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EEOC Outlines New Four-Year Strategic Plan

By Matthew J. Feery, Esq.

With relatively little fanfare, the Equal Employment Opportunity Commission recently posted its Draft Strategic Plan for Fiscal Years 2012-2016. The plan, which is required every four fiscal years from each government department, both reflects the current economic climate and provides some insight into where the EEOC will focus its efforts in upcoming years. Indeed, the plan acknowledges what many employers and employment attorneys have been saying for years - that during an economic downturn comes "an increase in overall charges [of discrimination] as more people are laid-off." Indeed, in 2010 and 2011 each, the EEOC received just shy of 100,000 individual private sector charges of discrimination, including a record 99,947 individual charges in 2011. Against this influx of charges, Congress recently cut the EEOC's budget for the upcoming fiscal year - something the Commission does not expect to change anytime soon. The new plan assumes that the EEOC's funding will remain at its 2012 levels through 2016.

The four-year fiscal plan calls for replacing the EEOC's 2006 National Enforcement Plan with a new Strategic Enforcement Plan, which will be finalized and adopted in September 2012. Under the new plan, the EEOC will focus its efforts - and its litigation - on "systemic discrimination cases," which the EEOC considers "pattern or practice, policy, and/or class cases where the alleged discrimination has a broad impact on an industry, profession, company, or geographic area." Indeed, under the new Strategic Enforcement Plan, the EEOC will have a target each fiscal year for a certain, still undetermined, percentage of

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its litigation cases to be systemic cases.

Also notable for employers is the EEOC's indication that it intends to blur the lines between its investigatory and litigation arms. The EEOC intends to create an "integrated, holistic approach to enforcement from beginning to end, without separating the investigation and conciliation state of the EEOC's work from its litigation stage." What this means for employers is still unclear, but it would not be unexpected to see more document and information requests from the EEOC at the investigative stage. Also of note is that the EEOC intends to focus on "targeted, equitable relief" that would expand the sought-after relief beyond just the individual complaining of discrimination to "all employees and job-seekers." Although the phrase "targeted, equitable relief" will be further defined later this year, the EEOC indicates that it will include more requests for supervisor and employee training, development of policies and practices by employers, and additional external monitoring.

The proposed four-year plan also sets two other goals for the EEOC. First, the EEOC wants to increase its education and outreach program to reach those groups it considers to have not been "equitably served" by the EEOC, such as "persons of color under the age of 30, low-skilled workers, and new immigrants." To do this, the EEOC plans to increase, among other things, its Internet and social media presence. Second, the EEOC intends to create more internal efficiency to provide greater customer service.

Although the plan is valuable for providing insight into the future direction of the EEOC, it should be noted that there are a number of factors that could significantly alter these objectives (a fact that the EEOC acknowledges in its plan). As recent years have shown, changes in the economy directly affect the EEOC's budget, which in turn affects, among other things, the number of investigators and attorneys the EEOC can employ. Additionally, changes in the law, such as 2008's Genetic Information Non-Discrimination Act of 2008, can change the scope and reach of the EEOC. Finally, and perhaps most importantly in an election year, politics can affect the EEOC's plans, especially if control of either of the Houses of Congress or the White House change parties. Thus, while the recently published draft strategic plan offers valuable insights into the direction of the EEOC, only time will tell whether any of its goals ultimately come to fruition.

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