



AFFIRMATIVE ACTION & EQUAL EMPLOYMENT OPPORTUNITY

IN SELECTING, APPOINTING AND PROMOTING EMPLOYEES
POLICY HR006, EFFECTIVE 2013-03-21

POLICY STATEMENT

The Minnesota Department of Transportation (MnDOT) managers and supervisors are committed to the employment of a diverse, well-qualified and inclusive work force. They must act in accordance with federal and state laws regarding affirmative action and equal employment opportunity in all aspects of employment, including recruiting, hiring and promoting employees.

REASON FOR POLICY

Minnesota law requires MnDOT to make a good faith effort to recruit veterans and protected group members (women, racial/ethnic minorities, persons with disabilities). These efforts include the requirements to implement an agency affirmative action plan that includes:

- Good faith efforts to recruit veterans and protected group members by following an active recruitment plan;
- Monitoring of competitive and non-competitive appointments pre-hire for missed opportunities for protected group members where they are under-represented in the job category;
- Implementation of a coordinated retention plan;
- Implementation of a plan for provision of reasonable accommodation in hiring and promotion of qualified disabled persons;
- Developing of innovative ways to promote awareness, acceptance and, appreciation for diversity and affirmative action efforts.

Veterans were added to the groups eligible for state affirmative action efforts under [Minnesota Statutes §43A.11](#). The law allows the listing of qualified veterans in the applicant pool and ensures veterans consideration for vacant positions.

WHO NEEDS TO KNOW THIS POLICY?

- Affirmative Action Officer
- Managers and supervisors
- Human Resources staff involved in recruiting, selecting, hiring, and promoting staff

POLICY OWNER

Seema Desai

*Affirmative Action Officer
Director, Office of Equity & Diversity*

POLICY CONTACT

Seema Desai

*Affirmative Action Officer
Director, Office of Equity & Diversity
Seema.Desai@state.mn.us
651-366-4725*

POLICY HISTORY

*1996-05-07, Established
2002-07-26, Revision 1
2013-03-21, Revision 2*

[MnDOT Policy Website](#)

DEFINITIONS

Competitive/Non-competitive Appointments

Appointments subject to this policy required to be monitored for affirmative action purposes pursuant to [Minnesota Statutes §43A.191, subd. 3.](#)

- Unlimited, classified and non-competitive qualifying appointment descriptions must be monitored.
- Non-competitive appointments the require affirmative action monitoring include: student workers, temporary unclassified positions, temporary appointments, routine service and entry clerical appointments and work-training appointments student workers, temporary unclassified positions, temporary appointments, routine service and entry clerical appointments and work-training appointments.

[Minnesota Management & Budget "State of Minnesota Monitoring the Hiring Process Form"](#)

Disparate Candidate

An applicant who is a member of one or more classes of protected groups (women, persons with disabilities, racial/ethnic minority) where there is currently under representation in the MnDOT workforce for a particular job group.

Missed Opportunity

- When a competitive or non-competitive appointment (including a promotional appointment) is to be made (after all collective bargaining rights for bidding, transfer, layoff and appointment have been exhausted), and
- Appointment is to be made from a multi-source list or applicant pool determined eligible and qualified by MnDOT Human Resources, and
- There is a disparity or under representation of one or more members of a protected group (women, racial/ethnic minorities, persons with disabilities) in the job group as determined by the Affirmative Action Officer under a utilization analysis compliant with state law. (Note: A missed opportunity under this policy/guideline includes a decision not to appoint a qualified protected group individual to a promotional or higher level appointment within his or her same job group, for example, a senior engineer to a principal engineer), and
- One or more members of a protected group:
Has applied for the appointment and is eligible and qualified for it, and is interested in the appointment, and the manager or supervisor wishes to appoint another eligible qualified candidate who is not in a protected group.

Protected Groups

- **Persons with disabilities**, any person who (1) has a physical, sensory, or mental impairment which substantially or materially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.
- **Racial/Ethnic minorities**, include Black, African American, Hispanic, Asian, Pacific Islander, Native American including American Indian and Alaskan Native. A person may self-identify in more than one category.
- **Women**

Utilization Analysis

An affirmative action analysis required by state and/or federal law and conducted to determine whether protected group individuals are under-represented in the MnDOT workforce by job group. The analysis is based on criteria set by state or federal law and criteria recommended as best practice for determining under-representation of protected groups within public entities such as MnDOT.

Veteran or Disabled Veteran

For the purposes of this policy, definitions for veteran and/or disabled veteran are found under [Minnesota Statutes 43A.11, subdivisions 5 & 7](#), [Minnesota Statutes 43A.111](#) and [Minnesota Statutes 197.447](#) (referencing [Code of Federal Regulations, CFR Title 38, section 3.12a](#) and Section 401, Public Law 95-202.)

Work out of class assignment

A Work out of Assignment of permanent or probationary classified employees to work out of class in temporarily unoccupied classified positions which are allocated to a different classification, [State of Minnesota Administrative Procedure 17.1.](#)

PROCEDURES

Selection and Appointment Procedures for competitive, non-competitive and promotional appointments

- The hiring manager or supervisor must work with Human Resources and Labor Relations, to ensure compliance with applicable bargaining agreement provisions.
- With guidance from the Affirmative Action Officer, the hiring manager or supervisor and Human Resources must utilize appropriate, effective and flexible recruitment strategies to increase the numbers of qualified veterans and protected group members in the applicant pool. All selection criteria must be job-related and consistent with business necessity.

Good Faith Effort

- The hiring manager or supervisor must make good faith efforts to ensure that veterans and protected group members are included on interview panels.
- The hiring manager or supervisor must make good faith efforts to ensure that qualified veterans and protected group members are interviewed for the appointment in a fair, objective and balanced interview process.

Missed Opportunities

All appointments must be reviewed pre-hire for missed opportunities where under-representation of protected individuals (women, racial ethnic minorities and persons with disabilities) in the job group exists. For non-competitive appointment of disabled veterans to the classified service, see below. Whenever a missed opportunity situation arises, before making an offer of employment, the hiring manager or supervisor must contact the Affirmative Action Officer and provide the following information:

- A copy of all relevant rating tools, including test results/scores and the structured interview questions/results, and
- A copy of the application, resume and, cover letter of the proposed appointee and all disparate candidates.
- A completed copy of the [Minnesota Management & Budget "State of Minnesota Monitoring the Hiring Process Form"](#) and a memo outlining facts indicating there is a significant difference in the qualifications of the disparate candidate(s) and the proposed hire and which indicates that the Office Director or Transportation District Engineer is aware of the proposed appointment and concurs.

Upon review of the information identified in the points above, the Affirmative Action Officer must:

- Approve the appointment and notify the hiring manager or supervisor of approval, or
- Note the appointment as a "missed opportunity," and contact the appropriate manager or office/division director.
- Offer guidance and expertise as needed.

Non-competitive Appointment of Certain Disabled Veterans to the Classified Service, [Minnesota Statutes §43A.11](#)

The hiring manager or supervisor may appoint a qualified disabled veteran, on a non-competitive basis to a position in the classified service, if **all** of the following requirements are met:

- The disabled veteran has served in the US armed forces and is on a US armed forces permanent disability list with a disability rating of at least 30 % or the disabled veteran has been rated by the US Department of Veterans Affairs as having a compensable service-connected disability of at least 30%;
- The disabled veteran presents written documentation from an appropriate federal government department certifying the existence and extent of disability. The certification must have been issued by the department within the year preceding appointment; and
- Human Resources determines that the disabled veteran meets the minimum qualifications for the vacant position using fair, objective and balanced selection criteria.

If all of the above requirements are satisfied, the hiring manager or supervisor is not required to interview any other person. However, they must advise the Affirmative Action Officer of the selection decision, so that affirmative action data can be maintained as required by law. If the veteran indicated disability status in the EEOC (Equal Employment Opportunity Job Category) section of the application, the [Minnesota Management & Budget "State of Minnesota Monitoring the Hiring Process Form"](#) must be completed and submitted to the Affirmative Action Officer, and the applicant must be considered an affirmative hire.

Work out of Class and Temporary Opportunities

Hiring managers or supervisors are encouraged to give sufficient notification of work out of class assignments and temporary opportunities to all qualified MnDOT employees, including veterans and protected group individuals.

RESPONSIBILITIES

Affirmative Action Officer

- Regularly review all job groups within MnDOT. Work collaboratively with management at all levels to address disparities for protected group individuals. Recommend measurable steps to address disparities in all recruitment and appointment decisions, including competitive, non-competitive, promotional appointments, temporary and work out of class assignments. Ensure that affirmative action recruitment and selection measures are flexible, job-related and consistent with business necessity. Review and recommend changes to internal policy, practice and procedures, consistent with best practices and applicable law.
- Ensure understanding of and proper implementation of the requirements set forth in this policy through on-going communication and training.
- Report missed opportunities and progress toward meeting affirmative action goals as required by state and federal law.

Office of Human Resources

- Work collaboratively with the Affirmative Action Officer and the hiring manager or supervisor to ensure understanding and proper implementation of the requirements set forth in this policy.
- Utilize recruitment and selection measures that are flexible, job-related and consistent with business necessity to address disparities in recruitment and appointment decisions, including competitive, non-competitive, promotional appointments, temporary and unclassified positions, temporary appointments, student worker and work out of class assignments. Seek guidance from the Affirmative Action Officer to address under-representation of protected group individuals within job classifications.
- Actively promote and support MnDOT efforts to promote awareness, acceptance and appreciation for inclusion, diversity and affirmative action efforts.

Assistant or Deputy Commissioner and Division Director

- Ensure that supervisory and managerial reports understand and implement the requirements set forth in this policy.
- Actively promote and support MnDOT efforts to promote awareness, acceptance and appreciation for inclusion, diversity and affirmative action efforts.

Office Director/Transportation District Engineer

- Regularly, review all job groups within area of direction or supervision. Where disparities exist for protected group, individuals, take measurable steps to address disparities in all recruitment and appointment decisions, including competitive, non-competitive, promotional appointments, temporary and work out of class assignments. Work collaboratively with the Affirmative Action Officer and Human Resources to address areas of disparity.
- Actively promote and support MnDOT efforts to promote awareness, acceptance and appreciation for inclusion, diversity and affirmative action efforts.
- Ensure that hiring manager or supervisor understands and implements the requirements set forth in this policy.
- Pre-hire, review and discuss with the hiring manager or supervisor, all missed opportunity appointments when qualified protected individuals are available for appointment. Seek guidance regarding missed opportunities from the MnDOT Affirmative Action Officer and if warranted, the appropriate Assistant/Deputy Commissioner or Division Director.

Hiring Manager or Supervisor

In collaboration with Human Resources and the Affirmative Action Officer:

- Actively promote and support MnDOT efforts to promote awareness, acceptance and appreciation for inclusion, diversity and affirmative action efforts.
- Understand and follow the procedures identified in this policy.
- Work collaboratively with the Affirmative Action Officer and the Office of Human Resources to ensure understanding and proper implementation of the requirements set forth in this policy.

- Pre-hire, review and discuss with the Office Director/District Engineer, all missed opportunity appointments when qualified protected individuals are available for appointment. Seek guidance from the MnDOT Affirmative Action Officer.

FORMS/INSTRUCTIONS

[Minnesota Management & Budget "State of Minnesota Monitoring the Hiring Process Form"](#)

RELATED INFORMATION

[Minnesota Statutes §43A.08](#) *Unclassified Service*

- *Unclassified Positions, Subdivision 1 (9), (11), (16)*
- *Temporary Unclassified Positions, Subdivision 2a*

[Minnesota Statutes §43A.09](#) *Recruitment*

[Minnesota Statutes §43A.11](#) *Veteran's Preference*

[Minnesota Statutes §43A.15](#) *Noncompetitive and Qualifying Appointments*

- *Temporary Appointments, Subdivisions 3, 10, 12, 13*

[Minnesota Statutes §43.111](#) *Noncompetitive Appointment of Certain Disabled Veterans*

[Minnesota Statutes §43A.191](#) *Agency Affirmative Action Programs*

[Minnesota Statutes §363A](#) *Human Rights*

[Minnesota Administrative Rules §3905](#) *State Agencies; Affirmative Action*

- [Affirmative Action Policy 3905.0100](#) *Affirmative Action Policy*

[MMB Affirmative Action Plan Requirements, Administrative Procedure 19.1](#)

[Title VII of the Civil Right Act of 1964](#)

[Americans with Disabilities Act \(ADA\)](#)

[Title 42 - Chapter 126 Equal Opportunity for Individuals with Disabilities](#)

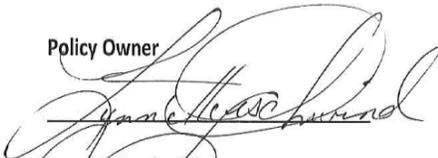
- [Section 12131 Definitions \(Section 201\)](#)
- [Section 12101 Findings and Purposes of the ADA Amendments Act of 2008](#)

[The Equal Pay Act of 1963](#)

[Federal Contract Compliance Programs](#)

POLICY OWNERSHIP AND AUTHORIZATION

Policy Owner



Lynette Geschwind
Director, Office of Affirmative Action

Date Signed Jan 31, 2013

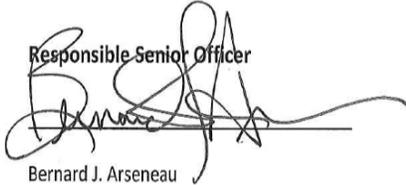
Internal Control & Accountability Governance Board has reviewed this policy and recommends approval



Tracy Hatch *(on behalf of the Board)*
Board Chair and Chief Financial Officer

Date Signed 2.11.2013

Responsible Senior Officer



Bernard J. Arseneau
Deputy Commissioner and Chief Engineer

Date Signed 3-21-13