



May 24, 2012

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Hon. Jacqueline Berrien, Chair
Equal Employment Opportunity
Commission
131 M Street, N.E.
Washington, D.C.

Hon. Constance Barker, Commissioner
Equal Employment Opportunity
Commission
131 M Street, N.E.
Washington, D.C. 20507

Hon. Chai Feldblum, Commissioner
Equal Employment Opportunity
Commission
131 M. Street, N.E.
Washington, D.C. 20507

Hon. Victoria Lipnic, Commissioner
Equal Employment Opportunity
Commission
131 M Street, N.E.
Washington, D.C. 20507

Hon. Jenny Yang, Commissioner
Equal Employment Opportunity
Commission
131 M. Street, N.E.
Washington, D.C. 20507

Re: EEOC Quality Control Plan for Investigations and Conciliations

Dear Chair Berrien, Commissioner Barker, Commissioner Feldblum, Commissioner Lipnic and Commissioner Yang:

On behalf of the Employment Task Force of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the rights of all persons in the United States, we appreciate the opportunity to comment on the Commission's development of a Quality Control Plan (QCP) that will establish criteria for evaluating the quality of EEOC investigations and conciliations pursuant to the Commission's Strategic Enforcement Plan (SEP) for fiscal years 2013 to 2016.

We commend the Commission for identifying in its SEP critical nationwide issues that it will prioritize in the coming years. For example, eliminating systemic barriers in recruitment and hiring is essential to ending occupational segregation between men and women and ensuring that all workers have access to high-wage jobs regardless of sex, race, religion, age, and disability. Targeting compensation systems and practices that discriminate based on gender is crucial to enforcing equal pay

laws. EEOC's attention to immigrant, migrant and low-wage workers is especially necessary because these workers often experience the most significant gaps in power and information. Combating harassment is key to promoting equal opportunities for women in the workplace. The Commission's identification of emerging issues as a priority area is particularly important, and we applaud the Commission's prioritization of situations in which pregnant workers are denied workplace accommodations and LGBT workers face sex discrimination, including discrimination on the basis of perceived failure to conform to sex stereotypes or discrimination based on gender identity.

This well-considered strategy will prove for naught without the implementation of meaningful quality control measures that (1) promote the timely processing of charges filed with the EEOC and greater transparency for employees regarding the status of filed charges and (2) ensure stronger communication with public interest organizations and other employee advocates seeking to enforce the nation's employment nondiscrimination laws as private attorneys general. These processes will strengthen the Commission's ability to effectively leverage both public and private resources toward the goal of enforcing the nation's nondiscrimination laws.

Prioritizing a consistent and effective approach to investigations and conciliations is urgently needed. The current system produces large numbers of investigations interminably delayed and then ended without substantial explanation; investigations that fail to produce sufficient data to enable the employee and her counsel to make an informed evaluation of the strengths and weaknesses of the case; and systemic investigations that drag on for four or five years without any established deadline for final Commission action.

The Commission's draft QCP does not begin to remedy these problems because it fails to incorporate specified measures of quality and provides boundless discretion to district and local offices. For example, the QCP does not include a requirement that the Commission obtain and share a copy of respondent position statements with the charging party. Without such a requirement, charging parties will be unable to meaningfully assess the strength of their case or compose useful rebuttals. EEOC should endeavor to create a QCP standard that reinforces the sharing of critical case information with charging parties in a manner that is consistent across offices. In addition, we urge the Commission to establish formal policies to share with counsel for charging parties the information it obtains in investigations in which the Commission decides not to bring its own enforcement action: such information sharing is needed to enable private counsel to function as "private attorneys general" in bringing cases that can further the cause of equal employment opportunity both for charging parties and for the broader national workforce.

The QCP also does not address the adequacy of Commission staff communications with charging parties and respondents regarding pending charges. Although we appreciate the heavy workload faced by many EEOC employees, inadequate communication with charging parties can impede and frustrate EEOC investigations. For example, failure to return calls may cause investigators to miss important factual developments. In addition, for charging parties unrepresented by private counsel, delays in EEOC contact by EEOC staff is highly likely to discourage complainants with worthy cases, thereby undermining EEOC's ability to fulfill its



mission “to pursue fair and vigorous enforcement where there is any form or level of employment discrimination covered by the laws [it] implement[s].” Thus, we strongly recommend that adequate communications with charging parties be a component of assessing the quality of an EEOC investigation.

Further, we are disappointed by the QCP’s failure to identify the timeliness of an investigation as a measure of quality since it directly relates to the efficient and effective use of agency resources in achieving the EEOC’s mission. Without it, the Commission will be unable to address endemic patterns of unexplained delay in many EEOC offices between the filing and termination of charges that receive minimal or no investigation.

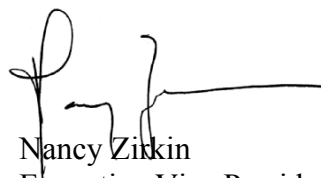
Our organizations endorse the efforts of the Commission to develop more effective procedures for the allocation of its scarce enforcement resources, but we strongly urge the Commission to provide additional detail to direct the determination of whether a quality investigation has occurred. Without further guidance, we fear the Commission’s SEP goals, commendable as they are, will remain unfulfilled.

We appreciate the opportunity to comment on the Commission’s Quality Control Plan and we look forward to a continued dialogue as the Commission moves this important agenda forward. If you have any questions, please contact Lisa Bornstein, Senior Counsel, The Leadership Conference for Civil and Human Rights, at bornstein@civilrights.org or Fatima Goss Graves, Vice President for Education & Employment, National Women’s Law Center, at fgraves@nwlc.org.

Respectfully submitted,



Wade Henderson
President & CEO



Nancy Zirkin
Executive Vice President