

220-RICR-80-05-3

## **TITLE 220 - DEPARTMENT OF ADMINISTRATION**

### **CHAPTER 80 - DIVERSITY, EQUITY AND OPPORTUNITY**

#### **SUBCHAPTER 05 - EQUAL OPPORTUNITY**

##### **PART 3 - Equal Employment Opportunity**

### **3.1 Authority**

R.I. Gen. Laws § 28-5.1-12 relating to Equal Employment Opportunity, sets forth the procedures and authority of the Rhode Island State Equal Opportunity Office to enforce the State's policy of equal opportunity and affirmative action.

### **3.2 Purpose**

Equal opportunity and affirmative action towards its achievement is the policy of all units of Rhode Island state government, including all public and quasi-public agencies, commissions, boards and authorities; and in the classified, unclassified and non-classified services of state employment; provided, that the mandatory provisions of this section shall not apply to the legislative branch of state government.

### **3.3 General Provisions**

- A. This act does not guarantee employment of minorities, but it provides the appointing authority with the increased opportunity to originally or promotionally appoint qualified minorities from an eligibility list. Original appointment is defined as the process applicable to initial entrance into state service. Promotional appointment is defined as the process applicable to the upward mobility opportunity for existing state employees. A minority is currently defined in federal employment law as Hispanic or Latino, Black or African American, Asian, Native Hawaiian or Other Pacific Islander, American Indian or Alaska Native, and Two or More Races. R.I. Gen. Laws § 36-4-26.1 affords the opportunity for the authorization of a supplemental certification process whenever there exists a "manifest imbalance" in a particular job category. "Manifest imbalance" is defined - meaning there is an underrepresentation of minorities based on a demographic analysis.
- B. The State Equal Opportunity Administrator shall serve as the Chief Executive Officer of the State Equal Opportunity Office and shall be responsible for

monitoring and enforcing all equal opportunity laws, programs and policies within State government.

- C. No later than July 1st each department or agency, excluding the legislative branch of state government, shall annually submit to the State Equal Opportunity Office and the House Fiscal Advisor sufficient data to enable the State Equal Opportunity Office and the House Fiscal Advisor to determine whether the agency achieved the hiring goals contained in its affirmative action plan for the previous year. If the hiring goals contained in the previous year's plan were not met, the agency shall also submit with such data a detailed explanation as to why the goals were not achieved.
- D. The State Equal Opportunity Administrator will initiate a complaint against any agency excluding the legislative branch, who fails to comply with the provisions set forth in § 3.2 of this Part. Whenever the Equal Employment Opportunity Administrator initiates such a complaint, he or she shall cause to be issued and served in the name of the Equal Opportunity Office, a written notice, together with a copy of such complaint, requiring that the agency, administrator, agent or employee respond thereto and appear at a hearing at a time and place specified in such notice. The Equal Opportunity Office shall follow its lawfully adopted rules and regulations concerning hearings of discrimination complaints.
- E. A final order of the Equal Opportunity Office shall constitute an "order" within the meaning of R.I. Gen. Laws § 42-35-1(13) shall be enforceable as such; shall be rendered in accordance with R.I. Gen. Law § 42-35-12 and shall be subject to judicial review in accordance with R.I. Gen. Law § 42-35-15.
- F. Pursuant to R.I. Gen. Laws § 28-5.1-5(2), the Office of Personnel Administration shall take positive steps to insure that the entire examination and testing process, including the development of job specifications and employment qualifications, is free from either conscious or inadvertent bias and shall review all recruitment or promotional procedures for all State agencies covered by this chapter for compliance with federal and state law, and bring to the attention of the Equal Opportunity Administrator matters of concern to its jurisdiction.
- G. The Personnel Administrator may use open continuous competitive tests to establish lists and fill vacancies where there is a manifest imbalance of minorities in the job category.
- H. A minority is eligible for a promotional examination if they are currently employed in state service as of the official closing date of the examination announcement or twenty-one calendar days prior to the first phase of the examination, whichever is later, and is a qualified exam applicant seeking entry into a classification where there is a manifest imbalance in the job category. This

section shall not be applicable to the Rhode Island State Police or the legislative branch of state government.

- I. Pursuant to R.I. Gen. Laws § 28-5.1-5(3)(b), the Office of Labor Relations shall propose in negotiations the inclusion of affirmative action language suitable to the need for attaining and maintaining a diverse workforce.
- J. Pursuant to R.I. Gen. Laws § 28-5.1-5(3)(c), there is hereby created a six (6) member committee which shall monitor negotiations with all collective bargaining units within State government specifically for equal opportunity and affirmative action interests. The members of that committee shall include the Director of the Rhode Island Commission for Human Rights, the Associate Director of the Office of Diversity, Equity and Opportunity, the Equal Opportunity Administrator, the Personnel Administrator, one (1) member of the House of Representatives appointed by the Speaker, and one (1) member of the Senate appointed by the Senate Majority Leader. The initial meeting shall be called by the Equal Opportunity Administrator. The committee shall elect a chairperson who shall preside over said committee.
- K. The Appointing Authority, along with the certification of the Equal Opportunity Administrator and the Personnel Administrator, shall determine job categories for which there exists a "manifest imbalance". These job categories are defined in the Agency Affirmative Action Plan and identified with the proper job category code in the Official State Classified and Unclassified Pay Plan.
- L. At least seven (7) days prior to certifying names under this Section, the Appointing Authority shall post a notice of intention to do so in the offices of the Personnel Administrator and of the Equal Opportunity Administrator and shall mail a copy of such notice to the applicable union, if any, with instructions to post copies of such notices at all locations where persons whose names may be certified under the provision of this Section may, if employed, be assigned.
- M. Supplemental Certification in the civil service is created to eliminate the overall adverse impact of systemic barriers to the employment of minorities as a protected class, and the office of Personnel Administration shall provide all appointing authorities the necessary flexibility to remedy the effects of systemic discriminatory practices.
- N. A supplemental Certification List of minorities may be called for in addition to the appropriate employment or promotion list, except in the following instances:
  - 1. The absence of statistical data or reasonable evidence to show significant past discrimination or patterns of possible discrimination and/or adverse impact on the protected classes;

2. The presence of at least one minority ranked among the three persons standing highest on the list of persons certified by the Personnel Administrator for the position in question;
  3. The absence of any minorities on the appropriate eligibility list; or
  4. Any instance in which the department or agency is subject to a contradictory or inconsistent court order.
- O. Supplemental Certifications, based on race or color as a protected class, shall be made by an appointing authority whenever:
1. The appointing authority shall make requisition to fill one (1) or more positions wherever a manifest imbalance is identified within the department's Affirmative Action Plan.
  2. Eligible minorities must have passed an examination for the classification being recruited and/or other list deemed appropriate by the Personnel Administrator.
  3. In certifying names for appointment to a classification for which supplemental certification is required, the Personnel Administrator shall include upon the applicable list the names of six (6) persons certified pursuant to this section.
- P. Whenever an agency is seeking supplemental certification, they shall indicate said desire on appropriate forms seeking eligibles to the Office of Personnel Administration.
- Q. The State Equal Opportunity Administrator shall develop and implement recruitment plans to assure that adequate consideration is given to minority applicants for all positions wherein no list exists in those job categories where a manifest imbalance exists, excluding those job categories in the legislative branch of state government.

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**PART 3 - Rules and Regulations Relating to Equal Employment Opportunity (220-RICR-80-05-3)**

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Editorial Note: This Part was filed with the Department of State prior to the launch of the Rhode Island Code of Regulations. As a result, this digital copy is presented solely as a reference tool. To obtain a certified copy of this Part, contact the Administrative Records Office at (401) 222-2473.