



Equal Employment Opportunity Commission

By Jocelyn Frye

Summary

The Equal Employment Opportunity Commission enforces key employment discrimination laws that are central to advancing our national commitment to achieving workplaces free of discrimination. The new president will have a crucial opportunity to strengthen the commission and provide a framework for tackling the agency's most persistent enforcement and resource challenges. Top priorities should include developing a comprehensive agency budget that includes a substantial increase in agency funding; identifying clear enforcement goals, such as increasing the number of cases filed involving systemic discrimination, pay discrimination, pregnancy discrimination, and retaliation; reducing the growing backlog of charges; examining ways to improve investigations and the way charges are processed; and strengthening relationships between the agency and underserved communities. These objectives are essential to ensuring that the EEOC is well positioned to carry out a comprehensive enforcement agenda that promotes fair treatment in the workplace and ensures that Americans can access the services and assistance they need to vindicate their rights.

Introduction

The Equal Employment Opportunity Commission's mission is to ensure fair treatment in the workplace by vigorously enforcing laws prohibiting workplace discrimination. EEOC, established by the landmark Civil Rights Act of 1964, is the primary federal agency charged with enforcing several major employment discrimination laws, including Title VII of the Civil Rights Act of 1964, the Pregnancy Discrimination Act of 1978, the Age Discrimination in Employment Act of 1967, the Equal Pay Act of 1963, Titles I and V of the Americans with Disabilities Act of 1990, Sections 501 through 505 of the Rehabilitation Act of 1973, and the Civil Rights Act of 1991.

The vast majority of federal employment discrimination claims—more than 82,000 filed by individuals in fiscal year 2007—start at the EEOC. The agency is the first contact for many Americans seeking to vindicate their rights. This “front line” role means that



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EEOC is often the most visible federal agency responsible for advancing our national commitment to workplace equality and ensuring the promise of equal employment opportunity for all people.

The new president will face several immediate challenges with the commission. He will confront an agency that has been significantly under-resourced for many years. The agency is constrained on multiple fronts. The commission has a growing charge and caseload, but limited resources to implement a comprehensive systemic discrimination program; it has a persistent need for staff education and training, lacks funds to meet rising infrastructure costs, and struggles with technology gaps. It also faces the ongoing challenge of keeping pace with rising discrimination charge filings and a mounting backlog of claims while simultaneously trying to ensure effective enforcement of the employment laws under its jurisdiction.

The president also will inherit an agency undergoing internal changes affecting its structure and staff. District, field, and local offices have recently been reorganized; there was a controversial opening and closing of a national contact center to answer calls to the commission; and national headquarters is scheduled to move to a new facility in November 2008.

First 100 days

The new president quickly will have to designate a chair and vice chair of the commission. The EEOC has five commissioners, each appointed by the president and confirmed by the Senate for staggered five-year terms. The commissioners are responsible for advancing the work of the commission, approving commission policies, authorizing commission lawsuits, participating in public commission meetings, and spearheading special initiatives that examine different types of workplace discrimination problems. No more than three of the five commissioners can be members of the same political party.

One of the five commissioners serves as the EEOC chair and one serves as the vice chair. The EEOC chair takes the overall lead in shaping the commission's work and has responsibility for strategic and policy direction, financial management, organizational development, and administrative oversight of agency operations, including staff hiring and developing an annual agency budget. The vice chair serves as the acting chair when the chair is absent and otherwise has the responsibilities of a commissioner.

The new president may have two options for filling these two leadership positions: elevate current commissioners to fill both the chair and vice chair slots, or appoint a new commissioner to fill one of the positions. It is crucial to fill these positions with persons who are fully committed to the EEOC's mission, knowledgeable about the agency and the laws it enforces, unafraid to utilize all the investigative and enforcement tools at EEOC's disposal, and a commitment to equal justice and vigorous enforcement of employment discrimination laws.

Less than one month after the new president takes office, he will submit a budget for FY2010. The EEOC's budget has remained largely stagnant or seen only modest increases over the past several years, and as a result, it has not kept pace with demands and needs. The new administration will have to initiate a comprehensive assessment of the commission's budgetary needs and propose a budget increase to help position the agency for the future. An increase of \$50 million—roughly a 15 percent increase over the FY2008 budget—would be an important first step.

The additional budget can be used to make much-needed improvements at the EEOC, such as hiring investigators, attorneys, and other staff based on a staffing-needs assessment; developing a plan to reduce the mounting backlog of cases; increasing training for EEOC personnel; implementing key initiatives, such as recommendations from the EEOC's systemic discrimination task force issued in March 2006;¹ and undertaking technology upgrades.

The budget must also reflect expected policy priorities for the upcoming year, with strong consideration given to targeting areas that have seen particular growth, such as pregnancy discrimination and retaliation claims, and discrimination aimed at particularly vulnerable populations, such as certain immigrant populations. The budget must be accompanied by aggressive outreach and education about the EEOC's short-term needs to Congress and the public, particularly in areas where Congress has previously sought to constrain EEOC resources.

The first year

The president will have key commission positions to fill in the first year. At least one commissioner slot is slated to expire July 1, 2009 and another on July 1, 2010. The EEOC general counsel—who leads the commission's litigation efforts—will also leave office in 2010.

The EEOC chair also may need to make several senior appointments, including the head of the EEOC's Office of Legal Counsel, which develops EEOC policy and guidance documents and serves as in-house counsel to the commission. All of these positions are key to the commission's effectiveness and demand candidates of the highest caliber. The president and chair should consider all options, including potential reappointment of existing commissioners, looking internally at EEOC career staff, and identifying talented outside candidates.

With effective staff in place the EEOC chair will have to identify concrete enforcement and litigation goals and priorities for the agency. These goals should be developed in consultation with other commissioners, EEOC and administration staff, and EEOC stakeholders, including employee and employer representatives, community groups, employment law practitioners, and advocates. The goals should be clearly crafted and communicated to send a strong message about the agency's overall direction.

The agency's priorities should include goals to increase the overall number of cases filed by the agency, with companion goals to increase the number of cases involving systemic discrimination, pay discrimination under the Equal Pay Act and Title VII, pregnancy discrimination, and retaliation—all types of discrimination that have increased in recent years. The agency should also explore greater use of commissioner charges—charges initiated by EEOC commissioners to investigate allegations of workplace discrimination—to complement the commission's enforcement work and analyze existing EEOC discrimination charge data broken down by race, ethnicity, gender, industry, and occupation to identify trends and better target resources.

The success of an individual's employment discrimination claim often hinges on the quality of EEOC's investigation. Yet there have been concerns about the consistency, efficiency, thoroughness, and accuracy of investigations conducted by the agency.² The EEOC chair should convene an internal working group and consult with outside stakeholders to evaluate the agency's investigations and recommend potential improvements. This work should include analyzing the significant disparity between the thousands of cases that the EEOC has reportedly referred to the Department of Justice, and the tiny fraction of those complaints filed by DOJ's Civil Rights Division Employment Litigation Section as a result of those referrals.

The agency will also need to examine and improve its incoming call and charge intake process. There has been ongoing criticism about whether initial calls made to the agency are answered in a prompt, appropriate, and efficient manner. President George W. Bush's first EEOC chair, Cari Dominguez, responded by pushing for an outsourced national contact center to handle all calls coming into the EEOC, but that approach was controversial. Concerns were raised about the quality of assistance and whether the EEOC should outsource its functions. A study commissioned by the EEOC's inspector general also questioned the contact center's effectiveness and revealed a significant drop-off in calls to the agency after its implementation.

The EEOC commissioners voted to discontinue the national contact center contract at the end of 2007 in the wake of these reports. EEOC staff have reassumed responsibility for responding to initial telephone calls, but it will be important to assess quickly how effectively calls are being handled to ensure callers get the help they need.

After years of steady decline, the EEOC's pending inventory of cases—often referred to as the agency backlog—has crept up slowly, rising from a steady 29,000 in FY2004, to more than 54,000 in FY2007, and estimates of near 67,000 by the end of FY2008.³ The chair should convene an internal working group to pinpoint where the backlog is occurring, explore how agency resource constraints affect the backlog, and produce a backlog reduction plan. The plan should include a goal to cut the backlog in half in five years.

The EEOC's broad agenda and ambitious goals will require a full complement of capable staff, but the size of the agency's personnel has declined significantly in recent years. A

report by the EEOC inspector general revealed a decrease of 347 staff between 1999 and 2006.⁴ The same report also notes that more than 40 percent of EEOC staff will be retirement eligible between 2007 and 2012, foreshadowing even more possible departures. It will therefore be essential for the EEOC chair to assess quickly the agency's staffing needs, identify short- and long-term resource needs, and develop a hiring timetable to ensure sufficient staff to carry out the commission's work.

The commission will also have to keep pace with the changing demographics of the workforce and the communities it serves in order to remain relevant and achieve its goals. Recent polling reveals that 31 percent of Asian Americans and 18 percent of Hispanics believe they have experienced employment discrimination over the past year, yet they file fewer charges with the EEOC.⁵ It is crucial for the commission to have a presence in diverse communities and to connect with constituencies that have not historically looked to the EEOC for protection. The agency should commission a report to evaluate its outreach efforts and recommend concrete ways to improve relationships with underserved communities.

The EEOC will be responsible for offering policy guidance to the new administration on employment issues, in addition to tackling its own slate of priorities. The agency should be prepared to offer assistance on resolving employer recordkeeping requirements under the uniform guidelines on employee selection procedures for Internet job applicants, updating existing policies on the proper use of arrest and conviction records in employment, and disavowing the use of credit checks in employment. Action also will be needed to finalize regulations for the recently enacted Genetic Information Non-Discrimination Act no later than May 2009.

Endnotes

- 1 Several years ago, a task force led by Commissioner Leslie Silverman produced a comprehensive report with recommendations on ways to reinvigorate the EEOC's work on systemic discrimination cases.
- 2 See, e.g.: National Employment Lawyers Association, "Workers' Rights In Jeopardy: EEOC's Enforcement of Equal Employment Opportunity Laws Impeded by Inadequate Funding" (April 2007), p. 11.
- 3 U.S. Equal Employment Opportunity Commission, FY2009 Congressional Budget Justification (February 2008), available at <http://www.eeoc.gov/abouteeoc/plan/2009budget/index.html> (last accessed September 2008); U.S. Equal Employment Opportunity Commission, FY2006 Performance Budget (February 2005), available at <http://www.eeoc.gov/abouteeoc/plan/2006budget/index.html> (last accessed September 2008). See generally: U.S. Equal Employment Opportunity Commission Office of Inspector General, "Semiannual Report to Congress, April 1, 2007-September 30, 2007" (October 2007), available at <http://www.eeoc.gov/abouteeoc/plan/oig-12-2006.html> (last accessed September 2008).
- 4 U.S. Equal Employment Opportunity Commission Office of Inspector General, "Semiannual Report to Congress: April 1, 2006-September 30, 2007" (October 2007).
- 5 The Gallup Organization, "Employee Discrimination in the Workplace" (December 2005), p. 2-3.

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