

NYC
**Equal Employment
Practices Commission**

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December 6, 2012

Janette Sadik-Khan
Commissioner
Department of Transportation
59 Maiden Lane, 17th Floor
New York, NY 10038

RE: Final Determination Pursuant to the Audit of the Department of Transportation's (DOT) Equal Employment Opportunity Program from January 1, 2009 to December 31, 2011

Dear Commissioner Sadik-Khan:

On behalf of the Equal Employment Practices Commission (EEPC), I want to thank you for your November 19, 2012 response to our October 18, 2012 Letter of Preliminary Determination regarding the referenced audit.

As we indicated in our Preliminary Determination Letter, our findings and recommendations are based on: the collection of documents in response to an EEPC *Document and Information Request Form*; your agency's Agency Specific EEO Plan and EEO Quarterly Reports; *EEPC Interview Questionnaires* completed by your agency's EEO Officer, Counselor(s), Investigator(s), or EEO Trainer(s), Disability Rights Coordinator, Section 55-a Coordinator, Director of Personnel or Human Resources and Agency Counsel (or individual responsible for responding to external EEO complaints); follow-up discussions with your agency's EEO Officer and any of the aforementioned individuals; and responses to the *EEPC Employee Survey* and *EEPC Supervisor/Manager Survey*.

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

Agree

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

Recommendation #2

Since agencies are responsible for ensuring compliance with all federal, state, and local laws pertaining to persons with disabilities, the agency should develop a plan to demonstrate accessibility for facilities it indicated were not accessible. This plan should identify the barriers in these facilities and detail the efforts the agency has taken, or will take, to remove barriers. The agency's plan will be reviewed during the compliance period. (EEPC/Sect. 831, City Charter, Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) and Local Law 58).

Response:

The six facilities you have identified all have two (2) floors and of these, one (1) is a warehouse. Our Facilities Management team has investigated the possibility of installing lifts to gain access to the second floors, however, it was determined that lifts may pose a potential safety issue. Most of all the facilities mentioned in the findings house field employees, who conduct the majority of their work outside of the facilities. In addition, most of the non-field employees (administrative and clerical) work on the first floors.

Currently, if an employee assigned to any of the six facilities specified in the audit report has a qualified disability, the Agency is willing and able to provide a reasonable accommodation for that employee. In addition, a ramp is currently being reconstructed at one of these facilities (1400 Williamsbridge Rd.) for wheelchair access. With regard to applicant accessibility, all applicants applying for a position are required to use the eHire electronic system from a computer or apply in person at the Agency's headquarters (55 Water Street), which is ADA compliant.

Recommendation #3

To ensure that all employees know the identity of the person responsible for handling reasonable accommodation requests, the agency should re-distribute and post -- on its electronic bulletin boards, intranet site, and at each site where it conducts business -- the name, location, and contact information of the Disability Rights Coordinator.

Response:

This information is found in the Discrimination Complaint Procedures package, which is on DOT's intranet. This information is also disseminated at all EEO training sessions, which are conducted weekly. In these sessions, employees are informed of the Disability Rights Coordinator and her contact information, when discussing the reasonable accommodation process. In addition, this information is posted at all DOT job sites on bulletin boards across the five boroughs. Although some employees may still not know the identity of the Disability Rights Coordinator, they are aware that the EEO Office is handling these issues because they will know to reach out to the EEO Office to apply for a reasonable accommodation. Nevertheless, this information will be placed in the DOT Newsletter as a reminder to employees.

Recommendation #4

The agency's HR/Personnel Officer should re-distribute the identity of the agency Career Counselor and ensure that all employees have access to information regarding job responsibilities, performance evaluation standards, examinations, training opportunities and job postings.

Response:

Information about the Career Counselor is found in the Equal Employment Opportunity Policy Statement, which is on DOT's intranet. This information is also disseminated at all weekly EEO training sessions, where employees are informed of the Career Counselor's name, her contact information and her functions. In addition, this information is distributed with the paychecks annually and posted at all DOT job sites on bulletin boards across the five boroughs. Additional information about jobs, examinations, and training opportunities is discussed at New Hire training and found on the Human Resources link on DOT's intranet. With the concerted efforts of the EEO Office and Human Resources, employees will on rare occasion request the services of the Career Counselor. Nevertheless, this information will be placed in the DOT Newsletter as a reminder.

Requires Clarification

For the following reason, hereafter identified as EEPC Rationale, we request clarification of your response to the following recommendation, which can be addressed in your response or during the City Charter-mandated compliance period:

Recommendation #1

The agency should assess the manner in which candidates are selected for employment, to determine whether there is any adverse impact upon any particular racial, ethnic, disability, or gender group. To the extent that adverse impact is discovered, the agency head should determine whether the criteria being utilized are job-related. The agency should discontinue using criteria that are not job-related and adopt methods which diminish adverse impact.

Response:

As a result of the Long Beach decision, the majority of hiring at the Agency is done from a civil service list. In 2012, the City of New York introduced eHire, an electronic job database, to all city agencies. External applicants interested in applying for a position at the Agency are asked to apply through this system at <http://www.nyc.gov/html/careers/home/home.stml> and current city employees at the Employee Self Service (ESS) website. This system will prompt responses from applicants and is programmed to automatically qualify or eliminate applicants for an interview, depending on the applicant's responses to questions. Race and gender information for applicants is made available to the Agency during this application process.

In the rare instances where there is provisional/discretionary hiring, (i.e. Assistant City Highway Repairer title) the Agency interviews a random sample of males and females separately. Prior to job interviews, the EEO Office works closely with hiring managers by reviewing all interview questions for job-relatedness and potential bias. Several times a month, the EEO Office conducts Structured Interview training for hiring managers to discuss topics such as *conducting effective and non-biased interviews, and fair and uniform Agency hiring standards and cultural diversity*. In addition, the EEO Office receives all discretionary applicant logs from job interviews conducted at the Agency, which are carefully reviewed for adverse impact upon any particular racial, ethnic, disability, or gender group.

In the past, DOT has done extensive outreach to different groups and met with the Director of Nontraditional Employment for Women (NEW) in an effort to address underutilization for minorities and women. Overall, underutilization exists because of the technical skills involved in some labor-intensive titles and special licenses and experience required for other titles. Historically, a small number of women meet these experience qualifications, which potentially disqualifies them from the application process. It can also be difficult to gain a foothold within the union structure preventing some groups from gaining the necessary prior experience in certain titles. In addition, the higher salaries in many private industry jobs increase the difficulty in recruiting and retaining women and minorities.

EEPC Rationale:

In order to better understand the agency's limitations in the recruiting process, the EEPC will require answers to the following questions during the compliance monitoring period: In titles that show underutilization, how does the union structure prevent these groups from receiving the necessary prior experience? What measures has the agency considered to overcome these obstacles?

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. Pursuant to your commitment to ensuring that the City's EEO Policy is fully implemented in your agency, we look forward to a mutually satisfactory compliance monitoring period.

Sincerely,



Charise L. Hendricks, PHR
Interim Executive Director

CC: Ann Williams, Asst Commissioner/EEO Officer, DOT