



STATE OF DELAWARE
Office of Management and Budget
Human Resource Management

Guidelines on Equal Employment Opportunity (EEO)
and Affirmative Action (AA)

Introduction

These guidelines are written to help state agencies, specifically managers and supervisors, to succeed in dealing with equal employment opportunity and affirmative action responsibilities in compliance with Executive Order No. 8. The Executive Order is clear in its direction to state agencies to pursue equal employment opportunities for all state employees and applicants. Under the Executive Order, state agencies are required to develop affirmative action plans, prescribed by Human Resource Management, to ensure compliance with federal and state laws. Each executive branch agency is accountable for compliance by including measures/statements in all managers' performance plans and agency strategic plans.

Managers and supervisors are critical to the success of equal employment opportunities in state government. They make virtually all the decisions, with advice from human resource personnel, which directly affect the success or failure of equal employment opportunity. Therefore, the managers and supervisors must clearly understand what they should and should not do.

Objectives of Equal Employment Opportunity and Affirmative Action

The first objective of equal employment opportunity and affirmative action in state government is to provide a full and fair opportunity for all employees, regardless of race, marital status, genetic information, color, age, religion, sex, sexual orientation, national origin or Vietnam Era veterans' status, to contribute to the extent of their abilities in pursuing a career in state service.

The second objective is to provide for the non-discriminatory treatment of all employees in the course of carrying out their duties in the workplace.

In order to do so, it is necessary to define key terms used in the program and summarize laws, regulations, and executive orders.

Definitions:

Equal Employment Opportunity is: equal consideration for a job; applicable to all citizens; essential to fair employment practices; and required by state and federal laws.

Affirmative Action is: the tool that provides positive steps to assure diversity and parity in the work place by creating opportunities for qualified protected class members to fairly compete for positions.

Protected Class Members are: individuals (minorities, women, people with disabilities, and individuals at least 40 years of age and above) who are specifically protected by statute against employment discrimination.

People With Disabilities are: people who have a verifiable physical or mental impairment which substantially limits one or more major life activities, have a record of such impairment, or are regarded as having such an impairment. "Major life activities" include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

SUMMARIES OF EQUAL EMPLOYMENT OPPORTUNITY LAWS,
REGULATIONS, AND EXECUTIVE ORDERS

<p>Title VII of the Civil Rights Act of 1964 as amended by the Equal Employment Opportunity Act of 1972 and 1991. 42 U.S.C. 1971, 1983, 2000e-2h.</p>	<p>Prohibits discrimination in employment because of race, color, religion, gender, or national origin. It covers all terms and conditions of employment, and may subject an employer to liability for discriminatory acts that occur in the workplace. Strengthens and improves Federal civil rights laws to provide for damages in cases of intentional employment discrimination and unlawful harassment in the workplace and to clarify provisions regarding disparate impact actions.</p>
<p>Age Discrimination in Employment Act of 1967, as amended. 29 U.S.C. 621, <u>et seq.</u></p>	<p>Prohibits discrimination based on age against individuals who are age 40 and above.</p>
<p>Vietnam Era Veterans Readjustment Assistance Act of 1974. 38 U.S.C. 219, <u>et seq.</u></p>	<p>Requires federal government contractors and subcontractors over \$10,000 to take affirmative action to employ and advance in employment disabled veterans and veterans of the Vietnam Era.</p>
<p>Family Medical Leave Act of 1993 as amended 29 U.S.C. 2601, <u>et seq.</u></p>	<p>Entitles an eligible employee to take up to a total of 12 workweeks off during a 12-month period for the birth/adoption of a child or to care for a spouse or immediate family member with a serious health condition or when the employee is unable to work because of a serious health condition or for Military Family Leave to address certain qualifying exigencies. And entitles an eligible employee to take up to a total of 26 workweeks off for Military Family Leave to care for a covered servicemember during a single 12-month period. Employers covered by the law are required to maintain any pre-existing group health coverage and once the leave period is concluded, to reinstate the employee to the same or an equivalent job with equivalent employment benefits, pay, and other terms and conditions of employment.</p>
<p>Americans With Disabilities Act of 1990 (ADA), 42 U.S.C. 12191, <u>et seq.</u></p>	<p>Makes it unlawful to discriminate in employment against a qualified individual with a disability. The ADA also outlaws discrimination against individuals with disabilities in state and local government services, public accommodations, transportation, and telecommunications.</p>

Federal Executive Order discrimination in 11246 of 1965, as amended by Executive Order 11375 of 1967.	Prohibits federal contractors and sub- contractors from discriminating in areas of employment, selection, promotion, compensation, granting of benefits, training, or employment opportunities because of race, color, religion, national origin, or gender.
Genetic Information Nondiscrimination Act (GINA) - PUBLIC LAW 110–233—MAY 21, 2008	<i>Title II of the Genetic Information Nondiscrimination Act of 2008, which prohibits genetic information discrimination in employment, took effect on November 21, 2009.</i> Under Title II of the Genetic Information Nondiscrimination Act (GINA), it is illegal to discriminate against employees or applicants because of genetic information. Title II of GINA prohibits the use of genetic information in making employment decisions, restricts acquisition of genetic information by employers and other entities covered by Title II, and strictly limits the disclosure of genetic information. The EEOC enforces Title II of GINA (dealing with genetic discrimination in employment). The Departments of Labor, Health and Human Services, and the Treasury have responsibility for issuing regulations for Title I of GINA, which addresses the use of genetic information in health insurance.
19 <u>Del.C.</u> 724	Prohibits discrimination practices by employers, employment agencies, labor unions in hiring, training, promotion, and all other areas of employment practices against qualified disabled individuals.
19 <u>Del. C.</u> 711	Prohibits any discrimination in wages and fringe benefits on basis of race, marital status, genetic information, color, age, religion, sex, sexual orientation, or national origin
29 <u>Del.C.</u> 5904A	Creates the Agency Aide Program and the Selective Placement Program, which provide employment opportunities for physically or mentally disabled persons. These programs enable Human Resource Management to employ qualified disabled citizens for work in various State agencies, without competitive examination or without listing, on an eligibility list. It further allows those individuals eventually to become regular employees of that agency.
State Executive Order No. 8 of 2009.	Continues the Governor's Council on Equal Employment Opportunity, directs state agencies to pursue equal employment and promotional opportunity for all state employees and applicants, and includes a strong recruitment and retention component. The Council is responsible for holding agencies accountable for implementing equal opportunity programs and assessing their compliance with the order.

Selection Process

A vacancy may be filled by promoting a current employee, by transferring an employee, or by selecting a candidate through the open competitive procedures under the merit system.

Agency human resource/affirmative action representatives can help hiring managers through all steps of the selection process. Hiring managers should talk with human resource/affirmative action personnel before filling a position. This way, full consideration can be given to equal employment opportunity implications regarding the interview and hiring process and affirmative action plans for the agency.

Human Resource Management is a resource to help you use effective recruiting techniques to obtain a broad and diverse array of qualified candidates. The Governor expects you to use this resource, especially in filling vacancies in areas where a statistical under-representation exists.

Referral List

Selecting a candidate from a referral list of well-qualified candidates can be a difficult task. It is important to recognize equal employment opportunity considerations while making the selection decision.

To ensure that hiring managers have a good size list to select from, the referral list of eligible candidates must consist of 15 or 15%, whichever is greater, of candidates that meet minimum qualifications.

Hiring managers are expected to interview all the candidates on the referral list in situations where there is under-representation of women and minorities in certain job groups.

Affirmative Action Plans

Executive Order No. 8, issued on August 11, 2009, requires that every agency develop and submit Annual Affirmative Action Plans. These plans must include a profile of the workforce, a determination of under-representation affirmative action strategies, and a plan of action in which the agency states specific actions it will take to accomplish equal employment opportunity goals. All agencies are required to submit these plans no later than September 15th of each year. The plans are required to be in the uniform format developed and defined by Human Resource Management.

Program Goal

Affirmative action practices and principles offer an opportunity to achieve diversity in the workforce by making a solid decision based on qualifications.

The goal of the affirmative action program is for managers and supervisors to make a conscious effort to ensure that minorities and women are given equal and fair consideration on the basis of qualifications and abilities. This action is not and cannot be interpreted to mean preferential treatment or quotas for minorities and women, which are expressly prohibited. See 19 Del.C. 711, 29 Del.C. 5953, and Merit Rule 2.1.