

Management Alert



U.S. Chamber of Commerce Calls for More EEOC Oversight

On Tuesday, June 10, the House Committee on Education and the Workforce, Subcommittee on Workforce Protections held a hearing entitled “The Regulatory and Enforcement Priorities of the EEOC: Examining the Concerns of Stakeholders.” Seyfarth Shaw partner Camille A. Olson testified on behalf of the U.S. Chamber of Commerce, the world’s largest business federation, representing more than 3 million businesses and organizations of every size, industry sector and geographical region.

The Chamber’s testimony focused on the EEOC’s failures with respect to its “statutory mandate to: (1) properly investigate charges and reach a determination as promptly as possible, (2) endeavor to eliminate any alleged unlawful practice through informal methods including conciliation and persuasion, and (3) ensure compliance with federal equal employment opportunity laws through meritorious direct party litigation and amicus participation in federal courts as well as the promulgation of enforcement guidance containing legitimate interpretations of federal employment discrimination laws.”

Addressing what many perceive to be a troubling disconnect from the agency’s well-publicized integrated enforcement strategy, the Chamber highlighted the broad delegation of authority away from the Commissioners to the General Counsel as a key stakeholder concern. Ms. Olson explained: “Loosely-defined and overly broad grants of authority to agency officers have resulted in an EEOC that prioritizes expansive enforcement, aggressive litigation and punishment over education, cooperation and conciliation.”

Referencing complaints raised at EEOC meetings in 2012 and 2013, the Chamber pointed to a rare consensus between plaintiff and defense bars—that EEOC investigations “[are] too long, inconsistent and of questionable quality.” The Chamber noted that the EEOC has so far failed to address those complaints by providing investigators with timeliness standards or a definition of a “quality, limited investigation.” In addition, Ms. Olson highlighted the agency’s propensity for litigation at the expense of sound investigation and good-faith conciliation. As a key example, the Chamber cited the EEOC’s “stonewalling” in *EEOC v. CRST Van Expedited, Inc.*, where EEOC’s failure to exhaust administrative remedies and to properly investigate before filing led to \$4.7 million in sanctions. Explaining that “it is very rare for a court to actually sanction a litigant,” Ms. Olson advised the Subcommittee that such results “indicate that the theories that are being brought are not well-grounded in either the facts or in the law.”

The Chamber’s testimony also addressed the agency’s continuing struggles in amicus representation, citing instances where several Circuit Courts of Appeal as well as the Supreme Court have rejected EEOC positions contained in enforcement guidelines and policy statements. Noting that the EEOC’s current role as an “overly aggressive litigant, seeking to make law through cases, not legislation,” has led to an “untenable atmosphere,” Ms. Olson advocated for the interests of employers and employees, “both of whom are left searching for reliable guidance on rights and obligations.”

The Chamber called for increased oversight by the Commissioners and a refocusing of the EEOC’s priorities toward its fundamental, statutory responsibilities.

The Chamber’s testimony can be downloaded [here](#). Concurrent with the hearing, the U.S. Chamber of Commerce released a white paper entitled “*Review of Enforcement and Litigation Strategy during the Obama Administration—A Misuse of Authority.*”

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