

May 23, 2017
Statement of the Honorable Mark Takano (D-CA)
Ranking Member, Subcommittee on Workforce Protections
“The Need for More Responsible Regulatory and Enforcement Policies at the EEOC.”

Thank you, Mr. Chairman.

It’s been more than fifty-years since the enactment of the Civil Rights Act of 1965 and the creation of the EEOC. In that time, the EEOC has been on the forefront of fighting discrimination in the workplace for all people, and its work is needed now more than ever.

Race, gender, disability, and age discrimination still persist today. In Fiscal Year 2016, the EEOC received a record total of 91,503 charges: 35% were based on race, 29% were based on sex, 29% were based on disability status, and 22.8% were based on age discrimination. This evidence demonstrates that there is still a need for robust civil rights protections in the workplace.

We are here today to discuss the EEOC’s regulatory and enforcement policies. If past is prologue, then I’m sure we will hear from witnesses and my colleagues on the other side of the aisle claiming that the EEOC has overstepped its bounds in pursuing an “aggressive litigation strategy” and in its enforcement guidance. I do not believe this is the case. With a more diverse workforce the EEOC’s charge is more difficult than ever before and Congress should empower the EEOC to ensure that all people feel welcome in their workplace.

There is so much more work the EEOC needs to do.

Take for example the issue of pay discrimination. We are in the 21st Century. The Equal Pay Act was passed in 1963 and the Lilly Ledbetter Act in 2009. Why is the wage gap still an issue for millions of working women in our nation?

On average, working women make 83 cents for every dollar that a typical white man makes. And census data shows that for women of color the wage gap is even worse: on average black women earn 65 cents to the dollar, Hispanic women earn 59 cents, and some AAPI women earn as little as 44 cents. That is why I support the recent update to the EEO-1 pay data collection form.

If we don't have accurate data, we won't be able to solve this persistent problem. While the updated EEO-1 form won't eliminate pay discrimination on its own, it's an important step. The data that this form will now collect will help the EEOC assess where discrimination is and help the Commission work to put an end to it.

The work of the EEOC ensures that there is fundamental fairness in the workplace.

This is what the Commission sought to do with its 2012 arrest and conviction guidance. By clarifying when and how an employer can use arrest and conviction records, the EEOC was simply providing guidance to employers to ensure that they were being fair in hiring and employment decisions. This was not a mandate to tell employers that they can't use criminal background checks, but rather an effort to ensure fairness to all workers. In fact, the fundamentals of that enforcement guidance came from the pivotal case of *Griggs v. Duke* and previous EEOC memos. And over 150 cities and counties and 26 states already have adopted what is widely known as "ban the box" laws.

Mr. Chair, I hope that our discussion today can center around the continued work the EEOC needs to do to end discrimination in the workplace.

[QUESTIONS]

Criminal Background Checks

- Mr. Cox, It is my understanding that some hiring practices and policies that would exclude people who maybe have been arrested could have a negative impact on people of color and in particular men of color. My colleagues on the other side of the aisle have introduced The Certainty In Enforcement Act which has been the subject of committee hearings before, what would the impact of this legislation be?
 - Can you explain in more detail what the EEOC guidance on criminal background checks actually did?

LGBT Protections

- Mr. Cox, what is the importance of ensuring that Title VII protections cover LGBT individuals and what has the EEOC done to ensure that these individuals are not discriminated against in the workplace?

EEOC Funding & Priorities

- We know that the EEOC receives anywhere between 90,000 and 100,000 charges each year, and yet has been nominally funded at the same level for six of the last seven years. The issue of the agency's backlog continues to be a real concern to me and the many constituents whose civil rights have been denied in the workplace. We also know that the EEOC continues to hemorrhage staff due to lack of resources while the workload grows. Yet, we find ourselves here not speaking directly with the EEOC about these challenges.
 - Mr. Cox, what can the Committee do to help the EEOC, rather than disparage the agency in absentia?

Systemic Cases and Litigation Strategy

- Mr. Cox, in her testimony, Ms. Olson criticizes the EEOC's litigation strategy and goes on to note that the EEOC filed less lawsuits and recovered less compensation for victims of discrimination in 2016 than it did the previous year.
 - When did the EEOC begin pursuing systemic cases?
 - Are systemic cases outside the scope of the EEOC's jurisprudence?
 - What is the purpose of systemic cases?
 - What do working people gain from these types of legal actions brought by the EEOC?
 - Ms. Olson's testimony also outlines five cases in which the court criticized the EEOC in its litigation tactics. Mr. Cox, can you tell us is this an accurate description of the EEOC's work and effort in litigation?

Disparate Impact Litigation

- Mr. Cox. You state in your testimony that the EEOC has played a pivotal role in moving us away from segregation and rampant discrimination. Despite the progress, true equal employment opportunities remain a goal out of reach for too many. You explain how workplace discrimination is often implicit and has been driven "underground" on page 7 of your testimony. In light of this, can you tell us about the importance of the EEOC's continued use of disparate impact litigation, and the level of expertise and data needed to conduct this type of litigation?

[CLOSING]

The name of our Subcommittee is Workforce Protections – meaning that we should be doing our best to protect workers. Mr. Chairman, the EEOC’s job should be about getting results for America’s workers, not providing full employment for law firms looking for new ways to prevent resolution of a disputed discrimination case. We know all too well, that justice delayed is justice denied.

We’ve heard today about the burdens on employers that some feel the EEOC has placed, but we need to think about the working people. When we talk about ‘banning the box’ we’re not just discussing a policy initiative, we are talking about allowing real men and women a fair shot at a good job and life.

When we talk about the EEO-1 pay data form and the EEOC’s work to end pay discrepancy, we are talking about ensuring that real people are getting all of their hard earned money. The EEOC’s work is still very much needed in our workforce and we should not seek to hold them back.

Workers need to be protected, that is why this Subcommittee exists. As one of the one of the seven openly LGBT Members of Congress, I am encouraged by the work the EEOC has undertaken to advocate for the rights of LGBT individuals under Title VII. All workers should feel safe and welcome in their work environments. Workers should not feel as though they are unwanted in their own workplace simply because of who they are, whom they love, or the color of their skin.

And I am disappointed once again, Mr. Chairman, that we have held yet another hearing on the EEOC without actually inviting a representative from the Commission. We need to hear from the Commissioners directly.

Thank you and I yield back the balance of my time.