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LC004104

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- EMPLOYMENT OF PEOPLE WITH  
DISABILITIES

Introduced By: Senators Ciccone, Lombardo, Lombardi, Felag, and Nesselbush

Date Introduced: February 04, 2020

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 28-5.1-3.2, 28-5.1-10 and 28-5.1-17 of the General Laws in  
2 Chapter 28-5.1 entitled "Equal Opportunity and Affirmative Action" are hereby amended to read  
3 as follows:

4 **28-5.1-3.2. Enforcement.**

5 (a) The state equal opportunity administrator is authorized to initiate complaints against  
6 any agencies, administrators, or employees of any department or division within state  
7 government, excluding the legislative branch, who or which willfully fail to comply with the  
8 requirements of any applicable affirmative action plan or of this chapter or who or which fail to  
9 meet the standards of good faith effort, reasonable basis, or reasonable action, as defined in  
10 guidelines promulgated by the federal Equal Employment Opportunity Commission as set forth in  
11 29 CFR 1607 [and the Office of Federal Contract Compliance Programs as set forth in 41 CFR](#)  
12 [Part 60-741.](#)

13 (b) Whenever the equal employment opportunity administrator initiates a complaint, he  
14 or she shall cause to be issued and served in the name of the equal employment opportunity office  
15 a written notice, together with a copy of the complaint, requiring that the agency, administrator,  
16 agent, or employee respond and appear at a hearing at a time and place specified in the notice.  
17 The equal employment opportunity office shall follow its lawfully adopted rules and regulations  
18 concerning hearings of discrimination complaints.

1 (c) The equal employment opportunity office shall have the power, after a hearing, to  
2 issue an order requiring a respondent to a complaint to cease and desist from any unlawful  
3 discriminatory practice and/or to take any affirmative action, including, but not limited to, hiring,  
4 reinstatement, transfer, or upgrading employees, with or without back pay, or dismissal, that may  
5 be necessary to secure compliance with any applicable affirmative action plan or with state or  
6 federal law.

7 (d) A final order of the equal employment opportunity office constitutes an "order"  
8 within the meaning of § 42-35-1(j); is enforceable as an order; is to be rendered in accordance  
9 with § 42-35-12; and is subject to judicial review in accordance with § 42-35-15.

10 **28-5.1-10. State contracts.**

11 The division of purchases shall prepare any rules, regulations, and compliance reports  
12 that shall require of state contractors the same commitment to equal opportunity as prevails under  
13 federal contracts controlled by federal executive orders 11246, 11625 and 11375 [and Office of](#)  
14 [Federal Contract Compliance Programs as set forth in 41 CFR Part 60-741](#). Affirmative action  
15 plans prepared pursuant to those rules and regulations shall be reviewed by the state equal  
16 opportunity office. The state equal opportunity office shall prepare a comprehensive plan to  
17 provide compliance reviews for state contracts. A contractor's failure to abide by the rules,  
18 regulations, contract terms, and compliance reporting provisions as established shall be ground  
19 for forfeitures and penalties as established by the department of administration in consultation  
20 with the state equal opportunity office.

21 **28-5.1-17. Utilization analysis.**

22 (a)(1) The personnel administrator, in consultation with the equal employment  
23 opportunity administrator, and the human resources outreach and diversity administrator within  
24 the department of administration, shall annually conduct a utilization analysis of positions within  
25 state government based upon the annual review conducted pursuant to §§ [28-5-40](#), 28-5.1-3 and  
26 28-5.1-4.

27 (2)(i) To the extent the analysis determines that minorities as currently defined in federal  
28 employment law as Blacks, Hispanics, American Indians (including Alaskan natives), Asians  
29 (including Pacific Islanders), are being underrepresented and/or underutilized, the personnel  
30 administrator shall, through the director of administration, direct the head of the department  
31 where the under-representation and/or under-utilization exists to establish precise goals and  
32 timetables and assist in the correction of each deficiency, to the extent permitted by law and by  
33 collective bargaining agreements.

34 [\(ii\) To the extent the analysis determines that persons with disabilities, as defined by the](#)

1 Office Of Federal Contract Compliance Programs as set forth in 41 CFR Part 60-741, are being  
2 underrepresented and/or underutilized, the personnel administrator shall, through the director of  
3 administration, direct the head of the department where the under representation or under-  
4 utilization exists to establish precise goals and timetables and assist in the correction of each  
5 deficiency, to the extent permitted by law and by collective bargaining agreements.

6 (3) The initial analysis shall be directed toward service oriented departments of the state,  
7 state police, labor and training, corrections, children, youth and families, courts, transportation,  
8 and human services.

9 (4) The equal employment opportunity administrator shall be consulted in the selection  
10 process for all positions certified as underrepresented and/or underutilized and shall report the  
11 results of progress toward goals to the governor and to the general assembly by January 31 and  
12 July 31 of each year. A copy of these results which shall be referred to the Rhode Island  
13 commission for human rights which may, in its discretion, investigate whether a violation of  
14 chapter 28-5 has occurred. The results shall be a public record and shall be made available  
15 electronically on the secretary of state's website.

16 (b)(1) In the event of a reduction in force, the personnel administrator, in consultation  
17 with the equal employment opportunity administrator and director of the department(s) where the  
18 reduction is proposed, shall develop a plan to ensure that affirmation action gains are preserved to  
19 the extent permitted by law and by collective bargaining agreements. A copy of this plan shall be  
20 referred to the Rhode Island commission for human rights which may, in its discretion,  
21 investigate whether a violation of chapter 28-5 has occurred. The plan shall be a public record  
22 and shall be made available electronically on the secretary of state's website.

23 (2) The equal employment opportunity administrator shall report the results of the plans  
24 and their subsequent actions to the governor and to the general assembly by January 31 and July  
25 31 of each year, to the Rhode Island commission for human rights. The report shall be a public  
26 record and shall be made available electronically on the secretary of state's website. Consistent  
27 with § 28-5.1-6, the Rhode Island commission for human rights shall have the power to order  
28 discontinuance of any department or division employment pattern or practice deemed  
29 discriminatory in intent or result by the commission.

30 (3) The equal opportunity administrator shall notify the commission of reports and results  
31 under this chapter.

32 SECTION 2. Sections 37-2.2-2 and 37-2.2-3.1 of the General Laws in Chapter 37-2.2  
33 entitled "Disability Business Enterprises" are hereby amended to read as follows:

34 **37-2.2-2. Definitions.**

1 As used in this chapter, the following words and phrases shall have the following  
2 meanings unless the context shall indicate another or different meaning or intent:

3 (1) "Persons with disabilities" or "person with a disability" shall mean any individual who  
4 has a physical or mental impairment which constitutes a substantial barrier to employment as  
5 certified by the department of human services, ~~or~~ the department of behavioral healthcare,  
6 developmental disabilities and hospitals, [the United States Department of Veterans' Affairs, the](#)  
7 [Social Security Administration, or other certifying state or federal entities.](#)

8 (2) "Small disadvantaged businesses owned and controlled by persons with disabilities "  
9 shall mean small business concern, which is at least fifty-one percent (51%) owned by one or  
10 more person(s) with disabilities or, in the case of a publicly owned business, at least fifty-one  
11 percent (51%) of the stock of which is owned by one or more disabled person, whose  
12 management and daily business operations are controlled by one or more person(s) with  
13 disabilities, and have fifty or fewer employees.

14 (3) "A physical or mental impairment" shall mean any physiological disorder or  
15 condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body  
16 systems: neurological; musculoskeletal; special sense organs; respiratory, including speech  
17 organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and  
18 endocrine; or any mental psychological disorder, such as mental retardation, organic brain  
19 syndrome, emotional or mental illness, and specific learning disabilities.

20 **37-2.2-3.1. Policy and applicability.**

21 (a) It is the policy of the state of Rhode Island that small disadvantaged disability  
22 businesses shall have the maximum opportunity to participate in the performance of procurements  
23 and projects as outlined in this chapter. This chapter shall apply to any and all state purchasing,  
24 including, but not limited to, the procurement of goods and services, construction projects, or  
25 contracts funded in whole or in part by state funds, or funds which, in accordance with a federal  
26 grant or otherwise, the state expends or administers or in which the state is a signatory to the  
27 construction contract.

28 (b) The director of administration, in consultation with the governor's commission on  
29 disabilities, is authorized and directed to establish rules and regulation formulas for awarding  
30 contracts to small disadvantaged businesses owned and controlled by persons with disabilities in  
31 the procurement of goods, services, construction projects, or contracts funded in whole or in part  
32 by state funds, in accordance with § 37-2-9(b)(14) on or before January 1, 2013.

33 [\(c\) The state's annual goal for disability business enterprises to participate in state](#)  
34 [procurements and construction projects under this chapter, shall be no less than three percent](#)

1 (3%) of the total value all contracts available to all businesses in each fiscal year. The director of  
2 the department of administration is further authorized to establish by rules and regulation  
3 formulas for giving disability business enterprises a preference in contract and subcontract  
4 awards.

5 SECTION 3. Chapter 37-2.2 of the General Laws entitled "Disability Business  
6 Enterprises" is hereby amended by adding thereto the following sections:

7 **37-2.2-6. Sanctions.**

8 The director of the department of administration shall have the power to impose sanctions  
9 upon contractors not in compliance with this chapter to include, but not be limited to:

10 (1) Suspension of payments;

11 (2) Termination of the contract;

12 (3) Recovery by the state of ten percent (10%) of the total contract award price as  
13 liquidated damages; and

14 (4) Denial of the right to participate in future projects for up to three (3) years.

15 **37-2.2-7. Reporting.**

16 By August 1, 2020, and each August 1 thereafter, the department of administration shall  
17 submit an annual report to the governor, speaker of the house, senate president, and executive  
18 secretary of the governor's commission on disabilities, for the period from July 1 to June 30, on  
19 the actual utilization of disability-owned small business enterprises as contractors, subcontractors,  
20 suppliers, and professional service providers for the state. The annual report shall include a list of  
21 all disability-owned small businesses that participated as contractors, subcontractors, suppliers,  
22 and professional service providers for the state, during the previous fiscal year.

23 SECTION 4. Chapter 37-2.4 of the General Laws entitled "Habilitation Procurement  
24 Program" is hereby amended by adding thereto the following sections:

25 **37-2.4-4. Habilitation facilities participation.**

26 The state's annual goal for the habilitation facilities to participate in state procurements  
27 and construction projects under this chapter shall be no less than three percent (3%) of the total  
28 value of all contracts available to businesses in each fiscal year. The director of the department of  
29 administration is further authorized to establish by rules and regulation, formulas for giving  
30 disability business enterprises a preference in contract and subcontract awards.

31 **37-2.4-5. Sanctions.**

32 The director of the department of administration shall have the power to impose sanctions  
33 upon contractors not in compliance with this chapter, to include, but not be limited to:

34 (1) Suspension of payments;

- 1           (2) Termination of the contract;  
2           (3) Recovery by the state of ten percent (10%) of the total contract award price as  
3 liquidated damages; and  
4           (4) Denial of the right to participate in future projects for up to three (3) years.

5           **37-2.4-6. Reporting.**

6           By August 1, 2022, and each August 1 thereafter, the department of administration shall  
7 submit an annual report to the governor, speaker of the house, senate president, secretary of the  
8 executive office of health and human services, the director of the department of behavioral  
9 healthcare, developmental disabilities, and hospitals and the director of the office of rehabilitation  
10 services for the period from July 1 to June 30, which addresses the actual utilization of  
11 habilitation services by contractors, subcontractors, suppliers, and professional service providers  
12 for the state. The annual report shall include a list of all disability-owned small businesses that  
13 participated as contractors, subcontractors, suppliers, and professional service providers for the  
14 state during the previous fiscal year.

15           SECTION 5. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO LABOR AND LABOR RELATIONS -- EMPLOYMENT OF PEOPLE WITH  
DISABILITIES

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1           This act would incorporate the federal affirmative action and nondiscrimination  
2 obligations of federal contractors and subcontractors regarding individuals with disabilities,  
3 utilization goal of seven percent (7%) for employment of qualified individuals with disabilities  
4 into the Rhode Island equal opportunity and affirmative action policy.

5           This act would expand the existing disability business enterprises program by allowing  
6 Veterans' Affairs, the Social Security Administration and others to verify that a business owner  
7 has a disability and is eligible for the current program. This act would set a goal of no less than  
8 three percent (3%) for state procurement by June 30, 2022.

9           This act would set a goal for the habilitation facilities to participate in state procurements  
10 and construction projects of less than three percent (3%) of the total value of all contracts  
11 available to businesses in each fiscal year by June 30, 2022.

12           This act would take effect upon passage.

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