



**Equal Employment
Practices Commission**

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September 8, 2014

Rick D. Chandler, P.E.
Commissioner
NYC Department of Buildings
280 Broadway, 7th Floor
New York, NY 10007

Re: Preliminary Determination: Audit, Evaluation and Monitoring of
the Department of Buildings *Discrimination Complaint and
Investigation Procedures* from January 1, 2012 to December 31,
2013.

Dear Commissioner Chandler:

On behalf of the members of the Equal Employment Practices Commission (Commission or EEPC), thank you and your agency for the cooperation extended to our staff during the course of this audit and evaluation. This letter contains the Commission's findings and preliminary determinations pertaining to the period covering January 1, 2012 to December 31, 2013.

Chapter 36, Section 831(d)(5) of the New York City Charter empowers this Commission to audit and evaluate the employment practices and procedures of city agencies and their efforts to ensure fair and effective equal employment opportunity for women and minority employees and applicants seeking employment. Sections 831(d)(2) and 832(c) authorize this Commission to make a determination that any agency's plan, program, procedure, approach, measure or standard does not provide equal employment opportunity, require appropriate corrective action and monitor the implementation of the corrective action it prescribes.

The Department of Buildings, which may herein be referred to as "the agency," falls within the Commission's purview under Chapter 36, Section 831(a) of the New York City Charter, which delineates city agency as any "city, county, borough or other office, administration, board, department, division, commission, bureau,



corporation, authority, or other agency of government where the majority of the board members of such agency are appointed by the mayor or serve by virtue of being city officers or the expenses of which are paid in whole or in part from the city treasury..."

This Commission has adopted *Uniform Standards for EEPAC Audits*¹ and *Minimum Equal Employment Opportunity Standards for Community Boards* to assess agencies' practices and policies. These standards are founded upon and consistent with federal, state and local laws, regulations, procedures and policies including, but not limited to, the Citywide Equal Employment Opportunity Policy - Standards and Procedures to be Utilized by City Agencies; the New York City Human Rights Law (NYC Administrative Code, §§8-107(1)(a) and (d), 8-107.13, and 8-107.1); the Equal Employment Opportunity Commission's Instructions to Federal Agencies for EEO, Management Directive 715; the Americans with Disabilities Act and its Accessibility Guidelines; and the equal employment opportunity requirements of the New York City Charter. Prescribed corrective actions are consistent with the aforementioned parameters.

Since this Commission is empowered to review and recommend actions which each agency should consider including in its annual plan of measures and programs to provide equal employment opportunity (Annual EEO Plan), the audited agency should incorporate required corrective actions in its current EEO Program and prospective Annual EEO Plans.

Scope and Methodology

This Commission's audit methodology includes collection and analysis of the documents, records and data the agency provides in response to the EEPAC preliminary interview questionnaires and document/information requests, which are sent to EEO professionals and others involved in EEO program administration. EEO professionals (including, but not limited to, past or current EEO Officers, Deputy or Co-EEO Officers, EEO Counselors, EEO Trainers, EEO Investigators, Disability Rights Coordinators,) and others involved in EEO program administration such as the General Counsel are given a two-week deadline to complete and return their individual questionnaires and requested documents. Applicable information from the agency's *Annual EEO Plans and Quarterly EEO Reports* are also reviewed.

The Commission's EEO Program Analysts also conduct additional research, follow-up discussions, and/or interviews with EEO professionals, when appropriate.

Description of the Agency

The Department of Buildings ensures the safe and lawful use of over 975,000 buildings and properties by enforcing the City's Building Code, Electrical Code, Zoning Resolutions, New York State Labor Law and New York State Multiple Dwelling Law. Activities include performing plan examinations, issuing construction permits, inspecting properties, and

¹ Corresponding audit/analysis standards are numbered throughout the document.



licensing trades. The agency also issues Certificates of Occupancy and Place of Assembly permits.

PRELIMINARY DETERMINATIONS AFTER AUDIT AND ANALYSIS

Following are the corresponding audit standards for each subject area along with the EEP's findings and required corrective actions, where appropriate:

I. ISSUANCE, DISTRIBUTION AND POSTING OF EEO POLICIES:

Determination: The agency is in compliance with the standards for this subject area.

1. Issue a general EEO Policy statement or memo reiterating commitment to EEO, declaring the agency's position against discrimination on any protected basis, advising employees of the names and contact information of EEO professionals, and attaching, or providing employees pertinent electronic links to, an EEO Policy/Handbook.
 - ✓ The Commissioner issued a general EEO Policy statement via email on July 22, 2013, to all staff reiterating the agency's commitment to preventing illegal discrimination by ensuring that all employees and applicants for employment are aware of their rights and obligations under the City's EEO Policy, by maintaining fair employment practices and by encouraging a work environment that tolerates and appreciates differences among employees. The Policy statement included the names and contact information of the principal EEO Professional and EEO Counselor/ Investigator and also included a link to the *Equal Employment Opportunity Policy- Standards and Procedures to Be Utilized by City Agencies* and EEO Policy Handbook: *About EEO; What You May Not Know*.
2. Distribute/Post a paper or electronic copy of the *Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies* – or an agency EEO Policy that conforms to city, state and federal laws – for use by managers, supervisors, and legal, human resources and EEO professionals. Include, or attach as addenda: a policy against sexual harassment; uniform and responsive procedures for investigating discrimination complaints and providing reasonable accommodations; an up-to-date list of protected classes under NYC and NYS Human Rights Laws; and current contact information for the agency's EEO professionals, as well as federal, state and local agencies that enforce laws against discrimination.
 - ✓ The agency distributed to all employees, and posted on its website, a link to the *Equal Employment Opportunity Policy, Standards and Procedures to be Utilized by City Agencies* which included a policy against sexual harassment, an up to date list of protected classes under NYC and NYS Human rights law and current contact information for federal, state and local agencies that enforce laws against discrimination.

- Although the agency provided a copy of the *Guidelines for the Implementation of City of New York's Discrimination Complaint Procedures* it did not demonstrate that a copy had been posted or distributed for use by managers, supervisors, and legal, human resources and EEO professionals.

NOTE: The agency should post or distribute uniform procedures for investigating discrimination complaints for use by managers, supervisors, and legal, human resources and EEO professionals (e.g. *Guidelines for the Implementation of City of New York's Discrimination Complaint Procedures*).

II. TRAINING-DISCRIMINATION COMPLAINT AND INVESTIGATION PROCEDURE:

Determination: The agency is in compliance with the standards for this subject area.

1. Establish and implement an EEO training plan for new and existing employees to ensure that all individuals who work within the agency, including managers and supervisors, receive training on unlawful discriminatory practices under local, state and federal EEO laws; EEO rights and/or responsibilities; discrimination complaint and investigation procedures; prevention of sexual harassment; and reasonable accommodation procedures.
- ✓ The agency established and implemented a mandatory annual EEO training plan for all employees including managers, supervisors, line staff, temporary employees and college aides. The agency head sent an annual memo to all staff reminding them of their obligation to complete the *Department of Citywide Administrative Services Computer Based Training*, the memo included instructions on how to access the training and a deadline for completion. In addition, the agency held eight *Sexual Harassment and Diversity/ Inclusion* training sessions between 2012 and 2013. According to information contained within the *Agency's Quarterly Reports on EEO Activity* over 91% (1,106) employees completed the *Department of Citywide Administrative Services Computer Based Training* during the audit period.

III. DISCRIMINATION COMPLAINT AND INVESTIGATION PROCEDURES:

Summary of Complaint Activity: The Department of Buildings reported 6 external complaints and no internal complaints of discrimination were filed during the period in review. (A breakdown is included in Appendix 1.) Since no internal complaints were filed this Commission could not conduct a robust analysis of the agency's internal complaint and investigation procedures. The following findings are based on information and forms submitted.

Determination: The agency is in partial compliance with the standards for this subject area.

1. Include in the complaint file a *Discrimination Complaint Form* or a complaint that captures the facts (including pertinent dates) that identify the respondent(s) with reasonable specificity and provide the essence of the circumstances which gave rise to the alleged discrimination.
 - ✓ The agency's *Complaint of Discrimination* form allowed an investigator to capture the facts; pertinent dates, the identity of the complainant and respondent(s), and provide the essence of the circumstances which gave rise to the alleged discrimination.
2. Serve the respondent with a notice of the complaint that includes the respondent's right to respond to the allegations, and right to be accompanied by a representative of his/her choice. Maintain in the complaint file documentation regarding the service of notice on the respondent.
 - ✓ The agency's *Notice of Discrimination Complaint* form included the respondent's right to respond to the allegations, and the right to be accompanied by a representative of his/her choice.
3. Issue and maintain written confirmation when a complaint is withdrawn or resolved by agreement of the parties.
 - ✓ The agency followed the *Guidelines for the Implementation of City of New York's Discrimination Complaint Procedures* which required that the principal EEO Professional notify the respondent in writing if the complainant has withdrawn the complaint and whether the investigation has been terminated or will continue.
4. Take thorough notes, of words spoken and facts provided, during each interview. Include these notes in each complaint file. Word processed notes are preferred.
 - ✓ The agency followed the *Guidelines for the Implementation of City of New York's Discrimination Complaint Procedures* which required that the interviewer "take thorough notes, as close to verbatim as possible, during each interview and review with witnesses (at the conclusion of the interview) the points contained in the notes to confirm their accuracy and determine whether the interviewee had anything to add".
5. Issue a Confidential Written Report within 90 days of the date the discrimination complaint was filed, although the investigation shall be commenced immediately.
 - ✓ The agency followed the *Guidelines for the Implementation of City of New York's Discrimination Complaint Procedures* which required that a confidential written report be issued less than 90 days of the date a discrimination complaint is filed.



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

NOTE: Since no complaints were filed during the audit period, the Commission did not conduct further analysis in this area.

7. Generate a report labeled "Confidential" consisting of Facts, Analysis, Conclusion, Recommendation, and Agency Head's Review at the conclusion of each complaint investigation.
 - ✓ The agency followed the *Guidelines for the Implementation of City of New York's Discrimination Complaint Procedures* which required that the principal EEO Professional prepare a report labeled "confidential" that included facts, analysis, conclusion, recommendation as a result of an investigation, and submit the report to the agency head for review.
8. The agency head reviews the EEO professional's report; promptly issues a written/electronic determination adopting, rejecting, or modifying the recommended action; and signs each final determination (via writing or electronically) to indicate it has been reviewed and adopted.
 - ✓ The agency followed the *Guidelines for the Implementation of City of New York's Discrimination Complaint Procedures* which required that the agency head review the EEO Professional's report; promptly issue a written/electronic determination adopting, rejecting, or modifying the recommended action; and sign each determination (via writing or electronically) to indicate it has been reviewed and adopted.
9. In order for the agency to demonstrate it has a responsive procedure for investigating discrimination complaints, in accordance with the City Human Rights Law, the complaint procedure requires written communication informing the complainant and respondent of the conclusion and outcome of a complaint investigation
 - ✓ The agency followed the *Guidelines for the Implementation of City of New York's Discrimination Complaint Procedures* which required written communication informing the complainant and respondent of the outcome of an investigation once it is concluded.
10. Internal discrimination complaint files contain written indication of their outcomes and corrective action(s) taken as a result of the determination.
 - ✓ The agency followed the *Guidelines for the Implementation of City of New York's Discrimination Complaint Procedures* which required that complaint files contain written

indication of their outcomes and corrective action(s) taken as a result of the determination.

11. Notify the complainant and respondent in writing when the investigation by the EEO professional has been transferred because of the filing of an external complaint.

- ✓ The agency followed the *Equal Employment Opportunity Policy Standards and Procedures to be Utilized by City Agencies* which required that the principal EEO Professional notify the complainant and the parties who are the subject of the complaint in writing that the investigation by the principal EEO Professional has been transferred because of the filing of the external complaint

12. Establish a complaint tracking and monitoring system that permits the agency to identify the location, status, and length of time elapsed in the EEO complaint process, the issues and the bases of the complaints, the aggrieved individuals, and other information necessary to analyze complaint activity to identify trends.

- ✓ The agency's *EEO Complaint Log* allowed for agency EEO Professionals to track complaints by sequence number, date of complaint, name of complainant/ respondent, status (complete or incomplete), and length of time elapsed from the incident to date of complaint.
 - The agency's *Complaint Log* did not identify the location within the agency where the allegations arose. **Corrective Action is required.**

Corrective Action #1: Establish a complaint tracking and monitoring system that permits the agency to –in addition to the aforementioned items– identify the specific departments/units where the allegations arose in order to analyze complaint activity and recognize trends within the agency.

13. Maintain EEO-related files in a secure area to ensure confidentiality.

- ✓ All EEO complaint files and related records are maintained in locked cabinets in the agency's EEO office which was only accessible to EEO Professionals.

14. Establish a procedure where the EEO professional, HR professional (or personnel responsible for employee discipline), and General Counsel review an employee's record for prior incidents of discriminatory conduct as part of the external complaint process.

- ✓ The principal EEO Professional reviewed employees' records for prior incidents of discriminatory conduct to support the General Counsel in the external complaint process. In addition, the General Counsel also reviewed past external complaint files to ascertain if an employee had previously been party to or named as a respondent in an external complaint.

**IV. EEO AND REASONABLE ACCOMMODATIONS FOR EMPLOYEES/
APPLICANTS FOR EMPLOYMENT WITH DISABILITIES:**

Determination: The agency is in compliance with the standards for this subject area.

1. Ensure that information regarding employee rights and obligations, and the complaint, investigation and reasonable accommodation procedures are made available in appropriate alternative formats (i.e., large print, audio tape and/or Braille) upon request to employees and applicants for employment with disabilities.
- ✓ Although there were no requests for alternate formats, the principal EEO Professional confirmed that the agency was prepared to provide information regarding employee rights and obligations and the complaint, investigation and reasonable accommodation procedures in large print and audio format to employees and applicants for employment with disabilities, upon request.
2. Document reasonable accommodation requests and their outcomes.
- ✓ Reasonable accommodation requests are made using the *Request for Reasonable Accommodation* form – which also indicated the outcome. All requests were maintained in confidential files within the EEO office.

**V. RESPONSIBILITY FOR IMPLEMENTATION OF COMPLAINT INVESTIGATION PROCEDURES -
EEO PROFESSIONALS:**

Determination: The agency is in compliance with the standards for this subject area.

1. Appoint a principal EEO Professional to implement EEO policies and standards within the agency. The principal EEO Professional is trained and knowledgeable regarding city, federal and state EEO laws; the requirements of the agency's EEO policies, standards and procedures; and the prevention, investigation, and resolution of discrimination complaints.
- ✓ The agency has appointed a principal EEO Professional to implement EEO policies and standards within the agency. The principal EEO Professional developed knowledge of city, state and federal EEO laws policies, standards and procedures regarding the prevention, investigation and resolution of discrimination complaints through 24 years of EEO and investigatory experience as a Compliance Specialist and EEO Investigator at various agencies within the City of New York. The principal EEO Professional received *Diversity and Equal Employment Opportunity Basic Training for EEO Professional* from the Department of Citywide Administrative Services and completed *Conducting Investigations and Sexual Harassment Prevention* seminar at Cornell University ILR.



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2. Appoint at least one EEO professional of each gender to receive discrimination complaints and conduct investigations.
 - ✓ The agency has appointed at least one EEO professional of each gender (i.e. one female EEO Officer, one male EEO Counselor/ Investigator) to receive discrimination complaints and conduct investigations.
3. The principal EEO Professional works cooperatively and closely with the General Counsel in the implementation of the EEO policies and related procedures.
 - ✓ The principal EEO Professional worked cooperatively and closely with the General Counsel in compiling necessary files and information when external complaints were filed and provided any additional support as needed for the implementation of EEO policies and related procedures.
4. The principal EEO Professional ensures that employees receive EEO training; supervises the EEO-related activities of other EEO professionals; ensures that EEO policies and complaint procedures are posted at each site where the agency conducts business; ensures that EEO policies and procedures are available in alternative formats (i.e., large print, audio tape and/or Braille); and provides guidance and assistance to agency managers, supervisors and human resource professionals in addressing issues relating to equal employment opportunity.
 - ✓ The principal EEO Professional, who is also the agency's EEO Trainer, ensured that all employees completed computer based EEO training as mandated by monitoring an electronic log which was updated daily. The principal EEO Professional posted the agency's EEO policy statement at locations where the agency conducted business and supervised the EEO-related activities of the EEO Counselor/ Investigator. (See Sec. IV. 1. for information regarding the availability of policies in alternative formats.)
5. The principal EEO Professional will monitor, analyze and report significant trends in the nature and disposition of discrimination complaint activity to provide the agency insight into the extent to which the agency is meeting its obligations under city, state and federal anti-discrimination laws and regulations.

NOTE: Since no internal complaints were filed during the audit period, the Commission did not conduct further analysis in this area.
6. The principal EEO Professional reports directly to the agency head (or an approved direct report other than the General Counsel) in order to exercise the necessary authority and independent judgment to fulfill EEO responsibilities.

- ✓ The principal EEO Professional reported directly to the Commissioner and attended monthly meetings to discuss EEO matters. The reporting relationship principal EEO Professional and Commissioner was reflected via the agency's organization chart.

VI. RESPONSIBILITY FOR IMPLEMENTATION OF COMPLAINT INVESTIGATION PROCEDURES –
GENERAL COUNSEL:

Determination: The agency is in compliance with the standards for this subject area.

1. The General Counsel assists the agency head in identifying and determining appropriate responses to EEO issues; and is responsible for the investigation of, and response to, external EEO complaints.
- ✓ The General Counsel is responsible for the investigation of and response to external EEO complaints. The General Counsel routinely apprised the agency head of litigation and significant EEO matters as they arose.
2. The General Counsel works with the principal EEO Professional in the implementation of the agency's EEO policies and related procedures; is available to consult on internal EEO investigations; and informs the principal EEO Professional when external complaints or litigation involving EEO matters are brought against the agency.
- ✓ The General Counsel was available to the principal EEO Professional to help ensure that agency policies were EEO complaint. The General Counsel assisted in identifying and determining appropriate responses to EEO matters as they arose, worked with the principal EEO Professional in the implementation of the *Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies*, and informed the principal EEO Professional when external complaints or litigation involving EEO matters were brought against the agency.
3. The General Counsel reviews the agency's annual number of EEO complaints and the agency's obligations as a result of corrective actions required under court decrees and/or governmental audits on an annual basis.
- ✓ The agency reported no employment discrimination complaints were filed internally and no court decrees were in effect during the audit period. Therefore, this Commission did not conduct further analysis in this area.
4. The General Counsel tracks dispositions of external complaints and reports trends, issues and problems to agency leadership for appropriate action.
- ✓ The Office of the General Counsel tracked the disposition of external EEO complaints and also tracked the disposition of litigation filed in State and Federal Courts. The General Counsel documented types of external complaints to aid in the evaluation of potential



trends, issues and problems being reported against the agency. The General Counsel assisted the principal EEO Professional in generating the agency's *Quarterly Reports on EEO Activity*, which were submitted to the EEPC quarterly for each year of the audit period.

VII. FINAL ACTION FOR AGENCY HEAD:

After implementation of the EEPC's corrective actions, if any:

1. The agency head distributes a memorandum informing employees of the changes implemented in the EEO program pursuant to the EEPC's audit/analysis and re-emphasizing the agency head's commitment to the EEO program.

Final Action: Distribute a memorandum signed by the agency head informing employees of the changes implemented in the EEO program pursuant to the EEPC's audit/analysis and re-emphasizing the agency head's commitment to the EEO program.

Conclusion

Pursuant to Chapter 36 of the New York City Charter, your agency has the *option* to respond to this *preliminary determination*, but must respond to our Final Determination if corrective action is required.

Optional Response to preliminary determination: If submitted, your optional response should indicate, with attached documentation, what steps your agency has taken or will take to implement the prescribed corrective actions, and must be received in our office within 14 days from the date of this letter. No extensions will be granted for the *option* to respond to the *preliminary determination*.

(Optional Conference) During the Optional Conference, we will discuss the immediate steps your agency should take and address questions regarding your agency's implementation of the prescribed corrective action(s).

(No Response Option) If your agency does not respond to this preliminary determination within 14 days, it will become the EEPC's Final Determination.

Mandatory Response to Final Determination: Following this preliminary determination, the EEPC will mail a Final Determination where we may modify or eliminate the corrective actions based on verified information; identify remaining action which requires further monitoring in order to ensure implementation; and assign a mandatory compliance-monitoring period of up to 6 months for this purpose. Pursuant to Chapter 36 of the New York City Charter your agency must respond to our Final Determination within 30 days. Your response to the Final Determination will initiate the compliance monitoring period.



In closing, we want to thank you and your staff for the cooperation extended to the Equal Employment Practices Commission's EEO Program Analysts during the course of our audit and analysis.

Respectfully Submitted by,

A handwritten signature in black ink, appearing to read "Ilacia N. Zuell", written over a horizontal line.

Ilacia N. Zuell, EEO Program Analyst

Approved by,

A handwritten signature in black ink, appearing to read "Charise L. Hendriks", written over a horizontal line.

Charise L. Hendriks, PHR
Executive Director

c: Bernadette Nespole, Principal EEO Professional

Appendix - 1

Department of Buildings
Summary of Complaint Activity
(as reported by the agency)

	INTERNAL COMPLAINTS (#)	EXTERNAL COMPLAINTS (#)
TOTAL NUMBER OF COMPLAINTS	0	6
Recruitment		
Testing		
Hiring		
Work Assignments		4
Transfer		2
Salary		3
Benefits		
Leave		1
Performance Evaluation		1
Promotion		3
Demotion		1
Training Opportunities		1
Transfer		1
Discipline		
Discharge		1
Working Conditions		4
Others: (Specify)		
RETALIATION		3

F. Total Number of Reasonable Accommodation Request Received during FY 2013.

Disability 18 Religion 1
Status as Victim of Domestic Violence, Sex Offense or Stalking 0