

Hon. Janet Dhillon
U.S. Equal Employment Opportunity Commission
131 M Street, NE
Washington, DC 20507
Via electronic service

December 14, 2020

Re: Request to Withdraw Proposed Updated Compliance Manual on Religious Discrimination, RIN 3046-ZA01

Dear Chair Janet Dhillon,

We, the undersigned 51 organizations, represent a diverse group of stakeholders and collectively urge the Equal Employment Opportunity Commission (EEOC) to withdraw, or in the alternative, suspend action on the proposed November 2020 update of the Compliance Manual Section on Religious Discrimination (“Compliance Manual”). The withdrawal or suspension of action on the EEOC’s Compliance Manual is in the public’s interest and would allow for additional stakeholder discussions including public hearings in drafting neutral, balanced guidance that more accurately reflects and addresses the practical issues faced by employees seeking EEOC intervention.

On November 17, 2020, the EEOC published a notice of availability for the draft Compliance Manual and opened a thirty-day public comment period, which closes on December 17, 2020. While not legally binding, this Compliance Manual provides guidance to employees, employers, and EEOC investigators regarding the application of anti-discrimination law, and may be viewed as carrying “the implicit threat of enforcement action if the regulated public does not comply.”¹ Thus, the public relies heavily on the EEOC’s analysis to understand what may constitute discriminatory workplace behavior and the relevant causes of action.

It has been 12 years since the EEOC collaborated with stakeholder organizations to review the complex subject matter involved and update the Compliance Manual. That collaborative model allowed key stakeholders of diverse perspectives to provide culturally competent input regarding typical workplace discrimination scenarios suffered by their respective communities and shed light on practical applications of the law regarding religious discrimination. The lack of stakeholder consultation and public hearings with testimony from relevant stakeholders on religious discrimination demonstrates that the EEOC is not truly committed to ensuring that religious discrimination claims are given the respect that they truly deserve. The fact that this

¹ *Promoting the Rule of Law Through Improved Agency Guidance Documents*, Executive Office of the President, (Oct. 9, 2019), available at <https://www.federalregister.gov/documents/2019/10/15/2019-22623/promoting-the-rule-of-law-through-improved-agency-guidance-documents..>

new draft is now being circulated for public comment without such prior collaboration should alone warrant withdrawal of the draft, suspension of its implementation, or at a minimum a significant extension of the comment period.

We are deeply concerned and alarmed that the guidance was created in a non-inclusive manner prior to the Commission ever approving the proposal for notice and comment. To make matters worse some of the Commissioners were not given adequate time to review the draft Compliance Manual prior to soliciting public comment. Based on these deficiencies the EEOC should withdraw its draft Compliance Manual or suspend the comment period. Additionally, the timing of the publication of the draft Compliance Manual in this accelerated manner after meeting with only a select and seemingly non-diverse group of organizations, during a global pandemic in the midst of the holiday season for various stakeholder groups, will continue to exclude many stakeholders from providing comments within the thirty-day window, ultimately leading to a lack of neutrality and balance that any EEOC guidance manuals require. As such, if the EEOC should decide to proceed with obtaining public comment it must provide additional time for the public to weigh in.

The public and all stakeholders must be given a fair opportunity to provide meaningful comments in accordance with the spirit by which EO 13891 was enacted to ensure that the public has “fair notice of their obligations.”² The EEOC should remain committed to drafting a Compliance Manual that abides by the Procedural Regulations for Issuing Guidance published on November 2, 2020, including the provision of clear procedures and opportunity for public comment independent of E.O. 13891. Absent these measures, the Compliance Manual will remain a document that ultimately harms women, people of color, LGBTQ individuals, and religious minorities, among others whose rights should be protected under Title VII of the Civil Rights Act.³

For the above reasons, we the undersigned strongly urge the EEOC to withdraw, or in the alternative suspend all action on the November 2020 update of the Compliance Manual Section on Religious Discrimination, and request that the EEOC hold public hearings on this matter while engaging key stakeholders in robust discussions geared towards producing guidance that is an accurate reflection of both individual employee interests and the protections provided for employers under Title VII, in a balanced, neutral manner that addresses the needs of vulnerable communities.

Very Respectfully,

The Sikh Coalition
The Leadership Conference on Civil and Human Rights
Human Rights Campaign
Proteus Fund/Rights, Faith & Democracy Collaborative

² See *Id.*

³ See 42 U.S.C. §§ 2000e.

A Better Balance
African American Ministers In Action
American Atheists
Americans United for Separation of Church & State
Bazelon Center for Mental Health Law
Center for American Progress
Center for Constitutional Rights
Council on American-Islamic Relations (CAIR)
Council on American-Islamic Relations, New York (CAIR-NY)
Emgage Action
Equality California
Equality North Carolina
Faithful America
Futures Without Violence
Georgia Equality
GLSEN
Institute for Women's Policy Research
Interfaith Alliance
Interfaith Voices for Reproductive Justice (IVRJ)
Islamic Networks Group (ING)
Jewish Women International
Lighthouse Foundation
Mazzone Center
Movement Advancement Project
NAACP
National Council of Jewish Women
National Employment Law Project
National Employment Lawyers Association
National Equality Action Team (NEAT)
National Immigration Law Center
National LGBT Bar Association
National LGBTQ Task Force
National Women's Law Center
NETWORK Lobby for Catholic Social Justice
NM Religious Coalition for Reproductive Choice
One Colorado
Reconstructing Judaism
Religious Coalition for Reproductive Choice
Reproaction
Sikh American Legal Defense and Education Fund (SALDEF)
Silver State Equality-Nevada
South Asian Americans Leading Together (SAALT)
The Trevor Project
The Women's Law Center of Maryland

Union for Reform Judaism
Women Employed
Women's Law Project

cc: Vice Chair Keith E. Sonderling, Equal Employment Opportunity Commission;
Commissioner Charlotte A. Burrows, Equal Employment Opportunity Commission;
Commissioner Jocelyn Samuels, Equal Employment Opportunity Commission;
Commissioner Andrea R. Lucas, Equal Employment Opportunity Commission;
Chair Lamar Alexander, Senate Committee on Health, Education, Labor and Pension;
Ranking Member Patty Murray, Senate Committee on Health, Education, Labor and Pension;
Chair Bobby Scott, House Committee on Education on Labor;
Ranking Member Virginia Foxx, House Committee on Education on Labor;
Chair, Ron Johnson, Senate Committee on Homeland Security and Governmental Affairs;
Ranking Member Gary Peters, Senate Committee on Homeland Security and Governmental Affairs;
Chair Carolyn Maloney, House Committee on Oversight and Reform;
Ranking Member James Corner, House Committee on Oversight and Reform;
Chair Jerry Nadler, House Committee on Judiciary;
Ranking Member Jim Jordan, House Committee on Judiciary;
Chair Lindsey Graham, Senate Committee on the Judiciary;
Ranking Member Dianne Feinstein, Senate Committee on the Judiciary