

EEOC and Race/Color Discrimination Developments.

The Equal Employment Opportunity Commission (EEOC) has recently published, in a “Question and Answer” format, guidance regarding an employer’s obligation under Title VII of the Civil Rights Act of 1964 to refrain from race or color discrimination. The publication makes clear that individuals of all races are protected under Title VII, not simply those in the major racial categories. The protection also extends to persons of more than one race. Race discrimination includes adverse employment action based on, according to the publication, ancestry or physical or cultural characteristics associated with a particular race, including skin color, hair texture or style, facial features, etc.

Discrimination based on color is a separate violation under Title VII. The question whether an African-American hiring official can be guilty of discrimination based on color by refusing to employ other African-Americans because of their lighter or darker skin is answered in the affirmative by the guidance.

In a related development, this next year will see the implementation of changes in the federal Employer Information Report. The Report, commonly called the “EEO-1 Report,” is filed annually with the EEOC by private employers and public employers receiving federal funds. It provides information about the racial, ethnic, and gender composition, broken down by job groups, of the employer’s workforce. Beginning with the report due in September 2007, employers will be required to change the way racial and ethnic data are collected and reported. A “two question” format will now be used, in which employees will first be asked to report Hispanic or Latino status and, then, if they report neither they will be asked to identify themselves racially. New race/ethnic categories will be used. “Pacific Islanders” are now separate from “Asians,” new categories “Asian not Hispanic or Latino” and “Native Hawaiian or Other Pacific Islander not Hispanic or Latino” are being added, and “Black” will now be reported as “Black or African American.” Finally, a new category, “two or more races not Hispanic or Latino” is also being added. Employees who place themselves in this latter category will now be separately reported by their employers.

The EEOC uses the EEO-1 Reports to help determine whether patterns of employment discrimination are evident. The Report is shared with the federal Office of Federal Contract Compliance Programs.