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OFCCP AND EEOC MERGER: NOT TOO LIKELY

As noted by DCI, the Department of Labor's Fiscal Year 2018 budget proposal outlined initiatives and recommendations for merging the Office of Federal Contract Compliance Programs (OFCCP) and Equal Employment Opportunity Commission (EEOC) by the end of FY2018. However, it is unlikely this merger will happen for a variety of practical and administrative reasons.

Many industry groups have opposed the merger, including NILG, the Institute for Workplace Equality, the U.S. Chamber of Commerce, and 73 different civil rights groups, including the National Women's Law Center, the NAACP, and AAAED. It is interesting to note both employer-represented groups and civil rights / employee-friendly groups coming together to oppose this merger.

Practically, both employee and employer friendly groups agree that the merger could compromise civil rights initiatives and inappropriately allocate government resources that help with the overall mission of civil rights and diversity. Further, employer groups, such as the Institute for Workplace Equality, note a variety of reasons as to why the merger would not be a good idea, including:

- The tremendous backlog of EEOC cases (over 73,000). The proposed budget and merger provide no additional staff or budgetary resources for EEOC to assume OFCCP's contractor compliance role in addition to this backlog.
- As noted by **NILG comments**, the focus of each agency is unique: OFCCP has been trained on contractor compliance and systemic discrimination issues, while EEOC's focus is on individual claims of discrimination. A merger without planning of staff's training would potentially allow for a loss of focus on critical issues enforced by OFCCP.
- Moving procurement and debarment authority from a cabinet level agency to a commission would be different.
- The potential for damages to be collected beyond back pay under EEOC is not well-received by employer groups.
- EEOC does not have expertise in contract compliance programs.

Beyond the practical reasons for an unlikely merger between EEOC and OFCCP, the merger of the two agencies cannot be accomplished without the approval of Congress. Section 503 and VEVRAA are legislative statutes and Congress has delegated authority for enforcement to the Department of Labor. Currently, EEOC is not under the Department of Labor. A simple reassignment via a budget is not possible; the laws would actually have to be amended by Congress. Getting a majority of the Senate to agree on this seems highly unlikely.

Therefore, as of today, we give this a slim chance of happening. Stay tuned.

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