

CLIENT ALERT

EEOC CHAIR ISSUES POWERFUL MESSAGE TO LARGEST EMPLOYERS REMINDING THEM OF THEIR LEGAL COMPLIANCE OBLIGATIONS RELATED TO DEI INITIATIVES

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In a February 26, 2026 letter (“Letter”), EEOC Chair, Andrea Lucas, in forceful and unmistakable terms, reminded the chief executive officers, general counsel, and board chairs of 500 of the largest employers in the United States of their obligations under Title VII of the Civil Rights Act of 1964 with regard to “employment policies, programs, and practices labeled as ‘DEI’ or other euphemisms.”

In an accompanying Statement, EEOC Chair Lucas “urged Corporate America to reject identity politics as its solution to society’s ills. The only lawful way to stop discrimination on the basis of race or sex is to stop discriminating on the basis of race or sex.” The Letter emphasized the EEOC’s commitment to fully utilizing all of its statutory tools to fulfill its mission.

The Letter specifically referenced the March, 2025 joint issuance by the EEOC and the United States Justice Department of two technical assistance documents (“Guidances”) focused on educating the public about unlawful discrimination related to diversity, equity, and inclusion in the workplace. The first guidance is a high level summary entitled “What to Do If You Experience Discrimination Related to DEI at Work”. The second guidance is in the form of eleven (11) frequently asked questions entitled “What You Should Know About DEI-Related Discrimination at Work”. The Letter is just the latest example of the EEOC’s repeatedly publicized position that it expects individuals to be judged in the workplace by the “content of their character, skills, and abilities, rather than by the color of their skin or their sex.”¹

Particularly now, employers, regardless of size, should review their hiring, promotion, retention, termination, and compensation policies and practices with experienced employment counsel.

Takeaways from the Letter and Guidances

1. The Guidances provide a more focused look at facts and circumstances that could give rise to DEI-related discrimination in the workplace.

¹ An article addressing what employers need to know about the Guidances, can be found at the link [Client Alert: What Employers Need to Know about the New EEOC Guidance Regarding DEI-Related Discrimination](#).



2. Title VII protections are not limited to individuals who are part of a minority group.
3. The EEOC’s position is that there is no such thing as “reverse” discrimination --; instead, there is only discrimination.
4. The EEOC does not require a higher showing of proof for so-called “reverse” discrimination claims.
5. Citing a recent Supreme Court decision, the EEOC reinforces that the prohibition against discrimination (including “DEI – related disparate treatment”) applies to a wide variety of aspects of employment including hiring, firing, promotion, demotion, compensation, fringe benefits; access to or exclusion from training; access to mentoring, sponsorship or workplace networking; internships; selection for interviews; and to job duties and work assignments.
6. In order to state a viable claim of discrimination, consistent with a recent Supreme Court decision, the EEOC notes that employees only need to show some injury or “some harm”.
7. There is no business justification for otherwise unlawful conduct based upon “business necessity” or an “interest in diversity”.

Next Steps

Employers would do well to consider the following:

- Ensure that hiring, promotion, transfer, and employment-related decisions are based on merit;
- Train managers on what are lawful and unlawful factors which may be considered in hiring, termination, promotion, and transfer decisions;
- Centralize decision making in terms of hiring, firing, promotions, and transfers;
- Ensure that employee resource groups, employee affinity groups, etc. are open to all and, more broadly, ensure that such programs do not offer benefits (such as training and mentoring) to one group of employees, but not to another;
- Review the content of employee training materials to verify that they are aligned with the Guidances;
- Ensure that third parties that employers engage to provide assistance in hiring and other employment related activities, such as training, are themselves complying with the Guidances; and



- Review existing insurance coverages (including Employment Practices Liability Insurance).

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