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COMMISSIONER, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
before the
DEPARTMENT OF HEALTH, EDUCATION AND WELFARE
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Marriottsville, Maryland

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MANAGING THE FEDERAL WORKFORCE: A QUEST FOR DIVERSITY

The topic of my speech is, "Managing the Federal Workforce: A Quest for Diversity." In discussing this broad topic, I will focus on three separate vehicles, all of which are implemented by the EEOC, which together may determine how diverse a Federal workforce our nation will have in the days ahead. These vehicles are: Title VII's prohibition against employment discrimination; Title VII's requirement that Federal agencies develop affirmative action programs; and special emphasis programs such as the Federal Equal Opportunity Recruitment Program (FEORP).

Of course, the existence of these vehicles in and of themselves will not assure that the Federal workforce will be reflective of the make-up of our nation. And I am sure that I do not have to tell personnel and equal employment opportunity managers such as yourselves that it is people -- such as you -- who will determine whether the quest for diversity in the Federal workforce will be achieved.

A. Overview of EEOC's Enforcement Responsibilities

Before I discuss in detail my topic for this evening, I would like to first give you an overview of the functions and responsibilities of the EEOC. The Equal Employment Opportunity Commission

was initially set up to enforce Title VII of the Civil Rights Act of 1964. As originally enacted, Title VII's enforcement depended totally on voluntary compliance. That is to say, originally the EEOC had no coercive power to enforce Title VII. Moreover, as originally enacted, Title VII did not apply to the Federal government.

By amendments effective in 1972, Title VII was amended to give the EEOC authority to enforce Title VII in Federal court. Moreover, those same amendments extended Title VII to apply to the Federal government. And, unlike the private sector, the 1972 Amendments made affirmative action mandatory in the Federal sector. However, those Amendments gave Title VII enforcement responsibility in the Federal sector to the Civil Service Commission (now Office of Personnel Management).

Pursuant to Reorganization Plan No. 1, which was enacted by Congress in 1978, the President increased the responsibility of the EEOC. Under this reorganization plan, the Equal Pay Act and the Age Discrimination in Employment Act were transferred from the Labor Department to the EEOC; the enforcement responsibility for Title VII, the Equal Pay Act, the Age Discrimination in Employment Act and the Rehabilitation Act was transferred from the Civil Service Commission to the EEOC. And, lastly, pursuant to Executive Order 12067 the EEOC was given responsibility to serve as the lead agency in assuring the coordination of all Federal EEO issuances to assure consistency in Federal EEO policy.

B. Title VII's Application to the Federal Workforce

As I mentioned earlier, the 1972 Amendments to Title VII extended the coverage of Title VII to the Federal government. Therefore, Title VII's prohibitions against employment discrimination were extended to the Federal sector.

Generally, in practical terms, Title VII, and anti-discrimination laws in general, prohibit employers from making employment decisions based on one or more of the prohibited bases. These prohibitions apply not only to intentional conduct but also to unintentional conduct which has the effect of treating one group less favorably than another.

The enforcement of Title VII in the Federal sector has traditionally been handled differently than in the non-Federal sector. One major difference is that Federal agencies initially investigate themselves. On the one hand, one could argue that such a system of self investigation has the appearance of being unfair. However, unlike the private processing of EEO complaints, the Federal scheme gives the complaining party the right to a full hearing.

The Federal hearing is probably the phase of the case processing which has given some credibility to what otherwise would be viewed as a situation which at least has the appearance of being a conflict of interest. This hearing, which is stenographically recorded, permits the complaining party to be represented by counsel; permits the complaining party to supplement the record; and, probably most importantly, permits cross examinations of witnesses.

One criticism of the hearing had been that on the one hand it afforded the parties due process (since both parties are involved in the hearing); yet, on the other hand, it required the complaining party to hire an attorney at his or her own expense.

Steps have been taken to rectify this inequity. The EEOC recently approved for public comment proposed guidelines that will permit attorney's fees to be awarded to an aggrieved party who prevails on an EEO complaint.

The legal authority for these regulations is Title VII itself. Section 706(k) of Title VII provides:

"In any action or proceeding under this title the court, in its discretion, may allow the prevailing party other than the Commission or the United States, a reasonable attorneys fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person."

Although the statute states that a court can award attorneys fees, several courts have interpreted this provision to also permit a Federal agency to award fees.

The attorneys' fee issue, like the other discrimination issues, can be appealed to the EEOC. The appeals function was also transferred from the Civil Service Commission to the EEOC pursuant to Reorganization Plan No. 1. Of course, this independence from the respondent agency is necessary for public confidence in the Federal complaint process.

I am sure that you are aware of the pilot program which is currently underway. Under this program several agencies have agreed to allow the EEOC to process Federal cases from their inception. The theory is to test the processes that the EEOC uses in its non-Federal case processing system in order to see if they work in the Federal sector. Until May 31, 1980, we are accepting comments from members of the public with respect to the pilot program.

Another case processing issue which you at HEW are concerned with is what to do about your individual Title VI cases, especially in light of the fact that very often the same person who files a Title VI charge will also file a Title VII charge based on the same facts. It is my understanding that our two agencies are presently negotiating this issue. That very problem is a large part of the reason why the President issued Executive Order 12067, which requires government wide coordination of EEO issuances. Duplicative investigations may well not be cost effective; and therefore, requires the EEOC and HEW to closely scrutinize the current state of affairs without doing violence to the power of HEW to terminate contracts with discriminators.

C. Affirmative Action in the Federal Government

In the Federal sector, affirmative action is required by Section 717 of Title VII. Prior to Reorganization Plan No. 1 the Federal affirmative action requirements were enforced by the Civil Service Commission. Of course, this function was also transferred to the EEOC under the reorganization order.

There were numerous deficiencies in previous approaches to affirmative action planning in the Federal sector. For example, agencies were not given specific instructions for calculating goals and timetables; nor were they monitored closely on their achievement of self-imposed goals; little emphasis was given to affirmative recruitment and hiring of handicapped individuals; and agencies did not incorporate affirmative action objectives into existing management information systems.

Recently, the EEOC issued comprehensive instructions for agency affirmative action plans, which include handicapped individuals. Moreover, the standards and procedures applied to the Federal sector must be consistent with private sector concepts. Therefore, specific numerical goals and timetables are now required throughout the Federal sector. And, recently, elimination of sexual harassment was added as a component of Federal affirmative action planning.

Since the EEOC wanted to give Federal agencies an opportunity to get acquainted with our approach to affirmative action, the first year of the program is designated as a transition year. During the transition year, agencies are required to target only two job categories. These targets are geared to the civilian labor force in non-professional categories and to availability for professional job categories. However, in the event of severe underrepresentation, which is defined as over 50 percent, the rate must be doubled.

In personnel terminology, the EEOC's affirmative action approach is designed to create a systematic methodology; it is goal/data driven; it calls for the integration of EEO, personnel and management processes; and it is designated for top level responsibility and accountability.

D. The Federal Equal Opportunity Recruitment Program

With affirmative action a requirement in the Federal sector, I am sure that some of you question why a special emphasis program, like FEORP, was required. Of course, as you are aware, FEORP was mandated by the Civil Service Reform Act. The answer is that although affirmative action has been required in the Federal government since 1972, some problems still exist. For example, minorities and women are still, to a great extent, concentrated in lower grades and non-professional occupations. Some groups -- such as the American Indian -- are almost absent from the Federal workforce. There are wide fluctuations in the quality and vigor of agency recruitment and affirmative action efforts. There are still systemic, non-job related barriers to equal employment opportunity in the Federal sector. FEORP was designed to address these problems with an approach stressing affirmative recruitment, stressing the creation of rich applicant pools, stressing a progressive manner of determining underrepresentation, and stressing the use of innovative personnel and staffing techniques.

E. EEO in a Declining Economy

On the one hand, it seems odd to require affirmative action and then on the other to prohibit you from hiring. Surely, the present hiring freeze will have an effect on the number of people, minority as well as majority. But, surely, employer decisions will still be made. For example, a one for two hiring policy will affect the numbers but should not affect the percentage goal from being met. Moreover, there will continue to be promotions, raises, transfers, and adverse actions. Therefore, the freeze may affect the size of the pie, but it should not affect the comparative size of the slices.

F. Personnel Specialists and Diversity Objectives

What is it that the Federal sector is all about in the civil rights management category? Why are you here in Marriottsville, Maryland? What will your discussions and workshops achieve for you on a personal and professional level?

Civil rights and equal employment opportunity must be managed to be effective. Diversity in the Federal workforce will be achieved only when diversity is affirmatively set as a goal for the Federal workforce, and not before. The notions of diversity are theoretical notions. Pure diversity follows pure management and pure recognition of the dearth of diversity. Hence, the rules and regulations of equal employment opportunity are policies which mean nothing without corresponding actions to save America from a workforce without a diverse people.

Personnel policies and equal employment policies are now so closely related as to be inseparable. Personnel specialists who are ignorant of or insensitive to the broad concepts imbedded in EEO and civil rights management functions may do a great disservice to the overall management of the operation. I believe that personnel policies and equal employment policies have always been one category; as equals in policy development and implementation. Equal employment opportunity management is not subordinate to personnel development or management.

Hence, compliance review of the effectiveness of equal employment opportunities is as much the responsibility of personnel specialists as it is of equal employment specialists. In fact, personnel specialists are at the cutting edge of equal employment opportunity since it is the personnel specialist who initially writes or reviews a job description, or who advises management on what they may or may not do or should or should not do in promoting, demoting, firing or otherwise acting on employment decisions. Personnel specialists cannot put on blinders to accommodate employment conduct which cuts against civil rights policy.

As I recently stated to several Federal executives at the 1980 Federal Executive Institute Development Days:

"Whatever intellectual notions are spun concerning liberty and access to jobs in a multi-ethnic and racial workforce, it is the line manager who has the principle responsibility to assure that

this government attains diversity in every job category. It is at this level that concepts of liberty and diversity face their greatest challenge -- for it is at this level where personal judgments, perhaps, sameness of religious beliefs, sameness of gender and identity of race or national origin, along with extra governmental pressures from interest groups could influence a policy best referred to as the status quo. Such conduct could evoke the remedies of Title VII of the Civil Rights Act, bring denials of discrimination, countercharges of discrimination and industrial disruption.

"This is a period in American history to make equality work under rules set by neither worker who may compete for an available job. The rules of equality in the workforce are derived from the constitutional authority of the Congress in order to secure the liberty and to secure the domestic peace and tranquility of a nation. Affirmative action is a promise associated with liberty by a vast number of workers in the population. Affirmative action in a multi-ethnic, multi-racial workforce may present problems which the contemporary manager must convert into a solution dictated by the policy of this nation in the same fashion and with the same vigor that we are

trained and are expected to resolve other vital domestic issues.

"A multi-ethnic, multi-racial workforce has long been a part of this government. In this connection, I believe that in the 1980's the rule of reason must reign in managing a multi-ethnic, multi-racial workforce. The quest for what is reasonable, what is fair, just and equitable is the subject matter for the Federalist papers of the closing years of this century."

G. Conclusion: Recession and a Diverse Government

In closing, I would be remiss if I did not reemphasize the quest for diversity in the context of the economy. Let me be quite blunt and up front: it is in severe economic periods of our nation's history when concern about the underclass must be advocated in the most vocal tones. The nation and those who govern the nation -- such as important people like you -- must not allow diversity in the workforce to lapse into a recession. There can be no recession in the quest to diversify the Federal workforce without compromising the national values of "liberty and justice for all."

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