

**Minnesota Department of Human Rights
Equal Pay Certificate
Technical Assistance Guidance**

On May 11, 2014, Governor Mark Dayton signed the Women’s Economic Security Act (WESA) into law. At the [bill signing ceremony](#), Governor Dayton stated,

Today, as we honor our Mothers and Grandmothers, we have taken a giant step forward for Minnesota’s working women and their families. It should not require a law to ensure that women are treated fairly in the workplace, or that they are paid equally for their work. However, too many women still experience serious economic disparities, unfair gender barriers, and other workplace discrimination in our state. For all of them, this law is vitally important and long overdue.

The new law creates a new obligation for certain state contractors to obtain an equal pay certificate from the Minnesota Department of Human Rights prior to executing a contract. The new equal pay certificate requirement applies to all solicitations likely to exceed \$500,000 that occur on or after August 1, 2014. The new law concerning equal pay certificates can be found in the Minnesota Human Rights Act at Minn. Stat. §363A.44.

This technical guidance is meant to provide information as to the scope of the new equal pay certificates, the application process and what may occur if the Department determines a contractor has not complied with the law.

The Department anticipates providing ongoing assistance to help contractors comply with the new equal pay statute.

Scope of Equal Pay Certificates

Minnesota state departments and agencies, the Metropolitan Council, the Minnesota Sports Facility Authority, the Metropolitan Airports Commission and the Metropolitan Mosquito Control Commission, except as discussed below, are now obligated to ensure that their large contracting partners have an equal pay certificate prior to executing a contract for goods and services over \$500,000.¹

A large contracting partner is a contractor that employs more than 40 full-time employees in Minnesota or in the state of its primary place of business, for at least

¹ Minn. Stat. §363A.44, Subd. 1(a).

one day in the 12 months prior to executing the contract². The following examples help explain when the law applies.

Scenario One – Company XYZ is a Wisconsin based company that has employed 10 employees in Minnesota and 50 employees in Wisconsin, over the past three years. Company XYZ executes a contract with the Metropolitan Airports Commission to provide services in excess of \$1,000,000. Company XYZ assigns only its Minnesota employees to work on the contract with the MAC.

Company XYZ is required to obtain an equal pay certificate because it employed 50 employees in Wisconsin, its primary place of business, in the 12 months prior to executing the contract and has executed a contract with the MAC for \$1,000,000. The fact that a contracting partner has more than 40 employees and a contract over \$500,000 means that the contractor is obligated to obtain an equal pay certificate.

Scenario Two – ABC engineering company enters into a \$750,000 contract with the Metropolitan Council. ABC has 25 employees in North Dakota and 20 employees in South Dakota. 10 employees of ABC are responsible for performing work under the contract with the Metropolitan Council.

ABC Company is not required to obtain an equal pay certificate because ABC does not employ 40 employees in Minnesota or its primary place of business.

If a contract is awarded to a business that does not have an equal pay certificate as required by the law, the Department, in deciding whether to take steps to void the contract will assess whether the lack of an equal pay certificate is due to contract award entity oversight, contractor omission or bad faith of the contractor.³

Exempt Contracts

Any business that has a license, certification, registration, provider agreement or provider enrollment contract to provide goods and services to individuals under chapters 43A, 62A, 62C, 62D, 62E, 256B, 256I, 256L and 268A is not required to obtain an equal pay certificate.⁴ Contracts entered into by the State Board of Investment for investment options under Minn. Stat. 352.965, subdivision 4 are also exempt.⁵

² Id.

³ Minn. Stat. §363A.44 Subd. 5.

⁴ Minn. Stat. §363A.44 Subd. 1(b).

⁵ Id.

Scenario One – Helping Hands, Inc. is a health care provider that has entered into a contract with the Department of Human Services to provide care under the State of Minnesota’s medical assistance program for needy people. Is Helping Hands, Inc. obligated to obtain an equal pay certificate?

No. Because Helping Hands, Inc. provides goods and services to individuals under Chapter 256B it is not obligated to obtain an equal pay certificate.

Application Process

The application for an equal pay certificate requires a contractor to provide an equal pay compliance statement and pay an application fee of \$150 to the Department.⁶

The equal pay compliance statement by the contractor must state or provide the following information⁷:

- (i) Compliance with Title VII of the Civil Rights Act of 1964, Equal Pay Act of 1963, Minnesota Human Rights Act and Minnesota Equal Pay for Equal Work Law;
- (ii) Average compensation for female employees is not consistently below the average compensation for male employees, taking into account mitigating factors, within each of the major job categories in your EEO-1 report.⁸ If federal law does not require you to file an EEO-1 report, then taking into account mitigating factors, the average compensation for female employees is not consistently below the average compensation for male employees within each of the major job categories as the term is defined by the EEOC in regards to the EEO-1 reporting system⁹.

⁶Minn. Stat. §363A.44 Subd. 2(a).

⁷Minn. Stat. §363A.44 Subd. 2(a)(b).

⁸ The EEO-1 report, formally known as the ‘Employer Information Report,’ is a United States government form requiring employers to provide a count of their employees by job category and then by ethnicity, race and gender. An EEO-1 report must be filed by all non-governmental employers with more than 100 employees and by federal government contractors with more than 50 employees. The EEO-1 report is submitted to the Equal Employment Opportunity Commission (EEOC) and to the Department of Labor, Office of Federal Contract Compliance Programs (OFCCP).

⁹ The ten major job categories are: (1) Executive/Senior Level Officials and Managers, (2) First mid/level officials and managers, (3) Professionals, (4) Technicians, (5) Sales, (6) Administrative support workers, (7) Craft workers, (8) Operatives (9) Laborers, and (10) Service workers. The Department will be available to answer question from contractors concerning the ten major job categories. The Compliance Unit can be reached at (651) 539-1095.

- (iii) No segregation, retention or promotion policies exist that result in a disparate discriminatory impact upon women;
- (iv) Wages and benefit disparities are corrected when identified;
- (v) How often wages and benefits are evaluated to ensure compliance with the laws identified above and that its female employees are paid equally to its male employees; and
- (vi) How it sets compensation and benefits for its employees.

The equal pay compliance statement must be signed by the Chief Executive Office or Chairperson of the Board.¹⁰ The Department has an [equal pay compliance statement](#) that can be used by contractors.

While a contractor needs to identify its compensation and benefit scheme and how often it evaluates its scheme, there is no specific preference for a particular compensation and benefit scheme or time interval for review mandated under the law.¹¹

The Department will issue an equal pay certificate or a letter explaining why the application was rejected within 15 days of the Department receiving the contractor's application.¹²

Review of Employment Practices

The Department will periodically review the employment practices of a contractor with an equal pay certificate to determine the compliance with Minn. Stat. §363A.44.¹³ The Department has broad discretion to request documents to determine compliance of a contractor.¹⁴

If the Department finds that the contractor is not in compliance with the law, the Department may pursue a variety of remedial actions such as changing the policies of the contractor, obtaining wages and benefits due to employees, or seeking modification or termination of the contract.¹⁵ The Department anticipates working in close collaboration with the bid award entity whenever the Department pursues remedial action against a contractor with an equal pay certificate. Contractors may

¹⁰ Minn. Stat. §363A.44 Subd. 2(a).

¹¹ Minn. Stat. §363A.44 Subd. 2(b).

¹² Minn. Stat. §363A.44 Subd. 3.

¹³ Minn. Stat. §363A.44 Subd. 8.

¹⁴ Id.

¹⁵ Minn. Stat. §363A.44 Subd. 5.

seek to challenge the action undertaken by the Department by filing an appeal with the Office of Administrative Hearings.¹⁶

The Department, when applicable, may forward information to the Department of Administration regarding the contractor's violation of the law. The Department of Administration may take action against the contractor including suspending or barring the contractor from being eligible to contract for future state business opportunities.

¹⁶ Minn. Stat. §363A.44 Subd. 6.