



U.S. Equal Employment Opportunity Commission

U.S. Equal Employment Opportunity Commission National Enforcement Plan

I. Introduction

In a motion unanimously adopted on April 19, 1995, the Commission directed the development, for its approval, of a National Enforcement Plan identifying priority issues and setting out a plan for administrative enforcement and litigation of the laws within its jurisdiction: Title VII of the Civil Rights Act of 1964 (Title VII), the Age Discrimination in Employment Act (ADEA), the Equal Pay Act (EPA), and the Americans With Disabilities Act (ADA). Also on April 19, 1995, the Chairman directed District Directors and Regional Attorneys in each field office to develop Local Enforcement Plans that will be consistent with the National Plan and that will tailor their priorities to the specific needs of the many different communities served by the Commission.

This motion was adopted at a special meeting convened on April 19, 1995, to consider recommended reforms to enforcement policies that had been established by the Commission over a decade ago. The recommendations had been developed by the Task Force on Charge Processing (Task Force) created by Chairman Gilbert F. Casellas and led by Vice Chairman Paul M. Igasaki which was charged with reviewing and analyzing the private sector charge processing system. More recently, partially as the result of the Commission's increased statutory responsibilities, the number of persons filing charges annually with the EEOC has risen from less than 64,000 in fiscal year 1991 to more than 95,000 in fiscal year 1995, a 49% increase. More funding to support additional staffing and other resources necessary to meet these new challenges has not been forthcoming.

The Task Force recognized that the Commission's effectiveness as a law enforcement agency had been reduced by the overwhelming increase in its inventory of individual charges of discrimination, by the lack of financial resources needed to address the increased workload, and by a failure to strategically utilize its resources to pursue its mission through vigorous investigation, conciliation, and litigation. In the 1980's, a number of enforcement processing and litigation policies based on principles of "full investigation and enforcement" were implemented.

The Task Force concluded that the policies and practices now prevented the agency from using its limited resources strategically to pursue its mission of eradicating workplace discrimination. To address this problem, it recommended the adoption of policies that would permit the agency to make the most prudent use of its resources to accomplish its mission. One of these recommendations was that the Commission develop National and Local Enforcement Plans that prioritize issues of discrimination for Commission action.

Given the comprehensive scope of the National Enforcement Plan, the Commission consulted with a broad range of external and internal stakeholders. Through this process, the Commission sought and received recommendations from dozens of representatives of the employer, employee, labor, and civil rights communities at both the national and local levels. In addition, the then-Acting General Counsel and then-Acting Director of the Office of Program Operations consulted with several District Directors and Regional Attorneys and asked all Regional Attorneys and District Directors to solicit suggestions from a wide range of EEOC staff, including union representatives.

Based upon this extensive consultative process and after its own careful consideration of the issues, the Commission adopts the following National Enforcement Plan (NEP) which will form the cornerstone of the Commission's efforts to achieve its statutory mission of eradicating discrimination from the workplace. The NEP recognizes that the Commission must use its limited resources more strategically to deter workplace discrimination, guide the development of the law, resolve disputes, and promote a work environment in which employment decisions are made on the basis of abilities, not on the basis of prejudice, stereotype and bigotry. The Commission also recognizes that regardless of resource issues, the development of this Plan is consistent with good management and reinventing government.

With this Plan, the Commission articulates the general principles governing the Commission's enforcement efforts, establishes national enforcement priorities, sets general parameters for the development of the Local Enforcement Plans, and delegates significant litigation authority to the Office of General Counsel so that the Commission can most effectively and efficiently accomplish its enforcement objectives.

II. Governing Principles

The National Enforcement Plan incorporates the following principles, which have guided its development and will govern its implementation.

A. The Commission is committed to an enforcement plan that encompasses a three-pronged approach to eliminate discrimination in the workplace: (1) prevention through education and outreach; (2) the voluntary resolution of disputes; and

(3) where voluntary resolution fails, strong and fair enforcement.

First, the Commission recognizes that achieving its fundamental mission -- the eradication of employment discrimination -- requires not only enforcement of the law, but also prevention of the problem through public outreach and education. Therefore, within current resource limitations, the National Enforcement Plan encourages that public education, outreach, and technical assistance be conducted at both the national and local level to support and enhance the enforcement activities directed by the NEP.

Second, the Commission is committed to the voluntary resolution of disputes where appropriate and feasible. The Commission recognizes that negotiated agreements that resolve claims of discrimination can directly advance the Commission's enforcement objectives, in addition to benefiting the parties to a particular dispute. The Commission believes that the use of Alternative Dispute Resolution (ADR) significantly furthers the Commission's mission as a law enforcement agency. Accordingly, the Commission strongly encourages its use as an integral part of our enforcement process.

Finally, the Commission is fully committed to firm and fair enforcement, including litigation, where voluntary efforts to achieve compliance fail. The Commission recognizes that an effective litigation program is critical to the furtherance of the Commission's enforcement agenda by enjoining current violations, deterring future violations, and providing remedies to victims of employment discrimination.

B. The Commission recognizes that given budget constraints under which it operates, it cannot be all things to all of its various constituencies. Moreover, the Commission must be candid with the public regarding the decisions that it makes. The adoption of this National Enforcement Plan and the subsequent adoption of Local Enforcement Plans will take critically important steps in this direction.

C. The combination of limited resources and increasing demands on the Commission requires a carefully prioritized and coordinated enforcement strategy. Strategic enforcement will assure the most effective use of the Commission's resources by assuring that available funds are devoted to efforts which have the potential to yield the greatest dividends in achieving equal employment opportunity. As part of this strategic enforcement strategy, the Commission is committed to the strategic and proactive use of its limited enforcement resources through, among other things, systemic investigations and litigation.

D. The Enforcement Plan must assure fair, aggressive and credible enforcement of all of the statutes enforced by the Commission regardless of the basis of discrimination or the issue.

E. Determination of whether a case should be pursued under the National Enforcement Plan will be based both on the issue raised and an assessment that the strength of the case supports the decision to proceed.

F. The Commission's enforcement activities will not be limited exclusively to the enumerated priority areas. With regard to charge processing, the Commission will issue cause findings in all cases in which it determines that it is more likely than not that discrimination has occurred and will proceed to conciliation in such cases. With regard to litigation, the Commission may pursue certain cases in which it has found cause, even though those cases do not fall clearly within an enumerated enforcement priority. At the same time, the Commission will not pursue litigation on every charge which falls within the NEP or LEPs. The Commission recognizes that it will be required to forgo litigating some good cases in order to devote adequate resources to other cases. At every stage of the process, the Commission will assess the available facts to determine whether the strength of the case and the nature of the issue supports the decision to proceed.

G. Enforcement efforts must be directed to the resolution of the Commission's pending inventory, in addition to the approximately 100,000 new cases which are projected to be filed over the next year. The Commission's recently implemented charge prioritization policies have already significantly reduced the Commission's current inventory, and it is anticipated that this trend will continue barring unforeseen circumstances. Both the National and Local Enforcement Plans must provide immediate strategies for continuing to reduce the existing inventory of cases. Such strategies should not ignore each office's need also to provide the resources necessary to support priority cases and address new filings. The backlog of cases is unfair to charging parties and respondents alike, diminishes EEOC's credibility as a law enforcement agency, and consumes valuable resources.

While the charge prioritization policies reflected in the NEP will permit the Commission to dedicate significant resources towards the Commission's goal of achieving a manageable inventory, the Commission recognizes that without a significant increase in resources, this goal will remain elusive.

III. Enforcement Priorities

Based on the above principles, the Commission has identified three major categories of priorities, which include a series of subcategories, that will provide the foundation of the National Enforcement Plan. These priority categories will apply, as appropriate, to investigation, conciliation, and litigation, including both trial and appellate practice, as well as the EEOC's amicus curiae and intervention representation.

The Commission sets forth the following areas as priorities under the National Enforcement Plan. These priorities will apply to each of the statutes enforced by the Commission and to all persons protected by these statutes.

A. Cases involving violations of established anti-discrimination principles, whether on an individual or systemic basis, including Commissioner charge cases raising issues under the NEP, which by their nature could have a potential significant impact beyond the parties to the particular dispute.

1. Cases involving repeated and/or egregious discrimination, including harassment, or facially discriminatory policies.

2. Challenges to broad-based employment practices affecting many employees or applicants for employment, such as cases alleging patterns of discrimination in hiring, lay-offs, job mobility, including "glass-ceiling" cases, and/or pay, including claims under the Equal Pay Act.

B. Cases having the potential of promoting the development of law supporting the antidiscrimination purposes of the statutes enforced by the Commission.

1. Claims presenting unresolved issues of statutory interpretation under one or more of the statutes enforced by the Commission, as follows:
 - a. Claims presenting unresolved questions regarding the allocation of burdens in disparate treatment cases as set forth in *St. Mary's Honor Center v. Hicks*.
 - b. Claims presenting questions regarding the scope of liability under the statutes enforced by the Commission, including issues of employer liability in harassment cases and individual liability.
 - c. Claims of national origin discrimination involving language issues, including accent discrimination and restrictive language policies or practices.
 - d. Claims clarifying the Title VII duty to reasonably accommodate religious practices.
 - e. Claims raising unresolved questions under the Americans with Disabilities Act regarding the meaning of "reasonable accommodation" and the term "qualified individual with a disability," as well as the defenses of "undue hardship" and "direct threat."
 - f. Claims presenting questions regarding the interpretation of the prohibition of disparate impact discrimination under the Civil Rights Act of 1991, the Age Discrimination in Employment Act, and the Americans With Disabilities Act.
 - g. Claims based on the intersection of two or more prohibited bases of discrimination (e.g., discrimination against women of color, older women, or minority persons with disabilities).
 - h. Claims addressing the legality of agreements that mandate binding arbitration of employment discrimination disputes imposed as a condition of initial or continued employment.
 - i. Claims presenting unresolved issues regarding the provision of employee benefits, including claims arising under Title I of the Older Workers Benefits Protection Act, and the Americans With Disabilities Act.
 - j. Claims of comparable significance identified and approved in the Local Enforcement Plans.
2. Cases involving legal issues where there is a conflict in the federal circuit courts on a Plan priority or in which the Commission is seeking Supreme Court resolution of such issue.

C. Cases involving the integrity or effectiveness of the Commission's enforcement process, particularly the investigation and conciliation of charges.

1. Cases involving allegations of retaliation against persons for participating in Commission proceedings or opposing unlawful employment discrimination, particularly cases where the scope of the statutory protection against retaliation is at issue.
2. Cases presenting challenges to Commission policy declarations, such as guidelines, regulations or policy guidance.
3. Cases protecting Commission access to information, including subpoena enforcement proceedings and proceedings to preserve or prevent the loss or destruction of evidence, except as set forth in paragraph 5 below.
4. Cases involving allegations of a material breach of an agreement to which the Commission was a party settling an earlier proceeding.
5. Cases involving alleged violations of the Commission's recordkeeping and reporting requirements where there is reason to believe that there may be another violation of statutes enforced by the Commission.

With the adoption of these priorities, and pursuant to a Motion unanimously adopted by the Commission on April 19, 1995, the Commission hereby withdraws all Priority Issues Lists that have previously set out priority issues for Commission consideration.

IV. Local Enforcement Plans

Each District Director and Regional Attorney shall develop a Local Enforcement Plan (LEP) and a supporting document detailing its plan to implement the LEP. These documents shall be submitted concurrently to the Commission, the General Counsel and Director of the Office of Program Operations, no later than forty-five (45) days from the date of the adoption of the National Enforcement Plan. In turn, the General Counsel and Director of Office of Program Operations shall review the LEPs and submit their recommendations to the Chairman no later than twenty-one (21) days from the date that the LEPs are submitted by the District Offices. The Commissioners may also submit their comments to the Chairman on the LEPs and the implementation documents, as well as on the recommendations submitted by OGC and OPO, no later than thirty-five (35) days from the date that the LEPs are submitted by the District Offices. Then, the Chairman shall have thirty (30) days to determine whether to approve the LEPs. LEPs are to be consistent with the National Enforcement Plan, but their specific goals and objectives should be tailored to reflect legal and factual issues specific to the communities served by each office, as well as each office's resources. In particular, LEPs shall include the following critical components:

A. An evaluation and strategy to address the provision of Commission services to underserved populations and geographic regions, as well as employment practices of particular importance in the region served by each district office.

B. A description and identification of the local issues which are on the NEP.

C. A description of each office's plan to resolve the pending cases in the office's inventory, including the long-term plans of the district office to use ADR techniques as part of its charge processing activities.

D. In addition, each district office shall develop an implementation document supporting the LEP. This document shall describe the district office's strategy for utilizing its resources and give Headquarters information critical for planning, staffing, and the allocation of resources in the field. This document shall:

1. Prioritize and justify the issues identified in the LEPs as to severity and need for local impact, taking into account industries, constituencies, and geographic areas involved;
2. Identify pending charges/suits or proposed charges/suits which fall within the local priority list and indicating those which would have the greatest impact;
3. Identify which of those current charges/suits can be pursued with available resources, as well as those others that could be pursued if additional resources were available; and
4. Describe how the plan results will be achieved, including time lines. Given that disclosure of the implementation documents would seriously circumvent the Commission's pending and proposed enforcement efforts, each implementation document will be treated by the Commission as confidential.

V. Delegation of Authority to General Counsel

The Commission, by resolution of April 19, 1995, delegated litigation authority in certain cases to the General Counsel until such time as the Commission adopts the National Enforcement Plan. With the goals of increasing strategic enforcement for the General Counsel and field attorneys, freeing the Commission to focus on policy issues, and increasing the efficiency and effectiveness of our litigation program, the Commission now provides such delegation as follows:

First, the Commission delegates to the General Counsel the decision to commence or intervene in litigation in all cases except the following:

- A. Cases involving a major expenditure of resources, e.g. cases involving extensive discovery or numerous expert witnesses and many pattern-or-practice or Commissioner's charge cases;
- B. Cases which present issues in a developing area of law where the Commission has not adopted a position through regulation, policy guidance, Commission decision, or compliance manuals;
- C. Cases which, because of their likelihood for public controversy or otherwise, the General Counsel reasonably believes to be appropriate for submission for Commission consideration; and
- D. All recommendations in favor of Commission participation as *amicus curiae* which shall continue to be submitted to the Commission for review and approval.

Second, the Commission ratifies its decision to give the General Counsel the authority to redelegate to regional attorneys the authority to commence litigation. The Commission encourages such re delegation of litigation authority as appropriate.

Finally, the Commission restates and ratifies its April 19, 1995 delegation to the General Counsel of the authority to refer public sector Title VII and ADA cases which fail conciliation to the Department of Justice, as well as the authority to redelegate this authority to Regional Attorneys. Regional Attorneys are encouraged to consult informally with designated "point of contact" attorneys at the Department of Justice regarding significant legal issues that arise in processing state and local government charges that appear to have litigation potential.

The General Counsel will report to the Commission quarterly on each new case filed pursuant to the delegated authority procedure set out above. The report will briefly describe the issue, basis, and scope of the case, and indicate whether authority to file it had been delegated to the Regional Attorney by the General Counsel. The General Counsel's report shall include an assessment of how the delegation authority has been exercised and whether the Commission's stated goals have been better achieved as a result of the delegation. Such reports shall be presented for discussion at the first regularly scheduled Commission meeting after the Report is prepared. The General Counsel will establish procedures for monitoring the performance of Regional Attorneys and will report to the Commission on such effectiveness once each year.

VI. Settlement and Alternative Dispute Resolution

The Commission's Policy Statement on Alternative Dispute Resolution (ADR), adopted on July 17, 1995, as well as the Commission's policy regarding settlements adopted on April 19, 1995, will apply to the implementation of the National and Local Enforcement Plans.

In the ADR Policy Statement, the Commission confirmed its strong commitment to using voluntary alternative methods for resolving disputes in all of its activities, including all aspects of the enforcement process, where appropriate and feasible. ADR is fully consistent with EEOC's mission as a law enforcement agency and is squarely grounded in the statutes enforced by the Commission. Used properly and in appropriate circumstances, ADR can provide less expensive, less contentious, and faster results in eliminating workplace discrimination.

ADR must be viewed as an integral component of its comprehensive enforcement program. ADR will complement current charge processing systems by facilitating early resolution of disputes where agreement is possible, thereby freeing up

resources for identifying, investigating, settling, conciliating or litigating other matters. Improvements in the Commission's enforcement efforts should enhance the Commission's credibility as a law enforcement agency.

The Commission recognizes that negotiated agreements that resolve claims of discrimination can benefit the parties to a dispute as well as directly advance the Commission's enforcement objectives. While encouraging the use of ADR, the Commission recognizes that it must remain vigilant in assuring that ADR, as used by the Commission, does not conflict with or undermine our enforcement objectives.

Within these limitations, and in conjunction with ADR programs which it may itself implement, the Commission reemphasizes the important role of settlement and conciliation as an integral component of its comprehensive enforcement program.

VII. Enforcement Partnership With State and Local Fair Employment Agencies

On May 22, 1995, the Commission resolved to establish a new partnership with the state and local fair employment practices agencies (FEPAs), recognizing our common mission to eliminate and prevent employment discrimination and to provide timely and effective redress for individuals who have been discriminated against. The Commission adopted the EEOC/FEPA Task Force's recommendation that the Chairman should take actions to forge this partnership by eliminating duplication of effort that might exist with respect to the processing of the charges. As part of this process, the Chairman requested the Director of OPO to consult with field offices and FEPAs to explore the feasibility of joint investigative and enforcement activities.

The FEPAs's enforcement efforts must be viewed as an integral component of the Commission's enforcement efforts. To enhance the roles of the FEPAs in the Commission's enforcement efforts, the Chairman suggested that the Director of OPO, in consultation with the FEPAs, review and discuss the recommendations of the Task Forces on Charge Processing and Alternative Dispute Resolution, exploring ways in which the principles and recommendations, particularly those concerning priority charge handling and the measurement of results, may be used to further our joint mission of eradicating and preventing discrimination. Therefore, the District Offices are encouraged to solicit suggestions from the FEPAs in developing and implementing their LEPs in an effort to minimize the duplication of efforts.

VIII. Implementation

While this plan does not, and is not intended to, define the operational implementation of the enforcement priorities, the following considerations should guide implementation steps:

- A. The top priority for charge processing (Category A), includes Enforcement Plan cases and, within resource constraints, other cases in which it appears more likely than not that discrimination has occurred.
- B. A determination that a charge falls within the Enforcement Plan requires a determination that the issue raised is an Enforcement Plan priority as well as an assessment that the strength and potential impact of the case supports the decision to proceed.
- C. Although it will be possible to categorize some charges as Enforcement Plan cases immediately upon receipt of the charge, the categorization of other cases will require further evaluation and investigation. The Commission is committed to devoting the appropriate level of resources to the evaluation and investigation of all cases potentially falling within the priorities enumerated in the NEP or Local Enforcement Plans. Nonetheless, district offices should endeavor to identify Enforcement Plan cases at the earliest possible time following receipt of charge.
- D. Offices should develop procedures to assure routine and effective consultation between legal and investigative personnel in all phases of the identification and development of Enforcement Plan cases.
- E. Cases falling under the enumerated priorities in the NEP and/or Local Enforcement Plans should be accorded priority in investigation with respect to speed, depth, and other measures of dedication of resources in order to assure that the investigation will support a subsequent and timely enforcement action if appropriate.
- F. The Commission recognizes that some cases that fall within the enumerated priorities will require a commitment of substantial resources from the district office and may diminish that office's ability to pursue other cases in litigation.
- G. In addition to charges filed by individuals, Commissioner's charges under Title VII and the ADA and directed investigations under the ADEA and EPA provide important enforcement tools under the Enforcement Plans.
- H. All district offices with responsibilities under the Enforcement Plans should conduct outreach and educational activities and obtain on a regular basis input from stakeholders and interested groups on the effectiveness of the implementation of the National and Local Enforcement Plans. These offices should also conduct regular assessments of the communities they serve to identify any special needs or employment discrimination issues that may otherwise not be addressed.
- I. The Commission recognizes that it may not be able to litigate every case that fails conciliation, including cases which fall within the National and Local Enforcement Plans. Thus, the Commission encourages the General Counsel, District Directors, and Regional Attorneys to work closely with the private bar, which continues to play a critical role in civil rights enforcement.
- J. All components of all offices in headquarters and the field will work together cooperatively to efficiently and effectively accomplish the mission of the agency.

IX. Reporting

The General Counsel and the Director of the Office of Program Operations shall report quarterly to the Commission on the effectiveness of their efforts under the Enforcement Plans. These reports will include recommendations for amendments to the National Plan or Local Plans where appropriate for the Commission's consideration and, with respect to the General Counsel, the matters set forth in Section V.