

# EQUAL EMPLOYMENT OPPORTUNITY POLICY

Policies and Procedures: F-V-f

McLennan Community College declares and reaffirms a policy of equal opportunity in employment and in all other personnel functions of this institution, such as, but not limited to: employment, up-grading, demotion, transfer, recruitment; lay-off or termination; rates of pay or other forms of compensation; and training opportunities.

Equal opportunity shall be provided all applicants for employment and employees, without regard to their race, color, creed or religion, national origin, sex, age, disability, or other factors which cannot be the lawful basis for a personnel decision.

The President of the College shall be responsible for general implementation of this policy, including the appointment of an Equal Employment Opportunity Officer.

## **Nondiscrimination**

McLennan Community College shall not fail or refuse to hire or discharge any individual, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of the individual's race, color, religion, sex, or national origin. Nor shall the College limit, segregate, or classify its employees or applicants for employment in any way that would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect the status as an employee because of the individual's race, color, religion, sex, or national origin. 42 U.S.C. 2000d; 42 U.S.C. 2000e-2(a); 20 U.S.C. 1681; Labor Code 21.051; North Haven Board of Education v. Bell, 102 S.Ct. 1912 (1982)

Sexual harassment is a form of sex discrimination. Meritor Savings Bank v. Vinson, 106 S.Ct. 2399 (1986)

## **Age**

The College shall not discriminate in employment because an individual is age 40 or above. 29 U.S.C. 623; 29 U.S.C. 631; Labor Code 21.101

## **Exception**

As an exception to the policy stated above, the Board may employ an individual on the basis of the individual's religion, sex, national origin, or age in those certain instances where religion, sex, national origin, or age is a bona fide occupational qualification reasonably necessary to the normal operation of the College. 42 U.S.C. 2000e-2(e)

## **Title IX**

The College shall designate at least one employee to coordinate its efforts to comply with Title IX of the Education Amendments of 1972, as amended, and its implementing regulations. The College shall notify all employees of the name, office address, and telephone number of the employee(s) so designated. 34 CFR 106.8(a)

## **Military Service**

The College shall not deny initial employment, reemployment, retention in employment, promotion, or any benefit of employment on the basis of membership in a uniformed service, performance in a uniformed service, application for uniformed service, or obligation to a uniformed service. The College shall not take adverse employment action or discriminate against any person who takes action to enforce protections afforded by the Uniformed Services Employment and Re-employment Rights Act of 1994 (USERRA). 38 U.S.C. 4311

## **Religious Freedom**

The College may not substantially burden an employee's free exercise of religion, unless the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. Civ. Prac. & Rem. Code 110.003

## **Disability**

The College shall not discriminate, as set out above, against a qualified individual with a disability because of the individual's disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment. Discrimination includes not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability, unless the College can demonstrate that the accommodation would impose an undue hardship on the operation of the College. 42 U.S.C. 12112(a), (b); 29 CFR Part 1630; Labor Code 21.051

The College shall not exclude or deny equal jobs or benefits to, or otherwise discriminate against, a qualified individual because of the known disability of an individual with whom the

qualified individual is known to have a family, business, social, or other relationship or association. 29 CFR 1630.8

### **ADA**

The College shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title II, Subtitle A, of the Americans with Disabilities Act and its implementing regulations, including any investigation of any complaint communicated to it alleging the College's noncompliance or actions prohibited by those provisions. The College shall make available to all interested individuals the name, office address, and telephone number of the employee(s) so designated. 28 CFR 35.107

### **Notice Under ADA**

The College shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of Title II of the Americans with Disabilities Act and its applicability to the College's programs, services, and activities. The information shall be made available in such manner as the Board and College President find necessary to apprise such persons of the protections against discrimination assured them by the ADA. 28 CFR 35.106

The College shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of Title I of the ADA. 42 U.S.C. 12115

### **Definitions Related to Individuals with Disabilities**

The term "disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the individual's major life activities, a record of having such an impairment, or being regarded as having such an impairment. "Major life activities" means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. 42 U.S.C. 12102 (2); 29 CFR 1630.2(g)-(1); 28 CFR 35.104. The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds or desires. Consideration shall be given to the College's judgment as to what functions of a job are essential, and if a written description has been prepared before advertising or interviewing applicants for the job, this description shall be considered evidence of the job's essential functions. 42 U.S.C. 12111(8); 29 CFR 1630.2(m),(n)

### **Reasonable Accommodation**

The term "reasonable accommodation" may include (1) making existing facilities used by employees readily accessible to and usable by individuals with disabilities and (2) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities. 42 U.S.C. 12111(9); 29 CFR 1630.2(o)

### **Undue Hardship**

The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of factors related to the nature and cost of the accommodation needed, overall financial resources of the affected facility and the College, and other factors set out in law. 42 U.S.C. 12111(10); 29 CFR 1630.2(p)

### **Exceptions to Definitions**

#### **Drug and Alcohol Abuse**

The term "qualified individual with a disability" does not include any employee or applicant who is currently engaging in the illegal use of drugs, when the College acts on the basis of such use. Nor does it include any individual who is an alcoholic whose current use of alcohol prevents the employee from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others. 42 U.S.C. 12114(a); 29 CFR 1630.3(a); 28 CFR 35.104; 29 U.S.C. 706(8)(C)

#### **Direct Threat to Health or Safety**

As a qualification standard, the College may require that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace. Although the term "physical or mental impairment" includes such contagious diseases as HIV disease (whether symptomatic or asymptomatic) and tuberculosis, an individual who by reason of such disease or infection would pose a direct threat to the health or safety of others that cannot be eliminated or reduced by reasonable accommodation or who is unable to perform the duties of the job shall not

be considered a "qualified individual". 42 U.S.C. 12113(b); 29 U.S.C. 706(8)(D); 29 CFR 1630.2(r); 28 CFR 35.104

The determination that an individual poses a "direct threat" shall be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job. The assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence. In determining whether an individual would pose a direct threat, the factors to be considered include:

1. The duration of the risk.
2. The nature and severity of the potential harm.
3. The likelihood that the potential harm will occur.
4. The imminence of the potential harm.

29 CFR 1630.2(r); School Board of Nassau County v. Arline, 107 S.Ct. 1123 (1987)