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Hot Topic "Future Workers Management"

WOMEN EMPLOYED INSTITUTE

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ORAL STATEMENT OF NANCY KREITER, RESEARCH DIRECTOR
WOMEN EMPLOYED INSTITUTE

on Alternative Dispute Resolution

Before the Commission on the Future of Worker/Management Relations

September 29, 1994

Good morning. My name is Nancy Kreiter; I am the Research Director of the Women Employed Institute, the research and education division of Women Employed, a membership association of working women at all levels of employment in all types of industries. Over the past two decades, we have assisted thousands of women with problems of discrimination and have closely monitored the performance of equal employment opportunity enforcement agencies. The Women Employed Institute sponsors a Job Problems Counseling Service for women with discrimination complaints, guides women through informal or internal mechanisms for resolving complaints, develops cases, monitors agency performance in handling cases, and develops specific, detailed proposals for improving enforcement efforts. We appreciate the opportunity to present testimony before you today on alternative dispute resolution.

Our long experience monitoring equal employment opportunity enforcement agencies has taught us that these agencies can work very effectively in responding to and resolving employment complaints. However, agencies must be appropriately funded and have policies and staff in place that emphasize enforcement of

civil rights laws. While we would agree that the EEOC at present is inefficient and often fails effectively to accomplish its mission, this does not mean that a new system of alternative dispute resolution is required to replace it. Instead, the effect of 12 years of undermining the resources and authority of these enforcement agencies must be reversed, and these agencies must be allowed to do what they were designed to do: to investigate and resolve complaints of employment discrimination effectively.

Our joint testimony describes generally some of the changes we would like to see in the federal enforcement agencies. Here, I would like to emphasize that these changes are neither staggering nor ground-breaking. The needs of the EEOC are simple: (1) more resources are required, and the resources that exist must be better employed toward enforcement, and (2) aggressive enforcement policies, including programs to

-pursue more class-based and systemic discrimination complaints,

-increase the number of settlements with back-pay and other damages awarded to complainants and decrease the time it takes to process charges, and

-eliminate the current case backlog,

must be adopted and made a top priority. Indeed, policies such as these were implemented with great success under the leadership of Eleanor Holmes Norton. We are confident that a strong new leadership team can implement changes that will make the EEOC an effective and respected enforcement agency.

Although we strongly oppose the creation of any new dispute resolution system, we recognize that many working women, for a

variety of reasons, prefer to resolve their employment disputes through informal or internal means. We certainly do not want to mandate litigation of every employment dispute, and we support efforts to settle and resolve these cases fairly. However, based on our experience counseling working women with employment problems, we are very concerned that the alternative dispute resolution mechanisms currently in effect at many workplaces fail to protect the rights and dignity of complaining employees.

We have found that women facing discrimination in the workplace have one overriding goal: to end the discrimination and get on with business. When they contemplate challenging these unfair employment practices, whether through an internal complaint system or otherwise, they have three primary concerns: (1) they fear retaliation, (2) they want confidentiality, and (3) they want to be taken seriously. Apparently, these concerns are well-founded, as many of the women we have talked to, in fact, faced retaliation or at least insensitivity upon reporting their complaint, and did not feel satisfied with the process.[1] Thus, when we advise employers who are creating internal dispute resolution mechanisms to deal with sexual harassment complaints, for example, we emphasize the need for prompt, sensitive, confidential and non-biased investigation of the complaint, followed swiftly by a decision and punitive measures, where appropriate. Because many employers have adopted internal

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[1] A copy of our study, entitled "Sexual Harassment: The Problem that Isn't Going Away," as well as our executive summary of the study and our fact sheet on sexual harassment have been attached to this statement for the Commission.

policies of dispute resolution that are not guided by these goals, we urge the Commission to adopt our recommendation that private resolutions of employment disputes be unenforceable absent certain safeguards.

Sexual harassment and other forms of gender discrimination continue to be very serious problems in our workplaces today. We all agree that resolution of employment complaints can be disruptive, time-consuming and costly. However, we urge the Commission to reject the idea that creating an entirely new public system of dispute resolution is the simplest and most cost-effective means of addressing the problem. Instead, a combination of strengthening the existing enforcement agencies, both financially and philosophically, and putting curbs on current private dispute resolution systems which fail to protect the constitutional rights of employees, will go a long way toward providing the education and incentives necessary to reduce the incidence of discrimination in the first place -- the surest method of reducing the number of employment disputes.