

Blog Post

What's in Store for the Next Four Years? – Part Two: The EEOC's Strategic Enforcement Plan

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The U.S. Equal Employment Opportunity Commission (EEOC or Commission) recently published its substantive agency enforcement priorities to combat employment discrimination and promote inclusive workspaces over the next four years. The EEOC periodically adopts a multi-year plan to guide fulfillment of its mission to prevent and remedy unlawful discrimination in employment. We discussed the EEOC's overall logistical plan to achieve and monitor its general and long-term goals and objectives in our [blog post](#) earlier this month about the EEOC's Strategic Plan (2022-2026). Now we have details about the subject matters where the EEOC will steer its efforts. In the [EEOC's Strategic Enforcement Plan 2023-2027 \(SEP\)](#) (draft released January 10, 2023), the EEOC strives to get the most "bang for its buck." So, to maximize its effectiveness, expect the EEOC to focus on activities that have a significant impact on the development of the law or on promoting compliance across a large organization, geographic region, or industry.

According to the EEOC, its SEP is a product of the Commission's collaborative effort to update and refine the agency's subject matter priorities, against the backdrop of "high-profile incidents of bias and violence based on race, religion, national origin, and gender [which] have impacted communities across

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the country.” The EEOC seeks to do its part to address systematic discrimination in the workplace, and has identified six subject matter priorities that employers, large and small, should familiarize themselves with. While the EEOC will continue to address many other issues, the SEP provides insight into areas that will have priority of the EEOC’s efforts, which are summarized here.

1. Eliminating Barriers in Recruitment and Hiring

The EEOC will focus on recruitment and hiring practices and policies that discriminate against protected groups and marginalized communities. These recruitment practices include:

- The use of artificial intelligence and automation to target job advertisements, recruit applicants, or make or assist in hiring decisions where such systems intentionally exclude or adversely impact protected groups;
- Job advertisements that exclude or discourage certain demographic groups from applying;
- The channeling, steering, or segregation of individuals into specific jobs or job duties due to their membership in a protected group;
- Limiting access to on-the-job training, apprenticeship programs, internships, or other job training or advancement opportunities based on protected status;
- Limiting employees exclusively to temporary work on a basis prohibited by federal employment laws when permanent positions are available for which they are qualified;
- Restrictive application processes or systems, including online systems that are difficult for individuals in protected groups to access; and
- Screening tools or requirements that disproportionately impact workers based on their protected status, including those facilitated by artificial intelligence or other automated systems, pre-employment tests, and background checks.

2. Protecting Vulnerable Workers and Persons from Underserved Communities

The EEOC plans to focus on harassment, retaliation, job segregation, labor trafficking, discriminatory pay, disparate working conditions, and other practices that impact vulnerable and marginalized communities. To achieve this, district offices and the agency's federal sector program will identify vulnerable workers and underserved communities in their districts for focused attention, based on their assessment of how the EEOC can most effectively utilize its resources to address issues of concern for these groups.

3. Addressing Selected Emerging and Developing Issues

The EEOC aims to prioritize emerging and developing issues, some of those issues being:

- Qualification standards and inflexible policies that discriminate against individuals with disabilities;
- Protecting individuals affected by pregnancy, childbirth, and related medical conditions under the Pregnancy Discrimination Act as well as pregnancy-related disabilities under the Americans with Disabilities Act and enforcing the provisions of the newly enacted Pregnant Workers Fairness Act;
- Addressing discrimination influenced by or arising as backlash in response to local, national, or global events;
- Employment discrimination associated with the COVID-19 pandemic and other threats to public health; and
- Technology-related employment discrimination.

4. Advancing Equal Pay For All Workers

The EEOC also seeks to focus its efforts on combatting pay discrimination in all its forms, as well as employer practices that may impede equal

pay or contribute to pay disparities. Examples of these employer practices include pay secrecy policies, retaliating against workers for asking about pay or sharing their pay with coworkers, reliance on past salary history to set pay, or requiring applicants to specify their desired or expected salary at the application stage.

5. Preserving Access To The Legal System

Another focus will be on policies and practices that limit substantive rights, discourage or prohibit individuals from exercising their rights under employment discrimination statutes, or impede the EEOC's investigative or enforcement efforts.

Specifically, the Commission identifies the following categories as a focus moving forward:

- Overly broad waivers, releases, non-disclosure agreements, or non-disparagement agreements;
- Unlawful, unenforceable, or otherwise improper mandatory arbitration provisions;
- Employers' failure to keep applicant and employee data and records required by statute or EEOC regulations; and
- Retaliatory practices that could dissuade employees from exercising their rights under employment discrimination laws.

6. Preventing and Remediating Systemic Harassment

Finally, the EEOC plans to prevent future systemic harassment by focusing on strong enforcement with appropriate monetary relief and targeted equitable relief. The EEOC will also focus on promoting comprehensive anti-harassment programs and practices, including training tailored to the employer's workplace and workforce, using all available agency tools, including outreach, education, technical assistance, and policy guidance.

Employer Take-Aways from the EEOC's Strategic Plan and SEP

The Commission identified several ways it plans to implement these SEP priorities, including: categorizing charges for priority handling; the EEOC's litigation program; systemic programs; alternative dispute resolution programs; and federal sector hearings, appeals, oversight and outreach. The SEP will be effective the day following approval by the Commission and will remain in effect until superseded, modified or withdrawn by vote of a majority of members of the Commission.

Employers should take the time now to review their policies and procedures to ensure they are doing their part to promote equal opportunity and fair and inclusive workplaces for all protected groups.

If you have questions on how the EEOC's Strategic Plan or SEP may affect your business, or are seeking guidance on how to ensure your company is compliant with all relevant laws and policies, contact your Akerman Labor & Employment attorney.

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