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**Authority**

The provisions of this Chapter 49 issued under section 7(d) of the Pennsylvania Human Relations Act (43 P. S. § 957(d)), as revised by Executive Order 1972-1, dated December 6, 1972, unless otherwise noted.

**Source**

The provisions of this Chapter 49 adopted March 8, 1974, effective March 9, 1974, 4 Pa.B. 409; amended March 7, 1975, effective March 8, 1975, 5 Pa.B. 434, unless otherwise noted.

**Cross References**

This chapter cited in 4 Pa. Code § 68.2 (relating to imposition of sanctions); 22 Pa. Code § 32.1 (relating to general authority); 55 Pa. Code § 3130.21 (relating to responsibilities of county executive officers); 55 Pa. Code § 3700.11 (relating to pertinent statutes and regulations); and 67 Pa. Code § 457.4 (relating to statements to be furnished under oath).

**GENERAL PROVISIONS**

**§ 49.1. Definitions.**

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

*Age*—40 to 62 years, inclusive.

*Commission*—The Pennsylvania Human Relations Commission created by the Pennsylvania Human Relations Act (43 P. S. §§ 951—963).

*Commonwealth*—The Commonwealth of Pennsylvania.

*Contractor*—A contractor, supplier, vendor or other person who, through a contract or other arrangement, has received, is to receive, or is receiving public funds or in kind contributions from the Commonwealth; and shall include a subcontractor who performs under a State contract. Contractors, whether corporate or natural persons, are designated in this chapter by the use of third person neuter pronouns.

*Hearing examiner*—An individual attorney, or Hearing Examiner Board including at least one attorney, designated to conduct hearings either by the Commission or by a state contracting agency.

*Labor organization*—An organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning terms or conditions of employment or of other mutual aid or protection in relation to employment.

*Minority, minorities, minority person or minority group persons*—Persons who may be excluded or discriminated against because of race, color, religious creed, national origin, ancestry, sex or age.

*Nondiscrimination clause*—The clause to be included in State contractual agreements or other arrangements under the provisions set forth in § 49.101 (relating to nondiscrimination clause).

*Order*—Executive Order 1972-1.

*Person*—A natural person, corporation, partnership, unincorporated association, State or local government and any agency, commission, authority, board or other instrumentality or political subdivision of government.

*State contract*—An agreement, purchase order or arrangement or modification thereof between the Commonwealth or a State contracting agency, and a person to be paid in whole or in part, directly or indirectly, by public funds or in kind contributions from the Commonwealth.

*State contracting agency or agency*—A department, agency, commission, authority, establishment or other instrumentality of the Commonwealth and any wholly or partially owned government corporation, subject to the jurisdiction of the Governor, which enters into contracts.

#### Cross References

This section cited in 16 Pa. Code § 49.101 (relating to nondiscrimination clause).

### § 49.2. Policy and purpose.

Nondiscrimination and equal opportunity are the policy of the Commonwealth and the Commission in all its decisions, programs and activities. The purpose of this chapter is to achieve the aims of the United States and Pennsylvania Constitutions, Executive Order 1984-1 codified at 4 Pa. Code §§ 1.161—1.167 (relat-

ing to affirmative action), the Pennsylvania Human Relations Act (43 P. S. §§ 951—962.2), and 43 P. S. § 153, by assuring that all persons are accorded equal employment opportunity without regard to race, color, national origin, ancestry, religious creed, age or sex. This chapter applies to the contracting agencies of this Commonwealth and to contractors who perform under State contracts.

### **POWERS AND DUTIES OF THE DIRECTOR OF CONTRACT COMPLIANCE**

#### **§ 49.11. Generally.**

The Director of Contract Compliance, a designee of the Commission, is the officer responsible for the administration of a uniform contract compliance program for equal employment opportunity for all State agencies under the direction of the Commission.

#### **§ 49.12. Supervision.**

Though each agency is primarily responsible for obtaining compliance with the provisions of this chapter and has management control over its officers and employes, the Commission, through the Director of Contract Compliance, will supervise, monitor and coordinate programs of the agency contract compliance officers and provide uniform guidelines and procedures, when appropriate, for the performance of their duties.

#### **§ 49.13. Review of compliance program.**

The Director of Contract Compliance will review, periodically, the operation of the contract compliance program and take whatever action is necessary to assure the proper implementation of this chapter.

#### **§ 49.14. Requesting information.**

The Director of Contract Compliance may request from agency contract compliance officers information and assistance that may be necessary to enforce this chapter.

#### **§ 49.15. Hearing examiners.**

The Attorney General will, in consultation with the Director of Contract Compliance review the qualifications of each of the contracting agency hearing examiners in order to determine their competence to adjudicate questions of employment discrimination, and will approve the hearing examiners as are found qualified to hold hearings under this chapter.

#### **Cross References**

This section cited in 16 Pa. Code § 49.64 (relating to certified examiners).

**§ 49.16. Reports.**

The Director of Contract Compliance will act under the direction of the Commission, and make periodic, formal reports to the Commission that the Commission will require as to the progress of implementation of the provisions of this chapter. The Commission will forward a copy of these formal reports to the Governor.

**§ 49.17. Order of imposition of sanctions.**

If sanctions are recommended against contractors involving coordinated action by more than one Commonwealth agency, the Director of Contract Compliance will approve the imposition of the sanctions prior to their transmittal of a notice of noncompliance under § 49.62 (relating to notice of noncompliance).

**§ 49.18. Complaints by employees.**

Complaints by employees or applicants for employment of a State contractor received by the Director of Contract Compliance will be referred to the Commission for investigation. The Commission shall forward the results of an investigation to the Director of Contract Compliance who may take whatever action is authorized by the provisions of this chapter.

**Cross References**

This section cited in 16 Pa. Code § 49.65 (relating to investigation of complaints).

**§ 49.19. Cooperation with other agencies.**

The Director of Contract Compliance shall make every effort, directly and through State contracting agencies, other interested State, Federal and local agencies, State recipients and all other available instrumentalities including the Commission to cause a contractor or labor union engaged in work under State contracts to cooperate in the implementation of this chapter. The Director of Contract Compliance may, in appropriate cases, notify the Commission and the respective contracting agencies whenever the Director of Contract Compliance has evidence that the practices of any contractor or labor union are in violation of the Pennsylvania Human Relations Act (43 P. S. §§ 951—963), 43 P. S. § 153, this chapter and other related State laws. The Director of Contract Compliance may also, in appropriate cases, notify the Federal Equal Employment Opportunity Commission, the Office of Federal Contract Compliance or the Federal agency to which the OFCC has specifically delegated its contract compliance authority when the Director has evidence that the practices of a contractor or labor union violate the Federal Civil Rights Act of 1964 (42 U.S.C.A. § 2000 et seq.) or other related Federal laws.

**§ 49.20. Meetings with Contract Compliance Advisory Board.**

The Director of Contract Compliance shall meet regularly with the Contract Compliance Advisory Board to receive the assistance, advice and recommendations of the Board on the implementation of the Contract Compliance Program, and to report on the implementation of that program.

**POWERS AND DUTIES OF THE AGENCY CONTRACT COMPLIANCE OFFICER****§ 49.31. Generally.**

The head of a Commonwealth contracting agency shall designate a qualified agency contract compliance officer and other qualified staff as necessary.

**§ 49.32. Responsibilities.**

An agency contract compliance officer shall be primarily responsible for obtaining compliance with the nondiscrimination clause, this chapter and orders issued by the Director of Contract Compliance.

**§ 49.33. Access to information.**

An agency contract compliance officer shall have free access to documents and other sources of information relevant to the implementation of the provisions of this chapter within the officer's agency, but the contents of the documents will not be disclosed to a person except for a purpose directly related to the implementation of the provisions of this chapter.

**§ 49.34. Cooperation with the Director of Contract Compliance.**

An agency contract compliance officer shall cooperate with the Director of Contract Compliance and shall furnish the information, reports and assistance as the Director of Contract Compliance may require in the implementation of this chapter. An agency contract compliance officer shall furnish the Director of Contract Compliance with copies of all official communications and official notices or other documents as shall be required by the Director of Contract Compliance.

**§ 49.35. Information concerning compliance by contractors.**

An agency contract compliance officer may, in accordance with priorities established in cooperation with the Director of Contract Compliance, obtain and inspect relevant documents and papers of contractors doing business with that officer's agency, including any information regarding existing affirmative action programs, reasonably necessary to determine whether or not the contractor is in compliance with this chapter. To the greatest extent possible, agency contract compliance officers shall attempt to minimize the burden and expense of the requirements for information by the following:

- (1) Utilizing forms and standards similar to those used by the Federal equal employment opportunity programs.
- (2) Accepting forms and reports prepared for Federal agencies where the information contained therein is sufficient for the Commonwealth's purposes.
- (3) Minimizing duplication of programs and procedures.
- (4) Inspecting and copying relevant documents contained in a contractor's files rather than requiring the contractor to provide them.
- (5) Accepting as in compliance with the provisions of this chapter an "affirmative action plan" or "hometown" plan approved by the Federal authorities or a plan issued by a court order or decree, unless it can be clearly demonstrated that the plans are not in conformity with the provisions of this chapter.

#### Cross References

This section cited in 16 Pa. Code § 49.101 (relating to nondiscrimination clause).

### § 49.36. Compliance review.

- (a) An agency contract compliance officer shall receive information to determine whether contractors are in compliance with this chapter, and the nondiscrimination clause required by § 49.101 (relating to nondiscrimination clause). A determination by one State contracting agency that a contractor is in compliance shall create a presumption of compliance as to all other State contracting agencies.
- (b) The purpose of a compliance review is to determine if a State contractor maintains nondiscriminatory hiring and employment practices under which applicants are employed and employees are placed, trained, upgraded, promoted and otherwise treated during employment without regard to race, color, religious creed, national origin, ancestry, sex or age. If a contractor is operating under an existing affirmative action plan, compliance review will also seek to determine whether the contractor is making a good faith effort to comply with that plan. A compliance review shall consist of a comprehensive analysis and evaluation of each aspect of the aforementioned policies and practices, and conditions resulting therefrom. The review shall consider, inter alia, whether minority groups and women are currently being discriminated against in any one or more job classification. Classification shall mean one or more groups of jobs having similar content, wage rates and opportunities.
- (c) In determining whether minorities and women are being discriminated against in a job classification the following factors shall be considered, where relevant, in accordance with the standards and definitions as the Commission shall promulgate and publish:
  - (1) The minority and female population of the labor area surrounding the facility.

- (2) The size of the minority and female employment and unemployment force in the labor area surrounding the facility.
  - (3) The percentage of the minority and female work force as compared with the total work force in the immediate labor areas.
  - (4) The general availability of minorities and women having requisite skills in the immediate labor area.
  - (5) The availability of minorities and women having requisite skills in an area in which the contractor can reasonably recruit.
  - (6) The availability of promotable and transferable minorities and women within the facility, except where it is the general policy of the contractor to transfer and/or promote personnel in certain job classifications within a larger organizational unit, in which case the availability of qualified minorities and women within that unit must be considered;
  - (7) The existence of training institutions capable of training persons in the requisite skills.
  - (8) The degree of training which the contractor is reasonably able to undertake as a means of making all job classifications available to otherwise qualified minorities and women.
- (d) Compliance review shall consist of a thorough analysis of each contractor's employment practices and the effects of such practices. Exact proportional representation of minority and female employees is not required by the provisions of this chapter. Good faith in implementing nondiscriminatory policies, taking into account the effects of past discrimination, is required.

#### **Cross References**

This section cited in 22 Pa. Code § 32.5 (relating to compliance review).

### **§ 49.37. Notifying contractor.**

- (a) After review, the agency contract compliance officer shall notify the contractor whether or not it has been found to be in compliance. If deficiencies are found to exist as a result of a compliance review, reasonable efforts shall be made to secure compliance through conciliation and persuasion. The commitment may include preparation and implementation of an affirmative action program as described in this chapter.
- (b) The commitments shall include the precise action to be taken and dates for completion. The time period estimated shall be no longer than the minimum period necessary to effect the changes.
- (c) A contractor shall be considered in compliance if it makes every good faith effort to keep the commitments.

#### **Cross References**

This section cited in 4 Pa. Code § 68.1 (relating to summary of controlling law and regulation); 16 Pa. Code § 49.51 (relating to purpose); and 16 Pa. Code § 49.62 (relating to notice of noncompliance).



**§ 49.38. Bidder's list.**

(a) If an agency requires bidders to be prequalified, the agency contract compliance officer shall immediately begin, under the supervision of the Director of Contract Compliance, to establish a program to require compliance with this chapter by all persons on the prequalified bidder's list by the date as shall be determined by the Director of Contract Compliance in consultation with the Commission and the agency. A person not in compliance as of the date shall be subject to administrative hearing and adjudication in compliance with the 2 Pa.C.S. §§ 501—508 and 701—704 (relating to practice and procedure of Commonwealth agencies and judicial review of Commonwealth agency action), deemed unqualified and excluded from the bidder's list until the time as their qualification is established.

(b) It shall be the duty of a State agency to award and administer contracts in a nondiscriminatory manner. In doing so, it shall be permissible for the agency to take affirmative action to attract minority and female contractors, including specialized recruiting drives, publicity and assistance in bid preparation to ameliorate an imbalance caused by prior discrimination resulting in the exclusion or under-representation of the contractors.

(c) In publication of invitations to bid, each agency shall advertise in minority as well as general news media.

(d) Nothing in this subsection shall be interpreted to detract from the concept of competitive bidding.

**CONTRACT COMPLIANCE ADVISORY BOARD****§ 49.41. General.**

The commission shall establish and appoint members of a board to be known as the Contract Compliance Advisory Board. The Board will be composed of representatives of labor unions, state contractors and other interested groups. The purpose of the board will be to assist and advise the Commission in its implementation of the contract compliance program.

**AFFIRMATIVE ACTION PROGRAM****§ 49.51. Purpose.**

(a) An affirmative action program is a set of specific and result oriented procedures to which a contractor shall apply every good faith effort. The objective of those procedures and efforts is to assure equal employment opportunity. An acceptable affirmative action program shall include an analysis of areas within which the contractor may be discriminating, unintentionally or otherwise, against minority groups and women; and further goals and timetables to which the good faith efforts of the contractor shall be directed to correct the deficiencies and, thus

to eliminate all discrimination against minority groups and women at all levels and in all segments of its work force. A necessary prerequisite to the development of a satisfactory affirmative action program is the identification and analysis of problem areas of minority group (including women) employment, and an evaluation of opportunities for utilization of minority groups and women personnel.

(b) Not all State contractors are required to submit an affirmative action program. Affirmative action programs not voluntarily agreed to through conciliation and persuasion can be imposed by order only on those State contractors found deficient under § 49.37 (relating to notifying contractor) and who are so adjudicated after a hearing in accordance with § 49.62 (relating to notice of noncompliance).

#### Cross References

This section cited in 4 Pa. Code § 68.1 (relating to summary of controlling law and regulations); and 22 Pa. Code § 32.5 (relating to compliance review).

#### § 49.52. Content.

Effective affirmative action programs should contain, but not necessarily be limited to, the following:

- (1) Development or reaffirmation of the contractor's equal employment opportunity policy in all personnel actions.
- (2) Formal internal and external dissemination of the contractor's policy.
- (3) Establishment of responsibilities for implementation of the contractor's affirmative action program.
- (4) Identification of problem areas (deficiencies) by organization units and job classification, including timetables for completion. Goals may not be rigid and inflexible, nor may they be quotas which must be met, but must be targets reasonably attainable by applying every good faith effort to make all aspects of the entire affirmative action program work.
- (5) Development and execution of action oriented programs designed to attain established goals and objectives.
- (6) Design and implementation of internal audit and reporting systems to measure effectiveness of the total program.
- (7) Compliance of personnel policies and practices with the Employee Selection Procedures and Sex Discrimination Guidelines of the Commission.
- (8) Solicitation of the support and cooperation of local and national community action programs and community service programs, designed to improve the employment opportunities of minorities and women.
- (9) Consideration of minorities and women not currently in the work force having requisite skills who may be recruited through affirmative action measures.

(10) In establishing timetables to meet goals and commitments, the contractor shall consider the anticipated expansion, contraction, and turnover of and in the work force.

(11) Goals, timetables, and affirmative action commitments shall be designed to correct any identifiable deficiencies.

(12) The goals and timetables, with supporting data and the analysis thereof, shall be part of the contractor's written affirmative action program. This data shall include, but not be limited to, progression line charts, seniority rosters, applicant flow data, and applicant rejection ratios indicating minority and sex status.

#### Cross References

This section cited in 4 Pa. Code § 68.1 (relating to summary of controlling law and regulations); and 22 Pa. Code § 32.5 (relating to compliance review).

### COMPLIANCE REVIEW

#### § 49.61. Compliance status.

(a) Each contractor's compliance posture shall be reviewed and determined by reviewing its employment practices and their effects.

(b) If an affirmative action program exists, no contractor's compliance status shall be judged solely by whether or not it reaches its goals or meets its timetables. Rather, a contractor's compliance posture may be determined by reviewing the contents of its program, the extent of its adherence to the program, and its good faith efforts to make the program work toward a realization of goals within the timetables set for completion.

#### Cross References

This section cited in 4 Pa. Code § 68.1 (relating to summary of controlling law and regulations).

#### § 49.62. Notice of noncompliance.

(a) If efforts to secure compliance with this chapter or with the contract non-discrimination clause through conciliation and persuasion have failed or if the agency contract compliance officer finds that the contractor has not made the requisite good faith effort to meet its commitments made under § 49.37 (relating to notifying contractor), the agency contract compliance officer shall issue a notice of noncompliance to the contractor giving it 30 days after receipt of that notice to show cause why the imposition of sanctions under this chapter should not be instituted. The notice shall set forth the specific deficiencies which constitute the basis of the asserted noncompliance.

(b) During the show-cause period of 30 days, the agency contract compliance officer shall continue, through conciliation, mediation and persuasion, to resolve the deficiencies which led to the determination of noncompliance.

(c) If the contractor is unable to show good cause for its failure to resolve the deficiencies, the Commonwealth contracting agency or the Commission shall issue a notice of proposed imposition of sanctions. The notice shall constitute an order to show cause within the meaning of 1 Pa. Code § 35.14 (relating to orders to show cause). The contractor shall be entitled to all of the rights provided by 2 Pa.C.S. §§ 501—508 and 701—704 (relating to practice and procedure of Commonwealth agencies and judicial review of Commonwealth agency action) and the regulations promulgated thereunder with respect to hearing and appeals. If a request for hearing is not made within the time provided by law, the sanctions described in the notice shall be immediately imposed unless compliance is obtained by agreement.

**Cross References**

This section cited in 16 Pa. Code § 49.17 (relating to order of imposition of sanctions); 16 Pa. Code § 49.51 (relating to purpose); and 16 Pa. Code § 49.64 (relating to certified examiners).

**§ 49.63. Determination of compliance status.**

The Commission, acting through the Director of Contract Compliance, may assume sole responsibility for the determination of the compliance status of a contractor at any stage of the compliance procedure. A hearing held by the Commission under the provisions of this chapter shall be conducted by a hearing examiner.

**Cross References**

This section cited in 16 Pa. Code § 49.71 (relating to generally).

**§ 49.64. Certified examiners.**

No hearing may be held under § 49.62(c) (relating to notice of noncompliance) by a hearing examiner not certified as qualified by the Attorney General under § 49.15 (relating to hearing examiners).

**§ 49.65. Investigation of complaints.**

The agency contract compliance officer shall forward any formal complaints alleging discrimination addressed to him by employees or applicants for employment of a State contractor, to the Commission for investigation under § 49.18 (relating to complaints by employees).

**§ 49.66. Notice.**

Two copies of notices of compliance, noncompliance or proposed imposition of sanctions shall be sent to the Director of Contract Compliance when the notices are forwarded to a contractor.

**SANCTIONS****§ 49.71. Generally.**

(a) In accordance with the rules, regulations or orders that the Commission may issue or adopt, the agency or the Commission may, after hearing and adjudication, impose one or more of the sanctions enumerated in subsection (b) as appropriate, to attain full and effective enforcement. If the Commission assumes responsibility for compliance review under § 49.63 (relating to determination of compliance status) the Commission may, after hearing and adjudication, order the imposition of appropriate sanctions and require the Commonwealth contracting agency to implement the sanctions.

(b) The Commission or agency may proceed as follows:

(1) Publish or cause to be published the names of contractors and labor unions which it has determined have complied or have failed to comply with the provisions of this chapter or with rules, regulations and orders of the Commission or the Agency.

(2) Recommend to the Attorney General that, in cases where there is substantial or material violation of this chapter, or the contract nondiscrimination clause, appropriate proceedings be brought to enforce such provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, compliance with provisions of this chapter.

(3) Recommend to the appropriate law enforcement official that criminal proceedings be brought for willfully furnishing false information to any state contracting agency or the Commission, as the case may be.

(4) Provide for the fixed-period suspension of the remaining obligations under the contract pending compliance by the contractor with this chapter and the termination of the remaining obligations under the contract; provided that the failure of the contractor to comply with the adjudication within the fixed period stated in the order (but not fewer than 30 days) shall be considered a material breach and shall give the Commonwealth the right to bring an action against the contractor and the surety on the contractor's bond to recover expenses incurred in reletting the contract, delay in performance, or other verifiable damages.

(5) Provide that a Commonwealth contracting agency shall refrain from entering into further State contracts or extensions, or other modifications of existing contracts with a noncomplying State contractor and that a State contracting agency which requires prequalification of bidders shall revoke the qualification of a noncomplying State contractor until the contractor has satisfied the agency or the Commission that it has established and shall carry out personnel and employment policies in compliance with this chapter.

**Cross References**

This section cited in 4 Pa. Code § 68.2 (relating to imposition of sanctions).

**CONTRACTUAL AGREEMENT****§ 49.101. Nondiscrimination clause.**

(a) Every State contract as defined in § 49.1 (relating to definitions) shall contain a nondiscrimination clause barring discrimination in employment because of race, color, religious creed, national origin, ancestry, sex or age.

(b) Every State contract between a Commonwealth agency engaged in granting financial assistance, including but not limited to State loans or State guarantees of student loans, and a bank, banking institution or other organization shall contain a nondiscrimination clause barring discrimination in employment because of race, color, religious creed, national origin, ancestry, sex or age.

(c) Every State contract for the deposit of Commonwealth funds in a bank, banking institution or trust company shall, upon the approval of the Board of Finance and Revenue, contain a nondiscrimination clause barring discrimination in employment because of race, color, religious creed, national origin, ancestry, sex or age.

(d) The nondiscrimination clause to be incorporated into every contractual agreement or other arrangement shall be in the following form:

**NONDISCRIMINATION CLAUSE**

During the term of this contract, Contractor agrees as follows:

1. Contractor shall not discriminate against any employe, applicant for employment, independent contractor, or any other person because of race, color, religious creed, ancestry, national origin, age, or sex. Contractor shall take affirmative action to ensure that applicants are employed, and that employes or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, age, or sex. Such affirmative action shall include, but is not limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. Contractor shall post in conspicuous places, available to employes, agents, applicants for employment and other persons, a notice to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

2. Contractor shall in advertisements or requests for employment placed by it or on its behalf state all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, age, or sex.

3. Contractor shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understand-

ing, a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by Contractor.

4. It shall be no defense to a finding of a noncompliance with Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission or this nondiscrimination clause that Contractor had delegated some of its employment practices to any union, training program, or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the Contractor was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.

5. Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that Contractor will be unable to meet its obligations under the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission or this nondiscrimination clause, Contractor shall then employ and fill vacancies through other nondiscriminatory employment procedures.

6. Contractor shall comply with the Contract Compliance Regulations of the Pennsylvania Human Relations Commission, 16 Pa. Code Chapter 49 and with all laws prohibiting discrimination in hiring or employment opportunities. In the event of Contractor's noncompliance with the non-discrimination clause of this contract or with any such laws, this contract may, after hearing and adjudication, be terminated or suspended, in whole or in part, and Contractor may be declared temporarily ineligible for further Commonwealth contracts, and such other sanctions may be imposed and remedies invoked as provided by the Contract Compliance Regulations.

7. Contractor shall furnish all necessary employment documents and records to, and permit access to its books, records and accounts by, the contracting agency and the Human Relations Commission, for purposes of investigation to ascertain compliance with the provisions of the Contract Compliance Regulations, pursuant to § 49.35 (relating to information concerning compliance by contractors). If Contractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting agency or the Commission.

8. Contractor shall actively recruit minority subcontractors or subcontractors with substantial minority representation among their employees.

9. Contractor shall include the provisions of this nondiscrimination clause in every subcontract, so that such provisions will be binding upon each Subcontractor.

10. The terms used in this nondiscrimination clause shall have the same meaning as in the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission, 16 Pa. Code Chapter 49.

11. Contractor obligations under this clause are limited to the Contractor's facilities within Pennsylvania, or, where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

#### Notes of Decisions

##### *Injunction*

A preliminary injunction against the enforcement of certain paragraphs of the nondiscrimination clause cannot be granted if the court does not find that immediate and irreparable harm would result from the enforcement, or if the court errs in its finding that immediate and irreparable harm would result. *Hospital Association of Pennsylvania v. Department of Public Welfare*, 433 A.2d 450, 455 (Pa. 1981).

The enforcement of the provisions of paragraph 9 of the nondiscrimination clause would not necessarily result in immediate and irreparable harm by requiring contractors to reduce their previously oral agreements to writings which include the nondiscrimination clause, since there is no statutory or regulatory requirement for such reduction to writing; the fact that almost all of the original complaining contractors are complying with paragraph 9 further supports the conclusion that there is no immediate and irreparable harm. *Hospital Association of Pennsylvania v. Department of Public Welfare*, 433 A.2d 450 (Pa. 1981).

#### Cross References

This section cited in 4 Pa. Code § 68.61 (relating to nondiscrimination clause; compliance prequalification); 16 Pa. Code § 49.1 (relating to definitions); and 16 Pa. Code § 49.36 (relating to compliance review).

#### EFFECTIVE DATE

##### **§ 49.102. Effective date.**

A State contracting agency shall immediately take all appropriate action necessary to implement this chapter.

[Next page is 51-1.]