

**43A.191 AGENCY AFFIRMATIVE ACTION PROGRAMS.**

Subdivision 1. **Affirmative action officers.** (a) Each agency with 1,000 employees or more shall have at least one full-time affirmative action officer, who shall have primary responsibility for developing and maintaining the agency's affirmative action plan. The officer shall devote full time to affirmative action activities. The affirmative action officer shall report administratively and on policy issues directly to the agency head.

(b) The agency heads shall assign affirmative action officers or designees for agencies with fewer than 1,000 employees. The designees shall report administratively and on policy issues directly to the agency head.

(c) An agency may not use authority under section 43A.08, subdivision 1a, to place the position of an agency affirmative action officer or designee in the unclassified service.

Subd. 2. **Agency affirmative action plans.** (a) The head of each agency in the executive branch shall prepare and implement an agency affirmative action plan consistent with this section and rules issued under section 43A.04, subdivision 3.

(b) The agency plan must include a plan for the provision of reasonable accommodation in the hiring and promotion of qualified disabled persons. The reasonable accommodation plan must consist of at least the following:

(1) procedures for compliance with sections 363A.08 to 363A.19, and 363A.28, subdivision 10, and, where appropriate, regulations implementing United States Code, title 29, section 794, as amended through December 31, 1984, which is section 504 of the Rehabilitation Act of 1973, as amended and the Americans with Disabilities Act, United States Code, title 42, sections 101 to 108, 201 to 231, 241 to 246, 401, 402, and 501 to 514;

(2) methods and procedures for providing reasonable accommodation for disabled job applicants, current employees, and employees seeking promotion; and

(3) provisions for funding reasonable accommodations.

(c) The agency plan must be prepared by the agency head with the assistance of the agency affirmative action officer and the director of diversity and equal employment opportunity. The Council on Disability shall provide assistance with the agency reasonable accommodation plan.

(d) The agency plan must identify any positions in the agency that can be used for supported employment as defined in section 268A.01, subdivision 13, of persons with severe disabilities. The agency shall report this information to the commissioner. An agency that hires more than one supported worker in the identified positions must receive recognition for each supported worker toward meeting the agency's affirmative action goals and objectives.

(e) An agency affirmative action plan may not be implemented without the commissioner's approval.

Subd. 3. **Audits; sanctions and incentives.** (a) The commissioner shall annually audit the record of each agency to determine the rate of compliance with affirmative action requirements.

(b) By March 1 of each odd-numbered year, the commissioner shall submit a report on affirmative action progress of each agency and the state as a whole to the governor and to the Finance Committee of the senate, the Ways and Means Committee of the house of representatives, the Governmental Operations Committees of both houses of the legislature, and the Legislative Coordinating Commission. The report must include

noncompetitive appointments made under section 43A.08, subdivision 2a, or 43A.15, subdivisions 3 to 7, 10, and 12, and cover each agency's rate of compliance with affirmative action requirements.

(c) An agency that does not meet its hiring goals must justify its nonaffirmative action hires in competitive and noncompetitive appointments according to criteria issued by the Department of Management and Budget. "Missed opportunity" includes failure to justify a nonaffirmative action hire. An agency must have 25 percent or less missed opportunities in competitive appointments and 25 percent or less missed opportunities in appointments made under sections 43A.08, subdivisions 1, clauses (9), (11), and (16); and 2a; and 43A.15, subdivisions 3, 10, 12, and 13. In addition, an agency shall:

(1) demonstrate a good faith effort to recruit protected group members by following an active recruitment plan;

(2) implement a coordinated retention plan; and

(3) have an established complaint resolution procedure.

(d) The commissioner shall develop reporting standards and procedures for measuring compliance.

(e) An agency is encouraged to develop other innovative ways to promote awareness, acceptance, and appreciation for diversity and affirmative action. These innovations will be considered when evaluating an agency's compliance with this section.

(f) An agency not in compliance with affirmative action requirements of this section must identify methods and programs to improve performance, to reallocate resources internally in order to increase support for affirmative action programs, and to submit program and resource reallocation proposals to the commissioner for approval. An agency must submit these proposals within 120 days of being notified by the commissioner that it is out of compliance with affirmative action requirements. The commissioner shall monitor quarterly the affirmative action programs of an agency found to be out of compliance.

(g) The commissioner shall establish a program to recognize an agency that has made significant and measurable progress in implementing an affirmative action plan.

**History:** *1Sp1985 c 13 s 172; 1987 c 186 s 7; 1987 c 354 s 8; 1988 c 667 s 11; 1990 c 571 s 26,27; 1992 c 513 art 9 s 2; 1995 c 248 art 10 s 8-10; 1996 c 305 art 1 s 11; 2004 c 207 s 26; 2007 c 35 s 1; 2008 c 204 s 42; 2009 c 101 art 2 s 109*