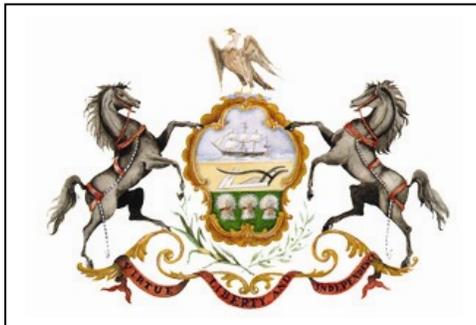


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Employment Affirmative Action Guidelines
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Pennsylvania Human Relations Commission

Employment Affirmative Action Guidelines

Proposed Employment Affirmative Action Guidelines were published by the Pennsylvania Human Relations Commission in the *Pennsylvania Bulletin* at 10 Pa.B. 4347 (November 8, 1980). All comments submitted by mail and at a public hearing conducted December 9, 1980, in Harrisburg were reviewed by the Commission. At its February 23, 1981, meeting, the Commission made revisions and adopted the Guideline which follows.

Homer C. Floyd, Executive Director

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Employment Affirmative Action Guidelines Overview

Introduction

Pursuant to sections 7(d) and 7(j) of the Pennsylvania Human Relations Act (Act), the Pennsylvania Human Relations Commission (Commission) hereby promulgates the following employment affirmative action guidelines.

Since the enactment of the Act and Title VII of the Civil Rights Act of 1964, prohibiting employment discrimination and creating the Equal Employment Opportunity Commission (EEOC), many employers have altered their hiring, promotion and training policies so as to improve the employment opportunities of previously excluded groups. These efforts are designed to increase the participation of excluded groups in our economic system. This process has usually been referred to as affirmative action. In recent years many employers have found their efforts at affirmative action challenged as either doing too little or too much to remedy past discrimination. Thus, when Kaiser Aluminum sought to improve employment opportunities for its Black employees, it was sued for racial discrimination by a White employee. United Steelworkers of America v. Weber, 443 U.S. 193 (1979). Similarly, when the City of Pittsburgh sought to increase the number of women and Blacks in its fire-fighting department, rejected White male applicants filed charges of racial discrimination. Chmill vs. City of Pittsburgh, __ Pa. ____, 412 A.2d 860 (1980). In contrast, when the New York construction industry sought to implement a federally approved affirmative action plan, Black and Hispanics challenged the adequacy of the plan, Percy v. Brennan, 384 F. Supp. 800, (S.D.N.Y. 1974).

This type of litigation has understandably left many employers, labor organizations and employment agencies in a quandary. They feel confronted with the two-fold dangers of traditional discrimination suits and so-called “reverse discrimination” suits as they ponder whether to institute or continue, affirmative action plans. These guidelines are designed to facilitate their efforts to engage in voluntary affirmative action.

Relationship to EEOC Guidelines

The recently promulgated affirmative action guidelines of the EEOC have served as a starting point for these guidelines. *See* 44 Fed. Reg. 4422 (1979). However, given the similar intent but different scope of Federal employment discrimination laws, these guidelines differ from the Federal model. One significant difference between Title VII and the Act is the Act’s protection of individuals with non-job related handicaps. Thus, Pennsylvania employers are encouraged to extend any EEOC approved affirmative action plan to include individuals with non-job related handicaps.

A second significant departure from the EEOC model involves an incorporation of significant case law decided since the EEOC guidelines were published. The EEOC guidelines were promulgated in final form five months prior to the United States Supreme Court’s opinion in Weber. That opinion made it clear that, for purposes of Federal law, a voluntary affirmative action program need not be based on an admission by an employer that it arguably had violated Title VII. The plan approved in Weber was designed to overcome the effects of societal

discrimination, and the Court deemed this sufficient despite the absence of any evidence of discrimination by the employer.

These guidelines also depart from the EEOC guidelines in their delineation of circumstances appropriate to the initiation of affirmative action. While the EEOC guidelines still focus on the existence of arguable violations, see §1608.3 of the EEOC guidelines, these guidelines focus on whether protected groups are under-represented in either the segments of the work force or the available labor pool.

Under-representation is an objective observation, a judgment resulting from a simple statistical comparison. Discrimination is a far more legally complex term. It is unrealistic to expect an employer to initiate an affirmative action program if the first step in that direction would be an admission of past or present wrongdoing. In practical terms, the emphasis on under-representation rather than discrimination allows an employer to admit the existence of a statistical disparity without admitting the existence of past or present wrongdoing that can usually be inferred from such disparity.

The “best able” Defense

Section 5(a) of the act forbids employment discrimination against an individual “if the individual is the best able and most competent to perform the services required.” The Pennsylvania courts have interpreted this language to mean that when a charge of discrimination has been made the burden is upon the employer to prove that the persons hired, retained or promoted in place of the Complainant were more competent to perform the required services. Concern has been expressed that affirmative action plans are some how inconsistent with this “best able” language. It is emphasized that an affirmative action plan does not require any employee to hire unqualified personnel. Ability to perform the services required shall continue to be a valid criterion an employer considers in its employment decisions. Affirmative action plans will, however, affect the allocation of employment opportunities between qualified candidates. In the implementation of an affirmative action program, employers making decisions as to the relative qualifications of applicants for employment positions should not isolate a single factor, such as scores on a validated test, as the essential measurement of an applicant’s ability to perform the services required.

Properly conceived and implemented affirmative action plans the “best able” language in the act are both defenses to charges of employment discrimination. An employer may rebut such charges by showing that the complainant was not the most competent to perform the job or by showing that the challenged actions were taken pursuant to and in accordance with a valid affirmative action plan and conforming to the requirements of these guidelines.

Relationship to Section 5(b)(3)

Concern has been expressed that affirmative action plans are inconsistent with section 5(b)(3) of the Act which makes it unlawful to “(d)eny or limit, through a quota system, employment or membership because of” any of the criteria forbidden by the Act. This contention was expressly rejected in Chmill. Such a contention also misrepresents the difference between quotas and goals. While quotas are fixed and inflexible, at times requiring hiring of a certain number of members of a protected group regardless of their relative qualifications, goals are inherently more flexible. The very word goal suggests that the numerical figure set is desired, not required. A valid affirmative action plan should be flexible enough to adjust its goals in light of subsequent experience. If, for example, economic conditions have reduced the number of new

job openings an employer expects to have available in the near future, the goals should be lowered accordingly. Additionally, the goals in affirmative action plans should be maintained only as long as it is necessary to remedy the particular under-representation involved.

The Chmill Decision

The Chmill case involved a “reverse discrimination” challenge to the voluntary adoption of an affirmative action plan for the Pittsburgh Fire Department by the Pittsburgh Civil Service Commission. The Pennsylvania Supreme Court, placing strong reliance on United Steelworkers of America v. Weber, 443 U.S. 193 (1979), upheld the plan. It noted that any affirmative action plan must be judged in terms of its purpose, its effect on the interests of non-minority employees, and its duration. Since the plan’s purpose mirrored those of State and Federal anti-discrimination laws, since it didn’t deny non-minority employees jobs or benefits previously promised, and since it was only temporary in duration, the plan was upheld by the Pennsylvania Supreme Court, 412 A.2d 860, 868-869. These criteria for evaluating affirmative action plans are embodied in these guidelines.

Relationship to Other Guidelines and Regulations

To the extent that Commonwealth contractors desire greater specificity as to what constitutes acceptable affirmative action, they are encouraged to refer to the Commission’s Employee Selection Procedure Guidelines, 1 Pa.B. 2005, the Commission’s Discrimination on the Basis of Handicap or Disability Regulations, 16 Pa. Code Ch. 44, 8 Pa.B. 2715, the Commission’s Contract Compliance Regulations, 16 Pa. Code Ch. 49 and the Commission’s Contract Compliance Guidelines. The Contract Compliance Regulations describe the purpose and content of required affirmative action programs, 16 Pa. Code §§49.51-49.52.

Employers that have analyzed the composition of their work force and found certain groups to have been under-represented should review their employee selection practices in light of the employee selection procedure guidelines so as to eliminate those non-job related employment criteria that have an adverse impact on such groups. They should also consider the initiation of an affirmative action program. Affirmative action is conceptually quite different from the elimination of invalid employment criteria. The latter seeks to eliminate present and future discrimination while the former seeks to remove the effects of past discrimination.

Any meaningful effort to eliminate the effects of employment discrimination should analyze the composition of each segment of an employer’s work force and the compensation levels within each section. Only with this broad-based approach can an employer identify possible job segregation. An employer with no under-representation in the work force at large might still have excluded members of protected groups from some segments of the work force and might still be under-compensating members of protected groups. Thus a vigorous affirmative action program should also seek to correct past exclusion, segregation and wage or salary discrimination.

The Emphasis on Voluntarism

It must be emphasized at this juncture that these guidelines are prescriptive rather than proscriptive. In encouraging employers to employ affirmative action to correct the effect of societal discrimination, the Commission is not in any way suggesting that an employer that has corrected the effects of its past discrimination and amended its employment practices to eliminate the chance of present or future discrimination will not be in full compliance with the

Act. Failure to correct the effects of societal discrimination will not, by itself, constitute a violation of the Act.

Conclusion

These guidelines have their genesis in part in the Commission's experience at monitoring affirmative action plans through its contract compliance program as well as in its experience in ordering remedial action, upon a finding of statutory violations. That experience has enabled the Commission to be more specific in defining the parameters and mechanics of suggested affirmative action programs.

The essential purpose of these guidelines is to enable employers, labor organizations and employment agencies to inaugurate or continue affirmative action plans with reasonable confidence that such actions won't render them ultimately liable in so-called "reverse discrimination" suits and with the Commission's assurance that the adoption of the plan will not constitute an admission of past wrongdoing. Employees should not, however, assume that the Commission will "rubber stamp" affirmative action plans that are challenged as discriminatory. The plan and its implementation will be scrutinized, and if the conduct in issue occurred pursuant to and in accordance with the adoption and implementation of an affirmative action plan that conforms to the requirements of these guidelines, a finding of no probable cause will be issued.

Employment Affirmative Action Guidelines

Section 1 – Scope

These guidelines are designed primarily to assist employers, labor organizations and employment agencies that want to engage in appropriate voluntary affirmative action in the employment field so as to promote equal employment opportunity.

The guidelines do not address the question of affirmative action in housing, education or public accommodations. Nor are these guidelines intended to control the relief the Commission or the State courts may award in remedying complaints of employment discrimination through consent decrees or the public hearing process. It is, however, hoped that these guidelines viewed in light of the particular facts of a case will prove useful to the Commission and the State courts in awarding such relief.

It should be noted at the onset that the affirmative action herein envisioned shall last only until any existing under-representation is eliminated. Additionally, these guidelines seek to harmonize the need to correct the effects of prior and present discrimination with the need to protect all individuals from the discrimination prohibited by the Act.

Section 2 – Purpose.

In its passage and modification of the Act, the Pennsylvania General Assembly sought to correct the patterns and effects of employment discrimination on the basis of race, color, religious creed, ancestry, age, sex, national origin, or non-job related handicap or disability. Although litigation is, if necessity, one of the tools given the Commission for effectuating this purpose, less coercive means, such as conference, conciliation and persuasion are clearly preferred. Wholly voluntary action is the ideal way of dealing with the effects of prior and present discrimination. Recent State and Federal litigation reveals however, that implementation of such voluntary programs may subject the employer, labor organization or employment agency to claims of so-called "reverse discrimination." These guidelines are designed to protect employers, labor organizations and employment agencies from the risk of being found to have

violated an Act whose purposes they have sought to voluntarily implement. These guidelines describe the circumstances under which employers, labor organizations and employment agencies may undertake a voluntary affirmative action program designed to improve the employment opportunities of protected groups and the kind of action they may take consistent with the purposes of the Act. These guidelines will be applied in processing claims of discrimination involving affirmative action plans and programs.

Section 3 – Definitions

(a) Affirmative action – An organized effort by an employer, labor organization or employment agency in which it first analyzes its work force to determine whether any protected groups are under-represented in any segment of the work force, and then modifies its hiring, training, promotion, recruitment and layoff policies to remedy the perceived under-representation.

(b) Disparate impact – A statistically significant disparity resulting from the implementation of a given employment criterion. Such disparity takes the form of the exclusion from or limitation of employment opportunities of a significantly higher percentage of members of a protected group than non-members of protected group.

(c) Under-representation – A statistically significant disparity in which the percentage of members of a protected group in the segments of the work force of an employer or on the membership rolls of a labor organization is significantly less than the percentage of members of that protected group in the labor pool available for such work. Where an employer can establish that a particular skill is a valid pre-employment criterion, under-representation shall also refer to a statistically significant disparity in which the percentage of protected group members in the available labor pool possessing such skill is, through historic restrictions by employers, labor organizations and others, significantly less than the percentage of protected group members in the overall available population of the geographic region from which the employer can reasonably expect to draw employees.

(d) Test of statistical significance – A standard scientific research procedure used to determine whether observed relationships and differences (between statistical samples, between variables in a sample, or between a sample and a specified type of statistical population) are due to chance or to an operative factor other than chance. A test of statistical significance is conventionally conducted at a “level of significance” of .05 (often written as p.05) that is, the probability is less than 5% that a relationship or difference of the observed magnitude could be expected to occur by chance alone.

Comment: The test of statistical significance is highly recommended for determining **(b)** and **(c)** above. It is recognized that sometimes the data available for analysis are insufficient and inadequate for the proper and sound use of this test. For example, data on skilled women who are attempting to return to the labor market within any geographic boundary are extremely difficult to find. This is equally true for any category of employable handicapped or disabled persons. Moreover, even when there are data on a broadly defined type of handicapped persons, for example, wheel-chaired persons, there may be no data or insufficient data on wheel-chaired darkroom technicians.

(e) Segment of the work force – Employees who perform similar duties, have similar skills and enjoy similar opportunities within the work force.

(f) Goals – Flexible numerical levels of protected group members participation in the various segments of the work force which the employer, labor organization or employment agency hopes to achieve within a set timetable. Goals are suggested targets rather than mandatory quotas.

Comments: In many instances it is more appropriate for employers to set goals as percentages of new hires and promotions that will hopefully be filled by protected group members. Goals expressed in this manner rather than as percentages of the overall work force or its various segments allow an affirmative action program that automatically adjusts to improving or declining economic conditions.

(g) Protected groups – Individuals of the same race, color, religious creed, ancestry, age (40-62 years), sex, national origin, or non-job related handicap or disability, who, within the context of the industry, profession, craft, trade or skill involved, have been excluded or under-represented.

Comment: Protected group is defined to include groups which, although they have not been generally under-represented in the Commonwealth's labor force, have been under-represented in particular trades, industries, professions or skills.

(h) Valid pre-employment criterion – A factor relied upon by an employer to select employees, the validity of which has been established pursuant to the Commission's Guidelines on Employee Selection Procedures, 1 Pa.B. 2005, or the EEOC's Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. Part 1607.

(i) Other words – used in these guidelines, unless the context clearly requires otherwise, shall have the same meaning as they do under the act.

Section 4-Circumstances appropriate to the initiation of voluntary affirmative action

To initiate voluntary affirmative action an employer need not conclude that it has violated or is violating the Act. Either of the following findings are sufficient to justify the implementation of an affirmative action program.

(a) Under-representation of protected groups in the work force. When a particular segment of the work force, compared to the labor pool available for such work, exhibits an under-representation of protected groups, voluntary affirmative action is appropriate to correct such under-representation. In determining the labor pool available for any particular work, the employer, labor organization or employment agency should look to the overall available population of the geographic region from which the employer can reasonably expect to draw employees. The available labor pool, however, should be those individuals in the geographic region from which the employer can reasonably expect to draw employees who possess skills that are an integral and regular component of the job to be performed and which constitute valid pre-employment criteria. Nothing in this subsection shall be construed to require the elimination of appropriate validated job requirements which are the least disparate available measures or non-disparate job requirements or both.

(b) Under-representation in the available labor pool of protected groups. Because of a valid pre-employment criterion, the available labor pool may be less than the overall available population of the geographic region from which the employer can reasonably expect to draw employees. When protected groups are under-represented in this available labor pool by reason of historic restrictions by employers, labor organizations and others, affirmative action is appropriate to correct such under-representation.

Comment: An example of such historic under-representation within the available labor pool occurs in the building trades and craft unions. See United Steelworkers of America v. Weber, 443 U.S. 193 (1979).

Section 5 – Establishing affirmative action plans

(a) Preliminary self-analysis. Prior to instituting an affirmative action plan, an employer, labor union or employment organization should consider whether its past or present practices have been the cause of under-representation in any segment of the work force of protected groups. Particular emphasis should be given to identifying those employment criteria that may have had a disproportionate impact on protected groups. Unless these criteria can be clearly shown to have a demonstrable relationship to successful performance on the job, they should be discontinued.

Comment: Examples of hiring, promotion or layoff criteria that are unlikely to be related to successful job performance are general requirements of high school diplomas, scores on general aptitude tests or arbitrary height and weight minimums. Where a criterion, despite its disparate impact, is considered necessary to the operation of the business, consideration should be given to alternative criteria that can still measure the likelihood of successful job performance without the same adverse impact upon protected groups. See the Commission's Employee Selection Procedure Guidelines, 1 Pa.B 2005, and the EEOC's Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. Part 1607. A second focus of this preliminary analysis should be on whether employment practices leave uncorrected the effects of prior discrimination.

Comment: Illustrative of this would be a policy of hiring new employees to a previously all White work force on the basis of word-of-mouth recruitment by current employees.

By no means should an employer limit its affirmative action to the elimination of employment criteria that adversely affect protected groups. This preliminary self-evaluation is designed to assure that such non-job related criteria do not effectively neutralize the gains made through an affirmative hiring, training and promotions policy.

(b) Reasonable basis and reasonable action. Where a finding is made that reflects either of the two situations outlined in section 4 (under-representation of protected groups in a segment of the employer's work force or the appropriate labor pool), a reasonable basis exists for an affirmative action plan reasonably calculated to eliminate such under-representation. Such affirmative action may, without limitation, include:

- (i) establishment of long term and interim goals and timetables or other appropriate employment tools that recognize the race, color, sex, ancestry, age, religious creed, non-job related handicap, or national origin of applicants or employees as well as the availability of basically qualified or qualifiable persons in the labor pool;
- (ii) the adoption of practices that will eliminate the perceived under-representation by providing opportunities for members of groups that have been excluded, regardless of whether the persons benefiting are themselves the victims of past discrimination;
- (iii) training plans and programs that emphasize providing protected group members with experience in trades, crafts and professions from which they have been excluded;
- (iv) recruitment directed at both prospective applicants for employment and current employees who are qualified or qualifiable for promotion;
- (v) the modification of promotion and layoff procedures;
- (vi) a systematic reorganization of working procedures so as to provide opportunities for persons lacking journeyman skills to enter and progress in a career field;
- (vii) a systematic effort to provide career advancement training both classroom and on-the-job to employees located in what are dead-end jobs.

(viii) solicitation of the support and cooperation of local and national community action programs designed to improve the employment opportunities of members of protected groups;

(ix) publication, both within and without the workplace of the existence and scope of the program and;

(x) the establishment of a system for regularly monitoring the effectiveness of the particular affirmative action program, and procedures for making timely adjustments in this program where effectiveness is not demonstrated.

(c) Limitations. The affirmative action program shall not require the discharge of workers so as to permit their replacement with newly hired protected group employees. Nor shall it absolutely bar the advancement of employees who are not members of a protected group. It may, however, provide for hiring, promotion, training and retention during layoffs of protected group employees at a percentage temporarily higher than their corresponding representation in the available labor pool.

The race, color, religious creed, age, ancestry, sex, non-job related handicap, and national origin conscious provisions of the plan should be maintained only so long as it is necessary to achieve the long range goals of the plan. The special training provisions of the plan should be continued as long as is necessary to achieve the long-range goals of the plan.

Where, at the time the under-representation in a segment of the work force is remedied, there still exists an under-representation in the available labor pool for a particular job, it is suggested that the training aspects of the affirmative action program be modified, rather than terminated.

Comment: By example, if the available pool of skilled carpenters is still predominantly White and male, an employer's termination of an affirmative action training program for carpenters would not be advisable. A better solution would be a retention of the training program, accompanied by an end to preferences in the program for members of protected groups.

(d) Variations. The final goals established for a program need not mirror the racial, sexual, ethnic and other divisions of society as a whole. The end goal is the demonstrable attainment of equal employment opportunities. When appropriate it may also be necessary to extend the time period within which goals are met during economic downturns. Interim goals may be increased or decreased to reflect the availability of qualified or qualifiable applicants.

(e) Special provisions regarding non-job related handicaps or disabilities. There is currently little data available which categorizes each of the numerous conditions which have been established as a handicap or disability, the number of individuals so afflicted by these conditions or the skills possessed by those individuals. Thus, it is virtually impossible to perform the under-representation analysis set forth earlier in these guidelines insofar as handicaps or disabilities are concerned. Nonetheless, this should not preclude a conscientious employer from considering affirmative actions which can be reasonably calculated to promote entry of the handicapped or disabled into the work force in general or various segments of the employer's work force.

In promoting entry of the handicapped or disabled into the work force in general or various segments of the work force, an employer's plan should include provisions to remove access barriers that exist at the employer's or employment agency's place of business or the labor organization's hiring hall. Additionally employers should consider modifying both the equipment employees are assigned and the duties of particular jobs so as to facilitate the integration of the handicapped and disabled into the work force. Lastly, employers must modify

pre-employment applications and pre- and post-employment medical testing programs to eliminate any screening devices that disqualify applicants on the basis of medical conditions which do not substantially interfere with the applicant's ability to perform the essential functions of the job.

Comment: A more detailed description of the reasonable accommodation that must be afforded the handicapped and disabled is provided by the Commission's handicap regulations, 16 Pa. Code Ch. 44, 8 Pa.B 2715. These regulations require access, equipment and job modifications unless such modifications create undue hardships for the employer, employment agency or labor organization. The indicated changes in pre- and post-employment screening devices are mandatory and are not subject to any undue hardship defenses. In most instances, employers should only modify jobs and equipment when there are specific handicapped individuals whom the employer expects to employ. Given the individual nature of most handicaps, the Commission neither expects nor encourages wholesale equipment and job modification to accommodate hypothetical handicapped employees.

(f) Special provisions regarding religious accommodation. Where an employee's or applicant's religious beliefs are inconsistent with job requirements of the employer (such as Sabbath schedules) both the employer and the labor organization should make a mutual good faith effort to reasonably accommodate those beliefs. Where the religious beliefs require the employee or applicant to observe a special Sabbath, the employer or labor organization should consider options such as:

- (i) scheduling the employee on a standard shift which does not conflict with such Sabbath observance;
- (ii) assigning the employee to a specially designed shift which does not conflict with such Sabbath, or, as a last resort;
- (iii) permitting the employee to work a reduced number of hours. To the extent the consideration should be given to waiving the agreement or practice with respect to such employee.

Where the employee or applicant for religious reasons refuses to tender union dues to the labor organization that represents him, consideration should be given allowing the employee to contribute an amount equal to the dues to a charitable organization of his choice.

Comment: Since even non-employers may still be liable for back pay where their actions cause an employee to lose a job or reduce his earnings, P.H.R.C. v. Transit Cas. Ins. Co., 20 Pa. Cmwlth. Ct. 43, 340 A.2d 624 (1975), labor organizations that refuse to reasonably accommodate the religious practices of an employee may be liable for any loss of salary the employee suffers.

Section 6 – Complaints involving affirmative action programs

(a) Procedure. Where an affirmative action plan or program is alleged to violate the Act, or is asserted as a defense to a complaint of discrimination, the Commission will investigate the complaint in accordance with its usual procedures and pursuant to the standards set forth in these guidelines. It is recommended that the affirmative action plan and the evaluation that preceded it be in writing. However, the Commission does not generally require that defenses be based on written documents. Where an unwritten plan is asserted as a defense to a charge of discrimination or alleged to violate the Act, credible evidence must be offered to demonstrate that an analysis was conducted and a plan implemented pursuant to these guidelines. Such issues must necessarily be dealt with on a case-by-case basis.

In conducting its investigation of a charge of discrimination involving an affirmative action plan, the Commission will determine whether the alleged incidents of discrimination occurred pursuant to and in accordance with the adoption and implementation of an affirmative action plan. If this finding is made, the Commission will next determine whether the plan conforms to the provisions of these guidelines. If the Commission so finds, it will issue a determination of no probable cause. If the Commission determines that an affirmative action plan does not exist or that the alleged conduct was not undertaken in accordance with and pursuant to the adoption and implementation of an affirmative action plan or that the affirmative action plan does not conform to the provisions of these guidelines, the plan as defense will be rejected and the Commission will proceed with the investigation and disposition consistent with the established facts of the case.

(b) Certain approved plans. Where the Commission determines that an affirmative action plan has been approved under appropriate State or Federal law, regulations, guidelines or executive orders, that it is part of a settlement agreement approved by the responsible State or Federal judicial, legislative or administrative body with appropriate expertise, or that it is part of an order of a court of competent jurisdiction arising from a case brought to enforce a Federal, State or local equal employment opportunity law or regulation, it shall only determine whether the action complained of was taken pursuant to and in accordance with such affirmative action plan. However, where the alleged discrimination is of a type prohibited by State but not Federal law. Federal approval of the plan shall not exempt it from inquiry by the Commission into the adequacy of the plan. If the action complained of does in fact comply with the previously approved affirmative action plan, the Commission will issue a finding of no probable cause. Individual questions of the application of affirmative action plans, whether or not previously approved, of necessity are beyond the scope of these guidelines.

(c) Reliance upon these guidelines. The procedure outlined at 6(a) is applicable whether or not it is asserted that the affirmative action plan was adopted in good faith reliance on these guidelines.

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