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November, 1996

Basics about AFFIRMATIVE ACTION IN OREGON

In 1964, Congress passed the Civil Rights Act, which outlawed employment practices that discriminated against individuals on the basis of race, color, religion, sex, or national origin. In 1996, voters in California passed Proposition 209, which requires that the state "...not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting." It would seem that these laws say the same thing! But where the first law set the stage for President Johnson's 1965 Executive Order requiring government contractors to take "affirmative action" to increase the employment of minorities, the second requires California to fully repeal its state and local affirmative action programs and plans. These two laws represent opposite ends of a contentious spectrum of debate on the issue of equal opportunity in the United States.

What is affirmative action? *Affirmative action* is commonly known today as a set of specific, concrete actions taken by an employer to increase the number of women and minority group members working or training to work in a particular industry, profession, or trade. Affirmative action is intended to improve access into industries, professions, and trades which historically have employed small numbers of women and minority group members.

How does Oregon define affirmative action? ORS 243.305 reads in part: " 'Affirmative action' means a method of eliminating the effects of past and present discrimination, intended or unintended, on the basis of race, religion, national origin, age, sex, marital status, or physical or mental disabilities."

Is there one state law dictating affirmative action policy? No. The state has separate affirmative action laws in the following areas:

- State personnel practices
- Public contracting
- Executive appointments
- Higher education recruitment and retention of minority students and staff
- Community colleges
- Economic development

What is an affirmative action plan? Generally, an affirmative action plan is a strategic plan designed by an employer for the purposes of attracting members of disadvantaged minority groups into employment, education, and other competitive opportunities which historically have been difficult to enter.

<i>Is the state an affirmative action employer?</i>	Yes. ORS 243.305 states: “it is declared to be the public policy of Oregon that all branches of state government shall be leaders among employing entities within the state in providing to its citizens and employees, through a program of affirmative action, fair and equal opportunities for employment and advancement in programs and services and in the awarding of contracts.”
<i>What employers in Oregon are required to follow affirmative action plans?</i>	All state agencies are required to follow affirmative action plans as defined by state law. Private employers are not required by law to adopt affirmative action plans. Some federal granting programs require that the public and not-for-profit agencies receiving grant money have affirmative action plans.
<i>How is affirmative action different from the enforcement of anti-discrimination laws?</i>	Affirmative action is <i>proactive</i> . Affirmative action plans seek to correct historical imbalances in the recruitment, training, and employment of disadvantaged persons in specific, measurable ways. Enforcing anti-discrimination laws is <i>reactive</i> . Discriminating against people in employment, accommodation, or access to education based on race, age, religion, color, sex, marital status, national origin, or physical or mental disability is illegal, and subject to penalties defined in the Oregon Revised Statutes.
<i>What are Oregon’s anti-discrimination laws?</i>	Oregon laws prohibit <i>all</i> employers--both public and private--from discriminating against a person because of that person’s age, race, religion, color, sex, marital status, national origin, or physical or mental disability. Discrimination is prohibited in public accommodations, public institutions of higher education, and in the sale or leasing of property. Oregon law at least partially preempts local ordinances relating to discrimination against persons based on sexual orientation.
<i>Who enforces Oregon’s anti-discrimination laws?</i>	The Bureau of Labor and Industries (BOLI) is responsible for investigating complaints of unlawful discrimination in employment, housing, places of public accommodation, and vocational, professional, or trade school activity.
<i>What recent Supreme Court decisions have affected affirmative action laws?</i>	Several Supreme Court cases in the past ten years have significantly affected affirmative action laws at the federal, state, and local level. Two of the more recent cases affecting affirmative action plans are <u>J.A. Croson v. the City of Richmond (1989)</u> and <u>Adarand v. Peña (1995)</u> . In the <u>Croson</u> decision, the justices held that the City of Richmond’s construction contract “set-aside” program, in which a percentage of the City’s construction contract dollars were to be set aside for minority-owned contracting firms, violated the equal protection clause of the Fourteenth Amendment. This case established that all race-based action by state and local governments must undergo “strict scrutiny” to determine whether or not such action is truly remedial in nature.

In Adarand v. Pena, a construction contractor sued the federal government for providing a financial incentive to general contractors on government construction projects for hiring minority subcontractors. The court ruled that federal racial classifications, like those of a state, must serve a compelling government interest, and must be narrowly tailored to further that interest alone.

Have there been any efforts to change affirmative action laws or plans in the United States or in Oregon?

Yes. In California, Proposition 209 will prohibit preferential treatment on the basis of race, sex, color, ethnicity, or national origin in the operation of California public employment, education, or contracting. The California Legislative Analyst's Office estimates that elimination of affirmative action programs will save the state more than \$125 million annually, but will eliminate or cause fundamental changes to *voluntary* desegregation programs run by school districts.

In Oregon, a petition circulated by the Oregonians for Equal Rights PAC failed to gain enough signatures to qualify for the ballot in 1996. This petition would have eliminated all affirmative action programs in Oregon, except for those necessary to qualify for federal funds.

Bills are introduced regularly in Congress that would amend or revise the 1964 Civil Rights Act, or otherwise increase or reduce the scope of the nation's affirmative action and equal opportunity laws. One bill introduced in the 104th Congress would have broadened the 1964 Act to include specific religious interests; another would have prohibited discrimination in housing and employment on the basis of sexual orientation. Bills also are regularly introduced which would amend the 1964 act to make "preferential treatment" an unlawful employment practice.

In October of 1996, Governor John Kitzhaber issued Executive Order #EO-96-38 directing all state agency directors and administrators to report the status of their affirmative action policies and programs by February of 1997. The order also directs the departments of Transportation and Corrections to increase the numbers of women and minorities working in the construction industry in Oregon. The order states that "the State of Oregon remains committed to the principle of ethnic and gender equity and will continue to implement non-discrimination and affirmative action policies where applicable.

For further information:

"Racial Quotas: Can there be affirmative action without special preferences?" *CQ Researcher*, Volume 1, No. 2, May 17, 1996.

"Proposition 9: Prohibition against discrimination or preferential treatment by state and other public entities," report of the Legislative Analyst's Office, State of California, 1996
Executive Order #EO-96-38, Office of the Governor, State of Oregon