

More EEO Fines on Their Way - And Helpful Hints on EEO Compliance From the FCC's EEO Webinar

January 12, 2012 by [David Oxenford](#)

Last week, I participated in an [FCC-sponsored webinar to discuss its EEO rules](#). Along with two other private firm lawyers, the chief of the FCC's Office that administers its EEO rules and one of his senior staff members participated on a panel to discuss the legal obligations of broadcasters and MVPDs in meeting the EEO rules. The panel, which lasted almost two hours, was a very thorough discussion of the requirements of the FCC rules. It provided insight into how the FCC identifies problems, and even suggested some ideas as to how broadcasters can assure compliance with the requirements in the easiest way possible. While lengthy, the webinar, which is archived on the FCC's website, is worth viewing to get a very good summary of the FCC rules. If a station or MVPD has its management employees and others with hiring responsibility sit down and watch the video, and use it as part of a training program for management employees on EEO matters, it may even count as one of the non-job specific supplemental outreach initiatives that the FCC requires each entity subject to the EEO rules to conduct.

We [wrote last week about a recent set of FCC fines](#) to two broadcasters that had not widely disseminated information about all of their job openings - relying instead on only a combination of internal sources (word-of-mouth, station websites, intra-company referrals) and Internet websites for their outreach efforts for a substantial number of job openings. At the webinar, the FCC officials said that there were a number of other enforcement actions in the pipeline that should be public soon. The FCC is reviewing **every license renewal application** that is filed with the FCC to determine if its accompanying Form 396 provides information necessary to demonstrate compliance with the three prongs of the FCC's EEO program - wide dissemination for all job openings, notice of job openings to community groups that request such notice, and non-vacancy specific initiatives that are designed to educate a community about the nature and requirements of broadcast jobs. Stations are also reviewed when the FCC conducts random audits (5% of all stations and MVPDs are supposed to be audited annually) and when complaints or other information comes to the attention of the FCC staff. Staff members remarked that they have even called stations to discuss issues when visiting a station website for personal reasons and noting the absence of the most recent Annual EEO Public File Report that needs to be posted on a station website on the anniversary date of the filing of the license renewal applications for stations in the state of the station's city of license.

While there was discussion about the Internet issue, and whether, in today's world, the Internet had become the one easy way to reach all groups within a community (replacing the large daily newspaper whose classified ads the FCC used to look at as the safe harbor for broadcasters to use for their **wide dissemination of information about job openings**), the FCC staff indicated that there was no movement within the Commission currently on the horizon to change their current position. However, the FCC staff members offered a willingness to reevaluate the issue if they were presented with information about the pervasiveness of online job searching. In the interim, broadcasters need to reach out to all the significant community groups in their area with information about job openings using these more traditional sources, like the local newspaper and direct outreach to community groups through direct emails or letters. All the panelists agreed that making at least some personal contact with outreach groups - including local colleges and trade schools, minority and community organizations, employment agencies and others - helps to make the outreach effort more effective.

We also discussed the "**internal promotion**" **exception to the wide dissemination requirement**. If a station wants to promote a current full-time employee, no recruitment is necessary (the assumption being that if, for instance, a sales person is promoted to sales manager, there would be an opening for a new sales person, and recruiting for that open position would take place). Promoting a part-time or temporary employee to a full-time position can take advantage of this internal promotions exception, if the part-timer or temp was hired using wide-dissemination. While there is an old proceeding outstanding about whether or not to extend the wide-dissemination requirements to part-time hiring, at this point the FCC staffers indicated that no decision was imminent. But, obviously, using outreach efforts to fill part-time positions is advantageous so a part-timer can be promoted to full-time without the outreach efforts if they prove to be a valuable employee.

There was also much discussion about the **non-vacancy specific employment initiatives, or supplemental efforts**, that stations need to conduct to comply with the FCC rules. These supplemental efforts are conducted by all broadcast employment units with five or more full-time employees, whether or not the station has any job openings. The idea is that stations help to educate the public about the types of jobs available at a station, the qualifications for those jobs, how to find out about those jobs. Also counted are programs to train existing employees to acquire new job skills. The FCC staffers on the panel seem to take an expansive view of these efforts - evidencing a willingness to count any meaningful activity where station employees take on this educational role. Credits or partial credits can be obtained for employees speaking at schools, for station visits by boy scout troops, for station promotional efforts in the community where some information is provided to attendees at the event about

broadcast employment issues, and (in some instances) for training of existing station employees. Internships have always been a staple of meeting these supplemental efforts requirement and, as the efforts are judged on a two year period, the FCC staff saw nothing wrong for claiming credit for two separate internship programs where there was recruitment at different times. In other words, if you have an intern in the fall semester, and then recruit at a school for an intern who you host in the spring semester, the FCC staff seemed open to counting this for two credits. But, as I warn broadcasters at all EEO seminars that I do, overachieve on these initiatives, as we have yet to see any cases where the FCC formally interprets what does and does not count in connection with these programs.

Documentation and self-assessment were also discussed. The FCC, in virtually every case where there has been an EEO fine, has also assessed a fine for failure to self-assess the EEO program. Self-assessment is written into the rules, so stations should be meaningfully reviewing their programs to make sure that they are being properly conducted, all of the required records are being kept, and that the programs are actually producing interviewees from recruiting sources outside of the traditional, in-house sources which the FCC felt that broadcasters in the past relied on too heavily.

These are but some of the issues tackled during this program, and just some of the issues to be considered in evaluating your EEO program. For more information about EEO compliance issues, look at some of past articles on this issue, and check out some of our other advisories on the subject. Our ***Guide to the FCC's EEO Rules*** is available [here](#). Our **most recent advisory about the requirements for the annual public inspection file report** is available [here](#). And slides from a recent presentation that I did about these rules for a state broadcast association are available [here](#).

[Disclaimer](#)

This advisory is a publication of Davis Wright Tremaine LLP. Our purpose in publishing this advisory is to inform our clients and friends of recent legal developments. It is not intended, nor should it be used, as a substitute for specific legal advice as legal counsel may only be given in response to inquiries regarding particular situations.