

President Appoints Victoria Lipnic EEOC Acting Chair

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On January 25, 2017, President Donald Trump appointed Equal Employment Opportunity Commission Commissioner Victoria A. Lipnic to serve as the Acting Chair of the EEOC.

Lipnic is the EEOC's only Republican Commissioner on the five-member Commission. She takes the reins from Jenny R. Yang, a Democrat, who continues as a Commissioner.

By statute, each Commissioner is appointed by the President, subject to approval by the U.S. Senate, and no more than three Commissioners may be members of the same political party. Currently, there is one seat vacant. Barring the resignation of a Commissioner, Trump will not be able to appoint enough Commissioners to the EEOC to form a majority of Republicans until July 1, 2017, when Yang's term expires.

Lipnic has served as a Commissioner since 2010. She was an Assistant Secretary in the Department of Labor during the George W. Bush Administration, where she oversaw several arms of the Department, including the Wage and Hour Division and the Office of Federal Compliance Programs.

During her time at the EEOC, Lipnic has joined in bipartisan initiatives of the agency. For example, she co-chaired, along with Democratic Commissioner Chai R. Feldblum, the EEOC's Select Task Force on Harassment in the Workplace in 2015-2016. When the EEOC issued Proposed Enforcement Guidance on Harassment, Lipnic said in an EEOC press release that she was "pleased the Commission is offering an updated version of its positions on this important topic and look[ing] forward to public input." She also voted to approve the EEOC's 2012 Guidance on the Use of Arrest and Conviction Records in Making Employment Decisions.

On some issues, Lipnic has not supported the EEOC's Democratic majority. She opposed the EEOC's proposed change to EEO-1 reporting to include collecting pay data from employees.

On LGBT issues, Lipnic did not join Democratic Commissioners who issued a Federal Commission Decision that found allegations of discrimination on the basis of sexual orientation stated a claim of discrimination on the basis of sex (*Baldwin v. Foxx*, 2015). Yet, the EEOC's Proposed Enforcement Guidance on Unlawful Harassment ("EEOC Proposed Enforcement Guidance") references *Baldwin v. Foxx* and several other cases that "concluded that claims of sexual orientation discrimination are cognizable as sex discrimination claims." (See EEOC Proposed Enforcement Guidance, n.17.) Lipnic joined the Commissioners in the EEOC landmark decision *Macy v. Holder*, which found that discrimination based on a person's gender identity may establish a case of gender discrimination (*Macy v. Holder*, 2012). (For more on this decision, see our article, Title VII Prohibits Discrimination against Transgender Workers, EEOC Decides.) Although she did not join the majority in *Lusardi v. Dep't of the Army* (2015) (where the Commission found continuous misgendering of a transgender female employee and denial of access to a restroom consistent with the employee's gender identity sufficiently constituted a hostile work environment based on sex), Lipnic appeared to support the inclusion of harassment based on gender identity in the EEOC Proposed Enforcement Guidance.

In addition to the five members of the Commission, Trump may appoint the EEOC's General Counsel, a position that is open. Such an appointment also is subject to approval by the U.S. Senate.

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