**Welcome to CDOT Affirmative Action in Employment Training**

*To the CDOT teams:*

*I am pleased to welcome you to this online awareness training designed to assist you in understanding the concepts and requirements relating to affirmative action.*

*At CDOT, we want to foster a work culture that values diversity and one in which all employees feel welcomed and appreciated. We will not condone behavior that undermines our core values, which include a passion for dignity, respect, and integrity. As a step toward this goal, we are providing this important professional development opportunity designed to help you understand affirmative action.*

*I encourage each of you to carefully review the content of this training module. Your participation will ensure that all members of the CDOT community have the foundation for a common understanding to help make us the best transportation department in the country.*

*CDOT is a partner in a Stewardship and Oversight Agreement with the Federal Highway Administration (FHWA) and the foundation for CDOT’s affirmative action plan is contained in 23 CFR Part 230 and the Federal Transportation Administration (FTA) Circular 4701.1.*

*CDOT is committed to equal employment opportunity and affirmative action for all Colorado residents.*

I*f you have any questions about this training, please contact Kevin Furman, Human Resources Director at 303-757-9154. In addition, at the end of the training, we welcome your comments on our evaluation form. The link to the CDOT Affirmative Action Report and Plan is here.*

*— Shailen Bhatt, CDOT Executive Director*

**Overview**

This training module is designed to provide managers and supervisors with an overview and practical understanding of the fundamental principles and requirements of affirmative action.

You will learn about:

* the origins and history of affirmative action;
* affirmative action myths and misinformation;
* the required elements of an affirmative action plan;
* affirmative action strategies and compliance.

**Definitions**

Affirmative Action (AA) is specific actions taken by an employer to eliminate the effects of past discrimination and to promote equal access in employment, e.g., recruiting, hiring, promoting, and training among certain groups (women, minorities, military veterans, and people with disabilities) who have historically experienced discrimination in this country.

An AA plan is a written document conforming to certain government regulations, in which an employer conducts an analysis of its workforce and ascertains whether, and the extent to which, members of protected groups are underutilized in specific job groups. In those areas where problems are identified, the employer must set goals and timetables to eliminate the underutilization.

EEO/Civil Rights results from a series of federal and state laws and provide workplace protection from discrimination and harassment.

Diversity relates to valuing the unique qualities, experiences and work styles of individuals that can contribute to increased staff engagement, retention and productivity as well as enhancing an organizations relationship with its customers and community.

**Important Milestones in the History of Affirmative Action**

In 1941, President Franklin Roosevelt's Executive Order 8802 outlawed segregationist hiring by federal defense contractors. In 1953, the Truman Committee, a U.S. Senate committee formed by President Truman, urged the Bureau of Employment Security "to act positively and affirmatively to implement the policy of nondiscrimination..." The Civil Rights Act of 1964 and Voting Rights Act of 1965 extended equal protection.

In 1961, President John F. Kennedy issued Executive Order 10925, which ordered federal contractors to take "affirmative action" measures to achieve fairness in the workplace.

In 1965, President Lyndon Johnson issued Executive Order 11246, which required federal contractors to "take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin."

In 1967, Johnson expanded the Executive Order to include affirmative action requirements to benefit women.

In 1969, President Richard Nixon initiated the "Philadelphia Order," a plan guaranteeing fair hiring practices in construction jobs.

In 1971, the U.S. Supreme Court ruling in Griggs vs. Duke Power Company required employment qualifications to be job related.

In 1978, the Supreme Court ruled in Regents of the University of California v. Bakke that while race was a legitimate factor in school admissions, the use of quotas was not constitutional.

In 1989, in City of Richmod v. Croson, a program setting aside 30% of city construction funds for black-owned firms was challenged. The Supreme Court ruled that the program violated the equal protection clause of the 14th Amendment.

**What is (and is not) Affirmative Action?**

Affirmative action can be the following:

* remedial action
* temporary measures
* results-oriented programs and activities
* removal of obstacles that lead to underutilization
* all else being equal, preferential hiring of qualified minority and female applicants

Affirmative action is not:

* a quota system
* reverse discrimination
* always court ordered or necessitated by law (can be voluntary) preferential hiring of minorities and women regardless of qualifications

**Illustration: "Are We Legal?"**

* You are the diversity officer for a large organization located in large metropolitan city. The CEO of the organization is concerned about the lack of diversity among the entry level workers employed.
* To address this concern, you are charged with developing efforts to increase the number of minority and female workers hired by the organization.
* You decide to create a special summer internship program exclusively for minority and female students enrolled at several local schools. The intent of the internship program is to expose these students to the benefits of working for a transportation organization and to provide the organization with increased opportunities to hire additional minority and female students.
* You contact the schools to request a list of second- and third-year African American, Asian American, Hispanic, Native American, and disabled students to invite to participate in the program.
* Are these efforts to promote and encourage job opportunities for these student permissible under the law?

**Response to: "Are We Legal?"**

* As a general rule, "exclusive" programs are deemed impermissible by the U.S. Supreme Court. If an employer chooses to implement such a program regardless, it will generally be subject to strict scrutiny. Exceptions may be granted if the program is narrowly tailored to remedy the present effects of past discrimination or implemented to promote diversity. In other words, the program must be necessary to further the organization's interest in diversity and must not unduly restrict access to students who do not meet the race or gender-based eligibility criteria. If such a program is not narrowly tailored, it is likely to be deemed discriminatory under the law.
* In this instance, the organization’s efforts to provide opportunities for students would be considered permissible inasmuch as, it can be shown through acceptable legal analysis that minority and female group members have been underrepresented in the specific professions. Without question, racial and ethnic diversity brings value to any organization Thus, an organization has an obligation to break down the institutional barriers that impede access for people of color.

**Who Benefits from Affirmative Action Policies?**

Affirmative action benefits everyone, either directly or indirectly.

* AA programs led to the establishment of clear norms by employers, giving all workers equal access to jobs, promotions, and training
* AA policies have resulted in increases in the representation of women and minorities across all levels of employment in the United States and within organizations that were once exclusively non-minority males
* AA expands the talent pool for jobs and creates a more diverse work environment.
* a wide range of groups have benefited from these policies which promote equality by directing resources, outreach and other opportunities to targeted under represented communities. These groups include women, Blacks/African Americans, Hispanics/Latinos, Asians/Pacific Islanders, and American Indians/Alaskan Natives
* according to the United States Labor Department, the primary beneficiaries of affirmative action are white women. The Department of Labor estimated that 6 million women workers are in higher occupational classifications today than they would have been without affirmative action policies

**Major Components of the Affirmative Action Plan**

An Affirmative Action Plan (AAP) must contain the following components:

1. *Narrative Statement*, a description of the employer's equal employment opportunity and affirmative action programs and activities;
2. *Workforce (or Job Group) Analysis or Organizational Profile*, which determines the representation and distribution of women and minorities within the organization;
3. *Availability Analysis*, which determines the representation of minorities and women in the relevant recruitment areas;
4. *Incumbency vs. Availability (or Utilization) Analysis*, a comparison of the employer's workforce with published statistical data indicating the number of available minorities and women in the relevant labor market;
5. *Goals and Timetables*, which addresses any areas where underrepresentation is identified by the *Incumbency vs. Availability Analysis;*
6. *Designation of Responsibility*, an identification of the individuals within the organization who are responsible for implementing the *Plan.*

**The Statistical Analyses in the Affirmative Action Plan**

While the *Narrative Statement* is a written description, the four subsequent sections of the Affirmative Action Plan are statistical analyses.

* *Workforce (or Job Group) Analysis* answers the question "Who are we?"
* *Availability Analysis* answers the question "Who is out there?"
* *Incumbency vs. Availability (or Utilization) Analysis* answers the question "How do we compare?"

80% Rule, in which underutilization exists if the percentage of females and/or minorities in a particular job group is less than 80% of the final availability percentage.

In determining under-utilization, most employers elect to use the 80% Rule. The ratio of workforce to availability is calculated as: Ratio = (W/A) x 100.

Example:
Workforce = 20% female workforce
Availability = 23% female availability

Ratio = (20/23) x 100 = 86.96%

In this example, underutilization does not exist because the ratio exceeds 80%.

* *Goals and Timetables* answer the question "What are we going to do?"

When underutilization is found, placement goals should be established to increase the numbers of minorities and/or women, as needed.

* a numerical placement goal is a statement of intent, a criterion for determining progress, rather than an absolute requirement.
* a goal is not the same as a quota.
* a timetable is a time schedule for making a good faith effort to achieve the self-imposed goals.
* goals are evaluated and adjusted, as appropriate, on an annual basis

**Affirmative Action Strategies**

Strategies for attaining goals may include:

* outreach and recruitment
* review of internal processes to assess bias and barriers
* mentoring and upward mobility programs
* engagement and retention programs
* diversity training
* incentive and awards programs

# Illustration: “Affirmative Action Dilemma”?

* Peter Johnson is a Manager at a large public organization. As part of his duties, he supervises fifteen supervisors. Fourteen of these supervisors are men. Only one of the supervisors is a black male, and one is a white female.
* Johnson is replacing one of the white male supervisors. The position has been posted both in-house as well as externally in accordance with the hiring policies. After reviewing all of the applications, Johnson believes that Steve Reed, employed with the organization for the past twelve years, is the best qualified applicant. However, in the pool of applicants, there are three qualified females and two qualified black males.
* What would you advise Peter Johnson to do?

# Response to "Affirmative Action Dilemma?"

* The objective in any employment selection process is to identify the best-qualified candidate for the position based on job-related criteria. In this situation, while Peter's intentions may be honorable, any decision to select a candidate based on his or her gender or race would be discriminatory and in violation of Title VII of the 1964 Civil Rights Act.
* However, if Peter's belief that Steve is the best-qualified candidate is based solely on Steve's longevity with the organization, Peter may be depending too heavily on only one element of the job qualifications. Peter should evaluate each candidate's entire application comprehensively, including the nature and length of each person's job-related work experience, education, other job skills, knowledge, and abilities, to make his selection decision.

Commentary: Achieving a workplace that includes a proportional representation of minority groups and females does not happen overnight. In some cases, qualified minority and female candidates may simply be unavailable. That is why it is important to consider diversity starting at the very early stages of recruiting, as well as throughout the selection and hiring processes. In addition, employers who are federal contractors or a state transportation agency, such as CDOT, must compile an annual affirmative action plan that determines whether the employer needs placement goals to achieve a better representation of minorities, based on the organizational profile, job group analysis, and availability analysis.

**Why Does Affirmative Action Sometimes Fail?**

At times, affirmative action fails to improve workplace conditions. Some of the reasons are:

* lack of accountability or commitment from senior management
* failure to use innovative methods to recruit females and people of color
* failure to analyze the factors that determine why females and people of color do not apply for hire or promotion
* hiring officials and/or recruitment personnel assume that there are no qualified women or people of color available
* unconscious bias — the unconscious tendency to hire people “who look like us.”

**The Challenges Ahead**

Affirmative action still faces many challenges. Some lie in implementation, such as:

* eradicating myths, misinformation, and ambivalence
* overcoming organizational inertia, culture, and complexity to reach and involve every employee, regardless of position or rank
* providing management with skills and tools to motivate, supervise, and reward a diverse workforce
* overcoming resistance, controversy, and perceived lack of relevance to systemic change and new expectations

**What are Expectations of CDOT Supervisors and Managers**?

Understanding CDOT’s Equal Employment Opportunity and Affirmative Action policies is critical as a Director, Manager or Supervisor. When practiced, you can easily avert the most common complaints and be supportive of CDOT’s EEO/AA requirements.

As a Supervisor or Manager you need to take the following action in support of EEO and AA:

* work with your Workforce Specialist and RCRM to determine the best hiring/promotion strategy
* communicate any systemic barriers to EEO and AA to appropriate manager or authority
* ensure that no biases or barriers exist when conducting hiring, promoting, or training actions
* inform your employees about EEO and AA policies, employee complaint procedures, and have completed Strength from Diversity, Putting the Brakes on Workplace Harassment, and Safety – Creating a Safer Workplace training
* immediately report any concern or complaint of sexual harassment, discrimination or hostile work environment to the Regional Civil Rights Office or, for HQ staff, Employee Relations Office
* ensure your subordinate managers and supervisors understand the EEO and AA policies and procedures
* monitor all employment actions (hiring, promotion, training, and other terms and conditions of employment) to ensure EEO and AA opportunities are fully utilized
* model respectful behavior and adherence to CDOT policies and procedural directives

**Post Training Assessment (TBD after content approved)**

* Underutilization is defined as having fewer minorities or women in a job classification than would be reasonably expected, based on:

the area population
their availability in the recruitment area
their representation among the employer's workforce
none of the above
* An affirmative action plan establishes guidelines for recruiting, hiring, and promoting women and minorities in order to eliminate the present effects of past discrimination.

True
False
* Which of the following analyses is not considered an essential statistical component of an organization's affirmative action plan?

the workforce analysis
the availability analysis
the compensation analysis
the incumbency vs. availability analysis
* edeFederal affirmative action guidelines specifically prohibit quotas.

True
False
* Equal opportunity and affirmative action programs guarantee that members of minority groups will be selected over non-minority applicants.

True
False
* Discrimination occurs when a more qualified member of a non-protected class (generally white males) is not hired or promoted in favor of a member of a protected class.

True
False