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November 1975

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DEPARTMENT OF ADMINISTRATION
STATE OF MONTANA

AFFIRMATIVE ACTION PLAN
NOVEMBER, 1975

MEMORANDUM

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DEPARTMENT OF ADMINISTRATION
STATE OF MONTANA

AFFIRMATIVE ACTION PLAN
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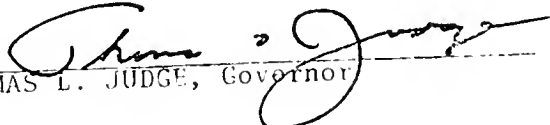
STATE OF MONTANA
Office of the Governor
EXECUTIVE ORDER 8-73

Executive Order directing the Department of Administration to implement and maintain an Equal Opportunity Employment Program in State government.

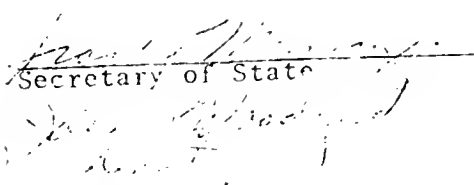
I, THOMAS L. JUDGE, Governor of the State of Montana, pursuant to the authority invested in me, hereby direct the Department of Administration to design, implement, and maintain an Equal Opportunity Employment Program in state government for all citizens of Montana without regard to race, religion, national origin, sex, or physical condition, except where sex or physical condition constitute a bonafide occupational requirement. The Department of Administration shall issue such regulations, standards, and other guidance as may be necessary for the implementation of an effective statewide affirmative action plan. This state plan shall be designed to eliminate discrimination in personnel policies and procedures, job structuring, position classifying, hiring, firing, promoting and training of state employees.

The Department of Administration shall monitor and maintain the Equal Employment Opportunity Program and submit a report thereon to the Governor within 90 days of the end of each year.

Given under my hand and the GREAT SEAL of the State of Montana this 28th day of November; in the year of our LORD, One Thousand, Nine Hundred Seventy-three.


THOMAS L. JUDGE, Governor

ATTEST:


Secretary of State

DEFINITIONS

The following definitions shall apply for purposes of this Affirmative Action Plan.

1. "Affected Class" - refers to those groups of people who have suffered and continue to suffer effects of past discrimination. This includes, but is not limited to persons in the following categories: minorities, women, physically or mentally handicapped, aged, ex-offenders, religious groups, public assistance recipients, or those discriminated against because of their marital status, political beliefs, national origin, or ancestry.
2. "Agency" - unless a different meaning clearly appears from the context - refers to all branches, departments, offices, boards, bureaus, commissions, agencies, or any other instrumentality of State government; whether or not allocated to a department for administrative purposes, but having authority for staffing and other personnel policies and having fifteen (15) or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.
3. "Employee - means any individual regularly employed by an agency on a part or full-time basis.
4. "Executive Officer" - means the highest ranking officer and chief administrator of an agency, responsible for all functions within that agency.
5. "Equal Employment Opportunity Officer" - refers to the person, under the supervision of the "Executive Officer," responsible for coordinating and implementing the agency's Affirmative Action Plan in conjunction with requirements established by the Equal Employment Opportunity Bureau.

6. "Good Faith Effort" - means that every reasonable effort has been undertaken to meet the goals and timetables established in the Affirmative Action Plan.
7. "Bona Fide Occupational Qualification" (BFOQ) - refers to an exception to the discrimination provisions upheld by Equal Employment Opportunity laws. BFOQ may permit an employer to discriminate where a job requires certain restrictions on qualifications, that are essential to the accomplishment of the job.
8. "Affirmative Action" - means steps taken to remedy the inadequate and inequitable staffing and recruitment patterns that are the present consequences of discrimination and to prevent the occurrence of employment discrimination in the future.

I. INTRODUCTION

Section 101 Purpose of Affirmative Action

Affirmative action is the implementation of a deliberate and sustained effort to equalize employment opportunities in all levels of State government. It goes beyond the establishment of neutral non-discriminatory policies and takes positive steps to identify and eliminate any barriers which may discriminate against any persons or class of persons seeking employment or presently employed by the State. The purpose of affirmative action is to fully utilize the "affected class" work force potential so as to provide at all levels a State governmental work force which is representative of the State's labor market. State government must be a leader in actively pursuing equal employment opportunity for four reasons. First, the people of Montana have spoken in full support of equal employment opportunity through their elected representatives to the Constitutional Convention and the Legislative Assembly. Secondly, State agencies are enforcing equal opportunity provisions in private enterprise, a job made easier if the State itself is in full compliance. Third, the State's access to federal funds is endangered if compliance with federal statutes is in question. Fourth, the denial of equal opportunity in employment is a discriminatory practice as defined in Title VII of the 1964 Civil Rights Act, as amended.

Section 102 Legal Provisions

Equal opportunity in employment is a fundamental right of all citizens and is covered by State and Federal laws. The state of Montana is committed to insure equal employment opportunity in an affirmative

and active manner by Gubernatorial Executive Order 8-73; the Constitution of the state of Montana (Article II, Sections 3 and 4), (Article X, Section 7); the Montana Human Rights Act of 1974 (Section 64-301 to Section 64-315, R.C.M. 1947), as amended; and the Montana Code of Fair Practices Act of 1975 (Section 64-316 to Section 64-330, R.C.M. 1947). Montana state government is committed to uphold the requirements of Title VI of the Civil Rights Act of 1964; Title VII of the Civil Rights Act of 1964, as amended; Presidential Executive Order 11246, as amended; the Equal Pay Act of 1963; and the Age Discrimination in Employment Act of 1967. This Montana Affirmative Action Plan reaffirms and supports these State and Federal laws, rules, and regulations in regard to non-discrimination in employment.

Section 103 Basic Policy Statement

It is the policy of the state of Montana to take affirmative action to eliminate discrimination in personnel policies and procedures based on race, color, religion, national origin, age, marital status, ancestry, receipt of public assistance, political beliefs, physical or mental handicap, ex-offender status, and sex; unless sex, ex-offender status, and/or physical or mental handicap relates to a bona fide occupational requirement. Equal opportunities shall be provided for all State employees during their terms of employment. All applicants for State employment are to be recruited from the available labor market and employed in accordance with each person's qualifications and abilities.

Section 104 Agency Support

The overall State Affirmative Action Program can only be implemented through the agencies of the State. Each agency shall conduct its operations

in accordance with the provisions of this plan and shall lend full support and cooperate fully with the Equal Employment Opportunity Bureau to insure the achievement of equal employment opportunity in Montana state government. All agencies shall be encouraged to explore new methods of achieving equal opportunity.

Section 105 Agency Affirmative Action Plan

Each agency, upon request of the Department of Administration's Equal Employment Opportunity Bureau, shall submit for approval an Affirmative Action Plan, complete with goals and timetables which are acceptable to the Equal Employment Opportunity Bureau. This plan shall be developed in accordance with guidelines and standards provided to the agency by the Bureau and shall assure equal employment opportunity for all State employees, as well as applicants for State employment. Each agency's plan shall take aggressive action in all personnel policies and procedures; and shall include, but not be limited to recruitment, testing, selection, benefits, qualifications, employment, promotions, transfers, dismissals, rehires, equality of wages, training programs, and a procedure for fair and immediate resolution of complaints of discrimination. Each agency's plan shall include specific affirmative action plan requirements for contractors, subcontractors, subgrantees, and other firms employing fifteen or more persons for each working day in each of twenty or more weeks in the current or preceding calendar year. After initial approval, any revisions or modifications in an agency plan must be resubmitted to the Equal Employment Opportunity Bureau.

II. ADMINISTRATION OF PLAN

Section 201 Governor's Support

The Governor, as chief executor of State law, fully supports the provision of equal employment opportunity in Montana state government. As Chief Executive, the Governor is primarily responsible for the implementation and continued evaluation of the Affirmative Action Program of the state of Montana.

III. ASSIGNMENT OF RESPONSIBILITIES

Section 301 Equal Employment Opportunity Bureau

The Equal Employment Opportunity Bureau, under the direction of the Department of Administration, shall have full responsibility to administer and implement the State's Affirmative Action Plan. The Equal Employment Opportunity Bureau shall:

- a. Issue such regulations, standards, record-keeping requirements, and technical assistance deemed necessary to clarify the composition of the agencies' Affirmative Action Plan.
- b. Define and establish evaluation procedures for review of each agency's Affirmative Action Plan.
- c. Review and give final approval to all agency Affirmative Action Plans to insure compliance with Federal and State guidelines.
- d. Prepare an annual report to the Governor evaluating the progress of affirmative action in State government and recommend corrective measures to be taken wherever equal employment opportunity is not fully implemented.

e. Advise the Governor and the Director of Administration concerning relevant laws, regulations, and guidelines from Federal agencies and their affect on equal employment opportunity within the State's system.

f. Consult with the State Classification Bureau, Merit System, and Training Bureau; and make recommendations to them regarding all aspects of personnel policies and procedures concerning members of the "affected class".

g. Research, maintain, and publish statistical information on equal employment opportunity within State government.

Section 302 Executive Officer of Agency

The "Executive Officer" of each agency shall have the full responsibility of implementing an Affirmative Action Plan for that agency. The Executive Officer shall insure the development of the agency's Affirmative Action Plan in accordance with standards and guidelines provided to the agency by the Equal Employment Opportunity Bureau. Each Executive Officer shall:

a. Designate and identify in writing to the Equal Employment Opportunity Bureau an Equal Employment Opportunity Officer, hereinafter referred to as the "EEO Officer". This person shall be a policy making executive with the responsibility for developing and implementing the Affirmative Action Plan.

b. Insure uniform application of all personnel policy procedures without regard to race, color, religion, national origin, age, marital status, ancestry, receipt of public assistance, political beliefs, physical or mental handicap, ex-offender status, or sex; unless sex, ex-offender status, and/or physical or mental handicap relates to a bona fide occupational requirement.

c. Insure that affirmative action encompasses all aspects of the agency's operation including staffing, recruiting, and training needs.

d. Insure that complaint procedures are strictly adhered to without retaliation or reprisals against any person filing a formal or informal discrimination complaint, or against any person giving testimony or aiding in the resolution of complaints.

e. Insure accurate completion and submission of the agency's Affirmative Action Plan and Semi-Annual Affirmative Action Status Reports to the Equal Employment Opportunity Bureau. (Standard report forms supplied by the EEO Bureau).

f. Insure a "good faith effort" in the achievement of employment goals and upgrading of "affected class" members within the agency.

g. Cooperate and provide information to the Equal Employment Opportunity Bureau when a review of the agency's Affirmative Action Plan is scheduled.

Section 303 Equal Employment Opportunity Officer

The person designated as Equal Employment Opportunity Officer should have a sensitivity to the varied ways in which discrimination limits job opportunities, a commitment to program goals, and the ability to work with others to achieve these goals. The EEO Officer shall have full authority as a policy making executive to develop and implement the agency's Affirmative Action Plan. The EEO Officer, on behalf of the agency's Executive Officer, shall coordinate equal employment opportunity and affirmative action efforts with the Equal Employment Opportunity Bureau.

IV. DISSEMINATION OF POLICY

Section 401 Agency Affirmative Action Policy Statement

Each agency will accept as its operating policy the following statement which is designed to further the provision of equal employment opportunity to all members of the "affected class", and to promote the full realization of equal employment opportunity through a positive and continuing program. This policy shall include, but not be limited to the following:

"It is the policy of this agency to insure that employees during employment and all applicants for employment are treated equally without regard to their race, color, religion, national origin, age, marital status, ancestry, receipt of public assistance, political beliefs, physical or mental handicap, ex-offender status, or sex; unless sex, ex-offender status, and/or physical or mental handicap relates to a bona fide occupational requirement. Such action shall include: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship and/or on-the-job training."

Section 402 Employee Orientation

Each Executive Officer will take steps to insure that all employees of the agency are made aware of and understand the policy of non-discrimination expressed in the agency's Affirmative Action Plan. To insure that this will be accomplished, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted not less than once every six months, at which time the agency's Affirmative Action Plan and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or another qualified agency official.

b. All new supervisory or personnel office employees will be given a thorough orientation by the EEO Officer or another qualified agency official. This shall cover all aspects of the agency's equal employment opportunity obligations, and occur within thirty working days following their reporting for duty with the agency.

c. The EEO Officer or another qualified agency official shall instruct all employees engaged in the recruitment of potential employees as to the objectives of affirmative action goals. The Officer shall also instruct these employees as to the procedures of locating and recruiting potential employees from the "affected class".

V. DEVELOPMENT OF PLAN

Section 501 Utilization Analysis

Each agency's Affirmative Action Plan shall include a realistic assessment of its existing employment patterns to determine what specific action steps are necessary to correct any deficiencies. Each agency shall make a comprehensive analysis of its current and past practices concerning recruitment, hiring, promotion, training, and other personnel actions. This survey and analysis of employment by agency and major job classification shall include the following information:

a. Identify Present Areas and Levels of Employment: Include the present number and percentage of minority and women employees currently employed.

b. Determine Extent of Underutilization of Minorities and Women: Each agency shall survey their labor area (the area from which they could reasonably expect to recruit) to determine as a minimum the following factors:

1. Percentage of each minority group (by sex) in total population of the area.
2. Percentage of women in total population in the area.
3. Percentage of each minority group and of women in the work force.
4. Extent of unemployment of women.
5. Extent of unemployment for minorities (by sex).
6. Availability of trainable, promotable, and transferable "affected class" employees in the work force.
7. Availability of training opportunities and facilities within and outside the agency.

The information gathered in the utilization analysis shall be used to identify deficient areas, and should be incorporated into the agency's Affirmative Action Plan with specific result-oriented actions to resolve them.

Section 502 Goals and Timetables

Goals and timetables shall be established after a utilization analysis has revealed any deficiencies in the utilization of the affected classes within the agency's work force. Each agency shall establish specific (short range) one year and (long range) five year goals and timetables to insure maximum utilization of minorities and

women. The goals which are established should be significant, measurable, and reasonably attainable. They must not be interpreted as rigid, inflexible quotas.

A good faith effort shall be put forth by each agency to make its overall Affirmative Action Plan work. Each agency shall also strive to attain equal employment opportunity over a period of five years.

The internal work force utilization analysis and the analysis of the relevant external labor market shall provide the basic data on which goals and timetables are formulated. The following factors shall be considered in determining goals and timetables:

a. Goals and timetables will be determined by job classification for women and minorities separately.

b. Each agency will consider anticipated expansion, contraction, and turnover of its work force.

c. Specific goals and timetables will be established for the promoting, transferring, and training of minorities, women, and other affected class groups.

d. The goals and timetables established shall be based on the following:

1. The degree of underutilization within the specified job category.
2. The extent of the relevant recruitment area.
3. The availability of qualified or qualifiable minorities and women in the relevant work area.
4. The number of job openings available, as determined by turnover and expansion.

The one year and five year goals will be recorded on forms supplied by the Equal Employment Opportunity Bureau.

VI. IMPLEMENTATION

Section 601 Recruitment

Each agency shall analyze and review its recruitment procedures to identify and eliminate any discriminatory practices. Each agency shall provide for an active recruitment program to:

a. Reach all segments of the population that work closely with "affected class" applicants, including but not be limited to the following: minority organizations, women's groups, religious groups, community organizations, professional groups, educational institutions, and training schools.

b. Consult with affected class members in developing recruitment and personnel procedures.

c. Vacancies should be analyzed to determine if they could be filled equally well or better by the substitution of two part-time positions, thus allowing qualified handicapped persons or women to apply who would otherwise be excluded from consideration.

d. When a vacancy is anticipated, consideration should be given to provide on-the-job training for minority or other affected class person, thus allowing that person to qualify for the position.

e. Review recruitment literature, publications, and job announcements to insure that they are acceptable to all groups. Provide for equal employment opportunity in the following ways:

1. Language or photographs shall not depict inequality to minority groups, women, or other affected classes.
2. Classified advertisements and other recruitment publications shall not use sex-segregated listings, unless sex-segregation is a bona fide occupational qualification for the job.
3. Publications shall be clear and understandable to all applicants.
4. Advertising and recruitment literature shall state "An Equal Employment Opportunity Employer".

f. Insure that all jobs are listed with the local State Employment Service in accordance with Equal Employment Opportunity guidelines, and emphasize the agency's interest in referrals of qualified as well as qualifiable affected class members.

Section 602 Selection Procedures

Each agency shall prohibit any job qualification or selection standard which disproportionately screen out members of the affected class. To justify any practice or policy which may have an adverse effect on "affected class" members, an employer must demonstrate concrete evidence that such a practice is justified as a "bona fide occupational qualification" (BFOQ) for that particular position. A "bona fide occupational qualification" should be applied narrowly to jobs for which a particular religion, sex, age, or national origin is absolutely essential to the accomplishment of the purposes of the job. While it is not expected that any BFOQ's will relate to Montana state government, the following examples are recognized by the Equal Employment Opportunity Commission:

- a. Where a sex restriction is necessary for purposes of authenticity or genuineness (e.g., actor, actress).
- b. Where a restriction is necessary for maintaining conventional standards of sexual privacy (e.g., washroom attendant).
- c. Where age is a bona fide factor in connection with job performance (e.g., commercial airline pilot).

Employee selection procedures are subject to Equal Employment Opportunity Commission guidelines and include all tests (written, performance, and oral), education and experience ratings, structured interviews, reference vouchers, and application forms; and must be designed to insure equal employment opportunity for all "affected class" members. The use of any test or selection procedure which adversely affects hiring, promotion, transfer, or employment of "affected class" members constitutes discrimination.

Section 603 Job Structuring and Upward Mobility

Each agency shall review and evaluate job classifications as needed to identify inaccurate job descriptions and qualifications not job related. The agency shall promote full utilization of the present skills of employees, and provide opportunities for employees to perform at their highest potential for advancement. Discriminatory or unnecessary restrictions must be deleted. Each agency shall eliminate any barriers affecting advancement in all employment practices. Such barriers are both formal and informal, and include assignment, transfer, promotion, and training.

A careful review of each agency's work force utilization analysis shall determine where there is an underutilization of qualified employees. Each agency shall assist capable lower level and "affected class" employees in developing their career to the fullest extent feasible, by providing as much help as possible in the form of counseling, coaching, and training.

Each agency shall develop a promotion plan that will provide upgrading for individuals who have been previously locked out of upward mobility or who traditionally have not had access to all positions. Promotions shall be based on individual qualifications and skills.

Section 604 Personnel Actions

Each agency shall insure non-discrimination in compensation (equal pay for substantially similar work), benefits, and conditions of employment in the following ways:

a. Review all benefits and conditions of employment to see that they are equally available without discrimination to all employees, both male and female. This includes medical, hospital, accident and life insurance; retirement benefits and pensions; leave; and other terms, conditions, and privileges of employment.

b. The standards for determining when a person shall be terminated, demoted, disciplined, laid off, or recalled should be the same for all employees.

1. Termination, demotion, or any form of punishment or harassment against an employee for filing a discrimination charge is illegal. Such actions receive top priority by the State of Montana Human Rights Commission and the United States Equal Employment Opportunity Commission, often resulting in reinstatement and back pay.

2. Records shall be kept for verification purposes of all reprimands, layoffs, demotions, and terminations. They shall include: total number of employees terminated, names, salaries, dates, reason for action, sex, race, and job category.
3. Exit interviews will be conducted by the EEO Officer with all terminated employees. These interviews may provide essential information on discriminatory policies and practices that should be revised.

Section 605 Union Contracts

Every collective bargaining agreement shall contain a non-discrimination clause covering all procedures of the agreement.

Each agency should insure their union contractors are in compliance with Executive Order 11246, as amended, and Section 64-318 to Section 64-320, R.C.M. 1947.

Section 606 Agency Responsibility for Subcontractors and Subgrantees

Each agency shall include an affirmative action policy statement with each application for funding or grant proposal. Each State agency shall require their contractors, subcontractors, subgrantees, and other firms doing business with that agency to be in compliance with the provisions of this Affirmative Action Plan and Section 64-316 to Section 64-330, R.C.M. 1947.

VII. COMPLAINT PROCEDURE

Section 701 Complaint Procedure

Each agency's EEO Officer, under the guidance of the Equal Employment Opportunity Bureau, shall establish an explicit complaint procedure which will provide for prompt, fair, and impartial processing of complaints of discrimination by prospective, current, or former employees. The complaint procedure shall consist of exact guidelines which shall be followed in handling complaints of discrimination. These guidelines shall be posted in a conspicuous place, readily accessible to all employees.

VIII. EVALUATION

Section 801 Records and Reports

Each agency shall audit, monitor, and evaluate its Affirmative Action Plan progress on a continuing and regular basis. This evaluation process shall be implemented by the agency's EEO Officer in conjunction with the agency's Personnel Officer.

A Semi-Annual Affirmative Action Status Report shall be submitted to the Equal Employment Opportunity Bureau and shall contain, as a minimum, the following information:

- a. Current employees by minority group, sex, job category, and salary.
- b. Work force availability by minority group and sex, both internally and externally.
- c. Identification of areas of underutilization of the "affected class", as well as established hiring and promotion goals and timetables.

d. Applicant flow (including records), each step of the selection process, hires, placements, promotions, requests for transfers, actual transfers, and training program participation by minority group and sex.

e. Number of resignations, layoffs, and other terminations detailed by minority group and sex.

f. Progress of all agencies toward their projected one year and five year goals.

g. All referral sources.

The Semi-Annual Affirmative Action Status Reports will be publicly available. They do not preclude compliance with Section 64-326, R.C.M. 1947.

Section 802 Affirmative Action Compliance

Each of the agencies shall be expected to comply with the policies and procedures set forth in this document. The Equal Employment Opportunity Bureau and the Department of Administration shall review each agency's Semi-Annual Affirmative Action Status Report to determine whether each agency's goals and timetables are being met. If, after these reviews, an agency is found to be deficient in any areas concerning their goals and timetables or in violation of this Plan, the Equal Employment Opportunity Bureau will meet with that agency to discuss these deficiencies. If in the judgment of the Equal Employment Opportunity Bureau, that agency is not putting forth a "good faith effort" towards achieving its established goals and timetables or is outwardly in violation of this plan, that agency will be considered to be in a non-compliance status and a formal compliance review will be scheduled by the Human Rights Bureau.

