

MARCH 28, 2025 | DISCRIMINATION, HARASSMENT & RETALIATION

EEOC Shifts Focus to “DEI-Related Discrimination”: What It Means for Title VII Enforcement

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The EEOC has recently issued [new guidance](#) signaling a marked shift in its enforcement priorities: a heightened focus on “[diversity, equity, and inclusion-related discrimination](#).” While the foundational legal framework of Title VII obviously remains unchanged, this guidance reflects a new interpretation of how DEI initiatives intersect with existing anti-discrimination protections.

Reaffirming Title VII Protections

Title VII prohibits employment discrimination based on race, sex, color, religion, and national origin. The EEOC’s updated guidance does not introduce new legal obligations but urges employers to reassess their DEI programs to ensure they are implemented in a manner consistent with these longstanding protections. While the guidance does not suggest widespread noncompliance, it does identify specific DEI practices that may attract greater scrutiny:

- **Disparate Treatment and Unequal Access to Opportunities:** The EEOC’s guidance places new emphasis on the exclusion of individuals from training, mentoring, fellowships, or interview slates based on protected characteristics. Though these are not new legal concepts, the EEOC’s decision to spotlight them indicates a shift in enforcement attention that DEI and HR professionals should take seriously.
- **Segregation and Classification:** The guidance cautions against separating employees into groups for DEI-related activities—such as trainings—based on race, sex, or other protected traits. Even when the content delivered is identical, dividing participants by protected category may raise legal concerns.
- **Harassment:** The EEOC reiterates that DEI training must not cross the line into creating a hostile work environment. While traditional DEI content is unlikely to meet the legal standard for harassment, employers should still approach training design with care, especially when addressing sensitive topics tied to protected traits.
- **Retaliation:** Title VII’s anti-retaliation provisions may apply when an employee objects to DEI training—if that objection is grounded in a good-faith, fact-specific belief that the training violates anti-discrimination laws. General discomfort or disagreement with DEI content, absent a legal basis, is unlikely to trigger retaliation protections.
- **Employee Resource Groups (ERGs):** The guidance also affirms that ERGs and affinity groups must be

inclusive and open to all employees. Limiting participation based on race, sex, or other protected traits may raise concerns of exclusion or unlawful segregation.

Current EEOC Guidance Reflects a New Focus Under Andrea R. Lucas

The guidance also coincides with the recent renomination of Andrea R. Lucas as Acting Chair of the EEOC. Lucas, who has served on the Commission since 2020, has emphasized the need to restore a “neutral” and “consistent” approach to civil rights enforcement. This includes addressing what she has described as the “unequal enforcement” of civil rights laws in recent years, particularly in relation to DEI programs.

Currently, Lucas is one of only two sitting commissioners on the five-member bipartisan Commission, leaving the EEOC without a quorum and unable to take formal votes on new guidance, rescind existing policy, or approve major litigation. While this limits her ability to enact sweeping policy changes, as Acting Chair she retains significant administrative authority over the agency’s day-to-day operations, including directing enforcement focus and internal priorities. Lucas has indicated that she intends to scrutinize DEI programs that she believes may exclude American workers or reflect politically motivated bias—signaling that even without formal Commission action, the agency’s practical enforcement posture is shifting under her leadership.

Practical Implications for Employers and Employees

In light of the EEOC’s recent technical assistance documents, employers should take this moment as an important opportunity to closely evaluate their DEI and DEI-adjacent programs to ensure compliance with evolving legal interpretations and enforcement priorities. While the agencies’ positions remain rooted in longstanding civil rights law, the latest guidance signals a different approach to how DEI initiatives are viewed in relation to anti-discrimination protections. As the regulatory landscape continues to shift, it is essential for organizations to stay proactive, informed, and responsive. If you have questions or would like assistance in assessing your DEI strategies under this updated framework, please do not hesitate to contact us for guidance.