



# EQUAL EMPLOYMENT PRACTICES COMMISSION

City of New York

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December 14, 2006

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

Re: Resolution #06/22-057/Preliminary 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:

Pursuant to Chapter 36 of the New York City Charter, the Equal Employment Practices Commission (EEPC) is empowered to audit and evaluate the employment practices, programs, policies and procedures of city agencies and their efforts to ensure fair and effective equal employment opportunity for minority group members and women. (New York City Charter, Chapter 36, sections 831(d)(2) and (5).)

This letter contains the preliminary determinations of the EEPC pursuant to its audit of compliance by the New York City Fire Department (FDNY) during the two-year period commencing July 1, 2003 and ending June 30, 2005. Requests for corrective actions and/or recommendations are included where the EEPC has determined that the FDNY has failed to comply in whole or in part with the City's EEO Policy.

Pursuant to the New York City Charter, as amended in 1996, the Department of Citywide Administrative Services (DCAS) issued the prior administration's Equal Employment Opportunity Policy (EEOP), a set of uniform standards and procedures designed to ensure the equality of opportunity for municipal government employees and job applicants. The EEOP

directs agencies to develop agency-specific plans for providing equal employment opportunity within the parameters of these standards and procedures.

In January 2005, the DCAS issued the current administration's new EEOP. In addition, this Commission is empowered by Section 831 of the City Charter to recommend all necessary and appropriate actions to ensure fair and effective affirmative employment programs for minority group members and women. Accordingly, all recommendations for corrective actions included in this letter are consistent with both the audit findings and the standards set forth in the new policy. Therefore, the New York City Fire Department, where appropriate, should incorporate these recommendations in its agency-specific Equal Employment Opportunity Plan. The relevant sections of the City's Equal Employment Opportunity Policy are cited in parenthesis at the end of each recommendation.

The purpose of this audit is to evaluate the agency's compliance with the EEOP, not to issue findings of discrimination pursuant to the New York City Human Rights Law.

### **Scope and Methodology**

Audit methodology included a review of the FDNY's responses to a Commission Document and Information Request Form and an analysis of the FDNY's quarterly EEO reports. The EEOC auditors also conducted in-depth, onsite interviews with the FDNY's Assistant Commissioner for EEO, Supervising EEO Investigator/Director of Training Events, Senior EEO Investigator, three EEO Counselors, Career Counselor, and Director of Recruitment & Diversity Initiatives.

A survey of 2,500 people employed by the FDNY during the audit period was distributed. Due to the low response rate (less than 5%), survey results would not be useful and were therefore not tabulated.

### **Description of the Agency**

As first responders to fires, public safety and medical emergencies, disasters and terrorist acts, the FDNY protects the lives and property of New York City residents and visitors. The Department advances public safety through its fire prevention, investigation and education programs. The timely delivery of these services enables the FDNY to make significant contributions to the safety of New York City and homeland security efforts.

### **Personnel Activity During the Audit Period**

During the audit period, 2,648 people were hired: 1,926 Caucasians, 272 African-Americans, 387 Hispanics, and 63 Asians. Two hundred and sixty of the hires were women. Eleven hundred and fifty-two people were promoted during the audit period: 856 Caucasians, 141 African-Americans, 120 Hispanics, 35 Asians, and 173 women. (Appendix 1)

The FDNY reports that 100 employees were involuntarily separated (laid-off or terminated) during the period in review: 50 Caucasians, 22 African-Americans, 23 Hispanics, 5

Asians, and 17 women. Between December 31, 2003 and December 31, 2005, the total number of the FDNY employees increased by 4.4%, going from 15,149 to 15,823. African-Americans and Asians showed no change in their representation, while there were less than 1% increases for Hispanics and women. (Appendices 2 and 3)

### **Discrimination Complaint Activity During the Audit Period**

During the audit period, 211 internal discrimination complaints were filed. The largest single category was race and color: 55 complaints were based exclusively or in part on that factor. Forty-two of the 211 complaints received a probable cause determination, 74 received a no probable cause determination, and 24 were pending at the end of the audit period.

Twenty-seven external complaints were filed during the audit period: five were based on race, four were based on disability, and one was based on national origin; the other complaints were based on multiple categories (e.g., race/national origin/religion). Twelve of the complaints were dismissed/right to sue letter, six received no probable cause determinations, three received probable cause determinations, one was withdrawn, one was settled, and four were open at the end of the period in review.

### **PRELIMINARY DETERMINATION**

Following are our preliminary determinations with required corrective actions and recommendations pursuant to the audit. (Note: The FDNY EEO Officer, who was interviewed by the EEPC auditors in April 2006, left the agency at the end of May 2006. All references to the EEO Officer in this letter refer to that individual, not the EEO Officer hired in June 2006.)

#### **Plan Dissemination – Internally**

The FDNY is in compliance with the following requirements:

1. The agency issued an EEO Policy booklet (November 2001) that includes a General Anti-Discrimination Policy Statement, a Sexual Harassment Policy Statement, a Disabilities Policy Statement, an Employee Reasonable Accommodation Policy, and an Internal Discrimination Complaint Procedure. In addition, the FDNY issued separate, poster-sized EEO and Sexual Harassment Policy Statements (2004).
2. The EEO Policy booklet was distributed to all FDNY units during the audit period, and managers were directed to give it to all employees.
3. The EEO Policy booklet was included in the managerial and non-managerial new hire packages.
4. The separate EEO and Sexual Harassment Policy Statements were sent to unit managers once per year, with instructions to post them on bulletin boards. The EEO Office representatives made regular visits to field offices to inspect the bulletin boards for EEO Policy posting.

The FDNY is not in compliance with the following requirement:

1. Both the EEO Policy booklet (2001) and the separate EEO Policy Statements (2004) were never updated and, consequently, did not contain the current list of "protected classes" under the New York City and New York State Human Rights Laws. Corrective action is no longer required pursuant to the NYC EEOP issued in January 2005.
2. The EEO Officer informed EEPC auditors that the agency's EEO policies were not available in alternate formats for persons with disabilities. Corrective action is no longer required pursuant to the NYC EEOP issued in January 2005.

#### **Plan Dissemination – Externally**

The FDNY is in compliance with the following requirements:

1. All seven job vacancy notices submitted by the agency indicate that the FDNY is an equal opportunity employer.
2. All the job advertisements submitted by the FDNY (Fire Alarm Dispatcher, Assistant Commissioner for EEO, Assistant Commissioner for Family Assistance, Director of Recruitment and Diversity Initiatives, Director of Center for Terrorism and Disaster Preparedness, and Skilled Dispatcher) contain the EEO tag line.

#### **Affirmative Action and Reasonable Accommodation for Persons with Disabilities**

The FDNY is in compliance with the following requirements:

1. The EEO Officer was appointed the Disabilities Rights Coordinator.
2. The FDNY has provided a number of reasonable accommodations to persons with disabilities. Many accommodations were time-related (granting flexible work schedules) and, in one case, an employee with carpal tunnel syndrome was relieved of her data entry duties.
3. The FDNY headquarters, which is owned and maintained by a private company, was constructed after the passage of the Americans With Disabilities Act and therefore meets all accessibility requirements. The building, for example, is floor level, there is a ramp to the garage, there are grab bars in the bathrooms, and all doors are wide enough to accommodate wheelchairs.

The FDNY is in partial compliance with the following requirement:

The EEO Officer informed EEPC auditors that although a paragraph about the Section 55-A Program is contained in the FDNY EEO Policy booklet, the 55-A Program Coordinator never distributed the DCAS program brochures to all employees. After the audit period, though, that brochure was placed in an FDNY Civilian Bulletin (Vol XVI, Issue No. 7, April 6, 2006).

According to the EEO Officer, seven or eight Fire Department employees currently participate in that program. Corrective action is required.

Recommendation: To ensure that employees are made aware of the Program, 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)

### **EEO Complaint and Investigation System**

The FDNY is in compliance with the following requirements:

1. The FDNY has appointed 47 EEO Counselors, who are assigned to all five boroughs. These employees provide counseling and referral to the EEO Office, but are not authorized to investigate complaints.
2. The EEO Office maintains and updates a log of all discrimination complaints filed against the agency.
3. The EEO Officer, Supervising Investigator, and two EEO Investigators have received training for EEO professionals from the Department of Citywide Administrative Services.

The FDNY is not in compliance with the following requirements:

1. The EEO Officer informed the EEPC auditors that the agency did not have individuals of both sexes available to investigate discrimination complaints during the audit period. From July 1, 2003 to June 30, 2005, there were three EEO professionals (EEO Officer, Supervising Investigator, EEO Investigator)—all females—authorized to investigate discrimination complaints. After the audit period, though, the FDNY hired four EEO Investigators and two EEO Trainers, so there are now eight EEO professionals—including two males—authorized to investigate discrimination complaints.
2. The EEO Officer informed EEPC auditors that there were an insufficient number of EEO professionals (three) to handle a large backlog of discrimination complaints during the audit period. The EEO Officer needed additional investigators and made that request of the Commissioner. Her request was denied, though, due to fiscal constraints. The staffing situation became adequate *after* the audit period, however, and—as mentioned above—there are now six EEO Investigators.
3. The EEO Officer informed the EEPC auditors that two of the recently hired EEO Investigators had not yet received DCAS's training for EEO professionals. They are, though, scheduled to receive such training. In addition, the "List of EEO Professionals" prepared by the FDNY for the EEPC indicates that 17 newly chosen EEO Counselors have not yet been scheduled for EEO training. Corrective action is required.

Recommendation: 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)

4. The EEO Office completed the investigation of 158 internal discrimination complaints during the audit period and issued probable cause or no probable cause determinations. In 83 (52.5%) of those cases, the EEO investigator's confidential written report was not issued within 90 days of the filing of the complaint. In addition, of the 24 internal discrimination complaints pending at the end of the audit period, 17 (70.8%) were filed more than 90 days prior to June 30, 2005 (the end of the audit period). Corrective action is required.
5. The EEO Office submitted copies of the discrimination files for the 10 most recently filed complaints. In four of those ten cases (#078-05, #046-05, #042-05, #068-05), the EEO investigator's confidential written report was not issued within 90 days of the filing of the complaint and there were no delay notification letters in the file. Corrective action is required.

Recommendation: 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)

## **EEO Training**

The FDNY is in compliance with the following requirement

The FDNY developed a plan—based on the DCAS standards—to train all new and existing employees on EEO. The training included a component on preventing sexual harassment. Between 2003 and 2005, 8403 employees (53% of the Department as of December 31, 2005) were trained by the FDNY EEO Office. The EEO training was conducted by the EEO Officer, Supervising Investigator/Director of Training Events, and an EEO Investigator. All of those individuals attended the DCAS's training for EEO professionals. In addition, the Department is conducting "massive refresher" EEO training for all civilian employees. The FDNY recently completed refresher training for the Emergency Medical Service personnel.

## **Selection and Recruitment**

The FDNY is in compliance with the following requirement:

For the relatively few vacancies in civilian titles, the Department advertised in minority- and female-oriented publications, including *Corporate Counsel Women of Color*, *Amsterdam News*, and *El Diario*.

The FDNY is not in compliance with the following requirements:

1. The EEO Officer informed EEPC auditors that the FDNY did not provide structured interview training for employees who conducted job interviews. Corrective action is required.

Recommendation: 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)

2. The EEO Officer informed EEPC auditors that her agency did not conduct adverse impact studies. If any were done, they were conducted by DCAS on competitive examinations. Corrective action is required.

Recommendation: 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)

### **Recruitment for Firefighter Positions**

FDNY is in compliance with the following requirement:

The Director of the Recruitment and Diversity Initiatives Unit told EEPC auditors that the long-term goal of her unit is “to create a Fire Department that reflects the city it serves and protects.” The Recruitment unit—which includes 30 full-time employees—conducts year round recruitment for firefighters in all five boroughs. The recruiters work in teams of two or three, and the department tries to assign them to the boroughs where they work or live. It also has a fixed budget of \$1.7 million, plus additional money for overtime and a marketing campaign. According to the Director, the focus of the FDNY’s marketing campaign (developed by the Arnell Group) follows recommendations contained in Columbia University’s 2004 study: *Improving Workforce Diversity at the FDNY*.

The recruitment unit has attended numerous parades, events, career fairs, and colleges with large minority and female representation. Some of these events include: NYCHA Basketball Tournament, Cinco de Mayo Festival, Annual Puerto Rican Day Parade, NY West Indian Day Parade, and African American Day Parade. All FDNY recruitment posters submitted to the EEPC contain pictures of minority and women firefighters. It has also recruited at local military bases, which have substantial minority populations. According to the director, the FDNY is working with DCAS to obtain the ability (which the Police Department currently has) to give exams at military facilities around the country.

The FDNY, once again, will be offering tutorial sessions around the city for the next firefighter exam (January 2007). The tutorial for the physical exam will be held on Randall’s Island. The Department is also conducting a phone bank program to keep firefighter applicants “in the pipeline” during the long selection process. The callers will encourage the applicants to

attend the tutorial programs. In addition, each applicant will receive at least five contacts until the written test is given. In the post-exam period, the FDNY fraternal organizations will stay in contact with the applicants.

More recently, the FDNY changed its hiring requirements in an effort to attract more minorities to the force. Under the new requirements (announced in August 2006), the number of college credits required of firefighter applicants will be cut in half, down to 15 credits from 30. Alternatively, candidates may substitute six months of work experience or two years of military experience for the 15 college credits.

### **Promotional Opportunities**

FDNY is in partial compliance with the following requirement:

The Deputy Civilian Personnel Manager was officially appointed Career Counselor. Her main functions are to inform FDNY candidates and employees about career advancement opportunities. The Department is also in the process of expanding the program, such as preparing a format for career counseling, issuing career counseling pamphlets, and hiring a summer intern to help in the process. Although the EEO Officer told EEPC representatives that her appointment was listed in an issue of the FDNY Civil Bulletin, the Department could not provide the Commission with that document. Corrective action is required.

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

### **EEO Officer Reporting Arrangement**

The FDNY is in compliance with the following requirement:

The EEO Officer (who resigned in late May 2006) reported to the Commissioner and met with him on an "as needed" basis.

The FDNY is not in compliance with the following requirement:

Although the EEO Officer told EEPC auditors that she keeps handwritten notes of her meetings with the Commissioner (indicating what was discussed and resolved), the Department could not provide copies of those notes. Corrective action is required.

Recommendation: 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.



## **EEO Officer Responsibilities**

The FDNY is in compliance with the following requirement:

The EEO Officer devoted 100% of her time to EEO matters.

The FDNY is not in compliance with the following requirement:

The EEO Officer informed EEPC auditors that she was not involved in selecting recruitment media or developing recruitment strategy; those were the sole responsibilities of the human resources department and the recruitment & diversity initiatives unit. Corrective action is required.

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

## **Supervisory Responsibility in EEO Plan Implementation**

The FDNY is not in compliance with the following requirement:

The EEO Officer informed EEPC auditors that she was “unsure” if supervisors and managers were directed to discuss the Department’s EEO policies with their subordinates. Corrective action is required.

Recommendation: It is the position of the DCAS (“Model Agency EEO Commitment Memo,” [http://extranet.dcas.nycnet/eo/pdf/model\\_memo.pdf](http://extranet.dcas.nycnet/eo/pdf/model_memo.pdf)) 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.

## **SUMMARY OF RECOMMENDED CORRECTIVE ACTIONS**

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)
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)
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)

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)
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)
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)
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.
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)
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.

In addition to the above recommendations, during the compliance process, the Commission requires that the agency head distribute a memorandum to all staff informing them of the changes that are being implemented in the agency's EEO program pursuant to the audit. This memorandum should re-emphasize the agency head's commitment to the agency's Equal Employment Opportunity Program.

## **Conclusion**

Pursuant to Chapter 36 of the New York City Charter and the previously cited preliminary determinations relating to the EEPC's audit of the FDNY's compliance with the City's Equal Employment Opportunity Policy, we respectfully request your response to the aforementioned preliminary determinations.

Your response should indicate what corrective actions your office will take, and which recommendations it intends to incorporate into its Equal Employment Opportunity Plan, where appropriate, to comply with the City's Equal Employment Opportunity Policy. As Assistant Commissioner for EEO Lyndelle Phillips informed us during the exit meeting of November 16, 2006, you have already implemented some of our recommended corrective actions. Please specify those corrective actions in your response. Please forward your response within thirty days of receipt of this letter.

Pursuant to Section 832 of the New York City Charter, as amended in 1999, if you do not implement all of the recommendations for corrective actions during a compliance period not to exceed six months, this Commission may publish a report and recommend to the Mayor the appropriate corrective actions that you should implement in your agency's Equal Employment Opportunity Plan.

In closing, we wish to thank you and your staff for the cooperation extended to the Equal Employment Practices Commission auditors during the course of this audit. If you have any questions regarding these preliminary determinations, please let us know.

Sincerely,



Ernest F. Hart, Esq.  
Chair

## APPENDIX – 1

The following table indicates personnel activity during the audit period, July 1, 2003 through June 30, 2005.

### New York City Fire Department

#### Hires by Sex and Ethnicity

Total Hires: 2,648

Male	Female	Total	Caucasian	African American	Hispanic	Asian	Total
2388	260	2648	1926	272	387	63	2648

#### Promotions by Sex and Ethnicity

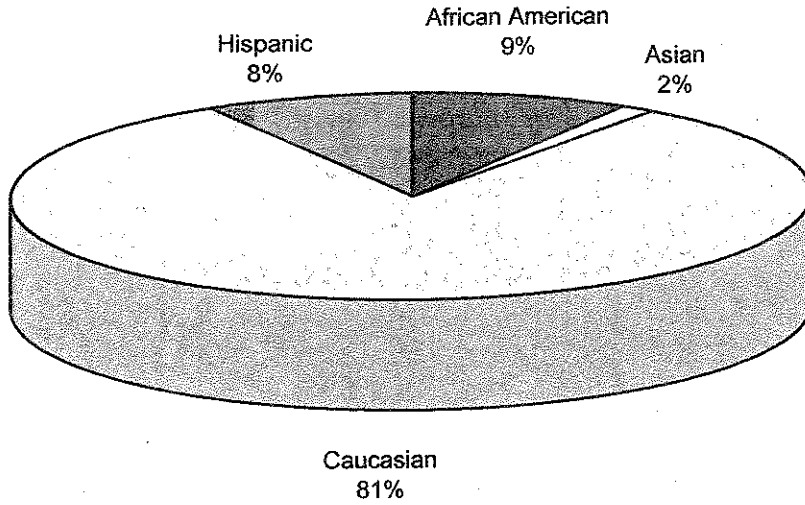
Total Promotions: 1,152

Male	Female	Total	Caucasian	African American	Hispanic	Asian	Total
979	173	1152	856	141	120	35	1152

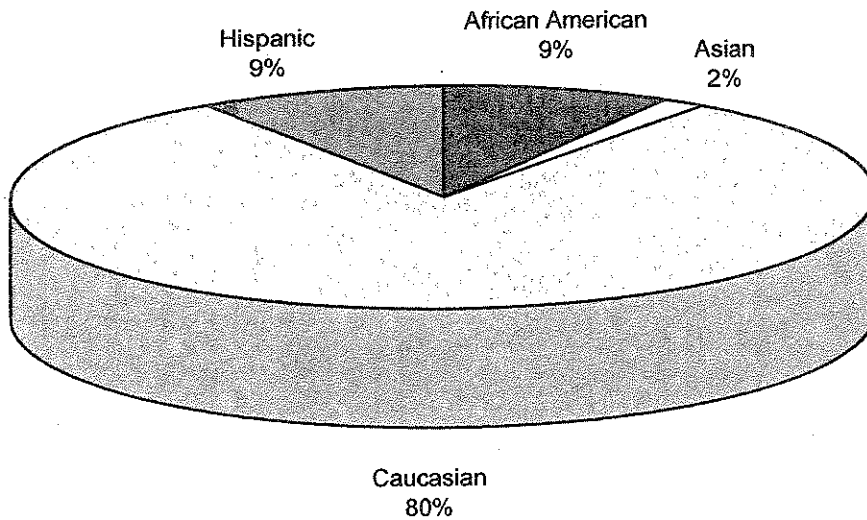
Source: Audit data supplied by the New York City Fire Department

Appendix - 2

New York City Fire Department  
Workforce by Ethnicity



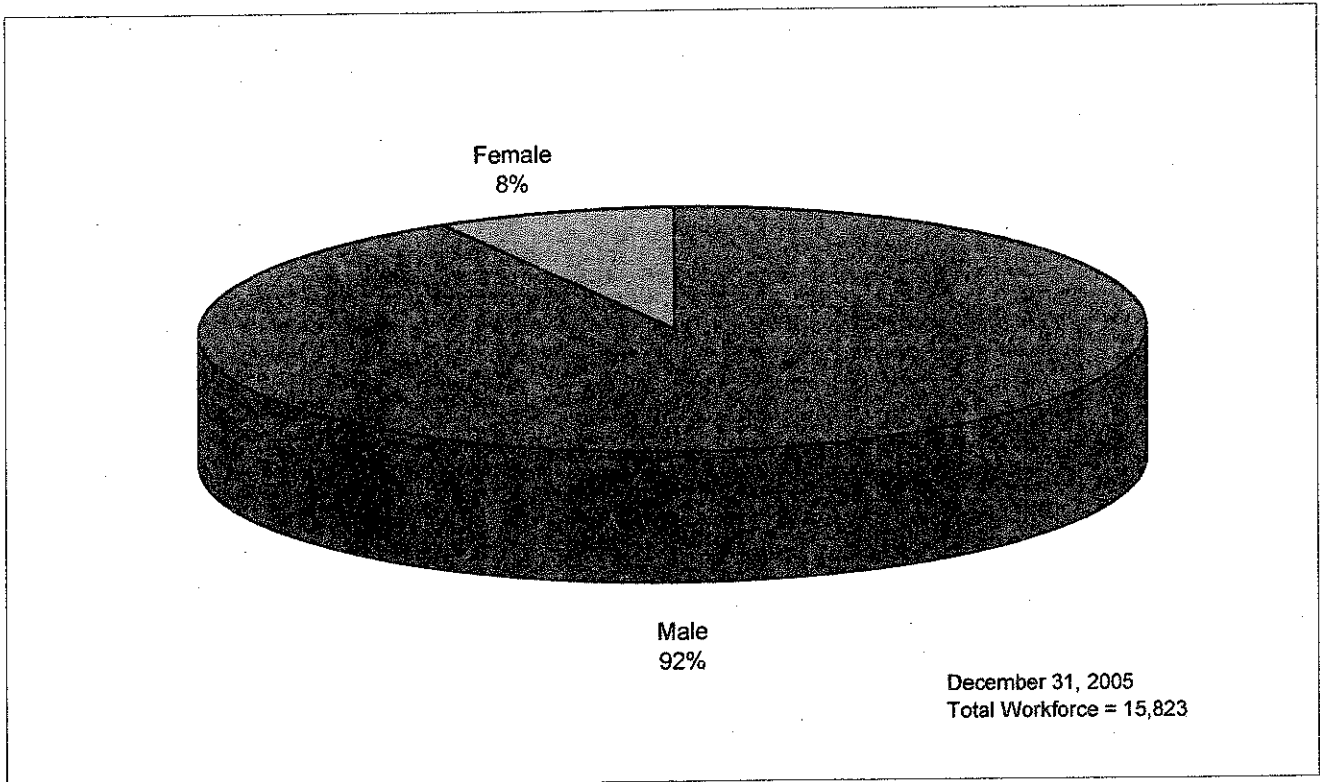
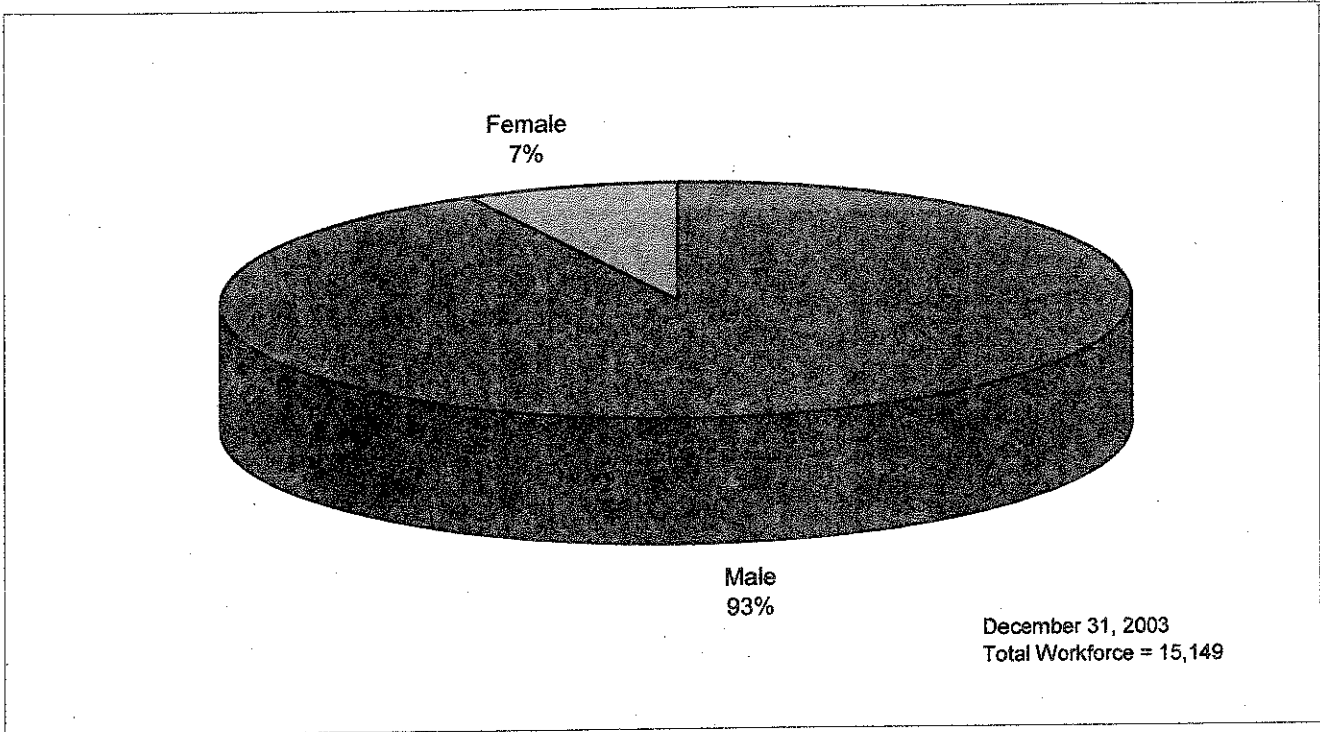
December 31, 2003  
Total Workforce = 15,149



December 31, 2005  
Total Workforce = 15,823

# Appendix - 3

## New York City Fire Department Workforce by Sex



Source= CEEDS and PRISE (DCAS)