

*Inside the Equal Employment Opportunity Commission:  
An Interview with the Director of the New York District EEOC*

*by Mark Lee*

**T**his year marks the 35<sup>th</sup> Anniversary of the Equal Employment Opportunity Co

where we believe it is likely that the statute has been violated, we will investigate. Sometimes we will send out a letter to employers requesting information about a charge, sometimes we will do on-site investigations, interviewing witnesses.

If we believe that the evidence suggests that a violation of the law is likely to have occurred, we issue a determination. This is administrative, without the force of law. But it is often persuasive to employers. We will then try to work out a negotiated settlement with the employer that ensures that any violation will not continue to occur. And, in cases in which monetary damages were incurred by employees, we seek proper compensation. If conciliation is successful, that's the end of it. But, if the agency and the employer cannot reach an amicable conciliation, then we may file a lawsuit in U.S. District Court. The court will then determine after a trial if there was a violation of the law.

Not all cases have merit. If we don't believe that a charge has enough merit for us to investigate, we dismiss the case. We then issue a "right to sue." This enables the individual to file a lawsuit in U.S. District Court. In other words, before an individual can sue an employer, it is a prerequisite that they first file a charge of discrimination with us and get a "right to sue." The theory here is that individuals have a right to enforce the civil rights law just as does our agency. Most individuals will engage private legal counsel to file such a lawsuit. A small number proceed *pro se*, on their own, and ask the court to appoint a lawyer. Sometimes they may be able to make it more affordable by finding *pro bono* legal help from an attorney willing to volunteer some of his time.

**Q: Your office recently obtained the largest EEOC monetary settlement ever won for age discrimination in New York State. Can you comment on this case ?**

**SL:** We settled a lawsuit against an employer called Johnson and Higgins for \$28 million. It resolved an EEOC lawsuit filed in 1993 based on allegations that this insurance brokerage and employee benefits firm, employing 17,000 people nationwide, maintained a mandatory retirement policy. The firm was ordered to end the policy. In that case, members of the board of directors were required to retire at age 62. The Age Discrimination in Employment Act prohibits employers from mandatorily retiring employees, with certain exceptions like public safety officers. Generally, employers cannot force individuals to retire at a certain age.

The lawsuit was significant because it sends a message to employers that such conduct constitutes a violation of the law and that the EEOC *will* enforce the law. Settlements of that magnitude, when reported in the media, alert employers to the fact that mandatory retirement policies violate the Age Discrimination in Employment Act.

**Q: Is there a strategy behind seeking such large settlements?**

**SL:** There is a strategy that we try to employ in our enforcement efforts. First, we feel that large settlements are significant, particularly when there's an employer policy that affects a large number of employees. Because, when many people are affected, it says either: (a) the employer is unaware the policy is a violation of the law, or (b) they are aware, but choose to continue enforcing that policy. So, our strategy is to place a lot of emphasis on class cases; that is, on cases where large numbers of employees are affected. When we take that approach, it allows us to direct our resources in a way that gets maximum effectiveness. Utilizing X number of individuals to enforce the law, you try to take those cases most egregious and affecting large numbers of people.

**Q: How successful has the EEOC's new mediation program been?**

**SL:** This year we have made substantial progress in our new approach of resolving many claims of discrimination through mediation. In 1991, Congress passed a statute requiring all federal agencies to examine alternative dispute resolution mechanisms to resolve disputes between agencies and vendors, as well as to make some ADM available to the individuals we serve. As an enforcement agency, we have been making sure that individuals have the opportunity to mediate cases, as opposed to an investigation. Mediation differs from more adversarial approaches in that the mediator tries to find a way to get the parties to resolve a dispute, without assessing the merits of the alleged facts. What does that mean? The mediator's role is not to determine if the facts described are true or if a law has been violated. This differs from arbitration or litigation, since the mediator is not trying to weigh the value of the facts of the case. About 40% of employers charged by individuals with discrimination, when offered mediation, have agreed to it. This is the first year that we have been able to make mediation available, and it was successful in resolving over 330 cases.

**Q: A number of large companies, including IBM, have recently tried to shift their employees from traditional pension plans to so-called "cash balance pensions." What has the EEOC been doing to respond to workers' concerns that these new plans may be shrinking their pensions?**

**SL:** We have been trying to evaluate if there is a possible violation of the law in these plans. Cash balance pensions are plans that employers only began adopting in the 1990s. We believe, in some instances, that cash balance plans have a disparate impact on older workers. That is, older workers stand to be more adversely affected by these plans. We are now evaluating data on these plans, their impacts on individuals, and to what extent their impacts may violate the Age Discrimination in Employment Act. This is a hot issue because so many employers have adopted them. We don't know if they adopted them in good faith or not. That's one of the things we'll be looking at in our investigations.

We will be developing new regulations on cash balance plans in coordination with other agencies, including the Department of Labor, the Treasury Department, OSHA and others to make sure that the government speaks with one voice on the issue. If there are differences of opinion among the agencies, we seek a negotiated arrangement. The courts will decide if the new regulations are appropriate. We often work with other agencies like the Labor Department and, particularly, the Justice Department's Civil Rights Division, which enforces Title VII against state and local entities.

**Q: Working women and immigrants are expected to be a growing share of new workers in coming years. What does the EEOC plan to do to ensure them equal opportunities in th**

dismissed other cases. This process removed a lot of cases from the backlog. In 1995, about 114,000 charges of employment discrimination were pending. Now it is down to about 42,000 – a decrease of over 70,000. Working the backlog down is significant, because we can get to cases faster and investigate, or send them to mediation. No one wants to wait an indefinite time to find out the results of a case. This has had positive effects both on employers and on individuals bringing the charges.

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**How To Make A Job Discrimination  
Complaint with the EEOC:**

Call, write or visit the  
New York EEOC District Office  
7 World Trade Center, 18<sup>th</sup> floor  
New York, NY 10048-1102  
Tel: 212/748-8500  
Fax: 212-748-8464  
[www.eeoc.gov](http://www.eeoc.gov)



## **What Federal Laws Prohibit Job Discrimination?**

**Civil Rights Act of 1964** (Title VII): prohibits employment discrimination based on race, color, national origin, religion, or sex. Title VII prohibits not only intentional discrimination, but also practices that have the effect of discriminating against individuals because of their race, color, national origin, religion, or sex.

Title VII's broad prohibitions against *Sex Discrimination* specifically cover:

**Sexual Harassment** - This includes practices ranging from direct requests for sexual favors to workplace conditions that create a hostile environment for persons of either gender, including same-sex harassment. (The "hostile environment" standard also applies to harassment on the bases of race, color, national origin, religion, age, and disability.)

**Pregnancy Based Discrimination** - Pregnancy, childbirth, and related medical conditions must be treated in the same way as other temporary illnesses or conditions.

Title VII's prohibitions against *National Origin Discrimination* make it illegal to discriminate against an individual because of birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group. An English-only rule on the job may violate Title VII unless an employer shows that the requirement is necessary for conducting business. If the employer believes such a rule is necessary, employees must be informed when English is required and the consequences for violating the rule.

**Equal Pay Act of 1963**: protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination.

**Age Discrimination in Employment Act of 1967**: prohibits employment discrimination based on age against individuals who are 40 years of age or older.

**Americans with Disabilities Act of 1990**: prohibits employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments.

**Civil Rights Act of 1991**: among other things, provides monetary damages in cases of intentional employment discrimination.

The EEOC enforces all of these laws. Other federal laws, not enforced by EEOC, also prohibit discrimination and reprisal against federal employees and applicants.

## **What Discriminatory Practices are Prohibited by these Laws?**

Under these laws, it is illegal to discriminate in any aspect of employment, including:

- Recruitment, job advertisements, or testing;
- hiring and firing;
- assignment, classification of employees, transfer or promotion;
- training and apprenticeship programs;
- pay, fringe benefits, retirement plans, and disability leave; or
- other terms and conditions of employment.

Source: <http://www.eeoc.gov>