

APPENDIX C

GLOSSARY OF EEO TERMS

Affirmative employment. A systematic plan and goals to balance the workforce in all job categories to reflect the same proportion as the general labor market. Examples of affirmative employment efforts include recruiting under-represented groups, promoting under-represented groups, and removing discriminatory obstacles.

Age Discrimination in Employment Act (ADEA). Protects individuals who are 40 years of age or older from employment discrimination.

Alternative dispute resolution (ADR). An informal process that occurs during the pre-complaint or formal EEO complaint process. A third party (usually a trained FEMA employee) assists the opposing parties to reach a voluntary negotiated resolution of the charge of discrimination.

Americans with Disabilities Act (ADA). Prohibits employment discrimination on the basis of disability in both the public and private sectors.

Bona Fide Occupational Qualification (BFOQ). A trait or characteristic that is integral or essential to the job in question. The anti-discrimination laws prevent discrimination on the basis of a characteristic specific to any protected class, unless the characteristic is a bona fide occupational qualification (BFOQ).

Disabled person (as defined by the Americans with Disabilities Act). A person who has a physical or mental impairment that substantially limits one or more major life activities that an average person can perform with little or no difficulty. (See this glossary of terms for definitions of underlined terms.)

Discrimination (as it relates to equal employment opportunity). The intentional or unintentional process of denying a person his or her equal opportunity for employment or advancement because of race, color, sex, religion, national origin, age, or physical/mental disability.

Disparate impact. This type of discrimination occurs when a decision, action, policy, or practice (i.e., hiring and promotion policy or procedures, training, etc.) has unequal consequences for one or more protected groups. For example, an organization requires that all job applicants take and pass an aptitude test written in English. On the surface, this seems nondiscriminatory because everyone is required to take the test. However, the failure rate for the test is consistently higher for one group (e.g., Hispanics) than it is for other groups (e.g., non-Hispanics), which could make use of the test unlawful.

Disparate treatment. A type of discrimination that occurs when an employee or employees are treated differently from other employees because of race, color, sex, religion, national origin, age, or physical/mental ability. An example of this is when an employee who is disciplined claims that he or she received harsher discipline for the misconduct than other employees who engaged in similar behavior.

Equal Employment Opportunity Commission. An independent Federal agency that enforces the Federal Equal Employment Opportunity laws.

EEO complaint process. The process employees and applicants can use when they feel they have been discriminated against.

Equal Pay Act. Protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination.

Equal Rights Officer (ERO). Equal employment experts located in the Disaster Field Office. The Office of Equal Rights in FEMA headquarters oversees the activities of the Equal Rights Officer.

Hostile environment. A form of sexual harassment that involves sexual conduct that has the purpose or effect of unreasonably interfering with a person's job performance or that creates an intimidating or offensive work environment. Hostile environment can also apply to minorities, older people, disabled people, and religious groups as well.

Job-related criteria. The specific duties, responsibilities, and performance requirements of the job. All employment actions (e.g., staffing, downsizing, evaluating performance, etc.) should be based on job-related criteria or qualifications.

Major life activities (as defined by the Americans with Disabilities Act). Include bathing, performing manual tasks, walking, seeing, hearing, breathing, speaking, learning, and working.

Mediation. A form of alternative dispute resolution (ADR) most often used by FEMA. It is an informal process in which a third party (usually a trained FEMA employee) assists the opposing parties to reach a voluntary, negotiated resolution of the charge of discrimination.

Mental impairment (as defined by the Americans with Disabilities Act). Includes most psychological disorders and disorders such as organic brain syndrome and learning disabilities. It specifically excludes various sexual behavior disorders, compulsive gambling, pyromania, and disorders due to current use of illegal drugs.

Office of Equal Rights. The Office of Equal Rights is located in FEMA Headquarters and oversees the activities and functions of each Equal Rights Office in the Disaster Field Office. All formal EEO complaints are filed with the Director, Office of Equal Rights at FEMA Headquarters.

Physical impairment (as defined by the Americans with Disabilities Act). Includes disorders of the sense organs (talking, hearing, etc.), motor functions, and body systems such as respiratory, cardiovascular, reproductive, digestive, urinary, skin, and endocrine systems.

Qualified individual with a disability (as defined by the Americans with Disabilities Act). An employee or applicant with a disability who satisfies skill, experience, education, and other job-related requirements of the job position, and who, with or without reasonable accommodation, can perform the essential functions of the position.

Quid pro quo. A Latin derivative meaning “this for that.” It is a form of sexual harassment where submitting to sexual demands becomes an implicit or explicit term or condition of employment; e.g., “You can have a promotion but only if you have sex with me.” This form of sexual harassment is much more blatant and easy to identify.

Reasonable accommodation (as defined by the Americans with Disabilities Act). Any modification or adjustment to a job or environment that enables a qualified individual with a disability to perform the essential functions of the job. Examples include installing wheelchair ramps, purchasing an extra-large computer monitor, or making changes to work schedules (see also religious accommodation).

Reasonable person standard. In determining whether a sexually oriented behavior is severe or pervasive enough to create a hostile environment, the Supreme Court adopted the “Reasonable Person” standard in 1993. That is, when making a determination, the behavior, taken as a whole, must be viewed from the perspective of a typical, reasonable man and woman. The adoption of this standard was an attempt to balance the perspective and to avoid hypersensitivity.

Rehabilitation Act of 1973. Section 501 of the Rehabilitation Act prohibits employment discrimination against Federal employees with disabilities. The Rehabilitation Act, as amended, requires Federal agencies to make reasonable accommodations to the known physical and mental limitations of qualified employees or applicants with disabilities. It also incorporates the requirements of the ADA, which prohibits employment discrimination on the basis of disability in both the public and private sector.

Religious accommodation. Under Title VII, an employer is required to accommodate the religious practices of employees and prospective employees unless it would pose an undue hardship on the employer. Employees most frequently request an accommodation because their religious practices conflict with their work schedules.

Retaliation or reprisal. The antidiscrimination laws make it unlawful to retaliate against an individual for engaging in a protected activity such as filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices.

Sexual harassment. A form of sex discrimination in violation of 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. There are two forms of sexual harassment: quid pro quo and hostile environment (see definitions in this glossary).

Substantially limits (as defined by the Americans with Disabilities Act). The severity and duration of a physical or mental impairment determines whether it substantially limits a major life activity. Impairment must last for several months and significantly restrict a major life activity. The person must also have a record of such impairment or is regarded as having such impairment.

Title VII of the Civil Rights Act. Prohibits employment discrimination based on race, color, religion, sex, or national origin. Harassment based on these criteria (i.e., sexual harassment, racial harassment, etc.) is also prohibited by Title VII.

Undue hardship (as defined by the Americans with Disabilities Act). An employer does not have to provide an accommodation if it causes undue hardship, meaning significant difficulty or expense. Undue hardship refers not only to financial difficulty, but also to accommodations that are unduly extensive or disruptive, or those that would fundamentally alter the nature and structure of the employer's work.

Vicarious liability. Agencies like FEMA can be held "vicariously liable" for sexual harassment if the Agency fails to prove that it exercised "reasonable care" to prevent and correct the harassment, and that the employee failed to use the EEO complaint processing system.