



What Employers Need To Know About The New EEOC Chair

Insights

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Janet Dhillon's confirmation as the new Chair of the Equal Employment Opportunity Commission (EEOC) earlier this week will have an impact on employers in more ways than one. Besides installing an agency head that is seemingly in a position to understand and balance the interests of the business community and workers alike, the Senate has restored a quorum to the agency for the first time in several months – meaning that the agency can get down to work on several critical initiatives. What do employers need to know about the new head of the federal employment law agency?

Who Is Janet Dhillon?

To understand the role that the new agency head might soon have, it is helpful to first understand her background. Chair Dhillon began her legal career as an attorney for a large general practice law firm in 1991, working in private practice until 2004. She then worked as corporate counsel for a national airline for five years before moving to several national retailers in several executive roles. She served as General Counsel for all three organizations, each of them a Fortune 500 company. She also helped found and was president of the Retail Litigation Center, a coalition of retail counsel advocating for the interests of the business community in judicial proceedings.

She was originally nominated for the position in June 2017, but political wrangling in the federal government held up her nomination for almost two years. At the time of her nomination, Sen. Lamar Alexander (R-TN) said that her experience helping to ensure that the companies she led complied with anti-discrimination laws provided her with the solid experience necessary to be an EEOC leader. However, some congressional leaders and others were concerned about Dhillon's lack of prior governmental experience. Nonetheless, lawmakers voted 50-43 to confirm her to the agency's top post on May 8.

Quorum Restored

Once Chair Dhillon is sworn in as a member of the EEOC and three of the five commissioner positions are filled, the agency will have a formal quorum allowing it to conduct official business. Chair Dhillon's term won't expire until July 1, 2022, affording her a great deal of time to place her imprint on the agency. Acting Chair Victoria Lipnic's term does not expire until 2020, and although Commissioner Charlotte Burrows' term is set to expire on July 1, that date can be extended until at least September 1 if a new pick isn't confirmed by then. Several names have been floated to occupy that slot and the other vacancies.

The agency is also awaiting finalization of the process to fill the EEOC's General Counsel role. Now that a quorum has been reestablished, it's possible that congressional leaders will turn their attention to filling that position.

Regardless of the status of the open positions, the agency will probably move swiftly in the coming months to address several crucial matters – some of which may prove to be controversial. First and perhaps foremost is the status of the pay data component of the new EEO-1 forms, resurrected several months ago by a federal judge and now due to be submitted by employers on or before September 30, 2019. The agency originally scrapped the new requirement forcing employers to turn over pay data along with other demographic information several years ago, but a judge overruled the agency and revived the requirement. That ruling is now subject to a legal appeal, and the agency will probably focus its attention on that appeal now that a quorum is in effect.

Another area that may soon be addressed once the agency can act with more formality is the status of the EEOC's position with respect to LGBT discrimination. Specifically, there may be an open question about whether the agency believes that Title VII prohibits private employers from workplace bias against LGBT workers. While the EEOC has long held that the reach of the federal statute covers LGBT discrimination, Dhillon declined to take up the agency's position on this matter during her confirmation hearing in 2017. It is possible, though unlikely with the current makeup of the agency leadership, that the EEOC may soon revisit this position – especially with a trio of cases addressing this specific matter currently pending at the U.S. Supreme Court.

What Else Is On Dhillon's Agenda?

At the time of her Senate testimony in 2017, Dhillon said that one of her priorities at the EEOC would be to focus on clearing the commission's case backlog. The good news is that the agency has taken great strides at accomplishing this goal for the past several years. The EEOC recently announced that it had reduced its charge workload by 19.5 percent in FY 2018, lowering that number to 49,607. It said that it achieved this goal by “deploying new strategies to more efficiently prioritize charges with merit, more quickly resolve investigations, and improve the agency's digital systems.” Because of the agency's efforts, it now has the lowest inventory of private sector charges in a dozen years. Chair Dhillon will no doubt seek to continue this trend for FY 2019 and beyond.

She also said that she would seek to reduce the number of new lawsuits filed by the EEOC, seeking instead to focus on conciliation efforts which she labeled as a “win-win for all.” She characterized litigation as a “last resort” that she would rather not have the agency initiate.

Conclusion

We will monitor these developments and provide updates once the newly reformed EEOC takes action. To ensure you receive the most up-to-date information, you should ensure you are subscribed to Fisher Phillips' alert system. For help with compliance steps or to answer questions, please contact your Fisher Phillips attorney.

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