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**NEBRASKA 1999  
INTENTIONAL JOB DISCRIMINATION  
IN  
METROPOLITAN AREAS**

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**THE REALITY OF INTENTIONAL JOB DISCRIMINATION IN  
METROPOLITAN AMERICA**

By the same authors

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The views expressed are those of the authors,  
not necessarily those of the Foundation or the University.

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## §1. ABOUT THE AUTHORS

### A. PROF. ALFRED W. BLUMROSEN

ALFRED W. BLUMROSEN is the Thomas A. Cowan Professor of Law, Rutgers, the State University of New Jersey, specializing in Labor and Employment law. He received his BA and JD degrees from the University of Michigan, and has taught at Rutgers Law School since 1955. In 1965, he studied the enforcement of the New Jersey Civil Rights Law in "Anti-Discrimination Laws in Action in New Jersey: A Law-Sociology Study." 19 Rutgers Law Review 187. Beginning in 1965, he assisted in organizing the EEOC and served as its first Chief of Conciliations and Director of Federal State Relations, a Special Attorney in the Civil Rights Division, U.S. Department of Justice, Consultant to Assistant Secretary of Labor for Employment Standards Arthur Fletcher (OFCCP) 1969-71; Acting Director, Michigan Civil Rights Commission, 1972, organized programs on the 10th and 20th anniversaries of the Civil Rights Act, 1975 and 1984; consultant to EEOC Chair Eleanor Holmes Norton, 1977-79 concerning Guidelines on Employee Selection Procedures, Affirmative Action Guidelines. In 1995, he advised the U.S. Department of Labor concerning the "affirmative action-reverse discrimination" controversy, and reviewed programs of the EEOC for the Citizens Commission on Civil Rights. In 1998 he received a grant from the Ford Foundation to investigate the extent of current intentional employment discrimination.

He was Of Counsel to Kaye, Scholer, Fierman, Hays & Handler, (New York, NY) 1979-1982 advising employers on equal opportunity matters; Counsel to NAACP in *Wards Cove Packing Co. v. Atonio*, 109 S.Ct. 2115 (1989) [concerning the interpretation of Title VII of the Civil Rights Act] and in *NAACP v. Meese*, 615 F. Supp. 200 (D.D.C) 1985 [seeking injunction against rescission of consent decrees involving affirmative action]; Counsel to mainly white female employees challenging a discriminatory layoff in *Chrapliwy v. Uniroyal*, 670 F.2d 760 (7th Cir. 1982) cert. denied, 103 S. Ct.2428 (1983), and counsel to the mainly white male employees, seeking equal pay in *Klask v. Northwest Airlines*, 57 FEP Cases 1147, 1152 (D. Minn. 1989, 91).

He has written MODERN LAW: THE LAW TRANSMISSION SYSTEM AND EQUAL EMPLOYMENT OPPORTUNITY, (1993, University of Wisconsin Press); BLACK EMPLOYMENT AND THE LAW (1971, Rutgers University Press), and numerous law review articles, including "Strangers in Paradise: Griggs

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v. Duke Power Co. and the Concept of Employment Discrimination." (1972) which has been cited by the U. S. Supreme Court in two decisions. His essay "Six Conditions for Meaningful Self Regulation" was awarded the Ross Prize by the American Bar Association in 1983. In 1993, he was a Fulbright Scholar in South Africa, where he examined whether U.S. equal employment experience would be useful in the post-apartheid period. In 1995, he was a resident scholar at the Rockefeller Institute Conference and Study center in Bellagio, Italy.

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**B. PROF. RUTH G. BLUMROSEN**

RUTH GERBER BLUMROSEN is adjunct Professor of Law at Rutgers Law School, Newark New Jersey, and former associate Professor at Rutgers Graduate School of Management. She received her BA and Law degrees from the University of Michigan. She assisted in the establishment of the U.S. Equal Employment Opportunity Commission in 1965, where she was acting director of compliance. She was consultant to EEOC Chair Eleanor Holmes Norton in 1979-80, concerning guidelines under the Equal Pay Act and wage discrimination issues, U.S. EEOC, Hearings on Job Segregation and Wage Discrimination. She participated in development of EEOC policy statement on impact of layoffs on minorities and women. She was consultant on Equal Employment Opportunity, U.S. Department of Health and Human Services, 1980-81; Advisor, New Jersey Commission on Sex Discrimination in the Statutes, prepared analysis of state pay practices which was basis for action by Governor's Task Force on Equitable Compensation, 1974-77, a member and Hearing Officer, New Jersey Governor's Committee on minority and female opportunities in state contracting, 1991-93. In 1993, she was a Fulbright Scholar in South Africa, examining whether U.S. equal employment experience would be useful in the post-apartheid period. In 1995, she was a resident scholar at the Rockefeller Institute Conference and Study center in Bellagio, Italy. She has published in the field of wage discrimination including Wage Discrimination, Job Segregation and Title VII of the Civil Rights Act of 1964, 12 University of Michigan Journal of Law Reform 397 (1979), cited by U.S. Supreme Court in *County of Washington v. Gunther*, 452 U.S. 161 (1981); Wage Discrimination, Job Segregation: The Survival of a Theory, 14 Univ. of Michigan Journal of Law Reform 1 (1981); Wage Discrimination Revisited, 8 Women's Rights Law Reporter 109 (1984); Remedies for Wage Discrimination, 20 Univ. of Mich. Journal of Law Reform, 99, (1986). She has also written on the concept of work sharing as alternative to layoffs, and the use of unemployment compensation to facilitate part time employment. She is co-author of *Downsizing and Employee Rights*, 50 Rutgers Law Review 943 (1998). She has litigated under New Jersey Anti-Discrimination laws in the case which established the federal constitutionality of state fair housing laws (*Levitt v. New Jersey*, 31 N.J. 514, 363 U.S. 418 (1960)), and has represented male flight attendants denied their rights under the Equal Pay act in *Klask v. Northwest Airlines*, 57 FEP Cases 1147, 1152 (D. Minn. 1989, 91).

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The thousands of men and women involved in the implementation of Title VII of the Civil Rights Act of 1964 on all sides of all issues, whose lives we shared.

The millions of men and women whose efforts made the Civil Rights Act of 1964 and its implementation an evolving achievement of American democracy.

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### **§3. DEDICATION**

To the memory of all those who shared in the adoption of the Northwest Ordinance of 1787 that prohibited slavery and provided that “schools and the means of education shall forever be encouraged.”

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## §6. INTRODUCTION

**T**his study identifies intentional employment discrimination in Nebraska by applying legal standards to the race, sex and ethnic composition of medium and large employers. It is based on information supplied by employers to the Federal Government, by 450 establishments in this state. To preserve confidentiality, the information on which this report is based does not include the names or identifying addresses of employers.

With a grant from the Ford Foundation to Rutgers Law School, we have compared the employment of minorities and women in the same labor market, industry and occupational categories among establishments with 50 or more employees. The minorities are Black, Hispanic, Asian and Native Americans. When these comparisons show that an establishment is so far below the average utilization of minorities or women that it is unlikely to have occurred by chance, the law identifies apparent intentional job discrimination.

Intentional discrimination exists “when a complaining party demonstrates that race, color, religion, sex or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.”<sup>1</sup> This means that intent need not be the sole factor in an employment decision. It is enough to show that it was one of the motivating factors. If an employer has both a legitimate reason for its practices and also a discriminatory reason, then it is engaged in discrimination under the Civil Rights Act. This discrimination may be established with employment statistics, which minimize the role of chance.

## §7. SUMMARY OF FINDINGS

(Terms defined in glossary at end of chapter.)

### A. STATEWIDE DISCRIMINATION

**Minority and Female** workers in metropolitan Nebraska faced substantial likelihood of intentional job discrimination when seeking an employment opportunity in 1999. **Minorities** faced this risk 27% of the time they sought job opportunities; **Women** faced this risk more than 22% of the time they sought job opportunities.

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**Table 1. Discriminating Establishments and Affected Workers – 1999**

Nebraska: Discriminating Establishments and Affected Workers – 1999			
Group	All Discriminating Estab.		Affected Workers*
	#	% of all Estab.	#
White Women**	133	31%	2,741
Black	113	40%	1,440
Hispanic	36	33%	983
Asian-Pac.	13	43%	142
<b>Totals</b>	<b>295</b>		<b>5,306</b>
* "Affected workers" are the difference between the members of an affected group employed in an establishment that is 2 standard deviations or more below the average utilization in the MSA, Industry and Occupation, and the number who would have been employed if members of that group had been employed at that average.			
** White Women as % of All Women: 85.05% They are reported here. Minority Women are reported in each minority group. [See Table 9]			

- **2,481 minority workers were adversely affected by discrimination in 138 establishments.** There was a 27% chance that a minority person would face intentional discrimination when seeking an employment opportunity in one of the nine occupational categories. [Table 13] **This was more than one quarter of the time a minority worker sought an employment opportunity.<sup>2</sup>** That opportunity may have consisted of obtaining employment, or of any condition or privilege of employment once obtained including promotion, pay, training, transfer, discipline, layoff and discharge. This was the burden imposed because of race or national origin on every minority worker seeking an employment opportunity.
- **1,440 Black workers** were affected by discrimination in **43 establishments.** This was 40% of the establishments reporting concerning Black workers. **The risk of discrimination existed 37% or more than one third of the time a Black worker sought an employment opportunity.** [Table 14]
- **983 Hispanic workers** were affected by discrimination in **36 establishments.** This was one third of the establishments reporting concerning Hispanic workers. **The risk of discrimination existed 34% or more than one third of the time a Hispanic worker sought an employment opportunity.** [Table 15]

- **142 Asian workers** were affected by discrimination in 13 establishments. This was 43% of the establishments reporting concerning Asian workers. **The risk of discrimination existed 41% or more than two fifths of the time an Asian worker sought an employment opportunity.** [Table 16]
- **3,233 Women** were affected by intentional job discrimination in 156 establishments. This was 31% of all establishments reporting concerning women workers. [Table 12] **The risk of discrimination was 21% or one fifth of the time a woman sought an employment opportunity.** [Table 12]

Women were 85% White, 8% Black, 4% Hispanic, 3% Asian Pacific origin.

To avoid double counting women in this summary, the following five tables report 85.05% of women workers as White. [Table 9] The remaining 14.95% of women are included under Black, Hispanic, and Asian headings.

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**B. HARD CORE DISCRIMINATION**

**Table 2. Hard Core Discriminators and Affected Workers – 1999**

Nebraska -- 1999 Hard Core Establishments* & Affected Workers**				
Group	Hard Core Estab.		Affected Workers	
	# of HC Estab.	% of all Estab.	# of Workers	% of all Affected Workers in Group
<b>White Women***</b>	42	8.37%	1,216	44.37%
<b>Black</b>	27	9.44%	464	32.23%
<b>Hispanic</b>	6	5.50%	321	32.64%
<b>Asian-Pacific</b>	1	3.33%	25	17.53%
<b>Totals</b>	76		2,026	

\* Discrimination at 2.5 standard deviations or more below average in MSA, industry and occupation over at least 9 years.

\*\*Affected workers are the difference between the number of members of an affected group employed in an establishment, and the number of such workers who would have been employed if the employer had employed that group at the average.

\*\*\* White Women as % of All Women: 85.05%  
They are reported here.  
Minority Women are reported in each minority group. [See Table 9]

- **35 Hard Core discriminators accounted for nearly 39% of the minority workers affected by discrimination.** [Table 11] They accounted for **464 Black workers (32% of all affected Black workers), 321 Hispanic workers (33% of all affected Hispanic workers), and 25 Asian workers (18% of all affected Asian Pacific origin workers).**

**C. GEOGRAPHIC DISTRIBUTION OF DISCRIMINATION**

**Table 3. Main MSA in Nebraska**

<b>Affected Workers* in EEO-1 Labor Force in the Largest Metro Statistical Areas – Nebraska</b>			
* "Affected Workers" are the difference between the number of members of an affected group employed in an establishment, and the number of such workers who would have been employed if the employer had employed that group at the average.			
** White Women as % of All Women: 85.05% They are reported here. Minority Women are reported in each minority group. [See Table 9]			
Group	OMAHA MSA		State Totals
	Affected Workers		
	#	% of Group	#
<b>W. Women**</b>	<b>2,328</b>	85%	2,741
<b>Blacks</b>	<b>1,426</b>	99%	1,440
<b>Hispanics</b>	<b>752</b>	77%	983
<b>Asian-Pac</b>	<b>129</b>	91%	142
<b>Total</b>	<b>4,635</b>	87%	5,306

This MSA accounts for 87% of all affected workers in Nebraska. The Sioux City MSA has 21.69% of the affected Hispanic workers in this state, or 92.47% of the Hispanic workers outside the Omaha MSA.

**D. DISCRIMINATION BY OCCUPATION**

- **Discrimination against each group occurred in each of the nine occupational categories.**

**Table 4. Occupational Discrimination in Nebraska – 1999**

DISCRIMINATION* IN OCCUPATIONS -- Nebraska -- 1999								
Occupation	WHITE WOMEN**		BLACKS		HISPANICS		ASIAN PACIFIC	
	Risk of Disc. %	Affected Workers*** #	Risk of Disc. %	Affected Workers #	Risk of Disc. %	Affected Workers #	Risk of Disc. %	Affected Workers #
O & M	21.88%	253	42.86%	12	33.33%	17	0.00%	0
Prof	23.13%	449	20.00%	9	0.00%	0	28.57%	21
Tech	22.22%	270	39.39%	58	50.00%	16	25.00%	14
Sales	21.77%	527	44.59%	286	0.00%	0	0.00%	0
O & C	17.68%	525	31.03%	338	50.00%	99	0.00%	0
Craft	29.27%	112	30.00%	78	41.18%	105	0.00%	0
Oper	39.58%	246	29.79%	206	37.93%	268	45.45%	53
Labor	25.00%	183	30.77%	142	39.13%	375	62.50%	54
Service	12.71%	176	45.45%	311	23.21%	103	0.00%	0
Any Occ	31.08%	2,741	39.51%	1,440	33.03%	983	43.33%	142
<b>TOTAL AFFECTED WHITE WOMEN, BLACKS, HISPANICS AND ASIANS = 5,306</b>								
* Discrimination at 1.65 standard deviations or more below average in industry and MSA.								
** 85.05% of All Women are White. They are reported here. Minority Women are reported in each minority group. [See Table 9]								
*** Affected workers are the difference between the members of a group employed in an establishment that is 2 standard deviations or more below the average utilization of that group in the same MSA, Industry and Occupation, and the number of members who would have been employed if members had been employed at the average utilization.								

**E.**

**DISCRIMINATION BY INDUSTRY**

- Nebraska is similar to the national pattern of industries engaged in intentional discrimination, with few exceptions. The top ten industries in terms of affected workers nationally are: Hospitals, Department Stores, Eating and Drinking Places, Computer and Data Processing, Telephone Communications, Grocery stores, Commercial banks, Motor Vehicles and Accessories, Scheduled Air Transportation, and Nursing and personal care facilities. These industries have large numbers of employees. They discriminate against Women, Blacks, Hispanics and Asians. As the following summary table shows, Nebraska varies little from the pattern, except for Railroads; Meat Products; Fire, Marine & Casualty Insurance; and, Life Insurance.

**Table 5. Top Ten Discriminatory Industries in Number of Affected Workers - Nebraska, 1999**

<b>Blacks, Hispanics, Asians</b>	<b># Affected Workers</b>	<b># Estab.</b>
Railroads	688	17
Groceries & Related Products	315	16
Eating & Drinking Places	170	25
Telephone Communication	167	9
Department Stores	158	15
Hospitals	153	7
Meat Products	124	3
Computer & Data Proc. Svcs.	120	12
Trucking & Courier Svcs., Ex. Air	119	5
Nursing & Personal Care Facilities	111	10
<b>Totals</b>	<b>2,124</b>	<b>119</b>

<b>White Women</b>	<b># Affected White Women Workers</b>	<b># Estab.</b>
Telephone Communication	420	10
Department Stores	330	19
Computer & Data Proc. Svcs.	327	15
Hospitals	279	12
Groceries & Related Products	263	9
Medical Svc. & Health Ins.	131	4
Fire, Marine & Casualty Ins.	91	5
Grocery Stores	77	6
Life Ins.	72	5
Meat Products	68	2
<b>Totals</b>	<b>2,058</b>	<b>87</b>

## **§8. BACKGROUND OF THIS STUDY**

Each year, private sector employers of more than 100 employees and government contractors of more than 50 employees are required to file a report, named EEO-1, on the race, sex, and ethnic composition of its workforce by nine occupational categories.

This study describes the extent of intentional job discrimination among private sector establishments in metropolitan areas with 50 or more employees who have filed EEO-1 reports in metropolitan statistical areas (MSA's). It includes discrimination by occupational category and by industries for which we have sufficient data. The industries are identified by the Standard Industrial Classification system, 1987 (SIC). The definitions of MSA and SIC are set forth in Part I of the National Report, and in its Appendix.<sup>3</sup>

The analysis of employer EEO-1 reports is explained in Part I of the National Report. See the National Report, Part I for a full explanation of the definitions and methodology used in this study.

This study has identified the average – mean – use of minorities or women by all establishments in the same labor market, industry and occupation. All establishments that have 20 or more employees in that industry and occupation are then compared to the mean.<sup>4</sup> Table 1 is an example of such a comparison, taken from an earlier report in the State of Washington. It graphically explains why we call this a “sore thumb” diagram.

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## §9. INTENTIONAL DISCRIMINATION<sup>5</sup>

“Intentional Discrimination” exists “when a complaining party demonstrates that **race, color, religion, sex or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.**”<sup>6</sup>

This means that the intent need not be the sole factor in an employment decision. It is enough to show that it was one of the motivating factors. If an employer has both a legitimate reason for its practices and also a discriminatory reason, then it is engaged in intentional discrimination under the Civil Rights Act.

The Supreme Court held in 1977 that a “pattern or practice” of intentional job discrimination exists when an employer treats some people less favorably than others as a “standard operating procedure – the regular rather than the unusual practice.”<sup>7</sup> When there is statistical evidence that an establishment is employing minorities or women in such small numbers that the pattern is unlikely to have occurred by chance, the law presumes that the discrimination is intentional.<sup>8</sup> The Supreme Court has explained that “[a statistical] imbalance is often a telltale sign of purposeful discrimination.... In many cases the only available avenue of proof is the use of racial statistics to uncover clandestine and covert discrimination...”<sup>9</sup>

Statisticians have developed concepts to determine when it is unlikely that a given result occurred by chance. In many analyses, including this study, an event qualifies as “statistically significant” if there is less than one chance in twenty (5%) that it would have occurred by chance. This probability is defined as “two standard deviations.” In some parts of this study, the value of 2.5 standard deviations is used. This value translates into one chance in 100 that the event observed occurred by chance, or a 99% certainty that it did not occur by chance. We apply these concepts to find the “sore thumbs” in each metropolitan area and in each industry and each job category.

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**Table 7. Probabilities of Discrimination and Legal Presumptions**

Standard Deviations	Probability		Described in this study as:	Legal effect
	Chance	Not chance		
1.65	1 in 10	90%	<b>At Risk</b>	Admissible if relevant; weighed with all other evidence; worker must prove that he/she was discriminated against.
2.0	1 in 20	95%	<b>Presumed</b>	Admissible; creates presumption of discrimination; employer must prove it had only legitimate non-discriminatory reasons. As the probability of result occurring by chance declines, the presumption of discrimination strengthens and raises the risk that employer will lose litigation; most such cases settle.
2.5	1 in 100	99%	<b>Clearly Visible</b>	
2.5 over 10yrs			<b>Hard Core</b>	

This study identifies four degrees of intentional job discrimination depending on the statistics in particular situations.

1. **AT RISK DISCRIMINATORS.** So far below average in an occupation that there is only a one in ten (10%) chance that the result occurred by accident (1.65 standard deviations) in 1999 plus fact specific evidence relating individual complainants to the occupation addressed by the statistics. The statistics play a supporting role. We do not know the specific facts in those situations and therefore report no “affected workers” in this category.
2. **PRESUMED DISCRIMINATORS.** So far below average in an occupation that there is only a one in twenty (5%) chance that the result occurred by accident (2 standard deviations). Intentional discrimination is presumed by law at this level, subject to the employer demonstrating that it had a legitimate non-discriminatory reason and overcoming the presumption of discrimination. Number of affected workers is identified.
3. **CLEARLY VISIBLE DISCRIMINATORS.** So far below average in an occupation that there is only a one in one hundred (1%) chance that the result occurred by accident (2.5 standard deviations) in 1999. Number of affected workers is identified.
4. **HARD CORE DISCRIMINATORS.** These establishments demonstrate a severe statistical case of discrimination that has existed over a long period of time. They are so far below average in an occupation that there is only a one in one hundred chance that the result occurred by accident (2.5 standard deviations) in 1999 and either 1998 or 1997, and at least one year between 1991 and 1996, and not above average between 1991 to 1996. Included are

establishments that are more than 2.5 standard deviations below the mean and have been so for longer than ten years.

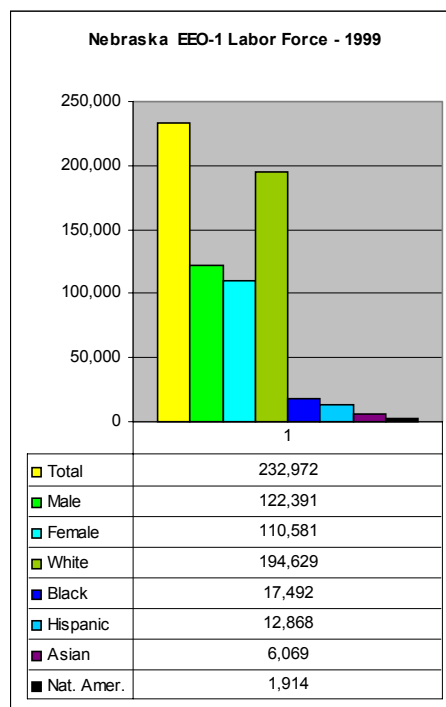
### **§10. THE SIGNIFICANCE OF THE EEO-1 LABOR FORCE**

Table 8 describes the **Total Population** eighteen years and older of the state in the categories of Male, Female, White, Black, Hispanic, Asian and Native American.<sup>10</sup> It also describes the **EEO-1 Population** of the state, being all workers employed by establishments that file EEO-1 reports for this state, including those outside any MSA. Finally, it describes the **EEO-1 Labor Force**, all employees of establishments located in metropolitan areas (MSA's) with 50 or more employees that file EEO-1 reports for this state.

The EEO-1 Population and Labor Force are based only on the actual numbers reported by establishments. Thus the state study does not include from 20 to 30% of establishments that were obligated to, but failed to file such reports.<sup>11</sup> Readers may assume, with caution, that the statistics reported here reflect from 70% to 80% of the intentional visible job discrimination in this state.

**Table 8. Nebraska Adult Population, EEO-1 Population and Labor Force by Sex, Race, and Hispanic Origin – 1999**

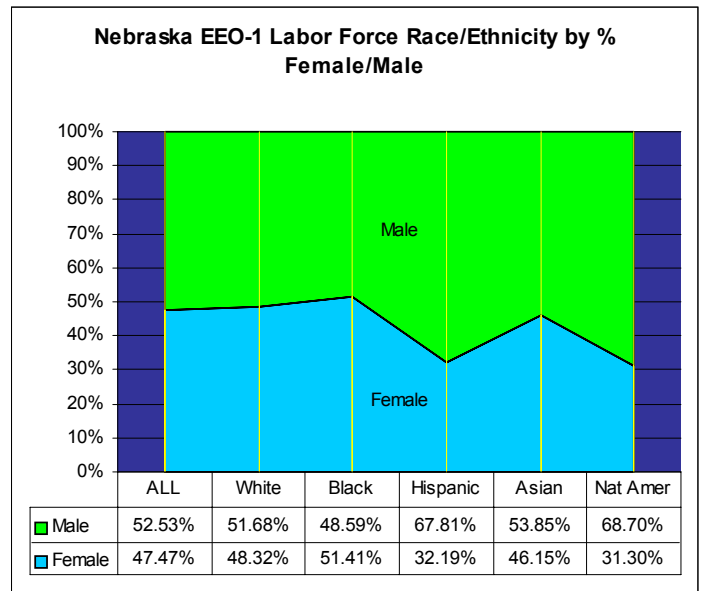
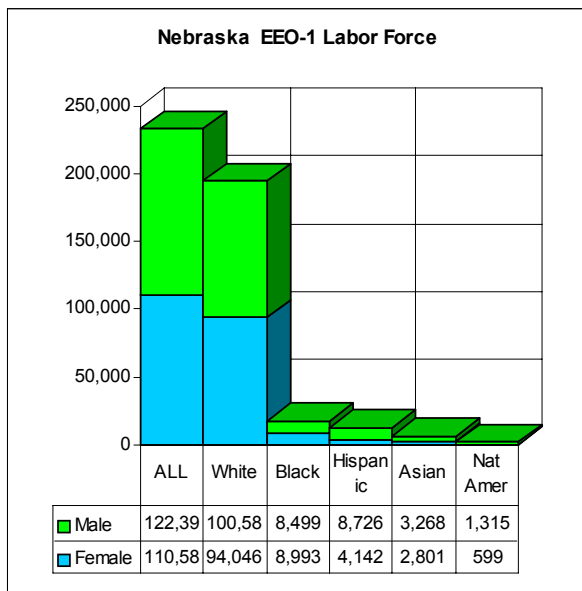
Nebraska	TOTAL POPULATION 18 AND OVER*		EEO-1 POPULATION		EEO-1 LABOR FORCE	
<b>Total</b>	1,261,021		326,105		232,972	
<b>Male</b>	612,965	48.61%	170,663	52.33%	122,391	52.53%
<b>Female</b>	648,056	51.39%	155,442	47.67%	110,581	47.47%
	#	% of Total	#	% of Total	#	% of Total
<b>White</b>	1,149,984	91.19%	274,207	84.09%	194,629	83.54%
<b>Black</b>	44,352	3.52%	18,078	5.54%	17,492	7.51%
<b>Hispanic</b>	57,207	4.54%	24,011	7.36%	12,868	5.52%
<b>Asian</b>	16,745	1.33%	7,387	2.27%	6,069	2.61%
<b>Native Amer.</b>			2,422	0.74%	1,914	0.82%
<b>Comments</b>	* Census treats Hispanics as of any race, so totals may exceed 100%		EEO-1 Population includes employees working both inside and outside of MSAs and for employers of any size workforce.		EEO-1 Labor Force includes employees working inside an MSA for an employer of 50 or more employees.	
<b>Employed Labor Force</b>	Total Employed Labor Force: <b>885,000</b>		EEO-1 Population: <b>36.85%</b> of the employed labor force		EEO-1 Labor Force: <b>71.44%</b> of the EEO-1 Population, and <b>26.32%</b> of the total employed labor force.	



**Table 9. The Nebraska EEO-1 Labor Force by sub categories of race, sex, and ethnicity: Showing proportions of minorities in each gender, and proportions of each gender among minorities**

Nebraska EEO-1 LABOR FORCE MALE/FEMALE					
	Total	Female	Male	Percentages	
				Female	Male
<b>ALL</b>	232,972	110,581	122,391	47.47%	52.53%
<b>White</b>	194,629	94,046	100,583	48.32%	51.68%
<b>Black</b>	17,492	8,993	8,499	51.41%	48.59%
<b>Hispanic</b>	12,868	4,142	8,726	32.19%	67.81%
<b>Asian</b>	6,069	2,801	3,268	46.15%	53.85%
<b>Nat Amer</b>	1,914	599	1,315	31.30%	68.70%

This table provides an overall assessment of the proportion of women and men in each racial/ethnic category.  
For example, Asians who are Female: 46.15%  
A chart below shows that 2.5% of Females are Asian.

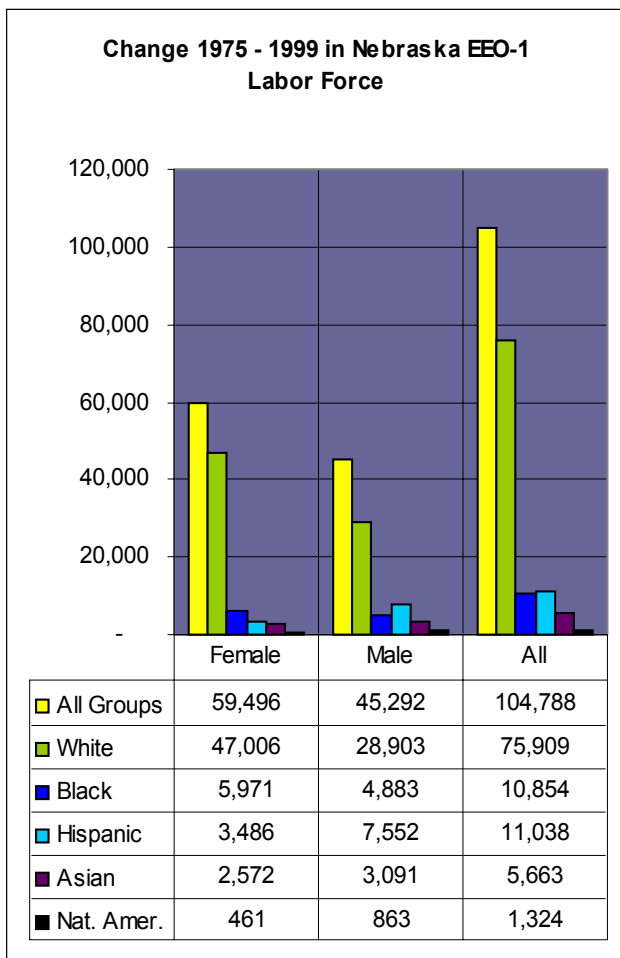


## §11. THE EFFECT OF CHANGE -- 1975 TO 1999

The EEO-1 Labor Force consists of employees of employers who have filed EEO-1 forms and (a) are located in metropolitan areas and (b) have 50 or more employees. This labor force has changed dramatically in the years between 1975 and 1999.

**Table 10. Nebraska EEO-1 Labor Force in 1975 and 1999**

Nebraska Employment in MSAs in Establishments over size 50									
	Number				%	Percent of Total			
	Female	Male	All			Female	Male	All	
<b>1975</b>									
<b>All Groups</b>	51,085	77,099	128,184		39.85%		100.00%	100.00%	100.00%
<b>White</b>	47,040	71,680	118,720		39.62%		92.08%	92.97%	92.62%
<b>Black</b>	3,022	3,616	6,638		45.53%		5.92%	4.69%	5.18%
<b>Hispanic</b>	656	1,174	1,830		35.85%		1.28%	1.52%	1.43%
<b>Asian</b>	229	177	406		56.40%		0.45%	0.23%	0.32%
<b>Nat. Amer.</b>	138	452	590		23.39%		0.27%	0.59%	0.46%
<b>1999</b>									
<b>All Groups</b>	110,581	122,391	232,972		47.47%		100.00%	100.00%	100.00%
<b>White</b>	94,046	100,583	194,629		48.32%		85.05%	82.18%	83.54%
<b>Black</b>	8,993	8,499	17,492		51.41%		8.13%	6.94%	7.51%
<b>Hispanic</b>	4,142	8,726	12,868		32.19%		3.75%	7.13%	5.52%
<b>Asian</b>	2,801	3,268	6,069		46.15%		2.53%	2.67%	2.61%
<b>Nat. Amer.</b>	599	1,315	1,914		31.30%		0.54%	1.07%	0.82%



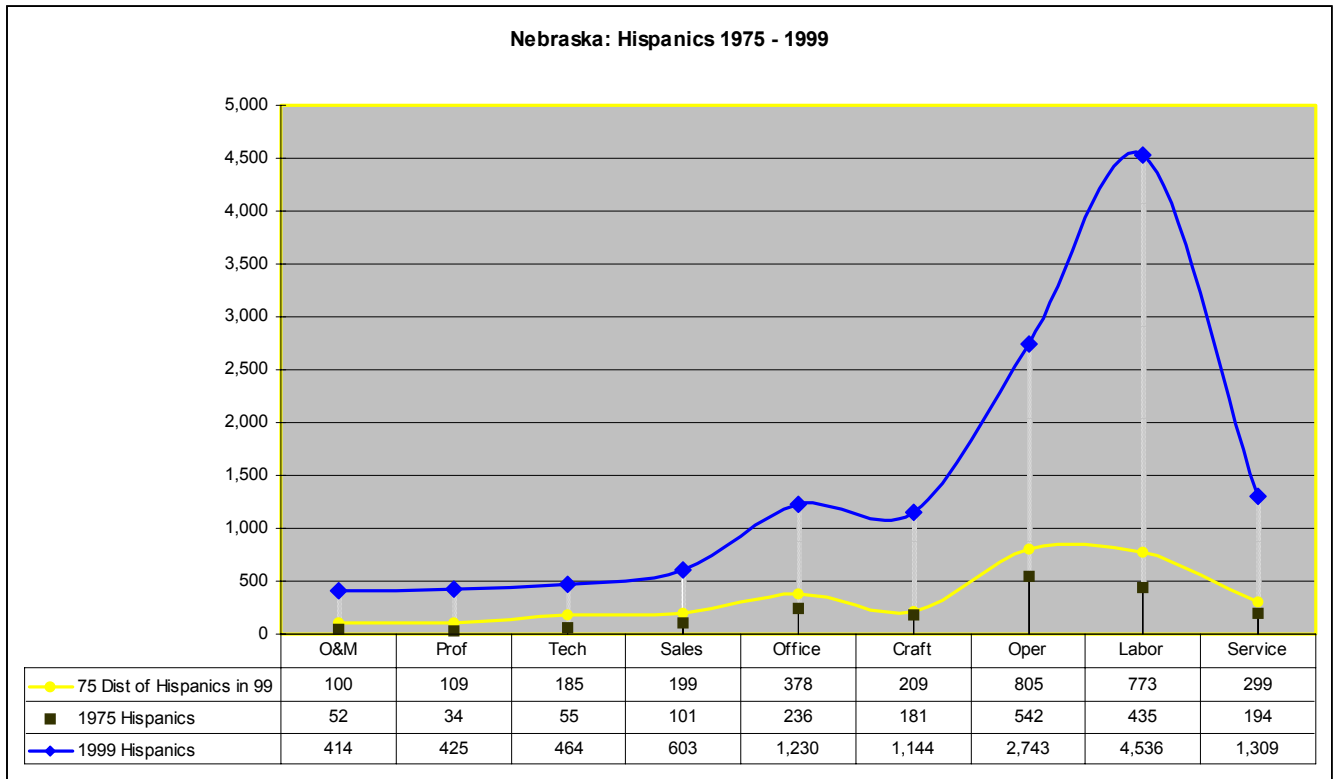
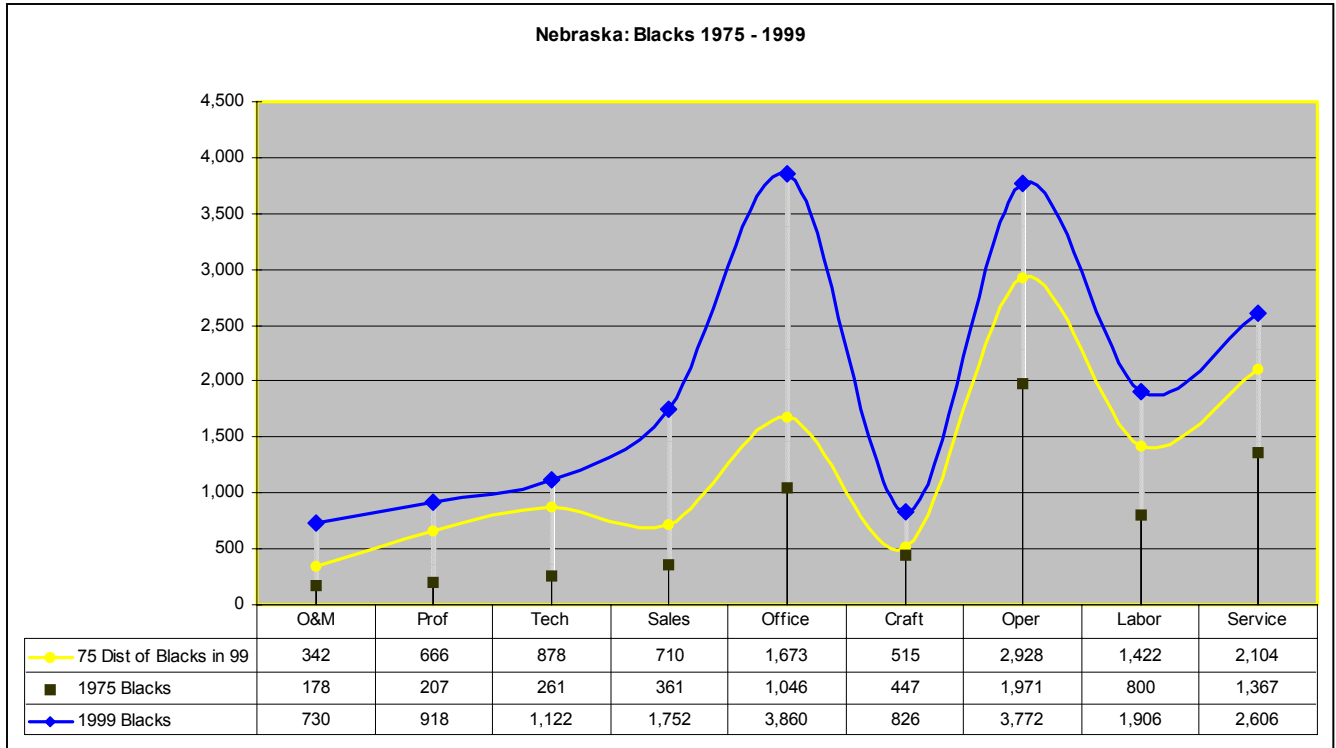
The increase in proportions of Women, Black, Hispanic and Asian employees is also evident in the adjoining chart showing the same data as above with emphasis on the changes between '75 and '99.

### A. RACE/ETHNICITY

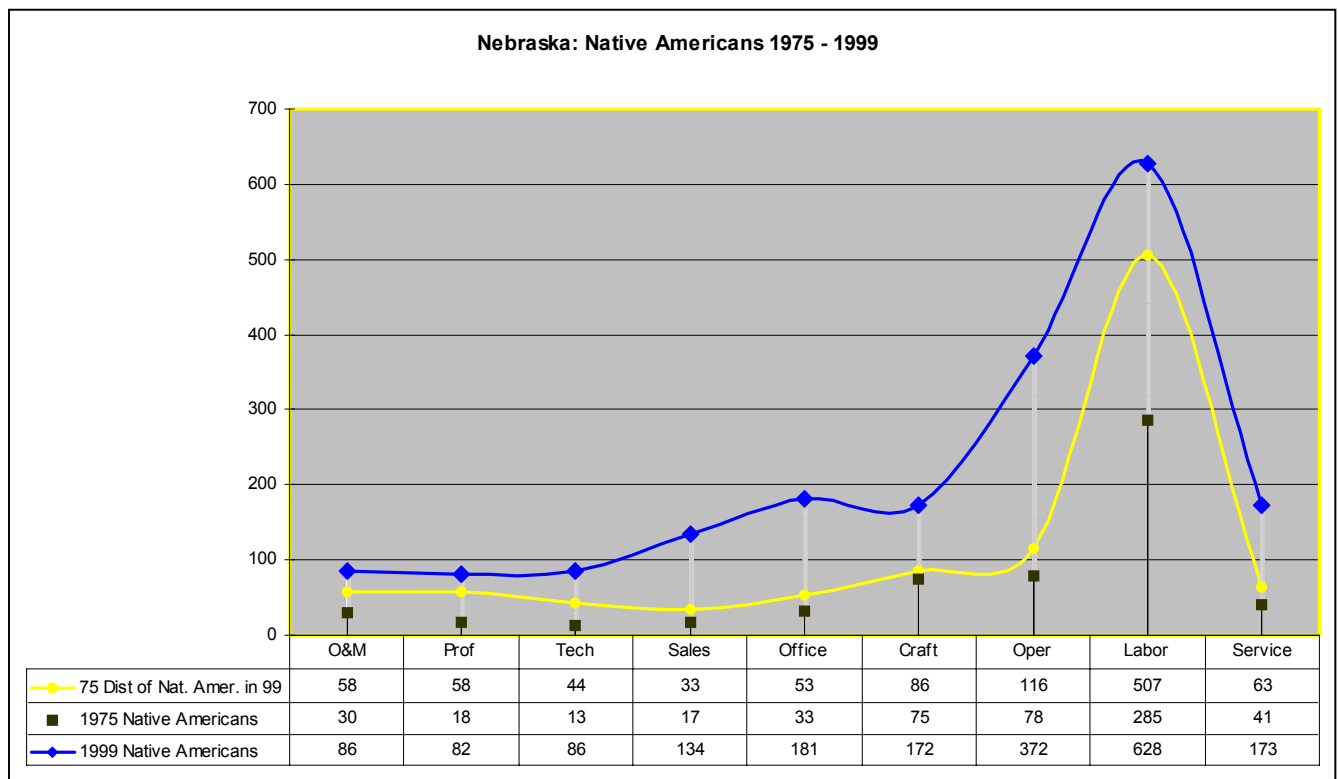
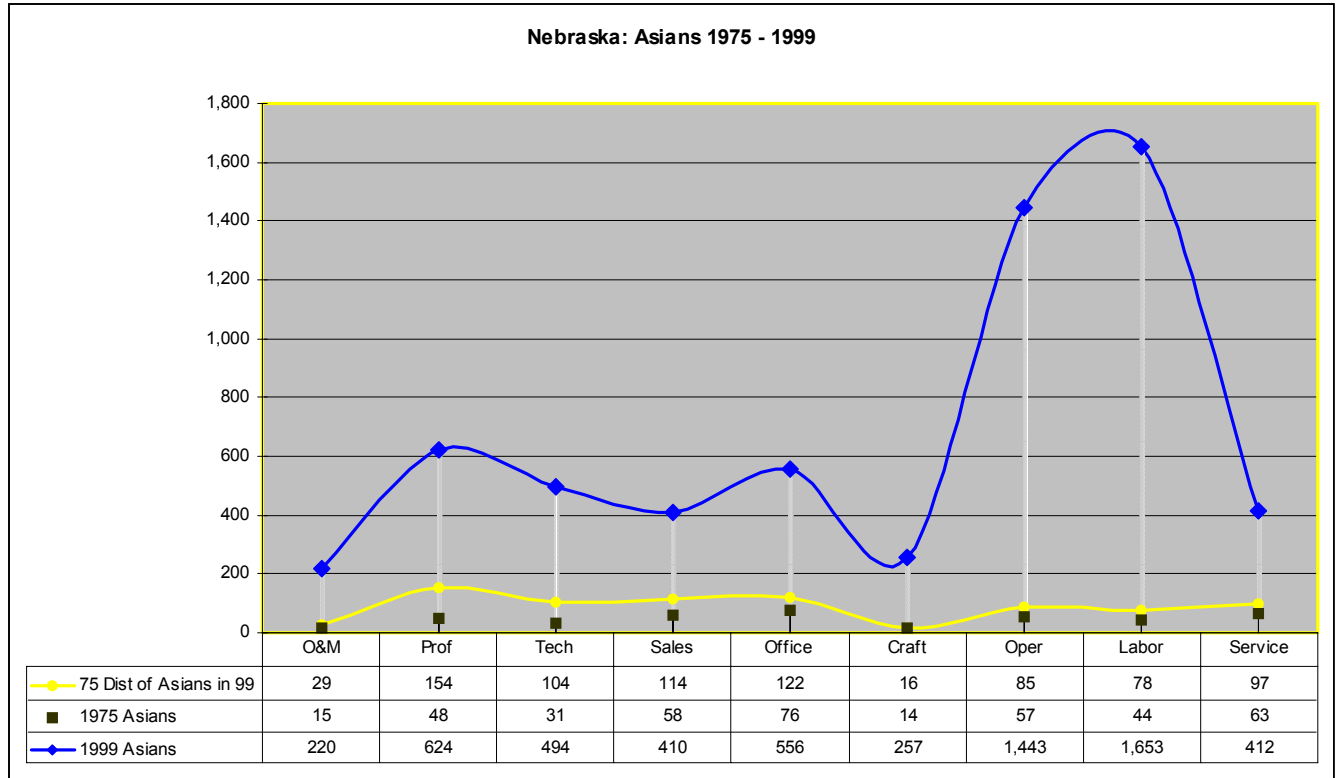
The following charts show the rising tide of employment among Blacks, Hispanics and Asian workers from 1975 to 1999, often exceeding in 1999 (the blue line) the distribution that would have been expected had the distribution of jobs continued in the same proportions as in 1975 (the yellow line).

**Table 10a. The Rising Tide: Black, Hispanic, Asian-Pacific Origin, and Native American Workers**

*[Next Page.]*







**B. GENDER AND RACE/ETHNICITY**

In Nebraska, changes in proportions of White Women in the workforce mirrored changes both for Women and for Whites. The lines on the following two “rising tides” charts show the effects of change for all Women and for White Women. The following four pie charts show that the proportion of White Women to all women was about the same as the proportion of White Men to all Men both in 1975 and in 1999, although the proportion of Whites (both male and female) to other groups changed over that period of time.

**Table 10b. Effect of change on Women, White Women, Minority Women and Men.**



This study examines how employers have addressed the emerging reality described above: that the number and proportion of qualified minority and female workers has been increasing. Many employers changed exclusionary practices and informally included more minorities and women. Others adopted more formal affirmative action programs. During this period, many reduced their use of pro forma screening devices such as written tests. They increased reliance on subjective judgments of supervisors that may harbor discrimination.<sup>12</sup> The discriminatory character of these judgments may become visible only when a pattern of similar activity is observed—often when the employer is compared to similar establishments. When the comparison yields a significant disparity, the Supreme Court has concluded that there is “substantial reason, based upon the statistical manifestations of the net effects of the employer’s practices, to believe that the employer has violated Title VII on a continuing basis.”<sup>13</sup>

Using this principle we have evaluated establishments in each industry and each metropolitan statistical area for which we have data. This enables us to identify those that are so far below the average utilization of minorities and women in particular occupations that the law presumes that intentional discrimination has taken place.<sup>14</sup>

## **§12. INTENTIONAL DISCRIMINATION IN NINE OCCUPATIONAL CATEGORIES AGAINST WOMEN AND MINORITIES, AND AGAINST BLACKS, HISPANICS AND ASIANS**

The following table describes the probability that a worker will face discrimination in seeking an employment opportunity in one of the nine occupational categories reported in form EEO-1.<sup>15</sup> They are: O& M = Official & Managers, Prof = Professionals, Tech = Technical workers, Sales = Sales workers, O & C = Office and Clerical, Craft = Craft workers-skilled, Oper = Operatives - semi skilled, Labor = Laborers - unskilled, Service = Service workers.

The likelihood of discrimination is found under the heading “**All Discriminating Establishments**” in bold face. This percentage represents the probability that a person with the race, sex, or ethnic characteristic listed will face intentional job discrimination when seeking an employment opportunity in any of the nine occupational categories. That opportunity may consist of obtaining employment, or of any condition or privilege of employment once obtained, including promotion, pay, training, transfer, discipline, layoff and discharge. This

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is the burden imposed on every member of each group because of his or her identification with that group when seeking an employment opportunity.

The last four columns in the table examine the extent of “Hard Core” discrimination as defined above and in Part I of the National Report. These establishments are so far below average in an occupation that there is less than one in one hundred chances that the result occurred by accident (2.5 standard deviations) in 1999 and either 1998 or 1997, and in at least one year between 1991 and 1996, and was never above average between 1991 and 1996. This category includes establishments that are 2.5 standard deviations or more below the average, and have been so for ten years or longer. It also includes establishments where the discrimination far exceeds 2.5 standard deviations. Hard Core establishments are a sub-set of discriminating establishments.

“Hard Core” establishments impose 39% of the burden of discrimination on Minorities, more than 32% of the burden on Blacks, more than 33% of the burden on Hispanics, and more than 18% of the burden on Asian-Pacific origin workers. 44% percent of the burden on women flows from “Hard Core” establishments.

**Table 11. Nebraska Discriminators by Sex, Race/Ethnicity, Occupation & Hard Core**

*[See next page.]*

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Occupational Discrimination in Nebraska								
Group	Occupation	All Discriminators			Hard Core Discriminators			
		Establishments		Affected Workers	Establishments		Affected Workers	
		#	%	#	#	%	#	% of all Affected Workers
<b>Female</b>	O & M	28	21.88%	297	10	7.81%	201	67.65%
	Prof	34	23.13%	528	13	8.84%	350	66.18%
	Tech	18	22.22%	317	8	9.88%	192	60.39%
	Sales	32	21.77%	619	9	6.12%	229	36.98%
	O & C	32	17.68%	618	6	3.31%	222	35.93%
	Craft	12	29.27%	132	3	7.32%	61	46.10%
	Oper	19	39.58%	289	5	10.42%	107	36.98%
	Labor	14	25.00%	215	2	3.57%	35	16.42%
	Service	15	12.71%	206	2	1.69%	34	16.31%
	Any Occ	156	31.08%	3,223	42	8.37%	1,430	44.37%
<b>Minority</b>	O & M	12	29.27%	100	0	0.00%	0	0.00%
	Prof	10	17.54%	56	1	1.75%	9	16.48%
	Tech	17	26.98%	131	0	0.00%	0	0.00%
	Sales	32	26.02%	315	6	4.88%	86	27.35%
	O & C	38	29.23%	533	10	7.69%	169	31.81%
	Craft	13	25.00%	208	1	1.92%	122	58.69%
	Oper	24	36.92%	460	9	13.85%	323	70.15%
	Labor	16	31.37%	377	6	11.76%	154	40.72%
	Service	29	25.22%	301	7	6.09%	99	32.77%
	Any Occ	138	30.67%	2,481	35	7.78%	962	38.76%
<b>Black</b>	O & M	3	42.86%	12	0	0.00%	0	0.00%
	Prof	2	20.00%	9	1	10.00%	9	100.00%
	Tech	13	39.39%	58	0	0.00%	0	0.00%
	Sales	33	44.59%	286	7	9.46%	89	31.06%
	O & C	27	31.03%	338	6	6.90%	58	17.04%
	Craft	6	30.00%	78	1	5.00%	37	47.15%
	Oper	14	29.79%	206	5	10.64%	125	60.43%
	Labor	8	30.77%	142	2	7.69%	43	30.48%
	Service	35	45.45%	311	8	10.39%	104	33.41%
	Any Occ	113	39.51%	1,440	27	9.44%	464	32.23%
<b>Hispanic</b>	O & M	2	33.33%	17	0	0.00%	0	0.00%
	Prof	0	0.00%	0	0	0.00%	0	0.00%
	Tech	2	50.00%	16	0	0.00%	0	0.00%
	Sales	0	0.00%	0	0	0.00%	0	0.00%
	O & C	7	50.00%	99	0	0.00%	0	0.00%
	Craft	7	41.18%	105	1	5.88%	48	46.06%
	Oper	11	37.93%	268	4	13.79%	173	64.75%
	Labor	9	39.13%	375	4	17.39%	99	26.41%
	Service	13	23.21%	103	0	0.00%	0	0.00%
	Any Occ	36	33.03%	983	6	5.50%	321	32.64%
<b>Asian</b>	O & M	0	0.00%	0	0	0.00%	0	0.00%
	Prof	2	28.57%	21	0	0.00%	0	0.00%
	Tech	2	25.00%	14	0	0.00%	0	0.00%
	Sales	0	0.00%	0	0	0.00%	0	0.00%
	O & C	0	0.00%	0	0	0.00%	0	0.00%
	Craft	0	0.00%	0	0	0.00%	0	0.00%
	Oper	5	45.45%	53	0	0.00%	0	0.00%
	Labor	5	62.50%	54	1	12.50%	25	46.11%
	Service	0	0.00%	0	0	0.00%	0	0.00%
	Any Occ	13	43.33%	142	1	3.33%	25	17.53%
<b>Native American</b>	Craft	2	40.00%	43	1	20.00%	36	83.78%
	Oper	4	57.14%	52	1	14.29%	37	71.76%
	Labor	2	40.00%	34	0	0.00%	0	0.00%
	Any Occ	4	57.14%	129	1	14.29%	73	56.75%

### **§13. INTENTIONAL DISCRIMINATION BY INDUSTRIES IN METROPOLITAN AREAS AMONG ESTABLISHMENTS WITH FIFTY OR MORE EMPLOYEES<sup>16</sup>**

These tables describe intentional job discrimination in each industry in a metropolitan statistical area for Minorities, Women and each group included among minorities. The Metropolitan Areas are ranked by the number of affected workers, which is normally related to the number of employees and establishments in the area. The industries are described at the three digit SIC level. Each industry has a possibility of discriminating in each of the occupations for which it has sufficient employees for a comparison. The average which is the benchmark against which each establishment is measured is the average employment in the industry of each group of minorities and women for each occupational category. The percentage of discriminating establishments may exceed 50% of all the reporting establishments.

**Discrimination** is defined as 1.65 standard deviations or more below the average utilization in the same MSA, SIC and Occupational Category. **Comparisons** are between establishments in same MSA and SIC and Occupational Category. **Affected Workers** represents the difference between the actual utilization by a discriminating establishment that is at least two standard deviations below the average and the utilization that would exist if the discriminating establishment employed at the average in the same MSA, SIC and occupational category. Each table is arranged by the number of affected workers. The industries are titled so that the SIC numbers, which appear in the Appendix to the National Report, can be consulted.

The percent and number of comparisons are helpful in assessing this data. The number of comparisons informs as to the amount of data available in a particular industry. The percentage of discrimination found under the heading “**Comparisons With Discrimination, %**” (in bold face) represents the probability that a person with the listed race, sex, or ethnic characteristics will face intentional job discrimination when seeking an employment opportunity in that industry and Metropolitan Statistical Area in any occupation. This is the burden imposed on every member of each group because of his or her identification with that group when seeking an employment opportunity. That opportunity may consist of obtaining employment, or of any condition or privilege of employment once obtained.

The **Discriminating Establishments** section of the table includes the number of establishments that appear to discriminate. It also contains the

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percentage that that number is of all reporting establishments in that industry and MSA. The percentage probability of discrimination may be smaller than percentage of discriminating establishments because each discriminating establishment is counted once, regardless of the number of comparisons in that establishment showing discrimination. This may result where, for example, there are three establishments in an industry. Each has three comparisons, only one of which showed discrimination. All three establishments would all be counted as discriminators (100% of all the establishments), but the percentage of comparisons would only be 33%. The probability of discrimination is based on those categories where discrimination is found, but each establishment is listed as a discriminator.

These tables are presented for Women, Minorities, Blacks, Hispanics and Asians, and Native Americans where available. More information on each group may be found in corresponding chapters of the National Report. In MSAs with many occupations the highest 10 percent of comparisons showing discrimination are indicated by a red number on yellow background and the lowest 10 percent by a brown number on yellow background.

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**Table 12. Discrimination against Women by MSA & Industry in Nebraska**

Nebraska	DISCRIMINATION AGAINST WOMEN	Comparisons w/Discrimination		Affected Workers	Discriminating Establishments	
		#	%		#	%
<b>MSA</b>	<b>Industry</b>					
<b>OMAHA</b>	Telephone Communication	15	29.41%	494	10	50%
	Computer/Data Proc. Svcs.	21	21.00%	369	13	37%
	Groceries & Related Products	18	32.73%	309	9	38%
	Hospitals	15	20.00%	299	10	45%
	Department Stores	16	26.67%	285	13	39%
	Medical Srvc. & Health Ins.	7	28.00%	154	4	44%
	Meat Products	3	27.27%	81	2	33%
	Life Ins.	4	26.67%	62	3	75%
	Commercial Banks	4	18.18%	58	3	21%
	Railroads	5	45.45%	57	5	50%
	Truck./Courier Svcs., Ex. Air	7	30.43%	51	7	64%
	Nurs./Personal Care Facilities	6	15.79%	47	6	30%
	Eating & Drinking Places	3	11.11%	46	3	11%
	Grocery Stores	3	7.69%	42	3	13%
	Security Brokers & Dealers	3	18.75%	14	2	25%
	Fire, Marine & Casualty Ins.	1	5.56%	6	1	14%
	Manifold Business Forms	2	20.00%	5	2	50%
	Engineering & Architect. Svcs.	1	6.67%	0	1	11%
	Hotels & Motels	4	16.67%	0	4	25%
	Grain Mill Products	2	16.67%	0	2	40%
	SICs with <10 comparisons	24	23.53%	360	21	24%
<b>OMAHA, NE-IA TOTAL</b>		<b>164</b>	<b>22%</b>	<b>2,738</b>	<b>124</b>	<b>32%</b>
<b>LINCOLN</b>	Department Stores	6	24%	103	6	40%
	Fire, Marine & Casualty Ins.	7	29%	101	4	44%
	Grocery Stores	4	10%	49	3	20%
	Hospitals	2	13%	29	2	67%
	Life Ins.	3	30%	23	2	50%
	Eating & Drinking Places	2	7%	22	2	7%
	Computer/Data Proc. Svcs.	3	30%	16	2	40%
	Nurs./Personal Care Facilities	2	14%	5	2	29%
	SICs with <10 comparisons	8	33%	73	7	39%
<b>LINCOLN TOTAL</b>		<b>37</b>	<b>19%</b>	<b>419</b>	<b>30</b>	<b>29%</b>
<b>SIOUX CITY</b>	SICs with <10 comparisons	3	38%	66	2	40%
<b>SIOUX CITY IA-NE TOTAL</b>		<b>3</b>	<b>38%</b>	<b>66</b>	<b>2</b>	<b>40%</b>
<b>NEBRASKA WOMEN TOTALS</b>		<b>204</b>	<b>22%</b>	<b>3,223</b>	<b>156</b>	<b>31%</b>



**Table 13. Discrimination against Minorities by MSA & Industry in Nebraska**

Nebraska	DISCRIMINATION AGAINST MINORITIES	Comparisons w/Discrimination		Affected Workers	Discriminating Establishments	
		#	%		#	%
<b>MSA</b>	<b>Industry</b>					
<b>Omaha</b>	Railroads	14	<b>40.00%</b>	585	9	69.23%
	Groceries & Related Products	18	<b>41.86%</b>	316	11	45.83%
	Telephone Communication	17	39.53%	233	10	50.00%
	Hospitals	14	<b>41.18%</b>	186	6	40.00%
	Computer/Data Proc. Svcs.	21	27.27%	181	13	40.63%
	Truck./Courier Svcs., Ex. Air	11	<b>50.00%</b>	173	6	46.15%
	Department Stores	15	28.30%	170	13	39.39%
	Nurs./Personal Care Facilities	12	<b>42.86%</b>	94	10	55.56%
	Meat Products	5	<b>45.45%</b>	82	3	50.00%
	Eating & Drinking Places	8	29.63%	71	8	29.63%
	Grocery Stores	4	<b>14.81%</b>	45	4	18.18%
	Life Ins.	3	30.00%	42	2	50.00%
	Medical Svcs. & Health Ins.	2	<b>18.18%</b>	31	1	12.50%
	Commercial Banks	5	25.00%	27	5	35.71%
	Hotels & Motels	3	<b>14.29%</b>	16	3	18.75%
	SICs with <10 comparisons	20	<b>17.39%</b>	118	18	19.78%
<b>Omaha, NE-IA Total</b>		<b>172</b>	<b>29.81%</b>	<b>2,368</b>	<b>122</b>	<b>34.27%</b>
<b>Lincoln</b>	Eating & Drinking Places	5	17.86%	31	5	17.86%
	Department Stores	1	6.25%	6	1	7.14%
	Grocery Stores	2	10.00%	0	1	8.33%
	SICs with <10 comparisons	8	17.02%	53	8	22.22%
<b>Lincoln, NE Total</b>		<b>16</b>	<b>14.41%</b>	<b>90</b>	<b>15</b>	<b>16.67%</b>
<b>Sioux City</b>	SICs with <10 comparisons	3	33.33%	22	1	25.00%
<b>Sioux City, IA-NE Total</b>		<b>3</b>	<b>33.33%</b>	<b>22</b>	<b>1</b>	<b>25.00%</b>
<b>NEBRASKA MINORITIES TOTALS</b>		<b>191</b>	<b>27.40%</b>	<b>2,481</b>	<b>138</b>	<b>30.67%</b>

**Table 14. Discrimination against Blacks by MSA & Industry in Nebraska**

Nebraska	DISCRIMINATION AGAINST BLACKS	Comparisons w/Discrimination		Affected Workers	Discriminating Establishments		
		#	%		#	%	
<b>MSA</b>	<b>Industry</b>						
<b>Omaha, NE- IA</b>	Railroads	12	48%	264	6	46%	
	Telephone Communication	13	42%	167	9	60%	
	Department Stores	15	41%	158	15	47%	
	Hospitals	16	52%	153	7	54%	
	Truck./Courier Svcs., Ex. Air	8	44%	119	5	42%	
	Nurs./Personal Care Facilities	12	46%	111	10	56%	
	Eating & Drinking Places	16	59%	106	16	59%	
	Groceries & Related Products	10	40%	85	9	43%	
	Computer/Data Proc. Svcs.	9	35%	66	8	44%	
	Hotels & Motels	6	32%	34	6	38%	
	Grocery Stores	4	25%	25	4	25%	
	Commercial Banks	1	7%	9	1	7%	
	SICs with <10 comparisons	16	21%	131	14	23%	
	<b>Omaha, NE-IA Total</b>		<b>138</b>	<b>37%</b>	<b>1,426</b>	<b>110</b>	<b>40%</b>
	<b>Lincoln, NE</b>	SICs with <10 comparisons	3	27%	14	3	27%
<b>Lincoln, NE Total</b>		<b>3</b>	<b>27%</b>	<b>14</b>	<b>3</b>	<b>27%</b>	
<b>NEBRASKA BLACKS TOTALS</b>		<b>141</b>	<b>37%</b>	<b>1,440</b>	<b>113</b>	<b>40%</b>	

**Table 15. Discrimination against Hispanics by MSA & Industry in Nebraska**

Nebraska	DISCRIMINATION AGAINST HISPANICS	Comparisons w/Discrimination		Affected Workers	Discriminating Establishments	
		#	%		#	%
<b>MSA</b>	<b>Industry</b>					
<b>Omaha, NE-IA</b>	Railroads	15	45.45%	295	7	53.85%
	Groceries & Related Prods.	10	50.00%	231	7	58.33%
	Meat Products	5	45.45%	124	3	50.00%
	Eating & Drinking Places	6	22.22%	55	6	22.22%
	Hotels & Motels	3	20.00%	35	3	20.00%
	SICs with <10 comparisons	4	25.00%	13	4	28.57%
	<b>Omaha, NE-IA Total</b>		<b>43</b>	<b>35.25%</b>	<b>752</b>	<b>30</b>
<b>Lincoln, NE</b>	Eating & Drinking Places	3	27.27%	10	3	27.27%
	SICs with <10 comparisons	2	22.22%	8	2	25.00%
<b>Lincoln, NE Total</b>		<b>5</b>	<b>25.00%</b>	<b>17</b>	<b>5</b>	<b>26.32%</b>
<b>Sioux City</b>	SICs with <10 comparisons	3	37.50%	213	1	33.33%
<b>Sioux City, IA-NE Total</b>		<b>3</b>	<b>37.50%</b>	<b>213</b>	<b>1</b>	<b>33.33%</b>
<b>NEBRASKA HISPANICS TOTALS</b>		<b>51</b>	<b>34.00%</b>	<b>983</b>	<b>36</b>	<b>33.03%</b>

**Table 16. Discrimination against Asians by MSA & Industry in Nebraska**

Nebraska	DISCRIMINATION AGAINST ASIANS	Comparisons w/Discrimination		Affected Workers	Discriminating Establishments	
		#	%		#	%
<b>MSA</b>	<b>Industry</b>					
<b>Omaha</b>	Computer/Data Proc. Svcs.	5	38.46%	54	4	33.33%
	SICs with <10 comparisons	7	70.00%	75	7	77.78%
<b>Omaha, NE-IA Total</b>		<b>12</b>	<b>52.17%</b>	<b>129</b>	<b>11</b>	<b>52.38%</b>
<b>Lincoln, NE</b>	SICs with <10 comparisons	1	14.29%	9	1	14.29%
<b>Lincoln, NE Total</b>		<b>1</b>	<b>14.29%</b>	<b>9</b>	<b>1</b>	<b>14.29%</b>
<b>Sioux City</b>	SICs with <10 comparisons	1	25.00%	4	1	50.00%
<b>Sioux City, IA-NE Total</b>		<b>1</b>	<b>25.00%</b>	<b>4</b>	<b>1</b>	<b>50.00%</b>
<b>NEBRASKA ASIANS TOTALS</b>		<b>14</b>	<b>41.18%</b>	<b>142</b>	<b>13</b>	<b>43.33%</b>

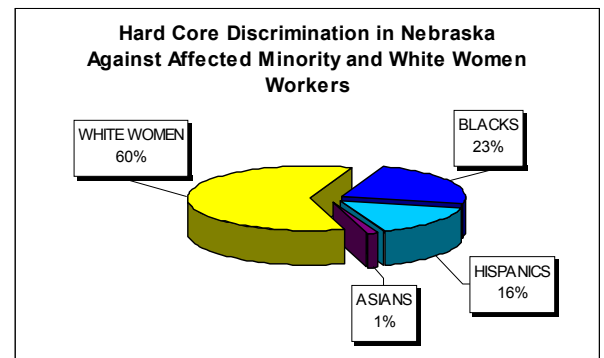
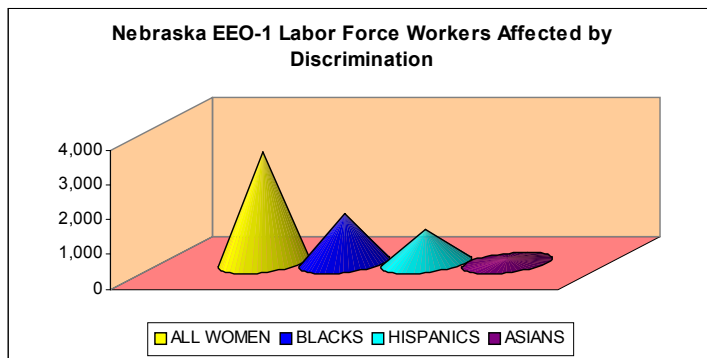
**Table 17. Discrimination against Native Americans by MSA & Industry in Nebraska**

Nebraska	DISCRIMINATION AGAINST NATIVE AMERICANS	Comparisons w/Discrimination		Affected Workers	Discriminating Establishments	
		#	%		#	%
<b>MSA</b>	<b>Industry</b>					
<b>Omaha</b>	Railroads	8	47.06%	129	4	57.14%
<b>Omaha, NE-IA Total</b>		<b>8</b>	<b>47.06%</b>	<b>129</b>	<b>4</b>	<b>57.14%</b>
<b>NEBRASKA NATIVE AMERICAN TOTALS</b>		<b>8</b>	<b>47.06%</b>	<b>129</b>	<b>4</b>	<b>57.14%</b>

## §14. THE BOTTOM LINE OF VISIBLE INTENTIONAL JOB DISCRIMINATION IN THIS STATE

**Table 18. Bottom Line of Discrimination in Nebraska.**

Bottom Line of Discrimination in Nebraska	Comparisons with Discrimination		Affected Workers	Discriminating Establishments		Hard Core Discriminators				
	#	%		#	#	%	Establishments		Workers	
							#	%	#	% of Affected Workers
<b>ALL WOMEN</b>	204	21.54%	3,223	156	31.08%	42	8.37%	1,430	44.37%	
<b>MINORITIES</b>	191	27.40%	2,481	138	30.67%	35	7.78%	962	38.76%	
<b>BLACKS</b>	141	37.01%	1,440	113	39.51%	27	9.44%	464	32.23%	
<b>HISPANICS</b>	51	34.00%	983	36	33.03%	6	5.50%	321	32.64%	
<b>ASIANS</b>	14	41.18%	142	13	43.33%	1	3.33%	25	17.53%	



Every time a Black worker sought an employment opportunity in 1999, he or she had a 37% chance of facing discrimination – more than one third of the time. A Hispanic worker faced this risk 34% of the time, while Asian Pacific Origin workers faced it 41% of the time. Women faced the risk of discrimination 22% or more than one fifth of the time.

The Omaha MSA included 4,635 affected workers or 87% of all affected workers in the state.

## §15. CONCLUSIONS AND RECOMMENDATIONS

This state study has the same objectives as the National Study: (1) to assist the public in deciding whether discrimination is still so severe that affirmative action continues to be necessary to raise the status of minorities and women to that of equality; (2) to enable those employers whose practices appear discriminatory to understand their situations and take actions they deem appropriate; (3) to enable public and private agencies to address the continuation of intentional job discrimination; and, (4) to bring a modest element of predictability and stability to the law of employment discrimination.<sup>17</sup>

1. The necessity for continued affirmative action is established by the statistics in this state. The playing field of employment in this state is clearly not level. The only way this massive problem of intentional discrimination can be usefully and practically addressed is by encouraging establishments to recruit, hire, train, assign, promote, pay and treat qualified minorities and women as they treat qualified whites and males. This is all that affirmative action programs have ever expected. We know that there are qualified minorities and women in this state, because they are currently working for employers who did not discriminate against them. The establishments currently discriminating are in as good or better a position to find qualified workers, as were those who found them in earlier years.
  2. Employers in this state are entitled to know where they stand vis-a-vis other similar employers. The Federal government, which has this information, has not supplied it to them. Without that knowledge, they cannot address their situation, either by preparing justifications or by taking steps to get out of the statistical trap they are in. They should attempt to secure the kind of analysis in this study from Federal or State Agencies. Failing that, employers may seek further information on obtaining this information by examining the EEO1.com website.
  3. The State agencies charged with enforcing the equal employment opportunity laws of this state should:
    - A. Request from EEOC the statistical information with the identification of the establishments described in this study, and develop a plan to address them in cooperation with other agencies and organizations.
    - B. This plan should include:
-

- (1) Adopting a systemic analysis of EEO-1 data for this state, updated annually, to identify establishments that may be discriminating;
  - (2) Advising employers if they are at risk of a finding of discrimination against them, based on these statistics;
  - (3) Making clear to such employers that they may take affirmative action to reduce or eliminate the risk of findings of discrimination against them;
  - (4) Encouraging them to report the results of their efforts to the Federal/State/local agency involved;
  - (5) Instituting formal proceedings against those employers who decline without justification to:
    - (a) File EEO-1 reports.
    - (b) Undertake enforceable affirmative action programs to address the apparent discrimination.
  - (6) Invite private counsel to participate in programs of advice to employers.
  - (7) Seek binding obligations from these employers to increase their utilization of qualified minority and female employees, while leaving litigation over damage issues primarily to private counsel.
4. Private organizations seeking to improve opportunities for women and minorities should press the government agencies to secure enforceable and reviewable promises to increase utilization of minority and female employees, in preference to securing damages for victims of discrimination that can be obtained by private counsel. These organizations and agencies should evaluate the government by how many jobs and promotions are obtained for how many workers, rather than by how much money is obtained for a few.
5. The result of the foregoing strategy should be the reduction of intentional discrimination in this state and the improvement of equality, not only in employment opportunity, but also in other areas of life where those who are fairly employed can further opportunities for themselves and their posterity.
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## §16. GLOSSARY

**AFFECTED WORKERS.** The number of additional workers who would have been employed by an establishment that was more than two standard deviations below the mean in utilization of minority or female employees if the establishment had employed them at the local industry and occupational level. This remedy is appropriate where intentional discrimination has been established.

**AFFIRMATIVE ACTION.** Any action taken by an employer, other than cessation of discriminatory actions, practices, procedures or tests, which has the intent or effect of improving employment opportunities for minorities and/or women. Such action may be informal as in more careful examination of relative qualifications of competing candidates, or more formal as in the adoption and implementation of plans which require examination of practices, procedures and tests to assure that they provide equal employment opportunity and to modify and correct those that do not. Such actions may include changing recruitment and other ways of doing business so as to include minorities and/or women.

Affirmative Action Plans may include “goals and timetables” as “benchmarks for measuring compliance with Title VII and eliminating the lingering effects of past discrimination,” but may not include a “quota” or “preference” which is a “rigid numerical requirement which must unconditionally be met.” Affirmative action, either formal or informal, is justified when an employer’s work force shows a “manifest imbalance” in the employment of minorities or women, when measured against appropriate peer establishments or the relevant labor market and whenever the employer reasonably believes that its existing employment pattern puts it in jeopardy of a finding of a “pattern or practice” of discrimination, a class action finding of discrimination or a finding of discrimination in individual cases.

All of these uses of statistics to identify and remedy discrimination have been approved by the Supreme Court. See *Sheetmetal Workers Local 28 v. EEOC*, 478 U.S. 421, 495 (1986); *United Steelworkers v. Weber*, 433 U.S. 193 (1979); *Johnson v. Transportation Agency, Santa Clara County*, 480 U.S. 616 (1987); *Wygant v. Jackson Board of Education*, 476 U.S. 267 (1986); *McDonnell Douglas v. Green*, 411 U.S. 792 (1973); *EEOC v. Shell Oil Company*, 466 U.S. 54 (1984).

**ASIAN-PACIFIC ISLANDERS.** See “Groups.”

**BLACKS.** See “Groups.”

**COMPARISON.** In this study, comparing the utilization of women or minorities in an occupational group at one establishment with the average utilization in that category at other establishments in the same industry and labor market. See *Peer Establishments and Statistical Significance*.

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**EEO1 LABOR FORCE.** In this study, establishments with 50 or more employees in metropolitan areas that report on Form EEO-1.

**EEO-1 REPORT.** All employers with 100 or more employees and many with fifty or more, have been required to file reports on the composition of their work forces since 1966 on a form called EEO-1. This employer reporting system has enabled the continuous annual collection of information on the race, sex, national origin, and occupation of employees. The Office of Federal Contract Compliance Programs (OFCCP) has required government contractors to file identical reports with respect to establishments of 50 or more employees.<sup>18</sup> The reports require information on the number of employees who are men and women, Black, Hispanic, Asian Pacific and Native American.

**EEOC.** The initials of the Equal Employment Opportunity Commission, an independent federal agency charged with enforcing Title VII of the Civil Rights Act of 1964, prohibiting discrimination on the basis of race, color, religion, sex or national origin, and other statutes prohibiting discrimination based on sex, age and disability. Title VII expressly authorizes the EEOC to require reports from the institutions it regulates.

**EMPLOYMENT OPPORTUNITY.** An “employment opportunity” may consist of obtaining employment, or of any condition or privilege of employment once obtained including promotion, pay, training, transfer, discipline, layoff and discharge.

**ESTABLISHMENT.** An economic unit, usually at a single physical location, that produces goods or services, such as a manufacturing plant, office, or retail store. An employer may have one or more establishments.

**GLASS CEILING.** The level in an employer’s hierarchy of work positions at which members of discriminated-against groups face restrictions in their opportunities to obtain higher-level, managerial, decision-making, or better-paid employment. Also, the barriers that these groups face as they seek to advance into those higher-level positions.

**GROUPS (RACE/ETHNICITY).**

The EEOC defines White, Black, Hispanic, Asian-Pacific Islander, and Native American in the instructions to the EEO-1 form as follows:

"Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group.

"The race/ethnic categories for this survey are:

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**"White** (Not of Hispanic origin)-All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.

**"Black** (Not of Hispanic origin)-All persons having origins in any of the Black racial groups of Africa.

**"Hispanic** - All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

**"Asian or Pacific Islander** - All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.

**"American Indian or Alaskan Native** - All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition."

**HISPANICS.** See "Groups" above.

**INTENTIONAL DISCRIMINATION.** "Intentional Discrimination" exists "when a complaining party demonstrates that **race, color, religion, sex or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.**"<sup>19</sup> This means that the intent need not be the sole factor in an employment decision. It is enough to show that it was one of the motivating factors. If an employer has both a legitimate reason for its practices and also a discriminatory reason, then it is engaged in intentional discrimination under the Civil Rights Act. See Statistical Significance.

**METROPOLITAN STATISTICAL AREA (MSA).** A geographical area, usually defined in terms of counties, designated by the U. S. Bureau of Census to represent a large concentration of population that functions as a geographically-integrated labor market.

**OCCUPATIONAL GROUP or CATEGORY.** One of nine job categories used in reporting employment utilization in EEO-1 reports: Officials and managers, Prof.s, technicians, sales workers, office and clerical workers, craft workers (skilled), operatives (semi-skilled), laborers (unskilled), and service workers.

The EEOC, in the instructions to the EEO-1 form, provides the following definitions for each category:

*"Officials and managers.* - Occupations requiring administrative and managerial personnel who set broad policies, exercise overall responsibility for execution of these policies, and direct individual departments or special phases of a firm's operations. Includes: officials, executives, middle management, plant managers, department managers, and superintendents, salaried supervisors who are members of management, purchasing agents and buyers, railroad conductors and yard masters, ship captains, mates and other officers, farm operators and managers, and kindred workers.

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"*Professionals*. - Occupations requiring either college graduation or experience of such kind and amount as to provide a comparable background. Includes: accountants and auditors, airplane pilots and navigators, architects, artists, chemists, designers, dietitians, editors, engineers, lawyers, librarians, mathematicians, natural scientists, registered professional nurses, personnel and labor relations specialists, physical scientists, physicians, social scientists, teachers, surveyors and kindred workers.

"*Technicians*. - Occupations requiring a combination of basic scientific knowledge and manual skill which can be obtained through 2 years of post high school education, such as is offered in many technical institutes and junior colleges, or through equivalent on-the-job training. Includes: computer programmers, drafters, engineering aides, junior engineers, mathematical aides, licensed, practical or vocational nurses, photographers, radio operators, scientific assistants, technical illustrators, technicians (medical, dental, electronic, physical science), and kindred workers.

"*Sales*. - Occupations engaging wholly or primarily in direct selling. Includes: advertising agents and sales workers, insurance agents and brokers, real estate agents and brokers, stock and bond sales workers, demonstrators, sales workers and sales clerks, grocery clerks, and cashiers/checkers, and kindred workers.

"*Office and clerical*. - Includes all clerical-type work regard-less of level of difficulty, where the activities are predominantly nonmanual though some manual work not directly involved with altering or transporting the products is included. Includes: bookkeepers, collectors (bills and accounts), messengers and office helpers, office machine operators (including computer), shipping and receiving clerks, stenographers, typists and secretaries, telegraph and telephone operators, legal assistants, and kindred workers.

"*Craft Workers (skilled)*. - Manual workers of relatively high skill level having a thorough and comprehensive knowledge of the processes involved in their work. Exercise considerable independent judgment and usually receive an extensive period of training. Includes: the building trades, hourly paid supervisors and lead operators who are not members of management, mechanics and repairers, skilled machining occupations, compositors and typesetters, electricians, engravers, painters (construction and maintenance), motion picture projectionists, pattern and model makers, stationary engineers, tailors and tailoresses, arts occupations, handpainters, coaters, bakers, decorating occupations, and kindred workers.

"*Operatives (semiskilled)* - Workers who operate machine or processing equipment or perform other factory-type duties of intermediate skill level which can be mastered in a few weeks and require only limited training. Includes: apprentices (auto mechanics, plumbers, bricklayers, carpenters, electricians, machinists, mechanics, building trades, metalworking trades, printing trades, etc.), operatives, attendants (auto service and parking), blasters, chauffeurs, delivery workers, sewers and stitchers, dryers, furnace workers, heaters, laundry and dry cleaning operatives, milliners, mine operatives and laborers, motor operators, oilers and greasers (except auto), painters (manufactured articles), photographic process workers, truck and tractor drivers, knitting, looping, taping and weaving machine operators, welders and flamecutters, electrical and electronic equipment assemblers, butchers and meatcutters, inspectors, testers and graders, handpackers and packagers, and kindred workers.

"*Laborers (unskilled)*. - Workers in manual occupations which generally require no special training who perform elementary duties that may be learned in a few days and require the application of little or no independent judgment. Includes: garage laborers, car washers and greasers, groundskeepers and gardeners, farmworkers, stevedores, wood choppers, laborers performing lifting, digging, mixing, loading and pulling operations, and kindred workers.

"*Service workers*. - Workers in both protective and non-protective service occupations. Includes: attendants (hospital and other institutions, professional and personal service, including nurses aides, and orderlies), barbers, charworkers and cleaners, cooks, counter and fountain workers, elevator operators,

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firefighters and fire protection, guards, door-keepers, stewards, janitors, police officers and detectives, porters, waiters and waitresses, amusement and recreation facilities attendants, guides, ushers, public transportation attendants, and kindred workers."

**OCCUPATIONAL SEGREGATION.** Patterns of employment that result when opportunities to work in certain occupations are associated with personal characteristics. For example, racial/ethnic occupational segregation is reflected in the exclusion or under-representation of African American or Hispanic workers from occupations historically considered "white jobs" and their over-representation in minority-dominated occupations. Similarly, gender occupational segregation is reflected in the existence of "female dominated" occupations (e.g., nurses and secretaries) and "male dominated" occupations (e.g., carpenters and surgeons).

**PEER ESTABLISHMENTS.** In this study, a group of establishments employing workers in the same industry, metropolitan statistical area, and occupational group.

**MINORITIES** identified in EEO-1 reports are Blacks, Hispanics, Asian-Pacific origin and Native Americans. Definitions of these terms appear in "Groups."

**NATIVE AMERICANS.** See "Groups."

**OFCCP.** Initials of the Office of Federal Contract Compliance Programs, a division of the Employment Standards Administration in the U.S. Department of Labor that enforces Executive Order 11,246 as amended, prohibiting federal government contractors from discriminating on grounds of race, color, religion, sex, national origin, and on other grounds.

**STANDARD DEVIATIONS.** See "Statistical Significance."

**STATISTICAL SIGNIFICANCE.** The likelihood that an observed result occurred by chance is measured in terms of "standard deviations" around an expected outcome. When an observed result (such as the percentage of women employed in a particular job category) has a less than a 1 in twenty chance of having occurred by chance, it constitutes a difference of two standard deviations. This difference is generally considered to be statistically significant. For example, if we expect to see an establishment in the stock brokerage industry employing on average 20% female stock brokers and a particular establishment employs only 4% women, that difference is deemed statistically significant. It is 2.7 standard deviations from the expected number. This difference is evidence of intentional discrimination. See "**Intentional Discrimination.**"

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**UTILIZATION.** The number or proportion of employees of a demographic group employed by an establishment in an occupational category. For example, if minorities constitute 15 out of 150 managers at an establishment, the utilization of minorities is 15 employees or 10%.

**VISIBLE JOB DISCRIMINATION.** **Discrimination** that appears when the EEO-1 reports filed by establishments in the same metropolitan area, the same industry and the same occupational category, show that an establishment is so far below the average use of the minority or female group in an occupational category that it is not likely to have resulted by chance. Such deviations make the offending establishments stick out like sore thumbs in our analysis. This study did not analyze any establishment with fewer than 50 employees, nor any establishment that was located outside a Metropolitan Statistical Area.

**§17. APPENDIX A:  
EXECUTIVE SUMMARY OF THE NATIONAL REPORT –  
THE REALITY OF INTENTIONAL JOB DISCRIMINATION IN  
METROPOLITAN AMERICA – 1999**

(The section numbers have been modified from the original numbering in the National Report to fit this state report.)

Intentional discrimination was “the most obvious evil” that the Civil Rights Act of 1964 was designed to prevent. Is intentional discrimination still a potent force restricting job opportunities for women and minorities? Or, is it what University of California Regent Ward Connerly suggested in 1998, “Black Americans are not hobbled by chains any longer. We’re free to compete. We’re capable of competing. It is an absolute insult to suggest that we can’t.”<sup>1</sup> Which is it: a “level playing field,” or an uphill struggle for women and minorities against intentional job discrimination that favors whites/males?

This question is answered in a four year, 1,400 page study of the race color and sex of employees in large and mid sized private business establishments – THE REALITIES OF INTENTIONAL JOB DISCRIMINATION IN METROPOLITAN AMERICA – 1999, by Rutgers Law School Professor Alfred W. Blumrosen and adjunct Professor Ruth G. Blumrosen. Supported by a grant from the Ford Foundation to Rutgers University, the study is based on employers’ annual reports to the Federal Government involving 160,000 establishments employing 37 million workers. It involved a computer analysis of these reports combined with Supreme Court and Congressional rules to identify “patterns and practices” of intentional job discrimination of the Supreme Court and Congress.

In 1991, Congress confirmed that intentional discrimination exists when “race, color, religion, sex or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.”<sup>2</sup> “Intent to discriminate” is not the equivalent of “evil motive,” where a personal wish or desire to oppress women or minorities is the *only* explanation for the harm done. If an employer has both a legitimate reason for its practices and also a discriminatory reason, it is engaged in intentional discrimination.

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1. Interview on “60 Minutes” by Mike Wallace, Aug. 2, 1998, transcript, p. 22.

2. Sec. 703 (m) of Title VII.

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The study found that intentional job discrimination continues on a major scale. Blacks, Hispanics, Asian Pacific workers and White Women who have the knowledge, skills, abilities, and experience to compete are deprived of that opportunity by intentional discrimination between a quarter and a third of the time they seek such opportunities.

- In 1999, intentional discrimination affected two million minority and female workers. It exists in every region of the country, in each of nine occupational categories from officials and managers to labor and service jobs.
- Seventy five thousand establishments discriminated intentionally against 1.3 million minorities; while 60,000 establishments discriminated intentionally against 952,000 women. Despite the persistence of intentional discrimination, the majority of establishments did not appear to engage in it. As a result, minorities and women have increased their participation in the labor force and in their proportion in better paying jobs.
- Forty industries were “equal opportunity discriminators” -- discriminating against 75% of the Blacks, Hispanics, Asian-Pacific workers and White women who were affected. The top ten of these industries were Hospitals, Eating and Drinking Places, Department Stores, Grocery Stores, Nursing and Personal Care Facilities, Computer and Data Processing Services, Hotels and Motels, Telephone Communications, Commercial Banks and Motor Vehicles and Equipment Manufacturing.
- Medical, Drug and Health related industries alone accounted for 20% of Women, Blacks, Hispanics and Asian Pacific workers affected by discrimination.
- Ninety percent of the affected workers were subjected to discrimination that was so severe that there was only one chance in 100 that it occurred by accident. That is far more than enough to trigger a legal presumption of intentional job discrimination.
- Between one third and one half of this discrimination was caused by “hard core” establishments that had been discriminating for at least nine years.

### **A. BACKGROUND OF THE STUDY**

Private employers of 100 or more employees and government contractors of 50 or more employees have been required to file annual reports, called EEO-1 reports, since 1966 with the U.S. Equal Employment Opportunity Commission and the Department of Labor. The study obtained computerized versions of these

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reports from the EEOC with the names and identifying addresses of employers expunged to preserve employer confidentiality. The statistics only identify the state and Metropolitan Statistical Area in which establishments are located.

Intentional job discrimination was identified by examining establishment reports in each metropolitan area by industry. Within each industry, nine occupational categories were examined separately. In this way, the average utilization of men and women, Blacks, Hispanics and Asians in each industry and occupational category within each metropolitan area was obtained. Establishments that were so far below the average utilization of minorities or women that it was unlikely to have occurred by chance, stood out “like sore thumbs” in this analysis. They are presumed by law to be intentional discriminators under legal rules developed since 1977. In that year, the Supreme Court explained that a statistical imbalance, “is often a telltale sign of purposeful discrimination.... In many cases the only available avenue of proof is the use of racial statistics to uncover clandestine and covert discrimination...” In law suits, employers would have the opportunity to show that the statistics were inaccurate or that they had only good reasons for the abnormally low utilization, a burden that is difficult to satisfy. The study suggests that most establishments facing these statistics would settle rather than litigate.

Workers affected by this discrimination were measured by the difference between the number actually employed and the number that the apparent discriminator would have employed if it had employed minorities/women at the average. This is the standard the Supreme Court has applied in cases of intentional discrimination. There is no single average in the study. For each occupation in each establishment, the average utilization varies depending on the number of qualified available workers in the labor market, industry and occupation. The average is not a quota—it is a fact, showing how similar employers have employed minorities and women in the same occupation under the same labor market and industrial circumstances.

The study addresses some of the most common employer explanations for such low levels of minority and female employment, such as women aren’t interested in the work, [they are doing the same work for other similar employers]; no qualified workers were available. [qualified workers were available because they were doing the same type of work for other employers.]

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## B. THE BURDEN OF DISCRIMINATION

What is the risk that a minority or woman will face discrimination because of their race, sex or national origin when seeking an employment opportunity? The study found that the probability of discrimination varied with the kind of job being sought. The table below describes the probability of discrimination by occupational category. The percentages apply each time a person sought an employment opportunity, be it employment, promotion, assignment, layoff, discharge or other employment related activities.

Risk of Discrimination because of race, sex, national origin each time a job opportunity is sought in the occupation.

	Blacks	Hispanics	Asian	Women
Officials and Managers	26.6%	21.8%	24.6%	18%
Professionals	27.6%	20.7%	30.8%	23%
Technical workers	29.1%	21.9%	30.2%	23%
Sales	39.5%	28.1%	27.3%	20%
Office and Clerical	31.8%	21.8%	26.4%	19%
Craft workers (skilled)	28.7%	27.1%	35.0%	37%
Operatives (semi skilled)	33.2%	33.4%	42.8%	38%
Laborers	34.9%	34.4%	43.6%	30%
Service workers	40.3%	34.0%	38.1%	19%
All comparisons	34.1%	35.0%	39.0%	23%

## C. BLACK WORKERS MOST SERIOUSLY AFFECTED

Despite the initial focus of the Civil Rights Act on Black workers, and the improvement that has taken place since, Black workers still bear the severest brunt of this discrimination. They constitute less than half of all minority workers reported, but they were 57% of all workers affected by discrimination. Fifteen percent of all Black workers were so affected in 1999, while 11% of both Hispanics and Asian Pacific workers were affected.

- Thirty five thousand business establishments discriminated against 586,000 Blacks. Ninety percent of these Black workers were affected by establishments that were so far below the average utilization that there was only a 1 in 100 chance that this happened by accident and half by "hard core" employers who had been discriminating for at least nine years.
- Hispanic workers were 33% of minority workers reported, and they constituted 28% of those affected by discrimination or 283,000 workers.

- Asian Pacific workers were 17% of the minorities, and 15% -- or nearly 150,000 -- of those affected by discrimination.
  - The data about Native American workers was too sparse to draw conclusions.
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#### **D. IMPROVEMENT IN PROPORTION OF MINORITIES AND WOMEN EMPLOYED BETWEEN 1975 AND 1999**

The bright spot in this study of intentional discrimination, is that between 1975 and 1999, minorities increased their participation in the labor force by 4.6 million workers beyond the increase resulting from economic growth; and women similarly increased their participation by 3.8 million workers. In absolute numbers, minorities went from 4 million workers in 1975 to more than 11 million in 1999; women went from 8 million workers in '75 to 17.5 million in 1999. More important, all groups increased their share of "better jobs" as officials, managers, professionals, technical and sales workers.

#### **E. FORTY INDUSTRIES THAT WERE 'EQUAL OPPORTUNITY DISCRIMINATORS'**

The study identified 40 industries that were "equal opportunity discriminators," discriminating against more than 75% of the Black, Hispanic, Asian, and White Women workers affected by discrimination.

*[Continued on next page.]*

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<b>FORTY INDUSTRIES' INTENTIONAL DISCRIMINATION* AGAINST WOMEN, BLACKS, HISPANICS, AND ASIANS, SHOWING AFFECTED WORKERS** AND DISCRIMINATION RISK BY INDUSTRY***</b>										
SIC	Industry	WOMEN		BLACKS		HISPANICS		ASIANS		AFFECTED WORKERS
		#	%Rsk	#	%Rsk	#	%Rsk	#	%Rsk*	
806	Hospitals	63,908	21%	89,314	41%	19,562	22%	23,719	36%	196,503
581	Eating and Drinking Places	35,370	19%	55,591	43%	43,702	40%	3,530	40%	138,193
531	Department Stores	42,271	22%	50,959	37%	20,615	29%	5,414	31%	119,259
541	Grocery Stores	28,253	14%	53,333	41%	20,681	33%	1,559	24%	103,827
805	Nursing and Personal Care Facilities	13,865	14%	39,429	35%	7,247	34%	5,508	34%	66,049
737	Computer and Data Processing Services	31,114	26%	8,206	28%	1,986	27%	16,637	36%	57,943
701	Hotels and Motels	13,127	17%	17,960	29%	18,651	25%	6,471	32%	56,208
481	Telephone Communication	29,394	30%	19,857	32%	3,654	25%	2,886	33%	55,791
602	Commercial Banks	18,673	18%	20,131	37%	4,006	23%	4,821	30%	47,632
371	Motor Vehicles and Equipment	18,084	32%	14,470	36%	3,206	32%	1,732	37%	37,492
367	Electronic Components and Accessories	11,965	26%	3,001	33%	5,808	23%	11,748	35%	32,522
421	Trucking & Courier Services, Ex. Air	10,119	42%	15,842	35%	5,304	26%	501	32%	31,766
451	Air Transportation, Scheduled	15,651	32%	8,597	30%	4,057	22%	2,768	33%	31,073
308	Miscellaneous Plastics Products	11,109	33%	4,622	33%	7,216	35%	2,559	49%	25,547
514	Groceries and Related Products	11,184	32%	4,783	34%	6,077	32%	534	36%	22,577
809	Health and Allied Services	10,329	21%	6,767	35%	2,063	29%	1,478	32%	20,638
633	Fire, Marine, and Casualty Insurance	7,858	18%	4,012	22%	772	20%	754	32%	13,395
632	Medical Service and Health Insurance	5,733	19%	5,751	28%	914	21%	944	26%	13,341
372	Aircraft and Parts	5,901	29%	1,443	34%	2,611	17%	2,497	35%	12,453
357	Computer and Office Equipment	5,814	27%	1,310	28%	1,066	21%	4,170	32%	12,360
594	Miscellaneous Shopping Goods Stores	6,186	30%	3,216	36%	1,888	33%	619	28%	11,909
621	Security Brokers and Dealers	7,506	21%	2,277	29%	817	23%	1,122	21%	11,723
384	Medical Instruments and Supplies	5,474	25%	1,012	27%	1,821	27%	2,995	31%	11,301
871	Engineering & Architectural Services	6,487	23%	1,792	25%	715	18%	2,235	25%	11,229
504	Professional & Commercial Equipment	6,440	26%	1,984	26%	977	25%	1,632	29%	11,033
366	Communications Equipment	4,500	25%	1,269	20%	978	20%	3,839	36%	10,585
283	Drugs	5,301	23%	1,718	25%	1,185	24%	2,301	31%	10,504
801	Offices & Clinics Of Medical Doctors	4,936	19%	2,987	33%	1,028	22%	1,419	27%	10,370
275	Commercial Printing	4,869	29%	1,984	31%	1,486	31%	878	43%	9,216
201	Meat Products	2,286	32%	1,720	33%	3,517	28%	916	58%	8,439
641	Insurance Agents, Brokers, & Service	3,943	19%	2,768	30%	756	25%	756	25%	8,222
349	Misc. Fabricated Metal Products	3,440	35%	1,511	30%	1,683	29%	835	39%	7,469
836	Residential Care	2,481	21%	3,449	33%	854	28%	378	35%	7,163
267	Misc. Converted Paper Products	3,505	33%	1,511	30%	1,516	33%	456	44%	6,988
344	Fabricated Structural Metal Products	2,242	37%	1,660	33%	2,476	32%	511	48%	6,888
489	Communication Services	2,530	30%	1,322	27%	1,474	29%	1,474	29%	6,800
271	Newspapers	2,924	19%	2,094	37%	1,016	26%	337	31%	6,372
501	Motor Vehicles, Parts, and Supplies	2,579	29%	1,354	30%	1,010	31%	1,010	31%	5,953
209	Misc. Food and Kindred Products	2,024	32%	1,119	35%	2,091	25%	695	43%	5,930
225	Knitting Mills	1,396	34%	1,043	34%	700	46%	414	59%	3,553
<b>Total affected workers</b>		<b>470,773</b>		<b>463,206</b>		<b>207,186</b>		<b>125,052</b>		<b>1,266,217</b>
31% reduction for minority women included in Women totals		<b>(145,940)</b>								<b>1,120,277</b>
<b>Percent of all affected Workers</b>		<b>75%</b>		<b>79%</b>		<b>73%</b>		<b>84%</b>		<b>77%</b>
* Discrimination 1.65 or more standard deviations.										
**Affected Workers are the difference between employment in same labor market and occupation at 2 or more standard deviations below average, and number who would have been employed if establishment had employed at the average.										
***Risk based on proportion of comparisons of establishments in same labor market and occupation.										

Additional highlights of the Study include:

- The largest number of establishments discriminating against both minorities and women employed between 100 and 500 workers. 22,000 establishments of that size discriminated against minorities, 20,000 against women. These establishments contributed about half the intentional job discrimination against both minorities and women.
- Separate studies for each state and each metropolitan area where there is data are included in the nationwide study. “Discrimination, like politics, is essentially local,” the study states. “We hope this material will be studied by

those interested in civil rights to try to address this discrimination in each state and metro area.”

## F. AFFIRMATIVE ACTION STILL NECESSARY

The study concludes that intentional discrimination is still so pervasive that affirmative action programs continue to be necessary. “ It is impossible to address the 75,000 establishments through formal law enforcement efforts. Congress was right in 1964 to make voluntary action the preferred means of improving opportunity for minorities and women, and it was right when it reaffirmed that principle in 1991.” Affirmative action programs are intended to allow employers who have reason to be concerned that they might be discriminating to take steps to correct their practices.

The statistics from this study will be helpful to all groups concerned with employment discrimination, the Study concludes. Employers would like to know where they stand compared to others; enforcement agencies and courts may use the information and those interested in civil rights can measure progress using the data. However, the Blumrosens doubt that the Federal Government, under either a Republican or Democratic administration is likely to use the study in ways they have suggested.

To address the needs of employers and workers, the Blumrosens have incorporated as EEO1.Inc., to make information available without identifying the names and addresses of any employer. The Study will be published on the web site, EEO1.com. This site will also include a program, the Discrimination Calculator, to enable workers and their representatives to find the likelihood of discrimination in labor markets, industries and occupations of interest to them without cost. Employers who are interested in comparative data and others who are entitled to it, may consult EEO1.com to find out how to obtain such data.

## G. RECOMMENDATIONS

1. **Employers** should demand access to information that will tell them where they stand compared to similar employers so that they can decide whether to take affirmative action; they should insist that they be free to take such action whenever the statistics warrant it. Industries that exhibit serious discrimination should establish programs to assist their members whose employment practices tarnish the industry reputation.
  2. **The Federal Government** should provide statistical information to employers so that they will know where they stand; adopt a five year enforcement program based
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on the statistical analysis and incorporate state and local government efforts, focusing on the 40 and 206 industries identified in the Study, and seeking increased employment, leaving litigation over damages to the private bar. They should also extend the reporting requirement to all establishments with 50 or more employees.

3. **Congress** should mandate these federal programs, and provide additional funding to proceed against the 206 industries, and extend the reporting requirements to identify the age of employees, to facilitate enforcement of the age discrimination act.
  4. **The Federal Courts** should recognize the prevalence of intentional job discrimination in constitutional and statutory decisions on affirmative action; reconsider the assumption that employers are likely to adopt rigid programs without individualized proof that such was the case and recognize that intentional discrimination appears to reflect the unwillingness of roughly one third of establishments to work with people who are not "White."
  5. **State and Local Civil Rights Agencies** should secure EEO-1 data, urge interested groups to examine this study and initiate actions in their state based on the information. In addition, they should cooperate with the federal and other state agencies in enforcement programs; support affirmative action where statistics justify it, and encourage state and federal legislative leaders to address the prevalence of intentional discrimination as identified in this study.
  6. **Civil Rights and Women's organizations** should use this study in public discussions of discrimination; cooperate with each other in legislative and other public affairs because they have a mutual interest in eliminating job discrimination, particularly in the 40 industries that discriminate against all the groups they represent; evaluate government programs more by how many jobs are obtained and less by how many cases are processed, or how many dollars individual workers obtain; demand a focused set of governmental programs to address the 40/206 industries, and support expansion of the EEO-1 reports to the age act and all establishments of 50 or more workers.
  7. **Lawyers for both workers and employers** should develop a fair arbitration system for dealing with individual discrimination cases, so that resources can be focused on patterns or practices of discrimination.
  8. **Universities, colleges, high schools and research oriented institutions** should make use of this study in research activities, and should integrate this study into the work of other disciplines concerned with labor relations and human behavior.
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## §18. ENDNOTES

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1. Sec. 703(m) of Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991.
  2. The total for all minorities will be smaller than the sum of individual minority groups because of the differences in the pools of workers being considered.
  3. Alfred W. Blumrosen, Ruth G. Blumrosen, *THE REALITY OF INTENTIONAL JOB DISCRIMINATION IN METROPOLITAN AMERICA* (2001).
  4. See National Report, Part I, Chapters 2-8 and Appendix C (Technical Appendix) for more technical details.
  5. See National Report, Part I, Chapters 5-7.
  6. Sec. 703 (m) of Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991.
  7. *Teamsters v. United States*, 431 US 324, n.15 (1977).
  8. *Teamsters, supra, Hazelwood School District v. United States*, 433 US 299 (1977).
  9. *Teamsters*, 431 US 324, n. 20.
  10. Statistics from Census Bureau. The statistics disregard individual reports that entered more than one race/ethnic category or another race. The average state had fewer than 2% of such reports.
  11. The extrapolation from Census figures used in Part I of the National Report is not available on a state-by-state basis. See Part I, National Report, Chapter 4.
  12. *Watson v. Fort Worth Bank And Trust*, 487 US 977 (1988). Alfred W. Blumrosen, *The Legacy of Griggs: Social Progress and Subjective Judgments*, 63 Chicago Kent L. Rev. 1 (1987).
  13. *EEOC v. Shell Oil Company*, 466 US 54, 71 (1984).
  14. See Table 1.
  15. Details in Appendix A.
  16. *Discrimination* is defined as 1.65 standard deviations or more below the average utilization in the same MSA, SIC and Occupational Category. *Comparisons* are between establishments in same MSA and SIC and Occupational Category. *Affected Workers* represents the difference between the actual utilization by a discriminating establishment that is at least two standard deviations below the average and the utilization that would exist if the discriminating establishment employed at the average in the same MSA, SIC and occupational category. Each table is arranged by the number of affected workers. The industries are titled so that the SIC numbers, which appear in the Appendix to the National Report, can be consulted.
  17. Detailed analysis of these Conclusions and Recommendations is contained in Part I of the National Report, Chapter 17.
  18. The OFCCP is a unit of the Department of Labor. Employers file their forms with the Joint Reporting Committee created by EEOC and OFCCP to simplify the reporting process.
  19. Sec. 703 (m) of Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991.
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