

## CHAPTER 3905

### DEPARTMENT OF MANAGEMENT AND BUDGET

### STATE AGENCIES; AFFIRMATIVE ACTION

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#### 3905.0100 AFFIRMATIVE ACTION POLICY.

It is the policy of the state of Minnesota to implement and maintain an affirmative action program designed to eliminate underutilization of qualified protected group members within the state civil service through a series of specific, result-oriented procedures combined with good faith effort. A good faith effort minimally includes consideration of affirmative action goals on all staffing and personnel decisions.

**Statutory Authority:** *MS s 43A.04*

#### 3905.0200 SCOPE OF CHAPTER.

This chapter applies to all agencies in the executive branch and to classified and unclassified positions of those agencies. In the event of a conflict or duplication between requirements of this chapter and federal regulations and at the request of the agency head, the commissioner may permit an agency to substitute a federally required procedure for a similar procedure otherwise required by this chapter.

**Statutory Authority:** *MS s 43A.04*

#### 3905.0300 DUTIES OF AGENCY HEAD.

The agency head shall administer the agency's affirmative action program in compliance with existing laws, federal regulations, and state rules. The agency head is accountable for affirmative action compliance to the governor and to the commissioner.

**Statutory Authority:** *MS s 43A.04*

#### 3905.0400 REQUIREMENTS FOR AGENCY AFFIRMATIVE ACTION PLANS.

Subpart 1. **For agencies with 25 or more employees.** The head of each agency with 25 or more employees shall submit to the commissioner an affirmative action plan for the agency. The plan must at least:

- A. identify the protected group or groups underrepresented in the agency's work force and, therefore, covered by the affirmative action plan;
- B. designate those persons or groups responsible for directing and implementing the agency affirmative action program and the specific responsibility, accountability, and duties of each person or group;
- C. state the agency head's commitment to the affirmative action program and to the implementation of the agency affirmative action plan;
- D. specify a readily accessible location for the posting of the agency's affirmative action plan;
- E. describe the methods by which the agency's affirmative action program is communicated internally and externally to employees and other interested persons;
- F. describe internal procedures, which must comply with part 3905.0500, for processing complaints of alleged discrimination from applicants, eligibles, and employees;
- G. set goals and timetables, which must be established using the standards in part 3905.0600;

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H. identify and describe methods for developing programs and program objectives designed to meet affirmative action goals;

I. describe methods of auditing, evaluating, and reporting program success, including a procedure that requires a preemployment review of all hiring decisions for goal units with unmet affirmative action goals and prereview of all layoff decisions to determine their effect on agencies' affirmative action goals and timetables; and

J. include the official affirmative action transmittal form which provides for section by section verification of the plan's components.

At the discretion of the agency head, the affirmative action plan may contain other provisions not in conflict with this chapter.

Subp. 2. **For agencies with fewer than 25 employees.** The head of each agency with fewer than 25 employees shall submit to the commissioner an affirmative action plan for the agency, which must at least:

A. state the agency head's commitment to the affirmative action program;

B. state the agency head's objective to hire members of protected groups when vacancies occur if an apparent underutilization of protected group members exists in the agency work force; and

C. describe an internal procedure, which must comply with part 3905.0500, for processing complaints of alleged discrimination from applicants, eligibles, and employees.

**Statutory Authority:** *MS s 43A.04*

**3905.0500 REQUIREMENTS FOR COMPLAINT PROCEDURES.**

In an agency's internal procedure for processing complaints of alleged discrimination from applicants, eligibles, and employees, the initial step must provide for a determination of whether the complaint is properly a discrimination complaint and, therefore, appropriate to be addressed by the internal procedure. Time limits on these determinations must be established to permit the applicant, eligible, or employee to pursue a complaint determined to be other than a discrimination complaint through other appropriate grievance procedures in accordance with the time limits of those procedures. Complaint procedures must also provide for a final written answer within 60 days after a formal complaint is filed. Disposition of complaints must be filed with the commissioner within 30 days of final determination.

**Statutory Authority:** *MS s 43A.04*

**3905.0600 REQUIREMENTS FOR GOALS AND TIMETABLES.**

Subpart 1. **General requirement.** In establishing goals and timetables for affirmative action plans, agency heads shall comply with subparts 2 to 6.

Subp. 2. **Labor force statistics.** In establishing goals for affirmative action plans, agency heads shall use labor force statistics from census data when available to examine work force participation. When an agency requests the authority to substitute more specific data, the commissioner shall consider alternative data sources and determine their applicability based on the following criteria:

A. the objectivity of the supplying organization;

B. the reliability of statistical procedures used to generate the data; and

C. the comparability of data categories (occupational group, geographic location, disabling condition, for example) used.

Subp. 3. **Formula for determining underutilization.** Agency heads shall determine underutilization of protected groups using statistical formulas based on the following criteria:

A. types of jobs within each agency and agency subdivision;

B. number of employees in those jobs, by state class title, and by protected group;

C. availability of protected group workers having the qualifications for those jobs; and

D. geographic locations and applicable labor market areas for each type of job in each agency and agency subdivision.

Subp. 4. **Numerical goals.** Agency heads shall establish numerical goals for the agency and for each agency subdivision that has 25 or more employees and that is in a geographic location with a labor market area separate from that of the agency central office.

Subp. 5. **Basis for goals.** Agency heads shall establish goals for each goal unit by protected group. The goals must be based on a comparison of the composition of the agency or agency subdivision work force with the composition of the relevant civilian labor force in an identified labor market area. If the comparison shows that a goal unit underutilizes a protected group, the agency head shall establish a goal for that group in that goal unit.

Subp. 6. **Timetables.** Agency heads shall establish timetables for meeting goals. Timetables must be based on turnover and hire rates within each goal unit in the agency or within each agency subdivision.

**Statutory Authority:** *MS s 43A.04*

**History:** *L 2005 c 56 s 2*

#### **3905.0700 REPORTING REQUIREMENTS.**

Subpart 1. **Quarterly reports.** Agency heads with 25 or more employees shall submit quarterly to the commissioner a report of the agency's efforts to meet affirmative action goals and the progress resulting from those efforts. Agency heads with fewer than 25 employees shall submit such a report to the commissioner semiannually. Reports are due 30 days following the close of the reporting period.

Subp. 2. **Biennial reports.** Each agency head shall submit to the commissioner, concurrently with the agency's biennial budget request, a report on the results of the agency's affirmative action plan. The commissioner shall submit these reports to the governor and the legislature.

**Statutory Authority:** *MS s 43A.04*