

Lean Mean Civil Rights Machine: What to Expect from the EEOC through 2016

February 26, 2013

By [Anne Elizabeth Ayeni](#)



In an informative panel for the Ogletree Deakins Washington, D.C. Legislative and Regulatory Conference on February 21, 2013, Equal Employment Opportunity Commission (EEOC) Commissioners Chai Feldblum and Victoria Lipnic discussed what employers can expect from what Commissioner Feldblum described as the “lean mean civil rights machine” of the agency during.....

In an informative panel for the Ogletree Deakins Washington, D.C. Legislative and Regulatory Conference on February 21, 2013, Equal Employment Opportunity Commission (EEOC) Commissioners Chai Feldblum and Victoria Lipnic discussed what employers can expect from what Commissioner Feldblum described as the “lean mean civil rights machine” of the agency during this administration. They outlined the agency agenda with regard to: discrimination in hiring; unlawful harassment; and compensation practices that discriminate based on gender. They also addressed the agency’s future plans, including developing a Quality Control Plan for investigations and conciliations.

The EEOC’s new Strategic Enforcement Plan will make hiring practices a priority enforcement area. This will include a focus on criminal background checks, because of their disparate impact on race in the

hiring process. The Commissioners expressed hope that new guidelines from the agency on the use of criminal background checks would provide some needed clarity to employers. They emphasized that the law does not require an employer to hire an employee with a conviction relevant to the job at issue, for example, a day care worker with a child abuse conviction. An employer's across-the-board ban on hiring anyone with a criminal record, however, even someone with an old conviction unrelated to any aspect of the job, could land the employer in trouble with the agency.

With respect to harassment, the agency will focus its litigation efforts on systemic, broad-based harassment. Commissioner Feldblum noted that there are still numerous cases where businesses have not one bad actor, but multiple supervisors and co-workers who engage in harassment. Recent examples of this kind of systemic examples have been concentrated in the areas of race and national origin discrimination. Despite this focus, the Commissioners expressed concern, however, about the persistence of harassment cases with single bad actors who are undeterred by policies against harassment. The agency also intends to engage in targeted outreach and education to help stop harassment, whether by one bad actor or many, before it begins.

Another part of the EEOC's new Strategic Enforcement Plan is a focus on compensation practices that discriminate based on gender. The Commissioners pointed out that the Equal Pay Act permits the EEOC to start investigations on its own initiative, and the EEOC is looking to do so. The Commissioners polled the audience about attitudes toward lasting pay disparities that result from maternity leave taken early in a woman's career. Commissioner Feldblum also expressed concern about studies showing that the stigma attached to working women with children is greater than the stigma attached to working men with children. The EEOC is on the lookout for Equal Pay Act cases.

Going forward, the agency would also like to explore regulatory updates and oversight for the Genetic Information Nondiscrimination Act of 2008 (GINA). The Commissioners opined that GINA's intersection with wellness programs and the Americans with Disabilities Act (ADA) suggests there may be a need for further regulatory clarification.

Finally, the EEOC is [seeking comment](#) from the public on what makes for good investigations and conciliations. The EEOC is developing a Quality Control Plan for investigations and conciliations. The EEOC states that the public must submit suggestions by 5:00 p.m. eastern time on Friday, March 1, 2013, to strategic.plan@eeoc.gov or by mail to Executive Officer, Office of the Executive Secretariat, U.S. Equal Employment Opportunity Commission, 131 M Street, NE, Washington, DC 20507.

The panel on which the Commissioners spoke was moderated by Ogletree Deakins shareholder Cheryl M. Stanton.

AUTHOR



Anne Elizabeth Ayeni

Director of Client Services, [Atlanta](#)

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