



October 26, 2023

Chair Charlotte Burrows  
U.S. Equal Employment Opportunity Commission  
131 M Street, NE  
Washington, DC 20507

Dear Chair Burrows,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 240 national organizations committed to promoting and protecting the civil and human rights of all persons in the United States, and The Leadership Conference's Employment Task Force, we write to share our priorities for the work of the U.S. Equal Employment Opportunity Commission (EEOC).

This year, we marked the 60th anniversary of the March on Washington for Jobs and Freedom, which led to the passage of the Civil Rights Act of 1964 and the creation of the EEOC, with its mission to combat employment discrimination and ensure equal employment opportunity for all. The EEOC plays a critical role in enforcing our civil rights in the workplace and in bringing the goals of the March to life. Our priorities for the Commission are outlined below.

**Diversity, equity, inclusion, and accessibility in the workplace.** When employers remove unfair barriers, seek out applicants from all racial and ethnic backgrounds, and create a workplace culture that fosters respect, people are able to thrive in their jobs. The Supreme Court's decision in *Students for Fair Admissions (SFFA) v. Harvard* and *SFFA v. UNC* does not change employers' duty to create workplaces free from discrimination, including through efforts designed to achieve diversity, equity, inclusion, and accessibility (DEIA). We welcome your strong statement to that effect after the ruling. The EEOC should take further steps to ensure that employers and workers understand that the ruling does not change Title VII of the Civil Rights Act of 1964 and that DEIA programs help employers meet their nondiscrimination obligations and advance opportunity for all. The EEOC should release guidance outlining the effect and/or non-effect of the *SFFA* decision on employment and the practices that remain lawful. This guidance should clearly differentiate between programs that use race as a criterion in employment decisions — which remain permissible in limited circumstances — and DEIA efforts, which generally do not. The EEOC should also incorporate discussions of the decision into training and continuing legal education (CLE) programs, and should provide additional training and technical assistance to employers on how to implement lawful DEIA initiatives. And the EEOC must utilize the full extent of its enforcement authority to ensure that employers meet their nondiscrimination obligations under civil rights laws.

**Fairness for pregnant workers.** The passage of the Pregnant Workers Fairness Act (PWFA) was a significant victory for women, pregnant and postpartum workers, and families across our nation. The new law requires employers to provide reasonable workplace accommodations to workers who need a change in duties or policies because of pregnancy, childbirth, or related medical conditions, unless the accommodation would impose an undue hardship on the employer. We applaud the EEOC for moving quickly to develop draft regulations to implement the law. We look forward to publication of the final

regulations and urge the EEOC to back them up by continuing the Commission's education and outreach efforts and taking strong enforcement action to make the rights guaranteed by the PWFA a reality.

**Pay equity.** Sixty years after the passage of the Equal Pay Act of 1963, wage gaps based on gender, race, and other lines of difference persist in our economy. Today, women working full-time, year-round are typically paid just 84 cents for every dollar paid to men, and that gap is even wider and more costly for Black, Latina, Native, and many groups of Asian American, Native Hawaiian, and Pacific Islander women, who stand to lose out on close to or more than \$1 million in earnings over the course of a 40-year career. Analyses also find wage gaps between LGBTQIA+ workers and their peers, and when comparing the median earnings of all workers, regardless of hours or weeks worked, women are typically paid just 77 cents for every dollar paid to men. Gender and race-based pay gaps are caused by a multitude of factors, including discrimination, and rooting out that discrimination requires pay transparency. The EEOC took a major step aimed at strengthening compliance with anti-discrimination laws in 2018 when the Commission, after an extensive deliberative process, adopted an expanded EEO-1 data collection that required employers to report summary pay data by gender, race, ethnicity, and job category. Though this effort was cut short by the Trump Administration, the EEOC collected FY 2017 and FY 2018 data under a federal court order. We urge EEOC to use this previously collected pay data to help identify charges that may merit closer review for systemic discrimination. This use is consistent with the findings of the National Academies of Sciences, Engineering, and Medicine (NASEM), which independently examined the quality and utility of the Component 2 data and determined that EEOC could use the collected data to prioritize investigations and the allocation of EEOC resources, including for public outreach, education, training, and compliance assistance. In addition, we urge the EEOC to reinstate a pay data collection informed by the NASEM report, which recognized pay data as an essential tool in preventing and combating pay discrimination.

**Anti-LGBTQ discrimination.** A record breaking 580+ anti-LGBTQ state bills have been introduced in 2023. Many of these bills threaten workers' rights to insurance coverage for transgender-inclusive healthcare, access to restrooms and other facilities consistent with gender identity, nondiscrimination in hiring and termination, and a work environment free from harassment. The EEOC must protect LGBTQ workers by providing further guidance to employers so that they comply with Title VII, and fully implement the Supreme Court's decision in *Bostock v. Clayton County* that Title VII's protections against sex discrimination apply to instances of discrimination on the basis of sexual orientation and gender identity.

**Workplace harassment.** Harassment along the lines of sex, race, disability, and other protected characteristics remains a widespread problem in U.S. workplaces, and we welcome the EEOC's continued recognition of and engagement with these often intersectional forms of discrimination. People holding multiple marginalized identities continue to face unique and pernicious forms of discrimination that are constantly evolving. We thank the EEOC for its release of updated enforcement guidance on workplace harassment. The EEOC's efforts to address harassment should prioritize workers that are most vulnerable to harassment and least able to enforce their rights, including low wage workers and workers experiencing harassment based on sexual orientation and gender identity.

**Automated systems, including artificial intelligence (AI).** Employers are increasingly implementing AI and other automated systems to aid in and make employment decisions, from

recruitment and hiring to surveillance, evaluation, discipline, and termination. These systems can be used to further limit job opportunities on a discriminatory basis and impose working conditions that harm workers' physical and mental health. Workers that face these tools are at an extreme information disadvantage, often with little or no knowledge or insight that such tools are being used, and if so, how they are being used to assess workers - including whether their use results in an unfair or discriminatory decision. We applaud the EEOC for its ongoing work and engagement in this space, including the release of technical assistance and a joint statement with federal agencies asserting enforcement authority. In collaboration with federal agency partners, the EEOC should build on those efforts by issuing guidance that outlines specific steps to ensure that these systems comply with Title VII and other civil rights laws and provides for oversight and accountability that evens the playing field for workers and job seekers subject to these systems. AI and other automated systems should not discriminate, only measure traits and skills directly related to job performance, include notice of how the assessment works and how to access accommodations, allow workers to opt out of automated assessments without punishing them for doing so, and be thoroughly and regularly audited.

**Longstanding shortfalls in age discrimination remedies and enforcement.** In the last thirty years, several laws long enforced by EEOC have added important remedies (e.g., Title VII added compensatory and punitive damages) and greatly expanded coverage. Yet the Age Discrimination in Employment Act (ADEA) continues to lag. Its lesser remedies – no damages, only lost wages, in cases involving private employers, and no monetary relief at all against state employers – discourage private enforcement generally and mean that, in particular, no meaningful relief is available to address private claims of on-the-job-age-based harassment. This urgently justifies greater attention from the EEOC. And, the ADEA's lesser coverage in the key area of hiring discrimination – due to two en banc courts finding that ADEA applicant-claimants have no disparate impact claim – is another huge barrier calling for EEOC attention. Overall, since *Gross v. FBL Fin. Servs., Inc.*, 557 U.S 167 (2009), freedom from age bias has often been dismissed – by courts and defendants – as a second-class civil right. Yet, overt age bias continues to be widely tolerated and recently has become a focus of digital discrimination. In righting this imbalance, EEOC should also revisit ADEA regulations that promise to “carefully scrutinize” the use of age-based and age-related inquiries but which, so far, do not appear to have led to significant enforcement activity or to have discouraged employers from routinely considering age in choosing workers, without any legitimate business purpose for doing so.

**Caregiver discrimination.** Workers with caregiving responsibilities continue to face discrimination - which harms all workers, but particularly impacts women and especially women of color. This form of discrimination was exacerbated by the COVID-19 pandemic, which created new caregiving responsibilities, including caring for newly sick or disabled family members and supporting children participating in remote education - often while simultaneously dealing with their own new or worsened disabilities as a result of COVID. Demand for care work also grew at a record pace during the pandemic, which negatively impacted labor force participation. Discrimination stemming in part from gender and racial stereotypes about the competence of mothers in the paid workforce creates a penalty for caregivers, which can exacerbate the gender wage gap. The existing EEOC guidance on caregiver discrimination must be formally updated to account for the stresses of the pandemic, as laid out in the agency's March 2022 technical assistance.

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Thank you for your consideration of our views. If you have any questions, please contact Kanya Bennett, managing director of government affairs, at [bennett@civilrights.org](mailto:bennett@civilrights.org).

Sincerely,

Judith M. Conti, Employment Task Force Co-Chair  
Yona Rozen, Employment Task Force Co-Chair  
The Leadership Conference on Civil and Human Rights