

TO: NAPBS
FROM: Montserrat Miller and Max Currier
DATE: September 16, 2014
RE: Pending Bills Related to the EEOC

H.R. 4959, H.R. 5422 and H.R. 5423 – EEOC Legislation

On June 25th, Rep. Richard Hudson (R-NC) introduced H.R. 4959, the “*EEOC Transparency and Accountability Act*,” which would prohibit the Equal Employment Opportunity Commission (EEOC) from bringing a suit unless it has exhausted informal conciliation, and certified such exhaustion, subject to judicial review. When the EEOC does file a suit, the bill would require the EEOC to make public certain information about any cause of action, including:

- Instances in which the EEOC was ordered to pay any fees and costs;
- Cases in which a sanction was imposed on the EEOC, the total number of charges of an alleged unlawful employment practice filed under specific provisions of the Civil Rights Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, and the Fair Labor Standards Act; and
- Cases of systemic discrimination, including pattern or practice discrimination.

The bill would also require the EEOC’s Inspector General to notify Congress within 14 days when a court has ordered sanctions against the EEOC, and then submit a further report after 90 days detailing a thorough investigation of the case. And, finally, the bill would require the EEOC to report to Congress within 60 days of a court decision detailing steps that the EEOC is taking to reduce instances in which it is subject to court-ordered sanctions. In a press release in June, Hudson stated that “the EEOC has overstepped its bounds by levying numerous cases found to be frivolous, groundless, and baseless that has caused undue burdens on numerous businesses and industries.”

The bill’s four cosponsors are all Republicans—Hastings, Kline, Rokita and Walberg. The bill is pending in the House Education and the Workforce Committee.

On September 9th, Rep. Tim Walberg (R-MI) introduced [H.R. 5422](#), the “*Litigation Oversight Act*,” which would amend the Civil Rights Act to require, “the Commission [to] approve or disapprove by majority vote whether the Commission shall commence or intervene in litigation involving multiple plaintiffs, or an allegation of systemic discrimination or a pattern or practice of discrimination.” The bill would allow for a member of the Commission to require the whole Commission to approve or disapprove by majority vote whether to commence or intervene in any litigation, an authority neither the Commission nor a member of the Commission may delegate to any other person. The bill would further require that votes on commencing or intervening in litigation would be posted publicly not later than 30 days after such action.

The bill’s two cosponsors are Republicans—Hudson and Rokita. The bill is pending in the House Education and the Workforce Committee.

Also on September 9th, Walberg introduced [H.R. 5423](#), the “*Certainty in Enforcement Act*,” which would amend section 703 of the Civil Rights Act related to unlawful employment practices to address the issue of pre-emption of state and local law. It would add the following language to the Civil Rights Act, “[n]otwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer, labor organization, or employment agency, or for a joint labor management committee controlling apprenticeships or other training or retraining opportunities, to engage in an employment practice that is required by Federal, State, or local law, in an area such as, but not limited to, health care, childcare, in-home services, policing, security, education, finance, employee benefits, and fiduciary duties.”

Hudson introduced this bill on the same day as the prior bill, H.R. 5422, above, but neither included this bill in the press release for the earlier bill nor issued a separate press release for this bill.

The bill’s two cosponsors are Republicans—Hudson and Rokita. The bill is pending in the House Education and the Workforce Committee.

Next Scheduled Action

Subcommittee hearing by the House Education and the Workforce Committee, Workforce Protections Subcommittee, on all three bills at 10 a.m. on September 17, 2014.

Witness List for Tomorrow’s Hearing

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Ms. Lynn A. Clements
Director, Regulatory Affairs
Berkshire Associates, Inc.
Columbia, MD

Mr. Eric S. Dreiband
Partner
Jones Day
Washington, D.C.

Mr. Michael L. Foreman
Director, Civil Rights Appellate Clinic
The Pennsylvania State University, Dickinson School of Law
State College, PA

Mr. William F. Lloyd
General Counsel
Deloitte LLP
New York, NY

Clements, Dreiband and Lloyd are all Republican witnesses. Lloyd will talk about the EEOC's investigation of Deloitte on age discrimination. Dreiband was a former EEOC General Counsel. Clements was previously at the EEOC. Professor Foreman is the Democratic witness.