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***Prepare for the EEOC's
Targeted Enforcement
for 2013-2016***

February 27, 2013

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Today's presenters



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Background on the EEOC's Strategic Enforcement Plan (SEP) 2013-2016

EEOC identified its enforcement priorities based on following factors

- Issues that will have a broad impact
- Issues involving developing areas of law
- Issues affecting workers who lack awareness of their rights
- Issues involving practices that impede or impair enforcement
- Issues that may be best addressed by government enforcement

EEOC SEP

Six Enforcement Priorities



1. Eliminating Barriers in Recruitment and Hiring
2. Protecting Immigrant, Migrant and Other Vulnerable Workers
3. Addressing Emerging and Developing Issues
4. Enforcing Equal Pay Laws
5. Preserving Access to the Legal System
6. Preventing Harassment Through Systemic Enforcement and Targeted Outreach

Priority No. 1

Eliminating Barriers in Recruiting and Hiring

Focus on class-based intentional recruitment and hiring discrimination and facially neutral recruitment and hiring practices that discriminate against:

- Racial groups
- Ethnic groups
- Religious groups
- Older workers
- Women
- People with disabilities



Priority 1 (cont.)

Eliminating Barriers in Recruiting and Hiring

- Targeted practices include:
 - Exclusionary policies and practices
 - Channeling or steering of individuals into specific jobs due to their status in a particular group
 - Restrictive application processes
 - Use of screening tools

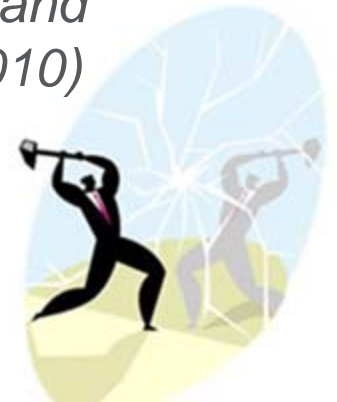


Priority 1 (cont.)

Eliminating Barriers in Recruiting and Hiring

Exclusionary policies and practices (examples):

- Recruiting through media directed at a specific ethnic group and hiring only from that group. *EEOC v. Scrub, Inc.* (N.D. Ill Nov. 9, 2010)
- Refusing to hire women as meat cutters. *EEOC v. Mars Super Markets, Inc.* (D. Md. Sept. 1, 2009)
- Failing to hire or assign African Americans as sales agents in predominately white communities. *EEOC v. John Wieland Homes and Neighborhoods, Inc.* (N.D. Ga. June 22, 2010)

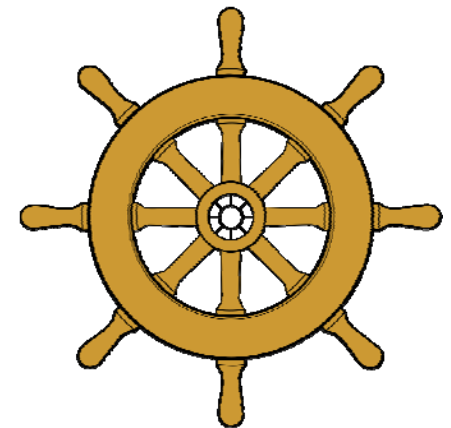


Priority 1 (cont.)

Eliminating Barriers in Recruiting and Hiring

Channeling or steering of individuals into specific jobs due to their status in a particular group (example)

- Women applying for positions were told only that waitressing, dishwashing and maid services positions were open. *EEOC v. Preferred Labor LLC* (D. Mass. July 6, 2009)



Priority 1 (cont.)

Eliminating Barriers in Recruiting and Hiring

Restrictive application processes (examples)

- Pre-offer disability related inquiries. *EEOC v. Celadon Trucking Services, Inc. (S.D. Ind. 2012)*
- Requirement that females truck driver applicants be trained only by female trainers.



Priority 1 (cont.)

Eliminating Barriers in Recruiting and Hiring



Use of screening tools such as:

- Pre-employment tests
 - Use of written test that had a disparate impact on African Americans. *EEOC v. Automotive Components Holdings, et al.* (S.D. Ohio Dec. 20, 2007)
- Background checks
 - Credit reports claimed to have a disparate impact on African American applicants *EEOC v. Kaplan*, (N.D. Ohio Jan. 28, 2013)**
 - Arrest and conviction records. EEOC issued Enforcement Guidance on Apr. 25, 2012.
- Date-of-birth inquiries

Priority No. 2

Protecting Immigrant, Migrant & Other Vulnerable Workers

EEOC to target:

- Disparate pay
- Job segregation
- Harassment
- Trafficking and discriminatory policies affecting vulnerable workers



Priority No. 2 (cont.)

Protecting Immigrant, Migrant & Other Vulnerable Workers

Disparate pay

- EEOC alleged that Hispanic warehouse workers paid less than non-Hispanic workers.
EEOC v. B&H Foto (S.D. N.Y. 2009)



Priority No. 2 (cont.)

Protecting Immigrant, Migrant & Other Vulnerable Workers

Job Segregation

- Allegations that Hispanic and African-American employees assigned to less desirable and lower-paying jobs. *EEOC v. L&W Supply (D. Ariz, Sept. 2, 2009)*.



Priority No. 2 (cont.)

Protecting Immigrant, Migrant & Other Vulnerable Workers

Trafficking

- EEOC filed suit alleging employer trafficked over 200 Thai male nationals to farms in Hawaii and Washington and subjected them to harassment and discrimination on pay. *EEOC v. Global Horizons (D. Haw., E.D. Wash, suit filed Apr. 19, 2011)*



Priority No. 3 Addressing Emerging Areas



The following emerging areas are recognized as a priority:

- ADA issues including coverage, reasonable accommodation, qualification standards, undue hardship and direct threat
- Accommodating pregnancy-related limitations under the ADAAA and the Pregnancy Discrimination Act
- Coverage of lesbian, gay, bisexual and transgender individuals

Priority No. 3 (cont.) Addressing Emerging Areas



ADA issues including coverage, reasonable accommodation . . . (examples)

- Morbid obesity as a covered disability. *EEOC v. BAE Systems (S.D. Tex., filed Sep. 27, 2011)*.
- Leave as a reasonable accommodation. *EEOC v. ACT Teleconferencing Servs. (D. Mass, July 15, 2011)*.
- “No fault” attendance policy.

Priority No. 3 (cont.) Addressing Emerging Areas



Accommodating pregnancy-related limitations

- Requiring pregnant employees to provide doctor's note certifying no restrictions, and discharged or forced to take leave because of restrictions unrelated to ability to do jobs. *EEOC v. Britthaven, Inc. (M.D.N.C. March 31, 2009).*

Priority No. 3 (cont.) Addressing Emerging Areas

Coverage of lesbian, gay, bisexual and transgender individuals

- Sexual orientation is not a protected class, nevertheless Title VII prohibits sex stereotyping discrimination. *Castello v. Donahoe, Postmaster General, EEOC appeal No. 012011795, Dec. 20, 2011*)

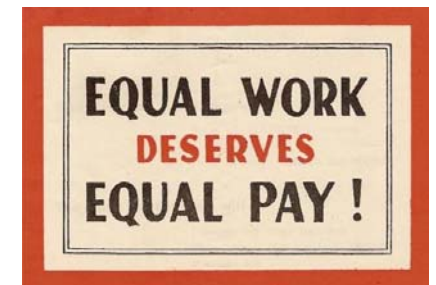


Priority No. 4 Enforcing Equal Pay Laws

Violation of Equal Pay Act, Title VII, ADA
and ADEA

EEOC to target compensation systems and
practices that discriminate based on gender

- Female program specialists paid less than male counterparts. *EEOC v. Texas Dept. of Agriculture (W.D. Tx., Nov. 19, 2012)*



Priority No. 5 Preserving Access to the Legal System



EEOC will target policies and practices that discourage or prohibit exercise of rights such as:

- Retaliation
- Overly broad waivers
- Settlement provisions that prohibit filing of charges or providing information or assisting in an investigation
- Employer's failure to maintain required records

Priority No. 5 (cont.)

Preserving Access to the Legal System



Settlement provisions that prohibit filing of charges or providing information or assisting in an investigation

- Retaliation where receipt of severance benefits conditioned upon withdrawing charges and agreement not to cooperate with EEOC. *EEOC v. Eli Lilly (S.D.Ind., June 12, 2008)*
- Retaliation (and summary judgment for EEOC!) where employee refused to sign “last chance agreement” that included a provision prohibiting employee from bringing EEOC Charge. *EEOC v. Cognis Corp.* (C.D.Ill. 2010)

Priority No. 6 Preventing Harassment

Priority to prevent harassment based on

- Race
- Ethnicity
- Religion
- Age
- Disability



Prepare for the SEP

- Review hiring and recruiting policies and practices for disparate impact
- Self-audit compensation systems
- Emphasize individualized assessment in all ADA matters
- Retrain employees on prohibited harassment
- If a charge is received, determine whether priority issue raised



Final Word

HIGH PRIORITY

“Employers and unions would thus do well to review the list of priority areas and be sure their compliance programs are up-to-date regarding these issues.”

Chai R. Feldblum, EEOC Commissioner, Jan. 9, 2013, “3 Take-Aways from the EEOC’s Strategic Enforcement Plan”
<http://corporatelaw.jdsupra.com>

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