



January 28, 2022

Elizabeth Lincoln, Director
Minnesota Legislative Reference Library
645 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
Saint Paul, MN 55155-1050

Dear Director Lincoln:

The Minnesota Department of Human Rights (MDHR) submits this Equal Pay Certificate Report as its even year report to the governor and the chairs and ranking minority members of the committees in the Minnesota Senate and the Minnesota House of Representatives with primary jurisdiction over the department. The period for which this report covers is January 1, 2020 to December 31, 2021. This report is required to be submitted every other year under Minn. Stat. § 363A.44 Subd. 10.

Introduction

The following sections provide information regarding which contractors are required to obtain a certificate, the number of Equal Pay Certificates issued during this reporting period, the number of Equal Pay audits conducted during this reporting period, a summary of the department's auditing efforts, and a narrative about what information the department collects to address a state contractor's compensation processes.

Equal Pay Certificate

Any contractor that has 40 or more employees must have an equal pay certificate whenever it enters into an agreement that is likely to exceed \$500,000 with a department or agency of the State of Minnesota, the Metropolitan Council, the Minnesota Sports Facility Authority, the Metropolitan Airports Commission, or the Metropolitan Mosquito Control Commission.¹ Equal Pay Certificates are valid for four years.² Effective January 1, 2022, political subdivisions that receive general bond funding for capital projects will also be required to obtain an Equal Pay Certificate if they are entering into agreements likely to exceed \$1,000,000 and contract with a business that has 40 or more employees.³

¹ Minn. Stat. § 363A.44, Subd. 1(a).

² Id.

³ Minn. Stat. § 363A.44, Subd. 1(b).

There are two exceptions to the general rule for a contractor to have an equal pay certificate. The first exception is when the contractor has a license, certification, registration, provider agreement or provider enrollment contract and is **only** providing goods and services to individuals under one of the following chapters: 43A, 62A, 62C, 62D, 62E, 256I, 256L or 268A.⁴ The second exception is when the contractor has entered into a contract with the State Board of Investment for investment options under Minn. Stat. § 352.965, Subd. 4.⁵ In addition to these exceptions, the Commissioner of Administration may also grant an undue hardship exemption for a specific contract.⁶

Equal Pay Certificate Application & Compliance

A contractor may obtain an equal pay certificate by paying a \$250 application filing fee and submitting an equal pay compliance statement with the commissioner.⁷ The equal pay compliance statement must be signed by the chief executive officer or chairperson of the board.⁸ MDHR has published on its website an equal pay compliance statement to assist state contractors who are submitting an Equal Pay Certificate application. However, there is no obligation for a contractor to use the sample equal pay compliance statement. The commissioner must issue an equal pay certificate or state why the department denied the application within 15 days of submission of the application.⁹

The equal pay compliance statement, in part, requires the contractor’s chief executive officer or board chairperson to identify or state that it:

- Complies with Title VII of the Civil Rights Act of 1964, Equal Pay Act of 1963, the Minnesota Human Rights Act and Minnesota Equal Pay of Equal Work Law;
- Does not segregate women into certain job classifications;
- Makes retention and promotion decisions without regard to sex;
- Promptly corrects compensation and benefits disparities;
- Identify how often it evaluates its compensation practices; and
- Identify how it sets compensation and benefits¹⁰

Equal Pay Certificates Issued

During the reporting period – January 1, 2020 to December 31, 2021 – the department issued 830 Equal Pay Certificates.

Audits Conducted and Auditing Efforts

MDHR completed 17 equal pay compliance audits during the relevant reporting period. During this

⁴ Minn. Stat. § 363A.44, Subd. 1(c).

⁵ Id.

⁶ Id.

⁷ Minn. Stat. § 363A.44, Subd. 2(a).

⁸ Id.

⁹ Minn. Stat. § 363A.44, Subd. 3.

¹⁰ Minn. Stat. § 363A.44, Subd. 2.

reporting period, the department has shifted its enforcement approach to a strategic compliance model when determining which contractors to audit. This allowed the department to be data driven and focus its efforts on the sectors and the specific businesses most prone to non-compliance. Furthermore, the department has been combining workforce¹¹ and equal pay reviews into one holistic desk audit that is streamlined and provides the department with a fuller understanding of areas of technical assistance required as well as to correct contractors' non-compliance. While the number of contractors identified for audits are lower, the review is deeper and more meaningful to assist companies in their equity and inclusion efforts. Additionally, due to the COVID-19 pandemic, the department has been limited in its ability to conduct on-site audits and has shifted its role as primarily providing resources and support to companies who have been experiencing workforce shortage and stoppage, as well as logistical delays.

When conducting its auditing efforts, the department asks contractors it identifies for an audit to provide information about the compensation provided to employees working on state contracts. Compensation includes salary, incentive pay, bonuses, and benefits paid. The department requests documentation of the contractor's last wage analysis to ensure the contractor is consistently reviewing their compensation practices and applying any changes consistently.

In the instances where the department found discrepancies which might suggest a violation of federal or state law, the department provided the contractor with an opportunity to explain the difference in starting wage or annual compensation. The most common affirmative defenses advanced by contractors were collective bargaining agreements, years of service within the organization, years of relevant work experience, education, and performance. In some cases, contractors voluntarily raise the wages of the affected employee(s) once they realize the wage disparity.

Compensation Practices

In analyzing the compensation practices of a contractor, the department appreciates that setting an employee's compensation and benefits is a complex process. When conducting its analysis, the department will group employees who perform substantially equal work by using factors such as Equal Employment Opportunity (EEO) codes, job title, seniority, and pay grade in order to analyze outcomes and determine any pay gaps.

The department also reviews information provided by the contractor on the criteria it uses to determine starting wages. For example, the department asks contractors how often (one year, two years, three years, or "other") they evaluate wages and benefits to ensure compliance with equal pay laws. The department also asks contractors to delineate the numerous ways they determine their employee's respective compensations (options provided are to use a market pricing approach, state prevailing wage or union contract requirements, performance pay system, an internal analysis, or other specified methods). The department will analyze these responses for best practices and evaluate how their respectively stated compensation preferences are impacting any equal pay disparities.

¹¹ Per Minn. Stat. § 363A.36, the department also issues and enforces Workforce Certificates for state contractors.

Conclusion

MDHR takes great pride in reviewing, monitoring, and ensuring that contractors with the State of Minnesota are fulfilling Minnesota's equal pay laws. The department's mission is to make Minnesota discrimination free and monitoring Equal Pay Certificate compliance is a critical component in achieving this goal.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Lucero', with a small mark below the 'o'.

Rebecca Lucero
Commissioner

cc:

Amber Jones, Office of Governor Tim Walz and Lt. Governor Peggy Flanagan
Senator Warren Limmer
Senator Ron Latz
Representative Jamie Becker-Finn
Representative Peggy Scott