

# THE GOVERNOR

## Title 4—ADMINISTRATION

### PART I. GOVERNOR'S OFFICE

[ 4 PA. CODE CH. 1 ]

[ EXECUTIVE ORDER NO. 2016-05 ]

#### Contract Compliance

April 7, 2016

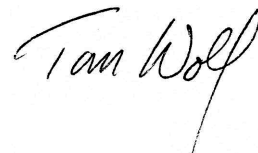
*Whereas*, this Administration is committed to promoting the prosperity and economic growth of all businesses and citizens of the Commonwealth of Pennsylvania, regardless of race, gender, creed, color, sexual orientation, or gender identity or expression; and

*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, or gender identity or expression 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, or gender identity or expression does not exist with respect to the award, selection, or performance of any contracts or grants issued by Commonwealth agencies.



Governor

**Fiscal Note:** GOV-16-05. No fiscal impact; (8) recommends adoption.

#### Annex A

### TITLE 4. ADMINISTRATION

#### PART I. GOVERNOR'S OFFICE

#### CHAPTER 1. AGENCY OPERATION AND ORGANIZATION

#### Subchapter QQ. (Reserved)

§§ 1.511—1.514. (Reserved).

#### Subchapter HHH. CONTRACT COMPLIANCE PROGRAM

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**§ 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 contracts and grants.
- (2) Nondiscrimination by those who are awarded Commonwealth contracts and grants in the hiring and treatment of their employees.
- (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 terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*Gender identity or expression*—The gender-related identity, appearance, mannerisms, expression or other gender-related characteristics of an individual regardless of the individual's designated sex at birth.

*Sexual orientation*—Heterosexuality, homosexuality or bisexuality.

**§ 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, or gender identity or expression.
- (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, is rescinded.

**§ 1.877. Effective date.**

This subchapter takes effect immediately.

[Pa.B. Doc. No. 16-687. Filed for public inspection April 22, 2016, 9:00 a.m.]

**PART I. GOVERNOR'S OFFICE**  
**[ 4 PA. CODE CH. 1 ]**  
**[ EXECUTIVE ORDER NO. 2016-04 ]**  
**Equal Employment Opportunity**

April 7, 2016

*Whereas*, it is the policy of the Commonwealth of Pennsylvania to treat all Pennsylvanians with dignity and respect, and to enhance the recognition, dignity, and protection of all Pennsylvanians; and

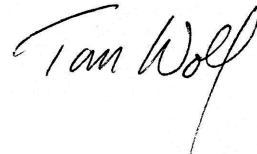
*Whereas*, the Commonwealth of Pennsylvania and its agencies should continue to be vigilant in assuring a continued commitment to treat all Pennsylvanians, including the Commonwealth's employees and officials, without regard to race, color, religious creed, ancestry, union membership, age, gender, sexual orientation, gender identity or expression, national origin, AIDS or HIV status, or disability; and

*Whereas*, this Administration believes that the employment practices of the Commonwealth of Pennsylvania must be nondiscriminatory in intent and effect to promote public confidence in the fairness and integrity of government; and

Whereas, past Governors of the Commonwealth have recognized a constitutional and legislative mandate to take affirmative steps to remedy employment discrimination and have issued Executive Orders promoting equal employment opportunity; and

Whereas, this Administration is committed to strengthening and developing equal employment opportunity programs in the Commonwealth.

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 order and direct as follows.



Governor

**Fiscal Note:** GOV-16-04. No fiscal impact; (8) recommends adoption.

#### Annex A

### TITLE 4. ADMINISTRATION

#### PART I. GOVERNOR'S OFFICE

#### CHAPTER 1. AGENCY OPERATION AND ORGANIZATION

#### Subchapter M. (Reserved)

- § 1.161. (Reserved).
- § 1.162. (Reserved).
- § 1.165. (Reserved).
- § 1.168. (Reserved).

#### Subchapter GGG. EQUAL EMPLOYMENT OPPORTUNITY

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|--------|--|
| Sec.   |  |
| 1.861. | Prohibition of discrimination and affirmation of equal employment opportunity. |
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| 1.863. | Responsibility for implementing equal employment opportunity.                  |
| 1.864. | Cooperation by Commonwealth agencies.  |
| 1.865. | General provisions.  |
| 1.866. | Rescission.  |
| 1.867. | Effective date.  |

#### § 1.861. Prohibition of discrimination and affirmation of equal employment opportunity.

(a) An agency under the Governor's jurisdiction may not discriminate against any employee or applicant for employment on the basis of race, color, religious creed, ancestry, union membership, age, gender, sexual orientation, gender identity or expression, national origin, AIDS or HIV status, or disability.

(b) Each agency under the Governor's jurisdiction shall ensure fair and equal employment opportunities exist at every level of government.

(c) Sexual harassment or harassment based on any of the factors in subsection (a) is prohibited.

#### § 1.862. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*Gender identity or expression*—The gender-related identity, appearance, mannerisms, expression or other gender-related characteristics of an individual regardless of the individual's designated sex at birth.

*Sexual orientation*—Heterosexuality, homosexuality or bisexuality.

#### § 1.863. Responsibility for implementing equal employment opportunity.

(a) The Secretary of Administration shall supervise the development, implementation and enforcement of the Commonwealth's equal employment

opportunity programs through the Bureau of Workforce Planning, Development and Equal Employment Opportunity, which shall in turn:

(1) Develop and promote steps designed to ensure a diverse workforce, equal employment opportunity and fair treatment of the protected classes in § 1.861(a) (relating to prohibition of discrimination and affirmation of equal employment opportunity) at all levels of state government.

(2) Develop Commonwealth-wide equal employment opportunity policies, procedures and training to ensure consistency and uniformity.

(3) Conduct or participate in periodic onsite reviews and audits of agency equal employment opportunity programs.

(4) Develop complaint investigation and resolution procedures for implementation by agencies under the Governor's jurisdiction.

(5) Review complaint investigation reports at any stage of the complaint process.

(6) Develop and implement a standardized equal employment opportunity procedure to monitor personnel transactions in Commonwealth agencies under the Governor's jurisdiction.

(7) Develop and issue guidelines for the conduct of agency equal employment opportunity programs and the review of equal employment opportunity plans prior to implementation.

(8) Design and implement monitoring and reporting systems to measure the effectiveness of agency equal employment opportunity programs.

(9) Consult with agency officials regarding personnel actions implicating equal employment opportunity, including recruitment, hiring, promotion, demotion, separation, transfer, performance standards and evaluation, and rate of pay.

(10) Provide leadership to agencies in the design and implementation of innovative equal employment opportunity strategies that will further the Commonwealth's commitment to equal employment opportunity.

(11) Examine in particular whether employees or applicants for employment experience workplace challenges due to sexual orientation and/or gender identity or expression and identify ways to minimize any the challenges.

(12) Evaluate the Commonwealth's hiring and job retention practices to ensure compliance with this subchapter.

(13) Coordinate, as needed, with the Bureau of Diversity, Inclusion and Small Business Opportunities within the Department of General Services to ascertain how equal employment opportunity best practices can promote diversity, inclusion and fairness in Commonwealth contracting.

(b) Heads of departments and agencies under the Governor's jurisdiction shall:

(1) Designate an Equal Opportunity Officer with the primary responsibility of developing and implementing the agency's equal employment opportunity program.

(2) Ensure that the agency Equal Opportunity Officer reports directly to the individual who has overall responsibility for the agency's equal employment opportunity program.

(3) Ensure that the agency's commitment to equal employment opportunity is clearly transmitted to agency employees and that bureau directors and managers provide adequate support to the Equal Opportunity Manager or Specialist in the development and implementation of program plans designed to achieve the agency's equal employment opportunity objectives.

(4) Seek input from the Director of the Bureau of Workforce Planning, Development and Equal Employment Opportunity on personnel actions affecting equal employment opportunity professional staff.

(5) Ensure that the agency develops and implements effective equal employment opportunity plans in addition to auditing and reporting mechanisms.

(6) Ensure that agency supervisory and management employees are rated on equal employment opportunity, diversity and inclusiveness based in part upon criteria identified in the agency's equal employment opportunity plan.

**§ 1.864. Cooperation by Commonwealth agencies.**

Agency heads and agencies, boards and commissions under the Governor's jurisdiction shall work cooperatively with the Governor's Office of Administration and its Bureau of Workforce Planning, Development and Equal Employment Opportunity to fulfill the demands of this subchapter. Independent agencies, State-affiliated entities and State-related agencies are strongly encouraged to join with the Governor's Office of Administration to adopt, refine and implement similar practices and procedures to support greater diversity, inclusion and fairness in employment opportunities within their workforce.

**§ 1.865. 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.

**§ 1.866. Rescission.**

Executive Order 2003-10, Equal Employment Opportunity, is rescinded.

**§ 1.867. Effective date.**

This subchapter takes effect immediately.

[Pa.B. Doc. No. 16-688. Filed for public inspection April 22, 2016, 9:00 a.m.]