



Littler Mendelson, P.C.
321 North Clark Street
Suite 1000
Chicago, IL 60654

March 21, 2011

Barry A. Hartstein
312.795.3260 direct
312.372.5520 main
bhartstein@littler.com

VIA ELECTRONIC FILING

Equal Employment Opportunity Commission
131 M Street, NE
Washington, DC 20507

Re: Request for Public Comments on the EEOC's Plan for Retrospective Review of its Significant Regulations

To Whom It May Concern:

We are writing on behalf of Littler Mendelson, P.C., to comment on the Equal Employment Opportunity Commission's (EEOC's) review of its existing significant regulations to determine whether any such regulation should be modified, streamlined, expanded, or repealed to make the EEOC's regulatory program more effective and/or less burdensome in achieving its regulatory objectives.

Founded over 60 years ago, Littler Mendelson is the nation's largest law firm dedicated exclusively to the practice of labor and employment law. With over 800 attorneys in 49 offices across the country, Littler Mendelson is the largest law firm in the country exclusively devoted to representing management in employment, employee benefits and labor law matters. The firm's client base ranges from Fortune 100 companies to small-business owners. The EEOC's regulatory program is highly relevant to the Firm's practice and significantly impacts the Firm's clients.

President Obama's Executive Order 13563 of January 18, 2011 (Executive Order) sets forth his regulatory strategy to protect public health, welfare, safety and our environment while promoting economic growth, innovation, competitiveness and job creation. Toward that goal, the Executive Order outlines the following guiding principles of regulation:

- Cost-effective and cost-justified
- Transparent
- Coordinated and simplified
- Flexible
- Science-driven
- Necessary and up-to-date

It is with these guiding principles in mind that we offer our comments on the EEOC's regulatory review plan. As the EEOC embarks on its directive to design such a plan, we urge the Agency to consider each of these factors in performing its review.

Meaningful and continued input from the employer community is a predicate for the Agency ensuring that its regulatory program is developed and operated consistent with these guiding principles. We appreciate that the EEOC is seeking help from the public to design its regulatory review plan, as this signifies a recognition of the importance of engaging the employer community in this process. We also hope the Agency recognizes the challenge of providing substantive and comprehensive input on specific regulations in the time afforded for comment.

We understand that the Executive Order directed agencies to submit a preliminary regulatory review plan to the Office of Information and Regulatory Affairs within 120 days. However, the timeline the EEOC has provided for public comment does not provide the opportunity to fully respond to the solicitation in a manner this important undertaking requires. The mission of the EEOC to promote equality of opportunity in the workplace and enforce federal laws prohibiting discrimination in employment is too critical and the impact of its regulatory program on economic growth, competitiveness and job creation is too great to provide a full analysis in this truncated comment period.

We view the EEOC's solicitation of input on its regulatory plan as the beginning of an ongoing, meaningful dialogue with employers on how to make the EEOC's regulatory program less burdensome in achieving its objectives. This substantive and interactive process begins with the EEOC's recent solicitation of public input, but it should not end there. Again, we appreciate the Agency's outreach, and hope that it signifies a transparent regulatory process with a meaningful opportunity for public comment that considers the burden imposed on employers and, in turn, economic growth, job creation and competitiveness.

To fully appreciate the burden the EEOC's regulatory program places on employers, this review process and the Executive Order principles driving it cannot be restricted to a retrospective review of "significant existing regulations." Although the EEOC's request for public comments refers to its retrospective review of existing significant regulations, the goals of the Executive Order may not be achieved by so limiting the review and public comment.

This process should extend to the full spectrum of the EEOC's regulatory agenda, including regulations at the proposed rulemaking and pre-rule stage as well as those under consideration for long-term action. For example, the EEOC's proposed rulemaking on the reasonable factor other than age defense under the Age Discrimination in Employment Act would have a significant and adverse impact on employers not contemplated by the Supreme Court or Congress. This proposed rulemaking should be reexamined in light of the objectives

of the Executive Order. Furthermore, to achieve the goals outlined in the President's Executive Order, we encourage the EEOC to seek input from the employer community before rules are developed and a Notice of Proposed Rulemaking (NPRM) published. For example, an Advanced Notice of Public Rulemaking helps inform the Agency about a proposal's impact on businesses before a NPRM is issued. The NPRM should be informed by such public input, not the trigger for it.

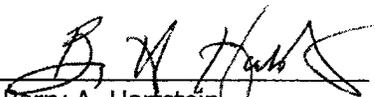
The impact of the EEOC's regulatory program on employers and their ability to remain competitive and create jobs comes from outside the rulemaking process as well. To the extent that the Agency is going to create policy and significantly impact employer operations outside of rulemaking, these activities should be guided by the same principles set forth in the Executive Order and discussed above. Such guidance and directives from the EEOC can have as strong an impact as the regulations do. For employers facing compliance with and enforcement of the EEOC's regulations, this sub-regulatory activity is inextricably linked to the regulations themselves. We strongly encourage a similar open and transparent process that provides a meaningful opportunity for public input on the EEOC's sub-regulatory agenda. It is our understanding that the EEOC is considering issuing guidance on employer use of criminal background checks and/or credit history. This is of vital interest to employers, and we urge the EEOC to solicit substantive feedback from employers on any such guidance prior to its issuance.

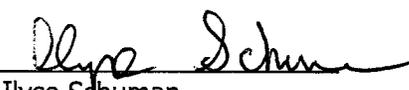
Thank you for the opportunity to comment on the EEOC regulatory review plan. We ask the Agency to apply the same approach of transparency, public participation and consideration of burden placed on employers to all stages of the EEOC's regulatory and sub-regulatory program.

We appreciate your consideration of our comments. Please do not hesitate to contact us should you have any questions.

Respectfully submitted,

Littler Mendelson, P.C.

By: 
Barry A. Hartstein

By: 
Ilyse Schuman