

PUBLICATION

A New Year, a New EEOC? What to Expect Under Acting Chair Victoria Lipnic

March 10, 2017

On January 25, 2017, President Donald J. Trump appointed Victoria Lipnic as Acting Chair of the Equal Employment Opportunity Commission. Ms. Lipnic was an EEOC Commissioner from 2010 until her elevation to Acting Chair. Prior to joining the EEOC, Ms. Lipnic served as the U.S. Assistant Secretary of Labor for Employment Standards from 2002 – 2009, where she oversaw the Wage and Hour Division, the Office of Federal Contract Compliance Programs, the Office of Workers' Compensation Programs and the Office of Labor Management Standards. Ms. Lipnic also served as employment counsel for both the U.S. Postal Service and private law firms during her career.

Given Ms. Lipnic's experience, and especially her public service, employers have rightfully wondered where she will land on the EEOC's enforcement priorities. On February 9, 2017, at a labor and employment law presentation in Chicago, Ms. Lipnic gave several public statements that provide some direction on what the EEOC will prioritize under the Trump Administration:

- Ms. Lipnic reaffirmed her commitment to enforcing anti-discrimination laws, but stated that the EEOC would incorporate President Trump's focus on "jobs, jobs, jobs."
- Ms. Lipnic noted that the number of EEOC enforcement actions has been in steady decline in recent years. She also noted that she wanted the Commissioners to consider and vote on litigation rather than delegating that completely to the General Counsel. It is unclear whether that means there will be more enforcement actions under the new administration or if it means that the Commissioners will act to prevent the General Counsel from filing certain actions.
- Ms. Lipnic noted that this year marks the 50th anniversary of the Age Discrimination in Employment Act, and she expects that the ADEA will be highlighted this year.
- Ms. Lipnic noted that the EEOC has not focused on equal pay cases in the past, but she considers those types of cases to be a priority.
- Ms. Lipnic is likely to reevaluate the EEOC's approach to systemic class actions. She stressed the importance of such cases but signaled that the cases may be refocused regionally rather than nationally.
- Ms. Lipnic also stated that she intends to reevaluate the revised regulations requiring substantial addition information in EEO-1 reports. Employers have objected to the additional burden under the new regulations, which require reporting of pay data and hours worked across 12 pay bands, categorized by gender, race and ethnicity. While Ms. Lipnic is ready to prioritize equal pay, she questioned whether the revised EEO-1 requirements are the best way to accomplish the EEOC's goals. Since the first reports under the new regulations are not due until March 31, 2018, it is anticipated that Ms. Lipnic will oversee some rollback of the regulations before they affect employers.

Ms. Lipnic suggested that more is likely to remain the same than will change at the EEOC while she is Acting Chair. Also, while her appointment as Acting Chair is only temporary, it certainly seems possible that she will eventually be appointed permanently, given her experience and reputation. However, Ms. Lipnic's priorities could quickly redirect the EEOC's enforcement activities, including reprioritizing away from LGBT protections. More importantly, the EEOC could see further shifts as new Commissioners are appointed. There is currently one vacancy on the Commission, and one Democrat's term is set to end on July 1, 2017. If President Trump

appoints Republicans to both seats as is expected, Republicans will have a majority on the Commission for the first time since 2007. As a result, further changes to the EEOC could be in store.