



SEPTEMBER 2022

HOW TO SPOT HIDDEN DISCRIMINATION IN RECRUITING

Presented By:

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TODAY'S SPEAKERS



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HOUSEKEEPING ITEMS

- This webinar is being recorded. The recording and slide deck will be emailed to all registrants.
- Slides of this presentation are available now for note taking in the “handout” section of your Go To Webinar panel.
- If time permits, questions will be answered at the end of the webinar. Please submit questions in the “question” section on your Go To Webinar panel.
- This webinar is approved for 1PDC with SHRM. **NOTE:** Only live attendees will have access to the credit code. Stay tuned to the end of this webinar for that code.





INTRODUCTION

DISCLAIMER

This presentation was prepared by Berkshire for participants' educational use. Participants should consult with their dedicated consultant or legal counsel before implementing any strategies or actions discussed in this presentation and should not consider this presentation, or related materials, to be legal advice.



ABOUT BERKSHIRE

OVER 35 YEARS

For over 35 years we have helped this nation's most recognizable federal contractors with OFCCP and EEOC regulatory requirements

SPECIALIZATION

We specialize in affirmative action compliance, pay equity, diversity, and talent acquisition

INDUSTRY LEADERS

Berkshire experts present at national and industry events and conferences

RESOURCES

Berkshire offers informative webinars and articles to keep AA/EEO leaders abreast of how regulatory requirements impact their company



AGENDA

- Pertinent Regulations and Definitions
- Hidden Discrimination when Attracting Candidates
- Hidden Discrimination when Reviewing Candidates
- Hidden Discrimination when Meeting Candidates
- Internal Recruitment and Movement
- What you should do next



A black and white photograph of a globe covered in dandelion seeds, resting on a spiral notebook with a paperclip.

POLL QUESTION

What is your role in your company's compliance?

- AA Officer
- Data Analyst
- Recruiter/Talent Acquisition
- Don't currently have a role



REGULATIONS AND DEFINITIONS

- OFCCP regulations - EO 11246, VEVVRA Section 503,
 - Executive Order 11246 requires affirmative action and prohibits federal contractors from discriminating on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractors also are prohibited from discriminating against applicants or employees because they inquire about, discuss, or disclose their compensation or that of others, subject to certain limitations.
 - The Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) is a law that prohibits federal contractors and subcontractors from discriminating in employment against protected veterans and requires employers take affirmative action to recruit, hire, promote, and retain these individuals.
 - Section 503 of the Rehabilitation Act of 1973 is a law that prohibits federal contractors and subcontractors from discriminating in employment against individuals with disabilities and requires employers take affirmative action to recruit, hire, promote, and retain these individuals.
- Discrimination – practice of treating one person or group of people less fairly or less well than other people or groups.
- Disparate Impact – occurs when policies or practices that appear to be neutral result in a disproportionate impact on a protected group.



A black and white photograph of a dandelion seed head on a desk next to a spiral notebook and a paperclip.

POLL QUESTION

What recruitment strategy has the MOST potential of leading to disparate impact?

- Recruitment agency
- Word of mouth
- Social Media (Linkedin, Indeed, etc.)
- Newspaper ads



**Attracting
Candidates**

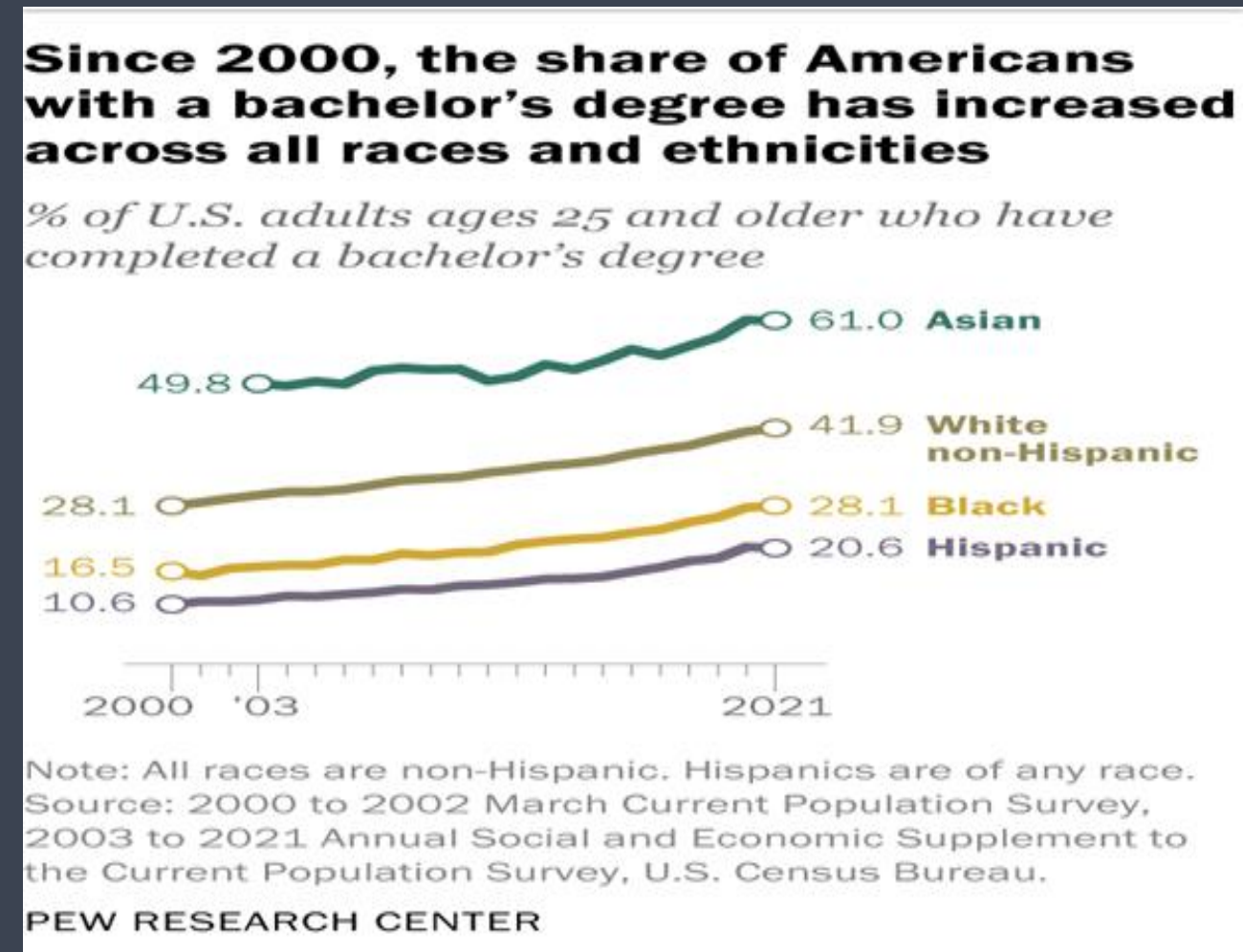
**Reviewing
Candidates**

**Meeting
Candidates**



ATTRACTING CANDIDATES

- Qualifications should be bona fide business reasons
 - Requiring applicants to have a certain educational background that is not important for job performance or business needs
 - Some minority races are less likely to have obtained a degree than whites



ATTRACTING CANDIDATES

- Clearly define basic and preferred qualifications
 - LinkedIn data research found that women will apply less often than men after viewing a job posting
 - Men are more likely to apply for stretch roles
- Referral programs – People tend to refer people who look like them
 - An OFCCP compliance review found that – from Jan. 1, 2017, to Dec. 31, 2017 – a company discriminated against female, Black and Asian applicants who applied to work as cashiers, packers and bakers. The agency found that the company's practice of relying on a word-of-mouth employee referral and recruitment system contributed to, at least in part, the hiring disparities impacting female, Black and Asian applicants.
 - 850K settlement and 52 job opportunities to effected parties



ABC CORPORATION

WE ARE HIRING!

ABC currently has part-time day shift openings for our Customer Service Representative in our Call Center at 123 Main Street in Leetown.

Job Description

At ABC Corp, our call center is all about helping our customers access our wide variety of products.

Our Customer Service Representatives provide high quality customer service by responding to telephone inquiries, customer requests and problems. Researches and resolves problems and errors. Identifies products and services that meet customers' needs. This would be a great job for retirees and moms looking for day shift work.

Basic Qualifications

- College degree, preferred
- Four or more years of experience in a customer service position

Preferred Skills/Experience

- Strong telephone and interpersonal skills
- Advanced problem-solving and negotiation skills
- Ability to handle difficult customer calls
- Proficient computer skills, especially Microsoft Office applications is required
- Ability to identify and resolve/escalate problems
- Good time management skills to maximize the number of clients that can be assisted while maintaining a high level of customer service
- Native English speakers only



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- ~~Native English speakers only~~ **Speak English Fluently**



**Attracting
Candidates**

**Reviewing
Candidates**

**Meeting
Candidates**



REVIEWING CANDIDATES

- Screening for a type
 - What school attended?
 - Do those schools have diverse student populations? Other demographics
 - "A female did this job before, so we should look for a female again"
- Location
 - Screening out candidates based on address
 - Make clear the location of the job and let candidate decide to proceed



REVIEWING CANDIDATES

- Criminal Incarceration of Minorities
 - Recent study by the Sentencing Project found that Black Americans are incarcerated in state prisons at nearly 5 times the rate of white Americans
 - One in 36 Hispanic males are incarcerated; one in 15 Black males are incarcerated (Pew Center, 2008); one in 54 males are incarcerated.
- Discrimination against Criminal Records
 - OFCCP Second Chance Month
 - The federal Fair Chance to Compete for Jobs Act of 2019 (Fair Chance Act) regulates how and when federal contractors may consider the criminal histories of applicants and employees.
 - This type of legislation is commonly known as “Ban the Box”
 - Screening for criminal record should be job related and consistent with business necessity vs blanket question on applications for all jobs





POLL QUESTION

Which scenario could lead to discrimination?

- You ask an interviewee if they currently use any illegal drugs.
- An interviewee tells you that they were fired from their last job. You make a note and move on to your next question.
- An interviewee tells you that they broke their foot on the job. You ask them how they are doing, and they mention that they are in the middle of a workers compensation claim with the company.
- You tell an interviewee that you will be contacting their references.



**Attracting
Candidates**

**Reviewing
Candidates**

**Meeting
Candidates**



MEETING CANDIDATES

- How someone behaves in an interview could be related to cultural tendencies or a disability
 - Some cultures known to be high-context meaning that messages are expected to be “read between the lines” can come across as underselling themselves even though on paper they have strong qualifications. Some cultures are low-context meaning that what is said is what is meant.
 - Some disabilities are not visible or known. Abstract interview questions can be difficult for individuals who are neurodiverse. Consider how to ask questions that would be more concrete vs abstract. Instead of “Tell me about your biggest weakness,” ask “At your last job at company Y, what was the most difficult part?”
- More use of Video in all discussion vs phone to start
 - Small talk
 - Be cautious in what you talk about. Could inadvertently discuss protected class information
 - Candidate experience can be affected by this



INTERVIEW ROLE PLAY



INTERVIEW ROLE PLAY



- What did the interviewer do that could be a problem?
- How might Susan feel about this line of questioning?





INTERNAL RECRUITMENT AND MOVEMENT

- How do people know about promotional opportunities at your company?
 - Word of mouth, Tap the shoulder, Ask for a promotion?
 - Best practice is a formal process to express interest
- How do people know about other developmental opportunities?
 - Leadership programs
 - Additional training opportunities



WHAT CAN YOU/SHOULD YOU DO?

- Review your processes and make necessary changes
 - Check with Talent Acquisition frequently to see if there are any changes in processes
 - Review interview questions – are there better ways to ask questions
 - Check with sourcing vendors (temporary agencies) to make sure they are sending diverse candidate pools and are compliant, as required
 - Annual notifications
- Use your AAP data to find possible issues
 - Check the makeup of the applicant pools
 - Do they seem reasonable for the type of jobs, locations, etc.
 - Applicant pools should mirror the availability
 - Disposition codes
 - Are certain codes being used "clues" to possible discrimination
 - Be specific the wording and meaning of your codes



Questions?

For more information about anything discussed in this presentation, please contact us!



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