



# Equal Pay Certificate of Compliance Report

2016 through 2018



April 10, 2018

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 (Department) submits the following biennial report to the Governor, the chairs, and ranking minority members of the committees in the Senate and House of Representative with primary jurisdiction over the Department concerning its enforcement efforts of Minn. Stat. §363A.44.

## Introduction

The National Committee on Pay Equity calculates the day into the current year the average woman must work to earn what the average white male earned in the previous year. The day is known as Equal Pay Day and in the present year the day falls on April 10. In honor of Equal Pay Day, the Department of Human Rights is issuing its Equal Pay report. The National Committee on Pay Equity calculates that it will take until 2059 for the gender pay gap to be closed.<sup>1</sup>

According to the American Community Survey (ACS) data released by the United States Census Bureau, the average woman in Minnesota makes 83 cents to every dollar made by white male workers. The Economic Policy Institute estimates that the loss of lifetime earnings for women is between \$530,000 and \$800,000 on average depending on their level of education.<sup>2</sup> In reviewing ACS data, the loss of earnings for women of color is more disparate as Asian American women make 71.3 cents, African American women make 59.4 cents, Native American women make 59.2 cents and Hispanic women make 53.5 cents to every dollar made by white male workers in Minnesota.

## Background

On May 11, 2014, Governor Mark Dayton signed into law the Women’s Economic Security Act (WESA). The WESA legislation, in part, amended the Minnesota Human Rights Act (Act) to require certain contractors to obtain an Equal Pay Certificate (certificate) from the Minnesota Department of Human Rights (Department) prior to contracting with the state of Minnesota and metropolitan agencies. The portion of WESA pertaining to certificates went into effect on August 1, 2014.

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1 Julie Anderson, Jessica Milli, and Melanie Kruevelis, “Projected Year The Wage Gap will Close by State”; Institute for Women’s Policy Research, March 22, 2017.

2 Elise Gould, Jessica Scheider, and Kathleen Geier, “What is the gender pay gap and is it real”; Economic Policy Institute, October 20, 2016.

Any contractor that has 40 or more employees in the state of its principal place of business, must have a 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.<sup>3</sup> Certificates are valid for four years.<sup>4</sup>

There are two exceptions to the general rule for a contractor to have a 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.<sup>5</sup> The second exception is when the contractor has entered into a contract with the State Board of Investment for investment options under Minn. Stat. § 352.965, Subd. 4.<sup>6</sup>

The commissioner of administration may grant an undue hardship exemption for a specific contract.<sup>7</sup> The exemption is not for the contractor.

A contractor may obtain a certificate by paying a \$150 filing fee and submitting an equal pay compliance statement with the commissioner.<sup>8</sup> The equal pay compliance statement must be signed by the chief executive officer or chairperson of the board.<sup>9</sup> The Department has published, on its website, an equal pay compliance statement for contractors to use. However, there is no obligation for a contractor to use the sample equal pay compliance statement. The commissioner must issue a certificate or state why the Department denied the application within 15 days of submission of the application.<sup>10</sup>

The equal pay compliance statement, in part, requires the contractor's Chief Executive Officer (CEO) 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 of 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 benefits.<sup>11</sup>

The sample equal pay compliance statement prepared by the Department provides the following options for a contractor to identify its compensation practices: market pricing, state prevailing wage or union contract, performance pay, internal

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3 Minn. Stat. §363A.44, Subd. 1(a).

4 Id.

5 Minn. Stat. §363A.44, Subd. 1(b).

6 Id.

7 Id.

8 Minn. Stat. §363A.44, Subd. 2(a).

9 Id.

10 Minn. Stat. §363A.44, Subd. 3.

11 Minn. Stat. §363A.44, Subd. 2.

<b>What a Woman Makes for Every Dollar a Man makes in Minnesota</b>	
<b>Women vs. Men</b>	<b>83 cents</b>
<b>White Non-Hispanic Women vs. White, non-Hispanic Men</b>	<b>80.1 cents</b>
<b>Asian Women vs. White, non-Hispanic Men</b>	<b>71.3 cents</b>
<b>Black Women vs. White, non-Hispanic Men</b>	<b>59.4 cents</b>
<b>Native Women vs. White, non-Hispanic Men</b>	<b>59.2 cents</b>
<b>Latinas vs. White, non-Hispanic Men</b>	<b>53.5 cents</b>

Source: National Women’s Law Center (NWLC). NWLC calculations based on the 2016 American Community Survey Data.

analysis, or other.<sup>12</sup> If the contractor selects other, the contractor must provide a description of the approach adopted by the contractor.

The commissioner may void a contract awarded by 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 if the contractor does not have an Equal Pay Certificate or the contractor has not submitted the \$150 application fee and equal pay compliance statement to the commissioner.<sup>13</sup>

The commissioner may suspend or revoke a certificate of a contractor when the contractor fails to make a good faith effort to comply with Minn. Stat. § 363A.44, has failed to make a good faith effort to comply with the laws identified in Minn. Stat. § 363A.44, Subd. 2(a)(1), or has multiple violations of the laws identified in Minn. Stat. § 363A.44, Subd. 2(a)(1).<sup>14</sup> Prior to suspending or revoking a certificate, the commissioner must first work with the contractor to correct wages and benefits due to employees.<sup>15</sup> The contract award agency may abridge or terminate a contract when the commissioner suspends or revokes the certificate of a contractor.<sup>16</sup>

## Certificates Issued

During the reporting period, the Department issued 511 certificates. The number of certificates issued to contractors that are based in Minnesota was 249. The number of certificates issued to contractors with their principal place of business

<sup>12</sup> Minn. Stat. §363A.44, Subd. 2(5)(b).

<sup>13</sup> Minn. Stat. §363A.44, Subd. 5(a).

<sup>14</sup> Minn. Stat. §363A.44, Subd.4.

<sup>15</sup> Id.

<sup>16</sup> Minn. Stat. §363A.44, Subd. 2(5)(b).

located outside of Minnesota was 262. The total number of contractors with a certificate issued by the Department currently stands at 1256.

The Department has 15 days, per statute, to review an equal pay application. The Department is committed to reviewing and approving an application within 3 days of receipt. Although the majority of applications were processed within 3 days, 5% of the certificates had deficiencies on their original application, which required additional time. The most common deficiencies are: CEO signature not included on the application, application fee not attached, or compensation method not outlined.

The Department contacted the Department of Administration to determine if the Commissioner issued an undue hardship exemption. The Commissioner of the Department of Administration informed the Department that no hardship exemption was granted during the reporting period.

## **Audits Conducted**

The Department initiated 122 equal pay compliance audits during the relevant reporting period. The Department, in determining which contractors to audit, strives to select contractors that are representative of the contractors performing work for the State of Minnesota and the metropolitan agencies. The industries that were represented in the audits included Construction, IT, Engineering, Healthcare and Environmental services.

In initiating equal pay compliance audits, the Department discovered that 13 contractors did not have a workforce certificate with the Department. The Commissioner has the authority to void a contract whenever it is discovered that the contractor is performing work for the State of Minnesota or metropolitan agency over \$100,000 and the contractor does not have a workforce certificate. All 13 contractors came into compliance with Minn. Stat. §363A.36 by obtaining a workforce certificate.

The Department cancelled 13 equal pay audits after reviewing the initial submission of the contractor. Equal pay audits are cancelled by the Department when the contractor has no female job incumbents in the positions that are performing work under identified contracts or the sample size of employees was too small to be objectively analyzed.

The Department completed 60 audits during the relevant reporting period. The Department has 62 audits that are open in which the Department has not yet made a determination.

## **Auditing Efforts**

The Department begins the auditing process by determining which employees within the contractor's organization are performing substantially similar work to the employees performing work under any contract that would require the contractor to have an equal pay certificate. The Department obtains information from the contractor such as EEO codes, job titles, and job descriptions to determine which individuals within the contractor's organization are performing substantially similar work. The individuals identified by the Department as performing substantially similar work become the relevant pool of employees for the equal pay audit. The Department then seeks compensation information from the contractor such as base salary, production incentive pay, bonuses, and benefits paid.

The Department also requests documentation of the contractor's last wage analysis to ensure that the contractor is consistently reviewing their compensation practices and addressing wage disparities as stated in its equal pay compliance statement. The Department considers the thoroughness of the compensation review undertaken by the contractor in assessing whether the contractor has made a good faith effort to comply with federal and state anti-discrimination and equal pay laws.

The Department then analyzes whether any disparities exist in the manner by which starting wages are determined and paid by the contractor. In assessing the starting wage compensation paid by contractors, the Department may consider such factors as the possible range of starting wages for the position, whether the contractor has a sign-on bonus, and the clarity of its policies to its hiring managers for determining starting wages and sign-on bonuses. The Department will also assess the consistency of the contractor's application of starting wage criteria.

The Department also analyzes whether any disparities exist in the manner by which total annual compensation is paid by the contractor. In analyzing total annual compensation, the Department may consider such factors as to whether the employee was eligible for a production bonus, overtime compensation, or additional assignment based on quality of work. Similar to starting wage compensation, the Department assesses the consistency of the contractor's application of total annual compensation criteria.

Finally, the Department analyzes whether horizontal and vertical job segregation exists in the contractor's workforce. Horizontal job segregation by a contractor is defined as female employees being disproportionately assigned to work in low wage occupations. Vertical job segregation by a contractor is defined as female employees being disproportionately paid less than the median wage paid to employees within a particular job or occupation.

In the instances where the Department found discrepancies which might suggest a violation of federal or state law, the Department provided the contractor with an opportunity to explain the difference in starting wage or annual compensation. The most common affirmative defenses advanced by contractors were collective bargaining agreements, years of service within the organization, years of relevant work experience, education and performance.

## Compensation Practices

Contractors are required within their equal pay compliance statement to identify their compensation and benefits practices. The five identified practices in the Department's sample equal pay compliance statement are – market pricing, state prevailing wage or union contract, performance pay, internal analysis and other.<sup>17</sup> If the contractor selects other, the contractor must provide a description of the approach adopted by the contractor. Of those contractors that received a certificate, 9% selected other.

The Department, in reviewing contractor's equal pay compliance statements during the reporting period, appreciates that setting employee compensation and benefits practices is a complex process given the variety of responses submitted by contractors. More than 52% of the entities with Equal Pay Certificates use multiple approaches in determining employee compensation and benefits. The most common dual method (32%), were market pricing and performance pay structures. Among the contractors that utilize only one type of compensation methodology, the two most common are market pricing (78%) and performance pay systems (61%).

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<sup>17</sup> Minn. Stat. §363A.44, Subd. 2(5)(b).

The equal pay compliance statement submitted by contractors requires them to identify how often they evaluate the compensation and benefits provided to their employees. The vast majority, 80% of contractors, who were issued a certificate during the reporting period review and evaluate their compensation and benefit practices on an annual basis. The data reviewed by the Department indicates that 9% of contractors review and evaluate their compensation and benefits every two years and 5% review and evaluate beyond two years. The remaining 6% of contractors indicated that they evaluate their compensation and benefit practices on a different timetable than indicated on the application.

## Conclusion

As the process for conducting equal pay audits has become more standardized, the Department anticipates that it will be able to complete annually more equal pay audits. The Department is working toward publishing technical assistance during the current biennium to assist contractors in complying with their equal pay certificate obligations.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin M. Lindsey". The signature is fluid and cursive, with the first name "Kevin" and last name "Lindsey" clearly legible.

Kevin M. Lindsey, Commissioner  
Minnesota Department of Human Rights

cc: Governor Mark Dayton  
Joane McAfee, Office of Governor Mark Dayton  
Senator Warren Limmer  
Senator Ron Latz  
Representative Sarah Anderson  
Representative Sheldon Johnson