

## **Computer Simulation and Learning Theory, Volume 3, 1976**

### **ISSUES IN EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION**

By: Richard W. Beatty, Univ. of Colorado and Craig Eric Schneier, Univ. of Maryland

#### **OVERVIEW**

Here we have an opportunity to use previous exercises and still build for use in future exercises (XVIII). After completing the section on testing (Exercise IX) you should be familiar with acceptable employee selection procedures which permit the selection of the best person to do a specific job. However, because of inappropriate testing procedures in the past there is another aspect of selecting people which must be addressed--job discrimination. Basically what is defined as job discrimination is any "adverse impact" that an organization's selection procedures may have on "protected groups"--minorities and women. Further, congress has decided that not only must the past practices causing adverse impact be eliminated but that organizations must engage in proactive practices to remedy past discrimination. The latter are commonly called affirmative action programs. These two issues, job discrimination and affirmative action, are the focus of this exercise.

#### **OBJECTIVES**

1. To gain an understanding of the law as it relates to employment discrimination.
2. To build skills in detecting and avoiding discriminatory practices as well as planning for specific remedies through Affirmative Action programs.

#### **PREMEETING ASSIGNMENT**

Read the entire exercise carefully, especially the introduction. You may also find the Appendix to Exercise IX a useful review.

#### **INTRODUCTION**

By the time that you read this some of the data discussed may have been changed by law, but most likely the major issues will remain the same. In fact even if the "Uniform Guidelines on Employee Selection Procedures" are promulgated as has been suggested for several years, there either will be few changes in the legal issues concerning employee selection in either substance or by implication.

In 1964 no one knew precisely the extent of racial discrimination in employment practices. But Congress in creating the commission assumed such practices were widespread. The commission composed of 5 members appointed by the president (for 5 year terms) confirmed the assumption. It found that Negroes in 1966 made up only 2.6 percent of the "white-collar" headquarters staffs of the hundred major New York City-based corporations which accounted for nearly 16 percent of the gross national product.

The passage of the Civil Rights Act of 1964 and the creation of the Equal Employment Opportunity Commission have had the effect of putting pressure on companies and unions to cease overt discrimination and open additional job opportunities in production-line and other "blue-collar" jobs. In the first four years, the commission's investigations of alleged illegal discrimination resulted

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in the filing of a mere handful-fewer than two dozen--federal suits to stop discrimination by employers or by unions. Most of the suits were against small companies or union locals. It was not until mid-1968 that a suit was brought against the nation-wide operations of a large employer.

There are several reasons for the EEOC'S slow initial performance. Congress initially in 1964 appropriated about \$2 million but President Johnson did not name the commissioners until well into 1965. The chairman was Franklin D. Roosevelt, Jr., a seemingly appropriate choice. But Roosevelt after a few months resigned to run for political office. So roughly two years passed before the commission really began. When it did, it found the administrative machinery provided by Congress slow and cumbersome. Initially it could only investigate complaints against private employers, employment agencies, unions, or labor-management apprenticeship programs. On finding such illegal bias could only try mediation; it had to recommend to the Justice Department that suits be brought. The EEOC had no authority to hold administrative hearings on its complaints and issue cease and desist orders against illegal union or employer discrimination. Authority to hold such proceedings is a basic part of the powers of other regulatory agencies and is a fundamental adaptation of law to the expertise of the agencies and the tremendous volume of their work. The EEOC has asked repeatedly for the authority and Congress has refused to grant it.

A change came in 1972. When the Act was expanded to include state and local governments and educational institutions. This provided coverage for 11 million and 4.3 million employees respectively. There was also a change in procedure in that now EEOC no longer viewed discrimination as a single, isolated act, but was expanded to systematic discrimination which had disparate effects on "protected groups". The major charge to the EEOC is to eliminate discrimination due to race, color, religion, sex, and national origin in hiring, upgrading and all employee conditions. EEOC was also given the power to sue discriminatory employers.

Of the first 175,000 EEOC cases 63% were found in favor of the complainant and at least 250 suits have been brought against employers. In 1974 over 6,000 cases involving women were filed and many traditional hiring requirements such as height, weight, working hours, childbearing, etc. have been ruled against.

Over 100 million dollars has been paid by organizations for their discriminatory behavior. The most famous of these is probably the AT&T case which paid 15 million, 23 million, and 30 million to various management and non-management groups for discrimination. Part of these payments were in the form of back pay, wage adjustments, and promotion payments. Another case which involved nine steel companies (73% of the industry's output) paid 31 million in back pay ranging from \$250 to \$3000 to minorities and women (22,800 of a work-force of 347,000). The steel companies also established goals and timetables concerning seniority, transfer, earnings, promotions and test validity. A more recent case Moody V. Albemarle Paper Co. seems to have affirmed that the 1970 EEOC Guidelines on employee selection are "entitled to great deference" as the procedures to be used in designing selection procedures.

Although many argue that the beginning of government intervention into employee selection began much earlier the case of Myart vs. Motorola certainly caught personnel psychologists and businessmen flat-footed. Many businesses

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were shocked to learn that employment testing, a generally accepted management prerogative, was being challenged on the grounds of racial discrimination. Several psychologists involved in this case lined up on opposite sides of the issues. Test publishers were fearful that their sales would slacken or even begin to decline. A low review article by Irving Kovarsky referred to the Motorola incident as “harlequinade,” and set in motion in 1963 a host of events that are still gaining momentum.

During the late 1950s and the early 1960s employment testing had increased to a fashionable stature and many were adopting the latest fad in selection techniques. Unfortunately, employment tests were sold or recommended to many employers who had not a single person trained in working in psychological measurement or test use. Even worse, sellers of tests rarely followed up to determine utility of tests in selecting a workforce. Concern for equal employment opportunity application of personnel selection procedures was virtually nonexistent. The forces of the civil rights movement were also becoming evident and after the Civil Rights Act of 1964 was enacted, few employers, unions, or employment agencies were prepared to cope with the idea that tests had a discriminatory effect on minorities. In fact, there was no corresponding evidence of their validity for the jobs for which they are administered. Neither were some segments of the psychological establishment willing to explore the possibility that a test may be valid for one racial group and invalid for another. Perhaps even more disconcerting was the development of evidence that different racial groups performed equally well on a job even though they performed poorly on a test presumed to predict performance on the job in question.

Four major federal laws are now available for seeking redress for discrimination in employment: Title VII of the Civil Rights Act of 1964, as amended in 1972; the Civil Rights Act of 1866; the Age Discrimination in Employment Act of 1967; and the Equal Pay Act of 1963. Title VII generally forbids employment discrimination on the basis of race, color, religion, sex and national origin. The Age Discrimination Act bans discrimination in employment on the basis of age against persons who are 40-65 years of age. The Equal Pay Act requires that individuals must receive equal pay regardless of sex, if they perform equal work. Executive Orders 11246 and 11141 prohibit employment discrimination by contractors and subcontractors doing business with the federal government. Executive Order 11246 prohibits employment discrimination on the basis of race, color, religion, sex and national origin. Executive Order 11141 forbids discrimination on the basis of age. The Executive Orders have the same force and effect as laws. They form the terms under which the federal government will award a contract or subcontract. Contractors who want to deal with the government accept the terms voluntarily. If contractors do not wish to accept the terms, they need not bid on a government contract. The President has also issued Executive Order 11478 which prohibits discrimination against federal employees on the basis of race, color, religion, sex or national origin. Executive Order 11345 specifically prohibits sex as a basis of discrimination. The Executive Orders operate in addition to, not instead of, the federal laws on employment discrimination.

The 1964 Civil Rights Act created the Equal Employment Opportunity Commission to enforce the provisions of Title VII. The 1972 amendments to Title VII strengthened the authority of the EEOC to eliminate discrimination in employment. In addition, the 1964 Civil Rights Act provides that the U.S. Attorney General may intervene to enforce Title VII by bringing civil suit in a federal court. In fact, an attorney who wins a case for the complainant may even receive the legal fees for the government if the complainant cannot pay.

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Enforcement powers under the Age Discrimination Act, the Equal Pay Act and Executive Order 11246 are vested in the Department of Labor. The Wage and Hour Division of the Labor Department is charged with administration of the Equal Pay Act. The Secretary of Labor is charged with administration and enforcement of the Age Act and Executive Order 11246. Under others from the Secretary, the authority and responsibility for administration and enforcement of the Age Act belong to the Wage and Hour Administrator. The Secretary created the Office of Federal Contract Compliance to administer and enforce Executive Order 11246. The Director of the OFCC has the authority to carry out the Executive Order and the responsibility for coordinating matters relating to Title VII with the EEOC and the Department of Justice.

Executive Orders 11141 and 11478 direct the heads of government departments and agencies to take appropriate action to publicize the government policy against age discrimination. Acting upon the directive, the General Services Administration has issued regulations to implement Executive Order 11141. The GSA will enforce compliance with Executive Order 11141. The Civil Service Commission is charged by the President with the responsibility of providing leadership and guidance in fulfilling the terms of Executive Order 11478. The 1972 amendments to Title VII also give the Commission the authority to investigate alleged violations of the nondiscrimination provisions of Title VII as they apply to federal employees.

To help employers, labor unions, employment agencies and joint labor-management committees to obey the law and the Executive Orders on employment discrimination, the various enforcement agencies have issued rules, regulations and guidelines.

The EEOC has issued guidelines on sex discrimination, religious discrimination, national origin discrimination and testing and selecting employees. The EEOC has also issued a release on pre-hire inquiries and has issued regulations on reporting and recordkeeping.

The Wage and Hour Division has issued regulations on recordkeeping and interpretative bulletins on equal pay for equal work and on age discrimination.

The Secretary of Labor has issued regulations on equal employment opportunity in apprenticeship and training and on the ratio of apprentices to journeymen on federal construction work.

The OFCC has issued regulations on the duties of contractors under Executive Order 11246, on affirmative action programs by government contractors and on testing and selecting of employees by government contractors. It has also issued sex discrimination guidelines.

The GSA has issued regulations on equal employment opportunity in several areas, including nondefense procurement contracts and nondiscrimination because of age on such contracts. The Civil Service Commission has issued regulations on equal federal employment opportunity.

Title VII contains several exceptions. The law does not apply to private membership clubs exempt from taxation under Section 501 of the Internal Revenue Code. It does not protect members of the Communist Party of the U.S. or members of Communist-action or Communist-front groups required to register by the Subversive Activities Control Board. It does not prohibit businesses located on or near Indian reservations from giving employment preference to Indians living on or near the reservations. It does not affect federal or state laws creating

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special employment rights or preferences for U.S. veterans. The law does not apply to workers outside the U.S. Aliens, like anyone else, are protected from race, sex, religious and national origin discrimination. National origin bias (not hiring a person because of his nationality) and alienage bias (not hiring for lack of U.S. citizenship) are different concepts.

The law does not prohibit employment discrimination if the discriminatory action is in the interest of national security.

Title VII also allows exceptions from its bans on discrimination on the basis of religion, sex or national origin (though not on the basis of race or color) if religion, sex or national origin is a bona fide occupational qualification (bfoq). The bfoq exception is interpreted narrowly by the EEOC. In order to qualify as a bfoq exception, a particular religion, sex or national origin must be a requirement for occupation of a job, and the requirement must be necessary to the normal operation of a business (e.g., an actress).

The 1972 amendments to Title VII eliminated the exception for educational institutions which was available under the original 1964 Civil Rights Act. Educational institutions, both public and private, are now subject to the Title VII bans on employment discrimination as to the employment of persons to perform work connected with the institutions' educational facilities. However, an exception is still made in the case of educational institutions maintained by a religious corporation or society. This exception applies only to the ban on religious discrimination (not to bans on discrimination on the basis of race, color, sex or national origin). Before the 1972 amendments, the exception was restricted to the employment of persons working at religious activities. The amendments broadened the exception to cover all secular, as well as religious, activities of the corporation or society.

The Age Act also allows exceptions from its provisions if the exceptions are based on bfoqs. In order to qualify as a bfoq exception, a particular age limitation must be required for a job and the requirement must be necessary to the normal operation of a business. The Act also provides that the Secretary of Labor, acting in the public interest, may make specific exceptions from the provisions of the Act. Retirement, pension or insurance plans and seniority systems may qualify for exception under the Act if they are established in good faith with no intent to evade the law. Such plans will not excuse the failure to hire any worker because of age.

The Equal Pay Act contains many exceptions. However, these exceptions hold up only when the Equal Pay Act is the basis used for attacking an employment practice. Equal Pay Act exceptions will not necessarily ward off an attack under Title VII.

When both Title VII and the Equal Pay Act apply to an employment situation, Title VII provides that its provisions will be harmonized with the Equal Pay Act to avoid conflicting interpretations of the law. However, Title VII also applies in cases of sex discrimination not covered by the Equal Pay Act.

In addition to the federal laws described above, state and other federal laws may be used as a basis for attacking employment practices. Minorities may bring suit against employers under:

- (1) the Fourteenth Amendment to the U.S. Constitution which forbids the denial of equal protection of the laws;
- (2) the Civil Rights Act of 1866 which has purview over private as well as public acts of color discrimination; or
- (3) the Civil Rights Act of 1870 which proscribes racial discrimination under color of state law.

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In addition, the states have passed laws dealing with employment discrimination. Title VII invalidates state laws that are inconsistent with any of the purposes or provisions of the federal law. However, Title VII will not provide relief from a duty or liability imposed by state law if the state law doesn't permit what would be unlawful under Title VII. Neither will Title VII invalidate a state law provision which is not inconsistent with the federal law, even though employers are thereby subject to more than one set of laws. The provisions of the Equal Pay law do not excuse noncompliance with any state law establishing higher equal pay standards than those provided by the federal law. Correspondingly, compliance with a state law will not excuse noncompliance with the Equal Pay Act.

Basically the federal agencies involved with Equal Employment Opportunity are:

**Equal Employment Opportunity Commission:** Can file suits for discrimination in jobs against private employers with more than 15 employees and against labor unions with more than 15 members. Suits must be preceded by efforts at conciliation.

**Justice Department:** Civil-rights division can bring suit where either a private employer or a labor union is engaging in a "pattern or practice of discrimination"; can bring individual as well as "pattern" suits against State and local agencies.

**Civil Service Commission:** Reviews policies of all federal agencies; consults with State and local governments to establish and improve merit hiring systems.

**Labor Department:** Office of Federal Contract Compliance requires all federal contractors with more than \$500,000 in contracts to take "affirmative action" to end job discrimination.

**Other federal agencies:** Review compliance by contractors they deal with; each agency is responsible for its own job practices.

The basis of Title VII of the Civil Rights of 1964 and the Equal Employment Opportunity Act of 1972 covers:

- All private employers of 15 or more persons
- All educational institutions, both public and private
- State and local governments
- Public and private employment agencies
- Labor unions with 15 or more members
- Joint labor-management committees for apprenticeship and training

The Equal Employment Opportunity Commission (EEOC) was established to receive and, on its own initiative, to investigate job discrimination complaints and, where the Commission finds the charge to be justified, against individuals or against groups it attempts through conciliation to reach an agreement. Should it fail in its efforts, however, the Commission has the power to go directly into federal court to enforce the law. In addition, interested organizations may also file class action suits on behalf of individuals or groups (systematic discrimination) who feel that they have been discriminated against by their employers and, in this connection, can claim back pay, damages, as well as

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TABLE 1

Agency	Authority	Scope of authority
Equal opportunity Commission (EEOC)	1964 Civil Right Act (78 Stat 241), as amended by 1972 EEO Act (86 Stat 103)	Can bring suits against private employers and labor unions with more than 15 employees. Suits must be preceded by efforts at conciliation, and must originate in individual complaints-although they may be expanded to pattern and practice suits. All Justice Department authority to bring EEO suits will go to EEOC in 1974
Justice Department Civil Rights Division	1964 Civil Rights Acts, as amended by 1972 EEO Act	Can bring suit where there exists a prima facie case of a private employer or labor union with more than 15 employees engaging in a pattern or practice of discrimination. May complete individual complaint suits begun before 1972 act. Can bring individual as well as pattern and practice suits against agencies of state and local government. After March 1974 all of this authority was transferred to EEOC.
Civil Service Commission	1972 EEO Act, ExecOrder 11478  1970 Intergovernmental Personnel Act (84 Stat 1909)	Reviews and approves EEO policies of all federal agencies.  Consults with state and local governments to establish and improve merit hiring systems.
Labor Department Office of Federal Contract Compliance (OFCC)	ExecOrder 11246, as amended (ExecOrder 11375): Labor Department Revised Order No. 4	Requires all federal contractors with more than \$50,000 in contracts to take affirmative action to bring about EEO.
All other federal agencies	ExecOrder 11246 and 11375: Labor Department Revised Order No. 4	Authority delegated by OFCC to review contract compliance. Each agency also is responsible for internal EEO, consistent with Civil Service guidelines.
Equal Employment Opportunity Coordinating Council	1972 EEO Act	Members include representative from EEOC, Justice, Civil Service, Labor and the Civil Rights Commission. Responsibility is to coordinate EEO policy for the first four of the agencies.

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legal fees. Furthermore, an aggrieved individual can also go into court directly to sue an employer for alleged discriminatory practices. In addition, the Equal Employment Opportunity Commission issues appropriate periodic guidelines to assist companies in making sure that their employment systems are in compliance with the law.

Executive Orders number 11246 and 11375 (and Revised Orders Number 4 and 14) affect all organizations that hold government contracts. Adherence to these Executive Orders is administered by the Office of Federal Contract Compliance of the U.S. Department of Labor. These orders apply specifically to contractors and subcontractors with government contracts in excess of \$50,000, or who employ 50 or more people. The orders, once again, prohibit discrimination in employment, but in addition, also require that each organization develop and implement an Affirmative Action Program--which is regularly audited by an assigned federal compliance agency--to remedy the effects of past discriminatory practices.

Specifically, under these Presidential Orders, a government contractor is required to furnish a results-oriented written commitment for an affirmative action program together with specific goals and timetables for their attainment. And most significantly, an organization found not to be in compliance with Revised Order Number 4 (which calls for a concrete affirmative action program) faces the possibility of cancellation of its government contracts.

The EEOC specifically advocates the following of the procedures described below to avoid job discrimination.

1. A total personnel assessment system that is non-discriminatory within the spirit of the law and places special emphasis on:
  - a. Careful job analysis to define skill requirements.
  - b. Special efforts in recruiting minorities.
  - c. Screening and interviewing related to job requirements,<sup>1</sup>
  - d. Tests selected on the basis of specific job-related criteria.
  - e. Comparison of test performance versus job performance.
  - f. Retesting
  - g. Tests should be validated for minorities.
2. Objective Administration of Tests. It is essential that tests be administered by personnel who are skilled not only in technical details, but also in establishing proper conditions for test taking. Members of disadvantaged groups tend to be particularly sensitive in test situations and those giving tests should be aware of this and be able to alleviate a certain amount of anxiety.

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<sup>1</sup> The Commission will not recommend any particular test, but adopts the standards for Educational and Psychological Tests and Manuals, prepared by a joint committee of the American Psychological Association, American Educational Research Association, and National Council on Measurement in Education (published by the American Psychological Association). This publication, endorsed by the panel of psychologists, consulted by the Commissions was prepared by recognized spokesmen for the profession and establishes standards and technical merits of evaluation procedures.



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These "Equal Employment Opportunity Commission Guidelines" on employee selection procedures issued on August 1, 1970 in the Federal Register are based on the belief that properly validated and standardized employee selection procedures can significantly contribute to the implementation of non-discriminatory personnel policies as required by Title VII of the Civil Rights Act of 1964. These Guidelines recognize that professionally developed selection methods when used in conjunction with other tools of personnel assessment and complemented by sound programs of job design, may significantly aid in the development and maintenance of an efficient work force and, indeed, aid in the utilization and conservation of human resources generally. The EEOC Guidelines are designed to serve as a workable set of standards for employers, unions and employment agencies in determining whether their selection procedures conform with obligations contained in Title VII which places an affirmative obligation on employers, labor unions, and employment agencies not to discriminate because of race, color, religion, sex or national origin. In developing Title VII cases, the courts have been asked to consider the 1970 EEOC Guidelines as minimum standards for test validation. Rather than trying to determine if an employer's practices were designed or intended to be discriminatory, the courts have looked first at the apparent results of discrimination and, secondly, at the procedures and practices which led to these apparent results. The apparent result of discrimination is generally referred to as "adverse impact" and it can be established in several ways. Adverse impact would be concluded, for example, when there are disproportionate representations of minority and non-minority or sex groups among present employees in different types of jobs. Adverse impact would also be concluded upon finding differential rates of selection or corresponding rejection rates for the various minority and non-minority or sex groups applying for similar jobs. The selection rate, incidentally, is the number hired compared to the number of applicants for any protected group. There are differences that exist between the Office of Federal Contract Compliance Testing and Selection Order published in 1971 and 1974 and the C Guidelines. According to the Office of Federal Contract Compliance, if the selection rate of applicants from the covered group is less than four-fifths the rate for the remaining applicants, adverse impact is concluded. For instance, if 90 percent of male applicants are selected and 30 percent of female applicants are selected, adverse impact would be concluded. Thirty percent is less than four-fifths of ninety percent. However if 85 percent of the male applicants are selected and 75 percent of the female applicants are selected, adverse impact would not be concluded. Seventy-five percent is more than four-fifths of eighty-five percent. The EEOC test is for statistically significant differences in selection rates which, for large numbers of applicants, can be a more sensitive so-called trigger than the OFCC four-fifths rule of thumb. There are statistical tools available for assessing the statistical significance of differences in proportions of percentages. Employers would be well advised to run these statistical analyses to see if in fact the tests (and non-test standards) being used are disqualifying a statistically significant greater percentage of minorities. If not, the government guidelines do not require submission of evidence of validity.

The legal conclusion of unfair discrimination is based upon two conditions being established; one by the charging party and one by the respondent in Title VII cases. If a charging party can establish that an employer's hiring, transfer, promotion, membership, training, referral, or retention practices result in adverse impact on an individual or a class protected by Title VII, the court then places the burden of proof on the respondent employer for evidence that

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the selection procedure having adverse impact is job related (validity) or is predictive of performance on the job. A validation study showing the job relatedness of any selection procedure found to have adverse impact is the first rebuttal by a Title VII respondent employer to a charge of discrimination. If a respondent cannot convince the court that his selection procedure resulting in adverse impact is job related, then the court concludes that unfair discrimination has been established. If on the other hand, the respondent can convince the court that a selection procedure resulting in adverse impact is job related, the fact that adverse impact is found becomes moot, provided the employer can demonstrate that selection procedures having a lesser adverse impact are unavailable for his use. One of the ways an employer can demonstrate that such alternative procedures having lesser adverse impact are unavailable is to show that when a choice was made between several alternative procedures, all having validity, the final choice was based on that procedure having the least adverse impact on covered groups. The legal conclusion of unfair discrimination then is based on a showing of adverse impact by a charging party and unacceptable evidence of job relatedness on the part of the respondent employer.

In defining the scope of practices covered by the EEOC Guidelines, "the team test is defined as any pencil and paper or performance measure used as a basis for any promotion decision." Also included in the definition of tests are "formal scored quantified or standardized techniques of assessing job suitability including specific qualifying or disqualifying personal history or background requirements, specific educational or work history requirements and scored interviews." The question is often asked if casual unscored interviews are covered by the EEOC Guidelines and the answer is If a casual interview is part of an employer selection procedure that results in adverse impact on a class of applicants covered by Title VII, then by the fact that a decision was made whether or not to further consider the applicant the interview becomes one more quantified decision point in the employers selection procedure.

What evidence an employer must present to show that his selection procedures are job related? In establishing the job relatedness of any selection procedure, EEOC looks for "empirical evidence in support of a test validity based on studies employing generally accepted procedures for determining criterion related validity such as those described in the Standards for Educational and Psychological Tests (1974), published by the American Psychological Association." While EEOC prefers criterion related validity evidence of content or construct validity as defined in that publication may also be appropriate where criterion related validity is not feasible. When criterion related validation studies are conducted according to the EEOC Guidelines, Evidence of a test's validity should consist of empirical data demonstrating that the test is predictive of or significantly correlated with important elements of work behavior which comprise or are relevant to the job for which the applicant is being considered. The relationship between the test and at least one relevant criterion must be statistically significant. This ordinarily means that the relationship should be sufficiently high ( $p < .05$ ). However, the use of a single test as the sole selection device will be scrutinized closely when that test is valid against only one component of job performance. There are five primary considerations in the EEOC Guidelines in conducting a criterion related validation:

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1. The sample of subjects must be representative of the normal or typical candidate group for the job or jobs in question in the local labor market. --
2. Tests must be administered and scored under controlled and standardized conditions with proper safeguards to protect the security of test scores and to insure the scores not enter into any judgments of employee adequacy that are to be used as criterion measures.
3. The work behaviors or other criteria of employee adequacy which the test is intended to predict or identify must be fully described. Such criteria may include measures other than actual work proficiency; such as, training time, supervisory ratings, regularity of attendance and tenure. Whatever criteria are used., they must represent major or critical work behaviors as revealed by careful job analysis. With respect to using standards for higher jobs than the one the person is being selected for, if job progression structures and seniority provisions are so established that new employees will probably, within a reasonable period of time and in a great majority of cases progress to a higher level, it may be considered. that candidates are being evaluated for jobs at that higher level. However, where job progression is not so nearly automatic or the time spent is such that higher level jobs or employees' potential may be expected to change in significant ways, it shall be considered that candidates are being evaluated. for a job at or near the entry level.
4. Supervisory rating techniques should be carefully developed and. the ratings should be closely examined for evidence of bias.
5. Differential validity data must be generated and results separately reported for minority, and non-minority groups whenever technically feasible.

Evidence of content or construct validity as defined in the APA Standards may be utilized where criterion related validity is not feasible. However, evidence for content or construct validity should be accompanied by sufficient information from a job analyses to demonstrate the relevance of the content in the case of job knowledge or proficiency, or the relevancy of the construct in the case of measures of personality traits or characteristics. According to the 1970 EEOC Guidelines, "Evidence of content validity alone may be acceptable for well developed tests that consist of suitable samples of the essential knowledge, skills, or behaviors composing the job in question. It must be cautioned that the types of knowledge, skills or behaviors contemplated here do not include those which can be acquired in a brief orientation to the job."

A final note on discriminatory practices is that is organization's selection procedures show no "adverse impact" (i.e., this organization is not discriminatory) there is no legal requirement that they validate selection procedures. Also the recent case rulings clearly indicate that any procedure an organization uses to select a white male is acceptable.

Affirmative Action. Federal equal employment opportunity laws now require employers, government contractors, and parties administering apprenticeship programs not only to refrain from deliberate acts of discrimination, but also to take positive steps to assure that current practices are nondiscriminatory and that any continuing effects of past discrimination be erased. Affirmative

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action, as called for by Executive Orders No. 11246 and 11375, is the method by which the employer, contractor, or party administering an apprenticeship program, insures that those positive steps have been, are being, or will be taken to achieve equal employment opportunity.

Affirmative Action was undefined in Presidential Executive Order No. 11246 and 11375 in that it "required companies contracting with the federal government to take affirmative action to recruit and promote minorities and females," but did not spell out what affirmative action meant or what obligations such contractors would have. Revised Order No. 4, under Nixon, defined contractors' obligations and established how an affirmative action program should be developed. Affirmative action programs are now being used by the Equal Employment Opportunity Commission as a remedy where a complaint has been filed and a pattern or practice of discrimination has taken place.

If after determining that discrimination does exist, one must develop an effective affirmative action program. Many companies have had an explicit or Implicit nondiscrimination policy; so, an affirmative action program can be viewed as not a new policy, but, rather a continuation of an existing one with a new and stronger emphasis. A company has four avenues open to itself in developing a nondiscriminatory policy. They are: passive nondiscrimination, which involves a willingness in all decisions regarding the hiring, promotion, and pay to treat the sexes and races alike. The problem of not recognizing past discrimination leaves many prospective employees unaware of present opportunities; 2) pure affirmative action, which involves a concerted effort to expand the pool of applicants so no one is excluded because of past or present discrimination; 3) affirmative action with preferential hiring, which means the company has a large labor pool and systematically favors women and minority group members; 4) which implies that a specific number or proportion of minority group members must be hired. Affirmative action programs at the present time are centered around hard quotas because of the government's emphasis on goals and targets. The government's objective in establishing affirmative action is based upon the second statement while the real issue involved here is with affirmative action programs as stated in the third alternative.

The only way to ensure that everything possible is being done is to develop and vigorously implement an affirmative action plan. Such a plan can be a valuable management tool. Even the process of developing a plan can be an extraordinarily useful management experience -- the review to determine if the organization is employing blacks, Spanish speaking Americans, American Indians, women and members of other groups in quantities which make sense in terms of their availability in the labor supply; the examination to discover if minority group members and women are clustered in lower level jobs with little opportunity to advance to better paying positions; and the close scrutiny of policies, procedures, and practices which may tend to favor one group over another -- all of these analyses can be helpful to management in improving the organization's systems for getting the best qualified people to serve the public.

Once the affirmative action plan is developed, it can serve as the basic management guide to action -- providing it has enough specificity to be meaningful. Managers and supervisors at all levels can use it to guide their actions and measure their progress. The plan should provide for the establishment of reasonable employment goals for minorities and women, as distinguished from mandatory quotas. It can call for deadlines by which certain programs

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(such as special recruiting programs or training programs) can be initiated or completed.

Goals and timetables are appropriate for problem areas where they will contribute to progress -- as, for example, in those organizations, localities, occupations, and grade levels where minority and female employment does not come up to reasonable expectations in view of the supply of qualified minority group members or women in the recruiting area and the availability of job opportunities.

In large organizations, numerical goals should be developed at the organizational component level rather than on a broad basis which does not take into account special circumstances. In this way, detailed statistics on minority groups and women will aid in identifying areas where additional affirmative action is required and can be translated into specific action plans for the level or component concerned.

To be valid, goals and timetables must be closely aligned with estimated turnover data and anticipated hiring as well as estimated changes in the total number of positions by job classification for the period covered by the timetable.

Goals can be qualitative as well as quantitative. For example, an organization which has lost a substantial proportion of minority employees through turnover may find that its climate for employment of minorities is poor. In such a case, new goals might include attempts to improve the attitude of other employees and supervisors toward acceptance of the group, providing more effective orientation and motivation of new employees, evaluating and improving training operations, or the strengthening of the grievance and discrimination appeals processes. An affirmative action plan should establish specific steps leading toward achievement of these goals.

As with other management programs, an affirmative action program needs periodic evaluation. Evaluation of operations may result in a conclusion that a greater number of minority group employees should be employed throughout the jurisdiction or one of its components. In other situations, the jurisdiction or component may have acceptable program results overall, but improvements may be needed in certain locations, divisions, grades, or occupations. Evaluations should lead to new updated goals and target progress dates based on the needs of the program.

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#### Part III

- Form 1: Basic company information (Perfect Cool Corp.)
- Form 2: New Personnel Administrators In-basket information
- Form 3: Employee Codes
- Form 4: Perfect Cool Personnel Profile
- Form 5: Total Company Breakdown
- Form 6: Master Plan Affirmative Action (Perfect Cool.)

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### PROCEDURE

**Overview.** In Part I you are to review the questions on Form 1 and then attempt to determine if adverse impact has been witnessed by using Form 2.

1. Form 1 provides a series of questions about EEO and Affirmative Action. You are to place a check in the column you believe is appropriate.
2. Form 2 asks you to record your height, sex and race and determine if “adverse impact” has been witnessed for persons who are members of protected groups under the OFCC guidelines. The minimum height requirements to obtain the job is five feet, eight inches. Calculate the “qualifying rates” for both sex and race. Was “adverse impact” observed. If so what must now be done given that the first of two steps in demonstrating job discrimination exists has now been shown?

In Part II you are to take the information provided for a city and analyze its Affirmative Action efforts.

1. You are to review the employee profile for the organization concerned and critique it. Then you are to complete the extra forms provided based on your review of the organization’s original documents. You are to present your plans to the class and be prepared to defend them.
2. If discrimination was found for women or a minority group the organization, a large metropolitan city, which receives considerable federal funding has been asked by the OFCC to develop an Affirmative Action program with the appropriate goals and time tables. You may use Form 2 of Part II for this purpose. Again, you are to develop a plan which you believe will gain the acceptance of the OFCC compliance panel.

In Part III you are to design an affirmative action plan for a manufacturer and present it to the organization.

1. You are to handle a combined In-basket and Affirmative Action exercise. You are to review the in-basket material and move on to completing the other materials required for Affirmative Action. You will work on developing an Affirmative Action Program for the Perfect Cool Corporation out of class. You should jointly assume the role of the Personnel Director (in groups of five) and make decisions in terms of company policy, Equal Employment Opportunity Commission Guidelines and Office of Federal Contract Compliance Procedures.

You had been on the job for two days and then had to attend the EEO conference for a week. The first two days had been spent with introductions and meetings, so you still have only a sketchy picture of the organization. Now you’re back in the office and have an opportunity to go through your in-basket. You discover the notes, letters and memos in Form 2. You are to read the memos, etc., the data provided, complete Forms 1 through 6 and be prepared to present your findings to a staff meeting composed of the President and all Department Heads. You should also detail how the program would be implemented and who would be involved.

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### FOR FURTHER READING

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### GLOSSARY OF EEO AND LEGAL TERMS

#### AFFECTED CLASS

Those groups of minorities, females, the elderly, and the disabled who by virtue of past discrimination continue to suffer the effects of such discrimination. Affected class status must be determined by analysis or court decision.

#### AFFIRMATIVE ACTION

Any activity initiated by an employer which contributes toward the greater utilization of minorities, females, the elderly, and the disabled, including goals established by units and timetables for completion.

#### AFFIRMATIVE ACTION GROUPS

Those persons identified by the Federal and State laws and the County Board of Commissioners to be specifically protected from employment discrimination; includes minorities, females, the elderly and the disabled.

#### ANSWER

Is a response by the person who is sued.

#### BENCH TRIAL

Follows discovery by both parties and is always before a judge in Title VII proceedings and never before a jury.

#### BFOQ or BOQ

“Bona Fide occupational qualification” a minimum qualification requirement needed as a prerequisite to be hired and succeed on that job. BFOQ’s if challenged, must be demonstrated to be valid by the employer. The courts have interpreted BFOQ very narrowly, especially with regard to sex. Each applicant must be treated as an individual in comparing his or her skills to the skills required to perform the job. Assumptions about a class are not legitimate BFOQ’s.

#### BURDEN OF PROOF

The responsibility for demonstrating to the requisite degree, the truth of one’s claim; the affirmative duty of proving or disproving the claim at issues.

#### “BUSINESS NECESSITY”

Criteria placed on applicants that are valid and necessary for the effective conduct of the organization objectives and the particular job. The courts have consistently struck down overly stringent criteria which have been shown to have a disparate effect on affirmative action category groups.

#### CAREER LADDER

The jobs which require related and increasingly more responsible duties through which employees advance by experience and in-service training in the lower jobs, Career ladders should be equal in quantitative opportunity and salary range for those jobs having high affirmative action group utilization compared with those having primarily white male incumbents.

#### CHARGING PARTY

Alleges that he or she is aggrieved as the result of an unlawful employment practice.

#### COMPLAINT

The first paper filed by the plaintiff.

#### COMPLIANCE

Within the limits of the nondiscrimination laws and their interpretations by the courts. While organizations through self-analysis and official changes



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can remove their exposure to class action suits through complying with all Civil Rights legislation, individual cases of discrimination can be avoided through training and awareness sessions with managers, supervisors, and other employees in the personnel process. Full compliance requires both.

### **CONCILIATION**

Is a settlement through administrative processes such as those initiated by EEOC and is a means by which a case is settled by resolution of charges without a trial.

### **CONSENT DECREE**

By comparison is the judicial counterpart to conciliation and is a formal court document approved by a judge.

### **DECISION**

Generally goes one of two directions - dismissal or Injunction.

### **DEFENDANT**

The person being sued.

### **DEPOSITIONS**

An oral interrogation of a witness in front of a court reporter.

### **DISCRIMINATION**

The impact or effect of personnel policies, practices, and procedures that result in affirmative action groups being less favorably situated in their employment that are not the results of BFOQ's or valid criteria of "Business necessity." Thus a conclusion of law based on a demonstration of adverse impact by the plaintiff and failure by a defendant to demonstrate that the practice was job-related. to the court's satisfaction.

### **DISCOVERY**

Is the legal term for the investigation phase after a complaint is filed and. the defendant has answered.

### **DISPARATE EFFECT OR DISPARATE IMPACT**

The result of an employment policy, practice, or procedure that, in practical application, has less favorable consequences for an affirmative action group than for the dominant group.

### **EEOC**

A Federal Commission on Equal Employment Opportunity which has the power to bring suits, subpoena witnesses, issue guidelines which have the force of law, render decisions, provide technical assistance to employers, provide legal assistance to complainants, etc.

### **EMPLOYMENT PARITY**

When the proportion of affirmative action groups in the external labor market is equivalent to their proportion in the County work force without reference to classification.

### **EXPERT WITNESS**

Is qualified by credentials which generally include at least a MS in psychology and experience in the field.

### **FINDINGS AT FACT**

Where he serves as an umpire and "calls them as he sees them" or as he under-stands the facts to be.

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### **GED**

General Educational Development - the GED certificate is the high school equivalency-certificate which the Minnesota State Department of Education recognizes as equal to the high school diploma for all practical purposes.

### **GOALS**

Good faith quantitative objectives which an employer voluntarily sets as the minimum progress which can be within a certain time period through all out efforts at outreach recruitment, validating selection criteria, creation of trainee positions, career ladders, etc. Goals and objectives are considered proper and legal responses to underutilization by EEOC, OFCC, USCSC, DOL. and the White House.

### **HUMAN RELATIONS TRAINING**

Interpersonal skill development, especially with respect to affirmative action group awareness, communication, and compatible attitude development, Techniques may include T-groups, seminars, workshops, role reversal, attitude assessment, etc.

### **INJUNCTION**

May either require that a certain practice be stopped. or that something be done in the future and orders others actions such as relief to affected class members.

### **INTERROGATORIES**

Written questions with a prescribed time period to answer.

### **JURY TRIAL**

More formal than a bench trial.

### **MAKING WHOLE**

Award of back pay they would have received but for the effects of the unlawful practice.

### **OBJECTIVES**

Similar to goals, a good faith effort to meet numerical goals through modifications in the employment procedures and practice. Goals and objectives are set after careful external and internal labor analysis.

### **OCCUPATIONAL PARITY**

When the proportion of affirmative action group employees in all occupational levels is equivalent to their respective availability in the external labor market. Eventually, with the goal of equal educational and training opportunities, employment parity and occupational parity will be equal.

### **OFCC**

Office of Federal Contract Compliance - which has set guidelines for all Federal contractors with respect to nondiscrimination and affirmative action.

### **PARITY**

The long-term goal of affirmative action which is reached when employment and occupational parity are identical.

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### PER SE

Violation for which there is no defense.

### PLAINTIFF

The person who initiates litigation

### PRIMA FACIE

Violation where evidence is shown that an employment practice has an adverse impact affecting an individual as a member of a similarly affected class covered by Title VII. It shifts the burden to the defendant. The elements necessary to support the claim have been presented, and unless evidence can be presented to rebut the previous arguments, the claim will be supported. In the EEO area, statistics of underutilization have been sufficient to make a prima facie case for discrimination, then it is the responsibility of the employer to justify those statistics through "business necessity," BFOQ's, etc.

### PROJECTED CLASS

Legally identified groups that are specifically protected by statute against employment discrimination. Unlike "affected class" which must be demonstrated, protected class status is automatically conferred upon recognized minority group members, females, etc., by virtue of the law or other court decisions interpreting the law.

### PROBABLE CAUSE

Reasonable on the basis of the evidence but not certain or proved. Before initiating court action, the Federal EEOC and the Minnesota Human Rights Department make a determination of no cause, probable cause, or cause. In incidents of probable cause or cause, pre-trial negotiations and conciliation generally resolve the issues before the case can get into court.

### QUOTAS

Fixed hiring and promotion rates based on race, sex, etc., which must be met at all costs and do not take into consideration the availability, education, or training of the external labor force of protected class members, nor the employer's internal labor situation with respect to projected manpower requirements. Quotas are considered to be last resort measures available only for the courts to impose when good faith efforts do not exist.

### REBUT

Offers a validation study.

### RESPONDENT

That person against whom an administrative charge of discrimination is filed.

### SMSA

Standard Metropolitan Statistical Area - the area of employee recruitment against which parity and utilization levels are compared. The SMSA may vary depending upon level of job class, availability of applicants, location of work station, etc.

### SUMMARY JUDGMENT

Could be issued by the court at the point where there is no dispute of material facts.

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### **TIMETABLES**

Consecutive time durations (generally in affirmative action, a timetable covers one year) during which the specific quantitative goals and objectives for that year are to be met and evaluations of progress are made before beginning the subsequent timetable with its own specific goals and objectives.

### **TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 AS AMENDED BY THE EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972.**

The first legislation to make it an unlawful employment practice to discriminate on the basis of race, color, religion, sex or national origin. All other Federal and State EEO legislation is patterned after or supportive of Title VII.

### **UNDERUTILIZATION**

Term used to describe a lower number of affirmative action group employees than parity would predict. Once underutilization is quantitatively established, the burden of proof rests on the employer to demonstrate that the underutilization is the legitimate effect of BFOQ and valid criteria of business necessity (also called underrepresentation).

### **VALIDITY**

The extent to which a test, criterion, or qualification measures the trait (some job performance ability) for which it is being used, rather than some other trait. "Business necessity" considerations are addressed to the usefulness of the test in predicting job performance and the minimum cut-off scores.

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### PART 1

### FORM 1

#### EEO REVIEW QUESTIONNAIRE

		TRUE	FALSE	UNDECIDED
1.	It would be inappropriate for courts to impose goals and timetables on employers engaged in discriminatory practices.			
2.	Unions may be held liable for the labor contracts that are overtly or covertly discriminatory.			
3.	State and local governments were subject to the Civil Rights Act of 1964 before 1972.			
4.	If an employer can show an employee profile which demonstrates that the organization does not discriminate there is no legal requirement that the organization validate its selection procedures.			
5.	Goals are determined by analyzing the job classifications within a unit or organization.			
6.	Some lawyers may now receive their fee from the government if they win an EEOC case.			
7.	A voluntarily developed affirmative action plan is a management guideline and is not a legal document.			
8.	Failure to impose quotas means failure of commitment to EEO.			
9.	EEOC is an affirmative action agency.			
10.	Affirmative action plans are not required by law, they are only recommended by guidelines.			
11.	Criteria for determining job requirements for minorities and women for the same positions should be the same.			
12.	The EEO Act gave the Civil Service Commission enforcement responsibilities for eliminating discrimination in State and Local governments.			
13.	The EEOC is responsible for non-discrimination and affirmative action among Government contractors.			
14.	Minority women should not be counted twice (it is illegal) in the analysis of an affirmative action plan – once as a woman, and once as a minority.			
15.	The responsibility for remedying unintentional or covert discrimination practices remains with the employer			

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	TRUE	FALSE	UNDECIDED
16. The new EEO Act (1972) prohibits discrimination based on age, race, religion, and sex.			
17. Complaints of race or sex discrimination may be filed on the basis of a specific practice or on the basis of systematic discrimination.			
18. The Labor Department administers the merit standards statutes.			
19. Affirmative action programs are designed to achieve equal employment opportunity only for minorities.			
20. A legal distinction has been made between "quotas" and goals			
21. It is wise to involve a representative group of employees in the development of affirmative action programs.			
22. Numerical goals as well as quotas are incompatible with merit principles for promotions, etc.			
23. Complaints may be files under several pieces of legislation if the nature of the complaint is covered by more than one law or regulation.			
24. The development of voluntary affirmative action programs are a protection for employers if a complaint of race or sex discrimination is filed.			
25. A goal may sometimes require hiring less qualified person over better qualified ones.			
26. Affirmative action plans should be given to "protected groups"			

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Form 2

## CALCULATIONS OF ADVERSE IMPACT

YOUR HEIGHT \_\_\_\_\_

YOUR SEX \_\_\_\_\_

YOUR RACE \_\_\_\_\_

$$\frac{\text{Number of women selected}}{\text{Total number of women}} = \underline{\hspace{1cm}} \%$$
$$\frac{\text{SELECTION RATE FOR WOMEN}}{\text{SELECTION RATE FOR MEN}} \quad \text{---} \%$$
$$\frac{\text{Number of men selected}}{\text{Total number of men}} = \underline{\hspace{1cm}} \%$$
$$\frac{\text{Number of whites selected}}{\text{Total number of whites}} = \text{---} \%$$
$$\frac{\text{SELECTION RATE FOR WHITES}}{\text{SELECTION RATE FOR NON-WHITES}} \text{ ——— \%}$$
$$\frac{\text{Number of non-whites selected}}{\text{Total number of non-whites}} = \underline{\hspace{1cm}} \%$$

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## PART II

### Form 1

#### SUPERCITY EMPLOYEE PROFILE

TABLE #1

male-female			
<u>Classification</u>	<u>Male</u>	<u>Female</u>	<u>Total</u>
Officials and managers	37	1	38
Professionals	434	6	440
Technicians	862	11	873
Office and clerical	4	873	877
Craftsmen (Skilled)	456	0	456
Operatives	541	21	562
Laborers and sanitation workers	2297	1	2298
Total	4631	912	5543

TABLE #2

minority – non-minority			
<u>Classification</u>	<u>White</u>	<u>Minority</u>	<u>Total</u>
Officials and managers	36	2	38
Professionals	421	19	440
Technicians	866	7	873
Office and clerical	668	209	877
Craftsmen (Skilled)	436	20	456
Operatives	480	82	562
Laborers and sanitation workers	734	1563	2297
Total	3641	1902	5543



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## Part II

### Form 2

#### AFFIRMATIVE ACTIONS

#### MASTER PLAN

Supercity, U.S.A.

STANDARD METROPOLITAN STATISTICAL AREA (Supercity, U.S.A.)					SUPERCITY EMPLOYEE PROFILE					
Group	Total	Percentage of total	within group	# of employees	% of employees	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	5 <sup>th</sup> year
TOTAL	1,486,291	100		5543	100					
Male	683,264									
Female	800,027									
Minority	(706,492)									
WHITE	776,799		(100)	3641						
Male	374,261									
Female	402,178									
BLACK			(100)	1463						
Male										
Female										
INDIAN			(100)	7						
Male										
Female										
SPANISH			(100)	401						
Male										
Female										
OTHER			(100)	31						
Male										
Female										

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## PART III

### Form 1

#### BASIC COMPANY INFORMATION

You are Al Smiley, the recently appointed Director of Personnel for Perfect Cool Corporation, reporting to the President. Your department has primary responsibility for monitoring personnel matters. You have a secretary and the company employs 100 people.

Perfect Cool is located in the suburbs of Supercity, a large midwestern industrial metropolitan hub. Transportation to the suburbs is convenient by bus or car. Perfect Cool is a family owned firm sub-contracting firm which specialized control devices for a prime military contractor. The company also makes controls for the large industrial boilers. Perfect Cool's products were designed by its founder. Perfect Cool has a growth rate of 15% and is in a very healthy financial situation since 1939. The President, I.M. Ready voluntarily determined to implement an Affirmative Action Program. He feels if he does not OFCC will request a compliance review which could jeopardize his contracts. Upon inspection he recognized he could be penalized both the Protobar and Hawkeye divisions since all customers are government contractors. The President's son-in-laws head the engineering and finance groups.

Of the 150 persons employed, sixteen are women, four are Black men, and seven are Chicanos and one is an American Indian. All others are white males. All whites live near the Plant. The minority personnel live in the urban areas of Supercity. All women are in clerical jobs, but there are now women applicants who want to work in the plant. Presently three women are eligible for promotion. If promoted they would have men working for them. A Black and the Chicanos are not paid at a commensurate salary. They are in effect supervisory but do not get supervisors pay. Soon there will be three production job vacancies on different shifts. Also, a new position will be created because of an expanded production schedule most workers seem to that women should not work in the plant and they also believe that Perfect Cool has its "quota" of minorities. Many feel that minorities want to "take over." Rumor has it that Blacks want to move into the neighborhood. In fact, the American Indian wants to move from Supercity so he can be closer to his job. Few blacks apply as the organization does not use popular minority media for recruiting. There is an overabundance of Women applicants.

Each of the Company's departments is headed by a manager with employees reporting to them. The president has recently had trouble with the production department. Effective administrative control of the department has been a continuing problem for the past two years.

Twenty-five of the employees are professionals. Of that 25, most are engineers assigned to various projects. The previous Personnel director, Mr. Cy Long retired after twenty years. Most people felt he lost interest in keeping up with his job after he decided to retire. In fact, he may have lost interest before he retired.

The former director favored EEO and philosophically agreed with the President's expressed EEO commitment. However, he did not devote much time to the subject, feeling his organization had no problems in this area.

Supercity considers the Perfect Cool a stable institution and the community has been hostile to minorities, Jews and Catholics in the past. Schools in

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Supercity are integrated and Perfect Cool employees children are bused to Supercity schools. Suburban schools close to Perfect Cool were closed by the School Board. There had been trouble with the local policy in the black community of Supercity. The local community newspaper devotes much space to Perfect Cool releases and does not print adverse information about the Company. The major metropolitan newspaper the Supercity Crusader will, however, print all of the news, including Perfect Cool's employment problems.

The Chamber of Commerce of Supercity desperately wants to be known as a "progressive" city. It is attempting to create the impression that Supercity is a good community for industry, including the surrounding suburban areas.

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## **PART III**

### **Form 3**

#### **NEW PERSONNEL ADMINISTRATOR' S IN-BASKET**

August 18

TO: Personnel Director

As you know for some months we have been negotiating with the skilled trades council to get more minorities into apprentice programs. Progress has been slow and the council has been extremely reluctant to change its old ways of doing business.

Our position in addition to the well known statements about EEO has been the expansion of this program to better utilize our unemployed youth.

One of the union's arguments which we feel must be broken down is that the available training facilities are being used to capacity. Unfortunately from our view Perfect Cool Corporation has provided very limited leadership in this vital area. It is suggested that the departments of Perfect Cool be used as training sites and. that the electricians Department would be the ideal place to start. You already have journeymen in that department so it should be a simple matter to establish an apprentice program, minorities in this community are becoming very aggravated over this problem and a declaration of commitment on your part would help to cool tempers.

We would appreciate the opportunity to discuss this matter at your earliest convenience.

The Urban Group for a Better Community

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EEOC Regional Office  
18 August

President  
Perfect Cool Corporation  
Supercity, U.S.A.

Dear Sir:

Our office has received notification from the Office of Federal Contract Compliance that an employee of Perfect Cool Corporation has charged your company with sex discrimination. They have passed the charge to us because we have the investigatory powers regarding such charges.

Thus, we request a review of the charges on your premises at your convenience. At that time, we would prefer to review all of your employment practices.

Your immediate attention to this notification is appreciated. I look forward to hearing from you.

Sincerely,

District Director  
Equal Employment  
Opportunity Commission

8/20  
Cy  
What has happened  
here? What do  
you plan to do?  
d.M.R.

Mr. Cy Long  
Personnel Director

We've got a problem! You know we picked up an Indian guy, Charlie Eaglefeather, last month. Well, everything was working out fine. He's already productive--fits in great! But he now tells me he can't find a house to buy. He wants to bring his wife and kids to Supercity but seems like everywhere he goes they take one look at that natural suntan and he gets the cool treatment!

I've tried to help, but no luck! I'm at the end of my rope. I can't lose him. You don't know how hard I searched to get somebody for that high wire stuff on the building maintenance crew.

HELP!

*Al Friendly*

Aug30

Smiley - Personnel

Please look over these two civil engineers who will graduate in June. I've interviewed them and pretty much decided on #3 because personality-wise I think he'll get along better with the Sub-contractor. Old Joe can be pretty salty and we need this job on schedule. This guy knows some good stories, plus he is an exmarine.

By the way, to keep in the rules I have to include a gal who showed up as #2. I even had to interview her!! She's a real smart kid but she'd turn blue when old Joe got through with her, besides having to slop around in the mud out there.

I don't know why she'd waste her time in engineering school!

Anyway look at these two and tell me what you think.

Sam Tinker  
Head of Engineering

TO: Cy Long

FROM: Tom Fact, assistant to president

This is some preliminary information needed for the first section of the President's report on affirmative action. (Due 12/3)

- 1) organization chart attached
- 2)
  - a) average age of professionals in Engineering is 52 (10 professionals)
  - b) average age in production is 4.7 (6 professionals)
  - c) average age in marketing is 58 (3 professionals)
  - d) average age in finance is 39 (6 professionals)
- 3) In the last two years eight professionals have been hired--all engineers -  
(5 for development: 1 Oriental, 1 White)  
(3 for applications - all white)

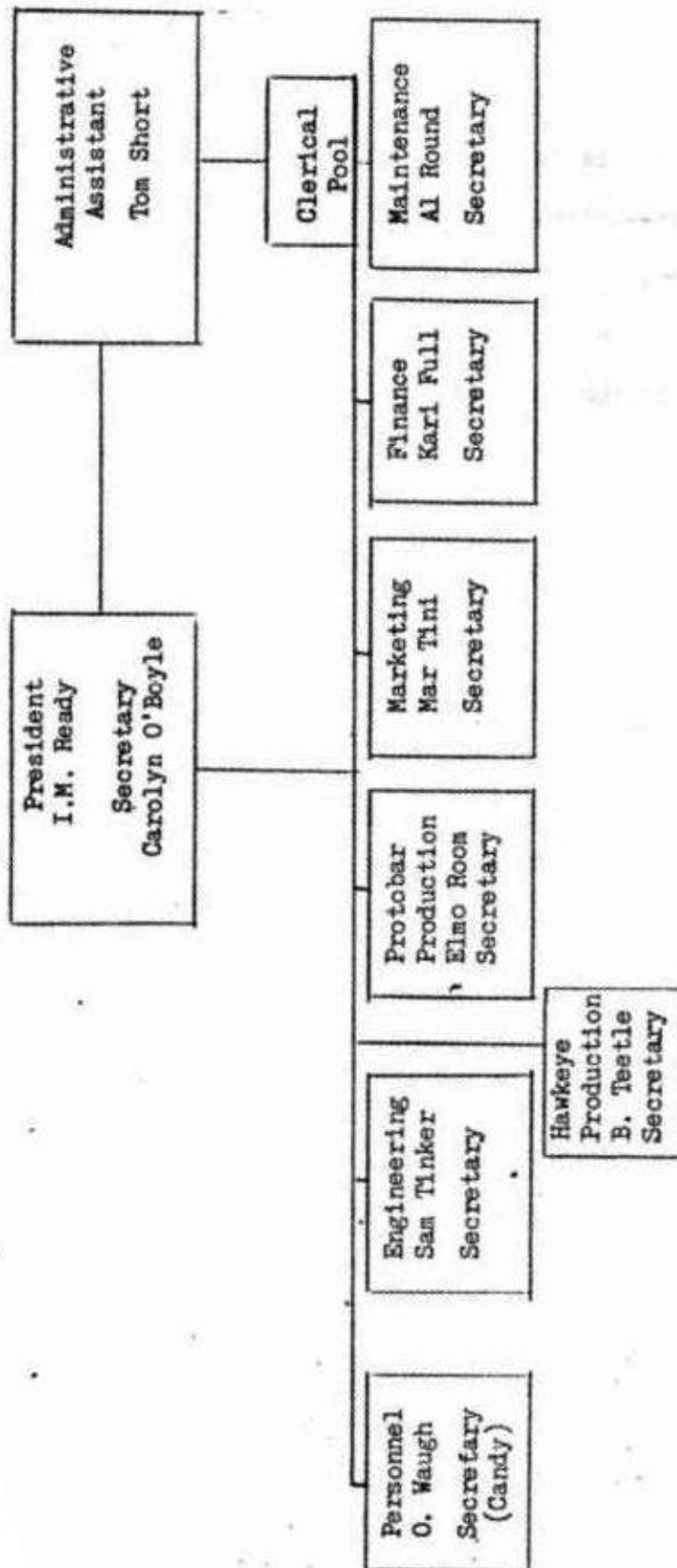
Nine clerical personnel have just been hired - 2 black, 1 Spanish, 6 white in the clerical pool. Turnover has been high in the past year. Current vacancies:

7. Also Larry White's secretary has given her notice (better paying job in private industry).

- 4.) There is one black engineer in Maintenance who has been with the department 5½ years.
- 5) Of all minorities in the organization, 56% are production workers.



ORGANIZATION CHART



8/2

Director of Personnel  
Perfect Cool Corporation  
Supercity, U.S.A.

Dear Sir:

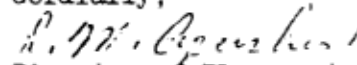
I understand that some of your departments will soon be hiring clerical employees. We would like to bring to your attention our school the Secretarial Success Institute which might serve as a recruitment source for you and lower your costs.

We are interested in meeting with you to discuss:

- (1) The possibility of placing some of our best graduates with your organization.
- (2) the possibility of negotiating an on-the-job training agreement with you for some of our students. We feel that mutual benefits would derive from this which could result in considerable financial savings for you.

You may be aware of the fact that our Institute is set up to serve the needs of this community under a grant from the U.S. Minority Business Enterprises Agency. Our school is accredited by the Accrediting Commission Business Colleges and is approved by the U.S. Veterans Administration training.

We offer quality education and have an extensive clerical and secretarial curriculum, based on current technology. Our classes are limited to 10 students so that our experienced teachers can offer intensified individualized instruction. We take pride both in our trainees and in our graduates.

Cordially,  
  
Director of Placement  
Secretarial Success Institute

7/16

Mr. Cy Long,

What are we going to do about the retirement party for Hector? We've got to send the notice around sometime in the next couple of weeks but where the heck should we have it? The club would be Ideal but Mr. Full has some strong feelings about THOSE PEOPLE in OUR club.

I could get messy and remind him that it's supposed to be a public establishment but----

Or maybe we could forget it and just plan to go to the Cafeteria. Everybody in the office chipped in, so we'll probably have enough left after the gift and stuff to buy meals and maybe hire a band. Let me know what you think? Please hurry on this one.

*Glenn Mewchay*

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9/1

Dear Mr. Waugh:

A group of employees in the Production Department are concerned about the apparent lack of opportunity for advancement. This came to my attention again when the steward told me the men were complaining.

As I recall in our last bargaining session we discussed this problem and the company agreed to consider it. We agreed on that basis not to make a contract provision but maybe we should.

I would like to meet to discuss this matter at your earliest convenience.

cc: Mr. Reddy

Very truly,

*Frank Matting*  
Business Agent

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Human Relations Commission Supercity, U.S.A.  
Dear Commissioner:

At the present time I am a civil engineer in the Engineering Division of Perfect Cool Corporation I am the only black engineer employed by the Company.

The position of Maintenance Manager will be available the first of the month due to the retirement of the incumbent and I intend to apply for that vacancy. However I already know that I will be passed over when the final decision is made and it will be due to race rather than qualifications. This organization could never stand to have a black man in a position with that much authority. I have always given my best to this organization but find that because of my race this is apparently not enough.

Therefore I would like to know the proper procedure for filing a complaint because I intend to carry this matter as far as possible to see that justice is done.

Any information you can provide regarding my rights would be appreciated.

Sincerely,

Altharange

cc: Mayor

P.S. By the way Harry I really want to pursue this based on our lunch last week.

October 31

Mr. Room

We have been in your Production Department three months now. This is our second complaint about poor working conditions which seem to have fallen on deaf ears so far including yours, just like when we were in the Maintenance Department.

We are sick and tired of greasing machines, it is dangerous and often the machines are not completely off. It's only by pure luck that none of us have been killed so far. We have to supply our own gloves and have no other protective clothing or equipment.

If there were some whites on here and we weren't all black or Spanish there'd be some equipment pretty fast. Now this is our last time to tell you about this. If something doesn't happen within two weeks we'll take our case to the highest levels In the city or this State or the Supreme Court if necessary. We want this corrected now.

Wough  
What can I do?  
Elmo

Felippe LaBato  
Lucius Nomore  
Clarence Bugger

Sept 6

Dear Mr. Waugh

I am Mexican-American and though I read and write English well my accent gives some trouble when I speak. I just started working here and already my supervisor (Mrs. Meany) is being very unfair to me. She has suspended me for three days because she says I was AWOL but I was not. She won't believe me when I tell her my story but she listens to her white typists when they tell her all sorts of tales.

She told us to call in when we are sick and do that very early in the day. Last Tuesday at 8:30 a.m. I called to say I was sick and would not be in and to tell Ms. Meany. The girl who answered the phone said O.K. and hung up before I got her name. I was upset because I didn't recognize the voice and was afraid it might be the new girl from the typing agency we got the day before. But I figured it would be O.K. and didn't call back because I didn't want to get her into trouble.

When I went in Wednesday Mrs. Meany asked why didn't I call and I was considered AWOL. I told her I called but didn't know who I talked to. She said nobody said nothing to her and she didn't believe me, that I had a three day suspension and if it happened again I would be fired.

She doesn't treat the white girls this way. When they are late or absent they don't even get a warning letter and. I think she doesn't like me because I'm Chicano.

I don't feel I did. anything wrong and am concerned about this being on my record. Besides I need the money. I hope you can do something to correct this terrible situation.

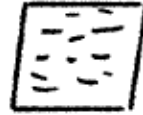
Your employee,

Inez Vigil

P.S. please don't tell Mrs. Meany I talked. to you.

Retirement is great,  
so are the Fiji Islands.  
I'm sure you will  
enjoy the pleasant  
people at Perfect Cool.  
They are all a good  
group. Good Luck.  
Say hello for me.

By Long



MR. O. WAUGH  
PERSONNEL DIRECTOR  
PERFECT COOL CORP.  
SUPERCITY SUBURB  
U.S.A.



## **Computer Simulation and Learning Theory, Volume 3, 1976**

July 17

Dear Mr. Long

We, the undersigned Quality Control Technicians, would like to meet with you to express our concern over the distortion of our duties and responsibilities over the past year.

Our duties include testing samples to determine the quality of our product. This information is recorded and presented to the staff engineers for evaluation.

In the past year as the engineering staff has decreased we have been called upon to make additional evaluations. Though some of us are qualified by experience to make this judgment we are not being paid at the professional level--we are still labeled technicians.

Therefore it would be appreciated if you would review this matter for we feel we should be paid for the work or not be required to do it.

We appreciate that there is a grievance procedure but feel this is a personnel problem that cannot be solved by our department head.

Technicians

cc: Department Head

## Computer Simulation and Learning Theory, Volume 3, 1976

Sept. 10

Dear New Boss:

How was your trip? I hope you enjoyed the meetings. I knew you would need the Haskel report first thing tomorrow so I finished what I could except for that narrative that Mr. Long used to do himself. (It will be on your desk with those statistics that Morse asked for.) When you called I told you that I would not need to be off tomorrow. Well, I started. thinking about it and decided to go ahead with that job interview anyway. I talked to them again and they can't offer more salary but they are talking about possibilities of moving up and they want me to take that Secretary's Seminar that I've been wanting to go to. Anyway, I thought I'd just talk to them.

I'll be in at 10:30.

P.S. I made arrangements for Dodo to cover for me until I get in.

Sept 4

Personnel Director

We Production workers have been discriminated against regarding opportunity for overtime. The white guys are always given preference everytime to work overtime. Our Supervisor just picks his favorites and nobody else gets a chance. We are going to refuse to work unless the situation is corrected. Mr. Crow, our union rep, is sick today so we are bringing this matter to your attention. We need a meeting to resolve the problem right now!

*P.S. How come Round and  
Room take 3 hour lunches  
but we have to punch a  
time clock?*

*(out at 12:18 and back at 12:48  
or we get docked)*

# Computer Simulation and Learning Theory, Volume 3, 1976

## PART III

### Form 3

#### EMPLOYEE CODES

##### RACE CODE

B = Black (Negro)  
O = Oriental (Asian American)  
AI = American Indian  
SSA = Spanish Surname American (Mexican, Cuban, Spanish, Puerto Rican, Latin)  
C = Caucasian

##### SALARY LEVEL

1 = 30,000  
2 = 20-25,000  
3 = 18-20,000  
4 = 16-18,000  
5 = 14-16,000  
6 = 12-14,000  
7 = 10-12,000  
8 = 6-10,000

##### EDUCATION

D = Doctorate  
M = Masters  
B = Bachelor  
H = High School  
G = Grade School

##### DEPARTMENT CODE

A = General Administration  
M = Marketing  
P = Production  
E = Engineering  
PS = Personnel  
MT = Maintenance  
F = Finance

##### JOB CATEGORIES

1 = Officials & Managers  
2 = Professionals  
3 = Technicians  
4 = Sales Representatives  
5 = Office & Clerical  
6 = Skilled Craft Workers/Craftsmen (skilled)  
7 = Paraprofessionals  
8 = Security Guards  
9 = Operatives  
10 = Laborers (unskilled)  
11 = Service/Maintenance Workers

# Computer Simulation and Learning Theory, Volume 3, 1976

## PART III

### Form 4

#### PERFECT COOL PERSONNEL PROFILE

Employee Number	Job Cat.	Salary	Department	Seniority	Education	Sex	Race	Age
1	1	1	A	30	D	M	W	60
2	7	4	F	15	M	M	W	35
3	10	7	E	10	B	M	B	35
4	4	2	M	20	M	M	W	45
5	1	1	A	15	D	F	W	53
6	4	2	P	20	B	M	W	40
7	6	3	F	15	D	M	W	41
8	6	3	E	16	B	m	W	36
9	10	8	P	1	G	F	W	35
10	6	4	P	15	B	M	W	55
11	11	8	F	5	G	M	SSA	63
12	6	5	P	15	H	M	W	57
13	9	7	MT	10	H	F	W	27
14	5	3	A	5	M	M	W	25
15	11	8	MT	10	H	M	B	30
16	8	8	A	22	B	M	W	41
17	10	7	MT	9	H	F	W	43
18	6	6	P	11	B	M	W	32
19	9	7	P	26	m	M	W	46
20	3	3	E	15	B	M	W	55
21	11	8	P	8	G	F	W	44
22	6	7	E	19	H	M	W	37
23	10	8	MT	16	H	M	SSA	37
24	2	5	A	1	M	M	W	27
25	6	3	F	16	B	M	W	41

# Computer Simulation and Learning Theory, Volume 3, 1976

## PART III

### Form 4

#### PERFECT COOL PERSONNEL PROFILE

Employee Number	Job Cat.	Salary	Department	Seniority	Education	Sex	Race	Age
26	8	6	PA	21	H	M	W	38
27	10	7	MT	7	G	F	SSA	29
28	10	8	MT	7	H	F	W	24
29	9	7	M	5	H	M	W	29
30	10	8	F	15	H	M	B	35
31	6	5	A	19	B	M	W	41
32	6	6	E	27	H	M	W	61
33	5	6	MT	6	H	F	SSA	60
34	7	4	P	3	B	M	W	33
35	3	7	P	7	H	M	W	41
36	4	5	PS	15	B	M	W	35
37	5	8	M	4	H	M	W	26
38	11	8	A	8	H	F	B	47
39	4	7	A	2	H	M	W	45
40	8	6	E	3	B	M	W	58
41	9	7	F	9	H	M	W	29
42	5	8	A	8	H	F	W	33
43	8	6	E	6	B	M	W	26
44	7	8	E	1	H	M	W	21
45	5	7	MT	11	B	M	W	31
46	2	4	M	20	M	M	W	40
47	9	7	P	7	H	M	AI	27
48	6	7	F	19	B	M	W	49
49	7	8	P	6	H	M	SSA	26

# Computer Simulation and Learning Theory, Volume 3, 1976

## PART III

### Form 4

#### PERFECT COOL PERSONNEL PROFILE

Employee Number	Job Cat.	Salary	Department	Seniority	Education	Sex	Race	Age
51	3	5	M	8	B	M	W	28
52	10	8	P	10	H	M	O	45
53	5	6	F	5	H	M	W	37
54	7	4	PS	19	H	M	W	49
55	6	8	F	1	H	M	W	27
56	5	7	MT	5	H	F	W	55
57	3	5	E	2	B	M	W	28
58	11	8	P	9	H	M	SSA	29
59	7	4	PS	11	B	M	W	31
60	5	6	A	3	B	M	W	27
61	9	8	MT	7	H	M	SSA	37
62	6	6	M	9	H	M	W	32
63	9	6	P	23	B	M	B	43
64	6	8	F	1	H	M	W	22
65	8	7	PS	16	H	M	W	46
66	10	7	MT	3	H	F	W	43
67	8	7	E	21	H	M	W	51
68	6	8	E	16	H	M	W	32
69	9	8	A	9	H	M	SSA	29
70	9	8	P	8	H	M	W	27
71	7	6	M	11	B	M	W	47
72	6	5	P	7	B	M	W	35
73	5	8	MT	5	H	F	W	42
74	3	4	P	20	H	M	W	40
75	8	6	PA	21	H	M	W	37

# Computer Simulation and Learning Theory, Volume 3, 1976

## PART III

### Form 4

#### PERFECT COOL PERSONNEL PROFILE

Employee Number	Job Cat.	Salary	Department	Seniority	Education	Sex	Race	Age
76	10	7	MT	3	G	F	W	39
77	6	8	PS	8	B	M	W	48
78	4	3	M	1	B	M	W	21
79	3	5	E	15	M	M	W	45
80	9	6	MT	3	H	F	B	41
81	8	7	PS	16	H	M	W	51
82	10	6	MT	5	H	F	O	37
83	9	7	P	13	H	M	W	43
84	1	2	A	2	B	M	W	32
85	5	5	F	29	H	M	W	65
86	5	8	MT	4	H	F	SSA	63
87	9	6	PS	7	B	M	W	27
88	8	6	E	20	B	M	W	40
89	11	8	F	15	H	M	SSA	35
90	2	3	PS	16	M	M	W	37
91	7	5	M	1	H	M	W	26
92	9	5	E	20	H	M	W	41
93	10	8	MT	3	H	F	W	23
94	11	8	M	9	H	M	W	53
95	11	8	P	5	H	M	O	37
96	7	5	A	2	B	M	W	29
97	11	7	E	9	B	M	W	60
98	1	2	PS	11	D	M	W	41
99	6	8	MT	4	H	M	W	28
100	10	8	F	11	H	M	SSA	31



# Computer Simulation and Learning Theory, Volume 3, 1976

## Form 5

### TOTAL COMPANY BREAKDOWN

	Professional, Executive, Managerial (1 & 2,4)	Clerical (5)	Skilled (6)	Semi- Skilled (3,9)	Unskilled (8,10,11)
White					
Black					
Mexican-American					
Puerto Rican					
American Indian					
Oriental					
Other					

## Form 2

### TOTAL COMPANY BREAKDOWN

	Professional, Executive, Managerial (1 & 2,4)	Clerical (5)	Skilled (6)	Semi- Skilled (3,9)	Unskilled (8,10,11)
16-25 years					
26-35 years					
36-40 years					
41-45 years					
46 years or older					

## Form 3

### TOTAL COMPANY BREAKDOWN

	Professional, Executive, Managerial (1 & 2,4)	Clerical (5)	Skilled (6)	Semi- Skilled (3,9)	Unskilled (8,10,11)
Male					
Female					

# Computer Simulation and Learning Theory, Volume 3, 1976

Form 6

## MASTER PLAN AFFIRMATIVE ACTION for Perfect Cool Company

Standard Metropolitan Statistical Ares (Supercity)				Perfect Cool Plan						
Group	Total	Percentage	#	%	1st	2nd	3rd	4th	5th year	
Total	2,376,421	100								
Male	1,237,642									
Female	1,138,779									
Minority	(1,426,381)									
White	950,040									
Male	456,382									
Female	493,658									
Black	1,026,341		(100)							
Male	498,562									
Female	527,779									
Indian	41,246		(100)							
Male	20,846									
Female	20,400									
Spanish	400,862		(100)							
Male	199,283									
Female	201,579									
Other			(100)							
Male										
Female										

ASSESSMENT OF LEARNING IN  
PERSONNEL ADMINISTRATION

Exercise Title \_\_\_\_\_

What do you think were the major objective(s) of the exercise?	What did you learn from the exercise (be specific)?	What are the implications of your learning for you as a Personnel Administrator?