

EQUAL EMPLOYMENT PRACTICES COMMISSION

The City of New York



ANNUAL REPORT

CALENDAR YEARS 2009 and 2010

EQUAL EMPLOYMENT PRACTICES COMMISSION

City of New York

Cesar A. Perez
Chair/Commissioner

Angela Cabrera
Commissioner

Malini Cadambi Daniel
Commissioner

Elaine S. Reiss, Esq.
Commissioner

Arva R. Rice
Commissioner

Staff

Abraham May, Jr., Executive Director
Charise L. Hendricks, PHR, Deputy Director
Judith Garica Quinonez, Esq., Counsel

Michelle M. Antonie, Sr. Auditor/Compliance
Adrienne Smith, EEO Auditor/Compliance
Ilicia Zuell, Budget/Personal Coordinator

Officer Alexander Salta, EEO Auditor*
Shaquiea Sykes, EEO Auditor
Cynthia Toro, Exec. Secretary

*Resigned during reporting period

+Retired during reporting period

**EQUAL EMPLOYMENT PRACTICES
COMMISSION ANNUAL REPORT/CALENDAR
YEARS 2009 and 2010**

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CHAPTER I

THE MANDATE

“There shall be an equal employment practices commission which shall review, evaluate and monitor the employment procedures, practices and programs of any city agency and the department of citywide administrative services to maintain an effective affirmative employment program of equal employment opportunity for minority group members and women who are employed by or who seek employment with city agencies.”

Chapter 36, Section 830 (a), New York City Charter, as amended, 1999

INTRODUCTION

To comply with the requirements of the 1964 Civil Rights Act and subsequent federal, state, and city laws against employment discrimination, Chapter 35 of the New York City Charter requires the heads of all city agencies “to establish measures and programs to ensure a fair and effective affirmative employment program to provide equal employment opportunity for minority group members and women who are employed by, or seek employment with the agency, and in accordance with the uniform procedures and standards established by the department of citywide administrative services for this purpose...” (Section 815a(19)).

To ensure the effective administration of these measures and programs, Chapter 36 of the New York City Charter created the Equal Employment Practices Commission with the following powers and duties:

1. To review the uniform standards, procedures and programs of every city agency to ensure that it provides equal employment opportunity for minority group members and women employed by, or seeking employment with, city agencies;
2. To recommend to all city agencies procedures, approaches, measures, standards and programs to be utilized to ensure equal employment opportunity for minority group members and women;
3. To advise and, if requested, assist city agencies in their efforts to increase employment of minority group members and women;
4. To audit and evaluate the employment practices and procedures of each city agency at least once every four years and whenever requested by the Civil Service Commission or the Human Rights Commission, or whenever deemed necessary by this Commission;
5. To make policy, legislative and budgetary recommendations to the Mayor, the City Council, or any city agency to ensure equal employment opportunity for minority group members or women;
6. To publish annually a report to the Mayor and the City Council on the activities of the Commission, and the effectiveness of each city agency’s efforts to ensure equal employment opportunity;

7. To establish appropriate advisory committees;
8. To serve with such other agencies or officials the Mayor designates as the city liaison to federal, state and local agencies responsible for compliance with equal employment opportunity;
9. To take such other actions as appropriate to effectuate the provisions and purposes of its mandate;
10. To hold public or private hearings; and
11. To compel the attendance of witnesses to determine if agencies are in compliance with the equal employment opportunity requirements of the New York City Charter.

COMMISSION STRUCTURE

The Equal Employment Practices Commission (Commission or EEPC) is an independent city agency. The New York City Charter authorizes the appointment of five part-time Commissioners, each serving staggered four-year terms. Two Commissioners are appointed by the Mayor, and two are appointed by the City Council. The Chairperson is appointed jointly by the Mayor and the City Council Speaker. Four of the five current commissioners were appointed in calendar year 2009.

In February 2009, Mayor Michael Bloomberg appointed Cesar A. Perez, Esq., to replace former commissioner/vice-chair Manuel Mendez. In April of the same year, Mayor Bloomberg and City Council Speaker Christine Quinn jointly appointed Mr. Perez chairperson for the remainder of a four-year term that ended June 30, 2010. Mr. Perez replaced former chair Ernest Hart, Esq., who resigned to assume the chair of the Civilian Complaint Review Board. Mr. Perez is the Counsel for Premiere Home Health Care, Inc. His previous positions include Deputy Chief Operating Officer at the Columbia University Medical Center at Harlem Hospital, and Assistant General Counsel at Columbia University.

In April 2009, Mayor Bloomberg appointed Elaine S. Reiss, Esq., to fill the vacancy created by the appointment of Mr. Perez as chair. That four-year term expires June 30, 2011. Ms. Reiss is an Adjunct Instructor at the Brooklyn Law School. She was

formerly employed as the Deputy General Counsel to New York City Charter Revision Commission (2003). She also served as a Deputy Commissioner/General Counsel at the former Department of Employment, and more recently at the Department of Information Technology and Telecommunications.

Also in April 2009, the City Council appointed Malini Cadambi Daniel to the Commission. She replaced former commissioner Veronica Villanueva, Esq., who resigned in 2008 to pursue a career as a public school teacher. Ms. Daniel is the Director of Research at the Service Employees International Union, Local 1199. She was promoted to that position after a successful tenure as Assistant Director for Research. She is a candidate for a doctorate at the New School for Social Research.

In September 2009, the City Council appointed Arva R. Rice to replace former commissioner Cheree Buggs, Esq., who resigned on January 1, 2008, to commence her first term as a New York State Civil Court Judge. Ms. Rice is the President And Chief Executive Officer of the New York Urban League. Her previous positions include Executive Director of Project Finance, a non-profit micro-finance corporation and founding Executive Director of Public Allies New York.

Former Mayor Rudolph Giuliani appointed Angela Cabrera in 1997. She is the President of Cabrera & Associates, a consulting firm that specializes in public relations and business development. A former Deputy Commissioner at the New York State Department of Commerce, she is also a board member of the Family Institute, a Trustee of the Museo del Barrio, and a member of the Prospect Park Alliance. Ms. Cabrera is also a member of the Diversification/Outreach Committee of the Metropolitan Museum of Art, and a founding member of 100 Hispanic Women.

The Commission has a liaison relationship with the office of the Deputy Mayor for Legal Affairs. The New York City Council Committee on Civil Rights has oversight responsibility for the EEPC.

EQUAL EMPLOYMENT OPPORTUNITY POLICY

To comply, in part, with federal civil rights laws, Chapter 35 of the New York City Charter requires the Department of Citywide Administrative Services (DCAS) to establish and enforce uniform procedures and standards to be utilized by city agencies to ensure equal employment opportunity for minority group members and women who are employed by, or who seek employment with, city agencies. Each city agency is thus required to “establish measures and programs to ensure a fair and effective affirmative employment plan to provide equal employment opportunity for minority group members and women who are employed by, or who seek employment with, the agency and, in accordance with the uniform procedures and standards established by the department of citywide administrative services for this purpose, to adopt and implement an annual plan to accomplish this objective.” These uniform procedures and standards administered by DCAS are known as the *Equal Employment Opportunity Policy, Standards and Procedures To Be Utilized by City Agencies (EEO)*. The current Equal Employment Opportunity Policy, established by the Bloomberg Administration, was distributed to all city agencies in January 2005.

As new “protected classes” have been added to federal, state, and city civil rights laws, the City’s EEO Policy has been amended accordingly. The EEO Policy currently prohibits employment discrimination on the basis of actual or perceived race, color, national origin, alienage or citizenship status, religion or creed, gender (including “gender identity”), disability, age (18 and over), military status, prior record of arrest or conviction, marital status, partnership status, predisposing genetic characteristic, sexual orientation, or status as a victim or witness of domestic violence, sexual offenses and stalking.

METHODOLOGY

In addressing its mandate, the Commission may hold public hearings with mayoral agencies on the implementation of the City’s Equal Employment Opportunity Policy, with non-mayoral agencies on the implementation of their Equal Employment Opportunity Programs, and special hearings on specific equal employment opportunity issues. The Commission may also conduct independent investigations on specific equal employment opportunity issues.

The Commission's most significant power is the power to audit city agencies. Audits are separate evaluations of the equal employment opportunity programs, policies, practices and procedures of an agency during a specific period of time. The purpose of audits of mayoral agencies is to determine agency compliance with the requirements of the City's Equal Employment Opportunity Policy (EEOP) established by the Mayor's office and federal, state and local EEO requirements. For non-mayoral agencies the audits determine agency compliance with their Equal Employment Opportunity Policy and federal, state, and local EEO requirements.

DEFINITION OF ETHNIC GROUPS

According to the 2010 census, there are approximately two hundred different ethnic groups living and working in New York City. Many of these ethnic groups are represented in New York City government's diverse workforce. Since any discussion of races and ethnic groups must be sensitive to the use of appropriate terminology, the Equal Employment Practices Commission consistently uses the following terms in discussing New York City's diverse races and ethnic groups:

Caucasians: persons of European ancestry and generally referred to as White.

Hispanics: persons of Hispanic ancestry including persons from Puerto Rico, Mexico, Central America and Latin America.

African-Americans: persons of African ancestry, including persons from the Caribbean and Africa, and generally referred to as Black.

Asian-Pacific Islanders: persons of Asian and Pacific Island ancestry including persons from China, Japan, Korea, Philippines and the Indian subcontinent.

Native-Americans: persons indigenous to the United States, including American Indians, Alaskans and Aleuts.

CONCLUSION

The distribution of an annual report on the Commission's activities is a requirement of the New York City Charter. This report is also on the Equal Employment Practices Commission's webpage:

(<http://www.nyc.gov/html/eeepc/html/home/home.shtmleepc.nyc.gov>).

CHAPTER II

UNLAWFUL EMPLOYMENT PRACTICES

“It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or discharge any individual or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin...”

Title VII, Civil Rights Act, 1964, Sec. 2000e-2. [Section 703]

INTRODUCTION

Employment discrimination lawsuits against city agencies are based on allegations the agency engaged in or allowed discriminatory practices, or the agency failed to utilize non-discriminatory employment practices. All such lawsuits are filed against the City of New York, and the agency. The New York City Law Department, Labor and Employment Division, represents the City and every agency in employment discrimination cases. Payments pursuant to judgments or settlements for employment discrimination cases are paid primarily from the City treasury; payments for back wages are paid from the agency's budget. Whether disposed of in favor of the City or in favor of the complaining employee, the legal defense of employment discrimination cases consumes vast amounts of City resources, including, but not limited to, the legal staff of the Law Department, as well as the legal staff of the city agency under suit.

Judgments that an agency violated City, State or Federal anti-discrimination laws may require not only payment to the employee, but may also require the agency to institute procedures and practices to avoid future violations of those laws. Consent decrees and orders of settlement, are approved by the court after consideration of the facts and claims of the parties, and include not only an agreement to a monetary payment, but also a structured agreement to institute changes in the agency's employment practices ensure adherence to anti-discrimination laws and regulations.

These changes are often consistent with recommendations the EEPC might have issued after an audit to corrective non-compliance with City, State, and Federal laws and procedures.

SIGNIFICANT COURT DECISIONS

Following are significant court decisions in employment discrimination cases against New York City government agencies in calendar years 2009 and 2010.

Calendar Year 2009

Williams v. New York City Housing Authority, 61 A.D.3d 62; 872 N.Y.S.2d 27 (App. Div., 1st Dept., 2009), lv. to app. den. Williams v. N.Y. City Hous. Auth., 13 NY3d 702, 914 NE2d 365, 885 NYS2d 716 (2009)

A City employee alleged she experienced sexual harassment, hostile work environment and retaliation at various times during her employment with the New York City Housing Authority. The Court ultimately affirmed the dismissal of the case because the allegations of harassment and hostile work environment occurred beyond the three-year statute of limitations, and the evidence did not support the allegations of retaliation.

The Williams decision is significant because the Appellate Division of the New York State Supreme Court analyzed and applied the Local Civil Rights Restoration Act of 2005 (Local Law No. 85 of 2005 § 1 (Restoration Act), in which the New York City Council amended the New York City Human Rights Law (NYCHRL) to establish it as independent of state and federal anti-discrimination laws, and require that it be construed more broadly and with a more remedial purpose.

The Court clarified that under the amended NYCHRL, the basis for analyzing allegations of sexual harassment and hostile work environment claims is whether there is evidence of inferior terms and conditions of employment on the basis of gender. This is distinguished from state and federal law that required the plaintiff show the sexual harassment was sufficiently severe or pervasive to alter the conditions of employment. The decision also acknowledged the need for “a keen sense of workplace realities” to evaluate whether what is alleged as retaliation would reasonably deter a person from opposing discrimination. Finally, the Court applied the NYCHRL’s continuing violation standard to determine whether the plaintiff’s claims were time-barred: whether the connection between the allegations of employment discrimination prior to the three-year limitation

period and the timely allegations is evidence of a consistent pattern of discriminatory practices.

Phillips v. City of New York, 66 A.D.3d 170; 884 N.Y.S.2d 369 (App. Div., 1st Dept., 2009)

An employee with breast cancer requested additional medical leave beyond the 12 weeks allowed by the Family Medical Leave Act. Her employer, the Department of Homeless Services (DHS), denied her request, due to the fact that she was in a non-competitive title. The Appellate Division of the New York State Supreme Court reversed dismissal of the case.

The Court held that the DHS has the affirmative obligation to endeavor to provide a reasonable accommodation to every class of employee with a disability, and that its failure to consider the feasibility of the employee's requested accommodation was discrimination in violation of the Americans with Disabilities Act, State and City Human Rights Laws. The Court held that the City is not exempt from the legal requirement to engage in the good faith interactive process, and that it cannot exclude a category of employees from this process due to their civil service status. The Court further held that engagement in the interactive process to identify the appropriate accommodation for the disabled employee is itself an accommodation.

United States and the Vulcan Society Inc. v. City of New York, 637 F. Supp. 2d 77 (E.D.N.Y. 2009)

In 2009, the Federal District Court held that New York City's use of Civil Service Examinations 7029 and 2043 to select entry-level firefighters from 1999 to 2007 effectively excluded hundreds of African American and Hispanic applicants from admission to the entry-level firefighter classes at the New York City Fire Academy, in violation of Title VII. The Court held there was sufficient evidence that the exams resulted in a statistically adverse impact on African American and Hispanic applicants, and that the City was aware of the discriminatory impact of the examinations on the hiring process.

The Court also found that the City had not constructed the entry-level exams to screen for either the abilities important to the job of firefighter, or for abilities needed upon entry to the Fire Academy. It held that in spite of the undeniable adverse impact the examinations have had on African American and Hispanic applicants, the City failed to take remedial action to ensure that the exams were reliable, such as retaining testing professionals to devise examination questions to test for important abilities related to the tasks of an entry-level firefighter; and improperly continued to rely upon the results of the poorly constructed examination as part of an arbitrary hiring process.

Latino Officers Association City of New York, Inc., et al v. City of New York, et al., 588F.3d 159 (2d Cir. 2009)

The Latino Officers Association (LOA) and a class of Latino and African American police officers brought the suit asserting that the New York City Police Department (NYPD) was in contempt of court for failure to comply with the terms of the Affirmative Injunctive Relief section of the 2003 Stipulation and Order (Stipulation) entered into to settle a previous case alleging discrimination against Latino and African American police officers. The Stipulation required the NYPD to establish a Disciplinary Review Unit (DRU) within the Office of Equal Employment Opportunity (OEEO) to review, analyze and report on its disciplinary practices; to implement a unified disciplinary database. The DRU was expected to analyze whether African American and Latino/Hispanic members of the NYPD were investigated or subjected to discipline in a discriminatory manner. The LOA submitted evidence that showed that minority police officers were 35% more likely to be disciplined than white officers, and that the discipline was more severe.

The Court held that the statistics did not support holding the NYPD in contempt. On the contrary, the Court found the evidence showed the NYPD created an Employment Practices Unit with the same purposes as the proposed DRU; and thus took substantial steps to eliminate discriminatory practices. The Court stated that although the agreement includes an assertion that the NYPD “will not allow discrimination” it does not guarantee that discrimination would never occur again.

Calendar Year 2010

United States and the Vulcan Society Inc. v. City of New York (731 F.Supp.2d 291 (E.D.N.Y. 2010))

Throughout 2010, United States District Court continued to address the City's practices in hiring fire fighters. The Court held that the City's use of Civil Service Exams 2043 and 7029 "constituted intentional discrimination in violation of Title VII and the Fourteenth Amendment." It also found, based on the evidence, that such discrimination was "standard operating procedure."

In June 2010, the City informed the Court that it was preparing to initiate a new firefighter class to address a compelling public safety necessity. The Court, pursuant to its duty to prevent similar discrimination in the future, held a hearing to inquire into the validity of the City's written entry level fire-fighter examination, Civil Service Examination 6019 given in 2007. It found that Exam 6019 also had a disparate impact on African American and Hispanic applicants. Use of the Exam was not justified by business necessity because it failed to test for relevant job skills, in violation of Title VII of the Civil Rights Act of 1964.

The Court permanently enjoined the City from using Exam 6019 to hire fire-fighters until the City selected one of the hiring options negotiated among the City and the Plaintiffs and approved by the Court. The decision to impose a permanent injunction on the City was supported by four factors. First, the City's past discrimination and unlawful employment practices in hiring firefighters caused irreparable injury to the public interest "that those who wish to serve in the Fire Department have an equal opportunity to do so regardless of race." Second, an adequate remedy to the injury must "eradicate the harm to the public that would be caused by further aggravating the underrepresentation of Black and Hispanic firefighters." Third, the long-term benefit of an injunction that prevents the City from hiring from Exam 6019 eradicates the exam's discriminatory effects, and outweighs the hardships. Fourth, preventing the City from utilizing Exam 6019 will serve the public interest because the Court directed the City to select one of the interim Hiring Options, which the Court found to be lawful and equitable, to minimize the hardship to the City and safeguard New York's citizens and firefighters.

United States of America v. City of New York and New York City Department of Transportation (713 F. Supp. 2d 300 (S.D.N.Y. 2010))

The New York City Department of Transportation (DOT) issued vacancy notices to hire bridge painters on a provisional basis between the civil service exams for Bridge Painters, in 1997 and 2004. Four women bridge painters who had the requisite years of experience, certifications and licenses, applied for the Bridge Painter positions. The DOT hired thirteen men who were equally or less qualified. The United States Department of Justice filed suit alleging that the DOT maintained a hostile work environment against women and engaged in a pattern and practice of disparate treatment by refusing to hire them as bridge painters because of their gender.

The United States District Court held the DOT engaged in discriminatory hiring practices that excluded qualified women from employment as Bridge Painters. The Court found that the DOT's applicant screening and interview process for the Bridge Painter position was subjective and lacked standards. The Court ordered appointment of the plaintiffs as provisional Bridge Painters, awarded them back pay, and ordered compliance remedies structured to allow women to fairly compete for positions at the DOT.

The Court adopted the Department of Justice's proposal for remedial relief, which included procedures that would govern the DOT's future hiring of Bridge Painters, either in a provisional manner, through a civil service exam, or if the position were reclassified as non-competitive. The new procedures, which include wider dissemination of Bridge Painter vacancy notices and adherence to New York Civil Service Law, require the DOT to engage in practices that should have been the agency's standard of operation to date. The proposal also requires compliance monitoring and oversight.

Forsythe v. New York City Department of Citywide Administrative Services (733 F. Supp. 2d 392 (S.D.N.Y. 2010))

A security guard employed by a security company which had a contract with the New York City Department of Citywide Administrative Services (DCAS) filed an employment discrimination claim against the DCAS and the City. As a general rule, an employee may file an employment discrimination claim only against his or her employer.

The exceptions to the rule are when separate entities function as a single employer; or when they function as joint employers, jointly handling aspects of the employer-employee relationship. Among the factors courts consider in determining whether a joint employer relationship exists are commonality of hiring, firing, discipline, and supervision.

The United States District Court held that in this case, the employee was entitled to assert an employment discrimination claim against the DCAS and the City. The Court found that the DCAS was a joint employer with the security company because it had a measure of control over the supervision and discipline of the private security guards. Under the terms of the contract, the DCAS reserved the right to reject or ban from a facility any employee hired by the security company. Further, the contract authorized the DCAS Deputy Director of Security for the Division of Administration and Security to make requests for private security guards to be transferred to or from DCAS-managed sites.

COST TO THE CITY FOR EMPLOYMENT DISCRIMINATION

Chapter 36 of the New York City Charter empowers the EEPD to request and receive from any city agency information necessary to carry out its mandate to evaluate the equal employment opportunity practices of all city agencies. Toward that end, the EEPD annually requests from the New York City Comptroller a report on the total number of employment discrimination suits settled or adjudicated against the City, the total cost to the City, and the agencies involved.

Settlements occur when the employee, who alleged his or her agency engaged in or allowed employment discrimination, and the City, which denied each and every allegation, desire to resolve the issues raised in the litigation without any admission of fault or finding of liability. While settlements usually consist only of an agreement to a monetary payment; some settlement agreements include commitments to make changes in agencies' employment practices. Although, a settlement agreement is based on neither findings nor admissions of liability, the EEPD noted the bases of the allegations of discrimination, which resulted in payments by the City. The most prevalent are allegations based on race, religion, national origin, gender, age, disability, sexual harassment, and sexual orientation.

The City paid to settle claims of employment discrimination: \$1,150,000 to five employees of the New York City Department of Environmental Protection to settle

allegations of hostile work environment on the basis of gender and sexual orientation, gender, age, race, and retaliation; \$818,500 to ten employees of the New York City Police Department; \$558,000 to six employees of the Department of Correction, whose allegations were based on race, national origin, religion, sexual orientation and disability; and \$496,062 to three employees who brought allegations of race, national origin, disability and retaliation against the New York City Fire Department.

Calendar Year 2009

According to data provided by the City Comptroller's office, in calendar year 2009 the City settled fifty-six employment discrimination cases at a total cost of \$2,962,612.52; there were three judgments against the City for a total cost of \$763,859.48. The cumulative cost for the settlements and judgments was \$3,726,472.00.

Over one third of the claims (21 of 59) were against the Department of Education (DOE) for a total value of \$2,040,780. (The EEPD has jurisdiction over the DOE's employment practices concerning non-pedagogical employees.) The second largest payout was \$625,000. for three claims against the Department of Information Technology and Telecommunications. The two largest settlements were for \$590,859 and \$238,480 at the Department of Education.

Calendar Year 2010

The Comptroller's office reported that in calendar year 2010, the City settled sixty-three cases of employment discrimination at a total cost of \$6,492,099.52; there were no judgments.

Over one quarter of the claims (17 of 63) were against the Department of Education with a total value of \$1,396,327. The second largest payout was \$1,287,500. for ten claims against the Health and Hospitals Corporation (HHC). The largest individual settlement was a \$950,000. claim at the HHC. (The EEPD does not have jurisdiction over the employment practices of the HHC.)

Cumulative Settlement/Judgment Costs

Charts of the costs to the City for unlawful employment discrimination in calendar years 2009 and 2010 are on the following pages. Additional charts show the annual cost to the City for illegal employment discrimination since calendar year 1994.

**COST OF UNLAWFUL EMPLOYMENT
DISCRIMINATION
IN NEW YORK CITY GOVERNMENT AGENCIES, BY
CLAIM CALENDAR YEAR 2009**

CLAIM #	AGENCY	SETTLEMENTS / JUDGMENTS	DESCRIPTION
2006PI22578	Administration for Children's Services	\$1,500	Race, Age, National Origin
2007PI00988	Department of Aging	\$22,000	Age, Gender
2009LW011706	Department of Consumer Affairs	\$9,600	Race
2009LW014451	Department of Correction	\$43,441	Age
2009PI006996	Department of Design & Construction	\$25,000	Gender, Sexual Harassment
2000PI020940	Department of Education	\$125,000	Disability
2005PI14476	Department of Education	\$590,859	Age, Disability *
2006PI005255	Department of Education	\$75,000	Disability
2006PI010909	Department of Education	\$1,500	Libel
2006PI027561	Department of Education	\$5,000	Retaliation
2007PI019138	Department of Education	\$175,000	Age, Disability
2008PI00235	Department of Education	\$15,000	Age, Disability
2008PI006379	Department of Education	\$145,000	Disability
2008PI011588	Department of Education	\$5,000	Race, National Origin

2008PI025029	Department of Education	\$50,000	Age, Religion, National Origin
2008PI026722	Department of Education	\$48,667	Disability, Wrongful Termination
2008PI027687	Department of Education	\$135,000	Age, Disability
2008PI027688	Department of Education	\$75,000	Disability , Gender
2009LW000638	Department of Education	\$40,000	Gender, Wrongful Termination
2009LW020353	Department of Education	\$238,480	Gender, Race, Wrongful Termination
2009PI000426	Department of Education	\$158,000	Age *
2009PI000433	Department of Education	\$45,000	Disability
2009PI007272	Department of Education	\$16,500	Gender, Pregnancy
2009PI007762	Department of Education	\$31,774	Race
2009PI021349	Department of Education	\$25,000	Disability
2009PI022091	Department of Education	\$40,000	Disability
2006PI023009	Information Tech. and Tele.	\$225,000	Gender, Race
2009PI005864	Information Tech. and Tele.	\$200,000	Race, Age, Disability
2009PI005865	Information Tech. and Tele.	\$200,000	Race, Age
2009PI006038	Department of Juvenile Justice	\$2,000	Disability, Wrongful Termination
2009PI011741	Department of Juvenile Justice	\$3,000	Age, Race, National Origin
2004PI018426	Department of Parks & Recreation	\$15,000	Race, Sexual Harassment
2007PI33616	Department of Parks & Recreation	\$12,000	Disability

2008PI017306	Department of Parks & Recreation	\$20,000	Sexual Harassment
2009PI007282	Department of Parks & Recreation	\$2,850	Age
2009PI12766	Department of Parks & Recreation	\$60,000	Sexual Harassment
2008PI027691	Department of Probation	\$17,500	Harassment
2009PI021626	Department of Probation	\$36,000	Disability, HIV
2009PI024117	Department of Probation	\$1,000	Disability
1996PI031991	Department of Sanitation	\$25,000	National Origin, Wrongful Termination
2008LW023630	Department of Sanitation	\$20,000	Disability, Wrongful Termination
2009PI015238	Department of Sanitation	\$15,000	Gender, National Origin
2009PI001837	Department of Transportation	\$15,000	Race
2003PI020032	District Attorney-Kings	\$4,577	Wrongful Termination
2004PI016893	Health & Hospitals Corporation	\$35,000	Gender
2004PI016891	Health & Hospitals Corporation	\$35,000	Gender
2004PI016894	Health & Hospitals Corporation	\$35,000	Gender
2004PI16896	Health & Hospitals Corporation	\$35,000	Gender
2005PI002494	Health & Hospitals Corporation	\$75,000	Gender, Wrongful Termination
2007PI031225	Health & Hospitals Corporation	\$135,000	Sexual Harassment

2008PI021706	Health & Hospitals Corporation	\$14,500	Religion, National Origin
2009PI024046	Health & Hospitals Corporation	\$15,000	Age, Gender *
2009PI025663	Health & Hospitals Corporation	\$72,000	Sexual Harassment
2008PI017301	Housing Preservation & Development	\$50,000	Race, Age
2009PI029959	Housing Preservation & Development	\$2,000	Race
2009PI011739	HRA	\$6,000	Race, Age, Disability, Wrongful Termination
2004PI024582	Marine Aviation	\$140,723	Disability, National Origin
2003PI024529	Off-Track Betting	\$10,000	Disability
2009PI026315	Sheriff's Office	\$50,000	Sex, National Origin
Grand Total 59 Claims (* 3 Judgments) \$3,726,472			

Source New York City Comptroller

**COST OF UNLAWFUL EMPLOYMENT
DISCRIMINATION
IN NEW YORK CITY GOVERNMENT AGENCIES, BY
CLAIM CALENDAR YEAR 2010**

CLAIM #	AGENC	SETTLEMENTS	DESCRIPTION
2009PI015237	Administration for Children's Services	\$130,172	Disability
2010PI008013	Administration for Children's Services	\$15,000	Disability
2010PI032202	Administration for Children's Services	\$15,000	Gender
2008PI021713	Department of Correction	\$45,000	Disability, Sexual Orientation
2008PI01714	Department of Correction	\$55,000	Disability, Sexual Orientation
2008PI021716	Department of Correction	\$70,000	Disability, Sexual Orientation
2009PI015237	Department of Correction	\$7,5000	Race, Gender
2009PI027423	Department of Correction	\$45,000	Race
2010PI022260	Department of Correction	\$175,000	Religion, National Origin
2004PI003013	Department of Education	\$250, 000	Whistleblower, Sex Orientation, Race
2004PI025925	Department of Education	\$25,000	Disability
2007PI015747	Department of Education	\$425,000	Gender
2007PI019138	Department of Education	\$175,000	Age, Disability
2009PI001835	Department of Education	\$46,000	Race
2009PI018748	Department of Education	\$45,000	Gender
2009PI029090	Department of Education	\$75,000	Age
2009PI030397	Department of Education	\$2,500	Race
2009PI030488	Department of Education	\$50,000	Gender, Disability

2010PI001992	Department of Education	\$25,000	Gender
2010PI008016	Department of Education	\$40,000	Race
2010PI009608	Department of Education	\$200,000	Whistleblower
2010PI011748	Department of Education	\$2,327	Race
2010PI011753	Department of Education	\$3,000	Disability
2010PI014931	Department of Education	\$7,500	Race
2010PI027709	Department of Education	\$10,000	Race
2010PI030567	Department of Education	\$15,000.00	Religion
2007PI030263	Department of Environmental Protection	\$40,000.00	Race
2009PI029036	Department of Environmental Protection	\$100,000.00	Age, Gender
2010PI000461	Department of Environmental Protection	\$160,000.00	Gender, Age
2010PI18886	Department of Environmental Protection	\$425,000	Gender
2010PI018889	Department of Environmental Protection	\$425,000	Gender
2008PI008699	Department of Health	\$90,000	Whistleblower
2009PI000447	Department of Health	\$90,000	Disability, Race, Religion
2009PI13142	Department of Health	\$150,000	Race, Religion
2010PI021516	Department of Health	\$100,000	Disability
2010PI036217	Department of Parks & Recreation	\$1,100	Gender
2008PI027706	Department of Probation	\$13,500	Sexual Orientation
2009PI000983	Department of Transportation	\$20,000	Age, Race, Gender
2005PI010108	Fire Department	\$345,000	Race

2010PI008018	Fire Department	\$115,000	Disability
2010PI008788	Fire Department	\$150,000	National Origin
2009PI029030	Health & Hospitals Corporation	\$55,000	Race, Gender, National Origin
2009PI029039	Health & Hospitals Corporation	\$55,000	Race, Gender, National Origin
2009PI029043	Health & Hospitals Corporation	\$40,000	Religion
2010PI013558	Health & Hospitals Corporation	\$7,500	National Origin, Race, Religion
2010PI013562	Health & Hospitals Corporation	\$100,000	Disability
2010PI018853	Health & Hospitals Corporation	\$45,000	Disability
2010PI022232	Health & Hospitals Corporation	\$2,000	Race
2010PI022419	Health & Hospitals Corporation	\$3,000	Gender
2010PI027714	Health & Hospitals Corporation	\$30,000	Gender
2010PI028831	Health & Hospitals Corporation	\$950,000	Disability
2010PI013557	Housing Preservation & Development	\$58,000	Disability, Religion
2008PI021708	Department of Human Resources Administration	\$25,000	Discrimination
2005PI024557	Police Department	\$175,000	Sexual Orientation
2006PI012148	Police Department	\$150,000	Religion National Origin
2008PI005317	Police Department	\$60,000	Race
2008PI027690	Police Department	\$152,500	Race, Religion, National Origin
2009PI026310	Police Department	\$12,500	Race
2010PI015269	Police Department	\$80,000	Gender, Race, Sexual Orientation
2010PI017853	Police Department	\$125,000	Sexual Orientation
2009PI000882	Queens Borough President	\$98,000	Gender

2009PI026315	Sheriff	\$50,000	National Origin
2010PI001801	Sheriff	\$40,000	Race, National Origin
Grand Total		(63 Claims)	\$ 6,492,099

Source: New York City Comptroller

**COST OF UNLAWFUL EMPLOYMENT
DISCRIMINATION**

**IN NEW YORK CITY GOVERNMENT AGENCIES, BY
YEAR CALENDAR YEARS 1994 – 2001**

YEAR	SETTLEMENT	ADJUDICATION	TOTAL
1994	—	—	\$869,150
1995	—	—	\$1,555,050
1996	—	—	\$1,794,186
1997	\$924,819	\$1,687,900	\$2,603,719
1998	\$1,334,685	\$75,000	\$1,409,685
1999	\$1,350,354	—	\$1,350,354
2000	\$2,435,069	—	\$2,435,069
2001	\$409,154	\$58,001	\$467,155
Grand Total			\$12,502,368
Average Annual Cost:			\$1,562,796

Source: New York City Comptroller's Office

**COST OF UNLAWFUL EMPLOYMENT
DISCRIMINATION**

**IN NEW YORK CITY GOVERNMENT AGENCIES, BY
YEAR CALENDAR YEARS 2002 – 2010**

YEAR	SETTLEMENT	ADJUDICATION	TOTAL
2002	\$2,796,087	\$470,159	\$3,266,246
2003	\$5,657,591	\$1,533,253	\$7,190,844
2004	\$319,000	\$124,100	\$443,100
2005	\$28,857,584	\$362,412	\$29,219,996
2006	\$854,332	—	\$854,332
2007	\$1,488,464	—	\$1,488,464
2008	\$16,431,609	—	\$16,431,609
2009	\$2,962,612	\$763,860	\$3,726,472
2010	\$6,492,100	—	\$6,492,100
Grand Total			\$69,113,163

Source: New York City Comptroller's Office

CONCLUSION

These lawsuits also expose unlawful employment practices that negatively impacted the morale of those city employees who filed the lawsuits.

During a press conference to discuss the twelve million dollar award to the plaintiffs in their employment discrimination suit filed against the New York City Department of Parks and Recreation and the City of New York, Theodore H. Shaw, Esq., President and Counsel of the NAACP Legal Defense Fund, said:

“In the scheme of things, it is a modest compensation for the discrimination that our clients suffered. And there are some things that can't be undone; some things that can't be compensated for in dollars and cents. When you work daily in a job situation where you are being discriminated against and treated unfairly, [when] you're being subjected to injustice and you go home and you carry that home every night to your family and to your household, it can eat you up. It can do a kind of emotional and psychological damage that many people have no idea of its consequences. And so while we are proud to reach this point, we really commend those who stood up, with the understanding that we really can't make up completely for what they experienced.”

(The Chief, March 07, 2008, p. 1)

CHAPTER III

ADDRESSING THE MANDATE/AUDITS

“The Commission shall have the following powers and duties:

to audit and evaluate the employment practices and procedures of each city agency and their efforts to ensure fair and effective equal employment opportunity for minority group members and women at least once every four years and whenever requested by the civil service commission or the human rights commission or whenever otherwise deemed necessary by the Commission.”

Chapter 36, Section 831(d)(5), New York City Charter, as amended, 1999

INTRODUCTION

The purpose of an audit is to evaluate mayoral agencies' compliance with the City's Equal Employment Opportunity Policy (EEOP) and non-mayoral agencies' compliance with their own EEOP for the period under review, not to issue findings of discrimination pursuant to the New York City Human Rights Law.

Audit methodology includes an analysis of the agency's: Annual Agency Specific EEO Plan, Quarterly EEO Reports, responses to the EEPC Document and Information Request Form, Employee Survey, Supervisor/Manager Survey, and interviews with the EEO Officer, Disability Rights Coordinator, EEO Counselor(s), EEO Trainer(s), General Counsel (regarding external complaints), Human Resources Director, and Career Counselor.

Corrective actions and/or recommendations are included where the EEPC determines that the agency has failed to comply, in whole or in part, with the applicable EEOP. Recommendations for corrective actions are consistent with both the audit's findings and the parameters set forth in the City's or non-mayoral agency's EEOP, and federal, state, and local EEO requirements. The relevant sections of the applicable EEO Policy are cited in parenthesis at the end of each recommendation. In addition, this Commission is empowered by Section 831 of the City Charter to recommend all necessary and appropriate actions to ensure fair and effective affirmative employment plans for minority group members and women employed by or seeking employment with the City.

An integral component of the audit process is the audit exit meeting with the agency head. The Commission requires the agency head to attend this meeting because Section 815 of the City Charter holds agency heads responsible for the effective implementation of Equal Employment Opportunity in their agencies through implementation of their agencies' EEOP. An EEPC Commissioner attends the audit exit meeting with EEPC senior staff. Prior to the audit exit meeting, a draft letter of preliminary determination is forwarded to the agency head and the EEO Officer. The purpose of the meeting is to resolve issues of fact prior to the issuance of the formal letter of preliminary determination. After the audit exit meeting, audit findings and recommendations with any necessary revisions are submitted to the Commission for review and approval. The approval process includes the adoption of a "Resolution of Preliminary Findings" pursuant to the audit. The resolution authorizes the Chairperson to formally inform the agency head, by letter, of the Commission's preliminary determination (Preliminary Determinations Letter).

The Preliminary Determinations Letter identifies where the agency is in compliance, and out of compliance, with the applicable Equal Employment Opportunity Policy. The letter also requests the agency head to implement all recommendations for corrective actions. The Commission requires the agency to respond within thirty days. After reviewing the response, the Commission issues a Final Determinations Letter if the agency does not agree to implement all of the recommended corrective actions, providing the EEPC's rationale for encouraging the agency to do so. If the agency's response concurs with all of the recommendations for corrective actions, the Commission issues a Compliance Initiation Letter. The Charter-mandated, six-month compliance procedure is discussed in detail in Chapter III.

STRATEGIES FOR ADDRESSING THE MANDATE

The Commission and EEPC staff conducted an in depth examination of its audit procedures. As a result, the EEPC initiated a number of changes, programmatic as well as administrative, to increase agency productivity. Following are the most significant:

Computerized Audit Procedures

The EEPC streamlined its audit procedures in 2009. Previously, the EEPC conducted in-person interviews with EEO-related personnel and a select number (5 to 25) of supervisors and managers at each agency. Scheduling these interviews at the agency under audit caused extreme delays in the audit process. Another time-consuming audit task was labeling and mailing the *EEPC Employee Survey* to the home addresses of a random sample of the agencies' employees. This and waiting for responses delayed the audit process and the employee response rate for many agencies was usually low, yielding minimal results.

To address these delays, the EEPC created electronic versions of the EEO-related personnel interview forms, Employee Survey, Supervisor/Manager Survey, and Document and Information and Request Form. Responses to the electronic version of the EEPC's Employee Survey tripled the rate of the mailed surveys. The EEPC is now able to collect significant and concise information to bolster its findings and recommendations.

Auditors now spend less time on logistics and more time on analysis.

Because the standard EEPC audit is comprehensive, completing an audit takes a lot of time. Given the number of audits the EEPC is mandated to complete annually, and the fact that different agencies have different issues, the EEPC developed issue-specific audit protocols to assess agencies' selection/recruitment; accessibility, disability and reasonable accommodations; and external discrimination complaints.

Re-location to City-owned Office Space

Mayor Bloomberg's proposed budget for Fiscal Year 2011 directed the EEPC to submit proposals to the Office of Management and Budget for a \$34,000 reduction in our FY 2010 budget and a \$68,000 reduction in our FY 2011 budget (total: \$102,000). The net impact of these reductions if implemented would mean a reduction to the EEPC's headcount from eight to six permanent employees.

To address this proposed budget reduction and the likelihood of future budget reductions, the EEPC submitted a formal request to the Department of Citywide Administrative Services for the relocation of the EEPC from a privately-owned office building to city-owned office space. At that time the annual lease expense was approximately 25 % of the EEPC's annual budget. More important, the lease was the only component of the EEPC's budget that could provide the proposed \$102,000 reduction without eliminating staff positions. The Commission's strategy was to re-locate to a city-owned building and re-allocate these lease funds to cover future budget reductions and hire additional auditors to address our City Charter mandate.

Proposal to the New York City Charter Revision Commission

The establishment of the New York City Charter Revision Commission by Mayor Bloomberg in 2009 provided the Commission with the unique opportunity to develop and submit recommendations to strengthen the EEPC via revisions to the City Charter. The EEPC took advantage of the opportunity and submitted its *Proposed Revisions To Chapter 36, New York City Charter* with the following recommendations:

1. The EEPC's authority to *review* the uniform standards, procedures, and programs, of the Department of Citywide Administrative Services to ensure equal employment opportunity, should be changed to *approve*.

2. The EEPC's jurisdiction over city agencies should be expanded to include all city agencies *where the costs associated with allegations or violations of equal employment provisions of law are paid in whole or in part from the city treasury . .*

3. The Charter should clearly state that the EEPC is an *independent* agency.

4. The annual allocation of funds for the EEPC should *not be less than one per centum of the appropriations available to pay for the expenses of the law department during such fiscal year*.

These proposed revisions would: 1) clearly establish the independence of the EEPC, 2) expand its jurisdiction to include city agencies that contribute to the cost to the City for illegal discrimination but are not monitored for compliance with the City's or the agency's Equal Employment Opportunity Policy, 3) institutionalize a permanent funding stream for the EEPC and, 4) reduce the potential cost to the City for illegal employment discrimination.

AUDIT ISSUES

Updated CEEDS Data

The City-wide Equal Employment Database System (CEEDS) data prepared by the Department of Citywide Administrative Services identifies, among other things, underutilizations and concentrations of targeted groups within City agencies' workforce. These designations represent imbalances between the number of employees in a particular job category and the number that would reasonably be expected when compared to their availability in the relevant labor market. CEEDS data is critical in identifying underutilization in the city's workforce. Typically, auditors would analyze underutilization data for a measure of the employment practices of an agency. Where underutilization is revealed within an agency's workforce, auditors determine whether an agency has undertaken reasonable measures for addressing underutilization.

The EEPC noted that throughout calendar years 2009 and 2010 there were no updated CEEDS data for the three-year audit periods under review. Consequently, the EEPC could not analyze efforts to address underutilization in any of the city agencies that were audited.

Commission staff and members of the Commission met with and communicated with the DCAS Deputy Commissioner for Equal Employment Opportunity to address this issue. The EEPC initially requested updated underutilization data for the twelve quarters of the audit period. The DCAS agreed to provide underutilization data for the first and last quarters for each year in the audit period.

CALENDAR YEAR 2009

During 2009, Commission staff completed audits of twenty-seven agencies with a cumulative headcount of approximately 13,222 city employees. The largest agency that was audited was the Administration for Children's Services (6,990); the smallest agencies were the Brooklyn Community Boards (2 to 3 employees per board). The audits of the eighteen Brooklyn Community Boards were desk audits of compliance with the *Minimum Standards for Equal Employment Opportunity for Community Boards* established by this Commission. The audit period for the community board desk audits was January 1, 2006 to December 31, 2008.

Exclusive of the community boards, the number of audit findings ranged from four, at the Financial Information Services Administration, to fifteen, at the Administration for Children's Services and the Department of Sanitation.

At the end of the year, audits of fourteen agencies were in progress and the Commission had completed 273 audits since its establishment.

AUDIT RESOLUTIONS

Following are the twenty-seven Audit Resolutions adopted by the Commission during the year including the audit period for each audit. The number of audit findings per agency is in parenthesis. Audit resolutions for these audits are available on the Commission's Webpage.

March 12, 2009

1. Resolution #09/01-012/CB 1: Re: Brooklyn Community Board #1

Audit of compliance with the *Minimum Standards for Equal Employment Opportunity by Community Boards*, established by the Equal Employment Practices Commission (0).

2. Resolution #09/02-012/CB 2: Re: Brooklyn Community Board #2
Audit of compliance with the above-mentioned *Minimum Standards* (0).
3. Resolution #09/03-012/CB 3: Re: Brooklyn Community Board #3
Audit of compliance with the above-mentioned *Minimum Standards* (0).
4. Resolution #09/04-012/CB 4: Re: Brooklyn Community Board #4
Audit of compliance with the above-mentioned *Minimum Standards* (0).
5. Resolution #09/05-012/CB 5: Re: Brooklyn Community Board #5
Audit of compliance with the above-mentioned *Minimum Standards* (1).
6. Resolution #09/06-012/CB 6: Re: Brooklyn Community Board #6
Audit of compliance with the above-mentioned *Minimum Standards* (3).
7. Resolution #09/07-012/CB 7: Re: Brooklyn Community Board #7
Audit of compliance with the above-mentioned *Minimum Standards* (0).
8. Resolution #09/08-012/CB 8: Re: Brooklyn Community Board #8
Audit of compliance with the above-mentioned *Minimum Standards* (0).
9. Resolution #09/09-012/CB 9: Re: Brooklyn Community Board #9
Audit of compliance with the above-mentioned *Minimum Standards* (0).
10. Resolution #09/10-012/CB 10: Re: Brooklyn Community Board #10
Audit of compliance with the above-mentioned *Minimum Standards* (0).
11. Resolution #09/11-012/CB 11: Re: Brooklyn Community Board #11
Audit of compliance with the above-mentioned *Minimum Standards* (1).
12. Resolution #09/12-012/CB 12: Re: Brooklyn Community Board #12
Audit of compliance with the above-mentioned *Minimum Standards* (1).
13. Resolution #09/13-012/CB 14: Re: Brooklyn Community Board #14
Audit of compliance with the above-mentioned *Minimum Standards* (1).

14. Resolution #09/14-012/CB 15: Re: Brooklyn Community Board #15
Audit of compliance with the above-mentioned *Minimum Standards* (3).
15. Resolution #09/15-012/CB 16: Re: Brooklyn Community Board #16
Audit of compliance with the above-mentioned *Minimum Standards* (0).
16. Resolution #09/15-012/CB 17 Re: Brooklyn Community Board #17
Audit of compliance with the above-mentioned *Minimum Standards* (1).
17. Resolution #09/17-012/CB 18: Re: Brooklyn Community Board #18
Audit of compliance with the above-mentioned *Minimum Standards* (0).

April 28, 2009

18. Resolution #09/18-012/CB 13: Re: Brooklyn Community Board 13
Audit of compliance with the above-mentioned *Minimum Standards* (0).

July 16, 2009

19. Resolution #09/19-820: Re: Office of Administrative Trials & Hearings (OATH)
Audit of compliance with the City's Equal Employment Opportunity Policy from January 1, 2005 to December 31, 2006 (9).
20. Resolution #09/20-067: Re: Administration for Children's Services (ACS)
Audit of compliance with the City's Equal Employment Opportunity Policy from January 1, 2005 to December 31, 2006 (15).

August 27, 2009

21. Resolution #09/21-827 Re: Department of Sanitation (DSNY)
Audit of compliance with the City's Equal Employment Opportunity Policy from January 1, 2006 to December 31, 2007 (9).

September 24, 2009

22. Resolution #09/22-836:Re: Department of Finance (DOF)

Audit of compliance with the City's Equal Employment Opportunity Policy from July 1, 2005 to June 30, 2007 (9).

October 29, 2009

23. Resolution #09/23-826 Re: Department of Environmental Protection (DEP)

Audit of compliance with the City's Equal Employment Opportunity Policy from January 1, 2006 to December 31, 2007 (10).

24. Resolution #09/24-127 Re: Financial Information Services Agency (FISA)

Audit of compliance with the City's Equal Employment Opportunity Policy from January 1, 2006 to December 31, 2007 (4).

25. Resolution #09/25-214 Re: Office of Labor Relations (OLR)

Audit of compliance with the City's Equal Employment Opportunity Policy from January 1, 2006 to December 31, 2007 (6).

December 10, 2009

26. Resolution #09/26-011 Re: Bronx Borough President (BxBP)

Audit of compliance by the Bronx Borough President's Office with its Equal Employment Opportunity Policy from: July 1, 2005 to June 30, 2007 (11).

27. Resolution #09/27-810 Re: Department of Buildings (DOB)

Audit of compliance with the City's Equal Employment Opportunity Policy from January 1, 2006 to December 31, 2007 (6).

MOST FREQUENT AUDIT FINDINGS

1. Agencies did not assess their criteria for selecting persons for mid-level to high-level discretionary positions to determine whether there is adverse impact upon any particular racial, ethnic, disability, or gender group.
2. Agencies did not conduct assessments to determine whether all of their facilities are accessible to and useable by persons with disabilities in accordance with the ADA and Local Law 58.
3. Agency heads did not sign off on all final determinations concerning EEO complaint resolutions.

Note: These findings are exclusive of the Brooklyn Community Board audits.

CALENDAR YEAR 2010

During 2010, Commission staff completed audits of twelve agencies with a combined total of approximately 31,865 employees. The Human Resources Administration was the largest audited agency with 14,123 employees, and the Office of Collective Bargaining was the smallest agency with 15 employees.

The number of audit findings ranged from three at the Department of Cultural Affairs and the Department of Youth and Community Development, to as many as ten at the City Commission on Human Rights and the Department of Health and Mental Hygiene.

At the end of the year, audits of twenty agencies were in progress and the Commission had completed 285 audits since its establishment.

AUDIT RESOLUTIONS

Following are the Resolutions of Preliminary Determinations adopted by the Commission during the year. All resolutions were adopted unanimously with the exception of two resolutions approved by four affirmative votes, with Chair Perez abstaining, and one resolution approved by three affirmative votes, with Commissioners Rice and Daniel abstaining. The number of audit findings is identified in parentheses. Audit resolutions for these audits are available on the Commission's webpage and the Department of Records and Information Services.

January 14, 2010

1. Resolution #10/01-866 Re: Department of Consumer Affairs (DCA)

Audit of compliance with the City's Equal Employment Opportunity Policy from January 1, 2006 to December 31, 2008 (5).

March 4, 2010

2. Resolution #10/02-806 Re: Department of Housing Preservation and Development (HPD)

Audit of compliance with the City's Equal Employment Opportunity Policy from January 1, 2006 to December 31, 2007 (4).

April 22, 2010

3. Resolution #10/03-313 Re: Office of Collective Bargaining (OCB)

Audit of Compliance with its Equal Employment Opportunity Policy from January 1, 2006 to December 31, 2008 (4).

4. Resolution #10/04-126 Re: Department of Cultural Affairs (DCLA)

Audit of compliance with the City's Equal Employment Opportunity Policy from January 1, 2006 to December 31, 2008 (3).

June 25, 2010

5. Resolution #10/05-781 Re: Department of Probation (DOP)

Audit of compliance with the City's Equal Employment Opportunity Policy from January 1, 2006 to December 31, 2008 (8).

6. Resolution #10/06-816 Re: Department of Health and Mental Hygiene (DOHMH)

Audit of compliance with the City's Equal Employment Opportunity Policy from January 1, 2006 to December 31, 2008 (10).

7. Resolution #10/07-156 Re: Taxi and Limousine Commission (TLC)

Audit of compliance with the City's Equal Employment Opportunity Policy from January 1, 2006 to December 31, 2008 (9).

August 6, 2010

8. Resolution #10/08-801 Re: Department of Small Business Services (SBS)

Audit of compliance with the City's Equal Employment Opportunity Policy from January 1, 2006 to December 31, 2008 (8).

9. Resolution #10/09-226 Re: City Commission on Human Rights (CCHR)

Audit of compliance with the City's Equal Employment Opportunity Policy from January 1, 2006 to December 31, 2008 (10).

December 15, 2010

10. Resolution #10/10-069 Re: Human Resources Administration (HRA)

Audit of compliance with the City's Equal Employment Opportunity Policy from January 1, 2006 to December 31, 2008 (9).

11. Resolution #10/11-260 Re: Department of Youth & Community Development (DYCD)

Audit of compliance with the City's Equal Employment Opportunity Policy from January 1, 2006 to December 31, 2008 (3).

12. Resolution #10/12-846 Re: Department of Parks and Recreation (DPR)

Audit of compliance with the City's Equal Employment Opportunity Policy from January 1, 2006 to December 31, 2008 (10).

MOST FREQUENT AUDIT FINDINGS

1. Agency recruitment literature did not include the statement that the City of New York and the agency is an Equal Opportunity Employer.
2. Agencies did not assess the manner in which candidates are selected for employment to determine whether there is adverse impact upon any particular racial, ethnic, disability, or gender group.
3. Respondents to the *EEPC Employee Survey* indicated they did not know the person responsible for providing career counseling.
4. Managers and supervisors did not emphasize their commitment to the agency's EEO policies and affirm the right of each employee to file a complaint with the EEO office during normal staff meetings.
5. Although the agency appointed a Disability Rights Coordinator (DRC), respondents to the *EEPC Employee Survey* indicated they did not know who the DRC is.
6. Agencies did not conduct managerial and/or non-managerial annual performance evaluations.

CHAPTER IV

APPROPRIATE AND EFFECTIVE CORRECTIVE ACTIONS

“...If the commission, after a period not to exceed six months, determines that the agency has not taken appropriate and effective corrective actions, the commission shall notify the agency in writing of this determination and the commission may thereafter publish a report and recommend to the mayor whatever appropriate corrective action the commission deems necessary to ensure compliance with equal employment opportunity pursuant to the requirements of this chapter and chapter thirty-five. Within thirty days of such determination the agency shall submit a written response to the commission and the mayor. The mayor after reviewing the commission’s findings and the agency’s response, if any, shall order and publish such action as he or she deems appropriate.”

Chapter 36, Section 832 (c), New York City Charter, as amended, 1999

INTRODUCTION

The New York City Charter, Chapter 36, Section 832.c requires agencies to make monthly reports to the EEPC of their efforts to implement appropriate and effective corrective actions in response to the EEPC'S audit recommendations, for a period not to exceed six months. The EEPC monitors each agency to determine whether it puts into practice all the corrective actions necessary to ensure compliance with equal employment opportunity pursuant to the requirements of Chapters 35 and 36 of the City Charter, as well as City, State and Federal equal employment opportunity requirements.

COMPLIANCE PROCEDURE

Compliance monitoring is initiated with a meeting among the EEPC Compliance staff and the agency EEO Officer and other agency representatives to consider the corrective actions the agency has taken or planned to take as indicated in its Response to the Preliminary Determination Letter and Final Determination Letter, if applicable. The agency is required to provide monthly documentation of its progress in rectifying the non-compliance for six months. The goal of monitoring is to bring the agency into compliance with the applicable Equal Employment Opportunity Policy as well as City, State and Federal laws.

The Compliance Unit reviews the agency's monthly reports, using the Compliance Criteria Guide for Monitoring Implementation of Required Actions, and advises the agency whether the actions are accepted and the documentation adequate. The final required action for all agencies is an agency-wide memorandum from the agency head informing all staff of the improvements the agency has made to enhance its EEO program, and reemphasizing his/her commitment to the agency's EEO program. This is in accordance with Section 815.a.(19) of the Charter, which holds the agency head responsible for establishing measures and programs to ensure fair and effective affirmative employment for agency employees and those who seek employment with the agency. The EEPC requires that the agency's final Monthly Compliance Report, in which all of the corrective actions should have been implemented, be transmitted by a letter from the agency head.

COMPLIANCE ISSUES

Extended Compliance

If the agency appears to be unable to implement all the recommended corrective actions by the end of the compliance period, the EEPD Executive Director will send a compliance status letter to the agency head to inform him or her of the corrective actions which remain outstanding. The letter will request that the agency head submit a formal request for an extension of the compliance period. The request should be addressed to the EEPD Chair, and describe the reasons for the request and projected timeframe for completing the outstanding required actions.

The Commission may, upon consideration of the nature of the outstanding corrective actions and the agency's efforts to implement them, grant an extension. In some instances, when the reason is beyond the control of the agency, as in the case of providing Basic EEO Training for EEO Professionals for its EEO representatives, the Commission may hold compliance in abeyance until the outstanding corrective action has been addressed.

The following agencies requested and received extensions of the compliance period to fully implement their outstanding required actions: the Bronx County Public Administrator's Office, the Department of Homeless Services, and the Conflicts of Interest Board. The most prevalent outstanding issues were EEO training for employees, EEO training for EEO professionals, and adverse impact training.

Partial Compliance

Agencies that do not complete compliance within the six-month Charter-mandated compliance period will be granted a reasonable timeframe to complete compliance with a caveat that if they do not implement the required action(s) within that timeframe, the Commission will issue a letter of partial compliance. The letter will also inform the agency that it may be audited again in less than the Charter-prescribed maximum four-year time period.

For example, if an agency does not have all of its EEO Counselors trained before the end of the six-month compliance period, the Commission will establish, in consultation with the agency, a reasonable timeframe to have all of its EEO Counselors trained.

If the agency does not have all of its EEO Counselors trained within the timeframe, the Commission will issue a letter of partial compliance and inform the agency that it will initiate another audit in less than the four-year Charter-mandated maximum timeframe.

Non-Compliance

If the Commission determines the agency has not taken appropriate or effective action to correct the non-compliance and to provide equal employment opportunity, the Commission shall notify the agency in writing of its determination and may thereafter publish a report, and, if a mayoral agency, recommend to the Mayor the appropriate or effective action it deems necessary.

CALENDAR YEAR 2009

COMPLIANCE RESOLUTIONS

Following are the fifteen Resolutions of Compliance or Partial Compliance adopted by the Commission during Calendar Year 2009. The compliance period and number of recommended corrective actions is also identified. All the Resolutions were adopted unanimously. After adoption, Chair Cesar A. Perez, Esq., forwarded a letter to the agency head informing him/her of that the agency has implemented the corrective actions to the Commission's satisfaction and is now in full or partial compliance. Compliance resolutions are available on the Commission's Webpage and the Department of Records and Information Services.

January 15, 2009

1. Resolution #09/01-008PC: Re: Office of the Actuary (OA)

The OA implemented eight of the ten recommended corrective actions by the end of an extended compliance period (November 2007-December 2008). The following corrective actions were not implemented:

The OA should ensure that all employees involved in job interviewing receive structured interview training, either through internal training or training provided by the DCAS or another appropriate organization; and

All staff, managerial and non-managerial, should receive an annual performance evaluation.

2. Resolution #09/02-021PC: Re: Tax Commission (TC)

The TC implemented nine of the eleven recommended corrective actions by the end of the extended compliance period (February 2008-December 2008). The following corrective actions were not implemented:

- Secure the necessary training to conduct an adverse impact assessment using the on-line disparate impact analysis application to assess the manner in which civilian candidates are selected for employment to determine whether there is any adverse impact upon any particular racial, ethnic, disability or gender group; and

- Provide the EEPC with documentation that at least twice a year during normal staff meetings, TC managers and supervisors emphasize their commitment to the agency's EEO policies and affirm the right of each employee to file a discrimination complaint with the EEO office.

3. Resolution #09/03-054C Re: Civilian Complaint Review Board (CCRB)

The CCRB implemented all ten recommended corrective actions within one month (December 2008). We commend the CCRB for the celeritous implementation of the audit recommendations.

March 12, 2009

4. Resolution #09/04-841C Re: Department of Transportation (DOT)

The DOT implemented all twelve recommended corrective actions within the six-month compliance period (July – December 2008).

5. Resolution #09/05-856C Re: Department of Citywide Administrative Services (DCAS)

The DCAS implemented all thirteen recommended corrective actions within the six-month compliance period (August 2008 – January 2009).

6. Resolution #09/06-906C Re: Office of the Public Advocate (PA)

The PA implemented all eight recommended corrective actions within two months (December 2008 – January 2009). We commend the PA for the celeritous implementation of the audit recommendations.

7. Resolution #09/07-057C Re: New York Fire Department (FDNY)

The FDNY implemented all ten recommended corrective actions with an extended compliance period (October 2007 - March 2009).

July 16, 2009

8. Resolution #09/08-125C Re: Department for the Aging (DFTA)

The DFTA implemented all four recommended corrective actions within the six-month compliance period (December 2008 – May 2009).

9. Resolution #09/09-136C Re: Landmarks Preservation Commission (LPC)

The LPC implemented all twenty recommended corrective actions within the six-month compliance period (December 2008 – May 2009).

10. Resolution #09/10-014C Re: Staten Island Borough President's Office (SIBPO)

The SIBPO implemented all fourteen recommended corrective actions within the six-month compliance period (December 2008 – May 2009).

11. Resolution #09/11-030C Re: Department of City Planning (DCP)

The DCP implemented all twenty recommended corrective actions within the six-month compliance period (December 2008 – May 2009).

12. Resolution #09/12-013C Re: Queens Borough President's Office (QBPO)

The QBPO implemented all nineteen recommended corrective actions within the six-month compliance period (January – June 2009).

December 10, 2009

13. Resolution #09/13-831C Re: Business Integrity Commission (BIC)

The BIC implemented all twelve recommended corrective actions within the six-month compliance period (February – July 2009).

14. Resolution #09/14-132C Re: Independent Budget Office (IBO)

The IBO implemented all the recommended corrective actions within the six-month compliance period (February – July 2009).

15. Resolution #09/15-256C Re: Police Pension Fund (PPF)

The PPF implemented all seventeen recommended corrective actions during an extended compliance period (December 2008 – December 2009).

CALENDAR YEAR 2010

COMPLIANCE RESOLUTIONS

Following are the eleven Resolutions of Compliance or Partial Compliance adopted by the Commission during the year. All Resolutions were adopted unanimously. After adoption, Chair Cesar A. Perez, Esq., forwarded a letter to the agency head informing him/her of that the agency has implemented the corrective actions to the Commission's satisfaction and is now in full compliance. Compliance resolutions are available on the Commission's Webpage and the Department of Records and Information Services.

March 4, 2010

1. Resolution #10/01-942C Re: Bronx County Public Administrator's Office (BCPA)

The BCPA implemented all four recommended corrective actions within an extended compliance period (October 2007 – January 2010). The extension was due to delays in securing EEO training for a newly-appointed EEO Officer.

June 25, 2010

2. Resolution #10/02-071C Re: Department of Homeless Services (DHS)

The DHS implemented all eighteen recommended corrective actions during an extended compliance period (December 2008 – April 2010).

3. Resolution #10/03-820C Re: Office of Administrative Trials & Hearings (OATH)

The OATH implemented all ten recommended corrective actions within the six- month compliance period (October 2009 – April 2010).

4. Resolution #10/04-214C Re: Office of Labor Relations (OLR)

The OLR implemented all seven recommended corrective within the six-month compliance period (March –August 2010).

August 6, 2010

5. Resolution #10/05-032C Re: Department of Investigation (DOI)

The DOI implemented all five recommended corrective actions during an extended compliance period (December 2009 – May 2010).

6. Resolution #10/06-312C Re: Conflicts of Interest Board (COIB)

The COIB implemented all eleven recommended corrective actions during an extended compliance period (December 2008 – November 2009).

7. Resolution # 10/07-126C Re: Department of Cultural Affairs (DCLA)

The DCLA implemented all four recommended corrective actions within a four-month compliance period (June – November 2010).

September 15, 2010

8. Resolution #10/08-011C Re: Bronx Borough President's Office (BxBPO)

The BxBPO implemented all thirteen recommended corrective actions within a five-month compliance period (March – July 2010).

9. Resolution #10/09-127/C Re: Financial Information Services Agency (FISA)

The FISA implemented all five recommended corrective actions within a five-month compliance period (March - August 2010).

November 8, 2010

10. Resolution #10/10-836C Re: Department of Finance (DOF)

The DOF implemented all ten recommended corrective actions during a briefly extended compliance period (March - September 2010).

11. Resolution #10/11-067C Re: Administration for Children's Services (ACS)

The ACS implemented all sixteen recommended corrective actions during an extended compliance period (February - October 2010).

CHAPTER V

RECOMMENDATIONS AND CONCLUSION

“The commission shall have the following powers and duties:

...to make such policy, legislative, and budgetary recommendations to the mayor, city council, the department of administrative services or any other city agency as the commission deems necessary to ensure equal employment opportunity for minority group members and women;”

Chapter 36, Section 831(d)6, New York City Charter, as amended, 1999

INTRODUCTION

Pursuant to section 831(d)6 of the New York City Charter, as amended, the Equal Employment Practices Commission makes the following recommendations:

RECOMMENDATION #1

To The Department of Citywide Administrative Services and The Law Department

We Recommend that the Department of Citywide Administrative Services, through its Division of Citywide Diversity and Equal Employment Opportunity, and the New York Law Department, through its Division of Labor and Employment, jointly prepare a Summary of all future Settlements or Judgments against City agencies or the City of New York for illegal employment discrimination (Summary). The Summary should include recommendations on how to avoid similar allegations leading to such settlements or judgments in the future and should be distributed to all agency heads, agency counsels, personnel directors, and EEO officers in all City agencies.

RATIONALE

According to data provided by the City Comptroller's Office, the cumulative cost to New York City for the settlement or adjudication of illegal employment discrimination cases between calendar years 1994 and 2010 was \$81,597,531.00. (See attached Chart). Approximately 85% of this amount (\$69,113,163.00) was paid out between calendar years 2002 and 2010. This is a significant increase compared to the cost in the previous eight years (1994-2010) which was \$12,502,368.00.

This Commission continues to believe that every City agency must have a properly structured and efficiently administered Equal Employment Opportunity Program that is in compliance with the applicable Equal Employment Opportunity Policy (EEO), and an agency head who is committed to the implementation of the agency's Equal Employment Opportunity Program.

While we cannot conclusively state that audits of the equal employment programs of City agencies will reduce the number or costs of employment discrimination suits against the City, we can state that our audits provide a venue to alert relevant agency personnel (agency head, agency counsel, personnel director or EEO officer) to deficiencies in the structure, procedure or administration of the agency's EEO program. The agency then has an opportunity to prevent errors in judgment and/or procedure, from potentially becoming costly and embarrassing lawsuits against the City.

Implementation of this Recommendation would strengthen the City's commitment to equal employment opportunity, clearly demonstrates the City's commitment to reduce these costs, and, could significantly reduce future costs for illegal employment discrimination.

COST OF UNLAWFUL EMPLOYMENT DISCRIMINATION

IN New York City GOVERNMENT AGENCIES BY YEAR

CALENDAR YEARS 1994 – 2010

YEAR	SETTLEMENT	ADJUDICATION	TOTAL
1994			\$869,150
1995			\$1,555,050
1996			\$1,794,186
1997	\$924,819	\$1,687,900	\$2,603,719
1998	\$1,334,685	\$75,000	\$1,409,685
1999	\$1,350,354		\$1,350,354
2000	\$2,435,069		\$2,435,069
2001	\$409,154	\$58,001	\$467,155
2002	\$2,796,087	\$470,159	\$3,266,246
2003	\$5,657,591	\$1,533,253	\$7,190,844
2004	\$319,000	\$124,100	\$443,100
2005	\$28,857,584	\$362,412	\$29,219,996
2006	\$854,332		\$854,332
2007	\$1,488,464		\$1,488,464
2008	\$16,431,609		\$16,431,609
2009	\$2,962,612	\$763,860	\$3,726,472
2010	\$6,492,100		\$6,492,100
Grand Total			\$81,597,531

Source: NYC Comptroller's Office

CONCLUSION

The Equal Employment Practices Commission pursues its City Charter mandate through auditing city agencies for compliance with federal, state, and city equal employment opportunity laws, and monitoring compliance by those agencies with all audit recommendations. Additional activities pursuant to our mandate include: public meetings, public hearings, special hearings; advisory committees (e.g., the Advisory Committee to Recommend Improvements in the Fire Department Recruitment Program, and the Advisory Committee to Recommend Improvements in the Reporting Structure of the City's Equal Employment Opportunity Program).

Section 1133a of the New York City Charter requires all city agencies to submit to the Department of Records and Information Services (DORIS) copies of each report prepared by the agency, which for the EEPC means all "Letters of Preliminary Determinations" and all "Letters of Final Determinations" issued by the Commission pursuant to audits of city agencies. In fairness to those agencies, this Commission also provides DORIS with copies of the agencies' responses. Those determinations and the agencies' responses are available for public review at the City Hall Library. Pursuant to Local Law 11, this Commission will forward those documents to DORIS electronically. The audit and compliance resolutions will also be available on the EEPC's website.

Pursuant to the State Open Meetings Law, all meetings of the Commission are open to the public. A notice of every Commission meeting and public hearing is published in the City Record the official newspaper of the New York City government. Copies of the minutes of Commission meetings, transcripts of public hearings, and any Commission publications are available by request at <http://www.nyc.gov/html/eepc/html/home/home.shtml>, or telephone (212) 615-8939 or fax (212) 615-8931.

Filing An Employment Discrimination Complaint

Individuals who wish to file an employment discrimination complaint with an outside government agency may contact one of the following government agencies:

U.S. Equal Employment Opportunity Commission

33 Whitehall Street

New York, NY 10004

(212) 336-3620

www.eeoc.gov

State Division of Human Rights

20 Exchange Place

New York, NY 10005 (212)

480-2522 www.nysdhr.com

New York City Commission on Human Rights

40 Rector Street

New York, NY 10006

(212) 306-7500

NYC.gov/html/cchr

EQUAL EMPLOYMENT
PRACTICES COMMISSION
The City of New York

<http://www.nyc.gov/html/eepc/html/home/home.shtml>