

# Behind the Scenes at the EEOC

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# Changes Under Obama Administration

- Budget
  - Between 2000 and 2008, Dropped Nearly 30%
  - FY 2009: \$14.6 Million in Additional Funding
  - FY 2010: \$23.4 Million in Additional Funding
- Staffing
  - Since 2007, Hired Over 200 Full Time Employees Nationwide
- Organization
  - Jacqueline A. Berrien, Chair
  - Chai Feldblum, Commissioner
  - Victoria Lipnic, Commissioner
  - P. David Lopez, General Counsel

# Enforcement Initiatives

- Enforcement:
  - ADA AAA
  - GINA
  - Youth@Work
  - Equal Pay Enforcement Taskforce
  - E-Race

# Best Practices for Responding to an EEOC Charge

- Investigation
  - Provide Complete Information
  - Articulate the Legitimate, Non-Discriminatory Reason(s) for Employment Decision
  - Share Information Regarding Credibility
- Conciliation
  - Keep in Mind Benefit of Confidentiality
  - Flexibility

# Mediation with the EEOC

- During Investigation (Prior to Litigation)
- Firewall
- Free
- Confidential
- Resolution Rate: 71% (SF District)

# Litigating With the EEOC

- Intervenor Counsel Involvement
- No Confidential Settlements
- Consent Decree Filed With Court
- Narrow Release of Claims

# EEOC Developments

- Final Regulations Under ADAA
- Final Regulations Under GINA

# Practitioner Tips: Charges & Investigations

- The outcome you want—a "no cause" finding—is most likely to occur when you make it easy
- Arrange and document your response to the charge as if you were writing the internal memorandum supporting that outcome
- You are much more likely to get a "no cause" finding through cooperation and a sense of shared venture than through combat

# Practitioner Tips

## Mediation

- Make sure the understanding from the outset is that the EEOC representatives at the table have authority to settle—don't get into the "authority" dance
- Don't expect your view of "common sense" to prevail—the Commission has its institutional priorities and they may not match yours
- A successful strategy may be to offer things that serve the Commission's overall objectives—training or mentoring, outreach to minority or female applicants, structured interview processes, improved postings of opportunities

# Practitioner Tips

## Litigating With the EEOC

- The Commission is essentially eternal, so remember that your reputation precedes you and will follow you
- The Commission is, in some respects, like an ocean liner—don't expect immediate action or decision-making
- Fight whenever necessary, but with an immortal opponent peace is sometimes better than war

# Practitioner Tips

## Litigating With the EEOC

- In major litigation, the Commission's litigation team may evolve and include new players; document clearly any agreements you reach with anyone on the Commission's team—better for you and for them
- Generally speaking, the Commission will enjoy some automatic credibility with the federal courts; test that at your peril
- The Commission is an institution and thus takes some institutional positions in litigation; where possible, explore the case law to see how those positions have fared in other courts