



April 22, 2016

VIA electronic submission to <http://www.regulations.gov>

Bernadette Wilson
Acting Executive Officer
Executive Secretariat
U.S. Equal Employment Opportunity Commission
131 M Street, NE
Washington, DC 20507

**Re: Response to Proposed Rule
81 Fed.Reg. 9,123-9,139; RIN 3046-AA94**

Dear Ms. Wilson:

The National Employment Lawyers Association (NELA) respectfully submits the following comments in response to the Equal Employment Opportunity Commission's Proposed Rule, published in the Federal Register on February 24, 2016, 81 Fed.Reg. 9,123-9,139.

NELA is the largest professional membership organization in the country comprised of lawyers who represent employees in labor, employment, wage and hour, and civil rights disputes. NELA advances employee rights and serves lawyers who advocate for equality and justice in the American workplace. NELA and its 69 circuit, state, and local affiliates have a membership of over 4,000 attorneys who are committed to working on behalf of those who have been illegally treated in the workplace. NELA has filed numerous *amicus curiae* briefs before the United States Supreme Court and other federal appellate courts regarding the proper interpretation of federal civil rights and worker protection laws, as well as undertaking other advocacy actions on behalf of workers throughout the United States. NELA members represent a substantial number of federal employees in employment law matters, and thus NELA has an interest in potential modifications to the Commission's federal sector regulations.

NELA supports the Commission's efforts to strengthen protections for disabled employees and job applicants, and to bolster the role of the federal government as a model employer of people with disabilities. Based on the experiences of our member attorneys representing federal sector employees and job applicants, NELA believes that there is a need for stronger protections in this area. Rather than prescribing a "once-and-done" set of modifications, NELA believes that the Commission's efforts in this area should be iterative, and urges the Commission to build into this process specific steps for ongoing review and further refinements to its regulations. The federal government's goal to be a model employer means serving as a standard-bearer in continually developing and evolving best practices for employment of people with disabilities.

Hopefully, many disability rights organizations will provide comments regarding specific substantive goals for the federal government as a model employer of people with disabilities. NELA will focus our specific suggestions on the procedural and remedial issues identified in the Proposed Rule. NELA submitted comments to the Commission on July 11, 2014, in response to the Commission's Advance Notice of Proposed Rulemaking (79 Fed.Reg. 27,824 - 27,826), which directly preceded this Proposed Rule. NELA restates our earlier comments in their entirety (a copy of which is attached for the convenience of the Commission), and incorporates them by reference in this Response.

NELA supports expansion of provision of personal assistance services to employees, whether it be under the rubric of "affirmative action" or under the rubric of "reasonable accommodation." In response to Request for Comment 3, concerning how to enforce provision of personal assistance services, NELA believes that the model specified in proposed 29 C.F.R. § 1614.203(f) is likely not a sufficiently strong enforcement mechanism to ensure proper provision of personal assistance services. A more effective model would implement the requirement for provision of personal assistance services through the same administrative mechanisms (and staff) established to respond to requests for reasonable accommodation of disabilities, enforceable through EEO complaints in the Part 1614 complaint mechanism. As NELA previously noted in its comments to the Commission's Advance Notice of Proposed Rulemaking, significant problems exist in enforcement mechanisms for reasonable accommodation requests. The existing reasonable accommodation enforcement mechanisms, however, are still superior to the enforcement mechanism proposed for 29 C.F.R. § 1614.203(f). Application of the reasonable accommodation mechanism to personal assistance services cases would expedite implementation. It would be an interim solution, pending an iterative review by the Commission of ways to strengthen the enforcement mechanisms in reasonable accommodation matters.

In response to Request for Comment 6, NELA supports creation of a prequalified candidate list to facilitate hiring of Schedule A disabled applicants, provided that the list would be subject to all necessary confidentiality protections under 29 C.F.R. §§ 1630.13-1630.14 and the Privacy Act. NELA notes that this is consistent with recent amendments to increase efficiency in civil service hiring, most notably under Public Law 114-137. As NELA previously noted in our comments to the Commission's Advance Notice of Proposed Rulemaking, the Commission should further examine enforcement mechanisms for strengthening enforcement of Schedule A hiring preferences for disabled applicants who choose to file Schedule A applications.

NELA appreciates the opportunity to comment on the Proposed Rule, and wishes to thank the Commission for its attention and consideration.

Sincerely yours,



Terisa E. Chaw
Executive Director

Attachment