

EEOC Quietly Updates Strategic Enforcement Plan for 2017-2021

Labor & Employment Law Update

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The EEOC's new Strategic Enforcement Plan (SEP) highlights its enforcement priorities and alerts employers to areas most likely to attract the EEOC's investigative eye, including the types of charges the EEOC is most likely to litigate on a complainant's behalf.

The EEOC recognizes that employment law is continuously developing and that related practices are continuously evolving. As a result, this SEP is intended to reflect current issues. This new four year SEP (which remains in effect until superseded, modified or withdrawn by vote of a majority of members of the Commission) emphasizes:

1. **Eliminating Barriers in Recruitment and Hiring.** As with the prior SEP, this priority includes exclusionary policies and practices such as "channeling or steering" persons into particular positions due to a protected trait, restrictive application processes, and screening tools for employment.
2. **Protecting Vulnerable Workers – Including Immigrant or Migrant Workers, and Underserved Communities from Discrimination.** The focus is on discriminatory policies including job segregation, unequal pay, and harassment. The shift here is to underserved communities.
3. **Addressing Emerging and Developing Issues.** Despite many courts' attempts to rein in the EEOC, the agency recognizes the following developing issues worthy of particular scrutiny: age and religious discrimination; coverage of LGBT persons under Title VII; disability discrimination, including qualification standards, inflexible leave policies, and temporary workers; accommodating pregnancy-related limitations; issues related to workers engaged on-demand (gig economy), including through staffing agencies, and independent contractor relationships; and "backlash discrimination" against Muslim/Sikh/Arab/Middle Eastern/South Asian communities.
4. **Enforcing Equal Pay Laws.** Previously focused on gender-based discrimination, the EEOC expanded this priority to all protected classes. In light of this, employers may see claims of willful protected class discrimination added to wage and hour disputes.
5. **Preserving the Exercise of Rights under the Law.** The EEOC is targeting policies and practices that discourage or prohibit individuals from exercising

their rights or disrupt investigative or enforcement efforts. This includes vague and overbroad waivers and provisions in settlement agreements that prohibit filing EEOC charges or assisting in the investigation or prosecution of claims. Unlike the prior SEP, this SEP removes “retaliatory actions” due to the EEOC’s inconsistent application, shifting the focus to “Significant Retaliatory Practices” that effectively dissuade others from exercising rights (e.g., terminating the HR Manager for investigating a complaint to send a message to other employees to not complain in the first place).

6. **Preventing Systemic Harassment.** The EEOC’s focus includes prevention programs (training and outreach) to deter future violations.

Starting 2017 on the Right Foot

Because state and local administrative agencies (e.g., city and county civil rights departments) often follow the EEOC’s lead, all employers, regardless of size, should take note of the EEOC’s stated priorities. An audit of human resources practices and policies should be part of your 2017 New Year’s (legal) resolutions.

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