

EEOC & Title VII: Recent Developments and Compliance Considerations

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The Institute for Workplace Equality

Employer Membership Association, formed to assist the contractor community in responding to rapidly changing compliance challenges. The Institute provides national training programs and webinars addressing the latest EEO developments and strategies for effective compliance.

For more information on The Institute for Workplace Equality, visit: www.theinstitute4workplaceequality.org

Institute Membership Offers Many Benefits

- Monthly members-only roundtable meeting covering cutting edge issues, including:
 - Washington Insider Insights
 - Changing enforcement initiatives, priorities and trends
 - Growing patchwork of domestic and international pay equity laws
 - Strategic and practical key takeaways (Takeaways PDF provided after each roundtable for members to share within their organizations)
- Unique access to EEO Agency leadership
- Complimentary registration for all webinars
- Institute conferences led by our 18-person faculty of nationally recognized EEO attorneys and statisticians
- Four or more* complimentary registrations for Institute conferences, annually
 - Member organizations do not pay conference registration fees on top of annual dues
 - **number of complimentary registrations depends on your organization's membership tier*
- Access to The Institute's extensive Member Resources Library
- Access to The Institute's Member Directory, a valuable networking opportunity for members to share best practices, guidance, and knowledge
- The Institute writes white papers addressing our members compliance concerns and priorities
- Opportunities for Institute members to collaborate and attend brainstorming sessions with federal EEO Agency leadership
- Semiannual meetings with The Institute's Advisory Board, U.S. DOL, and EEO Agency leadership

Agenda

- EEOC Leadership
- EEOC Enforcement Priorities During Trump 2.0
 - Illegal DEI
 - National origin discrimination, including concerns around perceived “Anti-American” bias
 - Antisemitism and anti-Christian bias in the workplace
 - Religious accommodation challenges, including tensions with LGBTQ+ protections
- EEOC enforcement activity updates
 - Commissioner charges
 - Recent cases dismissed
 - Recent lawsuits filed
- Practical Tips and resources along the way . . .

EEOC Leadership

- Commissioner Andrea Lucas appointed acting Chair on January 20, 2025
 - Confirmation hearing held June 19, 2025 but no vote scheduled (yet)
- Commissioner Kalpana Kotagal's term set to expire July 2027
- No quorum until nominee Brittney Panuccio (or other) is confirmed
 - Confirmation hearing held on June 16, 2025 but no vote scheduled (yet)
- Acting General Counsel Andrew Rogers announced February 4, 2025; hearing for DOL Wage & Hour post held in June 2025
- [State of the EEOC](#) FAQs
 - Lack of quorum does not limit filing and processing of charges
 - Commission's ability to revise existing or issue new regulations or policy directives is limited

The Changing Legal Landscape

- ***Students for Fair Admissions v. Harvard/UNC***
 - Lucas [May 2024 Statements](#): Because *SFFA* did not directly change the law in the employment context, DEI programs and policies and other employment policies, programs, and decisions that were legal before *SFFA* likely remain legal. Likewise, previously unlawful ones remain illegal. Whether this state of the law post-*SFFA* is good or bad news for a particular employer depends on whether that employer already was complying with the preexisting and continuing restrictive standards that apply to the use of race, sex, or other protected characteristics in employment decisions under Title VII.
- ***Muldrow v. City of St. Louis, Missouri, et. al.***
 - Lucas [May 2024 Statements](#): Under the broad and low threshold for a covered employment action post-*Muldrow*, Title VII arguably extends to employment actions like restricting employment training programs, leadership development programs, or mentoring or sponsorship programs to only employees of certain races or sexes; or selecting employees for those types of programs in whole, or in part, motivated by their race or sex . . . Likewise, covered employment actions arguably also include selecting applicants for interviews or placing them on a candidate slate, like a diverse slate policy, motivated in whole, or in part, by race or sex. In short, I think it is a major blind spot for employers to not scrutinize DEI programs that fall outside of hiring, firing, and compensation decisions, based on a misimpression that the DEI program in question does not involve an “adverse action” that is covered under Title VII.”
- ***Ames v Ohio Dept. of Human Services***
 - Lucas [press release](#) reaffirms that “EEOC has taken this colorblind, group-neutral position for *at least 50 years*” and that her priorities include “dismantling identity politics that have plagued our employment civil rights laws, by dispelling the notion that only the ‘right sort of’ plaintiff is protected by Title VII.”

Acting Chair Lucas Priorities

“Acting Chair Andrea R. Lucas understands that our nation’s civil rights laws reject identity politics and instead focus on individual rights and equality. She prioritizes evenhanded enforcement of civil rights laws for all Americans, including by

- rooting out unlawful DEI-motivated race and sex discrimination;
- protecting American workers from anti-American national origin discrimination;
- defending the biological and binary reality of sex and related rights, including women’s rights to single-sex spaces;
- protecting workers from religious bias and harassment; and
- remedying other areas that have been historically under-enforced by the agency.”

<https://www.eeoc.gov/andrea-r-lucas-acting-chair>



“Illegal DEI”

- [EO 14173](#): aimed at eliminating use of “dangerous, demeaning, and immoral race- and sex-based preferences under the guise of so-called “diversity, equity, and inclusion” (DEI)” in violation of federal civil rights laws
- Two new EEOC resources released in 2025:
 - [What You Should Know about DEI Related Discrimination](#)
 - [What to do if you experience discrimination related to DEI at work](#)
- Abundance of very public enforcement activity by Acting Chair Lucas, despite lack of quorum
- Keep in mind, EEOC is not only threat: DOJ and other business regulating agencies are playing a role

Practical Tips

- Review and continually revisit equal employment and inclusion-related policies
- Consider list of opportunity practices identified by Administration
 - ☐ **Broad-based** recruitment efforts
 - ☐ **Inclusive** mentorship and sponsorship programs
 - ☐ **Universal** leadership and EEO training
 - ☐ Audit job requirements/**Job analysis**
 - ☐ **Standardized** interviews
 - ☐ Support **first-generation** or other **socio-economic** demographic factors
 - ☐ Reassess approach to **work culture**
 - ☐ **Structured** promotion process

Level Set: Defining “National Origin”?

- Denial of equal employment opportunity because of:
 - Individual’s (or their ancestor’s) place of origin (including the U.S.)
 - Individual has the physical, cultural or linguistic characteristics of a national origin group
- “[W]hether an individual (or her ancestors) is from China, Russia, or Nigeria, or belongs to an ethnic group, such as Hispanic or Arab, she is entitled to be free from employment discrimination on that basis.”
- Actual or perceived
- Can occur within same national origin group
- Does not refer to citizenship status, but...

Does National Origin Cover “Americans”?

- **YES!** “National origin discrimination includes discrimination against American workers in favor of foreign workers.”
- *Fortino v. Quasar Co.*, 950 F.2d 389, 392 (7th Cir. 1991) (Title VII protects Americans from discrimination in favor of foreign workers)
- *Fulford v. Alligator River Farms, LLC*, 858 F. Supp. 2d 550, 557-60 (E.D.N.C. 2012) (disparate treatment and hostile work environment claims based on their national origin, American, where the defendant treated them differently, and less favorably, than workers from Mexico)
- *Thomas v. Rohner-Gehrig & Co.*, 582 F. Supp. 669, 674 (N.D. Ill. 1984) (holding that “a plaintiff discriminated against because of birth in the United States has a Title VII cause of action”).

Acting Chair Lucas' Warning to Employers



“The EEOC is putting employers and other covered entities on notice: if you are part of the pipeline contributing to our immigration crisis or abusing our legal immigration system via illegal preferences against American workers, you must stop . . . The EEOC is here to protect all workers from unlawful national origin discrimination, including American workers.”

EEOC Points to Alleged “Employer Excuses”

- Lower cost labor (whether due to payment under the table to illegal aliens, or exploiting rules around certain visa-holder wage requirements, etc.)
- Workforce perceived as more easily exploited, in terms of the group’s lack of knowledge, access, or use of wage and hour protections, antidiscrimination protections, and other legal protections
- Customer or client preference
- Biased perceptions that foreign workers are more productive or have a better work ethic than American workers

LeoPalace Resort Settlement

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Press Release
02-18-2025

LeoPalace Resort to Pay Over \$1.4 Million in EEOC National Origin Discrimination Lawsuit

Settles Federal Suit Alleging American Employees Were Paid Less Than Japanese Nationals

GUAM – LeoPalace Guam Corporation, doing business as LeoPalace Resort, a major hotel and resort on the U.S. territory of Guam, will pay \$1,412,500 and provide equitable relief to settle a national origin discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC), the federal agency announced today.

**Recent Press Releases
from the Los Angeles
District Office**
[EEOC Files Subpoena Enforcement Action](#)

Practical Tips and Employer Resources

- EEOC Resources
 - https://www.eeoc.gov/laws/guidance/eeoc-enforcement-guidance-national-origin-discrimination#_ftnref5
 - <https://www.eeoc.gov/laws/guidance/questions-and-answers-employers-responsibilities-concerning-employment-individuals>
- Ensure managers understand that customer preference and race/national origin preference cannot justify decision-making
- Revisit referral policies and workforce composition for lower skilled positions

Sexual Orientation and Gender Identity

- In 2020, Supreme Court holds that Title VII protects employees from discrimination on the basis of sexual orientation and gender identity in *Bostock v. Clayton County*
- [EEOC's 2024 Enforcement Guidance on Harassment in the Workplace](#) extended ruling to address use of restrooms and pronouns, among other items
- [EO 14168](#): “It is the policy of the United States to recognize two sexes, male and female”
- January 28, 2025 EEOC Press Release: Priority to “defend the biological and binary reality of sex and related rights, including women’s rights to single-sex spaces at work”
- In May 2025, district court in Texas ([Texas v. EEOC](#)) vacates parts of EEOC Guidance

Practical Tips and Employer Resources

- EEOC enforcement will likely decline during this Administration
 - Moved to drop pending lawsuits it filed on behalf of transgender workers.
 - Paused processing of transgender bias charges
 - Limited funding to states to process these claims
- 2024 guidance will likely be revised once quorum present

BUT . . .

- Application of *Bostock* to various fact patterns is in flux in courts
- State and local sexual orientation and gender identity protections remain in effect

Religious Discrimination and Accommodation

- Title VII prohibits discrimination on the basis of sincerely-held religious beliefs and requires reasonable accommodation unless there is an undue hardship
- Protects those who belong to traditional, organized religions, (Buddhism, Christianity, Hinduism, Islam, Judaism, etc) and also those who hold other sincerely held religious, ethical or moral beliefs
- Remember standard for accommodation recently clarified in Supreme Court's decision in *Groff v. DeJoy*

Religious Discrimination and Accommodation

- Recent EEOC Religious Discrimination/Accommodation Cases
 - Lawsuit against FCA for failing to allow time off for Sabbath
 - \$850K settlement with Venetian Resort for religious discrimination and retaliation (days off and wearing of beards for religious reasons)
 - Lawsuit against ski resort for terminating employee for religious based social media posts
 - Lawsuit against construction-related company over dress code policies

Practical Tips and Employer Resources

- EEOC Resources
 - [29 CFR Part 1605: Guidelines on Religious Discrimination](#)
 - [2021 Guidance on Religious Discrimination](#)
- Revisit or develop company policy on religious accommodations
- Train managers and supervisors on company policies and how to handle requests for accommodation

Systemic Discrimination Cases

- [EO 14281](#): “policy of the United States to eliminate the use of disparate-impact liability in all contexts to the maximum degree possible to avoid violating the Constitution, Federal civil rights laws, and basic American ideals”
- EEOC takes immediate action
 - Seeks to dismiss many charges and lawsuits where claim involves disparate impact
 - Halts funding of state processing of disparate impact claims

BUT . . .

- Acting Chair Lucas: “The Commission will continue to relentlessly combat unlawful patterns or practices of intentional discrimination in violation of Title VII . . .”
- Disparate impact liability remains part of Title VII and state/local laws
 - The Sheetz Case

Recent EEOC Enforcement Activity

- EEOC Enforcement Will Be Different But Not Non-Existent!
- Court of Public Opinion
 - Law Firm Letters
- Commissioner Charges
 - Pre-2025 Commissioner Charges by Acting Chair Lucas
 - Publication of Harvard University Charge
 - Charges based on news reports
- Handling of LGBTQ+ charges

Recent EEOC Enforcement Actions

- Subpoena for applicant data in Hispanic preference case against Vallarta Food Enterprises
- Lawsuit against FCA US, LLC for alleged refusal to accommodate employees request to observe the Sabbath and take unpaid leave for Passover
- Lawsuit against 1st Franklin Financial for class of employees when it alleged denied reasonable accommodations and fired them for their alleged disabilities

Presenters

Lynn A. Clements

Lynn A. Clements, Esq. is the Senior Director of People Insights at Berkshire Associates, a Columbia-MD based human resource consulting and technology firm. A division of Resolution Economics, the firm's practice includes an interdisciplinary team of expert compliance professionals, labor economists, and Industrial/Organizational (I/O) psychologists who help organizations analyze and interpret workforce data to build compliant employment practices.

Lynn has over 25 years of experience in the EEO and affirmative action space, including serving as the Acting Director of Policy at the OFCCP and as an attorney at EEOC in the Office of Legal Counsel and in Vice Chair Naomi Earp's office. Prior to joining Berkshire, Lynn was a partner at a management-side employment law firm, where she advised employers on the full range of EEOC and DOL compliance matters, including large-scale systemic discrimination cases.

Lynn is a faculty member at the Institute for Workplace Equality, co-authored the U.S. Chamber of Commerce's Fall 2017 Report on Recommendations for Reform of the DOL, and has testified before Congress on EEO and pay equity issues. Her experience with government transitions, both from the administration side and the private sector, makes her an invaluable voice during this period of change.

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T. Scott Kelly

Scott Kelly is a nationally recognized leader in equal employment opportunity law, pay equity, and legally compliant diversity, equity, and inclusion (DEI) programs, regularly advising and counseling employers on matters including employment discrimination, compliance programs, government contracting, affirmative action obligations, and workplace-related crises. His practice focuses on proactively advising clients in C-suite, senior leader, managerial, talent acquisition, and compensation executive roles in the financial services, media and entertainment, healthcare, higher education, retail, manufacturing, and technology industries—in addition to federal contractors and federal grant recipients.

He advises and counsels employers on the full spectrum of workplace related matters. Scott also provides advice regarding the proper validation of employment selection procedures to ensure compliance with Title VII and other applicable employment laws. Drawing on years of strategic litigation, Scott has represented employers in connection with EEOC and DOL systemic pattern or practice investigations, as well as litigation involving challenges to hiring, compensation, promotion and other practices alleged to cause class-wide disparate impact or disparate treatment discrimination. He is skilled in evaluating damages assessments that impact systemic enforcement actions, litigation defense, and settlement options. With experience in designing and defending compensation systems, Scott has led numerous proactive pay equity analyses across various industries.

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Thank You