

October 2016

# EEO, Title VI, and Nondiscrimination



# Non Discrimination laws & Policies

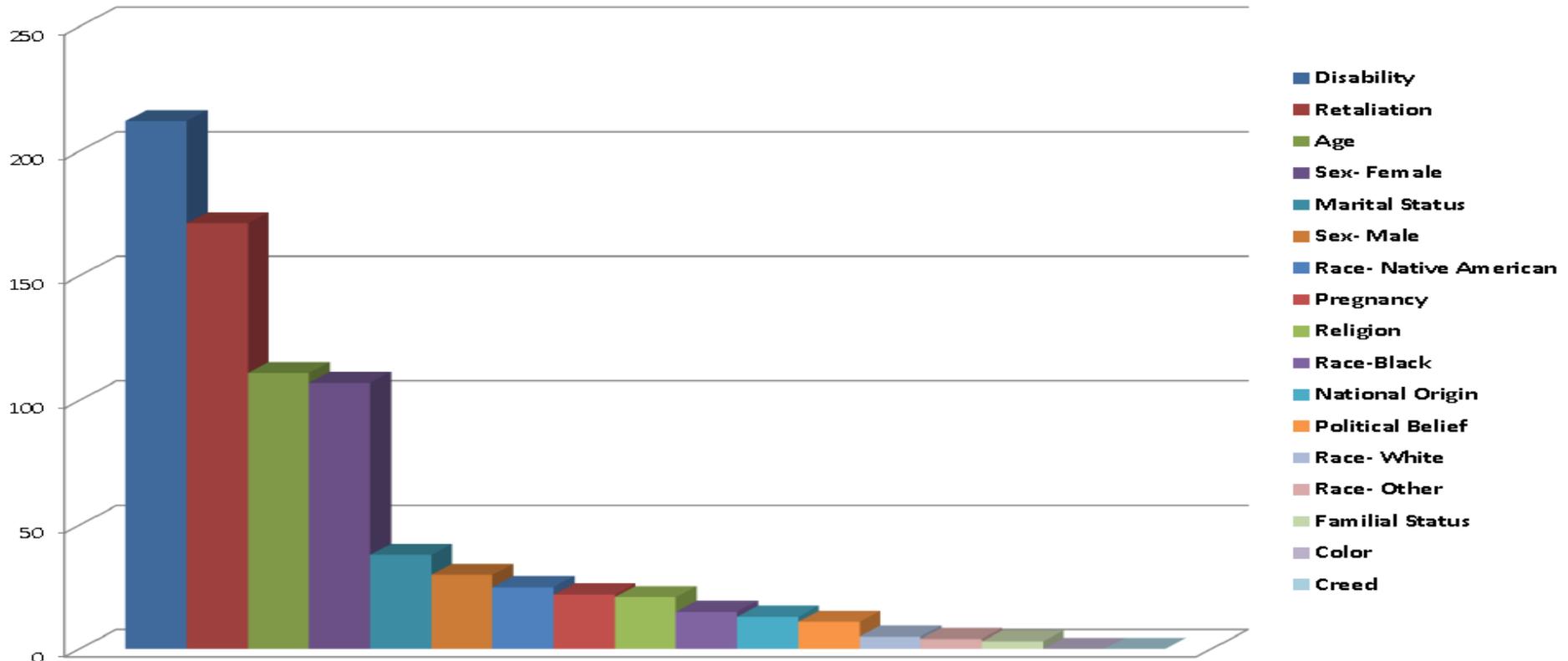
- Civil Rights Act of 1964 (Title VI and Title VII)
- Pregnancy Discrimination Act
- Sec. 504 of the Rehabilitation Act of 1973
- Age Discrimination in Employment Act of 1967
- Age Discrimination Act of 1975
- ADA
- ADA Amendments Act of 2008
- Genetic Information Nondiscrimination Act of 2008
- Equal Pay Act of 1963
- Federal-Aid Highway Act of 1968, and 1973
- Federal Transit Act
- Executive Order 11246
- Montana Human Rights Act
- Governmental Code of Fair Practices
- Governor's Executive Order 41-2008
- MDT internal policies
- Executive Order 13672
- State Executive Order 04-2016

# Montana Human Rights Cases 2015

Did you know that in 2010 employers in Montana paid an average of \$80,000.00 in awarded benefits for complaints of discrimination?

**TYPE OF CHARGE FILED FY2015  
(July 1, 2014- June 30, 2015)**

Total case number reflects some cases are filed in more than one category



The average complaint takes almost 250 days of the employers time!

In 2015 there were a total of 537 Montana Human Rights complaints filed in Montana and 132 of these were against State and local government agencies.

Out of the 537 cases filed, 455 were alleged employment discrimination cases. Out of those 537 cases: \* some cases are filed under multiple categories making the total higher\*

212 Disability

171 Retaliation

107 Sex (female) 149 27 (male)

111 Age

34 Race: Native American 18, Black 26, and White 9

22 Pregnancy

38 Marital Status

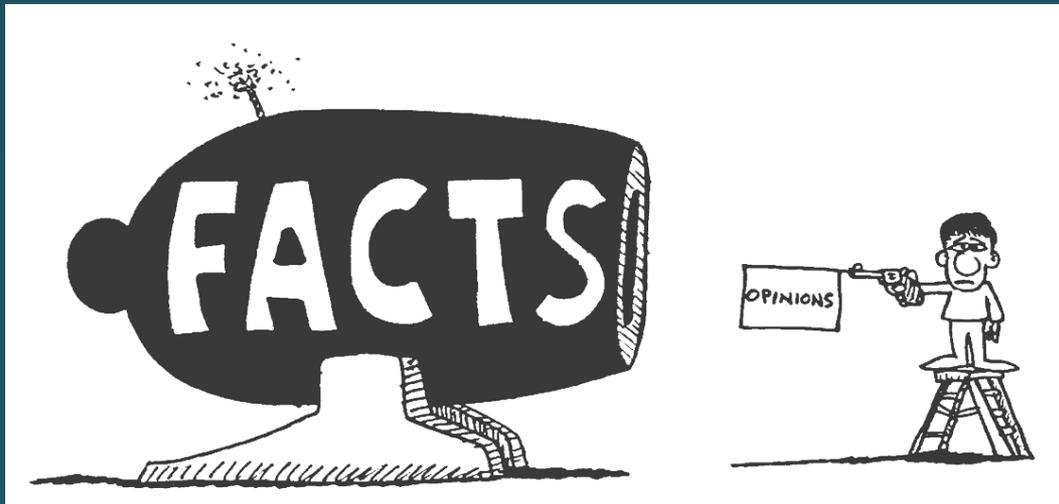
21 Religion

11 Political Belief

13 National Origin

# Investigative Findings 2015

## Cause vs No Cause



Montana Human Rights Cases

- 340 No Reasonable Cause
- 7- Reasonable Cause

# Protected Classes in Montana



Race, color, national origin, parental/marital status, age, physical or mental disability, marital status, pregnancy, parental/marital status, **pregnancy or childbirth or conditions related to pregnancy or childbirth**, religion, creed, sex, **sexual orientation or expression**, **gender identification**, political beliefs, genetic information, **military service** or veteran's status, culture, social origin or condition, or ancestry.

# What is unlawful discrimination?

Unlawful Discrimination is defined as adverse action taken against an individual because of his or her protected class status.

It is a failure to treat all persons equally when no reasonable distinction can be found between those favored and those not favored.

<http://www.bing.com/videos/search?q=what+is+unlawful+discrimination&&view=detail&mid=C0E9E79EE1F3E37C6F89C0E9E79EE1F3E37C6F89&FORM=VRDGAR>

# What is an Adverse Action

## An Adverse action is:

- different treatment, failure to hire, termination of employment, different pay, failure to accommodate a disability, harassment, or hostile work environment.

**This includes anything that would dissuade a reasonable person from engaging in a protected activity.**

# What is not Harassment

- Being held accountable for completing job tasks.
- Being held accountable for workplace behavior.
- Holding an individual to the exact same performance standard everyone else is held to.
- Having a boss who is an equal opportunity jerk! A boss with very high performance standards that holds **everyone** to those **same** standards.
- Not getting along with management-personality differences.
- Legitimate disciplinary action.
- Legitimate performance requirements.
- Petty slights and annoyances, such as stray negative comments in an otherwise positive or neutral evaluation.
- “Snubbing” a colleague.
- Negative comments that are justified by an employee's poor work performance or history.
- Negative performance evaluation that accurately reflects employee’s performance.
- Comments by non-decision makers (i.e. co-workers)

# Types of Harassment

- **1) Disparate Treatment/Intentional Discrimination Theory**
  - when an employer simply treats some people less favorably than others **because of** their protected status.
  - has to be **intentional**.
- **2) Disparate Impact**
  - when a facially neutral policy or practice has a significant disparate impact on a protected group
  - can be **unintentional**.
  - *Ex. requiring a college degree for an administrative staff position.*

# Speaking out is important!

<http://www.bing.com/videos/search?q=Then+they+came+for+me+%e2%80%94and+there+was+no+one+left+to+speak+for+me.&view=detail&mid=E8F2C313C8B7F148DA35E8F2C313C8B7F148DA35&FORM=VIRE>



# Genetic Information



## Genetic Information Includes:

- Genetic Testing
- Family Medical History
- Genetic Tests During Pregnancy
- Information gained at the “water cooler” or through social media

## Examples

- Facebook status “went to the doctor today for my last chemo.”
- At lunch someone says “I have to fill my cholesterol prescription this week.”

# Color

- Discrimination based on the tone of one's skin ( i.e. a fair white person can discriminate against a white person with an olive skinned complexion, even though they are both technically considered “white”).
- [https://www.youtube.com/watch?v=rp\\_tn659Sbw](https://www.youtube.com/watch?v=rp_tn659Sbw)



# James Duffy VS City of Los Angeles 2014

Awarded: 3.8 million plus interest



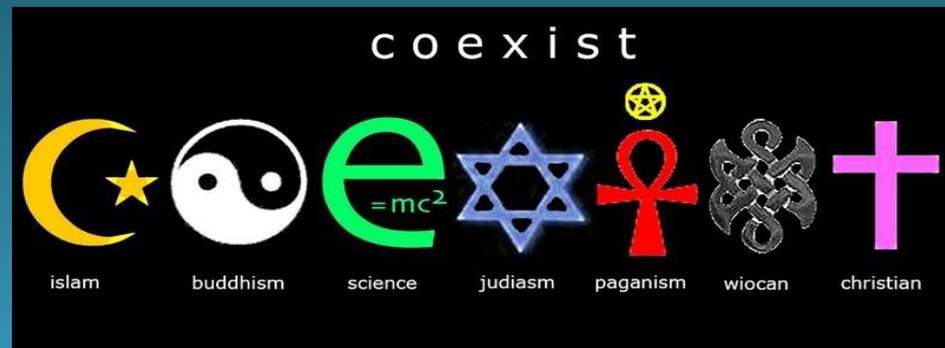
# Religion / Creed

## Creed

Has not yet been defined by the courts.

The dictionary definition is: *a set of fundamental beliefs; guiding principles underlying a particular religion.*

- Beliefs must be “sincerely held.”
- Beliefs need not be acceptable, logical, consistent, or comprehensible to others.
- Includes freedom not to believe -> accommodations can not impede on the rights and liberties of others.
- Accommodations for religious beliefs do not implicate constitutional issues of freedom of religion.



# AGE

- ALL ages are protected do not have to be over 40 to be protected.
- In Montana, age is protected from birth to death. “substantially younger/older” ~ 10+ years.



# Sex / gender

- Actions or comments that tend to reinforce gender stereotypes are gender discrimination. <https://www.youtube.com/watch?v=9uccExOPMrI>



# Pregnancy or medical conditions related to pregnancy

- Employer can not discriminate against a woman because she is or may become pregnant.
- An employer may not discriminate against a woman because of medical conditions related to pregnancy or childbirth.
  - <https://www.youtube.com/watch?v=Z6l9nc5yy1E>



# Gender Identification or Expression

Gender identity refers to a person's internal sense of being male, female or something else; gender expression refers to the way a person communicates gender identity to others through behavior, clothing, hairstyles, voice or body characteristics.

- It is illegal to discriminate against someone based on the gender they identify with!

Example: a woman who dresses like and identifies as man, or a man who dress like and identifies as female.

Gender expression refers to the way that a person uses

appearance, mannerisms and other personal traits to communicate their gender. Gender expression can be any combination of masculine, feminine and androgynous traits.

### Examples:

clothing and accessories, hairstyle, make-up, removal or growth of

body hair, development of musculature through exercise, stance and manner of walking, and manner of talking.

The name, pronouns and titles you ask others to use in reference

to you . It can also include using clothing, make-up and other methods to change the appearance of gender characteristics.

Examples of these methods include padding, binding, packing and tucking.

# Sexual Orientation

- The gender or genders someone is sexually and/or romantically attracted to!

Examples:

Straight, Homosexual, Bisexual

<https://www.youtube.com/watch?v=ago78PhUofI>

# Military Service or Veteran Status

- Veteran refers to anyone who served as active duty military (army, navy, air force, or marines,)for a minimum of 180 days.
- Military Status refers to someone currently on active duty or guard status.



# Sexual Harassment Explained

## **ARM 2.21.4013(2)**

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.

# Example

Notable recent developments include a 2011 verdict from a New Orleans jury finding Boh Brothers Construction Co. liable for a male superintendent's harassment of a male subordinate—to the tune of \$451,000. The supervisor was alleged to have verbally abused, taunted, made sexual gestures at and exposed himself to the male employee because he believed the employee was feminine and did not fit the “rough ironworker” stereotype. The award included \$250,000 in punitive damages and \$200,000 for emotional distress, sending a strong message that juries are willing to punish employers for allowing male-on-male sexualized hazing.”

# Cultural / social origin or condition / ancestry

- General, all inclusive, terms to promote the idea that employment related decisions cannot be based on an employee's socio-economic background but instead on objective and merit based criteria.



# Disability

1. A physical or mental impairment that substantially limits one or more major life activities of an individual;
2. A record of such an impairment; or
3. Being regarded as having such an impairment.



dislexia



# Protected Action

Participation in a protected activity means taking part in an employment discrimination proceeding. Participation is a protected activity even if the proceeding involved claims that ultimately were found to be invalid.

Protected examples include:

- Opposing a practice believed to be unlawful discrimination  
Informing an employer you believe he or she is engaging in prohibited discrimination;
- Complaining about alleged discrimination against oneself or others;
- Threatening to file a complaint of discrimination;
- Requesting an ADA or religious accommodation.

# Prevention

- Supervisors must set the tone!
- They must recognize their obligation to create and preserve a work environment free from sexual harassment.
- Take immediate action, and send the employee to OCR!
- Even if you feel a complaint made by an employee to you is groundless; treat it seriously.
- When in doubt, call OCR and ask for assistance or clarification. If we don't know the answer, we will find it.

While it may be difficult not to take an EEO allegation personally, managers should take a step back to consider their reactions in these situations. A negative change of behavior toward an employee after an EEO allegation can be perceived as retaliatory. To prevent retaliation from occurring, managers should take the following actions:

- Avoid publicly discussing the allegation;
- Do not share information about the EEO activity with any other managers or subordinates;
- Be mindful not to isolate the employee;
- Avoid reactive behavior such as denying the employee information/equipment/benefits provided to others performing similar duties;
- Do not interfere with the EEO process;
- Provide clear and accurate information to the EEO staff, EEO Investigator, or legal authority; and
- Do not threaten the employee, witnesses or anyone else involved in the processing of a complaint.



**For questions, comments, concerns, complaints, inquiries,  
additional training, information, brochures, or anything else  
contact:**

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