U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

Office of the Chair
Andrea R. Lucas, Acting Chair

To: Office of Field Programs; Office of Federal Operations

From: Andrea R. Lucas, Acting Chair Andrea Lucas Digitally signed by Andrea Lucas Date: 2025.05.15 16:15:52 -04'00'

Date: May 15, 2025

Re: Ending Unauthorized Monetary Sanctions Against Federal Agencies

Historically, the EEOC has taken the position that it may impose monetary sanctions, including attorney's fees and costs, against federal agencies who fail to comply with the EEOC's orders in administrative proceedings. In taking this position, the EEOC has disregarded for the past *two decades* the advice of the Department of Justice's Office of Legal Counsel (OLC) that EEOC may *not* impose such sanctions.[1] That ends today. The Department of Justice's OLC opinions constitute controlling legal advice to Executive Branch officials which the EEOC must follow. On my watch, the EEOC will do so going forward. Similarly, the EEOC will recognize that questions of statutory construction—including questions regarding the parameters of the EEOC's authority—are ultimately decided by the courts.[2]

The EEOC is further bound by OLC's opinion because it is consistent with the federal courts' firmly established jurisprudence on sovereign immunity. The Supreme Court has long held the United States immune from suit for money damages, such as sanctions, unless it has consented to be sued, or unless a waiver is expressly created by federal statute.[3] Statutes waiving sovereign immunity are "strictly construed … in favor of the sovereign,"[4] and a "waiver of sovereign immunity cannot be implied but must be unequivocally expressed."[5] The doctrine of sovereign immunity applies to suits in which the United States is the named defendant as well as to suits,

[1] *See Authority of the Equal Employment Opportunity Commission to Impose Monetary Sanctions Against Federal Agencies to Comply with Orders Issued by EEOC Administrative Judges* (27 Op. O.L.C. 24) (Jan. 6, 2003) (concluding that "pursuant to basic principles of sovereign immunity, EEOC lacks authority to impose monetary sanctions (such as attorney's fees) on federal agencies for failure to comply with AJ orders").
[2] *See generally Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024) (reaffirming core principle that "[i]t is emphatically the province and duty of the judicial department to say what the law is") (quoting *Marbury v. Madison*, 1 Cranch 137, 177 (1803)).
[3] *See United States v. Testan*, 424 U.S. 392, 399 (1976) (holding that the United States is immune from suit unless it consents to be sued); *see also Federal Deposit Insurance Corporation v. Meyer*, 510 U.S. 471, 475 (1994) ("Absent a waiver, sovereign immunity shields the Federal Government and its agencies from suit.").
[4] *Dep't of Army v. Blue Fox, Inc.*, 525 U.S. 255, 261 (1999) (citing *Lane v. Pena*, 518 U.S. 187, 192 (1996))
[5] *United States v. Mitchell*, 445 U.S. 535, 538 (1980) (internal citations and quotations omitted); *see also United States v. King*, 395 U.S. 1 (1968); *Testan*, 424 U.S. at 400-01; *Mitchell*, 445 U.S. at 538.

such as an EEOC administrative proceeding, in which a federal agency or its officials are the named defendants.[6]

These bedrock principles apply just as forcefully in the EEOC's administrative complaint process as they do in federal court. Among the various circuits, only the Ninth has squarely addressed whether the EEOC's enabling statutes grant it the authority to impose monetary sanctions against federal agencies.[7] The answer from the Ninth Circuit was a straightforward no. The EEOC fully agrees that Congress has not waived sovereign immunity with respect to monetary sanctions against federal agencies appearing before the EEOC.

Accordingly, I direct that the EEOC will no longer impose monetary sanctions against federal agencies. The EEOC will continue to protect the integrity of its proceedings through the other powerful tools at its disposal, such as resolving contested issues in favor of an opposing party, drawing adverse evidentiary inferences, excluding evidence, or taking other appropriately tailored action. Prudent use of these tools, rather than resorting to monetary sanctions, will further the EEOC's mission of eliminating unlawful discrimination while responsibly stewarding the funds entrusted to the federal government by Congress.

Consistent with this memorandum, any prior EEOC memoranda, procedures, or other documents that conflict with the above are hereby withdrawn.

CC: Heads and Acting Heads of Departments and Agencies

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[6] *See Dugan v. Rank*, 372 U.S. 609, 620 (1963).
[7] *See Plaskett v. Wormuth*, 18 F.4th 1072 (9th Cir. 2021).