U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Federal Operations
P.O. Box 77960
Washington, DC 20013

Thomas Schildgen a/k/a
Leonard D.,[1]
Complainant,

v.

Lloyd J. Austin III,
Secretary,
Department of Defense
(Office of the Secretary of Defense),
Agency.

Appeal No. 2021004597

Agency No. 2020-CONF-070

DECISION

Following its August 16, 2021, final order, the Agency filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) pursuant to 29 C.F.R. §1614.403(a). On appeal, the Agency requests that the Commission affirm its rejection of an EEOC Administrative Judge's certification of a class complaint alleging discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the following reasons, the Commission REVERSES the Agency's final order.

BACKGROUND

At the time of events giving rise to this complaint, Complainant (Class Agent) worked as a Warehouseman. Class Agent was employed by Fluor Corporation, who contracted with the Agency at Camp Dahlke in Afghanistan.

On March 31, 2020, Army Contracting Command-Afghanistan sent a Letter of Technical Direction (LOTD) to Fluor Corporation, which instructed the Project Manager to evacuate "high risk individuals" to their home of record.

[1] This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

The LOTD stated that it applied to personnel who were 60 years of age or older and/or had a diagnosis, or took medication for, pre-existing medical conditions, to include high blood pressure, heart disease, lung disease, cancer, or diabetes. Fluor Corporation was instructed to identify individuals over the age of 60 regardless of underlying conditions.

Shortly thereafter, in April 2020, U.S. Central Command (USCENTCOM) issued Modification 15 (MOD 15) to its Individual Protection and Individual-Unit Deployment Policy, which provided updated medical deployment standards.[2] Specifically, the Agency updated its fitness status requirements to state that based on the "direct threat presented by COVID-19 and the significant risk of harm, fitness now includes people being under the age of 65."

On April 18, 2020, Class Agent received an email informing him that, effective April 19, 2020, Class Agent was separated from his assigned project due to receiving a Not Fit for Duty status. The email stated the following:

> "This email is to inform you of a change in your status on the LOGCAP IV Project. We have received guidance from the Department of the Army Contracting Command that in response to the ongoing COVID‐19 pandemic, individuals over age 65, including contractor employees, are no longer considered Fit for Duty pursuant to revisions to MOD 15 and will not be allowed to return to the Central Command (CENTCOM) Area of Responsibility (AOR) for the foreseeable future."

On October 6, 2020, Class Agent filed an EEO complaint alleging discrimination by the Agency on the bases of disability (perceived disability as he was regarded as unfit for duty) and age (DOB: 1954). On November 9, 2020, Class Agent notified the Commission of the intention to pursue a class complaint and requested assignment to an Administrative Judge. The class complaint challenged the Agency's updated fitness status requirements.

On November 25, 2020, the EEOC Supervisory Administrative Judge (SAJ) sent the parties a request for information to assist in determining whether the matter was appropriate for class certification. On December 9, 2020, Class Agent filed a Response to the Request for Information. The Agency did not file a response.

On July 6, 2021, the assigned AJ (AJ) issued a decision on the Class Agent's motion for certification of the class, finding that Class Agent satisfied the requirements for class certification. In the decision, the AJ found that the putative class members were joint employees based on the Class Agent's Response to the Request for Information (Response). The AJ noted that the Agency did not oppose the facts or arguments set forth in Class Agent's Response. Moreover, the AJ concluded that the Agency exercised sufficient control over the putative class members for them to qualify as joint employees.

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[2] USCENTCOM is one of the 11 unified combatant commands of the Agency covering the "central" area of the globe located between the European, Africa, and Indo-Pacific Commands.

Regarding class certification, the AJ explained that the number of potential class members appeared to be sufficiently numerous to satisfy numerosity. Specifically, the Class Agent asserted that between 100 to 2,700 individuals were directly impacted by the updated fitness status requirement.

Next, the AJ found that common questions of fact existed because the putative class members' employment was terminated as a result of the updated Fitness for Duty policy. Similarly, the AJ determined that the claim asserted by the Class Agent was typical of the claim each putative class member was expected to assert. The AJ found that the Class Agent had the same interest as the putative class because he suffered the same injury as the members of the class.

With respect to adequacy of representation, the AJ found that Class Agent's attorneys had sufficient legal training and experience while the presentation of the complaint demonstrated familiarity with the practice of class action litigation. Moreover, the Agency did not challenge certification on grounds relating to adequacy of representation.

The AJ determined that the class was:

> All persons (except uniformed military personnel) who were removed from their overseas positions pursuant to the Agency's medical qualification standard prohibiting the presence of anyone age 65 or older.

The Agency declined to fully implement the AJ's decision on certification of the class and filed the instant appeal to the Commission.

CONTENTIONS ON APPEAL

Agency's Contentions

On appeal, the Agency argues that the modification of age-based fitness for duty requirements is an internal military decision and therefore, the Commission lacks jurisdiction over the matter. Additionally, the Agency contends that the legal theory that the Class Agent relies on for jurisdictional standing, federal joint employer doctrine, is not supported by statutory construction and related regulatory authority. The Agency adds that under a joint employer analysis, the Agency does not qualify as a joint employer and Class Agent does not qualify as a joint employee. According to the Agency, AJ relied on a single element, or the right to control, and failed to perform a proper joint employer analysis. The Agency adds that the modification did not require Fluor to terminate Class Agent or any other putative class member, and therefore it did not have de facto power to discharge Class Agent or any other putative class members.

Moving to certification of the class, the Agency asserts that the AJ did not properly determine that the class meets the criteria for class certification. Specifically, the Agency contends that Class Agent cannot meet the commonality and typicality requirements.

Finally, the Agency contends that the complaint should be held in abeyance until Class Agent's complaint against Fluor Corporation is resolved.[3]

Class Agent's Response

Class Agent maintains that the AJ's decision should be affirmed. Class Agent asserts that the Agency is prohibited from raising any arguments opposing class certification for the first time on appeal. In support, Class Agent contends that the Agency failed to submit any evidence or argument to AJ regarding class certification. Class Agent further contends that AJ's class certification decision is fully supported by EEOC regulations and case law. Regarding jurisdiction, Class Agent notes that the Commission has long held that personnel decisions by the military agencies that impact the employment of civilian employees come within the EEOC's jurisdiction. Likewise, Class Agent argues that the Commission has jurisdiction over claims filed by joint employees, as evidenced by Ma v. Dep't of Health and Hum. Svc., EEOC Appeal No. 01962390 (June 1, 1998). Class Agent reiterates the position that the class complaint satisfied the requirements for joint employment and class certification. Finally, Class Agent asserts that the Agency failed to identify a reasonable basis to suspend the processing of the class complaint. Specifically, Class Agent notes that Class Agent elected to dismiss the charge against Fluor Corporation and to refrain from bringing an action against Fluor Corporation.

ANALYSIS AND FINDINGS

As an initial matter, we address the Agency's argument that the Commission lacks jurisdiction over the complaint because the Agency's decision was an internal military decision. Section 717 of Title VII explicitly covers personnel actions affecting employees or applicants for employment in civilian positions within military departments. 42 U.S.C. § 2000e-16(a-b).5 EEOC Regulations provide that while the federal sector EEO process does not apply to uniformed members of military departments, the process does apply to civilian employees in military departments. See 29 C.F.R, §§ 1614.103(b)(1), (d)(1). Here, we find that Class Agent's complaint relates to civilian employment and fits squarely within the civilian EEO complaint process.

Joint Employer

In Serita B. v. Department of the Army, EEOC Appeal No. 0120150846 (November 10, 2016), the Commission reaffirmed its long-standing position on "joint employers" and noted it is found in numerous sources. See, e.g., EEOC Compliance Manual Section 2, "Threshold Issues," Section 2-III(B)(1)(a)(iii)(b) (May 12, 2000) (Compliance Manual); EEOC Enforcement Guidance: Application of EEO Laws to Contingent Workers Placed by Temporary Employment Agencies and Other Staffing Firms (Dec. 3, 1997) (Enforcement Guidance), "Coverage Issues," Question 2; Ma v. Dep't of Health and Human Servs., EEOC Appeal Nos. 01962389 & 01962390 (May 29,

[3] Class Agent filed a charge in the San Antonio Field Office, which was closed at the intake stage on May 7, 2021.

1998). We reiterate the analysis set forth in those decisions and guidance documents in this decision.

Agencies often conclude that an individual is not an employee based solely on the fact that the individual performs work pursuant to a contract between the federal government and an outside organization and the outside organization, not the federal government, controls the pay and benefits of that individual. See, e.g., Helen G. v. Dep't of the Army, EEOC Appeal No. 0120150262 (Feb. 11, 2016); Nicki B. v. Dep't of Educ., EEOC Appeal No. 0120151697 (Feb. 9, 2016). These elements are just two of the factors relevant to joint employment under the Commission's long-standing position and it is not at all surprising that they would be present when an individual working under a federal contract for a federal agency raises a complaint of discrimination.

The term "joint employer" refers to two or more employers that each exercise sufficient control of an individual to qualify as the worker's employer. Compliance Manual, Section 2-III(B)(1)(a)(iii)(b). To determine whether the Agency has the right to exercise sufficient control, EEOC considers factors derived from common law principles of agency. See Enforcement Guidance, ""Coverage Issues," at Q. 2. EEOC considers, inter alia, the Agency's right to control when, where, and how the worker performs the job; the right to assign additional projects to the worker; whether the work is performed on Agency premises; whether the Agency provides the tools, material, and equipment to perform the job; the duration of the relationship between the Agency and the worker whether the Agency controls the worker's schedule; and whether the Agency can discharge the worker. EEOC Compliance Manual, Section 2-III(A)(1) (citing Nationwide Mut. Ins. Co. v. Darden, 503 U.S. 318, 323-24 (1992)); EEOC v. Skanska USA Bldg., Inc., 550 F.App'x 253, 256 (6th Cir. 2013) ("Entities are joint employers if they 'share or co-determine those matters governing essential terms and conditions of employment"') (quoting Carrier Corp. v. NLRB, 768 F.2d 778, 781 (6th Cir. 1985); see also Ma, EEOC Appeal Nos. 01962389 & 01962390.

On the factor of the right to control when, where, and how the worker performs the job and to assign additional projects, complete agency control is not required. Rather, the control may be partial or joint and still point to joint employment. Shorter v. Dep't of Homeland Sec., EEOC Appeal No. 0120131148 (June 11, 2013) (where both staffing firm and agency made assignments, this pointed to joint employment); Complainant v. Dep't of the Navy, EEOC Appeal No. 0120143162 (May 20, 2015), request for reconsideration denied, EEOC Request No. 0520150430 (Mar. 11, 2016) (where staffing firm wrote and issued complainant's appraisal with input from agency, this pointed toward joint employment). Likewise, where both the agency and staffing firm provided tools, material, and equipment to perform the job, this pointed to joint employment. Elkin v. Dep't of the Army, EEOC Appeal No. 0120122211, 2012 WL 5818075 (Nov. 8, 2012). Similarly, where a staffing firm terminates a worker after an agency communicates it no longer wants the worker's services, this supports a finding that the agency has joint or de facto power to discharge the worker. See, e.g., Complainants v. Dep't of Justice, EEOC Appeal Nos. 0120141963 & 0120141762 (Jan. 28, 2015); see also Skanska USA Bldg., Inc., 550 Fed. App'x at 254, 256 (where defendant removed staffing firm's workers from job site without challenge from staffing

firm, and after such removals staffing firm generally fired worker, this pointed to joint employment); Butler v. Drive Auto. Indus. of America, Inc., 793 F.3d 404, 414-15 (4th Cir. 2015). The EEOC considers an entity's right to control the terms and conditions of employment, whether or not it exercises that right, as relevant to joint employer status. Enforcement Guidance, "Coverage Issues," at Question 2, Example 5 (where an entity reserves the right to direct the means and manner of an individual's work, but does not generally exercise that right, the entity may still be found to be a joint employer).

In assessing the right to control, EEOC does not consider any one factor to be decisive and emphasizes that it is not necessary to satisfy a majority of the factors. In particular, the fact that an individual performs work pursuant to a contract between the federal government and an outside organization and is paid and provided with benefits by that organization, on its own, is not enough to show that joint employment does not exist. Rather, the analysis is holistic; all the circumstances in the individual's relationship with the agency should be considered to determine if the agency should be deemed the worker's joint employer. Enforcement Guidance, "Coverage Issues," at Qs. 1 and 2. In sum, a federal agency will qualify as a joint employer of an individual if it has the requisite right to control the means and manner of the individual's work, regardless of whether the individual is paid by an outside organization or is on the federal payroll. See id., at Q. 2.

Here, in response to the SAJ's November 25, 2020, Request for Information, Class Agent asserted that the Agency exercised sufficient control over workers on overseas military bases to qualify as a joint employer. In support, Class Agent argued that the Agency had the ability to control when, where, and how the workers performed their jobs. Additionally, the work was performed in a foreign country where the Agency supplied the tools, materials, and equipment used by the workers. In further support, Class Agent noted that Agency officials had the ability to assign additional projects to the workers and set the workers' hours. The workers were paid by the hour, week, or month rather than the agreed cost of performing a particular job and the workers were integral to the regular operation of the Agency's overseas bases. Finally, Class Agent asserted that the Agency had de facto power to discharge the workers.

The Agency did not provide a response to SAJ's Request for Information. However, on appeal, the Agency argues that aside from the work being performed in Afghanistan, there is no evidence in the record that Class Agent's assertions were true. The Agency adds that Fluor Corporation had independent power to terminate or accommodate the impacted employees, but there is no evidence in the record that Fluor Corporation universally terminated the employees subjected to the modified requirements.

Upon review, we find that Class Agent's Response to SAJ's Request for Information demonstrates that the Agency qualifies as Class Agent's joint employer. Similarly, we find that the Agency had de facto power to terminate Class Agent, which it exercised. See Nakesha T. v. U.S. Postal Serv., EEOC Appeal No. 2020003723 (July 28, 2020); Millicent H. v. Dep't of Army, EEOC Appeal No. 0120171215 (June 22, 2017).

As explained by AJ, since the Agency's decision to revise the fitness-for-duty criteria effectively stopped the services of the workers and directly resulted in their termination from their private employer, the Agency exercised sufficient control over the employees for them to qualify as joint employees.

Given the Agency's de facto power, and the absence of evidence indicating that Fluor Corporation made an independent decision to terminate Class Agent, we conclude that the Agency had sufficient control over Class Agent's employment to be his common law joint employer.

Class Certification

EEOC Regulation 29 C.F.R. § 1614.204(a)(2) states that a class complaint is a written complaint of discrimination filed on behalf of a class by the agent of the class alleging that: (i) the class is so numerous that a consolidated complaint of the members of the class is impractical; (ii) there are questions of fact common to the class; (iii) the claims of the agent are typical of the claims of the class; and (iv) the agent of the class, or if represented, the representative will fairly and adequately represent the interests of the class. EEOC Regulation 29 C.F.R. § 1614.204(d)(2) provides that a class complaint may be dismissed if it does not meet the four requirements of a class complaint or for any of the procedural grounds for dismissal set forth in 29 C.F.R. § 1614.107. The class agent, as the party seeking certification of the class, carries the burden of proof, and it is his obligation to submit sufficient probative evidence to demonstrate satisfaction of the four regulatory criteria. Anderson, et al. v. Dep't of Def., EEOC Appeal No. 01A41492 (Oct. 18, 2005); Mastren, et al. v. U.S. Postal Serv., EEOC Request No. 05930253 (Oct. 27, 1993).

Commonality and Typicality

With regard to commonality and typicality, the purpose of these requirements is to ensure that a class agent possesses the same interests and has experienced the same injury as the members of the proposed class. See Gen. Tel. Co. of SW v. Falcon, 457 U.S. 147 (1982). While these two criteria tend to merge and are often indistinguishable, they are separate requirements. Id. Commonality requires that there be questions of fact common to the class; that is, that the same agency action or policy affected all members of the class. The Class Agents must establish some evidentiary basis from which one could reasonably infer the operation of an overriding policy or practice of discrimination. Belser, et al. v. Dep't of the Army, EEOC Appeal No. 01A05565 (Dec. 6, 2001). Typicality, on the other hand, requires that the claims, or discriminatory bases, alleged by a class agent be typical of the claims of the class, so that the interests of the putative class members are encompassed within a class agent's claim. Falcon, 457 U.S. at 156. The underlying rationale of the typicality and commonality requirement is that the interests of the class members be fairly encompassed within the class agent's claim. Falcon, 457 U.S. at 147.

Here, the Agency argues that there is insufficient information to determine whether there are common questions of fact or whether Class Agent's claims are typical of the claims of the class. According to the Agency, commonality and typicality cannot be established without the receipt of information from a third party.

Despite the Agency's argument, the Agency asserts that the "only centralized action by the Agency was a directive that those individuals (over age 65) needed to temporarily leave the USCENTCOM area of responsibility." Based on the Agency's admission, we find that Class Agent's claim encompasses the interests of the putative class. As such, we find that the AJ appropriately identified the Agency's relevant policy to establish commonality of the putative class members.

We also find that Class Agent's claim was typical of the class because he alleges discrimination based on his age and perceived disability, when the Agency revised its fitness-for-duty requirements and excluded individuals over the age of 65 and those considered "high risk" from CENTCOM. In sum, regarding commonality and typicality, we find that the interests of the putative class members are fairly encompassed within Class Agent's claim.

Numerosity

The numerosity prerequisite requires that the potential class must be sufficiently numerous so that a consolidated complaint by the members of the class, or separate complaints from each member of the class, is impractical. 29 C.F.R. § 1614.204(a)(2)(i). The relevant factors to determine whether the numerosity requirement has been met are the size of the class, the geographical dispersion of the class, the ease with which class members may be identified, the nature of the action at issue, and the size of each member's claim. Carter, et al. v. U.S. Postal Serv., EEOC Appeal No. 01A24926 (Nov. 14, 2003). The numerosity requirement does not impose a numerical minimum or cut-off point for the size of the class but, instead, requires an examination of the facts of each case. Gen. Tel. Co. of the Northwest Inc. v. EEOC, 446 U.S. 318, 330 (1980). Thus, although courts are reluctant to certify classes with 30 or fewer members, there are no specific numerical cut-off points. Carter, et al., EEOC Appeal No. 01A24926.

We find that AJ properly determined that Class Agent established numerosity. Specifically, the Agency does not challenge AJ's finding and notes that based on information provided by Fluor Corporation, approximately 142 employees were temporarily returned to the U.S. because they were 60 years of age or older.

Adequacy of Representation

"Adequacy of representation" means that the class agent has demonstrated that he, or a designated representative, will fairly and adequately protect the interests of the class. 29 C.F.R. § 1614.204(a)(2)(iv). The class agent must show that he is qualified, experienced, and generally able to conduct proposed litigation. See Drummond v. Dep't of the Army, EEOC Appeal No. 01940520 (Aug. 19, 1994). The Commission has generally held that a non-attorney class agent who does not possess the necessary experience, knowledge, or skills to represent a class is not an adequate representative. See Anderson, et al. v. Dep't of Def., EEOC Appeal No. 01A41492 (Oct. 18, 2005) (class certification denied where Class Agent did not possess the necessary experience, knowledge, or skills to represent the class, and she did not obtain experienced counsel to represent the class).

Here, we note that AJ determined that Class Agent's attorney met the qualifications to represent the class and that the Agency did not challenge this determination. As such, we find no reason to disturb the AJ's determination regarding the adequacy of representation.

We find that AJ properly determined that the complaint at issue in this case met the criteria set forth in the Commission's regulations at 29 C.F.R. § 1614.204(a)(2) for class certification. As such, we REVERSE the Agency's final order rejecting AJ's certification decision and REMAND the complaint for further processing, as ORDERED below.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we REVERSE the Agency's final order and REMAND the complaint for further processing, in accordance with the ORDER below.

ORDER

The Agency is ORDERED to perform the following:

1. Notify class members of the accepted class claim within fifteen (15) calendar days of the date this decision is issued, in accordance with 29 C.F.R. § 1614.204(e).
2. Forward a copy of the class complaint file and a copy of the notice to the Hearings Unit of EEOC's Washington Field Office within thirty (30) calendar days of the date this decision is issued. The Agency must request that an Administrative Judge be appointed to hear the certified class claim, including any discovery that may be warranted, in accordance with 29 C.F.R. § 1614.204(f).

The Agency is further directed to submit a report of compliance, as provided in the statement entitled "Implementation of the Commission's Decision." The report shall include supporting documentation of the Agency's actions.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and § 1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated**. See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0920)

The Commission may, in its discretion, reconsider this appellate decision if Complainant or the Agency submits a written request that contains arguments or evidence that tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or
2. The appellate decision will have a substantial impact on the policies, practices, or operations of the agency.

Requests for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration**. A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015).

Complainant should submit his or her request for reconsideration, and any statement or brief in support of his or her request, via the EEOC Public Portal, which can be found at https://publicportal.eeoc.gov/Portal/Login.aspx. Alternatively, Complainant can submit his or her request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, a complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

An agency's request for reconsideration must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Either party's request and/or statement or brief in opposition must also include proof of service on the other party, unless Complainant files his or her request via the EEOC Public Portal, in which case no proof of service is required.

Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. **Any supporting documentation must be submitted together with the request for reconsideration.** The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(c).

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency or filed your appeal with the Commission. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. **Filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests.

Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:

Carlton M. Hadden, Director
Office of Federal Operations

February 15, 2023
Date