



The GSH 60-Second Memo

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Laurie E. Meyer, Esq.

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Time Running Out to Provide Comments to EEOC on Regulation Review

By Laurie E. Meyer, Esq.

Time is running out for interested parties, including employers, to provide the EEOC with comments and feedback as to which employment nondiscrimination regulations the EEOC should review in the next two years.

On March 22, 2011, the EEOC will stop taking public comments on its efforts to comply with Executive Order 13563 (the "Order"), which was signed by President Obama on January 18, 2011. The Order, entitled "Improving Regulation and Regulatory Review," has been widely seen as an effort by the White House to reach out to the business community. The Order seeks to streamline the federal regulatory process and requires federal agencies - including the EEOC - to review their regulations and eliminate the ones that either do not make sense or stifle economic growth. As President Obama acknowledged in an op-ed article published in the *Wall Street Journal* the same day he issued the Order, the Order's purpose is to ensure federal administrative agencies "avoid excessive, inconsistent and redundant regulation":

[This Order] orders a government-wide review of the rules already on the books to remove outdated regulations that stifle job creation and make our economy less competitive. It's a review that will help bring order to regulations that have become a patchwork of overlapping rules, the result of tinkering by administrations and legislators of both parties and the influence of special interests in Washington over decades.

Barack Obama, *Toward a 21st-Century Regulatory System*, *Wall Street Journal*, Jan. 18, 2011.

Stating that "[o]ur regulatory system must protect public health, welfare, safety and our environment while promoting economic growth, innovation, competitiveness, and job creation," the Order outlines requirements designed to promote public participation, improve integration and innovation, increase flexibility, ensure scientific integrity, and increase retrospective analysis of existing rules. To this end, the Order offers certain guiding principles for the required regulatory review:

- **Cost-effectiveness and Cost-justification:** Consistent with law, federal agencies must consider costs and benefits and choose the least burdensome regulatory path.
- **Transparency:** The regulatory process must be transparent and include public participation, with an opportunity for the public to comment.
- **Coordination and Simplification:** Agencies must attempt to coordinate, simplify, and harmonize regulations to reduce costs and promote certainty for businesses and the public.
- **Flexibility:** Agencies must consider approaches that maintain freedom of choice and flexibility, including disclosure of relevant information to the public.
- **Science-driven:** Regulations must be guided by objective scientific evidence.
- **Necessary and Up-to-Date:** Existing regulations must be reviewed to determine whether they are still necessary and crafted effectively to solve current problems. If they are outdated, they must be changed or repealed.

Public Participation Emphasized

The Order stresses the importance of public participation, and requires agencies, to the extent feasible and permitted by law, to "afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally consist of not less than 60 days." To that end, the Order requires agencies to provide "for both proposed and final rules, timely online access to the rulemaking docket [on], including relevant scientific and technical findings." The Order further requires an "open exchange" of information among government officials, experts, stakeholders and the public.

Analysis of Existing Rules and Employer Comment

The Order also requires that each agency develop and submit to the Office of Information and Regulatory Affairs by May 18, 2011, a preliminary plan under which the agency will periodically review its existing significant regulations to determine whether its regulations

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should be modified, streamlined, expanded, or repealed to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.

With these goals in mind, the EEOC has been soliciting public comments and feedback on its regulatory review process. Specifically, the EEOC is seeking input on which regulations should be on its initial list of regulations to review over the next two years. (The EEOC supports enforcement of six employment nondiscrimination laws: Title VII, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Rehabilitation Act, the Equal Pay Act, and the Genetic Information Nondiscrimination Act.) As mentioned earlier, interested parties, including employers, have only until March 22, 2011 (this coming Tuesday) to submit their comments online at Public.Comments.RegulatoryReview@eoc.gov.

Whether the Order makes any long-term difference in the federal regulatory structure governing employment nondiscrimination laws remains to be seen. But for interested employers, this may not be an opportunity to let go by.

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