

**President's Proposal to Prohibit Discrimination Against Parents
April 18, 1999**

Q: What is the President's proposal on parental discrimination?

A. The President will send Congress legislation that prohibits discrimination on the basis of parental status in employment. The proposed legislation would protect those who choose to have a family from discrimination in employment, in hiring, advancement, and other employment decisions, because of their status as parents. This legislation would protect parents of children and those seeking legal custody of children.

The President's proposed federal legislation would offer protection to workers who are parents in a number of situations. It would prohibit employers from taking a mother or father off career-advancing paths (e.g., partnership track) out of some generalized belief that parents as a class are not capable of committing to the work requirements of the job. It would also prohibit employers from hiring a person without children over an equally or more qualified person with children. In general, the President's proposal would protect workers from unfair assumptions about their commitment to their jobs in hiring, advancement, and other employment decisions. While this law would clearly not prohibit employers from making hiring and promotion decisions on the basis of job performance, it would ensure that workers are not unfairly discriminated against simply because they are parents.

Q: What evidence do you have that discrimination against parents in the workplace is a problem?

A: Despite the fact that there is currently no cause of action for parental discrimination, we have found numerous cases in which employees describe instances of discrimination due to their status as parents. The precise extent of this problem is unknown at this time, but however great or small, it deserves a remedy. This form of discrimination should simply not take place at all and that is why the President has proposed this simple, but clear prohibition.

Q: How do you respond to the argument by opponents of the measure that this proposal will cause an avalanche of litigation in the courts?

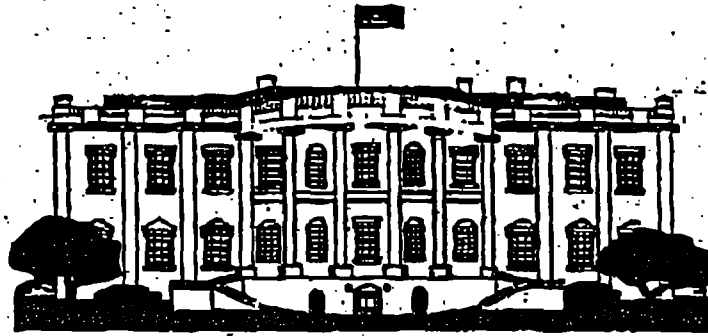
A: Opponents of this proposal have argued both that employers do not

discriminate on the basis of parental status and that this proposal will cause an explosion of litigation. It is difficult to see how the President's proposal will do both. Because the President's proposal only prohibits discrimination on the basis of disparate treatment (not disparate impact), plaintiffs will be required to show direct evidence of discrimination, which is a difficult burden in employment discrimination cases. Therefore, there is no reason to think that the creation of this cause of action will produce unnecessary and unwarranted litigation.

Q: Aren't you radically changing the rules of the workplace, if parents can now sue when they're required to work overtime or when they are required to move?

A. The President's proposal does not do that. This law would clearly not prohibit employers from making hiring and promotion decisions on the basis of job performance, and therefore, does not protect parents who are treated as every other employee. If all employees are required to work overtime, then employees who are parents can be required to work overtime. The President's proposal simply protects workers who are parents from unfair assumptions about their commitment or capacity to work.

Family - parental discrimination -

cc: Bruce
Nicole/Neera

WHITE HOUSE OFFICE OF PUBLIC LIAISON

Phone (202)456-2930 Fax (202)456-6218

let's do
something
for the weekly
signifying
another
event (in
radio ad-
dress) sur-
rounding
introduction
of the
bill
Elena

Page: One of 2

Date:

04/20/99

To: ELENA KAGEN

Fax

6-2878

Phone:

From:

MARY BETH CAHILL

Comments:

Podesta (cc M Penn)

Mary Beth → we need
to get this out there →

Boz

THE PROPOSAL WAS SEEN
4-19-99

Copied
Mary Beth Cahill
Mark Penn
Podesta

Clinton Seeks to Give Parents Standing To Create Basis for Discrimination Suits

By JEANNE CUMMINGS

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON—Renewing its courtship with "soccer moms" as the presidential campaign approaches, the Clinton administration will seek to create a broad new basis for job-discrimination lawsuits by classifying parents as a "protected class."

Under the proposal, parents would have the same standing to file discrimination cases as those who already fall under the legally protected classes of race, sex, age, religion or disability. Legislation will be sponsored by Democratic Sen. Christopher Dodd of Connecticut and is expected by the end of the month.

Business groups oppose the plan, arguing that it could prompt a flood of lawsuits when there is little evidence that a problem exists. They say disgruntled or poor-performing employees could exploit the new legal standing.

But White House Domestic Policy Adviser Bruce Reed says it is the product of "real cases." Among them is a New Jersey woman who claimed she was passed over for promotions because she is a mother. A New York federal judge rejected her lawsuit, saying the person who was promoted—who had no children—was of the same sex.

The White House acknowledges that its evidence is anecdotal, but Mr. Reed says that because such discrimination isn't illegal, "it is impossible to tell how many cases there will be. Like most cases of discrimination, employers don't advertise

their biases."

Mr. Clinton announced his intention to introduce such legislation in his State of the Union address; he recently expanded his fund-raising stump speech to signal that helping parents will be a major theme for Democrats in next year's elections. "We have not done enough in the U.S. to help people balance work and family," the president said Friday night at a Boston Democratic Party event.

The message dovetails with Vice President Al Gore's urban-sprawl initiative, which is aimed at reducing the time parents spend in traffic jams and creating more green space for families to enjoy.

Although the antidiscrimination proposal probably will face a frosty reception in the GOP-controlled Congress, the election-year dynamics could make opposition risky.

President Clinton's education proposals and criticism of former President Bush for vetoing the Family and Medical Leave Act helped him tap the middle-class soccer-mom vote in 1992. The Family and Medical Leave Act became the first bill signed into law by Mr. Clinton. The administration this year is expected to try to expand the now-popular law, which allows workers to take time off without pay to help sick or disabled relatives.

The White House is making no secret of its intention to make the fate of the parent antidiscrimination proposal an issue next year. "A truly pro-family Congress would pass this in a heartbeat," Mr. Reed says. "We'll see."

THE WALL STREET JOURNAL
MONDAY, APRIL 19, 1999

**President's Proposal to Prohibit Discrimination Against Parents
April 18, 1999**

Q: What is the President's proposal on parental discrimination?

A: The President will send Congress legislation that prohibits discrimination on the basis of parental status in employment. The proposed legislation would protect those who choose to have a family from discrimination in employment, both in the character of their job and in terms of hiring and advancement, because of their status as parents. This legislation would protect parents of children and those seeking legal custody of children.

The President's proposed federal legislation would offer protection to workers who are parents in a number of situations. It would prohibit employers from taking a mother or father off career-advancing paths (e.g., partnership track) out of some belief that parents as a class are not capable of committing to the work requirements of the job, though there is no discernable difference in the work product of those employees who are parents. It would also prohibit employers from hiring a woman without children over a more qualified man with children because the hired employee did not have children. In general, the President's proposal would protect workers from unfair assumptions about their commitment to their job that can affect hiring, advancement and other employment decisions. While this law would clearly not prohibit employers from making hiring and promotion decisions on the basis of job performance, it would ensure that workers are not unfairly discriminated against simply because they are parents.

Q: What evidence do you have that discrimination against parents in the workplace is a problem?

A: Despite the fact that there is currently no cause of action for parental discrimination, we have found a number of cases in which employees describe instances of discrimination due to their status as parents. Therefore, though the problem may not be rampant, it is a problem that deserves a remedy. This form of discrimination should simply not take place and that is why the President has proposed this simple, but clear prohibition.

Q: How do you respond to the argument by opponents of the measure that this proposal will cause an avalanche of litigation in the courts?

A: Opponents of this proposal have argued both that employers do not discriminate on the basis of parental status and that this proposal will cause

an explosion of litigation. It is difficult to see how the President's proposal will do both. In fact, because the President's proposal only prohibits discrimination on the basis of disparate treatment, not disparate impact, plaintiffs will be required to show direct evidence of discrimination against themselves, an often difficult burden in employment discrimination cases. Therefore, there is no reason to think it will cause unnecessary litigation. Indeed, only if this is a rampant, pervasive problem would it cause an 'avalanche' of litigation.

- Q: Aren't you radically changing the rules of the workplace, if parents can now sue if they're required to work overtime or if they are required to move?
- A. The President's proposal does not do that. This law would clearly not prohibit employers from making hiring and promotion decisions on the basis of job performance, and therefore, does not protect parents who are treated as every other employee. If all employees are required to work overtime, then employees who are parents can be required to work overtime. The President's proposal simply protects workers who are parents from unfair assumptions about their commitment or capacity to work.

DRAFT BILL RE PARENTAL STATUS DISCRIMINATION

Section 1 Definitions

For the purposes of this act,

(a) the terms employer, employee, employment agency, labor organization, complaining party, person, State, commerce, industry affecting commerce, demonstrates, and respondent will have the meaning as defined in Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e.

(b) the term parental status means the status of biological, adopted, or foster parent, stepparent, or standing in loco parentis, to a son or daughter who is under 18 years of age or 18 years of age of older and incapable of self-care because of a mental or physical disability.

Section 2 Unlawful Employment Practices

(a) It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with regard to his compensation, terms, conditions, or privileges of employment because of such person's parental status.

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against any individuals because of his or her parental status or to classify or refer for employment any individual because of his or her parental status.

(c) It shall be an unlawful employment practice for a labor organization to fail or refuse to refer for employment any individual because of such individual's parental status.

(d) It shall be an unlawful employment practice for an employer, employment agency, or labor organization to discriminate against any individual because he or she has opposed any employment practice made unlawful under this act, or because he or she has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this act.

(e) Nothing in this act shall be interpreted to require any employer, employment agency, or labor organization to collect or report information about the parental status of its employees, nor to require that any employer, employment agency, or labor organization grant preferential treatment to any individual because of his or her parental status.

Section 3 ✖ Enforcement and Remedies

(a) The powers, remedies, and procedures set forth in sections 705, 706, 707, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. §2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9) shall be the powers, remedies, and procedures this title provides to the Equal Employment Opportunity Commission, to the Attorney General, or to any person alleging a violation of any provision of this Act.

(b) Every employer, employment agency, and labor organization shall post and keep posted in conspicuous places upon its premises where notices to employees, applicant for employment, and members are customarily posted a notice setting forth excerpts from or summaries of the pertinent provisions of this act and information pertinent to the filing of a complaint. A willful violation of this section shall be punishable by a fine of not more than \$100 for each separate offense.

(c) The Equal Employment Opportunity Commission shall be empowered to promulgate regulations implementing the provisions of this act.

Prohibitory Discrim. Against Parents

no reasonable
accommod

Fam - get less def. pregnancy - PDA instead

* Disparate treatment - intentional

Disparate impact - neutral on face - have an impact.

(need statistics/data

no quotas ~~proof~~ treatment



duty to reasonably accom.

narrow group of discrimination - employers may make a
dec (anti-discrim) based on the notion that a parent...

benefits - include → ^{when} class of items

taken: err on → employer - not

health ins.

Rel - exemption, ²
Title VII, EMDA have exemptions

Prohibiting Discrimination Against Parents

Policy: We propose that the Administration introduce legislation that prohibits discrimination on the basis of family status in employment, both in terms of hiring and advancement. Family status would cover parents of children, women who are pregnant and those seeking legal custody of children. The animating principle of this policy is that those who choose to have a family should not be discriminated against in employment, both in the character of their job and in terms of hiring and advancement, because of their status as parents.

preg -
PDA

Rather than amend Title VII of the Civil Rights Act, we propose to put forward legislation that stands alone. As is the case with the Americans with Disabilities Act as enacted and the Employment Non-Discrimination Act as proposed, such legislation would contain the mandate that prohibits employment discrimination against parents, though it would refer to definitions and clauses within Title VII.

Examples of conduct:

- Employers who take women who are parents off career-advancing paths (e.g., partnership track) out of some belief that parents as a class are not capable of committing to the work requirements of the job, though there is no discernable difference in the work product of those employees who are women and parents.
- The hiring of a woman without children over a more qualified woman with children because the hired employee did not have children.

Background:

Prohibiting employment discrimination based on parental or family status is the law of some states and many municipalities. (Federal law currently prohibits discrimination based on family status in the provision of Housing. See Fair Housing Act.) For example, New Jersey law states that "All persons shall have the opportunity to obtain employment ... property without discrimination because of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, or sex, subject only to conditions and limitations applicable alike to all persons. This opportunity is recognized as and declared to be a civil right. (Stat. @ 10:5-4 (1998)) In addition, Michigan law states, "The opportunity to obtain employment, housing and other real estate, and the full and equal utilization of public accommodations, public service, and educational facilities without discrimination because of religion, race, color, national origin, age, sex, height, weight, familial status, or marital status as prohibited by this act, is recognized and declared to be a civil right." (MCL @ 37.2102; MSA @ 3.548(102) (1998)) In addition, a number of municipalities prohibit employment discrimination based on family status, including the District of Columbia, New York, Miami-Dade County, and Pittsburgh.

Concerns:

Such legislation could raise the profile of the Employment Non Discrimination Act (ENDA), a bill outlawing discrimination in hiring, firing and promotions based on sexual orientation, as gay and lesbian groups may demand that the Administration make ENDA a priority over any new

civil right.

Other issues:

A number of issues still require resolution, including:

Whether disparate impact analysis would apply in such a statute?

Whether such a prohibition would apply in the provision of benefits?

How to ensure such a statute would not apply to the detriment of workers with families?



EQUAL EMPLOYMENT OPPORTUNITY COMMISSION **Pregnancy Discrimination Charges** **EEOC & FEPAs Combined: FY 1991 - FY 1998**

	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998
RECEIPTS	3,000	3,385	3,577	4,170	4,191	3,743	3,977	4,219
RESOLUTIONS	3,135	3,045	3,145	3,181	3,908	4,186	4,595	4,467
RESOLUTIONS BY TYPE								
SETTLEMENTS	580 18.5%	457 15.0%	420 13.4%	373 11.7%	440 11.3%	388 9.3%	395 8.6%	424 9.5%
WITHDRAWALS W/BENEFITS	245 7.8%	237 7.8%	311 9.9%	341 10.7%	362 9.3%	323 7.7%	379 8.2%	328 7.3%
ADMINISTRATIVE CLOSURES	671 21.4%	762 25.0%	756 24.0%	920 28.9%	1,155 29.6%	1,098 26.2%	1,103 24.0%	1,026 23.0%
NO REASONABLE CAUSE	1,518 48.4%	1,497 49.2%	1,552 49.3%	1,435 45.1%	1,851 47.4%	2,276 54.4%	2,432 52.9%	2,534 56.7%
REASONABLE CAUSE	114 3.6%	87 2.9%	104 3.3%	104 3.3%	96 2.5%	97 2.3%	279 6.1%	154 3.5%
SUCCESSFUL CONCILIATIONS	77 2.5%	56 1.8%	62 2.0%	60 1.9%	51 1.3%	55 1.3%	71 1.5%	66 1.5%
UNSUCCESSFUL CONCILIATIONS	37 1.2%	31 1.0%	42 1.3%	44 1.4%	45 1.2%	42 1.0%	208 4.5%	88 2.0%
MERIT RESOLUTIONS	939 30.0%	781 25.6%	835 26.6%	818 25.7%	898 23.0%	808 19.3%	1,053 22.9%	906 20.3%
MONETARY BENEFITS (millions)	\$3.8	\$3.7	\$3.9	\$4.0	\$4.7	\$4.1	\$5.6	\$5.3

←
 versus
 12.4%
 overall

Data compiled by the Office of Research, Information and Planning from EEOC's Charge Data System - National Data Base.

* The total of individual percentages may not always sum to 100% due to rounding.

11/25/98

DEFINITIONS OF TERMS

Administrative Closure – Charge closed for administrative reasons, which include: failure to locate charging party, charging party failed to respond to EEOC communications, charging party refused to accept full relief, closed due to the outcome of related litigation which establishes a precedent that makes further processing of the charge futile, charging party requests withdrawal of a charge without receiving benefits or having resolved the issue, no statutory jurisdiction.

FEPA's – Fair Employment Practices Agencies are state and local agencies with which EEOC has contractual worksharing agreements to process employment discrimination charges.

Merit Resolutions – Charges with outcomes favorable to charging parties and/or charges with meritorious allegations. These include negotiated settlements, withdrawals with benefits, successful conciliations, and unsuccessful conciliations.

No Reasonable Cause – EEOC's determination of no reasonable cause to believe that discrimination occurred based upon evidence obtained in investigation. The charging party may request a review of a no-cause finding by EEOC Headquarters officials and may exercise the right to bring private court action.

Reasonable Cause – EEOC's determination of reasonable cause to believe that discrimination occurred based upon evidence obtained in investigation. Reasonable cause determinations are generally followed by efforts to conciliate the discriminatory issues which gave rise to the initial charge. NOTE: Some reasonable cause findings are resolved through negotiated settlements, withdrawals with benefits, and other types of resolutions, which are not characterized as either successful or unsuccessful conciliations.

Settlements (Negotiated) – Charges settled with benefits to the charging party as warranted by evidence of record. In such cases, EEOC and/or a FEPA is a party to the settlement agreement between the charging party and the respondent (an employer, union, or other entity covered by EEOC-enforced statutes).

Successful Conciliation – Charge with reasonable cause determination closed after successful conciliation. Successful conciliations result in substantial relief to the charging party and all others adversely affected by the discrimination.

Unsuccessful Conciliation – Charge with reasonable cause determination closed after efforts to conciliate the charge are unsuccessful. Pursuant to Commission policy, the field office will close the charge and review it for litigation consideration. NOTE: Because "reasonable cause" has been found, this is considered a merit resolution.

Withdrawal with Benefits – Charge is withdrawn by charging party upon receipt of desired benefits. The withdrawal may take place after a settlement or after the respondent grants the appropriate benefit to the charging party.

**CHARGE STATISTICS FROM THE
U. S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
FY 1991 THROUGH FY 1998**

	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998
*Total Charges	63,898	72,302	87,942	91,189	87,529	77,990	80,680	79,591
Race	27,981	29,548	31,695	31,656	29,986	26,287	29,199	28,820
	43.8%	40.9%	36.0%	34.8%	34.3%	33.8%	36.2%	36.2%
Sex	17,672	21,796	23,919	25,860	26,181	23,813	24,728	24,454
	27.7%	30.1%	27.2%	28.4%	29.9%	30.6%	30.7%	30.7%
National Origin	6,692	7,434	7,454	7,414	7,035	6,687	6,712	6,778
	10.5%	10.3%	8.5%	8.1%	8.0%	8.6%	8.3%	8.5%
Religion	1,192	1,388	1,449	1,546	1,581	1,564	1,709	1,786
	1.9%	1.9%	1.6%	1.7%	1.8%	2.0%	2.1%	2.2%
Retaliation	7,906	10,932	12,644	14,415	15,342	14,412	18,113	17,246
	12.4%	15.1%	14.4%	15.8%	17.5%	18.5%	22.5%	21.7%
Age	17,550	19,573	19,809	19,618	17,416	15,719	15,785	15,191
	27.5%	27.1%	22.5%	21.5%	19.9%	20.2%	19.6%	19.1%
Disability	NA	**1,048	15,274	18,859	19,798	18,046	18,108	17,806
		1.4%	17.4%	20.7%	22.6%	23.1%	22.4%	22.4%
Equal Pay Act	1,187	1,294	1,328	1,381	1,275	969	1,134	1,071
	1.9%	1.8%	1.5%	1.5%	1.5%	1.2%	1.4%	1.3%

NOTE: Data compiled by the Office of Research, Information and Planning from EEOC's Charge Data System - quarterly reconciled Data Summary Reports.

* The number for Total Charges reflects the number of individual charge filings. Because individuals often file charges under multiple bases, the number of Total Charges for any given fiscal year will be less than the total of the eight bases listed.

** EEOC began enforcing the Americans with Disabilities Act on July 26, 1992.



EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

All Statutes

FY 1991 - FY 1998

	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998
RECEIPTS	63,898	72,302	87,942	91,189	87,529	77,990	80,680	79,591
RESOLUTIONS	64,342	68,366	71,716	71,563	91,774	103,467	106,312	101,470
RESOLUTIONS BY TYPE								
SETTLEMENTS	5,047 7.8%	4,348 6.4%	4,138 5.8%	3,938 5.5%	3,811 4.2%	3,163 3.1%	3,992 3.8%	4,646 4.6%
WITHDRAWALS W/BENEFITS	4,250 6.6%	4,673 6.8%	5,145 7.2%	5,236 7.3%	5,035 5.5%	4,009 3.9%	3,635 3.4%	3,219 3.2%
ADMINISTRATIVE CLOSURES	14,941 23.2%	16,003 23.4%	20,285 28.3%	26,012 36.3%	34,153 37.2%	30,821 29.8%	30,077 28.3%	27,118 26.7%
NO REASONABLE CAUSE	38,369 59.6%	41,736 61.0%	40,183 56.0%	34,451 48.1%	46,700 50.9%	63,216 61.1%	64,567 60.7%	61,794 60.9%
REASONABLE CAUSE	1,735 2.7%	1,606 2.3%	1,965 2.7%	1,926 2.7%	2,075 2.3%	2,258 2.2%	4,041 3.8%	4,693 4.6%
SUCCESSFUL CONCILIATIONS	546 0.8%	545 0.8%	589 0.8%	607 0.8%	500 0.5%	749 0.7%	1,041 1.0%	1,343 1.3%
UNSUCCESSFUL	1,189 1.8%	1,061 1.6%	1,376 1.9%	1,319 1.8%	1,575 1.7%	1,509 1.5%	3,000 2.8%	3,350 3.3%
MERIT RESOLUTIONS	11,032 17.1%	10,627 15.5%	11,248 15.7%	11,100 15.5%	10,921 11.9%	9,430 9.1%	11,668 11.0%	12,558 12.4%
MONETARY BENEFITS (millions)	\$93.5	\$117.7	\$126.8	\$146.3	\$136.0	\$145.2	\$176.7	\$169.2

Data compiled by the Office of Research, Information and Planning from EEOC's Charge Data System - quarterly reconciled Data Summary Reports.

* The total of individual percentages may not always sum to 100% due to rounding.

11/25/98

DEFINITIONS OF TERMS

Administrative Closure – Charge closed for administrative reasons, which include: failure to locate charging party, charging party failed to respond to EEOC communications, charging party refused to accept full relief, closed due to the outcome of related litigation which establishes a precedent that makes further processing of the charge futile, charging party requests withdrawal of a charge without receiving benefits or having resolved the issue, no statutory jurisdiction.

Merit Resolutions – Charges with outcomes favorable to charging parties and/or charges with meritorious allegations. These include negotiated settlements, withdrawals with benefits, successful conciliations, and unsuccessful conciliations.

No Reasonable Cause – EEOC's determination of no reasonable cause to believe that discrimination occurred based upon evidence obtained in investigation. The charging party may request a review of a no-cause finding by EEOC Headquarters officials and may exercise the right to bring private court action.

Reasonable Cause – EEOC's determination of reasonable cause to believe that discrimination occurred based upon evidence obtained in investigation. Reasonable cause determinations are generally followed by efforts to conciliate the discriminatory issues which gave rise to the initial charge.

NOTE: Some reasonable cause findings are resolved through negotiated settlements, withdrawals with benefits, and other types of resolutions, which are not characterized as either successful or unsuccessful conciliations.

Settlements (Negotiated) – Charges settled with benefits to the charging party as warranted by evidence of record. In such cases, EEOC and/or a FEPA is a party to the settlement agreement between the charging party and the respondent (an employer, union, or other entity covered by EEOC-enforced statutes).

Successful Conciliation – Charge with reasonable cause determination closed after successful conciliation. Successful conciliations result in substantial relief to the charging party and all others adversely affected by the discrimination.

Unsuccessful Conciliation – Charge with reasonable cause determination closed after efforts to conciliate the charge are unsuccessful. Pursuant to Commission policy, the field office will close the charge and review it for litigation consideration. NOTE: Because "reasonable cause" has been found, this is considered a merit resolution.

Withdrawal with Benefits – Charge is withdrawn by charging party upon receipt of desired benefits. The withdrawal may take place after a settlement or after the respondent grants the appropriate benefit to the charging party.