In a recent Law360 article, the publication of the final rule revising the federal sector Equal Employment Opportunity Commission (EEOC) complaint process was announced. The revised rule, published in the Federal Register on July 25, 2012, updates how the EEOC processes complaints of discrimination by federal sector agency employees and applicants. The rule, which is located at 29 CFR Part 1614 (“Federal Sector Employment Opportunity”), also changes class proceedings. Click here for Questions and Answers on the rule.

What is the Federal Sector EEOC Complaint Process?

29 CFR Part 1614 governs the process for filing and adjudicating complaints of employment discrimination filed by federal employees and applicants for jobs with select federal agencies. (It doesn’t apply to private sector employers, their employees, or applicants or to state or local governments, their employees, and applicants.) Part 1614 also directs how these federal agencies must administer their internal equal employment opportunity programs. Federal executive agencies and a few other federal entities, such as the U.S. Postal Service, the Tennessee Valley Authority, and the Smithsonian Institution, must comply with the rules and procedures set forth in Part 1614.

What is the Impact of the Final Rule?

Basically, the final rule contains key revisions to the following six main areas:

- The EEOC’s authority to issue notices to agencies when non-compliance is found and not corrected;
- The agencies’ ability to seek approval from the EEOC to conduct pilot projects in which the complaint processing procedures vary from the requirements of Part 1614;
- Dismissal of a complaint that alleges that a proposal or preliminary step to taking a personnel action is discriminatory, unless the complainant alleges that the proposal is retaliatory;
- Provision of an estimated date of completion and reminder to the complainant that he or she has a current right to request a hearing or file a lawsuit when a covered agency has not completed its investigation in a timely manner;
- Changing an administrative judge’s decision on the merits of a class complaint to a “final decision,” rather than a “recommended decision,” which an agency can implement or appeal; and
The requirement that covered agencies must submit appeals and complaint files to the EEOC in a digital format, unless they can establish good cause for not doing so.

**Employers - Beware!**

Federal sector employers should now be aware of some important issues that have changed time periods for their response.

First, if an agency does not complete its investigation within the required time period, it must, within the same applicable time period, issue a written notice to the complainant informing him or her that the agency has been unable to complete its investigation within the required time limits. Additionally, an agency must now estimate a date by which its investigation will be completed and inform the complainant of that date. Further, the notice must explain that if the complainant does not want to wait until the agency completes the investigation, he or she may instead request a hearing or file a civil action in an appropriate federal district court.

Next, the final rule makes two changes to the class complaint process. First, an appeal of the acceptance or dismissal of a class complaint will be processed by the EEOC on an expedited basis. Thus, after an EEOC administrative judge issues a decision on whether to accept or dismiss a class complaint, the agency or the class agent can appeal the decision. That appeal will now be processed within 90 days, rather than 180 days under the previous rule.

Second, the revised final rule makes an administrative judge’s decision on the merits of a class complaint a final decision, which the agency can fully implement or appeal in its final action. With the current change, an administrative judge’s class complaint decision will have the same status and effect as an administrative judge’s decision on an individual complaint; it will be a final decision which the agency or class agent can appeal. If the agency does not fully implement the administrative judge’s decision, it only has to appeal the parts of the decision that it wishes to contest. For example, if an administrative judge finds that the agency discriminated against the class and awards reinstatement and backpay, and if the agency disagrees with the award of reinstatement, the agency’s appeal need only challenge the reinstatement award.