

EEOC Sets New Enforcement Priorities: Why Employers Should Take Note



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The law firm of Tucker Arensberg contributes this quarterly column focused on the legal issues that may impact our readers. Tucker Arensberg is a full-service law firm headquartered in Pittsburgh, Pa., USA. Servicing the legal needs of the iron and steel industry, Tucker Arensberg has also provided legal counsel to the Association for Iron & Steel Technology.

In early June, the Equal Employment Opportunity Commission (EEOC) issued its new National Enforcement Plan (NEP). The NEP is a helpful document, as it essentially serves as a road map that will guide the agency's enforcement efforts through 2029.

Why should employers take note? In short, the NEP explains what types of complaints the EEOC is going to target over the next few years. By publicly disseminating the NEP, the EEOC is giving employers a "sneak peek" about what sorts of cases are most likely to get an investigator's attention.

The EEOC is a federal executive agency, meaning that it sits under the White House's jurisdiction. Not surprisingly, many of the EEOC's priorities mirror those of President Trump.

The following is a summary of some of the key issues the EEOC intends to prioritize.

Protecting American Workers from Anti-American National Origin Discrimination

The EEOC will focus on recruiting, hiring and employment practices that favor or disfavor workers based on national origin. Employers should be mindful of these issues in connection with recruiting and employment practices involving foreign workers, including guest-worker visa holders and PERM applicants.

Defending Women's Rights to Single-Sex Spaces at Work and Workers' Rights to Express the Binary Nature of Sex

The EEOC specifically identified workplace single-sex spaces and employees' and employers' rights regarding the expression of sex as enforcement priorities.

Remediating DEI-Related Race and Sex Discrimination

The EEOC intends to scrutinize employment policies and practices that use race or sex in employment decisions, including hiring, promotion, compensation and other employment actions. Employers should review DEI-related programs and practices to ensure that they do not unlawfully rely on protected characteristics.

Protecting Employees' Right to Religious Freedom

The EEOC will prioritize claims involving religious discrimination, harassment, retaliation and an employee's right to receive reasonable religious accommodation absent undue hardship. The NEP specifically references the Supreme Court's decision in *Groff v. DeJoy*, which addressed the standard for determining when religious

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accommodation creates an undue hardship for an employer.

Protections for Employees Under the Pregnant Workers Fairness Act

The NEP also identifies the Pregnant Workers Fairness Act (PWFA) as an area in which the EEOC may seek to clarify the scope of employer obligations. Employers should continue to carefully evaluate pregnancy-related accommodation requests and ensure that managers understand their responsibilities under the PWFA.

Beyond these specific areas, the EEOC highlighted certain additional risk factors that may subject a particular policy or practice to increased investigative scrutiny. They include:

Cases involving repeated or overt discrimination.

This includes cases that involve facially discriminatory policies, job advertisements that discourage certain individuals from applying, or practices that steer individuals into specific jobs or duties based on protected characteristics. These priorities may be particularly relevant as employers increasingly use artificial intelligence and other automated tools in recruiting, screening, and interviewing.

Cases that implicate recent decisions from the Supreme Court of the United States.

One of the cases specifically referenced is *Muldrow v. City of St. Louis*, in which the Court held that employees

could challenge employment decisions that cause “some harm,” rather than significant harm, to a term or condition of employment. This means that the EEOC may pay increased attention to charges involving changes to an employee’s duties, schedule, assignments, working conditions, and other terms and conditions of employment, even where the employee has not suffered a significant economic loss.

Cases that involve vulnerable workers.

This includes teenage workers, persons with limited literacy or education, individuals working in low-wage jobs, survivors of sexual assault, and workers with developmental or intellectual disabilities.

The new NEP does not mean that every complaint involving one of these issues will result in an or enforcement action or negative finding. Rather, it provides employers with an indication of the types of matters that may receive greater attention from the EEOC.

Employers should consider the NEP an opportunity to review their employment practices, particularly with respect to recruiting and hiring, DEI initiatives, religious accommodations, pregnancy-related accommodations, disciplinary and performance-management practices, and the use of AI in employment decisions. By identifying its enforcement priorities in advance, the EEOC has provided employers with a useful opportunity to identify and address potential issues before they result in a charge or investigation. ♦

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