



The FCC's EEO Requirements

Overview

The FCC's outreach and recruitment requirements are intended to promote equal opportunity in employment in the regulated mass media. The rules are designed to be race and gender neutral while providing for broad dissemination of information about employment opportunities.

For now, the requirements apply only to full-time employees. The FCC continues to study whether and to what extent part-time positions should be covered by the rules.

Small Employment Unit and Small Market Exemptions

All employers, regardless of size, are prohibited from discriminating in employment practices on the basis of race, national origin, color, religion, or sex.

Every station must file an EEO Program Report (Form 396) with its license renewal application. Broadcast station employment units with fewer than five full-time employees, however, are exempt from the outreach and recordkeeping requirements.

In addition, broadcast station employment units with five to ten employees and units comprised of stations in "small markets" – licensed to a community located in a county that is outside of all metropolitan areas, or located in a metropolitan area that has a population of fewer than 250,000 persons – need complete only two, rather than four, general outreach initiatives in a two-year period.

Radio station employment units with ten or fewer employees are exempt from filing a mid-term EEO report.

Owners holding a 20 percent or greater voting interest in a licensee will not be regarded as station "employees" for EEO purposes (unless a single owner has more than 50 percent voting control, in which case he or she will be the only one not regarded as an "employee").

Public File and Reporting Requirements

Employment units must annually document their recruitment efforts, place them in the public file, and post them on their web sites.

Television station employment units with five or more full-time employees, and radio station employment units with more than ten employees, must file the two most recent public file reports with the Commission midway through the license term, using Form 397.

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Outreach Requirements

The fundamental outreach obligation of every employment unit is to widely disseminate information concerning each full-time job vacancy.

Employment units must provide notice of openings to qualifying organizations that request such notice. Employment units must regularly engage in longer-term recruitment initiatives. The Commission provides a menu of sixteen choices from which to select such initiatives.

Specific Requirements

The FCC's EEO program for broadcast station employment units contains six elements, which require an employment unit to:

Outreach

(1) Recruit for every job vacancy in its operation. A job filled by an internal promotion is not considered a vacancy for which recruitment is necessary. A station employment unit must use recruitment sources for each vacancy sufficient in its reasonable, good faith judgment to widely disseminate information concerning the vacancy. An employment unit must provide notification of each vacancy to any organization that distributes information about employment opportunities to job seekers or refers job seekers to employers, upon request by such organization. To be entitled to notice of vacancies, the requesting organization must provide the employment unit with its name, mailing address, e-mail address (if applicable), telephone number, and contact person, and identify the category or categories of vacancies of which it requests notice. (An organization may request notice of all vacancies).

Initiatives

(2) Engage in at least four of the following initiatives in a two-year period coinciding with the license renewal filing date, if the employment unit has more than ten full-time employees; or engage in two initiatives if it has five to ten full-time employees or is in a smaller market:

(i) participation in at least four job fairs by station personnel who have substantial responsibility in the making of hiring decisions;

(ii) hosting of at least one job fair;

(iii) co-sponsoring at least one job fair with organizations in the business and professional community whose membership includes substantial participation of women and minorities;

(iv) participation in at least four events sponsored by organizations representing groups present in the community interested in broadcast employment issues, including conventions, career days, workshops, and similar activities;

(v) establishment of an internship program designed to assist members of the community to acquire skills needed for broadcast employment;

(vi) participation in job banks, Internet programs, and other programs designed to promote outreach generally (not primarily directed to providing notification of specific job vacancies);

(vii) participation in scholarship programs designed to assist students interested in pursuing a career in broadcasting;

(viii) establishment of training programs designed to enable

station personnel to acquire skills that could qualify them for higher level positions;

(ix) establishment of a mentoring program for station personnel;

(x) participation in at least four events or programs sponsored by educational institutions relating to career opportunities in broadcasting;

(xi) sponsorship of at least two events in the community designed to inform and educate members of the public as to employment opportunities in broadcasting;

(xii) listing of each upper-level category opening in a job bank or newsletter of media trade groups whose membership includes substantial participation of women and minorities;

(xiii) provision of assistance to unaffiliated non-profit entities in the maintenance of web sites that provide counseling on the process of searching for broadcast employment and/or other career development assistance pertinent to broadcasting;

(xiv) provision of training to management level personnel as to methods of ensuring equal employment opportunity and preventing discrimination;

(xv) provision of training to personnel of unaffiliated non-profit organizations interested in broadcast employment opportunities that would enable them to better refer job candidates for broadcast positions;

(xvi) participation in other activities designed by the station employment unit reasonably calculated to further the goal of disseminating information as to employment opportunities in broadcasting to job candidates who might otherwise be unaware of such opportunities.

Outreach Analysis

(3) Analyze its recruitment program on an ongoing basis to ensure that it is effective in achieving broad outreach to potential applicants, and address any problems found as a result of its analysis.

Employment Analysis

(4) Periodically analyze measures taken to:

(i) Disseminate the station's equal employment opportunity program to job applicants and employees;

(ii) Review seniority practices to ensure that such practices are nondiscriminatory;

(iii) Examine rates of pay and fringe benefits for employees having the same duties, and eliminate any inequities based upon race, national origin, color, religion, or sex discrimination;

(iv) Utilize media for recruitment purposes in a manner that will contain no indication, either explicit or implicit, of a preference for one race, national origin, color, religion or sex over another;

(v) Ensure that promotions to positions of greater responsibility are made in a nondiscriminatory manner;

(vi) Where union agreements exist, cooperate with the union or unions in the development of programs to assure all persons equal opportunity for employment, irrespective of race, national origin, color,

Recordkeeping

religion, or sex, and include an effective nondiscrimination clause in new or renegotiated union agreements; and

(vii) Avoid the use of selection techniques or tests that have the effect of discriminating against any person based on race, national origin, color, religion, or sex.

(5) Retain records to document that it has satisfied the requirements of paragraphs (1) and (2) above. Such records, which may be maintained in an electronic format, must be retained until after grant of the renewal application for the term during which the vacancy was filled or the initiative occurred. The following records must be maintained:

(i) listings of all full-time job vacancies filled by the station employment unit, identified by job title;

(ii) for each such vacancy, the recruitment sources utilized to fill the vacancy (including, if applicable, organizations entitled to notification pursuant to Item (1), which should be separately identified), identified by name, address, contact person and telephone number;

(iii) dated copies of all advertisements, bulletins, letters, faxes, e-mails, or other communications announcing vacancies;

(iv) documentation necessary to demonstrate performance of the initiatives required by Item (2), if applicable, including sufficient information to fully disclose the nature of the initiative and the scope of the station's participation, including the station personnel involved;

(v) the total number of interviewees for each vacancy and the referral source for each interviewee; and

(vi) the date each vacancy was filled and the recruitment source that referred the hiree.

Public File Report

(6) Annually, on the anniversary of the date a station is due to file its renewal application, the station shall place in its public file and on its web site, if it has one, an EEO public file report containing the following information:

(i) a list of all full-time vacancies filled by the station's employment unit during the preceding year, identified by job title;

(ii) for each such vacancy, the recruitment source(s) utilized to fill the vacancy (including, if applicable, organizations entitled to notification pursuant to Item (1), which should be separately identified), identified by name, address, contact person and telephone number;

(iii) the recruitment source that referred the hiree for each full-time vacancy during the preceding year;

(iv) data reflecting the total number of persons interviewed for full-time vacancies during the preceding year and the total number of interviewees referred by each recruitment source utilized in connection with such vacancies; and

(v) a list and brief description of initiatives undertaken pursuant to Item (2) during the preceding year.

FCC Filing Requirements

Local recordkeeping is compiled and filed with the FCC in two stages:

(1) Broadcast EEO Program Report (Form 396). Every broadcast station, including those with fewer than five full-time employees, must file a

Broadcast Equal Employment Opportunity Program Report (Form 396) with its license renewal application, covering the period of the licensee's ownership during the preceding license term. Form 396 must be placed in the station's local public file.

(2) Broadcast Mid-Term Report. On the fourth anniversary of the filing of the most recent license renewal application, all television stations, and radio stations with ten or more full-time employees, must submit Form 397, and include the public file reports for the two preceding years.

The annual employment report form (Form 395-B) is under further study. If adopted, Form 395-B will have a September 30 annual filing deadline. The report will gather statistics only to report trends, not to evaluate any reporting entity.

Brokering Situations

If a station is subject to a time brokerage agreement, the licensee must file Forms 396 and 397 and EEO public file reports concerning only its own recruitment activity.

If a licensee is a broker of another station or stations, the licensee-broker must include its recruitment activity for the brokered station(s) in determining the bases of the Forms 396 and 397 and EEO public file reports for its own station.

If a licensee-broker owns more than one station, it must include its recruitment activity for the brokered station in the Forms 396 and 397 and EEO public file reports for its own station that is most closely affiliated with, and in the same market as, the brokered station.

If a licensee-broker does not own a station in the same market as the brokered station, then it must include its recruitment activity for the brokered station in the Forms 396 and 397 and EEO public file reports for its own station that is geographically closest to the brokered station.

How To Get Started

The first step toward compliance with the FCC's program for broad outreach is to identify and compile a permanent record of sources of recruitment and referrals. With respect to whether sources specifically targeted to minorities or women may or must be used, the Commission has said the EEO rule "neither requires nor precludes the use of any specific sources a broadcaster deems appropriate to achieving broad outreach." The Commission elaborated upon the licensee's good faith discretion in achieving broad outreach.

We do not require that broadcasters demonstrate that any particular segment of the community actually was aware of any vacancy. Nor do we require that recruitment be targeted to a specific segment or that broadcasters prove that they obtained a response from a particular segment.

Use of the Internet to post recruitment announcements is permissible, but a licensee may not rely solely on Internet job postings as a basis for achieving broad outreach. Regional and national recruitment sources such as state broadcasters association postings and trade press classifieds are permissible.

Second, identify those sources of recruitment that specifically request to receive information about each job opening. They must be separately

“asterisked” in recordkeeping.

Third, review the FCC’s menu of recruitment initiatives and select one or two, as appropriate, in which to participate in the coming year. With an eye toward your filing date for the EEO public file report, plan ahead to achieve compliance with the requirement to engage in two or four initiatives, as appropriate, in a two-year period. The filing date is the anniversary of the deadline for filing the station’s license renewal application, which is four months prior to the expiration date of the license.

Fourth, mark your calendar for placement of the annual EEO public file report in the local public file (and posting on your web site), on the aforementioned filing date.

Fifth, set up the necessary recordkeeping files:

For the local public file, you will need:

1. Summary of recruitment initiatives.
2. List of positions filled, by date of hire, job title, and recruitment source for hiree.
3. Recruiting sources used for each job search, by name of source, address, contact person, telephone, and indication whether the source requested notification of all openings.
4. Interviewee referral source summary, by recruitment sources used in the preceding year and number of persons interviewed who were referred by each source.

In order to compile the interviewee referral source summary, you will need to maintain an interview list for each opening, identifying the job title for the interviews and the referral source of each interviewee. The interview list, however, is not required to be made publicly available, and should not be placed in the local public file.

Finally, implement: be geared up to put recruitment outreach into action when an opening occurs, and follow up with the records of activity necessary to demonstrate broad outreach.

Conclusion

The FCC is committed to an active role in fostering diversity on the airwaves. The FCC’s EEO rule reflects an aggressive effort to further that objective, while maintaining consistency with limitations on the exercise of governmental power imposed by the federal courts.

Although the Commission acknowledges that the question whether broad outreach is achieved in any case is a subjective one, enforcement activity, including substantial fines, sometimes exceeding \$20,000, focuses on recordkeeping violations and failure to recruit from sources that will achieve broad dissemination of job announcements.

Contact Garvey Schubert Barer with any questions or for assistance in implementing your outreach program.