The First 6 Months: What You Need To Know About The Impact of Trump 2.0 on Employment Law

Presented By:
David S. Adams, Counsel, Immigration Policy & Strategy
Arielle Eisenberg, Member, Labor & Employment
C. Towner French, Managing Director, Cozen O'Connor Public Strategies
Nandini Sane, Member, Labor & Employment
Michael C. Schmidt, Vice Chair, Labor & Employment

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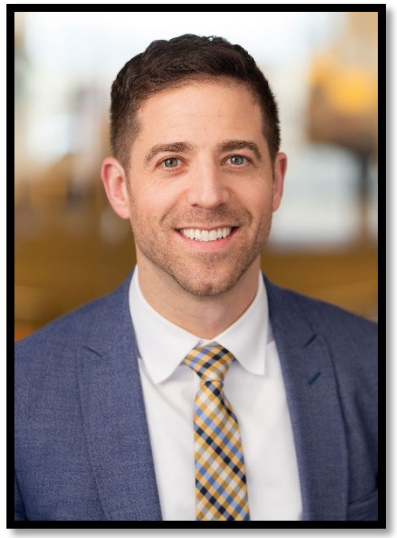
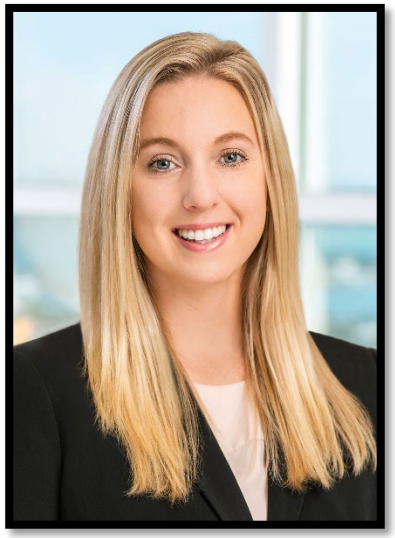
Today's Presenters



David S. Adams
Immigration Policy & Strategy
dsadams@cozen.com



Arielle Eisenberg
Labor & Employment
aeisenberg@cozen.com

C. Towner French
Public Strategies
tfrench@cozen.com

Nandini Sane
Labor & Employment
nsane@cozen.com

Michael C. Schmidt
Labor & Employment
mschmidt@cozen.com

The First 6 Months:
Trump 2.0 Review and Preview

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Trump 2.0 Review and Preview

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Trump 2.0 Review and Preview

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Trump 2.0 Review and Preview

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Trump 2.0 Review and Preview

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- **Surprises from the first six months?**
- **Employer expectations before mid-terms?**
- **Congressional prognostication?**

The First 6 Months:
U.S. Department of Labor

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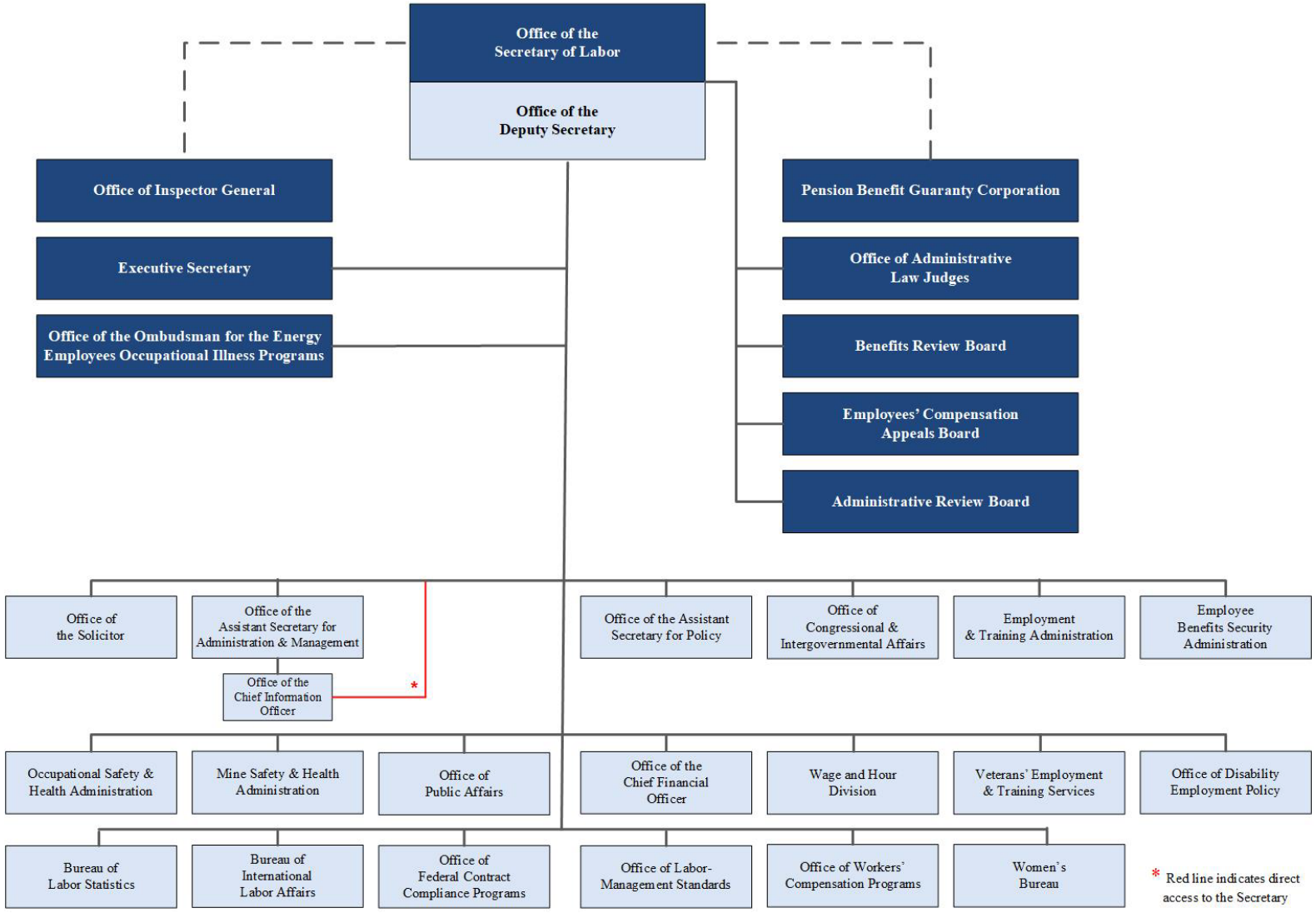
Lori Chavez-DeRemer
Sworn in March 11, 2025

Keith E Sonderling
Sworn in March 14, 2025

US Department of Labor Organizational Chart



Policy Shifts and Enforcement Priorities

- **Reverse 2024 Biden Independent Contractor Rule**
  - Biden rule made it harder to classify workers as independent contractors.
  - DOL indicated it will dramatically change or replace the Rule.
  - No replacement yet, but DOL stated it will enforce the FLSA in accordance with Fact Sheet # 13 (July 2008).
- **Biden-Era Subminimum Wage Program**
  - On July 7, 2025, DOL announced it is withdrawing a proposed rule from the Biden Administration that would have ended the DOL's ability to issue certificates allowing employers to pay subminimum wage to workers with disabilities in settings known as sheltered workshop.

Fact Sheet # 13

U.S. Department of Labor
Wage and Hour Division

This Fact Sheet is consistent with the Wage and Hour Division's current enforcement position as stated in Field Assistance Bulletin 2025-1 (May 1, 2025).

U.S. Wage and Hour Division
(July 2008)

Fact Sheet #13: Employment Relationship Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the meaning of "employment relationship" and the significance of that determination in applying provisions of the FLSA.

Characteristics

An employment relationship under the FLSA must be distinguished from a strictly contractual one. Such a relationship must exist for any provision of the FLSA to apply to any person engaged in work which may otherwise be subject to the Act. In the application of the FLSA an employee, as distinguished from a person who is engaged in a business of his or her own, is one who, as a matter of economic reality, follows the usual path of an employee and is dependent on the business which he or she serves. The employer-employee relationship under the FLSA is tested by "economic reality" rather than "technical concepts." It is not determined by the common law standards relating to master and servant.

The U.S. Supreme Court has on a number of occasions indicated that there is no single rule or test for determining whether an individual is an independent contractor or an employee for purposes of the FLSA. The Court has held that it is the total activity or situation which controls. Among the factors which the Court has considered significant are:

1) The extent to which the services rendered are an integral part of the principal's business.
2) The permanency of the relationship.
3) The amount of the alleged contractor's investment in facilities and equipment.
4) The nature and degree of control by the principal.
5) The alleged contractor's opportunities for profit and loss.
6) The amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent contractor.
7) The degree of independent business organization and operation.

There are certain factors which are immaterial in determining whether there is an employment relationship. Such facts as the place where work is performed, the absence of a formal employment agreement, or whether an alleged independent contractor is licensed by State/local government are not considered to have a bearing on determinations as to whether there is an employment relationship. Additionally, the Supreme Court has held that the time or mode of pay does not control the determination of employee status.

Requirements

When it has been determined that an employer-employee relationship does exist, and the employee is engaged in work that is subject to the Act, it is required that the employee be paid at least the Federal minimum wage of $5.85 per hour effective July 24, 2007; $6.55 per hour effective July 24, 2008; and $7.25 per hour effective July 24, 2009, and in most cases overtime at time and one-half his/her regular rate of pay for all hours worked in

excess of 40 per week. The Act also has youth employment provisions which regulate the employment of minors under the age of eighteen, as well as recordkeeping requirements.

Typical Problems

(1) One of the most common problems is in the construction industry where contractors hire so-called independent contractors, who in reality should be considered employees because they do not meet the tests for independence, as stated above. (2) Franchise arrangements can pose problems in this area as well. Depending on the level of control the franchisor has over the franchisee, employees of the latter may be considered to be employed by the franchisor. (3) A situation involving a person volunteering his or her services for another may also result in an employment relationship. For example, a person who is an employee cannot "volunteer" his/her services to the employer to perform the same type service performed as an employee. Of course, individuals may volunteer or donate their services to religious, public service, and non-profit organizations, without contemplation of pay, and not be considered employees of such organization. (4) Trainees or students may also be employees, depending on the circumstances of their activities for the employer. (5) People who perform work at their own home are often improperly considered as independent contractors. The Act covers such homeworkers as employees and they are entitled to all benefits of the law.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: http://www.dol.gov/whd/ and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
Contact Us

Proposed Rollbacks

- On July 1, 2025, Labor Secretary Chavez-DeRemer announced DOL's initial deregulatory efforts, including "slashing more than 60 obsolete and burdensome regulations."
- No minimum wage for home healthcare workers
- Protections for migrant farm workers
  - Rescind requirement for employer-provided transportation to have seat belts for agriculture workers.
  - Reverse 2024 rule that protected migrant farm workers from retaliation for filing a complaint, testifying, or participating in an investigation.
- Adequate lighting for construction spaces
- Mine safety
  - End DOL requirement to submit plans for ventilation and prevent roof collapse.
- Limiting OSHA
  - Currently, under general duty clause, OSHA has authority to punish employers for unsafe working conditions.
  - Proposal would exclude OSHA from applying general duty clause to prohibit, restrict, or penalize employers for inherently risky activities.

The First 6 Months:
U.S. Equal Employment Opportunity Commission

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No Quorum at the EEOC

The Commission

- Andrea R. Lucas, Acting Chair
- Kalpana Kotagal, Commissioner
- (vacant)
- (vacant)
- (vacant)

The General Counsel

- Andrew Rogers (acting)

Andrea Lucus
Named Acting Chair
on 1/21/25
Appointed by Trump

Kolpana Kotagal
Commissioner
Appointed by
Biden in 2023

Charlotte Burrows
Former
Commissioner
Appointed by Biden
Served Until
1/27/25 Removal
by Trump

Jocelyn Samuels
Former
Commissioner
Appointed by Biden
Served Until
1/27/25 Removal
by Trump

Keith Sonderling
Former
Commissioner
Appointed by
Trump
Served Until Term
Ended in 2024

Andrew Rogers
Named Acting
General Counsel
2/4/25

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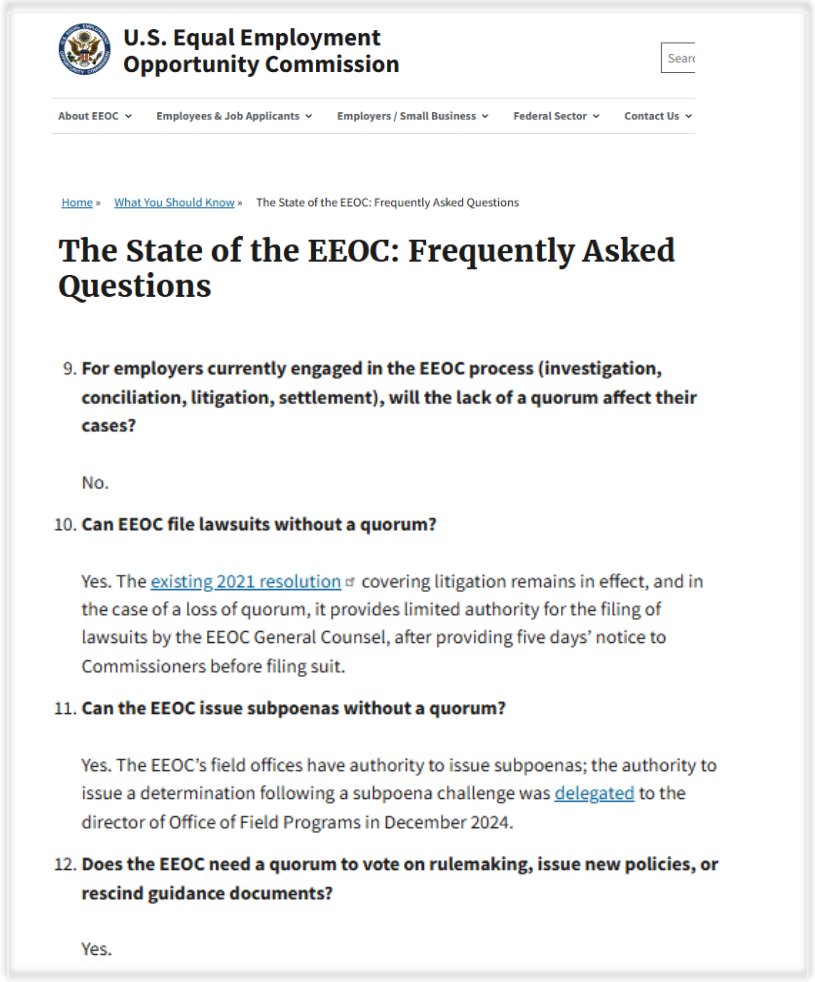
Impact of No Quorum

- **Without a quorum, the EEOC cannot:**
  - **Adopt new regulations.**
  - **Issue legal guidance.**
  - **Rescind existing guidance documents.**
- **While the EEOC can handle individual cases, it may face limitations in handling large, systemic cases requiring a vote by the full commission.**



U.S. Equal Employment Opportunity Commission

About EEOC | Employees & Job Applicants | Employers / Small Business | Federal Sector | Contact Us

Home » What You Should Know » The State of the EEOC: Frequently Asked Questions

The State of the EEOC: Frequently Asked Questions

9. **For employers currently engaged in the EEOC process (investigation, conciliation, litigation, settlement), will the lack of a quorum affect their cases?**

   No.

10. **Can EEOC file lawsuits without a quorum?**

    Yes. The existing 2021 resolution covering litigation remains in effect, and in the case of a loss of quorum, it provides limited authority for the filing of lawsuits by the EEOC General Counsel, after providing five days' notice to Commissioners before filing suit.

11. **Can the EEOC issue subpoenas without a quorum?**

    Yes. The EEOC's field offices have authority to issue subpoenas; the authority to issue a determination following a subpoena challenge was delegated to the director of Office of Field Programs in December 2024.

12. **Does the EEOC need a quorum to vote on rulemaking, issue new policies, or rescind guidance documents?**

    Yes.

EEOC May Have a Quorum Soon

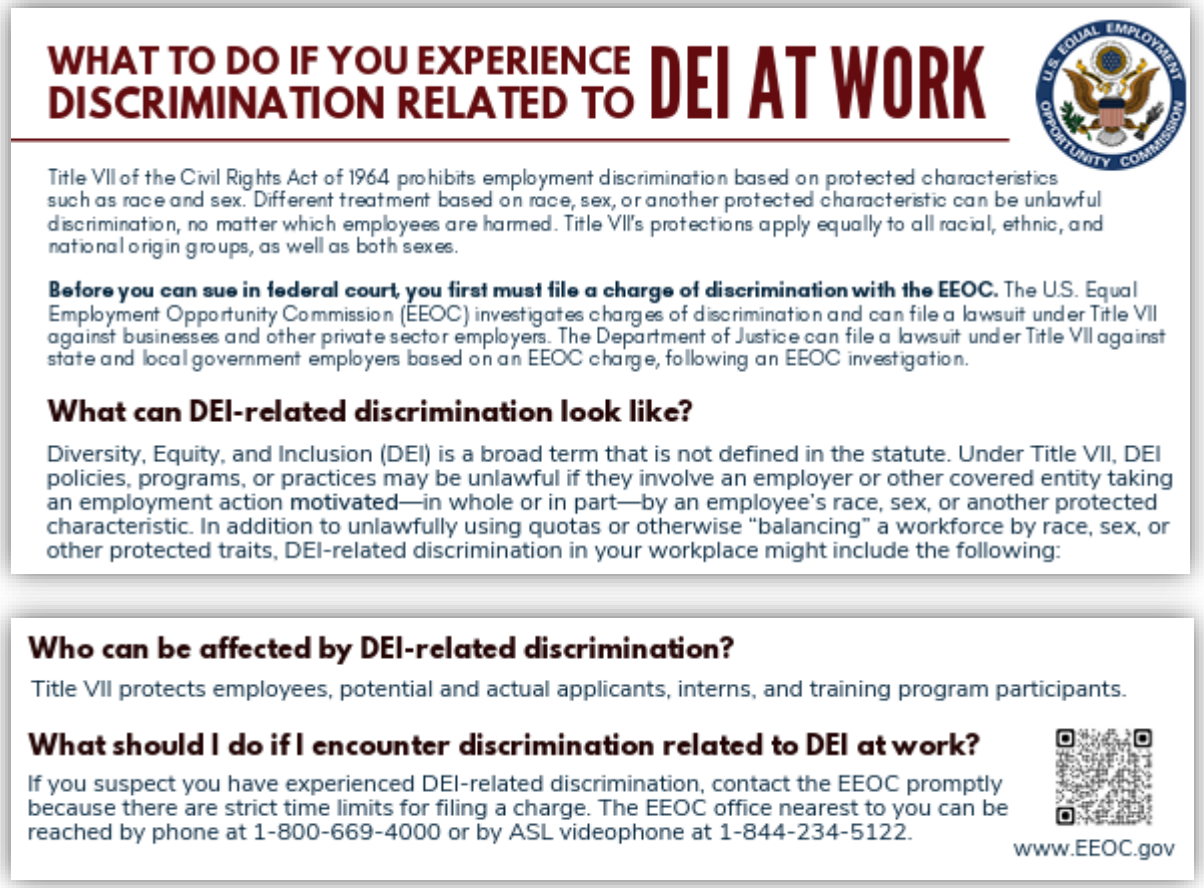
- President Trump has nominated Brittany Panuccio, an assistant U.S. attorney in the Southern District of Florida, to fill one of the three open seats on the EEOC.
- On July 16, 2025, the Senate Health, Education, Labor, and Pensions Committee convened to review her nomination.
- If confirmed by the Senate, this would restore the Commission's statutorily required quorum, enabling the agency to vote on major policy and regulatory changes.

Policy Shifts and Enforcement Priorities

- **Scale back on enforcement efforts for LGBTQ+ workers**
  - EEOC voluntarily dismissed several lawsuits alleging transgender discrimination.
  - Removed EEOC's guidance on "promoting gender ideology."
  - Made defending biological and binary definitions of sex and related rights an agency priority for compliance, investigations, and litigation.
- **Scrutiny on DE&I Programs**
  - Issuance of "What To Do If You Experience Discrimination Related to DEI at Work."
- **Increased Focus on National Origin and Religious Discrimination**
  - Focus on anti-American national origin discrimination and protecting workers from religious bias and harassment.

DEI Program Scrutiny

- **EEOC notes that DEI practices that may give rise to disparate treatment:**
  - **hiring, firing, promotion, demotion, compensation, fringe benefits, job duties, and/or work assignments;**
  - **access to or exclusion from training, including training characterized as leadership development programs;**
  - **access to mentoring, sponsorship, or workplace networking;**
  - **internships, including those labeled as "fellowships" or "summer associate" programs; and**
  - **selection for interviews, including placement or exclusion from a candidate "slate" or pool.**
- **Actions that limit, segregate or classify employees based on their protected characteristics – such as limiting membership in ERGs, business resource groups, or employee affinity groups to certain protected groups – may also violate Title VII.**
- **The EEOC reiterates that DEI training must not cross the line into creating a hostile work environment.**



WHAT TO DO IF YOU EXPERIENCE DISCRIMINATION RELATED TO DEI AT WORK

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on protected characteristics such as race and sex. Different treatment based on race, sex, or another protected characteristic can be unlawful discrimination, no matter which employees are harmed. Title VII's protections apply equally to all racial, ethnic, and national origin groups, as well as both sexes.

Before you can sue in federal court, you first must file a charge of discrimination with the EEOC. The U.S. Equal Employment Opportunity Commission (EEOC) investigates charges of discrimination and can file a lawsuit under Title VII against businesses and other private sector employers. The Department of Justice can file a lawsuit under Title VII against state and local government employers based on an EEOC charge, following an EEOC investigation.

What can DEI-related discrimination look like?

Diversity, Equity, and Inclusion (DEI) is a broad term that is not defined in the statute. Under Title VII, DEI policies, programs, or practices may be unlawful if they involve an employer or other covered entity taking an employment action **motivated**—in whole or in part—by an employee's race, sex, or another protected characteristic. In addition to unlawfully using quotas or otherwise "balancing" a workforce by race, sex, or other protected traits, DEI-related discrimination in your workplace might include the following:

Who can be affected by DEI-related discrimination?

Title VII protects employees, potential and actual applicants, interns, and training program participants.

What should I do if I encounter discrimination related to DEI at work?

If you suspect you have experienced DEI-related discrimination, contact the EEOC promptly because there are strict time limits for filing a charge. The EEOC office nearest to you can be reached by phone at 1-800-669-4000 or by ASL videophone at 1-844-234-5122.

www.EEOC.gov

EEOC's Focus on Anti-American Bias

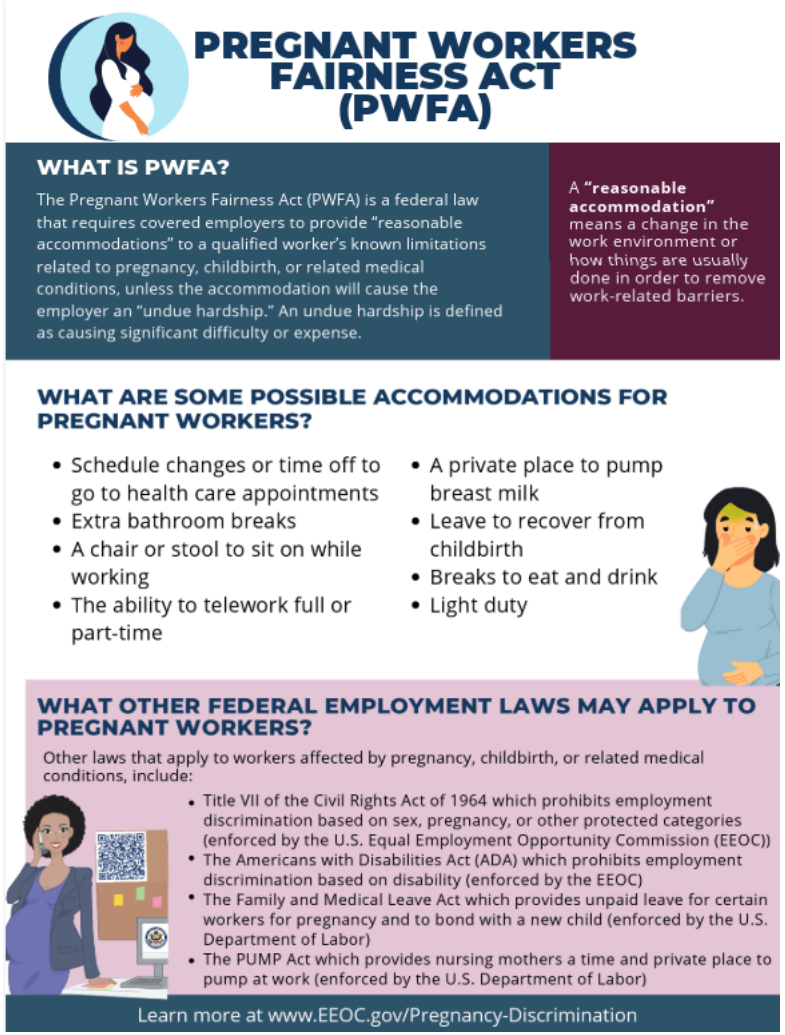
- **Acting Chair Andrea Lucas announced, "The EEOC is putting employers and other covered entities on notice: if you are part of the pipeline contributing to our immigration crisis or abusing our legal immigration system via illegal preferences against American workers, you must stop. The law applies to you, and you are not above the law. The EEOC is here to protect all workers from unlawful national origin discrimination, including American workers."**

Employers have many excuses for why they may prefer non-American workers, but none of these are legally permissible reasons to violate Title VII:

- lower cost labor (whether due to payment under the table to illegal aliens, or exploiting rules around certain visa-holder wage requirements, etc.);
- a workforce that is 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.

"The law is clear: the prohibition on national origin discrimination applies to *any* national origin group, including discrimination against American workers in favor of foreign workers," said Lucas. "The EEOC is going to rigorously enforce the law to protect American workers from national origin discrimination."

EEOC's Position on the PWFA



- **Acting Chair Lucas has been vocal in her opposition to certain parts of the Commission's Final Rule implementing the Pregnant Workers Fairness Act ("PWFA").**
- **Acting Chair Lucas voted against the Final Rule when it came up for a vote in April 2024 because she believed "at a high level, the rule fundamentally erred in conflating pregnancy and childbirth accommodation with accommodation of the female sex, that is, female biology and reproduction."**
- **"Once a quorum is re-established at the Commission, Acting Chair Lucas intends for the Commission to reconsider portions of the Final Rule that she believes are unsupported by law."**

Takeaways

- **A restored quorum would allow the EEOC to revisit and potentially rescind guidance issued under prior leadership, propose new rules aligned with the administration's direction, and shift enforcement priorities.**
- **Prepare for potential policy shifts:**
  - **Evaluate DEI programs.**
  - **Review policies and practices to ensure they align with the EEOC's new focus areas, including anti-American bias, religious freedom, and rights based on biological sex.**
- **Continue to comply with state and local laws.**

The First 6 Months: Immigration Update

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Let's Put This Discussion into Perspective

- **Since the results of the November presidential election, we have been constantly asked, "What changes we have seen under the Trump 2.0 administration"? What should we be prepared for from an immigration and compliance perspective? What can you do in anticipation of the upcoming changes?" In this brief discussion, we will highlight these areas and more. Thank you for joining us today!**

Trump 2.0 Admin on Corporate Immigration in the United States

- **The impact of the "One Big Beautiful Bill" on corporate immigration.**
- **Bill provides $170.7 billion in additional funding for immigration- and border enforcement-related activities (border wall, patrol agents, technology upgrades…etc.)**
- **The Trump "Gold Card" for $5 million – while a lot of discussion has surrounded this, there is a lot of legal and tax obstacles that would need to be overcome to implement this.**
- **Decrease in F-1 student visas issued.**
- **I-9 audits and ICE raids at employment sites.**

Impact to the I-9 Process

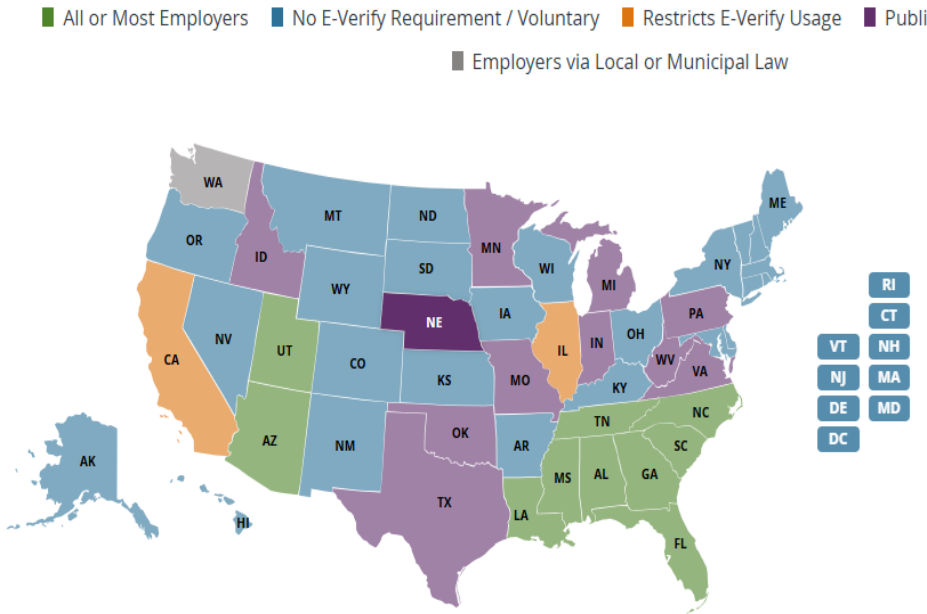
- Form required by the United States Citizenship and Immigration Services (USCIS) to establish that an employee is eligible to work in the United States.
- All U.S. employers must properly complete Form I-9 for every individual they hire for employment in the United States. This includes citizens and noncitizens.
- Both employees and employers (or authorized representatives of the employer) must complete the form.
- Also utilized to verify an individual's identity by requiring the individual to provide documentation establishing their identity through the I-9 process.
- The employer must examine these documents to determine whether they reasonably appear to be genuine and relate to the employee, then record the document information on the employee's Form I-9.
- Certain employers who choose to remotely examine the employee's documentation under a DHS-authorized alternative procedure rather than via physical examination must indicate they did so by checking the box provided.
- New form I-9 now includes alternative procedures for E-Verify employers to remotely examine employee documents.
- NOTE: It is vital that your organization has an established and consistent I-9 process for each newly hired employee as well as reverifying a current foreign national employee's work authorization for example.

Form I-9 Compliance

- **Penalties for incorrect or missing I-9 forms can be imposed by ICE, the U.S. Immigration and Customs Enforcement agency. The penalties for I-9 violations have recently increased. The size of penalties depends on several factors including company size and number of violations.**
  - **On June 28, 2024, DHS announced the following fine schedule:**
    - **I-9 Paperwork Violations: $281 to $2,789 per Form I-9.**
    - **Knowingly Employing Unauthorized Alien (First Offense): $698 to $5,579 per violation.**
    - **Knowingly Employing Unauthorized Alien (Second Offense): $5,579 to $13,946 per violation.**
    - **Knowingly Employing Unauthorized Alien (Third or More Offense): $8,369 to $27,894 per violation.**
    - **E-Verify Employers – Failure to Inform DHS of Continuing Employment Following Final Nonconfirmation: $973 to $1,942 per relevant individual employee.**
- **Under the DOJ's new schedule, fines for document abuse and unfair-immigration related employment practices are as follows:**
  - **Document Abuse: $230 to $2,304 per violation.**
  - **Unfair Immigration-Related Employment Practices (First Offense): $575 to $4,610 per individual against whom the employer is found to have discriminated.**
  - **Unfair Immigration-Related Employment Practices (Second Offense): $4,610 to $11,524 per individual against whom the employer is found to have discriminated.**
  - **Unfair Immigration-Related Employment Practices (Third or More Offense): $6,913 to $23,048 per individual against whom the employer is found to have discriminated .**
- **If employers try to trick ICE, or ignore credible warnings, they risk serious fines. Companies can also be punished for "subsequent offenses" even if their prior punishment wasn't in the recent past.**
- **DOES THIS SCARE YOU? IT SHOULD. As they say, the best offense is a good defense. Ensuring a consistent I-9 process in your organization can prevent any/all of the above.**

E-Verify

- **E-Verify is an Internet-based system that compares information entered by an employer from an employee's Form I-9, Employment Eligibility Verification, to records available to the U.S. Department of Homeland Security and the Social Security Administration to confirm employment eligibility.**
- **E-Verify operates with speed and accuracy. E-Verify is the only free, fast, online service of its kind that electronically confirms an employee's information against millions of government records and provides results within as little as three to five seconds.**
- **E-Verify was initially designed to be a voluntary program, although an increasing number of states have enacted laws, ordinances, and executive orders which require certain employers to use E-Verify for their newly hired employees.**
- **Refer to map to see which states require E-Verify.**
- **Federal contractors MUST use E-Verify.**



I-9 Recommendations and Warnings

- Over the last two years, there has been an increase in fines for failure to comply with I-9 regulations, as well as increased awareness of I-9 compliance in general. Historically, when DHS departments (including I-9 and USCIS) increase fees, that typically leads to more money available for enforcement, which, in this case, includes I-9 inspections. Here are some quick tips to ensure compliance:
- Make sure you have a consistent and timely I-9 program whereby each new hire completes the I-9 process as part of the onboarding process.
- If you are not already enrolled, we strongly encourage your company to be enrolled in E-Verify.
- Ensure that you are using the latest version of Form I-9.
- Proactively audit your current I-9 program to ensure compliance, which will provide insight into the strengths (or weaknesses) of your current I-9 program.
- Homeland Security Investigations (HIS) initially issues a Notice of Inspection (NOI) upon an employer whereby an employer has three (3) business days to produce the requested information.
- HSI's workforce consists of more than 10,000 employees, including special agents, criminal analysts, mission support personnel, and contract staff assigned to offices throughout the United States and around the world.
- Will President Trump increase this department?
- In 2018, ICE delivered more than 5,200 audit notices to businesses across the United States – since COVID-19, that number has dramatically increased. What does President Trump have to do in order to increase enforcements again?

I-9 Audits and ICE Raids

- What to expect in the event of an I-9 audit
- All businesses are subject to I-9 audits by ICE/HSI.
- If selected for an audit by notice, employers have three business days to produce I-9 forms for either all or selected employees.
- ICE may also request supporting documentation for the employee (i.e., passport, work authorization documents, etc.).
- ICE may request documentation from the company to establish it is a bona fide entity (i.e., articles of incorporation, list of all active employees, etc.).
- Make sure to contact your immigration attorney immediately.
- How to prepare for an I-9 audit
- The best offense is a good defense. Employers should proactively conduct self I-9 audits by reviewing all I-9s and ensuring compliance.
- Review your existing I-9 processes to ensure consistent and accurate procedures.
- Understand the related fees for I-9 violations.
- The USCIS has published guidelines intended to help employers conduct a proactive audit.
- If not already enrolled, strongly consider enrolling in e-Verify.
- WHAT TO DO IN THE EVENT OF AN ICE RAID
- Know your rights:
  - Employees have the right to remain silent.
  - Employers must NOT provide either false information or false documents in an attempt to "assist" employees, which also includes impeding the agents' ability to search.
  - Immigration officers are only allowed to enter public spaces within the workplace and require valid search warrants to enter private spaces.
  - The warrant should detail a list of items to be searched.
  - You can record and write down the names of agents.
  - You can assign an employee who will follow the agents around the facility.
  - If an officer requests to look at "privileged" documents, you can explain this to them, but ultimately, you cannot prevent them from taking these documents.
  - Company representatives should not make any statements to agents.

Thank You!

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