

**3920.0900 RECONSIDERATION.**

Subpart 1. **Scope.** If a jurisdiction disagrees with the department's compliance decision or with the time provided by the department to achieve compliance, it may request reconsideration of the decision. As the result of a reconsideration, the department must decide, based on the written information described in subparts 7 to 9:

A. that its original noncompliance decision and date for achieving compliance were correct;

B. that the original noncompliance decision was incorrect and the jurisdiction is in compliance; or

C. that the original noncompliance decision was correct but that more time will be provided for the jurisdiction to achieve compliance.

Subp. 2. **Initiating a reconsideration request.** To initiate a reconsideration request, the jurisdiction must give written notice to the department. The reconsideration request must be submitted within 30 days after the date of the noncompliance notice sent by the department.

Subp. 3. **Submitting information.** The jurisdiction must submit written information to support the request within 60 days after the date of the noncompliance notice sent by the department.

A. A jurisdiction requesting reconsideration must submit the information listed in subpart 5, notice to employees.

B. A jurisdiction requesting reconsideration of the time provided to achieve compliance, but not requesting reconsideration of the original compliance decision, must also submit the information listed in subpart 8, compliance plan.

C. A jurisdiction may also submit any of the information listed in subpart 9, evidence for reconsideration.

Subp. 4. **Burden of proof.** During the reconsideration process, the burden of proof is on the jurisdiction to demonstrate to the department that the compliance decision was incorrect or that the time allowed to achieve compliance should be extended.

Subp. 5. **Notice to employees.** Reconsideration requests must include:

A. a statement signed by the chief elected official, or if none, the chief appointed official, verifying that exclusive representatives and employees have been notified of the reconsideration request, as explained in subpart 6; and

B. a copy of the notice sent and posted, as explained in subpart 6.

Subp. 6. **Notice requirements.** A jurisdiction requesting reconsideration must send a written notice to each exclusive representative, if any, for employees of the jurisdiction. The

jurisdiction must also post the notice in a prominent location accessible to all employees, and make a copy available in the public library.

The notices must be sent and posted before the request for reconsideration is submitted to the department. Posted notices must remain posted for at least 90 days after the reconsideration request is submitted to the department.

The written and posted notices must include the following information:

A. a statement that the jurisdiction has been found not in compliance with the Local Government Pay Equity Act and that the jurisdiction is requesting a reconsideration of that decision or a longer period of time to achieve compliance;

B. a description of the grounds for the reconsideration request;

C. a statement that the department's determination and the materials submitted in support of the reconsideration request are public information available to anyone requesting the information;

D. a statement that any comments concerning the reconsideration request may be submitted to the department; and

E. the department's address and telephone number.

Subp. 7. **Comments.** A person or entity may submit a complaint about the accuracy or completeness of a jurisdiction's reconsideration request by writing to the department. The complaint must specify the information believed to be inaccurate or incomplete. In response to a complaint, the department must decide either that the complaint is without merit and that no review is necessary, or that the complaint may have merit and a review is necessary.

In addition, the department may initiate a review of the accuracy and completeness of a jurisdiction's reconsideration request for the purpose of ensuring that the reconsideration is based upon correct and complete information. If the department decides that a review is necessary, it must follow the procedures in part 3920.0700, subpart 2.

Subp. 8. **Compliance plan.** If a jurisdiction agrees that it is not in compliance, but requests reconsideration of the time allowed to achieve compliance, it must submit the following information to the department in writing:

A. a plan for achieving compliance, including the jurisdiction's proposed actions and response to the department's recommendations;

B. a proposed date for achieving compliance and for submitting a revised report for department review; and

C. a statement by the chief elected official or, if none, the chief appointed official, that the plan and proposed date have been approved by the jurisdiction's governing body.

Subp. 9. **Evidence for reconsideration.** In submitting a request for reconsideration of the compliance decision or for reconsideration of the time allowed to achieve compliance, the jurisdiction may submit written evidence concerning any of the facts in items A to H.

A. Nongender-based inequities. A jurisdiction may demonstrate that compensation inequities between male-dominated and female-dominated classes are not gender-based. The jurisdiction may submit any relevant information.

B. Recruitment difficulties. A jurisdiction may demonstrate that one or more female-dominated classes receive lower compensation than male-dominated classes because of recruitment difficulties in male-dominated classes. The jurisdiction may submit information documenting that:

(1) recruitment problems in female-dominated classes would be identified, evaluated, and treated the same as recruitment problems in male-dominated classes; and

(2) the higher compensation for male-dominated classes is needed to attract qualified candidates for those classes.

C. Retention difficulties. A jurisdiction may demonstrate that one or more female-dominated classes receive lower compensation than male-dominated classes because of retention difficulties in male-dominated classes. The jurisdiction may submit information documenting that:

(1) retention problems in female-dominated classes would be identified, evaluated, and treated the same as retention problems in male-dominated classes; and

(2) the higher compensation for male-dominated classes is needed to retain employees in those classes.

D. Recent arbitration. A jurisdiction may demonstrate that one or more female-dominated classes receive lower compensation than male-dominated classes because of recent arbitration awards that are inconsistent with equitable compensation relationships. The jurisdiction may submit any relevant information.

E. Good faith. A jurisdiction may demonstrate that it has made a good faith effort to achieve compliance. The jurisdiction may submit any information supporting subitems (1) to (3).

(1) Since 1984, the jurisdiction has substantially reduced the frequency or amount of compensation inequities for female-dominated classes in comparison with male-dominated classes.

(2) Since 1984, a substantial portion of funds available for compensation increases has been spent on reducing compensation inequities for female-dominated classes.

(3) There is other evidence of the jurisdiction's good faith efforts to achieve compliance.

F. Continued progress. A jurisdiction may demonstrate its continued progress toward compliance. The jurisdiction may submit any relevant information.

G. Constraints. A jurisdiction may demonstrate any constraints it faces. The jurisdiction may submit any information supporting subitem (1) or (2).

(1) severe fiscal constraints have made implementation difficult or impossible; or

(2) there are other constraints which have made implementation of pay equity difficult or impossible.

H. Other evidence. A jurisdiction may submit any other information to demonstrate that the department's compliance decision was incorrect or that more time should be provided to achieve compliance.

Subp. 10. **Reconsideration decision and notice.** The department must notify the jurisdiction in writing of its decision after reconsideration.

A. If the department decides that the original noncompliance decision was incorrect and the jurisdiction is in compliance, the department must notify the jurisdiction of that decision. The notice must specify the date on which the next implementation report must be submitted to ensure that pay equity is maintained, as explained in part 3920.1300, subpart 2.

B. If the department decides that the original noncompliance decision and date for achieving compliance were correct, the department must notify the jurisdiction of that decision. The notice must include a detailed description of the basis for the finding, specific recommended actions to achieve compliance, and an estimated cost of compliance, if any of that information is revised from the department's original noncompliance notice. If the jurisdiction does not achieve compliance and submit a revised report by the date specified in the department's original compliance notice, a penalty will be imposed under part 3920.1000.

C. If the department decides that the original noncompliance decision was correct but that more time will be provided to achieve compliance, the department must notify the jurisdiction of that decision. The notice must specify the revised date by which compliance must be achieved to avoid a penalty, as explained in part 3920.0800, subpart 3. In addition, the notice must include a detailed description of the basis for the finding, specific recommended actions to achieve compliance, and an estimated cost of compliance, if any of that information is revised from the department's original noncompliance notice.

Subp. 11. **Next steps.** If a reconsideration results in a time extension for achieving compliance, the jurisdiction must submit a revised report by the date established by the department. The department must examine the revised report by the methods in parts 3920.0400 to 3920.0700, and make a revised compliance decision.

A. If a reexamined jurisdiction is found in compliance, the department must notify the jurisdiction of the date on which the next implementation report must be submitted to ensure that pay equity is maintained, as explained in part 3920.1300, subpart 2.

B. If a reexamined jurisdiction is again found not in compliance, the department must notify the jurisdiction that a penalty will be imposed, as explained in part 3920.0800, subpart 5, item B.

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

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