



Office of
Victim Services

Office of Justice Programs Office for Civil Rights

As Presented by:

New York State Office of Victim Services

Revised 2024

One Straightforward Concept

- When Federal funds are involved, there are civil rights requirements that must be implemented and followed.

The Office for Civil Rights Enforces:

- Title VI of the Civil Rights Act (1964)
- The Omnibus Crime Control & Safe Streets Act (1968)
- Section 504 of the Rehabilitation Act (1973)
- Title II of the Americans with Disabilities Act (1990)
- Age Discrimination Act of 1975
- Title IX of the Education Amendments of 1972
- The Victims of Crime Act (VOCA) of 1984
- The Juvenile Justice and Delinquency Prevention Act of 1974
- The Violence Against Women Act of 1994

Title VI Civil Rights Act (1964)

- “No Person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

**Please note that New York State Law provides protections that go beyond the federal requirements, such as protections based on age, creed, sexual orientation, military status, sex, marital status, or disability. This information can be found on the New York State Division of Human Rights website.*



Title VI of the Civil Rights Act (1964)

- Who does this apply to?
 - Generally, the entire department or office within a state or local government is identified as the “*program or activity*.”
 - Example: If a program operated by a District Attorney receives federal funds, the entire office is covered, but not the other departments/agencies in that county.

Title VI of the Civil Rights Act (1964)

- Title VI regulations prohibit the following actions if performed on the basis of race, color, or national origin:
 - Providing different services to individuals
 - Denying the opportunity to participate as a member of planning or advisory body
 - Selecting the location of a facility with the purpose or effect of excluding individuals

Omnibus Crime Control and Safe Streets Act (1968)

- “No person in any state shall, on the ground of race, color, religion, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under or be denied employment in connection with any programs or activity funded in whole or in part with funds made available under this chapter.”

Protected Classes

Race

Color

National
Origin

Religion

Sex

Disability

Age



Race

American Indian
or Alaskan
Native

Native Hawaiian
or Other Pacific
Islander

Black or African
American

Asian

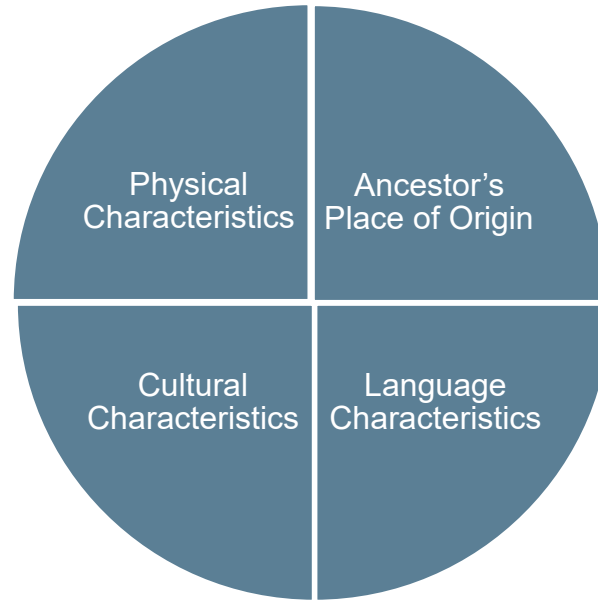
White

Please note that Hispanic / Latino is an ethnicity and not a race; however, any discrimination on this basis is in violation of Title VI of the Civil Rights Act (1964)

Color Discrimination

- Preference for or aversion to persons of different skin colors, regardless of whether the person is in the same racial or national origin group

National Origin



Limited English Proficiency

- A Limited English Proficient (LEP) person has a first language other than English and a limited ability to read, speak, or understand English
- National Origin Discrimination includes discrimination based on LEP
- Recipients of Federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important benefits, rights, programs, information and services

Limited English Proficiency

- To avoid discrimination against LEP persons, recipients must do the following:
 - Take reasonable steps to ensure meaningful access to the programs, services, and information the recipients provide, free of charge
 - Establish and implement policies and procedures for language assistance services that provide LEP persons with meaningful access



Limited English Proficiency

Determining Reasonable Steps: Four Factor Analysis –

1. The number or proportion of LEP persons served or encountered in the eligible service population
2. The frequency with which LEP individuals come in contact with the program
3. The nature and importance of the program, activity, or services provided by the program
4. The resources available to the recipient



Limited English Proficiency

Language Services

Oral Language Services

Bilingual Staff: Direct foreign language communication by fluent personnel

Interpreters: Ensure interpreter competency. Usually family members, friends, and uncertified co-workers are not appropriate

Translation

Safe Harbor Provision:

Applies only to translation of written materials; free translation of vital written documents must be provided

Based on number of LEP persons served



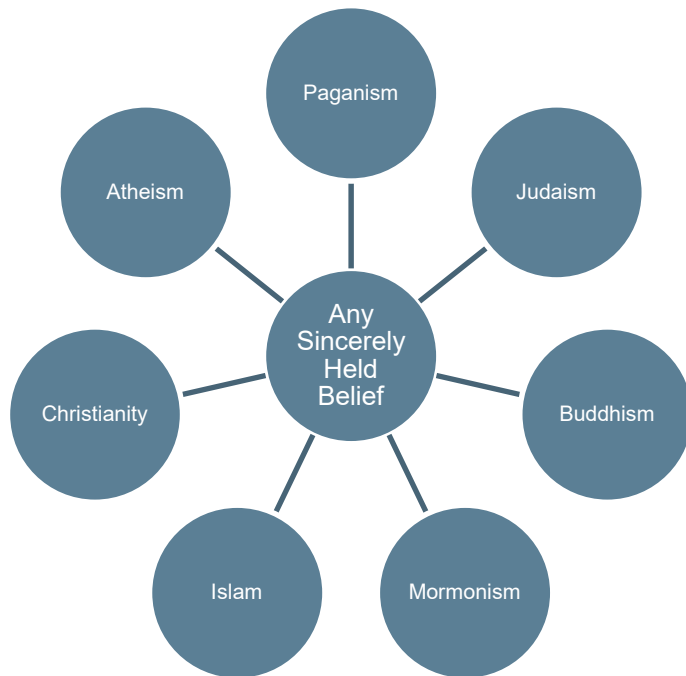
Limited English Proficiency

Five Elements of a written LEP Policy:

1. A process for identifying LEP persons who need language assistance
2. Identifying ways in which language assistance will be provided for both written and oral language
3. Training for staff
4. Monitoring and updating the LEP policy
5. Providing notice to LEP persons

What is a Religion?

All aspects of religious observance, practice, and belief are protected



Sex Discrimination

- Title VII prohibits discrimination and harassment based on sex.
- Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex.
- This includes discrimination and harassment based on sexual orientation or gender identity.
- Both men and women are protected from discrimination and harassment.
- Sexual harassment can take many forms. It may be sexual in nature, or it may be based on the sex of the employee, or the student in the educational program or activity that is subject to Title IX.

Who is covered by the “Disability” Class?

- Individuals who have, have a record of having, or are regarded as having a physical or mental impairment which substantially limits one or more major life activities.



What is a Major Life Activity?

- These are activities that an average person can perform with little or no difficulty, such as:

Eating

Walking

Breathing

Seeing

Hearing

Speaking

Learning

Sitting

Caring for
Oneself

Working

Performing
Manual
Tasks

Standing

Lifting

Reading



Disability Definitions

- Mental Impairment: includes any mental or psychological disorder, such as a developmental disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Disability Definitions

- Physical Impairments: may include, but are not limited to, any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following systems (examples listed below):

Neurological

Musculoskeletal

Special Sense
Organs

Respiratory

Speech Organs

Cardiovascular

Reproductive

Digestive

Genito-Urinary

Hemic

Lymphatic

Skin

Endocrine



Disability Definitions

- Substantially Limits: means the individual must be unable to perform, or be significantly limited in the ability to perform, an activity compared to an average person in the general population. Courts have looked at three factors in determining whether someone is substantially limited:
 1. Condition: its nature and severity
 2. Duration: How long it will last or is expected to last
 3. Manner: Its long-term impact or expected impact
- Since the Americans with Disabilities Act (ADA) was amended in 2008, “substantiality limits” is not meant to be a demanding standard. It necessitates an individualized assessment of the individual with the relevant impairment.



Disability Definitions

- Exclusions:
 - A person who currently uses illegal drugs is not protected by the ADA
 - Homosexuality and bisexuality are not impairments and are therefore not disabilities covered by the ADA

Age Discrimination Act of 1975

- Prohibits Federally funded organizations from discriminating against persons of any age in its programs and activities
- Does not cover discrimination in employment
- EEOC enforces the Age Discrimination in Employment Act, which prohibits employment discrimination against persons over the age of 40

Employment Discrimination

- Forms of Employment Discrimination:
 - Disparate Treatment
 - Adverse Impact
 - Harassment
 - Failure to Accommodate
 - Retaliation



Disparate Treatment

- Consists of intentional discrimination where an employer deliberately takes an adverse action against an employee based on:
 - Race
 - Color
 - National origin
 - Sex
 - Religion
 - Disability

How Do You Prove Intentional Discrimination?

- Direct Evidence
- Indirect Evidence, such as:
 - Similarly situated people of a different class were treated differently than the complainant
 - Evidence of bias
 - False explanation for the differential treatment
 - Statistical evidence

What is Adverse Impact?

- Adverse Impact occurs when an employer has a neutral policy or practice which has the effect of excluding employees of a particular race, color, sex, national origin, religion, or disability.

Examples of Adverse Impact

- The following are examples of employment policies which have been found to cause an adverse impact:
 - Minimum height requirements
 - Certain educational requirements
 - Physical agility tests
 - No beard policies

Adverse Impact

Evidence of Adverse Impact

The Four-Fifths Rule: When a policy or procedure has a selection rate for any protected class that is less than 4/5ths (80%) of the rate for the group with the highest rate of selection

If a Policy has an Adverse Impact

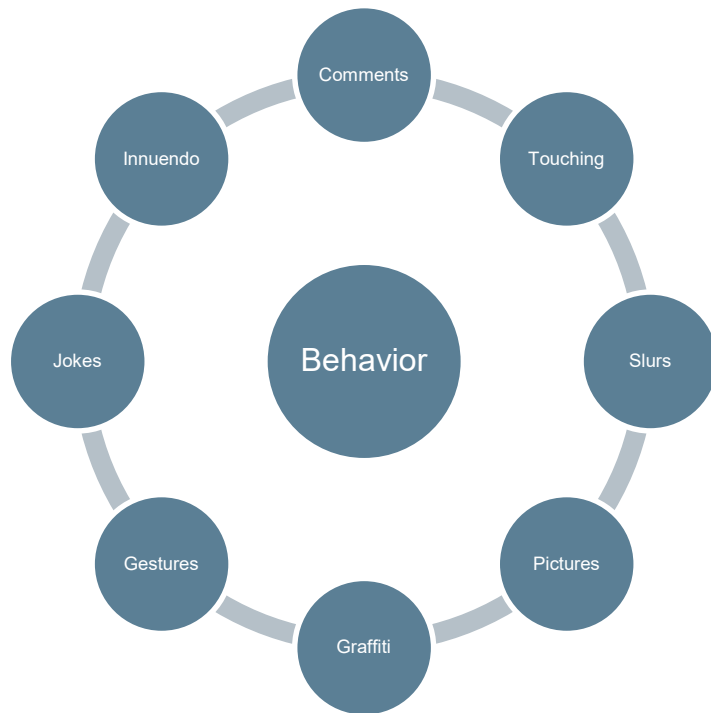
Choose an alternative with less adverse impact

The policy or practice may still be used if job related and consistent with business necessity

What is Harassment?

- Harassment is behavior which creates a hostile work environment for individuals because of their race, sex, color, national origin, religion, or disability

What is Harassment



What Makes a Work Environment Hostile?

- A stray remark is not enough to constitute a hostile work environment
- The harassment must be sufficiently severe or pervasive to alter the terms and conditions of employment

Determining Severity or Pervasiveness

- Six Factors - Use a reasonable person standard to determine the following:
 1. Was the conduct verbal or physical or both?
 2. How frequently was the conduct repeated?
 3. Was the conduct hostile or merely offensive
 4. Was the harasser a co-worker or supervisor?
 5. Did others join in the harassment?
 6. Was the harassment directed at more than one individual?

What Can an Employer Do About Unlawful Harassment?

- Take Preventative Action
 - Develop an explicit policy regarding harassment
 - Regularly train all employees
 - Develop effective sanctions
 - Develop a complaint procedure designed to:
 - Protect victims and witnesses against retaliation
 - Encourage complaints
 - Ensure confidentiality



What Can an Employer Do About Unlawful Harassment?

- Take Remedial Action
 - Promptly and thoroughly investigate all complaints of harassment
 - Take immediate action and appropriate corrective action reflecting the severity of the conduct
 - Restore lost employment benefits or opportunities
 - Discipline the offending employee or supervisor
 - Follow up with the victim to ensure there has been no retaliation

Accommodation: Religion & Disability

- An employer must make a reasonable accommodation to the known physical or mental limitations of a qualified applicant or employee with a disability
- An employer must make a reasonable accommodation to the known religious beliefs or practices of an applicant or employee

Protection for Employees, Program Participants, and Program Beneficiaries

- Retaliation against an employee, program participant, or program beneficiary for opposing an unlawful employment practice or participating in an investigation, proceeding, or hearing under the following statutes is prohibited:
 - Title VI of the Civil Rights Act
 - The Americans With Disabilities Act
 - The Omnibus Crime Control and Safe Streets Act
 - Title IX of the Education Amendments
 - The Rehabilitation Act
 - The Age Discrimination Act
 - The Victims of Crime Act
 - The Juvenile Justice and Delinquency Prevention Act



Protection for Employees

- As long as an employee had a reasonable and good faith belief that the employer's conduct was illegal, even if the employee turns out to be wrong, the employee is protected
- However, if the way the individual chooses to protest perceived discrimination is unreasonable or if the opposition is false and malicious, the anti-retaliation provisions will not apply

Victims of Crime Act (1984)

- (e) Discrimination prohibited. No person shall on the ground of race, color, religion, national origin, handicap, or sex be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with, any undertaking funded in whole or in part with sums made available under this subchapter.

Faith Based Organizations (FBOs)

- Must not use direct federal funding to engage in explicitly religious activities:
 - These activities must be separate in time or location from federally funded activities, and must be on a voluntary basis for those participating in the federally funded activities
- May not discriminate against program beneficiaries and prospective program beneficiaries based on a religion, a religious belief, a refusal to hold a religious belief, or a refusal to participate in a religious practice
- Please note that you may find a useful document on the Justice Department's website:
 - <https://www.ojp.gov/program/civil-rights-office/partnerships-faith-based-and-other-neighborhood-organizations>



Faith Based Organizations (FBOs)

- If FBOs choose to take religion into consideration in employment, they must:
 - Sign a “Certification Regarding Hiring Practices on the Basis of Religion” to certify that employing individuals of a particular religious belief is important to the organization’s religious exercise.
 - Certify that the organization will comply with the applicable requirements of 28 C.F.R. pt. 38.
 - FBO subgrantees that wish to complete this certification should submit the form to OVS to be uploaded into JustGrants.



Notice and Referral Requirements for FBOs

- Must give written notice to beneficiaries and prospective beneficiaries prior to the provision of services if practical that:
 - They will not discriminate on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to participate in a religious practice
 - They may not require beneficiaries to participate in any explicitly religious activities, and any participation in such activities is voluntary
 - They will separate in time or location any privately funded explicitly religious activities from federally-funded activities
 - A beneficiary or prospective beneficiary may report an organization's violation of any of the above requirements by contacting or filing a written complaint with OJP OCR or the intermediary that awarded funds to the organization (28 C.F.R. 38.6(b)(4))
 - A sample notice can be found at Appendix C of Part 38 (28 C.F.R. pt. 38, app. C)

Discrimination in Delivery of Services

- Whenever a service is provided, there are potential beneficiaries, and those beneficiaries must be treated equally regardless of race, sex, gender identity, national origin, age, color, disability, or religion
- Think of a program in which you are involved that receives federal funding:
 - Who are the potential beneficiaries?
 - What are the potential civil rights issues?

Civil Rights Laws & American Indians

- An Important Distinction

Recipient

When Tribes receive Federal financial assistance, they are not subject to the enforcement of Federal Civil Rights Laws when they function as an employer; however, tribes are required to comply with federal civil rights laws as service providers.

Beneficiary

American Indians, as employees or as beneficiaries of a non-Tribal organization receiving Federal financial assistance are protected by Federal Civil Rights Laws.

Civil Rights Laws & American Indians

The following protected classes are of particular importance for American Indians and Alaska Natives:

- Race
- National Origin
- Religion

Civil Rights Laws & American Indians

- Definition of American Indian for Civil Rights protections:
 - An employee would be entitled to protection of Title VII against employment discrimination regardless of his percentage of Native American ancestry if the employer reasonably believed that the employee was a member of a protected class based on some objective evidence, which may consist of physical appearance, language, cultural activities, or associations. One does not have to prove bloodlines or show tribal membership to be eligible for protection under Federal Civil Rights Laws.

Civil Rights Laws & American Indians

- Discrimination in employment on the basis of membership in a particular Indian tribe (e.g. favoring members of the Navajo Tribe over members of the Hopi Tribe) constitutes national origin discrimination in violation of Title VII

States & American Indians

- A State may be discriminating against American Indians if the State has implemented a policy of denying funding to Tribes, based on Tribes having received or having direct access to Federal Financial Assistance
- The Safe Streets Act contains a State liability waiver regarding Indian Tribes, which applies if a state does not have an “adequate forum to enforce ground provisions imposing liability on Indian tribes.”
- States do not need to require Indian Tribes to waive sovereign immunity to qualify as subgrantees



Assurances

The Applicant assures and certifies that:

- It will comply, and its contractors will comply, with the Nondiscrimination Requirements of the Omnibus Crime Control and Safe Streets Act (1968) [and other Federal civil rights statutes and regulations]
- It will comply, and assure the compliance of all its subgrantees and contractors...
- In the event a Federal or State court or Federal or State administrative agency makes a Finding of Discrimination after a due process hearing on the ground of race, color, religion, national origin, sex or disability against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs
- It will provide an Equal Employment Opportunity Plan if required to maintain one (when the recipient meets all three of the following criteria):
 - 1) state or local government agency or any business;
 - 2) 50 or more employees
 - 3) single award of \$25k or more



Equal Employment Opportunity Plan (EEOP)

- A comprehensive document that analyzes
 - an agency's workforce in comparison to its relevant labor market data
 - all agency employment practices to determine their impact on the basis of race, sex, or national origin
- A tool used to identify possible problem areas where discrimination may be occurring

Does an agency have to prepare an EEOP?

- This depends on:
 - Funding (Safe Streets Act, VOCA, or JJDPA)
 - Status of Organization (e.g. nonprofit)
 - Amount of single award
 - Number of employees

EEOP Chart

If Then	Does the recipient need to submit a Certification Form to OCR?	Does the recipient need to develop an EEOP?	Must the recipient submit an EEOP Utilization Report to OCR?
Recipient is a Medical or Educational Institution, Indian Tribe, or Nonprofit	YES	NO	NO
Largest individual grant received is less than \$25,000	YES	NO	NO
Recipient has less than 50 employees	YES	NO	NO
None of the above	YES	YES	YES

Prepare and Submit EEOP and Certification at
<https://ojp.gov/about/ocr/eeop.htm>



The Office of Justice Programs & Civil Rights Enforcement

- OJP OCR is responsible for the following areas of Civil Rights Enforcement:
 - Complaints
 - Compliance Reviews
 - Findings of Discrimination
 - EEOPs (Equal Employment Opportunity Plans)

Questions & OVC Point of Contact

Contact:

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