

Hawaii Department of Human Services

Civil Rights Awareness

Administrative Procedures

2014

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Federal Legal Authority

- **Civil Rights Act/s (VI +)**
- **Rehabilitation Act (Section 504)**
- **Age Discrimination Act**
- **Equal Pay Act**
- **Education Amendments (IX)**
- **Americans with Disabilities Act, as amended**
- **Genetic Information Act**

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State Legal Authority

- **Hawai'i Revised Statutes §371-31-34** Recipients of state financial assistance, including grants and purchase-of-service contracts, must take reasonable steps to provide meaningful access to their programs, services, and activities for persons with limited English proficiency (LEP).
- **Hawai'i Revised Statutes §489-21 Part II** Breastfeeding in Public Accommodations
 - |* **Right to Time and Place**
Breastfeeding in the work place

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What does Civil Rights

Compliance

Mean to You ?

General Compliance:

OFCCP
USDA FNS
USHHS
HUD
SSA
DOE
DOJ

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Overview

- Civil Rights Definitions, Goals, and Objectives
- Policies (Awareness and Tools)
 - Discrimination Complaint 4.10.1
 - Harassment Prevention 4.10.2
 - Services and Access 4.10.3
 - Access (language, disability, communication & facilities) 4.10.4
- DHRD Discrimination/Harassment-Free Workplace Policy (601.001)
- Bias-Free Language and Risky Behaviors
- Reasonable Accommodation Overview

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DHS Civil Rights

Goal: Prevention

Objective:

To create awareness of our roles in providing workplace and service areas that are free from discriminatory practices toward employees, clients and applicants.

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What is "*Discrimination*"?

The word **discrimination** comes from the Latin *discriminare*, which means to "distinguish between". However, **discrimination**, as used in **civil rights**, is more than distinction; it is *action based on prejudice resulting in unfair treatment of other people*. To **discriminate** socially is to make a distinction between people on the basis of a presumed category without regard to individual merit. Examples include race, religion, gender, disability, ethnicity, sexual orientation and age.

Distinctions between people which are based on individual merit (such as personal achievement, wealth, or skill) are generally not considered socially discriminatory.

In America, each individual's civil rights include the right to be free from government sponsored social discrimination.

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Unlawful Discrimination

- An employment (or service) decision made because of a person's protected class

Employment decisions such as:

- **Recruitment, hiring, assignment of work**
- **Training, compensation, benefits**
- **Evaluations, promotions, demotions**
- **Discipline and termination**

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Part I

Civil Rights Awareness and Tools

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Protected Areas in Employment

FEDERAL

Race
Color
National Origin
Sex (including gender identity or
expression and sexual
orientation)

Religion
Disability (physical or mental)
Age (Over the age of 40)
Pregnancy (and pregnancy related)

Federal ONLY

Uniformed Service
Veteran Status
Citizenship Status (except as permissible
by applicable laws)
Genetic Information

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Protected Areas in Access to Services

FEDERAL	National Origin	STATE
	Political Beliefs*	
	Race	
	Color	
	Sex	
	Religion	
	Disability	
	Age	
	Ancestry	
	Breast Feeding	

* Applies to SNAP Program (formerly Food Stamp) only

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What's covered? Protected Classes in *Hawaii* in Employment

- Race/Color
- National origin
- Ancestry
- Sex (pregnancy and pregnancy related); Gender identity or expression and sexual orientation
- Age (all ages)
- Disability (physical and mental)
- Religion
- Relationship status (including civil unions and same sex marriages)
- Arrest and court record (except as permitted by applicable laws)
- Breastfeeding (act of breastfeeding or expressing milk)
- National Guard absence
- Child support (income assignment)
- Association with a person with a disability
- Credit history or report (unless directly related to a bona fide occupational qualification)
- Domestic or sexual violence victim status (if the domestic or sexual violence victim provides notice to the victim's employer of such status or the employer has actual knowledge of such status)

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The Equal Pay Act (EPA)

- Prohibits sex-based wage discrimination
- Includes fringe benefits
- Applies when men and women perform substantially equal work

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The Age Discrimination in Employment Act (ADEA)

- Applies to employers with 20 or more employees.
- Applies to individuals who are age 40 and over.

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Age as a Protected Class

What would you do?

- Kim is the oldest employee in the division where she has worked for 30 years. Her supervisor, Jill, has prevented Kim from performing the more physical tasks because she is afraid Kim will hurt herself. As a result, Kim's co-workers have taken to calling her "Granny." Kim really doesn't like this and asks them to stop. They blow her off and continue using the nickname.
- Jill is right to protect Kim because she is older, but Kim's co-workers shouldn't call her "Granny."
 - **True**
 - **False**
 - **If you were Kim what would you do?**
 - **If you were Jill what would you do?**

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Age as a Protected Class

- Jill should not take it upon herself to limit Kim's job duties if Kim can perform them. It doesn't matter how old Kim is. Additionally it has encouraged Kim's co-workers to nickname her because of her age.
- Would this answer be different if Kim were the youngest employee in the office and Jill didn't allow her to perform the more difficult tasks, and her co-workers were referring to her as "Barbie?"

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Harassment Defined

- Any unwelcome verbal or physical conduct based on:

- › Race
- › Color
- › Sex (Gender)
- › Religion
- › National origin - ex: LEP
- › Age
- › Disability - ex: MENTAL HEALTH

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Harassment

DHS P&P 4.10.2 (2011)

Is **UNLAWFUL**

when:

- It is based on a protected factor
- It alters terms and conditions

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Reasonable Person Test

- Subjectively Offensive
 - Victim actually perceived the conduct as intimidating, hostile or offensive

- Objectively Offensive
 - Reasonable person of the same gender and in the same position as victim would perceive the conduct as intimidating, hostile or offensive.

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Types of Harassment

1. Tangible Employment Action

- Only supervisors and managers can subject an employee to tangible employment action harassment because only supervisors and managers have the authority needed to take a tangible employment action (hiring, benefits, promotion, training, demotion, discharge).

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2. Sexual Harassment

- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature
- Something promised in exchange for something else

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Sexual Harassment Severe or Pervasive

- Jack loves to tell funny stories and keep the spirit of good cheer alive in the workplace. One morning he sees Jessica looking a little tired and depressed. To cheer her up, he tells her a silly story with a sexually explicit line. Jessica looks offended. Jack asks Jessica what is wrong and she tells him that she found his joke offensive. Jack apologizes and doesn't tell any more jokes with sexual references.
 - **Jack's joke was sexually explicit and constitutes sexual harassment**
 - True
 - False
 - **Jack's behavior was unwelcome but not severe nor pervasive and he did not repeat it.**
 - **What if Jack grabbed Jessica's private parts?**

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Sex/Gender as a Protected Class

- Gender includes: sexual orientation, gender identity or expression, transgender, and same sex (regardless of sexual orientation)
- Tammy persists in asking her co-worker, Sam out to dinner, even though Sam turns her down each and every time she requests a date. Sam has told Tammy several times to stop asking.
 - **Tammy's behavior is not at risk for sexual harassment because sexual harassment may only occur between a male boss and a female subordinate.**
 - True
 - False
 - **Sexual harassment may occur between co-workers and/or between employees of the same sex**
 - **What if Tammy is Samantha's supervisor?**

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Gender/Sex—Transitioning

- Christopher is in the process of transitioning from male to female. She has requested to be called Christine and wears women's clothes to work. Her co-workers continue to call her Chris, make fun of her and make derogatory comments about the transition.
 - **Chris' co-workers haven't done anything wrong because it is normal to feel uncomfortable around someone who is transitioning.**
 - True
 - False
 - **Note: When an employee is transitioning from one gender to another, the employee should be referred to as the gender he/she requests, may use the restroom of the gender with which he/she identifies, and it doesn't matter if other employees are uncomfortable.**

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Racial or Ethnic jokes

- Ricky frequently tells racial jokes about Filipinos during team meetings. Ricky's co-worker, Mindy, who is Filipino, is very offended by his jokes.
- Ricky's behavior is not at risk because his jokes are all in fun and he does not intend to offend anyone.
 - True
 - False

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Severe or Pervasive

- Ricky's behavior is unwelcome
- Ricky's conduct is pervasive
- Harassment based on race does not depend on intent
- Ricky might not intend to offend or harass any of his co-workers, but the impact of his behavior is what counts

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What if?

- Would the answers be different if Ricky were also Filipino?
- What if Mindy were not Filipino?
- What if Ricky were texting or e-mailing racial or ethnic jokes to Mindy and she found them offensive? Would the answer change?

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What if?

- What if Ricky were a supervisor?
 - Personal Liability
- What is the vicarious liability of the employer?
 - Automatic when supervisor takes a tangible employment action
 - Injury could not have been inflicted absent the employment relationship
 - Course and scope of employment does not include racial or sexual harassment

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DHS Liability

- Affirmative defense
 - No tangible employment action
 - DHS exercised reasonable care to prevent and promptly correct any harassing behavior AND
 - Mindy unreasonably failed to take advantage of any preventive or corrective opportunities that were provided
- DHS duty is triggered when its supervisor knows or should have known of unlawful conduct.

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Identifying and Preventing Workplace Harassment

- Educate and Monitor
- Listen and Investigate
- Take Timely Corrective Action
- Set the standard; prevent workplace harassment

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Unreasonable Interference with work performance

- Alice has a calendar of nude males on her cubicle wall visible to passersby. Her co-workers complain because it bothers them.
 - This shouldn't bother anyone because the calendar is in Alice's cubicle. Besides, the calendar displays nude males and not nude females, which is much more offensive.
 - True
 - False
 - Note: Alice's calendar is unwelcome, affixed to her cubicle thus pervasive and subjectively and objectively interferes with work performance (Calendars, photographs or images with nude individuals are inappropriate in the workplace whether in print or electronic.)

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Hostile or Offensive Work Environment

- Lily frequently makes personal calls to her friends while at work. Her conversations are loud and generously sprinkled with sexual information. Her co-workers in nearby cubicles overhear her conversations.
- Lily's personal phone calls are not work-related and should not bother anyone.
 - True
 - False

Harassment in the workplace does not have to be directed at a particular individual. If the conversation is offensive to one employee, they are unwelcome. If they happen frequently, they are pervasive. They can create an intimidating, hostile or offensive work environment because her co-workers cannot help but overhear Lily's conversations, even though she is not speaking directly to them.

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DHS' Discrimination Complaint Policy and Procedures 4.10.1

Forms available at
<http://humanservices.hawaii.gov>

In the Civil Rights Corner

Discussion/Questions

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Know the difference

- Discrimination is based upon the perception of the client/employee that he/she is discriminated against based on one or more of the protected factors.
- Workplace violence is an act of aggression that the victim perceives as a threat to his/her safety, health and well being.
- Contact, PERS/ERS at 586-9543 to discuss your particular situation relative to workplace violence.
- Contact Geneva Watts/PERS/CRCS at 586-4955 to discuss your particular situation relative to discrimination.
- Contact your union representative to discuss your particular situation relative to misconduct.

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Rights and Responsibilities

(Access Hawaii Rights & Responsibility
Brochure - DHS 050, 2011)

Available in public waiting areas, on employee bulletin boards,
applications and in the Civil Rights Corner.

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Complaint Process

- Individuals who believe they have been subjected to discrimination based on national origin or any protected basis may file a complaint on DHS Forms 6000 and 6006 <http://humanservices.hawaii.gov>
- CRCS will initiate an investigation

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DHS Discrimination Complaint and Consent Release

STATE OF MARYLAND Department of Human Services

DISCRIMINATION COMPLAINT FORM

NAME: _____ TITLE: _____

EMPLOYER (Department/Unit) of applicant: _____

JOB TITLE: _____

BASES OF ALLEGED DISCRIMINATION (Check appropriate boxes.)

<input type="checkbox"/> Race	<input type="checkbox"/> National Origin/Ancestry	<input type="checkbox"/> Religion
<input type="checkbox"/> Sex/Gender	<input type="checkbox"/> Marital Status	<input type="checkbox"/> Disability
<input type="checkbox"/> Age	<input type="checkbox"/> Pregnancy/Child Birth	<input type="checkbox"/> Sexual Orientation
<input type="checkbox"/> Marital Status	<input type="checkbox"/> Child Support Assignment	<input type="checkbox"/> Political Belief

1. Explain briefly what, if anything, you have done about the alleged discrimination.

2. Does your complaint concern alleged discrimination in service delivery? Yes No

3. Does your complaint concern alleged discrimination in employment? Yes No

4. Is the alleged discrimination against you? No Yes, By Whom? _____

5. Please explain here and only here before you were discriminated against. Please be SPECIFIC. Please include names, dates, references and dates of the incident(s).

6. (Check relevant date if you recall the date) Is the alleged discrimination against you? No Yes, please list: Name(s), Address(es) and Phone Number(s).

7. What is the specific date or period of time of the alleged discrimination?

8. Please indicate the date(s) you are seeking _____

9. I will notify Department of Human Services (DHS), Personnel, Civil Rights Compliance Service (CRCS), PO Box 100, Hagerstown, MD 21740-0100, if I change my address or telephone number. I print as follows: _____

PLEASE COMPLETE, REVIEW, SIGN, DATE AND RETURN TO THE ABOVE ADDRESS

Signature: _____ Date: _____

Old form 10-10-2009

STATE OF MARYLAND Department of Human Services

CONSENT / RELEASE FORM

Name: _____ Address: _____

Please read the information below, initial the appropriate spaces, and sign and date this form on the lines at the bottom of the form.

I understand that in the event of a preliminary inquiry or investigation a report becomes necessary to the Department of Human Services (DHS), Civil Rights Compliance Service (CRCS) to assist my ability to pursue my complaint. I am also aware of the obligation of CRCS to have reports made to the Department of Human Services and Primary Care. I understand that it might be necessary for DHS to conduct investigations, including possibly identifying details, which I have granted as a part of the preliminary inquiry or investigation. If my complaint is upheld, I understand that as a complainant I am protected by Federal regulations and DHS policies. I am authorized for having this notice as provided to assist in future reports prepared by DHS/CRCS.

CONSENT GRANTED - I have read and understood the above information and authorize DHS, CRCS, to send my identity to persons in the organization under investigation, to be interviewed, and to provide my name and contact information to the organization. I hereby authorize DHS to conduct interviews and investigations that may be pertinent to the investigation of my complaint. The above language will not be used in the investigation of my complaint. I further understand that I am not required to authorize this release and I do so voluntarily.

CONSENT DENIED - I have read and understood the above information but do not authorize DHS, CRCS, to send my identity to persons in the organization under investigation, to be interviewed, and to provide my name and contact information to the organization. I understand that this is likely to result in the investigation of my complaint. I understand that this is likely to result in the investigation of my complaint. I further understand that I am not required to authorize this release and I do so voluntarily.

Signature: _____ Date: _____

Please attach completed, signed and dated form to: State of Maryland, Department of Human Services, PO Box 100, Hagerstown, MD 21740-0100

Questions may be sent to: crs@dmh.maryland.gov

Old form 10-10-2009

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Discrimination Complaint Requirements

- Right to file complaint concurrently
- Must be informed of complaint process in writing
- Forms, brochures, posters in multiple languages
- Guidelines should be clear
- Procedures, processes and forms readily available

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Discriminatory Retaliation is Prohibited

- It is unlawful to **penalize, punish or deny any employment status** because that person opposed discrimination or participated in any way (ex: as a witness) in the investigation of a charge

- It is unlawful to **penalize, punish or deny (or delay) any services or benefits** because that person opposed discrimination or participated in any way (ex: as a witness) in the investigation of a charge

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Retaliation

- Adverse employment action
- In response to or in an attempt to prevent
 - Opposing a discriminatory practice
 - Participating in an employment discrimination investigation or proceeding
 - Making a request for reasonable accommodation

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Retaliation **NOT**

- Petty slights and annoyances, such as stray negative comments in an otherwise positive or neutral evaluation
- Snubbing a colleague
- Negative comments that are justified by an employee's poor work performance or history
- Requests by a supervisor to improve or increase work productivity

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Retaliation Example

- Sammy, a painter at DHS, made an internal complaint against his supervisor for race discrimination. Two weeks later, his supervisor reassigned Sammy to standard laborer tasks. His pay and working hours did not change
 - True
 - False

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Retaliation continued

- Retaliation can occur:
 - when an employee is transferred to a less desirable work assignment, even if the pay and working hours do not change
 - When a complaint is filed or one has participated as a witness in a complaint investigation process

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Part II Language Access National Origin

Language Access (Interpretation)

DHS 5000

DHS 5050

Translation Helena Manzano, LEP
Project Manager

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Language Access Requirements

Opportunities for clients and applicants, to participate in programs, services and activities.

Clients and program participants shall be informed of their right to:

- Non-discriminatory service provision
- Accommodations
- Free interpreter services
- Filing a discrimination complaint

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What to do

- Step 1: Determine the primary language spoken.
 - Check application form
 - Use "I speak" cards <http://www.lep.gov>
 - Telephone Interpreter service 1-866 874 3972
CODE _____
 - Poster (FLAG AND OLA 2012)—LOCAL PHONE #
General Interpreter Services **1 888 764 7586**
 - * New SCRIPT and Google Translate (voice)

Once you have established the primary language you will need to make timely arrangements for an interpreter and document your efforts in the case notes/log of contacts.

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How to do it

Step 2: Getting an interpreter.

- Contact a DHS employee (preferably familiar with program).
 - DHS Volunteer
For current listing (586-4955 or gwatts@dhs.hawaii.gov)
 - arrange an appointment with the client and interpreter
- Contact Telephone Interpreter service where available
- Arrange for an interpreter for the formal interview
- There are other resources for interpreters that are available to you:
 - DCAB Listing
 - Court Interpreter Listing
 - Google Translate (voice)

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Working with the Interpreter

- The interpreter shall read, initial and date the Interpreter Code of Ethics
 - Document in log of contacts/contact notes.
 - Copy and place in case record.
- The interpreter shall provide a Confirmation statement to confirm to his/her qualifications
 - Verify signature on Confirmation and place in case notes or log of contacts.
 - Copy and file in case record.

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DHS Interpreter Form and Code of Ethics

STATE OF HAWAII
Department of Human Services
DHS 5050 (06/03/09)

INTERPRETER FORM

Name: _____

Language: _____

Phone No.: _____ E-mail Address: _____

DHS Division/Branch/Section/Unit: _____

DHS Position Title: _____

Company: _____

Address: _____

I state that the following are true:
 I have read and understand the Interpreter Code of Ethics
(on the back of this form), and agree
to follow it when providing interpreter services;
 I am 18 years of age or older; and,
Fluency:
Check as applicable: Fair Good Excellent
 I can communicate in English and the language listed
above; _____

Interpreter Code of Ethics

1. Accuracy

a. Interpreters shall convey the message and tone of the speakers accurately and completely, without adding or deleting anything.

b. Interpreters shall accurately interpret offensive language, obscenities, and sexual terminology and shall maintain composure while interpreting in emotionally charged situations.

c. Interpreters shall seek clarification when needed.

d. Upon recognizing that a communication may have been misunderstood, interpreters may bring the possible misunderstanding to the attention of the provider, who will decide how to resolve it. (Not to be done in legal proceedings.)

2. Confidentiality

a. Interpreters shall keep confidential all assignment-related information and shall not divulge any information obtained through their assignments, including but not limited to information gained through access to documents or other written materials.

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Interpreter Services Waiver

- When a client declines free interpreter services offered by DHS, document in your log of contacts:
 - Your efforts in providing free interpreter services
 - The client's declining such offer and the date and reason.
- The DHS shall provide a form and alternate interpreter verification/documentation in client's primary language.
 - If the client is unable to read in primary language, oral translation will be necessary.
- As a DHS employee, you shall document your efforts in providing free appropriate and timely interpreter services in your log of contacts or case notes.

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Offer and Acceptance or Waiver of Free Interpreter Services

STATE OF HAWAII DEPARTMENT OF HUMAN SERVICES

OFFER AND ACCEPTANCE OR WAIVER OF FREE INTERPRETER SERVICES

Case Name: _____ Case Number: _____
 Address: _____ Unit: _____
 Phone: _____

The Department of Human Services (DHS) has offered an interpreter at no cost to me, if English is not my primary language.

1. ENGLISH is my primary language: <input type="checkbox"/> YES <input type="checkbox"/> NO
2. <input type="checkbox"/> I do not need an interpreter. If you do not need an interpreter go to part 4 and sign below. <input type="checkbox"/> I need an interpreter for the following language: _____ If you need an interpreter, go to part 3, and check the box that applies to you.
3. <input type="checkbox"/> I want DHS to provide an interpreter at no cost to me. <input type="checkbox"/> I do not want an interpreter provided by DHS, and I will provide my own. <ul style="list-style-type: none"> - I understand that DHS may assign an independent interpreter to observe my interpreter to ensure the accuracy of the communication. - I understand that the use of family or friends as interpreters may not be the most effective way to help me obtain the benefits and services that DHS provides. - I understand that DHS does not recommend the use of family members or friends as interpreters and prohibits the use of minors (no one under age 18) as interpreters. - I understand that if I do not want interpreter services at this time, I have the right to change my mind in the future and have DHS provide free interpreter services at that time or bring an interpreter of my choice.
4. I have read and understood the information on this form. If I have questions or concerns, I can contact the worker listed above.

Print Name: _____ Date: _____
 Signature: _____

One Interpretation Original - One File

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Interpreter Requirements

- Proficient in more than one language
- Avoid using a client's friend, family, minor children.
- Document client waiver of free interpreter service.
- Arrange before bringing client in whenever possible.
- Use DHS volunteers appropriately.
- Examine credentials (over age of 18)
- Your particular program may require you to provide an interpreter for your use to verify that the communication is correct, accurate and understood by the client or applicant even when the client provides his/her own interpreter.

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National Origin Example

- Ashari speaks with a thick accent. Her co-workers occasionally ask her to repeat herself so they can understand what she is saying. One day Mike gets frustrated because he can't understand Ashari and makes fun of the way she talks.
 - There is nothing wrong with Mike's behavior because Ashari is in Hawaii and should speak English so everyone can understand her.
 - True
 - False

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Protected Class—National Origin

- Accents are a component of national origin and/or ancestry therefore discrimination or harassment because of an accent would violate DHRD's Discrimination/Harassment-Free Workplace Policy and DHS Harassment Prevention policy.
- Mike might not have gone as far as to create a hostile or offensive work environment for Ashari, but his conduct would violate Discrimination/Harassment-Free workplace policies.

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Remember

- **Inform LEP individuals of their right to free interpreter services**
- **Avoid using a client's/applicant's friend or family member or minor to interpret**
- **Contact one or more interpreter services (phone, e-mail, on-line, in-person)**
- **Use DHS Volunteer Interpreters as appropriate and needed**
- **Provide information on process for filing a Discrimination Complaint and/or a service complaint when service delivery is unacceptable**

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Remember (continued)

- **Document your efforts and the decision of the client to accept or decline the free interpreter service.**
- **Ensure that LEP applicants, potential applicants and clients are:**
 - **Given adequate, timely and correct information**
 - **Understanding of what services and benefits are available**
 - **Effectively communicating relevant circumstances of their situation**
 - **Documentation of services provided or client's declination of offered free interpreter service**
 - **Provided a comprehensive language assistance program, written policies, interpreter and/or translation services and effective communication devices.**

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Remember Access to Government Services is a Civil Right

Granted by the U.S. Constitution

- **Civil rights include the right to:
free speech,
privacy,
equal protection and due process.**
- **The right not to be discriminated in government services falls under equal protection which means that everyone shall be treated equally no matter the race, sex, religion or national origin and other protected factors.**

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Part III

**Bias Free Language
(Language Matters)**

and

**Risky Behaviors
(Do and Don't)**

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Bias- Free Language

How Do We Continue to Remove Our
Stereotypes in Communicating with
our
Employees and Clients?

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Bias-Free Language

Chairman	Chair Person
Fireman	Fire Fighter
Waiter	Server
Oriental	Asian (or be specific)
Welfare, inner-city, Underprivileged	Do not use euphemisms for racial groups
Redskins	Washington Football Team

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Guidelines for Achieving Bias-Free Communication

Be aware of words, images and situations that suggest that all or most members of a group are the same.

Stereotypes often lead to assumptions that are unsupportable and offensive.

Avoid qualifiers that reinforce stereotypes. A qualifier is added information that suggests what is being said is an exception to what is expected.

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More Guidelines for Achieving Bias-Free Communication

Identify people by identity characteristics only when relevant.

Example: "Michael Bloomberg, noted heterosexual mayor of New York..." "Twenty-two House Democrats, led by gay Democratic Representative Barney Frank..."

Be aware of language that, to some people, has questionable racial or ethnic connotations. While a word or phrase may not be personally offensive to you, it may be to others. i.e. disorganized, unorganized, as a general characteristic for a race or group.

Examples: "Culturally deprived" or "culturally disadvantaged." These terms imply superiority of one culture over another. In fact, people so labeled are often bicultural and bilingual. For example, "Nonwhite," implies that white is the standard. In American language, similar phrases such as *non-black* or *non-yellow* do not exist.

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More Guidelines for Achieving Bias-Free Communication

Be aware of the negative implications of *color* symbolic words. Choose words that do not reinforce bias. In some instances, *black* and *yellow* have become associated with the undesirable or negative.

Examples: *black* hearted and *yellow* coward

Avoid patronizing language and tokenism toward any racial or ethnic group.

Example: Once-a-year articles or special editions about a particular group may be interpreted as *cultural tokenism*, especially when such a group constitutes a large part of the community. This approach may suggest that that racial or ethnic group is out of the mainstream.

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More Guidelines for Achieving Bias-Free Communication

Substitute substantive information for ethnic clichés. Don't let ethnic clichés substitute for in-depth information.

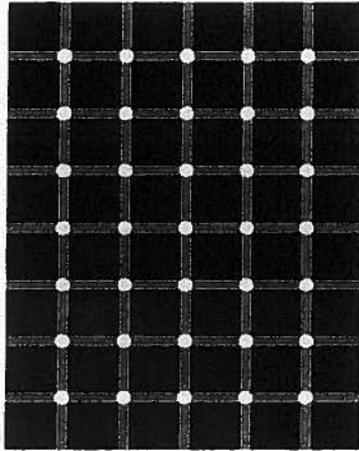
Example: A person of Pacific Island heritage might prefer to be asked about family history or real estate experiences than about surfing or dance.

Review marketing media to see if all groups are fairly represented.

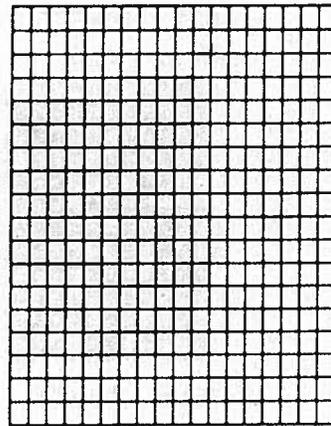
Examples: Are persons portrayed in positions of authority almost invariably Japanese or Pacific Islander or white? Does marketing media provide diverse racial role models?

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The human mind, naturally
"discriminates" and can make you
imagine....



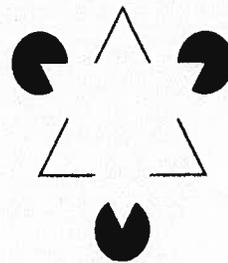
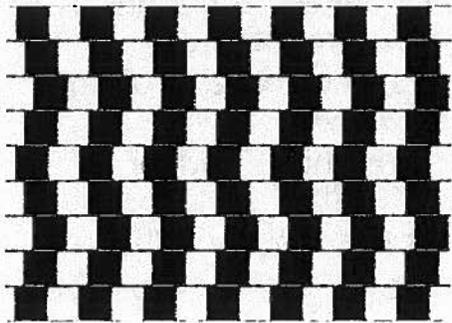
Black Dots



White Dots

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...or even make a *straight* line,
appear crooked...



Or a shape that's not even there

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Let's Reinforce the *Written Law*, Not the Person's Color !

Start at the top and say the *actual* color, not the *written* word.



The "Stroop Test," invented by John Stroop in 1935, psychologically tests our mental ability to stop one response in order to do something else.

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Risky Behaviors--Verbal

- Derogatory comments based on gender, race, national origin, religion, and others
- Suggestive or derogatory comments about clothing or personal behavior
- Colloquial terms such as "ho," "cougar," "breezy," "more local," "kitty"
- Terms of endearment like "honey," "babe"
- References to an adult as "girl" or "boy" or "doll" or "hunk"
- Sexuality or racially charged slurs or jokes
- Profanity

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Risky Behaviors—Verbal Continued

- Requesting sexual favors in exchange for employment benefits
- Tales of one's partner's sexual inadequacies or prowess
- Grunts, wolf whistles, catcalls, hoots, sucking noises, lip-smacks and animal noises
- Graphic descriptions of pornography
- Obscene phone calls, texts or voicemails
- Lies or rumors about a person's personal or sex life
- Requests for dates or sexual favors
- Sexual innuendos or stories
- Comments about a persons body or body part(s)

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Risky Behaviors--Physical

- Sexual assault
- Nonconsensual kissing, hugging, patting, stroking, grabbing
- Leaning over or invading a person's space
- Inappropriately touching a person or person's clothing
- Accidentally brushing sexual parts of the body
- Uninvited neck or shoulder message
- Deliberately touching in a sexual nature, brushing up against, pinching or patting
- Stalking

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Risky Behaviors—Non-Verbal

- Staring
- Making facial expressions of a sexual nature, winking, licking lips
- Making derogatory gestures of a sexual nature
- Giving sexually suggestive looks
- Looking someone up and down (elevator eyes)
- Displays of demeaning, insulting or sexually suggestive objects, pictures or photographs (texts, emails, internet materials)

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Part IV

- Reasonable Accommodation update

Pregnancy and Pregnancy Related

-reasonable amount of time off

Expressing milk in the work place

-clean, safe, private area-- not restroom

Disability (Physical or mental)

-essential functions of the job

Religious Practices or Beliefs

-flexible work schedules

Domestic or Sexual Violence Victims

-30 days unpaid leave; flexible schedule

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How to provide Reasonable Accommodations

- Making facilities accessible
- Job restructuring, modifying work schedules, reassignment
- Acquiring or modifying equipment or devices
- Adjusting examinations, training materials, or policies
- Providing qualified readers or interpreters

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Title I of the Americans with Disabilities Act

- Prohibits discrimination on the basis of disability, including requirements relative to providing a reasonable accommodation in employment and services for disabled individuals
- 2010 amendments redefined terms and clarified intent
Refer to ADAA and Reasonable Accommodation
<http://humanservices.hawaii.gov>

Accessibility to State Government by Persons with Disabilities

- Administrative Directive No. 12-06 Governor Neil Abercrombie

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Definition of a "Disability"

- A physical or mental impairment that substantially limits a major life activity
- A record of such an impairment
- Being regarded as having such an impairment

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Disability Illegal to:

- Refuse to hire, fire, penalize
- Limit, segregate, or classify
- Use prejudices of workers/clients
- Requires time away
- Retaliate

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Disability

Remember

- A qualified person with a permanent physical or mental impairment that substantially limits a major life activity
- Has a right to an effective reasonable accommodation

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REASONABLE ACCOMMODATION

A modification or adjustment to a job, the work environment, or the way job tasks are usually accomplished, to enable a person with a disability to perform the essential functions of a job or position.

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Reasonable Accommodation Update

What's Covered?

What's Reasonable?

Who's Responsible?

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Pregnancy

- Pregnant women or women affected by pregnancy must be treated in same manner as other applicants or employees with same abilities or disabilities
- Equal treatment
- An accommodation is an adjustment—different treatment
- May be viewed as special treatment, but law requires accommodation.

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Pregnancy or Related Illegal to:

- Refuse to hire, fire, penalize
- Not allow to express breast milk (similar to smoking breaks)
- Retaliate
- Use prejudices of workers/clients
- Requires time away

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Pregnancy Related Questions and Answers

- **Can DHS fire or require employee to take leave because of performance problems?**

Only if DHS first makes reasonable accommodation and employee is still unable to perform.

- What are some examples of reasonable accommodations?
 - *Time off from work for doctor appointment/s*
 - *Sit instead of stand*
 - *Excuse from /assist in lifting*
 - *Reassign to a vacancy (not usually recommended)*
 - *Breaks/rest periods; clean/safe place to express milk*
 - *Sick leave*

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Disability

Reasonable Accommodation

NOT Examples

- Eliminating an essential function
- Lowering standards
- Reassigning supervision
- Promoting to a higher or demoting to a lower position
- Providing personal use items
- Creating "light duty" or new jobs

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Disability

Examples Reasonable Accommodation

- Restructured job
- Modified or part-time schedule
- Modified policy or procedure
- Purchased/modified equipment
- Readers/interpreters or other auxiliary aids/services
- Leaves of absence
- Reassignment to a vacancy (usually not recommended)

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Physical or Mental Disability

- Jim was born with a club foot that makes him walk with a limp. One day, Jim walked into the break room as one of his co-workers, Tom, is in the middle of imitating the way Jim walks while the other co-workers laugh. Jim complains to his supervisor.
 - Tom's behavior wasn't discriminatory because he didn't mean to imitate Jim while Jim was around.
 - True
 - False
 - Note: It doesn't matter what Tom intended (isolated event; violation of policy)
 - What if you, as Jim's and Tom's supervisor witnessed Tom's imitation of Jim?

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Religious Practices

- Persons who request an adjustment for their bona fide religious practice or belief is due reasonable accommodation
- Bona fide—It is a sincerely held religious practice or belief irrespective of affiliation with an established church or religion.

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Religious Practices Illegal to:

- Force participation or not
- More/less favorably
 - hire to include/exclude
 - use different requirements
 - allow religious expression
- Retaliate – “business as usual”

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Religious Practices Questions and Answers

- What constitutes an effective accommodation?
An alternative that eliminates the conflict between a religious practice and an employment/service requirement
- What are some examples of effective reasonable accommodations?
 - *Leave for religious observances*
 - *Time and/or a place to pray*
 - *Ability to wear religious attire*
 - *Restructuring work/schedules*
 - *Voluntary substitutes*

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Religion Protected Class/ Reasonable accommodation

- All aspects of religious observance and practice
- Reasonable accommodation (hardship **not**)
- Inappropriate behavior
 - Antagonizing or ridiculing because of someone's religious beliefs
 - Preaching or proselytizing to an employee and the employee perceives that behavior to be unwanted and offensive

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Religion

- Amani, who works in Personnel, files a formal complaint that several co-workers are making fun of the head covering she wears and often refer to her as "camel jockey" or "Arab."
- The derogatory remarks made by Amani's co-workers are creating a hostile work environment for her.
 - True
 - False
 - What if they were made in front of her supervisor?
 - What if the comments were made by her supervisor?
 - What if the derogatory comments were made by a customer?

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Domestic or Sexual Violence Victim Status

- Persons who provide verification and/or is known to be a victim may request a reasonable accommodation, such as:
 - Changing contact information
 - Screening telephone calls
 - Restructuring job functions
 - Changing work location
 - Installing locks/security devices
 - Flexible hours

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Domestic or Sexual Violence Victim Status Written Verification

- DHS may request written verification every 6 months from:
 - Victim services organization
 - Employee's attorney/advocate
 - Attorney/advocate of employee's minor child
 - Medical/health professional
 - Clergy
 - Police/court record
 - After being notified
 - After having actual knowledge
 - After receiving verification

*If verified by a protective order with an expiration date, request only after expiration of order or extensions, whichever is later.

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Overall Defense

- Undue Hardship—demonstrate that accommodation would be disruptive, fundamentally alter the operation, OR require more than minimal or “administrative” cost:
 - Nature and cost
 - Financial resources
 - Operations
 - Number needing accommodation
 - Existence of bona fide seniority

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Overall Keys

- Requested
- Case-by-case
- Different
- Not usual and customary
- Not unfair; it is the law
- Interactive process
- Consideration of alternatives
- Effective

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Remember

- These requirements are to provide a balance between DHS' need to operate and society's need to have equality of opportunity, full participation, and contributing members
- It's the law.
- It's your responsibility.

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Responsibilities Supervisors and Managers

- Maintain a workplace free of harassment, discrimination and retaliation
- Take immediate and appropriate action to ensure any wrongful behavior ceases
- As assigned, investigate complaints of alleged violations of policies

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Managers and Supervisors Responsibilities continued

- Prevent retaliation against the victim and any witnesses
 - Monitor work environment
 - Instruct complainant and witnesses to report incidents they feel are retaliatory
 - Notices for victim and witnesses for interviews

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Supervisors and Managers Responsibilities continued

- Know who at DHS is designated to oversee alleged discrimination and retaliation complaints
- Report any alleged discrimination or retaliation complaint to this individual
- Separate accused and alleged victim, if necessary
- Assigned investigator must immediately initiate investigation
- Take effective remedial action
- Document process

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Employees (non-supervisory)

- Alleged harassment, discrimination and retaliation complaints may be made to:
 - Manager/Supervisor
 - Civil Rights Compliance Officer
 - DHRD EEO Manager
 - Hawaii Civil Rights Commission
 - Equal Employment Opportunity Commission
 - Appropriate Funding Agency
- Those receiving alleged discrimination and retaliation complaints must make sure that they are communicated to the DHS Civil Rights Compliance Office.

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Third-Party Behavior

- Harassment or Discrimination by a non DHS Employee (vendor, delivery or repair person, visitor, customer or client)
- What to do when a third-party is engaging in conduct that violated DHS and DHRD policies?

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Further Information

- gwatts@dhs.hawaii.gov
- Federal Guidelines <http://www.lep.gov>
- Hawaii Revised Statutes
<http://www.doh.gov/ola>
- DHS Policy and Procedures 4.10.4
- <http://humanservices.hawaii.gov>
(Civil Rights Corner)
 - Write: PERS/CRCS
P. O. 339
Honolulu, HI 96809-0339

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<http://humanservices.hawaii.gov> Civil Rights Corner

- Forms
- Training
- Plans
- Policies
- Notices
- Resource Lists

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For More Information.....

- Pregnancy Federal <http://www.eeoc.gov/facts/fs-preg.html>
State <http://hawaii.gov/labor/hcrc/pdf/INFOpreg.pdf>
& <http://hawaii.gov/labor/hcrc/har4.shtml#12-46-106>
- Disabilities Federal http://www1.eeoc.gov/laws/regulations/adaaa_fact_sheet.cfm?renderforprng=1
State <http://hawaii.gov/labor/hcrc/har9.shtml#12-46-187>
<http://hawaii.gov/health/dcab/sohramanual/> online or
<http://hawaii.gov/health/dcab/docs/sohramanual.pdf> print
- Religion Federal <http://www.eeoc.gov/facts/fs-religion.html>
State <http://hawaii.gov/labor/hcrc/har7.shtml#12-46-154>
- Domestic or Sexual Violence Victim Federal—NONE Not a Federal coverage
State
<http://hawaii.gov/labor/hcrc/pdf/HCRC%20Act%20206%2010-18-11%20public%20hearing%20agenda.pdf> and
http://www.capitol.hawaii.gov/session2011/bills/SB229_CD1_.pdf
- qwatts@dhs.hawaii.gov 586-4955 <http://humanservices.hawaii.gov>

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What will YOU do differently?

- What specific actions will you take as a result of increased awareness?
 - How will you change the way you work with clients? Employees?
 - Create a list of what you will do differently and put it into action.

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Civil Rights Compliance Office

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- DHSCivilRightsBox@dhs.hawaii.gov

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