

JAN 14 1994

EXECUTIVE ORDER
94-03*Judith K. Moriarty*
SECRETARY OF STATE

WHEREAS, the Constitutions of the United States and of the State of Missouri afford to all persons equal protection under the law; and

WHEREAS, the Congress of the United States and the General Assembly of the State of Missouri have enacted legislation prohibiting discrimination in public accommodations, housing and employment on the basis of race, sex, religion, national origin, age, color, disability, or veteran status; and

WHEREAS, personnel practices and procedures within the executive branch of the State of Missouri should not discriminate, through disparate treatment or disparate impact, against anyone, in violation of any federal or state civil rights statute, executive order, rule, regulation, or judicial decision; and

WHEREAS, the employment practices of the State of Missouri and the operation of its services and facilities should serve as a model for business, industry, and labor;

NOW, THEREFORE, I, Mel Carnahan, Governor of the State of Missouri, in recognition of the obligations of the State of Missouri and by virtue of the State of Missouri, do hereby promulgate the following Code of Fair Practices for the Executive Branch of State Government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 14th day of January, 1994.



Mel Carnahan
GOVERNOR

ATTEST:

Judith K. Moriarty
SECRETARY OF STATE

ARTICLE I

The executive branch of the State of Missouri shall ensure that all present and prospective employees are afforded equal opportunity at all levels and phases of employment within state government with respect to but not limited to hiring, recruiting, training, benefits, promotions, transfers, layoffs, demotions, terminations, rate of compensation, and recalls from layoffs. It shall be the responsibility of the State Office of Equal Employment Opportunity to monitor all departments of the executive branch of state government and assist them to ensure equal employment opportunity and affirmative action. The State of Missouri shall work to ensure that there will be no vestiges of discrimination against persons on account of race, sex, color, religion, national origin, age, disability, or veteran status in not only employment practices but the provision of services and operation of facilities.

ARTICLE II

State Equal Employment Opportunity Officer

The Governor shall designate a State Equal Employment Opportunity Officer, hereinafter referred to as the State EEO Officer. The State EEO Officer shall report to the Governor and the Commissioner of Administration. He or she shall have primary responsibility for assisting in the coordination and implementation of affirmative action throughout all departments of the executive branch of state government, and advising the Governor on issues regarding equal employment opportunity, affirmative action, and efforts to administer affirmative action goals and timetables for implementation throughout the departments of the executive branch.

The State EEO Officer shall be the State's chief compliance officer for the executive branch of state government to ensure that the State of Missouri is complying with all federal and state laws concerning equal employment opportunity and affirmative action. He or she shall assist each department in developing an Affirmative Action Plan of Implementation. Additionally, the State EEO Officer shall review progress reports of the departments and shall meet biannually with each department director to evaluate departmental results and determine the course of future affirmative action goals, timetables, recruiting, planning, and implementation. The results of each meeting shall be reported in writing to the Governor and Commissioner of Administration.

Not later than January first of each calendar year, the State EEO Officer shall provide a report to the Governor and the Commissioner of Administration which summarizes the activities of each department pursuant to this Order and which contains recommendations for additional programs to accomplish the purposes of this Order.

The Commissioner of Administration shall provide the State EEO Officer with such facilities, staff, resources, equipment, and supplies as are necessary to carry out the duties set forth herein. The State EEO officer shall submit a proposal each fiscal year to the Commissioner of Administration detailing the needs of the Office of Equal Employment Opportunity.

ARTICLE III

Affirmative Action Council

Each department director shall designate an individual to serve on the State Affirmative Action Council, hereinafter referred to as the "Council." The Council designee shall be the chief liaison to his or her department concerning equal employment opportunity and affirmative action issues. The Council shall meet quarterly and be chaired by the State EEO Officer. The Council shall work to ensure that all employees of the State are educated on issues involving diversity. The Council designees shall report any changes, trends, new occurrences or recommendations with respect to affirmative action to their respective departments. The Council shall make such recommendations as it believes necessary to the State EEO Officer to assist in the implementation of this Order. The Council will be a vital component for assisting the State EEO Officer in formulating policy and issues that affect affirmative action in the executive branch of state government.

ARTICLE IV

Affirmative Action Program

The Affirmative Action Program will demonstrate the State of Missouri's good faith efforts to eliminate any potential discriminatory barriers to employment, while enhancing the State's effort to provide equal employment opportunity and affirmative action. The Program shall: (1) ensure affirmative action awareness before hiring decisions are made; (2) prohibit the departments in the executive branch from engaging in unlawful discriminatory practices; (3) prohibit quotas unless mandated by Federal law; and (4) place a strong emphasis on recruitment, retention, and upward mobility as vehicles to enhance the State of Missouri's work force through equal employment opportunity and affirmative action.

ARTICLE V

Affirmative Action Plan of Implementation

By March 1, 1994, each department shall file with the State EEO Officer a revised Affirmative Action Plan of Implementation. The primary responsibility for developing the Affirmative Action Plan will rest with each department director. The departments shall file a revised Affirmative Action Plan once a year and shall make statistical updates every six (6) months. The times and dates for the submission of the Affirmative Action Plans shall be determined by the State EEO Officer. The State EEO Officer shall review each proposed plan and approve it if it significantly complies with the provisions and purposes of this order.

Each Affirmative Action Plan shall contain the following items: a departmental policy statement on Equal Employment Opportunity and Affirmative Action; identification of the person who will be responsible for implementation of the Affirmative Action Plan within the department; a statistical utilization and availability analysis which will contain a work force analysis, job group analysis, and availability analysis; identification of underutilization; goals and timetables for the present and the future; identification of problem areas and corrective action; an internal audit and reporting system; internal grievance procedures and Affirmative Action Plan support documents; a description of department recruiting practices currently used to diversify the department's work force; and identification and implementation of diversity training needs within the department. Each department may address other relevant issues as it sees fit.

The Office of Administration shall include in its Affirmative Action Plan of Implementation procedures to assure that all tests for employment and promotion administered by the Division of Personnel are nondiscriminatory.

During 1994 only, the first year of this Order's implementation, departments may choose to submit the non-statistical components of their Affirmative Action Plans (the policy statement, responsible person, grievance procedures, description of diversity recruiting practices and diversity training needs), by March 1, and the statistical components by July 1. A department which chooses to meet the requirements of this Order under this paragraph should file a copy of its latest EEO-4 report with the non-statistical portion of its Affirmative Action Plan by March 1, 1994.

If the State EEO Officer determines that a department's Affirmative Action Plan does not meet the requirements of this Order, he or she shall report the same to the Commissioner of Administration and the Governor, who shall take such action and offer such assistance as they deem needed to ensure that the department develops and files an Affirmative Action Plan which meets the requirements of this order.

ARTICLE VI

State Employment Services

All departments that provide employment referrals or placement services to public or private employers shall test, classify, counsel, train, and refer for employment without regard to race, sex, color, national origin, religion, age, disability and veteran status, unless otherwise required by law. No job orders designed to exclude persons as mentioned above shall be filled unless by reason of a bona fide occupational qualification. Any applicant who believes that he or

she has been discriminated against may ask for a review of the hiring decision from the responsible department.

ARTICLE VII

State Services and Facilities

Every department shall offer its services to the public without discrimination. No State facility shall be used to promote any discriminatory practice, nor shall any department become a party to any agreement which permits any discriminatory practice prohibited by this order, state or federal law.

ARTICLE VIII

Public Education

All state institutions of public education shall promote nondiscrimination in the provision of services and fairness in employment practices, and shall encourage participation in cultural diversity training, work force diversity training, sexual harassment training, and other human relations training for administrators, faculty, and staff.

ARTICLE IX

Financial Assistance

Neither race, sex, color, national origin, religion, age, disability nor veteran status shall be considered as a limiting factor in state-administered programs involving grants, loans, and other distribution of funds to applicants for benefits authorized by law.

ARTICLE X

Health Care Service

All health care facilities licensed by the State shall comply with Title VI of the Civil Rights Act of 1964 and with state laws of nondiscrimination in public accommodations including patient admissions and health care services as a condition of continued participation in any state program or eligibility for any form of state assistance or licensing.

ARTICLE XI

Training and Job Opportunities

All educational and vocational counseling, apprenticeship and training programs involving state participation shall encourage the development of an individual's fullest potential in a nondiscriminatory fashion. Job training programs will be administered without regard to race, sex, age, color, religion, national origin, disability, or veteran status, unless otherwise required by law.

ARTICLE XII

State Licensing and Regulatory Agencies

No department, board, commission, or agency shall grant, deny or revoke any license or charter on the basis of race, color, national origin, sex, age, religion, disability, or veteran status unless otherwise provided by law. Any test administered as a prerequisite to licensure by any board or licensing or regulatory agency shall be designed to preclude any impermissible discrimination.

ARTICLE XIII

Contracts and Subcontracts

Every state contract for goods or services, including insurance and health care maintenance, or for public works, including construction and repair of buildings, roads, bridges, and highways, shall contain a clause prohibiting discriminatory practices.

The nondiscrimination clause in state contracts shall specifically obligate contractors and subcontractors:

1. Not to discriminate against recipients of services on the basis of race, color, religion, national origin, sex, age, disability, or veteran status.
2. Not to discriminate against any employee or applicant for employment on the basis of race, color, religion, national origin, sex, age, disability or veteran status.
3. If the contractor or subcontractor employs at least fifty (50) persons, to have and maintain an affirmative action program which shall include:
 - (a) A written policy statement committing the organization to affirmative action and assigning management responsibilities and procedures for evaluation and dissemination;
 - (b) The identification of a person designated to handle affirmative action;
 - (c) The establishment of nondiscriminatory selection standards, objective measures to analyze recruitment, an upward mobility system, a wage and salary structure, and standards applicable to lay-off, recall, discharge, demotion, and discipline;
 - (d) The exclusion of discrimination from all collective bargaining agreements; and
 - (e) Performance of an internal audit of the reporting system to monitor execution and to provide for future planning.

Contractors subject to this requirement shall submit a written statement certifying their compliance with this paragraph. To verify compliance with this Order, departments may use any reasonable investigative procedures, including but not limited to requests, reports, site visits, and inspection of relevant documents of contractors and subcontractors.

The state shall work toward a goal that at least five (5%) percent of the contracts awarded by departments in the executive branch to for-profit businesses and five (5%) percent of the contracts awarded to not-for-profit businesses shall be to minority-owned or controlled enterprises. With the assistance of the Minority Business Advocacy Commission and the Division of Purchasing, each department shall develop a plan to pursue this goal or its own higher goal through training, education, communication and recruitment efforts aimed at such businesses and shall submit such plan to the Governor and the Commissioner of Administration by July 1, 1994. This Executive Order is not intended to supersede any other policy, rule or statute that sets a higher goal for any department, agency, board or commission. As part of each department's initial report, it shall compile and submit copies of any such policies, rules or statutes setting any minority contracting goals applicable to that department or any board, commission or similar entity assigned to that department. Each department shall thereafter annually report on its progress toward the goals by each succeeding July 1, and shall include in each report copies of any new statutes, rules, or policies governing its minority contracting efforts.

ARTICLE XIV

Employee Organizations

Employee organizations that exist in whole or in part for the purpose of dealing with employers in the executive branch of state government concerning employee grievances, labor disputes, or terms of employment shall not, on

account of race, color, sex, age, religion, national origin, disability or veteran status: (1) exclude or expel from membership or otherwise discriminate against any individual; (2) limit, segregate, or classify members or applicants for membership in any way which would deprive or tend to deprive any individual of any benefit, advantage, or privilege; or (3) directly or indirectly create any condition which adversely affects the status of any employee.

ARTICLE XV

Publication and Posting

Policies, procedures, and communications relating to this Order shall be distributed to all departments. Each department shall make a copy of the Affirmative Action Plan of Implementation accessible to employees at all offices and facilities.

ARTICLE XVI

Other Governmental Bodies

All local governments and instrumentalities of government in Missouri are requested to cooperate with this endeavor to end discrimination within this State.

ARTICLE XVII

This Order shall take effect immediately and shall supersede all previous Executive Orders on the same subject.