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DISCRIMINATION COMPLAINTS; CERTIFICATES 5000.0050

CHAPTER 5000 DEPARTMENT OF HUMAN RIGHTS DISCRIMINATION COMPLAINTS; CERTIFICATES

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5000.0050 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 5000.0050 to 5000.2400, all terms defined in Minnesota Statutes, section 363.01, have the meanings given to them there. All other terms have the meanings given to them in this part.

Subp. 2. **Act.** "Act" means the Minnesota Human Rights Act, as defined in Minnesota Statutes, chapter 363.

Subp. 3. **Administrative appeal of no probable cause determination.** "Administrative appeal of no probable cause determination" means the charging party's

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request that the commissioner reconsider a determination of no probable cause and the process by which the request is considered.

Subp. 4. Administrative appeal of probable cause determination. "Administrative appeal of probable cause determination" means a respondent's request that the commissioner reconsider a determination of probable cause and the process by which the request is considered.

Subp. 5. Answer to a charge. "Answer to a charge" means the respondent's initial written reply to a charge that contains information sufficient to explain the respondent's defense.

Subp. 6. Commissioner. "Commissioner" means the commissioner of human rights or an agent authorized by the commissioner of human rights to perform specific tasks or responsibilities.

Subp. 7. Complaint. "Complaint" means a document issued by the commissioner pursuant to Minnesota Statutes, section 363.06 alleging that a respondent has engaged in or is engaging in an unfair discriminatory practice.

Subp. 8. EEOC. "EEOC" means the United States Equal Employment Opportunity Commission.

Subp. 9. HUD. "HUD" means the United States Department of Housing and Urban Development.

Subp. 10. State. "State" means state of Minnesota.

Subp. 11. Statement of grievance. "Statement of grievance" means written information received by the department that may become a charge of discrimination as defined in parts 5000.0050 and 5000.0400 but that lacks one or more of the required elements described in parts 5000.0050 and 5000.0400.

Subp. 12. Verified charge. "Verified charge" means a written statement signed under oath or affirmation, filed by any person including the commissioner, containing a statement of allegation that a person may have engaged or may be engaging in an unfair discriminatory practice.

Subp. 13. Party. "Party" means a charging party, a complainant, or a respondent.

Statutory Authority: *MS s 363.05 subd 1 cl (8)*

History: *11 SR 740*

5000.0100 [Repealed, 9 SR 2748]

5000.0200 [Repealed, 11 SR 740]

AGENCY PROCEDURE

5000.0300 DEPARTMENT PROCEDURE.

Subpart 1. Due process rights. No person before the department shall have his or her rights, privileges, or duties determined without regard for fundamental fairness. A person may be represented by legal counsel at any stage of proceedings before the department.

Subp. 2. Computation of time. Unless otherwise specified, a period of time prescribed or allowed by parts 5000.0050 to 5000.0900 is computed in accordance with rule 6 of the Minnesota Rules of Civil Procedure and Minnesota Statutes, sections 645.14, 645.15, and 645.151.

Statutory Authority: *MS s 363.05 subd 1 cl (8)*

History: *11 SR 740*

5000.0400 CHARGES.

Subpart 1. Content. A verified charge shall contain:

A. the name and address of the person filing the charge;

B. the name and address of the person against whom the charge is filed;

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C. a clear and concise statement of the facts that, in the judgment of the person filing the charge, may constitute the alleged unfair discriminatory practice;

D. the signature under oath or affirmation of the person filing the charge; and

E. any other information required by the commissioner.

Subp. 1a. Who may file. A person who claims to be aggrieved by an unfair discriminatory practice may file a charge with the department. The charge of an allegedly aggrieved minor or ward must be filed by a parent or guardian.

Subp. 1b. Time for filing. A charge must be filed within 300 days of an alleged unfair discriminatory practice. Filing is accomplished by delivery of the charge to the department's office on or before the 300th day. Time is computed under Minnesota Statutes, sections 645.15 and 645.151.

Subp. 2. Filing. A statement of grievance received by the department must be filed as a verified charge pursuant to Minnesota Statutes, section 363.06, subdivision 3.

Subp. 2a. Cross-filing with other agencies. A charge filed with the department that alleges violation of antidiscrimination laws administered by EEOC or HUD will automatically be filed by the department with the EEOC or HUD.

A charge filed with EEOC or HUD may be referred to the department. The charge is considered filed on the date the department receives from the federal agency sufficient material for a charge to be considered filed under part 5000.0400.

Subp. 3. Service. A copy of the charge shall be served by the commissioner upon a respondent either by personal delivery or by certified mail within five days after it has been filed with the department.

Subp. 4. Withdrawal. A charge may be withdrawn at any time before a complaint is issued by the commissioner.

Subp. 5. Amended charges. A charge may be amended:

A. to cure technical defects or omissions;

B. to allege additional facts if they relate to or grow out of the facts alleged in the original charge;

C. to add, remove, or change a party; or

D. if the purposes of the act will be served thereby.

Subp. 6. Supplemental information. It is the continuing responsibility of a charging party to provide the department with written information sufficient to allow it to communicate with him or her by phone or in writing during the pendency of a charge or any complaint issued thereto. If a charging party fails to comply with this requirement, the commissioner may terminate any proceedings related to that charge; provided, however, that 30 days before the termination the commissioner shall direct a notice of the intention to so act to the charging party by mailing a certified letter to the charging party's last known address.

Statutory Authority: *MS s 363.05 subd 1 cl (8)*

History: *11 SR 740*

5000.0500 INVESTIGATION.

Subpart 1. Answer to charge. A person against whom a charge has been filed may submit to the commissioner an answer to the charge. The reply may contain a statement of the respondent's position and may present any evidence related to the subject matter of the charge.

Subp. 2. Statement. The commissioner may by interview or deposition take the statement of any person relating to the subject matter of a charge or a complaint. The appearance of witnesses may be compelled by the use of subpoena as provided in the act.

Subp. 3. Production and inspection of documents. The commissioner may order any person, including a party, to produce and permit the inspection and copying or photographing of any designated documents, papers, books, accounts, letters, photographs, or other tangible things, not privileged, which may constitute or contain evidence relating to the subject matter of a charge or a complaint. The production of any matter heretofore enumerated may be compelled by the use of subpoena as provided in the act.

Subp. 4. Written interrogatories. The commissioner may order any party to complete written interrogatories relating to the subject matter of a charge or complaint. The written interrogatories shall be completed and returned to the commissioner within 15 days of receipt of them. For good cause, the commissioner may grant an extension of time for the completion and return of the written interrogatories.

Subp. 5. Confidentiality. The commissioner shall not disclose any information obtained during investigation or discovery except as permitted by Minnesota Statutes, sections 363.06, subdivision 6 and 363.061.

Statutory Authority: *MS s 363.05 subd 1 cl (8)*

History: *11 SR 740*

5000.0510 FACT FINDING CONFERENCE.

Subpart 1. Call. The commissioner may call a conference to obtain information needed to investigate an allegation in a charge. At the conference, the parties may attempt to resolve the proceedings before a determination is made.

Subp. 2. Attendance; subpoenas; tape recording. The commissioner may require the attendance of a person at the conference by subpoena. The commissioner may restrict the attendance of others. Both the commissioner and a party may make an audio tape recording of the conference. On request of a party, while a charge is pending, the commissioner shall duplicate the audio recording. The commissioner shall charge a fee to cover the cost of duplication.

Statutory Authority: *MS s 363.05 subd 1 cl (8)*

History: *11 SR 740*

5000.0520 TERMINATION OF PROCEEDINGS.

The commissioner shall not process:

- A. a moot charge;
- B. a charge which the commissioner determines does not warrant further use of department resources; or
- C. a statement of grievance which does not conform to part 5000.0400, subpart 2.

Statutory Authority: *MS s 363.05 subd 1 cl (8)*

History: *11 SR 740*

5000.0530 DISMISSAL OF FRIVOLOUS CHARGES.

The commissioner shall dismiss a charge the commissioner determines is:

- A. illogical, fantastic, or incoherent;
- B. negated by common knowledge which the commissioner takes official notice of;
- C. brought by a charging party acting in bad faith; or
- D. substantially the same as a previous charge in which no probable cause was found and involves the same charging party but a different respondent.

Statutory Authority: *MS s 363.05 subd 1 cl (8)*

History: *11 SR 740*

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5000.0540 DISMISSAL FOR FAILURE TO PROVIDE REQUIRED INFORMATION.

Subpart 1. **When.** The commissioner shall dismiss a charge or a statement of grievance for failure to provide required information when:

- A. the statement of grievance does not conform to part 5000.0400;
- B. the information about a charge that the commissioner has is insufficient to make a determination and the charging party fails to provide information which the charging party claims to have or can obtain that may substantiate an allegation;
- C. the charging party fails to provide information essential to a charge that requires amending;
- D. the charging party indicates to the commissioner an intent to bring a private civil action but fails to proceed either as required by part 5000.0550 or Minnesota Statutes, section 363.14, subdivision 1, clause (c); or
- E. the charging party does not comply with part 5000.0400, subpart 2.

Subp. 2. **Procedure.** If informal means of obtaining the information fail, the commissioner shall notify the charging party by certified and first class mail of the need for the required information and the possibility of dismissal of the charge for failure to provide required information. If the information is not provided within 30 days of the date of notice, the commissioner shall dismiss the charge.

Statutory Authority: *MS s 363.05 subd 1 cl (8)*

History: *11 SR 740*

5000.0550 PRIVATE CIVIL ACTION; NOTICE TO DEPARTMENT.

When a person who has filed a verified charge as provided in part 5000.0400 indicates to the commissioner an intent to bring a private civil action in the matter pursuant to Minnesota Statutes, section 363.14, subdivision 1, clause (c), the commissioner shall suspend processing of the charge and request the charging party to execute, within 30 days, either:

- A. a statement of withdrawal signed by the charging party or attorney of record declaring that a private action will be commenced within 90 days of the initial notice; or
- B. a request to resume processing the case to a disposition consistent with other provisions of the statute and parts 5000.0050 to 5000.2400.

If neither is received within 30 days of delivery of the request to the charging party, the commissioner shall process the case as consistent with the provisions of the act and parts 5000.0050 to 5000.2400.

A copy of a summons and complaint served upon the respondent, whether submitted to the commissioner by the charging party, the respondent, or obtained from the court administrator in which it was filed, shall be sufficient to permit the commissioner to terminate all proceedings in the department relating to the charge.

Statutory Authority: *MS s 363.05 subd 1 cl (8)*

History: *11 SR 740; 1Sp1986 c 3 art 1 s 82*

5000.0560 NOTICE OF DISMISSAL.

The commissioner shall issue an order dismissing a charge when it falls outside the jurisdiction of the act or when it is dismissed pursuant to the act and parts 5000.0050 to 5000.2400. Written notice dismissing a charge shall be sent by certified and first class mail to the charging party and to the respondent within ten days of the dismissal. Notification to the charging party shall include notice of the right to bring a civil action relating to the charge within 45 days of a dismissal pursuant to part 5000.0520, 5000.0530, or 5000.0540.

Statutory Authority: *MS s 363.05 subd 1 cl (8)*

History: *11 SR 740*

5000.0570 REOPENING CERTAIN CASES.

Subpart 1. **Request.** A charging party may request that proceedings terminated according to part 5000.0400, subpart 6, 5000.0520, 5000.0530, or 5000.0540 be reopened. The request must be in writing and must state a substantive reason for reopening. No case shall be reopened pursuant to this rule more than 60 days after notice that the proceedings have been terminated was served by the commissioner.

Subp. 2. **Respondent; notice to; information from.** The commissioner shall within ten days notify the respondent by certified mail of the request. The respondent has ten days from the receipt of the notice to provide the commissioner with pertinent information in writing on reopening the proceedings.

Subp. 3. **Considerations.** In deciding whether to reopen proceedings, the commissioner shall consider whether:

A. the order of dismissal was affected by fraud, mistake, or misconception of fact;

B. the commissioner was less than reasonably diligent in trying to locate the charging party or in obtaining information from the charging party;

C. reopening would result in undue prejudice to the respondent; or

D. justice requires that the matter be reopened.

Subp. 4. **Reopening without request.** After determining that the department clearly erred in closing a proceeding, the commissioner shall reopen the proceedings without a request. The department shall provide notice of its intent to reopen to the charging party and respondent and allow ten days for the respondent to reply.

Subp. 5. **Notice of decision.** The commissioner shall, within 20 days of the respondent's receipt of notice, notify the parties in writing of the decision.

Statutory Authority: *MS s 363.05 subd 1 cl (8)*

History: *11 SR 740*

5000.0580 DETERMINATION OF UNFAIR DISCRIMINATORY PRACTICES.

Subpart 1. **Notice of determination of no probable cause.** The commissioner shall issue an order dismissing a charge or portion of a charge when the commissioner has determined after investigating the allegations of the charge that there is no probable cause to believe that the respondent has engaged in the alleged unfair discriminatory practice. A copy of the order dismissing a charge or portion of a charge following a no probable cause determination shall be served by certified and first class mail upon the charging party and by first class mail upon the respondent within ten days of the determination. The order shall become final unless a request for administrative appeal of the no probable cause determination is taken as provided in part 5000.0700.

Subp. 2. **Notice of determination of probable cause and conciliation.** If the commissioner has determined after investigating the allegations of a charge that there is probable cause to believe that the respondent has engaged in an unfair discriminatory practice, the commissioner shall attempt to eliminate the practice by conciliation in accordance with the act and parts 5000.0050 to 5000.0800 unless the commissioner determines that attempts to conciliate would be unproductive or unsuccessful. The notice shall be served on the respondent by certified and first class mail and on the charging party and the counsel of any party by first class mail.

Statutory Authority: *MS s 363.05 subd 1 cl (8)*

History: *11 SR 740*

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5000.0600 [Repealed, 11 SR 740]

5000.0700 ADMINISTRATIVE APPEAL OF NO PROBABLE CAUSE DETERMINATION.

Subpart 1. Service of notice of request for reconsideration. A charging party may request reconsideration of a determination of no probable cause by serving a written notice of request for reconsideration upon the commissioner and the respondent by hand delivery or by mail postmarked within ten calendar days after service of the determination notice.

Subp. 2. Acknowledgment of request. The commissioner shall acknowledge in writing to the charging party and respondent by first class mail the receipt of a timely notice requesting reconsideration.

Subp. 3. [Repealed, 11 SR 740]

Subp. 4. [Repealed, 11 SR 740]

Subp. 5. [Repealed, 11 SR 740]

Subp. 6. [Repealed, 11 SR 740]

Subp. 7. [Repealed, 11 SR 740]

Subp. 8. Basis for reconsideration. A request for reconsideration shall contain or identify and describe the relevance of one or more of the following:

- A. evidence that was not available during the investigation;
- B. evidence that was available in the investigation but not properly weighed in reaching the determination; or
- C. statutory or case law indicating that the determination is erroneous.

Subp. 9. Review of request. The commissioner shall review or shall designate one or more qualified persons to review the record of investigation and the evidence and argument presented with the request. The review shall be conducted within 20 days of the department's receipt of the request. Following review the commissioner shall either:

- A. affirm the determination of no probable cause;
- B. reverse the determination of no probable cause; or
- C. vacate the determination of no probable cause and remand the case for further investigation on its merits and issuance of a new determination.

Subp. 10. Notice of decision. Within ten days of the review of the request for reconsideration, the commissioner shall notify the charging party and the respondent of the decision made on the request. This decision shall be issued to the charging party and the respondent in the form on an order that states the decision and indicates the basis on which it was made. This notice shall be served on the charging party by certified mail.

Subp. 11. Effect of decision. The rights of the parties remain as they were before the decision on the request for reconsideration, except that a redetermination of no probable cause will not be reconsidered by the commissioner.

Statutory Authority: *MS s 363.05 subd 1 cl (8)*

History: *11 SR 740*

5000.0750 ADMINISTRATIVE APPEAL OF PROBABLE CAUSE DETERMINATION.

Subpart 1. Basis for reconsideration. A respondent may request reconsideration of a probable cause determination by submitting to the commissioner a written statement that contains or identifies:

- A. evidence that was not available during the investigation;
- B. statutes or case law that may invalidate the probable cause determination; or
- C. substantial information indicating that the evidence relied on for the determination was falsified, inaccurate, or erroneously weighed.

Subp. 2. **Acknowledgment of request.** The commissioner shall, within ten days of receipt of the request, notify the respondent by first class mail of the receipt of the request and state whether the request is sufficiently substantial to warrant further consideration.

Subp. 3. **Action on request.** If the request warrants reconsideration of the determination of probable cause, the commissioner shall reconsider the determination and either:

A. affirm the determination of probable cause;

B. reverse the determination; or

C. vacate the determination of probable cause and remand the case for further inquiry on its merits and issuance of a new determination.

The commissioner may refer a request for reconsideration to a person or panel designated pursuant to part 5000.0700, subpart 4.

Subp. 4. **Notice of decision.** When the commissioner has determined that action shall be taken on a request for reconsideration pursuant to subpart 3, notice of the decision shall be served upon the respondent by first class mail. A copy of this notice and of the reconsideration request shall be provided to the charging party by first class mail if the determination of probable cause is affirmed, and by certified mail if the determination is reversed or vacated.

Subp. 5. **Effect of decision.** A decision shall have the effect described in items A to D.

A. If the determination of probable cause is not reversed or vacated, the rights of the parties remain as they were prior to the decision.

B. If the determination of probable cause is reversed, the charging party has the right to request reconsideration by administrative appeal under part 5000.0700.

C. If the determination of probable cause is vacated and a subsequent determination of no probable cause is issued, the charging party has the right to request reconsideration under part 5000.0700.

D. If the determination of probable cause is vacated and a subsequent determination of probable cause is issued, that determination will not be reconsidered except on the initiative of the commissioner.

Statutory Authority: *MS s 363.05 subd 1 cl (8)*

History: *11 SR 740*

5000.0800 CONCILIATION AND SETTLEMENT.

Subpart 1. **Invitation to conciliation.** When the commissioner has determined after investigation that there is probable cause to believe that the respondent has engaged in an unfair discriminatory practice, the commissioner shall serve upon the respondent by certified mail a written notice of the determination which may include a written invitation to participate in a conciliation conference, as provided in part 5000.0580, subpart 2, for the purpose of attempting to eliminate the unfair discriminatory practice by informal means. The invitation shall set a ten-day limitation on the time in which the respondent shall respond to the invitation. For good cause the commissioner may grant an extension of time.

Subp. 2. **Termination of conciliation.** If a respondent fails or refuses to respond to the commissioner's invitation to participate in a conciliation conference, or if the respondent fails or refuses to make a good faith effort to conciliate, the commissioner may terminate attempts to conciliate the matter and shall issue a complaint in accordance with the act and parts 5000.0050 to 5000.2400, unless the commissioner determines to dismiss the charge pursuant to part 5000.0400, subpart 6, 5000.0520, or 5000.0540. Conciliation efforts may be resumed at any time upon written request of the commissioner to the respondent.

Subp. 3. **Settlement agreements.** The commissioner and a respondent may

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at any time enter into an agreement or stipulation to conciliate, settle, or compromise the subject matter of a charge or a complaint. The agreement or stipulation may provide for the commissioner to waive the right to proceed against the respondent under the act and for the respondent to take such affirmative actions as may effectuate the purpose of the act. The affirmative actions may include, but are not limited to, the payment of money damages, the hiring, reinstatement, or upgrading of an aggrieved person, or the sale or lease of real property. Any agreement entered into by the commissioner and the respondent shall be reduced to writing and is enforceable in the same manner as a final decision of the department. An administrative law judge may issue an order embodying the terms of any agreement or stipulation entered into by the commissioner and a respondent. The order is enforceable as a final decision of the department.

Subp. 3a. Monitoring agreements. The commissioner shall monitor all settlement and conciliation agreements requiring specific performance. If the commissioner believes a respondent may not have complied with an agreement, the commissioner shall notify the respondent by certified mail. The notice shall specify the part of the agreement the respondent is believed to have violated. After permitting the respondent 15 days after the receipt of the notice to respond, the commissioner shall commence investigation of the respondent's possible noncompliance with the agreement. If noncompliance is determined, the commissioner shall commence proceedings to enforce the agreement, unless the commissioner determines that to do so would not warrant use of department resources.

Subp. 4. Confidentiality. The commissioner shall not disclose any information concerning efforts to eliminate an unfair discriminatory practice by way of conciliation, except as provided by Minnesota Statutes, sections 363.06, subdivision 6, and 363.061.

Statutory Authority: *MS s 363.05 subd 1 cl (8)*

History: *L 1984 c 640 s 32; 11 SR 740*

5000.0900 COMPLAINT.

Subpart 1. When issued. The commissioner shall issue a complaint: when the commissioner has determined that there is probable cause to believe that a person has engaged or is engaging in an unfair discriminatory practice and after attempts to eliminate the unfair discriminatory practice by conciliation have been terminated, or when the commissioner has reason to believe that a person is engaging in an unfair discriminatory practice, unless the commissioner determines that it is appropriate to dismiss the charge pursuant to part 5000.0520 or 5000.0540.

Subp. 2. Content. A complaint shall contain: the name and address of the complainant; the name of the respondent; the relief sought and the grounds therefore; and the signature of the complainant.

Subp. 3. Service and filing. A complaint, notice, and order for hearing shall be served upon a respondent by certified mail and filed with an administrative law judge at least ten days before the date of the hearing as provided by Minnesota Statutes, section 363.06, subdivision 4, paragraph (3), and part 1400.5600.

Subp. 4. Amendments. The commissioner may amend a complaint at any time.

Statutory Authority: *MS s 363.05 subd 1 cl (8)*

History: *L 1984 c 640 s 32; 11 SR 740*

5000.1000 [Repealed, 11 SR 740]

5000.1100 CLASS ACTION SUITS.

Subpart 1. Prerequisites. With the permission of the charging party, the

commissioner may sue on behalf of a class only if: there are questions of law or fact common to the class, and the claims of members of the class are of sufficient similarity that a fair hearing of them is possible in a class action, and the commissioner will fairly and adequately protect the interests of the class, and one of the following three conditions exists:

A. the prosecution of separate actions by the commissioner on behalf of individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

B. the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate relief that includes final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

C. the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: the interest of members of the class in individually affecting the prosecution of separate actions; the extent and nature of any litigation concerning the controversy already commenced by members of the class; the desirability or undesirability of concentrating the litigation of the claims in the administrative hearing; the difficulties likely to be encountered in the management of a class action.

Subp. 2. Decision to maintain as class action. After an action is brought as a class action, the administrative law judge shall determine by order whether it is to be so maintained. At the discretion of the administrative law judge, the order may be a part of the final order issued in accordance with Minnesota Statutes, section 363.071. If the order is not part of the final order, it may be conditional and may be amended or altered before the decision on the merits.

Subp. 3. Notice to members. In any class action, before the hearing, the administrative law judge shall direct to the members or potential members of the class the best notice practicable under the circumstances. Notice shall be reasonably certain to inform those affected, or, where conditions do not reasonably permit the notice, the form of notice shall not be substantially less likely to give notice than other of the feasible and customary substitutes. If the complaint seeks compensatory relief, the notice shall advise each member: he or she will be excluded from the class, with respect to monetary relief, if he or she so requests by a specified date, and the decision, whether favorable or not, will include all members who do not request exclusion.

Subp. 4. Conduct of class action. In the conduct of class actions, the administrative law judge may make appropriate orders: determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; requiring a specific type of notice or other protections for the members of the class or for the fair conduct of the action; dealing with other procedural matters. The orders may be altered or amended as may be desirable from time to time, and they are not final decisions of the department.

Subp. 5. Required approval. A class action shall not be dismissed or compromised without the approval of the administrative law judge. Notice of the proposed dismissal or compromise shall be given to all members of the class in a manner as the panel or administrative law judge directs.

Subp. 6. Order. In a class action, the order issued in accordance with

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Minnesota Statutes, section 363.071, whether or not favorable to the class, shall include and describe those persons who are members of the class. This order is a final decision of the department and is subject to judicial review.

Statutory Authority: *MS s 363.05 subd 1 cl (8)*

History: *L 1984 c 640 s 32; 11 SR 740*

5000.1200 ANSWER TO A COMPLAINT.

A respondent shall serve an answer upon the commissioner within 20 days after service of the complaint. The original answer, together with an attached affidavit of service, shall be filed with the administrative law judge. Failure to answer the complaint shall be deemed an admission of the allegations in the complaint. A respondent may amend an answer at any time.

Statutory Authority: *MS s 363.05 subd 1 cl (8)*

History: *L 1984 c 640 s 32; 11 SR 740*

5000.1300 [Repealed, 11 SR 740]

5000.1400 [Repealed, 11 SR 740]

5000.1500 [Repealed, 11 SR 740]

5000.1600 [Repealed, 11 SR 740]

5000.1700 [Repealed, 11 SR 740]

5000.1800 [Repealed, 11 SR 740]

5000.1900 [Repealed, 11 SR 740]

5000.2000 DECISION OF ADMINISTRATIVE LAW JUDGE.

Subpart 1. **On the record.** No factual information or evidence not part of the record shall be considered by the administrative law judge in deciding a case.

Subp. 2. **Issuance of final order.** At the conclusion of a hearing held pursuant to Minnesota Statutes, section 363.071 and upon consideration of the record, the administrative law judge shall decide the case by issuing an order in accordance with Minnesota Statutes, section 363.071. The order shall be supported by written findings of fact and conclusions of law, which may be supplemented by a written memorandum. The order shall be a final decision of the department and shall be appealable in accordance with Minnesota Statutes, section 363.072 and part 5000.2100.

Subp. 3. **Service.** Findings of fact, conclusions of law, orders, and memoranda issued pursuant to Minnesota Statutes, section 363.071 shall be served in accordance with the provisions of that section. All other decisions and orders shall be served on the parties by certified mail.

Statutory Authority: *MS s 363.05 subd 1 cl (8)*

History: *L 1984 c 640 s 32; 11 SR 740*

5000.2100 COURT REVIEW.

Any person aggrieved by a final decision of the department reached after a hearing held pursuant to Minnesota Statutes, section 363.071 and rendered in accordance with part 5000.2000 may seek judicial review pursuant to Minnesota Statutes, sections 14.63 to 14.68.

Statutory Authority: *MS s 363.05 subd 1 cl (8)*

History: *11 SR 740*

5000.2200 POLICY LETTERS.

The commissioner may issue a letter setting forth the policy with respect to a provision or provisions of the act. A policy letter may be issued upon the request of any interested person or upon the commissioner's own initiative.

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A request for a policy letter shall be in writing and shall contain: the name and address of the person making the request and of other interested persons, if any; a statement of all known relevant facts; a statement of reasons why the policy letter should be issued; and the signature of the person making the request.

Statutory Authority: *MS s 363.05 subd 1 cl (8)*

History: *11 SR 740*

5000.2250 PRESERVATION OF RECORDS.

Subpart 1. **While charge pending.** A respondent notified of a charge shall retain all documents related to the charge that are under its control. The documents must be retained until the commissioner notifies the respondent that the charge has been resolved.

Subp. 2. **During monitoring period.** The commissioner may require as part of a conciliation or settlement agreement that the respondent retain documents related to a charge for a period of time specified in the agreement.

Subp. 3. **Retention of records.** An employer, employment agency, labor organization, or an operator of an apprenticeship or other training program subject to the act must retain all applicant and employment records for one year after the records are made.

Statutory Authority: *MS s 363.05 subd 1 cl (8)*

History: *11 SR 740*

5000.2300 SEVERABILITY.

If any provision of parts 5000.0050 to 5000.2400 is held invalid, the invalidity does not affect any provision of these rules which can be given effect without the invalid provision and to this end the provisions of these parts are severable.

Statutory Authority: *MS s 363.05 subd 1 cl (8)*

History: *11 SR 740*

5000.2400 CONSTRUCTION.

Parts 5000.0050 to 5000.2400 shall be construed liberally to effectuate the purposes of the act.

Statutory Authority: *MS s 363.05 subd 1 cl (8)*

History: *11 SR 740*

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5000.2500 [Repealed, 9 SR 2748]

5000.2600 [Repealed, 9 SR 2748]

5000.2700 [Repealed, 9 SR 2748]

5000.2800 [Repealed, 9 SR 2748]

5000.2900 [Repealed, 9 SR 2748]

5000.3000 [Repealed, 9 SR 2748]

5000.3100 [Repealed, 9 SR 2748]

5000.3200 SEVERABILITY.

If any provision of parts 5000.0100 to 5000.3300, or the application thereof to any person is held invalid, the invalidity does not affect any provision or application of these rules which can be given effect without the invalid provision or application, and to this end the provisions of these rules are severable.

Statutory Authority: *MS s 363.073 subd 1*

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5000.3300 CONSTRUCTION.

Parts 5000.0100 to 5000.3300 shall be construed liberally to effectuate the purposes of the act.

Statutory Authority: *MS s 363.073 subd 1*

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5000.3400 DEFINITIONS.

Subpart 1. Scope. For the purposes of parts 5000.3400 to 5000.3600 the following terms have the meanings given them.

Subp. 2. Affirmative action policy. "Affirmative action policy" means a managerial objective to eliminate all barriers to employment opportunity that are not based on specific job requirements. It refers also to the identification of barriers in the use of action-oriented programs to advance employment opportunities for women, minorities, and qualified disabled individuals.

Subp. 3. Affirmative action program. "Affirmative action program" means a coherent set of goal-oriented management policies and procedures which implement a contractor's affirmative action policy including the contractor's self-examination of its workforce and entire employment practices and policies, availability and utilization analyses, and the establishment of goals and timetables for the correction of any underutilization of women, minorities, and qualified disabled persons identified in the self-analysis.

Subp. 4. Availability. "Availability" means the percentage of minorities and women among those persons who may reasonably be considered eligible currently or may reasonably be considered eligible during the term of the affirmative action program.

Subp. 5. Civilian labor force. "Civilian labor force" means persons 16 years old and older who are either:

- A. at work during the reference week; or
- B. with a job but not at work during the reference week.

"At work" means that the person works as a paid employee, or in his or her own business or profession, or on his or her own farm; or who works 15 or more hours as an unpaid worker on a family farm or in a family business, during the reference week.

"With a job but not at work" means any person who does not work during the reference week but who has a job or business from which he or she was temporarily absent due to illness, bad weather, industrial dispute, vacation, or personal reasons.

Members of the armed forces are not included in the civilian labor force.

Subp. 6. Commissioner. "Commissioner" means the commissioner of the Minnesota Department of Human Rights.

Subp. 7. Construction work. "Construction work" means the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other on-site functions incidental to the actual construction.

Subp. 8. Contract. "Contract" means any agreement or modification of an agreement between a contracting agency and a business or firm for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements. The term "services," as used in this definition includes, but is not limited to the following services: utility, construction, transportation, research, insurance, and fund depository.

Subp. 9. Contractor. "Contractor" means a firm or business which has employed more than 20 full-time employees in Minnesota at any time during the previous 12 months, and which executes, holds, or submits a bid or proposal for a state contract for goods or services in excess of \$50,000.

Subp. 10. **Covered state contract.** "Covered state contract" means a state contract for goods or services in excess of \$50,000.

Subp. 11. **Department.** "Department" means the Minnesota Department of Human Rights.

Subp. 12. **Deficiency.** "Deficiency" means an underutilization of women, minorities, and qualified disabled employees or a failure to take corrective action to eliminate barriers to equal employment opportunity identified in the contractor's self-analysis.

Subp. 13. **Disabled individual.** "Disabled individual" means a person who has a physical or mental impairment which substantially limits one or more major life activity; it does not include an alcoholic or drug abuser whose current use of alcohol or drugs renders that individual a hazard to the individual or others.

Subp. 14. **Good faith effort.** "Good faith effort" means a reasonable effort undertaken by a contractor to accomplish the goals and implement the corrections identified in the self-analysis.

Subp. 15. **Immediate labor area.** "Immediate labor area" means that geographic area from which employees and applicants may reasonably commute to the contractor's establishment. The immediate labor area may include one or more contiguous cities, counties, or Standard Metropolitan Statistical Areas or parts thereof, in which the establishment is located.

Subp. 16. **Life activity.** "Life activity" includes communication, ambulation, self-care, socialization, education, vocational training, employment, transportation, or adapting to housing. For the purpose of this item, primary attention is given to those life activities that affect employability.

Subp. 17. **Minorities and women with requisite skills.** "Minorities and women with requisite skills" means minorities and women who have demonstrated that they possess the skills for the job in question. For example, through performance on another job, those who have completed training or educational programs designed to provide skills for the job in question, and those who could reasonably be expected to acquire the skills within a relatively short time after placement.

Subp. 18. **Minority.** "Minority" includes:

A. Blacks, persons having origins of any of the Black African racial groups not of Hispanic origin;

B. Hispanic, persons of Mexican, Puerto Rican, Cuban, Central American, South American, or other Spanish culture or origin, regardless of race;

C. Asian and Pacific Islander, persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands; and

D. American Indian or Alaskan Native, persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

Subp. 19. **Modification.** "Modification" means an alteration in the terms and conditions of a contract, including supplemental agreements, amendments, and extensions.

Subp. 20. **Promotable or transferable.** "Promotable or transferable" means, within the context of developing data for availability, those employees who are currently employed in a job group or groups which serve or could serve as a source from which selections are or could be made for another job group.

Subp. 21. **Qualified disabled individual.** "Qualified disabled individual" means a disabled individual who is capable of performing a particular job, with reasonable accommodation to his or her disability.

Subp. 22. **Relevant recruitment area.** "Relevant recruitment area" means the geographic area from which the contractor may reasonably recruit its employees.

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It is at least the area from which the contractor recruits, and may include geographic areas not contiguous with the immediate labor area.

Subp. 23. Substantially limited. "Substantially limited" means the degree that an impairment affects employability. A disabled individual who is likely to experience great difficulty in securing, retaining, or advancing in employment shall be considered substantially limited.

Subp. 24. Utilization analysis. "Utilization analysis" means a comparison of the availability of minorities and women in the immediate labor area to their presence in a contractor's workforce.

Subp. 25. Workforce analysis. "Workforce analysis" means a listing of job titles as they appear in applicable collective bargaining agreements or payroll records, not job group, ranked from the lowest paid to the highest paid within each department or other similar organizational unit including departmental or unit supervision.

Statutory Authority: *MS s 363.074*

History: *9 SR 2748*

5000.3410 GENERAL PROVISIONS.

Subpart 1. Purpose. The purpose of parts 5000.3400 to 5000.3600 is to increase employment opportunities for women, minorities, and disabled individuals by requiring contractors to adopt and implement affirmative action programs approved by the commissioner.

Subp. 2. Persons regulated. Parts 5000.3400 to 5000.3600 apply to contractors:

- A. who are doing business or desire to do business with the state;
- B. who employ more than 20 full-time employees 12 months before, or any time during, performance on a state contract; and
- C. whose contract amount exceeds \$50,000 or is reasonably expected to exceed \$50,000 in any one year.

Statutory Authority: *MS s 363.074*

History: *9 SR 2748*

5000.3420 CRITERIA FOR APPROVAL AND IMPLEMENTATION OF AFFIRMATIVE ACTION PLANS FOR CONTRACTORS.

Subpart 1. General requirements. Under the affirmative action obligation imposed by the Human Rights Act, Minnesota Statutes, section 363.073, contractors shall take affirmative action to employ and advance in employment qualified minority, female, and disabled individuals 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 363.073 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 a disabled applicant or employee identifies himself or herself, the contractor shall also seek his or her advice regarding proper placement and appropriate accommodation.

An employee shall not be precluded from informing a contractor at any future time of his or her 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 shall 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, 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

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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, or age.

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

Statutory Authority: *MS s 363.074*

History: *9 SR 2748*

NONCONSTRUCTION CONTRACTOR'S AFFIRMATIVE ACTION PLANS

5000.3430 ASSIGNMENT OF RESPONSIBILITY FOR PROGRAM TO EXECUTIVE OR TOP MANAGEMENT OFFICIAL.

Subpart 1. **Director.** An executive of the contractor shall be appointed as director or manager of the company equal opportunity program. Depending upon the size and geographical alignment of the company, this may be his or her sole responsibility. The director shall be given the necessary top management support and staffing to execute the assignment. The identity of the director or manager must appear on all internal and external communications on the company's equal opportunity programs. The minimum responsibilities of the director shall be the following:

- A. developing policy statements, affirmative action programs, and internal and external communication techniques;
- B. assisting in the identification of problem areas;
- C. assisting line management in arriving at solutions to problems;
- D. designing and implementing audit and reporting systems that will:
 - (1) measure effectiveness of the contractor's programs;
 - (2) indicate need for remedial action; and
 - (3) determine the degree to which the contractor's goals and objectives have been attained;
- E. serving as liaison between the contractor and enforcement agencies;
- F. serving as liaison between the contractor and minority organizations, women's organizations, and community action groups concerned with employment opportunities of minorities and women; and
- G. keeping management informed of the latest developments in the entire equal opportunity area.

Additional responsibility in furtherance of the purposes of parts 5000.3400 to 5000.3600, beyond those enumerated herein shall be at the option of the contractor, but encouraged by the department.

Subp. 2. **Director responsibilities.** The minimum line responsibilities of the director or manager shall be:

- A. assistance in the identification of problem areas and establishment of local and unit goals and objectives;
- B. active involvement with local minority organizations, women's organizations, community action groups, and community service programs;
- C. periodic audit of training programs, hiring, and promotion patterns to remove impediments to the attainment of goals and objectives;
- D. regular discussions with local managers, supervisors, and employees to be certain the contractor's policies are being followed;
- E. review of the qualifications of all employees to ensure that minorities and women are given full opportunities for transfers and promotions;

F. career counseling for all employees;

G. periodic audits to ensure that each location is in compliance in areas such as:

(1) Posters must be properly displayed.

(2) All facilities, including company housing, which the contractor maintains for the use and benefit of its employees, shall be desegregated, both in policy and use. If the contractor provides facilities such as dormitories, locker rooms, and rest rooms, they must be comparable for both sexes.

(3) Minority and female employees shall be afforded a full opportunity and encouraged to participate in all company sponsored educational, training, recreational, and social activities.

H. supervisors shall be made to understand that their work performance is being evaluated on the basis of their equal employment opportunity efforts and results as well as other criteria; and

I. it shall be the responsibility of supervisors to take actions to prevent harassment of employees placed through affirmative action efforts.

Additional responsibility in furtherance of the purposes of parts 5000.3400 to 5000.3600, beyond those enumerated herein shall be at the option of the contractor, but encouraged by the department.

Statutory Authority: *MS s 363.074*

History: *9 SR 2748*

5000.3440 PROCEDURES FOR DISSEMINATING POLICY INTERNALLY AND EXTERNALLY.

Subpart 1. **Internal.** The contractor shall disseminate its policy internally as follows:

A. Include it in contractor's policy manual.

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

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

D. Schedule special meetings with all other 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 policy, and request their cooperation.

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

H. Publish articles covering equal employment opportunity programs, progress reports, and promotions of minority and female employees in company publications.

I. Post the policy on company bulletin boards.

J. When employees are featured in product or consumer advertising, employee handbooks, or similar publications both minority and nonminority men and women shall be pictured.

K. Communicate to employees the existence of the contractor's affirmative action program and make available the elements of its program as will enable employees to know of and avail themselves of its benefits.

Subp. 2. **External.** The contractor shall disseminate its policy externally as follows:

A. Inform all recruiting sources verbally and in writing of company

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policy, stipulating that these sources actively recruit and refer minorities and women for all positions listed.

B. Incorporate the equal opportunity clause in all purchase orders, leases, and contracts.

C. Notify minority and women's organizations, community agencies, community leaders, secondary schools, and colleges, of company policy, preferably in writing.

D. Communicate to prospective employees the existence of the contractor's affirmative action program and make available the elements of its program as will enable prospective employees to know of and avail themselves of its benefits.

E. When employees are pictured in consumer or help wanted advertising, both minorities and nonminority men and women shall be pictured.

F. Send written notification of company policy to all subcontractors, vendors, and suppliers requesting cooperative action on their part.

Statutory Authority: *MS s 363.074*

History: *9 SR 2748*

5000.3450 WORKFORCE ANALYSIS, INCLUDING AVAILABILITY AND UTILIZATION ANALYSES.

Subpart 1. Workforce analysis. The affirmative action plan must include a workforce analysis including a listing of each job title as it appears in applicable collective bargaining agreements or payroll records (not job group) ranked from the lowest paid to the highest paid within each department or other similar organizational unit including departmental or unit supervision. If there are separate work units or lines of progression within a department, a separate list must be provided for each work unit, or line, including unit supervisors. For lines of progression there must be indicated the order of jobs in the line through which an employee could move to the top of the line. Where there are no formal progression lines or usual promotional sequences, job titles shall be listed by department, job family, or discipline, in order of wage rate or salary range. For each job title, the total number of incumbents, the total number of male and female incumbents, and the total number of male and female incumbents in each of the following groups must be given: Blacks, Spanish-surnamed Americans, American Indians, and Orientals. The wage rate or salary range for each job title must be given. All job titles, including managerial job titles, must be listed.

Subp. 2. Underutilization. An analysis of all major job groups at the facility, with explanation if minorities or women are currently being underutilized in any one or more job groups. "Job groups" means one or a group of jobs having similar content, wage rates, and opportunities. "Underutilization" means having fewer minorities or women in a particular job group than would reasonably be expected by their availability. In making the utilization analysis, the contractor shall conduct such analysis separately for minorities and women.

Subp. 3. Minority analysis. In determining whether minorities are underutilized in any job group, the contractor shall consider at least all of the following factors:

A. the minority population of the labor area surrounding the facility;

B. the size of the minority unemployment force in the labor area surrounding the facility;

C. the percentage of the minority work force as compared with the total work force in the immediate labor area;

D. the general availability of minorities having requisite skills in the immediate labor area;

E. the availability of minorities having requisite skills in an area in which the contractor can reasonably recruit;

F. the availability of promotable and transferable minorities within the contractor's organization;

G. the existence of training institutions capable of training persons in the requisite skills; and

H. the degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to minorities.

Subp. 4. Women analysis. In determining whether women are underutilized in any job group, the contractor shall consider at least all of the following factors:

A. the size of the female unemployment force in the labor area surrounding the facility;

B. the percentage of the female workforce as compared with the total workforce in the immediate labor area;

C. the general availability of women having requisite skills in the immediate labor area;

D. the availability of women having requisite skills in an area in which the contractor can reasonably recruit;

E. the availability of women seeking employment in the labor or recruitment area of the contractor;

F. the availability of promotable and transferable female employees within the contractor's organization;

G. the existence of training institutions capable of training persons in the requisite skills; and

H. the degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to women.

Statutory Authority: *MS s 363.074*

History: 9 SR 2748

5000.3460 GOALS AND OBJECTIVES ESTABLISHED BY ORGANIZATIONAL UNITS AND JOB GROUPS INCLUDING TIMETABLES FOR COMPLETION.

Subpart 1. Factors. The goals and timetables developed by the contractor must be attainable in terms of the contractor's analysis of its deficiencies and its entire affirmative action program. In establishing the size of its goals and the length of its timetables, the contractor shall consider the results which could reasonably be expected from its putting forth every good faith effort to make its overall affirmative action program work. In determining levels of goals, the contractor shall consider at least the factors listed in part 5000.3450.

Subp. 2. Personnel relations. The contractor shall involve personnel relations staff, department and division heads, and local and unit managers in the goalsetting process.

Subp. 3. Goals. Goals must be significant, measurable, and attainable. Goals must be specific for planned results, with timetables for completion. Goals must not be rigid and inflexible quotas which must be met, but must be targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire affirmative action program work.

Subp. 4. Expansion; contraction. In establishing timetables to meet goals and commitments, the contractor shall consider the anticipated expansion, contraction, and turnover of and in the workforce.

Subp. 5. Deficiencies. Goals, timetables, and affirmative action commitments must be designed to correct any identifiable deficiencies.

Subp. 6. Relevant percentages. Where deficiencies exist and where numbers of percentages are relevant in developing corrective action, the contractor shall establish and set forth specific goals and timetables separately for minorities and women.

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Subp. 7. **Written program.** Goals and timetables, with supporting data and the analysis, must be a part of the contractor's written affirmative action program and be maintained at each establishment of the contractor.

Subp. 8. **Factor analysis.** Where the contractor has not established a goal, its written affirmative action program must specifically analyze each of the factors listed in part 5000.3450 and must detail its reason for a lack of a goal.

Subp. 9. **Separate goals; timetables.** In the event it comes to the attention of the department that there is a substantial disparity in the utilization of a particular minority group or men or women of a particular minority group, the department may require separate goals and timetables for that minority group and may further require, where appropriate, goals and timetables by sex for each group for the job classifications and organizational units specified by the department.

Subp. 10. **Support data.** Support data for the required analysis and program must be compiled and maintained as part of the contractor's affirmative action program. This data must include progression line charts, seniority rosters, applicant flow data, and applicant rejection ratios indicating minority and sex status.

Subp. 11. **Copies.** Copies of affirmative action plans or programs and copies of support data must be made available to the department upon request for the purposes as may be appropriate to the fulfillment of the department's responsibilities under the act.

Statutory Authority: *MS s 363.074*

History: *9 SR 2748*

5000.3470 IDENTIFICATION OF PROBLEM AREAS OR DEFICIENCIES BY ORGANIZATIONAL UNITS AND JOB GROUPS.

Subpart 1. **Analysis.** Paying particular attention to trainees and those categories listed in part 5000.3450, subpart 2, an in-depth analysis of the following shall be made:

- A. composition of the work force by minority group status and sex;
- B. composition of applicant flow by minority group status and sex;
- C. the total selection process including position descriptions, position titles, worker specifications, application forms, interview procedures, test administration, test validity, referral procedures, final selection process, and similar factors;
- D. transfer and promotion practices;
- E. facilities, company sponsored recreation and social events, and special programs such as educational assistance;
- F. seniority practices and seniority provisions of union contracts;
- G. apprenticeship programs;
- H. all company training programs, formal and informal;
- I. work force attitude; and
- J. technical phases of compliance, such as poster and notification to labor unions, retention of applications, or notification to subcontractors.

Subp. 2. **Problem areas.** If any of the following items are found in the analysis, corrective action shall be taken:

- A. an "underutilization" of minorities or women in specific job groups;
- B. lateral or vertical movement of minority or female employees occurring at a lesser rate (compared to work force mix) than that of nonminority or male employees;
- C. the selection process which eliminates a significantly higher percentage of minorities or women than nonminorities or men;
- D. application or employment forms not in compliance with local, state, or federal law;

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- E. position descriptions inaccurate in relation to actual functions and duties;
- F. formal or scored selection procedures that are not validated;
- G. referral ratio of minorities or women to the hiring supervisor or manager which indicates a significantly higher percentage rejected as compared to nonminority and male applicants;
- H. minorities or women excluded from or not participating in company sponsored activities or programs;
- I. de facto segregation exists at some facilities;
- J. seniority provisions that contribute to overt or inadvertent discrimination, that is, a disparity by minority group status or sex exists between length of service and types of jobs held;
- K. nonsupport of company policy by managers, supervisors, or employees;
- L. minorities or women underutilized or significantly underrepresented in training or career improvement programs;
- M. no formal techniques established for evaluating the effectiveness of equal employment opportunity programs;
- N. lack of access to suitable housing inhibits recruitment efforts and employment of qualified minorities;
- O. lack of suitable transportation, public or private, to the workplace inhibits minority employment;
- P. purchase orders do not contain equal employment opportunity clause; and
- Q. posters not on display.

Statutory Authority: *MS s 363.074*

History: *9 SR 2748*

5000.3480 MEASURES TO FACILITATE IMPLEMENTATION OF EQUAL EMPLOYMENT OPPORTUNITY POLICY AND AFFIRMATIVE ACTION PROGRAMS.

Subpart 1. Consistent positions. The contractor shall conduct detailed analyses of position descriptions to ensure that they accurately reflect position functions, and are consistent for the same position from one location to another.

Subp. 2. Worker specifications. The contractor shall validate worker specifications by division, department, location, or other organizational unit and by job title using job performance criteria. Special attention must be given to academic, experience, and skill requirements to ensure that the requirements in themselves do not constitute inadvertent discrimination. Specifications must be consistent for the same job title in all locations and shall be free from bias as regards to race, color, creed, religion, sex, national origin, marital status, status regarding public assistance, age, and disability except where such status is a bona fide occupational qualification. Where requirements screen out a disproportionate number of minorities or women, the requirements must be professionally validated to job performance.

Subp. 3. Position descriptions. Approved position descriptions and worker specifications, when used by the contractor, must be made available to all members of management involved in the recruiting, screening, selection, and promotion process. Copies must also be distributed to all recruiting sources.

Subp. 4. Selection process evaluation. The contractor shall evaluate the total selection process to ensure freedom from bias and, thus, aid the attainment of goals and objectives.

All personnel involved in the recruiting, screening, selection, promotion,

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disciplinary, and related processes must be carefully selected and trained to ensure elimination of bias in all personnel action.

Selection techniques other than tests may also be improperly used so as to have the effect of discriminating against minority groups and women. Such techniques include, but are not limited to, unscored interviews, unscored or casual application forms, arrest records, credit checks, considerations of marital status or dependency or minor children. Where data exists suggesting that there is unfair discrimination or exclusion of minorities or women, the contractor shall analyze its unscored procedures and eliminate them if they are not objectively valid.

Subp. 5. Recruitment techniques. Suggested techniques to improve recruitment and increase the flow of minority or female applicants are as follows:

A. Certain organizations such as the Urban League, Job Corps, Equal Opportunity Programs, Inc., concentrated employment programs, Neighborhood Youth Corps, secondary schools, colleges, and city colleges with high minority enrollment, the state employment services, specialized employment agencies are normally prepared to refer minority applicants. Organizations prepared to refer women with specific skills are: National Organization for Women, welfare rights organizations, Women's Equity Action League, Talent Bank for Business and Professional Women (including 26 women's organizations), Professional Women's Caucus, Intercollegiate Association of University Women, black women's sororities and service groups such as Delta Sigma Theta, Alpha Kappa Alpha, and Zeta Phi Beta; National Council of Negro Women, American Association of University Women, YWCA, and sectarian groups such as Jewish women's groups, Catholic women's groups, Protestant women's groups, and women's colleges. In addition, community leaders as individuals shall be added to recruiting sources.

B. Formal briefing sessions shall be held, preferably on company premises, with representatives from these recruiting sources. Plant tours, presentations by minority and female employees, 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.

C. Minority and female employees, using procedures similar to item B, shall be actively encouraged to refer applicants.

D. A special effort shall be made to include minorities and women on the personnel relations staff.

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

F. Active participation in "job fairs" is desirable. Company representatives participating shall be given authority to make on-the-spot commitments.

G. Active recruiting programs shall be carried out at secondary schools, junior colleges, and colleges with predominant minority or female enrollments.

H. Recruiting efforts at all schools shall be undertaken whenever possible. Some possible programs are:

(1) technical and nontechnical co-op programs at predominantly black and women's colleges;

(2) "after school" or work-study jobs for minority youths, male and female;

(3) summer jobs for underprivileged youth, male and female;

(4) summer work-study programs for male and female faculty members of the predominantly minority schools and colleges; and

(5) motivation, training, and employment programs for the hard-core unemployed, male and female.

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I. When recruiting brochures pictorially present work situations, the minority and female members of the workforce must be included, especially when brochures are used in school and career programs.

J. Help wanted advertising shall be expanded to include the minority news media and women's interest media on a regular basis.

Subp. 6. Promotion. The contractor shall ensure that minority and female employees are given equal opportunity for promotion. Suggestions for achieving this result include:

A. Post or otherwise announce promotional opportunities.

B. Make an inventory of current minority and female employees to determine academic, skill, and experience level of individual employees.

C. Initiate necessary remedial, job training, and workstudy programs.

D. Develop and implement formal employee evaluation programs.

E. Make certain "worker specifications" have been validated on job performance related criteria. Neither minority nor female employees shall be required to possess higher qualifications than those of the lowest qualified incumbent.

F. When apparently qualified minority or female employees are passed over for upgrading, require supervisory personnel to submit written justification.

G. Establish formal career counseling programs to include attitude development, education aid, job rotation, buddy system, and similar programs.

H. Review seniority practices and seniority clauses in union contracts to ensure the practices or clauses are nondiscriminatory and do not have a discriminatory effect.

I. Make certain facilities and company-sponsored social and recreation activities are desegregated. Actively encourage all employees to participate.

J. Encourage child care, housing, and transportation programs appropriately designed to improve the employment opportunities for minorities and women.

Statutory Authority: *MS s 363.074*

History: *9 SR 2748*

5000.3490 INTERNAL AUDIT AND REPORTING SYSTEMS.

The contractor shall monitor records of referrals, placements, transfers, promotions and terminations at all levels to ensure that its equal employment opportunity and affirmative action policies are carried out.

The contractor shall require formal reports from the unit managers on a scheduled basis regarding the degree to which corporate or unit goals are attained and timetables are met.

The contractor shall review report results with all levels of management.

The contractor shall advise top management of program effectiveness and submit recommendations to improve unsatisfactory performance.

Statutory Authority: *MS s 363.074*

History: *9 SR 2748*

5000.3500 NONCONSTRUCTION CONTRACTOR'S DISABLED INDIVIDUALS PLAN.

Nonconstruction contractors shall also have affirmative action plans for disabled individuals in accordance with parts 5000.3550 to 5000.3559.

Statutory Authority: *MS s 363.074*

History: *9 SR 2748*

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CONSTRUCTION CONTRACTOR'S AFFIRMATIVE ACTION PLANS

5000.3520 COMMISSIONER SETS GOALS AND TIMETABLES.

The commissioner, from time to time, shall issue goals and timetables for minority and female utilization which must be based on appropriate workforce, demographic, or other relevant data and which shall cover construction projects, or construction contracts performed in specific geographical areas. The goals must be applicable to each construction trade in an area covered by the contractor's entire workforce which is working in the area covered by the goals and timetables. Goals must be published as notices in the State Register, and must be inserted by contracting state agencies and applicants, as applicable, in the notice required by part 5000.3530.

Statutory Authority: *MS s 363.074*

History: 9 SR 2748

5000.3530 NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY.

Contracting state agencies shall include the following notice in all solicitations for offers and bids on all state and state-assisted construction contracts in excess of \$50,000 to be performed in geographical areas designed by the commissioner.

The notice requirements shall take the following form:

"NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

1. The offeror's or bidder's attention is called to the "equal opportunity clause" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate workforce in each trade on all construction work in the covered area are as follows:

Timetables	Goals for minority participation in each trade	Goals for female participation in each trade
Insert the timetables as determined under part 5000.3520.	Insert the goals as determined under part 5000.3520.	Insert the goals as determined under part 5000.3520.

These goals are applicable to all the contractor's construction work (whether or not it is state or state-assisted) performed in the covered area.

The contractor's compliance with Minnesota Statutes, section 363.073 and part 5000.3520 shall be based on its implementation of the equal opportunity clause, specific affirmative action obligations required by the specifications in part 5000.3540, and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the contractor's goals, shall be a violation of the contract, Minnesota Statutes, section 363.073 and part 5000.3520. Compliance with the goals will be measured against the total work hours performed.

3. The contractor shall provide written notification to the Compliance Division of the Minnesota Department of Human Rights within ten working days of

award of any construction subcontract at any tier for construction work under the contract resulting from the solicitation. The notification must list the name, address, and telephone number of the subcontractor; employer identification number, estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. As used in this notice, and in the contract resulting from this solicitation, the "covered area" is the geographical area where the contract is to be performed. The contracting state agency shall insert the description of the geographical areas where the contract is to be performed describing the state, county, city, town, or municipality of the geographic area in the notice, and in the contract resulting from this solicitation."

Statutory Authority: *MS s 363.074*

History: *9 SR 2748*

5000.3535 STANDARD STATE EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS.

Each contracting state agency and each contractor shall include the following equal opportunity clause in each of its covered state and state-assisted construction contracts (and modifications, renewals, or extensions if not included in the original contract):

"STANDARD STATE EQUAL EMPLOYMENT OPPORTUNITY

CONSTRUCTION CONTRACT SPECIFICATIONS

1. The contractor shall implement the specific affirmative action standards provided in paragraphs 4(a) to (o) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor shall reasonably be able to achieve in each construction trade in which it has employees in the covered area. The contractor shall make substantially uniform progress toward its goals in each craft during the period specified.

2. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Minnesota Statutes, section 363.073 of the Minnesota Human Rights Act, or the rules adopted under the act.

3. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained according to training programs approved by the Minnesota Department of Human Rights, the Minnesota Department of Labor and Industry, or the United States Department of Labor.

4. The contractor shall take specific affirmative action to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications must be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

(a) Make a good faith effort to maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working

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environment, with specific attention to minority or female individuals working at such sites or in such facilities.

(b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(c) Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each individual. If the individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the contractor may have taken.

(d) Provide immediate written notification to the commissioner of the Minnesota Department of Human Rights when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

(e) Develop on-the-job training opportunities and/or participate in training programs for the areas which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the state of Minnesota. The contractor shall provide notice of these programs to the sources compiled under (b).

(f) Disseminate the contractor's equal employment opportunity policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its equal employment opportunity obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company equal employment opportunity policy on bulletin boards accessible to all employees at each location where construction work is performed.

(g) Review, at least annually, the company's equal employment opportunity policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendents, general foremen, etc., prior to the first day of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(h) Disseminate the contractor's equal employment opportunity policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's equal employment opportunity policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

(i) Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training

by any recruitment source the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's work force.

(k) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, such opportunities.

(l) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the equal employment opportunity policy and the contractor's obligations under these specifications are being carried out.

(m) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(n) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(o) Conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's equal employment opportunity policies and affirmative action obligations.

5. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (4(a) to (o)). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 4(a) to (o) of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be defense for the contractor's noncompliance.

6. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the contractor may be in violation of part 5000.3520 if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation of part 5000.3520 if a specific minority group is underutilized).

7. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, creed, religion, sex, national origin, marital status, status with regard to public assistance, disability, or age.

8. The contractor shall not enter into any subcontract with any person or firm debarred from government contracts under the federal Executive Order 11246 or a local human rights ordinance, or whose certificate of compliance has been suspended or revoked pursuant to Minnesota Statutes, section 363.073.

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9. The contractor shall carry out such sanctions for violation of these specifications and of the equal opportunity clause, including suspension, termination, and cancellation of existing contracts as may be imposed or ordered pursuant to Minnesota Statutes, section 363.073, and its implementing rules. Any contractor who fails to carry out such sanctions shall be in violation of these specifications and Minnesota Statutes, section 363.073.

10. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 4, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of Minnesota Statutes, section 363.073, its implementing rules, or these specifications, the commissioner shall proceed in accordance with part 5000.3570.

11. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company equal employment opportunity policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Minnesota Department of Human Rights, and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (for example, mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

12. Nothing provided in this part shall be construed as a limitation upon the application of other state or federal laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents."

Statutory Authority: *MS s 363.074*

History: *9 SR 2748*

5000.3540 CONSTRUCTION CONTRACTOR DISABLED INDIVIDUALS PLAN.

Construction contractors shall also have affirmative action plans for disabled individuals in accordance with parts 5000.3550 to 5000.3559.

Statutory Authority: *MS s 363.074*

History: *9 SR 2748*

ALL CONTRACTORS; AFFIRMATIVE ACTION PLANS FOR DISABLED INDIVIDUALS

5000.3550 DISABLED INDIVIDUALS AFFIRMATIVE ACTION CLAUSE.

Each state agency and each contractor shall include the following affirmative action clause in each of its covered state contracts and modifications, renewals, or extensions thereof if not included in the original contract.

"AFFIRMATIVE ACTION FOR DISABLED WORKERS

(a) The contractor shall not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled individuals without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or

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termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(b) The contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

(c) In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minnesota Statutes, section 363.073 and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

(d) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

(e) The contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Minnesota Statutes, section 363.073 of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled individuals."

Statutory Authority: *MS s 363.074*

History: *9 SR 2748*

5000.3552 PHYSICAL AND MENTAL QUALIFICATIONS.

Subpart 1. Schedule for review. The contractor shall provide in its affirmative action program, and shall 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 individuals, 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 individuals, the requirements shall be related to the specific job or jobs for which the individual is being considered and shall be consistent with business necessity and the safe performance of the job. The contractor shall have the burden to demonstrate that it has complied with the requirements of this paragraph.

Subp. 3. Preemployment medical exam. Nothing in this part shall prohibit a contractor from requiring a comprehensive medical examination prior to 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 prior to employment or change in employment status, information obtained in response to such inquiries or examination shall be kept confidential except that:

A. supervisors and managers may be informed regarding restrictions on the work or duties of disabled individuals 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 shall be informed if they request such information.

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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 individuals, the contractor shall 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 shall review their employment practices to determine whether their personnel programs provide the required affirmative action for employment and advancement of qualified disabled individuals. Based upon the findings of such reviews, contractors shall undertake appropriate outreach and positive recruitment activities, such as those listed below. 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 shall 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 individuals 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 individuals 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 individuals.

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 individuals) for the contractor's commitment to provide meaningful employment opportunities to qualified disabled individuals. (A list of numerous national organizations serving the disabled, many of which have state or local affiliates, is found in the "Directory of Organizations Interested in the Handicapped" published by the Committee for the Handicapped People-to-People Program, Washington, D.C.)

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

F. Establish meaningful contracts with appropriate social service agencies, organizations of and for disabled individuals, 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 shall 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 individuals 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 individuals described in part 5000.3552, subpart 6.

Subp. 7. Internal dissemination of policy. A strong outreach program shall be 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. His or her 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.

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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 shall 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 shall be made to participate in work study programs with rehabilitation facilities and schools which specialize in training or educating disabled individuals.

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 individuals 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 individual" as defined in part 5000.3400, subpart 21.

Statutory Authority: *MS s 363.074*

History: 9 SR 2748; L 1988 c 689 art 2 s 268

5000.3555 DETERMINATION OF DISABILITY.

Subpart 1. **Requiring medical determination of disability.** Any contractor requiring a determination of an applicant's or employee's disability may require the applicant or employee to provide medical documentation of the impairment or, in the alternative, may require the applicant or employee to undergo a medical examination at the contractor's expense.

Subp. 2. **Application of determination.** Any determination of disability required pursuant to subpart 1 must meet the requirements of part 5000.3552, subpart 3, and must be for the purpose of affirmative action and proper job placement. Information obtained therefrom shall not be used to exclude or otherwise limit the employment opportunities of qualified disabled individuals.

Subp. 3. **Medical documentation.** All medical documentation required under this part shall be based upon the Guides to the Evaluation of Permanent Impairment (1984) published by the American Medical Association, provided that the guides shall be used only to determine the existence of impairment without regard to the degree of impairment. The guides are incorporated by reference. The guides are available for inspection at Ford Law Library, 117 University Avenue, Saint Paul, Minnesota 55155. They are not subject to frequent change.

Statutory Authority: *MS s 363.074*

History: 9 SR 2748

5000.3557 LISTING OF EMPLOYMENT OPENINGS.

Contractors shall request the Minnesota Department of Jobs and Training to refer qualified disabled individuals for consideration under their affirmative action programs.

Statutory Authority: *MS s 363.074*

History: 9 SR 2748; 1Sp1985 c 14 art 9 s 75

5000.3559 AVAILABILITY AND UTILIZATION ANALYSIS.

The requirements in parts 5000.3450 and 5000.3460 regarding the performance of availability and utilization analyses and the establishment of goals and timetables do not apply to disabled applicants and employees.

Statutory Authority: *MS s 363.074*

History: 9 SR 2748

5000.3560 PROCEDURES FOR ISSUING CERTIFICATES OF COMPLIANCE.

Subpart 1. **Information required.** All businesses or firms desiring a certificate of compliance shall submit to the department one of the following:

A. an affirmative action plan in compliance with parts 5000.3400 to 5000.3600; or

B. letters or documentation establishing their compliance with federal or local agency rules together with an affirmative action program for disabled individuals.

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Subp. 2. **Certificates issued.** Except as provided in subpart 3, certificates of compliance shall be issued within 30 days after the department has received the information required in subpart 1.

Subp. 3. **Insufficient information.** A business or firm whose submission does not meet the requirements of subpart 1 shall be notified within 15 days that its submission must be revised. The notification shall state specifically how the submission fails to meet the requirements of subpart 1. Certificates of compliance shall be issued 15 days after the department has received a revised submission which complies with subpart 1.

Subp. 4. **Duration of certificates.** Certificates of compliance are effective for two years and shall expire after the second year has elapsed.

Statutory Authority: *MS s 363.074*

History: *9 SR 2748*

5000.3570 DETERMINATION OF COMPLIANCE STATUS.

Subpart 1. **General criteria for review.** A contractor's compliance status shall not be based solely upon whether or not it reaches its goals or meets its timetables. A contractor's compliance status shall be determined by reviewing its compliance with Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600, the contents of its affirmative action plan, the extent of its adherence to the plan or the equal opportunity clauses contained in its state contracts, and its employment practices and their effects. In determining a contractor's status, the department shall also consider the extent to which a contractor has made good faith efforts to implement its affirmative action plan or the equal opportunity clauses contained in its state contracts.

Subp. 2. **Determination of good faith efforts.** A contractor's good faith efforts shall be determined by whether it takes prompt corrective action when it becomes aware that any of the following conditions exist with regard to its workforce:

- A. underutilization of women or minorities in any job group;
- B. minority or female employees move laterally, vertically, at a lesser rate than nonminority or male employees;
- C. a selection process eliminates minorities or women at higher rate than nonminority or male employees;
- D. preemployment inquiries and application forms do not satisfy state law requirements;
- E. descriptions of jobs do not accurately reflect functions involved;
- F. selection procedures are not valid predictors of job performance;
- G. disproportionately high rejection of women or minorities by hiring supervisors;
- H. women, minorities, and disabled individuals who are not participating in company-sponsored activities;
- I. segregation still exists at some facilities;
- J. disparities by minority group status or sex in terms of length of service and type of job held;
- K. managers, supervisors, or employees lack interest in company equal employment opportunity policies;
- L. underrepresentation of women or minorities in training or career improvement programs;
- M. techniques for evaluating effectiveness of its equal employment opportunity programs have not been established; and
- N. inadequate display of equal employment opportunity posters.

Subp. 3. **Additional factors regarding good faith efforts.** Good faith efforts shall also be determined by:

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A. whether a contractor submits timely compliance review reports as required by part 5000.3580;

B. whether a contractor permits an on-site compliance review to be conducted;

C. whether a contractor makes available records or other information as required by parts 5000.3400 to 5000.3600; or

D. whether a contractor implements conciliation agreements.

Subp. 4. Analysis of good faith efforts. Good faith efforts shall be analyzed by:

A. the results of an investigation of a charge of discrimination;

B. the results of an analysis of the contractor's affirmative action plan;

C. the results of an on-site review of the contractor's compliance with its affirmative action plan or equal opportunity clause; or

D. the results of an assessment of the contractor's compliance with Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600.

Subp. 5. Notification of deficiencies. If the department determines that a contractor has failed to adhere to its affirmative action plan or the equal opportunity clauses contained in its state contracts, that the contractor has failed to exercise good faith efforts to implement the plan or the equal opportunity clauses, or has failed to comply with Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600, it shall notify the contractor by first-class mail identifying the nature of the deficiency and stating specifically the corrective measures necessary for eliminating the deficiency. The contractor shall have 15 days to reply to the notice of deficiency.

Where deficiencies are found to exist, the department shall attempt to secure compliance through conciliation and persuasion unless it determines that such efforts would be unsuccessful or unproductive. Before the contractor can be found to be in compliance, the contractor shall make a specific commitment in writing to correct the deficiencies set forth in the notice. The commitment must include the precise action to be taken and dates for completion. The time period allotted must be no longer than the minimum period necessary to effect such changes. Upon approval of the commitment by the commissioner, the contractor may be considered in compliance, on condition that the commitment is faithfully kept. The contractor shall be notified that making such a commitment does not preclude future determinations of noncompliance based on a finding that the commitment is not sufficient to achieve compliance.

Subp. 6. Notification of sanctions and hearing. Where a contractor fails to respond to a notice of deficiency within 15 days or the department determines that attempts to correct the deficiencies through conciliation and persuasion have been or would be unsuccessful or unproductive, the department may impose one or more of the sanctions set forth in Minnesota Statutes, section 363.073, subdivision 2. The department shall serve the contractor with notice of the sanctions by mailing a copy thereof to the contractor by first-class mail. The sanctions shall become effective 20 days after the notice is served.

A contractor may obtain a hearing regarding the department's determination of deficiencies or any sanctions which it has imposed by filing a written request for a hearing with the department within 20 days after service of the notice of sanction. The hearing shall be a contested case proceeding pursuant to the Administrative Procedure Act, Minnesota Statutes, sections 14.57 to 14.69.

A. If a timely request for a hearing is filed, the commissioner shall issue and serve upon the contractor by certified mail a notice and order directing the contractor to appear at the hearing, at a time and place specified in the notice, and show cause why the sanctions determined by the department shall not be imposed.

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B. The filing of a timely request for a hearing shall stay the enforcement of the sanctions in question until a final decision is issued or the request for a hearing is withdrawn or dismissed with prejudice. The failure of a contractor to appear at the hearing may be grounds for dismissal with prejudice.

C. The administrative law judge shall make and file with the commissioner a report stating the findings of fact, conclusions, and recommendations. The commissioner shall serve each party with a copy of the report by mail. Within 20 days after service of the report, any party including the department, may file with the commissioner and serve exceptions to the report and reasons in support of their exceptions.

D. Exceptions with respect to statements of fact or matters of law must be specific and must be stated and numbered separately. When exception is taken to a statement of fact, a corrected statement must be incorporated. If exception is taken to conclusions in the report, the points relied upon to support the exception must be stated and numbered separately. A reply to exceptions is not required, but may be filed by any party including the department within ten days after service of the exceptions to which reply is made along with proof of service thereof on all parties of record.

E. Exceptions and replies shall contain written arguments in support of the position taken by the party filing such exceptions or reply. An opportunity for oral argument before the commissioner or his or her designee shall be permitted if requested by a party at the time that they file their exceptions or reply, unless the commissioner in the exercise of his or her discretion, determines that oral argument is unnecessary because the facts and legal arguments could be adequately presented by the briefs and records and the decisional process would not be significantly aided by oral argument. Oral arguments shall be limited to a discussion of legal questions and a restatement of facts in evidence. No new evidence shall be received at oral arguments.

F. Within 20 days from the date of the mailing by the commissioner of his or her final decision or order, any party including the department, may petition for a rehearing, or for an amendment or vacation of the findings of fact, decision or order, or for reconsideration or reargument. If the petition is for a rehearing, vacation, reconsideration, or reargument, the grounds relied upon shall be specifically set forth and the claimed errors clearly stated. If the petition is for an amendment of the findings of fact, decision, or order, it shall contain the desired proposed amendments, and the reasons for it shall be clearly stated. The petition shall be served upon all parties to the proceeding. An adverse party shall have ten days from the date of the service of the petition to answer and no reply will be permitted. The commissioner may grant or deny the petition without a hearing, or in his or her discretion set a hearing thereon. Pending the decision of the commissioner on the petition, the commissioner may vacate and set aside the decision or order. No petition will extend the time of appeal from the decision or order.

G. A second petition for rehearing, amendment, or vacation of any finding of fact, decision, or order, reconsideration or reargument by the same party or parties and upon the same grounds as a former petition which has been considered and denied, will not be entertained.

Within ten days after the date that sanctions become effective, the department shall notify the state agency or state agencies which hold contracts with the affected contractor about the sanctions and make recommendations regarding whether such contracts shall be terminated pursuant to Minnesota Statutes, section 363.073, subdivision 3.

Subp. 7. Recertification. A contractor whose certificate of compliance has been suspended or revoked or who has been declared ineligible for further certificates of compliance pursuant to Minnesota Statutes, section 363.073, subdivision 2, may request reinstatement in a letter to the commissioner. The

commissioner may grant the request if, based upon the contractor's showing, the department's file regarding the contractor's past performance, a compliance review, the recommendations of the department or a conciliation agreement the commissioner determines that the contractor has established and will carry out employment policies and practices that are in compliance with Minnesota Statutes, section 363.073 and with parts 5000.3400 to 5000.3600.

Subp. 8. **Evidence of discrimination.** If a compliance review indicates a violation of Minnesota Statutes, section 363.03, the commissioner may proceed to file a charge and process the matter under Minnesota Statutes, section 363.06 or this part.

Statutory Authority: *MS s 363.074*

History: *9 SR 2748; L 1987 c 384 art 2 s 1*

5000.3580 SUBMISSION OF COMPLIANCE REPORTS.

Subpart 1. **Construction contractors; monthly reports.** Each construction contractor shall submit a monthly utilization report. The report must state for each state project during the month in question:

- A. total hours of employment on the project;
- B. total hours of employment of women;
- C. total hours of employment of minorities;
- D. total hours of training;
- E. total hours of training provided to women; and
- F. total hours of training provided to minorities.

Subp. 2. **Construction contractors; semiannual reports.** Construction contractors shall also submit semiannual compliance reports of their affirmative action programs for nonconstruction personnel. These compliance reports must contain the same information, and be submitted at the same time as the reports required for nonconstruction contractors in part 5000.3580, subpart 3.

Subp. 3. **Nonconstruction contractors; semiannual reports.** Nonconstruction contractors shall submit semiannual compliance reports. The report must include the following data, by job, group, race, sex, and disability:

- A. total number of employment applicants;
- B. total number of applicants interviewed;
- C. total number of applicants tested;
- D. total number of applicants hired;
- E. total number of employees promoted;
- F. total number of employees demoted;
- G. total number of employees transferred;
- H. total number of employees laid off;
- I. total number of employees recalled from layoff;
- J. total number of employees terminated;
- K. total number of employees receiving company sponsored training;

and

- L. total number of people employed by company.

Subp. 4. **Minimizing duplication of reports.** The department shall attempt to the fullest extent possible to minimize the burden of duplication of reports and efforts of federal and local contract compliance agencies by:

A. utilizing forms and standards similar to those used by federal equal employment opportunity programs;

B. accepting forms and reports prepared for federal or local agencies where the information contained therein is sufficient for parts 5000.3400 to 5000.3600; and

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C. minimizing duplication of programs and procedures.

Statutory Authority: *MS s 363.074*

History: *9 SR 2748*

5000.3590 PROCEDURES FOR COMPLIANCE REVIEW.

Subpart 1. Procedures for contractor evaluation. A contractor evaluation shall proceed as follows:

A. a desk audit of the contractor's affirmative action plan with special attention directed to the included workforce analysis;

B. an on-site review of those matters which still are not fully or satisfactorily addressed in the affirmative action plan and workforce analysis; and

C. where necessary, an off-site analysis of information supplied by the contractor during or pursuant to the on-site review. Contractors may reach agreement with the department on nationwide Affirmative Action Plan formats or on frequency of updating statistics.

Subp. 2. Desk audit. The department shall routinely request from contractors affirmative action programs and supporting documentation, including the workforce analysis and support data for audit. As used throughout this part, the term "Affirmative Action Plan and supporting documentation" means the required contents of affirmative action plans, and methods of implementing those requirements set forth in part 5000.3420. "Workforce analysis" is defined as a listing of each job title as it appears in applicable collective bargaining agreements or payroll records (not job groups) ranked from the lowest paid to the highest paid within each department or other similar organizational unit including departmental or unit supervision. If there are separate work units or lines of progression within a department a separate list must be provided for each such work unit or line, including unit supervisors. For lines of progression there must be indicated the order of jobs in the line through which an employee could move to the top of the line. Where there are no formal progression lines or usual promotional sequences, job titles shall be listed by department, job family, or discipline, in order of wage rates or salary ranges. For each job title, the total number of incumbents, the total number of male and female incumbents in each of the following groups must be given: Blacks, Spanish-surnamed Americans, American Indians, and Orientals. The wage rate or salary range for each job title must be given. All job titles, including all managerial job titles, must be listed.

Subp. 3. Exceptions to desk audit requirements. For preaward reviews, the desk audit need not be carried out or an abbreviated desk audit may be performed and an immediate on-site review performed. Special reports that meet the criteria in subpart 4, item C may be requested from contractors as required, for submission to the department for complaint investigations and follow-up reviews performed within one year of a full compliance review. The commissioner shall approve other special compliance reviews that effectuate the purposes of, and are consistent with the other compliance reviews described in part 5000.3590 when exigent circumstances require an immediate on-site review.

Subp. 4. On-site review. On-site reviews must be conducted as follows:

A. Each contractor shall permit access during normal business hours to its premises for the purpose of conducting on-site compliance reviews and inspecting and copying books, records, accounts, and other materials as may be relevant to compliance with Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600. Information obtained in this manner must be used only in connection with the administration or enforcement of the Minnesota Human Rights Act and in the furtherance of the act's objectives.

B. If upon examination of an affirmative action plan and included workforce analysis for desk audit, the department finds that the material submitted does not demonstrate a reasonable effort by the contractor to meet all the

requirements which are applicable under parts 5000.3420 to 5000.3600 the on-site review need not be carried out and the enforcement procedures specified in Minnesota Statutes, section 363.073 and part 5000.3570 shall be applicable. Otherwise, following a desk audit of the affirmative action plan and supporting documentation, the department shall schedule an on-site review of the establishment, provided that an on-site review need not be carried out when the department can determine that the contractor's affirmative action plan is acceptable. This determination must be based on the current desk audit and an on-site review conducted within the preceding 24 months and also must include an affirmative determination that the circumstances of the previous on-site review have not substantially changed.

C. The department shall request contractors who are scheduled for on-site reviews to have the information necessary to perform the review available on-site. Specifically, this includes:

- (1) information necessary to conduct an in-depth analysis of apparent deficiencies in the contractors' utilization of women or minorities;
- (2) information required for a complete and thorough understanding of data contained in or offered as support for the affirmative action plan; and
- (3) information concerning matters relevant to a determination of compliance with the requirements of Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600, but not adequately addressed in the affirmative action plan.

D. The contractor shall be requested to furnish only the specific items of information which the compliance officer determines are:

- (1) necessary for conducting the review and completing the standard compliance review report; and
- (2) not contained in or able to be derived from the material submitted by the contractor.

E. In order to pursue certain issues uncovered in the compliance review, it may be necessary for the compliance officer to request certain additional information on-site even though such data have not been previously identified. The additional information must also meet the criteria in this part.

F. Where necessary, the compliance officer may take information made available during the on-site review off-site for further analysis. An off-site analysis shall be conducted where issues have arisen concerning deficiencies or an apparent violation which is only capable of being more thoroughly analyzed off-site before a determination of compliance is made.

Subp. 5. Review of contractor data. If the contractor is concerned with the confidentiality of information such as lists of employees, employee names, reasons for termination, and pay data then alphabetic or numeric coding or the use of an index of pay and pay ranges is acceptable for desk audit purposes.

The contractor shall provide full access to all relevant data on-site as required by subpart 4, item A.

The contractor shall provide all data determined by the compliance officer to be necessary for off-site analysis pursuant to subpart 4, item F. The data may only be coded if the contractor makes the code available to the compliance officer. If the contractor believes that particular information which is to be taken off-site is not relevant to compliance, the contractor may request a ruling by the supervisor of the department's compliance division who shall issue a ruling within ten days: The contractor may appeal that ruling to the commissioner within ten days. The commissioner or his or her designee shall issue a final ruling within ten days. The information in question may be withheld pending a ruling by the supervisor or if appealed, a final ruling by the commissioner. Data determined to be relevant to the investigation must be submitted to the compliance officer within five days of the ruling by the supervisor, or if appealed, within five days of the final ruling of the commissioner.

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Subp. 6. Employee interviews. The compliance officer shall contact, where appropriate, a reasonable number of employees for interviews as part of the on-site review of the contractor's employment practices. The number, scope, and manner of conducting the interviews must be discussed in advance with the contractor.

Statutory Authority: *MS s 363.074*

History: *9 SR 2748*

5000.3600 DUTIES OF CONTRACTING STATE AGENCY.

Subpart 1. Cooperation with commissioner. Each state agency shall cooperate with the commissioner in the performance of his or her responsibilities under Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600. Cooperation includes the responsibility to ensure that contractors are cognizant of their obligations under Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600.

Subp. 2. Information provided to contractors. Each state agency shall include in each contract the contractor's obligation and requirements to comply with Minnesota Statutes, section 363.073 and parts 5000.3400 to 5000.3600, and provide documentation describing the law and rules pertaining to the law and the specific criteria by which the affirmative action plan will be approved or rejected.

Subp. 3. Information provided to department. Each contracting state agency shall provide any information which comes to its attention which indicates that a contractor is not in compliance with Minnesota Statutes, section 363.073 or any rule relating to that statute.

Subp. 4. Contract clause required. Each covered contract must contain an affirmative action clause which states the intention of the agency to carry out its responsibility for requiring affirmative action by its contractors and specific language outlining consequences for failure to implement the contractor's affirmative action plan or make a good faith effort to do so.

Subp. 5. Submission of list of bidders. The contracting agency shall submit to the department a list of prospective bidders prior to the opening of a contractor's bid to ensure compliance with Minnesota Statutes, section 363.073.

Subp. 6. List of contractors from department. Every 60 days the department shall furnish state agencies with a list of currently certified contractors and contractors whose certificates of compliance have been suspended or revoked or who have been deemed ineligible according to Minnesota Statutes, section 363.073.

Subp. 7. State agency's duty to provide information to department. Each contracting state agency shall provide the department with any information or assistance the department deems necessary to seek compliance with Minnesota Statutes, section 363.073 and the rules adopted under it.

Subp. 8. Copy of statute and rules to be made available. Each contracting agency shall make available to each bidder a copy of Minnesota Statutes, section 363.073 and the rules adopted pursuant to it.

Subp. 9. Bid specifications, modifications; incorporation of statutory and rule requirements. Each contracting state agency shall include the following paragraph in all bid specifications and modifications:

"It is hereby agreed between the parties that Minnesota Statutes, section 363.073 and Minnesota Rules, parts 5000.3400 to 5000.3600 are incorporated into any contract between these parties based upon this specification or any modification of it. A copy of Minnesota Statutes, section 363.073 and Minnesota Rules, parts 5000.3400 to 5000.3600 are available upon request from the contracting agency."

Statutory Authority: *MS s 363.074*

History: *9 SR 2748*