

5000.3552 PHYSICAL AND MENTAL QUALIFICATIONS.

Subpart 1. **Schedule for review.** The contractor must provide in its affirmative action program, and must adhere to, a schedule for the review of all physical or mental job qualification requirements to ensure that, to the extent qualification requirements tend to screen out qualified disabled persons, they are job related and are consistent with business necessity and the safe performance of the job.

Subp. 2. **Relating qualification requirements to job.** Whenever a contractor 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 disabled persons, the requirements must be related to the specific job or jobs for which the person is being considered and must be consistent with business necessity and the safe performance of the job. The contractor has the burden to demonstrate that it has complied with the requirements of this subpart.

Subp. 3. **Preemployment medical exam.** Nothing in this part shall prohibit a contractor from requiring a comprehensive medical examination after a conditional offer of employment provided that the results of such an examination shall be used only in accordance with the requirements of parts 5000.3550 to 5000.3559. Whenever a contractor inquires into an applicant's or employee's physical or mental condition or conducts a medical examination after a conditional offer of employment or change in employment status, information obtained in response to such inquiries or examination must be kept confidential except that:

A. supervisors and managers may be informed regarding restrictions on the work or duties of disabled persons and regarding accommodations;

B. first aid and safety personnel may be informed, where and to the extent appropriate, if the condition might require emergency treatment; and

C. officials, employees, representatives, or agents of the department or local human rights agencies investigating compliance with the act or local human rights ordinances must be informed if they request such information.

Subp. 4. **Accommodation to physical and mental limitations of employees.** A contractor shall make a reasonable accommodation to the physical and mental limitations of an employee or applicant unless the contractor can demonstrate that such an accommodation would impose an undue hardship on the conduct of the contractor's business. In determining the extent of a contractor's accommodation obligations, the following factors among others may be considered: (1) business necessity and (2) financial cost and expenses.

Subp. 5. **Compensation.** In offering employment or promotions to disabled persons, the contractor must not reduce the amount of compensation offered because of any disability income, pension, or other benefit the applicant or employee receives from another source.

Subp. 6. **Outreach, positive recruitment, and external dissemination of policy.** Contractors must review their employment practices to determine whether their personnel programs provide the required affirmative action for employment and advancement of qualified disabled persons. Based upon the findings of such reviews, contractors must undertake appropriate outreach and positive recruitment activities, such as those listed in items A to J. It is not contemplated that contractors will necessarily undertake all the listed activities or that their activities will be limited to those listed. The scope of a contractor's efforts must depend upon all the circumstances, including the contractor's size and resources and the extent to which existing employment practices are adequate.

A. Develop internal communication of its obligation to engage in affirmative action efforts to employ qualified disabled persons in such a manner as to foster understanding, acceptance, and support among the contractor's executive, management, supervisory, and all other employees and to encourage such persons to take the necessary action to aid the contractor in meeting this obligation.

B. Develop reasonable internal procedures to ensure that its obligation to engage in affirmative action to employ and promote qualified disabled persons is being fully implemented.

C. Periodically inform all employees and prospective employees of its commitment to engage in affirmative action to increase employment opportunities for qualified disabled persons.

D. Enlist the assistance and support of recruiting sources (including state employment security agencies, state vocational rehabilitation agencies or facilities, rehabilitation facilities, college placement officers, state education agencies, labor organizations, and organizations of or for disabled persons) for the contractor's commitment to provide meaningful employment opportunities to qualified disabled persons. Information on national organizations serving the disabled, many of which have state or local affiliates, can be obtained from the Clearinghouse on Disability Information, Office of Special Education and Rehabilitation Services, United States Department of Education, (202) 732-1241 or (202) 732-1723 (Voice/TDD).

E. Engage in recruitment activities at educational institutions that participate in training of the disabled, such as schools for the blind, deaf, or developmentally disabled.

F. Establish meaningful contracts with appropriate social service agencies, organizations of and for disabled persons, vocational rehabilitation agencies or facilities, for such purposes as advice, technical assistance, and referral to potential employees.

Technical assistance from the resources described in this paragraph may consist of advice on proper placement, recruitment, training, and accommodations contractors may undertake, but no such resource providing technical assistance must have the authority to approve or disapprove the acceptability of affirmative action programs.

G. Review employment records to determine the availability of promotable and transferable qualified known disabled persons presently employed, and to determine whether their present and potential skills are being fully utilized or developed.

H. Include disabled workers when employees are pictured in consumer, promotional, or help wanted advertising.

I. Send written notification of company policy to all subcontractors, vendors and suppliers, requesting that they act in a manner consistent with the contractor's policy on affirmative action.

J. Take positive steps to attract qualified disabled persons not currently in the work force who have requisite skills and can be recruited through affirmative action measures. These persons may be located through the local chapters of organizations of and for disabled persons described in part 5000.3552, subpart 6.

Subp. 7. **Internal dissemination of policy.** An outreach program is ineffective without adequate internal support from supervisory and management personnel and other employees, who may have had limited contact with disabled persons in the past. In order to assure greater employee cooperation and participation in the contractor's efforts, the contractor shall adopt, implement, and disseminate this policy internally as follows:

A. Include it in the contractor's policy manual.

B. Publicize it in the company newspaper, magazine, annual report, and other media.

C. Conduct special meetings with executive, management, and supervisory personnel to explain the intent of the policy and individual responsibility for effective implementation, making clear the chief executive officer's attitude.

D. Schedule meetings with all employees to discuss policy and explain individual employee responsibilities.

E. Discuss the policy thoroughly in both employee orientation and management training programs.

F. Meet with union officials to inform them of the contractor's policy, and request their cooperation.

G. Include nondiscrimination clauses in all union agreements, and review all contractual provisions to ensure they are nondiscriminatory.

H. Include articles on accomplishments of disabled workers in company publications.

I. Post the policy on company bulletin boards, including a statement that employees and applicants are protected from coercion, intimidation, interference, or discrimination for filing a complaint or assisting in an investigation under the Minnesota Human Rights Act.

J. When employees are featured in employee handbooks or similar publications for employees, include disabled employees.

Subp. 8. **Responsibility for implementation.** An executive of the contractor shall be designated as director or manager of company affirmative action activities under these regulations. The director's or manager's identity shall appear on all internal and external communications regarding the company's affirmative action programs. This executive shall be given necessary top management support and staff to manage the implementation of this program, including the following activities:

A. Develop policy statements, affirmative action programs, and internal and external communication techniques. The latter techniques shall include regular discussions with local managers, supervisors, and employees to be certain the contractor's policies are being followed. In addition, supervisors shall be advised that:

(1) their work performance is being evaluated on the basis of their affirmative action efforts and results, as well as other criteria; and

(2) the contractor is obligated to prevent harassment of employees placed through affirmative action efforts.

B. Identify problem areas in conjunction with line management and known disabled employees, in the implementation of the affirmative action plan, and develop solutions. This is particularly important for the accommodations requirements.

C. Design and implement audit and reporting systems that will:

(1) measure effectiveness of the contractor's plan;

(2) indicate need for remedial action;

(3) determine the degree to which the contractor's objectives have been attained;

(4) determine whether known disabled employees have had the opportunity to participate in all company sponsored educational, training, recreational, and social activities; and

(5) ensure that each location is in compliance with the Minnesota Human Rights Act and parts 5000.3550 to 5000.3559.

D. Serve as liaison between the contractor and the Minnesota Department of Human Rights.

E. Serve as liaison between the contractor and organizations of and for disabled persons, and arrange for the active involvement by company representatives in the community service programs of local organizations of and for the disabled.

F. Keep management informed of the latest developments in the entire affirmative action area.

G. Arrange for career counseling for known disabled employees.

Subp. 9. **Development and execution of affirmative action programs.** The affirmative action programs must be developed and executed as follows:

A. Job qualification requirements reviewed under part 5000.3552, subparts 1 and 2 shall be made available to all members of management involved in the recruitment, screening, selection, and promotion process.

B. The contractor shall evaluate the total selection process including training and promotion to ensure freedom from stereotyping disabled persons in a manner which limits their access to all jobs for which they are qualified.

C. All personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes shall be carefully selected and trained to ensure that the commitments in its affirmative action program are implemented.

D. Formal briefing sessions shall be held, preferably on company premises, with representatives from recruiting sources. Plant tours, clear and concise explanations of current and future job openings, position descriptions, worker specifications, explanations of the company's selection process, and recruiting literature shall be an integral part of the briefings. Formal arrangements shall be made for referral of applicants, follow up with sources and feedback on disposition of applicants.

E. A special effort shall be made to include qualified disabled persons on the personnel relations staff.

F. Disabled employees shall be made available for participation in career days, youth motivation programs, and related activities in their communities.

G. Recruiting efforts at all schools shall include special efforts to reach disabled students.

H. An effort must be made to participate in work study programs with rehabilitation facilities and schools which specialize in training or educating disabled persons.

I. The contractor shall use all available resources to continue or establish on-the-job training programs.

Subp. 10. **Rehabilitation facilities.** Contracts with rehabilitation facilities do not constitute affirmative action in lieu of employment and advancement of qualified disabled persons in the contractor's own workforce. Contracts with rehabilitation facilities may be included within an affirmative action program if the rehabilitation facility trains employees for the contractor and the contractor is obligated to hire trainees at full compensation when such trainees become qualified as "qualified disabled persons" as defined in part 5000.3400, subpart 21.

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

History: *9 SR 2748; L 1988 c 689 art 2 s 268; 17 SR 1279; 24 SR 273*

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