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Practices

In a letter to the Equal Employment Opportunity Commission (EEOC), the American Institute of CPAs (AICPA) has asked commissioners to reject staff appeals to investigate and litigate against accounting firms regarding partner retirement provisions ...

Isaac M. O'Bannon • Oct. 20, 2014



In a letter to the Equal Employment Opportunity Commission (EEOC), the [American Institute of CPAs](#) (AICPA) has asked commissioners to reject staff appeals to investigate and litigate against accounting firms regarding partner retirement provisions, saying the classification of partners as employees would be very disruptive to the accounting profession and its business practices.

In the October 20 letter, AICPA President and CEO Barry Melancon, CPA, CGMA, explained, “We understand that the EEOC staff is currently investigating and considering litigation against accounting firms regarding the partner retirement provisions in their partnership agreements. You will recall that less than eighteen months ago, the EEOC staff completed a similar investigation of another large

accounting firm. As the EEOC General Counsel's office wrote in its July 25, 2013

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partnership retirement practices Further, the Institute is requesting that Commissioners direct the EEOC staff and General Counsel to “stop these unwarranted and unnecessary investigations of accounting firm partnerships and utilize the Commission’s resources in a more productive manner that will address actual discrimination practices.”

The full text of the letter, which copied members of the Senate Committee on Health Education, Labor and Pensions and House Committee on Education and the Workforce, follows:

“Dear Commissioners:

We understand that the EEOC staff continues to investigate accounting firms organized as partnerships, apparently seeking to expand the scope of the Age Discrimination in Employment Act (ADEA) by requiring that partners in such firms be treated as “employees” for purposes of the ADEA.

As the world’s largest member association representing the accounting profession, with more than 400,000 members and a history of serving the public interest since 1887, the American Institute of CPAs (AICPA) remains concerned that such a significant expansion of the ADEA would be detrimental to the accounting profession and, thus, to the public at large.

As we wrote to you in June 2013, we respectfully request that the EEOC reject staff appeals to move forward with such matters.

We understand that the EEOC staff is currently investigating and considering litigation against accounting firms regarding the partner retirement provisions in their partnership agreements. You will recall that

less than eighteen months ago, the EEOC staff completed a similar

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The AICPA represents CPAs in the more than 11,000 US accounting firms that almost exclusively operate as partnerships, as generally required under state accountancy statutes. Importantly, the public interest is protected by these statutes and the related AICPA Code of Conduct provisions that require that accounting firm owners also be actively engaged in the firm. Appropriately, hundreds of thousands of non-partner employees are covered by the ADEA. Accounting firm partners, as owners, however, are not covered by the ADEA, and we do not believe such partners should be considered employees, as the EEOC staff is apparently asserting.

We believe that any change in the EEOC's classification of accounting firm *partners* to "employees" for the purposes of anti-discrimination laws would be very disruptive to the accounting profession and its business practices. A change that treats accounting firm partners as "employees" would upend the long-established expectations and business reliance interests of the accounting profession. The members of our profession possess a high degree of business expertise. Those individuals have full knowledge and understanding of the compensation, capital contributions, buy outs, pensions, deferred compensation, voting rights, benefits, governance, termination policies, as well as mandatory retirement provisions, and agree to those terms when signing their firm's partnership agreement. Further, individuals have the option of choosing to remain employees rather than becoming partners.

Accounting firms and their partners have adopted these policies for sound business reasons. This business model has thrived and prospered for decades while also serving the public interest. In particular, retirement policy provisions allow for the predictable progression of lesser tenured, and often more diverse, individuals into the partnership, and facilitate the

orderly transition of a firm's clients from senior partners to those who will

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Thank you for your consideration of our views.

Sincerely,

Barry C. Melancon, CPA, CGMA

President and CEO

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