

Equal Employment Opportunity Commission



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The U.S. Equal Employment Opportunity Commission (EEOC) is a federal agency that administers and enforces civil rights laws against workplace discrimination. The EEOC investigates discrimination complaints based on an individual's race, children, national origin, religion, sex, age, disability, sexual orientation, gender identity, genetic information, and retaliation for reporting, participating in, and/or opposing a discriminatory practice. [3]

History

On March 6, 1961, President John F. Kennedy signed Executive Order 10925, which required government contractors to "take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, or national origin." [4] It established the President's Committee on Equal Employment Opportunity of which then Vice President Lyndon Johnson was appointed to head. This was the forerunner of the EEOC.

The EEOC was established on July 2, 1965; its mandate is specified under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (ADEA), [5] the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA) of 1990, and the ADA Amendments Act of 2008. The EEOC's first complainants were female flight attendants. However, the EEOC at first ignored sex discrimination complaints, and the prohibition against sex discrimination in employment went unenforced for the next few years. [7] One EEOC director called the prohibition "a fluke... conceived out of wedlock." [7]

All Commission seats and the post of general counsel to the commission are filled by the US President, subject to confirmation by the Senate. [8] Stuart J. Ishimaru, a Commissioner who was confirmed in 2003 and 2006, [9] served as Acting Chair of the Commission from January 20,

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2009 until December 22, 2010, when the Senate confirmed Jacqueline Berrien to be the chairwoman. She had been nominated as chairwoman by President Barack Obama in July 2009. [10] In September 2009, Obama chose Chai Feldblum to fill another vacant seat. [11]

On March 27, 2010, President Obama made <u>recess appointments</u> of three Commission posts: Berrien, Feldblum, and <u>Victoria Lipnic</u>. With the appointments, the Commission had its full five Commissioners: Ishimaru, Berrien, Feldblum, Lipnic, and <u>Constance Barker</u>, who was confirmed by the Senate in 2008 to be a Commissioner. President Obama also made a recess appointment of P. David Lopez to be the EEOC's General Counsel. [12]

On December 22, 2010, the Senate gave full confirmation to Berrien, Feldblum, Lipnic, and Lopez.

In 2011, the Commission included "sex-stereotyping" of lesbian, gay, and bisexual individuals, as a form of sex discrimination illegal under Title VII of the Civil Rights Act of 1964. [13][14] In 2012, the Commission expanded protection provided by Title VII to transgender status and gender identity. [13][15]

After the departure of Ishimaru, the commission returned to its full five commissioners on April 25, 2013, with the Senate confirmation of Jenny Yang.

In 2015, it concluded that for Title VII, sex discrimination includes discrimation based on sexual orientation. [16][17]

However, the rulings, while persuasive, are not binding on courts and would need to be addressed by the Supreme Court for a final decision. The Commission also mediates and settles thousands of discrimination complaints each year prior to their investigation. The EEOC is also empowered to file civil discrimination suits against employers on behalf of alleged victims and to adjudicate claims of discrimination brought against federal agencies. [18][19]

Staffing, workload, and backlog

In 1975, when the backlog reached more than 100,000 charges to be investigated, President <u>Gerald Ford</u>'s full requested budget of \$62 million was approved. A "Backlog Unit" was created in <u>Philadelphia</u> in 1978 to resolve the thousands of federal equal employment complaints inherited from the <u>Civil Service Commission</u>. In 1980, Eleanor Holmes Norton began re-characterizing the backlog cases as "workload" in her reports to Congress, thus fulfilling her promise to eliminate the backlog. [20]

In June 2006, civil rights and labor union advocates publicly complained that the effectiveness of the EEOC was being undermined by budget and staff cuts and the outsourcing of complaint screening to a private contractor whose workers were poorly trained. In 2006, a partial budget freeze prevented the agency from filling vacant jobs, and its staff had shrunk by nearly 20 percent from 2001. A Bush administration official stated that the cuts had been made because it was necessary to direct more money to defense and homeland security. By 2008, the EEOC had lost 25 percent of its staff over the previous eight years, including investigators and lawyers who handle the cases. The number of complaints to investigate grew to 95,400 in fiscal 2008, up 26 percent from 2006. [22]

Although full-time staffing of the EEOC was cut between 2002 and 2006, Congress increased the commission's budget during that period, as it has almost every year since 1980. The budget was \$303 million in fiscal year $2001^{\boxed{22}}$ to \$327 million in fiscal year $2006.^{\boxed{22}}$

The outsourcing to Pearson Government Solutions in Kansas cost the agency \$4.9 million and was called a "huge waste of money" by the president of the EEOC employees' union in 2006. [21]

The EEOC uses punitive monetary fines as their primary form of deterrence; it is likely that because the EEOC has not adjusted a great many of their fines for inflation, the backlog of EEOC cases illustrates eroding deterrence.

Race and ethnicity

The EEOC requires employers to report various information about their employees, in particular their racial/ethnic categories, to prevent discrimination based on race/ethnicity. The definitions used in the report have been different at different times.

In 1997, the Office of Management and Budget gave a Federal Register Notice, the "Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity," which defined new racial and ethnic definitions. [23] As of September 30, 2007, the EEO's EEO-1 report must use the new racial and ethnic definitions in establishing grounds for racial or ethnic discrimination. [24] If an employee identifies their ethnicity as "Hispanic or Latino" as well as a race, the race is not reported in EEO-1, but it is kept as part of the employment record.

A person's color or physical appearance can be grounds for a case of racial discrimination as well. Discrimination based on national origin can be grounds for a case on discrimination as well.

Investigative compliance policy

EEOC applies an investigative compliance policy when respondents are unco-operative in providing information during an investigation of a charge. If a respondent fails to turn over requested information, field offices are to subpoen the information, file a direct suit on the merits of a charge, or use the legal principle of adverse inference, which assumes the withheld information is against the respondent. [27]

Increase in disability-based charges

In 2008, disability-based charges handled by the EEOC rose to a record 19,543, up 10.2 percent from the prior year and the highest level since 1995. [28]

That may again be showing that because the EEOC has not adjusted many of their initial 1991 fines for inflation, the backlog of EEOC cases illustrates erosion of deterrence.

Home Depot disability discrimination suit

In September 2012, <u>Home Depot</u> agreed to pay \$100,000 and furnish other relief to settle a <u>disability</u> discrimination lawsuit filed by the EEOC for the alleged failure to provide <u>reasonable accommodation</u> for a cashier with cancer at its <u>Towson</u>, <u>Maryland</u>, store and for later purportedly firing her because of her condition. [29]

2012 profile

The U.S. Equal Employment Opportunity Commission (EEOC) announced that it received 99,412 private sector workplace discrimination charges during fiscal year 2012, down slightly from the previous year. The year-end data also show that retaliation (37,836), race (33,512), and sex discrimination (30,356), which includes

allegations of sexual harassment and pregnancy were the most frequently filed charges. [30]

Additionally, the EEOC achieved a second consecutive year of a significant reduction in the charge inventory, something not seen since fiscal year 2002. Due to a concerted effort, the EEOC reduced the pending inventory of private sector charges by 10 percent from fiscal year 2011, bringing the inventory level to 70,312. This inventory reduction is the second consecutive decrease of almost ten percent in charge inventory. Also this fiscal year, the agency obtained the largest amount of monetary recovery from private sector and state and local government employers through its administrative process — \$365.4 million.

In fiscal year 2012, the EEOC filed 122 lawsuits, including 86 individual suits, 26 multiple-victim suits, with fewer than 20 victims, and 10 systemic suits. The EEOC's legal staff resolved 254 lawsuits for a total monetary recovery of \$44.2 million.

EEOC also continued its emphasis on eliminating alleged systemic patterns of discrimination in the workplace. In fiscal year 2012, EEOC completed 240 systemic investigations which in part resulted in 46 settlements or conciliation agreements. These settlements, achieved without litigation, secured 36.2 million dollars for the victims of unlawful discrimination. In addition, the agency filed 12 systemic lawsuits in fiscal year 2012.

Overall, the agency secured both monetary and non-monetary benefits for more than 23,446 people through administrative enforcement activities – mediation, settlements, conciliations, and withdrawals with benefits. The number of charges resolved through successful conciliation, the last step in the EEOC administrative process prior to litigation, increased by 18 percent over 2011.

Criticism

Some employment-law professionals criticized the agency after it issued advice that requiring a high school diploma from job applicants could violate the <u>Americans with Disabilities Act</u>. The advice letter stated that the longtime lowest common denominator of employee screening must be "job-related for the position in question and consistent with business necessity." A <u>Ballard Spahr</u> lawyer suggested, "There will be less incentive for the general public to obtain a high school diploma if many employers eliminate that requirement for job applicants in their workplace." [31]

The EEOC has been criticized for alleged heavy-handed tactics in their 1980 lawsuit against retailer Sears, Roebuck & Co. Based on a statistical analysis of personnel and promotions, EEOC argued that Sears both was systematically excluding women from high-earning positions in commission sales and was paying female management lower wages than male management. Sears, represented by lawyer Charles Morgan, Jr., counterargued that the company had encouraged female applicants for sales and management, but women preferred lower-paying positions with more stable daytime working hours, as compared to commission sales, which demanded evening and weekend shifts and featured drastically-varying paychecks, depending on the numbers of sales in a given pay period. In 1986, the court ruled in favor of Sears on all counts and noted that the EEOC had neither produced a single witness who alleged discrimination nor identified any Sears policy that discriminated against women. [32][33]

In a 2011 ruling against the EEOC, Judge <u>Loretta A. Preska</u> declared that It relied too heavily on <u>anecdotal</u> claims rather than on hard data, in a lawsuit against <u>Bloomberg, L.P.</u> that alleged discrimination against pregnant employees. In a ruling described in the *New York Times* as "strongly worded," Preska wrote, "the law does

not mandate 'work-life balance'l and added that while Bloomberg had expected high levels of dedication from employees, the company did not treat women who took pregnancy leave differently from those who took leave for other reasons.

Commissioners

- 1. Luther Holcomb, 1965-1974
- 2. Aileen Hernandez, 1965-1966
- 3. Vicente T. Ximenes, 1967-1971
- 4. Samuel C. Jackson, 1965-1968
- 5. Richard Graham, 1965-1966
- 6. Elizabeth Kuck, 1968-1970
- 7. Ethel B. Walsh, 1971-1980
- 8. Colston A. Lewis, 1970-1977
- 9. Raymond L. Telles, 1971-1976
- 10. J. Clay Smith, 1978-1982
- 11. Hon. Daniel Leach, 1976-1981
- 12. Armando Rodriguez, 1978-1983
- 13. Cathie Shattuck, 1982-1983
- 14. Tony E. Gallegos, 1982-1994
- 15. R. Gaull Silberman, 1984-1995
- 16. Joy Cherian, 1987-1993
- 17. William Webb, 1982-1986
- 18. Fred Alvarez, 1984-1987
- 19. Evan J. Kemp, Jr., 1987-1993
- 20. Joyce Tucker, 1990-1996
- 21. Paul Steven Miller, 1994-2004
- 22. Reginald E. Jones, 1996-2000

Chairs

No.	Chair of the EEOC	Picture	Start of Term	End of Term	President(s)
1	Franklin D. Roosevelt <u>Jr.</u>	a State	May 26, 1965	May 11, 1966	
2	Stephen N. Shulman	The state of the s	September 14, 1966	July 1, 1967	Lyndon Johnson
3	Clifford Alexander Jr.	1 30	August 4, 1967	May 1, 1969	

4	William H. Brown III		May 5, 1969	December 23, 1973	Diobord Nivon
5	John H. Powell Jr.		December 28, 1973	March 18, 1975	Richard Nixon
Acting	Ethel Bent Walsh		1975		
6	Lowell W. Perry		May 27, 1975	May 15, 1976	Gerald Ford
Acting	Ethel Bent Walsh		May 1976	May 1977	
7	Eleanor Holmes Norton		May 27, 1977	February 21, 1981	Jimmy Carter
Acting	J. Clay Smith Jr.		1981	1982	Ronald Reagan
8	Clarence Thomas		May 6, 1982	March 8, 1990	Ronald Reagan George H. W. Bush
9	Evan J. Kemp Jr.		March 8, 1990	April 2, 1993	George H. W. Bush
Acting	Tony Gallegos		1993	1994	
10	Gilbert Casellas		September 29, 1994	December 31, 1997	
Acting	Paul Igasaki		1998		Bill Clinton
11	Ida L. Castro	2	October 23, 1998	August 13, 2001	

12	Cari M. Dominguez	August 6, 2001	August 31, 2006	George W. Bush
13	Naomi C. Earp	September 1, 2006	2009	
Acting	Stuart J. Ishimaru	January 20, 2009	April 7, 2010	
14	Jacqueline A. Berrien	April 7, 2010 ^[35]	September 2, 2014	Barack Obama
15	Jenny R. Yang	September 2, 2014 ^[36]	January 22, 2017	
Acting	<u>Victoria Lipnic</u>	January 25, 2017 ^[37]	present	Donald Trump

See also

- ADA Amendments Act of 2008 (ADAAA)
- Equal Pay Act of 1963
- Title 29 of the Code of Federal Regulations
- Pregnancy discrimination
- Race and ethnicity (EEO)
- Title VII Civil Rights Act of 1964
- Katherine Pollak Ellickson

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External links

- Official website (https://www.eeoc.gov/)
- Proposed and finalized federal regulations from the Equal Employment Opportunity Commission (https://web.archive.org/web/20111008182337/http://openregs.com/agencies/view/88/equal_employment_opportunity_commission)
- Role of Equal employment opportunity commission (http://elder-law.laws.com/discrimination-workp lace/role-of-equal-employment-opportunity-commission)
- Records of the Equal Employment Opportunity Commission in the National Archives (Record Group 403) (https://catalog.archives.gov/id/699)
- nytimes.com (https://www.nytimes.com/2011/08/18/nyregion/discrimination-suit-against-bloomberg -lp-is-dismissed.html?_r=1&ref=equalemploymentopportunitycommission), discusses the fairly recent case involving allegations against <u>Bloomberg</u> unfairly treating pregnant women. Bloomberg won because of a lack of statistics on the <u>Equal Employment Opportunity Commission's part</u>. However, it is still possible for the federal government to appeal and the witnesses can individually sue Bloomberg for discrimination.
- https://en.wikisource.org/wiki/Federal Civil Penalties Inflation Adjustment Act of 1990

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