STATE OF MINNESOTA

WORKERS' COMPENSTION COURT OF APPEALS

Affirmative Action Plan

August 2014 – August 2016

25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155
651-539-1200

This document can be made available upon request in alternative formats by contacting Laura Sengil at laura.sengil@state.mn.us or 651-201-8005.

I. STATEMENT OF COMMITMENT

This statement reaffirms the Workers' Compensation Court of Appeals is committed to Minnesota's statewide affirmative action efforts and providing equal employment opportunity to all employees and applicants in accordance with equal opportunity and affirmative action laws.

I affirm my personal and official support of these policies which provide that:

- No individual shall be discriminated against in the terms and conditions of employment, personnel practices, or access to and participation in programs, services, and activities with regard to race, sex, color, creed, religion, age, national origin, sexual orientation, disability, marital status, status with regard to public assistance, or membership or activity in a local human rights commission.

- This agency is committed to the implementation of the affirmative action policies, programs, and procedures included in this plan to ensure that employment practices are free from discrimination. Employment practices include, but are not limited to the following: hiring, promotion, demotion, transfer, recruitment or recruitment advertising, layoff, disciplinary action, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. We will provide reasonable accommodation to employees and applicants with disabilities.

- This agency will continue to actively promote a program of affirmative action, wherever minorities, women, and individuals with disabilities are underrepresented in the workforce, and work to retain all qualified, talented employees, including protected group employees.

- This agency will evaluate its efforts, including those of its directors, managers, and supervisors, in promoting equal opportunity and achieving affirmative action objectives contained herein. In addition, this agency will expect all employees to perform their job duties in a manner that promotes equal opportunity for all.

It is the agency's policy 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. We strive to provide equal employment opportunities and the best possible service to all Minnesotans.

Commissioner/Agency Head Signature: Patricia F. Nelson

Date: July 8th

II. INDIVIDUALS RESPONSIBLE FOR DIRECTING/IMPLEMENTING THE AFFIRMATIVE ACTION PLAN

A. Commissioner or Agency Head

Chief Judge Patricia Milun, Workers' Compensation Court of Appeals

The Workers' Compensation Court of Appeals is responsible for oversight of the policies contained in this Affirmative Action Plan and complying with all federal and state equal opportunity laws and regulations.

Accountability:
The Workers' Compensation Court of Appeals is accountable directly to Governor and indirectly to the Minnesota Management and Budget Commissioner on matters pertaining to equal opportunity and affirmative action.

B. Affirmative Action Officer or Designee

Patricia J. Milun, Chief Judge, Workers' Compensation Court of Appeals.

Laura Sengil, Director of Human Resources, MMB, Administration, and SmART agencies/boards/councils.

Responsibilities:
The Affirmative Action Officer or designee is responsible for implementation of the policy's contained in the agency's affirmative action plan, and oversight of the agency's compliance with equal opportunity and affirmative action laws.

C. Americans with Disabilities Act Coordinator or Designee

Kate Rios, ADA Coordinator for MMB, Administration and SmART agencies, boards, and councils.

Responsibilities:
The Americans with Disabilities Act Coordinator or designee is responsible for the oversight of the agency's compliance with the Americans with Disabilities Act Title I – Employment and Title II – Public Services, in accordance with the Americans with Disabilities Act - as amended, the Minnesota Human Rights Act, and Executive Order 96-09.

D. All Employees

Responsibilities:
All employees are responsible for conducting themselves in accordance with the agency's equal opportunity and Affirmative Action Plan and policies.

III. POLICY PROHIBITING DISCRIMINATION AND HARASSEMENT

It is the policy of the of the State of Minnesota 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, 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 agency's Affirmative Action Officer or designee. If the employee chooses, a complaint can be filed 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 State Affirmative Action Program Coordinator in the Office of Equal Opportunity and Diversity at Minnesota Management and Budget 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 or designee will be expected to keep the Workers' Compensation Court of Appeals and its employees apprised of any changes in the law or its interpretation regarding this form of discrimination. The Affirmative Action Officer or designee is also responsible for:

Notifying all employees and applicants of this policy; and

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:

- Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment;

- 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

- 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:

- Among peers or coworkers;

- Between managers and subordinates; or

- Between employees and members of the public.

Employees who experience discrimination or harassment should bring the matter to the attention of the Workers' Compensation Court of Appeals' Affirmative Action Officer or designee. In fulfilling our obligation to maintain a positive and productive work environment, the Affirmative Action Officer or 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.

Any employee or applicant who believes that they have experienced discrimination or harassment 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 may file a complaint of discrimination.

Complaints of discrimination or harassment can be filed using the internal complaint procedure included in this Affirmative Action Plan.

IV. COMPLAINT PROCEDURE FOR PROCESSING COMPLAINTS FOR ALLEGED DISCRIMINATION/HARASSMENT

The Workers' Compensation Court of Appeals has established the following discrimination/harassment complaint procedure to be used by all employees and applicants. 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 or designee for information and for access to data and records for the purpose of enabling the Affirmative Action Officer or designee to carry out responsibilities under this complaint procedure.

Who May File:
Any employees or applicants who believes that they have been discriminated against or harassed 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.

Complaint Procedure:
The internal complaint procedure provides a method for resolving complaints involving violations of this agency's policy prohibiting discrimination and harassment within the agency. Employees and applicants 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 or designee may contact the Office of Diversity and Equal Opportunity if more information is needed about filing a complaint.

Filing Procedures:

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

2. The Affirmative Action Officer or 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 or designee shall also discuss other options for resolution, such as the workplace mediation.

    - 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.

    - If the complaint is related to discrimination, the Affirmative Action Officer or designee will, within ten (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 or designee shall then investigate the complaint. At the conclusion of the investigation, the Affirmative Action Officer or designee shall notify the

complainants and respondents that the investigation is completed. The Affirmative Action Officer or designee shall than review the findings of the investigation.

- If there is sufficient evidence to substantiate the complaint, appropriate action will be taken.

- 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. Disposition of the complaint will be filed with the Commissioner of the Minnesota Management and Budget within thirty (30) days after the 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:

   - Interviews or written interrogatories with all parties involved in the complaint, i.e., complainants, respondents, and their respective witnesses; officials having pertinent records or files, etc.; and

   - All records pertaining to the case i.e., written, recorded, filmed, or in any other form.

8. The Affirmative Action Officer or designee shall maintain records of all complaints and any pertinent information or data for three (3) years after the case is closed.

V. REASONABLE ACCOMMODATION POLICY

The State of Minnesota is committed to the fair and equal employment of individuals with disabilities. Reasonable accommodation is the key to this nondiscrimination policy. While many individuals with disabilities can work without accommodation, other qualified employees and applicants face barriers to employment without the accommodation process. It is the policy of the Workers' Compensation Court of Appeals 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, as amended, 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, an individual with a disability is one who has a physical or mental impairment that substantially limits one or more major life activities; or a record of such an impairment; or being regarded as having such an impairment.

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 (3) aspects of employment:

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

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 this agency.

Procedure for Current Employees and Employees Seeking Accommodation:

1. This agency 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 or designee of the need for an accommodation.

3. The ADA Coordinator or 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:

   - Discuss the purpose and essential functions of the particular job involved. Completion of a step-by-step job analysis may be necessary;

   - Determine the precise job-related limitation;

   - Identify the potential accommodations and assess the effectiveness each would have in allowing the individual to perform the essential functions of the job; and

   - 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 agency 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 or designee will work with the employee to obtain technical assistance, as needed.

6. The ADA Coordinator or designee 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 or designee shall work together to determine whether reassignment may be an appropriate accommodation.

Procedure for Job Applicants:

1. The job applicant shall inform the ADA Coordinator or designee of the need for an accommodation. The ADA Coordinator or designee will discuss the needed accommodation and possible alternatives with the applicant.

2. The ADA Coordinator or 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 this agency for accommodations that do not cause an undue hardship.

Procedure for Determining Undue Hardship:
In determining whether or not providing a reasonable accommodation would impose an undue hardship, the agency will consider at least the following factors:

- Overall size of the program (i.e., number and type of facilities, size of budget);
- Type of the operation including the composition and structure of the work force;
- Nature and cost of the accommodation needed;
- Reasonable ability to finance the accommodation; and
- Documented good-faith efforts to explore less restrictive or less expensive alternatives including consultation with the individual with the disability or with knowledgeable individuals with disabilities or organizations.

The ADA Coordinator or designee will provide a decision to the employee.

Appeals:
Employees or applicants who are dissatisfied with the decisions pertaining to an accommodation request may file an appeal with the Commissioner or 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:
This agency 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, the agency will work with the ADA Coordinator or designee and organizations that provide employment services to individuals with disabilities to recruit and hire individuals for supported employment if such a position is created.

APPENDIX

A. Complaint of Discrimination/Harassment Form

(Agencies may include their own complaint form here. Sample form listed below.)

COMPLAINT OF DISCRIMINATION/HARASSMENT FORM

Workers' Compensation Court of Appeals
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

PLEASE READ BEFORE COMPLETION OF FORM

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

Complainant (You)		
Name	Job Title	
Work Address	City, State, Zip Code	Telephone
Agency	Division	Manager/Supervisor's Name

Respondent (Individual Who Discriminated Against/Harassed You)		
Name	Job Title	
Work Address	City, State, Zip Code	Telephone
Agency	Division	Manager/Supervisor's Name

The Complaint Basis of Complaint (Place an "X" in the box for all that apply):		
☐ Race	☐ Disability	☐ Sexual Orientation
☐ Sex (Gender)	☐ Marital Status	☐ Status with Regard to Public Assistance
☐ Age	☐ National Origin	☐ Membership or Activity in a Local Human Rights Commission
☐ Color	☐ Creed	☐ Religion

Date most recent act of discrimination or harassment 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 or harassed against (names, dates, places, etc.). Use a separate sheet of paper if needed and attach to this form.

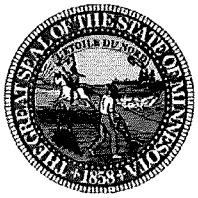
Information on Witnesses Who Can Support Your Case		
Name	**Work Address**	**Work Telephone**
1.		
2.		
3.		

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

This complaint is being filed on my honest believe that the State of Minnesota has discriminated against or harassed 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.

Signatures	
Complainant Signature	**Date**
Affirmative Action Officer Signature	**Date**

B. Employee/Applicant Request for ADA Reasonable Accommodation Form



STATE OF MINNESOTA – WORKERS' COMPENSATION COURT OF APPEALS

EMPLOYEE/APPLICANT REQUEST FOR ADA REASONABLE ACCOMMODATION FORM

The State of Minnesota is committed to complying with the Americans with Disabilities Act ("ADA") and the Minnesota Human Rights Act ("MHRA"). To be eligible for an ADA accommodation, you must be 1) qualified to perform the essential functions of your position and 2) have a disability that limits a major life activity or function. The ADA Coordinator/Designee will review each request on an individualized case-by-case basis to determine whether or not an accommodation can be made.

Employee/Applicant Name:	**Job Title:**
Work Location:	**Phone Number:**

Data Privacy Statement: This information may be used by your agency human resources representative, ADA Coordinator or designee, your agency legal counsel, or any other individual who is authorized by your agency to receive medical information for purposes of providing reasonable accommodations under the ADA and MHRA. This information is necessary to determine whether you have a disability as defined by the ADA or MHRA, and to determine whether any reasonable accommodation can be made. The provision of this information is strictly voluntary; however, if you refuse to provide it, your agency may refuse to provide a reasonable accommodation.

Questions to clarify accommodation requested.

1. What specific accommodation are you requesting?

2. If you are not sure what accommodation is needed, do you have any suggestions about what options we can explore.

    a. If yes, please explain.

Questions to document the reason for the accommodation request *(please attach additional pages if necessary).*

1. What, if any job function are you having difficulty performing?

2. What, if any employment benefit are you having difficulty accessing?

3. What limitation as result of your physical or mental impairment is interfering with your ability to perform your job or access an employment benefit?

4. If you are requesting a specific accommodation, how will that accommodation be effective in allowing you to perform the functions of your job?

Information Pertaining to Medical Documentation

In the context of assessing an accommodation request, medical documentation may be needed to determine if the employee has a disability covered by the ADA and to assist in identifying an effective accommodation.

The ADA Coordinator or designee in each agency is tasked with collecting necessary medical documentation. In the event that medical documentation is needed, the employee will be provided with the appropriate forms to submit to their medical provider. The employee has the responsibility to ensure that the medical provider follows through on requests for medical information.

This authorization does not cover, and the information to be disclosed should not contain, genetic information. "Genetic Information" includes: Information about an individual's genetic tests; information about genetic tests of an individual's family members; information about the manifestation of a disease or disorder in an individual's family members (family medical history); an individual's request for, or receipt of, genetic services, or the participation in clinical research that includes genetic services by the individual or a family member of the individual; and genetic information of a fetus carried by an individual or by a pregnant woman who is a family member of the individual and the genetic information of any embryo legally held by the individual or family member using an assisted reproductive technology.

Employee/Applicant Signature:	**Date:**