

Wisconsin Human Resources Handbook

Chapter 800

Equal Employment Opportunity (EEO) Programs and Affirmative Action (AA) Planning Standards

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Sec. 800.010 Introduction

The purpose of this chapter is to provide the compliance standards for the Equal Employment Opportunity (EEO) Program and Affirmative Action (AA) plans within Wisconsin state government agencies. See the *EEO/AA Professional Procedure Manual* for roles and responsibilities, and assistance in writing, implementing and managing the agency's EEO certification program and AA plan.

Sec. 800.020 Statutory and Rule Authority

Wisconsin Administrative Code Chapter ER 43, Affirmative Action and Equal Opportunity and several state statutes direct action items for the administrator of the Division of Personnel Management (DPM) in the Department of Administration (DOA) regarding EEO/AA. DPM complies with these directives by requiring information, reports, AA plans and EEO certification from agencies. The following excerpts are from the statutes specific to EEO and AA.

1. Section 111.31(1), Wis. Stats., reads in part, "The legislature finds that the practice of unfair discrimination in employment against properly qualified individuals by reason of their age, race, creed, color, disability, marital status, sex, national origin, ancestry, sexual orientation, arrest record, conviction record, military service....."
2. Section 230.01(2)(b), Wis. Stats., reads in part, "It is the policy of this state to provide for equal employment opportunity by ensuring that all personnel actions including hire, tenure or term, and condition or privilege of employment be based on the ability to perform the duties and responsibilities assigned to the particular position, without regard to age, race, creed"
3. Section 230.02 Wis. Stats., reads, "Statutes applicable to the division and bureau shall be construed liberally in aid of the purposes declared in s. 230.01."
4. Section 230.04(1), Wis. Stats., reads, "The administrator is charged with the effective administration of this chapter. All powers and duties, necessary to that end, which are not exclusively vested by statute in the commission, the division of equal rights, the director or appointing authorities, are reserved to the administrator.
5. Section 230.04(9)(a), Wis. Stats., reads in part, "Establish standards for affirmative action plans to be prepared by all agencies and applied to all employees in and applicants for employment....."

6. Section 230.04(9)(c), Wis. Stats., reads, “Monitor, evaluate and make recommendations to each agency to improve its progress toward providing equal opportunity to employees, applicants for employment and clients of the agency”
7. Section 230.04(9)(f), Wis. Stats., reads in part, “Establish an affirmative action subunit. The affirmative action subunit shall advise and assist the director, the administrator, and agency heads on establishing policies and programs to ensure appropriate affirmative action.....”
8. Section 230.04(9m), Wis. Stats., reads in part, “The administrator shall conduct periodic reviews and evaluations of the written records of hiring decisions made by appointing authorities under”
9. Section 230.04(10)(b), Wis. Stats., reads in part, “The administrator shall request from each agency and each agency shall furnish to the administrator relevant racial, ethnic, gender and disability information on every employee hired.....”
10. Section 230.04(10)(c), Wis. Stats., reads in part, “The administrator shall request from each agency and each agency shall furnish to the administrator relevant information regarding prior military service, if any, of every new employee hired.....”
11. Section 230.06(1)(j), Wis. Stats., reads, “An appointing authority shall, if his or her agency employs 50 or more employees, create an affirmative action advisory committee which shall advise the appointing authority concerning programs designed to ensure equal opportunity to all employees, applicants for employment and clients of the agency.”
12. Section 230.06(1)(k), Wis. Stats., reads “An appointing authority shall designate an affirmative action officer reporting directly to the appointing authority. The affirmative action officer shall advise and assist the appointing authority in establishing programs to ensure appropriate affirmative action.”
13. Section 230.147(1), Wis. Stats., reads in part, “Each appointing authority of an agency with more than 100 authorized permanent full-time equivalent positions shall prepare and implement a plan of action to employ persons who, at the time determined in sub. (4), receive aid under s. 49.19 or benefits”
14. Section 230.25(1p), Wis. Stats., reads in part, “If an appointing authority appoints a person certified under this section and the person is not a veteran, the spouse of a veteran or a person the hiring of whom would serve affirmative action purposes, the appointing authority shall make and retain a written record of...”

Sec. 800.030 Definitions

1. **Administrator** means the administrator of the division of personnel management in the department of administration.
2. **Adverse Impact** means an employment policy, practice, or procedure has adverse impact if it results in the disqualification of affirmative action group members at a significantly greater rate than members of other groups. The enforcement agencies will generally regard a selection rate for any group which is less than four-fifths (4/5) or 80% of the rate for other groups as constituting evidence of adverse impact.
3. **Affirmative action** means specific actions in employment which are designed and taken for the purposes of all of the following:
 - (a) Ensuring equal opportunities.
 - (b) Eliminating a substantial disparity between the proportion of members of racial and ethnic, gender or disabled groups either in job groups within the classified civil service, or in similar functional groups in the unclassified service, and the proportion of members of racial and ethnic, gender or disabled groups in the relevant labor pool.
 - (c) Eliminating present effects of past discrimination. [s. 230.03(2), Wis. Stats.]

4. **Affirmative action group** means one or more of the following:
 - (a) Racial or ethnic groups.
 - (b) Gender groups.
 - (c) Disability groups.
5. **Affirmative Action Officer** means the staff person designated by the appointing authority to advise and assist in establishing programs to ensure appropriate equal employment opportunity and affirmative action in each agency.
6. **Affirmative action program** means specific results oriented standards, procedures and initiatives designed to ensure equal employment opportunity and to eliminate present effects of past discrimination. s. ER 43.02(2m), Wis. Adm. Code
7. **Agency** means “[A]ny board, commission, committee, council, or department in state government or a unit thereof created by the constitution or statutes if such board, commission, committee, council, department, unit,……” s. 230.03(3), Wis. Stats.
8. **Appointing authority** means the chief administrative officer of an agency unless another person is authorized to appoint subordinate staff in the agency by the constitution or statutes. s. 230.03(4), Wis. Stats.
9. **Client** means any individual or organization receiving services or financial assistance from an agency. s. ER 43.02(4), Wis. Adm. Code
10. **Director** means the director of the bureau of merit, recruitment and selection in the division.
11. **Disability groups** mean one or more of the following:
 - (a) Individuals with a disability who have any of the following:
 1. A physical or mental impairment which makes achievement unusually difficult or limits the capacity to work;
 2. A record of such an impairment; or
 3. Are perceived as having such an impairment.
 - (b) Individuals with a severe disability who have a chronic disability that meets all of the following conditions:
 1. It is attributable to a mental or physical impairment or combination of mental and physical impairments.
 2. It is likely to continue indefinitely.
 3. It results in substantial functional limitations in one or more of the following areas of major life activity: self-care; receptive and expressive language; learning; mobility; capacity for independent living; and economic self-sufficiency.
 - (c) Disabled veterans as defined in s. 230.03 (9m), Stats.” s. ER 43.02 (5m), Wis. Adm. Code
12. **Division** means the division of personnel management in the department of administration.
13. **Employee or state employee** means an employee of an agency, to include permanent, project, limited term and interns.
14. **Equal opportunity** means the absence of discrimination in employment or in provision of services to clients. s. ER 43.02(5), Wis. Adm. Code
15. **Gender group**, when used in connection with affirmative action under this chapter means females. This does not include groups discriminated against because of sexual orientation, as defined in s. 111.32 (13m), Wis. Stats.

16. **Job group** means a set of classifications combined by the office on the basis of similarity in responsibility, pay range and nature of work. s. 230.03(10r) Wis. Stats.
17. **Racial or Ethnic Groups** means American Indians or Alaskan Natives (Non Hispanic or Latino), Asians (Non Hispanic or Latino), Blacks or African Americans ((Non Hispanic or Latino), Hispanics or Latinos, Native Hawaiians or Other Pacific Islanders ((Non Hispanic or Latino), and Whites (Non Hispanic or Latino) defined as follows:
- (a) “American Indians or Alaskan Natives (Non Hispanic or Latino)” means persons having origins in any of the original peoples of North or South America (including Central America), and who maintain tribal affiliation or community attachment.
 - (b) “Asians (Non Hispanic or Latino)” means persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.
 - (c) “Blacks or African Americans (Non Hispanic or Latino)” means persons having origins in any of the black racial groups of Africa.
 - (d) “Hispanics or Latinos” means persons of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.
 - (e) “Native Hawaiians or Other Pacific Islanders (Non Hispanic or Latino)” means persons having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
 - (f) “Whites (Non Hispanic or Latino)” means persons having origins in any of the original peoples of Europe, the Middle East or North Africa.
18. **Sexual orientation** means having a preference for heterosexuality, homosexuality or bisexuality, having a history of such a preference or being identified with such a preference. s. 111.32(13m), Wis. Stats.
19. **Underutilization:** Occurs when the percentage of racial/ethnic minorities or women in a job group is below the availability of those groups in the relevant labor pool.
20. **Veteran** means any of the following:
- (a) A person who served on active duty under honorable conditions in the U.S. armed forces and who was entitled to receive any of the following:
 - 1. The armed forces expeditionary medal established by executive order 10877 on December 4, 1961.
 - 2. The Vietnam service medal established by executive order 11231 on Jul 8, 1965.
 - 3. The navy expeditionary medal.
 - 4. The marine corps expeditionary medal.
 - (b) A person who served on active duty under honorable conditions in the U.S. armed forces in a crisis zone, as defined in s. 45.01(11), Wis. Stats.
 - (c) A person who served on active duty under honorable conditions in the U.S. armed forces for at least one day during a war period, as defined in s. 45.01 (13), Wis. Stats., or under section 1 of executive order 10957 dated August 10, 1961.
 - (d) A person who served on active duty under honorable conditions in the U.S. armed forces for 2 continuous years or more or the full period of the person’s initial service obligation, whichever is less. A person discharged from the U.S. armed forces for reasons of hardship or a service-connected disability or a person released due to a reduction in the U.S. armed forces prior to the completion of the required period of service shall also be considered a “veteran” regardless of the actual time served. s. 230.03(14), Wis. Stats.

Sec. 800.040 EEO Program Certification

In order to achieve statewide consistency in Equal Employment Opportunity (EEO) programs, all Wisconsin state government agencies must meet seven eligibility criteria to attain and maintain EEO Program Certification. All agencies attained EEO Program Certification in 2014. Agencies received an EEO Program Certification certificate and approval letter.

EEO Program Certification criteria:

- Develop EEO policies
- Appoint an Affirmative Action Officer (AAO)
- Implement and maintain recruitment and selection process requirements
- Establish an Affirmative Action Advisory Committee (AAAC)
- Conduct a personal demographic information survey
- Disseminate EEO/AA policies and procedures
- Develop and implement a W-2 plan

It is the agency's responsibility to remain at the certified level at all times. Detailed information on specific requirements to meet each of the criteria listed above is located in the *EEO/AA Professional Procedure Manual* and Policy Bulletin DPM-0433-EI, on the Bureau of Equity and Inclusion (BEI) website. EEO Program Certification requirements are verified during agency monitoring visits conducted by BEI. (See Attachment #1, *EEO Certification Checklist*)

Sec. 800.050 Affirmative Action Plan

Affirmative Action (AA) plans are the outline of specific, pro-active programs and steps to be taken over a pre-determined period of time to increase the access of historically underrepresented qualified applicants to an agency's workforce. Affirmative Action plans cover three-year time period and are produced and administered by an agency's equal opportunity and/or affirmative action officer. Agencies with 30 or more permanent, classified employees must prepare AA plans. Agencies with less than 30 permanent, classified employees must submit an EEO/AA Commitment Letter.

Agencies must conduct a self-assessment of their organization, determine any problem areas or deficiencies which exist, and develop programmatic goals and actions steps to address these problem areas or deficiencies. Self-analysis allows agencies to evaluate whether past discrimination and other issues have been corrected, and to track which current employment practices are succeeding.

Based on findings from the agency self-assessment, goals and action plans must be developed to address problem areas revealed in the analysis. Following are the areas that must be included in an agency's AA plan (See Attachment #2, *AA Plan Checklist*):

1. Narrative Summary
2. Description of Problem(s) to be Addressed
3. Description of Efforts You Will Use to Address the Problems
4. Goal(s) to be Achieved
5. Action Steps/Responsible Staff or Office/Time Line/Evaluation
6. Internal Communication and Monitoring of AA Plan
7. Your Agency's EEO/AA Policy Statement
8. Signatures of your Appointing Authority and Affirmative Action or Equal Opportunity Officer
9. Date of Submission of Plan to DPM Bureau of Equity and Inclusion

See the EEO/AA Professional Procedure Manual for requirements and guidance in developing and implementing the agency's AA plan. AA plan tools and templates are located on the BEI website. For further assistance contact the BEI team.

Sec. 800.060 AA Plan Progress Report

Annually, agencies must submit an AA plan progress report to the BEI. This progress report will document progress toward achieving affirmative action goals and addressing problems identified in an agency's workforce analysis. BEI will use this information to compose an annual report for the Governor on the status of Wisconsin's workforce, and to assist its statewide monitoring of agency affirmative action compliance.

Sec. 800.070 Administrative Information

This is a new chapter issued in June 2014 for the *Wisconsin Human Resources Handbook*.

In July 2016, Chapter 800 underwent a review and update pursuant to changes introduced by 2015 Wisconsin Act 55 and by 2015 Wisconsin Act 150. In July 2015, the Office of State Employment Relations was eliminated and the functions were transferred into the newly created Department of Administration, Division of Personnel Management. This chapter was updated to reflect the changes in terminology that resulted from the organizational restructuring. This chapter was changed to only contain policy items. All procedures for complying with these policies are located in the newly created *EEO/AA Professional Procedure Manual*.

In August 2018, Chapter 800 was updated to reflect updates to Chapter ER 43, Wisconsin Administrative Code and to update the formatting of the chapter to align with the Wisconsin Human Resources Handbook standards. Updates were also made to reflect that in May 2017, the Bureau of Affirmative Action was modified to be the Bureau of Equity and Inclusion.

Attachment #1

EEO Program Certification Review Checklist

In order to achieve statewide consistency in equal employment opportunity (EEO) programs, all Wisconsin agencies must meet seven eligibility criteria to attain EEO Program Certification. The EEO/AA Professional Procedure Manual addresses EEO Program Certification requirements. It is the agency's responsibility to remain at the certified level at all times. EEO Program Certification requirements are verified during agency monitoring visits conducted by BEI.

EEO Policies **Y** **N**

Required Documentation: Agency will provide updated EEO/AA policies at the time of monitoring visit.

Diverse Interview Panel	Y	N
EEO/AA Policy Statement	Y	N
Harassment	Y	N
Internal Complaint Process	Y	N
Reasonable Accommodations	Y	N

NOTE: Agency may combine policies and procedures in the same document as long as all of the above areas are covered in depth.

Notes:

Affirmative Action Officer (AAO) appointed **Y** **N**

Required Documentation: A letter signed by the head of the agency or designee, which identifies the AAO and states that the AAO reports directly to him/her for EEO/AA purposes. The appointing authority or designee cannot be the AAO. When a new AAO is appointed a new signed letter must be sent to BAA.

Notes:

Recruitment and Selection Process **Y** **N**

Required Documentation: A process that includes all steps identified on the DPM recruitment checklist used for every position. BEI will review six recruitment files or other documentation from the agency to determine compliance with recruitment and selection process requirements.

Recruitment plan	Y	N
HR informs AAO of open positions	Y	N
AAO approval of interview questions/criteria	Y	N
Diverse interview panels	Y	N
Interview panel members trained	Y	N
Hiring decision reason documented in system	Y	N

Notes:

Affirmative Action Advisory Committee (50 or more permanent employees).	Y	N	NA
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Required Documentation: A copy of the most recent Affirmative Action Advisory Committee meeting agenda, minutes, current roster, and Bylaws.

Notes:

Personal Demographic Information Survey	Y	N	
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Required Documentation: A copy of the method used to request employees to review their personal demographic information in STAR HCM, self-service in January of an odd year.

Notes:

Dissemination of EEO/AA Policies and Procedures	Y	N	
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Required Documentation: Agency's EEO/AA Policy Statement must be posted in an area that is accessible to all employees in the agency. EEO/AA policies and procedures and contact information located on Intranet.

Notes:

W-2 Plan	Y	N	
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Required Documentation: Agency will explain the agency's W-2 plan and how it was implemented.

Notes:

Affirmative Action Plan Checklist

Are the following areas included in your agency AA Plan?		
Required Area	Yes or No	What you still need to do
Agency Name		
Agency Head Signature		
AA Officer Signature		
Date Submitted to DPM/BEI		
Agency's Policy Statement		
Narrative Summary		
Description of Problems to be addressed		
Description of Efforts you will use to address the problems		
Goal(s) to be achieved		
Action Step(s)		
Time Line(s)		
Staff or Office Responsible		
Evaluation		
Internal Communication Plan		
Internal Monitoring Plan		