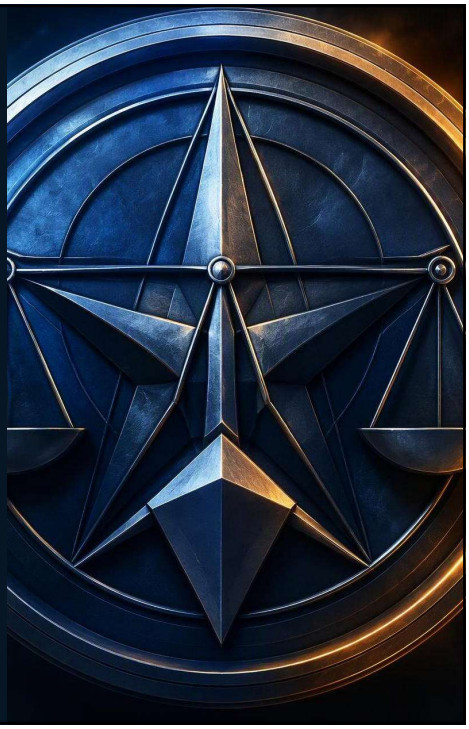
THE EEOC

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

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*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.

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02

Previously, on EEOC...



BY THE END, YOU CAN...

1 **Identify leadership + policy changes**

2 **Analyze the NEP's employer risk areas**

3 **Build a defensible charge response**

3

ACT I — MEET THE NEW EEOC

03

Three occupied seats now shape Commission policy

EVERY VILLAIN HAS AN ORIGIN STORY

1	2	3	—	—
ANDREA R. LUCAS	KALPANA KOTAGAL	BRITTANY BULL PANUCCIO	VACANT	VACANT
Chair	Commissioner	Commissioner	Seat 4	Seat 5

A three-member quorum can vote

The Chair administers policy and operations; Commissioners vote on policy, charges, and some litigation.

Leadership changes priorities—not the statutory text.

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ACT I — MEET THE NEW EEOC

05

The playbook changed; the law did not

PREVIOUS EMPHASIS		CURRENT EMPHASIS
Broad systemic priorities	→	Intentional discrimination
DEI as a potential solution		DEI as a potential source of bias
LGBTQI+ protections emphasized		Sex-based rights emphasized
Broad harassment guidance		Current statutory / case-law framework
Emerging technology / AI		Targeted statutory enforcement
Vulnerable-worker focus		Evenhanded, merit-based framing

AGENCY PRIORITIES ≠ CHANGES IN UNDERLYING LAW

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

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ACT II — THE NEW ENFORCEMENT LANDSCAPE

07

Five priority gates determine what gets EEOC attention

01	02	03	04	05
Broad-impact discrimination	**Intentional discrimination**	**Recent Supreme Court precedent**	**Vulnerable workers**	**Enforcement-process strengthening**
Policies with reach beyond the parties	Overt or facially discriminatory action	Scope or application still developing	Barriers to asserting legal rights	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.

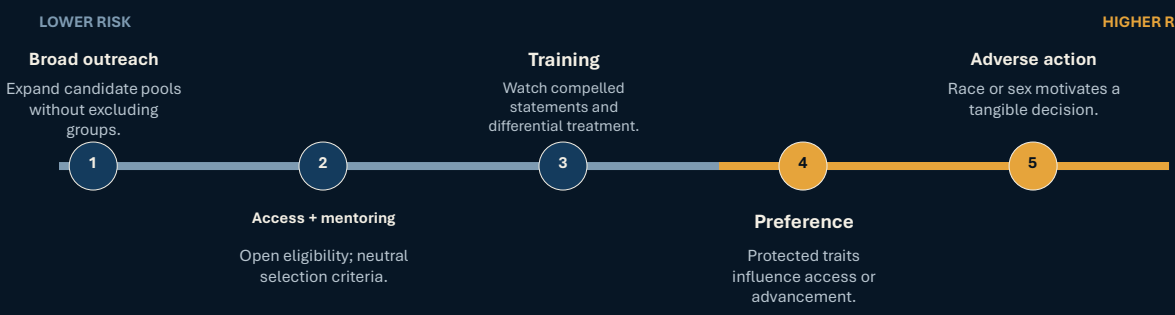
Source: EEOC, National Enforcement Plan FY2025–FY2029 (June 4, 2026).

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ACT II — THE BIG FOUR

08

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).

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INTERACTIVE — THE DEI TRAP

09

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.

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ACT II — THE BIG FOUR

10

Religious accommodation now sits nearer the center

GROFF

Undue hardship means substantial increased costs in relation to the conduct of the particular business.

SINCERE BELIEF + REQUEST

SUBSTANTIAL INCREASED COST



Scheduling | Dress / grooming | **Religious expression** | Proselytizing | **DEI conflicts** | LGBTQ-policy conflicts

Engage • identify alternatives • document actual burden

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

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INTERACTIVE — THE WORKPLACE COLLISION

11

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

ACT II — THE BIG FOUR

12

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).

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ACT II — THE BIG FOUR

13

Rescission removed guidance—not Title VII

2024 — EEOC harassment guidance issued

↑

2025 — Texas federal court vacates portions

↑

JAN 2026 — Commission votes 2–1 to rescind

↑

NOW — Statute + precedent control

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.

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ACT II — THE BIG FOUR

14

“America First” does not erase national-origin rules

TITLE VII

National origin

No discrimination because of ancestry, birthplace, culture, linguistic traits, or perceived origin.

INA §1324b

Citizenship status

Generally bars citizen-only hiring absent law, regulation, executive order, or government-contract requirement.

I-9 / E-VERIFY

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).

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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

ACT III — THE EEOC'S OTHER WEAPONS

16

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.

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ACT IV — SURVIVING THE EMPIRE

18

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.

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ACT IV — SURVIVING THE EMPIRE

19

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

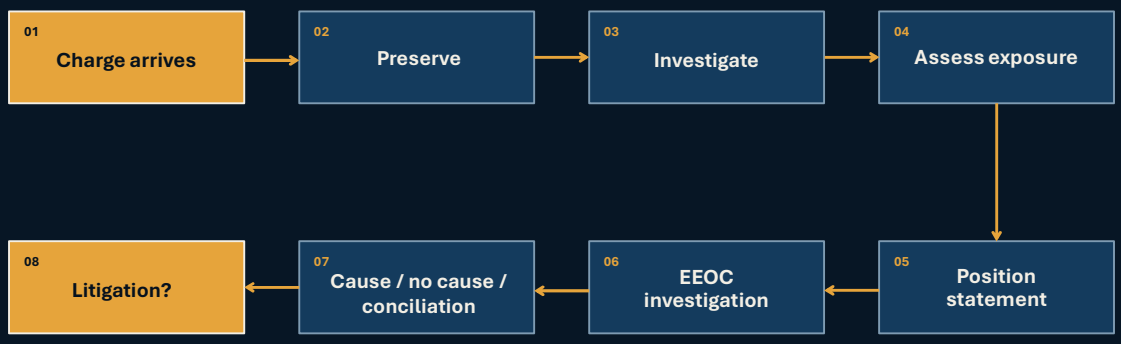
Sources: EEOC Effective Position Statements; EEOC conciliation and litigation guidance.

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ACT IV — THE EEOC CHARGE IN 2026

20

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.

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ACT V — PREDICTING THE NEXT VILLAIN

21

Watch the intersections, not just the headlines

Technology may change the process faster than the substantive law.



AI + algorithms

DEI litigation

Religious accommodation

Sex / gender disputes

National origin

Systemic investigations

Supreme Court

Federal / state divergence

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

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AUDIENCE BATTLE — CHOOSE YOUR OWN VILLAIN

22

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.

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FINAL BATTLE — THE TAKEAWAY

23

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."

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