



February 13, 2024

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, 2022, to December 31, 2023. 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

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. §

¹ Minn. Stat. § 363A.44, Subd. 1(a).

² Id.

³ Minn. Stat. § 363A.44, Subd. 1(b).

⁴ Minn. Stat. § 363A.44, Subd. 1(c).

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 or 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, 2022, to December 31, 2023 – the department issued 1,071 Equal Pay Certificates.

Audits Conducted and Auditing Efforts

Data submitted to the department by Workforce and Equal Pay Certificate holders has demonstrated that gender-based equal pay violations can be uncovered by identifying certificate holders that have significant underutilization of women in job categories.¹¹ Therefore, the department combines workforce and equal pay reviews into holistic audits that are streamlined to provide the department with a fuller understanding of areas of technical assistance and enforcement needed to correct contractors' non-compliance.¹²

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.

¹¹ Over 70% of Equal Pay Certificate holders also have Workforce Certificates.

¹² Minn. R. 5000.3450 & 5000.3470.

Utilizing this data-drive approach, the department first conducted a substantive review of the 4,484 annual compliance reports submitted by 2,453 contractors during this reporting period.¹³ The substantive review included comparing utilization rates for women, people of color, and/or Indigenous community members to any past reports to assess for continued underutilization; identifying whether the data provided by a contractor is reflected in the contractor's descriptions of the actions they have purportedly taken to address underutilization; analyzing whether underutilization data reflects the contractor's commitment to its affirmative action plan; and assessing whether the contractor has identified and taken action steps to address underutilization demonstrated in its own workforce data. Where the department identified something concerning regarding a certificate holder's affirmative action plan and data – such as a failure to adequately take steps to address underutilization, the department followed up with that business so that it would amend its annual report to include details with respect to how it plans to address the reported underutilization.

The department also reviewed data submitted during this reporting period by 150 construction contractors in the form of 3,674 monthly reports on 412 active construction projects. This review also includes assessing underutilization rates for women, people of color, and/or Indigenous community members.

After completing this initial review of information and data, the department narrowed its focus by taking into account a number of factors, including: focusing on certificate holders that had significant underutilization reported in job categories, had not been recently audited in the past 12 months, had been ostensibly working to address any underutilization for more than 12 months, and were engaged with subcontractors that were similarly demonstrating troubling underutilization rates.

This approach led to the identification of a Workforce and Equal Pay Certificate holder that works with dozens of subcontractors that are also certificate holders and, on its own, has multiple contracts with multiple state agencies totaling over \$118 million dollars. The comprehensive audit of this entity included the request and review of additional compensation data and related documents, onsite visits, as well as multiple interviews with key employees and business leaders. This type of strategic audit meant that the workforce and equal pay violations that MDHR identified are impacting many contracts and multiple subcontractors.

The department is next engaging in conciliation with this entity and is hopeful that conciliation efforts will be successful, that the business will not only be able to correct its own workforce and equal pay violations but that the comprehensive audit and conciliation agreement will increase compliance rates for other businesses in the same industry.

As noted during the previous reporting period, the department has shifted its enforcement approach to this strategic compliance model when determining which contractors to comprehensively audit. This allows the department to be data-driven and focus its efforts on the industries and the specific businesses most prone to non-compliance. This method also improves the experience of most Equal Pay Certificate holders. Instead of MDHR subjecting a certificate holder to an exhaustive audit process merely because the certificate holder was randomly selected for such an audit, the department reviews and analyzes the extensive data that certificate

¹³ Contractors that submitted annual compliance reports during this reporting period were from a variety of industries. The number of contractors from each industry is as follows: Banking/Finance: 53; Construction: 530; Education/Legal/Social Services: 88; Engineering/architecture/technical: 66; Government: 4; Healthcare/pharmaceutical: 105; Hospitality/food: 5; IT/Communications: 91; Manufacturing: 47; Security: 8; Transportation: 33; Utilities: 15; Other: 1408.

holders produce to identify which vendors actually require a further, exhaustive audit that may later be followed-up with an enforcement action.

Conducting this time of comprehensive audit in this manner also allowed the department to provide quality technical assistance while focusing exhaustive audit efforts where there would be the most strategic impact.

Compensation Practices

In analyzing a contractor's compensation practices, 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.

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 stylized flourish at the end.

Rebecca Lucero
Commissioner

cc:

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