

## ***A REALISTIC WAY TO IMPROVE THE EEO PROCESS***

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At a Nov. 9 hearing, Equal Employment Opportunity Commission Chairwoman Cari Dominguez indicated that the federal EEO system to process discrimination complaints was too slow and expensive. Thus, she called for a review and assessment of the operational foundation of the process. Indeed, the EEOC indicated its intentions for such a review in its latest semiannual regulatory agenda that was published in the *Federal Register* on Oct. 31.

The EEOC chairwoman has some company in this undertaking. The employee affinity groups also want a more expeditious processing of their members' discrimination complaints. While employees who prevail on claims of discrimination are reimbursed for their attorney's fees, they have to pay for the out-of-pocket expenses of their attorneys before the issuance of such findings. Naturally, this places an onerous financial burden on these employees if the process takes too long.

Attorneys who represent managers think it is a challenging proposition for their members to supervise employees who have accused them of discrimination when the litigation of these complaints takes so long. Often, managers are reluctant to make difficult personnel decisions for fear of creating the appearance of reprisal. This is a no-win situation for employees, managers and taxpayers.

It should come as no surprise that EEO professionals at federal agencies, who are the enforcers of the regulations for the EEO process, are the first ones who want to bring about improvements to the current EEO process. However, they know that they need to get the ear of the EEOC chairwoman to succeed.

One thing is clear – EEOC is not getting additional funds from Congress to enhance the federal EEO system, and EEO managers at federal agencies are not getting additional employees. Consequently, the only way to improve the system is for EEOC to work more collaboratively with the EEO professionals. Not an illusory collaboration, but a meaningful one to address these challenges.

What better way to start this symbiotic relationship than by asking EEOC to allow federal agencies to do the following:

- Dismiss complaints after employees have not made a choice after receiving the letter allowing them to select between an EEOC hearing and a final agency decision.
- Dismiss complaints on the merits when facts available for the record, prior to the start of the formal investigation, show that the employees cannot make a prima facie showing (with appeal rights to the Office of Federal Operations). This proposal would allow EEO offices to process meritorious complaints more rapidly. And with the money saved, offices could give more EEO

training to employees and managers.

- Empower EEOC administrative judges to dismiss complaints after employees have been uncooperative during the hearing process, instead of the current practice of remanding them to the agencies for a final decision.
- Request that EEOC officials provide agencies more specific guidance, including stipulating the number of complaints filed by an employee, and on when it is proper to dismiss complaints for abuse of the EEO process.
- Request that EEOC officials be more proactive in enforcing the requirement that employees notify the agency EEO offices when they request an EEOC hearing.

The EEOC chairwoman frequently cites 19th century British prime minister William Gladstone's saying that justice delayed is justice denied. On the other hand, I am reluctant to criticize anything without offering solutions. Now that I've shared some solutions, it's time for the EEOC chairwoman to embrace Benjamin Franklin's saying that well done is better than well said. Considering that Dominguez's term expires on July 1, she does not have much time to make a difference.

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