

## MODEL AFFIRMATIVE ACTION PLAN INTRODUCTORY STATEMENT

The Massachusetts Legal Assistance Corporation expects all MLAC-funded legal services programs to have an Affirmative Action Plan that covers a program's employment practices and that complies with all applicable laws. But MLAC does not prescribe any particular content for the Plan. In order to assist legal services programs in identifying matters that might be covered and providing suggested language, the Legal Services Diversity Coalition has prepared this Model Affirmative Action Plan.

This Plan is a guide, and programs may want to change, add to or subtract from it as appropriate to their circumstances. However, any changes made to the Model Plan may render the plan unlawful. This Model Plan has been reviewed by legal counsel for its compliance with the laws governing employment of personnel. Legal counsel believes that the provisions of this plan comply with all current laws and court decisions that bear on the provisions of the Plan. But this area of law is evolving, and so a program is well advised to keep current with new developments on these issues.

Legal services programs should be aware that their practices, and their plans, are also governed by the various federal and state laws and regulations that apply to employment practices of nonprofit agencies, such as legal services programs, that are funded by the government. Included among these laws are:

- \$ Federal anti-discrimination laws such as Titles VI and VII of the Federal Civil Rights laws
- \$ State laws prohibiting discrimination, such as Chapter 151B, the state's public accommodations statute and the state law prohibiting sexual harassment in an employment context. These laws are further detailed in regulations issued by the Massachusetts Commission Against Discrimination.
- \$ Grant conditions in various public grants typically provide requirements governing employment practices and sometimes require reports by government grantees. Programs should be familiar with these grant conditions and take steps to be in compliance.

This plan covers employment practices and the selection of program Board members. It does not cover program treatment of clients, vendors, or events sponsored by the program. Programs are required by the law and grant conditions to avoid discrimination against clients and others who participate in program activities. Programs may want to expand upon these obligations in other written policies.

This Plan is drafted so that it can be adopted by a program with little or no change if a program decides to accept it. In a few cases, the Plan contains optional language, which is identified by brackets.

# AFFIRMATIVE ACTION PLAN

## **I. Goals and General Policies**

### **A) The goals of this Plan are:**

i) To more effectively achieve our mission as a legal services program by creating a diverse and a supportive environment for employees in all job categories, and for board members, interns, volunteers, and clients:

- To redress prior discrimination, if any, by programs against protected groups; to ensure non-discrimination in prospective employment actions; to create a supportive environment for qualified workers of all backgrounds; and to improve services to a diverse community.
- \$ To include and recognize the uniqueness of qualified people of all abilities and disabilities, ages, colors, ethnicities, religions, genders, job categories, class statuses, national origins, races, and sexual orientations in legal services workplaces.
- \$ To create an environment that allows for open communication about differences, and empowers each individual to do his or her best work on behalf of clients.
- \$ To endeavor to hire, promote, and retain qualified members of protected groups in all job categories at rates reflecting actual workforce availability.

ii) To identify and remedy disparate employment practices that disparately treat employees and/or employment practices with disparate impact upon members of protected groups.

iii) To engage in non-discriminatory outreach efforts to recruit and to improve retention of qualified members of protected groups as employees, board members, interns and volunteers

iv) To monitor progress in recruitment, hiring, promotions, transfers, and retention of qualified members of protected groups in all job categories

v) To ensure that staff are not discriminatory toward one another

vi) To facilitate cultural competence of program staff, to provide a supportive environment for qualified workers of all backgrounds, and to improve services to a diverse client community

## **B. Non-Discrimination Statement, Coverage and Definitions**

i) The program will not discriminate on the basis of age, class, color, disability, ethnicity, faith, gender, national origin, race, or sexual orientation.

ii) This Plan applies to board members, permanent and temporary employees, interns, and volunteers of the program. Long-term temporary employees who are hired to fill planned leaves or other foreseeable absences of other staff, and any temporary employee whose stay is expected to last at least three months, are included in the Plan.

iii) The definitions of protected groups to which this Plan applies are as follows: [The definitions established by the federal Equal Employment Opportunity Commission are as follows except for the

definition of gender]

*[People of African Heritage:* All persons having origins in any of the black racial groups of Africa.

*Latina/os:* All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture.

*Asian or Pacific Islanders:* All persons having origins in any of the original peoples of the nations of the Far East, Southeast Asia, Pacific Islands, or the Indian subcontinent.\*

*Native Peoples:* All persons having origins in any of the native nations of the Americas.

*People of Color:* People in any of the above four groups (these groups have historically experienced discrimination on the basis of race and/or national origin).

\*Note: People having origins in Arab nations may be from the Asian or African continents.

*People with Disabilities:* Those persons with a physical or mental impairment that substantially limits one or more of their major life activities, or with a record of such impairment (for purposes of nondiscrimination, as compared to a protected group, “people with disabilities” includes persons who are regarded as having such impairment, including HIV status).

*Gender.* [: All female persons.]

## **II. Implementation**

### **A. Establishment of an Affirmative Action (AA) Officer and an optional Affirmative Action Committee:**

- i) The program will designate an AA Officer
- ii) The AA Officer shall be provided with the needed resources, such as relevant information to fulfill his or her responsibilities, should have adequate time allotted to do this job, and should be given compensation if appropriate
- iii) Management must inform the AA Officer of all pending decisions regarding posting, recruitment, hiring, transfer, promotion, disciplinary action (including Performance Improvement Plans), termination, layoff, and Mass. Commission Against Discrimination complaints or other pertinent complaints or suits of any member of a protected group, subject to confidentiality and the agreement of the person affected.

### **B. The AA Officer shall:**

- i) Participate in program hiring processes including: outreach, development of hiring criteria and promotion and transfer policies and practices
- ii) Participate in the development, maintenance and updating of the program’s AA Plan
- iii) Promote and oversee effective retention practices and policies
- iv) Act as liaison between Diversity Coalition staff and this program, including acting as a sounding board on particular diversity-related issues and identifying programs and resources needed to promote this program’s staff diversity and cultural competence

### **C. In addition, the AA Officer may be given other responsibilities under this Plan, such as to:**

- i) Develop programs, statements for, and communicate developments to, staff, management, the Board, and clients

- ii) Investigate and address complaints under AA grievance procedures, where appropriate
- iii) Act as a liaison to organizations that are comprised of or serve protected groups
- iv) Conduct Affirmative Action information sessions for management and staff
- v) Oversee activities aimed at creating a supportive environment for qualified workers of all backgrounds, including activities aimed at improving retention of qualified members of protected groups
- vi) Monitor casework to ensure low-income individuals who are members of protected groups are not unlawfully excluded as clients and receive excellent service
- vii) Consult with the Diversity Coalition as needed for assistance with these activities

**[D. Establishment of an AA Committee:**

- i) The AA Committee shall be appointed promptly (or redesignated) immediately upon adoption of this AA Plan
- ii) The Committee shall be selected with staff and management participation, and Board involvement if appropriate
- iii) The Committee shall as much as possible, include people from a variety of race/national origin backgrounds, job categories, religions, ages, sexual orientations, both genders, and persons with disabilities
- iv) The AA Committee works in cooperation with the AA Officer to implement this Plan and oversee all diversity-related activities]

**E. Internal Dissemination of Plan**

The program's Plan shall be:

- i) Discussed, as appropriate, in management, AA Committee, and hiring committee meetings
- ii) Distributed to all employees and interns
- iii) Discussed in employee orientation and management training sessions
- iv) Published in the program's personnel manual
- v) The employees union shall be consulted in the formation of the Plan, will be asked to endorse the Plan and, in the process of mandatory collective bargaining, the program shall use its best efforts to ensure that contract language is not inconsistent with or exclusive of the Plan, particularly language regarding non-discrimination and seniority.

**F. External Dissemination of Plan**

The program shall:

- i) Publicly affirm its commitment to its AA Plan;
- ii) Inform recruiting sources and organizations of the Plan

**G. Advertisements and Posting; Opening recruitment**

- i) In all job notices and ads, the program will include a statement of the program's intent not to discriminate and to provide equal opportunity, such as: "This legal services program is an Equal Opportunity Employer, and does not discriminate on the basis of age, class, color, disability, ethnicity, faith, gender, national origin, race, or sexual orientation. "
- ii) The program will encourage qualified in-house employees who are members of protected groups to apply for job openings
- iii) The program will make presentations and maintain regular contact with potential sources of qualified candidates from protected groups, including meeting with groups of law students and attending recruiting fairs
- iv) Deadlines may be extended if recruitment and outreach fails to produce a qualified applicant pool that sufficiently reflects the diversity of the qualified available workforce
- v) Even if there is not an opening, qualified applicants' resumes may be kept for at least two years and can be shared with other programs once applicants give their consent

## **H. Hiring Process**

The program's hiring committees:

- i) Shall include representatives of one or more members of protected groups if feasible and/or the AA Officer
- ii) Shall set qualifications for hiring that include relevant community ties and life experience that reflect the ability to relate well with the program's client communities (e.g. language skills, cultural background, experience as an immigrant or public assistance recipient)
- iii) Will review each job description to ensure it accurately reflects the position, that credentials and experience required by the job description are essential job functions and that the language and format of the job description will not discourage qualified members of protected groups
- iv) Will create a clearly defined and weighted set of criteria for hiring that includes all elements related to the needs of the job and that values ability to communicate and relate well with client communities, along with other skills.
- v) Will ensure that all stages of hiring process are monitored by AA Officer [and Committee]
- vi) The program shall commit to providing all reasonable accommodations for individuals with disabilities to enable them to fulfill their essential job functions

## **I. Hiring Decisions**

- i) The ability to relate to clients who are members of protected groups is an important qualification for legal services positions because background, language skills, and experience may provide candidates with functional advantages in fulfilling the requirements of the job.

## **J. Supervision and Evaluation**

- i) Employees shall be supervised and evaluated based on a full range of skills, including interpersonal skills and ability to relate to staff and clients of all backgrounds

- ii) Information shall be provided about paths to promotion
- iii) Supervisors and supervisees shall work together to distinguish between issues of competence and issues of work style differences in order to achieve non-discriminatory supervision and evaluation
- iv) Supervisors' training shall include instruction on diversity issues and their impact on supervision and evaluation

**K. Training**

- i) Training should be considered as a means of helping a program to retain staff who are members of protected groups
- ii) Orientation and technical training shall be provided for new employees as appropriate
- iii) The program, with support from the Diversity Coalition as needed, will plan ongoing training to educate all staff on diversity issues in cooperation with AA Officer [and Committee]

**L. Promotions and Transfers - This Plan applies to all promotions and transfers**

**M. Termination and Resignation**

- i) This Plan shall apply to layoff decisions
- ii) Factors used to determine who should be retained during layoffs shall include ability to communicate with and relate to clients who are members of protected groups
- iii) Exit interviews are encouraged with all departing employees, and the AA Officer shall conduct exit interviews with members of protected groups who are terminated, laid off or resign, to determine whether diversity issues contributed to the decision
- iv) Terminations may be grieved on the basis of violation of this Plan if informal resolution is not achieved

**III. Administration and Monitoring**

**A. Monitoring**

The AA Officer [and Committee], in collaboration with program managers/supervisors, shall:

- i) Annually monitor the application of this Plan in personnel management including recruitment, hiring, promotion, termination, supervision and training efforts
- ii) Periodically submit reports to the program's Board of Directors and staff, and make reports available to clients and community
- iii) Consult with the Diversity Coalition as needed when assessing and addressing diversity issues
- iv) Enforce, refine, or recommend to the Board the reshaping of this Plan according to ongoing evaluation

**B. Informal Grievance Procedure [If the program's union-management or personnel grievance procedure applies, substitute a reference to it]**

- i) Any person aggrieved by any action or decision under this Plan shall have the right to file a grievance as described below. Such a grievance shall be filed with the AA Officer and the program's Executive Director and shall contain a brief statement of the grievance and the relief requested.
- ii) The AA Officer shall attempt to resolve grievances informally through discussions with parties involved, possibly assisted as needed by the Diversity Coalition's ombuds-team [and/or with the AA Officer and Committee]
- iii) The program's personnel grievance procedure applies in formal resolution of a grievance

#### **C. Program-Wide Self-Analysis**

The AA Committee or Officer (or other Committee comprised of people from various job categories, or both union and management members in unionized programs) shall:

- i) Periodically review the composition of the program's employees in all job categories in comparison with the composition of the qualified available workforce.
- ii) Periodically review the composition of job applicants to assess the effectiveness of efforts to recruit qualified members of protected groups from the qualified available workforce.
- iii) Periodically review the composition of the program's clients in each program unit in comparison with the client-eligible population.

#### **D. Uses of Results of Self-Analysis**

- i) The goals of these self-analyses are to determine how a program's employment and Board selection practices have or have not tended to have an adverse effect on opportunities for qualified members of protected groups; and
- ii) Based on the results of these analyses, the program shall take lawful steps to eliminate disparate treatment of and disparate impact on qualified members of protected groups in the program's employment and Board selection practices.

#### **E. Selection of Board Members**

The program shall make its best efforts to achieve a composition of its Board of Directors that is generally representative of the program's client community and the community at large, and shall fill available vacancies with this in mind

[F. This Model Affirmative Action Plan is not a contract of employment; does not bestow third-party beneficiary rights on anyone; and may be terminated, amended, or modified by the program.]

For more information about the Massachusetts Legal Services Diversity Coalition, or this Model Plan, please contact us at:

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Original Sources: Affirmative Action Plans from Greater Boston Legal Services, Cambridge and Somerville Legal Services, The Disability Law Center, Legal Services Corporation, the MA Trial Courts; the MA Legal Services Diversity Coalition Affirmative Action Task Force; and other members of the MA legal services community.

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