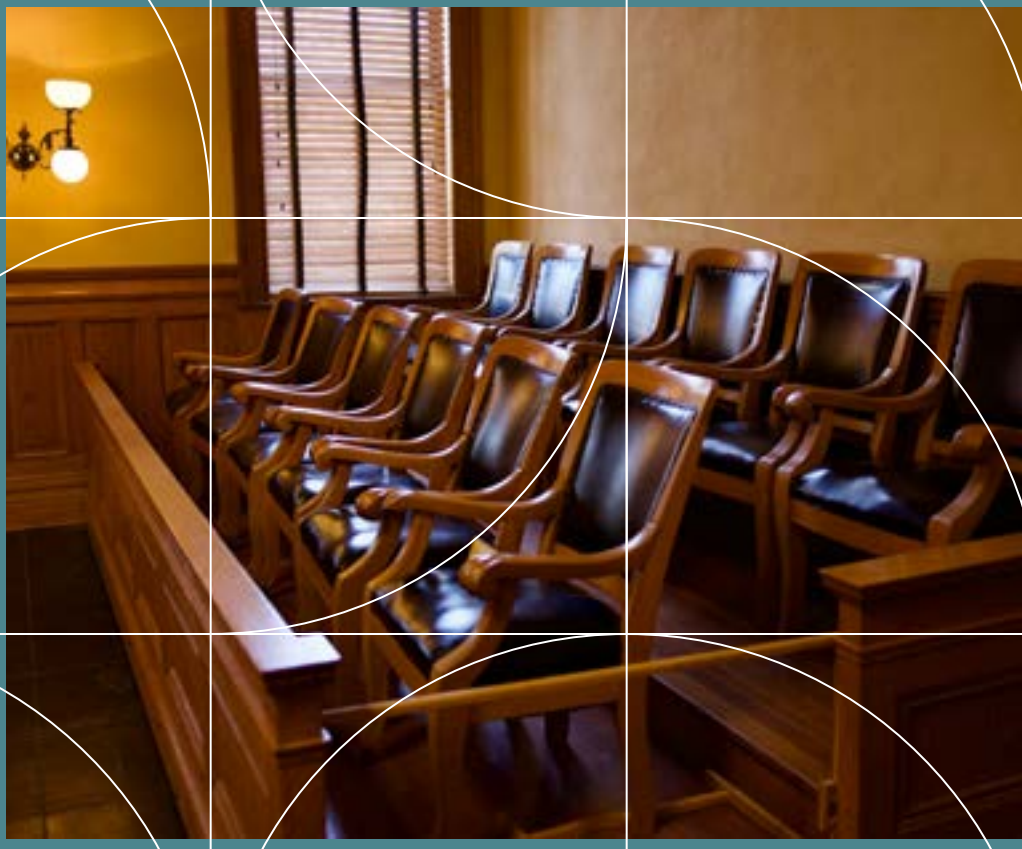
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EEOC-Initiated Litigation



2025 Edition



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Dear Clients and Friends,

Seyfarth Shaw is once again pleased to provide you with the latest edition of our annual analysis of trends and developments in Equal Employment Opportunity Commission litigation, ***EEOC-Initiated Litigation: 2025 Edition.*** This desk reference compiles, analyzes, and categorizes the major case filings and decisions involving the EEOC in 2024 and recaps the major policy and political changes we observed in the past year. 2024 has been a particularly active year for politics, and we have included our observations and predictions throughout this reference. Our goal is to guide our readers through all aspects of EEOC-initiated action, and to empower corporate counsel, human resources professionals, and operations teams to make sound and informed legal and business decisions. We hope that you find this report useful.

And there is so much to explore: 2024 was a whirlwind of change and activity for the agency. We saw the Commission advance under a Democratic majority and a new General Counsel. The moves this Commission has made, however, will likely be impacted by a second Trump administration, that has promised to make sweeping changes to all levels of government. What these developments mean for employers will be discussed in detail herein.

Part I of this reference introduces the key players in the EEOC, and how their unique views on employment and societal issues will shape real-world application of EEO statutes. **Part II** is an in-depth review of the EEOC's evolving strategic priorities. This includes a fascinating overview of the emerging intersection between Artificial Intelligence issues and the EEOC's agenda, equal pay protections and how the agency plans to address historical pay disparities, a new look at preventing harassment in the workplace, and the EEOC's plans to double-down on large-scale litigation, among a host of other topics. Back by popular demand, **Part III** includes a detailed profile of each EEOC District. Practitioners who work with and litigate against the EEOC quickly appreciate that each District has a unique personality and often differing substantive focus areas. It is all about location, location, location. **Part IV** paints the EEOC by the numbers: an empirical analysis of how the EEOC actually targeted employment issues in 2024, and how those trends will translate to activity in 2025. **Part V** is a deeper dive into how the EEOC has addressed particular industries, identifying which sectors tend to land in the EEOC's crosshairs most often, why, and for which issues. **Part VI** explores the various ways EEOC actions are resolved, from confidential conciliation to Court-ordered Consent Decrees. Finally, **Part VII** provides related guidance concerning how the EEOC leverages the media at various stages in a case.

A special thanks to the team of lawyers and professionals who made this publication possible with tireless efforts throughout the year. This book is meant to be the start of a conversation, and we are standing by to address any further questions or issues our readers wish to share.



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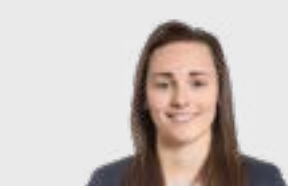
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PART I: Agency Composition

A. Equal Employment Opportunity Commission Composition and Background

In FY 2024, under the leadership of Chair Charlotte A. Burrows, the EEOC advanced Democratic policy priorities. President Biden's nominee for the EEOC General Counsel position, Karla Gilbride, was confirmed by the Senate on October 17, 2023, giving the EEOC a full complement of Senate-confirmed Democratic political leadership for almost all of FY 2024. With the July 1 expiration of the term of Commissioner Keith E. Sonderling,[1] a Republican appointee, the Commission ended FY 2024 with a 3-1 Democratic majority.

In FY 2024, Chair Burrows wielded her Democratic majority on the Commission to advance some policy initiatives over the objection of Republicans on the Commission, including issuing the EEOC's long-awaited enforcement guidance on harassment in the workplace and its interpretative guidance to implement the Pregnant Workers Fairness Act (PWFA).

The vast majority of the EEOC's operations, including its litigation and enforcement activity, are not subject to political considerations, are conducted with tacit or explicit bipartisan approval from its political leadership, and are left squarely in the hands of the EEOC's career leadership and front-line staff in the various District Offices throughout the country. This bipartisan approach is reflected in the Commission's recent voting records. For example, in FY 2024, Republican Commissioner Andrea Lucas voted to approve 22 of the 24 litigation recommendations (92%) that came before the Commission for a vote.

With the 2024 election of President Donald Trump and Republicans regaining control of the Senate, the winds of political change will immediately reshape the EEOC's political leadership. The Commission's Senate-confirmed leadership team includes five Commission members, each nominated by the President and confirmed by the Senate for a five-year term. The incumbent President designates one of the Commissioners as the Chair, and another Commissioner can be designated as the Vice Chair. Of the five Commissioners, no more than three may be members of the same political party, a statutory requirement notionally promoting bipartisanship that outlives administration changes. The EEOC's General Counsel is nominated by the President and confirmed by the Senate for a four-year term.

After his second inauguration, one of President Trump's first executive actions was to designate Commissioner Andrea Lucas as Acting Chair. President Trump will be able to nominate a Republican to fill the current vacancy on the Commission, and upon that nominee's confirmation by the Senate, there would be two Republicans and three Democrats on the EEOC. Assuming all of the currently serving Commissioners serve out the remainder of their terms, Republicans would not have a majority on the EEOC until the Senate confirms a replacement for Democrat Commissioner Jocelyn Samuels, whose term on the Commission expires on July 1, 2026.

Even without a majority, the EEOC Chair (or an Acting Chair) can, on her own authority, issue subregulatory guidance such as technical assistance. Notable prior EEOC technical assistance documents, issued solely under the authority of the Chair, include the EEOC's 2022 technical assistance regarding artificial intelligence and the Americans With Disabilities Act, its 2023 technical assistance regarding Title VII and AI, and the EEOC's COVID-19 "What You Should Know" document, which was updated frequently during the COVID-19 pandemic.

However, the issuance of formal EEOC guidance (including conducting notice-and-comment rulemaking pursuant to the Administrative Procedures Act) requires the approval by a majority of the Commissioners. President Trump's Chair or Acting Chair could, on her own authority, revoke or revise technical assistance documents issued solely under the authority of a previous Chair. But she would not be able to revoke existing formal guidance, or start new rulemaking initiatives, without the approval of the full Commission. This means

[1] While Commissioner Sonderling's term on the Commission expired on July 1, 2024, Title VII allowed him to remain on the Commission for an additional 60 days. Title VII also allows Commissioners to hold over for even longer periods if the President nominates a replacement, but President Biden did not do so. Thus, Commissioner Sonderling left the EEOC on September 1, 2024.

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that without a Republican majority, President Trump's EEOC Chair could not initiate formal rulemaking under the Administrative Procedures Act to revoke the EEOC's recent Pregnant Workers' Fairness Act rules, or the EEOC's enforcement guidance on harassment in the workplace, nor could she commence any new regulatory initiatives under the APA. Similarly, modifications to the EEOC's Strategic Plan or Strategic Enforcement Plan—discussed at length in Section II A.—would require Commission approval.

President Biden at the start of his term fired then EEOC General Counsel Sharon Gustafson. President Trump has signaled his intent to treat that act as precedent and to fire EEOC General Counsel Karla Gilbride in the first days of his administration. Pursuant to the Federal Vacancies Reform Act, the current Deputy General Counsel, a career EEOC official, would be elevated to Acting General Counsel, and he would serve in that role until President Trump's nominee for the EEOC GC position is confirmed by the Republican-controlled Senate.

And while the Commission has statutory responsibility for deciding when to commence or intervene in litigation against private sector employers, Title VII confers upon the General Counsel responsibility "for the conduct of litigation" by the EEOC.[2] The Commission has previously delegated some of its authority to the General Counsel, but the extent of the delegation has changed over time. The Commission's delegation of litigation authority that was in effect in FY 2024 was last modified in the waning days of the first Trump Administration. This delegation, effective January 13, 2021, asserted a greater level of involvement of the Commissioners in approving litigation recommendations. In particular, this modification provided for an initial review by the members of the Commission of the Office of General Counsel's litigation recommendations, and, upon the request of a majority of the Commissioners, the General Counsel would be required to submit the matter to the Commission for a vote. Even so, consistent with previous years, in FY 2024 the vast majority of litigation matters presented to the Commission for a vote were approved on a bipartisan basis. In public comments, Chair Burrows previously expressed her desire to revisit the Commission's litigation delegation processes. As of the date of this publication, the Democrats on the EEOC have not modified those procedures.

B. EEOC Staffing Challenges in FY 2024 and Beyond

Title VII confers on the EEOC's Chair the sole responsibility "for the administrative operations of the Commission".[3] The Chair is responsible for hiring members of the career Senior Executive Service, and evaluating and managing the EEOC's cadre of Senior Executives. In other words, the Chair is directly responsible for hiring and evaluating the performance of the 15 District Directors across the country, as well as other Senior Executives in the agency. Moreover, the Chair's responsibility for the "administrative operations" of the EEOC includes the ability, exercised through the EEOC's Chief Operating Officer, to allocate the EEOC's budget to its various programs and operational efforts. While the Commission as a whole must vote on certain appropriations, the Chair has broad authority in making adjustments – both large and small – to how the Commission spends its money.

The Chair and her staff are responsible for advocating before Congress for increases to the EEOC's budget, and the Chair is also responsible for deciding exactly how the EEOC spends additional money appropriated by Congress. During the early years of the Biden Administration, the EEOC received significant budget increases, and Chair Burrows used those budget increases to invest in hiring front-line enforcement and litigation personnel.

Recently, the EEOC has faced significant budget challenges. In FY 2023, the EEOC received $455 million in funding, and for FY 2024 the EEOC requested an increase of approximately $26 million (5.7%). However, Congress declined the request and held the EEOC's budget at the previous year's amount. The EEOC suffered another blow when President Biden in December 2023 issued an executive order that granted

[2] *See* Section 705(b)(1).

[3] *See* Section 705(a).

federal employees a 5.2% pay raise. Pay and benefits accounted for 74% of the EEOC's budget in FY 2024, so this unfunded pay increase, combined with the unchanged budget allocation, created a significant budget crunch for the agency.

In July 2024, Chair Burrows explained to EEOC employees that the agency had implemented multiple fiscal austerity measures, including dialing back hiring, making "significant across-the-board cuts, with deeper cuts to some programs", including reducing travel and eliminating most training, and delaying expenditures such as office moves. Despite these austerity measures, the EEOC still faced a budget shortfall, and EEOC leadership even began preparations to furlough all employees for one day (without pay) at the end of August. No other federal agency announced similar furlough plans. Ultimately the furlough plan was not put into action, but the possibility it may have been needed illustrates how thinly stretched were the EEOC's resources in FY 2024.

Despite these significant budget challenges, at the end of FY 2024 the EEOC reported a net *increase* of employees over its FY 2023 levels. The EEOC's 2,246 FTE at the end of FY 2024 represented a net increase of 103 FTE (4.8%) over its FY 2023 headcount. This overall growth in headcount continued the EEOC's expansion during the Biden administration, albeit at a much slower pace than FY 2023's dramatic 6.47% increase and FY 2022's 5.92% increase. The EEOC's continued focus on growing its workforce has resulted in significant cumulative growth over the past years, with the EEOC's FY 2024 headcount of 2,246 FTE representing a 15.8% increase over its headcount at the end of FY 2020.

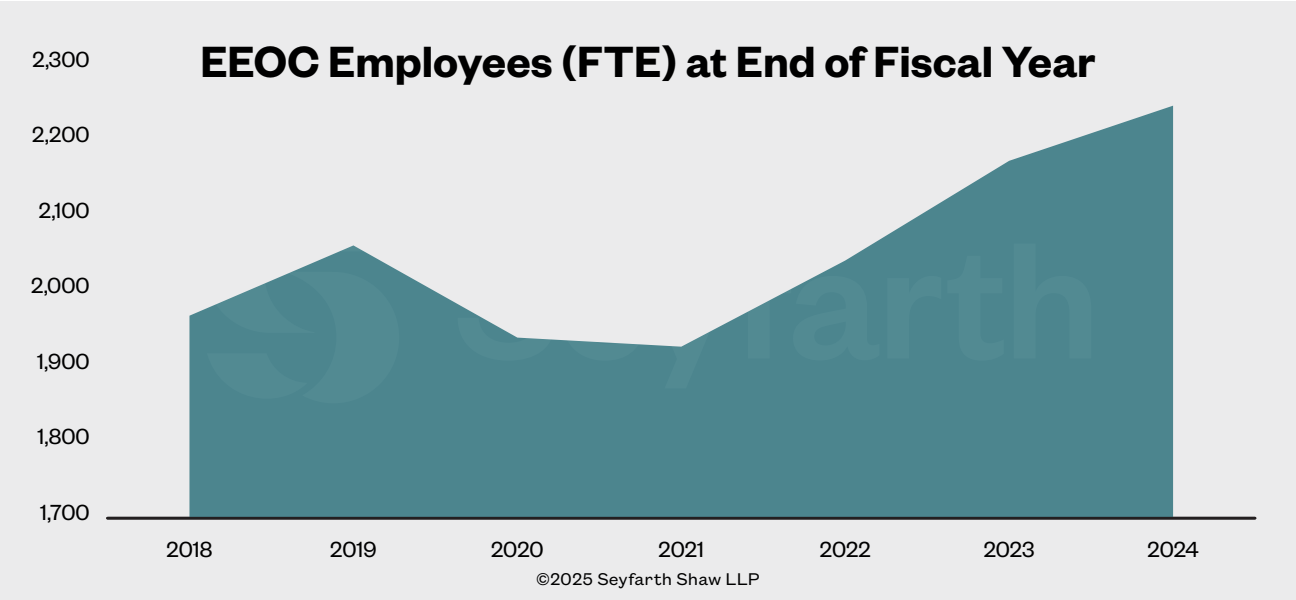
The EEOC's Agency Financial Reports (AFRs) for FY 2022 and FY 2023 emphasized that the agency's hiring was focused on front-line positions (that is, investigators, mediators, attorneys, and administrative staff who support those roles). The FY 2024 AFR does not distinguish between front-line hires and other positions.

The following table and chart summarize what we know about the EEOC's headcount from the EEOC's recent Agency Financial Reports:[4]

	"Front Line" Positions Filled	Total Hires	Total EEOC Headcount at end of FY	% Increase, Total Headcount
FY 2020		260	1,939	-5.92%
FY 2021	"Predominately front-line"	"More than 450 authorized"	1,927	-0.62%
FY 2022	297	352 (authorized)	2,041	5.92%
FY 2023	338	493 (actual)	2,173	6.47%
FY 2024		103 (net)	2,246	4.81%

[4] *See* U.S. Equal Employment Opportunity Commission, *Fiscal Year 2024 Agency Financial Report* (Nov. 15, 2024), https://www.eeoc.gov/fiscal-year-2024-agency-financial-report; U.S. Equal Employment Opportunity Commission, *Fiscal Year 2023 Agency Financial Report* (Nov. 15, 2023), https://www.eeoc.gov/fiscal-year-2023-agency-financial-report; U.S. Equal Employment Opportunity Commission, *EEOC Fiscal Year 2022 Agency Financial Report* (Nov. 9, 2022), https://www.eeoc.gov/eeoc-fiscal-year-2022-agency-financial-report; U.S. Equal Employment Opportunity Commission, *Fiscal Year 2021 Agency Financial Report* (2021), https://www.eeoc.gov/fiscal-year-2021-agency-financial-report; U.S. Equal Employment Opportunity Commission, *Fiscal Year 2020 Agency Financial Report U.S. Equal Employment Opportunity Commission* (2020), https://www.eeoc.gov/fiscal-year-2020-agency-financial-report-us-equal-employment-opportunity-commission; U.S. Equal Employment Opportunity Commission, *Fiscal Year 2019 Agency Financial Report U.S. Equal Employment Opportunity Commission* (2019), https://www.eeoc.gov/fiscal-year-2019-agency-financial-report-us-equal-employment-opportunity-commission; U.S. Equal Employment Opportunity Commission, *Performance and Accountability Report Fiscal Year 2018* (2018), https://www.eeoc.gov/performance-and-accountability-report-fiscal-year-2018.

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Along with the incoming heads of all federal agencies, the Chair or Acting Chair of the EEOC under President Trump's second administration will face intense pressure to cut programs and headcount. While as of the time of publication specific policy or budget proposals from the incoming Trump Administration or the "Department of Government Efficiency" have not been released, some sources suggest that the Department of Labor budget will return to the levels seen at the end of the first Trump Administration, a significant reduction from the current state. The EEOC will likely face significant challenges in continuing the headcount growth trend it has experienced over the past years under the Biden administration. Moreover, given the austerity measures that the Agency implemented in 2024, one can infer that the EEOC has already made significant cuts to discretionary spending, including travel, training, office moves, and other non-personnel expenditures. Thus, the new Republican political leadership at the EEOC may very well be facing a budget that has very little room to trim, other than through personnel costs.

C. EEOC Profiles



Andrea R. Lucas
(Acting Chair, Republican)

Andrea R. Lucas joined the EEOC in 2020 and became Acting Chair on January 20, 2025. Her term expires July 1, 2025. Prior to her appointment to the EEOC, she practiced management-side employment law at a large Washington, D.C. law firm. Acting Chair Lucas continues to garner media coverage for her cautionary advice to employers regarding their diversity, equity, and inclusion (DEI) programs. She is also known for emphasizing issues relating to religious discrimination, accommodation, and inclusion; accommodations for pregnancy, childbirth, and related medical conditions; and disability accommodation. Commissioner Lucas' voting patterns demonstrate that she was a potential "swing" vote when the Commission was under Democratic control.



Jocelyn Samuels
(Vice Chair, Democrat)

Jocelyn Samuels joined the EEOC as a Commissioner on October 14, 2020, and on July 14, 2021, was confirmed for a second term expiring July 1, 2026. She has been designated by President Biden as the Commission's Vice Chair. Immediately prior to joining the Commission, she led the Williams Institute, focusing on LGBTQI+ issues. During the Obama administration, she served in leadership positions at the U.S. Department of Health & Human Services and the U.S. Department of Justice.



Kalpana Kotagal
(Commissioner, Democrat)

Kalpana Kotagal joined the EEOC on August 9, 2023, and her term expires July 1, 2027. Before joining the Commission, she was in private practice, focusing on litigating worker-side civil rights issues. She is a co-author of the "Inclusion Rider" – a voluntary agreement between actors, filmmakers and studios aimed at advancing equal opportunity in the film industry both behind the camera and in front of it.

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Charlotte A. Burrows
(Commissioner, Democrat)

Charlotte Burrows has been a Commissioner at the EEOC since 2014, and is currently serving her third term. First nominated to the Commission by President Obama in 2014, she is now serving her third term, which expires July 1, 2028. She was designated by President Biden as the Chair of the Commission. Prior to her appointment to the EEOC, she served as Associate Deputy Attorney General at the U.S. Department of Justice (DOJ), and on the staff of Senator Edward M. Kennedy on the Senate Judiciary Committee.



Keith E. Sonderling
(Former Commissioner, Republican, Term Concluded July 1, 2024)

Keith E. Sonderling joined the EEOC in 2020, for a term that expired on July 1, 2024. Commissioner Sonderling departed the EEOC on September 1. Until January of 2021, he served as the Commission's Vice-Chair. Before joining the EEOC, he served as the Acting and Deputy Administrator of the Wage and Hour Division at the U.S. Department of Labor. Before joining the Department of Labor in 2017, he was a management-side labor and employment lawyer in Florida. Commissioner Sonderling speaks and writes frequently on the benefits and potential harms of using artificial intelligence-based technology in the workplace.



Karla Gilbride
(General Counsel, Democrat)

Karla Gilbride was nominated by President Biden as General Counsel of the EEOC, and was confirmed by the Senate on October 17, 2023 to a four-year term. Prior to Gilbride's confirmation, the EEOC had been without a Senate-confirmed General Counsel since President Biden's firing in March 2021 of General Counsel Sharon Gustafson, who had been nominated by President Trump. Gilbride previously litigated cases on behalf of workers and consumers. In May of 2022, she argued before the Supreme Court and obtained a 9-0 victory in a case involving the impact of delay on the enforcement of arbitration clauses, Morgan *v. Sundance, Inc.,* 596 US 411, 142 S.Ct. 1708 (2022).

PART II: EEOC's Enforcement Priorities

The following section outlines the foundational EEOC documents that answer two fundamental agency questions: what are the EEOC's strategic priorities, and how will the EEOC effectuate those priorities? The EEOC is quite clear that, at least for the foreseeable future, it intends to address six key areas.

1. Eliminating Barriers In Recruitment and Hiring
2. Protecting Vulnerable Workers and Persons from Underserved Communities
3. Addressing Selected Emerging and Developing Issues
4. Advancing Equal Pay for All Workers
5. Preserving Access to the Legal System
6. Preventing and Remedying Systemic Harassment

A. EEOC's FY 2024 Cornerstone Documents

1. Background

The EEOC released its Strategic Enforcement Plan ("SEP") for fiscal years 2024-2028 on September 21, 2023.[5] The SEP identifies the agency's enforcement priorities. Along with the SEP, the EEOC also outlines its enforcement strategies through its Strategic Plan.[6] Despite the similarity in their titles, these plan documents serve two distinct purposes. The SEP lays out the Commission's specific priorities by highlighting certain areas of law or groups of workers that it will aim to address over the next four years. A separate document known as the Strategic Plan describes *how* the EEOC will achieve its strategic mission, including executing on the priorities contained in the SEP. In the words of the EEOC, the Strategic Plan "establishes a framework for achieving the EEOC's mission to 'prevent and remedy unlawful employment discrimination and advance equal employment opportunity for all.'"[7]

The EEOC first unveiled its SEP in December 2012, stating that the plan "established substantive area priorities and set forth strategies to integrate all components of EEOC's private, public, and federal sector enforcement to have a sustainable impact in advancing equal opportunity and freedom from discrimination in the workplace."[8] The Commission's six major enforcement priorities have remained relatively consistent across multiple iterations of the SEP. But the EEOC can and has changed how it interprets those priorities over the life of those Plans, which has often led to a shift in how the EEOC approaches litigation and the topics and issues it chooses to enforce in the federal courts.[9] According

[5] U.S. Equal Employment Opportunity Commission, *Press Release: EEOC Releases Strategic Enforcement Plan* (Sept. 21, 2023), https://www.eeoc.gov/newsroom/eeoc-releases-strategic-enforcement-plan.

[6] *See* Christopher DeGroff, James Nasiri, and Rachel See, *EEOC Adopts 2022-2026 Strategic Plan With an Emphasis on Large-Scale Litigation, Improving Internal EEOC Processes,* Workplace Class Action Blog (Aug. 23, 2023), https://www.workplaceclassaction.com/2023/08/eeoc-adopts-2022-2026-strategic-plan-with-an-emphasis-on-large-scale-litigation-improving-internal-eeoc-processes/.

[7] U.S. Equal Employment Opportunity Commission Strategic Plan 2022-2026, eeoc.gov/eeoc-strategic-plan-2022-2026#.

[8] U.S. Equal Employment Opportunity Commission Strategic Enforcement Plan FY 2017-2021, www.eeoc.gov/eeoc/plan/sep-2017.cfm.

[9] *See* Christopher J. DeGroff, Andrew L. Scroggins, Samantha Brooks, James P. Nasiri, and Ridhima Bhalla, *EEOC Case Filings Plummet: A Look at the EEOC's Surprisingly Sluggish FY 2024*, Workplace Class Action Blog (Sept. 30, 2024), https://www.workplaceclassaction.com/2024/09/eeoc-case-filings-plummet-a-look-at-the-eeocs-surprisingly-sluggish-fy-2024/.

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to the EEOC "the purpose of the [Strategic Enforcement Priorities] is to focus and coordinate the EEOC's programs to have a sustainable impact in reducing and deterring discriminatory practices in the workplace."[10]

The 2024-2028 SEP reaffirmed the importance of "systemic" cases to the EEOC's overall mission. Systemic cases are those with a strategic impact, meaning they affect how the law influences a particular community, entity, or industry. The EEOC continues to place special emphasis on systemic lawsuits. In November 2019, the EEOC announced that it would be replacing the combined Performance Accountability Report that it formerly published annually in November.[11] Among other things, the annual Performance Accountability Report contained data regarding the number of systemic cases being handled by the EEOC. Since the change, the EEOC now publishes an Agency Financial Report in November and a separate Annual Performance Report in February along with its Congressional Budget Justification. The Annual Performance Report describes the progress of the EEOC's efforts to achieve its strategic goals and objectives. Employers will have to wait for that Report in February for updated data regarding the EEOC's pursuit of systemic cases. In this year's Agency Financial Report, the EEOC reported that the Commission filed 13 systemic discrimination lawsuits, which is the same number per year that the EEOC filed in FY 2022, 2021, and 2020, but only about *half* of the 25 systemic discrimination lawsuits that it filed in FY 2023.[12]

2. Particular FY 2024 Strategic Enforcement Priorities

As mentioned above, the EEOC focused on six different strategic enforcement priorities in FY 2024, including: (1) eliminating barriers in recruitment and hiring; (2) protecting vulnerable workers from underserved communities; (3) addressing selected emerging and developing issues; (4) advancing equal pay for all workers; (5) preserving access to the legal system; and (6) preventing and remedying systemic harassment. Importantly, these priorities are not mutually exclusive. The EEOC can and does look for opportunities to pursue matters that check more than one of these strategic boxes.

Eliminating Barriers In Recruitment and Hiring. The first strategic enforcement priority is eliminating barriers in recruitment and hiring. The EEOC's focus within this priority is to address recruiting and hiring practices that "discriminate on any basis unlawful under the statutes EEOC enforces, including sex, race, national origin, color, religion, age, and disability." The EEOC has spent a considerable amount of its enforcement budget litigating issues that it sees as barriers to recruitment and hiring. In recent years, there have been a number of judicial decisions involving the EEOC's attempts to combat discrimination, including the use of pre-employment screening tests.

The FY 2024-2028 SEP added far more detail about the types of hiring practices and policies that the EEOC intends to scrutinize. For example, prior SEPs described the EEOC's intention to prevent steering members of protected groups into specific (often less desirable) jobs. The FY 2024-2028 SEP goes further to explain that the EEOC also will be examining whether employers are segregating workers in jobs, or by job duties, based on membership in a protected group.

Building further on this, the SEP includes several new but related areas of focus. These include examining practices that may limit access to work opportunities, such as advertising jobs in a manner that excludes or discourages some protected groups from applying, or denying training, internships, or apprenticeships. The EEOC also intends to scrutinize whether employers are denying opportunities to move from temporary to permanent roles, including when permanent positions are available.

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[10] U.S. Equal Employment Opportunity Commission, *Press Release: EEOC Approves Strategic Enforcement Plan,* https://www.eeoc.gov/newsroom/eeoc-approves-strategic-enforcement-plan.

[11] U.S. Equal Employment Opportunity Commission, Fiscal Year 2019 Agency Financial Report, at 9, https://www.eeoc.gov/fiscal-year-2019-agency-financial-report-us-equal-employment-opportunity-commission.

[12] U.S. Equal Employment Opportunity Commission, Fiscal Year 2024 EEOC Litigation Focuses on Emerging Issues and Underserved, Vulnerable Populations (Oct. 9, 2024), https://www.eeoc.gov/newsroom/fiscal-year-2024-eeoc-litigation-focuses-emerging-issues-and-underserved-vulnerable.

Likewise, the EEOC modified its earlier focus on screening tools that might disproportionately impact workers based on their protected status, with a special emphasis in the new SEP on the use of technology, AI, and machine learning used in job advertisements, recruiting, and hiring decisions. We cover this in further detail in Part II(C), and it represents an example of strategic intersection (addressing both hiring and an emerging issue).

This aligns with the EEOC's increased interest in how employers use technology to recruit and hire workers. Here, the new SEP emphasizes an employer's use of all technology (not just "automated systems") in hiring and recruitment as an area of strategic focus. The EEOC has, historically, focused on recruiting and hiring in part because private plaintiffs' counsel have been unwilling to champion large scale hiring cases due to cost and challenges identifying potential victims. The proliferation in recent years of electronic tools available to assist employers to find talent in challenging labor markets may provide fertile ground for the EEOC on this issue.

The EEOC has also called out "continued underrepresentation" of women and workers of color in certain industries, naming construction and manufacturing, high tech, STEM, and finance in particular, and indicated its intent to monitor those benefiting from substantial federal investment.

Protecting Vulnerable Workers from Underserved Communities. The second strategic enforcement priority is protecting vulnerable workers. The EEOC's focus within this area is to combat policies and practices that impact "particularly vulnerable workers," including immigrant and migrant workers, and the agency has expanded the categories of workers categorized as "vulnerable and underserved."

For purposes of the SEP, "vulnerable workers" are those who may be unaware of their rights under equal employment opportunity laws, or reluctant or unable to exercise those rights. The EEOC's FY 2024-2028 SEP adds substantially to this priority as well. In a change from prior versions of the SEP, the EEOC has called out 11 different categories of vulnerable workers that it aims to safeguard:

- immigrant and migrant workers;
- individuals employed in low wage jobs and/or their first jobs, including teenage workers;
- individuals with arrest or conviction records;
- LGBTQI+ individuals;
- Native Americans/Alaska Natives;
- older workers;
- people with developmental or intellectual disabilities;
- people with mental health related disabilities;
- persons with limited literacy or English proficiency;
- temporary workers; and
- survivors of gender-based violence.

Employers in sectors that engage many members of these communities, or who have operations in areas of the country with large populations of such workers, may expect increased inquiry.

Addressing Selected Emerging and Developing Issues. The third strategic priority addresses selected emerging and developing issues. As the name implies, the EEOC may adapt its focus within this priority on a year-to-year basis in accordance with developing case law and societal movements. Thus, this strategic priority is something of a "wild card."

As a government agency, the EEOC is responsible for monitoring trends and developments in the law, workplace practices, and labor force demographics. Not surprisingly, the emerging issues identified by the agency have evolved over time. For example, the 2017 SEP identified five emerging and developing issues as strategic priorities: (1) qualification standards and inflexible leave policies that discriminate against individuals with disabilities; (2) accommodating pregnancy-related limitations under the Americans with Disabilities Amendments Act and Pregnancy Discrimination Act; (3) protecting lesbian,

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gay, bisexual, and transgender (LGBTQI+) individuals from discrimination based on sex; (4) clarifying the employment relationship and the application of workplace civil rights protections in light of the increasing complexity of employment relationships and structures; and (5) addressing discriminatory practices against those who are Muslim or Sikh, or persons of Arab, Middle Eastern or South Asian descent, as well as persons perceived to be members of these groups, arising from backlash against them from tragic events in the United States and abroad.

Few issues have attracted as much of the EEOC's attention in recent years as its campaign to have LGBTQI+ discrimination recognized as a prohibited form of discrimination under Title VII. That issue was settled in 2020 by the U.S. Supreme Court in the landmark decision of *Bostock v. Clayton County Georgia,* pursuant to which the U.S. Supreme Court ruled that Title VII prohibits discrimination against gay or transgender employees as a form of sex discrimination. We have reported on the impact of the *Bostock* decision and in particular, the religious liberties implications that have come to light following that ruling.

The FY 2024-2028 SEP has brought notable changes. The current SEP leaves just one priority largely unchanged from the prior SEP: qualification standards and inflexible policies or practices that discriminate against individuals with disabilities will remain an area of focus.

On the other hand, the EEOC has dropped two priorities that appeared in this section of previous SEPs. These include protecting LGBTQI+ people from discrimination, and clarifying the application of workplace civil rights protections in complex employment relationships and structures. However, those priorities have not fallen completely by the wayside. This is likely just the agency's view that these issues are no longer "emerging" areas, but rather have been fully embraced in the EEO universe.

The SEP elaborates on statements from the earlier SEPs related to pregnancy discrimination to include protection for those affected by pregnancy, childbirth, and related medical conditions and disabilities, including under the Pregnant Workers Fairness Act. The PFWA requires covered employers[13] to provide reasonable accommodations to employees and applicants with known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an "undue hardship." The EEOC immediately began accepting charges from claimants on June 27, 2023, the day the law went into effect. Earlier versions of the SEP have discussed "backlash" discrimination, but the new SEP goes further. The EEOC has noted that discrimination against some groups can arise as a backlash in response to local, national, or global events. The EEOC identifies some groups in particular, including Jews; Muslims; racial or ethnic groups; and LGBTQI+ individuals, but also notes that the groups at issue, and the practices they are subjected to, can be expected to change during the time period covered by this SEP.

Notably, the new SEP dials back the scope of the EEOC's prior focus on COVID-19. Under the SEP, *only* "Long COVID" is now considered an area of strategic emphasis. This is important in part because, while the EEOC and its local counterparts have fielded thousands of charges of discrimination relating to employees' religious and/or medical exemption requests from employers' COVID-19 vaccination policies, vaccination-related enforcement is not referenced in the SEP. Nor has it been a focus of agency litigation, with only a handful of actions pursued across the country since the pandemic.

The final topic under this priority is "technology-related employment discrimination." Here, the EEOC is interested in particular in employment decisions based on algorithmic decision-making; as well as automated recruitment, selection, production, and performance management tools.

Advancing Equal Pay for All Workers. The fourth strategic priority is advancing enforcement of pay discrimination laws, including the Equal Pay Act and Title VII. We cover the key focus areas relative to this strategic priority in Part II(B).

[13] Under the PWFA, a covered employer includes private and public sector employers with at least 15 employees, Congress, Federal agencies, employment agencies, and labor organizations.

In the past, the EEOC's primary focus has been combating discrimination in pay based on sex. The FY 2024-2028 SEP revises this priority to make more clear that it intends to focus on pay discrimination based on any protected category.

The SEP departs from prior versions in two other notable ways. First, it includes a statement indicating that the EEOC will not depend on charges from members of the public, but will use its authority to initiate directed investigations and Commissioner's charges in order to facilitate enforcement. Second, the EEOC states its intent to challenge practices that it perceives may impede equal pay, or contribute to pay disparities, including secrecy policies, discouraging or prohibiting workers from sharing pay information, and "reliance on past salary history or applicants' salary expectations to set pay."

The partnership between the EEOC and the Department of Labor that was announced in 2023, provides the agency an additional source for information that could fuel investigations in this area. We cover the Memorandum of Understanding setting forth this partnership in Part II(A)(3).

Preserving Access to the Legal System. The fifth strategic priority is preserving access to the legal system, and it is largely unchanged from the prior version on this topic. The focus within this priority is on policies or practices that discourage or prohibit individuals from exercising their rights, including any policies that deter or prohibit filing charges with the EEOC or cooperating freely in EEOC investigations, as well as, according to the EEOC, "overly broad waivers, releases, non-disclosure agreements, or non-disparagement agreements," failure to maintain applicant and employee data, and retaliatory practices that dissuade employees from exercising their rights. This objective has historically been reflected in the EEOC's aggressive assertion of retaliation claims against employers allegedly obstructing employees' efforts to participate in EEOC proceedings or otherwise oppose discrimination. The EEOC's Enforcement Guidance on Retaliation states that retaliation occurs when an employer takes a materially adverse action because an individual has engaged, or may engage, in protected activity that is in furtherance of Title VII, the Age Discrimination in Employment Act, the Americans with Disabilities Act, Section 501 of the Rehabilitation Act, the Equal Pay Act, or Title II of the Genetic Information Nondiscrimination Act. Retaliation claims premised on EEO-related activity are comprised of three elements: (1) protected activity through "participation" in an EEO process or "opposition" to discrimination; (2) materially adverse action taken by the employer; and (3) the requisite level of causal connection between the protected activity and the materially adverse action.

Of the 96 cases that were filed by the EEOC in FY 2024, 38 cases – or roughly 40% – involved retaliation allegations, signaling the EEOC's continued interest in pursuing such claims and in turn, the interests of employees' ability to pursue their rights under the anti-discrimination laws.

Preventing and Remedying Systemic Harassment. The sixth strategic priority is preventing and remedying systemic harassment, both in-person and online. This priority is directed at harassment, including sexual harassment and harassment based on sex, race, disability, age, national origin, religion, and color. This strategic priority will continue to focus on systemic cases. The EEOC harassment as an ongoing and serious issue in the U.S. workplace. The EEOC has had ample opportunity to shape the law of sexual harassment through its litigation activities. Those cases often hinge on two issues: whether the alleged actions rise to the level of unlawful harassment, and whether an employer can be held liable for harassment perpetrated by employees. In FY 2024, there was a total of 20 cases involving harassment claims and 19 of those cases alleged sexual harassment. Additional information on this strategic priority and related case filings appears in Part II(D).

Of note, the FY 2024-2028 SEP now expressly calls out harassment based on pregnancy, gender identity, and sexual orientation. The EEOC has also articulated more detailed support for employer training, including focusing on promoting comprehensive anti-harassment programs and practices and providing education, technical assistance, and policy guidance.

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Continued Reliance on Systemic Investigations and Litigation to Advance Strategic Goals. In the FY 2024-2028 SEP, the "Commission once again reaffirms its commitment to the agency's systemic program." The EEOC looks to its SEP priorities to decide what types of systemic investigations and cases to pursue. Indeed, the SEP priority areas are "given precedence over other cases to maximize the EEOC's strategic impact." While the Commission saw a decrease in litigation activity in FY 2024, the recent departure of one of the EEOC's two Republican Commissioners (Keith Sonderling) has solidified a Democratic majority for the near future. The Commission also requested a budget increase of over $33 million for FY 2025, which if approved would allow the EEOC to enhance its litigation resources. As a likely result, employers can expect increased case filings with respect to each of the above-referenced priorities.

3. EEOC and Wage Hour Division Memorandum of Understanding

On September 13, 2023, the EEOC and the Department of Labor Wage Hour Division (WHD) entered into a Memorandum of Understanding (MOU) enabling information sharing, joint investigations, training, and outreach.[14] The MOU empowers the agencies' field staff to coordinate efforts on both individual matters and larger investigations.[15]

The MOU's information-sharing and other contemplated coordinated activity provisions cover a broad range of activities, touching on all aspects of EEOC and WHD jurisdiction. For example, the MOU explicitly describes that each agency will make complaint referrals to the other, that the two will share complaint or investigative files, EEO-1 reports and FLSA records, and "statistical analyses or summaries," and that the agencies "will explore ways to efficiently facilitate" the data sharing.

Information sharing under the MOU is not limited to just top-level agency officials in Washington, DC; leadership from each agency's District (or Regional) offices may request information without the need to first obtain approval from HQ in Washington, DC. Importantly, the EEOC District Directors and Regional Attorneys may also designate other EEOC employees to make the request. This means that front-line EEOC staff involved in enforcement and litigation can quickly assess a wide range of information held by WHD. It is also noteworthy that the MOU allows any EEOC Commissioner to directly request information from WHD, without first channeling the request through EEOC career staff. This is significant because it enables EEOC Commissioners from different political parties than the Chair to obtain information directly from WHD.

Significantly, the MOU specifically contemplates that the EEOC can share employer EEO-1 reports with the WHD. This is notable because Title VII prohibits the EEOC from disclosing EEO report data to the public, but the MOU does not bind the WHD in the same way. Instead, the WHD agrees to "observe" Title VII's confidentiality requirements.

Employers can continue to expect the MOU to result in amplified information sharing between the EEOC and WHD when it comes to individual charges and investigations. (The MOU contains a high-level framework for coordinated investigations involving the same employer.) The potential for data sharing to fuel broader systemic investigations should remain at the forefront of employers' minds. The ability to gather additional data through this partnership with the WHD adds a powerful tool to the EEOC's investigative powers.

[14] U.S. Equal Employment Opportunity Commission Memorandum of Understanding Between the U.S. Department of Labor, Wage and Hour Division and the U.S. Equal Employment Opportunity Commission, https://www.eeoc.gov/memorandum-understanding-between-us-department-labor-wage-and-hour-division-and-us-equal-employment.

[15] *See* Rachel See, Christopher DeGroff, and Andrew Scroggins, *EEOC and DOL Join Forces – What the Alliance Means for Employers,* Workplace Class Action Blog (Sept. 18, 2023), https://www.workplaceclassaction.com/2023/09/eeoc-and-dol-join-forces-what-the-alliance-means-for-employers/.

4. Impact of *Loper Bright*

In its 2023-2024 term, the U.S. Supreme Court brought an end to 40 years of deference to administrative agencies when it overturned *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.,* 468 U.S. 837 (1984).[16, 17] In *Loper Bright Enterprises v. Raimondo,* 144 S. Ct. 2244, 2273 (2024), the Court held that "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority" rather than allowing the agency to fill statutory gaps, judging that courts, not agencies, are best situated to interpret ambiguous statutory provisions, even in areas of agency expertise.

In the wake of the Court's decision, it is anticipated that regulated entities will bring new and potentially far reaching challenges to longstanding rules that are premised on statutory ambiguity. Under *Loper Bright,* courts have significantly more leeway to interpret statutes contrary to an agency's interpretations, and courts can use this to cabin agency authority.

However, while the Court's decision was a marked change in how courts may review administrative agencies' exercise of their power going forward, presently, all agency rules that were enforceable before *Loper Bright* remain enforceable. Indeed, the Court observed that all decisions relying on *Chevron* to uphold an agency's action (1) remain good law and (2) are not subject to overruling simply because they relied on *Chevron*. The result is that, practically, nothing changes for people or entities subject to such pre-existing administrative authority unless or until a new challenge is lodged and decided.

Further, *Loper Bright* does not mark the end of the administrative state. Most notably, the decision appears to endorse the Court's ruling in *Skidmore v. Swift & Co.,* 323 U.S. 134 (1944), under which courts grant a modicum of deference to an agency's statutory interpretation to the extent that it has the power to persuade in light of the agency's thoroughness, its consistency over time, and the soundness of its reasoning. The continuing availability of *Skidmore* deference likely provides some security to longstanding agency rules and interpretations, particularly in noncontroversial areas of significant agency expertise.

Additionally, *Loper Bright* does little to call into question Congress's ability to expressly delegate authority to agencies to promulgate regulations and relevant definitions, such as the delegations to the EEOC under the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (the ADA), and the Genetic Information Nondiscrimination Act (GINA), as well as the recently passed Pregnant Workers Fairness Act (PWFA) and the Providing Urgent Maternal Protections for Nursing Mothers ("PUMP") Act. Given this, when Congress has directly authorized an agency to exercise discretion about the meaning of a statute, *Loper Bright* suggests that there is less space for courts to disagree with that interpretation. Consequently, the rules promulgated under such a delegation may similarly be less vulnerable to attack, and the EEOC's regulatory and enforcement efforts on these fronts is likely to continue unabated notwithstanding the Court's decision. Elsewhere, the end of *Chevron* deference should not affect the way that federal courts are likely to view the EEOC's Title VII guidance, as that guidance has only received *Skidmore* deference, and not *Chevron* deference, since the Court's ruling in *General Electric Co. v. Gilbert,* 429 U.S. 125 (1976).

5. Recent EEOC Guidance on Vision and Hearing

On January 24, 2023, the EEOC published guidance[18] regarding hearing disabilities in the workplace. The guidance contained a series of question-and-answer documents addressing how the ADA applies to job applicants and employees with hearing disabilities. In particular, the document explained: when an employee may ask an applicant or employee questions about a hearing condition and how it should

[16] *See* Rachel See, Jules A. Levenson, and Michael D. Berkheimer, *The Chevron Doctrine is Dead. Long Live the Administrative State* (June 28, 2024), https://www.seyfarth.com/news-insights/chevron-is-dead-long-live-the-administrative-state.html.

[17] All case-related information in this Report is strictly derived from court dockets and other publicly-available sources.

[18] U.S. Equal Employment Opportunity Commission, Hearing Disabilities in the Workplace and the Americans with Disabilities Act (Jan. 24, 2023), https://www.eeoc.gov/laws/guidance/hearing-disabilities-workplace-and-americans-disabilities-act.

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treat voluntary disclosures; what types of reasonable accommodations applicants or employees with hearing disabilities may need; how an employer should handle safety concerns about applicants and employees with hearing disabilities; and how an employer can ensure that no employee is harassed because of a hearing disability.

In a similar vein, on July 26, 2023, the EEOC published updated guidance regarding individuals with vision disabilities in the workplace.[19] This technical assistance document explained how the ADA applies to job applicants and employees with disabilities. The document outlined when, according to the EEOC, an employer may ask an applicant or employee questions about their vision, how an employer should treat voluntary disclosure about visual disabilities, and what types of reasonable accommodations those with visual disabilities may need in the workplace. The document also highlighted new technologies for reasonable accommodations, and described how using artificial intelligence and algorithms to make employment decisions can impact individuals with visual disabilities. Finally, the guidance also addressed how an employer should handle safety concerns about applicants and employees with visual disabilities, and methods to prevent harassment and retaliation.

Reflective of its emphasis on protecting employees under the ADA, the Commission filed 48 cases under the Americans with Disabilities Act during FY 2024.[20] Focusing on hearing or vision-impaired workers, the Commission brought suit on behalf of a blind employee, for instance, who was fired two days after falling at work despite being uninjured and his exemplary performance for more than a year. Following the fall, his employer made no effort to reassess the employee's capabilities or potential accommodations after the fall and decided to terminate him in violation of its policies. In another case, an employer was alleged to have violated the ADA after firing a scheduling assistant on her first day of work shortly after she requested reasonable accommodations related to her visual impairments. According to the EEOC, after the scheduling assistant informed the employer about her impairments and need for accommodations, the employer questioned why she failed to raise the issues during her interview and immediately terminated her.

The EEOC's message: employers must engage in the interactive process with applicants and employees, not only during the interview process, but throughout the entire employment relationship. The EEOC's increased scrutiny on these issues is likely to continue and employers should recognize that the EEOC will target decisions it believes are based on stereotypes.

6. Focus Area: Hearing Impairment Issues in Recruiting and Hiring

Relatedly, while the disability-related lawsuits that the EEOC filed concerned a broad range of disabilities in FY 2024, the Commission built on a trend from the end of the previous year and continued to prioritize hearing-related disabilities. Specifically since publishing its guidance regarding hearing disabilities in the workplace in January 2023, the Commission has filed a total of 16 ADA cases on behalf of hearing impaired employees, nine in FY 2023 and seven in FY 2024.[21]

Like the cases filed in 2023, the cases filed by the EEOC in FY 2024 related to hiring and recruiting fall into one of two categories: challenging employers' assumptions that hearing impaired workers cannot perform jobs safely; and challenging employers' alleged failure to provide reasonable accommodations for those with hearing disabilities. The Charlotte District Office and the Philadelphia District Office led the pack, filing two cases each in North Carolina and Maryland, respectively. Other cases were filed in Illinois, Texas, and Florida.

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[19] U.S. Equal Employment Opportunity Commission, *Press Release: Updated EEOC Resources About the ADA and Individuals with Visual Disabilities at Work* (July 26, 2023), https://www.eeoc.gov/newsroom/updated-eeoc-resource-about-ada-and-individuals-visual-disabilities-work#:~:text=%E2%80%9CProviding%20reasonable%20accommodations%20is%20an,the%20resources%20needed%20to%20succeed.

[20] U.S. Equal Employment Opportunity Commission, *Press Release: Fiscal Year 2024 EEOC Litigation Focuses on Emerging Issues and Underserved, Vulnerable Populations* (Oct. 9, 2024), https://www.eeoc.gov/newsroom/fiscal-year-2024-eeoc-litigation-focuses-emerging-issues-and-underserved-vulnerable.

[21] *See* Christopher J. DeGroff, Andrew L. Scroggins, James P. Nasiri, and Samantha L. Brooks, *EEOC Case Filings Plummet: A Look at the EEOC's Surprisingly Sluggish FY 2024* (Sept. 30, 2024), https://www.seyfarth.com/news-insights/eeoc-case-filings-plummet-a-look-at-the-eeocs-surprisingly-sluggish-fy-2024.html.

Several cases filed by the EEOC this year challenge employers' assumptions that hearing impaired workers cannot perform jobs safely. For example, an employer in one case allegedly refused to hire an applicant and failed to discuss any reasonable accommodations with the applicant after the applicant failed a pre-employment hearing test.[22] In another case, the employer allegedly told a hearing impaired applicant that the company would not hire an individual who did not read, write, or speak English or who communicated in sign language.[23] Another case involved an employer who allegedly told a hearing impaired applicant that the applicant was not eligible for a position because the applicant's disability presented safety concerns.[24]

Other cases filed by the EEOC in FY 2024 challenged employers' alleged failures to provide reasonable accommodations. For example, one employer faced scrutiny for allegedly demoting a hearing-disabled employee to avoid providing personal protective equipment ("PPE") as a reasonable accommodation to protect the employee's remaining hearing.[25] In another case, after a qualified applicant requested an ASL interpreter as an accommodation for an interview, the employer allegedly cancelled the interview and did not hire the applicant.[26]

Once again, these cases signal the EEOC's message that it expects employers to engage in the interactive process with applicants and employees, including during the interview process, and ensure decisions regarding hiring and recruiting are not made based on stereotypes.

7. Staffing Company Issues

In the FY 2024-2028 SEP, staffing relationships are no longer an "emerging and developing" issue, as they were in the previous SEP. Instead, the EEOC has expanded its efforts related to "vulnerable and underserved workers"—those "who may be unaware of their rights under [EEO] laws, may be reluctant or unable to exercise their legally protected rights, or have historically been underserved by federal employment discrimination protections"—which the EEOC treats as including "temporary workers."[27] Accordingly, one of the EEOC's priorities is "eliminating barriers in recruitments and hiring" in areas relevant to staffing, including the following:

- limiting employees to temporary work when qualified for available permanent positions;
- limiting access to temp-to-hire positions or other job training or advancement opportunities;
- channeling, steering, or segregating individuals into specific jobs or job duties by protected group;
- use of automated systems to target job advertisements, recruit applicants, or make or assist in hiring decisions where such systems intentionally exclude or adversely impact protected groups;
- job advertisements that exclude or discourage certain demographic groups from applying;
- restrictive application processes or systems, including online systems that are difficult for individuals with disabilities or other protected groups to access; and
- screening tools or requirements that disproportionately impact workers based on protected status, including those using AI/automated systems, pre-employment tests, and background checks.

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[22] *EEOC v. The Timken Corp.,* No. 1:24-cv-08983 (N.D. Ill. Sept. 26, 2024).

[23] *EEOC v. Wilson Logistics, Inc,* 1:24-cv-640 (M.D.N.C. July 31, 2024).

[24] *EEOC v. Heart of Texas Goodwill Industries, Inc.,* No. 6:24-cv-00498 (W.D. Tex. Sept. 26, 2024).

[25] *EEOC v. Smiths Detection, Inc.,* 1:24-cv-2510 (D. Md. Aug. 29, 2024).

[26] *EEOC v. Champion Media LLC,* 7:24-cv-707 (E.D.N.C. Aug. 8, 2024).

[27] *See* U.S. Equal Employment Opportunity Commission Strategic Enforcement Plan FY 2024-2028, Strategic Enforcement Plan Fiscal Years 2024-2028 | U.S. Equal Employment Opportunity Commission (eeoc.gov).

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In FY 2024, the EEOC filed several suits related to temporary work arrangements, sometimes against a staffing agency and sometimes against the businesses that engage staffing agencies for temporary labor. In one such case, a staffing agency allegedly ended an applicant's interview after the applicant asked for a possible religious accommodation to attend Friday prayer if his workplace was not near a mosque. According to the EEOC, the supervisor conducting the interview noted that the applicant was not hired due to his schedule and religious accommodation request. The EEOC further alleged that the staffing agency disqualified the applicant from other positions after the applicant followed up with the agency to understand why he was not hired for the position.[28] In another case, a staffing agency failed to comply with its conciliation agreement regarding an EEOC charge alleging that the staffing agency enforced a "no-Spanish" rule without adequate business justification in violation of Title VII.[29]

8. Amicus Briefs and Other Noteworthy Filings

The EEOC approved and filed Amicus Briefs in 37 cases during FY 2024. The filings were made in district courts, several circuit courts, and in one instance with the United States Supreme Court. A number of the briefs focused on how district courts have handled adverse employment actions following the Supreme Court's decision in *Muldrow v. City of St. Louis, Missouri,* 601 U.S. 346, 346, 144 S. Ct. 967, 969, 218 L. Ed. 2d 322 (2024) where the Court held that employees only must show that a job transfer caused "some harm" to an identifiable term and condition of employment rather than a "significant harm." The EEOC takes the position that district courts are inappropriately analyzing adverse employment actions by requiring plaintiffs to plead that they were subjected to an adverse employment action that caused them a significant harm. The EEOC also seems particularly interested in all facets of ADA claims, including reasonable accommodations and discrimination based on disability, with nearly one-third of the Amicus Briefs filed in 2024 addressing cases brought under that statute. The Supreme Court case that the EEOC filed an Amicus Brief in is one such case. In *Stanley v. City of Sanford, Florida,* the EEOC argued that the City of Sanford's policy of shortening the duration of a post-employment health-insurance subsidy for employees who retire due to a disability violated the ADA. We will continue to follow EEOC Amicus Brief filings going into 2025 and track any changes that may be on the horizon in its enforcement strategy.

The following is a summary of the EEOC Amicus filings that, taken together, provides valuable insight into the EEOC strategic direction and the legal issues it chooses to emphasize.

Weaver v. Walgreen Co. **No. 23-1763 (4th Circuit)**

Unanimously Approved by the Commissioners.

The EEOC filed an Amicus Brief arguing that the 90-day filing requirement following issuance of a notice of right to sue is not an element of a District Court's jurisdiction. Rather, the EEOC took the position that the 90-day filing requirement is a claims-processing rule. Under this position, the argument that a plaintiff failed to file suit within the 90-day filing requirement is an affirmative defense and where assessing that defense requires factual development a defendant cannot challenge that on motion to dismiss.

Vincent v. ATI Holdings LLC, et al. **No. 23-12417 (11th Circuit)**

Unanimously Approved by the Commissioners.

The EEOC filed an Amicus Brief arguing that the lower court improperly granted summary judgment in favor of ATI Holdings, LLC, a rehabilitation-services provider that places athletic trainers in schools. The EEOC took the position that ATI Holdings LLC was a joint employer with control over the Plaintiff's removal from employment at a high school. Specifically, the EEOC argued that ATI had sufficient control

[28] *EEOC v. Logic Staffing LLC,* 2:24cv1557 (W.D. Wash. Sept. 30, 2024).

[29] *EEOC v. Total Emp. & Mgmt.,* No. 3:24-cv-05813 (W.D. Wash. Sept. 26, 2024).

over the essential terms and conditions over the Plaintiff's work and was solely responsible for her salary benefits. Further, the EEOC argued that ATI had previously removed trainers from the high school and exercised a sufficient degree of control to constitute a joint employer.

Ringhofer et al. v. Mayo Clinic Ambulance et al. **Nos. 23-2994, 23-2995, 23-2996, 23-2997, 23-2999 (8th Circuit)**

Unanimously Approved by the Commissioners.

The EEOC filed an Amicus Brief in support of religious accommodations for refusing mandatory COVID-19 vaccinations. The case involves a registered nurse and a paramedic who were longtime employees for the Mayo Clinic. The two employees objected to Mayo Clinic's mandatory COVID-19 vaccination policy claiming that they object to vaccines that are produced or tested with fetal cells. The district court granted Mayo Clinic's motion to dismiss the complaint. On appeal, the EEOC argued that the employees plausibly pled religious beliefs that conflicted with Mayo Clinic's vaccination requirement.

Yates v. Spring Independent School District, **No. 23-20441 (5th Circuit)**

Unanimously Approved by the Commissioners.

In *Yates*, a teacher in his late sixties claimed that his employer, a school district, discriminated against him because of his age, violating the ADEA, Title VII, and the ADA by reassigning him to a position in which he was no longer a lead teacher responsible for his own classroom but was instead inside of another teacher's classroom, placed on support plans, and placed on administrative leave for four months. The EEOC took the position that a jury could find that Yates established an adverse action sufficient to sustain his ADEA discrimination claim. The EEOC argued that the district court erred in relying on the Fifth Circuit's former "ultimate employment decision" standard in holding that the Plaintiff's placement on a performance improvement plan was not an adverse action.

Raymond v. Spirit AeroSystems Holdings, **No. 23-3126 (10th Circuit)**

Unanimously Approved by the Commissioners.

The EEOC filed an Amicus Brief taking the position that a one-time reduction in force can form the basis for ADEA liability under the *Teamsters* pattern-or-practice framework.

Thomas v. Dallas Independent School District, **No. 23-10882 (5th Circuit)**

Unanimously Approved by the Commissioners.

The EEOC filed an Amicus Brief taking the position that a Plaintiff does not need to plead all of the elements of a *McDonnell Douglas* prima facie case to survive a motion to dismiss.

Valdes v. Kendall Healthcare Group, Ltd. **No. 23-12983 (11th Circuit)**

Unanimously Approved by the Commissioners.

The EEOC filed an Amicus Brief arguing that Kendall Healthcare's decision to discontinue a Plaintiff's participation in a paid clinical training program was sufficiently adverse as a matter of law to support discrimination claims under the ADEA. The EEOC argued that the district court failed to apply the proper standards governing Plaintiff's retaliation and discrimination claims and that discrimination with respect to training programs is actionable under the ADEA as long as the training is materially related to the employee's job responsibilities or possibilities for advancement.

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***Alburquerque v. The De Moya Group, Inc.,* 23-13157 (11th Circuit)**

Unanimously Approved by the Commissioners.

The EEOC filed an Amicus Brief arguing that the lower court articulated the incorrect standard for determining whether an employer's conduct constitutes a "materially adverse action." The EEOC argued that the lower court erred in holding that an individual's physical assault of a plaintiff did not constitute a materially adverse employment action that would dissuade a reasonable worker from making or supporting a charge of discrimination. The EEOC also argued that district court made an inappropriate inference at summary judgment that the individual who verbally threatened Plaintiff did it solely to protect his father rather than to retaliate against the Plaintiff.

Case on appeal to the Third Circuit

Unanimously Approved by the Commissioners.

The EEOC filed an Amicus Brief taking the position that a plaintiff can invoke the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (EFASASHA) and therefore avoid pursuing their sexual harassment claims through arbitration, even if they do not allege sexual advances or conduct motivated by sexual desire.

***Weathers v. Houston Methodist Hospital et al.,* 23-20536 (5th Circuit)**

Unanimously Approved by the Commissioners.

The EEOC filed an Amicus Brief in support of a *pro se* plaintiff who filed his charge two days after the deadline arguing that the plaintiff's verification of her charge "relates back" to timely submissions made to the EEOC.

***Bolden v. CAEI, Inc.,* No. 23-2195 (4th Circuit)**

Approved by: Commissioners Burrows, Kotagal, Lucas, Samuels.

The EEOC filed an Amicus Brief supporting a plaintiff who failed to name one defendant in his charge of discrimination, arguing that the circuit should recognize the identity-of-interest exception to Title VII's naming requirement.

***Batten v. K-VA-T Food Stores, Inc.,* No. 23-14199 (11th Circuit)**

Approved by: Commissioners Burrows, Kotagal, Lucas, Samuels; Disapproved by: Commissioner Sonderling.

The EEOC filed an Amicus Brief in support of a plaintiff amputee who asked to bring his service dog to his job as a reasonable accommodation. The Defendant did not have an objection to the request that it would impose an undue hardship but refused the Plaintiff's request and proposed a single alternative that the Plaintiff claimed was ineffective and he was subsequently fired. The EEOC argued that the district court erred by concluding that the plaintiff's ability to struggle through pain and danger to perform essential functions of his position deprived him of the right to a reasonable accommodation. The EEOC urged the 11th Circuit to reject the proposition that the ADA requires only accommodations that are strictly necessary for performance of essential job functions.

***Minniti v. Crystal Window & Door Systems PA, LLC,* No. 23-03132 (3d Circuit)**

Unanimously Approved by the Commissioners.

The EEOC filed an Amicus Brief in support of a plaintiff, arguing that when he stated opposition to, and refused to carry out, the firing of the only two Black employees of the plant he managed, a reasonable jury could decide that his actions constituted a protected activity under Title VII.

***Dike v. Columbia Hospital Corp. of Bay Area,* No. 24-40058 (5th Circuit)**

Unanimously Approved by the Commissioners.

The EEOC filed an Amicus Brief in arguing that an employer's policy of honoring patients' racial preferences – combined with a pattern of ridicule and insult – can constitute severe or pervasive harassment.

***Abdi v. Hennepin County,* No. 24-1393 (8th Circuit)**

Unanimously Approved by the Commissioners.

The EEOC filed an Amicus Brief arguing that a Plaintiff need not show that a Defendant's disciplinary investigation and negative performance evaluation of him constitutes a sufficient adverse employment action under the ADA's retaliation provision. The EEOC also argued that Title I failure to accommodate claims do not require a Plaintiff to show an adverse employment action.

***Turner v. BNSF Railway Co.,* No. 24-10031 (5th Circuit)**

Approved by: Commissioners Burrows, Kotagal, Lucas, Samuels; Disapproved by: Commissioner Sonderling.

The EEOC filed an Amicus Brief arguing that the district court erred in holding that the Federal Railroad Safety Act and its regulations preclude a plaintiff's ADA claim. The EEOC also argued that the district court erred in holding that the plaintiff was not a qualified individual under the ADA because the defendant denied the plaintiff's certification because the plaintiff failed to petition for administrative review of that denial.

Case on appeal to the Fourth Circuit

Unanimously Approved by the Commissioners.

The EEOC filed an Amicus Brief supporting a plaintiff that filed ADA claims that were rejected by the district court because (1) her pregnancy-related medical condition was not a covered disability, and (2) her request to work fewer hours due to her medical condition was neither a request for a reasonable accommodation nor subject to the ADA's antiretaliation provision. The district court also rejected the plaintiff's sex discrimination claims under Title VII. The EEOC argued that the district court applied inapposite and incorrect legal standards under the ADA and Title VII.

***Meza v. Union Pacific Railroad Co.,* 24-1367 (8th Circuit)**

Approved by: Commissioners Burrows, Kotagal, Lucas, Samuels; Disapproved by: Commissioner Sonderling.

The EEOC argued that the district court erred in holding that no jury could find that Union Pacific regarded plaintiff as having an impairment when Union Pacific barred him from work for five years because of alleged future safety concerns due to plaintiff's brain injuries.

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***Hall v. Coal Bed Services, Inc.,* 24-10572 (11th Circuit)**

Unanimously Approved by the Commissioners.

The EEOC argued that the district court misapplied precedent by relying on non-material differences to hold that the plaintiffs' comparator was not similarly situated in all material respect. The EEOC also argued that the plaintiffs presented enough evidence to support a reasonable inference of discrimination, defeating summary judgment on their Title VII disparate-treatment claim both under *McDonnell Douglas* and a convincing mosaic framework.

***Sutherland v. Peterson's Oil Service, Inc.,* No. 24-1431 (1st Circuit)**

Unanimously Approved by the Commissioners.

The EEOC argued that the district court erred by applying pre-ADA Amendments Act of 2008 standards when concluding that the plaintiff could not establish he was disabled under the ADA The EEOC also argued that the district court erred in concluding the plaintiff could not perform the essential duties of his job with a reasonable accommodation because the district court did not cite to any record evidence that the accommodations at issue were not "reasonable" for someone in plaintiff's position.

***Franks v. City of Oxford et al.,* 24-60295 (5th Circuit)**

Unanimously Approved by the Commissioners.

The EEOC argued that the district court erred in holding that the elimination of plaintiff's position, which resulted in her transfer, was not actionable under Title VII, even if it was retaliatory. The EEOC argued that disbanding plaintiff's position, which resulted in a forced transfer, may have dissuaded reasonable employees in her position from complaining about discrimination.

***Strife v. Aldine Independent School District,* No. 24-20269 (5th Circuit)**

Approved by: Commissioners Burrows, Kotagal, Lucas, Samuels; Disapproved by: Commissioner Sonderling.

The EEOC argued that the district court erred in dismissing plaintiff's ADA failure to accommodate claim, which was premised on her employer's alleged undue delay in providing a reasonable accommodation and that the district court misstated the elements of an ADA interference claim. The EEOC argued that the plaintiff alleged facts sufficient to state a failure-to-accommodate claim and that an employer's unreasonable delay in providing an accommodation can amount to a failure to accommodate in some circumstances.

***Thatch v. FedEx Freight, Inc.,* No. 24-1781 (4th Circuit)**

Unanimously Approved by the Commissioners.

The EEOC argued that the district court erred by requiring plaintiff to plead an adverse action that imposed a "significant detriment" for his discrimination claim, even after the Supreme Court's decision in *Muldrow v. City of St. Louis,* 601 U.S. 346 (2024), which abrogated that standard. The EEOC also argued that the district court erred by not applying the adverse action standard for retaliation claims that the Supreme Court set out in *Burlington N. & Santa Fe Ry. Co. v. White,* 548 U.S. 53, 67-68 (2006), which looks to whether the challenged action might dissuade a reasonable worker from complaining about discrimination.

***Stanley v. City of Sanford,* Florida, No. 23-997 (U.S. Supreme Court)**

Unanimously Approved by the Commissioners.

The EEOC argued that the City of Sanford's adoption of a policy shortening the duration of a post-employment health-insurance subsidy it provided to employees who retire on account of a disability violated the ADA. The EEOC argued that the lower court erred in determining that a former-employee cannot challenge an allegedly discriminatory post-employment benefits policy because benefits were paid after the employee was no longer employed.

***Andrews v. Tri Star Sports and Entertainment Group, Inc.,* No. 23-5700 (6th Circuit)**

Unanimously Approved by the Commissioners.

The EEOC argued that the panel majority's holding that Plaintiff's asthma was not a disability contravened the amended ADA.

***Snyder v. Arconic Corp.,* No. 23-3188 (8th Circuit)**

Approved by: Commissioners Burrows, Kotagal, Samuels; Disapproved by Commissioners Lucas, Sonderling.

The EEOC argued that the district court did not err by requiring a plaintiff to establish the prima facie elements of a religious-accommodation claim, arguing that the Supreme Court's decision in *EEOC v. Abercrombie & Fitch Stores, Inc.,* 575 U.S. 768, 773-74 (2015) did not eliminate the prima facia framework. The EEOC also argued that the district court correctly concluded that the plaintiff failed to identify any religious practice or observance obliging him to object to the use of a rainbow symbol publicly or in a manner that the defendant's policies prohibited.

***Vavra v. Honeywell International, Inc.,* No. 23-2823 (7th Circuit)**

Approved by: Commissioners Burrows, Kotagal, Samuels; Disapproved by: Commissioners Lucas, Sonderling.

The EEOC argued that unconscious bias trainings are not inherently discriminatory. The EEOC also argued that for the purposes of a Title VII retaliation claim, a plaintiff must proffer evidence that a reasonable person could believe a mandatory anti-discrimination training, such as unconscious bias training, was discriminatory.

Case pending in the Northern District of Ohio

Approved by: Commissioners Burrows, Kotagal, Samuels; Disapproved by: Commissioners Lucas, Sonderling.

The EEOC argued that Title VII standards permit private employers to adopt voluntary affirmative-action plans to remedy manifest imbalances and that voluntary affirmative-action plans are not subject to strict scrutiny.

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***Tudor v. Whitehall Central School District,* No. 23-665 (2nd Circuit)**

Approved by: Commissioners Burrows, Kotagal, Samuels; Disapproved by: Commissioners Lucas, Sonderling.

The EEOC argued there is no basis in the statutory text of the ADA holding that an employer need not provide a reasonable accommodation if the qualified individual is able to perform the essential functions of his job without one. Accordingly, the EEOC argued that the ADA and the EEOC's implementing regulations require employers to make reasonable accommodations even if unrelated to the performance of essential job functions. The plaintiff argued that she could only preform the essential functions of her job without an accommodation under great duress and harm. The district court rejected Plaintiff's theory, holding that an employer need only provide reasonable accommodations to qualified individuals with disabilities who need an accommodation to perform essential functions of one's job.

***Arnos v. The Lampo Group, LLC,* No. 24-5011 (6th Circuit)**

Approved by: Commissioners Burrows, Kotagal, Samuels; Disapproved by: Commissioners Lucas, Sonderling.

The EEOC argued that the district court erred in dismissing a plaintiff's religious nonconformity claim because the district court claimed that the plaintiff did not adequately plead his own religious beliefs, even though the law only required him to plead that his employer discriminated against him for not conforming to its religious beliefs.

***Mobley v. Workday, Inc.,* 3:23-cv-00770, (N.D. California)**

Approved by: Commissioners Burrows, Kotagal, Samuels; Disapproved by: Commissioners Lucas, Sonderling.

The EEOC argued that Workday constitutes an employment agency because it provided screening and referral activities, and because Workday's algorithmic tools perform precisely the same screening and referral functions as traditional employment agencies. The EEOC also argued that in his complaint, Plaintiff plausibly alleged that Workday is an indirect employer and an agent of plaintiff's employers.

***Sheer v. Sisters of Charity of Leavenworth Health System, Inc.,* 24-1055 (10th Circuit)**

Approved by: Commissioners Burrows, Kotagal, Samuels; Disapproved by: Commissioners Lucas, Sonderling.

Plaintiff alleged that her employer perceived her as having a mental-health impairment, mandated that she participate in employer-provided mental health counseling to address the perceived impairment, and then terminated her for refusing to sign a release authorizing disclosure of certain information about the mandatory counseling to her employer. The district court held that the mandatory referral was not a discriminatory adverse action because it did not constitute a "significant change in employment status." The EEOC argued that a reasonable jury could find that defendant regarded plaintiff as disabled because it took prohibited actions against her based on its perception that she was suicidal. The EEOC also argued that a reasonable jury could find that plaintiff was qualified to perform the essential functions of her job based on evidence that defendant would not have terminated her for performance reasons. The EEOC finally argued that a reasonable jury would not be compelled to accept defendant's affirmative defense that its actions were justified as "job-related and consistent with business necessity" where the parties disputed key facts.

***Gray v. State Farm Mutual Automobile Insurance Co.,* No. 24-3086 (6th Circuit)**

Approved by: Commissioners Burrows, Kotagal, Samuels; Disapproved by: Commissioners Lucas, Sonderling.

The EEOC argued that the district court set forth an inapposite legal standard in analyzing plaintiff's retaliation claim under the ADA by setting forth the standard for assessing disparate-treatment claims in its opinion. The EEOC also argued that the district court failed to consider other important aspects of plaintiff's case and misapplied the correct legal standard for an adverse employment action under an ADA retaliation claim.

***Liu v. Uber Technologies, Inc.,* No. 22-16507, 22-16712 (9th Circuit)**

Approved by: Commissioners Burrows, Kotagal, Samuels; Disapproved by: Commissioners Lucas, Sonderling.

The EEOC argued that Uber's use of a star-rating system to terminate drivers violates Title VII because it disparately impacts white drivers. The EEOC argued that it was improper for the district court to dismiss plaintiff's Third Amended Complaint because he lacked sufficient statistical or other evidentiary support to plausibly plead his claim. The EEOC argued that the court applied an unnecessarily high pleading standard to plaintiff's complaints.

***Sharpe-Miller v. Walmart,* No. 24-2055 (10th Circuit)**

Approved by: Commissioners Burrows, Kotagal, Samuels; Disapproved by: Commissioners Lucas, Sonderling.

The EEOC argued that the district court committed several errors with respect to the plaintiff's Title VII sex-discrimination claims, including misapplying the burden-shifting framework under *McDonnell Douglas Corp. v. Green,* 411 U.S. 792 (1973) in analyzing his disparate-treatment claim and applying incorrect legal standards to plaintiff's hostile-work-environment claim. The EEOC argued that the district court erred in holding that plaintiff's demotion was not an adverse employment action and that the district court erred in analyzing plaintiff's hostile-work-environment claim by disregarding comments, requiring him to show interference with his work performance and a "steady barrage" of offensive comments.

***Lambert and Shanks v. International Union of Bricklayers,* No. 23-7141 & No. 23-7145 (D.C. Circuit)**

Approved by: Commissioners Burrows, Kotagal, Samuels; Disapproved by: Commissioner Lucas.

The EEOC argued that the union enforced a policy that caused a disparate impact on Black employees by requiring that all employees be vaccinated against COVID-19 or to obtain a religious or disability-based exemption by a certain deadline. The EEOC argued that most Black employees received less information and less time to meet the deadline than most White employee. The district court dismissed the two cases at the pleading stage because the plaintiffs voluntarily chose to not get vaccinated and accordingly could not state a claim. The EEOC argued that the district court erred in several respects, including by requiring proof rather than plausible allegations and suggesting that any individuals who "voluntarily" did not comply with the policy cannot establish causation in a disparate impact case.

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B. EEOC Focus on Equal Pay Protections

The EEOC is the federal government's most powerful agency for the enforcement of federal anti-discrimination laws in the workplace. Authorized by Congress to wield broad investigative and subpoena powers for the prevention and remediation of unlawful employment practices, the EEOC's enforcement mechanisms cover a range of activities, from individual and systemic claims investigations, conciliation, litigation and monitoring compliance, to serving as an agent for effecting broader policy change in employment sectors throughout the country. Each iteration of the EEOC's Strategic Enforcement Plan has included a focus on advancing equal pay for all workers.[30]

The number of EEOC lawsuits alleging equal pay violations has dropped significantly in recent years. This has led to a decline in legal decisions relating to equal pay issues, at least those involving the EEOC as a party.

The EEOC filed only two Equal Pay Act ("EPA") cases in federal court in 2024. Both are in the early stages of litigation. First, in *EEOC v. Houston Independent School District,* 4:24-cv-00125, filed in the Southern District of Texas on January 11, 2024, the EEOC alleges that defendant HISD, a *public* school district, violated the EPA by paying lower wages to female Senior Career & Technical Education Program Specialists than it pays to male employees in the same role. The EEOC alleges defendant interpreted its own compensation manual unfairly by limiting the credit assigned to female employees for previous work experience outside of an education setting, resulting in a lower starting salary. The EEOC claims this resulted in male employees being compensated at higher rates than their female colleagues who had equal or more relevant experience.

Second, in *EEOC v. AccentCare, Inc.* 3:23-cv-01646, filed in the Middle District of Pennsylvania on September 27, 2024, the EEOC alleges that AccentCare, Inc. violated the EPA, Title VII of the Civil Rights Act of 1964, and the Civil Rights Act of 1991. The EEOC alleges that AccentCare, a home healthcare agency, paid female Licensed Practical Nurses lower wages than a male counterpart for equal work. The complaint further alleges that AccentCare unlawfully retaliated against a female nurse by terminating her employment after she repeatedly complained about the pay disparity. In both cases, the EEOC seeks injunctive relief, back pay, compensatory damages, and an order requiring defendants to implement policies and practices to prevent future pay discrimination.

Equal pay litigation, itself – apart from the EEOC's involvement – continues apace. And the EEOC has been actively attempting to steer the results, even if not as a party plaintiff. For example, in September 2023, the EEOC filed an amicus brief in favor of reversal of the United States District Court for the Middle District of Alabama's decision in *Williams v. Alabama State University*.[31] In that case, a female Athletic Director of a university alleged she was underpaid compared to her male successor in the same position. Before the university hired her, the plaintiff had earned a Master's Degree in Athletic Administration and worked for two other Division I schools. When plaintiff was hired in 2018, she was given a $135,000 salary with performance incentives. When she asked for a raise the following year, the university denied her request and gave her a one-time $5,000 signing bonus.[32]

Williams resigned in 2021, and the university posted the Athletic Director position again, modifying the education and experience requirements. On education, the posting required "a master's degree, preferably in sports management or sports administration, an MBA or terminal degree." On experience, the posting required "at least seven to ten years of experience in major leadership posts in sports administration and management."[33] The university hired a male who had a Master's Degree in Secondary Education and a PhD in Higher Education Administration. He had never been an athletic director before. But he requested and received a starting salary of $170,000 along with performance incentives.[34]

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[30] *See* U.S. Equal Employment Opportunity Commission Strategic Enforcement Plan FY 2024-2028, Strategic Enforcement Plan Fiscal Years 2024-2028 | U.S. Equal Employment Opportunity Commission (eeoc.gov).

[31] *Williams v. Ala. State Univ.,* No. 2:22-cv-48-ECM, 2023 WL 4632386 (M.D. Ala. July 19, 2023).

[32] *Id.* at *2.

[33] *Id.*

[34] *Id.* at *3.

Nevertheless, the District Court granted the university's motion for summary judgment on plaintiff's EPA claim. The court held (1) that the university had met its burden on the affirmative defense because the evidence demonstrates that it could have legitimately relied on her successor's higher degree and greater relevant experience to set his higher salary;[35] and (2) that plaintiff had not proven pretext because she failed to produce evidence that directly establishes discrimination, or which would permit a jury to reasonably disbelieve the employer's proffered reason.[36]

The matter was appealed to the Eleventh Circuit, where the EEOC filed an amicus brief urging its interpretation of the burden shifting framework under the EPA.[37] According to the EEOC, the EPA's framework is: (1) the plaintiff must establish a prima facie case; (2) the defendant must then prove an affirmative defense that, in fact, caused the difference in pay in order to avoid liability. According to the EEOC, under the EPA, the burden never shifts back to the plaintiff to prove pretext.[38]

Applying the EEOC's interpretation, for the university to prevail, it would need to submit evidence from which a reasonable factfinder could conclude that the proffered reasons do in fact explain the wage disparity (not simply that they could explain the disparity, which would be sufficient under Title VII's *McDonnell Douglass* framework). Further, the EEOC urged that burden is even higher at the summary judgment stage because an employer must prove at least one affirmative defense so clearly that no rational jury could find to the contrary.[39] Additionally, under the EEOC's preferred framework, the burden does not shift to the plaintiff to prove pretext.[40] According to the EEOC, the District Court's decision to the contrary goes against Eleventh Circuit precedent, and the majority of other circuits also reject the pretext step for EPA claims.[41] Notwithstanding the EEOC's argument, this issue in fact has been hotly disputed among the federal courts over the past few years.[42] The brief provides insight to the manner in which EEOC works to steer the law in directions that are plaintiff-friendly.

Different burden shifting frameworks may seem like an overly technical distinction to some, but it can have real, case-dispositive impacts. For example, in *EEOC v. First Metropolitan Financial Service, Inc.*,[43] the EEOC alleged that a financial lending company paid two female Branch Managers less than male Branch Managers. The outcome of the case was, to a large extent, determined by the different burden-shifting frameworks applied under Title VII versus the EPA. Although the two statutes apply different standards for establishing a prima facie case, the court concluded that "[h]aving found that the Plaintiff successfully established a *prima facie* case under the Equal Pay Act, the Court also finds that the evidence used under the EPA burden is sufficient to establish a *prima facie* case under Title VII."[44] The case then turned on the employer's affirmative defenses.

The court explained that under the burden shifting scheme of Title VII, "[t]he burden of production now shifts to the Defendant to articulate some legitimate, non-discriminatory reason in light of the four exceptions outlined in the Equal Pay Act."[45] The employer argued that the salary of plaintiff's alleged

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[35] *Id.* at *4.

[36] *Id.* at *7.

[37] *See* Br. of the EEOC as Amicus Curiae in Support of Appellant and in Favor of Reversal, *Williams v. Ala. State Univ.,* No. 23-12692 (filed Sept. 29, 2023).

[38] *Id.* at 10-13.

[39] *Id.* at 14.

[40] *Id.* at 16-19.

[41] *Id.*

[42] *See*, e.g., *Wilder v. Stephen F. Austin State Univ.,* No. 9:20-cv-40-ZJH, 2021 WL 3288303, at *9 (E.D. Tex. Aug. 2, 2021) (Noting the differences in proving pretext under the McDonnell Douglas framework versus the framework applied under the EPA, the court held that, under the EPA, the defendant always keeps the burden of production and persuasion after a plaintiff has established a prima facie case: "the court will always consider pretext if the analysis gets that far, but the burden never shifts back to the plaintiff in an EPA claim."); *Mullenix v. Univ. of Tex. at Austin,* No. 1:19-cv-1203-LY, 2021 WL 5881690 (W.D. Tex. Dec. 13, 2021) ("The burden-shifting framework established in *McDonnell Douglas Corp. v. Green,* 411 U.S. 792 (1973), governs claims under the EPA.") (citing *Lindsley v. TRT Holdings, Inc.,* 984 F.3d 460, 466 (5th Cir. 2021)); *Patel v. Tungsten Network, Inc.,* No. 2:20-cv-7603-SB-JEM, 2021 WL 4776348, at *7 (C.D. Cal. Sept. 15, 2021) (holding that the plaintiff did not need to establish pretext to avoid summary judgment because "summary adjudication on the EPA claim is proper only if Defendant produces 'sufficient evidence such that no rational jury could conclude but that these proffered reasons actually motivated the wage disparity' at issue") (quoting *Stanziale v. Jargowsky,* 200 F.3d 101, 107-08 (3d Cir. 2000)).

[43] *EEOC v. First Metro. Fin. Serv., Inc.,* 449 F. Supp. 3d 638 (N.D. Miss. 2020).

[44] *Id.* at 647.

[45] *Id.* at 647-48.

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comparator had been set at a time when it needed to hire someone quickly or else close that branch, and the comparator had made a "take it or leave it" demand that the company felt compelled to take. The court held that that satisfied the employer's burden under the Title VII burden-shifting scheme because, under that statute, an employer "need only articulate – not prove – a legitimate, nondiscriminatory reason," to meet its burden of production.[46] However, the employer was not able to rebut the EEOC's claims that those purportedly legitimate reasons were merely a pretext for discrimination; instead, the court found the employer's reasons "highly suspicious" in light of the fact that it had sometimes allowed even larger branches to operate for short periods of time without a manager.[47]

As this case shows, wage discrimination cases often rise and fall on the identification of an appropriate comparator. Under the federal Equal Pay Act, employers are prohibited from paying employees differently for "equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions."[48] Cases often turn on this distinction. For example, in *EEOC v. University of Miami*,[49] the EEOC alleged that a university paid a female professor less than her counterpart who performed the same job. The university had hired the charging party as an associate professor during the same year that it hired a male professor with comparable qualifications for a lower-ranked position in the same department at a higher salary.[50] The university argued that the professors did not perform substantially equal work and that the salary discrepancy could be explained by a factor other than sex.

The court first held that a reasonable jury reviewing the duties of the two professors could conclude that their positions were substantially equal.[51] Although the two professors taught different political science specialties, the court noted that they both had doctorate degrees, generally taught the same number of courses at the introductory and advanced levels, and were subject to the same university requirements regarding teaching and research. The university argued that the two professors were not comparable because of their different areas of specialization, because they published in different journals, and because the male professor had published in more prestigious journals. The court found this evidence unpersuasive because "the professors' specializations within the field of political science do not appear to be dispositive as to the question of substantial job similarity," but "[r]ather, subspecialties are considered when evaluating whether a professor conducted research and was subsequently published in high-ranking journals relevant to their respective specializations."[52] The court was ultimately convinced that "the quality of [comparator's] publications and number of cite counts are determinative of this inquiry because the Plaintiff's prima facie case requires a comparison of jobs, not the skills and qualifications of the individuals who hold the jobs."[53]

Written policies regarding salary scales and job categories often factor into equal pay cases as well, as employers often rely on those policies to prove that salaries were set according to by their terms and are therefore not discriminatory. For example, in *EEOC v. Enoch Pratt Free Library*, the employer pointed out that it used a Managerial and Professional Society Salary Policy ("MAPS") to determine compensation for newly hired library supervisors.[54] According to the employer, that policy is facially neutral, and clearly permitted the employer to pay the starting salaries that it did.[55] The court held, however, that the MAPS policy left open the possibility that the employer could apply discretion with respect to setting starting salaries.[56] The court concluded that the alleged comparator "was hired at a rate not only higher than the female [library supervisors] represented by the EEOC, but also significantly above the salary [the

[46] *Id.* at 648 (quoting *Texas Dept. of Cmty. Affairs v. Burdine,* 450 U.S. 258, 258 (1981)).

[47] *Id.* at 648-49.

[48] 29 U.S.C. § 206(d)(1).

[49] *EEOC v. Univ. of Miami,* No. 19-cv-23131, 2021 WL 4459683 (S.D. Fla. Sept. 29, 2021).

[50] *Id.* at *6.

[51] *Id.* at *8.

[52] *Id.*

[53] *Id.*

[54] *EEOC v. Enoch Pratt Free Library,* No. 17-cv-2860, 2019 WL 5593279, at *3 (D. Md. Oct. 30, 2019).

[55] *Id.* at *6.

[56] *Id.*

comparator] had received during his first tenure at [employer]. Given these facts, combined with the inherent discretion within the MAPS policy, genuine factual questions exist about how defendants arrived at [the comparator's] salary."[57]

After the conclusion of a five-day bench trial, the court concluded that the employer had violated the EPA.[58] The EEOC easily met its burden to establish a prima facie case because the parties stipulated that the comparator's salary was higher than that of each charging party.[59] To carry its burden, the employer argued that each library branch differed with respect to circulation size, outreach efforts, and physical footprint, thus rendering the job duties of each library supervisor too dissimilar to support a finding that they performed equal work. The court found, however, that the core job duties were the same, relying in part on evidence that the positions shared the same job description, and supervisors often substituted for one another on a short- or long-term basis without requiring any additional training and without any alteration in pay.[60] The differences among library branches did not defeat the EEOC's case because "none of th[ose] differences translated into *job duties* that differed significantly from one another."[61]

The EEOC has also been pushing the law in a more employee-friendly direction with respect to an employer's affirmative defenses. For example, in *EEOC v. Hunter-Tannersville Central School District*,[62] the employer had pled as an affirmative defense that the charging party and her comparator had each negotiated their salaries, and that those negotiations resulted in the alleged salary disparity.[63] The EEOC argued that "there is simply no basis for the proposition that a male comparator's ability to negotiate a higher salary is a legitimate business-related justification to pay a woman less."[64] The court rejected this argument, but noted that other courts had come to different conclusions as to whether salary negotiations, by themselves, could constitute a valid defense to an EPA claim. Given the unsettled nature of the law, the court was unwilling to adopt the EEOC's interpretation at the pleading stage: "The Court finds that the EEOC did not meet its burden to show that the affirmative defense is insufficient because there is a question of law, specifically whether *Aldrich's* job-relatedness requirement would apply to negotiations, which might allow the defense to succeed."

Finally, recent EEOC litigation has generated some important and noteworthy decisions for employers who undertake the investigation and remediation of equal pay issues upon themselves. For example, in *EEOC v. George Washington University*,[65] an Executive Assistant to the employer's former Athletic Director alleged she was paid less than a male "Special Assistant" for the same work.[66] She filed an internal grievance with the employer's EEO office and a charge with the EEOC. The employer initiated an internal investigation to review the matter, which was initially conducted by non-lawyer staff in the EEO office. The investigation was later handed over to a law firm, which then issued a Confidential Informal Grievance Report.[67]

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[57] *Id.* at *7. *See* also *EEOC v. George Washington Univ.,* No. 17-cv-1978, 2019 WL 2028398, at *4 (D.D.C. May 8, 2019) (denying an employer's motion to dismiss even though the complaint at issue did not explicitly allege how the positions at issue were equal with respect to skill, effort, and responsibility, holding that the complaint "straightforwardly pleads that [plaintiff] was paid less as Executive Assistant than [comparator] was paid as a Special Assistant for substantially the same job responsibilities"); *EEOC v. Univ. of Miami,* No. 19-cv-23131-Civ-Scola, 2019 WL 6497888, at *2 (S.D. Fla. Dec. 3, 2019) (denying a motion to dismiss claims brought by professors in the same department because the EEOC had supported its claims of pay discrimination with numerous allegations relating to the professors' job duties, such as teaching classes and publishing books and articles, and allegations that the female professor had two more years of teaching experience and had published more works, and because the EEOC had alleged that both professors were in the same department and had been promoted to full professor at the same time after a review by the same committee based on the same criteria); *EEOC v. Denton Cty.,* No. 4:17-cv-614, 2018 U.S. Dist. LEXIS 175794, at *22 (E.D. Tex. Oct. 12, 2018) (denying cross motions for summary judgment, holding that it was "not convinced that [defendant] or the EEOC has met their respective burdens demonstrating that there is no material issue of fact as to the EEOC's claim for violation of the Equal Pay Act entitling it to judgment as a matter of law").

[58] *EEOC v. Enoch Pratt Free Library,* No. 8:17-cv-2860, 2020 WL 7640845 (D. Md. Dec. 23, 2020).

[59] *Id.* at *8.

[60] *Id.* at *9.

[61] *Id.* (emphasis in original).

[62] *EEOC v. Hunter-Tannersville Cent. Sch. Dist.,* No. 1:21-cv-0352, 2021 WL 5711995 (N.D.N.Y. Dec. 2, 2021).

[63] *Id.* at *3

[64] *Id.* at *2.

[65] *EEOC v. George Washington Univ.,* 342 F.R.D. 161 (D.D.C. 2022).

[66] *Id.* at 166.

[67] *Id.*

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The EEOC demanded all documents relating to that investigation. But the employer withheld all documents, except the grievance itself, under the auspices of attorney-client privilege and the work product doctrine, arguing that the investigation was done at the behest of the University's Office of General Counsel and, later, the law firm that conducted the investigation. Some of those documents were created by someone in the EEO office who, while an attorney, was not acting as counsel for the employer. The court held that those materials were privileged because that person had contacted the employer's Office of General Counsel within days of receiving the grievance, after determining that litigation was likely, and had received guidance from the employer's in-house lawyers respecting the conduct of the investigation.[68]

The EEOC also argued that the employer's assertion of a good faith defense to the EEOC's claim for punitive damages worked as a waiver of the privilege over those documents. According to the EEOC, the assertion of that defense puts an employer's state of mind at issue, and in particular, its intent and knowledge of the law. The court held that "a party that has interposed a good faith defense but disclaimed reliance on privileged or protected materials – such as those created in connection with an internal investigation – does not waive protection over those materials."[69] Because the evidence of the employer's good faith was unconnected to its internal investigation, the court held that the privilege had not been waived: "the [employer's good faith] defense relies on evidence that the hiring and compensation decisions at issue here were made in a good faith effort to comply with the law. Importantly, all those decisions predate the internal investigation because 'the [employer] already had hired [comparator] as Special Assistant and already had determined his and [charging party's] pay at the time that the Internal Investigation began.'"

As noted above, the EEOC's enforcement of equal pay issues has dwindled in recent years. However, employers should be mindful of EEOC-driven litigation in this area and, where appropriate, conduct a privileged audit of their pay practices to prevent potential liability.

C. Preventing Discrimination In Recruiting and Hiring

Over the past decade, the EEOC has spent a considerable amount of its enforcement budget litigating issues that it sees as barriers to recruitment and hiring. Much of its enforcement activity has historically focused on combating hiring practices that could result in age discrimination. But recent years have evidenced a broadening of that focus to claims ranging from sex discrimination, race discrimination, and disability discrimination. In particular, the EEOC has scrutinized how pre-employment screening tests and the use of technology in carrying out the screening process can result in discrimination against certain groups of individuals.

In 2025, employers should expect the EEOC to continue its strategic efforts to develop and file litigation alleging discrimination in recruitment and hiring. This broad SEP category has now been in place since FY 2017, with the most recent updates reflecting the EEOC's ongoing bipartisan warnings to employers and human resources technology vendors about the potential discriminatory impacts of AI in hiring. While the issues created by AI continue to hold the spotlight, we believe that the EEOC's strategic emphasis and litigation efforts in 2025 will be broader and touch on multiple aspects of hiring and recruiting.

1. Artificial Intelligence and Technology in Recruiting and Hiring

Use of artificial intelligence has entered the mainstream, and the application of these tools in the workplace has become increasingly common. Employers now routinely use artificial intelligence to streamline hiring and recruiting.

Prior versions of the SEP announced the EEOC's focus on recruitment and hiring practices and policies that might give rise to discrimination against members of racial, ethnic, and religious groups, as well as women, older workers, and those with disabilities. In the current SEP, the EEOC added far more detail about the types of hiring practices and policies that it intends to scrutinize, and specifically noted that

[68] *Id.* at 179.

[69] d. at 187.

it is interested in employers' use of artificial intelligence and automated systems in that regard. The Commission has emphasized its intent to investigate whether protected groups might be harmed – whether intentionally or not – by automated systems used to target job advertisements to particular populations, recruit workers, or aid in hiring decisions.

Specifically, in the SEP, the EEOC has committed to focusing on the use of technology, AI, and machine learning used in job advertisements, recruiting, and hiring decisions. The SEP emphasizes an employer's use of all technology (not just "automated systems") in hiring and recruitment as an area strategic focus. The EEOC has, historically, focused on recruiting and hiring in part because private plaintiffs' counsel have been unwilling to champion large scale hiring cases due to cost and challenges identifying potential "victims." The proliferation in recent years of electronic tools available to assist employers to find talent in challenging labor markets may provide fertile ground for the EEOC on this issue.

Since the SEP was published, EEOC leaders have participated in executive branch AI initiatives,[70] and all EEOC personnel were requested by EEOC Chair Charlotte Burrows to attend an AI training about how front-line staff could "identify AI-related issues in [their] enforcement work".[71] An October 30, 2023 Executive Order set in motion action from multiple Departments and independent agencies intended to both harness the benefits of AI and maintain American leadership in innovation, while addressing risks associated with the use of AI.[72] The Executive Order made clear that agencies charged with enforcing civil rights laws should make "comprehensive use of their respective authorities" to address potential civil-rights harms arising from the use of AI, including "issues related to AI and algorithmic discrimination".

On June 3, 2024, the EEOC announced the appointment of Sivaram Ghorakavi as Deputy Chief Information Officer and Chief Artificial Intelligence Officer.[73] Ghorakavi's appointment was made in accordance with the President's Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence, which requires all federal agencies to establish an officer for the use of artificial intelligence. Ghorakavi is charged with coordinating intra-departmental and cross-agency efforts on AI and adjacent issues, in line with the EEOC's efforts to prevent and remedy employment discrimination through the use of technology a priority in its AI and Algorithmic Fairness initiative and strategic enforcement plan.

To date, the EEOC has not initiated litigation of its own to challenge an employer's use of artificial intelligence in the workplace. However, the EEOC did step into the fray by filing an amicus brief in support of claims by a private plaintiff in *Mobley v. Workday*.[74] In *Mobley*, the plaintiff alleges that Workday engaged in a pattern or practice of discriminatory job screening that disproportionately disqualifies African-Americans, individuals over 40, and individuals with disabilities from securing employment in violation of Title VII, Section 1981, the ADEA, the ADA, and California state law. Specifically, plaintiff alleges that Workday's AI and algorithms are more likely to deny job applicants who are African-American, over 40, and have a disability, and plaintiff asserted that Workday acted as an employment agency, or, in the alternative, as an indirect employer or agent of the employer. Mobley seeks class certification.

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[70] https://www.whitehouse.gov/ostp/ai-bill-of-rights/

[71] https://news.bloomberglaw.com/daily-labor-report/eeoc-to-train-staff-on-ai-based-bias-as-enforcement-efforts-grow

[72] https://www.seyfarth.com/news-insights/president-biden-signs-executive-order-setting-forth-broad-directives-for-artificial-intelligence-regulation-and-enforcement.html

[73] *See* U.S. Equal Employment Opportunity Commission, *EEOC Appoints Sivaram Ghorakavi as Deputy Chief Information Officer and Chief Artificial Intelligence Officer* (Jun. 3, 2024), https://www.eeoc.gov/newsroom/eeoc-appoints-sivaram-ghorakavi-deputy-chief-information-officer-and-chief-artificial

[74] *See* Rachel See, Annette Tyman, and Samantha Brooks, *EEOC Argues Vendors Using Artificial Intelligence Tools Are Subject to Title VII, the ADA and ADEA Under Novel Theories in Workday Litigation,* Workplace Class Action Blog (Apr. 29, 2024), https://www.seyfarth.com/news-insights/legal-update-eeoc-argues-vendors-using-artificial-intelligence-tools-are-subject-to-title-vii-the-ada-and-adea-under-novel-theories-in-workday-litigation.html.

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The district court granted Workday's motion to dismiss Mobley's original complaint but granted the plaintiff leave to amend his complaint. Workday again moved to dismiss. On this second round of briefing, the EEOC submitted an amicus brief taking a novel position in support of Mobley's class-action theory that an AI vendor could be directly liable under Title VII, the ADA, or the ADEA for employment discrimination caused by the use of the vendor's AI. Among other things, the EEOC argued that by actively making automated decisions to reject or advance candidates before referring them to employers, Workday functions as an employment agency under the law. In its amicus submission, the EEOC drew an analogy to IRS rules stating that tax preparation software can be considered a tax preparer if the software does more than just provide "mere mechanical assistance." So too with algorithmic tools that go beyond that threshold in the employment context, according to the EEOC.

The district court subsequently issued a split decision that allowed the plaintiff's agency theory to proceed, as supported by the EEOC in its amicus brief.[75] The Court's opinion emphasized the importance of the "agency" theory in addressing potential enforcement gaps in our anti-discrimination laws. In this regard, the Court illustrated the potential gaps with a hypothetical scenario: a software vendor intentionally creates a tool that automatically screens out applicants from historically black colleges and universities, unbeknownst to the employers using the software. Without the agency theory, the Court opined, no party could be held liable for this intentional discrimination. By construing federal anti-discrimination laws broadly and adapting traditional legal concepts to the evolving relationship between AI service providers and employers, the Court's decision was based, in part, on the desire to avoid potential loopholes in liability.

By allowing the plaintiff's agency theory to proceed, as supported by the EEOC in its amicus brief, the ruling opens the door for a significant expansion of liability for AI vendors in the hiring process, with potential far-reaching implications for both AI service providers and for employers using those tools.

Employers, HR vendors and service providers, and AI developers should take note because even though the allegations in the amended complaint may not reflect the reality of how most employers are using AI in hiring, the EEOC's position is likely to embolden plaintiffs to pursue similar claims.

Against this backdrop, employers should be mindful that any charge of discrimination filed with the EEOC that mentions the use of artificial intelligence – or any other technology in hiring – will not only qualify for priority handling, but is also likely to receive additional scrutiny from EEOC management. Likewise, the SEP is used to inform the EEOC's selection of litigation, so it would not be surprising to see EEOC litigators mining for AI cases to develop and bring.

2. Other Technology in Hiring and the Path Ahead on AI

Importantly, the EEOC signaled that it is focusing on *all* uses of technology in recruitment and hiring, not just artificial intelligence. In August 2023, the EEOC entered into a settlement agreement with iTutorGroup, which many media reports and commenters characterized as the EEOC's "first ever" case involving artificial intelligence discrimination in hiring.

However, according to the EEOC's complaint, the underlying hiring technology simply asked job applicants for their date of birth and was configured to automatically reject female applicants age 55 or older and male applicants age 60 or older. To be clear, automatically rejecting older job applicants, when their birthdates are already known, does not require any sort of artificial intelligence or machine learning.[76]

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[75] *See* Rachel See and Annette Tyman, *Mobley v. Workday: Court Holds AI Service Providers Could Be Directly Liable for Employment Discrimination Under "Agent" Theory,* Workplace Class Action Blog (Jul. 19, 2024), https://www.seyfarth.com/news-insights/mobley-v-workday-court-holds-ai-service-providers-could-be-directly-liable-for-employment-discrimination-under-agent-theory.html.

[76] https://www.seyfarth.com/news-insights/eeocs-settlement-challenging-simple-algorithm-provides-warning-for-employers-using-artificial-intelligence.html

That said, it is entirely fair to say that the EEOC's iTutorGroup complaint and settlement, as well as the way the commission has characterized the lawsuit and settlement, squarely falls within the broader scope of the EEOC's greater scrutiny of all sorts of technology in hiring, even technology that does not involve artificial intelligence. The EEOC's commitment to enforcement in the area of AI and other technology in hiring serves as a strong reminder that employers should be prepared to defend their use of technology in hiring, whether or not it might fall into any particular legal definition of "artificial intelligence."

In response to EEOC charges alleging that the use of AI or other technology is discriminatory, employers should be prepared to explain to EEOC investigators what AI or other technology they have been using in hiring or sourcing processes, and produce evidence that their processes are free of unlawful disparate impact against protected groups. Also, if employers have not already had conversations with their AI vendors or in-house developers about the likelihood of scrutiny of these processes in enforcement actions or litigation, in certain circumstance it could be an opportune time to take a deeper look at how technology is being used in their own organization.

3. Job Advertisements

The EEOC's SEP accentuates the risks associated with unlawfully targeted job advertisements, or advertisements that otherwise deter people from specific protected groups from applying. The EEOC's emphasis here includes job advertisements posted in traditional media that might contain discriminatory language, as well as issues involving algorithmic targeting of job advertisements.

4. Job Segregation or Steering Based on Protected Characteristics

Job segregation and steering issues have been included in the SEP since 2017. Charges and litigation in this category could involve practices that do not necessarily focus on technology , such as steering women away from certain positions, channeling workers onto certain shifts, or assigning workers to certain positions based on a protected class. However, as with other hiring categories in the SEP, there is also a technology angle, with the EEOC expressing potential heightened interest in charges involving technology that applies – with or without AI – allegedly discriminatory steering or segregation, such as by suggesting jobs for which an applicant or employee is well-matched.

In September 2024, the EEOC sued a regional restaurant chain, alleging that it had a policy or practice of intentionally failing to hire male applicants for front-of-house positions because of their sex.[77] According to the EEOC's complaint, the policy or practice impacted hiring and resulted in segregation by sex in 19 restaurant locations.

The EEOC also resolved several complaints involving allegations of segregation. In April 2024, the EEOC announced that it had settled complaint that drivers were assigned different routes, given heavier dock work, and segregated based on race.[78] In August 2024, the EEOC announced that it had settled a complaint that included allegations the employer had segregated jobs based on sex.[79] In September 2024, the EEOC announced that it had reached a settlement to end litigation alleging that an employer had used multiple secret phrases and techniques when requesting temporary employees from a staffing agency, including requesting Spanish-speaking employees to fill roles that did not require such language skills, and segregated employees by race and generally provided Hispanic workers better pay, working conditions, and financial opportunities than Black workers.[80]

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[77] *See* U.S. Equal Employment Opportunity Commission, *Kickback Jack's Sued by EEOC for Failing to Hire Males for Front-of-House Positions* (Sept. 25, 2024), https://www.eeoc.gov/newsroom/kickback-jacks-sued-eeoc-failing-hire-males-front-house-positions.

[78] *See* U.S. Equal Employment Opportunity Commission, *DHL to Pay $8.7 Million in EEOC Race Discrimination Lawsuit* (Apr. 25, 2024), https://www.eeoc.gov/newsroom/dhl-pay-87-million-eeoc-race-discrimination-lawsuit.

[79] *See* U.S. Equal Employment Opportunity Commission, *Radiant Services to Pay $1.1 Million in EEOC Hiring Discrimination Lawsuit* (Aug. 7, 2024), https://www.eeoc.gov/newsroom/radiant-services-pay-11-million-eeoc-hiring-discrimination-lawsuit.

[80] *See* U.S. Equal Employment Opportunity Commission, *Aaron Thomas Company to Pay $450,000 to Settle EEOC Race Discrimination Lawsuit* (Sept. 27, 2024), https://www.eeoc.gov/newsroom/aaron-thomas-company-pay-450000-settle-eeoc-race-discrimination-lawsuit.

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5. Focus Area: Underrepresentation in Particular Industries

The final paragraph in the new SEP's section on hiring maintains the 2017-2021 SEP's emphasis on issues relating to the continued underrepresentation of women and workers of color in certain sectors:

The continued underrepresentation of women and workers of color in certain industries and sectors (for example, construction and manufacturing, high tech, STEM, and finance, among others), are also areas of particular concern, especially in industries that benefit from substantial federal investment. The EEOC has alerted the construction industry that it is focused on who is receiving on-the-job training, pre-apprenticeship or apprenticeship programs, temp-to-hire positions, internships, or other job training or advancement opportunities. Relatedly, the EEOC is focused on whether employees performing temporary work are permitted to seek permanent positions as they are made available. In each of these instances, over- or underrepresentation of protected groups may prompt the EEOC to turn its investigative powers to try to identify the reasons why.[81]

On June 18, 2024, the EEOC issued its *Promising Practices for Preventing Harassment in the Construction Industry*.[82] This guidance provides key recommendations that construction-industry leaders and employers should consider implementing to prevent and address harassment in the workplace, and avoid being the target of the EEOC's enforcement efforts. The guidance emphasizes several core principles to prevent and address harassment in the construction industry, including a committed and engaged leadership, consistent and demonstrated accountability, strong and comprehensive anti-harassment policies, trusted and accessible complaint procedures, and regular, interactive training tailored to the appropriate audience. In support of these principles, the guidance makes several overarching recommendations to help construction-industry employers remain in compliance with federal laws, and off the EEOC's enforcement radar.

Technology companies – broadly defined – also remain on the EEOC's radar. On September 11, 2024, the EEOC issued a report entitled *High Tech, Low Inclusion: Diversity in the High Tech Workforce and Sector 2014-2022*, which analyzes "demographic disparities for workers in 56 science, technology, engineering, and mathematics (STEM) occupations and the industries employing them."[83] The report lists numerous findings that show, according to the EEOC, that the underrepresentation of Black, Hispanic, female, and older workers in the high-tech industry is due to "discriminatory barriers," which the EEOC intends to address by proactively investigating charges of discrimination and pursuing litigation. The EEOC also plans to provide technical assistance and engage in extensive education and outreach efforts aimed at getting employers to comply with laws enforced by the EEOC. We should expect the EEOC to continue efforts toward analyzing the diversity of these sector-specific workforces, and developing enforcement and litigation targets addressing any perceived gaps.

D. Preventing Harassment In The Workplace

The prevention of systemic workplace harassment has been one of the EEOC's national enforcement priorities since 2013. In April 2024, the EEOC published its Enforcement Guidance on Harassment ("Enforcement Guidance").[84] The Enforcement Guidance was meant to replace several earlier EEOC guidance documents, aiming to define what constitutes harassment, examine when a basis for employer liability exists, and offer suggestions for preventative practices.[85] According to the Enforcement Guidance, the EEOC will find harassing conduct to be unlawful if the conduct is based on an individual's race, color, national origin, religion, age,

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[81] *See* Meghan A. Douris and Andrew Scroggins, *The EEOC Targets Construction Industry For Heightened Enforcement,* The Construction Seyt (Feb. 24, 2024), https://www.seyfarth.com/news-insights/the-eeoc-targets-construction-industry-for-heightened-enforcement.html.

[82] *See* Christopher Kelleher and Andrew Scroggins, *EEOC Issues Anti-Harassment Guidance to Construction-Industry Employers,* The Construction Seyt (June 24, 2024), https://www.constructionseyt.com/2024/06/eeoc-issues-anti-harassment-guidance-to-construction-industry-employers/.

[83] Christopher Kelleher, Andrew Scroggins and Christopher DeGroff, *EEOC Puts High Tech Employers on High Alert Regarding Discrimination* (Sept. 11, 2024), https://www.workplaceclassaction.com/2024/09/eeoc-puts-high-tech-employers-on-high-alert-regarding-discrimination/.

[84] Office of Legal Counsel, U.S. Equal Employment Opportunity Commission, *Enforcement Guidance on Harassment in the Workplace,* (Apr. 29, 2024), https://www.eeoc.gov/laws/guidance/enforcement-guidance-harassment-workplace#_ftn215

[85] *See* id.

disability, or an individual or family member's genetic test or family medical history.[86] Further, the Enforcement Guidance specifically sets forth the EEOC's position that as a protected basis "sex" includes, but is not limited to, pregnancy, childbirth, or related medical conditions.[87] Moreover, the EEOC announced that it will even entertain harassment claims based on (1) "perceived" membership in a protected class (even if the perception is incorrect),[88] (2) for "associational harassment," where an employee who is a member of a protected class claims harassment based on his/her association with individuals who do not share their protected characteristics;[89] (3) where the alleged harassment was not directed at the employee;[90] and (4) in instances where the alleged harassment occurred outside of the workplace.[91]

The Enforcement Guidance is the EEOC's first published guidance document in over two decades. While parts of the 2024 guidance are largely noncontroversial (for example, it is widely understood that epithets based on a protected class can serve as the basis for a harassment claim), the Enforcement Guidance treads some new ground. Some of the key new additions include:

- **Pregnancy, Childbirth, or Related Medical Conditions:** Sex based harassment based on pregnancy, childbirth, or related medical conditions "can include issues such as lactation; using or not using contraception; or deciding to have, or not to have, an abortion, if that harassment is linked to a targeted individual's sex."[92] Examples provided include:

  - (1) Scrutinizing a pregnant woman's bathroom usage; (2) Interfering with and making inappropriate comments about a woman's use of a lactation room; and (3) Complaints about pregnant women always getting "special perks."[93]

- **Sexual Orientation and Gender Identity:** Discrimination based on sexual orientation or gender identity includes physical assault, "outing," or other harassing conduct toward individuals because they "do not present in a manner that would stereotypically be associated with that person's sex."[94]

  - Harassing behavior under this covered basis includes the repeated and intentional use of a name or pronoun inconsistent with the individual's known gender identity (misgendering), or the denial of access to a bathroom or other sex-segregated facility consistent with the individual's gender identity.[95]

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[86] *Id.* At 9-21.

[87] *Id;* see *Walsh v. Nat'l Computer Sys., Inc.,* 332 F.3d 1150, 1160 (8th Cir. 2003)(upholding jury verdict finding the plaintiff was subjected to a hostile work environment based on pregnancy where the plaintiff's supervisor made numerous derogatory comments about her pregnancy and required the plaintiff to provide advance notice and documentation of doctor's appointments, even though the plaintiff's coworkers were not required to provide such information for appointments); 42 U.S.C. § 2000e(k) ("The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions . . . ."); *Bostock v. Clayton Cnty.,* 140 S. Ct. 1731, 1747 (2020); *Sch. Of the Ozarks, Inc. v. Biden,* 41 F.4th 992, 995 (8th Cir. 2022)("Bostock held that the statute's prohibition on employment discrimination 'because of sex' encompasses discrimination on the basis of sexual orientation and gender identity.")

[88] *See*, *e.g., Jones v. UPS Ground Freight,* 683 F.3d 1283, 1299 (11th Cir. 2012)('[A] harasser's use of epithets associated with a different ethnic or racial minority than the plaintiff will not necessarily shield an employer from liability for a hostile work environment."); *EEOC v. WC&M Enters., Inc.,* 496 F.3d 393, 401-02 (5th Cir. 2007) (concluding that the EEOC presented sufficient evidence to support its national origin harassment claim where coworkers repeatedly referred to an employee of Indian descent as "Taliban" or "Arab" and stated that "[t]his is America . . . not the Islamic country where you came from," even though the harassing comments did not accurately describe the employee's actual country of origin.)

[89] *See e.g., Frith v. Whole Foods Mkt., Inc.,* 38 F.4th 263 (1st Cir. 2022)(concluding that claims alleging discrimination based on interracial association "are fundamentally consistent with *Bostock [v. Clayton County,* 140 S. Ct. 1731 (2020)] and Title VII's plain language prohibiting action 'because of such individual []' plaintiff's race"). *Barrett v. Whirlpool Corp.,* 556 F.3d 502, 512 (6th Cir. 2009) (holding that white employees could allege claim of racial harassment based on their friendship with and advocacy on behalf of African American coworkers).

[90] *See e.g., Ellis v. Houston,* 742 F.3d 307, 320-21 (8th Cir. 2014) (concluding that the District Court erred in evaluating plaintiffs' section 1981 and section 1983 claims of racial harassment by examining in isolation harassment personally experienced by each plaintiff, rather than also considering conduct directed at others, where every plaintiff did not hear every remark, but each plaintiff became aware of all of the conduct).

[91] U.S. Equal Employment Opportunity Commission, *Enforcement Guidance on Unlawful Harassment in the Workplace, see* supra note 1, at 57.

[92] U.S. Equal Employment Opportunity Commission, *Enforcement Guidance on Unlawful Harassment in the Workplace, see* supra note 1, at 15.

[93] *Id.* at 16.

[94] *Id.* at 17.

[95] *Id.*

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- **Harassment in Virtual Work Environments:** As with conduct within a physical work environment, conduct within a virtual work environment can contribute to a hostile work environment. This can include, for instance:

  - Sexist comments made during a video meeting; (2) Racist imagery that is visible in an employee's workspace while the employee participates in a video meeting; and (3) Sexual comments made during a video meeting about a bed being near an employee in the video image.[96]

- **Scope of Hostile Work Environment Claims:** Conduct that can affect the terms and conditions of employment, even though it ***does not occur*** in a work related context, includes electronic communications using private phones, computers, or social media accounts, if *it impacts the workplace*.[97]

  - Given the proliferation of digital technology, it is increasingly likely that the non-consensual distribution of real or computer generated intimate images using social media can contribute to a hostile work environment, if it impacts the workplace.[98]

The EEOC provides employers with what it views as a practical toolkit to prevent and correct harassment in the workplace using effective anti-harassment policies and training programs. In regards to employer anti-harassment policies, the Enforcement Guidance encourages employers to: (1) clearly identify accessible points of contact to whom reports of harassment should be made and include contact information, and (2) explain the employer's complaint process, including the process's anti-retaliation and confidentiality protections.[99] The Guidance also lays out several features that anti-harassment trainings should include to maximize their effectiveness:

- It explains the employer's anti-harassment policy and complaint process, including any ADR process, and confidentiality and anti-retaliation protections;

- It describes and provides examples of prohibited conduct that, if left unchecked, might rise to the level of prohibited harassment;

- It provides information about employees' rights if they experience, observe, become aware of, or report conduct that they believe may be prohibited;

- It provides supervisors and managers information about how to prevent, identify, stop, report, and correct harassment, such as actions that can be taken to minimize the risk of harassment, and clear instructions for addressing and reporting harassment that they observe, that is reported to them, or that they otherwise become aware of.[100]

Under the Enforcement Guidance, employers will face the challenge of balancing conflicting guidance. The EEOC's requirement that employers act on out-of-work conduct that creates a hostile work environment is in apparent conflict with the National Labor Relations Board ("NLRB") August 2023 decision requiring that employers take care not to place impermissible restrictions on employee speech, including out-of-work speech on social media.[101] Employers must also juggle the EEOC's mandate that they "must take corrective action that is 'reasonably calculated to prevent further harassment'" (emphasis added) with the NLRB's May 2023 decision prohibiting employers from disciplining employees for certain harassing conduct that

[96] U.S. Equal Employment Opportunity Commission, Enforcement Guidance on Harassment in the Workplace, at 53.

[97] *Id.* at 54.

[98] *Id.* at 55.

[99] *Id.* at 66.

[100] U.S. Equal Employment Opportunity Commission, *Enforcement Guidance on Harassment in the Workplace,* at 67.

[101] *Stericycle, Inc., and Teamsters Local 628,* 372 NLRB No. 113 (2023) (holding that a facially neutral work rule is presumptively unlawful if a "reasonable" employee predisposed to engaging in protected concerted activity could interpret the rule to have a coercive meaning.").

occurs while an employee is engaged in protected conduct.[102] While the NLRB acknowledges the concern that conflicts could arise between its holding and antidiscrimination laws, it says only that it will cross that bridge if it comes. The EEOC's draft enforcement guidance is silent on the topic.

E. EEOC's Emphasis on Combatting Systemic Discrimination

Systemic discrimination refers to biases that are "built into systems, originating in the way work is organized" and "refers to structures that shape the work environment or employment prospects differently for different types or workers."[103] The EEOC defines systemic cases as "pattern or practice, policy and/or class cases where the discrimination has a broad impact on an industry, profession, company or geographic location."[104]

In the EEOC's FY 2024 Agency Financial Report, Chair Burrows emphasized the EEOC's commitment and focus on combatting systemic discrimination. Since 2006, the EEOC has made "the identification, investigation, and litigation of systemic discrimination cases (i.e. pattern or practice, policy, and/or class cases where the alleged discrimination has a broad impact on an industry, profession, company, or geographic area) a top priority."[105] In FY 2024, the EEOC filed 17 systemic lawsuits, a number that lagged behind the prior year but did surpass the number of such filings in 2020, 2021, and 2022.

Below are some examples of the systemic discrimination lawsuits filed by the EEOC in FY 2024:

- ***EEOC v. Genesh, Inc.*, Case No. 2:24-cv-02445 (D. Kan. 2024):** In a Title VII action, the EEOC alleges Burger King supervisors engaged in systemic sexual harassment of and retaliation against female employees (including minors) at restaurants in Lawrence, Kansas and Derby, Kansas.
- ***EEOC v. Houston Independent School District*, Case No. 4:24-cv-00125 (S.D. Tex. 2024):** The EEOC sued the School District alleging it paid a group of female employee less than their male counterparts. The EEOC alleges that the pay disparity has existed since at least February 2019.
- ***EEOC v. Allen Theatres Inc.*, Case No. 1:24-cv-965 (D. N.M. 2024):** In an action brought under the ADEA, the EEOC alleges a movie theater chain unlawfully enforced a discriminatory compensation policy that resulted in employees aged 65 or older receiving less in compensation than their younger counterparts.
- ***EEOC v. Sheetz, Inc., CLI Transport, LP, Sheetz Distribution Services LLC.* Case No. 1:24-cv-01123-JKB (D. Md. 2024):** According to the EEOC, a large convenience store chain maintained a practice of screening job applicants for records of criminal conviction, which resulted in a disproportionate screening out of Black, Native America/Alaska Native and multiracial applicants.

Employers should expect that the Commission will continue to make good on its promise to litigate large-scale, high-impact, and high-profile investigations and cases that address the issues identified as its enforcement priorities and areas of focus.

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[102] *Lion Elastomers LLC II,* 372 NLRB No. 83 (2023) (holding that employers must evaluate employee misconduct, including harassing conduct, against "setting-specific standards" to determine whether the misconduct is afforded impunity because the employee was engaged in conduct otherwise protected by the National Labor Relations Act.).

[103] U.S. Equal Employment Opportunity Commission, *Systemic Enforcement at the EEOC,* https://www.eeoc.gov/systemic-enforcement-eeoc

[104] *Id.*

[105] U.S. Equal Employment Opportunity Commission, *EEOC Strategic Plan 2022-2026,* https://www.eeoc.gov/eeoc-strategic-plan-2022-2026

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PART III: District Office Profiles

While the EEOC is a national enforcement body, the Commission's 15 District Offices often take different approaches to their respective litigation and settlement activity. To that end, Part III provides an overview of key developments from each District Office in FY 2024. Each summary begins with a District Profile, which outlines key players and litigation statistics. These statistics include: 1) the number of lawsuits filed in FY 2024, followed by the district's rank among other offices; 2) the average time period between the issuance of a determination letter and the subsequent failure to conciliate notice; 3) the average time period between the failure to conciliate notice and the EEOC's complaint; and 4) the average time period between the issuance of a determination letter and the EEOC's complaint. Finally, the District breakdowns also contain summaries of notable lawsuits and settlements attributable to each office in FY 2024.

EEOC Atlanta District Office

DISTRICT PROFILE

Director: **Darrell Graham**

Regional Attorney: **Marcus G. Keegan**

Merit Cases Filed in FY 2024: **11**

Average Days Between Determination Letter & Failure to Conciliate: **87**

Average Days Between Failure to Conciliate & Complaint: **165**

Average Days Between Determination Letter & Complaint: **252**



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KEY CASES FILED IN FY 2024

***EEOC vs. Sureste Prop. Grp., LLC, et al.,* 1:24-mi-99999 (N.D. Ga.)** As described by the EEOC, the defendant property group allegedly terminated an African American employee because of his race. The EEOC alleges that the aggrieved employee was the only African American individual ever employed as a project development manager for the real estate company. He performed well in his role, despite being assigned more work than his white counterparts. However, less than a year into his tenure, the company terminated his employment claiming first that he was "lazy" and did not fit into the company's "culture," it later claimed that the role was eliminated. Despite claims that the project development manager role had been eliminated, a significantly less-qualified white employee was promoted to the position less than a month later.

***EEOC v. Mia Aesthetics Clinic ATL LLC, Mia Aesthetics Services, LLC,* 1:24-cv-3407 (N.D. Ga.)** According to the EEOC, a surgical sales coordinator diagnosed with breast cancer requested to work remotely for approximately three months while undergoing chemotherapy treatments. The employee provided medical documentation to support her request. Though in-person attendance was not an essential function of her sales coordinator position, the company refused to provide telework as an accommodation in violation of the Americans with Disabilities Act.

KEY SETTLEMENTS SECURED IN FY 2024

***EEOC v. Covenant Woods Senior Living, LLC and BrightSpace Senior Living, LLC,* Case No. 4:24-cv-00022 (M.D. Ga.)** In its suit, the EEOC claims that in February 2022, the company fired a long-tenured, 78 year old receptionist, despite recognizing the employee's contributions just a month prior. Her termination came shortly after the employee required a brief hospitalization. Upon her return to work, the general manager asked how long she intended to continue working, whether she needed to work, and whether she might prefer to travel and see family rather than work. Despite expressing her desire to continue working the general manager informed her that the company "lost confidence" in her work abilities due to her hospitalization. She was terminated the next day and replaced by substantially younger employees. Resolving the suit, the company agreed to provide $78,000 in relief to the victim, revise its ADEA and ADA policies, post a notice in the workplace informing employees of the settlement, and train all employees and supervisors on their rights and responsibilities. Moreover, the company agreed to provide the EEOC with periodic reports regarding future complaints of age or disability discrimination and a description of each employee's allegations and the company's response.

***EEOC v. RSPS Holdings LLC, SRS Milledgeville LLC d/b/a Shane's Rib Shack,* 5:24-cv-00049 (M.D. Ga.)** According to the EEOC's suit, a female employee—who was a college freshman at the time—was sexually harassed by a male manager from September to December 2021. During that time, on a daily basis, the manager made unwanted comments about the employee's physical appearance, his romantic feelings toward her, spread false sexual rumors about her, and cornered her in areas of the restaurant demanding a hug or attention before allowing her to pass. The employee reported the behavior to her supervisor multiple times, but no effective remedial action was taken and her employment was terminated shortly thereafter. The company agreed to pay $56,500 and provide other relief to settle the lawsuit.

EEOC Birmingham District Office

DISTRICT PROFILE

Director: **Bradley A. Anderson**

Regional Attorney: **Marsha Rucker**

Merit Cases Filed in FY 2024: **6**

Average Days Between Determination Letter & Failure to Conciliate: **19**

Average Days Between Failure to Conciliate & Complaint: **82**

Average Days Between Determination Letter & Complaint: **118**



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KEY CASES FILED IN FY 2024

***EEOC Equal v. Sanmina Corp.,* 5:24-cv-1317 (N.D. Ala.)** The EEOC brought suit on behalf of an employee with osteoarthritis and other conditions that made movements such as walking across the company's parking lot difficult and painful. During the pandemic, the employee worked from home without any negative impact on her performance. After the pandemic, the company began requiring all workers to return to working in person. The employee requested an accommodation of continuing to work from home. The company granted the employee's accommodation request until further notice however, several months later, it terminated the employee's employment due to her accommodation of working from home resulting from her disability status.

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KEY SETTLEMENTS SECURED IN FY 2024

***EEOC vs. TCI of Alabama LLC,* 4:23-cv-1200 (N.D. Ala.)** The EEOC filed suit alleging that the employer retaliated against a manager in violation of Title VII after a female job applicant filed a charge against the company. During the company's internal investigation into the charge, a manager explained that the company had a practice of not hiring female laborers dating back to its founding. Allegedly, the company's president pressured the manager to change his story, but the manager refused and was terminated. To resolve the suit, the company will pay $90,000 to the affected employee, implement and distribute an anti-retaliation policy to its employees and any staffing agencies, post a notice to employees concerning the settlement, and provide annual, mandatory training to owners, managers, and employees on Title VII's protections.

EEOC Charlotte District Office

DISTRICT PROFILE

Director: **Betsy Rader**

Regional Attorney: **Melinda Dugas**

Merit Cases Filed in FY 2024: **7**

Average Days Between Determination Letter & Failure to Conciliate: **114**

Average Days Between Failure to Conciliate & Complaint: **65**

Average Days Between Determination Letter & Complaint: **177**



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KEY CASES FILED IN FY 2024

***EEOC v. Champion Media LLC,* 7:24-cv-707 (E.D.N.C.)** According to the EEOC's lawsuit, a deaf applicant met the qualifications and applied for a job at the employer's printing facility. After participating in an initial conversation over the phone and with the assistance of a video relay service, the applicant was selected for an in-person interview. The applicant then requested that the company provide a sign language interpreter as an accommodation for the interview. In place of providing an interpreter, the company canceled the interview and did not hire the applicant for the job.

***EEOC v. Epiq Food Hall Woodbridge LLC, 4 Brothers Props. LLC,* 1:24-cv-1518 (E.D. Va.)** The EEOC filed suit, alleging that the owner of the restaurant subjected a Black general manager to numerous derogatory racial comments, such as telling him that he looked like he spoke "thug language," referring to him as the n-word, and making frequent disparaging remarks about African American individuals. Because of the persistent racist commentary and lack of a complaint procedure or a human resources department, the general manager was forced to resign.

KEY SETTLEMENTS SECURED IN FY 2024

***EEOC v. Suncakes, LLC d/b/a IHOP,* 3:23-cv-00274 (W.D.N.C.)** The EEOC filed suit on behalf of a former employee asserting claims for religious discrimination and failure to accommodate. Originally, the employee requested and was granted an accommodation of not working on Sundays in accordance with his religious beliefs. However, after a change in management, his new manager scheduled him to work on two Sundays. After working these days, the employee refused to work any further Sundays and the general manager precluded him from working his next shift and terminated him. The EEOC further

alleges that the manager expressed hostility toward religion in comments made to other employees. Per the parties' two-year consent decree, the company will pay $40,000 in monetary damages, provide annual training to managers on Title VII's requirements, notify employees about the settlement, and revise its current policies to expressly include protection for religious accommodations to resolve the suit.

***EEOC v. Cmty. Loans of Am. and Carolina Title Loans, Inc.,* 6:22-cv-1000 (D.S.C.)** According to the EEOC's complaint, from approximately August 2019 through September 2019, a branch manager at the defendants' Greenville, South Carolina location subjected an African American employee to a hostile work environment based on race. The manager made derogatory comments about African Americans and used racial slurs, including the N-word, in the employee's presence. The employee reported these comments to managers and to a company hotline, but no remedial action was taken. In addition, the defendants refused to allow the employee to return to work on crutches after a disability-related surgery, forcing her to remain on unpaid leave until they terminated her employment.

EEOC Chicago District Office

DISTRICT PROFILE

Director: **Amrith Kaur Aakre**

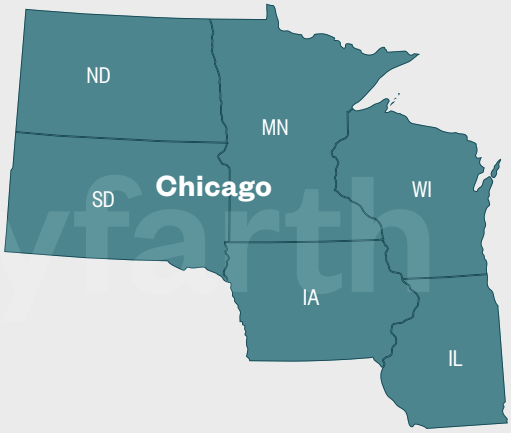
Regional Attorney: **Gregory M. Gochanour**

Merit Cases Filed in FY 2024: **7**

Average Days Between Determination Letter & Failure to Conciliate: **107**

Average Days Between Failure to Conciliate & Complaint: **131**

Average Days Between Determination Letter & Complaint: **238**



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KEY CASES FILED IN FY 2024

***EEOC vs. Sis-Bro, Inc.,* 3:24-cv-00968 (S.D. Ill.)** The EEOC claims that the employer allowed an employee to be harassed because of her sex and gender identity, forcing her to quit. According to its suit, the targeted employee was a high performer and began her transition in 2018. From that time, the company's co-owner made frequent derogatory comments about the employee's gender identity, refused to call her by her name, opting to use her former name instead. Further, the employer failed to stop aggressive sexual harassment by a fellow employee which began in October 2020, when a newly hired employee exposed his genitals to her, touched and attempted to touch her breasts on occasion, and made frequent unwanted comments and sexual advances toward her. The company did not have a policy for reporting harassment; though, at least one employee reported the harassment to the co-owner, but the co-owner did not take steps to address the harassment, which continued until the employee was forced to quit.

***EEOC v. Alto Ingredients Inc.,* 1:24-cv-1269 (C.D. Ill.)** The EEOC filed on behalf of an electrician who applied for a job with the employer and informed the company that he was disabled due to back injury sustained during service in the U.S. Navy. The electrician passed a pre-hire physical and was hired. His employment was successful, free of accidents, and he was praised for his technical ability and troubleshooting skills. Nevertheless, after coworkers said they were worried that he had difficulty climbing stairs and ladders, the company informed him it was firing him due to safety concerns. According to the lawsuit, the decision was made without any objective or medical evidence that his disability posed tangible safety risks.

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KEY SETTLEMENTS SECURED IN FY 2024

***EEOC v. Urbana Sch. Dist. No. 116 and Urbana Educ. Ass'n, IEA-NEA,* 18-cv-02212 (C.D. Ill.)** The Urbana School District agreed to pay $206,301 to settle an age discrimination lawsuit brought by the EEOC alleging that the district limited the salary increase of a group of teachers over the age of 45 because of their age based on a provision within its collective bargaining agreement limiting the salary increases of teachers who are within 10 years of retirement eligibility to no more than 6% above their previous year's salary. Based on the three-year consent decree, the district is also enjoined from limiting the ability of teachers to earn salary increases because of age, and entering into any agreement that limits a teacher's compensation based on age or proximity to retirement eligibility. Further, it must provide training for district personnel involved in collective bargaining, post a notice about the suit's resolution; and periodically report to the EEOC.

EEOC Dallas District Office

DISTRICT PROFILE

Director: **Travis Nicholson**

Regional Attorney: **Timothy Maughan**

Merit Cases Filed in FY 2024: **7**

Average Days Between Determination Letter & Failure to Conciliate: **62**

Average Days Between Failure to Conciliate & Complaint: **125**

Average Days Between Determination Letter & Complaint: **191**



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KEY CASES FILED IN FY 2024

***EEOC v. NICPA Cent. Auto Grp., LLC., Cent. Austin Motorcars,* 1:23-cv-01541 (W.D. Tex.)** According to the EEOC, three managers at a car dealership sexually harassed female employees. The managers regularly touched or attempted to touch female employees, made sexual comments about them, and critiqued their appearance, encouraging them female salespeople to "show more," to "sell more." The managers also developed a culture where discussing sexual encounters and watching sexual videos was commonplace. Several female employees who suffered harassment left their jobs as a result of the conduct and several employees, including a male manager, reported the harassers' behavior to both the auto group's director of human resources and chief operating officer. However, the complaint alleges that no appropriate investigation, corrective action, or remedial action resulted. Instead, the reporting employees were transferred to other dealerships managed and one was subsequently terminated.

***EEOC v. Castle Hills Master Ass'n Inc., et al.,* 4:24-cv-871 (E.D. Tex.)** In its complaint the EEOC alleges that a pregnant resident coordinator diagnosed with placenta previa—a condition that causes physical symptoms and limitations—was terminated after requiring hospitalization. Approximately a month before her due date, the employee was hospitalized due to complications related to her condition; when her doctor ordered she be on bed rest until she gave birth, the employee notified her supervisor of her hospitalization and need for leave. The property management companies told the employee it would not accommodate her because they do not provide leave outside of that covered under its short-term disability plan or the Family Medical Leave Act, in violation of the Americans with Disabilities Act.

KEY SETTLEMENTS SECURED IN FY 2024

***EEOC v. Nat'l Telecomm. Inst., Inc.*, 5:23-cv-01210 (W.D. Tex.)** The EEOC and a staffing support firm agreed to settle a disability discrimination suit. The EEOC claims that when the company learned that applicants used accessibility technologies such as screen readers to convert computer text to speech, it declined to pursue placement or referrals for blind and low-vision applicants. The company assumed that its clients would not be able to support the required accommodating technology at the time. The practice, according to the EEOC, amounted to unnecessary and exclusionary barriers to employment opportunities in contravention of the Americans with Disabilities Act. The company agreed to pay $1.25 million to settle the suit and must revise its policies regarding accommodations for those with disabilities and appoint an internal ADA coordinator to monitor compliance measures to prevent any future similar practices.

EEOC Houston District Office

DISTRICT PROFILE

Director: **Rayford O. Irvin**

Regional Attorney: **Rudy L. Sustaita**

Merit Cases Filed in FY 2024: **8**

Average Days Between Determination Letter & Failure to Conciliate: **78**

Average Days Between Failure to Conciliate & Complaint: **391**

Average Days Between Determination Letter & Complaint: **470**



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KEY CASES FILED IN FY 2024

***EEOC v. Houston Indep. Sch. Dist.*, 4:24-cv-00125 (S.D. Tex.)** According to the EEOC's lawsuit, since at least February 2019, the school district paid lower wages to a class of female senior program specialists than it paid to their male counterparts performing equal work in a job requiring substantially equal skill. The EEOC further claimed that the district implemented a stringent interpretation of its compensation manual for female senior program specialists that limited their ability to qualify for a higher starting salary based on their previous work experience. This resulted in male senior program specialists being compensated at higher rates than their female colleagues who sometimes had as much or more related experience.

***EEOC v. Minden Seafood LLC, Dorcheat Seafood LLC*, 2:24-cv-2360 (E.D. La.)** The EEOC alleges that the employer subjected a female employee to a sexually hostile work environment, discharged her because of her sex, and retaliated against her for engaging in protected activity in violation of Title VII. According to the lawsuit, the female employee, a cashier at the restaurant, was persistently subjected to unwelcome sexual advances by a coworker, including unwanted and inappropriate comments about her body, sexual propositions, and being followed into a bathroom where a coworker exposed himself to her. The employee complained to the owner, who permitted the coworker to continue working with her. Finding conditions intolerable, the employee resigned. When she asked to return to work, her request was denied as well.

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KEY SETTLEMENTS SECURED IN FY 2024

***EEOC v. Gracious, LLC d/b/a Gracious Bakery + Café,* 1:24-cv-418 (E.D. La.)** According to the EEOC's lawsuit, the employer violated federal law after firing an employee for missing two shifts in order to obtain medical treatment related to her pregnancy. Although she returned to work in a few days and satisfactorily performed her duties, she was fired because, according to her managers, her pregnancy complications posed a reliability issue. The EEOC filed suit, though the parties ultimately resolved the matter. Under a three-year consent decree, the employer must conduct annual training for its employees, pay monetary damages, revise its policies, provide regular reports to the EEOC on certain workers, and post a notice concerning its obligations under Title VII, the Americans with Disabilities Act, and the Pregnant Workers Fairness Act.

EEOC Indianapolis District Office

DISTRICT PROFILE

Director: **Michelle Eisele**

Regional Attorney: **Kenneth Bird**

Merit Cases Filed in FY 2024: **10**

Average Days Between Determination Letter & Failure to Conciliate: **51**

Average Days Between Failure to Conciliate & Complaint: **147**

Average Days Between Determination Letter & Complaint: **199**



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KEY CASES FILED IN FY 2024

***EEOC v. Ephraim McDowell Health, Inc.,* 5:24-cv-00084 (E.D. Ky.)** As described by the EEOC, the company violated federal law after denying a female employee a promotion because of her sex and retaliated against her after she filed a charge of discrimination. The EEOC further claims that the employee was told by the company's CEO that she would not be selected for an administrator position because of her sex due to the CEO's belief that men work better with men. Ultimately, a male employee who did not possess the educational requirements was promoted to the position. The female employee, who met all requirements for the position, was instead elevated to a lower-paying position reporting to the newly promoted male. The EEOC further charged that after the female employee filed a discrimination charge with the EEOC, the company retaliated against her and fired her.

***EEOC v. Pace Se. Mich.,* 2:24-cv-12424 (E.D. Mich.)** The EEOC charges that PACE maintained a policy which treated any employee unable to return to work following the expiration of FMLA leave as a "voluntary resignation" resulting in termination. One disabled employee with pseudotumor cerebri requested a brief extension of leave until her new specialty contact lenses arrived. She explained the lenses would arrive within 30 days of her FMLA leave expiration date, and possibly as soon as three days. Another employee with severe anxiety and bipolar disorder requested 30 more days of unpaid leave and provided medical documentation supporting her request. PACE did not consider either request and terminated both employees pursuant to the policy though it could have easily accommodated both. Moreover, it did not hire replacements for either until months later.

KEY SETTLEMENTS SECURED IN FY 2024

***EEOC v. Houchens Food Grp., d/b/a Hometown IGA,* 6:22-cv-00235 (E.D. Ky.)** Houchens, an owner and operator of retail grocery, convenience and hardware stores agreed to pay $40,000 in monetary damages and to other equitable relief to settle a lawsuit filed by the EEOC. According to the lawsuit, the company subjected a Spiritualist Rastafarian to discrimination when it refused to hire him for a position because he needed a religious accommodation to the company's personal appearance policy. The applicant's religious beliefs require that he wear his hair in dreadlocks, a style prohibited under the company's personal appearance policy. When the applicant expressed his inability to cut his hair due to his religious beliefs, the company did not consider possible accommodations and denied him employment outright. In addition to the monetary relief, the company must train, post notices, and revise its policies to prevent future violations of Title VII and report to the EEOC for three years to ensure compliance.

***EEOC v. Keystone RV Co.,* 3:22-cv-00831 (N.D. Ind.)** According to the EEOC's suit, the company failed to accommodate a former painter after he requested an accommodation under the company's attendance policy in relation to his need for disability-related leave. The EEOC also argued that the company failed to fulfill its obligations to engage in the interactive process with the painter when initially assessing the employee's request. To resolve the suit, the company agreed to pay $96,460 and will provide management trainings and revise its policies to prevent future violations of the Americans with Disabilities Act.

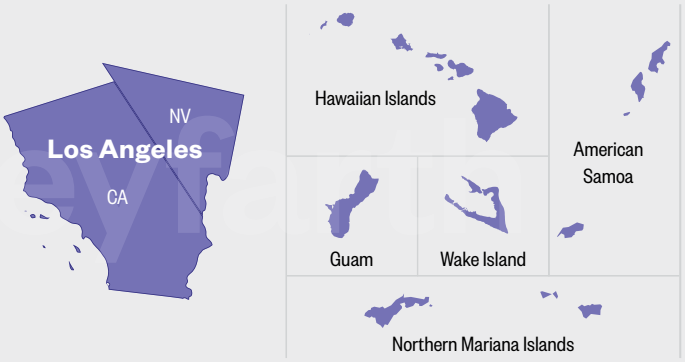
EEOC Los Angeles District Office

DISTRICT PROFILE

Director: **Christine Park-Gonzalez**

Regional Attorney: **Anna Y. Park**

Merit Cases Filed in FY 2024: **3**



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KEY CASES FILED IN FY 2024

***EEOC v. Techstyle, Inc. et al., Does 1-10, Inclusive,* 2:24-cv-07239 (C.D. Cal.)** As described by the EEOC, the company violated federal law after failing to file EEO-1 reports in prior reporting years, including 2019, 2020, 2021 and 2022, despite written notice from the EEOC. The Complaint was filed on August 26, 2024 and the parties entered into a Consent Decree on September 20, 2024. Pursuant to the Consent Decree, the company will file all past due reports, and for a five-year period will timely file all EEO-1 reports as required, obtain an EEO-1 Reporting Monitor and the EEOC is entitled to monitor for compliance with the Consent Decree.

***EEOC v. Good Health Manufacturing, Inc.* 2:24-cv-01679 (D. Ariz.)** The EEOC charged that the employer violated Title VII when it failed to address multiple instances of sexual harassment against its female employees by other workers and supervisors since at least 2018. The EEOC filed its Complaint on July 9, 2024, and the parties entered into a Consent Decree on August 1, 2024. The company is required to pay $20,000 in monetary damages, and agreed to substantial injunctive relief, including, removing negative references for personnel files and providing neutral references, reinstate eligible employees, appoint an

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Internal EEO Coordinator, conduct EEO compliance and complaint audits, revise relevant policies, provide training to employees, establish a complaint log and toll-free complaint hotline and compile reports on its activities under the Consent Decree.

KEY SETTLEMENTS SECURED IN FY 2024

Charge v. Scripps Clinical Medical Group. The company agreed to pay $6.875 million to settle and age and disability discrimination Charge filed against it. The charge alleged the company subjected a class of physicians to a mandatory retirement age, regardless of the individuals' abilities to do the job. The company entered into a four-year conciliation agreement with the EEOC. In addition to the monetary damages, the company has rescinded its mandatory retirement policy based on age and its Board of Directors will reaffirm this recission. The company will inform employees of the recission and clarify that the company does not have any policy in which age is a factor in making employment decisions, including termination, retirement, and terms and conditions of employment. The company will also review its policies and procedures against discrimination based on age and disability, and it will provide training on the ADEA and ADA to division heads, department heads, executive leadership, and members of human resources. The EEOC will monitor for ***compliance.***

EEOC v. Radiant Services Corp., BaronHR, LLC, et al, **Case No. 2:22-cv-06517 (C.D. Cal.)** A temporary staffing company, agreed to pay $2.2 million in monetary damages and other equitable relief to settle a lawsuit filed by the EEOC. According to the lawsuit, since at least 2015, the company failed to recruit and refer workers for low-skill positions based on their race (Black, Asian and white) and national origin (non-Hispanic), and illegally steered candidates to certain positions based on their sex. The lawsuit also said the company screened out individuals with disabilities and perceived disabilities by only hiring and referring supposedly physically fit candidates with no history of injury. In addition to monetary relief, which will be paid out through a claims process, the company entered into a consent decree, which requires the company to change its employment practices to prevent future discriminatory hiring nationally. This includes hiring a third-party monitor, significant training and robust reporting mechanisms to ensure applicants and employees can report discrimination and updating the company's anti-discrimination policies to prohibit discrimination in hiring.

EEOC Memphis District Office

DISTRICT PROFILE

Director: **Michelle Eisele**

Regional Attorney: **Kenneth Bird**

Merit Cases Filed in FY 2024: **4**

Average Days Between Determination Letter & Failure to Conciliate: **32**

Average Days Between Failure to Conciliate & Complaint: **247**

Average Days Between Determination Letter & Complaint: **279**



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KEY CASES FILED IN FY 2024

***EEOC v. Intrepid Gymnastics, LLC,* Case 3:24-cv-0310 (N.D. Miss.)** As described by the EEOC, the company subjected female employees, including teenage coaches, to severe and pervasive sexual harassment. The president and majority owner of Intrepid subjected a 19-year-old employee to unwelcome sexual harassment, continuing a pattern of unlawful conduct including making sexual advances to female employees and students who were 19 years old or younger, frequently offering money for sex, asking them to procure other female employees for group sex, and sending sexually explicit text messages, the EEOC alleged. The company failed to provide its young coaches and employees with a harassment policy defining conduct constituting sexual harassment, failed to give details on reporting harassment, and failed to identify the person responsible for receiving reports of harassment, according to the lawsuit.

***EEOC v. Shimmick Corporation,* Case No. 1:24-cv-00323 (E.D. Tenn.)** The EEOC charges that a former employee filed a complaint on behalf of a female employee, his fiancée, alleging sex-based discrimination by the employee's supervisors. The company investigated the complaint. During the investigation, the female employee responded to the company's questions and provided evidence of the sex-based discrimination, including identifying two male managerial employees as individuals who tolerated and enabled the discriminatory mistreatment she endured. Less than a month after the investigation, the two managerial employees reassigned the female employee to the nightshift in an attempt to force her to resign. The managers presented the employee with an ultimatum: either agree to work the nightshift or turn in the keys and leave. The managerial employees left the female employee with no choice but to surrender her keys and vacate the job site.

KEY SETTLEMENTS SECURED IN FY 2024

***EEOC v. Hospital Housekeeping Systems, LLC,* 2:21-cv-02134 (W.D. Ark.)** The company, a provider of housekeeping, food and facilities support to numerous industries, agreed to pay $520,000 in monetary damages and to other equitable relief to settle a lawsuit filed by the EEOC. According to the lawsuit, the company began requiring employees to take the Essential Functions Test (EFT) at hire, annually, and upon the return from a medical leave of absence, even when portions of the test were not job-related. In addition to the monetary relief, the company must provide a reasonable accommodation to individuals with disabilities during the administration of the EFT in the future, must not take adverse action against any employee who complains about the EFT, and must not terminate an employee solely based on a failed EFT. The company will conduct semiannual training regarding EFT testing and retaliation under the ADA for three years.

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***EEOC v. Aaron Thomas Co. et al.*, Case No. 2:23-cv-02599 (W.D. Tenn.)** According to the EEOC's suit, the company routinely failed to select or retain Black workers for placement at its Memphis, Tennessee locations. The company used multiple covert phrases and techniques when requesting temporary employees from a staffing agency, including requesting Spanish-speaking employees to fill roles that did not require such language skills. The company also segregated employees by race and generally provided Hispanic workers better pay, working conditions, and financial opportunities than Black workers, per the lawsuit. The company agreed to pay $450,000 in monetary damages and also entered into a two-year Consent Decree that requires the company to create and distribute an anti-discrimination policy, develop a recruitment plan designed to attract diverse applicants, and provide specialized anti-discrimination training to managerial employees. The company will also provide the EEOC with periodic reports of any future employee complaints of discrimination and the company's response to the complaint(s).

EEOC Miami District Office

DISTRICT PROFILE

Director: **Evangeline Hawthorne**

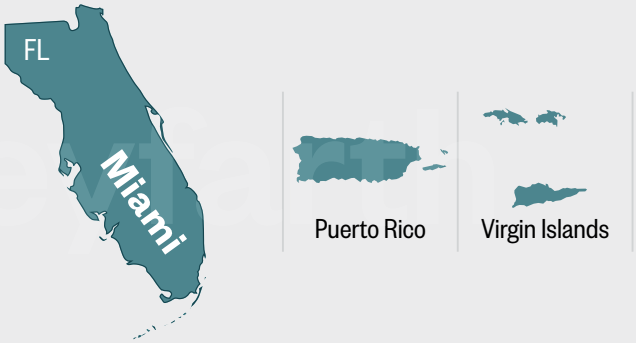
Regional Attorney: **Kristen M. Foslid**

Merit Cases Filed in FY 2024: **8**

Average Days Between Determination Letter & Failure to Conciliate: **67**

Average Days Between Failure to Conciliate & Complaint: **218**

Average Days Between Determination Letter & Complaint: **433**



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KEY CASES FILED IN FY 2024

***EEOC v. Yas Caribe, Inc. d/b/a Farmacia Carimas, Interamerican Unlimited Drug Inc. d/b/a Farmacia Carimas 2, Al-Teen, Corp. d/b/a Farmacia Carimas 3,* Case No. 3:24-cv-01449 (D.P.R.)** According to the EEOC's lawsuit, the company's manager subjected a female employee to a sexually hostile work environment when a nephew of the company's owner attacked the female employee before closing the store at night, and subjected her to unwanted sexual contact. The nephew forced the employee onto the floor, forcibly grabbed and kissed her, and rubbed his genitals against her. The employee did not know of any process for complaining about the harassment and was forced to resign.

***EEOC v. Advanced Auto Parts, Inc., Discount Auto Parts LLC,* Case No. 24-cv-81200 (S.D. Fla.)** The EEOC alleges that employees at the company refused to follow instructions from an assistant manager because she is gay and called her derogatory names targeting her sexual orientation. Black employees were also called the "n-word" by their coworkers, and a customer said he would pay a Black employee "the same thing [your] grandfather was paid for picking cotton." The company failed to take prompt corrective action to stop the harassment, the EEOC charged.

KEY SETTLEMENTS SECURED IN FY 2024

***EEOC v. J.A. Croson, LLC,* Case No. 5:22-cv-00435 (M.D. Fla.)** According to the EEOC's lawsuit, the company subjected a class of Black and Hispanic employees to a work environment with open use of racial slurs and derogatory language, display of the Confederate flag, and distribution of humiliating and degrading assignments based on race and national origin. The EEOC also asserted retaliation claims on behalf of two former Black employees who were fired as a result of their work environment complaints. Under a three-year consent decree, the company will pay $1.6 million in monetary damages and must designate an employee relations hotline for employees to submit harassment and retaliation complaints; assign an investigator to receive and address harassment and retaliation complaints; and provide training to its employees on recognizing workplace harassment. The company will also conduct work environment surveys and audits to ensure race and national origin do not play a role in the allocation of work assignments.

***EEOC v. Asphalt Paving Systems, Inc.,* Case No. 8:23-cv-2169 (M.D. Fla.)** The EEOC charged the company subjected 12 Black former employees and a class of other Black employees, to frequent, severe harassment because of their race. Black employees were subjected to degrading and humiliating conditions such as being required to work in pouring rain while white workers watched, and being forced to relieve themselves outdoors while white employees were taken to indoor restrooms. Black employees were also often called racial slurs and epithets, including the "n-word," "monkey" and "boy." The hostile work environment was exacerbated by physically threatening conduct, such as managers and supervisors bringing guns to worksites and—in one instance—reaching for a gun. Leadership at the company witnessed and received complaints about the employees' racist treatment, but took no action to correct it, the EEOC further alleged. As part of a three-year Consent Decree, the company agreed to pay $1.25 million in monetary damages and the following injunctive relief: provide specialized training on race discrimination to human resources officers and managers to ensure that they are aware of their obligations to prevent workplace discrimination and how to address complaints, appoint an outside monitor to review complaints of race-based harassment and provide EEOC with reports of harassment complaints which also describe its actions taken in response to the complaints.

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EEOC New York District Office

DISTRICT PROFILE

Director: **Yaw Gyebi, Jr.**

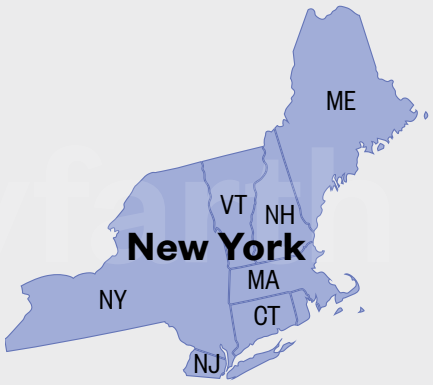
Regional Attorney: **Kimberly Cruz**

Merit Cases Filed in FY 2024: **9**

Average Days Between Determination Letter & Failure to Conciliate: **85**

Average Days Between Failure to Conciliate & Complaint: **98**

Average Days Between Determination Letter & Complaint: **183**



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KEY CASES FILED IN FY 2024

***EEOC v. Boxwood Hotels, LLC d/b/a Holiday Inn Express, et al.*, Case No. 24-cv-00902 (W.D.N.Y.)** According to the EEOC's lawsuit, during a transgender housekeeper's first day of work at a hotel located in Jamestown, New York, their supervisor referred to them as a "transformer," made multiple offensive derogatory comments about being transgender, and repeatedly misgendered the housekeeper or referred to them as "it." The housekeeper made prompt complaints to local managers and a corporate office but, instead of taking action to stop the unlawful conduct, management suggested that the job might not be a good fit, and told the housekeeper their services were no longer needed, the EEOC alleged.

***EEOC v. Garden City Jeep Chrysler Dodge, LLC and VIP Auto Group of Long Island, Inc.*, Case No. 2:24-cv-06878 (E.D.N.Y.)** The EEOC filed suit, alleging that the company and its owner allowed the inventory manager at their car dealership to touch and grab female employees' breasts and backsides; run his hand down a female employee's hair and back; regularly engage in sexual moaning and catcalling; and talk about female employees' bodies and his own sex life. Managers regularly witnessed this harassment, and female employees repeatedly complained to management and human resources, but the harassment continued. Ultimately, the defendants' failure to stop the harassment or terminate the inventory manager forced some female employees to resign, according to the EEOC.

KEY SETTLEMENTS SECURED IN FY 2024

***EEOC v. ACARE HHC d/b/a Four Seasons Licensed Home Health Care*, Case No. 23-cv-5760 (E.D.N.Y.)** The EEOC filed suit claiming the company routinely assented to patients' racial preferences when making home health aide assignments, including removal of Black and Hispanic aides. Those aides would be transferred to a new assignment or, if no other assignment were available, they would be terminated. Per the parties' Consent Decree, the company will pay $400,000 in monetary damages, update the company's internal policies; provide mandatory training for management employees about Title VII; and reporting of complaints to resolve the suit. The company is also enjoined from making home health aide assignments based on a clients' race- and/or national origin-based preferences.

***EEOC v. Tech Mahindra (Americas), Inc.*, Case No. 6:23-cv-06397 (W.D.N.Y.)** According to the EEOC's complaint, a deaf applicant provided a sign-language interpreter during an interview he had for an automation engineer position with the company. When the company realized the applicant was deaf and using an interpreter, it ended the interview. The company then emailed the applicant and stated, "Thank you for your time today it is unfortunate that we can't proceed with your profile. While you have the perfect skill set for this role it would be a challenge having an interrupter [sic] on-site."

EEOC Philadelphia District Office

DISTRICT PROFILE

Director: **Jamie Williamson**

Regional Attorney: **Debra Lawrence**

Merit Cases Filed in FY 2024: **16**

Average Days Between Determination Letter & Failure to Conciliate: **91**

Average Days Between Failure to Conciliate & Complaint: **110**

Average Days Between Determination Letter & Complaint: **201**



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KEY CASES FILED IN FY 2024

***EEOC v. AccentCare, Inc.,* Case No. 3:24-cv-01646 (M.D. Pa.)** According to the EEOC's lawsuit, female Licensed Practical Nurses (LPNs) were paid less than their male colleague for performing equal work, despite their superior qualifications. After a female LPN repeatedly complained about the gender-based pay disparity and requested a raise, the company retaliated against her, and ultimately terminated her.

***EEOC v. Inova Surgery Center, LLC,* Case No. 1:24-cv-1721 (E.D. Va.)** The EEOC alleges that the company terminated a 52-year-old employee after she requested an extension of her medical leave to recover from carpal tunnel surgery and replaced her with two co-workers, ages 24 and 35. Further, the termination and replacement occurred while the employee was still on approved medical leave, the EEOC said.

KEY SETTLEMENTS SECURED IN FY 2024

***EEOC v. Didlake, Inc.,* Case No. 8:23-cv-2618 (D. Md.)** According to the EEOC's lawsuit, the company failed to provide communications accommodations, including American Sign Language (ASL) interpreters, for deaf and hard-of-hearing employees, and it maintained a policy of terminating employees who requested medical leave but did not qualify for leave under the Family and Medical Leave Act (FMLA). Under a five-year Consent Decree, the company must pay $1,017,500 in monetary damages and is required to update and supplement its existing policies relating to leave and reasonable accommodations, provide training to its management on the ADA, and educate all employees on how to request reasonable accommodations.

***EEOC v. Hatzel & Buehler, Inc.,* Case No. 3:23-cv-03093 (D.N.J.)** The EEOC charged since at least November 2020, the vice president of the company's New Jersey branch engaged in age discriminatory recruiting and hiring practices when he requested that recruiting companies seek out younger project manager and estimator candidates for job opportunities, and then refused to hire older workers because they did not fall within his desired age range. The same vice president failed to retain job applicant and hiring-related records in violation of federal law, per the EEOC.

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EEOC Phoenix District Office

DISTRICT PROFILE

Director: **Melinda Caraballo**

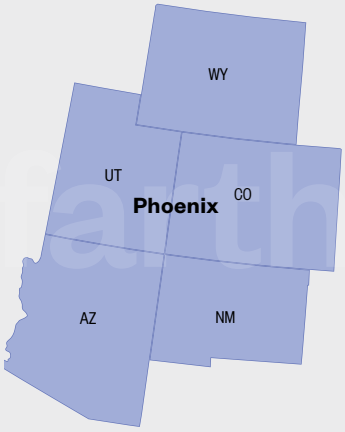
Regional Attorney: **Mary Jo O'Neill**

Merit Cases Filed in FY 2024: **10**

Average Days Between Determination Letter & Failure to Conciliate: **257**

Average Days Between Failure to Conciliate & Complaint: **193**

Average Days Between Determination Letter & Complaint: **450**



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KEY CASES FILED IN FY 2024

EEOC-Initiated Lawsuit against a Sports & Outdoor Company: According to the EEOC's lawsuit, an employee of a sports & outdoors company complained multiple times to human resources and management about age discrimination during an organizational restructuring. During the reorganization, the company created a new leadership role and hired several younger, less experienced employees to fill the positions without posting the positions or giving older, more experienced employees the opportunity to apply. When the employee complained that the actions constituted age discrimination, his regional manager and the company's human resources representative warned him not to pursue his complaint up the chain, implying it would jeopardize his career. When the employee nevertheless elevated his complaint to the company's global vice president, the company terminated him less than six weeks later the EEOC charged.

***EEOC v. Factor One Source Pharmacy LLC,* Case No. 1:24-cv-1572 (D. Col.)** According to the lawsuit, the company violated the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA) when it inquired about employee disabilities and genetic information and pressured employees to use its pharmacy services. The company unlawfully asked applicants about their hemophilia, their children's hemophilia, and the medications they or their children took so it could recruit individuals who had hemophilia or had family members with hemophilia.

KEY SETTLEMENTS SECURED IN FY 2024

***EEOC v. Walmart, Inc.,* Case No. 3:23-cv-08118 (D. Ariz.)** The EEOC filed suit alleging the company fired a cashier because she had seizures causing her to miss work. The company's attendance policy allows for absences to be excused for disability accommodations, but after about two months, human resources personnel told her absences for her seizures would no longer be excused. The cashier submitted a written request for the accommodation as provided in the company's attendance policy, but was fired while the request was still pending, the EEOC claimed. Per the parties' two-year Consent Decree, the company will pay $100,000 in monetary damages, provide management and employee training, post notices, and review policies to prevent future violations of the ADA. In addition, the company will report to the EEOC for two years to ensure compliance with the Decree.

***EEOC v. Nature's Herbs & Wellness Center d/b/a High Plainz Strains,* Case No. 1:24-cv-02706 (D.S.C)** According to the EEOC's Complaint, the company failed to reasonably accommodate a budtender's disabilities after she disclosed her disabilities to her manager and requested accommodation. When the employee complained about disability discrimination, the company suspended her without pay and later fired her. In internal communications regarding the employee's termination, the owner of the company instructed human resources to "cut [the employee] loose" because she did not divulge her disabilities when she was hired, and the human resources manager referred to the employee as a "fruitcake." The parties entered into a two-year Consent Decree whereby the company agreed to may $95,000 in monetary damages and to refrain from discriminating based on disability or retaliating against employees in the future, to revise its policies and practices to ensure it provides reasonable accommodations to individuals with disabilities, provide annual training on the ADA to employees in all seven locations and report to the EEOC on any complaints of disability discrimination during the Decree's two-year term.

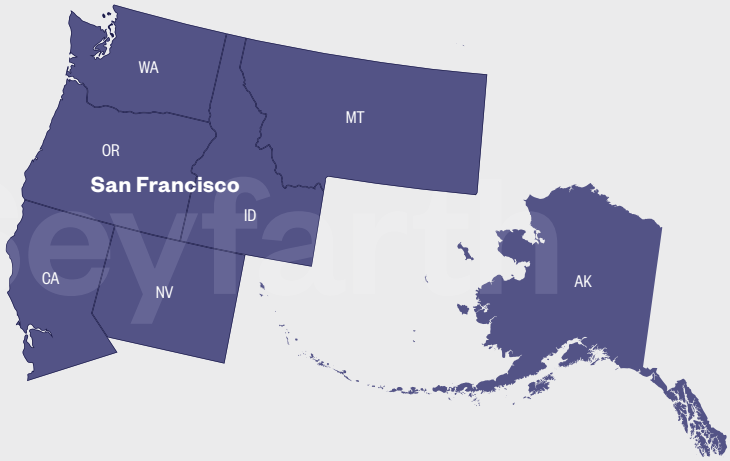
EEOC San Francisco District Office

DISTRICT PROFILE

Director: **Christopher Green**

Regional Attorney: **Roberta Steele**

Merit Cases Filed in FY 2024: **7**



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KEY CASES FILED IN FY 2024

***EEOC v. HCL America, Inc.,* Case No. 5:24-CV-04694 (N.D. Cal.)** According to the EEOC's lawsuit, in July 2021, the company interviewed an applicant for a sales director position. Although the applicant met the job qualifications, the hiring manager emailed the hiring team after the interview, described the applicant as a "good guy, but he is too old," and then asked recruiters to send him applications from non-Indian candidates. Emails between recruiters and managers ranking as high as vice presidents revealed that the company set aside applications from qualified Indian applicants and discussed relaxing the job qualifications while searching for non-Indian candidates, the EEOC found. The company hired a younger, non-Indian candidate for the sales director position.

***EEOC v. Insurance Auto Auctions, Inc.,* Case No. 4:24-cv-06848 (N.D. Cal.)** The EEOC alleges that a yard attendant at the company's facility endured constant racial slurs, including the "n-word," up to 15 times a day by co-workers for over a year. This verbal harassment occurred openly in front of the general manager who failed to take adequate steps to curb the misconduct, despite directly observing it, per the EEOC. A manager was even told by several employees that it was acceptable to say the "n-word" in the Bay Area. The Black employee felt he had no choice but to quit to escape the hostile work environment.

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KEY SETTLEMENTS SECURED IN FY 2024

***EEOC v. SmartTalent, LLC,* Case No. 2:22-cv-01102 (W.D. Wash.)** According to the EEOC's lawsuit, since at least 2015, the company engaged in a pattern of discrimination against women in hiring and job assignments. When the staffing agency received requests for male workers from some clients, the company complied with those discriminatory requests instead of declining them as unlawful. The company denied female workers job placement opportunities, and discouraged some of its own recruiters who voiced concerns about such discrimination, the EEOC charged. Per the parties' three-year Consent Decree, the company will pay $875,000 in monetary damages, and is required to retain an independent consultant to draft and implement policies and procedures prohibiting discrimination against female workers and investigate all complaints of discrimination, retain a third party to train its managers and recruiters on the requirements of Title VII and the company's new anti-discrimination policies and to hold management and recruiters accountable for compliance with its anti-discrimination policies and procedures through written evaluations and active monitoring.

***EEOC v. Monson Fruit, Co. LLC,* Case No. 1:22-cv-03133 (E.D. Wash.)** The EEOC alleged that a Latina agricultural worker faced sexual harassment including repeated unwelcome advances and requests for sex from a manager in 2019. After she rejected his propositions and reported the conduct, Monson fired her coworker husband in retaliation, the agency alleged. The company's management failed to act on reports of the harassment, the EEOC further charged. Pursuant to the parties' three-year Consent Decree, the company will pay $250,000 in monetary damages and has agreed to implement additional policies and procedures to bolster its compliance with Title VII, including a new reporting hotline and trainings for supervisors and managers on investigative techniques for sexual harassment investigations. The company will also remove the alleged harasser from any supervisory positions.

EEOC St. Louis District Office

DISTRICT PROFILE

Director: **David Davis**

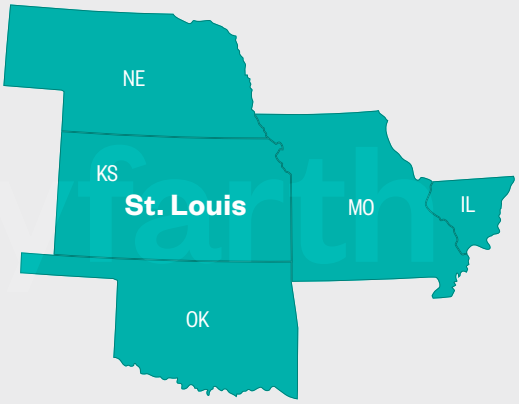
Regional Attorney: **Andrea Baran**

Merit Cases Filed in FY 2024: **6**

Average Days Between Determination Letter & Failure to Conciliate: **45**

Average Days Between Failure to Conciliate & Complaint: **179**

Average Days Between Determination Letter & Complaint: **224**



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KEY CASES FILED IN FY 2024

***EEOC v. Urologic Specialists of Oklahoma Inc.,* Case No. 4:24cv452 (N.D. Okla.)** The EEOC charges the specialty medical practice did not allow a medical assistant at its facility to sit, take breaks, or work part-time as her physician said was needed to protect her health and safety during the final trimester of her high-risk pregnancy. Instead, the practice forced her to take unpaid leave and refused to guarantee she would have breaks to express breastmilk. When she would not return to work without those guaranteed breaks, the company terminated her, the EEOC alleged.

KEY SETTLEMENTS SECURED IN FY 2024

***EEOC v. Dolgencorp, LLC d/b/a Dollar General,* Case No. 6:21-cv-00295 (E.D. Okla.)** The company agreed to pay $295,000 in monetary damages and to other equitable relief to settle a lawsuit filed by the EEOC. According to the lawsuit, a newly hired regional director in Oklahoma harassed district managers who were in their 50s and older by calling them "grumpy old men," telling them he was building "a millennial team" and they needed "young blood" in the stores, and threatening them to keep up with the "millennial team" or quit or be fired from July 2016 until January 2018. After one of the district managers quit and reported the harassment to the Company, the company sought feedback from the district managers about the new regional director but did not investigate reports of age discrimination. Emboldened, the regional director continued harassing older workers and fired two district managers in retaliation for reporting his misconduct, the EEOC alleged. Eventually another district manager was forced to quit because of the continual harassment. In addition to the monetary relief, the company must provide training to retail and human resources managers, adopt and distribute effective policies and procedures to prevent age harassment and discrimination, and notify employees of their rights. The company will also report to the EEOC regarding compliance with the Consent Decree.

***EEOC v. Anant Enterprises, L.L.C., et al.,* Case No. 8:22-cv-345 (D. Neb.)** According to the EEOC's suit, In the fall of 2019, the general manager advised his direct supervisor, the company's V.P. of Operations, that he was going to be away from work because he was going to the hospital for treatment for depression. Two days later, on the same day the general manager was discharged from the hospital, his supervisor told him he was terminated because the company was afraid he might harm other people. The company agreed to pay $100,000 in monetary damages and also entered into a two-year Consent Decree that requires the Company to adopt policies and procedures to ensure compliance with the ADA, ensures all employees receive copies of and annual training on those ADA policies, and requires additional recurring ADA training for all of the company's owners, general managers, and human resources personnel. The company will also regularly report to the EEOC regarding any employees who are terminated after requesting an accommodation for a disability or taking leave for a disability. The company is also prohibited from terminating employees on the basis of disability.

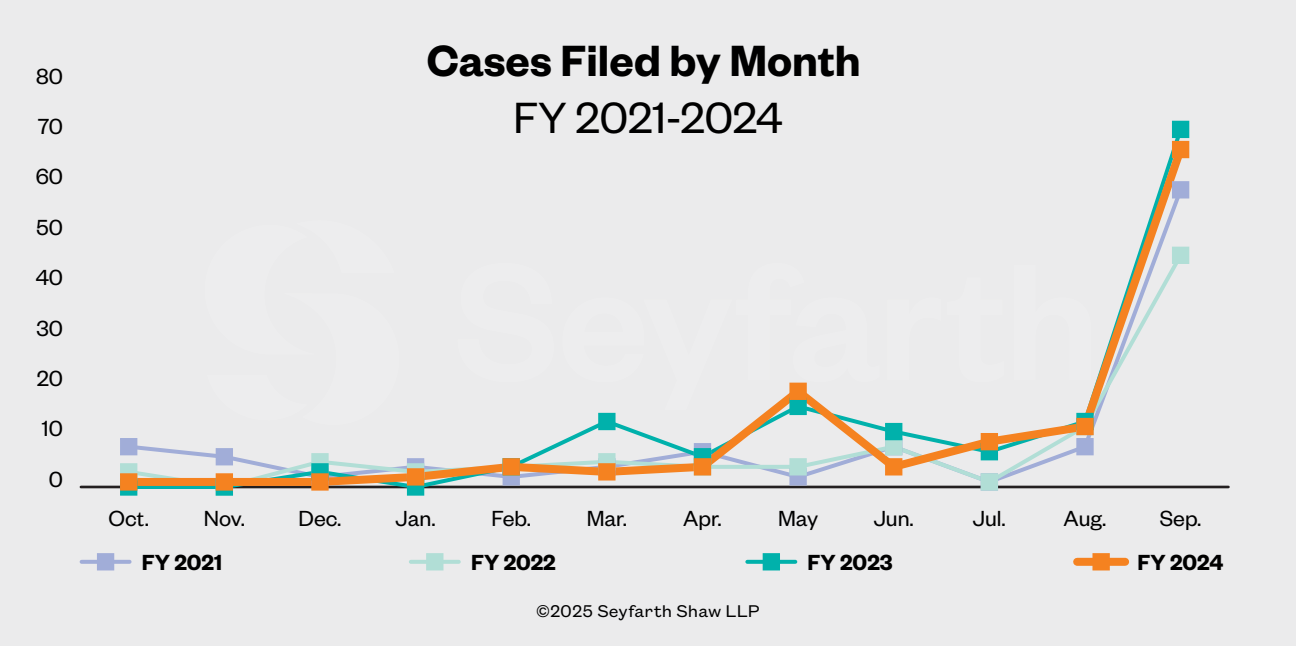
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PART IV: By The Numbers: EEOC Data Analysis

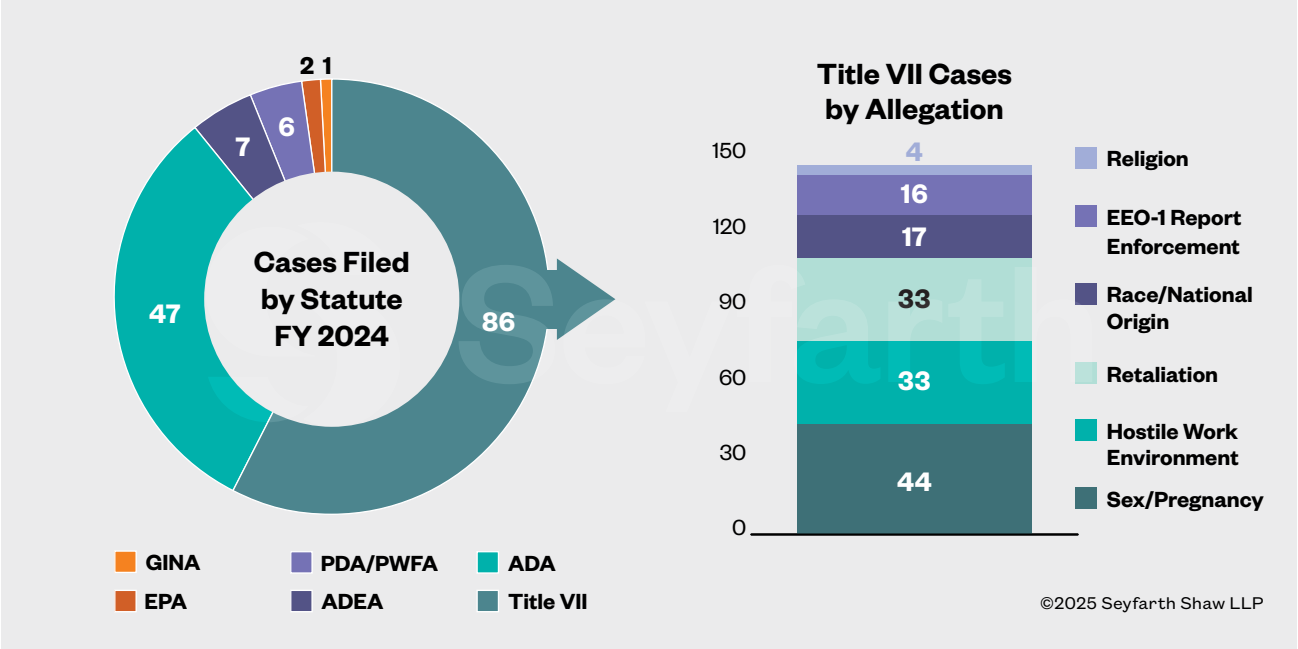
A. Trends in EEOC Federal Court Filings In FY 2024

Each fiscal year we analyze the types of lawsuits the EEOC files, in terms of the statutes and theories of discrimination alleged, as well as when and where the cases were filed. The bottom line for FY 2024 is that we saw a significant downturn in litigation activity, as the EEOC filed 111 merit lawsuits this fiscal year, compared to its 144 filings in FY 2023. Although this figure still represents an increase from FY 2022—when the Commission filed just 95 merit lawsuits—this decrease in filings is somewhat surprising given that the EEOC achieved a Democratic majority of Commissioners and confirmed its Democratic General Counsel this fiscal year. Nevertheless, while the overall number of filings was down in FY 2024, a close analysis of these case filings suggests that the EEOC emphasized alignment with its strategic priorities over quantity of litigation in FY 2024.

We first turn to when the EEOC typically files lawsuits. As in several past years, the EEOC once again ramped up its litigation activity at the end of its fiscal year by filing 67 cases in September alone (down from 71 cases in September 2023). In addition to its "September Surge," the EEOC was particularly active in the spring of 2024, as it filed 19 lawsuits in May (up from 16 lawsuits in May 2023). This represents a five-year high mark for EEOC filings in May. The graph below show the number of EEOC lawsuits filed per month over the last four fiscal years.



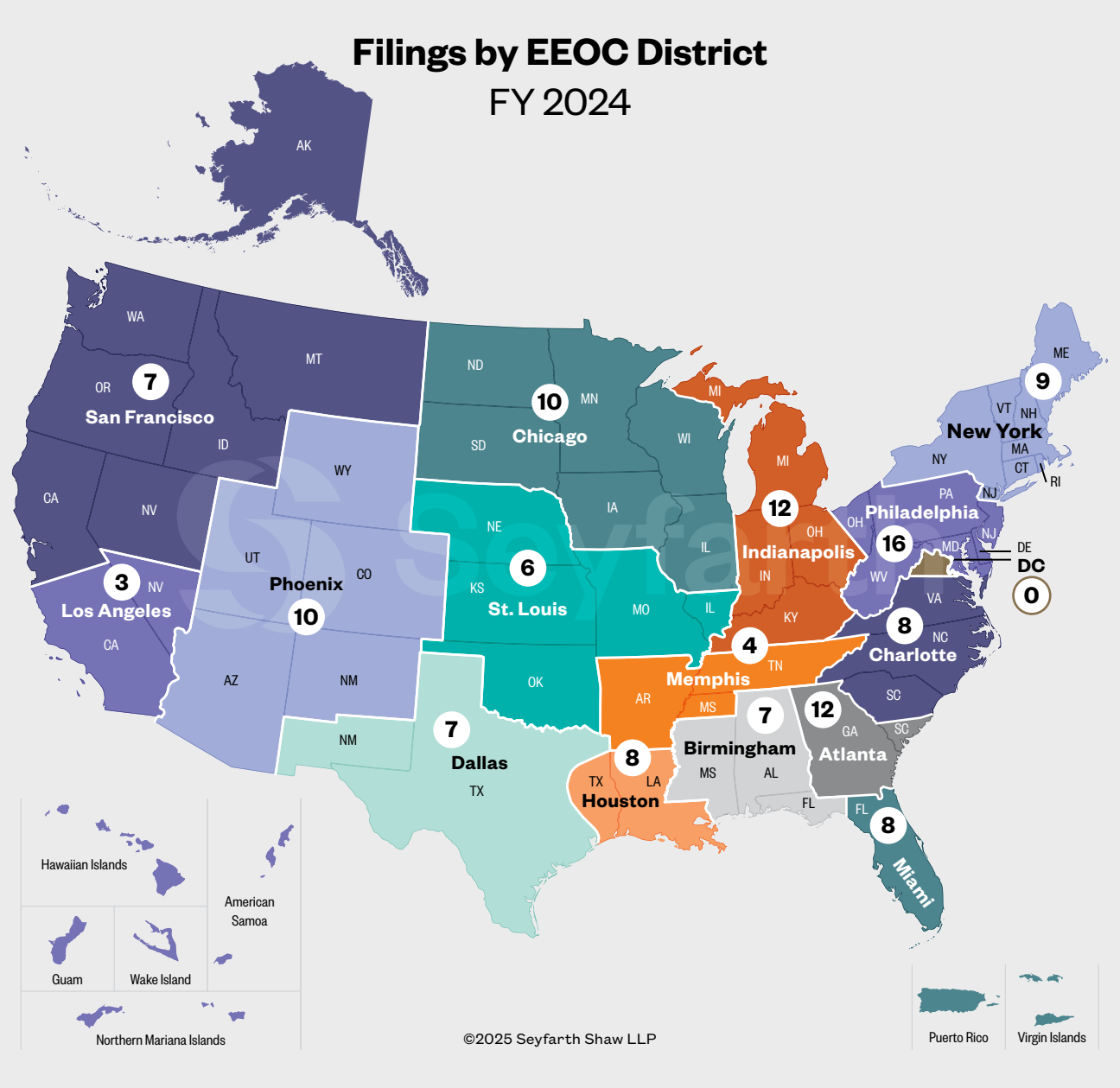
With respect to the types of claims asserted, the graphs below show the number of lawsuits filed according to the statute under which they were filed (Title VII, Americans With Disabilities Act, Pregnancy Discrimination Act, Equal Pay Act, and Age Discrimination in Employment Act, etc.) and, for Title VII cases, the theory of discrimination alleged. This analysis can often reveal how the EEOC is shifting its strategic priorities.



Despite the overall decrease in lawsuits (111 filings in FY 2024, as compared with 144 filings in FY 2023), when considered on a percentage basis, the distribution of cases filed by statute remained roughly consistent compared to the last few years. Title VII cases once again made up the majority of cases filed, accounting for 68% of all filings (on par with the 63% in FY 2023, 65% in FY 2022, and 62% in FY 2021). ADA cases also made up a significant percentage of the EEOC's filings, totaling 37% this fiscal year, generally aligning with prior levels of 34% in FY 2023, 29% in FY 2022, and 36% in FY 2021. In terms of pure filings, however, ADA lawsuits remain in an upward trend. After filing just 27 cases in FY 2022, the Commission has since filed 49 cases in FY 2023 and 47 cases in FY 2024. Age discrimination filings declined slightly, with 7 filings in FY 2024, as compared with 13 filings in FY 2023, 7 filings in FY 2022, and just one filing in FY 2021.

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One of the most noticeable trends of this fiscal year, continuing from last fiscal year, is the prominent levels of litigation activity by the Commission's East Coast District Offices. Philadelphia again led the way with a total of 16 lawsuits filed in FY 2024, outpacing the next closest District Offices (Atlanta and Indianapolis) by four filings. Atlanta and Indianapolis inched ahead of Chicago (last fiscal year's second-highest filer) and Phoenix, who each filed 10 lawsuits. Other active Districts on the East Coast include New York (9) (down one from last fiscal year), Charlotte (8) (down one from last fiscal year), Houston (8), and Miami (8). Conversely, the Commission's West Coast Districts were again relatively quiet in FY 2024, with the Los Angeles and San Francisco Offices combining for only 10 total filings this fiscal year.

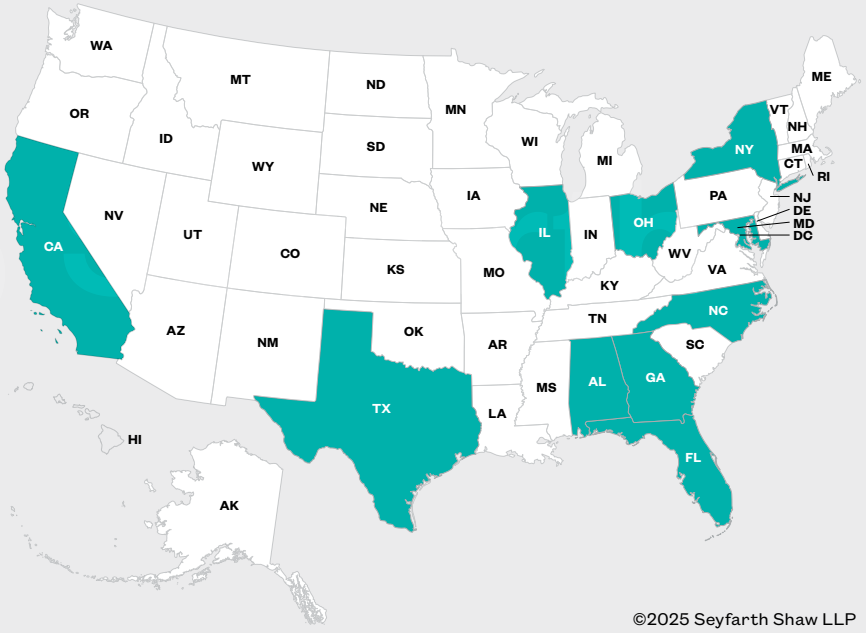


Looking beyond the EEOC's designated Districts, the map below highlights the number of FY 2024 EEOC filings in each state. While several of the most populated states—*i.e.,* California, Texas, Florida, & New York—predictably appear in the top 10, this state-by-state analysis reflects a few interesting trends. For example, although the Philadelphia District led the pack with respect to District Office filings, the EEOC filed only three lawsuits in the state of Pennsylvania. Instead, the Philadelphia District focused primarily on employers in Maryland, which saw the third-highest FY 2024 filings with 7, despite having a smaller state population than almost every other state on this list. The state on this map with the lowest population (Alabama) also saw as many, or even more, merit filings than other states with far higher state populations, such as New York, North Carolina, Ohio, and California.

Top 10 States in EEOC Filings Received
FY 2023

FILINGS RECEIVED BY STATE

- Georgia: **12**
- Texas: **11**
- Florida: **7**
- Illinois: **7**
- Maryland: **7**
- Alabama: **6**
- New York: **6**
- North Carolina: **6**
- Ohio: **6**
- California: **5**



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B. EEOC Charge Data Analysis

In addition to the EEOC's annual merit filings, a thorough examination of EEOC charge statistics offers valuable insights into the current status of the employment discrimination space. While merit filings highlight the Commission's priorities, the charge data from the EEOC reflects the perceptions of American workers regarding their treatment in the workplace.

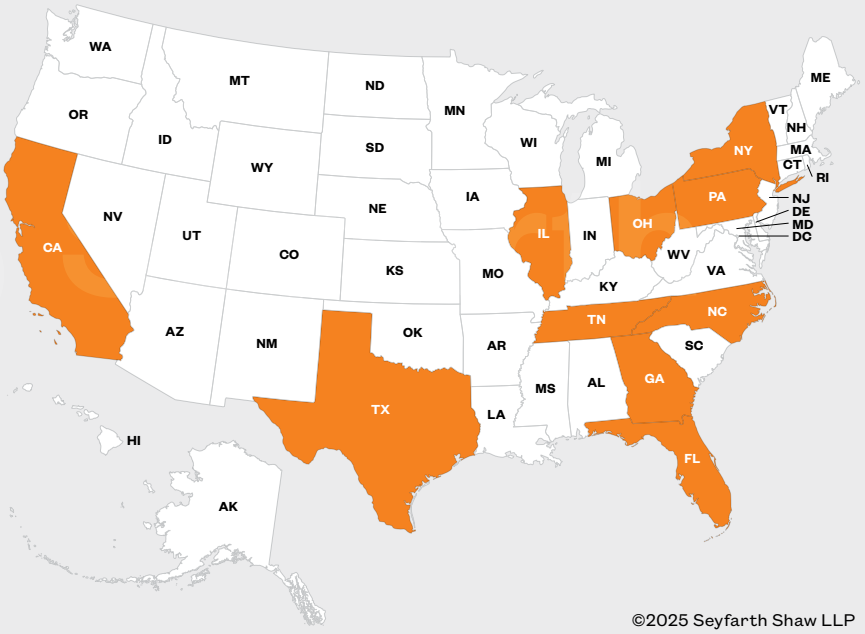
Because filing an administrative charge with the EEOC is a prerequisite to filing a lawsuit under federal antidiscrimination law, employees throughout the country regularly file between 60,000-80,000 EEOC charges per year. Following FY 2017—when the EEOC received 84,254 charges—overall charges steadily declined through FY 2021, when the Commission received a 10-year low of just 61,331 charges. FY 2022 reflected the start of a return to prior levels of EEOC activity with 73,485 charges, and that trend continued into FY 2023. To that end, the Commission received 81,055 charges in FY 2023. This number represented a substantial increase of more than 8,000 charges as compared to FY 2022. Despite the decline in merit filings, the EEOC's charge data suggests that workers are increasingly filing more discrimination, retaliation, and harassment claims over the past few years.

With respect to where these charges are being filed, there are certain geographic "hot spots" in which employees consistently file the most EEOC charges. These states are highlighted by the map graphic below. In FY 2023, Texas again outpaced the rest of the country by nearly 2,000 charges. Following Texas, which saw 8,221 charges filed in FY 2023, Florida (6,289), Georgia (5,738), California (5,143), and Pennsylvania (4,749) rounded out the top five most popular filing locations.

Top 10 States in EEOC Charges Received
FY 2023

CHARGES RECEIVED BY STATE

- Texas: **8,221**
- Florida: **6,289**
- Georgia: **5,738**
- California: **5,143**
- Pennsylvania: **4,749**
- Illinois: **4,627**
- New York: **4,011**
- North Carolina: **3,791**
- Tennessee: **2,786**
- Ohio: **2,665**



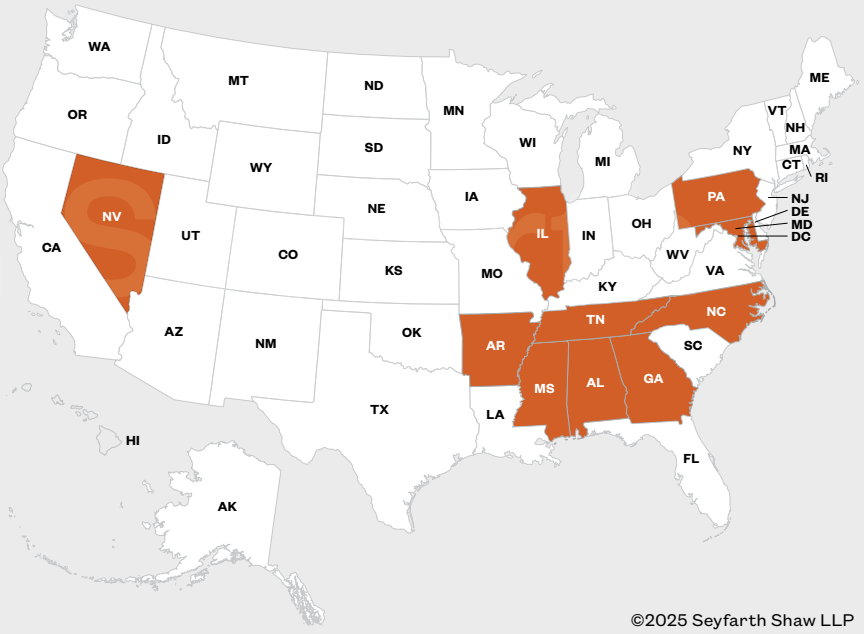
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However, when adjusted for state population, the Southeast region of the country once again stands out in terms of EEOC charge filings per capita. As demonstrated by the map graphic below, in FY 2023, Georgia led the way with over five EEOC charges filed for every 10,000 people living in the state. Other notable states in this per-capita category include Arkansas (4.53 charges per 10,000 residents), Tennessee (3.91), Mississippi (3.9), and Nevada (3.85).

Top 10 States in EEOC Charges Received Relative to State Population FY 2023

CHARGES RECEIVED PER 10,000 POPULATION

- Georgia: **5.20**
- Arkansas: **4.53**
- Tennessee: **3.91**
- Mississippi: **3.90**
- Nevada: **3.85**
- Illinois: **3.67**
- Pennsylvania: **3.66**
- Alabama: **3.60**
- North Carolina: **3.50**
- Maryland: **3.38**



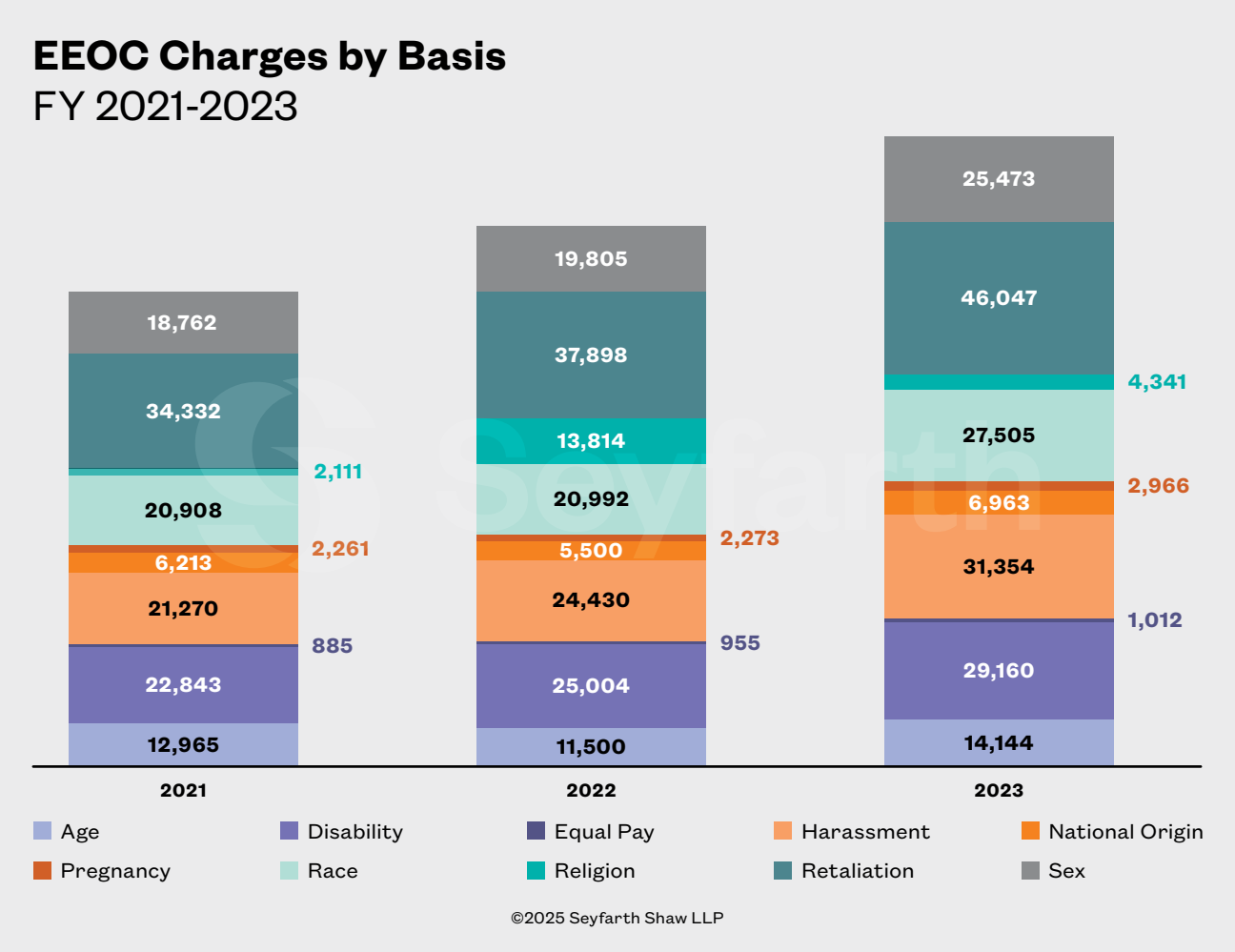
2024 state population data courtesy of census.gov.

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In terms of the types of charges filed with the EEOC, retaliation is consistently the most common allegation, outpacing the next most popular category (typically disability discrimination or harassment) by at least 10,000 charges per year. Notably, this year retaliation outpaced the next category by more than 15,000 charges. Following with that trend, retaliation claims accounted for approximately 56% of all charges filed in FY 2023. The next most popular charge types in FY 2023 were harassment, disability discrimination, and race discrimination.

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The bar graph below represents the types of charges filed with the EEOC between fiscal years 2021-2023. As this graph demonstrates, the amount of disability, retaliation, and sex-based discrimination charges have steadily increased the past three years. Additionally, racial discrimination charges and harassment charges saw an increase from FYs 2021 and 2022. Race-based charges increased approximately by 31%, and harassment charges also rose by 31% in FY 2023.



However, one type of charge that saw a notable decline in FY 2023 was religious discrimination. In FY 2022 American workers filed more religious-based EEOC charges than ever before, lodging 13,814 such charges. This took a sharp decline down to only 4,341 charges this year, close to a 68% decrease. This decrease is likely a result of the easing of COVID-19 vaccine requirements by the government and employers. The religious based charges filed in FY 2023 now resemble those observed prior to FY 2022, although, they do still remain marginally higher.

While religious discrimination claims were not as prevalent at the EEOC this fiscal year, pregnancy discrimination emerged as a priority for both American workers and the Commission itself. With regard to charge data, workers filed 2,966 pregnancy-based charges in FY 2023, which represents a five-year high for pregnancy charge filings. The EEOC also filed a number of merit lawsuits alleging pregnancy-based claims in FY 2024, mostly notably filing its first five lawsuits under the recently-enacted Pregnant Workers Fairness Act ("PWFA"). The PWFA—which strengthens protection for pregnant workers and requires employers to accommodation several pregnancy-related conditions—went into effect June 27, 2023, and on April 15, 2024, the EEOC issued its final regulations concerning enforcement of the Act.

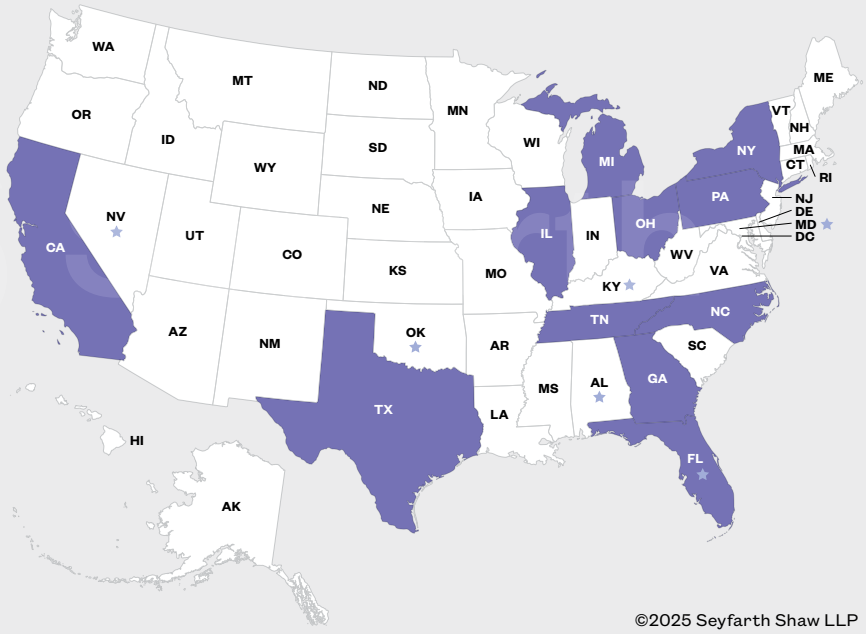
The map below demonstrates both the top 10 states in terms of PWFA charge filings in FY 2023, as well as where the EEOC filed its pregnancy-based lawsuits in FY 2024. Texas led the way with 22 PWFA charge filings in FY 2023, followed by Georgia (16), Illinois (14), and North Carolina (14). Despite these states receiving the most PWFA charges in FY 2023, the only state in the top 10 for PWFA charges received to also see a pregnancy-based lawsuit in FY 2024 was Florida. Otherwise, in FY 2024, the EEOC filed its pregnancy discrimination merit lawsuits in lesser-populated states such as Alabama, Kentucky, Maryland, Nevada, and Oklahoma.

Top States in Pregnancy Workers Fairness Act Charges Received FY 2023

PWFA CHARGES RECEIVED BY STATE

- Texas: **22**
- Georgia: **16**
- Illinois: **14**
- North Carolina: **14**
- Tennessee: **11**
- California: **10**
- Florida: **10**
- Michigan: **8**
- New York: **8**
- Ohio: **8**
- Pennsylvania: **8**

★ States where pregnancy-related lawsuits were filed .



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PART V: Industry Focus

As described in Part II in its SEP, the EEOC identifies particular industries on which it intends to focus its enforcement activity. And as described in Part III, the EEOC's District Offices approach litigation and settlement activity in their own idiosyncratic ways.

Part V provides an overview of industries hit repeatedly by EEOC-initiated litigation in FY 2024, the number and bases of the complaints, which District Offices were mostly likely to bring those cases, and summaries of notable lawsuits filed.

A. Hospitality

Hospitality Industry Merit Cases Filed in FY 2024

21

Statutory Basis for Suit

17: Title VII
5: ADA
1: ADEA
1: GINA

EEOC District Offices Bringing Suit & Number of Lawsuits Brought by Each District



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The vast majority of cases brought by the EEOC against companies in the hospitality sector in 2024 alleged discrimination in violation of Title VII (albeit on many different protected characteristics). The EEOC brought multiple cases focused on gender identity, as well as many cases alleging stereotypical direct sexual and racial harassment.

KEY CASES FILED IN FY 2024

***EEOC v. Harmony Hospitality LLC,* Case No. 1:24-cv-00357 (N.D. Ill.).** According to the complaint, defendant hotel operator employed a night auditor who dressed in a manner that was allegedly perceived as less masculine. Management instructed the employee's supervisor to ask the employee to dress in a more conforming manner, and the supervisor refused because the employee is gay and identifies as more feminine. Allegedly the employee was fired mere hours after this disclosure. The EEOC is suing based on Title VII sex (gender identity/orientation) discrimination.

***EEOC v. New York Beer Project,* Case No. 1:24-cv-00377 (W.D.N.Y.).** Defendant operates a restaurant, beer hall, and brewery. The EEOC alleges that two employees were fired illegally based on disabilities. One was diagnosed with cancer and allegedly found himself no longer scheduled then terminated. The other experienced a nocturnal seizure, and upon learning of this his employer allegedly terminated him. The EEOC alleges violations of the ADA.

***EEOC v. Battleground Restaurants, Inc.,* Case No. 1:24-cv-00792 (M.D.N.C.).** The EEOC brought suit based on a purported class of male applicants to positions in defendant's restaurant chain. Per the complaint, of 2,100 employees in defendant's chain in a two-year period, only 3% were male. The EEOC alleges violations of Title VII based on sex.

B. Healthcare

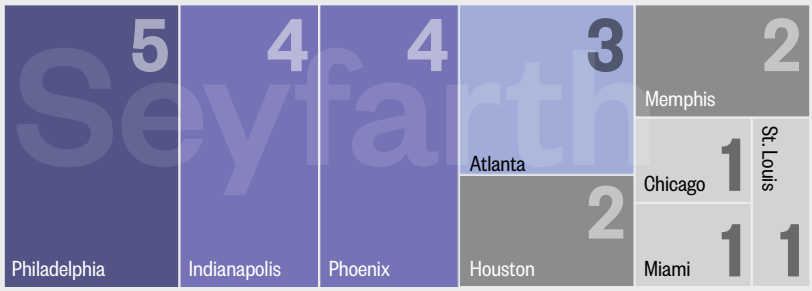
Health Care Industry Merit Cases Filed in FY 2024

23

Statutory Basis for Suit

14: ADA
11: Title VII
2: ADEA
1: EPA
1: GINA

EEOC District Offices Bringing Suit & Number of Lawsuits Brought by Each District



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In 2024, the EEOC signaled a greater focus on the healthcare sector, bringing suits against 23 different companies. The primary areas of attention were direct sexual harassment against women and failures to accommodate disabilities, though other cases were also brought based on pregnancy discrimination, race discrimination, and a sex discrimination case based on a male employee.

KEY CASES FILED IN FY 2024

***EEOC v. HSS Security LLC,* Case No. 4:24-cv-03663 (S.D. Tex.).** According to the complaint, a female applicant for a security position had substantive skills related to the job duties, including past experience with physical altercations and subduing patients. She was offered the position but after a later interview with two supervisors found her offer withdrawn. The position was later offered to two male applicants, neither of whom was more qualified than complainant. The EEOC alleges violations of Title VII based on sex.

***EEOC v. PACE Southeast Michigan,* Case No. 2:24-cv-12424-NGE-CI (E.D. Mich.).** The complaint alleges that the company maintained a policy requiring any employee who is unable to return to work at the expiration of FMLA leave to "voluntarily resign." The EEOC alleges that two employees required very brief extensions of leave (one for 30 days, one for 3-30 days) and that the company refused to consider either request. The EEOC is alleging violations of the ADA.

***EEOC v. VibraLife,* Case No. 4:24-cv-02861 (S.D. Tex.).** A potential employee with a sleep-related disorder applied for a position that required three 12-hour shifts. According to the EEOC, the employer informed the worker after hire that she would be required to work a fourth 12-hour shift each week. She requested to be kept to the advertised schedule and was allegedly demoted and terminated thereafter. The EEOC alleges violations of the ADA.

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C. Construction

Construction Industry Merit Cases Filed in FY 2024

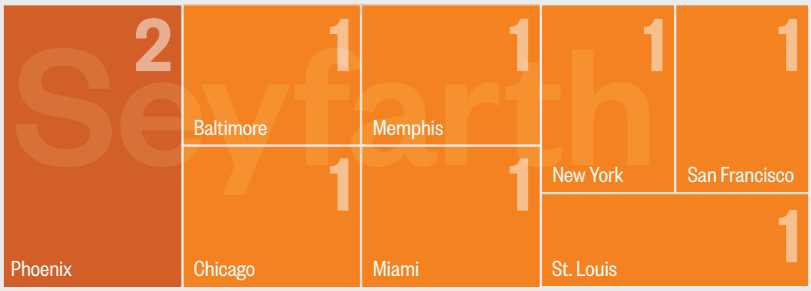
9

Statutory Basis for Suit

8: Title VII **1:** ADEA

1: ADA

EEOC District Offices Bringing Suit & Number of Lawsuits Brought by Each District



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This year, the EEOC filed several lawsuits against construction companies on a range of grounds. Due to the small number of filed cases alleging substantive violations, there is no discernable area of focus from these complaints. One trend that does seem evident is that the EEOC was very willing to sue on facts that indicate discrimination that was specific to an individual as opposed to a class-based suit.

KEY CASES FILED IN FY 2024

***EEOC v. DR Horton,* Case No. 24-cv-02757-GLR (D. Md.).** The EEOC filed suit on behalf of a sales associate who was assigned to a housing development that was 66 miles from her home. The sales associate has a medical condition that causes pain when she sits and drives for extended periods of time. Even after the employee allegedly requested to be reassigned to a closer location, and several closer locations became available, the sales associate remained assigned to the same location. The EEOC alleges violations of the ADA.

***EEOC v. BFS Group LLC d/b/a BFS Group of Washington LLC,* Case No. 2:24-cv-01562 (W.D. Wash.).** According to the complaint, a 67-year-old worker was assigned by a staffing agency to a worksite as an assembler at a truss facility. Upon arrival, the general manager allegedly speculated that the worker had a physical impairment and/or was unable to perform her job duties, immediately turning the worker back. The EEOC alleges violations of Title VII based on age and the ADEA.

***EEOC v. Sunrooms and More Design Center, Inc.,* Case No. 5:24-cv-01016 (W.D. Okla.).** In one of a trio of sex discrimination/harassment cases filed nearly simultaneously, the EEOC brought suit on behalf of multiple women who alleged a manager subjected female employees to unwanted comments, sexual innuendo, and physical assault such as grabbing and touching them. The EEOC alleges violations if Title VII based on sex.

D. Retail

Retail Industry Merit Cases Filed in FY 2024

6

Statutory Basis for Suit

10: Title VII **1:** PDA

3: ADA

EEOC District Offices Bringing Suit & Number of Lawsuits Brought by Each District



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The EEOC filed a number of lawsuits against retail companies in 2024, with an emphasis on discriminatory hiring practices and pre-employment qualifications related to the applicant's disability, pregnancy, and/or race. The EEOC also filed several lawsuits alleging disability and sex-based harassment, including cases related to harassment on the basis of gender identity. This is an area of interest for the EEOC, which released new guidance on workplace harassment with respect to sexual orientation and gender identity in April 2024.

KEY CASES FILED IN FY 2023

***EEOC v. ABC Phones of North Carolina, Inc. d/b/a Victra,* Case No. 3:24-cv-00444 (D. Nevada).** The EEOC filed suit on behalf of an employee who was not allowed to leave a new hire training early for an urgent medical evaluation related to her pregnancy. Instead, the company rescinded the job offer and told the employee to reapply once she knew she could attend the full training. According to the EEOC, other new hires were permitted to adjust or reschedule their training for various reasons unrelated to pregnancy. The EEOC alleges violations of Title VII and the ADA.

***EEOC v. Heart of Texas Goodwill Industries, Inc.,* Case No. 6:24-cv-00498 (W.D. Texas).** The EEOC alleges that the employer violated the ADA when it failed to hire an applicant because she was deaf. The EEOC claims that the manger told the applicant she was not eligible for a role because her disability may raise a safety concern and failed to follow-up on the applicant's request for a reasonable accommodation.

***EEOC v. Lush Handmade Cosmetics,* Case No. 5:24-cv-06859 (N. D. California).** The EEOC alleges that a company manager subjected LGBTQI+ employees to offensive physical and verbal sexual conduct, including unwanted touching of their buttocks, requesting sex, commenting about their breasts and his penis, inquiring about sex acts relating to their sexual orientation and/or gender identity, and using sexually offensive terms. According to the EEOC, the company failed to adequately investigate the employees' complaints and the harassment continued. As a result, at least two employees quit.

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E. Technology

Consistent with the priorities articulated in its Strategic Enforcement Plan, in FY 2024, the EEOC issued a report focusing on what it claims are demographic disparities in the technology industry. The EEOC's report, issued on September 11, 2024 and entitled *High Tech, Low Inclusion: Diversity in the High Tech Workforce and Sector 2014-2022*, focused on the "high tech workforce", which the EEOC defined as workers in 56 science, technology, engineering, and mathematics (STEM) occupations, regardless where they were employed, as well as the "high tech sector", which the EEOC defined as industries where at least 20% of the workforce holds STEM occupations—a threshold that includes many employers who might not consider themselves a "high tech" company.

Methodology

The EEOC relied on three sources of data when creating this report: American Community Survey (ACS) data from 2014-2022, EEO-1 Reports from 2014-2022, and the 2022 EEOC administrative records of discrimination charge filings. The ACS data is collected by the U.S. Census Bureau through an ongoing monthly survey that provides vital information about America's workforce. This comprehensive survey samples approximately 3.5 million households annually, gathering detailed demographic, employment, and occupational data that represents the entire U.S. labor force – including public and private sector workers and self-employed individuals.

The EEO-1 reports, in contrast, provide a more focused but limited dataset. These reports must be filed with the EEOC by private sector employers with 100 or more employees (and federal contractors with 50 or more employees), detailing their workforce demographics by job category, race/ethnicity, and gender. While more limited in scope than the ACS, the EEO-1 data offers employer-level insights into workforce composition at larger private companies. But the job categories in the EEO-1 reports have not changed for decades, and so they use broad occupational groupings that don't align well with modern tech roles. To overcome this limitation, the EEOC used the ACS data's more detailed occupational classifications to identify 56 specific STEM occupations and analyze the high tech workforce, while using the EEO-1 data primarily to examine demographic patterns by employer size within the broader tech sector.

Finally, the EEOC attempted to match its administrative records of charges of discrimination filed in calendar-year 2022 to employer records in its EEO-1 data, in order to draw conclusions about whether and how discrimination charge patterns in the high tech sector differ from those in other industries. But the EEOC was only able to match approximately 36% of its total charge records for this period to a specific employer's EEO-1 report, largely because the EEOC's charge filing system lacked complete and accurate industry codes for many employers. Despite these limitations, this matching process attempted to make a systematic comparison of discrimination charge patterns between the high tech sector and other industries. Those attempting to draw broad-based conclusions from this analysis should be cautious given that nearly two-thirds of the EEOC's charge data for this period was not included. (A footnote in the EEOC's report asserts without further explanation or analysis, "Although more research is needed, the results suggest that the subset of matched administrative records are generally representative of all charge records.")

The EEOC's Conclusions and Implications

The EEOC's report concludes, among other things, the EEOC's view that:

- Female, Black, and Hispanic workers remained substantially underrepresented in the high tech workforce and sector. According to the EEOC, between 2005 and 2022 there was very little change in the representation of Black workers and virtually no change in the representation of female workers occurred in the high tech workforce.

- Black, Hispanic and Asian workers were purportedly underrepresented in managerial positions compared to their participation in the high tech workforce overall.

- While women are nearly half of the total U.S. workforce, the EEOC reports that they were just 22.6%of the high tech workforce in all industries, and even more underrepresented in higher-paying high tech jobs within the high tech sector.

- The EEOC suggests that the high tech workforce is generally younger than the total U.S. workforce; 40.8% of the high tech workforce are ages 25 to 39, but only 33.1% of the overall workforce. Workers over age 40 in the high tech workforce reportedly lost ground between 2014 and 2022, declining from 55.9% to 52.1%.

Using the EEOC's charge-filing data, the report also concluded that retaliation, disability discrimination, race discrimination, and sex discrimination were the four most common charges filed with the EEOC in the high-tech sector. The EEOC also found that age, pay, and genetic information discrimination charges were more prevalent in the high-tech sector than in other industries.

Ultimately, the EEOC concluded that, progress towards diversity notwithstanding, the "magnitude of underrepresentation" suggested that discrimination contributed to the lower employment of women, Black workers, Hispanic workers, and older workers. The EEOC also concluded that the underrepresentation of Black, Hispanic, female, and older workers in the high-tech industry is due to "discriminatory barriers."

According to the EEOC's report, there are barriers to equal employment for high tech jobs, which the Agency intends to address through heightened enforcement efforts. It is important for all employers – not just high tech employers – to understand that the EEOC's report reflects the agency's ongoing commitment to aggressive enforcement addressing discrimination in recruitment, hiring, and promotion practices, and its ongoing emphasis on devoting additional enforcement and litigation resources to the "high tech" sector. Both traditional technology employers and companies with significant STEM workforces should carefully review their employment practices and demographic data to avoid becoming targets of the EEOC's enhanced enforcement efforts in this area.

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F. Transportation & Logistics

Transportation and Logistics Industry Merit Cases Filed in FY 2024

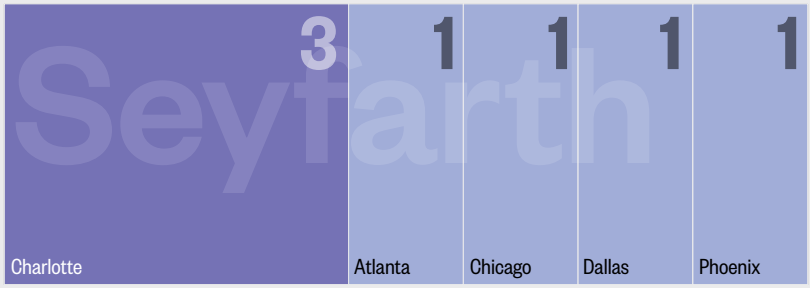
7

Statutory Basis for Suit

3: Title VII

4: ADA

EEOC District Offices Bringing Suit & Number of Lawsuits Brought by Each District



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The EEOC filed a number of lawsuits against companies in the transportation and logistics industries in 2024. The greatest number of these suits concerned alleged violations of the ADA, including discrimination against those with hearing impairments and on issues related to leave and return to work policies. Other suits related to alleged discriminatory hiring and harassment in the workplace.

KEY CASES FILED IN FY 2024

***EEOC v. Federal Express Corp.,* Case No. 0:24-cv-03559 (D. Minn.).** The EEOC filed a lawsuit charging that the company's 100% healed policy for drivers with medical restrictions violated the ADA. According to the lawsuit, the company's policy of placing ramp transport drivers on 90-day temporary light-duty assignment followed by unpaid medical leave for a year unless they could show they were able to return to work without restriction denied the drivers reasonable accommodations that might have kept them working. The EEOC seeks monetary relief for a class of aggrieved individuals.

***EEOC v. Lubin Logistics Company,* Case No. 1:24-cv-01911-JPB-LTW (N.D. Ga.).** The EEOC sued the company for allegedly violating the ADA by firing an employee who suffered from lupus. According to the lawsuit, a "flare-up" caused the employee to experience severe pain, so the employee returned to the delivery terminal prior to the end of his shift. A company supervisor fired the employee, stating that he could no longer work for the company due to his medical condition.

***EEOC v. Transportation Management Group, d/b/a Wilson Logistics,* Case No. 1:24-cv-00640 (M.D.N.C.).** The EEOC sued the company for allegedly violating the ADA by refusing to hire a deaf job applicant. According to the lawsuit, a deaf applicant who possessed a commercial driver's license, had relevant experience, and had been granted an exemption from regulatory hearing requirements by the U.S. Department of Transportation sought work as a truck driver but was denied the job because the company did not hire individuals who communicate through sign language.

PART VI: EEOC Case Resolution

All EEOC matters eventually come to an end. How a matter ends will dramatically impact an employer's future interaction with the EEOC. As with most civil litigation, most matters are settled, but as we describe below, there is significant meaning to *when* resolution is achieved.

A. Resolution Through Conciliation

Congress originally conceived that the EEOC would remedy discrimination in a non-adversarial manner by conducting neutral investigations and reaching agreements with the employer to voluntarily correct any discriminatory practices. Congress settled on a framework that "preferred" cooperation and voluntary compliance over litigation, rather than simply affording victims a cause of action for damages like other statutes provide. *Mach Mining, LLC v. EEOC,* 575 U.S. 480, 486 (2015) (citation omitted). As the Supreme Court has explained, Title VII was designed to encourage " `… `voluntary compliance' and ending discrimination far more quickly than could litigation proceeding at its often ponderous pace." *Ford Motor Co. v. EEOC,* 458 U.S. 219, 228 (1982).

This notice of voluntary compliance through conciliation remains. When the EEOC issues a letter of determination, it must then invite the employer to explore the potential for a negotiated, pre-suit resolution. As the Supreme Court has described in *Mach Mining,* the EEOC must demonstrate that it has satisfied its statutory duty of "conference, conciliation, and persuasion" before filing suit.

For employers, there are often benefits to resolving a matter through conciliation rather than proceeding to litigation. The most notable is the opportunity to avoid having the EEOC go public with its allegations. The EEOC is prohibited by law from sharing information about charges that it settles through conciliation unless an employer agrees to publicize the resolution. In contrast, the EEOC frequently publicizes its litigation matters through press releases, briefs and evidence will posted to the court's docket, and litigation can only be resolved through Consent Decrees, which are public.

Employers often complain that it is common for the EEOC to approach conciliation in a one-sided manner. Investigators in the EEOC's District Offices frequently refuse to explain the bases for their findings, decline to consider additional argument from employers, and remain vague about the relief they are seeking in order to resolve the charge. This lack of transparency can frustrate employers, who often feel that they lack information at the conciliation stage to meaningfully evaluate risk and make decisions about settlement.

There have been attempts to change this state of affairs. At the close of FY 2020, we reported that new EEOC leadership had been pushing to make substantive changes to how the EEOC approaches its litigation and enforcement programs.[106] On July 7, 2020, the EEOC officially announced a new pilot program intended to improve conciliation procedures at the Commission.[107] The program was built "on a renewed commitment for full communication between the EEOC and the parties, which has been the agency's expectation for many years."[108] On October 8, 2020, the EEOC, in a Notice of Proposed Rulemaking, acknowledged that, historically, it had elected not to adopt detailed regulations relative to its conciliation efforts based on its

[106] *See* Christopher DeGroff, Matthew J. Gagnon, and Alex S. Oxyer, *EEOC Update: The Commission Releases Its FY 2020 Litigation Performance Report Card,* Workplace Class Action Blog (Jan. 20, 2021), https://www.workplaceclassaction.com/2021/01/eeoc-update-the-commission-releases-its-fy-2020-litigation-performance-report-card/; see also Christopher DeGroff, Matthew J. Gagnon, and Alex S. Oxyer, *EEOC Update: The Commission Issues New Litigation Delegation And Amicus Curiae Procedures,* Workplace Class Action Blog (Jan. 14, 2021), https://www.workplaceclassaction.com/2021/01/eeoc-update-the-commission-issues-new-litigation-delegation-and-amicus-curiae-procedures/.

[107] Press Release, U.S. Equal Employment Opportunity Commission, EEOC Announces Pilot Programs to Increase Voluntary Resolutions (July 7, 2020) www.eeoc.gov/newsroom/eeoc-announces-pilot-programs-increase-voluntary-resolutions.

[108] *Id.*

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belief that retaining flexibility over the conciliation process would "more effectively accomplish its goal of preventing and remediating employment discrimination."[109] The notice also acknowledged that the EEOC's conciliation efforts had not been terribly successful at resolving charges.[110]

In an effort to improve the effectiveness of the conciliation process, the notice included proposed amendments meant to establish "basic information disclosure requirements that will make it more likely that employers have a better understanding of the EEOC's position in conciliation and, thus, make it more likely that the conciliation will be successful."[111] The changes proposed by the EEOC were seen by many as a welcome attempt to address this issue, the Republican-led Commission adopted the Final Rule in January 2021, just before the new Biden administration was sworn in.

The new rule went into effect on February 16, 2021, but while it was lauded by employers, it did not survive long. Congress exercised its authority under the Congressional Review Act to overturn executive branch regulations within 60 legislative days of when they were issued.[112] Before June 2021 ended, both[113] houses[114] of Congress passed resolutions to rescind the rule, which the White House signed the resolutions into law.[115]

Short of any explicit requirements for the EEOC to follow, employers must be diligent and sometimes creative about drawing the EEOC into meaningful and productive settlement discussions. For employers, a longer conciliation process generally is better, as it suggests that the EEOC is more engaged in a give and take process about how to resolve the dispute without resort to litigation. In contrast, a short conciliation suggests that one or both parties are unwilling to bend their positions to negotiate a mutually acceptable outcome.

Conciliation agreements that the EEOC accepts commonly include requirements such as posting a notice of non-discrimination; reviewing and revising policies; providing training; and submitting reports to the EEOC for a period of time. Employers can negotiate the specific terms, though, such as the content of any notice, or where it is posted; which employees must complete the training; the contents and frequency of submission of any reports; or the duration of the agreement. The EEOC may also ask the employer whether they will agree to make the settlement public via a press release. Experienced counsel may be able to save an employer significant sums of money not just through the economic relief, but by understanding how to agree on points important to the EEOC while ensuring that programmatic relief does not needlessly burden the employer.

Timing and Statistics in Conciliation. The EEOC does not report detailed statistics about its process and timelines for moving an investigation from determination, to conciliation, to litigation. However, following the Supreme Court's *Mach Mining* decision, the EEOC began to include information in its complaints about how the process played out in each particular case. Seyfarth collects and analyzes that information annually, and as a result we are able to describe how long it takes for the EEOC to move from step to step, as well as the relative pace of the EEOC District Offices.

Duration of Conciliation. If you are an employer that has responded to a charge and just received a letter of determination, how long can you expect the EEOC to engage in conciliation? According to our analysis, the median time spent in conciliation is 54 days. For most employers, the EEOC will declare that conciliation has failed in three months or less. In some instances, however, conciliation has lasted for years.

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[109] Update of Commission's Conciliation Procedures, 85 Fed. Reg. 64079 (proposed Oct. 9, 2020) (to be codified at 29 C.F.R. pt. 1601 and 1626).

[110] *Id.* Over the last several years, the EEOC's conciliation efforts resolved less than half of the charges where a reasonable cause finding was made. Specifically, between fiscal years 2016 and 2019, only 41.23% of the EEOC's conciliations with employers were successful.

[111] *Id.*

[112] *See* Congressional Review Act, 5 U.S.C. § 801.

[113] S.J. Res., 117th Cong. (2021

[114] H.R.J. 33, 117th Cong. (2021).

[115] Remarks on Signing Legislation Regarding Methane Pollution, Predatory Lending, and Employment Discrimination, Daily Comp. Pres. Doc. DCPD-202100551 (June 30, 2021).

As described above, a longer conciliation process is likely to benefit employers, because it generally reflects that both sides are trying to reach an agreement. Employers are more likely to spend longer in conciliation when dealing with the EEOC's District Offices in Los Angeles, St. Louis, Charlotte, and Washington DC. Conciliation moves faster in the EEOC's District Offices in Memphis, Birmingham, Philadelphia, and Miami.

Time from the Failure of Conciliation to Filing a Complaint. The common assumption among employers is that it is a race to the courthouse once the EEOC deems conciliation failed, but our analysis suggests otherwise. Only about 7% of complaints are filed within the first month, and the median time from the notice of conciliation failure to filing of a complaint is nearly four times that: 116 days.

The quickest to file are the EEOC District Offices in Charlotte, New York, Philadelphia, and Dallas. The EEOC moves most slowly in its District Offices in Houston, Miami, Memphis, and Phoenix.

Time from Determination to Litigation. Taking both of these together, how much time can an employer expect to pass from determination to the start of litigation? Our analysis found that employers can expect to have more than a month before the complaint is filed, and that short timeline is uncommon. The median time from determination to complaint is 196 days.

Charges move most quickly to court in the EEOC's District Offices in Indianapolis, Charlotte, Dallas, and New York. The EEOC moves most slowly in its District Offices in Houston, Los Angeles, Phoenix, and Miami.



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B. Consent Decrees

1. General Description of a Consent Decree

If conciliation fails and the EEOC chooses to file a federal court complaint, the *only* way a matter can be mutually resolved (at least according to the EEOC) is a Consent Decree. A Consent Decree is a legally binding agreement, negotiated between the EEOC and the employer defendant, and ordered by the presiding Court. The proposed Decree and the Order entering the Decree are filed in open court and are a matter of public record. Critically, a Consent Decree cannot be confidential. The public nature of the settlement of an EEOC-initiated case is one of the biggest differences between an agency action and private litigation, and can be a source of surprise and frustration for employer defendants, where confidentiality is typically an essential term of any settlement.

Adding to the concern is the EEOC's standard procedure of issuing a press release at the conclusion of a lawsuit. With rare exceptions, soon after a Consent Decree is entered, the EEOC issues a press release on its website at eeoc.gov. The press release is ordinarily composed of 1) a recitation of the allegations in the complaint, 2) a summary of the terms of the Decree (both monetary and non-monetary), 3) one or more quotes by the District leadership/attorneys emphasizing the importance of complying with civil rights statutes, and 4) a discussion of how individuals can contact the EEOC if they feel they are victims of discrimination or retaliation. The EEOC takes the uniform position that employers cannot be part of the press release process,

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and will flatly reject demands to preview and/or edit the press release. Naturally, an employer may issue its own counter-press release, but that carries with it certain risks of compounding the exposure of the Decree. EEOC press releases and media issues are described in Part VII, below.

2. Common Provisions of a Consent Decree

Consent Decrees can differ significantly based on a host of factors, including the claims alleged, the size and nature of the employer, the strategic importance of the issue litigated, and the scope of alleged victims impacted by the employer's action or policy. Decrees can also differ significantly depending the EEOC District bringing the action, and can even differ by the EEOC lawyer negotiating the settlement. There are, however, certain features common to most Decrees:

- **Injunctive "Follow-the-Law" Provision:** A term appearing in virtually any Decree is a requirement that the employer not violate the particular statute at issue in the case for the term of the Decree. While this may seem like an innocuous provision, it technically creates a new cause of action against the employer for any alleged violation of statute during the term of the Decree. For example, if an employee feels they were a victim of discrimination during the Decree, and the EEOC believes that claim is substantiated, not only could the employee file an individual action under the particular statute, but the EEOC could also claim the employer defendant violated the Decree as well, and pursue a separate enforcement action. The impact of these provisions can be so great that certain Courts have, in very rare circumstances, refused to enter a Decree unless the provision is removed. *Fla. Ass'n of Rehab. Facilities v. Fla. Dep't of Health & Rehab. Servs.,* 225 F.3d 1208, 1223 (11th Cir. 2000) (citing *Meyer v. Brown & Root Constr. Co.,* 661 F.2d 369, 373 (5th Cir. 1981) ("An injunction must be framed so that those enjoined know exactly what conduct the court has prohibited and what steps they must take to conform their conduct to the law."); *see, e.g., Burton v. City of Belle Glade,* 178 F.3d 1175, 1200 (11th Cir. 1999) (invalidating an injunction which prohibited a municipality from discriminating on the basis of race in its annexation decisions because it "would do no more than instruct the City to 'obey the law'…"); *Payne v. Travenol Laboratories, Inc.,* 565 F.2d 895, 897 (5th Cir. 1978) (invalidating injunction that prohibited defendant from violating Title VII in its employment decisions).

- **Scope and Duration of the Decree:** Consent Decrees necessarily include provisions outlining the organizational and/or geographical scope to which it applies, and how long the Decree will remain in effect. The scope can range from as small as a particular department in a single facility to a coast-to-coast scope if the alleged offending policy or practice was nationwide. The length of Decrees typically range from as short as one year to as long as five years (and, in some rare instances, even longer). The most typical Decree length demanded by the EEOC is three years.

- **Monetary Relief:** The Decree will include the details of any monetary settlement, both for individual claimants and for class relief where applicable. The monetary relief section of a Decree can be as simple as outlining where and how checks will be sent, to pages of complicated instructions as to how a class settlement will be funded, managed, and issued to a large group of alleged victims. In some instances, employers and the EEOC engage a settlement administrator to assist in the monetary relief distribution process (at the employer's expense).

- **Modification of Internal Practices and Procedures:** The EEOC typically requires employers to ensure their internal processes, policies and procedures comply with the law. In an employment discrimination case, these changes generally impact recruitment, promotion, compensation, training, and other human resources policies. A diverse assortment of institutional changes may be required by the EEOC. In some cases, the EEOC will demand changes to an employer's policies that go beyond what is necessarily required by law.

- **Mandatory Anti-Discrimination Training:** Most Decrees also include mandatory EEO training programs. The programs most often consist of diversity, racial/gender sensitivity, and non-harassment training. Training of senior executives and management is nearly always required, but an employer also may be directed to train nearly all of its employees. The scope and cost of such training can be substantial.

- **Reporting and Monitoring:** Virtually all Decrees have some ongoing reporting and monitoring requirements. At a minimum, an employer ordinarily will be required to notify the EEOC when it has complied with certain provisions (e.g., a report on when payment was issued, when training has been conducted, the timing of policy revisions, etc.). The reporting provisions, however, can be far more invasive, requiring employers to update the EEOC on any similar internal claims of discrimination and how they were resolved, providing applicant flow and hiring data in a recruiting case, and detailed reports of any discipline that has been administered if discipline was at issue in the underlying case. The Decree often includes a commitment that the employer will retain and produce documents concerning Decree compliance, will make employees available for interviews, and could even allow the EEOC to access the employers worksites.

- **Posting:** In almost all cases, the employer is required to post a notice visible to all employees that the EEOC brought a lawsuit, that it was resolved via a Consent Decree, explaining that the employer is forbidden from violating certain EEO laws, and providing contact information for the EEOC.

There are, of course, other more "exotic" forms of relief found in Decrees, including set hiring efforts, public statements by company leadership encouraging diversity, letters of apology to alleged victims, the hiring of outside experts to guide policy review, the formation of new internal organizations and positions to ensure Decree compliance, and so on. All terms of a Consent Decree are subject to negotiation, and employers are not compelled to agree to any provision. As will be discussed below, the terms the EEOC demands in settlement are often far broader than injunctive relief that is typically ordered by a District Court even when the EEOC is successful a trial.

NOTABLE FY 2024 RESOLUTIONS THROUGH CONSENT DECREES

***EEOC v. Aaron Thomas Co. et al.,* Case No. 2:23-cv-02599 (W.D. Tenn.)** A national contract packaging company agreed to pay $450,000 to settle an EEOC suit claiming the company failed to select or retain Black workers for placement at its worksites in violation of Title VII of the Civil Rights Act of 1964 (Title VII). According to the EEOC, the company utilized multiple secret phrases and techniques when it requested temporary employees from a staffing agency, including requesting Spanish-speaking employees when their language skills were not required for the job. The company allegedly segregated employees by race and generally provided Latino workers with better pay, conditions, and financial opportunities than their Black counterparts. In addition to monetary damages, the company signed a 2-year Consent Decree that requires it to create an anti-discrimination policy and develop a plan designed to recruit diverse applicants. It must also provide specialized anti-discrimination training to managerial employees and provide the EEOC with periodic reports of any future employee complaints of discrimination.

***EEOC v. ACARE HHC d/b/a Four Seasons Licensed Home Health Care,* 23-cv-5760 (E. D. N. Y.)** A New York City based company agreed to pay $400,000 to a class of home health aides and provide significant non-monetary relief when it allegedly agreed to patients' racial preferences when making home health aide assignments, in violation of Title VII. According to the EEOC, Black and Hispanic aides would be transferred to a new assignment or, if no other assignment was available, lose their employment altogether. In addition to the monetary payment, defendants signed a Consent Decree that includes an injunction prohibiting the company from making home health aide assignments based on clients' race- and/or national origin-based preferences. The company must also update its internal policies, report complaints and provide mandatory training for management employees on the law.

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***EEOC v Monson Fruit, Co. LLC,* Case No. 1:22-cv-03133-MKD (E.D. Wash.)** A produce company agreed to pay $250,000 and provide injunctive relief to resolve a sexual harassment action brought under Title VII. The EEOC alleged that an agricultural worker encountered sexual harassment including repeated unwelcome advances and requests for sex from her manager. After rejecting the manager's propositions and reporting the conduct, the worker's husband who also worked for the company was fired. Management had also allegedly failed to act on reports of the female worker's harassment. The company agreed to a three-year consent decree that requires implementation of additional policies and procedures designed to increase compliance with Title VII, including a new reporting hotline and trainings for supervisors and managers on investigative techniques for sexual harassment investigations.

***EEOC v. Asphalt Paving Systems, Inc.,* Case No. 8:23-cv-2169-JLB-UAM (M. D. Fla.)** An asphalt paving company with locations in Florida, New Jersey, Pennsylvania, Georgia and Tennessee, agreed to pay $1.25 to settle a race discrimination action. According to the EEOC's lawsuit, the company subjected 12 Black former employees and a class of other Black employees, to frequent, severe harassment based on race that subjected them to degrading and humiliating conditions such as being required to work in pouring rain while white workers watched, and being forced to relieve themselves outdoors while white employees were taken to indoor restrooms. The Black employees often were subjected to racial slurs and epithets. The company resolved the Title VII action by agreeing to a three-year decree to provide specialized training on race discrimination to human resources officers and managers. The decree also requires the company to appoint an outside monitor to review complaints of race-based harassment and provide EEOC with reports of harassment complaints.

***EEOC v. J.A. Croson, LLC,* Case No. 5:22-cv-00435 (M. D. Fla.)** A Florida-based plumbing and HVAC contractor agreed to pay $1.6 million to settle a race and national origin harassment and retaliation lawsuit. In a Title VII complaint, the EEOC alleged the company subjected a 17 Black and Hispanic employees to a work environment with open use of racial slurs and derogatory language, displayed the Confederate flag, and distributed of humiliating and degrading assignments based on their race and national origin. Two former Black employees were also allegedly terminated for reporting complaints of the work environment. Under the three-year consent decree the company agreed to, it will pay monetary damages and designate an employee relations hotline for employees to submit harassment and retaliation complaints. The company will also assign an investigator address harassment and retaliation complaints. Training employees to recognize workplace harassment will also be required.

***EEOC v National Telecommuting Institute, Inc.,* No. 5:23-cv-01210-XR (W.D. Tex.)** A Massachusetts-based staffing support firm agreed to pay $1.25 million to resolve an ADA disability discrimination action. The EEOC alleged the company failed to pursue the placement or referral of visually-impaired applicants as telephone-based customer service agents after learning the applicants used accessibility tools like screen readers to convert computer text to speech, and it also denied request for accommodations during the application process. The company paid monetary damages and agreed to a three-year consent decree requiring internal training on applicants' and employees' rights and responsibilities under the ADA. The decree also required revision of company policies and practices concerning the provision of reasonable accommodations to persons with disabilities, including blindness. It also had to appoint an internal ADA coordinator and external monitor to ensure compliance.

C. Trial Judgment

Although EEOC trial victories are widely publicized by the agency, they are, in reality, quite rare. This, not necessarily because of the merits of any given action, but because the EEOC tries very few cases to verdict. As with the broader universe of employment law actions, the uncertainty of trial often drives the parties to pre-trial resolution. Indeed, according to Lex Machina's 2023 Employment Litigation Report (the most recent report available), only 1.3% of all employment cases are actually tried to verdict.[116]

Monetary relief awarded by juries vary widely, depending on the number of claimants, the nature of the action, and the type of position at issue. Some of these trial verdicts are highlighted in Part III. The monetary relief in an EEOC-initiated action is no different than what a private litigant could be awarded in individual action, with the important exception that the EEOC cannot be awarded attorneys' fees as a prevailing litigant.

A more important distinction is non-monetary relief. Although non-monetary/injunctive relief can theoretically be sought in private litigation, few private litigants seek relief beyond backpay, front pay and compensatory, punitive and/or liquidated damages (depending on the statute at issue). The EEOC, on the other hand, routinely seeks non-monetary relief after a trial victory. The District Court Judge, and not a jury, awards any non-monetary relief. The injunctive relief demanded by the EEOC often mirrors the elements sought in Consent Decrees (see above).

A District Court considers a variety of factors when deciding what injunctive relief is proper after an EEOC trial win. To determine whether a post-trial award warrants the imposition of injunctive relief, courts primarily consider "whether the facts indicate a danger of future violations" of unlawful employment practices. *E.E.O.C. v. Wal-Mart Stores, Inc.,* 187 F.3d 1241, 1250 (10th Cir. 1999) If an employer intentionally engages in a practice whereby a "danger of future violations" exists, a court may find it necessary to grant injunctive relief. *Id.* The danger of recurrent violations must be "something more than a mere possibility, which serves to keep the case alive." *United States v. W.T. Grant Co.,* 345 U.S. 629, 633 (1953). But injunctive relief is not appropriate "when there is no proof of a pattern or practice of discrimination. *E.E.O.C. v. RadioShack Corp.,* No. 10-CV-02365-LTB-BNB, 2012 WL 6090283, at *6 (D. Colo. Dec. 6, 2012). A District Court in Colorado did not grant injunctive relief where there was "no reason to believe that the single unlawful act 'will likely occur again.'" *Id.* Indeed, as one court noted, a finding that an employer "discriminated against one individual on the basis of disability" was not "standing alone, sufficient to warrant mandating the entire Department of Commerce post an anti-discrimination notice." *Id.*

Although the EEOC often seeks wide-ranging injunctive relief, Seyfarth's survey of post-trial injunctive relief awards demonstrates that District Courts simply do not tend to award the breadth and depth of relief demanded by the Commission. In fact, in the past 10 years, most grants of injunctive relief after an EEOC trial victory consisted of a general prohibition on future discrimination, and training or policy modifications, if warranted. The majority of the injunctive relief imposed by the courts have been limited to two or three year period. Courts imposed an injunction period of more than three years in only a few cases, and these five year periods were not unexpected given the large compensatory or punitive damages involved.

NOTABLE EEOC TRIAL VICTORIES IN FY 2024

***EEOC v. SkyWest Airlines Inc.,* Case No. 3:22-cv-01807-D (N.D.Tex.)** On November 20, 2024, a jury awarded a former employee $170,000 in compensatory damages and $2 million in punitive damages in a workplace sexual harassment case filed by the EEOC. That same day, the judge presiding over the trial reduced the punitive damages to $130,000. The EEOC argued that the former employee had been subjected to a hostile work environment by her coworkers' constant crude and sexual jokes, that the company swept the harassment under the rug with a shoddy investigation, and that the company retaliated against the employee by placing her on indefinite administrative leave after she reported the harassment. The company argued that it did not know about the harassment and that once it did,

[116] Lex Machina did not publish the Employment Litigation Report in 2024.

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it took prompt remedial action. The company also argued that paid administrative leave was not an adverse employment action. The jury found for the EEOC on the sexual harassment claim, but not the retaliation claim.

***EEOC v. Drivers Management, LLC and Werner Enterprises, Inc.,* Case No. 8:18-cv-00462 (D.Neb.)** On January 11, 2024, a judge awarded a deaf applicant $300,000 in punitive damages and approximately $36,000 in backpay in a disability discrimination case filed by the EEOC. A jury previously awarded $36 million in punitive damages – over one hundred times the statutory cap. The judge also ordered the defendants to submit bi-annual reports to the EEOC for three years. In the suit, the EEOC claimed that the defendants, a truckload carrier, failed to hire the applicant because he was deaf. The EEOC argued that the applicant was fully qualified for the job because he obtained a commercial driver's license and an exemption from federal physical qualification standards for interstate drivers. The defendants maintained that the applicant was not qualified for the job due to his lack of prior trucking experience and inability to safely complete the required training program. The judgment has been appealed to the 8th Circuit.

Case pending in the Northern District of New York: On February 8, 2024, a jury awarded a deaf applicant $25,000 in back pay, $150,000 in emotional distress damages, and $1.5 million in punitive damages in a disability discrimination case filed by the EEOC. According to the lawsuit, the defendant, a distribution company, failed to interview the claimant upon learning she was deaf and refused to hire her for two entry-level warehouse positions. The defendant argued that the decisionmaker who declined to interview the applicant was unaware the applicant was disabled. A seven-person jury did not accept this argument, finding that the failure to interview and subsequent failure to hire constituted violations of federal law.

NOTABLE EEOC TRIAL LOSS IN FY 2024

***EEOC v. Telecare Mental Health Services of Washington, Inc.,* Case No. 2:21-cv-01339 (W.D. Wash.)** On March 14, 2024, an eight-person jury issued a defense verdict for a healthcare company, finding that providing an accommodation for the applicant, who sought a registered nurse position, would pose an undue hardship. The company rescinded its conditional job offer to the applicant after the interactive process revealed his physical limitations from a permanent leg injury could not be accommodated due to the physical nature of the job. The EEOC had sought significant injunctive relief in addition to maximum compensatory damages for the applicant. Subsequently, the EEOC moved for a new trial and judgment as a matter of law. After the trial court denied the motions, the EEOC filed an appeal to the Ninth Circuit, but voluntarily dismissed it on December 2, 2024. Seyfarth Shaw represented the defendant in the trial and appellate court actions.

PART VII: Media and Publicity Elements of an EEOC Case

Preceding sections touched on the EEOC's public statements concerning case resolution, but given the brand and reputation impact these cases may carry for employers, a specific word on the issue is warranted. The EEOC has become quite savvy at leveraging the press as a pulpit for publicizing its agenda, especially in litigation. An employer need only visit the EEOC's website to understand the role of media statement's in the Commission's enforcement process.[117]

This section discusses what employers can expect from these releases, including typical language, elements, and timing.

EEOC's Publicity Philosophy. The EEOC has acknowledged that press coverage is part of its deterrent message and mission. Notably, in sources as early as the Commission's 2006 Systemic Task Force report, the EEOC has announced that the "EEOC engage[s] in high impact litigation and publicity efforts that change the workforce status of affected groups and/or improve employment policies, practices, or procedures in affected workplaces."[118] (*See also* opening statement of Sen. Alexander regarding the Commission's apparent strategy, in filing certain lawsuits, to "achieve a maximum amount of publicity."[119])

The EEOC's litigation media statement is one of the tools in the Commission's toolbox that it wields with an aim to achieve its strategic enforcement goals.

Typical Media Statements During The Course Of EEOC Initiated Litigation. In the life of a lawsuit initiated by the EEOC, there will ordinarily be two media statements. The first will be published when the suit is filed, and the second if the case is resolved. Although all media statements published upon filing of a suit will have roughly the same cadence and tone, those published upon resolution can vary greatly. Depending on the posture of the case, whether the case theories align with the EEOC's strategic goals, and even how the EEOC views the employer, media statements can vary dramatically.

Initial Media Statement. A media statement issued at the outset of the litigation tends to have a stern tone, regarding the alleged actions of the employer. The statement will lead off with a general assertion of the legal claims lodged against employer, including the statute at issue. For example, the statement may declare that a female employee suffered through a hostile work environment at the hands of her supervisor, in violation of Title VII. The statement will then go on to recite the key allegations of discrimination, harassment, or retaliation proffered in the complaint. These allegations are often delivered as fact, not issues that will be proven – or not – during the litigation. Often times the statement will also describe the employer, perhaps sharing a website, states of operation, and a brief description of the work done by the business. Finally, the applicable District Director and/or one of the trial attorneys for the matter will offer a quote in the nature of a sound bite concerning the allegations, which will emphasize the Commission policy underlying its prosecution of the lawsuit. Notably, these statements include entirely unproven allegations, many of which are often later proven inaccurate or outright false (and never with an EEOC retraction or modification of the press release). It is not surprising that many employers who have been the subject of the EEOC's media statements have deemed the Commission's tactics to be unfair and designed to apply extra-judicial pressure to settle litigation.

Media Statement Upon Resolution. When a suit is resolved, typically through an agreed upon Consent Decree (but occasionally after confidential conciliation or a rare trial win), the EEOC will publish yet another media statement. The tone and content of this statement, however, can vary from extremely aggressive

[117] U.S. Equal Employment Opportunity Commission, *EEOC Newsroom,* https://www.eeoc.gov/newsroom/search.

[118] U.S. Equal Employment Opportunity Commission, *SYSTEMIC TASK FORCE REPORT To the Chair of the Equal Employment Opportunity Commission* (Mar. 2006), https://www.eeoc.gov/systemic-task-force-report-chair-equal-employment-opportunity-commission.

[119] U.S. Government Publishing Office, *Transcript from Senate Hearing 114-165, Examining the Equal Employment Opportunity Commission, Focusing on Examining EEOC's Enforcement and Litigation Programs* (May 19, 2015), https://www.govinfo.gov/content/pkg/CHRG-114shrg94782/html/CHRG-114shrg94782.htm.

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to fairly measured, and can even verge on "friendly." The direction taken by the EEOC in this statement has historically depended largely on the resources devoted to the litigation, how contentious the litigation was, as well as whether the claims and allegations at issue align with the Commission's strategic goals. The Commission used to publish its process in the Regional Attorney's manual, but that document has been rescinded and replaced by a document titled "Dissemination of Information to the Public about EEOC Cases in Litigation."[120] In year past, before the resolution of "significant litigation" a Regional Attorney was required to advise the Office of the General Counsel. The Commission defines "significant" to mean a lawsuit "expected to involve significant monetary or injunctive relief"; "a favorable jury verdict or court decision"; or resolution which "is likely to receive national or significant local attention due to the notoriety of the defendant, ongoing media interest in the lawsuit and/or issues involved, or other factors that may have spurred significant media scrutiny." Whether or not the litigation was deemed "significant" played a role in the tone of the media release as well. The current protocol released on May 21, 2024, does not indicate the internal process for deeming certain cases significant, or what role the Office of the General Counsel plays in press releases. The policy simply states that "it is EEOC policy to issue a press release each time the EEOC files a case in court, resolves a lawsuit, or experiences other significant litigation developments." The EEOC also indicates that it takes individuals' privacy concerns into account, and will not release an individual's name or personal identifying characteristics in a press release without express consent.

Historically, the more resources expended, and the more closely aligned the claims are with the Commission's strategic goals, the more likely the EEOC will publish an aggressive media statement. The hallmarks of such a statement will be not only the recitation of the most salacious of the allegations (often those that remain contested but offered as fact), but also a detailed description of the monetary and programmatic relief obtained in the Consent Decree. For example, in a representative matter involving a Brooklyn-based company supplying home health aides, the EEOC's media statement set forth that "[the company] routinely acceded to patients' racial preferences when making home health aide assignments, including removal of Black and Hispanic aides. Those aides would be transferred to a new assignment or, if no other assignment were available, lose their employment completely."[121] The statement went on to detail the programmatic relief, followed by harsh admonishments from a Regional Attorney and District Director, specifically:

> "Employers cannot make job assignment decisions based on a client's preference for a worker of a particular race or national origin," said EEOC Regional Attorney Kimberly A. Cruz. "It is imperative for employers to have policies, training, and other safeguards in place that help prevent a client's prejudices from influencing their employment decisions."
>
> Yaw Gyebi, Jr., director of the EEOC's New York District Office, added, "In the 60 years since the enactment of Title VII, the EEOC has remained vigilant and committed to the elimination of discrimination in the workplace, which includes addressing employer practices which accede to client's discriminatory preferences. The EEOC will continue to investigate allegations against employers who make job assignments based on such improper bases and obtain appropriate relief for those victims who are harmed by such practices."

Moving down the spectrum, the Commission may take a more measured tone where the litigation is less protracted and the claims are not necessarily consistent with its strategic goals. For instance, in an ADA case settled by the EEOC concerning an employer's alleged discriminatory termination of a disabled employee, which had been pending less than a year, the media statement provided few details concerning the claims brought.[122] Further, after a short description of the programmatic relief contained in the lone statement o a Regional Attorney was far more benign:

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[120] U.S. Equal Employment Opportunity Commission, *Dissemination of Information to the Public about Cases in Litigation,* https://www.eeoc.gov/regional-attorneys-manual/c-dissemination-information-public-about-cases-litigation.

[121] Press Release, U.S. Equal Employment Opportunity Commission, *Four Seasons Licensed Home Care Agency to Pay $400,000 in EEOC Race and National Origin Discrimination Lawsuit* (Sept. 24, 2024) https://www.eeoc.gov/newsroom/four-seasons-licensed-home-care-agency-pay-400000-eeoc-race-and-national-origin..

[122] Press Release, U.S. Equal Employment Opportunity Commission, *Otto Candies to Pay $165,000 to Resolve EEOC Disability Discrimination Suit* (Aug. 23, 2018), https://www.eeoc.gov/newsroom/otto-candies-pay-165000-resolve-eeoc-disability-discrimination-suit.

> "This settlement is both strong and just," said Rudy Sustaita, regional attorney for the EEOC's Houston District Office. "[The employer] has given us every indication that it intends to comply with the ADA in the future."

And on occasion, it will even border on "friendly" – including a statement of appreciation to the employer for its cooperation in resolving the litigation.[123] In a suit brought in Wisconsin, filed and settled within five months, the Commission was quoted as stating:

> "We thank [the employer] for its commitment to settle this case before the sides incurred significant costs and its willingness to ensure a level playing field for its pregnant employees seeking job modifications, including light duty work, otherwise available to non-pregnant employees," said EEOC Chicago Regional Attorney Gregory M. Gochanour. "The EEOC will continue to enforce the federal laws so that all pregnant employees have the same opportunities as non-pregnant employees to contribute to our thriving economy," said Julianne Bowman, the EEOC's District Director for the Chicago District Office.

Although "friendly" media statements are the exception, not the rule, the EEOC is more likely to publish such a statement to incentivize other employers to similarly resolve enforcement actions.

A Word On Conciliation Media Statements. Historically, the EEOC has issued media statements primarily for lawsuits, as conciliation is intended to be a confidential process. Indeed, one of the chief reasons for employers to engage in pre-suit conciliation is the carrot of confidential resolution. Interestingly, however, we have seen a trend of the EEOC issuing presumably agreed-upon media statements for matters settled in conciliation. Accordingly, the employer has a degree of leverage in negotiating these publications. As one might imagine, conciliation media statements are, thus, more positive in tone.[124] Further, on occasion, the employer may also make a statement, which at minimum disclaims any liability – something rarely, if ever, allowed in a litigation media statement.

However, the EEOC will issue media statements on the conciliation process where it alleges that an employer failed to comply with the terms of a conciliation agreement. For example, on October 7, 2024, the EEOC did release a press release claiming that a staffing agency violated the law by refusing to comply with the terms of a conciliation agreement regarding a classwide national origin discrimination finding.[125] The EEOC alleges that the staffing agency refused to honor its obligations under the agreement and "pa[id] only a portion of the amount promised to the workers" and failed to report to the EEOC. In its press release, an EEOC Trial Attorney was quoted stating, "When an employer signs and then ignores an EEOC conciliation agreement, it signals contempt for the law and harms both the victims of discrimination and the public interest. We want to put employers on notice that the EEOC will enforce these agreements when respondents fail to comply."

Anatomy Of A Media Statement. Regardless of the tone, EEOC media statements are consistent in their basic elements and structure.

First, there will be a **headline** crafted to be eye-catching. In prior years, these headlines tended to be punchier, such as "Paramount Mailing Company Punished Female Employees for Complaining About Abuse, Federal Agency Charges."[126] More recently, headlines have tended to be short and to the point, though they are still designed to draw a reader's attention, such as "EEOC Sues New York Beer Project for Discriminating

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[123] Press Release, U.S. Equal Employment Opportunity Commission, *Silverado to Pay $80,000 to Settle EEOC Pregnancy Discrimination Lawsuit* (Jan. 29, 2018), https://www.eeoc.gov/newsroom/silverado-pay-80000-settle-eeoc-pregnancy-discrimination-lawsuit.

[124] *See*, e.g., Press Release, U.S. Equal Employment Opportunity Commission, *Strategic Systems to Pay $15,000 in EEOC Sex Discrimination Charge* (Sept. 30, 2024) https://www.eeoc.gov/newsroom/strategic-systems-pay-15000-eeoc-sex-discrimination-charge; Press Release, U.S. Equal Employment Opportunity Commission, *G4S Secure Solutions Settles EEOC Disability Discrimination Charge for $90,000* (Sept. 4, 2018), https://www.eeoc.gov/newsroom/g4s-secure-solutions-settles-eeoc-disability-discrimination-charge-90000.

[125] Press Release, U.S. Equal Employment Opportunity Commission, *EEOC Sues Total Employment and Management for Breaching Conciliation Agreement* (October 7, 2024) https://www.eeoc.gov/newsroom/eeoc-sues-total-employment-and-management-breaching-conciliation-agreement

[126] Press Release, U.S. Equal Employment Opportunity Commission, *EEOC Sues Sierra Creative SystemsAddressers for Sexual Harassment and Retaliation* (June 13, 2018), https://www.eeoc.gov/newsroom/eeoc-sues-sierra-creative-systems-addressers-sexual-harassment-and-retaliation.

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Against Employees Because of Their Medical Conditions."[127] Below is a word cloud, highlighting the most common words and phrases employed by the EEOC in its 2024 headlines. Not surprisingly, in the current environment, "Disability," "Sexual" and "Harassment" play prominently.



Second, the media statement will include a **statement of claims**, describing the complained of discrimination, harassment, and/or retaliation, including factual and legal allegations. The more aggressive press releases will set forth the most sensational and detailed allegations, whereas the measured versions may state the allegations in more bland terms, which can sometimes be so vague that it is difficult to divine what the claims were based upon in the first place.

Third, the Commission will include **quotes** from the relevant District Director and possibly a Regional Attorney involved in the litigation. The tone of the EEOC's quotes can vary greatly, depending on, among other things, the importance of the issue to the Commission's strategic goals, the duration of the litigation, and resources expended. Excluding conciliation media statements, on very rare occasions, the EEOC may allow a quote from the employer on the resolution of the lawsuit. Although it is unlikely the Commission will agree to such a statement, if the litigation and settlement proceed amicably, it is certainly worth attempting to negotiate the point.

Finally, the media statement will conclude with a **statement of the EEOC's mission** (*e.g.* "The EEOC advances opportunity in the workplace by enforcing federal laws prohibiting employment discrimination"). Media statements that make note of the SEP are more likely to be among the more aggressive.

Emerging Issues With Media Exposure. As the Commission media strategy has evolved, it has made continued efforts to increase its audience and distribution of these statements for maximum effect. The EEOC has also been known to conduct press conferences announcing a new suit[128] or trumpeting an EEOC

[127] Press Release, U.S. Equal Employment Opportunity Commission, *EEOC Sues New York Beer Project for Discriminating Against Employees Because of Their Medical Conditions* (April 24, 2024), https://www.eeoc.gov/newsroom/eeoc-sues-new-york-beer-project-discriminating-against-employees-because-their-medical#:~:text=According%20to%20the%20EEOC%27s%20lawsuit,he%20had%20a%20nocturnal%20seizure.

[128] *See*, e.g., Press Release, U.S. Equal Employment Opportunity Commission, *EEOC TO ANNOUNCE FILING OF DISABILITY LAWSUIT* (May 22, 1996), https://www.eeoc.gov/newsroom/eeoc-announce-filing-disability-lawsuit.

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victory.[129] But now the EEOC also publishes many of its media statements on social media, such as Twitter. It has also taken to issuing relevant media statements in multiple languages depending upon the employees and employer at issue.[130] For as long as the EEOC places a priority on publicity, it will no doubt continue to search for new ways to increase their audience.

Practical Considerations for Employers. For employers who find themselves involved in an EEOC enforcement action, it is important not to lose sight of the Commission's use of its media statement as both carrot and stick. The EEOC places considerable value on shining a spotlight on its enforcement efforts, especially those which advance its strategic goals. While it is unlikely that the EEOC will allow the employer too much say in the issued statement, when negotiating resolution with the EEOC, where possible, employers should use the Commission's goal of publicity as a possible bargaining chip to achieve the best possible outcome for the inevitable media statement. Moreover, by understanding the Commission's strategic goals, employers will gain a greater awareness of what tone and tenor the EEOC's statement will take upon resolution, and can prepare accordingly.

[129] *See*, e.g., Press Release, U.S. Equal Employment Opportunity Commission, *ABM Industries Settlement Press Conference*, https://www.eeoc.gov/abm-industries-settlement-press-conference.

[130] *See*, e.g., Press Release, U.S. Equal Employment Opportunity Commission, *GE Oil & Gas Pagará $5,300 Por Desacato En Citación De La EEOC En El Cumplimiento De Acción* (Feb. 19, 2015), https://www.eeoc.gov/newsroom/ge-oil-gas-pagara-5300-por-desacato-en-citacion-de-la-eeoc-en-el-cumplimiento-de-accion; Press Release, U.S. Equal Employment Opportunity Commission, *Wal-Mart Pagará $150,000 Para Resolver Demanda Por Discriminación a Base De Edad Y La Discapacidad Por la EEOC* (Feb. 19, 2015), https://www.eeoc.gov/newsroom/wal-mart-pagara-150000-para-resolver-demanda-por-discriminacion-base-de-edad-y-la; Press Release, U.S. Equal Employment Opportunity Commission, *EZEFLOW USA, Inc. Pagará $65,000 Para Resolver Demanda por Discriminación A Base De Discapacidad Por La EEOC* (Jan. 9, 2015), https://www.eeoc.gov/newsroom/ezeflow-usa-inc-pagara-65000-para-resolver-demanda-por-discriminacion-base-de-discapacidad.

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SEYFARTH'S COMPLEX LITIGATION RESOURCES

Seyfarth takes pride in keeping our clients informed about current developments in a way that is pertinent to their businesses. We believe it is our responsibility to provide expeditious, high-quality products and services that meet our clients' practical needs. Since 2013, Seyfarth's Complex Discrimination Litigation practice group has published an annual report on trends in EEOC litigation. Additionally, when it comes to defending employers in wage and hour collective and class actions, we literally wrote the book on the subject. Our treatise, *Wage & Hour Collective and Class Litigation* is recognized as the definitive resource on this subject and is commonly used by lawyers, academicians, and judges in researching the many complex and evolving procedural and substantive defense issues that may ultimately determine case outcomes. We have also published other authoritative resources, such as the *FLSA Handbook* as well as guides to wage and hour laws in California, Illinois, and Massachusetts.

Together with our blogs (www.employerlaborrelations.com, www.environmentalsafetyupdate.com, www.laborandemploymentlawcounsel.com, www.wagehourlitigation.com, and www.workplaceclassaction.com), legal updates, and webinars, these treatises establish us as the most reliable management thought leaders in this area. Most importantly, we put our thought leadership to good use in our approach to the defense of these cases for our clients. To learn more about our capabilities in this space, please visit our website at www.seyfarth.com.

We sincerely hope this book serves as a valuable reference for you, our clients and friends, and we look forward to delivering up-to-the-minute updates to you throughout the year.

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