



BURTON BLATT INSTITUTE
CENTERS OF INNOVATION ON DISABILITY

June 15, 2011

Ms. Justine Lisser
Ms. Christine Nazer
Equal Employment Opportunity Commission
131 M St. NE
Washington, DC 20507

Via Email: Public.Comments.RegulatoryReview@eoc.gov

RE: Preliminary Plan for Retrospective Review of Significant Regulations

Dear Ms. Lisser and Ms. Nazer:

Thank you for the opportunity to comment on the EEOC's Preliminary Plan for Retrospective Review of Significant Regulations.

The Burton Blatt Institute (BBI) is a research, education, and advocacy organization dedicated to advancing the civic, economic and social participation of people with disabilities worldwide. Our focus areas are employment, entrepreneurship, economic empowerment, civil rights and community participation. BBI has done extensive research, program development and education in the areas of disability-inclusive employer policies and culture, employer attitudes toward applicants and employees with disabilities, entrepreneurship for people with disabilities, vocational rehabilitation practices, assistive and accessible technology, and implementation of the Americans with Disabilities Act (ADA), and reasonable accommodations costs and benefits.

We agree with the regulations identified by the EEOC for retrospective review. In particular, review of the Federal Sector Equal Employment Opportunity Complaint Processing is very important as the federal government works to become a model employer of people with disabilities. Notably, the interaction between Sections 501, 504, and 508 of the Rehabilitation Act should be addressed. Section 508 provides rights for federal employees to accessible technology beyond the general "reasonable accommodation/reasonable modification" rights provided under Sections 501 and 504. As such, the complaint processing for Section 508 issues should be coordinated with, but should not necessarily be the same process as that provided under Sections 501 and 504.

Review of regulations and guidance about complaint processing and investigations of federal contractor compliance with Section 503 of the Rehabilitation Act and federal funding recipients' compliance with Section 504 of the Rehabilitation Act are also important. The Department of Labor Office of Federal Contract Compliance Programs has issued an ANPRM to make the disability-based affirmative action requirements of

Section 503 more substantive and this will impact complaint investigation under Section 503. In addition, the recent regulations implementing the ADA Amendments Act will impact Section 504 of the Rehabilitation Act and justify review of those regulations.

We would also encourage the EEOC to consider reviewing regulations and issuing guidance regarding emerging issues in disability employment law. For example, the Affordable Care Act would permit employers to reduce insurance premiums for employees by up to 20% if employees participate in employer-sponsored wellness programs. While incentives for engaging in healthy activities are well-intentioned, it is important that this new intersection of health care, insurance, and employment not be permitted to undermine the rights of employees with disabilities under the ADA, GINA, and other laws. Highly incentivized wellness programs raise a number of areas of concern. For example, medical questionnaires required for participation in an employer's wellness program potentially undermines an employee's right under the ADA not to be subject to medical inquiries or examinations. This is particularly concerning where participation in a wellness program is so substantially monetarily incentivized that an employee who does not participate (because of a desire not to inform her employer of her health conditions) is essentially punished for not participating and, therefore, participation (and revelation of health information) is not truly voluntary. Strong incentives also run the risk of punishing employees with disabilities who cannot participate or cannot succeed in a wellness program because of their disabilities. EEOC guidance on the legal limits on wellness programs would be helpful.

In addition, there is some confusion among providers of employment services specifically for individuals with disabilities, such as sheltered workshops, including those that receive state and federal contracts or other financial support, about their obligations under the ADA and Rehabilitation Act. EEOC guidance regarding the obligation of disability-specific employers to reasonably accommodate their employees, to integrate employees with disabilities with nondisabled employees and customers, and to provide equal wages would be useful.

If you have questions, feel free to contact us (contact information below) or Eve Hill at (202) 296-2044.

Sincerely,

/s/

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