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State of Minnesota

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# **Workers' Compensation Court of Appeals**

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## **Affirmative Action Plan**

**2004 - 2006**

Minnesota Judicial Center  
25 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

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**2004 - 2006 Affirmative Action Plan**

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## Statement of Commitment

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The Workers' Compensation Court of Appeals (hereinafter, "Court") is committed to Minnesota's statewide affirmative action efforts and equal employment opportunity policies. I affirm my personal and official support of these policies which provide that:

- Discrimination against employees, applicants, or eligibles on the basis of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local human rights commission, disability, sexual orientation, or age will not be tolerated;
- The Court is committed to the implementation of the affirmative action policies, programs, and procedures included in this plan;
- The Court will continue to actively promote a program of affirmative action, wherever minorities, women, and persons with disabilities are underrepresented in the workforce;
- The Court is committed to the retention all qualified, talented employees, including protected group employees.

Sandra Lynott will act as the Court's Affirmative Action Officer designee and ADA Coordinator designee. She 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 request a copy of the plan from Sandy Lynott.

It is the policy of the Court to provide an employment environment free of any form of discriminatory harassment as prohibited by federal, state, and local human rights laws. I strongly encourage suggestions as to how we may improve the Court. We strive to provide equal employment opportunities and the best possible service to the citizens of Minnesota.

8/2/04  
Date

Thana John  
Executive Director

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## **Harassment/Discrimination Policy**

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### **Statement of Policy**

It is the policy of the Court to prohibit harassment of its employees based on race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local human rights commission, disability, sexual orientation, or age. This prohibition with respect to harassment includes both overt acts of harassment and those acts that create a negative work environment. Any employee subjected to such harassment should file a complaint internally with the Court's Affirmative Action Officer designee. If the employee chooses, s/he may file a complaint externally with the Minnesota Department of Human Rights, the Equal Employment Opportunity Commission, or through other legal channels. These agencies have time limits for filing complaints, so individuals should contact the agencies for more information. In extenuating circumstances, the employee should contact the Office of Diversity and Equal Opportunity at the Minnesota Department of Employee Relations for information regarding the filing of a complaint. Any unintentional or deliberate violation of this policy by an employee will be cause for appropriate disciplinary action.

Each employee 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. The Affirmative Action Officer designee will be expected to keep the Court and its employees apprised of any changes in the law or its interpretation regarding this form of discrimination. The Affirmative Action Officer designee is also responsible for:

1. Notifying all employees, and orienting each new employee who is hired, of this policy; and
2. Informing all employees of the complaint procedure and ensuring that all complaints will be investigated promptly and carefully.

### **Definitions**

Discriminatory harassment is any behavior based on protected class status which is not welcome, which is personally offensive, which, therefore, may effect morale and interfere with the employee's ability to perform. For example, harassment based on national origin has been defined by the U.S. Equal Employment Opportunity Commission as "Ethnic slurs and other verbal or physical conduct relating to an individual's national origin."

Sexual harassment has also been specifically defined by the Minnesota Human Rights Act, which states in regard to employment, that:

“Sexual harassment” includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal or physical conduct or communication of a sexual nature when: (1) submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment; (2) submission to or rejection of that conduct or communication by an individual is used as a factor in decision affecting that individual's employment; or (3) that conduct or communication has the purpose or effect of substantially interfering with an individual's employment, and in the case of employment, the employer knows or should know of the existence of the harassment and fails to take timely and appropriate action.

It is possible for discriminatory harassment to occur: 1) among peers or coworkers, 2) between managers and subordinates, or 3) between employees and members of the public. Employees who experience discriminatory harassment should bring the matter to the attention of the (agency name)'s Affirmative Action Officer designee. In fulfilling our obligation to maintain a positive and productive work environment, the Affirmative Action Officer designee and all employees are expected to address or report any suspected harassment or retaliation.

Varying degrees of discriminatory harassment violations can occur and require varying levels of progressive discipline. Individuals who instigate harassment are subject to serious disciplinary actions up to and including suspension, demotion, transfer, or termination. Additionally, inappropriate behaviors that do not rise to the level of discriminatory harassment, but are none the less disruptive, should be corrected early and firmly in the interests of maintaining a barrier-free work place. Individuals who participate in inappropriate behaviors at work are also subject to disciplinary actions.

### **Procedure**

Any employee, applicant, or eligible of the Court who believes that she/he has experienced discrimination or harassment based on his/her race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local human rights commission, disability, sexual orientation, or age may file a complaint of discrimination.

Complaints of discrimination or harassment can be filed using the internal discrimination complaint procedure included in our Court's affirmative action plan.

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## **Internal Harassment/Discrimination Complaint Procedure**

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The Court has established the following discrimination complaint procedure to be used by all employees, applicants, or eligibles. Coercion, reprisal, or intimidation against anyone filing a complaint or serving as a witness under this procedure is prohibited.

### **Responsibility of Employees**

All employees shall respond promptly to any and all requests by the Affirmative Action Officer designee for information and for access to data and records for the purpose of enabling the Affirmative Action Officer designee to carry out responsibilities under this complaint procedure.

### **Who May File**

Any employee, applicant, or eligible of the Court who believes that s/he has been discriminated against by reason of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local human rights commission, disability, sexual orientation, or age may file a complaint. Employees who are terminated are encouraged to file their internal complaint prior to their actual separation, however, complaints will be taken for a reasonable period of time subsequent to the actual separation date.

### **The Complaint Procedure**

The internal complaint procedure provides a method for resolving complaints involving violations of the Court's nondiscrimination policy within the agency. Employees, applicants, and eligibles are encouraged to use this internal complaint process. Retaliation against a person who has filed a complaint either internally or through an outside enforcement agency or other legal channels is prohibited. The Affirmative Action Officer designee may contact the Office of Diversity and Equal Opportunity if s/he wants information about filing a complaint.

### **Filing Procedures**

1. The employee, applicant, or eligible completes the "Complaint of Discrimination Form" provided by the Affirmative Action Officer designee. Employees are encouraged to file a complaint within a reasonable period of time after the individual becomes aware that a situation may involve discriminatory harassment. The Affirmative Action Officer designee will, if requested, provide assistance in filling out the form.

2. The Affirmative Action Officer designee determines if the complaint falls under the purview of Equal Employment Opportunity law, i.e., the complainant is alleging discrimination or harassment on the basis of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local human rights commission, disability, sexual orientation, or age; or if the complaint is of a general personnel concern. The Affirmative Action Officer designee shall also discuss other options for resolution, such as the Workplace Mediation Pilot Project.
  - A. If it is determined that the complaint is not related to discrimination but rather to general personnel concerns, the Affirmative Action Officer designee will inform the complainant, in writing, within ten (10) working days.
  - B. If the complaint is related to discrimination, the Affirmative Action Officer designee will, within 10 working days, contact all parties named as respondents and outline the basic facts of the complaint. The respondents will be asked to provide a response to the allegations within a specific period of time.
3. The Affirmative Action Officer designee shall then investigate the complaint. At the conclusion of the investigation, the Affirmative Action Officer designee shall notify the complainants and respondents that s/he has completed the investigation. The Affirmative Action Officer designee shall then review the findings of the investigation.
  - A. If there is sufficient evidence to substantiate the complaint, appropriate action will be taken.
  - B. If insufficient evidence exists to support the complaint, a letter will be sent to the complainants and the respondents dismissing the complaint.
4. A written answer will be provided to the parties within sixty (60) days after the complaint is filed. The complainants will be notified should extenuating circumstances prevent completion of the investigation within sixty (60) days.
5. Dispensation of the complaint will be filed with the Commissioner of the Department of Employee Relations within thirty (30) days of final determination.
6. All documentation associated with a complaint shall be considered investigative data under the Minnesota Government Data Practices Act. The status of the complaint will be shared with the complainants and respondents. After an investigation is completed and all appeals are exhausted, all documentation is subject to the provisions of the Minnesota Government Data Practices Act.
7. All data collected may at some point become evidence in civil or criminal legal proceedings pursuant to state or federal statutes. An investigation may include, but is not limited to, the following types of data:

- A. Interviews or written interrogatories with all parties involved in the complaint, e.g., complainants, respondents, and their respective witnesses; officials having pertinent records or files, etc.
  - B. All records pertaining to the case i.e., written, recorded, filmed, or in any other form.
8. The Affirmative Action Officer designee shall maintain records of all complaints and any pertinent information or data for three (3) years after the case is closed.

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## **Reasonable Accommodation Policy**

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### **Policy**

The Court 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 and employees face barriers to employment without the accommodation process. It is the policy of the Court to reasonably accommodate qualified individuals with disabilities unless the accommodation would impose an undue hardship. In accordance with the Minnesota Human Rights Act and the Americans with Disabilities Act, accommodations will be provided to qualified individuals with disabilities when such accommodations are directly related to performing the essential functions of a job, competing for a job, or to enjoy equal benefits and privileges of employment. This policy applies to all applicants, employees, and employees seeking promotional opportunities.

### **Definitions**

#### **Disability:**

For purposes of determining eligibility for a reasonable accommodation, a person with a disability is one who has a physical or mental impairment that materially or substantially limits one or more major life activities.

#### **Reasonable Accommodation:**

A reasonable accommodation is a 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 an equal employment opportunity.

Examples of accommodations may include acquiring or modifying equipment or devices; modifying training materials; making facilities readily accessible; modifying work schedules; 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.

### **Procedure - Current Employees and Employees Seeking Promotion**

1. The Court will inform all employees that this accommodation policy can be made available in accessible formats.
2. The employee shall inform their supervisor or the ADA Coordinator designee of the need for an accommodation.
3. The ADA Coordinator designee 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, locked files. No one will be told 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 employer 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.
  - 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 ADA Coordinator designee will work with the employee to obtain technical assistance, as needed.
6. The ADA Coordinator will provide a decision to the employee within a reasonable amount of time.
7. If an accommodation cannot overcome the existing barriers or if the accommodation would cause an undue hardship on the operation of the business, the employee and the ADA Coordinator designee shall work together to determine whether reassignment may be an appropriate accommodation.

## **Procedure-job Applicants**

1. The job applicant shall inform the ADA Coordinator designee of the need for an accommodation. The ADA Coordinator designee will discuss the needed accommodation and possible alternatives with the applicant.
2. The ADA Coordinator designee will make a decision regarding the request for accommodation and, if approved, take the necessary steps to see that the accommodation is provided.

## **Policy for Funding Accommodations**

Funding must be approved by the Court for accommodations that do not cause an undue hardship (M.S. 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 employee will meet with the ADA Coordinator designee to discuss the requested accommodation.
2. The ADA Coordinator designee will review undue hardships by considering:
  - a. The nature and cost of the accommodation in relation to the size, the financial resources, and the nature and structure of the operation; and
  - b. The impact of the accommodation on the nature or operation of the Court.
3. The ADA Coordinator designee will provide a decision to the employee.

### **Appeals**

Employees or applicants who are dissatisfied with the decisions pertaining to his/her accommodation request may file an appeal with the agency head, within a reasonable period of time, for a final decision.

If the individual believes the decision is based on discriminatory reasons, then they may file a complaint internally through the agency's complaint procedure as outlined in this plan.

## **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.

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**COMPLAINT OF HARASSMENT/DISCRIMINATION**

**Please Read Before Completion of Form**

Any complaint of harassment/discrimination is considered confidential data under Minnesota Statute 13.39, Subd. 1 and 2. This information is being collected for the purpose of determining whether harassment/discrimination has occurred. 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, and appropriate personnel.

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

<b>The Complaint</b>	
Basis of Complaint ("X" all that apply):	
<input type="checkbox"/> Race	<input type="checkbox"/> Color <input type="checkbox"/> Disability <input type="checkbox"/> Sexual Orientation
<input type="checkbox"/> Sex	<input type="checkbox"/> Creed <input type="checkbox"/> Marital Status <input type="checkbox"/> Status with Regard to Public Assistance
<input type="checkbox"/> Age	<input type="checkbox"/> Religion <input type="checkbox"/> National Origin <input type="checkbox"/> Membership or Activity in a Local Human Rights Commission
Date most recent act of harassment/discrimination took place:	If you filed this complaint with another agency, give the name of that agency:

<p>Describe how you believe that you have been harassed/discriminated against (names, dates, places, etc.). Use a separate sheet of paper if needed and attach to this form.</p>	

<b>Information on Witnesses Who Can Support Your Case</b>		
Name	Work Address	Work Telephone
1.		( )
2.		( )
3.		( )

Additional witnesses may be listed in "Additional Information" or on a separate sheet attached to this form.

<p>This complaint is being filed on my honest belief that the State of Minnesota has harassed/discriminated against me. I hereby certify that the information I have provided in this complaint is true, correct and complete to the best of my knowledge and belief.</p>	
Complainant Signature	Date

Affirmative Action Officer Signature	Date
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