

EEOC Resources Offer Valuable Help



By Jennifer Chandler Hauge, Esq.

Resource Type: Articles

Topic: HR Risk and Employment Practices

The Equal Employment Opportunity Commission (EEOC) is the enforcement body that will challenge an employer's hiring or employment practices when a discrimination complaint is lodged by an employee, a former employee or an applicant. However, the EEOC is also in the business of helping employers avoid acting in a discriminatory manner. In this way, the EEOC can be seen as a nonprofit's risk management partner.

Compliance Resources

Guidelines and fact sheets published by the Department of Labor and available on the EEOC's Web site are very helpful. Among the most helpful information recently made available is the EEOC's **2006 Compliance Manual**, available at www.eeoc.gov. Published in April 2006, the manual describes common pitfalls and best practices for employers striving to avoid discriminatory practices.

The 2006 Compliance Manual provides a list of the following best practices:

- Develop a strong Equal Employment Opportunity policy that is championed by senior management.
- Train all supervisors and senior staff on the policy.
- Enforce the policy and hold supervisors accountable for enforcement.
- Make employment decisions in a transparent manner and document them.
- Recruit, hire and promote with equal employment opportunity in mind and implement practices that widen and diversify the pool of applicants.
- Monitor equal employment opportunity by conducting self-assessments.
- Create objective, job-related qualification standards for each position.
- Identify and remove barriers to equal employment opportunity, such as word-of-mouth recruiting in nondiverse workplaces.
- Monitor hiring, compensation and performance appraisals for patterns of potential discrimination or apparent discriminatory practices.
- Provide training and professional development opportunities to encourage staff members' growth in their positions and opportunities for advancement.
- Promote a culture of diversity and inclusiveness.
- Encourage open communication and dispute resolutions.
- Prohibit retaliation and make every employee aware of the policy.

The most significant recent change in civil rights enforcement is reflected in the EEOC's admonition that supervisor training is a best practice. In fact, the prevalence of supervisory training in the workplace is credited

with the reduction in the number of cases of sexual harassment in recent years. California has been a leader in this area with its state law mandate that all employers provide sexual harassment training to supervisors every two years.

“With regard to hiring and promotions, the EEOC Compliance Manual stresses that job standards and minimum qualifications with respect to educational background and experience must be consistent with business necessity and specifically related to the job at issue. Employers should review job requirements and descriptions without regard to whoever is presently doing that particular job, but instead identifying the requirements for anyone who might hold that position.”

Promoting a Culture of Inclusiveness

Ironically, most nonprofits are extremely aware of the need to be diverse, and to reflect, from the board of directors on down, the communities served by the nonprofit. However, actually having a diverse workforce is often difficult when your staff is small. Even if your nonprofit does not have the luxury of dozens of staff members with different backgrounds, striving to promote a culture of inclusiveness is a worthy goal.

There are many ways in which discrimination can be almost imperceptibly present: in work assignments (Do we only give certain people certain types of assignments?), performance measures (Do we hold certain types of people to different standards?), training and offering constructive feedback (Do we mentor some employees more than others?), and grooming standards (Do we overlook personal expression, such as tattoos or facial hair, of some employees but not others?).

With regard to hiring and promotions, the EEOC Compliance Manual stresses that job standards and minimum qualifications with respect to educational background and experience must be consistent with business necessity and specifically related to the job at issue. Employers should review job requirements and descriptions without regard to whoever is presently doing that particular job, but instead identifying the requirements for anyone who might hold that position.

Recruiting new employees is an area where the EEOC's Compliance Manual highlights that the use of homogenous recruiting practices, such as word-of-mouth and using the same tried and true publications for announcing position openings, are particularly susceptible to claims that these practices inhibit workplace diversity.

Race and Color Harassment

In recent years, the concept of harassment that violates Title VII's standards of workplace equality has focused less on sexual harassment, and more frequently on harassment based on a person's race or color. In surveys conducted in 2004 and 2005, sexual harassment claims fell 11 percent from 2003 levels; with 90 percent of employers reporting that training on sexual harassment policies regularly occurred at the workplace. In contrast, race and color harassment claims rose considerably in the same period, with only 56 percent of employers responding that training was offered.

Race and color harassment is unwelcome conduct that unreasonably interferes with a person's work performance or creates an intimidating, offensive or hostile work environment. To be actionable as a violation of law, the alleged harassment must be so severe or pervasive that it alters the alleged victim's terms and conditions of employment, as evaluated from the perspective of a reasonable person in the victim's position. For conduct to be "unwelcome," the victim may not have solicited or incited the conduct. It makes sense to raise awareness among staff that in subtle or overt ways, a person's conduct or words can be perceived as unwelcome harassment and can therefore violate the nonprofit's EEO policy. Training the entire workforce to be more sensitive to race and color harassment is a logical first step to reduce this risk.

For information about the Nonprofit Risk Management Center, visit [www.https://nonprofitrisk.org/](https://nonprofitrisk.org/) or call (703) 777-3504.