabilities to do their jobs more effectively. Alterations may include, but not be limited to:

- (a) Rearranging files or shelves for accessibility to employees with decreased mobility.
- (b) Widening access areas between fixtures to allow room for wheelchairs.
- (c) Placing Braille labels or tactile cues on shelves so that employees who are blind can identify contents.
- (d) Raising or lowering equipment and posted information to provide comfortable working heights.
- (e) Moving equipment controls to one side or another or modifying them for hand or foot operation.
- (f) Installing special holding devices on desks, machines, or benches.
- (g) Installing touch-line telephones and headsets for those who cannot dial or hold the telephone.
- (h) Providing a speakerphone, an extension arm or gooseneck to hold a phone receiver.
- (i) Installing telecommunication devices or telephone amplifiers for persons who are deaf or hard of hearing.
- (j) Providing special heating or air conditioning units for persons who are sensitive to environmental temperatures.
- (k) Providing typewriters for those with related physical disabilities.
- (l) Opportunity to telework when appropriate to the position responsibilities.

(2) Work locations will be reviewed with supervisors, rehabilitation counselors and persons with disabilities to identify barriers and appropriate work site modifications.

c. Making Facilities Accessible.

(1) Reasonable accommodation is different from architectural accessibility and program accessibility, which are dealt with under statutes such as the Architectural Barriers Act of 1968, as amended and other elements required by Section 504 of the Rehabilitation Act of 1973, as amended. For buildings not covered by existing accessibility statutes, provision of accessibility may be an aspect of reasonable accommodation. In such cases, reasonable accommodation may include physical modification of facilities or relocation of particular offices or jobs in facilities or parts of facilities that are accessible to and usable by persons with disabilities.

(2) Accommodations may involve eliminating barriers in the physical design of the environment. This is a broader concern than modification of the work site environment. It is a matter of dealing with the major obstacles in the way of person with disabilities getting to and from work sites.

(a) Transportation systems, buildings and other facilities may restrict accessibility to programs and services by applicants and employees with disabilities. The Department will not discriminate against qualified applicants and employees with disabilities due to facility inaccessibility.

(b) Physical and structural changes will be made in order to create a barrier-free environment as practicable. Architectural barriers will be eliminated through such means as ramps, specially designed lavatories, wider doorways, elevators, work platforms, handrails and visual alarm systems to ensure the work facility is usable by all employees with disabilities.

d. Adjusting Work Schedules. Accommodations may be made for various disabilities by using the flexibility of alternative work schedules.

(1) Employees with decreased mobility who encounter difficulty in maneuvering during peak periods on public transportation systems may be permitted to start their working day earlier or later than others. Workers requiring medical treatment may need a flexible schedule one or two days a week. Persons who need rest periods could adjust their schedules to make up the time at the beginning or end of the workday. Employees with particular disabilities affected by eating or sleeping schedules, such as diabetes and epilepsy, may be permitted to work a regular schedule even though others holding comparable jobs are required to work differing shifts.

(2) Individuals with disabilities requiring shorter hours, may be provided flexible and compressed work schedules, with various accommodations such as flexible working hours, job sharing, extended rest periods and telework.

e. Restructuring Jobs. Job restructuring does not alter the essential function of the job, but is one of the principal means by which qualified persons with disabilities can be accommodated. Such job modification, adaptation, redesign, restructuring, tailoring or human engineering, first identifies factors making a job incompatible with a worker's disability. Next such factors are eliminated through restructuring to effectively use the capabilities of the individual changes made enable the qualified person with disabilities to perform these functions. Job content changes may be made by isolating and eliminating nonessential duties through reassignment. Often, however, job modification is a matter of slightly altering the method of task accomplishment.

(1) Identifying the capabilities and limitations of persons with disabilities must precede job restructuring. The first person to consult is the person requesting the accommodation. Supplemental information may be obtained through consultation with specialists in the field of vocational rehabilitation, the Department's Office of Human Resources and the Office of Civil Rights.

(2) Careful job analysis to determine the essential functions of positions must also precede job restructuring. Various perspectives by those with intimate knowledge of the jobs involved, such as supervisors and staff who currently perform the jobs or have performed them in the past, should be included in the analysis process. This enables the most accurate differentiation to be made between essential functions and those of the position, which are nonessential and can be reassigned.

(3) Consult with rehabilitation counselors, with area vocational rehabilitation offices, Veterans Administration hospitals and centers, private rehabilitation centers and universities with rehabilitation units for recommendations on ways to restructure jobs.

f. Providing Assistive Devices. Through advanced technology, numerous assistive devices are available to persons with disabilities. While such devices alone cannot ensure successful job performance, they enable persons with disabilities to perform otherwise difficult tasks and increase the quantity, quality and efficiency of their work.

(1) Some assistive devices are inexpensive; some quite costly. Before purchasing any special equipment, the employee with disabilities will be consulted to determine what is needed and/or wanted.

(2) Special equipment may be purchased if it is determined that the use of the equipment is necessary in transaction of the official business of the agency. The equipment may not be of a personal nature (for example: eyeglasses, hearing aids, etc.) which the employee could reasonably be expected to provide. In determining whether the purchase of an assistive device should be authorized, consideration should be given to how well the employee could perform the job without the equipment and whether the principal benefit would be improved job performance.

(3) Assistive devices may also be available free from other sources. Consult community resource directories for listings of agencies and organizations providing funds or equipment. Community organizations and service clubs occasionally sponsor the purchase of such equipment.

g. Providing Readers and Interpreters.

(1) Readers.

(a) Supervisors have the administrative authority to assign employees to provide reading services on a part-time or "as required" basis for employees with vision loss.

(b) Supervisors may not substitute readers for clerical assistance where such assistance is required.

(2) Interpreters. Supervisors have the administrative authority to assign employees to provide interpreter services on a part-time or "as required" basis.

h. Adopting Flexible Leave Policies.

(1) Departmental office entities will adopt flexible leave to accommodate employees with disabilities. While the administration of the leave system is subject to certain laws and regulations, flexible leave allows reasonable accommodation to employees with disabilities. Flexibilities can be built into practices on the use of leave without pay.

(2) Policies can also be extended to grant:

(a) Extended leave without pay for illness, disability and retraining up to 12 months.

(b) Use of annual leave or excused absences for meetings or conventions where attendance would increase the disabled employee's knowledge, skills, or potential.

(3) Flexibilities used will be consistently applied and effectively communicated with prior approval by the designated person with delegated authority for such actions.

i. Reassigning and Retraining Employees. Employees who, because of illness or injury, are unable to continue to perform the duties of their current positions may be provided alternatives, including but not limited to:

(1) Retraining. Explore and document efforts to retrain employees with disabilities for positions for which they have the basic qualifications and capabilities. Although an initial expense is involved in retraining, the result will justify the expenditure if the employee and the position are matched carefully beforehand. Assistance may be available from vocational rehabilitation, blind services and area service agencies and organizations.

(2) Reassignment. Employees' work experiences and education may indicate that they can perform satisfactorily in other positions. Under certain circumstances, an exception may be made to normal qualification standards to facilitate assignment. Reassignment need not necessarily be limited to positions of the same pay grade or series. Voluntary demotion to lower level positions with less strenuous physical or mental demands may be appropriate accommodation.

Chapter 6

RECORD KEEPING AND REPORTS

6-1. General. Continuing an effective affirmative action program requires periodic review and evaluation of policies, procedures and practices. Through annual reports compiled from monthly reports, the need for revision and adjustments, as well as, assessment of effectiveness and progress, will be determined. These reports will serve as management tools for determining the extent to which provisions of this operating procedure and legal mandates have been followed. The goals of this Department will be developed and reported annually by utilizing the planned versus actual performance levels of the Department.

6-2. Civil Rights Records and Reports.

a. Form CF 904, Disciplinary Action Report, is used to report workforce diversity data for all disciplinary actions imposed on employees within Regions and Facilities. These completed forms are submitted in Formsite monthly and submitted to the Office of Civil Rights by the tenth day of the following month.

b. Workforce diversity and equal employment opportunity statistical reports are distributed periodically by the Office of Civil Rights to each Civil Rights Officer for review to determine progress toward workforce diversity goals.

c. The New Hires Report is distributed biweekly by the Office of Civil Rights to each Regional Civil Rights Officer. This report reflects workforce diversity data for new hires during the pay periods.

6-3. Retention Periods. Disposal of records will be in accordance with CFOP 15-4, Records Management, but all civil rights records and reports must be kept for a minimum of three calendar years. Records and reports related to discrimination complaints or lawsuits shall be maintained until such complaints have been closed and any subsequent court action finalized.

6-4. Post Selection Monitoring Process. Each Regional and Facilities Civil Rights Officer will review the monthly new hires/promotions report and randomly select 10% of new hires and promotions (minimum of five (5) appointments) to conduct monthly post selection audits. Each Civil Rights Officer will request the selected hiring packets from the hiring authority. Each Civil Rights Officer will complete the EEO Selection Monitoring Tool.

6-5. Quarterly Performance Status Reports. Civil Rights Officers will maintain the Office of Civil Rights database from which performance data will be collected.

Chapter 7

GOALS

7-1. General. Realistic goals and timetables are important management tools in planning and evaluating workforce diversity plans. Goal-setting is based on the precept that equal employment opportunity constitutes the equal consideration of each individual's capability to perform job-related duties without regard to that individual's race, color, religion, national origin, genetic information, sex, age (except as provided by law), disability, military status or marital status.

7-2. Purpose. Realistic goals and timetables are established to measure the progress of correcting present under-utilization of protected classes, without regard to whether or not such under-utilization was intended. Such goals and timetables, however, are not established to displace present employees or to promote the hiring of unneeded or unqualified applicants.

7-3. Responsibility for Establishing Goals.

a. Office of Civil Rights will develop and recommend, for the Secretary's approval, realistic goals for the Department's workforce diversity plan.

b. Each Civil Rights Officer will develop and recommend, to the Regional Managing Director, Program Office Director, Assistant Secretaries, or Hospital Administrator's approval, realistic strategies and timetables for goal accomplishment.

7-4. Procedures for Establishing Goals.

a. Office of Civil Rights will annually compile the most recent labor market data to determine the percentage of protected class members in each of the eight EEO job categories in the relevant labor market area.

b. Office of Civil Rights will annually assess the work force of the Department to determine areas of under-utilization.

c. Office of Civil Rights will convert the percentage of under-utilization to the nearest number of full time equivalent positions and that number will be the hiring goal. Under no circumstance should this number be construed as a quota.

d. No goal will be established in any EEO category in which under-utilization does not exist or in which the protected class represents fifty (50) percent or more of the workforce.

7-5. Factors Controlling the Revision of Goals. The Office of Civil Rights in coordination with the Regional Managing Directors, Program Office Directors, Assistant Secretaries, Hospital Managing Directors and the Civil Rights Officers, will consider revising goals only in cases involving exceptional circumstances such as the following:

- a. Substantial increases or decreases in the number of authorized positions;
- b. Extremely low turnover rate;
- c. Legislative or court mandated changes; or,

d. Revised relevant available labor market data.

GLOSSARY OF TERMS

a. Accommodation. The employer's obligation to make reasonable changes in the work environment or reasonable modifications in work assignments and scheduling to provide "qualified individuals with disabilities" employment opportunities through appropriate assistive devices and work modifications allowing them to satisfactorily accomplish the essential functions and responsibilities assigned to the position.

b. ADA – Americans with Disabilities Act. This act provides Civil Rights protection for persons who are considered disabled. Title I of the ADA prohibit employment discrimination against "qualified individuals with disabilities."

c. ADA/ADEA. The Age Discrimination Act of 1975 and the Age Discrimination in Employment Act of 1968, which prohibit unlawful age discrimination in services and in employment by recipients of federal financial assistance.

d. Adverse Impact. Applying uniformly to all applicants or employees certain personnel or admission policies (e.g., word-of-mouth recruiting, diploma requirements, intelligence tests, minimum height requirements) that have the effect of disproportionately denying benefits, services, employment or advancement to women, blacks or other minorities. Business necessity is the only justifiable reason for adverse impact.

e. Affidavits. A written statement made under oath before a person permitted by law to administer such an oath (e.g., a notary public). Such statements are used in departmental civil rights complaint investigations. An affidavit, or affirmation, is a declaration that the information provided is true to the best of the affiant's knowledge and belief. Such affirmed statements may be executed during the interview with the witness to expedite the investigation. The interviewee will be given an opportunity to review the written statements and to make any necessary corrections or changes, affirming the truth of the statement. If corrections or changes are made to the statement by the interviewee, such changes should be made in ink and initialed by the interviewee. The interviewee should sign all copies of the statement and initial each page.

f. Affirmative Action. Any action that is intended to correct effects of past discrimination, to eliminate present discrimination, or to prevent discrimination in the future.

g. Alleged Discriminatory Official. The person named as committing the unlawful act in an alleged employment discrimination complaint.

h. Available Labor Market. Persons who reside in the geographical area from which an employer may reasonably be expected to recruit, limited to those unemployed and those employed but available, who possess the knowledge, skills and abilities to perform a specific job or type of job.

i. Basis. Cause of discrimination alleged in a discrimination complaint based on a person's age, color, disability, marital status, national origin, genetic information, race, religion or sex, or retaliation for a person's opposition to an act made unlawful by the Civil Rights Act of 1964 or similar Civil Rights laws.

j. Bona Fide Occupational Qualification. A job related requirement or necessary occupational qualification that would be discriminatory and prohibited if it could not be shown that it is essential for the satisfactory performance of the duties and responsibilities assigned a particular position. A defense allowed by Title VII of the Civil Rights Act of 1964, as amended, to be used by employers with legitimate requirements for designating positions to be filled by persons of one sex, or religion. An example is a position that is specifically designed to be filled by females because the major duties

require the incumbent to conduct body cavity searches or observe body hygiene activities of female clients. Race, however, can never be used as a Bona Fide Occupational Qualification.

k. Charging party. A person filing a complaint of discrimination alleging a violation of federal or state civil rights (equal opportunity/nondiscrimination) laws or policies.

l. Civil Rights Officer. Employees whose assigned job duties include handling discrimination complaints.

m. Conciliation/Settlement. The process an employer and a complainant use to develop a mutually satisfactory written agreement to resolve an employment discrimination complaint.

n. Determination. The findings or results of the investigation relating to the merits of the complaint, e.g., "reasonable cause" or "no reasonable cause" to believe a violation of Title VII of the Civil Rights Act occurred as alleged.

o. Disabled Person. As defined at 45 CFR 84.3 (l) in the federal regulation implementing Section 504 of the Rehabilitation Act of 1973, as amended, a disabled person is (for the purpose of this operating procedure) one who:

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

p. Discrimination. With regard to employment practices, the denial of equal treatment to a person in comparison with others similarly situated, based on that person's rights as defined under Title VII of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1978, and other applicable laws.

q. Disparate Treatment. With regard to employment practices, treating an individual or group differently and less favorably because of age, color, creed, disability, marital status, national origin, genetic information, race, sex or participation in a discrimination complaint or opposition to alleged unlawful employment practices.

r. Equal Employment Opportunity. The provisions of an environment in which the rights of all persons to work and to advance on the basis of merit, ability and potential are manifest.

s. Equal Employment Opportunity Categories. The eight job categories listed on the State and Local Government Information Report (EEO-4 Report) and defined in the instructions for completing EEOC Form 164 as follows:

1. Officials and Administrators. Occupations where employees set broad policies, exercise overall responsibility for execution of these policies, direct individual departments or special phases of the agency's operations, or provide specialized consultation on a Regional or Circuit basis.
2. Professionals. Occupations requiring specialized and theoretical knowledge that is usually acquired through college training or through work experience and other training providing comparable knowledge.

3. Technicians. Occupations requiring a combination of basic scientific knowledge and manual skills that can be obtained through specialized post-secondary school education or through equivalent on-the-job training.

4. Protective Service Workers. Occupations in which workers are entrusted with public safety, security and protection from destructive forces.

5. Paraprofessionals. Occupations in which workers perform some of the duties of a professional or technician in a supportive role, usually requiring less formal training or experience than normally required for professional or technical status. Such positions may fall within an identified pattern of staff development and career advancement.

6. Office and Clerical Workers. Occupations in which workers are responsible for internal and external communications, recording and retrieving data or information and other paperwork required within an office.

7. Skilled Craft. Occupations in which workers perform jobs that require special manual skills and a thorough and comprehensive knowledge of the processes involved, which skills and knowledge are usually acquired through on-the-job training and experience or through apprenticeship or other formal training programs.

8. Service/Maintenance. Occupations in which workers perform duties that result in or contribute to the comfort, convenience, hygiene, or safety of the general public or which contribute to the upkeep and care of buildings, facilities, or public property.

t. Equal Employment Opportunity Commission (USEEOC). An independent federal agency created by the Civil Rights Act of 1964, as amended, which is responsible for enforcing Title VII of that act. The USEEOC may bring suit, subpoena witnesses, issue guidelines that have the force of law, render decisions and provide technical assistance to employers and legal assistance to complainants. The USEEOC does not conduct routine compliance reviews, but does investigate complaints of discrimination in employment. Upon findings of reasonable cause to believe discrimination occurred, USEEOC attempts to effect conciliation or appropriate remedy through various enforcement activities that may include court action.

u. Essential Functions. The fundamental duties of a job. Consideration must be given to whether the function is required to accomplish the job, or if removing the function would fundamentally change the job.

v. External Complaints. Written complaints of discrimination filed with federal or state agencies with enforcement authority.

w. Florida Commission on Human Relations. The commission, created pursuant to Chapter 760, F.S., is the state's civil rights enforcement agency charged with promoting and encouraging: fair treatment and equal opportunity for all persons; mutual understanding and respect among members of all economic, social, racial, religious and ethnic groups; and efforts to eliminate discrimination against and antagonism among religious, racial, and ethnic groups and their members. Employment discrimination complaints, except those alleging marital status, filed with the Florida Commission on Human Relations are jointly filed with the United States Equal Employment Opportunity Commission.

x. Goals. Goals to eliminate employment discrimination and effects of past discrimination are required elements of an affirmative action program. Goals are not to be confused with quotas. The long-range goal is representation of each group identified as underutilized in reasonable relation to their availability in each major job classification or grouping. Once long-range goals have been set, specific annual goals are developed for hiring, training and promotion.

y. Hiring Authority. Any person who has selection authority for a job vacancy.

z. Informal Complaints. Complaints that are not reduced to writing.

aa. Internal Complaints. Written complaints of discrimination filed with the Office of Civil Rights in accordance with Chapter 60L-36.004, Florida Administrative Code (Sexual Harassment), or with procedures established in CFOP 60-15, Equal Employment Opportunity/Affirmative Action. Internal complaints are under the jurisdiction of the Department and the final decision on resolution and disposition is made by the Secretary (or designee).

bb. Interviewee. Any person applying for a job with the State of Florida and who has been interviewed by the hiring authority regarding the duties and responsibilities of the position.

cc. Interviewer. Any person who is charged with the responsibility to screen and/or select potential employees for this Department relative to the duties and responsibilities surrounding a job vacancy.

dd. Issues. The violations alleged in the complaint or the nature of the charge of discrimination; e.g., failure to hire; discharge; failure to promote; layoff; harassment; or other terms and conditions of employment.

ee. No Reasonable Cause. The conclusion or determination reached after examining all available evidence and documentation that no discrimination has taken place.

ff. Office of Civil Rights. The organizational unit which functions to provide direction and coordination of civil rights efforts, including the development and enforcement of policies, procedures and guidelines to meet all requirements relative to equal employment opportunity and affirmative action.

gg. Pretext (pretextual). A response made by a respondent that appears to be a pretense or excuse to conceal the true intent that appears to be discriminatory, based on race, sex, etc.

hh. Prima Facie. Established guidelines as found in McDonnell Douglas vs. Green, 441 US 792 5FEB 965 (1973):

1. Charging party in a Title VII complaint action must carry the initial burden of establishing a prima facie complaint. Four areas of proof are:

- a. Charging party belongs to a protected class.
- b. Charging party applied and qualified for an advertised job vacancy.
- c. Charging party was not hired.
- d. The position remained unfilled and recruitment activities continued.

2. The areas of proof may vary from case to case, but charging party must provide evidence that he/she was treated differently from other similarly situated employees who were of a different race, sex, etc.

3. After a prima facie complaint is established, respondent must articulate legitimate nondiscriminatory reason(s) for the action or treatment.

4. The burden of proof is then returned to charging party who must provide substantial proof that the reason articulated is a pretext for discrimination based on race, sex, etc., i.e., respondent's intent was discriminatory.

ii. Protected Class. A person or group of persons who, under a specific set of relevant circumstances, qualifies for protection against discrimination under a given civil rights statute or ordinance, such as Title VII of the Civil Rights Act of 1964 and the Florida Human Rights Act of 1992.

jj. Qualified Disabled Person. Title V, Section 504 of the Rehabilitation Act of 1973, as amended, as implemented by 45 CFR, Part 84, does not protect all disabled persons participating in programs or activities receiving federal financial assistance from discrimination on the basis of disability. To be covered by Section 504, a disabled person must be "qualified." In Section 84.3(k), the term "qualified disabled person" is defined in terms of employment as "a disabled person who, with reasonable accommodation, can perform the essential functions of the job in question.

kk. Qualified Applicant. Any person who submits a State of Florida application for a job vacancy and whose knowledge, skills and abilities (training and experience) meet the minimum requirements established for the position (Chapter 60L-33, F.A.C.). (For positions requiring examination, applicants who possess the required minimum knowledge, skills and abilities and attain a minimum qualifying score on the written examination for the class.)

ll. Quota. Fixed hiring and/or promotion rates, usually established by court order, based on race, sex, or other factors that must be met without regard to the availability, the education, experience, or training of the external labor force or the employer's projected manpower requirements.

mm. Race/Ethnic Categories. For the record keeping purposes of this plan, each applicant and employee is classified in only one of the following race/ethnic categories:

1. Black, not of Hispanic origin.
2. White, not of Hispanic origin.
3. Hispanic, including persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish origin or culture regardless of race.
4. American Indian or Alaskan native.
5. Asian or Pacific Islander.
6. Other

nn. Reasonable Cause. The conclusion or determination that is reached after examining all available evidence and documentation and applying those facts to applicable principles or standards of proof.

oo. Respondent. The Department of Children and Families.

pp. Retaliation. Prohibited action taken against complainants or persons assisting in a complaint of discrimination as a direct result of their participation in the complaint or their opposition to alleged unlawful employment practices prohibited by state and federal laws and Department policy.

1. It is an unlawful employment practice to retaliate against any individual because he/she has opposed any discriminatory practice, made a charge, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under Title VII.

2. To establish a retaliation complaint, complainant must establish:

a. The basis, i.e., show that there was statutorily protected participation or opposition.

b. The issue, i.e., an adverse employment activity, such as discharge, demotion, failure to hire, or other form of discriminatory action.

c. A causal connection between the participation or opposition (basis) and the adverse employment action (issue).

qq. Retention of Records. All personnel and applicant records, including applications, related reference materials, interview notes and selection modules, are required to be maintained for a minimum of two years. Statistical records and reports compiling such information and reflecting statistical records, i.e., work force and applicant flow analysis by race, sex, age, job groupings, etc., of applicants and employees must be retained for a minimum of three years. Personnel data that relate to a complaint of discrimination must be retained by the hiring authority or other designated official until the complaint is either resolved or a final court decision made. The notice of a complaint being filed is the notice to retain such personnel records relating to or involved in the charge of discrimination. Close coordination with the hiring authority and Civil Rights Officers is essential throughout the complaint process to ensure adherence to such documentation requirements.

rr. Sexual Harassment. Any form of unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment.

2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.

3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

ss. Staffing Pattern. A numerical (statistical) profile of incumbent employees in an organizational unit or entity by race, sex, age, national origin, genetic information, pay grade, job classification and/or EEO category.

tt. Under Utilization. The employment of fewer protected class members in a particular job classification or Equal Employment Opportunity category than would reasonably be expected by their availability in the relevant labor market.

uu. Work Force Analysis. A statistical review of the current distribution, participation, compensation and movement of an organization's or agency's employees analyzed in terms of relevant available labor market.