

TABLE OF CONTENTS

SECTION

- I. [Policy](#)
- II. [Authority](#)
- III. [Supportive Data](#)
- IV. [Signature Block with Effective Date](#)
- V. [Definitions](#)
- VI. [Protocol](#)
- VII. [Procedure](#)
- A. [Legal Authority for Development and Implementation of DOH Programs](#)
- B. [Designation of Responsibilities](#)
- C. [Investigation of Complaints](#)
- D. [EEO Records and Reports](#)
- VIII. [Distribution List](#)
- IX. [History Notes](#)
- X. [Exhibits](#)
- A. [Authorization to Investigate](#)
- B. [Investigative Report](#)
- C. [Index of Investigative Materials](#)
- D. [Civil Rights Complaint Log](#)

I. Policy

The department assures to each applicant or employee an equal employment opportunity without regard to a person's age, race, color, sex, religious creed, national origin, political opinions or affiliations, marital status or disability except as provided by law or when such requirement constitutes a bona fide occupational qualification necessary to perform the tasks associated with the position. Such 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.

II. Authority

A. 45 Code of Federal Regulations (CFR) 80, 81, 83, 84, 86 and 90, requires nondiscrimination on the basis of race, color, national origin, disability, sex, or age in federally assisted programs and activities [Title VI of the Civil Rights Act of 1964, as amended, 42 United States Code (U.S.C.) 2000d et seq.; Section 504 of the Rehabilitation Act of 1973; Title IX of the Education Amendments of 1972; Age Discrimination in Employment Act of 1967].

B. 29 CFR, Equal Employment Opportunity Commission, pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq. and Title I of the Americans with Disabilities Act, prohibit employment discrimination on the basis of race, color, creed, sex, national origin, religion, and disabilities; and establish procedures for complaints of employment discrimination filed against recipients of federal financial assistance. 29 CFR also establishes minimal retention schedules and records requirements.

C. 7 CFR 15, nondiscrimination on the basis of race, color, national origin, age, sex or disability, prohibits discrimination in programs and activities funded by U. S. Department of Agriculture.

D. Section 110.105, Florida Statutes, establishes nondiscriminatory employment policy of the state of Florida.

E. Section 110.201(3), Florida Statutes, requires state agencies to comply with all federal regulations necessary to receive federal funds.

F. Chapter 112, F.S., Section 112.042 and 112.043, prohibits discrimination in state employment on the basis of race, color, sex, religious creed, national origin, or age.

G. 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.

H. Chapter 60L, Florida Administrative Code, Rules of the Florida Commission on Human Relations (FCHR), provides for the processing and settlement of discrimination complaints filed with FCHR or deferred to FCHR by the United States Equal Employment Opportunity Commission (USEEOC).

I. Chapter 60K, Personnel Rules, Florida Administrative Code, sets forth the rules concerning the department's personnel practices including compensation, hiring, promotion, demotion, classification, retention, discipline, and leave.

J. Chapter 60L-28, Florida Administrative Code, establishes DOH sexual harassment policy and procedures for handling complaints and for disciplining offenders.

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

L. Governor's Executive Order 81-69 prohibits sexual harassment in state gubernatorial agencies. Chapter 60L-28, F.A.C., implements requirements of this order and establishes DOH policy and procedures prohibiting sexual harassment.

III. Supportive Data

A. The Department of Health's Equal Opportunity in Service Delivery policy, developed pursuant to 45 CFR, Part 80, and Section 110.201(3), Florida Statute, implements required compliance activities (county specific and program specific) pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and similar federal statutes.

B. The Department of Health's Sexual Harassment policy provides communication of departmental procedures prohibiting sexual harassment in accordance with Chapter 60L-28, Florida Administrative Code, Sexual Harassment.

IV. Signature Block with Effective Date

Signature on file at the Office of Equal Opportunity and Minority Health

Robert G. Brooks, M.D.
Secretary

Date
July 1, 2000

V. Definitions

A. Accommodation. The employer's obligation to make reasonable changes in the work environment or reasonable modifications in work assignments and scheduling to provide employment opportunities to qualified persons with

disabilities through appropriate assistive devices and work modifications allowing them to satisfactorily accomplish the major duties and responsibilities assigned.

B. Age Discrimination Act and Age Discrimination in Employment Act (ADA/ADEA). The Age Discrimination Act of 1975 and the Age Discrimination in Employment Act of 1967 which prohibit unlawful age discrimination in services and in employment by recipients of federal financial assistance.

C. Americans with Disabilities Act. The Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disability.

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 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. Allegations. The specific statements made by the complainant in a complaint of discrimination.

G. Alleged Discriminatory Official (ADO). The supervisory or hiring authority named in an employment discrimination complaint.

H. Auxiliary Aids and Services. Services or devices for ensuring effective communication.

I. Basis. Cause of discrimination alleged in a discrimination complaint based on a person's age, color, disability, marital status, national origin, 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. BFOQ (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, national origin or religion. An example is a position that is specifically designated 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 BFOQ.

K. Complainant (Charging Party). A person filing a complaint of discrimination alleging a violation of federal or state civil rights (equal opportunity and nondiscrimination) laws or policies.

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

M. Current Illegal Use of Drugs. The illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.

N. Department of Health and Human Services (DHHS). The United States agency responsible for civil rights enforcement of Title VI of the Civil Rights Act; Section 504 of the Rehabilitation Act of 1973; Title IX Of the Education Amendments of 1972; Omnibus Budget Reconciliation Act of 1981 and the Age Discrimination Act of 1975. DHHS is the primary federal sponsoring agency of DOH federally funded programs and activities (Equal Opportunity and Nondiscrimination in Service Delivery).

O. 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.

P. Disability. As defined at 29 CFR 1630.4, is a physical or mental impairment that substantially limits one or more of the major life activities of an individual; or a record of such an impairment; or regarded as having such an impairment.

Q. 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; the Americans with Disabilities Act of 1990, and other applicable laws.

R. 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, race, sex, participation in a discrimination complaint or opposition to alleged unlawful employment practices.

S. EEO Categories. The eight job categories listed on the State and Local Government Information Report (EE0-4 Report) are defined 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, district, or area 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. 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.

U. Equal Employment Opportunity Commission (EEOC). 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 is also responsible for enforcing the Americans with Disabilities Act of 1990. The USEEOC may bring suit; subpoena witnesses; issue guidelines which have the force of law; render decisions; provide technical assistance to employers; and provide 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.

V. Essential functions. The fundamental job duties of the employment position the individual with a disability holds or desires.

W. External Complaints. Written complaints of discrimination filed with federal or state agencies with enforcement authority in the investigation, resolution or disposition of civil rights (discrimination) complaints, e.g., USEEOC - Title VII and the Americans with Disabilities Act - employment discrimination; DHHS (OCR) - Title VI, Section 504, Title IX, Age Discrimination Act, or Omnibus Budget Reconciliation Act - (discrimination complaints) provision of services and benefits; Florida Commission on Human Relations, Florida Civil Rights Act of 1992 and Title VII - employment discrimination.

X. Facility. All or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

Y. Florida Commission on Human Relations (FCHR). 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 a basis of marital status, filed with FCHR are jointly filed with the United States Equal Employment Opportunity Commission.

Z. Hiring Authority. Any person who has selection authority for a bona fide job vacancy.

AA. Internal Complaints. Written complaints of discrimination filed with the Office of Equal Opportunity and Minority Health in accordance with Chapter 60L-28, Florida Administrative Code (Sexual Harassment), or with procedures established in this procedure, or in DOH Methods of Administration, Equal

Opportunity in Service Delivery. 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. Individual with a Disability. An individual who has a physical or mental impairment which substantially limits one or more major life activity; or who has a record of such an impairment; or who is regarded as having such an impairment.

CC. Interviewee. Any person having submitted a State of Florida application for a *bona fide* job vacancy, and who has been *interviewed* by the hiring authority or designee relative to the duties and responsibilities of said position.

DD. 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 bona fide job vacancy.

EE. 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.

FF. Office for Civil Rights. The office in the United States Department of Health and Human Services (DHHS) responsible for civil rights compliance and enforcement activities involving recipients of federal financial assistance, such as DOH.

GG. Office of Equal Opportunity and Minority Health (HSMA). The organizational unit which functions to provide administrative support, as well as overall direction and coordination, for this department's civil rights efforts, including the development and enforcement of policies, procedures and guidelines to meet all requirements relative to equal employment opportunity.

HH. Pretext (Pretextual). A response made by an Alleged Discriminatory Official or respondent that appears to be a pretense or excuse to conceal the true intent which appears to be discriminatory, based on race, sex, etc.

II. Prima Facie Complaint. Established guidelines for a prima facie employment discrimination complaint are found in *McDonnell Douglas v. Green*, 441 US 792, 5 FEP 965 (1973). The areas of issue and basis are as follows:

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

- a. Complainant belongs to a protected class.
- b. Complainant applied and qualified for an advertised job vacancy.

- c. Complainant was not hired.
 - d. The position remained unfilled and recruitment activities continued.
2. The areas of proof may vary from case to case, but complainant 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 complainant 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.

JJ. 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 Civil Rights Act of 1992.

KK. Qualified Individual with a Disability. An individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who with or without reasonable accommodation can perform the essential functions of the position.

LL. Qualified Applicant. Any person who submits a State of Florida application for a *bona fide* job vacancy and whose knowledge, skills and abilities (training and experience) meet the minimum requirements established for the position. (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.)

MM. Race and Ethnic Categories. A group of people classified together based on physical characteristics, common history, nationality, or geographic distribution. Includes the following:

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.

NN. Reasonable Accommodation. Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or modifications or adjustments that enable an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities.

OO. Reasonable Cause or No 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.

PP. Respondent. The subject employer, agency or entity named in a complaint of employment discrimination.

QQ. 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 DOH 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).

RR. 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. Records that relate to a complaint of discrimination are to be retained by the personnel officer 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 personnel offices and EEO coordinators is essential throughout the complaint process to ensure adherence to such documentation requirements.

SS. 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.

TT. Undue Hardship. With respect to the provision of an accommodation, significant difficulty or expense incurred considering the nature and cost, the overall financial resources, the type of operation, and the impact of the accommodation on the operation of the facility.

VI. Protocol

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. 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 with the Department of Health, Office of Equal Opportunity and Minority Health, 4052 Bald Cypress Way, Bin #A00, Tallahassee, Florida 32399-1701, within 365 days of the alleged discriminatory action. All complaints shall be treated in accordance with the procedures set forth by law, or by applicable rule, such as Chapters 60-5, 60Y, and 60L, Florida Administrative Code (F.A.C.).

VII. Procedure

A. Legal Authority for Development and Implementation of DOH Programs - It shall be the policy of the state to provide equal employment opportunity. It is also the purpose of these procedures to establish a system of personnel management in accordance with Section 110.105, F. S. 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, and other related activities.

B. Designation of Responsibilities - It is the purpose of this section to ensure timely and appropriate implementation and communication of the department's EEO policy by clearly identifying responsibilities and accountability. The following responsibilities are herein delegated to designated staff:

1. Equal Opportunity and Minority Health Director. The Equal Opportunity and Minority Health Director will develop policies and procedures to implement the department's EEO program and to assure departmental and contracted service provider compliance with applicable civil rights laws.

2. County Health Department and CMS Directors. CHD/CMS Directors will ensure that:

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

b. Personnel under their supervision attend EEO training and functions when scheduled.

3. Personnel Officers. Personnel officers and managers at all organizational levels will:

a. Provide current and new employees with EEO information and complaint procedures.

b. Maintain EEO records as required.

c. Coordinate EEO related reports with the EEO coordinator.

4. The Civil Rights Advisory Committee (CRAC) will:

a. Review and analyze relevant civil rights laws, regulations and directives to determine those which may affect the department.

b. Recommend appropriate action to the Secretary, relative to departmental application of those laws, regulations and directives.

5. EEO Coordinators appointed by each county health department (CHD) or CHD consortium will be responsible for overall coordination of EEO activities, including:

- a. Monitoring EEO program functions.
 - b. Investigating complaints of alleged discrimination.
 - c. Coordinating preparation of required reports, including reports required by the Department's Equal Employment Opportunity and Methods of Administration policies.
 - d. Participating in and conducting EEO related technical assistance activities.
 - e. Ensuring that the department's statement of policy, federal EEO posters and other related materials are displayed in appropriate areas for employees and the public in accordance with the Department's Equal Employment Opportunity and Methods of Administration policies.
6. EEO Liaisons appointed by Division Directors or smaller CHD's are responsible for EEO activities within the divisions or CHD's which may include:
- a. Attending EEO programs.
 - b. Collecting information for reports or complaint investigations.
 - c. Participating in EEO related technical assistance activities.
 - d. Ensuring that the department's statement of policy, federal EEO posters and other related materials are displayed in appropriate areas for employees and the public in accordance with the Department's Equal Employment Opportunity and Methods of Administration policies.

Duties can also include carrying out other EEO functions assigned by the EEO Coordinator or the Equal Opportunity and Minority Health Office.

C. Investigation of Complaints

1. Time Frame for Complaint Assignment. Within five working days of receipt of a complaint, the Equal Opportunity and Minority Health Director will forward the written complaint, along with a document request, to the EEO coordinator through the appropriate Health Department Director, CMS Director or Unit Director responsible (herein referred to as the appropriate authority) for the investigation. The document request will delineate each allegation and outline specific persons to be interviewed and documents to be obtained to determine the validity of each allegation. For the purpose of clarification, the investigator may gather other evidence in addition to that requested in the document request.
2. Complaint Assignment. The complaint will normally be assigned to the equal employment opportunity (EEO) Coordinator for investigation. In case of a conflict

of interest, or in cases where there is no EEO Coordinator designated, a representative from the Office of Equal Opportunity and Minority Health or another department representative may be designated as the investigator at the discretion of the Equal Opportunity and Minority Health Director in consultation with the appropriate authority.

3. Time Frame for Submission of Investigative Report. Within 30 working days of receipt of the complaint, an investigative report will be prepared by the designated investigator and submitted to the Equal Opportunity and Minority Health Director after review by the appropriate legal counsel and approval by the appropriate authority.

4. Contents of Investigative Reports. The investigative report will include, but not be limited to, the following:

- a. The complaint and any additional affidavits or other information the complainant submits.
- b. Affidavit(s) by any witness testifying on behalf of the complainant.
- c. Affidavit(s) with any supporting documentation by the person(s) charged (ADO) with the alleged discriminatory act(s) in response to the allegation(s).
- d. Affidavit(s) with any supporting documentation by any witness testifying on behalf of the ADO or other person(s) complained against.
- e. Statement of position by the respondent together with any documents in support of that position.
- f. Records and documents gathered in evidence from the respondent.
- g. Investigator's summary and recommendation of a finding of "reasonable cause" or "no reasonable cause" to believe that discrimination or retaliation has occurred as alleged.

(Note: If there is a recommendation of a cause finding, the Office of Equal Opportunity and Minority Health shall be contacted prior to the issuance of the report).

5. Administrative Review. If the appropriate authority, legal counsel or the Equal Opportunity and Minority Health 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.

6. Departmental Disposition. Upon receipt of the investigative report, the Equal Opportunity and Minority Health Director will review the report for sufficiency to determine if there is a need for additional information or immediate corrective action. Then, the report and any addendum required to fully address the issues in the complaint will be developed by the Equal Opportunity and Minority Health Director. The Equal Opportunity and Minority Health Director will make final disposition of the complaint, indicating whether there is "reasonable cause" or "no reasonable cause" to believe that discrimination or retaliation has occurred as alleged.

7. Assigning an Investigator. Upon receipt of a complaint by the Office of Equal Opportunity and Minority Health, it is assigned to an investigator and given a DOH case number. The appropriate authority and the EEO coordinator are notified and a copy of the complaint is forwarded to the EEO Coordinator. On internally filed complaints, the Equal Opportunity and Minority Health Director also notifies the complainant of the receipt for the complaint. (The external agency is responsible for notifying complainant and the department of receipt of an externally filed employment discrimination complaint.) The assigned investigator, normally the EEO Coordinator or other official designated will either investigate the complaint or form a committee to perform that task.

8. Authorization to Investigate.

a. The investigator(s), when other than the designated EEO Coordinator or representative from the Office of Equal Opportunity and Minority Health will be provided written authorization to conduct the investigation. The authorization will be in the investigator's possession at all times while actively investigating a complaint. (See Appendix A for the suggested format.) Any person designated as an EEO Coordinator will be trained in investigative techniques.

b. Once the EEO coordinator or other official has been designated; that investigator has the authority to:

1) Investigate the specific allegations contained in the complaint.

2) Review and obtain agency documentation relevant to the issues in the complaint.

3) Obtain written and oral testimony and affidavits from persons who have direct knowledge or information concerning the reliability and validity of the complaint.

9. Restricting Use of Information.

a. Information in the investigative report is confidential. However, once the department'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 complainants by FCHR, USEEOC, or obtained as public records under the Sunshine Laws.

b. Any requests for review of investigative materials or reports are to be directed to the Equal Opportunity and Minority Health Director who is the official custodian of such records.

10. Requesting Exceptions and Extensions. Requests for exceptions to the procedures described or extensions of the time required to complete the investigative report may be made by the EEO Coordinator to the Equal Opportunity and Minority Health Director. Such requests will include the reasons for the exceptions or extensions; any additional time needed; the name, address, title and telephone number of the investigator or recommending official; the anticipated completion date; and any recommended alternative procedure or action. The EEO coordinator or designated investigator will contact the Equal Opportunity and Minority Health Director 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 (EEOC or FCHR).

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 complainant relating to the complaint.

g. Requesting exceptions, waiver or deviation from EEO procedures or reporting requirements.

11. Defining Scope of Investigation.

a. The scope of the investigation is to be determined by the investigator taking into consideration these procedures; the document request(s) from the Equal Opportunity and Minority Health Director; other instructions from the Office of Equal Opportunity and Minority Health, and peculiarities of the particular case. The investigation will be comprehensive, addressing each issue and allegation contained in the complaint. All allegations will be thoroughly investigated to identify position of the respondent relative to the validity and merit of each allegation will be clearly presented and documented (See Appendix B for sample report).

b. 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 complainant was treated, affected and why.
- 2) In what manner others who were similarly situated were treated, affected and why.
- 3) The ADO's reasons for the actions or treatment and related policies and practices.
- 4) If the 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.

12. Analyzing Complaints.

a. The document request prepared by the Office of Equal Opportunity and Minority Health is a guide for the investigator to insure that relevant documents and affidavits are compiled for review.

b. Any background information received by the investigator will be used to assist in the investigation and not to prejudice the complaint's merits.

c. Complaints of discrimination are allegations or statements of beliefs and feelings - not facts or established truths. The investigator will evaluate the facts and indicate whether it appears that the complainant was treated (or affected) differently or less favorably than others - of a different race, sex, etc. - under similar circumstances. In making this review, the investigator will:

- 1) Become familiar with the personnel rules, regulations and procedures governing the actions taken by the ADO, if applicable.
- 2) Identify Department of Health regulations, manuals, operating procedures and practices as well as office policies that are or were in effect.
- 3) Coordinate review of policy and procedures as well as of related personnel documents with the personnel office to ensure adherence to records retention requirements and to avoid policy and procedural misinterpretations.

4) Review and obtain copies of documents, such as affidavits and grievances pertaining to issues in the complaint.

5) Survey the general work environment if complaint allegations refer to specific incidents regarding the physical environment.

13. Conducting Investigative Interviews. The primary purpose for conducting an interview is to obtain facts and clarify the allegations. The interview will be confined to those matters within the scope of the official investigation.

a. Preparation and Setting.

1) The investigator will prepare for the interview by reviewing all known facts about the complaint. Outline questions or points to be covered during the interview, including a list of any documents that require verification.

2) Schedule appointments with witnesses. Conduct the interview in a neutral setting with as few distracting elements as possible.

3) A parent or other adult will be present when interviewing a person under the age of 18.

4) If possible, a second team member or a neutral observer will be present if the interviewee is known to be hostile.

b. Interviewer's Tone. The interviewer's approach should convey a sense of respect. The interviewer must control any positive or negative personal feelings about the situation or the statements provided. It is important to convey to the interviewee the interviewer's neutral role, the importance of adherence to confidentiality and the appropriate use of information obtained.

c. Interviewing Techniques.

1) Listen. Listen carefully to the witness (interviewee). Listen for Who? What? When? Where? How? Why? Pay particular attention to what is said. Outline what is said, indicating what, how and by whom relevant information can be substantiated or corroborated.

2) Look. Be alert to physical mannerisms and other observable behaviors during the interview. Look behind what the person says.

3) Avoid interruptions and distractions. Do not interrupt a witness who is in the middle of an appropriately related narrative. Note any possible ambiguity or contradiction in the testimony. At an appropriate time, ask the witness to explain or clarify any such noted ambiguities or contradictions.

- 4) Avoid badgering the witness. Do not phrase questions in a manner that assumes validity of any accusations or allegations.
- 5) Ask relevant questions.
- 6) Be precise and clarify questions.
- 7) Stick to the basis and issues.
- 8) Avoid interjecting your personal opinions.
- 9) Speak clearly.
- 10) Summarize periodically. When taking notes, read relevant passages back to allow the interviewee to correct or clarify.

d. Interviewing Complainant, Witness and ADO.

- 1) In conducting an interview, maintain an impartial, objective and factual approach. Inform each witness that it is the intent of the department to thoroughly and objectively investigate the complaint in an impartial and expeditious manner.
- 2) During the initial contact with the subjects of the complaint, advise them of the right to be accompanied by an individual of their choosing during the interview.
- 3) When a complaint has been filed with an external agency (EEOC, FCHR) and the complainant is represented by an attorney, no contact will be made by an investigator directly with complainant. Requests for clarification or documentation will be addressed to complainant's attorney.

e. Evidence. Information that is substantiated by personal observations of a witness can be used as supporting evidence in a complaint. Documents such as personnel records, reports, rules, regulations, manuals, policies, procedures, notarized statements and expert witness testimony constitute acceptable evidence.

f. Interviews Where Misconduct is Alleged.

- 1) Any department employee covered by union contract may request that a union or association representative or attorney be present during any disciplinary investigation or other investigative meeting in which the employee is being questioned relative to alleged misconduct. If an employee requests the presence of a union representative or attorney, all questioning should cease until suitable arrangements are made. It should be understood that a union representative or

attorney is not a participant, but an observer. However, the representative or attorney may provide additional pertinent facts in the matter under investigation.

Note: An EEO interview does not take the place of an investigatory conference or a pre-determination conference.

2) Although there is no affirmative duty to advise the employee of the right to representation, the investigator must give advance notice to the employee of the investigative meeting if it involves alleged misconduct. Therefore, whenever an investigator is planning such an interview with an employee, the appropriate personnel office will be contacted to determine if the employee is in a bargaining unit.

g. Interview Documentation. Interview notes may be made during the interview to ensure accuracy, clarity and completeness. Interview notes will be clearly marked with date, time and interviewer's signature. The investigator will obtain copies of or review and attest to the existence of documents supporting interview statements whenever possible.

14. Preliminary Review Of Findings.

a. The investigator will review all issues identified in the complaint to determine whether 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 complainant as compared with the treatment of other employees in the organizational unit in which the alleged discrimination occurred; and any policies and practices related to the work situation which may constitute, or appear to constitute, discrimination as expressly cited by complainant. The investigative report will indicate:

- 1) The manner in which complainant was treated.
- 2) The manner in which other similarly situated employees/applicants were treated.
- 3) The rationale for such treatment.
- 4) Whether the rationale was lawful and nondiscriminatory. (reasonable basis provided for the actions by the ADO).

- c. Inconclusive, uncorroborated evidence or hearsay testimonies are insufficient rationale for "reasonable cause" determinations. In those situations without any substantial 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. The aggrieved employee must prove the claim of discrimination by a preponderance of the evidence.
- f. Once a prima-facie discrimination complaint is established, respondent is required to produce lawful and nondiscriminatory reasons for its actions. It is up to complainant to prove by a preponderance of evidence that such reasons are a pretext for unlawful discrimination. Investigators are not advocates for complainants or for ADO's; but are departmental representatives responsible for obtaining facts and evidence upon which the department can through due diligence arrive at a reasonable and prudent determination concerning the complaint.

15. Investigative Report Organization.

- a. Document Request and Chronological Order. The basic report format places all investigatory materials in chronological order, attached to the right-hand side of the file, the first received at the bottom and the latest one at the top. Witness questions or document requests, the individual's reply and documents submitted in response to such questions or document requests are kept together.
- b. Maintain Integrity of Documents. Packages of information submitted by complainant or ADO are kept together, except when due to the many allegations involved, the information is grouped by allegation. If the second course of action is followed, the information within each allegation should be maintained in chronological order.
- c. Tabs. Tab all information. (Facilitate review by accurate and relevant tabbing and indexing.)
 - 1) Evidence so closely related that it appropriately belongs under only one letter tab will be identified by numerical sub-classifications, such as "Tab X-5," to show each document within that tab.
 - 2) Tabs will be permanently affixed, clearly marked and visible.
 - 3) Complaint Log. The Complaint Log will be affixed to the left-hand side of the investigative file indicating persons involved and time spent investigating the complaint.

4) Securing Report and Documents. All materials in the file will be attached to the folder with punched holes and fasteners to ensure that materials are bound securely. The routing sheet is the only material to be attached (by staples only) to the outside of the file.

5) Reporting Telephone and Other Contacts. Contacts made by telephone as well as other contacts of a substantive nature otherwise undocumented will be recorded by memorandum to the file, highlighting the salient points of the contact. This memorandum will be placed on the right-hand side of the file with the other evidence.

6) Interview Notes. Notes made during witness interviews will be sub-tabbed according to logical grouping of the information, such as grouping by question and all parties' answers. Such notes are to be signed, numbered and dated with blank spaces marked through to authenticate such record.

16. Report Preparation and Disposition.

a. All allegations made by complainant are numbered, addressed individually and arranged in chronological order of occurrence. Making separate subheadings for different allegations and rephrasing the allegations are optional if this adds clarity.

b. The investigative report (IR) 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 IR will be first identified by complete name and job title.

d. Never raise the party's contentions to the dignity or validity of evidence prior to analysis of the contention, including the credibility of the witness. State: "Complainant alleges..." or "Mr. Jones, Supervisor, contends..." Appropriate conclusions will be made only after an examination of all the evidence presented.

e. For clarity, include an account of relevant events occurring after the charge or complaint was filed.

f. Type reports single-spaced on letter size paper.

g. Keep disputed and undisputed facts separate.

h. Explain in detail but keep sentences short (use more sentences). Also, keep paragraphs short.

i. If an acronym is to be used, state the initials immediately after the name or title is mentioned for the first time.

j. Specify as many relevant dates as possible. If the coordinator or committee member has been unable to secure dates, so state.

k. If no information has been presented in response to a specific document request, so state and explain why (ADO, witness or complainant refuses, not available, etc.).

l. Resolve any conflicts in the evidence.

m. Use words that convey the intended meaning.

17. Investigative Report Format. The investigative reports are to be submitted by memorandum to the Equal Opportunity and Minority Health Director from the EEO Coordinator or other assigned investigator in the following format (see Appendix B):

a. Date. Indicate the date the report is completed.

b. To. Direct the report to the Equal Opportunity and Minority Health Director, 4052 Bald Cypress Way, Bin #A00, Tallahassee, FL 32399-1701.

c. Regarding. Indicate the name of complainant versus the name of respondent and the complaint number. Example: RE: Jane Smith vs. Houston County Health Department DOH #99999.

d. Basis/Issue.

1) Basis. Indicate, as shown in the complaint, the basis of the complaint, e.g., age, color, disability, marital status, national origin, race, religion, sex or retaliation.

2) Issue. Indicate, as shown in the complaint, the issue of the complaint, e.g., failure to hire; failure to promote; harassment; termination; terms and conditions. Specify one of the following if the issue regards terms and conditions: accommodation; demotion; layoff; suspension; wages; or other specific term or condition of employment.

e. Parties to the Action. The name and address of complainant will appear next in the report, using three lines. Following a double space, the name and address of respondent will be typed on three lines. Double space again and enter the name(s), title(s) and address(es) of the ADO(s). If there is more than one ADO, each will be listed on three lines with a double space separating each address.

f. Recommended Determination. The recommended position of the county or headquarters, based on the merits of the complaint and on the documented

evidence provided, will be stated here. Clearly indicate either "no reasonable cause" or "reasonable cause".

g. Jurisdiction. A summary statement of the complaint will be included to reflect complaint jurisdiction, i.e., filed externally with EEOC pursuant to Title VII of the Civil Rights Act of 1964; filed with FCHR pursuant to the Florida Civil Rights Act of 1992; or filed internally with DOH pursuant to Chapter 60L-21, F.A.C., or Chapter 60L-28, F.A.C. Also indicate who conducted the investigation in this section, e.g., EEO coordinator, EEO compliance committee, etc.

h. Allegation I. Provide and underline the first allegation made by complainant in the complaint or as organized in the document request from the Office of Equal Opportunity and Minority Health. For example: "Complainant alleges that her supervisor, Ms. Mary Smith, failed to counsel her and provided very little training regarding her work performance and duties (Tab A)."

i. Finding I. Provide a complete discussion of the facts or evidence obtained in the investigation to fully address the first allegation. Include the rebuttal or confirmation, i.e., response of the ADO to the specific statement or allegation by complainant. Include information from records and statements reviewed, making reference to the documents and statements. Avoid ambiguous and unsupported statements or feelings. Reference each statement of material fact with the evidence supporting such statement. For example: "Records and documents reviewed reflect that Complainant was hired as a Switchboard Operator at Sunland, Sundale, on June 6, 1988 (Tab D). Witness statements reflect ...(Tab B-2). The alleged discriminatory official (ADO) states that ...(Tab E). A review of the notes of counseling sessions indicates ...(Tab F). Statements from other operators indicate that ...(Tabs B-2, B-3 and B-4). Statements and documents reviewed also indicate ...(Tabs H, B-1, B-2, B-3, B-4 and B-5)."

j. Allegation II. Repeat the same format as for the first allegation. Continue this method for all subsequent allegations, noting each one in numerical order.

k. Recommended Determination. A recommended determination on the findings will be stated concerning the complaint. For example: "Based on the following, the appropriate authority recommends that there is "no reasonable cause" to believe an unlawful employment practice has occurred as alleged:

- 1) Complainant failed to provide any evidence or show comparative data that similarly situated white employees were treated differently or more favorably.
- 2) Records and statements reviewed indicate that Complainant was properly informed of a change in her work schedule.
- 3) Documents and statements reviewed indicate Complainant was not discharged because of her race."

l. Recommended Corrective Action. Recommendations may be included in the investigative report when there is a finding of "reasonable cause". Each recommendation must be lawful and appropriate. Such proposals for written recommendations must be approved by the appropriate legal counsel and the Equal Opportunity and Minority Health Director prior to inclusion in the report.

m. Index of Investigative Materials. In developing the actual report, the investigator will first organize and assemble the relevant materials obtained during the investigation. Each allegation, response, document and statement cited will be clearly labeled and identified for ready reference, e.g., Complaint of Discrimination, Tab A. The index begins with the actual complaint, followed by notices and relevant correspondence. Following the correspondence are the affidavits in the order of complainant, ADO and witnesses, accompanied by relevant documents. (Refer to Appendix C for an example index of investigatory materials.)

n. Complaint Activity Log. For each investigative report submitted, there will be an activity log to reflect the time and effort spent in investigating the complaint. This log will indicate all staff time expended on the investigation, reflecting who did what, when, and how long the activity took. (Refer to Appendix D for an example complaint activity log.)

o. Complaint Disposition Routing Sheet. Official sign-off, concurrence, disapproval or rejection will be indicated on the routing sheet accompanying each investigative report. Comments or clarification will be made as appropriate. Additional comment sheets, signed and dated, may be attached.

p. EEO Complaint Log. The log will be completed by the EEO Coordinator as a record of EEO activities including formal complaints, informal complaints and pre-counseling activities. The form will be maintained by the EEO Coordinator.

q. Criminal Activities. Any allegations or evidence of criminal activity will be expeditiously referred to the appropriate legal counsel. Matters contained in civil rights complaints are limited to civil issues or alleged offenses.

D. EEO Records and Reports.

1. All qualified applicants who apply for each vacancy announced by the department are to be submitted to the Office of Equal Opportunity and Minority Health via the Personnel Interview and Applicant List. The Personnel Interview and Applicant List is an electronic system found in the Department's Intranet site. A designee is appointed by the CHD and CMS units to input the necessary data. Each designee must contact the Office of Equal Opportunity and Minority Health before using the system to obtain the appropriate access to the system.

To access the Personnel Interview and Applicant System:

- a. From the Department of Health Intranet page, click on "Online Systems".
 - b. Select Personnel Vacancy Interview & Applicant List.
 - c. A security screen will follow for the user name and password to be entered. A bulletin will follow. You have five seconds to select the stay and read or the system automatically goes to the next page. If you do not catch the screen, you may use the back button to return. This is the only time the back button should be used while working in this system.
 - d. On the next screen, click on "NEW". You will see "PLEASE ADD NEW RECORDS BELOW".
 - e. Complete each section with the appropriate information.
 - 1) For the supervisor and applicant name, enter last name first.
 - 2) For eligibility use 1 if eligibility is determined by the personnel office or 2 if eligibility is determined by the hiring authority.
 - 3) For the position number use six numbers, if the position only has five numbers use a leading zero.
 - 4) For social security numbers you do not have to include dashes, but for the dates dashes are required.
 - 5) Note that some blanks have drop down boxes. In these blanks choose the appropriate response.
 - 6) ADD REC (Additional Recruitment Resources). If you have used additional recruitment resources (minority newspapers, journals, or radio and television ads), type Y in the ADD REC field.
 - 7) EEOJ (EEO Justification). This field is completed for each position that is pay-grade 20 and above. (For other positions the default selection F-Not Applicable should remain.) Applicants who submit applications late or who do not meet the minimum qualifications are not entered into the system.
- A - Recommended applicant is the candidate selected from the applicant pool.
- B - Finalist, but not the most qualified are the candidates in the top 3 but not selected. (Candidates ranked 2 & 3).
- C - Interviewed is for all candidates who were interviewed except the top 3.

D - Eliminated is for all candidates who were eliminated from consideration because of insufficient KSA's or those who had a negative reference check.

E - Other is for candidates who were eliminated from consideration for a reason not mentioned above (i.e. applicant withdrew, not able to meet salary requirements, etc.)

F - Not applicable is for positions less than pay-grade 20.

8) At this time please check all information. Once the "Add Applicant Flow" button is clicked you will not be able to edit the information. **Make any necessary corrections.**

9) Click "Add Applicant Flow Button".

10) Repeat steps 5 through 7 until all applicants have been added.

11) To begin a new form and submit the form you have just completed, click on "New EEO".

12) If you have additional forms to complete, repeat steps 5 through 9 until all forms have been added. After entering all forms close window.

13) To print the forms from this Welcome screen, enter the job advertisement date and the position number; then click on "Search".

14) Please check the information to be sure it is correct. At this point if the information is not correct, you will have to contact the managers of the system (The Office of Equal Opportunity and Minority Health at 245-4002 or suncom 205-4002) so that they can make the appropriate changes.

15) From this inquiry mode screen, click on "Print Format". When "EEO FORM 900 HISTORY" appears click somewhere in the bottom section of the screen, then click print on the Microsoft toolbar.

16) On this screen you will find an "exit" button, where you can exit the system.

17) On the next screen there is an "Exit to Home Page" selection that will take you back to the DOH homepage.

18) Now return the printed form to the hiring authority to sign and date the bottom of the first page and initial the bottom of any extra pages.

19) This form is to be maintained in the application selection package. A copy of this form or the Personnel Interview and Vacancy Applicant List Completion

Verification Form should be submitted to personnel with the hiring packet of the selected applicant (Follow your local personnel office procedure).

20) If you have any questions or need assistance, contact the Office of Equal Opportunity and Minority Health at 245-4002.

2. The Disciplinary Action Report for all disciplinary actions imposed on employees within each county and institution will be compiled monthly and submitted to the Office of Equal Opportunity and Minority Health by the tenth day of the following month.

3. Retention Periods.

a. Records that relate to a complaint of discrimination are to be retained by the personnel officer 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 personnel offices and EEO coordinators is essential throughout the complaint process to ensure adherence to such documentation requirements.

b. Disposal of records will be in accordance with DOH Records Management; but all EEO records and reports are to be kept for a minimum of three calendar years.

4. Ordering Forms. Forms prescribed by this chapter will be available on the DOH Intranet.

VIII. Distribution List

Deputies

Division Directors

Executive Office Directors

Bureau Chiefs

County Health Department Directors/Administrators

Children's Medical Service's Nursing Directors/Medical Directors

Human Resource Liaisons

EEO Coordinators

Policy and Procedures Library, hard copy

Web Manager, electronic copy

IX. History Notes

(Not applicable)

X. Exhibits

- A. [Authorization to Investigate](#)
- B. [Investigative Report](#)
- C. [Index of Investigative Materials](#)
- D. [Civil Rights Complaint Log](#)