

The New Recruiting Risk Landscape: EEOC Enforcement and Hiring Challenges

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October 20, 2026

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Agenda

1 | The EEOC's Shifting Priorities

2 | Where is the Risk?

3 | Lessons Learned from Recent Consent Decrees

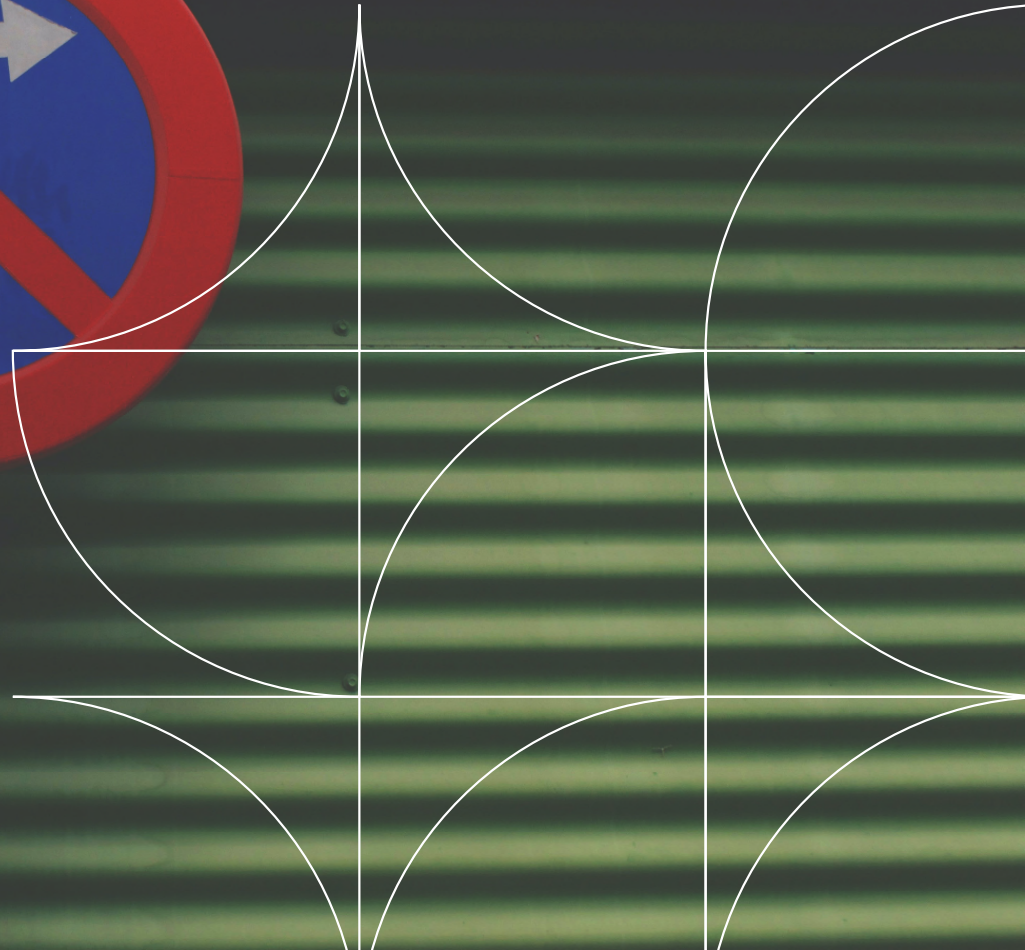
4 | What Can You Do Now?



The EEOC's Shifting Priorities

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The EEOC's Shifting Priorities

2024-2028 Strategic Enforcement Plan

- Recruiting and hiring as a standalone priority
- AI and automated tools expressly named
- Disparate treatment and disparate impact
- District complement plans

2025-2029 National Enforcement Plan

- Intentional discrimination focus
- Facial classifications and overt preferences
- Nationwide enforcement model
- Hiring embedded in systemic or overt cases

2026-2030 Strategic Plan

- Charge management aligned to NEP
- Systemic program and measurable relief
- Technology remains an applicant-screening factor
- Agreement compliance and monitoring



Where is the Risk?

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Recruiting and Hiring Risk Under the NEP and SP

Job Ads	Selection Process	Access and Accommodation	Vendor and Pipelines
• Preferences • Exclusions • Discouragement • Accommodation language	• Criteria • Interview questions • Panels • Scoring and approvals	• Interpreters (including ASL) • Testing • Physical requirements • Pregnancy and disability	• Staffing agencies • Temporary labor • Data separation



Lessons Learned from Recent Consent Decrees

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Conciliation Agreements and Consent Decrees: A Primer

Conciliation Agreement v. Consent Decree

	Conciliation Agreement	Consent Decree
Timing	Administrative, pre-suit resolution	After filed litigation; entered by Court
Enforcement	Agreed contractual or statutory mechanisms AND Court enforcement	Court enforcement
Publicity	Confidential*	Publicly filed
Relief to EEOC and Charging Party	Money, injunction, policy, training, reporting	Money, injunction, policy, training, reporting
Benefits	Avoid public litigation and publicity	Settlement, case closure

What is Negotiable? *Almost Everything!*

Term	What is Negotiable?
Scope	Entity, facility, location, job
Relief to Charging Party	Sum, format, allocation, reference, expungement
Term	Duration
Injunctive Relief	Statement of compliance, notice posting (location)
Policy/policies	Scope, specific requirements, timing
Training	Audience/position, scope/subject, format, frequency, EEOC involvement/approval, timing, language, trainer
Reporting and Monitoring	Frequency, subject, method
Enforcement	Notice of violation, time to cure, inspection

What is Not Negotiable?

- Parties bear own expenses, fees, etc.
- EEOC's reporting obligations (IRS, etc.) and other IRS requirements
- Agreement binding on successors
- Document preservation obligations





Takeaways from Recent Consent Decrees

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A Selection of Recent Consent Decrees (May 2025- 2026)

Defendant	Issue/Claim	Monetary Relief	Key Non-Monetary Terms
<i>Automotive Dealership Group</i>	Sex-based discrimination in hiring	\$275,000 (two named claimants, 14 aggrieved applicants)	5 years; Develop HR department; EEO policy incl. hiring; live 2-hr. semi-annual training for owners, officers, managers, supervisors, HR, and others involved in hiring (vendor) <i>and</i> 45 min. training for all employees; reporting
<i>Large-scale Manufacturing Company</i>	Pattern or practice sex-based discrimination in hiring	\$2M (three named claimants, other eligible claimants – Settlement Fund)	2 years; Process to hire specific women applicants (claimants) for production positions; semi-annual reporting on applicants and complaints of sex discrimination and retaliation; C-suite rep. to oversee compliance with Decree and Title VII; update policies (EEO, hiring); supervisor/manager training within 90 days (vendor)
<i>Media Conglomerate & Newspaper Publishing Company</i>	Failure to hire because of disability and failure to accommodate	\$102,500	3 years; individual direct threat analysis before determining disabled employee constitutes direct threat; EEO policy incl. accommodations (incl. deaf-specific); annual ADA training; semi-annual reports on requests for accommodation; appoint ADA coordinator to monitor compliance

Case	Issue/Claim	Monetary Relief	Key Non-Monetary Terms
<i>Major Freight Carrier & Logistics Company</i>	Pattern or practice sex-based discrimination in hiring	\$5.5M (four named claimants and other aggrieved individuals) (claims administrator and settlement fund)	2.5 yrs; consultant to review and revise EEO policy; add EEO form to truck driver application; training (vendor) for all employees with authority to hire drivers (2 hrs annually) and HR (3 hrs annually); Consent Decree monitor; develop record keeping policy; semi-annual reports of complaints of discrimination, training, applicant flow data, job postings
<i>Family-owned Residential Electrical Service Provider</i>	Failure to hire based on disability and failure to accommodate	\$34,500	3 yrs; update job postings (EEO and accommodation for drug testing); ADA policy; annual, 2 hr live training annually for HR, management, and others involved in hiring AND 2 hr virtual training annually for all other employees; semi-annual reports of requests for accommodation
<i>Large Emergency Service Provider</i>	Rescinded job offer because of perceived disability	\$59,000	2 yrs; EEO/disability policy; annual training re EEO and ADA policy; annual report of policy, training

Themes from These Decrees

Nearly All Decrees

- Policy
- Training
- Reporting
- Injunction/statement of non-discrimination and non-retaliation
- Notice posting

Less Common

- More than 3 years
- Monitor
- Settlement Fund/Claims Administrator
- Hiring claimant(s)
- Revisions to applications



Recent Subpoena Enforcement Actions in Hiring Cases

- *School District*
 - EEOC alleged school district failed to hire Native American applicants
 - subpoena enforcement action (7 years of applicant and employment data)
- *Athletic Corporation*
 - EEOC investigating systemic allegations of DEI-related intentional race discrimination against white workers, including hiring
 - subpoena enforcement action (some requests back 8 years)
- *Automotive & Industrial Replacement Parts Provider/Distributor*
 - EEOC investigating nationwide failure to hire and recruit African American candidates
 - subpoena enforcement action (7 years of hiring records and policies)



What Can You Do Now?

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A 90-Day Plan to Implement Recruiting and Hiring Compliance and Best Practices

0-30 Days: Inventory and Preserve

- Ads, criteria, interviews, and approvals
- Identify accommodation and staffing workflows
- Preserve fields, notes, and configurations
- Review/update EEO policy

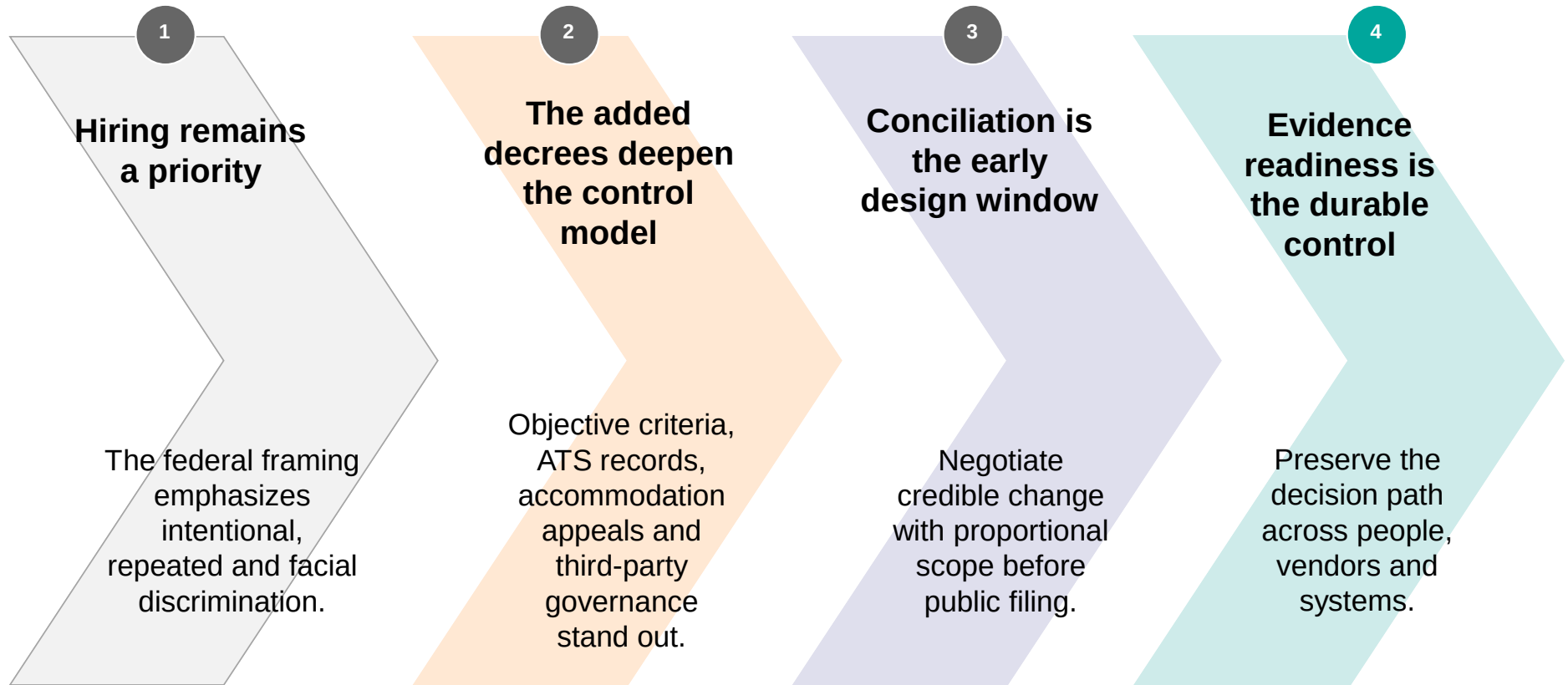
31-60 Days: Test and Remediate

- Sample completed requisitions and applicant files
- Test accommodation processes, including appeals
- Correct demographic data and vendor gaps
- Distribute EEO policy to vendors

61-90 Days: Operationalize

- Approve guardrails and owners
- Train recruiters, human resources, and managers
- Set privileged monitoring and escalation cadence

The Bottom Line





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