

EEOC Office of Legal Counsel staff members wrote the following informal discussion letter in response to an inquiry from a member of the public. This letter is intended to provide an informal discussion of the noted issue and does not constitute an official opinion of the Commission.

Federal EEO Laws: Hiring Incentives

February 29, 2012

TRANSMITTED VIA EMAIL

Dear :

This letter responds to your inquiry concerning employer participation in government programs that give incentives for hiring job seekers who traditionally have faced barriers to employment.

Specifically, you asked (1) whether participating in "various federal and state based wage subsidy programs," or identifying up front that certain job seekers qualify for the incentives these programs offer, would subject employers to potential claims of discrimination^[1]; (2) whether it is "discriminatory for an employer to know prior to hire that an individual is eligible for an incentive, such as Nevada Silver State Works, when considering that individual for an opening;" and (3) whether it is "discriminatory for an employer to work with an organization that provides job placement and training to disadvantaged populations of individuals (such as unemployed, vocational rehabilitation, TANF, etc.) as a sourcing partner knowing that many of those individuals may qualify for incentives programs such as WOTC or other cash incentives."

Question 1

We believe that your first question is essentially whether asking job seekers if they qualify for a program that provides incentives to employers for hiring individuals who are experiencing severe difficulties often linked to unemployment violates federal equal employment opportunity (EEO) laws. Because you did not provide any details about the types of information employers are required to obtain from applicants in order to take advantage of the programs in question, we cannot speak with any specificity as to whether the questions are lawful under the laws we enforce. We suggest that you review the information we provided in response to your earlier questions concerning the Federal Work Opportunity Tax Credit (WOTC). See EEOC letter dated September 15, 2010, available at http://www.eeoc.gov/eeoc/foia/letters/2010/ada-titlevii-adea_work_tax_irs_eta_form.html (September 15, 2010 WOTC letter).

As you know, to qualify for the WOTC tax credit for hiring individuals such as those who have been long-term recipients of payments under the Temporary Assistance to Needy Families program (TANF), the WOTC law requires employers to obtain official confirmation of the job applicants' WOTC status before offering employment. 26 U.S.C. § 51(d)(13) (Section 51). Employers' use of Internal Revenue Service Form 8850 for collection of this information is lawful under the laws that we enforce, for the reasons discussed in detail in the cited letter. To the extent the inquiries used in applying for the incentive programs about which you are concerned parallel the inquiries on Form 8850 and are used for the same purposes, the same analysis would apply.

Questions 2 and 3

You also asked whether it is discriminatory for an employer to know prior to hiring someone that he or she is eligible for an incentive and whether it is discriminatory for an employer to work with an organization that provides job placement and training to disadvantaged populations of individuals as a sourcing partner knowing that many of those individuals may qualify for incentives programs such as WOTC or other cash incentives. You are concerned that considering and hiring these candidates would show favoritism towards them. Knowing that an applicant is eligible for a hiring

incentive and/or working with organizations that assist such applicants does not render a decision to hire the applicant discriminatory under EEO laws.

We hope this information is helpful. Please note that this is an informal discussion of the issues you raised and does not constitute an official opinion of the EEOC.

Sincerely,

/s/

Kerry Leibig

Senior Attorney Advisor

[\[1\]](#) You raised this question in a letter we received in late August 2011. We responded with a request for further details, as the initial letter did not contain enough information on which to base a response. In late December 2011, you responded to our request for additional details by sending questions 2 and 3, above.

This page was last modified on April 6, 2012.



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