



April 6, 2011

VIA ELECTRONIC MAIL: <http://www.regulations.gov>

Mr. Stephen Llewellyn
Executive Officer
Executive Secretariat, Equal Employment Opportunity Commission
U.S. Equal Employment Opportunity Commission
131 "M" Street, N.E.
Washington, DC 20507

Re: Comments on EEOC Request Pursuant to Executive Order 13563 Seeking Input on Retrospective Analysis of Existing Significant Regulations

Dear Mr. Llewellyn:

The Society for Human Resource Management submits these comments to the U.S. Equal Employment Opportunity Commission (EEOC or Commission) in response to the above-referenced request made by EEOC on its website and through its March 8, 2011 press release.

The Society for Human Resource Management (SHRM) is the world's largest association devoted to human resource management. Representing more than 250,000 members in over 140 countries, the Society serves the needs of HR professionals and advances the interests of the HR profession. Founded in 1948, SHRM has more than 575 affiliated chapters within the United States and subsidiary offices in Canada and India.

SHRM's membership comprises HR professionals who are responsible for developing and administering their employer's human resource policies and practices. As such, our members are intimately familiar with the practical aspects of implementing, in the workplace, the regulations and guidance promulgated by the Commission.

We thank the Commission for the opportunity to provide input into its development of a regulatory review process according to Executive Order 13563, "Improving Regulation and Regulatory Review." Although submitted after the two week comment period, SHRM would appreciate consideration of its comments along with those submitted by other stakeholders and members of the public.

Given the significance of the rule-making process, SHRM suggests, as described in more detail below, that the Commission seek additional public and stakeholder input and allow a greater period of time for feedback as it begins to define its process for review of regulations.

EEOC Should Seek Additional Input

The Executive Order is intended to increase the effectiveness of governmental regulation, while reducing the burden imposed by compliance with overlapping and many times obsolete requirements. As President Obama emphasized in announcing its implementation,

This order requires that federal agencies ensure that regulations protect our safety, health and environment while promoting economic growth. And it orders a government-wide review of the rules already on the books to remove outdated regulations that stifle job creation and make our economy less competitive.

President Barack Obama, *Toward a 21st-Century Regulatory System*, WALL ST. J., Jan. 11, 2011.

The EEOC, like all Executive Branch departments and agencies, is required under the Executive Order to submit a preliminary plan for periodic review of existing significant regulations to the Office of Information and Regulatory Affairs (OIRA) on or before May 18, 2011 (120 days from the January 18 issuance date) “under which the agency will . . . determine whether any 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.” Executive Order No. 13,563, Sec. 6(b), 76 Fed. Reg. 3821, at 3822. In a Guidance Memorandum issued February 2, 2011, the Office of Management and Budget (OMB) emphasized that the aim of the plan requirement is “to create a defined method and schedule for identifying certain significant rules that are obsolete, unnecessary, unjustified, excessively burdensome, or counterproductive.” Memorandum re Executive Order 13563, “Improving Regulation and Regulatory Review,” Office of Management and Budget (OMB) M-11-10 (Feb. 2, 2011).

The EEOC’s public comment period is significantly shorter than those established by a number of other federal agencies – from thirty (30) to sixty (60) days. The brief comment period afforded by the Commission significantly undermines the ability of the public to provide meaningful input into the review process.

Nevertheless, SHRM offers the following suggestions to the EEOC in its review of existing regulations:

Method for Prioritizing EEOC's Periodic Review of Existing Regulations

Section 6 of the Executive Order requires the agencies to submit a preliminary plan under which the agency will periodically review its existing significant regulations

to determine whether any such regulations should be modified, expanded, streamlined, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.

To further this goal, SHRM suggests the EEOC identify for review those regulations that meet any of the following criteria:

1. The regulation is contrary to EEOC's goal of effecting compliance with the laws it is charged with enforcing in that it discourages the regulated community from seeking compliance assistance from EEOC. To identify such regulations, EEOC should issue a Request for Information;
2. While the regulation may have been effective at the time of promulgation, intervening events or technologies have rendered the regulation less relevant or efficacious. To identify these regulations, EEOC should issue a Request for Information to obtain information about how the need for the regulation has changed since its promulgation; or
3. The regulations or multiple regulations impose overlapping obligations that are either duplicative, inconsistent, or in conflict with each other, such that the costs of compliance far exceed the public benefit achieved. To identify these regulations, EEOC should issue a Request for Information to obtain data to enable EEOC to quantify the costs of compliance with the regulations, as compared to the public benefit achieved as a result of complying with the regulation.

Specific Regulations that EEOC Should Review

SHRM's members have a vital interest in the EEOC's regulations. In the very short period of time provided for public input, SHRM cannot provide meaningful suggestions on the specific regulations that would likely meet any of the criteria listed above, and we believe that other interested members of the public likely are in the same position. For that reason, we urge EEOC to obtain detailed information from the public through the Requests for Information described above. Using the information obtained, the Commission can then make reasoned decisions about how best to focus its review of existing regulations.

The Commission, to its credit, recently issued regulations implementing the Genetic Information Nondiscrimination Act and the ADA Amendments Act. Each of these regulations will undoubtedly have a significant impact on the workplace. At this point, however, the regulations are too recent to assess their impact. In addition, there may be other regulations or aspects of regulations that may be identified by SHRM or its members after a fuller review. At this time, we offer two suggestions for consideration.

Reasonable Factors Other Than Age under the Age Discrimination in Employment Act (ADEA)

The Commission has, through two different rulemaking efforts, 2008 and 2010, proposed substantial changes to the ADEA and the interpretation of "reasonable factors other than age." Although the Commission has not yet finalized any revisions, SHRM remains concerned about the direction these proposed rules have taken. SHRM's views on this matter are more fully described in our comments filed on April 19, 2010.

Commission Oversight of Enforcement Actions

The Commission's regional offices are responsible for receiving complaints, investigating the validity of complaints, and bringing enforcement actions against those who violate the laws under EEOC jurisdiction. Enforcement is an integral part of regulatory compliance and the approach taken to enforce the laws and regulations of the EEOC has a tremendous impact on the regulated community. Employers are better able to comply with the Equal Opportunity laws and regulations when those mandates are clear and employers understand the standards by which they will be held accountable.

Different EEOC regional offices have sometimes interpreted the same regulation differently resulting in confusing and sometimes conflicting enforcement schemes. This lack of a unified approach to enforcement can make it difficult for employers to anticipate how to best comply with EEOC rules. As part of its regulatory review, we urge the Commission to revise its current enforcement practices to ensure that the Commission establishes a nationwide, uniform enforcement and litigation strategy.

Again, we appreciate your consideration of our comments. If you would like to discuss these comments, please contact Nancy Hammer at (703) 535-6030.

Yours truly,



Michael P. Aitken
Director, Government Affairs