

# AFFIRMATIVE ACTION

Effective: June 17, 1997

01-36

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TO ASCERTAIN CLARIFICATION OF WHO IS A VIETNAM ERA VETERAN, SPECIAL DISABLED VETERAN, OR PERSON WITH A DISABILITY THE FOLLOWING LAWS/REGULATIONS AND DEFINITIONS ARE NOTED:

### **I. LAWS/REGULATIONS**

Vietnam Era Veteran's Readjustment Assistance Act of 1974, as amended, 38 USC 2012; Section 503 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990, Chapter 60--Office of Federal Contract Compliance Programs, Equal Employment Opportunity, United States Department of Labor.

Tompkins County's policy of nondiscrimination and affirmative action in the employment and promotion of qualified persons with disabilities, special disabled veterans and Vietnam era veterans is defined by the following Federal statutes and their implementing regulations:

- (1) The Vietnam Era Veteran's Readjustment Assistant Act of 1974, as amended;
- (2) Section 503 of the Rehabilitation Act of 1973, as amended.

### **A. DEFINITIONS**

- Veteran of the Vietnam Era or Vietnam Era Veteran means a person who:
  - (1) served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964 and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or
  - (2) was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964 and May 7, 1975.
- Special disabled veterans means:
  - (1) a veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary (Secretary of Labor, U.S. Department of Labor) for a disability (i) rated at 30 percent or more, or (ii) rated at 10 or 20 percent in the case of a veteran who has been determined under section 3106 of the Act to have a serious employment disability; or
  - (2) a person who was discharged or released from active duty because of service-connected disability.
- Individual with a disability means any person who:
  - (1) has a physical or mental impairment which substantially limits one or more of such person's major life activities;

Physical or mental impairment means: (a) any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or (b) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Substantially limits means: (a) unable to perform a major life activity that the average person in the general population can perform; or (b) significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.

Major life activity means: (a) functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(2) has a record of such impairment, meaning has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities; or

(3) is regarded as having such an impairment, meaning (a) has a physical or mental impairment that does not substantially limit major life activities but is treated by the County as constituting such limitation; (b) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others towards such impairment; or (c) has none of the impairments defined in (a) or (b), but is treated by the County as having a substantially limiting impairment.

Persons also included within the definition of individuals with disabilities are those who: (1) have successfully completed a supervised drug rehabilitation program and are no longer engaging in the illegal use of drugs, or have otherwise been rehabilitated successfully and are no longer engaging in such use; (2) are participating in a supervised rehabilitation program and are no longer engaging in such use; or (3) are erroneously regarded as engaging in such use, but are not engaging in such use.

[Note that all persons included within the definition of individuals with disabilities must satisfy the requirements of the definition of “qualified individual with a disability” as well defined within this definition section.]

Exceptions to the definition of individuals with disabilities who: (1) are currently engaged in the illegal use of drugs, when the employer acts on the basis of such use; (2) are alcoholics; (3) who currently have a contagious disease or infection; and (4) who are homosexuals, bisexuals or have other sexual- or gender-based conditions; and (5) who have other conditions.

“Drugs” mean: a controlled substance as defined by the Controlled Substances Act (21 USC 812).

“Illegal Use of Drugs” means: the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act but does not include the use of a drug

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taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal or State Law.

An “alcoholic” means: an individual whose (a) current use of alcohol prevents such individual from performing the essential functions of the employment position such individual holds or desires, or (b) employment, by reason of such current alcohol abuse, would constitute a direct threat to property or to the health or safety of the individual or others.

A person currently having a “contagious disease or infection” is one who: (a) by reason of such disease or infection, would constitute a direct threat to the health or safety of the individual or others or (b) by reason of the currently contagious disease or infection, is unable to perform the essential functions of the employment position such individual holds or desires.

“Homosexuality, bisexuality, and other sexual- and gender-based conditions”: are not impairments or disabilities and include transvestitism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders.

“Other conditions” include: compulsive gambling, kleptomania, pyromania, psychoactive substance use disorders resulting from current illegal use of drugs.

The affirmative action regulation for persons with disabilities permits the County to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual who is covered by the definition of an individual with a disability is no longer engaging in the illegal use of drugs. Drug testing to determine the illegal use of drugs is not considered a medical examination. (See Section III part D of this document for more information concerning Drugs and Alcohol)

Qualified individual with a disability means an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position. The same exceptions to the definition of individual with a disability apply to the definition of qualified individual with a disability.

“Essential functions” means: fundamental job duties of the employment position the individual with a disability holds or desires based upon, but is not limited to the following: (1) the County’s judgment as to which functions are essential; (2) written job descriptions prepared before advertising or interviewing applicants for the job; (3) the amount of time spent on the job performing the function; (4) the consequences of not requiring the incumbent to perform the function; (5) the terms of a collective bargaining agreement; (6) the work experience of past incumbents in the job; and/or (7) the current work experience of incumbents in similar jobs.

“Reasonable accommodation” means: (1) modifications or adjustments to a job applicant process that enable a qualified applicant with a disability to be considered for the position such applicant desires; (2) modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform

the essential functions of that position; or (3) modifications or adjustments that enable the County's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by the County's other similarly situated employees without disabilities.

"Undue Hardship" means: with respect to the provision of an accommodation, significant difficulty or expense incurred by the County, when considered in light of the factors set for below:

- the nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions, and/or outside funding;
- the overall financial resources of the County, the number of persons employed by the County, and the effect on expenses and resources;
- the type of operation(s) of the County, including the composition, structure and functions of the workforce of the County; and
- the impact of the accommodation upon the operation of the County, including the impact on the ability of other employees to perform their duties and the impact of the County's ability to conduct business.

"Qualification Standard" means: the personal and professional attributes including the skill, experience, education, physical, medical, safety and other requirements established by the County as requirements which an individual must meet in order to be eligible for the position held or desired.

"Direct Threat" means: a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation, the determination of which is based upon an individualized assessment of the individual's present ability to perform safely the essential functions of the job. The burden of establishing direct threat is on the County.

## **II. AFFIRMATIVE ACTION CLAUSE and EQUAL OPPORTUNITY CLAUSE**

(Section 60-254.4 - Affirmative Action for Veterans, Section 60-741.5 - Affirmative Action for Persons with Disabilities)

Tompkins County shall include the required affirmative action clause in each of its covered contracts and subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract) in excess of \$10,000 in accordance with the affirmative action regulations for special disabled veterans and Vietnam era veterans. The affirmative action clause, which may be incorporated by reference into the County's covered contracts and subcontract, shall read as follows:

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### **AFFIRMATIVE ACTION FOR SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA**

In addition, the following equal opportunity clause shall be included in each of the County's contracts or subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract):

#### **EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES**

Once the affirmative action clause is determined to be applicable, the contract shall continue to be subject to such clause for its duration, regardless of the amounts ordered, or reasonably expected to be ordered in any year. The County shall include the provisions of this clause in every subcontract or purchase order of \$10,000 or more. The County will take such action with respect to any subcontractor or vendor to enforce such provisions.

The County does not discriminate against any employee or applicant for employment because s/he is a special disabled veteran, Vietnam era veteran or individual with a disability in regard to any position for which the employee or applicant for employment is qualified. The County agrees to take affirmative action to employ, advance in employment and otherwise treat qualified special disabled veterans, Vietnam era veterans and individuals with disabilities without discrimination based upon the disability or veteran status in all employment practices such as the following:

- outreach, recruitment and advertising
- job applicant procedures
- hiring and transfers
- selection for training, including apprenticeship
- upgrading and promotion
- demotion
- layoff or termination
- leaves of absence, sick leave, or any other leave
- right of return from layoff or rehiring
- rates of pay or other forms of compensation and changes in compensation
- fringe benefits available by virtue of employment, whether or not administered by the County
- activities sponsored by the County including social or recreational programs
- any other terms, condition, privilege or benefit of employment

The County agrees to post in conspicuous places, available to employees and applicants for employment, notices which state the rights of applicants and employees as well as the County's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, Vietnam era veterans and individuals with disabilities.

The County agrees to list all employment openings at an appropriate local office of the State employment service system wherein the opening occurs. Listing of employment openings with the State employment service system is made concurrently with the use of any other recruitment source or effort and involve the normal obligations which attach to the placing of a bonafide job order, including the acceptance of referrals of veterans and non-veterans.

The County will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the institution is bound by the terms of the Vietnam Era Veterans Readjustment Assistance Act and Section 503 of the Rehabilitation Act of 1973,

and is committed to take affirmative action to employ and advance in employment, qualified special disabled veterans, Vietnam era veterans and individuals with disabilities.

### III. DISCRIMINATION PROHIBITED

(Persons with Disabilities)

The covered employment activities include all those employment activities listed in this program dealing with the County's affirmative action obligations for persons with disabilities relative to the equal opportunity clause.

In addition, it is unlawful for the County to:

- deny an employment opportunity or benefit or otherwise to discriminate against a qualified individual with a disability because of that individual's disability. Unless otherwise permitted by the affirmative action regulation for persons with disabilities, it is unlawful for the County to limit, segregate, or classify a job applicant or employee in a way that adversely affects his or her employment opportunities or status on the basis of disability.
- participate in a contractual or other arrangement or relationship, that has the effect of subjecting the County's own qualified applicant or employee with a disability to prohibited discrimination.
- use standards, criteria, or methods of administration, that are not job-related and consistent with business necessity, and that: (1) have the effect of discriminating on the basis of disability; or (2) perpetuate the discrimination of others who are subject to common administrative control.
- 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.
- fail to make a reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability, unless the County can demonstrate that the accommodation would impose an undue hardship on the operation of its business.

Note that a qualified individual with a disability is not required to accept an accommodation, aid, service, opportunity or benefit which such qualified individual chooses not to accept. However, if such individual rejects a reasonable accommodation, aid, service, opportunity or benefit that is necessary to enable the individual to perform the essential functions of the position held or desired, and cannot, as a result of that rejection, perform the essential functions of the position, the individual will not be considered a qualified individual with a disability.

- use qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, on the basis of disability, unless the standard, test or other selection criterion, as used by the County, is shown to be job-related for the position in question and is consistent with business necessity.

Note that the County may use as a qualification standard the requirement that an individual be able to perform the essential functions of the position held or desired without posing a direct threat to the health or safety of the individual or others in the workplace. Selection criteria that concern an essential function may not be used to

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exclude an individual with a disability if that individual could satisfy the criteria with provision of a reasonable accommodation to an individual with a disability or a class of individuals because of disability but concern only marginal functions of the job would not be consistent with business necessity. The County may not refuse to hire an applicant with a disability because the applicant's disability prevents him or her from performing marginal functions.

Note also that the Uniform Guidelines on Employee Selection Procedures (41 CFR part 60-3) do not apply to the Rehabilitation Act and are similarly inapplicable here.

- fail to select and administer civil service tests in the most effective manner to ensure that, when a civil service test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, the civil service test results accurately reflect the skills, aptitude, or whatever other factor of the applicant or employee that the test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant, except where such skills are the factors that the civil service test purports to measure.
- reduce the amount of compensation offered because of any income based upon a disability-related pension or other disability-related benefit the applicant or employee receives from another source as it pertains to the County's offer of employment or promotion to individuals with disabilities.

#### A. Direct Threat Defense

The County may use as a qualification standard the requirement that an individual be able to perform the essential functions of the position held or desired without posing a direct threat to the health or safety of the individual or others in the workplace.

#### B. Medical Examinations and Inquiries

It is unlawful for the County to require a medical examination of an applicant or employee or to make inquiries as to whether an applicant or employee is an individual with a disability or as to the nature or severity of such disability. The County, however, may:

- make pre-employment inquiries into the ability of an applicant to perform job-related functions, and/or may ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions.
- require a medical examination (and/or inquiry) after making an offer of employment to a job applicant and before the applicant begins his or her employment duties, and may condition an offer of employment on the results of such examination (and/or inquiry), if all entering employees in the same job category are subjected to such an examination (and/or inquiry) regardless of disability. Note that these examinations do not have to be job-related and consistent with business necessity.
- require a post-employment medical examination (and/or inquiry) of an employee that is job-related and consistent with business necessity. The County may make inquiries into the ability of an employee to perform job-related functions.

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- conduct voluntary medical examinations and activities, including voluntary medical histories, which are part of an employee health program available to employees at the work site. Note that these examinations do not have to be job-related and consistent with business necessity.

Relative to medical examinations and inquiries mentioned above that do not have to be job-related and consistent with business necessity, if certain criteria are used to screen out an applicant(s) or an employee(s) with disabilities as a result of such examinations or inquiries, the County must demonstrate that the exclusionary criteria are job-related and consistent with business necessity, and that performance of the essential job functions cannot be accomplished with reasonable accommodations.

Whenever the County inquires into an applicant's or employee's physical or mental condition or conducts a medical examination prior to employment or change in employment status, such information obtained in response to such inquiries or examination are kept confidential. Information obtained under this section regarding the medical condition or history of any applicant or employee shall be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record.

Information obtained under this section regarding medical condition or history of any applicant or employee are kept confidential, except that: (i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the applicant or employee and necessary accommodations; (ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and (iii) government officials engaged in enforcing the laws administered by the federal government enforcing the Rehabilitation Act of 1973, as amended by the Americans with Disabilities Act of 1990.

### C. Omnibus Transportation Employee Testing Act

According to the provision of the Omnibus Transportation Employee Testing Act, the County must conduct drug and alcohol testing for its employees who are required to carry commercial drivers licenses in order to execute the duties of their jobs.

### D. Drugs and Alcohol

Pursuant to the affirmative action regulation for persons with disabilities, the County is permitted to:

- (1) prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;
- (2) require that employees not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;
- (3) require that all employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 USC 701);
- (4) hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior to which the County holds its other employees, even if any unsatisfactory performance or behavior is related to the employee's drug use or alcoholism;
- (5) require that its employees in an industry subject to such regulations comply with the standards

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established in the regulations (if any) of the Departments of Defense and Transportation, and of the Nuclear Regulatory Commission, and other Federal agencies regarding alcohol and the illegal use of drugs; and

- (6) require that employees employed in sensitive positions comply with the regulations (if any) of the Departments of Defense and Transportation, and of the Nuclear Regulator Commission, and other federal agencies that apply to employment in sensitive positions subject to such regulations.

Any information regarding the medical condition or history of any employee or applicant obtained from a test to determine the illegal use of drugs, except information regarding the illegal use of drugs, is subject to the requirements concerning medical examinations and inquiries contained within this document.

#### E. Health Insurance, Life Insurance and Other Benefit Plans

An insurer, hospital, or medical service company, health maintenance organization, or any agent or entity that administers benefit plans, or similar organizations, may underwrite risks, classify risks, or administer such risks that are based on or not inconsistent with State law, unless these activities are used as a subterfuge to evade the purposes of this part. The County may:

- unless used as a subterfuge to evade the purposes of this part, establish, sponsor, observe or administer the terms of a bonafide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law and is not subject to State laws that regulate insurance.
- not deny a qualified individual with a disability equal access to insurance or subject a qualified individual with a disability to different terms or conditions of insurance based on disability alone, if the disability does not pose increased risks.

### IV. AFFIRMATIVE ACTION POLICY AND PROGRAMS

#### A. County's Affirmative Action Programs

The County's Affirmative Action Programs for persons with disabilities and veterans are maintained in one written document separately from its affirmative action programs for minorities and women. The County's Affirmative Action Programs set forth the County's policies and procedures in accordance with the regulations and are reviewed and updated annually. If there are any significant changes in procedures, rights or benefits as a result of this annual review, those changes shall be communicated to employees and applicants for employment. These Programs shall be available for inspection, upon request, to any employee or applicant for employment. The location and hours during which the written Programs may be obtained, shall be posted within each County department and at the Personnel Department located at 125 East Court Street, Ithaca, NY 14850.

##### 1. Internal Communications

A strong outreach program will be ineffective without adequate internal support from supervisory and management personnel and other employees. In order to assure greater employee cooperation and participation in the County's Affirmative Action Program efforts, it has developed internal procedures for communication of its obligation to engage in affirmative action efforts to employ and advance in employment qualified veterans and individuals with disabilities. The County

adopts, implements and disseminates its Programs internally by means which include, but may not be limited to, the following noting that the scope of the County's efforts depend upon all the circumstances, including the County's size and resources, and the extent to which existing practices are adequate:

- (a) By incorporation in the County's Personnel Policies.
- (b) By periodically informing all employees and prospective employees of its commitment to engage in affirmative action to increase employment opportunities for qualified individuals with disabilities and qualified special disabled veterans and Vietnam era veterans.
- (c) By publication in an official County publication.
- (d) By special meetings conducted with the Board, Department heads, managers and supervisors to explain the intent and individual supervisory responsibility for the effective implementation, making clear the Board chair's attitude and commitment in support of affirmative action program efforts.
- (e) By special meetings with employees which include, but may not be limited to, employee orientations and management/supervisory training programs to discuss Board Policy and explain individual employee responsibilities.
- (f) By communication with union officials to inform them of the County's policy and request their cooperation.
- (g) By inclusion of nondiscrimination clauses in all union agreements and by review of all contractual provisions to ensure nondiscrimination.
- (h) By publication of articles covering progress reports, promotions, etc. of disabled employees, special disabled veteran employees and Vietnam era veteran employees in County publications.
- (i) By posting the Board's Policy on designated bulletin boards within departments, including a statement that employees and applicants are protected from coercion, intimidation, interference or discrimination for filing a complaint or assisting in an investigation into discriminatory conduct.
- (j) By featuring disabled employees, special disabled veteran employees and Vietnam era veteran employees in employee handbooks or similar publications for employees.

2. External Communications

The County shall undertake appropriate communication strategies which include, but may not be limited to, the following noting that the scope of the County's efforts shall depend upon all the circumstances, including its size and resources, and the extent to which existing employment practices are adequate:

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(a) Sending written notification of the Affirmative Action Policy to all subcontractors, vendors and suppliers, requesting appropriate action on their part.

(b) Developing reasonable internal communication procedures to ensure that its obligations to engage in affirmative action to employ and promote qualified disabled individuals, special disabled veterans and Vietnam era veterans is being fully implemented.

(c) Periodically informing all current and prospective employees of its commitment to engage in affirmative action to increase employment opportunities for qualified special disabled veterans, Vietnam era veterans and disabled individuals.

### B. Responsibility for Implementation

The ultimate responsibility for the implementation of the County's Affirmative Action programs rests with the Board who has assigned overall responsibility for affirmative action and equal employment opportunity matters throughout the County to the Affirmative Action Officer.

The Affirmative Action Officer's identity and location will appear on all internal and external communications regarding the County's Affirmative Action Programs. The Affirmative Action Officer is assured the necessary top management support and staff to manage the implementation of these Programs.

More specifically, the overall responsibilities of the Affirmative Action Officer include, but may not be limited necessarily to, the following:

1. Developing policy statements and procedures for affirmative action implementation, including regular discussions with Board, department heads, managers, supervisors and employees to be certain the County's policies are being followed.
2. Identifying problem areas and developing solutions, in conjunction with the Community Affirmative Action Committee, department heads and other appropriate personnel, known disabled persons and known veterans, in the implementation of these Programs.
3. Serving as liaison between the County and enforcement agencies, as appropriate.
4. Serving as liaison between the County and organizations serving disabled persons, special disabled veterans and Vietnam era veterans and arranging for the active involvement of the County's representatives in the community service programs of local organizations representing these groups.
5. Keeping the Board and department heads informed of the latest developments in the entire affirmative action area, in conjunction with the County Attorney and the Tompkins County Human Rights Commission.
6. Arranging for the career counseling of known special disabled veterans and Vietnam era veterans.
7. Informing department heads, supervisors and managers that (i) their work performance is being

evaluated on the basis of their affirmative action efforts and results, as well as other criteria and (ii) the County is obligated to prevent harassment of employees placed through the County's Affirmative Action Program efforts.

In addition, the Affirmative Action Officer, in consultation with the County Attorney and/or the Tompkins County Human Rights Commission, determines whether individuals who identify themselves as disabled fall within the prescribed definition of an individual with a disability for purposes of providing reasonable accommodation.

The **Community Affirmative Action Committee** is responsible for these Programs in the same manner as described in the County's Affirmative Action Programs dealing with the underutilization of women and minorities.

The **Department Heads** are responsible for these Programs in the same manner as described in the County's Affirmative Action Programs dealing with the underutilization of women and minorities.

The **County Training Coordinator**, in conjunction with the Affirmative Action Officer and the Tompkins County Human Rights Commission, is responsible for training all personnel involved in the recruitment, screening, selection, promotion, disciplinary and related processes are carefully selected and trained to ensure that the commitments in the County's Affirmative Action Programs are implemented.

#### C. Outreach and Recruitment

The County shall undertake appropriate outreach and positive recruitment activities including, but not limited to the following, noting that the scope of the County's efforts shall depend upon all the circumstances, including its size and resources, and the extent to which existing employment practices are adequate:

Continuing to enlist the assistance of and inform the County's recruiting sources of its policy and commitment to provide meaningful employment opportunities to qualified individuals with disabilities and qualified special disabled veterans and Vietnam era veterans. These sources include, but may not be limited to, the following:

- contact with the local Veterans Employment Representative or his/her designee in the New York State Employment Service Office to recruit job-ready veterans and to develop on-the-job training opportunities for covered veterans wherever feasible;
- contact with the local office of the New York State Division of Veteran Affairs to develop on-the-job training opportunities for covered veterans and to recruit job-ready veterans;
- contact with the office of the National Alliance of Business persons in order to cooperate in the Jobs for Veterans' Program;
- contact with local veterans' groups and veterans' service centers for the recruitment of covered veterans;
- contact with the State employment security agencies, State vocational rehabilitation agencies or facilities, sheltered workshops, college placement officers, State

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education agencies, labor organizations and organizations of or for individuals with disabilities;

- recruit at schools by incorporating special efforts to reach students with disabilities;
- engage in recruitment activities at educational institutions which participate in training of individuals with disabilities;
- establish meaningful contacts with local organizations serving individuals with disabilities, appropriate social service agencies, vocational rehabilitation agencies or facilities, for advice, technical assistance and referral of potential employees;
- review employment records to determine: (i) the availability of promotable and transferable qualified known special disabled veterans and Vietnam era veterans presently employed; and (ii) whether their present and potential skills are being fully utilized or developed;
- consider all qualified disabled persons and special disabled veterans and Vietnam era veterans not currently in the workforce, who have requisite skills who can be recruited through affirmative action measures;
- include disabled employees when employees are pictured in publications and promotional or help wanted advertising;
- take positive steps to attract and consider all qualified individuals with disabilities and qualified special disabled veterans and Vietnam era veterans not currently in the workforce who have requisite skills and can be recruited through affirmative action measures.

### D. Invitation to Voluntary Self Identify Disability and Veteran Status

Effective August 29, 1996, the County may only request voluntary self-identification of disability and/or veteran status from job candidates to whom an offer of employment has been extended, whether or not the candidate accepts the job offer. The voluntary self-identification process provides persons who believe they are covered by the Programs to identify their disability and/or veteran status. The invitation to self-identification must state that a request to benefit under the County's Affirmative Action Programs herein may be made immediately and/or at any time in the future, and that refusal to provide information on disability or veteran status will not subject the applicant to adverse treatment.

The County may invite voluntary self-identification of disability and/or veteran status at the pre-offer stage only when:

1. the County actually is undertaking affirmative action for individuals with disabilities, special disabled veterans, and Vietnam era veterans at the pre-offer stage; or
2. pursuant to a federal, state or local law requiring affirmative action for individuals with disabilities, special disabled veterans and Vietnam era veterans.

No employee, however, is precluded from informing the County Affirmative Action Officer at a future time of his/her desire to benefit from one or both of these voluntary self-identification programs. In addition, nothing in this section relieves the County of its obligation to take affirmative action with respect to those applicants or employees who are known to the County to be special disabled veterans, Vietnam era veterans or persons with disabilities, whether or not these persons voluntarily self-identify their disability and/or veteran status to the Affirmative Action Officer. Furthermore, nothing in this section relieves the County from liability for discrimination.

E. Review of Personnel Processes

The County periodically reviews its personnel policies, procedures, and processes to ensure careful, thorough, and systematic consideration of the job qualifications of applicants and employees with known disabilities, as well as known special disabled veteran applicants and Vietnam era veteran applicants, for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available.

A description of the review and any necessary modifications to personnel processes or development of new processes shall be included in the County's Affirmative Action Programs.

In determining the qualifications of a covered veteran, the County considers only that portion of the military record, including discharge papers, relevant to the specific job qualifications for which the veteran is being considered. To the extent that it is necessary to modify personnel procedures, the County shall include the development of new procedures for this purpose in the County's Affirmative Action Programs.

F. Physical and Mental Qualifications

The County provides in its Programs, and adheres to, a schedule for the periodic review of all physical and mental job qualification standards to ensure that, to the extent qualification standards tend to screen out qualified individuals with disabilities and special disabled veterans, they are job-related for the position in question and are consistent with business necessity. The periodic review takes place twice a year -- January and July.

The purpose of this review gives special attention to physical and mental job qualification requirements to insure: (1) their job-relatedness, consistency with business necessity and with safe performance of the job; and (2) that these qualification requirements do not screen out qualified persons with disabilities and qualified special disabled and Vietnam era veterans.

Whenever the County applies physical or mental job qualification requirements in the selection of applicants or employees for employment or other change in employment status such as promotion, demotion or training, to the extent that qualification requirements tend to screen out qualified individuals with disabilities and qualified special disabled veterans, the requirements or standards shall be related to the specific job(s) for which the individual is being considered and shall be consistent with business necessity and the safe performance of the job.

1. Reasonable Accommodation to Physical and Mental Limitations of Employees

The County shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability, unless it can demonstrate that the reasonable accommodation would impose an undue hardship on the operation of its business.

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If an employee with a known disability or who is a known special disabled veteran is having significant difficulty performing his/her job and it is reasonable to conclude that the performance problem may be related to the known disability, the appropriate supervisor or manager shall confidentially notify the employee of the performance problem and inquire whether the problem is related to the employee's disability. If the employee responds affirmatively, the appropriate supervisor or manager shall confidentially inquire whether the employee is in need of a reasonable accommodation.

In determining the extent of the County's reasonable accommodation obligations, the following factors, among others, may be considered: (1) business necessity and (2) financial cost and expense to the specific County department.

To determine the appropriate reasonable accommodation after the Affirmative Action Officer has determined whether individuals who identify themselves as disabled within the prescribed legal definition, it may be necessary for the County department head, manager or supervisor to initiate an informal, interactive process with the qualified individual with a disability in need of the reasonable accommodation. This interactive process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations to performing the essential functions of the job.

#### G. Compensation

In offering employment or promotions to individuals with disabilities, special disabled veterans and Vietnam era veterans, the County may not reduce the amount of compensation offered because of any disability income, pension or other benefit the applicant or employee receives from another source. Reducing the amount of compensation on this basis is an unlawful employment practice.

#### H. Internal Audit and Reporting Systems

The Affirmative Action Officer, in conjunction with the Community Affirmative Action Committee, shall design and implement internal audit and reporting systems to:

- (a) measure the effectiveness of the County's Affirmative Action Programs
- (b) indicate any need for remedial action
- (c) determine the degree to which the County's objectives have been attained
- (d) determine whether known disabled persons, special disabled veterans and Vietnam era veterans have had the opportunity to participate in all County sponsored education, training, recreation and social activities
- (e) measure the County's compliance with the specific obligations contained within this document
- (f) ensure that each County department is in compliance with the provisions of these Programs

Where the implementation of the provisions of these Programs is found to be deficient, the County shall undertake necessary action to correct deficiencies and to assure equality of opportunity.

### I. Sheltered Workshops

Contracts with sheltered workshops do not constitute affirmative action in lieu of employment and advancement of qualified disabled individuals in the County's own workforce. These contracts will be included in the County's Affirmative Action Programs where the contracts with sheltered workshops train employees for the County and the County is obligated to hire trainees at full compensation when such trainees become "qualified individuals with disabilities."

### V. **Harassment and Other Forms of Discrimination/Complaint Procedures**

The County has developed and implemented procedures to ensure that its employees with disabilities are not harassed or discriminated against because of disability or veteran status. Informal concerns of harassment and other forms of discrimination are handled and resolved by the Affirmative Action Officer and formal complaints of harassment and other forms of discrimination against the County are processed through the Tompkins County Human Rights Commission.

The Complaint Procedure delineated in the County's Affirmative Action Programs document dealing with the utilization of minorities and women is hereby designated as the procedure to be followed for claims alleging harassment and other forms of discrimination based upon disability or veteran status.

### VI. **Relationship of Civil Service to Affirmative Action**

As a public/government employer, Tompkins County must comply with New York State Civil Service Law and the Civil Service Rules for Tompkins County. This body of Law and Rules operates as the statutory basis for all public employment policy. An understanding of the impact of Civil Service Law and the Local Rules on the hiring procedure is therefore necessary before an Affirmative Action Program that addresses the underutilization of minorities and women within certain County job categories may be implemented.

The Constitution of the State of New York (Article V, Section 6) mandates that "appointments and promotions in the civil service of the State and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive." State Civil Service Law and the local civil service rules are the legislated means by which public employers shall carry out the constitutional mandate of employment based on the principle of "merit and fitness". In its interpretation of the requirement of "competitive examination wherever practicable", Civil Service Law establishes four jurisdictional classes of positions: Competitive, Non-Competitive, Exempt and Labor.

The competitive class consists of those positions for which competitive examination has been deemed practicable. Positions in this class are filled by making a permanent appointment from among the top three candidates appearing on an eligible list as the result of competitive examination. Positions in the other three classes do not require competitive examination but department heads must still follow the principle of "merit and fitness" when filling vacancies.

There are three key steps in the process of hiring an employee that have a major impact on the equal employment opportunities that Tompkins County is able to provide. The first is the setting of minimum qualifications that do not adversely impact any of the protected classes. The responsibility for this step rests with the Personnel Department and has been an active concern of this Department for many years.

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The second key step is the recruitment effort. The Personnel Department recognizes the need for adequate advertisement of Tompkins County's vacancies and examinations and the need to notify the public about how the system works. In recent years a standardized, comprehensive list of vacancies and a mailing list serving more members of the protected classes has been created. Application forms, job descriptions, examination announcements, public information sessions and an equal opportunity to apply for advertised examinations and/or vacancies are made readily available to the public.

One-on-one civil service information sessions (not career counseling) are provided on a walk-in basis or over the telephone. Public informational sessions are provided to groups as requested. In addition to newspaper advertisements, direct mailing and public posting of paper announcements, the current vacancy list and all examination announcements are also available on the World Wide Web at <http://www.co.tompkins.ny.us/>. Free public access to the internet is currently provided by the Tompkins County Public Library.

Tompkins County's efforts in creating job descriptions containing appropriate minimum qualifications and recruitment are similar to the steps that any employer, public or private, would take and are not impacted upon by Civil Service Law and Rules.

The third key step in the hiring process is the actual selection of the candidate to be hired. For positions in the exempt, non-competitive and labor classes, the impact of Civil Service Law and Rules is minimal. Department Heads may select any candidate referred by the Personnel Department.

For competitive class positions, however, Appointing Authorities are limited to using an appropriate eligible list to make an appointment from among the top three persons who are willing to accept such appointment. This "Rule of Three" is specified by civil service law Section 61. Correspondingly, this law also says that anyone equal to, but beyond the number three position on the list, is also considered number three for the purpose of making a permanent appointment. This section of law is significant in light of the State's new "Band Scoring" reform.

The traditional point-by-point scoring system is being phased out and will be replaced entirely by the use of band scoring for all civil service examinations. Band scoring simply means that the point-by-point scores of a group can be considered functionally equivalent within an appropriate band. This came about because Governor Pataki recognized that "no test can measure a candidate's true score with perfect confidence and no test can assess all the abilities relevant to a given job."

As a result, band scoring has the **potential** to provide an appointing authority with more than three candidates who are "among the top three" by providing more candidates who are equal to but beyond the number three position on the list. This should provide a little more flexibility in the hiring employees without violating the wording and intent of the State Constitution. However, even with such progressive changes as band scoring and with no adverse impact from the setting of the minimum qualifications or from the recruitment effort, the County may still be prevented from hiring members of the protected classes by virtue of the rule of three. Here, therefore, is the one place where Civil Service Law and Rules may directly impact on the equal employment opportunity practices of the County.

Although there may be five or ten or even one hundred people who are on the eligible list and therefore qualified for appointment by virtue of having passed the Civil Service exam, the Department Head is limited at any given time to choosing one candidate from among the top three. The same recruitment effort for a position in one of the other three classes could potentially, in contrast, provide a Department Head with five, ten or even one hundred candidates from which to choose.

In summary, the Civil Service Law and Local Rules have essentially no impact on the County's Affirmative Action efforts in the Non-Competitive, Exempt or Labor classes. The responsibility to recruit candidates from three protected classes lies with the Personnel Department and the responsibility to hire in accordance with the intent and goals of this Program lies with the Department Heads making the appointments. For competitive class positions, however, there may be occasions where affirmative action efforts in hiring to address underutilization will be hampered or prevented by the rule of three for appointment from Eligible Lists, despite effective recruitment of minorities and women and an intent to hire in accordance with the Program.

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### VII. HIV INFECTION AND AIDS POLICY

Equal opportunity for persons who have, or are perceived to have, HIV infection or AIDS is guaranteed by New York State Human Rights Law and the Americans With Disabilities Act of 1990. While none of the principles with respect to such persons differ from other disabilities, this policy exists to provide clarification with respect to this particular condition, given the amount of general attention, publicity and fear that exists.

#### A. Definitions

1. "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control of the United States Public Health Service.
2. "HIV Infection" means infection with the human immune deficiency virus or any other related virus identified as a probable causative agent of AIDS.
3. "Persons with HIV infection or AIDS" means a person living with AIDS, living with HIV related illnesses, or who tests positive for HIV.
4. "Employees" means everyone who receives a paycheck from Tompkins County government, volunteers and student interns.

#### B. Non-Discrimination

Tompkins County guarantees equal opportunity to all employees without regard to race, color, national origin, sex/gender, sexual orientation, religion, creed, age, marital status, disability, ex-offender status, Vietnam Era or special disabled veteran status. Tompkins County recognizes that employees living with, or perceived to be living with, life threatening illnesses, including HIV infection or AIDS, may choose to conduct their lives following their normal routines, including employment with Tompkins County.

Employees with HIV infection or AIDS may continue to work for the County so long as they are able to perform the duties of their position. As with other disabilities, the County will make reasonable accommodation for the employee to enable the employee to continue normal routine.

The County shall develop and conduct employee education around the issue of life-threatening illnesses, specifically HIV infection and AIDS, as a part of its training program with respect to affirmative action and equal opportunity in employment in general. This will include education for new employees held within the first three months of hire. This training will include the rudiments of self-protection when coming to someone's aid.

Specific job-related policies, procedures and training will be developed by individual departments on an "as needed basis", unless additional training is specifically prescribed by law. Said training shall address basic safety procedures to be followed by employees in the performance of their prescribed duties.

No employee will be transferred to a different job site or assigned to different job duties based on a fear of working with persons with life-threatening illnesses, including persons living with, or perceived to be living with, HIV infection or AIDS. If additional training is needed to address and relieve fears which one employee may have of another, the County will ensure that said training is offered.



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#### C. Grievance Procedure

Any employee who wishes to present a grievance because of discrimination based on the fact that they are living with, or are perceived to be living with, HIV infection or AIDS may file such a grievance with an immediate supervisor, a higher level supervisor, a department head or the Commissioner of Personnel. Any employee represented by a bargaining unit (union) may in the alternative follow the grievance procedure provided in the pertinent union agreement.

Any individual who is not satisfied with the results of the above grievance process, or who does not wish to use them, may file a claim with the County Administrator, the Human Rights Commission, or with the New York State Division of Human Rights.

All County employees or officials who are in any way involved in any grievance filed under this policy must maintain strict confidentiality with respect to the details of that grievance.

#### D. Confidentiality

When, in a County department, the conduct of business requires that an employee divulge information about a person living with, or perceived to be living with HIV infection or AIDS, employees shall not divulge such information to any third party except with specific written release from the individual for EACH instance. Any health conditions of an employee are personal and confidential, and stringent precautions must be taken to protect such information.

Unless otherwise specified, the release to be used when such information must be divulged will be the release developed by the New York State Health Department for such purposes.

If a person living with, or a person perceived to be living with, HIV infection or AIDS believes that this right to confidentiality has been violated, the above grievance procedures shall apply.

#### E. Education

Each County employee must be informed of and provided an opportunity to review the County HIV Infection and AIDS Policy and have the opportunity to discuss this policy with their supervisor or personnel representative at the time of appointment. The Affirmative Action Officer, the County Training Coordinator, the Director of the Tompkins County Human Rights Office, and other appropriate professionals are instrumental in the provision of education programs around the County's HIV Infection and AIDS Policy. In addition, at the time of appointment, written information shall be given to each new employee pertaining to:

Basic HIV/AIDS Medical Information

Transmission Modes

Preventive Strategies

NYS Confidentiality Law

Referrals for further information

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At a minimum, County departments must adhere to the laws/regulations promulgated by the State Legislature, Federal Government, Board of Representatives and their respective administrative agencies regarding training of employees and the frequency and content of that training.

Each department is encouraged to provide or arrange a session annually for employees to attend on one or more of the following topics:

- Updated medical information, including most recent information on transmission and prevention
- Service delivery in response to AIDS
- Information on demographic and patient needs
- Counseling and testing
- Confidentiality and non-discrimination requirements
- Examples of specific work site situations

These sessions are to be conducted on County time and expense, the arrangements must be made to make it possible for employees to attend. Supervisory staff in departments with major public contact are required to attend one session per year and may ask to receive special assistance from within their department or through the Public Health or Personnel Department.

The County shall ensure that the Employee Assistance Program is qualified and prepared to offer help to persons experiencing distress personally because of HIV infection or AIDS-related issues for themselves, family members, or with respect to real or perceived problems in co-workers.

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**VIII. CONCLUDING STATEMENT**

**I, Barbara Mink, as the Chair of the County Board of Representatives, have read the Affirmative Action Programs and that the contents thereof are true and correct to the best of my knowledge and belief. I pledge the County to make every good faith effort to achieve the objectives, goals and timetables set forth in these Programs.**

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**Barbara Mink, Board Chair**

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**Date**