

## Chapter ER 43

### AFFIRMATIVE ACTION AND EQUAL OPPORTUNITY

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**Note:** Corrections made under s. 13.93 (2m) (b) 6., Stats., Register December 2003 No. 576.

**ER 43.01 Policy.** It is the policy of this state to ensure equal opportunity without regard to age, race, creed or religion, color, disability, sex, marital status, national origin or ancestry, political affiliation, arrest or conviction record, or sexual orientation. In furtherance of this policy, all persons responsible for employment decisions shall, within the scope of their assigned responsibilities:

(1) Exercise administrative authority and personal leadership to prohibit, prevent and eradicate every form of discrimination from the agency's policies, practices and working conditions.

(2) Take affirmative action as defined in s. 230.03 (2), Stats. For purposes of this subsection, elected state officials are not considered a similar functional group in the unclassified service.

(3) Integrate equal opportunity and affirmative action concerns into the agency personnel management system under their control.

(4) Develop and implement innovative personnel management procedures to aid in the achievement of affirmative action goals.

**History:** Cr. Register, February, 1984, No. 338, eff. 3-1-84; am. (1) (3) and (4), r. and recr. (2), Register, May, 1988, No. 389, eff. 6-1-88; **CR 18-006: am. (intro.) Register July 2018 No. 751, eff. 8-1-18.**

**ER 43.02 Definitions.** In this chapter:

(2) "Affirmative action group" means one or more of the following:

- (a) Racial or ethnic groups.
- (b) Gender groups.
- (c) Disability groups.

(2m) "Affirmative action program" means specific results oriented standards, procedures and initiatives designed to ensure equal employment opportunity and to eliminate present effects of past discrimination.

(4) "Client" means any individual or organization receiving services or financial assistance from an agency.

(4m) "Disability" groups mean one or more of the following:

- (a) Individuals with a disability who have any of the following:
  1. A physical or mental impairment which makes achievement unusually difficult or limits the capacity to work.
  2. A record of such an impairment.
  3. Are perceived as having such an impairment.
- (b) Individuals with a severe disability who have a chronic disability that meets all of the following conditions:
  1. It is attributable to a mental or physical impairment or combination of mental and physical impairments.
  2. It is likely to continue indefinitely.
  3. It results in substantial functional limitations in one or more of the following areas of major life activity: self-care; receptive and excessive language; learning; mobility; capacity for independent living; and economic self-sufficiency.
- (c) Disabled veterans as defined in s. 230.03 (9m), Stats.

(5) "Equal opportunity" means the absence of discrimination in employment or in provision of services to clients.

(6m) "Racial or Ethnic Groups" mean American Indians or Alaskan Natives (Non Hispanic or Latino), Asians (Non Hispanic or Latino), Blacks or African Americans (Non Hispanic or Latino), Hispanics or Latinos, Native Hawaiians or Other Pacific Islanders (Non Hispanic or Latino), and Whites (Non Hispanic or Latino) defined as follows:

(a) "American Indians or Alaskan Natives (Non Hispanic or Latino)" means persons having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or community attachment.

(b) "Asians (Non Hispanic or Latino)" means persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

(c) "Blacks or African Americans (Non Hispanic or Latino)" means persons having origins in any of the black racial groups of Africa.

(d) "Hispanics or Latinos" means persons of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.

(e) "Native Hawaiians or Other Pacific Islanders (Non Hispanic or Latino)" means persons having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

(f) "Whites (Non Hispanic or Latino)" means all persons having origins in any of the original peoples of Europe, North Africa, or Middle East.

(7) "Sexual orientation" means a preference as defined in s. 111.32 (13m), Stats.

**History:** Cr. Register, February, 1984, No. 338, eff. 3-1-84; r. (1), (2) (a) and (5), r. and recr. (2) (intro.), renum. (2) (b) to (e) and (6) to be (6m) (b), (c), (5m), (6m) (d) and (5) and am. cr. (2) (a) to (c), (2m), (6m) (intro.), (a) and (7), Register, May, 1988, No. 389, eff. 6-1-88; **CR 18-006: am. (2) (c), r. (3), am. (5m) (intro.), r. and recr. (5m) (a) to (c), am. (6m) (intro.), (a) to (d), cr. (6m) (e), (f) Register July 2018 No. 751, eff. 8-1-18; renum. (5m) to (4m) under s. 13.92 (4) (b) 1., ; correction in (4m) (b) 1. made under s. 35.17, Stats., Register July 2018 No. 751.**

**ER 43.03 Affirmative action plans.** Each agency shall prepare and file with the administrator an affirmative action and equal opportunity plan which shall be developed in accordance with standards and time schedules established by the administrator and include the following minimum components:

(1) A policy statement which affirms the commitment of the appointing authority to ensure equal opportunity, freedom from discrimination, and affirmative action in compliance with state policy and state and federal laws.

(2) An analysis of the agency work force to determine if there are substantial disparities between the proportion of any affirmative action groups in either a classified civil service classification, grouping of classifications or similar functional group in the unclassified service, in the agency work force and the rate of that group's representation in that part of the state labor force qualified for employment in such classification, progression series or functional group in the relevant labor pool.

(3) Goals and timetables to correct disparities identified in sub. (2).

(4) The establishment of goals and objectives for affirmative action programs designed to achieve equal opportunity, eliminate discrimination and attain the goals and timetables identified in sub. (3).

(5) Description of a system and timetable for regularly monitoring the effectiveness and progress of the agency in meeting the plan objectives.

**History:** Cr. Register, February, 1984, No. 338, eff. 3-1-84; am. (intro.), (1) and (2), r. (3) to (5) and (7), a. (3) and (4), renum. (6) to be (5) and am. Register, May, 1988, No. 389, eff. 6-1-88; correction in (intro.) under s. 13.92 (4) (b) 6., Stats., Register September 2015 No. 717.

**ER 43.04 Review of plans.** The administrator shall review all agency affirmative action and equal opportunity plans for compliance with the standards established under s. ER 43.03. In addition the administrator shall:

(1) Provide the governor with a list of approved or disapproved plans and notice that the plans and any comments regarding them are available for review.

(2) Determine compliance with the standards established under s. ER 43.03 of agency plans which were previously developed to comply with federal law.

**History:** Cr. Register, February, 1984, No. 338, eff. 3-1-84; am. (intro.), r. (1) to (6), cr. (1), renum. (7) to be (2) and am. Register, May, 1988, No. 389, eff. 6-1-88; correction in (intro.) under s. 13.92 (4) (b) 6., Stats., Register September 2015 No. 717; 2015 Wis. Act 330 s. 20: am. (2) Register April 2016 No. 724, eff. 5-1-16; **CR 18-006: am. (2) Register July 2018 No. 751, eff. 8-1-18.**

**ER 43.045 Program, policy and procedures standards.** In addition to the plans described in s. ER 43.03, the administrator may establish standards for agency affirmative action and equal opportunity programs, policies, and procedures designed to comply with state and federal affirmative action and equal employment opportunity laws and policies.

**History:** Cr. Register, May, 1988, No. 389, eff. 6-1-88; correction under s. 13.92 (4) (b) 6., Stats., Register September 2015 No. 717.

**ER 43.05 Monitoring and compliance.** On an ongoing basis, the administrator shall monitor and evaluate each agency's progress toward affirmative action and equal opportunity goals and objectives in implementing the policy of the state and shall make specific recommendations regarding methods through which the respective agencies may improve their efforts in providing equal opportunity to employees, applicants for employment and clients of the agency. If an agency fails to make reasonable efforts to meet goals and objectives and comply with the standards established under ss. ER 43.03 and 43.045, the administrator may take necessary steps under s. 230.04, Stats., to ensure compliance.

**History:** Cr. Register, February, 1984, No. 338, eff. 3-1-84; am. Register, May, 1988, No. 389, eff. 6-1-88; correction under s. 13.92 (4) (b) 6., Stats., Register September 2015 No. 717.

**ER 43.06 Request for information.** Upon request of the administrator, the appointing authority shall provide information concerning applicants, employees and clients. Confidentiality of information shall be maintained by the administrator as provided under state and federal law.

**History:** Cr. Register, February, 1984, No. 338, eff. 3-1-84; am. Register, May, 1988, No. 389, eff. 6-1-88; correction under s. 13.92 (4) (b) 6., Stats., Register September 2015 No. 717.

**ER 43.07 Reporting systems.** Appointing authorities shall comply with standards and procedures for reporting systems established by the administrator to acquire affirmative action information. If an agency has established reporting systems in compliance with federal law, such systems shall be reviewed by the administrator for acceptability.

**History:** Cr. Register, February, 1984, No. 338, eff. 3-1-84; correction under s. 13.92 (4) (b) 6., Stats., Register September 2015 No. 717.

**ER 43.08 Availability of Affirmative Action information.** Information on affirmative action groups is available to the public unless release of the information is prohibited by state or federal law.

**History:** Cr. Register, February, 1984, No. 338, eff. 3-1-84; **CR 18-006: am. Register July 2018 No. 751, eff. 8-1-18.**