



March 22, 2011

Jacqueline A. Berrien
Chair
Equal Employment Opportunity Commission
131 M Street NE
Washington, DC 20002
Via email to Public.Comments.RegulatoryReview@eoc.gov

Re: The EEOC's plan for retrospective analysis of significant regulations pursuant to Executive Order 13563

Dear Chair Berrien,

The National Partnership for Women & Families appreciates the opportunity to respond to the Equal Employment Opportunity Commission's request for public comment as it develops a plan to review its significant regulations. The National Partnership for Women & Families (formerly the Women's Legal Defense Fund) is a national advocacy organization that develops and promotes policies to help women achieve equal opportunity, quality health care, and economic security for themselves and their families.

The EEOC has undertaken this review pursuant to Executive Order 13563, "Improving Regulation and Regulatory Review." 76 Fed. Reg. 3821 (Jan. 21, 2011). Executive Order 13563 directs each federal agency to develop "a preliminary plan, consistent with law and its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives." Specifically, the EEOC "is soliciting public comment to assist in the development of its plan to periodically review existing significant regulations, including input on factors the Commission should consider, the process it should use, and the specific regulations that should be reviewed in the next two years."

The National Partnership supports the administration's effort to enable the EEOC to achieve its regulatory objectives more effectively. In reviewing its regulations, the Commission should ensure that all regulations provide clarity and support vigorous enforcement of the civil rights laws. Strong and specific regulations provide important guidance to employers and employees about the meaning of civil rights laws, which can promote voluntary compliance and reduce business costs. Regulations requiring reporting and data collection should be robust to enable the EEOC to identify and challenge unlawful discrimination. To the extent that specific regulations are identified for review, we urge the EEOC to provide an opportunity for interested parties to comment.

We urge the EEOC to finalize a number of proposed rules and to issue new or revised regulations in a number of areas. We would also like to take this opportunity to urge the EEOC to consider additional guidance in key areas.

The EEOC should issue new regulations to collect compensation data from employers. Just as the EEOC currently collects non-wage, demographic data about employers' workforces in EEO Reports, the EEOC should collect wage data to improve efforts to combat unlawful wage discrimination. The EEOC already has commissioned a study of the type of data that should be collected to better detect and challenge pay discrimination. The National Partnership urges the EEOC to implement the results of this study as soon as possible by collecting refined pay information from employers.

The EEOC should issue a new regulation to set forth the standard of employer liability for harassment by supervisors. The Commission rescinded 29 CFR §1604.11(c) of the Guidelines on Sexual Harassment, which set forth the standard of employer liability for harassment by supervisors, in light of the Supreme Court decisions in *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998), and *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998). The Commission issued a policy document that examines these decisions and provides guidance on the issue of vicarious liability for harassment by supervisors. The EEOC should incorporate this guidance in the regulations.

The EEOC should issue guidance on employers' use of credit checks. Employment decisions based on credit information tend to adversely impact persons of color, persons with disabilities, and women. Many of the damaging credit-related items that employers consider in screen out candidates are more likely to appear in women's credit reports than in men's credit reports. For example, women's credit reports are more likely to include accounts in debt collection, bankruptcy, high debt-to-income ratio, and foreclosure. Further, credit checks have not been demonstrated to be job-related and consistent with business necessity. The EEOC has made credit checks the subject of at least two meetings, but has yet to issue guidance for employers.

The EEOC should issue guidance on the employment practice of excluding unemployed job seekers. The EEOC recently convened a meeting to examine the practice of excluding currently unemployed persons from applicant pools, including in job announcements. The Commission heard testimony about the disparate impact of this practice on women, older workers, workers of color, and people with disabilities. The EEOC should provide guidance to employers about the potential legal implications of the practice of screening out unemployed job seekers.

We appreciate this opportunity to submit comments as the EEOC undertakes this review. If you have any questions, please contact Sarah Crawford, Director of Workplace Fairness at the National Partnership for Women & Families, at scrawford@nationalpartnership.org or 202-238-4852.

Sincerely,

The National Partnership for Women & Families