



# Strategic Workforce Planning Legal and Practical Considerations

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# Hypothetical

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Your agency EEO officer has just notified you of underutilization in a particular civil service title. There is a race-based disparity of the incumbents in the title. What are the next steps you should take?

- A) Because there is a statical disparity, you can immediately give a hiring preference to applicants of underutilized races to comply with the City's EEO policy.
- B) You should work with your EEO officer in order to explore the composition of the hiring pools for the title as well as critically examine the hiring process to determine what is causing the disparity.
- C) You should consider new recruitment processes to advertise the position to a greater cross-section of the population and processes to support applicants from underutilized races.
- D) You should follow all of the above steps immediately
- E) You should start with steps B & C



# Race-based hiring

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- While rare, race (or gender) based hiring is permissible, but only if:
  - The agency can show that the hiring is a bona fide occupational qualification (BFOQ) necessary to the normal hiring of the agency AND agency can show that no reasonable alternatives exist OR
  - The agency can show a “strong basis in evidence” that a hiring practice is discriminatory AND there are no equally valid alternatives that are less discriminatory. A disparity alone is insufficient
- As a practical matter, this is virtually impossible to show outside of the most egregious circumstances and only all reasonable alternatives are exhausted



# Solution-Oriented Approach

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- Avoid applying “band-aids” and seek out and fix root of the problem
- Data review to determine source of disparity, but review data critically and in qualitative context (seek assistance of EEO and General Counsel)
- Examine candidate pool, source of the pool, pipeline, training and engagement
- Strategies may be very different depending on the nature of the job and recruitment
- Case Study: Fire Department