

THE EEOC

Strikes Back

Villains, Victories & the New Enforcement Landscape

The Current State of Federal Employment
Discrimination Enforcement

2026 Crowe Dunlevy Annual Labor & Employment Seminar • CURRENT AS OF OCTOBER 20, 2026

Educational material only — not legal advice



1

Jaycee Simon



- Attorney in the firm's Oklahoma City office.
- Member of the Labor & Employment, Immigration, and Litigation & Trial Practice Groups.

Katie Campbell

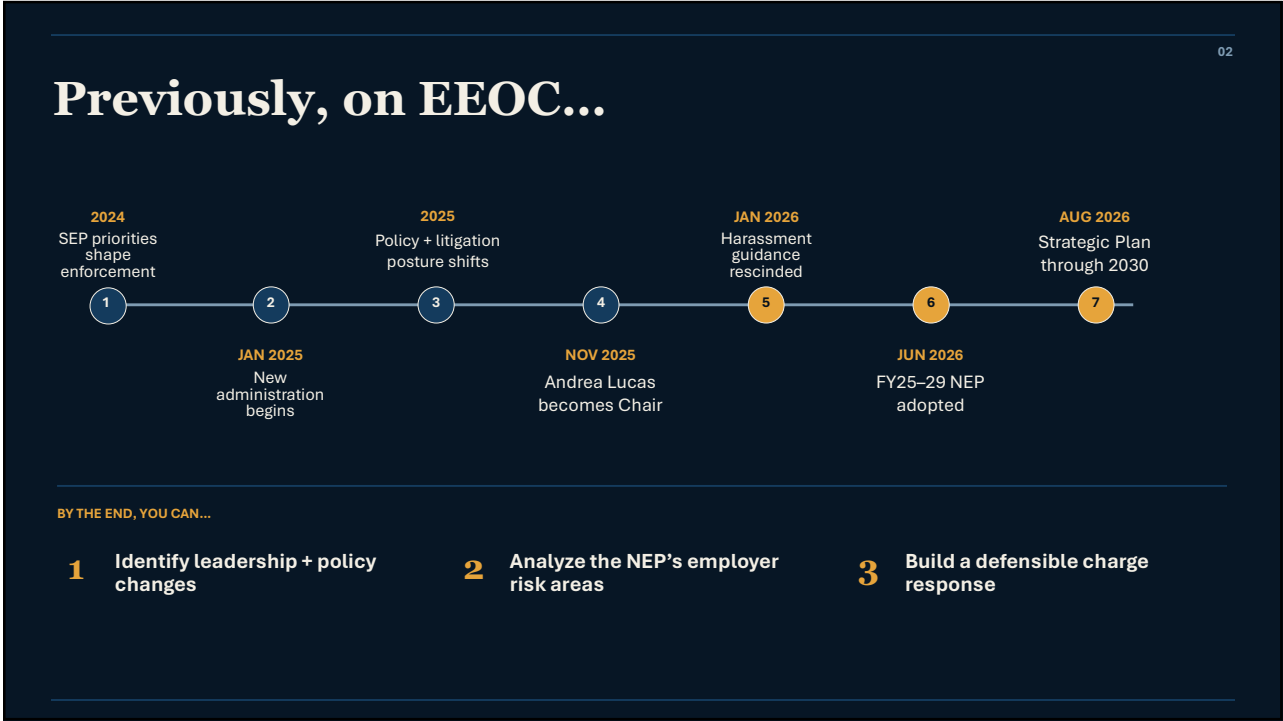


- Attorney in the firm's Dallas office.
- Member of the Labor & Employment Practice Group.

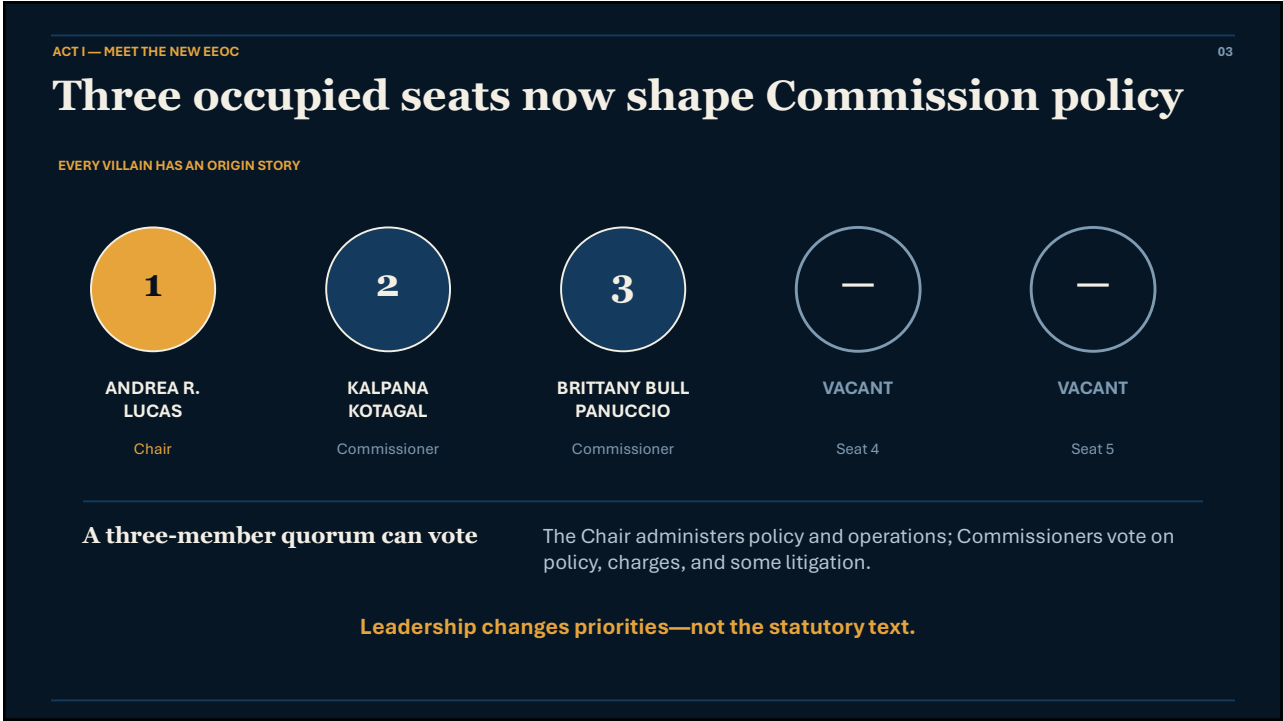
*Subsequent information should not be understood as, or considered a substitute for, specific legal advice. For inquiries, please contact Jaycee Simon, Katie Campbell, or another licensed attorney.

© Crowe Dunlevy 2026

2



3



4

The playbook changed; the law did not

PREVIOUS EMPHASIS

Broad systemic priorities
 DEI as a potential solution
 LGBTQI+ protections emphasized
 Broad harassment guidance
 Emerging technology / AI
 Vulnerable-worker focus



CURRENT EMPHASIS

Intentional discrimination
 DEI as a potential source of bias
 Sex-based rights emphasized
 Current statutory / case-law framework
 Targeted statutory enforcement
 Evenhanded, merit-based framing

AGENCY PRIORITIES ≠ CHANGES IN UNDERLYING LAW

Sources: EEOC SEP FY2024–2028; EEOC NEP FY2025–2029; Jan. 2026 harassment-guidance rescission.

5

Five priority gates determine what gets EEOC attention

01

Broad-impact discrimination

Policies with reach beyond the parties

02

Intentional discrimination

Overt or facially discriminatory action

03

Recent Supreme Court precedent

Scope or application still developing

04

Vulnerable workers

Barriers to asserting legal rights

05

Enforcement-process strengthening

Cases that reinforce compliance

CHAIR PRIORITIES

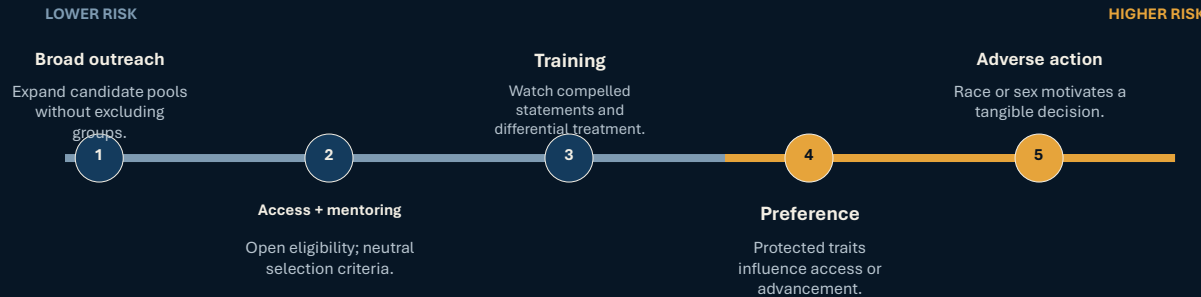
DEI-related race/sex • national origin • women's sex-based rights • religious liberty

Priority status affects resource allocation—not whether conduct is lawful.

Source: EEOC, National Enforcement Plan FY2025–FY2029 (June 4, 2026).

6

DEI becomes risky when protected traits drive employment decisions



Audit the decision rule

Who is eligible? Who decides? What is documented? Is participation voluntary? Does any employment outcome turn on race or sex?

Sources: EEOC, What You Should Know About DEI-Related Discrimination at Work; EEOC/DOJ technical assistance (Mar. 2025).

7

The DEI trap turns on action, eligibility, and evidence

COMPANY X

A leadership program is open only to women and racial minorities.

Applicants must self-identify race and sex. A rejected white male employee files an EEOC charge.

WHAT HAPPENS NEXT?

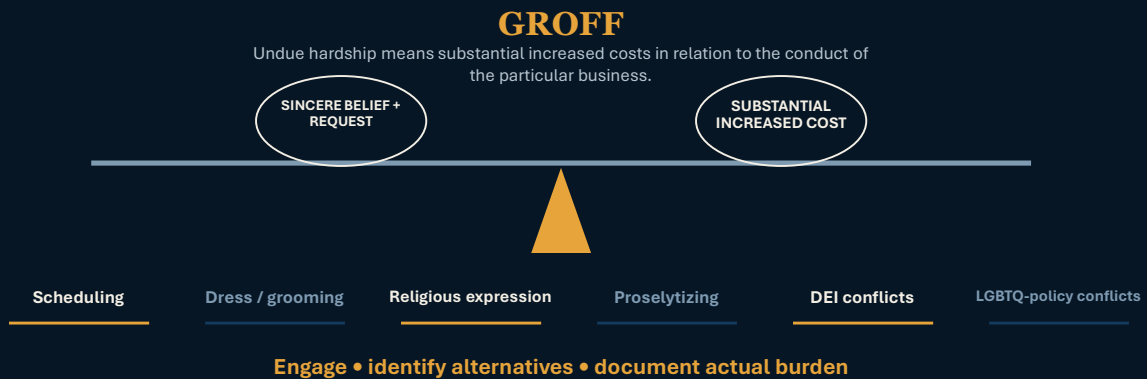
- 1** What is the legal theory?
- 2** Is there an adverse action?
- 3** Which facts change the analysis?
- 4** What should the employer do now?

60 seconds • issue-spot before arguing outcome

Legal frame: Title VII disparate treatment; EEOC DEI technical assistance. Hypothetical for discussion only.

8

Religious accommodation now sits nearer the center



Sources: Groff v. DeJoy, 600 U.S. 447 (2023); EEOC NEP FY2025–2029.

9

Competing employee concerns require a disciplined Title VII analysis

EMPLOYEE A

“My sincerely held belief requires an exception to this workplace practice.”

WHOSE RIGHTS DOES TITLE VII PROTECT?

- 1 Identify the request
- 2 Test sincerity + conflict
- 3 Measure actual hardship
- 4 Prevent harassment / retaliation

EMPLOYEE B

“That exception makes the workplace feel hostile or exclusionary.”

Accommodation is not endorsement. Objection is not automatically harassment.

Focus on conduct, operational burden, and legally protected rights—not viewpoint preference.

Sources: Title VII; Groff v. DeJoy; EEOC NEP FY2025–2029. Hypothetical for discussion only.

10

Sex and gender disputes sit at three legal layers

01

STATUTE

Title VII prohibits discrimination because of sex.

02

SUPREME COURT

Bostock: firing someone merely for being gay or transgender violates Title VII.

03

CURRENT AGENCY POSTURE

2024 harassment guidance rescinded; statutory duties and precedent remain.

OPERATIONAL QUESTIONS

- Bathrooms + facilities
- Pronouns
- Dress codes
- **Single-sex spaces**
- Harassment complaints
- Religious conflicts

Do not turn policy language into a substitute for element-by-element legal analysis.

Sources: Bostock v. Clayton County (2020); EEOC guidance-rescission release (Jan. 23, 2026).

11

Rescission removed guidance—not Title VII



WHAT REMAINS

Title VII's harassment prohibition

Supreme Court precedent

Fact-specific hostile-environment analysis

What changed?

The agency withdrew one interpretive framework and signaled a narrower/current legal approach.

Sources: EEOC rescission release (Jan. 23, 2026); Meeting of Jan. 22, 2026; Bostock v. Clayton County.

12

ACT II — THE BIG FOUR

14

“America First” does not erase national-origin rules

TITLE VII	INA §1324b	I-9 / E-VERIFY
National origin No discrimination because of ancestry, birthplace, culture, linguistic traits, or perceived origin.	Citizenship status Generally bars citizen-only hiring absent law, regulation, executive order, or government-contract requirement.	Document practices Do not request more or different documents based on citizenship status or national origin.

RED FLAG

“Our customers prefer American accents.”

Separate lawful work-authorization requirements from national-origin or citizenship preferences.

Sources: EEOC NEP FY2025-2029; DOJ IER, Understanding the INA’s Anti-Discrimination Provision (Mar. 2024).

13

INTERACTIVE — WHO GETS THE JOB?

15

A citizenship preference can trigger more than one statute

“ We prefer U.S. citizens because our customers don’t want to deal with foreign accents. ”

WHAT LAWS JUST WALKED INTO THE ROOM?

TITLE VII	INA	I-9
National-origin discrimination	Citizenship-status discrimination	Unfair documentary practices

Ask next: Is citizenship legally required for this specific job?

Source: DOJ IER employer guidance. Hypothetical for discussion only.

14

The old villains are still on the statute book

TITLE VII — race • color • religion • sex

ADA — disability + accommodation

ADEA — age 40+

GINA — genetic information

EPA — equal pay for equal work

PWFA — pregnancy-related accommodation

DIFFERENT PRIORITIES

≠

WEAKER ENFORCEMENT

Retaliation remains a cross-cutting risk.

The Strategic Plan still emphasizes investigations, conciliation, litigation, systemic impact, and meaningful relief.

Sources: EEOC, What Laws Does EEOC Enforce?; EEOC Strategic Plan FY2026–2030.

15

Five moves reduce employer exposure now

1 **Audit DEI programs**

Eligibility • selection • employment consequences

2 **Rebuild religious-accommodation steps**

Sincerity • alternatives • Groff burden

3 **Review sex / gender policies**

Statute • precedent • jurisdiction • consistency

4 **Train on national origin + citizenship**

Recruiting • accents • I-9 • lawful requirements

5 **Preserve the fundamentals**

Documentation • investigations • anti-retaliation

PHOTOGRAPH THIS SLIDE

Practical checklist synthesized from current EEOC plans, Supreme Court precedent, and EEOC/DOJ technical assistance.

16

HR and counsel are the first line of defense

HR OWNS THE FACTS

- ✓ Preserve documents + messages
- ✓ Identify decisionmakers
- ✓ Secure policies + comparator data
- ✓ Interview witnesses promptly
- ✓ Stop retaliation + preserve neutrality

COUNSEL OWNS THE LEGAL FRAME

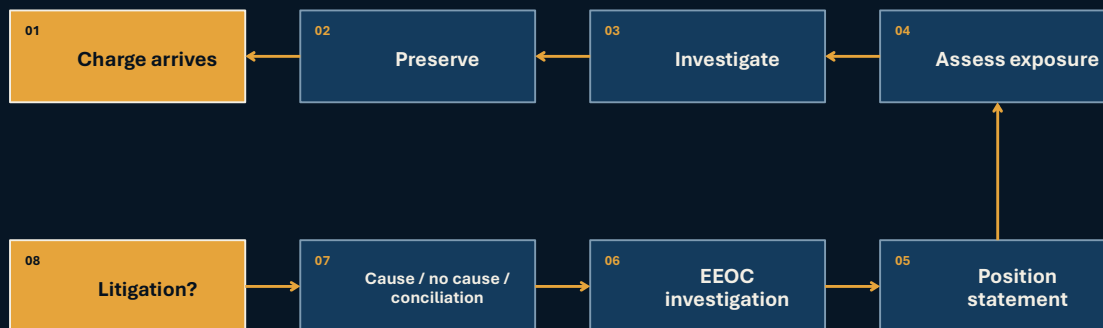
- ✓ Define privilege deliberately
- ✓ Test the legal theory + elements
- ✓ Shape the position-statement record
- ✓ Evaluate mediation / conciliation early
- ✓ Quantify litigation + operational exposure

ONE RECORD • ONE THEORY • NO SURPRISES

Sources: EEOC Effective Position Statements; EEOC conciliation and litigation guidance.

17

A charge creates a decision path—not a single deadline

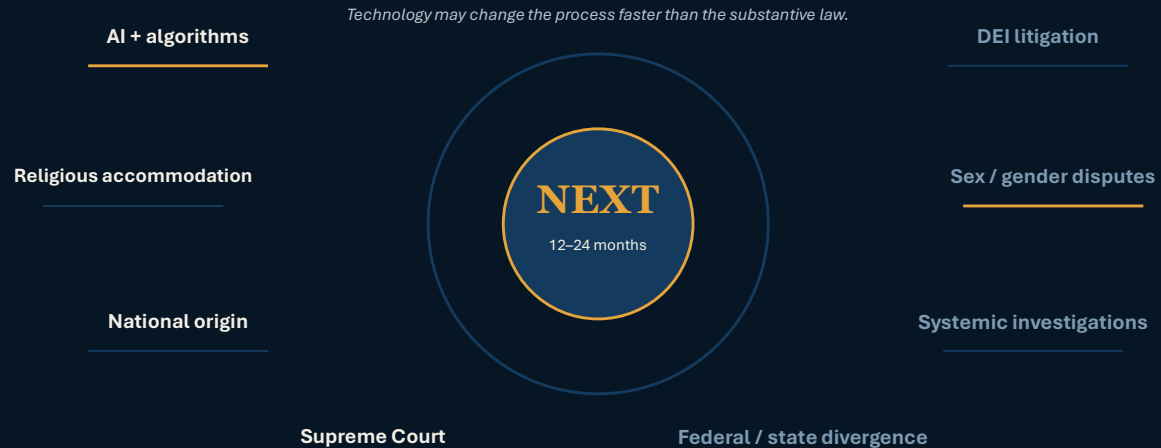


At every stage: preserve credibility, comparator evidence, and settlement options.

Sources: EEOC Effective Position Statements; EEOC, Conciliation and Litigation; EEOC, Resolving a Charge.

18

Watch the intersections, not just the headlines



Sources: EEOC Strategic Plan FY2026–2030; NEP FY2025–2029; prior SEP FY2024–2028.

19

Three scenarios reveal the same response discipline

A

THE DEI PROGRAM

Race/sex-exclusive leadership initiative.

WHAT DOES THE EEOC CARE ABOUT?

WHAT MUST THE EMPLOYER DO?

60 SEC

B

THE RELIGIOUS EMPLOYEE

Accommodation request conflicts with policy.

WHAT DOES THE EEOC CARE ABOUT?

WHAT MUST THE EMPLOYER DO?

60 SEC

C

THE PRONOUN / BATHROOM COMPLAINT

Competing rights + harassment allegations.

WHAT DOES THE EEOC CARE ABOUT?

WHAT MUST THE EMPLOYER DO?

60 SEC

Audience exercise. Apply Title VII elements, current priorities, evidence preservation, accommodation, and anti-retaliation.

20

The enforcement landscape changed—but the legal discipline did not

- 1** Priorities changed; statutory authority did not.
- 2** Intentional discrimination is back in the spotlight.
- 3** DEI, religion, sex/gender, and national origin demand attention.
- 4** Systemic investigations and litigation remain significant threats.
- 5** **Defensible policies beat predictions about the next administration.**

**“THE VILLAIN MAY CHANGE.
THE EMPLOYMENT LAWS DON’T.”**

21



Contact

Jaycee Simon

405.234.3254

jaycee.booth@crowedunlevy.com

crowedunlevy.com



Contact

Katie Campbell

405.234.3245

katie.campbell@crowedunlevy.com

crowedunlevy.com



Oklahoma City

Braniff Building

324 North Robinson Ave.

405.235.7700



Tulsa

222 North Detroit Ave.

Suite 600

918.592.9800



Dallas

2525 McKinnon Street

Suite 425

214.420.2163



Houston

3663 N. Sam Houston

Parkway East, Suite 628

To sign up for Crowe Dunlevy news, legal updates and seminars, please visit crowedunlevy.com/subscribe



22