

To: Governor's Task Force on Sexual Harassment and Discrimination
From: Ann McGinley, Member
Re: State of Nevada Executive Branch Sexual Harassment and Discrimination Policy
Date: 4/24/19

I. Background of Sexual Harassment Law (Sexual Harassment is Sex Discrimination)

Title VII of the 1964 Civil Rights Act states:

It shall be an unlawful employment practice for an employer—

To fail or refuse to hire or to discharge any individual, *or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment* because of such individual's ... *sex*.

Nev. Rev. Stat. 613.330¹ states:

[I]t is an unlawful employment practice for an employer

To fail or refuse to hire or to discharge any person, *or otherwise to discriminate against any person with respect to the person's compensation, terms, conditions or privileges of employment*, because of his or her ... *sex, sexual orientation, gender identity or expression*

Anti-Retaliation Provisions

Both federal and state law prohibit retaliation for reporting violations including sexual harassment and other discriminatory conduct.

Relevant Differences Between Nevada and Federal Law

Nevada law explicitly bans discrimination based on sexual orientation, gender identity, and gender expression. While Title VII does not explicitly ban discrimination based on sexual orientation, gender identity, and gender expression, recently, the Equal Employment Opportunity Commission and a number of federal circuit courts of appeal have held that a ban on sex discrimination in Title VII prohibits discrimination based on sexual orientation and transgender status. There is, however, a split in the circuits on this issue, and the U.S. Supreme Court recently granted *certiorari* on three cases that deal with these issues. Arguments in these cases will be heard in the fall, with opinions likely published in spring 2020. Moreover, the U.S. Supreme Court has already held that it is illegal to discriminate based on a person's failure to comply to (or overcompliance with) gender stereotypes. This holding explicitly forbids discrimination based on gender expression (whether one is too masculine or too feminine, for

¹ Throughout, I focus more heavily on the law under Title VII of the 1964 Civil Rights Act because there is very little case law interpreting N.R.S. 613.330. Because Nevada law has, when interpreted by the courts, been consistently interpreted in accordance with Title VII, an interpretation of Title VII is likely to be the same under Nevada Law. Where there is a difference between the two statutes, I make it clear in the memo.

example). See *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) (holding that failing to promote a woman to the partnership because she was too masculine was illegal sex discrimination under Title VII).

Similarities: Nevada and Federal Law

Neither federal nor state law explicitly prohibits sexual harassment. The law prohibits *discrimination* that occurs because of sex, and standards concerning the illegality of sexual harassment have developed through court interpretations of the law. See, e.g. *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986); *Harris v. Forklift Systems, Inc.*, 510 U.S. 17 (1993). The theory is that persons who suffer harassment based on their sex are subject to discrimination in their “terms, privileges or conditions of employment.” If sufficiently severe or pervasive, this harassment “alters the terms or conditions of employment.”²

The bottom line: harassment that occurs because of sex (or gender) is illegal. It is a type of sex discrimination that imposes undue burdens on individual applicants or employees because of their sex or gender.³ The behaviors that are illegal do *not* have to be sexual in nature.⁴ Nor does the harasser’s motive have to be sexual attraction. *The behavior can be sexual, gendered or sex- and gender- neutral.* In other words, one of the problems with “sexual harassment” policies is that they define illegal behavior too narrowly.⁵ They emphasize sexual behavior but do not discuss sex- or gender-based harassment that is not sexual in nature or motive. Any behavior that harasses an employee because of that employee’s sex or gender is illegal if it meets the standards of Title VII and NRS (severe or pervasive). Thus, while it is illegal to condition employment or to make employment decisions based on sexual behavior or the lack of it, sex- or gender-based harassment is also illegal if the behavior is sufficiently severe or pervasive to alter the terms or conditions of an individual’s employment.

² See *Meritor*, 477 U.S. at . Courts have also held that harassment based on other protected characteristics such as race, national origin, age, and disability is also illegal.

³ Throughout, I use the term “sex” to mean biological sex and “gender” to mean the social construction of sex, in other words, society’s norms and expectations of how an individual of a particular biological sex should act and dress.

⁴ See Vicki Schultz, *Reconceptualizing Sexual Harassment*, Yale L. J. (1998); Vicki Schultz, *Reconceptualizing Sexual Harassment, Again*, Yale L. J. Forum (June 2018), available at <https://www.yalelawjournal.org/forum/reconceptualizing-sexual-harassment-again>; Vicki Schultz, *Open Statement on Sexual Harassment from Employment Discrimination Law Scholars*, Stanford L. Rev. Online (June 2018), available at <https://www.stanfordlawreview.org/online/open-statement-on-sexual-harassment-from-employment-discrimination-law-scholars/>.

⁵ There is another issue with employer policies. Not only do they define illegal sex- or gender-based harassment too narrowly, but they also define harassment in a way that is much broader than the federal courts do. As noted in the text of this memo, the courts require a showing that the behavior creating a hostile working environment be severe or pervasive. This standard is rarely met by an individual act. But employers, within their rights, define “sexual harassment” as including any individual act, which, when combined with other acts, would likely create a hostile working environment. Employers have a right to ban behaviors that in themselves may not be sufficient to create a hostile work environment, and many desire to assure that their employee behavior falls far short of the legal line. By the same token, if employers are overzealous in defining impermissible behavior, they create the risk that employees will consider “sexual harassment” unimportant and those who report it overzealous. These attitudes can undermine enforcement.

Terminology

The term “sexual harassment” is misleading because it appears to require sexual behavior and/or sexual motive of the harasser(s). Because the law prohibits harassment that occurs because of sex (and gender), the term “sex- and gender-based harassment” is more accurate. This latter term includes not only sexual behavior and motive, but also harassment that occurs because of an individual’s sex or gender, whether the content be sexual, sex- or gender-based, or sex- or gender-neutral.

What does “because of sex” mean?

Because “sexual harassment” is a type of sex discrimination, one must prove that the harassing behavior occurred because of the sex (or gender) of the victim or other individual. This includes biological sex, but it also includes an individual’s failure to adhere to expected gender-based norms or because the individual expresses gender in an exaggerated manner. *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989). For example, discriminating against (including harassing) a woman because she is too masculine or a man because he is too feminine is illegal unless the employer can prove that being masculine or feminine is a bona fide occupational qualification. (BFOQ). The BFOQ defense is *extremely rare*. It is limited to jobs where the sex-based characteristic is essential (such as a wet nurse).

Same-sex harassment

Harassment that occurs because of sex, whether the perpetrators and victims are of the same or different sex or gender is illegal. *Oncale v. Sundowner Offshore Serv., Inc.*, 523 U.S. 75 (1998). Moreover, *Oncale* makes clear that the motivation for illegal harassment does not have to be sexual desire. It can also be hostility toward one group or an interest in proving one’s own masculinity or femininity by degrading another’s gender expression.⁶ For example, *Oncale*, read together with *Price Waterhouse*, means that it is illegal for a man or group of men to harass another man because of his failure to conform to societal expectations of masculinity if the harassment rises to the level required by the statute (severe or pervasive). This means that behaviors that are characterized by social scientists as bullying and hazing can violate Title VII and Nevada law if they occur on the basis of the victim’s sex.⁷

When is an employer liable?

The standard depends on who the harasser is. See *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 772 (1998); *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998).

Owners/Alter-Egos of Company

A company is strictly vicariously liable for the harassment **by the owner or director** of a company. *Ellerth*; *Faragher*.

⁶ For elaboration, see ANN C. MCGINLEY, *MASCULINITY AT WORK: EMPLOYMENT DISCRIMINATION THROUGH A DIFFERENT LENS* (NYU Press, 2016).

⁷ For more explanation, see Ann C. McGinley, *Bullying and Harassment Because of Sex*, and my book

Supervisors within the chain of command

Employers are strictly vicariously liable under federal law for the harassing behavior of **supervisors** if a *tangible employment action* occurs as a result of the harassment (failure to hire, firing, failure to promote, demotion, etc.).

If a tangible employment action does *not* occur, employers are strictly liable for harassing behavior by supervisors if the employer fails to prove an affirmative defense:

- a. That the employer used reasonable methods to prevent and promptly correct harassing behavior; AND
- b. That the individual alleging harassment unreasonably failed to take advantage of the employer's corrective opportunities, or otherwise failed to avoid the harm. *Ellerth; Faragher*.

Co-workers, Customers, Clients, and Other Third Parties

If the harassers are co-workers, customers, clients, or other third parties, the employer is liable for the harassment if it *knew or should have known* about the harassment and failed to correct it. (negligence standard). *Ellerth; Faragher*.

Employer Liability under State Tort Law

Employers may also be liable under state tort law to their employees for the *employer's own actions* such as negligent supervision, negligent hiring, intentional infliction of emotional distress, defamation, etc.

Are individual harassing employees liable?

Individual employees are not liable for sex discrimination, including sex- or gender-based harassment under federal and state anti-discrimination law.

Individual employees who harass may, however, be liable to the victims under state tort law. For example, individual harassers may be liable for assault, battery, defamation, false imprisonment, etc.

Suggested Policy Definitions and Examples (included in my redline of the current policy)

Behavior that is illegal sex- or gender-based harassment includes:

1. Making submission to unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature either explicitly or implicitly a term or condition of a person's employment; or

2. Making submission to or the rejection of such conduct described in (1) by a person a basis of employment decisions affecting that person; or
3. Engaging in unwelcome harassing verbal or physical behavior that occurs because of sex of individual(s) and has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating or offensive work environment where
 - a. Harassing behavior is of a sexual nature (E.g. A supervisor rubs his hands on his secretary's thigh repeatedly, and she tells him to stop, but he does not stop; coworkers at a lawyer's office pass rumors about Dan, a male paralegal, that he "is AC/DC," "walks swishy," and "enjoys kinky sex");
 - b. Harassing behavior is not sexual in nature, but it is related to sex or gender of the victim or others (E.g. Coworkers yell at female employees who are truck drivers that female employees are "good for nothing," make jokes about how "ugly they are," and say in employee meetings that, "Women can't drive trucks. I don't know why you are here. You are taking a man's place."); or
 - c. Harassing behavior is sex- and gender-neutral in content but occurs because of the victim's or others' sex or gender (E.g. A supervisor constantly yells at his female employees, not mentioning anything about their sex or gender, but calling them "stupid" and "worth nothing." He does not yell at his male employees nearly as much or in the same way); or
 - d. Any combination of types of behaviors described in 3.a through c.

II. History and Effectiveness of Policies, Trainings, Investigations: Recommendations for More Effective Policies, etc.

Employers have an incentive to create policies and to train their employees about sex- or gender-based harassment because of the affirmative defense under *Ellerth* and *Faragher*. Most courts have concluded that a good policy, combined with trainings and a prompt investigation as well as prompt remedial action is sufficient to make out the first requirement of the affirmative defense.

As to the second element of the affirmative defense, many courts conclude that an employee who is a victim of sex- or gender-based harassment does not act reasonably if the employee fails to report the harassment to the employer in accordance with the policy.

Unfortunately, research demonstrates that a very large percentage of harassment victims do not report harassment out of fear of retaliation. Most courts do not consider this fear to be reasonable under the second element. Nonetheless, in a recent third circuit case, the court overturned the district court's grant of summary judgment to the defendant. Even though the plaintiff failed to report the harassment, the court of appeals held that a jury could conclude that the plaintiff's failure to report was reasonable. See *Minarsky v. Susquehanna Cty.*, 895 F.3d 303 (3d. Cir. 2018).

Moreover, while it is clear that policies and trainings on sex- and gender-based harassment operate to shield employers from liability because employers often can prove the affirmative

defense, *research does not support a conclusion that sex- and gender-based harassment policies and trainings actually work to prevent harassment*. See Susan Bisom-Rapp, *Sex Harassment Training Must Change: The Case for Legal Incentives for Transformative Education and Prevention*, STANFORD L. REV. ONLINE (June 2018), available at <https://www.stanfordlawreview.org/online/sex-harassment-training-must-change-the-case-for-legal-incentives-for-transformative-education-and-prevention/>;

LAUREN EDELMAN, WORKING LAW: COURTS, CORPORATIONS, AND SYMBOLIC CIVIL RIGHTS (2016); CHAI R. FELDBLUM & VICTORIA A. LIPNIK, U.S. EQUAL EMP'T OPPORTUNITY COMM'N, REPORT OF THE CO-CHAIRS OF THE SELECT TASK FORCE ON THE STUDY OF HARASSMENT IN THE WORKPLACE (2016), available at https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf.

The EEOC Task Force Recommendations⁸

The Equal Employment Opportunity Commission (“EEOC”) Select Task Force on the Study of Harassment in the Workplace, a bipartisan group that engaged in a comprehensive literature study, concluded that although standalone trainings are not proven effective, employers should have policies and trainings along with an emphasis on leadership and accountability in a holistic approach.⁹ The Report concludes that without leadership that is obviously committed to eliminating discrimination and harassment from the workforce, these behaviors will continue to occur.¹⁰ Leaders must demonstrate a “sense of urgency” about preventing harassment.¹¹ They can do so by “taking a visible role in stating the importance of having a diverse and inclusive workplace that is free of harassment, articulating clearly the specific behaviors that will not be acceptable in the workplace, setting the foundation for employees throughout the organization to make change (if change is needed), and, once an organizational culture is achieved that reflects the values of the leadership, commit to ensuring that the culture is maintained.”¹² Leadership must assess whether the workplace has risk factors for harassment, take steps to address or eliminate them, and conduct climate surveys of employees before and after a “holistic approach to prevention” is in place.¹³ Leadership should also have effective policies and procedures and effective trainings.¹⁴ Finally, leadership must devote time and money to the effort, and leaders with responsibility to eliminate harassment must have enough power and authority to make it happen.¹⁵

A second necessity is accountability. This requires an effective anti-harassment program with an effective, safe reporting system, a thorough system of investigation, and proportionate

⁸ The description and analysis of the EEOC Task Force conclusions that follows comes in large part from Ann C. McGinley, *Sex- and Gender-Based Harassment in the Gaming Industry*, __ UNLV GAMING L. J. __ (forthcoming 2019).

⁹ CHAI R. FELDBLUM & VICTORIA A. LIPNIK, U.S. EQUAL EMP'T OPPORTUNITY COMM'N, REPORT OF THE CO-CHAIRS OF THE SELECT TASK FORCE ON THE STUDY OF HARASSMENT IN THE WORKPLACE (2016) [hereinafter EEOC TASK FORCE REPORT].

¹⁰ *Id.* at 31-34.

¹¹ *Id.* at 32.

¹² *Id.* at 31-34.

¹³ *Id.* at 33.

¹⁴ *Id.*

¹⁵ *Id.* at 33-4.

corrective actions.¹⁶ Individuals who have engaged in harassment must be held accountable for their actions with sanctions that are in proportion to the behavior.¹⁷ Mid-level managers and front-line supervisors must be held responsible for monitoring and stopping harassment of those under them—if they do not investigate thoroughly and impose proportional sanctions, they should be punished.¹⁸ And, leadership must incentivize and reward mid-level managers and front-line supervisors for promptly reporting, investigating, and dealing with complaints.¹⁹ In fact, it is ordinarily a good sign, at least initially, if harassment complaints rise in a particular division.²⁰ This often means that the trainings and policies are working, and managers and supervisors are taking complaints seriously and not suppressing them.²¹

The EEOC Task Force acknowledged the lack of empirical evidence supporting standalone trainings and policies, but the Task Force noted that in absence of such empirical proof, there is at least some agreement that certain behaviors appear to work.²² While we wait for useful research, employers must take a number of measures to prevent and respond to harassment.

Qualities of policies and procedures that the task force recommends include:

- (1) A clear explanation of prohibited conduct, including examples;
- (2) Assurance that participants will be protected from retaliation;
- (3) A complaint process with multiple, accessible avenues of complaint;²³
- (4) Assurance of confidentiality to complainants to the extent possible;
- (5) A prompt, thorough, and impartial investigation; and
- (6) Assurance of immediate and proportionate corrective action when the employer finds that harassment has occurred, and an appropriate response to behavior that is not yet legally-actionable “harassment” but that could become illegal if not corrected.²⁴

The Task Force also recommends that employer policies cover all illegal forms of harassment (based on race, color, disability, age, sex, gender, religion, etc.).²⁵ It advises frequent in-person compliance trainings that are conducted by qualified, live, interactive trainers, and that the training be frequently evaluated.²⁶ Training should be for all employees with descriptions of conduct that, if left unchecked, would create a hostile working environment.²⁷ The trainers should also explain the consequences of engaging in these behaviors and that corrective action

¹⁶ *Id.* at 34.

¹⁷ *Id.*

¹⁸ *Id.* at 35.

¹⁹ *Id.* at 34-5.

²⁰ *Id.* at 36.

²¹ *Id.* at 36.

²² *Id.*

²³ The task force emphasized the importance of a “safe” reporting system that is communicated to employees. The report notes that a significant body of research establishes the concerns that employees have about reporting harassment in their workplaces. *See id.* at 41.

²⁴ *Id.* at 38.

²⁵ *Id.* at 43.

²⁶ *Id.* at 52-3.

²⁷ *Id.* at 50-3.

will be proportionate to the offense.²⁸ The Task Force recommends that middle-management and first-line supervisors receive additional compliance training that explains their accountability and the employers' expectations of the concrete actions that supervisors should take to prevent and/or stop and remedy harassment.²⁹ This will include instructions on how to deal with particular behaviors, how to report them up the line, and the affirmative duties of line managers even in absence of a complaint.³⁰ This training should be tailored to the particular workplace and industry.³¹

Besides regular compliance training, and while recognizing the paucity of research supporting their effectiveness, the Task Force recommends workplace civility and bystander intervention training, tailored to the workplace, which have proved successful in some organizations.³²

The Task Force also notes the influence of social media on the workplace environment and the employers' responsibilities in assuring that a toxic environment does not exist as a result of social media interactions.³³ It also explains the dangers and inappropriateness of "zero tolerance" policies.³⁴ A "zero tolerance" policy implies that all will be treated the same, no matter the gravity or lack thereof of the offense, but "[a]ccountability requires that discipline for harassment be proportionate to the offensiveness of the conduct."³⁵ For example, the first telling of a sexist joke may merit a warning of the offender, whereas conditioning a subordinate's promotion on the provision of sexual favors would likely merit discharge of the offender.³⁶

The Federal Courts' Recommendations: Informal Mechanisms; Civility; Bystanders

In response to the allegations of judicial misconduct and sex- and gender-based harassment of employees, law clerks, and interns, Chief Justice Roberts established a working group to study workplace misconduct in the judiciary. The Working Group produced an extensive report that analyzed weak points in the recognition, reporting, and resolution of sex- and gender-based harassment. *See Report of the Federal Judiciary Workplace Conduct Working Group to the Judicial Conference of the United States*, (June 1, 2018), available at https://www.uscourts.gov/sites/default/files/workplace_conduct_working_group_final_report_0.pdf. The Working Group first assessed the problems in the federal judiciary workplaces. It recognized that although there were a number of policies and rules in existence a key concern was the lack of reporting. They studied the workplace and solicited information from employees in order to understand why employees were not reporting. Besides finding that some of the rules, policies, and reporting mechanisms were not effective, the Working Group

²⁸ *Id.* at 50.

²⁹ *Id.* at 51.

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 54-7.

³³ *Id.* at 39-40. For an examination of the importance of social media and the National Labor Relations Act, *see generally* Ann C. McGinley & Ryan P. McGinley-Stempel, *Beyond the Water Cooler: Speech and the Workplace in an Era of Social Media*, 30 HOFSTRA LAB. & EMP. L. J. 75 (2012).

³⁴ EEOC TASK FORCE REPORT, *supra* note 9, at 40.

³⁵ *Id.*

³⁶ *Id.*

found that it is necessary to adopt *informal mechanisms* to resolve problems that would be independent of Human Resources and management.

Informal Mechanisms

The Working Group stated:

[T]he Working Group found that [formal complaint procedures] are not well suited to address the myriad of situations that call for less formal measures. For example, an employee may be uncomfortable with a well-meaning supervisor's familiarity or avuncular physical contact and seek advice on how to express discomfort. Or an employee may encounter crude or boorish behavior from a coworker and not want to file a formal complaint, but may want a supervisor to step in and curtail the conduct. Or an employee may encounter sexual advances from a judge and seek confidential advice on what support is available if a formal complaint is filed, such as placement in another chambers. Or a former law clerk, now in private practice, may seek advice on application of the Judiciary's confidentiality requirements in deciding whether to file a misconduct claim. *Id.* at 36.

In order to resolve problems that employees did not want to bring through the formal complaint process, the Working Group recommended the creation of new positions in every circuit for counselors/advisors who would give employees information concerning their workplace rights, respond to questions, and if requested, informally resolve problems with supervisors or other employees. This position would be independent of local human resources and management influence, and the holder of the position would have sufficient status and rank to be able to resolve conflicts. *Id.* at 37-39. The Ninth Circuit Court of Appeals has recently created the office of the Director of Workplace Relations to oversee workplace relations and training programs in sexual harassment and discrimination. *Id.* at 37.

Civility Training/Bystander Reporting

Other notable conclusions of the Working Group seconded findings of the EEOC Task Force. These conclusions were that all employees (including judges) should receive training on *general civility* and *bystander reporting*.

III. Analysis and Conclusions

The State of Nevada Executive Branch Sexual Harassment and Discrimination Policy, revised 4/18/18, does not reflect current social science and legal research on sexual harassment and should be updated to reflect the most recent social science and legal research. Attached to this memo is a (proposed) redline version of suggested changes to portions of the policy. Obviously, this is just one member's suggestions, and my purpose is to encourage focused discussion.

Revising and updating the policy so it reflects current law, however, is a relatively easy task. The more difficult task is to create trainings, reporting mechanisms, and investigation procedures that work *not only to protect the State as an employer but also to protect employees from sex- and gender-based harassment*. Well-meaning employers are struggling with this task because of the dearth of research. But we do have the EEOC Task Force recommendations and the recommendations of the Federal Courts' Working Group. There are also social science studies that recommend that sexual harassment trainings and policies should be tailored to the individual workplace (or at least the industry).

Different Possible Options

The ideal situation would be to have access to particular workplaces to do evidence-based research through interviews and focus groups of employees, the creation of training models, and then the testing of those models for efficacy. Such a project could occur within one or more designated state agencies (as pilot programs) and would likely take a number of years. Such work could be performed by post-doctoral fellows and law students who are members of the Workplace Law Program at UNLV Boyd and supervised by Professor Ruben Garcia and me (co-directors of the program). The cost of this project would have to be allocated by the legislature, and I don't know if it is too late to even consider this type of approach for the upcoming two years. (I am also hesitant to raise this possibility because of my involvement at the Workplace Law Program, but I do believe that the best way to resolve these issues is to conduct industry-based social science research).

In the absence of a social science/legal research project with evidence-based results, there are other potential options. One would be to try to adopt the recommendations of the EEOC Task Force and the Federal Courts' Working Group (discussed above). Instead of true social science research, we could approach the issue by attempting to collect information as the Working Group did from particular agencies to see what obstacles the employees believe are in their way to reporting, understanding, etc. Many of these were informal, anonymous, and confidential means of gaining information. And, they did seem to yield very interesting results and information.

A third option is to move forward without collecting information in Nevada agencies. This option would involve instituting policies, training, reporting mechanisms, and investigation procedures that are considered generally effective by the EEOC Task Force and the Federal Courts' Working Group. Moreover, NERC currently does trainings, and it would be interesting to see what measures of effectiveness NERC has. I suspect that many of the NERC training requirements would be similar to those recommended by the EEOC Task Force. Even if we decide not to collect information in preparation for creating trainings, it would be beneficial to collect information that might be useful to future task forces concerning the type of trainings used in different agencies, the numbers of employees trained, employee perceptions of whether the trainings helped inform them, employee perceptions of whether there is illegal harassment occurring (or something short of illegal harassment) in their agencies, the number of reports, how they are investigated and resolved, etc.

Of course, there are, as a member of the Governor's Task Force mentioned at our last meeting, many private organizations that will create policies and do trainings for workplaces. These organizations' effectiveness vary. The EEOC Task Force has already compiled, however, the best practices information from these private organizations as well as from others who work in the area.

Whatever option is chosen, the question will then become how much of this should the Executive branch policy contain (re trainings, etc.). Should it recommend using the EEOC Task Force and the Working Law Group? Should it, instead, include a list of relatively simple requirements (as it does now)? If so, what should those be? How do we measure effectiveness as we move forward?

In the attached proposed revisions to the policy, I deal with these questions in my redline edits and comments.