

April 2, 2019

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, D.C.

Dear Majority Leader McConnell:

We write to urge you to confirm the only current nominee to be a member of the Equal Employment Opportunity Commission (“EEOC”, “Agency” or “Commission”), Janet Dhillon. Confirming her is essential so that the Commission will have a quorum that will be able to move forward on critical matters pending before the Agency. The lack of a quorum threatens to greatly affect our organizations and their members.

The inability of the Commission to act has had grave consequences for employers and other stakeholders. For example, the Commission has been unable to approve regulations relating to health care and workplace wellness plans, which would give employers and plan sponsors much needed guidance as to how they may structure and incentivize their workplace wellness plans lawfully under the Americans with Disabilities Act and Genetic Information Nondiscrimination Act. The EEOC’s prior regulations were vacated by an order from the U.S. District Court for the District of Columbia effective January 2, 2019 (and subsequently withdrawn from the Code of Federal Regulations). The absence of a functioning majority at the Commission has meant that the Agency has been unable to adopt new regulations setting forth a regulatory safe harbor for workplace wellness plans.

More recently – and perhaps more critically – earlier this month Judge Tanya S. Chutkan of the U.S. District Court for the District of Columbia held that the Office of Management Budget’s (OMB) order under the Paperwork Reduction Act (PRA) staying the EEOC’s collection of detailed employee compensation data from thousands of employers was unlawful under the Administrative Procedure Act (APA). In 2016, under the prior Administration, the EEOC relied on the PRA clearance process to greatly expand the amount of data employers are required to submit to the EEOC by adding detailed pay and hours-worked data for an array of job and demographic categories. This data is of no practical use and its collection would impose a cost of more than \$50 million annually (this is the EEOC’s calculation which is believed to be an underestimation and significantly in error) on American businesses. In August 2017, OMB revoked its prior PRA clearance and stayed the collection of this data indefinitely. On March 4, 2019, Judge Chutkan held that OMB’s rescission of its prior approval and subsequent stay were unlawful under the APA. Judge Chutkan has ordered the EEOC to begin collecting this enormous amount of data in a highly compressed time frame, putting employers in an untenable position. The inability of the Agency to act on this matter now threatens to impose millions of dollars in regulatory compliance costs on employers.

In the prior Congress, the President submitted nominations to the Senate to fill vacancies on the EEOC. The Senate did not act on these nominations, and they were returned to the White House at the end of the 115th Congress. In the 116th Congress, the President has re-nominated Janet R. Dhillon, to serve on the EEOC. On February 27, 2019, the Senate Committee on Health, Education, Labor, and Pensions approved for a second time Ms. Dhillon’s nomination.

Given the lack of a quorum at the Commission, for all of the reasons discussed above, we urge you to use all of the means at your disposal to advance this nomination and provide a functioning quorum at the EEOC. We thank you for your consideration, and stand ready to assist.

Sincerely yours,

Agricultural Retailers Association

Independent Electrical Contractors

American Bankers Association

International Association of Plastics
Distribution

American Property Casualty Insurance
Association

International Foodservice Distributors
Association

American Rental Association

International Franchise Association

American Supply Association

Littler Workplace Policy Institute

American Trucking Associations

National Association of Professional
Employer Organizations

Associated Builders and Contractors

National Association of Wholesaler-
Distributors

Associated General Contractors

National Council of Chain Restaurants

Auto Care Association

National Federation of Independent Business

Construction Industry Round Table

National Grocers Association

Convenience Distribution Assn.

National Restaurant Association

Food Marketing Institute

National Retail Federation

Heating, Air-conditioning, & Refrigeration
Distributors International

Retail Industry Leaders Association

HR Policy Association

Small Business and Entrepreneurship Council

Independent Bakers Association

U.S. Chamber of Commerce