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# Message to Members 2007

## A Mutually Beneficial Partnership

The enlightened handful of company representatives that created EEAC back in 1976 believed that their common objective of complying with our nation's civil rights laws could best be accomplished by operating on a collaborative rather than individual basis. For over thirty years the EEAC member companies and staff have worked hard to prove them right — and by all measures they were right. It has proven to be a mutually beneficial partnership. One member describes EEAC as “a lifeline for EEO/AA professionals”; another as “a one-stop resource for timely, legally-based, comprehensive EEO/AA materials with a variety of delivery options.” What do members say they most appreciate about EEAC?

### *Access to Pertinent Information*

- “EEAC covers exactly what my group needs to know. You speak our language, and you get the information directly from the source — the courts, EEOC and OFCCP. Each memo not only provides an update on the latest activity in a given area, it also adds practice tips and lists a contact person for further information.”
- “EEAC is *the best* when you are looking for *usable* information and services to help you meet your legal and regulatory obligations.”

### *Knowledge and Accessibility of EEAC Staff*

- “[T]here is a trust element in all of our dealings with EEAC staff. We trust the information and guidance that EEAC provides in all aspects of EEO/compliance. I have confidence that you're not just ‘shooting from the hip,’ but staying well-connected with all the topics and providing excellent thought leadership on topics.”
- “The EEAC staff is much more in touch with how things work within a company and this makes the memos and suggestions far more helpful than most law firm memos.”
- The “EEAC leadership team is very approachable and easy to do business with; there is a real sense that the leadership team is genuinely trying to help.”

### *High Quality Training Programs*

- The “training and seminars run the gamut from laying the EEO/AA compliance foundation to enhancing the knowledge base of a seasoned EEO/AA practitioner. The content is equally appropriate for the Hiring Manager as well as those in Compensation, Legal and HR departments.”

### *Meetings and Forums*

- “The twice-yearly meetings ... provide a first-hand opportunity for us to hear from high-level officials within the government, get insight from EEAC staff, and network with other professionals in a relaxed environment.”

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# Message to Members 2007

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## *Provides a Voice in Matters That Impact Corporate America*

- EEAC provides “direct access to the leaders of the Federal departments that make ... regulations” and “the opportunity to influence those leaders and the regulations through the strong historical relationship and reputation that the EEAC has in this arena.”
- “EEAC clearly understands the challenges we face in the business world and you actively work with the government agencies to convey our point of view. As a member company I always feel that you are working with our best interests at heart.”

## *Serves as a Proactive Partner*

- “EEAC is out ahead of things. We’re all so busy in our jobs and tend to be in “reactive” mode quite a bit. EEAC helps me a great deal by alerting me to what’s coming up — what are the trends — what are other companies doing — what are various government agencies planning/ thinking. This helps me to do my job better and be better prepared.”
- “My team and I consistently find opportunities to leverage the knowledge, tools and insights we gain from our EEAC membership .... By enabling us to work smarter, not harder, we can devote more of our limited resources toward proactive measures and less on audits.”

It is not, however a one-way street. The EEAC staff could not provide these services were it not for the encouragement, support and active participation of EEAC member company representatives. Whether it is service on the Board of Directors, Task Forces, Committees, or participation as a speaker or panelist at a meeting, forum or roundtable, members are willing — even anxious — to share their experiences and expertise with the staff and other members. Even the daily, routine Clearinghouse calls help us to stay in touch with the issues and challenges members face, and provide a blueprint for additional services. It is this ongoing member and staff commitment to EEAC as an organization that has created the “mutually beneficial partnership” that has served us all so well for more than three decades.

One EEAC member commented that “the overall impression I take away from every EEAC activity, service and product is excellence and quality that I can rely upon.” Speaking on behalf of the EEAC staff and management, the same can be said of our members. We look forward to continuing the partnership in 2007-2008.



Sue Werber  
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, EDR 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 2006-2007 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.

# 2006 EEAC Staff

Jeffrey Norris	President
John Tysse	Chief Operating Officer
Rae Vann	General Counsel
Judith Lampley	Secretary/Director of Training/Counsel
Judy Jackson	Treasurer
Laura Giantris	Assistant General Counsel
Joseph Lakis	Senior Counsel
Robert Williams	Senior Counsel
Ann Reesman	Senior Counsel
Nancy Nelkin	Director, Audit Services
William Holmes	Senior Consultant
David Rainwater	Senior Consultant
Cynthia Valadez	Senior Consultant
Chris Gokturk	Senior Consultant
Nick Kuriger	Director of Information Technology
Tim Fitzpatrick	Information Technology Analyst
John Steiger	Legal Assistant
Nicole McDuffie	Administrator
Monica Barbour	Administrative Assistant
James Ragsdale	Training 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 2006 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 and Member Networks

- **Workplace Violence Clearinghouse**

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 Clearinghouse**

EEAC's EEO Data Gathering Groups Clearinghouse was created in response to efforts by 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 Clearinghouse**

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.

- **Mediator/Arbitrator Clearinghouse**

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.

- **Employee Groups Network**

Whether a company calls them "Affinity Groups," "Networking Groups," "Resource Groups," or something else, many employers now have some type of employee group initiative as part of their culture. EEAC's **Employee Groups Network** is designed to allow member company representatives with responsibility for coordinating, managing, and/or

operating their employee groups to share information with each other in a private, facilitated virtual setting.

- **EDR Coordinators Network**

The **EDR Coordinators Network** provides a home for member company representatives with responsibility for coordinating, managing, or operating an in-house EDR (Employee Dispute Resolution) program. The Network gives EDR coordinators with a unique opportunity to share information with each other in a private, facilitated virtual setting. We welcome the participation of any EEAC member company representative with an interest. There is no charge to participate, and there is no limit to the number of participants per member company.

- **FAAP Compliance Network**

The **FAAP Compliance Network** serves as an information-sharing resource for those companies that have received — or are considering requesting — Office of Federal Contract Compliance Programs (OFCCP) approval of a functional affirmative action program (FAAP) structure. The FAAP Compliance Network provides member company representatives with an opportunity to share information concerning the design, development, and implementation of functional AAPs, as well as information about OFCCP's functional AAP approval and auditing procedures. All interested EEAC member company representatives are welcome.

- **Influenza Pandemic Network**

EEAC's **Influenza Pandemic Network** is designed to assist member companies in preparing for the possibility of a pandemic flu outbreak. The Network offers private sector information and government and public health resources designed for this purpose.

- **Global Employers Network**

The **Global Employers Network** is designed to serve as a resource for EEAC members who have an interest in the fair employment practice requirements in countries other than the U.S. Participants are able to use the Network to exchange ideas and best practices on such issues as monitoring global EEO compliance, global diversity strategies, and specific HR issues encountered by EEAC members in particular countries.

- **Lawyers Network**

The **Lawyers Network** is a contact group that enables member company in-house employment counsel to benchmark with each other in a private, facilitated virtual setting in between EEAC's semiannual McDowell Legal Forums. There is no charge to participate, and there is no limit to the number of participants per member company.

### **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®**

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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.

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**What's New**

EEAC's 2007 Annual Meeting will be held on March 14 to 16 at the Marriott Metro Center hotel in Washington, D.C. We've put together an informative three days of featured speakers, issue updates, workshops and other sessions, as well as plenty of opportunities to network with your colleagues. If you haven't yet signed up, please take a moment to register and plan on joining us. [Click here](#) for agenda and registration information. EEAC members and invited guests 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 23, 2007:**

- 07-038 EEAC's Brief in *BCJ v. EEOC* Urges Supreme Court To Reject Tenth Circuit's Expansive Interpretation of "Cat's Paw" Legal Standard
- 07-039 EEOC's 2006 Charge Data Reveal Significant Increase in "Commissioners" Charges, Suggesting Agency's Systemic Enforcement Initiative Is Well Underway
- 07-040 Full Parity for Employer-Provided Mental Health Benefits Could Get Congressional Approval This Year
- 07-041 Two Federal Agencies Issue New Guidance to Employers on Preparing for Possible Influenza Pandemic
- 07-042 Eighth Circuit in *EEOC v. City of Independence* Rules That Leave Donation Policy Violated ADEA by Excluding Retirement Eligible Employees
- 07-043 Ninth Circuit Revises Earlier Decision in *U.S. v. Ziegler*, Concludes That Employees Have Reasonable Privacy Interest In Company Computers

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Notice    [Register Now for EEAC's 2007 Spring Training Seminars](#)

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Meetings & Forums	
Annual Membership Meeting	Mar 14-16 - Washington, DC
EDR Discussion Forum	Apr 19 - Washington, DC

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Training Programs & Seminars	
Responding to Charges of Employment Discrimination	Mar 27-28 - Washington, DC
Basic EEO	Apr 11-12 - Washington, DC
Developing & Defending Compliant AAPs	Apr 24-26 - Washington, DC
Conducting a Compensation Analysis	May 8-9 - Washington, DC
Writing Effective Position Statements	May 17 - Washington, DC
Basic EEO & Affirmative Action Compliance	Jun 12-14 - Washington, DC
Responding to Charges of Employment Discrimination	Jun 19-20 - Washington, DC
Developing & Defending Compliant AAPs	July 10-12 - Washington, DC
EEO/AA Compliance Immersion Program	July 16-20 - Washington, DC
Writing Effective Position Statements	Sept 11 - Washington, DC
Developing & Defending Compliant AAPs	Sept 18-20 - Washington, DC
Basic EEO	Sept 26-27 - Washington, DC

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**Publications & Products**

- EEAC's Comp Auditor® II Software
- EEO Essentials for Recruiters
- Conducting Effective Internal Investigations
- Sexual Harassment
- Maintaining Harassment Free Work Environ. California Edition
- Self Audit Checklist
- EEO Resource Manual
- Managing OFCCP Compliance Evaluations
- Preventing Sex Discrimination
- On-Line Training
- Managers 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 has filed more than 570 *amicus curiae* briefs. A detailed description of EEAC's 2006 *amicus curiae* activity is contained on the following page and in Appendix E.

## **Regulatory Comments and Testimony**

EEAC files detailed written comments to, 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 2006 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 2006 covered issues such as how and when to raise good-faith objections to an assertion of OFCCP jurisdiction in an audit, the options available to companies for setting or resetting their AAP cycles, and a guide for developing a compliant AAP "action-oriented program."

## **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.

# 2006 Issue Highlights

Summarized below are specific legal, regulatory and policy issues addressed by EEAC in 2006.

## 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 2006. EEAC has filed a total of 573 *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 (SHRM). Our 192 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 2006, EEAC submitted briefs in 16 cases, dealing with a wide variety of employment-related issues, and saw decisions in quite a few cases briefed in 2006 and before.

In the U.S. Supreme Court, we argued unsuccessfully that claims of retaliation must involve an "adverse employment action." The Court, however, ruled broadly in *Burlington Northern Santa Fe v. White* that an employer can be liable under Title VII for any retaliatory action that "could well dissuade a reasonable worker from making or supporting a charge of discrimination." The Court did agree with us in *Domino's Pizza v. McDonald* that:

a race discrimination plaintiff who does not have an actual or potential contractual relationship with the defendant cannot bring a claim under 42 U.S.C. § 1981. In *Ledbetter v. Goodyear*, we argued to the High Court that the statutory deadline for filing a timely claim of pay discrimination under Title VII begins to run when a decision affecting pay is made. We anticipate a decision in that case some time next year.

The enforceability of releases, in which an employer gives money or other benefits in exchange for a waiver of claims against the company, continues to be an important topic for EEAC member companies. We were successful in helping to convince the Tenth Circuit to delete problematic language from its decision in *Kruchowski v. Weyerhaeuser*, and the Eleventh Circuit to reverse a lower court decision making releases difficult to enforce in *Burlison v. McDonalds*. In *EEOC v. SunDance Rehabilitation*, we helped to convince the Sixth Circuit that releases are not a form of unlawful retaliation under the discrimination laws. Finally, joined by the Chamber and SHRM, we supported the company's successful effort to have a Fourth Circuit panel rehear a ruling that releases of claims under the Family and Medical Leave Act (FMLA) are unenforceable without DOL or court approval, and we await the final decision in that case.

The continuing development of substantive issues involving the Americans with Disabilities Act (ADA) warrants EEAC's attention as well. In *Bates v. United Parcel Service*, the Ninth Circuit, contrary to EEAC's arguments, made it very difficult for a company to enforce a safety-based qualification standard, and we have filed another brief supporting the company's request for the court to rehear the case. We argued to the Eighth Circuit in *Huber v. Wal-Mart* that the ADA stops short of requiring an employer to give an individual with a disability a preference over another, better-qualified candidate when considering job reassignment as a reasonable accommodation. We also argued to the Eighth Circuit that rotating shifts can be an "essential function" under the ADA in *Rehrs v. Iams and Procter & Gamble*.

Similarly, the courts continue to develop the law on FMLA issues. We argued to the Eleventh Circuit in *Mahoney v. Nokia* that the FMLA does not require the clients of staffing companies to provide intermittent or reduced schedule leave to the workers they lease. In *O'Reilly v. Rutgers University*, we argued to the Third Circuit that the FMLA does not give an employee the right to dictate to whom she will submit a requested medical certification that supports her request for FMLA medical leave. We contended in *Rucker v. Lee Holding Co.* in the First Circuit that the lower court was correct to hold that the Family and Medical Leave Act (FMLA) does not permit an employee to merge distinct periods of employment separated by a five-year gap to meet the law's eligibility requirement of a minimum of 12 months of employment with the employer.

EEAC frequently briefs cases involving potential workplace violence issues. We argued successfully to the Second Circuit in *Sista v. CDC IXIS* that an employee cannot use the ADA or the FMLA as a shield against the consequences of physically threatening his boss.

EEAC continues to participate in cases setting the parameters for employment discrimination class actions. In *Reeb v. Ohio Dept. of Rehab. and Corrections*, the Sixth Circuit ruled that a Title VII lawsuit in which plaintiffs seek individual compensatory damages for alleged employment discrimination cannot be certified as a class action under F.R.C.P. 23(b)(2). EEAC has briefed several other cases on this issue, and the circuits are divided. We still await a Ninth Circuit decision in the *Dukes v. Wal-Mart* sex discrimination case, which we briefed in 2004.

The Department of Labor Administrative Review Board is considering some of its first substantive cases involving the whistleblower provisions of the Sarbanes-Oxley (SOX) Act, and EEAC has been in a number of them. We argued successfully in *Platone v. FLYi, Inc.* that a complainant in a SOX case must

prove that she engaged in protected activity, which must specifically involve reports of fraud against shareholders. We have also briefed *Smith v. Hewlett Packard*, arguing that the administrative law judge ruled correctly in concluding that a claim of unlawful retaliation by an employee relations consultant who threatened to bring a race discrimination charge is outside the scope of prohibited conduct that Sarbanes-Oxley protects against, and *Ambrose v. U.S. Foodservice*, arguing that SOX does not cover a non-public company merely because it happens to be the subsidiary of a publicly-traded company, and we await the results of those cases.

Some cases that EEAC briefs truly form the leading edge of employment discrimination law. We argued successfully to the Ninth Circuit in *Jespersen v. Harrah's* that employers may impose gender-specific grooming policies without violating Title VII as long as the policies are consistently applied. Several such trend-setting cases we briefed are still pending. In *AARP v. EEOC*, we supported the EEOC's authority to issue a regulation exempting from the Age Discrimination in Employment Act (ADEA) retiree health programs that coordinate benefits with Medicare, and argued to the Third Circuit that the regulation as proposed meets applicable legal requirements. We argued to the Eighth Circuit in *Standridge v. Union Pacific* that Title VII of the Civil Rights Act, as amended by the Pregnancy Discrimination Act (PDA), does not mandate that an employer provide coverage for contraceptives as part of the prescription drug insurance coverage it offers to employees. As companies, largely successfully, fend off attacks to their cash balance pension plans, we told the Third Circuit in *Register v. PNC Financial Services Group* that both sound legal reasoning and strong public policy considerations support allowing employers to continue to exercise needed flexibility to convert traditional defined benefit pension plans to the "cash balance" variety. And finally, we supported the company's request for full court review of a Tenth Circuit panel decision allowing irrelevant and prejudicial "me too" witnesses to testify in a

discrimination trial in *Mendelsohn v. Sprint/United Management Co.*

Additional information about EEAC's 2006 *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 2006 were the OFCCP's development and issuance of its final systemic compensation discrimination guidelines; the withdrawal of OFCCP's controversial Equal Opportunity Survey; the efforts of both OFCCP and DOL-VETS to finalize two new sets of regulations on veterans AAP and reporting requirements; OFCCP's efforts to clarify its 2005 "internet applicant" regulation; DOL's decision to eliminate America's Job Bank and the related implications for federal contractors; the Department of Homeland Security's proposed regulation on the electronic completion and retention of Employment Eligibility Verification forms (Form I-9s); EEOC's final revisions to the Employer Information (EEO-1) Report; and EEOC's efforts to develop and implement a new systemic discrimination enforcement strategy.

For both OFCCP and federal contractors, 2006 was an active year. The year began with OFCCP issuing a massive wave of "advance notice" letters identifying more than 9,000 contractor establishments for possible review, a move that suggested OFCCP was planning on more than doubling the average number of audits it completes in any given year. And even though it became clear by year's end that OFCCP would complete substantially fewer than 9,000 audits, the agency nevertheless announced that it had collected a record high amount of financial relief for victims of unlawful employment discrimination, primarily as a result of OFCCP's systemic discrimination enforcement initiative.

OFCCP also was active in the development of EEO/AA policy. First, the agency proposed and then finalized the formal elimination of its controversial Equal Opportunity Survey, a measure that EEAC had been urging the agency to take for several years. OFCCP also proposed (but did not finalize) a new set of regulations implementing the veterans-related affirmative action compliance requirements established by the 2002 Jobs for Veterans Act (JVA), including regulations that, when finalized, will affect how the Vietnam Era Veterans' Readjustment Assistance Act's (VEVRAA) mandatory job listing requirements can be satisfied. At the "sub-regulatory" level, OFCCP issued several sets of Frequently Asked Questions (FAQ) attempting to clarify the agency's 2005 "internet applicant" regulation. OFCCP also finalized two important guidance documents on the subject of systemic compensation discrimination, one establishing voluntary standards that contractors could follow when conducting self-critical analyses of their compensation practices, and the other establishing the statistical and legal standards by which OFCCP would evaluate a contractor's compensation practices for evidence of unlawful discrimination.

OFCCP was not the only DOL agency to influence EEO/AA compliance policy in 2006. DOL's Veterans' Employment and Training Service (DOL-VETS) proposed new JVA reporting

regulations that would require some contractors to collect and maintain data on seven separate veterans categories and prepare and submit two separate VETS-100 forms for each establishment. DOL's Employment and Training Administration (ETA) also stepped into the JVA fray, by announcing that it was shutting down America's Job Bank (AJB) — the primary method used by most large federal contractors to satisfy their mandatory job listing requirements under VEVRAA — effective June 30, 2007.

Not surprisingly, 2006 also saw several important policy developments at the EEOC, including the development and implementation of a new enforcement initiative aimed at systemic discrimination, a much-anticipated clarification on the race/ethnicity categories to be used in the revised Employment Information (EEO-1) Report beginning in 2007, a restructuring of the Commission's field offices, and a rulemaking to conform EEOC's Age Discrimination in Employment Act (ADEA) regulations to the Supreme Court's 2004 "reverse age discrimination" decision in *General Dynamics v. Cline*.

Finally, EEAC also reported on — and filed comments in support of — an interim rule by the Department of Homeland Security (DHS) that gives employers the option of electronically completing, signing, and storing Employment Eligibility Verification forms (Form I-9s). The interim rule reflected many of the specific suggestions that EEAC and other members of the "Employers' Electronic I-9 Coalition" offered during DHS's deliberative process, of which EEAC was a participating member.

For a complete detailed listing of the EEO/AA regulatory issues upon which EEAC commented during 2006, 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, that could impact our member companies.

Appendix G provides a summary of the federal legislative issues monitored by EEAC in 2006.

## State and Local Developments

During 2006, EEAC also reported on a number of developments involving state and local laws. Topics covered included employment verification of undocumented workers, paid sick leave, affirmative action bans, same-sex marriage, mandatory sexual harassment training, smoking bans, workplace and domestic violence initiatives, parking lot gun laws, medical marijuana use, and employment arbitration agreements.

## International Developments

EEAC reported on a number of international employment law issues in 2006. For instance, EEAC prepared memoranda on the challenges to U.S. companies posed by international data protection laws; a Canadian Supreme Court decision on Canada's comparable worth mandate; the effect of Sarbanes-Oxley compliance obligations on France's ban on whistleblower hotlines; and a global workforce study that identified key factors in attracting and retaining skilled workers. EEAC also alerted members to the new age discrimination regulations and sex and disability discrimination requirements in the United Kingdom, as well as a broad employment antidiscrimination law in Germany and a new process in Ontario for the processing of employment discrimination charges.

EEAC also introduced its new web-based *International Resources Library* in 2006. The *Library* contains information about the labor and employment laws, enforcement processes, workforce statistics, and other workforce issues relating to more than 75 foreign countries where EEAC member companies may do business. The *Library* was created in response to the ongoing interest expressed by many member companies for more information regarding fair employment practice obligations in other countries. Most EEAC member companies today have global operations, and the *Library* provides convenient one-stop access to a wealth of international workforce-related laws and compliance requirements.

# 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.

### *Membership Committee*

The Membership 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.

### *EDR Discussion Forum*

EEAC sponsors an EDR Discussion Forum to provide interested members with timely and up-to-date information on developments in the area of Employment Dispute Resolution (EDR). The Forum typically features presentations by EEAC members who describe their own companies' in-house EDR

programs, as well as an EEAC staff update on legal, legislative, and regulatory developments. In 2006, EEAC launched its EDR Coordinators Network, through which EDR Forum participants can continue to dialogue and benchmark informally on EDR trends and developments.

### **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.

### **“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 2006 membership meetings can be found in Appendix D.

## Training Seminars and Publications

### *EEAC's Training Center*

Entering its fourth 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 and managing OFCCP compliance evaluations, employment discrimination charge processing, conducting compensation analyses, and writing effective position statements. These programs and their 2007 dates are described in greater detail in Appendix C.

During 2006, EEAC also held a number of special seminars on the Internet Applicant regulations and analyzing executive compensation and variable pay for potential employment discrimination.

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

Introduced for the first time in 2005, EEAC's *EEO/AA Compliance Immersion Program* is now a core component of EEAC's training curriculum. The *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*, *Responding to Charges of Employment Discrimination*, 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.

The 2007 session of the *EEO/AA Compliance Immersion Program* is scheduled for July 16-20, 2007.

### *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 is 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 2006, in-house programs were presented to the following organizations:

Arrow Electronics	JPMorgan Chase
BAE Systems	Liz Claiborne
Bausch & Lomb	Lockheed Martin
Burlington Northern Sante Fe	Mayo Clinic
Caterpillar	Nestle
Cingular	Northrop Grumman
CNA	Parker Hannifin
Dart Container	Sodexo
Goodyear	Tesoro
Hallmark	U.S. Cellular
Johnson Matthey	U.S. Steel

### **Web Workshops**

In 2006, 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 workshops on résumé searches under the new Internet Application regulations, the new EEO-1 form, new Department of Labor compensation guidelines, the Older Workers Benefits Protection Act, the Department of Homeland Security's Basic Pilot Program, and a five-part series of workshops for company recruiters on the new Internet Application regulations.

### **Managers' Pamphlet Series**

EEAC introduced one new pamphlet in its "Managers' Pamphlet Series" in 2006. The new pamphlet covered what managers and supervisors need to know about preventing sex discrimination in the workplace.

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 new pamphlet, there are 18 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;*
- *What Managers Should Know About Protecting the Privacy of Employees' Personal Information;*
- *What Managers Should Know About Employment Selection Testing; and*
- *What Managers Should Know About the Sarbanes-Oxley Act and Whistleblower Rights.*

### **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. This process is now complete, 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.

#### *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.

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>.

# 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® II Software

EEAC's Comp Auditor® II compensation analysis software is designed to assist member companies in conducting self-audits of their compensation systems to identify areas of potential discrimination. EEAC's Comp Auditor® II builds upon previous versions of this powerful compensation analysis software by adding advanced features that were not available in previous versions, including an enhanced data import function, the ability to conduct customized mean and regression analyses, enhanced displays, and enhanced reporting and exporting features that display your data and analyses and enable you to create PDF files and export data to Microsoft Excel® and Access®. The EEAC Comp Auditor® II 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 Evaluation 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.

*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

## 2006–2007 Board of Directors

Hayward Bell  
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Raytheon Company  
Waltham, Massachusetts

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International Paper  
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Director, Diversity & Workplace Fairness  
The Coca-Cola Company  
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Dennis Butler  
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The Great Atlantic & Pacific Tea Co., Inc.  
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Indianapolis, Indiana

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

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Employee Relations Manager  
Cargill, Inc.  
Minneapolis, Minnesota

Natalie Trueheart  
Manager, Fair Employment Practices  
Delphi Corporation  
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Sue Werber\*\*\*  
Sr. Director, EEO/AA & Immigration Services  
Marriott International, Inc.  
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Doug Wilson\*  
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Shell Oil Company  
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John Yeager\*  
Director, Compliance  
Anheuser-Busch Companies, Inc.  
St. Louis, Missouri

James Zappa  
Assistant General Counsel  
3M Company  
St. Paul, Minnesota

# Appendix B

## Topical Index of 2006 EEAC Memoranda

### ADA/REHABILITATION ACT

- 06-21 EEOC Opinion Letter Provides Example of When Pre-Offer Invitations To Self-Identify Are Permissible Under ADA (January 27, 2006)
- 06-22 EEAC Urges Ninth Circuit in *Joephys v. Pacific Bell* To Reconsider Its Ruling That Employer Violated ADA by Failing To Rehire Individual With History of Violence (January 27, 2006)
- 06-37 “Bad Back” Charges Are Common Under the ADA, but Courts Generally Have Found That Back Impairments Do Not Qualify as a Covered Disability (February 17, 2006)
- 06-55 Labor Department’s ODEP Has Developed a Number of Programs and Resources To Assist in Employing Individuals With Disabilities; Employers With Exemplary Programs Might Want To Self-Nominate for New Freedom Initiative Award (March 10, 2006)
- 06-64 ADA Title III Settlement Between Justice Department and Ticketmaster Serves as Important Reminder That ADA Can Affect Companies Beyond Just Employment (March 24, 2006)
- 06-66 ADA May Require Worksite Presence of Service Animal To Allow Disabled Worker To Perform Job, Creating Special Challenges for an Employer (March 24, 2006)
- 06-94 Second Circuit in *Sista v. CDC IXIS*, Agreeing With Arguments Raised in EEAC’s *Amicus* Brief, Rejects ADA and FMLA Claims of Employee Who Threatened Supervisor (April 28, 2006)
- 06-107 EEOC To Hold June 7 “Employer Roundtable” on Emergency Preparedness and People with Disabilities (May 19, 2006)
- 06-111 Oregon Supreme Court Rules That Employer Can Fire Medical Marijuana User for Violating Drug-Free Workplace Policy, but Ducks Accommodation Issue (May 19, 2006)
- 06-123 EEAC’s Brief in *Rehrs v. Procter & Gamble* Argues That Ability To Work Rotating Shifts Can Be Essential Job Function Under the ADA (June 9, 2006)
- 06-132 EEOC Forum on Emergency Planning and Disability Features Testimony by Three EEAC Member Companies (June 16, 2006)
- 06-142 Requests To Accommodate Mental Disabilities Continue To Pose Challenges for Employers Under the ADA (June 30, 2006)
- 06-162 EEAC’s *Amicus* Brief in *Huber v. Wal-Mart* Argues That ADA Does Not Create Special Preference in Job Reassignment Over More Qualified Candidate (July 28, 2006)
- 06-191 Disabilities Caused by Environmental Exposures Can Create ADA Compliance Issues (September 1, 2006)

- 06-208 EEOC Chair Naomi Earp Tells House Committee That Agency Has Achieved “Measurable Results” in Enforcing the ADA (September 22, 2006)
- 06-220 Second Circuit in *Graves v. Finch Pruyn* Rules ADA’s Reasonable Accommodation Obligation May Apply Even When No Request for Accommodation Is Made (October 6, 2006)
- 06-221 Imposing Harsher Misconduct Discipline Because Employee Is Alcoholic Can Open Up ADA Claim (October 6, 2006)
- 06-222 EEO Implications Should Be Considered When Making Outsourcing Decisions (October 6, 2006)
- 06-230 Ninth Circuit in *Bates v. UPS* Undermines Employer’s Ability To Apply Safety-Based Qualification Standards Against ADA Claims (October 20, 2006)
- 06-241 Three EEAC Member Companies Receive 2006 “New Freedom Initiative” Awards for Exemplary Efforts in Recruiting, Hiring, and Supporting Individuals With Disabilities (November 3, 2006)
- 06-243 Sixth Circuit in *EEOC v. Watkins* Rejects Argument That Extreme Obesity Is an Automatic ADA Disability (November 3, 2006)
- 06-247 EEAC’s “Letter” Brief Asks for Full Ninth Circuit Reconsideration of Bad ADA Decision in *Bates v. UPS* (November 10, 2006)
- 06-276 Ninth Circuit’s ADA Decisions Show Pattern of Disregard for Legitimate Workplace Safety Concerns (December 22, 2006)

#### AFFIRMATIVE ACTION

- 06-1 EEAC’s Written Comments to OMB Endorse EEO-1 Revisions, Recommend Several Important Clarifications (January 6, 2006)
- 06-6 OFCCP Issues First Set of “Frequently Asked Questions” on Its Internet Applicant Regulation (January 13, 2006)
- 06-12 Second Wave of OFCCP “Advance Notice” Letters Targets an Additional *Nine Thousand* Establishments for Review This Year; Scheduling Letters Likely To Follow Soon (January 20, 2006)
- 06-18 OFCCP Declines To Extend Effective Date of Internet Applicant Regulation, but Adopts 90-Day Grace Period for Contractors Who Can Demonstrate Reasonable Steps To Comply (January 27, 2006)
- 06-20 OFCCP Proposes New Veterans Affirmative Action Regulations Required by 2002 Jobs for Veterans Act (January 27, 2006)

- 06-23 OFCCP Publishes Materials That Will Be Used To Train Compliance Staff on the New Internet Applicant Regulation (January 27, 2006)
- 06-62 EEAC Files Written Comments on OFCCP’s Proposed Veterans Affirmative Action Regulations Implementing Jobs for Veterans Act (March 24, 2006)
- 06-63 EEAC Submits Written Comments Supporting OFCCP’s Proposed Rule To Eliminate Its Ineffective Equal Opportunity Survey (March 24, 2006)
- 06-74 OFCCP Issues Second Series of Internet Applicant Regulation FAQs Providing Helpful Guidance on Several Critical Compliance Issues (April 7, 2006)
- 06-80 EEAC’s Digest of State and Local Affirmative Action Requirements (April 14, 2006)
- 06-102 OFCCP Set To Begin New Round of Functional AAP Compliance Evaluations, With Some FAAP Contractors Likely To Receive More Than One Audit This Year (May 12, 2006)
- 06-103 New OFCCP “Media Guidelines” Directive Sets Out Nationwide Agency Policy for Publicizing Enforcement Actions (May 12, 2006)
- 06-114 DOL Plans To Phase Out America’s Job Bank, Leaving Contractors With a Potential Compliance Dilemma Regarding VEVRAA’s Mandatory Job Listing Requirements (May 26, 2006)
- 06-125 Good Faith Objection to OFCCP Compliance Evaluation on Jurisdictional Grounds Should Be Raised Early, With Reasons Carefully Documented (June 9, 2006)
- 06-161 EEAC’s Guide To Preparing an AAP-Compliant “Action-Oriented Program” (July 28, 2006)
- 06-194 It’s Official: OFCCP’s Controversial Equal Opportunity Survey Is No More (September 8, 2006)
- 06-195 EEAC’s Guide To Setting — or Resetting — Your Annual AAP Cycle (September 8, 2006)
- 06-196 Michigan Voters To Decide Ballot Initiative That Would Ban Use of Affirmative Action Programs by State Agencies and Universities (September 8, 2006)
- 06-201 2005 “American Community Survey” Results Show Surprising Decline in Multiple Race Population, Continuing Increase in Immigrant Population (September 15, 2006)
- 06-211 Practicing Affirmative Action Within the Law — Revisited (September 29, 2006)
- 06-217 Latest Round of OFCCP Functional AAP Compliance Evaluations Is Underway (October 6, 2006)

- 06-227 Updated Higher Education Race/Ethnicity and Gender Data for 2004-2005 Provide Insight Into Degree Attainment by Women and Minorities (October 13, 2006)
- 06-233 OFCCP Issues 12 New “Frequently Asked Questions” on Its Internet Applicant Regulation (October 27, 2006)
- 06-239 Newly Released 2004 EEO-1 Data Provide Useful Compliance and Diversity Benchmarks (November 3, 2006)
- 06-246 EEOC Confirms That Resurvey of Incumbent Employees After Revised EEO-1 Goes Into Effect Is Encouraged, but *Not* Required; Same for OFCCP (November 10, 2006)
- 06-251 OFCCP Commences 2006-2007 Enforcement Cycle With Round of “Advance Notice” Letters Targeting Approximately 2,000 Establishments; Scheduling Letters Not Far Behind (November 17, 2006)
- 06-256 Recent Election Featured Enactment of Several Employment-Related State Ballot Issues, Including Michigan “Civil Rights Initiative” To Ban Affirmative Action by State Entities (November 22, 2006)
- 06-260 New Report Analyzes Negative Effects of California’s “Prop 209” Barring Affirmative Action in Public Education and Contracting (December 1, 2006)

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- 06-4 EEAC’s Brief in *Burlison v. McDonald’s* Urges Eleventh Circuit To Reverse Lower Court Ruling That Makes Many Releases of Age Discrimination Claims Unenforceable (January 6, 2006)
- 06-8 Eleventh Circuit in *Rowell v. BellSouth* Rejects ADEA “Constructive Discharge” Claim of Employee Who Opted for Generous Early Retirement Incentive Package (January 13, 2006)
- 06-31 Eighth Circuit in *Lee v. Rheem* Finds That Employer Did Not Violate ADEA by Refusing To Rehire Retiree Who Expressed Lack of Interest in Long-Term Employment (February 10, 2006)
- 06-46 Recent Studies Continue To Highlight Implications of Aging Workforce, Urge Employers To Prepare (February 24, 2006)
- 06-47 EEAC, Joined by Nine Other Groups, Urges Third Circuit in *AARP v. EEOC* To Support EEOC’s Retiree Health Benefits (“*Erie County*”) Regulation (March 3, 2006)
- 06-67 Plaintiffs Thus Far Are Finding It Hard To Win ADEA Disparate Impact Claims Despite Supreme Court’s 2005 Ruling in *Smith v. City of Jackson, MS* (March 24, 2006)
- 06-78 Decision by Seventh Circuit in *EEOC v. Sidley Austin* Underscores EEOC’s Broad Litigation Authority (April 7, 2006)

- 06-86 EEAC's *Amicus* Brief in *Register v. PNC Financial* Contends That Cash Balance Pension Plan Conversion Is Legal and Consistent With Sound Public Policy (April 21, 2006)
- 06-96 Tenth Circuit, Responding to Arguments Made in EEAC's Brief, Reissues Decision in *Kruchowski v. Weyerhaeuser* To Eliminate Bad OWBPA Interpretation (May 5, 2006)
- 06-100 Decision by Second Circuit in *Holowecki v. FedEx* Allowing ADEA Class Action Undermines EEOC Charge Filing Procedures (May 5, 2006)
- 06-141 Eighth Circuit in *Parsons v. Pioneer Seed* Issues Helpful Decision Upholding ADEA Release (June 30, 2006)
- 06-150 Eleventh Circuit in *Burlison v. McDonald's* Reverses Problematic Lower Court Ruling That Jeopardized Validity of ADEA Releases (July 14, 2006)
- 06-172 Major Ruling by Seventh Circuit in *Cooper v. IBM* Concludes That Conversion to Cash Balance Pension Plan Did Not Discriminate on Basis of Age (August 11, 2006)
- 06-175 Pension Reform Bill Approved by Congress Includes Safe-Harbor Against Age Discrimination Claims for "Hybrid" Pension Plans, but Only Prospectively (August 11, 2006)
- 06-179 EEOC Proposes Changes to ADEA Regulations To Conform Them To Supreme Court's 2004 Ruling in *General Dynamics v. Cline* (August 18, 2006)
- 06-185 Second Circuit in *Meacham v. Knolls Atomic Power Laboratory* Issues Important Ruling on Who Has Burden of Proof in ADEA Disparate Impact Case (August 25, 2006)
- 06-186 New Pension Reform Law Adds Language Offering Limited Protection for "Phased Retirement" Programs (August 25, 2006)
- 06-204 New Age Discrimination Regulations in the United Kingdom Go Into Effect on October 1 (September 15, 2006)
- 06-224 EEAC's Written Comments Endorse EEOC's Proposed ADEA Regulatory Revisions As Consistent With Supreme Court's "Reverse Age Discrimination" Ruling in *General Dynamics v. Cline* (October 13, 2006)
- 06-245 EEAC's Updated Guide To Obtaining OWBPA-Compliant Releases of Age Discrimination Claims (November 10, 2006)
- 06-255 EEAC's Brief in *Mendelsohn v. Sprint* Urges Review of Bad ADEA Decision Allowing Irrelevant and Very Prejudicial "Me Too" Testimony (November 22, 2006)

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- 06-32 In Positive ADR Ruling, Fourth Circuit in *American General Life v. Wood* Holds State Law Claims Are Covered Under Employment Arbitration Agreement (February 10, 2006)
- 06-54 Supreme Court in *Buckeye Check Cashing v. Cardegna* Rules That Validity of Contract Containing an Arbitration Agreement Is for Arbitrator, Not a Court, To Decide (March 10, 2006)
- 06-70 Illinois Supreme Court in *Melena v. Anheuser-Busch* Upholds Employment Arbitration Agreement (March 31, 2006)
- 06-85 Four EEAC Member Company Programs Featured at April 11 ADR Discussion Forum (April 21, 2006)
- 06-113 Fifth Circuit Rules in *Garrett v. Circuit City* That USERRA Claims Are Covered Under Employment Arbitration Agreement (May 26, 2006)
- 06-116 EEAC's Practical Pointers for Developing an Effective Employee Dispute Resolution (EDR) Program (May 26, 2006)
- 06-147 Fifth Circuit in *Goins v. Ryan's Family Steakhouses* Says No To Enforcing Three-Way Arbitration Agreement (July 7, 2006)
- 06-167 NLRB Rules That Employment Arbitration Agreement Is Unlawful Because It Appears To Disallow Employee From Filing Charge With the Agency (August 4, 2006)
- 06-189 EEAC's Brief in *Independent Chemical* Argues That Arbitrator Was Wrong in Ordering Reinstatement of Worker Under Indictment for Violent Felonies (September 1, 2006)
- 06-238 Tenth Circuit in *Hardin v. First Cash Financial Services, Inc.* Joins Other Federal Courts in Concluding That "Continued Employment" Validates Employment Arbitration Agreement (October 27, 2006)
- 06-248 Tenth Circuit in *LB&B Associates, Inc. v. IBEW* Upholds Arbitrator's Order Reinstating Sexual Harasser (November 10, 2006)

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- 06-2 Seventh Circuit in *Moranski v. General Motors* Finds That Employer's Decision To Disallow Religious Affinity Groups Did Not Violate Title VII (January 6, 2006)
- 06-10 Gallup Survey on Employee Perceptions About Workplace Discrimination Finds That Commitment to Diversity Matters (January 13, 2006)

- 06-11 EEOC Extends Nomination Deadline for Second Annual “Freedom to Compete” Award Until March 1; EEOC Chair Dominguez Encourages EEAC Members To Apply (January 13, 2006)
- 06-29 Recent Report Prepared by Dallas Federal Reserve Bank Focuses on Two Important Workplace Trends: Women Opting Out and an Aging Workforce (February 3, 2006)
- 06-40 Center for Work-life Policy Study Examines Untapped Talent of Minority Professionals, Offers Recommendations to Employers for Leveraging “Cultural Capital” (February 17, 2006)
- 06-43 Final Administrative Ruling in *Halloum v. Intel Corporation* Gives Broad Reading to Sarbanes-Oxley Anti-Retaliation Provisions, but Ultimately Finds for Employer (February 24, 2006)
- 06-46 Recent Studies Continue To Highlight Implications of Aging Workforce, Urge Employers To Prepare (February 24, 2006)
- 06-48 Most Recent Progress Report by Coca-Cola Class Action Settlement Task Force Concludes Innovative HR Systems Are Now in Place, Can Serve as Model for Other Companies (March 3, 2006)
- 06-55 Labor Department’s ODEP Has Developed a Number of Programs and Resources To Assist in Employing Individuals With Disabilities; Employers With Exemplary Programs Might Want To Self-Nominate for New Freedom Initiative Award (March 10, 2006)
- 06-79 Another Study Extols the Business Benefits of Teleworking (April 7, 2006)
- 06-83 European Union Provides Sampling of Diversity “Good Practices” Implemented by EU Employers (April 14, 2006)
- 06-91 EEOC Publishes New Compliance Manual Chapter on Race and Color Discrimination (April 28, 2006)
- 06-107 EEOC To Hold June 7 “Employer Roundtable” on Emergency Preparedness and People with Disabilities (May 19, 2006)
- 06-120 EEOC Has Statutory Duty To Conciliate Discrimination Charges in Good Faith Before Bringing a Lawsuit (June 2, 2006)
- 06-121 EEAC Launches New Resource Clearinghouse on Preparing for and Responding to Possible Flu Pandemic (June 2, 2006)
- 06-132 EEOC Forum on Emergency Planning and Disability Features Testimony by Three EEAC Member Companies (June 16, 2006)

- 06-138 Four EEAC Member Companies Recognized by EEOC as 2006 “Freedom to Compete” Award Winners for Their Exemplary EEO Best Practices (June 23, 2006)
- 06-141 Eighth Circuit in *Parsons v. Pioneer Seed* Issues Helpful Decision Upholding ADEA Release (June 30, 2006)
- 06-142 Requests To Accommodate Mental Disabilities Continue To Pose Challenges for Employers Under the ADA (June 30, 2006)
- 06-148 Recent Survey of Global Workforce Seeks To Identify Key “Drivers” for Attracting, Retaining and Engaging Skilled Workers (July 7, 2006)
- 06-159 Recent Decision by Tenth Circuit in *EEOC v. BCI* Underscores Important Role HR Can Play in Making Sure Managers Make Nondiscriminatory Employment Decisions (July 21, 2006)
- 06-165 Dealing With Sexual Harassment Allegations Involving High-Level Executives (August 4, 2006)
- 06-169 Human Rights Campaign Reports That More Than Half of Fortune 500 Companies Now Provide Domestic Partner Benefits (August 4, 2006)
- 06-182 High-Profile Data Breach Incidents Should Serve as Good Incentive for Companies To Review Security Policies and Procedures for Protecting HR Data (August 25, 2006)
- 06-190 Decision by Seventh Circuit in *EEOC v. Target Corp.* Underscores How Sloppy Recordkeeping and Recruitment Practices Can Get a Company Into Trouble (September 1, 2006)
- 06-192 Keeping Your Independent Contractors Independent (September 1, 2006)
- 06-199 Decision by Seventh Circuit in *Valentine v. City of Chicago* Underscores Importance of Having Effective Sexual Harassment Complaint Procedures (September 8, 2006)
- 06-210 Recent Federal Appeals Court Rulings Bolster Right of Employers To Enforce Computer-Use Policies, Including Internet Monitoring (September 22, 2006)
- 06-211 Practicing Affirmative Action Within the Law — Revisited (September 29, 2006)
- 06-213 Three EEAC Member Companies Among Those Receiving National Recognition for Support of Employees Serving in National Guard and Reserve (September 29, 2006)
- 06-218 EEOC Seeking Nominations for 2007 “Freedom to Compete” Awards (October 6, 2006)
- 06-222 EEO Implications Should Be Considered When Making Outsourcing Decisions (October 6, 2006)

- 06-229 New Report Finds Many Recent Graduates Lack Basic Skills Necessary for Success on the Job (October 20, 2006)
- 06-241 Three EEAC Member Companies Receive 2006 “New Freedom Initiative” Awards for Exemplary Efforts in Recruiting, Hiring, and Supporting Individuals With Disabilities (November 3, 2006)
- 06-245 EEAC’s Updated Guide To Obtaining OWBPA-Compliant Releases of Age Discrimination Claims (November 10, 2006)
- 06-254 First-Time Government Survey Underscores Important Role Played by HR in Workplace Violence Prevention Efforts (November 17, 2006)
- 06-257 New Study Reveals Employee Attitudes About Pandemic Flu Outbreak (November 22, 2006)
- 06-263 Obligation To Retain Documents (Including Electronic Records) Relevant to Employment Litigation Applies to Plaintiffs as Well as Employers (December 1, 2006)
- 06-280 Final Report by Coca-Cola Class Action Settlement Task Force Concludes that Sustainable, Innovative HR Systems Are Now in Place (December 29, 2006)

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- 06-7 Jury Credits Company’s Self-Critical Analyses in Delivering Favorable Verdict in *Williams v. Boeing Co.* Class Action Trial (January 13, 2006)
- 06-27 Sixth Circuit in *Reeb v. Ohio DRC* Widens 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 (February 3, 2006)
- 06-44 Fourth Circuit in *Thorn v. Jefferson-Pilot Life* Signals That Title VII Lawsuits Seeking Money Damages Are Unsuitable for Class Action Treatment (February 24, 2006)
- 06-48 Most Recent Progress Report by Coca-Cola Class Action Settlement Task Force Concludes Innovative HR Systems Are Now in Place, Can Serve as Model for Other Companies (March 3, 2006)
- 06-71 Two Federal Circuit Courts “Rewrite” Important Provision of Federal Class Action Fairness Act (March 31, 2006)
- 06-75 EEOC Decides To Make Systemic Discrimination Investigations and Enforcement a “Top Priority” (April 7, 2006)
- 06-77 Wage and Hour Collective Actions Have Moved to the Forefront of Employment-Related Class Action Litigation (April 7, 2006)

- 06-92 D.C. Circuit in *Garcia v. Johanns* and *Love v. Johanns* Rejects “Subjective Decision-making” Class Action Claims (April 28, 2006)
- 06-100 Decision by Second Circuit in *Holowecki v. FedEx* Allowing ADEA Class Action Undermines EEOC Charge Filing Procedures (May 5, 2006)
- 06-106 Employment Discrimination Class Action Litigation Trends: Looking Back Over the Last Five Years (May 12, 2006)
- 06-119 Federal Grand Jury Indicts Major Plaintiffs’ Class Action Law Firm for Alleged Illegal Kickback Scheme (June 2, 2006)
- 06-140 EEOC’s New Systemic Discrimination Focus Highlights Agency’s Broad Authority To Bring Class Action Lawsuits Unrestrained by the Rules Governing Private Class Litigation (June 30, 2006)
- 06-155 EEAC’s Updated Class Action Cases and Settlements Catalog (July 21, 2006)
- 06-172 Major Ruling by Seventh Circuit in *Cooper v. IBM* Concludes That Conversion to Cash Balance Pension Plan Did Not Discriminate on Basis of Age (August 11, 2006)
- 06-209 Favorable Ruling by Fifth Circuit in *Price v. Choctaw Glove & Safety Company* Holds That Title VII “Piggybackers” Do Not Have Right To Bring Their Own Lawsuits (September 22, 2006)
- 06-225 Federal Judge in *Jenkins v. BellSouth* Finds Plaintiffs Failed To Make Valid Race Discrimination Class Action Case (October 13, 2006)
- 06-265 Two Recent Court Decisions Make Clear That Use of Statistical Analyses To Establish Systemic Employment Discrimination Had Better Relate Precisely to the Facts Presented (December 8, 2006)
- 06-280 Final Report by Coca-Cola Class Action Settlement Task Force Concludes that Sustainable, Innovative HR Systems Are Now in Place (December 29, 2006)

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- 06-14 EEAC’s Annual Federal Legislative Update and Forecast (January 20, 2006)
- 06-65 Several States Are Considering Legislation To Restrict Employment of Illegal Aliens as Congress Continues To Search for Consensus Approach (March 24, 2006)
- 06-90 Immigration Reform Update: Parameters of New Mandated Electronic Employment Verification System — EEVS — Becoming Clearer (Assuming Congress Enacts a Bill) (April 28, 2006)

- 06-93 Advocacy Groups Renew Pay Equity Push, Even as Latest BLS Survey Shows Wage Gap Continues To Narrow (April 28, 2006)
- 06-99 House Veterans' Affairs Committee Holds Hearing Spotlighting Corporate Commitment To Hiring and Supporting Veterans (May 5, 2006)
- 06-117 Senate-Passed Amendments to Immigration Bill Making English the "National Language" Unlikely To Affect Employers (May 26, 2006)
- 06-122 Data Security Legislation Gets Renewed Congressional Attention After Government Discloses Massive Data Breach Involving Veterans (June 2, 2006)
- 06-124 Side-By-Side Analysis of Electronic Employment Verification System (EEVS) Provisions Contained in House and Senate Immigration Reform Bills (June 9, 2006)
- 06-133 Congressional Watchdog Agency Issues Report Criticizing Absence of Objectivity at the U.S. Civil Rights Commission (June 16, 2006)
- 06-145 New Georgia Law Imposing Sanctions on Employers Who Use Undocumented Workers Exemplifies Growing Trend Among States To Address Issue Without Waiting for Congress To Act (July 7, 2006)
- 06-151 EEAC Update: State Court Rules New York Constitution Does Not Require Recognition of Same-Sex Marriage; U.S. Senate Rejects "Marriage Protection" Amendment (July 14, 2006)
- 06-163 Final "No FEAR" Act Regulations Require Federal Agencies To Give Mandatory Training to All Employees on Their Rights Under Antidiscrimination Laws by Year-End, and Every Two Years Thereafter (July 28, 2006)
- 06-172 Major Ruling by Seventh Circuit in *Cooper v. IBM* Concludes That Conversion to Cash Balance Pension Plan Did Not Discriminate on Basis of Age (August 11, 2006)
- 06-175 Pension Reform Bill Approved by Congress Includes Safe-Harbor Against Age Discrimination Claims for "Hybrid" Pension Plans, but Only Prospectively (August 11, 2006)
- 06-186 New Pension Reform Law Adds Language Offering Limited Protection for "Phased Retirement" Programs (August 25, 2006)
- 06-207 Congress Clears Bill To Create Publicly-Accessible Website That Will List Federal Contracts and Contractors Starting in 2008 (September 22, 2006)
- 06-270 San Francisco Paid Sick Leave Ordinance May Be Precursor To Push for Federal Mandate (December 15, 2006)

06-274 ICE Raid on Swift Meatpacking Facilities Exposes Potential Limitations of a New Electronic Employment Verification System (December 22, 2006)

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06-192 Keeping Your Independent Contractors Independent (September 1, 2006)

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06-1 EEAC's Written Comments to OMB Endorse EEO-1 Revisions, Recommend Several Important Clarifications (January 6, 2006)

06-5 U.S. and European Officials Hold Public Forum Focused on European Union's Data Protection Directive (January 6, 2006)

06-6 OFCCP Issues First Set of "Frequently Asked Questions" on Its Internet Applicant Regulation (January 13, 2006)

06-12 Second Wave of OFCCP "Advance Notice" Letters Targets an Additional *Nine Thousand* Establishments for Review This Year; Scheduling Letters Likely To Follow Soon (January 20, 2006)

06-18 OFCCP Declines To Extend Effective Date of Internet Applicant Regulation, but Adopts 90-Day Grace Period for Contractors Who Can Demonstrate Reasonable Steps To Comply (January 27, 2006)

06-19 OFCCP Proposes Rule To Eliminate Its Controversial Equal Opportunity Survey (January 27, 2006)

06-20 OFCCP Proposes New Veterans Affirmative Action Regulations Required by 2002 Jobs for Veterans Act (January 27, 2006)

06-21 EEOC Opinion Letter Provides Example of When Pre-Offer Invitations To Self-Identify Are Permissible Under ADA (January 27, 2006)

06-23 OFCCP Publishes Materials That Will Be Used To Train Compliance Staff on the New Internet Applicant Regulation (January 27, 2006)

06-24 It's Official: Revised EEO-1 Report Approved, Effective for 2007 Reporting Cycle (February 3, 2006)

06-59 EEOC Chair Cari Dominguez Confirms That Race/Ethnicity Data for Revised EEO-1 Can Be Collected Using a Single Question Format; EEAC's Model Self-ID Form Attached (March 17, 2006)

- 06-61 “Googling” Applicants: A Look at the Pros and Cons (March 17, 2006)
- 06-62 EEAC Files Written Comments on OFCCP’s Proposed Veterans Affirmative Action Regulations Implementing Jobs for Veterans Act (March 24, 2006)
- 06-63 EEAC Submits Written Comments Supporting OFCCP’s Proposed Rule To Eliminate Its Ineffective Equal Opportunity Survey (March 24, 2006)
- 06-68 EEOC Opinion Letter Says Paperless Personnel Records Appear To Meet Recordkeeping Requirements of Federal Anti-Discrimination Laws (March 31, 2006)
- 06-74 OFCCP Issues Second Series of Internet Applicant Regulation FAQs Providing Helpful Guidance on Several Critical Compliance Issues (April 7, 2006)
- 06-90 Immigration Reform Update: Parameters of New Mandated Electronic Employment Verification System — EEVS — Becoming Clearer (Assuming Congress Enacts a Bill) (April 28, 2006)
- 06-98 Department of Defense Issues Updated “Profile” Report on the Race/Ethnicity and Gender Demographics of U.S. Military Personnel (May 5, 2006)
- 06-102 OFCCP Set To Begin New Round of Functional AAP Compliance Evaluations, With Some FAAP Contractors Likely To Receive More Than One Audit This Year (May 12, 2006)
- 06-114 DOL Plans To Phase Out America’s Job Bank, Leaving Contractors With a Potential Compliance Dilemma Regarding VEVRAA’s Mandatory Job Listing Requirements (May 26, 2006)
- 06-115 EEOC’s Latest EEO-1 Data Report Examines Minority and Female Diversity in the Finance Industry (May 26, 2006)
- 06-124 Side-By-Side Analysis of Electronic Employment Verification System (EEVS) Provisions Contained in House and Senate Immigration Reform Bills (June 9, 2006)
- 06-130 Department of Homeland Security Proposes Regulation To Clarify Employer Responsibilities When Notified of Social Security Number “No-Match” (June 16, 2006)
- 06-136 Department of Homeland Security Issues Interim Regulation Implementing Electronic I-9 Form Option (June 23, 2006)
- 06-139 OFCCP’s Final Voluntary “Self-Evaluation Guidelines” for Reviewing Compensation Practices (June 30, 2006)
- 06-149 New EEO-1 Form Will Require Companies To Allocate Management Positions to Two “Officials and Managers” Categories (July 14, 2006)

- 06-161 EEAC's Guide To Preparing an AAP-Compliant "Action-Oriented Program"  
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- 06-166 Department of Homeland Security Announces New "IMAGE" Partnership Program for  
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- 06-170 It's Reporting Time: 2006 EEO-1 and VETS-100 Forms Due by September 30; Forms  
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- 06-176 U.S. Labor Department Proposes New "VETS-100A" Report for 2008 Reporting Cycle;  
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- 06-177 EEAC's Written Comments Support Electronic I-9 Form Regulation, Ask for Certain  
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- 06-182 High-Profile Data Breach Incidents Should Serve as Good Incentive for Companies To  
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- 06-194 It's Official: OFCCP's Controversial Equal Opportunity Survey Is No More  
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- 06-195 EEAC's Guide To Setting — or Resetting — Your Annual AAP Cycle  
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- 06-201 2005 "American Community Survey" Results Show Surprising Decline in Multiple Race  
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- 06-207 Congress Clears Bill To Create Publicly-Accessible Website That Will List Federal  
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- 06-212 EEAC's Primer on Using Personality Tests as an Employee Selection Tool  
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- 06-217 Latest Round of OFCCP Functional AAP Compliance Evaluations Is Underway  
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- 06-223 EEAC Submits Formal Comments Urging DOL-VETS To Minimize Burdensome "Dual  
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- 06-233 OFCCP Issues 12 New "Frequently Asked Questions" on Its Internet Applicant  
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- 06-239 Newly Released 2004 EEO-1 Data Provide Useful Compliance and Diversity  
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- 06-246 EEOC Confirms That Resurvey of Incumbent Employees After Revised EEO-1 Goes Into Effect Is Encouraged, but *Not* Required; Same for OFCCP (November 10, 2006)
- 06-251 OFCCP Commences 2006-2007 Enforcement Cycle With Round of “Advance Notice” Letters Targeting Approximately 2,000 Establishments; Scheduling Letters Not Far Behind (November 17, 2006)
- 06-263 Obligation To Retain Documents (Including Electronic Records) Relevant to Employment Litigation Applies to Plaintiffs as Well as Employers (December 1, 2006)
- 06-268 New BLS “Databook” on Women’s Employment Provides Wealth of Information on Long-Term Trends in U.S. Labor Force Participation Rates, Employment Patterns and Earnings (December 8, 2006)
- 06-269 USERRA Complaints Up Four Percent in FY 2006, Monetary Relief Up Forty Percent (December 15, 2006)
- 06-274 ICE Raid on Swift Meatpacking Facilities Exposes Potential Limitations of a New Electronic Employment Verification System (December 22, 2006)
- 06-277 OFCCP’s 2006 Enforcement Numbers Confirm Increasing Effectiveness of Agency’s Systemic Discrimination Emphasis (December 29, 2006)

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- 06-10 Gallup Survey on Employee Perceptions About Workplace Discrimination Finds That Commitment to Diversity Matters (January 13, 2006)
- 06-83 European Union Provides Sampling of Diversity “Good Practices” Implemented by EU Employers (April 14, 2006)
- 06-98 Department of Defense Issues Updated “Profile” Report on the Race/Ethnicity and Gender Demographics of U.S. Military Personnel (May 5, 2006)
- 06-115 EEOC’s Latest EEO-1 Data Report Examines Minority and Female Diversity in the Finance Industry (May 26, 2006)
- 06-211 Practicing Affirmative Action Within the Law — Revisited (September 29, 2006)
- 06-227 Updated Higher Education Race/Ethnicity and Gender Data for 2004-2005 Provide Insight Into Degree Attainment by Women and Minorities (October 13, 2006)
- 06-239 Newly Released 2004 EEO-1 Data Provide Useful Compliance and Diversity Benchmarks (November 3, 2006)

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06-111 Oregon Supreme Court Rules That Employer Can Fire Medical Marijuana User for Violating Drug-Free Workplace Policy, but Ducks Accommodation Issue (May 19, 2006)

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- 06-2 Seventh Circuit in *Moranski v. General Motors* Finds That Employer's Decision To Disallow Religious Affinity Groups Did Not Violate Title VII (January 6, 2006)
- 06-4 EEAC's Brief in *Burlison v. McDonald's* Urges Eleventh Circuit To Reverse Lower Court Ruling That Makes Many Releases of Age Discrimination Claims Unenforceable (January 6, 2006)
- 06-22 EEAC Urges Ninth Circuit in *Joesphs v. Pacific Bell* To Reconsider Its Ruling That Employer Violated ADA by Failing To Rehire Individual With History of Violence (January 27, 2006)
- 06-25 EEAC Urges Supreme Court in *BNSF vs. White* To Reverse Problematic Retaliation Ruling That Erodes Traditional Management Prerogatives (February 3, 2006)
- 06-27 Sixth Circuit in *Reeb v. Ohio DRC* Widens 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 (February 3, 2006)
- 06-41 Unanimous Supreme Court in *Domino's Pizza v. McDonald* Overturns Ninth Circuit, Limits Scope of Section 1981 Race Discrimination Claims to Direct Contractual Relationship (February 24, 2006)
- 06-47 EEAC, Joined by Nine Other Groups, Urges Third Circuit in *AARP v. EEOC* To Support EEOC's Retiree Health Benefits ("Erie County") Regulation (March 3, 2006)
- 06-86 EEAC's *Amicus* Brief in *Register v. PNC Financial* Contends That Cash Balance Pension Plan Conversion Is Legal and Consistent With Sound Public Policy (April 21, 2006)
- 06-89 Ninth Circuit's Ruling in *Jespersen v. Harrah's* Supports Grooming Policy Against "Sex Stereotyping" Claim, but Theory Remains Alive and Well in Other Contexts (April 21, 2006)
- 06-94 Second Circuit in *Sista v. CDC IXIS*, Agreeing With Arguments Raised in EEAC's *Amicus* Brief, Rejects ADA and FMLA Claims of Employee Who Threatened Supervisor (April 28, 2006)
- 06-96 Tenth Circuit, Responding to Arguments Made in EEAC's Brief, Reissues Decision in *Kruchowski v. Weyerhaeuser* To Eliminate Bad OWBPA Interpretation (May 5, 2006)

- 06-97 EEAC's Brief in *Smith v. Hewlett Packard* Urges Labor Department Tribunal To Reject Sarbanes-Oxley Whistleblower Complaint Brought by Employee Relations Consultant (May 5, 2006)
- 06-109 EEAC's Brief to Eighth Circuit in *Standridge v. Union Pacific* Argues That Title VII Does Not Require Prescription Drug Benefit To Include Contraceptive Coverage (May 19, 2006)
- 06-123 EEAC's Brief in *Rehrs v. Procter & Gamble* Argues That Ability To Work Rotating Shifts Can Be Essential Job Function Under the ADA (June 9, 2006)
- 06-135 U.S. Supreme Court in *BNSF v. White* Broadens Employer Liability in Title VII Retaliation (June 23, 2006)
- 06-144 EEAC's Brief in *Rucker v. Lee Holding* Argues That FMLA Does Not Allow Merging of Widely Separated Periods of Employment To Meet Eligibility Requirements (July 7, 2006)
- 06-150 Eleventh Circuit in *Burlison v. McDonald's* Reverses Problematic Lower Court Ruling That Jeopardized Validity of ADEA Releases (July 14, 2006)
- 06-162 EEAC's *Amicus* Brief in *Huber v. Wal-Mart* Argues That ADA Does Not Create Special Preference in Job Reassignment Over More Qualified Candidate (July 28, 2006)
- 06-173 EEAC's Brief in *Ambrose v. U.S. Foodservice* Addresses Reach of Sarbanes-Oxley Whistleblower Protection Provisions to Non-Public Subsidiary (August 11, 2006)
- 06-184 EEAC's Brief in *O'Reilly v. Rutgers* Argues That FMLA Does Not Allow Employees To Put Conditions on Medical Certification Requirements (August 25, 2006)
- 06-189 EEAC's Brief in *Independent Chemical* Argues That Arbitrator Was Wrong in Ordering Reinstatement of Worker Under Indictment for Violent Felonies (September 1, 2006)
- 06-197 EEAC in *Taylor v. Progress Energy* Once Again Argues That FMLA Does Not Require Labor Department To Supervise Releases, and Labor Department Agrees (September 8, 2006)
- 06-228 DOL Appeals Board in *Platone v. FLYi, Inc.* Adopts Arguments Made in EEAC's Friend-of-the-Court Brief, Rejects Sarbanes-Oxley Whistleblower Claim (October 20, 2006)
- 06-231 Ninth Circuit in *Wallace v. City of San Diego* Broadens Employer Liability for "Constructive Discharge" (October 20, 2006)
- 06-235 EEAC Urges Supreme Court in *Ledbetter v. Goodyear* To Adopt Rational Time Limitation for Making Claims of Pay Discrimination Under Title VII (October 27, 2006)

- 06-242 Sixth Circuit in *EEOC v. SunDance* Strikes Another Blow to EEOC’s Controversial “Facial Retaliation” Theory (November 3, 2006)
- 06-247 EEAC’s “Letter” Brief Asks for Full Ninth Circuit Reconsideration of Bad ADA Decision in *Bates v. UPS* (November 10, 2006)
- 06-253 EEAC’s Brief in *Mahoney v. Nokia* Argues That Client-Employer Has No Obligation To Grant FMLA Leave to Leased Employee (November 17, 2006)
- 06-255 EEAC’s Brief in *Mendelsohn v. Sprint* Urges Review of Bad ADEA Decision Allowing Irrelevant and Very Prejudicial “Me Too” Testimony (November 22, 2006)

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- 06-1 EEAC’s Written Comments to OMB Endorse EEO-1 Revisions, Recommend Several Important Clarifications (January 6, 2006)
- 06-62 EEAC Files Written Comments on OFCCP’s Proposed Veterans Affirmative Action Regulations Implementing Jobs for Veterans Act (March 24, 2006)
- 06-63 EEAC Submits Written Comments Supporting OFCCP’s Proposed Rule To Eliminate Its Ineffective Equal Opportunity Survey (March 24, 2006)
- 06-134 OFCCP Issues Final “Interpretive Standards” for Investigating Systemic Compensation Discrimination (June 23, 2006)
- 06-177 EEAC’s Written Comments Support Electronic I-9 Form Regulation, Ask for Certain Clarifications (August 18, 2006)
- 06-194 It’s Official: OFCCP’s Controversial Equal Opportunity Survey Is No More (September 8, 2006)
- 06-223 EEAC Submits Formal Comments Urging DOL-VETS To Minimize Burdensome “Dual Reporting” Requirement Proposed New “VETS-100A” Will Create (October 13, 2006)
- 06-224 EEAC’s Written Comments Endorse EEOC’s Proposed ADEA Regulatory Revisions As Consistent With Supreme Court’s “Reverse Age Discrimination” Ruling in *General Dynamics v. Cline* (October 13, 2006)

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

- 06-9 EEAC’s Eighth Annual Litigation Survey Results (January 13, 2006)
- 06-13 EEAC President Jeff Norris Relates U.S. Experience With Affirmative Action in Presentation to Korean Employers (January 20, 2006)

- 06-26 January 2006 McDowell Legal Forum Highlights (February 3, 2006)
- 06-57 EEAC's 2006 Annual Membership Meeting Highlights (March 17, 2006)
- 06-58 EEAC's 2006-2007 Board of Directors and Officers (March 17, 2006)
- 06-76 EEAC Reinstates Annual Discrimination Charge Benchmarking Survey (April 7, 2006)
- 06-85 Four EEAC Member Company Programs Featured at April 11 ADR Discussion Forum (April 21, 2006)
- 06-121 EEAC Launches New Resource Clearinghouse on Preparing for and Responding to Possible Flu Pandemic (June 2, 2006)
- 06-128 EEAC's New Web-Based *International Resources Library* (June 16, 2006)
- 06-129 EEAC's New "Managers" Pamphlet on Preventing Sex Discrimination (June 16, 2006)
- 06-132 EEOC Forum on Emergency Planning and Disability Features Testimony by Three EEAC Member Companies (June 16, 2006)
- 06-137 June 2006 EEAC McDowell Legal Forum Highlights (June 23, 2006)
- 06-138 Four EEAC Member Companies Recognized by EEOC as 2006 "Freedom to Compete" Award Winners for Their Exemplary EEO Best Practices (June 23, 2006)
- 06-160 EEAC's 2006 Discrimination Charge Survey Results (July 28, 2006)
- 06-200 EEAC's Ninth Annual Litigation Survey (September 15, 2006)
- 06-206 California Legislature Narrows Scope of Mandatory Sexual Harassment Training Requirements for Supervisors (September 22, 2006)
- 06-213 Three EEAC Member Companies Among Those Receiving National Recognition for Support of Employees Serving in National Guard and Reserve (September 29, 2006)
- 06-227 Updated Higher Education Race/Ethnicity and Gender Data for 2004-2005 Provide Insight Into Degree Attainment by Women and Minorities (October 13, 2006)
- 06-234 EEAC's 2006 Fall Membership Meeting Highlights (October 27, 2006)
- 06-239 Newly Released 2004 EEO-1 Data Provide Useful Compliance and Diversity Benchmarks (November 3, 2006)

## **EEAC SPECIAL MEMORANDA**

- 06-9 EEAC's Eighth Annual Litigation Survey Results (January 13, 2006)
- 06-61 "Googling" Applicants: A Look at the Pros and Cons (March 17, 2006)
- 06-80 EEAC's Digest of State and Local Affirmative Action Requirements (April 14, 2006)
- 06-116 EEAC's Practical Pointers for Developing an Effective Employee Dispute Resolution (EDR) Program (May 26, 2006)
- 06-134 OFCCP Issues Final "Interpretive Standards" for Investigating Systemic Compensation Discrimination (June 23, 2006)
- 06-139 OFCCP's Final Voluntary "Self-Evaluation Guidelines" for Reviewing Compensation Practices (June 30, 2006)
- 06-149 New EEO-1 Form Will Require Companies To Allocate Management Positions to Two "Officials and Managers" Categories (July 14, 2006)
- 06-160 EEAC's 2006 Discrimination Charge Survey Results (July 28, 2006)
- 06-182 High-Profile Data Breach Incidents Should Serve as Good Incentive for Companies To Review Security Policies and Procedures for Protecting HR Data (August 25, 2006)
- 06-211 Practicing Affirmative Action Within the Law — Revisited (September 29, 2006)
- 06-245 EEAC's Updated Guide To Obtaining OWBPA-Compliant Releases of Age Discrimination Claims (November 10, 2006)
- 06-252 Internal Agency Documents Shed Light on EEOC's Progress in Implementing Its New Systemic Discrimination Enforcement Program (November 17, 2006)

## **ENFORCEMENT AGENCIES**

### **CENSUS BUREAU**

- 06-201 2005 "American Community Survey" Results Show Surprising Decline in Multiple Race Population, Continuing Increase in Immigrant Population (September 15, 2006)
- 06-268 New BLS "Databook" on Women's Employment Provides Wealth of Information on Long-Term Trends in U.S. Labor Force Participation Rates, Employment Patterns and Earnings (December 8, 2006)

## **DHS**

- 06-121 EEAC Launches New Resource Clearinghouse on Preparing for and Responding to Possible Flu Pandemic (June 2, 2006)
- 06-124 Side-By-Side Analysis of Electronic Employment Verification System (EEVS) Provisions Contained in House and Senate Immigration Reform Bills (June 9, 2006)
- 06-130 Department of Homeland Security Proposes Regulation To Clarify Employer Responsibilities When Notified of Social Security Number “No-Match” (June 16, 2006)
- 06-136 Department of Homeland Security Issues Interim Regulation Implementing Electronic I-9 Form Option (June 23, 2006)
- 06-145 New Georgia Law Imposing Sanctions on Employers Who Use Undocumented Workers Exemplifies Growing Trend Among States To Address Issue Without Waiting for Congress To Act (July 7, 2006)
- 06-166 Department of Homeland Security Announces New “IMAGE” Partnership Program for Employers To Help Prevent Hiring of Undocumented Workers (August 4, 2006)
- 06-177 EEAC’s Written Comments Support Electronic I-9 Form Regulation, Ask for Certain Clarifications (August 18, 2006)
- 06-259 Decision by DOL Tribunal in *Amtel* Case Reminds Companies Using H-1B Workers That Additional Employment Rules Apply (December 1, 2006)
- 06-274 ICE Raid on Swift Meatpacking Facilities Exposes Potential Limitations of a New Electronic Employment Verification System (December 22, 2006)

## **DOD**

- 06-60 U.S. Supreme Court in *Rumsfeld v. Forum for Academic and Institutional Rights* Upholds Equal Access for Military Recruiters to Law Schools Receiving Federal Funds (March 17, 2006)
- 06-98 Department of Defense Issues Updated “Profile” Report on the Race/Ethnicity and Gender Demographics of U.S. Military Personnel (May 5, 2006)
- 06-213 Three EEAC Member Companies Among Those Receiving National Recognition for Support of Employees Serving in National Guard and Reserve (September 29, 2006)

## DOJ

- 06-16 Justice Department Issues Regulation Governing Access to FBI Databases for Background Checks on Private Security Officers (January 20, 2006)
- 06-35 Department of Justice Reminds Employers of Their Immigration-Related Nondiscrimination Obligations (February 10, 2006)
- 06-64 ADA Title III Settlement Between Justice Department and Ticketmaster Serves as Important Reminder That ADA Can Affect Companies Beyond Just Employment (March 24, 2006)
- 06-157 U.S. Justice Department Recommends That Employers Be Given Access to FBI Criminal Records Database To Enhance Accuracy of Background Checks (July 21, 2006)
- 06-269 USERRA Complaints Up Four Percent in FY 2006, Monetary Relief Up Forty Percent (December 15, 2006)

## DOL

- 06-17 The *Ragsdale* Loophole: To Avoid Possible Liability, Employers Still Need To Designate FMLA-Covered Leave (January 20, 2006)
- 06-33 FMLA Enforcement Numbers Dropped Again in 2005 (February 10, 2006)
- 06-43 Final Administrative Ruling in *Halloum v. Intel Corporation* Gives Broad Reading to Sarbanes-Oxley Anti-Retaliation Provisions, but Ultimately Finds for Employer (February 24, 2006)
- 06-46 Recent Studies Continue To Highlight Implications of Aging Workforce, Urge Employers To Prepare (February 24, 2006)
- 06-77 Wage and Hour Collective Actions Have Moved to the Forefront of Employment-Related Class Action Litigation (April 7, 2006)
- 06-88 Labor Department Opinion Letter Says That FMLA Leave Does Not Relieve Employee From Having To Meet Hours Threshold for Health Benefits Eligibility (April 21, 2006)
- 06-93 Advocacy Groups Renew Pay Equity Push, Even as Latest BLS Survey Shows Wage Gap Continues To Narrow (April 28, 2006)
- 06-97 EEAC's Brief in *Smith v. Hewlett Packard* Urges Labor Department Tribunal To Reject Sarbanes-Oxley Whistleblower Complaint Brought by Employee Relations Consultant (May 5, 2006)
- 06-114 DOL Plans To Phase Out America's Job Bank, Leaving Contractors With a Potential Compliance Dilemma Regarding VEVRAA's Mandatory Job Listing Requirements (May 26, 2006)

- 06-118 Seventh Circuit Does About-Face in *Harrell v. USPS*, Concludes That Additional Return-To-Work Requirements in Collective Bargaining Agreement Do Not Violate the FMLA (June 2, 2006)
- 06-127 FMLA Leave To “Care For” Ailing Family Member Gets Expansive Interpretation by Eighth Circuit in *Stallings v. Hussmann Corporation* (June 9, 2006)
- 06-144 EEAC’s Brief in *Rucker v. Lee Holding* Argues That FMLA Does Not Allow Merging of Widely Separated Periods of Employment To Meet Eligibility Requirements (July 7, 2006)
- 06-146 Sarbanes-Oxley Whistleblower Protection Update: Two Significant New Administrative Rulings Address Scope of Law’s Reach (July 7, 2006)
- 06-170 It’s Reporting Time: 2006 EEO-1 and VETS-100 Forms Due by September 30; Forms and Filing Options Are Unchanged From Last Year (August 11, 2006)
- 06-173 EEAC’s Brief in *Ambrose v. U.S. Foodservice* Addresses Reach of Sarbanes-Oxley Whistleblower Protection Provisions to Non-Public Subsidiary (August 11, 2006)
- 06-175 Pension Reform Bill Approved by Congress Includes Safe-Harbor Against Age Discrimination Claims for “Hybrid” Pension Plans, but Only Prospectively (August 11, 2006)
- 06-176 U.S. Labor Department Proposes New “VETS-100A” Report for 2008 Reporting Cycle; New Form Would Not Replace the VETS-100 (August 18, 2006)
- 06-180 DOL Tribunal in *Henrich v. Ecolab, Inc.* Rules That Sarbanes-Oxley Act Does Not Protect Whistleblower Unless He Actually Blows the Whistle (August 18, 2006)
- 06-183 Workplace Homicides Rose Slightly in 2005, While Workplace Suicides Dropped Sharply (August 25, 2006)
- 06-197 EEAC in *Taylor v. Progress Energy* Once Again Argues That FMLA Does Not Require Labor Department To Supervise Releases, and Labor Department Agrees (September 8, 2006)
- 06-223 EEAC Submits Formal Comments Urging DOL-VETS To Minimize Burdensome “Dual Reporting” Requirement Proposed New “VETS-100A” Will Create (October 13, 2006)
- 06-227 Updated Higher Education Race/Ethnicity and Gender Data for 2004-2005 Provide Insight Into Degree Attainment by Women and Minorities (October 13, 2006)
- 06-228 DOL Appeals Board in *Platone v. FLYi, Inc.* Adopts Arguments Made in EEAC’s Friend-of-the-Court Brief, Rejects Sarbanes-Oxley Whistleblower Claim (October 20, 2006)

- 06-231 Ninth Circuit in *Wallace v. City of San Diego* Broadens Employer Liability for “Constructive Discharge” (October 20, 2006)
- 06-241 Three EEAC Member Companies Receive 2006 “New Freedom Initiative” Awards for Exemplary Efforts in Recruiting, Hiring, and Supporting Individuals With Disabilities (November 3, 2006)
- 06-254 First-Time Government Survey Underscores Important Role Played by HR in Workplace Violence Prevention Efforts (November 17, 2006)
- 06-259 Decision by DOL Tribunal in *Amtel* Case Reminds Companies Using H-1B Workers That Additional Employment Rules Apply (December 1, 2006)
- 06-264 Labor Department Seeks Public Comments on FMLA Compliance Issues; Proposed Regulatory Changes Could Follow (December 8, 2006)
- 06-268 New BLS “Databook” on Women’s Employment Provides Wealth of Information on Long-Term Trends in U.S. Labor Force Participation Rates, Employment Patterns and Earnings (December 8, 2006)
- 06-269 USERRA Complaints Up Four Percent in FY 2006, Monetary Relief Up Forty Percent (December 15, 2006)
- 06-271 Tenth Circuit in *Hackworth v. Progressive* Upholds FMLA Regulation for Determining Whether Small Operation Is Covered (December 15, 2006)
- 06-273 Sarbanes-Oxley Whistleblower Retaliation Complaints Dropped in 2006 (December 22, 2006)
- 06-279 First Circuit in *Rucker v. Lee Holding Co.* Gives Liberal Interpretation to FMLA Eligibility Requirement (December 29, 2006)

#### **DOT**

- 06-230 Ninth Circuit in *Bates v. UPS* Undermines Employer’s Ability To Apply Safety-Based Qualification Standards Against ADA Claims (October 20, 2006)

#### **EEOC**

- 06-1 EEAC’s Written Comments to OMB Endorse EEO-1 Revisions, Recommend Several Important Clarifications (January 6, 2006)
- 06-3 EEOC Moves Ahead With Field Office Restructuring (January 6, 2006)
- 06-10 Gallup Survey on Employee Perceptions About Workplace Discrimination Finds That Commitment to Diversity Matters (January 13, 2006)

- 06-11 EEOC Extends Nomination Deadline for Second Annual “Freedom to Compete” Award Until March 1; EEOC Chair Dominguez Encourages EEAC Members To Apply (January 13, 2006)
- 06-21 EEOC Opinion Letter Provides Example of When Pre-Offer Invitations To Self-Identify Are Permissible Under ADA (January 27, 2006)
- 06-24 It’s Official: Revised EEO-1 Report Approved, Effective for 2007 Reporting Cycle (February 3, 2006)
- 06-36 EEOC’s Detailed 2005 Charge Data Confirm Significant Drop in Charge Filings in All Categories, but Pre-Litigation Monetary Relief for Victims Set All-Time High (February 17, 2006)
- 06-37 “Bad Back” Charges Are Common Under the ADA, but Courts Generally Have Found That Back Impairments Do Not Qualify as a Covered Disability (February 17, 2006)
- 06-47 EEAC, Joined by Nine Other Groups, Urges Third Circuit in *AARP v. EEOC* To Support EEOC’s Retiree Health Benefits (“*Erie County*”) Regulation (March 3, 2006)
- 06-57 EEAC’s 2006 Annual Membership Meeting Highlights (March 17, 2006)
- 06-59 EEOC Chair Cari Dominguez Confirms That Race/Ethnicity Data for Revised EEO-1 Can Be Collected Using a Single Question Format; EEAC’s Model Self-ID Form Attached (March 17, 2006)
- 06-66 ADA May Require Worksite Presence of Service Animal To Allow Disabled Worker To Perform Job, Creating Special Challenges for an Employer (March 24, 2006)
- 06-68 EEOC Opinion Letter Says Paperless Personnel Records Appear To Meet Recordkeeping Requirements of Federal Anti-Discrimination Laws (March 31, 2006)
- 06-69 President Bush To Nominate Veteran Management Lawyer Ronald S. Cooper To Be EEOC General Counsel (March 31, 2006)
- 06-75 EEOC Decides To Make Systemic Discrimination Investigations and Enforcement a “Top Priority” (April 7, 2006)
- 06-76 EEAC Reinstates Annual Discrimination Charge Benchmarking Survey (April 7, 2006)
- 06-78 Decision by Seventh Circuit in *EEOC v. Sidley Austin* Underscores EEOC’s Broad Litigation Authority (April 7, 2006)
- 06-91 EEOC Publishes New Compliance Manual Chapter on Race and Color Discrimination (April 28, 2006)

- 06-100 Decision by Second Circuit in *Holowecki v. FedEx* Allowing ADEA Class Action Undermines EEOC Charge Filing Procedures (May 5, 2006)
- 06-107 EEOC To Hold June 7 “Employer Roundtable” on Emergency Preparedness and People with Disabilities (May 19, 2006)
- 06-108 EEOC Charge Filings Through Second Quarter Comparable to Same Period Last Year, but Backlog Is Growing (May 19, 2006)
- 06-115 EEOC’s Latest EEO-1 Data Report Examines Minority and Female Diversity in the Finance Industry (May 26, 2006)
- 06-120 EEOC Has Statutory Duty To Conciliate Discrimination Charges in Good Faith Before Bringing a Lawsuit (June 2, 2006)
- 06-132 EEOC Forum on Emergency Planning and Disability Features Testimony by Three EEAC Member Companies (June 16, 2006)
- 06-138 Four EEAC Member Companies Recognized by EEOC as 2006 “Freedom to Compete” Award Winners for Their Exemplary EEO Best Practices (June 23, 2006)
- 06-140 EEOC’s New Systemic Discrimination Focus Highlights Agency’s Broad Authority To Bring Class Action Lawsuits Unrestrained by the Rules Governing Private Class Litigation (June 30, 2006)
- 06-141 Eighth Circuit in *Parsons v. Pioneer Seed* Issues Helpful Decision Upholding ADEA Release (June 30, 2006)
- 06-142 Requests To Accommodate Mental Disabilities Continue To Pose Challenges for Employers Under the ADA (June 30, 2006)
- 06-149 New EEO-1 Form Will Require Companies To Allocate Management Positions to Two “Officials and Managers” Categories (July 14, 2006)
- 06-153 Title VII Retaliation Claim Must Be Supported by “Reasonable Belief” That Unlawful Discrimination Occurred, but What Is “Reasonable Belief”? (July 14, 2006)
- 06-159 Recent Decision by Tenth Circuit in *EEOC v. BCI* Underscores Important Role HR Can Play in Making Sure Managers Make Nondiscriminatory Employment Decisions (July 21, 2006)
- 06-160 EEAC’s 2006 Discrimination Charge Survey Results (July 28, 2006)
- 06-167 NLRB Rules That Employment Arbitration Agreement Is Unlawful Because It Appears To Disallow Employee From Filing Charge With the Agency (August 4, 2006)

- 06-170 It's Reporting Time: 2006 EEO-1 and VETS-100 Forms Due by September 30; Forms and Filing Options Are Unchanged From Last Year (August 11, 2006)
- 06-171 EEOC's Cari Dominguez Announces Her Departure After Serving Five Years as Agency's Chair (August 11, 2006)
- 06-178 EEOC's Third Quarter Enforcement Numbers Show Significant Increase in Charge Backlog From Same Period Last Year (August 18, 2006)
- 06-179 EEOC Proposes Changes to ADEA Regulations To Conform Them To Supreme Court's 2004 Ruling in *General Dynamics v. Cline* (August 18, 2006)
- 06-181 Federal Courts Are Generally Receptive To Enforcing EEOC Subpoenas, but Employers Can Sometimes Narrow the Scope (August 18, 2006)
- 06-188 President Bush Announces That He Will Appoint Naomi C. Earp To Serve as EEOC's Chair (September 1, 2006)
- 06-190 Decision by Seventh Circuit in *EEOC v. Target Corp.* Underscores How Sloppy Recordkeeping and Recruitment Practices Can Get a Company Into Trouble (September 1, 2006)
- 06-193 Decision by Third Circuit in *Buck v. Hampton Township School District* Underscores Importance of Making Sure That Title VII Charge Has Been "Verified" (September 1, 2006)
- 06-203 Federal Appeals Courts at Odds After Seventh Circuit Rules in *Doe v. Oberweis* That Charging Party Does Not Have To Cooperate in EEOC Charge Investigation as a Condition for Bringing a Discrimination Lawsuit (September 15, 2006)
- 06-205 David J. Palmer Tapped To Be New EEOC Commissioner; Leslie Silverman Designated Vice Chair (September 22, 2006)
- 06-208 EEOC Chair Naomi Earp Tells House Committee That Agency Has Achieved "Measurable Results" in Enforcing the ADA (September 22, 2006)
- 06-209 Favorable Ruling by Fifth Circuit in *Price v. Choctaw Glove & Safety Company* Holds That Title VII "Piggybackers" Do Not Have Right To Bring Their Own Lawsuits (September 22, 2006)
- 06-218 EEOC Seeking Nominations for 2007 "Freedom to Compete" Awards (October 6, 2006)
- 06-224 EEAC's Written Comments Endorse EEOC's Proposed ADEA Regulatory Revisions As Consistent With Supreme Court's "Reverse Age Discrimination" Ruling in *General Dynamics v. Cline* (October 13, 2006)

- 06-239 Newly Released 2004 EEO-1 Data Provide Useful Compliance and Diversity Benchmarks (November 3, 2006)
- 06-242 Sixth Circuit in *EEOC v. SunDance* Strikes Another Blow to EEOC’s Controversial “Facial Retaliation” Theory (November 3, 2006)
- 06-243 Sixth Circuit in *EEOC v. Watkins* Rejects Argument That Extreme Obesity Is an Automatic ADA Disability (November 3, 2006)
- 06-245 EEAC’s Updated Guide To Obtaining OWBPA-Compliant Releases of Age Discrimination Claims (November 10, 2006)
- 06-246 EEOC Confirms That Resurvey of Incumbent Employees After Revised EEO-1 Goes Into Effect Is Encouraged, but *Not* Required; Same for OFCCP (November 10, 2006)
- 06-249 The EEOC Sometimes Gets Sued for Discrimination (and, by the Way, Defends Itself Vigorously When It Does) (November 10, 2006)
- 06-252 Internal Agency Documents Shed Light on EEOC’s Progress in Implementing Its New Systemic Discrimination Enforcement Program (November 17, 2006)
- 06-263 Obligation To Retain Documents (Including Electronic Records) Relevant to Employment Litigation Applies to Plaintiffs as Well as Employers (December 1, 2006)
- 06-265 Two Recent Court Decisions Make Clear That Use of Statistical Analyses To Establish Systemic Employment Discrimination Had Better Relate Precisely to the Facts Presented (December 8, 2006)
- 06-266 Federal Court in *Venetian Casino Resort v. EEOC* Upholds EEOC Policy That Allows Agency To Disclose Confidential Employer Information Without Notice; EEAC Intends To File *Amicus* Brief in Support of Employer’s Appeal (December 8, 2006)
- 06-272 Two Contrasting Testing Decisions Illustrate Why It Is Important To Validate Before Testing (December 15, 2006)
- 06-278 Second Circuit in *Nestor v. Pratt & Whitney* Gives Discrimination Complainant Another Bite at the Apple To Go for Additional Money Damages (December 29, 2006)

## HHS

- 06-121 EEAC Launches New Resource Clearinghouse on Preparing for and Responding to Possible Flu Pandemic (June 2, 2006)
- 06-254 First-Time Government Survey Underscores Important Role Played by HR in Workplace Violence Prevention Efforts (November 17, 2006)

## **IRS**

- 06-175 Pension Reform Bill Approved by Congress Includes Safe-Harbor Against Age Discrimination Claims for “Hybrid” Pension Plans, but Only Prospectively (August 11, 2006)
- 06-186 New Pension Reform Law Adds Language Offering Limited Protection for “Phased Retirement” Programs (August 25, 2006)
- 06-187 D.C. Circuit Rules in *Murphy v. IRS* That Income Tax on Emotional Distress Damages Is Unconstitutional (August 25, 2006)

## **NLRB**

- 06-104 Recent Immigration Rallies Prompt Charges That Some Employers Violated U.S. Labor Law by Interfering With Right of Employees To Engage in “Concerted Activity” (May 12, 2006)
- 06-167 NLRB Rules That Employment Arbitration Agreement Is Unlawful Because It Appears To Disallow Employee From Filing Charge With the Agency (August 4, 2006)
- 06-236 Decision by National Labor Relations Board in *Oakwood Healthcare, Inc.* Defining “Supervisor” Not Likely To Impact Employment Discrimination Cases (October 27, 2006)

## **ODEP**

- 06-55 Labor Department’s ODEP Has Developed a Number of Programs and Resources To Assist in Employing Individuals With Disabilities; Employers With Exemplary Programs Might Want To Self-Nominate for New Freedom Initiative Award (March 10, 2006)
- 06-241 Three EEAC Member Companies Receive 2006 “New Freedom Initiative” Awards for Exemplary Efforts in Recruiting, Hiring, and Supporting Individuals With Disabilities (November 3, 2006)

## **OFCCP**

- 06-6 OFCCP Issues First Set of “Frequently Asked Questions” on Its Internet Applicant Regulation (January 13, 2006)
- 06-12 Second Wave of OFCCP “Advance Notice” Letters Targets an Additional *Nine Thousand* Establishments for Review This Year; Scheduling Letters Likely To Follow Soon (January 20, 2006)
- 06-18 OFCCP Declines To Extend Effective Date of Internet Applicant Regulation, but Adopts 90-Day Grace Period for Contractors Who Can Demonstrate Reasonable Steps To Comply (January 27, 2006)

- 06-19 OFCCP Proposes Rule To Eliminate Its Controversial Equal Opportunity Survey (January 27, 2006)
- 06-20 OFCCP Proposes New Veterans Affirmative Action Regulations Required by 2002 Jobs for Veterans Act (January 27, 2006)
- 06-23 OFCCP Publishes Materials That Will Be Used To Train Compliance Staff on the New Internet Applicant Regulation (January 27, 2006)
- 06-28 OFCCP's 2005 Enforcement Numbers Show Record Amount in Monetary Relief; Compliance Reviews Were Down, but Not for Long (February 3, 2006)
- 06-51 Updated OFCCP National Office and Field Directory (March 3, 2006)
- 06-57 EEAC's 2006 Annual Membership Meeting Highlights (March 17, 2006)
- 06-62 EEAC Files Written Comments on OFCCP's Proposed Veterans Affirmative Action Regulations Implementing Jobs for Veterans Act (March 24, 2006)
- 06-63 EEAC Submits Written Comments Supporting OFCCP's Proposed Rule To Eliminate Its Ineffective Equal Opportunity Survey (March 24, 2006)
- 06-74 OFCCP Issues Second Series of Internet Applicant Regulation FAQs Providing Helpful Guidance on Several Critical Compliance Issues (April 7, 2006)
- 06-102 OFCCP Set To Begin New Round of Functional AAP Compliance Evaluations, With Some FAAP Contractors Likely To Receive More Than One Audit This Year (May 12, 2006)
- 06-103 New OFCCP "Media Guidelines" Directive Sets Out Nationwide Agency Policy for Publicizing Enforcement Actions (May 12, 2006)
- 06-114 DOL Plans To Phase Out America's Job Bank, Leaving Contractors With a Potential Compliance Dilemma Regarding VEVRAA's Mandatory Job Listing Requirements (May 26, 2006)
- 06-125 Good Faith Objection to OFCCP Compliance Evaluation on Jurisdictional Grounds Should Be Raised Early, With Reasons Carefully Documented (June 9, 2006)
- 06-134 OFCCP Issues Final "Interpretive Standards" for Investigating Systemic Compensation Discrimination (June 23, 2006)
- 06-139 OFCCP's Final Voluntary "Self-Evaluation Guidelines" for Reviewing Compensation Practices (June 30, 2006)
- 06-156 Two High-Level National Office Staff Changes at OFCCP (July 21, 2006)

- 06-161 EEAC's Guide To Preparing an AAP-Compliant "Action-Oriented Program"  
(July 28, 2006)
- 06-170 It's Reporting Time: 2006 EEO-1 and VETS-100 Forms Due by September 30; Forms  
and Filing Options Are Unchanged From Last Year (August 11, 2006)
- 06-174 OFCCP Posts "Frequently Asked Questions" on Its Recently-Finalized Systemic  
Compensation Discrimination Guidelines (August 11, 2006)
- 06-176 U.S. Labor Department Proposes New "VETS-100A" Report for 2008 Reporting Cycle;  
New Form Would Not Replace the VETS-100 (August 18, 2006)
- 06-194 It's Official: OFCCP's Controversial Equal Opportunity Survey Is No More  
(September 8, 2006)
- 06-195 EEAC's Guide To Setting — or Resetting — Your Annual AAP Cycle  
(September 8, 2006)
- 06-207 Congress Clears Bill To Create Publicly-Accessible Website That Will List Federal  
Contracts and Contractors Starting in 2008 (September 22, 2006)
- 06-217 Latest Round of OFCCP Functional AAP Compliance Evaluations Is Underway  
(October 6, 2006)
- 06-219 OFCCP's Director of Statistical Analysis, Dr. Michael Sinclair, Offers Guidance to  
EEAC Seminar Attendees on Compensation Self-Monitoring (October 6, 2006)
- 06-233 OFCCP Issues 12 New "Frequently Asked Questions" on Its Internet Applicant  
Regulation (October 27, 2006)
- 06-239 Newly Released 2004 EEO-1 Data Provide Useful Compliance and Diversity  
Benchmarks (November 3, 2006)
- 06-246 EEOC Confirms That Resurvey of Incumbent Employees After Revised EEO-1 Goes  
Into Effect Is Encouraged, but *Not* Required; Same for OFCCP (November 10, 2006)
- 06-251 OFCCP Commences 2006-2007 Enforcement Cycle With Round of "Advance Notice"  
Letters Targeting Approximately 2,000 Establishments; Scheduling Letters Not Far  
Behind (November 17, 2006)
- 06-265 Two Recent Court Decisions Make Clear That Use of Statistical Analyses To Establish  
Systemic Employment Discrimination Had Better Relate Precisely to the Facts Presented  
(December 8, 2006)
- 06-272 Two Contrasting Testing Decisions Illustrate Why It Is Important To Validate Before  
Testing (December 15, 2006)

06-277 OFCCP's 2006 Enforcement Numbers Confirm Increasing Effectiveness of Agency's Systemic Discrimination Emphasis (December 29, 2006)

## **OMB**

06-1 EEAC's Written Comments to OMB Endorse EEO-1 Revisions, Recommend Several Important Clarifications (January 6, 2006)

06-24 It's Official: Revised EEO-1 Report Approved, Effective for 2007 Reporting Cycle (February 3, 2006)

06-207 Congress Clears Bill To Create Publicly-Accessible Website That Will List Federal Contracts and Contractors Starting in 2008 (September 22, 2006)

## **EQUAL PAY ACT/COMPENSATION**

06-19 OFCCP Proposes Rule To Eliminate Its Controversial Equal Opportunity Survey (January 27, 2006)

06-56 Recent Decision by Canadian Supreme Court Illustrates That Implementing Canada's Statutory Comparable Worth Mandate Has Not Been Easy (March 10, 2006)

06-63 EEAC Submits Written Comments Supporting OFCCP's Proposed Rule To Eliminate Its Ineffective Equal Opportunity Survey (March 24, 2006)

06-93 Advocacy Groups Renew Pay Equity Push, Even as Latest BLS Survey Shows Wage Gap Continues To Narrow (April 28, 2006)

06-129 EEAC's New "Managers" Pamphlet on Preventing Sex Discrimination (June 16, 2006)

06-134 OFCCP Issues Final "Interpretive Standards" for Investigating Systemic Compensation Discrimination (June 23, 2006)

06-139 OFCCP's Final Voluntary "Self-Evaluation Guidelines" for Reviewing Compensation Practices (June 30, 2006)

06-174 OFCCP Posts "Frequently Asked Questions" on Its Recently-Finalized Systemic Compensation Discrimination Guidelines (August 11, 2006)

06-219 OFCCP's Director of Statistical Analysis, Dr. Michael Sinclair, Offers Guidance to EEAC Seminar Attendees on Compensation Self-Monitoring (October 6, 2006)

06-226 Slowly But Surely, Increased Women's Earnings Are Continuing To Narrow the Gender Wage Gap, According to Latest Annual Government Survey (October 13, 2006)

06-235 EEAC Urges Supreme Court in *Ledbetter v. Goodyear* To Adopt Rational Time Limitation for Making Claims of Pay Discrimination Under Title VII (October 27, 2006)

### **FAIR CREDIT REPORTING ACT**

06-157 U.S. Justice Department Recommends That Employers Be Given Access to FBI Criminal Records Database To Enhance Accuracy of Background Checks (July 21, 2006)

### **FAIR LABOR STANDARDS ACT**

06-77 Wage and Hour Collective Actions Have Moved to the Forefront of Employment-Related Class Action Litigation (April 7, 2006)

### **FAMILY AND MEDICAL LEAVE ACT**

06-17 The *Ragsdale* Loophole: To Avoid Possible Liability, Employers Still Need To Designate FMLA-Covered Leave (January 20, 2006)

06-33 FMLA Enforcement Numbers Dropped Again in 2005 (February 10, 2006)

06-38 Gym Visits and Beer Runs Disqualify Employee From FMLA Protection Says First Circuit in *Colburn v. Parker Hannifin* (February 17, 2006)

06-88 Labor Department Opinion Letter Says That FMLA Leave Does Not Relieve Employee From Having To Meet Hours Threshold for Health Benefits Eligibility (April 21, 2006)

06-94 Second Circuit in *Sista v. CDC IXIS*, Agreeing With Arguments Raised in EEAC's *Amicus* Brief, Rejects ADA and FMLA Claims of Employee Who Threatened Supervisor (April 28, 2006)

06-101 Fifth Circuit in *Willis v. Coca Cola Enterprises* Holds That Employer Can Designate FMLA Leave Even If Employee Does Not Want To Use It (May 5, 2006)

06-112 Sixth Circuit in *Edgar v. JAC Products* Set Out Rationale for Applying "After-Acquired Evidence" Doctrine in Context of FMLA Cases (May 19, 2006)

06-118 Seventh Circuit Does About-Face in *Harrell v. USPS*, Concludes That Additional Return-To-Work Requirements in Collective Bargaining Agreement Do Not Violate the FMLA (June 2, 2006)

06-127 FMLA Leave To "Care For" Ailing Family Member Gets Expansive Interpretation by Eighth Circuit in *Stallings v. Hussmann Corporation* (June 9, 2006)

06-144 EEAC's Brief in *Rucker v. Lee Holding* Argues That FMLA Does Not Allow Merging of Widely Separated Periods of Employment To Meet Eligibility Requirements (July 7, 2006)

- 06-152 Fourth Circuit in *Yashenko v. Harrah's* Confirms That There Is No Automatic Right To Job Restoration After Using FMLA Leave (July 14, 2006)
- 06-184 EEAC's Brief in *O'Reilly v. Rutgers* Argues That FMLA Does Not Allow Employees To Put Conditions on Medical Certification Requirements (August 25, 2006)
- 06-197 EEAC in *Taylor v. Progress Energy* Once Again Argues That FMLA Does Not Require Labor Department To Supervise Releases, and Labor Department Agrees (September 8, 2006)
- 06-198 Favorable Decision by Third Circuit in *Sommer v. Vanguard Group* Confirms That Certain Bonuses to FMLA Leave-Takers Can Be Pro-Rated (September 8, 2006)
- 06-214 Sixth Circuit in *Cobb v. Contract Transport, Inc.* Stretches FMLA To Find "Successor" Employer Must Grant Protected Leave (September 29, 2006)
- 06-253 EEAC's Brief in *Mahoney v. Nokia* Argues That Client-Employer Has No Obligation To Grant FMLA Leave to Leased Employee (November 17, 2006)
- 06-264 Labor Department Seeks Public Comments on FMLA Compliance Issues; Proposed Regulatory Changes Could Follow (December 8, 2006)
- 06-270 San Francisco Paid Sick Leave Ordinance May Be Precursor To Push for Federal Mandate (December 15, 2006)
- 06-271 Tenth Circuit in *Hackworth v. Progressive* Upholds FMLA Regulation for Determining Whether Small Operation Is Covered (December 15, 2006)
- 06-279 First Circuit in *Rucker v. Lee Holding Co.* Gives Liberal Interpretation to FMLA Eligibility Requirement (December 29, 2006)

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- 06-266 Federal Court in *Venetian Casino Resort v. EEOC* Upholds EEOC Policy That Allows Agency To Disclose Confidential Employer Information Without Notice; EEAC Intends To File *Amicus* Brief in Support of Employer's Appeal (December 8, 2006)

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- 06-50 Third Circuit in *Jensen v. Potter*, in Opinion Written by Judge Samuel Alito Shortly Before Moving to Supreme Court, Says Harassment Can Be Retaliation Under Title VII (March 3, 2006)
- 06-52 Tenth Circuit in *Maldonado v. City of Altus* Finds Another Way for Plaintiffs To Bring a Title VII Case: Hostile Environment Disparate Impact (March 10, 2006)

- 06-82 Ruling by D.C. Circuit in *Lutkewitte v. Gonzales* Raises Issue of Whether Employer Should Be Automatically Liable in Case Where Harassment Victim Gets Benefits for Submitting to Supervisor’s Advances (April 14, 2006)
- 06-95 Decision by California Supreme Court in “Friends” Lewd Language Harassment Case Has Hollywood Ending for Employer, but Little Practical Relevance to the Normal Workplace (April 28, 2006)
- 06-129 EEAC’s New “Managers” Pamphlet on Preventing Sex Discrimination (June 16, 2006)
- 06-154 Proposed Regulations To Implement California’s Mandatory Sexual Harassment Training Law Are Re-Proposed To Reflect Public Input (July 14, 2006)
- 06-164 Seventh Circuit in *Forrester v. Rauland-Borg Corporation* Makes Clear That Jury Cannot Second Guess Employer’s Nondiscriminatory Reason for Taking Adverse Action (July 28, 2006)
- 06-165 Dealing With Sexual Harassment Allegations Involving High-Level Executives (August 4, 2006)
- 06-199 Decision by Seventh Circuit in *Valentine v. City of Chicago* Underscores Importance of Having Effective Sexual Harassment Complaint Procedures (September 8, 2006)
- 06-203 Federal Appeals Courts at Odds After Seventh Circuit Rules in *Doe v. Oberweis* That Charging Party Does Not Have To Cooperate in EEOC Charge Investigation as a Condition for Bringing a Discrimination Lawsuit (September 15, 2006)
- 06-206 California Legislature Narrows Scope of Mandatory Sexual Harassment Training Requirements for Supervisors (September 22, 2006)
- 06-231 Ninth Circuit in *Wallace v. City of San Diego* Broadens Employer Liability for “Constructive Discharge” (October 20, 2006)
- 06-232 Germany’s New “General Equal Treatment Act” Broadly Prohibits Employment Discrimination (October 20, 2006)
- 06-248 Tenth Circuit in *LB&B Associates, Inc. v. IBEW* Upholds Arbitrator’s Order Reinstating Sexual Harasser (November 10, 2006)
- 06-262 Element of Fear in Harassment Complaint Increases Duty on Employer To Respond Swiftly, According to Seventh Circuit in *Erickson v. Wisconsin DOC* (December 1, 2006)

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- 06-35 Department of Justice Reminds Employers of Their Immigration-Related Nondiscrimination Obligations (February 10, 2006)

- 06-65 Several States Are Considering Legislation To Restrict Employment of Illegal Aliens as Congress Continues To Search for Consensus Approach (March 24, 2006)
- 06-90 Immigration Reform Update: Parameters of New Mandated Electronic Employment Verification System — EEVS — Becoming Clearer (Assuming Congress Enacts a Bill) (April 28, 2006)
- 06-104 Recent Immigration Rallies Prompt Charges That Some Employers Violated U.S. Labor Law by Interfering With Right of Employees To Engage in “Concerted Activity” (May 12, 2006)
- 06-117 Senate-Passed Amendments to Immigration Bill Making English the “National Language” Unlikely To Affect Employers (May 26, 2006)
- 06-124 Side-By-Side Analysis of Electronic Employment Verification System (EEVS) Provisions Contained in House and Senate Immigration Reform Bills (June 9, 2006)
- 06-130 Department of Homeland Security Proposes Regulation To Clarify Employer Responsibilities When Notified of Social Security Number “No-Match” (June 16, 2006)
- 06-131 Title VII Ruling by Tenth Circuit in *Zamora v. Elite Logistics* Illustrates Dilemma Employer Can Face When Attempting To Resolve Social Security Number “No-Match” (June 16, 2006)
- 06-136 Department of Homeland Security Issues Interim Regulation Implementing Electronic I-9 Form Option (June 23, 2006)
- 06-145 New Georgia Law Imposing Sanctions on Employers Who Use Undocumented Workers Exemplifies Growing Trend Among States To Address Issue Without Waiting for Congress To Act (July 7, 2006)
- 06-166 Department of Homeland Security Announces New “IMAGE” Partnership Program for Employers To Help Prevent Hiring of Undocumented Workers (August 4, 2006)
- 06-177 EEAC’s Written Comments Support Electronic I-9 Form Regulation, Ask for Certain Clarifications (August 18, 2006)
- 06-201 2005 “American Community Survey” Results Show Surprising Decline in Multiple Race Population, Continuing Increase in Immigrant Population (September 15, 2006)
- 06-256 Recent Election Featured Enactment of Several Employment-Related State Ballot Issues, Including Michigan “Civil Rights Initiative” To Ban Affirmative Action by State Entities (November 22, 2006)
- 06-259 Decision by DOL Tribunal in *Amtel* Case Reminds Companies Using H-1B Workers That Additional Employment Rules Apply (December 1, 2006)

06-274 ICE Raid on Swift Meatpacking Facilities Exposes Potential Limitations of a New Electronic Employment Verification System (December 22, 2006)

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06-5 U.S. and European Officials Hold Public Forum Focused on European Union's Data Protection Directive (January 6, 2006)

06-13 EEAC President Jeff Norris Relates U.S. Experience With Affirmative Action in Presentation to Korean Employers (January 20, 2006)

06-34 United Kingdom Took Action on Several Employment-Related Issues in 2005 (February 10, 2006)

06-45 French Data Privacy Agency Relaxes Ban on Whistleblower Hotlines in Recognition of Sarbanes-Oxley Compliance Obligations (February 24, 2006)

06-56 Recent Decision by Canadian Supreme Court Illustrates That Implementing Canada's Statutory Comparable Worth Mandate Has Not Been Easy (March 10, 2006)

06-83 European Union Provides Sampling of Diversity "Good Practices" Implemented by EU Employers (April 14, 2006)

06-128 EEAC's New Web-Based *International Resources Library* (June 16, 2006)

06-148 Recent Survey of Global Workforce Seeks To Identify Key "Drivers" for Attracting, Retaining and Engaging Skilled Workers (July 7, 2006)

06-202 Second Circuit Rules in *Ofori-Tenkorang v. AIG* That Section 1981 Does Not Apply Extraterritorially (September 15, 2006)

06-204 New Age Discrimination Regulations in the United Kingdom Go Into Effect on October 1 (September 15, 2006)

06-228 DOL Appeals Board in *Platone v. FLYi, Inc.* Adopts Arguments Made in EEAC's Friend-of-the-Court Brief, Rejects Sarbanes-Oxley Whistleblower Claim (October 20, 2006)

06-232 Germany's New "General Equal Treatment Act" Broadly Prohibits Employment Discrimination (October 20, 2006)

06-258 International Data Protection Laws Can Create Challenges for U.S. Companies Doing Business Overseas (November 22, 2006)

### OFCCP COMPLIANCE ISSUES

06-125 Good Faith Objection to OFCCP Compliance Evaluation on Jurisdictional Grounds Should Be Raised Early, With Reasons Carefully Documented (June 9, 2006)

06-161 EEAC's Guide To Preparing an AAP-Compliant "Action-Oriented Program"  
(July 28, 2006)

06-195 EEAC's Guide To Setting — or Resetting — Your Annual AAP Cycle  
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06-109 EEAC's Brief to Eighth Circuit in *Standridge v. Union Pacific* Argues That Title VII Does Not Require Prescription Drug Benefit To Include Contraceptive Coverage  
(May 19, 2006)

06-129 EEAC's New "Managers" Pamphlet on Preventing Sex Discrimination (June 16, 2006)

### **PRIVACY**

06-16 Justice Department Issues Regulation Governing Access to FBI Databases for Background Checks on Private Security Officers (January 20, 2006)

06-30 Second Circuit Rules in *Cassano v. Carb* That Federal Discrimination Law Does Not Protect Individual Who Refuses To Disclose Social Security Number to Her Employer  
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06-45 French Data Privacy Agency Relaxes Ban on Whistleblower Hotlines in Recognition of Sarbanes-Oxley Compliance Obligations (February 24, 2006)

06-122 Data Security Legislation Gets Renewed Congressional Attention After Government Discloses Massive Data Breach Involving Veterans (June 2, 2006)

06-157 U.S. Justice Department Recommends That Employers Be Given Access to FBI Criminal Records Database To Enhance Accuracy of Background Checks (July 21, 2006)

06-182 High-Profile Data Breach Incidents Should Serve as Good Incentive for Companies To Review Security Policies and Procedures for Protecting HR Data (August 25, 2006)

06-210 Recent Federal Appeals Court Rulings Bolster Right of Employers To Enforce Computer-Use Policies, Including Internet Monitoring (September 22, 2006)

06-258 International Data Protection Laws Can Create Challenges for U.S. Companies Doing Business Overseas (November 22, 2006)

### **RELIGION**

06-2 Seventh Circuit in *Moranski v. General Motors* Finds That Employer's Decision To Disallow Religious Affinity Groups Did Not Violate Title VII (January 6, 2006)

06-110 Second Circuit in *Baker v. Home Depot* Finds That Employer's Offered Religious Accommodation Was Not Reasonable (May 19, 2006)

## RETALIATION/WHISTLEBLOWER

- 06-15 First Circuit in *Carnero v. Boston Scientific* Rules That Sarbanes-Oxley Act's Whistleblower Protection Does Not Extend Beyond U.S. Boundaries (January 20, 2006)
- 06-25 EEAC Urges Supreme Court in *BNSF vs. White* To Reverse Problematic Retaliation Ruling That Erodes Traditional Management Prerogatives (February 3, 2006)
- 06-30 Second Circuit Rules in *Cassano v. Carb* That Federal Discrimination Law Does Not Protect Individual Who Refuses To Disclose Social Security Number to Her Employer (February 10, 2006)
- 06-39 Filing EEOC Charge That Does Not Allege Statutory Violation Bars Employee From Claiming Title VII's Anti-Retaliation Protection, Third Circuit Rules in *Slagle v. County of Clarion* (February 17, 2006)
- 06-43 Final Administrative Ruling in *Halloum v. Intel Corporation* Gives Broad Reading to Sarbanes-Oxley Anti-Retaliation Provisions, but Ultimately Finds for Employer (February 24, 2006)
- 06-45 French Data Privacy Agency Relaxes Ban on Whistleblower Hotlines in Recognition of Sarbanes-Oxley Compliance Obligations (February 24, 2006)
- 06-50 Third Circuit in *Jensen v. Potter*, in Opinion Written by Judge Samuel Alito Shortly Before Moving to Supreme Court, Says Harassment Can Be Retaliation Under Title VII (March 3, 2006)
- 06-87 D.C. Circuit in *Rochon v. Gonzales* Finds That Employer's Action Does Not Have To Be Employment-Related in Order To Support a Title VII Retaliation Claim (April 21, 2006)
- 06-97 EEAC's Brief in *Smith v. Hewlett Packard* Urges Labor Department Tribunal To Reject Sarbanes-Oxley Whistleblower Complaint Brought by Employee Relations Consultant (May 5, 2006)
- 06-126 U.S. Supreme Court in *Garcetti v. Ceballos* Addresses Whistleblower Rights of Public Employees, but Ruling Has Minimal Carry-Over to Private Sector (June 9, 2006)
- 06-135 U.S. Supreme Court in *BNSF v. White* Broadens Employer Liability in Title VII Retaliation (June 23, 2006)
- 06-146 Sarbanes-Oxley Whistleblower Protection Update: Two Significant New Administrative Rulings Address Scope of Law's Reach (July 7, 2006)
- 06-153 Title VII Retaliation Claim Must Be Supported by "Reasonable Belief" That Unlawful Discrimination Occurred, but What Is "Reasonable Belief"? (July 14, 2006)
- 06-158 *BNSF v. White* Retaliation Ruling Highlighted Employment-Related Cases Decided During Supreme Court Last Term (July 21, 2006)

- 06-173 EEAC's Brief in *Ambrose v. U.S. Foodservice* Addresses Reach of Sarbanes-Oxley Whistleblower Protection Provisions to Non-Public Subsidiary (August 11, 2006)
- 06-180 DOL Tribunal in *Henrich v. Ecolab, Inc.* Rules That Sarbanes-Oxley Act Does Not Protect Whistleblower Unless He Actually Blows the Whistle (August 18, 2006)
- 06-215 Dealing With Chronic Charge-Filers, aka "Vexatious Litigants" (September 29, 2006)
- 06-228 DOL Appeals Board in *Platone v. FLYi, Inc.* Adopts Arguments Made in EEAC's Friend-of-the-Court Brief, Rejects Sarbanes-Oxley Whistleblower Claim (October 20, 2006)
- 06-231 Ninth Circuit in *Wallace v. City of San Diego* Broadens Employer Liability for "Constructive Discharge" (October 20, 2006)
- 06-242 Sixth Circuit in *EEOC v. SunDance* Strikes Another Blow to EEOC's Controversial "Facial Retaliation" Theory (November 3, 2006)
- 06-250 Disgruntled Employees Who Cross the Line in Sounding Off Against Their Employer May Lose Protection Against Retaliation (November 10, 2006)
- 06-261 Eighth Circuit in *Clark v. Johanns* Rejects "Third Party" Retaliation Claim (December 1, 2006)
- 06-267 First Circuit in *Velez v. Janssen Ortho* Provides Helpful Guidance on What Constitutes a Failure-To-Hire Retaliation Claim (December 8, 2006)
- 06-273 Sarbanes-Oxley Whistleblower Retaliation Complaints Dropped in 2006 (December 22, 2006)
- 06-275 Second Circuit in *Joseph v. Leavitt* Concludes That Putting Employee on Paid Leave Pending Internal Investigation Is Not an Adverse Action for Purposes of Title VII Discrimination Claim (December 22, 2006)

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- 06-41 Unanimous Supreme Court in *Domino's Pizza v. McDonald* Overturns Ninth Circuit, Limits Scope of Section 1981 Race Discrimination Claims to Direct Contractual Relationship (February 24, 2006)
- 06-44 Fourth Circuit in *Thorn v. Jefferson-Pilot Life* Signals That Title VII Lawsuits Seeking Money Damages Are Unsuitable for Class Action Treatment (February 24, 2006)
- 06-202 Second Circuit Rules in *Ofori-Tenkorang v. AIG* That Section 1981 Does Not Apply Extraterritorially (September 15, 2006)

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- 06-60 U.S. Supreme Court in *Rumsfeld v. Forum for Academic and Institutional Rights* Upholds Equal Access for Military Recruiters to Law Schools Receiving Federal Funds (March 17, 2006)
- 06-72 Massachusetts Supreme Court Limits Scope of Its 2003 Same-Sex Marriage Decision by Ruling That Non-Residents Who Cannot Legally Marry in Their Home States Cannot Get Married in Massachusetts Either (March 31, 2006)
- 06-89 Ninth Circuit's Ruling in *Jespersen v. Harrah's* Supports Grooming Policy Against "Sex Stereotyping" Claim, but Theory Remains Alive and Well in Other Contexts (April 21, 2006)
- 06-151 EEAC Update: State Court Rules New York Constitution Does Not Require Recognition of Same-Sex Marriage; U.S. Senate Rejects "Marriage Protection" Amendment (July 14, 2006)
- 06-169 Human Rights Campaign Reports That More Than Half of Fortune 500 Companies Now Provide Domestic Partner Benefits (August 4, 2006)
- 06-240 Same-Sex Marriage Ruling by New Jersey Supreme Court Highlights EEAC's "State Snapshots II" Roundup (November 3, 2006)
- 06-256 Recent Election Featured Enactment of Several Employment-Related State Ballot Issues, Including Michigan "Civil Rights Initiative" To Ban Affirmative Action by State Entities (November 22, 2006)

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- 06-32 In Positive ADR Ruling, Fourth Circuit in *American General Life v. Wood* Holds State Law Claims Are Covered Under Employment Arbitration Agreement (February 10, 2006)
- 06-49 Tenth Circuit in *Bastible v. Weyerhaeuser* Rejects Challenge to Firearms Ban on Company Property, but for Many Employers Issue Is Far From Resolved (March 3, 2006)
- 06-53 Corporate "Quit Smoking or Be Fired Policies" Can Be Subject to State Law Restrictions (March 10, 2006)
- 06-65 Several States Are Considering Legislation To Restrict Employment of Illegal Aliens as Congress Continues To Search for Consensus Approach (March 24, 2006)
- 06-70 Illinois Supreme Court in *Melena v. Anheuser-Busch* Upholds Employment Arbitration Agreement (March 31, 2006)

- 06-71 Two Federal Circuit Courts “Rewrite” Important Provision of Federal Class Action Fairness Act (March 31, 2006)
- 06-72 Massachusetts Supreme Court Limits Scope of Its 2003 Same-Sex Marriage Decision by Ruling That Non-Residents Who Cannot Legally Marry in Their Home States Cannot Get Married in Massachusetts Either (March 31, 2006)
- 06-80 EEAC’s Digest of State and Local Affirmative Action Requirements (April 14, 2006)
- 06-95 Decision by California Supreme Court in “Friends” Lewd Language Harassment Case Has Hollywood Ending for Employer, but Little Practical Relevance to the Normal Workplace (April 28, 2006)
- 06-105 “Parking Lot Gun Laws” Enacted in Handful of States Despite Workplace Violence Concerns (May 12, 2006)
- 06-111 Oregon Supreme Court Rules That Employer Can Fire Medical Marijuana User for Violating Drug-Free Workplace Policy, but Ducks Accommodation Issue (May 19, 2006)
- 06-145 New Georgia Law Imposing Sanctions on Employers Who Use Undocumented Workers Exemplifies Growing Trend Among States To Address Issue Without Waiting for Congress To Act (July 7, 2006)
- 06-151 EEAC Update: State Court Rules New York Constitution Does Not Require Recognition of Same-Sex Marriage; U.S. Senate Rejects “Marriage Protection” Amendment (July 14, 2006)
- 06-154 Proposed Regulations To Implement California’s Mandatory Sexual Harassment Training Law Are Re-Proposed To Reflect Public Input (July 14, 2006)
- 06-168 EEAC’s “State Snapshots” I (August 4, 2006)
- 06-196 Michigan Voters To Decide Ballot Initiative That Would Ban Use of Affirmative Action Programs by State Agencies and Universities (September 8, 2006)
- 06-206 California Legislature Narrows Scope of Mandatory Sexual Harassment Training Requirements for Supervisors (September 22, 2006)
- 06-240 Same-Sex Marriage Ruling by New Jersey Supreme Court Highlights EEAC’s “State Snapshots II” Roundup (November 3, 2006)
- 06-256 Recent Election Featured Enactment of Several Employment-Related State Ballot Issues, Including Michigan “Civil Rights Initiative” To Ban Affirmative Action by State Entities (November 22, 2006)
- 06-260 New Report Analyzes Negative Effects of California’s “Prop 209” Barring Affirmative Action in Public Education and Contracting (December 1, 2006)

06-270 San Francisco Paid Sick Leave Ordinance May Be Precursor To Push for Federal Mandate (December 15, 2006)

06-278 Second Circuit in *Nestor v. Pratt & Whitney* Gives Discrimination Complainant Another Bite at the Apple To Go for Additional Money Damages (December 29, 2006)

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06-81 Fifth Circuit in *IBEW v. Mississippi Power & Light* Issues Favorable Ruling Regarding Use of Employment Test (April 14, 2006)

06-212 EEAC's Primer on Using Personality Tests as an Employee Selection Tool (September 29, 2006)

06-272 Two Contrasting Testing Decisions Illustrate Why It Is Important To Validate Before Testing (December 15, 2006)

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06-2 Seventh Circuit in *Moranski v. General Motors* Finds That Employer's Decision To Disallow Religious Affinity Groups Did Not Violate Title VII (January 6, 2006)

06-7 Jury Credits Company's Self-Critical Analyses in Delivering Favorable Verdict in *Williams v. Boeing Co.* Class Action Trial (January 13, 2006)

06-25 EEAC Urges Supreme Court in *BNSF vs. White* To Reverse Problematic Retaliation Ruling That Erodes Traditional Management Prerogatives (February 3, 2006)

06-27 Sixth Circuit in *Reeb v. Ohio DRC* Widens 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 (February 3, 2006)

06-35 Department of Justice Reminds Employers of Their Immigration-Related Nondiscrimination Obligations (February 10, 2006)

06-42 Supreme Court Grants Review in Title VII Race Discrimination Case (*Ash v. Tyson Foods*), and Immediately Reverses Because of Appeals Court Errors (February 24, 2006)

06-44 Fourth Circuit in *Thorn v. Jefferson-Pilot Life* Signals That Title VII Lawsuits Seeking Money Damages Are Unsuitable for Class Action Treatment (February 24, 2006)

- 06-50 Third Circuit in *Jensen v. Potter*, in Opinion Written by Judge Samuel Alito Shortly Before Moving to Supreme Court, Says Harassment Can Be Retaliation Under Title VII (March 3, 2006)
- 06-82 Ruling by D.C. Circuit in *Lutkewitte v. Gonzales* Raises Issue of Whether Employer Should Be Automatically Liable in Case Where Harassment Victim Gets Benefits for Submitting to Supervisor's Advances (April 14, 2006)
- 06-87 D.C. Circuit in *Rochon v. Gonzales* Finds That Employer's Action Does Not Have To Be Employment-Related in Order To Support a Title VII Retaliation Claim (April 21, 2006)
- 06-89 Ninth Circuit's Ruling in *Jespersen v. Harrah's* Supports Grooming Policy Against "Sex Stereotyping" Claim, but Theory Remains Alive and Well in Other Contexts (April 21, 2006)
- 06-91 EEOC Publishes New Compliance Manual Chapter on Race and Color Discrimination (April 28, 2006)
- 06-92 D.C. Circuit in *Garcia v. Johanns* and *Love v. Johanns* Rejects "Subjective Decision-making" Class Action Claims (April 28, 2006)
- 06-109 EEAC's Brief to Eighth Circuit in *Standridge v. Union Pacific* Argues That Title VII Does Not Require Prescription Drug Benefit To Include Contraceptive Coverage (May 19, 2006)
- 06-110 Second Circuit in *Baker v. Home Depot* Finds That Employer's Offered Religious Accommodation Was Not Reasonable (May 19, 2006)
- 06-129 EEAC's New "Managers" Pamphlet on Preventing Sex Discrimination (June 16, 2006)
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- 06-135 U.S. Supreme Court in *BNSF v. White* Broadens Employer Liability in Title VII Retaliation (June 23, 2006)
- 06-153 Title VII Retaliation Claim Must Be Supported by "Reasonable Belief" That Unlawful Discrimination Occurred, but What Is "Reasonable Belief"? (July 14, 2006)
- 06-158 *BNSF v. White* Retaliation Ruling Highlighted Employment-Related Cases Decided During Supreme Court Last Term (July 21, 2006)
- 06-159 Recent Decision by Tenth Circuit in *EEOC v. BCI* Underscores Important Role HR Can Play in Making Sure Managers Make Nondiscriminatory Employment Decisions (July 21, 2006)

- 06-164 Seventh Circuit in *Forrester v. Rauland-Borg Corporation* Makes Clear That Jury Cannot Second Guess Employer’s Nondiscriminatory Reason for Taking Adverse Action (July 28, 2006)
- 06-165 Dealing With Sexual Harassment Allegations Involving High-Level Executives (August 4, 2006)
- 06-190 Decision by Seventh Circuit in *EEOC v. Target Corp.* Underscores How Sloppy Recordkeeping and Recruitment Practices Can Get a Company Into Trouble (September 1, 2006)
- 06-193 Decision by Third Circuit in *Buck v. Hampton Township School District* Underscores Importance of Making Sure That Title VII Charge Has Been “Verified” (September 1, 2006)
- 06-203 Federal Appeals Courts at Odds After Seventh Circuit Rules in *Doe v. Oberweis* That Charging Party Does Not Have To Cooperate in EEOC Charge Investigation as a Condition for Bringing a Discrimination Lawsuit (September 15, 2006)
- 06-209 Favorable Ruling by Fifth Circuit in *Price v. Choctaw Glove & Safety Company* Holds That Title VII “Piggybackers” Do Not Have Right To Bring Their Own Lawsuits (September 22, 2006)
- 06-225 Federal Judge in *Jenkins v. BellSouth* Finds Plaintiffs Failed To Make Valid Race Discrimination Class Action Case (October 13, 2006)
- 06-231 Ninth Circuit in *Wallace v. City of San Diego* Broadens Employer Liability for “Constructive Discharge” (October 20, 2006)
- 06-232 Germany’s New “General Equal Treatment Act” Broadly Prohibits Employment Discrimination (October 20, 2006)
- 06-235 EEAC Urges Supreme Court in *Ledbetter v. Goodyear* To Adopt Rational Time Limitation for Making Claims of Pay Discrimination Under Title VII (October 27, 2006)
- 06-236 Decision by National Labor Relations Board in *Oakwood Healthcare, Inc.* Defining “Supervisor” Not Likely To Impact Employment Discrimination Cases (October 27, 2006)
- 06-242 Sixth Circuit in *EEOC v. SunDance* Strikes Another Blow to EEOC’s Controversial “Facial Retaliation” Theory (November 3, 2006)
- 06-244 Federal Courts Are Consistent in Finding That “Same Actor” Rule Creates Strong Inference That Adverse Action Was Not Discriminatory (November 3, 2006)
- 06-261 Eighth Circuit in *Clark v. Johanns* Rejects “Third Party” Retaliation Claim (December 1, 2006)

- 06-262 Element of Fear in Harassment Complaint Increases Duty on Employer To Respond Swiftly, According to Seventh Circuit in *Erickson v. Wisconsin DOC* (December 1, 2006)
- 06-267 First Circuit in *Velez v. Janssen Ortho* Provides Helpful Guidance on What Constitutes a Failure-To-Hire Retaliation Claim (December 8, 2006)
- 06-275 Second Circuit in *Joseph v. Leavitt* Concludes That Putting Employee on Paid Leave Pending Internal Investigation Is Not an Adverse Action for Purposes of Title VII Discrimination Claim (December 22, 2006)
- 06-278 Second Circuit in *Nestor v. Pratt & Whitney* Gives Discrimination Complainant Another Bite at the Apple To Go for Additional Money Damages (December 29, 2006)

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

- 06-20 OFCCP Proposes New Veterans Affirmative Action Regulations Required by 2002 Jobs for Veterans Act (January 27, 2006)
- 06-60 U.S. Supreme Court in *Rumsfeld v. Forum for Academic and Institutional Rights* Upholds Equal Access for Military Recruiters to Law Schools Receiving Federal Funds (March 17, 2006)
- 06-62 EEAC Files Written Comments on OFCCP's Proposed Veterans Affirmative Action Regulations Implementing Jobs for Veterans Act (March 24, 2006)
- 06-99 House Veterans' Affairs Committee Holds Hearing Spotlighting Corporate Commitment To Hiring and Supporting Veterans (May 5, 2006)
- 06-113 Fifth Circuit Rules in *Garrett v. Circuit City* That USERRA Claims Are Covered Under Employment Arbitration Agreement (May 26, 2006)
- 06-114 DOL Plans To Phase Out America's Job Bank, Leaving Contractors With a Potential Compliance Dilemma Regarding VEVRAA's Mandatory Job Listing Requirements (May 26, 2006)
- 06-170 It's Reporting Time: 2006 EEO-1 and VETS-100 Forms Due by September 30; Forms and Filing Options Are Unchanged From Last Year (August 11, 2006)
- 06-176 U.S. Labor Department Proposes New "VETS-100A" Report for 2008 Reporting Cycle; New Form Would Not Replace the VETS-100 (August 18, 2006)
- 06-213 Three EEAC Member Companies Among Those Receiving National Recognition for Support of Employees Serving in National Guard and Reserve (September 29, 2006)
- 06-223 EEAC Submits Formal Comments Urging DOL-VETS To Minimize Burdensome "Dual Reporting" Requirement Proposed New "VETS-100A" Will Create (October 13, 2006)

06-269 USERRA Complaints Up Four Percent in FY 2006, Monetary Relief Up Forty Percent (December 15, 2006)

### WORKPLACE VIOLENCE

- 06-22 EEAC Urges Ninth Circuit in *Joesephs v. Pacific Bell* To Reconsider Its Ruling That Employer Violated ADA by Failing To Rehire Individual With History of Violence (January 27, 2006)
- 06-49 Tenth Circuit in *Bastible v. Weyerhaeuser* Rejects Challenge to Firearms Ban on Company Property, but for Many Employers Issue Is Far From Resolved (March 3, 2006)
- 06-94 Second Circuit in *Sista v. CDC IXIS*, Agreeing With Arguments Raised in EEAC's *Amicus* Brief, Rejects ADA and FMLA Claims of Employee Who Threatened Supervisor (April 28, 2006)
- 06-105 "Parking Lot Gun Laws" Enacted in Handful of States Despite Workplace Violence Concerns (May 12, 2006)
- 06-183 Workplace Homicides Rose Slightly in 2005, While Workplace Suicides Dropped Sharply (August 25, 2006)
- 06-189 EEAC's Brief in *Independent Chemical* Argues That Arbitrator Was Wrong in Ordering Reinstatement of Worker Under Indictment for Violent Felonies (September 1, 2006)
- 06-254 First-Time Government Survey Underscores Important Role Played by HR in Workplace Violence Prevention Efforts (November 17, 2006)
- 06-262 Element of Fear in Harassment Complaint Increases Duty on Employer To Respond Swiftly, According to Seventh Circuit in *Erickson v. Wisconsin DOC* (December 1, 2006)

### MISCELLANEOUS

- 06-9 EEAC's Eighth Annual Litigation Survey Results (January 13, 2006)
- 06-29 Recent Report Prepared by Dallas Federal Reserve Bank Focuses on Two Important Workplace Trends: Women Opting Out and an Aging Workforce (February 3, 2006)
- 06-40 Center for Work-life Policy Study Examines Untapped Talent of Minority Professionals, Offers Recommendations to Employers for Leveraging "Cultural Capital" (February 17, 2006)
- 06-46 Recent Studies Continue To Highlight Implications of Aging Workforce, Urge Employers To Prepare (February 24, 2006)
- 06-53 Corporate "Quit Smoking or Be Fired Policies" Can Be Subject to State Law Restrictions (March 10, 2006)

- 06-60 U.S. Supreme Court in *Rumsfeld v. Forum for Academic and Institutional Rights* Upholds Equal Access for Military Recruiters to Law Schools Receiving Federal Funds (March 17, 2006)
- 06-61 “Googling” Applicants: A Look at the Pros and Cons (March 17, 2006)
- 06-76 EEAC Reinstates Annual Discrimination Charge Benchmarking Survey (April 7, 2006)
- 06-79 Another Study Extols the Business Benefits of Teleworking (April 7, 2006)
- 06-84 Seventh Circuit in *International Airport Centers v. Citrin* Says Federal “Computer Fraud and Abuse Act” Allows Employer To Sue Former Employee Who Trashed Company Records (April 14, 2006)
- 06-121 EEAC Launches New Resource Clearinghouse on Preparing for and Responding to Possible Flu Pandemic (June 2, 2006)
- 06-126 U.S. Supreme Court in *Garcetti v. Ceballos* Addresses Whistleblower Rights of Public Employees, but Ruling Has Minimal Carry-Over to Private Sector (June 9, 2006)
- 06-133 Congressional Watchdog Agency Issues Report Criticizing Absence of Objectivity at the U.S. Civil Rights Commission (June 16, 2006)
- 06-157 U.S. Justice Department Recommends That Employers Be Given Access to FBI Criminal Records Database To Enhance Accuracy of Background Checks (July 21, 2006)
- 06-158 *BNSF v. White* Retaliation Ruling Highlighted Employment-Related Cases Decided During Supreme Court Last Term (July 21, 2006)
- 06-160 EEAC’s 2006 Discrimination Charge Survey Results (July 28, 2006)
- 06-163 Final “No FEAR” Act Regulations Require Federal Agencies To Give Mandatory Training to All Employees on Their Rights Under Antidiscrimination Laws by Year-End, and Every Two Years Thereafter (July 28, 2006)
- 06-165 Dealing With Sexual Harassment Allegations Involving High-Level Executives (August 4, 2006)
- 06-181 Federal Courts Are Generally Receptive To Enforcing EEOC Subpoenas, but Employers Can Sometimes Narrow the Scope (August 18, 2006)
- 06-186 New Pension Reform Law Adds Language Offering Limited Protection for “Phased Retirement” Programs (August 25, 2006)
- 06-187 D.C. Circuit Rules in *Murphy v. IRS* That Income Tax on Emotional Distress Damages Is Unconstitutional (August 25, 2006)

- 06-200 EEAC's Ninth Annual Litigation Survey (September 15, 2006)
- 06-210 Recent Federal Appeals Court Rulings Bolster Right of Employers To Enforce Computer-Use Policies, Including Internet Monitoring (September 22, 2006)
- 06-215 Dealing With Chronic Charge-Filers, aka "Vexatious Litigants" (September 29, 2006)
- 06-222 EEO Implications Should Be Considered When Making Outsourcing Decisions (October 6, 2006)
- 06-226 Slowly But Surely, Increased Women's Earnings Are Continuing To Narrow the Gender Wage Gap, According to Latest Annual Government Survey (October 13, 2006)
- 06-229 New Report Finds Many Recent Graduates Lack Basic Skills Necessary for Success on the Job (October 20, 2006)
- 06-237 Federal Courts Tend To Put Employee Insubordination Into Three General Categories (October 27, 2006)
- 06-244 Federal Courts Are Consistent in Finding That "Same Actor" Rule Creates Strong Inference That Adverse Action Was Not Discriminatory (November 3, 2006)
- 06-249 The EEOC Sometimes Gets Sued for Discrimination (and, by the Way, Defends Itself Vigorously When It Does) (November 10, 2006)
- 06-257 New Study Reveals Employee Attitudes About Pandemic Flu Outbreak (November 22, 2006)
- 06-268 New BLS "Databook" on Women's Employment Provides Wealth of Information on Long-Term Trends in U.S. Labor Force Participation Rates, Employment Patterns and Earnings (December 8, 2006)

# Appendix C

## 2007 Training Seminars and Packages

The Council's training curriculum for 2007 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) writing effective position statements; and (4) compensation analysis.

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.

### 2007 TRAINING SEMINARS

#### I. Basic EEO

##### Basic EEO and AA Compliance

January 23-25

April 11-12

June 12-14

September 26-27

November 13-15

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; and
- The fundamentals of responding to employment discrimination charges filed with the EEOC and FEP agencies.

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

- An overview of 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

**February 6-8**

**April 24-26**

**July 10-12**

**September 18-20**

**November 27-29**

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* covers everything that a compliance practitioner needs to know in order to design, develop, implement, and defend a compliant AAP. Participants (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. Responding to Charges of Employment Discrimination

**March 27-28**

**June 19-20**

**October 2-3**

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**

**January 30-31**

**May 8-9**

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. The trainers' use of EEAC's Comp Auditor® II software in presenting this information avoids the need for a thorough understanding of statistical methodologies. Managing OFCCP's review of your compensation system and strategies for conciliating alleged pay violations found by OFCCP also are addressed. The program concludes with a demonstration of EEAC's Comp Auditor® II software.

## V. Writing Effective Position Statements

May 17

September 11

EEAC Training Center  
Washington, DC

Preparing an effective “Statement of Position” for the EEOC after an employment discrimination charge is filed can have a significant impact on the scope of the agency’s investigation and ultimate determination. Yet writing an effective position statement can be difficult — even for the most seasoned EEO professional.

In addition to providing guidance on the preparation of an effective written position statement, the seminar also will cover strategies for responding to other information requests. Participants will engage in a variety of challenging practice exercises that ask them to discuss and critique sample position statements and responses to information requests.

### 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 offers a 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 laws 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

## 2006 Membership Meetings Program Highlights

### ANNUAL MEETING

March 8-10, 2006

Washington, DC

#### General Session

Cari Dominguez  
Chair  
Equal Employment Opportunity Commission

David Frank  
Deputy Director  
Office of Federal Contract Compliance  
Programs

Kim Wells  
Executive Director  
Corporate Alliance to End Partner Violence

#### Luncheon

Juan Williams  
Award-Winning Journalist

#### 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. *Practical Implementation Issues Under the New USERRA Regulations*

Rocco Maffei, Lockheed Martin  
Terry Owens, Masco Corporation  
Kenan Torrans, DOL-VETS  
Kathleen Vance, Union Pacific  
Ann Reesman, EEAC

2. *The Aging Workforce: Is Your Corporation Prepared?*

Marcie Pitt-Catsoupes, Center on Aging and  
Work/Workplace Flexibility  
Michael Smyer, Center on Aging and  
Work/Workplace Flexibility  
Marjorie Stein, CIGNA Corporation  
Jeff Trader, Chevron Corporation  
Doug Wilson, Shell Oil Company  
Laura Giantris, EEAC

3. *Keeping Pace With OFCCP's Evolving Tools for Evaluating Compensation Patterns*

Nancy Nelkin, EEAC

### FALL MEETING

October 18-20, 2006

Scottsdale, AZ

#### General Session

Leslie Silverman  
Vice Chair  
Equal Employment Opportunity Commission

Patsy Baker Blackshear  
Director, Division of Program Operations  
Office of Federal Contract Compliance  
Programs

Bill Proudman  
Managing Partner  
White Men as Full Diversity Partners, LLC

#### Luncheon

Dave Werner  
Political Satirist

#### 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*

## **General Session on OFCCP's Internet Applicant Regulation**

### **Workshops**

1. *Preparing for an OFCCP Audit of Compensation in Light of the Agency's Evolving Analytical Methodologies*

Nancy Nelkin, EEAC

2. *EEOC's New Systemic Enforcement Focus*

Laura Giantris, EEAC

3. *Obtaining Valid Releases of Employment Discrimination Claims*

Ann Reesman, EEAC  
Paul Iyob, EEAC

# Appendix E

## Summary of 2006 *Amicus Curiae* Activity

### I. Brief Cases Decided in 2006

#### A. Alternative Dispute Resolution

*Melena v. Anheuser-Busch* (Illinois Supreme Court)

*Decision:* The employer’s arbitration agreement was enforceable under ordinary state law contract principles.

A state trial court and appeals court both had refused to enforce an agreement to arbitrate employment disputes, and EEAC submitted a brief supporting the company’s request to have the state’s highest court review the case. See EEAC Memorandum 04-238 (November 5, 2004). The Illinois Supreme Court followed the U.S. Supreme Court’s lead and ruled that an arbitration agreement is as enforceable as any other contract. As the U.S. Supreme Court did previously, the Illinois court confirmed that by agreeing to arbitration, an employee does not give up any substantive rights, but merely agrees to have them decided in a different forum. The court also confirmed that the fact that the employee chose to remain employed by the company after the arbitration agreement was implemented showed both that she agreed to arbitration and served as “consideration” for the contract. See EEAC Memorandum 06-070 (March 31, 2006).

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

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

*Decision:* The company’s good faith attempt to enforce a safety standard for its drivers that paralleled an existing U.S. Department of Transportation (DOT) safety regulation violated the Americans with Disabilities Act (ADA).

EEAC’s brief urged 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. See EEAC Memorandum 05-059 (March 18, 2005). The Ninth Circuit, however, ruled that the company’s use of the DOT rule as applied to drivers of vehicles under 5

*Josephs v. Pacific Bell Telephone Company* (Ninth Circuit)

tons violated the ADA, finding that UPS had failed to justify its use of the rule under the ADA's "business necessity" defense. See EEAC Memorandum 06-230 (October 20, 2006). EEAC has filed a letter brief supporting the employer's request for the full court to rehear the case. See EEAC Memorandum 06-247 (November 10, 2006).

*Decision:* The Ninth Circuit declined to reconsider a panel decision holding that the employer violated the Americans with Disabilities Act (ADA) when it refused to rehire an employee who was fired for lying about his violent criminal record on his job application.

EEAC's letter brief, joined by the Chamber of Commerce of the United States, argued that the panel majority condoned a series of outcome-determinative mistakes by the trial court, leading to a result that puts employers in a no-win position. See EEAC Memorandum 06-022 (January 27, 2006).

### **C. Class Action Watch**

*Reeb v. Ohio Dept. of Rehab. and Corrections* (Sixth Circuit)

*Decision:* A Title VII lawsuit in which plaintiffs seek individual compensatory damages for alleged employment discrimination cannot be certified as a class action under F.R.C.P. 23(b)(2).

EEAC's brief, joined by the Chamber, contended that lawsuits brought under Title VII of the Civil Rights Act of 1964 where plaintiffs seek money damages cannot meet the legal requirements necessary for being certified as a class action under F.R.C.P. 23(b)(2), which is designed for cases in which injunctive relief is the predominant relief sought. EEAC's brief also highlighted for the court that the "blackmail value" of class certification merits careful appellate review of certification decisions. See EEAC Memorandum 04-237 (November 5, 2004). The Sixth Circuit agreed. See EEAC Memorandum 06-027 (February 3, 2006).

## D. Releases

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

*Decision:* An employer conducting a nationwide reduction-in-force (RIF) can obtain valid releases of Age Discrimination in Employment Act (ADEA) claims by providing the required information on a regional level where the regional level formed the decisional unit.

EEAC's brief urged the appeals court to overturn a lower court ruling that we contend erroneously interpreted the Older Workers' Benefit Protection Act (OWBPA), a federal law that governs the terms of releases of age discrimination claims. We pointed out that the lower court's ill-advised ruling put in jeopardy any effort by an employer to soften the blow of a RIF by offering enhanced severance benefits. 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). The court agreed with EEAC's position. See EEAC Memorandum 06-150 (July 14, 2006).

*EEOC v. SunDance Rehabilitation Corp.*  
(Sixth Circuit)

*Decision:* Asking an employee to sign a release waiving his or her right to file a charge with the EEOC was not unlawful retaliation.

EEAC's brief, joined by the Chamber, urged 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 disputed 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).

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

The appeals court agreed, ruling that an employer does not engage in unlawful retaliation by merely offering an employee a severance package conditioned on a release. See EEAC Memorandum 06-242 (November 3, 2006).

*Decision:* The court reissued its prior decision deleting language that would have created major obstacles for employers seeking valid releases of claims under the Age Discrimination in Employment Act (ADEA).

EEAC's brief, joined by the Chamber, urged the Tenth Circuit to reconsider a problematic ruling that an employer seeking a release in connection with a reduction in force (RIF) failed to comply with ADEA requirements as amended by the Older Workers Benefit Protection Act (OWBPA) because it did not disclose the selection criteria for the RIF. See EEAC Memorandum 05-230 (October 14, 2005). The court reissued the decision without the troublesome ruling. See EEAC Memorandum 06-096 (May 5, 2006).

### **E. Retaliation**

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

*Decision:* An employer can be liable under Title VII for any retaliatory action that "could well dissuade a reasonable worker from making or supporting a charge of discrimination." The Court also ruled that unlawful retaliation can include acts by an employer that are "not directly related to employment."

Our brief, joined by the Chamber, urged the High Court to reverse a decision of the U.S. Court of Appeals for the Sixth Circuit that essentially would allow a retaliation claim to go forward if it involved *any* kind of adverse treatment. We argued 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 06-025 (February 3, 2006). The Court, however, adopted an extremely broad standard. See EEAC Memorandum 06-135 (June 23, 2006).

## F. Sarbanes-Oxley

*Platone v. FLYi, Inc.* (U.S. Department of Labor Administrative Review Board)

*Decision:* To state a Sarbanes-Oxley whistleblower retaliation case, the employee must prove that she engaged in protected activity, which must specifically involve reports of fraud against shareholders.

EEAC, joined by the Chamber, weighed in on one of the first substantive cases to reach the administrative appeals stage under the whistleblower provisions of the 2002 Sarbanes-Oxley Accounting Reform Law. The Administrative Law Judge (ALJ) effectively shifted the burden of proof to the employer to prove that it had *not* violated the law. Our brief to the DOL Administrative Review Board (ARB) urged reversal of that ruling, which would force employers to expend considerable time and resources defending against unsubstantiated claims. See EEAC Memorandum 04-197 (September 17, 2004). The ARB agreed with our position. See EEAC Memorandum 06-228 (October 20, 2006).

## G. Section 1981

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

*Decision:* A race discrimination plaintiff who does not have an actual or potential contractual relationship with the defendant cannot bring a claim under 42 U.S.C. § 1981.

Agreeing with the position taken in EEAC's *amicus* brief, which was joined by the Chamber, the High Court concluded that Section 1981, which protects the right of persons to "make and enforce contracts" regardless of race, requires at a minimum that someone bringing a claim have a contractual relationship with the person or entity being sued. See EEAC Memorandum 06-041 (February 24, 2006).

## H. Sex Stereotyping

*Jespersen v. Harrah's Operating Co.* (9th Cir. *en banc*)

*Decision:* Employers may impose gender-specific grooming policies without violating Title VII as long as the policies are consistently applied.

A three-judge panel of the Ninth Circuit had 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 full court granted rehearing at the plaintiff’s request, however, and EEAC’s brief urged the full Ninth Circuit to reinstate the panel decision. Our brief pointed 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). The full Ninth Circuit concluded that where an employer’s appearance policy “does not unreasonably burden one gender more than the other, that policy will not violate Title VII.” Importantly, the Ninth Circuit rejected Jespersen’s argument that her claim should be evaluated under a “sex stereotyping” theory. See EEAC Memorandum 06-089 (April 21, 2006).

## I. Workplace Violence

*Sista v. CDC IXIS* (Second Circuit)

*Decision:* An employee cannot use the Americans with Disabilities Act (ADA) and the Family and Medical Leave Act (FMLA) as a shield against the consequences of physically threatening his boss.

EEAC’s brief defended an employer’s legal right to terminate an employee for threatening his supervisor. See EEAC Memorandum 05-146 (July 1, 2005). The appeals court ruled that the employee, who was placed on leave after making the threat, and was not allowed to return because he neither apologized nor recanted, had no case under either the ADA or the FMLA. The Second Circuit agreed with our contention that an employer does not have to prove the ADA’s “direct threat” defense in a situation in which the employee has made an actual threat. The court also agreed with EEAC that nothing in the FMLA prevents an employer from placing an employee on involuntary leave after making violent threats, or requires reinstatement once the leave is over. See EEAC Memorandum 06-094 (April 28, 2006).

## II. Pending Cases Briefed in 2006

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

*Huber v. Wal-Mart* (Eighth Circuit)

*Issue:* Does the Americans with Disabilities Act (ADA) stop short of requiring an employer to give an individual with a disability a preference over another, better-qualified candidate when considering job reassignment as a reasonable accommodation?

Our brief, joined by the Chamber, asks the appeals court to overturn a trial court ruling that in effect gave the plaintiff an automatic right to reassignment to an equivalent vacant position, even though there was a more qualified candidate who also wanted the job, and there was another vacant job available to accommodate the plaintiff. Two other federal circuit courts — the Seventh and Tenth Circuits — have ruled previously on this issue, and came down on opposite sides. Accordingly, while a favorable ruling by the Eighth Circuit in this case would be helpful, the issue most likely will at some point end up before the U.S. Supreme Court. See EEAC Memorandum 06-162 (July 28, 2006).

*Rehrs v. Procter & Gamble* (Eighth Circuit)

*Issue:* Can rotating shifts be an “essential function” of a job under the ADA?

EEAC’s brief argues that working at a particular time, including rotating shifts, can be as essential as the actual tasks an employee performs. Our brief counters the argument made in an *amicus curiae* brief filed by the Equal Employment Opportunity Commission in this case that only the actual job tasks can be “essential functions.” See EEAC Memorandum 06-123 (June 9, 2006).

### B. Cash Balance Pension Plans

*Register v. PNC Financial Services Group* (Third Circuit)

*Issue:* Do both sound legal reasoning and strong public policy considerations support allowing employers to continue to exercise needed flexibility to convert traditional defined benefit pension plans to the “cash balance” variety?

EEAC's brief, joined by the Chamber, explains that employers have converted their traditional "final average salary" defined benefit pension plans to the cash balance type for a variety of legitimate reasons. Whatever the reason, conversion to a cash balance plan is far superior, from the perspective of both older and younger employees, than other equally legitimate options such as terminating the plan entirely or freezing benefit accruals. We point out that critics of cash balance conversions lose sight of the fact that continuing to provide *any* future pension benefit accruals, other than those that already have vested, is voluntary on the part of the employer. Accordingly, EEAC argues, the Third Circuit should affirm the Philadelphia federal court's decision to preserve employers' flexibility to convert to cash balance pension plans. See EEAC Memorandum 06-086 (April 21, 2006)

### C. Contraceptive Coverage

*Standridge v. Union Pacific* (Eighth Circuit)

*Issue:* Does Title VII of the Civil Rights Act, as amended by the Pregnancy Discrimination Act (PDA), stop short of requiring an employer to provide coverage for contraceptives as part of the prescription drug insurance coverage it offers to employees?

Joined by the Chamber, EEAC's brief urges reversal of a federal district court decision holding that a company was required to provide such coverage under the PDA. Notably, the lower court's decision goes so far as to declare pregnancy a "disease," and thus concludes that employers must treat the "risk" of pregnancy the same way as all other diseases that pose comparable health risks. Although many employers voluntarily have elected to provide contraceptive coverage in their employee health plans, such coverage has never been mandated by federal law. Our brief argues that it is up to Congress to determine whether such coverage should be mandated, and that Title VII as currently drafted simply does not support the trial court's reasoning. See EEAC Memorandum 06-109 (May 19, 2006).

**D. Family and Medical Leave Act (FMLA)**

*Mahoney v. Nokia* (Eleventh Circuit)

*Issue:* Does the FMLA stop short of requiring the clients of staffing companies to provide intermittent or reduced schedule leave to the workers they lease?

EEAC's brief argues that the obligation to grant FMLA leave to a staffing company's employees belongs only to their primary employer, not the staffing company's client, who is merely a secondary employer under the FMLA regulations. See EEAC Memorandum 06-253 (November 17, 2006).

*O'Reilly v. Rutgers University* (Third Circuit)

*Issue:* Was the trial court correct to hold that the FMLA does not give an employee the right to dictate to whom she will submit a requested medical certification that supports her request for FMLA medical leave?

Our brief points out that nothing in the law itself nor in the Department of Labor's implementing regulations gives an employee the right to withhold medical certification, yet remain under the FMLA's protection, merely because the employer's designated recipient for the medical certification form is not the person to whom the employee would prefer to submit it. We recite pertinent legislative history making clear that Congress knew that the FMLA would pose significant administrative challenges to employers, and that Congress gave employers the statutory right to require a medical certification as one means to help them effectively manage FMLA leave. See EEAC Memorandum 06-184 (August 25, 2006).

*Rucker v. Lee Holding Co.* (First Circuit)

*Issue:* Was the lower court correct to hold that the Family and Medical Leave Act (FMLA) does not permit an employee to merge distinct periods of employment separated by a five-year gap to meet the law's eligibility requirement of a minimum of 12 months of employment with the employer?

EEAC’s brief, joined by the Chamber of Commerce, urges the appeals court to uphold a lower court’s ruling against an employee who claimed he was discharged in violation of the FMLA. We contend that an employee with only nine months of recent service cannot combine a prior period of employment with the same employer five years earlier to satisfy the FMLA’s minimum eligibility requirement of 12 months of service for the employer. We point out that Congress enacted the FMLA for the purpose of creating a balance between workplace demands and family needs, but also taking into account the legitimate interests of employers. We argue that a rule permitting employees to collate distinct, independent periods of employment separated by a substantial period of time shifts this balance in a way that Congress did not intend. See EEAC Memorandum 06-144 (July 7, 2006).

### **E. Pay Discrimination**

*Ledbetter v. Goodyear* (U.S. Supreme Court)

*Issue:* Do the timely filing limitations of Title VII preclude a pay discrimination plaintiff from challenging pay decisions that were made earlier than the most recent pay decision immediately preceding the start of the limitations period?

Joined by the Society for Human Resource Management (SHRM), EEAC’s brief argues that the statutory deadline for filing a timely claim of pay discrimination under Title VII begins to run when a decision affecting pay is made. The plaintiff is arguing that the clock for filing such a claim can continue to run for years — in her case, almost two decades — as long as the effects of an alleged previous discriminatory pay decision keep showing up in the plaintiff’s ongoing paychecks. See EEAC Memorandum 06-235 (October 27, 2006).

### **F. Releases**

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

*Issue:* Is a release of FMLA claims valid even though not 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 and the Society for Human Resource Management (SHRM), supported the company's motion asking the full court to review and reverse the ruling by the panel. Our brief highlighted 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). The full court agreed to rehear the case. Invited by the court, EEAC, the Chamber and SHRM filed a reply brief in the case. See EEAC Memorandum 06-197 (September 8, 2006).

## G. Retiree Health

*AARP v. Equal Employment Opportunity Commission* (Third Circuit)

*Issue:* Does the EEOC have the authority to issue a regulation exempting from the Age Discrimination in Employment Act (ADEA) retiree health programs that coordinate benefits with Medicare, and does the regulation as proposed meet 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 brief, joined by the HR Policy Association, the Society for Human Resource Management, America's Health Insurance Plans, the American Benefits Council, the National Rural Electric Cooperative Association, the ERISA Industry Committee, WorldatWork, the College and University Professional Association for Human Resources, and the American Council on Education contended that the EEOC is acting well-within its rulemaking authority and that the regulation is both necessary and in the public interest. See EEAC Memorandum 06-047 (March 3, 2006).

## H. Sarbanes-Oxley

*Ambrose v. U.S. Foodservice* (U.S. Department of Labor Administrative Review Board)

*Issue:* Was the administrative law judge correct to hold that the whistleblower protection provisions of the Sarbanes-Oxley Act (SOX) do not cover a non-public company merely because it happens to be the subsidiary of a publicly-traded company?

SOX applies to a company whose stock is traded publicly and is subject to federal securities laws. Our brief asks the ARB to affirm the ruling of an administrative law judge who concluded that the SOX whistleblower provisions do not necessarily cover a non-public subsidiary merely because it has a publicly-traded parent. See EEAC Memorandum 06-173 (August 11, 2006).

*Smith v. Hewlett Packard* (DOL Administrative Review Board)

*Issue:* Did the administrative law judge rule correctly in concluding that a claim of unlawful retaliation by an employee relations consultant who threatened to bring a race discrimination charge is outside the scope of prohibited conduct that Sarbanes-Oxley protects against?

EEAC's brief contends that the ALJ correctly ruled that Smith did not engage in protected activity under Sarbanes-Oxley when he threatened to file an EEOC charge. We point out that the principal aim of Sarbanes-Oxley is to protect shareholders by establishing a requirement for the accurate disclosure of material facts relating to corporate finances. Thus, we argue that in order to enjoy whistleblower protection under the Act, an employee must reasonably believe that his or her employer violated a federal law that prohibits shareholder fraud. Our brief also argues that companies entrust employee relations professionals with the responsibility to prevent and remedy instances of potential discrimination, thus creating an implicit duty to act in the company's best interest. See EEAC Memorandum 06-097 (May 5, 2006).

## I. Sex Discrimination

*Mendelsohn v. Sprint/United Management Co.* (Tenth Circuit)

*Issue:* Can a plaintiff introduce at trial “me too” testimony from other employees, not similarly situated, to bolster her discrimination case?

EEAC’s brief urges the Tenth Circuit to review a panel decision holding that a trial judge was wrong to refuse to allow several witnesses to testify that they believed that they, too, were the victims of discrimination, where those witnesses worked for different supervisors and their experiences were unrelated to what happened to the plaintiff. We contend that this highly irrelevant yet prejudicial “me too” testimony will unfairly sabotage an employer’s ability to defend itself in discrimination cases. See EEAC Memorandum 06-255 (November 22, 2006).

# Appendix F

## Summary of 2006 Regulatory Issues on Which EEAC Commented

<i>Issuing Agency/Department</i>	<i>Issue</i>	<i>Status</i>
<b>I. OFCCP's Equal Opportunity (EO) Survey</b>		
Office of Federal Contract Compliance Programs (OFCCP) (Memos 06-019, 06-063, 06-194)	<p>On January 20, 2006, OFCCP published a Notice of Proposed Rulemaking in the <i>Federal Register</i> indicating the agency's intent to eliminate its controversial Equal Opportunity (EO) Survey. OFCCP based its proposed action on the results of independent studies that concluded that the EO Survey is not an effective instrument for enforcement targeting purposes.</p> <p>On March 21, 2006, EEAC President Jeffrey Norris submitted written comments to OFCCP's Policy Division Acting Director James Pierce supporting the agency's proposed action. President Norris maintained that, as designed, the EO Survey simply did not, and could not, satisfy any of its major objectives that justified the survey's development and implementation.</p>	On September 8, 2006, OFCCP published a Final Rule in the <i>Federal Register</i> rescinding the Equal Opportunity (EO) Survey requirement.
<b>II. Veteran's Affirmative Action Requirements</b>		
Office of Federal Contract Compliance Programs (OFCCP) (Memos 06-020, 06-062)	On January 20, 2006, OFCCP published a Notice of Proposed Rulemaking implementing adjustments to the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) that were made by the Jobs for Veterans Act (JVA) of 2002. These proposed JVA regulations (to be codified at 60-300) would apply to all nonexempt contracts and subcontracts on or after December 1, 2003, and are intended to <i>supplement</i> , not <i>replace</i> the Veterans affirmative action regulations (to be recorded at 60-250) that apply to	Pending.

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

*Issuing Agency/Department*

*Issue*

*Status*

contracts and subcontracts entered into on or before December 1, 2003.

On March 21, 2006, EEAC President Jeffrey Norris filed written comments with OFCCP's Policy Division Acting Director James Pierce urging the agency make clear in the final rule that contractors subject to both the VEOA/VBHCIA and the JVA regulations can satisfy their AAP obligations for all covered veterans by preparing a single AAP meeting both sets of requirements. President Norris also emphasized that the final JVA regulations should not be issued before the establishment of a "Veterans Job Clearinghouse," which would allow federal contractors to disseminate job listings to local employment offices via a centralized online system.

**III. OFCCP's Systemic Compensation Discrimination Guidance**

Office of Federal Contract Compliance Programs (OFCCP) (Special Memo 06-134)

On November 16, 2004, OFCCP proposed two sets of guidelines ("interpretive standards" and "self-evaluation guidelines") pertaining to federal contractor compensation practices. On January 19, 2005, EEAC President Jeffrey Norris submitted written comments on both proposals with the agency.

On June 16, 2006, OFCCP published the final interpretive standards and final self-evaluation guidelines in the *Federal Register*. The final interpretive standards incorporate many of the suggestions made by EEAC in President Norris' detailed comments to OFCCP.

*Issuing Agency/Department*

*Issue*

*Status*

#### **IV. VETS-100A Report**

U.S. Department of Labor  
Veterans' Employment and  
Training Service (DOL-VETS)  
(Memos 06-176, 06-223)

On August 8, 2006, DOL-VETS published a Notice of Proposed Rulemaking implementing the veterans *reporting* requirements mandated by the Jobs for Veterans Act (JVA) of 2002. The proposed rule would establish a new "VETS-100A" form to be used starting with the 2008 reporting cycle, and would apply to federal contracts and subcontracts on or after December 1, 2003.

Pending.

On October 10, 2006, EEAC President Jeffrey Norris filed written comments with Robert Wilson, a Division Chief in DOL-VETS urging the agency to take steps to mitigate the unnecessary dual reporting burden that would be imposed on many federal contractors under the new "VETS-100A" Report. President Norris' comments offered specific, practical recommendations for mitigating the dual reporting burdens for contractors with contracts subject to both the VETS-100 (pre-12/1/2003 contracts) and the VETS-100A (post-12/1/2003 contracts).

#### **V. ADEA Reverse Age Discrimination Regulations**

Equal Employment Opportunity  
Commission (EEOC) (Memos  
06-179, 06-224)

On August 11, 2006, the Equal Employment Opportunity Commission (EEOC) published a Notice of Proposed Rulemaking (NPRM) in the *Federal Register* requesting comments on its proposed changes to the Age Discrimination in Employment Act (ADEA) regulations to bring them in line with the Supreme Court's 2004

Pending.

*Issuing Agency/Department*

*Issue*

*Status*

decision in *General Dynamics Land Systems v. Cline*. The Court ruled that the ADEA does not permit reverse age discrimination claims, and that the EEOC regulation allowing such claims was “clearly wrong.”

On October 9, 2006, EEAC President Jeffrey Norris submitted written comments to Stephen Llewellyn, Acting Executive Officer of the EEOC’s Executive Secretariat in support of the agency’s proposed revisions to its ADEA regulations in light of the *General Dynamics* decision. President Norris pointed out that the proposed changes are necessary to help ensure that companies can continue providing important benefits to the nation’s oldest workers.

## **VI. Electronic I-9 Form Completion and Retention**

Department of Homeland Security, Bureau of Immigration and Customs Enforcement (DHS-ICE) (Memos 06-136, 06-177)

On June 15, 2006, DHS-ICE issued an interim rule with request for comments pertaining to electronic completion, signing and storage (retention) of the Employment Eligibility Verification form (Form I-9) for all employees, including U.S. citizens. The interim regulation implements an April 2005 federal law allowing the electronic storage (retention) of I-9s and superseding the prior requirement that employers maintain I-9 forms in paper or on outdated microfilm or microfiche.

Pending.

*Issuing Agency/Department*

*Issue*

*Status*

On August 11, 2006, EEAC President Jeffrey Norris submitted written comments to James Knapp, Associate Legal Advisor of DHS-ICE commending the agency for issuing a regulation that provides guidance and sets standards that grant employers a considerable amount of flexibility in how to avail themselves of the new electronic I-9 option. President Norris requested clarification, and suggested recommendations on three issues: recommending that no printed confirmation of an I-9 signature transaction be required; that an employer's ability to provide an I-9 inspector with access to an employee's electronic I-9 be sufficient to comply with the requirement for producing Form I-9s for inspection; and that mandating that employers who retain their I-9s electronically must maintain a backup and recovery system for such records goes beyond the requirements of the law.

# Appendix G

## Summary of Federal Legislation Monitored by EEAC During the Second Session of the 109th Congress (2006)

### I. Immigration Reform

H.R. 4437 (Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005), S. 2454 (Securing America's Borders Act), S. 2611 (Comprehensive Immigration Reform Act of 2006) (*Memos 06-090, 06-117, 06-124*)

Although none of the three major immigration reform proposals considered by Congress in 2006 was enacted into law, all three contained essentially the same fundamental employment eligibility verification procedures in the form of a mandatory Electronic Employment Verification System (EEVS) that mirrors the procedures contained in the current voluntary Basic Pilot Program administered by the Department of Homeland Security and the Social Security Administration.

H.R. 4437 passed the House on December 16, 2005. S. 2611 passed the Senate with amendments on May 25, 2006. No further action was taken on either bill.

### II. Pension Reform

H.R. 4 (Pension Protection Act of 2006)  
(*Memos 06-175, 06-186*)

Section 701 of the Pensions Protection Act of 2006 (PPA) amends the Age Discrimination in Employment Act (ADEA) and related provisions of the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code, to make clear that conversions to or newly created hybrid (cash balance) pension plans will not be considered discriminatory on the basis of age simply because of their design. These "safe harbor" provisions are prospective only, applying to plans adopted on or after June 29, 2005.

Section 905 of the PPA amends the Internal Revenue Code and ERISA to allow workers who reach age 62 to reduce their work hours and begin

receiving partial defined benefit (DB) pension benefits. These changes permit in-service distributions to plan participants beginning at the age of 62. Thus, beginning in 2007 (when the amendments take effect), any worker who has reached age 62 may reduce his or her work hours and begin receiving partial pension benefits, and in this way "phase" into retirement.

P.L. No. 109-280 was signed into law by President Bush on August 17, 2006.

### III. Federal Funding Accountability and Transparency Act of 2006

S. 2590 (Federal Funding Accountability and Transparency Act of 2006) (*Memo 06-207*)

The Federal Funding Accountability and Transparency Act of 2006 requires the federal Office of Management and Budget (OMB) to create a searchable database website accessible to the public at no cost containing information on all "federal awards," including government contracts in excess of \$25,000. Effective starting in 2008, the new website (or database) must include, for *each* federal award made, the (1) name of the contractor; (2) dollar amount of the contract; (3) contracting agency; (4) contracting entity's location and the primary location of performance; (5) a unique identifier for the performing entity and its parent entity (if any); and (6) any "other information that OMB deems relevant." Subcontracts would have to be included in the database beginning no later than January 1, 2009.

P.L. No. 109-282 was signed into law by President Bush on September 26, 2006.

### IV. Data Security Legislation

S. 1326 (Notification of Risk to Personal Data Act), S. 1408 (Identity Theft Protection Act), S. 1789 (Personal Data Privacy and Security Act of

2005), H.R. 3997 (Financial Data Protection Act), H.R. 4127 (Data Accountability and Trust Act) (*Memo 06-122*)

Congressional committees reported out at least five major bills that would impose data security requirements on employers and also compel notification of the individuals in the event of a data breach. None of the bills provided for private lawsuits against employers by the individuals whose data were breached, but all of them carried civil penalties of varying severity against an employer found liable. All of the bills would have pre-empted any state legislation containing similar requirements.

Hearings and subcommittee markups were held on several of these bills, but no further action was taken.

## **V. Pay Equity**

S. 841/H.R. 1687 (Paycheck Fairness Act), S. 840/H.R. 1697 (Fair Pay Act) (*Memo 06-093*)

The Paycheck Fairness Act would amend the Equal Pay Act to narrow the affirmative defenses available to employers and to authorize awards of punitive and compensatory damages. The Fair Pay Act would mandate equal pay for jobs deemed to be of equivalent value (“comparable worth”).

Although bills of these types continue to be introduced in Congress, it has been several years since either issue has received serious legislative consideration.

Both S. 841 and S. 840 were referred to the Senate Health, Education, Labor and Pensions Committee. No further action was taken.

Both H.R. 1687 and H.R. 1697 were referred to the House Education and the Workforce Committee. No further action was taken.

## **VI. Marriage Protection Constitutional Amendment**

S. Joint Resolution 1/H. Joint Resolution 88 (Proposing an amendment to the Constitution of the United States relating to marriage) (*Memo 06-151*)

The “Marriage Protection Amendment” to the U.S. Constitution would have limited marriage in the United States to the union of a man and a woman. The amendment thus would shield the federal Defense of Marriage Act (DOMA) from constitutional challenge, and prevent states which do not recognize gay marriage from having to recognize a gay marriage performed in a state that does recognize the legality of gay marriage.

The Senate failed to invoke cloture on S. Joint Resolution 1. No further action was taken by the Senate or the House.

## **VII. Paid Sick Leave**

S. 932/S. 1085/H.R. 1902 (Healthy Families Act) (*Memo 06-270*)

The Healthy Families Act would require employers with 15 or more employees to provide a minimum of 7 paid sick leave days to all employees who work an average of 20 hours per week. The paid sick leave could be used for an employee’s own physical or mental illness, injury or medical condition, or to care for a child, parent, spouse, or “any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.”

S. 932 was referred to the Senate Health, Education, Labor and Pensions Committee. No further action was taken.

H.R. 1902 was referred to the House Education and the Workforce, Government Reform, and House Administration Committees. No further action was taken.

