



COMMUNITY LEGAL SERVICES  
OF PHILADELPHIA

September 18, 2012

Hon. Jacqueline Berrien, Chair  
Equal Employment Opportunity Commission  
131 M Street, N.E.  
Washington, D.C.

Hon. Constance Barker, Commissioner  
Equal Employment Opportunity Commission  
131 M Street, N.E.  
Washington, D.C. 20507

Hon. Chai Feldblum, Commissioner  
Equal Employment Opportunity Commission  
131 M. Street, N.E.  
Washington, D.C. 20507

Hon. Victoria Lipnic, Commissioner  
Equal Employment Opportunity Commission  
131 M Street, N.E.  
Washington, D.C. 20507

**RE: EEOC Strategic Enforcement Plan (Fiscal Years 2012-2016)**

Dear Chair Berrien and Commissioners:

The National Employment Law Project (NELP) and Community Legal Services of Philadelphia (CLS) are pleased to submit these comments on the EEOC's Strategic Enforcement Plan (SEP) for Fiscal Years 2012-2016. NELP and CLS strongly endorse the priorities reflected in the SEP, and we congratulate the Strategic Plan Workgroup and the Performance Measurement Group for the breadth and depth of the product. We value our working relationship with the agency, and believe that its willingness to seek input from stakeholders about priority areas will make the EEOC's work more effective.

#### **I. General Comments**

A strong and strategic enforcement plan is critical to the EEOC's mission given the ever increasing challenges workers face as they navigate a hostile and unforgiving job market. Today's highly competitive job market leaves more workers vulnerable to discrimination in hiring and more workers who are likely to suffer retaliation when they seek to enforce their civil rights on the job. In addition, the EEOC must vigilantly guard against new forms of prohibited discrimination that threaten to take hold, including discrimination against hiring the unemployed.

The SEP reflects a thoughtful balance of these and other timely priorities, while working within the limited resources available to the agency. Specifically, we support the targeted approach toward enforcement focusing the agency's limited resources on clearly identified issues (Section C.1.), and the five factors that regulate the priority setting process (Section III.A.). We also strongly support the EEOC's designated national substantive priority areas, especially including systemic barriers in recruitment and hiring (such as criminal background and credit checks for employment), discrimination against immigrant and other vulnerable workers, and retaliatory practices by employers that target the brave workers who seek to enforce their federal rights against discrimination on the job (Section III.B.).

Also of special significance, NELP and CLS value the plan's proposal requiring a thoughtful and effective federal sector enforcement plan, to be developed by March 29, 2013 (Section III.D.). Working with the

Attorney General's Reentry Council, the Labor Department's Office of Federal Contract Compliance Programs, the Office of Personnel Management and other partners across the federal government, the EEOC is in a unique position to ensure that the federal government plays a leadership role enforcing the anti-discrimination laws in key priority areas as applied both to federal employees and the millions of workers employed by federal contractors.

## II. Specific Comments

1. Systemic Barriers to Recruitment and Hiring - NELP and CLS take this opportunity to applaud the EEOC for its strong emphasis on eradicating discriminatory barriers to employment that result from criminal background checks for employment, including the updated guidance issued on April 25<sup>th</sup> (Number 915.002) and the leadership role the agency has played as part of the Attorney General's Reentry Council promoting this critical issue.

Building on the EEOC's successful track record and SEP's proposal activities to eliminate systemic barriers to recruitment and hiring, NELP and CLS recommend that the EEOC place a special emphasis on outreach, education and enforcement around this critical issue. In addition to litigation, similar to the recent Pepsi settlement, the opportunity exists to join forces at the field office and regional levels with Labor Department officials and others on a comprehensive education and outreach plan, one that actively engages the business community and community-based organizations with a special interest in the issue. As part of this effort, the EEOC should develop one- and two-page flyers, user-friendly complaint forms and other outreach material that would go a long way to operationalize the April 25<sup>th</sup> guidance.

In addition, NELP and CLS urge the EEOC to develop guidance specific to the issue of employment credit checks, which disproportionately impact people of color and other protected groups, as documented in the EEOC's October 20, 2010, commission meeting. This is a critical job access issue that satisfies all the EEOC's criteria for determining substantive priorities for national enforcement. Indeed, it will become increasingly more serious given the millions of workers who are still unemployed or underemployed for records periods of time and have been stretched to the limit to meet their financial obligations.

2. Protecting Immigrant Workers - We are especially heartened at the special emphasis that the EEOC is placing on protecting immigrant, migrant and other vulnerable workers. The EEOC has been the key federal agency to perceive and prioritize the multiple forms of discrimination suffered by immigrant workers, from its early enforcement emphasis on farmworker women victims of sexual assault and sexual harassment, through its implementation of a protocol for certifying U-visas for victims of workplace crimes to its use of discrimination laws to confront trafficking and abuse of immigrant guestworkers.

As is recognized in the SEP, EEOC's work on behalf of migrant and immigrant workers meets all of the elements of its criteria for determining national priorities: since immigrant workers are often exposed to horrific discrimination on a company-wide basis, EEOC's work has a potential to have a broad impact on certain industries and geographic areas.

EEOC can make considerable strides in development of the law around discrimination and retaliation against immigrant workers and is doing so by updating its policies around U visas, national origin discrimination and the processing of claims by immigrant workers. Additionally, these workers form what is the quintessential case of vulnerable workers who often lack awareness of the laws that are meant to protect them, and are, often as a matter of routine, exposed to retaliation and other discriminatory practices that chill their attempts to enforce their rights. Finally, EEOC's focus on research and data can

help identify the industries and localities that the agency should prioritize, and where the tools available to it can have industry-changing impacts.

For these reasons, we also applaud the prioritization that EEOC describes in its SEP. We do, however, encourage EEOC to prioritize individual cases of retaliation as Category A charges where individual cases have the capacity to change a common practice in an industry or geography, and not limit those cases to high priority only when they can contribute to the development of the law. Even individual cases can often address systemic abuses.

3. Addressing Emerging Issues – As detailed in the SEP (Section III.C.), the EEOC plays a special role in documenting and responding to emerging discriminatory practices that require urgent attention. We urge the EEOC to supplement the proposed list of emerging issues to be targeted to include the pernicious practice of discriminating against the “currently employed” in hiring, which has a disparate impact on people of color, older workers, the disabled and other protected groups.

The EEOC’s February 6, 2011, commission meeting provided a valuable platform to publicize the issue for the business community, the media and the general public, and explore options for further EEOC actions. Since then, the President has endorsed federal legislation and over a dozen states have proposed bills (thus far, New Jersey, Oregon and the District of Columbia have enacted laws) to expand worker protections in this area. We urge the EEOC to prioritize this as an emerging issue by issuing guidance and taking other steps to clarify that this employment screening practice, which is often used for convenience, is based on assumptions that could easily run afoul of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the American with Disabilities Act.

Again, we appreciate the EEOC’s request for stakeholder comment and participation in this process. Should you have any questions regarding our recommendations, please do not hesitate to contact Maurice Emsellem ([memsellem@nelp.org](mailto:memsellem@nelp.org)), or Sharon Dietrich ([sdietrich@clsphila.org](mailto:sdietrich@clsphila.org)), or Rebecca Smith ([rsmith@nelp.org](mailto:rsmith@nelp.org)).

Sincerely,



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