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EEOC Lectures Employers About Unlawful DEI-Related Discrimination

On March 19, 2025, the Equal Employment Opportunity Commission (EEOC) issued two technical assistance documents (“Guidance”) regarding employer diversity, equity, and inclusion (DEI) policies, programs, and practices, and how DEI in the workplace may potentially run afoul of Title VII of the Civil Rights Act of 1964. Though the Guidance largely restates settled Title VII law, it is further evidence of the EEOC’s efforts to effectuate President Trump’s executive orders aimed at dismantling or disrupting DEI programs nationwide.

Since 1964, Title VII has prohibited discrimination based on race, color, religion, sex, and national origin with respect to the terms, conditions, or privileges of employment. The EEOC is responsible for enforcing Title VII, along with other federal anti-discrimination laws.

In 2023, the U.S. Supreme Court struck down affirmative action in college admissions in a landmark decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College* and *Students for Fair Admissions, Inc. v. University of North Carolina* (known collectively as *SFFA*). That decision triggered one important inquiry: would the *SFFA* decision impact an employer’s DEI initiatives? In 2023, then-acting EEOC Chair Charlotte Burrows reassured employers that *SFFA* would not impact DEI initiatives. In her [statement](#), Burrows explained:

The [SFFA] decision . . . does not address employer efforts to foster diverse and inclusive workforces or to engage the talents of all qualified workers, regardless of their background. It remains lawful for employers to implement DEI and accessibility programs that seek to ensure workers of all backgrounds are afforded equal opportunity in the workplace.

Less than two years later, the EEOC is now taking a dramatically different position. Since January 2025, acting EEOC Chair Andrea Lucas, a Trump appointee, has made it clear that, under her

leadership, “there are some serious implications for some very popular types of DEI programs.”

In a continuation of that theme, the newly issued Guidance warns against what the EEOC deems unlawful “DEI-related” discrimination. Again, while most of the Guidance amounts to recitations of a law that has been in effect since 1964, it highlights certain examples of actions that may run afoul of federal anti-discrimination laws:

- Limiting membership in workplace groups, such as employee resource groups (ERGs) or other employee affinity groups, to employees with certain protected characteristics.
- Separating employees into groups based on race, sex, or another protected characteristic when administering DEI or other trainings, or other privileges of employment, even if the separate groups receive the same programming content or amount of employer resources.
- DEI training, depending on content, application, or context.
- Access to leadership development programs.
- Intentionally diverse candidate slates or diverse hiring pools.
- Providing meeting space or time for employee-led clubs viewed as segregated or exclusionary.

Moreover, the EEOC Guidance explains that employers may be liable for the actions of their agents—including recruiters and staffing agencies. It also emphasizes that even informal mentoring networks may be discriminatory as “an employee’s success may depend not only on his or her job duties, but also on his or her integration into important workplace networks.”

Finally, the EEOC stated that Title VII’s protections apply equally to all workers. Different treatment based on race, sex, or other protected characteristic can be unlawful discrimination—no matter which employees or applicants are harmed. Accordingly, the EEOC “does not require a higher showing of proof for so-called ‘reverse’ discrimination claims [because] there is no such thing as ‘reverse’ discrimination; there is only discrimination.”

The level of proof needed for reverse discrimination claims, however, is currently pending before the Supreme Court. That issue

should be decided this term. Until changed by the Supreme Court, so-called “reverse” discrimination cases do require a higher showing of proof in many federal courts. While the Supreme Court may (and likely will) agree with acting EEOC Chair Lucas, the decision has yet to be released.

If you have any questions about the EEOC Guidance and the impact it may have on an employer’s ability to maintain DEI policies, programs, and practices, please contact the authors or any member of our [Labor and Employment Practice Group](#).

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