

NOTE: The webinar and these slides are intended as a general guide to identifying some of the legal and regulatory questions that may face your stations in connection with the FCC's EEO rules. This information should not be considered legal advice, as we do not have the specific facts of your situation which could affect how rules and policies are interpreted. For legal advice, you should always talk to your own counsel.

EEO for Broadcasters: 2022

Pennsylvania Association of Broadcasters
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What You Need To Know About FCC EEO Obligations

- We'll discuss general obligations today – always consult your attorney for details of any situation as specific facts can make a difference in the legal analysis
- EEO performance being reviewed now as much as ever
- FCC requires non-discrimination, plus affirmative action in hiring
- Affirmative Action through a three-pronged recruitment program
 - Wide Dissemination
 - Notice to Community Groups
 - Supplemental Efforts – Menu Options - “Non-vacancy specific outreach efforts”
- Record-keeping Requirements
- Reporting Requirements

Any Pandemic-Specific Changes?

- Generally, no, the rules are still being enforced
- Several EEO audits conducted during the pandemic
- Even FCC fines for paperwork issues
- One pandemic-related decision – if you had to lay off employees in the pandemic, you can re-hire them within 9 months of the date that they were laid off without having to advertise the job and seek other recruits
- Otherwise, rules continue to apply as they have for the last 20 years

Thoughts About EEO

- Clearly, there have been very important discussions about race and inclusiveness in the last two years
- FCC like every other government agency is looking at what it can do – heightened awareness of EEO
- FCC has an open proceeding to see what more it should do – likely will require more FCC actions before anything final can be determined – ultimate outcome likely dictated by new FCC
 - FCC also looking at Form 395 return
 - Recent proposals for more EEO reporting from program suppliers
- Industry examining what else it should do
- Congress is reviewing EEO issues too - Minority tax certificates proposals waiting on Congress to decide

Who Needs to Worry About EEO?

- All broadcasters need to think about EEO
- Nondiscrimination requirements apply to all stations – adverse findings on discrimination can affect your license
- Affirmative action outreach to fill job openings and other community-education requirements apply to all stations with 5 or more full-time employees in their “employment unit”
 - Full-time for the FCC is 30 hours per week
 - Employee count based on employees in an “employment unit” – includes all commonly controlled stations in same area with at least one common employee
- Commercial and noncommercial

When is EEO reviewed?

- Random Audits – 5% of all stations each year
- License Renewal – FCC still looking at some EEO filings from license renewal cycle – and TV coming up in Pennsylvania next April
- Mid-Term Review – no more form to be filed, but review still occurs for bigger station groups
- Complaints
- Ongoing FCC review of enhancing EEO enforcement
 - EEO now in Enforcement Bureau, not Media Bureau
 - Every year, we see at least a few fines for EEO matters

Outreach Efforts – Prong 1 - Shout It From the Mountaintops -- Wide Dissemination of Job Openings

- Applies To All Station Employment Units With Five or More Fulltime Employees
- Not Restricted To The Recruitment of Minorities and Women -- Applies To All Community Groups
- Used to require outreach to community groups, educational organizations and print media – now can be done through online media

Wide Dissemination-- What's It all About?

- Recruitment for *ALL* Full-time Job Openings unless there are “Exigent Circumstances” – and the FCC really means *all* openings
- Outreach to notify entire “Community”
- Community defined by broadcaster - based on your Service Area
- Trying to ensure diversity in hiring – that you are getting recruits from outside the broadcast “old boy’s network” of word-of-mouth referrals and suggestions from consultants and corporate parent

Wide Dissemination-- Do I Really Have to Do That?

- Exigent Circumstances – limited exception
- Specialized Positions – specialized recruiting
- Internal Promotions
- Part-timers and Temporary Employees
- No Recruitment if hire from Pool developed for the same job and applications are “Viable” – probably no older than about 90 days

Now You Can Rely on Online Sources

- FCC used to forbid reliance simply on online employment recruiting sources
- Now can use an online source you reasonably believe reaches all groups within your community – and that is it!
- No need to require on other real-world sources – FCC *encourages* but does not require the use of other media, community groups, employment agencies, schools
- *Need to make sure that the online sources work* – that you are getting real employment prospects – if not, expand your recruitment and go back to traditional sources
- Even with this liberalization, there have still been fines for stations that don't keep records of what they do

Prong 2 - They Asked For It...

Notification of Community Groups

- Must notify community groups who ask to be informed of Job Openings
- You choose method of notification
- Must publicize ability to be added to List - Broadcast or newspaper notice
- A Group is on the List until they say “Stop”
- FCC has fined stations for not notifying community groups who asked for notice

Prong 3 - Menu Options-- One Size Does Not Fit All

- Employment units with 5 to 10 employees must do at least two activities every two years – “non-vacancy specific outreach efforts” – obligation still in effect even in a pandemic
- Employment units in smaller markets must do at least two activities every two years – smaller market is one in metropolitan area of less than 250,000 people
- Employment Units in larger markets with more than 10 employees must do at least four activities every two years
- Over-achieve - do more than required in case FCC disallows a claimed activity - activities must be “significant” to count

I'll Take One From Column A...

Menu Options

- Participation in four job fairs
- Co-sponsoring at least one Job Fair with a business or professional group with substantial minority or female membership
- Participation in four activities sponsored by community groups active in employment issues, e.g., career days, conventions, workshops
- Hosting at least One Job Fair
- Scholarship program – money alone is not enough
- Internship Programs
- Participation in four activities by educational institutions relating to broadcast employment
- Sponsoring two community activities to educate public on broadcast employment

Or One From Column B...

More Menu Options

- Participation in non-vacancy specific outreach efforts, such as job banks or Internet programs, including State Broadcast Association Programs
- Listing All Upper-Level Jobs with newsletter of trade organization with substantial participation of minorities and women
- Assisting non-profit entities in developing web sites on broadcast employment
- Mentoring programs for Employees
- Training programs to advance Employee skills
- EEO Training programs for Management Employees
- Training programs for non-profit organizations on broadcast employment opportunities
- Other activities calculated to disseminate information on broadcast employment opportunities

Additional Obligation: Did it Work? - Self-Assessment

- Analyze Recruitment Program to ensure effectiveness of broad outreach – still need to make sure online outreach is working
- Disseminate EEO Program to Employees and Applicants
- Review Seniority Practices to avoid discrimination
- Examine Salaries and Benefits to assure that there is no discrimination
- In Recruitment Announcements, make sure no inference of racial or gender preferences
- Ensure promotions are non-discriminatory
- Work with Unions, if any, to develop nondiscrimination programs
- Avoid tests or selection techniques that could be discriminatory
- Add-on to any fine for failure to recruit or for lack of paperwork – FCC theory is that if had done self-assessment, you would have discovered the problem

Write It Down! - *Internal* Record Keeping Requirements

- List of all fulltime jobs filled, by job title
- Recruitment Sources used to fill jobs (Prong 2 groups listed separately)
- Address, telephone number and contact person for each recruitment source
- Dated copies of correspondence to all recruitment sources
- Number of interviewees for each job, and recruitment source for each interviewee
- Recruitment Source of Person Hired
- Total Number of interviewees during the year, broken down by recruitment source
- Documentation of all supplemental efforts

Write It Down! - Annual *Public File* Report Requirements

- List of all fulltime jobs filled, by job title
- Recruitment Sources used to fill jobs (Prong 2 groups listed separately)
- Address, telephone number and contact person for each recruitment source,
- Recruitment Source of Person Hired
- Total Number of interviewees during the year, broken down by recruitment source
- Description of all supplemental efforts

Annual Public File Report

Where You Can Put It

- Annual Uploading Requirement – Upload report on the anniversary of your renewal filing – April 1 for Pennsylvania - stays in public file until next renewal is granted
- Post link to most recent EEO report on your Station's homepage (only need link to most recent report on website)
- FCC is checking websites.....
- Reporting Period Ends 10 Days Before Reports Due

Pay Attention: Potential Problems

- Discrimination
- Insufficient Outreach
- Failing to Document Efforts or Problems
- Insufficient Supplemental Efforts
- Insufficient Paperwork
- Insufficient Self-Assessment
- Improper FCC Filings
- Misrepresentation

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