



Smithsonian
Institution

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EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

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1. PURPOSE

This directive provides policies for promoting equal opportunity at the Smithsonian Institution (SI) and links to the associated *Equal Opportunity Handbook*, which contains procedures to implement these policies.

2. BACKGROUND

Smithsonian equal opportunity policies and procedures apply to all federal and trust employees and applicants for employment at the Smithsonian Institution.

In addition, the Smithsonian Institution strives to provide a working environment that is free from discrimination for all affiliated persons (e.g., Interns, Research Associates, Fellows, and Volunteers). Whether an affiliated person has the right to proceed in a process covered by this directive will depend on a determination of his or her legal standing (i.e., for processes related to equal employment opportunity [EEO] complaints and reasonable accommodations for individuals with disabilities).

The protections identified in this directive may not apply in all circumstances to non-U.S. citizens employed by the Smithsonian outside of the United States and its territories. Please contact the Office of Equal Employment and Supplier Diversity (OEESD) or the Office of General Counsel (OGC) for guidance on specific issues.

3. AUTHORITIES

The following laws, regulations, and directives prohibit discrimination based on race, color, sex (including pregnancy, sexual stereotyping, sexual orientation, and gender identity), religion, national origin, age, disability, genetic information, and retaliation for protected EEO activity:

- [Title VII of the Civil Rights of 1964, as amended](#): This law prohibits employment discrimination and harassment because of race, color, religion, sex (including pregnancy, sexual stereotyping, sexual orientation, and gender identity), and national origin. The law also makes it illegal to retaliate against a person because he or she complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The law also requires that employers reasonably accommodate applicants' and employees' sincerely held religious practices, unless doing so would impose an undue hardship on the operation of the employer's business.
- [Equal Pay Act of 1963, as amended](#): This law protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination.
- [Age Discrimination in Employment Act of 1967, as amended](#): This law protects individuals who are 40 years of age or older from discrimination because of age.
- [Sections 501 and 505 of the Rehabilitation Act of 1973, as amended](#): This law prohibits discrimination against a qualified person with a disability in the federal Government. It also requires the Smithsonian to provide reasonable accommodation to qualified employees and applicants with disabilities. This law also requires the Smithsonian to engage in affirmative action for the hiring and advancement of individuals with disabilities.
- [Architectural Barriers Act of 1968, as amended](#): This law requires buildings and facilities designed, built, altered, or leased with federal funds to be accessible to and usable by individuals with disabilities.
- [Title II of the Genetic Information Nondiscrimination Act of 2008](#): This law makes it illegal to discriminate against employees or applicants because of genetic information, which includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about any disease, disorder or condition of an individual's family members (i.e., an individual's family medical history).
- [Section 29 of the Code of Federal Regulations \(CFR\), Part 1614](#): This regulation provides the framework for agencies' equal employment opportunity (EEO) programs, including the processing of complaints of employment discrimination. It also establishes the procedures for developing an EEO counseling system.

- [29 CFR Part 1630](#): This regulation implements the provisions of the Americans with Disabilities Act and the nondiscrimination requirements of Section 501 of the Rehabilitation Act.
- [Executive Order \(EO\) 11478 of 1969, as amended](#): This order requires EEO to be an integral part of personnel policies and practices in the federal Government, including affirmative programs and upward mobility activities.
- [EO 12067 of 1978](#): This order gave the Equal Employment Opportunity Commission (EEOC) the lead in coordinating responsibility for all federal EEO programs and activities.
- [EEOC Management Directive \(MD\) 110](#): This directive establishes procedures for processing federal-sector complaints of employment discrimination.
- [EEOC MD 715](#): This omnibus directive requires agencies to move toward Model EEO Program Status by establishing and reporting on criteria for six essential elements: Demonstrated Commitment; Integration of EEO in the Strategic Mission; Management/Program Accountability; Proactive Prevention of Unlawful Discrimination; Efficiency in EEO Complaints Administration; and Responsiveness/Legal Compliance.

The EEOC has jurisdiction to enforce the prohibitions against employment discrimination under Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, Sections 501 and 505 of the Rehabilitation Act of 1973, the Civil Rights Act of 1991, and Title II of the Genetic Information Nondiscrimination Act of 2008. SI policy also prohibits discrimination (including harassment) based on marital and parental status. However, claims of discrimination on these bases are not within the EEOC jurisdiction to enforce. For this reason, individuals should contact OEESD to determine the appropriate processes to handle concerns relating to parental or marital status issues in the workplace.

4. POLICY

At the Smithsonian, we embrace our differences so that each person is treated with dignity and respect. We are committed to providing a workplace where individuals, regardless of their background, come together and support each other as we affirm and celebrate the values of inclusion and diversity.

It is the policy of the Smithsonian Institution to provide equal opportunity to all employees, applicants for employment, and affiliated persons (e.g., Interns, Research Associates, Fellows, and Volunteers) without regard to race, color, religion, sex (including pregnancy, sexual stereotyping, sexual orientation, and gender identity), age, national origin, disability, genetic information, parental or marital status, and to eliminate all forms of unlawful discrimination and

harassment. To fully support this policy, the Secretary of the Smithsonian issues the [Diversity and Equal Employment Opportunity Policy Statement](#) and the [Prevention of Workplace Harassment Policy Statement](#) annually.

5. DEFINITIONS

The words and phrases below are referenced in this directive. Definitions of other terms related to the equal opportunity program are available in the *Equal Opportunity Handbook*.

Affirmative Programs: Affirmative programs are focused on workplace development to ensure employee and applicant equal employment opportunity.

Age Discrimination: A claim of discrimination based on age by an individual who is at least 40 years of age at the time of the alleged discriminatory act.

Alternative Dispute Resolution (ADR): Another way of settling disputes, which may involve mediation, focused discussion, early intervention, etc. It is a less costly and more expeditious way of resolving disputes. It is available throughout the EEO complaint process: counseling, after filing formally, and prior to a hearing.

Barrier: Agency policy, principle, practice or condition that limits or tends to limit employment opportunities for members of a particular gender, race, age, or ethnic background or for an individual (or individuals) based on disability status.

Basis (Bases): The protected class(es) alleged by a complainant.

Color Discrimination: Treating someone unfavorably because of skin color complexion.

Disability: A person with a disability is defined as one who has a physical or mental impairment which substantially limits one or more major life functions, e.g., walking, speaking, breathing, learning, etc.; one who has a record of such; or one who is regarded as having a disability. For the purpose of statistics, recruitment, and targeted goals, the numbers of employees in the workforce who have indicated having a disability are calculated from the Office of Personnel Management's (OPM) Standard Form (SF) 256. Qualified persons with disabilities are those who can perform the essential functions of the job with or without reasonable accommodation.

Discrimination: Any action, failure to act, and/or reprisal, impermissibly based in whole or in part on a person's race, color, religion, sex (including pregnancy, sexual stereotyping, sexual orientation, and gender identity), national origin, age, physical or mental disability, or genetic information, that adversely affects an employee's/applicant's privileges, benefits, or working conditions; or results in disparate treatment or disparate impact on employees or applicants for employment. Unlawful discrimination may be either intentional or unintentional.

Disparate Treatment: This occurs when people are treated differently with respect to the terms and conditions of employment because of a protected basis.

Diversity: The specific and unique combination of characteristics that differentiates one person or group from another. Differentiation factors might include innate characteristics (e.g., race, ethnicity, sexual orientation, physical and mental abilities, religious beliefs, gender, and age) and/or acquired characteristics (e.g., educational backgrounds, tenure with the organization, lifestyle, culture, and language).

Equal Employment Opportunity (EEO): The policy whereby all personnel activities are conducted to ensure equal access in all phases of the employment process. Employment decisions are based solely on the individual merit and fitness of applicants and employees related to specific jobs, without regard to race, color, religion, sex (including pregnancy, sexual stereotyping, sexual orientation, and gender identity), age, national origin, disability, genetic information, and marital or parental status. Marital or parental status are prohibited by Smithsonian policy.

Genetic Information Nondiscrimination Act of 2008 (GINA): The law that prohibits the improper use of genetic information in health insurance and employment. The Act restricts the deliberate acquisition of genetic information by employers and strictly limits disclosure of genetic information. Under GINA, an employer cannot refuse to hire an employee, discharge an employee, or discriminate against an employee in any terms, conditions, or privileges of employment, based on genetic information.

National Origin Discrimination: Treating people unfavorably because they are from a particular country or part of the world, because of ethnicity or accent, or because they appear to be of a certain ethnic background (even if they are not).

Pregnancy Discrimination: Discrimination on the basis of pregnancy, childbirth, or related medical conditions constitutes unlawful sex discrimination under Title VII of the Civil Rights Act of 1964. Women who are pregnant or affected by pregnancy-related conditions must be treated in the same manner as other applicants or employees with similar abilities or limitations.

Protected Class: A group protected from employment discrimination by law (i.e., based on race, color, religion, sex (including pregnancy, sexual stereotyping, sexual orientation, and gender identity), age, national origin, disability, and/or genetic information). Every U.S. citizen is a member of some protected class and is entitled to the benefits of EEO law.

Race Discrimination: Treating someone (an applicant or employee) unfavorably because he/she is of a certain race or because of personal characteristics associated with race (such as hair texture, skin color, or certain facial features).

Reasonable Accommodation: Reasonable accommodation for individuals with disabilities include such efforts as making facilities readily accessible to, and usable by, persons with

disabilities, job restructuring, part-time or modified work schedules, acquiring or modifying equipment or assistive devices, adjusting or modifying examinations, providing readers or interpreters, and other similar actions. See the Smithsonian's [Procedures for Providing Reasonable Accommodation for Individuals with Disabilities](#). Also, see **Religious Accommodation**.

Religious Accommodation: Any change or adjustment to accommodate sincere religious observances or practices that conflict with work requirements and/or expectations unless the employer can demonstrate that it is unable to do so without undue hardship on the conduct of its business.

Religious Discrimination: Religious discrimination occurs when an employment rule or policy violates a fundamental belief, principle or practice of one's religion and management fails to provide an accommodation. Religious practices are not limited to worship, but may include other practices (e.g., attendance at meetings and retreats, and the wearing of certain attire). Religion is not limited to orthodox or well-recognized denominations (e.g., Catholic, Baptist, or Jewish). All that is required is a sincere and meaningful belief equivalent to the belief in God held by some traditionally recognized religions. Atheists also are protected in their right not to hold or practice any particular religious belief.

Reprisal: Any action taken against an individual for filing a charge of discrimination, participating in a discrimination proceeding, engaging in other EEO protected activity, or otherwise opposing discrimination.

Sexual Harassment: Sexual harassment is a form of sex discrimination and is prohibited by Title VII of the Civil Rights Act of 1964. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when any of these criteria is met:

- Submission to the conduct is made either explicitly or implicitly a term or condition of employment;
- Submission to or rejection of the conduct is used as a basis for employment decisions; or
- The conduct has the purpose or effect of unreasonably interfering with work performance or creating an intimidating, hostile or offensive working environment.

Undue Hardship: In regards to requests for accommodations related to disability, undue hardship is any significant difficulty or expense which, when taken into account with the resources and mission of the Smithsonian, may excuse the agency from providing accommodation to an individual based on disability. In regards to religion, undue hardship means that providing an accommodation would cause more than a minimal burden on the operations of the Smithsonian.

6. RESPONSIBILITIES

An effective EEO program requires the commitment of all individuals in leadership positions. Employees also play an important role in the Smithsonian's efforts to ensure EEO throughout the Institution. Responsibilities include:

- The **Secretary of the Smithsonian Institution** is responsible for:
 - providing direction and sufficient resources for the implementation of an effective program that meets the requirements of applicable laws, regulations, and EEOC guidelines;
 - using the Smithsonian's performance management systems (i.e., performance plans and appraisals) to hold managers and supervisors at all levels accountable for achieving EEO goals within their purview;
 - demonstrating commitment to EEO and a workplace free of discriminatory harassment by issuing policy statements annually;
 - promoting a work environment that is free of unlawful discrimination and harassment; and
 - reviewing and approving the *Annual EEO Program Report to EEOC* (i.e., the *MD-715 Report*) annually.
- The **Director of the Office of Equal Employment and Supplier Diversity (OEESD)** is responsible for:
 - serving as the principal advisor to the Secretary on all matters concerning equal employment opportunity (EEO) by developing policies, programs, and guidance to implement the Smithsonian's EEO policies and report compliance;
 - directing management of the EEO program;
 - completing an annual self-assessment of the Smithsonian's EEO program and certifying completion to the EEOC;
 - conducting barrier analysis to identify obstacles to equal employment opportunity in all personnel areas (e.g., recruitment, hiring, promotions, career development, and retention) and to develop plans to eliminate identified barriers;

- recommending changes to Smithsonian policies and procedures to eliminate discriminatory practices;
 - providing impartial processes to manage, adjudicate and resolve complaints of unlawful discrimination, harassment, and reprisal, and making final agency decisions on EEO complaints as the Secretary's designee;
 - facilitating and promoting alternative dispute resolution options to manage workplace conflict at the lowest level and in the most efficient and effective manner;
 - assisting managers, supervisors, and other Smithsonian staff to provide effective reasonable accommodations to individuals with disabilities; and
 - overseeing the Smithsonian's EEO training initiatives.
- The **Director of the Office of Human Resources (OHR)** is responsible for:
 - promoting and supporting the Smithsonian Equal Opportunity Program by ensuring fair and open competition, participating in the implementation of reasonable accommodations, and assisting unit directors and supervisors in their efforts to achieve EO goals by developing a diverse pool of applicants from which to choose;
 - assisting managers and supervisors in determining appropriate corrective measures and disciplinary actions when complaints of discrimination or harassment are substantiated;
 - eliminating identified barriers to equal employment opportunity;
 - assisting supervisors and management officials with the identification of underrepresented candidates;
 - managing "EEO for Supervisors" training in collaboration with OEESD;
 - collecting, maintaining, and providing required personnel workforce data for the evaluation of EEO programs;
 - implementing corrective actions for identified barriers to promote equal employment opportunity;

- ensuring that employees and applicants have equal access to information regarding job opportunities, employment benefits, training, and other personnel-related activities;
 - ensuring that employees have the opportunity to complete and update forms SF-256, *Self-identification of Disability*, and SF-181, *Ethnicity, and Race Identification*; and
 - working with managers, supervisors, and OEESD to implement reasonable accommodations, including reassignment for individuals with disabilities in accordance with federal regulations.
- The **Director of Access Smithsonian** is responsible for:
 - monitoring progress in achieving accessibility in Smithsonian public programs; and
 - assisting in the accommodation of employees when physical barriers to facilities exist. (**Note:** Guidelines for Access Smithsonian are contained in [SD 215](#), *Accessibility for People with Disabilities*.)
 - The **Director of the Office of Safety, Health, and Environmental Management (OSHEM)** is responsible for:
 - receiving and maintaining medical information that is pertinent to requests for accommodation from employees' designated health care professionals;
 - obtaining the employee's written authorization for release of medical information and communicating directly with medical providers to obtain additional information in the event that the information submitted to Occupational Health Services (OHS) is inadequate or ambiguous;
 - reviewing employees' medical information to identify the nature, severity, and duration of the individual's impairment, the activity or activities that the impairment limits, the extent to which the impairment limits the individual's ability to perform the activity or activities, and how the requested accommodation may assist the employee; and
 - disclosing, upon request by OEESD or the Office of General Counsel (OGC), medical information and documentation (including diagnosis) provided by employee's medical providers to facilitate OEESD or OGC review of requests

for accommodation in accordance with the Institution's [Procedures for Providing Reasonable Accommodation for Individuals with Disabilities](#). See Confidentiality of Data section below.

- The **Director of Smithsonian Facilities (SF)** is responsible for the planning, real-estate management, design and construction services of the Smithsonian Institution. This oversight is applicable to all facility-altering projects in all units, museums, and other Institution organizations. To this end, the Director, SF, delegates the following:
 - **The Director of the Office of Planning, Design and Construction** is responsible for providing leadership for all Smithsonian facility programs as outlined in [SD 410](#), *Facility Construction and Improvement Projects*. This leadership includes planning, budgeting for, designing, constructing, and maintaining facilities that are accessible to people with disabilities.
- The **Chief Information Officer** is responsible for ensuring that electronic data and information technology are readily accessible to, and usable by, persons with disabilities.
- The **Director of the Office of Academic Appointments and Internships (OAAI)** is responsible for disseminating, collecting, and maintaining agreements associated with appointments of Interns, Fellows, and Research Associates, including those related to SI Equal Opportunity Rights and Responsibilities. Standards of conduct related to nondiscrimination and prevention of harassment identified in [SD 205](#), *Research Associates*, [SD 701](#), *Smithsonian Institution Fellows*, and [SD 709](#), *Smithsonian Institution Interns*, provide additional guidance.
- The **Deputy Secretary, Under Secretaries, Assistant Secretaries, Other Direct Reports to the Secretary, and Directors of Museums, Research Centers, and Offices** are responsible for:
 - implementing and supporting Smithsonian EEO policies by providing direction, sufficient resources; and oversight to achieve equal opportunity in their respective units;
 - maintaining a work environment that is free of unlawful discrimination and harassment;
 - providing financial resources for unit employees, affiliated staff, and sponsored programs as they relate to:
 - Costs of EEO complaint investigations covered by the unit where the complaint arose;

- Expenses incurred by providing reasonable accommodations. Costs are paid by the unit that sponsors the meeting or activity (e.g., staff meeting, lecture, equipment needs, etc.). The Smithsonian's Central Accommodation Fund (CAF) was established by the Under Secretary for Administration (USA) to encourage the employment of qualified individuals with disabilities by providing units with supplementary financial support that can help offset the unbudgeted costs of providing reasonable accommodations to those individuals. Units should contact OEESD for assistance; and
 - Expenditures related to diversity recruitment and outreach activities covered by the unit with the vacancy or program sponsor.
 - holding managers and supervisors at all levels accountable for achieving EEO, diversity, and inclusion within their purview by using Smithsonian performance management systems (i.e., performance plans and appraisals);
 - ensuring that managers and supervisors conduct their activities in a manner consistent and compatible with the Institution's equal employment opportunity policies and its affirmative employment programs and plans;
 - ensuring that all managers, supervisors, and employees in their units receive mandatory EEO training;
 - promoting the hiring, placement, and advancement of historically underrepresented groups, including qualified persons with disabilities, and participating in community and professional outreach activities to enhance opportunities; and
 - appointing appropriate staff to serve as contact persons for OEESD's program managers (e.g., HR Liaisons). In this role, staff are responsible for:
 - submitting requested information to facilitate the assessment and reporting of EEO program activities;
 - reporting on EEO training;
 - posting current EEO posters on bulletin boards;
 - submitting activities into the Diversity and Inclusion Initiatives Report (DIIR) SharePoint site on a quarterly basis; and
 - facilitating the provision of reasonable accommodations.
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- **Managers and supervisors** are responsible for:
 - maintaining a work environment that is free of unlawful discrimination and harassment;
 - ensuring that prompt and appropriate inquiry and corrective action are taken in response to reports of inappropriate workplace conduct or comments in coordination with OHR Labor and Employee Relations staff, as appropriate; and taking appropriate action against individuals responsible for unlawful discrimination, harassment, or reprisal;
 - ensuring that all employees in their units receive mandatory EEO training;
 - disseminating EEO policy statements to all employees under their supervision;
 - providing the maximum feasible opportunity to employees to enhance their skills so that they may perform at their highest potential and advance in accordance with their abilities; and
 - making reasonable accommodations to the known physical or mental limitations of a qualified person with a disability upon request unless undue hardship exists.
 - **Smithsonian employees** are responsible for:
 - adhering to the Smithsonian's nondiscrimination policy and anti-harassment policies;
 - completing mandatory EEO training within required time frames;
 - requesting assistance with EEO matters through the resources identified in the *Equal Opportunity Handbook*, [OEESD's website](#) on Prism, and EEO training resources;
 - reporting incidents of discrimination and harassment in good faith;
 - cooperating with SI inquiries and investigations concerning discrimination and harassment; and
 - working to create and maintain an environment that is respectful of their colleagues.
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7. MISSION AND FUNCTIONS OF OEESD

The OEESD ensures compliance with regulatory guidelines and Institution-wide policies by directing, overseeing, facilitating, and reporting on all aspects of equal opportunity in the Smithsonian Institution's employment and business relationships. The OEESD:

- advocates and promotes equal opportunity for all individuals without regard to race, color, sex (including pregnancy, sexual stereotyping, sexual orientation, and gender identity), national origin, religion, age, disability, genetic information, and marital or parental status;
- processes EEO complaints of discrimination and facilitates resolution;
- facilitates the processing of requests for accommodations;
- assesses, monitors, and reports on equal opportunity and supplier diversity initiatives;
- develops, disseminates, and facilitates equal opportunity information and training; and
- advocates and promotes the use of small and disadvantaged businesses in Smithsonian Institution contractual relationships (See [SD 216, Supplier Diversity Program](#)).

A supplementary [Equal Opportunity Handbook](#) provides additional information on the following programs administered by OEESD:

- **Model EEO Program:** The Smithsonian is required to take proactive steps to ensure EEO for all employees and applicants for employment. The OEESD works proactively to prevent potential discrimination before it occurs by regularly assessing employment policies, procedures, and practices to identify barriers to equality of opportunity for all individuals, developing plans to eliminate barriers when they are identified, and reporting EEO efforts to the Secretary, the EEOC, and Congress. The OEESD also facilitates the Institution's efforts to achieve and retain a workforce that reflects the nation's diversity; and
- **EEO Complaints Administration:** Guidelines for processing employment discrimination complaints at the Smithsonian Institution are provided. All discrimination complaints against the Institution are processed under federal guidelines.

8. CONFIDENTIALITY OF SENSITIVE DATA

Confidentiality and privacy are important requirements of EEO processes. In order to have confidence in these processes, individuals must be able to trust that their questions and concerns will be addressed privately to the maximum extent allowable, that documentation will be handled discreetly, and that information will only be shared on a “need-to-know” basis.

Federal regulations require the Smithsonian to collect and maintain personally identifiable information (PII), (e.g., race, ethnicity, and disability). PII is stored in electronic personnel systems and access is limited to persons with a valid business need to know such information in the performance of their duties (e.g., developing diversity reports, EEO complaint investigations). The Smithsonian also collects and maintains sensitive PII (sPII), (e.g., medical information on a person’s diagnosis or condition) as indicated in the Smithsonian’s Reasonable Accommodations Procedures. These practices are consistent with the Smithsonian Privacy Office guidelines identified in [SD 118](#), Privacy Policy, and [SD 119](#), *Privacy Breach Notification Policy*.

SUPERSEDES:	SD 214, <i>Equal Opportunity Handbook</i> , July 29, 2009.
INQUIRIES:	Office of Equal Employment and Supplier Diversity (OEESD).
RETENTION:	Indefinite. Subject to review for currency 36 months from date of issue.
