The Official Word on EEOC:
An Overview of Important Laws & Regulations

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Equal Employment Opportunity Commission

• Bipartisan, 5-member commission established by the Civil Rights Act of 1964:
  – Chair: Jacqueline Berrien
  – 4 Commissioners: Constance Barker; Chai Feldblum; Victoria Lipnic; Jenny Yang
  – General Counsel: P. David Lopez

• Key functions
  – Set national EEO policy
  – Investigate, mediate, conciliate and litigate (when necessary)
  – Outreach and education

• Work carried out primarily in 53 offices in major metropolitan areas
Laws Enforced by EEOC

- **Title VII of the Civil Rights Act of 1964**
  - Prohibits employment discrimination based on *race, color, religion, sex, or national origin*

- **Title I of the Americans with Disabilities Act of 1990**
  - Prohibits employment discrimination against *qualified persons on the basis of disability*

- **Age Discrimination in Employment Act of 1967**
  - Prohibits employment discrimination based on a person’s *age (40 or over)*

- **Equal Pay Act of 1963**
  - Prohibits *pay discrimination between men and women* when they perform substantially equal work in the same establishment

- **Title II of the Genetic Information Nondiscrimination Act of 2008**
  - Prohibits discrimination on the basis of *genetic information* (including family medical history)
EEOC’s Strategic Priorities

• Eliminating **barriers** in recruitment and hiring
• Protecting immigrant, migrant, and other vulnerable workers
• Enforcing **equal pay** laws
• Addressing **emerging and developing issues**
• Preserving **access to the legal system**
• Preventing **harassment** through systemic enforcement and targeted outreach
Eliminating Barriers in Recruitment and Hiring

• “The EEOC will target class-based recruitment and hiring practices that discriminate against racial, ethnic and religious groups, older workers, women, and people with disabilities.”

• Eliminating “disparate treatment” discrimination ... especially discriminatory “pattern or practice.” Examples:
  – EEOC v. Texas Roadhouse, 1:11-cv-11732 (D. Mass) (alleging restaurant chain routinely denied “front of the house” and other public, visible positions to older workers, in violation of the ADEA)

• Eliminating “disparate impact” discrimination. Example:
Protecting Immigrant, Migrant, and Other Vulnerable Workers

• “The EEOC will target disparate pay, job segregation, harassment, trafficking and discriminatory policies affecting vulnerable workers who may be unaware of their rights under the equal employment laws, or reluctant or unable to exercise them.”

• Examples:
  – EEOC v. Hill Country Farms, Inc. d/b/a Henry’s Turkey Servs., 3:11-cv-41 (S.D. Iowa) (jury found turkey processor subjected intellectually disabled employees to years of severe mistreatment – including verbal and physical abuse, and restricting their freedom of movement)
  – EEOC v. Signal International, LLC, 2:12-cv-557 (E.D. La.) (alleging that marine services company operating in the Gulf of Mexico required Indian workers to live behind a fence in so-called “man camps” that featured demeaning and unsanitary living conditions)
  – EEOC v. JBS USA, LLC d/b/a JBS Swift & Co., 11:10-cv-2103 (D. Colo.) (alleging that meat-packing company created a hostile work environment for its Somali and Muslim employees due to their race, national origin, and religion -- including the allegation that supervisors and coworkers threw blood, meat, and bones at the Muslim employees and called them offensive names)

Addressing Emerging and Developing Issues

• “The EEOC will target emerging issues in equal employment law, including issues associated with significant events, demographic changes, developing theories, new legislation, judicial decisions and administrative interpretations.”

• Examples:
  – **Emerging ADA Issues:** Regulation Implementing the ADA Amendments Act of 2008 (effective 5/24/11)
    • Future focus will be less on coverage, and more on reasonable accommodation, qualification standards, undue hardship, and direct threat.
  – **LGBT Issues:** Macy v. Dep’t of Justice, EEOC DOC 0120120821, 2012 WL 1435995 (April 20, 2012) (complainant contended she was tentatively hired by ATF but the position was revoked for a pretextual reason when ATF learned she was transitioning from male to female; EEOC held that Title VII’s prohibition against discrimination “based on ... sex” covers discrimination not just based on biological sex, but also based on gender (“the cultural and social aspects associated with masculinity and femininity”)).
  – **Pregnancy Issues:** Accommodation of pregnancy-related limitations under the ADA and the Pregnancy Discrimination Act (PDA);
Enforcing Equal Pay Laws

• “The EEOC will target compensation systems and practices that discriminate based on gender.”

• National Equal Pay Enforcement Task Force (EEOC, DOJ, DOL, OPM)
  – Better coordination among federal agencies
  – Obtaining more wage data
  – Education of stakeholders, training of agency staff
  – More focus on federal employee wage gap
  – Enhanced legislation
    • E.g., Paycheck Fairness Act
Preserving Access to the Legal System

• “The EEOC will target policies and practices that discourage or prohibit individuals from exercising their rights under employment discrimination statutes, or that impede the EEOC's investigative or enforcement efforts.”
  
  – Retaliatory actions (37,836 retaliation charges filed with EEOC in 2012)
  

  – Overly broad settlement provisions – e.g., that prohibit filing EEOC charges or assisting EEOC investigations

  – Failure to maintain records – records are required to be kept for one year or, if relevant to a charge or lawsuit, until final disposition of the charge or lawsuit
Preventing Harassment

• “The EEOC will pursue systemic investigations and litigation and conduct a targeted outreach campaign to deter harassment in the workplace.”
  – Harassment is one of the most frequent complaints raised in the workplace. The issue is not just sex harassment. Harassment claims based on race, ethnicity, religion, age and disability combined significantly outnumber even sexual harassment claims.
  – By coworkers – employer must take prompt and appropriate corrective action once it knows (or should know) of the harassment
  – By supervisors – employer must take reasonable care to prevent and correct promptly any harassing behavior

• Vance v. Ball State Univ., 646 F.3d 461 (7th Cir. 2011) (holding that although the alleged harasser had the authority to tell the plaintiff what to do and did not clock in like other hourly employees, she was not a supervisor because she did not have the authority to hire, fire, demote, promote, transfer, or discipline employees), cert. granted, 2012 WL 2368689, No. 11-556 (U.S. Jun 25, 2012).
General Do’s and Don’ts

• Do:
  – Be proactive about equal employment opportunity
    • Policy: strong; descriptive; examples
    • Provide training
    • Protect against retaliation
  – Hold managers accountable for EEO problems

• Don’t ignore problems when they arise, or respond inappropriately or inconsistently
Recruitment and Hiring
Do’s and Don’ts

• Do:
  – Recruit and hire with EEO in mind
    • Broaden the search
    • Develop specific, job-related qualification standards
    • Formalize the process
    • Ensure that decision-making is well-document and transparent
  • Don’t rely solely on informal networks for recruitment and hiring (unless the networks reflect the diversity of the qualified labor market)
Terms and Conditions of Employment
Do’s and Don’ts

• Do:
  – Conduct anti-harassment training – not just sex-harassment; also race, ethnicity, religion, age, and disability
  – Monitor compensation and performance appraisal systems for patterns of potential discrimination
  – Provide reasonable accommodations
    • For individuals with disabilities
    • For religious practices
  – Treat pregnant workers the same as other persons similar in their ability or inability to work
• Don’t permit a work environment unsupportive of diversity (in all its forms) or which does not respect personal differences
Discharge and Downsizing
Do’s and Don’ts

• Do:
  – Provide clear expectations regarding conduct and performance that will subject someone to termination
  – Consistently apply policies
  – Make sure waivers and releases are knowing and voluntary and not overly broad

• Don’t retaliate against a person for filing a charge of discrimination, participating in an EEOC proceeding, or otherwise opposing discrimination
End

• Questions?