

JANUARY 16, 2025 | DISCRIMINATION, HARASSMENT & RETALIATION

Employers Can Expect a more business-friendly EEOC in a Second Trump Administration

Under the Biden administration, the U.S. Equal Employment Opportunity Commission (“EEOC”), the agency that administers and enforces federal workplace civil rights law, advanced numerous employee-friendly initiatives, with a particular focus on gender identity discrimination in the workplace and Diversity, Equity, and Inclusion (“DEI”) initiatives promoting workplace diversity. While we cannot say with absolute certainty what the EEOC will look like under a second Trump administration, as set forth in further detail below, we strongly suspect that these initiatives will be put on the back burner (and/or eliminated entirely) and that the EEOC will take a more business-friendly approach, offering employers more leeway when interpreting and enforcing federal employment laws.

It is worth noting, however, that the EEOC, a bipartisan Commission comprised of five presidentially appointed members, including the chair, vice chair, and three commissioners, will continue to have a Democratic majority through 2026. Therefore, even if President-Elect Trump appoints a new commissioner in the next few weeks (as widely expected), any priority shifts or other significant changes to the EEOC will not occur immediately.

When such changes do begin to occur, it is likely that the EEOC will not be anywhere near as friendly towards DEI programs and practices. Indeed, in his campaign, Trump promised to “terminate every diversity, equity, and inclusion program across the entire federal government.” Further, current commissioner Andrea Lucas (the individual most likely to be appointed the next Chair) has already warned employers that some current DEI initiatives and programs may already violate the law as they are not sufficiently narrowly tailored to escape liability under Title VII of the Civil Rights Act. Additionally, while not a DEI program *per se*, it is nonetheless relevant to this discussion that in the 2023 case of *Students for Fair Admissions, Inc. v. Harvard*, the U.S. Supreme Court decided that affirmative action programs were unlawful in higher education. Based on these factors, among others, it certainly is not a stretch to conclude that the EEOC will take a much harsher stance towards DEI programs and practices.

As for other Biden-era initiatives that may be coming to an end, the EEOC released updated guidance on workplace harassment in 2024 which, among other things, provided that harassment could include misgendering a worker, preventing an employee from accessing a bathroom that aligns with their gender identity, and “virtual harassment,” including on social media. The EEOC also detailed “special considerations” when balancing anti-harassment with religious accommodations, an issue that typically arises with respect to pronoun usage and transgender/homosexual topics in the workplace. Nonetheless, it would not be surprising to see the EEOC roll

back or even directly rescind this expanded definition of workplace harassment and the current interpretation of the law as applied to transgender issues.

Moreover, during the Biden administration, the EEOC issued guidance interpreting the relatively new Pregnant Workers Fairness Act (“PFWA”), which included language providing for employees to seek reasonable accommodations under the law for abortions, miscarriage or stillbirth, migraines, lactation, and episodic pregnancy-related conditions, such as morning sickness. At that time, however, Commissioner Lucas, opposed the EEOC’s interpretation of reproductive care covered by the PFWA and asserted that employers offering abortion-related travel benefits were engaged in discrimination. Moreover, the 2025 Presidential Transition Project states that the “EEOC should reorient its enforcement priorities toward claims of failure to accommodate disability, religion, and pregnancy (but not abortion).” Based on these strong signals, we expect the Trump EEOC to curtail the EEOC’s interpretative guidance on the PFWA or, at the very least, qualify the list of reasonable accommodations to exclude abortion care.

Finally, as many of you may know, the EEOC recently issued a notice announcing its intent to bring back pay data collection as part of the required EEO-1 submissions, which would require businesses to provide data to the EEOC about employee wages and hours. The expressed reason for employers to provide this data would be so that the EEOC could then use that information to identify pay discrepancies and investigate alleged discriminatory pay practices, which could then, in turn, potentially be used to support a discrimination claim. The EEOC initially said it planned to propose new pay data collection regulations in January 2025, but that date has already been pushed back. Given the change in administration, we expect this date to continue to be pushed back, eventually resulting in this entire process being thwarted and the EEO-1 data collection requirement being eliminated in its entirety.

Thus, significant changes to the EEOC are on the horizon, although at this point it is still early to say when, exactly, these changes will occur. Nonetheless, it is certainly worth keeping an eye out for these changes, as they undoubtedly will impact and/or affect your business and your company’s policies, practices, and procedures, at least in some capacity. As always, we will keep you apprised of these developments as they occur and are available to assist you and your business in navigating these legal challenges.