

Retail Detail



Retailers Should Fasten Their Seat Belts Because the EEOC Has Released its Final Strategic Enforcement Plan

The EEOC announced yesterday that it approved its *Strategic Enforcement Plan for FY 2013-2016*. The EEOC intends for this SEP to serve as the blueprint for the Commission's enforcement activity for the next several years.

The final SEP expressly lists six national enforcement priorities, including: (1) eliminating barriers in recruitment and hiring; (2) protecting immigrant, migrant, and other vulnerable workers; (3) addressing emerging and developing issues; (4) enforcing equal pay laws; (5) preserving access to the legal system; and (6) preventing harassment through systemic enforcement and targeted outreach. These stated priorities provide employers at least some insight into the EEOC's goals and key concerns.

In the SEP, the EEOC acknowledged the need for national priorities, standards, and oversight of its activities. The EEOC asserted that the SEP "seeks to establish clear expectations for those charged with implementing this plan and to provide for regular and meaningful communication amongst the Commission, General Counsel, agency leadership, and agency staff." The SEP envisions that the EEOC will review its nationwide implementation and institute annual reporting to achieve these goals. The SEP also expects to create "Strategic Enforcement Teams" in an effort to make the EEOC's enforcement more uniform and efficient. For retailers, this is a positive development because it may mean that the EEOC would stop filing multiple, identical lawsuits across the nation against a retailer and focus on one streamlined action against that Respondent.

Although the SEP highlights the EEOC's nationwide integration plans, it is also clear that the EEOC will continue to delegate authority to District Directors, the General Counsel, and the Office of Federal Operations. In fact, the final SEP also envisions that leadership in the District offices will develop local priorities to address particular issues unique to that geographic location. The SEP also calls for more coordination between investigative and legal enforcement staff and mandates that districts be held responsible for ensuring such coordination.

In a section particularly relevant to our national retail clients, the SEP confirms the EEOC's increased emphasis on systemic litigation suits. Specifically, the SEP notes that, at both the national and local level, "meritorious systemic charges and cases that raise SEP or district priority issues [will] be given precedence over individual priority matters and over all non-priority matters, whether individual or systemic." As such, retail employers should be mindful that an EEOC investigation into one of the six national priorities or yet to be determined local priorities could turn into "example setting" litigation.

Perhaps most interesting, however, is that the EEOC suggests that the private bar will "play a vital role in enforcing laws prohibiting employment discrimination." Indeed, in the SEP, the EEOC notes that it will "support private enforcement of the federal anti-discrimination laws" through referrals to local and state bar associations. It will be interesting to see how the EEOC will partner with private law firms on discrimination litigation in the future since these two groups often have different and conflicting priorities.

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Finally, throughout the SEP, the EEOC explains that its goals and procedures are limited by its resources - and we believe that this is a clear message to Congress and the administration that the EEOC will need more money to pursue its enforcement goals.

Implications For Retail Employers

We believe that ultimately, retail employers will benefit from the EEOC's new SEP because this new integrated approach will create more transparency and consistency with respect to the agency's enforcement. The SEP also provides a window into the EEOC's particular goals and agenda for 2013 and beyond. As a result, retail employers should review this agenda and prioritize their own compliance functions.

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