

123:1-49-01**Equal employment opportunity policy.**

- (A) No person employed by any state agency, board, or commission shall discriminate against any other state employee or candidate for state employment on the basis of race, color, religion, sex, national origin (ancestry), military status (past, present or future), disability, age (40 years of age or older), genetic information, or sexual orientation, as those terms are defined in Ohio law, federal law and any current executive order of the governor of Ohio, in making any state government employment-related decisions including, but not limited to, hiring, layoff, termination, transfer promotion, demotion, rate of compensation, or eligibility for in-service training programs.
- (B) The equal opportunity division of the department of administrative services shall promote equal opportunity in state government employment-related decisions and the full realization of equal opportunity in state service through a continuing affirmative action program in each state agency, board, or commission.
- (C) For purposes of Chapter 123:1-49 of the Administrative Code, "agency" or "agencies" means each state agency, board, or commission.

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123:1-49-02**Duties of the state employees equal opportunity coordinator.**

(A) The equal opportunity division is hereby created within the department of administrative services. The division shall be under the direct supervision of the state equal employment opportunity coordinator. The division shall provide leadership and guidance to agencies in the conduct of affirmative action programs for the employees of and candidates for employment within the agencies. The state equal employment opportunity coordinator may issue procedures to implement the state equal employment opportunity policy and programs.

(B) The state equal employment opportunity coordinator shall conduct equal employment opportunity compliance reviews and evaluate agency affirmative action program operations periodically, obtain such reports as the coordinator deems necessary, and report to the Governor and the director of the department of administrative services as appropriate on overall progress. When the coordinator finds that an agency program is not in conformity with these rules, the coordinator may require improvement or corrective action to bring the agency's affirmative action program into compliance with the rules of this Chapter.

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123:1-49-03**Responsibilities of state agencies in regard to EEO.**

(A) The head of each agency shall establish an agency equal opportunity program which shall include an affirmative action plan. Ultimate responsibility for the agency's equal opportunity program rests with the agency head. Each agency shall designate an agency equal employment opportunity officer who shall have sufficient knowledge and experience to handle the assignment and whose functions may include:

- (1) Advising the head of the agency with respect to the preparation of equal employment opportunity programs, procedures, rules, reports, and the agency's affirmative action plan.
- (2) Evaluating from time to time the sufficiency of the total agency equal employment opportunity program and reporting thereon to the head of the agency with recommendations as to any improvement or correction needed. The head of the agency shall include remedial or disciplinary actions for supervisors or managers who have failed to cooperate fully or who are in violation of the program.
- (3) Make changes in programs and procedures designed to eliminate discriminatory practices when so authorized by the head of the agency.
- (4) Evaluating tests, employment policies, practices and qualifications and reporting to the head of the agency and to the state equal employment opportunity coordinator any such policies, practices and qualifications which have a disparate impact on minorities and women. This function shall be performed in cooperation with the equal opportunity division of the department of administrative services.
- (5) Providing for counseling of any aggrieved employee or applicant for employment who believes that he or she has been discriminated against because of race, color, religion, sex, or national origin (ancestry), military status (past, present or future), disability, age (40 years of age or older), genetic information, or sexual orientation.
- (6) Providing for receipt and investigation of individual complaints of discrimination in personnel matters within the agency, and for attempting to resolve the complaint raised by the employee or candidate in a complaint of discrimination.
- (7) Furnishing any information required by the state equal employment opportunity coordinator, including but not limited to, monthly reports on all complaints pending within the agency, including those filed with the Ohio civil rights commission and the federal equal employment opportunity commission. The state equal employment opportunity coordinator will provide the format in which such reports should be submitted.

(B) An equal employment opportunity officer may be named for a group of participating agencies when the agency is too small to have a full time equal employment opportunity officer.

(C) The names of the equal employment opportunity officers, their address, email address and telephone number, and any change made in their designation shall be furnished to the state equal employment opportunity coordinator annually or as changes are made.

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123:1-49-04

Establishment of affirmative action plan.

(A) Each agency shall establish, maintain, carry out and continually evaluate its affirmative action plan designed to promote equal opportunity in every aspect of recruitment, employment, development, advancement, and treatment of employees. The state equal employment opportunity coordinator may issue guidelines which agencies shall use for establishing, implementing and judging an acceptable affirmative action plan as required by Chapter 123:1-49 of the Administrative Code.

(B) An affirmative action plan shall consist of a set of specific, result-oriented procedures designed to promote equal employment opportunity for all state employees and candidates for state employment. Each agency must apply the procedures enumerated in its affirmative action plan in good faith. An agency's affirmative action plan must include an analysis of areas within the agency where the hiring and promotion of minorities and women are deficient. Each agency must establish goals and timetables to correct these deficiencies and increase materially the opportunities of minorities and women at all levels of state government. An agency's affirmative action plan must include an identification and analysis of difficulties the agency has experienced in curing any deficiencies in the employment of minorities and women. Additionally, such plans must set goals to eliminate all artificial barriers regarding the hiring and or promotion of minorities and women.

(C) Each agency shall include in its affirmative action plan such information and analysis which the state equal employment opportunity coordinator may require. This information shall include, but is not limited to, the following:

(1) Statistical evaluation of the agency's workforce and information regarding the labor market composition.

(2) Goals, timetables, supporting data, and affirmative action commitments, and analysis thereof, which must be designed to correct any identifiable deficiencies. Agency goals should be attainable in consideration of the agency's current deficiencies and the results which could be reasonably expected from full, good faith implementation of the remedial measures identified in its affirmative action plan. If the agency does not meet its goals and timetables, the agency's "good faith efforts" shall be judged by whether it is following its program and attempting to make it work toward the attainment of its goals. Support data for the above analysis and program shall be compiled and maintained as part of the agency's affirmative action plan. This data should include applicant flow data and applicant rejection ratios indicating minority status.

(D) Each agency shall submit a written affirmative action plan to the state equal employment opportunity coordinator every three years for review and approval. The state equal employment opportunity coordinator shall review the agency's

affirmative action plan to determine if the agency is in compliance with this rule. Where the state equal employment opportunity coordinator finds that the agency has failed to comply with the requirements of these rules and its obligations, the state equal employment opportunity coordinator shall take such action as may be appropriate.

- (E) Agency compliance status shall be determined by reviewing the contents of its plan, the extent of its adherence to its plan, and its good faith efforts to realize the plan's goals within the timetables set for completion. An agency's compliance status shall not be solely determined on the basis of whether the agency reaches all of its goals within the established timetables. The purpose of the agency's establishment and use of goals and timetables is to ensure that it meets its equal opportunity obligation and is not intended and should not be used to discriminate against any applicant or employee because of race, color, religion, sex, national origin (ancestry), military status (past, present or future), disability, age (40 years of age or older), genetic information, or sexual orientation. If an agency fails to submit an affirmative action plan with specific goals and timetables, the state equal employment opportunity coordinator may disapprove the plan. If an agency's affirmative action plan is disapproved, the state equal employment opportunity coordinator shall either return the plan to the agency for revision and resubmission or may set the goals and timetables on behalf of the agency. Additionally, agencies shall submit information updates to the approved affirmative action plan on an annual basis and as requested by the state equal employment opportunity coordinator.
- (F) Each agency shall furnish any necessary information and assistance as may be required by the state equal employment opportunity coordinator. Such information shall include statistical data on minority and women applicant flow, employment, promotion and any other information relevant to the administration of the these rules. Each agency shall be required to gather such data in a format as the division may require providing an adequate statistical base for determining compliance.
- (G) In addition to the general requirements of an affirmative action plan, an agency may:
- (1) Provide sufficient resources to administer its equal opportunity program in a positive and effective manner;
 - (2) Examine recruiting and employee selection and job qualification procedures for bias and eliminate any such procedure found to have a discriminatory impact on minorities or women;
 - (3) Implement ongoing measures to eliminate prejudice or discrimination based upon race, color, religion, sex, national origin (ancestry), military status (past, present or future), disability, age (40 years of age or older), genetic information, or sexual orientation, from the agency's personnel policies, practices and working conditions, and recommend corrective action against employees who engage in discriminatory practices;

- (4) Utilize to the fullest extent the present skills of employees by all means as outlined in the current position description;
- (5) Provide substantial opportunities for employees to enhance their skills through on-the-job training, work-study programs, and other training measures so that they may perform at their highest potential and advance in accordance with their abilities;
- (6) Communicate the state's and the agency's equal employment opportunity policy and program and its employment needs to all sources of job candidates without regard to race, color, religion, sex, or national origin (ancestry), military status (past, present or future), disability, age (40 years of age or older), genetic information, or sexual orientation, and solicit their recruitment assistance on a continuing basis;
- (7) Participate at the community level with other employers, with schools and universities, and with other public and private groups in cooperative action to improve employment opportunities and community conditions that affect employability;
- (8) Review and evaluate managerial and supervisory performance regarding the application of the agency affirmative action plan in order to continue affirmative application and vigorous enforcement of the policy of equal opportunity;
- (9) Provide orientation, training, and advice to managers and supervisors to assure their understanding and implementation of its equal employment opportunity policy and program;
- (10) Inform its employees and recognized employee organizations of its equal employment opportunity policy and program and enlist their cooperation; and,
- (11) Schedule new employees to receive orientation and/or training in the state's and the agency's equal employment opportunity policy within a reasonable time from the date of hire.

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123:1-49-05

Characteristics of an affirmative action program.

In addition to the affirmative action plan required by rule 123:1-49-04 of the Administrative Code, an agency shall also:

(A) Periodically appraise its personnel operations to assure their conformity with these rules and the agency's affirmative action plan.

(B) Publish the functions, rules and activities of the office agency by posting the following information on official bulletin boards and agency websites:

(1) The name and address of the state equal employment opportunity coordinator.

(2) The names and addresses of the equal employment opportunity officers and that they are available to assist employees or candidates for employment who believe they have been discriminated against because of race, color, religion, sex, national origin (ancestry), military status (past, present or future), disability, age (40 years of age or older), genetic information, or sexual orientation.

(3) The right of each employee and candidate for employment who believes that he or she has been discriminated against because of race, color, religion, sex, national origin (ancestry), military status (past, present or future), disability, age (40 years of age or older), genetic information, or sexual orientation to file a complaint.

(4) The complaint procedure and time limits for such complaints as established by these rules.

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123:1-49-06

Filing of Complaint.

(A) In order for a complaint to be considered jurisdictional by the equal opportunity division, the complainant must:

- (1) Be an agency employee or candidate for state employment;
- (2) Allege that the improper conduct occurred in the making of a state government employment-related decisions including, but not limited to, hiring, layoff, termination, transfer promotion, demotion, rate of compensation, or eligibility for in-service training programs;
- (3) File with either the agency or with the equal opportunity division of the department of administrative services in person, electronically, by U.S. mail, or through an authorized representative; and
- (4) File within thirty calendar days of the date of the alleged improper conduct.

(B) A complaint shall be deemed filed on the date it is electronically filed or on the date it is time-stamped if addressed to an appropriate official designated to receive complaints. The agency or the equal opportunity division, whichever initially receives the complaint, shall determine whether the complaint meets the jurisdictional requirements set forth in paragraph (A) of this rule.

(C) When a complaint is filed with the agency, the agency shall transmit a copy of the complaint electronically to the equal opportunity division within fifteen calendar days of the receipt thereof. If the agency determines that the complaint meets the jurisdictional requirements, the agency shall proceed to process the complaint. If the agency determines that the complaint is not jurisdictional, it shall notify the equal opportunity division.

(D) The equal opportunity division shall review all complaints whether filed with the agency or directly with the division. If the division disagrees with the jurisdictional determination of the agency, it may reinstate the complaint and require the agency to process the complaint as jurisdictional pursuant to these rules; or the division may reject the complaint as non-jurisdictional and close the matter for purposes of these rules. The agency may, at its discretion, proceed to process a non-jurisdictional complaint. However, rules 123:1-49-07 and 123:1-49-08 will not apply to a non-jurisdictional complaint. The determination of jurisdiction by the equal opportunity division is final.

(E) Any complaint filed beyond the thirty calendar day period set forth in paragraph (A) of this rule will not be considered jurisdictional for purposes of these rules. The state equal employment opportunity coordinator may extend the time limits for filing a jurisdictional complaint under this rule when the complainant demonstrates they were prevented by circumstances beyond their control from submitting the matter within the time limits, or for other reasons considered sufficient by the agency or the state equal employment opportunity coordinator.

- (F) A complaint shall include the name, street address, email address, and telephone number of the complainant; the name of the person or persons committing the alleged improper conduct; a description of the conduct; a statement as to any other action or proceeding instituted in any other forum based upon the facts alleged in the complaint, including the status or disposition of such other action; and any other pertinent information which will assist in the investigation and resolution of the complaint.
- (G) All jurisdictional complaints shall be acknowledged in writing and shall include notice of complainant's right to file a charge affidavit with the Ohio civil rights commission or the federal equal employment opportunity commission, including the time limits for filing such charges.
- (H) An agency or a complainant may make a request for a jurisdictional complaint to be investigated by a third party from outside of the agency if a conflict of interest is perceived to exist within the agency. All requests for third party investigators shall be submitted to the state equal employment opportunity coordinator and the coordinator shall approve or disapprove of such request as deemed appropriate. If such a request is approved, the coordinator will select a third party investigator, who shall conduct an investigation and upon completion, submit the investigation and their recommendation and to the agency for its determination. The agency shall provide the equal opportunity division with a copy of the investigation and the agency's determination.
- (I) At any stage in the filing or investigation of a complaint, the complainant may be accompanied, represented, and advised by a representative of his or her own choosing. If the complainant is an employee of the agency, a reasonable amount of time off from work to file his or her complaint must be given by the agency. If the complainant is an employee of the agency and has designated another employee of the agency as his or her representative, the representative as well as the complainant shall be given a reasonable amount of time off from work to file the complaint.
- (J) If a jurisdictional complaint is still pending with the agency within sixty days from the date the complaint was filed, the state equal employment opportunity coordinator may require the agency to take special measures to ensure prompt processing of the complaint. The state equal employment opportunity coordinator or the agency may dismiss a complaint because of failure of the complainant to prosecute the complaint. The decision to dismiss the complaint shall be transmitted by letter to the complainant and the complainant's representative, if any. The decision letter shall inform the complainant of his or her right to file a charge with the Ohio civil rights commission and with the federal equal employment opportunity commission and of the time limits for filing such charges.
- (K) The agency shall document the actions of the agency in resolving a jurisdictional

complaint and report the actions of the agency to the equal opportunity division.

- (L) Any investigation shall include a thorough review of the circumstances under which the alleged improper conduct occurred and may include a review of the treatment of members of the complainant's group identified by the complaint as compared with the treatment of other similarly situated employees in the agency in which the alleged improper conduct occurred. Information needed to apprise the complainant shall be recorded in the agency's investigative file.
- (M) The term "investigative file" shall mean the various documents and information acquired during the investigation including, but not limited to, affidavits of the complainant, of the alleged discriminating employee, and of the witnesses and copies of, or extracts from, records, policy statements, or regulations of the agency organized to show their relevance to the complaint or the general environment out of which the complaint arose.
- (N) Complainants, their representatives, and witnesses shall be free from restraint, interference, coercion, discrimination, or reprisal at any stage in the presentation and processing of a complaint.
- (O) A complainant, his or her representative, or a witness who alleges restraint, interference, coercion, discrimination, or retaliation in connection with the presentation of a complaint under this Chapter of the Administrative Code may have the allegation reviewed as an individual complaint of discrimination.

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123:1-49-07**Appeals to Division.**

(A) Upon completion of an investigation of a jurisdictional complaint, the agency must provide a copy of the investigation report and the determination of the agency to the complainant or the complainant's representative and the state equal employment opportunity coordinator and include a cover letter informing the complainant of his or her right to appeal the determination of the agency to the state equal employment opportunity coordinator and of the right to file a charge affidavit with the Ohio civil rights commission and with the federal equal employment opportunity commission, and of the time limits applicable thereto.

(B) The complainant must file an appeal of an agency determination with the state equal employment opportunity coordinator in writing within fifteen calendar days of receipt of the agency's determination. If the complainant fails to notify the state equal employment opportunity coordinator within the fifteen day period, the determination of the agency is final.

(C) When a complainant files a timely appeal of an agency determination with the state equal employment opportunity coordinator, the agency shall provide a copy of the investigative file and all relevant written information to the coordinator and, upon review, the coordinator may take any of the following dispositive actions:

(1) Accept the determination of the agency and deny the appeal;

(2) Remand the investigative file to the agency for further investigation. Any further investigation by the agency resulting from a remand shall be conducted according to the rules for conducting the original investigation. When further investigation is completed, the agency shall provide a copy of any revised investigation report promptly to the state equal employment opportunity coordinator and the complainant or the complainant's representative and issue a disposition of the appeal based on the revised investigation;

(3) Order a hearing pursuant to rule 123:-1-49-08 of the Administrative Code if the state equal employment opportunity coordinator considers such action to be necessary.

(4) Order the agency to take corrective action determined to be necessary or desirable to resolve the issues and to promote the policy of equal opportunity, whether or not there is a finding of probable cause.

(D) The state equal employment opportunity coordinator shall issue a written decision setting forth the coordinator's reasons for the decision and shall send copies thereof to the complainant, the complainant's representative, and the agency. When corrective action is ordered, the agency shall report promptly to the equal opportunity division that the corrective action has been taken.

(E) Any decision of the state equal employment opportunity coordinator is final. All final

decisions shall be sent in writing to the agency and the complainant or the complainant's representative. The decision shall contain a notice of the right to file a charge affidavit with the Ohio civil rights commission and with the federal equal employment opportunity commission and of the time limits for filing such charges.

(F) The state equal employment opportunity coordinator may, in their discretion, reopen and reconsider any previous decision when the party requesting reopening submits written argument or evidence which tends to establish that:

(1) New and material evidence is available that was not readily available when the previous decision was issued; or

(2) The previous decision involves an erroneous interpretation of law or regulation or a misapplication of established policy.

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123:1-49-08

Hearing.

- (A) Any hearing ordered by the state equal employment opportunity coordinator pursuant to rule 123:1-49-07 of the Administrative Code shall be held by a hearing officer who may be an employee of another agency or who may be an employee of the equal opportunity division of the department of administrative services.
- (B) The hearing officer shall schedule the hearing for a convenient time and place and shall conduct the hearing so as to bring out pertinent facts, including the production of pertinent documents. The complainant, his or her representative, and representatives of the agency at the hearing shall be given the opportunity to examine witnesses who appear and testify.
- (C) The hearing officer shall have the power to regulate the course of the hearing; limit the number of witnesses whose testimony would be unduly repetitious; and exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing.
- (D) The hearing officer shall request the agency to make available as a witness at the hearing any employee requested by the complainant when he or she determines that the testimony of the employee is necessary. The hearing officer may also request the appearance of an employee of any state agency whose testimony he or she determines is necessary to furnish information pertinent to the complainant under consideration. The hearing officer shall give the complainant his or her reasons for the denial of a request for the appearance of employees as witnesses and shall insert those reasons in the record of the hearing. An agency to which a request is made must make its employees available as witnesses at a hearing on a complaint when requested to do so by the hearing officer. Any agency who has not allowed the employee to testify must state the reasons in writing for the hearing officer. An employee of an agency shall be in pay status during the time he or she is made available as a witness. The agency shall be billed by the equal opportunity division for expenditures involved in the hearing.
- (E) The hearing officer shall issue a written report and recommendation to the agency and state equal employment opportunity coordinator within a reasonable period of time but no later than thirty days from the date of the hearing. The agency may approve, reject or modify the recommendations of the hearing officer and report its action to the complainant and the state equal employment opportunity coordinator. The state equal employment opportunity coordinator may take any of the dispositive actions set forth in subsections (1), (2) or (4) of paragraph (C) of rule 123:1-49-07 of the Administrative Code and issue a written decision pursuant to paragraph (D) of rule 123:1-49-07 of the Administrative Code. There is no right to a hearing before the state equal employment opportunity coordinator or the equal opportunity division.

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