EEOC Rescinds Prior Affirmative Action Guidance

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Key Takeaways

- The EEOC has withdrawn decades-old guidance that explained when and how employers could implement affirmative action plans under Title VII.
- The move signals continued federal scrutiny of workplace policies that consider race, sex, or other protected characteristics, increasing potential legal risk for employers.
- Employers should review existing affirmative action and DEI-related programs to ensure they remain compliant and defensible under current law.

The EEOC announced on June 24 that it would hold a meeting on July 1 at its Washington, D.C. headquarters to discuss three agenda items, two of which relate to affirmative action. Specifically, the agenda noted that it would consider whether to (1) revoke a 1979 interpretive rule called "Affirmative Action Appropriate Under Title VII of the Civil Rights Act of 1964" and (2) eliminate the related Section 607 of its Compliance Manual. However, on June 29, the EEOC canceled the July 1 meeting and voted to rescind the longstanding guidance.

The 1979 guidance explained how employers could legally implement affirmative action plans. The guidance identified the circumstances under which a voluntary affirmative action plan is appropriate and the three elements of an established affirmative action plan. It also explained how the EEOC would process Title VII complaints involving affirmative action compliance programs established (1) under Executive Order No. 11246, (2) as part of EEOC conciliation or settlement, (3) under state or local law, and (4) to adhere to a court order. Given the rescission of this guidance, the EEOC also determined that Section 607 of its Compliance Manual is now obsolete.

The EEOC's press release stated, "[t]he Commission found that the Affirmative Action Guidelines ran afoul of the text of Title VII and contradicted Supreme Court case law that has developed over the four decades since the Affirmative Action Guidelines were issued." Specifically, the press release noted that "[t]he stated purpose of the Affirmative Action Guidelines in 1979 was to protect employers, labor organizations, and other persons subject to Title VII [who] have changed their employment practices and systems to improve employment opportunities for minorities and women"; however, the stated purpose no longer applies because "the Supreme Court has held Title VII of the Civil Rights Act of 1964 provides the "same protections for every individual."[1][2]

What It Means

While rescission of the guidance itself does nothing to change Title VII or any other federal, state, or local law, including the Supreme Court's decisions in both *United Steelworkers v. Weber*, 443 U.S. 193 (1979) and *Johnson v. Transportation Agency*, 480 U.S. 616 (1987), it does raise questions concerning whether reliance on the guidance will be a meaningful defense in future litigation. It also follows a broader trend of federal disfavor and scrutiny of policies that allow the consideration of race, sex, or any other protected characteristic in the workplace.

In light of the revocation of the guidance, and the elimination of the safe harbor it provided, it is imperative to revisit any affirmative action plans you may have in place. To do so, contact any member of Benesch's Labor and Employment team.

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[1]29 CFR § 1608 *et seq.*, available at: https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1608 (last accessed July 6, 2026).

[2] *See* U.S. Equal Employment Opportunity Commission, EEOC Votes to Rescind Affirmative Action Interpretive Guidelines and Related Compliance Manual, available at: https://www.eeoc.gov/newsroom/eeoc-votes-rescind-affirmative-action-interpretive-guidelines-and-related- (last accessed July 6, 2026) (quotations omitted).