# Best Practices of Private Sector Employers




## EXECUTIVE SUMMARY

## INTRODUCTION AND PROCEDURE

Commissioner Reginald E. Jones was appointed by Chairman Gilbert F. Casellas to head the Task Force to study "best" equal employment opportunity policies, programs, and practices of private sector employers. While the Equal Employment Opportunity Commission (Commission or EEOC) is the enforcement agency responsible for compliance with its statutory mandates, the Commission has an important role in facilitating voluntary compliance through education, training, outreach, and policy guidance. Indeed, the primary goal of the Task Force is to facilitate voluntary compliance in its examination of business policies, programs, and practices that will be useful to employers in structuring systems and policies that are consistent with their business priorities as well as with their equal employment opportunity (EEO) obligations and diversity objectives. The Task Force also has presented employers with the opportunity to showcase those policies, programs, and practices of which they are particularly proud.

Accordingly, the Task Force set out to look at noteworthy business practices by which employers are complying with their EEO obligations and diversity objectives, especially practices thought of as creative or innovative. The Task Force also set out to catalogue its findings in such a way that they will be useful to employers, especially smaller and medium-sized employers that are less likely to employ professional personnel and legal staffs. Additionally, ideas were solicited about how the Commission could better assist entities in developing best policies, programs, and practices. The Task Force thus examined what statutory, regulatory, policy or operational changes by the Commission may better facilitate the development of best policies, programs, and practices.

The Task Force divided its study of policies, programs, and practices into six major groupings: (1) **recruitment and hiring;** (2) **promotion and career advancement**; (3) **terms and conditions**; (4) **termination and downsizing**; (5) **alternative dispute resolution; and** (6) **other.** The focus of "recruitment and hiring" is on affirmative recruitment programs designed to create a diverse workforce, such as internships, recruitment strategies, and education and training programs used for hiring. The focus of "promotion and career

advancement” is on programs that have eliminated barriers to the advancement of women, people from diverse ethnic and racial groups, persons with disabilities, and older workers (those forty or older). Such programs as mentoring, education and training for purposes of promotion, and career enhancement initiatives were considered in this group. The focus of “terms and conditions” is on disability and religious accommodation programs, and on sexual harassment, pay equity, insurance, employee benefits, and work-life and familyfriendly policies and practices. The focus of the section on “termination and downsizing” is on such areas as retraining and placement programs for employees displaced by downsizing programs, nondiscriminatory early retirement programs, and insurance. “Alternative dispute resolution” focuses on early resolution of employment discrimination complaints and voluntary and effective alternative dispute resolution programs. The “other” category embraces any other policies, programs, or practices not readily identifiable in the previous five groups or where there was an overlap between or among groups.

Since management commitment and accountability are driving forces behind a company’s EEO policies, programs, and practices, it was decided to devote a part of the discussion in the report to this factor as well, thus creating a seventh grouping of “management commitment and accountability.” In terms of commitment, the Task Force looked at what management was saying and doing. In terms of accountability, the Task Force looked at tools such as performance appraisals, compensation incentives, and other evaluation measures to reflect a manager’s ability to set high standards and demonstrate progress.

The Task Force also decided to discuss a group of companies that have EEO programs that are particularly noteworthy from a comprehensive perspective. These companies addressed most, if not all, of the elements delineated above and deserve comprehensive recognition for their programs. The Task Force, in addition, recognized various partnerships, involving companies and the facilitation of employment opportunities with other organizations and/or individuals.

The Task Force developed criteria setting forth what a “best practice” is and does, which will be discussed. The best practices selected were generally viewed in terms of those criteria. The Task Force also focused on those submissions that were more detailed in terms of the description of the practice and how it worked, and that persuasively explained why the practice was of a noteworthy nature. Furthermore, the Task Force favored those practices that were presented with supporting data as to their effectiveness.

From the outset, submitting employers recognized that the information the Task Force was seeking went beyond simple compliance with the EEO laws enforced by the EEOC. When they received the Task Force request to hear about “Best Practices,” they knew that this meant more than just complying with the minimum requirements of the law. No, this term inherently focuses on what a company is doing at the level of compliance and beyond.

## LIMITATIONS

Unfortunately, time and financial resources limited the scope of the group’s work. The Task Force, as a whole, did not have the luxury of conducting site visits or validation studies of the submissions. Essentially, work was begun with an exhaustive review of the “best practices” literature. Thereafter, paper

examinations were conducted relying on stakeholders' submissions at face value, although follow-up was done, where it was available and felt to be helpful. In sum, the Task Force essentially considered whether the practice complied with the law, whether it would likely promote effective equal employment opportunity strategies, considering the barrier or barriers it was designed to address, and its fairness. Of course, the additional element of demonstrable results was considered where available.

The recognition of best practices in this report is a qualified one. The Task Force believes, however, that if appropriately implemented, considering the factual circumstances surrounding the implementation, the cited practices will be reasonably likely to promote equal employment opportunity. Indeed, the Task Force takes as a given that in each instance the submitter believes the practice has been highly successful in the promotion of equal employment opportunity and/or diversity, and, thus, is deserving of recognition.

The Task Force wishes to stress that a best practice may not be universally replicable on a successful basis regardless of employer or industry. We think, however, that the recognition of the practices in this report can provide some of our stakeholders valuable ideas on what has worked for other stakeholders. Such practices may very well be the basis for replication, although individual tailoring to the requirements of the individual worksite may be necessary.

Moreover, the Task Force notes that citing an employer for a best practice does not mean that employer is necessarily a model equal employment opportunity employer generally. A cited practice involves only a specific area of equal employment opportunity. This is because it is possible, for example, that an employer may have an excellent sexual harassment program and policy, yet that same employer may not have an effective policy on the employment of people with disabilities. A model employer must necessarily do many things, involving a multitude of areas, in a commendable manner. We emphasize, however, that even those employers generally cited for recognition may not be immune from criticism, given the parameters and limitations of the Task Force's study.

In sum, since time and resource constraints made it impossible to validate the accuracy of the submissions, or to assess how they are being implemented, it is important to emphasize that the Commission is not endorsing any particular policy, program, or practice. Rather, the Commission's goal is to identify and disseminate information about practices currently being implemented by employers which are likely to promote voluntary compliance with the laws enforced by EEOC.

## WHAT IS A "BEST" PRACTICE?

The report begins by identifying what the Task Force considers to be relevant in determining what a "best" practice involves. This was not an easy task. The Task Force recognizes that reasonable persons may differ on the question. Nevertheless, the Task Force concluded that most stakeholders should be able, at least generally, to agree with the framework.

In the view of the Task Force, a "best" practice comports with the requirements of the law, as manifested in the Commission's statutory mandates: Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, the Equal Pay Act of 1963, and the applicable sections of the Civil Rights Act of 1991. A best practice promotes

equal employment opportunity and addresses one or more barriers that adversely affect equal employment opportunity. Not only does a best practice present serious commitment from management to EEO objectives, but it also addresses management accountability for equal employment opportunity. Effective communication between management and the intended beneficiaries of the practice, as well as with all other employees, is another consistent best practice trait. A best practice embraces fairness to all employees. Finally, a best practice is implemented conscientiously and shows noteworthy results.

## "BEST" PRACTICE FINDINGS

The second section of the report identifies the policies, programs, and practices that the Task Force believes reasonably likely to assist the employer community and related employees and employee groups in facilitating their equal employment opportunity programs. As indicated, the Task Force divided its study of policies, programs, and practices into seven factor groupings:

1. Recruitment and Hiring;
2. Promotion and Career Advancement;
3. Terms and Conditions;
4. Termination and Downsizing;
5. Alternative Dispute Resolution;
6. Other; and
7. Management Commitment and Accountability.

The second section begins with those companies found to be comprehensively noteworthy, and then identifies noteworthy companies in each of the seven major groupings, including management commitment and accountability. Finally, the Task Force discusses noteworthy partnership arrangements, or any type of collaborative effort involving employers and another group, to achieve EEO worksite objectives.

Ultimately, the most successful companies have figured out that it makes best economic sense to draw talent and ideas from all segments of the population. Inclusive hiring and promotion practices bring into the organization segments of the workforce that may well provide competitive advantage in the increasingly global economy. Systematic exclusion of these segments denies these resources to the organization and lessens the chances of eventual success. For these companies, pursuing diversity and equal employment opportunity is just as integral a business concept as increasing market share or maximizing profits. In this way, diversity and EEO become not just programs, nor even separate departments, but rather a way of life that is integral to all business activities of the company.

However, the EEOC Best Practices Task Force recognizes that often it is not a simple matter for employers to comply with their obligations under our civil rights and EEO laws. This can be complex legal terrain. The EEOC itself enforces five separate statutes, and employers are subject to a myriad of other federal, state and local statutes, ordinances and regulations that also govern the employment arena. Thus, there is no substitute for strong commitment and hard work in this area.

The third section reviews "best" practice findings from a conceptual perspective. Leading companies responding to the Task Force seem to adopt what

we call a “SPLENDID” approach to these issues. The acronym “SPLENDID” stands for a series of actions that conscientious employers can take to address EEO and diversity issues: **STUDY, PLAN, LEAD, ENCOURAGE, NOTICE, DISCUSSION, INCLUSION,** and **DEDICATION.** A further explanation of the concepts behind the letters of the acronym is summarized on the following page:

## THE “SPLENDID” APPROACH

- **STUDY** – Since one cannot solve problems that one doesn’t know exists, know the law, the standards that define one’s obligations, and the various barriers to EEO and diversity.
- Assistance can be obtained from EEOC, professional consultants, associations or groups, etc.
- **PLAN** – Know one’s own circumstances (workforce and demographics – locally, nationally, and globally). Define one’s problem(s); propose solutions; and develop strategies for achieving them.
- **LEAD –** Senior, middle, and lower management must champion the cause of diversity as a business imperative, and provide leadership for successful attainment of the vision of a diverse workforce at all levels of management.
- **ENCOURAGE –** Companies should encourage the attainment of diversity by all managers, supervisors, and employees, and structure their business practices and reward systems to reinforce those corporate objectives. Link pay and performance not only for technical competencies, but also for how employees interact, support and respect each other.
- **NOTICE** –Take notice of the impact of your practices, after monitoring and assessing company progress. Self-analysis is a key part of this process. Ensure that a corrective strategy does not cause or result in unfairness.
- **DISCUSSION –** Communicate and reinforce the message that diversity is a business asset and a key element of business success in a national and global market.
- **INCLUSION** – Bring everyone into this process, including white males. Help them understand that EEO initiatives are good for the company and, thus, good for everyone in the company. Include them in the analysis, planning, and implementation.
- **DEDICATION** – Stay persistent in your quest. Long term gains from these practices may cost in the short term. Invest the needed human and capital resources.
- The suggestions above are just a small sampling of the characteristics that seem to be common in most of the companies that operate their EEO compliance procedures above and beyond the minimum basic legal requirements. Additional ideas are set forth in each of the seven “best” practice areas studied. Since these ideas are rather extensive, they are not discussed here.

## STATUTORY, REGULATORY, POLICY, AND OPERATIONAL CHANGES

The fourth section considers what Commission statutory, regulatory, and policy changes may be necessary to facilitate best practices. This section also considers what the Commission might do operationally to facilitate best practices.

### 1. STATUTORY, REGULATORY, AND POLICY CONSIDERATIONS

A Task Force committee was assigned to address Chairman Casellas' request for a review of all statutory, regulatory, and procedural guidance for their impact on the development or implementation of best practices, including, if needed, recommendations for changes. After reviewing the comments received from stakeholders and conducting our own assessment of the statutes the Commission enforces, as well as the substantive and procedural guidance documents issued by the Commission, the Task Force concludes that none of the Commission's current regulations or policy guidance hinder the development or implementation of employer best practices.

In addition, based on the input from external and internal stakeholders, the Task Force concludes that no recommendations to Congress for changes in the statutes enforced by the Commission are warranted at this time. While Congressional action to promote voluntary compliance with EEO laws and/or to facilitate employer adoption of best practices may be possible, the Task Force received no specific comments, suggestions, or recommendations in this area.

Finally, the EEOC has been and continues to be committed to providing guidance to the public about the laws we enforce. That commitment includes obtaining input from internal and external stakeholders about the type and kind of policy guidance we should issue. The Office of Legal

Counsel, which is primarily responsible for development of policy for consideration by the

Commission, regularly meets with a broad range of external stakeholders, including personnel from other federal agencies, to seek input on policy issues. The development of policy is also driven by the types of issues that are reflected in our charge inventory and litigation docket, and by input from investigators and attorneys in the field. The Task Force believes that the Commission should continue to facilitate accessibility and responsiveness on policy issues, and continue to welcome advice and comment from stakeholders on how it may better serve the public interest.

A summary of the Task Force's recommendations is as follows:

- The Task Force recommends that the Commission place greater emphasis on the development of procedural and substantive guidance.
- The Task Force encourages a comprehensive and speedy review of Volume II of the Compliance Manual with input from external stakeholders in close coordination with the Commission staff.

**2. OPERATIONAL CONSIDERATIONS**

One of the key factors in implementing best practices is for those affected by EEO laws to be well informed about their rights and responsibilities under those laws. This section of the Best Practices Task Force Report assesses what the Commission can do operationally to facilitate the development and implementation of best equal employment opportunity policies, programs, and practices. A Task Force committee was assigned to address this area.

- **EEOC Education, Technical Assistance, and Outreach Programs**

This part of the Task Force report begins with the history of the Commission's education, technical assistance, and outreach programs designed to inform

stakeholders about the statutes and changes in the law. It illustrates the Commission's longstanding and continuing commitment to education, technical assistance, and outreach. From the nationwide voluntary action program begun by the agency in 1966, to the Office of Technical Assistance, created in 1967 and which grew into a twentyone person office by 1970, to the 1972 creation of the Office of Voluntary Programs that continued operations through the 1970s, the Commission constantly maintained a dual focus with law enforcement on the one hand, and education, outreach, and technical assistance efforts on the other.

Toward the end of the 1970s, the Commission's primary emphasis was on the reduction of its charge backlog. As a consequence, Commission technical assistance and education programs were deemphasized, with resources being redirected to law enforcement programs and activities. In 1982, Chairman Clarence Thomas, reaffirming the need for active voluntary assistance to complement EEOC's enforcement efforts, required renewed managerial attention to education and outreach activities. Other such efforts initiated during this time were the Office of Special Projects (established to conduct special analyses and make recommendations of operational changes to increase the agency's effectiveness), the Office of Voluntary Assistance (which was designed to provide education and assistance to small employers, unions and individuals), and the Expanded Presence Program (designed to increase the accessibility of EEOC staff to underserved areas).

With the passage of the Gramm-Rudman Act, the EEOC was required to reevaluate its spending on voluntary assistance and education programs. Early in FY 1986, the agency concluded that it could not fully renew its budget allotments for these programs, and funding was steadily squeezed off thereafter. By 1990, our technical assistance activities were largely confined to participation as invited speakers in workshops, seminars, and conferences sponsored by other groups and organizations.

President George Bush signed the Americans with Disabilities Act on July 26, 1990, and on July 26, 1992, the Commission began enforcing Title I of the ADA. In that two-year period, the Commission developed regulations and policy guidance, developed broad technical assistance programs, developed training programs for EEOC staff, as well as plans for providing training to the disability community and employers. These and subsequent ADA implementation activities were performed by the Office of Legal Counsel.

The current EEOC education, technical assistance, and outreach program consists of Commission activities in three areas: (1) national and local enforcement plans [NEP & LEP] (which pledge the Commission to education, outreach, and voluntary resolution as tools to eliminate workplace discrimination); (2) the revolving fund (which produces the agency's fee-paid technical assistance program seminars [TAPS] across the country); and (3) participation of headquarters and field office personnel in thousands of nationwide conferences, meetings, and seminars annually.

- **Recommendations**

In its discussions with field office staffs and external stakeholders, the Task Force received many comments and suggestions about what EEOC can do to improve both its fee paid and no-fee education and technical assistance programs in advancing the development of best practices, and the role of agency enforcement

activities and general operations in helping employers develop best practices. All of these comments and suggestions were considered by the Task Force and many of them have merit. However, in times when Commission resources are limited and demands placed upon those resources are heavy, policy choices placing new stress on those resources are difficult to make. Thus, suggestions entailing large new cost outlays were generally not adopted. Moreover, some of the comments did not appear to be relevant to Task Force issues, or bore significant implications beyond the scope of this report. The Task Force has sought to address the concerns of all stakeholders, and these concerns played a key role in the formulation of its recommendations.

The Task Force's recommendations fall into four primary areas. First, the Task Force recommends that the Commission be more involved in providing employers assistance in implementing best practices. This includes providing technical assistance on-site, where possible, collecting best practices information and models, establishing industry liaison groups, providing more materials, and providing easier and more frequent access to Commission programs. Second, the Task Force recommends that the Commission engage in various communications initiatives. This includes encouraging employers to give their evaluations of Commission activities in education, technical assistance, and outreach, so that the Commission can be even more responsive to employer needs. Third, the Task Force recommends certain coordination initiatives in order to facilitate greater effectiveness and efficiency in the planning and delivery of the Commission's programs.

Fourth, the Task Force has made recommendations concerning the use of its settlement agreements and/or consent decrees. A summary of the Task Force's recommendations is as follows:

- Commissioner-led outreach activities across the country should continue, with particular emphasis in areas which historically have been underserved by EEOC.
- Technical assistance should be provided on-site.
- Collect best practices information and models on an ongoing or periodic basis, and provide such information in TAPS presentations and other Commission programs.
- Office of Research, Information and Planning should provide research support and general industry or sector employment and best practices analyses in support of the field offices' NEP/LEP outreach, education, and technical assistance.
- Establish industry liaison groups, to the extent possible, within each district office jurisdiction.
- Revolving Fund Division, Office of Field Programs (OFP), should continue to explore alternative ways to effectively reach nonprofit organizations and small businesses in low cost and more affordable venues and formats.
- Consider holding public hearings, to the extent possible, around the country and/or consider holding a few Commission meetings outside of Washington, DC.
- Continue to encourage open communications with employers who need help from EEOC in changing their current policies and practices.
- OFP should report annually on the status and accomplishments of the Revolving Fund and other education, technical assistance, and outreach programs. The report should include an evaluation and presentation of best practices.

- TAPS attendees should be asked how and to what extent the program facilitated their compliance with the law and if so, whether it facilitated best practices.
- To the extent possible, additional resources should be devoted to the agency’s no-fee education, technical assistance, and outreach programs.
- OFP and Office of General Counsel should compile and catalogue best practice settlement agreements and/or consent decrees.