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State of
Minnesota
DEPARTMENT
OF EMPLOYEE
RELATIONS

Local Government Pay Equity Compliance Report



200 Centennial Bldg.
658 Cedar Street
St. Paul, MN 55155

Submitted to the
Minnesota State Legislature

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LOCAL GOVERNMENT PAY EQUITY COMPLIANCE REPORT

This report is submitted to the legislature by the Department of Employee Relations as required by the Local Government Pay Equity Act (M.S. 471.999). A copy of the law is attached as Appendix A.

Requirements of the Law

The Local Government Pay Equity Act requires local governments to "establish equitable compensation relationships" by December 31, 1991. Other common terms for "equitable compensation relationships" are "comparable worth" or "pay equity."

The purpose of the law is "to eliminate sex-based wage disparities in public employment in this state." Equitable compensation relationships are achieved when "the compensation for female-dominated classes is not consistently below the compensation for male-dominated classes of comparable work value...within the political subdivision."

The law requires this department to determine whether local governments have achieved pay equity, based on implementation reports submitted by local governments. The first such reports are due on January 31, 1992. Since reports have not yet been submitted, no compliance decisions have been made.

The Rulemaking Process

In 1991, the legislature authorized the department to adopt rules under the Administrative Procedures Act in order to ensure compliance with the Local Government Pay Equity Act (Laws 1991, chapter 128, section 2). The department is now in the final stages of the rulemaking process. A public hearing was conducted by an Administrative Law Judge from the Office of Administrative Hearings on November 14, 1991. On January 3, 1992 the department received the report from the Administrative Law Judge, Allen E. Giles. He concluded that the content of the rule was "needed and reasonable" and no changes were recommended. He also concluded that the department needed to prepare a more adequate fiscal note. This will delay the final adoption of the rule.

The proposed rule consists of the following parts:

- Definitions for terms such as benefits, compensation, and employee.
- A process for resolving questions about which jurisdiction is responsible for particular groups of employees.
- A list of information which must be included in the annual reports to DOER.

- Information about the tests a jurisdiction must pass to be found in compliance: a statistical analysis test, an alternative analysis test (for smaller jurisdictions and those with no salary ranges), a completeness and accuracy test, a salary range test, and an exceptional service pay test.
- A notification process to inform jurisdictions of the department's decision and next steps. The rule also includes notification procedures for jurisdictions to inform employees.
- Appeals procedures, including reconsideration, request for suspension of penalty, and contested case appeals.
- Penalties, including the enforcement conditions and procedures.
- Procedures for ensuring that pay equity is maintained in the future.

Copies of the proposed rule and supporting materials are available from the department's pay equity coordinator at (612) 296-2653.

Assistance to Local Governments

DOER has sent report forms and instructions to all of the 2,000 local governments covered by the law. The department has informed local governments about the compliance determination process through a number of mechanisms, including the following:

- A 63-page publication, *A Guide to Implementing Pay Equity in Local Government*, mailed to all local governments, provided initial compliance guidelines in September 1990. The department's proposed rule is generally consistent with those guidelines.
- Training sessions were offered through the University of Minnesota Employer Education Service and the Minnesota School Boards Association in 1990, and through the Government Training Service in 1991. Department staff trained more than 1,000 local officials each year on compliance criteria as proposed in the guidebook and the rule.
- The department formed a rulemaking advisory committee which met from May to July, 1991. Employer organizations, unions, and women's groups were asked to name representatives to the committee. This 30-member group spent many hours during eight meetings discussing and reviewing compliance guidelines and advising the department on the proposed rule.
- During the last two years, the department's pay equity coordinator has provided technical assistance to local governments through extensive training, telephone consultation, and preliminary compliance evaluations. The coordinator has made more than 1,000 preliminary evaluations at the request of local governments. In the last three months, the department has responded to more than 50 phone calls a day from local governments seeking assistance.

1992 Legislative Proposal

The department is proposing a technical change in the pay equity law: that a final decision in a contested case appeal will be made by an administrative law judge rather than by the department.

The law already provides two appeals to the department in the event of a non-compliance decision: 1) a reconsideration process and 2) a process for requesting suspension of a financial penalty.

The proposed amendment is attached as Appendix B.

Next Steps

The law and proposed rule establish a complex process for determining compliance and reviewing appeals. In summary, these steps are involved:

- The department makes an initial compliance decision. If a jurisdiction is not in compliance, the department notifies the jurisdiction of a new date by which compliance must be achieved to avoid a financial penalty.
- Any jurisdiction found not in compliance may request the department to reconsider the decision.
- After the new date for achieving compliance, the department must review a new implementation report. If a jurisdiction is still not in compliance, the department notifies the jurisdiction that a penalty will be imposed.
- Any jurisdiction subject to a penalty may request the department to suspend the penalty. In addition, such a jurisdiction may initiate a contested case appeal.
- No penalties may be imposed until the end of a legislative session in which the department submits a report listing a jurisdiction as not in compliance.
- Jurisdictions found in compliance must submit new reports every three years on a staggered schedule beginning in 1994, to ensure that pay equity is maintained.

The department expects to make initial compliance decisions for all jurisdictions by the end of calendar year 1992. The results will be included in the 1993 report to the legislature. If any penalties are necessary, the earliest date on which penalties could be imposed would be the end of the 1993 session.

The department will continue to work with all parties to ensure that the goals of the pay equity law are met, and that the process is understood and supported by all affected.

APPENDIX A

LOCAL GOVERNMENT PAY EQUITY ACT

471.991 Definitions.

Subdivision 1. **Terms.** For the purpose of Laws 1984, chapter 651, the following terms have the meanings given them.

Subd. 2. **Balanced class.** "Balanced class" means any class in which no more than 80 percent are male and no more than 70 percent of the members are female.

Subd. 3. **Comparable work value.** "Comparable work value" means the value of work measured by the skill, effort, responsibility, and working conditions normally required in the performance of the work.

Subd. 4. **Class.** "Class" means one or more positions that have similar duties, responsibilities, and general qualifications necessary to perform the duties, with comparable selection procedures used to recruit employees, and use of the same compensation schedule.

Subd. 5. **Equitable compensation relationship.** "Equitable compensation relationship" means that the compensation for female-dominated classes is not consistently below the compensation for male-dominated classes of comparable work value as determined under section 471.994, within the political subdivision.

Subd. 6. **Female-dominated class.** "Female-dominated class" means any class in which 70 percent or more of the members are female.

Subd. 7. **Male-dominated class.** "Male-dominated class" means any class in which 80 percent or more of the members are male.

Subd. 8. **Position.** "Position" means a group of current duties and responsibilities assigned or delegated by a supervisor to an individual.

471.992 Equitable Compensation Relationships.

Subdivision 1. **Establishment.** Subject to sections 179A.01 to 179A.25 and sections 177.41 to 177.44 but notwithstanding any other law to the contrary, every political subdivision of this state shall establish equitable compensation relationships between female-dominated, male-dominated, and balanced classes of employees in order to eliminate sex-based wage disparities in public employment in this state. A primary consideration in negotiating, establishing, recommending, and approving compensation is comparable work value in relationship to other employee positions within the political subdivision. This law may not be construed to limit the ability of the parties to collectively bargain in good faith.

Subd. 2. **Arbitration.** In all interest arbitration involving a class other than a balanced class held under sections 179A.01 to 179A.25, the arbitrator shall consider the equitable compensation relationship standards established in this section and the standards established under section 471.993 together with other standards appropriate to interest arbitration. The arbitrator shall consider both the results of a job evaluation study and any employee objections to the study. In interest arbitration for a balanced class, the arbitrator may consider the standards established under this section and the results of, and any employee objections to, a job evaluation study, but shall also consider similar or like classifications in other political subdivisions.

Subd. 3. Collective Bargaining. In collective bargaining for a balanced class, the parties may consider the equitable compensation relationship standards established by this section and the results of a job evaluation study, but shall also consider similar or like classifications in other political subdivisions.

471.993 Compensation Relationships of Positions.

Subdivision 1. Assurance of reasonable relationship. In preparing management negotiation positions for compensation established through collective bargaining under chapter 179A and in establishing, recommending, and approving compensation plans for employees of political subdivisions not represented by an exclusive representative under chapter 179A, the respective political subdivision as the public employer, as defined in section 179A.03, subdivision 15, or, where appropriate, the Minnesota merit system, shall assure that:

- (1) compensation for positions in the classified civil service, unclassified civil service, and management bear reasonable relationship to one another;
- (2) compensation for positions bear reasonable relationship to similar positions outside of that particular political subdivision's employment; and
- (3) compensation for positions within the employer's work force bear reasonable relationship among related job classes and among various levels within the same occupational group.

Subd. 2. Reasonable relationship defined. For purposes of subdivision 1, compensation for positions bear "reasonable relationship" to one another if:

- (1) the compensation for positions which require comparable skill, effort, responsibility, working conditions, and other relevant work-related criteria is comparable; and
- (2) the compensation for positions which require differing skill, effort, responsibility, working conditions and other relevant work-related criteria is proportional to the skill, effort, responsibility, working conditions, and other relevant work-related criteria required.

471.994 Job Evaluation System.

Every political subdivision shall use a job evaluation system in order to determine the comparable work value of the work performed by each class of its employees. The system must be maintained and updated to account for new employee classes and any changes in factors affecting the comparable work value of existing classes. A political subdivision that substantially modifies its job evaluation system or adopts a new system shall notify the commissioner. The political subdivision may use the system of some other public employer in the state. Each political subdivision shall meet and confer with the exclusive representatives of their employees on the development or selection of a job evaluation system.

471.995 Report Availability.

Notwithstanding section 13.37, every political subdivision shall submit a report containing the results of the job evaluation system to the exclusive representatives of their employees to be used by both parties in contract negotiations. At a minimum, the report to each exclusive representative shall identify the female-dominated classes in the political subdivision for which compensation inequity exists, based on the comparable work value, and all data not on individuals used to support these findings.

471.996 Repealed, 1990, c 512 s13

471.9966 Effect on Other Law.

Notwithstanding section 179A.13, subdivision 2, it is not an unfair labor practice for a political subdivision to specify an amount of funds to be used solely to correct inequitable compensation relationships. A political subdivision may specify an amount of funds to be used for general salary increases. The provisions of section 471.991 to 471.999 do not diminish a political subdivision's duty to bargain in good faith under chapter 179A or sections 179.35 to 179.39.

471.997 Human Rights Act Evidence.

The commissioner of human rights or any state court may use as evidence the results of any job evaluation system established under section 471.994 and the reports compiled under section 471.995 in any proceeding or action alleging discrimination.

471.9975 Suits Barred.

No cause of action arises before August 1, 1987 for failure to comply with the requirements of Laws 1984, chapter 651.

471.998 Report to Commissioner.

Subdivision 1. **Report on Implementation plan: contents.** Every political subdivision shall report to the commissioner of employee relations by October 1, 1985, on its plan for implementation of sections 471.994 and 471.995. Each report shall include:

- (1) the title of each job class which the political subdivision has established;
- (2) the following information for each class as of July 1, 1984:
 - (a) the number of incumbents;
 - (b) the percentage of incumbents who are female;
 - (c) the comparable work value of the class, as determined under the system chosen under section 471.994; and
 - (d) the minimum and maximum monthly salary for the class;
- (3) a description of the job evaluation system used by the political subdivision; and
- (4) a plan for establishing equitable compensation relationships between female-dominated and male-dominated classes, including:
 - (a) identification of classes for which a compensation inequity exists based on the comparable work value;

(b) a timetable for implementation of pay equity; and

(c) the estimated cost of implementation.

Subd. 2. Technical assistance. The commissioner of employee relations shall, upon request of a political subdivision, provide technical assistance in completing the required reports.

Subd. 3. Public Data. The report required by subdivision 1 is public data governed by chapter 13.

471.9981 Counties and Cities: Pay Equity Compliance.

Subdivision 1. 1988 report. A home rule charter or statutory city or county, referred to in this section as "governmental subdivision," that employs ten or more people and that did not submit a report according to section 471.998, shall submit the report by October 1, 1988, to the commissioner of employee relations.

The plan for implementing equitable compensation for the employees must provide for complete implementation not later than December 31, 1991, unless a later date has been approved by the commissioner. If a report was filed before October 1, 1987, and had an implementation date after December 31, 1991, the date in the report shall be approved by the commissioner. The plan need not contain a market study.

Subd. 2. Repealed, 1990, c 512, s 13

Subd. 3. Repealed, 1990, c 512, s 13

Subd. 4. Repealed, 1990, c 512, s 13

Subd. 5. Repealed, 1990, c 512, s 13

Subd. 5a. Implementation Report. By January 31, 1992, each political subdivision shall submit to the commissioner an implementation report that includes the following information as of December 31, 1991:

(1) a list of all job classes in the political subdivision;

(2) the number of employees in each class;

(3) the number of female employees in each class;

(4) an identification of each class as male-dominated, female-dominated, or balanced as defined in section 471.991;

(5) the comparable work value of each class as determined by the job evaluation used by the subdivision in accordance with section 471.994;

(6) the minimum and maximum salary for each class, if salary ranges have been established, and the amount of time in employment required to qualify for the maximum;

(7) any additional cash compensation, such as bonuses or lump-sum payments, paid to the members of a class; and

(8) any other information requested by the commissioner.

If a subdivision fails to submit a report, the commissioner shall find the subdivision not in compliance with subdivision 6 and shall impose the penalty prescribed by that subdivision.

Subd. 5b. Public Data. The implementation report required by subdivision 5a is public data governed by chapter 13.

Subd. 6. Penalty for failure to implement plan. (a) The commissioner of employee relations shall review the implementation report submitted by a governmental subdivision, to determine whether the subdivision has established equitable compensation relationships as required by section 471.992, subdivision 5a, by December 31, 1991, or the later date approved by the commissioner. The commissioner shall notify a subdivision found to have achieved compliance with section 471.992, subdivision 1.

(b) If the commissioner finds that the subdivision is not in compliance based on the information contained in the implementation report required by section 471.9981, subdivision 5a, the commissioner shall notify the subdivision of the basis for the finding. The notice must include a detailed description of the basis for the finding, specific recommended actions to achieve compliance, and an estimated cost of compliance. If the subdivision disagrees with the finding, it shall notify the commissioner, who shall provide a specified time period in which to submit additional evidence in support of its claim that it is in compliance. The commissioner shall consider at least the following additional information in reconsidering whether the subdivision is in compliance:

- (1) recruitment difficulties;
- (2) retention difficulties;
- (3) recent arbitration awards that are inconsistent with equitable compensation relationships; and
- (4) information that can demonstrate a good-faith effort to achieve compliance and continued progress toward compliance, including any constraints the subdivision faces.

The subdivision shall also present a plan for achieving compliance and a date for additional review by the commissioner.

(c) If the subdivision does not make the changes to achieve compliance within a reasonable time set by the commissioner, the commissioner shall notify the subdivision and the commissioner of revenue that the subdivision is subject to a five percent reduction in the aid that would otherwise be payable to that governmental subdivision under section 124.23, 273.1398, or sections 477A.011 to 477A.014, or to a fine of \$100 a day, whichever is greatest. The commissioner of revenue shall enforce the penalty beginning in calendar year 1992 or in the first calendar year beginning after the date for implementation of the plan of a governmental subdivision for which the commissioner of employee relations has approved an implementation date later than December 31, 1991. However, the commissioner of revenue may not enforce a penalty until after the end of the first regular legislative session after a report listing the subdivision is not in compliance has been submitted to the legislature under section 471.999. The penalty remains in effect until the subdivision

achieves compliance. The commissioner of employee relations may suspend the penalty upon making a finding that the failure to implement was attributable to circumstances beyond the control of the governmental subdivision or to severe hardship, or that non-compliance results from factors unrelated to the sex of the members dominating the affected classes and that the subdivision is taking substantial steps to achieve compliance to the extent possible.

Subd. 7. Appeal. A governmental subdivision may appeal the imposition of a penalty under subdivision 6 by filing a notice of appeal with the commissioner of employee relations within 30 days of the commissioner's notification to the subdivision of the penalty. An appeal must be heard as a contested case under section 14.57 to 14.62. No penalty may be imposed while an appeal is pending.

471.999 Report to Legislature.

The commissioner of employee relations shall report to the legislature by January 1 of each year on the status of compliance with section 471.992, subdivision 1, by governmental subdivision.

The report must include a list of the political subdivisions in compliance with section 471.992, subdivision 1, and the estimated cost of compliance. The report must also include a list of political subdivisions found by the commissioner to be not in compliance, the basis for that finding, recommended changes to achieve compliance, estimated cost of compliance, and recommended penalties, if any. The commissioner's report must include a list of subdivisions that did not comply with the reporting requirements of this section. The commissioner may request, and a subdivision shall provide, any additional information needed for the preparation of a report under this subdivision.

Laws, 1984, Chapter 651, sections 1-11
(Amended) Laws 1986, Chapter 459, sections 1-3
(Amended) Laws 1988, Chapter 702, section 15
(Amended) Laws 1990, Chapter 512, sections 1-13

APPENDIX B

PAY EQUITY CONTESTED CASE DISPOSITION

1992 Proposed Amendment

Summary: Amends M.S. 471.9981 to clarify that the final decision on this type of pay equity compliance appeal is to be made to the Office of Administrative Hearings. Suggested language is drafted to parallel similar provision in the Human Rights Act, Chapter 363.

M.S. 471.9981. COUNTIES AND CITIES; PAY EQUITY COMPLIANCE.

Sub. 7. Appeal. A governmental subdivision may appeal the imposition of a penalty under subdivision 6 by filing a notice of appeal with the commissioner of employee relations within 30 days of the commissioner's notification to the subdivision of the penalty. An appeal must be heard as a contested case under sections 14.57 to 14.62, except that the report of the administrative law judge shall be binding on all parties to the proceeding and if appropriate shall be implemented by an order as provided in subdivision 8. No penalty may be imposed while an appeal is pending.

Sec. 3. Minnesota Statutes 1990, section 471.9981, is amended by adding a subdivision to read:

Subd. 8. (DETERMINATION OF NONCOMPLIANCE.) The administrative law judge shall make findings of fact and conclusions of law, and issue an order to enforce, suspend, or waive the penalty, or extend the date for compliance. The order shall be a final decision of the department.

Sec. 4. Minnesota Statutes 1990, section 471.9981, is amended by adding a subdivision to read:

Subd. 9. (APPELLATE COURT REVIEW.) The commissioner or party may seek judicial review in accordance with sections 14.63 to 14.68, chapter 14.

Sec. 5. (EFFECTIVE DATE.)

Sections 2 to 4 are effective the day after final enactment.

Background: Action is needed in 1992 because the department will already be in the process of making compliance decisions by the time the 1992 session starts. As the law is written now, Commissioner Barton would make the decision on a contested case appeal after hearings are conducted and recommendations are made by the Office of Administrative Hearings. There are two problems with this:

1. Legislative intent, and the understanding of all parties to the 1990 amendments, was that this level of appeal would be outside the department. There are already two appeals to the department.
2. As the law is written now, Commissioner Barton could not have any knowledge of the compliance decision-making process. A barrier would have to be set up between her and all the Department of Employee Relations staff involved in that process, so that she could be a neutral judge of the merits of any contested cases. (This was pointed out by Steve Gunn and confirmed by Cathy Keane from the Office of the Attorney General.) Because there are so few staff involved in the pay equity program, the commissioner's involvement is essential.

The issue cannot wait for the 1993 session because the barrier must be erected immediately under the current law. That is, the commissioner cannot be involved in compliance decisions until the law clearly says that she will **not** be making contested case decisions. Without action in 1992, all major compliance decisions will be made long before the commissioner could be involved.