

# Race and Color Discrimination

The Office of Civil Rights (OCR) manages the Department of Commerce's Equal Employment Opportunity (EEO) complaint Process and other EEO programs. This fact sheet provides basic information about race and color discrimination, which are prohibited by Title VII of the Civil Rights Act of 1964.

## Q. What protections do Commerce employees and job applicants have from race and color discrimination?

**A.** Title VII protects all Commerce employees and job applicants from employment discrimination based on race or color.

## Q. What types of discriminatory practices are prohibited?

**A.** It is unlawful to discriminate against any employee or applicant for employment because of race or color in regard to hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment.

Discriminatory practices also include:

- harassment on the basis of race or color;
- retaliation against an individual for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices; and

- employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of certain racial groups.

## Q. Is it unlawful to discriminate against an employee or job applicant because of association with a person of a particular race?

**A.** Yes. Equal employment opportunity cannot be denied because of marriage to or association with an individual of a different race; membership in or association with race-based organizations or groups; or attendance or participation in schools or places of worship generally associated with people of a certain race.

## Q. Does the discrimination have to be intentional to be unlawful?

**A.** No. Title VII prohibits both intentional discrimination and neutral job policies that disproportionately exclude minorities and are not job related.

## Q. How is discrimination based on color different from race discrimination?

**A.** While race and color discrimination often are found together, they are different. Color discrimination is treating employees or applicants differently because they have different skin colors, even if they are of the same race, national origin, or ethnic origin.

## Q. Are employees protected from discrimination based on race-related characteristics other than color?

**A.** Yes. Discrimination on the basis of immutable characteristics associated with race, such as hair texture or certain facial features violates Title VII, even though not all members of the race share the same characteristics.

Title VII also prohibits discrimination on the basis of a condition which predominantly affects one race unless the practice is job related and consistent with business necessity.

**Q. Is it unlawful to exclude minorities from certain positions or areas?**

**A.** Yes. Title VII is violated where minority employees are segregated by physically isolating them from other employees or from customer contact. Title VII also prohibits assigning primarily minorities to predominantly minority establishments or geographic areas.

It is also illegal to exclude minorities from certain positions or to group or categorize employees or jobs so that certain jobs are generally held by minorities. Coding applications or resumes to designate an applicant's race constitutes evidence of discrimination where minorities are excluded from employment or from certain positions.

**Q. May an employer ask for information about a job applicants' race during the hiring process?**

**A.** Generally, no. Requesting pre-employment information which discloses or tends to disclose an applicant's race suggests that race will be unlawfully used as a basis for hiring. Solicitation of such pre-employment information is presumed to be used as a basis for making selection decisions. Therefore, if members of minority groups are excluded from employment, the request for such pre-employment information would likely constitute evidence of discrimination.

However, employers may legitimately collect information about their employees' or applicants' race for affirmative action purposes and/or to track applicant flow. This information may not be used in the selection process.

**Q. Does harassment on the basis of race or color violate Title VII?**

**A.** Yes. Racial slurs, racial "jokes," offensive or derogatory comments, or other verbal or physical conduct based on an individual's race or color constitutes unlawful harassment if the conduct creates an intimidating, hostile, or offensive working environment, or interferes with the individual's work performance.

**Q. How can employees raise a claim of race or color discrimination in the EEO complaint process?**

**A.** The first step is to see an EEO Counselor. To preserve your right to file a formal complaint, you must do this within 45 days of the action you believe is discriminatory or when you first knew or should have known of the possible discrimination.

Contact your bureau EEO Officer to initiate counseling. Your EEO Counselor can also give you information about other possible avenues of redress for your claim.

*Published February 2022*