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The EEOC will soon begin advancing Trump's agenda in earnest following months of paralysis. The agency's likely course of action may impact employers' current discrimination and hiring policies.

Key takeaways

- The EEOC can now function properly following the confirmation of Trump's nominee, who restored the agency to a quorum.
- Employers can anticipate less enforcement around gender identity and disparate impact claims and a stronger emphasis on protecting American workers.
- Changes to the EEOC's rule implementing the PWFA are expected, though compliance with state and local laws remains essential.



The US Equal Employment Opportunity Commission (EEOC) returned to a quorum on 7 October 2025, for the first time since US President Donald Trump terminated two Democratic commissioners in January 2025. Assuming adequate funding, the agency can now begin implementing Trump's anti-diversity, equity and inclusion (DEI) policies by resuming decision-making processes and rolling back guidance issued during the Biden administration. As of this writing, the federal government has been shut down for 28 days due to a lapse in appropriations.

Trump terminated Jocelyn Samuels and Charlotte Burrows from the EEOC when he took office, leaving acting chair Andrea Lucas and Democrat Kalpana Kotagal as the only commissioners. Samuels has since challenged her dismissal, with her lawsuit currently pending before the US District Court for the District of Columbia.

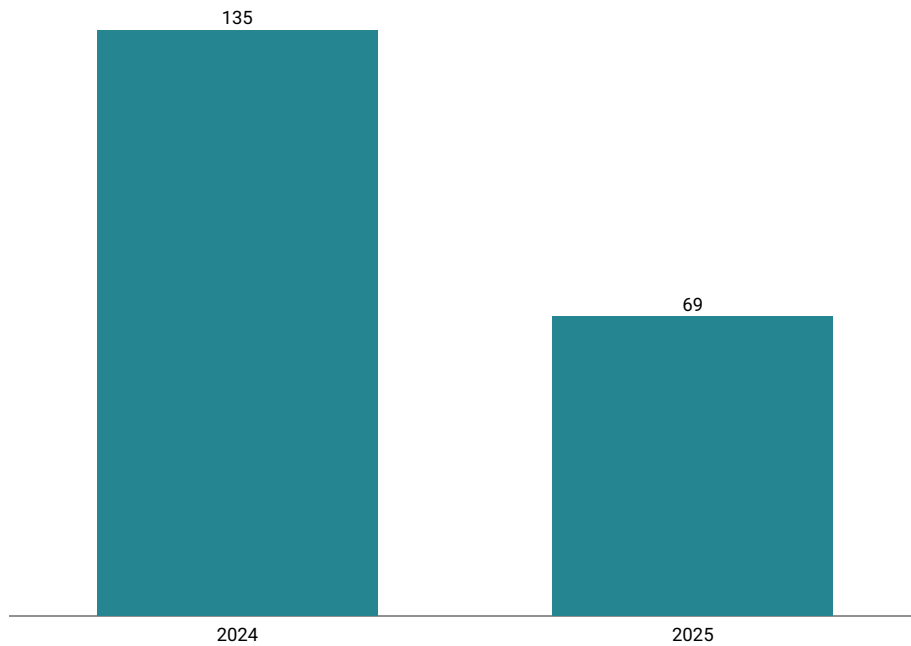
The US Supreme Court is expected to weigh in on the limits of the US president's power to remove members of independent commissions in Rebecca Slaughter's case contesting her removal from the US Federal Trade Commission. Samuels raised arguments similar to Slaughter's, though the relevant statutes differ somewhat.

State of play

The EEOC's field offices continued to investigate new and existing charges while the agency lacked a quorum, and Lucas and former acting general counsel Andrew Rogers, who has since been replaced by US Office of Federal Contract Compliance Programs alum Catherine Eschbach, were able to exercise some authority. However, the agency has not been able to issue new decisions or implement, modify or rescind guidance or regulations.

The impact on the EEOC's output is clear: the agency voted on only 69 matters in fiscal year (FY) 2025, compared to 135 in FY 2024.

EEOC votes by fiscal year



Source: EEOC Commission Votes

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Constangy Brooks Smith & Prophete partner Robin Shea said that the private sector has experienced delays due to the lack of a quorum at the EEOC. She said that cases pending before the agency from the Biden administration are still open, and that the backlog has grown since Trump took office. The EEOC has been shuttered since 1 October 2025 due to a lapse in government funding, Shea noted, though commissioners have remained active and will likely resume normal operations now that Trump's nominee, Brittany Panuccio, has reportedly been sworn in.

During her confirmation hearing, Panuccio expressed support for Trump's anti-DEI policies and pledged to protect women's rights. Lucas has commended Panuccio's positions, writing that her confirmation has "empowered [the EEOC] to deliver fully on [its] promise to advance the most significant civil rights agenda in a generation."

It remains uncertain which issues the EEOC will tackle first, but Lucas' stated priorities and recent legal actions may provide insight into how the agency will begin working toward the Trump administration's goals.

Discrimination under the new EEOC

Perhaps at the top of the EEOC's to-do list will be rescinding the gender identity portions of its 2024 Enforcement Guidance on Harassment in the Workplace, per a 15 May 2025 order of the US District Court for the Northern District of Texas. The guidance cites the US Supreme Court's 2020 decision in *Bostock v Clayton* in recognising harassment based on gender identity as discrimination under Title VII of the Civil Rights Act 1964. The district court found several portions of the guidance "contrary to law," including all language defining "sex" in Title VII as "sexual orientation" or "gender identity" and all language recognising both terms as a protected class.

Lucas voted against the guidance in 2024, and the agency said in a May 2025 court filing that "the challenged portions of the Guidance should be rescinded" once a quorum was regained, in part to align with Trump's Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government executive order. Once the agency takes this step, federal enforcement against gender identity harassment will slow or, likely, stop. However, this change will not legalise gender identity harassment or prevent workers from bringing private claims, Duane Morris partner Gerald Maatman said.

“Gender identity accommodations may not be required under federal law, but you’re going to have plaintiffs’ lawyers bringing lawsuits over gender identity issues that are prohibited by state laws,” Maatman said. “At the end of the day, it’s just brought by a different party under a different law, but it’s the same concept. Employers don’t have a license to discriminate.”

In further pursuit of abolishing private-sector DEI efforts, the EEOC also announced this year that it will no longer recognise disparate impact liability under Title VII, as directed by Trump. The agency has since closed all pending disparate impact charges.

Drawing parallels to the EEOC’s harassment guidance, Littler Mendelson partner James Paretti emphasised that “the disparate impact theory is still codified in the Civil Rights Act,” but noted that such litigation “requires more statistical analysis and evidence.” This often discourages plaintiffs from pursuing these cases due to a lack of time and resources, Paretti said.

Lucas to prioritise American workers

Another priority for the EEOC will be enforcement of anti-discrimination laws against employers who favour “non-American workers.” In a February 2025 press release, Lucas deemed policies that prefer immigrants, migrants and visa holders to be in direct violation of Title VII.

According to the EEOC’s Enforcement Guidance on National Origin Discrimination, Title VII “prohibits employment discrimination against individuals because of their national origin group,” which includes citizenship status. In her February 2025 press release, Lucas recognised that “Title VII’s national origin non-discrimination requirement generally means that employers cannot prefer American workers.” However, she said it equally protects US citizens from the same discrimination.

The EEOC’s first publicised settlement under Lucas may set the tone for further enforcement against national origin discrimination. The agency announced a US\$1.45 million settlement with LeoPalace Resort, a resort on the US territory of Guam, in February 2025. The EEOC sued the resort in 2017 on behalf of US employees who claimed they were being paid less than their Japanese counterparts.

Trump’s recently announced US\$100,000 H-1B visa application fee has already made it harder for some employers to hire foreign workers, and future EEOC measures may add to this strain. Maatman said that most national origin discrimination cases arise in the southwest region of the US, and that industries that rely on foreign workers, such as agriculture and IT, may be vulnerable to these claims.

Constangy’s Shea said employers can avoid private litigation and EEOC scrutiny by “hiring the most qualified person for the job.” She said that employers must “cast a wide enough net” to attract a diverse pool of applicants and ensure that their hiring and employment decisions are documented.

Despite her current pro-American worker stance, Lucas has historically supported enforcement of national origin discrimination laws to protect non-American employees and job applicants, aligning with Kotagal and former Democratic commissioners. The commission voted unanimously on the four national origin discrimination actions it took in FY 2024, all of which addressed discrimination against non-American workers.

The EEOC voted unanimously on four national origin discrimination actions in FY 2024.

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Once it resumes normal operations, the EEOC may also issue changes to its 2024 rule implementing the Pregnant Workers Fairness Act 2022 (PWFA). The rule, which has been challenged in the past, requires employers to make reasonable accommodations for “related medical conditions” under the PWFA, and includes abortions as such a condition.

Lucas’ voting history reflects consistent opposition to the PWFA rule, setting her apart from her Democratic colleagues. Upon adoption of the rule, she wrote that she was “unable to approve it because it purports to broaden the scope of the statute in ways that, in [her] view, cannot reasonably be reconciled with the text.” Under Lucas’ leadership, the EEOC has announced plans to “reconsider portions of the Final Rule that she believes are unsupported by law.”

Littler’s Paretti noted concerns about the EEOC’s broad interpretation of the PWFA. He said the agency may start fresh with implementing the statute.

“The PWFA was a bipartisan bill that was enacted for a very specific purpose. There was a concern that pregnant workers were falling through the cracks of discrimination laws because they sometimes didn’t rise to the level of disability,” Paretti said. “The EEOC’s rule really expanded the scope of the law to . . . almost anything tied to reproduction. I don’t think that’s what Congress had in mind, so this EEOC may just pull the rule back and re-issue something completely new.”

Whiteford, Taylor & Preston partner Lisa Brauner said employers can expect the EEOC to narrow its PWFA rule. She said they should “prepare to re-evaluate the scope of accommodations related to pregnancy under the PWFA,” while also being mindful of accommodations required by some state and local laws.

The EEOC did not respond to a request for comment.

“Expect the unexpected”

Whilst the White House has made its stance on DEI and private sector employment policies clear, Duane Morris’ Maatman cautioned that employers should still “expect the unexpected” when it comes to the EEOC’s next steps. He said its recent actions and stated priorities “are unlike anything we’ve seen in the history of the agency,” and that compliance will depend on companies’ values and goals.

“Some companies see a corporate imperative to staying clear of being in the news or sued over discrimination issues, while others want to exercise their discretion at the maximum level and don’t want the government telling them what to do, unless and until a court does,” Maatman said. “It all depends on how conservative you want to be to avoid legal problems, or how close you’re willing to come to prompting action from the EEOC.”

Constangy’s Shea said employers should wait to see what specific changes the EEOC makes to its guidance and enforcement efforts, but that they can prepare by auditing their employment processes to ensure they are providing reasonable accommodations under applicable laws and not discriminating against protected classes.

“Compliance really hasn’t changed,” Shea said. “If the EEOC takes you to court because you hired the most qualified person for the position, you’re going to win.”

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