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# Message to Members 2006

Thirty years ago, a handful of major U.S. companies met in Washington, DC to determine how best to respond to OFCCP's strict enforcement of its new "Revised Order 4" affirmative action regulations, and how to impress upon federal judges the practical impact on the business community of their emerging decisions under Title VII. This core group of companies decided to create a nonprofit association to represent their collective interests before the courts and government policymakers. It was in this environment that EEAC was created in 1976 to serve as an employer advocate in the then largely unfamiliar EEO and affirmative action arena.

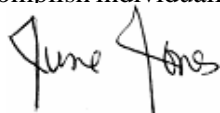
Much has changed at EEAC in the last 30 years — but much has also stayed the same. One of EEAC's primary goals today as it was 30 years ago is to serve as a responsible and effective advocate for its member companies on all matters relating to EEO, affirmative action, and now diversity management. As in earlier years, such advocacy most often is expressed through regulatory comment letters and *amicus curiae* briefs filed in significant employment cases. In this way we seek to ensure that a business perspective is understood and considered by those developing new employment policies.

But EEAC's goals now extend beyond advocacy to include service as a top-quality resource to members. We strive to be recognized as the premier advisor to large private employers on issues related to their EEO, affirmative action, and diversity management practices.

In 2005, for example, EEAC issued 286 weekly analytical memoranda on a wide variety of regulatory, legal, diversity, and "best practices" topics; responded to more than 500 member clearinghouse calls *each month*; maintained a curriculum of seven ongoing training programs; presented those programs on 24 occasions, in addition to 41 customized in-house presentations; sponsored five special seminars on newly-emerging issues; and presented 18 "open dialogue" conference calls and Internet-based "web workshops." In addition, a wide variety of products and services are made available to members including publications on all aspects of EEO and affirmative action compliance, software for conducting statistical analyses of workforce demographics and compensation, and statistical data on employment patterns useful for benchmarking purposes.

As we look ahead to the next 30 years, we believe the need for effective advocacy, advice and service is likely to continue. Today, EEAC members are faced with new and complex regulations pertaining to how workforce demographic data are collected and reported; how records pertaining to Internet recruitment and selection processes should be retained and analyzed; and, how compensation analyses should be conducted. Beyond compliance, members increasingly are looking to EEAC for advice on how their diversity programs can be more strategically based. Finally, the ever-present threat of class action litigation serves as both a reminder and an incentive to employers to ensure that all employment practices are — and are perceived by employees to be — fair and inclusive.

The original vision of the EEAC founders is a vision that is as relevant today as it was then, particularly as we add the complexity of doing business in an increasingly global world. We look forward to continuing the EEAC staff/member company partnership that has enabled us over the years to accomplish far more collectively than we would have been able to accomplish individually.



June Jones  
Chair  
Board of Directors



Jeffrey A. Norris  
President

# Organizational Profile

## Overview

The Equal Employment Advisory Council (EEAC) is a national association of primarily large companies that was formed in 1976 to ensure that an informed business perspective would be presented in emerging employment-related litigation in the federal courts through the filing of friend-of-the-court briefs. Since its creation 30 years ago, EEAC has grown in size and prestige to become the preeminent employer group dedicated exclusively to the advancement of practical and effective programs to eliminate workplace discrimination.

Today, EEAC serves as a valuable legal and information resource for its member companies. Membership is corporate, rather than individual. Thus, EEAC's membership privileges extend to any person who works for a company that belongs.

Each week our staff experts prepare a number of informative "memos" to ensure that member companies are kept up-to-date on developments directly impacting corporate EEO, diversity, and affirmative action efforts and initiatives. As a complement to the memos, we encourage our members to call EEAC's staff experts if they have questions or need more information, or if they want to compare notes on how other member companies are dealing with similar issues. EEAC's website at [www.eeac.org](http://www.eeac.org) contains an ever-expanding library of helpful EEO-related resources, as well as details about EEAC's acclaimed training programs, special seminars and forums, products and publications, and more.

EEAC reaches out regularly to its member companies through a variety of meetings, training seminars, and other events designed to facilitate member participation. These include two membership meetings each year, as well as special forums aimed at in-house employment counsel, ADR coordinators, and senior EEO/AA professionals. Our online offerings include interactive web workshops and "open dialogue" teleconferences with key government officials and other experts.

EEAC also serves an important role as an advocate for its member companies in the public policy arena. Our *amicus curiae* briefs, regulatory comments, and testimony, all developed with active member company input, are highly regarded by the courts and policy-makers for presenting a practical employer perspective. We also maintain regular communications with officials at the EEOC and OFCCP to provide ongoing input into agency enforcement and policy initiatives.

## Administration and Staffing

EEAC is a nonprofit association that is tax-exempt under Section 501(c)(6) of the Internal Revenue Code. Membership dues are fully tax deductible as an ordinary and necessary business expense.

EEAC positions and policies are set by its Board of Directors. The Board is comprised of 30 member company representatives who serve three-year terms. The Board approves all positions taken by EEAC in *amicus curiae* briefs and regulatory comments and adopts the Council's annual budget. The Board traditionally is composed of representatives of companies that are widely diversified as to industry, size, and geography. A listing of EEAC's 2005-2006 Board of Directors can be found in Appendix A.

Each year the Board elects an Executive Committee that makes policy recommendations to the Board and acts for the Board when necessary. EEAC's work is performed primarily by attorneys and nonlawyer employment specialists with the law firm of McGuiness Norris & Williams, LLP, in Washington, D.C.

# 2005 EEAC Staff

Jeffrey Norris	President
John Tysse	Chief Operating Officer
Ann Elizabeth Reesman	General Counsel
Judith Lampley	Secretary/Director of Training/Counsel
Troy Moody	Treasurer
Laura Giantris	Assistant General Counsel
Joseph Lakis	Senior Counsel
Robert Williams	Senior Counsel
Nancy Nelkin	Director, Audit Services
William Holmes	Senior Consultant
David Rainwater	Senior Consultant
Cynthia Valadez	Senior Consultant
Nick Kuriger	Director of Information Technology
Bronson Hall	Associate Director of Information Technology
John Steiger	Legal Assistant
Nicole McDuffie	Executive Administrative Assistant
Andrea Dixon	Member Services Coordinator
Catherine Henderson	Training Coordinator
Allison Lowry Evans	Administrative Assistant/On-Line Coordinator
James Poindexter	Office Services Director
Price Williams	Office Services Assistant

# Communicating With Our Members

An EEAC member company's annual dues cover a wide array of services and activities that EEAC provides on an ongoing basis. These include:

## Weekly Memoranda

Members typically receive more than 250 informative memoranda each year. Prepared on a weekly basis, each memo analyzes a timely topic, which can range in scope from an important court decision, to a significant regulatory or policy development, to a corporate "best practices" initiative. A complete topical list of memoranda prepared for our members in 2005 appears in Appendix B.

## Clearinghouse

Members are encouraged to call or email our staff experts if they have questions, are looking for information, want to benchmark with other members, or sometimes simply want to bounce an idea. Because EEAC's experts are in regular contact with other member companies, as well as with government officials, they often can provide valuable insights into current government enforcement policies and procedures and how other companies are responding to them.

## Issue-Related Clearinghouses

- **Workplace Violence**

EEAC maintains a library of corporate workplace violence prevention policies and practices, including facts and materials from the Federal Bureau of Investigation. These workplace violence policies, available on request, have been helpful to member companies as they draft or review their own workplace violence policy. The Workplace Violence Clearinghouse also provides member companies with contacts at other companies that have addressed workplace violence issues.

- **EEO Data Gathering Groups**

EEAC's EEO Data Gathering Groups Clearinghouse was created in response to a growing trend among outside interest groups and advocacy organizations — often referred to as "Nongovernmental Organizations" (NGOs) — to seek EEO-related data from companies. This information frequently is then made available by the NGO to the public at large. The Clearinghouse contains individual profiles of many of these outside groups, information which can be very helpful to a company in determining how to respond to a request for data.

- **Harassment Policies**

EEAC's Harassment Policies Clearinghouse collects company harassment policies and complaint procedures and makes them available to member company representatives for research and benchmarking purposes.

- **Employee Network Groups**

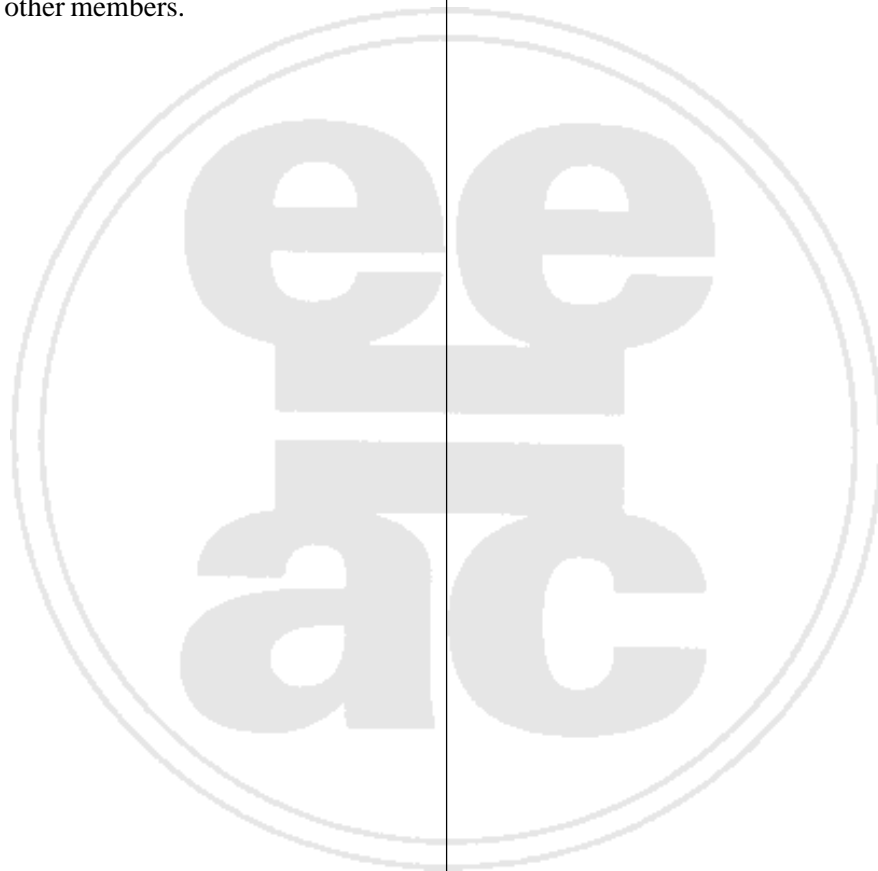
The Employee Network Groups Clearinghouse provides a forum for companies to obtain information about establishing and monitoring affinity or employee network groups. Benchmarking assistance is available through contacts with other member companies, as well as a library of resources, including individual company policies and procedures which may be helpful to member companies addressing a network group issue.

- **Mediator/Arbitrator**

In recognition of the fact that more and more companies are using mediation and arbitration to resolve workplace disputes, EEAC established a clearinghouse of external mediators and arbitrators. The clearinghouse compiles qualification and contact information for mediators and arbitrators that EEAC members have used and are willing to recommend to other companies.

## Best Practices Benchmarking

EEAC's member company representatives frequently ask us to serve as a facilitator for putting them in touch with other members for the purpose of comparing EEO best practices. This service is provided on a confidential basis for those companies that have expressed a willingness to share such information with other members.



# EEAC on the Internet

EEAC's constantly improving website lists all the latest information on EEAC programs and activities and contains indexes of EEAC memos dating back several years. You can find us on the Internet at <http://www.eeac.org>.

## Equal Employment Advisory Council

Home | Membership | Register

The nation's only employer association dedicated exclusively to the advancement of practical and effective equal employment opportunity and affirmative action compliance programs to eliminate workplace discrimination.

- Home On-Line
- Member Resources
- Member Update
- Training & Seminars
- Publications & Products
- Meetings & Forums
- Events Calendar
- Data Services
- Amicus Curiae Briefs
- Regulatory Comments/Testimony
- AAP Counseling Services
- Networking Information
- EEAC Staff
- Contact EEAC
- Bookmark This Page

### What's New

EEAC is pleased to announce two upcoming web workshops. On **Tuesday, February 21, 2006**, we will hold a two-hour web workshop on the compliance and recordkeeping requirements applicable to internal and external resume database searches under OFCCP's new Internet Applicant regulation. The workshop will explore the specific requirements applicable to internal and external resume database searches, and highlight practical steps that companies can take to get the most out of the regulation's "budget management" provisions. [Click here](#) for details. On **Thursday, February 23, 2006**, EEAC will hold a two-hour web workshop on the new EEO-1, covering the new form's data collection and maintenance requirements, as well as the implications the new report will have on other processes such as affirmative action plans, impact ratio analyses, and the VETS-100 form. [Click here](#) for details. Please note that both web workshops are open to **EEAC member companies only**.

### In This Week's Posting

EEAC's weekly memoranda — our signature member benefit — analyze and provide practical guidance on important regulatory, legislative, judicial, and policy developments affecting company equal employment opportunity and affirmative action compliance programs.

**Posted February 3, 2006:**

- 96-004 EEOC Official Revised EEO-1 Report Approved, Effective for 2007 Reporting Cycle
- 96-005 EEAC Urges Supreme Court in *MSP vs. White* To Reverse Problematic Retaliation Ruling That Erodes Traditional Management Prerogatives
- 96-006 January 2006 McDowell Legal Forum Highlights
- 96-007 Sixth Circuit in *Asob v. Ohio DOC* Warns Split Among Federal Courts on Whether Title VII Lawsuits Seeking Individual Money Damages Can Qualify for Class Action Treatment; Agreeing With EEAC, Court Here Says No
- 96-008 OFCCP's 2005 Enforcement Numbers Show Record Amount in Monetary Relief, Compliance Reviews Were Down, but Not For Long
- 96-009 Recent Report Prepared by Dallas Federal Reserve Bank Focuses on Two Important Workplace Trends: Women Going Out and an Aging Workforce

Notice: Announcing an EEAC Web Workshop — The new EEO-1 Report, 2:00 p.m. to 4:00 p.m. EST, February 23, 2006

Notice: Announcing an EEAC Web Workshop — Resume Database Searches Under OFCCP's New Internet Applicant Regulation, 2:00 p.m. to 4:00 p.m. EST, Tuesday, February 21, 2006

Notice: EEAC "Open Dialogue" With conerzo Almonro, OFCCP Regional Director for the Northeast Region, Tuesday, February 28, 2006, 2:00 p.m. - 3:00 p.m. EST

### Featured Products & Upcoming Events

**Meetings & Forums** View all >>

Annual Membership Meeting	Mar 9-10 - Washington, DC
ADR Discussion Forum	Apr 13 - Washington, DC
McDowell Legal Forum	Jun 19-20 - Washington, DC

**Training Programs & Seminars** View all >>

Developing & Defending Compliant AAPs	Mar 28-30 - Washington, DC
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**Web Workshops & Clerk Databases** View all >>

"Web Workshop" on Resume Database Searches Under OFCCP's New Internet Applicant Regulation	Feb 21 - Web Workshop
"Web Workshop" on the New EEO-1 Report	Feb 23 - Web Workshop
"Open Dialogue" With Lorraine Harrison, OFCCP Regional Director for the Northeast Region	Feb 28 - Open Dialogue
"Open Dialogue" on Hiring and Retaining Individuals With Disabilities	Mar 2 - Open Dialogue

**Publications & Products** View all >>

- Conducting Effective Internal Investigations (CIWI)
- Sexual Harassment
- Maintaining Harassment Free Work Environments, California Edition
- Comp Auditor® Software
- Self Audit Checklist
- EEO Resource Manual
- Managing OFCCP Compliance Evaluations
- On-Line Training
- Navigators Pamphlets Series

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# Legal and Compliance Monitoring

## Amicus Curiae Briefs

EEAC's lawyers prepare and submit friend-of-the-court briefs in important EEO-related cases in the U.S. Supreme Court and the federal circuit courts of appeals. Since 1976, EEAC had filed more than 550 *amicus curiae* briefs. A detailed description of EEAC's 2005 *amicus curiae* activity is contained on the following page and in Appendix E.

## Regulatory Comments and Testimony

EEAC files detailed written comments, and frequently testifies at public hearings, on all proposed federal regulations or policy initiatives that significantly affect corporate EEO/AA compliance practices. These can include regulatory proposals published by the Equal Employment Opportunity Commission (EEOC), the Department of Labor's (DOL) Office of Federal Contract Compliance Programs (OFCCP), and other federal agencies that have EEO regulatory authority. EEAC actively seeks member company input when preparing such comments or testimony. A summary of the 2005 regulatory issues on which EEAC commented is contained in Appendix F.

## Case Analyses

EEO compliance is shaped to a great degree by court interpretations of the law. EEAC closely tracks decisions issued by the federal courts, and analyzes those decisions by identifying their practical implications for corporate compliance programs.

## Class Action Watch

The Class Action Watch provides member companies with up-to-date information on pending class action employment discrimination lawsuits. We track topics including trends in recently filed class action complaints, tactics used by class action plaintiffs' lawyers, and court decisions on class certification and other matters. The Class Action Watch also helps EEAC to identify cases that are suitable for EEAC *amicus* participation.

## Privacy Watch

EEAC monitors a range of privacy-related matters that have implications for EEO professionals. The EEAC Privacy Watch tracks and reports on privacy developments of particular interest to member companies.

## Solicitor of Labor Watch

EEAC's Solicitor of Labor Watch updates members periodically on the most important decisions rendered by the Department of Labor (DOL) in administrative enforcement actions involving the Office of Federal Contract Compliance Programs (OFCCP). We also report significant administrative rulings rendered under the whistleblower anti-retaliation provisions of the Sarbanes-Oxley Act.

## OFCCP Compliance Issues Series

Initiated in 2003, our periodic *OFCCP Compliance Issues* memoranda analyze at a detailed and practical level how federal contractors can comply with that agency's affirmative action recordkeeping and reporting requirements. The memoranda issued in this series in 2005 focused on specific OFCCP jurisdictional questions, including how subcontractors become covered, how contracts are valued for the purpose of determining whether OFCCP's jurisdictional thresholds are met, how OFCCP's compliance requirements apply to "off-shore" U.S. jurisdictions, and the circumstances under which OFCCP's jurisdiction over a contractor or establishment comes to an end.

## International Watch

In addition to monitoring legal and compliance developments occurring in the U.S., EEAC also monitors and reports from time to time on international developments that have implications for U.S. companies doing business overseas.

# 2005 Issue Highlights

Summarized below are specific legal, regulatory and policy issues addressed by EEAC in 2005.

## Legal

EEAC is the primary national organization filing *amicus curiae* (friend-of-the-court) briefs on behalf of the employer community in major cases involving employment discrimination and affirmative action issues. EEAC monitors a wide variety of ongoing cases before the federal courts and administrative agencies. Proposed cases are considered by EEAC's standing Case Selection Committee (comprised of more than 100 in-house employment counsel at EEAC member companies) which then recommends a position to EEAC's Board of Directors.

Since we began filing briefs in 1976, EEAC has had a significant influence on the development of employment law, and that impact was apparent in 2005. EEAC has filed a total of 558 *amicus* briefs, often joined by other employer organizations such as the Chamber of Commerce of the United States and the Society for Human Resources Management. Our 190 briefs filed with the U.S. Supreme Court illustrate that EEAC is involved in the most important employment cases. Over the years, more than 64% of the court decisions in EEAC-briefed cases have adopted EEAC's position, not a bad statistic considering that we choose cases for their importance, not their "winnability."

During 2005, EEAC submitted briefs in 19 cases, dealing with a wide variety of employment-related issues. The U.S. Supreme Court ruled for the first time in *Smith v. City of Jackson, MS* that a "disparate impact" theory of discrimination can be used in an Age Discrimination in Employment Act (ADEA) case, but clarified that the plaintiff must identify a specific employment practice, and confirmed that employers can defend such a case successfully by showing that the impact was caused by a "reasonable factor other than age."

The remaining Supreme Court cases had a less direct impact on EEAC's sphere of interest. The Court agreed with EEAC in *Graham County Soil & Water Conservation District v. U.S. ex rel Wilson* that the time limit for filing a False Claims Act case is the corresponding state law statute of limitations. By the time the Court concluded in *Commissioner of Internal Revenue v. Banks* and *Banaitis* that amounts awarded in an employment discrimination lawsuit for attorney's fees are taxable to the plaintiff, Congress had passed legislation that will permit a discrimination plaintiff to deduct attorneys' fees on his or her federal tax return. In 2006, we expect the Court to address issues in several cases we have briefed, including the threshold for maintaining a claim of retaliation, in *Burlington Northern Santa Fe v. White*, and whether a non-party to a contract can sue for race discrimination under 42 U.S.C. § 1981.

Indeed, 2005 saw EEAC briefs in a number of significant cases involving the ADEA. We took the unusual step of appearing in federal district court, to support the Equal Employment Opportunity Commission's attempt to issue a regulation allowing employers to coordinate retiree health benefits with Medicare against a challenge by the AARP, and will file a brief in 2006 with the U.S. Court of Appeals for the Third Circuit to support the agency again in AARP's appeal of the judge's favorable decision. We also filed briefs in several key cases involving the proper interpretation of the requirements of the Older Workers Benefit Protection Act (OWBPA) for obtaining valid waivers of ADEA claims, and those cases are still pending.

EEAC continues to participate in cases setting the parameters for employment discrimination class actions. In both *Anderson v. Westinghouse Savannah River Co.* in the Fourth Circuit, and *Grosz v. The Boeing Company* in the Ninth Circuit, federal appeals courts upheld the trial court's ruling that broad based discrimination claims should not go forward as class actions. Two other cases, which EEAC briefed in 2004, are awaiting decisions, including *Dukes v. Wal-Mart* in the Ninth Circuit.

Some cases that EEAC briefs truly form the leading edge of employment discrimination law. In *Moranski v. General Motors*, the first case of its kind, the Seventh Circuit ruled that an employer does not violate Title VII if it chooses to exclude groups of a religious nature from its recognized affinity groups program. In *Jespersen v. Harrah's*, in the Ninth Circuit, and in *Etsitty v. Utah Transit Authority* in the Tenth Circuit, EEAC argued against expanding language concerning “sex stereotyping” in the Supreme Court’s 1989 *Price Waterhouse v. Hopkins* decision into a full-blown independent cause of action, and we await the results in those cases.

EEAC also continues to support the enforceability of lawful agreements to arbitrate employment disputes. In *Caley v. Gulfstream Aerospace Corporation*, we argued successfully to the Eleventh Circuit that an agreement is enforceable when employees signify their assent to the agreement by choosing to remain employed, and that a clause prohibiting class actions does not make the agreement unenforceable. The First Circuit ruled in *Campbell v. General Dynamics* that e-mail is a proper means of communicating changes in company policy, provided that the message is clear.

EEAC briefs in several areas have supported employer efforts to prevent workplace violence. In the Third Circuit, we argued that an employer has a legal right to terminate an employee for threatening his supervisor without having to prove every element of the Americans with Disabilities Act’s (ADA) “direct threat” defense. We also joined the Society for Human Resources Management in a brief supporting employers who are challenging Oklahoma’s law requiring employers to allow firearms on company premises. Both of those cases are still pending.

In another ADA case, we have urged the Ninth Circuit in *Bates v. United Parcel Service* to reverse a lower court decision that effectively barred an

employer from applying a safety-based qualification standard that prohibited deaf individuals from driving a commercial delivery truck. That case is still pending as well.

EEAC briefs supported common sense interpretations of the Family and Medical Leave Act (FMLA). In *Hoffman v. Professional Med. Team*, we explained to the Sixth Circuit the significant challenges that intermittent FMLA leave poses for employers, and the court cited our brief as part of its reasoning in its decision favoring the employer. In *Taylor v. Progress Energy, Inc.*, we have urged the full Fourth Circuit to review and reverse a highly problematic panel decision holding that a release of FMLA claims is invalid unless it is supervised by the Department of Labor or a court, and await the Fourth Circuit’s response.

In another brief for common sense, we argued successfully to the Tenth Circuit *Shikles v. Sprint/United Management Company* that a plaintiff must cooperate with the EEOC investigation as part of his obligation to exhaust administrative remedies before going to court, even though the EEOC itself argued otherwise. In *EEOC v. Sundance Rehabilitation Corporation*, we disputed the agency’s legal theory that conditioning an offer of severance pay on signing a general release is actionable under an “anticipatory retaliation” theory, and the Sixth Circuit has not yet decided the case.

Additional information about EEAC’s 2005 *amicus* activity can be found in Appendix E.

## **EEO/AA Compliance**

EEAC plays an important and often influential role in the analysis and development of federal EEO/AA compliance requirements, primarily those administered by the U.S. Equal Employment Opportunity Commission (EEOC) and the Department of Labor’s (DOL) Office of Federal Contract Compliance Programs (OFCCP).

In addition to routinely monitoring and reporting on these developments to our members, EEAC frequently prepares detailed comments and analyses on specific regulatory or compliance requirements, providing the agencies with the practical and valuable perspective of those who ultimately will be responsible for meeting them. We also maintain regular contact with agency policymakers through informal meetings, requests to speak at EEAC membership meetings and forums, and attendance at agency functions.

Among the major federal EEO/AA policy and compliance developments that EEAC monitored, analyzed, and commented on in 2005 were the OFCCP's final "Internet Applicant" regulation; the EEOC's approval of a final proposal and timetable for revising the Employer Information (EEO-1) Report; the Labor Department's final regulations implementing the Uniformed Services Employment and Reemployment Rights Act (USERRA); the OFCCP's evolving methods for evaluating compensation data to detect systemic pay discrimination; and the OFCCP's new auditing procedures for off-site compliance checks and determining compliance with the so-called "Beck" requirements.

On October 7, 2005, the OFCCP published its long-awaited final rule defining an "applicant" in the context of the Internet and related technologies. The landmark regulation established a brand new compliance framework around which companies would be required to design or redesign their recruitment and selection procedures, and gave contractors just 120 days to bring their practices into compliance. To help our members understand and comply with the rule's requirements, EEAC prepared detailed memoranda analyzing the final rule and its implications, updated our members on the rule's requirements at the 2005 fall membership meeting, and presented a full-day special seminar to explain exactly how the rule's requirements were likely to impact specific recruitment and selection practices. We also submitted a formal request to OFCCP

seeking an extension of the rule's February 6, 2006 effective date, a request that had not been responded to as of year's end.

The last few months of 2005 also saw several other significant compliance-related developments, including the EEOC's November 16, 2005 approval of final proposed revisions to the Employment Information (EEO-1) Report. The final proposed revisions, which included a number of favorable changes from what the EEOC initially had proposed in 2003, would among other things change the race/ethnicity and job category classification systems used in the EEO-1 Report and in several other federal EEO/AA recordkeeping and reporting requirements. Pending final official clearance from the federal Office of Management and Budget, the revisions are scheduled to go into effect in 2007.

On December 19, 2005, the Labor Department's Veterans' Employment and Training Service (DOL-VETS) published its final regulation implementing the Uniformed Services Employment and Reemployment Rights Act (USERRA). The 69-page regulation and its accompanying preamble were issued in an attempt to clarify USERRA's rules prohibiting discrimination and retaliation against former and current members of the uniformed services, as well as an employer's obligation to reinstate a service member to his or her former civilian job under certain conditions. The new regulation was scheduled to take effect on January 18, 2006.

In addition to these three major policy issues, EEAC also monitored, analyzed, and reported on several OFCCP enforcement-related developments that occurred in 2005. First, the agency took steps to refine its analytical approach for evaluating contractor compensation data, including launching pilot tests of new models for analyzing "paragraph 11" compensation data and for performing more sophisticated "mini-regression" analyses. Second, OFCCP finalized a long-pending regulatory amendment that now allows the agency to complete limited compliance "checks" without performing a

visit to the contractor's establishment. Third, OFCCP implemented a new enforcement strategy for auditing contractor compliance with the union-related "Beck" workplace poster and contract clause requirements established by a 2001 Presidential Executive Order. And lastly, OFCCP refined its new targeting model — the Federal Contractor Selection System (FCSS) — and used that model to again identify establishments that would be subject to compliance reviews in 2005 and 2006.

Finally, EEAC continued publishing weekly memoranda in the special *OFCCP Compliance Issues Series* started in 2003, providing our members with guidance on specific OFCCP jurisdictional issues such as how subcontractors become covered under OFCCP's requirements, how contracts are valued for the purpose of determining whether OFCCP's jurisdictional thresholds are met, how OFCCP's compliance requirements apply to "off-shore" U.S. jurisdictions, and the circumstances under which OFCCP's jurisdiction over a contractor or establishment comes to an end.

For a complete detailed listing of the EEO/AA regulatory issues upon which EEAC commented during 2005, please see Appendix F.

## Federal and State Legislative Tracking

EEAC is not a lobbying organization and does not attempt in any way to influence the U.S. Congress on the development of legislation that may affect corporate fair employment practices. We do, however, closely monitor, analyze, and report on federal legislative developments, as well as major developments at the state and local level that have implications for employers all across the nation.

Appendix G provides a summary of the federal legislative issues monitored by EEAC in 2005.

## State and Local Developments

During 2005, EEAC also reported on a number of developments involving state and local laws. Topics covered included same-sex marriage and domestic partner rights and benefits; medical marijuana initiatives; mandatory sexual harassment training; concealed weapons; retaliation; identity theft; and other state laws on employee leave entitlements, jury duty, employer immunity for references, and releases.

## International Developments

EEAC reported on a number of international employment law issues in 2005. For instance, EEAC prepared memoranda on the progress of European Union (EU) member countries implementing the various EU EEO directives; guidance issued by the EU on its data protection directive; and a study issued by the EU on the importance of data collection and monitoring in combat systemic discrimination. EEAC also alerted members to recent employment-related legal developments in the United Kingdom and employee privacy rights in France.

# Partnering With Our Members

## Standing Committees

EEAC currently has four standing committees, each comprised of member company representatives who have volunteered to participate.

### *Case Selection Committee*

The Case Selection Committee monitors and analyzes significant pending equal employment and affirmative action litigation, primarily in the federal courts; recommends cases in which EEAC should file *amicus curiae* briefs; and provides advice and counsel on the positions to be taken in those briefs.

### *EEO/AA Compliance Committee*

The EEO/AA Compliance Committee analyzes proposed agency regulations and policy developments and assists in the preparation of written comments to ensure that regulators understand the practical implications of their actions. The committee also acts as a source of informal, off-the-record input into the development of EEAC position statements and recommendations.

### *Member Enrichment Committee*

The Member Enrichment Committee provides a forum for member company representatives to share what they get from their EEAC membership, recommends ways in which this experience can be enhanced, and assists the EEAC staff with membership recruitment and retention issues.

### *Committee on Employee Selection*

EEAC's Committee on Employee Selection is made up largely of in-house industrial and organizational psychologists from EEAC member companies. The committee monitors and provides EEAC input on developments affecting employee selection testing.

## Special Forums

### *Legal Forum*

The two-day McDowell Legal Forum (in memory of EEAC's late General Counsel Douglas S. McDowell) brings together member company in-house lawyers in a confidential setting where they share information, ideas, experiences, and strategies. The Legal Forum provides a unique opportunity for free and open "off the record" discussion that allows participants to learn from their colleagues at other member companies. Updates on recent legal developments are presented by EEAC staff, and outside speakers offer their unique perspectives. Each attendee receives an extensive outline and compact disc of helpful resource materials drawn from EEAC memoranda, court decisions, briefs, enforcement agency pronouncements, and information supplied by participants.

### *Managers Forum*

EEAC's Managers Forum provides EEO/AA compliance and diversity practitioners with an informal roundtable environment to discuss and strategize about developing issues affecting corporate-wide compliance and diversity programs. It also presents an additional opportunity for EEAC staff to learn how our member companies manage the "real world" implications of federal EEO/AA compliance requirements, information which often proves invaluable when formulating and framing our comments on pending EEO/AA regulatory and policy issues.

### *ADR Discussion Forum*

EEAC sponsors periodic ADR Discussion Forums to provide interested members with timely and up-to-date information on developments in the area of alternative dispute resolution (ADR). The semi-annual Discussion Forums, held at EEAC's Training Center, feature presentations by member

companies who share the details of their in-house programs designed to resolve employee disputes without litigation; EEAC staff-provided briefing on legal, legislative and regulatory developments; and outside speakers add their expertise. During the year, EEAC facilitates communication between EEAC member companies on ADR issues and maintains an ADR library, which is open to EEAC members and houses copies of materials from over 75 company ADR programs.

### **Task Forces**

Important issues arise from time to time that may lead EEAC to create a special ad hoc task force. The task forces are composed of EEAC member company representatives with specialized expertise in the particular issue that is being addressed. The task forces serve as a valuable resource to EEAC staff in compiling anecdotal or statistical information to be included in our comments on proposed regulations or major policy changes. In 2005, a Diversity Metrics Task Force was established to assist the EEAC staff in determining how best to provide information and services that can be used to evaluate diversity progress in EEAC member companies.

### **“Open Dialogues”**

EEAC’s “Open Dialogues” are designed to provide EEAC member company representatives with the opportunity to talk with key government officials, stay current on breaking issues, exchange ideas, and benchmark with other member company representatives — all without having to leave the office. This conference call format provides an alternative approach for meeting the needs of our members faced with tight travel budgets.

# Educating Our Members

## Membership Meetings

EEAC conducts two two-day meetings during the year: our Annual Meeting, held early in the year in Washington, D.C., and our Fall Meeting, generally rotated between a West Coast and Midwest location. Meeting programs are designed to provide useful information on current issues of interest to a member company's EEO/AA compliance staff and in-house employment counsel. The meetings typically consist of a general session with guest speakers discussing important policy issues; EEO/affirmative action and legal updates; hands-on workshops; a "mini-seminar" featuring an important topic of general interest; and informal roundtable discussions on subjects where participants can share their companies' experiences. A list of speakers and subjects covered at the two 2005 membership meetings can be found in Appendix D.

## Training Seminars and Publications

### *EEAC's Training Center*

Entering its third year, EEAC's Training Center located at EEAC Headquarters in Washington, D.C., allows us to continue to offer quality programs on a more flexible schedule and as demand requires. Not only does this provide for more efficient use of EEAC staff time, but it enables us to offer the participants a private, high-tech training facility without increasing registration fees.

The Training Center seats up to 20 participants and offers both high-speed wired and wireless internet access. In addition to being used for EEAC seminars and training programs, the Training Center also is available to EEAC member companies for customized training programs. Please contact EEAC's Director of Training, Judy Lampley, at 202-789-8650 for further information.

### *EEAC Sponsored Seminars*

EEAC offers a full curriculum of ongoing training programs developed and presented by experienced EEAC trainers. A comprehensive, introductory "Basic EEO" survey course addresses the fundamentals of equal employment opportunity and affirmative action. This program is offered in a two-day (just EEO) or three-day (EEO and AA) format. Other programs offered by EEAC are skills development courses focusing on the preparation of affirmative action plans, managing OFCCP compliance evaluations, employment discrimination charge processing, conducting compensation analyses, and conducting internal investigations. These programs and their 2006 dates are described in greater detail in Appendix C.

During 2005, EEAC also held a number of special seminars on the ADA and the FMLA, statistical methodologies, selection testing practices, and the Internet Applicant regulation.

### *EEAC's EEO/AA Compliance Immersion Program*

Introduced for the first time in 2005, EEAC's *EEO/AA Compliance Immersion Program* provides HR professionals and in-house legal counsel with an opportunity to gain all of the benefits of EEAC's core training programs condensed into an intense one-week session. Participants in this special program, which is held at the EEAC Training Center in Washington, D.C., receive the EEAC Equal Opportunity Professional Certificate, as well as recertification credits from the Human Resource Certification Institute.

The one-week course combines the essential elements from EEAC's popular *Basic EEO*, *Investigating & Responding to Discrimination Charges*, and *Developing & Defending Compliant Affirmative Action Programs*. Although this course is designed to be intense, it offers a unique and cost-effective opportunity for professionals new to EEO and affirmative action to get the fundamentals of

compliance in both areas at one time, in one location, taught by leading experts in the field.

EEAC has scheduled two sessions of the EEO/AA Compliance Immersion Program for 2006: July 17-21 and August 14-18.

### *Training Packages*

EEAC offers five stand-alone facilitator-led training packages designed for presentation by company personnel. The sexual harassment prevention training package, *Maintaining a Harassment-Free Work Environment: Training for Managers and Supervisors*, includes an award-winning video produced by the Georgia-Pacific Corporation. This package was also made available in a California Edition to meet the requirements of that state's mandatory sexual harassment training law. *Equity at Work* continues to be a best-seller and provides the most efficient means of delivering a basic understanding of EEO considerations and legal responsibilities to front-line managers and supervisors. *Investigating Workplace Conduct* provides step-by-step guidance for conducting an internal investigation of workplace misconduct. *EEO Essentials for Recruiters* is designed to ensure that your company's recruiters are in-step with the company's EEO and affirmative action policies. All four training packages include instructional material for the trainers and participants' materials.

EEAC also offers an online training program, entitled *Avoiding Illegal Retaliation*. This web-based course allows managers and supervisors to quickly and effectively learn the key EEO requirements regarding illegal retaliation in the workplace.

### *Corporate In-House Training*

EEAC trainers also provide customized programs to accommodate the unique employment practices and particular educational needs of our individual member companies. Our in-house training can be

presented to senior management, human resource professionals, or supervisors and managers. During 2005, in-house programs were presented to the following organizations:

3M	General Dynamics
Ameren	Goodyear
Arrow	Hallmark
BellSouth	Honeywell
Burlington	Lexmark
Cargill	Lockheed Martin
Caterpillar	L'Oreal
CenterPoint Energy	Merck
ChevronTexaco	Telcordia
Duke Energy	Timken

### **Web Workshops**

In 2005, EEAC continued its conference call presentations that also utilize the Internet to simultaneously provide a Microsoft® PowerPoint presentation to participants. These periodic web workshops were conducted by EEAC staff experts and included a workshop on invitations to self-identify and two sessions of a special web workshop series on OFCCP's proposed compensation analysis guidelines.

### **Managers' Pamphlet Series**

EEAC introduced two new pamphlets in its "Managers' Pamphlet Series" in 2005. The first covered what managers and supervisors need to know about employment selection testing practices, and the second discussed what managers and supervisors need to know about the Sarbanes-Oxley Act and whistleblowers' rights.

EEAC's *Managers' Pamphlets* are designed to furnish a basic understanding of key equal employment opportunity (EEO) requirements to managers and front-line supervisors. Each pamphlet uses a question and answer format to describe in plain English what a company's managers and supervisors need to know about EEO rules that apply

in the workplace and what they need as part of their daily decision-making process. Additionally, the pamphlets provide helpful guidance on ways in which your managers and supervisors can help the company avoid workplace discrimination and further affirmative action goals.

In addition to the two new pamphlets, there are 16 other pamphlets in the series:

- *Understanding Our Company's Affirmative Action Obligation for Individuals With Disabilities and Veterans;*
- *What Managers Should Know About Avoiding Age Discrimination;*
- *What Managers Should Know About Avoiding Illegal Retaliation;*
- *What Managers Should Know About Preventing Harassment in the Workplace;*
- *What Managers Should Know About the Family and Medical Leave Act;*
- *What Managers Should Know About Preventing Religious Discrimination;*
- *What Managers Should Know About Preventing Race, Color, and National Origin Discrimination;*
- *Equal Employment Opportunity and Affirmative Action Compliance: An Executive Summary for Senior Managers;*
- *What Managers Should Know About the Americans with Disabilities Act (ADA);*
- *What Managers Should Know About Our Company's Affirmative Action Obligations;*
- *What Managers Should Know About the Rights of Employees Who Serve in the Military;*

- *What Managers Should Know About Interviewing Prospective Employees;*
- *What Managers Should Know About "I-9 Basics": Verifying a New Hire's Employment Eligibility;*
- *What Managers Should Know About the Federal Fair Credit Reporting Act and Background Checks;*
- *What Managers Should Know About an OFCCP Compliance Review; and*
- *What Managers Should Know About Protecting the Privacy of Employees' Personal Information.*

## Resource Manuals

EEAC offers a wide-array of highly-regarded resource manuals written by our staff experts to assist HR professionals and legal staff. Over the last two years, EEAC has been converting its resource manuals to a more user-friendly CD-ROM format. That process was completed in 2005, and now each of the manuals is available exclusively on CD-ROM. Users will find that this format allows greater flexibility and efficiency in researching through enhanced search capabilities, as well as allows quick access to relevant statutes, regulations and forms. We also offer a license that permits companies to make the manuals available on their intranets. A brief description of each manual follows.

### *EEO Resource Manual*

EEAC's *EEO Resource Manual* is an all-inclusive treatise on the equal opportunity/affirmative action laws and regulations that impact the employment relationship. The manual is updated periodically to reflect current regulatory and judicial developments involving laws such as Title VII, the ADA, and the FMLA, as well as OFCCP's revised affirmative action regulations and compliance

procedures. Most useful as a handy desk reference for providing answers to practical questions that arise about a company's compliance obligations, the manual also has been designed to serve as a technical resource for conducting EEO self-audits.

### *Developing Effective Affirmative Action Programs*

This manual is the definitive resource manual for human resource professionals and in-house counsel responsible for managing and overseeing their company's affirmative action compliance programs. The manual reflects the major requirements of OFCCP's "60-2" AAP content regulations, and offers step-by-step, detailed guidance on developing the required elements of a compliant AAP under the new regulations. The manual begins with an overview of affirmative action and the steps necessary to prepare for the AAP-development process. Subsequent chapters are devoted to the quantitative AAP reports required under the new regulations, including the "organizational profile" requirement. Also included is a chapter covering OFCCP's important additional required elements, such as the requirement that contractors perform "in-depth" analyses of their employment processes for potential discrimination. The appendices include all relevant OFCCP statutes and regulations and excerpts from EEAC's sample model AAPs.

### *Managing OFCCP Compliance Evaluations*

This manual is a comprehensive guide to the regulations, methods and procedures by which OFCCP evaluates a federal contractor's AAPs. The manual provides a general overview of the OFCCP, its strategic enforcement objectives, and the methods by which the agency evaluates AAPs. Detailed information and guidance is provided on the various stages in the compliance evaluation process: jurisdictional and facility selection issues; preparing, analyzing and submitting the desk audit materials; managing the on-site review; and conciliating successful resolutions of the evaluation. In addition, the manual contains chapters devoted to conducting compensation analyses, performing statistical

analyses of employment transactions for potential discrimination, and the strategies and procedures for managing a corporate management or "glass ceiling" compliance evaluation. The appendices include all relevant OFCCP statutes and regulations, the agency's compliance evaluation scheduling letters, and relevant sections of the agency's Federal Contract Compliance Manual.

### *Investigating and Responding to Discrimination Charges*

This manual is full of step-by-step guidance and practical advice covering all phases of EEOC's charge handling process and is heavily cross-referenced to pertinent EEOC regulations, policy statements, and compliance manual provisions.

### *Equity at Work: A Manager's Guide to Fair Employment Laws and Practices*

This manual provides front-line managers and supervisors a basic understanding of the EEO considerations and legal responsibilities involved in their day-to-day decision-making. Included are guidelines and specific do's and don'ts related to basic EEO issues, including hiring, terminating, the FMLA, and sexual harassment. This manual is available in individual hard copy or under license for unlimited reproduction and installation on your company's intranet.

### *EEO Essentials for Recruiters*

This manual provides company recruiters with valuable information that explains in straightforward language the critical relationship between EEO/affirmative action and the recruitment process. It is built around eight EEO essentials and is written in non-technical language, but explains some of the specialized jargon a recruiter is likely to hear used by those who work regularly in the EEO/affirmative action field. An entire chapter is devoted to the do's and don'ts of interviewing. This resource is available in individual hard copy or under license for unlimited

reproduction and installation on your company's intranet.

*Investigating Workplace Conduct: Investigator's Guidebook*

This guidebook is a valuable resource for anyone who conducts or is involved in internal investigations. It provides step-by-step guidance on when to conduct an investigation and the necessary elements of a thorough and impartial investigation. Suggestions on interviewing, including specific questions to ask, and assessing credibility are covered in detail, as is preparing the final report and strategies to preserve confidentiality. The guidebook is available in hard copy or under license for unlimited reproduction and installation on your company's intranet.

*Statistics for Nonstatisticians*

This manual provides the reader with a simple and clear introduction to statistical concepts and methodologies that are relevant to affirmative action planning and employment discrimination issues. The text is intuitive, but also covers calculations of the most common statistical tests. (Available in hard copy only.)

For more information on EEAC seminars, training packages, in-house training, or publications, please call our program line at 202-789-8638, or you may visit our website at <http://www.eeac.org>.

*Conducting Impact Ratio Analyses (IRAs) for Potential Employment Discrimination*

This stand-alone spiral-bound resource manual is designed for HR professionals, managers and attorneys involved in developing strategies and conducting IRAs for hires, promotions, terminations, downsizings, and other employment selections. Under its new enforcement strategy targeting systemic discrimination, OFCCP is putting a particular emphasis on the "desk audit" phase of a compliance review, which in turn increases the importance of a quality desk audit submission. Properly conducted IRAs can alert a contractor to potential issues that can be addressed before a desk audit is even scheduled, as well as help to preempt potential questions by OFCCP about desk audit data that might otherwise lead to further investigation. The manual starts by discussing the statistical principles used by OFCCP and the courts in determining whether "disparate impact" discrimination exists. Subsequent chapters address how those statistical principles are applied in practice in evaluating hires, promotions, transfers, terminations, and other selection processes.

# Providing Specialized Services to Our Members

## EEAC's Data Services

EEAC's Data Services provide member company subscribers with online access to an expanding array of government and proprietary statistics useful for EEO/AA and diversity benchmarking. Offerings currently available through this subscription service include EEO-1 workforce benchmarks, college and university graduate benchmarks (including a service that identifies colleges and universities that have graduated the greatest numbers or percentages of a specific race, ethnicity, or gender group with a specific degree), Census 2000 occupation benchmarks, U.S. Department of Defense occupation benchmarks, and EEOC and OFCCP enforcement benchmarks.

## Comp Auditor® Software

EEAC created the EEAC Comp Auditor® software program in response to increased emphasis by both the OFCCP and EEOC on investigating compensation discrimination. The Comp Auditor® is designed to assist member companies in conducting self-audits of their compensation systems to identify areas of potential discrimination. The Comp Auditor® is available only to EEAC members.

## Special Resources

In addition to the Comp Auditor® software and Data Services, EEAC also makes available to members a number of other "special" resources. These include:

*IRA Workbook* – This compliance tool is designed to assist in conducting impact ratio analyses (IRAs) consistent with OFCCP's current methods for conducting investigations of adverse impact. The Workbook, which runs in Microsoft® Excel and comes with an easy-to-follow *User's Guide*, replaces the SWBell IRA software program that EEAC made available for several years. In addition to reflecting OFCCP's latest methods for conducting investigations of adverse impact, the IRA Workbook is simpler and

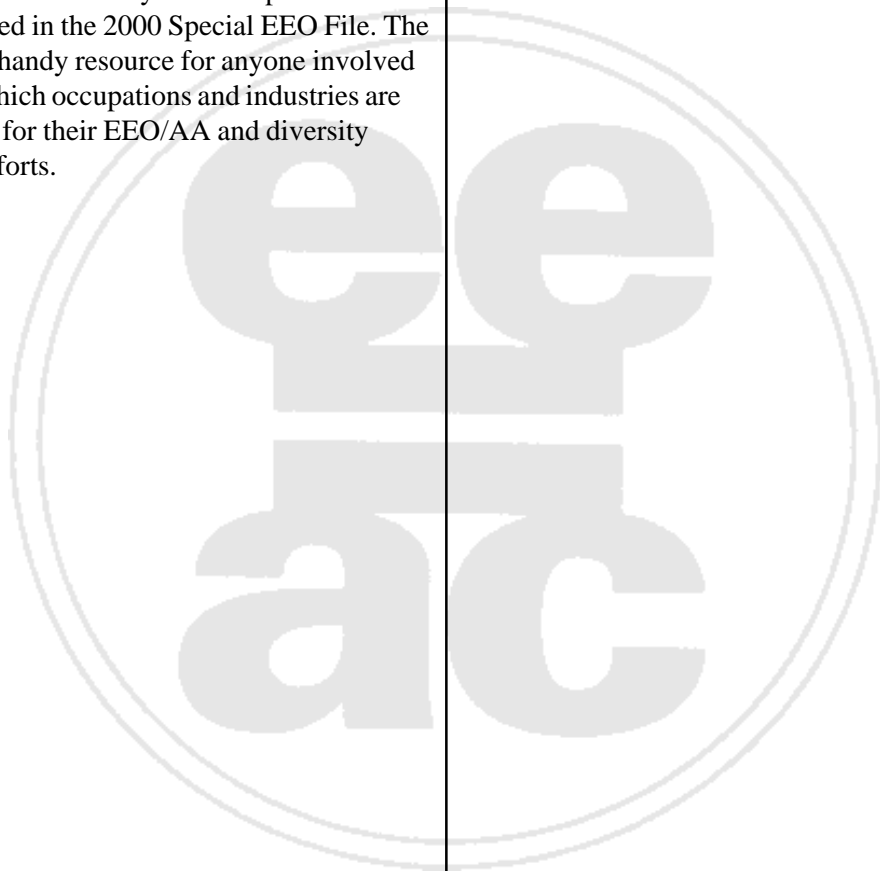
easier to use than the SWBell program, taking advantage of Microsoft® Excel's expanded features.

*Self-Audit Checklist* – This handy compliance tool provides a comprehensive list of items organized by category, to be reviewed in an internal audit of corporate nondiscrimination and affirmative action policies. Each item contains space to record the audit findings. The *Checklist* is organized into seven units: reporting, recording and notice posting; hiring and promotion processes; adverse impact analyses in selections; affirmative action plans; compensation practices; employment practices; and corporate management practices and policies.

*OFCCP Compliance Checklist* – This EEAC tool provides a step-by-step template for tracking and managing all aspects of an OFCCP compliance evaluation. The *Checklist* should be helpful not only to those tasked with responsibility for handling the compliance evaluation, but also to other human resource personnel involved in an evaluation who might not be familiar with all of the "ins and outs" of the OFCCP compliance evaluation process. The *Checklist* breaks down the OFCCP compliance evaluation process into a number of clearly identifiable components.

*OFCCP Regulations Desk Reference* – The *Desk Reference* provides a single, comprehensive, and easy-to-use resource for locating and interpreting the affirmative action program regulations administered and enforced by the OFCCP. It includes the administration and enforcement regulations (Part 60-1); regulations governing the structure and content of AAPs for women and minorities (Part 60-2); regulations governing the content of AAPs for covered veterans and special disabled veterans (Part 60-250); and individuals with disabilities (Part 60-741). The *Desk Reference* is available in either hard copy or searchable CD with commentary "hot-linked" to each regulation.

*Index of Census 2000 Industries and Occupations* – This resource manual is intended to help you facilitate conversions to the revised industry and occupation classification systems that are used in the 2000 Special EEO File. The 330-page manual contains a comprehensive directory of more than 21,000 specific industry titles and 30,000 specific occupation titles and shows how these individual titles were grouped into the industry and occupation classifications used in the 2000 Special EEO File. The manual will be a handy resource for anyone involved in determining which occupations and industries are most appropriate for their EEO/AA and diversity benchmarking efforts.



# Appendix A

## 2005–2006 Board of Directors

Mary Banks  
SVP, Managing Director, ER Compliance  
JPMorgan Chase & Co.  
Houston, Texas

Hayward Bell  
Chief Diversity Officer  
Raytheon Company  
Waltham, Massachusetts

Allie Bond  
Director, Diversity & Compliance  
International Paper  
Memphis, Tennessee

Steve Bucherati\*  
Director, Diversity & Workplace Fairness  
The Coca-Cola Company  
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Asst. Vice President, Diversity and EEO  
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Norfolk, Virginia

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Prudential Financial  
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Corporate Manager, EEO/AA Programs  
Deere & Company  
Moline, Illinois

Robert Gelerter  
Director, AA/EEO  
PricewaterhouseCoopers  
New York, New York

Amos Hewitt\*  
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Rolls-Royce North America Inc.  
Chantilly, Virginia

Charles Jackson  
Director, Equal Employment & Workforce Strategies  
Georgia-Pacific Corporation  
Atlanta, Georgia

June Jones\*\*\*  
Director, Employee Relations & Best Places To Work  
Hill's Pet Nutrition, Inc.  
Topeka, Kansas

Cindy Kaneshiro  
Compliance & Diversity Manager  
Exelon Company  
Chicago, Illinois

June Kubo\*  
Compliance Manager  
Microsoft Corporation  
Redmond, Washington

\* *Executive Committee*, \*\* *Vice Chair*, \*\*\* *Chair*

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Senior Counsel, VP of Employment Law  
The Great Atlantic & Pacific Tea Co., Inc.  
Montvale, New Jersey

Jeanne Mathews\*  
Counsel – Employment Law  
General Electric Company  
Fairfield, Connecticut

Maribeth McCue  
Corporate EEO Manager  
Dart Container Corporation  
Mason, Michigan

Martha Heady Messman  
VP & EEO Compliance Manager  
National City Corporation  
Indianapolis, Indiana

Craig Owen  
Corporate Workforce Planning Manager  
United Parcel Service, Inc.  
Atlanta, Georgia

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Assistant General Counsel, Labor Law  
Lockheed Martin Corporation  
Bethesda, Maryland

Kathleen Schier  
Employee Relations Manager  
Cargill, Inc.  
Minneapolis, Minnesota

Alan Tanenbaum  
Deputy General Counsel  
Fannie Mae  
Washington, D.C.

Natalie Trueheart  
Manager, Fair Employment Practices  
Delphi Corporation  
Troy, Michigan

Sue Werber\*\*  
Senior Director, EEO/AA & Immigration Services  
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Bethesda, Maryland

Doug Wilson  
Director, Equal Opportunity  
Shell Oil Company  
Houston, Texas

Linda Workman\*  
Vice President, Workforce Effectiveness  
ConAgra Foods, Inc.  
Omaha, Nebraska

John Yeager\*  
Director, Compliance  
Anheuser-Busch Companies, Inc.  
St. Louis, Missouri

# Appendix B

## Topical Index of 2005 EEAC Memoranda

### ADA/REHABILITATION ACT

- 05-36 Labor Department Now Seeking Nominations for 2005 “New Freedom Initiative” Award (February 18, 2005)
- 05-59 EEAC’s Brief to Ninth Circuit in *Bates v. United Parcel Service* Urges Reversal of ADA Ruling That Effectively Precludes Employer From Applying Safety-Based Qualification Standard (March 18, 2005)
- 05-79 The ADA and Employee Use of Legal Prescription and Over-the-Counter Drugs (April 8, 2005)
- 05-95 Ninth Circuit in *Leonel v. American Airlines* Closes ADA’s Post-Offer, Pre-Employment Medical Exam Window on Employer’s Fingers, Despite Evidence That Applicants Were Not Truthful (April 29, 2005)
- 05-103 Courts Are Providing Some Guidance on Distinguishing Between ADA-Covered Disabilities Versus Uncovered Short-Term Temporary Disabilities, but No “Bright Line” Test Exists (May 6, 2005)
- 05-109 Courts Have Been Consistent in Finding That Reasonable Accommodation That Goes Beyond ADA Requirements Does Not Raise the Bar for All Future Accommodations (May 13, 2005)
- 05-123 EEAC’s Comments on Proposed Revisions to ADA Accessibility Guidelines Urge Justice Department to Preserve “Work Area” Exception (June 3, 2005)
- 05-127 Supreme Court Rules in *Gonzales v. Raich* That Federal Law Trumps State Medical Marijuana Laws; Decision Removes Potential Conflict With Enforcement of Drug-Free Workplace Rules (June 10, 2005)
- 05-129 Seventh Circuit in *Hammel v. Eau Galle Cheese Factory* Rules Bad Attitude Is Relevant in Determining Whether an Individual Qualifies for ADA Protection (June 10, 2005)
- 05-146 EEAC’s Brief in *Sista v. CDC IXIS* Argues That Neither ADA Nor FMLA Protect Employee Who Threatens Workplace Violence (July 1, 2005)
- 05-158 Seventh Circuit Rules in *Karraker v. Rent-A-Center* That Test Used by Employer To Assess Personality Traits of Applicants Is Prohibited “Medical Examination” Under the ADA (July 15, 2005)
- 05-170 EEOC Issues Fact Sheet on Cancer and the ADA To Coincide With Law’s 15<sup>th</sup> Anniversary (July 29, 2005)
- 05-181 Tenth Circuit in *Kelly v. Metallics West* Widens Circuit Court Split on Whether ADA Requires Reasonable Accommodation for Individuals “Regarded As” Disabled (August 12, 2005)
- 05-185 NLRB Weighs in on ADA Versus Collective-Bargaining Rights, Finds (Surprise) That Collective-Bargaining Rights Prevail (August 19, 2005)

- 05-187 Huge Federal Highway Bill Signed Into Law by President Bush Contains a Few Employment-Related Items, but Problematic Tax Provisions Are Gone (August 19, 2005)
- 05-190 EEOC Issues Informal “Opinion Letter” on Written Job Descriptions and Their Relationship to EEO Requirements (August 26, 2005)
- 05-202 Recent ADA Cases Involving Individuals With Diabetes Help To Illustrate Scope of Law’s Protection (September 8, 2005)
- 05-208 Citing U.S. Supreme Court’s Medical Marijuana Ruling in *Raich*, California State Court Upholds Right of Employer To Enforce Anti-Drug Policy (September 16, 2005)
- 05-236 New EEOC “Questions and Answers” Fact Sheet Interprets ADA’s Association Discrimination Provision (October 21, 2005)
- 05-238 Second Circuit, in *Capobianco v. City of New York*, Rules That “Night Blindness” Can Be an ADA-Covered Disability (October 28, 2005)
- 05-246 Eleventh Circuit Makes It a 4 – 4 Tie in the Federal Appeals’ Courts on Whether ADA Requires Reasonable Accommodation for Individuals “Regarded as” Disabled (November 4, 2005)
- 05-253 EEOC Issues Another ADA “Questions and Answers” Fact Sheet, Focusing on Blindness and Other Visual Impairments (November 18, 2005)
- 05-262 EEOC Hearing Shines Spotlight on Disaster Preparedness in Wake of Katrina, With Emphasis on Needs of Individuals With Disabilities (December 2, 2005)
- 05-278 Winning or Losing a Discrimination Lawsuit Hinges on Whether Parties Meet Their Burden of Proof; EEAC’s New Matrix Maps Out the Basics (December 23, 2005)

### **AFFIRMATIVE ACTION**

- 05-5 New Census Bureau “American Community Survey” Could Increase Frequency of Useful EEO Benchmark Information (January 7, 2005)
- 05-17 Companies Can Be Subcontractors Subject to OFCCP Coverage Even if They Have No Federal Contracts of Their Own (January 28, 2005)
- 05-41 Valuing Federal Contracts for Purposes of Applying OFCCP’s Jurisdictional Thresholds (February 25, 2005)
- 05-55 Defense Department Report Provides Detailed Race/Ethnicity and Gender Data for U.S. Military Personnel (March 11, 2005)
- 05-80 Contractor Establishments in Puerto Rico and Some Other Off-Shore Jurisdictions Are Subject to OFCCP’s Affirmative Action Requirements (April 15, 2005)

- 05-86 Recent OFCCP Enforcement Developments Put Renewed Emphasis on Importance of Job Analysis and Job Content Documentation (April 22, 2005)
- 05-96 EEAC Identifies Additional DOD Demographic Data Resources for Companies That Recruit From U.S. Military (April 29, 2005)
- 05-120 EEOC's 2003 EEO-1 Data Tabulations Complete Transition From SIC to NAICS; Breakdown by Industry and Geography Provides Rich Source for EEO Benchmarking (May 27, 2005)
- 05-121 "Supplier Diversity" Compliance: A Primer on Federal Disadvantaged Business Enterprise (DBE) Subcontracting Requirements (June 3, 2005)
- 05-126 Departure of OFCCP Deputy Director Bill Doyle Not Expected To Result in Any Significant Policy Changes at Agency (June 10, 2005)
- 05-132 Ninth Circuit in *Western States Paving v. Washington State* Finds Preferences Granted in Awarding Highway Construction Contracts Exceeded Constitutional Limits (June 17, 2005)
- 05-137 An EEAC Primer: Understanding the Rules Covering Invitations To Self-Identify (June 24, 2005)
- 05-144 OFCCP Finalizes "Compliance Check" Regulation To Allow Contractors To Opt for Off-Site Records Review (July 1, 2005)
- 05-162 When Does OFCCP's Jurisdiction Over a Federal Contractor (or a Covered Establishment) End? (July 22, 2005)
- 05-176 OFCCP Begins Scheduling Onsite Visits To Audit Compliance With "Beck" Posting and Contract Clause Requirements, Even Where Desk Audit Reveals No EEO/AA Compliance Issues (August 5, 2005)
- 05-200 EEAC's Guide to Establishing and Maintaining the Confidentiality of Internal HR Compliance Investigations and Self-Evaluations (September 8, 2005)
- 05-205 Katrina Update: OFCCP Temporarily Exempts Katrina-Related Contracts From AAP Requirements; Labor Department Launches "Katrina Recovery Job Connection" Website To Connect Employers and Job Seekers (September 13, 2005)
- 05-211 EEAC Comment Letter Supports Retention of OFCCP's Scheduling Letter in Its Current Form, Including Paragraph 11 (September 23, 2005)
- 05-220 OFCCP Getting Ready To Mail First Wave of 2005-2006 "Advance Notice" Letters, Again Using Federal Contractor Selection System (FCSS) To Target Selected Establishments (September 30, 2005)
- 05-227 OFCCP's Final "Internet Applicant" Regulation Establishes Compliance Framework for Federal Contractors' Electronic Recruitment and Selection Practices (October 14, 2005)

- 05-235 OFCCP Seeking Clearance To Extend EO Survey for Three More Years (October 21, 2005)
- 05-242 OFCCP Officials Clarify Use of Employment Tests as “Selection Procedures” Under Internet Applicant Final Rule (November 4, 2005)
- 05-257 EEOC Commissioners Approve Revised EEO-1 Form Effective With 2007 Reporting Deadline (November 18, 2005)
- 05-267 EEAC Asks OFCCP To Extend Effective Date for Internet Applicant Regulation Until October 1, 2006 (December 2, 2005)
- 05-268 OFCCP Issues Revisions to Veterans AAP Requirements Conforming Them to Changes Mandated by 1998 and 2000 VEVRAA Amendments (December 9, 2005)
- 05-277 EEAC’s Checklist To Help Inventory and Assess Current Recruitment and Selection Practices in Light of OFCCP’s New “Internet Applicant” Regulation (December 16, 2005)
- 05-279 EEAC Once Again Expresses Objections to EO Survey, Asks OFCCP To Dispense With Plans To Mail Another 30,000 Over Next Three Years (December 23, 2005)

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- 05-28 EEOC Puts Final Retiree Health Regulation on 60-Day Hold After AARP Files Preemptive Lawsuit (February 11, 2005)
- 05-40 Seven Other Major Employer Groups Join With EEAC To Argue That Regulation To Protect Retiree Health Benefits, Under Review in *AARP v. EEOC*, Should Be Issued (February 25, 2005)
- 05-68 Supreme Court’s Ruling in *Smith v. City of Jackson, MS* Gives Green Light to Disparate Impact Claims Under the ADEA (April 1, 2005)
- 05-69 Federal District Court in *AARP v. EEOC* Bars Agency From Issuing Retiree Health Regulation (April 1, 2005)
- 05-77 Pension Law Obstacles to “Phased Retirement Programs” Are Being Addressed, but ADEA Issues Remain (April 8, 2005)
- 05-108 ERISA “Section 510” Offers Broad Protection Against Alleged Benefits-Related Discrimination and Retaliation (May 13, 2005)
- 05-110 EEAC’s Updated Survey of States With Requirements Governing “Releases” of Discrimination Claims (May 13, 2005)
- 05-119 Eighth Circuit Rules in *Thomforde v. IBM* That ADEA Release Fails To Meet “Understandable” Requirement (May 27, 2005)

- 05-136 Legislation To Create Safe Harbor for Cash Balance Pension Plans Against Age Discrimination Claims Introduced in House of Representatives (June 17, 2005)
- 05-154 Trial Judge, Citing Recent Supreme Court Decision on Federal Agencies' Regulatory Authority, Wants To Reconsider Her *AARP v. EEOC* Ruling Involving Commission's Retiree Health Care Rule (July 8, 2005)
- 05-156 Cash Balance Provisions Included in Pension Reform Bill Approved by House Education and Workforce Committee (July 15, 2005)
- 05-157 EEAC's Brief in *Burlison v. McDonald's* Urges Eleventh Circuit To Review Bad Lower Court Ruling That Would Invalidate Many ADEA Releases (July 15, 2005)
- 05-172 Supreme Court's 2004 Term Featured Few Employment-Related Cases (August 5, 2005)
- 05-209 Seventh Circuit in *Isbell v. Allstate* Rejects Claim That Conditioning Benefits in Return for Release of Claims Constitutes Unlawful Retaliation (September 16, 2005)
- 05-212 Troubling Decision by Tenth Circuit in *Kruchowski v. Weyerhaeuser* Casts Doubt on Enforceability of Many ADEA Releases Obtained in Conjunction With Group Exit Incentive Plans (September 23, 2005)
- 05-214 Katrina Dominating Agenda, but Congress Still May Tackle Pension Law Reform Before Year-End; Pending Bills Differ on Treatment of Cash Balance Plans (September 23, 2005)
- 05-217 Trial Judge in *AARP v. EEOC* Does About Face and Upholds EEOC's Retiree Health Care Regulation; Judge Brody, in Reversing Her Earlier Ruling, Points to Recent Supreme Court Decision (September 30, 2005)
- 05-230 EEAC Urges Tenth Circuit To Reconsider Its Problematic *Kruchowski v. Weyerhaeuser* Decision Interpreting OWBPA (October 14, 2005)
- 05-239 Congress Gets First Bill Aimed at Expanding Phased-In Retirement and Flexible Work Opportunities for Older Workers (October 28, 2005)
- 05-245 Tenth Circuit, Agreeing With Arguments Made by EEAC, Rules in *Shikles v. Sprint* That Plaintiff Who Refuses To Cooperate in EEOC Investigation Cannot Come Back and Sue (November 4, 2005)
- 05-282 Tenth Circuit in *Whittington v. Nordham Group* Declines To Rule That Age Difference Between 62 Year-Old and 57 Year-Old Replacement Is Insignificant, Allows ADEA Claim To Go Forward (December 23, 2005)

#### **ALTERNATIVE DISPUTE RESOLUTION (ADR)**

- 05-54 EEAC's Brief to Eleventh Circuit in *Caley v. Gulfstream Aerospace Corp.* Argues for Enforcement of Employment Arbitration Agreement (March 11, 2005)

- 05-66 Major Arbitration Provider JAMS, Citing Misinterpretations, Withdraws Its Controversial Policy Refusing To Enforce Class Action Preclusion Clauses (March 25, 2005)
- 05-91 April 2005 ADR Discussion Forum Highlights (April 22, 2005)
- 05-93 EEAC Survey Shows Member Companies With Seasoned ADR Programs Find Significant Benefits (April 29, 2005)
- 05-97 First Circuit's Pro-ADR Ruling in *Marie v. Allied Home Mortgage* Protects Employer's Right To Postpone Arbitration Until Completion of EEOC Investigation (April 29, 2005)
- 05-125 First Circuit in *Campbell v. General Dynamics* Recognizes E-Mail as Appropriate Medium for Communicating Corporate Policy, as Long as the Message Is Clear (June 3, 2005)
- 05-151 Ninth Circuit in *Ingle v. Circuit City II* Once Again Displays Hostility to Mandatory Arbitration, Penalizes Company for Bringing Appeal (July 8, 2005)
- 05-159 EEOC Releases Free Video Encouraging Employers To Participate in Agency's National Mediation Program (July 15, 2005)
- 05-216 Recent Legal Developments Involving the Enforceability of Mandatory Agreements to Arbitrate Employment Disputes (September 30, 2005)
- 05-228 October 6 ADR Discussion Forum Highlights (October 14, 2005)
- 05-251 Pro-ADR Decision by Eleventh Circuit in *Caley v. Gulfstream Aerospace* Upholds Employment Arbitration Agreement (November 11, 2005)
- 05-261 Disclosure Rules Applicable to Most Arbitrators and Mediators Can Be Helpful to Employers in Ensuring That Their ADR Programs Are Perceived as Fair (November 23, 2005)

### **BEST PRACTICES**

- 05-2 Recent Study by CCH Incorporated Reveals Employees' Unscheduled Absences Are at a Five-Year High (January 7, 2005)
- 05-10 Special Task Force Praises Coca-Cola for Progress in Meeting Terms of Class Action Settlement; Company Voluntarily Extends Task Force for Additional Year (January 14, 2005)
- 05-16 Ninth Circuit in *Jespersen v. Harrah's* Applies "Unequal Burdens" Test in Finding That Even-Handedly Applied Gender-Specific Grooming Policy Did Not Violate Title VII (January 28, 2005)

- 05-22 EEOC Now Accepting Nominations for New “Freedom to Compete” Award; Chair Cari Dominguez Will Participate in February 23 EEAC “Open Dialogue” To Answer Your Questions (February 4, 2005)
- 05-30 Presentations From Recent Conference on Workplace Violence Recommend Prevention Strategies (February 11, 2005)
- 05-35 Charging Party’s False Allegations of Biased Statements by Manager Can Pose Special Challenges for HR Professionals (February 18, 2005)
- 05-36 Labor Department Now Seeking Nominations for 2005 “New Freedom Initiative” Award (February 18, 2005)
- 05-49 Courts Generally Supportive of “Zero-Tolerance” Policies, But Consistent Application Is the Key (March 4, 2005)
- 05-60 E-SIGN Act Update: Employers Appear To Be Proceeding Cautiously With Conversion to Paperless Employment Records (March 18, 2005)
- 05-65 We’ve Said It Before, We’ll Say It Again: Good Documentation Practices Support Sound Decision-Making, Can Offer Protection Against Bias Claims (March 25, 2005)
- 05-75 Proposed “No FEAR” Act Regulations Will Soon Require Federal Agencies To Train All Employees on Their Rights Under Antidiscrimination Laws (April 8, 2005)
- 05-79 The ADA and Employee Use of Legal Prescription and Over-the-Counter Drugs (April 8, 2005)
- 05-93 EEAC Survey Shows Member Companies With Seasoned ADR Programs Find Significant Benefits (April 29, 2005)
- 05-109 Courts Have Been Consistent in Finding That Reasonable Accommodation That Goes Beyond ADA Requirements Does Not Raise the Bar for All Future Accommodations (May 13, 2005)
- 05-113 Third Circuit in *Callison v. Philadelphia* Finds That FMLA Leave Does Not Excuse Employee From Complying With Additional Requirements of Employer’s Absence Control Policy (May 20, 2005)
- 05-125 First Circuit in *Campbell v. General Dynamics* Recognizes E-Mail as Appropriate Medium for Communicating Corporate Policy, as Long as the Message Is Clear (June 3, 2005)
- 05-131 EEAC’s Jeff Norris and Nancy Nelkin Consulted on Recent Congressional Report Identifying Leading Diversity Practices in the Federal Sector (June 10, 2005)
- 05-169 Employment Class Action Settlements Are Not Just About the Money; They Often Contain Far-Reaching Programmatic Relief (July 29, 2005)

- 05-175 Pennsylvania Latest State To Adopt Immunity Protection for Giving Employment References (August 5, 2005)
- 05-191 *Cantrell v. Nissan* Ruling Once Again Shows the Risk of Second-Guessing an Appropriate Response to Workplace Misconduct (August 26, 2005)
- 05-192 Nearly Half of Fortune 500 Companies Now Offer Domestic Partner Benefits (August 26, 2005)
- 05-195 Concern About Identity Theft Continues To Prompt New Laws To Protect Confidentiality of Social Security Numbers, Including in the Workplace (September 2, 2005)
- 05-196 U.S. Secret Service Study Offers Guidance on Steps To Prevent “Insider” Sabotage of Company Computer Systems (September 2, 2005)
- 05-200 EEAC’s Guide to Establishing and Maintaining the Confidentiality of Internal HR Compliance Investigations and Self-Evaluations (September 8, 2005)
- 05-233 EEOC Now Accepting Self-Nominations for Second Annual “Freedom to Compete” Award (October 21, 2005)
- 05-244 Study Offers Insights Into Dealing With “The Competent Jerk/Lovable Fool” Phenomenon (November 4, 2005)
- 05-250 Two EEAC Member Companies Among 2005 “New Freedom Initiative” Award Winners (November 11, 2005)
- 05-251 Pro-ADR Decision by Eleventh Circuit in *Caley v. Gulfstream Aerospace* Upholds Employment Arbitration Agreement (November 11, 2005)
- 05-262 EEOC Hearing Shines Spotlight on Disaster Preparedness in Wake of Katrina, With Emphasis on Needs of Individuals With Disabilities (December 2, 2005)
- 05-276 Two New Studies Focus on Women’s Corporate Leadership Qualities, Concluding That the Skills Are There, but That Gender Stereotyping Inhibits Advancement to Top Executive Jobs (December 16, 2005)
- 05-285 Recent Survey of HR Managers Indicates Most of Their Employers Now Have Emergency Preparedness Plans (December 30, 2005)

#### CLASS ACTION WATCH

- 05-10 Special Task Force Praises Coca-Cola for Progress in Meeting Terms of Class Action Settlement; Company Voluntarily Extends Task Force for Additional Year (January 14, 2005)

- 05-38 Class Action Reform Bill on Way to President, but Impact on Employment Discrimination Litigation Will Be Limited (February 18, 2005)
- 05-45 Ruling in *McReynolds v. Sodexo* Title VII Class Action Underscores Power Judge Can Wield in Determining Whether Multimillion Dollar Lawsuit Goes to Trial (February 25, 2005)
- 05-61 Employment Discrimination Class Actions Filed in Federal Court, Up 26%, Hit All Time High Last Year (March 18, 2005)
- 05-62 Ruling by Federal Trial Court in *Williams v. Boeing* Creates Catch-22 for Company Trying To Settle Employment Class Action (March 25, 2005)
- 05-66 Major Arbitration Provider JAMS, Citing Misinterpretations, Withdraws Its Controversial Policy Refusing To Enforce Class Action Preclusion Clauses (March 25, 2005)
- 05-92 Tenth Circuit Rules in *Pritchett v. Office Depot* That New Class Action Fairness Act Applies Only to Lawsuits Filed After Law Became Effective (April 22, 2005)
- 05-100 \$80 Million Settlement in *McReynolds v. Sodexo* Highlights Changes Contained in EEAC's Updated Catalog of Active Employment Class Actions and Major Settlements (May 6, 2005)
- 05-111 Major Ruling by Fourth Circuit in *Anderson v. Westinghouse* Rejects Pay and Promotions Class Action Claims, Leaving Little Left for Plaintiffs To Pursue (May 20, 2005)
- 05-141 Seventh Circuit in *EEOC v. Caterpillar* Concludes EEOC Has Virtually Unlimited Authority To Expand Agency-Initiated Lawsuits (June 24, 2005)
- 05-149 Ninth Circuit in *Grosz v. Boeing* Upholds Decision by Lower Court Refusing To Allow Sex Discrimination Lawsuit To Go Forward as a Class Action (July 8, 2005)
- 05-169 Employment Class Action Settlements Are Not Just About the Money; They Often Contain Far-Reaching Programmatic Relief (July 29, 2005)
- 05-272 Employment Lawsuits Filed in Federal Court in FY 2005 Dropped 14% From Previous Year (December 9, 2005)

### CONGRESSIONAL ACTIVITY

- 05-20 Supreme Court in *IRS v. Banks* Rules Attorney Contingent Fees Are Taxable to Plaintiff; 2004 "Civil Rights Tax Relief Act" Should Minimize Impact of Decision on Employment Litigation (January 28, 2005)
- 05-33 Preview of Employment-Related Legislation That Congress Might Consider in 2005 (February 11, 2005)
- 05-34 U.S. Senate Approves Legislation To Ban Genetic Discrimination in Employment, Health Insurance (February 18, 2005)

- 05-37 Federal Court in *Wilson et al v. Ashcroft* Upholds Constitutionality of Federal “Defense of Marriage Act” (February 18, 2005)
- 05-38 Class Action Reform Bill on Way to President, but Impact on Employment Discrimination Litigation Will Be Limited (February 18, 2005)
- 05-64 Proposed Amendments to Freedom of Information Act Could Eliminate Critical Confidentiality Protections for Employer Documents in Agency Hands (March 25, 2005)
- 05-87 Title VII Amendment To Increase Reasonable Accommodation Obligation for Employee Religious Beliefs and Practices Introduced Once Again (April 22, 2005)
- 05-92 Tenth Circuit Rules in *Pritchett v. Office Depot* That New Class Action Fairness Act Applies Only to Lawsuits Filed After Law Became Effective (April 22, 2005)
- 05-115 New Federal “REAL ID” Act Has Implications for Employment Eligibility Verification Process (May 20, 2005)
- 05-118 Congress Moves To Extend Job Training Law, but Controversial Faith-Based Provision Could Once Again Prevent Final Action (May 27, 2005)
- 05-130 Senate-Approved Highway Funding Bill Contains Business Tax Provisions Limiting Deductibility of Amounts Paid by Employers in Damages and Settlements (June 10, 2005)
- 05-136 Legislation To Create Safe Harbor for Cash Balance Pension Plans Against Age Discrimination Claims Introduced in House of Representatives (June 17, 2005)
- 05-145 Enhanced Worksite Enforcement Becoming Key Component of Congressional Immigration Reform Debate; New GAO Report Concludes Current Effort Is “Low Priority” (July 1, 2005)
- 05-150 Legislation To Extend the Violence Against Women Act Would Create New Federal Leave Protection for Victims of Domestic or Sexual Violence (July 8, 2005)
- 05-156 Cash Balance Provisions Included in Pension Reform Bill Approved by House Education and Workforce Committee (July 15, 2005)
- 05-187 Huge Federal Highway Bill Signed Into Law by President Bush Contains a Few Employment-Related Items, but Problematic Tax Provisions Are Gone (August 19, 2005)
- 05-195 Concern About Identity Theft Continues To Prompt New Laws To Protect Confidentiality of Social Security Numbers, Including in the Workplace (September 2, 2005)
- 05-214 Katrina Dominating Agenda, but Congress Still May Tackle Pension Law Reform Before Year-End; Pending Bills Differ on Treatment of Cash Balance Plans (September 23, 2005)
- 05-219 Hurricane Relief Update: Congress Expands Work Opportunity Tax Credit; DOL-VETS Will Extend VETS-100 Filing Deadline for Affected Employers (September 30, 2005)

- 05-239 Congress Gets First Bill Aimed at Expanding Phased-In Retirement and Flexible Work Opportunities for Older Workers (October 28, 2005)
- 05-241 U.S. Senate Confirms Earp and Griffin Nominations, Putting Five-Member EEOC at Full Complement (October 28, 2005)
- 05-256 Workplace Religious Freedom Act Gets Mixed Reception at House Hearing (November 18, 2005)
- 05-269 House Poised To Approve New Mandatory Employment Eligibility Verification Process Modeled After Existing “Basic Pilot” Program (December 9, 2005)

### **CONTINGENT WORKERS**

- 05-197 Latest BLS “Contingent and Alternative Work Arrangements” Survey Shows More Than Ten Million Individuals, or 7.4% of U.S. Workforce, Are Independent Contractors (September 2, 2005)

### **DATA COLLECTION, RECORDKEEPING, AND REPORTING**

- 05-5 New Census Bureau “American Community Survey” Could Increase Frequency of Useful EEO Benchmark Information (January 7, 2005)
- 05-11 EEAC’s Comments to OFCCP on Proposed Compensation Analysis Guidelines Commend Agency for Adopting Established Legal and Statistical Principles, but Urge Flexibility in Implementation (January 21, 2005)
- 05-21 OFCCP Is Pilot Testing “Mini-Regressions” in Some Desk Audits Where Initial Indicators Show Potential Compensation Discrimination (January 28, 2005)
- 05-24 EEOC Opinion Letter Says Online Job Seekers Are Not Automatically “Internet Applicants” Simply Because They Include Photo or Video Clip With Resume (February 4, 2005)
- 05-25 Federal Trade Commission Finalizes Regulatory Changes Mandated by 2003 Amendments to the Fair Credit Reporting Act (February 4, 2005)
- 05-26 Department of Labor Streamlines Labor Certification Process for Employers Seeking To “Sponsor” Foreign Workers Eligible for Permanent Immigrant Status in the U.S. (February 4, 2005)
- 05-31 European Union Approves New “Model Contracts” Language To Allow Companies To Comply With EU Data Protection Directive (February 11, 2005)
- 05-32 OFCCP Actively Considering “Focused Reviews” of Selected Employment Practices on a Multiple-Location Basis (February 11, 2005)

- 05-50 European Union Study, Citing U.S. Experience As Example, Examines How Data Collection and Monitoring Are Essential for Combating Systemic Discrimination (March 4, 2005)
- 05-55 Defense Department Report Provides Detailed Race/Ethnicity and Gender Data for U.S. Military Personnel (March 11, 2005)
- 05-60 E-SIGN Act Update: Employers Appear To Be Proceeding Cautiously With Conversion to Paperless Employment Records (March 18, 2005)
- 05-70 OFCCP Is Field Testing Rudimentary Analyses of “Paragraph 11” Desk Audit Compensation Data (April 1, 2005)
- 05-72 EEOC Releases 2004 Charge Data by Industry (April 1, 2005)
- 05-74 EEAC’s Updated Listing of Federal Employment-Related Notice Posting Requirements (April 8, 2005)
- 05-80 Contractor Establishments in Puerto Rico and Some Other Off-Shore Jurisdictions Are Subject to OFCCP’s Affirmative Action Requirements (April 15, 2005)
- 05-82 Implementing Regulations for New Law Allowing Electronic “I-9” Forms Still Several Months Away (April 15, 2005)
- 05-86 Recent OFCCP Enforcement Developments Put Renewed Emphasis on Importance of Job Analysis and Job Content Documentation (April 22, 2005)
- 05-96 EEAC Identifies Additional DOD Demographic Data Resources for Companies That Recruit From U.S. Military (April 29, 2005)
- 05-99 U.S. Immigration and Customs Enforcement Issues Interim Guidance on New Electronic “I-9” Law (April 29, 2005)
- 05-102 EEOC Subpoena Power, Typically Used as Last Resort, Is Broad but Not Unlimited; Giving the Agency the Information It Wants (May 6, 2005)
- 05-115 New Federal “REAL ID” Act Has Implications for Employment Eligibility Verification Process (May 20, 2005)
- 05-120 EEOC’s 2003 EEO-1 Data Tabulations Complete Transition From SIC to NAICS; Breakdown by Industry and Geography Provides Rich Source for EEO Benchmarking (May 27, 2005)
- 05-121 “Supplier Diversity” Compliance: A Primer on Federal Disadvantaged Business Enterprise (DBE) Subcontracting Requirements (June 3, 2005)
- 05-133 Census Bureau’s 2004 Population Estimates Continue To Show Significant Growth in Hispanic and Asian Populations Since 2000 Census (June 17, 2005)

- 05-135 EEOC Sues Large Retailer for Failure To File EEO-1 Reports; Court Orders Company To Comply (June 17, 2005)
- 05-137 An EEAC Primer: Understanding the Rules Covering Invitations To Self-Identify (June 24, 2005)
- 05-138 Labor Department Confirms That 2005 VETS-100 Report Will Be the Same as Last Year (June 24, 2005)
- 05-143 Department of Homeland Security Issues “Rebranded” I-9 Form Making Cosmetic Changes Only; 11/21/91 Version Is Still Valid (July 1, 2005)
- 05-144 OFCCP Finalizes “Compliance Check” Regulation To Allow Contractors To Opt for Off-Site Records Review (July 1, 2005)
- 05-155 It’s Official: EEOC Confirms That 2005 EEO-1 Form and Filing Options Are Unchanged From Last Year (July 15, 2005)
- 05-162 When Does OFCCP’s Jurisdiction Over a Federal Contractor (or a Covered Establishment) End? (July 22, 2005)
- 05-168 Recent Decision by First Circuit in *Mercado v. Ritz-Carlton* Shows That Failure To Post Required EEO Notices Can Have Consequences Well-Beyond the Possibility of a Nominal Fine (July 29, 2005)
- 05-176 OFCCP Begins Scheduling Onsite Visits To Audit Compliance With “Beck” Posting and Contract Clause Requirements, Even Where Desk Audit Reveals No EEO/AA Compliance Issues (August 5, 2005)
- 05-182 OFCCP Decides To Seek Three-Year Extension of Current Compliance Review Scheduling Letter, Meaning No Changes to “Paragraph 11” Compensation Data Requests (August 12, 2005)
- 05-193 Recent Employee Privacy Rights Developments in France Underscore Contrast With U.S. Practices (August 26, 2005)
- 05-200 EEAC’s Guide to Establishing and Maintaining the Confidentiality of Internal HR Compliance Investigations and Self-Evaluations (September 8, 2005)
- 05-204 Homeland Security Temporarily Suspends Employment Eligibility Requirements for Hiring of Katrina Victims; Other Government Employment–Related Initiatives in the Works (September 8, 2005)
- 05-205 Katrina Update: OFCCP Temporarily Exempts Katrina-Related Contracts From AAP Requirements; Labor Department Launches “Katrina Recovery Job Connection” Website To Connect Employers and Job Seekers (September 13, 2005)
- 05-210 EEOC Extends EEO-1 Filing Deadline to March 31, 2006 for Companies Affected by Hurricane Katrina (September 16, 2005)

- 05-211 EEAC Comment Letter Supports Retention of OFCCP’s Scheduling Letter in Its Current Form, Including Paragraph 11 (September 23, 2005)
- 05-220 OFCCP Getting Ready To Mail First Wave of 2005-2006 “Advance Notice” Letters, Again Using Federal Contractor Selection System (FCSS) To Target Selected Establishments (September 30, 2005)
- 05-227 OFCCP’s Final “Internet Applicant” Regulation Establishes Compliance Framework for Federal Contractors’ Electronic Recruitment and Selection Practices (October 14, 2005)
- 05-235 OFCCP Seeking Clearance To Extend EO Survey for Three More Years (October 21, 2005)
- 05-242 OFCCP Officials Clarify Use of Employment Tests as “Selection Procedures” Under Internet Applicant Final Rule (November 4, 2005)
- 05-257 EEOC Commissioners Approve Revised EEO-1 Form Effective With 2007 Reporting Deadline (November 18, 2005)
- 05-267 EEAC Asks OFCCP To Extend Effective Date for Internet Applicant Regulation Until October 1, 2006 (December 2, 2005)
- 05-268 OFCCP Issues Revisions to Veterans AAP Requirements Conforming Them to Changes Mandated by 1998 and 2000 VEVRAA Amendments (December 9, 2005)
- 05-269 House Poised To Approve New Mandatory Employment Eligibility Verification Process Modeled After Existing “Basic Pilot” Program (December 9, 2005)
- 05-277 EEAC’s Checklist To Help Inventory and Assess Current Recruitment and Selection Practices in Light of OFCCP’s New “Internet Applicant” Regulation (December 16, 2005)
- 05-279 EEAC Once Again Expresses Objections to EO Survey, Asks OFCCP To Dispense With Plans To Mail Another 30,000 Over Next Three Years (December 23, 2005)
- 05-280 New EEOC Opinion Letter Addresses Application of EEO Laws in the Context of Internet Recruitment and Selection Practices (December 23, 2005)

### **DIVERSITY/GLOBAL DIVERSITY**

- 05-55 Defense Department Report Provides Detailed Race/Ethnicity and Gender Data for U.S. Military Personnel (March 11, 2005)
- 05-120 EEOC’s 2003 EEO-1 Data Tabulations Complete Transition From SIC to NAICS; Breakdown by Industry and Geography Provides Rich Source for EEO Benchmarking (May 27, 2005)
- 05-131 EEAC’s Jeff Norris and Nancy Nelkin Consulted on Recent Congressional Report Identifying Leading Diversity Practices in the Federal Sector (June 10, 2005)

- 05-276 Two New Studies Focus on Women’s Corporate Leadership Qualities, Concluding That the Skills Are There, but That Gender Stereotyping Inhibits Advancement to Top Executive Jobs (December 16, 2005)

### DRUG AND ALCOHOL TESTING

- 05-39 Oregon Court Ruling on Accommodating Medical Marijuana User Undercuts Zero Tolerance Drug Policy (February 18, 2005)
- 05-79 The ADA and Employee Use of Legal Prescription and Over-the-Counter Drugs (April 8, 2005)
- 05-127 Supreme Court Rules in *Gonzales v. Raich* That Federal Law Trumps State Medical Marijuana Laws; Decision Removes Potential Conflict With Enforcement of Drug-Free Workplace Rules (June 10, 2005)
- 05-208 Citing U.S. Supreme Court’s Medical Marijuana Ruling in *Raich*, California State Court Upholds Right of Employer To Enforce Anti-Drug Policy (September 16, 2005)

### EEAC AMICUS BRIEFS

- 05-6 Sixth Circuit in *Hoffman v. Professional Med Team*, Citing EEAC’s Brief, Points to Problems Created by Intermittent FMLA Leave in Finding That Employer Did Not Violate the Law (January 14, 2005)
- 05-29 EEAC’s Brief to Eighth Circuit in *Electrolux v. UAW* Argues That FMLA Does Not Allow Leave-Seeking Employees to “Doctor Shop” (February 11, 2005)
- 05-40 Seven Other Major Employer Groups Join With EEAC To Argue That Regulation To Protect Retiree Health Benefits, Under Review in *AARP v. EEOC*, Should Be Issued (February 25, 2005)
- 05-47 EEAC Urges Supreme Court To Reverse Lower Court Ruling in *Graham County v. Wilson* Allowing up to Six Years for Whistleblower Retaliation Claims Under False Claims Act (March 4, 2005)
- 05-54 EEAC’s Brief to Eleventh Circuit in *Caley v. Gulfstream Aerospace Corp.* Argues for Enforcement of Employment Arbitration Agreement (March 11, 2005)
- 05-59 EEAC’s Brief to Ninth Circuit in *Bates v. United Parcel Service* Urges Reversal of ADA Ruling That Effectively Precludes Employer From Applying Safety-Based Qualification Standard (March 18, 2005)
- 05-71 EEAC’s Brief in *Clark v. United Parcel Service* Urges Sixth Circuit To Reconsider Decision That Penalizes Employer for Its Inclusive Sexual Harassment Policy (April 1, 2005)

- 05-88 EEAC’s Brief to Sixth Circuit in *EEOC v. SunDance Rehabilitation* Challenges Dubious Legal Theory of “Anticipatory Retaliation” (April 22, 2005)
- 05-94 EEAC Urges Sixth Circuit To Review and Reverse Bad Employment Testing Decision in *Isabel v. City of Memphis* (April 29, 2005)
- 05-128 EEAC’s Brief in *Jespersen v. Harrah’s* Argues That Title VII Does Not Prohibit Even-Handedly Applied Gender-Specific Personal Appearance Standards (June 10, 2005)
- 05-140 EEAC’s Friend-of-the-Court Brief in *Moranski v. General Motors* Argues That Employer’s Decision Not To Allow Religious Affinity Group Does Not Violate Title VII (June 24, 2005)
- 05-146 EEAC’s Brief in *Sista v. CDC IXIS* Argues That Neither ADA Nor FMLA Protect Employee Who Threatens Workplace Violence (July 1, 2005)
- 05-157 EEAC’s Brief in *Burlison v. McDonald’s* Urges Eleventh Circuit To Review Bad Lower Court Ruling That Would Invalidate Many ADEA Releases (July 15, 2005)
- 05-166 EEAC’s Brief to U.S. Supreme Court in *Domino’s Pizza v. McDonald* Urges Reversal of Troublesome Ninth Circuit Ruling Expanding Scope of Section 1981 Lawsuits (July 29, 2005)
- 05-183 Both Labor Department and EEAC Urge Fourth Circuit To Reconsider Problematic Panel Ruling in *Taylor v. Progress Energy* Making Releases of FMLA Claims Mostly Unenforceable (August 19, 2005)
- 05-223 EEAC Urges U.S. Supreme Court To Review Problematic Ruling in *BNSF v. White* That Would Permit Frivolous Retaliation Claims (October 7, 2005)
- 05-229 EEAC Joins Brief Challenging Oklahoma Law That Restricts Right of Employers To Ban Firearms on Company Property (October 14, 2005)
- 05-230 EEAC Urges Tenth Circuit To Reconsider Its Problematic *Kruchowski v. Weyerhaeuser* Decision Interpreting OWBPA (October 14, 2005)
- 05-270 U.S. Supreme Court in *BNSF v. White* Agrees To Decide Minimum Threshold for Title VII Unlawful Retaliation Claim; EEAC Urged Court To Consider Case (December 9, 2005)
- 05-274 EEAC’s Brief in *Etsitty v. Utah Transit Authority* Argues That Expanding Title VII To Cover Transsexuals Should Be Up to Congress, Not Courts (December 16, 2005)

#### **EEAC COMMENTS TO REGULATORY AGENCIES**

- 05-11 EEAC’s Comments to OFCCP on Proposed Compensation Analysis Guidelines Commend Agency for Adopting Established Legal and Statistical Principles, but Urge Flexibility in Implementation (January 21, 2005)

- 05-105 EEAC Urges Labor Department To Adopt New USERRA Notice Without Changes (May 13, 2005)
- 05-123 EEAC's Comments on Proposed Revisions to ADA Accessibility Guidelines Urge Justice Department to Preserve "Work Area" Exception (June 3, 2005)
- 05-211 EEAC Comment Letter Supports Retention of OFCCP's Scheduling Letter in Its Current Form, Including Paragraph 11 (September 23, 2005)
- 05-267 EEAC Asks OFCCP To Extend Effective Date for Internet Applicant Regulation Until October 1, 2006 (December 2, 2005)
- 05-279 EEAC Once Again Expresses Objections to EO Survey, Asks OFCCP To Dispense With Plans To Mail Another 30,000 Over Next Three Years (December 23, 2005)

### **EEAC MEMBERSHIP/MEMBER SERVICES**

- 05-1 EEAC's Seventh Annual Litigation Survey Results (January 7, 2005)
- 05-15 EEAC's Updated Glossary of Commonly Used EEO/AA Compliance-Related Acronyms (January 21, 2005)
- 05-22 EEOC Now Accepting Nominations for New "Freedom to Compete" Award; Chair Cari Dominguez Will Participate in February 23 EEAC "Open Dialogue" To Answer Your Questions (February 4, 2005)
- 05-23 EEAC's January 2005 McDowell Legal Forum Highlights (February 4, 2005)
- 05-56 EEAC's 2005 Annual Membership Meeting Highlights (March 18, 2005)
- 05-57 EEAC's 2005-2006 Board of Directors and Officers (March 18, 2005)
- 05-72 EEOC Releases 2004 Charge Data by Industry (April 1, 2005)
- 05-91 April 2005 ADR Discussion Forum Highlights (April 22, 2005)
- 05-93 EEAC Survey Shows Member Companies With Seasoned ADR Programs Find Significant Benefits (April 29, 2005)
- 05-106 Latest in EEAC's "Managers" Pamphlet Series Provides Guidance on Employment Selection Testing Practices (May 13, 2005)
- 05-110 EEAC's Updated Survey of States With Requirements Governing "Releases" of Discrimination Claims (May 13, 2005)
- 05-116 Please Consider Participating in EEAC's Eighth Annual Litigation Survey (May 27, 2005)

- 05-120 EEOC's 2003 EEO-1 Data Tabulations Complete Transition From SIC to NAICS; Breakdown by Industry and Geography Provides Rich Source for EEO Benchmarking (May 27, 2005)
- 05-134 June 2005 McDowell Legal Forum Highlights (June 17, 2005)
- 05-228 October 6 ADR Discussion Forum Highlights (October 14, 2005)
- 05-243 EEAC's 2005 Fall Membership Meeting Highlights (November 4, 2005)
- 05-271 Latest in EEAC's "Managers" Pamphlet Series Provides Guidance on the Sarbanes-Oxley Act and Whistleblower Rights (December 9, 2005)

### **EEAC SPECIAL MEMORANDA**

- 05-51 EEAC's Updated Survey of State Employee Leave Laws (March 11, 2005)
- 05-74 EEAC's Updated Listing of Federal Employment-Related Notice Posting Requirements (April 8, 2005)
- 05-86 Recent OFCCP Enforcement Developments Put Renewed Emphasis on Importance of Job Analysis and Job Content Documentation (April 22, 2005)
- 05-93 EEAC Survey Shows Member Companies With Seasoned ADR Programs Find Significant Benefits (April 29, 2005)
- 05-121 "Supplier Diversity" Compliance: A Primer on Federal Disadvantaged Business Enterprise (DBE) Subcontracting Requirements (June 3, 2005)
- 05-137 An EEAC Primer: Understanding the Rules Covering Invitations To Self-Identify (June 24, 2005)
- 05-200 EEAC's Guide to Establishing and Maintaining the Confidentiality of Internal HR Compliance Investigations and Self-Evaluations (September 8, 2005)
- 05-216 Recent Legal Developments Involving the Enforceability of Mandatory Agreements to Arbitrate Employment Disputes (September 30, 2005)
- 05-227 OFCCP's Final "Internet Applicant" Regulation Establishes Compliance Framework for Federal Contractors' Electronic Recruitment and Selection Practices (October 14, 2005)
- 05-247 EEAC's Updated *FMLA Compliance Checklist* (November 11, 2005)
- 05-278 Winning or Losing a Discrimination Lawsuit Hinges on Whether Parties Meet Their Burden of Proof; EEAC's New Matrix Maps Out the Basics (December 23, 2005)

## ENFORCEMENT AGENCIES

### CENSUS BUREAU

- 05-5 New Census Bureau “American Community Survey” Could Increase Frequency of Useful EEO Benchmark Information (January 7, 2005)
- 05-14 Labor Department Study Shows That Foreign-Born Workers Now Comprise 14% of U.S. Workforce (January 21, 2005)
- 05-133 Census Bureau’s 2004 Population Estimates Continue To Show Significant Growth in Hispanic and Asian Populations Since 2000 Census (June 17, 2005)

### DHS

- 05-26 Department of Labor Streamlines Labor Certification Process for Employers Seeking To “Sponsor” Foreign Workers Eligible for Permanent Immigrant Status in the U.S. (February 4, 2005)
- 05-53 Appointment of New Special Counsel for Immigration-Related Unfair Employment Practices Serves as Reminder of IRCA’s Nondiscrimination Requirements (March 11, 2005)
- 05-82 Implementing Regulations for New Law Allowing Electronic “I-9” Forms Still Several Months Away (April 15, 2005)
- 05-99 U.S. Immigration and Customs Enforcement Issues Interim Guidance on New Electronic “I-9” Law (April 29, 2005)
- 05-143 Department of Homeland Security Issues “Rebranded” I-9 Form Making Cosmetic Changes Only; 11/21/91 Version Is Still Valid (July 1, 2005)
- 05-145 Enhanced Worksite Enforcement Becoming Key Component of Congressional Immigration Reform Debate; New GAO Report Concludes Current Effort Is “Low Priority” (July 1, 2005)
- 05-187 Huge Federal Highway Bill Signed Into Law by President Bush Contains a Few Employment-Related Items, but Problematic Tax Provisions Are Gone (August 19, 2005)
- 05-204 Homeland Security Temporarily Suspends Employment Eligibility Requirements for Hiring of Katrina Victims; Other Government Employment-Related Initiatives in the Works (September 8, 2005)
- 05-269 House Poised To Approve New Mandatory Employment Eligibility Verification Process Modeled After Existing “Basic Pilot” Program (December 9, 2005)

## DOD

- 05-55 Defense Department Report Provides Detailed Race/Ethnicity and Gender Data for U.S. Military Personnel (March 11, 2005)
- 05-96 EEAC Identifies Additional DOD Demographic Data Resources for Companies That Recruit From U.S. Military (April 29, 2005)
- 05-161 Outreach Campaign by ESGR Organization Seeks Signed “Statement of Support” From Private Sector Employers (July 22, 2005)

## DOJ

- 05-53 Appointment of New Special Counsel for Immigration-Related Unfair Employment Practices Serves as Reminder of IRCA’s Nondiscrimination Requirements (March 11, 2005)
- 05-123 EEAC’s Comments on Proposed Revisions to ADA Accessibility Guidelines Urge Justice Department to Preserve “Work Area” Exception (June 3, 2005)
- 05-148 President Bush Nominates Wan J. Kim to Top Civil Rights Post at Justice Department (July 1, 2005)
- 05-273 Justice Department Putting Together Recommendations to Congress on Ways To Allow Private Employers Greater Access to Use of FBI Database for Background Checks (December 16, 2005)

## DOL

- 05-14 Labor Department Study Shows That Foreign-Born Workers Now Comprise 14% of U.S. Workforce (January 21, 2005)
- 05-18 Seventh Circuit in *Mitchell v. Dutchmen Mfg.* Rules Employer Complies With FMLA by Reinstating Leave-Returning Employee to Substantially Similar (But Not “Virtually Identical”) Job (January 28, 2005)
- 05-26 Department of Labor Streamlines Labor Certification Process for Employers Seeking To “Sponsor” Foreign Workers Eligible for Permanent Immigrant Status in the U.S. (February 4, 2005)
- 05-46 Now You See It Now You Don’t: Labor Department Hits Glitch With New “Notice of USERRA Rights” Poster, But Still Aiming for March 10 Deadline (March 4, 2005)
- 05-58 DOL-VETS Seeking Public Comments on New Notice of USERRA Rights Poster (March 18, 2005)
- 05-76 Plaintiffs Successful in Two Recent Sarbanes-Oxley Act Whistleblower Cases (April 8, 2005)

- 05-90 Labor Department Attempting To Boost Awareness of Its “Employer Assistance & Recruiting Network” To Encourage Hiring of Qualified Disabled Workers (April 22, 2005)
- 05-98 Eighth Circuit in *Throneberry v. McGehee Desha County Hospital* Rules Employee on FMLA Leave Is Not Immune From Discipline for Conduct or Performance-Related Problems (April 29, 2005)
- 05-105 EEAC Urges Labor Department To Adopt New USERRA Notice Without Changes (May 13, 2005)
- 05-118 Congress Moves To Extend Job Training Law, but Controversial Faith-Based Provision Could Once Again Prevent Final Action (May 27, 2005)
- 05-138 Labor Department Confirms That 2005 VETS-100 Report Will Be the Same as Last Year (June 24, 2005)
- 05-156 Cash Balance Provisions Included in Pension Reform Bill Approved by House Education and Workforce Committee (July 15, 2005)
- 05-164 DOL Opinion Letter Concludes That FMLA’s Statutory Deferral to More Generous State Leave Laws Prevails Over ERISA Preemption (July 22, 2005)
- 05-167 Fourth Circuit Rules in *Taylor v. Progress Energy* That Releases of FMLA Claims Cannot Be Enforced Unless Supervised by Labor Department or a Court (July 29, 2005)
- 05-176 OFCCP Begins Scheduling Onsite Visits To Audit Compliance With “Beck” Posting and Contract Clause Requirements, Even Where Desk Audit Reveals No EEO/AA Compliance Issues (August 5, 2005)
- 05-178 Charles Ciccolella Sworn in as New Head of DOL-VETS, as Agency Announces It Will Now Accept USERRA Complaints On-Line (August 12, 2005)
- 05-183 Both Labor Department and EEAC Urge Fourth Circuit To Reconsider Problematic Panel Ruling in *Taylor v. Progress Energy* Making Releases of FMLA Claims Mostly Unenforceable (August 19, 2005)
- 05-189 Federal Courts Are Providing Useful Guidance on What Constitutes Adequate FMLA Notice by Employees (August 26, 2005)
- 05-197 Latest BLS “Contingent and Alternative Work Arrangements” Survey Shows More Than Ten Million Individuals, or 7.4% of U.S. Workforce, Are Independent Contractors (September 2, 2005)
- 05-201 Seventh Circuit in *Harrell v. USPS* Clarifies FMLA’s “Fitness-for-Duty” Certification Requirements (September 8, 2005)
- 05-203 Labor Department Appellate Board in *Getman v. Southwest Securities, Inc.* Clarifies Scope of “Protected Activity” Under Sarbanes-Oxley Whistleblower Provisions (September 8, 2005)

- 05-205 Katrina Update: OFCCP Temporarily Exempts Katrina-Related Contracts From AAP Requirements; Labor Department Launches “Katrina Recovery Job Connection” Website To Connect Employers and Job Seekers (September 13, 2005)
- 05-222 Second Annual “American Time Use Survey” Shows Little Change From Previous Year in How Most Americans Spend Their Time (October 7, 2005)
- 05-232 Secretary of Labor Chao Appoints David L. Frank as Deputy Director of the Office of Federal Contract Compliance Programs (October 21, 2005)
- 05-237 New FMLA Opinion Letters Give Favorable Interpretations on Medical Certification, Adoption Issues (October 28, 2005)
- 05-254 Latest Annual BLS Survey of Women’s Earnings Shows Gender Wage Gap Continues To Gradually Narrow (November 18, 2005)
- 05-255 Eighth Circuit in *Chubb v. City of Omaha* Rules That Incentive Program Awarding Extra Vacation Time for Not Taking Sick Leave Is Not Subject to FMLA’s Bonus Eligibility Rule (November 18, 2005)
- 05-259 Favorable FMLA Ruling by Tenth Circuit in *Jones v. Denver* Puts Some Sensible Limits on the Regulatory Definition of a Protected “Serious Health Condition” (November 23, 2005)
- 05-260 USERRA Complaints Dropped Slightly in 2005, but Monetary Awards Were Up (November 23, 2005)
- 05-268 OFCCP Issues Revisions to Veterans AAP Requirements Conforming Them to Changes Mandated by 1998 and 2000 VEVRAA Amendments (December 9, 2005)
- 05-275 Whistleblower Retaliation Complaints Filed Under Sarbanes-Oxley Act in FY 2005 Increased More Than 50% Over Previous Year (December 16, 2005)
- 05-283 Labor Department Issues Final Regulations Interpreting the Uniformed Services Employment and Reemployment Rights Act (USERRA) (December 30, 2005)
- 05-284 Labor Department Issues Opinion Letter Addressing How To Track Intermittent FMLA Leave When Using a “Rolling” Leave Year (December 30, 2005)

## DOT

- 05-132 Ninth Circuit in *Western States Paving v. Washington State* Finds Preferences Granted in Awarding Highway Construction Contracts Exceeded Constitutional Limits (June 17, 2005)
- 05-187 Huge Federal Highway Bill Signed Into Law by President Bush Contains a Few Employment–Related Items, but Problematic Tax Provisions Are Gone (August 19, 2005)

## EEOC

- 05-4 Charging Parties Are Not Always Bound by EEOC Filing Deadlines; Courts Have Recognized a Number of Circumstances That Can Result in “Equitable” Extensions (January 7, 2005)
- 05-7 Obtaining EEOC Charge File Can Be Helpful to Employer in Defending Against a Discrimination Lawsuit, but Agency Typically Will Treat Some Documents as “Off Limits” (January 14, 2005)
- 05-9 EEOC Rolls Out New Spanish Language Website (January 14, 2005)
- 05-22 EEOC Now Accepting Nominations for New “Freedom to Compete” Award; Chair Cari Dominguez Will Participate in February 23 EEAC “Open Dialogue” To Answer Your Questions (February 4, 2005)
- 05-24 EEOC Opinion Letter Says Online Job Seekers Are Not Automatically “Internet Applicants” Simply Because They Include Photo or Video Clip With Resume (February 4, 2005)
- 05-28 EEOC Puts Final Retiree Health Regulation on 60-Day Hold After AARP Files Preemptive Lawsuit (February 11, 2005)
- 05-35 Charging Party’s False Allegations of Biased Statements by Manager Can Pose Special Challenges for HR Professionals (February 18, 2005)
- 05-42 EEOC’s Detailed 2004 Charge Data Show Across-the-Board Drop in All but One Category for Second Year in a Row, but Average Settlement Per Charge Was Up by Almost One Thousand Dollars (February 25, 2005)
- 05-48 Employment Testing Practices Coming Under Increasing Scrutiny by OFCCP, EEOC (March 4, 2005)
- 05-63 Employment Discrimination Lawsuits Are Not Always Limited by the Allegations Contained in an EEOC Charge (March 25, 2005)
- 05-69 Federal District Court in *AARP v. EEOC* Bars Agency From Issuing Retiree Health Regulation (April 1, 2005)
- 05-72 EEOC Releases 2004 Charge Data by Industry (April 1, 2005)
- 05-79 The ADA and Employee Use of Legal Prescription and Over-the-Counter Drugs (April 8, 2005)
- 05-83 “Continuing Antagonism” or “Setting Someone Up To Fail” Can Expose Employer to Retaliation Liability Long After the Triggering Event Occurs (April 15, 2005)
- 05-88 EEAC’s Brief to Sixth Circuit in *EEOC v. SunDance Rehabilitation* Challenges Dubious Legal Theory of “Anticipatory Retaliation” (April 22, 2005)

- 05-97 First Circuit's Pro-ADR Ruling in *Marie v. Allied Home Mortgage* Protects Employer's Right To Postpone Arbitration Until Completion of EEOC Investigation (April 29, 2005)
- 05-102 EEOC Subpoena Power, Typically Used as Last Resort, Is Broad but Not Unlimited; Giving the Agency the Information It Wants (May 6, 2005)
- 05-103 Courts Are Providing Some Guidance on Distinguishing Between ADA-Covered Disabilities Versus Uncovered Short-Term Temporary Disabilities, but No "Bright Line" Test Exists (May 6, 2005)
- 05-112 EEOC's Mid-Year Enforcement Numbers Suggest Agency May Be Stepping Up Its Litigation Activity (May 20, 2005)
- 05-114 EEOC Says That Requiring Medical Documentation in English May Be National Origin Discrimination (May 20, 2005)
- 05-120 EEOC's 2003 EEO-1 Data Tabulations Complete Transition From SIC to NAICS; Breakdown by Industry and Geography Provides Rich Source for EEO Benchmarking (May 27, 2005)
- 05-135 EEOC Sues Large Retailer for Failure To File EEO-1 Reports; Court Orders Company To Comply (June 17, 2005)
- 05-137 An EEAC Primer: Understanding the Rules Covering Invitations To Self-Identify (June 24, 2005)
- 05-141 Seventh Circuit in *EEOC v. Caterpillar* Concludes EEOC Has Virtually Unlimited Authority To Expand Agency-Initiated Lawsuits (June 24, 2005)
- 05-153 EEOC's New Regional Attorneys' Manual Sheds Some Light on Agency's Litigation Approach (July 8, 2005)
- 05-154 Trial Judge, Citing Recent Supreme Court Decision on Federal Agencies' Regulatory Authority, Wants To Reconsider Her *AARP v. EEOC* Ruling Involving Commission's Retiree Health Care Rule (July 8, 2005)
- 05-155 It's Official: EEOC Confirms That 2005 EEO-1 Form and Filing Options Are Unchanged From Last Year (July 15, 2005)
- 05-159 EEOC Releases Free Video Encouraging Employers To Participate in Agency's National Mediation Program (July 15, 2005)
- 05-160 Analysis of EEOC's FY 2004 Charge and Litigation Data by Field Office Shows Considerable Variance Among Different Locations (July 15, 2005)
- 05-170 EEOC Issues Fact Sheet on Cancer and the ADA To Coincide With Law's 15<sup>th</sup> Anniversary (July 29, 2005)

- 05-171 California Supreme Court Ruling That Sexual Favoritism Can Create Unlawful Hostile Work Environment Adopts Long-Standing Position of EEOC (August 5, 2005)
- 05-173 President Bush Selects Disability Rights Advocate for Vacant Democrat Seat at EEOC; Nominates Republican Naomi C. Earp to Second Term as Vice-Chair (August 5, 2005)
- 05-179 EEOC Issues Compliance Guidance on “Continuing Violations” in Light of Supreme Court’s 2002 Ruling in *National Railroad Passenger Corporation v. Morgan* (August 12, 2005)
- 05-186 EEOC’s Third Quarter Enforcement Numbers Show Agency Is Bringing More Lawsuits Than in Previous Two Years (August 19, 2005)
- 05-190 EEOC Issues Informal “Opinion Letter” on Written Job Descriptions and Their Relationship to EEO Requirements (August 26, 2005)
- 05-199 OFCCP and EEOC Working on Contingency Plans for Field Offices Impacted by Hurricane Katrina (September 2, 2005)
- 05-202 Recent ADA Cases Involving Individuals With Diabetes Help To Illustrate Scope of Law’s Protection (September 8, 2005)
- 05-210 EEOC Extends EEO-1 Filing Deadline to March 31, 2006 for Companies Affected by Hurricane Katrina (September 16, 2005)
- 05-212 Troubling Decision by Tenth Circuit in *Kruchowski v. Weyerhaeuser* Casts Doubt on Enforceability of Many ADEA Releases Obtained in Conjunction With Group Exit Incentive Plans (September 23, 2005)
- 05-213 Ninth Circuit in *EEOC v. NEA* Rules That Hostile Environment Sexual Harassment Claim Can Be Actionable Even Without Sexual References, if Women Suffer More Abusive Behavior Than Men (September 23, 2005)
- 05-217 Trial Judge in *AARP v. EEOC* Does About Face and Upholds EEOC’s Retiree Health Care Regulation; Judge Brody, in Reversing Her Earlier Ruling, Points to Recent Supreme Court Decision (September 30, 2005)
- 05-226 Two Recent Federal Appeals Court Rulings Address Timeliness of Pay Discrimination Claims (October 7, 2005)
- 05-230 EEAC Urges Tenth Circuit To Reconsider Its Problematic *Kruchowski v. Weyerhaeuser* Decision Interpreting OWBPA (October 14, 2005)
- 05-233 EEOC Now Accepting Self-Nominations for Second Annual “Freedom to Compete” Award (October 21, 2005)
- 05-234 Being Able To Show Different Treatment Compared to “Similarly Situated” Coworkers Is Essential To Proving Typical Intentional Discrimination Claim (October 21, 2005)

- 05-236 New EEOC “Questions and Answers” Fact Sheet Interprets ADA’s Association Discrimination Provision (October 21, 2005)
- 05-241 U.S. Senate Confirms Earp and Griffin Nominations, Putting Five-Member EEOC at Full Complement (October 28, 2005)
- 05-245 Tenth Circuit, Agreeing With Arguments Made by EEAC, Rules in *Shikles v. Sprint* That Plaintiff Who Refuses To Cooperate in EEOC Investigation Cannot Come Back and Sue (November 4, 2005)
- 05-253 EEOC Issues Another ADA “Questions and Answers” Fact Sheet, Focusing on Blindness and Other Visual Impairments (November 18, 2005)
- 05-257 EEOC Commissioners Approve Revised EEO-1 Form Effective With 2007 Reporting Deadline (November 18, 2005)
- 05-262 EEOC Hearing Shines Spotlight on Disaster Preparedness in Wake of Katrina, With Emphasis on Needs of Individuals With Disabilities (December 2, 2005)
- 05-264 EEOC’s Preliminary 2005 Enforcement Numbers Show Eleven Percent Drop in Charges Filed Over Last Four Years (December 2, 2005)
- 05-280 New EEOC Opinion Letter Addresses Application of EEO Laws in the Context of Internet Recruitment and Selection Practices (December 23, 2005)

## FTC

- 05-25 Federal Trade Commission Finalizes Regulatory Changes Mandated by 2003 Amendments to the Fair Credit Reporting Act (February 4, 2005)
- 05-31 European Union Approves New “Model Contracts” Language To Allow Companies To Comply With EU Data Protection Directive (February 11, 2005)
- 05-84 Third Circuit in *Kelchner v. Sycamore Manor* Rules That Employer May Make Signing an FCRA Authorization a Condition of Employment (April 15, 2005)

## HHS

- 05-28 EEOC Puts Final Retiree Health Regulation on 60-Day Hold After AARP Files Preemptive Lawsuit (February 11, 2005)
- 05-30 Presentations From Recent Conference on Workplace Violence Recommend Prevention Strategies (February 11, 2005)
- 05-184 Recent NIOSH Study Finds Societal Cost of Workplace Homicides Totals in the Billions (August 19, 2005)

## **IRS**

- 05-20 Supreme Court in *IRS v. Banks* Rules Attorney Contingent Fees Are Taxable to Plaintiff; 2004 “Civil Rights Tax Relief Act” Should Minimize Impact of Decision on Employment Litigation (January 28, 2005)
- 05-77 Pension Law Obstacles to “Phased Retirement Programs” Are Being Addressed, but ADEA Issues Remain (April 8, 2005)
- 05-136 Legislation To Create Safe Harbor for Cash Balance Pension Plans Against Age Discrimination Claims Introduced in House of Representatives (June 17, 2005)
- 05-156 Cash Balance Provisions Included in Pension Reform Bill Approved by House Education and Workforce Committee (July 15, 2005)
- 05-219 Hurricane Relief Update: Congress Expands Work Opportunity Tax Credit; DOL-VETS Will Extend VETS-100 Filing Deadline for Affected Employers (September 30, 2005)

## **NLRB**

- 05-185 NLRB Weighs in on ADA Versus Collective-Bargaining Rights, Finds (Surprise) That Collective-Bargaining Rights Prevail (August 19, 2005)

## **ODEP**

- 05-36 Labor Department Now Seeking Nominations for 2005 “New Freedom Initiative” Award (February 18, 2005)
- 05-90 Labor Department Attempting To Boost Awareness of Its “Employer Assistance & Recruiting Network” To Encourage Hiring of Qualified Disabled Workers (April 22, 2005)
- 05-250 Two EEAC Member Companies Among 2005 “New Freedom Initiative” Award Winners (November 11, 2005)

## **OFCCP**

- 05-11 EEAC’s Comments to OFCCP on Proposed Compensation Analysis Guidelines Commend Agency for Adopting Established Legal and Statistical Principles, but Urge Flexibility in Implementation (January 21, 2005)
- 05-17 Companies Can Be Subcontractors Subject to OFCCP Coverage Even if They Have No Federal Contracts of Their Own (January 28, 2005)
- 05-21 OFCCP Is Pilot Testing “Mini-Regressions” in Some Desk Audits Where Initial Indicators Show Potential Compensation Discrimination (January 28, 2005)

- 05-24 EEOC Opinion Letter Says Online Job Seekers Are Not Automatically “Internet Applicants” Simply Because They Include Photo or Video Clip With Resume (February 4, 2005)
- 05-32 OFCCP Actively Considering “Focused Reviews” of Selected Employment Practices on a Multiple-Location Basis (February 11, 2005)
- 05-41 Valuing Federal Contracts for Purposes of Applying OFCCP’s Jurisdictional Thresholds (February 25, 2005)
- 05-44 Updated Roster of OFCCP’s National and Field Office Key Personnel (February 25, 2005)
- 05-48 Employment Testing Practices Coming Under Increasing Scrutiny by OFCCP, EEOC (March 4, 2005)
- 05-52 OFCCP Announces More High Level Staff Changes (March 11, 2005)
- 05-70 OFCCP Is Field Testing Rudimentary Analyses of “Paragraph 11” Desk Audit Compensation Data (April 1, 2005)
- 05-80 Contractor Establishments in Puerto Rico and Some Other Off-Shore Jurisdictions Are Subject to OFCCP’s Affirmative Action Requirements (April 15, 2005)
- 05-86 Recent OFCCP Enforcement Developments Put Renewed Emphasis on Importance of Job Analysis and Job Content Documentation (April 22, 2005)
- 05-126 Departure of OFCCP Deputy Director Bill Doyle Not Expected To Result in Any Significant Policy Changes at Agency (June 10, 2005)
- 05-137 An EEAC Primer: Understanding the Rules Covering Invitations To Self-Identify (June 24, 2005)
- 05-144 OFCCP Finalizes “Compliance Check” Regulation To Allow Contractors To Opt for Off-Site Records Review (July 1, 2005)
- 05-155 It’s Official: EEOC Confirms That 2005 EEO-1 Form and Filing Options Are Unchanged From Last Year (July 15, 2005)
- 05-162 When Does OFCCP’s Jurisdiction Over a Federal Contractor (or a Covered Establishment) End? (July 22, 2005)
- 05-176 OFCCP Begins Scheduling Onsite Visits To Audit Compliance With “Beck” Posting and Contract Clause Requirements, Even Where Desk Audit Reveals No EEO/AA Compliance Issues (August 5, 2005)
- 05-177 Whirlpool and OFCCP Settle High Profile Testing Case for \$850,000, but Agreement Is Silent on Use of Testing (August 12, 2005)

- 05-182 OFCCP Decides To Seek Three-Year Extension of Current Compliance Review Scheduling Letter, Meaning No Changes to “Paragraph 11” Compensation Data Requests (August 12, 2005)
- 05-188 Senior-Level Turnovers at OFCCP Afford Director Charles James Rare Opportunity To Influence Agency Direction; New Regional Director Announced for the Northeast Region (August 19, 2005)
- 05-199 OFCCP and EEOC Working on Contingency Plans for Field Offices Impacted by Hurricane Katrina (September 2, 2005)
- 05-200 EEAC’s Guide to Establishing and Maintaining the Confidentiality of Internal HR Compliance Investigations and Self-Evaluations (September 8, 2005)
- 05-205 Katrina Update: OFCCP Temporarily Exempts Katrina-Related Contracts From AAP Requirements; Labor Department Launches “Katrina Recovery Job Connection” Website To Connect Employers and Job Seekers (September 13, 2005)
- 05-211 EEAC Comment Letter Supports Retention of OFCCP’s Scheduling Letter in Its Current Form, Including Paragraph 11 (September 23, 2005)
- 05-220 OFCCP Getting Ready To Mail First Wave of 2005-2006 “Advance Notice” Letters, Again Using Federal Contractor Selection System (FCSS) To Target Selected Establishments (September 30, 2005)
- 05-227 OFCCP’s Final “Internet Applicant” Regulation Establishes Compliance Framework for Federal Contractors’ Electronic Recruitment and Selection Practices (October 14, 2005)
- 05-232 Secretary of Labor Chao Appoints David L. Frank as Deputy Director of the Office of Federal Contract Compliance Programs (October 21, 2005)
- 05-235 OFCCP Seeking Clearance To Extend EO Survey for Three More Years (October 21, 2005)
- 05-242 OFCCP Officials Clarify Use of Employment Tests as “Selection Procedures” Under Internet Applicant Final Rule (November 4, 2005)
- 05-267 EEAC Asks OFCCP To Extend Effective Date for Internet Applicant Regulation Until October 1, 2006 (December 2, 2005)
- 05-268 OFCCP Issues Revisions to Veterans AAP Requirements Conforming Them to Changes Mandated by 1998 and 2000 VEVRAA Amendments (December 9, 2005)
- 05-277 EEAC’s Checklist To Help Inventory and Assess Current Recruitment and Selection Practices in Light of OFCCP’s New “Internet Applicant” Regulation (December 16, 2005)
- 05-279 EEAC Once Again Expresses Objections to EO Survey, Asks OFCCP To Dispense With Plans To Mail Another 30,000 Over Next Three Years (December 23, 2005)
- 05-280 New EEOC Opinion Letter Addresses Application of EEO Laws in the Context of Internet Recruitment and Selection Practices (December 23, 2005)

## OMB

- 05-81 Approaching Federal “Smart Card” ID Requirements Will Apply to Contractor Employees Who Regularly Access Federal Facilities (April 15, 2005)
- 05-207 OMB Issues Guidance Further Clarifying New “Smart Card” ID Requirements for Accessing Federal Facilities (September 16, 2005)
- 05-279 EEAC Once Again Expresses Objections to EO Survey, Asks OFCCP To Dispense With Plans To Mail Another 30,000 Over Next Three Years (December 23, 2005)

## EQUAL PAY ACT/COMPENSATION

- 05-11 EEAC’s Comments to OFCCP on Proposed Compensation Analysis Guidelines Commend Agency for Adopting Established Legal and Statistical Principles, but Urge Flexibility in Implementation (January 21, 2005)
- 05-21 OFCCP Is Pilot Testing “Mini-Regressions” in Some Desk Audits Where Initial Indicators Show Potential Compensation Discrimination (January 28, 2005)
- 05-70 OFCCP Is Field Testing Rudimentary Analyses of “Paragraph 11” Desk Audit Compensation Data (April 1, 2005)
- 05-101 Eleventh Circuit in *Gillis v. Georgia Department of Corrections* Finds That Smaller-Than-Expected Raise Can Be Adverse Employment Action (May 6, 2005)
- 05-126 Departure of OFCCP Deputy Director Bill Doyle Not Expected To Result in Any Significant Policy Changes at Agency (June 10, 2005)
- 05-165 Michigan Supreme Court Concludes That Supervisor Can Be Individually Liable for Discrimination Under State Law (July 22, 2005)
- 05-182 OFCCP Decides To Seek Three-Year Extension of Current Compliance Review Scheduling Letter, Meaning No Changes to “Paragraph 11” Compensation Data Requests (August 12, 2005)
- 05-211 EEAC Comment Letter Supports Retention of OFCCP’s Scheduling Letter in Its Current Form, Including Paragraph 11 (September 23, 2005)
- 05-226 Two Recent Federal Appeals Court Rulings Address Timeliness of Pay Discrimination Claims (October 7, 2005)
- 05-254 Latest Annual BLS Survey of Women’s Earnings Shows Gender Wage Gap Continues To Gradually Narrow (November 18, 2005)
- 05-258 Seventh Circuit in *Wernsing v. Illinois DHS* Finds That Basing Starting Pay on Prior Salary Does Not Violate Equal Pay Act; Federal Courts Are Split on the Issue (November 23, 2005)

## FAIR CREDIT REPORTING ACT

- 05-25 Federal Trade Commission Finalizes Regulatory Changes Mandated by 2003 Amendments to the Fair Credit Reporting Act (February 4, 2005)
- 05-84 Third Circuit in *Kelchner v. Sycamore Manor* Rules That Employer May Make Signing an FCRA Authorization a Condition of Employment (April 15, 2005)

## FAIR LABOR STANDARDS ACT

- 05-61 Employment Discrimination Class Actions Filed in Federal Court, Up 26%, Hit All Time High Last Year (March 18, 2005)
- 05-272 Employment Lawsuits Filed in Federal Court in FY 2005 Dropped 14% From Previous Year (December 9, 2005)

## FAMILY AND MEDICAL LEAVE ACT

- 05-6 Sixth Circuit in *Hoffman v. Professional Med Team*, Citing EEAC's Brief, Points to Problems Created by Intermittent FMLA Leave in Finding That Employer Did Not Violate the Law (January 14, 2005)
- 05-18 Seventh Circuit in *Mitchell v. Dutchmen Mfg.* Rules Employer Complies With FMLA by Reinstating Leave-Returning Employee to Substantially Similar (But Not "Virtually Identical") Job (January 28, 2005)
- 05-29 EEAC's Brief to Eighth Circuit in *Electrolux v. UAW* Argues That FMLA Does Not Allow Leave-Seeking Employees to "Doctor Shop" (February 11, 2005)
- 05-51 EEAC's Updated Survey of State Employee Leave Laws (March 11, 2005)
- 05-78 Determining Benefits Eligibility for Employees Taking FMLA Leave (April 8, 2005)
- 05-98 Eighth Circuit in *Throneberry v. McGehee Desha County Hospital* Rules Employee on FMLA Leave Is Not Immune From Discipline for Conduct or Performance-Related Problems (April 29, 2005)
- 05-113 Third Circuit in *Callison v. Philadelphia* Finds That FMLA Leave Does Not Excuse Employee From Complying With Additional Requirements of Employer's Absence Control Policy (May 20, 2005)
- 05-122 Sixth Circuit in *Saroli v. Automation & Modular Components, Inc.* Issues Another Decision Expanding FMLA Rights (June 3, 2005)
- 05-146 EEAC's Brief in *Sista v. CDC IXIS* Argues That Neither ADA Nor FMLA Protect Employee Who Threatens Workplace Violence (July 1, 2005)

- 05-150 Legislation To Extend the Violence Against Women Act Would Create New Federal Leave Protection for Victims of Domestic or Sexual Violence (July 8, 2005)
- 05-164 DOL Opinion Letter Concludes That FMLA’s Statutory Deferral to More Generous State Leave Laws Prevails Over ERISA Preemption (July 22, 2005)
- 05-165 Michigan Supreme Court Concludes That Supervisor Can Be Individually Liable for Discrimination Under State Law (July 22, 2005)
- 05-167 Fourth Circuit Rules in *Taylor v. Progress Energy* That Releases of FMLA Claims Cannot Be Enforced Unless Supervised by Labor Department or a Court (July 29, 2005)
- 05-183 Both Labor Department and EEAC Urge Fourth Circuit To Reconsider Problematic Panel Ruling in *Taylor v. Progress Energy* Making Releases of FMLA Claims Mostly Unenforceable (August 19, 2005)
- 05-189 Federal Courts Are Providing Useful Guidance on What Constitutes Adequate FMLA Notice by Employees (August 26, 2005)
- 05-194 New Illinois Law Creates Leave Entitlement for Family Members of Active Duty Armed Services Members (September 2, 2005)
- 05-201 Seventh Circuit in *Harrell v. USPS* Clarifies FMLA’s “Fitness-for-Duty” Certification Requirements (September 8, 2005)
- 05-237 New FMLA Opinion Letters Give Favorable Interpretations on Medical Certification, Adoption Issues (October 28, 2005)
- 05-247 EEAC’s Updated *FMLA Compliance Checklist* (November 11, 2005)
- 05-255 Eighth Circuit in *Chubb v. City of Omaha* Rules That Incentive Program Awarding Extra Vacation Time for Not Taking Sick Leave Is Not Subject to FMLA’s Bonus Eligibility Rule (November 18, 2005)
- 05-259 Favorable FMLA Ruling by Tenth Circuit in *Jones v. Denver* Puts Some Sensible Limits on the Regulatory Definition of a Protected “Serious Health Condition” (November 23, 2005)
- 05-263 FMLA Leave Does Not Insulate Employee From Discipline for Misconduct, but Ruling by Sixth Circuit in *Wilkerson v. AutoZone* Suggests That Delaying Adverse Action Until Leave Is Over Can Undermine Employer’s Defense (December 2, 2005)
- 05-284 Labor Department Issues Opinion Letter Addressing How To Track Intermittent FMLA Leave When Using a “Rolling” Leave Year (December 30, 2005)

### **FREEDOM OF INFORMATION ACT**

- 05-64 Proposed Amendments to Freedom of Information Act Could Eliminate Critical Confidentiality Protections for Employer Documents in Agency Hands (March 25, 2005)

## GLASS CEILING

- 05-276 Two New Studies Focus on Women's Corporate Leadership Qualities, Concluding That the Skills Are There, but That Gender Stereotyping Inhibits Advancement to Top Executive Jobs (December 16, 2005)

## HARASSMENT

- 05-13 Eighth Circuit in *Hesse v. Avis* Finds No Title VII Sexual Harassment Liability Where Offensive Behavior Was Not Based on Victim's Sex (January 21, 2005)
- 05-71 EEAC's Brief in *Clark v. United Parcel Service* Urges Sixth Circuit To Reconsider Decision That Penalizes Employer for Its Inclusive Sexual Harassment Policy (April 1, 2005)
- 05-89 First Circuit in *Noviello v. Boston* Finds Employer Can Be Liable for Hostile Environment Created by Coworker Retaliatory Harassment (April 22, 2005)
- 05-171 California Supreme Court Ruling That Sexual Favoritism Can Create Unlawful Hostile Work Environment Adopts Long-Standing Position of EEOC (August 5, 2005)
- 05-213 Ninth Circuit in *EEOC v. NEA* Rules That Hostile Environment Sexual Harassment Claim Can Be Actionable Even Without Sexual References, if Women Suffer More Abusive Behavior Than Men (September 23, 2005)
- 05-224 Seventh Circuit in *Venezia v. Gottlieb Memorial Hospital* Inexplicably Allows Unrelated Harassment Claims by Two Individuals To Go Forward in Single Lawsuit (October 7, 2005)
- 05-266 Employer Can Be Liable for Harassment Committed by Its Contractors, as Seventh Circuit Reaffirms in *Dunn v. Washington County Hospital* (December 2, 2005)
- 05-278 Winning or Losing a Discrimination Lawsuit Hinges on Whether Parties Meet Their Burden of Proof; EEAC's New Matrix Maps Out the Basics (December 23, 2005)
- 05-281 California's Fair Employment and Housing Commission Proposes Implementing Regulations for State's Mandatory Sexual Harassment Training Law (December 23, 2005)

## IMMIGRATION

- 05-26 Department of Labor Streamlines Labor Certification Process for Employers Seeking To "Sponsor" Foreign Workers Eligible for Permanent Immigrant Status in the U.S. (February 4, 2005)
- 05-53 Appointment of New Special Counsel for Immigration-Related Unfair Employment Practices Serves as Reminder of IRCA's Nondiscrimination Requirements (March 11, 2005)
- 05-82 Implementing Regulations for New Law Allowing Electronic "I-9" Forms Still Several Months Away (April 15, 2005)

- 05-99 U.S. Immigration and Customs Enforcement Issues Interim Guidance on New Electronic “I-9” Law (April 29, 2005)
- 05-115 New Federal “REAL ID” Act Has Implications for Employment Eligibility Verification Process (May 20, 2005)
- 05-133 Census Bureau’s 2004 Population Estimates Continue To Show Significant Growth in Hispanic and Asian Populations Since 2000 Census (June 17, 2005)
- 05-143 Department of Homeland Security Issues “Rebranded” I-9 Form Making Cosmetic Changes Only; 11/21/91 Version Is Still Valid (July 1, 2005)
- 05-145 Enhanced Worksite Enforcement Becoming Key Component of Congressional Immigration Reform Debate; New GAO Report Concludes Current Effort Is “Low Priority” (July 1, 2005)
- 05-198 Fourth Circuit in *Venkatraman v. REI Systems* Rules That There Is No Private Right of Action Under “H-1B” Visa Program (September 2, 2005)
- 05-204 Homeland Security Temporarily Suspends Employment Eligibility Requirements for Hiring of Katrina Victims; Other Government Employment–Related Initiatives in the Works (September 8, 2005)
- 05-269 House Poised To Approve New Mandatory Employment Eligibility Verification Process Modeled After Existing “Basic Pilot” Program (December 9, 2005)

### INTERNATIONAL

- 05-27 Recent Employment-Related Legal Developments in the United Kingdom Include Nondiscrimination Protection for Same-Sex Partners, Workplace Stress Code (February 4, 2005)
- 05-31 European Union Approves New “Model Contracts” Language To Allow Companies To Comply With EU Data Protection Directive (February 11, 2005)
- 05-50 European Union Study, Citing U.S. Experience As Example, Examines How Data Collection and Monitoring Are Essential for Combating Systemic Discrimination (March 4, 2005)
- 05-73 European Union Launches “Your Europe” Website That Provides Information on Member Country Employment Laws (April 1, 2005)
- 05-124 European Union Offers More Guidance on Ways To Comply With Its Data Protection Directive (June 3, 2005)
- 05-193 Recent Employee Privacy Rights Developments in France Underscore Contrast With U.S. Practices (August 26, 2005)
- 05-240 New Report Maps Progress Made by European Union Member Countries in Implementing Major EEO Directives (October 28, 2005)

## OFCCP COMPLIANCE ISSUES

- 05-17 Companies Can Be Subcontractors Subject to OFCCP Coverage Even if They Have No Federal Contracts of Their Own (January 28, 2005)
- 05-41 Valuing Federal Contracts for Purposes of Applying OFCCP's Jurisdictional Thresholds (February 25, 2005)
- 05-80 Contractor Establishments in Puerto Rico and Some Other Off-Shore Jurisdictions Are Subject to OFCCP's Affirmative Action Requirements (April 15, 2005)
- 05-162 When Does OFCCP's Jurisdiction Over a Federal Contractor (or a Covered Establishment) End? (July 22, 2005)

## PRIVACY

- 05-34 U.S. Senate Approves Legislation To Ban Genetic Discrimination in Employment, Health Insurance (February 18, 2005)
- 05-64 Proposed Amendments to Freedom of Information Act Could Eliminate Critical Confidentiality Protections for Employer Documents in Agency Hands (March 25, 2005)
- 05-81 Approaching Federal "Smart Card" ID Requirements Will Apply to Contractor Employees Who Regularly Access Federal Facilities (April 15, 2005)
- 05-84 Third Circuit in *Kelchner v. Sycamore Manor* Rules That Employer May Make Signing an FCRA Authorization a Condition of Employment (April 15, 2005)
- 05-187 Huge Federal Highway Bill Signed Into Law by President Bush Contains a Few Employment-Related Items, but Problematic Tax Provisions Are Gone (August 19, 2005)
- 05-193 Recent Employee Privacy Rights Developments in France Underscore Contrast With U.S. Practices (August 26, 2005)
- 05-195 Concern About Identity Theft Continues To Prompt New Laws To Protect Confidentiality of Social Security Numbers, Including in the Workplace (September 2, 2005)
- 05-200 EEAC's Guide to Establishing and Maintaining the Confidentiality of Internal HR Compliance Investigations and Self-Evaluations (September 8, 2005)
- 05-207 OMB Issues Guidance Further Clarifying New "Smart Card" ID Requirements for Accessing Federal Facilities (September 16, 2005)
- 05-273 Justice Department Putting Together Recommendations to Congress on Ways To Allow Private Employers Greater Access to Use of FBI Database for Background Checks (December 16, 2005)

## RELIGION

- 05-87 Title VII Amendment To Increase Reasonable Accommodation Obligation for Employee Religious Beliefs and Practices Introduced Once Again (April 22, 2005)
- 05-118 Congress Moves To Extend Job Training Law, but Controversial Faith-Based Provision Could Once Again Prevent Final Action (May 27, 2005)
- 05-140 EEAC's Friend-of-the-Court Brief in *Moranski v. General Motors* Argues That Employer's Decision Not To Allow Religious Affinity Group Does Not Violate Title VII (June 24, 2005)
- 05-256 Workplace Religious Freedom Act Gets Mixed Reception at House Hearing (November 18, 2005)
- 05-278 Winning or Losing a Discrimination Lawsuit Hinges on Whether Parties Meet Their Burden of Proof; EEAC's New Matrix Maps Out the Basics (December 23, 2005)

## RETALIATION/WHISTLEBLOWER

- 05-3 Employees Called for Jury Duty Are Protected Under Both Federal and State Law, but the Level of Protection May Vary (January 7, 2005)
- 05-8 Federal False Claims Act Provides Whistleblowers With Potential Big Monetary Awards; Supreme Court To Decide Appropriate Time Frame for Filing an FCA Retaliation Complaint (January 14, 2005)
- 05-47 EEAC Urges Supreme Court To Reverse Lower Court Ruling in *Graham County v. Wilson* Allowing up to Six Years for Whistleblower Retaliation Claims Under False Claims Act (March 4, 2005)
- 05-76 Plaintiffs Successful in Two Recent Sarbanes-Oxley Act Whistleblower Cases (April 8, 2005)
- 05-83 "Continuing Antagonism" or "Setting Someone Up To Fail" Can Expose Employer to Retaliation Liability Long After the Triggering Event Occurs (April 15, 2005)
- 05-85 Eighth Circuit in *Dossett v. First State Bank* Finds That Private Employer Could Be Liable for Violating Employee's Constitutional Rights (April 15, 2005)
- 05-88 EEAC's Brief to Sixth Circuit in *EEOC v. SunDance Rehabilitation* Challenges Dubious Legal Theory of "Anticipatory Retaliation" (April 22, 2005)
- 05-89 First Circuit in *Noviello v. Boston* Finds Employer Can Be Liable for Hostile Environment Created by Coworker Retaliatory Harassment (April 22, 2005)
- 05-108 ERISA "Section 510" Offers Broad Protection Against Alleged Benefits-Related Discrimination and Retaliation (May 13, 2005)

- 05-139 Supreme Court in *Graham County v. Wilson*, Ruling on Appropriate Limitations Period for Filing Whistleblower Retaliation Claims Under False Claims Act, Adopts Position Advocated by EEAC (June 24, 2005)
- 05-152 Federal Court in *Murray v. TXU Corp.* Rules No Jury Trials or Punitive Damages for Sarbanes–Oxley Retaliation Claims (July 8, 2005)
- 05-191 *Cantrell v. Nissan* Ruling Once Again Shows the Risk of Second-Guessing an Appropriate Response to Workplace Misconduct (August 26, 2005)
- 05-203 Labor Department Appellate Board in *Getman v. Southwest Securities, Inc.* Clarifies Scope of “Protected Activity” Under Sarbanes-Oxley Whistleblower Provisions (September 8, 2005)
- 05-209 Seventh Circuit in *Isbell v. Allstate* Rejects Claim That Conditioning Benefits in Return for Release of Claims Constitutes Unlawful Retaliation (September 16, 2005)
- 05-218 Seventh Circuit in *Washington v. Illinois Department of Revenue* Lowers the Bar on Type of “Materially Adverse” Change Needed To Support Title VII Retaliation Claim (September 30, 2005)
- 05-223 EEAC Urges U.S. Supreme Court To Review Problematic Ruling in *BNSF v. White* That Would Permit Frivolous Retaliation Claims (October 7, 2005)
- 05-225 California Supreme Court Expands Scope of Activity Protected From Unlawful Retaliation Under State Law (October 7, 2005)
- 05-248 Courts Continue To Recognize That Employers Acting on “Honest Belief” of Employee Misconduct Do Not Commit Unlawful Discrimination (November 11, 2005)
- 05-249 Eighth Circuit in *Gilooly v. Missouri* Rules That Title VII’s Anti-Retaliation Prohibition Puts High Standard on Employer To Justify Adverse Action Against Protected Employee (November 11, 2005)
- 05-270 U.S. Supreme Court in *BNSF v. White* Agrees To Decide Minimum Threshold for Title VII Unlawful Retaliation Claim; EEAC Urged Court To Consider Case (December 9, 2005)
- 05-271 Latest in EEAC’s “Managers” Pamphlet Series Provides Guidance on the Sarbanes-Oxley Act and Whistleblower Rights (December 9, 2005)
- 05-275 Whistleblower Retaliation Complaints Filed Under Sarbanes-Oxley Act in FY 2005 Increased More Than 50% Over Previous Year (December 16, 2005)
- 05-278 Winning or Losing a Discrimination Lawsuit Hinges on Whether Parties Meet Their Burden of Proof; EEAC’s New Matrix Maps Out the Basics (December 23, 2005)

#### SECTION 1981

- 05-166 EEAC’s Brief to U.S. Supreme Court in *Domino’s Pizza v. McDonald* Urges Reversal of Troublesome Ninth Circuit Ruling Expanding Scope of Section 1981 Lawsuits (July 29, 2005)

## SEXUAL ORIENTATION

- 05-19 Illinois Becomes Fifteenth State To Prohibit Workplace Discrimination Based on Sexual Orientation (January 28, 2005)
- 05-37 Federal Court in *Wilson et al v. Ashcroft* Upholds Constitutionality of Federal “Defense of Marriage Act” (February 18, 2005)
- 05-163 Latest Annual HRC Survey Shows Private Employers Continuing To Adopt Policies on Sexual Orientation and Gender Identity Discrimination, Even Without Mandates (July 22, 2005)
- 05-192 Nearly Half of Fortune 500 Companies Now Offer Domestic Partner Benefits (August 26, 2005)
- 05-206 California Governor Schwarzenegger To Veto Same-Sex Marriage Bill, but Debate Will Go on There and Elsewhere (September 16, 2005)
- 05-274 EEAC’s Brief in *Etsitty v. Utah Transit Authority* Argues That Expanding Title VII To Cover Transsexuals Should Be Up to Congress, Not Courts (December 16, 2005)

## SOLICITOR OF LABOR WATCH

- 05-177 Whirlpool and OFCCP Settle High Profile Testing Case for \$850,000, but Agreement Is Silent on Use of Testing (August 12, 2005)

## STATE/LOCAL DEVELOPMENTS

- 05-3 Employees Called for Jury Duty Are Protected Under Both Federal and State Law, but the Level of Protection May Vary (January 7, 2005)
- 05-19 Illinois Becomes Fifteenth State To Prohibit Workplace Discrimination Based on Sexual Orientation (January 28, 2005)
- 05-37 Federal Court in *Wilson et al v. Ashcroft* Upholds Constitutionality of Federal “Defense of Marriage Act” (February 18, 2005)
- 05-39 Oregon Court Ruling on Accommodating Medical Marijuana User Undercuts Zero Tolerance Drug Policy (February 18, 2005)
- 05-51 EEAC’s Updated Survey of State Employee Leave Laws (March 11, 2005)
- 05-104 “Bullying” in the Workplace Is Becoming Emerging Legal Issue as Awareness of Its Destructive Effects Increases (May 6, 2005)
- 05-110 EEAC’s Updated Survey of States With Requirements Governing “Releases” of Discrimination Claims (May 13, 2005)

- 05-127 Supreme Court Rules in *Gonzales v. Raich* That Federal Law Trumps State Medical Marijuana Laws; Decision Removes Potential Conflict With Enforcement of Drug-Free Workplace Rules (June 10, 2005)
- 05-150 Legislation To Extend the Violence Against Women Act Would Create New Federal Leave Protection for Victims of Domestic or Sexual Violence (July 8, 2005)
- 05-163 Latest Annual HRC Survey Shows Private Employers Continuing To Adopt Policies on Sexual Orientation and Gender Identity Discrimination, Even Without Mandates (July 22, 2005)
- 05-164 DOL Opinion Letter Concludes That FMLA's Statutory Deferral to More Generous State Leave Laws Prevails Over ERISA Preemption (July 22, 2005)
- 05-165 Michigan Supreme Court Concludes That Supervisor Can Be Individually Liable for Discrimination Under State Law (July 22, 2005)
- 05-171 California Supreme Court Ruling That Sexual Favoritism Can Create Unlawful Hostile Work Environment Adopts Long-Standing Position of EEOC (August 5, 2005)
- 05-175 Pennsylvania Latest State To Adopt Immunity Protection for Giving Employment References (August 5, 2005)
- 05-180 Ohio Court in *Akron v. AFSCME Local 2517*, Citing Strong Public Policy Reasons, Overturns Arbitrator and Rules That Employer Is Not Required To Reinstate Potentially Violent Employee (August 12, 2005)
- 05-194 New Illinois Law Creates Leave Entitlement for Family Members of Active Duty Armed Services Members (September 2, 2005)
- 05-195 Concern About Identity Theft Continues To Prompt New Laws To Protect Confidentiality of Social Security Numbers, Including in the Workplace (September 2, 2005)
- 05-206 California Governor Schwarzenegger To Veto Same-Sex Marriage Bill, but Debate Will Go on There and Elsewhere (September 16, 2005)
- 05-208 Citing U.S. Supreme Court's Medical Marijuana Ruling in *Raich*, California State Court Upholds Right of Employer To Enforce Anti-Drug Policy (September 16, 2005)
- 05-225 California Supreme Court Expands Scope of Activity Protected From Unlawful Retaliation Under State Law (October 7, 2005)
- 05-229 EEAC Joins Brief Challenging Oklahoma Law That Restricts Right of Employers To Ban Firearms on Company Property (October 14, 2005)
- 05-281 California's Fair Employment and Housing Commission Proposes Implementing Regulations for State's Mandatory Sexual Harassment Training Law (December 23, 2005)

## TESTING

- 05-48 Employment Testing Practices Coming Under Increasing Scrutiny by OFCCP, EEOC (March 4, 2005)
- 05-94 EEAC Urges Sixth Circuit To Review and Reverse Bad Employment Testing Decision in *Isabel v. City of Memphis* (April 29, 2005)
- 05-106 Latest in EEAC's "Managers" Pamphlet Series Provides Guidance on Employment Selection Testing Practices (May 13, 2005)
- 05-107 Decision by Eleventh Circuit in *Polkey v. Transtecs* Serves as Reminder That Lie Detector Tests by Private Employers Are Severely Restricted (May 13, 2005)
- 05-158 Seventh Circuit Rules in *Karraker v. Rent-A-Center* That Test Used by Employer To Assess Personality Traits of Applicants Is Prohibited "Medical Examination" Under the ADA (July 15, 2005)
- 05-177 Whirlpool and OFCCP Settle High Profile Testing Case for \$850,000, but Agreement Is Silent on Use of Testing (August 12, 2005)
- 05-242 OFCCP Officials Clarify Use of Employment Tests as "Selection Procedures" Under Internet Applicant Final Rule (November 4, 2005)
- 05-252 Tenth Circuit in *Garrison v. Gambro* Finds Employer's Use of Employee Assessment Tests Did Not Discriminate (November 18, 2005)

## TITLE VII

- 05-13 Eighth Circuit in *Hesse v. Avis* Finds No Title VII Sexual Harassment Liability Where Offensive Behavior Was Not Based on Victim's Sex (January 21, 2005)
- 05-16 Ninth Circuit in *Jespersen v. Harrah's* Applies "Unequal Burdens" Test in Finding That Even-Handedly Applied Gender-Specific Grooming Policy Did Not Violate Title VII (January 28, 2005)
- 05-45 Ruling in *McReynolds v. Sodexo* Title VII Class Action Underscores Power Judge Can Field in Determining Whether Multimillion Dollar Lawsuit Goes to Trial (February 25, 2005)
- 05-53 Appointment of New Special Counsel for Immigration-Related Unfair Employment Practices Serves as Reminder of IRCA's Nondiscrimination Requirements (March 11, 2005)
- 05-87 Title VII Amendment To Increase Reasonable Accommodation Obligation for Employee Religious Beliefs and Practices Introduced Once Again (April 22, 2005)
- 05-100 \$80 Million Settlement in *McReynolds v. Sodexo* Highlights Changes Contained in EEAC's Updated Catalog of Active Employment Class Actions and Major Settlements (May 6, 2005)

- 05-101 Eleventh Circuit in *Gillis v. Georgia Department of Corrections* Finds That Smaller-Than-Expected Raise Can Be Adverse Employment Action (May 6, 2005)
- 05-111 Major Ruling by Fourth Circuit in *Anderson v. Westinghouse* Rejects Pay and Promotions Class Action Claims, Leaving Little Left for Plaintiffs To Pursue (May 20, 2005)
- 05-114 EEOC Says That Requiring Medical Documentation in English May Be National Origin Discrimination (May 20, 2005)
- 05-128 EEAC's Brief in *Jespersen v. Harrah's* Argues That Title VII Does Not Prohibit Even-Handedly Applied Gender-Specific Personal Appearance Standards (June 10, 2005)
- 05-140 EEAC's Friend-of-the-Court Brief in *Moranski v. General Motors* Argues That Employer's Decision Not To Allow Religious Affinity Group Does Not Violate Title VII (June 24, 2005)
- 05-147 D.C. Circuit in *Shekoyan v. Sibley International* Rules That Title VII's "Extraterritorial" Coverage Limited to U.S. Citizens Only (July 1, 2005)
- 05-149 Ninth Circuit in *Grosz v. Boeing* Upholds Decision by Lower Court Refusing To Allow Sex Discrimination Lawsuit To Go Forward as a Class Action (July 8, 2005)
- 05-190 EEOC Issues Informal "Opinion Letter" on Written Job Descriptions and Their Relationship to EEO Requirements (August 26, 2005)
- 05-213 Ninth Circuit in *EEOC v. NEA* Rules That Hostile Environment Sexual Harassment Claim Can Be Actionable Even Without Sexual References, if Women Suffer More Abusive Behavior Than Men (September 23, 2005)
- 05-218 Seventh Circuit in *Washington v. Illinois Department of Revenue* Lowers the Bar on Type of "Materially Adverse" Change Needed To Support Title VII Retaliation Claim (September 30, 2005)
- 05-223 EEAC Urges U.S. Supreme Court To Review Problematic Ruling in *BNSF v. White* That Would Permit Frivolous Retaliation Claims (October 7, 2005)
- 05-224 Seventh Circuit in *Venezia v. Gottlieb Memorial Hospital* Inexplicably Allows Unrelated Harassment Claims by Two Individuals To Go Forward in Single Lawsuit (October 7, 2005)
- 05-231 Eleventh Circuit in *Underwood v. Perry County* Puts Helpful Twist on "After-Acquired Evidence" Doctrine (October 14, 2005)
- 05-234 Being Able To Show Different Treatment Compared to "Similarly Situated" Coworkers Is Essential To Proving Typical Intentional Discrimination Claim (October 21, 2005)
- 05-245 Tenth Circuit, Agreeing With Arguments Made by EEAC, Rules in *Shikles v. Sprint* That Plaintiff Who Refuses To Cooperate in EEOC Investigation Cannot Come Back and Sue (November 4, 2005)

- 05-248 Courts Continue To Recognize That Employers Acting on “Honest Belief” of Employee Misconduct Do Not Commit Unlawful Discrimination (November 11, 2005)
- 05-249 Eighth Circuit in *Gilooly v. Missouri* Rules That Title VII’s Anti-Retaliation Prohibition Puts High Standard on Employer To Justify Adverse Action Against Protected Employee (November 11, 2005)
- 05-256 Workplace Religious Freedom Act Gets Mixed Reception at House Hearing (November 18, 2005)
- 05-266 Employer Can Be Liable for Harassment Committed by Its Contractors, as Seventh Circuit Reaffirms in *Dunn v. Washington County Hospital* (December 2, 2005)
- 05-270 U.S. Supreme Court in *BNSF v. White* Agrees To Decide Minimum Threshold for Title VII Unlawful Retaliation Claim; EEAC Urged Court To Consider Case(December 9, 2005)
- 05-274 EEAC’s Brief in *Etsitty v. Utah Transit Authority* Argues That Expanding Title VII To Cover Transsexuals Should Be Up to Congress, Not Courts (December 16, 2005)
- 05-278 Winning or Losing a Discrimination Lawsuit Hinges on Whether Parties Meet Their Burden of Proof; EEAC’s New Matrix Maps Out the Basics (December 23, 2005)

#### **VETERANS/VETS-100/USERRA**

- 05-12 Fifth Circuit in *Rogers v. City of San Antonio* Rules That USERRA Does Not Require Employers To Give Reservists Greater Rights Than Other Employees (January 21, 2005)
- 05-46 Now You See It Now You Don’t: Labor Department Hits Glitch With New “Notice of USERRA Rights” Poster, But Still Aiming for March 10 Deadline (March 4, 2005)
- 05-55 Defense Department Report Provides Detailed Race/Ethnicity and Gender Data for U.S. Military Personnel (March 11, 2005)
- 05-58 DOL-VETS Seeking Public Comments on New Notice of USERRA Rights Poster (March 18, 2005)
- 05-96 EEAC Identifies Additional DOD Demographic Data Resources for Companies That Recruit From U.S. Military (April 29, 2005)
- 05-105 EEAC Urges Labor Department To Adopt New USERRA Notice Without Changes (May 13, 2005)
- 05-138 Labor Department Confirms That 2005 VETS-100 Report Will Be the Same as Last Year (June 24, 2005)
- 05-161 Outreach Campaign by ESGR Organization Seeks Signed “Statement of Support” From Private Sector Employers (July 22, 2005)

- 05-178 Charles Ciccolella Sworn in as New Head of DOL-VETS, as Agency Announces It Will Now Accept USERRA Complaints On-Line (August 12, 2005)
- 05-194 New Illinois Law Creates Leave Entitlement for Family Members of Active Duty Armed Services Members (September 2, 2005)
- 05-219 Hurricane Relief Update: Congress Expands Work Opportunity Tax Credit; DOL-VETS Will Extend VETS-100 Filing Deadline for Affected Employers (September 30, 2005)
- 05-260 USERRA Complaints Dropped Slightly in 2005, but Monetary Awards Were Up (November 23, 2005)
- 05-268 OFCCP Issues Revisions to Veterans AAP Requirements Conforming Them to Changes Mandated by 1998 and 2000 VEVRAA Amendments (December 9, 2005)
- 05-278 Winning or Losing a Discrimination Lawsuit Hinges on Whether Parties Meet Their Burden of Proof; EEAC's New Matrix Maps Out the Basics (December 23, 2005)
- 05-283 Labor Department Issues Final Regulations Interpreting the Uniformed Services Employment and Reemployment Rights Act (USERRA) (December 30, 2005)

### **WORKPLACE VIOLENCE**

- 05-30 Presentations From Recent Conference on Workplace Violence Recommend Prevention Strategies (February 11, 2005)
- 05-51 EEAC's Updated Survey of State Employee Leave Laws (March 11, 2005)
- 05-146 EEAC's Brief in *Sista v. CDC IXIS* Argues That Neither ADA Nor FMLA Protect Employee Who Threatens Workplace Violence (July 1, 2005)
- 05-150 Legislation To Extend the Violence Against Women Act Would Create New Federal Leave Protection for Victims of Domestic or Sexual Violence (July 8, 2005)
- 05-180 Ohio Court in *Akron v. AFSCME Local 2517*, Citing Strong Public Policy Reasons, Overturns Arbitrator and Rules That Employer Is Not Required To Reinstate Potentially Violent Employee (August 12, 2005)
- 05-184 Recent NIOSH Study Finds Societal Cost of Workplace Homicides Totals in the Billions (August 19, 2005)
- 05-215 Workplace Homicides in 2004 Dropped to Lowest Level Since BLS Began Reporting in 1992 (September 23, 2005)
- 05-229 EEAC Joins Brief Challenging Oklahoma Law That Restricts Right of Employers To Ban Firearms on Company Property (October 14, 2005)
- 05-265 New Survey Confirms Once Again That Workplace Impacts of Domestic Violence Extend Beyond Just the Victims (December 2, 2005)

## MISCELLANEOUS

- 05-1 EEAC's Seventh Annual Litigation Survey Results (January 7, 2005)
- 05-2 Recent Study by CCH Incorporated Reveals Employees' Unscheduled Absences Are at a Five-Year High (January 7, 2005)
- 05-3 Employees Called for Jury Duty Are Protected Under Both Federal and State Law, but the Level of Protection May Vary (January 7, 2005)
- 05-8 Federal False Claims Act Provides Whistleblowers With Potential Big Monetary Awards; Supreme Court To Decide Appropriate Time Frame for Filing an FCA Retaliation Complaint (January 14, 2005)
- 05-10 Special Task Force Praises Coca-Cola for Progress in Meeting Terms of Class Action Settlement; Company Voluntarily Extends Task Force for Additional Year (January 14, 2005)
- 05-14 Labor Department Study Shows That Foreign-Born Workers Now Comprise 14% of U.S. Workforce (January 21, 2005)
- 05-20 Supreme Court in *IRS v. Banks* Rules Attorney Contingent Fees Are Taxable to Plaintiff; 2004 "Civil Rights Tax Relief Act" Should Minimize Impact of Decision on Employment Litigation (January 28, 2005)
- 05-34 U.S. Senate Approves Legislation To Ban Genetic Discrimination in Employment, Health Insurance (February 18, 2005)
- 05-35 Charging Party's False Allegations of Biased Statements by Manager Can Pose Special Challenges for HR Professionals (February 18, 2005)
- 05-43 Agreements To Shorten Time Periods for Filing May Be Enforceable for Certain Employment-Related Claims (February 25, 2005)
- 05-49 Courts Generally Supportive of "Zero-Tolerance" Policies, But Consistent Application Is the Key (March 4, 2005)
- 05-55 Defense Department Report Provides Detailed Race/Ethnicity and Gender Data for U.S. Military Personnel (March 11, 2005)
- 05-60 E-SIGN Act Update: Employers Appear To Be Proceeding Cautiously With Conversion to Paperless Employment Records (March 18, 2005)
- 05-61 Employment Discrimination Class Actions Filed in Federal Court, Up 26%, Hit All Time High Last Year (March 18, 2005)
- 05-65 We've Said It Before, We'll Say It Again: Good Documentation Practices Support Sound Decision-Making, Can Offer Protection Against Bias Claims (March 25, 2005)

- 05-74 EEAC's Updated Listing of Federal Employment-Related Notice Posting Requirements (April 8, 2005)
- 05-75 Proposed "No FEAR" Act Regulations Will Soon Require Federal Agencies To Train All Employees on Their Rights Under Antidiscrimination Laws (April 8, 2005)
- 05-81 Approaching Federal "Smart Card" ID Requirements Will Apply to Contractor Employees Who Regularly Access Federal Facilities (April 15, 2005)
- 05-85 Eighth Circuit in *Dossett v. First State Bank* Finds That Private Employer Could Be Liable for Violating Employee's Constitutional Rights (April 15, 2005)
- 05-104 "Bullying" in the Workplace Is Becoming Emerging Legal Issue as Awareness of Its Destructive Effects Increases (May 6, 2005)
- 05-107 Decision by Eleventh Circuit in *Polkey v. Transtecs* Serves as Reminder That Lie Detector Tests by Private Employers Are Severely Restricted (May 13, 2005)
- 05-116 Please Consider Participating in EEAC's Eighth Annual Litigation Survey (May 27, 2005)
- 05-117 Verbal Agreement To Settle Employment Dispute Might Be Enforceable, Even Where Complainant Has Second Thoughts (May 27, 2005)
- 05-121 "Supplier Diversity" Compliance: A Primer on Federal Disadvantaged Business Enterprise (DBE) Subcontracting Requirements (June 3, 2005)
- 05-125 First Circuit in *Campbell v. General Dynamics* Recognizes E-Mail as Appropriate Medium for Communicating Corporate Policy, as Long as the Message Is Clear (June 3, 2005)
- 05-130 Senate-Approved Highway Funding Bill Contains Business Tax Provisions Limiting Deductibility of Amounts Paid by Employers in Damages and Settlements (June 10, 2005)
- 05-139 Supreme Court in *Graham County v. Wilson*, Ruling on Appropriate Limitations Period for Filing Whistleblower Retaliation Claims Under False Claims Act, Adopts Position Advocated by EEAC (June 24, 2005)
- 05-148 President Bush Nominates Wan J. Kim to Top Civil Rights Post at Justice Department (July 1, 2005)
- 05-153 EEOC's New Regional Attorneys' Manual Sheds Some Light on Agency's Litigation Approach (July 8, 2005)
- 05-160 Analysis of EEOC's FY 2004 Charge and Litigation Data by Field Office Shows Considerable Variance Among Different Locations (July 15, 2005)
- 05-168 Recent Decision by First Circuit in *Mercado v. Ritz-Carlton* Shows That Failure To Post Required EEO Notices Can Have Consequences Well-Beyond the Possibility of a Nominal Fine (July 29, 2005)

- 05-172 Supreme Court's 2004 Term Featured Few Employment-Related Cases (August 5, 2005)
- 05-174 Think Some of Your Employees Sometimes "Play Hooky" From Work? New Survey Suggests You're Right, and Then Some (August 5, 2005)
- 05-196 U.S. Secret Service Study Offers Guidance on Steps To Prevent "Insider" Sabotage of Company Computer Systems (September 2, 2005)
- 05-207 OMB Issues Guidance Further Clarifying New "Smart Card" ID Requirements for Accessing Federal Facilities (September 16, 2005)
- 05-219 Hurricane Relief Update: Congress Expands Work Opportunity Tax Credit; DOL-VETS Will Extend VETS-100 Filing Deadline for Affected Employers (September 30, 2005)
- 05-222 Second Annual "American Time Use Survey" Shows Little Change From Previous Year in How Most Americans Spend Their Time (October 7, 2005)
- 05-244 Study Offers Insights Into Dealing With "The Competent Jerk/Lovable Fool" Phenomenon (November 4, 2005)
- 05-254 Latest Annual BLS Survey of Women's Earnings Shows Gender Wage Gap Continues To Gradually Narrow (November 18, 2005)
- 05-272 Employment Lawsuits Filed in Federal Court in FY 2005 Dropped 14% From Previous Year (December 9, 2005)
- 05-273 Justice Department Putting Together Recommendations to Congress on Ways To Allow Private Employers Greater Access to Use of FBI Database for Background Checks (December 16, 2005)
- 05-276 Two New Studies Focus on Women's Corporate Leadership Qualities, Concluding That the Skills Are There, but That Gender Stereotyping Inhibits Advancement to Top Executive Jobs (December 16, 2005)
- 05-285 Recent Survey of HR Managers Indicates Most of Their Employers Now Have Emergency Preparedness Plans (December 30, 2005)

# Appendix C

## 2006 Training Seminars and Packages

The Council's training curriculum for 2006 consists of a series of seminars for equal employment opportunity (EEO) specialists and attorneys. The seminars are presented by EEAC trainers and include two versions of an "EEO 101" course on the fundamentals of EEO and affirmative action, plus four skills development courses focusing on (1) developing and defending affirmative action plans (AAPs); (2) handling EEO charges; (3) compensation analysis; and (4) conducting internal investigations.

EEAC also offers a variety of training packages that can be purchased for in-house presentation by company trainers or human resource professionals. These include a course on sexual harassment, one on conducting internal investigations, another on EEO essentials for recruiters, and "Equity at Work" which covers the fundamentals of EEO requirements for front-line managers and supervisors.

Additionally, EEAC offers an online training program for managers and supervisors on avoiding illegal retaliation and a special California edition of our popular harassment-free work environment training package in order to meet the training requirements of a new California law for our members with operations in that state.

EEAC trainers also provide customized in-house training programs, including train-the-trainer presentations, built around EEAC seminars, training packages, and numerous other EEO-related issues.

### 2006 TRAINING SEMINARS

#### I. Basic EEO

##### Basic EEO and AA Compliance

**January 25-26**

**April 25-27**

**July 26-27**

**September 13-15**

**November 15-16**

EEAC Training Center  
Washington, DC

This comprehensive training course, offered in a two-day or three-day version, is designed to provide human resources generalists, EEO/AA specialists, and attorneys with a practical understanding of the fundamental principles and requirements of the equal employment opportunity laws. The primary focus is on federal EEO laws, but participants are also exposed to some of the principles and requirements of state and local EEO laws, as well as the application of state common law to the employment area.

The program has always served as a training experience for newcomers to the EEO/AA field. But, because the seminars include up-to-date information on EEO/AA topics, it is useful for experienced professionals looking to update their knowledge and skills.

Basic EEO is a two-day seminar and covers the following topics:

- The legal definition and main theories of "discrimination";
- Specifics of the federal EEO laws, including Title VII, Civil Rights Act of 1991, Civil Rights Act of 1866, Equal Pay Act, ADEA, Americans with Disabilities Act, FMLA, Immigration Reform and Control Act, and veterans acts;
- An overview of state EEO laws, whistleblower protection laws, the employment-at-will doctrine, and tort laws;
- Preventing illegal workplace harassment — both sexual and nonsexual harassment;
- Providing accommodations based on religion and to individuals with disabilities;
- EEO considerations in interviewing, performance appraisals, and termination procedures;
- The fundamentals of responding to employment discrimination charges filed with the EEOC and FEP agencies; and

- A comparison and contrast of the objectives of EEO, affirmative action, and diversity.

Basic EEO and AA Compliance is a three-day program and covers all of the above plus:

- The basic requirements of affirmative action compliance, including an explanation of the legal obligations, the components of an affirmative action plan, and the processes of OFCCP compliance evaluations.

The seminars are delivered primarily in a lecture format. However, case studies and participants' experiences are used throughout the seminar to clarify and demonstrate the practical application of the information delivered by the seminar trainer(s). Group discussion is encouraged and facilitated. This enhances the learning experience and provides opportunities for participants to benchmark the employment policies and procedures at other companies.

## II. Developing and Defending Compliant Affirmative Action Programs

**January 31-February 2**

**March 28-30**

**June 6-8**

**August 22-24**

**September 19-21**

**November 28-30**

EEAC Training Center  
Washington, DC

This seminar which combines two of EEAC's long-standing core programs, *Developing Effective Affirmative Action Programs* and *Managing OFCCP Compliance Evaluations* will cover everything that a compliance practitioner needs to know in order to design, develop, implement, and defend a compliant AAP. Participants will (1) gain an in-depth understanding of the current legal, regulatory, and business requirements impacting the design, development, and evaluation of AAPs; (2) experience the process of developing each

AAP component through participative exercises; and (3) learn strategies and tactics to effectively prepare for, manage, and defend against an OFCCP compliance evaluation, with particular emphasis placed on OFCCP's evolving statistical models for evaluating personnel transactions and compensation data.

The seminar covers the following topics:

- Affirmative Action Compliance and Enforcement;
- Preparing To Develop the AAP;
- Developing, Using, and Defending the Organizational Profile;
- Forming and Justifying AAP Job Groups;
- Understanding and Calculating Availability;
- Comparing Incumbency to Availability;
- Affirmative Action Placement Rate Goals;
- Executive Order 11246 AAP Narrative Requirements;
- Disability and Veterans AAP Requirements;
- Strategies for Implementing the AAP;
- Responding to an OFCCP Compliance Evaluation Scheduling Letter;
- OFCCP's Desk Audit Analysis and Focus on Systemic Discrimination;
- Managing Follow Up Requests for Data; and
- Completing the Evaluation.

## III. Investigating and Responding to Discrimination Charges

**April 5-6**

**June 27-28**

**November 8-9**

EEAC Training Center  
Washington, DC

This one- and one-half day seminar builds upon the overview of EEOC discrimination charge processing presented in the *Basic EEO* training seminar. It is designed primarily for employer representatives who have direct responsibility for investigating and responding to discrimination charges filed with federal and state EEO agencies. The program focuses on techniques

and strategies for dealing with discrimination charges, from the moment an employer receives notice that a charge has been filed with an EEO agency, through the final resolution or referral of the case to litigation. The program concludes with a special segment on the use of mediation in resolving both formal and informal charges. Using lectures, discussion problems, and role-playing exercises, the course is intended to increase the skills of employer representatives at each stage of the EEO charge process.

The course offers up-to-date information on enforcement agency procedures, including a full description of EEOC's charge handling procedures. The agenda for the session includes the following topics:

- Overview of charge processing procedures;
- Current agency policies;
- What to do when a charge is filed;
- Assessment of the charge;
- Time-filing requirements and deferral procedures;
- Employer's internal investigation;
- Developing the employer's response;
- The fight or settle decision;
- Preparing written position statements and responses to requests for information;
- Preparing for an EEOC on-site investigation;
- Approaching settlement and conciliation;
- Predetermination settlements;
- Failure of conciliation; and
- The mediation option.

#### **IV. Conducting a Compensation Analysis**

**May 10-11**

**September 26-27**

EEAC Training Center  
Washington, DC

This two-day program offers guidance on how to conduct a self-analysis for potential compensation discrimination under Title VII and the Equal Pay Act. The program also addresses the compensation analyses

required under OFCCP's new regulations and covers strategies for managing an OFCCP audit of your compensation practices.

The course focuses on what the EEO or compensation practitioner needs to know and be able to do to conduct the newly required compensation self-analyses, to present compensation analyses to the OFCCP, and to ensure that the company's compensation practices are legally defensible. The course is appropriate for both EEO and compensation professionals. EEO professionals will benefit by learning the strategies and techniques currently used by OFCCP to evaluate compensation practices during audits. In addition, guidance on identifying statistical pay patterns that may give rise to inferences of race or sex discrimination will be useful as part of an ongoing EEO monitoring program. Compensation professionals will learn how to supplement their traditional evaluation of pay practices with an assessment of legal vulnerabilities to discrimination suits based on race or gender. Compensation professionals also will learn how best to coordinate their expertise with that of the company's EEO professionals to manage an OFCCP audit of compensation.

The course begins with a brief overview of the legal and statistical principles involved in compensation analysis followed by the presentation of a sample pay analysis. Against this background there is a more in-depth review of the questions that need to be addressed in evaluating your company's compensation systems. We will conduct a step-by-step review of a statistical methodology designed to pinpoint workforce units with potentially problematic statistical pay patterns. In addition, non-statistical "cohort analyses" are discussed as a way of determining whether any problematic statistical pay patterns that have been identified can be justified. Managing OFCCP's review of your compensation system and strategies for conciliating alleged pay violations found by OFCCP also are addressed.

## V. Conducting an Internal Investigation

May 17  
December 6

EEAC Training Center  
Washington, DC

This one-day seminar, which is designed for HR professionals and in-house legal counsel, covers essential topics such as notifying management, securing legal privilege, developing an investigation plan, interviewing techniques, dealing with difficult witnesses, and presenting the investigation findings. The session includes extensive discussion exercises and participants receive hands-on practice in conducting interviews and developing an investigation plan.

### TRAINING PACKAGES

#### I. Maintaining a Harassment-Free Work Environment: Training for Managers and Supervisors

This training package, built around the award-winning video on sexual harassment produced by Georgia-Pacific Corporation, is designed to train managers and supervisors on their responsibilities in maintaining a work environment free of harassment.

The program focuses on the obligations of supervisors and managers to:

- Understand the legal and business reasons for maintaining a harassment-free work environment;
- Understand what types of behavior constitute harassment;
- Take advantage of informal opportunities to educate employees on the company's policy

- against harassment; and
- Respond appropriately to employee concerns or complaints.

The program was developed and piloted with assistance from corporate human resource officers and attorneys. The result is a program that emphasizes good management techniques and sound business reasons for creating and maintaining a harassment-free workplace.

Your in-house trainer can use the program "off-the-shelf" to present a three- or four-hour session and can easily customize the course to focus on your organization's own policy against harassment.

#### II. Maintaining a Harassment-Free Work Environment: Training for Managers and Supervisors (California Edition)

In response to the California law effective January 1, 2006 requiring all employers with 50 or more employees working in the state to provide at least two hours of training on sexual harassment to their supervisors, EEAC introduced in 2004 a revised training package specifically aimed at helping companies covered under the new law comply with the state's new training and education requirements.

EEAC's *Maintaining a Harassment-Free Work Environment (California Edition)* is designed to provide a minimum of two hours training (not including the 35-minute video that comes with the package) on both federal and California harassment law to managers and supervisors, with an emphasis on sexual harassment. The program focuses on the obligations of supervisors and managers to: understand the legal and business reasons for maintaining a harassment-free work environment; understand what types of behavior constitute harassment; take advantage of informal opportunities to educate employees on the company's policy against harassment; respond appropriately to employee concerns or complaints; and avoid

retaliation. The program is designed for unlimited use by in-house company facilitators and is interactive with discussion exercises and video.

### III. Equity at Work: A Manager's Guide to Fair Employment Law and Practices

EEAC's *Equity at Work* training package is an off-the-shelf course developed for presentation by an in-house trainer. *Equity at Work* is designed to educate front-line managers and supervisors about EEO considerations and legal responsibilities that are part of their day-to-day decisionmaking. The course ideally is suited for a full-day session.

*Equity at Work* is broken into four presentation modules, starting with (1) an introduction to the basic concepts of EEO, affirmative action, and diversity; (2) application of these concepts to specific personnel transactions such as hiring and firing; (3) discussion of the "special" issues of harassment and accommodating individuals with disabilities and religious differences; and finishing with (4) a summary and checklist of things to remember.

### IV. Investigating Workplace Conduct

EEAC's *Investigating Workplace Conduct* is a training package that provides step-by-step guidance for conducting an internal investigation of a complaint of workplace misconduct. The program is designed so that it can be presented in approximately four hours by your in-house trainer to individuals who might be involved in an internal investigation.

The course takes the investigator through each step of the process, beginning with determining when an investigation is required and the initial steps in starting an investigation — whom to contact, setting up files, and developing a plan of action for the investigation.

From there, *Investigating Workplace Conduct* looks at handling documentary and physical evidence and the various techniques for conducting productive interviews of general witnesses and the complainant and accused, in particular.

The investigator's report and recommendation and implementation of the decision round out the course material. Topics such as confidentiality, recordkeeping, and retaliation are discussed throughout the training.

Incorporated in the program is an "investigation scenario," which provides the background for the included EEAC video that presents interviews of a complainant, accused supervisor and witness.

### V. EEO Essentials for Recruiters

EEAC's popular *EEO Essentials for Recruiters* training program is now available to EEAC member companies for licensing for use by their own company trainers. Most importantly, the license enables member companies to customize the materials to include company-specific branding, processes and references.

EEAC's *EEO Essentials for Recruiters* program is designed to ensure that your company's recruiters are in-step with the company's EEO and affirmative action policies. The program provides recruiters with the essential practices they need to function effectively as a recruiter in today's business and legal environment.

Topics discussed in *EEO Essentials for Recruiters* include being consistent and nondiscriminatory in the standards applied to, and treatment of, applicants and employees; the importance of documentation using only standards and criteria that are job-related and consistent with business necessity; filling jobs with the best people while making progress toward affirmative action goals; and the importance of reporting back to HR on recruiters' good faith efforts.

## VI. Avoiding Illegal Retaliation

*Avoiding Illegal Retaliation* is an online training course designed specifically for your managers and supervisors. Based on our popular *Managers Series* pamphlet *What Managers Need to Know About . . . Avoiding Illegal Retaliation*, EEAC developed this e-learning experience to give member companies a convenient and efficient way to educate their managers and supervisors on understanding the key EEO requirements regarding retaliation and how they, as managers and supervisors, can help the company avoid claims of illegal retaliation in the workplace. For a one-time license fee, a member company may train an unlimited number of its managers and supervisors, at its convenience, on this all-important compliance issue. The only requirement on the part of the individual taking the course is internet access and a username and password issued by the company. In addition, if desired, the program will allow the company representative who is administering the training to monitor each individual's progress throughout the course to final completion. The course takes approximately 15 minutes to complete.

## CUSTOM IN-HOUSE TRAINING PROGRAMS AND BRIEFINGS

All of the seminars and training packages described can be customized to the unique circumstances of your company and presented by EEAC trainers to in-house audiences. In addition, special briefings on evolving topics, legislative initiatives, regulatory changes, and long-term employment trends can be prepared for senior management or other special audiences. We will work with your staff to ensure that the program addresses issues of concern to your company and takes into account your own policies and procedures.

### EEAC In-House Curriculum

Any of the seminars described previously can be customized for presentation to your company as an in-

house program. Additionally, EEAC has a number of programs that are especially appropriate for in-house presentation.

***EEO Essentials for Recruiters*** — The objective of this program is to ensure that your company's recruiters are in-step with the company's EEO and affirmative action policies. The program provides recruiters with the essential practices they need to function effectively as a recruiter in today's business and legal environment. Topics covered include being consistent and nondiscriminatory in the standards applied to, and treatment of, applicants and employees; the importance of documentation; using only standards and criteria that are job-related and consistent with business necessity; filling jobs with the best people while making progress toward affirmative action goals; and the importance of reporting back to HR on their good faith efforts.

***Good Employment Selection Testing Practices*** — In response to OFCCP's current focus on whether contractors' employment tests and other selection devices comply with the Uniform Guidelines on Employee Selection Procedures, EEAC has developed a special in-house training seminar designed to help EEO/AA compliance professionals and in-house employment counsel identify what is, and is not, a test, and how to audit your testing practices and analyze the results. The program focuses on the many benefits of using tests correctly and effectively, the potential risks associated with selection testing, and what the OFCCP looks for in reviewing your selection tests and supporting validation analyses during a compliance evaluation.

***Measuring Diversity With Metrics*** — EEAC's Diversity Metrics in-house training program is designed to explore how companies might develop and implement metrics-based approaches to measuring the performance and impact of their diversity and EEO/AA initiatives. The program will cover both the tangibles and intangibles associated with diversity, and focus on those demographic characteristics and human resources activities that might be measured by a

metrics-based diversity analytics model. In addition to covering the fundamentals of metrics, the seminar also will feature a discussion of the legal pitfalls associated with using numbers to measure such demographic characteristics as race, ethnicity, or gender, including segments on how a company's existing EEO/AA compliance programs might impact the development of a diversity metrics model.

***Affirmative Action for HR Generalists*** — This program is geared specifically to HR generalists working for federal contractors who need a basic understanding of affirmative action, affirmative action programs, and OFCCP compliance evaluations. With the recent dramatic increase in OFCCP enforcement activity, it can be helpful if your HR generalists have a sound foundation in the basics of affirmative action compliance. This program is designed to provide that foundation through discussions on the why's and how's of affirmative action and what HR professionals need to know and be able to convey to managers. The session includes an overview of OFCCP compliance evaluation procedures, again focusing on what HR professionals outside the EEO/AA function need to know about compliance evaluations.

If there is an employment-related issue which EEAC does not cover in one of our previously-described seminars or which is not included above, please contact us and we will do our best to accommodate your training requirements through a custom-designed program to suit your organization's individual needs.

# Appendix D

## 2005 Membership Meetings Program Highlights

### ANNUAL MEETING

March 9-11, 2005

Washington, DC

#### General Session

Cari Dominguez  
Chair  
Equal Employment Opportunity Commission

Charles James  
Director  
Office of Federal Contract Compliance  
Programs

Steve Bucherati  
Director, Diversity & Workplace Fairness  
The Coca-Cola Company

#### Luncheon

H. Patrick Swygert  
President  
Howard University

#### EEAC Staff Update

A perspective on the current hot issues in the EEO/AA compliance and policy areas.

#### Discussion Roundtables

*Best Practices*  
*EEO/AA Compliance*  
*Legal Issues*

#### Workshops

1. *Supplier Diversity - An Overview of Federal MBE/WBE/DBE Subcontracting Requirements*

Caroline Laguerre-Brown, EEAC  
Joe Lakis, EEAC

2. *OFCCP/Solicitor of Labor "Open Dialogue"*

Howard Radzely, Solicitor of Labor  
Bill Doyle, OFCCP  
Jeff Norris, EEAC

3. *Connecting Generations: Lone Ranger or Home Alone*

Tammy Hughes, Generations at Work/Claire  
Raines Associates  
Judy Lampley, EEAC

### FALL MEETING

October 26-28, 2005

San Antonio, TX

#### General Session

Cyrus Mehri  
Partner  
Mehri & Skalet, PLLC

Honorable Xavier Rodriguez  
U.S. District Court Judge  
Western District of Texas, San Antonio Division

Charles James  
Director  
Office of Federal Contract Compliance  
Programs

#### Luncheon

Andrew Cohen  
CBS Court-Watcher and Commentator

#### EEAC Staff Update

A perspective on the current hot issues in the EEO/AA compliance and policy areas.

## Discussion Roundtables

*Best Practices*  
*EEO/AA Compliance*  
*Legal Issues*

## “Town Hall Meeting” - Responding to Class Action Vulnerabilities

Joseph Moan  
Senior Employment Counsel  
The Coca-Cola Company

Kwame Satchell  
Counsel  
Chevron Corporation

## Workshops

### 1. *Employment Tests and Other Selection Devices: What Is OFCCP Looking For?*

Fred Azua, OFCCP  
Connie Ackermann, Counsel for Civil Rights  
Jeff Norris, EEAC

### 2. *HR as Part of Corporate Social Responsibility in Today's Global Business Environment*

Linda Workman, ConAgra Foods  
Ethel Batten, Lucent Technologies  
Peter Dudley, Wells Fargo  
Judy Lampley, EEAC

### 3. *Assessing Your Vulnerability to ADEA Disparate Impact Claims*

Ann Reesman, EEAC  
Laura Giantris, EEAC  
Nancy Nelkin, EEAC

# Appendix E

## Summary of 2005 *Amicus Curiae* Activity

### I. Brief Cases Decided in 2005

#### A. Age Discrimination

##### 1. *Disparate Impact Discrimination*

*Smith v. City of Jackson, MS*, 125 S. Ct. 1536 (2005)

*Decision:* The Age Discrimination in Employment Act of 1967 (ADEA) permits lawsuits under the legal theory of “disparate impact.”

EEAC’s brief urged the High Court to rule, consistent with decisions issued by most of the federal appeals courts, that age discrimination claims cannot be brought on a theory that facially neutral policies adversely affect older workers. The Supreme Court, however, concluded that the ADEA does permit claims under a disparate impact theory. At the same time, however, the court emphasized that the “reasonable factor other than age” defense is extremely broad, potentially providing a very strong defense for employers in such cases. See EEAC Memorandum 05-068 (April 1, 2005).

##### 2. *Retiree Health*

*AARP v. Equal Employment Opportunity Commission*, 740 F. Supp. 2d 437 (E.D. Pa. 2005) (E.D. Pa. 2005)

*Decision:* The EEOC has the authority to issue a regulation exempting from the Age Discrimination in Employment Act (ADEA) retiree health programs that coordinate benefits with Medicare, and the regulation as proposed meets applicable legal requirements.

The AARP is challenging the EEOC’s authority to issue a regulation that would allow employers to coordinate retiree health benefits with Medicare without violating the Age Discrimination in Employment Act (ADEA). EEAC’s *amicus curiae* brief, joined by the HR Policy Association, the Chamber of Commerce of the United States, the Society for Human Resource Management, America’s Health Insurance Plans, American Benefits Council, National Rural Electric Cooperative Association, and the ERISA Industry Committee, contended that the EEOC is acting well-within its rulemaking authority and that the regulation is both necessary and in the public interest. In March, the district court judge ruled against the EEOC, but recently

### 3. *Older Workers Benefit Protection Act (OWBPA)*

*Burlison v. McDonald's Corp.*, No. 05-90018 (11th Cir.) (petition for interlocutory appeal granted July 22, 2005)

### B. *Alternative Dispute Resolution*

*Caley v. Gulfstream Aerospace Corporation*, 428 F.3d 1359 (11th Cir. 2005)

reversed her own decision in light of an intervening Supreme Court decision involving judicial review of agency actions. See EEAC Memorandum 05-217 (September 30, 2005). The AARP has appealed to the Third Circuit, and EEAC will be filing a brief with that court in 2006 urging affirmance.

*Decision:* The Eleventh Circuit will review the lower court's decision.

The district court ruled that the company's release was unenforceable as to age discrimination claims because the company provided the required disclosure information only for individual regions rather than providing information as to the entire nationwide reduction in force. McDonald's has asked the Eleventh Circuit to immediately review this ruling, and EEAC's brief supported that request. See EEAC Memorandum 05-157 (July 15, 2005). The court granted the petition, and EEAC has since filed a brief on the merits.

*Decision:* An agreement to arbitrate employment disputes could use "continued employment" as grounds for making it a binding contract, and could include a clause barring class actions.

EEAC's brief, joined by the Chamber, urged the appeals court to affirm a lower court decision enforcing an agreement to arbitrate employment disputes. Although the plaintiff raised a laundry list of issues, we focused on two that are of particular importance to EEAC members. We argued that an agreement is enforceable when employees signify their assent to the agreement by choosing to remain employed, and that a clause prohibiting class actions does not make the agreement unenforceable. See EEAC Memorandum 05-054 (March 11, 2005). The Eleventh Circuit enforced the agreement, and agreed with EEAC on the two issues that we briefed. See EEAC Memorandum 05-251 (November 11, 2005).

*Campbell v. General Dynamics Government Systems Corp.*, 407 F.3d 546 (1st Cir. 2005)

*Decision:* E-mail is a proper means of communicating changes in company policy, provided that the message is clear.

EEAC's brief argued that the lower court was wrong in concluding that notifying employees by e-mail that the company had adopted a mandatory arbitration policy was insufficient to communicate the policy, and therefore prevented it from being enforced. The First Circuit ruled that e-mail can be used for such a purpose, although it found that the message in *this* case was not clear enough to put employees on notice that they would be bound by the new policy. See EEAC Memorandum 05-125 (June 3, 2005).

### C. Class Actions

*Anderson v. Westinghouse Savannah River Co.*, 406 F.3d 248 (4th Cir. 2005)

*Decision:* The federal trial court was correct both in refusing to certify a class action claiming race discrimination in pay and promotions and in rejecting the lead plaintiff's individual claims.

Joined by the Chamber of Commerce of the United States, EEAC's brief argued that the trial court properly refused to grant class certification of claims of non-promotion and discriminatory performance evaluations. Among other things, the decision by the three-judge panel concluded that the lead plaintiff's expert statistical analyses were faulty, leaving her with little evidence to support her claims. The decision also contains language that may be helpful to other employers facing a potential employment class action. See EEAC Memorandum 05-111 (May 20, 2005).

*Grosz v. The Boeing Company*, No. 04-55428, 136 Fed. Appx. 960, 2005 U.S. App. LEXIS 13004 (9th Cir. June 28, 2005)

*Decision:* The Ninth Circuit ruled that a federal trial court was correct in denying class action status to a sex discrimination lawsuit brought by a group of current and former Boeing employees.

The decision by a court to "certify" a class action lawsuit can be a cataclysmic event in the progress of a lawsuit, often handing the plaintiffs a powerful weapon with which to pressure a defendant into a

settlement or face significant defense costs and the possibility of significant monetary liability, even if the employer has a strong case. Joined by the Chamber, EEAC's brief urged the Ninth Circuit to affirm the trial court's decision that a broad-based claim of sex discrimination in compensation and promotion, involving employees from a wide variety of jobs and locations, should not be treated as a class action. See EEAC Memorandum 04-217 (October 8, 2004). The appeals court agreed that the members of the proposed class were far too different, both as to the types of jobs they held and the level of subjectivity involved in making employment decisions about them, for the case to meet the federal requirements for maintaining a class action. See EEAC Memorandum 05-149 (July 8, 2005).

#### **D. Duty To Cooperate With EEOC**

*Shikles v. Sprint/United Management Company*, 426 F.3d 1304 (10th Cir. 2005)

*Decision:* A plaintiff is required to cooperate with the EEOC investigation as part of his obligation to exhaust administrative remedies before going to court, and his failure to do so ended any right to come in later and file a lawsuit on the same claim.

Joined by the Chamber, EEAC's brief argued that a plaintiff's participation in the EEOC's investigation of his discrimination charge is a *legally required prerequisite* to filing a lawsuit. See EEAC Memorandum 04-091 (April 23, 2004). The Tenth Circuit agreed. See EEAC Memorandum 05-245 (November 4, 2005).

#### **E. False Claims Act**

*Graham County Soil & Water Conservation District v. U.S. ex rel. Wilson*, 126 S. Ct. 24 (2005)

*Decision:* The statute of limitations for a False Claims Act whistleblower retaliation case is the comparable state statute of limitations, beginning on the date the adverse employment action took place, and not the six-year period beginning on the date fraud against the government occurred, if indeed it ever did.

The U.S. Supreme Court ruled that plaintiffs who file lawsuits claiming whistleblower retaliation under the federal False Claims Act (FCA) must do so within the

most closely analogous time period allowed for similar suits under state law — usually two or three years — or they lose their right to sue. Adopting several of the arguments made in EEAC’s *amicus curiae* brief, which was joined by The Chamber of Commerce of the United States, the Court concluded by a vote of 7 – 2 that the FCA did not clearly allow a six-year time period for filing whistleblower suits, as the Court of Appeals for the Fourth Circuit had concluded. Since most state limitations periods allow fewer than six years for filing suit, the decision is a favorable one for employers. See EEAC Memorandum 05-139 (June 24, 2005).

#### **F. Family and Medical Leave Act (FMLA)**

*Hoffman v. Professional Med Team*, 394 F.3d 414 (6th Cir. 2005)

*Decision:* An employer did not “willfully” violate the FMLA by denying an employee’s request for FMLA intermittent leave after she refused to get clarification of a confusing and possibly invalid medical certification form.

EEAC’s *amicus curiae* brief explained to the Sixth Circuit the significant challenges that intermittent FMLA leave poses for employers. See EEAC Memorandum 03-262 (December 12, 2003). The Sixth Circuit cited our brief as part of its reasoning. See EEAC Memorandum 05-006 (January 14, 2005).

*Electrolux v. UAW of America*, 416 F.3d 848 (8th Cir. 2005)

EEAC’s brief argued that the FMLA does not allow employees to “doctor shop” after their own health care provider has refused to certify that a health condition qualifies for leave. We urged the appeals court to overturn a trial court ruling affirming an arbitrator’s award that allowed an employee to get a second medical opinion to support her request for medical leave after her own health care provider refused to certify it. See EEAC Memorandum 05-029 (February 11, 2005). The Eighth Circuit, however, did not reach the issue EEAC briefed, deciding the case instead on the narrow ground of the scope of the arbitrator’s authority.

## G. Religion

*Moranski v. General Motors*, 433 F.3d 537  
(7th Cir. 2005)

*Decision:* An employer may disallow affinity or networking groups based on religious beliefs or non-beliefs, even though the employer expressly sanctioned such groups formed for other purposes.

The lower court had ruled that the employer's denial of a request to form a religious affinity group did not violate Title VII. EEAC's brief, joined by the U.S. Chamber of Commerce, pointed out that an employer is free to decide which affinity groups, if any, it will sponsor based on the potential benefit to the company's employees and the company's objectives. We contended that GM's affinity groups' policy prohibiting the formation of groups that "promote or advocate particular religious or political positions" is not discriminatory under Title VII, because it applies to all employees regardless of their religion or lack of religion. See EEAC Memorandum 05-140 (June 24, 2005). The Seventh Circuit agreed. See EEAC Memorandum 06-002 (January 6, 2006).

## H. Retaliation

*Burlington Northern & Santa Fe Railway  
Co. v. White* (U.S. Supreme Court)

*Decision:* The Supreme Court will review a Sixth Circuit decision holding that minor adjustments in work assignments and a temporary suspension with full backpay and benefits constituted a "materially adverse change" in the terms and conditions of the person's employment and therefore, actionable "adverse employment actions" for purposes of a Title VII retaliation claim.

EEAC's brief supported the employer's request to the High Court to review a recent Sixth Circuit decision that essentially would allow a retaliation claim to go forward if it involved any kind of adverse action. We argue that an employer should have the right to make minor changes in job duties, for example, or should be able to temporarily suspend an employee pending an internal investigation of alleged misconduct, without having to defend itself against a charge of unlawful retaliation. See EEAC Memorandum 05-223 (October 7, 2005).

## I. Sexual Harassment

*Hesse v. Avis Rent-A-Car System*, 394 F.3d 624 (8th Cir. 2005)

The Supreme Court granted the request, and EEAC will be filing a brief in 2006 supporting the company's position on the merits.

*Decision:* Conduct "because of" sex is a necessary element of a sexual harassment claim.

Noting that Title VII is not a "civility code" for the workplace, EEAC's brief argued that a plaintiff alleging sexual harassment must prove that the conduct complained of was *because* of her sex. We contended that although the complained of conduct may be immature, unprofessional, and even abusive, a plaintiff cannot succeed merely by showing that she is a woman and the harasser is a man. See EEAC Memorandum 04-157 (July 23, 2004). The Eighth Circuit agreed. See EEAC Memorandum 05-013 (January 21, 2005).

*Clark v. United Parcel Service* (Sixth Circuit *en banc*)

*Decision:* Petition for rehearing denied.

EEAC's brief urged the full Sixth Circuit to review and reverse a panel decision holding that because a company policy required all employees to report inappropriate behavior, the fact that two supervisors who each witnessed a minor incident failed to report it precluded the employer from using the affirmative defense to sexual harassment liability established by the U.S. Supreme Court in 1998. Our brief supported the employer's request to have the court rehear the case and overturn the panel's ruling. See EEAC Memorandum 05-071 (April 1, 2005). The full Sixth Circuit denied rehearing.

## J. Taxation of Attorney's Fees

*Commissioner of Internal Revenue v. Banks and Banaitis*, 543 U.S. 426 (2005)

*Decision:* When a successful plaintiff's recovery includes money to pay his or her attorney's contingent fee, that amount is taxable income to the plaintiff, even though the lawyer gets it all.

EEAC's brief had argued that the federal government should not be allowed to take a two-fisted tax helping from every settlement of an employment discrimination lawsuit in which the plaintiff's lawyer is retained on a contingency fee basis. Since double taxation of contingency fees ratchets up the cost, EEAC's brief explains to the Court that allowing the government to double dip makes it that much more difficult to reach a settlement, and therefore fosters protracted litigation. See EEAC Memorandum 04-182 (August 20, 2004). The Court, however, ruled 8-0 that amounts awarded for attorney's fees are taxable to the plaintiff. See EEAC Memorandum 05-020 (January 28, 2005). In the meantime, however, Congress passed legislation that will permit a discrimination plaintiff to deduct attorneys' fees on his or her federal tax return, so that this decision will have little, if any, effect on employment litigation. See EEAC Memorandum 04-220 (October 15, 2004).

## K. Testing

*Isabel v. City of Memphis* (Sixth Circuit *en banc*)

*Decision:* Petition for rehearing denied.

EEAC's brief urged the full Sixth Circuit to review and reverse a problematic panel decision that includes three separate rulings that are contrary to both law and recognized professional practice. The panel ruled that the written test the City used to select police officers for promotion discriminated on the basis of race under Title VII because, among other things, (1) the cutoff score was not set at "minimal qualifications"; (2) the cutoff score was not "validated"; and (3) the test covered only one aspect of the job rather than the entire job domain. EEAC's brief argued that these three rulings are egregious errors. See EEAC Memorandum 05-094 (April 29, 2005). The Sixth Circuit, however, denied rehearing.

## II. Briefed in 2005 but Not Yet Decided

### A. Age Discrimination

*Kruchowski v. Weyerhaeuser Co.* (Tenth Circuit)

*Issue:* Should the full Tenth Circuit review and reverse a panel decision holding that cast doubt on the enforceability of most releases obtained by employers in the context of a reduction in force?

EEAC's brief, joined by the Chamber, urges rehearing of the case on two counts. We explain that the panel's ruling that an OWBPA disclosure must include the selection criteria for a reduction in force is contrary to the statute, the EEOC's implementing regulations, and current practice. Second, we argue that the disclosure notices satisfied the OWBPA requirements even though the company made a nominal error in describing the "decisional unit." See EEAC Memorandum 05-230 (October 14, 2005).

*Burlison v. McDonald's* (Eleventh Circuit)

*Issue:* May an employer conducting a nationwide reduction in force obtain valid releases of ADEA claims by providing the required information on a regional level where the regional level formed the decisional unit?

The district court in this case ruled that the "Information Sheet" McDonald's had provided to employees who were offered benefits in exchange for a release during reorganization was insufficient to satisfy one of OWBPA's notification requirements, because the sheet should have provided nationwide data showing the job titles and ages of everyone the company had selected for termination as part of its restructuring, rather than just the job titles and ages of those selected for termination in the particular region where the decisions were made. See EEAC Memorandum 06-004 (January 6, 2006).

### B. Americans with Disabilities Act (ADA)

*Sista v. CDC IXIS* (Second Circuit)

*Issue:* Was the trial court correct in finding that an employee who threatens his supervisor is not "qualified" for the job, and that the ADA's "direct threat" defense is never even in the picture?

*Bates v. United Parcel Service* (Ninth Circuit)

EEAC's brief defends an employer's legal right to terminate an employee for threatening his supervisor. The plaintiff is claiming that the employer is required to prove the ADA's "direct threat" defense in order to justify his termination. Notably, the Equal Employment Opportunity Commission (EEOC) has filed a friend-of-the-court brief supporting his claim. We in turn argue that the trial court was correct in ruling for the employer on the ADA claim. We also contend that nothing in the FMLA prevents an employer from refusing to reinstate an FMLA leave-taking employee who has made violent threats. See EEAC Memorandum 05-146 (July 1, 2005).

*Issue:* Does the ADA permit the application of a safety-based qualification standard that excludes people with disabilities as long as the standard is "job-related and consistent with business necessity"?

EEAC's brief urges the appeals court to reverse a lower court decision under the Americans with Disabilities Act (ADA) that effectively barred an employer from applying a safety-based qualification standard that prohibited deaf individuals from driving a commercial delivery truck. Our brief argues that the ADA explicitly permits the application of a safety-based qualification standard to exclude individuals with disabilities as long as it is "job-related and consistent with business necessity." In this case, we contend that the trial court interpreted "business necessity" so narrowly that it was impossible for United Parcel Service (UPS) to prove it, despite presentation of persuasive evidence that the standard was necessary for safety reasons. See EEAC Memorandum 05-059 (March 18, 2005).

### **C. Family and Medical Leave Act (FMLA)**

*Taylor v. Progress Energy, Inc.* (Fourth Circuit) (*en banc*)

*Issue:* Should the full Fourth Circuit review and reverse a panel decision holding that a release of FMLA claims is invalid unless supervised by the Department of Labor or a court?

Both the U.S. Department of Labor (DOL) and EEAC filed friend-of-the-court briefs with the U.S. Court of Appeals for the Fourth Circuit asking the full appeals court to overturn a ruling by a three-judge panel that held that an employee's release of claims under the Family and Medical Leave Act (FMLA) cannot be enforced unless the release has been supervised by DOL or a court. EEAC's brief, joined by the Chamber of Commerce of the United States and the Society for Human Resource Management, supports the company's motion asking the full court to review and reverse the ruling by the panel. Our brief highlights the importance of private resolution of employment disputes, and explains why the panel's highly problematic decision guts that vital policy objective. See EEAC Memorandum 05-183 (August 19, 2005).

#### **D. Retaliation**

*EEOC v. Sundance Rehabilitation Corporation* (Sixth Circuit)

*Issue:* How viable is the EEOC's theory of "anticipatory retaliation" if it allows someone to sue over events that have not actually happened?

EEAC's brief, joined by the Chamber, urges the appeals court to overturn a district court decision holding that conditioning an offer of severance pay on signing a general release is "facially retaliatory" in violation of the federal anti-discrimination laws. We dispute the agency's legal theory that federal retaliation law is broad enough to encompass situations of "anticipatory retaliation" that make an employer liable for things that have not happened. See EEAC Memorandum 05-088 (April 22, 2005).

#### **E. Section 1981**

*Domino's Pizza v. McDonald* (U.S. Supreme Court)

*Issue:* Was the Ninth Circuit incorrect in allowing a lawsuit under 42 U.S.C. § 1981 ("Section 1981") by someone who claims to have been injured by race discrimination in some contractual relationship, even if that person was not a party to the contractual relationship and was not personally the victim of discrimination?

Under the Ninth Circuit’s decision, Company A can be sued by an employee of Company B, claiming that he was injured by Company A’s race discrimination against Company B. EEAC’s brief argues that the ruling expands the scope of Section 1981 way beyond its intended coverage, and if allowed to stand raises the prospect of a flood of Section 1981 suits. See EEAC Memorandum 05-166 (July 29, 2005).

## F. Sex Discrimination

*Jespersen v. Harrah’s Operating Co.*  
(Ninth Circuit *en banc*)

*Issue:* May an employer maintain dress and grooming standards designed to promote a professional image, even if those standards differ somewhat for men and women, as long as they do not put an unequal burden on one gender?

In *Jespersen v. Harrah’s Operating Co.*, 392 F.3d 1076, 1077 (9th Cir. 2004), a three-judge panel of the Ninth Circuit affirmed a lower court ruling in favor of the employer, ruling that the employer was permitted to impose a gender-specific grooming policy — in this case, requiring female beverage servers to wear makeup — because the policy was “evenhanded.” The court granted rehearing at the plaintiff’s request. EEAC’s brief urges the full Ninth Circuit to reinstate the panel decision and points out that many employers have personal appearance standards for legitimate and non-discriminatory reasons. In this case, for instance, the policy was designed to promote and protect the employer’s public image. See EEAC Memorandum 05-128 (June 10, 2005).

*Etsitty v. Utah Transit Authority* (Tenth Circuit)

*Issue:* Did the trial court correctly dismiss the plaintiff’s claim because Title VII’s prohibition on sex discrimination does not extend to an individual who claims bias because he or she is transsexual?

EEAC’s brief supports the dismissal of a claim by a male transsexual employee who claims that Title VII of the Civil Rights Act protects his right to use the women’s restroom at work. EEAC’s brief points out that many employers voluntarily have adopted

employment policies prohibiting discrimination on the basis of sexual identity. Even voluntary efforts to ensure workplace equality for transsexuals raise complex legal and human resource challenges — including questions about which bathroom the employee should use — that Congress never considered when it amended Title VII to prohibit sex discrimination. Accordingly, we contend that it should be up to Congress to decide whether Title VII coverage should be amended again to extend coverage based on gender identity. See EEAC Memorandum 05-274 (December 16, 2005).

### G. Workplace Violence

*Williams Companies v. Henry*, No. 04-CV-820-TCK-PJC (N.D. Okla.)

*Issue:* Should the federal court enjoin a state statute that forbids employers from prohibiting employees to transport or store firearms in their motor vehicles while parked in company parking areas?

EEAC joined an *amicus curiae* brief supporting a lawsuit by a number of companies seeking to enjoin enforcement of the Oklahoma law. The complaint contends that the law is an unconstitutional taking of private property rights, is expressly preempted by federal firearms laws, and conflicts with federal safety regulations. See EEAC Memorandum 05-229 (October 14, 2005).

# Appendix F

## Summary of 2005 Regulatory Issues on Which EEAC Commented

<i>Issuing Agency/Department</i>	<i>Issue</i>	<i>Status</i>
<b>I. Employer Information Report (EEO-1) Revisions</b>		
Equal Employment Opportunity Commission (EEOC) (Memo 06-024)	<p>On November 28, 2005, the EEOC published a notice in the <i>Federal Register</i> concerning the agency's final revisions to the Employer Information (EEO-1) Report. The EEOC announced that it was submitting final revisions to the EEO-1 Report after consultations with the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP).</p> <p>On December 28, 2005, EEAC President Jeff Norris filed written comments with the Office of Management and Budget (OMB) commending the EEOC for the <i>substance</i> of its final EEO-1 revisions and for achieving the appropriate balance among the "competing interests" that guided its deliberations in this matter. President Norris further recommended that OMB, as part of its terms of clearance for the revisions, require the EEOC to: a) make clear that employers are in fact permitted to <i>collect and maintain</i> race/ethnicity data in the same seven categories as are used to <i>report</i> those data on the EEO-1 form; b) make clear that employers have discretion in determining which of the two "Officials and Managers" job categories is most appropriate for each of their management positions; c) make clear that employers will not be <i>required</i> to begin collecting and maintaining race/ethnicity data under the new classification systems until the 2007 reporting cycle; and d) take the necessary steps to ensure that all other federal EEO/AA recordkeeping and</p>	On January 27, 2006, EEOC announced that the new form had been adopted essentially as proposed, and would first be used for the 2007 reporting cycle.

\*EEAC's comment letters can be accessed from EEAC's website at [www.eeac.org](http://www.eeac.org).

*Issuing Agency/Department*

*Issue*

*Status*

reporting requirements that use the EEO-1 form's race/ethnicity and/or job category classification systems remain consistent with the changes to the EEO-1 form itself.

## II. Equal Opportunity (EO) Survey

Office of Federal Contract Compliance Programs (OFCCP) (Memo 06-019)

On October 19, 2005, OFCCP published a notice in the *Federal Register* indicating that it was seeking a three-year Paperwork Reduction Act (PRA) extension of the Equal Opportunity Survey (EO Survey or Survey) in order to permit OFCCP more time to continue its assessment and evaluation of this mandatory — and now nearly six-year-old — compliance reporting instrument. OFCCP further indicated in the notice that it would use the next three years to “conduct a cost benefit analysis to examine the effectiveness of the EO Survey as a useful tool in the selection of contractors that are not in compliance with their Equal Employment Opportunity and non-discrimination obligations.”

On December 19, 2005, EEAC President Jeff Norris submitted comments to the agency pointing to the already substantial statistical and anecdotal evidence that the Survey is *ineffective* in identifying federal contractors not in compliance. President Norris also noted OFCCP's failure to acknowledge such evidence already received from roughly 87,000 contractor establishments over

On January 20, 2006, OFCCP issued a Notice of Proposed Rulemaking (NPRM) indicating its intention to eliminate the EO Survey.

the course of nearly six years and the fact that OFCCP already has performed an outside statistical analysis of the Survey's effectiveness. In conclusion, EEAC urged OFCCP to withdraw its request for a three-year extension of the Survey, and instead either bring the Survey into compliance with the standards established by the PRA or eliminate it entirely.

### III. Internet "Applicant" Recordkeeping Requirements

OFCCP (Memos 05-227, 05-267, 06-018)

On October 7, 2005, OFCCP published its final regulation regarding the definition of "applicant" for purposes of the Internet and related technologies. EEAC presented its initial analysis of the agency's Internet applicant final regulation in Special Memorandum 05-227 (October 14, 2005).

On December 2, 2005, EEAC President Jeff Norris submitted a letter to OFCCP Deputy Assistant Secretary Charles James requesting an extension until October 1, 2006 of the effective date of the agency's final "Internet Applicant" rule in order to allow federal contractors enough time to bring their recruitment and selection practices in line with the regulation's requirements.

On January 20, 2006, OFCCP posted on its website a "frequently asked question" indicating that the February 6, 2006 effective date would not be extended, but that a 90-day enforcement grace period would be extended to contractors that could demonstrate they were taking reasonable steps to comply with the new requirements, and in the meantime were maintaining records in accordance with established OFCCP-approved procedures.

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*Issue*

*Status*

#### **IV. OFCCP Recordkeeping and Reporting Requirements for Supply and Service Contractors**

OFCCP (Memo 05-211)	<p>On July 21, 2005, OFCCP published a notice in the <i>Federal Register</i> requesting public comments on its announced intent to seek a routine three-year extension without change of its current Recordkeeping and Reporting Requirements for Supply and Service Contractors, including the agency's current desk audit scheduling letter requesting aggregate compensation data by race and gender.</p> <p>On September 19, 2005, EEAC President Jeff Norris submitted written comments to OFCCP supporting the agency's position to continue collecting only aggregate "paragraph 11" compensation data at the desk audit stage of a compliance review.</p>	Three-year extension granted by OMB through November 2008.
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#### **V. Proposed Compensation Analysis Guidelines**

OFCCP (Memo 05-011)	<p>On November 16, 2004, OFCCP published two notices in the <i>Federal Register</i>, one regarding proposed standards for defining systemic compensation discrimination, and one regarding proposed guidelines for federal contractor self-evaluation of compensation practices.</p> <p>On January 19, 2005, EEAC President Jeff Norris filed written comments with the agency on both proposals. President Norris commended OFCCP on both proposals for adopting an approach that not only is consistent with well-established legal and statistical principles, but which also</p>	Pending.
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*Issuing Agency/Department*

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represents a significant improvement over past agency practices with respect to investigating alleged compensation discrimination. At the same time, President Norris stressed the need for flexibility in how the guidelines are applied in practice.

## **VI. USERRA Notice**

U.S. Department of Labor  
Veterans' Employment and  
Training Service (DOL-VETS)  
(Memo 05-105)

On March 10, 2005, DOL-VETS posted on its website a new workplace notice form required under a 2004 legislative amendment to the Uniform Services Employment and Reemployment Rights Act (USERRA), and simultaneously published an announcement in the *Federal Register* inviting public comments on that notice.

Finalized with minor  
modifications on  
December 19, 2005.

On May 4, 2005, EEAC General Counsel Ann Reesman submitted written comments to DOL-VETS recommending that the agency adopt the notice without change, and arguing that any subsequent amendments to the notice would require employers to spend additional time and resources to comply with this new requirement. General Counsel Reesman also urged DOL-VETS to confirm in its final rule that electronic transmission of the notice via e-mail is compliant, as is posting the notice on the employer's intranet website if that is where other notices are posted for employees.

*Issuing Agency/Department*

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## **VII. ADA Accessibility Guidelines**

U.S. Department of Justice  
(DOJ) (Memo 05-123)

On September 30, 2004, DOJ published an Advanced Notice of Proposed Rulemaking (ANPRM) in the *Federal Register* concerning the adoption of revised Americans with Disabilities Act Accessibility Guidelines (ADAAG) for Buildings and Facilities recently issued by the Architectural and Transportation Barriers Compliance Board (Access Board). (EEAC's response to the ANPRM focused primarily on the *Employee Work Areas* section.)

Pending.

On May 31, 2005, EEAC President Jeff Norris submitted written comments to DOJ strongly recommending the retention of the exemption for employee work areas contained in the current ADAAG. President Norris emphasized that although well-intentioned, the Access Board's proposed expansion of ADAAG into employee work areas would encroach on the carefully crafted relationship that Congress designed between Titles I and III of the ADA with respect to workplace application. President Norris further recommended that DOJ clarify that any revisions to the existing ADAAG be applied only prospectively.

# Appendix G

## Summary of Federal Legislation Monitored by EEAC During the Second Session of the 109th Congress (2005)

### I. Immigration Reform

H.R. 1268 (REAL ID Act of 2005 – Public Law No. 109-013); H.R. 4437 (Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005); H.R. 98 (Illegal Immigration Enforcement and Social Security Protection Act of 2005); S. 1438 (Comprehensive Enforcement and Immigration Reform Act of 2005); S. 1033 (Secure America and Orderly Immigration Act of 2005) (*Memos 05-115; 05-145; 05-269*)

The READ ID Act was added as an amendment to an Iraq supplemental appropriations bill. Among other things, it sets federal standards for the issuance of state drivers' licenses. Once the REAL ID standards go into effect in 2008, employers would not be able to accept a state driver's license or state identification card as a Form I-9 proof of identity (List B) document, unless the license or card has been issued subject to the new REAL ID standards.

Several comprehensive immigration reform bills were introduced into Congress in 2005. H.R. 4437, which passed the House, would mandate participation by *all* employers in the Basic Pilot Program for verification of *new* hires and also require employers to reverify *previously-hired* employees. The bill also would subject employers to increased civil penalties for failure to comply with employment eligibility verification requirements. All of the other comprehensive reform bills were referred to committee, where no further action was taken.

### II. Cash Balance Plans/Pension Reform

H.R. 2830 (Pension Protection Act of 2005); S. 1783 (Pension Security and Transparency Act of 2005) (*Memos 05-136; 05-156; 05-214*)

H.R. 2830 verifies the legality of cash balance pension plans by creating a simple age discrimination test to be applied when employers convert existing

defined benefit pension plans to the cash balance type. However, the provision applies only prospectively. S. 1783 contains language making clear that a cash balance plan or similar hybrid pension plan will *not* violate the statutory prohibitions on age discrimination. Again, the provision would apply only prospectively.

H.R. 2830 passed the House on December 15, 2005. S. 1783 passed the Senate on November 16, 2005. A conference committee was announced to work out differences between the bills, but no agreement was reached before Congress adjourned for the year. Negotiations will continue in 2006.

### III. Phased Retirement

S. 1826 (Older Worker Opportunity Act) (*Memo 05-239*)

The Older Worker Opportunity Act would create tax credits for employers that offer flexible work-time arrangements or phased retirement programs to older workers on terms that allow them to continue participating in employer-sponsored health insurance and pension plans. The bill also addresses loss of healthcare coverage before older workers become eligible for Medicare, elder care obligations, and lack of access to employment training services.

S. 1826 was referred to the Senate Finance Committee. No further action was taken.

### IV. Personal Privacy Protection

H.R. 3804 (Identity Theft Relief Act of 2005); H.R. 1745 (Social Security Number Privacy and Identity Theft Prevention Act of 2005); H.R. 1078 (Social Security Number Protection Act of 2005); H.R. 220 (Identity Theft Prevention Act of 2005); S. 1408 (Identity Theft Protection Act); S. 1332 (Personal Data Privacy and Security Act of 2005); S. 810 (Safeguarding Americans from

Exporting Identification Data Act); S. 116 (Privacy Act of 2005); S. 29 (Social Security Number Misuse Prevention Act) (*Memo 05-195*)

A variety of bills designed to enhance personal privacy protection were introduced in both the House and Senate. Among provisions included were protection of Social Security Numbers (SSNs) from security breaches, such as prohibiting the use of SSNs on employee identification cards; prohibiting the display of any individual's SSN to a third party without the individual's consent; prohibiting employers and employer-sponsored employee benefit plans from using SSNs for identification purposes; prohibiting the "display" of SSNs but exempting the use of SSNs to prevent fraud or to facilitate credit and background checks; and prohibiting cross-border transfers of personally identifiable data.

All of the bills were referred to committee, where no further action was taken.

## V. Class Action Reform

S. 5/H.R. 516 (Class Action Fairness Act – Public Law No. 109-2) (*Memo 05-038*)

Congress passed class action reform legislation designed primarily to curb abuses that have arisen in the context of *consumer* class actions. Included however, are new provisions which: allow a class action to be filed in or moved to federal court if at least one plaintiff and one defendant are from different states and the amount sued for is greater than \$5,000,000; prohibit approval of a settlement that gives more to class members who live closer to where the lawsuit is filed; require notice to appropriate federal or state officials (*e.g.*, the Attorney General) of a proposed settlement; forbid a court from approving a settlement less than 90 days after the notice; and allow a class member to opt out of the settlement if the required notice is not given.

P.L. 109-2 was signed into law by President Bush on February 18, 2005.

## VI. Violence Against Women Reauthorization Act

H.R. 3402 (Violence Against Women and Department of Justice Reauthorization Act of 2005–Public Law No. 109-162) (*Memo 05-150*)

As introduced, the House and Senate bills contained "emergency leave" from employment provisions modeled after the Family and Medical Leave Act (FMLA). However, the leave entitlement was removed from the final version of the law and replaced with a grant award program to provide for a national resource center on workplace responses to assist victims of domestic and sexual violence.

P.L. 109-162 was signed into law by the President on January 5, 2006.

## VII. Workplace Religious Freedom

H.R. 1445/S. 677 (Workplace Religious Freedom Act of 2005) (*Memos 05-087; 05-256*)

For the fifth Congress in a row, legislation to expand the duty of employers to accommodate employees' religious practices and beliefs was introduced in both the U.S. Senate and House of Representatives. WRFA 2005 would amend Title VII to bring religious accommodation in line with the more stringent reasonable accommodation requirement contained in the Americans with Disabilities Act (ADA).

H.R. 1445 was referred to the House Education and the Workforce Committee, where the Subcommittee on Employer-Employee Relations held hearings on the bill. S. 677 was referred to the Senate Health, Education, Labor and Pensions (HELP) Committee. No further action was taken.

## VIII. Job Training/Faith-Based Legislation

H.R. 27 (Job Training Improvement Act of 2005); S. 1021 (Workforce Investment Act Amendments of 2005) (*Memo 05-118*)

The House version of the reauthorization of the Workforce Investment Act includes a provision that would make faith-based organizations eligible to receive federal job training funds by expressly exempting them from the law's nondiscrimination requirements. The Senate version does not include this faith-based exemption. H.R. 27 passed the House on March 2 and was referred to the Senate HELP Committee. S. 1021 was passed by the Senate HELP Committee on September 7 and placed on the Senate Legislative Calendar. No further action was taken.

## IX. Genetic Discrimination

H.R. 1227/S. 306 (Genetic Information Nondiscrimination Act of 2005) (*Memo 05-034*)

Legislation that would ban *intentional* employment and health insurance discrimination based on an individual's genetic information unanimously passed the Senate early in the session. The legislation also would make it unlawful for employers to request or obtain genetic information about individuals or their family members, except in limited circumstances and prohibits an employer from refusing to hire or otherwise discriminate against a person because the person or their family member requested a genetic test or other genetic service. The bill also specifies that no violation occurs where an employer inadvertently acquires genetic information and that disparate impact on the basis of genetic information will not establish a violation.

S. 306 passed the Senate on February 17, 2005. H.R. 1227 was referred to the House Subcommittee on Employer-Employee Relations, where no further action was taken.

## X. Freedom of Information Act Amendments

H.R. 867/S. 394 (OPEN Government Act of 2005) (*Memo 05-064*)

Both the House and Senate proposed amendments to the Freedom of Information Act (FOIA) designed to expand the openness of the federal government in a direction more responsive to information requests from the public. If enacted as introduced, however, the legislation also would remove most of the protection afforded to sensitive company documents in the government's possession. One provision even would appear to prevent any agency that was tardy in responding to a FOIA request from claiming any of the exemptions that protect records, except in some very limited conditions.

S. 394 was referred to the Senate Judiciary Committee – Terrorism, Technology and Homeland Security Subcommittee, which held a hearing in March, 2005. H.R. 867 was referred to the House Government Reform Committee. No further action was taken.

## XI. Federal Highway Bill

H.R. 3 (Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU – Public Law 109-59) (*Memos 05-130; 05-187*)

The Senate version of the federal highway funding authorization bill (S. 732) initially contained provisions that would have eliminated tax deductions for punitive damages and certain settlement amounts. These were not included in the House version (H.R. 3), which was eventually enacted into law following preparation of the conference report.

PL-109-59 was signed into law by President Bush on August 10, 2005.

## **XII. Hurricane Katrina Relief**

H.R. 3768/S. 1696 (Katrina Tax Relief Act of 2005 – Public Law No. 109-73)  
(*Memo 05-219*)

The Hurricane Katrina Tax Relief Act expanded the Work Opportunity Tax Credit to all employers who hire survivors of Hurricane Katrina as new employees. The new law defined “Hurricane Katrina employee” as an individual whose principal place of residence as of August 28, 2005, was in the core disaster area.

P.L. 109-73 was signed into law by President Bush on September 23, 2005.

## **XIII. Banning Workplace Naps**

H.R. 40105/S. 40105 (Workplace Alert to Knapping Employees Under Pressure)  
(*Memo 05-300*)

The so-called WAKEUP bill is designed to address the emerging workplace problem of employees who tend to doze off in response to job pressure, which has been shown to have negative morale and productivity impacts. The bill would require employers to install alarms at all employee work stations that would have to sound off at least once every hour during a work shift. Failure to comply could result in serious penalties, including having to watch reruns of every professional bowling event ever recorded.

The House and Senate bills were both referred to Committee, where action is possible in 2006.

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