

EXECUTIVE ORDER

01.01.2007.16

Code of Fair Employment Practices

(Rescinds Executive Order 01.01.2007.09)

- WHEREAS, The State of Maryland recognizes and honors the value and dignity of every employee and understands the importance of providing its employees with a fair opportunity to pursue their careers in an environment free of discrimination or any form of prohibited harassment;
- WHEREAS, Title 5, Subtitle 2 of the State Personnel and Pensions Article of the Annotated Code of Maryland establishes an Equal Employment Opportunity (EEO) program to ensure that employment decisions are based only on merit and fitness;
- WHEREAS, The State is committed to providing a work environment free from discrimination on the basis of age, ancestry, color, creed, genetic information, marital status, mental or physical disability, national origin, religious affiliation, belief or opinion, race, sex, sexual orientation, or any other non-merit factor;
- WHEREAS, All Executive Branch appointing authorities and managers are expected to assume personal responsibility and leadership in ensuring that fair employment practices are adhered to and that equal employment opportunity is a reality in Maryland State government; and
- WHEREAS, There is a need to update prior Executive Orders to emphasize the State of Maryland's commitment to fair employment practices, to reaffirm the responsibilities of State agencies to uphold these important principles, and to reflect existing law.
- NOW, THEREFORE, I, MARTIN O'MALLEY, GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF MARYLAND, DO HEREBY RESCIND EXECUTIVE ORDER 01.01.2007.09 AND PROCLAIM THE FOLLOWING EXECUTIVE ORDER EFFECTIVE IMMEDIATELY.

**Article I – Equal Employment Opportunity
Program in State Government**

A. All personnel actions concerning any employee or applicant for employment in the Executive Branch will be taken on the basis of merit and fitness, and without regard to:

- (1) Age;
- (2) Ancestry;
- (3) Color;
- (4) Creed;
- (5) Gender identity and expression;
- (6) Genetic information;
- (7) Marital status;
- (8) Mental or physical disability;
- (9) National origin;
- (10) Race;
- (11) Religious affiliation, belief or opinion;
- (12) Sex; or
- (13) Sexual orientation.

B. All personnel actions concerning any skilled, professional or management service employee and any special appointee designated by the Secretary of Budget and Management, or any applicant for employment in those services or in comparable positions in an independent personnel system in the Executive Branch, shall be without regard to political affiliation, belief or opinion.

C. Discrimination against or harassment of employees on the basis of any reason prohibited by law is not permitted.

D. Retaliation against any employee who opposes discrimination or participates in an EEO investigation is not permitted.

E. Retaliation against an individual because of their refusal to submit to a genetic test or make available the results of a genetic test is not permitted.

F. The Secretary of Budget and Management shall:

(1) Recommend the appointment of a Statewide Equal Employment Opportunity Coordinator who shall administer the program and coordinate the activities of the agency Fair Practices Officers, EEO Officers, and Americans with Disabilities Act Officers;

(2) Establish an Equal Employment Opportunity Unit which will report directly to the Equal Employment Opportunity Coordinator to oversee the administration of an equal employment practices program consistent with the requirements of applicable federal and State law governing equal employment opportunity, the State Personnel and Pensions Article, and this Executive Order;

(3) Upon an appropriate showing by an agency, and consistent with State and federal law, permit any bona fide occupational qualification; and

(4) Take any action, not inconsistent with federal or State law, to resolve employee complaints of unfair employment practices.

G. The head of each department or other independent unit in the Executive Branch shall, consistent with guidelines and regulations promulgated by the Secretary of Budget and Management:

(1) Appoint a Fair Practices Officer, and any Equal Employment Opportunity Officers, as required, for the appropriate implementation of the Equal Employment Opportunity Program in the department or unit;

(2) Ensure that the personnel practices in the department or unit are not discriminatory;

(3) Review disciplinary actions initiated against employees, employee grievances and complaints of discrimination to ensure the fair and equitable treatment of employees in their department or unit;

(4) Develop and implement policies that promote equal employment opportunity and work force diversification reflective of the availability of women, minorities, and persons with disabilities in the relevant labor market;

(5) Provide leadership and training to managers, supervisors and other employees in fair employment practices;

(6) Ensure that designated Fair Practices and Equal Employment Opportunity Officers are known to all employees in their respective agencies and that these Officers have appropriate decision-making authority consistent with relevant federal and State law, this Executive Order, and personnel regulations;

(7) Consult and cooperate fully with the Secretary of Budget and Management and the Statewide EEO Coordinator or their designees in investigating and resolving expeditiously complaints of discrimination or unfair employment practices;

(8) Provide statistical and other information requested by the Secretary of Budget and Management regarding efforts to implement the department's or unit's Equal Employment Opportunity Program;

(9) Develop and implement programs, activities and events to acknowledge and educate about diversity and cultural differences; and

(10) Implement any decision of the Secretary of Budget and Management not inconsistent with the spirit or requirements of this Executive Order and federal or State law.

H. Cabinet officials and other heads of departments or units are expected to lead by example in promoting fair employment practices and this Administration's policy of zero tolerance for employment discrimination.

Article II — Complaints of Discrimination and Unfair Employment Practices

A. It is the policy of this Administration that all complaints of discrimination or other unfair employment practices be thoroughly investigated and promptly resolved, as appropriate.

B. The Statewide EEO Coordinator shall monitor the compliance and effectiveness of each agency's EEO program and make recommendations for improvement.

C. The Secretary of Budget and Management shall develop and promulgate rules, regulations, and guidelines for the

investigation and resolution of complaints of discrimination or other unfair employment practices which shall include, at a minimum:

- (1) Provisions for resolving complaints informally whenever possible;
- (2) Provisions for employees to file complaints with the Fair Practices or Equal Employment Opportunity Officer for the department or unit;
- (3) Provisions for the review and resolution of any employment grievance, complaint involving discrimination or other unfair employment practices by the Secretary of Budget and Management prior to any appeal to the Office of Administrative Hearings;
- (4) Guidelines for cooperation with the investigation of any complaint of discrimination filed with the Maryland Commission on Human Relations, the United States Equal Employment Opportunity Commission or any other agency authorized by law to conduct such investigations; and
- (5) Training programs for managers and supervisors in identifying and resolving complaints of discrimination or other unfair employment practices.

D. No employee shall be harassed or otherwise retaliated against for filing a complaint of discrimination or other unfair employment practice, providing information in support of any such complaint or testifying, assisting or participating in any phase of an investigation of any unfair employment practice, or on the basis of his or her refusal to submit to a genetic test or make available the results of a genetic test.

E. Discrimination or retaliation complaints by Fair Practices Officers, Equal Employment Opportunity Officers, or EEO Office Directors shall be filed with the head of the unit or their designee and may be appealed to the statewide EEO Coordinator's Office.

**Article III — Cooperation with the Maryland Commission
on Human Relations and United States Equal
Employment Opportunity Commission**

A. In accordance with the requirements of applicable federal and State law governing equal employment opportunity, the State Personnel and Pensions Article, and this Executive Order, all heads of departments and units in the Executive Branch shall cooperate fully with the Maryland Commission on Human Relations, the United States Equal Employment Opportunity Commission and any other federal or State agency investigating discrimination and duly comply with any validly adopted rules, regulations, and orders for effectuating the State's policies against discrimination and resolving complaints of discrimination.

B. Every attempt shall be made to resolve complaints of discrimination within a department or unit; however, employees who file complaints of discrimination with agency Fair Practices Officers or Equal Employment Opportunity Officers shall be advised of their right to file a complaint with the Maryland Commission on Human Relations and the United States Equal Employment Opportunity Commission.

C. The Secretary of Budget and Management shall establish guidelines which provide for agency participation in mediation or arbitration of employee complaints of discriminatory or unfair employment practices.

D. If an employee of the Maryland Commission on Human Relations files a complaint of discrimination against a State agency, the Governor shall appoint an individual to perform the functions usually performed by the Commission.

Article IV — State Action

A. Any employee of the State who violates the laws of this State pertaining to equal employment opportunity, this Executive Order or guidelines, rules and regulations promulgated pursuant thereto, will be subject to disciplinary action, up to and including dismissal from employment with the State.

B. In performing services to the public, employees of this State will not discriminate against the public or individuals for any reason prohibited by law, nor shall they authorize the use of State facilities in the furtherance of any unlawfully

discriminatory purpose or by any organization which unlawfully discriminates in its membership or policies.

Article V — Accommodations

A. Reasonable accommodation shall be provided for all qualified applicants for employment and State employees with disabilities, consistent with the requirements of federal and State law.

B. Meetings, hearings, and employment tests shall be conducted in an accessible manner and location, as required by federal and State law.

C. No employee shall be retaliated against for seeking a reasonable accommodation for a disability.

D. Managers and Supervisors shall receive training concerning reasonable accommodations for disabilities.

Article VI — Annual Reports

A. The head of each principal department or unit in the Executive Branch shall, by October 15 of each year, or as otherwise requested, submit to the Secretary of Budget and Management an annual report of activities taken in the previous fiscal year to effectuate this Code of Fair Employment Practices. The report shall contain the information required by the Secretary of Budget and Management in a form consistent with the guidelines issued by the Secretary of Budget and Management.

B. The Secretary of Budget and Management shall, by January 1 of each year, submit to the Governor an annual report on statewide equal employment opportunity practices. The Secretary of Budget and Management shall provide copies of the report to each department and unit, the General Assembly, and the Maryland Commission on Human Relations.

Article VII — Notice to Employees

A. The Secretary of Budget and Management shall publish the policies of this State with regard to its fair employment practices and make copies of the publication available to all agencies.

B. Consistent with the requirements of federal and State law, the Secretary shall authorize an appropriate notice of State fair employment practices and the manner in which the notice is to be posted.

C. The heads of departments and units shall procure the publication and notice required by this Executive Order, furnish copies of the publication to all managers and supervisors and make it available to employees, and post the notice in the locations and manner required by the Secretary of Budget and Management.

GIVEN Under My Hand and the Great Seal of the State of Maryland, in the City of Annapolis, this 22nd day of August, 2007.

Martin O'Malley
Governor

ATTEST:

Dennis Schnepfe
Interim Secretary of State