

CHAPTER 68
EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

[Prior to 10/8/86, Civil Rights[240]]

[Prior to 3/17/04, see 581—Ch 20]

11—68.1(19B) Definitions. The following definitions shall be applied to the rules in this chapter.

“*Affirmative action*” means action appropriate to overcome the effects of past or present practices, policies, or other barriers to equal employment opportunity.

“*Availability*” means the extent to which protected class members are qualified or qualifiable to be employed in classes within state and local government job categories.

“*Disabled person*” means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

“*EEO-4 income bracket*” means the annual salary ranges as defined by the Equal Employment Opportunity Commission. Where employees are paid on other than an annual basis, their regular earnings shall be expanded and expressed in terms of an annual income.

“*EEO-4 report*” means the annual state employment data report as required by the federal Equal Employment Opportunity Commission.

“*Equal employment opportunity*” means equal access to employment or training opportunities regardless of race, creed, color, religion, sex, age, national origin or physical or mental disability.

“*Organizational unit*” means those agency units which lend themselves to the most reasonable system of grouping for analysis even though they may not necessarily coincide with the agency’s administrative divisions.

“*Protected class*” means racial or ethnic minorities, sex, age, creed, color, national origin, religion, mental and physical disability.

“*Racial or ethnic minorities*” means Black, Hispanic, Asian and Pacific Islander, American Indian and Alaskan natives.

“*Relevant labor force*” means that group of persons in the general population of a specified geographic area who are qualified to perform a particular type of work.

“*Sexual harassment*” means persistent, repetitive, or highly egregious conduct directed at a specific individual or group of individuals that a reasonable person would interpret as intentional harassment of a sexual nature, taking into consideration the full context in which the conduct occurs, which conduct threatens to impair the ability of a person to perform the duties of employment, or otherwise function normally within an institution responsible for the person’s care, rehabilitation, education, or training. “*Sexual harassment*” may include, but is not limited to, the following: (1) unsolicited sexual advances by a person toward another person who has clearly communicated the other person’s desire not to be the subject of those advances; (2) sexual advances or propositions made by a person having superior authority toward another person within the workplace or institution; (3) instances of offensive sexual remarks or speech or graphic sexual displays directed at a person in the workplace or institution, who has clearly communicated the person’s objection to that conduct, and where the person is not free to avoid that conduct due to the requirements of the employment or the confines or operations of the institution; (4) dress requirements that bear no relation to the person’s employment responsibilities or institutional status.

“*State and local government job categories*” means officials and administrators, professionals, technicians, protective service workers, paraprofessionals, administrative support workers, skilled craft workers and service maintenance workers, as defined by the federal Equal Employment Opportunity Commission guidelines.

“*Utilization*” means the extent to which minorities, females, and persons with disabilities are represented within an agency’s work force as compared to their availability in the relevant labor force.

“*Work force*” means an agency or organizational unit’s full-time employees and other than full-time employees.

[ARC 4121C, IAB 11/21/18, effective 10/25/18; ARC 4244C, IAB 1/16/19, effective 2/20/19]

11—68.2(19B) Plans, policies and records.

68.2(1) Each agency or an entity approved by the director shall prepare and implement a written affirmative action plan with goals and timetables which conform to the requirements of Iowa Code chapter 19B.

68.2(2) Each agency shall adhere to the provisions of the “State of Iowa Equal Opportunity, Affirmative Action and Anti-Discrimination Policy for Executive Branch Employees,” and the “Policy Prohibiting Sexual Harassment for Executive Branch Employees.”

68.2(3) Each agency shall keep records as required by the director. These records shall, at a minimum, include tracking of the composition of applicant groups, their movement through steps in the hiring processes, and the impact of personnel actions on various group members when records are not otherwise available in centralized information systems. Each agency shall submit to the director, as requested, timely, complete, and accurate reports related to required records in accordance with rule 11—68.5(19B).

[ARC 4121C, IAB 11/21/18, effective 10/25/18; ARC 4244C, IAB 1/16/19, effective 2/20/19]

11—68.3(19B) Planning standards. Each affirmative action plan shall include, but not be limited to, the following standards:

68.3(1) *Affirmative action statement.* The affirmative action statement shall include, but not be limited to, the following:

a. Policy statement. The policy statement shall be a clear and unambiguous declaration of commitment to the principles of equal employment opportunity and affirmative action in the application of all personnel rules, policies, and practices. It shall contain the following or similarly worded language.

(1) The agency prohibits discrimination in its employment policies and practices on the basis of race, creed, color, religion, national origin, sex, age, or mental and physical disability.

(2) The agency is an equal employment opportunity and affirmative action employer.

b. Administration statement. The administration statement shall be a declaration of how the agency’s affirmative action policy is to be implemented. It shall contain the following:

(1) The name, job title, and work location of the responsible equal employment opportunity or affirmative action official.

(2) The internal system for auditing and reporting.

c. Signature. The affirmative action statement shall be signed and dated by the appointing authority.

68.3(2) *Work force analysis.* A work force analysis shall show the numerical and percentile breakdown of the agency’s full-time employees, and other than full-time employees, separately by racial or ethnic minorities, sex, and disability. Full-time and other than full-time employees shall be arrayed according to the state and local government job categories with further census occupational subcategory breakdowns as required by the director. For the purposes of confidentiality, disability figures shall be totaled only by an organizational unit covered by an individual affirmative action plan or the department as a whole.

a. Exemptions. The work force analysis shall not include elected officials; such officials’ immediate secretary, administrative, legislative, or other immediate or firstline aides; and such officials’ legal advisor.

b. Organizational unit. An agency with a large number of employees may be required to conduct a separate work force analysis for each of its organizational units. The organizational units may be determined by the agency based on the size, geographic dispersion and administrative lines of authority of its work force.

c. Confidentiality. An agency may suppress work force data which is likely to identify specific employees and violate their confidentiality.

d. Analysis report. The work force analysis shall be reported on forms available from the department. An agency may request approval of a similar report required by another regulatory agency as part of its work force analysis.

68.3(3) Availability analysis. An availability analysis shall show the percentile breakdown by racial or ethnic minorities and sex of the relevant labor force arrayed according to their state and local government job categories and relevant subcategories. The analysis shall include an assessment of the relevant available labor force by using the geographic area from which work force recruitment can reasonably occur for each state and local government job category. The geographic area will usually be larger for high-paid or high-ranked classifications for recruitment purposes. The labor force availability of disabled persons shall be based on census reports of persons with a work disability residing in the most relevant geographic area defined by the census bureau.

a. Organizational unit. An availability analysis shall be conducted for each organizational unit by an agency which conducted a separate work force analysis pursuant to subrule 68.3(2), paragraph "b."

b. Analysis report. The availability analysis shall be reported in a format prescribed by the department. In lieu of completing all parts of the availability analysis form, an agency may submit a similar report required by another regulatory agency, such as a federal funding agency, as part of its availability analysis, if approved by the department.

68.3(4) Quantitative utilization analysis. A quantitative utilization analysis shall compare work force analysis with availability analysis to show the numerical and percentile underrepresentation in the agency's work force, if any, by racial or ethnic minorities, sex, and disability.

a. Rounding. All partial numerical figures for state and local government job categories that contain .5 or more shall be rounded upward and .49 or less shall be rounded downward to the nearest whole number.

b. Organizational unit. A quantitative utilization analysis shall be conducted for each organizational unit by an agency which conducted a separate work force analysis pursuant to subrule 68.3(2), paragraph "b."

c. Analysis report. The quantitative utilization analysis shall be reported in the format prescribed by the department. In lieu of completing all parts of the quantitative utilization analysis format, an agency may submit a similar report required by another regulatory agency, such as a federal funding agency, if approved by the department.

68.3(5) Qualitative utilization analysis. A qualitative utilization analysis shall show whether and where an agency's employment policies and practices do or tend to exclude, disadvantage, restrict or result in adverse impact on the basis of age, sex, disability, and racial or ethnic minorities. It shall also show whether and where effects of prior illegal discrimination are left uncorrected. The analysis may include, but not be limited to, the following areas:

- a.* Recruitment efforts and methods.
- b.* Applicant flow characteristics study.
- c.* Interview, selection, appointment, and placement policies and practices.
- d.* Policies and practices affecting transfers, promotions, and reallocations.
- e.* Selection of employees for training.
- f.* Policies and practices in demotion, discipline, termination, and reduction in force.
- g.* Laws, policies, and practices external to the agency that discourage effective results in affirmative action.

68.3(6) Goals and timetables. An agency's affirmative action goals and timetables shall specify the appropriate actions and time frames in which problems identified under subrules 68.3(4) and 68.3(5) are targeted to be remedied.

a. Appropriate action. In setting goals, an agency may consider, but not be limited to, the following:

- (1) Devising a recruitment program in conjunction with the state recruitment coordinating committee authorized under the department.
- (2) Validating the selection instruments in conjunction with the department.
- (3) Revising and improving other personnel policies and practices.
- (4) Providing affirmative action training internally or externally through organizations such as the Iowa management training system.

(5) Devising a plan so that agency personnel who impact EEO and affirmative action can have part or all of their performance evaluated on their contribution to meeting the established goals and timetables.

b. Timetable. Each agency shall determine the timetable in which it expects to meet its goals. In setting timetables, an agency should consider, but not be limited to, the following:

- (1) Anticipated vacancies and positions.
- (2) Work force turnover rate.

c. Organizational unit. Goals and timetables shall be prepared for each organizational unit by an agency which conducted a separate work force analysis pursuant to subrule 68.3(2), paragraph "b."

d. Numerical goals. Numerical goals shall be established by each agency to remedy any underrepresentation identified in subrule 68.3(4). When setting numerical goals, agencies shall utilize the following procedure:

(1) Underutilized classes in which women represent more than 70 percent of the relevant available labor force for that occupational subcategory are exempt from this procedure when setting goals for women.

(2) Annual goals for hires shall be based on underutilization analysis and projected vacancies and set at a percentage rate that is equal to or greater than the labor force availability rate established in subrule 68.3(3).

(3) The percentage rate established in subparagraph (2) of this paragraph shall be multiplied by the projected number of openings anticipated in the following year by occupational subcategory to establish the actual numerical hiring goals for each underutilized subcategory.

(4) Goals established for each occupational subcategory shall be totaled to establish goals for each state and local government job category.

(5) Where projected goals indicate that a period greater than five years is required to remedy any underrepresentation, agencies may be required to revise their goals established in subparagraph (2) of this paragraph.

(6) Goals shall not be rigid and inflexible quotas. They must be targets reasonably attainable through good faith effort and must not cause any group of applicants to be excluded from the hiring process.

68.3(7) Consolidation. An agency may consolidate the racial or ethnic minorities and state and local government job categories into broader groupings in conducting its analysis under subrules 68.3(2) and 68.3(6) with department prior approval.

a. Applicability. Consolidation is applicable when the agency or organizational unit work force has been analyzed according to all the racial or ethnic minorities or occupational categories, and the resultant figures are determined to be too small for significant statistical analysis.

b. Racial or ethnic minorities. The minority racial or ethnic groups may be consolidated into one single group.

c. Occupational categories. The occupational categories may be consolidated into one or more groups.

68.3(8) Comparable plan. An agency plan which is consistent with 41 Code of Federal Regulations, Chapter 60, Revised Order No. 4, Affirmative Action Guidelines, issued by the Office of Federal Contract Compliance Programs, shall be considered to be in compliance with the aforementioned planning standards if the plan is approved as meeting the requirements of subrules 68.3(2), 68.3(5), and 68.3(6).

11—68.4(19B) Dissemination. Each agency shall have an internal and external system for disseminating its affirmative action plan.

68.4(1) Affirmative action plan. The plan shall be distributed to agency employees charged with the responsibility for its implementation and be made available to other agency employees and the public upon request.

68.4(2) Affirmative action statement. The statement shall be disseminated in, but not limited to, the following manner:

- a. A copy shall be given to all agency employees.
- b. It shall be posted on bulletin boards and other conspicuous places throughout the agency.
- c. It shall be distributed to the agency's recruiting sources.

11—68.5(19B) Reports.

68.5(1) Each agency shall annually submit an affirmative action report and plan for approval to the department at the time specified by the department that shall conform to the standards specified in these rules.

68.5(2) Each agency may be required to submit progress reports in accordance with the due dates and procedures established by the director.

11—68.6(19B) Discrimination complaints, including disability-related and sexual harassment complaints. The director shall have the authority to investigate practices prohibited under the "Equal Opportunity, Affirmative Action, and Anti-Discrimination Policy for Executive Branch Employees" and the "Policy Prohibiting Sexual Harassment for Executive Branch Employees," adopted in accordance with Iowa Code section 19B.12. The director shall investigate any complaint pertaining to the policies specified in this rule unless directed by the governor to be investigated by another agency or entity.

68.6(1) Confidentiality. Complaints and records related to complaints, regardless of where the records are located, are confidential. These confidential records include, but are not limited to, all information gathered in the course of an investigation and investigative reports. Confidential records shall not be released unless ordered by a court of competent jurisdiction. This rule does not supersede the remedies provided under Iowa Code chapter 216.

68.6(2) General procedures.

a. Any person who feels that he or she has been subjected to, or who witnesses or has knowledge of, a violation of the "Equal Opportunity, Affirmative Action, and Anti-Discrimination Policy for Executive Branch Employees" or the "Policy Prohibiting Sexual Harassment for Executive Branch Employees" is encouraged to make a complaint pursuant to the complaint procedure outlined in the respective policies.

b. An agency shall immediately report all complaints pertaining to the "Equal Opportunity, Affirmative Action, and Anti-Discrimination Policy for Executive Branch Employees" or the "Policy Prohibiting Sexual Harassment for Executive Branch Employees" to the department.

68.6(3) Sexual harassment complaint procedures. All employees shall have access to internal grievance procedures as authorized by Iowa Code section 19B.12 for reporting complaints of sexual harassment as set forth in the "Policy Prohibiting Sexual Harassment for Executive Branch Employees."

a. Any employee who believes that he or she has been subjected to, or who witnesses or has knowledge of, a violation of the "Policy Prohibiting Sexual Harassment for Executive Branch Employees" is encouraged to bring a complaint to:

- (1) The employee's immediate supervisor;
- (2) The next higher supervisor; or
- (3) The agency director or the employee identified by the agency to receive complaints of sexual harassment.

b. A complaint, including those concerning senior agency officials or agency directors, may be made directly to the department or the office of the governor without reporting the matter internally to the agency.

68.6(4) Complaint investigation procedures. The department shall investigate all complaints arising under the "Equal Opportunity, Affirmative Action, and Anti-Discrimination Policy for Executive Branch Employees" and the "Policy Prohibiting Sexual Harassment for Executive Branch Employees" unless directed by the governor to be investigated by another agency or entity. All executive branch employees must cooperate fully with any investigation and may be subject to discipline up to and including termination of employment for failure to cooperate with an investigation. The department shall submit findings for an investigation conducted under this rule to the applicable agency or the office of the governor.

- a.* A complaint may be submitted on the form prescribed by the department or through other means, either orally or in writing. The complaint should at least contain the following:
- (1) The name and contact information of the person submitting the complaint;
 - (2) The name(s) and contact information, if known, of the alleged harasser;
 - (3) A statement of the allegations, including dates, if known, constituting the alleged discriminatory or harassing conduct; and
 - (4) Any witnesses or persons to whom the allegations were reported.
- b.* Upon receipt or referral of a complaint, the department shall acknowledge the receipt of the complaint to the person submitting the complaint within five business days of receipt.
- c.* The investigation shall be initiated within ten days of the receipt of the complaint.
- d.* The investigation shall be completed within 30 days of the receipt of the complaint unless good cause can be shown that additional time is required. Reasons for additional time to complete the investigation beyond 30 days shall be documented in the investigation file. Extensions beyond 60 days must have prior approval by the director.
- e.* The investigation report shall include at least the following:
- (1) Background of the complaint;
 - (2) Allegations;
 - (3) Persons interviewed;
 - (4) Analysis and findings; and
 - (5) Conclusion.
- f.* Upon completion of the investigation, written correspondence regarding the conclusion of the investigation shall be sent to all parties interviewed during the course of the investigation.

68.6(5) Retaliation prohibited. Any form of retaliation against an employee for resisting discriminatory or harassing behavior, reporting a complaint of discriminatory or harassing behavior, assisting a complainant who reports discriminatory or harassing behavior, or who cooperates in an investigation regarding discriminatory or harassing behavior is prohibited. Executive branch employees who engage in retaliatory behavior shall be subject to discipline up to and including termination of employment. An employee who experiences retaliation prohibited under this subrule may report the retaliation through any of the avenues identified in this rule.

[ARC 4121C, IAB 11/21/18, effective 10/25/18; ARC 4244C, IAB 1/16/19, effective 2/20/19]

11—68.7(19B) Training. The department shall provide training to all executive branch state employees relating to sexual harassment awareness, prevention and reporting. Executive branch state employees shall complete sexual harassment training on an annual basis as provided by the department.

[ARC 4244C, IAB 1/16/19, effective 2/20/19]

These rules are intended to implement Iowa Code chapter 19B.

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