

**CITY OF NEW ORLEANS
CHIEF ADMINISTRATIVE OFFICE**

POLICY MEMORANDUM NO. 54 (REVISED)

August 28, 1997

TO: All Departments, Boards, Agencies and Commissions

FROM: Marlin N. Gusman, Chief Administrative Officer

**SUBJECT: CITY'S AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT
POLICIES**

I. PURPOSE.

The purpose of this memorandum is to establish standards for all departments, board, agencies, and commissions of City Government to follow in regard to affirmative action and equal employment opportunities due to race, color, religion, gender, national origin, physical or mental disability, age, sexual orientation creed, culture, or ancestry. This memorandum will consolidate all previous policy memoranda affecting this subject matter.

II. BACKGROUND.

A. Councilmanic Resolution of June 2, 1966, proclaimed fair and equitable employment practices of the City of New Orleans and the establishment of these practices by the Mayor. The following is an excerpt from the Councilmanic Resolution:

“THEREFORE, BE IT RESOLVED BY THE
COUNCIL OF THE CITY OF NEW ORLEANS,
that it is hereby declared to be the official policy of
the City of New Orleans that all agencies, boards,
and departments of the City of New Orleans shall
fairly consider the application of every qualified
applicant for employment who is certified by the
Civil Service Commission, irrespective of the race,
Religion or nationality of said applicant, and all
agencies, boards and departments of the City of
New Orleans are directed to end discriminatory
employment practices based on race, religion or
nationality, wherever they may exist.”

B. Past Administrations had expanded the resolution to include color, disability, age, gender, and sexual orientation. In July 1983, a policy memorandum formally was

issued to announce the City's statement on non-discrimination. On June 21, 1985, sexual orientation was included in the City's EEO policy.

- C. P L101-336 was signed into law by President George Bush on July 26, 1990, and was called The Americans with Disabilities Act (ADA). It was passed pursuant to extensive lobbying by disability rights organizations during the 1980's. The previous Rehabilitation Acts of 1973, Section 503 and 504, pertained primarily to federal contractors, subcontractors, and recipients of financial assistance. Basically, the provisions of the ADA are viewed as enforcing the Fourteenth Amendment by eliminating over or covert discriminatory practices emanating from the conducting of public sector or commercial activities because of an individual's disability or perceived disability. It is estimated that some 43,000,000 Americans have one or more physical or mental disabilities. This represents about one-sixth (1/6) of the American population.

III. NON-DISCRIMINATION POLICY OF THE CITY OF THE CITY OF NEW ORLEANS.

- A. The City of New Orleans does not discriminate on the basis of race, color, religion, national origin, gender, age, physical or mental disability, sexual orientation, creed, culture, or ancestry in employment or in the operation of City programs and services, as required by Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Executive Order 11246, as amended, Sections 504 and 503 of the Rehabilitation Act of 1973, as amended, Americans with Disabilities Act of 1990, and other applicable federal and state laws.
- B. Furthermore, it is the policy of the City to notify participants, beneficiaries, applicants and employees, as well as, unions or professional organizations holding collective bargaining agreements with the City that the City does not discriminate on the basis of race, color, religion, national origin, gender, age, physical or mental disability, sexual orientation, creed, culture, or ancestry. Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990 require the City to include disability in non-discrimination clauses. Chapter 86 of the City Code cites the involvement of the Human Relations Commission for local discrimination issues.
- C. All City contracts other than procurement contracts of insurance or guaranty shall include a statement of non-discrimination on the basis of race, color, religion, national origin, gender, age, physical or mental stability, sexual orientation, creed, culture, ancestry Policy Memorandum No 8 (Revised) issued on September 9, 1996, contains appropriate language which must appear in all personal and professional services contracts and cooperative endeavor agreements. Listed below is the amended working to be used in these contracts.

“In all hiring or employment made possible by, or resulting from this contract, there (1) will not be any discrimination against any employee or applicant for employment because of race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, affirmative action will be taken to ensure that the Contractor’s employees are treated during employment without regard to their race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry. This requirement shall apply to, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry.”

- D.** The following statement should be included on all publications or information concerning employment with the City of New Orleans.

“The City of New Orleans is an equal opportunity employer and does not discriminate on the basis of race, color, religion, national origin, gender, age, physical or mental disability, sexual orientation, creed, culture, or ancestry.”

- E.** When informational brochures on City services such as recreation programs, health services, public assistance, etc., are printed, they should include a general statement of non-discrimination such as:

“The City of New Orleans does not discriminate on the basis of race, color, religion, national origin, gender, age, physical or mental disability, sexual orientation, creed, culture, or ancestry. For information call (504)* - * or TTY/Voice 504-586-4475.”

- F.** Departments and agencies conducting public hearings and meetings must ensure that notices of public hearings and meetings shall include the following statement:

“The meeting site is generally accessible to persons with disabilities. If you need accommodations or assistance to participate, then please call (504) * - *or TTY/Voice 504-586-4475.”

*The department, board, agency, or commission responsible for conducting the public hearing or meeting, or providing services will provide its telephone number so that disabled persons can call to obtain assistance/information regarding the meeting or services.

- G.** All letterhead, informational pamphlets, notices of public hearings, and meetings should display prominently the words “Equal Opportunity Employer” at the bottom of the document or communication. These words must appear in conjunction with any other statements of non-discriminate cited in this memorandum or other statutory required non-description statements for various programs or activities.
- H.** Public entities are required to disseminate sufficient information to applicants, employees, and other interested persons to inform them of their rights. Requirements may include publication of information in handbooks, manuals, and pamphlets that are distributed to employees or to the public, use of posters in service centers and other public places, and even television or radio broadcasts aired as public service announcements. The notices must comply with requirements for communication with the sight-impaired, hearing-impaired, and other disabled individuals.
- I.** In addition, public entities must furnish adequate information and signage at inaccessible entrances to facilities, to direct disabled individuals to accessible entrances or to a location where they can obtain information about accessible facilities.

IV. PROHIBITION AGAINST SEXUAL HARRASSMENT.

Included in the policy is the prohibition of sexual harassment. The City will not tolerate any actions in the form of unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature such as the following occurs:

Submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment;

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

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

V. PROHIBITION AGAINST AGE DISCRIMINATION.

Title VII of the Civil Rights Act of 1964 was amended in 1978 to include a protected age group of persons who are 40 to 70 years of age. Formerly, the upper age limit was 65 years of age as designated by the Age Discrimination in Employment Act of 1967. The law was designed to promote the hiring of workers over 40 and to prohibit discrimination against older members of the work force. This 1978 amendment bans involuntary retirement on the basis of age before age 70 for most employees.

VI. BUILDINGS AND FACILITIES, PROGRAMS, AND SERVICE ACCESSIBLE TO AND USABLE BY PERSONS WITH DISABILITIES.

- A. Municipal buildings and facilities, programs, and services must meet certain standards making them accessible to and functional for persons with disabilities. The ADA broadly defines a “disability.” It is considered “a physical or mental impairment that substantially limits one or more major life activities of such individual, a record of such an impairment; or, being regarded as having had such an impairment.” Major life activities include the following: caring for one’s self; performing manual tasks; walking; seeing; hearing; speaking; breathing; learning; thinking, concentrating; interacting with others, and, performing major tasks. In addition, persons who have known relationships or associations with individuals who have disabilities are covered by the ADA in the areas of employment and public accommodation.
- B. This definition does not include current illegal drug or other substance use, disorders resulting from current illegal drug use, on- the-job alcohol abusers, sexual behavioral disorders, compulsive gambling, kleptomania, or pyromania.
- C. As in other types of civil rights legislation that have passed, the ADA addresses the elimination of discriminatory practices in such critical areas as Employment (Title I), Public Services (Title II), Public Accommodations and Services operated by private entities (Title III), Telecommunications (Title IV), and Miscellaneous (Title V). The ADA applies to both the private and the public sector.
- D. Any current or future state or local laws addressing disabilities pursuant to the ADA AND which set more stringent standards for providing services and programs, and employment opportunities for persons with disabilities will prevail over the federal ADA.

VII. SPECIFIC TITLES – TITLE I –EMPLOYMENT OF ADA.

- A. For the first time, there is a single uniform federal ban on disability-based discrimination covering all but the smallest employers.
- B. All aspects of employment are regulated by this act. Title I of ADA prohibits employees from discriminating against qualified persons because of disabilities in all aspects of employment including the following: job applications/procedures;

compensation, benefits, training; advancement; termination, and, other terms and conditions of employment. Employers are prohibited from execution of contracts or other relationships with entities that may engage in disability-based discrimination.

- C. An employer must provide reasonable accommodation of the disability if so requested by the employee or applicant such accommodation is not an undue hardship upon the employer.
- D. “Undue hardship” refers to any accommodation that would be unduly costly, expensive, substantial, or disruptive, or would fundamentally alter the nature or operation of a business or service. However, the ADA requires employers to incur more than just deminimus costs in order to accommodate the disabled.
- E. Posters announcing ADA requirements will be posted in conspicuous work locations readily accessible to the public and departments’ and agencies’ employees.
- F. The employer’s medical examinations must meet specific requirements. Departments and agencies should not have medical information in employees’ files. Applicants’ and employees’ medical records must be stored separately from other personnel records. Examples of items which should not appear in individual employees’ files are pre-employment physicals and medicals conducted during employment, substance abuse screenings, medical records or such other related medical documents as prescriptions or worker’s compensation claims. Medical records are extremely confidential. Doctors’ certificates obtained as consequences of existing City Civil Service Rules and Regulations may not remain in an individual’s personnel file. Any other medical items which may be questionable for the retention in an employee’s file should be approved by the City Attorney’s Office. That office can be contacted at 565-6200.
- G. Access of an employee’s medical file is limited to supervisors or managers who must be cognizant of work restrictions or accommodations, personnel rendering medical or other assistance in emergency situations, and governmental officials’ investigating ADA complaints.

VIII. SPECIFIC TITLES – TITLE II – PUBLIC SERVICES OF ADA.

- A. State and political subdivisions cannot deny use of public services, programs, or activities to persons with disabilities. The salient areas affected would be accessibility of buildings, roadways, communication processes, information, and transportation barriers enabling a person to participate in the program, etc. The governmental entity must provide auxiliary aids and services for persons with disabilities to participate in all services, programs, and activities under the auspices of a public entity.

- B. Communications with persons with disabilities is regulated by Title II. Persons with disabilities must be given opportunities to engage in regular emergency services and programs via TDD (Telecommunication Devices for the Deaf), computer modems, or equally effective telecommunication systems.

IX. OTHER TITLES – TITLES III, IV, AND V OF ADA.

- A. Title III and Title IV involve public accommodations and services, and telecommunications respectively. These regulations do not seem applicable to the City at this time.
- B. The provisions of Title V are a hodgepodge of related topics to the ADA, but unrelated to each other in this particular section. These items are not applicable to the City at this time.

X. ENFORCEMENT.

- A. Most of the areas for possible discrimination under federal laws are enforced by the local district office of the federal Equal Employment Opportunity Commission (EEOC). However for ADA, Title I, Employment, is enforced too by the U. S. Attorney General.
- B. ADA Title II, Public Services, is enforced by the U S Attorney General and the U S Secretary of Transportation.
- C. Chapter 86 of the City Code empowers the Human Relations Commission to address disability and other types of complaints alleging discrimination.

XI. GENERAL COMMENTS ON UNINTENTIONAL ADA TITLE DISCRIMINATION.

- A. Caution is advised in determining what constitutes essential job functions for a class of work. Job structure should be such that the major job activities in no way adversely affect a person with a disability.
- B. Performance evaluations should not discriminate on the basis of disability per perpetuate the discrimination by other who are subject to or who exercise common administrative control.
- C. Persons who are qualified to hold a job and who themselves have failed to claim a disability should not be denied employment opportunities because of a known relationship with a person with disabilities, e.g., spouses with disabilities.
- D. If an otherwise qualified person with known physical and mental limitations asks for reasonable accommodations, then the employer's failure to provide such

without defensible declaration of “undue hardship” could be viewed as ADA violations.

- E. Qualification standards or the similar types of selection criteria that fail to reflect essential job functions should not be used.
- F. Entering into contracts with companies or persons that would subject the City to prohibited ADA discrimination must be avoided.

XII. GENERAL COMMENTS ON UNINTENTIONAL ADA TITLE II DISCRIMINATION.

- A. Programs and services should be available to all those who want to use or to participate in them. This means that departments and agencies will need dot publicize that assistance for programs and services are available when requested by an individual with a disability.
- B. Such assistance may take the form of the following: Telecommunications Devices for the Deaf (TDD); signing interpreters, readers; timely provision of taped text or electronic text, Braille, large print or other effective methods of making visual materials available to a particular individual with visual impairments; acquisition or modifications of equipment or devises; and, other similar services and actions.
- C. Departments and agencies should coordinate all access activities with the Property Management Department, the CAO-Capital Projects Section, and the City’s Human Relations Commission.

XIII. REASONABLE ACCOMMODATION.

- A. A listing of possible items which can be used as satisfying reasonable accommodation requests is attached to this policy memorandum. This listing is not inclusive, but a sample of what ADA guidelines and advocacy groups consider representative of reasonable accommodation.
- B. Copies of any reasonable accommodation requests (both Title I and Title II) received by a department or agency should be sent to the Employee and Labor Relations Division of the Chief Administration Office. If the reasonable accommodation affects a Classified Service employee’s job functions, then the Employee Growth and Development Division of the Civil Service Department should receive a copy of the requests too. Copies of these requests should be forwarded within (3) days of receipt by a department or agency. The Human Relations Commission and other departments and agencies will be involved as needed to resolve the matter.

- C. An employing department or agency has a responsibility to inform employees and applicants of its duty to make reasonable accommodations. However, the duty of to accommodate generally is not triggered until an employee or an applicant requests a specific accommodation.
- D. Reasonable accommodation should be viewed as a problem-solving approach. Usually the individual with the disability will know precisely what accommodations that he or she needs to perform a job, to apply for employment, or to participate in programs and services. An individual with a disability is entitled to reasonable accommodation if (s)he meets the ADA definition of “a qualified individual with a disability.”
- E. Reasonable accommodation should concentrate on the ability to perform essential job functions or to receive equal benefits and privileges of employment or to ensure equal opportunity in the application process. In considering an accommodation, the focus should be on the abilities and limitations of the individual—not the particular physical or mental condition qualifying the individual for coverage under the ADA.
- F. When departments and agencies are asked for reasonable accommodations pertaining to programs and services (Title II), there exist several resources for references. The accessibility requirements under Title II are established in the United States Department of Justice regulations. That entity has an office for the Americans with Disabilities Act.

XIV. MISCELLANEOUS ON ADA.

- A. Departments and agencies should think of how to handle emergency evacuation plans. Items to be considered are the following know who and where the employees with disabilities are; make sure they have means to recognize an evacuation alert, how to handle a citizen with a disability if there is an emergency; and, what special equipment will be needed for the evacuation process. These processes should focus on employees and others whose disabilities make assistance in an emergency necessary.
- B. Departments and agencies should review all existing and proposed contracts and leases to make sure the agreements do not directly or indirectly violate the ADA. Proposed leased premises should be inspected for compliance before leases are executed.
- C. Departments and agencies should become familiar with items generally considered as “reasonable accommodation” of a request from a person with a disability. A list is attached to this policy memorandum. It should not be considered as an **all-inclusive** listing, but a basic representation of what may be requested. An employer, however, is not required to incur “undue hardship” to accommodate someone.

- D. No medical information may be requested during an interview of an applicant. A job applicant cannot be asked if he or she is an individual with a disability. The employer may not ask about the nature or severity of a disability. The employer yet may ask the applicant whether or not he or she has the ability to perform job-related functions. A substance abuse screening and a medical exam can be required only after a condition offer of employment is made to a job applicant and prior to the applicant's beginning employment duties.
- E. The City's substance abuse policy is permitted by the ADA. It will remain in effect.
- F. All programs and services provided by departments and agencies must be accessible and offer disabled persons opportunities to participate in such endeavors.
- G. A person who incurs a temporary non-chronic impairment is not covered by the ADA. Thus, someone with a treatable and healable (in a brief space of time) broken leg seemingly would not be covered because his/her ability to walk is only temporarily impaired. However, it is possible for temporary impairments that take a significantly long time to heal to be considered disabilities depending upon the individual case. Chronic, but intermittent, or episodic disabilities will normally be covered.

XV. RESPONSIBILITY FOR NON-DISCRIMINATION.

- A. All departments, boards, agencies, and commissions should have designated EEO representatives pursuant to this memorandum. Data should be submitted to the Chief Administrative Office as to department/agency EEO personnel involved in EEO activities for the department/agency. Needed information within ten (10) days of receipt of this memorandum is the employee's name, class of work, office address, and office telephone and fax numbers. This person will work with the Chief Administrative Office and/or the Human Relations Commission in the resolution of all EEO grievances.
- B. It is the responsibility of the department, board, agency, or commission to notify the Chief Administrative Office when an EEO Representative is changed. This representative will serve in a counselor capacity to employees with concerns or grievances relative to the EEO process.
- C. The Appointing Authority of each department, board, agency, and commission will be charged with the responsibility for non-discrimination and affirmative action within a department, board, agency or commission.
- D. The Human Relations Commission shall process and shall investigate discrimination complaints from any persons who is not a City employee. The

person may also file with appropriate City department, board, agency, or commission. The Human Relations Commission will be responsible for monitoring the provisions of this policy memorandum for all persons other than City employees.

- E.** The Chief Administrative Office, Employee and Labor Relations Division (CAO-ELRD), is responsible for the monitoring of the provisions of this policy memorandum for City employees. The CAO-ELRD shall receive and shall investigate any complaints of discrimination made by City employees. The CAO-ELRD will process all complaints filed by persons and employees with the Equal Employment Opportunity Commission against the City of New Orleans.
- F.** The CAO-ELRD shall file the EEO-4 report and related ancillary reports emanating from the EEO-4 report as required by the Equal Employment Opportunity Commission (EEOC) and other federal/state agencies.
- G.** Appointing authorities shall distribute this memorandum to all persons responsible for personnel procedures in a department or agency.
- H.** A copy of this memorandum shall be displayed publicly in the agency's or departmental human resources section responsible for maintaining and for administering personnel policies and procedures. Also, a copy of this memorandum shall be posted in the same location as the poster mentioned in the following paragraph.
- I.** A copy of EEO Poster GPO 19820-370-331 shall be placed in a conspicuous place where all employees and citizens can read the displayed information. The City is required to post the EEO Poster as mandated by Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, as amended, and various laws concerning persons with disabilities and veterans. This poster also shows the prohibitions under the Equal Pay Act of 1963, as amended, and requirements for affirmative action under Executive Order 11246.
- J.** Anyone whose job functions pertain to building modification or leasing property for City use should be aware of ADA specifications for physical accessibility. The current standards are found in the Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities published by the U.S. Architectural & Transportation Barriers Compliance Board, 1111 18th Street, N.W, Suite 501, Washington, D.C. 20036-3894 – Area Code (202) 653-7834 V/TDD or Area Code (202) 653-7863 Fax. Other recognized standards are the Uniform Federal Accessibility Standards.
- K.** Contractors and vendors who contract with the City should be informed of Mayoral executive orders for EEO/Affirmative action compliance.

XVI. GRIEVANCE PROCEDURES.

- A. For persons other than City employees, a separate complaint, procedure has been established by the Human Relations Commission. It shall be used for filing and for investigating all complaints of discrimination by persons other than City employees.
- B. The grievance procedures are attached to this memorandum. All previously existing EEO grievance forms and procedures should be replaced with those attached to this policy memorandum.
- C. Appointing Authorities are to ensure that these grievance procedures are prominently posted and are displayed permanently. Also, supervisory personnel shall disseminate this information to the maximum extent possible for notification to all City employees and the public.
- D. In most instances, questions of discrimination can be resolved within the terms of these procedures. Supervisors are to entertain seriously complaints of discrimination and, when necessary, have employees use the grievance procedure. This allows for a more flexible and immediate response. Municipal supervisor(s) and appointing authorities are not authorized to advise employees or citizens about their legal remedies as provided by federal and/or state agencies. Moreover, retaliation against persons making complaints of discrimination are strictly prohibited.
- E. The suggestion to use the grievance procedure should not be constructed as an attempt to prohibit the legal right of City employees to refer complaints of discrimination to the Equal Employment Opportunity Commission (as provided for in the Civil Rights Act of 1964), to the Office of Federal Contract Compliance, to other pertinent U.S. Government agencies, to the City's Civil Service Commission, or to any other agency.

XVII. TRAINING.

- A. Informational sessions will be held for departmental/agencies directors and deputy directors at the Administration's regularly scheduled monthly meetings. These meetings will update and supplement equal employment/affirmative action data it develops.
- B. Human Resources officers and other managerial and administrative personnel will be scheduled to attend training sessions to be conducted either by the Chief Administrative Office and/or the City Civil Service Department.

XVIII. INQUIRIES.

- A.** Any questions concerning technical assistance with regard to standard specifications for making buildings and facilities accessible to and usable by persons with disabilities should be addressed to the Capital Projects Administrator, Chief Administrative office, at 565-6061.
- B.** Questions from citizens about discrimination should be addressed to the Human Relations Commission at 565-7916.
- C.** Questions from employees about discrimination should be addressed to the Employee and Labor Relations Division of the Chief Administration Office at 565-6500.
- D.** The Employee Growth and Development Division of the Civil Service Department may be contacted regarding available training courses. The Management Services Division and the Public and Employee Relations Division are available for discussing complaints and appeals to the Civil Service Commission. All of these divisions may be reached by contacted 565-6800.
- E.** Department and agencies should contact the City Attorney's Office anytime that there are questions about possible legal actions occurring pursuant to the issuance of this policy memorandum. The telephone number is 565-6200.

Marlin N. Gusman
Chief Administrative Officer

MNG/JMR/itb

Enclosures: Reasonable Accommodations Listing (Samples)
Employee's EEO Grievance Procedure
Employee's EEO Grievance Form (CAO Form I)
Citizens Grievance Procedure