

Commission on Human Rights and Opportunities

Memo

To: Persons Who Testified Concerning or Expressed Interest in the Proposed Affirmative Action Plan Regulations

From: Jim O'Neill, Legislative Liaison

CC: Tanya Hughes, Executive Director

Date: December 4, 2013

RE: Proposed Affirmative Action Plan Regulations

In accordance with the provisions of Section 4-168 of the Connecticut General Statutes the Commission on Human Rights and Opportunities has considered all public comments and has decided to submit proposed regulations regarding Affirmative Action Plans to the Regulation Review Committee for action.

The Commissioners of the Commission on Human Rights and Opportunities approved the revised proposed regulations (attached) on October 9, 2013.

The draft of the original proposed Affirmative Action Plan regulations as heard at the February 8, 2012 public hearing are also attached.

Below is a summary of the background of these proposed regulations, public comment and changes made to the February 8, 2012 version of the proposed regulations.

Summary of Public Comments and Commission Response

BACKGROUND

Section 75 of PA 11-51 directed the executive director of the Commission on Human Rights and Opportunities to convene a working group to review the commission's existing regulations governing affirmative action plans and to recommend amendments to such regulations.

The Working Group (WG) was specified to consist of the executive director, the Secretary of the Office of Policy and Management, or a designee, the Commissioner of Administrative Services, or a designee, and eight other members selected by the executive director who have experience in one or more of the following: (1) Drafting affirmative action plans for state agencies, (2) affirmative action law, (3) affirmative action

education, or (4) the impact of affirmative action on minority communities. Such eight members shall include at least one representative of each of the following: (A) A regulation and protection agency, (B) a conservation and development agency, (C) a human services agency, (D) a transportation agency, and (E) an education agency. The executive director shall serve as chairperson of the working group.

Subsection (c) of Section 75 required that not later than January 1, 2012, the Commission on Human Rights and Opportunities shall publish notice of its intention to amend its regulations to implement the recommendations of the working group in the Connecticut Law Journal in accordance with the provisions of section 4-168 of the general statutes.

The Working Group (WG) was formed and met. It then designated a subcommittee to write a draft of the regulations. The WG met two more times before authorizing a draft of new Affirmative Action Plan regulations be posted for public comment in the CT Law Journal. The WG determined that the magnitude of the changes did not allow for amendment of the existing regulations, sections 46a-68-1 to 46a-68-74, inclusive, of the Regulations of Connecticut State Agencies and chose instead to number the new regulations as sections 46a-68-75 to 46a-68-115, inclusive, of the Regulations of Connecticut State Agencies.

Notice of Intent to Adopt Regulations was published in the Connecticut Law Journal on December 27, 2011. A number of people requested a public hearing and that was held on February 8, 2012.

TESTIMONY

Four people testified and submitted testimony and four others submitted written testimony only.

There were varying opinions expressed on the deletion and addition of certain definitions. What people opposed collectively was the proposed change of Affirmative Action Plan to Equal Employment Opportunity Plan. Affirmative Action Plan was restored.

The Commission deleted a number of unnecessary definitions. These included words or phrases that did not have meaning outside the commonly accepted meaning of these words and words that did not appear in the regulation text except for the definition section.

Definition of Affirmative Action was restored.

The definition and application of good faith efforts was an issue of considerable discussion and differences of opinion. Eventually it was decided that the existing definitions with minor changes be retained and that the issue deserved its own section and can now be found in Section 46a-68-92.

Adverse Impact as a definition was substantially shortened. It was considered for elimination because the six adverse impact tests which were universally recognized as having no value were deleted, but was retained on the advice of counsel.

It was suggested that the term service animal be added to definition of Physical Disability. The Commission believes this is beyond its statutory authority.

One person suggested reporting the number of physically disabled persons in its full-time work force by occupational category should also include the number and type of reasonable accommodations that the agency provided. The WG decided this would be an administrative burden that would not prove of any use because if a person had not been accommodated they would file a CHRO complaint and if they had been accommodated what would be the value of knowing how this was achieved.

The Goals Analysis section was thought to be lacking enough explanation of what is required when a goal is unmet. The Commission added language to more clearly explain what is expected.

Issue of utilizing only statewide analysis as opposed to labor market analysis was proposed, but was objected to based on the need for certain jobs that make long commutes (snow plow drivers) and could not be appropriately assessed using statewide data. The regulations were changed to labor market analysis.

Testimony favored combining hiring and promotional goals into simply goals, but CHRO Affirmative Action Plan reviewers and reverted to hiring and promotional goals.