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EEOC Scrutiny of DEI Programs: What Companies Need to Know

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The EEOC's Policy and Initiatives

Over the past 15 months of the second Trump Administration, the U.S. Equal Employment Opportunity Commission ("EEOC"), under the leadership of Chair Andrea Lucas, has pursued aggressive enforcement efforts aimed at advancing the Administration's civil rights priorities and implementing the directives of Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, and, more recently, Executive Order 14398, *Addressing DEI Discrimination by Federal Contractors*. Both of those Executive Orders reflect the Administration's stated view that diversity, equity, and inclusion ("DEI") programs promote discrimination instead of remedying it.

Last week the EEOC submitted a proposal to the Office of Management and Budget's Office of Information and Regulatory Affairs, seeking rescission of the agency's longstanding 1979 rule titled "Affirmative Action Appropriate Under Title VII of the Civil Rights Act of 1964." The rule provides guidance to employers on implementing affirmative action programs to correct the effects of prior discriminatory practices, as well as a good-faith-reliance defense for employers who implement affirmative action plans in good faith and in conformity with the rule's guidelines. If finalized, the proposal would eliminate the availability of this good-faith defense and expose private-sector employers to EEOC enforcement actions targeting affirmative action as discrimination.

The EEOC's recent proposal is the latest in a series of efforts aimed at dismantling DEI practices in the private sector. Earlier this year, Chair Lucas issued a letter to Fortune 500 companies, warning of potential Title VII violations arising from DEI programs and underscoring the importance of employment decisions grounded in "merit, excellence, and character." The letter aligns with EEOC guidance, which the agency characterizes as "non-binding," that identifies DEI activities in the workplace and provides employees with information on how to report such conduct. The EEOC has not clarified exactly what constitutes "unlawful" DEI. But the agency has cautioned that, in addition to workforce "balancing" and quotas, excluding non-minority employees from mentoring or sponsorship programs, or limiting membership in workplace groups, such as Employee Resource Groups, to certain protected groups may violate Title VII. Separately, Chair Lucas has publicly solicited discrimination complaints from white male employees in a video posted on social media.

EEOC Enforcement Efforts

The EEOC's anti-DEI enforcement actions have been wide-ranging and include administrative subpoena enforcement actions against companies like Nike, Inc. seeking information related to diversity and inclusion efforts dating back to 2018 (well before the Trump Administration's Executive Orders and before the EEOC issued guidance or outlined its anti-DEI agenda); lawsuits against companies like Coca-Cola arising from a women's forum event in 2024; and settlements with organizations like Planned Parenthood concerning DEI-related training that allegedly created a hostile work environment.

Most recently, the EEOC filed a lawsuit against The New York Times for allegedly discriminating against a white male employee in a promotion decision that was purportedly denied based on the company's diversity goals. In the complaint, the agency cites past public statements by the New York Times dating back to 2017, including "Diversity and Inclusion" reports and "Call to Action" publications, which outline the company's diversity initiatives, including race and sex-based leadership representation goals. The agency alleges that a "necessary consequence" of such initiatives "would be a decrease in the percentage of White leaders[,]" and that these stated goals "influenced the decision" not to promote the white male employee in violation of Title VII. *U.S. Equal Emp't Opportunity Comm'n v. The New York Times*, No. 1:26-cv-03704, Dkt. No. 1 ¶¶ 39, 94 (S.D.N.Y. May 5, 2026).

Practical Takeaways

In this rapidly evolving regulatory environment, employers should carefully evaluate their DEI practices to ensure compliance with the EEOC's revised agency guidance.

At a minimum, employers should:

- Conduct comprehensive audits of existing DEI programs, training, mentorship and sponsorship programs, affinity or other workplace groups, hiring and advancement practices, and internal and external-facing statements to identify and mitigate potential areas of legal exposure;
- Inventory all employer-sponsored training, programs, activities, events, and opportunities to ensure they are open to all employees regardless of protected class;
- Provide periodic training to leaders and key stakeholders on the current Administration's interpretation of anti-discrimination laws and best practices to ensure compliance.

Given the EEOC's demonstrated willingness to pursue investigations, subpoena enforcement actions, and federal litigation, employers should not delay in undertaking these efforts. Employers should also speak with their attorneys about DEI programs or initiatives that were in place before the Trump

Administration, as evidenced by the Administration's attempts to scrutinize diversity-related policies implemented under the 1979 rule's guidance.

Riley Safer Holmes & Cancila's team of experienced employment practitioners is available to assist employers in navigating the dramatic shifts in the DEI landscape, including assessing current risk exposure and providing tailored counseling, training, and related services. For more information regarding the developments discussed in this article or the services we provide, please contact the authors below.

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