EEOC Update

The Strategic Enforcement Plan - SEP
The Priority Charge Handling Procedures - PCHP
The EEOC Investigation
The Digital Charge System

Gail Cober - Field Director, Detroit Office
Equal Employment Opportunity Commission
The EEOC is the key civil rights agency responsible for enforcing federal laws that prohibit employment discrimination.
EEOC Mission and Vision

**EEOC Mission**

To stop and remedy discriminatory practices in the workplace

**EEOC Vision**

Justice and equality in the workplace
Promote the EEOC Mission

The EEOC promotes equal opportunity in employment through:

- Outreach and education,
- Compliance and/or voluntary settlement, and, where necessary,
- Vigorous enforcement through administrative and judicial actions.
Strategic Enforcement Plan

- National Priorities – Originally voted on by the EEOC Commissioners in 2012
- National Priorities – In place through 2016
- Modified for Fiscal years 2017-2021
- Opportunity to identify specific areas of the law to examine more closely
- To “issue spot” in areas of national importance – yet unique to each jurisdiction
- District Compliment Plan – Tool for local implementation.
Strategic Enforcement Plan

- **Targeted Approach** - Focused attention on an identified set of priorities.

- **Integrated Approach** – Enforcement should be coordinated and consistent. Full use of outreach, education, training, research, communications, mediation, enforcement and litigation.

- **Accountability** – Establish clear expectations and ensure strategic, integrated and consistent approach.
Criteria Used to Identify SEP Priorities

- Issues that will have a broad impact.
- Issues affecting workers who may lack awareness of their legal protections or are reluctant/unable to exercise their rights.
- Issues involving developing areas of the law.
- Issues involving practices that impede/impair enforcement of anti-discrimination laws.
- Issues that may be best addressed by government enforcement, based on the EEOC’s access to information, data and research.
I. Eliminating Systemic Barriers in Recruitment and Hiring.

- **Barriers:**
  - Exclusionary practices and policies
  - Steering individuals into jobs based on protected category
  - Restrictive application processes
  - Use of screening tools with adverse impact

**Groups affected:**
- Racial and Ethnic Minorities
- Older workers
- Women
- Individuals with Disabilities
II. Protecting Immigrant, Migrant and other Vulnerable Workers

- Target:
  - Disparate pay
  - Job segregation
  - Harassment
  - Human Trafficking
  - Discriminatory Language Policies

Vulnerable workers may be unaware of their rights or be reluctant or unable to exercise them.
III. Address Emerging and Developing Issues

- **Issue 1 - ADAAA**
  - Qualification standards
  - Inflexible leave policies

- **Issue 2 – Pregnancy**
  - Accommodating pregnancy-related limitations
  - Intersection of the ADA and the PDA

- **Issue 3 - LGBT**
  - Protecting lesbians, gay men, bisexuals and transgender (LGBT) people from discrimination based on sex.
III. Address Emerging and Developing Issues (Continued)

- **Issue 4 – Complex Employment Relationships**
  - Independent Contractor
  - Integrated Enterprise
  - Joint Employer
  - On-Demand Economy
  - Staffing Agency
  - Temporary Worker

- **Issue 5 – Backlash Discrimination – National Origin/Religion**
  - Arab, Middle Eastern, South Asian, Muslim, Sikh
IV. Ensuring Equal Pay Protections

- The EEOC will target compensation systems and practices that discriminate based on gender.
- The EEOC will also focus on compensation systems and practices that discriminate based on race, national origin, disability, and age.

V. Preserving Access to the Legal System

- Targeting policies and practices that discourage or prohibit individuals from exercising their rights or impede the investigative process.
  - Retaliation
  - Waiver of Rights
  - Failure to Maintain Records
VI. Preventing Harassment through Systemic Enforcement and Targeted Outreach.

- EEOC will pursue *systemic* harassment investigations and litigation;
- Conduct a targeted outreach campaign to deter harassment in the workplace
Priority Charge Handling Procedures - PCHP

- Adopted in 1995 – Replaced Full Investigations Policy
- Categorizes charges for priority handling
- Investigation should be appropriate to the particular charge, taking into account the EEOC’s resources.
- Vigorous PCHP is required to serve the public and effectively manage our workload.
- A Charging Party has an absolute right to file a charge.
- The EEOC determines which charges we will investigate.
Priority Charge Handling Procedures - PCHP

- Use analytical and critical thinking;
- And a thorough understanding and application of the models/elements of proof;
- Apply this to the evidence and information
- Analyze and assess the merits of the case.
PCHP Examples – How We Do What We Do

Example:
- Charging Party alleges that she was discharged due to her sex, female/pregnancy.
- Charging Party alleges that he was subjected to harassment from a coworker based on his national origin.

Company’s view:
- Charging Party was discharged due to excessive tardiness.
- Respondent has an Anti-Harassment Policy. The Charging Party never complained and the supervisor was unaware of the alleged harassment.
Evidence Evaluation – Legal Standard

- The EEOC evaluates the evidence under the applicable Legal Theory;
- Examples: Disparate Treatment; Disparate Impact; Reasonable Accommodation;
- The EEOC evaluates the evidence under the applicable Models of Proof;
- Bottom Line – We must apply the law to the facts of the case
- Determine whether or not there is reasonable cause to believe that the statutes have been violated – more likely than not.
The Company Response: POSITION STATEMENT

- Official position of the company;
- Forms the basis on which the charge is ultimately investigated;
- Defines the parties and addresses reasons for particular employment action - provides defenses;
- Provides information addressing each allegation;
- Identifies key personnel and individuals involved in the dispute; and
- Provides documentation to support conclusions, to expedite investigation and resolve issues.
Internal Investigation

- Gather Documents
- Interview Witnesses
- Review Employer Policies and Practices
- Identify Comparatives (if appropriate)
- Investigate Claims of Harassment
- Examine Efforts to Accommodate (if applicable)
- Confirm Basis For Employer’s Action
Prepare Position Statement

- Tell the story in a chronological and simple way with supporting policies, documents, affidavits, etc.
- Break down with headings to make easier to follow.
- Attach relevant documents.
- Include documents for comparatives.
- Avoid facts that don’t really matter to the charge.
Release of Position Statements During Investigation

- Nationwide procedure in all EEOC Offices – Effective January 1, 2016
- Position Statement will be released to Charging Party upon request
- Charging Party informed of this when Charge is filed – in Handout and Intake Counseling
- Charging Party has opportunity to respond to Position Statement
- Includes release of non-confidential attachments
- Providing the Position Statement and non-confidential attachments will facilitate a more informed, pointed and thorough response from Charging Party.
- Notice to Respondent to segregate confidential information
Confidential Information – What R Should Segregate

- Sensitive medical information (except for the CP’s info);
- Social Security Numbers;
- Confidential commercial or financial information;
- Trade Secrets information;
- Non-relevant information about witnesses, third parties, comparators (DOB in non-age cases, addresses, phone numbers, email addresses);
- References to other charges filed against the Respondent.
Position Statement
Rebuttal

• Charging Party’s opportunity to refute and rebut the information provided by Respondent.

• The purpose is to review the Respondent’s Position Statement and evidence with the CP and provide him or her with an opportunity to rebut the evidence.

• An efficient investigative tool as it gives the CP the opportunity to provide investigative leads focused on the defenses set forth in Respondent’s Position Statement.

• The CP’s response to the Position Statement will not be shared with Respondent.
After Position Statement is submitted and reviewed with Charging Party

- **Dismissal.** Review and understand basis of dismissal and statutes of limitation.

- If not dismissed, EEOC may:
  - Upload in DCS or send a request for additional information (**RFI**).
  - **Subpoena** further records;
  - **On-site** investigation;
  - **Fact-Finding.**
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Onsite Investigation
EEOC Compliance Manual, Vol 1; Sec 25

- EEOC authorized to enter and inspect Respondent facilities, to examine and copy records and conduct interviews.
- Strategic Enforcement Plan Cases
- Timely Processing:
- Nature and Scope of the Evidence:
- Large number of witnesses to interview
- Assert Federal EEOC presence
Onsite Investigation
(What to expect)

- Participation
  - **Management employees**: Company HR Mgr/Rep; Company Attorney
  - **Non-management employees**: Witness only
  - **Former management employee**: Generally witness only, unless specifically requested by employee
  - **Former non-management employees**: Witness only
Fact Finding Conference

An informal investigative forum intended to further define the issues, determine what is undisputed, clarify disputed issues and determine what other evidence is needed.
Fact Finding Conference

- Authority for fact finding is EEOC’s statutory authority to require persons to appear, produce evidence and testify.

- Expedite efficient charge processing – by bringing all the parties together to find out what happened, and why.

- The FFC allows the parties and the Investigator to hear both sides in a non-adversarial setting.

- A FFC may encourage settlement of the charge.

- If the case does not settle or is withdrawn at the FFC, the statements and documents received at the conference should provide an adequate investigatory record with which to proceed.
Fact Finding Conference

Advantages

- Efficient
- Interactive
- Facilitates improved relationships and problem solving
- Allows participants to hear facts directly from each other
- Assists in assessing credibility of charging party, respondent, witnesses
Pre-determination Interview - PDI

The “Cause” Determination Precursor and Your Opportunity to Clarify or Rebut the Evidence
Conducting the PDI

- Inform Respondent of the scope of the investigation;
- Summarize the evidence
- Invite the Respondent to provide its response;
- Inform the Respondent that a formal determination will be issued by the Director
A determination of *reasonable cause* is a finding that it is more likely than not that the Charging Party, aggrieved persons, and/or members of a class were discriminated against because of a bias prohibited by the statutes enforced by the EEOC.
Cause Findings

- Based upon the evidence established
- Appropriate legal theory
- *Prima facie* case established
- Evidence of pretext (in Disparate Treatment cases)
- EEOC may take further action.
Conciliation

- Conciliation - address and remedy the violation.
  - Seek relief for all harmed parties
  - Targeted Equitable Relief
  - Include appropriate comp and punitive damages
  - Include Policy Relief
  - Training
  - Notice Posting
  - Monitoring and Reporting
  - Public Conciliation
EEOC’s Digital Charge System – (DCS)

- Electronic Service and Notice of Charge
- Secure Portal for Respondent to Log into
- View and Download the Charge of Discrimination
- Review and Respond to an invitation to mediate
- Provide/verify Respondent contact information
- Designate Legal Representative
- Submit a Position Statement to EEOC
- Submit a Response to a Request for Information (RFI) to EEOC
- EEOC Goal – Expand use of DCS to all phases of the investigation.
DCS - Benefits to the Public

- Provides for uploading and downloading of documents through a secure portal;
- Provides for online communications, expanded info available through online resources and links to eeoc.gov;
- Streamlines enforcement systems with dates triggering messages, reminders and action steps;
- Saves resources, including time, paper, and money using digital documents and communications rather than copying, mailing, faxing, and phone calls.
Detroit Field Office - Contact Information

➤ Gail D. Cober – Field Director
➤ (313) 226-3347
➤ gail.cober@eeoc.gov

➤ Lolita Davis – Outreach Manager
➤ (313) 226-3783
➤ lolita.davis@eeoc.gov