SENATE BILL 226

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

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AN ACT

RELATING TO STATE PERSONNEL; ENACTING THE DIVERSITY ACT; CREATING THE CHIEF DIVERSITY OFFICER WITHIN THE STATE PERSONNEL OFFICE; CREATING DIVERSITY AND INCLUSION LIAISONS WITHIN STATE AGENCIES; CREATING THE WORKFORCE DIVERSITY AND INCLUSION COUNCIL; PROVIDING DUTIES; REQUIRING STATE AGENCIES TO DEVELOP AND IMPLEMENT POLICIES TO IDENTIFY, ASSESS AND DECREASE INSTITUTIONAL RACISM; PROVIDING CRITERIA BY WHICH STATE AGENCIES SHALL IMPLEMENT SUCH POLICIES; REQUIRING AN ANNUAL REPORT; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Diversity Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Diversity Act:

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A. "accessibility" means the degree to which a product, device, service, environment or facility is usable by as many people as possible, including people that belong to a protected class;

B. "council" means the workforce diversity and inclusion council;

C. "director" means the state personnel director;

D. "diversity" means the practice of including or involving people from a range of different racial or ethnic backgrounds and may also include persons of every background, gender, race, sexual orientation, age and disability;

E. "equality" means the equivalent treatment of and opportunity for members of different groups within society regardless of individual distinctions of race, ethnicity, gender, age, social class, sexual orientation or other characteristics or circumstances;

F. "equity" means the consistent and systematic fair, just and impartial treatment of all people, including people who belong to underserved communities;

G. "gender identity" means the gender-related identity, appearance, mannerisms or other gender-related characteristics of a person, regardless of the person's designated sex at birth;

H. "inclusion" means the process of creating a working culture and environment that recognizes, appreciates

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and effectively utilizes the talents, skills and perspectives of every state employee; uses state employee skills to achieve a state agency's objectives and mission; connects each state employee to the organization; and encourages collaboration, flexibility and fairness in the workplace;

I. "inequities" means disparities in physical health, mental health, economic opportunities, education or social factors;

J. "institutional racism" means actions that result in differential access to the goods, services and opportunities of society due to the existence of institutional programs, policies and practices that intentionally or unintentionally place certain racial and ethnic groups at a disadvantage in relation to other groups;

K. "office" means the state personnel office;

L. "protected class" means a group of people with a common characteristic who are legally protected from employment discrimination on the basis of that characteristic; such characteristics may include a person's race; color; religion; sex, which may include pregnancy, transgender status and sexual orientation; national origin; age, being forty years of age or older; disability; or genetic information;

M. "state agency" means any state agency, office, department, board, commission or authority under the executive branch of the state;

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N. "state employees" means all classified personnel pursuant to the Personnel Act;

O. "underserved communities" means populations, as well as geographic communities, who share a particular characteristic and have been systematically denied a full opportunity to participate in aspects of economic, social and civic life; such communities may include Black, Latino, Native American, Asian American and Pacific Islander and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender and queer persons; persons with disabilities; persons who live in rural areas; and persons who have otherwise been adversely affected by persistent poverty or inequality; and

P. "workforce diversity" means the process of recruiting from a diverse, qualified group of potential applicants to secure a high-performing workforce drawn from all segments of American society.

SECTION 3. [NEW MATERIAL] CHIEF DIVERSITY OFFICER--CREATED--DUTIES.--

A. The position of "chief diversity officer" is created as a classified position within the office. The chief diversity officer shall be hired by and serve at the pleasure of the director.

B. The chief diversity officer shall have a background and education in management or business and have

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experience with diversity and inclusion.

C. The chief diversity officer shall:

(1) lead the development and implementation of proactive diversity, equality, equity and inclusion initiatives in support of the state's strategic plan to create a culture of diversity, equality, equity and inclusion pursuant to Section 6 of the Diversity Act;

(2) collaborate with and support other state agencies in assessing potential barriers and developing strategies for state agencies to recruit and retain a diverse workforce;

(3) assess state agencies' needs for, and recommend training initiatives on, cultural competency, gender identity differences, disability, accessibility, sexual harassment and other topics designed to increase awareness and support of equity, equality and inclusive values;

(4) ensure that all state agencies maintain compliance with all relevant and applicable laws and rules;

(5) exercise authority to advise state agency directors with regard to matters for which the chief diversity officer has authority pursuant to this section;

(6) have full access to the office's human resource management systems;

(7) establish and maintain state-agency-specific strategic plans that publicly state diversity

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definitions and goals for the state agency;

(8) define a set of strategic metrics that are directly linked to key organizational priorities and goals actively used to implement the strategic plan;

(9) establish training regarding diversity dynamics and best practices for effectively leading diverse groups;

(10) establish and maintain a strategic plan for outreach to, and recruiting from, underserved communities;

(11) conduct regular, rigorous evaluations and assessments of diversity for state agencies; and

(12) perform such additional duties and exercise such powers as the director may prescribe.

D. On or before December 31 of each year, the chief diversity officer shall:

(1) conduct an evaluation of race as self-identified by applicants, candidates and employees subject to the Personnel Act as related to hiring, promotion, retention and pay;

(2) develop policies to identify, assess, reduce and prevent inequities due to institutional racism in hiring, promotion and pay for those agencies with positions to which the provisions of the Personnel Act apply;

(3) conduct an analysis of state government employment data sets of race as self-identified by employees to

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track progress toward ending institutional racism; and

(4) develop and provide anti-institutional racism training for all employees subject to the Personnel Act that shall include:

(a) a historical perspective on New Mexico, spotlighting the many racial and ethnic subpopulations that live and work in New Mexico and the need for all New Mexicans to be aware of, appreciate and celebrate the cultural differences in the state;

(b) strategies to eliminate cultural prejudices and discrimination while strengthening the common threads that bind individuals into one state and one country;

(c) strategies to improve engagement with employees, customers or clients from different cultural backgrounds; and

(d) strategies to counteract unconscious bias and foster a climate of diversity and inclusion in the state government workplace.

SECTION 4. [NEW MATERIAL] DIVERSITY AND INCLUSION LIAISONS--WORKFORCE DIVERSITY AND INCLUSION COUNCIL--CREATED--DUTIES.--

A. Each state agency shall designate a diversity and inclusion liaison, who shall report directly to the head of that state agency and collaborate with the chief diversity officer.

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B. The chief diversity officer shall convene the "workforce diversity and inclusion council" composed of the diversity and inclusion liaisons from each state agency.

C. Each diversity and inclusion liaison shall provide to the chief diversity officer the data and information required pursuant to Section 5 of the Diversity Act.

D. Diversity and inclusion liaisons shall work with the chief diversity officer to implement recommendations proposed by state agencies or by the chief diversity officer.

E. The diversity and inclusion liaisons shall assist the chief diversity officer in developing and providing anti-institutional racism training for all employees subject to the Personnel Act.

F. The chief diversity officer, in collaboration with the diversity and inclusion liaisons, shall ensure that each state agency includes a prominent statement on all job advertisements and annual reviews that:

(1) clearly articulates the state's commitment to reducing and preventing institutional racism; and

(2) states that all employees are required to participate in anti-institutional racism training.

G. The council shall convene regularly and may establish subcommittees as appropriate.

SECTION 5. [NEW MATERIAL] ANNUAL REPORT--REPORT CONTENTS--PUBLICATION AND DISSEMINATION OF REPORT.--

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A. No later than July 1 of each year, each state agency shall submit a report to the office on the activities of the state agency pursuant to the Diversity Act. The report shall include:

(1) demographic data on each element of the state agency's workforce that is disaggregated by rank and grade or grade-equivalent, with respect to the following groups:

(a) applicants for each position within the state agency;

(b) applicants hired to the state agency;

(c) state employees promoted within the state agency;

(d) members of any external advisory committee or board who are subject to appointment by people in senior positions at the state agency;

(e) state employees participating in professional development programs; and

(f) state employees participating in mentorship or retention programs;

(2) aggregate demographic statistics for all employees, including race for those employees who self-identify;

(3) an assessment of the state agency's

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compliance with relevant elements identified by the United States equal employment opportunity commission;

(4) an assessment of the state agency's anti-institutional racism policies in hiring, promotion, retention, pay equity, community engagement and workplace participation;

(5) the steps in the state agency's hiring and promotion processes that incorporate the values of diversity, equity and inclusion;

(6) data on the promotion outcomes of women and racial or ethnic minorities;

(7) demographic data, disaggregated by rank and grade or grade-equivalent, of contractors and subcontractors, as well as the nongovernmental organizations and civil society organizations that win bids or obtain contracts and grants and serve as subcontractors to the state agency;

(8) a description of the state agency's efforts to propagate rules of fairness, impartiality and inclusion;

(9) the state agency's efforts to enforce anti-harassment and anti-discrimination policies;

(10) the state agency's acknowledgment of its obligation to refrain from unlawful discrimination in any phase of the employment process, including recruitment, hiring, evaluation, assignments, promotion, retention and training;

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(11) the state agency's intentions to prevent retaliation for state employees participating in employment-related activities protected by state or federal law;

(12) an assessment of the state agency's obligation to deliver reasonable accommodations for state employees with disabilities; and

(13) recommendations using data-driven approaches toward advancing solutions for problems identified and proactive measures addressing diversity, equity and inclusion in the workforce.

B. The chief diversity officer shall compile the state agency data collected pursuant to Subsection A of this section into an annual report and submit the report no later than October 1 of each year to the governor, the appropriate interim legislative committee dealing with courts, corrections and justice issues, the legislative finance committee and the legislature to address diversity, inclusion and institutional racism as a part of the annual fiscal budget or request for proposals submission for each state agency.

C. The chief diversity officer shall:

(1) ensure that the data included within the annual report is in a machine-readable format that is downloadable, searchable and sortable; and

(2) publish the annual report on the office's website.

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D. A copy of the report shall be maintained in the legislative council service library, the state library and the state records center and archives.

SECTION 6. [NEW MATERIAL] DIVERSITY, EQUITY AND INCLUSION STRATEGIC PLANS.--

A. The head of each state agency shall develop and maintain a comprehensive diversity, equity and inclusion strategic plan in coordination with the chief diversity officer and the diversity and inclusion liaison for that agency and the council.

B. The diversity, equity and inclusion strategic plan shall:

(1) integrate the diversity, equity and inclusion goals into the mission, operations, programs and infrastructure of the state agency to enhance equitable opportunities for the populations served by the agency and to foster an increasingly diverse, equitable and inclusive workplace environment; and

(2) outline the:

(a) proactive measures toward addressing equal employment opportunities pursuant to federal and state law;

(b) intentions of fostering pay equity pursuant to federal and state law;

(c) practices to promote diversity,

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equity and inclusion in hiring, promotion, retention, succession planning and leadership opportunities; and

(d) practices of employee engagement and inclusivity in the workforce.

C. The head of each state agency shall coordinate with the chief diversity officer to effectively support ongoing progress and accountability to achieve diversity, equity and inclusion goals.

SECTION 7. APPROPRIATION.--Two hundred fifty thousand dollars ($250,000) is appropriated from the general fund to the state personnel office for expenditure in fiscal year 2024 to carry out the provisions of the Diversity Act. Any unexpended or unencumbered balance remaining at the end of fiscal year 2024 shall revert to the general fund.

SECTION 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2023.

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