

Systemic Considerations in Recruitment & Hiring

EXCEL 2014

Sheraton San Diego Hotel & Marina

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STRATEGIC ENFORCEMENT PLAN-(SEP)

- ▶ Strategic Enforcement Plan – Priority Issues
 - **Eliminating Barriers in Hiring & Recruitment**
 - Protecting Immigrant, Migrant and Other Vulnerable Workers
 - Addressing Emerging and Developing Issues
 - Enforcing Equal Pay Laws
 - Preserving Access to the Legal System
 - Preventing Harassment Through Systemic Enforcement and Targeted Outreach

EEOC'S SYSTEMIC INITIATIVE

In 2006 the EEOC launched its Systemic Initiative to prevent discrimination by taking a careful look at the practices employers use to recruit, hire, promote, train and retain employees.

What is Systemic Discrimination?

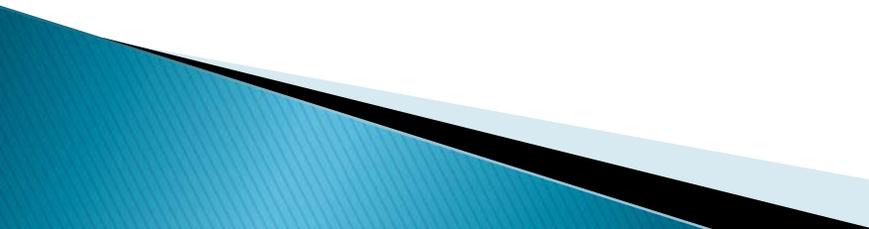
- ▶ Systemic discrimination involves a **pattern or practice, policy, or class case** where the alleged discrimination has a broad impact on an industry, profession, company or geographic area.
- 

What are Systemic Practices?

▶ Examples of Systemic Practices include:

- Discriminatory barriers in **recruitment and hiring**
- Excluding qualified women from traditionally male dominated fields of work
- Compliance with customer preferences that result in discriminatory assignments or placements

What is Pattern and Practice?

- ▶ Repeated, similar instances of disparate treatment affecting a group of people constitutes a “pattern” of discrimination.
 - ▶ Disparate Treatment: When an employer treats a class differently based on a protected basis (i.e. race, sex, age etc...).
 - ▶ Underlying belief that employer’s workforce should reflect the available labor market absent discrimination.
- 

What is a Systemic Policy Case?

- ▶ A facially neutral policy/practice that disproportionately excludes members of a protected class.
 - Example: Griggs v. Duke Power Company
 - ▶ Job-related and consistent with business necessity.
 - ▶ Are there less discriminatory alternatives?
- 

Why Should I Be Concerned?

- ▶ Class Litigation is Costly & Time Consuming!
 - ▶ Damage to Reputation
 - ▶ Spurs Additional Complaints & Lawsuits by Others
 - ▶ Settlements Can Be Financially Significant
 - ▶ Distraction From Core Business Concerns
- 

TOP TEN CLUES THAT YOUR EMPLOYMENT PRACTICES MAY CREATE A BARRIER TO RECRUITMENT AND/OR HIRING

DRUMROLL PLEASE.....



NUMBERS 10 & 9...



10. YOUR APPLICANTS AND/OR EMPLOYEES HAVE TO TAKE A TEST.

9. YOU “BELIEVE” YOUR SELECTION TEST HAS BEEN VALIDATED

BE A SMART CONSUMER!!

- ▶ IS A TEST RELEVANT/NECESSARY?
- ▶ IS THE TEST REQUIRED OF RELEVANT APPLICANTS/EMPLOYEES?
- ▶ HAS THE TEST BEEN VALIDATED FOR YOUR WORKFORCE, FAIRNESS, ALTERNATIVES?
 - BE WARY OF CLAIMS THAT THE TEST HAS BEEN VALIDATED.
- ▶ EEOC GUIDANCE HELPS YOU BE A SMART CONSUMER.

Employment Testing



- ▶ Employers often use tests to screen applicants for hire and/or employees for promotion.
 - i.e. cognitive, personality, physical & honesty/integrity tests
 - A 2000 American Management Association survey reports that 33% of employers surveyed used psychological testing.
- ▶ Employment tests can be very effective in screening, but their use must be lawful.
 - Cannot be used to intentionally screen out people are of a certain race, color, sex, national origin, religion, disability, or age (40 or older).
 - Even if the discrimination is not intentional, these measures cannot screen out protected group members unless the Employer can properly justify their use.
- ▶ Be mindful of Third Party Testing:
 - State Job Services
 - Contractors

- ▶ The Uniform Guidelines (EEOC et al., 1978) provide some guidance:
 - If there is statistical evidence of adverse impact Employer must be able to demonstrate:
 - The validity of the procedure
 - Predictive power of the measure in determining work performance
 - Test fairness
 - Applicants/employees had equal access to any available preparation materials
 - Attempts to identify equally-valid alternative selection devices with less impact
 - Additional attempts to reduce adverse impact

§ Sec. 1607.15 Documentation of Impact and Validity Evidence

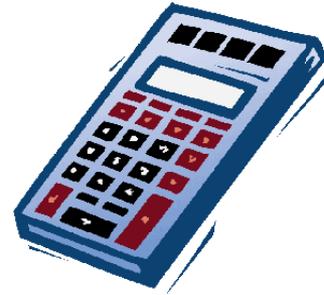
- ▶ Users [with more than 100 employees] of selection procedures . . . should maintain and have available for each job, records or other information showing whether the total selection process for that job has an adverse impact.
- ▶ Where a total selection process for a job has an adverse impact, the user should maintain and have available records or other information showing *which* components have an adverse impact.
- ▶ Where there is evidence of adverse impact, the employer should have evidence of:
 - Attempts to reduce Adverse Impact
 - Validity of the Selection Device

Advantages of Self Assessment

- ▶ Limit liability: Find the problem and correct it
- ▶ Proper Oversight: Is your test a “fair test?”
- ▶ Sometimes what appears to be cheap and easy – isn’t.
- ▶ Diversity: Is your workforce as diverse as you would like it to be?
- ▶ The employer is obligated to find the least discriminatory selection procedure



Online Calculators



- ▶ <http://www.hr-software.net/EmploymentStatistics/DisparateImpact.htm>
- ▶ <http://faculty.vassar.edu/lowry/binomialX.html>
- ▶ <http://www.biddle.com/adverseimpacttoolkit/SelectionRateComparison.aspx>
- ▶ <http://www.adverseimpact.org/AdverseImpactAnalysis.htm>

NUMBER 8...

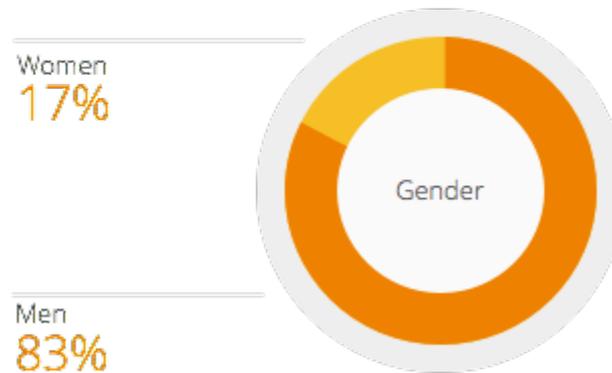


8. YOUR EEO-1 COMPARISON SHOWS SIGNIFICANT DISPARITIES

FROM GOOGLE WEBSITE

“Making Google a workplace for everyone

Having a diversity of perspectives leads to better decision-making, more relevant products, and makes work a whole lot more interesting. <http://www.google.com/diversity/at-google.html#tab=tech>”



SELF-ASSESSMENT

- ▶ Comparisons of your workforce to competitors in the labor market
- ▶ EEOC aggregates data from the EEO-1 reports and makes them available to the public for various purposes
 - Including employer self-assessment:
<http://www.eeoc.gov/eeoc/statistics/employment/jobpat-eeo1/index.cfm>

A QUESTION?



- ▶ I own a small independent grocery store. Recently one of my customers asked why we did not have any women managers. As a result of that encounter I began to wonder if my workforce is as diverse as it should be. I don't have a lot of resources, is there anything I can do?

CO= AB66254

U= AB66254

EQUAL EMPLOYMENT OPPORTUNITY
2011 EMPLOYER INFORMATION REPORT
SINGLE ESTABLISHMENT REPORT - TYPE 1

SECTION B - COMPANY IDENTIFICATION

1. MY IMAGINARY COMPANY
123 FIRST PEACH STREET
ATLANTA, GA 30303

2.a MY IMAGINARY COMPANY
123 FIRST PEACH STREET
ATLANTA, GA 30303

FULTON COUNTY
c. Y

SECTION C - TEST FOR FILING REQUIREMENT

1-Y 2-Y 3-Y DUNS NO.:

SECTION E - ESTABLISHMENT INFORMATION

NAICS: 445110 Supermarkets and Other
Grocery (except Convenience) Stores

SECTION D - EMPLOYMENT DATA

JOB CATEGORIES	HISPANIC OR LATINO		NOT-HISPANIC OR LATINO											OVERALL TOTALS	
			*****MALE*****						*****FEMALE*****						
	MALE	FEMALE	WHITE	BLACK OR AFRICAN AMERICAN	NATIVE HAWAIIAN OR PACIFIC ISLANDER	ASIAN	AMERICAN INDIAN OR ALASKAN NATIVE	TWO OR MORE RACES	WHITE	BLACK OR AFRICAN AMERICAN	NATIVE HAWAIIAN OR PACIFIC ISLANDER	ASIAN	AMERICAN INDIAN OR ALASKAN NATIVE		TWO OR MORE RACES
EXECUTIVE/SR OFFICIALS & MGRS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
FIRST/MID OFFICIALS & MGRS	0	0	5	0	0	0	0	0	0	0	0	0	0	0	5
PROFESSIONALS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TECHNICIANS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
SALES WORKERS	0	0	0	0	0	0	0	0	10	0	18	0	0	0	28
ADMINISTRATIVE SUPPORT	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
CRAFT WORKERS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
OPERATIVES	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
LABORERS & HELPERS	5	0	16	0	0	0	0	0	0	0	0	0	0	0	21
SERVICE WORKERS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL	5	0	22	0	0	0	0	0	10	0	18	0	0	0	55
PREVIOUS REPORT TOTAL	111	0	0	0	0	0	0	0	0	0	0	0	0	0	111

SECTION F - REMARKS

DATES OF PAYROLL PERIOD: 07/01/2011 THRU 07/01/2011

SECTION G - CERTIFICATION

CERTIFYING OFFICIAL: TEST
EEO-1 REPORT CONTACT PERSON: TEST
EMAIL:

TITLE: TEST
TITLE: TEST
TELEPHONE NO: 3333333333

CERTIFIED DATE[EST]: 08/18/2011 12:03 PM

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Job Patterns For Minorities And Women In Private Industry (EEO-1)

Introductory Note

As part of its mandate under Title VII of the Civil Rights Act of 1964, as amended, the Equal Employment Opportunity Commission collects data from public and private employers, and unions and labor organizations which indicate the composition of their work force. Key among these reports is the EEO-1, which is collected annually from Private employers with 100 or more employees. In 2008, over 68,300 employers with more than 62.2 million employees filed EEO-1 reports.

The confidentiality provision which governs release of these data (Section 709 (e) of Title VII of the Civil Rights Act of 1964 and the Employment Opportunity Act of 1972) prohibits release of individually identifiable information. However, data in aggregate form by industry group for private employers (EEO-1) are available. The following tables are national aggregations by type of employment.

[SIC Industry definitions and codes](#) used in the tables from 1998 through 2002 are based upon those given in the 1987 SIC Manual. [NAICS Industry definitions and codes](#) used in the 2003 through 2006 tables are based upon those given in the 2002 Classification System (NAICS) Manual. For 2007 tables and indicators, [NAICS 2002 definition](#) is used. Starting with year 2007, data are based on the CBSA (Core Based Statistical Area) as defined by the Office of Management and Budget of December 2000.

Due to the unique racial and ethnic composition of the population of Hawaii, employment data for establishments in that State are not included in the aggregates of EEO-1 data prior to 2007. From 2007, the State of Hawaii is included in all the aggregates.

- [2009 tables](#)
- [2008 tables](#)
- [2007 tables](#)



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[Home](#) > [About EEOC](#) > [Statistics](#) > [Employment Statistics](#) > [Job Patterns \(EEO-1\)](#) > 2009

2009 Job Patterns For Minorities And Women In Private Industry (EEO-1)

Search the 2009 tables

Please begin by selecting the scope:

National Aggregate, All Industries

National Aggregate, All Industries
 National Aggregate, by NAICS-2
 National Aggregate, by NAICS-3
 National Aggregate, by NAICS-4
 National Aggregate, by NAICS-5

By Geographic Area

States, All Industries
 States, by NAICS-2
 States, by NAICS-3
 CBSAs, All Industries
 CBSAs, by NAICS-2
 CBSAs, by NAICS-3

By Industry

NAICS-2, by State
 NAICS-3, by State
 NAICS-2, by CBSA
 NAICS-3, by CBSA

[View in Excel](#)

2012 Job Patter... Windows Internet Explorer

index.cfm#select_label

et Start Microsoft Microsoft



Employers Federal Agencies Contact Us

EEO-1 > 2012 Job Patterns

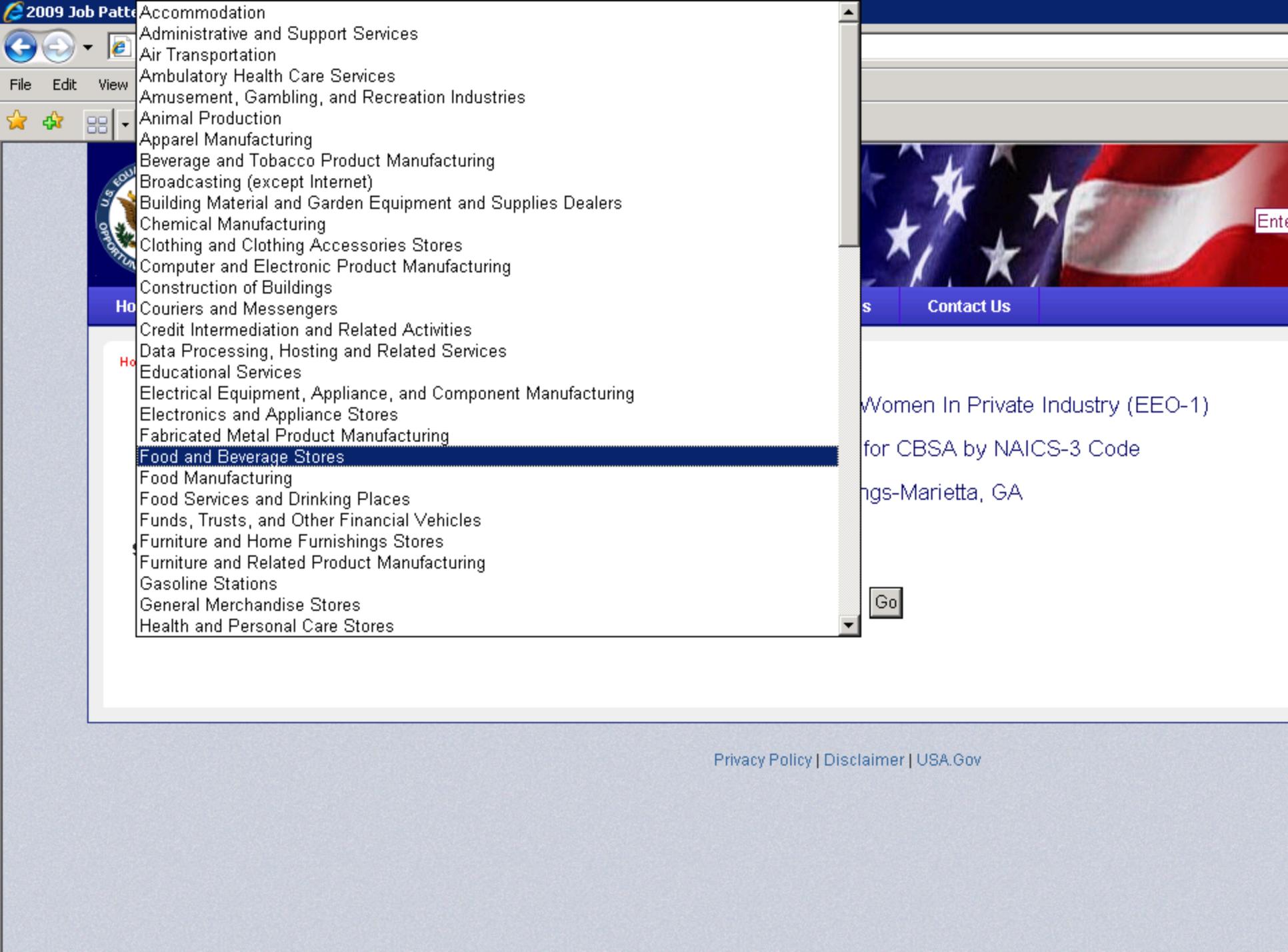
Patterns for Minorities and Women in Private Industry (EEO-1)

2012 EEO-1 Aggregate Report for CBSA by NAICS-3 Code

Privacy Policy | Disclaimer | USA.Gov

San Diego-Carlsbad-San Marcos, CA
San Francisco-Oakland-Fremont, CA
San Jose-Sunnyvale-Santa Clara, CA
San Luis Obispo-Paso Robles, CA
Sandusky, OH
Santa Barbara-Santa Maria, CA
Santa Cruz-Watsonville, CA
Santa Fe, NM
Santa Rosa-Petaluma, CA
Sarasota-Bradenton-Venice, FL
Savannah, GA
Scranton-Wilkes-Barre, PA
Seattle-Tacoma-Bellevue, WA
Sebastian-Vero Beach, FL
Sheboygan, WI
Sherman-Denison, TX
Shreveport-Bossier City, LA
Sioux City, IA-NE-SD
Sioux Falls, SD
South Bend-Mishawaka, IN-MI
Spartanburg, SC
Spokane, WA
Springfield, IL
Springfield, MA
Springfield, MO
Springfield, OH
St. Cloud, MN
St. George, UT
St. Joseph, MO-KS
St. Louis, MO-IL
San Diego-Carlsbad-San Marcos, CA

Go



File Edit View
★ ☆

- Accommodation
- Administrative and Support Services
- Air Transportation
- Ambulatory Health Care Services
- Amusement, Gambling, and Recreation Industries
- Animal Production
- Apparel Manufacturing
- Beverage and Tobacco Product Manufacturing
- Broadcasting (except Internet)
- Building Material and Garden Equipment and Supplies Dealers
- Chemical Manufacturing
- Clothing and Clothing Accessories Stores
- Computer and Electronic Product Manufacturing
- Construction of Buildings
- Couriers and Messengers
- Credit Intermediation and Related Activities
- Data Processing, Hosting and Related Services
- Educational Services
- Electrical Equipment, Appliance, and Component Manufacturing
- Electronics and Appliance Stores
- Fabricated Metal Product Manufacturing
- Food and Beverage Stores**
- Food Manufacturing
- Food Services and Drinking Places
- Funds, Trusts, and Other Financial Vehicles
- Furniture and Home Furnishings Stores
- Furniture and Related Product Manufacturing
- Gasoline Stations
- General Merchandise Stores
- Health and Personal Care Stores



Contact Us

Women In Private Industry (EEO-1)
for CBSA by NAICS-3 Code
ings-Marietta, GA

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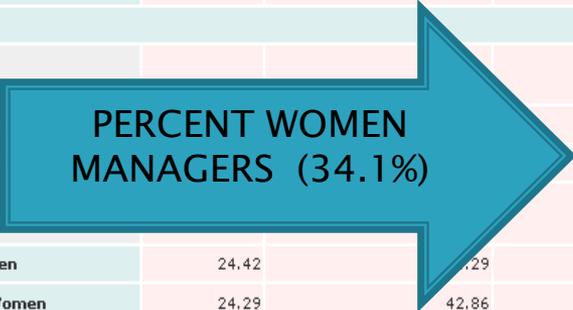
Home > About EEOC > Statistics > Employment Statistics > Job Patterns (EEO-1) > 2012 Job Patterns

2012 Job Patterns for Minorities and Women in Private Industry (EEO-1)

2012 EEO-1 Aggregate Report for CBSA by NAICS-3 Code
 San Diego-Carlsbad-San Marcos, CA - Food and Beverage Stores
 (183 UNITS)

Racial/Ethnic Group and Sex	Total Employment	Number Employed									
		Executive/Senior Level Officials & Managers	First/Mid Level Officials & Managers	Professionals	Technicians	Sales Workers	Office & Clerical Workers	Craft Workers	Operatives	Laborers	Service Workers
ALL EMPLOYEES	15,959	7	1,213	203	80	8,790	313	7	992	1,596	2,758
Men	8,338	3	799	66	16	4,376	31	5	701	740	1,601
Women	7,621	4	414	137	64	4,414	282	2	291	856	1,157
WHITE	7,773	4	673	95	42	4,530	207	2	411	698	1,111
Men	3,897	1	431	43	6	2,196	20	2	277	311	610
Women	3,876	3	242	52	36	2,334	187	0	134	387	501
MINORITY	9,186	3	540	108	22	4,260	106	5	501	888	1,647

INDIAN	103	0	10	1	1	51	2	0	9	12	17
Men	40	0	5	0	0	20	0	0	6	2	7
Women	63	0	5	1	1	31	2	0	3	10	10
HAWAIIAN	112	0	3	0	0	50	0	0	7	27	25
Men	62	0	2	0	0	28	0	0	6	11	15
Women	50	0	1	0	0	22	0	0	1	16	10
TWO OR MORE RACES	589	0	20	4	1	259	4	0	30	114	157
Men	334	0	16	1	0	147	0	0	19	58	93
Women	255	0	4	3	1	112	4	0	11	56	64
PARTICIPATION RATE											
A			100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
M			65.87	32.51	20.00	49.78	9.90	71.43	70.67	46.37	58.05
W			34.13	67.49	80.00	50.22	90.10	28.57	29.33	53.63	41.95
W			55.48	46.80	52.50	51.54	66.13	28.57	41.43	43.73	40.28
Men	24.42	14.29	35.53	21.18	7.50	24.98	6.39	28.57	27.92	19.49	22.12
Women	24.29	42.86	19.95	25.62	45.00	26.55	59.74	0.00	13.51	24.25	18.17
MINORITY	51.29	42.86	44.52	53.20	47.50	48.46	33.87	71.43	58.57	56.27	59.72
Men	27.83	28.57	30.34	11.33	12.50	24.80	3.51	42.86	42.74	26.88	35.93
Women	23.47	14.29	14.18	41.87	35.00	23.66	30.35	28.57	15.83	29.39	23.79
BLACK	4.42	0.00	3.96	1.97	5.00	4.53	1.92	14.29	3.73	5.01	4.60
Men	2.62	0.00	2.31	1.48	1.25	2.88	0.32	0.00	2.62	1.88	2.76
Women	1.80	0.00	1.65	0.49	3.75	1.65	1.60	14.29	1.11	3.13	1.85



STATISTICAL SIGNIFICANCE TESTS?

- ▶ Use an online calculator that computes the *Exact Binomial* to enter:
 - The total number of managers you have (5)
 - The total number of female managers you have (0)
 - The percentage of female managers employed by your competitors (34.1%)
- ▶ The aggregate data shows that 34.1 percent of all first/mid level managers are women
 - If *your firm* employed women at the same rate as your competitors (34.1 percent) you would expect to have at least one woman manager (1.71)

- Calendar**
 - Date and Day Calculator
 - Event Calendar
 - Zodiac Calculators
- Charts and Graphs**
 - Charts
 - Graphs
- Conversions**
 - Color Converters
 - Hexa, Decimal, Binary Conversions
 - Unit conversions
 - Currency Converters
- Geometry**
 - Analytical Geometry
 - Area Calculators
 - Trigonometry calculators
- Health**
 - Health Calculator
 - Medical Calculators
 - Math Dictionary
- Mind Twist**
 - Funny Math
 - Puzzles
 - Vedic Maths

Binomial Distribution Calculator

Binomial Distribution - Calculator

To Calculate Binomial Distribution:

Enter the number of events n:

Enter the number of success r:

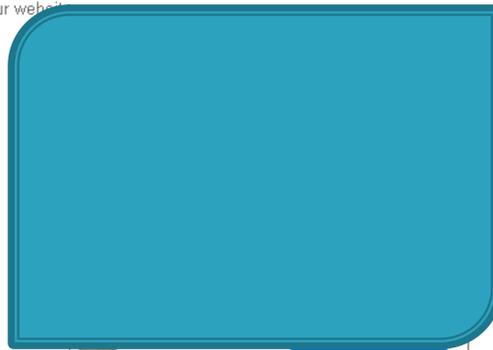
Enter the Probability of success p:

Calculate

Results:

Binomial Distribution:

Code to add this calci to your website

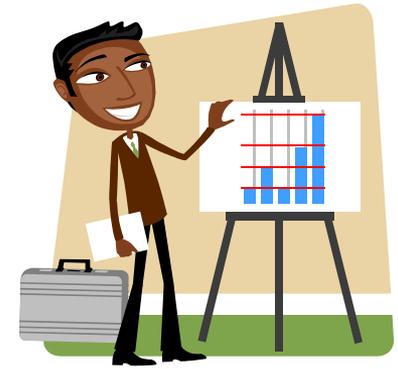


RESULTS: PROBABILITIES LESS THAN 0.05 CONSIDERED SIGNIFICANT

<http://vassarstats.net/binomialX.html>

	PROBABILITY 0 OR FEWER OUT OF 5	
FOR HYPOTHESIS TESTING	ONE TAILED	TWO-TAILED
Method 1. exact binomial calculation	0.12487	0.2486

INTERPRETATION



- ▶ DIFFERENCE BETWEEN EXPECTED AND OBSERVED DISPARITIES WOULD NOT BE CONSIDERED STATISTICALLY SIGNIFICANT
- ▶ BE AWARE THAT THIS TYPE OF ANALYSIS GIVES AN *IDEA* ABOUT THE OVERALL REPRESENTATION OF CERTAIN PROTECTED GROUPS IN YOUR WORKFORCE
 - It does not necessarily ensure that all employment practices are free of adverse impact

CONSIDERATIONS

- EEOC does not endorse any particular on-line calculator. Consider:
 - Does it compute an exact binomial test?
 - Does it provide a two-tailed probability test?
- If the table of competitor data that you need is not on our website, EEOC will provide a customized table.
- Remember: Your EEO-1 report is due September 30.
 - File for an extension if you need it.
 - Consider adding a self-assessment to your reporting process.

NUMBER 7...



- 7. YOU USE A CRIMINAL BACKGROUND OR CREDIT CHECK.**

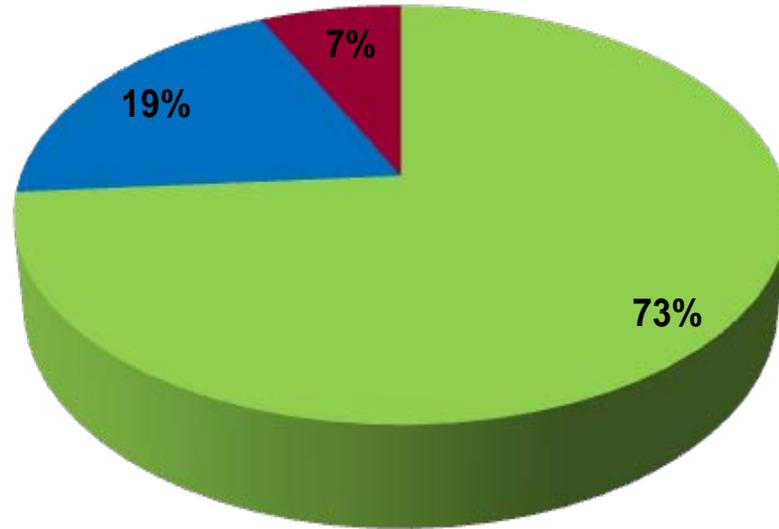
Criminal Background Checks



Why We Care
Potential Pitfalls and Best Practices

Criminal Background Checks

Results of 2010 SHRM Survey



- All job candidates
- Selected job candidates
- No, my organization does not conduct this type of background check for any of its job candidates

Criminal Background Checks

The Data Driving EEOC Concerns

- ▶ Increased rate of Incarceration:
 - 1991 – 1.8%
 - 2001 – 2.7%
 - 2007 – 3.2% – 1 in every 31 adults
- ▶ Assuming incarceration rates are unchanged:
 - 1 in 3 African American men
 - 1 in 6 Hispanic men
 - 1 in 17 White men



Criminal Background Checks



**Is EEOC really saying we can't
do criminal background checks?**

Criminal Background Checks

Compare:

- ▶ Applicant with a 20-year old conviction for selling marijuana when he was 18.
- ▶ Applicant with a 5-year old conviction for embezzlement when he was 32.

SHOULD WE TREAT THEM THE SAME?



Criminal Background Checks

Compare:

- ▶ Applicant with a 20-year old conviction for selling marijuana when he was 18, applying for a janitorial job.
- ▶ Applicant with a 5-year old conviction for embezzlement when he was 32, applying for an accounting job

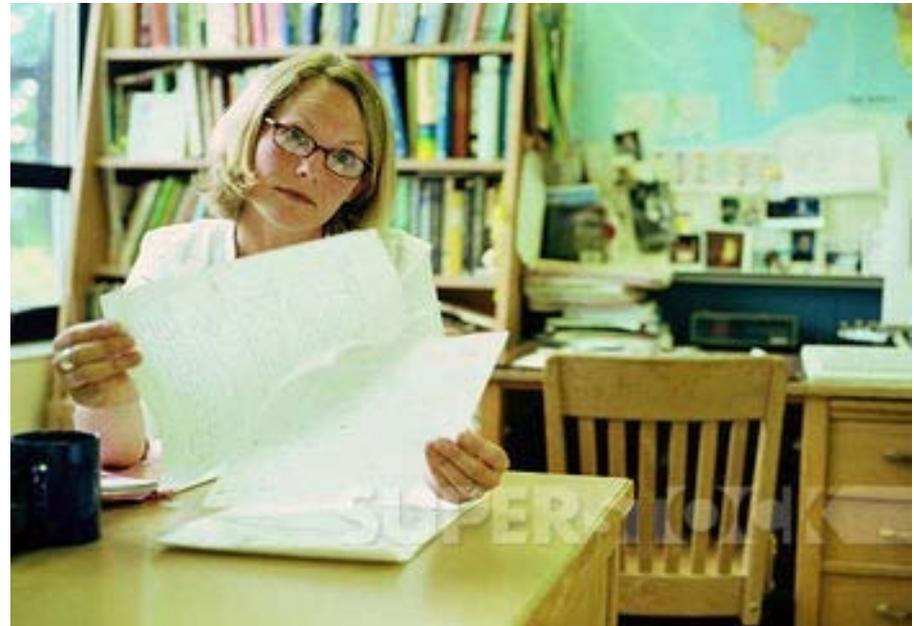
DOES THE JOB MATTER?



Criminal Background Checks

Individualized Assessment

- Apply the 3-factor targeted screen;
- Tell the applicant;
- Consider any additional evidence offered.



Best Practices

- ▶ Have a written policy
- ▶ Specific crimes for specific jobs
- ▶ Convictions, not arrests
- ▶ Do individualized assessments
- ▶ Train hiring officials on the policy
- ▶ Keep information confidential

NO AUTOMATIC EXCLUSIONS!

NO BLANKET POLICY!



EXAMPLE: Pepsi Beverages pays \$3M in racial bias case



WASHINGTON – Pepsi Beverages will pay \$3.1 million to settle federal charges of race discrimination for using criminal background checks to screen out job applicants — even if they weren't convicted of a crime.

Criminal Background Checks

Additional Resources

- ▶ Enforcement Guidance:
http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm
- ▶ Qs and As:
http://www.eeoc.gov/laws/guidance/qa_arrest_conviction.cfm
- ▶ What You Should Know Fact Sheet:
http://www.eeoc.gov/eeoc/newsroom/wysk/arrest_conviction_records.cfm



Credit Checks

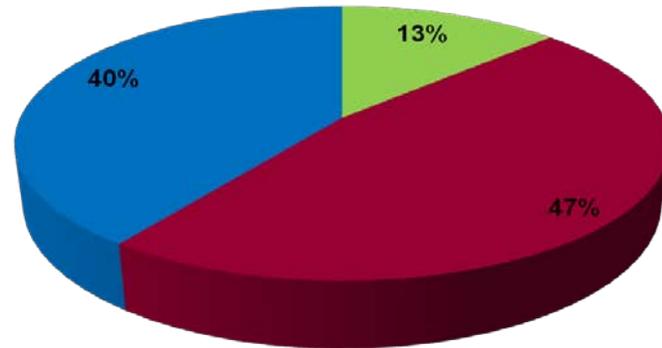
Why Not?



Credit Checks

- ▶ Credit checks can impact protected populations as much as criminal background checks do.
 - A widely used tool on the rise:
 - 19% of employers were using credit checks in **1996**, 35% of employers in **2003** (SHRM, 2004)
 - SHRM **2010** poll results (47%):

‘Does your organization, or an agency hired by your organization, conduct credit checks for any job candidates by reviewing the candidates’ consumer reports?’



■ All job candidates
■ Selected job candidates
■ No, my organization does not conduct this type of background check for any of its job candidates

Credit Checks

Who is likely to be denied jobs?

(Freddie Mac, 2000)

Race	Bad Credit	Intermediate Credit	Good Credit
Black	48%	16%	36%
Hispanic	34%	15%	51%
White	27%	12%	61%

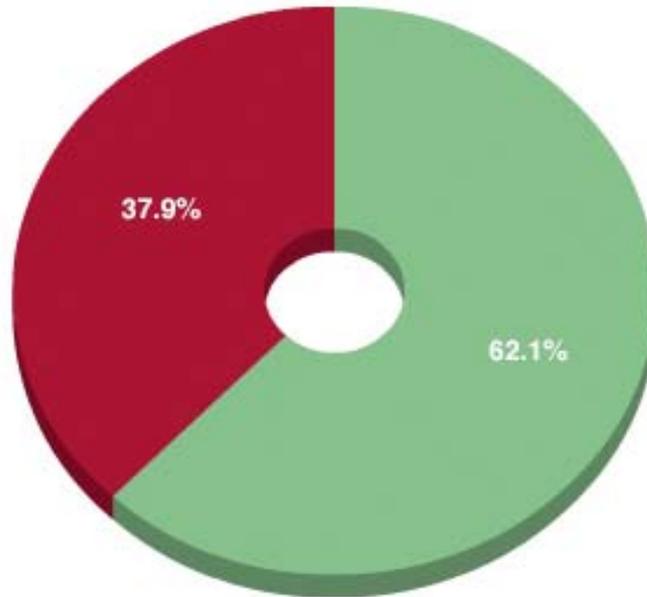
(Federal Reserve, 2007)

Race	Mean score	Median Score
Black	25.8	19.13
Hispanic	38.36	33.9
White	54.16	55.86
Asian	55.1	55.73

Credit Checks

Who else is likely to be denied jobs?

Percent of 2007 U.S. Bankruptcies Attributable to Medical Debts



■ American debtors with non-medical bankruptcy ■ American debtors suffering from medical bankruptcy

Credit Checks

There is no evidence that people with good credit make better employees.



BE A SMART CONSUMER!!

Credit & Criminal Background Checks

- ▶ Title VII could be violated when an employer's use of screening criteria, (i.e. credit/conviction records) shows significant adverse impact on the basis of race/national origin
 - Unless the employer is able to demonstrate that the standard or criterion is *job-related* and *consistent with business necessity*.
 - In determining this, Employers should take into account the nature of the job, the nature and seriousness of the offense, and the length of time since the conviction and/or incarceration.
- ▶ Employers should internally monitor the effects of their own selection/screening criteria to determine whether there is evidence of disparate impact
 - Keep in mind that tests of statistical significance ($p \leq .05$) are the standard

NUMBER 6...



6. YOU USE EMPLOYMENT OR LEASING AGENCIES

BE A SMART CONSUMER!!

- ▶ EMPLOYMENT AGENCIES, INCLUDING EMPLOYEE LEASING AGENCIES MAY OFFER MANY USEFUL SERVICES – BUT BE **WARY...**
- ▶ SOUND EMPLOYMENT PRACTICES VS. CHEAPER LABOR
- ▶ ARE THEIR PRACTICES SOUND and FAIR?
- ▶ ARE THEY DELIVERING ON THEIR PROMISES?
 - TESTING & SCREENING
 - EEO-1 REPORTING
- ▶ ARE YOU ASKING FOR SCREENS THAT YOU WOULD NOT DO?

NUMBERS 5 & 4...



- 5. YOU DEVELOP AND IMPLEMENT TARGETED RECRUITMENT PROGRAMS**
- 4. YOU RELY ON LIMITED OR SINGLE RECRUITMENT EFFORTS**

Recruitment Analysis

- ▶ To determine whether an employer's job opportunities have been made known to the entire relevant labor market
- ▶ The focus of an analysis should be on those jobs where hires occurred and the applicant rate of affected classes (where it was low)
- ▶ Recruitment Source Analysis may be relevant to hiring and selection issues if the company favors one source of applicants over another in its decisions.

Job Advertisements

Watch that Ad!!

- “We’ll Pay You!... to go to trade school. We want persons to age 34 to train as electronics and electricians technicians...”
- “Young, energetic”
- “Hostess or Waitress”



SPECIAL RECRUITMENT PROGRAMS

▶ RECENT COLLEGE GRAD'S

- Implement Carefully
 - Work Related Rationale
 - Don't Associate with Layoffs
- ▶ Title VII does not favor certain groups over others. It makes it illegal to discriminate on the basis of RACE, COLOR, RELIGION, NATIONAL ORIGIN OR SEX
 - See **AFFIRMATIVE ACTION** Appropriate Under Title VII <http://www.gpo.gov/fdsys/pkg/CFR-2013-title29-vol4/xml/CFR-2013-title29-vol4-part1608.xml>



NUMBER 3...

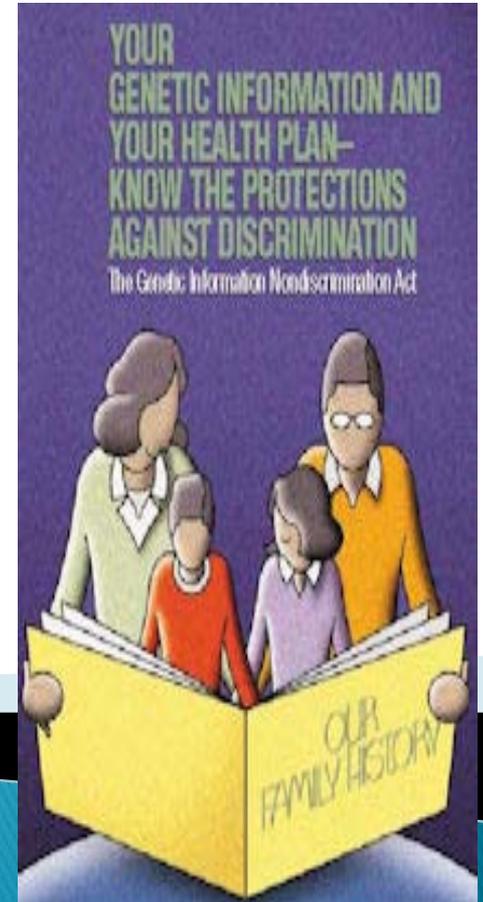


3. YOU USE A MEDICAL SCREENING DEVICE

And, the need to ACCOMMODATE (both ADA and religious) during both the application & hiring process.

Pre-Employment Medical Screening

ADA and GINA Implications



Medical Screens

ADA allows Pre-Employment Medical Screening **ONLY** if:

- ▶ The candidate was given a conditional offer, **and**
- ▶ The candidate has not commenced performing duties; **and**
- ▶ **All** entering employees are subjected to such exam, not just applicants with disabilities; **and**
- ▶ Medical information obtained is kept separately and treated as confidential; **and**
- ▶ Results are used only in accordance with the ADA.



Medical Screens

Cannot Use Pre-Employment Medical Exams to Deny Jobs Based on Perceived Risks:

- ▶ To exclude candidates because of existing mental or physical impairment;
- ▶ To exclude candidates because of prior injuries;
- ▶ To exclude candidates because of prior workers compensation claims;
- ▶ To exclude candidates with prior illnesses;
- ▶ To exclude candidates because of family history of medical conditions.



Medical Screens

If there is legitimate concern about whether the person is able to do the essential job functions, then what?

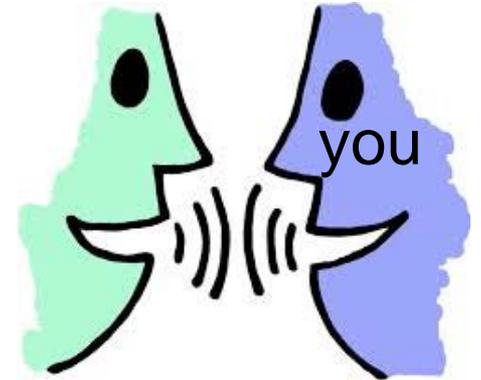
The Interactive Process



Medical Screens

The Interactive Process:

- ▶ Talk to the candidate about job functions think he/she may not be able to perform;
- ▶ Talk to the candidate about whether some accommodation is needed;
- ▶ Talk to medical professionals about what accommodation is needed and can be provided;
- ▶ Consult the Job Accommodation Network for ideas about reasonable accommodation. askjan.org
- ▶ Consult other experts for ideas about reasonable accommodation.



Medical Screens

Potential Pitfalls

- ▶ Don't jump to conclusions
- ▶ Don't assume a candidate can't do the job
- ▶ Don't act based on stereotypes
- ▶ Don't act based on speculation about potential risks
- ▶ Don't assume a candidate will harm himself or others (Direct Threat defense)
 - Direct Threat is the employer's burden to prove
 - Direct Threat still requires consideration of reasonable accommodation



Medical Screens & GINA

Genetic Information Non-Discrimination Act:

- ▶ Defines “genetic information” to include family medical history;
- ▶ Prohibits use of genetic information in employment decision-making;
- ▶ Prohibits requesting, requiring, or purchasing genetic information;
- ▶ Requires confidentiality and strictly limits disclosure;
- ▶ Provides remedies for individuals whose genetic information is acquired, used, or disclosed in violation of its protections.



Medical Screens

The GINA Pitfall for Pre-Employment Medical Screens:

- ▶ Doctors doing the pre-employment medical screen may routinely collect medical history
 - i.e. genetic test results & family medical history
 - Info that GINA prohibits YOU from collecting,
 - either directly or through your agent (the doctor).
- ▶ YOU have to tell the medical provider to NOT collect or provide any “genetic information” including family medical history.
- ▶ Use the “safe harbor” language in the EEOC GINA regulations. 29 C.F.R. 1635.8(b)(1)

Religious Accommodation

EXAMPLE:

Sikh Who Kept Beard Can Sue Lexus Dealership

▶ *Courthouse News Service, July 3, 2013*

A Lexus dealership cannot dismiss claims that adhering to its corporate parent's no-beard policy made it discriminate against a Sikh, a federal judge ruled.

EXAMPLE:

MCM Elegante Hotel Settles Religious Discrimination Suit with EEOC

Albuquerque Hotel Refused Muslim Woman's Request to Wear Head Scarf, Federal Agency Charged.

Corporation of America, doing business as MCM Elegante Hotel in Albuquerque, has agreed to settle a religious discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC) for \$100,000 and other relief, the agency announced.

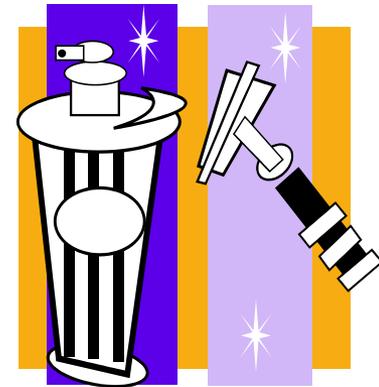


NUMBER 2...



2. **YOU'VE GOT A "LOOK" OR APPEARANCE & GROOMING STANDARDS.**

- ▶ Use of ***Appearance and/or Grooming Standards*** may adversely impact those in protected classes
 - No facial hair/beard policies



EXAMPLE



- ▶ \$50 Million Paid to Class Members in December 2005 in Abercrombie & Fitch Discrimination Lawsuit Settlement

EXAMPLE: Lawry's Restaurants, Inc. to Pay \$1 Million For Sex Bias Against Men in Hiring

Males Categorically Rejected for Server Jobs Under Longstanding Company Policy

- ▶ LOS ANGELES – The U.S. Equal Employment Opportunity Commission (EEOC) announced the settlement of a sex discrimination class action lawsuit for \$1,025,000 and far reaching injunctive relief against Lawry's Restaurants, Inc.



AND...

**THE NUMBER 1 CLUE THAT YOUR EMPLOYMENT PRACTICES MAY
CREATE A BARRIER TO RECRUITMENT AND/OR HIRING IS.....**

1. THE EEOC IS KNOCKING AT YOUR DOOR



Q & A

Thank you!

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