



THE TIME IS NOW – FIGHT BACK/ MOVE FORWARD

November 18, 2025

We are in a moment in time when civil rights and equal employment opportunity are facing waves of destructive orders, memoranda, and actions from a hostile federal executive branch.

This document provides a summary of these attacks on equal employment opportunity and the responses by [EEO Leaders](#) to those attacks. We also seek to begin a dialogue on how we can develop new strategies that will move us forward to fully realize the promise of America's civil rights laws.

We are committed to fighting back and moving forward.

FIGHT BACK

Support for Employers Who Are Continuing to Take Proactive Steps to Advance Equal Employment Opportunity.

For decades, long-standing legal principles have encouraged employers to take proactive steps to identify and remove barriers to equal employment opportunity. Many employers called these measures “Diversity, Equity and Inclusion” (“DEI”) efforts, while others have used different language. Regardless of the terminology, what matters is that many of these efforts are lawful under existing precedent and help employers counteract discrimination that might otherwise operate to harm workers.

The Trump Administration has launched a [broad assault](#) aimed at dismantling decades of progress to open doors to opportunity, beginning with Executive Orders to attack efforts that it deems to be “unlawful DEI.” On January 20, 2025, President Trump issued [Executive Order 14151](#), to end what it termed “radical and wasteful government DEI programs and preferences,”

and on January 21, 2025, President Trump issued [Executive Order 14173](#), which characterized DEI efforts as “illegal discrimination” undermining “merit-based” treatment of employees.

In response to those Executive Orders, EEOC Chair Andrea Lucas issued warnings about “DEI-Related Discrimination,” and the Department of Justice issued similar warning memos. These actions rest on misleading characterizations of the law in an effort to intimidate employers from taking proactive measures to improve equal employment opportunity.

These actions include:

- **Threatening law firms with illegitimate requests for extensive information on their DEI efforts.** On March 17, 2025, Chair Lucas sent [letters](#) to 20 law firms directing them to produce extensive data regarding their employment practices and DEI efforts. These requests would have the natural result of chilling these law firms (and other employers) from engaging in efforts that the EEOC might characterize as “illegal DEI.” In response, EEO Leaders sent a letter to Chair Lucas stating our legal concerns with her action, which appeared to exceed her authority under Title VII. See [Letter to Acting Chair Andrea Lucas \(March 18, 2025\)](#).
- **Issuing a misleading document on DEI in the workplace.** On March 19, 2025, Chair Lucas issued [“What You Should Know About DEI Discrimination at Work.”](#) Without ever defining “DEI,” the document seeks to convey the message that all DEI efforts are fraught with legal peril. This would also naturally result in chilling employers’ willingness to undertake any proactive measure to achieve equal employment opportunity. In response, EEO Leaders issued a statement that exposed the deficiencies of Chair Lucas’ document and laid out legal proactive measures that employers can take to create non-discriminatory and inclusive environments. See [Statement of Former Equal Employment Opportunity Commission \(EEOC\) Officials on Employer Diversity, Equity, and Inclusion Efforts](#) (April 3, 2025).
- **Misrepresenting the Law on Collecting and Using Workforce Demographic Data.**
For decades, [EEOC regulations](#) have required employers to annually report their workforce demographic data. EEOC uses this data to assist with investigations, and many employers use the data to assist with self-assessments. This year, Chair Lucas included a [message](#) in the EEOC’s yearly request for such data warning employers against using their data “to treat individuals differently on the basis of race, sex or other protected characteristic.” Chair Lucas’ message improperly implied there is a legal risk in using workforce demographic data to ensure equal employment opportunity. In fact, there is no legal risk in collecting demographic data and using it appropriately. See [Open Letter](#)

[to the Federal Contractor Community from Former Department of Labor Officials \(April 15, 2025\).](#)

- **Dissolving EEOC Employee Resource Groups.** Chair Lucas dissolved all of the EEOC's internal employee resource groups that provided opportunities for employees who shared common interests to come together, provide mutual support, and make suggestions for improvements in agency operations. Chair Lucas also canceled the educational programs long offered by the agency to mark commemorative occasions relevant to civil rights history, including Black History Month, Women's History Month, Hispanic Heritage Month, and Asian American, Native Hawaiian, and Pacific Islander History Month. The group [Pride in Exile](#) was created to substitute for the LGBTQI+ affinity group at the EEOC.

The Department of Justice has amplified the Administration's efforts by issuing [Guidance For Recipients of Federal Funding Regarding Unlawful Discrimination](#). DOJ states that this guidance applies to all employers subject to federal anti-discrimination law. EEO Leaders issued a response to DOJ's guidance, countering numerous misleading statements and conclusions in the document. See [EEO Leaders Response to DOJ's Guidance For Recipients of Federal Funding Regarding Unlawful Discrimination \(November 18 2025\)](#)

Use of Disparate Impact Analysis to Prevent Employment Discrimination

Disparate impact liability, [which is part of Title VII](#) and has been applied by courts for decades, ensures that employment decisions are based on a person's ability to do a job. A policy that disproportionately excludes people on a prohibited basis is unlawful if – *but only if* – it is not [“job related for the position in question and consistent with business necessity.”](#)

For example, disparate impact analysis is important for assuring employers that new AI tools will not cause employers to discriminate and expose them to legal liability, even if discrimination is not intended. Similarly, a requirement that job applicants have a certain number of years of uninterrupted work history to be considered for a job vacancy could have an unjustified disparate impact on women, who are more likely to take time out of the workforce to care for children or other family members.

In contravention of Title VII, the President issued [Executive Order 14281](#) on April 28, 2025, urging federal agencies to eliminate the use of disparate impact liability “in all contexts to the maximum degree possible.” In response, EEO Leaders issued a statement explaining the importance of disparate impact liability and explicating the illegal analysis in the Executive

order. See [President Trump's Executive Order on Disparate Impact Analysis Is Legally Incorrect and Will Undermine Meritocracy and Equal Employment Opportunity \(May 13, 2025\)](#).

Chair Lucas subsequently took actions to undermine the use of disparate impact liability in employment cases. These actions include:

- **Moving to dismiss lawsuits relying on disparate impact analysis.** In May 2025, the EEOC [moved to dismiss](#) its lawsuit in *EEOC v. Sheetz, Inc.*. This was a Commission-approved systemic lawsuit that challenged alleged race discrimination by a national retailer's denial of employment opportunities based on applicants' criminal justice records without justifying this criterion as necessary for the jobs in question.
- **Refusing to Pay FEPAs for Work on Disparate Impact Charges.** On May 20, 2025, the EEOC sent a [memo](#) to state, local and tribal [Fair Employment Practices Agencies](#) ("FEPAs") informing them that the EEOC would no longer pay the agencies for their work on charges alleging discriminatory disparate impact. The memo noted that this payment restriction would be retroactive to January 20, 2025 and thus would apply to charges that the FEPAs had already completed. In July 2025, the EEOC sent a revised [Handbook](#) to the FEPAs with a Model Worksharing Agreement that precluded payment for charges raising claims based on disparate impact. For further information on FEPAs, see EEO Leaders, [Background Information on Fair Employment Practices Agencies and Recent Restrictions Imposed by the Equal Employment Opportunity Commission \(October 2025\)](#).
- The head of EEOC's Office of Field Programs then issued a memo effective September 15, 2025, ordering all pending investigations of charges that were premised solely on a disparate impact theory of liability to be closed by September 30, and informing field staff that they could no longer investigate or conciliate charges premised on disparate impact liability. In response, a charging party whose charge was administratively closed pursuant to this memo [filed suit](#) against the EEOC and Chair Lucas, contending that the memo violated the Administrative Procedure Act because it contradicted the EEOC's obligations under Title VII to investigate all charges of discrimination.

Protecting LGBTQI+ Individuals from Employment Discrimination

In its [Strategic Enforcement Plan for 2013-2016](#), the EEOC identified the LGBTQI+ community as among the populations the agency would prioritize resources to protect. The EEOC reaffirmed that priority in its [Strategic Enforcement Plan for 2024-2028](#).

In 2020, the Supreme Court's decision in [Bostock v. Clayton County](#) firmly established that employment discrimination based on sexual orientation and gender identity is prohibited under Title VII as a form of sex discrimination. The *Bostock* ruling was transformative in addressing workplace discrimination faced by LGBTQ people, and was applied by numerous courts to hold employers accountable for such discrimination.

But, on the first day of his second administration, President Trump issued [Executive Order 14168, Defending Women from Gender Ideology Extremism](#). That Executive Order denied the very existence of transgender, non-binary, and intersex people and hence undermined the possibility of providing them protection under Title VII.

Chair Lucas followed President Trump's Executive Order by taking numerous steps to undermine the agency's protection of LGBTQ people from discrimination. These steps include:

- **Moving to dismiss pending cases protecting the rights of transgender employees and other employees who had supported them.** In each of these seven cases, the affected individuals relied on EEOC's commitment to vindicate their rights. But the EEOC filed [motions to dismiss](#) the suits, stating that the suits were inconsistent with the President's Executive Order mandating adherence to a gender binary. In all seven cases, the employees were able to find private lawyers to represent them—without the support of the EEOC behind them.
- **Failing to process charges filed by LGBTQ people in a lawful manner.** Following issuance of Executive Order 14168, the EEOC paused processing of charges based on gender identity or sexual orientation. A memo sent to EEOC field offices on July 1, 2025, instructed offices to resume processing those charges the EEOC characterized as falling “squarely” within *Bostock*, such as “hiring, discharge or promotion.” The memo suggests that EEOC did not believe that charges of harassment fell within that category. The initial pausing of charges and the July memo contravene Title VII's command that the agency investigate all charges, and ignore the protections established in *Bostock*. EEO leaders responded by explaining the legal protections of *Bostock*, see [An Open Letter to Acting Chair Andrea Lucas \(June 25, 2025\)](#), and setting forth the legal deficiencies of EEOC's July memo. See [Statement on EEOC's Processing of LGBTQ+ Charges as of July 1, 2025 \(July 21, 2025\)](#). In addition, LGBTQ rights organization Free State Justice, represented by Democracy Forward and the National Women's Law Center, [filed a suit](#) against the EEOC for unlawfully refusing to enforce federal workplace protections for transgender workers.

- **Improperly amending the EEOC’s harassment guidance.** Chair Lucas directed that sections of a Commission-voted guidance referring to protection against unlawful harassment based on sexual orientation or gender identity be “shaded out.” These changes not only created confusion for EEOC investigators, employers, and employees, but enshrined in an EEOC document the legally unsustainable position that harassment on the basis of sexual orientation or gender identity is not prohibited under Title VII. See [EEO Leaders Statement on Understanding the EEOC’s 2024 Harassment Guidance](#).
- **Removing materials regarding LGBTQI+ individuals from EEOC’s website.** The EEOC has [removed from its website](#) documents relating to the rights of LGBTQI+ individuals under Title VII. These include descriptions of EEOC’s litigation on behalf of LGBTQI+ workers, summaries of federal sector decisions explaining the contours of prohibited discrimination, and fact sheets explaining the protections provided by Title VII against sexual orientation and gender identity discrimination. [Pride in Exile](#) has created a [Restoration Page](#) of the LGBTQI+ documents removed from EEOC’s website.
- **Denying EEOC employees and charging parties the opportunity to self-identify.** Chair Lucas barred EEOC employees from including their pronouns in their e-mail signatures and eliminated the ability of charging parties to self-identify their sex with an X gender marker, thus forcing them to deny their identities in order to carry out their jobs or file charges of discrimination. Emails to Chair Lucas from [an attorney in EEOC’s Office of Legal Counsel](#) in March 2025 (who resigned), from [Molly Powell](#), EEOC’s DEIA Director (who resigned), and an EEO complaint from [Marc Seawright](#), EEOC’s Director of Information Governance and Strategy (who resigned), all describe the harm being done to LGBTQI+ employees at the EEOC.
- **Refusing to Pay FEPAs for Processing Gender Identity Charges.** On May 20, 2025, EEOC sent a memo to state, local and tribal Fair Employment Practices Agencies (“FEPAs”) informing them that the EEOC would no longer pay the agencies for their work on charges raising gender identity discrimination claims. The memo noted that this payment restriction would be retroactive to January 20, 2025, and thus would apply to charges of this kind that the FEPAs had already processed. In July 2025, EEOC sent a revised [Handbook](#) to the FEPAs with a Model Worksharing Agreement that precluded payment for charges raising gender identity discrimination claims. For further information on FEPAs, see EEO Leaders, [Background Information on Fair Employment Practices Agencies and Recent Restrictions Imposed by the Equal Employment Opportunity Commission \(October 2025\)](#).

Maintaining EEOC's Independence and Integrity

At the most basic level, leaders of the EEOC must comply with the law and maintain the integrity of the agency. Many of the actions taken by Chair Lucas were done in violation of either Title VII or established Commission procedures or historical traditions.

Congress created the EEOC as a bipartisan five-member commission of presidentially appointed, Senate-confirmed experts with set statutory terms. At the very start of the Administration, President Trump attacked the bipartisan and independent nature of the EEOC by terminating two Democratic EEOC Commissioners prior to the expiration of their terms – something that has never been done in the 60-year history of the EEOC.

A bipartisan Commission allows for reasoned deliberations that reflect a diversity of viewpoints and encourages thoughtful negotiation and consensus. Even if a final decision is not unanimous, all Commissioners abide by enforcement actions, regulations, guidances, federal sector opinions, and plans adopted by majority vote of the Commission.

In contrast, Chair Lucas has consistently undermined the structure and integrity of the agency and, in several instances, has acted in direct contravention of the law. The substantive harm wrought by these actions has been detailed above. But it is important to highlight as well the unprecedented procedural and legal deficiencies in such actions.

These actions include:

- **Issuing public letters demanding information from employers in the absence of a charge.** As noted above, Chair Lucas issued unprecedented public letters to 20 law firms directing them to produce extensive information about the lawfulness of their "diversity, equity and inclusion" (DEI) programs. Title VII prohibits public disclosure of the existence or the subject of a charge and imposes civil and criminal penalties for violations by EEOC officials and staff. Congress deliberately designed Title VII to encourage cooperative compliance and prohibited the Commission from using public pressure to intimidate employers before a finding of discrimination on a charge that leads to a court proceeding.

If Chair Lucas had had a sufficient basis in evidence to believe that any of these law firms had engaged in discrimination in violation of Title VII as a result of their DEI programs, she could have filed a Commissioner charge, signed under penalty of perjury, to begin an investigation. Those charges would have then remained confidential under the law. However, since Title VII does not authorize this sort of public demand for information, sending these letters exceeded the EEOC's authority under the law.

- **Allowing the EEOC to be used as a tool in the President’s retaliatory campaign against law firms.** The letters sent by Chair Lucas followed a [directive](#) from the President that the EEOC “review the [DEI] practices of representative large, influential, or industry leading law firms for consistency with Title VII.” This unprecedented command from a President that the EEOC take specific enforcement actions contravenes traditional and critical efforts to insulate agency enforcement decisions from political influence. Chair Lucas’s acquiescence in this procedural breach led her, as noted above, to unlawfully issue demand letters to 20 law firms. She doubled down on using EEOC resources to further the President’s retaliatory agenda by entering into “[settlements](#)” with four of the targeted firms.
- **Modifying a Commission-voted harassment guidance without a new Commission vote.** As noted above, Chair Lucas unilaterally shaded out all sections of EEOC’s harassment guidance referring to harassment on the basis of sexual orientation or gender identity. While Chair Lucas acknowledged that she did not have authority to officially revise the guidance without a quorum and a Commission vote, her actions nonetheless effectively created the same result.
- **Violating contracts with Fair Employment Practices Agencies.** The EEOC has denied FEPAs compensation for work they already performed on charges involving gender identity discrimination or disparate impact. The May 20, 2025 memo informing FEPAs that the EEOC would no longer compensate them for work on such charges was retroactive to January 20, 2025.

We can expect other attacks from the EEOC on equal employment opportunity because it now has a quorum with the [addition](#) of Brittany Bull Panuccio as a Commissioner. We will continue to track those actions– and will respond to further efforts to mislead employers and to undermine the law.

MOVE FORWARD

We cannot expend all our energy fighting back against the onslaught of attacks on equal employment opportunity happening in this country today. We must also spend energy on strategies for moving forward.

As a threshold matter, where equal employment opportunity programs and structures have been destroyed, we need to rebuild those structures in an effective manner and develop strong protections to ensure their viability moving forward.

But beyond that, we must think boldly and creatively about what is needed to achieve robust protections in the 21st century for all workers.

These ideas should not be developed in a top-down fashion. To the contrary, we need to build an enterprise that engages a broad range of stakeholders. This diversity of perspectives will result in more creative and innovative ideas. It will also ensure that our ideas meet the needs of the full range of workers and employers.

As EEO Leaders, we are committed to soliciting ideas from all stakeholders, working with other groups engaged in similar efforts, and collectively creating an energized and effective community dedicated to equal employment opportunity.

Join Us In Fighting Back and Moving Forward!