

# THE GOVERNOR

## Title 4—ADMINISTRATION

### PART I. GOVERNOR'S OFFICE

[ 4 PA. CODE CH. 1 ]

[ EXECUTIVE ORDER NO. 2016-05 AMENDED ]

### Contract Compliance

June 18, 2018

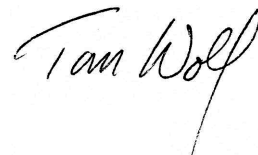
*Whereas*, this Administration is committed to promoting the prosperity and economic growth of all businesses and citizens of the Commonwealth of Pennsylvania, regardless of race, gender, creed, color, sexual orientation, gender identity or expression, or participation or decision to refrain from participation in protected labor activities; and

*Whereas*, this Administration believes the contracting processes of Commonwealth agencies should be nondiscriminatory and that all businesses contracting with the Commonwealth as well as all grantees should use nondiscriminatory practices in subcontracting, hiring, promoting, and other labor matters; and

*Whereas*, this Administration believes that a single Commonwealth agency should be assigned the responsibility of developing and managing programs for Commonwealth agencies to ensure that discrimination by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or participation or decision to refrain from participation in protected labor activities does not exist with respect to the award, selection, or performance of any contracts or grants issued by Commonwealth agencies; and

*Whereas*, under Sections 301 and 3701 of the Commonwealth Procurement Code, the Department of General Services is generally responsible for the formulation of procurement policy.

*Now, Therefore*, I, Tom Wolf, Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me by the Constitution and laws of the Commonwealth of Pennsylvania, do hereby designate the Department of General Services as the central agency to develop and manage Commonwealth agency programs to ensure that discrimination by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or participation or decision to refrain from participation in protected labor activities does not exist with respect to the award, selection, or performance of any contracts or grants issued by Commonwealth agencies.



Governor

**Fiscal Note:** GOV-2016-05 (Amended). No fiscal impact; (8) recommends adoption.

#### Annex A

#### TITLE 4. ADMINISTRATION

#### PART I. GOVERNOR'S OFFICE

#### CHAPTER 1. AGENCY OPERATION AND ORGANIZATION

#### Subchapter HHH. CONTRACT COMPLIANCE PROGRAM

#### § 1.871. Establishment of contract compliance program.

Commonwealth agencies shall establish, implement and maintain contract compliance programs to ensure that Commonwealth contracts and grants are nondiscriminatory in three aspects:

(1) Nondiscrimination in the award of Commonwealth contracts and grants.

(2) Nondiscrimination by those who are awarded Commonwealth contracts and grants in the hiring and treatment of their employees and in the provision of services to their clients and service recipients.

(3) Nondiscrimination by those who are awarded Commonwealth contracts and grants in their award of subcontracts and supply contracts for performance under Commonwealth contracts.

**§ 1.872. Definitions.**

The following words and phrases when used in this subchapter have, unless otherwise defined by Commonwealth State law or the context clearly indicates otherwise, or both, the following meanings given:

*Gender expression*—The external manifestations of gender, expressed through a person's name, pronouns, clothing, haircut, behavior, voice and/or body characteristics.

*Gender identity*—A person's internal, deeply held sense of their gender, regardless of their biological sex and/or the sex they were assigned at birth.

*Protected labor activities*—Labor activities protected under the Public Employe Relations Act (43 P.S. §§ 1101.101—1101.2301), Pennsylvania Labor Relations Act (43 P.S. §§ 211.1—211.13) or National Labor Relations Act (29 U.S.C.A. §§ 151—169), as applicable and to the extent determined by entities charged with these acts' enforcement.

*Sexual orientation*—An individual's enduring physical, romantic and/or emotional attraction to members of the same or opposite sex, including lesbian, gay, bisexual and heterosexual (straight) orientations, or lack thereof, including asexual orientation.

**§ 1.873. Responsibilities.**

(a) The Department of General Services (Department) shall:

(1) Develop standards for a uniform Statewide contract compliance program that ensures nondiscrimination by Commonwealth contractors and grantees.

(2) Review agency contract compliance programs, plans, reports and procedures to ensure consistency with the Department contract compliance policies.

(3) Develop and implement monitoring and reporting systems to measure the effectiveness of agency contract compliance programs.

(4) Provide leadership and training to agencies and assist them in conducting contract compliance program audits such as periodic onsite reviews.

(5) Investigate and make reports relating to the administration of contracting programs and operations.

(6) Require contractors and grantees to agree, as a condition in their contracts or agreements with the Commonwealth, not to discriminate in the award of subcontracts or supply contracts or in hiring, promotion or other labor matters on the basis of race, gender, creed, color, sexual orientation, gender identity or expression, or participation or decision to refrain from participation in protected labor activities.

(7) Ensure that contractors and grantees receiving Commonwealth funds have, as a condition of payment or funding, a written sexual harassment policy and that employees of the contractor or grantee are aware of the policy.

(b) Agency heads under the Governor's jurisdiction shall:

(1) Ensure that the agency's commitment to the contract compliance program is clearly understood and appropriately furthered by all agency employees.

(2) Create contract compliance plans, coordinate the development of activities to implement agency plans, and develop audit and reporting systems to measure the effectiveness of the agency's contract compliance programs.

(3) Designate a responsible official to supervise the agency's contract compliance program.

(4) Designate a contract administrator to carry out all agency responsibilities regarding contract compliance as articulated in this subchapter.

(5) Upon request, furnish pertinent information or assistance to the Department.

(6) Recommend sanctions to the Secretary of General Services, as may be appropriate, for lack of compliance with Commonwealth contracting programs.

(c) For programs when an agency's receipt and use of Federal funds are subject to approval and oversight by a Federal funding agency, agency heads under the Governor's jurisdiction will comply with those contract compliance requirements imposed by that Federal agency as a condition of eligibility for the funds rather than program requirements established by the Department.

**§ 1.874. Cooperation by Commonwealth agencies.**

Agency heads and agencies, boards and commissions under the Governor's jurisdiction shall work cooperatively with the Department of General Services (Department) to fulfill the demands of this subchapter. Independent agencies, State-affiliated entities and State-related agencies are strongly encouraged to work with the Department to adopt, refine and implement similar procurement practices and procedures to support greater diversity, inclusion and fairness in the contracting process.

**§ 1.875. General provisions.**

Nothing in this subchapter shall be construed to impair or otherwise affect the authority granted by law to an executive department, agency or the head thereof. This subchapter is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the Commonwealth, its departments, agencies or entities, its officers, employees or agents, or any other person.

**§ 1.876. Rescission.**

Executive Order 2006-02, Contract Compliance, was rescinded April 6, 2016.

**§ 1.877. Effective date.**

This amended subchapter takes effect immediately.

[Pa.B. Doc. No. 18-1100. Filed for public inspection July 20, 2018, 9:00 a.m.]

**Title 4—ADMINISTRATION****PART I. GOVERNOR'S OFFICE**

[ 4 PA. CODE CH. 1 ]

[ EXECUTIVE ORDER NO. 2016-02 AMENDED ]

**Minimum Wage for Employees of the Commonwealth and of Organizations Receiving State Contracts**

June 28, 2018

*Whereas*, the inflation-adjusted hourly earnings of the bottom fifth of Pennsylvania workers are lower today than they were in 1979; and

*Whereas*, the current minimum wage of \$7.25 per hour has 26 percent less purchasing power than the minimum wage had in 1979; and

*Whereas*, the decline in the purchasing power of the minimum wage is the major reason why the earnings of the lowest-paid Pennsylvanians have fallen; and

*Whereas*, a full-time, year-round worker earning the current minimum wage earns less than the federal poverty threshold for a family of two; and

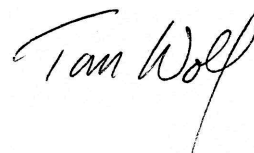
*Whereas*, studies have consistently shown that increases in the minimum wage have not reduced the employment of low-wage workers; and

*Whereas*, an increase in the minimum wage will lead to increases in employee morale, productivity, and quality of work and decreases in turnover and the costs of training and supervision; and

*Whereas*, it is the policy of this administration to increase efficiency and achieve cost savings in state government; and

*Whereas*, an increase in the minimum wage will achieve efficiency and cost savings for state government and reduce state expenditures on income support programs;

*Now, Therefore*, I, Tom Wolf, Governor of the Commonwealth of Pennsylvania, by the virtue of the authority vested in me by the Constitution and laws of the Commonwealth of Pennsylvania do hereby direct the following:



Governor

**Fiscal Note:** GOV-16-02 (Amended). (1) Multiple Funds;

(7) General Fund; (2) Implementing Year 2018-19 is \$663,000; (3) 1st Succeeding Year 2019-20 is \$789,000; 2nd Succeeding Year 2020-21 is \$917,000; 3rd Succeeding Year 2021-22 is \$1,044,000; 4th Succeeding Year 2022-23 is \$1,170,000; 5th Succeeding Year 2023-24 is \$1,296,000;

(7) State Lottery Fund; (2) Implementing Year 2018-19 is \$33,000; (3) 1st Succeeding Year 2019-20 is \$39,000; 2nd Succeeding Year 2020-21 is \$45,000; 3rd Succeeding Year 2021-22 is \$51,000; 4th Succeeding Year 2022-23 is \$57,000; 5th Succeeding Year 2023-24 is \$63,000;

(7) Motor License Fund; (2) Implementing Year 2018-19 is \$64,000; (3) 1st Succeeding Year 2019-20 is \$76,000; 2nd Succeeding Year 2020-21 is \$88,000; 3rd Succeeding Year 2021-22 is \$100,000; 4th Succeeding Year 2022-23 is \$112,000; 5th Succeeding Year 2023-24 is \$123,000;

(7) State Stores Fund; (2) Implementing Year 2018-19 is \$131,000; (3) 1st Succeeding Year 2019-20 is \$225,000; 2nd Succeeding Year 2020-21 is \$317,000; 3rd Succeeding Year 2021-22 is \$505,000; 4th Succeeding Year 2022-23 is \$1,321,000; 5th Succeeding Year 2023-24 is \$2,218,000;

(7) Game Fund; (2) Implementing Year 2018-19 is \$43,000; (3) 1st Succeeding Year 2019-20 is \$55,000; 2nd Succeeding Year 2020-21 is \$67,000; 3rd Succeeding Year 2021-22 is \$79,000; 4th Succeeding Year 2022-23 is \$91,000; 5th Succeeding Year 2023-24 is \$102,000;

(7) Rehabilitation Center Fund; (2) Implementing Year 2018-19 is \$3,000; (3) 1st Succeeding Year 2019-20 is \$4,000; 2nd Succeeding Year 2020-21 is \$4,000; 3rd Succeeding Year 2021-22 is \$5,000; 4th Succeeding Year 2022-23 is \$5,000; 5th Succeeding Year 2023-24 is \$6,000;

(4)\* 2017-18 Program—\$70,295,000; 2016-17 Program—\$67,950,000; 2015-16 Program—\$64,314,000;

(8) recommends adoption. Funds have been included in the budget to cover this increase.

\*Totals include General Fund, State Lottery Fund, Motor License Fund, State Stores Fund, Game Fund and Rehabilitation Center Fund.

### Annex A

#### TITLE 4. ADMINISTRATION

#### PART I. GOVERNOR'S OFFICE

#### CHAPTER 1. AGENCY OPERATION AND ORGANIZATION

#### Subchapter EEE. MINIMUM WAGE FOR EMPLOYEES OF THE COMMONWEALTH AND OF ORGANIZATIONS RECEIVING STATE CONTRACTS

##### § 1.841. Minimum wage.

All employees covered by this subchapter, other than tipped employees, shall be paid no less than:

(1) \$12.00 per hour after the effective date of this subchapter.

(2) Beginning July 1, 2019, and annually thereafter, the minimum wage will be increased by of \$0.50 until July 1, 2024, when the minimum wage reaches \$15.00. Thereafter, the minimum wage rate would be increased by an annual cost-of-living adjustment using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for Pennsylvania, New Jersey, Delaware and Maryland. The applicable amount will be published in the *Pennsylvania Bulletin* by March 1 of each year to be effective the following July 1.

##### § 1.842. Coverage.

For the purpose of this subchapter, "employee" is defined as in section 3 of The Minimum Wage Act of 1968 (43 P.S. § 333.103). Employees exempt from the minimum wage under The Minimum Wage Act of 1968 (43 P.S. §§ 333.101—333.115) are not covered by this subchapter. The employees covered by this subchapter are:

(1) Employees of Commonwealth agencies under the jurisdiction of the Governor.

(2) Employees who meet any of the following, when the service, construction or ancillary service is called for in a new lease of property or contract for services or construction exceeding the applicable small purchase threshold entered into with a Commonwealth agency under the jurisdiction of the Governor, or bilateral modifications to existing leases or contracts, entered into after the effective date of this subchapter:

(i) Directly perform services or construction.

(ii) Directly perform services for the Commonwealth and are employed by a lessor of property to the Commonwealth.

(iii) Spend at least 20% of their working time in a given work week performing an ancillary service.

##### § 1.843. Implementation.

All Commonwealth agencies under the jurisdiction of the Governor shall take all steps necessary to implement this subchapter. Independent agen-

cies, State-affiliated entities and State-related institutions are also strongly encouraged to implement this subchapter.

**§ 1.844. Sanctions.**

Failure of a covered contractor or lessor to comply with this subchapter may result in the imposition of sanctions, which may include, but are not limited to, termination of the contract or lease, nonpayment, debarment or referral to the Office of General Counsel for appropriate civil or criminal referral.

**§ 1.845. Application.**

(a) Nothing in this subchapter shall be construed to contravene or supersede:

(1) Any State or Federal law or collective bargaining agreement.

(2) Any State or local policy requiring a covered employee to be paid more than the minimum wage required by this subchapter.

(b) This chapter is not applicable when the provisions may jeopardize the receipt of Federal funds.

(c) This subchapter is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the Commonwealth, its departments, agencies or entities, its officers, employees or agents, or any other person.

**§ 1.846. Effective dates.**

This subchapter shall take effect on the following dates and shall remain in effect until modified or rescinded:

(1) For employees described in § 1.842(1) (relating to coverage), July 1, 2018.

(2) For employees described in § 1.842(2), on the effective date of the applicable contract or lease solicited or bilaterally modified on or after July 1, 2018.

[Pa.B. Doc. No. 18-1101. Filed for public inspection July 20, 2018, 9:00 a.m.]

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