

Flashpoints In Focus: Tips As EEOC Prioritizes Hiring Bias

By **Dawn Solowey, Andrew Scroggins and Loren Gesinsky** (May 15, 2026)

This article is part of a monthly column that examines polarizing social, cultural or political issues that affect workplace legal considerations. In this installment, we discuss how employers can mitigate risk as federal enforcement priorities increase scrutiny of recruiting and hiring processes.

In today's environment, recruiting and hiring issues are often at the intersection of cultural conflicts, political polarization and employment law. As evidenced by two recent cases, the U.S. Equal Employment Opportunity Commission's litigation filings in the first five months of 2026 reflect the agency's increased interest in recruiting and hiring bias claims.

Employers should expect to see the EEOC continuing to focus on recruiting and hiring issues, and for the private plaintiffs bar to follow suit. Thus, this is the perfect time for employers to review their hiring and recruiting processes and policies in order to ensure compliance with federal, state and local law and minimize their legal risk.

Recent Cases

EEOC v. Gallup-McKinley County Schools

On April 27, the EEOC filed a subpoena enforcement action in *EEOC v. Gallup-McKinley County Schools* in the U.S. District Court for the District of New Mexico.[1]

The action arises out of a charge brought by former EEOC Commissioner and current EEOC Chair Andrea Lucas, alleging that Gallup-McKinley County Schools discriminated against and failed to interview, hire, promote and classify Native American applicants and employees. The subpoena sought several years of applicant and employee data.

EEOC v. Central Transport LLC

A few days later, the parties in *EEOC v. Central Transport LLC* filed a joint motion for entry of a consent decree in the EEOC's lawsuit alleging that Central Transport failed to hire several charging parties and other female applicants for truck driver positions over a period of nearly 10 years because of their sex.[2]

The April 30 consent decree in the U.S. District Court for the District of Arizona included \$5.5 million in monetary relief, as well as various nonmonetary terms, including injunctive relief, review of Central Transport's equal employment opportunity policies, training for those with hiring authority for truck drivers and other relief.

Enforcement Priorities



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These recent actions focused on recruiting and hiring bias align with priority issues that the EEOC identified in its 2024-2028 strategic enforcement plan. One such priority is "Eliminating Barriers in Recruitment and Hiring" based on any protected category.[3]

Another priority is "Addressing Selected Emerging and Developing Issues," including recruiting and hiring issues. The plan specifically lists:

- "Qualification standards and inflexible policies or practices that discriminate against individuals with disabilities";
- "Protecting workers affected by pregnancy, childbirth, or related medical conditions under the Pregnancy Discrimination Act (PDA) and the Pregnant Workers Fairness Act (PWFA), as well as pregnancy-related disabilities under the Americans with Disabilities Act (ADA)"; and
- "Addressing discrimination influenced by or arising as backlash in response to local, national, or global events, including discriminatory bias arising as a result of recurring historical prejudices."

The first two issues implicate accommodations at the application stage, including for disabilities, pregnancy and pregnancy-related disabilities. The third issue shines a spotlight directly on cultural flashpoints in the hiring process and during employment.

EEOC leadership has also reiterated this focus on recruiting and hiring in recent public statements addressing the agency's enforcement agenda.

In a May 5 press release, Lucas stated that "making hiring or promotion decisions motivated in whole or in part by race or sex violates federal law," characterizing that principle as a general requirement of Title VII, rather than as a case-specific standard.[4]

Separately, according to a U.S. News article from December discussing the EEOC's enforcement priorities for 2026, Lucas stated that it's unlawful to "have a DEI program or any employee program that involves taking an action in whole or in part motivated by race or sex or any other protected characteristic." [5]

The interview addressed the commission's forward-looking enforcement approach and was not limited to post-hire conduct, reflecting the agency's position that programs influencing employment decisions at any stage — including recruiting and candidate selection — may be subject to enforcement where protected characteristics are considered.

Where Cultural Flashpoints Arise in Recruiting and Hiring

Cultural flashpoints create challenges for employers at every step of the recruiting and hiring process.

For example, the positions that the EEOC and President Donald Trump's administration have taken on diversity, equity and inclusion programs and policies have been well publicized.

This has led some employers to revamp or revise any such programs and policies — including those around recruiting and hiring — in an attempt to stay off the government's radar.

At the same time, employers must balance those concerns with the ongoing need to find and hire talented candidates — often from large volumes of electronic resumes and applications — and to maintain an inclusive work environment.

Some employers have endeavored to manage the high volume of job applications by implementing artificial intelligence tools for resume screening and assessments.

However, there have been high-profile challenges to the use of these tools, alleging that the systems discriminate based on age, gender and race, and at scale, such as in *Mobley v. Workday Inc.*, which is pending in the U.S. District Court for the Northern District of California.[6]

Employers may also face liability if a hiring manager or recruiter reacts to a flashpoint on a candidate's resume or profile, or during an interview, and makes hiring decisions based on that information.

For example, a resume or interview may reveal a candidate's involvement in a particular social movement or political party, or that they have prior work history at a nonprofit organization that engages in advocacy on controversial issues. Likewise, a candidate may reveal divisive viewpoints in a virtual meeting background during an interview.

Employers must tread carefully in these situations to ensure sound decision-making — not only to minimize legal risk, but also to avoid prematurely rejecting a qualified candidate or, inversely, hiring a candidate whose conduct does not match the company's policies or values.

How to Safeguard Your Business

Vendor Management and AI Governance

Effective vendor management and AI governance are critical, because third-party hiring and recruiting tools and algorithms can raise questions of bias if they are not properly vetted and monitored. Moreover, employers cannot outsource responsibility for employment outcomes and may be held accountable for their vendors' actions.

Employers should implement a robust governance framework for the use of AI — ensuring that AI systems are properly vetted before they are put in place, and then monitored after rollout — to align with equal employment opportunity principles and evolving legal standards.

Alternatives to Quotas or Preferences

Employers should focus on skills-based hiring practices that are neutral and job-related.

An alternative to quotas or preferences in hiring could include broadening recruiting pipelines, such as expanding outreach to varied schools, geographic areas or professional backgrounds, to increase a broad pool of candidates without using classifications tied to protected characteristics.

It is wise for employers to audit the selection and evaluation criteria being used in hiring and recruiting to ensure that they are compliant under current executive orders and law.

Recruiting and Hiring Statistics

Whether to track recruiting and hiring statistics in relation to one or more protected characteristics and, if so, which ones, how, who has access and what they do with this access are all risk-laden decisions.

On one hand, avoiding or at least defending claims, such as the EEOC-initiated claims against Gallup-McKinley County Schools and Central Transport, can be more difficult without such data.

On the other hand, bad data or problems in any of these areas of decision-making only increase the legal risks. For example, allowing overly broad access to the data increases its potential misuse in an unlawfully preferential way.

Training

Employers should regularly train employees who are on the front lines of hiring and recruiting — such as hiring managers and human resources personnel — on the law and best practices, including updating hiring and recruiting processes and policies in real time to reflect the state of the law.

The importance of training — and the EEOC's view of the importance of training — is reflected in the EEOC v. Central Transport consent decree, which lays out training requirements for three broad categories of employees: nonmanagerial, managerial and supervisory, and human resources.

Even if an organization's legal and human resources groups are clear that any preferential or otherwise disparate treatment of a protected characteristic in recruiting or hiring is likely to prompt a legal challenge, that does not necessarily mean that all others participating in recruiting and hiring have received and internalized this message. Indeed, far too often, this is not the case, which makes reasonably specific training, including examples, more important than ever on this issue.

Diligence

Including a human resources partner along with the hiring manager through every step of the recruiting and hiring process will also minimize risk. A trained human resources partner can help ensure that hiring managers avoid stereotyping and ensure appropriate diligence before rejecting a candidate based on a cultural flashpoint-related issue.

Conclusion

Recruiting and hiring sit at the front line of both cultural flashpoints and legal risk.

Recent EEOC enforcement actions, such as EEOC v. Gallup-McKinley County Schools, and its recently initiated litigation, such as EEOC v. Central Transport, not only highlight the agency's priorities, but also serve as a barometer of broader cultural issues shaping the workplace.

Indeed, both cases highlight the EEOC's interest in recruiting and hiring claims, and with

respect to Central Transport, the lengths the agency will go to remedy such claims.

As scrutiny intensifies, it is essential for employers to adopt proactive, legally grounded hiring and recruiting strategies. In doing so, employers can manage legal risk while attracting and onboarding the best talent.

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[1] Equal Employment Opportunity Commission v. Gallup-McKinley County Schools, Case No. 1:26-mc-00019.

[2] Equal Employment Opportunity Commission v. Central Transport LLC, Case No. 2:26-cv-02201.

[3] <https://www.eeoc.gov/strategic-enforcement-plan-fiscal-years-2024-2028>.

[4] U.S. Equal Employment Opportunity Commission, Press Release, May 5, 2026, <https://www.eeoc.gov/newsroom/eeoc-sues-new-york-times-dei-related-race-and-sex-discrimination>.

[5] Reuters, Exclusive: Corporate America Faces DEI Reckoning in 2026, EEOC Chair Says, interview conducted Dec. 18, 2025, published Dec. 19, 2025, <https://www.usnews.com/news/top-news/articles/2025-12-19/exclusive-corporate-america-faces-dei-reckoning-in-2026-eeoc-chair-says>.

[6] Mobley v. Workday Inc., Case No. 3:23-cv-00770.