

The U.S. Equal Employment Opportunity Commission

Questions and Answers About Race and Color Discrimination in Employment

INTRODUCTION

Title VII of the Civil Rights Act of 1964 prohibits employers with at least 15 employees from discriminating in employment based on race, color, religion, sex, and national origin. It also prohibits retaliation against persons who complain of discrimination or participate in an EEOC investigation. Everyone is protected from race and color discrimination Whites, Blacks, Asians, Latinos, Arabs, American Indians, Alaska Natives, Native Hawaiians, Pacific Islanders, persons of more than one race, and all other persons, whatever their race, color, or ethnicity.

These questions and answers are adapted from the EEOC's Compliance Manual Section on Race and Color Discrimination. For more detailed information about race and color discrimination, you may review the [Race and Color Section](#) on the EEOC's website or call 1-800-669-3362 to request a free copy of the Race and Color Section of the web site.

What is "Race"?

Title VII does not contain a definition of "race." Race discrimination includes discrimination on the basis of ancestry or physical or cultural characteristics associated with a certain race, such as skin color, hair texture or styles, or certain facial features.

- Note that forms used for collecting federal data on race and ethnicity in the workforce use five racial categories: *American Indian or Alaska Native; Asian; Black or African American; Native Hawaiian or Other Pacific Islander; and White; and one ethnicity category, Hispanic or Latino.*

What is "Color"?

Color discrimination occurs when a person is discriminated against based on his/her skin pigmentation (lightness or darkness of the skin), complexion, shade, or tone. Color discrimination can occur between persons of different races or ethnicities, or even between persons of the same race or ethnicity. For example, an African American employer violates Title VII if he refuses to hire other African Americans whose skin is either darker or lighter than his own.

EMPLOYMENT DECISIONS

What employment actions are prohibited by Title VII?

Title VII prohibits race and color discrimination in every aspect of employment, including recruitment, hiring, promotion, wages, benefits, work assignments, performance evaluations, training, transfer, leave, discipline, layoffs, discharge, and any other term, condition, or privilege of employment. Title VII prohibits not only intentional discrimination, but also practices that appear to be neutral, but that limit employment opportunities for some racial groups and are not based on business need.

What is intentional discrimination?

Intentional discrimination occurs when an employment decision is affected by the person's race. It includes not only racial animosity, but also conscious or unconscious stereotypes about the abilities, traits, or performance of individuals of certain racial groups.

Example: An upscale retail establishment with a sophisticated clientele rejects an African American male applicant. The hiring manager stereotypically believes that African American males do not convey a clean-cut image and that they lack the soft skills needed to service customers well. A finding of discrimination would be warranted.

What if clients, customers, or employees prefer working with people of their own race?

Basing employment decisions on the racial preferences of clients, customers, or coworkers constitutes intentional race discrimination. Employment decisions that are based on the discriminatory preferences of customers or coworkers are just as unlawful as decisions based on an employer's own discriminatory preferences.

Can neutral policies be discriminatory?

Yes, in some instances. Some neutral employment policies or practices may exclude certain racial groups in significantly greater percentages than other racial groups. If there is a business necessity for the practice and there is no equally effective alternative, the practice will be lawful despite its impact.

However, if there is not a business necessity for the practice or the business need could readily be met in a way that has less impact, the practice will be unlawful.

Example: An employer has a "no-beard" rule, which disproportionately excludes African American men because they have a higher incidence of pseudofolliculitis barbae, an inflammatory skin condition caused by shaving. The employer must be able to demonstrate that beards affect job performance or safety. Also, there must be no alternatives to a strict "no-beard" rule that would meet the employer's business or safety needs.

Additional examples of neutral employment policies that may be discriminatory are included in the following sections.

RECRUITMENT AND HIRING PRACTICES

Can an employer ask about an applicant's race on an application form?

Employers may legitimately need information about their employees or applicants race for affirmative action purposes and/or to track applicant flow. One way to obtain racial information and simultaneously guard against discriminatory selection is for employers to use separate forms or otherwise keep the information about an applicant's race separate from the application. In that way, the employer can capture the information it needs but ensure that it is not used in the selection decision.

Unless the information is for such a legitimate purpose, pre-employment questions about race can suggest that race will be used as a basis for making selection decisions. If the information is used in the selection decision and members of particular racial groups are excluded from employment, the inquiries can constitute evidence of discrimination.

How can employers avoid racial discrimination when recruiting?

- **Job advertisements** - Generally, employers should not express a racial preference in job advertisements. Employers can indicate that they are "equal opportunity employers."

- **Employment Agencies** - Employment agencies may not honor employer requests to avoid referring applicants of a particular race. If they do so, both the employer and the employment agency that honored the request will be liable for discrimination.
- **Word-of-mouth employee referrals**- Word-of-mouth recruitment is the practice of using current employees to spread information concerning job vacancies to their family, friends, and acquaintances. Unless the workforce is racially and ethnically diverse, exclusive reliance on word-of-mouth should be avoided because it is likely to create a barrier to equal employment opportunity for racial or ethnic groups that are not already represented in the employer's workforce.
- **Homogeneous recruitment sources** - Employers should attempt to recruit from racially diverse sources in order to obtain a racially diverse applicant pool. For example, if the employer's primary recruitment source is a college that has few African American students, the employer should adopt other recruitment strategies, such as also recruiting at predominantly African American colleges, to ensure that its applicant pool reflects the diversity of the qualified labor force.

How can employers avoid racial discrimination in hiring and promotions?

Race or color should not be a factor or consideration in making employment decisions except in appropriate circumstances as set forth at Section 15-VI-C of the Compliance Manual section on Race and Color Discrimination. Reasons for selection decisions should be well supported and based on a person's qualifications for the position.

Also, an employer should not use selection criteria that disproportionately exclude certain racial groups unless the criteria are valid predictors of successful job performance and meet the employer's business needs.

- **Educational Requirements** - Certain educational requirements are obviously necessary for some jobs. However, if the educational requirement exceeds what is needed to successfully perform the job and if it disproportionately excludes certain racial groups, it may violate Title VII.
- **Arrest & Conviction Records** - Using arrest or conviction records as an absolute bar to employment disproportionately excludes certain racial groups. Therefore, such records should not be used in this manner unless there is a business need for their use.

Whether there is a business need to exclude persons with conviction records from particular jobs depends on the nature of the job, the nature and seriousness of the offense, and the length of time since the conviction and/or incarceration.

Unlike a conviction, an arrest is not reliable evidence that an applicant has committed a crime. Thus, an exclusion based on an arrest record is only justified if it appears not only that the conduct is job-related and relatively recent but also that the applicant or employee actually engaged in the conduct for which (s)he was arrested.

Can employers base hiring or promotion decisions on employment tests?

Yes, professionally developed tests may be used to make employment decisions if they do not discriminate on the basis of race. Employment tests that disproportionately exclude applicants/employees of a certain race must be validated. For example, if an employer uses a personality test to assess which employees are "management material" and the test disproportionately excludes people of a certain race, the employer must have the test professionally validated to ensure that the test accurately predicts or correlates with successful job performance. Employers should also consider whether there is an alternative to the test that serves the employers' needs with less discriminatory impact.

How can employers avoid racial discrimination on the job?

Employers should not only strive to recruit and hire in a way that provides equal opportunity for workers of all backgrounds to obtain jobs, but should also ensure that race and color discrimination are not barriers to employees' success once they are in the job. Race or color should not affect work assignments, performance evaluations, training opportunities, discipline, or any other term or condition of employment, except in appropriate circumstances as set forth at Section 15-VI-C of the Compliance Manual section on Race and Color Discrimination.

Example: An employer terminates a new Asian employee on the ground that she performs her work too slowly and makes too many mistakes. The investigation reveals that although White employees who perform at a substandard level are coached toward increasingly good performance, new employees of color get less constructive feedback and training. Therefore, they tend to repeat mistakes and make new ones that could have been avoided. A finding of discrimination would be warranted.

HARASSMENT

What is racial harassment?

Racial harassment is unwelcome conduct that unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive work environment. Examples of harassing conduct include: offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance. An employer may be held liable for the harassing conduct of supervisors, coworkers, or non-employees (such as customers or business associates) over whom the employer has control.

An isolated incident would not normally create a hostile work environment, unless it is extremely serious (e.g., a racially motivated physical assault or a credible threat of one, or use of a derogatory term, such as the N-word, etc.). On the other hand, an incident of harassment that is not severe standing alone may create a hostile environment when frequently repeated.

Example: A day after a racially charged dispute with a White coworker, an African American employee finds a hangman's noose hanging above his locker, reminiscent of those historically used for racially motivated lynchings. Given the violently threatening racial nature of this symbol and the context, this incident would be severe enough to constitute harassment.

Example: An African American librarian presents an idea to his supervisor to create a section devoted to African American authors and history, similar to those in major bookstore chains. The supervisor rejects the idea, stating that he does not want to create a "ghetto corner" in the library. This statement alone, while racially offensive, does not constitute severe or pervasive racial harassment in the absence of additional incidents.

How can employers prevent racial harassment?

The most important step for an employer in preventing harassment is clearly communicating to employees that harassment based on race will not be tolerated and that employees who violate the prohibition against harassment will be disciplined. Other important steps include adopting effective and clearly communicated policies and procedures for addressing complaints of racial harassment, and training managers on how to identify and respond effectively to harassment. By encouraging employees and managers to report harassing conduct at an early stage, employers generally will be able to prevent the conduct from escalating to the point that it violates Title VII.

An employer is liable for harassment by a supervisor if the employer failed to take reasonable care to prevent and promptly correct the harassment or if the harassment resulted in a tangible job action (termination, demotion, less pay, etc.). For more information, see EEOC's [Questions & Answers for Small Employers on Employer Liability for Harassment by Supervisors](#). An employer is liable for harassment by co-workers or non-employees if it knew or should have known of the harassment and failed to take prompt corrective action.

COMPLAINTS OF DISCRIMINATION

What should an employer do when someone has complained about race/color discrimination?

Employers should investigate and seek to resolve any complaint of discrimination by an applicant or employee. Employers should remember that, in all cases, it is unlawful to retaliate against a worker who complains of discrimination or participates in an investigation of discrimination.

Example: In the months following a charge of discrimination, a Native American employee begins receiving less and less overtime work. He files another charge alleging that the denial of overtime is retaliatory. The employer states that the employee was not assigned overtime because there is less work. However, the investigation reveals no significant change in the amount of overtime available before and after the employee's original charge. Other employees with similar qualifications have continued to be assigned overtime at approximately the same rate. These facts establish that the employee has been retaliated against for filing a charge.

What should an employee do if he or she experiences or witnesses race/color discrimination?

Employees or job applicants should attempt to address concerns with the offender and, if that does not work, report any unfair or harassing treatment to the company. They should keep records documenting what they experienced or witnessed, as well as other witness names, telephone numbers, and addresses. Employees may file a charge with the EEOC, and are legally protected from being punished or fired for reporting or opposing job discrimination or for participating in an EEOC investigation. Charges against private sector and local and state government employers may be filed in person, by mail, or by telephone by contacting the nearest EEOC office. If there is no EEOC office in the immediate area, call toll free 1-800-669-4000 or 1-800-669-6820 (TTY) for more information. Federal sector employees and applicants should contact the EEO office of the agency responsible for the alleged discrimination to initiate EEO counseling. For more details, see [How to File a Charge of Employment Discrimination](#).

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