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DAILY BUSINESS REVIEW

JUSTICE WATCH John Pacenti

Beefed-up EEOC 'back' with new Miami leaders



The U.S. Equal Employment Opportunity Commission is under new management and touting its tough new agenda.

The Miami district office, which had been languishing in recent years, has new leadership under the Obama administration. District director Malcolm Medley is the former head of the Massachusetts Commission Against Discrimination.

Attorneys representing employees say cases are moving faster and the office overseeing most of Florida

and Puerto Rico is doing more than giving the tacit go-ahead for workers to pursue private litigation.

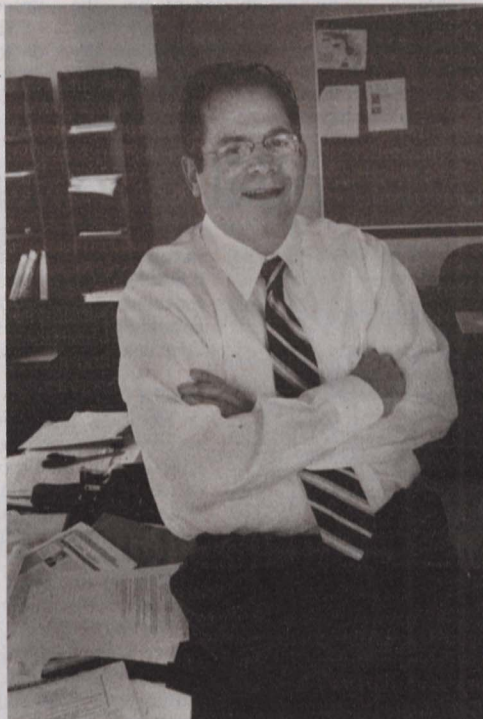
The agency is pursuing its own litigation on workplace discrimination claims and more employer outreach through confidential conciliations and mediation.

Hiring discrimination is a new frontier with applicants objecting to arrest and bankruptcy records being used to deny jobs.

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JUSTICE WATCH John Pacenti

BEEFED-UP EEOC 'BACK' WITH NEW MIAMI LEADERS



J. ALBERT DIAZ

Robert E. Weisberg, the new general counsel for the Miami district EEOC office, said he was inspired by President Obama's election and commitment to the enforcement of civil rights.

P. David Lopez, general counsel for the U.S. Equal Employment Opportunity Commission, was downright giddy.

Lopez flew to Miami with EEOC chair **Jaqueline A. Berrien** to trumpet the new vim and vigor of the agency that protects workers' rights under **President Obama**. But he said he also wanted to make a public proclamation:

"Ladies and gentlemen, Miami's back."

Lopez said the Miami district office was in state of limbo for several years under **President George W. Bush's** administration and then had to wait until new leadership was appointed.

Now more than two years into the Obama administration, Miami's office is back on track, Lopez said. He heralded the new district director, **Malcolm Medley**, former head of the Massachusetts Commission Against Discrimination, and **Robert E. Weisberg**, a veteran civil rights attorney, as the general counsel for the office overseeing most of Florida, Puerto Rico and the U.S. Virgin Islands.

"We had a very significant turnover in staff," Lopez said. "Miami is an extremely important city. It's a very complex community ... and it presents a lot of challenges, and it is a city that deserves a strong enforcement program."

Lopez was particularly effusive with his praise toward Weisberg, calling the former plaintiff and class action specialist "a low-ego resource."

"He shares my dedication to excellence. He shares my commitment fostering an environment in his office conducive to creativity," Lopez said.

Miami attorney **Ben Kuehne**, who has litigated a number of civil rights cases, said Weisberg's move

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JUSTICE WATCH: Confidential mediation program praised

to the EEOC is an example for other lawyers to follow. "When he went into government service, it was viewed as tremendous," he said.

Weisberg said class action lawsuits on behalf of employees are getting hard to pursue, and that position was reinforced by the U.S. Supreme Court decision last week junking a gender discrimination class action against Wal-Mart.

VULNERABLE WORKERS

Weisberg said he was motivated by Obama and the opportunity to pursue job-discrimination claims with the government at his back.

"I was inspired by President Obama's election and his commitment to the enforcement of civil rights," he said. "I wanted to be part of it."

Since joining the Miami office last September, Weisberg said two significant sexual harassment lawsuits have been filed, one against tomato grower DiMare Ruskin and the other against call center Four Amigos Travel.

The DiMare action filed in March accuses crew leaders of making unwanted sexual advances and vulgar sexual comments toward three female employees. The women were fired in retaliation for refusing their sexual advances, the EEOC claims.

"I think as a group agriculture workers are particularly vulnerable," Weisberg said. "They are often less aware of their rights."

Four Amigos and sister company Top Dog Travel were sued by the EEOC

EEOC IS BACK

EEOC under new management:

Jacqueline A. Berrien: chair, previously associate-director counsel for the NAACP Legal Defense and Educational Fund

P. David Lopez: general counsel, appointed by President Obama after 15 years with the commission

Malcolm Medley: Miami district director, former chairman of the Massachusetts Commission Against Discrimination

Robert Weisberg: Miami district general counsel, veteran employment and civil rights attorney

What is the EEOC?

Established in 1965, the U.S. Equal Employment Opportunity Commission enforces laws against workplace discrimination. It investigates discrimination complaints based on race, color, national origin, religion, sex, age, perceived intelligence and disability.

in May, accused of allowing five female employees in Largo to be sexually harassed by supervisors.

These lawsuits are getting results. The agency has reached at least a dozen legal settlements with employers this month. Sonic drive-in restaurants settled for \$2 million an action that stemmed from accusations by employees of a manager's repeated sexual

harassment. The agency also reached a \$600,000 settlement with AutoZone for the company's failure to provide accommodations to a disabled sales manager in a Peoria, Illinois, store.

'A SEA CHANGE'

The EEOC was established as an enforcement agency in 1965. It investigates discrimination complaints based on race, color, national origin, religion, sex, age, perceived intelligence and disability as well as retaliation for reporting violations. It can't levy fines directly but can sue on behalf of alleged victims and negotiate settlements.

The EEOC was criticized by labor and civil rights officials as ineffectual under President Bush. The Republican administration cut staff 25 percent, froze the budget and outsourced complaint screening to a private contractor. The administration said the cuts were necessary to pay for the war efforts in Iraq and Afghanistan.

Obama has added more than 200 positions to the agency and increased the budget about \$38 million. The EEOC has been busy filing lawsuits against companies for sexual harassment and an assortment of discrimination. Weisberg said he has hired four attorneys and got another one from Hawaii who set up shop in Tampa.

The agency's new energy hasn't gone unnoticed by attorneys who file and defend against employment discrimination suits.

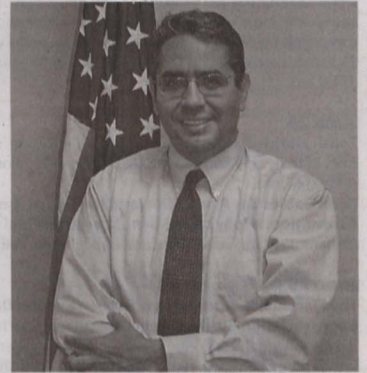
"I've seen a huge difference actually in the last few years," said Fort Lauderdale attorney **Donna Ballman**, who represents workers. "I did see cases starting to really languish."

Before Obama, she said the EEOC issued letters of determination explaining its findings in 99 percent of the claims it received. Most employees who wanted to pursue litigation did it on their own rather than with agency backing. Now, Ballman is seeing what are called voluntary conciliations where employers are contacted. She also has high praise for the EEOC's confidential mediation program.

On the other side of the aisle, attorney **Robin Symons**, a partner at Gordon & Rees in Miami who defends companies, said changes are noticeable.

"It's fair to say there has been a sea change, and the EEOC has stepped up its initiatives," she said. "We are certainly educating our clients to be aware of the heightened scrutiny." She noted three new EEOC programs to address race discrimination and promote the hiring of the disabled and young people.

Symons said she tells her clients to make sure employees know there are



P. David Lopez, general counsel for the EEOC, came to Miami with the proclamation: "Ladies and gentlemen, Miami's back."

internal compliance programs for making and dealing with discrimination complaints so workers don't have to run to the EEOC. In-house efforts could pay off if a jury ever has to decide the company's fate.

"It can be a legal defense if there is a procedure and it's not used," she said.

EMPLOYER OUTREACH

Lopez noted the EEOC has been vigorous in reaching out to employers.

"I operate on belief that the vast majority of employers are trying to do the right thing. Sometimes they don't quite know how to go about doing it," he said. "Education and outreach is critical to the eradication of discrimination."

Still, López said litigation sometimes is the only way to get an employer's attention. He noted a lawsuit filed on behalf of a Muslim woman who was fired because she insisted on wearing a head scarf for religious reasons.

Hiring discrimination is the new frontier for the EEOC, which is concerned about arrest records being used to deny employment, as well as the emerging issue of dismissing job applicants with a history of personal bankruptcy.

"It's recognized there are racial disparities in arrest rates," Berrien said.

She said denying employment based on a bankruptcy filing is a Catch-22 for people who are unemployed and trying to pay their debts. For the EEOC, this issue is more nuanced.

"For our purposes and concerns, we were exploring whether or how that practice might be discriminatory on its effect on different groups or whether it's a practice employers might use to treat applicants differently," Berrien said.

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Symons



Berrien