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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Ex-EEOC Officials Say Agency DEI Guidance Disregards Law

By **Grace Elletson**

Law360 (April 3, 2025, 7:49 PM EDT) -- A group of Democratic former U.S. Equal Employment Opportunity Commission officials said Thursday that recent agency guidance on diversity, equity and inclusion programs lacks clarity and threatens to stifle efforts to make workplaces fairer.

The 10 ex-officials, including recently fired commissioners Charlotte A. Burrows and Jocleyn Samuels, penned to the legal community **an open letter** criticizing a document titled "What You Should Know About DEI-Related Discrimination at Work," which was issued by acting Chair Andrea Lucas last month.

The officials said the guidance didn't define what DEI initiatives are and could give employers the wrong idea that all DEI-related work could cause them legal trouble, making clear that the programming can be implemented in accordance with anti-bias law.

Lucas' guidance wrongly equates having an interest in promoting diversity with illegal preferences, the letter said.

"This document ignores important aspects of applicable law, as well as the reality that proactive efforts are still needed in America's workplaces to provide equal opportunity for all employees and applicants," the letter states. "To the extent the acting chair's document chills such efforts, we believe it does a grave disservice to employers, their employees, and America's economy."

The document, **published March 19** in tandem with the U.S. Department of Justice, was issued alongside a second document titled "What To Do If You Experience Discrimination Related to DEI at Work." The guidance aimed to clarify what is considered unlawful discrimination under workplace DEI-programs.

The documents explained how workers can file bias charges if they feel they have been discriminated against through DEI efforts and further clarified that DEI programs may violate the law if they take action based on an employee's race, sex or other protected characteristic through quotas or other identity-based workforce balancing.

The guidance also warns that affinity groups or employee resource groups — such as programming devoted to working parents, LGBTQ+ employees or female employees — can **also run afoul of the law** if they unlawfully segregate or exclude employees based upon a protected characteristic.

Wednesday's letter addressed only the "What You Should Know About DEI-Related Discrimination at Work" document.

While the former officials said the guidance warns against providing DEI-related training that could prompt harassment, it is rare that a DEI training could create a hostile work environment, which hinges on whether a worker can show he or she faced severe or pervasive conduct based upon a legally protected identity-marker. Courts have repeatedly found an employee's general discomfort with a DEI-related training does not amount to harassment, the ex-officials added.

The guidance would have been more helpful, the former officials said, if it had explained that the trainings should not include physical contact or repeated negative remarks about specific groups of people.

The former officials also said that the guidance may prompt employers to shutter affinity groups or be reluctant to support their construction even though these groups can be organized in accordance with anti-bias law. For example, if a group is created to support women in the workplace, employers should ensure that all workers are eligible to join regardless of their gender if all participants agree to a certain set of objectives.

"It is important for employers to have guidance on a positive forward-looking framework for lawful ways to increase diversity and remove barriers to equal employment opportunity in their workplaces," the letter states. "Unfortunately, the acting chair's document is inadequate to that task."

The letter is signed by former Commissioners Charlotte A. Burrows, Jocleyn Samuels, Chai R. Feldblum, Stuart J. Ishimaru, Christine Griffin and Jenny Yang; ex-general counsels Karla Gilbride and P. David Lopez; and former legal counsels Peggy R. Mastroianni and Ellen Vargyas. All the officials were either appointed by Democratic presidents or occupied Democratic seats on the commission, except legal counsels, which are appointed by agency chairs.

The EEOC and Lucas did not immediately respond to a request for comment. A representative of the former officials declined to offer an additional comment.

--Additional reporting by Patrick Hoff and Vin Gurrieri. Editing by Nick Petruncio.
