Copyright ©2026 LexisNexis and/or its Licensors.
This branded reprint, or any of the content within the branded reprint, may not be posted online, including on social media, without express written permission from LexisNexis.

Employer Protections for Voluntary Affirmative Action Plans May End Soon: 3 Takeaways From EEOC's

A Practical Guidance® Article by Sheila M. Abron, Fisher & Phillips LLP



Sheila M. Abron
Fisher & Phillips LLP

A longtime rule may soon be scrapped that helped employers ensure they were providing equal employment opportunities and improve diversity, equity, and inclusion while also complying with federal anti-discrimination laws. The Equal Employment Opportunity Commission (EEOC) submitted a proposal to the White House on May 27 seeking to revoke a safe harbor for employers that's been in place for nearly 50 years. The move aligns with the Trump administration's efforts to eliminate DEI programs from the workplace and focus on merit-based opportunities. Here are three key takeaways from the EEOC's latest action and the practical steps employers should be taking now.

1. Employers Would Lose Safe Harbor

The EEOC wants to revoke a 1979 interpretive rule addressing a potential conflict between voluntary affirmative action plans (not those previously mandated for federal contractors) and compliance with Title VII of the Civil Rights Act of 1964:

- Title VII prohibits employment discrimination based on color, national origin, race, religion, or sex.
- Voluntary Affirmative action plans (AAPs) aim to correct historical exclusion of minorities and women in the workplace by, for example, setting goals to hire and promote qualified workers from underrepresented groups. These should not allow employers to take race and gender into consideration when making employment decisions, but the terminology used and application in some workplaces raised some arguments about the conflict between voluntary AAPs and Title VII compliance.
- The 1979 rule provided a legal defense for private employers that voluntarily implemented reasonable affirmative action plans in good faith and properly followed EEOC guidelines.

The EEOC's latest proposal to the White House on May 27 would revoke this good-faith-reliance defense for employers with voluntary AAPs.

Action Item: Employers should be prepared for this rule to ultimately take effect, but also recognize there are still a few steps remaining in the process before this can be finalized. We expect to have more details once the White House completes its review. In the meantime, ensure your hiring, promotion, and compensation decisions are transparent and well-documented.

2. Proposal Aligns with Broader Plan to Eliminate "Illegal" DEI Programs

This proposal comes on the heels of another EEOC submission to the White House on May 14 aiming to end the requirement for large employers to submit workforce demographic data each year through the EEO-1 reporting process.

Moreover, the proposal aligns with President Trump's larger goal to ban "illegal" DEI programs and promote "colorblind

equality" and merit-based opportunities. The series of steps the Trump administration has taken to achieve this goal include:

- Eliminating many long-time affirmative action requirements for federal contractors and subcontractors by revoking Executive Order 11246.
- Directing federal officials to take "appropriate measures to encourage the private sector to end illegal discrimination and preferences, including DEI."
- Requiring federal contractors to affirmatively agree not to engage in racially discriminatory DEI activities and to take certain compliance steps.

EEOC Chair Andrea Lucas has also clearly stated her goal to end unlawful DEI programs. The agency released guidance last year, for example, on the types of workplace DEI programs that may be risky under President Trump's executive orders. You can read about that guidance here: EEOC Issues Guidance on Unlawful Workplace DEI Programs: Top Takeaways for Employers

Action Item: Audit your programs and practices with legal counsel. Conduct a privileged review of your current programs, policies, and agreements to ensure they align with the administration's new direction and identify anything that may need to be updated or discussed with your attorney.

3. The Legal Landscape is Changing Significantly

The White House is currently reviewing several EEOC proposals related to workplace laws, regulations, and initiatives that implicate race and gender, including diversity, equity, and inclusion. Employers should be monitoring those developments and preparing for potential changes that could impact policies, practices, and workplace compliance strategies.

If these changes are finalized, we could see more workplace discrimination lawsuits filed by "majority group" plaintiffs, particularly since the US Supreme Court unanimously ruled last term that plaintiffs alleging workplace discrimination under Title VII are not required to meet a heightened evidentiary standard just because they have "majority-group" status.

Action Item: Track federal developments and legal challenges as they arise. Make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information.

Conclusion

If you have questions, reach out to your Fisher Phillips attorney, the authors of this Insight, or any member of our DEI and EEO Compliance Team or Government Contracting, Compliance, and Reporting Practice Group. We will continue to monitor developments related to all aspects of workplace law. Make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information.

Related Content

Prior Legal Developments & Analysis

- Immigration Officials Tighten Green Card Rules for Nonimmigrants Already in the US: What Employers Should Do Now
- Trump Administration Seeks to End EEO-1 Reporting: What This Means for Employers + 5 Steps While We Wait for More Info

Resource Kits

- Equal Employment Opportunity Commission (EEOC) Resource Kit
- Workplace Diversity, LGBTQ, and Racial and Social Justice Resource Kit

Practice Notes

- Diversity, Equity, Inclusion, and Accessibility (DEIA) in the Federal Workforce
- Workplace Diversity, Equity, and Inclusion Guidance: Training Presentation

Statutes & Regulations

- EEOC Notice

Sheila M. Abron, Partner, Fisher & Phillips LLP

Sheila Abron is a partner at Fisher Phillips, LLP. Certified as a Specialist in Employment and Labor Law by the South Carolina Supreme Court, Sheila represents companies and educational institutions—large and small—as they navigate employment issues related to hiring, discipline, investigations, employment discrimination, unemployment, and other related issues. As Chair of the Firm's Government Contracting, Compliance, and Reporting practice group, she has extensive experience providing compliance advice to federal contractors on affirmative action and OFCCP regulations and audits. Sheila also has a wealth of experience working on collective actions under the Fair Labor Standards Act (FLSA) and class actions under wage and hour state laws. She is a member of the National Association of College and University Attorneys (NACUA). Sheila also provides training for supervisors and managers on harassment, Equal Employment Opportunity (EEO) compliance, the Family Medical Leave Act, diversity and inclusion, and many other areas.

Sheila is involved in various professional and community activities. She is a past president of the National Conference of Women's Bar Associations, the South Carolina Women Lawyers' Association (SCWLA) and the South Carolina Bar Young Lawyers (SCYLD) Division. She also serves on the Board of Directors for Columbia – Society for Human Resource Management (SHRM), and the Riverbanks Zoo Society. Sheila is active in the Richland County Bar, American Bar Association, and is a member of the Junior League of Columbia.

Prior to attending law school, Sheila was a member of store leadership for a Fortune 500 retail company, providing employee supervision and managing a variety of employee issues related to wage and hour, workers' compensation, discrimination issues, performance management, and other personnel issues.

Sheila has been recognized for her contributions to the legal profession and her community at large, having been twice named to the Columbia *Regional Business Report's* Women of Influence list, *Columbia Business Monthly's* Legal Elite of the Midlands, and the American Bar Association's On the Rise – Top 40 under 40. She has been consistently recognized in South Carolina Super Lawyers and was a recipient of the Leadership in the Law award. She was awarded the Johnathon Jasper Wright Award by The Honorable Matthew J. Perry Chapter of the Black Law Students Association at the University of South Carolina School of Law, is a three-time recipient of the President's Award and a four-time recipient of the Star of the Quarter award from the South Carolina Bar Young Lawyers' Division. Sheila has also been recognized as a Silver Compleat lawyer Award from the University of South Carolina School of Law Alumni Association. This award recognizes alumni who have made significant contributions to the legal profession and who exemplify the highest standard of professional competence, ethics, and integrity.

Sheila's depth of experience in a variety of employment-related issues has made her a trusted source for commentary. She is regularly quoted in prominent media outlets such as *Bloomberg Law*, *The Wall Street Journal*, *Inc. Magazine*, *SC Lawyers Weekly*, *Business Insurance*, *Federal News Network*, *Law 360*, *EHS Today*, and *HR Dive*.

This document from Practical Guidance®, a comprehensive resource providing insight from leading practitioners, is reproduced with the permission of LexisNexis®. Practical Guidance includes coverage of the topics critical to practicing attorneys. For more information or to sign up for a free trial, visit lexisnexis.com/practical-guidance. Reproduction of this material, in any form, is specifically prohibited without written consent from LexisNexis.

LexisNexis, Practical Guidance and the Knowledge Burst logo are registered trademarks of RELX Inc.
Other products or services may be trademarks or registered trademarks of their respective companies. © 2026 LexisNexis

