

EEOC ENFORCEMENT

FIRMS SCRAMBLE TO COMPLY WITH NEW PLAYBOOK

THE EQUAL Employment Opportunity Commission has rolled out the most dramatic shift in its enforcement posture in decades, narrowing some protections and targeting others, especially around diversity equity and inclusion (DEI) and gender identity.

Also, with the confirmation of Commissioner Brittany Bull Panuccio in October 2025, the EEOC once again has a voting quorum. Her addition gives the new Republican majority the opportunity to rewrite guidance, revise strategic enforcement plans and launch higher-profile litigation aligned with the administration's executive orders.

The new enforcement focus, initiated by a series of executive orders by President Trump, stands in contrast to established federal law, opening firms up to litigation by employees that runs counter to EEOC enforcement priorities.

DEI programs under a sharper lens

The EEOC has trained its focus on what it describes as "unlawful DEI-motivated race and sex discrimination." Programs that once were framed as inclusion efforts are now being scrutinized for potential reverse discrimination.

Programs under scrutiny

- Mentorship, sponsorship and leadership programs limited to certain demographic groups.
- "Women only" or "underrepresented only" events and resource group activities.
- Hiring, promotion or internship pipelines that expressly prefer certain races or genders.
- Diversity metrics that function more like quotas than broad, aspirational goals.



Gender identity policies

EEOC Chair Andrea Lucas has directed agency lawyers to back away from gender identity litigation and to revisit harassment guidance that spells out protections for transgender employees.

Bathrooms, locker rooms and pronoun policies are likely flashpoints. Employers that wish to maintain strong protections for transgender and nonbinary workers may need to rely more heavily on state law, company values and reputational concerns as their guideposts.

Important: These new policies put employers in a bind. Title VII's ban on sex discrimination, which covers sexual orientation and gender identity, still stands, and many states explicitly protect those groups.

Employers that scale back protections to comply with the new federal posture may reduce the chance of an EEOC probe, but increase exposure to private lawsuits, state agency enforcement and reputational damage.

How employers can respond

CEOs and HR executives should move quickly on several fronts:

Audit DEI and talent programs – Inventory all DEI initiatives, resource groups, mentorships and pipelines. Strip out eligibility rules tied to race, sex or national origin. Reframe programs around equal access and business needs.

Refresh public and internal statements – Review diversity pledges, representation goals and reporting. Avoid language that can be read as promising preferences. Emphasize fair processes, bias reduction and inclusion.

Map gender identity and facility policies to actual law – Chart federal, state and local requirements for every location. Where you maintain sex-specific facilities, consider options like single-user restrooms and clear procedures for handling complaints.

Boost religious accommodation practices – Ensure there is a clear, documented process for addressing religious objections, including objections to DEI content or pronoun expectations. Train managers to respond promptly and consistently.

Keep doing adverse impact reviews – Even if the EEOC is stepping back, continue to test hiring tools, promotion systems and layoff criteria for disproportionate effects on protected groups.

Invest in investigation capability – Make sure complaint procedures, investigation protocols and documentation would hold up under scrutiny from private plaintiffs, state agencies or the EEOC under its new priorities.

Takeaway

Finally, ensure that your business secures an employment practices liability policy, which can protect your firm from employee-initiated actions like discrimination or harassment complaints.

These policies can cover the cost of court costs, attorneys' fees, discovery expenses, settlements or judgments and other related costs.