

Monday, Aug. 18, 2008 – From the EXCEL CONFERENCE FLOOR

Gazal Modhera, Special Assistant to Chair Naomi Earp, gave an informative presentation on the EEOC's [E-RACE Initiative](#). E-RACE stands for Eradicating Racism and Colorism From Employment. Modhera explained that we need E-RACE because despite progress, there is evidence that race and color discrimination in employment persists. In addition to opinion polls showing that discrimination persists, several recent research studies have revealed the continuing impact of race and color discrimination in employment.

In one study, researchers mailed identical applications to employers. Some were from fictitious applicants with traditionally White-sounding names, like Emily and Brendan, and some were from fictitious applicants with traditionally Black-sounding names, like Lakisha and Jamal. The hypothetical White applicants were 50% more likely to receive a call back than the hypothetical Black applicants.

Further, race discrimination is the most frequently filed charge with the EEOC. In 2007, over 30,000 EEOC charges alleged race-based discrimination, accounting for 37 percent of all charges filed. This is up 12% to the highest level since FY 1994.

The Commission has also seen a troubling resurgence of the hangman's noose – historically one of the most vile symbols of terror, harassment, intimidation, and violence against Blacks. Gazal noted that the Commission has seen some of these cases in the federal sector as well. In the plenary session, the Chair spoke about one employee who had “KKK” carved into her computer and a noose left in her workplace.

Discrimination today is often a lot more subtle than it was in previous years, Modhera explained, and finding it can be a more complex endeavor. Subjective decision-making is not illegal, but the courts say that subjective decision-making has to be examined carefully. A particular danger with respect to subjective decision-making is that it can easily be infected by so-called “implicit bias,” or “subconscious bias,” meaning that people may engage in discrimination without even realizing it at the time. Implicit bias is a growing concern among employment discrimination experts.

Implicit bias tests measure the extent to which people hold stereotypes for various traits by measuring subtle shifts in reaction times when people match a series of “good” words and “bad” words with persons of different races, genders, ages, etc. Millions of people have taken one or more of the tests, allowing the researchers to make certain findings: First, implicit biases are pervasive. Second, people are often unaware of their implicit biases. Third, implicit biases predict behavior. Finally, the researchers say that implicit attitudes can be modified by experience, which in turn can change behavior. This means there is an antidote for biased thinking - making *nondiscrimination* more conscious.

Modhera encouraged attendees to take the self-assessment test at the website: <https://implicit.harvard.edu> to get feedback and raise self-awareness.

The burgeoning Information Age is another reason for E-RACE. While technology has eased our lives in many respects, it also has the potential to foster discrimination early in the hiring process. The prevalence of the Internet and computer records has made it easier to access background information about applicants that may have implications for equal employment opportunity. Also, with so much recruitment occurring via the Internet and by computer, it is possible that individuals with home addresses in certain zip codes in areas known to be ethnic, racial, or religious enclaves could be screened out discriminatorily.

As an example of video resumes, Modhera mentioned the movie “Legally Blond,” where the protagonist Elle used a video resume to apply to law school. She noted that the Commission is concerned about the potential problems that may arise from social networking sites, and the use of video resumes. All of these may permit employers to rely on prohibited traits such as race, color, gender, national origin, disability or age to exclude applicants, without the applicant knowing.

Moderha discussed some of the important race and color discrimination lawsuits the EEOC recently filed or resolved. In March 2008, EEOC settled a lawsuit in which EEOC alleged that national drug store chain Walgreen Co. engaged in a pattern and practice of race discrimination by making store assignments to Black management trainees, managers and pharmacists, because of their race. The total settlement amount was over \$24 million, with over \$18 million for about 10,000 individuals. The settlement also included robust non-monetary relief, including the hiring of consultants to review and make recommendations regarding modifications to the company’s employment processes.

The highlight of the presentation was the discussion about proactive prevention steps employers can and should take to prevent discrimination in recruitment and selection and to provide qualified persons of all races equal access to jobs. Modhera stressed that organization leadership must make equal employment opportunity a commitment. Basic training on the fundamentals of the law on equal employment opportunity should be required.

In recruitment, EEO principles should not be an afterthought. Employers should make sure they are pulling in applicants that reflect the diversity of the qualified labor market. Beware of informal, word-of-mouth recruiting and selection.

Employers should analyze the duties, functions, and competencies relevant to jobs and create objective, job-related qualification standards related to those duties, functions, and competencies. They should make sure that selection standards are consistently applied when choosing among candidates.

Again, for some traits and qualities, subjectivity cannot be avoided. But discretion should not run amok. Subjective decision-making should be guided by clear standards, and such decisions should be supported with details and documents. Make sure you retain your notes of interviews.

All of this applies to promotions as well. Employers should make sure the promotion process is open and fair. Informal, “tap on the shoulder” promotion practices can be a barrier to

employment for the full qualified candidate pool. Make sure promotion criteria and job openings are made known.

Finally, in conducting interviews, it can be helpful to use structured interviews which ensure that all candidates are asked the same questions regardless of demographic characteristics or appearance.

As important as nondiscrimination in recruitment and selection are, just getting a job is not enough. Persons of all backgrounds must have an equal opportunity to succeed in their jobs without regard to their race or color. This of course means that harassment cannot be tolerated. It's troubling there has been a trend of increases in non-sexual harassment charges.

Employers should conduct self-analyses to determine whether current employment practices disadvantage people of color, or treat them differently in everyday terms and conditions of employment. Moreover, employers should formalize as many employment practices as feasible so as to limit subjective decision-making in areas where it is not needed.