PUBLICCOMMENTREGULATORYREVIEW

From: <REDACTED>
To: <Public.Comments.RegulatoryReview@eeoc.gov>
Date: 5/22/2011 5:34 PM

As , I have been for many years trying to affirm my rights as a citizen and my wishes to be treated with parity to other <REDACTED>. I would like to say, in the state of Oregon, they do not follow any procedural standards, and my Security Manager says the Policies and Procedures, well they aren't rules, they are just guidelines that a manager may chose to follow or go any other rout. If this is how she views them, it's no wonder the <REDACTED> is a mess.
I have tried every thing I can to just be treated reasonably. Nothing has worked, some how, I'm always the one who's wrong, and I get into trouble for asking. Is this fair? Is this the way it's suppose to run? How do I get help? Can some one help me in any way? Or is there no equity for some of us?
Thank you for listening, <REDACTED>

PUBLICCOMMENTREGULATORYREVIEW -Question

From: "Herman, Andrew" <REDACTED>
To: "Public.Comments.RegulatoryReview@eeoc.gov" <Public.Comments.RegulatoryReview@eeoc.gov>
Date: 5/27/2011 10:54 AM
Subject: Question

To Whom It May Concern,
Where can the public comments to the Preliminary Plan to Retrospective Analysis of Existing Rules be found? Or how can they be obtained?

Regards,
Andrew Herman

Andrew Herman
Associate
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Bio | VCard | Email | www.winston.com
*Not admitted to practice in NY.*

WINSTON & STRAWN LLP

PUBLICCOMMENTREGULATORYREVIEW -eeoc regulations

From: <REDACTED>
To: <Public.Comments.RegulatoryReview@eeoc.gov>
Date: 5/27/2011 5:16 PM
Subject: eeoc regulations

I reported my supervisor for hostile work environment on behalf of a female coworker.
The company helped her get the job she wanted with another division in Florida and moved her from Illinois. When I complained to the EEOC about how I was being treated by my supervisor and the company's HR, the interviewer told me that I was not covered under the EEOC's "no retaliation" policy. If I had known this, I would not have reported the incident to the company's HR.

Either the interviewer didn't think I had good evidence and was trying to get me out our their office or the EEOC unofficial policy is to not protect dissenters who report for protected classes of people but to only protect protected classes of people who are mistreated because of their class who report for themselves.

The EEOC website should be changed and the no retaliation clause for witnesses and whistleblowers deleted, even if this requires a change to EEOC law. The company appears to know what the EEOC protects and does not protect and acts accordingly for their own interests. The EEOC interviewer told me that emotional abuse is not actionable. I know there is not much chance to prove emotional abuse unless people are under oath and tell the truth. My life at work would have been helped if the EEOC would have mediated with the company.

PUBLICCOMMENTREGULATORYREVIEW

From: Kimberly Williams <REDACTED>
To: <public.comments.regulatoryreview@eeoc.gov>
Date: 5/30/2011 6:35 PM

To Whom It May Concern,

Recently, I wrote a research paper on the reason's that people may be screened out by an employer. What I discovered was that a large majority of the employer's have mainstreamed back ground checks as apart of the screening process, and employer's are not required to tell applicants why their application was rejected. I don't have an issue with my background, but I am in a group that has been identified as protected because of my age. I would really like to know why my application was rejected, not only would it give me a chance to target skills, but I think it would increase the thought behind the application rejection. No one is in the room when a job application is being reviewed, so one never know's if employer's are practicing age discrimination.

Another concern I have is the invasion of privacy issue, especially when employer's do internet searches on social net-working sites, this should be prohibited.

One last point, background checks do serve their purpose but the over exposure is denying people opportunity to work and be able to meet their needs. I would like to know how the government is going to address this problem of people being unemployable because of your history that the govenrment is permitting to be shared with anyone who asks.

Thank you,
Kim Williams

PUBLICCOMMENTREGULATORYREVIEW -RE: Days to file

From: "Cindy" <REDACTED>
To: <Public.Comments.RegulatoryReview@eeoc.gov>
Date: 6/2/2011 6:13 PM
Subject: RE: Days to file

If a person is fired due to their disability and their disability happens to be a mental illness disorder, how is it possible for a person experiencing an episode to be able to file in a certain time period. I had a terrible time trying to get a complaint written and I was able to hire an attorney. But the attorney didn't understand that I was experiencing problems thus it was one more layer of delay in an already extremely complex situation.

From: <REDACTED>
To: <Public.Comments.RegulatoryReview@eeoc.gov>
Date: 6/7/2011 6:07 AM
Subject: Public comment on significant EEOC regulations under Executive Order (EO) 13563

To whom it may concern:

My recent experience with the EEOC has demonstrated to me that many existing corporations have discovered and exploit loopholes in Equal Opportunity regulations. Management of the company that discriminated against me was even boastful of it.

In my case <REDACTED>, I was demoted per my change in assignment and responsibilities after being diagnosed with <REDACTED>
was enough to cause the management to "risk manage" me out of my role.

When I was demoted, they were careful not to change my title or compensation. In fact, they were oddly explicit during the meetings in which I was demoted to carefully tell me that I would keep my title and salary. Of course, only an extremely naive company would change the title or give a salary reduction after an "FLMA protected" surgery. They did, however, significantly change my duties and responsibilities, effectively giving me a major demotion. When the EEOC investigated my case, they only confirmed that the company did not change my title or salary, but gave no consideration to my job role. They did not even contact any member of the team I was on to verify any statements.

The VP of the company previously boasted about this tactic as being one that evades any "messy HR stuff." He described that once the person is demoted in terms of their assignments and duties (but not title), he could give them a poor performance review for not meeting the duties and responsibilities of the title. Of course, they had those duties and responsibilities taken away, so they could not possibly perform them. At that point, the employee can be put on an impossible "performance improvement plan" and be fired for cause. At the time, one of the employees being attacked this way was penalized for not having given enough talks. The title that everyone in the organization had included "training/speaking", but very few were actually assigned to do any speaking. He was singled out for it in this manner, whereas no other employee was penalized for it, making the entire review process subjective.

Because I was also on FMLA protected leave, I contacted the FMLA as well. The agent who took the case told me that companies have all shared this strategy with each other, and it's very common, especially now with a bad job market. She confirmed the above strategy and said that a lot of companies use the aforementioned tactic to evade the law and worse, that it works.

If the regulations are going to have any meaningful force, they cannot be subject to such a simplistic test that is so easily exploited. Titles have no legal meaning or force, and in some companies have virtually no meaning with regard to work assignments and expectations. In my former position, everyone in the department had one of two titles, but their actual job functions varied dramatically I would request that you consider this so that the EEOC may actually fulfill its duties against both naive and deceitful companies.

I believe that the EEOC is essentially ineffective against any company with a lawyer on staff, except perhaps in the most gross cases of discrimination.

<REDACTED>

From: <REDACTED>
To: <Public.Comments.RegulatoryReview@eeoc.gov>
Date: 6/9/2011 5:05 PM
Subject: CALL TO my Civil Rights, my Religion Rights

# EQUAL EMPLOYMENTOPPORTUNITYCOMMISSION IN WASHINGTON STATE

SUBJECT: DISCRIMINATION AT <REDACTED>

IN: 8/3/2010
Date: THURSDAY 9 JUN 2011

I am emotionally overwhelmed and I feel badly heart, I wonder if I have white skin, I am emotionally stressed and depressed due the way I get treat from them let times, we are only ((2 Muslim)) and I take that friendly talking with them, I feel there are no different between us from where you come from or what your back-round, talking to them I am a Muslim I am here to make a living and working with all kind people , I know they are lot kind people deference religion or color skin they work with(( <REDACTED>)) they do not have right to trite me base to my religion or color skin, <REDACTED> she is Manger when she say in my face about my Religion and the way we fast in Ramadan,(( she said if eat gum you going to hell, and is not the first time she remarked bad commit about my Religion and the manger <REDACTED> he know ,it happing inside the <REDACTED> office it is work place , he did not say anything to her.

THE EEOC they said we cannot do anything about your Charge ofDISCRIMINATION, I am emotionally overwhelmed and badly heart when I feel bad the EEOC they cannot help me, I will pray to my GOD everyone get his civil Rights and ((religion right)) and ((Race

right)) ((color skin right))in Washington State, I hope from the Washington state do something about ((Discrimination in the STATE WASHINGTON)) .

<REDACTED>

From: "H. H." <REDACTED>
To: <Public.Comments.RegulatoryReview@eeoc.gov>
Date: 6/12/2011 8:12 AM
Subject: Regulation for Age Discrimination

There should be a regulation in place for the auditing of hiring practices. Companies should be regularly audited to determine whom they are hiring and their age. If a company reports hiring 100 people in the past year and there was not a reasonable percentage (15 -20%) hired in the 50+ range that company was most likely practicing age discrimination. Only by auditing can laws be enforced. Companies will not do the right thing on their own. There is also age discrimination in the Federal government. I applied for a position at the FDA in MA. There were two positions open and I was extremely qualified. I had a phone interview and it seemed like I was actually being discouraged in my interest in the position. I did not get the position.

# Tri-County Independent Living Center, Inc.

680 E. Market Street, Suite 205
Akron, Ohio 44304·1640
(330) 762.0007· Voice (330) 762·7416· FAX l-800.750.0750 -Relay
Website: www.tcilc.org E-mail: tcilc@ohio.net


June 13, 2011

To: Public.Cornments.RegulatoryReview@eeoc.gov.

RE: Request for Public Comment on EEOC's Preliminary Plan for Retrospective Analysis of Significant Regulations

Specifically related to Titles I and V of the Americans with Disabilities Act, as amended

The Preliminary Plan's statement is bolded below. Our comments regarding that statement is indented directly beneath.

**"(2) The Commission's regulations on recordkeeping and reporting**

**Several civil rights organizations suggested that tbe Commission should issue new regulations in order to collect morc complete compensation data to improve efforts to remedy wage discrimination. Other commenters urged that more specific data be collected on the EEO-l survey, including disability data and more detailed race/ethnic data."**

> The Center agrees that more complete compensation data and more specific information regarding disability should be collected as long as specific diagnosis is not requested. Identifying disabilities by category such as physical, cognitive, mental/emotional, vision, hearing or multiple would help determine if people with certain categories of disability are more likely to experience discrimination while allowing more specific health information to remain private.
>
> Collecting and providing such information to the Rehabilitation Services Commissions and Centers for lndependent Living would aid these agencies in their advocacy efforts and with assisting people with disabilities regarding employment. These agencies assist the EEOC with their mission of promoting "equality of opportunity in the workplace" by encouraging people with disabilities who experience discrimination to file complaints.

Please feel free to contact me should you have any questions or concerns Our Center's business hours are Monday through Friday. from 8:00 AM until 4:30 PM Eastern Time. Our telephone number is 330-762-0007.

Sincerely,

Tami Gaugler
Housing Coordinator

SERVICES ADVOCACY SOCIAL CHANGE
Serving People With Disability -Summit, Stark, Portage Counties


Funding provided through the U.S. Department of Education, Ohio Statewide Independent Living Council, and the Ohio Rehabilitation Services Commission


Burton blatt institute Centers of innovation on disability

June 15, 2011

Ms. Justine Lisser
Ms. Christine Nazer
Equal Employment Opportunity Commission
131 M St. NE Washington, DC 20507

Via Email: Public.Comments.RegulatoryReview@eeoc.gov

RE: Preliminary Plan for Retrospective Review of Significant Regulations

Dear Ms. Lisser and Ms. Nazer:

Thank you for the opportunity to comment on the EEOC's Preliminary Plan for Retrospective Review of Significant Regulations.

The Burton Blatt Institute (BBI) is a research, education, and advocacy organization dedicated to advancing the civic, economic and social participation of people with disabilities worldwide. Our focus areas are employment, entrepreneurship, economic empowerment, civil rights and community participation. BBI has done extensive research, program development and education in the areas of disability-inclusive employer policies and culture, employer attitudes toward applicants and employees with disabilities, entrepreneurship for people with disabilities, vocational rehabilitation practices, assistive and accessible technology, and implementation of the Americans with Disabilities Act (ADA), and reasonable accommodations costs and benefits.

We agree with the regulations identified by the EEOC for retrospective review. In particular, review of the Federal Sector Equal Employment Opportunity Complaint Processing is very important as the federal government works to become a model employer of people with disabilities. Notably, the interaction between Sections 501, 504, and 508 of the Rehabilitation Act should be addressed. Section 508 provides rights for federal employees to accessible technology beyond the general "reasonable accommodation/reasonable modification" rights provided under Sections 501 and 504. As such, the complaint processing for Section 508 issues should be coordinated with, but should not necessarily be the same process as that provided under Sections 501 and 504.

Review of regulations and guidance about complaint processing and investigations of federal contractor compliance with Section 503 of the Rehabilitation Act and federal funding recipients' compliance with Section 504 of the Rehabilitation Act are also important. The Department of Labor Office of Federal Contract Compliance Programs has issued an ANPRM to make the disability-based affirmative action requirements of

Section 503 more substantive and this will impact complaint investigation under Section 503. In addition, the recent regulations implementing the ADA Amendments Act will impact Section 504 of the Rehabilitation Act and justify review of those regulations.

We would also encourage the EEOC to consider reviewing regulations and issuing guidance regarding emerging issues in disability employment law. For example, the Affordable Care Act would permit employers to reduce insurance premiums for employees by up to 20% if employees participate in employer-sponsored wellness programs. While incentives for engaging in healthy activities are well-intentioned, it is important that this new intersection of health care, insurance, and employment not be permitted to undermine the rights of employees with disabilities under the ADA, GINA, and other laws. Highly incentivized wellness programs raise a number of areas of concern. For example, medical questionnaires required for participation in an employer's wellness program potentially undermines an employee's right under the ADA not to be subject to medical inquiries or examinations. This is particularly concerning where participation in a wellness program is so substantially monetarily incentivized that an employee who does not participate (because of a desire not to inform her employer of her health conditions) is essentially punished for not participating and, therefore, participation (and revelation of health information) is not truly voluntary. Strong incentives also run the risk of punishing employees with disabilities who cannot participate or cannot succeed in a wellness program because of their disabilities. EEOC guidance on the legal limits on wellness programs would be helpful.

In addition, there is some confusion among providers of employment services specifically for individuals with disabilities, such as sheltered workshops, including those that receive state and federal contracts or other financial support, about their obligations under the ADA and Rehabilitation Act. EEOC guidance regarding the obligation of disability-specific employers to reasonably accommodate their employees, to integrate employees with disabilities with nondisabled employees and customers, and to provide equal wages would be useful.

Sincerely,
/s/

Peter Blanck, Chair
(315) 443-9703
pblanck@syr.edu

Michael Morris, Chief Executive Officer
(202) 296-2046
mmorris@ndi-inc.org

If you have questions, feel free to contact us (contact information below) or Eve Hill at (202) 296-2044.

From: lisa <REDACTED>
To: <Public.Comments.RegulatoryReview@eeoc.gov>
Date: 6/27/2011 9:20 PM
Subject: comment

June 27, 2011
My comment/suggestion for the EEOC of the future is to do more about warning the employer that retaliation will not be tolerated. A basic letter in the beginning of the Charge process is not a deterrant at all as employers have complete disregard for the law. I filed a Title VII charge in 4/08 and it took 3 years to get a Right to Sue Letter and in between I lost my job, my health, my home, my car, my quality of life among many other things because I filed a Charge and my employer retaliated. Now my case is in Federal Court which may be a lengthy process, embarrassing and intrusive. This is not what the charge process was meant to be like. An employer needs to be reminded numerous times throughout the complaint/investigation process that retaliation is not permitted and will have consequences, as most employers believee the EEOC is a joke, as in my case. If I had to do it all over again, I would most likely have not filed the charge and kept mum
just like many others before me, as losing everything for filing a charge was not worth it, so it seems.
<REDACTED>

From: ronnie clarke <REDACTED>
To: <Public.Comments.RegulatoryReview@eeoc.gov>
Date: 6/28/2011 6:34 PM
Subject: The "Right to Sue Notice"

Dear EEOC Commissioners:

I would request that a stern look and serious consideration be given to revamping the "Right To Sue" notice that is issued to the charging partying in the event that the EEOC doesn't decide to represent him/her. Since is often qouted that the EEOC represents a limited amout of persons due to the extreme amout of cases filed, what I've noticed to be the case is that once a charging party receives a "Right to Sue Notice" it sends a clear signal to most employers to continue their discriminatory ways with reckless abandon and without fear of any consequences of the EEOC's anti-discriminatory policies.

Case in point, what I have noticed to be the case is that a charging party will receive a "Right To Sue" notice that states, langauge not precise "After review of charge.....the EEOC could not find a violation... this does not mean the respondent's did not violate the EEOC's policies and you have the right to further pursue the matter within 90 days of receipt of this letter."

Many employers stop at the point where the letter states that the EEOC could not find any violation. The problem with inherently in that is the case investigator often does not state why a violation could not be found but yet a descrepency must have been noticed or the EEOC would have the dissmissed the charging parties initial complaint through the screening process.

As a further note, if an investigator has taken greater than 180 days to investigate a particular charge and the EEOC all claims are "thouroughly" investigated, then why not let the "Right To Sue" notice reflect that?

Respectfully Submitted

R. Clarke

**PUBLICCOMMENTREGULATORYREVIEW -Public Comments Regulatory Review (EEOC)**

**From:** "LaVerne" <REDACTED>
**To:** <Public.Comments.RegulatoryReview@eeoc.gov>
**Date:** 7/4/2011 8:39 AM
**Subject:** Public Comments Regulatory Review (EEOC)
**CC:** "LaVerne" <REDACTED>

Dear Sir or Madam:

Below you will find comments I submitted, in 2010, protesting certain changes EEOC was trying to make in the federal sector EEO regulations. The changes would have forced victims of discrimination to wait longer to get relief and also create a loophole to allow agencies to avoid having to provide relief if a complainant went into court. I am writing to request that my 2010 comments be considered during EEOC's Retrospective Review.

Thank you,

LaVerne B. Jones

**Comment on FR Doc # E9-30162**

**Document ID:** EEOC-2010-0001-0007**Document Type:** Public Submission This is comment on Proposed Rule: Federal Sector Equal Employment Opportunity

**Docket ID:**
EEOC-2010-0001
**RIN:**3046-AA73 **Topics:** *No Topics associated with this document*
Show Details

Dear Mr. Llewellyn: I am a retired federal employee. But I remain very interested in matters relating to discrimination in the federal government. During my years of federal employment, I had the opportunity to gain important insights into EEOC's role in the government as well as the EEO process itself. Early in my career, I served as an EEO Specialist. Eventually, I became involved in EEO issues as a Human Resource Specialist.

Although I believe EEOC could do a lot more to clarify the federal sector regulations, I would like to offer a comment, at this time, on the proposal regarding Section 1614.502(c). In Section 502(c), EEOC is allowing agencies to delay giving relief to a person who has been discriminated against, without considering the person's particular circumstances. This

could cause extreme hardship to an individual, especially since it already takes too long to get a favorable decision in the administrative process. I believe the deadline for providing relief to a discrimination victim should be based on how urgent the situation is. This means that sometimes relief should be provided immediately.

The explanation for changing Section 502(c) is not a good reason for prolonging the suffering of any discrimination victim. It almost sounds as if EEOC is trying to create a possible loophole for agencies that want to avoid having to correct their discriminatory behavior. The loophole is EEOC's willingness to protect them by saying that its relief orders have no effect, the minute a complainant goes into court. I don't think its proper for EEOC to align itself with discriminating agencies in this way.

Agencies should be required to provide a remedy for their discrimination if EEOC orders them to do so. If a problem arises due to a court action, agencies have lawyers who are perfectly capable of figuring out how to get whatever legal protection they think they need from EEOC or the court. It is not EEOC's role to automatically let these agencies off the hook by punishing a complainant for filing an action in court.

Sincerely,
LaVerne B. Jones

**Communications Workers of America**
AFL-CIO, CLC

501 Third Street, NW.
Washington, D.C. 20001-2797
202/434-1213 Fax: 202/434-1219

Mary K. O'Melveny
General Counsel

July 5,2011

**Re: Comments on EEOC's Preliminary Plan for Retrospective Analysis of Significant Regulations**

Gentlemen/women:

I am writing on behalf of the Communications Workers of America, AFL--CIO ("CWA"), in response to your agency's request for comments on the EEOC's Preliminary Plan for Retrospective Analysis of Significant Regulations, submitted in response to Executive Order 13563,76 Fed.Reg. 3821 (Jan. 21, 2011). The Executive Order directs federal agencies to propose a plan for the periodic review of agency regulatory directives to determine whether any significant regulations "should be modified, streamlined, expanded or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving regulatory objectives."

CWA is an international labor union representing over 700,000 workers in the United States, Canada and Puerto Rico who work in communications, media, airlines, manufacturing, public service and health care. CWA has worked closely with various offices of the EEOC to obtain and provide information to its represented workers about their rights and to assist in the enforcement of the laws enforced by the agency. CWA officers and staff have referred members to the EEOC to pursue discrimination claims and/or provided them with assistance in filing such claims. CW A has also participated as a party in litigation with the agency and filed charges with the agency to assert the rights of its members under various statutes, including Title VII of the Civil Rights Act and the Americans with Disabilities Act. CWA, like many unions, has been actively involved in supporting the creation and implementation of equal rights legislation, including The Americans with Disabilities Act and most recently, The Lilly Ledbetter Fair Pay Act of 2009. *See* American Rights at Work, Unions Making a Difference for Equality, http://www.americanrightsatwork.org/publications/issues/unions-making-a-difference-for-equality-20080825-640-37-37.html.

Regulatory guidance and technical enforcement assistance provided by the EEOC is crucial to an organization such as CWA which represents individuals covered by all of the laws within the agency's jurisdiction, many of whom do not have familiarity with their rights or even with the existence of or

scope of these laws. In addition, CWA is also an employer, with approximately 500 employees working in various positions and offices around the country. The regulatory process in place at the EEOC has also enabled CW A to effectively evaluate its legal obligations to its employees and to keep abreast of changes mandated by various court rulings and legislative developments. Finally, the EEOC's regulatory and policy process enables organizations such as CWA to argue at the bargaining table for broader employee benefits and working condition protections because the thoroughness of the agency's review of employer legal obligations affords substantial support for the adoption of creative workplace policies that advance the intent behind existing statutes.

The focus of the Executive Order and the EEOC's development of a responsive plan appear to be based on concerns that businesses burdened by excessive regulatory requirements will be less likely to contribute effectively to a robust economy. However, the EEOC's crucial law enforcement mission requires, in our view, that the Commission provide extensive assistance, guidance and direction to employers and to employees and applicants for employment that ensure that the full protections of these key statutes are broadly realized. Sadly, even though many of the laws enforced by the EEOC have been on the books for decades, discrimination remains a significant and growing reality in today's workplace. Thus, while the EEOC's Preliminary Plan for Retrospective Review appears to strike an appropriate balance between seemingly competing considerations -the need to ensure that regulations are timely issued and clearly drawn, the need for certainty in providing meaningful advice and assistance across the broad range of statutory obligations under the agency's jurisdiction and the agency's limited resources in the face of increasing charges and other evidence of discriminatory practices affecting a wide range of workers throughout the country -we urge the Commission to retain its commitment to a strong regulatory agenda to ensure that these crucial laws are aggressively enforced.

A strong regulatory agenda also increases the likelihood that employees and others protected by these vital laws have adequate notice of the laws that protect them. An increasing number of employees and job-seekers are simply unaware of their rights and are, as a result, often victimized by discriminatory hiring, compensation or promotion practices or by prohibited harassment at work. Too often, these individuals lack any meaningful ability to complain about such discrimination because they are afraid of losing their jobs. For example, a recent study of low wage workers who were paid less than the statutorily required minimum wage revealed that a significant portion of those surveyed were afraid to report even the most serious workplace safety violations and discriminatory practices because they feared loss of their jobs or other retaliatory treatment by employers. *See, e.g.,* Ruth Milkman, Ana Luz

Gonzalez, Victor Narro, Wage Theft and Workplace Violations in Los Angeles: The Failure of Employment and Labor Law for Low-Wage Workers (UCLA Inst. for Research on Labor and Employment 2010), pp.1-3. Also see Cynthia Eastlund, Rebuilding the Law of the Workplace in an Era of Self-Regulation, 105 Colum.L.Rev. 319 (2005).

When workers have union representation, avenues are available to assist individuals who experience discrimination on the job. Unions such as CWA rely upon EEOC's technical assistance and regulatory guidance in a variety of ways. Unions often play a key role in the resolution of workplace discrimination grievances. The grievance process established in collective bargaining agreements can provide a channel through which employees can address their problems without having to resort to more formal legal processes outside of the workplace and many union stewards and other representatives rely upon EEOC materials when attempting to assist workers in resolving such grievances. *See* Toke Aidt & Zafiris Tzannatos, *Unions and Collective Bargaining: Economic Effects in* a *Global Environment* 26 (2002); also *see* Ellen J. Dannin, "Contracting Mediation: The Impact of Different Statutory Regimes," *17 Hofstra Lab. & Emp. L.J.* 65, 81 (1999). Additionally, many unions also train stewards on the essential protections afforded by the laws enforced by EEOC, again relying on the agency's regulatory and technical assistance materials to do so.

Unions also benefit from the regulatory guidance and other information provided by EEOC in developing and implementing both non-discrimination provisions in collective bargaining agreements and other contractual provisions that carry out guarantees and benefits that promote the statutory goals of the laws enforced by the Commission. *See* Program on Employment and Disability, School of Industrial and Labor Relations -Extension Division, Cornell University, Brochure, The ADA and Collective Bargaining Issues (Susanne M. Bruyere ed.,) (2001). CWA, for example, publishes and distributes brochures and other materials and information to represented workers outlining their rights under the ADA as well as explaining the statutory protections against sexual harassment on the job. CWA also provides periodic training for staff outlining the various civil rights statutes that apply in the workplace.

The union's bargaining power in pursuing workplace benefits that provide employees with meaningful provisions to ensure accommodation or fairness in selection procedures, for example, is enhanced by the regulatory assistance and guidance provided by the Commission. And, the union's ability to assist workers whose disputes with the employer cannot be resolved through contractual processes is likewise enhanced when stewards and others have the benefit of regulatory assistance when helping an employee draft a

discrimination charge to be filed with the EEOC. In short, "the rights and regulations that make up employment law" are enhanced when they can be utilized within "a complimentary system of collective representation to back them up." Estlund, "Rebuilding the Law of the Workplace," 105 *Colum* L. *Rev.* at 402.

One of the many unfortunate consequences of the decline in the number of workers who have meaningful collective bargaining rights is the absence of a readily available resource for workers within the work site where discriminatory policies and practices can be safely called into question and where assistance can be provided to try to redress these policies and practices. Another is the loss of the more standardized and predictable wage and benefit policies that unionized workplaces often provide for similarly situated categories of workers as well as the guarantee of seniority systems that were designed to remove, or at least significantly reduce, potentially discriminatory subjective decision-making from decisions about pay, transfer, promotion and similar job guarantees. When such standardized compensation or other objective structures do not exist, pay disparities and other types of workplace discrimination increase, as evidenced by the recent increase in EEOC charges alleging violations of Title VII or Equal Pay Act guarantees of nondiscrimination in compensation. [1]

A strong EEOC regulatory agenda is also needed to address growing enforcement problems created by the nation's current economic difficulties. It is generally recognized that layoffs and downsizing are directly linked to an increase in the number of employment discrimination charges filed with the EEOC and other fair employment agencies. *See, e.g.,* Andrew Mcllvain, "Layoff Lawsuits," *Human Resources Executive Online* (Feb. 16, 2009).[2] This pattern has held true during the most recent economic recession. In September 2010, *The Wall Street Journal* reported that the EEOC received 47,000 discrimination claims during the first two quarters of the 2010 fiscal year. This is an eight percent increase from 2009. *See* Nathan Koppel, "Claims Alleging Job Bias Rise with Layoffs," *Wall St. J.* (Sept. 24, 2010).[3] Workers who can find

1 According to a January 2011 news release from the Bureau of Labor Statistics in the U.S. Department of Labor. full-time wage and salary workers who were union members averaged significantly higher wages than non-union workers in 2010. The union members had median weekly earnings of $917. while non-union workers had median weekly earnings of only $717. *See* Bureau of Labor Statistics. U.S. Department of Labor. Union Members -2010. Jan. 21. 2011. http://www.bls.gov/news.release/\1n1on2.t02.htm.

2 *See* http://www.hreonline.com/HRlD/story.jsp?storyld=174907673

*3 See* http://online.wsj.com/article/SB10001424052748704062804575510212682065740.html?mod=WSJ_WSJ_ US_News_5.

immediate employment elsewhere may not take the time to file charges, even when meritorious, but when workers cannot find replacement work they become more likely to pursue their claims. *Id.*[4]

These charge-filing statistics leave no doubt that discriminatory practices and policies remain a significant problem for employees and for job applicants in 2011. Effective regulatory oversight of employers to ensure that they are following the law is more crucial than ever in times of economic difficulty because of the pressure employees face to accept problematic and unlawful employment situations simply because they desperately need a job and/or are terrified of losing the job they have.

CWA agrees with the priorities identified by EEOC as a basis for retrospective analysis. CWA also agrees with the agency's identification of appropriate candidates for rule-making over the next two-year period, particularly those that would ensure that there is appropriate coordination between interested agencies on disability discrimination and overall EEO enforcement concerns. However, CWA urges the Commission to consider adding regulatory guidance during this period on several matters that are of heightened concern during these difficult economic times -discrimination against job-seekers based on credit reports, background checks and arrest/conviction records and discrimination based on employment status *(e.g.,* those who are not employed at the time of application). CWA commends the Commission on holding recent hearings to explore these issues and hopes that sufficient information has been assembled to enable the agency to issue strong regulatory rules and enforcement assistance on these key topics.

CWA also urges the Commission to take further regulatory action on the issue of leave as a reasonable accommodation -a subject addressed at the recent June 8, 2011 Commission meeting. While the agency's excellent existing regulatory and interpretative guidance on reasonable accommodation includes some discussion of leave issues, we agree with many who testified at the hearing that too many employers are still denying leave to employees with

[4] The EEOC's own statistics underscore this trend. In 2010, the Commission published data showing that the number of sex-, religion-and race-based discrimination claims have risen steadily since 2005. In the 2010 fiscal year alone, the EEOC received 35,890 race-based charges and 29,029 charges of sex discrimination. *See* U.S. Equal Employment Opportunities Commission, Sex-Based Charges FY 1997 -FY 2010, http://wwwl.eeoc.gov//eeoc/statistics/enforcement/sex.cfm?=1; *see also* U.S. Equal Employment Opportunities Commission, Race-Based Charges FY 1997 -FY 2010, http://wwwl.eeoc.gov//eeoc/statistics/enforcement/race.cfm?=1; *see also* U.S. Equal Employment Opportunities Commission, Religion-Based Charges FY 1997 -FY 2010, http://www1.eeoc.gov/ /eeoc/statistics/enforcement/religion.cfm?=1.

disabilities and/or applying no fault absence policies or unyielding limited leave policies to employees for whom additional leave would provide a reasonable accommodation protected by the ADA.

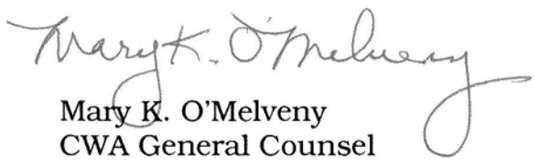
CWA represents employees who work for many employers around the country, both large and small, which have been unwilling to address these important issues in the bargaining or grievance context. These employers insist on disciplining employees using restrictive absence and limited leave policies even when individual employees are clearly entitled to additional leave as an ADA accommodation. Too often, these employees have no opportunity to discuss their need for accommodation with the employer and many are not sufficiently aware of their ADA-protected accommodation rights because employer leave policies make no mention of such rights.

CWA has filed at least one charge with EEOC relating to such discriminatory leave and absence policies which, along with others, led to an extensive investigation and possible relief for thousands of employees. We believe that the Commission's issuance of specific additional guidance in this area will eliminate significant and continuing employer reluctance to honor the ADA obligation to engage in the interactive process and provide reasonable accommodation to employees seeking added leave. We also believe that further guidance directing employers to provide adequate notice to employees about their right to reasonable accommodations under the ADA will assist employees in more effectively asserting their rights.

Additionally, CWA would like to commend the Commission on its comprehensive and extremely useful materials and regulations in the area of disability discrimination. We believe that the Commission has provided extremely valuable assistance in this area to employees, employers, labor organizations and other entities and has done so in a manner that incorporates legitimate concerns of various stakeholders while ensuring that the intent of the ADA is always honored and effectively explained. However, as noted above and at the recent Commission meeting, despite the existence of comprehensive and clear regulations and other technical assistance materials, we believe that there is still a significant lack of awareness of the rights and obligations set forth in the ADA that prevents effective enforcement of this statute. Since the budgetary limitations facing the Commission cannot necessarily support the extensive litigation program that might otherwise address these enforcement problems, we believe that additional regulatory oversight will aid significantly in doing so and will also allow more effective private enforcement in appropriate cases.

Thank you for the opportunity to comment on the EEOC's Preliminary Plan for Retrospective Analysis and for the excellent work of the Commission in providing the public with helpful, effective and necessary regulatory guidance to ensure that these critical civil rights statutes continue to be fully enforced.

Sincerely,



Mary K. O'Melveny
CWA General Counsel

*Law Offices of*
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February 10, 2010

Stephen Llewellyn, Executive Officer
Executive Secretariat
Equal Employment Opportunity Commission
131 M Street NE, Room 6NE03F
Washington, D.C. 20507

Re: RIN Number: 3046-AA73

Dear Mr. Llewellyn:

I am an attorney whose practice includes representing federal employees who have filed discrimination complaints against their agencies. Below you will find comments and concerns regarding proposed changes to part 1614 of EEOC's regulations.

SECTION 204 (Class Complaints)

The proposed changes to Section 204 are surprisingly modest when one considers the flawed nature of the class complaint process in general. EEOC suggests that, by making class merits decisions "final" and setting deadlines for deciding appeals, the class procedures will somehow be more effective. It has long been known, however, that more fundamental changes are needed to address legal and practical deficiencies in the class certification process. Given these deficiencies, EEOC's apparent decision to continue its "no opt out" and "abeyance" policies is a matter of deep concern.

SECTION 402(a) (Appeal Time Frames)

Proposed Section 402(a) does not specify a time frame for filing an appeal when an agency fails to take final action within the period required by the regulations. This should be addressed to minimize uncertainty and undue delay.

SECTION 409 (Terminating Appeals After Civil Action Filing)

EEOC is the entity charged, by statute, with eliminating employment discrimination within the executive branch. Given this fact, it is not appropriate that Section 409's "dismissal" provision be phrased in absolute and mandatory terms. It fosters the impression that the Commission's policy is to relinquish its federal sector mandate to the courts, which EEOC has no authority to do. The language in Section 409 should mirror EEOC's private sector regulations, where the Commission acknowledges its duty to process a claim of discrimination as long as processing will further the goals and purposes of the law. *See* 29 C.F.R. § 1601.28(a)(3).

SECTION 502(c) (Extending Time for Compliance with Remedial Orders)

The rationale for delaying relief to an adjudicated victim of discrimination is a matter of concern to the extent it suggests that relief need not be provided, at all, if any aspect of the victim's administrative complaint becomes part of a civil action. Deeming remedial orders non binding, once a civil action is filed, does not further the goals of the laws that EEOC enforces. It also undermines any action that might be filed after Section 503 procedures are exhausted.

SECTION 504 (Final Actions and Settlement Agreements)

Section 504 should be clarified to conform to relevant case law implicitly recogl1lzlIlg that agencies are bound by their final actions, even after a civil action is filed. *See e.g. Derose* v. *Rice*, 2006 WL367888 at * 4-7 (D.D.C. 2006) (noting supportive authorities), *affirmed* 236 Fed. Prox 635 (D.C. Cir. 2007). Also, the remedy provisions of Section 504 should acknowledge that there may be circumstances where the breach of a final action would justify an award of relief for loss and suffering. It should not be necessary for a complainant to commence another proceeding if an agency's breach is essentially a continuation of earlier discrimination.

Respectfully,

Ronald W. Belfon

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July 5, 2011

*Via Electronic Mail to Public.Comments.RegulatoryReview@EEOC.gov*

Equal Employment Opportunity Commission
131 M Street, N.E.
Washington, D.C. 20507

Re: Comments on Behalf of the IBEW re EEOC's Preliminary Plan for Retrospective Analysis of Significant Regulations

Dear Gentlemen/Women:

This firm serves as general counsel to the International Brotherhood of Electrical Workers, AFL-CIO, CLC ("IBEW"). The IBEW represents approximately 750,000 members in the United States and Canada employed in the broadcasting, construction, manufacturing, public service, railroad, telecommunications, and utility fields. The IBEW also is the employer of over 400 employees in its headquarters in Washington, D.C. as well as in offices throughout the United States. The IBEW, both as a union representative and as an employer, often is called upon to address employment issues involving the laws the EEOC is charged with enforcing, including Title VII, the ADA, and the ADEA.

The IBEW has participated as a stakeholder as the EEOC has explored employment discrimination issues and developed regulations and guidances. The IBEW has observed first-hand the EEOC's thoughtful and inclusive regulatory process under which it actively solicits input from both employer and employee stakeholders. The EEOC's foresightful and timely regulatory guidance concerning the laws it enforces has been critical to the IBEW as a union representative and as an employer as it has sought to ensure that workplaces are free from discrimination. The IBEW therefore urges the EEOC to continue its proactive and inclusive process and continue to issue guidances that address developing issues under the anti-discrimination laws it enforces.

The IBEW has reviewed the EEOC's preliminary plan and believes it strikes the right balance between costs and benefits. As to the EEOC's initial list of candidate rules for review over the next two years, the IBEW urges the EEOC to add to the list two additional items: (1) discrimination against applicants based on credit reports, background checks, arrest or conviction records, and employment status and (2) leave as a reasonable accommodation under the ADA.

Thank you for your consideration of the IBEW's comments.

Sincerely,
Sherman, Dunn, Cohen, Leifer & Yellig, P.C.

By:
Sue D. Gunter

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July 6,2011

Mailed electronically to:

Stephen Llewellyn, Executive Officer
Executive Secretariat
U.S. Equal Employment Opportunity Commission 131 M Street, NE Washington, DC 20507

Re: Comments on Preliminary Plan for Retrospective Analysis of Existing Rules

Dear Mr. Llewellyn:

On behalf of our members and all Americans age 50 and older, AARP appreciates the opportunity to submit comments on the Commission's Preliminary Plan for Retrospective Analysis of Existing Rules. As AARP stated in its March 22, 2011 comments on the Commission's proposed Plan for Retrospective Analysis of Significant Regulations, the success or failure of the civil rights laws depends in significant part on the actions of the Equal Employment Opportunity Commission (EEOC) in promulgating strong, clear regulations to implement these laws and in vigorously enforcing them.

As an initial matter, AARP strongly approves of the Commission's citation of provisions in Executive Order 13563 (76 Fed. Reg. 3821, Jan. 18, 2011) that qualitative factors and values, "including equity, human dignity, fairness, and distributive impacts," are highly relevant in measuring the benefits of its rules. The EEOC's mission -to promote equal opportunity in the workplace and enforce the laws against employment discrimination -is defined by these very values. Every federal agency should seek to make its regulations smart, clear, and efficient;" however, cost-benefit analysis" has no rightful role in the evaluation of regulations to ensure civil rights protections.

The Commission's Preliminary Plan is on target in pointing out that the EEOC already has a robust tradition of retrospective analysis in place that fulfills the mandates of E.O. 13563. Whenever Congress changes the law, the Supreme Court issues a decision on equal employment opportunity, or the EEOC receives communications urging regulatory changes, the agency already reviews its regulations and guidance to determine whether any new rules are needed. In addition, like other federal agencies, twice each year the Commission issues a semiannual regulatory agenda outlining its plans for future rulemakings. These regimens, along with public hearings and outreach on emerging issues already conducted by the Commission, install confidence that the Commission has struck an appropriate balance between periodic reevaluation of past actions and looking forward to address new challenges.

On the particulars of the EEOC's near-term agenda, AARP is gratified to see that the Commission's rulemaking on disparate impact under the ADEA and the Reasonable Factors Other Than Age defense are at the top of the list of rules for review over next two years. Following the Supreme Court's decision in *Meacham v. Knolls Atomic Laboratory,* it is clear that

the courts and employers are in need of guidance on what constitutes a reasonable factor, and employees need meaningful protections from disparate impact discrimination. AARP's only new comment on this rulemaking proceeding is that we urge the EEOC to issue a final rule much sooner than "over next two years," preferably over the next two *months.*

AARP is also pleased to see that the EEOC proposes to continue its interagency coordination activities. There are many enforcement issues of concern to AARP members that are of overlapping concern to the EEOC and the Department of Labor, e.g., discrimination against caregivers in the workplace who take leave under Family and Medical Leave Act (FMLA), and the availability of FMLA leave as a reasonable accommodation under the Americans with Disabilities Act. Leveraging the expertise and enforcement resources of both agencies in a coordinated manner will improve enforcement measures to address issues such as these.

There was one issue identified in the summary of public comments received on the Preliminary Plan, however, on which AARP wishes to register its opposition. In the summary of public comments, the Commission notes that it received a recommendation from the US Chamber of Commerce to repeal the EEOC's July 1997 Policy Statement on Mandatory Binding Arbitration of Employment Discrimination Disputes as a Condition of Employment. AARP disagrees with this recommendation.

The Chamber is accurate in pointing out that the Statement is many years old and that a series of Supreme Court decisions have strengthened the hand of employers to demand forced predispute arbitration as a condition of employment. Nevertheless, this is not a reason to repeal it. The Policy Statement is not a regulation or a binding statement of governing law. Nor is it an "interpretation of the law" as the Chamber asserts, valid or otherwise. The Policy Statement is just that, a statement of policy and principles, and its arguments are just as strong and persuasive today as they were in 1997; nothing in those subsequent court decisions contradicts the powerful reasoning underlying the Statement. Besides, the EEOC should continue to be guided by this policy statement to the extent permitted by law, for instance, in designing settlements and proposing consent decrees. If the Commission does deem it desirable to update the Statement, its status as a policy statement (as opposed to a source of binding law) should place it low on the Commission's priorities and the statement should merely be updated to note the state of the law, not transformed into a restatement of the law.

Thank you again for your consideration of these comments and suggestions. If you have questions, please feel free to contact Deborah Chalfie on our Government Affairs staff at (202) 434-3723.

Sincerely,

David Certner
Legislative Counsel & Legislative Policy Director
Government Relations & Advocacy


July 6, 2011

Peggy Mastroianni
Legal Counsel
U.S. Equal Employment Opportunity Commission
131 M Street NE
Washington DC 20507

Dear Ms. Mastroianni:

On behalf of the Rights Task Force of the Consortium of Citizens with Disabilities, we submit these comments on the EEOC's Preliminary Plan for Retrospective Analysis of Significant Regulations. The Consortium of Citizens with Disabilities is a coalition of more than 130 national disability-related organizations working together to advocate for national public policy that ensures full equality, self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society.

We think that the EEOC's Preliminary Plan identifies appropriate factors for prioritizing matters for retrospective review, and a good list of initial rules to review. We make the following additional suggestions for the plan.

**(1) Section 501 of the Rehabilitation Act**

One area where the EEOC's regulations reflect gaps is with respect to Section 501 of the Rehabilitation Act, which forbids federal agencies from discriminating in employment based on disability and requires them to engage in affirmative action efforts to hire people with disabilities. While the EEOC enforces Section 501, its regulations do not contain substantive requirements for compliance with Section 501 with respect to affirmative action.

As you know, the Department of Labor's Office of Federal Contract Compliance Programs is currently in the process of modernizing its regulations implementing Section 503 of the Rehabilitation Act to strengthen the requirements for federal contractors to take affirmative steps to hire people with disabilities. The EEOC should similarly review and modernize its regulations implementing Section 501 to strengthen the requirements for federal agencies to take

affirmative steps to hire people with disabilities. Currently, the EEOC reviews and approves federal agencies' plans to promote the employment and advancement of people with disabilities through Management Directive 715. The EEOC has not, however, established minimum goals and standards that it expects federal agencies to meet. It is well within the EEOC's enforcement authority to do so, and doing so would be an important step to ensure meaningful affirmative action efforts. This is particularly important in light of the President's Executive Order requiring the federal government to hire 100,000 individuals with disabilities within five years.

**(2) Reasonable Accommodation**

The EEOC's ADA Title I regulations with regard to reasonable accommodation do not reflect legal and factual developments in a variety of areas over the years since the regulations were originally promulgated in 1991 and enforcement guidance concerning Reasonable Accommodation and Undue Hardship issued in 2002. We think it is important for the EEOC to update its enforcement guidance on a number of reasonable accommodation issues, including, for example:

- Clarifying the application of the ADA to employer-based wellness programs, including its application to financial inducements for meeting health targets that have the effect of discriminating based on disability (or penalties for not meeting them), to wellness program components that are inaccessible to people with disabilities, and to requirements that employees fill out health risk assessments that include disability-related questions.

- Clarifying that whether a reasonable accommodation may be made to attendance rules is an individualized inquiry that considers the nature of the particular job as well as other factors.

- Clarifying that whether a reasonable accommodation may be made to a workplace conduct rule for conduct stemming from a disability is an individualized inquiry that considers the nature of the conduct, the efforts made by an employer to address the conduct, the employee's knowledge that the employer considered the conduct to be a problem and the employee's efforts to address it, and other factors.

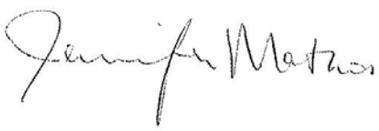
- Clarifying that in the context of employment, service animals may include any type of animal that reasonably accommodates a person's disability, and may be used by individuals with any type of disability.

**(3) Cost-Benefit Analysis**

It is important that any cost-benefit analysis done by the agency take into account the costs of not having robust protections for individuals with disabilities in the workplace. As you know, the employment rate of individuals with disabilities is far below the employment rate for the general population, and individuals with disabilities are routinely wrongly excluded from the workplace due to stereotyped assumptions about their abilities or failure to make reasonable accommodations that would allow them to work successfully. The social costs of isolating and impoverishing individuals with disabilities, and of losing the benefits of their skills and talents in the workplace, as well as the enormous financial cost of supporting individuals through public benefits rather than permitting them to be productive workers and taxpaying citizens must be considered in any cost-benefit analysis of the EEOC's regulations.

Sincerely,

CCD Rights Task Force Co-Chairs



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**PUBLICCOMMENTREGULATORYREVIEW -Re: Guidance Concerning Policies, Procedures and Practices for Prevention and Correction of Discrimination, Harassment, and Retaliation**

From: "jan duffy" <jduffy@managementpractices.com>
To: <Public.Comments.RegulatoryReview@eeoc.gov>
Date: 7/6/2011 7:37 PM Subject:
Re: Guidance Concerning Policies, Procedures and Practices for Prevention and Correction of Discrimination, Harassment, and Retaliation Attachments: Public Comments to EEOC, 2011.doc; Public Comments to EEOC, 2011.doc; Public Comments to EEOC, 2011.doc; Public Comments to EEOC, 2011.doc

July 6, 2011

Equal Employment Opportunity Commission 131 M. Street, NE Washington, DC 20002

Dear Commissioners:

In response to your request for public comment concerning your review of existing significant regulations, I would urge you to consider expanding your existing advice to include Guidance as to the reasonable steps or actions that constitute effective prevention and correction of discrimination, harassment, and retaliation in the workplace.

At least since the U.S. Supreme Court's decisions in such seminal cases as Faragher v. City of Boca Raton, 524 U. S. 775 (1998), Burlington Industries, Inc. v. Ellerth, 524 U. S. 742 (1998), and Kolstad v. American Dental Association, 527 U. S. 526 (1999), as well as other judicial, regulatory, and statutory developments at the federal, state, and local level, American employers have come to understand that they have an obligation under both the law and reasonable management practice to undertake efforts to prevent and correct discrimination, harassment, and retaliation at work. Although the EEOC has provided some piecemeal guidance to employers through such means as its Guidance on Vicarious Liability for Supervisors, the EEOC to date has not offered comprehensive assistance as to which reasonable steps and actions are useful or necessary to achieve success in the critical effort to prevent and correct discrimination.

Recent developments provide both a challenge and an opportunity. The challenge comes from certain commentators' widely disseminated interpretations of dicta in the U.S. Supreme Court's recent decision in Wal-Mart Stores, Inc. v. Dukes, et al., 564 U.S. (2011). Writing for the majority in that case, Justice Antonin Scalia held that the Wal-Mart plaintiffs' claims lacked the necessary commonality in part because there was no single policy (or, presumably, practice or procedure) that linked the literally millions of employment decisions involved together. He wrote: "Without some glue holding the alleged *reasons* for all those decisions together, it will be impossible to say that the examination of all the class members' claims for relief will produce a common answer to the crucial question *why was I disfavored*." 564 U. S., at 12. In dicta later in the Opinion, Justice Scalia stated that one way of bridging the "conceptual gap" between an individual's claim of discrimination and the existence of a class of persons who have suffered the same injury so as to make the claimant's claim typical of the class claims, is to provide "significant proof", in this case, that Wal-Mart "operated under a general policy of discrimination." Justice Scalia continued: "That is entirely absent here. Wal-Mart's announced policy forbids sex discrimination… and as the District Court recognized the company imposes penalties for denials of equal employment opportunity, F. R. D., at 154."

Although a thoughtful reading of Justice Scalia's opinion clearly does not support this view, in the publicity following the decision, a number of sources, including major media and some management-side employment lawyers, appear to be suggesting that what Justice Scalia meant was that having an anti-discrimination policy alone could be enough for employers to avoid liability for discrimination. Such a suggestion goes against years of legal developments as well as the usual and reasonable management practice, also developed over many years of experience, of the vast majority of American employers. Clearly, training for managers and supervisors on the policies; effective complaint procedures; managerial accountability systems; and similar measures that go well beyond a simple declaration of policy are also necessary to establish, maintain, and enforce any antidiscrimination policy and, accordingly, must also be undertaken by reasonable employers. Nevertheless, in trumpeting a great "victory" for employers, these misguided commentators may well persuade less responsible employers that an anti-discrimination policy standing alone will meet obligations to act effectively to prevent and correct discrimination, harassment, and retaliation.

This is where the opportunity arises for the EEOC to assist American employers and employees in an extremely significant way. First, scholars, attorneys, management and human resources professionals, and employers themselves have already developed a huge body of learning, experience, and commentary as to "what works and what doesn't" in the effective prevention and correction of discrimination, harassment, and retaliation in the workplace. This, coupled with existing EEOC advice on the subject, could provide an excellent resource for better defining for employers how they can successfully meet their obligations.

Second, the compliance and ethics profession that has arisen in response to the challenges posed by the business scandals at the beginning of the past decade, has come to rely on a particular new framework now used by numerous government agencies to evaluate the efficacy of an organization's other compliance efforts. This framework is found in the Federal Sentencing Commission's Guidelines Manual in Chapter 8, Sentencing for Organizations, Sections (a) and (b). Certainly, given, if nothing else, the fact that the Guidelines would appear on the surface to relate to criminal matters, learning and understanding the framework requires some diligence. (Unfortunately, comprehensive discussion of the Guidelines is beyond the scope of this comment. A more comprehensive explanation of the meaning and use of these Guidelines can be found in the journals and proceedings of compliance and ethics organizations such as the Society for Corporate Compliance and Ethics.) Nevertheless, suffice it to say here that the Federal Sentencing Commission's Guidelines on Organizations are regularly relied on as charging guidelines by numerous governmental entities including the Securities Exchange Commission, the Department of Labor, and the Justice Department in their enforcement of a wide variety of other compliance-related statutes and regulations. They are also regularly used by compliance professionals and employers as a guide to designing, implementing, and enforcing organizational compliance efforts respecting a wide variety of statutes.

Many of the Federal Sentencing Guidelines' factors are similar or even identical to those now found in various Guidances created by the EEOC. As a result of the importance of this matter to both employers and employees; the existence already of a substantial body of knowledge created by years of judicial opinions, regulations, and the experience of countless employers, their advisors, scholars, and other knowledgeable commentators; as well as the considerable existing expertise of the EEOC, I respectfully urge the EEOC to consider providing cogent, consistent, and comprehensive advice in the form of a new Guidance on policies, procedures, and practices necessary to the effective prevention and correction of discrimination, harassment, and retaliation in the American workplace.

Respectfully submitted,

D. Jan Duffy
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# LiUNA!



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July 6, 201 I

Via E-Mail to Public.Comments.RegulatoryReview@eeoc.gov.
U.S. Equal Employment Opportunity Commission

RE: Comments on the Equal Employment Opportunity Commission's Preliminary Plan for Retrospective Analysis of Significant Regulations

To Whom It May Concern:

The Laborers' International Union of North America (LiUNA) is one of the nation's largest and oldest labor organizations. For more than a century, LiUNA has been at the forefront of protecting and advancing the right of workers to obtain and exercise a collective voice in their workplace. LiUNA is dedicated to enhancing the wages, working conditions and dignity of all workers. Today, our union represents approximately half a million workers in building construction, heavy highway construction, residential construction and a number of other private and public service professions. Our membership is ethnically and geographically diverse and employed by a wide range of employers in the construction industry. The employment non-discrimination laws and regulations enforced by the EEOC affect all of our members. The experience acquired from representing these workers permits LiUNA to make broad and well-informed observations on the impact of the EEOC's Preliminary Plan for Retrospective Analysis of Significant Regulations, submitted in response to Executive Order 13563.

The EEOC serves a critical and extraordinarily important function in promoting equality of opportunity in the workplace and protecting all workers and job applicants. Without effective enforcement of the EEOC's regulatory program, workers face the possibility of significant abuse and discrimination. Many individuals have no idea of their rights under the laws and regulations enforced by the EEOC or that these laws even exist. Protection under such laws as Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Equal Pay Act, among others, is a powerful right. Too often employees and job applicants do not know of these protections and, consequently, are subjected to employment harassment; a hostile work environment; or discriminatory termination, hiring compensation or promotion practices. Therefore, the EEOC has a crucial enforcement mission and a strong regulatory agenda is necessary to ensure these extremely significant rights and protections are secured for all workers and job seekers.

***Feel the Power***

LiUNA maintains that to uphold this enforcement mission and ensure that these important laws and regulations are enforced as intended, the EEOC must continue to provide extensive assistance, direction and guidance to both employers, as well as applicants for employment and the general workforce. LiUNA understands that compliance with these laws and regulations may place a burden on employers and guidance and direction provided by the EEOC may place a burden on the Commission. We believe, however, that any burden associated with the laws and regulations enforced by the EEOC on employers is, without a doubt, a necessary burden. These laws were made to protect workers' rights and dignity and the full protection of these key statutes and regulations must be maintained as discrimination in the workplace still occurs. Accordingly, any burden associated with a strong regulatory agenda is counterbalanced and offset by continuing to ensure the civil rights protections granted and afforded to workers and job applicants.

A strong EEOC agenda is especially important in these trying economic times in our Nation's history. It is generally recognized that employees face significant pressures in a down economy. When work is scarce, employees often feel like they must accept unlawful working conditions and simply have to ignore clear violations of EEOC laws and regulations. In times of economic difficulty, they may desperately be in need of a job to make ends meet and fearful that if they lose their current job they will have little luck -or no luck at all for that matter -in finding any other suitable employment. Workers will tum the other cheek and allow themselves to be subjected to blatant discrimination in order to support themselves and their families. It is these types of examples of abuse and discrimination that led to the passage of the very laws enforced by the EEOC. Effective regulatory enforcement and oversight of employers to ensure they follow all anti-discrimination laws and promote equality of opportunity must be continued as has been done by the EEOC in the past. These civil rights laws and the critically important rights that they confer are too important not to be made a priority. LiUNA commends the EEOC for its excellent work in protecting the rights of our members and all workers and we encourage the Commission to continue to maintain a strong regulatory agenda with extensive assistance, direction and guidance for employers, the workforce, and job seekers.

Thank you for your consideration of these comments.

Very truly yours,

TERRY O'SULLIVAN General
President

ar

**PUBLICCOMMENTREGULATORYREVIEW**

From: <REDACTED>
To: <Public.Comments.RegulatoryReview@eeoc.gov>
Date: 7/7/2011 8:27 PM

To whom it may concern; I had filed a case against my supervisors ( at <REDACTED>, in Portland Oregon), and it was closed, before any one from the EEOC had ever spoken to me, they only spoke to the managers I filed the charges on. I was given a letter to sue, but if they got away with lying once, they'll do it again. So , it should be that when a set of charges are filed, the person who filed them should be talked to and their side should also be considered. This was what I had thought was to take place, but to date, no one has asked, seen nor heard my side. If I had known this was to be the case, I would not have bothered to file, it's cost me more in doing so than if I had just let them do it and shut up. This has left me in a very bad situation at work. And I now have no creditability with anyone. How is it right? Why would any one bother to file a charge if their employer is the only one to be heard and their versions of the truth is all that is considered. If the grieving party is not to be asked any thing, were is the fair and just side of it? I just would like some one to shed some light on this for me. I know I'll never get parity, but an explanation would be nice. As I can't seem to get one from any one. Thank you for your time, <REDACTED>

# NELA

July 7, 2011 Submitted Via E-Mail

Public.Comments.RegulatoryReview@eeoc.gov
The Honorable Jacqueline A. Berrien Chair
U.S. Equal Employment Opportunity Commission
131 M. Street NW Washington, DC 20507

Re: Public Comment on EEOC's Preliminary Plan for Retrospective Analysis of Existing Rules

Dear Chair Berrien:

The National Employment Lawyers Association (NELA) submits the following response to the U.S. Equal Employment Opportunity Commission's (EEOC) request for public comments on the EEOC's Preliminary Plan for Retrospective Review of Existing Rules pursuant to Executive Order 13563, "Improving Regulation and Regulatory Review," 76 Fed. Reg. 3821 (January 21, 2011). NELA advances employee rights and serves lawyers who advocate for equality and justice in the American workplace. With 68 state and local affiliates, and 3,000 members across the country, NELA is the nation's largest professional organization comprised exclusively of lawyers who represent individual employees in cases involving employment discrimination, wrongful termination, employee benefits and other employment-related matters.

As a group, NELA members have represented thousands of individuals seeking equal employment opportunities. NELA is one of a limited number of organizations dedicated to protecting the rights of all employees who rely on the EEOC and the courts for protection against illegal workplace discrimination. NELA's members serve the same constituency as the EEOC, namely, employees who have been and are being subjected to invidious race, color, national origin, gender, religious, age, and disability discrimination prohibited by Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act (ADEA), and the Americans with Disabilities Act (ADA). NELA's members interface with the EEOC on a daily basis. They are involved with the EEOC's compliance procedures, its investigation practices, and its disposition of cases. That involvement is nationwide and reaches to all of EEOC's regional and district offices.

Accordingly, NELA and our members have a vital interest in ensuring that EEOC regulations provide for effective compliance and strong enforcement of the nation's antidiscrimination in employment laws for which the EEOC has jurisdiction. In this regard, NELA commends the EEOC for providing timely policy guidance in defining and clarifying legal issues arising under these statutes.

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NELA enthusiastically supports the EEOC's initial list of five candidate rules for review over the next two years as announced in its "Preliminary Plan for Retrospective Analysis of Existing Rules" (May 24, 2011). In particular, we believe that the three rules pertaining to enhanced inter-agency coordination between the EEOC, the Department of Justice, the Department of Labor, and other federal civil rights enforcement authorities with respect to processing charges or complaints of employment discrimination under the ADA and Section 504 of the Rehabilitation Act of 1973 are effective steps to address duplicative agency efforts and lessen the burden on charging parties and employers (29 CFR Parts 1640, 1641 and 1691).

NELA is pleased that the EEOC has designated "Federal Sector Equal Employment Opportunity Complaint Processing" (29 CFR Part 1614) for review. As you are aware, at NELA's 2011 Annual Convention in New Orleans last week, several of NELA's federal sector practitioners expressed the need for improved enforcement of the rule during a robust discussion with you, Commissioners Stuart J. Ishimaru and Chai R. Feldblum, and General Counsel P. David Lopez. The issues raised during this discussion were also the subject of NELA's December 2, 2010 letter to Claudia A. Withers, the EEOC's Chief Operating Officer, recommending reforms that could be implemented internally by the EEOC without delay or cost.

NELA applauds the EEOC's proposed rule review on "Disparate Impact Burden of Proof and Reasonable Factors Other than Age Under the ADEA" (29 CFR Part 1625) directed at providing much needed guidance on the meaning of "reasonable factors other than age" (RFOA) following the U.S. Supreme Court's decisions in *Smith v. City of Jackson*, 544 U.S. 228 (2005) and *Meacham v. Knolls Atomic Laboratory*, 131 S.Ct. 413 (2010). With the rising number of age discrimination claims, compounded by the Supreme Court's misguided decision in *Gross v. FBL Financial Services, Inc*., 129 S.Ct. 2343 (2009), NELA firmly believes that such guidance is essential to protect older workers subjected to age-based disparate impact practices. In addition to promulgating guidance on the RFOA standard, NELA strongly urges the EEOC to use its rulemaking authority to limit the damaging effects of *Gross*, which now compels older workers to prove that age was the "but for" cause of their adverse treatment, a higher standard of proof than is required for other types of employment discrimination claims. Unfortunately, NELA members have seen the poisonous tentacles of the *Gross* decision reach to other employment discrimination statutes such as the ADA, the Equal Pay Act, and the Family and Medical Leave Act, thereby undermining Congressional intent of these worker protection laws. The EEOC must act swiftly and decisively on this front to ensure that equal employment opportunity is a reality for all of America's workers.

As the federal agency charged with the interpretation and enforcement of the nation's employment discrimination laws, NELA strongly urges the EEOC to maintain its longstanding policy statement on "Mandatory Binding Arbitration of Employment Discrimination Disputes as a Condition of Employment" (July 10, 1997). Simply stated, forced arbitration of employment disputes as a condition of employment undermines our country's civil rights laws and the ability of individuals to vindicate their right to be free from employment discrimination. The EEOC must steadfastly continue to ensure that employees who are discriminated against in America's workplaces have meaningful access to our civil justice system to enforce their rights.

We appreciate the opportunity to provide the EEOC with the above comments. Please do not hesitate to contact Eric M. Gutiérrez, NELA's Legislative & Public Policy Director, should you have any questions or wish to discuss our comments (Tel: 202 898-2880, ext. 115; E-mail: egutierrez@nelahq.org).

Sincerely yours,

Terisa E. Chaw
Executive Director

**PUBLICCOMMENTREGULATORYREVIEW -Oregon Employers Discriiminate on AGE**

From: Margot Lee <REDACTED>
To: "Public.Comments.RegulatoryReview@eeoc.gov" <Public.Comments.RegulatoryReview@eeoc.gov>
Date: 7/12/2011 7:21 PM
Subject: Oregon Employers Discriiminate on AGE

Applying for a job online is allowing companies to request a person's social security number and date of birth.
<REDACTED> and the <REDACTED> is a
provider of web based candidate screening and recruiting software

**PUBLICCOMMENTREGULATORYREVIEW -Comments on helpful changes to EEOC's rules and investigative system's.**

From: <REDACTED>
To: <Public.Comments.RegulatoryReview@eeoc.gov>
Date: 7/15/2011 2:21 PM
Subject: Comments on helpful changes to EEOC's rules and investigative system's.

***To Whom it may concern; I had filed a complaint with the EEOC , and I was never spoken to until after the charge was closed, and it seems rather odd, to not talk to the person who made the complain, but only the one's the complaint was made on. I did get a letter to sue, but with out a rather large amount of money I am not financially able to take on my employer,*** **<REDACTED>** ***in court. If I had of known this was to be the case, I would have never have filed the charges, I had thought there was to be some kind of investigation into my charges, not just talk to my supervisor and call it good. This ordeal has put me in a very bad situation at work, as now, my superiors know they can do what ever they want, the fed, has approved their methods. At current I have been the on the receiving end of discipline , things that are allowed for other staff, but not me evidently. I'm held to a higher standard then any other staff member in*** **<REDACTED>** ***This is all that filing a charge has done for me. It has made my life horrible and very stressful. So you should do a real investigation, and see if there is collusion from the ones who have been filed on. Most people would not go to the trouble of asking for help, if they didn't really need it, and in my case, the people you agent talked to , well they lied to you and lied on the affidavit they filed with you. So, I have no options, but to take what ever treatment they chose to give me. With all due respect and curtsies,*** **<REDACTED>**

# Honor

One who develops the habit of being honorable, and solidify that habit with every value choice they make. Honor is a matter of carrying out, acting, and living the values of respect, duty, loyalty, selfless service, integrity and personal courage in everything you do.To show the respect to ones ancestors and our way of life.Ones standards for self and the actions taken in the ways they carry themself.

PUBLICCOMMENTREGULATORYREVIEW -Review of Regulations

From: BARBARA LESPERANCE <REDACTED>
To: <Public.Comments.RegulatoryReview@eeoc.gov>
Date: 7/17/2011 12:02 PM
Subject: Review of Regulations

To Whom It May Concern:
I feel that in today's economy many qualified workers are being denied employment based upon a poor credit rating. They are excluded from many jobs in the financial and retail industries to name only two. Employers are stating that a poor credit rating possibly leads to employee theft and unreliable workers. Is this not a form of discrimination by judging someone's abililty to be honest and hard working members of society. Employers are not interested in why or how a persons credit became damaged just that it is. In the past decade many homeowners have been subjected to forecloser's, unemployment at no fault of their own, and if they were able to find other employment, many of those took jobs with huge pay cuts from their previous positions. In turn, everything from food to gasoline prices have risen to an almost all time high, making lowering the family budget to barely a level of survival that cannot hold the wait of mortgages with high interst rates, student loan debt, car repairs, etc; And notwithstanding of trying to save for future retirement thidualrough 401k's, pension plans, investments, and any other forms of savings. Americans cannot invest in America when America does not invest in us.

I feel the right of employers to have access to my credit record is a violation of my privacy and does not prove me to be more given to theft and poor job performance. If I had a job with decent pay I could improve my credit rating greatly. The U.S. Government has bailed out corporations and the Financial Industry only at the cost of the working class. The law allowing employers to discriminate based on an individuals credit rating is unjust and should be illegal. We have been tagged as over-spenders having higher debt to income ratio and denied employment when our government does worse than over-spend and then bails out companies who have done the same only to be rewared for their mishandling of funds. I am currently in the process of starting a petition to change this policy and make it aginst the law to discriminate against employers denying employment based on a poor credit credit rating and being allowed access to a potential employees credit report at all. The few jobs available could be filled with postitive, productive workers if the discrimination law was to include the credit issue. We all are aware that the more people employed the better our economy and the success of our country relies upon just that.

Thank you for your time and I hope I have been of help in expanding the elimination of discriminatory practices still in exsistence.

Sincerely,
Barbara Lesperance
<REDACTED>

**PUBLICCOMMENTREGULATORYREVIEW - Public Comments re Regulatory Review**

From: William Brawner <REDACTED>
To: <Public.Comments.RegulatoryReview@eeoc.gov>
Date: 7/20/2011 5:27 PM
Subject: Public Comments re Regulatory Review
CC: William Brawner <REDACTED>

I apologize for this late comment. I did not learn of your request for comments until today.

1. The federal EEOC system is unique in that it allows the party accused of violating the law to conduct the investigation into that alleged violation. This should be changed. Investigators should be hired directly by the Commission and paid by the Commission. The Commission itself should direct federal sector investigations just as it directs those in private sector cases. (The costs could be reimbursed to the Commission by the agencies, but there should be no agency control of investigations.

2. It is a joke to claim that federal sector investigators are not biased. They are paid by the agencies and if they wish to continue getting work, they must produce reports that favor the agencies. Thus, as long as the agencies hire investigators, there needs to be a clear cut means of filing complaints against investigator directly with the Commission. The current system of complaining to the agency is deficient. The agencies have no incentive to take corrective action.

3. Complainants need to be able to file a complaint directly with the Commission when, at the counseling stage, an agency simply refuses to process a claim. I know from personal experience that if an agency fails to process a claim, the claim is dead. Regional offices says they have no authority to intervene and OFO simply ignores complaints. Thus, the deadline for issuing a report of investigation should start from initial counseling contact; not from the agency's acceptance of a formal complaint.

4. At present, virtually every deadline for doing something set forth in the regulations for complainants carries a penalty for non-compliance: usually dismissal of the claim. None of the deadlines for agencies carries any kind of penalty. This seems blatantly biased in faovor of agencies and needs to be changed. Agencies must, in fundamental justice, also be subjected to penalties for failing to comply with regulatory deadlines.

5. A more equitable system for recusing biased judges needs to be established; perhaps like that that exists in the laws of many states, for example: Nevada. Judges should not be allowed to rule on motions to recuse themselves. Such motions should be refer to another judge; preferably in a different regional office.

Thank you.

William H. Brawner, Esq.

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http://www.federaladvocate.com
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**PUBLICCOMMENTREGULATORYREVIEW -Commentary Submission - Arrest and Conviction Records as a Barrier to Employment**

From: Jimmie Mesis <jim@nciss.org>
To: <Public.Comments.RegulatoryReview@eeoc.gov>
Date: 8/5/2011 3:24 PM
Subject: Commentary Submission - Arrest and Conviction Records as a Barrier to Employment

August 5, 2011

TO: Chair Berrien, EEOC

FROM: NCISS – National Council of Investigative and Security Services
Jimmie N. Mesis, Legislative Chairman

Re: Arrest and Conviction Records as a Barrier to Employment

NCISS is concerned with the unintended consequences likely to result from contemplated guidance revisions with regard to arrest and conviction records associated with employer background checks. Our organization represents the interests of more than 60,000 professional investigators in the United States who conduct background checks on a daily basis. These background checks are conducted on behalf of employer's who screen specific job applicants as a simple matter of due diligence based on the position applied for. Employers must insure they know who they are hiring in order to protect other employees, their customers, and company assets. Yes, this often includes searching for arrest and conviction records, which are just a few of many more factors used in evaluating and determining employment qualifications.

NCISS recognizes the commission's concern that criminal histories may present a barrier to employment, but our background investigations also help to protect the lives of employees and customers. Employers are obligated to make every effort to insure the safety of their employees. Imagine the employer who did not conduct a criminal background check on an employee who has a history of workplace violence or who rapes a co-worker. A criminal search would have revealed a previous conviction for the same offense. A simple background check could have, at the very least, made the employer aware of said history in making an employment decision.

In addition, investigators are most often called to conduct background checks as it relates to a specific job position or the business necessity determined by the nature of the job applied for. The results of a criminal history background check are just one of many factors used to consider employment along with experience, previous employment history, education verification, certifications, and references.

The depth of a background check is determined by the risk level associated with the position applied for. In many cases, only conviction records are available as compared to an arrest record. When an arrest record is found the investigator will ascertain the disposition of the matter to determine if the case was dropped or resulted in a conviction. This is not the type of information one might acquire from conducting a Google search. In fact, such search engine searches may often provide dated or inaccurate information and are not deemed reliable unless independently confirmed, hence the reason for using professional investigators.

As a matter of reference, the Secure and Fair Enforcement For Mortgage Licensing Act - 12 USC 1501-1516 requires by federal law that financial institutions do backgrounds on all mortgage brokers as part of the licensing act. How would an employer comply with two conflicting acts?

In Illinois, private social service agencies are required by the Department of Children and Family Services to conduct background checks on employees who will be working with the developmentally disabled. Does the EEOC think that these applicants, along with coaches, school bus drivers, teachers, and those working with children shouldn't be screened for criminal records?

In regard to fairness, if two similarly qualified candidates in terms of work experience are applying for the same job, should the person with a clean record be selected over the applicant who chose to deal drugs, commit thefts etc.? Is that any different than taking the candidate who has better grades in school or being the preferred candidate?

NCISS supports the needs of employers and their right to conduct criminal history checks and the role such checks serve in the overall screening process. Individuals with criminal records do have a right to work, but employers also have a right to know who they are hiring based on all available information. Employers must take into consideration all factors when making hiring decisions. While a person's past does not necessarily determine their future, their past does provide the employer with additional information to consider when doing the overall evaluation and selection.

*The National Council of Investigation and Security Services, Inc., is a cooperative effort of those companies and associations responsible for providing private security and investigation services to the legal profession, business community, government and the public. For additional information, contact us at jim@nciss.org*

Jimmie Mesis
NCISS Legislative Chairman

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**PUBLICCOMMENTREGULATORYREVIEW -Anti-Discrimination on all laws for LGBT people**

From: Jennifer smith <REDACTED>
To: <Public.Comments.RegulatoryReview@eeoc.gov>
Date: 8/7/2011 12:34 AM
Subject: Anti-Discrimination on all laws for LGBT people

Hello. Thank you for taking time in considering items for inclusion into the accepted practice when determining an EEOC violation. I ask that you please CAREFULLY examine the information, and current action at workplaces and especially as I know, in the public service sector-fire- rescue. I would like and feel there needs to be some kind of avenue for people of a minority other than and often times more prevalent than some of the other issues going on. I see where retaliation is at an all time high and what about discrimination against gays and lesbians? Why is retaliation so high and what is the reasons-logically. Why does it seem as if the investigators are on the defendant side. I thought you were there to fight for our rights as citizens, not defend the public sector or federal govt. I really feel there needs to be a more genuine look at what goes on in the workplace and come to the conclusion that anti-discrimination should also include LGBT people especially if your covering religion and genetics now? When are you going to realize there are millions of us struggling to make it on unemployment and think god they saw it as we did. Oh yes, one more thing. What would be wrong with the investigator going out in her car to the home or workplace to do a formal in person interviews, or go to the workplace and interview people. I think you might get better results. Sitting behind a desk and skimming through all the paperwork I send in over an (if I'm lucky) 8 hr day that I spent weeks putting together to come to a conclusion that it isn't worth going forward.?
Something is definitely wrong. I wish I could be there at this conf. But I am lucky to pay my rent this month.
Thank you for listening.
Very frustrated.