



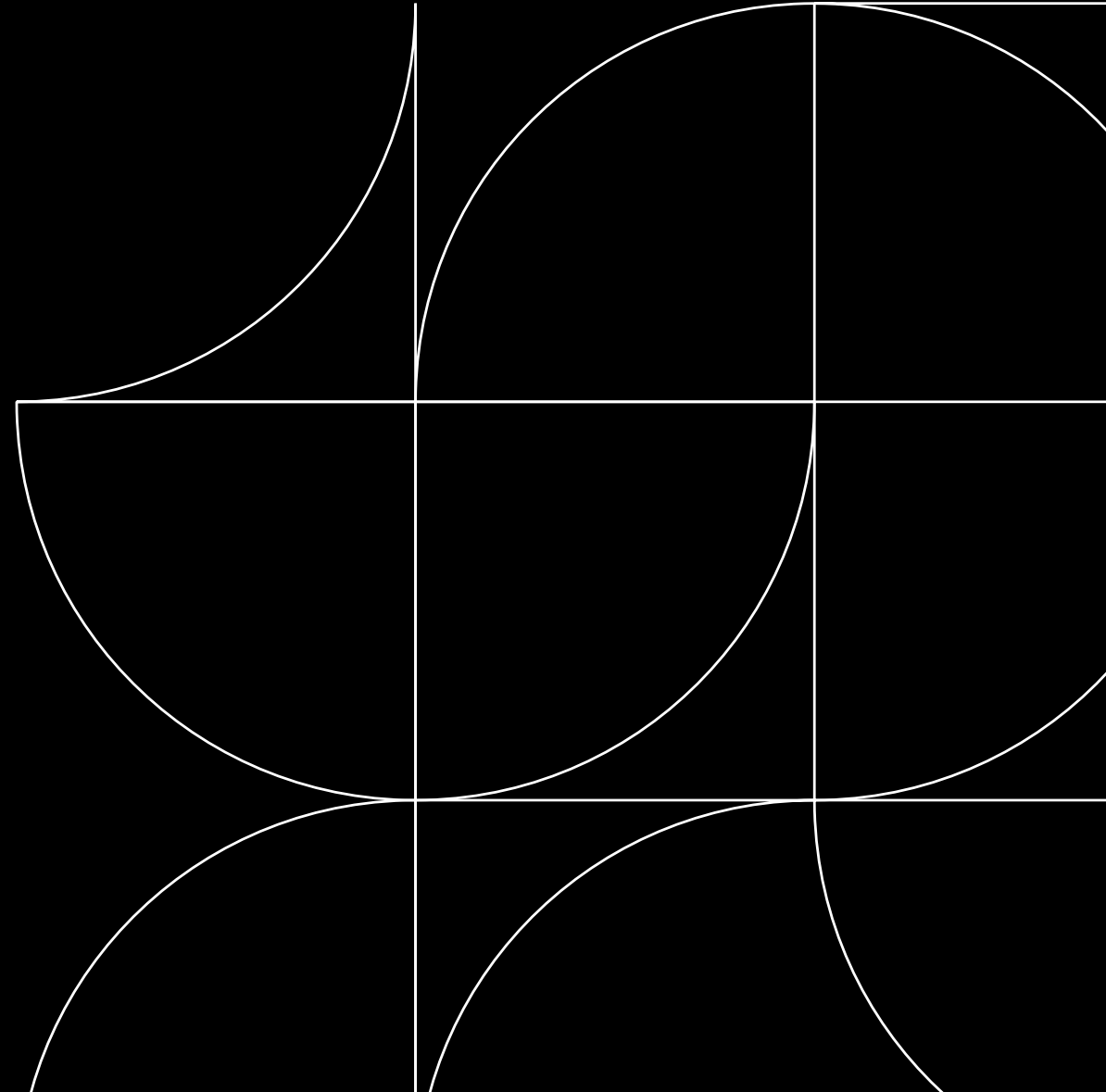
Labor & Employment Trends in 2026 and What's to Come

Seyfarth Boston Labor &
Employment Team

April 2026

Seyfarth Shaw LLP

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Agenda

- 1 | EEOC's Dramatic Turn: 2026 Enforcement Trends—Then and Now!
- 2 | Administration Priorities – DEI, Federal Contractors
- 3 | Massachusetts PFML Key Provisions and Litigation Trends
- 4 | Pay Equity & Pay Transparency – Emerging Requirements & Best Practices

Speakers



Lynn Kappelman
Partner



Jennifer Serafyn
Partner



Alison Silveira
Partner



Molly Mooney
Partner



Christina Duszlak
Associate



Adrienne Lee
Associate

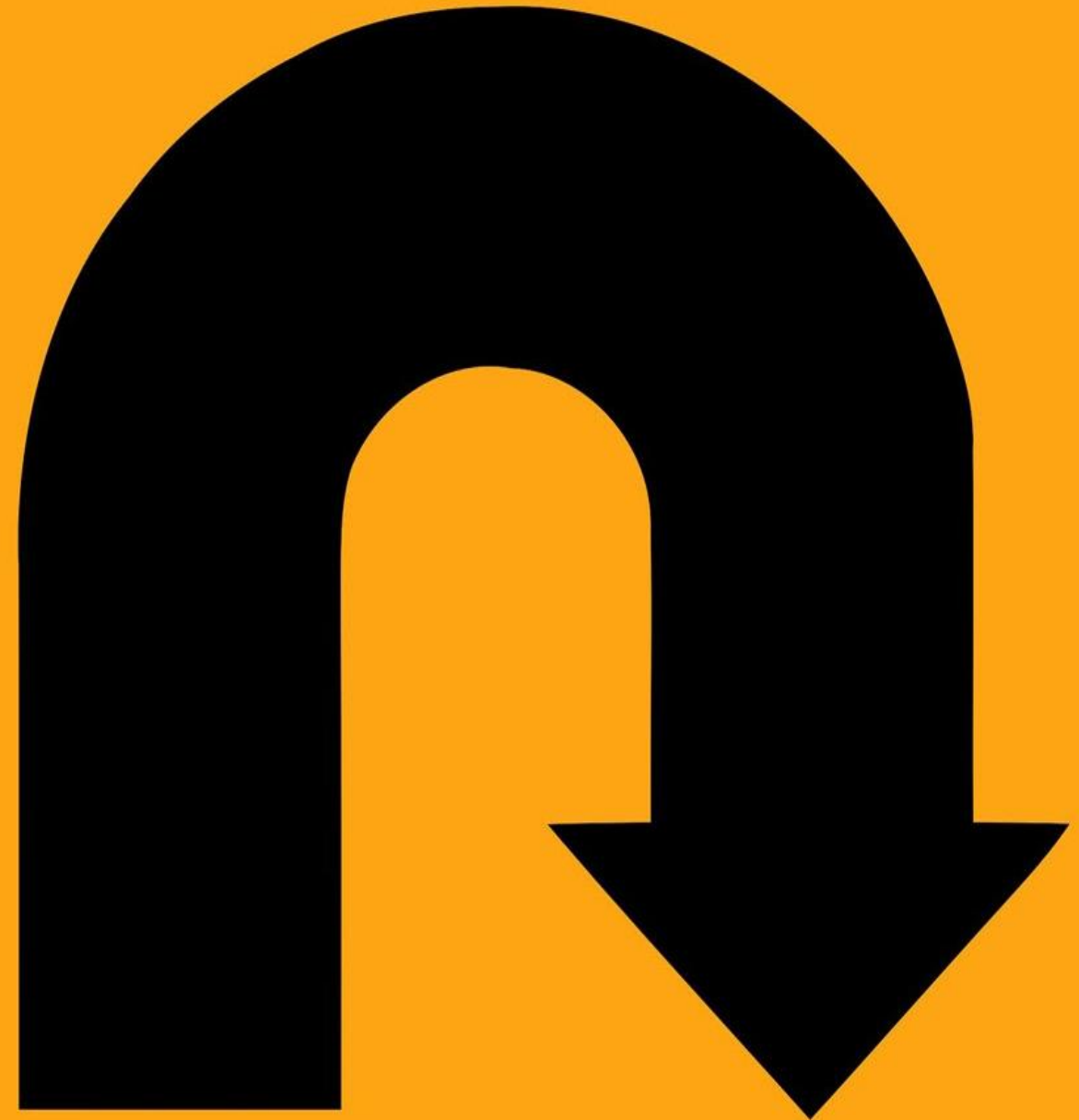


EEOC's Dramatic Turn: 2026 Enforcement Trends—Then and Now!

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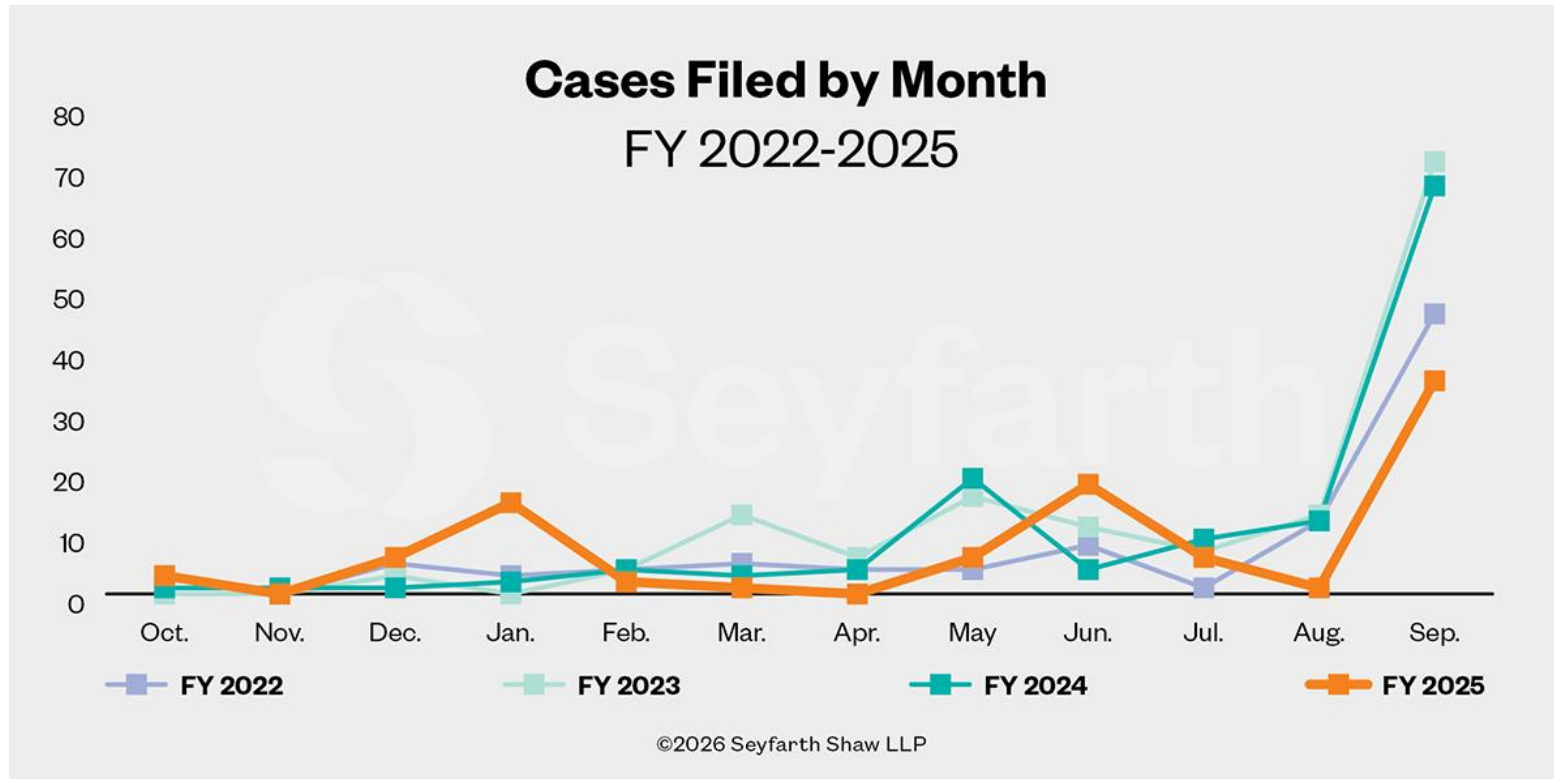


The EEOC's Lineup



- **Andrea R. Lucas** (Chair)
 - Nominated by President Trump
 - Upon her confirmation, Chair Lucas affirmed her commitment to three priorities:
 - Disavowing DEI;
 - Combating antisemitism; and
 - Restoring equal opportunity for American workers.
- **Kalpana Kotagal** (Commissioner)
 - Nominated by President Biden
- **Brittany Bull Panuccio** (Commissioner)
 - Nominated by President Trump
- **M. Carter Crow** (General Counsel nominee)

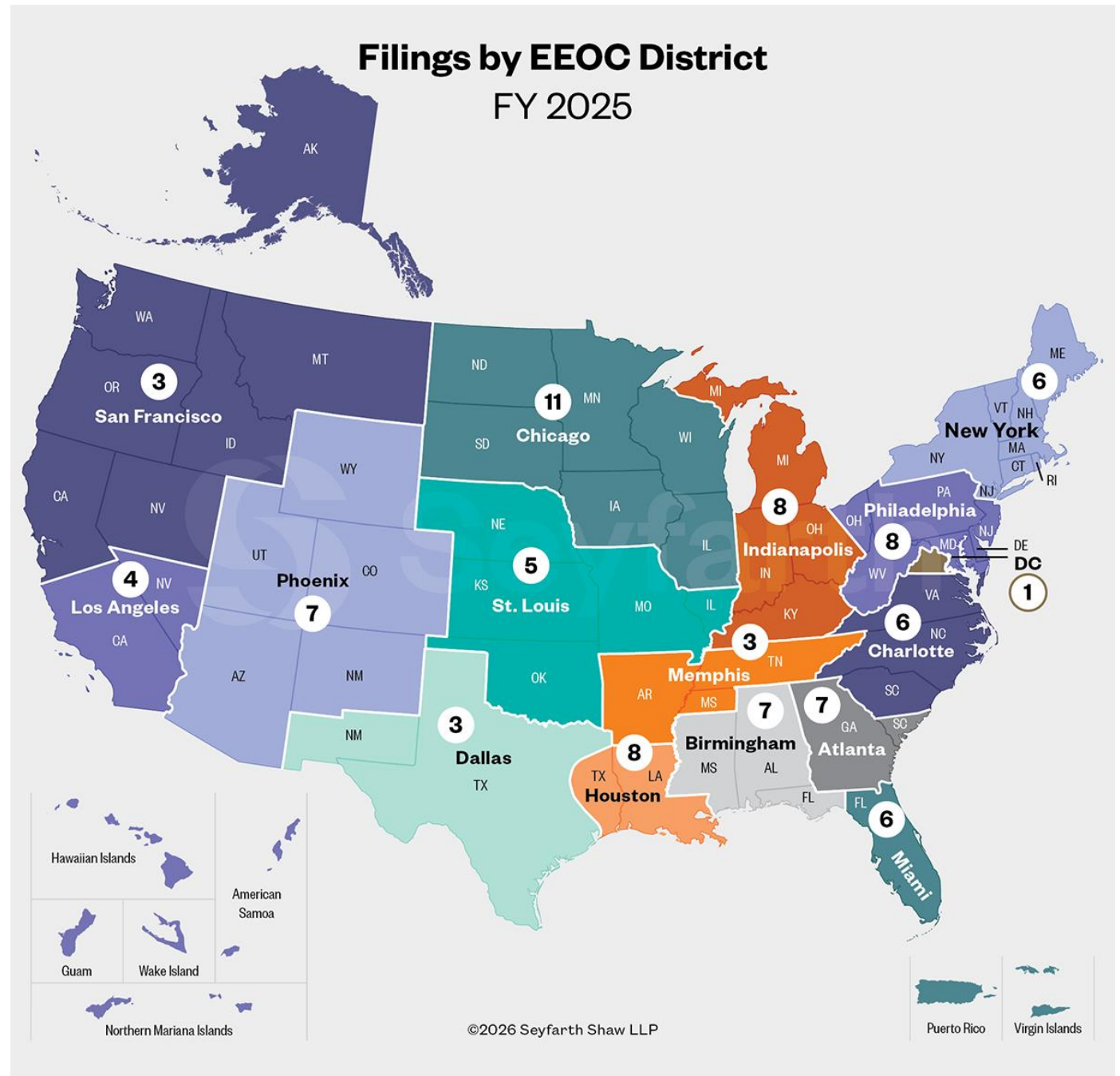
EEOC Litigation By The Numbers



- Overall merit filing numbers by month
 - Significant drop in filings in FY 2025 compared to FY 2024.
- **September** is always a busy time for the EEOC (end of its FY)
 - September 2025 was the busiest month, but still saw the EEOC file just 35 lawsuits, compared to 56 in September 2024.

EEOC Litigation By The Numbers

- **Chicago Office** led the way, with 11 filings. A return to its typically-high levels of filing activity.
- The **Philadelphia, Indianapolis, and Houston Offices** showed a steady uptick with 8 filings each.
- The traditionally busy **Los Angeles, New York, and San Francisco Offices** saw a noticeably quiet year.



EEOC's Unusually Active Spring 2026

ADA

- Failure to accommodate:
 - Cancer treatments through intermittent leave
 - PTSD through service dog
 - Sickle cell disorder through reassignment
 - Foot injury through reassignment
 - Neuropathy through reassignment
 - Hearing impairment
- Termination when absences due to disability violate policy (2)
- Require “full duty release” to RTW (3 cases)
- Prohibited medical inquiries (2)

Title VII

- Failure to accommodate religious observance through schedule change (4)
- Failure to accommodate religious beliefs re vaccines
- Male employees not invited to company-sponsored women's networking outing
- Female applicants not hired as truck drivers
- Black employees not allowed breakroom access
- Black nurse not sent to care facility where residents “did not care for black people”
- Black employees subjected to slurs, hostile work environment (2)
- Female employees subjected to hostile work environment and harassment by male employees

PDA/PWFA

- Failure to accommodate:
 - High-risk pregnancy through intermittent leave
 - Allowing employee to sit
 - Allowing employee to have water bottle

EEOC Litigation NOW – Emerging Issues

- **Pregnancy accommodations and PWFA guidelines** – *Position of Acting Chair Lucas Regarding the Commission’s Final Regulations Implementing the Pregnant Workers Fairness Act*
- **Emerging issues: Title VII religious discrimination focus** – *Task Force to Eradicate Anti-Christian Bias in the federal government established under Executive Order No. 14202*
- **National origin discrimination prioritizing Anti-American bias** – *Discrimination Against American Workers Is Against The Law fact sheet*
- **Texting witnesses, Use of data in employment decisions – But No disparate impact cases!**
 - Use of artificial intelligence discrimination in hiring – *“algorithmic” discrimination*
 - Compilation and utilization of employee demographic data in making discrete employment or enterprise-wide decisions



Former EEOC Strategic Enforcement Priorities –for FY 2024-? (Then)

1

Eliminating Barriers In Recruitment and Hiring: The EEOC will focus on recruitment and hiring practices and policies that discriminate on any basis unlawful under the statutes EEOC enforces, including sex, race, national origin, color, religion, age, and disability.

2

Protecting Vulnerable Workers: The EEOC will focus on harassment, retaliation, job segregation, labor trafficking, discriminatory pay, disparate working conditions, and other policies and practices that impact particularly vulnerable workers and persons from underserved communities.

3

Addressing Selected Emerging And Developing Issues: The EEOC will continue to prioritize issues that may be emerging or developing, including issues that involve new or developing legal concepts or topics that are difficult or complex.

4

Advancing Equal Pay For All Workers: The EEOC will continue to focus on combatting pay discrimination in all its forms—on the basis of sex under the Equal Pay Act and Title VII, on other protected bases covered by federal anti-discrimination laws, including race, national origin, disability, and age, and at the intersection of protected bases.

5

Preserving Access to the Legal System: The EEOC will focus on policies and practices that limit substantive rights, discourage or prohibit individuals from exercising their rights under employment discrimination statutes, or impede the EEOC's investigative or enforcement efforts.

6

Preventing and Remediating Systemic Harassment: The EEOC will continue to focus on combatting systemic harassment in all forms and on all bases—including sexual harassment and harassment based on race, disability, age, national origin, religion, color, sex (including pregnancy, gender identity, and sexual orientation) or a combination or intersection of any of these. A claim by an individual or small group may fall within this priority if it is related to a widespread pattern or practice of harassment.

Now – Anticipated Litigation Areas

- Challenges to employer **DEI** initiatives – See Chair Lucas letter
- **Majority-group** discrimination claims, on both individual and class bases – See Chair Lucas Video/NIKE/Coca-Cola
- Retrenchment on **gender identity** Protections
- **Religious-liberty** cases



Things To Come In 2026

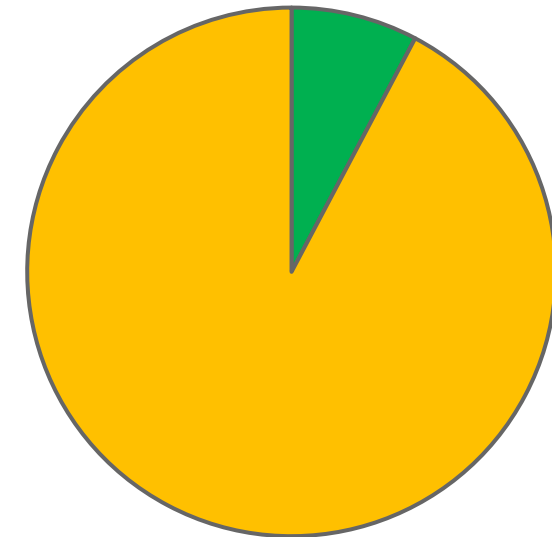
- Chair Lucas' statement to Reuters on December 19, 2025:
 - ***“My goal is to shift to a conservative view of civil rights.”***
- Analysis of trends and anticipated litigation focus for the remainder of FY 2026
- Best practices to stay off EEOC's radar
- Risk of Public Disclosure of Investigations
- More Subpoena Enforcement-See below



Litigation Delegation History – Then

- 1964: Title VII gives the Commission authority to commence employment litigation.
- **1995: Commission delegates most litigation authority to the General Counsel, with encouragement to further delegate to Regional Attorneys.**
- Before 2026 fewer than 8% of total suits filed were first approved by the Commission.

FY2009 - FY2020 Litigation



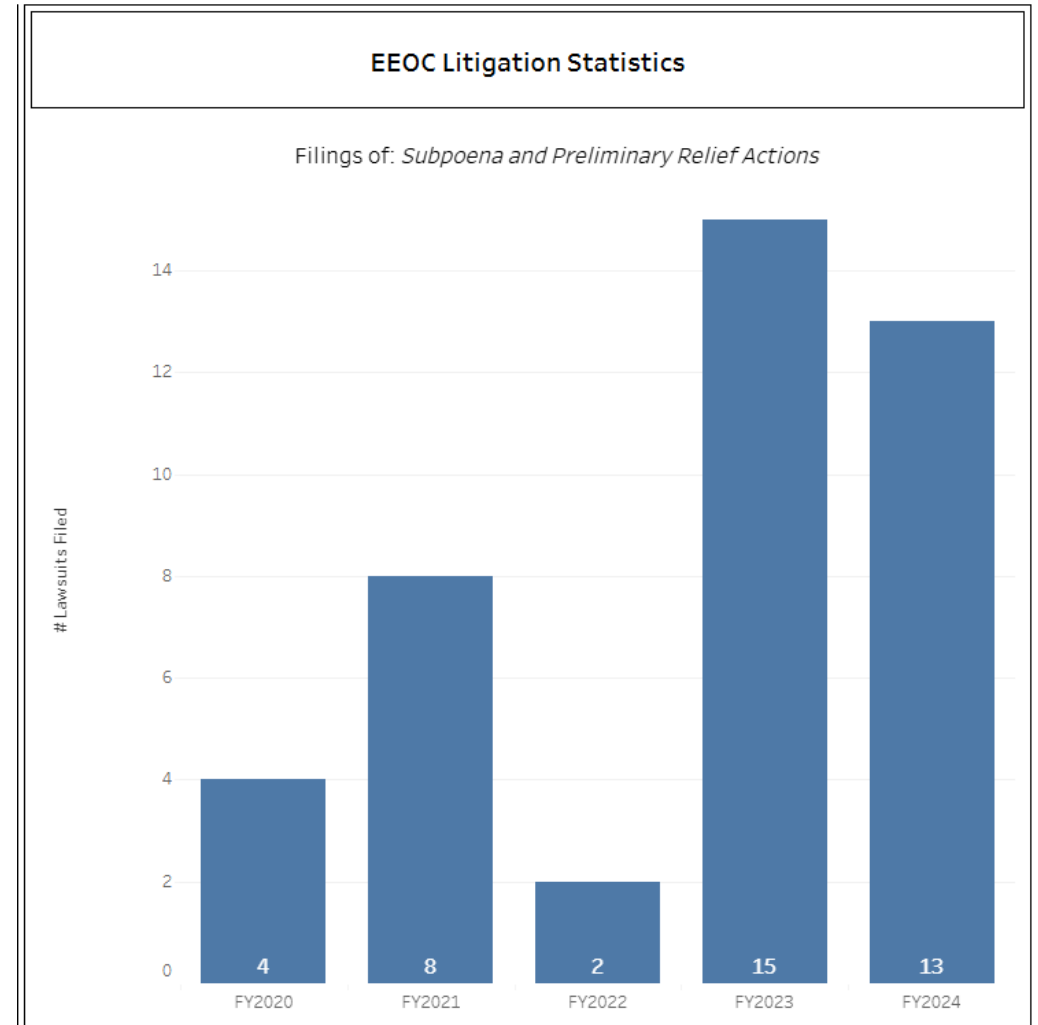
■ Approved by Commission ■ Not Approved by Commission

January 2026 Delegation Rules-NOW

- **NOW-The Commission must cast majority vote to commence or intervene in all litigation:**
- Votes are cast within 7 business days for the following cases:
 - Major expenditure of agency resources, including staffing, extensive discovery or expert witnesses; includes all systemic cases, pattern or practice cases, and cases with 15 or more aggrieved individuals.
 - Issues on which the Commission’s position or GC’s proposal is contrary to Circuit precedent.
 - Cases that reasonably implicate areas of the law that are not settled or that are reasonably likely to generate public controversy.

Subpoena Enforcement Actions: Then and Background

- Charge investigations are confidential.
- EEOC can seek information in an investigation via subpoena.
- If employer does not comply, EEOC can go to court to enforce the subpoena, which has the additional effect of making the investigation public.
- Standard of review is favorable to EEOC:
 - Court’s role is to “satisfy itself that the charge is valid and that the material requested is ‘relevant’ to the charge . . . cognizant of the ‘generous’ construction that courts have given the term ‘relevant.’” *McLane Co., Inc. v. EEOC*, 581 U.S. 72, 76 (2017).



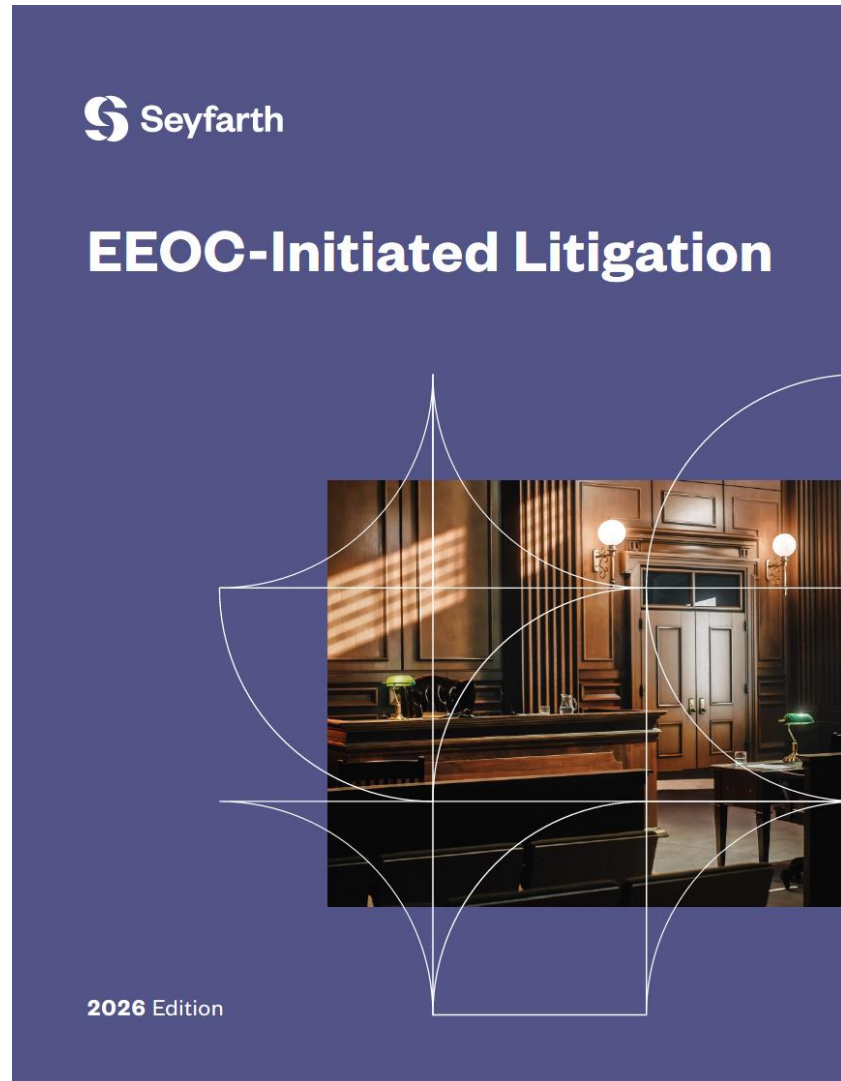
New Busy Era of Subpoena Enforcement under Current Administration

- EEOC Files Agency’s First Subpoena Enforcement Action Under the Pregnant Workers Fairness Act (4/8/2025)
- EEOC Files Subpoena Enforcement Action Against Mauser Packaging Solutions (5/13/2025)
- EEOC Files Subpoena Enforcement Action Against Vallarta Food Enterprises (7/3/2025)
- EEOC Files Subpoena Enforcement Action Against Gallup-McKinley County Schools (8/22/2025)
- EEOC Files Subpoena Enforcement Action Against University of Pennsylvania Over Antisemitic Work Environment (11/18/2025)
- EEOC Files Subpoena Enforcement Action Against Financial Services Giant [Insurer] Over Allegations of DEI-Related Discrimination (11/20/2025)
- Federal Court Orders Vallarta Food Enterprises to Comply with EEOC Subpoenas (12/16/2025)
- EEOC Files Subpoena Enforcement Action Against [Apparel and Footwear Company] (2/4/2026)
- EEOC Files Subpoena Enforcement Action Against NAPA Auto Parts (2/5/2026)
- EEOC Files Subpoena Enforcement Action Against JamRock Solutions (3/12/2026)

Considerations for Clients

- Clients should be on high alert from the outset if they receive:
 - Commissioner's Charge
 - Charge with allegations that match administration priorities: DEI, religious discrimination or accommodation, national origin discrimination relating to US workers, harassment predicated on sharing spaces with transgender co-workers
 - Expansive requests for information (or RFIs related to HRIS, which typically are a precursor to targeted expansive RFIs)
- Prepare written responses with an eye to audiences beyond the investigator – litigation unit, Regional Director, Commissioners, the public

About The Book



- Analyzes new lawsuits filed and other enforcement activities initiated in the EEOC's most recent fiscal year
- Analyzes recent court decisions impacting substantive and procedural developments in EEOC-initiated litigation
- Evaluates emerging trends and key developments as the Commission's philosophy continues to evolve
- Distributed to thousands of companies, corporate counsel, and journalists



Administration Priorities & Practical Takeaways

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Administration Priorities

The Big Picture

Enforcement, not legislation

- Executive orders and agency action, not Congress, are largely driving the pace of change

Civil rights enforcement reframed

- The Administration is using anti-discrimination law as a tool *against* DEI, not in support of it

Federal leverage: contracts, funding, DOJ

- Employers and institutions with federal ties face direct contractual and financial consequences

Universities as early test cases

- Higher education was the leading edge; corporate enforcement follows the same playbook

DEI & Federal Contractors

Where the Risk is

End of affirmative action ≠ end of scrutiny

- EO 11246 is gone, but compliance obligations and enforcement exposure have intensified

Mandatory contract clauses

- Federal agencies must incorporate prohibitions on “racially discriminatory DEI activities” into all covered contracts and subcontracts by April 25, 2026

DEI reframed as the discrimination

- The Administration’s position is that many race-conscious programs constitute unlawful disparate treatment

FCA, whistleblowers, debarment risk

- Non-compliance has consequences

Immigration

Immigration & Employment

Enforcement focus, not legislative reform

- Immigration policy driven by agency enforcement and discretion

Employment-based visa scrutiny increasing

- Greater focus on compliance w/ wage, recruitment, and sponsorship requirements tied to “American worker” protection

\$100K fee changes the cost calculus

- Presidential proclamation for certain new H1-B petitions for workers outside the U.S.

Sponsorship decisions = compliance decisions

- Visa and green card sponsorship intersects w/ discrimination, audit, and enforcement risk, not just talent strategy

Practical Takeaways

Remember . . .

Lawful vs. defensible DEI: the distinction matters

- Programs that were compliant a year ago may now require privileged review and restructuring

Document neutral decision-making

- Contemporaneous records of merit-based hiring, promotion, and program decisions are your first line of defense

Immigration sponsorship = six-figure compliance investment

- Budget, strategy, and timing around H-1B and green card sponsorship require immediate reassessment



Massachusetts PFML Key Provisions and Litigation Trends

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Rebuttable Presumption

- An employer “shall be presumed” to have retaliated against an employee if it makes any “negative change in the . . . status” of the employee within six months of the employee taking family or medical leave. Mass. Gen. Laws ch. 175M, § 9(c).
- This “presumption shall be rebutted only by **clear and convincing evidence** that such employer’s action was not retaliation against the employee and that the employer had sufficient independent justification for taking such action and would have in fact taken such action in the **same manner** and at the **same time** the action was taken, regardless of the employee’s use of leave.”

Rebuttable Presumption

- What triggers the presumption
 - Any **negative employment action** (e.g., termination, discipline, demotion, hours reduction, pay cut, or material change in terms and conditions); **not trivial or subjectively perceived inconveniences** impacting *de minimis* aspects of employee's work.
 - Taken **while the employee is on PFML** or **within six months after PFML ends**.
- Effect of the presumption
 - The burden shifts to the employer.
 - The employer must prove the action was not retaliation and the employer had **sufficient independent justification** for taking such action and would have in fact taken such action in the **same manner and at the same time** the action was taken, regardless of the employee's use of leave, restoration to a position or participation in proceedings or inquiries.
- Standard of proof
 - Employer must establish a **clear and convincing evidence** defense.
 - This is a **heightened evidentiary standard**, significantly more demanding than “preponderance of the evidence.”

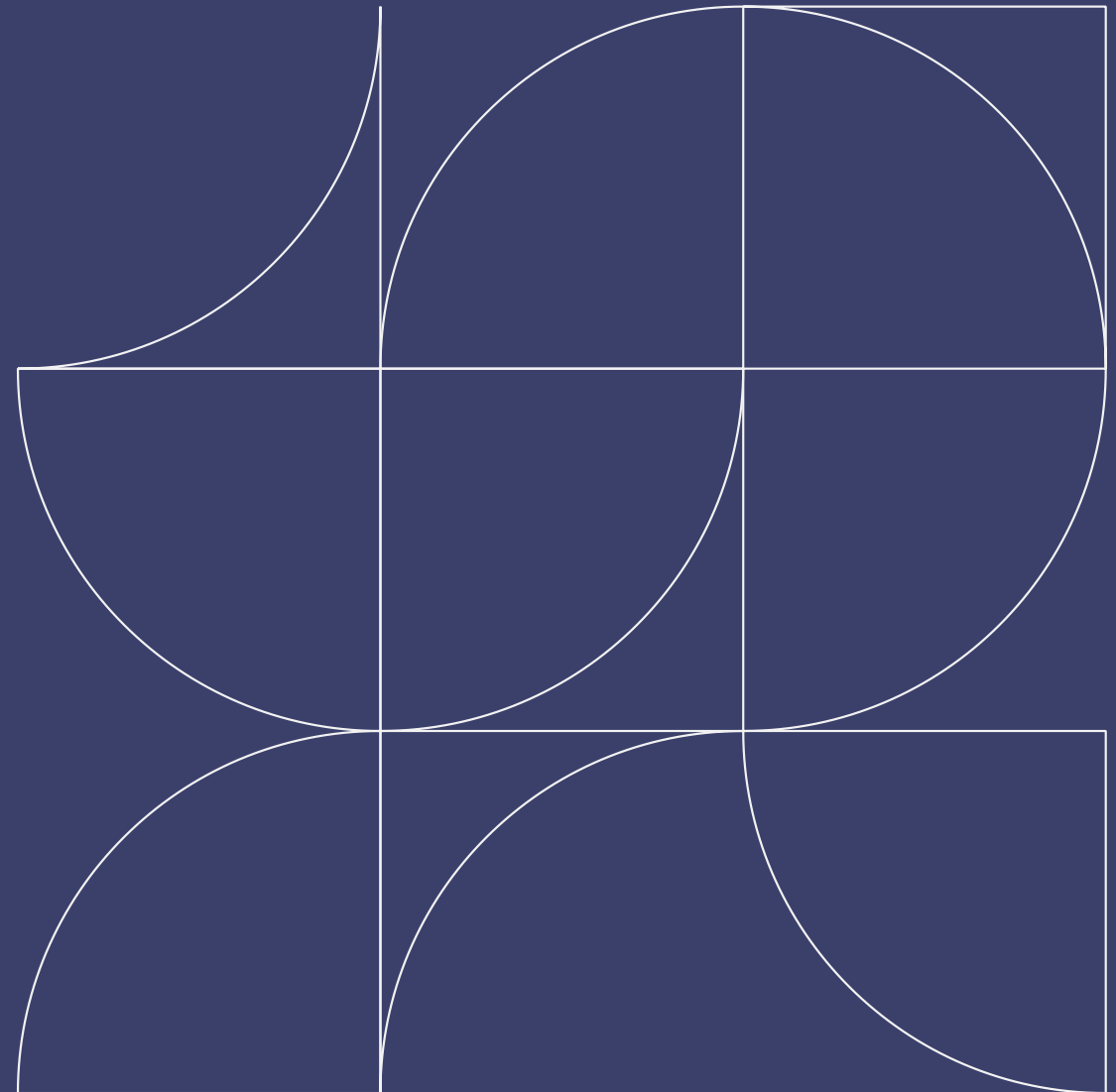
Notice Requirement

- Employers must provide individual written notice to each new covered individual within **30 days of hire**.
- The notice may be provided electronically or in hard copy.
- Employers must obtain a **signed acknowledgment or maintain records showing the employee declined to acknowledge** the policy.
- In the event that an employee fails to acknowledge receipt, the Company can provide evidence that it provided each member of its current workforce notice and the opportunity to acknowledge or decline to acknowledge receipt.
- The notice must be available in English and each language which is the **primary language of 5 or more individuals** in your workforce. DFML provides translations in English and 12 other languages. The employer is responsible for providing translation with regard to any language not provided by DFML.
- Annual notice – 30 days before change to benefits or contribution amounts (encouraged).

Treble Damages

- All remedies available in common law tort actions shall be available to prevailing plaintiffs and shall be in addition to any legal or equitable relief provided in this section. The court **may**: (i) issue temporary restraining orders or preliminary or permanent injunctions to restrain continued violations of this section; (ii) reinstate the employee to the same position held before the violation or to an equivalent position; (iii) reinstate full fringe benefits and seniority rights to the employee; (iv) compensate the employee for **3 times the lost wages, benefits and other remuneration and the interest thereon**; and (v) order payment by the employer of reasonable costs and attorneys' fees.
- No case law interpreting this language.
- BUT NOTE: Does not provide for emotional distress damages.

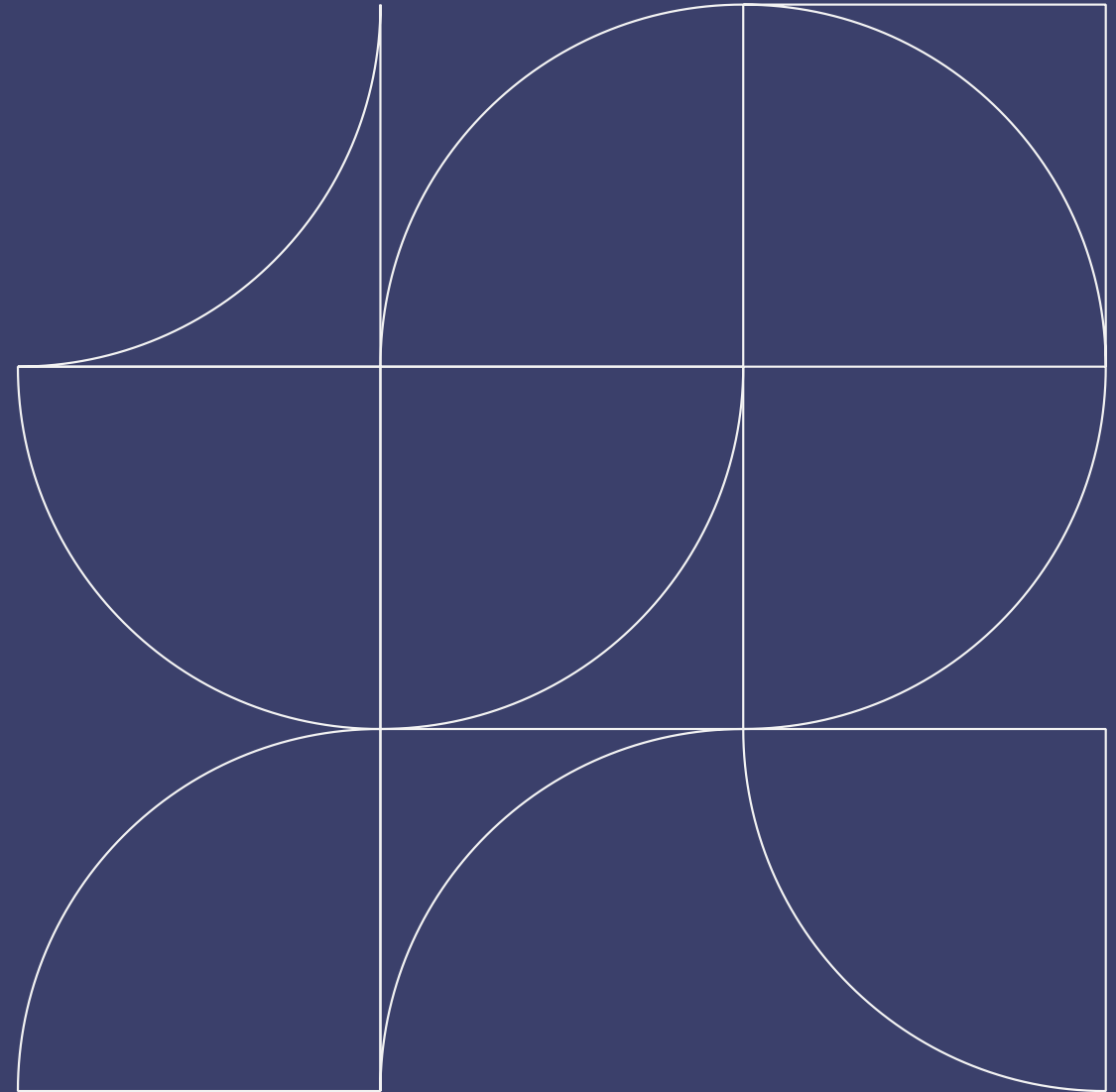
Overlap with Other Laws



Overlap with Other Laws

- **MA PFML and FMLA often run concurrently** when the employee is eligible for both and the reason for leave qualifies under both laws (e.g., serious health condition of employee or family member).
- **PFML covers more employees and employers** than FMLA (no 50-employee threshold; broader family definitions).
- PFML covers employees on their **first day of work** (and **26 weeks after termination** or until they receive new employment).
- **ADA obligations** exist independently of leave statutes and may be triggered before, during, or after PFML/FMLA leave.
- PFML provides paid, job-protected leave, but it **does not end the employer's ADA interactive process obligations**.

Recent MA PFML Retaliation Cases



Norma Wright v. Micro Focus, LLC and Opentext, Inc. (D. Mass.)

- The Court held there was an issue of fact regarding the motivations for the skip level manager to lower the Plaintiff's rating.
- The Court said it did not matter that it was senior leadership and not the two supervisors that made the ultimate decision to terminate Plaintiff because senior leadership's decision-making was not entirely free of their influence.
- The Court said Defendant failed to show that “every reasonable juror would conclude it is highly likely that [Plaintiff's supervisors were] acting based on legitimate performance concerns rather than any desire to retaliate against [Plaintiff] for taking leave.”
- To rebut the retaliation presumption in this context, it was not enough that members of team were subsequently laid off. The law requires that such action be in the **same manner** and at the **same time** the action was taken, regardless of the employee's use of leave.
- Defendants did not convincingly refute that their own Human Resources department found the rating suspicious enough to flag it for review twice during processing.

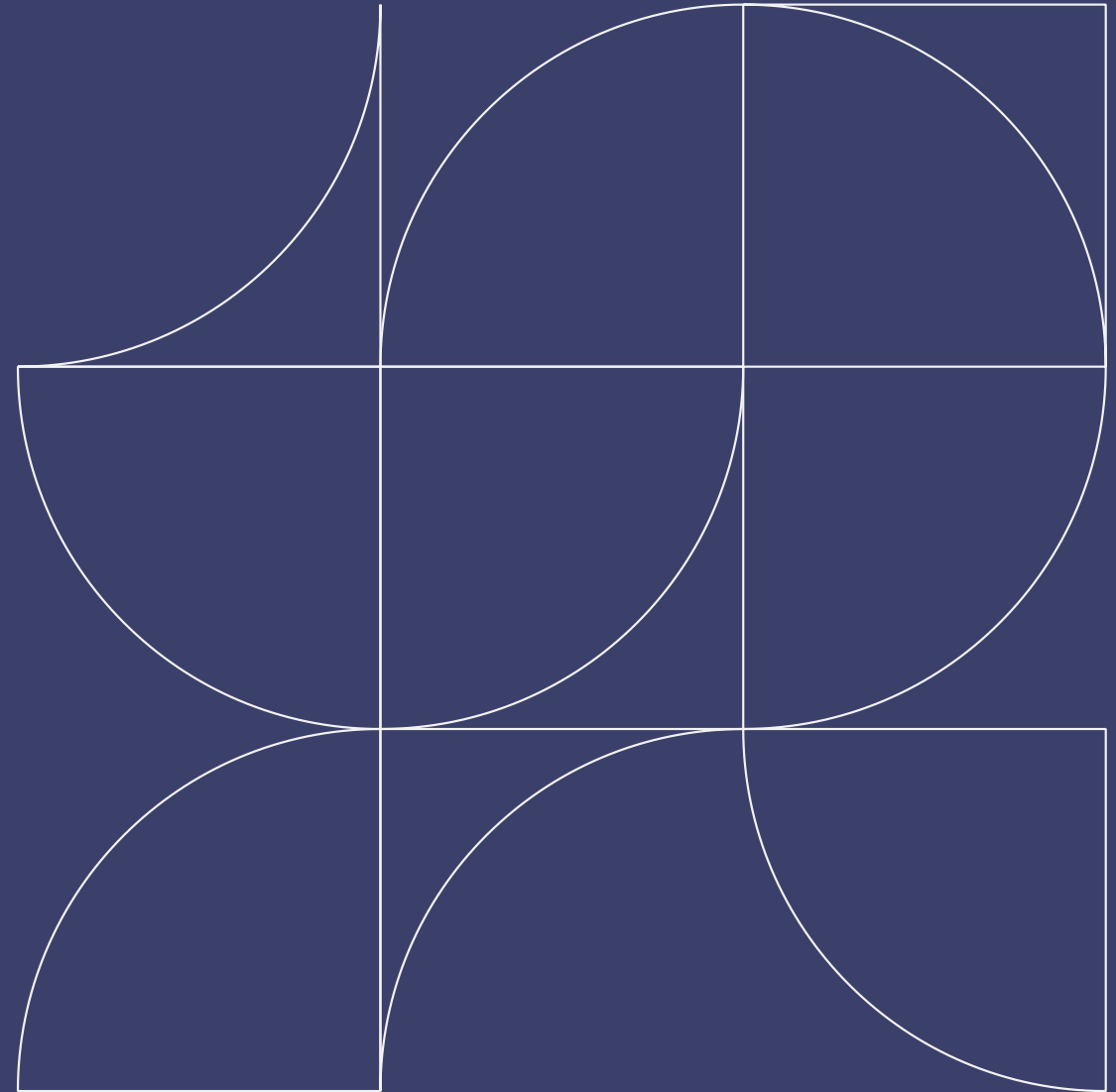
Bodge v. Commonwealth (SJC 2024)

- State police officers challenged a Commonwealth policy denying accrual of benefits (vacation, sick time, seniority, length of service credit) while employees were on PFML leave.
- Plaintiffs relied on statutory language stating PFML leave “shall not affect an employee’s right to accrue” benefits and argued PFML requires continued accrual of employment benefits during leave.
- The SJC held PFML **does not require** employers to continue benefit accrual during PFML leave.
- The phrase “shall not affect” means leave cannot reduce previously earned benefits. It does not create an affirmative entitlement to ongoing accrual during the leave period.

Laughlin v. Binstar, Inc. (Mass. Super. 2026)

- The court granted the employer’s motion, dismissing these claims with prejudice. The court reasoned that:
 - MA PFML incorporates the definitions of “employee” and “employer” from the Massachusetts Wage Act, M.G.L. c. 151A. Chapter 151A defines an “employer” as “any employing unit” or “any individual or type of organization” who has “one or more individuals performing services for him or it.”
 - Based on this definition and the lack of explicit language extending liability to a corporate employer’s officers or agents, the Court concluded that the obligations related to providing paid family or medical leave fall solely on the employer and cannot be imputed to board members or investors. In doing so, the Court distinguished language in the MA PFML from the Wage Act, noting that the Wage Act includes explicit language extending liability to a corporate employer’s officers and agents.
 - The Court also held that the MA PFML **does not** provide a cause of action for aiding and abetting a PFMLA violation. Comparing the MA PFML to the Massachusetts anti-discrimination law, M.G.L. c. 151B, the Court further reasoned that while c. 151B includes the language, “to aid, abet or incite,” the MA PFML does not include any such language, indicating that the legislature intentionally omitted liability for this type of claim.

Wage & Hour Litigation Trends



The Massachusetts Wage Act



- Mandates treble damages
 - “An employee so aggrieved who prevails in such an action shall be awarded **treble damages**, as liquidated damages, for any lost wages and other benefits and shall also be awarded the costs of the litigation and reasonable attorneys' fees.”

Key Provisions That Are the Subject of Litigation

Timely payment of wages during employment:

- Hourly employees: must be paid weekly or biweekly, within six days after the close of the pay period in which the wages were earned.
- Salaried employees (exempt and salaried non-exempt): biweekly or semi-monthly, or monthly at an employee's own option.

Terminal pay:

- Voluntary termination: all wages owed, including accrued and unused vacation, on the next regular pay day following termination.
- Involuntary termination: all wages owed, including overtime and any accrued/unused vacation, on the day of termination.

Monthly Pay Cases

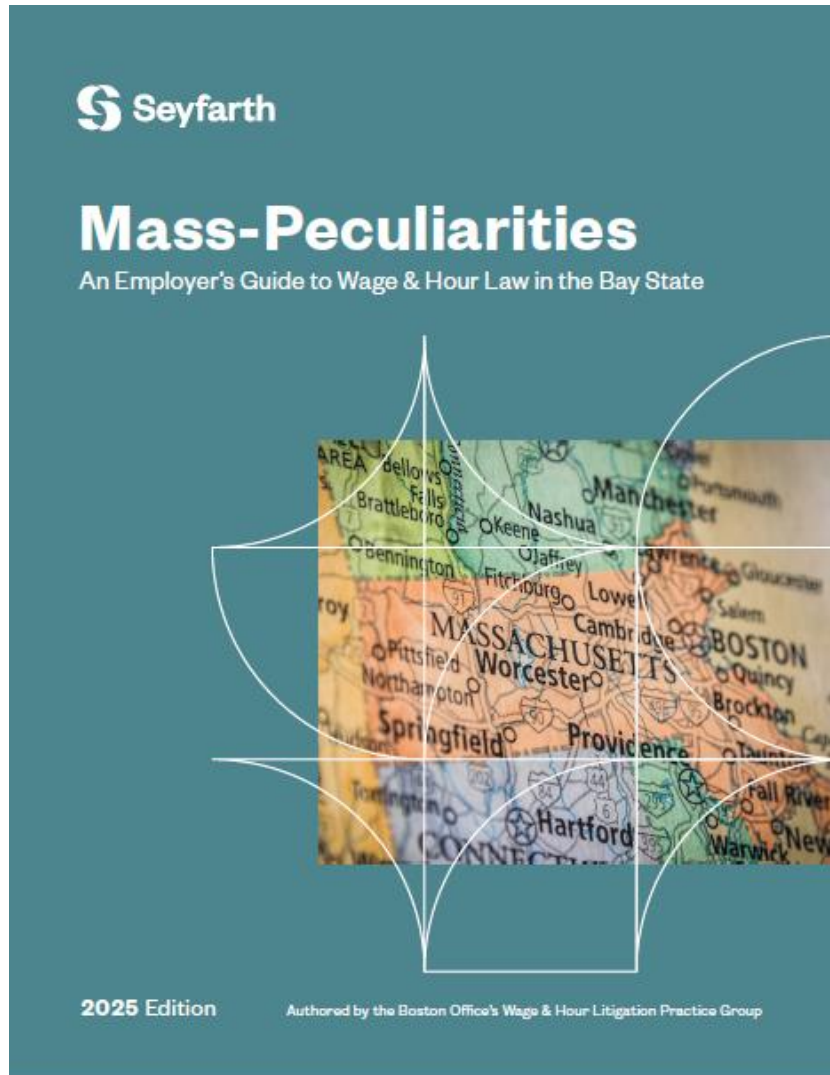


Complaints have been filed challenging monthly pay practices against a handful of institutions, as well as employers in other industries.

Temporary Legislative Fix: Section 113, FY 2026 Budget

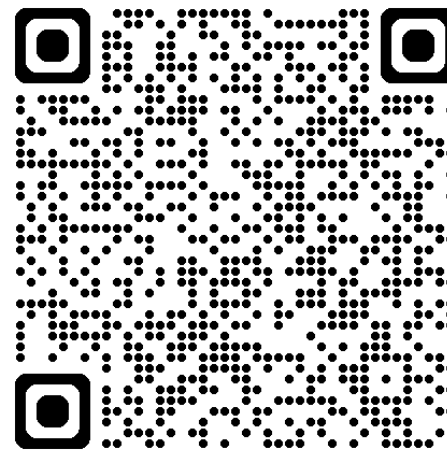
- Enacted June 30, 2025.
- Provides a **temporary** legal shield from Massachusetts Wage Act claims challenging monthly pay schedules, for certain employers.
- Protection of legislation limited to:
 - Nonprofit colleges and universities
 - Nonprofit healthcare organizations operating healthcare delivery systems
- Applies to lawsuits filed between July 1, 2024 and September 30, 2028.
- Protects against claims alleging improper monthly wage payments made without advanced employee consent, provided wages were paid in full under the established schedule.

Mass-Peculiarities: An Employer's Guide to Wage & Hour Law



We invite you to download the 2025 Edition of *Mass-Peculiarities: An Employer's Guide to Wage & Hour Law in the Bay State*.

Authored by attorneys in the firm's Wage & Hour Litigation practice group in Boston, this publication explains and analyzes the ways in which Massachusetts wage and hour law differs from federal law and incorporates unique requirements that are not part of the laws of most other states.





Pay Equity & Pay Transparency – Emerging Requirements & Best Practices

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Pay Equity Overview

- The federal Equal Pay Act prohibits pay discrimination between employees on the basis of sex for "*equal* work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions." 29 U.S.C. § 206(d)(1). The EPA recognizes four affirmative defenses that are generally applied to Title VII claims as well. Pay differentials may be explained by: (1) a seniority system; (2) a merit system; (3) a system that measures earnings by quality or quantity of production; or (4) any other factor other than sex.
- A number of states have adopted their own (broader) equal pay laws, including Massachusetts. Massachusetts Equal Pay Act prohibits differences in pay for "*comparable* work." ("No employer shall discriminate in any way on the basis of gender in the payment of wages, or pay any person in its employ a salary or wage rate less than the rates paid to its employees of a different gender for comparable work" G. L. c. 149, § 105A(b)).

Massachusetts Equal Pay Act Specific Defenses



- Enumerated list of specific defenses that have some similarities to its federal counterpart (with some significant distinctions):
 - Seniority system (but time spent on protected maternity leave cannot reduce seniority)
 - Merit system
 - System which measures earnings by quantity or quality of production, sales, or revenue
 - Geographic location, or requirement that employee travel
 - Education, training, or experience “to the extent such factors are reasonably related to the particular job in question.”
 - NO catchall (i.e. “factor other than sex” in federal law)

Massachusetts Equal Pay Act Nuances



- In 2018, the MEPA was amended to add an affirmative defense to liability, akin to a "safe harbor."
- MEPA provides a complete defense to liability for wage discrimination claims to an employer that (1) completed a good faith self-evaluation of its pay practices that is "reasonable in detail and scope in light of the size of the employer" within the three years prior to commencement of the action; and (2) made "reasonable progress" toward eliminating pay differentials uncovered by the evaluation.

Attorney General's Guidance on Massachusetts Equal Pay Act



- Per the AG's guidance:
 - Good faith is a genuine attempt to identify any unlawful pay disparities; not one conducted to achieve certain pre-determined results (i.e., to find no disparities) or to justify known disparities.
 - Reasonableness factors: whether the evaluation includes a reasonable number of jobs and employees; whether the evaluation considers all reasonably relevant and available information; and whether the evaluation is reasonably sophisticated.

Recent Case Developments

- On December 31, 2025, the Massachusetts Appeals Court interpreted the MEPA affirmative defense and affirmed an order of the Superior Court granting summary judgment to the Massachusetts Department of Public Health, Board of Registration in Nursing (“DPH”) on a MEPA claim. *Woodward v. Bd. of Registration in Nursing*, 106 Mass. App. Ct. 1116 (2025).
- Plaintiff, a compliance officer, alleged she was hired into the wrong “step” in the hiring pay scale and thus was underpaid relative to two male colleagues. There was no dispute the Plaintiff was paid less than the males.
- The Appeals Court agreed that DPH demonstrated it was entitled to the MEPA affirmative defense because it conducted a good faith self-evaluation of its pay practices within three years of commencement of the lawsuit and made reasonable progress toward eliminating pay disparities.
- DPH's self-evaluation revealed seven employees who were subject to potentially impermissible pay disparities, and DPH adjusted those employees' salaries upwards.

Recommendations for Employers

- Conduct regular pay audits under the protection of the attorney-client privilege.
 - The analysis should be conducted for legal purposes and advice, not business purposes (for example, separate from DEI initiatives, social responsibility initiatives, and compliance programs).
 - Focus on legal assessment and risk, and do not disclose results in any public filings or statements to avoid waiving privilege.
- Document the completion of any pay equity audit.
- Implement increases to address pay disparities shortly after completing an analysis, ideally within 6 months.

Resources



- [2026 Developments In Equal Pay Litigation Book](#)
- [50 State Equal Pay Reference Guide](#)
- [Webinar Recording: Managing Equal Pay in Practice: Leveraging Analytics to Navigate U.S. and Global Pay Compliance | Seyfarth Shaw LLP](#)
- [MA AG's Office MEPA Guidance and FAQ: Massachusetts Equal Pay Law | Mass.gov](#)



Massachusetts Pay Transparency Act

- Took effect October 29, 2025
- Employers with more than 25 employees in Massachusetts must disclose salary range information on job postings and provide pay range information to current employees in certain circumstances.
- Employers with more than 100 employees in Massachusetts must submit EEO and pay data to the Commonwealth annually for the purposes of aggregated public reporting by the Massachusetts Department of Labor.

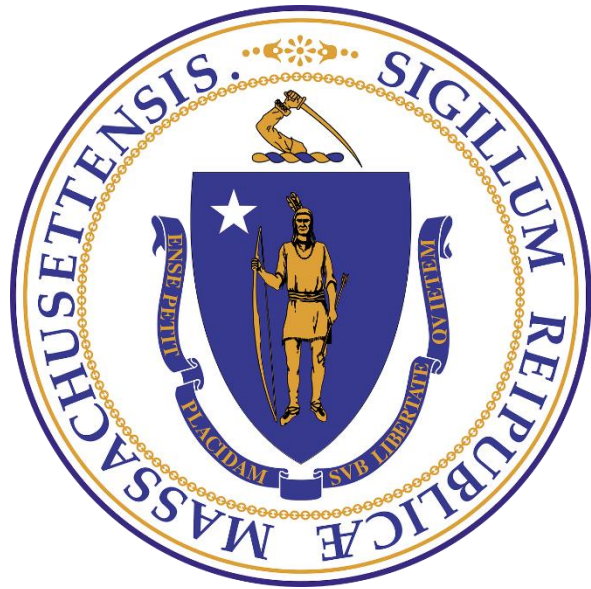
Salary Range Disclosure Requirements

- All public and private employers that had more than 25 employees in Massachusetts in the prior calendar year must now comply with the following requirements:
 - **Job postings:** Include the annual salary range or hourly wage range that the employer “reasonably and in good faith expects to pay for such position at that time” of posting. This requirement applies to postings made directly by an employer or through third party recruiters.
 - **Current employees:** Upon request, provide the pay range for the position currently held by the employee – even if there is no vacancy in the role.
 - **Promotions and Transfers:** Disclose the pay range to any current employee offered a promotion or transfer to a new position.

Attorney General FAQs

- Notable clarifications from AGO FAQs include:
 - **Commission and Piece Rate Roles:** Employers must disclose the expected range of commission or piece rate compensation in job postings.
 - **Remote Employees:** Employees whose primary place of work is Massachusetts must be included in the headcount and are covered by the law.
 - **Remote Positions:** Employers must disclose the pay range for all positions “that can be performed remotely to a Massachusetts worksite” and positions that can be performed by a remote worker who primarily works from Massachusetts. It is not entirely clear what a position that can be performed remotely “to a Massachusetts worksite” means or how broadly that will apply. Employers should consult with counsel when determining which remote positions may be subject to the Act.
 - **No Qualification Threshold:** Applicants are entitled to pay range disclosures regardless of their qualifications for the position.

Reporting Requirements



Must File Federal EEO Filings with Commonwealth

- Employers with 100 or more employees who are subject to the federal filing requirements of EEO Data Reports are required to submit those same filings to the Secretary of the Commonwealth (via online portal).
- Not a new data collection requirement.

Enforcement and Penalties

- The Pay Transparency law is enforced exclusively by the Massachusetts Attorney General's Office. There is no private right of action for applicants or employees. The Attorney General can seek declaratory or injunctive relief or impose fines in accordance with the following schedule:
 - First offenses are subject to a warning.
 - Second offenses are subject to a fine of not more than \$500.
 - Third offenses are subject to a fine of not more than \$1,000.
 - Fourth or subsequent offenses are subject to civil fines of \$7,500 to \$25,000 per violation, depending on the circumstances.
- Employers are **prohibited from retaliating** against employees who seek to exercise their rights under the law.
- Until **October 29, 2027**, employers will have 2 business days to cure defects upon receipt of a Notice to Cure letter from the AGO.

Best Practices for Compliance

- **Establish pay ranges for each role.** Develop a methodology for how pay ranges are or will be determined for positions. This will ensure ranges are set “reasonably and in good faith.”
- **Audit current job postings and templates.** Ensure all job postings for Massachusetts-based positions include a clearly defined and accurate pay range. Be sure to provide updated job postings and information to any third-party recruiters engaged to post job openings on your behalf.
- **Update internal policies.** Ensure internal policies are updated to reflect the requirements pertaining to pay transparency in Massachusetts and that all Human Resources and recruiting staff understand these new obligations.

thank
you

contact information

Lynn Kappelman, Partner
lkappelman@seyfarth.com

Jennifer Serafyn, Partner
jserafyn@seyfarth.com

Alison Silveira, Partner
asilveira@seyfarth.com

Molly Mooney, Partner
mmooney@seyfarth.com

Christina Duszlak, Associate
cduszlak@seyfarth.com

Adrienne Lee, Associate
aclee@seyfarth.com