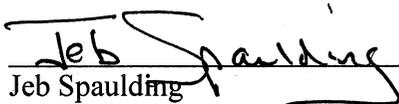


Vermont State Government
Equal Employment Opportunity Plan
Fiscal Year 2015



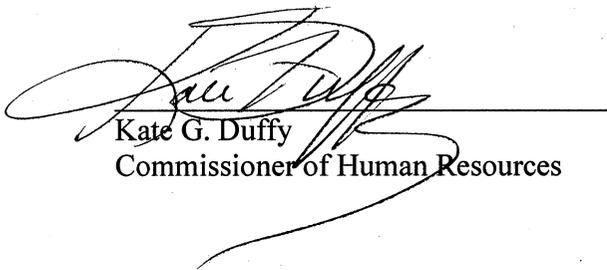
Peter Shumlin
Governor

5/5/14
Date



Jeb Spaulding
Secretary of Administration

4/30/14
Date

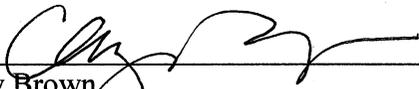


Kate G. Duffy
Commissioner of Human Resources

4-30-14
Date

Rubin Jennings
Co-Chair, Governor's Workforce Equity
and Diversity Council

Date



Cary Brown
Co-Chair, Governor's Workforce Equity
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STATE GOVERNMENT WORKFORCE MISSION

What is an Equal Employment Opportunity (“EEO”) Plan? Why should the State of Vermont have one? What should result from it?

An EEO plan is a blueprint to help build a strong and diverse workforce by taking advantage of the skills and education of all segments of Vermont's population. This statewide plan is an umbrella document for State of Vermont (“State”) agencies and departments to use in developing their own EEO plans. It also provides a way to assess human resources practices.

Why have a plan? First, a diverse workforce promotes new ideas and a variety of work and leadership styles. Second, a diverse workforce, reflecting all segments of society, promotes inclusion and support for the work of government. And, whenever the labor market is tight, the state should take the opportunity to reach beyond traditional sources of new employees.

Vermont's population is changing. Over the next century, the state's population can be expected to reflect a broader mix of ethnic, religious, and racial groups. Inclusion of all groups in the State's workforce will improve the workforce and its ability to best serve the entire population.

An EEO Plan can help an employer successfully retain a workforce that provides the best service to the people of our State. Having a good plan in place is an important first step toward achieving this goal.

INTRODUCTION

The State has prepared this EEO Plan voluntarily, as a reaffirmation of its commitment to equal employment opportunity. The terminology used in Executive Order 11246 and its implementing regulations has been used as a guide. Therefore, the use of such terms as “deficiency,” “underrepresentation,” “concentration,” “expected number,” “problem area,” “affected class,” and “underutilization,” should not be construed as an admission that in fact either minorities or women have been or are presently being discriminated against in any way in violation of federal, state or local fair employment practices laws. Further, nothing contained in this material or the data supporting this Plan should be construed as an admission by the State that it has contravened any such federal, state, or local fair employment practices laws. In developing and implementing this Plan, the State has been guided by its established policy of providing equal employment opportunity. Any goals that are established herein are not intended as rigid, inflexible quotas that must be met, but rather as targets reasonably attainable by applying every good faith effort in implementing this program. The use of goals in this program is not intended to discriminate against any individual or group of individuals with respect to any employment opportunity for which they are qualified on the grounds that they are not the beneficiaries of equal opportunity themselves. Nothing herein is intended to sanction the discriminatory treatment of any person. Thus, this plan has been developed in strict reliance upon the equal opportunity guidelines issued by the Equal Employment Opportunity Commission (EEOC)—Affirmative Action Appropriate Under Title VII of the Civil Rights Act of 1964, As Amended, 29 C.F.R. Part 1608.

Through a 2002 Executive Order No. 09-02, the Governor assigned the Commissioner of Personnel (now Human Resources) the responsibility of developing, implementing and monitoring a state government equal employment opportunity program. A copy of the Executive Order is attached as Appendix A. The Governor also established the Governor's Workforce Equity and Diversity Council (GWEDC), a successor to the Affirmative Action Council. Through Executive Order No. 10-13, the Governor re-affirmed the GWEDC in 2013. A copy of that Executive Order is attached as Appendix B. The GWEDC and the State Equal Employment Opportunity Officer wrote this plan.

Discrimination in employment continues to occur all across the country, particularly against people belonging to historically disadvantaged groups. Minorities, women, people with disabilities, older workers, and other groups may still face unfair barriers to employment opportunities. By the Governors' Orders, the State of Vermont is committed to taking positive steps toward ensuring that employment barriers do not exist within State government.

This plan is designed to encourage all State agencies and departments to develop EEO Plans that ensure that all eligible applicants or job-holders have equal opportunity in all areas of State employment, including compensation, recruitment, hiring, retention, training, promotion, working conditions, and benefits.

To the extent possible, the State will strive to employ a workforce reflective of Vermont's civilian workforce population. Providing equal employment opportunities throughout State government is an important goal, and implementing an EEO Plan is a means of attaining that goal.

EXECUTIVE BRANCH ORGANIZATION OF STATE GOVERNMENT

The offices of Governor, Lieutenant Governor, Secretary of State, Treasurer, Auditor of Accounts, and Attorney General constitute the executive branch of the State. The large majority of agencies, departments, boards, councils, and commissions are overseen by the Governor.

Agencies, run by secretaries appointed by the Governor, consist of departments (with commissioner appointments approved by the Governor) that generally are comprised of divisions. Both secretary and commissioner appointments must be confirmed by the State Senate. Half a dozen departments are independent — not part of any agency — most with commissioners who report directly to the Governor. Lines of authority tend to run from the Governor to the agency/department heads to division directors to section chiefs to unit supervisors. A small number of appointed officials do not report directly to the Governor or an agency secretary.

The Governor either appoints or approves appointments to boards, councils, and commissions. Many appointments require Senate confirmation.

The GWEDC was created by the Governor's 2002 Executive Order, and re-affirmed in the Governor's 2013 Executive Order. A roster of current Council members is attached as Appendix C.

The foundation for the Council's work is the Governors' Executive Orders, as well as federal laws and regulations that prohibit discriminatory behavior by employers against members of protected classes. In addition, Vermont laws, policies, and labor contracts with the State employees represented by the Vermont State Employees Association, Inc. (VSEA) or the Vermont Troopers' Association (VTA) reflect the same objectives.

The Secretary of Administration and DHR issue policies and procedures for human resources administration directly relevant to equal employment opportunities which apply to all executive branch employees and job applicants. The DHR administrator for each agency/department must make these policies available to State employees and job applicants. They also are available at DHR's website: ([http://humanresources.vermont.gov/policies/personnel_policy_procedure manual](http://humanresources.vermont.gov/policies/personnel_policy_procedure_manual)).

The State/VSEA labor contracts recognize separate Non-Management, Supervisory, and Corrections bargaining units that cover most executive branch employees, and the State/VTA labor contract is specific to the State Police. Not included are contractors, appointed officials exempt from the State's civil service system, managerial, confidential, or temporary employees.

FEDERAL EMPLOYMENT LAWS

U.S. Constitution

The Fifth and Fourteenth Amendments to the United States Constitution apply to federal and state governments. The Fifth Amendment precludes the federal government from depriving any person of life, liberty or property without due process of law. It also contains an implicit guarantee that each person receive equal protection under the law. The Fourteenth Amendment prohibits states from violating a person's due process or equal protection rights. In employment, the right of equal protection limits state and federal governments from discriminating against employees, former employees, or job applicants because they belong to a particular group (e.g., based on race or sex).

Civil Rights Act of 1964 — Title VII (42 U.S.C. §§ 2000e - 2000e-17)

This act, as amended in 1991, prohibits discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth, or related medical conditions), or national origin. The Act makes it illegal for an employer to discriminate in hiring, discharging, or compensating employees, or in the terms and conditions of employment.

Executive Order 11246 — President Johnson, 1965

Signed by President Johnson in 1965, the Order prohibits discrimination against workers on the basis of race, color, religion, sex, or national origin by government contractors receiving \$10,000 or more in federal funds. Federal contractors with 50 or more employees and federal contracts of \$50,000 or more must have affirmative action plans, which are monitored by the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP). Regulations implementing the order are at 41 C.F.R. Chapter 60.

Age Discrimination in Employment Act (29 U.S.C. §§ 621-- 633a)

This act applies to employees who are at least 40 years old, and prohibits employers from discriminating against those workers because of their age.

Rehabilitation Act of 1973 (29 U.S.C. §§ 706, 791--795r)

This act, as amended, prohibits employment discrimination on the basis of a disability in any program or activity receiving federal financial assistance.

Americans with Disabilities Act of 1990 (42 U.S.C. §§12101-12213)

The ADA prohibits discrimination against a qualified individual with a disability in employment, public services, and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal opportunity in all aspects of employment.

Equal Pay Act (29 U.S.C. § 206d)

This act bars employers and unions from paying wages based on sex, and requires equal pay to employees for equal work, provided the jobs require equal skill, effort, and responsibility, and are performed under similar working conditions.

Family and Medical Leave Act (29 U.S.C. §2601 *et seq.*)

This act allows eligible employees up to 12 weeks of leave in a 12-month period for statutorily defined events, including serious illness, pregnancy and birth, or adoption of a child. The law allows intermittent leave in some circumstances.

STATE OF VERMONT LAW

Fair Employment Practices Act (21 V.S.A. §495 *et seq.*)

This act prohibits employers from discriminating against individuals on the basis of race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, place of birth, age (specifically, individuals 18 years of age and older), disability, or having a positive test result from an IRV-related blood test. It also prohibits employers from paying wages based on sex, and requires equal pay to employees for equal work, provided the jobs require equal skill, effort, and responsibility, and are performed under similar working conditions. Section 495h requires employers to ensure a workplace free of sexual harassment. (The State Employees Labor Relations Act, 3 V.S.A. §§961 and 963, and the Judiciary Employees Labor Relations Act, 3 V.S.A. §§1026 and 1028, also make discrimination for any of these reasons an unfair labor practice, and ban unions from engaging in discrimination of this kind.)

Employment of People with Disabilities (21 V.S.A. § 497)

This act promotes employment of people with disabilities through cooperation by public and private organizations. It establishes a committee appointed by the Governor for this purpose.

Parental and Family Leave Act (21 V.S.A. §§470-- 474)

This act entitles eligible employees to up to 12 weeks of leave during a 12-month period for serious illness of the employee or a close relative, or for the birth or adoption of a child. It provides for short-term family leave of up to four hours in any 30-day period (up to 24 hours per year) for routine medical and dental care for the employee or close relatives, or for activities related to the academic advancement of the employee's children.

STATE PERSONNEL POLICIES AND PROCEDURES

These policies apply to executive-branch classified, exempt and temporary State employees, and

to job applicants. The entire text of the following Policies can be found in Appendix D.

Equal Employment Opportunity/Affirmative Action, Policy 3.0

The policy prohibits discrimination in all State employment practices, including recruitment, hiring, promotion, demotion, transfer, layoff, termination, rates of pay and other forms of compensation, selection for training, agency sponsored social and recreational events, and all other terms, privileges, and conditions of employment. The policy requires each agency to appoint an EEO Officer.

Sexual Harassment, Policy 3.1

This policy defines and prohibits sexual harassment and details a procedure for making and processing complaints of such discrimination. Managers are responsible for ensuring that employees are provided with gender-relations training.

Reasonable Accommodation, Policy 3.2

This policy sets forth how the State responds to requests by State employees for reasonable accommodations of disabilities that may affect an employee's ability to perform the essential functions of a job.

Discrimination Complaints, Policy 3.3

This policy states that the State opposes discrimination on the basis of race, color, religion, creed, ancestry, gender, marital status, age, national origin, disability, sexual orientation, membership or nonmembership in the VSEA and any other factor prohibited by law. The State is bound to respond to any discrimination complaint against employees with established protocols for reporting, investigating and resolving allegations. The policy holds managers responsible for providing a discrimination-free workplace. A copy of the Discrimination Policy must be posted in the workplace, and all new employees must receive a copy of this policy.

COLLECTIVE BARGAINING AGREEMENTS

Discrimination prohibitions appear in Article 5 of the State's collective bargaining agreements with the VSEA and VTA.

- Section 1 prohibits workplace discrimination, intimidation, harassment and retaliation on the basis of specified factors.
- Section 2 spells out the parties' commitment to affirmative action programs and gives the VSEA/VTA a role in developing them.
- Section 3 clarifies the responsibilities of the State and the union in enforcing the contract provisions.

Additional information can be found in Appendix E.

STATE EEO STATEMENT AND POLICIES

The State is an equal opportunity employer and is committed to offering equal employment opportunities in accordance with Title VII of the Civil Rights Act of 1964 and its amendments. The State's Personnel Policies and Practices prohibit discrimination on the basis of race, color, religion, ancestry, national origin, gender, sexual orientation (as provided by 21 V.S.A. § 495), place of birth, age, or physical or mental condition (a person with a qualifying disability) in all employment practices including, but not limited to: recruitment, hiring, promotion, demotion or transfer; layoff or termination; rates of pay and other forms of compensation; selection for training; agency sponsored social and recreational events; and all other terms, privileges, and conditions of employment.

The State is committed to non-discrimination in employment and is strongly committed to an aggressive approach to equal opportunity employment practices and education to overcome any manifest imbalance in the work force based on gender, race or disability. With this focused approach to equal opportunity comes continued commitment to identify obstacles to the employment and career advancement opportunities afforded to employees, and to work toward removing those obstacles.

With this in mind, the following policy is set in place:

1. The State will take appropriate action in all personnel actions to create equitable conditions of employment involving women, minorities and individuals with disabilities where a demonstrated imbalance exists within job groups or in the case of top management, within Equal Employment Opportunity (EEO) categories, consistent with State Equal Employment Opportunity plans and policies.
2. The State will make efforts to recruit, select, train and promote women, minorities and individuals with disabilities.
3. Compensation, benefits, job assignments, layoffs, employee development opportunities and discipline shall be administered without bias and without regard to race, color, religion, ancestry, national origin, gender, sexual orientation, place of birth, age, or disability.

It is the policy of the State not to make any adverse employment decisions against minorities or women with respect to recruitment, hiring, training, promotion and other terms and conditions of employment, provided the individual is qualified to perform the work available. The State shall consider all qualified applicants for available positions without regard to race, color, gender, religion, age, national origin, or disability. This policy shall apply to all employment actions, including, but not limited to, recruitment, hiring, upgrading, promotion, transfer, demotion, layoff, recall, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship, at all levels of employment. Advancement to positions of greater responsibility is based on an individual's demonstrated performance.

The State is committed to its Equal Employment Opportunity Policy, and as part of the Equal Employment Opportunity Plan will:

- Recruit, hire, upgrade, train, and promote in all job classifications without regard to race, color, gender, religion, age, national origin, or disability;
- Base employment decisions on the principles of Equal Employment Opportunity and with the intent to further the State's commitment to workplace diversity;
- Ensure that all other personnel actions such as compensation, benefits, State-sponsored training, educational tuition assistance, social and recreational programs, shall be administered without regard to race, color, sex, religion, age, national origin, or disability;
- Ensure that employees and applicants are not subjected to intimidation and/or harassment, threats, coercion, or discrimination because they have filed a complaint, assisted or participated in an investigation or any other activity, or opposed any act or practice made unlawful.

STATE DATA ANALYSIS

According to the U.S. Census Bureau, Vermont's population was 608,827 in 2000, with a 4.1% minority population.¹ Over a decade later, Vermont's total population in 2012 stood at 625,953, with 4.5% of the workforce identified as minorities.² While the growth in Vermont's total population from 2000 to 2013 was just 2.8%, the minority workforce population increased 12.8%.

In Fiscal Year 2000, the State's classified workforce numbered 6,937, and 118 employees – or 1.7% of the workforce – were identified as minorities.³ By 2012 (Fiscal Year 2013), the State's classified workforce stood at 7,475 – a 7.8% increase – and the number of classified minority employees increased to 228, or 3.1% of the workforce.⁴ This compares to an estimated 4.5% minority representation in Vermont's total civilian labor force.

Thus, in just over a decade the number of minorities in the State's workforce increased approximately 93% and, perhaps more importantly, the percent of the workforce in Vermont identified as minorities increased 82%, suggesting the State has made progress in diversifying its workforce. The State seeks to build on this past success by cultivating a workforce that mirrors the diversity of Vermont's general workforce population.

¹ U.S. Census Bureau, 2000 Census Data and Population Estimates Program, People QuickFacts.

² Labor Market – Census data from U.S. Bureau of the Census, American Fact Finder, Equal Employment Opportunity (EEO) Tabulation 2006-2010, Table EEO1r. Detailed Census Occupation by Sex and Race/Ethnicity for Resident Geography Universe: Civilian labor force 16 years and over. <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

³ Vermont Department of Human Resources, Workforce Report – Fiscal Year 2002.

⁴ Vermont Department of Human Resources, Workforce Report – Fiscal Year 2013.

2014 - 2015 STATE GOVERNMENT EEO PLAN

I. *Introduction.* The State of Vermont strives to promote equal employment opportunities for everyone. The State explicitly recognizes diversity as a worthy and attainable goal. Nationwide, significant barriers have hampered some groups of citizens in realizing equal employment opportunities. Throughout the country, real progress in eradicating those barriers has been made, but some obstacles to equality and diversity persist.

The State of Vermont Governor's Workforce Equity and Diversity Council (GWEDC) works to promote equality. The following definition of "diversity" guides the Council's work:

Differences among people with respect to personal or cultural background, including, without limitation, race, color, religion, national origin, gender, sexual orientation, gender identity, ancestry, place of birth, age, military status, or physical or mental condition.

The GWEDC's Vision Statement explains its objective:

The State of Vermont fosters an inclusive and welcoming environment, in recognition of the diversity of our community. As an employer of choice, the State of Vermont is committed to developing an environment where every individual may grow personally and professionally, where everyone's contributions are acknowledged, respected, and appreciated, and where we celebrate the differences that make us a strong organization.

By working in concert with the Governor's Workforce Equity and Diversity Council (GWEDC), the Department of Human Resources will identify ways to attract, develop, recognize and retain highly skilled and talented individuals who best represent all dimensions of diversity in all levels of the organization.

Ultimately, diversity benefits us all. The State aspires to employ a workforce that is free of stereotypes and other impediments to equality. When the working population is reflective of the civilian population, traditionally underrepresented groups benefit, the workforce benefits, and society benefits. As an employer, the State benefits by hiring individuals with diverse backgrounds, experiences, and ideas. Similarly, our citizens are best served by well-qualified State employees who are representative of the population, and can draw upon the inherent strengths of diversity when serving their communities.

II. *EEOP Committee Recommendations Summary and Update.* The State strives to recruit and retain an excellent, dedicated, and diverse workforce, and hopes to make State employment attractive to all. The State plans to further expand its outreach efforts to recruit qualified applicants from historically disadvantaged and underrepresented populations. The State's objective is to promote equal opportunity and diversity.

Four years ago, a workforce committee (EEOP Committee) was created to consider recruitment efforts and alternatives designed to increase minority interest in State employment. The EEOP Committee's recommendations were accepted and incorporated into the EEO Plan at that time. A

current status update of DHR's EEO work as it relates to the EEOP Committee's recommendations follows.

Recommendation: The Department of Human Resources (DHR) Recruitment Services Unit will continue to provide centralized support to the State's agencies and departments. Agencies and departments are unique, and should develop their own individualized recruitment strategies and plans for marketing and outreach with assistance from DHR Recruitment Services. Agencies and departments should consider implementing the following recommendations:

Recruiting Efforts

- A. Provide top-down direction to implement workforce diversity goals.
 - Update: DHR Field Operations team (managers and administrators assigned to serve agencies and departments), and DHR Recruitment Services Unit, provide guidance to agency and department leaders and managers about available resources to assist with implementation, including training, consultation and partnering in the hiring process.
- B. Develop relevant outreach materials for use at recruiting events (job fairs, online) (Consider the VTrans model used to recruit Engineers, including on-the-job-training and internships).
 - Update: A fresh approach to outreach materials is scheduled for 2015. Recruitment Services has increased its partnership with agencies and departments since 2014 to maximize effect at job fairs, and is developing advertising strategies designed to reach a broader range of applicants across many demographics. The GWEDC has provided input and advice in this process.
- C. Market staff availability to assist potential applicants with the online application. Consider the VTrans model of a paper outline of the online application to encourage applicants to gather information before preparing the online application. Market assistance with online application.
 - Update: Recruitment Services' capacity for outreach was diminished during the implementation process for the upgrade of the HRIS software system. Emphasis during that time in 2013-2014 was placed on ensuring overall accessibility of the system for all applicants, addressing difficulties or system errors, and ensuring applicants had access to telephone coaching and online training resources. The goals in this area have in large part been met. Recruitment Services will work strategically with DHR Field Operations and community resources (including the Vermont Department of Labor, and the Department of Libraries, and Vocational Rehabilitation) to extend DHR's reach in supporting successful application completion.
- D. Engage in active sourcing, trolling, and other recruitment strategies specific to agency/department needs, to mine talent using all available resources, including social networking sites.
 - Update: Recruitment Services is evaluating a variety of sourcing options, and has established a collaborative and shared recruiting position with the Department of

Information and Innovation (DII). This individual will help DHR and DII prioritize these sources and select those which will provide the most effective outreach for general and targeted recruiting efforts. Options include JobLink, VocRehab, LinkedIn, JobsinVT, and others.

In the upcoming year, the State will continue to work with the GWEDC for suggestions on methods to evaluate the avenues selected by DHR Recruitment Services and agencies/departments to increase representation of historically disadvantaged and underrepresented populations in the qualified applicant pool. The State believes that by increasing interest in State employment by individuals from historically disadvantaged and underrepresented populations, it can meet its goal of hiring the best possible employees, while maintaining a strong workforce that enjoys the inherent benefits of diversity.

III. *Executive Order Goals and GWEDC Accomplishments and Objectives.* Achievement of the described objectives calls for coordination and cooperation from all segments of State government. Principal responsibilities lie with appointing authorities, the GWEDC, and DHR. The Governor's 2013 Executive Order provides that the Commissioner of Human Resources will ". . . develop, implement, and monitor an Equal Employment Opportunity Program for the State of Vermont that addresses statewide diversity issues and provides support to each agency or department in developing and implementing individual diversity programs tailored to agency/department needs..."

The equal employment opportunity plan builds on specific diversity efforts of the past several years, training by agencies and departments and DHR, educational efforts to eliminate harassment of all types, and equal employment opportunity initiatives already in place in many parts of state government. Pursuant to the Governors' 2002 and 2013 Executive Orders, the Commissioner of Human Resources is also charged with working with agencies and departments in the preparation, monitoring, and enforcement of agency/department-specific EEO plans.

The GWEDC, working with DHR and assisted by State and agency/department EEO officers, will make recommendations regarding:

- Recruitment — examining advertising, job fairs and other approaches to attracting workers, including identification of target markets through many different types of venues.
- Retention/Promotion —practices to encourage retention and promotion of individuals from underutilized groups.
- Training/Education — programs that foster diversity and support equal employment opportunity goals, and that prevent harassment and discrimination.

Using the EEO plan as a foundation, the GWEDC and DHR will seek progress in recruitment, employee promotion, diversity training, and/or other initiatives that improve employees' understanding of equal employment opportunity.

The Commissioner of Human Resources will work with other agency and department heads to ensure that their EEO plans support and complement the State EEO plan.

GWEDC and DHR Accomplishments and Goals for 2013-2014

Accomplishments

The GWEDC has worked with DHR in the past year to advance the goals established in the EEO plan. Following is a list of some of the Council's accomplishments this year.

- **Limited English Proficiency**. The Council built on its work of previous years by comparing the best practices guidelines developed by the Council with LEP plans or statements that exist in other agencies or departments in state government. The work group's research revealed several agency/department-level LEP plans addressing external customer relations, and found no LEP guidelines in agencies/ departments that addressed LEP practices with employees.
- **2003/2010 Vocational Rehabilitation Disability Employee Survey Results Analysis**. This work group reviewed and compared results of these surveys extensively, and identified discrepancies/areas for improvement in the two instruments, and potential areas for improvement in practices, training and awareness in state government.
- **Consulting Project with Vermont Certified Public Manager® Program Team**. The Council hosted a consulting project for a team of participants in the Vermont Certified Public Manager® Program (VCPM), which examined accessibility in the on-line employment application system. The Council and DHR may determine action items in the coming year.

Goals 2014

The Council's work in 2013 has laid a solid foundation on which to build its work, and DHR's equity and diversity priorities for 2014.

- Infuse cultural competence and diversity awareness content into existing and future training for DHR Field Operations, Directors, and other key DHR staff, with ongoing follow-up and support for these individuals to facilitate further training of others.
- Support DHR's expansion of supervisor training programs for all State supervisors and managers by providing curriculum resources in cultural competence and collaboration with DHR and across State agencies and departments.
 - a. Explore potential points of collaboration with Vocational Rehabilitation, including linking SOV job postings with VR's "Salesforce" software, to allow VR's employment teams to support their clients in SOV job applications; and exploring VR's "Progressive Employment" program and whether or not it may align with DHR's recruitment program

and/or internship program to enhance employment success. Policy, contract, and resource implications would likely weigh large in this exploration.

- Explore the feasibility of implementing one or more LEP best practices.
- Follow up on the 2010 Vocational Rehabilitation Employee Survey by identifying and prioritizing potential action items based on the results analysis.
- Meet with Recruitment Services to explore what may be done to address the key question raised in the VCPM consulting project results: *How does SOV continue to improve its ability to assist those who have difficulty applying, or simply cannot apply, on line?*

STATE'S EEO PLAN RESPONSIBILITIES

Department of Human Resources

- Submit an annual report on the program to the Governor by January 15. Annually provide the Governor with the updated Plan to approve by April 30.
- Implement and monitor the State's EEO Plan and work with agencies and departments to develop their Plans.
- Maintain employee statistics on race, sex, national origin, disability status, and age by EEO-4 job category, pay grade, and step to the extent that accurate information is available.
- Monitor and report annually to the Secretary of Administration regarding grievance proceedings from Step III, keeping a confidential, aggregate record of grievances that allege discrimination, including the nature of the grievances, and the resolution of the grievances.
- Train and monitor departments and agencies granted authority for decentralized recruitment.
- Ensure reasonable accommodations in the Workforce Planning & Development Group for all job applicants. Examples include American Sign Language interpretation, readers, accessible facilities, TTY (text telephone device) or relay service, and large print materials.
- Through the State Workforce Equity & Diversity Coordinator, provide technical assistance to the Governor's Workforce Equity and Diversity Council, and to agencies, departments and other units of government in development of individual equal employment opportunity plans.
- Consult with and advise the Commissioner of Human Resources and the Secretary of Administration with regard to the development, implementation, and maintenance of the State's Equal Employment Opportunity Plan.
- Meet on a regular basis to ensure ongoing coordination of efforts, monitoring of activities against goals and objectives, and compliance with federal and state mandates and the State/VSEA and State/VTA contracts.

Department of Labor

- Provide data and interpretation to the Commissioner of Human Resources regarding Vermont's civilian labor force and applicant pools.

Secretaries, Commissioners and Directors

- Ensure compliance with the State Equal Employment Opportunity Plan and their agency/department equal employment opportunity programs.
- Ensure there are no barriers to equal employment opportunities.
- Ensure employee attendance at training programs to support equal employment opportunity goals and objectives.
- Ensure staff are adequately trained and assigned responsibility for the policies, procedures and activities related to their agency/department equal employment opportunity programs.

Guidelines and assistance for developing or updating agency-specific plans are provided by the Department of Human Resources. An agency/department EEO Plan outline is attached as Appendix F. Copies of the Plans can be obtained from the specific department or agency.

STATE'S EEO PLAN UPDATING AND DISTRIBUTION

The Equal Employment Opportunity Plan is to be updated annually, under the oversight of the Governor's Workforce Equity and Diversity Council, through the Department of Human Resources, and agency/department Equal Employment Opportunity Officers. The Equal Employment Opportunity Plan is reviewed by the Commissioner of Human Resources and approved by the Governor.

Comprehensive communication of the State's EEO Policy and Plan (EEOP), both internally and externally, is fundamental to the successful implementation of the EEOP. The State will utilize a variety of effective internal and external formal communication mechanisms to publicize and disseminate its EEO Plan. EEO Officers will ensure that all required EEO posters and policy statements are prominently displayed in conspicuous and accessible locations at State worksites. EEO Officers will also provide the Plan to employees upon request. The State will ensure that all employment advertisements and vacancy announcements state the State is an Equal Employment Opportunity Employer. The State's EEO Policy and Plan are published in a prominent location on the State's internet and intranet websites, and can be accessed through the Department of Human Resources' web page (<http://www.humanresources.vermont.gov>). The link is made from the State homepage (<http://www.vermont.gov>) by opening 'Human Resources, Dept. of' under 'Agency A-Z.'

INDIVIDUAL AGENCY/DEPARTMENT PLANS

The following government units are required by federal law to have individual EEO plans:

- Agency of Administration
- Agency of Agriculture
- Agency of Commerce & Community Development
- Agency of Human Services
- Agency of Natural Resources
- Agency of Transportation
- Department of Banking, Insurance, Securities & Health Care Administration
- Department of Labor
- Agency of Education
- Department of Liquor Control
- Department of the Military
- Department of Public Safety
- Office of the Attorney General
- Office of the Defender General
- Vermont Veteran's Home

Guidelines and assistance for developing or updating agency-specific plans will be provided by the Department of Human Resources. An agency/department EEO Plan outline is attached as Appendix F. Copies of individual Plans can be obtained from the specific agency or department.

GLOSSARY

Affirmative Action — A commitment to identify and remove obstacles to employment and career advancement opportunities afforded to employees and applicants for employment. Affirmative Action applies to all areas of employment, including, but not limited to recruitment, hiring, retention, accommodations, training, promotion, working conditions, compensation, benefits, transfer, demotion, reduction-in-force, and discharge.

Appointing Authority — The person authorized by statute, or lawfully-delegated authority, to appoint and dismiss employees.

Disability — A physical or mental impairment that substantially limits one or more major life activities.

Discrimination — Unequal treatment of a class of persons or of an individual based on his or her protected class status. Discrimination may involve a single act or it may involve a continuing policy or practice. Discrimination may be intentional or unintentional.

Diversity — The variations among individuals that make a group non-homogeneous. Variations exist according to race, ethnicity, sex, sexual orientation, gender identity, age, disability, religion, place of birth, national origin, and other factors.

Diversity Training— A process whereby individuals gain insight into 1) their personal diversifying characteristics; 2) the diverse make-up of their work environment; 3) strategies for attaining and retaining a diverse workforce, with a view toward maximum utilization of individual talents, skills and perspectives for optimal productivity.

Equal Employment Opportunity — Access to all available employment opportunities, under equal terms and conditions, with equal benefits and services without actions, policies, or practices that differentiate among applicants or employees on the basis of race, color, national origin, place of birth, sex, age, sexual orientation, gender identity, disability, religion, or HIV status. Equal employment opportunity includes equality in recruitment, hiring, retention, accommodations, training, promotion, working conditions, compensation, benefits, transfer, demotion, reduction-in-force, discharge, and all terms and conditions of employment.

Essential Functions — Fundamental job duties; not marginal functions.

Individuals with Disabilities — Persons who have one or more physical or mental impairment that substantially limits one or more major life activity, or those who have histories of such impairments, or are regarded as having such impairments.

Minority — A member of an identifiable, disadvantaged group making up less than a majority of the population. Most commonly, this term is used to refer to groups that are of a different race or national origin than the majority of the population.

Protected Class— A group of people protected under federal and/or state fair employment

practices law. In Vermont, state and/or federal laws protect people from employment discrimination on the basis of age, color, disability status, sex, national origin, pregnancy, race, religion, protected activity (for which retaliation is illegal), ancestry, HIV status, place of birth, gender identity, and sexual orientation.

Reasonable Accommodation — Any change or adjustment to a work environment that enables a qualified applicant or employee with a disability to apply for a job, to perform its essential functions, or to enjoy the benefits and privileges of employment equal to those enjoyed by employees without disabilities.

Relevant Labor Market — The geographical area from which an employer recruits its employees. (For this plan, the relevant labor market is Vermont.)

Representative Parity — When an employer utilizes racial or ethnic minorities or women at a reasonable rate, based on their availability in the relevant labor market.

Step III Grievance — An expression of dissatisfaction with aspects of employment or working conditions under a collective bargaining agreement, or a complaint alleging discriminatory application of a rule or regulation. At this stage of the grievance procedure, an employee, a group of employees, or the employee's collective bargaining representative presents a written complaint to the Department of Human Resources.

APPENDIX A

STATE OF VERMONT

Executive Department

EXECUTIVE ORDER

WHEREAS, the State of Vermont is an equal opportunity employer and is committed to the concept of affirmative action in the practice of equal opportunity in all aspects of employment in state government; and

WHEREAS, affirmative action is a continuing commitment by the state to identify any obstacles to the employment and career advancement afforded employees of the state and to work to remove those obstacles without regard to race, color, religion, national origin, sex, sexual orientation, ancestry, place of birth, age, physical or mental disability or condition or HIV status.

WHEREAS, the Department of Personnel is developing a formal statewide Workforce Planning process that will capitalize on the benefits of diversity and promote a talented and skilled workforce.

NOW THEREFORE, BE IT RESOLVED THAT I, Howard Dean, by virtue of the power vested in me as Governor, do hereby:

1. Appoint the Commissioner of Personnel or the Commissioner's designee as the Workforce Equity and Diversity Officer of the State of Vermont to:
 - a. With the approval of the Secretary of Administration, develop, implement, and monitor an affirmative action program for the State of Vermont which shall address itself to statewide issues and provide support to each agency/department of state government to ensure the independent development and implementation of agency-specific/department-specific programs tailored to its needs; and
 - b. Work with agencies and departments in the preparation, monitoring, and enforcement of agency-specific/department-specific affirmative action plans;
 - c. Work with personnel officers, field equity and diversity officers, and ADA coordinators to ensure the availability of appropriate training and support for all agencies and departments; and
 - d. Ensure that affirmative action and diversity is an integral part of workforce planning and development throughout the executive branch.
2. Create a Governor's Workforce Equity and Diversity Council, which shall:
 - a. Consist of not more than fifteen (15) members to include one representative from each of the following:

Department of Personnel
Vermont State Employees Association
Attorney General's Office

Governor's Commission on the Status of Women
Department of Aging and Disabilities

These members of the council shall be appointed by their respective agencies. The remainder of the Council shall consist of three (3) at-large state government executive branch employees, and seven (7) public members who belong to historically disadvantaged groups or who work for organizations that advocate for such groups, and shall be appointed by the Governor. Each year the Council shall elect two members to serve as chair and vice-chair or as co-chairs of the Council.

- b. The term of office for Council members shall be two (2) years, with members serving at the pleasure of the Governor. The Council shall be attached to the Department of Personnel for the purpose of obtaining assistance with scheduling, taking minutes, maintaining files, and similar administrative support. Council members shall receive reimbursement for mileage and necessary expenses, including meals and reasonable accommodations.
 - c. The Council shall consult with and advise the Commissioner of Personnel and the Secretary of Administration with regard to the development, implementation, and maintenance of the state's Affirmative Action Program and report on the integration of diversity issues with statewide planning and development efforts.
 - d. The Council shall meet on a regular basis to ensure ongoing coordination of efforts, monitoring of activities against goals and objectives, and compliance with applicable federal and state mandates and the state/VSEA contract.
 - e. The Council may establish ad hoc subcommittees and appoint advisors as needed to address specific issues that may arise.
3. Require the Commissioner of Personnel, with the assistance of the State Governor's Workforce Equity and Diversity Council:
- a. To submit an annual report to the Governor as to the progress of the current year's affirmative action plan on January 15; and
 - b. To submit the state's affirmative action plan for the next fiscal year by April 30th for approval by the Governor.

This Executive Order supercedes Executive Order #14-98.

This Executive Order shall take effect upon signing.

Witness my name hereunto subscribed and the
Great Seal of the State of Vermont hereunto affixed
at Montpelier, this day of , 2002, C.E.

Howard Dean, M.D. Governor

APPENDIX B

**STATE OF VERMONT
EXECUTIVE DEPARTMENT
EXECUTIVE ORDER NO. 10-13**

[Governor's Workforce Equity and Diversity Council and Development of an Equal Employment Opportunity Program]

WHEREAS, the State of Vermont is an employer committed to the practice of equal opportunity in all aspects of employment in state government, and

WHEREAS, the State of Vermont is committed to promoting equal employment opportunities by identifying obstacles to employment and career advancement, and endeavoring to remove those obstacles without regard to race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, place of birth, age, physical or mental condition, or HIV status, and

WHEREAS, the Department of Human Resources is developing a statewide Workforce Planning process that will reflect the benefits of diversity and promote a talented and skilled workforce.

NOW, THEREFORE, BE IT RESOLVED that I, Peter Shumlin, by virtue of the authority vested in me as Governor of the State of Vermont, do hereby re-establish and re-constitute the "Governor's Workforce Equity and Diversity Council" and order as follows.

I. Composition, Appointments, and Process

The Council shall have up to fifteen members, including:

- The Commissioner of Human Resources or designee,
- The Commissioner of Labor or designee,
- The Commissioner of the Department of Disabilities, Aging and Independent Living or designee,
- A representative from the Vermont State Employees' Association,
- A representative of the Attorney General's Office,
- A representative of the Vermont Commission on Women,
- Up to seven members of the public belonging to historically under-represented or disadvantaged groups, or working for organizations that advocate for such groups or promote the practices of equal opportunity, appointed by the Governor, and
- Up to two at large members appointed by the Governor.

Each year the Council shall elect at least one member, but no more than two members, to serve as chair or co-chairs of the Council.

The term of office for Council members shall be two years, with members serving at the pleasure of the Governor. Members may be reappointed to subsequent two year terms.

The Council shall be attached to the Department of Human Resources for administrative support. To the extent funds permit, members of the Council who are not state employees shall receive a per diem pursuant to 32 V.S.A. § 1010(e).

II. Charge

The Council's duties include but are not limited to the following:

- A. Consult with and advise the Commissioner of Human Resources and the Secretary of Administration regarding development, implementation, and the maintenance of the state's Equal Employment Opportunity and Diversity Program(s), and shall report on the integration of diversity issues with statewide planning and development efforts;
- B. Meet on a regular basis to ensure ongoing coordination of efforts, monitoring of activities against goals and objectives, and compliance with applicable federal and state laws, mandates, and union contracts, and
- C. The Council may establish ad hoc subcommittees and appoint advisors as needed to address specific issues that may arise.

In addition, the Commissioner of Human Resources, with the assistance of the Council, shall:

- A. With the approval of the Secretary of Administration, develop, implement, and monitor an Equal Employment Opportunity Program for the State of Vermont that addresses statewide diversity issues and provides support to each state agency or department in developing and implementing individual diversity programs tailored to agency/department needs, and
- B. Work with agencies and departments in the preparation, monitoring, and enforcement of agency or department-specific equal employment opportunity and diversity programs, and
- C. Work with human resources administrators and labor relations specialists to make available appropriate training and provide support for all agencies and departments, and
- D. Ensure that equal opportunity and diversity is an integral part of workforce planning and development throughout the Executive Branch, and
- E. submit an annual report to the Governor regarding the progress of the current year's Equal Employment Opportunity Plan and diversity initiatives by January 15th, and
- F. Submit the state's Equal Employment Opportunity Plan for the next fiscal year by April 30th for approval by the Governor.

III. Effective Date

This Executive Order shall take effect upon signing, shall supersede Executive Order 09-02, and shall continue in full force and effect until further order by the Governor.

Dated December 31, 2013.

Peter Shumlin
Governor

Executive Order No. 10-13

APPENDIX C

Governor's Workforce Equity & Diversity Council Member Roster January 2014

Cary Brown, Director
(Co-Chair 2014)
VT Commission on Women
126 State Street
Montpelier, VT 05602
Phone: (802) 828-2852
Cary.brown@state.vt.us
(Commission on Women Representative)

Diane Dalmasse, Director
Div. Voc. Rehab., DAIL
Mailing Address: 103 S. Main St., Weeks 1A
Waterbury, VT 05671
Phone: (802) 871-3068
diane.dalmasse@state.vt.us
(DAIL Representative)

Kate Duffy
Commissioner, Department of Human Resources
110 State Street
Montpelier, VT 05620-3001
Phone: (802) 828-3491
Kate.duffy@state.vt.us
(DHR Commissioner)

Roy V. Hill, II, Trustee
VT Ecumenical Council
P.O. Box 5733
Burlington, VT 05402
Phone: (802) 578-3047
Rvh32002@yahoo.com
(Public member)

Rubin Jennings (VSEA)
(Co-Chair 2014)
Defender General's Office
Prisoner's Rights Office
6 Baldwin St., 4th Floor
Phone: (802) 828-0024 (O)
(802) 279-5972 (C)
rubin.jennings@state.vt.us
(VSEA Representative)

Patricia Nelson
106 James Avenue
Burlington, VT 05409
Phone: (802) 863-7568
pneljohn@gmail.com
(Public member)

Virginia Renfrew
P.O. Box 1274
Montpelier, VT 05601
Phone: (802) 223-5968
Renfrew@sover.net
(Public member)

Marie Salem
Assistant Attorney General
Administrative Law Division,
Office of Vermont Attorney General
109 State Street
Montpelier, VT 05609
Phone: (802) 828-2360
msalem@atg.state.vt.us
(Office of the Attorney General Representative)

Judith Scott, Director
Vermont Refugee Resettlement Program
462 Hegeman Avenue, Ste. 101
Colchester, VT 05446
Phone: (802) 654-1700
jscott@uscrvt.org
(Public member)

Lori Valburn
Agency of Transportation
National Life Building,
Drawer 33
Montpelier, VT 05633-5001
Phone: (802) 828-5561
Fax: (802) 828-1047
lori.valburn@state.vt.us
(State employee at-large)

Vivian Winham
Equal Opportunity & Employee Relations Officer
Norwich University
158 Harmon Drive
Northfield, VT 05663
Phone: (802) 485-2144
vwinham@norwich.edu
(Public member)

Jane Woodruff
Vermont Department of Labor
Montpelier, VT
Jane.woodruff@state.vt.us
(VDOL Representative)

A J Van Tassel
Investigator, Public Protection Division
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609-1001
Phone: (802) 828-1373
ajvantassel@atg.state.vt.us
(State employee at-large)

ADMINISTRATIVE & FACILITATION

Alison Powers
Staff Attorney & EEO Officer, Dept. of Human Resources
110 State Street
Montpelier, VT 05620
(802) 828-3331 (DHR Commissioner's Designee)

Rose Gowdey
Director, Division for Workforce Recruitment, Development & Wellness,
Dept of Human Resources
439 Industrial Lane
Berlin, VT 05620
(802) 828-2930
Rose.gowdey@state.vt.us

APPENDIX D

EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION

Number 3.0

Effective Date: March 1, 1996

Subject: EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION

*** Supersedes Policy Dated: October 1, 1993 ***

Applicable To: All classified employees, as well as exempt, appointed, and temporary, and applicants for employment with the Executive Branch of the State of Vermont.

Issued By: Department of Personnel

Approved By: William H. Sorrell, Secretary of Administration

PURPOSE & POLICY STATEMENT

The State of Vermont is an equal opportunity employer and is committed to offering equal employment opportunities in accordance with Title VII of the Civil Rights Act of 1964 and its amendments. The State's personnel policies and practices prohibit discrimination on the basis of race, color, religion, ancestry, national origin, sex, sexual orientation (as provided by 21 V.S.A. .495), place of birth, age, or physical or mental condition (a person with a qualifying disability) in all employment practices including, but not limited to: recruitment, hiring, promotion, demotion or transfer; layoff or termination; rates of pay and other forms of compensation; selection for training; agency sponsored social and recreational events; and all other terms, privileges, and conditions of employment.

The State of Vermont is committed to non-discrimination in employment and is strongly committed to an aggressive affirmative action program to overcome any manifest imbalance in the work force based on gender, race or disability.

Affirmative Action is synonymous with sound personnel management. Affirmative Action is a step beyond equal opportunity and non-discrimination. With Affirmative Action comes a continued commitment to identify obstacles to the employment and career advancement opportunities afforded to employees, and to work toward removing those obstacles.

With this in mind, the following policy is set in place:

1. The State will take appropriate affirmative action in all personnel actions and conditions of employment involving women, minorities and individuals with disabilities where a demonstrated imbalance exists within job groups or in the case of top management, within Equal Employment Opportunity (EEO) categories, consistent with State Affirmative Action Plans and Policies.
2. The State will include, as appropriate affirmative action, efforts to recruit, select, train and promote women, minorities and individuals with disabilities.
3. Compensation, benefits, job assignments, layoffs, employee development opportunities and discipline shall be administered without bias to race, color, religion, ancestry, national origin, gender, sexual orientation, place of birth, age, or disability.

Supervisory and management personnel are responsible and accountable for the implementation of the Affirmative Action Plan, including efforts to achieve both numerical and programmatic goals. Supervisory and management personnel shall be held accountable for their performance with regard to equal employment opportunity and affirmative action.

PROCEDURES

Executive Order No. 06-93 appointed the Commissioner of Personnel (or his or her designee), as the Equal Employment Officer for the State of Vermont. Under the guidance of the Commissioner of Personnel, the State EEO officer is responsible for developing, implementing and monitoring an Affirmative Action Program for the State of Vermont. This plan will focus on Statewide policies and procedures and will act as a guideline for the establishment of agency/department-specific Affirmative Action Plans.

Each agency/department will:

- Appoint an EEO Officer and immediately notify the State EEO Officer of any change in that appointment.
- Work with the State EEO Officer to implement and maintain an Affirmative Action Program to remedy past or present discrimination.
- Work with the State affirmative action officer to set goals and timetables, establish policies and procedures, and implement corrective action plans where appropriate.

Agency/department Affirmative Action Programs will include the following:

- Development and dissemination of policy.
- Utilization analysis and identification of problem areas, goals and time tables.
- Action-oriented programs.
- Internal monitoring, audit and reporting systems.

The State EEO Officer will also be responsible for auditing agency/department activities to ensure compliance with stated goals and objectives and for reporting the results of agency/department efforts. The State EEO Officer will submit an Annual Report to the Governor and the Governor's Council on Affirmative Action, by January 31st of each year.

It is the responsibility of all agency secretaries, department heads, and division directors, to ensure compliance with this policy. Your continued cooperation and support in this Affirmative Action Program is essential to achieving this important goal.

SEXUAL HARASSMENT

Number 3.1

Effective Date: March 1, 1996

Subject: SEXUAL HARASSMENT

***supersedes Policy Dated: November 1, 1993

Applicable To: All classified employees, as well as exempt, appointed, and temporary, with the Executive Branch of the State of Vermont.

Issued By: Department of Personnel

Approved By: William H. Sorrell, Secretary of Administration

PURPOSE AND POLICY STATEMENT

The State of Vermont is opposed to and prohibits without qualification the harassment of anyone on the basis of gender.

Sexual harassment violates an individual's basic civil rights, undermines the integrity of the workplace, and adversely affects workers and clients whether or not they are direct subjects of harassment. Sexual harassment is a form of discrimination on the basis of sex and is, therefore, prohibited in the work place by both state and federal law as well as the collective bargaining agreements between the State of Vermont and the Vermont State Employees' Association, Inc. It is also unlawful to retaliate against an employee for filing a complaint of sexual harassment or for cooperating in an investigation of sexual harassment.

All employees, including but not limited to staff, supervisors, managers, and appointing authorities, are expected to comply with this policy and take appropriate measures to ensure that sexual harassment does not occur. Disciplinary action, up to and including dismissal, will be taken against any employee who engages in sexual harassment or who otherwise violates this policy.

In addition, every manager and supervisor within the State of Vermont is responsible for providing a work place free from sexual harassment. This duty includes informing and discussing this policy with all employees; ensuring that employees know they are not required to endure sexual harassment; that sexual harassment will not be allowed; that this policy will be enforced; and that charges of sexual harassment will be impartially and immediately investigated. Managers are responsible for ensuring that all new employees receive a copy of this policy; for posting this policy and a poster in prominent and accessible locations in the work place; and ensuring that employees are provided with gender-relations training. Any manager or supervisor who does not deal with sexual harassment complaints consistent with the terms of this policy may be subject to disciplinary action.

DEFINITION OF SEXUAL HARASSMENT:

Sexual harassment is a form of sex discrimination and means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when:

- a) submission to such conduct is made either explicitly or implicitly a term or condition of employment; or
- b) submission to or rejection of such conduct by an individual is used as a component of the basis for employment decisions affecting that individual; or
- c) the conduct has the purpose or effect of unreasonably interfering with an individual's work performance or of creating an intimidating, hostile, or offensive work environment.

PROHIBITED CONDUCT:

Sexual harassment can be either verbal, physical, auditory, or visual. It can be either subtle or overt. Sexual harassment refers to behavior that is not only unwelcome, but which can also be personally offensive, fails to respect the rights of others, lowers morale and interferes with work effectiveness, or violates a person's sense of well-being.

Both men and women can be the victims of sexual harassment and it can occur in situations where one person has authority (or the appearance of authority) over another, and can also occur between equals.

Managers, supervisors, and employees with the appearance of authority shall not threaten or insinuate, either explicitly or implicitly, that an employee's submission to or rejection of sexual harassment will in any way affect the employee's employment, evaluations, wages, advancement, assigned duties, shifts, or any other condition of employment or career development. Harassment by co-workers is also unlawful and prohibited both by applicable federal and state laws and the collective bargaining agreements, even though the loss to the victim may not involve the tangible benefits outlined above.

Examples of other forms of prohibited sexual harassment include, but are not limited to the following, when such acts or behavior come within one of the above definitions:

Verbal: Sexual innuendos, suggestive comments, jokes of a sexual nature, sexual propositions, threats, unwelcome sexual flirtations, persistent requests for dates, degrading words used to describe an individual, other verbal comments of a sexual nature, and graphic commentaries about an individual's body.

Non-Verbal: Sexually suggestive or offensive objects or pictures, written comments, suggestive or insulting sounds, leering, whistling, obscene gestures.

Physical: Unwanted physical contact, which may include touching, pinching or brushing the body, coerced sexual intercourse, and assault.

REPORTING & RESOLUTION OF COMPLAINTS:*

The State, through this policy, commits itself to quick and effective actions to ensure that sexual harassment does not occur or persist. However, the fulfillment of that commitment will in large part depend on the willingness of employees to report prohibited behavior. A timely response to sexual harassment is essential to protect victims from further unwelcome behavior. It also

ensures that the person responsible for objectionable behavior understands its impact on others. A timely report provides the best opportunity for the employer to expeditiously and effectively address the matter with the least possible adverse impact on all parties concerned.

Therefore, all employees should report any incidents of sexual harassment they experience, witness, or know of. Employees are also encouraged, *but not required*, to identify objectionable actions to those responsible for them, and to try to resolve issues informally.

The following process will allow employees to freely report incidents of sexual harassment, free from threats of reprisal, and will protect the rights of all parties involved.

* These Reporting and Resolution of Complaints procedures may be expanded upon by individual departments and agencies. Any specific departmental policies and procedures must first be reviewed and approved by the Department of Personnel.

TO FILE A COMPLAINT:

Any employee who believes (s)he has been the subject of sexual harassment shall report the alleged act(s) as soon as possible to any one of the following:

1. the immediate supervisor;
2. any departmental management staff;
3. any departmental personnel officer;
4. any departmental Equal Employment Opportunity (EEO) Officer
5. any member of the Department of Personnel Employee Relations staff, 110 State Street, Montpelier, VT, 802-828-3454.

NOTE: Any employee may consult with the VSEA to request its assistance. (S)he may also file a complaint of sexual harassment in accordance with the grievance procedures prescribed by the contract. The employer shall ensure that complainants and respondents are advised of their right to VSEA representation under the circumstances required by the contract.

TO PROCESS A COMPLAINT:

1. All complaints received by supervisors, managers, EEO officers, or Department of Personnel staff will be referred immediately to the departmental personnel officer. The personnel officer will coordinate with the appointing authority to ensure that a timely and complete review of the complaint is made. A report of any investigation will first be reviewed with the Department of Personnel Employee Relations Staff, and then a copy of the final report will be provided to the appointing authority. The appointing authority will identify and take steps to promptly remedy the harassment and prevent its recurrence.
2. Within five (5) work days, the appointing authority shall issue a written response to the complainant acknowledging the complaint and providing notice, if applicable, that any prohibited activity is expected to cease. An investigation will be done promptly and a written response will be provided to the complainant. The investigation and response will normally be completed within thirty (30) days.

3. Complainants should be notified that confidentiality cannot be guaranteed if a complaint results in a grievance or other litigation of the complainant.
4. The Department of Personnel and appointing authorities shall ensure that an investigation is conducted when any instance of sexual harassment comes to their attention, even in the absence of a complaint.
5. If the appointing authority or any member of the agency/department personnel unit is named in the complaint, the complainant or his or her representative must bring the complaint to the attention of either the Secretary of Administration or the Commissioner of Personnel to determine the appropriate personnel to be responsible for investigating the charge.
6. Any intimidation, harassment, or interference for filing a complaint or assisting in an investigation and/or intentionally filing a false complaint of sexual harassment will be subject to appropriate discipline, up to and including dismissal.

The use of this procedure does not preclude any victim of sexual harassment from pursuing any other legal remedy. To explore other remedies, employees may also contact the following:

Equal Employment Opportunity Commission

1 Congress Street

Boston, MA 02114

617-565-3200 (Voice/TDD)

Complaints must be filed within 300 days of the adverse action.

Vermont Attorney General's Office

109 State Street

Montpelier, VT 05609-1001

802-828-3171 (Voice/TDD)

Complaints should be filed within 300 days of the adverse action.

Vermont Human Rights Commission

135 State Street, Drawer 33

Montpelier, VT 05633-6301

802-828-2480 (Voice/TDD)

Complaints must be filed within 360 days of the adverse action.

Vermont State Employees' Association, Inc.

155 State Street

Montpelier, VT 05601

802-223-5247

REASONABLE ACCOMMODATION

Number 3.2

Effective Date: March 1, 1996

Subject: REASONABLE ACCOMMODATION

****Supersedes Policy Dated September 30, 1992****

Applicable To: All classified employees, as well as exempt, appointed, and temporary, and applicants for employment with the Executive Branch of the State of Vermont.

Issued By: Department of Personnel

Approved By: William Sorrell, Secretary of Administration

PURPOSE AND POLICY STATEMENT

The State of Vermont endorses the mandate of the Americans with Disabilities Act of 1990 (ADA) which prohibits employment discrimination on the basis of disability.

Consistent with the ADA and Vermont's Fair Employment Practices Act, it is the policy of the State of Vermont, upon request, to provide reasonable accommodation to the known physical or mental limitations of an otherwise qualified employee or applicant with a disability, unless such accommodation would cause an undue hardship. The policy regarding requests for reasonable accommodation applies to all aspects of employment, including the application process.

DEFINITIONS

DISABILITY - An individual with: (1) a physical or mental impairment that substantially limits one or more of the major life activities of such individual (i.e. caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working); (2) a record of such an impairment; or (3) being regarded as having such an impairment.

ESSENTIAL FUNCTIONS - The fundamental job duties of the employment position that an individual with a disability holds or desires.

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 such position.

REASONABLE ACCOMMODATION - Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position the person desires; 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 they are enjoyed by other similarly situated employees without

disabilities. Reasonable accommodation may include, but is not limited to: making existing facilities used by employees readily accessible to and usable by individuals with disabilities; job restructuring; part-time or modified work schedules; reassignment to a vacant position; equipment or devices; adjustment or modification of examination, training materials or policies; and the provision of qualified readers or interpreters.

UNDUE HARDSHIP - Any accommodation that would be unduly costly, extensive, substantial or disruptive, or that would alter the nature or operation of the business.

DIRECT THREAT - A significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.

REASONABLE ACCOMMODATION COMMITTEE (RAC) - A committee established to review and monitor the provisions of this policy. The members of the committee shall be selected by the Commissioner of Personnel. The RAC may be contacted through the Department of Personnel, Employee Relations Division, 802-828-3454.

GENERAL

Applicants or employees cannot be asked whether they have a disability, or to describe the nature or severity of their disability. An applicant can only be asked: "Will you be able to perform all the essential functions of this position with or without a reasonable accommodation"? (See Number 4.11, Interviewing and Reference Checking.) Employment opportunities shall not be denied to anyone based solely on the need to provide reasonable accommodation.

REASONABLE ACCOMMODATION PROCEDURES

Accommodation Request Initiated by an Employee or Applicant

1. An employee or applicant shall make a written request to the immediate supervisor using the Request for Reasonable Accommodation form to include: (1) name, department/agency, job title, address, phone number; (2) description of functional limitations for which accommodation(s) are being requested; and (3) description of any potential reasonable accommodation(s) that would overcome the limitations (See Attachment B).
2. In cases of routine requests for accommodation in the interview process which cost less than \$500 (i.e. for sign language interpreters), it is generally not necessary to use the Request for Reasonable Accommodation form or review process described below.

Department Review

1. After receiving an accommodation request, the supervisor shall notify the appointing authority and contact the departmental personnel officer and, if necessary, other departmental resources for technical assistance.
2. If necessary, medical verification of the disability may be requested from the individual. Any information supplied pursuant to the request for medical verification shall be treated as confidential, to the extent required by law, and shall be kept separate from personnel files.
3. The supervisor and departmental personnel officer, shall review the accommodation request to:

- determine whether the individual is a qualified individual with a disability covered by this policy;
 - analyze the job description for essential functions;
 - review medical verification, if applicable;
 - review the individual's current limitations;
 - review the individual's suggested reasonable accommodation(s);
 - investigate other possible accommodations;
 - determine if the individual can have the disability reasonably accommodated without undue hardship.
4. If there is no reasonable accommodation which will allow the employee to perform the essential functions of his or her present job (i.e. if steps 1 - 3 above have been exhausted), then the Accommodation through Reclassification procedures must be followed (See Attachment A).

Department Response

1. The supervisor shall be responsible for completing the department response section of the Request for Reasonable Accommodation form, to include a description of the accommodation proposed or provided, or a description of why an accommodation request was not granted. The original form must be submitted to the Chair of the RAC, with copies forwarded to the requesting individual, the department personnel officer, and the appointing authority. Whenever possible, an initial response will be communicated within ten (10) work days of receipt of the accommodation request.
2. As an employer, the State is not obligated to provide the "best" accommodation possible, as long as the accommodation offered is sufficient to enable the individual to perform the essential functions of the job.
3. In the following situations, an accommodation request initiated by an individual must be referred to the RAC:
 - If the cost of the proposed accommodation exceeds five-hundred dollars (\$500); has an impact on the duties of any other position; or has an impact on the workload or schedule of another employee.
 - If there is a dispute between the department and the individual requesting the accommodation as to the accommodation to be provided.
 - If, for whatever reason, it is determined that an accommodation request cannot be granted.
4. Notwithstanding the above, nothing shall preclude a department from seeking an advisory opinion from the RAC by calling the Department of Personnel Employee Relations Division at 802-828-3454.

Reasonable Accommodation Committee Review

5. After receiving the completed Request for Reasonable Accommodation form, the RAC will conduct its review to:
 - analyze the job description for essential functions;
 - review medical verification if applicable;
 - review the individual's current limitations;
 - review the individual's suggested reasonable accommodation(s);
 - investigate other accommodations;
 - determine if the disability can be reasonably accommodated without undue hardship.

6. If deemed necessary by the Chair of the RAC, expert opinion will be solicited to determine if there is an appropriate accommodation under the circumstances which is possible.
7. The RAC will attempt to issue its decision within ten (10) work days of receipt of a Request for Reasonable Accommodation form. The RAC will communicate its decision in writing to the requesting individual and the appointing authority. The RAC will set forth the rationale for its decision.
8. The requesting individual is not required to accept an accommodation recommended by the RAC. However, if the individual rejects a recommended reasonable accommodation that would enable the individual to perform the essential functions of the position held or desired, and cannot as a result of that rejection, perform the essential functions of the job, the individual will not be considered a qualified individual with a disability.
9. Any appointing authority or designee dissatisfied with a decision of the RAC may request, by letter to the RAC Chair, an opportunity to discuss the committee's decision within ten (10) days of receipt of the decision.

Direct Threat

10. As an employer, the State may refuse to hire an applicant, or retain an employee who poses a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or sufficiently reduced by reasonable accommodation.
11. If an individual is believed to pose a direct threat, the appointing authority or designee will complete a Request for Reasonable Accommodation form and forward it to the RAC for a decision. In cases of direct threat, the RAC will endeavor to render and communicate its decision within five (5) workdays of receipt of a Reasonable Accommodation Report.
12. Determination will be made on the individual's present ability to safely perform the essential functions of the job. Factors to be considered include: (1) the duration of the risk; (2) the nature and severity of the potential harm; (3) the likelihood that the potential harm will occur; and (4) the imminence of the potential harm.
13. An employee may be temporarily relieved from duty with pay until the RAC makes a decision.

Remedies

14. An employee aggrieved by a decision of the RAC may grieve the decision pursuant to the ADA Grievance Procedures (See Number 10.2).
15. Any applicant who feels (s)he has been discriminated against as an applicant for employment with the State of Vermont may file a complaint through the ADA Grievance Procedures (See Number 10.2).
16. Nothing herein shall preclude any aggrieved individual from pursuing any other legal remedy. To explore other remedies, individuals may also contact the following:

*Human Rights Commission 135 State Street, Drawer 33 Montpelier, VT 05633-1201
802-828-2480 (Voice/TDD)*

VT State Employees' Association, Inc. 155 State Street, P.O. Box 518 Montpelier, VT 05601 802-223-5247

ATTACHMENT A ACCOMMODATION THROUGH RECLASSIFICATION

INTRODUCTION

In compliance with the Americans with Disabilities Act of 1990 (ADA), these procedures will expand the State's Reasonable Accommodation Policy by providing State employees Statewide access to positions they are able to perform at the same or lower pay grades, in lieu of Reduction in Force (RIF) when the employee is disabled and incapable of performing in his or her current job.

This policy **does not** apply to temporary and exempt employees.

PROCEDURES

17. Reasonable accommodation alternatives in an employee's current job must be exhausted before reassignment to the duties of a different position is considered. Such an assignment is appropriately designated as a reasonable accommodation only when it is determined that no reasonable accommodation is available in the current job, as determined by the Reasonable Accommodation Committee (RAC). Any dispute over the reassignment should be referred to the RAC in accord with established procedures.
18. When there is no other reasonable accommodation available within the employee's current position, the personnel officer must determine if there is another position **at the same pay grade** which management intends to fill and for which the employee meets the minimum qualifications and is able to perform, with or without reasonable accommodation. The personnel officer must look first within the employing department, and second within the employing agency,
19. If there is such a position **at the same pay grade** within the employee's geographic area [i.e., within a thirty-five (35) road-mile radius of the regular duty station] which the employee is able to perform with or without reasonable accommodation, the employee **shall be required to perform the duties of the position** and will be **reclassified** accordingly. No further reasonable accommodation steps are required after that point, except those accommodations which may be necessary to permit the employee to perform the new duties. The right of management to require an employee to perform such duties shall be superior to the rights of any current classified State employee or current or former employee on the RIF list. This reassignment shall normally be completed **within ten (10) calendar days** of the RAC determination that the employee can no longer perform the duties of his or her current position.
20. If there is **no position at the same pay grade** in the employing Agency under sections 2 & 3, above, the appointing authority shall, as soon as practicable, notify the Commissioner of Personnel and the RAC Chair of their need to determine whether there are any positions within the remainder of the classified service for which the employee is qualified and is able to perform with or without reasonable accommodation. The employer shall provide the RAC Chair with all relevant documentation including, at least: the employee's current job description (Per-10); a list of the employing agency's current vacant positions; pertinent medical reports; and medical end results for any applicable Workers' Compensation case.
21. When the RAC Chair determines that the employing Agency has complied with all applicable reasonable accommodation steps, the employee shall be placed in a **Pre-Separation Accommodation through Reclassification** status. The employee shall be notified by the RAC Chair that (s)he has been placed in such status, and that the employee has the responsibility to meet with the Department of Personnel's Recruitment

Division to establish his or her parameters for assignment to a position. This process allows the employee to inform the Department of Personnel what work (s)he is willing to do and where. The Accommodation through Reclassification status shall last for **twenty (20) calendar days** and shall begin upon date of receipt of notice.

22. An employee in an Accommodation through Reclassification status shall have, after establishing his or her parameters with the Department of Personnel, the right to be assigned to the duties of positions that management intends to fill that fall within these parameters and which are at the same or lower pay grade for which (s)he meets the minimum qualifications, and which (s)he is capable of performing with or without reasonable accommodation. That right shall be superior to the rights of any current classified State employees or current or former State employees on the RIF list. The employee shall be assigned to the duties of a position for which (s)he is eligible. Refusal of any one such assignment, or no response within five (5) workdays of notice, shall terminate any and all Accommodation through Reclassification status rights, and the employee will be considered to have resigned his or her position and will be separated accordingly. Any questions as to whether an employee is qualified must be resolved by the RAC.

NOTE: A position will not be considered "vacant" in any agency/department until the Accommodation through Reclassification status has been cleared. Positions will not be RIF-cleared if there is an employee eligible for the position.

23. If there is no position available to the employee within the twenty (20) calendar day period of the Accommodation through Reclassification status, the appointing authority shall at once initiate a disability RIF for the employee in accord with the Injury on the Job Article of the current Agreements between the State of Vermont and the Vermont State Employees' Association, Inc. After that point RIF rehire priority will be established in accordance with applicable contractual RIF procedures.
24. Normal contract or regulatory provisions affecting status, seniority, salary, and benefits shall be applicable to any changes effected. In these instances, an employee's salary will be determined by the RIF provisions of the contract.

DISCRIMINATION COMPLAINTS

Number 3.3

Effective Date: July 1, 1999

Subject: **DISCRIMINATION COMPLAINTS**

Applicable To: All classified employees, as well as exempt, appointed, and temporary, with the Executive Branch of the State of Vermont.

Issued By: Department of Personnel

Approved By: Kathleen C. Hoyt, Secretary of Administration

PURPOSE AND POLICY STATEMENT

The State of Vermont is opposed to and contractually bound to respond to discrimination against employees on the basis of race, color, religion, creed, ancestry, sex, marital status, age, national origin, disability, sexual orientation, membership or non-membership in the V.S.E.A., and any other factor that is prohibited by law. The purpose of this policy is to establish protocols for reporting and investigating allegations of discrimination. Sexual harassment is covered separately in Policy 3.1. Reasonable accommodation for disability and the Americans With Disability Act are covered by Policy 3.2.

Many of the above-listed forms of discrimination are made unlawful by state and federal law. All are prohibited by the collective bargaining agreements between the State of Vermont and the Vermont State Employees' Association, Inc. In addition to the prohibitions on discrimination, it is unlawful to retaliate against an employee for filing a complaint of discrimination. Allegations of such retaliation will be investigated in the same manner as reports of discrimination. Discipline for making a complaint of discrimination that the complainant knows to be false is not retaliation.

All employees, including but not limited to non-supervisory staff, supervisors, managers, and appointing authorities, are expected to comply with this policy and take appropriate measures to ensure that discrimination does not occur. Disciplinary action, up to and including dismissal, may be taken against any employee who engages in discrimination or who otherwise violates this policy, applicable state and federal laws, or the collective bargaining agreements. In addition, every manager and supervisor within the State of Vermont is responsible for providing a work place free from discrimination. This duty includes disseminating this policy so that all employees are aware that:

they are not required to endure discrimination;

discrimination will not be allowed;

this policy, the collective bargaining agreement prohibitions, and state and federal discrimination laws will be enforced; and

charges of discrimination will be impartially and immediately investigated.

Managers are responsible for ensuring that all new employees receive a copy of this policy; for posting this policy in prominent and accessible locations in the work place; and striving to provide employees with diversity training. Any manager or supervisor who does not deal with discrimination complaints consistent with the terms of this policy may be subject to disciplinary action.

EXPLANATION OF TERMS USED

Agency - Throughout this policy, the term agency is intended to refer to all categories of State of Vermont Executive Branch government units. The term agency head refers to the appointed or elected head of each unit. This includes agencies, departments, offices of elected officials such as the Attorney General and Treasurer, and independent boards and commissions.

Appointing Authority - As used in this policy, the term appointing authority refers to the government official who is charged with making significant decisions regarding employees, to include hiring and discipline. The appointing authority may be the appointed or elected head of the government unit, or the official delegated by the appointed or elected official to make such decisions.

Discrimination - As used in this policy, the term discrimination is intended to include all forms of mistreatment or denial of privileges in the workplace based upon impermissible factors as established by state or federal law, applicable regulations, or the collective bargaining agreements between the State of Vermont and the Vermont State Employees' Association, Inc.

Victim - Throughout this policy, the term victim means the actual or alleged target of the discriminatory behavior that is being investigated. It is not meant to exclude the victim identified in a claim of discrimination that is not substantiated by investigation. The term victim is not interchangeable with the term complainant because not all victims complain, nor are all complainants victims.

Complainant - An individual who brings allegations of discrimination to the attention of state officials.

REPORTING & RESOLUTION OF COMPLAINTS

The State, through this policy, commits itself to take necessary action to deter discrimination in the workplace. However, the fulfillment of this commitment will, in large part, depend on the willingness of employees to report prohibited behavior. A timely response to discrimination is essential to protect victims from further unwelcome behavior. It also ensures that the person responsible for objectionable behavior understands its impact on others. A timely report provides the best opportunity for the employer to expeditiously and effectively address the matter with the least possible adverse impact on all parties concerned.

Therefore, all employees should report any incidents of discrimination, based upon any of the prohibited factors, that they experience, witness, or of which they are aware. In some instances, such as where discriminatory or offensive behavior may be unintentional, informal and direct objection can be the best way to remedy a problem. In such instances, employees are encouraged, but not required, to identify objectionable actions to those who commit them, and to try to resolve issues informally.

The following process allows employees to freely report incidents of discrimination, free from threats of reprisal, and protects the rights of all parties involved.

These Reporting and Resolution of Complaints procedures may be expanded upon by individual departments and agencies. Any specific departmental policies and procedures must first be reviewed and approved by the Department of Personnel, Employee Relations Division.

TO FILE A COMPLAINT:

1. Any employee who believes (s)he has been the subject of discrimination shall report the alleged act(s) as soon as possible to any one of the following:

an immediate supervisor;

any agency management staff;

any agency personnel officer (agency personnel officers act as agency Equal Employment Opportunity (EEO) Officers); or

any member of the Department of Personnel Employee Relations staff, 110 State Street, Montpelier, VT 05620, 802-828-3454.

NOTE: Any employee may consult with the VSEA to request its assistance. (S)he may also file a complaint of discrimination in accordance with the grievance procedures prescribed by the contract. The employer shall ensure that complainants and respondents are advised of their right to VSEA representation under the circumstances required by the contract.

2. Employees who witness discriminatory acts are encouraged to report their observations to any of the appropriate state officials identified in this policy.

COMPLAINT PROCESSING PROCEDURE:

1. Complaints Will Be Promptly Referred To The Appropriate Authority

All complaints received by a supervisor, manager, EEO or personnel officer, Department of Personnel staff person, or any other state official will be immediately referred to the departmental personnel officer of the employee who is the alleged victim of the discriminatory conduct.

2. Agencies Will Promptly Respond

Once a complaint is referred to an agency, the agency personnel officer will notify the appointing authority and the Department of Personnel to ensure timely and complete review of the complaint. The Department of Personnel and appointing authorities shall ensure that an investigation is conducted when any instance of discrimination comes to their attention, even in the absence of a complaint. The steps to be taken upon receipt of a complaint are:

- a. Appointment of an Investigator.

The responsibility for determining who will investigate and the scope of the investigation is with the agency head. The appropriate agency head is the official in charge of the agency that employs the victim. If in a single incident there are multiple victims employed by more than one agency, the agencies will coordinate with the Department of Personnel to identify a single responsible appointing authority to conduct the investigation. If the individual accused of discrimination is a state employee not under the supervision of the same agency head as the victim, immediate notice of the allegation will also be made to the agency head of the accused employee. If the complaint is made against the head of an agency, the complaint will be forwarded to the Commissioner of Personnel. The Commissioner of Personnel will inform the Secretary of Administration and the responsible Agency Secretary, in the event that the target of the complaint reports to an Agency Secretary. The Commissioner of Personnel will coordinate a response on behalf of the Secretary of Administration.

The investigator assigned may be an employee from the same agency, another agency, or may be someone hired on a personal services contract to conduct the investigation. The investigator should be appointed in writing and given specific instruction on the scope of the investigation. Where the allegations include claims of serious misconduct that may constitute criminal conduct, the agency head may elect to defer investigation until completion of a criminal investigation, but only after consultation with the Commissioner of Personnel.

b. Notification to Complainant, Victim, and Accused

Within five workdays, the appointing authority shall issue written notices to complainants, victims, and those accused of discriminatory acts.

For a complainant who is not a victim, the notice should acknowledge the complaint and state that the agency is taking action and that any retaliation should be reported to the agency or Department of Personnel.

For a complainant who is a victim, the notice should also state that the State will endeavor to prevent any additional prohibited activity, that an investigation will be done promptly, and that a written response will be provided when the investigation is completed.

If the complainant identifies specific state employees accused of wrong doing, written notices should be provided to such accused employees. For an employee accused of discriminatory conduct, the notice should state: that the employee has been accused of discriminatory behavior; that while no conclusions about allegations will be drawn until completion of the investigation, such behavior is prohibited by law and the collective bargaining agreements; and that employees are subject to discipline, up to and including dismissal, for engaging in such behavior. The notice should also state that retaliation of any type is not tolerated and will be subject to discipline. Where the complaint alleges serious misconduct, the appointing authority should consider relieving the accused employee from duty with pay.

Personnel officers should seek assistance from the Department of Personnel, Employee Relations Division before sending these notices.

2. Investigation Procedures

The actions taken by the investigator will vary depending on the nature of the allegations and the resources made available, however, the investigation should be broad enough to comply with the minimum reporting requirements listed in the following paragraph.

Witness Interviews

Investigators must comply with the collective bargaining agreements between the State of Vermont and the Vermont State Employees' Association, Inc. when interviewing employees, especially those employees who are accused of or suspected of wrongdoing. Persons interviewed in the course of the investigation should be informed that statements made to the investigator are not confidential and that while the State's policy is to strictly control distribution of investigative reports, such reports may be released as the result of a public records request or in the course of litigation.

Preserving Evidence

An investigator may find tangible evidence when investigating a complaint of discrimination. Examples include documents used in committing discriminatory acts or that memorialize such acts, and non-documentary evidence such as graffiti on a wall or damaged personal property. Reasonable and prudent measures should be taken to preserve evidence. Where appropriate, photographs should be taken and prints labeled with time and place taken. Fingerprints may be taken from a wide variety of substances, thus, where suggested by the circumstances, evidence should be handled carefully to avoid the loss of existing prints or the addition of others. Investigators should seek the assistance of counsel or other experts whenever necessary.

3. Contents of Investigation Report

At a minimum, the report of an investigation into allegations of discrimination will include:

- a summary of the allegations and how they were brought to the attention of state officials;
- summaries of interviews with any alleged victims;
- summaries of interviews of any employees accused of or suspected of wrongdoing;
- summaries of interviews of any other witnesses who may possess information relevant to a fair resolution of the complaint; and
- any documents or other tangible evidence, or photographs or descriptions of such evidence, as appropriate, along with notation of where such evidence is being held for safekeeping.

In any investigation where there is a disagreement as to any material facts, the investigator will state factual findings that reflect his or her resolution of that disagreement.

4. Distribution of the Final Report and Notification to Interested Parties

The final report will be provided to only the appointing authority and the Commissioner of Personnel. The Commissioner of Personnel may elect to provide copies to other state officials. Neither the final report nor the supporting materials will be provided to the victim(s) or employee(s) accused of wrongdoing. The victim will be provided a notice that the investigation

is completed and be informed if any allegations are substantiated. The appointing authority will identify and take steps to promptly remedy any discrimination and prevent its recurrence.

The use of this procedure does not preclude any victim of discrimination harassment from pursuing any other legal remedy. To explore other remedies, employees may also contact the following:

Equal Employment Opportunity Commission 1 Congress Street Boston, MA 02114 617-565-3200 (Voice/TDD) Complaints must be filed within 300 days of the adverse action.

Vermont Attorney General's Office 109 State Street Montpelier, VT 05609-1001 802-828-3171 (Voice/TDD) Complaints should be filed within 300 days of the adverse action.

Vermont Human Rights Commission 135 State Street, Drawer 33 Montpelier, VT 05633-6301 802-828-2480 (Voice/TDD) Complaints must be filed within 360 days of the adverse action.

Vermont State Employees' Association, Inc. 155 State Street Montpelier, VT 05601 802-223-5247

Signed by Kathleen C. Hoyt, August 6, 1999

Approved, Secretary of Administration