

COMMONWEALTH OF MASSACHUSETTS

By His Excellency

Michael.S. Dukakis

Governor

EXECUTIVE ORDER NO. 143

EQUAL EMPLOYMENT OPPORTUNITY FOR THE HANDICAPPED

Preamble

The Commonwealth of Massachusetts has long been recognized as a leader in advancing equality of opportunity for all individuals. Our State Constitution, statutes, and recent executive orders such as Executive Order No. 74, 116, the Code of Fair Practices, affirm this overriding commitment.

However, despite these efforts, the handicapped in our society have often suffered from discriminatory employment practices.

Today, our state government breaks new ground in affirming the Commonwealth's strong commitment to extending equal employment opportunity to the handicapped in state service.

In order to meet this obligation, I, Michael S. Dukakis, Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me by the Constitution and by the statutes of the Commonwealth, do hereby adopt the following Governor's Order for Equal Employment Opportunity for the Handicapped and hereby order and direct that the said Order be the governing and guiding policy of the Executive branch of the government of the Commonwealth of Massachusetts.

Article I Declaration of Policy

1.1 Non-discrimination and equal opportunity are the policy of the Executive Department of the Commonwealth of Massachusetts with respect to the employment of the handicapped in state service.

1.2 A handicapped person shall mean any person who:

- 1) has a physical or mental impairment which substantially limits one or more major life activities;
- 2) has a record of such an impairment; or
- 3) is regarded as having such an impairment.

1.3 Unless the person's handicap would prevent such

person from performing the particular job, no person who is otherwise qualified shall be denied equal opportunities to obtain and/or maintain employment in state service or to advance in his/her position solely because said person is handicapped.

Furthermore, state contracts shall be held to comply with this policy.

1.4 State agencies shall eliminate pre-employment inquiries or medical examinations as to whether an applicant is handicapped or as to the nature and severity of the handicap, except when necessary to determine the applicant's ability to perform job related functions.

1.5 Each agency and appointing authority of the Commonwealth shall be expected to make reasonable accommodations to the known physical or mental limitations of an otherwise qualified handicapped individual.

1.6 All agencies and appointing authorities of the Commonwealth shall initiate equal employment opportunity programs designed to conform with this policy. All such EEO programs shall be subject to review by the Executive Office of Administration and Finance (Secretary or his/her designee as hereafter provided).

1.7 All powers, functions and duties granted to the Governor and the Secretary of A & F under any provision of law shall also apply to the policy and shall be construed liberally for the accomplishment of the purposes hereof.

## Article II Employment Policies of State Agencies

2.1 The Secretary of Administration & Finance shall have overall responsibility for ensuring equal employment opportunities for the handicapped in the Commonwealth.

2.2 The Secretary shall appoint forthwith an Advisory Board which shall consist of the Commissioner of the Massachusetts Rehabilitation Commission, the Commissioner of the Commission for the Blind, the Director of Personnel Administration, the Director of the Office of Affirmative Action, or their designees and four other persons, who are either handicapped persons in state service or representatives of handicapped organizations.

2.3 The Secretary, in consultation with the Advisory Board, shall establish appropriate standards and procedures governing the preparation, submission and review of equal employment opportunity programs for the handicapped for all agencies within the Executive Department and shall establish, within thirty days of the promulgation of this order, a uniform grievance procedure to be used by all agencies and appointing authorities subject thereto. Such standards and procedures

shall include, without limitation, the following:

2.3.1 The requirement that each secretary of each Executive Office shall appoint a highly placed person, preferably the person serving as the EEO Officer under EO 116, as the EEO Officer for the Handicapped. This person shall supervise the implementation of the Handicapped programs by all agencies and appointing authorities within each executive office, including the secretariat. The Chief Executive of each agency or appointing authority shall appoint an Equal Employment Opportunity Officer, preferably the person serving as EEO Officer under Executive Order 116, as the EEO Officer for the Handicapped. Each EEO Officer shall have the authority to review and pass upon the EEO program within his/her office and, whenever possible, shall be exempt from Civil Service.

2.3.2 The requirement that each agency and appointing authority will implement and utilize the grievance procedure established pursuant to section 2.3 to hear complaints from applicants and employees based on this policy.

2.3.3 The requirement that each agency and appointing authority will develop a program for implementation of the policy based on the standards and procedures formulated by the Secretary within thirty days of receiving same.

2.3.4 The requirement that, within sixty days of receiving programs promulgated pursuant to the order, the Secretary shall approve or disapprove them.

2.3.5 The requirement that the Secretary, or his/her designee, conduct an ongoing review of the EEO programs for the handicapped to assure that such programs, and the intent of this Executive Order, are being complied with.

2.3.6 The requirement that all agencies and appointing authorities shall promulgate clear, written directions to carry out the approved programs for the handicapped.

2.4 Agencies and appointing authorities shall receive technical assistance in the development and implementation of their programs by the Massachusetts Rehabilitation Commission and Massachusetts Commission for the Blind.

2.5 The Division of Personnel Administration shall employ systematic efforts to ensure that the procedure for appointing persons to state services is based on an applicant's actual ability to discharge the duties of the position for which the person seeks employment and not based on preconceptions of a person's handicap.

2.6 Each agency and appointing authority shall report, on a quarterly basis, through the appropriate Secretary, to the Secretary on actions taken during the preceding three

months and shall submit an annual report by July 30 of each year. Notwithstanding the foregoing, the Secretary, his/her designee, may at any time request and shall receive such information as is deemed appropriate for your purposes of monitoring compliance.

2.7 The Director of the Office of Affirmative Action shall serve as the Secretary's designee in carrying out his/her responsibilities under this order. As part of the Director's responsibilities, he/she shall be responsible for the review of all appeals from the grievance procedure. Furthermore, the Director shall work directly with all agencies and secretariats in ensuring the proper implementation of all equal employment programs for the handicapped. In order for the Director to monitor the implementation of these programs all Equal Employment Officers shall be required to submit information to the Director and to such other persons as the Director may designate. Such Equal Employment Officer shall report to the Director any problems that they experience in administering the programs within their offices. In addition, the Director shall have any additional powers that are necessary to carry out the Commonwealth's policy of nondiscrimination and equal employment opportunity for the handicapped.

2.8 The Office of Affirmative Action shall report instances of non-compliance with an approved EEO plan for the handicapped to the Secretary. Any finding, after a hearing by the Secretary, his/her designee, of deliberate failure or refusal to implement such plan shall constitute cause for dismissal and shall be reported through the appropriate secretary to such person's appointing authority for appropriate disciplinary action. If a Secretary is found to be out of compliance, the report shall be made to the Governor.

2.9 The hearings required in paragraph 2.8 of this Article shall be conducted by a hearing panel consisting of not less than three members of the Advisory Board. The panel will be called the Equal Employment Panel for the Handicapped, and shall have authority to impose sanctions on persons, where appropriate. To act as staff for the Panel, the Secretary, his/her designee, shall appoint the person serving as Panel Director under the Executive Order 116, as Panel Director for the Handicapped.

### Article III State Services and Facilities

3.1 All service of every state agency shall be performed without discrimination based on handicap. No state facility shall be used in furtherance of any discriminatory pattern or practice nor shall any state agency become a party to any agreement, arrangement or plan which has the effect of sanctioning such patterns or practices.

3.2 Each agency shall prepare a self-evaluation by

June 2, 1978 pursuant to Section 504 of the Rehabilitation Act of 1973, Public Law 93-112, as amended, and shall instigate sustained, comprehensive programs to remedy any defects found to exist. This self-evaluation shall thereafter be performed on an annual basis as part of the agency's annual report.

#### Article IV Contracts

4.1 Every state or state-assisted contract for public buildings and public works or for goods or services shall contain an article prohibiting discriminatory employment practices by contracts, subcontracts and suppliers of goods or services based on handicap. The nondiscrimination article shall include a provision requiring contractors and suppliers of goods or services to give written notice of their commitments under this article to any labor union, association or brotherhood with which they have a collective bargaining or other agreement.

#### Article V State Employment Services

5.1 All state agencies including educational institutions which provide employment referral or placement services to public or private employers shall refuse to fill any job order which has the effect of excluding handicapped persons unless the job related requirements are such that even with reasonable accommodation said requirements preclude a handicapped person from performing the necessary functions of the position, as determined by the Division of Personnel Administration under Article 2.5.

#### Article VI State Forms

All state agencies shall exclude from forms or request for information any item or inquiry expressing any limitation or specification as to handicap except for pre-employment inquiry into an applicant's ability to perform job-related functions.

Given at the Executive Chamber  
in Boston this 20th day of March  
in the year of our Lord one  
thousand nine hundred and seventy-  
eight and of the Independence of  
the United States of America,  
two hundred and one.

Michael S. Dukakis, Governor  
Commonwealth of Massachusetts

Paul H. Guzzi  
Secretary of the Commonwealth