

White House spokesman Shin Inouye said Obama is committed to “lasting and comprehensive change” and his administration’s “goal is passage of ENDA.”

But the president of Freedom to Work April 12 called the White House’s failure to act on an executive order “a political calculation that cannot stand,” and the group announced an expanded campaign to obtain workplace protections for the LGBT community.

White House Favors Legislative Approach. Inouye said Obama “has long supported” an “inclusive” ENDA.

The legislation (H.R. 1397, S. 811), which would prohibit employers, employment agencies, labor organizations, and joint labor-management committees from firing, refusing to hire, or discriminating against employees based on perceived or actual sexual orientation, was introduced in the House and Senate last year during the first session of the 111th Congress.

BY LAWRENCE E. DUBE

Text of the letter by House Democrats is available at <http://op.bna.com/dlrcases.nsf/r?Open=ldue-8tapa9>.

Rulemaking

OFCCP Official Discusses Proposal on Reasonable Accommodation Requests

The Office of Federal Contract Compliance Programs may start to pay more attention to how federal contractors handle requests for reasonable accommodations, said an official from the OFCCP during an April 18 public policy session at a corporate-sponsored conference on employment practices.

Speaking through the voice of an interpreter using American Sign Language, Claudia L. Gordon, special assistant at the OFCCP, said sometimes there is a breakdown in communication in the workplace as to who is responsible for granting or denying a reasonable accommodation request.

In its notice of proposed rulemaking to amend regulations implementing Section 503 of the Rehabilitation Act (see *News and Developments*, 12/30/11, p. 107), OFCCP is requiring federal contractors to develop a written reasonable accommodation procedure, Gordon explained.

“In our proposed rules, we have said that a reasonable accommodation plan should identify who is in charge. There should be written confirmation that a request was received,” she added.

Gordon was part of a panel that included officials at the Department of Labor. The event, the Sixth Annual U.S. Disability Matters Awards Banquet and Conference, was held in Newark, N.J., and hosted by Prudential Financial.

Under the proposal, contractors will have to date-stamp reasonable accommodation requests upon receipt. The written plan on reasonable accommodation should also clearly communicate what documentation is needed for the request. Also, a denial for accommodation should be in writing and state the reason as to why the employer made that determination, Gordon said. “It’s a win-win for the employer and the employee when there is clear communication about this process.”

Gordon also noted that the unemployment rate among disabled workers is significantly higher than for non-disabled workers. This is one reason why the

agency wants to amend Section 503, she said. The regulations in their current state have not improved employment opportunities for disabled workers.

OFCCP will consider public comments filed under the NPRM as it drafts the final rule, Gordon said (see *News and Developments*, **this issue**). “The ADA was updated, so we need to update Section 503,” she added.

Self-Disclosure Tool Suggested. The whole idea behind the Section 503 proposal “is to have a process that is fair and equitable across the footprint of the organization,” so that the employer will not violate the equal employment opportunity rights of people with disabilities, said moderator Nadine O. Vogel, founder and president of Springboard Consulting, a New Jersey-based firm focusing on disability issues in the workplace that also sponsored the event.

On the issue of voluntary self-identification by applicants and employees, Vogel noted that the comfort level of disclosure—and disclosure rates—will increase if more employers develop “a decision tree” tool that will help people with disabilities in the decision-making process of disclosing a disability.

In many cases, workers are confused as to how much information they should reveal about their disability and whether to disclose the condition to human resources or a manager, Vogel said. “We need to do more work on the process of disclosing a disability.”

BY LYDELL C. BRIDGEFORD

Rulemaking

Supporters of OFCCP’s Rehab Act Proposal Want More; Others Decry Contractor Burden

Supporters of a recent proposal by the Office of Federal Contract Compliance Programs to update federal contractors’ affirmative action and nondiscrimination obligations for individuals with disabilities urged OFCCP to go even further with its plans to introduce numerical utilization goals, while opponents argued that proposed changes would be ineffective and unduly burdensome, according to a BNA review of public comments submitted to the agency.

OFCCP received some 400 comments in response to the December 2011 notice of proposed rulemaking to amend regulations (41 C.F.R. Part 60-741) implementing Section 503 of the Rehabilitation Act (see *News and Developments*, 12/30/11, p. 107; 12/30/11, p. 108).

However, commenters divided on whether OFCCP’s proposed rule, as currently drafted, actually would allow the agency to achieve that objective.

Approximately 70 disability and civil rights organizations, employee groups, and some federal contractors, as well as more than 150 individuals, wrote to generally express their belief that OFCCP could meet the objective through a proposed 7 percent national utilization goal and the possibility of a 2 percent subgoal for individuals with severe disabilities. Some commenters encouraged the agency to increase those goals to 10 percent and 5 percent, respectively.

They also backed proposals that would require contractors to invite job applicants to voluntarily self-identify as disabled during the pre- and post-offer stages of the hiring process, to annually review certain personnel processes, to analyze certain referral, appli-