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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 1968

03/04/2019 Authored by Hornstein, Zerwas, Lillie, Hamilton and Nelson
The bill was read for the first time and referred to the Committee on Government Operations

1.1 A bill for an act
1.2 relating to state government; modifying provisions related to state employees with
1.3 disabilities; creating a working group; requiring a report; amending Minnesota
1.4 Statutes 2018, sections 43A.15, subdivision 14; 43A.191, subdivisions 2, 3.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2018, section 43A.15, subdivision 14, is amended to read:

1.7 Subd. 14. On-the-job demonstration process and appointment. (a) The commissioner
1.8 shall establish qualifying procedures for applicants whose disabilities are of such a severe
1.9 nature that the applicants are unable to demonstrate their abilities in the selection process
1.10 with significant disabilities as defined in Minnesota Rules, part 3300.5010, subpart 18. The
1.11 qualifying procedures must consist of up to 700 hours on-the-job trial work experience for
1.12 which the disabled person has the option of being paid or unpaid. Up to three persons with
1.13 severe disabilities and their job coach may be allowed to demonstrate their job competence
1.14 as a unit through the on-the-job trial work experience selection procedure. This on-the-job
1.15 demonstration process must be limited to applicants for whom there is no reasonable
1.16 accommodation in the selection process.

1.17 (b) Up to three persons with significant disabilities and their job coaches may be allowed
1.18 to demonstrate their job competence as a unit through the on-the-job trial work experience
1.19 selection procedure as defined in Minnesota Rules, part 3300.5010, subpart 18. This
1.20 on-the-job demonstration process must be limited to applicants for whom there is no
1.21 reasonable accommodation in the selection process.

1.22 (c) The commissioner may authorize the probationary appointment of an applicant based
1.23 on the request of the appointing authority that documents that the applicant has successfully

2.1 demonstrated qualifications for the position through completion of an on-the-job trial work
 2.2 experience. The implementation of this subdivision may not be deemed a violation of chapter
 2.3 43A or 363A.

2.4 Sec. 2. Minnesota Statutes 2018, section 43A.191, subdivision 2, is amended to read:

2.5 Subd. 2. **Agency affirmative action plans.** (a) The head of each agency in the executive
 2.6 branch shall prepare and implement an agency affirmative action plan consistent with this
 2.7 section and rules issued under section 43A.04, subdivision 3.

2.8 (b) The agency plan must include a plan for the provision of reasonable accommodation
 2.9 in the hiring and promotion of qualified disabled persons. The reasonable accommodation
 2.10 plan must consist of at least the following:

2.11 (1) procedures for compliance with sections 16E.03, subdivision 9, 363A.08 to 363A.19,
 2.12 and 363A.28, subdivision 10, and, where appropriate, regulations implementing United
 2.13 States Code, title 29, section 794, as amended through December 31, 1984, which is section
 2.14 504 of the Rehabilitation Act of 1973, as amended and the Americans with Disabilities Act,
 2.15 United States Code, title 42, sections 101 to 108, 201 to 231, 241 to 246, 401, 402, and 501
 2.16 to 514;

2.17 (2) methods and procedures for providing reasonable accommodation for disabled job
 2.18 applicants, current employees, and employees seeking promotion; ~~and~~

2.19 (3) provisions for funding reasonable accommodations;

2.20 (4) a plan to ensure that any collective bargaining agreement between the state and
 2.21 agency employees provides equal employment opportunity for job applicants with disabilities
 2.22 and current employees with disabilities seeking promotion; and

2.23 (5) the number of requests made, the number of requests approved, and the number of
 2.24 requests reimbursed from the state accommodation account under section 16B.4805.

2.25 (c) The agency plan must be prepared by the agency head with the assistance of the
 2.26 agency affirmative action officer and the director of diversity and equal employment
 2.27 opportunity. The agency may consult with the Council on Disability shall provide assistance
 2.28 with the agency reasonable accommodation plan, vocational rehabilitation services, state
 2.29 services for the blind, and other disability experts to review and make recommendations on
 2.30 recruitment and retention of people with disabilities.

2.31 (d) The agency plan must identify any positions in the agency that can be used for
 2.32 supported employment as defined in section 268A.01, subdivision 13, of persons with severe

3.1 disabilities. The agency shall report this information to the commissioner. An agency that
3.2 hires more than one supported worker in the identified positions must receive recognition
3.3 for each supported worker toward meeting the agency's affirmative action goals and
3.4 objectives.

3.5 (e) An agency affirmative action plan may not be implemented without the
3.6 commissioner's approval.

3.7 Sec. 3. Minnesota Statutes 2018, section 43A.191, subdivision 3, is amended to read:

3.8 Subd. 3. **Audits; sanctions and incentives.** (a) The commissioner shall annually audit
3.9 the record of each agency to determine the rate of compliance with affirmative action
3.10 requirements.

3.11 (b) By March 1 of each odd-numbered year, the commissioner shall submit a report on
3.12 affirmative action progress of each agency and the state as a whole to the governor and to
3.13 the Finance Committee of the senate, the Ways and Means Committee of the house of
3.14 representatives, the Governmental Operations Committees of both houses of the legislature,
3.15 and the Legislative Coordinating Commission. The report must include noncompetitive
3.16 appointments made under section 43A.08, subdivision 2a, or 43A.15, subdivisions 3 to 7,
3.17 10, and 12, and cover each agency's rate of compliance with affirmative action requirements.

3.18 (c) An agency ~~that does not meet its hiring goals~~ must justify its ~~nonaffirmative action~~
3.19 hires in competitive and noncompetitive appointments according to criteria issued by the
3.20 Department of Management and Budget. ~~"Missed opportunity" includes failure to justify a~~
3.21 ~~nonaffirmative action hire. An agency must have 25 percent or less missed opportunities~~
3.22 ~~in competitive appointments and 25 percent or less missed opportunities in appointments~~
3.23 ~~made under sections 43A.08, subdivisions 1, clauses (9), (11), and (16); and 2a; and 43A.15,~~
3.24 ~~subdivisions 3, 10, 12, and 13.~~ The criteria must include the number of applicants hired
3.25 through on-the-job trial work experience, the number of applicants who receive authorization
3.26 for a probationary period, and the number of applicants who are offered an appointment.

3.27 In addition, an agency shall:

3.28 (1) demonstrate a good faith effort to recruit protected group members by following an
3.29 active recruitment plan;

3.30 (2) implement a coordinated retention plan; and

3.31 (3) have an established complaint resolution procedure.

3.32 (d) The commissioner shall develop reporting standards and procedures for measuring
3.33 compliance.

4.1 (e) An agency is encouraged to develop other innovative ways to promote awareness,
 4.2 acceptance, and appreciation for diversity and affirmative action. These innovations will
 4.3 be considered when evaluating an agency's compliance with this section.

4.4 (f) An agency not in compliance with affirmative action requirements of this section
 4.5 must identify methods and programs to improve performance, to reallocate resources
 4.6 internally in order to increase support for affirmative action programs, and to submit program
 4.7 and resource reallocation proposals to the commissioner for approval. An agency must
 4.8 submit these proposals within 120 days of being notified by the commissioner that it is out
 4.9 of compliance with affirmative action requirements. The commissioner shall monitor
 4.10 quarterly the affirmative action programs of an agency found to be out of compliance.

4.11 (g) The commissioner shall establish a program to recognize an agency that has made
 4.12 significant and measurable progress in implementing an affirmative action plan.

4.13 (h) The commissioner must publish on the Minnesota Management and Budget website
 4.14 summary data about all appointments including protected class status and job classification
 4.15 of each.

4.16 Sec. 4. **WORKING GROUP ON STATE EMPLOYMENT AND RETENTION OF**
 4.17 **EMPLOYEES WITH DISABILITIES.**

4.18 Subdivision 1. **Members.** (a) A working group on state employment and retention of
 4.19 employees with disabilities is formed and must consist of the following members:

4.20 (1) a representative of the Commission of the Deaf, Deafblind and Hard of Hearing;

4.21 (2) a representative of the Governor's Council on Developmental Disabilities;

4.22 (3) a representative of Vocational Rehabilitation Services from within the Department
 4.23 of Employment and Economic Development;

4.24 (4) a representative of State Services for the Blind from within the Department of
 4.25 Employment and Economic Development;

4.26 (5) a representative of the Minnesota Council on Disability;

4.27 (6) a representative of the Office of the Ombudsman for Mental Health and
 4.28 Developmental Disabilities;

4.29 (7) a representative of the Olmstead Implementation Office with the Minnesota Housing
 4.30 Finance Agency;

4.31 (8) a representative of the MN.IT Office of Accessibility;

5.1 (9) a representative of A System of Technology to Achieve Results from within the
5.2 Department of Administration; and

5.3 (10) a representative from Minnesota Management and Budget.

5.4 (b) Each of the entities listed in paragraph (a) must appoint its representative to the
5.5 working group.

5.6 Subd. 2. **Convening authority; chair.** The Commission of the Deaf, Deafblind and
5.7 Hard of Hearing is responsible for convening the working group and its representative to
5.8 the working group shall act as chair for all meetings.

5.9 Subd. 3. **Duties; timing.** The working group must report on strategies for attracting and
5.10 retaining state employees with disabilities to Minnesota Management and Budget and to
5.11 the legislative committees with responsibility for state finance and operation. The report
5.12 must be delivered by January 15, 2020.