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GOVERNOR

STATE OF MICHIGAN  
OFFICE OF THE GOVERNOR  
LANSING

GARLIN GILCHRIST II  
LT. GOVERNOR

## EXECUTIVE DIRECTIVE

**No. 2019-9**

To: State Department Directors and Autonomous Agency Heads  
From: Governor Gretchen Whitmer  
Date: January 7, 2019  
Re: Equal Opportunity in State Employment, State Contracting and Grant and Loan Programs, and the Provision of State Services

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In Michigan, all political power is inherent in its people and state government has been instituted for their equal benefit, security, and protection. Given this constitutional charge, the State of Michigan must be a model of equal opportunity—reaching out to people, knocking down barriers, treating everyone fairly, and dispelling prejudices that hold Michigan and its residents back. The policies and practices of the State of Michigan should promote public confidence in the fairness and integrity of state government.

Michigan has been a leader in expanding opportunities for all citizens. State government has long provided for equal opportunity for employment in the state classified service without discrimination and based on merit, efficiency, and fitness. Discrimination based on sexual orientation was prohibited in state employment for the first time by Executive Directive 2003-24. This prohibition was incorporated by the Civil Service Commission in its Rule 1-8.1 on prohibited discrimination in 2004. Discrimination based on gender identity or expression in state employment was prohibited by Executive Order 2007-24. The first Michigan law prohibiting discrimination based on sexual orientation—the Regional Convention Facility Authority Act—was enacted a year later. More recently, in 2018, the Michigan Civil Rights Commission, exercising its constitutional authority, formally determined that discrimination because of “sex”, as used in the Elliott-Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 to 37.2804, includes discrimination based on gender identity and discrimination based on sexual orientation.

Michigan must do more. State government has an obligation to all Michigan residents to maintain its leadership position. The State of Michigan should be open for business to all. The diversity of Michigan’s people is one of our state’s greatest strengths. When the State of Michigan acts inclusively, the state benefits from the enhanced contribution, commitment, participation, and satisfaction of its employees, improved workplace relationships, and through increased productivity and health outcomes.

State policies and procedures that encourage non-discriminatory and equal treatment provide desirable models for local government and the private sector and build upon

successful procedures of public and private-sector job providers.

All Michigan residents deserve fair treatment and respect from their government—in employment, state contracting, and when accessing services from state government. This administration is firmly committed to strengthening and developing equal opportunities in the State of Michigan.

Acting pursuant to Article 5, § 1 and § 8 of the Michigan Constitution of 1963, I hereby direct the following:

## **1. Equal Employment Opportunities**

A department, board, commission, or other agency subject to supervision by the Governor under Article 5, § 8 of the Michigan Constitution of 1963 shall provide equal employment opportunities in the classified service for all persons and for unclassified state employees in accordance with this directive and with applicable Civil Service Commission rules and regulations.

## **2. Prohibited Employment Discrimination**

- (a) A department, board, commission, or other agency subject to supervision by the Governor under Article 5, § 8 of the Michigan Constitution of 1963 shall not do any of the following:
  - (i) Fail or refuse to hire, recruit, or promote; demote; discharge; or otherwise discriminate against a person with respect to employment in the classified service or as an unclassified state employee, compensation, or a term, condition, or privilege of employment in the classified service or as an unclassified state employee, because of religion, race, color, national origin, age, sex, height, weight, marital status, partisan considerations, or a disability or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position.
  - (ii) Limit, segregate, or classify an employee or applicant for employment in the classified service or as an unclassified state employee in a way that deprives or tends to deprive the employee or applicant of an employment opportunity or otherwise adversely affects the status of an employee or applicant because of religion, race, color, national origin, age, sex, height, weight, marital status, partisan considerations, or a disability or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position.
- (b) Discriminatory harassment is prohibited in any department, board, commission, or other agency subject to supervision by the Governor under Article 5, § 8 of the Michigan Constitution of 1963. Reporting requirements established by the Civil Service Commission and regulations established by the State Personnel Director relating to discriminatory harassment under Civil Service Rule 1-8.3 are applicable to all employees within the executive branch of state government. As provided in rules promulgated by the Civil Service Commission, an employee who engages in



discriminatory harassment against another employee or a member of the public may be disciplined by the appointing authority, up to and including dismissal. If a report of discriminatory harassment is substantiated, or there is reasonable cause to believe that an allegation of discriminatory harassment is true, the appointing authority shall take appropriate corrective and remedial action, as authorized under Civil Service Rule 1-8.3(c)(3).

- (c) An appointing authority within a department, board, commission, or other agency subject to supervision by the Governor under Article 5, § 8 of the Michigan Constitution of 1963 may establish a bona fide occupational qualification based on religion, national origin, sex, age, marital status, height, or weight, only if consistent with applicable law and if approved in advance by the State Personnel Director, as provided under Civil Service Rule 1-8.4.
- (d) An appointing authority within a department, board, commission, or other agency subject to supervision by the Governor under Article 5, § 8 of the Michigan Constitution of 1963 may adopt or carry out a plan to eliminate the present effects of past discriminatory practices with respect to religion, race, color, national origin, sex, or disability if the plan is approved in advance by the State Personnel Director and is otherwise consistent with applicable law, as provided under Civil Service Rule 1-8.5.
- (e) Consistent with Civil Service Rule 1-8.6, nothing in § 1 or § 2 of this directive should be construed to prohibit the Civil Service Commission or an appointing authority from applying a different standard for compensation or different terms, conditions, or privileges of employment under a bona fide seniority or merit system approved by the Civil Service Commission or the State Personnel Director.
- (f) Consistent with Civil Service Rule 1-8.7, nothing in § 1 or § 2 of this directive should be construed to limit the authority of an appointing authority to issue a work rule that regulates verbal or physical conduct or communication that does not rise to the level of prohibited discrimination or discriminatory harassment as defined under Civil Service Commission rules.
- (g) A department, board, commission, or other agency subject to supervision by the Governor under Article 5, § 8 of the Michigan Constitution of 1963 shall take appropriate action to ensure that its policy statements, programs, and procedures adequately reflect equal employment opportunities consistent with § 1 and § 2 of this directive.
- (h) The Civil Service Commission is requested to issue rules, regulations, orders, and instructions as it deems necessary to extend the equal employment protections of § 1 and § 2 of this directive to all employees within the classified service and, to the extent permissible, unclassified state employees.

### **3. Equal Opportunities in State Contracting and Grant and Loan Programs**

- (a) A department, board, commission, or other agency within the executive branch of state government shall include in any contract with another person or entity a requirement that the person or entity, and any subcontractor under the contract, not discriminate against an employee or an applicant for employment in hiring, any terms and conditions of employment, or matters related to employment because of religion, race, color, national origin, age, sex, height, weight, marital status, partisan considerations, or a disability or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. The requirements of this § 3(a) apply to contracts for the purchase of, the contracting for, and the providing of supplies, materials, services, insurance, utilities, third-party financing, equipment, printing, and all other items as needed by state departments and agencies, including contracts for the construction, alteration, repair, or demolition of a facility.
- (b) The provisions of section 3(a) apply, without limitation, to the exercise of procurement authority by the Department of Technology, Management, and Budget under § 261 of The Management and Budget Act, 1984 PA 431, as amended, MCL 18.1261, and to contracts entered into by departments or agencies exercising procurement authority delegated by the Department of Technology, Management, and Budget under that section.
- (c) The Director of the Department of Technology, Management, and Budget may issue, alter, or rescind administrative and procedural directives pursuant to § 131 of The Management and Budget Act, 1984 PA 431, as amended, MCL 18.1131, and adopt changes to the Administrative Guide to State Government as necessary to implement § 3(a) of this directive.
- (d) A department, board, commission, or other agency within the executive branch of state government subject to supervision by the Governor under Article 5, § 8 of the Michigan Constitution of 1963 shall include in any agreement for the provision of a grant or loan involving state money to another person or entity a requirement that the person or entity and any contractor of the person or entity, subcontractor of the contractor, or sub-recipient of the grant or loan, not discriminate against an employee or an applicant for employment in hiring, any terms and conditions of employment, or matters related to employment because of religion, race, color, national origin, age, sex, height, weight, marital status, partisan considerations, or a disability or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position.
- (e) In exercising general supervisory control over the functions and activities of all administrative departments, boards, commissioners, and officers of the state, and of all state institutions as required by § 3 of 1921 PA 2, as amended, MCL 17.3, the State Administrative Board may monitor compliance with the requirements of § 3 of this directive.
- (f) Section 3 of this directive does not apply to employment contracts subject to the jurisdiction of the Civil Service Commission.



#### **4. Prohibited Discrimination in the Provision of State Services**

A department, board, commission, or other agency subject to supervision by the Governor under Article 5, § 8 of the Michigan Constitution of 1963 shall not discriminate, harass, or retaliate against a member of the public when providing governmental services or administering a government program because of religion, race, color, national origin, age, sex, height, weight, marital status, partisan considerations, or a disability or genetic information unless a federal or state law mandates contrary action.

#### **5. Implementation**

- (a) To assist in educating state employees about the requirements of this directive and monitoring compliance with this directive, each director of a principal state department and head of an autonomous agency subject to supervision by the Governor under Article 5, § 8 of the Michigan Constitution of 1963 shall designate an individual within the department or agency as an Equity and Inclusion Officer.
- (b) The Equity and Inclusion Officer for a department or agency shall engage in proactive efforts to educate employees of the department or agency about the requirements of this directive and related Civil Service rules and directives issued by the Governor or the Director of the Department of Technology, Management, and Budget. The Equity and Inclusion Office may request assistance from the Department of Civil Rights or the Civil Service Commission, or both, in complying with the requirements of this § 5(b).
- (c) The Equity and Inclusion Officer for a department or agency shall receive complaints regarding noncompliance with the requirements of this directive by the department or agency and recommend measures to remedy the noncompliance to the department director or agency head. The Equity and Inclusion Officer for a department or agency shall report to the Governor's Chief Compliance Officer all complaints received regarding noncompliance with this directive and actions taken by the department or agency to remedy the noncompliance.
- (d) Nothing in this directive alters the right to freedom of worship or religious belief that the People of the State of Michigan have guaranteed under Article 1, § 4 of the Michigan Constitution of 1963.
- (e) This directive supersedes Executive Directive 2007-24. Executive Directive 2007-24 is rescinded in its entirety, without affecting its rescission of Executive Directive 2003-24.
- (f) This directive supersedes Executive Directive 2018-7. Executive Directive 2018-7 is rescinded in its entirety.
- (g) This directive is effective immediately. A contract, grant, or loan subject to this directive and entered into or modified after the effective date of this directive must comply with this directive.

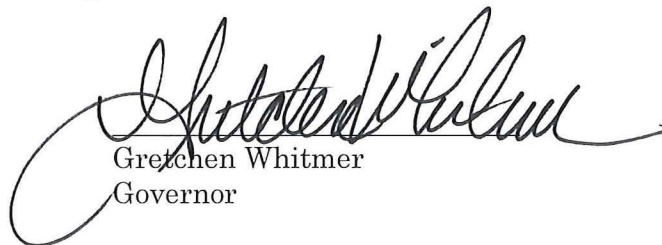
## 6. Definitions

As used in this directive:

- (a) "Appointing authority" means the term as defined by Civil Service Rule 9-1.
- (b) "Civil Service Commission" means the Michigan Civil Service Commission created under Article 11, § 5 of the Michigan Constitution of 1963.
- (c) "Classified service" means the state classified service as provided for under Article 11, § 5 of the Michigan Constitution of 1963.
- (d) "Discriminatory harassment" means unwelcome advances, requests for favors, or other verbal or physical conduct or communication based on religion, race, color, national origin, age, sex, height, weight, marital status, partisan considerations, disability, or genetic information under any of the following conditions:
  - (1) Submission to the conduct or communication is made a term or condition, either explicitly or implicitly, to obtain employment.
  - (2) Submission to or rejection of the conduct or communication by a person is used as a factor in decisions affecting the person's employment.
  - (3) The conduct or communication has the purpose or effect of substantially interfering with a person's employment or creating an intimidating, hostile, or offensive employment environment.
  - (4) The conduct or communication concerns the status of another individual with whom the person has a real or perceived past or present relationship or association and has the purpose or effect of substantially interfering with a person's employment, or creating an intimidating, hostile, or offensive employment environment.
- (e) "Gender identity or expression" means the perception by an individual or another person of the gender identity, appearance, behavior, or expression of the individual whether or not that gender identity, appearance, behavior, or expression is different from the gender identity, appearance, behavior, or expression traditionally associated with the sex assigned to the individual at birth.
- (f) "Genetic information" means the term as defined by Civil Service Rule 9-1.
- (g) "Regulation" means the term as defined by Civil Service Rule 9-1.
- (h) "Rule" means the term as defined by Civil Service Rule 9-1.
- (i) "Sex" includes sexual orientation and gender identity or expression.
- (j) "Sexual orientation" means the term as defined by Civil Service Rule 9-1.

- (k) "State Personnel Director" means the director selected by and responsible to the Civil Service Commission under Article 11, § 5 of the Michigan Constitution of 1963.

Thank you for your cooperation in implementing this directive.



Gretchen Whitmer  
Governor