

DAS/EOD Proposed Rule Changes for Chapter 123:1-49

Chapter 123:1-49-01 Equal Employment Opportunity Policy

OLD RULE:

The Department of State Personnel will assure equal opportunity in state service and universities to prohibit discrimination in state service and universities because of race, color, religion, sex, national origin, age or handicap, and to promote the full realization of equal opportunity in state service and universities through a continuing affirmative program in each state department, agency, commission and appointing authority (hereinafter referred to as "agency").

NEW RULE:

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.

The equal opportunity division of the department of administrative services will assure equal opportunity in state government employment-related decisions and shall promote the full realization of equal opportunity in state service through a continuing affirmative action program in each state agency, board, or commission (hereinafter collectively referred to as "agency" or "agencies").

DAS/EOD Proposed Rule Changes for Chapter 123:1-49

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

OLD RULE:

The Division of Equal Employment Opportunity for State Personnel (hereinafter sometimes referred to as the "Division") is hereby created within the Department of State Personnel. The Division shall be under the direct supervision of a chief, who shall serve as State Employees Equal Opportunity Coordinator (hereinafter referred to as "State Employees EEO Coordinator"). The Division shall provide leadership and guidance to departments and agencies in the conduct of equal employment opportunity programs for the employees of and applicants for employment within the agencies. The State Employees EEO Coordinator shall adopt regulations and issue procedures to implement the EEO regulations.

NEW RULE:

The Division of Equal Opportunity 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 adopt rules and issue procedures to implement the state equal employment opportunity policy and programs.

The state equal employment opportunity coordinator shall review 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 conformity with these rules.

DAS/EOD Proposed Rule Changes for Chapter 123:1-49

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

OLD RULE:

(A) Each state agency shall be primarily responsible for carrying out the requirements of these regulations and subsequent procedures. The agency shall furnish such information and assistance as may be required by the State Employees EEO Coordinator. Such information shall include statistical data on minority and women applicant flow, employment, promotion and any other information relevant to the administration of this regulation.

(B) The head of each agency shall establish and promulgate a program to carry out the agency's responsibilities under these regulations. Each agency head shall also designate an agency Affirmative Action Executive who shall have sufficient knowledge and experience to handle the assignment.

(C) An Affirmative Action Executive may be named for a group of participating agencies when the department, board and commissions are too small for each to have a full time executive. Ultimate responsibility for the agency's affirmative action program rests with the agency head.

(D) The head of the agency may also designate Deputy Affirmative Action Executives and assign clerical support to assist the Affirmative Action Executives in the performance of his or her duties.

(E) The names of the Affirmative Action Executives and the Deputy Affirmative Action Executives, their addresses and telephone numbers, and any change made in their designation shall be furnished to the State Employees EEO Coordinator.

NEW RULE:

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 equal employment opportunity strategic 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, including remedial or disciplinary action with respect to managerial or supervisory employees 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 unequal impact on minorities and women. This function shall be performed in cooperation with the equal opportunity division of the department of administrative services.

DAS/EOD Proposed Rule Changes for Chapter 123:1-49

(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 on an informal basis the matter raised by the employee or applicant 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 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, board and commission is too small to have a full time equal employment opportunity officer.

(C) The names of the equal employment opportunity officers, their addresses, location, email address and telephone numbers, and any change made in their designation shall be furnished to the State Equal Employment Opportunity Coordinator annually or as changes are made.

DAS/EOD Proposed Rule Changes for Chapter 123:1-49

123:1-49-04 Establishment of affirmative action plan (Rescind old rule and replace).

OLD RULE:

(A) Each Agency shall establish, maintain, and carry out a continuing Affirmative Action Plan designed to promote equal opportunity in every aspect of agency personnel policy and practice.

NEW RULE

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

(B) An affirmative action plan is a set of specific, result-oriented procedures to which all agencies must apply every good faith effort. The objective is to insure equal employment opportunities for all persons. A workable affirmative action plan must include an analysis of areas within which the agency is deficient in the hiring and promotion of members of minority groups and women. 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. There must be identification and analysis of problem areas inherent in minority employment and an evaluation of the opportunities for minority group personnel. All barriers, legal or artificial, must be eliminated.

(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 work force and information regarding the labor market composition.

(2) Goals, timetables and affirmative action commitments which must be designed to correct any identifiable deficiencies. Such goals and timetables, with supporting data and the analysis thereof shall be a part of the agency's written affirmative action plan. The goals and timetables should be attainable in terms of the agency's analysis of its deficiencies and its entire affirmative action plan. Thus, in establishing its goals and timetables the agency should consider the results which could be reasonably expected from good faith efforts to make its overall affirmative action plan work. 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) No agency's compliance status shall be judged alone by whether it reaches its goals or meets its timetables. Rather, each agency's compliance posture shall be reviewed and determined by reviewing the contents of its plan, the extent of its adherence to its plan, and its good faith efforts to make its plan work toward the realization of the plan's goals within the timetables set for completion. The purpose of the agency's establishment and use of goals and timetables is to insure 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.

(E) The agency shall submit annually to the state equal employment opportunity coordinator its written affirmative action-plan for review and approval. The agency's-affirmative action plan shall be submitted in a format prescribed by the equal opportunity division. The state equal

DAS/EOD Proposed Rule Changes for Chapter 123:1-49

employment opportunity coordinator shall review the agency's affirmative action plan to determine if the agency has met its goals. If said agency meets its minority and women personnel goals or if the agency can demonstrate that it has made every good faith effort to meet said goals, the agency shall be presumed to be in compliance with these rules and the state equal employment opportunity coordinator shall approve the agency's plan. 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 and return the plan to the agency or may determine the goals and timetables for the agency. 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.

(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 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 shall:

(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) Conduct a continuing campaign to eradicate every form of 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 and practices and working conditions, including corrective action against employees who engage in discriminatory practices;

(4) Utilize to the fullest extent the present skills of employees by all means, including the redesigning of jobs where feasible, so that tasks not requiring the full utilization of skills of incumbents are concentrated in jobs with lower skill requirements;

(5) Provide the maximum feasible opportunity to 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, evaluate, and control managerial and supervisory performance in such a manner as to insure a continuing affirmative application and vigorous enforcement of the policy of equal opportunity, and provide orientation, training, and advice to managers and supervisors to assure their understanding and implementation of its equal employment opportunity policy and program;

(9) Inform its employees and recognized employee organizations of its equal employment opportunity policy and program and enlist their cooperation.

DAS/EOD Proposed Rule Changes for Chapter 123:1-49

(10) 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.

DAS/EOD Proposed Rule Changes for Chapter 123:1-49

123:1-49-05 Characteristics of an affirmative action program.

OLD RULE:

In addition to the Affirmative Action Plan required by 123:1-49-04 an agency shall also:

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

(B) Appoint an Affirmative Action Executive whose functions are:

(1) Advising the head of the agency with respect to the preparation of equal employment opportunity programs, procedures, regulations, reports, and the agency's Affirmative Action Plan.

(2) Evaluating from time to time the sufficiency of the total agency program for equal employment opportunity and reporting thereon to the head of the agency with recommendations as to any improvement or correction needed, including remedial or disciplinary action with respect to managerial or supervisory employees 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 Employees EEO Coordinator any such policies, practices and qualifications which have unequal impact on minorities and women. This function shall be performed in cooperation with the Department of State Personnel.

(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.

(6) Providing for receipt and investigation of individual complaints of discrimination in personnel matters within the agency, and for attempting to resolve on an informal basis the matter raised by the employee or applicant in a complaint of discrimination.

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

(1) The name and address of the State Employees EEO Coordinator.

(2) The names and addresses of the Appointing Authority, Affirmative Action Executive, and Deputy Affirmative Action Executive; and the fact they are available to counsel employees or applicants for employment who believe they have been discriminated against because of race, color, religion, sex, national origin, age or handicap.

(3) The right of each employee and applicant for employment who believes that he or she has been discriminated against because of race, color, religion, sex, national origin, age or handicap to file a complaint.

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

DAS/EOD Proposed Rule Changes for Chapter 123:1-49

(D) Follow the Equal Employment Opportunity Commission Guidelines adopted by reference in 123:1-49-06 of these regulations.

(E) Submit annually for the review and approval of the Division of Equal Employment Opportunity for State Personnel written equal employment opportunity plans of action. Affirmative Action Plan shall be submitted in a format prescribed by said Division.

NEW RULE:

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 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 the fact they are available to counsel 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.

DAS/EOD Proposed Rule Changes for Chapter 123:1-49

123:1-49-06 Adoption of equal employment opportunity commission guidelines

OLD RULE:

The Federal Equal Employment Opportunity Commission Guidelines on Discrimination Because of Sex, 29 C.F.R. 1604; Guidelines on Discrimination Because of Religion, 29 C.F.R. 1605 ; Guidelines on Discrimination Because of National Origin, 29 C.F.R. 1606 ; and Guidelines on Employment Selection Procedure, 29 C.F.R. 1607, are hereby adopted by reference and incorporated into this regulation as though fully set forth herein.

NEW RULE

123:1-49-06 Filing of Complaint.

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

(1) Be an agency employee or candidate for state employment;

(2) Allege that the improper conduct occurred in the making 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 by through an authorized representative; and

(4) File within thirty calendar days of the date of the alleged improper conduct ~~on~~.

(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 ~~in~~. 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 shows that he or she was not notified of the time limits and was not otherwise aware of them, or that he or she was prevented by circumstances beyond his or her 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.

DAS/EOD Proposed Rule Changes for Chapter 123:1-49

(F) A complaint should 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 same facts as are alleged in the complaint, together with a statement as to 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 by the receiving agency or the state equal employment opportunity coordinator and shall include a description of the procedures under this rule and of his or her right to file a charge affidavit with the Ohio Civil Rights Commission or the Equal Employment Opportunity Commission, including the time limits imposed on the exercise of these rights. -

(H) A complainant may make a request for a jurisdictional complaint to be investigated by someone outside of the agency in which the alleged improper conduct occurred. The agency may also request that a complaint be investigated by someone outside of its agency. All requests for outside investigations 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 an outside investigator, who shall conduct an investigation and upon completion, submit a copy of the investigation to the equal opportunity division and to the agency for further action.

(I) At any stage in the filing or investigation of a complaint, the complainant shall have the right to 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 present 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 insure 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 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 complaints 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 employees in the organizational segment 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 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.

DAS/EOD Proposed Rule Changes for Chapter 123:1-49

(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 reprisal 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.

DAS/EOD Proposed Rule Changes for Chapter 123:1-49

123:1-49-07 Division review – Rescind (incorporated Rule 04).

OLD RULE:

The Division shall review and evaluate agency program operations periodically, obtain such reports as it deems necessary, and report to the Governor and the Director of the Department of State Personnel as appropriate on overall progress. When it finds that an agency program is not in conformity with these regulations, the Division shall require improvement or corrective action to bring the agency's program into conformity with these regulations.

NEW RULE:

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 to the complainant or their representative with 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 Equal Employment Opportunity Commission, and of the time limits applicable thereto.

(B) Any appeal of the determination of the agency must be received by the state equal employment opportunity coordinator in writing within fifteen calendar days of issuance of the cover letter. If the complainant fails to notify the state equal employment opportunity coordinator of his or her wishes within the fifteen day period, the determination of the agency is final.

(C) If a complainant files a timely appeal of a jurisdictional complaint 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. The state equal employment opportunity coordinator may take any of these 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 same rules as apply to 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. The coordinator's disposition of the appeal will be based on the revised investigation; or

(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, his or her designated 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 complainant and shall contain a notice of the right to file a charge affidavit with the Ohio Civil Rights Commission and with the Equal Employment Opportunity Commission and of the time limits for filing such charges.

DAS/EOD Proposed Rule Changes for Chapter 123:1-49

(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.

DAS/EOD Proposed Rule Changes for Chapter 123:1-49

123:1-49-08 Filing and presentation of complaints (Rescind old rule and replace).

OLD RULE:

(A) Each agency shall have a procedure for accepting complaints from any aggrieved employee or applicant for employment with that agency. Complaints can be filed in person or by an authorized representative, for an individual who believes that he or she has been discriminated against because of race, color, religion, sex, national origin, age or handicap.

(B) A complainant may only file a single complaint based upon any given allegation of discrimination.

NEW RULE:

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. The agency to which request is made shall provide an explanation to 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 thirty days of 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 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.

123:1-49-09 Complaints in writing – **Rescind (incorporated Rule 06).**

DAS/EOD Proposed Rule Changes for Chapter 123:1-49

OLD RULE:

~~Complaints shall be in writing and shall be filed with either an appropriate agency official or with the Division of Equal Employment Opportunity for State Personnel. Those filed with the Division shall be referred to the agency for processing. The appropriate agency officials to receive complaints are the Agency Head, the Affirmative Action Executive or a Deputy Affirmative Action Executive. The complaint may be delivered in person or submitted by certified or registered mail.~~

123:1-49-10 Format of complaints – Rescind (incorporated Rule 06).

OLD RULE:

~~(A) The complaint should include the name, address, and telephone number of the complainant; the name of the person or persons committing the alleged discrimination; a description of the acts considered to be discriminatory; a statement as to any other action or proceeding instituted in any other forum based upon the same facts as are alleged in the complaint, together with a statement as to the status or disposition of such other action; and any other pertinent information which will assist in the investigation and resolution of the complaint. The complaint shall be signed by the complainant.~~

~~(B) Where a complaint contains incomplete information, the agency shall promptly seek the needed information from the complainant.~~

123:1-49-11 Filing of complaint – Rescind (incorporated Rule 06).

OLD RULE:

~~(A) The complaint must be filed within 30 calendar days of the date of the matter causing complainant to believe he or she has been discriminated against.~~

~~(B) A complaint shall be deemed filed on the date it is received, if delivered to an appropriate official, or on the date postmarked (if validated by certified or registered mail) if addressed to an appropriate official designated to receive complaints. The agency shall acknowledge receipt of the complaint to the complainant or his or her representative in writing and advise the complainant in writing of the grievance procedure under this regulation and of his or her right to file a charge affidavit with the Ohio Civil Rights Commission under Title VII of the Civil Rights Act of 1964, including the time limits imposed on the exercise of these rights.~~

~~(C) The agency shall extend the time limits in this section when the complainant shows that he or she was not notified of the time limits and was not otherwise aware of them, or that he or she was prevented by circumstances beyond his or her control from submitting the matter within the time limits, or for other reasons considered sufficient by the agency.~~

123:1-49-12 Complainant's right to have representation – Rescind (incorporated Rule 06).

OLD RULE:

~~At any stage in the presentation of a complaint the complainant shall have the right to 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 present his or her complaint must be given by the appointing authority. 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 present the complaint.~~

DAS/EOD Proposed Rule Changes for Chapter 123:1-49

123:1-49-13 Rejection or cancellation of complaint.(Rescind and moved to new #06)

OLD RULE:

~~The State Equal Employment Opportunity Employees Equal Employment Coordinator, the Appointing Authority agency or the equal employment opportunity officer of the agency Affirmative Action Executive may reject a complaint which was not timely filed under rule 123:1-49-11 123:1-49-08 of the Administrative Code or where information is not supplied under 123:1-49-10, and shall reject those allegations in a complaint which are not within the purview of rule 123:1-49-08 of the Administrative Code, or which sets forth identical matters as contained in a previous complaint filed by the same complainant which is pending in the agency or has been decided by the agency. The State Employees Equal Employment Opportunity Coordinator, Appointing Authority the agency or the equal employment opportunity officer Affirmative Action Executive, may dismiss a complaint because of failure of the complainant to prosecute the complaint. The decision to reject or 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 under Ohio Revised Code Chapter 4112 and with the Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964 and of the time limits for filing such charges.~~

123:1-49-14 Prehearing processing (Rescind and incorporated into #06).

OLD RULE:

~~When complaints are filed with the agency, the agency shall transmit a copy of the complaint to the State Employees EEO Coordinator within fifteen (15) days of the receipt thereof.~~

~~The Affirmative Action Executive or his designee shall counsel the aggrieved person concerning the issues in the matter, and attempt to resolve the complaint informally prior to investigation. If the complaint is not resolved in this matter, the Affirmative Action Executive shall provide for a prompt investigation of the complaint.~~

~~The investigation shall include a thorough review of the circumstances under which the alleged discrimination occurred and of the treatment of members of the complainant's group identified by his complaint as compared with the treatment of other employees in the organizational segment in which the alleged discrimination occurred. Information needed to apprise the complainant shall be recorded in this investigative file.~~

~~The term "investigative file" shall mean the various documents and information acquired during the investigation under this section including affidavits of the complainant, of the alleged discriminating official, 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.~~

123:1-49-15 Informal adjustment of complaint. (Rescind and incorporate in Rule #06)

OLD RULE:

~~(A) The agency shall provide an opportunity for informal adjustment of the complaint after the complainant has reviewed the investigative file. The agency shall allow the complainant or the complainant's representative a reasonable amount of time off from work to review the investigative file promptly after the file is completed by the Affirmative Action Executive or designee, and provide opportunity for the complainant to discuss the investigative file with the Affirmative Action Executive or designee. If an informal adjustment of the complaint is arrived at, the terms of the adjustment shall be in writing and made part of the complaint file, with a copy of the terms of the adjustment provided to the complainant. If the agency does not carry out, or rescinds, any action specified by the terms of the adjustment, the agency shall reinstate the~~

DAS/EOD Proposed Rule Changes for Chapter 123:1-49

~~complaint for further processing from the point processing ceased under the terms of the adjustment.~~

~~(B) If an informal adjustment of the complaint, satisfactory to both complainant and the agency is not arrived at, the complainant shall be notified in writing by the Affirmative Action Executive or designee:~~

~~(1) Of the proposed disposition of complaint, including dismissal based on the findings,~~

~~(2) Of his or her right either with or without a hearing of a decision by the Appointing Authority and the Affirmative Action Executive if said complainant notifies the agency in writing within fifteen (15) calendar days of the receipt of the notice that he or she desires a hearing.~~

~~(C) If the complainant fails to notify the agency of his or her wishes within the fifteen (15) day period prescribed in paragraph (B)(2) of this section, the agency shall notify the complainant by letter of the decision. This letter shall also inform the complainant of his or her right to file a charge affidavit with the Ohio Civil Rights Commission under Chapter 4112 of the Ohio Revised Code and with the Equal Opportunity Commission under Title VII of the Civil Rights Act of 1964. The decision of the agency shall be subject to review by the State Employees Equal Employment Opportunity Coordinator who shall notify the complainant and the complainant's representative by letter of the disposition of the complaint.~~

123:1-49-16 Freedom from reprisal or interference – **Rescind (incorporated Rule #06).**

OLD RULE:

~~A complainant, his or her representative, or a witness who alleges restraint, interference, coercion, discrimination, or reprisal 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~~

123:1-49-17 Choice of review procedures – **Rescind (incorporated Rule #06).**

OLD RULE:

~~(A) Choice of review procedures: A complainant, his or her representative, or a witness who alleges restraint, interference, coercion, discrimination, or reprisal in connection with the presentation of a complaint under this Subpart may have the allegation reviewed as an individual complaint of discrimination or as a charge subject to paragraph (B) of this section.~~

~~(B) Procedure for review of charges:~~

~~(1) An employee or applicant may file a charge of restraint, interference, coercion, discrimination, or reprisal, in connection with the presentation of a complaint with an appropriate agency official as defined in 123:1-49-09, within fifteen (15) calendar days of the date of the alleged occurrence. The charge shall be in writing and shall contain all pertinent facts. Except as provided in subparagraph (2) of this paragraph, the agency shall undertake an appropriate inquiry into such a charge and shall forward to the Division within fifteen (15) calendar days of the date of its receipt a copy of the charge and report of action taken. The agency shall also provide the charging party with a copy of the report of action taken. When the agency has not completed an appropriate inquiry fifteen (15) calendar days after receipt of such a charge, the charging party may submit a written statement with all pertinent facts to the Division, and the Division shall require the agency to take whatever action is appropriate.~~

~~(2) When a complainant, after completion of the investigation of his or her complaint under 123:1-49-14 requests a hearing and in connection with that complaint alleges restraint, interference,~~

DAS/EOD Proposed Rule Changes for Chapter 123:1-49

~~coercion, discrimination, or reprisal, the complaints examiner assigned to hold the hearing shall consider the allegations as an issue in the complaint at hand or refer the matter to the agency for further processing under the procedure chosen by the complainant pursuant to paragraph (A) of this section.~~

123:1-49-18 Hearing (Rescind old rule and incorporated in #08).

OLD RULE:

~~The hearing shall be held by a complaints examiner who must be an employee of another agency or who may be an employee of the Division. The agency in which the complaint arose shall request the Division of Equal Employment Opportunity for State Personnel to supply the name of a complaints examiner who has been certified by the Division as qualified to conduct a hearing under this section.~~

123:1-49-19 Transmittal of complaint file – Rescind (incorporated Rule 08)

OLD RULE:

~~The agency in which the complaint arose shall transmit all the documents which have been acquired up to that point in the processing of the complaint to the complaints examiner who shall review the complaint file to determine whether further investigation is needed before scheduling the hearings. When the complaints examiner determines that further investigation is needed, he or she shall remand the complaint to the Affirmative Action Executive for further investigation or arrange for the appearance of witnesses necessary to supply the needed information at the hearings. The complaints examiner shall schedule the hearing for a convenient time and place.~~

123:1-49-20 Conduct of hearing – Rescind (incorporated Rule 08)

OLD RULE:

~~The complaints examiner shall conduct the hearing so as to bring out pertinent facts, including the production of pertinent documents. The official rules of evidence applicable to civil proceedings shall be followed but may be liberally construed. Information having a bearing on the complaint or employment policy or practices relevant to the complaint shall be received in evidence, but the hearing officer may exclude irrelevant or unduly repetitious evidence. The complainant, his or her representative, and representatives of the agency at the hearing shall be given the opportunity to cross-examine witnesses who appear and testify.~~

123:1-49-21 Powers of complaints examiner – Rescind (incorporated Rule 08)

OLD RULE:

~~The complaints examiner shall have the power to:~~

~~(A) Regulate the course of the hearing;~~

~~(B) Rule on offers of proof;~~

~~(C) Limit the number of witnesses whose testimony would be unduly repetitious; and~~

~~(D) Exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing.~~

123:1-49-22 Responsibilities of agency in hearing – Rescind (incorporated Rule 08)

OLD RULE:

DAS/EOD Proposed Rule Changes for Chapter 123:1-49

~~The complaints examiner 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 complaints examiner 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 complaints examiner 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 whom a request is made must make its employees available as witnesses at a hearing on a complaint when requested to do so by the complaints examiner. Any Appointing Authority who has not allowed the employee to testify must state the reasons in writing for the hearing officer. The agency to whom request is made shall provide an explanation to the complaints examiner. If the explanation is inadequate, the complaints examiner shall insert it in the record of the hearing, provide a copy to the complainant, and make arrangements to secure testimony from the employee through a written interrogatory. An employee of an agency shall be in pay status during the time he or she is made available as a witness. The agency should be billed for expenditures involved in the hearing by the Division.~~

123:1-49-23 Documents part of hearings record – **Rescind**

OLD RULE:

~~All documents submitted to, and accepted by, the complaints examiner at the hearing shall be made part of the record of the hearing. If the agency submits a document that is accepted, it shall furnish a copy of the document to the complainant. If the complainant submits a document that is accepted, he or she shall make the document available to the agency representative for reproduction.~~

123:1-49-24 Decision transmittal – **Rescind (incorporated in part to Rule 08)**

OLD RULE:

~~The complaints examiner shall transmit to the head of the agency or his or her designee (1) the complaint file (including documents accepted at the hearing), (2) the findings and analysis of the complaints examiner and (3) the recommended decision on the merits of the complaint, including remedial action, where appropriate. The complaints examiner shall make such decision within one week of the conclusion of the hearing. In addition, the complaints examiner may transmit, by separate letter to the State Employees EEO Coordinator, whatever findings and recommendations he or she considers appropriate with respect to conditions in the agency having no bearing on the matter which gave rise to the complaint.~~

123:1-49-25 Prompt resolution of complaint – **Rescind**

OLD RULE:

~~The complaint shall be resolved promptly. To this end the complainant and the agency shall proceed with the complaint without undue delay so that the complaint is resolved within 120 calendar days after it was filed, including time spent in the processing of the complaint by the complaints examiner.~~

123:1-49-26 Monthly reports of complaints.-**Rescind (incorporated Rule 04)**

OLD RULE:

~~The Affirmative Action Executive shall furnish the Division of Equal Employment Opportunity for State Personnel monthly reports on all complaints pending within the agency in a form specified by the Division. If an agency has not issued a final decision, and has not requested the Division to supply a complaints examiner, within 60 days from the date the complaint was filed, the Division may require the agency to take special measures to insure prompt processing of the complaint.~~

DAS/EOD Proposed Rule Changes for Chapter 123:1-49

123:1-49-27 Complaint examiner's decision binding – **Rescind**

OLD RULE:

~~When the complaints examiner has submitted a recommended decision finding discrimination and the agency has not issued a final decision within 30 calendar days after the complaints examiner's recommended decision it shall become binding on the agency. In such event, the agency shall notify the complainant of the decision and furnish to him or her a copy of the findings, analysis, and the decision of the complaints examiner under 123:1-49-24.~~

123:1-49-28 Decisions based on information in complaint file – **Rescind**

OLD RULE:

~~The Appointing Authority or Affirmative Action Executive shall make the decision of the agency on a complaint based on information in the complaint file.~~

123:1-49-29 Agency transmittal to complainant – **Rescind**

OLD RULE:

~~(A) The decision of the agency shall be in writing and shall be transmitted by letter to the complainant and his or her representatives. When there has been no hearing, the decision shall contain the specific reasons in detail for the agency's action, including any remedial action taken.~~

~~(B) When there has been a hearing on the complaint, the decision letter shall transmit a copy of the findings, analysis and recommend decision of the complaints examiner under 123:1-49-24. The decision of the agency shall adopt, reject, or modify the decision recommended by the complaints examiner. If the decision is to reject or modify the recommended decision, the decision letter shall set forth the reasons for rejection or modification.~~

~~(C) When there has been no hearing and no decision under 123:1-49-15, a letter setting forth the findings and analysis of the head of the agency or the Affirmative Action Executive shall be issued.~~

123:1-49-30 Remedial action by agency – **Rescind**

OLD RULE:

~~The decision of the agency shall require any remedial action authorized by law determined to be necessary or desirable to resolve the issues of discrimination and to promote the policy of equal opportunity, whether or not there is a finding of discrimination. When discrimination is found, the agency shall require remedial action to be taken in accordance with 123:1-49-38, shall review the matter giving rise to the complaint to determine whether corrective action against alleged discriminatory officials is appropriate, and shall record in each alleged discriminatory official's employee history file the basis for its decision to take, or not to take corrective action but this decision shall not be included in the complaint file.~~

123:1-49-31 Complaint file – **Rescind**

OLD RULE:

~~The agency shall establish a complaint file. Except as provided in 123:1-49-30, this file shall contain all documents pertinent to the complaint in such format and order as may be required by the Division. The complaint file shall not contain any document that has not been made available to the complainant or to the complainant's representative.~~

DAS/EOD Proposed Rule Changes for Chapter 123:1-49

123:1-49-32 Notification of right of appeal – **Rescind (incorporated in Rule #07)**

OLD RULE:

~~The decision letter shall inform the complainant of his or her right to appeal the decision of the agency to the Division and of the right to file a charge affidavit with the Ohio Civil Rights Commission in accordance with Chapter 4112 of the Ohio Revised Code, and with the Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964, and of the time limits applicable thereto.~~

123:1-49-33 Reasons for appeal – **Rescind (incorporated Rule #07)**

OLD RULE:

~~A complainant may appeal the decision of the agency to the Division of Equal Opportunity for State Personnel:~~

~~(A) to reject the complaint, or a portion thereof, for reasons covered by 123:1-49-13; or~~

~~(B) to dismiss the complaint under 123:1-49-13 because of the complainant's failure to prosecute his/her complaints; or~~

~~(C) on the merits of the complaint, under 123:1-49-28, if the decision does not resolve the complaint to the complainant's satisfaction.~~

123:1-49-34 Appeal in writing – **Rescind (incorporated in part in Rule #07)****OLD RULE:**

~~The complainant shall file his or her appeal in writing, either in person or by mail, with the Division of Equal Employment Opportunity for State Personnel, Department of State Personnel, 65 S. Front Street, Columbus, Ohio 43215. The appeal shall include a statement of the reasons for the appeal.~~

123:1-49-35 Time limits for appeal – **Rescind (incorporated in Rule #07)**

OLD RULE:

~~The individual may file an appeal after receipt of the agency's notice of final decision of his or her complaint not later than fifteen (15) calendar days after receipt of the notice.~~

123:1-49-36 Disposition of appeal by division. **(Rescind and incorporated in Rule #07)**

OLD RULE:

~~The Division of Equal Employment Opportunity for State Personnel shall upon appeal review the complaint file and all relevant written information made to the Division. The Division may remand a complaint to the agency for further investigation or a rehearing if it considers that action necessary. Any further investigation or rehearing resulting from a remand from the Division shall be conducted according to the same rules as apply to an original investigation and hearing. There is no right of a hearing before the Division. The Division shall issue a written decision setting forth its reasons for the decision and shall send copies thereof to the complainant, his or her designated representative, and the agency. When corrective action is ordered, the agency shall report promptly to the Division that the corrective action has been taken. The decision of the Division is final, but shall contain a notice of the right to file a charge affidavit with the Ohio Civil Rights Commission in accordance with Chapter 4112 of Ohio Revised Code, and with the Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964.~~

DAS/EOD Proposed Rule Changes for Chapter 123:1-49

123:1-49-37 Reasons for reconsideration. (Rescind and incorporated into Rule #07)

OLD RULE:

~~The Division may, in its discretion reopen and reconsider any previous decision when the party requesting reopening submits written argument or evidence which tends to establish that:~~

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

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

123:1-49-38 Remedial action for applicants and employees.

OLD RULE:

~~(A) Remedial action involving an applicant.~~

~~(1) When an agency, or the Division, finds that an applicant for employment has been discriminated against and except for that discrimination would have been hired the agency shall offer the applicant employment of the type and grade denied him. The offer shall be made in writing. The individual shall have fifteen (15) calendar days from receipt of the offer within which to accept or decline the offer. Failure to notify the agency of his or her decision within the 15-day period will be considered a declination of the offer, unless the individual can show that circumstances beyond his or her control prevented him or her from responding within the time limit. If the offer is accepted, appointment shall be effective on the first Monday following the date of acceptance.~~

~~(2) When an agency, or the Division, finds that discrimination existed at the time the applicant was considered for employment but does not find that the individual is the one who would have been hired except for discrimination, the agency shall consider the individual for any existing vacancy of the type and grade for which he or she had been considered initially and for which he or she is qualified before consideration is given to other candidates. If the individual is not selected, the agency shall record the reasons for non-selection. If no vacancy exists, the agency shall give him or her this priority consideration for the next vacancy for which he or she is qualified.~~

~~(B) Remedial action involving an employee. When an agency, or the Division, finds that an employee of the agency was discriminated against and as a result of that discrimination was denied an employment benefit, or an administrative decision adverse to said employee was made, the agency shall take remedial actions which shall include one or more of the following, but need not be limited to these actions:~~

~~(1) Retroactive promotion when the record clearly shows that but for the discrimination the employee would have been employed at a higher pay range.~~

~~(2) Consideration for promotion to a position for which he or she is qualified before consideration is given to other candidates when the record shows that discrimination existed at the time selection for promotion was made but it is not clear that except for the discrimination the employee would have been promoted. If the individual is not selected, the agency shall record the reasons for non-selection.~~

~~(3) Cancellation of an unwarranted personnel action involving the complainant and restoration of the employee.~~

DAS/EOD Proposed Rule Changes for Chapter 123:1-49

~~(4) Expungement from the agency's records of any reference to or any record of an unwarranted disciplinary action. Such records in Department of State Personnel and State Personnel Board of Review shall also be destroyed.~~

~~(5) Full opportunity to participate in the employee benefit denied him or her (e.g. training, preferential work assignments, overtime scheduling).~~

123:1-49-39 Right to appeal to Ohio civil rights commission (**Rescind**)

~~(A) Under Section 4112.05(B) of the Ohio Revised Code, an employee or applicant may file a charge affidavit with the Ohio Civil Rights Commission within six (6) months after the alleged unlawful discriminatory practices are committed. Under Title VII of the Civil Rights Act of 1964 an employee or applicant may file a charge with the Equal Employment Opportunity Commission within one hundred and eighty days after the alleged unlawful employment practice occurred. Filing a charge under this regulation does not in any way limit the rights of an individual to file a charge with the Ohio Civil Rights Commission or the Equal Employment Opportunity Commission.~~

~~(B) An agency shall notify an employee or applicant of his or her right to file a charge affidavit with the Ohio Civil Rights Commission, and of the six (6) month time limit for filing, and with the Equal Employment Opportunity Commission, and of the one hundred and eighty day time limit for filing in any final action on a complaint under 123:1-49-13, 123:1-49-15, 123:1-49-27, 123:1-49-28. The Division shall notify an employee or applicant of his or her right to file a charge and of the time limits for filing, in any decision under 123:1-49-36.~~

123:1-49-40 Agency head to provide leadership in affirmative action planning **Rescind**

(incorporated in Rule 04)

OLD RULE:

~~The head of each agency shall exercise personal leadership in establishing, maintaining, carrying out and evaluating a continuing Affirmative Action Plan designed to promote equal opportunity in every aspect of agency personnel policy and practice in the recruitment, employment, development, advancement, and treatment of employees.~~

123:1-49-41 General requirements of plans – **Rescind (incorporated Rule 04)**

OLD RULE:

~~(A) An Affirmative Action Plan is a set of specific, result-oriented procedures to which all state agencies must apply every good faith effort. The objective is to insure equal employment opportunities for all persons. A workable Affirmative Action Plan must include an analysis of areas within which the agency is deficient in the hiring and promotion of members of minority groups and women. 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. There must be identification and analysis of problem areas inherent in minority employment and evaluate the opportunities for minority group personnel. All barriers, legal or artificial, must be eliminated.~~

~~(B) Each agency shall include in its Affirmative Action Plan such information and analysis which the State Employees EEO Coordinator may require. This information shall include, but is not limited to, the following:~~

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

DAS/EOD Proposed Rule Changes for Chapter 123:1-49

~~(2) Goals, timetables and affirmative action commitments must be designed to correct any identifiable deficiencies. Such goals and timetables, with supporting data and the analysis thereof shall be a part of the agency's written Affirmative Action Program. The goals and timetables should be attainable in terms of the agency's analysis of its deficiencies and its entire Affirmative Action Plan. Thus, in establishing its goals and timetables the agency should consider the results which could be reasonably expected from good faith efforts to make its overall Affirmative Action Plan work. 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.~~

~~(3) No agency's compliance status shall be judged alone by whether or not it reaches its goals or meets its timetables. Rather, each agency's compliance posture shall be reviewed and determined by reviewing the contents of its plan, the extent of its adherence to its plan, and its good faith efforts to make its plan work toward the realization of the plan's goals within the timetables set for completion. The purpose of the agency's establishment and use of goals and timetables is to insure that it meets its affirmative action obligation and is not intended and should not be used to discriminate against any applicant or employee because of race, color, religion, national origin, sex, age, or handicap.~~

~~(4) If an agency fails to submit an Affirmative Action Plan with specific goals and timetables, the Division shall return such plan to the agency for the addition of such goals and timetables or the Division may itself determine the goals and timetables for the~~

123:1-49-42 Review of plans by division – **Rescind (incorporated Rule 04)**

OLD RULE:

~~The Division shall review agency employment practices under the agency's Affirmative Action Plan. If said agency meets its minority and women personnel goals or if the agency can demonstrate that it has made every good faith effort to meet said goals, the agency shall be presumed to be in compliance with these regulations. Where the Division finds that the agency has failed to comply with the requirements of these regulations and its obligations, the Division shall take such action as may be appropriate.~~

123:1-49-43 Additional requirements for agency affirmative action plans **(incorporated in Rule 04).**

OLD RULE:

~~In addition to the general requirements of an equal employment opportunity strategic plan Affirmative Action Plan, an agency shall:~~

~~(A) Provide sufficient resources to administer its Equal Employment Opportunity Program in a positive and effective manner;~~

~~(B) 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;~~

~~(C) Conduct a continuing campaign to eradicate every form of prejudice or discrimination based upon 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, from the agency's personnel policies and practices and working conditions, including corrective action against employees who engage in discriminatory practices;~~

DAS/EOD Proposed Rule Changes for Chapter 123:1-49

~~(D) Utilize to the fullest extent the present skills of employees by all means, including the redesigning of jobs where feasible, so that tasks not requiring the full utilization of skills of incumbents are concentrated in jobs with lower skill requirements;~~

~~(E) Provide the maximum feasible opportunity to 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;~~

~~(F) Communicate 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;~~

~~(G) 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;~~

~~(H) Review, evaluate, and control managerial and supervisory performance in such a manner as to insure a continuing affirmative application and vigorous enforcement of the policy of equal opportunity, and provide orientation, training, and advice to managers and supervisors to assure their understanding and implementation of the equal employment opportunity policy and program;~~

~~(I) Inform its employees and recognized employee organizations of the affirmative equal employment opportunity policy and program and enlist their cooperation.~~

123:1-49-44 Guidelines for affirmative action plans – **Rescind (incorporated in Rule 04)**

OLD RULE:

~~The State Employees EEO Coordinator shall issue guidelines which state agencies may use for establishing, implementing and judging an acceptable Affirmative Action Plan as required by this Subpart.~~

123:1-49-45 Statistical data – **Rescind (incorporated in Rule 04)**

OLD RULE:

~~Each agency shall be required to gather such data in a format as the Division may require to provide an adequate statistical base for determining compliance.~~

123:1-49-46 Delegation of authority by the coordinator

OLD RULE:

~~The State Employees EEO Coordinator may delegate to any official agency, commission, or employee in the executive branch of the government of the State of Ohio, any function or duty of the said Coordinator under this regulation, except authority to promulgate implementing personnel procedure memorandums of a general nature. The authority delegated by the Coordinator pursuant to the regulations in this part shall be exercised under his or her general direction and control.~~

123:1-49-47 Each section is independent

OLD RULE:

DAS/EOD Proposed Rule Changes for Chapter 123:1-49

~~(A) Each section and each part of each section of this regulation is hereby declared to be an independent section or part of a section and, notwithstanding any other evidence or intent, it is hereby declared to be the controlling intent that if any section, or any provision thereof or the application thereof to any person or circumstances, is held to be invalid, the remaining sections or parts of sections and the application of such provision to any other person or circumstances, other than those as to which it is held invalid, shall not be affected thereby and it is hereby declared to be the intent that the other provisions of this regulation would have been adopted independently of such section, sections, or parts of a section so held to be invalid.~~

~~(B) Nothing in Chapter 123:1-49 should be construed to be in conflict with sections of the Ohio Revised Code relating to personnel or to the other Administrative Rules of the Director of State Personnel.~~