

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

Statement of Regulatory and Deregulatory Priorities

The mission of the Equal Employment Opportunity Commission (EEOC, Commission, or Agency) is to ensure equality of opportunity in employment by vigorously enforcing and educating the public about the following Federal statutes: title VII of the Civil Rights Act of 1964, as amended (prohibits employment discrimination on the basis of race, color, sex (including pregnancy), religion, or national origin); the Equal Pay Act of 1963, as amended (makes it illegal to pay unequal wages to men and women performing substantially equal work under similar working conditions at the same establishment); the Age Discrimination in Employment Act of 1967, as amended (prohibits employment discrimination based on age of 40 or older); titles I and V of the Americans with Disabilities Act, as amended, and sections 501 and 505 of the Rehabilitation Act, as amended (prohibits employment discrimination based on disability); Title II of the Genetic Information Nondiscrimination Act (prohibits employment discrimination based on genetic information and limits acquisition and disclosure of genetic information); and section 304 of the Government Employee Rights Act of 1991 (protects certain previously exempt state and local government employees from employment discrimination on the basis of race, color, religion, sex, national origin, age, or disability).

The EEOC has authority to issue legislative regulations under the Age Discrimination in Employment Act, title I of the Americans with Disabilities Act (ADA), and title II of the Genetic Information Nondiscrimination Act (GINA). Under title VII of the Civil Rights Act, the EEOC's authority to issue legislative regulations is limited to procedural, record keeping, and reporting matters.

Five items are identified in this Regulatory Plan. Two of these items are agency regulations related to employer-sponsored wellness programs. On August 22, 2017, the U.S. District Court for the District of Columbia ordered the EEOC to reconsider its regulations under the ADA and GINA related to incentives and employer-sponsored wellness plans. See *AARP v. EEOC*, Civ. Action No. 16-2113 (D.D.C. Aug. 22, 2017). In accordance with the Court's ruling, the EEOC, on December 20, 2018, issued final rules to rescind the incentive section of the ADA and GINA rules. Now it will consider and take actions to address wellness programs in response to the court's ruling. The EEOC's Fall 2020 Regulatory Agenda states that NPRMs are expected to be issued by November 2020.

Two more items from the Regulatory Agenda concern employment relationships under federal EEO laws: Guidelines on employment relationships under Title VII, ADEA, ADA, and GINA; and EPA regulations on employment relationships. Both of these items would provide more clarity to stakeholders regarding when an entity may be considered an employer of an individual and when two entities can be considered joint employers subject to the jurisdiction of federal EEO laws. They would, among other things, update and consolidate the EEOC's position on the topic to regulatory locations that are easier for stakeholders to find, as opposed to having the Commission's position represented in a smattering of different subregulatory guidance documents. The EPA regulation further would coordinate with the Department of Labor's

position on joint employment relationships under the Fair Labor Standards Act, of which the EPA is a part. The Commission proposes to issue an NPRM on both of these documents concerning joint employer status by November 2020.

Finally, the Regulatory Plan includes revisions to Official Time in the federal sector EEO process. The Commission published an NPRM on this topic in December of 2019. The NPRM proposed to update the EEOC's regulations to clarify that union officials are not eligible for official time under the Commission's regulations when serving as representatives in federal sector EEO claims, and the availability of official time for union officials to represent workers depends instead on relevant labor relations statutes and applicable collective bargaining agreements. The Commission anticipates issuing a final rule in November 2020.

Executive Order 13771 Statement

EEOC does not anticipate finalizing any regulatory or deregulatory actions subject to Executive Order 13771 in the next 12 months. All of the rules designated in this plan are significant under EO 12866, but they are not expected to be finalized in the next 12 months.

Consistent with section 4(c) of Executive Order 12866, this statement was reviewed and approved by the Chair of the Agency. The statement has not been reviewed or approved by the other members of the Commission.