June 24, 2026

Midyear Overview of the Labor Department's & EEOC's Shifting Focus: What Employers Need to Know About Evolving Discrimination Enforcement

David Michael

Alec Cerqueira

Human Resources & Employment

The Equal Employment Opportunity Commission has sharply pivoted its enforcement priorities, training its sights on corporate diversity, equity, and inclusion (DEI) programs, which—in the agency's view—embed unlawful race- or sex-based preferences in hiring and promotion. For employers, the message is clear: now is the time to reassess such programs.

A New Enforcement Posture

Under Acting Chair Andrea Lucas, the EEOC has taken the position that Title VII prohibits all race- and sex-based employment decisions, including those made in the name of DEI. The agency has warned employers it will pursue claims where it believes diversity programs disadvantage men or White workers, and Chair Lucas has publicly encouraged White men who believe they have experienced bias to file charges—a notable shift from prior enforcement priorities.

The EEOC has released a four-year National Enforcement Plan, replacing a Biden-era guide on the agency's priorities. The plan, effective through 2028, will prioritize disparate treatment liability cases and combating "illegal" diversity, equity, and inclusion programs. It formally lays out the EEOC's litigation priorities, enforcing a three-prong approach:

1. Prevention through education and outreach;

2. The voluntary resolution of disputes, including through alternative dispute resolution, pre-determination settlements, and conciliation agreements; and

3. Strong and even-handed enforcement via the Commission's litigation program.

The plan also establishes priorities for investigation and enforcement, including matters involving intentional discrimination arising from challenging broad-based employment policies. The EEOC will shift focus from prior mandates to prioritize claims involving the application of recent decisions, such as *Ames v. Ohio Department of Youth* (rejecting a higher burden of proof in reverse discrimination cases), *Muldrow v. St. Louis* (requiring only a showing of "some harm" to a term or condition of employment), and *Groff v. DeJoy* (raising the burden to deny a religious accommodation to showing "substantial increase costs").

The EEOC will also aim to clarify the scope of the *Bostock v. Clayton County* decision (which held firing an individual merely for being gay or transgender violates Title VII) "with respect to (i) employees' right to single-sex intimate spaces; (ii) employers' right to provide the same; (iii) employees' and employers' right to express the binary nature of sex; and (iv) employees' right to religious

accommodations for sincerely held religious beliefs."

Two important cases have recently highlighted the areas where the EEOC will focus their resources.

EEOC v. The New York Times (S.D.N.Y., filed May 5, 2026): The EEOC filed a lawsuit alleging the *Times'* 2021 "Call to Action" diversity plan and its annual diversity reports evidence an intent to make hiring and promotion decisions based on race and sex in violation of Title VII. The complaint alleges a White male editor was passed over for a promotion in favor of a multiracial female candidate (whom the EEOC characterized as less qualified). The case is a warning that an employer's public diversity goals and reports may be used as evidence of discriminatory intent.

EEOC v. Coca-Cola Beverages Northeast (D.N.H., filed Feb. 17, 2026): The EEOC filed a lawsuit against a Coca-Cola distributor for hosting a paid, two-day corporate retreat for approximately 250 female employees. The complaint alleges the female-only event denied male employees equal terms and privileges of employment under Title VII. The filing certainly signals that single-sex (or single-race) employer-sponsored affinity groups (including their events, retreats, and programs) will be squarely in the EEOC's sights.

These shifts in the EEOC's priorities are further highlighted by the EEOC's recent plan to end employer reporting requirements concerning race, sex, and national origin. On May 14, 2026, the EEOC submitted a notice to the White House proposing the recission of the **regulations requiring such reporting (the Employer Information Report, commonly called the EEO-1 Report).**

Courts Are Pushing Back — But Inconsistently

Federal courts—including judges appointed by presidents of both parties—have pushed back on aspects of the broader anti-DEI enforcement effort, finding the administration's directives unconstitutionally vague or lacking legal authority. However, companies such as T-Mobile, Verizon, and IBM have faced significant pressure to revise or abandon DEI practices, with IBM ultimately paying $17 million to resolve a federal investigation. The results are fast-moving, often contradictory and can be confusing for employers.

What Employers Should Do Now

Audit DEI programs: Review hiring, promotion, mentorship, and fellowship programs to identify any use of race, sex, or other protected characteristics as eligibility criteria or numerical targets. Programs should be structured to comply with Title VII's prohibition on disparate treatment based upon a protected characteristic.

Document job-related, uniform selection criteria: Hiring and promotion decisions should rest on legitimate, job-related qualifications applied consistently to all candidates, with the rationale for subjective decisions clearly documented. *The New York Times* case shows how an employer's diversity goals may be used as circumstantial evidence of bias when selection decisions are not well supported.

Reassess single-demographic affinity groups, events, and programs: Retreats, networking events, mentorships, affinity groups, and professional development opportunities limited to one sex, race, or other protected characteristic are now plainly an EEOC target, as the Coca-Cola case illustrates. Open participation to all eligible employees or be prepared to justify any restriction.

Retrain managers and HR: Update training to reinforce that Title VII protects all employees equally, that retaliation is prohibited, and that inclusion goals must be pursued through lawful means. Revise materials that could be read as endorsing decisions based on protected characteristics.

Vet public-facing diversity statements: Annual diversity reports, public demographic targets, and internal planning documents might be used as evidence of discriminatory intent, as the EEOC's reliance on the *Times'* "Call to Action" demonstrates. Have counsel review such communications before publication.

Review anti-discrimination policies: Handbooks and policies should clearly prohibit discrimination against any employee on the basis of any protected characteristic, with accessible complaint and investigation procedures that are consistently applied.

Engage employment counsel early: Given how quickly enforcement priorities and the law are shifting, employers should consult employment counsel proactively. Don't wait for a charge to be filed to identify vulnerabilities and restructure programs to achieve inclusion goals within legal limits.

Continue to comply with EEOC reporting requirements: Despite the recent EEOC proposals to target EEO data collection and disclosure, no official change has taken place. As a result, employers should continue to provide the appropriate EEO data collection information until further notice.

Looking Ahead

Expect the EEOC's scrutiny of DEI programs to continue under the current administration, alongside more charges from majority-group employees and further appellate litigation testing the limits of the administration's anti-DEI directives. Traditional discrimination obligations remain fully in force, and the IBM experience—a dismissed state lawsuit followed by a $17 million federal settlement—shows that risk can come from multiple directions.

Employers best positioned to navigate this environment will treat anti-discrimination compliance as a principled, consistent application of Title VII: employment decisions grounded in merit, qualifications, and legitimate business needs, not protected characteristics. Neither doubling down on demographic targets nor abandoning all diversity efforts is risk-free. A deliberate review of programs, policies, and communications now—with experienced employment counsel—is the surest way to reduce exposure from any quarter.

As employers prepare for the implementation of these recent developments, now is a good time to review your company's EEOC compliance or DEI program. Please do not hesitate to contact any of the attorneys in Gould & Ratner's Human Resources and Employment Law Practice to discuss the effects of these new measures on your business and how your company's diversity and inclusion initiatives should be reviewed to comply with current enforcement priorities.