By His Excellency

MICHAEL S. DUKAKIS
GOVERNOR

EXECUTIVE ORDER NO. 116
(Revising and Amending Executive Order No. 74)
GOVERNOR'S CODE OF FAIR PRACTICES

Preamble

The Preamble is amended by adding the following sentence at the end of the third paragraph:

We recognize that any such effects of any illegal past or present discriminatory practices by state agencies and appointing authorities must be affirmatively remedied, and that the percentage racial and sexual makeup of the state work force should, at all levels, reflect the percentage racial and sexual makeup of the population where the jobs exist.

Article I Declaration of Policy

1.1 Non-discrimination and equal opportunity are the policy of the Executive Department of the Commonwealth of Massachusetts in all of its decisions, programs and activities. To that end, all state employees shall rigorously take affirmative steps to insure equality of opportunity in the internal affairs of state government, as well as in their relations with the public, including those persons and organizations doing business with the Commonwealth. Each agency, in discharging its statutory responsibilities, shall consider the likely effects which its decisions, programs and activities shall have in meeting the goal of equality of opportunity.

1.2 Affirmative action requires more than vigilance in the elimination of discriminatory barriers to employment on the grounds of race, color, creed, national origin, age and sex. It must also entail positive and aggressive measures to ensure equal opportunity in the areas of hiring, promotion, demotion or transfer, recruitment, layoff or termination, rate of compensation, inservice or apprenticeship training programs, and all terms and conditions of employment. This affirmative action shall include efforts required to remedy the effects of present and past discriminatory patterns and practices and any action necessary to guarantee equal employment opportunity for all people.

1.3 All agencies and appointing authorities of the Commonwealth shall initiate affirmative action programs designed to conform with this policy. All such affirmative action programs shall be subject to review by the Executive Office of Administration and Finance ("Commissioner") and...
the Massachusetts Commission Against Discrimination ("Commission") as hereafter provided.

1.4 All powers, functions and duties granted to the Governor, the Commissioner of Administration and Finance, and the Massachusetts Commission Against Discrimination under any provision of law shall apply also to this Code and shall be construed liberally for the accomplishment of the purposes hereof.

Article II Employment Policies of State Agencies

2.1 State officials and supervisory employees shall appoint, assign, train, evaluate, compensate, and promote state personnel on the basis of merit and fitness, without regard to race, color, religion, national origin, ancestry, language, sex or age, unless a preference, limitation or specification based upon sex, age, language, military service or otherwise is required by law, or unless sex or proficiency in the English language is deemed by the Massachusetts Commission Against Discrimination to be a bona fide occupational qualification for employment.

2.2 The Commissioner of Administration and Finance shall establish appropriate standards and procedures governing the preparation, submission and review of affirmative action plans by all agencies within the Executive Department. Such standards and procedures shall include, without limitation, the following:

2.2.1 The requirement that, within thirty days of the effective date of this order, the secretary of each executive office shall cause each agency or appointing authority under his or her control to prepare an affirmative action plan or plans setting forth goals and timetables and requiring that each agency or appointing authority employ all possible measures to eliminate the effects of any present or past discriminatory employment practice. The timetables for achieving the goals set in affirmative action plans shall be closely reviewed by the Commissioner, or his designee, to assure that they are reasonable, to the end that the goals established in each such plan shall be achieved in the shortest reasonable time. In no event, however, shall any plan be approved by the Commissioner if the time for achieving the goals extends beyond January 1, 1978.

2.2.2 The requirement that in preparing an affirmative action plan, the agency or appointing authority consider its existing staffing patterns, and when such patterns indicate a pattern of staffing of racial minorities and women that is not fairly
reflective of the percentage of minorities and women where the jobs exist, then to take appropriate remedial measures.

2.2.3 The requirement that, within ninety days of the effective date of this order, the Commissioner shall approve or disapprove all affirmative action plans prepared by such agencies and appointing authorities.

2.2.4 The requirement that the Commissioner, or his or her designee, conduct an ongoing review of affirmative action plans to assure that such plans, and the intent of this Executive Order, are being complied with.

2.2.5 The requirement that the secretary of each executive office shall appoint a highly placed person, who shall report directly to such secretary and who may be designated the Equal Employment Opportunity Officer, to supervise enforcement of affirmative action plans by agencies and appointing authorities within such executive office, including the secretariat. The chief executive of each agency or appointing authority shall appoint a highly placed person, who shall report directly to the chief executive, to administer and enforce the affirmative action plan of such agency or appointing authority. Said person may also be designated the Equal Employment Opportunity Officer. Each Equal Opportunity Officer shall have the authority to review and pass upon affirmative action plans within his or her office and, wherever possible, shall be exempt from civil service. In addition, the Equal Employment Opportunity Officers for each secretariat shall have authority to recommend approval or disapproval of appointment forms and personnel requisitions, and is given a sign-off on all personnel requisitions and appointment forms initiated within his or her secretariat. All other Equal Employment Opportunity Officers shall have authority to recommend approval or disapproval of appointment forms and personnel requisitions and shall report all disapprovals to the Equal Employment Opportunity Officers for their secretariats.

2.2.6 The requirement that all agencies and appointing authorities shall promulgate clear, written directives to carry out the approved affirmative action plan.

2.3 The Commissioner shall consult with the Massachusetts Commission Against Discrimination, with respect to the establishment of such standards and procedures.

2.4 The Division of Civil Service and the Bureau of Personnel and Standardization (Division of Personnel Administration after July 1, 1975) shall employ systematic efforts
to ensure that the procedure for appointing persons to state service, including the development and administration of written and oral examinations, job specifications, and employment qualifications, are free from either conscious or inadvertent bias, and have been examined to eliminate any discriminatory effect on minorities or women. All examinations for entry or promotional appointments shall be designed clearly and demonstrably to test an applicant's actual ability to discharge the duties of the position for which the person seeks appointment.

2.5 The Commissioner shall investigate instances of non-compliance with an approved affirmative action plan. Any finding, after a hearing by the Commissioner, or his or 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.

2.6 The Commissioner shall refer to the Massachusetts Commission Against Discrimination any information which he or she believes may constitute a violation of the laws. The Commission shall initiate complaints against those agencies or persons who it has reason to believe are in violation of the laws. If any agency or appointing authority does not have an approved affirmative action plan within one hundred twenty days after the effective date of this Executive Order, then the Commission may establish such plan for such agency or authority.

2.7 Each agency and appointing authority by July 30th of each year shall report, through the appropriate secretary, to the Commissioner on actions taken during the preceding fiscal year to implement its affirmative action plan. Notwithstanding the foregoing, the Commissioner or the Massachusetts Commission Against Discrimination may at any time request and shall receive such information as is deemed appropriate for purposes of monitoring compliance.

2.8 To carry out the affirmative action responsibilities of the Commissioner under this order, and the Commonwealth's policy of non-discrimination and equal opportunity, there shall be appointed a Director of Affirmative Action ("Director"), who shall be the chief affirmative action officer for the Commonwealth. In order effectively to perform said responsibilities, the Director shall have authority to approve or disapprove all personnel requisitions and appointment forms submitted to the Commissioner by appointing authorities within state government, and is given a sign off on all such appointment forms and personnel requisitions. The Director shall, from time to time, but at least every three months, report to the Governor and the Commissioner on the progress being made by secretaries and all other appointing authorities in meeting the affirmative action plans. Further, the Director shall insure that the state
personnel system is operated in such a way as to ensure assistance to appointing authorities in meeting their affirmative action goals. All affirmative action officers shall be required to submit information to the Director and to such other person as the Director may designate. Said affirmative action officers shall report to the Director any problems that they experience in enforcing and administering the affirmative action plan or plans within their offices. In addition, the Director shall have any additional powers that are necessary to carry out the Commonwealth's policy of non-discrimination and equal opportunity.

2.9 The hearings required in paragraph 2.5 of this Article shall be conducted by a hearings panel, consisting of not less than three persons. The panel may be called the Equal Employment Panel (Panel), and shall have authority to impose sanctions on persons, where appropriate. To act as staff for the Panel, the Commissioner, or his or her designee, shall appoint a Panel director. The Panel director shall perform such other duties as the Commissioner, or his or her designee, may determine.

2.9.1 The Commissioner, or his or her designee, shall establish such appeal procedures as may be required to protect rights of secretaries.

2.10 Nothing in the Article shall be deemed to diminish the powers, duties or jurisdiction of the Commission, including but not limited to its power to act with respect to complaints against any agency or person.

Article III  State Services and Facilities

The language of this article is adopted as it appears in Executive Order No. 74.

Article IV  Contracts

The word "state" is deleted from the heading as it appeared in Executive Order No. 74. Paragraphs one and two of Executive Order No. 74 are revised as shown in paragraphs 4.1 and 4.2 below.

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 contractors, subcontractors and suppliers of goods or services based on race, color, religion, national origin, ancestry, age or sex. 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. Such notice shall also be given to minority and women
contractors and minority contractor associations.

4.2 It is the policy of the Commonwealth of Massachusetts to require that every state contract or state-assisted contract for public buildings and public works and for goods and services which exceeds $100,000 shall contain an article requiring the contractor, and his or her subcontractors, to undertake through every possible measure such affirmative action as may be required by the secretary of the executive office within which the contracting or assisting agency is located (or if such agency is not located within an executive office, then such secretary shall be designated by the Commissioner). The secretary of each executive office shall require that the contracting or assisting agency include as part of state or state-assisted contracts for public buildings and public works, a version of the Commonwealth's Supplemental Equal Employment Opportunity Anti-Discrimination and Affirmative Action Program, appropriately adapted by the Commission. The objective of such affirmative action shall be that (1) all present and past effects of discrimination in employment because of race, color, religion, sex, age or national origin shall be eliminated, and (2) to promote the full realization of equal employment opportunity for minorities and women, including minority and women contractors, through positive and continuing programs.

Paragraph three of Article IV of Executive Order No. 74 is adopted in its entirety.

Paragraph four of Article IV of Executive Order No. 74 is amended by deleting the words "appointing authorities and state," at the beginning of the second sentence, and replacing them with the words "contracting and assisting."

Article V  State Employment Services

The first paragraph of Article V of Executive Order 74 is adopted with the following amendments: The words "they shall" at the beginning of the second sentence are deleted and replaced by the words "said agencies". The word "person" appearing after the word "any" at the end of the first line of the second sentence is deleted and replaced by the words "class of persons". The word "language" is inserted in the second sentence after the word "ancestry" and before the word "age". And the words "or language" are inserted in the second sentence after the word "sex" and before the words "is deemed".

The second sentence of Article V of Executive Order 74 is deleted.

The following paragraphs are added to Article V:

5.2 All state agencies shall advise the Massachusetts Commission Against Discrimination promptly of any employers, employment agencies or unions which said agencies have reason
to believe are practicing unlawful discrimination.

5.3 State agencies shall assist public and private employers, unions, or other persons who, pursuant to a remedial affirmative action program, seek to broaden their recruitment programs by requesting the referral of qualified minority and female applicants. Each executive office, including but not limited to the Executive Office of Manpower Affairs, shall direct agencies under their jurisdiction to fully utilize their expertise, to the end that the agencies shall cause all persons (as defined in Chapter 151B of the Massachusetts General Laws) within their jurisdiction to initiate action to eliminate any practice or program which has an illegal discriminatory effect on minority or female persons within the population, due to their race, sex, color or national origin.

Article VI Massachusetts Commission Against Discrimination

6.1 In the performance of its responsibilities under this Executive Order the Massachusetts Commission Against Discrimination shall have the full cooperation of all state agencies and appointing authorities. Said agencies and appointing authorities shall comply with the Commission Against Discrimination's requests for information concerning practices inconsistent with the state policy of non-discrimination and affirmative action and said agencies shall follow its lawful directives for giving effect to that policy.

6.2 Where appropriate the Commission shall promulgate guidelines, rules and regulations aiding the implementation and enforcement of this executive order.

Article VII State Education, Counseling, and Training Programs

The language of this article, is adopted as it appears in Executive Order No. 74.

Article VIII Health Care

The language of this article is adopted as it appears in Executive Order 74.

Article IX Private Educational Institutions

The language of this article is adopted as it appears in Executive Order No. 74.

Article X State Licensing and Regulatory Agencies

Paragraph one of this article of Executive Order No. 74 is amended by adding the word "sex" after the word "race" and before the word "color", appearing in the first line.
Paragraph two of this article of Executive Order No. 74 is amended by deleting the words "a disparate", after the word "have", and by replacing them with the words "an illegal discriminatory", and by deleting the words "any minority group" and replacing them with the words "women and minority persons".

Article XI Housing Accomodations

Paragraph one of Executive Order No. 74 is amended by adding the word "language" after the word "ancestry" and before the word "membership", and by adding the entry "sex, marital status," after the words "armed forces" and before the words "or veterans".

Paragraph two is corrected by adding the letter "n" after the letter "o" of the incorrect entry "actio". The result is the word "action", as intended.

The third paragraph is amended by adding the word "sex" after the word "color" and before the word "creed", and by adding the word "language" after the words "veterans status" and before the words "or national origin".

Article XII Public Schools

The first paragraph of Executive Order No. 74 is amended by deleting the word "encourage" and replacing it with the word "require".

The following new paragraph is added as the second paragraph:

12.2 The Board of Education shall develop, and cause to be implemented, Rules and Regulations designed to effectuate Chapter 622 of the Acts of 1971 (Massachusetts General Laws c. 76 Sec. 5), and shall ensure that the School Building Assistance Bureau require that all new school buildings and facilities are designed so as to assure that male and female students are provided equal physical facilities.

Paragraph two of Executive Order No. 74 will be paragraph three of this Order with the following amendment: The words "women and" are inserted after the words "education of" and before the words "minority groups".

Article XIII State Financial Assistance

Article XIII of Executive Order No. 74 is amended by deleting the word "encourage" and replacing it with the word "require" and by adding after the word "discrimination" the clause "due to race, color, sex, or national origin". Article XIII is further amended by deleting the words "in conjunction with" and replacing them with the words "subject to review and revision by".

Article XIV State Forms

The language of this article is adopted as it appears in Executive Order No- 74.
Given at the Executive Chamber in Boston this 1st day of May in
the year of our Lord one thousand
nine hundred and seventy-five and
of the Independence of the United
States of America One hundred
Ninety-Ninth.

MICHAEL S. DUKAKIS
Governor
COMMONWEALTH OF MASSACHUSETTS

PAUL GUZZI
Secretary of the Commonwealth