

SCIARRINO & ASSOCIATES, PLLC
BROADCAST LEGAL SERVICES



EEO 101:

A Broadcasters' Guide to the Basics of
EEO Compliance, 2004 Edition

In March 2003, after numerous Court challenges, the FCC again imposed new EEO Rules on broadcast licensees. Broadcasters are required to follow these new rules in their hiring and employment practices. The new rules require broadcasters to a) practice non-discrimination, b) conduct mandatory outreach and c) maintain detailed records and reports regarding their hiring practices.

I. Non-Discrimination.

The EEO regulations contain a non-discrimination provision that generally prohibits *all* broadcasters from practicing *any* employment discrimination based on race, color, religion, national origin or gender. These rules apply both to recruitment and to actual employment practices (such as promotions and other internal procedures).

In addition to generally creating a non-discriminatory workplace, stations that have five or more full-time employees are required to establish and implement a specific EEO program. The EEO Program should be in writing and should include such measures as defining the responsibility of employees and managers in enforcing the EEO policy, establishing procedures for reviewing supervisory performance, conducting continuing educational programs designed to inform employees of EEO programs and continually reviewing EEO policies to ensure compliance. Broadcasters must also periodically and regularly review their own internal structure and practices to ensure that such practices are nondiscriminatory. Measures that stations must review include pay ranges, salary scales, fringe benefits, procedures for promotions, seniority practices, and recruitment measures.

Stations that employ less than five full-time employees are not required to establish and implement an EEO Program. However, these stations are only exempt from the EEO Program requirements and *must* still abide by the general policy of non-discrimination. *All* broadcast licensees are subject to the rule that requires equal employment opportunity and prohibits unlawful employment discrimination.

Notwithstanding the prohibition on discrimination, religious broadcasters may require particular religious affiliation for employment. Religious broadcasters are defined as licensees closely affiliated with a church, synagogue or other religious entity. While such entities are not required to strictly adhere to the anti-discrimination rule, they must make reasonable, good faith efforts to comply with the ideal of the rules. For example, religious broadcasters may require a particular religious affiliation for employment at a station but should hire a person who is religiously qualified without regard to race, color, national origin or gender. Religious broadcasters are encouraged to consult with counsel before engaging in any recruiting or outreach activities to insure lawful compliance.

II. Mandatory Outreach.

All Station Employment Units¹ with five or more fulltime employees² must engage in a three-pronged outreach effort.

Prong 1: Recruitment.

The first prong requires wide dissemination of information regarding each fulltime job opening throughout the entire community.³ A ‘community’ is defined in good faith by the broadcaster but should include, at a *minimum*, the community of license. Depending on a broad range of factors, including the technical, geographic, marketing, promotional and advertising scope of the station, the community could be very large. Further, wide dissemination means that the efforts were ‘reasonably calculated to reach the entire community.’ Though broadcasters are

¹ A Station Employment Unit (“SEU”) is defined as a station or group of commonly owned stations in the same market that share at least one employee. The definition of a market for SEU purposes is left to the good faith discretion of the broadcaster. The Commission stated that in determining whether stations are in the same market, broadcasters should review the technical coverage of its stations, marketing, promotional and advertising practices, market definitions adopted by commercial or public agencies (e.g., Arbitron and Nielsen) and the requests they receive from notice of job vacancies from locally-based community groups.

² For purposes of these rules, ‘fulltime’ is defined as 30 or more hours per week.

³ A rulemaking regarding recruitment for part-time positions remains pending at the Commission.

not expected to contact an infinite number of potential sources or any specific segment of society, they are expected to reasonably tailor their recruitment efforts to the nature of the available position.

There is no definitive Commission statement on what would constitute sufficient widespread dissemination, though the Commission has indicated that posting on the Internet alone is insufficient. Broadcasters have great discretion over what would constitute an appropriate method. Examples of methodologies that can be used in conjunction with one another include:

- Posting full-time job vacancies on the station's own job bank webpage and/or on the job bank webpage of the State Broadcasters Association, the National Alliance of State Broadcasters Associations, the National Association of Broadcasters and other organizations in order to reach the broadest number of people. If a station uses this method, it should air spots promoting this fact;
- Send notices of job openings to recruitment organizations and referral services, including those that have asked to receive such notification;
- Expand station's mailing list to include different state, local and community organizations, especially those that target women's and minority groups;
- Advertise the vacancy over the air and/or through other, unaffiliated stations or print media;
- Promote the vacancy at job fairs; and/or
- Post the vacancy in the station's office.

Broadcasters should review their methods of disseminating information and modify their recruitment methods according to the practices that receive the greatest response. Stations should indicate that they are an equal opportunity employer (EOE) and should allow a reasonable time for recruitment before filling the position.

There are four exceptions to the wide dissemination requirement. Stations are not required to widely disseminate recruitment information when hiring in exigent circumstances, hiring a temporary employee, hiring an intern and when internally promoting an employee. Exigent circumstances exist when, for example, there is an immediate need to replace an employee who left without notice and another station employee cannot perform their duties. In this instance, the station may rapidly fill the position without broad recruitment measures, though

the Commission has stated that this should be a rare occurrence. Neither interns nor temporary positions are subject to the wide dissemination requirement. In either of these instances, however, if a position becomes permanent then the permanent position becomes subject to the wide dissemination requirement. Finally, recruitment is not necessary when employees are internally promoted, unless the position from which the person being promoted from was not subject to broad recruitment. Before bypassing the wide dissemination requirement, broadcasters are urged to err on the side of caution and contact legal counsel.

Prong 2: Community Organizations.

The second prong of the EEO recruitment rules require broadcasters to be responsive to recruitment organizations and other community groups that have requested to be informed of vacancies at the station.⁴ To “seed” this list, broadcasters are advised to notify community organizations about the opportunity to be placed on the station’s vacancy list.⁵ Organizations that have requested notification must be notified of any job vacancy for which the station is recruiting. Once an organization has requested vacancy information they are always entitled to receive such information without having to re-request it and should not be taken off the station’s contact list until requested to be removed by the organization. The FCC considers this measure to be a ‘safety valve’ to help ensure that no segment of the community is omitted from recruitment practices.

Prong 3: Outreach Programs.

In addition to responding to vacancies within the station, broadcasters are also expected to engage in non-vacancy specific outreach programs. In its rules, the FCC listed sixteen outreach options designed to keep the broadcaster involved and engaged with the community, as well as to inform the community of opportunities in broadcasting. Depending on the size of the SEU, the station will either have to complete two or four of the options within a two-year period.

⁴ Recruitment organizations can be defined as organizations that assist job seekers in finding employment.

⁵ Some state broadcasters associations have prepared on-air announcements for this purpose.

SEUs that have less than five fulltime employees are not subject to this regulation. SEUs with five -10 fulltime employees and SEUs with five or more employees in very small markets⁶ must complete two of the options in a two-year period. SEUs with more than 10 fulltime employees must complete four of the options within a two-year period.

The 16 options are:

1. Participate in at least four job fairs by station personnel who have substantial responsibility for hiring decisions.
2. Host at least one job fair.
3. Co-sponsor at least one job fair with an organization in the business and professional community whose membership includes substantial participation of women and minorities.
4. Participate in at least four activities sponsored by community groups active in broadcast employment issues (such as conventions, career days, workshops and similar activities).
5. Establish an internship program designed to assist members of the community to acquire skills needed for broadcast employment.
6. Participate in general outreach efforts by such means as job banks or Internet programs.
7. Participate in scholarship programs directed at students desiring to pursue a career in broadcasting.
8. Establish training program designed to enable station personnel to acquire skills that could qualify them for higher-level positions.
9. Establish a mentoring program.
10. Participate in at least four events or programs relating to career opportunities in broadcasting sponsored by educational institutions.
11. Sponsor at least two events in the community designed to inform the public as to employee opportunities in broadcasting.
12. List every upper level opening in a job bank or newsletter of media trade groups whose membership includes substantial participation of women and minorities.

⁶ Small market stations are defined as any SEU consisting solely of a station or stations licensed to a community that is located in a county that is outside of all metropolitan areas or is located in a metropolitan area that has a population of fewer than 250,000 persons. This information is available from the US Census.

13. Provide assistance to outside non-profit entities in the maintenance of websites that provide counseling on the process of searching for broadcast employment and/or other career development assistance pertinent to broadcasting.
14. Provide training to management level personnel as to methods of ensuring equal employment opportunity and preventing discrimination.
15. Provide training to personnel of outside recruitment organizations that would enable them to better refer job candidates for broadcast positions.
16. Participate in other activities than the ones listed that the licensee has designed to further the goal of disseminating information about employment opportunities.

Further, while broadcasters are allowed to perform the outreach initiatives in conjunction with other broadcasters, the FCC requires that a broadcaster must contribute 'meaningful participation' in order to satisfy the rule. Representatives of the station must be actively involved in either planning or executing the program and not merely lend the station's name or money to an event.

III. Record-Keeping and Filing Obligations.

It is imperative that non-exempt SEUs document each step of their EEO compliance. Absent extenuating circumstances, the Commission will not give credit to stations for their actions without proper documentation.

Broadcasters should maintain an internal, non-public file for potential audits by the FCC. In these internal files broadcasters should retain:

- A list of all full-time jobs filled;
- A listing of all the recruitment methods and sources used for each job vacancy filled as well as for each interviewee;
- Dated copies of all advertisements, letters, emails, faxes, etc. used to fill each vacancy;
- Documentation that job vacancy information was distributed to requesting organizations; and
- Documentation to prove participation and/or completion of the required outreach initiatives.

Additionally, broadcasters are required to prepare an Annual EEO Public Report and place it in their Local Public Inspection File as well as post it on their website, if available, on the anniversary date of their renewal filing. The Annual Public File Report must include the following:

- A list of all full-time job openings filled;
- Lists of recruitment sources used to fill the positions as well as sources used to generate interviewees;
- Total number of people interviewed for full-time employment during the preceding year;
- Number of people referred by each recruitment source during the preceding year; and
- Outreach initiatives completed.

In addition to maintaining internal documents and preparing the Annual Public File Report, broadcasters must also file information with the FCC. The last two years of EEO Public File Reports must be submitted to the FCC at the time of filing the station's license renewal application as an attachment to Form 396. Television stations with five or more full-time employees and radio stations with more than 10 full-time employees must file EEO Public File Reports for the two preceding years at the time of their mid-term review.

Finally, in June 2004, the FCC issued a *Third Report and Order and Fourth Notice of Proposed Rulemaking* (FCC 04-103) re-instituting versions of Form 395-A and 395-B, which requires broadcasters and cable operators with five or more full time employees to report data on the race, ethnicity and gender of their workforce. The U.S. Court of Appeals for the D.C. Circuit struck down a previous version as unconstitutional. According to the FCC, the new Form 395 will only be used to track industry trends and compile Congressional reports and cannot be used to determine compliance with EEO rules, as was done in the past. Beginning in 2005, the 395's will be due to be filed annually via CDBS on September 30. At this time, it is unclear whether broadcasters will be able to keep the 395 confidential after filing it and the FCC is seeking to determine if this form may be exempt from the requirements of the Freedom of Information Act. A rulemaking at the Commission remains pending. Sciarrino & Associates, PLLC will keep

abreast of any developments concerning Form 395 and its impact on broadcasters. Please contact this firm with any additional questions.

Helpful Links:

<http://www.fcc.gov/mb/>

<http://www.gpoaccess.gov/fr/index.html>

Broadcasters are encouraged to contact counsel before beginning and during the construction of their EEO Program. In addition, the [National Association of Broadcasters](#) (www.nab.org) and [FCC](#) (www.fcc.gov) websites have valuable information concerning EEO Program requirements.

This document is intended to introduce the reader to basic, fundamental changes to EEO compliance and is in no way a substitute of legal advice. It is imperative that you contact your communications legal counsel, FCC staff or Sciarrino & Associates, PLLC if you are unsure about your responsibilities under these laws and regulations.

Dawn M. Sciarrino, Esq.
Jennifer L. Smith, Esq.

SCIARRINO & ASSOCIATES, PLLC
Broadcast Legal Services
5425 Tree Line Dr.
Centerville, VA 20120-1676
703.830.1679 (phone)
703. 991.7120 (fax)
info@sciarrinolaw.com
www.sciarrinolaw.com

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