

**Labor and Employment Law Section  
December Luncheon  
December 18 & 19, 2003**

**EEOC MEDIATION, CONCILIATION AND LITIGATION**

**Mediation**

Since April 1999, EEOC has mediated 52,400 charges, and 35,100 or 69% have been successfully resolved in an average of 85 days. EEOC uses a combination of internal mediator and external contract mediators. In the Milwaukee District (includes Iowa, Wisconsin and Minnesota), there are two internal mediators, Julie Bretz, Mediation Coordinator for the District, located in Milwaukee, and Ruby Jones, Mediator, located in the Minneapolis Area Office. During the last fiscal year, the Milwaukee District successfully mediated 185 charges, with benefits of \$2.9 million .

Mediation is typically offered soon after a charge is filed. Respondents opting for mediation do not have to submit a position statement, and no investigation is commenced. EEOC evaluates charges in order to determine whether a charge is appropriate for mediation. In most cases charges which required additional investigation are eligible for mediation; charges determined to be without merit are not.

EEOC is committed to using alternative methods for resolving disputes where it is appropriate and feasible. Certain core principles underlie the use of alternative dispute resolution including mediation. The actions EEOC takes to implement alternative dispute resolution must further EEOC's mission to enforce the anti-discrimination statutes and resolve employment disputes. Another core principle is fairness which includes voluntariness, neutrality, confidentiality and enforceability. Finally, the EEOC's program must be flexible to meet the needs of the various districts it serves, and have a training and evaluation component.

In practice, an EEOC employee contacts both parties to a charge to determine whether each is interested in mediation. This happens before any response from the employer is requested. Both parties must be interested in mediation in order for the charge to be mediated. Some employers have agreed to Universal Agreements to Mediate (UAMs) with EEOC which eliminates initial contact with the employer regarding the Mediation Program. Either party can decline mediation, regardless of whether there is a UAM. If mediation is unsuccessful, the charge is investigated.

The advantages to mediation are:

- \$ cost-free
- \$ confidentiality
- \$ time-avoids lengthy litigation
- \$ disruption to workplace is limited.

**Conciliation**

Title VII of the Civil Rights Act of 1964, requires that the Commission shall endeavor to eliminate any unlawful employment practice by “informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission . . . .” 42 U.S.C. §2000e-5 (b). Conciliation occurs after an investigation which results in a finding that there is reasonable cause to believe that the charge is true. The ADEA contains similar language regarding conciliation. 29 U.S.C. §626(b).

Differences between mediation and conciliation:

- \$ conciliation occurs after an investigation which results in a finding that there is reasonable cause to believe the statute has been violated;
- \$ the person investigating the case is the conciliator;
- \$ the agency is a party to the conciliation; and
- \$ the agency is bound by the confidentiality provisions of Title VII, but the parties are not.

During fiscal year 2003, 181 charges in the Milwaukee District were settled outside of the mediation program, including conciliations and other settlements reached after investigation had commenced, for a total in benefits of \$3.9 million.

**Litigation**

Commission litigation for Title VII and the ADA is authorized by 42 U.S.C. §2000e-5 (f)(1) and 42 U.S.C. §12117 (a), and for the ADEA by 28 U.S.C. §626. During fiscal year 2003, the Legal Unit settled nine cases for a total benefit of \$2.1 million, plus injunctive relief.

Litigation is a featured component of the Commission’s Strategic Plan for fiscal years 2004-2009. The Commission has determined that it should contribute to the development of the law through litigation, amicus briefs, regulations and policy guidance. As part of that plan, the Commission encourages the offices to publicize significant, high impact case settlements, court decisions and other enforcement activities to business and employer communities and employee stakeholder groups, particularly in similar or related industries. The Commission also

encourages the development of methodologies to measure any resulting changes in workplace status of affected groups and/or improvements in workplace policies or procedures in affected employers. This also includes securing resolutions that avoid future instances of discrimination, where instances of discrimination are identified.

Generally, the kinds of cases the Commission brings can be summarized as:

§ Cases involving violations of established anti-discrimination principles, whether on an individual or systemic basis including:

-Cases of egregious discrimination

-Challenges to broad-based employment practices affecting many employees or applicants for employment, such as cases alleging patterns of discrimination in hiring, lay-offs, etc.

§ Cases having the potential of promoting the development of law supporting the anti-discrimination purposes of the statutes enforced by the Commission:

-Claims presenting unresolved issues of statutory interpretation under one or more of the statutes enforced by the Commission

-Cases involving legal issues where there is a conflict in the federal circuit courts

§ Cases involving the integrity or effectiveness of the Commission's enforcement process, particularly the investigation and conciliation of charges

Our current litigation load consists of cases against the following defendants:

Bemis Company, Inc. (Title VII-Race-Class)  
Southern District of Indiana

Coca Cola (Title VII-Race)  
District of Minnesota

Dial Corporation (Title VII-Sex)  
Southern District of Iowa

Endres Processing, LLC (Title VII, Retaliation)  
District of Minnesota

Johnson International, Inc. (Title VII, Sex)  
Eastern District of Wisconsin  
LaCrescent-Hokah Public Schools (ADEA)  
District of Minnesota

Milwaukee Gray Iron (ADEA, Title VII, National Origin)  
Eastern District of Wisconsin

Minnesota Beef Industries, Inc. (Title VII, Sex)  
District of Minnesota

Mount Carmel, LLC (Title VII, Retaliation)  
Eastern District of Wisconsin

Northwest Airlines (ADA)  
District of Minnesota

Remedy Intelligent Staffing (ADA)  
Southern District of Iowa

Target (Title VII, Race)  
Eastern District of Wisconsin

Wisconsin Health Fund (ADEA)  
Eastern District of Wisconsin

WYETH, d/b/a Fort Dodge Animal Health (Title VII, Sex)  
Northern District of Iowa

