

The following slides are not meant as legal advice. They are instead provided to highlight some of the important provisions of the FCC's EEO rules and some of the pending issues concerning these rules. As a legal conclusion about any situation is very dependent on the specific facts of that situation, please seek legal advice from your own attorney.

EEO 2021 – Staying on Top of Your FCC Requirements

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What You Need To Know About FCC EEO Obligations

- FCC still reviewing EEO performance, even after this most unusual year
- Rules require non-discrimination, plus affirmative action in hiring
- We'll spend most of our time on the affirmative action obligations – a three-pronged set of recruitment requirements
 - Wide Dissemination
 - Notice to Community Groups
 - Supplemental Efforts – “Non-vacancy specific outreach efforts”
- Record-keeping Requirements
- Reporting Requirements
- Advertising Nondiscrimination

Any Pandemic-Specific Changes?

- Generally, no, the rules are still being enforced
- Parts of 3 EEO audits during the pandemic
 - Responses to one were due late March 2020 – many stations received an extension
 - Audit last summer but for only 35 stations
 - Another one released last month with responses due in April – included many noncommercial stations
- One specific 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

Thoughts About EEO Issues

- Clearly, there have been very important discussions about race and inclusiveness in the last year
- FCC like every other government agency is looking at what it can do – and the new administration may bring a different approach
- FCC has an open proceeding from 2019 looking to make EEO more effective – led to a draft Notice of Proposed Rulemaking now circulating among the Commissioners for consideration - likely will ask for comments on specific changes to existing rules – look for proposals soon
- Industry examining what else it should do
 - Minority tax certificates

What Stations are Subject to the Current EEO Requirements?

- Nondiscrimination requirements apply to all stations
- Mandatory 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
- Both commercial and noncommercial - but only applies to employees at the station
 - FCC rules don’t reach employees of, for example, a college where those employees are not employees of the station

When is EEO reviewed?

- Random Audits – 5% of all stations each year
- License Renewal – FCC Form 396 filed with renewals - currently more than half way through radio license renewal cycle – less than a third of the way through the TV cycle
 - Form 396 submits two annual public file reports plus lists discrimination complaints and EEO contact person
 - We've seen more review of EEO during renewal recently
- Mid-Term Review – no more Form 397 to be filed, but FCC review still occurs for bigger station groups
- Complaints
- Ongoing FCC review of enhancing EEO enforcement
- EEO now in Enforcement Bureau, not Media Bureau, and EEO review office has a new head

Shout It From the Mountaintops-- Wide Dissemination

- First prong of FCC EEO Outreach requirements
- 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
- Rules once required outreach to community groups, educational organizations and print media – now can be done through online media if that media reaches all groups in the community

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 insure diversity in hiring – that you are getting recruits from outside the broadcast “old boys network” of word-of-mouth referrals and suggestions from consultants and corporate parent

Wide Dissemination-- Are There Exceptions to Outreach?

- Exigent Circumstances
- Specialized Positions – specialized recruiting
- Internal Promotions
- Part-timers and Temporary Employees – incentives to widely disseminate for these positions too
- No Recruitment if hire from pool developed for the same job and applications are “Viable” – probably no older than about 90 days
- No Recruitment necessary for employment of owner of 20% or more of Licensee

Now You Can Rely on Online Sources

- FCC used to forbid reliance exclusively on online employment recruiting sources
- Now can reach out through online sources you reasonably believe reach all groups within your community
- No need to require on other real-world sources – but FCC *encourages* 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

They Asked For It...

Notification of Community Groups

- Prong 2 of Outreach requirements
- Must notify community groups who ask to be informed of Job Openings
- You choose method of notification
- Station 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

Menu Options--

One Size Does Not Fit All

- Prong 3 of Outreach requirements – whether you have job openings or not – idea is for you to teach community about broadcast employment opportunities
- 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
- 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

Menu Options in the Pandemic

- How do you meet the menu options in a virtual world?
 - Virtual job fairs
 - Online training programs for employees to advance their skills
 - Mentorship programs
 - Scholarship programs
 - Online internships
 - Speaking to community groups or school groups – even if it is done virtually
- Menu options judged on two-year basis – so if you underachieved last year because of the pandemic, overachieve in the next year

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 fine for failure to recruit – if you didn't recruit enough, you didn't self-assess as 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 Find It

- Annual Uploading Requirement - Anniversary of your Renewal filing – 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 can end 10 Days before Reports are due for inclusion in the public file – but do it consistently

One Other EEO Issue to Remember – Certifications in Ad Contracts

- Must have language in ad contracts that station and advertiser will not discriminate in ad sales practices
- To stop “no Spanish, no urban dictates”
- Applies to all commercial stations – must certify at renewal time
- Need language in contracts and, if no contracts, other sales materials
- Puts burden on stations to be sure that rep firms and advertisers are complying

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

EEO for Broadcasters– 2021

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