

EMPLOYER PROTECTIONS FOR VOLUNTARY AFFIRMATIVE ACTION PLANS MAY END SOON: 3 TAKEAWAYS FROM EEOC'S NEW PROPOSAL

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

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

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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.