

## **THE LATEST ASSAULT ON EMPLOYERS EEOC STRENGTHENS ITS ANTI-EMPLOYER POLICIES**

A recent directive from Washington, D.C., done without any legislative input, is yet another assault on employers of all sizes. The Equal Employment Opportunity Commission (EEOC) investigates and prosecutes charges of employment discrimination. Many employers have received a "Charge of Discrimination" and spent thousands of dollars every time one of those Charges is filed, regardless of the Claim's merit. Employers have been able to minimize their losses by settling Charges through the EEOC's mediation program. That program has benefitted employers who have made the "business decision" to pay some money to resolve a Charge and get a release from the employee.

Employers always ask the same question – "if I pay this money, the employee cannot come back and sue me again, right?" In the past, the employer was protected from further claims by the settling employee, but no longer. The EEOC now takes the position that when an employee does not have an attorney, and many do not, the EEOC will not allow employers to require "general releases" as a condition of settlement. Under the EEOC's policy, if an employer pays an employee to settle a Charge, the employee will only be required to sign the EEOC's settlement documents, which state that the employee cannot file legal action on the basis of the claim at issue now, but does not preclude the employee from filing a new charge or lawsuit on another basis. The employee literally could walk out of the bank after depositing the employer's settlement check and head back to the EEOC or to the local courthouse to file some other claim. The EEOC has eliminated the very limited protection employers obtained once employers decided to settle.

I recently confronted the EEOC about this issue and was told that EEOC leadership in Washington will not permit unrepresented employees to waive their "rights" on other claims when they settle with employers, regardless of how much money the employee is receiving from the employer. The EEOC's policy can be seen only as a solidification of its bias against employers and an encouragement for employees to "play the system." There are many employees who sue multiple employers or file multiple claims against the same employer. The EEOC has given those employees license to keep filing Charges.

Employers must shore up their defense against this latest assault. Employers must invest the time to strengthen their anti-discrimination policies and grievance procedures so that the employer can deal with claims from a position of strength. Employers should update handbooks, invest in management training so that managers are aware of their role in protecting the company from claims and what to do in the event of a claim, and invest in workforce training to communicate policies and grievance procedures to employees. By making that investment, employers who are forced to defend themselves against EEOC Charges then can feel more secure in rejecting settlements and standing up to the revolving door of employee claims.

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