

5000.3420 AFFIRMATIVE ACTION PLANS; CONTRACTORS.

Subpart 1. **General requirements.** Under the affirmative action obligation imposed by the Human Rights Act, Minnesota Statutes, section 363A.36, contractors must take affirmative action to employ and advance in employment qualified minority, female, and disabled persons at all levels of employment, including the executive level. Affirmative action must apply to all employment practices including the following:

- A. hiring, upgrading, demotion, or transfer;
- B. recruitment or recruitment advertising;
- C. layoff or termination;
- D. rates of pay or other forms of compensation; and
- E. selection for training, including apprenticeship.

Subp. 2. **Proper consideration of qualifications.** Contractors shall review their personnel processes to determine whether their present procedures assure careful, thorough, and systematic consideration of the job qualifications of known minority, female, and disabled applicants and employees for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available. To the extent that it is necessary to modify their personnel procedures, contractors shall include the development of new procedures for this purpose in their affirmative action plan required under this part. These procedures must be designed to facilitate a review of the implementation of this requirement by the contractor or the department.

Subp. 3. **Affirmative action plan.** Before submitting a bid or proposal for a covered state contract, a contractor shall prepare and maintain at each establishment an affirmative action plan which sets forth the contractor's policies, practices, and procedures in accordance with this part. This plan may be integrated into or kept separate from other affirmative action plans of the contractor.

Subp. 4. **Plan review.** The affirmative action plan must be reviewed and updated annually. If there are any significant changes in procedures, rights, or benefits as a result of the annual updating, those changes must be communicated to employees and applicants for employment and submitted to the department's compliance division.

Subp. 5. **Identify plan coverage.** The contractor shall invite all applicants and employees who believe themselves covered by Minnesota Statutes, section 363A.36 and who wish to benefit under the affirmative action plan to identify themselves to the contractor. The invitation must state that the information is voluntarily provided, that it will be kept confidential, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with the Human Rights Act and rules adopted under the act. If disabled applicants or employees

identify themselves, the contractor shall also seek advice from each of them regarding proper placement and appropriate accommodation.

An employee shall not be precluded from informing a contractor at any future time of the employee's desire to benefit under the program.

A contractor shall not be relieved of its obligation to take affirmative action with respect to those applicants or employees whose minority, female, or disabled status is known to the contractor provided that the contractor is not obligated to search the medical files of any applicant or employee to determine the existence of a disability.

A contractor shall not be relieved from liability for discrimination under the Human Rights Act.

Subp. 6. **Notice.** The contractor shall agree to post a notice in a conspicuous place which is available to employees and applicants for employment. The notice must be in a form prescribed by the commissioner. The notice must state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified minority, female, and disabled employees and applicants for employment, and the rights of applicants and employees.

Subp. 7. **Employee access to plan.** The complete affirmative action plan must be available for inspection to an employee or applicant for employment upon request. The location and hours during which the program may be obtained must be posted at each facility.

Subp. 8. **Equal opportunity policy statement.** The contractor must prepare and include in its affirmative action plan an equal employment opportunity policy statement.

The equal employment opportunity policy statement must indicate that the contractor is committed to the principles of equal employment opportunity, assign overall responsibility to an executive of the contractor, and provide for a reporting and monitoring procedure. The policy statement must indicate that it is the policy of the contractor to:

A. recruit, hire, train, and promote persons in all job titles, without regard to race, color, creed, religion, sex, national origin, marital status, status with regard to public assistance, disability, sexual orientation, or age except where such status is a bona fide occupational qualification;

B. make employment decisions in a manner which will further the principles of equal employment opportunity;

C. ensure that promotion decisions are in accord with principles of equal employment opportunity by imposing only valid requirements for promotional opportunities; and

D. ensure that all personnel actions such as compensation, benefits, transfers, layoffs, return from layoff, company-sponsored training, education, tuition assistance, and social and recreation programs will be administered without regard to race, color, creed, religion, sex, national origin, marital status, status with regard to public assistance, disability, sexual orientation, or age.

This statement must be signed by the chairperson of the board or the chief executive officer.

Statutory Authority: *MS s 363.074; 363A.37*

History: *9 SR 2748; 17 SR 1279; 24 SR 273*

Published Electronically: *October 2, 2013*