New Priorities, Familiar Laws: Federal Labor and Employment Law Developments in 2025 and 2026

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I. Introduction

Every year, employers make countless decisions about hiring, firing, wages, and workplace conditions. In 2025 and 2026, the regulatory landscape governing those decisions changed—substantially—but the law did not. New leaders took the helm at the United States Equal Employment Opportunity Commission (EEOC), the United States Department of Labor (Department of Labor), the United States Department of Justice (DOJ), and at other federal executive agencies. Executive orders ushered in new enforcement priorities with ambitious scope, based on both familiar and novel legal theories, including measures designed to end "illegal" diversity, equity, and inclusion (DEI) programs and seeking to snuff out the use of disparate impact liability. The agencies moved aggressively to implement President Donald Trump's second-term policy agenda, and agencies that historically have had nothing to do with workplace regulation entered the arena. Religious liberty emerged as a renewed enforcement priority. The Supreme Court weighed in on presidential removal powers, transgender rights, and until-now outstanding issues under Title VII and the Americans with Disabilities Act. And across the country, universities agreed to high-profile settlements with the federal government that involved hundreds of millions of dollars. Put it all together, and labor and employment practitioners are now operating in a regulatory environment very different from the one they knew in 2024.

It is also important not to overstate these changes. Congress passed no significant law that changed anything about federal laws that govern the workplace. The federal government's efforts to implement President Trump's agenda produced mixed results. Litigation produced injunctions that stopped some of the agencies' efforts, and the agencies themselves filed a small number of lawsuits that remain pending.

This article breaks down the key developments and explains what they mean for lawyers advising employers and employees today.

II. Trump Administration Policy Directives Affecting Labor & Employment Matters

The second Trump Administration has charted an aggressive course. On personnel, it has trimmed the federal workforce across the board and indicated plans to continue that theme in 2026. It also brought in new political leadership at the EEOC and the Department of Labor and changed who can be fired and how. On policy, President Trump issued executive orders addressing sex and gender discrimination, illegal DEI initiatives, and disparate impact liability. And on enforcement, the Administration declared an intent to wield the False Claims Act against federal contractors that engage in illegal DEI practices.

A. Agency Personnel Changes Affecting Labor & Employment Matters

The EEOC and the Department of Labor both saw substantial personnel changes in the second Trump administration. At the EEOC, President Trump installed new political leadership, including designating Andrea Lucas as Acting Chair with a focus on reversing DEI-related enforcement priorities, while simultaneously overseeing significant reductions in agency staffing

to historic lows. The Department of Labor similarly welcomed new leadership, including now-former Secretary Lori Chavez-DeRemer, Acting Secretary Keith Sonderling, and Solicitor of Labor Jonathan Berry. Each brought distinct policy priorities to the agencies. All supported President Trump's agenda.

1. EEOC Leadership Changes and Staff Reduction

a. *New Political Leadership*

On January 20, 2025, President Trump designated Commissioner Andrea Lucas as Acting Chair. Acting Chair Lucas announced that her "priorities will include rooting out unlawful DEI-motivated race and sex discrimination; protecting American workers from anti-American national origin discrimination; defending the biological and binary reality of sex and related rights, including women's rights to single-sex spaces at work; protecting workers from religious bias and harassment, including antisemitism; and remedying other areas of recent under-enforcement."[1] Chair Lucas has since encouraged white males to contact the EEOC with allegations of discrimination, on December 17, 2025, posting a video on X.com with the caption: "Are you a white male who has experienced discrimination at work based on your race or sex? You may have a claim to recover money under federal civil rights laws. Contact the @USEEOC as soon as possible."[2]

President Trump fired former Chair Charlotte Burrows and Vice Chair Jocelyn Samuels on January 27, 2025. The firings left the Commission without the three-commissioner minimum for a quorum[3] and restricted the EEOC's ability to file systemic discrimination lawsuits and amicus briefs, issue regulations, initiate rulemaking, and change policies.[4] On July 31, 2025, the Senate confirmed Lucas for another five-year term, and President Trump formally designated her as chair on November 6.[5] President Trump also nominated Brittany Panuccio to serve as commissioner.[6] And the EEOC obtained a quorum on October 27, when Senate-confirmed Commissioner Panuccio (Republican) joined Chair Lucas (Republican) and Commissioner Kalpana Kotagal (Democrat) at the EEOC.

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[1] *President Appoints Andrea R. Lucas EEOC Acting Chair Jan. 21, 2025*, www.eeoc.gov/newsroom/president-appoints-andrea-r-lucas-eeoc-acting-chair (last visited Apr. 28, 2026).

[2] EEOC Chair Andrea Lucas (@andrealucasEEOC), X (Dec. 17, 2025), https://perma.cc/X528-DEAK.

[3] *See* 42 U.S.C. § 2000e-4(c).

[4] *See What You Should Know About EEOC and Modified Delegation of Litigation Authority*, www.eeoc.gov/wysk/what-you-should-know-about-eeoc-and-modified-delegation-litigation-authority (last visited Apr. 28, 2026)

[5] *EEOC Acting Chair Andrea Lucas Confirmed by United States Senate for a Second Term Aug. 1, 2025*, www.eeoc.gov/newsroom/eeoc-acting-chair-andrea-lucas-confirmed-united-states-senate-second-term (last visited Dec. 30, 2025); *Andrea R. Lucas Designated Chair of the U.S. Equal Employment Opportunity Commission Nov. 6, 2025*, www.eeoc.gov/newsroom/andrea-r-lucas-designated-chair-us-equal-employment-opportunity-commission (last visited Apr. 28, 2026).

[6] *Brittany Bull Panuccio, Commissioner*, www.eeoc.gov/brittany-bull-panuccio-commissioner (last visited Apr. 28, 2026).

The EEOC's general counsel is responsible for the conduct of EEOC litigation.[7] Three individuals served in that role during 2025, and President Trump nominated a fourth. President Trump fired Biden-appointee Karla Gilbride on January 27, 2025. On February 4, 2025, he appointed Andrew Rogers to serve as acting general counsel.[8] Mr. Rogers left the EEOC in October after the Senate confirmed his nomination to serve as the Wage and Hour Administrator at the Department of Labor.[9]

President Trump then appointed former Office of Federal Contract Compliance Programs Director Catherine Eschbach to replace Mr. Rogers.[10] On November 19, President Trump nominated Houston-based lawyer M. Carter Crow to serve as general counsel.[11] The Senate returned the nomination to the President on January 3, 2026.[12] President Trump renominated Mr. Crow on January 13, 2026,[13] but again withdrew his nomination on April 27, 2026.[14] Ms. Eschbach will continue as acting general counsel.

b. *Workforce Reductions*

The federal workforce shrank dramatically in 2025 and 2026. Since January 2025, large swaths of federal employees have either voluntarily left or been forced to leave their jobs.[15] As part of that push, many federal employees received deferred resignation offers known as the "Fork in the Road" emails.[16] The emails promised employees that those who resigned would "retain all pay and benefits regardless of [their] daily workload" and "be exempted from all applicable in-person work requirements until September 30, 2025."[17]

The personnel reductions reflected the Trump Administration's view of the federal workforce, the Office of Personnel Management explained in a message to career civil servants:

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[7] *See* 42 U.S.C. § 2000e-4(b).

[8] *Andrew Rogers Named Acting EEOC General Counsel Feb. 4, 2025*, www.eeoc.gov/newsroom/andrew-rogers-named-acting-eeoc-general-counsel (last visited Apr. 28, 2026).

[9] *PN60-16 — Andrew Rogers — Department of Labor*, 119TH CONGRESS (2025-2026) www.congress.gov/nomination/119th-congress/60/16 (last visited Apr. 28, 2026).

[10] *Catherine Eschbach Appointed as EEOC Principal Deputy General Counsel Sept. 30, 2025*, www.eeoc.gov/newsroom/catherine-eschbach-appointed-eeoc-principal-deputy-general-counsel (last visited Apr. 28, 2026).

[11] *PN653 — Carter Crow — Equal Employment Opportunity Commission*, 119TH CONGRESS (2025-2026) www.congress.gov/nomination/119th-congress/653?s=2&r=5 (last visited Apr. 28, 2026).

[12] *PN653 — Carter Crow — Equal Employment Opportunity Commission*, 119TH CONG. (2025–2026), https://perma.cc/XX4H-ZSVG.

[13] *PN730-16 — Carter Crow — Equal Employment Opportunity Commission*, 119TH CONG. (2025–2026), https://perma.cc/N7WF-G85U.

[14] *Nominations and Withdrawals Sent to the Senate*, THE WHITE HOUSE, www.whitehouse.gov/presidential-actions/2026/04/nominations-and-withdrawals-sent-to-the-senate-d935/.

[15] Ahmed Aboulenein, Andy Sullivan, Nathan Layne, and Courtney Rozen, *White House Lays Off Thousands of US Government Workers, Blaming Shutdown*, REUTERS (Oct. 11, 2025), https://perma.cc/MC3Q-Z9BK.

[16] *Fork in the Road: Original Email to Employees*, OFF. OF PERS. MGMT. (Jan. 28, 2025), https://perma.cc/VQU5-MARB.

[17] *Id.*

> We encourage you to find a job in the private sector as soon as you would like to do so. The way to greater American prosperity is encouraging people to move from lower productivity jobs in the public sector to higher productivity jobs in the private sector.[18]

Consistent with the broad reduction in the federal workforce, the EEOC shrank during 2025 and 2026. The EEOC's budget justification for fiscal year 2026 initially indicated plans to reduce staffing to approximately 1,767 full-time equivalents, a decrease of 253 from 2025 and of 479 since 2024, marking the lowest staffing levels at the commission in at least the last 46 years.[19] That number was subsequently adjusted up to 1,803, which remains a record low.[20] And the budget justification for 2027 forecasts a similar headcount of just 1,850 full-time equivalents. The EEOC Inspector General observed that "[d]ue to notable reduction in staffing, a likely decrease in the budget, and an internal restructuring, the Agency must focus on effective management of its human resources to deliver on its core mission and priorities."[21]

2. Department of Labor Leadership Changes

The Department of Labor also has new political leadership. President Trump nominated and the U.S. Senate confirmed Lori Chavez-DeRemer to serve as Secretary of Labor and Keith Sonderling to serve as Deputy Secretary of Labor. Chavez-DeRemer served in that position from March 11, 2025, until her resignation on April 20, 2026, when President Trump designated Deputy Secretary Keith Sonderling to serve as Acting Secretary of Labor.[22]

Before his appointment to the Department of Labor, Mr. Sonderling served as an EEOC Commissioner and EEOC Vice-Chair, and as the Acting and Deputy Administrator of the U.S. Department of Labor's Wage and Hour Division.[23] While serving as an EEOC Commissioner, then-Commissioner Sonderling published articles and made public statements about his concerns regarding discrimination in the use of artificial intelligence (AI).[24] In March 2026, the Department of Labor launched a free AI literacy course to promote foundational AI skills.[25]

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[18] Office of Personnel Management, Frequently Asked Questions, *available at* www.opm.gov/about-us/fork/faq/ (last visited April 23, 2026).

[19] *Fiscal Year 2026 Cong. Budget Justification*, EEOC (May 2025), https://perma.cc/3GVQ-STMM.

[20] *Fiscal Year 2027 Cong. Budget Justification*, EEOC (Mar. 2026), https://www.eeoc.gov/fiscal-year-2027-congressional-budget-justification.

[21] *Fiscal Year 2026 Mgmt. Challenges*, EEOC OFF. OF INSPECTOR GEN., https://perma.cc/54BP-3QDJ.

[22] Lori Chavez-DeRemer Sworn in as 30th US Secretary of Labor, U.S. DEP'T OF LAB. (Mar. 11, 2025) www.dol.gov/newsroom/releases/osec/osec20250311; Max Kutner, *Trump's Labor Secretary Steps Down* (Apr. 20, 2026) https://www.law360.com/articles/2429360.

[23] *Id.*

[24] *See, e.g.*, Keith E. Sonderling, Bradford J. Kelley & Lance Casimir, *The Promise and The Peril: Artificial Intelligence and Employment Discrimination*, 77 U. MIA. L. REV. 1 (2022), https://perma.cc/B747-ZAQQ; *Managing the Future of Work: The EEOC's Keith Sonderling on Job Fairness in the Age of AI*, HARV. BUS. SCH. (Sept. 20, 2023), https://perma.cc/K3JP-U5WQ.

[25] *US Department of Labor Launches 'Make America AI-Ready' Initiative*, U.S. DEP'T OF LAB. (Mar. 24, 2026), https://perma.cc/7N7D-SGNT.

President Trump nominated Jonathan Berry to serve as Solicitor of Labor and the Senate confirmed the nomination on October 7, 2025.[26] Before his service at the Department of Labor, Mr. Berry wrote the chapter on the Department of Labor in "Mandate for Leadership: The Conservative Promise," the 2023 Heritage Foundation publication better known as Project 2025.[27] Among other things, that chapter of Project 2025 proposed eliminating EEO-1 data collection and disparate impact liability; amending Title VII "to prohibit the Equal Employment Opportunity Commission from collecting EEO-1 data and any other racial classifications in employment for both private and public workplaces"; restricting the application of *Bostock v. Clayton County*, 590 U.S. 644 (2020) to hiring and firing; actively promoting a variety of "pro-life measures"; providing more "robust protections" for religious employers and employees; and changing the rules for independent contractors promulgated by the National Labor Relations Board (NLRB) and Department of Labor.[28]

After he joined the Department of Labor, Solicitor Berry signaled new priorities for the Office of the Solicitor. On February 9, 2026, he prohibited Department of Labor staff from speaking at, attending, or participating in programs hosted by the American Bar Association (ABA) using their government titles.[29] Mr. Berry explained that he did not want the Department of Labor to support the ABA's "radical goals" by "contribut[ing] to [the ABA's] institutional stature."[30]

Mr. Berry also circulated a memorandum on February 26, 2026. The memorandum stated that "[w]e at the Office of the Solicitor put the American worker first by shoring up the social contract that affirms work as service to God, to family, to community, and to nation."[31] The memorandum also stated that, as part of an effort to focus enforcement efforts on "the most impactful cases," the Office of the Solicitor will prioritize cases involving significant numbers of employees, "employers whose market power permits them to dominate their respective labor markets in ways that can facilitate employment-law violations," willful and repeat violators, and union officials or health or retirement fund fiduciaries who abuse their roles.[32] As a corollary, the Office of the Solicitor will be less likely to pursue cases against unionized employers.[33]

As mentioned above in section II.A.1., Andrew Rogers left his role as EEOC acting general counsel in October 2025 when the Senate confirmed his nomination to serve as the Wage and Hour Administrator at the Department of Labor.[34]

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[26] https://www.congress.gov/nomination/119th-congress/60/5 (last visited April 23, 2026).

[27] Jonathan Berry, *Department of Labor and Related Agencies, in* MANDATE FOR LEADERSHIP: THE CONSERVATIVE PROMISE, 581 (Paul Dans and Steven Groves eds., 2023), https://perma.cc/7UBE-XYDG.

[28] *Id.* at 583–86, 591.

[29] Parker Purifoy and Tre-Vaughn Howard, *Labor Department Bars Attorneys From Speaking at ABA Events (1)*, BLOOMBERG LAW NEWS (Feb. 26, 2026), https://perma.cc/SZN8-FLKZ.

[30] *Id.*

[31] Josh Eidelson, *DOL Pledges Close Eye on Firms Using 'Market Power' to Dominate*, BLOOMBERG LAW NEWS (Feb. 26, 2026), https://perma.cc/DTN5-FF9F.

[32] *Id.*

[33] *Id.*

[34] *PN60-16 — Andrew Rogers — Department of Labor*, 119TH CONGRESS (2025-2026) www.congress.gov/nomination/119th-congress/60/16 (last visited Apr. 28, 2026).

President Trump also appointed Ashley Romanias as the new director of the Office of Federal Contract Compliance Programs (OFCCP).[35] Ms. Romanias previously served as an assistant director at the Federal Housing Finance Agency.[36]

3. Challenges to Trump Firings Reach the Supreme Court

The Supreme Court ruled on and granted certiorari for two cases arising out of firing political leadership. The Court addressed one case, *Trump v. Wilcox*,[37] on its emergency docket. Another case, *Trump v. Slaughter*,[38] was argued in December 2025.

a. *Trump v. Wilcox*

The issues in *Trump v. Wilcox* arose when President Trump fired NLRB Member Gwynne Wilcox and Merit Systems Protection Board (MSPB) Member Cathy Harris and they challenged their removal in court.[39] The governing statutory scheme prohibited removing such officers except for cause,[40] and "no qualifying cause was given."[41] The United States District Court for the District of Columbia enjoined the removals because they did not satisfy the for-cause standard.[42]

The President filed an emergency motion for a stay pending appeal, which the Supreme Court granted on May 22, 2025.[43] It concluded that the President "may remove without cause executive officers who exercise [executive] power on his behalf, subject to narrow exceptions recognized by our precedents."[44] Accordingly, the Court explained that "[t]he stay reflects our judgment that the Government is likely to show that both the NLRB and MSPB exercise considerable executive power."[45] But the Court left the question "whether the NLRB or MSPB falls within such a recognized exception . . . for resolution after full briefing and argument."[46] The Court rejected Harris's and Wilcox's argument that the case "necessarily implicate[s] the constitutionality of for-cause removal protections for members of the Federal Reserve's Board of Governors or other members of the Federal Open Market Committee" because the Federal Reserve is *sui generis*.[47]

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[35] *Director – Ashley Romanias*, DEP'T OF LAB.: OFF. OF FED. CONT. COMPLIANCE: ABOUT US, https://perma.cc/7LFT-AU9J.

[36] *Id.*

[37] 145 S. Ct. 1415 (2025).

[38] No. 25-332 (U.S. argued Dec. 8, 2025).

[39] *Wilcox*, 145 S. Ct. 1415.

[40] 29 U.S.C. § 153(a); 5 U.S.C. § 1202(d).

[41] *Wilcox*, 145 S. Ct. 1415.

[42] *Wilcox v. Trump*, 775 F. Supp. 3d 215 (D.D.C. 2025).

[43] *Wilcox*, 145 S. Ct. 1415.

[44] *Id.* (citing *Seila L. LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 215–18 (2020)).

[45] *Id.*

[46] *Id.*

[47] *Id.*

Justice Kagan, joined by Justices Sotomayor and Jackson, dissented.[48] She argued that *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), which holds that statutory for-cause removal protections for members of bipartisan administrative bodies are constitutional, "forecloses both the President's firings and the Court's decision to award emergency relief."[49] Justice Kagan added that the "emergency docket, while fit for some things, should not be used to overrule or revise existing law . . . with little time, scant briefing, and no argument."[50] And she contended that, independent of *Humphrey's Executor*, the majority "misapprehends" the relevant interests when balancing the equities by giving short shrift to Congress's interests and "overstat[ing]" the President's interests in removing Wilcox and Harris.[51]

b. *Trump v. Slaughter*[52]

Trump v. Slaughter also arises out of President Trump's decision to fire political appointees before the expiration of their terms—in that case, former Federal Trade Commission (FTC) Commissioners Rebecca Slaughter and Alvaro Bedoya.[53] Congress enacted statutory removal limits that purport to restrict "the selection and tenure of FTC Commissioners, including a requirement that they only be removed for 'inefficiency, neglect of duty, or malfeasance in office.'"[54] But when Deputy Director of Presidential Personnel Trent Morse sent Ms. Slaughter and Mr. Bedoya emails firing them, the emails did not give any of those three reasons.[55] Rather, the emails contained a message from President Trump informing them that their "continued service on the FTC is inconsistent with [the Trump] Administration's priorities."[56]

Mr. Bedoya and Ms. Slaughter sued to contest their discharges. The district court held that Mr. Bedoya's claims were moot because he voluntarily resigned from the FTC and ruled in Ms. Slaughter's favor. The court granted Ms. Slaughter's motion for summary judgment and permanently enjoined the remaining Commissioners and their subordinates from interfering with the execution of her duties.[57]

The U.S. Court of Appeals for the D.C. Circuit denied President Trump's application for a stay pending appeal and dissolved the previously entered administrative stay.[58] The Supreme Court granted certiorari and stayed the district court's order.[59] The Court granted certiorari to resolve (1) whether "the statutory removal protections for members of the Federal Trade Commission violate the separation of powers and, if so, whether *Humphrey's Executor v. United*

[48] *Id.* (Kagan, J. dissenting).
[49] *Id.* (Kagan, J. dissenting).
[50] *Id.* (Kagan, J. dissenting).
[51] *Id.* (Kagan, J. dissenting).
[52] *Samuels v. Trump*, No. 1:25-cv-01069 (D.D.C. Apr. 9, 2025), in which former EEOC Commissioner Jocelyn Samuels challenged her termination, is stayed pending the decision in *Slaughter*.
[53] *Slaughter v. Trump*, 791 F. Supp. 3d 1, 6 (D.D.C.); *see also Trump v. Slaughter*, OYEZ, https://perma.cc/96FB-XQ6F.
[54] *Slaughter*, 791 F. Supp. 3d at 6.
[55] *Id.* at 8.
[56] *Id.* at 8.
[57] *Id.* at 10, 29.
[58] *Slaughter v. Trump*, No. 25-5261, 2025 WL 2551247 (D.C. Cir. Sept. 2, 2025).
[59] *Trump v. Slaughter*, 146 S. Ct. 18 (2025).

States, 295 U.S. 602 (1935), should be overruled"; and (2) whether "a federal court may prevent a person's removal from public office, either through relief at equity or at law."[60]

The case remains pending before the Supreme Court with a decision expected by around the end of June 2026.

B. Executive Orders Affecting Labor & Employment Matters

President Trump issued a flurry of executive orders in 2025 and 2026. By December 16, 2025, less than a year into his second term, President Trump had already issued more executive orders than he issued during his entire first term. In total, he signed 225 executive orders in 2025. Several of those executive orders, as well as a recent order issued in 2026, address labor and employment-related topics. This section discusses Executive Orders 14173, 14168, 14281, and 14398, and major developments arising from them.

1. Executive Order 14173: "Ending Illegal Discrimination and Restoring Merit-Based Opportunity"

President Trump issued Executive Order 14173, titled "Ending Illegal Discrimination and Restoring Merit-Based Opportunity," on January 21, 2025.[61] The order targets DEI by directing agencies to "terminate all discriminatory and illegal preferences, mandates, policies, programs, activities, guidance, regulations, enforcement actions, consent orders, and requirements" and "combat" DEI in the private sector.[62] It also imposes prospective requirements for new grants and contracts, instructing agencies to "include in every contract or grant award" language requiring the counter-party or grant recipient to (1) agree that compliance with federal anti-discrimination laws "is material to the government's payment decisions for purposes of" 31 U.S.C. § 3729(b)(4), and (2) certify that it does not operate any unlawful[63] DEI programs.[64] It instructs all agency heads to prepare, within 120 days of the Order's publication, a report containing, among other things, "[a] plan of specific steps or measures to deter DEI programs or principles (whether specifically denominated 'DEI' or otherwise) that constitute illegal discrimination or preferences."[65]

Plaintiffs in *National Association of Diversity Officers in Higher Education v. Trump* facially challenged three parts of Executive Orders 14173 and 14151 (addressing DEI in the federal government) on First and Fifth Amendment grounds.[66] Executive Order 14173 contains two provisions that the plaintiffs dubbed the Certification and Enforcement Threat Provisions, as

[60] *Id.*

[61] Executive Order No. 14173, 90 Fed. Reg. 8633 (Jan. 21, 2025), https://perma.cc/6YBA-BSTS.

[62] *Id.* § 2.

[63] Following Executive Order 14173, the EEOC released guidance explaining that a DEI initiative "may be unlawful if it involves an employer or other covered entity taking an employment action motivated — in whole or in part — by race, sex, or another protected characteristic." *What You Should Know About DEI-Related Discrimination at Work*, EEOC, https://perma.cc/6ZWZ-8UUQ.

[64] Executive Order No. 14173 § 3(b)(iv).

[65] *Id.* § 4(b)(iii).

[66] 167 F.4th at 93–95.

described above.[67] Executive Order 14151 contains a provision that the plaintiffs dubbed the "Termination Provision," which instructs federal agencies and departments to "terminate, to the maximum extent allowed by law," all DEI offices, positions, and employee, contractor, or grantee performance requirements, along with all "equity"-related actions, initiatives, programs, and grants.[68]

The district court held that Termination, Certification, and Enforcement Threat Provisions were likely unconstitutional and granted a nationwide preliminary injunction.[69]

On appeal, the U.S. Court of Appeals for the Fourth Circuit vacated the injunction and remanded the case.[70]

The Fourth Circuit held that the plaintiffs had no standing to challenge the Enforcement Threat Provision because the report described in that provision had already been prepared and issued months ago, meaning that the plaintiffs had not shown redressability.[71] It further explained that the plaintiffs did not show an injury in fact because "everything about [the Enforcement Threat Provision] is intra-governmental" and the plaintiffs' alleged injury in fact "rest[ed] on a highly attenuated chain of possibilities."[72]

In contrast, the court found that the plaintiffs had standing to challenge the Termination and Certification Provisions because they had plausibly shown that they would lose access to money—"a classic pocketbook injury"—due to conduct fairly traceable to the defendant, and that the injury was redressable with an injunction.[73] The challenges to both provisions, however, failed on the merits. Because the Termination Provision "is nothing more than 'an outward-facing' policy directive from the President to his agents" and its "plain text doesn't terminate any contracts" or "directly regulate non-governmental conduct," the plaintiffs' arguments could not support a facial challenge.[74] The challenge to the Termination Provision also failed because the "First Amendment doesn't confer a right to violate" federal antidiscrimination laws, and arguments that the President might misinterpret federal antidiscrimination laws in specific applications of the Termination Provision cannot show that "a substantial number of the Certification Provision's applications will be unconstitutional"—the plaintiffs' burden on a facial First Amendment challenge.[75]

As for order implementation, agencies besides the traditional labor and employment agencies took steps to implement Executive Order 14173 and combat DEI. Through the Integrated Postsecondary Education Data System (IPEDS) Admissions and Consumer Transparency Supplement (ACTS), the Department of Education issued regulatory changes that require

[67] *Supra* Section II.B.2.
[68] *Id.* at 94.
[69] *Id.* at 95.
[70] *Id.*
[71] *Id.* at 97.
[72] *Id.* (cleaned up).
[73] *Id.* at 98 (citation and internal quotation marks omitted).
[74] *Id.* at 101–02 (citation and internal quotation marks omitted).
[75] *Id.* at 103–04 (cleaned up).

universities to produce historical race- and sex-related admissions data going back seven years.[76] A coalition of 17 states sued to enjoin the data collection.[77] "The states said the Education Department is turning IPEDS, intended to provide data for a nonpartisan clearinghouse for university statistics, into a 'global subpoena' for information that could be used by federal enforcers to investigate and punish schools they believe are using race as a factor in admissions decisions."[78] On April 3, 2026, the district court preliminary enjoined the Department of Education and Secretary of Education Linda McMahon from enforcing ACTS compliance deadlines against any of the 17 states that are parties to the lawsuit.[79]

The Federal Communications Commission (FCC) also considered companies' commitments not to engage in DEI programming in a recent merger. The FCC approved Charter Communications' $34.5 billion acquisition of Cox Enterprises on February 27, 2026.[80] The press release highlighted Charter's "commit[ment] to new safeguards to protect against DEI discrimination."[81] So did the FCC opinion approving the acquisition.[82]

2. Executive Order 14168: "Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government"

President Trump issued Executive Order 14168, titled "Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government," on January 20, 2025.[83] The order defines "sex" as "an individual's immutable biological classification as either male or female," which "does not include the concept of 'gender identity,'"[84] and directs federal agencies to "enforce laws governing sex-based rights, protections, opportunities, and accommodations to protect men and women as biologically distinct sexes."[85]

That definition and the accompanying directive bear on anti-discrimination laws that prohibit discrimination on the basis of gender, including Title VII,[86] which prohibits employment discrimination because of race, color, national origin, religion, and sex, and the Equal Pay Act,[87] which prohibits wage-based sex discrimination.

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[76] Carolyn Muyskens, *Schools Get Extension For College Admissions Data*, LAW360 (Mar. 13, 2026), https://perma.cc/UEC5-JZFL.

[77] *Massachusetts v. Dep't of Ed.*, No. 1:26-cv-11229 (D. Mass. Mar 11, 2026).

[78] Muyskens, *supra* note 76.

[79] *Massachusetts v. Dep't of Ed.*, No. 1:26-cv-11229, ECF Nos. 12, 75, 143.

[80] *FCC Approves Charter-Cox Combination*, FCC (Feb. 27, 2026), https://perma.cc/Z33X-DWHP.

[81] *Id.*

[82] *In re Cox Enterprises, Inc. and Charter Communications, Inc., Applications for Consent to Transfer Control*, Memorandum Opinion and Order, DA 26-211, WC Docket No. 25-233, at 15 (Feb. 27, 2026) ("Charter states that it modified its practices and is committed to a work environment free from invidious discrimination . . . . We accept Charter's commitment as firm and definite, and expect that these changes will prevent DEI discrimination in the post-transaction company, as consistent with the law and the public interest.").

[83] Executive Order No. 14168, 90 Fed. Reg. 8615 (Jan. 20, 2025), https://perma.cc/7EFR-VJWY.

[84] *Id.* § 2(a).

[85] *Id.* § (3)(b).

[86] 42 U.S.C. § 2000e *et seq.*

[87] Equal Pay Act of 1963, 29 U.S.C. § 206(d).

The EEOC cited Executive Order 14168 when it moved to dismiss several Biden-era cases. One set of cases accused businesses of discriminating against transgender and nonbinary employees.[88] The EEOC voluntarily withdrew from seven such lawsuits as inconsistent with 14168.[89] Some individuals affected by the withdrawals intervened with private counsel to continue litigating.[90]

3. Executive Order 14281: "Restoring Equality of Opportunity and Meritocracy"

President Trump issued Executive Order 14281, titled "Restoring Equality of Opportunity and Meritocracy," on April 23, 2025.[91] The order characterizes disparate impact liability as a "key tool" of a "pernicious movement" that holds "a near insurmountable presumption of unlawful discrimination exists where there are any differences in outcomes in certain circumstances among different races, sexes, or similar groups."[92] It therefore specifically directs executive agencies including the EEOC to discontinue the use of disparate impact liability in enforcement actions.[93] It states that "[i]t is the policy of the United States to eliminate the use of disparate-impact liability in all contexts to the maximum degree possible."[94]

The EEOC sought to implement Executive Order 14281 by dismissing its pending disparate impact litigation. The Biden-era EEOC sued the convenience store chain Sheetz and alleged that Sheetz violated Title VII because it denied employment to any job applicant with a criminal conviction, a practice the EEOC alleged adversely impacted non-white applicants.[95] The EEOC moved to dismiss its claims in the case on June 6, 2025.[96]

Effective December 10, 2025, the DOJ rescinded disparate impact regulations issued to implement Title VI of the Civil Rights Act of 1964.[97] Its stated rationale was that the amendments implement Executive Order 14281, to "align the conduct prohibited by the Department's regulations with Title VI's original public meaning, avoid constitutional concerns, reduce compliance costs, and serve the public interest."[98]

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[88] Grace Elletson, *EEOC Backs Off Trans Bias Suits, Citing Trump Order*, LAW360 (Feb, 18, 2025), https://perma.cc/PGZ5-QSRN; Jared Foretek, *Judge Questions EEOC's Halt On Disparate Impact Probes*, LAW360 (Nov. 12, 2025), https://perma.cc/M5PN-UEUM.

[89] Elletson, *supra* note 88.

[90] *See, e.g.*, *EEOC v. Lush Handmade Cosmetics, LLC*, No. 5:24-cv-06859, ECF No. 48 (N.D. Cal. Sept. 30, 2024).

[91] Executive Order 14281, 90 Fed. Reg. 17537 (Apr. 23, 2025), https://perma.cc/65ME-DTDR.

[92] *Id.* § 1.

[93] *Id.* § 6.

[94] *Id.* § 2.

[95] *EEOC Sues Sheetz, Inc. For Racially Discriminatory Hiring Practice*, EEOC (Apr. 18, 2024), https://perma.cc/74EU-GDN2.

[96] *EEOC v. Sheetz, Inc.*, No. 3:24-cv-00231, ECF No. 87, at 3 (W.D. Pa. Oct. 4, 2024).

[97] 28 C.F.R. 42, https://perma.cc/25TS-6XKW.

[98] *Id.*

4. Executive Order 14398: "Addressing DEI Discrimination by Federal Contractors"

Executive Order 14173 cited the False Claims Act (FCA) and signaled the Trump administration's intention to use the FCA to fight DEI.[99] On February 19, 2026, Deputy Assistant Attorney General Brenna Jenny explained that the DOJ planned to build FCA cases based on "evidence of unlawful discrimination," including "(1) preferential hiring or training programs where companies allegedly bypass qualified candidates because they are not part of a protected class, (2) creating and tracking demographic goals, and (3) tying compensation to those goals or requiring managers to meet those goals in hiring and promotion decisions."[100] The legal theory is novel, and the DOJ has not yet filed any lawsuits based on it.

The latest development in the government's FCA-based DEI enforcement initiative is Executive Order 14398, titled "Addressing DEI Discrimination by Federal Contractors," which President Trump issued on March 26, 2026.[101] It instructs executive departments and agencies, within 30 days of the order, to include in all contracts the following language:

> In connection with the performance of work under this contract, [the contractor/appropriate party (contractor)] agrees as follows: 1. The contractor will not engage in any racially discriminatory DEI activities, as defined in section 2 of the Executive Order of March 26, 2026 (Addressing DEI Discrimination by Federal Contractors); 2. The contractor will furnish all information and reports, including providing access to books, records, and accounts, as required by the contracting agency pursuant to the Executive Order of March 26, 2026 (Addressing DEI Discrimination by Federal Contractors), for purposes of ascertaining compliance with this clause; 3. In the event of the contractor's or a subcontractor's noncompliance with this clause, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor or subcontractor may be declared ineligible for further Government contracts; 4. The contractor will report any subcontractor's known or reasonably knowable conduct that may violate this clause to the contracting department or agency and take any appropriate remedial actions directed by the contracting department or agency; 5. The contractor will inform the contracting department or agency if a subcontractor sues the contractor and the suit puts at issue, in any way, the validity of this clause; and 6. The contractor recognizes that compliance with the requirements of this clause are material to the Government's

[99] Executive Order No. 14173, 90 Fed. Reg. 8633 (Jan. 21, 2025), https://perma.cc/6YBA-BSTS.

[100] Anne Robinson, Danielle McCall, and Morgan Maddoux, *What We Know About DOJ's New FCA Enforcement Priorities*, LAW360 (Mar. 16, 2026), https://perma.cc/X5GL-ZB9G.

[101] Executive Order 14398, 91 Fed. Reg. 16147 (Mar. 26, 2026), https://perma.cc/9QEX-4QGL; *see also Fact Sheet: President Donald J. Trump Addresses DEI Discrimination by Federal Contractors*, THE WHITE HOUSE (Mar. 26, 2026), https://perma.cc/L95M-XGSV.

payment decisions for purposes of section 3729(b)(4) of title 31, United States Code (False Claims Act).[102]

Listed penalties for failure to comply include contract termination or suspension of contracts, along with "appropriate action to suspend and debar contractors or subcontractors."[103]

The Order also contains additional implementation provisions. It directs the Office of Management and Budget (OMB) to issue compliance guidance for "economic sectors that pose a particular risk of entities engaging in racially discriminatory DEI activities."[104] And it directs the Federal Acquisition Regulatory Council to amend the Federal Acquisition Regulation (FAR) to include the language quoted above.[105] On April 17, 2026, the FAR Council issued guidance addressing the implementation of Executive Order 14398.[106] The guidance instructs agencies that, to implement section 3 of Executive Order 14398, they must "[u]pdate their Revolutionary Federal Acquisition Regulation Overhaul class deviations," and "[u]se the new clause at FAR 52.222-90" in both new and existing contracts "valued over the micro-purchase threshold."[107] Agencies must include the new contract language in all new solicitations and resulting contracts beginning April 24, 2026.[108] Additionally, "contracting officers must make every effort to bilaterally modify existing contracts by July 24, 2026."[109]

III. Regulatory Initiatives to Implement Trump Policy Agenda

In the second Trump administration, the EEOC and Department of Labor have made substantial regulatory changes. The EEOC changed its voting procedures, rescinded Biden-era enforcement guidance, and may issue or rescind enforcement guidance in a number of other areas based on recent executive orders. The Department of Labor has issued several new rules, including rescinding the Biden-era rule for classifying independent contractors and requiring higher wages for white-collar foreign workers on EB-2, EB-3, H-1B, H-1B1, and E-3 visas. This section summarizes those regulatory developments.

A. The EEOC Consolidates Control and Rescinds Biden-Era Guidance

The EEOC made three major regulatory changes in January 2026. First, it changed its voting procedures, rescinding voting procedures enacted at the end of the Biden administration.[110]

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[102] Executive Order 14398 § 3.

[103] *Id.* § 4(a).

[104] *Id.* § 4(b).

[105] *Id.* § 5.

[106] Mem. from Dr. Kevin R. Rhodes, Adm'r for Fed. Procurement Pol'y, Off. of Mgmt. and Budget, *et al.*, to Chief Acquisition Officers, Senior Procurement Executives, Defense Acquisition Regulations Council, and Civil Agency Acquisition Council, *Agency Implementation of Executive Order 14398, Addressing DEI Discrimination by Federal Contractors* (Apr. 17, 2026), www.acquisition.gov/sites/default/files/page_file_uploads/FAR%20Council%20Guidance%20to%20Implement%20EO%2014398.pdf.

[107] *Id.* at 2.

[108] *Id.*

[109] *Id.*

[110] *Meeting of January 14, 2026*, EEOC, https://perma.cc/739M-2SA3.

The now-rescinded rules included specified briefing periods and voting periods for proposed regulations, guidance documents, opinion letters, and litigation recommendations.[111] They also gave commissioners the right to call for public discussion via an agenda vote.[112] The new rules consolidate control in the Chair, giving Chair Lucas the authority to set the agenda and dates for public meetings and decide which issues will be voted on via a notation vote, without a public meeting.[113]

Second, the EEOC adopted a resolution requiring the Commission to approve almost all new litigation, taking back authority previously delegated to the General Counsel.[114] However, "[t]he EEOC General Counsel will retain delegated litigation authority in limited circumstances, including during a loss of quorum."[115] The General Counsel also "retains delegated authority to initiate litigation in certain limited situations, including to enforce settlements, consent decrees, subpoena enforcement actions, and temporary restraining orders."[116]

Third, the EEOC rescinded Biden-era Enforcement Guidance on Harassment in the Workplace, originally issued in 2024.[117] The 2024 Guidance specifically addressed harassment, sexual orientation, and gender identity following the Supreme Court's decision in *Bostock v. Clayton County*.[118]

Based on the executive orders discussed in Section II.B, the EEOC will also likely make several other regulatory changes. Based on Executive Order 14281, the EEOC may rescind its guidance on considering arrest and conviction records in employment decisions[119] and the use of hiring tests and employment selection procedures,[120] both of which rely in substantial part on a disparate impact proof structure. Based on Executive Order 14173, we may see changes to EEOC guidance[121] and regulations[122] that address affirmative action. Additionally, the EEOC may change or eliminate the EEO-1 Component 1, which "is a mandatory annual data collection that requires all private sector employers with 100 or more employees, and federal contractors with 50 or more employees meeting certain criteria, to submit workforce demographic data, including data

[111] *Id.*

[112] *Id.*

[113] *Id.*

[114] *EEOC Commission Adopts Resolution to Require Commission Approval of Almost All Litigation*, EEOC (Jan. 23, 2026), https://perma.cc/UL8Y-F2K3.

[115] *Id.*

[116] *Id.*

[117] *Meeting of January 22, 2026*, EEOC, https://perma.cc/X2XH-LQ9E; *EEOC Commission Votes to Rescind 2024 Harassment Guidance*, EEOC (Jan. 23, 2026), https://perma.cc/STN9-GHQ2.

[118] Tracy Wolf, Kierra Powell, and Kevin Koronka, *Navigating The Void Left By Axed EEOC Harassment Guidance*, LAW360 (Feb. 11, 2026), https://perma.cc/PTC8-RTLJ. For further discussion of *Bostock*, *see infra*, Section V.B.1.

[119] *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act*, EEOC (Apr. 25, 2012), https://perma.cc/AH5W-FJKH.

[120] *Guidance: Employment Tests and Selection Procedures*, EEOC (Dec. 1, 2007), https://perma.cc/AUW2-8P6E; *see also* 29 C.F.R. Parts 1601, 1606, 1607.

[121] *Guidance: CM-607 Affirmative Action*, EEOC (Oct. 1, 1981), https://perma.cc/AW5X-KZ6M.

[122] *See, e.g.*, 29 C.F.R. Part 1608, https://perma.cc/5N6Y-YV6S.

by job category and sex and race or ethnicity, to the EEOC."[123] And it is likely to rescind Biden-era EEOC regulations implementing the Pregnant Workers Fairness Act (PWFA)[124] that require employers to offer accommodations for elective abortions.[125]

B. The Department of Labor Initiates New Rulemaking

This section discusses seven proposed regulatory changes that the Department of Labor made since July 2025, including three Notices of Proposed Rulemaking (NPRMs) that the Department of Labor issued on July 1, 2025, and one that it issued on April 23, 2026.

The first July 2025 NPRM proposes to rescind the implementing regulations for Executive Order 11246.[126] Executive Order 14173 revoked Executive Order 11246.[127] While in force, Executive Order 11246 prohibited discrimination on the basis of "race, color, religion, sex, sexual orientation, gender identity, and national origin"; "required [employers] to take affirmative action on those bases"; and "prohibited these employers from taking adverse employment actions against applicants or employees because they inquired about, discussed, or disclosed information about their pay or their co-workers' pay."[128]

The second July 2025 NPRM[129] proposed to rescind certain regulations implementing Section 503 of the Rehabilitation Act of 1973.[130] Section 503 remains in effect.[131] However, the NPRM proposes "rescind[ing] the regulations at 41 CFR 60-741.42, which require contractors to invite applicants and employees to self-identify their disability status, as well as the utilization goal requirements at 41 CFR 60-741.45."[132] Those regulations require contractors to (1) implement a 7% utilization goal for employing people with disabilities and (2) "conduct a utilization analysis, where they evaluate the representation of individuals with disabilities."[133] The NPRM states that the Department of Labor "has concerns that the self-identification and utilization goal regulations are inconsistent with the [Americans with Disabilities Act (ADA)]" because "contractors may, in practice, be induced to using quotas to meet the utilization goal."[134]

The third July 2025 NPRM[135] proposes to modify the regulations implementing the Vietnam Era Veterans Readjustment Assistance Act of 1974 (VEVRAA).[136] "The VEVRAA

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[123] *Data and Analytics – Overview: EEO-1 (Employer Information Report) Statistics*, EEOC, https://perma.cc/MQ3T-MFQ5.

[124] 42 U.S.C. §§ 2000gg–gg-6.

[125] *Summary of Key Provisions of EEOC's Final Rule to Implement the Pregnant Workers Fairness Act (PWFA)*, EEOC, https://perma.cc/675R-S5QT.

[126] 90 Fed. Reg. 28472, https://perma.cc/PL7G-TMAC.

[127] *Id.*

[128] *Id.*

[129] 90 Fed. Reg. 28492, https://perma.cc/8UN6-6CM2.

[130] 29 U.S.C. § 793.

[131] 90 Fed. Reg. 28492.

[132] *Id.*

[133] *Id.*

[134] *Id.*

[135] 90 C.F.R. 28485, https://perma.cc/RS4T-3758.

[136] 38 U.S.C. § 4212.

regulations prohibit Federal contractors and subcontractors ('contractors') from discriminating against employees and applicants because of their status as a protected veteran (defined by the statute to include disabled veterans, recently separated veterans, Armed Forces Service Medal Veterans, and active duty wartime or campaign badge veterans)."[137] Although VEVRAA remains in effect, those implementing regulations "adopt and cross-reference the E.O. 11246 administrative enforcement proceeding procedures at 41 CFR 60-30."[138] The NPRM therefore proposes removing that cross-reference, along with other changes to reflect the revocation of Executive Order 11246.[139]

Fourth, the Trump Administration announced its Unified Agenda of Regulatory and Deregulatory Actions on September 4, 2025.[140] The "nearly 150 proposals under the U.S. Department of Labor's jurisdiction" include "look[ing] at the circumstances under which a business can be held liable as a joint employer" for purposes of the Fair Labor Standards Act (FLSA).[141] The FLSA "generally requires employers to pay their employees at least the federal minimum wage for all hours worked and overtime for hours worked over 40 in a workweek."[142] For purposes of that rule, an employee may have "one or more joint employers" who are "jointly and severally liable with the employer for the employee's wages."[143]

Fifth, the Department of Labor proposed a new rule for classifying independent contractors on February 26, 2026.[144] The proposal would rescind a Biden-era rule from 2024 and "replace it with an analysis for employee classification similar to the one adopted by the department in 2021."[145] The proposed rule would apply an "economic reality" test to determine independent contractor status, based primarily on (1) the nature and degree of the worker's control over the work and (2) the worker's opportunity for profit or loss based on initiative and/or investment.[146]

Sixth, on March 26, 2026, the Department of Labor issued a proposed rule requiring higher wages for white-collar foreign workers.[147] The proposed rule would apply to workers on EB-2 and EB-3 employment-based immigrant visas via the Permanent Labor Certification Program, and workers on H-1B, H-1B1, or E-3 non-immigrant visas.[148] The regulatory scheme setting wages for such workers sets pay ranges based on a four-tier classification that accounts for job duties and

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[137] 90 C.F.R. 28485.

[138] *Id.*

[139] *Id.*

[140] *News Release: US Department Of Labor Unveils Proposals to Put American Workers, Businesses First in Release of Semiannual Regulatory Agenda*, DEP'T OF LAB. (Sept. 4, 2025), https://perma.cc/FK9R-K4QE.

[141] *Id.*

[142] *Fact Sheet: Notice of Proposed Rulemaking on Joint Employer Status under the FLSA*, DEP'T OF LAB., https://perma.cc/E2SK-J48M.

[143] *Id.*

[144] *News Release: US Department Of Labor Proposes Rule Clarifying Employee, Independent Contractor Status under Federal Wage and Hour Laws*, DEP'T OF LAB. (Feb. 26, 2026), https://perma.cc/K6GD-46E6.

[145] *Id.*

[146] *Id.*

[147] Andrew Kreighbaum*, H-1B Employers Would Pay Higher Wages in New Trump Proposal (2)*, BLOOMBERG LAW (Mar. 26, 2026), https://perma.cc/U8FL-T3SB.

[148] *Id.*

experience levels.[149] The proposed rule would increase the applicable percentile for each wage level, moving from the 17th to 34th percentile for Level I, the 34th to 52nd percentile for Level II, the 50th to 75th percentile for Level III, and the 67th to 88th percentile for Level IV.[150]

Finally, on April 23, 2026, the Department of Labor issued an NPRM addressing joint employer status for purposes of three statutes: the FLSA, the Family Medical Leave Act (FMLA), and the Migrant Seasonal Agricultural Worker Protection Act (MSPA).[151] The April 2026 NPRM "proposes to clarify how to determine joint employer status under the FLSA."[152] It also proposes amending the regulations implementing the FMLA and MSPA to determine joint employer status under those two statutes the same way that joint employer status is determined under the FLSA.[153]

IV. Enforcement Initiatives and Litigation Affecting Labor & Employment Matters

In addition to regulatory changes, the Trump administration has also been active on the enforcement front. The EEOC and FTC have sent warning letters to law firms and Fortune 500 companies regarding DEI programs. The EEOC has initiated lawsuits targeting DEI-related discrimination and antisemitism in the workplace, and the Administration has reached several high-profile settlements, particularly with higher education institutions. The DOJ has also brought lawsuits advancing the Trump policy agenda, prioritizing enforcement to protect U.S. workers from citizenship-status discrimination, and actively pursuing claims under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and Servicemembers Civil Relief Act (SCRA) to protect military servicemembers. This section discusses each of those developments.

A. DEI Warning Letters to Law Firms and Fortune 500 Companies

The EEOC has sent two different groups of private entities warning letters about DEI programs. On March 17, 2025, Chair Lucas sent letters to 20 law firms requesting information about their DEI-related practices.[154] The EEOC's press release about the letters states that, "[b]ased on publicly available information, the letters note concerns that some firms' employment practices, including those labeled or framed as DEI, may entail unlawful disparate treatment . . . in violation of Title VII of the Civil Rights Act of 1964 (Title VII)."[155] It also publicizes a newly established email address "where whistleblowers can submit information to the EEOC about potentially unlawful DEI practices at law firms."[156]

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[149] *Id.*

[150] *Id.*

[151] 91 Fed. Reg. 21878, www.federalregister.gov/documents/2026/04/23/2026-07959/joint-employer-status-under-the-fair-labor-standards-act-family-and-medical-leave-act-and-migrant.

[152] *Id.*

[153] *Id.*

[154] *EEOC Acting Chair Andrea Lucas Sends Letters to 20 Law Firms Requesting Information About DEI-Related Employment Practices*, EEOC (Mar. 17, 2025), https://perma.cc/3Z4A-W5C2.

[155] *Id.*

[156] *Id.*

Responses to the letters varied. Some law firms voluntarily settled with the EEOC.[157] On the other end of the spectrum, a group of law students sued to enjoin the handover of data for attorneys who work or applied to work at the 20 law firms that received the letter.[158] In response, the EEOC moved for summary judgment, attaching a declaration from Mary Katherine Littlejohn, an Attorney Advisor in EEOC's Office of the Chair.[159] Ms. Littlejohn's declaration stated that the "letters constituted informal information gathering and were not a component of any investigation" and "do not state that compliance was mandatory, and the recipients were not required to provide the information requested in the letters."[160] Based in part on those representations, the parties stipulated to dismiss the case with prejudice under Federal Rule of Civil Procedure 41(a)(1)(A)(ii) on February 9, 2026.[161]

Later that month, the EEOC sent a letter about DEI initiatives to Fortune 500 executives.[162] The letter "emphasizes the EEOC's commitment to preventing discrimination through employer education and compliance assistance, including the agency's non-binding educational resources addressing unlawful discrimination related to DEI in the workplace."[163]

The FTC also sent letters to 42 law firms regarding DEI programs on January 30, 2026.[164] The firms all participated in the "Mansfield Certification," a commitment to meeting certain standards for employee diversity.[165] The letter "remind[ed]" the law firms that "[p]otentially anticompetitive collusion between law firms on DEI metrics can include quotas by which they agree to compose panels of job candidates based on race, sex, or other personal characteristics other than the candidate's merit, or by which law firms agree to make final decisions about hiring and promotions based on those personal characteristics."[166] It added that, although "[o]ther federal agencies will need to determine whether participation in the Mansfield program creates separate liability under the U.S. civil rights laws," the FTC was "alert[ing] [the firms] to potential for liability under laws that the FTC directly enforces."[167]

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[157] *In EEOC Settlement, Four 'BigLaw' Firms Disavow DEI and Affirm Their Commitment to Merit-Based Employment Practices*, EEOC (Apr. 11, 2025), https://perma.cc/RAV3-3M9Z.

[158] Grace Elletson, *Law Students Say EEOC Overreached With DEI Info Demands*, LAW360 (Apr. 15, 2025), https://perma.cc/45H3-MLX4; *Doe 1 v. EEOC*, No. 1:25-CV-01124 (D.D.C. Apr. 15, 2025).

[159] *Doe 1*, No. 1:25-CV-01124, Mot. Summ. J., ECF No. 38-3.

[160] *Id.* at 3.

[161] *Id.*, ECF No. 43.

[162] *EEOC Chair Issues Reminder Letter to the Fortune 500 Regarding Title VII Compliance Related to DEI Initiatives*, EEOC (Feb. 26, 2026), https://perma.cc/DD5Q-XVFL.

[163] *Id.*

[164] *Federal Trade Commission Chairman Andrew N. Ferguson Issues Warning Letters to Law Firms on Anticompetitive DEI Hiring*, FTC (Jan. 30, 2026), https://perma.cc/ZPM4-72XH.

[165] *Id.*

[166] *Id.*

[167] *Id.*

B. Agency-Filed Lawsuits and Enforcement Initiatives

The EEOC and the DOJ also filed lawsuits and other enforcement actions. The EEOC filed DEI-based subpoena enforcement actions against Northwestern Mutual and Nike and a DEI-related merits case against a Coca Cola bottler.

The DOJ also sued the University of California at Los Angeles (UCLA) Medical School, Harvard University, the Rhode Island Department of Education, and Minnesota over DEI-related allegations.

1. EEOC Lawsuits Prioritize Major Trump Policy Goals

The EEOC has prioritized enforcement actions advancing the Trump administration's policy goals. For example, the Commission filed a subpoena enforcement action against the University of Pennsylvania (Penn), and it investigated. The Trump Administration reached high-profile settlements with Columbia University, Northwestern University, Penn, Cornell University, and Brown University. The dollar value of the settlements totals hundreds of millions of dollars.

The EEOC sued the financial services company Northwestern Mutual on November 20, 2025, after a former employee filed a discrimination charge against the company in March 2025.[168] The charge alleged that Northwestern Mutual violated Title VII through its DEI programs and denied the charging party advancement because of his race, sex, color, and national origin.[169] The EEOC filed its lawsuit in the U.S. District Court for the Eastern District of Wisconsin and seeks to compel the company "to produce information about the firm's [DEI] policies and practices, related to the firm's decision to deny a promotion to one of its compliance officers."[170]

On February 4, 2026, the EEOC sued Nike in the U.S. District Court for the Eastern District of Missouri.[171] The lawsuit sought "to compel NIKE, Inc. to produce information related to allegations that the company discriminated against white workers, including as a result of NIKE's [DEI]-related 2025 Targets and other DEI-related objectives."[172]

Shortly thereafter, on February 18, 2026, the EEOC sued Coca Cola Beverages Northeast in the U.S. District Court for the District of New Hampshire.[173] The lawsuit alleges that Coca Cola violated Title VII when it held an employer-sponsored trip and networking event for female

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[168] *EEOC Files Subpoena Enforcement Action Against Financial Services Giant Northwestern Mutual Over Allegations of DEI-Related Discrimination*, EEOC (Nov. 20, 2025), https://perma.cc/RQ2S-P6EF.

[169] *Id.*

[170] *Id.*

[171] *EEOC Files Subpoena Enforcement Action Against NIKE*, EEOC (Feb. 4, 2026), https://perma.cc/F4WV-MQ4N.

[172] *Id.*

[173] *EEOC Sues Coca-Cola Beverages Northeast for Sex Discrimination*, EEOC (Feb. 18, 2026), https://perma.cc/CA95-QWMX.

employees in 2024.[174] Coca Cola invited only female employees, who were excused from work and not required to use paid time off to attend the event.[175]

The EEOC also sued Penn and an EEOC referral led to a DOJ lawsuit against UCLA.

The EEOC sued Penn on November 18, 2025, to enforce a subpoena issued during its investigation into alleged antisemitic harassment, following a Commissioner's Charge filed in December 2023.[176] The charge "alleged that the university subjected its faculty and staff to antisemitic harassment throughout its workplaces, failed to effectively address complaints of harassment, failed to take prompt and effective measures to end harassment, and instead, allowed harassment to escalate."[177]

Penn asserted a First Amendment defense.[178] On March 31, 2026, the court granted the EEOC's applications for enforcement of the subpoena and rejected Penn's and the intervenors' First Amendment arguments:[179]

> Respondents offer no evidence to show enforcement of the subpoena would create a "substantial risk of serious bodily harm." *Id.* at 1064. They refer first to Nazi Germany. Penn, for example, argues "allowing regimes to collect lists of Jewish people has not boded well for their safety." (Statement of Penn's Am. Assoc. of Univ. of Professors at 2, Dkt. No. 20-14.) And the intervenors assert the EEOC seeks to "establish a central registry of the University's Jews" which may result in "frightening implications" based on "historical echoes." (Intervenors' Answer at 28.) But comparing the EEOC's investigation into antisemitism at Penn with Nazi Germany is counterproductive, as counsel acknowledged by attempting to backtrack from such analogies. (Tr. of Oral Arg. at 89:2–5, Penn.)

The court continued:

> Finally, the intervenors argue the affected employees' information may "fall into the wrong hands" within the Government because two online articles reported that current administration officials have ties to antisemites. (Intervenors' Answer at 14.) National Public Radio, for example, reported that a White House official worked on Andrew Tate's legal team and attended a Nick Fuentes rally. Tom Dreisbach, *Multiple Trump White House Officials Have Ties to Antisemitic Extremists*, NPR (May 14, 2025),

[174] *Id.*
[175] *Id.*
[176] *EEOC Files Subpoena Enforcement Action Against University of Pennsylvania Over Antisemitic Work Environment*, EEOC (Nov. 18, 2025), https://perma.cc/66BF-JQGR.
[177] *Id.*
[178] *EEOC v. The Trustees of the Univ. of Penn.*, No. 2:25-cv-06502, Mem. Op., ECF No. 37, at 2 (E.D. Pa. Nov 18, 2025).
[179] *Id.*, ECF No. 54.

> https://www.npr.org/2025/05/14/nx-s1-5387299/trump-white-house-antisemitism. And the New York Times reported this same official said in a text message that he had a "Nazi streak." Katie Rogers, *In Trump's Washington, Hate is Not a Deal Breaker*, NEW YORK TIMES (Oct. 21, 2025), https://www.nytimes.com/2025/10/21/us/politics/trump-ingrassia-republicans.html. These are unserious political arguments, not serious legal ones which, as counsel admitted, undercut her position. (Tr. of Oral Arg. at 146:6–25, 148:1–9, Intervenors.)

The court concluded that the subpoena was narrowly tailored and did not significantly chill the affected employees' ability to associate, infringe on academic freedom protected by the First Amendment, or substantially burden the intervenors' members' ability to collectively engage in religious exercise.[180]

The EEOC also coordinated with the DOJ to sue UCLA on February 24, 2026.[181] The lawsuit arose from a Commissioner's Charge that Chair Lucas filed in June 2024.[182] "According to [the EEOC and DOJ's] complaint, after the Hamas-led massacre in Israel on October 7, 2023, antisemitic acts pervaded UCLA."[183] Accordingly, the DOJ's complaint alleges that UCLA created a hostile work environment for Jewish and Israeli faculty and staff in violation of Title VII.[184]

Finally, the Administration has reached high-profile settlements with five major universities to resolve claims based on antisemitic harassment, the use of race in admissions, alleged violations of Title IX of the Education Amendments of 1972 (Title IX) in the administration of women's sports programs, and other DEI-related issues.

Columbia University agreed to pay $221 million as part of two settlements. One settlement resolves EEOC charges that Columbia engaged in antisemitic harassment "since at least Oct. 2, 2023" and provides that Columbia will pay $21 million.[185]

The other settlement agreement settles claims that Columbia violated Title VI through its handling of allegations of antisemitism. Columbia agreed to pay the government a $200 million fine and other nonmonetary relief.[186]

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[180] *Id.* at 24–31. The district court has since granted a stay pending appeal. *See id.*, ECF No. 68.

[181] *Justice Department Sues University of California Over Antisemitism and Hostile Work Environment at UCLA*, DOJ (Feb. 24, 2026), https://perma.cc/S5MQ-FKJX.

[182] *Id.*

[183] *Id.*

[184] *Id.*

[185] *200 Days of EEOC Action to Protect Religious Freedom at Work*, EEOC (Aug. 22, 2025), https://perma.cc/M663-FQDX; *In Largest EEOC Public Settlement in Almost 20 Years, Columbia University Agrees to Pay $21 Million to Resolve EEOC Antisemitism Charges*, EEOC (July 25, 2025), https://perma.cc/UUE9-RWAM.

[186] *Fact Sheet: President Donald J. Trump Secures Major Settlement with Columbia University*, THE WHITE HOUSE (July 24, 2025), https://perma.cc/5YR6-RW6U; *Our Resolution With the Federal Government*, COLUM. UNIV. OFF. OF THE PRESIDENT, https://perma.cc/N63J-MFP8; Elissa Nadworny and Jordan Owens, *What We Know About Columbia's $221 Million Settlement with the Trump Administration*, NAT'L PUB. RADIO (Jul, 25,

The government has also reached settlements with Northwestern University, Penn, Cornell University, and Brown University.

Northwestern agreed to pay $75 million as part of a settlement resolving claims that it used race-based admissions and created a hostile educational environment for Jewish students.[187]

Penn agreed to injunctive relief consistent with Executive Order 14168 to resolve the U.S. Department of Education Office of Civil Rights' finding that Penn violated Title IX by allowing transgender athlete Lia Thomas to compete on the University's Women's Swimming and Diving Team.[188]

Cornell agreed to pay a $30 million fine and invest $30 million in research to support farming and agriculture as part of a settlement that resolved DEI-related allegations.[189]

And Brown agreed to pay "$50 million over ten years to state workforce development organizations that comply with anti-discrimination laws."[190] Brown also agreed to adopt injunctive relief consistent with President Trump's executive orders, including providing the government access to certain data and "not perform[ing] gender reassignment surgeries on minors or prescrib[ing] them puberty blockers or cross-sex hormones."[191]

Outside of higher education, the EEOC reached a settlement with Planned Parenthood of Illinois to end an investigation into potential race-based discrimination.[192] According to the EEOC's findings, Planned Parenthood required employees to attend either mandatory, racially segregated "affinity caucuses" or DEI-related training sessions each week.[193] As part of the agreement, reached through the EEOC's administrative conciliation process, Planned Parenthood of Illinois agreed to pay $500,000.[194]

2. DOJ Lawsuits Advance Trump Policy Agenda

The DOJ sued two universities and two state entities, alleging in each lawsuit that the defendants impermissibly used DEI programs. It also prioritized enforcement against employers

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2025), https://perma.cc/DQ6R-P83L.

[187] *The United States Announces Agreement with Northwestern University*, DOJ (Nov. 28, 2025), https://perma.cc/U6KB-LK7E.

[188] *U.S. Department of Education Announces the University of Pennsylvania Has Entered into a Resolution Agreement to Resolve its Title IX Violations*, DEP'T OF ED. (Jul. 1, 2025), https://perma.cc/A939-2RMG.

[189] *The United States Announces Agreement with Cornell University*, DOJ (Nov. 7, 2025), https://perma.cc/Q2XY-LGMA.

[190] *Fact Sheet: President Donald J. Trump Secures Major Settlement with Brown University*, THE WHITE HOUSE (July 30, 2025), https://perma.cc/38E5-5F2B.

[191] *Id.*

[192] *Planned Parenthood of Illinois to Pay $500,000 to End EEOC DEI-Related Race Discrimination Investigation*, EEOC (Mar. 19, 2026), https://perma.cc/2XLK-S6AC.

[193] *Id.*

[194] *Id.*

who discriminate against U.S. workers in favor of temporary visa holders and actively pursued claims under the USERRA and the SCRA to protect veterans and servicemembers.

On January 28, 2026, the DOJ Civil Rights Division intervened in a lawsuit filed against UCLA's Geffen School of Medicine.[195] The underlying lawsuit "allege[s] . . . that UCLA has continued to use race in its admissions decisions after the Supreme Court's decision in *SFFA v. Harvard*," 600 U.S. 181 (2023).[196] The DOJ's complaint "notes that, based on admissions data obtained from the Geffen School, large disparities exist between the academic preparation of minority applicants and non-minority applicants."[197]

In the latest development in the Trump administration's ongoing legal battle with Harvard,[198] the DOJ sued Harvard "for race and national origin discrimination against Jewish and Israeli students, in violation of Title VI of the Civil Rights Act of 1964," on March 20, 2026.[199] The lawsuit alleges that, following the October 7, 2023, Hamas attacks in Israel, Harvard failed to protect Jewish and Israeli students through deliberate indifference and "refus[ing] to enforce its campus rules against students who harass their Jewish and Israeli peers."[200] Accordingly, the DOJ seeks injunctive relief ordering Harvard to comply with Title VI, along with "recover[y of] the taxpayer funds that Harvard accepted while in violation of Title VI."[201]

The DOJ has also sued two state entities over their use of DEI in Rhode Island and Minnesota. The lawsuit against the Rhode Island Department of Education alleges that Rhode Island's Educators of Color Loan Forgiveness Program, which allows new, non-white teachers to receive student loan repayments up to $25,000, constitutes illegal racial discrimination.[202] The lawsuit against Minnesota alleges that Minnesota's statewide affirmative action program for state civil service violates Title VII.[203] The complaint in that case argues that "[b]ecause staffing is a zero-sum game, when Minnesota gives preferences to employees or prospective employees because of their race, color, national origin, and sex, it inevitably and necessarily discriminates against other employees or prospective employees because of their race, color, national origin, and

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[195] *Justice Department Joins Lawsuit Against Racial Discrimination in Admissions at UCLA's Medical School*, DOJ (Jan. 28, 2026), https://perma.cc/RYZ3-C3RC.

[196] *Id.*

[197] *Id.*

[198] When the government previously terminated Harvard's grant funding, Harvard and certain other organizational plaintiffs sued. The court granted partial summary judgment in the plaintiffs' favor on September 3, 2025. *President & Fellows of Harvard Coll. v. United States Dep't of Health & Hum. Servs.*, 798 F. Supp. 3d 77 (D. Mass. 2025). An appeal at the U.S. Court of Appeals for the First Circuit is currently pending. *Am. Ass'n of Univ. Professors v. DOJ.*, No. 25-2231 (4th Cir. Dec. 31, 2025).

[199] *Justice Department Sues Harvard University for Antisemitism*, DOJ (Mar. 20, 2026), https://perma.cc/L3BH-7UYL.

[200] *Id.*

[201] *Id.*

[202] *See United States of America v. Rhode Island Dep't of Ed.*, No. 1:25-cv-00466, ECF No. 1, at 2 (D.R.I. Sep 16, 2025) ("Helping new teachers pay off their student loans may be a worthy endeavor for public school districts. But excluding white teachers is racist and unlawful.").

[203] *United States Department of Justice Files Lawsuit Against Minnesota's 'Affirmative Action' Regime*, DOJ (Jan. 14, 2026), https://perma.cc/M7LV-VX8A.

sex."[204] It also specifically criticizes two Title VII Supreme Court affirmative action cases, *United Steelworkers of America v. Weber*, 443 U.S. 193 (1979), and *Johnson v. Transportation Agency, Santa Clara County,* 480 U.S. 616 (1987): "Minnesota laws, enacted around the time that *Weber/Johnson* greenlighted race and sex discrimination under Title VII, demonstrate the consequences of these precedents."[205]

The DOJ also made national origin discrimination against U.S. nationals an enforcement priority by continuing the Protecting U.S. Workers Initiative.[206] The Initiative began during President Trump's first term and "targets, investigates, and brings enforcement actions against employers that intentionally discriminate against U.S. workers due to a preference for temporary visa workers."[207] As part of the Initiative, the DOJ reached settlements with Epik Solutions (regarding preferentially hiring H-1B visa holders)[208] and H2A Complete II Inc. (regarding preferentially hiring H-2A visa holders for agricultural jobs)[209] in 2025.

The DOJ Civil Rights Division has additionally focused on enforcing two laws that protect veterans and current members of the military: USERRA and the Servicemembers Civil Relief Act (SCRA).

USERRA "entitles servicemembers to return to their civilian employment upon completion of their military service with the seniority, status, and rate of pay that they would have obtained had they remained continuously employed by their civilian employer" and "also prohibits discrimination based on present, past and future military service."[210] In September 2025, the DOJ was granted summary judgment in a lawsuit alleging that Guam and the Guam Retirement Fund violated USERRA by denying civilian employees called for active military service retirement credit and pension contributions.[211] The DOJ also reached USERRA settlements with Kansas City Kansas Community College[212] and Oklahoma City Public Schools,[213] which resolved USERRA claims against the schools for failure to reinstate veteran employees when they returned from military service.

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[204] *United States v. Minnesota*, No. 0:26-cv-00273, ECF No. 1, at 12 (D. Minn. Jan. 14, 2026).

[205] *Id.* ¶ 11.

[206] *Justice Department Fighting Discrimination Against U.S. Workers*, DOJ (June 10, 2025), https://perma.cc/LYX5-Q4QJ.

[207] *Id.*

[208] *Id.*

[209] *Justice Department Reaches New Settlement to Protect U.S. Workers*, DOJ (July 15, 2025), https://perma.cc/83N7-LZWM.

[210] *Servicemembers and Veterans Initiative: Employment*, DOJ, https://perma.cc/2SW7-7D87.

[211] *Justice Department Announces Ruling to Protect Military Servicemembers' Civilian Employment Pension Benefits*, DOJ (Sept. 10, 2025), https://perma.cc/X2XE-9GQF; *see also* Benjamin Morse, *Guam Can't Appeal Military Leave Suit Loss At 9th Circ.*, LAW360 (Feb. 9, 2026), https://perma.cc/225L-F33Z (describing the U.S. Court of Appeals for the Ninth Circuit's decision denying Guam and the Guam Retirement Fund's interlocutory appeal).

[212] *Justice Department Announces Settlement with Kansas City Kansas Community College to Enforce the Employment Rights of Servicemember*, DOJ (Sept. 22, 2025), https://perma.cc/6EJD-TCSF.

[213] J*ustice Department Secures Agreement with Oklahoma City Public Schools to Resolve Alleged Discrimination Against U.S. Air Force Reserve Member*, DOJ (Feb. 7, 2025), https://perma.cc/7T5E-85ED.

Separately, 2025 saw developments in class actions to enforce USERRA rights against several major airlines. In September 2025, Southwest Airlines agreed to pay $18.5 million and provide ten days of paid military leave per year to settle a class action alleging that its short-term military leave policies violated USERRA.[214] A similar class action lawsuit against Alaska Airlines remains pending, although the United States District Court for the Western District of Washington granted partial summary judgment in Alaska's favor on March 13, 2026.[215] And, although it denied a similar class certification by Delta Airlines pilots, the United States District Court for the Northern District of Georgia allowed the plaintiffs to amend their complaint to name a plaintiff to serve as class representative.[216] In contrast, American Airlines successfully decertified a class "in a suit alleging the airline unlawfully denied pilots pay and profit-sharing credit for time spent on military leave."[217]

The DOJ Civil Rights Division also prioritized enforcement of the SCRA, which protects servicemembers' financial and housing rights.[218] Since April 22, 2025, it settled seven SCRA cases. The cases ranged from a lawsuit against a towing company that "auction[ed], without a court order, a vehicle belonging to a Navy Lieutenant while he was deployed at sea aboard an aircraft carrier" to a lawsuit against a property management company that "impos[ed] early termination charges on six servicemembers who terminated their residential leases early because they had received military relocation orders."[219]

V. Other Developments in Key Enforcement Areas

Beyond the major policy directives, regulatory changes, and enforcement initiatives discussed in the preceding sections, 2025 and 2026 have also seen significant developments in several other key areas of labor and employment law. This section examines five such areas.

First, religious liberty emerged as a heightened enforcement priority, with the EEOC and other agencies pursuing claims arising from COVID-19 vaccine mandates and other religious accommodation disputes, while courts addressed important questions about class certification in religious discrimination cases.

Second, the federal government's enforcement for sex and gender issues shifted dramatically, with new EEOC decisions limiting transgender-related workplace protections and

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[214] Kellie Mejdrich, *Southwest Airlines Inks $18.5M Deal In Military Leave Suit*, LAW360 (Sept. 26, 2025), https://perma.cc/LQ2B-JUTK.

[215] Rachel Riley, *Alaska Airlines Pilot's Military Leave Benefits Suit Trimmed*, LAW360 (Mar. 13, 2026), https://perma.cc/5ZYV-WFN8.

[216] Chart Rigall, *Delta Pilots Lose Military Leave Class Cert. Bid in 'Close Call'*, LAW360 (Dec. 22, 2025), https://perma.cc/WZ8R-GYQE.

[217] Tom Lotshaw, *American Airlines Knocks Out Class Cert. in Military Leave Suit*, LAW360 (Aug. 21, 2025), https://perma.cc/ZV2T-82SP; *see also* Matthew Santoni, *3rd Circ. Denies Pilots' Bid To Revive Military Leave Class*, LAW360 (Sept. 29, 2025), https://perma.cc/ZA82-NWN3.

[218] *Servicemembers and Veterans Initiative: Financial and Housing Rights*, DOJ, https://perma.cc/5B89-8FHG.

[219] *Housing and Civil Enforcement: Recent Accomplishments of the Housing and Civil Enforcement Section*, DOJ (updated Feb. 24, 2026), https://perma.cc/FER7-QDSD.

the Supreme Court considering constitutional challenges to state laws restricting transgender participation in women's sports.

Third, the EEOC released updated guidance on national origin discrimination, with a particular focus on protecting American workers.

Fourth, the Supreme Court issued a significant ruling in *Stanley v. City of Sanford*, clarifying timing limitations under the Americans with Disabilities Act.

Fifth, Title VII jurisprudence continues to evolve, including the Supreme Court's decision in *Ames v. Ohio Department of Youth Services* addressing discrimination claims brought by majority-group plaintiffs, and its grant of certiorari in *Younge v. Fulton County* on procedural questions regarding affirmative defenses.[220]

A. Religious Liberty

The EEOC and the Department of Health and Human Services (HHS) made religious liberty an enforcement and messaging priority. On August 22, 2025, the EEOC issued a press release marking "200 Days of EEOC Action to Protect Religious Freedom at Work."[221] The press release highlighted enforcement actions arising from more than 10,000 religious accommodation charges challenging COVID-19 vaccine mandates, resulting in more than $55 million recovered.[222] It also highlighted enforcement actions involving other religious accommodations against employers across a wide range of industries, ranging from a casino and a snow park to timeshare companies and a construction company.[223] And, on March 24, 2026, the EEOC reached a $15 million conciliation agreement with a major technology company that addressed religious discrimination claims related to COVID-19 vaccine requirements.[224]

HHS took a similar approach to religious liberty. Section 1557 of the Affordable Care Act extends the Spending Clause statutes that prohibit discrimination (including Titles VI and IX; the Age Discrimination Act of 1975, 42 U.S.C. § 6101 *et seq.*; and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794) to "any health program or activity, any part of which is receiving Federal financial assistance, or under any program or activity that is administered by an Executive Agency or any entity established under Title I of the Affordable Care Act or its amendments."[225] The HHS Office of Civil Rights used Section 1557 to enforce healthcare conscience protections, including rescinding and disavowing certain Biden-era documents and issuing a nationwide "Dear Colleague" letter.[226] The Dear Colleague letter explains what conscience statutes are, summarizes the contents of several specific conscience statutes, and "reaffirms th[e] [Trump] Administration's

[220] 42 U.S.C. § 12101 *et seq.*

[221] *200 Days of EEOC Action*, *supra* note 185.

[222] *Id.*

[223] *Id.*

[224] *EEOC Reaches $15 Million Conciliation Agreement to Resolve Discrimination Claims Related to COVID-19 Vaccinations*, EEOC (Mar. 24, 2026), https://perma.cc/728A-5J66.

[225] 42 U.S.C. § 18116.

[226] *Fact Sheet: HHS Takes Comprehensive Action to Enforce Conscience Rights and Protect Human Life*, DEP'T OF HEALTH AND HUM. SERVS., https://perma.cc/S6Z9-ECQE.

commitment to vigorous enforcement of federal conscience and related protections . . . in HHS programs."[227]

The U.S. Court of Appeals for the Fifth Circuit issued a major decision addressing class certification in the context of claims challenging a COVID-19 vaccine mandate: *Kincannon v. United Airlines, Inc.*[228] The plaintiffs in *Kincannon*, United Airlines employees, "allege[d] that United failed to offer reasonable religious and medical accommodations to its COVID-19 vaccine mandate, thereby unlawfully discriminating against them and all others similarly situated."[229] The lawsuit alleged that "[t]o comply with [United's COVID-19 vaccine] mandate, employees were required to get vaccinated within five weeks of the FDA's approval of a vaccine, or—if a vaccine was not yet approved—by October 25, 2021. Employees could avoid getting vaccinated if they requested and received a religious or medical accommodation."[230] United intended to place all employees granted accommodations on unpaid leave, but the plaintiffs sued before the policy took effect.[231] "While this dispute was unfolding, United implemented a revised accommodation policy for non-customer-facing employees, such as mechanics and ramp agents. Under the new policy, those employees were allowed to continue working but were required to comply with United's masking-and-testing regime."[232]

Based on those facts, the plaintiffs moved to certify three classes. One class (the Rule 23(b)(2) Class) comprised all individuals "who submitted a request for a reasonable accommodation from United's COVID-19 vaccine mandate due to a sincerely held religious belief or medical disability and then faced the choice of: abandoning their religious beliefs or medical needs (*i.e.*, get vaccinated); accepting indefinite leave; or being fired or otherwise separated."[233] The second class (the Rule 23(b)(3) Masking-and-Testing Subclass) comprised "[a]ll employees United deemed non-customer-facing who received an accommodation due to a sincerely held religious belief or medical disability and were subject to the purposely punitive masking-and-testing accommodation."[234] And the third class (the Rule 23(b)(3) Unpaid-Leave Subclass) comprised "all employees United deemed customer facing who received an accommodation due to a sincerely held religious belief or medical disability and who were put on unpaid leave."[235]

The district court denied certification for the Rule 23(b)(2) Class and the Rule 23(b)(3) Masking-and-Testing Subclass.[236] However, it certified the Rule 23(b)(3) Unpaid-Leave Subclass for the employees who sought religious accommodations, though it excluded employees who received a medical accommodation from the class due to a lack of commonality.[237]

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[227] *Id.*
[228] 168 F.4th 713 (5th Cir. 2026).
[229] *Id.* at 718–19.
[230] *Id.* at 719.
[231] *Id.*
[232] *Id.*
[233] *Id.* at 720.
[234] *Id.*
[235] *Id.*
[236] *Id.*
[237] *Id.*

The Fifth Circuit affirmed.[238] It held that the putative Rule 23(b)(2) Class lacked commonality and typicality, and that "Plaintiffs' request for punitive damages predominates" in light of the policy's different impact on different class members.[239] Similarly, it affirmed the district court's decision not to certify the Rule 23(b)(3) Masking-and-Testing Subclass because "the district court's order holding that United's masking-and-testing accommodation is not an adverse employment action is not on appeal" and, even if it were, "the harms suffered—that is, the alleged adverse employment actions—among the putative members vary significantly."[240] And it affirmed the district court's exclusion of putative class members who received medical accommodations from the Rule 23(b)(3) Unpaid-Leave Subclass because "[t]he importance of [an individualized inquiry into each plaintiff's claimed disability] and the need for individualized proof at least undermine the predominance requirement."[241] Similarly, the court agreed with the district court's refusal to certify a class under the Americans with Disabilities Act (ADA) because "United's grant of a medical accommodation does not establish as a matter of law that any employee had a qualifying disability" and, "even more fundamentally, the determination of whether someone has a qualifying disability under the ADA does not generally lend itself to class-wide resolution, at least where the putative class members suffer from a variety of disabilities."[242]

The Fifth Circuit also affirmed the district court's certification of a modified Rule 23(b)(3) Unpaid-Leave Subclass comprising only those who received religious accommodations.[243] Addressing United's argument that questions about individual putative class members' sincerity made class certification inappropriate, the Fifth Circuit explained that "certification may be appropriate if the district court adequately assesses the issue of religious sincerity and finds common questions of law and fact. . . . United will have ongoing opportunities to present evidence demonstrating a specific employee's lack of religious sincerity and object to his or her inclusion in the class."[244] More specifically, the Fifth Circuit explained that the district court "may entertain evidence showing that a particular employee does not sincerely hold the beliefs to which he or she attested" during class rostering and the case can be tried "[o]nce the final roster is established."[245] The Fifth Circuit therefore concluded that, "[a]lthough some individualized questions will be presented, allowing good-faith challenges to individual employees' inclusion in the class affords United due process without dismembering an otherwise cohesive class. . . . [T]o hold otherwise . . . would effectively be establishing a bright-line rule against class actions in religious-discrimination cases."[246]

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[238] *Id.* at 735.
[239] *Id.* at 723.
[240] *Id.* at 725.
[241] *Id.* at 727.
[242] *Id.* at 726.
[243] *Id.* at 735.
[244] *Id.* at 729–30.
[245] *Id.* at 730.
[246] *Id.* at 730.

The Fifth Circuit also rejected United's argument that backpay, punitive damages, and compensatory damages rendered class certification inappropriate.[247] "The district court determined that backpay could be calculated with a mathematical formula using the average earnings for each member, and that the jury could determine an appropriate multiplier for any punitive damages."[248] The Fifth Circuit "agree[d] that a jury could use this or a similar methodology," rendering back pay and punitive damages "amenable to class-wide resolution."[249] In contrast, it explained that compensatory damages, which could not be resolved by formulaic calculations, "will likely have to be separately tried."[250] Nonetheless, because the other issues were common to the class, the Fifth Circuit concluded that "the class's request for compensatory damages does not defeat predominance."[251]

In his concurrence, Judge Willett highlighted that United still has "the right to have a jury determine its objections to individual class members' sincerity," and that "the district court retains discretion to decertify the class and require individual suits" if the mechanism necessary to resolve those challenges is "unreasonably cumbersome."[252]

B. Sex and Gender

The law about sex and gender issues remains unchanged. However, the regulatory landscape at the federal agencies shifted.

The EEOC issued two federal employee decisions that overruled the Commission's prior decisions about transgender workplace protections. The Commission held that Title VII permits employers to maintain single-sex bathrooms and to exclude gender transition services from federal health plans.

Meanwhile, the Supreme Court heard arguments in two cases challenging state laws that require sex segregation in sports by gender. Those cases raise important questions under the Equal Protection Clause and Title IX. Decisions are expected in or around June 2026.

1. The EEOC and Transgender Issues in the Workplace

The EEOC recently released two decisions that address transgender issues in the workplace. First, it released *Selina S. v. Driscoll*, on February 26, 2026.[253] The complainant in that case, a transgender federal employee, challenged the federal government's policy, based on Executive Order 14168, that "intimate spaces," such as bathrooms and locker rooms, are to be "designated by sex and not identity."[254] The complainant's case relied in substantial part on *Bostock v. Clayton County*, 590 U.S. 644 (2020). In *Bostock*, an employee challenged his firing

[247] *Id.* at 732–33.
[248] *Id.*
[249] *Id.* at 733.
[250] *Id.*
[251] *Id.*
[252] *Id.* at 740 (Willett, J. concurring).
[253] Appeal No. 2025003976 (EEOC Feb. 26, 2026), https://perma.cc/LF8T-KRAQ.
[254] *Id.* at 1.

"for conduct 'unbecoming' a county employee" soon after he began participating in a "gay recreational softball league."[255] The issue there was whether Title VII of the Civil Rights Act of 1964's prohibition on employment discrimination "because of . . . sex" encompassed discrimination on the basis of an individual's sexual orientation or gender identity.[256] The Court answered that question in the affirmative: "An employer who fires an individual merely for being gay or transgender defies the law."[257] In *Selina v. Driscoll*, however, the EEOC Office of Federal Operations determined that *Bostock* did not control on the question of "whether single-sex bathrooms are lawful."[258] It then concluded that "Title VII permits a federal agency employer to maintain single-sex bathrooms and similar intimate spaces. And it permits a federal agency employer to exclude employees, including trans-identifying employees, from opposite-sex facilities."[259] That decision overruled an Obama-era EEOC federal employee decision called *Lusardi v. Dep't of the Army*.[260] It also "applies only to federal agencies subject to the [EEOC's] administrative complaint process for federal employees."[261]

Second, on March 24, 2026, the EEOC released its decision in *Sam T. v. Kupor*.[262] The complainants there were current and former Office of Personnel Management (OPM) employees who are transgender and are/were enrolled in Federal Employee Health Benefits (FEHB) Plans. They challenged OPM's decision to exclude coverage of gender transition services and procedures from FEHB plans.[263] They argued that the decision constituted sex discrimination in violation of Title VII and/or disability bias under the Rehabilitation Act.[264]

The EEOC rejected those arguments. Citing *United States v. Skrmetti*,[265] the EEOC in *Sam T.* overturned *Lawrence v. Office of Personnel Management*,[266] which held that denying health insurance coverage for gender-affirming care violated Title VII.[267] The Commission also

[255] *Bostock v. Clayton Cnty.*, 590 U.S. 644, 653 (2020).
[256] *Id.*
[257] *Id.* at 683.
[258] *Selina S.*, Appeal No. 2025003976, at 3.
[259] *Id.*
[260] EEOC Appeal No. 0120133395, 2015 WL 1607756 (Apr. 1, 2015).
[261] *Selina S.*, Appeal No. 2025003976, at 4.
[262] EEOC Appeal Nos. 0120172750, 0120172751, 2020000643, 2021005019 (EEOC Mar. 24, 2026).
[263] *Id.* at 2.
[264] *Id.*
[265] 605 U.S. 495 (2025). In 2023, Tennessee passed a law prohibiting healthcare providers from providing gender-affirming surgeries and other gender-affirming medical treatment to minors. *Id.* at 506–07. Three transgender minors, their parents, and a doctor brought a pre-enforcement challenge. *Id.* at 507. The Supreme Court held that the law was not subject to heightened scrutiny under the Equal Protection Clause of the Fourteenth Amendment because the restrictions were based on age and medical use classifications—both of which receive only rational basis review—rather than sex. *Id.* at 511–19. It also declined to extend the logic of *Bostock v. Clayton County*, 590 U.S. 644 (2020), beyond the Title VII context. *Id.* at 519–22. It also held that the Tennessee law satisfied rational basis scrutiny because Tennessee's legislature had reasonable grounds for imposing the restrictions, including findings about medical risks and potential adverse psychological consequences for minors who undergo gender-affirming care. *Id.* at 522–25.
[266] Appeal No. 0120162065, 2024 WL 3040129 (EEOC May 30, 2024).
[267] *Sam T.*, EEOC Appeal Nos. 0120172750, 0120172751, 2020000643, 2021005019, at 4–6.

concluded that *Bostock* did not help the complainants because "neither [the employee's] sex nor [their] transgender status is the but-for cause of [their] inability to obtain [the procedure]."[268]

2. Sex and Gender at the Supreme Court

The Supreme Court also heard arguments in two cases that address transgender-related issues and girls' and women's sports teams.

Little v. Hecox involves a challenge to an Idaho statute "which categorically barred transgender girls and women from participating on female athletic teams in public schools . . . [and] allowed any individual to challenge a female athlete's gender, triggering a mandatory medical verification process that could include analysis of reproductive anatomy, genetic make-up, or testosterone levels."[269] Two plaintiffs—Lindsey Hecox, a transgender student at Boise State University who had undergone hormone therapy and was excluded from joining the women's cross-country team, and a cisgender high school student known as Jane Doe—challenged the law.[270] The question presented is whether laws that, like Idaho's, limit participation in women's and girls' sports based on biological sex violate the Equal Protection Clause of the Fourteenth Amendment.[271]

West Virginia enacted a similar law called the "Save Women's Sports Act." That law "requires public school and collegiate sports teams to be designated based on 'biological sex' and excludes individuals identified as male at birth from participating on female teams."[272] The law prevented B.P.J., a biological male who identifies as female, from competing on high school girls track and cross-country teams.[273] The questions presented are whether Title IX and the Equal Protection Clause prohibit laws like West Virginia's that separate sports teams based on biological sex determined at birth.[274]

C. National Origin Discrimination

In addition to the DOJ actions prosecuting national origin discrimination discussed in section IV.B.2. above, the EEOC issued updated Title VII educational sub-regulatory guidance that focuses on discrimination against U.S. nationals in the workplace. The guidance, entitled "Discrimination Against American Workers Is Against The Law,"[275] provides information and encourages individuals who "suspect [they] may have experienced anti-American national origin discrimination" to contact the EEOC.[276]

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[268] *Id.* at 7 (quoting *Skrmetti*, 605 U.S. at 521) (internal quotations omitted).
[269] *Little v. Hecox*, OYEZ, https://perma.cc/4T74-WD32.
[270] *Id.*
[271] *Id.*
[272] *West Virginia v. B.P.J.*, OYEZ, https://perma.cc/G7QG-32RZ.
[273] *Id.*
[274] *Id.*
[275] *Discrimination Against American Workers Is Against the Law*, EEOC, https://perma.cc/5S5H-MAQM; *EEOC Releases New and Updated Educational Materials on National Origin Discrimination*, EEOC (Nov. 19, 2025), https://perma.cc/M2ZW-PZE8.
[276] *Discrimination Against American Workers Is Against the Law*, *supra* note 275.

D. The Supreme Court Clarifies the Americans with Disabilities Act's Coverage of Retirees

Finally, 2025 saw a major development in ADA law from the Supreme Court's decision in *Stanley v. City of Sanford*.[277] The plaintiff in that case, Karyn Stanley, began working for the City of Sanford, Florida, as a firefighter in 1999.[278] When the City hired her, "it offered health insurance until age 65 for two categories of retirees: those who retired with 25 years of service, and those who retired earlier because of a disability."[279] In 2003, the City changed its policy "to pay for health insurance up to age 65 for retirees with 25 years of service," while offering those who retired earlier due to a disability only 24 months of insurance, unless the retiree began receiving Medicare benefits sooner.[280]

After the City changed its policy, Stanley began to suffer from "an unspecified disability."[281] She ultimately retired in 2018, leaving her entitled to only 24 months of health insurance under the City's new policy.[282]

Stanley sued, alleging that the City's policy violated the ADA, among other state and federal laws.[283] The district court dismissed the ADA claim because, as a retired person, Stanley was not a "qualified individual" covered by the ADA.[284] The Eleventh Circuit affirmed, and so did the Supreme Court.[285] The Supreme Court held that, "to prevail under § 12112(a), a plaintiff must plead and prove that she held or desired a job, and could perform its essential functions with or without reasonable accommodation, at the time of an employer's alleged act of disability-based discrimination."[286] A retiree is not covered because a retiree neither "holds" nor "desires" a job, as required by the statutory text.[287] A retiree in different factual circumstances than Stanley, however, might have a claim if the discrimination started when the plaintiff was a qualified individual.[288]

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[277] 606 U.S. 46 (2025).
[278] *Id.* at 49.
[279] *Id.*
[280] *Id.* at 49–50.
[281] *Id.* at 50.
[282] *Id.*
[283] *Id.*
[284] *Id.* at 50–51.
[285] *Id.* at 51.
[286] *Id.* at 65.
[287] *Id.* at 52 ("Those present-tense verbs . . . tend to suggest that the statute does not reach retirees who neither hold nor desire a job at the time of an alleged act of discrimination.").
[288] *Id.* at 62–63.

E. Title VII at the Supreme Court

The 2025 Supreme Court case *Ames v. Ohio Department of Youth Services* clarified Title VII's proof structure.[289]

Marlean Ames, a heterosexual woman, brought Title VII discrimination claims, alleging that she was denied promotion in favor of a lesbian woman and demoted in favor of a gay man.[290] The U.S. Court of Appeals for the Sixth Circuit affirmed the district court's grant of summary judgment because Ames did not satisfy the Sixth Circuit's "background circumstances" rule. That rule required her to show "background circumstances to support the suspicion that the defendant is that unusual employer who discriminates against the majority."[291] The Supreme Court reversed because "the Sixth Circuit's 'background circumstances' rule cannot be squared with the text of Title VII or our longstanding precedents."[292]

The Supreme Court has also granted certiorari in a case addressing the scope of Title VII[293]: *Younge v.* Fulton *County Judicial Circuit District Attorney's Office.*[294] Fulton County District Attorney Paul Howard hired Dr. Jasmine Younge as Deputy Chief of Staff and Director of Policy and Programs.[295] "Younge's offer letter specified that she would 'be assigned to the Policy Division under the supervision of the District Attorney,' and her offer was 'contingent upon the approval of the Fulton County Personnel Department and Finance Department.'"[296] Younge was Howard's third-in-command and worked closely with Howard, who was her only supervisor.[297]

"Around July 1, 2019, approximately two months after she started her job, Younge told Howard that she was pregnant. Afterwards, Howard stopped meeting with Younge, excluded her from his meetings with others, treated her dismissively, and reassigned some of her work duties. Two weeks later, he fired Younge."[298] Younge brought claims for pregnancy discrimination, race discrimination, and retaliation, all in violation of Title VII, along with additional claims of race and sex-based discrimination.[299]

The district court dismissed all of Younge's claims except the Title VII pregnancy discrimination and retaliation claims, then Younge abandoned her retaliation claim.[300] Accordingly, by the time the case reached the summary judgment stage, only the Title VII pregnancy discrimination claim remained.[301]

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[289] 605 U.S. 303 (2025).
[290] *Id.* at 306.
[291] *Id.* at 307 (cleaned up).
[292] *Id.* at 309.
[293] Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*
[294] *Younge v. Fulton Jud. Cir. Dist. Att'y*, No. 25-352, 2026 WL 858458 (U.S. Mar. 30, 2026).
[295] *Younge v. Fulton Jud. Cir. Dist. Att'y's Off.*, No. 23-11418, 2025 WL 974309, at *1 (11th Cir. Apr. 1, 2025).
[296] *Id.*
[297] *Id.* at *2.
[298] *Id.*
[299] *Id.* at *2 n.4.
[300] *Id.*
[301] *Id.*

Title VII does not cover elected officials or their "personal staff."[302] After discovery had already closed, the District Attorney's Office notified the district court and Younge that it intended to raise the personal-staff exemption at summary judgment.[303] The district court allowed the DA's Office to assert the personal-staff exemption and granted summary judgment based on that affirmative defense.[304]

The U.S. Court of Appeals for the Eleventh Circuit affirmed. The court (1) assumed without deciding that the personal-staff exemption is an affirmative defense; (2) held that the district court did not clearly err in allowing the DA's Office to assert the personal-staff exemption because Younge was not prejudiced; (3) assumed without deciding that the six factors set forth in *Laurie v. Alabama Court of Criminal Appeals*, 88 F. Supp. 2d 1334 (M.D. Ala. 2000), governed its analysis of the exemption; and (4) held that Younge was a member of Howard's personal staff because five of the six *Laurie* factors weighed in favor of that finding.[305]

The Supreme Court granted certiorari on March 30, 2026, on a single issue: "Whether, where a defendant has filed an answer without pleading an affirmative defense, the defendant may nonetheless assert that affirmative defense as the basis for a summary judgment motion, without amending or seeking to amend its answer to plead that affirmative defense, and whether a defendant may do so even if an amendment adding that affirmative defense would be barred by Rule 16(b)(4)."[306]

VI. Conclusion

The second Trump administration has fundamentally reshaped labor and employment law enforcement through sweeping personnel changes, executive orders, and targeted enforcement initiatives.

Key takeaways include:

- New leadership drove a shift in enforcement priorities toward combating DEI programs, protecting religious liberty, and addressing antisemitism in the workplace;
- Executive Orders 14168, 14173, 14281, and 14398 redefined federal enforcement priorities and policies on sex and gender, targeted DEI initiatives, sought to eliminate disparate impact liability, and threatened False Claims Act enforcement against federal contractors;

[302] 42 U.S.C. § 2000e(f).
[303] *Younge*, 2025 WL 974309 at *2.
[304] *Id*. at *3.
[305] *Id.* at *3–11.
[306] *Younge*, 2026 WL 858458; *Younge v. Fulton Jud. Cir. Dist. Att'y's Off.*, Docket No. 25-352 (cert. granted Mar. 30, 2026).

- The EEOC rescinded Biden-era harassment guidance, consolidated control in the Chair, and required Commission approval for nearly all litigation;
- The Department of Labor has proposed rescinding regulations implementing Executive Order 11246, modifying independent contractor classification rules, and increasing wage requirements for foreign workers; and the Supreme Court has addressed presidential removal power, transgender sports participation, and important Title VII questions; and
- The DOJ rescinded disparate impact regulations under Title VI, filed lawsuits against universities and state entities over DEI programs, prioritized enforcement against employers who discriminate against U.S. workers in favor of visa holders, and actively pursued USERRA and SCRA claims to protect servicemembers.