

State of North Carolina

ROY COOPER
GOVERNOR

October 18, 2017

EXECUTIVE ORDER NO. 24

POLICIES PROHIBITING DISCRIMINATION, HARASSMENT, AND RETALIATION IN STATE EMPLOYMENT, SERVICES, AND CONTRACTS UNDER THE JURISDICTION OF THE OFFICE OF THE GOVERNOR

WHEREAS, North Carolina welcomes all people and recognizes the importance of diversity; and

WHEREAS, North Carolina has a strong commitment to maintaining an excellent statewide workforce and a robust economy, and must eliminate discrimination, harassment, and retaliation to attract, grow, and retain its workforce and build its economy; and

WHEREAS, robust workplace protections produce greater employee job commitment, improved workplace relationships, increased job satisfaction, improved productivity, and improved health outcomes; and

WHEREAS, protecting against discrimination, harassment, and retaliation in the provision of government services promotes solidarity, government accountability, and economic efficiency; and

WHEREAS, the United States Supreme Court in *Grutter v. Bollinger* recognized a compelling state interest in diversity; and

WHEREAS, the United States Supreme Court in *Obergefell v. Hodges* recognized that “[t]he fundamental liberties protected by the Fourteenth Amendment’s Due Process Clause extend to certain personal choices central to individual dignity and autonomy, including intimate choices defining personal identity and beliefs,” and laws burdening this liberty interest “abridge central concepts of equality”; and

WHEREAS, the majority of federal courts that have addressed the issue to date have held that discrimination on the basis of transgender status is unlawful; and

WHEREAS, a 2013 Pew Research study found that twenty-one percent of LGBT respondents “had been treated unfairly by an employer in hiring, pay, or promotions” due to their sexual orientation and/or gender identity; and

WHEREAS, a 2015 study conducted by the National Center for Transgender Equality found that thirty-two percent of transgender workers in North Carolina experienced workplace harassment or discrimination in the past year; and

WHEREAS, discrimination, harassment, and retaliation based on activities and identities protected under existing federal and state law, including but not limited to race, color, ethnicity, national origin, age, disability, sex, pregnancy, religion, National Guard or veteran status, sexual

orientation, gender identity or expression, is prohibited and unlawfully infringes upon individual dignity and autonomy; and

WHEREAS, it is in the State's interest to invite private businesses, private non-profit organizations, and other private entities to adopt policies protecting transgender individuals from discrimination, harassment, and retaliation; and

WHEREAS, it is necessary to provide state and local government actors with clarity and guidance regarding existing laws and policies prohibiting discrimination, harassment, and retaliation; and

WHEREAS, the measures set forth in this Executive Order are not inconsistent with existing federal and state law.

NOW, THEREFORE, I, Roy Cooper, Governor of the State of North Carolina, by virtue of the authority vested in me under the Constitution and the laws of the State of North Carolina, do hereby order the following:

I. Definitions and Standards

A. Prohibited Grounds

Activities and identities protected under existing federal and state law, including but not limited to race, color, ethnicity, national origin, age, disability, sex, pregnancy, religion, National Guard or veteran status, sexual orientation, gender identity or expression, shall be referred to in this Executive Order as "Prohibited Grounds" for discrimination, harassment, or retaliation.

B. Guidance

As used in this Executive Order, "Guidance" is defined to be a statement within the scope of one or more of the sub-subdivisions of N.C. Gen. Stat. § 150B-2(8a)a - 1.

C. State Employment, State Government Services and Programs, State Contracts, and State Grants

1. State agencies, boards, commissions, and departments under the jurisdiction of the Office of the Governor shall not discriminate, harass or retaliate on the basis of Prohibited Grounds in employment against an individual;
2. State agencies, boards, commissions, and departments under the jurisdiction of the Office of the Governor shall not discriminate, harass or retaliate on the basis of Prohibited Grounds in the provision of government services or in the administration of government programs, including, but not limited to, programs and services concerning public safety, health, and welfare;
3. State agencies, boards, commissions, and departments under the jurisdiction of the Office of the Governor shall not discriminate, harass or retaliate on the basis of Prohibited Grounds in awarding state contracts and state grants; and
4. State agencies, boards, commissions, and departments under the jurisdiction of the Office of the Governor will not adopt policies or regulations barring, prohibiting, blocking, deterring, or impeding any individual who lawfully uses public facilities under their control or supervision, in accordance with that individual's gender identity.

II. Access to State Services

State agencies and departments under the jurisdiction of the Office of the Governor (referred to hereafter as "State Agencies" or "State Agency") are directed to adopt additional rules and policies permissible under existing federal and state law that are necessary to provide the public with equal access and opportunity, without discrimination, harassment, or retaliation based upon Prohibited Grounds, to:

- a. Services provided by the State;
- b. Services both:
 - i. Funded directly by State treasury funds that are disbursed by a State Agency; and
 - ii. Provided by a private entity receiving those funds (a “Grantee”); a private entity receiving those funds from a Grantee (a “Sub-Grantee”); a private contractor pursuant to an agreement with a State Agency (referred to in this section, and this section alone, as a “Service Contractor”); or a private subcontractor pursuant to an agreement with a Service Contractor.

State Agencies will notify their employees of measures undertaken pursuant to this Section and will ensure that those employees provide the public with equal access and opportunity without discrimination, harassment, or retaliation based upon Prohibited Grounds, to services provided by the State.

III. Policy Development

A. State Agency Specific Policies Addressing Discrimination, Harassment, and Retaliation

By the authority vested in me as the Governor of the State of North Carolina under the Constitution, *see* N.C. CONST. art. III, §§ 1, 5(4), (8), (10), and as chief supervisor of State Agencies, *see* N.C. Gen. Stat. §§ 126-1 – 99, 143B-1 – 30.4, 147-12 – 33, I further direct the Office of State Human Resources (“OSHR”) to take the following actions in furtherance of the goals set forth in this Executive Order:

1. Issue Guidance applicable to all state agencies, boards, commissions, and departments under the jurisdiction of the Office of the Governor, and all directors, supervisors, officers, officials, managers, staff, and employees covered under N.C. Gen. Stat. § 126-1 – 99 (2017) (the “Human Resources Act”) that addresses state government non-discrimination policy and facilitates compliance with Section II of this Executive Order. At a minimum, this Guidance will:
 - a. Set forth internal State Agency standards addressing discrimination, harassment, and retaliation based upon Prohibited Grounds;
 - b. Set forth standards which may be used by State Agencies as guidelines for complying with Section II of this Executive Order; and
 - c. Charge OSHR with adopting measures that would identify under what circumstances State Agencies may impose consequences on Grantees and Sub-Grantees who discriminate, harass, or retaliate based upon Prohibited Grounds, up to and including grant revocation and exclusion from consideration for future state grants.
2. Take any additional steps necessary to prevent and stop discrimination, retaliation, and harassment based upon Prohibited Grounds; and
3. Periodically report on efforts to comply with and implement this Executive Order.

I further direct State Agencies to take the following actions in furtherance of the goals set forth in this Executive Order.

1. Consult with OSHR and thereafter develop State Agency specific internal dispute procedures that will remain continuously in effect for State Agency employees alleging discrimination, harassment or retaliation based upon Prohibited Grounds in connection with state employment;
2. Take any additional steps necessary to prevent and stop discrimination, retaliation, and harassment based upon Prohibited Grounds; and
3. Periodically report on efforts to comply with and implement this Executive Order.

B. State Procurement Measures

I further direct the Department of Administration (“DOA”) to take the following actions in furtherance of the goals set forth in this Executive Order:

1. Issue Guidance addressing discrimination, retaliation, and harassment based upon Prohibited Grounds in state procurements. At a minimum, this Guidance will;
 - a. Require, where necessary, that state contracts or subcontracts managed by and through DOA for (i) construction of public buildings, (ii) other public works, and (iii) goods or services include provisions, in accordance with existing federal and state law, which establish that bids are awarded on the basis of merit and qualifications and prospective contractors will not be discriminated, harassed or retaliated against on the basis of Prohibited Grounds;
 - b. Charge DOA with adopting measures that would identify under what circumstances:
 - i. State contractors would have to attest that they will not discriminate, harass, or retaliate based upon Prohibited Grounds prior to providing goods and services to the State;
 - ii. State contractors would be required to have in place internal policies prohibiting discrimination, harassment, and retaliation based upon Prohibited Grounds, and ensure subcontractors working on any state project under this Section have similar policies in place; and
 - iii. DOA may set forth consequences for state contractors and subcontractors who discriminate, harass or retaliate based upon Prohibited Grounds, up to and including contract termination and exclusion from consideration for future state contracts and subcontracts.
 - c. Affirm DOA’s commitment to retain contractors from diverse backgrounds.
2. Notify State Agencies of DOA’s measures to address discrimination, harassment, and retaliation in state procurements;
3. Take any additional steps necessary to prevent and stop discrimination, retaliation, and harassment based upon Prohibited Grounds in state procurements; and
4. Periodically report on efforts to comply with and implement this Executive Order.

IV. Commission on Inclusion

In furtherance of the goals set forth in this Executive Order, the Secretary of the Department of Administration is hereby directed to establish a commission (the “Commission”) comprised of members from state government, private businesses, and non-profit organizations to (i) assist DOA and OSHR in carrying out their duties under Section III of this Executive Order and (ii) identify additional policies and measures that would promote inclusion and address discrimination, harassment, and retaliation based upon Prohibited Grounds. The Commission will meet at the request of the Secretary of the Department of Administration and work in consultation with State Agencies. DOA shall adopt any rules and policies necessary to further the Commission’s objectives and the goals set forth in this Executive Order.

V. Counties, Municipalities, Political Subdivisions, Local Government Agencies, and Private Entities


1. Consistent with existing federal and state law, I affirm that all counties, municipalities, political subdivisions, local government agencies, and private entities in North Carolina may establish their own policies prohibiting discrimination, harassment, and retaliation based upon Prohibited Grounds in employment, the provision of services, and contracting.

2. Consistent with existing federal and state law, all private entities in North Carolina, along with all North Carolina counties, municipalities, political subdivisions, and local government agencies, are encouraged to adopt policies similar to those outlined in this Executive Order.

VI. Miscellaneous

1. This Executive Order does not create a private cause of action.
2. Except as provided in Section VI.4, this Executive Order is subject to and does not otherwise conflict with or abrogate existing state law.
3. The “whereas” recitals in this Executive Order are for convenience of reference only, are not operative, and shall not be deemed to alter or affect the meaning or interpretation of any provisions thereof.
4. Unless otherwise provided, this Executive Order supersedes and rescinds Executive Order No. 93, issued on April 12, 2016.
5. This Executive Order is effective immediately and shall remain in effect until amended or rescinded by future Executive Order of the Governor.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this the 18th day of October, in the year of our Lord two thousand seventeen.



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State

