

EEOC ISSUES NEW ENFORCEMENT PLAN: 5 STEPS FOR EMPLOYERS TO ENSURE COMPLIANCE WITH FEDERAL ANTI-DISCRIMINATION LAWS

Insights
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EEOC Issues New Enforcement Plan: 5 Steps for Employers to Ensure Compliance with Federal Anti-Discrimination Laws

Employers now have a roadmap from the federal government on how best to comply with workplace anti-discrimination laws under the Trump administration. The Equal Employment Opportunity Commission (EEOC) just released an updated National Enforcement Plan yesterday that replaces the last plan from the Biden administration. Notably, the plan prioritizes enforcement in intentional discrimination cases – including bias in DEI programs – rather than disparate impact claims. The plan “reaffirms the agency’s unwavering commitment to merit-based, evenhanded enforcement of our nation’s civil rights laws,” according to EEOC Chair Andrea Lucas. We’ll tell you everything you need to know about the new enforcement guidelines and five steps to ensure compliance.

The EEOC’s New Enforcement Priorities

The EEOC’s Commissioners voted on June 4 to replace the Biden administration’s FY 2024-2028 Strategic Enforcement Plan with a new National Enforcement Plan (NEP). The EEOC noted that it will use its enforcement discretion to advance the Trump administration’s policy objectives and comply with relevant executive orders. The plan includes the following priorities:

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Disparate Treatment Cases: The EEOC will prioritize disparate treatment (meaning intentional discrimination) over disparate impact claims (which stem from seemingly neutral policies or practices that have a disproportionate impact on a particular group of individuals based on a protected characteristic like race or sex).

The EEOC's plan eliminates disparate impact theories in investigations "to the maximum degree possible" and drops litigation efforts that advance disparate impact claims. The plan aligns with President Trump's 2025 Executive Order aiming to "eliminate the use of disparate impact liability in all contexts to the maximum degree possible." [You can read more about that order here.](#)

Intentional Discrimination Through DEI Programs: The plan specifically names DEI policies, programs, and practices as a focus. The agency included the following examples of practices it will scrutinize:

- race- or sex-based quotas (even when framed as "aspirational" goals);
- diverse slate policies;
- diverse hiring panel policies;
- diversity statements required of candidates;
- compensation tied to diversity goals; and
- race or sex data shared with managers, the public, or other non-HR personnel or legal representatives.

Hiring Preferences for Foreign National Workers: The NEP says this may include, but is not limited to, policies, programs, or practices that preference guest worker visa holders or PERM applicants.

Clarifying Supreme Court Precedent: The new plan specifically highlights claims involving the application or scope of recent SCOTUS decisions on:

- ["majority-group" workplace bias claims;](#)
- [a sex discrimination claim based on a lateral job transfer;](#)
- [voluntary affirmative action programs;](#) and

- employer obligations under Title VII to reasonably accommodate religious practices.

The EEOC is also focusing on cases that will clarify the scope of *Bostock v. Clayton County* regarding employees' right to "single-sex intimate spaces" and employers' right to provide them, employees' and employers' right to "express the binary nature of sex," and employees' right to religious accommodations for sincerely held religious beliefs. Additionally, it will focus on the scope of liability under the Pregnant Workers Fairness Act.

Three-Pronged Approach to Eliminating Workplace Discrimination

The new National Enforcement Plan also reaffirms the EEOC's three-pronged approach to addressing workplace discrimination:

1. prevention through education and outreach;
2. voluntary resolution of disputes (including alternative dispute resolution, pre-determination settlements, and conciliation agreements); and
3. enforcement through litigation.

Beyond the DEI and disparate treatment priorities discussed above, the plan also targets cases with potentially broad impact beyond the immediate parties, matters involving vulnerable workers, federal appeals court disagreements on anti-discrimination issues, and constitutional and statutory liability limits for religious employers.

EEOC Chair Andrea Lucas framed the new plan as a commitment to individualized, merit-based enforcement. "By prioritizing intentional discrimination and underscoring that every worker must be treated as an individual under the law, this plan sharpens the agency's focus on protecting equal opportunity for all Americans," she said.

The EEOC's only Democratic Commissioner, Kalpana Kotagal, objected to the new NEP, calling it a "dramatic shift in the agency's enforcement, outreach, and litigation programs."

Your 5-Step Compliance Plan

The EEOC's announcement of new enforcement priorities offers an opportunity for your business to audit current policies to ensure they're in compliance with the agency's current approach. Consult with your FP counsel and consider the following steps:

1. Review Your Workplace Policies and Practices: Title VII of the Civil Rights Act prohibits employment discrimination based on protected characteristics, including race, color, national origin, sex, and religion. In [prior guidance](#), the Trump administration has explained that the law protects against such discrimination "no matter which employees are harmed," and noted that Title VII's protections "apply equally to all racial, ethnic, and national origin groups, as well as both sexes." Additional laws the EEOC enforces protect employees from discrimination based on age, disability, and genetic information.

2. Focus on Consistency and Transparency: In addition to reviewing what your policies actually say, you should ensure rules are applied consistently and do not inadvertently disadvantage any group. Using transparent qualification standards and legal review for major decisions such as promotions, demotions, and involuntary transfers are keys to reducing risk.

3. Train Your Staff: It's crucial to provide training to HR staff and managers on unbiased decision-making and to reinforce compliance with equal employment opportunity laws for all employees.

4. Continue to Monitor for State Law Compliance: The federal government is no longer pursuing disparate impact claims, but employers may still see such claims, particularly under applicable state law. Continue to assess whether any neutral policies potentially create these types of disparities. In general, state and local anti-discrimination laws may impose more obligations than federal law. Review your policies against the requirements in each of your locations and consult with counsel to address state law nuances.

5. Stay Updated on the Latest Developments: The EEOC and other federal agencies continue to issue new guidance at a rapid pace that significantly impacts workplace compliance priorities. For example, just last month, the EEOC submitted two proposals to the White House: one to [scrap a safe harbor](#) for employers with voluntary affirmative action plans, and another to [end EEO-1 reporting](#). Make sure

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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](#). We will continue to monitor developments related to all aspects of workplace law. And again, sign up for alerts from [Fisher Phillips' Insight System](#) to stay on top of information that could impact your business.