

Launching Your New EEO Plan

Association of Chief Human Resources Officers/Equal Employment Officers (ACHRO/EEO) 2023 Fall Institute
October 18, 2023

Presented By: Alysha Stein-Manes, Amy Brandt, & Andrea Epps

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Alysha Stein-Manes, Partner, Liebert Cassidy Whitmore
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Agenda

1. EEO & The Law: Foundation
2. Title 5 Revisions in 2022
3. Overview of Key Components of EEO Plan
4. EEO Plan & Program Development Strategies
5. Practical Considerations



EEO & The Law: Foundation



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EEO in California

Proposition 209 (Cal. Const. Art. 1, Sec. 31)*

- Prohibits "preferential treatment" on basis of:
 - Race
 - Sex
 - Color
 - Ethnicity
 - National origin
- In Public:
 - Employment
 - Education
 - Contracting

Legislative Response

- Government Code
 - Identifies lawful, and some **mandatory**, recruitment strategies (GC 7400)
- Education Code
 - Makes funding contingent on "...recruiting, training and advancement opportunities that **will result**" in EEO (EC 87101(c))

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EEO In California & Regulatory Enforcement

- Title 5 Regulations require:**
 - EEO Plans (§ 53003(a))
 - Hiring procedures
 - Districts take steps to eliminate underrepresentation based on protected status. (§ 53006)
- State Chancellor enforcement:**
 - Provides EEO Model Plan for district use
 - Reviews EEO Plans prior to adoption
 - Annually reviews district employee demographic data

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Title 5 Revisions in 2022

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EEO Plans Legal Overview

- Board of Governors adopted revised regulations for EEO Plans, effective October 20, 2022.
- Revisions require CCDs to make changes not only to their EEO plan, but also to *how* they adopt and revise the plan, and their hiring processes

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Changes to Pre-Hiring, Screening, and Hiring Practices

- **Job Announcements**
 - Must include the possibility of meeting minimum qualifications through equivalency
- **Qualified Applicant Pool**
 - **What is the same:** must review and compare the qualified applicant pool to the initial applicant pool and take appropriate action if the qualified applicant pool may have been influenced by non-job related factors
 - **What has changed:** must do an initial demographic review of the qualified applicant pool *before* the application deadline for each position closes, and if the diversity of the pool is not consistent with the diversity goals of a district's EEO Plan, the CCD *may* extend the search period

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Applicant Pool Review

1. Screen initial applications
2. Determine which of the initial applicants meet the job specifications – the "qualified applicant pool"
3. Before the application deadline closes, do a demographic review of the qualified applicant pool
4. If the diversity of the qualified applicant pool is not consistent with the diversity goals of the EEO plan, consider extending the search period
5. In conducting the longitudinal data analyses of district employment trends, review and compare the composition of the initial applicant pool to the composition of the qualified applicant pool
6. If the composition of the qualified applicant pool may have been influenced by non-job related factors, take "appropriate action" (this is an undefined term)

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**State Chancellor:
EEO Plan General Requirements***

- Developed in collaboration with district's EEOAC
- Reviewed & adopted at a regular meeting of the governing board
 - *Agenized as a separate action item, not on consent agenda!*
- Covers a 3-year period
- Submitted to the Chancellor at least 90 days prior to adoption
- Any comments received from Chancellor's Office must be presented to the governing board prior to adoption

* § 53003(a)

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Overview of Key Components of EEO Plan

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Model Plan Template

- <https://www.cccco.edu/-/media/CCCCO-Website/Office-of-General-Counsel/modeleeoplan2022finala11y-V2.pdf?la=en&hash=FA6D606E93F54AABC9B82FD434F50677EC99E6EF>
- 13 components
 - Components 1-3 recommended
 - Components 4-13 required

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EEO Plan Component 5: Advisory Committee Model Plan Summary

- Required component of EEO Plan (§ 53005)
- EEO Advisory Committee exists to assist in developing, revising and implementing EEO programs and plans
 - Title 5 does not require EEOAC to vote on final draft
 - EEO Officer/HR retains such authority (unless local procedure/rule says otherwise)
- Must "be composed of a diverse membership and include members from district stakeholder groups, including, but not limited to, students, faculty, and classified staff"

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EEO Plan Component 8: Training Summary of Title 5 Revisions

- Required component of EEO Plan
- **Expanded training requirement**
 - In addition to the EEOAC, all Board trustees must now receive training on the following:
 - EEO Programs requirements and the requirements of state and federal nondiscrimination laws;
 - Identification and elimination of bias in hiring;
 - The education benefits of workforce diversity; and
 - The role of the EEO Advisory Committee in drafting and implementing a district EEO Plan.

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EEO Plan Component 8: Training Model Plan Summary

- Plan must describe process for ensuring training for employees who:
 - Serve on screening/selection committees
 - Involved in recruitment efforts
- Training for anyone participating in screening/selection process must cover (minimally):
 - State and federal nondiscrimination laws
 - Educational benefits of workforce diversity
 - Elimination of bias in hiring
 - Best practices for serving on selection committee
- Screening committee formation "shall include diverse membership whenever possible"
 - Include strategies and procedures the district will use to promote diversity within the selection of members to the screening/selection committees

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EEO Plan Component 10: Gathering Info and Longitudinal Analysis – Model Plan Summary

- Required component of EEO Plan
- Provide process for gathering information and periodic, longitudinal analysis of district's employees and applicants
 - Break down number of persons from monitored group status in each (of 7) job category
 - Determine whether additional diversification measures needed
 - Implement and evaluate effectiveness of measures
- Must conduct data review as part of plan renewal
- Describe how districts will conduct longitudinal analysis of district employment trends, utilize data to identify and mitigate causes of adverse impact

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EEO Plan Component 10: Gathering Info and Longitudinal Analysis – Model Plan Guidance

- Have process in place to collect data and analyze existing workforce and applicants
 - Data that allows districts to compare composition of initial applicant pool, qualified pools, and applicants recommended for interviews
 - Data that allows tracking of who is hired and who is retained over time
 - Data disaggregated by college, department, discipline, job category, other measures particular to your district
- Demographic data about workforce and applicants provide info you need to conduct adverse impact analysis
- Different than "availability data" and analysis
- Districts may consider conducting analysis more frequently depending on size, demographics, other factors unique to district

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Definitions: Adverse Impact and Underrepresented Group

- "Adverse Impact": means a disproportionate negative impact to a group protected from discrimination arising from the effects of an employment practice as determined according to a valid statistical measure (such as those outlined in the Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures")
- "Underrepresented group": means any monitored group for which the percentage of persons from that group employed by the district in a job category is below eighty percent (80%) of the projected representation for that group and job category

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**EEO Plan Component 11:
Underrepresentation Analysis – Summary of
Title 5 Revisions**

- **Mitigation of underrepresentation and adverse impact:**
 - Must collect and assess longitudinal data to identify, and determine the cause of, any underrepresentation or adverse impact, of monitored groups in pre-hiring, hiring, and post-hiring processes
 - If a CCD determines there is significant underrepresentation or adverse impact that may be the result of non-job related factors, it must implement additional strategies in its EEO plan
- **More flexibility in mitigation:**
 - Section 53006 no longer lists specific additional measures that a CCD must implement

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**EEO Plan Component 11:
Underrepresentation Analysis – Model Plan
Summary**

- Required component of EEO Plan
- Describe how district will utilize data available from reliable public and private sources to determine whether monitored groups are underrepresented within district job categories.
- Memorializes how districts will comply with requirements to conduct longitudinal analysis of district employment trends and utilize data to identify the case of any underrepresentation
- Data provides comparison of the percent of “monitored” group in a job category with their projected representation based on availability in the workforce

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**EEO Plan Component 12:
Addressing Underrepresentation – Model
Plan Summary**

- Required component of EEO Plan.
- Identify methods districts will utilize to address any underrepresentation identified.
- Overlapping strategies to address both underrepresentation and adverse impact can be addressed under this component.
- Be clear whether strategy is designed to address:
 - Adverse impact, underrepresentation or both
 - How the method is designed to address the problem(s)
 - How effectiveness will be measured

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EEO Plan Component 13: Implementation of EEO Strategies and Timelines – Model Plan Summary

- EEO plans must identify what “specific pre-hiring, hiring, and post-hiring EEO strategies” the CCD intends to implement
- Must include specific strategies district intends to implement:
 - How districts will implement the strategies and programs
 - When districts will implement strategies and programs
 - Create an actual schedule!
- *Strategies should be tied to district’s data analyses
 - i.e., choose strategies intended to tackle adverse impact and underrepresentation

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EEO Plan Component 13: Implementation of EEO Strategies and Timelines – Model Plan Guidance

- May include listed strategies in Title 5, section 53024.1, and others as identified by district workforce and applicant analysis
- Utilize the template matrix to organize objectives!
<https://www.cccco.edu/-/media/CCCCO-Website/Office-of-General-Counsel/appendixaeeeoplancomponent13templatefinala11y-V2.pdf?la=en&hash=FF4E45FCBE5D11863CE2F28EB13599F6014760C5>
- Must identify:
 - Timeline for execution and milestones
 - Who is responsible for carrying out measure
 - How the district will evaluate its effectiveness

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District Indicators

- Key premises:
 - Establishing/maintaining a diverse workforce is an on-going process
 - Appropriate steps depend on the unique circumstances of each institution
- Key requirements:
 - Districts shall locally develop & implement indicators of institutional commitment to diversity
 - Sustained effort
 - No specific steps are mandated
 - Unless required by State Chancellor
- Education Code section 53024.1 identifies possible indicators
 - E.g., conduct campus climate surveys, exit interviews, elimination of bias training
 - E.g., invest in more mentoring and professional development programs for new employees and establish “grow-your-own” programs
 - E.g., updating curricula in way that supports EEO/DEI goals at district
 - E.g., incorporate commitment to DEI into employee evaluation & tenure reviews (to the extent permitted by the CBAs)

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EEO Plan & Program Development Strategies

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Promoting an Inclusive Work Environment

Why?

- To improve applicant pools (pre-hiring)
- To improve employee retention(post-hiring)

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Promoting an Inclusive Work Environment

Requires:

- Leadership & “buy-in” at the top
 - Boards
 - Chancellors
 - Presidents
 - Visible support for diversity and inclusion
- Equity-mindedness
 - Institutional commitment – at all levels
 - Unions
 - Senates

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Promoting an Inclusive Work Environment

- Institutional commitment:
 - Community wide “buy-in” essential for success
 - Ensure input from all stake holders
 - Utilize “principles” of participatory governance
 - Inter-departmental collaboration—H.R and academic departments
 - See classified service as an essential partner

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Promoting an Inclusive Work Environment

- Inclusive work cultures and retention
- Mentoring programs
- Opportunities for growth
- Leadership opportunities
- Environments within colleges, campuses, departments
- Access

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Pre-hiring Strategies: Promoting an Inclusive Work Environment

Discussion:

How can EEO Plans institutionalize & support strategies designed to promote an inclusive work environment?

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Pre-Hiring Strategies: Update Job Descriptions / Announcements

- **Hiring process should include updating:**
 - Do the "KSAs" need to be updated?
 - How do issues of diversity impact this work?
 - What job-related criteria value/attract diverse candidates?
 - What job-related criteria assess "sensitivity to diversity. . ."
 - Who are the students served and what are their needs?
 - Do the preferred criteria include irrational barriers (i.e. unreliable predictors of performance) that will tend to reduce pool diversity?

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Pre-Hiring Strategies: Update Job Descriptions / Announcements

- For example:
 - Valuing currency of knowledge may facilitate building a more diverse, qualified pool
 - Valuing current knowledge gives those more recent to the field the opportunity to shine
 - Diversity increases among those more recent to the field

***NOTE:** this does **NOT** mean valuing younger candidates.

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Pre-Hiring Strategies: Update Job Descriptions / Announcements

- For example, in faculty context:
 - Global perspective is consistent with CCD mission
 - Ask: Is global perspective evident in how jobs are defined and knowledge/skills required?
 - If not: reexamine curriculum, programs, majors, etc.

*** NOTE:** this will both improve work culture and may diversify pool of qualified candidates.

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Pre-Hiring Strategies: Update Job Descriptions / Announcements

- Make assessment of candidate's "sensitivity to diversity" more robust
 - Tailor assessment to each job
 - Treat as a required job qualification
 - Assess in multiple ways
 - Written application
 - Specific questions
 - As part of a response to multiple questions
 - Respectful engagement of the (diverse) hiring committee

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Pre-Hiring Strategies: Update Job Descriptions / Announcements

Discussion:

How can EEO Plans institutionalize & support strategies designed to update job announcements and descriptions?

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Hiring Strategies: The Recruitment

- **The Goal:**
 - Create highly qualified, diverse applicant pools
 - From which you hire most qualified candidate—without regard to protected status

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Hiring Strategies: The Recruitment

- Add to (don't replace) traditional avenues
- Connections to institutions & organizations that support underrepresented groups
- Personal connections with career centers
- Develop your own students
- Make district attractive to nontraditional applicants
- Use demographic data
- Assume a buyer's market

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Hiring Strategies: The Recruitment

Discussion:

How can EEO Plans institutionalize & support strategies designed to enhance recruitment efforts?

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Strategies for Eliminating Bias in Hiring Decisions

- **Two related & necessary approaches:**
 1. Hiring Committees that are:
 - Diverse
 - Well trained
 2. Procedures that "interrupt" unconscious bias of committees & decision makers

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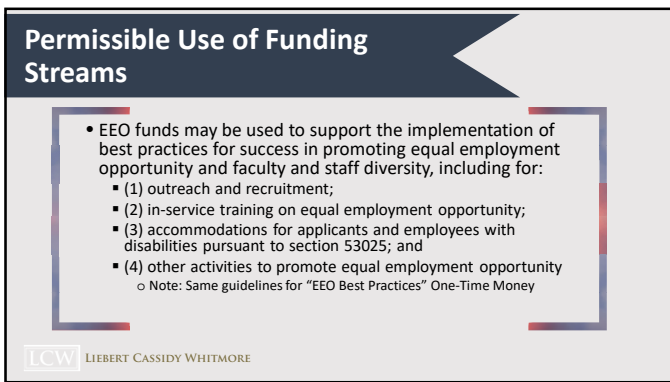
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**EEO Plan Development and Implementation:
Practical Considerations**

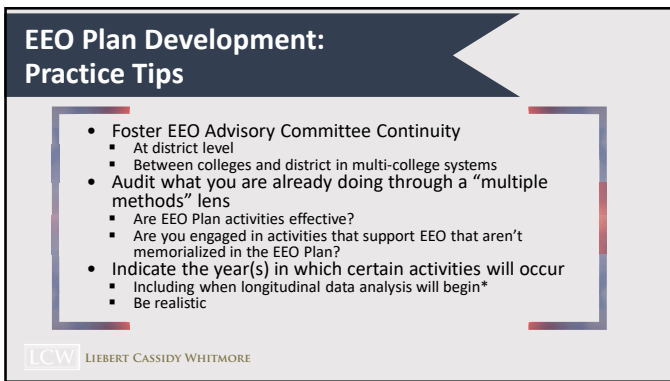
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Permissible Use of Funding Streams

- EEO funds may be used to support the implementation of best practices for success in promoting equal employment opportunity and faculty and staff diversity, including for:
 - (1) outreach and recruitment;
 - (2) in-service training on equal employment opportunity;
 - (3) accommodations for applicants and employees with disabilities pursuant to section 53025; and
 - (4) other activities to promote equal employment opportunity
 - Note: Same guidelines for "EEO Best Practices" One-Time Money

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**EEO Plan Development:
Practice Tips**

- Foster EEO Advisory Committee Continuity
 - At district level
 - Between colleges and district in multi-college systems
- Audit what you are already doing through a "multiple methods" lens
 - Are EEO Plan activities effective?
 - Are you engaged in activities that support EEO that aren't memorialized in the EEO Plan?
- Indicate the year(s) in which certain activities will occur
 - Including when longitudinal data analysis will begin*
 - Be realistic

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Thank You!

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