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Oklahoma Administrative Code
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*** THIS DOCUMENT IS CURRENT THROUGH THE AUGUST 15, 2007 ***

TITLE 530. OFFICE OF PERSONNEL MANAGEMENT
CHAPTER 10. MERIT SYSTEM OF PERSONNEL ADMINISTRATION RULES
SUBCHAPTER 3. AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT OPPORTUNITY
PART 2. DISCRIMINATION COMPLAINTS INVESTIGATIONS

O.A.C. § 530:10-3-20 (2007)

530:10-3-20. Purpose

Section 840-2.1 (F)(1) of Title 74 of the *Oklahoma Statutes* requires persons who investigate complaints of discrimination after December 1, 1995, to be trained according to the requirements of the Administrator unless otherwise provided by state or federal law. The rules in this Part establish training requirements for persons who investigate complaints of employment discrimination in executive branch agencies. The rules in this Part are not intended to require Appointing Authorities to train an agency employee as a discrimination complaint investigator; but rather, are intended to ensure that complaints of discrimination are investigated by persons who meet the training requirements of the Administrator, unless otherwise provided by state or federal law, regardless of whether the investigation is conducted by persons internal or external to the agency.

CHAPTER AUTHORITY: 74 O.S., § 840-1.6A

SOURCE: Added at 13 Ok Reg 845, eff 11-29-95; Added at 13 Ok Reg 3067, eff 7-15-96.

CHAPTER SOURCE: Codified 12-31-91

LEXSTAT 74 OKL. ST. § 840.2.1

OKLAHOMA STATUTES, ANNOTATED BY LEXISNEXIS (R)

*** THIS DOCUMENT IS CURRENT WITH CHAPTERS EFFECTIVE SEPTEMBER 1, 2008 ***
*** OF THE SECOND REGULAR SESSION OF THE 51ST LEGISLATURE ***
*** JUNE 24, 2008 ANNOTATION SERVICE ***

TITLE 74. STATE GOVERNMENT
CHAPTER 27A. OKLAHOMA PERSONNEL ACT
RIGHTS AND BENEFITS

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74 Okl. St. § 840-2.1 (2008)

§ 840-2.1. Affirmative action

A. All agencies, boards, commissions, departments, and offices of each branch of state government, except institutions within The Oklahoma State System of Higher Education, shall submit an affirmative action plan to the Office of Personnel Management annually by September 1 following the end of the fiscal year ending June 30. Institutions within The Oklahoma State System of Higher Education shall submit an affirmative action plan to the Oklahoma State Regents for Higher Education in accordance with standards established by the Oklahoma State Regents for Higher Education.

B. Said plan for agencies of the executive branch, except institutions within The Oklahoma State System of Higher Education, is subject to the approval of the Administrator of the Office of Personnel Management.

C. The Administrator of the Office of Personnel Management shall analyze the affirmative action plans of executive branch agencies and Equal Employment Opportunity Commission reports prepared by such agencies, except institutions within The Oklahoma State System of Higher Education, and, on or before March 1 of each year, shall submit a report to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Governor. Said report shall state the efforts and progress made by governmental entities in the area of affirmative action, including the status of recruitment, hiring, and promotion of women, men and minorities within job categories.

D. The provisions of this section shall not require an agency, board, commission, department, or office of state government to grant preferential treatment to an individual or group because of race, color, religion, sex, national origin, age, or handicap because of an imbalance which may exist in comparison with the employment statistics of the area involved.

E. It is not a discriminatory practice for the appointing authority of an entity subject to the provisions of this title to adopt and implement an affirmative action plan to eliminate or reduce imbalances with respect to women and minorities if the plan has been approved by the Office of Personnel Management in accordance with rules and guidelines adopted by the Office of Personnel Management. For affirmative action purposes, any person who lists American Indian as his race or national origin shall, within thirty (30) days of his appointment, verify his tribal affiliation by providing a certificate of Degree of Indian Blood from the U.S. Department of Interior, Bureau of Indian Affairs, or by providing the name and address of tribal officials who can verify his tribal affiliation.

F. 1. The Administrator of the Office of Personnel Management shall establish qualification requirements for personnel serving as agency civil rights or affirmative action administrators, officers, coordinators and other personnel responsible for civil rights compliance or affirmative action for executive branch agencies. Such qualification requirements shall include, but not be limited to, knowledge of federal and state civil rights, affirmative action, and equal employment laws and regulations. Such personnel shall be subject to the training requirements specified by the Office of Personnel Management. The Administrator shall be authorized to bill agencies for the training of personnel professionals pursuant to this paragraph to recover reasonable costs associated with the training. Monies received for such training shall be deposited in the Office of Personnel Management Revolving Fund. Expenditure of such funds collected for the training shall be exempt from any expenditure limit for the Office of Personnel Management established by law. Effective December 1, 1995, complaints of alleged illegal discrimination shall be investigated only by personnel trained pursuant to the requirements of the Administrator, unless otherwise provided by federal or state law. This paragraph shall not apply to such personnel of the Oklahoma Merit Protection Commission or the Oklahoma Human Rights Commission.

2. If, after notice, administrative hearing and determination, pursuant to Article II of the Administrative Procedures Act, Section 308a et seq. of Title 75 of the Oklahoma Statutes, the Administrator finds that an appointing authority of any executive branch agency has failed to make significant progress toward affirmative action goals, or has failed to appoint a civil rights administrator without justifiable reasons, the Administrator may begin requiring remedies as allowed by subsection G of this section and rules promulgated thereto and appropriate to making progress toward affirmative action goals. Such action shall remain in effect until the Administrator determines that significant progress toward affirmative action goals is being made. The provisions of law pertaining to the duties and powers of any agency shall not be construed to deny the Administrator the authority provided for in this paragraph, unless the agency is specifically excluded by law from the provisions of this paragraph.

G. 1. The Administrator of the Office of Personnel Management shall develop rules for the imposition of appropriate remedies for agencies in the executive branch of state government, excluding The Oklahoma State System of Higher Education, when an agency has failed to make significant progress toward affirmative action goals or has been found to have a pattern of noncompliance with affirmative action goals. If, pursuant to Article II of the Administrative Procedures Act, the Administrator finds that an agency has failed to make significant progress toward affirmative action goals or is found to have a pattern of noncompliance with affirmative action goals, remedies that the Administrator may impose shall include:

- a. requiring noncomplying appointing authorities to participate in programs for special recruiting efforts,
- b. development of training programs to enhance promotability of minorities within agencies and supervisory training in equal opportunity employment, affirmative action, managing workplace diversity, and
- c. mandatory review and approval of all hiring and promotion decisions by an appointing authority by the Administrator if the Administrator can document a pattern of noncompliance in previous remedial actions pursuant to this subsection or appointment of a full-time affirmative action officer to any agency in noncompliance with affirmative action remedies.

2. Effective July 1, 1995, if the Administrator determines that a pattern of noncompliance with affirmative action goals exists at an agency and that none of the remedies provided by paragraph 1 of this subsection are appropriate and the Administrator determines the Office of Personnel Management has sufficient resources, the Administrator shall be

empowered to remove personnel function(s) relating to recruitment, hiring or promotion from the appointing authority and to place that function with the Administrator of the Office of Personnel Management as provided by this paragraph. Removal of personnel function(s) shall occur only when a pattern of noncompliance with the affirmative action plan can be documented and a vote by two-thirds (2/3) of the Affirmative Action Council recommends to the Administrator to remove personnel function(s). Removal of personnel function(s) shall terminate one (1) calendar year after the Administrator removes such function(s) unless the Administrator is able to demonstrate that the restoration of personnel function(s) to the appointing authority will result in further noncompliance with this section. A vote of two-thirds (2/3) of the Council shall be necessary to continue the removal of personnel function(s) by the Administrator for each additional year. The Administrator must receive approval from the Director of the Office of State Finance to develop recruitment, hiring and promotion actions within budgetary constraints for the affected agencies. The Administrator shall consult with the appointing authority about personnel plans and actions, but the Administrator shall retain final authority for personnel decisions within the scope of the Administrator's authority for the period an agency is operating under removal of the personnel function(s). Nothing in this section shall prohibit the removal of a personnel function(s) remedy at any time if the Administrator determines the appointing authority and agency have the capability of reassuming the authority that was removed. The provisions of law pertaining to the duties and powers of any agency shall not be construed to deny the Administrator the authority provided for in this paragraph, unless the agency is specifically excluded by law from the provisions of this paragraph. Upon removal of an agency's personnel function(s), the Administrator may employ employees at the Office of Personnel Management to assume the personnel function(s) of the agency as provided by this section.

H. 1. There is hereby created the Affirmative Action Review Council to assist in the implementation of the state's equal employment opportunity and affirmative action efforts mandated by this section. The Administrator of the Office of Personnel Management shall consult with and request the assistance of the Council in developing standards that executive branch agencies shall follow in adopting their affirmative action plans. The Council shall review agency affirmative action plans and assist the Administrator in preparing the annual status report for agencies on equal employment opportunity and affirmative action required by this section. Staff for the Council shall be provided by the Office of Personnel Management.

2. The Affirmative Action Review Council shall consist of six (6) members. The individuals making the appointment shall consider experience in the field, theory, and application of human resources management and affirmative action in making their appointments. Members of the Council shall serve at the pleasure of the respective individuals making the appointments. Two members of the Council shall be appointed by the Governor, two members shall be appointed by the Speaker of the House of Representatives, and two members shall be appointed by the President Pro Tempore of the Senate. Nothing shall preclude the appointment of members of the Legislature. Each individual making appointments shall give consideration to the diversity of the Council's membership when making the appointments and shall not appoint more than one individual who is an employee of the executive branch, excluding The Oklahoma State System of Higher Education. The Governor shall appoint the initial chair from among the Council's membership to serve a two-year term. Thereafter, the chair shall be selected by the Council from among its membership. The Council shall select a vice-chair from among its membership. All members shall serve two-year terms, unless removed prior to the expiration of a term by the respective individual making the appointment. Any vacancy on the Council shall be filled by the individual who made the original appointment.

Except as provided in subparagraph b of paragraph 4 of this subsection, a majority of the members of the Council shall constitute a quorum to transact business, but no vacancy shall impair the right of the remaining members to exercise all of the powers of the Council and every act of a majority of the members present shall be deemed the act of the Council.

3. Members of the Council shall receive no compensation for serving on the Council, but shall be reimbursed for their necessary travel expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act. Any member who is employed in state government shall receive the reimbursement from their

employing entity. Any member who is not an employee of state government shall receive the reimbursement from the Office of Personnel Management.

4. a. The Council shall make any recommendations to the Administrator, the Governor, the Speaker of the House of Representatives or the President Pro Tempore of the Senate the Council deems will assist in the attaining of affirmative action goals for state government.

b. The Council shall review agency affirmative action plans for compliance with the standards adopted by the Administrator. The Council shall recommend that the Administrator reject any agency plans which it finds in noncompliance.

c. The Council shall request the Administrator to investigate any agency that the Council believes has violated equal employment opportunity or affirmative action provisions of this section and to conduct hearings to determine if such violations have occurred. If the Administrator finds that an agency is not in compliance with such law and the Council believes that the noncompliance indicates a pattern of noncompliance, the Council, upon a two-thirds vote of its members, may recommend to the Administrator to act in accordance with this section to compel the agency to comply with equal employment opportunity and affirmative action laws. If the Administrator decides not to act on the Council's recommendation, the Administrator shall respond in writing within thirty (30) days of the Council's recommendation setting forth the reasons why the Administrator has decided not to act in accordance with said recommendation.

d. Any member who is an employee of an agency that is subject to investigation pursuant to subparagraph b of this paragraph shall disqualify himself or herself from voting on the matter.

e. This paragraph applies to review of issues related to affirmative action. This paragraph does not apply to prohibited discrimination that is within the jurisdiction of the Oklahoma Merit Protection Commission or the Oklahoma Human Rights Commission.

5. The Council shall not have authority to adopt rules pursuant to the Administrative Procedures Act.

I. Affirmative action plans for the judicial branch of government, except the Court of Criminal Appeals and the Workers' Compensation Court, shall be prepared by the Administrative Director of the Courts. The Court of Criminal Appeals shall prepare affirmative action plans for the Court of Criminal Appeals. The Administrator of the Workers' Compensation Court shall prepare affirmative action plans for the Workers' Compensation Court.

J. The Administrator of the Office of Personnel Management is hereby directed to adopt rules necessary to implement the provisions of this section. Such rules regarding affirmative action plans shall include, but not be limited to, a set of specific and result-oriented programs to which an appointing authority commits himself or herself to apply every good faith effort to achieve prompt and full utilization of women and minorities at all levels and in all segments of the work force where deficiencies exist. Such rules shall also include separate provisions for affirmative plans for agencies with

fewer than fifteen full-time-equivalent employees.