

STATE OF ALASKA
EXECUTIVE ORDER NO. 78

1991



1 Under the authority of art. III, sec. 23, of the Alaska Constitution, and in accordance with
2 AS 24.08.210, I order the following:

3 * **Section 1.** FINDINGS. As governor, I find that it would be in the best interests of efficient
4 administration to transfer the office of equal employment opportunity from the Office of the
5 Governor to the Department of Administration.

6 * **Sec. 2.** AS 44.21.020 is amended by adding a new paragraph to read:
7 (14) administer the office of equal employment opportunity.

8 * **Sec. 3.** AS 44.21 is amended by adding new sections to read:

9 **ARTICLE 8. OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY.**

10 **Sec. 44.21.500. OFFICE ESTABLISHED.** The office of equal employment
11 opportunity is established in the department.

12 **Sec. 44.21.501. POWERS AND DUTIES OF THE OFFICE.** (a) The office shall
13 administer the equal employment opportunity program for the executive branch of state
14 government to ensure compliance with AS 44.21.500 - 44.21.508 and shall

1 (1) assist state officials to carry out their equal employment opportunity
2 responsibilities, including promoting the recruitment, employment, training, and retention
3 of members of protected classes, and recommend solutions to any problems identified;

4 (2) train state managers and supervisors in their equal employment
5 opportunity and affirmative action responsibilities and offer orientation programs to
6 employees to inform them of their rights and responsibilities under AS 44.21.500 -
7 44.21.508.

8 (3) monitor records of personnel actions, develop auditing and reporting
9 systems to acquire statistical information, and prepare federal and state reports concerning
10 the composition of the work force;

11 (4) prepare and submit the affirmative action plan for employment in the
12 executive branch of state government to the governor;

13 (5) prepare guidelines for the affirmative action programs of agencies and
14 review, audit and make recommendations concerning the programs;

15 (6) ensure that agencies comply with the affirmative action plan and with
16 the agency affirmative action program;

17 (7) implement standards by which performance evaluations of supervisors
18 reflect compliance with affirmative action plans and objectives, including the granting or
19 denial of merit increases;

20 (8) assist the division of labor relations in collective bargaining
21 negotiations between the state and employee bargaining organizations to ensure that each
22 collective bargaining agreement negotiated by the state ensures equal employment
23 opportunity;

24 (9) file quarterly reports with the governor and the legislature concerning
25 agency compliance with and progress in its affirmative action program, the affirmative
26 action plan, state and federal equal employment opportunity laws and regulations;

27 (10) accept, investigate, and resolve complaints of discrimination from
28 employees, previous employees, or applicants for employment;

29 (11) serve as primary liaison between the executive branch and state and
30 federal agencies, minority and women's organizations, and community groups concerned
31 with equal employment opportunity; and

1 (12) prepare and submit an annual report to the governor and the
2 legislature by February 15 on the progress and problem areas in the equal employment
3 opportunity program and the implementation of the affirmative action plan.

4 (b) The office may

5 (1) recommend legislative or administrative action to the governor relating
6 to equal employment opportunity and affirmative action matters;

7 (2) require the purging of the records of a complaint of unlawful
8 discrimination from the personnel file of an employee who has filed a complaint of
9 unlawful discrimination;

10 (3) forbid an agency to hire or promote employees based on a
11 discriminatory employment practice;

12 (4) require an agency to reverse a personnel action including a hiring
13 decision if it finds that the action was based on a discriminatory employment practice;

14 (5) require an agency to change its selection procedures if it finds that the
15 procedures violate state or federal laws prohibiting employment discrimination; and

16 (6) when there is reason to believe that an employee has violated this
17 subsection, require the agency to investigate and to impose discipline if the investigation
18 reveals facts warranting it.

19 (c) A collective bargaining agreement adopted under AS 23.40.070 - 23.40.260
20 (Public Employment Relations Act) must be consistent with principles of equal
21 employment opportunity and affirmative actions. AS 44.21.500 - 44.21.508 supersede the
22 provisions of AS 39.25 (State Personnel Act).

23 Sec. 44.21.502. ADMINISTRATIVE REGULATIONS. The commissioner shall
24 adopt regulations under the Administrative Procedure Act (AS 44.62) to carry out the
25 office's duties.

26 Sec. 44.21.503. AFFIRMATIVE ACTION PLAN. The department shall establish
27 an equal employment opportunity program and adopt annually an affirmative action plan
28 for the executive branch of state government. The plan remains in effect until the
29 department establishes a subsequent plan. The office shall work with each agency to
30 enhance equal employment opportunity.

31 Sec. 44.21.504. COMPLIANCE WITH AFFIRMATIVE ACTION PLAN. (a)

1 Each agency shall comply with the affirmative action plan. Each commissioner or
2 executive head of an agency shall adopt an affirmative action program to implement the
3 plan within the agency. At the request of the office, a state official shall report to the
4 office about agency employment practices and activities to implement and comply with
5 the plan or program.

6 (b) When the office finds that an agency has violated the affirmative action plan
7 or its affirmative action program, the office may

8 (1) suspend the hiring authority of the agency; and

9 (2) impose mandatory affirmative action measures on the agency to bring
10 the agency into compliance.

11 Sec. 44.21.505. EMPLOYMENT DISCRIMINATION COMPLAINTS. (a) The
12 office shall accept complaints of employment discrimination in the executive branch of
13 state government and shall confer with the complainant and the agency involved to bring
14 about an informal resolution of complaint.

15 (b) An agency shall notify the office when the agency receives a complaint
16 alleging employment discrimination.

17 (c) The office may not make public the records of a complaint or investigation.

18 Sec. 44.21.506. RETALIATION PROHIBITED. (a) An agency, officer, or state
19 employee may not directly or indirectly refuse to hire, transfer or promote, or dismiss,
20 demote, suspend, lay off, or otherwise discipline a person for filing a complaint with the
21 office for a failure to comply with affirmative action or equal employment opportunity
22 or for assisting the office in an investigation of a complaint.

23 (b) A person who knowingly violates this section is liable for a civil penalty of
24 not more than \$1,000.

25 Sec. 44.21.507. ACCESS TO CONFIDENTIAL RECORDS. The office may
26 have access to all data, records, and reports necessary to carry out its functions under AS
27 44.21.500 - 44.21.508. The office may not make public information designated as
28 confidential by AS 39.25.080 or another law. However, the office may make public
29 statistical information compiled from confidential records.

30 Sec. 44.21.508. DEFINITIONS. In AS 44.21.500 - 44.21.508,

31 (1) "agency" means a department, office, agency, public corporation,

1 board, commission, authority, or other organizational unit of the executive branch;

2 (2) "commissioner" means the commissioner of administration;

3 (3) "department" means the Department of Administration;

4 (4) "employment in the executive branch of state government" includes
5 employment as a permanent, probationary, provisional, nonpermanent, or temporary
6 employee in the classified, partially exempt, or exempt services in the executive branch
7 of state government;

8 (5) "member of a protected class" means a person protected by federal or
9 state laws that prohibit discrimination in employment or a person who experiences or has
10 experienced difficulty in obtaining employment or advancement in employment because
11 of another factor not related to merit;

12 (6) "office" means the office of equal employment opportunity in the
13 department.

14 * Sec. 4. AS 44.19.441, 44.19.442, 44.19.443, 44.19.444, 44.19.445, 44.19.446, 44.19.447,
15 44.19.448, and 44.19.449 are repealed.

16 * Sec. 5. TRANSITION. (a) Litigation, hearings, investigations, and other proceedings
17 pending under a law amended or repealed by this Order, or in connection with functions
18 transferred by this Order, continue in effect and may be continued and completed notwithstanding
19 a transfer or amendment or repeal provided for in this Order.

20 (b) Regulations adopted by the office of equal employment opportunity under authority
21 of AS 44.19.443 before March 23, 1991, remain in effect until regulations are adopted under
22 AS 44.21.502 by the commissioner of administration, and take effect. The Department of
23 Administration may enforce the regulations adopted under AS 44.19.443 until its own take effect.

24 (c) Contracts, rights, liabilities, and obligations created by or under a law amended or
25 repealed by this Executive Order, and in effect on March 22, 1991, remain in effect
26 notwithstanding this Order's taking effect. Records, equipment, appropriations, and other
27 property of agencies of the state whose functions are transferred under this Order shall be
28 transferred to implement the provisions of this Order.

29 * Sec. 6. This Order takes effect March 23, 1991.

30 DATED: January 21, 1991.

/s/ Walter J. Hickel, Governor