

**Racial Preferences:
The Treatment of White and African American Job Applicants
by Temporary Employment Agencies in California**

by

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Executive Summary

The Discrimination Research Center (DRC) has found that temporary employment agencies in California show significant preference for white job applicants over African American applicants. In 64 undercover tests conducted between May and November, 2003, temporary agencies preferred white applicants 4-1 over African Americans in Los Angeles and more than 2-1 in San Francisco.

DRC sent pairs of specially trained job applicants to temporary employment agencies to determine whether one applicant was favored over the other in obtaining an interview, obtaining a job offer, rates of pay, length of job assignment, and other indicators. The results are strikingly similar to DRC's previous 1999 study (conducted in San Francisco only) which showed that whites were preferred by more than 3-1.

Temporary employment is a major gateway to permanent jobs. In the present economy, over 90% of companies utilize temporary or contract workers. Thus, barriers for African American workers in this industry have a pervasive impact.

DRC calls upon industry leaders and individual temporary employment agencies to address these troubling findings by conducting self-assessments and public audits, educating company personnel about practices that may favor one group over another, and eliminating such practices.

Discrimination Research Center

The Discrimination Research Center (DRC) was launched in 1998 by The Impact Fund in order to conduct objective social science research to determine the levels of employment and other discrimination experienced by women, people of color, newcomers and others in a changing and increasingly diverse society. The DRC was the first employment testing program on the West Coast and now uses multiple methods and strategies to measure differences in treatment associated with race, gender, national origin and other factors. The research described in this report was funded by the Ford Foundation, the San Francisco Foundation, the Van Loben Sels Foundation, The Fight Back! Fund of the Vanguard Public Foundation, and the Evelyn and Walter Haas, Jr. Fund.

The Temporary Employment Industry

DRC began its study and analysis of the temporary employment industry in the late 1990s. The importance of this industry to the national economy as a whole and to women and minorities in particular continues to grow. Temporary employment agencies serve fully 90% of America's employers. Nationally, there are 7,000 temporary employment agencies operating approximately 20,000 offices. Every day, according to industry data, over two million individuals are working in temporary or contract positions.

Temporary employment agencies are increasingly being utilized as out-sourced human resources departments by large companies, screening and placing job applicants and serving as a gateway to stable, well-paying jobs. Today, as California and the nation begin to emerge from a weak economy, temporary employment is one of the leading job growth areas with an estimated 150,000 new positions filled since April, 2003. Women and African Americans tend to be more represented in the temporary employment labor pool than they are in permanent positions. Nonetheless, DRC has found, both in its earlier 1999 study and in this report, that temporary employment industry practices can be a barrier and not a bridge for African American job applicants.

The temporary employment agencies that DRC selected for testing come from the leaders in the industry. By selecting some of the largest agencies, and those who have offices in both San Francisco and Los Angeles, DRC is able to mirror the temporary job seeking paths of African Americans and whites in both cities. In short, the agencies where DRC testers went are the same places that a recently laid off permanent employee, a single mother transferring from welfare to work, or a newcomer to California would go to seek temporary employment. These temporary agencies are Fortune 500 and Fortune 1000 companies with hundreds or thousands of offices around the country and globally. They employ hundreds of thousands of temporary employees and have operated for decades. Their influence and their practices define the temporary employment industry. Thus, the results we uncovered are typical of the situations African American and white temporary employment applicants see on a day to day basis.

Methodology

The matched-pair testing methodology, also known as ‘testing’ or ‘auditing’, is a social science research technique which compares the treatment of candidates who present equal qualifications and similar personal traits to the same employer, but who differ in a single demographic characteristic (e.g., race, gender, national origin, etc.). The candidates, called ‘testers,’ are carefully screened to match each other’s personal characteristics and are trained to mirror each other’s interviewing techniques and to objectively observe employer behavior. Each tester keeps detailed reports of his or her experiences during the job application process, which can later be compared for any differences in treatment or outcome. Testing is commonly used by fair housing organizations to uncover housing discrimination, and has been endorsed by the United States Supreme Court, the Equal Employment Opportunity Commission¹, and other governmental agencies for the purposes of identifying acts of discrimination. It is built upon the premise that differences in treatment between equally qualified testers who interact similarly with the interviewer strongly suggest employer bias or discrimination.

Blatant discrimination is rarely seen in testing; most discrimination is subtle and covert, and perhaps not even conscious on the part of the employer. The comparison between the two testers is crucial because it allows us to see whether there are any differences in the way in which like job applicants are treated. This differential treatment frequently manifests itself in preferences shown toward one of the candidates,

¹ In 1992, for example, the Equal Employment Opportunity Commission began to allow discrimination charges to be filed against an employer on the basis of data collected by testers.

preferences which cannot be explained by superior qualifications. Preferential treatment can be expressed in a variety of ways:

- One applicant is offered a job while her partner tester is not;
- One applicant is asked to come in for an interview while her partner tester is not;
- One applicant is offered a job with a higher salary or longer duration;
- One applicant is offered a job more quickly than her partner tester;
- One applicant does not have to follow the same application procedures as her partner tester;
- One applicant is offered coaching on how to present herself or improve her resume that is not afforded to the other tester.

This treatment may not always be the result of negative behavior directed toward the other candidate, but it is still discriminatory as it unfairly favors one candidate over the other and predisposes that candidate to obtain a better job.

DRC selects matched pairs of testers after an intensive interviewing process which can take between three and four months. In order to select the two tester teams in San Francisco, DRC interviewed over 150 applicants. Individual testers are matched on the basis of physical presentation (e.g., height, weight, posture, mannerisms, eye contact, facial features, attractiveness, etc.) and personality (e.g., extroversion, friendliness, articulation, energy level, speech patterns, emotional expression, etc.). In addition, the testers must display punctuality, professionalism, and a high degree of observational skills.

Once a pair has been found, they participate in a training session that lasts three to four days. This training focuses on three main topics. First, new resumes are created for the testers to ensure that the testers are comparably qualified and that each tester appears to be an ideal candidate for the jobs for which they will be applying. The minority tester is given stronger credentials (e.g., several more months of relevant job experience) than the other tester so as to eliminate any doubt about her superior qualifications for the jobs.

Second, the testers practice interviewing with their new biographies. They are provided information regarding the industry they will be testing and advised on how to respond appropriately to typical interview questions. The testers are also told to observe the mannerisms and interviewing style of their partner tester and to mimic each other's style as much as possible so that they become even more similar. If necessary, they learn and practice skills specific to the industry they will be testing. If one tester performs better than the other, that tester is instructed to perform at a lower level so that the testers' skill levels are evenly matched.

Finally, the testers practice writing reports of their interviewing experiences. They are provided information about the details to which they need to pay particular attention, such as the length of the interview, the race of employees in the office, and the specific elements of any job offers. The testers are instructed to be objective and concrete in their descriptions and to provide factual information without drawing any conclusions or making interpretations about employer behavior themselves.

Once training is complete, testing can begin. The testers have no further contact with each other once testing has started, so that they do not influence each other's

performance or their reports about their experiences. All of their contacts with the employers are planned by the DRC Testing Coordinator. Each employer is first contacted by both testers on the same day. Subsequent steps in the application process (e.g., follow up telephone calls, emailing of the applicant’s resume, in-person interview) are scheduled to be as close as possible to each other—ideally within a few hours—to ensure that both testers are subject to the same circumstances and environment and have the same pool of jobs available to them. The African American tester always precedes her white counterpart so as to avoid any false preference for the white tester based upon order of arrival. The testers report back to the Coordinator after each contact and write about that contact in their narrative. Once a job offer has been made to a tester, she turns it down within a few hours’ time so as to minimize any inconvenience on the part of the employer.

All six of the two-person tester teams hired in both 1999 and 2003 were comprised of one white female and one African American female, with the exception of one all-male team in 1999. DRC tested a total of 35 temporary employment agencies located in either San Francisco or Los Angeles, or in both cities. In 1999, the testers visited 17 agency offices in San Francisco. In 2003, they visited 22 agency offices in San Francisco and 23 agency offices in Los Angeles. Each agency in San Francisco was tested two or three times, while the agencies in Los Angeles were tested once.

Altogether, DRC conducted a total of 109 tests (see Table 1).

<u>Year</u>	<u>Location</u>		<u>Total</u>
	<u>San Francisco</u>	<u>Los Angeles</u>	
1999	45	0	45
2003	41	23	64
<u>Total</u>	86	23	109

Our research approach allowed us to achieve multiple objectives. We were able to obtain a representative sample of temporary employment agencies in San Francisco for each year, make comparisons regarding the treatment of the testers at each agency, and draw meaningful conclusions about the agencies' actions. At the same time, we were able to make solid comparisons between temporary employment agencies as a whole in San Francisco in 1999 and 2003 as well as to discern any changes within the sixteen companies we studied in both years. In addition, our expanded testing efforts this year enabled us to compare, for the first time, San Francisco and Los Angeles temporary employment agency practices and to make similar assessments within the Los Angeles area itself. In order to isolate differences between the two regions, we tested eleven agencies that had local offices in both places. These agencies constituted approximately half of the companies we tested in 2003.

Results

Our findings demonstrate a significant level of preference for white job applicants over African Americans at temporary employment agencies in California. Although the African American testers had slightly better job qualifications than their matched white tester counterparts, the white testers were treated more favorably three times as often as the African American testers (see Chart 1).

Specifically, we found that the white testers were treated preferentially over their African American counterparts in 47% of the tests conducted across the state in 2003. In only 16% of the tests was the African American applicant preferred. In 27% of the tests,

Chart 1. Preferential Treatment of White and African American Applicants by Temporary Employment Agencies in San Francisco and Los Angeles, 2003

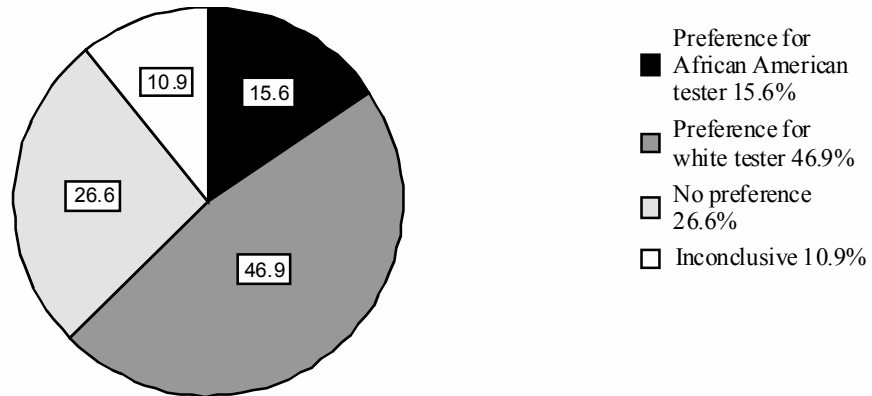
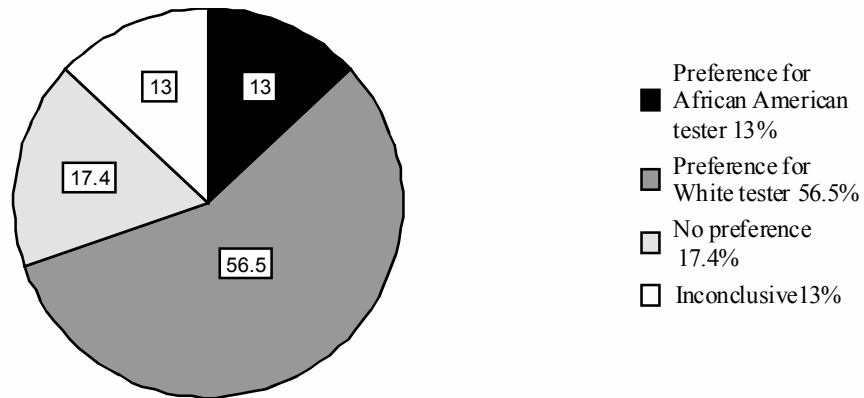


Chart 2. Preferential Treatment of White and African American Applicants by Temporary Employment Agencies in Los Angeles, 2003



the two job applicants were treated equally. The remaining 11% of the tests were incomplete or inconclusive. Thus, in only one of every six tests was the more qualified African American preferred over the less qualified white applicant.

By region, more preference for white applicants was shown in 2003 in Los Angeles than in San Francisco. In Los Angeles, white testers were treated preferentially 57% of the time, four times as often as African American testers were preferred (13% ; see Chart 2). In San Francisco, white applicants were preferred in 42% of the tests or more than twice as often as African American applicants, who were preferred in just 17% of the tests (see Chart 3). The 2003 San Francisco results represent only a modest

Chart 3. Preferential Treatment of White and African American Applicants by Temporary Employment Agencies in San Francisco, 2003

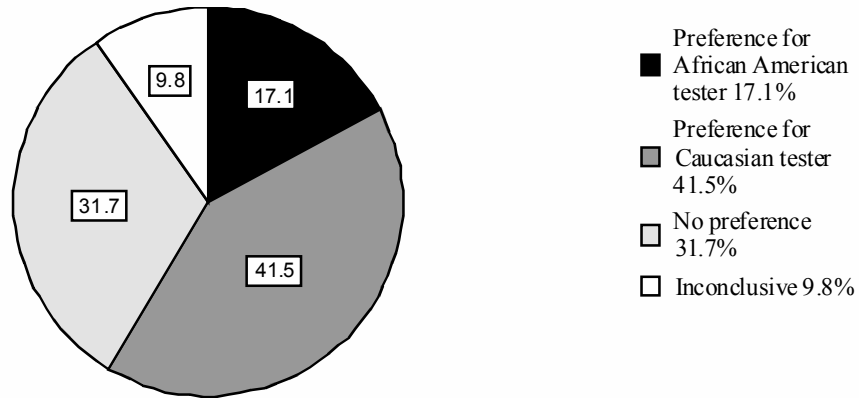
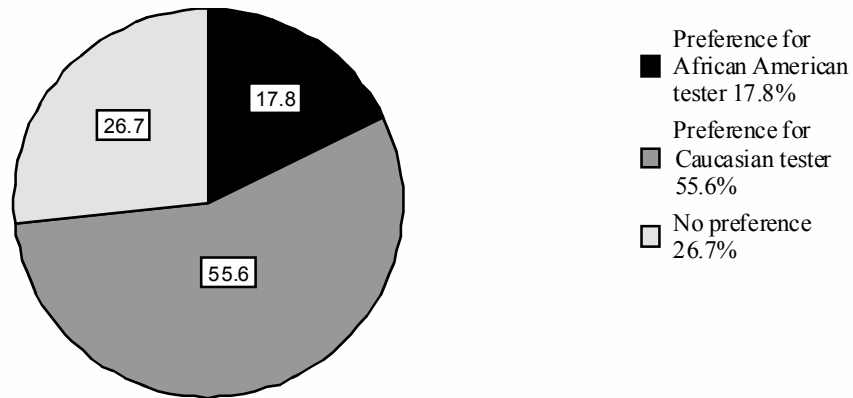


Chart 4. Preferential Treatment of White and African American Applicants by Temporary Employment Agencies in San Francisco, 1999



improvement since 1999, when white applicants were preferred 56% of the time and African American applicants were preferred 18% of the time (see Chart 4).

Eleven percent of the tests conducted in 2003 were considered to be inconclusive. Tests were considered inconclusive for one of two reasons: either neither tester was interviewed and the test was therefore unable to take place, or the circumstances surrounding each tester's experience with the agency were so incomparable that a determination of differential treatment could not be made.

Preferential treatment of white job applicants was not limited to a single, isolated test at any particular agency. Six of the agencies in San Francisco which consistently

preferred the white tester in 1999 continued to do so in 2003. In 2003, three agencies with local branches in both San Francisco and Los Angeles preferred the white candidate 100% of the time. DRC found two agencies whose practices in 1999 and 2003, in Los Angeles and in San Francisco, resulted in a preference for the white applicant 100% of the time. Four additional companies treated the white applicant preferentially between 67% and 80% of the time.

The preferences shown toward the white testers were manifested in a variety of ways. In some cases, preferential treatment was observed in a better outcome of the job application process: being offered an available position while her counterpart was not, being offered a longer-term or higher-paying position, or receiving a job offer more quickly. For example, white testers were offered a position 77% of the time, while the African American testers were offered a position 67% of the time. Additionally, white testers were offered long-term and permanent positions twice as often as were their African American counterparts.

In a number of cases, the testers were treated differently even when one of them was never seen by the employer. Since the white tester experienced a more favorable outcome than her African American counterpart in 92% of these cases, it is possible that the employers inferred the racial identity of the testers on the basis of name (e.g., Shawnette vs. Julia, Tamara vs. Emma) or accent. In nine cases, the African American tester was never interviewed, while her white partner was interviewed and offered a position. In four cases, the white tester was never interviewed in person by the agency, and yet was still offered a position in three of those cases on the basis of a phone

interview alone, while the African American tester was also offered a position, but only after being interviewed and tested in person.

In other instances, the preference for the white tester was more subtly expressed in the behavior of recruiters who offered greater encouragement to the white tester than to her counterpart, by coaching her on how to present herself, advising her on how she might improve her resume, encouraging her to keep calling back in order to arrange an interview, or telling her about a greater variety of positions. In a few cases, the African American candidate was steered toward positions offering fewer opportunities for advancement, was told to be prepared for inquiries into her credit history or criminal record, or was asked to fill out a survey which helped the agency to monitor how many of their employees were welfare recipients.

Case studies documenting preferential treatment

Three case studies are illustrative of the preferential treatment for the white tester that DRC found to occur in almost half of the tests.

Case Study #1: The white tester is offered a more highly paid position sooner than the African American tester, who is offered a less well paid position.

Both testers were interviewed by the same recruiter at the agency. When the African American tester was interviewed, she was told that she did not need to take any of the computer skills tests because she was being placed in the vast pool of clerical job applicants. When the white tester was interviewed the following

morning, the recruiter gave her computer skills tests in Word and Excel and assured the tester that she did not place people in jobs for less than \$12 per hour. On the day of her interview, the white tester was informed of a \$13 per hour job doing relevance testing for an internet search engine company for six weeks, and was told that the recruiter would mark her down as a candidate. She was offered this position eight days later. The African American tester was not offered this position, although she had called the agency on the same day that the white tester received her message regarding the assignment to let them know that she was available to work. Two weeks later, the African American tester was offered a temporary position with the possibility of permanent hire. This position paid 15% less (\$11 per hour) and involved distributing mail and providing general office support.

Case Study #2: The white tester is offered a position without being interviewed.

Both testers emailed their resumes to the agency on the same day and received calls from the agency on the same day. The white tester was offered a position one day later without ever undergoing an in-person interview or taking any tests. By contrast, the African American tester underwent an interview and was asked to take a variety of computer skills tests. After more than a week, the African American tester was offered two positions. Although both testers were ultimately offered good positions, the agency was willing to bend its rules for the white tester in order to secure her a job not made available to the African American tester.

Case Study #3: The African American tester is never interviewed.

The testers emailed their resumes to the same agency on the same day. The African American tester called the agency on four separate occasions to follow up and try to schedule an interview. She was repeatedly told that a recruiter would contact her if her qualifications fit any of the positions they were staffing, and was finally told that she had not been contacted because she was not qualified for any of their assignments. The white tester was called the same day that her resume was received and was asked to come in for an interview. She was later offered a permanent position as a purchasing assistant for a cruise line which paid over \$35,000 per year and included an annual free cruise.

The preferences observed in this study are consistent over time and are prevalent in both Los Angeles and San Francisco. They indicate the presence of a racial bias pervasive throughout the temporary employment industry which consistently favors white job applicants over African American job applicants. While this bias may frequently be expressed subtly, and may not even be purposeful on the part of the recruiters, it can nevertheless lead to profound economic consequences for real-life job applicants. African American applicants are placed at a clear disadvantage when they are unable to get a position, or when they are presented with positions which will earn less than positions offered to white applicants. Moreover, any differences in pay will be compounded over time, as future pay rates build on past wages. Additionally, because African American applicants do not receive as much encouragement from recruiters as

white applicants, they may be less persistent in pursuing a position and hence less successful in securing one.

Legal Protections against Discrimination in Temporary Employment

All individuals are protected against discrimination in temporary employment on account of race, gender, national origin and related characteristics. In policy guidance adopted by the Equal Employment Opportunity Commission in 1997, the federal anti-discrimination agency made clear that staffing firms must hire and make job assignments in a non-discriminatory manner. Not only is the staffing firm obligated to conduct its own hiring and referral practices in a non-discriminatory manner, it must also take immediate and appropriate corrective action if it learns that the hiring client has discriminated against one of the staffing firm's employees.

A temporary employment agency may not argue in its defense that it was complying with the request of its client employer to illegally prefer or deny job applicants based upon a prohibited demographic factor. Furthermore, according to the EEOC, the temporary hiring agency is liable if it administers on behalf of its client a test or other selection requirement that has an adverse impact on a protected class and is not job-related for the position in question and consistent with business necessity. For more information, see, "Enforcement Guidance: Application of Equal Employment Opportunity Laws to Contingent Workers Placed by Temporary Employment Agencies and Other Staffing Firms", EEOC Notice 915.002, 12/30/97. California state law

prohibitions against employment discrimination also apply to temporary employment agencies.

Policy Recommendations

DRC recommends that the staffing industry in California seriously address this report's findings and explore measures that its members can take to address both the perception and reality of racial preference in the industry. California Staffing Professionals and the American Staffing Association are membership organizations that represent many sectors and emphasize advancing professionalism and ethics within the staffing industry, including temporary employment agencies.

Specifically, these industry leaders should:

- Disseminate and discuss the DRC report at chapter meetings across the state;
- Ascertain whether member practices are susceptible to variances in providing services on the basis of race or any other factors;
- Develop model practices that will eliminate racial preferences in consumer services; and
- Train industry members to understand state and federal legal requirements against employment discrimination, including EEOC Enforcement Guidance Notice 915.002 applying equal employment opportunity laws to contingent workers placed by temporary staffing agencies.

Temporary employment agencies should:

- Provide written information on employment discrimination protections to individuals who use temporary employment services and post such information on company websites;
- Maintain accurate records of services provided to individuals utilizing their services in order to self-evaluate and prevent hidden or unintentional granting of preferences based upon race or other prohibited factors;
- Remind employer clients about temporary staffing agencies' and employers' liability in discrimination cases where the staffing agency is asked to carry out an employer's discriminatory hiring request; and
- Conduct periodic audits of their hiring practices.

Civil rights law enforcement agencies should:

- Publicize existing legal prohibitions and remedies involving employment discrimination and temporary employment; and
- Measure the extent to which industry practices produce preferences in areas of California outside of Los Angeles and San Francisco.

Civil rights and community leaders, especially, those representing African Americans and women, two demographic groups more often using temporary employment agency services, should:

- Educate community members to understand their rights under state and federal law to be protected against preferential treatment; and
- Encourage community members to report differences in treatment to temporary employment agencies and to the appropriate civil rights law enforcement agency.

Conclusion

DRC's examination of the temporary employment industry in 1999 and 2003 has discovered significant preferential treatment for white job applicants over African American job applicants. The existence of such strong evidence of preference for white applicants where virtually all other factors are constant indicates even greater potential for preference in everyday situations where applicant qualifications are not systematically controlled. The size and status of the temporary employment agencies we have selected demonstrate that this is an industry-wide problem and calls for remedial action. In addition, DRC will continue to examine the industry on an even larger scale and plans to present more comprehensive and different types of analyses in 2004.