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AFFIRMATIVE ACTION FOR  
EQUAL EMPLOYMENT OPPORTUNITY  
IN THE FEDERAL GOVERNMENT

FOR HONORABLE ROBERT BROWN'S USE AT THE  
GOVERNOR'S CONFERENCE ON EQUAL OPPORTUNITY  
IN EMPLOYMENT ON SEPTEMBER 28, 1972

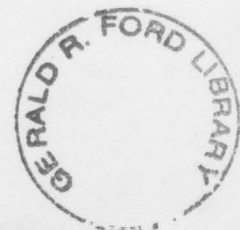


Soon after he took office in 1969, President Nixon asked the U. S. Civil Service Commission to study the Federal Equal Employment Opportunity Program and recommend improvements. The result was Executive Order 11478 issued by the President August 9, 1969. It was much stronger than preceding orders. It applied sound management concepts to the affirmative action for equal opportunity and as should be expected of such a large organization, the progress has been striking.

Although it was not greeted with overwhelming publicity, March 24 of this year should be remembered in the annals of equal opportunity in this nation. For the first time in our history, employees of Federal, state, and local governments were covered under Title VII of the Civil Rights Act. The Congress wrote a new Section 717 into Title VII for Federal equal employment opportunity.

The Equal Employment Opportunity Commission administers the law for state and local governments--elected officials are, of course, exempted, as are their personal assistants and immediate advisors.

The Civil Service Commission administers the law for Federal government employees. Federal employees are given the same right as employees in private industry to bring court action if they are not satisfied with the Federal government's handling of their complaints of bias.



When the President signed the Equal Employment Opportunity Act of 1972, into law on March 24th, the Civil Service Commission, for the first time was given statutory authority to see that all personnel actions in the Federal government are not only free from discrimination, but are actively and affirmatively oriented toward equality of opportunity.

It has taken 185 years to add such rights by law since the Constitution, in Article VI, prohibited religious discrimination in filling "any office or public trust under the United States." The Civil Service Act of 1883 substituted merit for politics and other non-merit factors as the measure for Federal employment. The principle that public employment could not be denied for reasons of race, creed, or color was first stated by the Executive Branch in 1940 in Executive Order 8587.

That first Executive Order amended the Federal Civil Service rules to prohibit discrimination on the basis of race. This was followed closely by the Ramspeck Act barring discrimination in Federal service on the basis of race, creed, or color. Sex was added to the non-discrimination language in 1967.

Each President beginning with President Roosevelt issued Executive Orders aimed at eliminating discrimination in Federal employment. For over a period of 15 years, these orders set up various Boards and Committees to implement this policy. But the policy emphasis was on nondiscrimination and the program remained passive. To promote fair treatment in the Federal job market, in the United States, Federal agencies



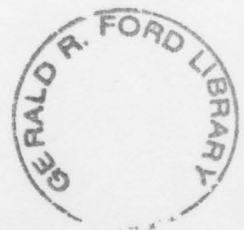
were told, not so much what they should do, but rather what they could not do.

The shift to a more positive program was heralded by President Eisenhower's Executive Order 10950, issued in 1955. That order proclaimed that the U. S. Government's policy is "that equal opportunity be afforded all qualified persons, consistent with law, for employment in the Federal Government." Equal opportunity was the significant change.

The concept of affirmative action was introduced in 1961 with President Kennedy's Executive Order 10925, which directed "positive measures for the elimination of any discrimination, direct or indirect, which now exists." President Johnson's Executive Order 11246 in 1965 placed responsibility for Federal governmentwide guidance and leadership under the U. S. Civil Service Commission.

Although the Kennedy-Johnson orders squarely assigned the responsibility for active efforts to assure equal opportunity, the orders did not address themselves to the specifics or to the problems of upward mobility of lower level employees.

Which brings us back to the present administration and the President's Executive Order 11478, issued August 9, 1969. This is a stronger order than those preceding it, partly because it was couched in a management-oriented framework, in terms of language and organization.





It was directed explicitly to heads of executive departments and agencies by a special memorandum from President Nixon sent to them through the Civil Service Commission, together with the Commission's Report to the President of its assessment of the then-current status of equal opportunity in Federal employment.

The President's Order 11478 for the first time made clear that EEO applied to every aspect of personnel policy and practice in the employment, advancement, development, and treatment of civilian employees in the Federal Government.

It emphasized upward mobility so that underutilized employees with ability to advance could receive training and experience that would help them compete for more responsible jobs. That gave hope to many employees - including a disproportionate number of minority employees and women - stranded in low-graded, dead-end jobs, the kind of jobs without promise of advancement, that can often lead to an environment in which disregard of an employee's human dignity may escape notice, and which in turn can tend to reduce morale and productivity.

And finally specific steps were outlined which became the basis for the affirmative action program in every Federal agency. What have been the results of this program?

It goes without saying that much remains to be done, but minorities not only hold significant numbers of positions in the Federal Government, they have moved up the pay scale as well, and are continuing to move up.

Total minority representation is approximately 19.5 % of the Federal work force. From 1967 to 1971, minority employment in all



pay schedules increased by 6,080 positions while total Federal employment decreased by 48, 169.

The latest survey - data as of November 30, 1971 - shows that the number of minority group Americans in better paying jobs in Federal Government increased significantly. Minorities now hold 15. 2 % of all General Schedule positions:

- 28% GS-1 through GS-4
- 18.9% GS-5 through GS-8
- 8.9% GS-9 through GS-11
- 5.2% GS-12 through GS-13
- 4.2% GS-14 through GS-15 and
- 2.8% GS-16 through GS-18.

(All up from 1970, except GS-1 through GS-4.

The Civil Service Commission survey also showed that minority employees are moving into the middle and higher grade levels at a faster rate than non-minority employees. This is a result of efforts which the Commission and the individual agencies are making to assure upward mobility into better jobs, many of them in professional and administrative fields.

Over one third of the Federal work force is now made up of women. At the higher grade levels of the Federal service, GS-13 and above, close to 3,000 women have been added to the rolls since 1966.

November 1971 data for the largest Federal agencies show an increase in the number of women in mid-level positions on their way



up the career ladder. While women held only 20.7 percent of all jobs at grades GS-7 through 12 in 1970, they accounted for 50 percent of the total increase in jobs at these grade levels from November 1970 to November 1971. This is 7,000 jobs out of the increase of 14,000 at these grade levels.

We have seen the program develop and change direction from non-discrimination to emphasis on positive steadily strengthened affirmative action to get measurable results within merit principles.

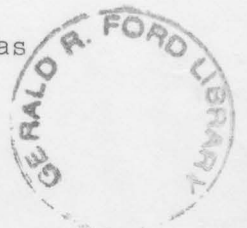
Now, with the new law, we have entered a new era - an era where equal employment opportunity and affirmative action are no longer matters of executive branch policy alone. They are the law.

Let's look at some of the new provisions on the books.

The law states that all personnel actions affecting employees or applicants for employment "shall be made free from any discrimination based on race, color, religion, sex, or national origin." The Civil Service Commission has authority for enforcement and may order whatever remedies are appropriate, including reinstatement or hiring of employees with or without back pay.

Regulations have been developed for ensuring enforcement, including the award of back pay as a remedy in findings of discrimination.

The Congress wants compliance. The administration has assured the Civil Service Commission that it wants compliance. "Business as





usual" will not suffice. This goes for both sides of the coin, whether a manager tempted to play the "quota" game - which the President and Chairman Hampton of the Civil Service Commission have continued to reject in clear and definite policy statements - or a supervisor paying only lip service to the Federal EEO program - and the President and the Commissioner have continued to call for "affirmative efforts to ensure that all Americans have an equal chance to compete for employment opportunities, and to do so on the basis of individual ability."\*

While each Federal department and agency has been required by the Civil Service Commission for some years to submit an annual EEO action plan for review, the act now requires that the Commission be responsible for an annual review and approval of national and regional EEO action plans. It is now a legal obligation for the Commission to review each agency's plan and give formal approval before its implementation.

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\* From the text of the President's letter of August 11, 1972 to the American Jewish Committee.



Regional plans are brand new. They offer the opportunity for a close look at an individual installation's affirmative action plans, its problems, and its progress. As an important step in decentralization, the Civil Service Commission proposes to tailor regional plans to an agency's own organizational structure.

The law requires these action plans to include, but not be limited to:

- (1) Provisions for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential. The Commission has revised its action plan guidelines accordingly and will review agency actions against those instructions.
- (2) A description of the qualifications, in terms of training and experience, of "principal and operating officials" and agency personnel and resources devoted to equal employment opportunity. New standards have been developed by the Commission for equal employment opportunity officials, and agency personnel will be required to meet those standards. The adequacy of the number of persons assigned to EEO, and of the other resources agencies are devoting to their equal employment activities, will be a part of the action plan reviews now made by the Commission. The job required by law cannot be accomplished without resources and it will be the obligation of each Federal agency to supply the necessary staff and resources.



The law makes the Commission responsible for reviewing and evaluating the operation of all agency EEO programs. It is also required to obtain and publish progress reports on all of them at least semiannually. Agency employment reports of minorities and women must be sufficiently comprehensive to comply with the legal requirements which call for semiannual reports. Agencies will be required, in addition, to provide narrative program activity reports.

On-site evaluation will be the prime method for monitoring problems and progress. For the first time, the equal employment programs in major Federal agencies will be reviewed on an annual cycle, including headquarters as well as a sampling of field installations.

The law makes these provisions on access to the courts: Within 30 days after receipt of notice of final action taken by an agency or by the Commission's Board of Appeals and Review, an employee or applicant for employment who has alleged discrimination based on race, color, religion, sex, or national origin, if he (or she) is dissatisfied with final action, may file a civil action in court, naming the head of the employing agency as defendant. Also, a complainant may file a civil suit if final action on the complaint is not taken by the agency within 180 days of filing, or by the Commission's Board of Appeals and Review within 180 days of an appeal from an agency decision. The Commission will assist agencies in meeting their deadlines on final action complaint decisions by providing Commission



investigators, on request, on a reimbursable basis. The Commission will also monitor agency complaint processing closely to prevent backlogs and bottlenecks and will continue as under present regulations to provide independent third-party hearings examiners to hold hearings in complaint cases.

Once a civil action is filed, the court, if it deems it just, may appoint an attorney for the complainant, and waive payment of fees, costs, or security. A judge will be assigned to hear the case at the earliest practicable date. If the court finds that the agency has intentionally engaged in an unlawful employment practice, it may enjoin the agency head from such practice and order such corrective action as it deems appropriate--including reinstatement or hiring, with or without back pay.

We are well aware of the implications of this provision of the act, but we do not foresee it as sending a steady stream of grievants to the courts. The administration welcomes it as an opportunity to have the decisions in discrimination cases measured by the courts as to their fairness.

In summary:

Equal employment opportunity in the Federal service now has a clear, specific, and positive statutory charter. It has come a long way but still has a distance to go. Discrimination is not just the malicious intent of individuals. It may be systemic. The Civil Service Commission's job is to see that it does not appear in any Federal merit procedures. To assure this, all aspects of the Civil Service





systems for the recruitment and selection of employees are undergoing intensive review.

Solid progress in the employment of minority group persons and women has been made, and it is a cliché to say that more is needed. The whole thrust of our renewed program is to deal with real, not rhetorical needs. There is, for example, a tremendous training job going on in the Federal Government on every level, spearheaded by the Civil Service Commission, to equip investigators, hearing examiners, counselors, managers, and supervisors with the facts about the EEO program which they need to know to make it effective.

One can hardly underestimate how much human energy will be released by our efforts to ensure fair treatment for all in Federal employment. But I am convinced that this program will help to channel that energy into all the productive jobs that Federal departments and agencies have been assigned to do.

The EEO program of the Federal Government is keyed to the accomplishment of our major assignment and constant objective: getting the public's job done as effectively and efficiently as possible.

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