

Montana Judicial Branch Personnel Policies & Procedures

Subject: Nondiscrimination	Policy No.: Section 200
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1.0 POLICY

The Judicial Branch is an equal employment opportunity employer and does not discriminate in employment or services based on race, color, national origin, age, physical or mental disability, marital status, religion, creed, sex, pregnancy, child birth or medical conditions related to pregnancy or child birth, culture, ancestry, social origin or condition, genetic information, military service or veteran status, gender identity or expression, sexual orientation or political beliefs.

2.0 DEFINITIONS

"Judicial Branch" means the Montana Supreme Court, the District Courts, and the Water Court. All boards, commissions and related staff attached to the Judicial Branch for administrative purposes are considered part of the Judiciary for purposes of this policy.

3.0 PROCEDURE

The Judicial Branch is an equal employment opportunity employer and prohibits discrimination based on race, color, national origin, age, physical or mental disability, marital status, religion, creed, sex, pregnancy, child birth or medical conditions related to pregnancy or child birth, culture, ancestry, social origin or condition, genetic information, military service or veteran status, gender identity or expression, sexual orientation or political beliefs. This prohibition includes discrimination in hiring, firing, promotions, compensation, job assignments, and other terms, conditions or privileges of employment.

Any employee or applicant for employment who believes he or she has been subjected to discrimination based upon any of these factors should contact the Human Resources Office, the Montana Human Rights Bureau and/or the federal Equal Employment Opportunity Commission (EEOC). Jurisdiction to address any category of discrimination varies.

3.1 PREEMPLOYMENT INQUIRIES

Except as may be required by the reasonable demands of a position, compliance with an affirmative action plan, or government reporting or record-keeping requirements, the Judicial Branch may not gather information concerning race, color, national origin, age, physical or mental disability, marital status, religion, creed, sex, pregnancy, child birth or medical conditions

related to pregnancy or child birth, culture, ancestry, social origin or condition, genetic information, military service or veteran status, gender identity or expression, sexual orientation, or political beliefs . The employer may obtain information required for tracking demographic information after employment.

The Judicial Branch requires preemployment medical examinations only as necessary to determine ability to perform the physical duties of a position. Any preemployment medical examination must be job-related. A conditional offer of employment must be made before a preemployment medical examination can be conducted.

- a. Results of examinations are to be kept in separate files, which are treated as confidential, except that supervisors and managers may be informed regarding necessary restrictions and accommodations, and safety personnel may be informed if a disability might require emergency treatment.
- b. Examination results may not be used to refuse employment or make a distinction in employment unless a reasonable medical evaluation establishes inability of the applicant to safely and efficiently perform the duties of the position with reasonable accommodation, if necessary.

3.2 SEXUAL HARASSMENT

Sexual harassment of employees or any other persons is prohibited. The Judicial Branch shall:

- a. Provide employees with a work environment free of sexual harassment;
- b. Communicate the sexual harassment prevention policy and reporting procedures to employees and supervisors;
- c. Recognize the unique nature of complaints of sexual harassment;
- d. Encourage early reporting by employees; and
- e. Resolve complaints promptly, confidentially, and at the lowest management level possible.

Sexual harassment includes unwelcome verbal or physical conduct of a sexual nature when:

- a. Submission to the conduct is implicitly or explicitly made a term or condition of employment;
- b. Submission to or rejection of the conduct is used as the basis for an employment decision affecting the individual; or
- c. The 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 also includes harassment directed toward a person because of gender, a pattern of sexual favoritism, or harassment because of a person's sexual orientation, gender identity, or gender expression.

Examples of prohibited sexual harassment include, but are not limited to:

- a. Propositions or pressure to engage in sexual activity;
- b. Repeated intentional body contact;
- c. Repeated sexual jokes, innuendoes, or comments;
- d. Repeated staring or leering;
- e. Inappropriate comments concerning appearance;

- f. Display of magazines, books, pictures, or electronic documents with a sexual connotation;
- g. A pattern of hiring or promoting sex partners over more qualified persons; or
- h. Any harassing behavior, whether or not sexual in nature, directed toward a person because of the person's gender, sexual orientation, gender identity, or gender expression.

Officials and employees in supervisory positions are required to immediately report any suspected sexual harassment to the Human Resources office or the Court Services Director.

3.3 OTHER HARASSMENT

Examples of other prohibited harassment include, but are not limited to coercion of employees or others in the participation or non-participation in religious activities; or ethnic slurs, repeated jokes, innuendoes, or other verbal or physical conduct because of a person's status in one of the above listed classes if these actions create an intimidating, hostile or offensive working environment.

3.4 REPORTING PROCESS

The Judicial Branch encourages prompt reporting and resolution of any discrimination complaints or concerns at the lowest possible level. Anyone with information or a complaint is encouraged to complete the Judicial Branch Discrimination Complaint Form (attached to this policy) and submit it to the Human Resources office or the Court Services Director.

- a. Employees or any other person with relevant information should report concerns through the chain of command starting with the employee's immediate supervisor. The chain of command for a Supreme Court employee would be the immediate supervisor, any additional supervisor, and the Supreme Court Administrator. For District Court employees, the chain of command is established in each judicial district but includes an immediate supervisor, other higher-level supervisors, and the supervising District Court Judge. An employee who believes that he/she is being harassed by a supervisor should report concerns to any person in the chain of command or the Human Resources Office.
- b. Supervisors, Supreme Court Justices, District Court Judges, Water Judges, the Clerk of Supreme Court, the Court Administrator or others receiving a complaint of discrimination must notify the Human Resources office for advice and support.
- c. At the request of a Supreme Court Justice, a supervising District Court Judge, the Chief Water Judge, or the Court Administrator, the Human Resources staff or a designee of the Human Resources staff will investigate a complaint. An investigation may involve the gathering of written materials, interviews, and other routine information gathering techniques. The investigator will make a recommendation to the supervisor regarding the validity of the claim and a recommended resolution.
- d. Investigations into complaints of discrimination must be initiated and concluded in a timely manner and without unnecessary delays.
- e. Accused employees will have a right to respond to an investigative report prior to any disciplinary action.
- f. Recommended actions may include discipline as described in the discipline policy, training, or any other appropriate action.

- g. Investigative materials will be considered confidential and will be released only to those people with a need to know.

3.5 RETALIATION

Judicial Branch employees, elected officials, the Water Court judges, the Supreme Court Administrator, and the State Law Librarian may not retaliate or allow, condone, or encourage others to retaliate against any person for opposing unlawful discriminatory practices, filing a discrimination complaint, and/or testifying or participating in any other manner in a discrimination proceeding.

3.6 RESOURCES

Employees wishing to file a complaint with other relevant agencies may do so, but employees are encouraged to first notify their supervisor, someone in their chain of command, and/or the Human Resources office (406-841-2965) of their complaint. Other resources are:

Montana Human Rights Bureau
PO Box 1728
Helena, MT 59624-1728
800-542-0807

Equal Employment Opportunity Commission
909 First Avenue
Suite 400
Seattle, WA 98104-1061
800-669-4000

MONTANA JUDICIAL BRANCH COMPLAINT RESOLUTION FORM

Name: _____

Mailing Address: _____

Telephone Number: _____

Please explain your complaint with as much detail as possible. Be specific, including dates, names, locations, actions or events, witnesses, etc. (You may attach additional pages as needed).

Specific corrective action you are seeking:

Signature

Date

Submit form to: Office of Court Administrator
 Human Resources Office
 P.O. Box 203005
 Helena, MT 59620
 (406) 841-2965