



**Equal Employment
Practices Commission**

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December 4, 2012

Rahul Merchant
Chief Information & Innovation Officer
Department of Information Technology & Telecommunications
255 Greenwich Street, 9th Floor
New York, NY 10007

RE: Final Determination Pursuant to the Audit of the Department of Information Technology & Telecommunications' (DoITT) Equal Employment Opportunity Program from July 1, 2008 to June 30, 2011

Dear Mr. Merchant:

On behalf of the Equal Employment Practices Commission (EEPC), thank you for the response to our Letter of Preliminary Determination that was submitted by your agency's EEO Officer.

After reviewing the response, our Final Determination is as follows:

Agree

We agree with the responses to the following EEPC recommendations, pending documentation that can be attached to your reply or provided during the compliance period:

Recommendation #1

All agency recruitment literature should indicate that the agency and the City of New York is an equal opportunity employer.

Response:

EEPC staff correctly determined that all DoITT recruitment materials stated that "the City of New York is an Equal Opportunity Employer," but that those materials did not separately specify that DoITT is an equal opportunity employer. DoITT has manifested its commitment to the principles of diversity and equal employment opportunity in a variety of formats and forums, including DoITT's Web site. Consistent with this recommendation, DoITT has revised its job postings and all other recruitment materials to specify not only that the City of New York, but also DoITT, is an equal opportunity employer.

Recommendation #2

The EEO Officer/Counselor should serve the respondent with a notice of complaint (or another document that includes the respondent's right to respond to the allegations and right to be accompanied by a representative of his/her choice) along with a copy of the complaint. The EEO Officer should keep receipts regarding the service of notice on the respondent in the complaint file.

Response:

EEPC staff identified three instances during the audit period in which complaint files did not contain proof that written service of the complaint and of the right to respond to the complaint had been served on the respondent. It has always been the regular practice of the EEO and Diversity Office to serve a copy of the complaint along with a letter of notice to the respondent in person. The respondent is asked to sign a copy of the notice, and the notice is stored in the EEO file. I have emphasized to my staff the importance of unfailing adherence to this requirement.

Recommendation #3

In rare circumstances where the investigation cannot commence immediately, or where the confidential report cannot be issued within 90 days, a note should be made in the complaint file explaining the reason for the delay and projecting a time frame for completion of the report. The complainant, respondent and DCAS-Citywide EEO should be notified of the delay in writing.

Response:

EEPC staff identified one instance during the audit period in which a "delay notification letter" was not sent to the complainant or respondent. Investigation delays have been extremely rare, and all delays have been documented both to the file and in DoITT's quarterly EEO reports. I have emphasized to my staff the importance of unfailing adherence to the requirement that notice of the delay be sent to the complainant and the respondent.

Recommendation #4

The EEO Officer should notify the complainant and respondent, in writing, that the investigation by the EEO Officer has been transferred because of the filing of the external complaint.

Response:

EEPC staff identified one instance during the audit period in which the complaint file did not contain proof that the complainant and the respondent had been given written notice that the complaint had been transferred from the EEO and Diversity Office to the Office of General Counsel. In that case, the complaint was transferred because the complainant filed an external complaint. Both the complainant and the respondent were aware of the external filing. Nonetheless, it has always been the regular practice of the EEO and Diversity Office to send such written notice to the complainant and the respondent, and I have emphasized to my staff the importance of unfailing adherence to this requirement.

Recommendation #5

To ensure that all employees are aware of the Disability Rights Coordinator -- person responsible for handling reasonable accommodation requests and ensuring compliance with all federal, state,

and local laws, as well as City and agency policies, pertaining to persons with disabilities -- the agency should re-distribute to all employees in writing the name, location, and telephone number of this person.

Response:

DoITT materials relating to employee disability issues, including DoITT's reasonable accommodation request form, have always indicated that disability issues may be addressed to the EEO and Diversity Office. Consistent with this recommendation, DoITT's materials have been updated to specify that the Disability Rights Coordinator is the Director of the EEO and Diversity Office.

Recommendation #7

To ensure that employees know the identity of the agency's Career Counselor, the personnel officer should re-distribute to all employees the identity and the type of guidance which is available from the Career Counselor. This should be done at least once each year.

Response:

In 2011, DoITT formalized the creation of an Office of Professional Development, and that Office undertook a continuing series of professional development initiatives that have been well publicized to DoITT employees. Consistent with this recommendation, DoITT has designated a member of that Office as DoITT's Career Counselor, and DoITT materials have been updated to reflect this designation. The Division of Human Resources plans to roll out a series of trainings during the Fall of 2012 that covers career related topics.

Recommendation #8

The agency is required to file with the EEPC copies of finalized agency EEO/agency specific plans. The agency must also submit quarterly to the EEPC, a report on its efforts during the previous quarter to implement the agency specific plan. All reports should be submitted no later than thirty (30) days following the reporting period.

Response:

EEPC staff found that DoITT failed to submit reports and plans to EEPC during part of the audit period. These reports and plans were prepared and submitted to DCAS EEO, but apparently some were not submitted to the EEPC. It has been the regular procedure of DoITT to file all such reports and plans, and all such reports and plans have been submitted to EEPC during my tenure as Director of the EEO and Diversity Office. I have emphasized to my staff the importance of unflinching adherence to this requirement.

Disagree

For the following reason, hereafter identified as EEPC rationale, we disagree with your response to the following EEPC recommendation:

Recommendation #6

Since agencies' HR Officers are responsible for reviewing statistical information (including total employment, new hires and promotions by race/ethnicity and gender), employment practices, policies and programs for purposes of identifying whether there are barriers to equal opportunity,

and informing the EEO Officer of efforts that the agency has made to employ, promote or accommodate qualified individuals with disabilities, DoITT's Human Resources Division should be assigned the responsibility of recording and maintaining information on the agency's applicant logs.

Response:

DoITT respectfully rejects this recommendation. The Division of Human Resources is not responsible for facilitation employment interviews, and employment applicants do not generally meet with Human Resources until they have been tentatively selected for employment. Requiring the intervention of Human Resources staff at the interview stage of the hiring process would require a substantial new allocation of resources that DoITT believes to be unnecessary and unwise. Our view is that completion of the applicant log is best handled by the hiring manager.

EEPC Rationale

The EEPC recommends the DoITT strengthen the structure of its recruitment and selection processes to be nondiscriminatory, by delegating the responsibility for generating, recording and maintaining applicant information to individuals who are separate from the selection process, to avoid the appearance that the contents of the applicant log, e.g., ethnicity, gender, disability or veteran status, play any part in the selection process. The hiring managers may then consistently focus on the job qualifications of applicants.


Conclusion

Please issue a written response to the aforementioned determinations, with appropriate documentation, within thirty days. Consistent with §815(a)(19), this Commission requires that the written response is signed by the agency head.

Pursuant to Section 832 of the New York City Charter, this Commission will initiate a compliance monitoring period, in which the agency reports monthly on its progress in implementing the corrective actions, for up to six months. EEPC Counsel and Director of Compliance, Judith Garcia Quiñonez, Esq., or her designee, will contact your agency's EEO Officer to establish a formal compliance monitoring period (which will begin with your agency's response to this document), and discuss the steps your agency should take to achieve compliance. If a meeting at our office is required to address questions regarding this Letter of Final Determination or discuss the compliance process, please contact Ms. Garcia Quiñonez within two weeks.

In closing, we want to thank you and your staff for your cooperation during the audit process. We look forward to a mutually satisfactory compliance monitoring process.

Sincerely,


Charise L. Hendricks, PHR
Interim Executive Director

c: Emily Johnson, EEO Officer