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# **Workers' Compensation Court of Appeals**

## **Affirmative Action Plan**

**Biennial  
2002- 2004**

Workers' Compensation Court of Appeals

**Affirmative Action Plan**

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## STATEMENT OF COMMITMENT

The Workers' Compensation Court of Appeals (hereinafter, "Court") is committed to the State of Minnesota's equal employment opportunity policies and statewide affirmative action for its employees and the public it serves. I affirm my personal and official support of these policies which provide:

That the State of Minnesota is committed to hiring individuals with disabilities who can perform the essential job functions with or without reasonable accommodation.

That all employees and potential employees are to be treated equally and that all personnel actions are to be carried out without regard to race, color, creed, national origin, sex, sexual orientation, marital status, status with regard to public assistance, age, disability, membership or activity in a local human rights commission, and religion.

That the Court will further strive to ensure equal access and opportunity in the services it provides to the public.

That the Court will continue to actively promote a program of affirmative action, wherever minorities, women, and persons with disabilities are under represented in the workforce.

The Court will consider for hire qualified members of under-represented, protected groups whenever a vacancy occurs and there is an apparent under-utilization of protected group members in the Court's work force.

Managers and supervisors will be held accountable for ensuring that affirmative action is implemented since these are the individuals who can ultimately make the most impact on this program. Each manager and supervisor shall have a statement in his/her position description on their affirmative action responsibilities.

In order to administer the plan most effectively, I have delegated this responsibility to the Affirmative Action Designee, Sandra Lynott, who will act as the Court's Affirmative Action Officer and is responsible for monitoring the day-to-day activities of the program.

Anyone interested in reviewing the Court's Affirmative Action Plan or who has concerns about affirmative action or equal opportunity issues, may contact our Affirmative Action Officer. A copy of the plan will be located on the Court's bulletin board.

7/14/03  
(Date)

Thomas Johnson  
Chief Judge

## **INTERNAL DISCRIMINATION AND/OR HARASSMENT COMPLAINT PROCEDURE**

The Workers' Compensation Court of Appeals has established the following complaint procedure for processing complaints of alleged harassment and discrimination. Anyone filing a complaint, or serving as a witness, under this procedure shall do so without fear, coercion, reprisal or intimidation.

### **Responsibility of Court Employees**

All employees shall respond promptly to any and all requests by the Affirmative Action Officer (AAO) for information and for access to data and records for the purpose of enabling the AAO to carry out her/his responsibilities under this complaint procedure. The failure of any employee to comply with the requests of the AAO shall be reported to the Assistant Administrator and/or the Chief Judge.

### **Who May File**

Any employee, applicant or eligible, of the Court who believes that s/he has been discriminated against, or anyone who believes that s/he has been harassed, by reason of race, color, creed, national origin, sex, sexual orientation, marital status, status with regard to public assistance, age, disability, membership or activity in a local human rights commission, and religion. Employees who are terminated must file their complaint prior to their actual separation.

### **The Complaint Procedure**

The complaint (Attachment A) must be filed with the AAO within seven (7) working days after the occurrence of the event giving rise to the complaint. In the event that the respondent is the AAO, the complaint may be filed with the Chief Judge.

All documentation associated with a complaint shall be considered confidential information during the course of investigation. The status of the complaint, however, is public. After an investigation is completed, all documentation becomes public information, in accordance with the Data Privacy Act.

The entire complaint procedure will be completed by supplying the parties with a final written answer within 60 working days of the filing of the complaint.

### **Filing Procedures**

1. File the complaint with the AAO in writing, attaching copies of all documents associated with the complaint procedure.
2. The AAO will, within five (5) working days of the receipt of the complaint, determine whether the complaint is properly a discrimination complaint and if so will then send a copy of the complaint to all parties named as respondents on the complaint of discrimination form. The copy shall be accompanied by a letter outlining the basic facts of the complaint and requesting a response to the allegations from the respondent(s) within a specific period of time.

If it is determined the complaint is other than a discrimination complaint, the AAO, within five (5) days of receipt of the complaint, shall send a written letter to the complainant information of other grievance procedures he/she may pursue.

3. The respondent(s) shall report to the AAO in writing, within the time period specified by the letter, setting forth his/her understanding of the situation or causes giving rise to the complaint. If the respondent(s) fail to provide the answer within the specified time period, the allegations contained in the complaint will be considered to be denied by the respondent(s) and the AAO shall proceed to investigate the case.
4. All data collected may at some point become evidence in civil or criminal legal proceedings against the respondent(s) pursuant to state or federal statutes. A thorough investigation may include, but not be limited to, the following types of data:
  - a. Separate interviews or written interrogatories with all parties and/or persons involved in the complaint: complainant, respondent, their respective witnesses, officials having pertinent records or files, etc.
  - b. All records pertaining to the case, i.e., written, tape-recorded, videotaped, filmed, or records in any other form.
5. At the conclusion of the investigation, the AAO shall notify the Chief Judge by letter. This letter shall include the complaint summary, the AAO's determination and recommendation(s) for corrective action. The Chief Judge shall accept, modify or reject the AAO's recommendation(s) and shall take such actions as deemed appropriate, and notify, in writing, the complainant, respondent(s) and the AAO. This notification will include advice to the complainant that they may file a formal charge with the Minnesota Department of Human Rights, the U.S. Equal Employment Opportunity Commission, or may also file charges in District Court if the charge has been first filed with the Minnesota Department of Human Rights or the U.S. Equal Employment Opportunity Commission. The complainant will also be advised to check with each agency regarding current statutes of limitations.
6. If the AAO believes there is insufficient evidence to support the complaint, a letter dismissing the complaint will be sent to complainant, the respondent(s) and the Chief Judge. The letter will include advice to the complainant that they may file a formal charge with the Minnesota Department of Human Rights, the U.S. Equal Employment Opportunity Commission, or may also file charges in District Court if the charge has been first filed with the Minnesota Department of Human Rights or the U.S. Equal Employment Opportunity Commission. The complainant will also be advised to check with each agency regarding current statutes of limitations..
7. Dispensation of the complaint will be filed by the AAO with the Commissioner of the Department of Employee Relations within 30 days of final determination.
8. The AAO shall maintain records of all complaints and any pertinent information or data for three years after the case is closed.

## HARASSMENT POLICY

### Statement of Policy

It is the policy of the Court to prohibit verbal and physical harassment based on race, color, creed, national origin, sex, sexual orientation, marital status, status with regard to public assistance, age, disability, membership or activity in a local human rights commission, and religion. This prohibition with respect to sexual harassment includes overt acts as defined by U.S. Equal Employment Opportunity Commission (EEOC) and those acts which create a negative work environment. Anyone subjected to such harassment should file a complaint with the Court's AAO. Any unintentional or deliberate violation of this policy by an employee will be cause for appropriate disciplinary action. Employees, as well as non-employees in the employer's workplace, are prohibited from these acts which create a negative work environment. The prohibitions also extend to any location, activity or event associated with the Court or with its employees in their capacity as representatives.

Each supervisor is responsible for the application of this policy. This includes initiating and supporting programs and practices designed to develop understanding, acceptance, commitment, and compliance within the framework of this policy. All employees must be informed that harassment is unacceptable behavior, and each supervisor will be responsible for orienting his/her staff to the Court's policy. The AAO will be expected to keep the Court apprised of any changes in the law or its interpretation regarding this form of discrimination. More specifically, the personnel office will be responsible for:

1. Making certain that each individual who makes or recommends employment and other personnel decisions are fully aware of and comply with this policy;
2. Notifying all employees within the Court and orienting each new employee who is hired of this policy;
3. Informing all employees in the Court of the complaint procedure and ensuring that all complaints will be investigated promptly and carefully.

### Definitions

**Harassment** is any behavior which is not welcome, which is personally offensive, which, therefore, may affect morale and interfere with the employee's ability to perform. When the basis of harassment is race, color, creed, national origin, sex, sexual orientation, marital status, status with regard to public assistance, age, disability, membership or activity in a local human rights commission, and religion.

**Harassment based on national origin** has been defined by the EEOC as "Ethnic slurs and other verbal or physical conduct relating to an individual's national origin."

**Sexual harassment** has been defined by the EEOC as "Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment."

Sexual harassment may include, but is not limited to, such actions as:

1. verbal: unwelcome sexual innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions, threats.
2. non-verbal: unwelcome sexually suggestive objects or pictures, graphic commentaries, suggestive or insulting sounds, leering, whistling, obscene gestures.
3. physical: unwelcome physical contact, including touching, pinching, brushing by the body, coerced sexual intercourse, assault.

Finally, it is possible for harassment to occur within two different levels of employee relationship: 1) among peers or co-workers, or 2) between supervisors and subordinates. Employees who experience harassment from co-workers should, if they feel comfortable, make it clear that such behavior is offensive to them or bring the matter to the attention of their supervisors or the Court's AAO. In fulfilling our obligation to maintain a positive and productive work environment, supervisors are expected to halt such harassment between co-workers through appropriate disciplinary action based on the seriousness of the incident. They are also expected to protect a harassed employee who initiates a complaint from reprisal.

A form of sexual harassment which may be more difficult for employees to cope with occurs when people offer or threaten to use the power of their position to control, influence, or affect the career, salary, or job of another employee (or prospective employee such as an applicant) in exchange for sexual favors. Individuals who instigate this type of harassment are subject to the most serious disciplinary actions, including suspensions, demotion, transfer, or termination. Complaints of sexual harassment involving misuse of an individual's official position should be made to the Chief Judge or the Court's AAO.

### **Complaint Procedure**

Anyone (either an employee of the Court or a nonemployee) who believes that he/she has been harassed based on her/his race, color, creed, national origin, sex, sexual orientation, marital status, status with regard to public assistance, age, disability, membership or activity in a local human rights commission, and religion, may file a complaint using the Workers' Compensation Court of Appeals' Affirmative Action Plan Internal Discrimination Complaint Procedure.

## REASONABLE ACCOMMODATION POLICY

### Policy

The State of Minnesota is committed to the fair and equal employment of people with disabilities. Reasonable accommodation is the key to this non-discrimination policy. While many individuals with disabilities can work without accommodation, other qualified applicants, employees and employees seeking promotion face barriers to employment without the accommodation process. It is the Court's policy to reasonably accommodate qualified individuals with disabilities unless the accommodation would impose an undue hardship.

Accommodations will be provided to qualified individuals when such accommodations are directly related to performing a job or competing for a job. Accommodations will not be provided for non job-related personal needs, such as transportation to and from work.

### Definitions:

1. **For purposes of providing a reasonable accommodation, an individual with a disability is defined as:**

A person who has a physical or mental impairment that substantially limits one or more life activities.

2. **Reasonable Accommodation**

A reasonable accommodation is any modification or adjustment to a job, an employment practice, or the work environment that makes it possible for a qualified individual with a disability to enjoy and have access to equal employment opportunity.

Examples of accommodations may include, but are not limited to, acquiring or modifying equipment or devices; modifying examinations and training materials; making facilities readily accessible; job restructuring; modifying work schedules; providing qualified readers or interpreters; and reassignment to a vacant position.

Reasonable accommodation applies to three aspects of employment:

- a. To assure equal opportunity in the employment process;
- b. To enable a qualified individual with a disability to perform the essential functions of a job; and
- c. To enable an employee with a disability to enjoy equal benefits and privileges of employment.

## Procedures - Existing Staff

1. The Court will inform all employees of this accommodation policy in accessible formats.
2. The employee shall inform her/his supervisor of the need for an accommodation and complete the "Employee Request for Reasonable Accommodation" form (Attachment B).
3. The Court may request documentation of the individual's functional limitations to support the request. Any medical documentation must be collected and maintained on separate forms and in separate files. The employee's supervisor, the Assistant Administrator, and the Chief Judge may be told about necessary restrictions on the work or duties of the employee and about necessary accommodations. Supervisors and the Chief Judge will not be told about, or have access to, medical information unless the disability might require emergency treatment.
4. When a qualified individual with a disability has requested an accommodation, the supervisor, the Court's ADA Coordinator, the Assistant Administrator, and the Chief Judge shall, in consultation with the individual:
  - a. Discuss the purpose and essential functions of the particular job involved. Completion of a step-by-step job analysis may be necessary;
  - b. Determine the precise job-related limitation;
  - c. Identify the potential accommodations and assess the effectiveness each would have in allowing the individual to perform the essential functions of the job; and
  - d. Select and implement the accommodation that is the most appropriate for both the individual and the employer. While an individual's preference will be given consideration, the Court is free to choose among equally effective accommodations and may choose the one that is less expensive or easier to provide.
5. The Court's ADA Coordinator should work with the supervisor and employee to obtain technical assistance, as needed.
6. If the supervisor and the ADA Coordinator are unable to make a definitive decision, for whatever reason, about providing the accommodation, the supervisor and the ADA Coordinator will forward a written request for accommodation along with their recommendation to the Chief Judge within four (4) weeks following the employee's request.
7. The Chief Judge will provide a decision in writing to the ADA Coordinator and employee within 10 working days. The Court's Affirmative Action Officer will complete the "Reasonable Accommodation Agreement" form (Attachment C) after the accommodation decision has been made.
8. If an accommodation cannot overcome the existing barriers or if the accommodation would cause an undue hardship on the operation of the Court, the employee and the ADA Coordinator shall work together to determine whether reassignment may be an appropriate accommodation.

The ADA Coordinator shall first look for a vacant position in the Court equivalent to the one presently held by the employee in terms of pay and other job status. If the individual with the disability is not qualified, with or without reasonable accommodation, for a vacant position (or

a position the Court knows will become vacant within a reasonable period of time) the Court may reassign the individual as a reasonable accommodation to a lower graded vacant position for which the employee is qualified. If this occurs, the Court is not required to maintain the individual's salary at the previous level.

The Court will look at transfer opportunities, mobility opportunities, appointment opportunities, noncompetitive and competitive opportunities. (Minn. Stat. § 43A.)

The Court is not required to create a new job or to bump another employee from a job in order to provide a reassignment as a reasonable accommodation.

9. If a request for accommodation is not approved, the Chief Judge shall inform the employee of the reason(s) for nonapproval, in writing, within 3 working days of the decision.

### **Procedure - Job Application**

1. The Court shall notify all applicants of this accommodation policy using accessible formats.
2. When a request for accommodation is received from an applicant, the supervisor and the ADA Coordinator will discuss the needed accommodation and discuss possible alternatives with the applicant.
3. The supervisor and the ADA Coordinator will recommend and request approval for the accommodation from the Chief Judge and, if approved, take the necessary steps to see that the accommodation is provided.
4. If the accommodation is not approved, the ADA Coordinator will inform the applicant the reason for nonapproval, in writing, within 3 working days of the decision.

### **Policy for Funding for Accommodations**

Funding must be provided by the Court, with the Chief Judge's approval, for accommodations which do not cause an undue hardship (Minn. Stat. § 43A.191(c)).

### **Definition**

#### **Undue Hardship:**

An undue hardship is an action that is unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the Court.

### **Procedure for Determining Undue Hardship**

1. The supervisor will meet with the ADA Coordinator to discuss the requested accommodation.
2. The ADA Coordinator and the Assistant Administrator will determine undue hardship by considering:

- a. The nature and cost of the accommodation in relation to the size, the financial resources, the nature and structure of the Court's operation; and
  - b. The impact of the accommodation on the nature or operation of the Court.
3. If the ADA Coordinator and the Assistant Administrator believe that the accommodation will impose an undue hardship, the ADA Coordinator will forward an undue hardship analysis and recommendation to the Chief Judge within 10 working days following employee request or within 3 working days following applicant request.
  4. The Chief Judge will provide a decision in writing to the ADA Coordinator, Assistant Administrator, supervisor, and employee within 10 working days or applicant within 3 working days.

### **Supported Work**

The Court will review vacant positions and assess the current workload and needs of the office to determine if job tasks might be performed by a supported employment worker(s). If appropriate, a list of supported worker candidates will be requested from DOER. The Court will work with the State ADA/Disability Coordinator to recruit and hire individuals for supported employment if such a position is created.

**WORKERS' COMPENSATION COURT OF APPEALS  
COMPLAINT OF DISCRIMINATION AND/OR HARASSMENT**

Attachment A

**Please Read Before Completion of Form**

Any complaint of discrimination is considered confidential data under Minnesota Statute § 13.39, subs. 1 and 2. You are not legally required to provide this information, but without it, an investigation cannot be conducted. This information may only be released to the Affirmative Action Officer/Designee, the complainant, the respondent, appropriate supervisory personnel and the Chief of Staff and/or Director of Operations.

<b>Complainant (You)</b>		
Name	Job Title	
Work Address	City, State, Zip Code	Telephone (    )
Agency	Division	Supervisor
<b>Respondent (Person Who Discriminated Against You)</b>		
Name	Job Title	
Work Address	City, State, Zip Code	Telephone (    )
Agency	Division	Supervisor

<b>The Complaint</b>	
Basis of Complaint ("X" all that apply):	
<input type="checkbox"/> Race <input type="checkbox"/> Color <input type="checkbox"/> Creed <input type="checkbox"/> National Origin <input type="checkbox"/> Sex <input type="checkbox"/> Sexual orientation <input type="checkbox"/> Marital status <input type="checkbox"/> Status with regard to public assistance <input type="checkbox"/> Age <input type="checkbox"/> Disability <input type="checkbox"/> Membership or activity in a local human rights commission <input type="checkbox"/> Religion	
Date most recent act of discrimination took place:	If you filed this complaint with another agency, give the name of that agency:
Describe how you believe that you have been discriminated against (names, dates, places, etc.):	

**WORKERS' COMPENSATION COURT OF APPEALS  
EMPLOYEE REQUEST FOR REASONABLE ACCOMMODATION**

Attachment B

Please Print or Type

Employee Name	Classification	Date of Request
Division	*Statement of Limitations	
* Attach additional sheets for questions below if necessary.		
1. Type of accommodation requested to perform essential function:		
2. Which essential function(s) of your job will the requested accommodation allow to perform?		
3. Why is the requested accommodation necessary to perform the essential job function(s)?		
4. How will the requested accommodation be effective in allowing performance of the essential job function(s)?		
5. Have any non-essential job functions been eliminated? Please describe.		
Signature of Employee	Date	
Signature of Supervisor	Date	
Signature of Manager	Date	
Additional Comments:		

\*Information on this form shall be confidential with the exceptions according to the Rehabilitation Act of 1973, Section 504, subd. 84.14.

REASONABLE ACCOMMODATION AGREEMENT

This form is to be completed by the Department's Affirmative Action Officer after the reasonable accommodation decision has been made. The signatures on the bottom of this form indicate an agreement between the employee and the Department to the specific accommodation.

Name of Employee \_\_\_\_\_

Name of Division Manager \_\_\_\_\_

The request for reasonable accommodation to the needs of the above named handicapped employee was:

\_\_\_ Accepted \_\_\_ Denied

Justification for the decision (indicate specific factors considered):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If reasonable accommodation was approved, was the employee's suggestion accepted?

\_\_\_ Yes \_\_\_ No \_\_\_ Partially

Reason:

\_\_\_\_\_  
\_\_\_\_\_

Describe specific accommodations to be made:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Cost Estimate: \_\_\_\_\_

I have read the employee request for reasonable accommodation. I understand that all tangible accommodations purchased by the Department, will become the Property of the State of Minnesota.

Signature of Employee \_\_\_\_\_ Date \_\_\_\_\_

Signature of Executive Director \_\_\_\_\_ Date \_\_\_\_\_

Signature of Affirmative Action Officer \_\_\_\_\_ Date \_\_\_\_\_