



An EEO Check List

- ✓ Widely recruit across your entire community for all full-time job vacancies.
- ✓ Be certain organizations that assist job seekers know they can request vacancy notices from your stations.
- ✓ Conduct the required supplemental recruitment initiatives.
- ✓ Annually prepare your EEO Public File Report, place it in each station's public inspection file and post it on each station's Web site.
- ✓ Assess your EEO recruitment program and correct any issues that are identified.
- ✓ Make certain your hiring and promotions policies are non-discriminatory.
- ✓ Make certain employees understand the FCC's EEO requirements and train new employees as appropriate.



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THE FEDERAL COMMUNICATIONS COMMISSION has levied some \$100,000 in fines on broadcast stations for equal employment opportunity violations since its new EEO rules went into effect back in 2003.

And it didn't come in little chunks of change. One Texas television station was hit with a \$20,000 fine when the commission determined that it not only failed to conduct the required employment outreach and retain sufficient documentation, but it also failed to comply with the reporting requirements. Making matters more burdensome, the FCC required that the station submit substantial amounts of documentation regarding its compliance on an annual basis over a three-year period.

In this financially challenging period of time, it's particularly important for broadcasters to understand the commission's requirements. That's not to suggest that the FCC gives cable operators a pass on FCC matters. But given the complexity of the regulations, this article is focusing specifically on broadcasters.

Looking at the issue from a bird's eye view, it's clear that the FCC is concerned with three areas of outreach. It wants to make sure stations engage in wide-spread recruitment for all full-time job vacancies; provide notification of vacancies to organizations that request notices, and complete supplemental recruitment initiatives.

Complying with FCC hiring requirements involves a whole lot of communication, and very detailed recordkeeping.

By JOHN W. BAGWELL

As the Texas station's experience suggests, the EEO rules also impose significant recordkeeping and reporting requirements regarding employment efforts.

The EEO rules are enforced on a so-called Station Employment Unit basis, which consist of a station or group of commonly owned stations in the same market that share at least one employee. Only employment units that have five or more full-time employees (those that work 30 or more hours per week) are subject to the FCC's recruitment and outreach requirements.

Compliance with these rules is monitored by the FCC as part of each station's license renewal process, as well as halfway through each broadcast license's eight-year term and by the random auditing of hundreds of broadcast stations each year.

Broadcasters must have meaningful and substantial involvement in the "supplemental" outreach activities they undertake.

Notice Requirements

The FCC is looking for "wide dissemination" of information about every full-time job vacancy that stations fill. But what exactly does that mean? In simple terms, it refers to communicating in a manner "reasonably calculated to reach the entire community."

In order to ensure that each job notification is widely distributed, a variety of sources should be used for each vacancy. It's easy to tick off some obvious ways of getting the word out: local newspapers, college-career placement offices, trade publications and organizations, Internet job sites, and local employment services.

But reaching out to just a handful of those sources may not be enough. In a recent enforcement decision, the commission found that an employment unit that relied on the Internet, on-air advertisements, walk-ins, word-of-mouth, unsolicited resumes and internal job postings in making hiring decisions had not adequately provided notice of job vacancies to its community.

Simply having a number of applications is not sufficient for the FCC's EEO rules. Instead, a station must proactively provide notice of each vacancy across its entire community. This means actively reaching out to local employment services, colleges and other community organizations.

There are, however, a few times when the FCC does not require broadcasters to widely recruit for full-time vacancies. For instance, stations do not need to recruit for positions that are filled by an internal promotion of existing employees.

What's more, stations do not need to conduct recruitment for short-term employees (i.e., less than six months). The FCC also recognizes that broadcasters may want to hire employees temporarily, with the possibility of retaining them on a permanent basis if their performance is satisfactory. For those positions, recruitment must be conducted either at the initial hire — in which case the transition to a permanent hire is considered an internal promotion — or recruitment must be conducted for the position before the temporary employee is converted to permanent status.

The FCC does recognize that there are instances where exigent circumstances prevent wide recruitment, such as the availability of a talent so unique and exceptional that recruitment would not likely find a comparable hire.

There may also be instances where a vacancy needs to

THE SUPPLEMENTAL 16

There are 16 ways to abide by the FCC's requirement that broadcasters engage in "supplemental" recruitment activities. Here's the complete list:

- **PARTICIPATE** in at least four job fairs.
- **HOST** a job fair.
- **CO-SPONSOR** a job fair with professional organizations that have substantial participation by women and minorities.
- **PARTICIPATE** in four events sponsored by organizations interested in broadcast employment issues (such as career days, conventions, workshops).
- **ESTABLISH** an internship program.
- **PARTICIPATE** in job banks, Web sites, or other programs that promote outreach generally (and do not primarily provide job-vacancy listings).
- **PARTICIPATE** in scholarships designed to assist students interested in broadcasting.
- **ESTABLISH** a training program to develop employees' career skills.
- **ESTABLISH** an employee-mentoring program.
- **PARTICIPATE** in four events sponsored by educational institutions related to broadcast-career opportunities.
- **SPONSOR** two events that inform and educate the public regarding broadcast-career opportunities.
- **LIST** all upper-level job vacancies in a job bank or media trade group newsletter whose membership includes substantial participation by women and minorities.
- **ASSIST** unaffiliated nonprofit organizations in maintaining Web sites that provide counseling on the process of searching for careers in broadcasting.
- **TRAIN** management personnel regarding methods of ensuring equal opportunity and preventing discrimination.
- **PROVIDE** training to nonprofit organizations interested in broadcast-career opportunities to enable them to better refer job candidates for broadcast positions.
- **PARTICIPATE** in other employment unit activities designed to further the goal of disseminating information regarding broadcaster-career opportunities to job candidates who might otherwise be unaware of them.



be filled on an emergency basis or where confidentiality would be required so that an existing employee is not alerted. However, the commission expects these exigent circumstances to be rare and recommends using techniques such as blind recruiting where broad outreach can occur while the specific position remains confidential.

While the commission gives broadcasters discretion in selecting their recruitment sources, broadcasters must notify community organizations that they can request to be included on the employment unit's recruitment source list.

When an organization makes such a request, it must be given notice of all subsequent full-time vacancies. Broadcasters may contact these organizations to confirm that they continue to want to receive job-vacancy announcements or want notices of only certain categories of jobs.

Supplemental Outreach

Of the three main areas of outreach that were mentioned at the start of this article, the one that may seem a little mysterious is the need for "supplemental" recruiting. By that, the FCC is referring to the need for activities that are designed to reach people who may not be aware of career opportunities in broadcasting – or who may not have the experience necessary to compete for such job vacancies.

Stations may choose from a menu of 16 outreach activities in fulfilling this obligation. They range from participating in at least four job fairs to establishing an internship program. (See sidebar, opposite page.)

Station employment units with more than 10 full-time employees are required to implement four of these options every two years. Station employment units with between five and 10 full-time employees, and those located exclusively within a smaller market, need complete only two outreach activities in each two-year time span. The two-year period begins on the date the broadcaster files its FCC license renewal applications and cycles every two years.

Just paying lip service to these initiatives won't fulfill the obligation. Broadcasters must have meaningful, substantial involvement in the outreach activities they undertake. The commission has made it clear that simply lending the broadcaster's name or contributing money to an organization or event is insufficient involvement to receive credit for the initiative.

The FCC requires employment units to keep copies of materials that document their supplemental initiatives, such as invitations or other materials regarding events the employment unit participated in, as well as any materials the stations prepared for distribution as a way of verifying compliance with its EEO rules.

The commission will not award credit for any supplemental recruitment initiative that cannot be documented. Therefore, it is critical that stations retain sufficient

documentation regarding their EEO compliance. It can be extremely challenging and costly to attempt to locate and collect documentation for activities that may have occurred as long as three years ago, particularly when the personnel responsible for maintaining the records is no longer employed at the station.

On the Record

Maintaining extensive records of EEO activities is key to the whole process of EEO compliance. And organized record-keeping is particularly crucial at larger employment units that may fill dozens of full-time vacancies each year.

Every time a full-time vacancy is filled, keep a list of the recruitment sources used to fill the position. Each source should be identified by name, address, contact person and telephone number. And the number of interviewees each recruitment source referred for the vacancy also must be noted.

Also keep on file copies of all advertisements, bulletins, letters, faxes, e-mails, and other job vacancy announcements. Add to the record all documentation related to the required supplemental outreach activities. Everything should include dates.

All of this information should be retained in the station's internal, non-public files for at least two years, or until the station's next license renewal application is granted – whichever period is longer.

This material becomes particularly valuable when stations prepare their annual EEO report, which must be placed in the public inspection file of each station in the employment unit as well as posted on each station's Web site.

The annual report, summarizing the recruitment activities for the year, must include a list of all full-time vacancies filled by the unit and identified by job title. For each vacancy, stations must list the recruitment sources used to fill the vacancy and identify the sources that referred each hiree. The report should also include data reflecting the number of persons interviewed for full-time vacancies; the total number of interviewees referred by each recruitment source, and a brief description of the supplemental recruitment activities undertaken by the employment unit.

While the general public can access an employment unit's EEO information on the Web site or via the station public inspection files at any time, the FCC further reviews half of the annual EEO reports within each eight-year license period.

As part of the license renewal process, stations must file a Broadcast Equal Employment Opportunity Program Report. This report, which is reviewed by the com-

Violations discovered during EEO audits can result in thousands of dollars in fines and the imposition of additional reporting requirements.



mission, will include the two most recent annual EEO reports. Violations discovered in the annual reports can result in fines and/or additional reporting requirements being imposed on the broadcaster.

In addition, employment units also file an EEO mid-term report with the FCC at the midpoint of each station's eight-year term. This report also includes the station employment unit's two most recent annual EEO reports.

But no station can afford to scrupulously detail their EEO activities in the four annual reports guaranteed to receive an FCC review and take a more relaxed attitude with the rest.

EEO Audits

Each year, the FCC randomly audits hundreds of broadcast stations for compliance with the EEO rules. Violations discovered during these audits can result in thousands of dollars in fines and the imposition of additional reporting requirements.

If a station employment unit is selected for a random audit, it must provide the FCC with copies of its two most recent EEO Public File Reports and a significant amount of documentation supporting recruitment efforts listed in those reports, as detailed above.

The audited unit must also provide documentation of the supplemental recruitment initiatives it undertook during the audited period.

Adding to the paperwork burden, an EEO audit also requires units to describe their methods for analyzing the effectiveness of its EEO recruitment

program and the fairness of the unit's seniority, promotions, pay and benefits programs to ensure that they provide equal opportunities and do not discriminate.

Failing to comply with the basic EEO requirements can also result in the FCC finding an automatic failure by the unit to effectively analyze its EEO program. In a recent EEO decision, the FCC found that a broadcaster who failed to retain records regarding more than half of its hires was automatically unable to have complied with the self-analysis requirements, because it did not have the documentation necessary to review its program.

Given the voluminous amounts of documentation involved in an EEO audit response, it is common for even the smallest response to result in inches of documents being provided to the FCC. In larger audits, boxes of material are disclosed. While all of this may seem extremely burdensome, those that make the tremendous efforts required to satisfy the commission insure their company against monetary fines and the additional mountain of paperwork that occur when the commission detects violations.

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SURVIVING AN AUDIT

Here's some "preventative medicine" that could save an extraordinary amount of time, energy and money if an FCC audit occurs:

- Create an internal file that contains your recruitment source list and documents efforts taken to develop and update your sources.
- Create an internal file for each job vacancy. It should include dated copies of all notifications, e-mails, fax confirmations and related material that you send for each vacancy - as well as a list of the sources contacted.
- Create an internal file for each supplemental recruitment initiative you participate in. Be sure each of these files contains sufficient material documenting the initiative (such as correspondence, a list of station personnel involved in the initiative, flyers and other material produced or distributed).
- Create an internal file regarding your efforts to inform community organizations that they can request job vacancy notifications.
- Make certain more than one employee understands the EEO reporting requirements. If only one person understands the requirements and he or she leaves the station, it can be very difficult for a new employee to prepare the necessary reports.

Here's what you can do if your station(s) receives an EEO audit letter from the FCC:

- Contact corporate counsel or outside legal counsel immediately.
- Review the EEO audit letter so you understand exactly what information must be provided. Smaller employment units and recently audited units may only need to provide a limited amount of information.
- Quickly identify and inform all employees that will be involved in preparing the audit response. Be sure you know their vacation schedules.
- Establish deadlines for: 1) collecting audit documentation; 2) reviewing the documentation; 3) conducting any necessary follow-up research; 4) preparation of the audit response; 5) management and legal review of the audit response; and 6) finalizing and submitting the audit response.
- Be aggressive when searching for missing information: have employees check their e-mail. Contact recruitment sources to obtain any missing notices. Check station logs for on-air job vacancy announcements. Request copies of missing advertisements from the publications that published them or check your local library. Contact job fair/event sponsors in which you participate.