



EQUAL EMPLOYMENT PRACTICES COMMISSION

City of New York

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February 22, 2007

Nicholas Scoppetta
Commissioner
New York City Fire Department
9 MetroTech Center
Brooklyn, NY 11201-3857

Re: Final Determination Pursuant to the Audit of the New York City Fire Department (FDNY) and its Compliance with the City's Equal Employment Opportunity Policy from July 1, 2003 to June 30, 2005

Dear Commissioner Scoppetta:

Thank you for your February 9, 2007 response to our December 14, 2006 Letter of Preliminary Determination pursuant to the audit of the New York City Fire Department and its compliance with the City's Equal Employment Opportunity Policy from July 1, 2003 to June 30, 2005. EEPC staff has reviewed your response and 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 #4

The FDNY should ensure that all employees involved in job interviewing receive structured interview training, either through internal training or training provided by the DCAS or another appropriate organization. (Sect. IV, EEOP)

Recommendation #7

It is the Commission's position that appropriate documentation of meetings and other communications between the EEO Officer and the agency head regarding EEO program operational decisions should be maintained and kept in clearly identifiable, secure files.

Requires Clarification

For the following reasons, hereafter identified as EEPC Rationale, we request clarification of your response to the following recommendations, which can be addressed in your response or during the compliance period:

Recommendation #1

The Section 55-A Program brochures issued by the DCAS should be distributed to all new and current employees—uniformed and civilian. (Sect. IIB, EEOP)

Your Response

The information contained in the Section 55-A brochure (Equal Employment Opportunity for Persons with Disabilities) was communicated to all current employees through the FDNY Civilian Bulletin (Vol. XVI, Issue No. 7), dated April 6, 2006. The FDNY EEO Office distributes the Section 55-A brochure to all new employees during new employee orientation and training which includes the orientation of Emergency Medical Services, Fire and civilian personnel. The FDNY Equal Employment Opportunity Booklet, Section VII, p. 19, references the NYS Civil Service Law 55-A Program and the 55-A Coordinator, Gloria Johnson, Assistant Counsel. (See attached)

EEPC Rationale

It is unclear from your response if the FDNY is asserting that the Section 55-A brochures were distributed to new employees during the audit period. (The former EEO Officer told the EEPC auditors that the program brochures were not distributed to employees between July 1, 2003 and June 30, 2005.) In addition, your response does not commit to the distribution of the Section 55-A brochures to all new and current employees—uniformed and civilian. (Note: There was no attached document).

Recommendation #2

The EEO Officer should ensure that all of the FDNY EEO professionals who have not received EEO training from the DCAS receive such training. (Sect. VB, EEOP)

Your Response

Seven (7) EEO professionals received the EEO training offered by DCAS and three (3) EEO professionals remained to be trained. The three (3) EEO professionals who have not received DCAS EEO training are scheduled to receive EEO training beginning Thursday, March 15, 2007 for five (5) consecutive Thursday on March 22, 29, and April 5, and 12.

EEPC Rationale

Although the EEPC auditors were informed by the former EEO Officer that a total of 19 EEO professionals (2 EEO Investigators and 17 EEO Counselors) had not received DCAS's training for EEO professionals, your response refers to a total of 10 EEO professionals who either have recently received, or still need to receive, EEO training. The reason for this discrepancy is unclear.

Recommendation #3

The EEO investigator's confidential written report should be issued within 90 days of the date the discrimination complaint was filed. In rare circumstances where the investigation cannot be issued within 90 days, the parties to the complaint should be notified of the delay. (DCAS, Discrimination Complaint Procedures Implementation Guidelines, April 2, 1996 Amendment)

Your Response

The EEO Staff will endeavor to issue confidential written reports within 90 days of the date the Complaint was filed. The EEO Office sends a "Notice of Delay" to Complainants when the investigation cannot be issued within 90 days. (See attached).

EEPC Rationale

Our review of the FDNY discrimination complaint files found that the EEO Office did not send delay notification letters, when required, to complainants during the audit period. It is unclear from your response if the FDNY is asserting that such delay notification letters were indeed sent during the audit period, or if such letters have been sent after the audit period. (There was no attached document).

Recommendation #5

The FDNY should secure the necessary training, either from DCAS or another appropriate source, to assess the manner in which civilian candidates are selected for employment, to determine whether there is any adverse impact upon any particular racial, ethnic, disability or gender group. (Sect. IV, EEOP)

Your Response

(NOTE: Commissioner in the past, (8/31/00), the Department declined, for any number of reasons, to initiate an adverse impact study with regard to the written firefighters exams, educational requirements, etc. This particular EEPC audit is requesting that the Department initiate an adverse impact study **"to assess the manner in which civilian candidates are selected for employment, to determine whether there is any adverse impact upon racial, ethnic, disability or gender group."** As you know, this will require an extensive undertaking, including hiring a consultant to capture all of the data on our civilian interviewing, hiring and selection process...therefore, I need some guidance on this response. I can share my thoughts with you based on what I have seen in prior EEPC audits and my understanding of our legal obligations to this Commission. Although the Department has declined to conduct adverse impact studies in the past...the EEPC has followed up with DCAS on those sensitive issues and,

one way or the other, we are still “grappling” with these issues. Apparently, DCAS uses in-house consultant services to conduct a job analysis and adverse impact to determine if any “requirement” may disproportionately screen out members of historically underrepresented groups. I am not sure if they also conduct a study that applies to civilians. Let’s discuss. Thanks).

EEPC Rationale

The response does address the recommendation.

EEPC Recommendation #6

The FDNY should notify all employees in writing of the name, location, and telephone number/email address of the Career Counselor. (Sect. VB, EEOP)

Your Response

The FDNY Career Counselor is Audrey Brown Bennett; she is located at 9 MetroTech Center in the Personnel Department, 6th Floor. Her telephone number is (718) 999-2195 and her e-mail address is benneta@fdny.nyc.gov.

EEPC Rationale

It is unclear from your response if this information was also distributed to all FDNY employees.

EEPC Recommendation #8

The agency head should direct the heads of the human resources and recruitment and diversity units to include the EEO Officer in selecting recruitment media and developing recruitment strategy. (Sect. VC, EEOP)

Your Response

On a weekly basis, the EEO Officer receives a list of the employees who receive Diversity training through the Diversity Weekly Update. The EEO Officer will meet with the Fire Commissioner to determine the best way to accomplish the EEPC request that the EEO Officer have more involvement in selecting recruitment media and developing recruitment strategy,

EEPC Rationale

It is unclear from your response if and when this recommendation will be implemented.

Disagree

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

EEPC Recommendation #9

It is the position of the DCAS (“Model Agency EEO Commitment Memo,” available on the DCAS website) and the EEPC that at least twice a year during normal staff meetings,

managers and supervisors should emphasize their commitment to the agency's EEO policies and affirm the right of each employee to file a discrimination complaint with the EEO office.

Your Response

The EEO Office conducts daily EEO training for EMS and Fire personnel. During each training session, the EEO Discrimination Complaint process is included as part of the daily training curriculum. Civilian personnel also scheduled to receive annual EEO training. The EEO Officer currently attends and participates in bi-weekly Senior Staff meetings and bi-weekly Initiatives Meetings that are scheduled by the Fire Commissioner with senior staff, managers and supervisors. The EEO Officer and the Fire Commissioner will schedule a bi-annual review of EEO policies with senior staff, managers and supervisors to affirm the employment rights of each employee with regard to filing a discrimination complaint with the EEO Office.

EEPC Rationale

This Commission is pleased to learn that the EEO Office is conducting a variety of EEO training and attending senior staff and managerial meetings to affirm the EEO rights of all employees. However, the clear intent of this recommendation is to direct *managers and supervisors* to emphasize their commitment to the agency's EEO policies directly to the FDNY personnel under their supervision.

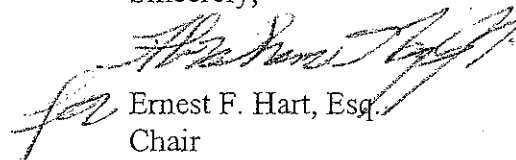
Conclusion

Pursuant to section 832 of the New York City Charter, this Commission will initiate an audit compliance period not to exceed six months. However, you may respond in writing to this Final Determination prior to the initiation of audit compliance.

If you decide to issue a written response, please do so within thirty days. If you decide not to issue a written response, we will initiate audit compliance shortly thereafter. EEPC Counsel Lisa Badner or her designee will contact your EEO Officer to ascertain your intentions.

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

Sincerely,


Ernest F. Hart, Esq.
Chair

c: Lyndelle T. Phillips, EEO Officer
Douglas White, Deputy Commissioner for Administration