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PENNSYLVANIA CLIENT ASSISTANCE PROGRAM

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Pennsylvania Independent Regulatory Review Commission
333 Market Street
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Harrisburg, PA 17101

May 9, 2017

Re: Pennsylvania State Civil Service Commission
Proposed Regulation #61-6
Implementation of Act 69 of 2016 and Act 167 of 2016
IRRC Identification Number 3167

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Dear Commissioners:

The Pennsylvania Client Assistance Program (CAP) is the federally designated statewide advocate for people with disabilities seeking services from the Office of Vocational Rehabilitation. In addition to individual advocacy, CAP focuses on policy and regulatory issues at the state and federal level.

Last year, Acts 69 and 167 of 2016 were signed into law without updating significantly outdated language related to the hiring of people with disabilities. To compound this lost opportunity, the proposed regulations fail to incorporate the well-established legal protections afforded to individuals with disabilities in the hiring process and workplace under the Americans With Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973 and the Pennsylvania Human Relations Act. The proposed regulations also fail to reflect the purpose, scope and objectives of the Governor's disability-related employment policy as set forth in Management Directive 205.25.

Specifically, §95.1 permits the Director to require an applicant to supply information, documents and certificates concerning his/her disability to assess and determine the person's merit and fitness for appointment or promotion. It is well established that such an inquiry is prohibited under the laws cited above, and violates the procedures for hiring and selection set out in paragraph 7 of the Governor's Management Directive, 205.25. Beyond the problems with this section, it cannot be reconciled with §95.1(c), which prohibits, in accordance with the law, any inquiry regarding disability on the application or examination.

Under §95.1(d)(4) the Director can reject an applicant with a physical or mental disability who he believes is unfit or unsuitable to perform the essential functions of the position's duties and responsibilities with or without reasonable accommodations. While this section was amended in 2004 to have it satisfy the requirements of the ADA, it remains in violation of the Act. The ADA prohibits a pre-hiring eligibility process based on a person's disability, and nowhere does the ADA convey upon a single person, such as the Director, the unfettered authority to find an applicant unfit or unsuitable for a position based upon disability.

These violations have real consequences. The failure of the regulations to conform to the ADA has led to a practice within the Civil Service of pre-screening individuals with a disability to determine if the applicant can perform the essential functions of a position prior to examination, eligibility, interview or job offer. This practice is outlined on the SCSC web site. It goes without saying and is plainly obvious to anyone familiar with the ADA that considering a person's disability first in the overall hiring process violates the law, and is contrary to the Governor's disability-related employment policy.

In the end, the Director's authority to reject an applicant with a disability based upon an approach which fails at every turn to comply with state and federal law prohibiting disability discrimination must be amended and replaced with regulations which ensure equal employment opportunities for all Commonwealth citizens.

Thank you for the opportunity to comment. I would ask that my testimony at the May 17, 2017 SCSC hearing be incorporated herein.

Sincerely,



Stephen S. Pennington, Esquire
Pennsylvania Client Assistance Program