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A Quick Guide To Equal Pay Certificates in Minnesota

MAY 27 Posted by [Michael Wilhelm](#)

One of the new requirements of the [Women's Economic Security Act](#) is that certain contractors must provide equal pay certificates in order to conduct business with the State of Minnesota or certain governmental agencies. See [H.F. 2536](#); [H.F. 3172](#). The equal pay certificate requirements of the law will be codified at Minn. Stat. § 363A.44.

Here's a short overview of the new equal pay certificate requirements:

When Do the Equal Pay Certificate Requirements Take Effect? The equal pay certificate requirements will become effective on August 1, 2014 and will apply to "any solicitation made on or after that date."

What Contractors Will Need to Have Equal Pay Certificates? Any business that has 40 or more full-time employees in Minnesota or in the state where the business has its primary place of business, on a single day during the prior 12 months, will need to have an equal pay certificate in order to be eligible to execute a contract or agreement for goods or services in excess of \$500,000.00 with the State of Minnesota, a Department or agency of the State, the Metropolitan Council, or a metropolitan agency.

Are Any Contracts Exempt? Yes, the Commissioner of Administration may exempt a contractor from the equal pay certificate requirements if the Commissioner determines that requiring the certificate would cause undue hardship to the contracting entity. In addition, the equal pay certificate requirements do not apply to contracts to provide goods and services to individuals under Minn. Stat. chapters [43A](#), [62A](#), [62C](#), [62D](#), [62E](#), [256B](#), [256I](#), [256L](#), or [268A](#), with a business that has a license, certification, registration, provider agreement, or provider enrollment contract that is a prerequisite to providing those goods and services. Finally, the equal pay certificate requirements also do not apply to contracts entered into by the State Board of Investment for investment options under [Minn. Stat. § 352.965, subd. 4](#).

How Does a Contractor Obtain An Equal Pay Certificate? In order to obtain the equal pay certificate, the business must pay a \$150.00 fee and the chief executive of the business must sign and send an equal pay compliance statement to the Minnesota Department of Human Rights stating that:

- The business is in compliance with Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, Minnesota Human Rights Act, and Minnesota Equal Pay for Equal Work Law;
- The average compensation for its female employees is not consistently below the average compensation for its male employees within each of the major job categories in the EEO-1 employee information report for which an employee is expected to perform work under the contract, taking into account factors such as length of service, requirements of specific jobs, experience, skill, effort, responsibility, working conditions of the job, or other mitigating factors;



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- The business does not restrict employees of one sex to certain job classifications and makes retention and promotion decisions without regard to sex;
- That wage and benefit disparities are corrected when identified to ensure compliance with equal pay requirements;
- The certification must explain how often wages and benefits are evaluated to ensure compliance with equal pay requirements; and
- The certification must indicate whether the business, in setting its compensation and benefits, utilizes: (1) a market pricing approach; (2) state prevailing wage or union contract requirements; (3) a performance pay system; (4) an internal analysis; or (5) an alternative approach to determine what level of wages and benefits to pay its employees. If the business uses an alternative approach, the business must provide a description of its approach.

What Should The Equal Pay Compliance Statement Look Like? Unless additional guidance is provided by the Department of Human Rights, the equal pay compliance statement should likely resemble this [sample equal pay compliance statement](#) that was used during the legislative process.

Can An Equal Pay Compliance Statement Be Rejected? Yes. The law provides that the commissioner must issue an equal pay certificate, or a statement of why the application was rejected, within 15 days of receipt of the application. An application may be rejected only if it does not comply with the requirements of explained above.

How Long Is A Certificate Valid? Once issued, an equal pay certificate will be valid for a period of four years.

Can Contractors Be Audited To Ensure Compliance? Yes. The Commissioner of Human Rights will have the authority to audit contractor businesses to ensure compliance with the equal pay certificate requirements described above. If audited, a business may be required to disclose: (1) the number of male employees; (2) the number of female employees; (3) average annualized salaries paid to male employees and to female employees, in the manner most consistent with the employer's compensation system, within each major job category; (4) information on performance payments, benefits, or other elements of compensation, in the manner most consistent with the employer's compensation system, if requested by the commissioner as part of a determination as to whether these elements of compensation are different for male and female employees; (5) average length of service for male and female employees in each major job category; and (6) other information identified by the business or by the commissioner, as needed, to determine compliance.

Can Equal Pay Certificates Be Suspended or Revoked? Yes. The statute authorizes the suspension or revocation of equal pay certificates if a contractor does not make a good faith effort to comply with equal pay laws, fails to make a good faith effort to comply with the equal pay certificate requirements, or has multiple violations of equal pay laws or the equal pay certificate requirements. If this occurs, the contractor may request an administrative hearing to review the decision within 20 days after receiving notice of the decision.

Does The Law Impose Any New Substantive Equal Pay Requirements on Employers? No – in a [recent interpretive letter](#), the Commissioner of Human Rights clarified that the Administration "interprets the proposed language in the bill only to ensure contractors comply with equal pay laws." The Commissioner described the certificate as "a one-page, affirmative statement that the business is following equal pay laws (Title VII of the Civil Rights Act of 1964, Equal Pay Act of 1963, Minnesota Human Rights Act, and the Minnesota Equal Pay for Equal Work Law) and is taking steps to remedy disparities when they are found." The Commissioner explicitly rejected any interpretation of the law that would require contractors to implement "comparable worth" policies similar to those required of municipalities under pre-existing state law. See [Minn. Stat. § 471.992](#) et seq.

Is Technical Assistance Available? Yes. The statute requires that the Commissioner must provide technical assistance to any business that requests it.

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