CLIENT ALERTS & INSIGHTS

EEOC Shakeups Under the Trump Administration Targeting Gender Identity, Abortion Accommodations, and AI Bias

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The Trump Administration has issued swift changes in policy, and the effects are now reaching the Equal Employment Opportunity Commission ("EEOC"). While the EEOC is still awaiting quorum to vote on major actions, it is signaling changes to Biden-era rules related to gender identity, abortion accommodations, and artificial intelligence ("AI") bias risks.

LGBTQ+ Guidance

On January 20, 2025, President Trump issued an executive order recognizing only "two sexes" and seeking rescission of the 2024 anti-harassment guidance. The Biden-era guidance, which is still in effect, provides that employers are prohibited from misgendering employees or barring them from using bathrooms that align with their gender identity.

Following President Trump's order, EEOC Acting Chair, Andrea Lucas, directed that all impacted EEOC charges be elevated for review at the Commission's headquarters. The EEOC has now filed motions to dismiss at least six transgender discrimination cases, which were based on allegations of inappropriate comments related to gender identity and misgendering employees. In addition, the Commission has removed nonbinary gender markers from bias charge intake forms. Lucas has signaled that once quorum is met, the Commission will be rescinding the 2024 anti-harassment guidance.

Abortion Accommodation Rules

The EEOC's 2024 rules related to the Pregnant Workers Fairness Act ("PWFA") require employers to provide accommodations for pregnant workers, including abortion-related accommodations. The rules were quickly challenged by the attorneys general of 17 states, who argued that the rules were illegal because abortions are not explicitly mentioned in the PWFA. In June 2024, the U.S. District Court for the Eastern District of Arkansas rejected a preliminary injunction brought by the states and held that they lacked standing to bring suit. Yesterday, the Eighth Circuit found that the states do have standing to bring the case and remanded, allowing litigation to proceed.

The EEOC has signaled that it will be dropping the Biden-era interpretation of the PWFA, as Lucas, who voted against the current PWFA rules, has stated that they conflate "pregnancy and childbirth accommodations with accommodations related to the female sex, that is, female biology and reproduction."

AI Bias Guidance

In May 2023, the EEOC issued a technical assistance document outlining how AI algorithms in employment-related tools and programs may violate Title VII protections against bias toward job applicants and employees. The guidance provided employers with information on how to prevent this type of discrimination. The EEOC has since removed the guidance from its website, indicating that AI bias is not a topic of concern for the Trump Administration.

These changes to the EEOC rules and guidance showcase the Trump Administration's policy priorities and directly impact how private sector employers will handle day-to-day issues surrounding employee gender identity and accommodations. While changes may be underway, employers are still subject to the Biden-era EEOC rules and guidance. They will remain subject to Title VII's anti-discrimination protections for applicants and employees.

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