



EQUAL EMPLOYMENT PRACTICES COMMISSION

City of New York

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February 22, 2011

Adrian Benepe

Commissioner

Department of Parks and Recreation

830 5th Avenue

New York, NY 10021

Re: Final Determination Pursuant to the Audit of the Department of Parks and Recreation (DPR) and its Compliance with the City's Equal Employment Opportunity Policy from January 1, 2006 through December 31, 2008

Dear Commissioner Benepe:

Thank you for your January 31, 2011 response to our December 15, 2010 Letter of Preliminary Determination pursuant to 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 EEPD *Document and Information Request Form*; interview questionnaires completed by the DPR's EEO Officer/Section 55-A Coordinator, EEO Counselor/Investigator, Director of Training, General Counsel, Director of Personnel, 5 Career Counselors, Accessibility Coordinator and 12 EEO Counselors; in-person interviews with the EEO Officer/Section 55-A Coordinator and the Deputy Director of EEO; and responses to the EEPD's *Employee Survey* and *Supervisor/Manager Survey*.

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

Agree

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

Recommendation #1

To ensure that all employees are aware of the Disability Rights Coordinator (or Accessibility Coordinator) -- 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(s). (Sect. VB and VC, EEOP)

Recommendation #2

All internal discrimination complaint files should include an Agency Complaint of Discrimination Based on Anonymous/Oral Complaint Form completed by the complainant or an EEO representative, or a complaint that captures the information required on this form. (DCPIG Sect. 10/12 and Appendix D)

Recommendation #7

To ensure that employees know the identities of the agency's Career Counselors, the personnel officer should re-distribute to all employees the identity and the type of guidance which is available from the Career Counselors. This should be done at least once each year. (12/14/ 2006 *Addendum to EEOP Standards and Procedures to Be Utilized By City Agencies (2005)* and Sect. VF, EEOP)

Disagree

We respectfully disagree with your statement that "all recommendations were implemented prior to our meeting." For the following reasons, hereafter identified as *EEPC Rationale*, we disagree with your response to the following recommendations:

Recommendation #4

The agency head should sign-off on all final determinations concerning EEO complaint resolutions to indicate that they have been reviewed and whether the recommendations, if any, have been approved and adopted. Such sign off may be in written or electronic form. (Sect. VB, EEOP and Sect. 12b, DCPIG)

Your Response

This is already the practice and has been for the past six years.

EEPC Rationale

Confidential written reports for complaints EEO 08-02 and EEO 08-06 did not contain your signature to indicate that the final determinations were reviewed and approved.

Recommendation #5

Because the EEOP holds each agency responsible for retaining information about personnel actions, discretionary hiring, and applicants as required by federal, state and local law and/or the City's official records retention schedule, the agency should maintain complete applicant logs (which include the *Division/Unit, JVN#, Civil Service Title, Office Title, Interviewers' Names, Applicants Names, Security Number, Ethnicity, Gender, Disability, Veteran, Interview Date, Result, Reason Selected/Not Selected, and Recruitment Source*) for all discretionary appointments. (Sect. IV, EEOP and DCAS issued *Applicant Log*)

Your Response

Our Personnel division already maintains applicant logs. The logs are contained in the Vacancy Accountability and Tracking System (VAT) and are reviewed by the EEO office for all

fulltime hires. The VAT contains a Discretionary Applicant Form, which contains demographic data, resumes, rating sheets, etc.

EEPC Rationale

The DPR used applicant logs to retain applicant/hire information for its discretionary positions (i.e. name, agency code, agency, title code, job title, recruitment source, gender, ethnicity, disability status, veteran's status, date, person interviewed by, and unit/work location). Candidates were interviewed by panels and received a separate rating from each panel member. However, neither the applicant logs nor rating sheets identified the reason for selection/non-selection. Your response does not indicate that the agency records this information as a practice. The Recommendation reflects this finding.

Recommendation #6

Since the EEOP requires that each agency assess its criteria for selecting persons for mid-level to high-level discretionary positions to determine whether there is adverse impact upon any particular racial, ethnic, disability, or gender group, the DPR should conduct an assessment of its selection criteria for discretionary titles. The DPR can use, and may modify, the Disparate Impact Analysis Program (an on-line Internet based application) recommended by DCAS/DCEEO by accessing: <http://www.hr-software.net/EmploymentStatistics/DisparateImpact.htm>. To the extent that adverse impact is discovered, the agency head should determine whether the criteria being utilized are job-related. If the criteria are not job-related, the agency should discontinue using those criteria. (Sect. IV, EEOP)

Your Response

We will explore this recommendation, but it is important to note that "mid to high" level positions are usually governed by the VAT process (see above) and include strict scrutiny by the EEO office.

EEPC Rationale

Your response does not indicate that the results of the past assessment (of the manner in which mid-level to high-level candidates are selected for employment to determine whether there is any adverse impact upon any particular racial, ethnic, disability, or gender group) were conclusive as to whether there was adverse impact on any particular racial, ethnic, disability, or gender group. Nor does it indicate whether the agency head, Human Resources Director and EEO Officer used the results to determine a recruitment strategy for positions where underutilization existed.

Recommendation #8

Since the City's Equal Employment Opportunity Policy holds managers and supervisors accountable for effectively implementing EEO-related policies and ensuring non-discrimination within their departments or units, the agency's managerial performance evaluation form should contain a rating for EEO – which covers responsibilities and processes for assuring that people are appropriately employed, effectively and efficiently utilized, and dealt with in a fair and equitable manner. (EEOP, Sect. VE)

Your Response

This was previously negotiated and was implemented four years ago.

EEPC Rationale

The managerial performance evaluation form submitted to the EEPC by DPR contains an EEO Section with a *notation* of whether the supervisor/manager has violated the EEO Policy, failed to cooperate with the EEO Office or promptly report any allegations of discriminatory conduct, or provided exceptional service in support of the EEO Office.

The agency head's accountability statement in Agency Specific EEO Plan encouraged managers/supervisors to support a work environment that values fairness, equity and respect and holds them accountable for implementing the policy and ensuring that the agency does not harass or discriminate against employees and applicants for employment. However, their evaluations did not contain an EEO *rating* which covers these responsibilities.

Recommendation #10

Because the EEOP requires the EEO Officer to report directly to the agency head (or if approved by DCAS, to a direct report to the agency head), appropriate documentation of meetings and other communications between the EEO Officer and the agency head regarding decisions that impact the administration of the agency's EEO program must be maintained. (Sect. VB, EEOP, and EEPC Position)

Your Response

This Recommendation was implemented after the December Audit meeting. The memorandum reflects the existence of a meeting, but does not memorialize the communications of the meeting.

EEPC Rationale

In order to maintain the integrity of the DPR's EEO Program, appropriate documentation of decisions that impact the administration of the agency's EEO program must be maintained.

Requires Clarification

Your response to the following recommendations requires clarification:

Recommendation #3

Since the EEOP states that all complaints, requests, mediation efforts, investigations, requests for accommodation and their outcomes must be documented by the EEO Office, it is the Commission's position that all internal discrimination complaint files should contain written indication of the corrective action(s) taken as a result of the determination. (Sect. III and IV, EEOP and EEPC Position)

Your Response

The written corrective action is already contained in the reports. Therefore, this recommendation is most relevant to the follow-up. We already have the practice of a written nine month follow-up with complaints and will follow up with either the Disciplinary Division or Management as recommended.

EEPC Rationale

Complaints EEO 08-02, EEO 08-03, EEO 08-10, and EEO 08-11, did not contain documentation that corrective action was taken as a result of the EEO Officer's investigation. Your response states that a practice is in place, but does not address the recommendation that these and all complaint files should contain written indication of the corrective action(s) (i.e. documentation of training, reprimand, etc.) that occurred as a result of a determination.

Recommendation #9

At least twice a year during normal staff meetings, managers and supervisors must 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. These meetings must be documented. (DCAS, Model Agency EEO Commitment Memo and EEPC Position)

Your Response

While this affirmation is contained in the on-line EEO/Harassment Training, we will prepare an affirmation for distribution.

EEPC Rationale


Your response does not indicate whether managers and supervisors will be directed to 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 during staff meetings at least twice a year.

Conclusion

Pursuant to section 832 of the New York City Charter, this Commission will initiate an audit compliance procedure not to exceed six months. However, you may respond to the aforementioned determinations prior to the initiation of audit compliance. If you choose to issue a written response, please do so within thirty days. If you choose not to issue a written response, we will initiate audit compliance shortly thereafter. EEPC Counsel/Compliance Director Judith Quiñonez or her designee will contact your EEO Officer in seven days to ascertain your intentions.

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 the DPR, we look forward to a mutually satisfactory compliance process.

Sincerely,


Abraham May, Jr.
Executive Director

C: Ricardo Granderson, EEO Officer
Judith Garcia Quiñonez, Counsel/Compliance Director