

**STATEMENT OF
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U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
BEFORE THE
SUBCOMMITTEE ON CIVIL RIGHTS AND HUMAN SERVICES
COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES**

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Good afternoon Madam Chair, Ranking Member and Members of the Subcommittee. Thank you for inviting me to testify today on behalf of the Equal Employment Opportunity Commission (EEOC). The EEOC is a five-member commission responsible for the enforcement of federal employment anti-discrimination laws. I serve as the Chair of the EEOC with Commissioners Victoria Lipnic and Charlotte Burrows, and General Counsel Sharon Gustafson. I appreciate the opportunity to appear before you to discuss the plans, challenges and needs of the EEOC.

I would first like to thank you for your past support of the EEOC and I look forward to working with the members of this subcommittee and all members of Congress to advance the mission of the EEOC to prevent and remedy unlawful employment discrimination and advance equal opportunity for all in the workplace.

I believe that equal opportunity in employment is one of our nation's most cherished and hard-fought values. It gives workers, and their families, a fair shot to reach their highest dreams and aspirations. And it clears the way for all of us to contribute to the economic engine and social fabric of our nation.

I have been at the Commission for just over four months and am still learning about many aspects of the Commission's work. In my prior roles, I have seen the EEOC in action – and the positive impact that it has had on workforces across the country. In fact, I am keenly aware that my own career is, in part, a result of the work of legislators passing the Civil Rights Act, the EEOC, and many others in the civil rights community.

In our very own EEOC Headquarters building, there is a display on our wall titled “Breaking Barriers” which celebrates men and women who have triumphed over obstacles, inspired others, and opened doors for future generations. It highlights the lives of pioneers who successfully confronted stereotypes, challenged gender inequalities, and overcame barriers of all kinds, which speaks to the promise of America as a land of equality and opportunity for all. One such pioneer showcased in this display is Sandra Day O'Connor, who became the first female Justice of the United States Supreme Court in 1981, shattering the ultimate “glass ceiling” in the legal profession. She has been a role model for all Americans. Along with the tribute to Supreme Court Justice O'Connor, there is a quote from her as well which reads: “At every step

of the way, I felt the thrill of doing something right for a reason that was good. It was the thrill of building bridges.” I believe all of us here in this room share the sense of feeling thrill in doing something right for a reason that is good.

As Chair of the EEOC I want to build on the agency’s legacy and continue to tackle workplace discrimination, while striking a careful balance between enforcement and compliance assistance. To further build on this legacy, I am starting with several central principles:

Customer Service

We at the EEOC must provide excellent customer service. The EEOC must be responsive to employees who raise discrimination claims. An employee’s decision to bring a charge is, in many instances, a courageous act – and that act can also be stressful for both the individual and his or her family. We owe it to these employees, as well as everyone else involved, to respect that courage by swiftly addressing their concerns.

It is the sad reality that too often, justice delayed is justice denied. Evidence can be misplaced, and memories fade with the passage of time. The opportunity to quickly stop and remedy a discriminatory practice can also be lost – potentially to the detriment of other impacted employees. To ensure quality service, it is critical that private sector charges and federal complaints are handled promptly and fairly – and so we must work to reduce backlogs across all program offices.

Each year, the EEOC handles hundreds of thousands of calls, inquiries, and charges from workers in the private and public sector seeking assistance with potential complaints of discrimination. During fiscal year 2018, the EEOC received over 519,000 calls to the toll-free number and more than 34,600 emails. These contacts led to roughly 200,000 formal inquiries concerning discrimination to our field offices. A continued emphasis on inventory management strategies and priority charge handling procedures, technological enhancements, and hiring front-line staff in fiscal years 2017 and 2018, allowed us to make significant progress managing our pending workload of charges. As a result, in fiscal year 2018 the EEOC reduced the charge workload by 19.5 percent to 49,607, which builds on the 16 percent already realized in fiscal year 2017. In fiscal year 2019, staff are continuing to work diligently to provide quality and prompt service to the public. However, the lengthy government shut-down has had a negative impact on the pending workload: our private sector inventory jumped to 53,281 at the end of the third quarter. EEOC staff is working diligently, but we will not be able to make the same reductions to the inventory we would have expected without the shut-down.

Even as we leverage resources and technology to successfully manage the workload, we are continuing to focus on the quality of our investigations to ensure that we are providing the best possible service to the public. We reassess charges to determine whether the investigation has yielded information about whether further inquiry is needed, if sufficient information is available to support a cause finding, or if there is information that would lead to a conclusion of no reasonable cause that discrimination occurred. In 2015 the Commission also approved a plan for quality enforcement practices (QEP) to provide a consistent, agency-wide framework to enhance the timeliness of charge investigations and to ensure the continued quality of charge

enforcement activity. The QEP sets forth, in a transparent manner, the practices that are expected at different stages of the administrative process to ensure that charges are resolved in a timely and thorough manner.

The EEOC also views the merit factor rate as a key indicator that the reassessment and prioritization of charges does not adversely affect the quality of our investigations, in the private sector. The merit factor rate includes settlements, withdrawals with benefits, successful conciliations and unsuccessful conciliations. In fiscal year 2018 the merit factor rate increased to 15.2 percent of all resolutions, and as of the third quarter of fiscal year 2019, merit factor resolutions are up significantly, with the merit factor rate above 16 percent.

Another example of successfully managing resources to provide better customer service is found in our federal sector hearing and appeals programs. By developing and implementing strategies to increase efficiency, the federal sector hearings program increased its resolutions in fiscal year 2018 by 30.0 percent over fiscal year 2017, allowing it to reduce the pending hearings inventory for the first time - a reduction of 8.6 percent, from 14,885 to 13,612. Addressing the inventory is important to ensure that we are able to focus our resources on cases with merit. In FY 2018 we increased the findings of discrimination by 7% and increased the monetary amount recovered for employees by 16%. At the same time, we continued to review and evaluate files to ensure that there was no drop in the quality of hearings. We also developed quality assurance metrics, which are being implemented this fiscal year, so that we are able to assess and measure the quality of hearings going forward.

During fiscal year 2018, the EEOC implemented vigorous case management strategies in its federal sector appellate program, reducing the overall pending inventory that will carry-over to next fiscal year by almost 20 percent. The EEOC also reduced the age of the pending appellate inventory by 14 percent, from 363 days in fiscal year 2017 to 313 at the end of fiscal year 2018. The EEOC's adjudication efforts on appeal resulted in a 43 percent reduction in the pending cases that were more than 500 days old. At the same time, more than 46 percent of the total resolutions were issued within 180 days of their receipt.

While the government shutdown impacted our agency, the EEOC has made it a top priority to ameliorate the effects of the shutdown to the greatest extent possible. I commend all EEOC employees for their hard work on this initiative.

Leverage Technology

The EEOC has continued to embrace and leverage technology to improve our services – we have a powerful set of tools available to us. The EEOC continues to invest in and leverage technology to transform the way we do our work, including making our processes more transparent and providing information to our stakeholders faster – electronically, online, and on demand. The EEOC has significantly increased the public's access to the agency's services through the launch of online systems for employees and employers involved in discrimination disputes. These secure systems give individuals and employers 24/7 access to submit inquiries, schedule interview appointments, check the status of charges, upload and download charge

documents, make Freedom of Information Act (FOIA) requests, and receive notices from the EEOC about investigative actions on charges.

Online access through the agency's inquiry and appointment system launched in November 2017 and resulted in a 30 percent increase in the number of individuals submitting inquiries about potential discrimination charges in fiscal year 2018. Since its launch, more than 46,700 individuals have scheduled intake interviews with EEOC staff. Providing online capabilities to employees, employers, and the EEOC's staff enables faster communications and actions that save time and resources for the public we serve and for the agency.

During fiscal year 2018, the EEOC expanded its digital services to our state and local Fair Employment Practices Agencies (FEPA) partners to facilitate sharing notices of dual-filed charges, and to federal agencies to streamline the systems for hearings and appeals, bringing efficiencies to the process and savings to other federal agencies. I was very pleased earlier this year to announce the most recent expansion of the EEOC Public Portal, which allows federal employees and applicants to file and manage requests for hearings and appeals of their federal EEO complaints. It also invites parties to pursue Alternative Dispute Resolution at the hearing stage. These enhanced system capabilities, in conjunction with online FAQs and user guides on our public EEOC website, improve the efficiency and transparency of the EEOC's federal hearings and appeals process. Making these critical technology investments in support of our mission will accelerate productivity across our program areas.

It is also important to note that our major mission essential system, the Integrated Mission System (IMS), is outdated and the services it provides must be modernized. The IMS is so critical to EEOC's mission, and EEOC is looking for pathways to accelerate modernization. We have submitted an application to the Technology Modernization Fund (TMF) that is being considered by the Board. If approved by the Board, this infusion of funds, tied to EEOC's thoughtful execution strategy, will jump start this critical effort. The TMF funding would be matched with sufficient EEOC development and modernization funds in fiscal year 2020 and 2021 in order to meet EEOC Strategic Plan Goals and modernize this mission essential system. If not approved for TMF funding, other alternatives will be required or progress will be delayed.

Outreach and Education

Critically important to our mission is outreach and education. I believe that most employers want to be law-abiding. The EEOC has strengthened our efforts to educate employees, applicants and employers, many in collaboration with our enforcement partners in federal, state, and local government as well as with employer, employee, and academic communities. This allows the agency to maximize the impact of collective knowledge and resources to educate the public on legal rights and responsibilities and continue to build on the EEOC's work of providing tools to employers that allow them to comply with the law.

In fiscal year 2018, the EEOC conducted over 3,900 outreach events reaching 398,665 individuals nationwide. Notwithstanding the government shutdown, we anticipate similar outreach levels in fiscal year 2019. The EEOC has focused on outreach to small and new businesses, especially those lacking the resources to maintain full-time professional human

resources staff. EEOC staff conducted 620 no-cost outreach events directed toward small businesses in fiscal year 2018, reaching 42,619 small business representatives. Working with the Small Business Administration's (SBA) Office of the National Ombudsman, the EEOC participated in several Round Table discussions across the country with small businesses and organizations that represent small businesses, as well as a Regulatory Fairness Hearing held in Washington, DC. The EEOC launched an online Small Business Resource Center at the end of fiscal year 2016 and continues to make online access to information from us easier to understand, and more directly responsive to the real-life issues that small businesses face in the workplace.

The SBA Ombudsman's Report grades all federal agencies on their responsiveness to small business concerns and their compliance with the Small Business Regulatory Enforcement Fairness Act of 1996. The Ombudsman's report for fiscal year 2017, the most recent report available, gives the EEOC an "A" rating across-the-board, the highest rating possible. In addition, the SBA highlighted the EEOC's Small Business Resource Center as an example of agency compliance assistance initiatives in the fiscal year 2017 report. I am proud to note that over the years that the Ombudsman has issued the report, EEOC has consistently received an "A," reflecting the SBA's recognition of the EEOC's strong commitment to assist this important sector of the economy.

Rather than solely addressing persistent problems after they occur, the agency is also examining the underlying causes of discriminatory patterns and focusing on developing solutions to the most complex problems. Building active and engaged partnerships to develop innovative solutions to the workplace challenges facing many employers and employees today is one way to do this. The Select Task Force on the Study of Harassment in the Workplace is a prime example of this effort as it brought together employers, workers' advocates, academics, and others experienced with harassment issues to identify underlying problems leading to harassment claims and effective strategies for preventing and remedying workplace harassment.

In fiscal year 2018, EEOC staff conducted 1,513 free outreach events involving harassment, reaching 151,671 attendees. A total of 949 of these events covered the topic of sexual harassment and were attended by 96,735 participants. Through the 3rd Quarter of fiscal year 2019, EEOC staff have conducted 436 events focusing on sexual harassment and reached 81,248 participants. Additionally, in fiscal year 2019, Office of Federal Operations staff have provided Respectful Workplace training to approximately 2,000 federal employees, and there are at least 43 more sessions scheduled for the remainder of the fiscal year.

Clear and Accurate Guidance

Important tools in educating employers, as well as employees, are the regulations, guidance and technical assistance documents produced by the Commission. The EEOC works with hundreds of thousands of employees and employers every year to educate them on their legal rights and responsibilities, and it is important that the information available to our stakeholders is clear, accurate, and does not cause confusion.

The EEOC is currently undertaking an effort to eliminate obsolete guidance that may cause confusion. Shortly after joining the agency, I established a working group to review

regulations, guidance and technical assistance documents and address those that have been superseded by legislation, court decisions, or newer guidance, as well as those that involve issues that rarely arise and make guidance unnecessary.

We are working diligently to implement this process. After reviewing EEOC's regulations, guidance, and technical assistance documents and compiling a list of documents that meet the criteria, the material will be circulated internally to EEOC office directors, as well as Commissioners and the General Counsel, for comment. Commissioners will then vote to repeal guidance documents that were originally adopted by Commission vote. Technical assistance documents, which were not approved by Commission vote, will be withdrawn after notice to the Commission. I am committed to keeping you updated about this process and letting you know when you can expect to start to see outdated guidance rescinded.

Along the same lines, a priority of mine is to harmonize our guidance with other federal agencies so that employers have a clear understanding of their obligations. If we are holding employers accountable for their obligations under the laws we enforce, those obligations need to be clear across the federal government. I am committed to working with my federal agency partners to work through any conflicts that may arise, and keeping you informed about the results of those discussions.

Finally, and importantly, when the EEOC is called upon to provide guidance or take regulatory action, we will do so in a way that is transparent and provides opportunities for all stakeholders to provide input. Honest, vigorous exchanges of views, sharing of best practices, and honest debate will result in a better product, which benefits all involved. We will also ensure that we act in compliance with the Administrative Procedure Act.

Vulnerable Workers

Under my leadership the EEOC will continue to work vigorously to protect vulnerable workers. I have established an intra-agency workgroup to target our efforts to educate vulnerable workers about their rights and increase outreach efforts. The workgroup will examine who we consider a vulnerable worker, as well as how best to reach those populations. Pursuant to the President's Interagency Task Force to Monitor and Combat Trafficking in Persons, we will also work to increase awareness of and reduce human trafficking.

The EEOC has been successful in reaching vulnerable workers. In fiscal year 2018, approximately 34 percent of the outreach conducted was to vulnerable communities. Immigrant and farm worker communities were a priority for this outreach. Addressing the scourge of human trafficking, the EEOC staff worked with governmental and non-governmental organizations, to raise awareness and address trafficking. Staff members traveled to states and communities where no EEOC office is located or where certain communities are reluctant to come forward to complain of employment discrimination, and partnered with local community organizations, consulates, and other entities to reach these workers. For example, 1,320 events targeted toward vulnerable and underserved communities reached 108,174 individuals in fiscal year 2018.

While vulnerable workers may be harder to reach, and cases may be more difficult to investigate, resources will be allocated appropriately to support this important effort.

Alternative Dispute Resolution and Conciliation

Alternative Dispute Resolution (ADR) and conciliation are vital tools in achieving the agency's mission. Successful settlement or conciliation avoids time-consuming, expensive, and stressful litigation. It truly is a win-win result. Accordingly, these processes must always be conducted in good faith.

The EEOC's mediation program began 20 years ago and has had great success. In fiscal year 2018 the agency conducted more than 9,000 mediations and was successful in more than 6,700. Importantly, those mediations were completed in an average of 99 days and resulted in a total of \$165.8 million in benefits – quickly resolving charges that would otherwise use investigatory resources and providing benefits for victims of discrimination.

Additionally, the program continues to receive positive feedback from participants. Based on the responses to an annual survey of participants in our mediation program, charging parties (job applicants, employees, and former employees) and employers continue to express their confidence in the level of service provided under this process. In fiscal year 2018, 97.2 percent of all participants indicated that they would utilize the mediation process in a future charge filed with the EEOC, and we anticipate similar results from our fiscal year 2019 survey.

The EEOC's conciliation efforts are another vital means to promote voluntary compliance with federal employment discrimination laws. If the EEOC determines there is reasonable cause to believe discrimination has occurred, the agency invites the parties to join the EEOC in seeking to settle the charge through an informal and confidential process known as conciliation. Conciliation is voluntary for employers, and the parties must agree to the resolution. The EEOC has an obligation to attempt to resolve findings of discrimination on charges through conciliation before the agency considers the matter for litigation.

The agency has continued to emphasize the importance of conciliation, statutory requirements, and how to effectively reach meaningful resolutions which include appropriate targeted equitable relief. The EEOC has worked to conciliate a greater percentage of cases than at any time in recent history - with successful conciliations rising from 27 percent in fiscal year 2010 to 44 percent in fiscal years 2015 and 2016, 40 percent in fiscal year 2017 and 41 percent in fiscal year 2018. The success rate for conciliation of systemic charges was approximately 46 percent in fiscal year 2018.

Litigation as a Last Resort

I believe that litigation truly is a last resort. When it does become necessary, the EEOC's litigation will be conducted in accordance with the highest ethical standards. The EEOC is the preeminent federal agency focused on workplace discrimination issues – its work in the courtroom should be consistently excellent and demonstrate respect for both the tribunal and other litigants.

The EEOC's litigation attorneys should have access to the resources needed to conduct litigation to these high standards and should be subject to careful oversight and given appropriate guidance. Courts and others in the litigation process should recognize the EEOC as an honest broker, whose advocacy is above reproach, whose motives are transparent, and whose approach is always constructive.

The Commission has long emphasized that the litigation program should focus on cases that have the potential to impact multiple workplaces or large groups of applicants or employees, emerging issues where the agency's expertise may be especially critical to achieving a successful outcome, and individual cases where broader law enforcement goals can be advanced with the successful resolution of the case. In addition, the litigation program focuses on population groups and geographic locations where private enforcement of anti-discrimination laws is rare, and individuals have minimal access to the legal system to protect their rights.

The EEOC has been successful in ensuring that the great majority of the cases selected for litigation raise priority issues, including discriminatory barriers to employment (chiefly recruitment and hiring practices), patterns of harassment, protecting the rights of immigrants and other vulnerable populations.

The Commission's resource investments in its litigation program have paid dividends. Since fiscal year 2010, the EEOC has averaged a favorable outcome in over 90 percent of its suits.

Conclusion

As we all see in the work we do, discrimination threatens equal opportunity, holding people back from pursuing their dreams. And, despite the progress we've made as a nation, bias in employment still happens too frequently. This comes at a high cost to all of us – in economic advancement and untapped talent – and it could hinder our ability to find solutions to our most pressing problems. We must continue to work together toward an America where everyone has a fair chance to work, provide for their family, and contribute to our economy and our society.

Thank you for the opportunity to highlight my priorities and the work of the EEOC. I look forward to working with you in the future to achieve EEOC's mission to remedy and prevent employment discrimination and create equal employment opportunity for all in the American workplace. I am happy to answer any questions that you may have.