



Equal Employment Advisory Council 2008 Annual Report

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Message to Members 2008

Preparing for the Future

EEAC is now entering its thirty-second year. During that time much has remained the same with respect to corporate commitments to and responsibility for employment nondiscrimination and affirmative action. But much has changed with respect to the landscape within which those commitments and responsibilities are implemented and enforced. For example:

- In many organizations the previous focus on nondiscrimination and affirmative action has been expanded to include a new focus on workplace diversity, fairness and inclusion.
- Prior attention to affirmative action plan “eight-factor” availability analyses and goals and timetables has been replaced by a concern for systemic discrimination.
- Reliance on basic “JAAR” analyses and “80%” tests as measures of compliance have yielded to multiple regression analyses, Mantel-Haenszel tests, and other complex statistical methodologies.
- A near exclusive concern with domestic employment practices has taken on global dimensions for many companies.

EEAC always has sought to be a top-quality resource for its members, and a responsible and effective advocate for their interests. The evolving employment landscape, however, has brought with it changes in the responsibilities and needs of EEAC member representatives — changes that EEAC must stay in tune with if it is to continue providing members with unparalleled expertise and service, meeting today’s and tomorrow’s needs.

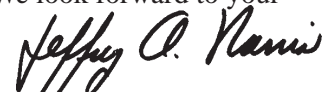
In recognition of this reality the Executive Committee recently began work on a three-year strategic plan for EEAC. Over the remainder of this year an assessment will be made of what EEAC is today in light of the following questions:

- What Do We Want To Become, and Why? — A look at EEAC’s Vision and Mission.
- What’s at Stake If We Succeed, and What’s at Stake If We Fail? — A detailed look at both the opportunities in front of us, and consequences of not staying current and relevant for our membership.
- Inconvenient Truths — Those things about our current regulatory, political and business environments that we must consider in our thinking that we rarely talk about, don’t want to talk about, etc.
- What Challenges Us, and What Enables Us? — Potential concerns, barriers, strengths, advantages to leverage, etc.
- Then, looking at all EEAC currently does, we will ask ourselves:
 - o What should we keep or enhance?
 - o What should we create?
 - o What should we change?
 - o What should we reduce or eliminate?

We are grateful for the enthusiasm with which the Executive Committee has embarked upon this important task. Plans are now underway to enlist the participation of all member companies in helping us to identify how EEAC can become an even more valuable resource than it is today. We look forward to your insights.



Steve Bucherati
Chair
Board of Directors



Jeffrey A. Norris
President

Organizational Profile

About EEAC

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 more than 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 wide array of services are available to any employee who works for a member company.

Each week our staff experts prepare and distribute a series of memos designed to inform member companies about 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 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 respected by the courts and policymakers 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, elected by their peers, 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 2007-2008 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 Washington, D.C. law firm of Norris, Tysse, Lampley & Lakis, LLP, in Washington, D.C.

2007 EEAC Staff

Jeffrey Norris	President
John Tysse	Chief Operating Officer
Judith Lampley	Secretary/Director of Training/Counsel
Rae Vann	General Counsel
Judy Jackson	Treasurer
Joseph Lakis	Senior Counsel
Ann Reesman	Senior Counsel
Robert Williams	Senior Counsel
Laura Giantris	Counsel
Alexandra Tsiros	Counsel
Paul Iyob	Counsel
Nancy Nelkin	Director, Audit Services
Michael Sinclair	Director of Statistical Analyses
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 Poindexter	Office Services Director
Price Williams	Office Services Assistant

Programs and Services

Weekly Memoranda

Members typically receive more than 250 EEAC memos each year. Prepared on a weekly basis by our staff experts, each memo analyzes a timely topic, ranging in scope from important court decisions, to significant regulatory or policy developments, to corporate “best practices” initiatives. A complete topical list of memos issued in 2007 appears in Appendix B.

Clearinghouse

Through the EEAC Clearinghouse, member company representatives can call or email our staff experts anytime they have questions, are looking for information, want to benchmark with other members, or sometimes simply want to bounce an idea. Our staff experts are in regular contact with government officials, and often can provide valuable insights into current government enforcement policies and procedures and how other companies are responding to them.

Amicus Curiae Briefs

As part of EEAC’s advocacy role on behalf of its member companies, EEAC’s lawyers prepare and submit friend-of-the-court briefs in important EEO-related cases before 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 2007 *amicus curiae* activity is contained in Appendix E.

Regulatory Comments and Testimony

EEAC prepares and submits detailed written comments in response to all proposed federal regulations or policy initiatives that significantly affect corporate EEO/AA compliance practices. In addition, we are often asked to testify when hearings are held on these proposals. EEAC actively seeks member company input when preparing such comments or testimony. A summary of the 2007 regulatory issues on which EEAC commented is contained in Appendix F.

Membership Meetings

EEAC holds two membership meetings each 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 on topics of interest to all attendees, including featured guest speakers and a comprehensive update by EEAC’s staff experts; hands-on workshops on specific issues; informal roundtable discussions on best practices and compliance experiences; and lots of opportunities for member networking. A list of speakers and subjects covered at the two 2007 membership meetings can be found in Appendix D.

McDowell Legal Forum

The twice a year McDowell Legal Forum (in memory of EEAC’s former 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.

EDR Discussion Forum

The periodic EDR Discussion Forums provide interested members with timely and up-to-date information on employment dispute resolution developments. 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.

Network Groups

To facilitate information exchange on selected topics of interest among member companies in a private, facilitated virtual setting, EEAC coordinates a number of member network groups. Participation in a network group is open to any interested member company representative, and there is no fee to participate.

FAAP Compliance Network – Serves as an information-sharing resource for those companies that have received — or are considering requesting — 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.

Lawyers Network – Comprised of member company in-house employment counsel to enable them to benchmark on EEO-related legal developments in between EEAC's McDowell Legal Forums.

EDR Coordinators Network – Provides a home for member company representatives with responsibility for coordinating, managing, or operating an in-house EDR program.

Global Employers Network – Serves 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.

FLSA Compliance Network – Provides participants with the opportunity to benchmark with one another on practical, day-to-day wage and hour issues such as exempt/nonexempt classifications, overtime issues, and federal and state litigation developments.

Employee Groups Network – Whether a company calls them “Affinity Groups,” “Networking Groups,” “Resource Groups,” or something else, this EEAC network allows member company representatives with responsibility for coordinating, managing, and/or operating their employee groups to share information.

HRIS Users Network – Allows participants to benchmark on compliance and diversity related issues related to company human resources information systems (HRIS), with a focus on PeopleSoft and SAP.

Influenza Pandemic Network – Assists 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.

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, and there is no fee to participate.

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.

Standing Committees

EEAC currently has four standing committees, which most often meet in conjunction with our membership meetings. Participation is open to any interested EEAC member.

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 – The 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.

Web-Based Member Resources

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.

Compliance Resources – The members only “Member Services” portal on EEAC’s website at www.eeac.org contains a variety of EEO/AA compliance resources, including Affirmative Action Compliance Links, Federal Reporting Requirements & Forms, Uniform Guidelines on Employee Selection Procedures, State Employment Leave Entitlement Laws, and Directory of State and Local Fair Employment Practices Agencies.

The “Member Services” portal also contains a variety of *Best Practices* resources, as well as *International Resources*, including EEAC’s web-based *International Resources Library*.

Training and Seminars

The EEAC Training Center

Most of EEAC's core training programs are held in our new state-of-the-art Training Center located at our headquarters in Washington, D.C. The Training Center was constructed to house our training programs in a facility designed to maximize the EEAC training experience for member company representatives, and features:

- 94" SMART Board
- 50" HD Plasma Display
- LCD Projector
- DVD/VCR Player
- Professional Conferencing System
- Stereo Sound System with in-ceiling microphones

The Training Center offers flexible seating that can comfortably accommodate up to 32 classroom, 24 hollow square, and 18 U-shape. The room can be divided into two breakout rooms and the foyer area provides a buffet counter with appliances, coffee service, and telephones.

Core Training Seminars

EEAC offers a number of highly acclaimed training seminars each year. Our training curriculum consists of a series of seminars for EEO specialists and attorneys, including a basic EEO course on the fundamentals of equal employment opportunity and affirmative action, plus more advanced courses on preparing and defending AAPs, responding to charges of employment discrimination, and analyzing compensation systems for potential discrimination. We also have combined a number of these courses into a single one-week "Immersion" course, which is offered a couple of times a year. All seminars are presented by EEAC staff specialists.

Training Packages

EEAC's off-the-shelf training packages include two courses on sexual harassment, one of which features an award-winning video produced by the

Georgia-Pacific Company; "Equity at Work," a course for line managers and supervisors that covers the fundamentals of EEO requirements; Avoiding Illegal Retaliation (an on-line training course); and a package on investigating workplace conduct. These programs can be used by your own trainers or can be taught by one of EEAC's experts as an in-house program.

In-House Training

EEAC staff experts are available to 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.

Web Workshops

EEAC's web workshops are web-based interactive training programs, usually no more than two hours in length, that focus in on a particular compliance topic or development. The web workshops provide members with the opportunity to stay on top of important developments without the need to travel.

Special Seminars

When the need arises for a more comprehensive examination of a new compliance development, EEAC will hold a special seminar, generally one day in length and held in Washington, D.C.

Publications and Products

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.

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.

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.

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.

Managers' Pamphlets

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. There are 19 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;*
- *What Managers Should Know About the Sarbanes-Oxley Act and Whistleblower Rights; and*
- *What Managers Should Know About Preventing Sex Discrimination.*

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.

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.

What Managers Should Know About Fair Employment Practices

In 2007, EEAC introduced a new resource manual that provides guidance for managers and supervisors on all of these topics and more. Our new pocket-guide is designed specifically to give company managers and supervisors basic guidance on their responsibilities under EEO and other employment laws. The pocket-guide, a compilation of a number of EEAC’s popular Managers’ Pamphlets, explains to managers:

- Both the legal and business case for a nondiscriminatory workplace;
- Their role in preventing various types of discrimination and retaliation on a day-to-day basis;
- How to apply these nondiscriminatory practices in the interviewing, hiring, performance evaluation, and termination processes;
- Their role in responding to requests by employees for religious and disability accommodations and for leave under the Family and Medical Leave Act;
- Privacy issues in the workplace; and
- The basic affirmative action obligations of a federal contractor.

This spiral-bound pocket-guide is small and compact, and purposely designed to be a quick and easy reference tool for managers and supervisors as they go about their day-to-day duties.

Appendix A

2007–2008 Board of Directors

Teresa Aramaki
Vice President, Human Resources
Management & Training
Centerville, Utah

Kevin Blasini
Director, Corporate Human Resources
McDermott International
Houston, Texas

Allie Bond*
Director, Diversity & Compliance
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Director, Diversity & Workplace Fairness
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Dennis Butler
Vice President, Workplace Solutions
Liz Claiborne, Inc.
North Bergen, New Jersey

David Cobbs, Jr.**
Asst. Vice President, Diversity and EEO
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Mary Anne Detmer
Director, Global Compliance & Metrics
Eastman Kodak
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E. Alberto Dominguez*
Director, HR Compliance
American Express Company
Gaithersburg, Maryland

Tara Dunlap
Director-EEO & Corporate Headquarters HR
General Dynamics
Falls Church, Virginia

Troy Farley
Manager, EEO/Global Minority Leadership
Deere & Company
Moline, Illinois

Amos Hewitt
Director, Diversity & Employment Practices
Rolls-Royce North America Inc.
Chantilly, Virginia

Bettye Hill
Senior Attorney, EEO
Walgreen Co.
Deerfield, Illinois

Cindy Kaneshiro
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Walgreen Co.
Deerfield, Illinois

June Kubo
Compliance Manager
Microsoft Corporation
Redmond, Washington

Wendy Kurtz
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U.S. Foodservice
Columbia, Maryland

Rosemary Kuzma
HR Regulatory Coordinator
Mayo Clinic
Rochester, Minnesota

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

Maribeth McCue
Corporate EEO Manager
Dart Container Corporation
Mason, Michigan

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

Knox McMillan
Assoc. General Counsel, VP Human Resources
OfficeMax
Boise, Idaho

Martha Heady Messman*
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National City Corporation
Indianapolis, Indiana

Keith Mitchell
Director, Staffing and Recruiting
Kellogg Company
Battle Creek, Michigan

Robert O'Hara
Director, EEO and Employment Counsel
United Technologies
Hartford, Connecticut

Craig Owen
Director of Workforce Planning
United Parcel Service, Inc.
Atlanta, Georgia

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

Kathleen Vance
Director, EEO and AA
Union Pacific Railroad Company
Omaha, Nebraska

Sue Werber*
Sr. Director, EEO/AA & Immigration Services
Marriott International, Inc.
Washington, DC

Doug Wilson*
Dir., Equal Opportunity, Corporate Affairs/HR
Shell Oil Company
Houston, Texas

John Yeager*
Director, Compliance
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St. Louis, Missouri

James Zappa
Director, Employment Law
UnitedHealth Group
Minnetonka, Minnesota

Appendix B

Topical Index of 2007 EEAC Memoranda

ADA/REHABILITATION ACT

- 07-003 Employer's Reliance on Its Doctor's Medical Opinion Is Not Always a Defense to an ADA Claim (January 5, 2007)
- 07-013 Third Circuit in *Spencer v. Wal-Mart* Joins Other Courts in Concluding That Backpay Is Not a Remedy for Hostile Environment Absent a Showing of Constructive Discharge (January 19, 2007)
- 07-015 As Corporate Wellness Programs Grow in Popularity, Employers Should Continue To Keep in Mind Possible ADA Implications (January 19, 2007)
- 07-024 Proposed Genetic Information Nondiscrimination Act on Congressional Fast Track (February 2, 2007)
- 07-040 Full Parity for Employer-Provided Mental Health Benefits Could Get Congressional Approval This Year (February 23, 2007)
- 07-081 Recent Court Decisions Address Issue of Individual Liability Under the ADA (No) and FMLA (Yes) (April 20, 2007)
- 07-085 Full Ninth Circuit Agrees To Reconsider Bad ADA Ruling in *Bates v. UPS* (April 27, 2007)
- 07-093 Seventh Circuit in *EEOC v. Schneider National* Upholds Safety Qualification Standard Against ADA "Regarded As" Claim (May 4, 2007)
- 07-100 Workplace Alcohol Abuse and the ADA (May 11, 2007)
- 07-101 Eighth Circuit in *Rehrs v. Procter & Gamble*, Adopting Arguments Advanced in EEAC's Brief, Rules Ability To Work Rotating Shifts Can Be Essential Job Function Under the ADA (May 18, 2007)
- 07-114 EEOC Issues New Enforcement Guidance Addressing "Caregiver" Discrimination Issues Arising Under Title VII and the ADA (June 1, 2007)
- 07-119 Eighth Circuit in *Huber v. Wal-Mart* Concludes That ADA Does Not Require Automatic Right to Job Reassignment as Reasonable Accommodation (June 8, 2007)
- 07-120 EEAC Once Again Urges Ninth Circuit To Reverse Bad ADA Ruling in *Bates v. UPS* (June 8, 2007)
- 07-122 Recent Court Decisions Reaffirm That Physical or Mental Impairments Must Be "Substantially Limiting" To Be Covered Under the ADA (June 8, 2007)
- 07-133 Government Mandated EEO-Related Training Requirements Applicable to Private Employers Are Few and Far Between (June 22, 2007)

- 07-173 Tenth Circuit Rules in *Berry v. T-Mobile* That Employer’s Approval of FMLA Leave Does Not Establish ADA “Regarded As” Claim (August 17, 2007)
- 07-179 Evaluating an Employee’s “Fitness-for-Duty” Within the Parameters Permitted by the ADA and FMLA (August 24, 2007)
- 07-187 What Constitutes a “Medical Examination” Under the ADA? (September 7, 2007)
- 07-191 DHS Proposes To Invalidate All Remaining “Green Cards” That Do Not Have an Expiration Date (September 14, 2007)
- 07-198 Eleventh Circuit in *Greenberg v. BellSouth* Rules Obese Employee Was Not Disabled Under the ADA (September 21, 2007)
- 07-199 Proposed Federal “ADA Restoration Act” Would Expand ADA Definition of Disability To Cover Most Impairments (September 21, 2007)
- 07-207 EEAC’s Updated *ADA Reasonable Accommodation Compliance Checklist* Provides Guidance for Accommodating Qualified Individuals With Disabilities (October 5, 2007)
- 07-219 Two Recent ADA Decisions by Tenth Circuit Have Implications for ADA Class Action Awaiting Go/No Go Decision by Third Circuit (October 19, 2007)
- 07-225 EEAC Member Companies Are Among Recipients of Labor Department’s 2007 “New Freedom Initiative” Awards (November 2, 2007)
- 07-227 New Report by National Council on Disability Highlights Persistent Employment Barriers for Individuals With Disabilities That Remain Despite the ADA (November 2, 2007)
- 07-229 Monetary Damages Under Federal Laws That Ban Employment Discrimination Vary Depending on the Statute Involved; EEAC’s New “Federal Law Damages Finder” Provides a Handy Reference Tool (November 9, 2007)
- 07-246 EEAC Fall Meeting Presentations by Key EEOC Officials Underscore Why Employers Need To Pay Attention to Agency’s Systemic Litigation Initiative (November 30, 2007)
- 07-248 Brief to Fifth Circuit in *EEOC v. Agro Distribution* Urges Court To Uphold Ruling That Agency Failed To Properly Investigate and Conciliate Discrimination Charge (December 7, 2007)

AFFIRMATIVE ACTION

- 07-012 OFCCP Update: Acting Policy Director Lynn Clements Provides Legal Forum Attendees With Overview of Currently Pending Enforcement and Policy Issues (January 19, 2007)

- 07-017 OFCCP Stepping Up Audits of Contractors' Disability and Veterans Outreach Efforts (January 26, 2007)
- 07-022 DOL's Planned "List of Web Links" in Response to Pending Shut Down of America's Job Bank Will Not Be Much Help to Companies in Meeting Their VEVRAA Mandatory Job Listing Requirements (February 2, 2007)
- 07-033 EEOC Revises Its EEO-1 "FAQs" To Clarify There Is No Requirement To Collect and Maintain Race and Ethnicity Data in More Than the Seven Listed Reporting Categories (February 16, 2007)
- 07-034 EEAC's Updated *OFCCP Regulations Desk Reference* Now Available on EEAC's Website (February 16, 2007)
- 07-046 OFCCP Clarifies That Use of "80%/Whole Person" Overlay Method Is Permissible for Determining When Goals Must Be Established (March 2, 2007)
- 07-047 "Reverse Discrimination" Ruling by Seventh Circuit in *Alexander v. City of Milwaukee* Serves as Reminder That Race-Based Preferential Treatment Should Be Narrowly Tailored (March 2, 2007)
- 07-054 Newly Released 2005 EEO-1 Data Now Available From EEAC (March 16, 2007)
- 07-058 OFCCP Officials Confirm That Agency Is Considering Options To Reduce Burden of VEVRAA Job Listing Obligation in Response to Pending Shut Down of America's Job Bank (March 23, 2007)
- 07-059 Round Two of OFCCP Advance Notice Targets 4,500 Contractor Establishments for Compliance Evaluations; Scheduling Letters Will Follow Beginning April 2 (March 23, 2007)
- 07-083 EEAC's Guide To Complying With Current and Pending Veterans AAP and Reporting Requirements (April 27, 2007)
- 07-089 AJB Update: DOL Advises Contractors They Have Until June 15 To Request Records That May Be Needed To Show Compliance With VEVRAA Job Listing Requirements (May 4, 2007)
- 07-138 Supreme Court Strikes Down Race-Based Public School Assignment Plans; 5 - 4 Holding Has No Direct Impact on Private Sector, but Justices Are Indicating Increasing Skepticism Over Race-Conscious Decision-Making (July 6, 2007)
- 07-143 OFCCP Begins Scheduling New Round of Functional AAP (FAAP) Compliance Evaluations (July 13, 2007)
- 07-154 ALJ Decision in *OFCCP v. Bank of America* Articulates Legal Standards Agency Must Meet To Gain On-Site Access (July 27, 2007)

- 07-169 OFCCP's Final Jobs for Veterans Act (JVA) Regulations Respond to Concerns Expressed by EEAC About Potential Burden, Will Give Contractors Welcome Flexibility in Complying (August 10, 2007)
- 07-176 OFCCP Issues "Interim Guidance" on the Use of Race and Ethnicity Categories in Affirmative Action Programs in Response to Revised EEO-1 Categories (August 24, 2007)
- 07-181 EEAC Updates Sample "Cross-Over" AAP Narrative and Self-ID Form To Comply With Recently Issued Jobs for Veterans Act Regulations (August 31, 2007)
- 07-202 Another Year, Another Compliance Evaluation Cycle: OFCCP Mails First Round of "Advance Notice" Letters; Approximately 2,500 Establishments Targeted for Review Beginning October 1 (September 28, 2007)
- 07-211 Census Bureau's Most Recent American Community Survey (ACS) Data Continue To Highlight Increasing Diversity of Nation's Population (October 5, 2007)
- 07-222 EEAC Planning New Series of Memoranda Focusing on Selection Practices (November 2, 2007)
- 07-223 Recent OFCCP Enforcement Actions Focus on Systemic Discrimination in Hiring for Entry-Level Jobs (November 2, 2007)
- 07-224 Labor Department Announces "Job Fair Blitz" To Promote Hiring of Veterans (November 2, 2007)
- 07-229 Monetary Damages Under Federal Laws That Ban Employment Discrimination Vary Depending on the Statute Involved; EEAC's New "Federal Law Damages Finder" Provides a Handy Reference Tool (November 9, 2007)
- 07-234 2007 Labor Department Secretary's Opportunity and EVE Award Recipients Feature EEAC Members (November 16, 2007)
- 07-247 OFCCP's Online "National Pre-Award Registry" Shows All Compliance Evaluations Closed Within the Past Two Years (December 7, 2007)
- 07-252 U.S. Department of Education Releases Updated College and University Graduate Figures Covering 2005-2006 Academic Year (December 7, 2007)
- 07-259 OMB Launches New Publicly-Accessible Database Website Listing Federal Contracts of \$25,000 or More (December 21, 2007)

AGE DISCRIMINATION

- 07-025 Third Circuit in *Register v. PNC Financial* Becomes Second Federal Appeals Court To Rule That Conversion to Cash Balance Pension Plan Did Not Discriminate on Basis of Age (February 2, 2007)
- 07-026 “Benchmark Study” by Center on Aging and Work Reviews Steps Some Employers Are Taking To Prepare for Impacts of Aging Workforce (February 2, 2007)
- 07-042 Eighth Circuit in *EEOC v. City of Independence* Rules That Leave Donation Policy Violated ADEA by Excluding Retirement Eligible Employees (February 23, 2007)
- 07-068 EEAC’s Brief to Supreme Court in *Sprint v. Mendelsohn* Argues Tenth Circuit Was Wrong in Allowing Prejudicial “Me Too” Testimony (April 6, 2007)
- 07-076 Eleventh Circuit in *Myricks v. FRB of Atlanta* Provides Useful Guidance on What Constitutes “Knowing and Voluntary” Waiver of Title VII Claim (April 13, 2007)
- 07-077 EEAC Update: Pending DOL and EEOC Regulatory and Policy Proposals Will Impact EEAC Members’ Compliance Obligations (April 13, 2007)
- 07-099 Eighth Circuit Rules in *Fischer v. Andersen Corp.* That Employee Put on “Performance Improvement Plan” Was Not Constructively Discharged (May 11, 2007)
- 07-118 Third Circuit, Agreeing With Arguments Advanced in EEAC’s Brief, Rejects AARP Challenge to Issuance of EEOC Retiree Health Benefits Regulation (June 8, 2007)
- 07-126 EEAC’s Brief in *EEOC v. Allstate* Urges Eighth Circuit To Reject Disparate Impact Theory in ADEA Hiring Discrimination Case (June 15, 2007)
- 07-145 EEOC Issues Final Rule Conforming ADEA Regulations to Supreme Court’s 2004 “Reverse Age Discrimination” Ruling in *General Dynamics v. Cline* (July 13, 2007)
- 07-170 EEAC’s Brief to Supreme Court in *Federal Express v. Holowecki* Argues That Lower Court Was Wrong in Allowing Plaintiff To Bypass EEOC Charge Filing Requirements (August 17, 2007)
- 07-182 EEAC’s Brief in *Sprint v. Mendelsohn* Urges Supreme Court To Bar Admission of “Me, Too” Testimony as Evidence of Alleged Discrimination (August 31, 2007)
- 07-184 Decision by Ninth Circuit in *Poland v. Chertoff* Weighs In on “Cat’s Paw” Theory of Discrimination (August 31, 2007)
- 07-204 Third Circuit in *Ruehl v. Viacom* Refuses To Allow Piggybacking Claim Based on ADEA Class Action That Was Later Found To Be Wanting (September 28, 2007)

07-215 Ruling by Sixth Circuit in *Drutis v. Rand McNally* Is Latest by Federal Appeals Court To Conclude That Cash Balance Pension Plan Was Not Age Discriminatory (October 12, 2007)

07-229 Monetary Damages Under Federal Laws That Ban Employment Discrimination Vary Depending on the Statute Involved; EEAC's New "Federal Law Damages Finder" Provides a Handy Reference Tool (November 9, 2007)

ALTERNATIVE DISPUTE RESOLUTION (ADR)

07-053 Sixth Circuit Rules in *Legair v. Circuit City Stores* That Failure To Exercise Opt-Out Choice Requires Employee To Arbitrate His Discrimination Claim (March 9, 2007)

07-073 EEOC Revises Its *Mediation Deskbook*, in Part To Reflect New Focus on Systemic Litigation (April 13, 2007)

07-087 EEAC's April 19 EDR Discussion Forum Highlights (April 27, 2007)

07-088 EEAC's 2007 Employment Dispute Resolution (EDR) "Use/Experience" Survey Seeks Updated Data on Company Programs (April 27, 2007)

07-092 Decision by Eighth Circuit in *EEOC v. Woodmen Insurance* Illustrates Potential Dilemma for Employers Created by Supreme Court's *Waffle House* Arbitration Ruling (May 4, 2007)

07-152 Ninth Circuit Continues To Find Fault With Employment Arbitration Agreements, Overshadowing Pro-Arbitration Ruling by Trial Court Within Same Jurisdiction (July 20, 2007)

07-157 Proposed "Arbitration Fairness Act" Would Ban Mandatory Arbitration of Most Employment-Related Disputes (July 27, 2007)

07-261 Sixth Circuit Upholds Employment Arbitration Agreement in *Seawright v. American General Financial Services*, but Some in Congress Are Pushing To Outlaw Such Agreements (December 21, 2007)

BEST PRACTICES

07-008 Blue-Ribbon Commission Warns of Lag in U.S. Workforce Skills, Recommends Sweeping Education and Training Reform (January 12, 2007)

07-015 As Corporate Wellness Programs Grow in Popularity, Employers Should Continue To Keep in Mind Possible ADA Implications (January 19, 2007)

07-026 "Benchmark Study" by Center on Aging and Work Reviews Steps Some Employers Are Taking To Prepare for Impacts of Aging Workforce (February 2, 2007)

- 07-035 Labor Department Now Seeking Nominations (Including Self-Nominations) for 2007 “New Freedom Initiative” Award (February 16, 2007)
- 07-041 Two Federal Agencies Issue New Guidance to Employers on Preparing for Possible Influenza Pandemic (February 23, 2007)
- 07-045 EEOC’s New “E-RACE” Initiative Will Target Race and Color Discrimination (March 2, 2007)
- 07-048 Unauthorized Audio Recordings of Workplace Conversations Can Create Special Challenges for Employers (March 2, 2007)
- 07-052 Reluctance of Employee To Disclose Details of Alleged Harassment by Supervisor Does Not Relieve Employer of Obligation To Follow Up (March 9, 2007)
- 07-072 EEAC’s Practical Pointers for Avoiding Pregnancy Discrimination Claims (April 6, 2007)
- 07-076 Eleventh Circuit in *Myricks v. FRB of Atlanta* Provides Useful Guidance on What Constitutes “Knowing and Voluntary” Waiver of Title VII Claim (April 13, 2007)
- 07-079 Courts Will Sometimes Disregard Discriminatory Workplace Comments as Mere “Stray Remarks,” but Preventing *Any* Questionable Comments Is the Best Policy (April 20, 2007)
- 07-094 DOL’s Office of Disability Employment Policy Launches Two New Initiatives, Extends Nomination Period for 2007 “New Freedom Initiative” Award (May 4, 2007)
- 07-100 Workplace Alcohol Abuse and the ADA (May 11, 2007)
- 07-117 Growing Popularity of “Social Networking” Websites Has Implications for Employers (June 1, 2007)
- 07-153 To Go To Work or Stay at Home? New Study Suggests Many Mothers Would Prefer Jobs That Allow Both (July 20, 2007)
- 07-188 GLBT Advocacy Group Reports Significant Increase in Number of Large Companies With Policies Prohibiting Discrimination Based on Gender Identity (September 7, 2007)
- 07-200 Skilled Employees Who Quit Their Jobs Because of Perceived Unfairness Cost Companies Billions Annually, According to Recent Survey (September 21, 2007)
- 07-205 New Study Reveals That By and Large, U.S. Workers Are Satisfied With Their Jobs (September 28, 2007)

- 07-207 EEAC's Updated *ADA Reasonable Accommodation Compliance Checklist* Provides Guidance for Accommodating Qualified Individuals With Disabilities (October 5, 2007)
- 07-216 New Survey Alleges That Workplace "Bullying" Has Become a National Epidemic (October 12, 2007)
- 07-225 EEAC Member Companies Are Among Recipients of Labor Department's 2007 "New Freedom Initiative" Awards (November 2, 2007)
- 07-227 New Report by National Council on Disability Highlights Persistent Employment Barriers for Individuals With Disabilities That Remain Despite the ADA (November 2, 2007)
- 07-234 2007 Labor Department Secretary's Opportunity and EVE Award Recipients Feature EEAC Members (November 16, 2007)
- 07-249 EEOC Publishes "Fact Sheet" for Employers on Employment Testing and Selection Procedures (December 7, 2007)
- 07-256 Actions Speak Louder Than Words: Eighth Circuit in *Engel v. Rapid City* Rules Employer May Be Liable for Continuing Harassment When It Does Not Follow Through on Threatened Discipline (December 14, 2007)
- 07-257 Ill-Advised Postings on Social Networking Websites Are Adding Another Dimension to Off-Duty Conduct That Can Impact the Workplace (December 14, 2007)
- 07-258 Recent Study Offers Revealing Insights on How Gender Stereotypes Continue To Serve as Obstacle to Advancement of Women Leaders (December 14, 2007)
- 07-263 EEOC Outlines E-RACE Initiative Implementation Plan (December 28, 2007)
- 07-265 Decision by Seventh Circuit in *EEOC v. V & J Foods* Underscores Importance of Giving Employees Adequate Notice of Discrimination Prevention Policies (December 28, 2007)

CLASS ACTION WATCH

- 07-006 Federal Trial Court in *Gutierrez v. Johnson & Johnson* Refuses To Certify Class Action in Case Involving Allegations of Discriminatory Subjective Decision-Making (January 12, 2007)
- 07-019 Employment Discrimination Lawsuits Filed in Federal Court Went Down Again in 2006; Class Actions Not Reported (January 26, 2007)
- 07-027 Ninth Circuit Certifies Largest Employment Discrimination Class Action Ever in *Dukes v. Wal-Mart, Inc.* (February 9, 2007)

- 07-039 EEOC's 2006 Charge Data Reveal Significant Increase in "Commissioners" Charges, Suggesting Agency's Systemic Enforcement Initiative Is Well Underway (February 23, 2007)
- 07-044 EEAC Urges Ninth Circuit To Reverse Its Flawed Class Action Ruling in *Dukes v. Wal-Mart* (March 2, 2007)
- 07-078 \$55 Million Settlement Highlights Recent Developments Added to EEAC's Updated Class Action Cases and Major Settlements Catalog (April 20, 2007)
- 07-095 EEAC's Brief in *Federal Express v. Holowecki* Urges Supreme Court To Reverse Lower Court Ruling Allowing Plaintiff To Bypass EEOC Charge Filing Process (May 11, 2007)
- 07-111 Settlement of Sex Discrimination Class Action Against Morgan Stanley Contains Interesting Programmatic Relief (May 25, 2007)
- 07-136 Two Federal Appeals Court Rulings Illustrate Wide Difference on Showing Plaintiffs Must Make To Support "Rule 23" Class Certification Determination (June 29, 2007)
- 07-189 Wage & Hour Lawsuits Brought Under Federal Fair Labor Standards Act Are Increasing (September 7, 2007)
- 07-197 EEAC's Brief in *Ellis v. Costco* Urges Ninth Circuit To Overturn Questionable Class Action Certification Ruling (September 21, 2007)
- 07-204 Third Circuit in *Ruehl v. Viacom* Refuses To Allow Piggybacking Claim Based on ADEA Class Action That Was Later Found To Be Wanting (September 28, 2007)
- 07-219 Two Recent ADA Decisions by Tenth Circuit Have Implications for ADA Class Action Awaiting Go/No Go Decision by Third Circuit (October 19, 2007)
- 07-260 Ninth Circuit Panel in *Dukes v. Wal-Mart* Denies Request for Rehearing, Reaffirms Massive Class Action Certification Ruling (December 21, 2007)

CONGRESSIONAL ACTIVITY

- 07-005 Employment Issues Likely To Get More Attention This Year in New Democrat-Controlled Congress (January 5, 2007)
- 07-024 Proposed Genetic Information Nondiscrimination Act on Congressional Fast Track (February 2, 2007)
- 07-030 Senate-Approved Minimum Wage Bill Contains Tax, Immigration Provisions That Could Impact Large Employers (February 9, 2007)

- 07-040 Full Parity for Employer-Provided Mental Health Benefits Could Get Congressional Approval This Year (February 23, 2007)
- 07-050 House of Representatives Approves Federal Labor Law Changes To Permit “Card-Check” Union Certification (March 9, 2007)
- 07-064 EEAC Update: Employment-Related Bills Are Stacking Up as New Democratic Congress Assembles Its Wish List (March 30, 2007)
- 07-084 Pending “Pay Equity” Legislation Would Expand Employer Liability for Compensation Discrimination, Revive OFCCP’s Equal Opportunity Survey (April 27, 2007)
- 07-103 Bush Administration and Congressional Leaders Reach Deal on Attaching Labor Standards, Including Ban on Employment Discrimination, to Pending Free Trade Agreements (May 18, 2007)
- 07-105 Several More States Enact Ban on Workplace Discrimination Based on Sexual Orientation; Latest Version of Federal Employment Nondiscrimination Act Adds Gender Identity Protection (May 18, 2007)
- 07-107 More States Enact Laws Regulating Employment of Illegal Aliens, as Congress Takes a Step Closer To Enacting Major Immigration Reform (May 25, 2007)
- 07-110 Congress Clears Minimum Wage Increase (May 25, 2007)
- 07-115 Seventh Circuit in *Noesen v. Medical Staffing Network* Rejects Title VII Religious Accommodation Claim; Case Illustrates How “WRFA” Could Change the Outcome (June 1, 2007)
- 07-125 Congressional Hearing Focuses on Practical Concerns Regarding Proposed New Employment Eligibility Verification System (EEVS) (June 15, 2007)
- 07-130 Pay Confidentiality Policies Likely To Come Under Increased Scrutiny in Wake of Supreme Court’s *Ledbetter* Decision (June 22, 2007)
- 07-139 House Committee Approves Bill To Reverse Supreme Court’s Recent *Ledbetter* Decision; Measure Would Expand Time Frame for Bringing Compensation Discrimination Claims (July 6, 2007)
- 07-146 Arizona Adopts Tough New Law Regarding Employment of Illegal Aliens After Congressional Immigration Reform Effort Tanks (July 13, 2007)
- 07-150 Senate Committee Approves Amendment That Would Bar EEOC Lawsuits That Challenge English-Only Policies (July 20, 2007)

- 07-151 Congress Considering a Number of New or Expanded Employee Leave Entitlements (July 20, 2007)
- 07-157 Proposed “Arbitration Fairness Act” Would Ban Mandatory Arbitration of Most Employment-Related Disputes (July 27, 2007)
- 07-159 “EEVS” Lives: Some Federal Contractors Could Be Required To Participate in Basic Pilot Program (July 27, 2007)
- 07-160 House Passes “Ledbetter” Reversal Bill on Party-Line Vote; Tally Is Well-Short of Number Needed To Overcome Likely Veto (August 3, 2007)
- 07-161 Federal Trial Court Rules in *Lozano v. City of Hazleton* That Local Ordinance Aimed at Controlling Employment of Illegal Immigrants Is Preempted by Federal Law (August 3, 2007)
- 07-164 Small But Growing Number of States Now Offer Employment Protection to Nursing Mothers (August 3, 2007)
- 07-168 Courts Find “Equitable” Ways To Extend Filing Deadlines When an Individual Learns of Discrimination Only When It Is Otherwise Too Late, Countering Main Argument of *Ledbetter* Decision Opponents (August 10, 2007)
- 07-172 Family Members of Wounded Service Members Could Take From Six Months to One Year of Protected Time Off From Work Under Amendments Approved Recently by U.S. Senate (August 17, 2007)
- 07-192 Congressional Joint Economic Committee Is Asking Fortune 100 Companies for Information on Their Family Leave Policies (September 14, 2007)
- 07-199 Proposed Federal “ADA Restoration Act” Would Expand ADA Definition of Disability To Cover Most Impairments (September 21, 2007)
- 07-209 Tenth Circuit Rules in *Etsitty v. Utah Transit Authority* That Title VII Does Not Extend Sex Discrimination Protection to Transsexual Employee (October 5, 2007)
- 07-233 House Approves “Employment Non-Discrimination Act” To Prohibit Workplace Discrimination Based on Sexual Orientation (November 16, 2007)
- 07-251 California Governor Schwarzenegger Vetoes Several Employment-Related Bills, but Signs New Law Granting Military Family Leave (December 7, 2007)
- 07-253 Congress on Verge of Approving New FMLA Military Family Leave Entitlement, Expanded Whistleblower Protection for DOD Contractor Employees (December 14, 2007)

07-261 Sixth Circuit Upholds Employment Arbitration Agreement in *Seawright v. American General Financial Services*, but Some in Congress Are Pushing To Outlaw Such Agreements (December 21, 2007)

DATA COLLECTION, RECORDKEEPING, AND REPORTING

07-012 OFCCP Update: Acting Policy Director Lynn Clements Provides Legal Forum Attendees With Overview of Currently Pending Enforcement and Policy Issues (January 19, 2007)

07-017 OFCCP Stepping Up Audits of Contractors' Disability and Veterans Outreach Efforts (January 26, 2007)

07-022 DOL's Planned "List of Web Links" in Response to Pending Shut Down of America's Job Bank Will Not Be Much Help to Companies in Meeting Their VEVRAA Mandatory Job Listing Requirements (February 2, 2007)

07-028 EEAC Urges Labor Department To Revise Problematic FMLA Rules Dealing With Intermittent Leave and Serious Health Condition (February 9, 2007)

07-033 EEOC Revises Its EEO-1 "FAQs" To Clarify There Is No Requirement To Collect and Maintain Race and Ethnicity Data in More Than the Seven Listed Reporting Categories (February 16, 2007)

07-046 OFCCP Clarifies That Use of "80%/Whole Person" Overlay Method Is Permissible for Determining When Goals Must Be Established (March 2, 2007)

07-051 Full Tenth Circuit Overturns Its Earlier Ruling in *Zamora v. Elite Logistics*, Concludes Employer Responded Appropriately to Social Security "Mismatch" Information (March 9, 2007)

07-054 Newly Released 2005 EEO-1 Data Now Available From EEAC (March 16, 2007)

07-055 Proposed "REAL ID" Regulations Clarify That Conforming Driver's Licenses Will Not Be a Mandatory I-9 Document (March 16, 2007)

07-058 OFCCP Officials Confirm That Agency Is Considering Options To Reduce Burden of VEVRAA Job Listing Obligation in Response to Pending Shut Down of America's Job Bank (March 23, 2007)

07-059 Round Two of OFCCP Advance Notice Targets 4,500 Contractor Establishments for Compliance Evaluations; Scheduling Letters Will Follow Beginning April 2 (March 23, 2007)

07-063 Federal Contractors Would Be Required To Report Subcontracts to Federal Database Under Newly Proposed Rule (March 30, 2007)

- 07-077 EEAC Update: Pending DOL and EEOC Regulatory and Policy Proposals Will Impact EEAC Members' Compliance Obligations (April 13, 2007)
- 07-080 EEOC Now Distributing New, More Detailed Charge "Intake Questionnaire" Through Its National Contact Center (April 20, 2007)
- 07-082 Collecting Race/Ethnicity and Gender Information From Job Applicants (April 20, 2007)
- 07-083 EEAC's Guide To Complying With Current and Pending Veterans AAP and Reporting Requirements (April 27, 2007)
- 07-084 Pending "Pay Equity" Legislation Would Expand Employer Liability for Compensation Discrimination, Revive OFCCP's Equal Opportunity Survey (April 27, 2007)
- 07-089 AJB Update: DOL Advises Contractors They Have Until June 15 To Request Records That May Be Needed To Show Compliance With VEVRAA Job Listing Requirements (May 4, 2007)
- 07-090 EEOC Intends To Formally Adopt Voluntary Self-Identification as the "Preferred Method" for Race/Ethnicity Data Collection (May 4, 2007)
- 07-102 EEOC Makes Available Specifications for Filing the New 2007 EEO-1 Report (May 18, 2007)
- 07-109 OFCCP's Approach To Evaluating Company Compensation Practices Still Evolving, According to Agency Statistician Dr. Michael Sinclair (May 25, 2007)
- 07-123 Emerging Use of "Video Résumés" Raises Issues for Employers (June 8, 2007)
- 07-134 Referencing EEAC's Guidance As You Prepare To File Your 2007 EEO-1 Forms (June 22, 2007)
- 07-135 OFCCP Puts Enforcement of VEVRAA Job Listing Requirement on Temporary Hold in Light of AJB Shutdown (June 29, 2007)
- 07-143 OFCCP Begins Scheduling New Round of Functional AAP (FAAP) Compliance Evaluations (July 13, 2007)
- 07-149 Reporting Season Has Arrived: 2007 EEO-1 and VETS-100 Filing Update (July 20, 2007)
- 07-162 U.S. Coast Guard Issues Written Guidance for Implementing Biometric ID "TWIC" Cards for Maritime Workers (August 3, 2007)
- 07-165 EEOC Modifies File Specifications for Electronic Filing of 2007 EEO-1s To Accommodate Establishment Employer ID Numbers (EIN) (August 10, 2007)

- 07-169 OFCCP's Final Jobs for Veterans Act (JVA) Regulations Respond to Concerns Expressed by EEAC About Potential Burden, Will Give Contractors Welcome Flexibility in Complying (August 10, 2007)
- 07-171 Homeland Security Issues Final "No-Match" Regulations, Announces Ambitious Plan To Step Up Workplace Enforcement of Immigration Requirements (August 17, 2007)
- 07-176 OFCCP Issues "Interim Guidance" on the Use of Race and Ethnicity Categories in Affirmative Action Programs in Response to Revised EEO-1 Categories (August 24, 2007)
- 07-177 EEAC's Brief in *Venetian Casino v. EEOC* Urges D.C. Circuit To Restrict Agency Disclosure of Confidential Business Information to Charging Parties (August 24, 2007)
- 07-181 EEAC Updates Sample "Cross-Over" AAP Narrative and Self-ID Form To Comply With Recently Issued Jobs for Veterans Act Regulations (August 31, 2007)
- 07-186 Federal Judge Temporarily Blocks Implementation of Department of Homeland Security's New "No-Match" Rule (September 7, 2007)
- 07-202 Another Year, Another Compliance Evaluation Cycle: OFCCP Mails First Round of "Advance Notice" Letters; Approximately 2,500 Establishments Targeted for Review Beginning October 1 (September 28, 2007)
- 07-211 Census Bureau's Most Recent American Community Survey (ACS) Data Continue To Highlight Increasing Diversity of Nation's Population (October 5, 2007)
- 07-212 Labor Department Announces Intent To Seek Paperwork Act Clearance for New "VETS-100A" Report; Form Will Not Take Effect Before 2009 at Earliest (October 12, 2007)
- 07-222 EEAC Planning New Series of Memoranda Focusing on Selection Practices (November 2, 2007)
- 07-232 Department of Homeland Security Releases New Employment Eligibility Verification Form I-9 Incorporating 1996 Amendments to IRCA (November 16, 2007)
- 07-242 Brief Member Survey Seeks Feedback on How Companies Are Complying With VEVRAA's Mandatory Job Listing Requirements (November 30, 2007)
- 07-243 New I-9 Form Must Be Used for All New Hires Starting No Later Than December 26, 2007 (November 30, 2007)
- 07-254 EEAC Files Another Round of Comments Urging Labor Department To Minimize "VETS-100" and Proposed "VETS-100A" Reporting Burdens (December 14, 2007)
- 07-259 OMB Launches New Publicly-Accessible Database Website Listing Federal Contracts of \$25,000 or More (December 21, 2007)

DIVERSITY/GLOBAL DIVERSITY

07-054 Newly Released 2005 EEO-1 Data Now Available From EEAC (March 16, 2007)

07-252 U.S. Department of Education Releases Updated College and University Graduate Figures Covering 2005-2006 Academic Year (December 7, 2007)

DRUG AND ALCOHOL TESTING

07-100 Workplace Alcohol Abuse and the ADA (May 11, 2007)

07-221 Most Recent National Substance Use Survey Continues To Show About One in Ten Full-Time Workers Is Dependent Upon or Abuses Drugs and/or Alcohol (October 19, 2007)

EEAC AMICUS BRIEFS

07-023 EEAC's Brief in *EEOC v. Federal Express Corporation* Asks Ninth Circuit To Rein in Overreaching EEOC Investigation (February 2, 2007)

07-025 Third Circuit in *Register v. PNC Financial* Becomes Second Federal Appeals Court To Rule That Conversion to Cash Balance Pension Plan Did Not Discriminate on Basis of Age (February 2, 2007)

07-027 Ninth Circuit Certifies Largest Employment Discrimination Class Action Ever in *Dukes v. Wal-Mart, Inc.* (February 9, 2007)

07-038 EEAC's Brief in *BCI v. EEOC* Urges Supreme Court To Reject Tenth Circuit's Expansive Interpretation of "Cat's Paw" Legal Standard (February 23, 2007)

07-044 EEAC Urges Ninth Circuit To Reverse Its Flawed Class Action Ruling in *Dukes v. Wal-Mart* (March 2, 2007)

07-061 Eighth Circuit in *Standridge v. Union Pacific* Rules That Exclusion of Contraceptive Coverage From Employer's Health Plans Is Not Pregnancy Discrimination (March 23, 2007)

07-068 EEAC's Brief to Supreme Court in *Sprint v. Mendelsohn* Argues Tenth Circuit Was Wrong in Allowing Prejudicial "Me Too" Testimony (April 6, 2007)

07-085 Full Ninth Circuit Agrees To Reconsider Bad ADA Ruling in *Bates v. UPS* (April 27, 2007)

07-095 EEAC's Brief in *Federal Express v. Holowecki* Urges Supreme Court To Reverse Lower Court Ruling Allowing Plaintiff To Bypass EEOC Charge Filing Process (May 11, 2007)

07-096 Adopting Arguments Made in EEAC's Brief, Third Circuit Rules in *O'Reilly v. Rutgers* That Employee Cannot Dictate Terms of FMLA Medical Certification (May 11, 2007)

- 07-101 Eighth Circuit in *Rehrs v. Procter & Gamble*, Adopting Arguments Advanced in EEAC's Brief, Rules Ability To Work Rotating Shifts Can Be Essential Job Function Under the ADA (May 18, 2007)
- 07-113 Supreme Court Rules in *Ledbetter v. Goodyear* That Title VII Pay Discrimination Charges Are Subject to Same Charge-Filing Deadlines as Other Title VII Claims (June 1, 2007)
- 07-118 Third Circuit, Agreeing With Arguments Advanced in EEAC's Brief, Rejects AARP Challenge to Issuance of EEOC Retiree Health Benefits Regulation (June 8, 2007)
- 07-119 Eighth Circuit in *Huber v. Wal-Mart* Concludes That ADA Does Not Require Automatic Right to Job Reassignment as Reasonable Accommodation (June 8, 2007)
- 07-120 EEAC Once Again Urges Ninth Circuit To Reverse Bad ADA Ruling in *Bates v. UPS* (June 8, 2007)
- 07-126 EEAC's Brief in *EEOC v. Allstate* Urges Eighth Circuit To Reject Disparate Impact Theory in ADEA Hiring Discrimination Case (June 15, 2007)
- 07-163 EEAC Once Again Urges Fourth Circuit To Reconsider Bad FMLA Ruling in *Taylor v. Progress Energy*; DOL Weighs In, but Passes on Opportunity To Make Regulatory Clarification (August 3, 2007)
- 07-170 EEAC's Brief to Supreme Court in *Federal Express v. Holowecki* Argues That Lower Court Was Wrong in Allowing Plaintiff To Bypass EEOC Charge Filing Requirements (August 17, 2007)
- 07-177 EEAC's Brief in *Venetian Casino v. EEOC* Urges D.C. Circuit To Restrict Agency Disclosure of Confidential Business Information to Charging Parties (August 24, 2007)
- 07-182 EEAC's Brief in *Sprint v. Mendelsohn* Urges Supreme Court To Bar Admission of "Me, Too" Testimony as Evidence of Alleged Discrimination (August 31, 2007)
- 07-197 EEAC's Brief in *Ellis v. Costco* Urges Ninth Circuit To Overturn Questionable Class Action Certification Ruling (September 21, 2007)
- 07-209 Tenth Circuit Rules in *Etsitty v. Utah Transit Authority* That Title VII Does Not Extend Sex Discrimination Protection to Transsexual Employee (October 5, 2007)
- 07-218 Federal Court in *ConocoPhillips v. Henry* Rules That Oklahoma Law Restricting Right of Employers To Ban Firearms on Company Property Is Preempted by Federal Occupational Safety and Health Act (October 19, 2007)
- 07-244 EEAC's Brief in *Progress Energy v. Taylor* Urges Supreme Court To Review Questionable Ruling on FMLA Releases (November 30, 2007)

- 07-245 EEAC's Brief to Supreme Court in *CBOCS West v. Humphries* Argues for Reversal of Section 1981 Retaliation Ruling (November 30, 2007)
- 07-248 Brief to Fifth Circuit in *EEOC v. Agro Distribution* Urges Court To Uphold Ruling That Agency Failed To Properly Investigate and Conciliate Discrimination Charge (December 7, 2007)
- 07-255 EEAC's Brief to Fourth Circuit in *Platone v. U.S. Department of Labor* Argues That Plaintiff Failed To Show She Was Entitled to Sarbanes-Oxley Act Whistleblower Protection (December 14, 2007)
- 07-260 Ninth Circuit Panel in *Dukes v. Wal-Mart* Denies Request for Rehearing, Reaffirms Massive Class Action Certification Ruling (December 21, 2007)

EEAC COMMENTS TO REGULATORY AGENCIES

- 07-028 EEAC Urges Labor Department To Revise Problematic FMLA Rules Dealing With Intermittent Leave and Serious Health Condition (February 9, 2007)
- 07-108 EEAC General Counsel Rae Vann Testifies at EEOC Public Meeting on Employment Testing and Selection (May 25, 2007)
- 07-169 OFCCP's Final Jobs for Veterans Act (JVA) Regulations Respond to Concerns Expressed by EEAC About Potential Burden, Will Give Contractors Welcome Flexibility in Complying (August 10, 2007)
- 07-254 EEAC Files Another Round of Comments Urging Labor Department To Minimize "VETS-100" and Proposed "VETS-100A" Reporting Burdens (December 14, 2007)

EEAC MEMBERSHIP/MEMBER SERVICES

- 07-011 January 2007 EEAC McDowell Legal Forum Highlights (January 19, 2007)
- 07-029 EEAC's Ninth Annual Litigation Survey Results (February 9, 2007)
- 07-034 EEAC's Updated *OFCCP Regulations Desk Reference* Now Available on EEAC's Website (February 16, 2007)
- 07-060 EEAC's 2007 Annual Membership Meeting Highlights (March 23, 2007)
- 07-062 Valuing Your EEAC Membership (March 23, 2007)
- 07-065 EEAC's 2007-2008 Board of Directors and Officers (March 30, 2007)

- 07-087 EEAC's April 19 EDR Discussion Forum Highlights (April 27, 2007)
- 07-088 EEAC's 2007 Employment Dispute Resolution (EDR) "Use/Experience" Survey Seeks Updated Data on Company Programs (April 27, 2007)
- 07-108 EEAC General Counsel Rae Vann Testifies at EEOC Public Meeting on Employment Testing and Selection (May 25, 2007)
- 07-124 June 2007 EEAC McDowell Legal Forum Highlights (June 15, 2007)
- 07-194 EEAC's Updated Primer on Employment Practices Liability (EPL) Insurance (September 14, 2007)
- 07-222 EEAC Planning New Series of Memoranda Focusing on Selection Practices (November 2, 2007)
- 07-228 EEAC's 2007 Fall Membership Meeting Highlights (November 9, 2007)
- 07-234 2007 Labor Department Secretary's Opportunity and EVE Award Recipients Feature EEAC Members (November 16, 2007)
- 07-238 Sixth Circuit Ruling in *Thomas v. Speedway* Shows How Making Proper Exempt/ Non-Exempt Classifications Under the Fair Labor Standards Act Can Be a Challenge (November 21, 2007)
- 07-246 EEAC Fall Meeting Presentations by Key EEOC Officials Underscore Why Employers Need To Pay Attention to Agency's Systemic Litigation Initiative (November 30, 2007)
- 07-252 U.S. Department of Education Releases Updated College and University Graduate Figures Covering 2005-2006 Academic Year (December 7, 2007)

EEAC SPECIAL MEMORANDA

- 07-029 EEAC's Ninth Annual Litigation Survey Results (February 9, 2007)
- 07-049 Assessing Sex-Based Compensation Discrimination Claims Often Requires Understanding of the Interplay Between Title VII and the Equal Pay Act (March 9, 2007)
- 07-054 Newly Released 2005 EEO-1 Data Now Available From EEAC (March 16, 2007)
- 07-083 EEAC's Guide To Complying With Current and Pending Veterans AAP and Reporting Requirements (April 27, 2007)
- 07-207 EEAC's Updated *ADA Reasonable Accommodation Compliance Checklist* Provides Guidance for Accommodating Qualified Individuals With Disabilities (October 5, 2007)

07-229 Monetary Damages Under Federal Laws That Ban Employment Discrimination Vary Depending on the Statute Involved; EEAC's New "Federal Law Damages Finder" Provides a Handy Reference Tool (November 9, 2007)

ENFORCEMENT AGENCIES

CENSUS BUREAU

07-211 Census Bureau's Most Recent American Community Survey (ACS) Data Continue To Highlight Increasing Diversity of Nation's Population (October 5, 2007)

07-241 Latest Annual BLS Survey of Women's Earnings Shows Wage Gap Held Steady in 2006 Over Prior Year (November 21, 2007)

DHS

07-014 TSA Finalizes Regulation Requiring Biometric ID (TWIC) Cards for U.S. Maritime Workers (January 19, 2007)

07-030 Senate-Approved Minimum Wage Bill Contains Tax, Immigration Provisions That Could Impact Large Employers (February 9, 2007)

07-125 Congressional Hearing Focuses on Practical Concerns Regarding Proposed New Employment Eligibility Verification System (EEVS) (June 15, 2007)

07-159 "EEVS" Lives: Some Federal Contractors Could Be Required To Participate in Basic Pilot Program (July 27, 2007)

07-162 U.S. Coast Guard Issues Written Guidance for Implementing Biometric ID "TWIC" Cards for Maritime Workers (August 3, 2007)

07-171 Homeland Security Issues Final "No-Match" Regulations, Announces Ambitious Plan To Step Up Workplace Enforcement of Immigration Requirements (August 17, 2007)

07-186 Federal Judge Temporarily Blocks Implementation of Department of Homeland Security's New "No-Match" Rule (September 7, 2007)

07-191 DHS Proposes To Invalidate All Remaining "Green Cards" That Do Not Have an Expiration Date (September 14, 2007)

07-217 Federal Judge in *AFL-CIO et al v. Chertoff* Grants Preliminary Injunction Against Enforcement of Homeland Security's Controversial "No-Match" Regulations (October 19, 2007)

07-232 Department of Homeland Security Releases New Employment Eligibility Verification Form I-9 Incorporating 1996 Amendments to IRCA (November 16, 2007)

07-243 New I-9 Form Must Be Used for All New Hires Starting No Later Than December 26, 2007 (November 30, 2007)

DOD

07-253 Congress on Verge of Approving New FMLA Military Family Leave Entitlement, Expanded Whistleblower Protection for DOD Contractor Employees (December 14, 2007)

DOJ

07-208 Expected Senate Confirmation of New Special Counsel for Immigration-Related Unfair Employment Practices Serves as Reminder of IRCA's Nondiscrimination Requirements (October 5, 2007)

DOL

07-001 Tenth Circuit in *Knapp v. America West Airlines* Finds Employee's Paid On-Call Time Cannot Be Counted for Determining Her FMLA Eligibility (January 5, 2007)

07-004 FMLA Complaints Resolved by Labor Department in 2006 Dropped for Third Consecutive Year (January 5, 2007)

07-020 Decision by First Circuit in *Engelhardt v. S.P. Richards* Gives Favorable Interpretation to FMLA's "Small Operations" Exemption (January 26, 2007)

07-022 DOL's Planned "List of Web Links" in Response to Pending Shut Down of America's Job Bank Will Not Be Much Help to Companies in Meeting Their VEVRAA Mandatory Job Listing Requirements (February 2, 2007)

07-028 EEAC Urges Labor Department To Revise Problematic FMLA Rules Dealing With Intermittent Leave and Serious Health Condition (February 9, 2007)

07-031 ALJ Rules in *Hagman v. Washington Mutual Bank, Inc.* That Front Pay Award Is Appropriate Under Sarbanes-Oxley Act Whistleblower Provisions (February 9, 2007)

07-040 Full Parity for Employer-Provided Mental Health Benefits Could Get Congressional Approval This Year (February 23, 2007)

07-041 Two Federal Agencies Issue New Guidance to Employers on Preparing for Possible Influenza Pandemic (February 23, 2007)

07-058 OFCCP Officials Confirm That Agency Is Considering Options To Reduce Burden of VEVRAA Job Listing Obligation in Response to Pending Shut Down of America's Job Bank (March 23, 2007)

07-066 FMLA's Paid Leave Substitution Rules Continue To Generate Lawsuits (March 30, 2007)

- 07-075 Labor Department Tribunal in *Morriss v. LG&E* Rejects Violent Employee's Attempt To Hide Behind Whistleblower Protection Law (April 13, 2007)
- 07-077 EEAC Update: Pending DOL and EEOC Regulatory and Policy Proposals Will Impact EEAC Members' Compliance Obligations (April 13, 2007)
- 07-083 EEAC's Guide To Complying With Current and Pending Veterans AAP and Reporting Requirements (April 27, 2007)
- 07-089 AJB Update: DOL Advises Contractors They Have Until June 15 To Request Records That May Be Needed To Show Compliance With VEVRAA Job Listing Requirements (May 4, 2007)
- 07-094 DOL's Office of Disability Employment Policy Launches Two New Initiatives, Extends Nomination Period for 2007 "New Freedom Initiative" Award (May 4, 2007)
- 07-097 Labor Department Announces Another Online Tool Intended To Help Employers Comply With the FLSA (May 11, 2007)
- 07-098 Sarbanes-Oxley Whistleblower Retaliation Rulings Are Putting Strict Interpretation on Time Frame for Bringing a Claim (May 11, 2007)
- 07-112 New Government Study Finds Labor Force Participation of Married Mothers With Infants, After Peaking in Late 90's, Has Leveled Off (May 25, 2007)
- 07-135 OFCCP Puts Enforcement of VEVRAA Job Listing Requirement on Temporary Hold in Light of AJB Shutdown (June 29, 2007)
- 07-141 Labor Department Tribunal Resolves Long Running Sarbanes-Oxley Whistleblower Retaliation Case (*Welch v. Cardinal Bankshares Corp.*), Rejects Plaintiff's Claim (July 6, 2007)
- 07-144 Fourth Circuit in *Taylor v. Progress Energy* Reinstates Troublesome FMLA Ruling Restricting Enforceability of Waivers (July 13, 2007)
- 07-147 Labor Department Concludes Its Latest FMLA Reform Inquiry With Report, Deferring Once Again on Proposing Regulatory Changes (July 13, 2007)
- 07-148 Federal Courts Generally Applying Four-Year "Catchall" Time Frame for Bringing USERRA Claims (July 13, 2007)
- 07-149 Reporting Season Has Arrived: 2007 EEO-1 and VETS-100 Filing Update (July 20, 2007)
- 07-163 EEAC Once Again Urges Fourth Circuit To Reconsider Bad FMLA Ruling in *Taylor v. Progress Energy*; DOL Weighs In, but Passes on Opportunity To Make Regulatory Clarification (August 3, 2007)

- 07-169 OFCCP's Final Jobs for Veterans Act (JVA) Regulations Respond to Concerns Expressed by EEAC About Potential Burden, Will Give Contractors Welcome Flexibility in Complying (August 10, 2007)
- 07-183 Labor Department Revises "Whistleblower" Regulations Under Several Federal Environmental Laws in Effort To Standardize Complaint Handling Procedures (August 31, 2007)
- 07-189 Wage & Hour Lawsuits Brought Under Federal Fair Labor Standards Act Are Increasing (September 7, 2007)
- 07-210 Retaliation Claims Brought Under the Fair Labor Standards Act: As With Title VII, Courts Still Disagree on Scope of Protected Activity (October 5, 2007)
- 07-212 Labor Department Announces Intent To Seek Paperwork Act Clearance for New "VETS-100A" Report; Form Will Not Take Effect Before 2009 at Earliest (October 12, 2007)
- 07-218 Federal Court in *ConocoPhillips v. Henry* Rules That Oklahoma Law Restricting Right of Employers To Ban Firearms on Company Property Is Preempted by Federal Occupational Safety and Health Act (October 19, 2007)
- 07-221 Most Recent National Substance Use Survey Continues To Show About One in Ten Full-Time Workers Is Dependent Upon or Abuses Drugs and/or Alcohol (October 19, 2007)
- 07-224 Labor Department Announces "Job Fair Blitz" To Promote Hiring of Veterans (November 2, 2007)
- 07-226 Favorable FMLA Ruling by First Circuit in *Mellen v. Boston University* Concludes That Holidays Can Be Counted for Purposes of Determining Employee's Intermittent Leave Entitlement (November 2, 2007)
- 07-238 Sixth Circuit Ruling in *Thomas v. Speedway* Shows How Making Proper Exempt/ Non-Exempt Classifications Under the Fair Labor Standards Act Can Be a Challenge (November 21, 2007)
- 07-240 Whistleblower Complaints Under Sarbanes-Oxley Declined Again in FY 2007 (November 21, 2007)
- 07-241 Latest Annual BLS Survey of Women's Earnings Shows Wage Gap Held Steady in 2006 Over Prior Year (November 21, 2007)
- 07-253 Congress on Verge of Approving New FMLA Military Family Leave Entitlement, Expanded Whistleblower Protection for DOD Contractor Employees (December 14, 2007)
- 07-254 EEAC Files Another Round of Comments Urging Labor Department To Minimize "VETS-100" and Proposed "VETS-100A" Reporting Burdens (December 14, 2007)

DOT

07-085 Full Ninth Circuit Agrees To Reconsider Bad ADA Ruling in *Bates v. UPS*
(April 27, 2007)

EEOC

07-003 Employer's Reliance on Its Doctor's Medical Opinion Is Not Always a Defense to an
ADA Claim (January 5, 2007)

07-011 January 2007 EEAC McDowell Legal Forum Highlights (January 19, 2007)

07-018 EEOC Systemic Discrimination Initiative Update: Ronald Cooper Presents Office of
General Counsel Perspective to Legal Forum Participants (January 26, 2007)

07-023 EEAC's Brief in *EEOC v. Federal Express Corporation* Asks Ninth Circuit To Rein in
Overreaching EEOC Investigation (February 2, 2007)

07-024 Proposed Genetic Information Nondiscrimination Act on Congressional Fast Track
(February 2, 2007)

07-033 EEOC Revises Its EEO-1 "FAQs" To Clarify There Is No Requirement To Collect and
Maintain Race and Ethnicity Data in More Than the Seven Listed Reporting Categories
(February 16, 2007)

07-038 EEAC's Brief in *BCI v. EEOC* Urges Supreme Court To Reject Tenth Circuit's
Expansive Interpretation of "Cat's Paw" Legal Standard (February 23, 2007)

07-039 EEOC's 2006 Charge Data Reveal Significant Increase in "Commissioners" Charges,
Suggesting Agency's Systemic Enforcement Initiative Is Well Underway
(February 23, 2007)

07-042 Eighth Circuit in *EEOC v. City of Independence* Rules That Leave Donation Policy
Violated ADEA by Excluding Retirement Eligible Employees (February 23, 2007)

07-045 EEOC's New "E-RACE" Initiative Will Target Race and Color Discrimination
(March 2, 2007)

07-049 Assessing Sex-Based Compensation Discrimination Claims Often Requires
Understanding of the Interplay Between Title VII and the Equal Pay Act (March 9, 2007)

07-054 Newly Released 2005 EEO-1 Data Now Available From EEAC (March 16, 2007)

07-057 Fifth Circuit in *EEOC v. Jefferson Dental Clinics* Limits Ability of Agency To Seek
Victim-Specific Money Relief Where Victim Previously Litigated Claim
(March 16, 2007)

- 07-069 Third Circuit in *El v. SEPTA* Rejects Title VII Disparate Impact Claim Against Employer's Policy of Rejecting Applicants With a Prior Criminal Conviction (April 6, 2007)
- 07-073 EEOC Revises Its *Mediation Deskbook*, in Part To Reflect New Focus on Systemic Litigation (April 13, 2007)
- 07-077 EEAC Update: Pending DOL and EEOC Regulatory and Policy Proposals Will Impact EEAC Members' Compliance Obligations (April 13, 2007)
- 07-080 EEOC Now Distributing New, More Detailed Charge "Intake Questionnaire" Through Its National Contact Center (April 20, 2007)
- 07-082 Collecting Race/Ethnicity and Gender Information From Job Applicants (April 20, 2007)
- 07-084 Pending "Pay Equity" Legislation Would Expand Employer Liability for Compensation Discrimination, Revive OFCCP's Equal Opportunity Survey (April 27, 2007)
- 07-086 EEOC Holds Public Hearing To Solicit Input on "Caregiver" Issues in Context of Federal Antidiscrimination Laws (April 27, 2007)
- 07-090 EEOC Intends To Formally Adopt Voluntary Self-Identification as the "Preferred Method" for Race/Ethnicity Data Collection (May 4, 2007)
- 07-092 Decision by Eighth Circuit in *EEOC v. Woodmen Insurance* Illustrates Potential Dilemma for Employers Created by Supreme Court's *Waffle House* Arbitration Ruling (May 4, 2007)
- 07-093 Seventh Circuit in *EEOC v. Schneider National* Upholds Safety Qualification Standard Against ADA "Regarded As" Claim (May 4, 2007)
- 07-095 EEAC's Brief in *Federal Express v. Holowecki* Urges Supreme Court To Reverse Lower Court Ruling Allowing Plaintiff To Bypass EEOC Charge Filing Process (May 11, 2007)
- 07-102 EEOC Makes Available Specifications for Filing the New 2007 EEO-1 Report (May 18, 2007)
- 07-104 EEOC's Evolving Systemic Enforcement Program Includes Performance Plan Accountability for District Directors (May 18, 2007)
- 07-108 EEAC General Counsel Rae Vann Testifies at EEOC Public Meeting on Employment Testing and Selection (May 25, 2007)
- 07-113 Supreme Court Rules in *Ledbetter v. Goodyear* That Title VII Pay Discrimination Charges Are Subject to Same Charge-Filing Deadlines as Other Title VII Claims (June 1, 2007)

- 07-114 EEOC Issues New Enforcement Guidance Addressing “Caregiver” Discrimination Issues Arising Under Title VII and the ADA (June 1, 2007)
- 07-118 Third Circuit, Agreeing With Arguments Advanced in EEAC’s Brief, Rejects AARP Challenge to Issuance of EEOC Retiree Health Benefits Regulation (June 8, 2007)
- 07-119 Eighth Circuit in *Huber v. Wal-Mart* Concludes That ADA Does Not Require Automatic Right to Job Reassignment as Reasonable Accommodation (June 8, 2007)
- 07-121 Mid-Year Report: Latest EEOC Enforcement Numbers Show Increase in Charge Activity, as Backlog Continues To Grow (June 8, 2007)
- 07-123 Emerging Use of “Video Résumés” Raises Issues for Employers (June 8, 2007)
- 07-126 EEAC’s Brief in *EEOC v. Allstate* Urges Eighth Circuit To Reject Disparate Impact Theory in ADEA Hiring Discrimination Case (June 15, 2007)
- 07-131 EEOC’s “Commissioner Charge” Data Suggest Particular Interest in Systemic Hiring Discrimination (June 22, 2007)
- 07-134 Referencing EEAC’s Guidance As You Prepare To File Your 2007 EEO-1 Forms (June 22, 2007)
- 07-145 EEOC Issues Final Rule Conforming ADEA Regulations to Supreme Court’s 2004 “Reverse Age Discrimination” Ruling in *General Dynamics v. Cline* (July 13, 2007)
- 07-149 Reporting Season Has Arrived: 2007 EEO-1 and VETS-100 Filing Update (July 20, 2007)
- 07-150 Senate Committee Approves Amendment That Would Bar EEOC Lawsuits That Challenge English-Only Policies (July 20, 2007)
- 07-165 EEOC Modifies File Specifications for Electronic Filing of 2007 EEO-1s To Accommodate Establishment Employer ID Numbers (EIN) (August 10, 2007)
- 07-170 EEAC’s Brief to Supreme Court in *Federal Express v. Holowecki* Argues That Lower Court Was Wrong in Allowing Plaintiff To Bypass EEOC Charge Filing Requirements (August 17, 2007)
- 07-177 EEAC’s Brief in *Venetian Casino v. EEOC* Urges D.C. Circuit To Restrict Agency Disclosure of Confidential Business Information to Charging Parties (August 24, 2007)
- 07-178 EEOC’s Charge Backlog Continues To Grow as Number of Charges Filed Increases (August 24, 2007)

- 07-187 What Constitutes a “Medical Examination” Under the ADA? (September 7, 2007)
- 07-195 Seventh Circuit in *EEOC v. Concentra Health Services* Dismisses Agency’s Lawsuit, Finds Employer Was Not Given Fair Notice of Alleged Violation (September 14, 2007)
- 07-203 Review of Recent Court Complaints Filed by EEOC Sheds Light on Agency’s Current Litigation Strategy (September 28, 2007)
- 07-207 EEAC’s Updated *ADA Reasonable Accommodation Compliance Checklist* Provides Guidance for Accommodating Qualified Individuals With Disabilities (October 5, 2007)
- 07-222 EEAC Planning New Series of Memoranda Focusing on Selection Practices (November 2, 2007)
- 07-231 Management Attorney Reed Russell Named as New EEOC Legal Counsel (November 9, 2007)
- 07-233 House Approves “Employment Non-Discrimination Act” To Prohibit Workplace Discrimination Based on Sexual Orientation (November 16, 2007)
- 07-236 EEOC Hangs Up on National Call Center Pilot Project, Will Once Again Handle All Inquiries Internally (November 16, 2007)
- 07-246 EEAC Fall Meeting Presentations by Key EEOC Officials Underscore Why Employers Need To Pay Attention to Agency’s Systemic Litigation Initiative (November 30, 2007)
- 07-248 Brief to Fifth Circuit in *EEOC v. Agro Distribution* Urges Court To Uphold Ruling That Agency Failed To Properly Investigate and Conciliate Discrimination Charge (December 7, 2007)
- 07-249 EEOC Publishes “Fact Sheet” for Employers on Employment Testing and Selection Procedures (December 7, 2007)
- 07-263 EEOC Outlines E-RACE Initiative Implementation Plan (December 28, 2007)
- 07-264 U.S. Senate Confirms Nomination of Stuart Ishimaru To Serve Another Term as EEOC Commissioner (December 28, 2007)
- 07-265 Decision by Seventh Circuit in *EEOC v. V & J Foods* Underscores Importance of Giving Employees Adequate Notice of Discrimination Prevention Policies (December 28, 2007)

HHS

- 07-040 Full Parity for Employer-Provided Mental Health Benefits Could Get Congressional Approval This Year (February 23, 2007)

07-041 Two Federal Agencies Issue New Guidance to Employers on Preparing for Possible Influenza Pandemic (February 23, 2007)

07-100 Workplace Alcohol Abuse and the ADA (May 11, 2007)

07-221 Most Recent National Substance Use Survey Continues To Show About One in Ten Full-Time Workers Is Dependent Upon or Abuses Drugs and/or Alcohol (October 19, 2007)

IRS

07-009 D.C. Circuit Vacates Controversial Ruling in *Murphy v. IRS*, Will Reconsider Whether Emotional Distress Damages Are Taxable Income (January 12, 2007)

07-156 D.C. Circuit, Ruling Once Again in *Murphy v. IRS*, Decides That Emotional Distress Damages Are Taxable Income After All (July 27, 2007)

NLRB

07-050 House of Representatives Approves Federal Labor Law Changes To Permit “Card-Check” Union Certification (March 9, 2007)

ODEP

07-035 Labor Department Now Seeking Nominations (Including Self-Nominations) for 2007 “New Freedom Initiative” Award (February 16, 2007)

07-094 DOL’s Office of Disability Employment Policy Launches Two New Initiatives, Extends Nomination Period for 2007 “New Freedom Initiative” Award (May 4, 2007)

07-225 EEAC Member Companies Are Among Recipients of Labor Department’s 2007 “New Freedom Initiative” Awards (November 2, 2007)

OFCCP

07-011 January 2007 EEAC McDowell Legal Forum Highlights (January 19, 2007)

07-012 OFCCP Update: Acting Policy Director Lynn Clements Provides Legal Forum Attendees With Overview of Currently Pending Enforcement and Policy Issues (January 19, 2007)

07-017 OFCCP Stepping Up Audits of Contractors’ Disability and Veterans Outreach Efforts (January 26, 2007)

07-022 DOL’s Planned “List of Web Links” in Response to Pending Shut Down of America’s Job Bank Will Not Be Much Help to Companies in Meeting Their VEVRAA Mandatory Job Listing Requirements (February 2, 2007)

07-034 EEAC’s Updated *OFCCP Regulations Desk Reference* Now Available on EEAC’s Website (February 16, 2007)

- 07-046 OFCCP Clarifies That Use of “80%/Whole Person” Overlay Method Is Permissible for Determining When Goals Must Be Established (March 2, 2007)
- 07-054 Newly Released 2005 EEO-1 Data Now Available From EEAC (March 16, 2007)
- 07-058 OFCCP Officials Confirm That Agency Is Considering Options To Reduce Burden of VEVRAA Job Listing Obligation in Response to Pending Shut Down of America’s Job Bank (March 23, 2007)
- 07-059 Round Two of OFCCP Advance Notice Targets 4,500 Contractor Establishments for Compliance Evaluations; Scheduling Letters Will Follow Beginning April 2 (March 23, 2007)
- 07-063 Federal Contractors Would Be Required To Report Subcontracts to Federal Database Under Newly Proposed Rule (March 30, 2007)
- 07-082 Collecting Race/Ethnicity and Gender Information From Job Applicants (April 20, 2007)
- 07-083 EEAC’s Guide To Complying With Current and Pending Veterans AAP and Reporting Requirements (April 27, 2007)
- 07-084 Pending “Pay Equity” Legislation Would Expand Employer Liability for Compensation Discrimination, Revive OFCCP’s Equal Opportunity Survey (April 27, 2007)
- 07-089 AJB Update: DOL Advises Contractors They Have Until June 15 To Request Records That May Be Needed To Show Compliance With VEVRAA Job Listing Requirements (May 4, 2007)
- 07-109 OFCCP’s Approach To Evaluating Company Compensation Practices Still Evolving, According to Agency Statistician Dr. Michael Sinclair (May 25, 2007)
- 07-132 Recent OFCCP Settlements Outline Remedies That Agency Is Seeking in Systemic Hiring Discrimination Cases (June 22, 2007)
- 07-133 Government Mandated EEO-Related Training Requirements Applicable to Private Employers Are Few and Far Between (June 22, 2007)
- 07-134 Referencing EEAC’s Guidance As You Prepare To File Your 2007 EEO-1 Forms (June 22, 2007)
- 07-135 OFCCP Puts Enforcement of VEVRAA Job Listing Requirement on Temporary Hold in Light of AJB Shutdown (June 29, 2007)
- 07-143 OFCCP Begins Scheduling New Round of Functional AAP (FAAP) Compliance Evaluations (July 13, 2007)

- 07-154 ALJ Decision in *OFCCP v. Bank of America* Articulates Legal Standards Agency Must Meet To Gain On-Site Access (July 27, 2007)
- 07-169 OFCCP’s Final Jobs for Veterans Act (JVA) Regulations Respond to Concerns Expressed by EEAC About Potential Burden, Will Give Contractors Welcome Flexibility in Complying (August 10, 2007)
- 07-176 OFCCP Issues “Interim Guidance” on the Use of Race and Ethnicity Categories in Affirmative Action Programs in Response to Revised EEO-1 Categories (August 24, 2007)
- 07-181 EEAC Updates Sample “Cross-Over” AAP Narrative and Self-ID Form To Comply With Recently Issued Jobs for Veterans Act Regulations (August 31, 2007)
- 07-202 Another Year, Another Compliance Evaluation Cycle: OFCCP Mails First Round of “Advance Notice” Letters; Approximately 2,500 Establishments Targeted for Review Beginning October 1 (September 28, 2007)
- 07-222 EEAC Planning New Series of Memoranda Focusing on Selection Practices (November 2, 2007)
- 07-223 Recent OFCCP Enforcement Actions Focus on Systemic Discrimination in Hiring for Entry-Level Jobs (November 2, 2007)
- 07-224 Labor Department Announces “Job Fair Blitz” To Promote Hiring of Veterans (November 2, 2007)
- 07-234 2007 Labor Department Secretary’s Opportunity and EVE Award Recipients Feature EEAC Members (November 16, 2007)
- 07-237 OFCCP Issues Four New “Frequently Asked Questions” Regarding Agency Audits of Contractor Compensation Practices (November 21, 2007)
- 07-242 Brief Member Survey Seeks Feedback on How Companies Are Complying With VEVRAA’s Mandatory Job Listing Requirements (November 30, 2007)
- 07-247 OFCCP’s Online “National Pre-Award Registry” Shows All Compliance Evaluations Closed Within the Past Two Years (December 7, 2007)
- 07-259 OMB Launches New Publicly-Accessible Database Website Listing Federal Contracts of \$25,000 or More (December 21, 2007)

OMB

- 07-063 Federal Contractors Would Be Required To Report Subcontracts to Federal Database Under Newly Proposed Rule (March 30, 2007)

07-212 Labor Department Announces Intent To Seek Paperwork Act Clearance for New “VETS-100A” Report; Form Will Not Take Effect Before 2009 at Earliest (October 12, 2007)

07-259 OMB Launches New Publicly-Accessible Database Website Listing Federal Contracts of \$25,000 or More (December 21, 2007)

EQUAL PAY ACT/COMPENSATION

07-012 OFCCP Update: Acting Policy Director Lynn Clements Provides Legal Forum Attendees With Overview of Currently Pending Enforcement and Policy Issues (January 19, 2007)

07-027 Ninth Circuit Certifies Largest Employment Discrimination Class Action Ever in *Dukes v. Wal-Mart, Inc.* (February 9, 2007)

07-049 Assessing Sex-Based Compensation Discrimination Claims Often Requires Understanding of the Interplay Between Title VII and the Equal Pay Act (March 9, 2007)

07-073 EEOC Revises Its *Mediation Deskbook*, in Part To Reflect New Focus on Systemic Litigation (April 13, 2007)

07-084 Pending “Pay Equity” Legislation Would Expand Employer Liability for Compensation Discrimination, Revive OFCCP’s Equal Opportunity Survey (April 27, 2007)

07-109 OFCCP’s Approach To Evaluating Company Compensation Practices Still Evolving, According to Agency Statistician Dr. Michael Sinclair (May 25, 2007)

07-113 Supreme Court Rules in *Ledbetter v. Goodyear* That Title VII Pay Discrimination Charges Are Subject to Same Charge-Filing Deadlines as Other Title VII Claims (June 1, 2007)

07-130 Pay Confidentiality Policies Likely To Come Under Increased Scrutiny in Wake of Supreme Court’s *Ledbetter* Decision (June 22, 2007)

07-139 House Committee Approves Bill To Reverse Supreme Court’s Recent *Ledbetter* Decision; Measure Would Expand Time Frame for Bringing Compensation Discrimination Claims (July 6, 2007)

07-155 Seventh Circuit in *Sims-Fingers v. City of Indianapolis* Rejects Pay Discrimination Claim, Finds No Need To Consider Whether Supreme Court’s *Ledbetter* Ruling Applied (July 27, 2007)

07-160 House Passes “Ledbetter” Reversal Bill on Party-Line Vote; Tally Is Well-Short of Number Needed To Overcome Likely Veto (August 3, 2007)

07-167 Gender Wage Gap Not Unique to U.S.: New Study Shows Pay Disparity Persists in European Union Countries as Well (August 10, 2007)

07-168 Courts Find “Equitable” Ways To Extend Filing Deadlines When an Individual Learns of Discrimination Only When It Is Otherwise Too Late, Countering Main Argument of *Ledbetter* Decision Opponents (August 10, 2007)

07-210 Retaliation Claims Brought Under the Fair Labor Standards Act: As With Title VII, Courts Still Disagree on Scope of Protected Activity (October 5, 2007)

07-229 Monetary Damages Under Federal Laws That Ban Employment Discrimination Vary Depending on the Statute Involved; EEAC’s New “Federal Law Damages Finder” Provides a Handy Reference Tool (November 9, 2007)

07-237 OFCCP Issues Four New “Frequently Asked Questions” Regarding Agency Audits of Contractor Compensation Practices (November 21, 2007)

07-241 Latest Annual BLS Survey of Women’s Earnings Shows Wage Gap Held Steady in 2006 Over Prior Year (November 21, 2007)

07-260 Ninth Circuit Panel in *Dukes v. Wal-Mart* Denies Request for Rehearing, Reaffirms Massive Class Action Certification Ruling (December 21, 2007)

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07-106 Washington State Restricts Employer Access to Credit Reports for Background Checks of Applicants and Employees (May 18, 2007)

07-140 Supreme Court’s *Safeco* and *GEICO* Rulings Shed Light on Standards for Expanded Damages Awards in Employment Cases (July 6, 2007)

FAIR LABOR STANDARDS ACT

07-019 Employment Discrimination Lawsuits Filed in Federal Court Went Down Again in 2006; Class Actions Not Reported (January 26, 2007)

07-030 Senate-Approved Minimum Wage Bill Contains Tax, Immigration Provisions That Could Impact Large Employers (February 9, 2007)

07-097 Labor Department Announces Another Online Tool Intended To Help Employers Comply With the FLSA (May 11, 2007)

07-110 Congress Clears Minimum Wage Increase (May 25, 2007)

07-189 Wage & Hour Lawsuits Brought Under Federal Fair Labor Standards Act Are Increasing (September 7, 2007)

07-210 Retaliation Claims Brought Under the Fair Labor Standards Act: As With Title VII, Courts Still Disagree on Scope of Protected Activity (October 5, 2007)

07-229 Monetary Damages Under Federal Laws That Ban Employment Discrimination Vary Depending on the Statute Involved; EEAC's New "Federal Law Damages Finder" Provides a Handy Reference Tool (November 9, 2007)

07-238 Sixth Circuit Ruling in *Thomas v. Speedway* Shows How Making Proper Exempt/ Non-Exempt Classifications Under the Fair Labor Standards Act Can Be a Challenge (November 21, 2007)

07-250 Latest Federal Court Statistics Show Another Big Increase in FLSA Lawsuits, and Another Drop in Employment Discrimination Lawsuits (December 7, 2007)

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07-001 Tenth Circuit in *Knapp v. America West Airlines* Finds Employee's Paid On-Call Time Cannot Be Counted for Determining Her FMLA Eligibility (January 5, 2007)

07-004 FMLA Complaints Resolved by Labor Department in 2006 Dropped for Third Consecutive Year (January 5, 2007)

07-019 Employment Discrimination Lawsuits Filed in Federal Court Went Down Again in 2006; Class Actions Not Reported (January 26, 2007)

07-020 Decision by First Circuit in *Engelhardt v. S.P. Richards* Gives Favorable Interpretation to FMLA's "Small Operations" Exemption (January 26, 2007)

07-028 EEAC Urges Labor Department To Revise Problematic FMLA Rules Dealing With Intermittent Leave and Serious Health Condition (February 9, 2007)

07-066 FMLA's Paid Leave Substitution Rules Continue To Generate Lawsuits (March 30, 2007)

07-081 Recent Court Decisions Address Issue of Individual Liability Under the ADA (No) and FMLA (Yes) (April 20, 2007)

07-096 Adopting Arguments Made in EEAC's Brief, Third Circuit Rules in *O'Reilly v. Rutgers* That Employee Cannot Dictate Terms of FMLA Medical Certification (May 11, 2007)

07-128 Ruling by Fifth Circuit in *Greenwell v. State Farm* Serves as Reminder That Employees Must Meet Minimum FMLA Notice Requirements (June 15, 2007)

07-144 Fourth Circuit in *Taylor v. Progress Energy* Reinstates Troublesome FMLA Ruling Restricting Enforceability of Waivers (July 13, 2007)

07-147 Labor Department Concludes Its Latest FMLA Reform Inquiry With Report, Deferring Once Again on Proposing Regulatory Changes (July 13, 2007)

- 07-151 Congress Considering a Number of New or Expanded Employee Leave Entitlements (July 20, 2007)
- 07-163 EEAC Once Again Urges Fourth Circuit To Reconsider Bad FMLA Ruling in *Taylor v. Progress Energy*; DOL Weighs In, but Passes on Opportunity To Make Regulatory Clarification (August 3, 2007)
- 07-172 Family Members of Wounded Service Members Could Take From Six Months to One Year of Protected Time Off From Work Under Amendments Approved Recently by U.S. Senate (August 17, 2007)
- 07-173 Tenth Circuit Rules in *Berry v. T-Mobile* That Employer’s Approval of FMLA Leave Does Not Establish ADA “Regarded As” Claim (August 17, 2007)
- 07-179 Evaluating an Employee’s “Fitness-for-Duty” Within the Parameters Permitted by the ADA and FMLA (August 24, 2007)
- 07-192 Congressional Joint Economic Committee Is Asking Fortune 100 Companies for Information on Their Family Leave Policies (September 14, 2007)
- 07-226 Favorable FMLA Ruling by First Circuit in *Mellen v. Boston University* Concludes That Holidays Can Be Counted for Purposes of Determining Employee’s Intermittent Leave Entitlement (November 2, 2007)
- 07-229 Monetary Damages Under Federal Laws That Ban Employment Discrimination Vary Depending on the Statute Involved; EEAC’s New “Federal Law Damages Finder” Provides a Handy Reference Tool (November 9, 2007)
- 07-235 A Real Shaggy Dog Story: Seventh Circuit in *Stevenson v. Hyre Electric* Rules Bizarre Reaction to Stray Mutt Incident May Have Put Employer on Notice That Employee Needed FMLA Leave (November 16, 2007)
- 07-244 EEAC’s Brief in *Progress Energy v. Taylor* Urges Supreme Court To Review Questionable Ruling on FMLA Releases (November 30, 2007)
- 07-251 California Governor Schwarzenegger Vetoes Several Employment-Related Bills, but Signs New Law Granting Military Family Leave (December 7, 2007)
- 07-253 Congress on Verge of Approving New FMLA Military Family Leave Entitlement, Expanded Whistleblower Protection for DOD Contractor Employees (December 14, 2007)

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- 07-177 EEAC’s Brief in *Venetian Casino v. EEOC* Urges D.C. Circuit To Restrict Agency Disclosure of Confidential Business Information to Charging Parties (August 24, 2007)

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- 07-013 Third Circuit in *Spencer v. Wal-Mart* Joins Other Courts in Concluding That Backpay Is Not a Remedy for Hostile Environment Absent a Showing of Constructive Discharge (January 19, 2007)
- 07-052 Reluctance of Employee To Disclose Details of Alleged Harassment by Supervisor Does Not Relieve Employer of Obligation To Follow Up (March 9, 2007)
- 07-070 Decision by Fourth Circuit in *Lettieri v. Equant, Inc.* Shows Sex-Based Stereotypes Continue To Get Employers in Trouble (April 6, 2007)
- 07-071 Ruling in *Singleton v. New York City* Serves as Reminder That Actionable Sexual Harassment Is Not Always Male on Female (April 6, 2007)
- 07-133 Government Mandated EEO-Related Training Requirements Applicable to Private Employers Are Few and Far Between (June 22, 2007)
- 07-166 California Adopts (Finally) Final Implementing Regulations for Its Mandatory Sexual Harassment Training Law (August 10, 2007)
- 07-174 D.C. Circuit in *Vickers v. Powell* Finds That Harassment of Employee by Successive Supervisors, Though Years Apart, Was Continuing Violation (August 17, 2007)
- 07-246 EEAC Fall Meeting Presentations by Key EEOC Officials Underscore Why Employers Need To Pay Attention to Agency's Systemic Litigation Initiative (November 30, 2007)
- 07-256 Actions Speak Louder Than Words: Eighth Circuit in *Engel v. Rapid City* Rules Employer May Be Liable for Continuing Harassment When It Does Not Follow Through on Threatened Discipline (December 14, 2007)
- 07-265 Decision by Seventh Circuit in *EEOC v. V & J Foods* Underscores Importance of Giving Employees Adequate Notice of Discrimination Prevention Policies (December 28, 2007)

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- 07-010 Same-Sex Marriage and Immigration Compliance Highlight Recent State Law Developments (January 12, 2007)
- 07-030 Senate-Approved Minimum Wage Bill Contains Tax, Immigration Provisions That Could Impact Large Employers (February 9, 2007)
- 07-051 Full Tenth Circuit Overturns Its Earlier Ruling in *Zamora v. Elite Logistics*, Concludes Employer Responded Appropriately to Social Security "Mismatch" Information (March 9, 2007)

- 07-055 Proposed “REAL ID” Regulations Clarify That Conforming Driver’s Licenses Will Not Be a Mandatory I-9 Document (March 16, 2007)
- 07-107 More States Enact Laws Regulating Employment of Illegal Aliens, as Congress Takes a Step Closer To Enacting Major Immigration Reform (May 25, 2007)
- 07-125 Congressional Hearing Focuses on Practical Concerns Regarding Proposed New Employment Eligibility Verification System (EEVS) (June 15, 2007)
- 07-146 Arizona Adopts Tough New Law Regarding Employment of Illegal Aliens After Congressional Immigration Reform Effort Tanks (July 13, 2007)
- 07-150 Senate Committee Approves Amendment That Would Bar EEOC Lawsuits That Challenge English-Only Policies (July 20, 2007)
- 07-159 “EEVS” Lives: Some Federal Contractors Could Be Required To Participate in Basic Pilot Program (July 27, 2007)
- 07-161 Federal Trial Court Rules in *Lozano v. City of Hazleton* That Local Ordinance Aimed at Controlling Employment of Illegal Immigrants Is Preempted by Federal Law (August 3, 2007)
- 07-171 Homeland Security Issues Final “No-Match” Regulations, Announces Ambitious Plan To Step Up Workplace Enforcement of Immigration Requirements (August 17, 2007)
- 07-186 Federal Judge Temporarily Blocks Implementation of Department of Homeland Security’s New “No-Match” Rule (September 7, 2007)
- 07-191 DHS Proposes To Invalidate All Remaining “Green Cards” That Do Not Have an Expiration Date (September 14, 2007)
- 07-208 Expected Senate Confirmation of New Special Counsel for Immigration-Related Unfair Employment Practices Serves as Reminder of IRCA’s Nondiscrimination Requirements (October 5, 2007)
- 07-211 Census Bureau’s Most Recent American Community Survey (ACS) Data Continue To Highlight Increasing Diversity of Nation’s Population (October 5, 2007)
- 07-217 Federal Judge in *AFL-CIO et al v. Chertoff* Grants Preliminary Injunction Against Enforcement of Homeland Security’s Controversial “No-Match” Regulations (October 19, 2007)
- 07-229 Monetary Damages Under Federal Laws That Ban Employment Discrimination Vary Depending on the Statute Involved; EEAC’s New “Federal Law Damages Finder” Provides a Handy Reference Tool (November 9, 2007)

07-232 Department of Homeland Security Releases New Employment Eligibility Verification Form I-9 Incorporating 1996 Amendments to IRCA (November 16, 2007)

07-243 New I-9 Form Must Be Used for All New Hires Starting No Later Than December 26, 2007 (November 30, 2007)

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07-016 New Ontario Law Likely To Speed Up the Resolution of EEO Complaints (January 19, 2007)

07-103 Bush Administration and Congressional Leaders Reach Deal on Attaching Labor Standards, Including Ban on Employment Discrimination, to Pending Free Trade Agreements (May 18, 2007)

07-116 International Labour Organization Issues Second “Global Report on Discrimination” (June 1, 2007)

07-158 European Union Compiles Seven Different Employment Laws Dealing With the Equal Treatment of Men and Women Into a Single New “Directive” (July 27, 2007)

07-167 Gender Wage Gap Not Unique to U.S.: New Study Shows Pay Disparity Persists in European Union Countries as Well (August 10, 2007)

07-180 China’s New Employment Contract Law Expands Basic Rights of Chinese Workers (August 24, 2007)

07-190 European Union Takes Action Against Several Member States for Failure To Implement Racial Equality Law (September 7, 2007)

07-262 European Union Opinion Survey Shows That Age, Disability, and Ethnic Origin Are Perceived as Being Significant Disadvantages To Seeking Employment in EU Member Countries (December 21, 2007)

OFCCP COMPLIANCE ISSUES

07-046 OFCCP Clarifies That Use of “80%/Whole Person” Overlay Method Is Permissible for Determining When Goals Must Be Established (March 2, 2007)

07-154 ALJ Decision in *OFCCP v. Bank of America* Articulates Legal Standards Agency Must Meet To Gain On-Site Access (July 27, 2007)

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07-002 Silence Is Not Golden: Supervisor’s Failure To Congratulate Employee on Her Pregnancy Is Evidence of Discriminatory Bias, Sixth Circuit Says in *Asmo v. Keane, Inc.* (January 5, 2007)

07-061 Eighth Circuit in *Standridge v. Union Pacific* Rules That Exclusion of Contraceptive Coverage From Employer’s Health Plans Is Not Pregnancy Discrimination (March 23, 2007)

07-072 EEAC’s Practical Pointers for Avoiding Pregnancy Discrimination Claims (April 6, 2007)

07-229 Monetary Damages Under Federal Laws That Ban Employment Discrimination Vary Depending on the Statute Involved; EEAC’s New “Federal Law Damages Finder” Provides a Handy Reference Tool (November 9, 2007)

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07-014 TSA Finalizes Regulation Requiring Biometric ID (TWIC) Cards for U.S. Maritime Workers (January 19, 2007)

07-024 Proposed Genetic Information Nondiscrimination Act on Congressional Fast Track (February 2, 2007)

07-043 Ninth Circuit Revises Earlier Decision in *U.S. v. Ziegler*, Concludes That Employees Have Reasonable Privacy Interest in Company Computers (February 23, 2007)

07-048 Unauthorized Audio Recordings of Workplace Conversations Can Create Special Challenges for Employers (March 2, 2007)

07-055 Proposed “REAL ID” Regulations Clarify That Conforming Driver’s Licenses Will Not Be a Mandatory I-9 Document (March 16, 2007)

07-106 Washington State Restricts Employer Access to Credit Reports for Background Checks of Applicants and Employees (May 18, 2007)

07-117 Growing Popularity of “Social Networking” Websites Has Implications for Employers (June 1, 2007)

07-162 U.S. Coast Guard Issues Written Guidance for Implementing Biometric ID “TWIC” Cards for Maritime Workers (August 3, 2007)

07-257 Ill-Advised Postings on Social Networking Websites Are Adding Another Dimension to Off-Duty Conduct That Can Impact the Workplace (December 14, 2007)

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07-115 Seventh Circuit in *Noesen v. Medical Staffing Network* Rejects Title VII Religious Accommodation Claim; Case Illustrates How “WRFA” Could Change the Outcome (June 1, 2007)

07-142 Ninth Circuit in *Noyes v. Kelly Services* Backs Employee’s Title VII Religious Favoritism Claim (July 6, 2007)

07-239 Sixth Circuit Rules in *Tepper v. Potter* That Elimination of Religious Accommodation Is Not Automatic Title VII Violation (November 21, 2007)

RETALIATION/WHISTLEBLOWER

07-007 Sixth Circuit in *Crawford v. Nashville* Concludes That Participation in Internal EEO Investigation Is Not Covered by Title VII's Anti-Retaliation Provisions (January 12, 2007)

07-009 D.C. Circuit Vacates Controversial Ruling in *Murphy v. IRS*, Will Reconsider Whether Emotional Distress Damages Are Taxable Income (January 12, 2007)

07-031 ALJ Rules in *Hagman v. Washington Mutual Bank, Inc.* That Front Pay Award Is Appropriate Under Sarbanes-Oxley Act Whistleblower Provisions (February 9, 2007)

07-036 Seventh Circuit in *Humphries v. CBOCS West, Inc.* Joins Other Federal Courts in Concluding That Section 1981 Covers Retaliation Claims (February 16, 2007)

07-056 The Federal Courts and Unlawful Retaliation Cases After *BNSF v. White*: "Context Matters" (March 16, 2007)

07-074 Supreme Court in *Rockwell v. United States* Adopts Tight Standard for Allowing Corporate Whistleblower To Bring "Bounty" Claim Under the Federal False Claims Act (April 13, 2007)

07-075 Labor Department Tribunal in *Morriss v. LG&E* Rejects Violent Employee's Attempt To Hide Behind Whistleblower Protection Law (April 13, 2007)

07-098 Sarbanes-Oxley Whistleblower Retaliation Rulings Are Putting Strict Interpretation on Time Frame for Bringing a Claim (May 11, 2007)

07-141 Labor Department Tribunal Resolves Long Running Sarbanes-Oxley Whistleblower Retaliation Case (*Welch v. Cardinal Bankshares Corp.*), Rejects Plaintiff's Claim (July 6, 2007)

07-156 D.C. Circuit, Ruling Once Again in *Murphy v. IRS*, Decides That Emotional Distress Damages Are Taxable Income After All (July 27, 2007)

07-183 Labor Department Revises "Whistleblower" Regulations Under Several Federal Environmental Laws in Effort To Standardize Complaint Handling Procedures (August 31, 2007)

07-195 Seventh Circuit in *EEOC v. Concentra Health Services* Dismisses Agency's Lawsuit, Finds Employer Was Not Given Fair Notice of Alleged Violation (September 14, 2007)

- 07-196 Fifth Circuit in *McCoy v. Shreveport* Is Latest Federal Appeals Court To Rule That *BNSF v. White*'s Expansive Adverse Action Standards Do Not Apply to Garden Variety Title VII Bias Claims (September 14, 2007)
- 07-210 Retaliation Claims Brought Under the Fair Labor Standards Act: As With Title VII, Courts Still Disagree on Scope of Protected Activity (October 5, 2007)
- 07-229 Monetary Damages Under Federal Laws That Ban Employment Discrimination Vary Depending on the Statute Involved; EEAC's New "Federal Law Damages Finder" Provides a Handy Reference Tool (November 9, 2007)
- 07-240 Whistleblower Complaints Under Sarbanes-Oxley Declined Again in FY 2007 (November 21, 2007)
- 07-245 EEAC's Brief to Supreme Court in *CBOCS West v. Humphries* Argues for Reversal of Section 1981 Retaliation Ruling (November 30, 2007)
- 07-253 Congress on Verge of Approving New FMLA Military Family Leave Entitlement, Expanded Whistleblower Protection for DOD Contractor Employees (December 14, 2007)
- 07-255 EEAC's Brief to Fourth Circuit in *Platone v. U.S. Department of Labor* Argues That Plaintiff Failed To Show She Was Entitled to Sarbanes-Oxley Act Whistleblower Protection (December 14, 2007)

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- 07-036 Seventh Circuit in *Humphries v. CBOCS West, Inc.* Joins Other Federal Courts in Concluding That Section 1981 Covers Retaliation Claims (February 16, 2007)
- 07-213 Recent Legal Developments Under Section 1981 Illustrate the Ongoing Relevance to Employers of This Important Federal Nondiscrimination Law (October 12, 2007)
- 07-245 EEAC's Brief to Supreme Court in *CBOCS West v. Humphries* Argues for Reversal of Section 1981 Retaliation Ruling (November 30, 2007)

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- 07-010 Same-Sex Marriage and Immigration Compliance Highlight Recent State Law Developments (January 12, 2007)
- 07-105 Several More States Enact Ban on Workplace Discrimination Based on Sexual Orientation; Latest Version of Federal Employment Nondiscrimination Act Adds Gender Identity Protection (May 18, 2007)
- 07-127 Three More States Take Action To Extend Legal Protection and Benefits to Same-Sex Couples (June 15, 2007)

07-188 GLBT Advocacy Group Reports Significant Increase in Number of Large Companies With Policies Prohibiting Discrimination Based on Gender Identity (September 7, 2007)

07-209 Tenth Circuit Rules in *Etsitty v. Utah Transit Authority* That Title VII Does Not Extend Sex Discrimination Protection to Transsexual Employee (October 5, 2007)

07-233 House Approves “Employment Non-Discrimination Act” To Prohibit Workplace Discrimination Based on Sexual Orientation (November 16, 2007)

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07-132 Recent OFCCP Settlements Outline Remedies That Agency Is Seeking in Systemic Hiring Discrimination Cases (June 22, 2007)

07-154 ALJ Decision in *OFCCP v. Bank of America* Articulates Legal Standards Agency Must Meet To Gain On-Site Access (July 27, 2007)

07-223 Recent OFCCP Enforcement Actions Focus on Systemic Discrimination in Hiring for Entry-Level Jobs (November 2, 2007)

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07-010 Same-Sex Marriage and Immigration Compliance Highlight Recent State Law Developments (January 12, 2007)

07-055 Proposed “REAL ID” Regulations Clarify That Conforming Driver’s Licenses Will Not Be a Mandatory I-9 Document (March 16, 2007)

07-091 Legislators in Florida and Georgia Reject “Parking Lot Gun Laws” in Wake of Virginia Tech Tragedy (May 4, 2007)

07-105 Several More States Enact Ban on Workplace Discrimination Based on Sexual Orientation; Latest Version of Federal Employment Nondiscrimination Act Adds Gender Identity Protection (May 18, 2007)

07-106 Washington State Restricts Employer Access to Credit Reports for Background Checks of Applicants and Employees (May 18, 2007)

07-107 More States Enact Laws Regulating Employment of Illegal Aliens, as Congress Takes a Step Closer To Enacting Major Immigration Reform (May 25, 2007)

07-127 Three More States Take Action To Extend Legal Protection and Benefits to Same-Sex Couples (June 15, 2007)

07-133 Government Mandated EEO-Related Training Requirements Applicable to Private Employers Are Few and Far Between (June 22, 2007)

- 07-146 Arizona Adopts Tough New Law Regarding Employment of Illegal Aliens After Congressional Immigration Reform Effort Tanks (July 13, 2007)
- 07-152 Ninth Circuit Continues To Find Fault With Employment Arbitration Agreements, Overshadowing Pro-Arbitration Ruling by Trial Court Within Same Jurisdiction (July 20, 2007)
- 07-161 Federal Trial Court Rules in *Lozano v. City of Hazleton* That Local Ordinance Aimed at Controlling Employment of Illegal Immigrants Is Preempted by Federal Law (August 3, 2007)
- 07-164 Small But Growing Number of States Now Offer Employment Protection to Nursing Mothers (August 3, 2007)
- 07-166 California Adopts (Finally) Final Implementing Regulations for Its Mandatory Sexual Harassment Training Law (August 10, 2007)
- 07-188 GLBT Advocacy Group Reports Significant Increase in Number of Large Companies With Policies Prohibiting Discrimination Based on Gender Identity (September 7, 2007)
- 07-201 California Legislature Approves Several Bills That Would Significantly Expand Employment Protection Under State Law, Including Extended Filing Deadline for Pay Discrimination Claims and New “Familial Status” Rights (September 21, 2007)
- 07-217 Federal Judge in *AFL-CIO et al v. Chertoff* Grants Preliminary Injunction Against Enforcement of Homeland Security’s Controversial “No-Match” Regulations (October 19, 2007)
- 07-218 Federal Court in *ConocoPhillips v. Henry* Rules That Oklahoma Law Restricting Right of Employers To Ban Firearms on Company Property Is Preempted by Federal Occupational Safety and Health Act (October 19, 2007)
- 07-251 California Governor Schwarzenegger Vetoes Several Employment-Related Bills, but Signs New Law Granting Military Family Leave (December 7, 2007)

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- 07-108 EEAC General Counsel Rae Vann Testifies at EEOC Public Meeting on Employment Testing and Selection (May 25, 2007)
- 07-187 What Constitutes a “Medical Examination” Under the ADA? (September 7, 2007)
- 07-230 “Biodata” Testing as an Employee Selection Tool (November 9, 2007)
- 07-249 EEOC Publishes “Fact Sheet” for Employers on Employment Testing and Selection Procedures (December 7, 2007)

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- 07-006 Federal Trial Court in *Gutierrez v. Johnson & Johnson* Refuses To Certify Class Action in Case Involving Allegations of Discriminatory Subjective Decision-Making (January 12, 2007)
- 07-007 Sixth Circuit in *Crawford v. Nashville* Concludes That Participation in Internal EEO Investigation Is Not Covered by Title VII's Anti-Retaliation Provisions (January 12, 2007)
- 07-013 Third Circuit in *Spencer v. Wal-Mart* Joins Other Courts in Concluding That Backpay Is Not a Remedy for Hostile Environment Absent a Showing of Constructive Discharge (January 19, 2007)
- 07-023 EEAC's Brief in *EEOC v. Federal Express Corporation* Asks Ninth Circuit To Rein in Overreaching EEOC Investigation (February 2, 2007)
- 07-027 Ninth Circuit Certifies Largest Employment Discrimination Class Action Ever in *Dukes v. Wal-Mart, Inc.* (February 9, 2007)
- 07-032 Decision by Third Circuit in *Scheidemantle v. Slippery Rock* Underscores Potential Discrimination Liability When Employer Strays From Stated Job Criteria (February 9, 2007)
- 07-037 First Circuit in *Velázquez-García v. Horizon Lines* Rules That Plaintiff Has Different (And Easier) Burden Under USERRA Than Under Title VII (February 16, 2007)
- 07-038 EEAC's Brief in *BCI v. EEOC* Urges Supreme Court To Reject Tenth Circuit's Expansive Interpretation of "Cat's Paw" Legal Standard (February 23, 2007)
- 07-044 EEAC Urges Ninth Circuit To Reverse Its Flawed Class Action Ruling in *Dukes v. Wal-Mart* (March 2, 2007)
- 07-045 EEOC's New "E-RACE" Initiative Will Target Race and Color Discrimination (March 2, 2007)
- 07-047 "Reverse Discrimination" Ruling by Seventh Circuit in *Alexander v. City of Milwaukee* Serves as Reminder That Race-Based Preferential Treatment Should Be Narrowly Tailored (March 2, 2007)
- 07-049 Assessing Sex-Based Compensation Discrimination Claims Often Requires Understanding of the Interplay Between Title VII and the Equal Pay Act (March 9, 2007)
- 07-052 Reluctance of Employee To Disclose Details of Alleged Harassment by Supervisor Does Not Relieve Employer of Obligation To Follow Up (March 9, 2007)

- 07-057 Fifth Circuit in *EEOC. v. Jefferson Dental Clinics* Limits Ability of Agency To Seek Victim-Specific Money Relief Where Victim Previously Litigated Claim (March 16, 2007)
- 07-061 Eighth Circuit in *Standridge v. Union Pacific* Rules That Exclusion of Contraceptive Coverage From Employer’s Health Plans Is Not Pregnancy Discrimination (March 23, 2007)
- 07-069 Third Circuit in *El v. SEPTA* Rejects Title VII Disparate Impact Claim Against Employer’s Policy of Rejecting Applicants With a Prior Criminal Conviction (April 6, 2007)
- 07-070 Decision by Fourth Circuit in *Lettieri v. Equant, Inc.* Shows Sex-Based Stereotypes Continue To Get Employers in Trouble (April 6, 2007)
- 07-071 Ruling in *Singleton v. New York City* Serves as Reminder That Actionable Sexual Harassment Is Not Always Male on Female (April 6, 2007)
- 07-076 Eleventh Circuit in *Myricks v. FRB of Atlanta* Provides Useful Guidance on What Constitutes “Knowing and Voluntary” Waiver of Title VII Claim (April 13, 2007)
- 07-078 \$55 Million Settlement Highlights Recent Developments Added to EEAC’s Updated Class Action Cases and Major Settlements Catalog (April 20, 2007)
- 07-079 Courts Will Sometimes Disregard Discriminatory Workplace Comments as Mere “Stray Remarks,” but Preventing *Any* Questionable Comments Is the Best Policy (April 20, 2007)
- 07-081 Recent Court Decisions Address Issue of Individual Liability Under the ADA (No) and FMLA (Yes) (April 20, 2007)
- 07-111 Settlement of Sex Discrimination Class Action Against Morgan Stanley Contains Interesting Programmatic Relief (May 25, 2007)
- 07-113 Supreme Court Rules in *Ledbetter v. Goodyear* That Title VII Pay Discrimination Charges Are Subject to Same Charge-Filing Deadlines as Other Title VII Claims (June 1, 2007)
- 07-114 EEOC Issues New Enforcement Guidance Addressing “Caregiver” Discrimination Issues Arising Under Title VII and the ADA (June 1, 2007)
- 07-115 Seventh Circuit in *Noesen v. Medical Staffing Network* Rejects Title VII Religious Accommodation Claim; Case Illustrates How “WRFA” Could Change the Outcome (June 1, 2007)
- 07-129 Seventh Circuit Confirms in *Dillard v. Starcon* That Oral Settlement Agreement Can Be Enforced, Assuming Essential Elements Have Been Agreed To (June 15, 2007)

- 07-130 Pay Confidentiality Policies Likely To Come Under Increased Scrutiny in Wake of Supreme Court's *Ledbetter* Decision (June 22, 2007)
- 07-131 EEOC's "Commissioner Charge" Data Suggest Particular Interest in Systemic Hiring Discrimination (June 22, 2007)
- 07-136 Two Federal Appeals Court Rulings Illustrate Wide Difference on Showing Plaintiffs Must Make To Support "Rule 23" Class Certification Determination (June 29, 2007)
- 07-139 House Committee Approves Bill To Reverse Supreme Court's Recent *Ledbetter* Decision; Measure Would Expand Time Frame for Bringing Compensation Discrimination Claims (July 6, 2007)
- 07-142 Ninth Circuit in *Noyes v. Kelly Services* Backs Employee's Title VII Religious Favoritism Claim (July 6, 2007)
- 07-150 Senate Committee Approves Amendment That Would Bar EEOC Lawsuits That Challenge English-Only Policies (July 20, 2007)
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- 07-160 House Passes "Ledbetter" Reversal Bill on Party-Line Vote; Tally Is Well-Short of Number Needed To Overcome Likely Veto (August 3, 2007)
- 07-168 Courts Find "Equitable" Ways To Extend Filing Deadlines When an Individual Learns of Discrimination Only When It Is Otherwise Too Late, Countering Main Argument of *Ledbetter* Decision Opponents (August 10, 2007)
- 07-174 D.C. Circuit in *Vickers v. Powell* Finds That Harassment of Employee by Successive Supervisors, Though Years Apart, Was Continuing Violation (August 17, 2007)
- 07-184 Decision by Ninth Circuit in *Poland v. Chertoff* Weighs In on "Cat's Paw" Theory of Discrimination (August 31, 2007)
- 07-185 Fifth Circuit Confirms in *Alvarado v. Texas Rangers* That Denial of Lateral Transfer to Job With Same Pay and Title Still Can Constitute an Adverse Action (August 31, 2007)
- 07-195 Seventh Circuit in *EEOC v. Concentra Health Services* Dismisses Agency's Lawsuit, Finds Employer Was Not Given Fair Notice of Alleged Violation (September 14, 2007)
- 07-196 Fifth Circuit in *McCoy v. Shreveport* Is Latest Federal Appeals Court To Rule That *BNSF v. White*'s Expansive Adverse Action Standards Do Not Apply to Garden Variety Title VII Bias Claims (September 14, 2007)

- 07-197 EEAC's Brief in *Ellis v. Costco* Urges Ninth Circuit To Overturn Questionable Class Action Certification Ruling (September 21, 2007)
- 07-208 Expected Senate Confirmation of New Special Counsel for Immigration-Related Unfair Employment Practices Serves as Reminder of IRCA's Nondiscrimination Requirements (October 5, 2007)
- 07-209 Tenth Circuit Rules in *Etsitty v. Utah Transit Authority* That Title VII Does Not Extend Sex Discrimination Protection to Transsexual Employee (October 5, 2007)
- 07-229 Monetary Damages Under Federal Laws That Ban Employment Discrimination Vary Depending on the Statute Involved; EEAC's New "Federal Law Damages Finder" Provides a Handy Reference Tool (November 9, 2007)
- 07-239 Sixth Circuit Rules in *Tepper v. Potter* That Elimination of Religious Accommodation Is Not Automatic Title VII Violation (November 21, 2007)
- 07-260 Ninth Circuit Panel in *Dukes v. Wal-Mart* Denies Request for Rehearing, Reaffirms Massive Class Action Certification Ruling (December 21, 2007)
- 07-263 EEOC Outlines E-RACE Initiative Implementation Plan (December 28, 2007)

VETERANS/VETS-100/USERRA

- 07-012 OFCCP Update: Acting Policy Director Lynn Clements Provides Legal Forum Attendees With Overview of Currently Pending Enforcement and Policy Issues (January 19, 2007)
- 07-017 OFCCP Stepping Up Audits of Contractors' Disability and Veterans Outreach Efforts (January 26, 2007)
- 07-022 DOL's Planned "List of Web Links" in Response to Pending Shut Down of America's Job Bank Will Not Be Much Help to Companies in Meeting Their VEVRAA Mandatory Job Listing Requirements (February 2, 2007)
- 07-037 First Circuit in *Velázquez-García v. Horizon Lines* Rules That Plaintiff Has Different (And Easier) Burden Under USERRA Than Under Title VII (February 16, 2007)
- 07-058 OFCCP Officials Confirm That Agency Is Considering Options To Reduce Burden of VEVRAA Job Listing Obligation in Response to Pending Shut Down of America's Job Bank (March 23, 2007)
- 07-077 EEAC Update: Pending DOL and EEOC Regulatory and Policy Proposals Will Impact EEAC Members' Compliance Obligations (April 13, 2007)
- 07-083 EEAC's Guide To Complying With Current and Pending Veterans AAP and Reporting Requirements (April 27, 2007)

- 07-089 AJB Update: DOL Advises Contractors They Have Until June 15 To Request Records That May Be Needed To Show Compliance With VEVRAA Job Listing Requirements (May 4, 2007)
- 07-133 Government Mandated EEO-Related Training Requirements Applicable to Private Employers Are Few and Far Between (June 22, 2007)
- 07-135 OFCCP Puts Enforcement of VEVRAA Job Listing Requirement on Temporary Hold in Light of AJB Shutdown (June 29, 2007)
- 07-148 Federal Courts Generally Applying Four-Year “Catchall” Time Frame for Bringing USERRA Claims (July 13, 2007)
- 07-149 Reporting Season Has Arrived: 2007 EEO-1 and VETS-100 Filing Update (July 20, 2007)
- 07-169 OFCCP’s Final Jobs for Veterans Act (JVA) Regulations Respond to Concerns Expressed by EEAC About Potential Burden, Will Give Contractors Welcome Flexibility in Complying (August 10, 2007)
- 07-172 Family Members of Wounded Service Members Could Take From Six Months to One Year of Protected Time Off From Work Under Amendments Approved Recently by U.S. Senate (August 17, 2007)
- 07-175 USERRA May Require Reinstatement — If Only Briefly — of Service Member Otherwise Subject to Discharge for Misconduct (August 17, 2007)
- 07-181 EEAC Updates Sample “Cross-Over” AAP Narrative and Self-ID Form To Comply With Recently Issued Jobs for Veterans Act Regulations (August 31, 2007)
- 07-212 Labor Department Announces Intent To Seek Paperwork Act Clearance for New “VETS-100A” Report; Form Will Not Take Effect Before 2009 at Earliest (October 12, 2007)
- 07-224 Labor Department Announces “Job Fair Blitz” To Promote Hiring of Veterans (November 2, 2007)
- 07-229 Monetary Damages Under Federal Laws That Ban Employment Discrimination Vary Depending on the Statute Involved; EEAC’s New “Federal Law Damages Finder” Provides a Handy Reference Tool (November 9, 2007)
- 07-242 Brief Member Survey Seeks Feedback on How Companies Are Complying With VEVRAA’s Mandatory Job Listing Requirements (November 30, 2007)
- 07-254 EEAC Files Another Round of Comments Urging Labor Department To Minimize “VETS-100” and Proposed “VETS-100A” Reporting Burdens (December 14, 2007)

WORKPLACE VIOLENCE

- 07-075 Labor Department Tribunal in *Morriss v. LG&E* Rejects Violent Employee's Attempt To Hide Behind Whistleblower Protection Law (April 13, 2007)
- 07-091 Legislators in Florida and Georgia Reject "Parking Lot Gun Laws" in Wake of Virginia Tech Tragedy (May 4, 2007)
- 07-193 Number of Workplace Homicides in 2006 Dropped to Lowest Number Since Government Began Tracking Such Data in 1992 (September 14, 2007)
- 07-218 Federal Court in *ConocoPhillips v. Henry* Rules That Oklahoma Law Restricting Right of Employers To Ban Firearms on Company Property Is Preempted by Federal Occupational Safety and Health Act (October 19, 2007)
- 07-220 New Workplace Violence Survey Suggests That Nearly One in Six Workers Got Mad Enough at a Coworker Last Year That They Wanted To Take a Swing (October 19, 2007)

MISCELLANEOUS

- 07-005 Employment Issues Likely To Get More Attention This Year in New Democrat-Controlled Congress (January 5, 2007)
- 07-008 Blue-Ribbon Commission Warns of Lag in U.S. Workforce Skills, Recommends Sweeping Education and Training Reform (January 12, 2007)
- 07-019 Employment Discrimination Lawsuits Filed in Federal Court Went Down Again in 2006; Class Actions Not Reported (January 26, 2007)
- 07-021 Ninth Circuit in *Carson v. Billings Police Department* Rules That Attorney's Fees Award Is Determined Using Prevailing Market Rate, Regardless of What Plaintiff and Her Counsel Otherwise Agreed To (January 26, 2007)
- 07-026 "Benchmark Study" by Center on Aging and Work Reviews Steps Some Employers Are Taking To Prepare for Impacts of Aging Workforce (February 2, 2007)
- 07-029 EEAC's Ninth Annual Litigation Survey Results (February 9, 2007)
- 07-041 Two Federal Agencies Issue New Guidance to Employers on Preparing for Possible Influenza Pandemic (February 23, 2007)
- 07-048 Unauthorized Audio Recordings of Workplace Conversations Can Create Special Challenges for Employers (March 2, 2007)
- 07-064 EEAC Update: Employment-Related Bills Are Stacking Up as New Democratic Congress Assembles Its Wish List (March 30, 2007)

- 07-099 Eighth Circuit Rules in *Fischer v. Andersen Corp.* That Employee Put on “Performance Improvement Plan” Was Not Constructively Discharged (May 11, 2007)
- 07-103 Bush Administration and Congressional Leaders Reach Deal on Attaching Labor Standards, Including Ban on Employment Discrimination, to Pending Free Trade Agreements (May 18, 2007)
- 07-110 Congress Clears Minimum Wage Increase (May 25, 2007)
- 07-112 New Government Study Finds Labor Force Participation of Married Mothers With Infants, After Peaking in Late 90’s, Has Leveled Off (May 25, 2007)
- 07-117 Growing Popularity of “Social Networking” Websites Has Implications for Employers (June 1, 2007)
- 07-123 Emerging Use of “Video Résumés” Raises Issues for Employers (June 8, 2007)
- 07-124 June 2007 EEAC McDowell Legal Forum Highlights (June 15, 2007)
- 07-129 Seventh Circuit Confirms in *Dillard v. Starcon* That Oral Settlement Agreement Can Be Enforced, Assuming Essential Elements Have Been Agreed To (June 15, 2007)
- 07-138 Supreme Court Strikes Down Race-Based Public School Assignment Plans; 5 - 4 Holding Has No Direct Impact on Private Sector, but Justices Are Indicating Increasing Skepticism Over Race-Conscious Decision-Making (July 6, 2007)
- 07-140 Supreme Court’s *Safeco* and *GEICO* Rulings Shed Light on Standards for Expanded Damages Awards in Employment Cases (July 6, 2007)
- 07-153 To Go To Work or Stay at Home? New Study Suggests Many Mothers Would Prefer Jobs That Allow Both (July 20, 2007)
- 07-156 D.C. Circuit, Ruling Once Again in *Murphy v. IRS*, Decides That Emotional Distress Damages Are Taxable Income After All (July 27, 2007)
- 07-164 Small But Growing Number of States Now Offer Employment Protection to Nursing Mothers (August 3, 2007)
- 07-194 EEAC’s Updated Primer on Employment Practices Liability (EPL) Insurance (September 14, 2007)
- 07-200 Skilled Employees Who Quit Their Jobs Because of Perceived Unfairness Cost Companies Billions Annually, According to Recent Survey (September 21, 2007)

- 07-205 New Study Reveals That By and Large, U.S. Workers Are Satisfied With Their Jobs (September 28, 2007)
- 07-214 Tenth Circuit Addresses Several Active Employment Law Topics, All in One Decision (*Montes v. Vail Clinic, Inc.*) (October 12, 2007)
- 07-216 New Survey Alleges That Workplace “Bullying” Has Become a National Epidemic (October 12, 2007)
- 07-250 Latest Federal Court Statistics Show Another Big Increase in FLSA Lawsuits, and Another Drop in Employment Discrimination Lawsuits (December 7, 2007)
- 07-257 Ill-Advised Postings on Social Networking Websites Are Adding Another Dimension to Off-Duty Conduct That Can Impact the Workplace (December 14, 2007)
- 07-258 Recent Study Offers Revealing Insights on How Gender Stereotypes Continue To Serve as Obstacle to Advancement of Women Leaders (December 14, 2007)

Appendix C

2008 Training Seminars and Packages

The Council's training curriculum for 2008 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 three skills development courses focusing on (1) developing and defending affirmative action plans (AAPs); (2) handling EEO charges and writing effective position statements; and (3) 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, "Equity at Work" which covers the fundamentals of EEO requirements for front-line managers and supervisors, and EEAC's newest training package, *What Managers Should Know About Fair Employment Practices*, which was designed around EEAC's popular *Managers' Pamphlets*, provides your managers and supervisors with basic guidance on their responsibilities and obligations under EEO and other employment laws.

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.

2008 TRAINING SEMINARS

I. Basic EEO Basic EEO and AA Compliance

January 29-31

April 9-10

June 17-19

September 9-10

November 11-13

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 20-22

April 22-24

July 15-17

September 16-18

November 18-20

EEAC Training Center
Washington, DC

This seminar 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

February 12-13

May 14-15

October 28-29

EEAC Training Center
Washington, DC

This two 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

April 2-3

September 24-25

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.

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. What Managers Should Know About Fair Employment Practices

EEAC’s What Managers Should Know About...Fair Employment Practices Training Package, like the pocket-guide of the same name, is designed around EEAC’s popular *Managers’ Pamphlets*, and is designed to provide your managers and supervisors with basic guidance on their day-to-day responsibilities and obligations under EEO and other employment laws.

This EEAC training package explains both the legal and business case for a nondiscriminatory workplace; managers’ role in preventing various types of discrimination and retaliation on a day-to-day basis; how to apply these nondiscriminatory practices in the interviewing, hiring, performance evaluation, and termination processes; managers’ role in responding to requests by employees for religious and disability accommodations and for leave under the Family and Medical Leave Act; immigration compliance issues in the workplace; and the basic affirmative action obligations of a federal contractor.

V. 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.

VI. 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.

VII. 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.

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

2007 Membership Meetings Program Highlights

ANNUAL MEETING

March 14-16, 2007

Washington, DC

General Session

Naomi Churchill-Earp
Chair
Equal Employment Opportunity Commission

Charles James
Director
Office of Federal Contract Compliance
Programs

Dr. Cedric Herring
Professor
University of Illinois at Chicago and University
of Illinois

Luncheon

Gwen Ifill
Veteran 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. *Navigating the Maze of the New EEO-1 Form*

William Holmes, EEAC
Laura Giantris, EEAC

2. *Revisiting Your Veterans AA Compliance Obligations*

Joe Lakis, EEAC
Nancy Nelkin, EEAC

3. *Employment Eligibility Verification: The Process and the Pitfalls*

Judy Lampley, EEAC
Paul Iyob, EEAC
Monte Lake, McGuiness Norris & Williams,
LLP

FALL MEETING

October 24-26, 2007

Denver, CO

General Session

Lynn Clements
Acting Director, Division of Policy, Planning and
Program Development
Office of Federal Contract Compliance
Programs

Jack Rowe
Chicago District Director
Equal Employment Opportunity Commission

Mary Jo O'Neill
Phoenix Regional Attorney
Equal Employment Opportunity Commission

Luncheon

Alex Valdez
Motivational Speaker, Trainer & Comedian

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 Presentation by Holocaust Survivor Irving Roth

Workshops

1. 2008 AAP, EEO-1, and VETS-100 Compliance Update

Joe Lakis, EEAC
William Holmes, EEAC

2. Evaluating and Responding to the Current Challenges to Affirmative Action and Diversity

Wayne Rustin, IBM
David Goldberg, LCCR
Jeff Norris, EEAC

3. Employment Practices Liability (EPL) Insurance: Is it a "Must Have" for Employers?

Trudy Hardin, AON Financial Services
David Keenan, Chubb & Son
Rae Vann, EEAC

Appendix E

Summary of 2007 *Amicus Curiae* Activity

I. Brief Cases Decided in 2007

A. Age Discrimination in Employment Act (ADEA)

AARP v. EEOC (ADEA) (Third Circuit)
(EEAC Memorandum 07-118)

Decision: The EEOC may issue a regulation exempting from the ADEA employer-sponsored retiree health programs that coordinate benefits with Medicare or equivalent state laws.

The Third Circuit agreed with arguments raised by EEAC in its *amicus* brief, which was joined by several other major employer organizations. Among other things, we argued that the EEOC was well-within its authority under the ADEA in issuing the exemption, which is reasonable, necessary and in the public interest.

B. Americans with Disabilities Act (ADA)

Bates v. United Parcel Service (Ninth Circuit) (EEAC Memorandum 08-007)

Decision: The district court, in relying on *Morton v. UPS*, applied the wrong legal standard in determining whether UPS's safety-based qualification standard was justified by business necessity and thus not unlawful under the ADA. To the extent the Court's earlier holding in *Morton* is based on that erroneous legal standard, the Ninth Circuit said, it is no longer good law.

EEAC's brief, joined by the U.S. Chamber of Commerce, urged the Ninth Circuit, sitting en banc, to disavow its earlier holding in *Morton v. UPS*, which improperly applied the more onerous "BFOQ" defense to assessing the validity of UPS's qualification standard.

Huber v. Wal-Mart (Eighth Circuit)
(EEAC Memorandum 07-119)

Decision: The Americans with Disabilities Act (ADA) does not require an employer to give an individual with a disability a preference over another, better-qualified candidate when considering job reassignment as a reasonable accommodation.

Rehrs v. Procter & Gamble (Eighth Circuit)
(EEAC Memorandum 07-101)

Our brief, joined by the U.S. Chamber of Commerce, had urged the 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. We argued, and the court agreed, that the ADA imposes no such requirement.

Decision: The ability to work rotating shifts can be an “essential function” of a job under the ADA.

EEAC’s brief argued that working at a particular time, including rotating shifts, can be as essential as the actual tasks an employee performs. The court agreed with our position.

C. Cash Balance Pension Plans

Register v. PNC Financial Services Group
(Third Circuit) (EEAC Memorandum
07-025)

Decision: PNC’s cash balance pension plan does not discriminate on the basis of age, in that it calculated credit earnings based on a combination of age and years of service and interest credits allocated equally, regardless of age. Furthermore, the plan did not violate ERISA’s anti-backloading provision, as the rule only applies where two benefits calculation formulas co-exist under a single plan.

EEAC’s brief, joined by the Chamber, explained 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 to other equally legitimate options such as terminating the plan entirely or freezing benefit accruals. We pointed out that cash balance conversion plans, in addition to being fair, are beneficial in terms of the flexibility they offer to employers and employees alike. The court agreed with EEAC’s position.

D. Class Certification

Dukes v. Wal-Mart (Ninth Circuit) (EEAC Memorandum 07-260)

Decision: The Ninth Circuit, in a 2-1 panel decision, once again affirmed the district court's order granting plaintiffs' motion for class certification, thereby certifying a class of over 1.5 million current and former female employees of Wal-Mart alleging sex discrimination.

EEAC's letter brief supporting Wal-Mart's petition for panel rehearing argued that the lower court's reasoning, if adopted, would make the crucial class action "certification" decision an academic exercise in favor of the plaintiffs. The huge class certified by the district court is based on the plaintiffs' theory that Wal-Mart's corporate pay and promotion policies, which allow store managers some (but not total) discretion, support a finding that there are legal and factual issues "common" to the class. We argued that the district court's ruling establishes a flawed and dangerous precedent for employment class actions because all companies have some subjectivity in their decisionmaking, and considering this to be a "common policy" would allow any company to be subject to a class action for any employment policy or series of decisions.

E. Family and Medical Leave Act (FMLA)

Taylor v. Progress Energy (Fourth Circuit) (EEAC Memorandum 07-144)

Decision: A Family and Medical Leave Act (FMLA) administrative regulation prohibits employees from voluntarily waiving their rights under the Act (both prospectively and retrospectively), unless such a waiver is supervised by a court or by the U.S. Department of Labor (DOL).

EEAC, along with the Chamber and SHRM, filed an *amici curiae* brief, which pointed out the practical problems created by the panel's ruling. Among other things, the Fourth Circuit's ruling discourages employers from attempting to settle any dispute, since

O'Reilly v. Rutgers University (Third Circuit) (EEAC Memorandum 07-096)

any associated waiver that is not supervised by a court or the Labor Department could later be deemed unenforceable, and calls into question innumerable releases that already have been executed nationwide.

Decision: 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.

EEAC's brief argued that neither the FMLA nor its administrative regulations gives an employee the right to withhold medical certification required as part of the FMLA leave approval process simply because the designated recipient is not the person she would prefer to receive the information. Our brief pointed out, and the court agreed, that Congress gave employers the statutory right to require a medical certification as one means to help them effectively manage FMLA leave.

F. Title VII of the Civil Rights Act of 1964 (Title VII)

Etsitty v. Utah Transit Authority (Eighth Circuit) (EEAC Memorandum 07-209)

Decision: Transgender bias is not a form of sex discrimination prohibited by Title VII.

In affirming the district court's dismissal of the case, the Eighth Circuit agreed with arguments EEAC made in its *amicus brief* that discrimination because of a person's status as a transsexual is not discrimination "because of sex" under Title VII. "Rather, like all other employees, such protection extends to transsexual employees only if they are discriminated against because they are male or because they are female."

Ledbetter v. Goodyear (U.S. Supreme Court) (EEAC Memorandum 07-113)

Decision: Agreeing with arguments made in EEAC’s brief, which was joined by the Society for Human Resource Management (SHRM), the U.S. Supreme Court ruled on May 29, 2007 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.

Our brief had argued, and the Court agreed, that compensation decisions constitute “discrete acts” that trigger the EEOC charge filing limitations period, and that a plaintiff cannot attempt to challenge alleged discriminatory pay practices that occurred years — or as in this case decades — prior to filing a charge. Requiring employers to defend such stale claims, we said, would impose substantial and unreasonable burdens on employers.

Standridge v. Union Pacific (Eighth Circuit) (EEAC Memorandum 07-061)

Decision: Title VII of the Civil Rights Act, as amended by the Pregnancy Discrimination Act (PDA), does not require an employer to provide coverage for contraceptives as part of the prescription drug insurance coverage it offers to employees.

The court agreed with arguments raised by EEAC in its brief, which was joined by the U.S. Chamber of Commerce, that Title VII simply does not require that employers provide contraceptive coverage in their employee health plans.

BCI Coca-Cola Bottling Co. v. EEOC (U.S. Supreme Court) (EEAC Memorandum 07-038)

Decision: Unopposed motion to withdraw employer’s petition for certiorari granted.

This case involved the question of when, if ever, an employer may be held liable for intentional discrimination based on the alleged bias of a subordinate employee who was not involved in the challenged employment decision. EEAC’s brief to

the U.S. Supreme Court urged the Court to reverse the Tenth Circuit’s ruling below which, we contended, misinterpreted the burden of proof requirements in a Title VII intentional discrimination case. We argued that imposing a rule that would require an employer to investigate the motives of every person reporting suspected misconduct to rule out potential bias would impose an enormous burden on employers and could create a chilling effect on employees’ willingness to complain about workplace problems.

G. Workplace Violence

ConocoPhillips v. Henry (N.D. Okla.)
(EEAC Memorandum 07-218)

Decision: State statute that forbids employers from prohibiting employees to transport or store firearms in their motor vehicles while parked in company parking areas is unenforceable as it is preempted by the federal Occupational Safety and Health Act.

EEAC, the Society for Human Resource Management (SHRM), HR Policy Association, and ASIS International, joined onto an *amicus* brief filed by the Oklahoma Chamber of Commerce, which argued among other things that the challenged state law would deprive employers within the state of their constitutional right to maintain control over their own property, and would prohibit employers from taking the necessary steps to prevent workplace violence by banning firearms from company property.

II. Pending Cases Briefed in 2007

A. Age Discrimination in Employment Act (ADEA)

Sprint/United Management v. Mendelsohn (U.S. Supreme Court) (EEAC Memorandum 07-182)

Issue: Is the “me, too” testimony of nonparty witnesses who are not similarly situated to the plaintiff admissible in an individual disparate treatment ADEA discrimination case?

EEAC, joined by SHRM, filed a brief in support of Sprint with the U.S. Supreme Court, which asks the Court to reverse the Tenth Circuit’s troubling decision allowing highly irrelevant yet prejudicial “me too” testimony to be offered as proof of discrimination. Our brief argues that permitting such evidence will unfairly sabotage an employer’s ability to defend itself in discrimination cases.

Federal Express Corporation v. Holowecki (U.S. Supreme Court) (EEAC Memorandum 07-170)

Issue: Whether completion of an EEOC questionnaire — which is neither treated as a charge nor served on the employer — is sufficient to constitute a filed charge under the ADEA?

EEAC, joined by the Chamber of Commerce, filed a brief supporting Federal Express Corporation with the U.S. Supreme Court, which urges the Court to reverse a troubling lower court ruling that permits an ADEA plaintiff to satisfy her charge filing requirements through submission of an intake questionnaire that was never treated as a charge by the EEOC or served on the company. Our brief contends the mere completion of an intake questionnaire does not satisfy the statutory charge filing requirements of the ADEA in that such an action does not trigger the EEOC’s notice, investigation, or conciliation obligations.

EEOC v. Allstate (Eighth Circuit) (EEAC Memorandum 07-126)

Issue: Whether disparate impact hiring cases are cognizable under Section 623(a)(1) of the ADEA in light of the U.S. Supreme Court’s decision in *Smith v. City of Jackson, MS*?

EEAC, joined by the U.S. Chamber of Commerce, argued that the Supreme Court in *Smith v. City of Jackson, MS* made clear that disparate impact claims are available under Section 623(a)(2) of the Act, which does not cover discrimination in hiring. Our brief points out the substantial burdens that employers would face if they were subject to claims of hiring discrimination brought under the ADEA using a disparate impact theory, since employers are not required to, and generally do not, collect age information from applicants for employment.

B. Americans with Disabilities Act (ADA)

EEOC v. Agro Distribution, LLC (Fifth Circuit) (EEAC Memorandum 07-248)

Issue: In an ADA discrimination action, did the district court correctly grant summary judgment to the employer due to the EEOC’s failure to meet its statutory duty to conciliate, where the agency did not respond to the employer’s overture seeking negotiation but merely declared conciliation a failure and filed suit?

EEAC’s brief argues that the EEOC failed to make a sincere effort to conciliate the underlying charge prior to filing suit in federal court, as is required under the ADA. Our brief notes that in order to satisfy its statutory obligation, the EEOC must, at a minimum, outline the basis for its reasonable cause determination, provide the respondent with a meaningful opportunity to voluntarily comply, and respond reasonably and flexibly to the employer’s reasonable attitudes. Our brief argues the EEOC’s conciliation efforts in this case failed to satisfy these standards.

C. Class Certification

Ellis v. Costco (Ninth Circuit) (EEAC Memorandum 07-197)

Issue: Did the district court conduct a “rigorous analysis” to determine whether class certification is proper as required by Rule 23 of the Federal Rules of Civil Procedure?

EEAC's brief contends, among other things, that the district court's class certification ruling was improper as it was not based on a "rigorous analysis" required under Rule 23 and disregards the fact that the sizable monetary damages sought by the plaintiff class renders the case unsuitable for class treatment.

D. Family and Medical Leave Act (FMLA)

Progress Energy v. Taylor (U.S. Supreme Court) (EEAC Memorandum 07-244)

Issue: Is a waiver of FMLA claims invalid unless supervised by the Department of Labor or a court?

EEAC's brief urges the U.S. Supreme Court to review the Fourth Circuit's decision, which advances an interpretation of the FMLA regulations that conflicts with the Labor Department's own interpretation and with the Fifth Circuit's decision in *Faris v. Williams*, which held that the FMLA does not bar unsupervised waiver of such claims.

E. Freedom of Information Act (FOIA)

Venetian Casino v. EEOC (D.C. Circuit) (EEAC Memorandum 07-177)

Issue: Do the EEOC's informal procedures permitting disclosure of confidential employer information comport with federal law, including the Freedom of Information Act?

EEAC's brief argues that internal document disclosure procedures used by the EEOC do not comport with statutory requirements that prevent federal agencies from disclosing confidential business data to the public without proper notice and the right to object.

F. Mandatory Arbitration

Manigault v. Macy's East, LLC (Second Circuit) (EEAC Memorandum 08-004)

Issue: Does an employee's failure to affirmatively opt-out of a mandatory employment arbitration agreement signal her assent to be bound by its terms, such that the agreement to arbitrate is valid and enforceable under the Federal Arbitration Act?

EEAC’s brief argues that the district court’s refusal to compel arbitration in this case is out of step with the weight of authority and undermines the strong federal public policy favoring arbitration of employment disputes.

G. Sarbanes-Oxley Act (SOX)

Platone v. DOL (Fourth Circuit) (EEAC Memorandum 07-255)

Issue: Whether an employee, in complaining about possible violations of an internal union policy unrelated to shareholder fraud or securities violations, engages in “protected activity” under SOX?

EEAC’s brief, which is joined by the U.S. Chamber of Commerce, argues that Congress was very specific in defining the type of protected activity that would be covered by the SOX Act’s whistleblower retaliation provisions, and that the plaintiff’s conduct here was not protected.

H. Section 1981

CBOCS West v. Humphries (U.S. Supreme Court) (EEAC Memorandum 07-245)

Issue: Are race retaliation claims cognizable under 42 U.S.C. § 1981 (“Section 1981”)?

EEAC’s brief urges the U.S. Supreme Court to reverse the Seventh Circuit’s decision below, which permitted the plaintiff to proceed with his Section 1981 retaliation claim. Our brief points out that unlike virtually every other federal nondiscrimination law, Congress did not include a retaliation cause of action in Section 1981, and thus it was an error for the Seventh Circuit to read one into the law. We note the fact that Congress in 1991 amended Section 1981 to expand the type of conduct to be included in the concept of “to make and enforce contracts,” but not to include an anti-retaliation provision further demonstrates such a cause of action is not available under Section 1981.

I. Title VII of the Civil Rights Act of 1964 (Title VII)

EEOC v. Federal Express Corporation
(Ninth Circuit) (EEAC Memorandum
07-023)

Issue: May the EEOC continue to investigate a charge of investigation after the charging party has been issued a Right-to-Sue notice and files a private lawsuit based on the same claims in the underlying charge?

EEAC, joined by the U.S. Chamber of Commerce, filed an *amicus* brief that argues the EEOC's authority to investigate a charge of discrimination terminates whenever a charging party files a private lawsuit based on the same claims in the charge.

Appendix F

Summary of 2007 Regulatory Issues on Which EEAC Commented

<i>Issuing Agency/Department</i>	<i>Issue</i>	<i>Status</i>
I. VETS-100 and Proposed VETS-100A Reports		
Department of Labor's Veterans' Employment and Training Service (DOL-VETS) (Memos 07-254, 07-212)	<p>On October 2, 2007, DOL-VETS published a notice in the <i>Federal Register</i> seeking comments on its proposed revisions to the existing VETS-100 and new VETS-100A Reports. The VETS 100A, however, is not expected to be implemented until the 2009 reporting cycle at the earliest, according to an agency spokesperson.</p> <p>On December 3, 2007, EEAC President Jeff Norris submitted written comments to DOL-VETS offering specific recommendations to minimize the burdens of the VETS-100A. President Norris urged DOL-VETS to communicate and make contractors aware of their VETS-100 and/or VETS-100A compliance requirements, to confirm that the new VETS-100A report will not require contractors to resurvey their existing employees, to provide guidance to contractors on "bridging" data from the VETS-100 covered veterans categories to the VETS-100A covered veterans categories, to place primary emphasis on VETS-100A compliance assistance and only secondary compliance assistance emphasis on the VETS-100 for contractors subject to both reports, and to not require the first VETS-100A Reports to be filed until the 2009 reporting cycle at the earliest plus allow contractors a minimum of six (6) months from the date the VETS-100A is finalized to begin collecting and maintaining the veterans data necessary for compliance.</p>	Pending.

*EEAC's comment letters can be accessed from EEAC's website at www.eeac.org.

II. Veteran’s Affirmative Action Requirements

Office of Federal Contract Compliance Programs (OFCCP) (Memo 07-169)

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 recorded at 60-300) would apply to all nonexempt contracts and subcontracts on or after December 1, 2003, and are intended to *supplement*, not *replace* the Veterans affirmative action regulations (to be recorded at 60-250) that apply to contracts and subcontracts before December 1, 2003.

On March 21, 2006, EEAC President Jeff 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

On August 8, 2007, OFCCP published its final rule (60-300 regulations) implementing the affirmative action provisions of the Jobs for Veterans Act of 2002. The final regulations are responsive to a number of key recommendations made by EEAC that will reduce the overall compliance burdens on federal contractors, including to allow contractors to satisfy their VEVRAA job listing obligations by sending emails, letters or facsimiles to the workforce agency of the state in which the opening occurs; to permit contractors holding both pre- and post-JVA covered contracts to develop a single AAP and a single self-identification form meeting both sets of compliance requirements; and to clarify that modifications to certain “older” pre-JVA contracts may bring those contracts under only post-JVA requirements, thereby eliminating dual regulatory coverage.

Issuing Agency/Department

Issue

Status

III. Family and Medical Leave Act (FMLA) Regulations

Department of Labor's Wage & Hour Division (DOL-WHD)(Memo 07-028)

On December 1, 2006, the Department of Labor's Wage & Hour Division published a notice in the *Federal Register* requesting public comments on the effectiveness of the current FMLA regulations and the agency's administration of the law.

Pending.

On February 2, 2007, EEAC General Counsel Rae Vann submitted written comments to DOL-WHD focusing on the problematic issues of employee use (and/or misuse) of "intermittent" FMLA leave and the definition of "serious health condition." General Counsel Vann stressed that the changes EEAC recommended would eliminate the unnecessary burdens currently imposed upon employers and cut down on the potential for employee leave abuse, without in any way diminishing the protections that the FMLA provides to eligible employees.

IV. Employer Testing, Screening, and Other Selection Procedures

Equal Employment Opportunity Commission (EEOC) (Memo 07-108)

On May 16, 2007, the EEOC Commissioners held a Commission Meeting on Employer Testing & Screening, and other selection procedures. The Commissioners heard testimony from charging parties, EEOC staff attorneys, outside lawyers, and Industrial and Occupational (I/O) psychologists specializing in employment testing and validation.

Pending.

Issuing Agency/Department

Issue

Status

EEAC General Counsel Rae Vann's testimony, presented on behalf of EEAC, focused on the types of tests and other selection procedures generally utilized by large employers, as well as common challenges presented by employment testing. Ms. Vann also offered suggestions on how the Commission could best utilize its enforcement resources as it delves more closely into the issue of employment testing.

Appendix G

Summary of Federal Legislation Monitored by EEAC During the Second Session of the 110th Congress (2007)

I. Minimum Wage Increase

H.R. 2 (Fair Minimum Wage Act of 2007; S. 2 (Fair Minimum Wage Act of 2007) (*Memos 07-005, 07-030, 07-064, 07-110*)

Congress approved an increase in the minimum wage by \$2.10 over a period of two years plus 60 days. The staggered increases were set to implement as follows: from the current \$5.15 to \$5.85 per hour beginning July 24, 2007; to \$6.55 per hour on 7/24/2008; and to \$7.25 per hour as of July 24, 2009.

The increase in the federal minimum wage bill (Public Law No. 110-28) was signed into law by President Bush on May 25, 2007.

II. Military Family Leave

H.R. 3481 (Support for Injured Servicemembers Act); H.R. 3993/S. 1885 (Military Family Job Protection Act); S. 1894 (Support for Injured Servicemembers Act of 2007); S. 1898 (Military Family and Medical Leave Act) (*Memos 07-172, 07-251, 07-253*)

Congress approved an amendment to the Family and Medical Leave Act (FMLA) that would provide up to six months of protected leave to allow an FMLA-eligible family member to provide care for a wounded service member. In addition, the amendment would allow FMLA-eligible employees to take up to 12 weeks of protected leave for any “qualifying exigency” (to be defined in new Department of Labor regulations) arising as a result of a spouse, son, daughter, or parent’s active duty or impending active duty in a military conflict.

The amendment was signed into law on January 29, 2008.

III. Whistleblower Protection for Federal Contractor Employees

H.R. 1585/S. 1547 (National Defense Authorization Act for Fiscal Year 2008) (*Memo 07-253*)

Congress approved an amendment that would expand the current anti-retaliation protection accorded to Department of Defense (DOD) contractor employees who provide information about a substantial violation of law related to a contract to a Member of Congress, an authorized official of one of the DOD contracting agencies (Army, Navy, Air Force, Coast Guard), NASA, or the U.S. Department of Justice (DOJ). The amendment expands the basis for whistleblower protection to include disclosures to “a representative of a committee of Congress, an Inspector General, the Government Accountability Office, [or] a Department of Defense employee responsible for contract oversight or management,” in addition to the original authorized officials.

The amendment also provides a 210-day timeline for administrative action on whistleblower complaints, after which the employee would be allowed to request a jury trial in federal district court to seek compensatory damages and other relief.

The amendment was signed into law on January 29, 2008 as part of the National Defense Authorization Act.

IV. Immigration Reform

S. 1348 (Comprehensive Immigration Reform Act of 2007); S. 1639 (Unaccompanied Alien Child Protection Act of 2007); (*Memos 07-005, 07-064, 07-107, 07-125, 07-146, 07-159*)

The Senate’s chief comprehensive immigration reform bill (S. 1639) contained a provision requiring employers to participate in a mandatory employment eligibility verification system (EEVS). Title III of the Senate bill would have required employment eligibility verification of all employees, not just new hires, and

would have imposed stiffer penalties for employers found in violation.

The Senate failed to invoke cloture (cut off debate) and proceed to a final vote on S. 1639 on June 28, 2007, which for all intents and purposes killed comprehensive immigration reform until the next Congress convenes in 2009.

In addition, the House of Representatives attached riders to the appropriations bills funding the Departments of Labor/Health & Human Services/ Education; Commerce/Justice; Agriculture; and Transportation/Housing and Urban Development that would prohibit any of the money appropriated by these bills from being used to pay for government contracts where the contractor did not participate in the Basic Pilot Program (EEVS).

Funding for all of these Departments was consolidated into an omnibus appropriations bill in December without inclusion of any of these riders. P.L. 110-161, the omnibus appropriations legislation, was signed into law by President Bush on December 26, 2007.

V. Lilly Ledbetter Fair Pay Act

H.R. 2831 (Lilly Ledbetter Fair Pay Act of 2007); S. 1843 (Fair Pay Restoration Act) (*Memos 07-130, 07-139, 07-160*)

H.R. 2831 would amend Title VII to provide that each time an individual receives a paycheck stemming from an alleged discriminatory decision “or other practice,” regardless of when it occurred, the individual would have 180 days from the issuance of that paycheck to file a valid charge with the EEOC. In effect, the bill would allow individuals claiming pay inequities to bring a valid charge years after an alleged discriminatory event occurred, the exact scenario that Ms. Ledbetter presented in her unsuccessful lawsuit.

H.R. 2831 passed the House of Representatives on July 31, 2007 and was placed on the Senate Legislative Calendar on August 2. S. 1843, the Senate version introduced by Senator Kennedy, was referred to the Senate HELP (Labor) Committee. No further action was taken on either bill.

VI. Americans with Disabilities Restoration Act (ADARA)

H.R. 3195 (ADA Restoration Act); S. 1881 (Americans with Disabilities Restoration Act) (*Memos 07-005, 07-064, 07-199*)

According to its sponsors, the ADARA is intended to restore the original intent of Congress regarding the ADA’s scope in the wake of several Supreme Court decisions interpreting the language of the law that critics claim are way too restrictive. For example, Section 4 of the ADARA would delete the critical requirement that an impairment must “substantially limit” one or more “major life activities” in order to be covered by the ADA. By eliminating these qualifying terms, and with no equivalent language in the ADA restricting coverage to serious disabilities, the ADARA presumably would extend coverage to individuals with minor and/or temporary conditions that would not even be considered serious under the FMLA.

On October 4, 2007, the House Judiciary Committee’s Subcommittee on the Constitution, Civil Rights and Civil Liberties held hearings on the House version of ADARA (H.R. 3195). On November 17, 2007, the Senate HELP Committee held hearings on the Senate’s version of ADARA (S. 1881). No further action was taken.

VII. Arbitration Fairness Act

H.R. 3010/S. 1782 (Arbitration Fairness Act of 2007) (*Memos 07-064, 07-157, 07-261*)

Legislation was re-introduced in the U.S. Senate and House of Representatives that would amend the Federal Arbitration Act (FAA) to prohibit pre-dispute mandatory arbitration agreements in any employment, consumer, or franchise dispute, including arbitration of statutory discrimination claims, unless the parties voluntarily agree to arbitration *after* the dispute has arisen. The legislation would effectively overturn the U.S. Supreme Court's 2001 decision in *Circuit City Stores v. Adams* holding that the FAA generally allowed mandatory employment arbitration agreements to be enforced.

On October 25, 2007 the Subcommittee on Commercial and Administrative Law of the House Judiciary Committee held a hearing on H.R. 3010. On December 12, 2007 the Senate Judiciary Committee held a hearing on S. 1782. No further action was taken.

VIII. Breastfeeding Legislation

H.R. 2236 (Breastfeeding Promotion Act of 2007); H.R. 2633/S. 1342 (Healthy Lifestyles and Prevention America Act) (*Memo 07-164*)

The Breastfeeding Promotion Act would amend Title VII to clarify that breastfeeding and expressing milk in the workplace are protected conduct under Title VII and that discrimination on this basis is a form of sex discrimination. The proposed legislation would also provide tax credit incentives for businesses that support and promote breastfeeding.

The Healthy Lifestyles and Prevention America Act would amend the FMLA to require employers to make reasonable efforts to provide eligible employees with work breaks to either breastfeed or express milk. Employers would be permitted to designate such rest periods as unpaid and to combine them with other break periods provided the employee. The Act

would also require employers to make a reasonable effort to provide appropriate lactation facilities for employees to breastfeed or express milk.

Both H.R. 2236 and H.R. 2633 were referred to multiple Committees within the House. S. 1342 was referred to the Senate Finance Committee. No further action was taken.

IX. Employee Free Choice Act

H.R. 800/S. 1041 (Employee Free Choice Act of 2007) (*Memos 07-005, 07-050, 07-064*)

The number one legislative priority of organized labor was the so-called "Employee Free Choice Act" that would require an employer to recognize a union when a majority of the employees have signed union authorization cards in the presence of union organizers, rather than allowing employees to participate in a secret ballot election as required under current law. The bill would make such signed "authorization cards" — commonly referred to as card-check certification — the principal way to determine whether a union can represent workers in dealings with management.

H.R. 800 passed the House of Representatives on March 1, but on June 26, the Senate failed to invoke cloture on the motion to proceed with H.R. 800. S. 1041 was referred to the Senate HELP (Labor) Committee. No further action was taken.

X. Employment Non-Discrimination Act (ENDA)

H.R. 3685 (Employment Non-Discrimination Act of 2007); H.R. 3686 (To prohibit employment discrimination based on gender identity); H.R. 2015 (Employment Non-Discrimination Act of 2007) (*Memos 07-005, 07-064, 07-105, 07-233*)

H.R. 3685 extends workplace nondiscrimination protection on the basis of sexual orientation. The bill creates a separate statute parallel to Title VII. When the legislation (H.R. 2015) was initially introduced, it would have extended protection on the basis of gender identity in addition to sexual orientation. The gender identity language was dropped and incorporated into a separate bill (H.R. 3686) after ENDA's sponsors concluded that a bill that contained protection on the basis of gender identity would not pass the House.

H.R. 3685 passed the House on November 7, 2007, and was placed on the calendar in the Senate. No further action was taken.

XI. English-Only Policies

S. 1745/H.R. 3093 (Department of Commerce, Justice, Science and Related Agencies Appropriations Act of 2008) (*Memo 07-150*)

An amendment to the Senate version of the Equal Employment Opportunity Commission's fiscal year 2008 (FY 2008) spending bill approved by the Senate Appropriations Committee would have prohibited the EEOC from filing Title VII national origin discrimination lawsuits against employers that adopt English-only policies. The amendment expressly prohibited the agency from using funds authorized by Congress for FY 2008 (October 1, 2007 to September 30, 2008) to participate in litigation over policies that require employees to speak English in the workplace. The amendment would not prevent individuals from filing private lawsuits challenging such policies.

The English-only amendment was not included in the House version (H.R. 3093) of the EEOC funding bill or in the omnibus federal appropriations bill, H.R. 2764 (Consolidated Appropriations Act of 2008) that ultimately passed Congress on December 18 and was signed by the President on December 26 to become P.L. 110-161.

XII. Family/Paid Sick Leave Legislation

S. 1681 (Family Leave Insurance Act of 2007); H.R. 1369 (Family and Medical Leave Extension Act); H.R. 2392 (Family and Workplace Balancing Act); H.R. 2395/S. 1136 (Security and Financial Empowerment [SAFE] Act); H.R. 2792 (Family and Medical Leave Inclusion Act); H.R. 1542/S. 910 (Healthy Families [Paid Sick Leave] Act); H.R. 2744/S. 2059 (Airline Flight Crew Technical Corrections Act); H.R. 1643 (Volunteer Firefighter and EMS Personnel Job Protection Act) (*Memos 07-005, 07-064, 07-151, 07-192*)

A number of family leave-related measures were introduced in Congress including legislation that would mandate up to eight weeks of *paid* leave annually for eligible employees through an FMLA insurance program funded by employers, employees, and the federal government.

Bills were also introduced to provide protected unpaid leave to victims of domestic violence, to voluntary emergency workers and firefighters, and to airline flight crews. Other bills would protect employees who take time off for parental school conferences and events, and to care for seriously ill same-sex spouses, domestic partners, parents-in-law, adult children, siblings, and grandparents. And yet another bill would require employers to give employees a minimum number of annual paid sick leave days, including to care for family members.

All of these bills remained in Committee. No further action was taken.

XIII. Free Trade Agreement Labor Standards

H.R. 3688 (United States-Peru Trade Promotion Agreement Implementation Act) Panama, Peru, Colombia and South Korea Free Trade Agreements (*Memo 07-103*)

Bush Administration officials and Congressional leaders agreed to add enforceable “core labor standards,” including a commitment to eliminate employment discrimination, to four pending international free trade agreements (FTAs) with Panama, Peru, Colombia and South Korea, respectively. The bipartisan understanding, which also called for adding environmental standards, cleared the way for possible congressional approval of a number of pacts with foreign trading partners that have been stalled on the issue of whether FTAs should include such standards.

H.R. 3688 (U.S.-Peru FTA) became P.L. 110-138 when signed into law by President Bush on December 14, 2007. No further action on the other FTAs was taken.

XIV. Genetic Information Nondiscrimination Act (GINA)

H.R. 493/S. 358 (Genetic Information Nondiscrimination Act of 2007)(*Memos 07-005, 07-024, 07-064*)

The Genetic Information Nondiscrimination Act (or GINA) was proposed with broad bipartisan support to prohibit discrimination in employment and health insurance based on “genetic information.” GINA would restrict the collection of genetic information and prohibit the use of such information to discriminate.

H.R. 493 passed the House on April 25, 2007 and was placed on the Senate Legislative Calendar. S. 358 was reported out of the Senate Health, Education, Labor and Pensions (HELP) Committee. No further action was taken.

XV. Mental Health Parity

S. 558 (Mental Health Parity Act of 2007); H.R. 1424 (Paul Wellstone Mental Health Addiction and Equity Act of 2007) (*Memos 07-040, 07-064*)

The Mental Health Parity Act would further amend 1996 amendments to the Employment Retirement Income Security Act (ERISA) to require employers that offer health care coverage for mental illness to do so on a par with coverage for medical and surgical treatment. The House version was considerably broader in scope than the Senate bill, which enjoyed business support.

S. 558 passed the Senate on September 18, 2007 and was referred to multiple House committees. H.R. 1424 was reported out of the three House Committees (Energy and Commerce; Education and Labor; Ways and Means) to which it was referred. No further action was taken.

XVI. Pay Equity Legislation

H.R. 1338/S. 766 (Paycheck Fairness Act of 2007); H.R. 2019/S. 1087 (Fair Pay Act of 2007) (*Memos 07-064, 07-084*)

The Paycheck Fairness Act would amend the Equal Pay Act (EPA) to expand the scope of the EPA’s coverage, increase available damages, and eliminate or restrict currently available defenses. It also would give the EEOC explicit authority to collect pay information from employers broken down by sex, race, and national origin, and would reinstate OFCCP’s Equal Opportunity Survey.

The Fair Pay Act would expressly recognize and mandate “comparable worth” by amending the FLSA to put into place a new legal requirement that employers pay employees the same for performing “equivalent” jobs. The legislation also would create a new kind of compensation discrimination claim based on sex, race or national origin, including unlimited compensatory and punitive damages, as well as a new requirement that employers report compensation data to the EEOC.

The Subcommittee on Workforce Protections of the House Education and Labor Committee held a

hearing on H.R. 1338 on July 11, 2007. S. 766 was referred to the Senate HELP Committee. No further action was taken.

H.R. 2019 was referred to the Subcommittee on Workforce Protections of the House Education and Labor Committee. S. 1087 was referred to the Senate HELP Committee. No further action was taken.

XVII. Workplace Religious Freedom Act (WRFA)

H.R. 1431 (Workplace Religious Freedom Act of 2007) (*Memos 07-064, 07-115*)

The Workplace Religious Freedom Act (H.R. 1431/S. 677) would amend Title VII to expand the duty of employers to accommodate employees' religious beliefs and practices, as well as increase the burden on an employer to show that making an accommodation would result in an "undue hardship."

H.R. 1431 was referred to the House Education and Labor Committee. No further action was taken.

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