

DISCRIMINATION IN EMPLOYMENT BASED ON RACE, ETHNICITY AND COLOR¹

Imagine this scenario: You participate in search committee interviews of candidates being considered for a faculty position in your department. Of the four candidates interviewed, three are white and one is African American. One of the white candidates is hired, and the three other candidates are rejected for the position. Upon being notified of his rejection, the African American candidate sends you an email expressing his concern that he believes he was not selected because of possible unfair and discriminatory conduct by one of the search committee members. What should your response be, if any?

Federal and state law, as well as Tulane's Equal Employment Opportunity (EEO) and Anti-Harassment Policy, prohibit discrimination in employment on the basis of, among other things, race, ethnicity and color. The prohibition on discrimination applies to all aspects of the employment relationship, such as recruiting, interviewing, hiring, compensation, and termination. Title VII prohibits employment decisions based on stereotypes and assumptions about abilities, traits, or the performance of individuals of certain racial groups. Title VII not only prohibits intentional discrimination (known as "disparate treatment"), but also neutral job policies that disproportionately exclude minorities (known as "disparate impact") and that are not job-related.

Under the disparate treatment theory, the aggrieved individual must show that race played a role in the decisional process. An employer's failure to offer a credible and supportable explanation for an employment decision can support a claim of race discrimination under a disparate treatment theory.

Under the disparate impact theory, an individual can allege that an employer relies upon a selection criterion that is racially-neutral, but has a disparate impact on members of a particular racial group. Unless the employer can justify the use of the selection criterion by demonstrating that the criterion is job-related, consistent with business necessity, and that no reasonable less discriminatory alternative exists, a court is likely to conclude that the practice is unlawful.

As our policy makes clear, the University will investigate any complaint of discrimination from an applicant, employee or student and will strive to protect, to the greatest extent possible, the confidentiality of persons reporting or accused of harassment. Confidentiality, however, cannot be guaranteed where doing so would conflict with the University's obligation to investigate the underlying allegations.

In response to the email in our hypothetical, the appropriate course would be for you to forward the email to our office at oie@tulane.edu or call our office to discuss. If you would like additional information on this topic, or would like to provide more in-depth training regarding discrimination for your faculty and staff, please feel free to contact OIE at 862-8083 or by email.

¹ Excerpts taken from the Equal Employment Opportunity Commission's website, found at www.eeoc.gov.