

Congress of the United States
Washington, D.C. 20515

July 29, 2020

The Honorable Janet Dhillon
Chair
U.S. Equal Employment Opportunity Commission
131 M Street NE
Washington, DC 20507

Dear Chair Dhillon:

We write to express our strong opposition to the proposed rule titled “Official Time in Federal Sector Cases before the Commission, RIN No. 3046-AB00,” which has re-opened for a second comment period.

Under longstanding regulations, federal agencies are required to grant a “reasonable amount of official time” to all representatives when they assist coworkers in the process of preparing complaints of employment discrimination and responding to agency requests for information.¹ The proposed rule would create an exception, excluding from the official time requirement representatives who serve as an “officer, steward, or otherwise in an official capacity in a labor organization.”²

The proposed rule would undermine the rights of federal employees and harm the mission of the Equal Employment Opportunity Commission (EEOC) and the equal employment opportunity process.

First, the proposed rule would undermine the existing right of federal employees “to be accompanied, represented, and advised by a representative of complainant’s choice.”³

The right of representation has been a requirement that federal agencies are obligated to uphold. Under current regulations, if a discrimination complainant chooses a union representative who also works at her agency, then the agency must give both the complainant and her representative official time while they participate in the discrimination complaint process.

The effect of the proposed rule would be to subject the right of representation to a manager’s personnel decision: whether to grant annual leave to the complainant’s union representative. Subjecting a complainant’s representative to the discretion of a manager clearly undermines the right of representation that the current regulations require.

¹ 29 C.F.R. § 1614.605(b).

² 84 Fed. Reg. 67683 (Dec. 11, 2019) (online at www.federalregister.gov/d/2019-26545).

³ 29 C.F.R. § 1614.605(a).

Second, the proposed rule undermines the efficiency and effectiveness of the equal employment opportunity process.

Over the past 40 years, complainants have often chosen co-workers who serve in an official capacity with the union to represent them in the employment discrimination complaint process. These representatives are federal workers who serve with the union.

Through their repeated experience with the equal employment opportunity process, union representatives gain helpful knowledge. They understand the technical details of the complaint process – timelines, requirements and protocols. They share that knowledge with the complainant, for whom the complaint process is new and unfamiliar. As a result, complainants can make more effective use of the process that Congress authorized and the EEOC administers when they receive representation from union representatives.

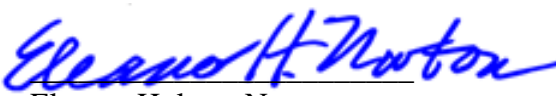
The proposed rule, because it would exclude union representatives from the official time requirement, would deny complainants the experience and expertise that union representatives can offer. The loss of their experience and expertise will negatively affect the equal employment opportunity process, which will become less efficient and effective as a result.

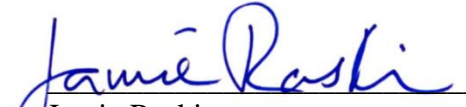
Third, the proposed rule undermines the mission of the EEOC. The proposed rule would increase both the number of complainants who lack adequate representation and the financial costs to complainants, who may feel it necessary to hire private counsel to replace the union representation that they would receive under current rules. Both consequences undermine the mission of the EEOC.

Finally, we find it highly suspect that the comment period was reopened. We, of course, support the opportunity for those interested or affected by proposed rules to be able to comment on them. But in this case, there was tremendous response, with over 1,800 comments. These comments were overwhelmingly opposed to the rule change. We are concerned that this second period has occurred for the purpose of soliciting comments in support of the rule change that did not materialize on their own the first time, while ignoring the 1,800 comments opposed to the rule.

Therefore, we, including one of us who previously served as the chair of the EEOC, respectfully request that the EEOC reject the proposed rule. Federal employees should continue to be able to choose the representative they prefer, and that choice should continue to include union representatives.

Sincerely,


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Jamie Raskin
Member of Congress

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Member of Congress

Rick Larsen
Member of Congress

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