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With Third EEOC Commissioner, Agency Has Power to Resume Action: Top 7 Things Employers Can Expect

**By J. Randall Coffey, Benjamin M. Ebbink,
Rick Grimaldi and Ree Harper**

In this article, the authors provide an overview about the Senate's approval of the third commissioner of the Equal Employment Opportunity Commission and provide a list of the top seven things employers can now expect.

When the U.S. Senate recently approved Brittany Panuccio as the third commissioner of the Equal Employment Opportunity Commission (EEOC or Commission), it restored the agency's full power to take action – which means we can soon expect a series of developments to unfold that will impact the workplace. Now that the agency has a working quorum once again, it can issue federal regulations, release enforcement guidance, and tackle large-scale litigation on topics that the administration considers priorities. This article provides an overview about this key appointment and provide a list of the top seven things employers can now expect.

The authors, attorneys with Fisher Phillips, may be contacted at rcoffey@fisherphillips.com, bebbink@fisherphillips.com, rgrimaldi@fisherphillips.com and rharper@fisherphillips.com, respectively.

WHAT DOES THE EEOC DO?

The EEOC is the federal agency that enforces anti-bias workplace laws based on race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age, disability, and genetic information. The main statutes it supports include Title VII, the Equal Pay Act, the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA), and the most recent addition, the Pregnant Workers Fairness Act (PWFA).

- The Commission investigates discrimination complaints and often files lawsuits against employers on behalf of applicants, workers, and former workers.
- Additionally, it issues binding regulations, and occasionally releases non-binding guidance to help inform employers about its positions on certain key matters.

HOW DOES THE EEOC TYPICALLY WORK?

The EEOC is led by a five-member commission, each of whom is appointed by the President and, typically, enjoys a staggered five-year term. These commissioners wield tremendous power in approving regulations and technical guidance, along with steering the direction and focus of the agency itself. But in order to take such significant actions, the EEOC needs to have a quorum of at least three commissioners.

WHAT HAPPENED?

Democratic members Jocelyn Samuels and Charlotte Burrows were set to remain on the Commission until July 2026 and July 2028, respectively, ensuring Biden appointees served as the majority and controlled the agency for another year. But President Trump took the unprecedented step of firing these two Democratic commissioners in January rather than waiting until their terms would have expired.

That left the EEOC with just two members: Andrea Lucas (appointed by Trump in 2020), and Kalpana Kotagal (appointed by Biden in 2023). Trump then nominated Panuccio in May 2025 to fill a third seat – and the Senate has now approved her nomination. This once again restores a working quorum and gives Trump appointees majority control of the agency.

WHO IS BRITTANY PANUCCIO AND WHAT CAN EMPLOYERS EXPECT FROM HER?

- A Northwestern Law graduate admitted to practice in Illinois and Florida, Panuccio began her career as a labor and employment lawyer at a private law firm. She also clerked on the District of Columbia and Fifth Circuit Courts of Appeal, as well as at the EEOC itself.
- During the first Trump administration, she served at the U.S. Department of Education in the Office for Civil Rights and the Office of the General Counsel, contributing to Title IX regulatory work.
- Most recently, she was an Assistant U.S. Attorney in the Southern District of Florida, handling civil and criminal appeals.
- Panuccio has pledged to “vigorously enforce Title VII,” and she has voiced skepticism about workplace initiatives that provide “preferential treatment” in the name of diversity.

HOW LONG WILL PANUCCIO’S TERM LAST?

Her term is slated to last through July 1, 2029.

WILL COURTS WEIGH IN ON THE COMPOSITION OF THE EEOC?

Former Commissioner Samuels filed a lawsuit challenging the early termination, arguing that the President cannot remove EEOC members absent cause.

- Her complaint contends that the firings violated statutory protections meant to preserve the agency’s independence and guard against partisan swings disrupting its mission.
- The administration has countered that EEOC commissioners are executive officers who serve at the pleasure of the president, pointing to broader constitutional arguments about presidential removal powers.

- The Supreme Court will hear arguments on a case involving the president's power to terminate leaders at another federal agency later this year or in early 2026. The decision in *Trump v. Slaughter* could impact whether Trump's terminations of Samuels and Burrows stand – and whether the current balance of power at the EEOC remains.

TOP 7 THINGS WE EXPECT FROM THE EEOC

Until the U.S. Supreme Court weighs in, we can expect the EEOC to press forward with a series of priorities to further the administration's goals. Here are the top seven actions you can expect from the newly empowered agency.

- *DEI Programs Will Be on the Chopping Block:* EEOC Chair Andrea Lucas has focused much of her work on eliminating “unlawful DEI-motivated race and sex discrimination” from the workplace. We expect to soon see technical guidance attempting – or even a proposed rule purporting – to regulate private sector DEI programs.
- *Pregnant Workers Fairness Act Rule Will Be Rescinded:* Lucas dissented when the EEOC passed the April 2024 PWFA rules given the requirement that employers accommodate applicants and workers who need time off or other workplace modifications for an abortion procedure. A federal court recently struck down the abortion mandate and the entire slate of PWFA regulations is on shaky ground. Look for the EEOC to rescind that portion of the rule – or the entire rule itself (and it's an open question if it will be replaced).
- *Expanded Religious Rights for Workers:* Current EEOC leaders have said they are intent on “protecting workers from religious bias and harassment” – which might reduce opportunities for LGBTQ+ workers to bring claims alleging hostility or misgendering from coworkers who assert religious opposition to their status.
- *Restricted Approach to Gender Identity:* One of Trump's January 2025 executive orders proclaims that “sex” is not a synonym for and does not include the concept of “gender identity,” and a federal judge followed by striking down the EEOC's gender identity enforcement guidance requiring bathroom, dress, and pronoun accommodations. This stance

seemingly runs counter to the Supreme Court's *Bostock* Title VII ruling, and employers could still see discrimination claims from transgender and non-binary/gender-nonconforming applicants and workers. You can expect to soon see guidance from the EEOC restricting the application of this decision as narrowly as possible.

- *Conservative Approach to Worker Bathroom Access:* The current EEOC chair has already made clear her stance on gender-affirming bathroom access: "Every female worker has privacy and safety rights that necessitate access to single-sex workplace bathrooms limited to biological women,"¹ she said while voting against the EEOC's most recent workplace harassment guidance (which Trump rescinded almost immediately after assuming office). Expect to see a new rule or guidance requiring employers to offer single-sex bathroom access to employees based only on the sex assigned at birth.
- *Stronger "Reverse Discrimination" Principles:* Current EEOC leaders have said they want to protect workers from "anti-American national origin discrimination," so you can expect to see a focus on prosecuting "reverse discrimination" claims or otherwise supporting the legal tenets backing such theories – especially given that the Supreme Court recently ruled that plaintiffs alleging workplace discrimination under Title VII are not required to meet a heightened evidentiary standard just because they have "majority-group" status.
- *Reduced Enforcement and Outreach:* In recent years, the EEOC's greatest expenditures were for private enforcement and outreach, as well as federal employee programs. The number of lawsuits filed by the EEOC increased under the Biden administration, but the fiscal year that just ended saw a reduced number of lawsuits (93). We expect to see the EEOC pursue less litigation and become more of an administrative board over the next few years.

NOTE

1. <https://www.eeoc.gov/commissioner-andrea-r-lucass-statement-eeoc-enforcement-guidance-harassment-workplace>.

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