

# EEOC Doubles Down on Targeting of Disparate Impact Liability

Mark A. Konkel

May 23, 2025

Acting EEOC Chair Andrea Lucas issued a public statement regarding the 2024 EEO-1 Component 1 data-collection portal. The statement serves as a reminder for employers to complete their reporting obligations by June 24, 2025, but also reinforced the EEOC's commitment to President Trump's recent Executive Order "Restoring Equality of Opportunity and Meritocracy" seeking to eliminate the use of disparate-impact liability by employers, on which we previously [reported](#). The EEO-1 data collection obligates private sector and federal contractors to provide the EEOC with various demographic data about employees.

In her public statement, Lucas reinforced that employers have "obligations under Title VII not to take any employment actions based on, or motivated in whole or in part by, an employee's race, sex, or other protected characteristics." She warned companies not to "use information about [their] employees' race/ethnicity or sex—including demographic data...collect[ed] and report[ed] in EEO-1 Component 1 reports—to facilitate unlawful employment discrimination based on race, sex, or other protected characteristics in violation of Title VII." Lucas emphasized that "Title VII's protections apply equally to all workers, regardless of their race or sex" and that "there is no 'diversity' exception to Title VII's requirements."

Lucas also reminded employers of Trump's recent Executive Order which "directed all agencies, including the EEOC, to deprioritize "disparate impact" enforcement—that is, investigations and lawsuits that challenge neutral practices that have unequal outcomes based on race, sex, or other protected characteristics." Lucas announced the EEOC's commitment to enforce the Executive Order by explaining, "the EEOC is an executive branch agency, not an independent agency. We will fully and robustly comply with this and all Executive Orders. Under my leadership, the EEOC will prioritize remedying intentional discrimination claims." She further noted **"the fact that a neutral employment policy or practice has an unequal outcome on employees of a particular race or sex—that is, has a 'disparate impact' based on race or sex—does not justify your company or organization treating any of your employees differently based on their race or sex."**

Reading this statement in conjunction with the recent Executive Order, the message is a commitment by the EEOC to its enforcement of the Executive Order and opposition to the use of a disparate impact analysis by employers. The statement reminds employers not to use workforce demographic data required by the EEO-1 to analyze whether any of its otherwise facially neutral policies or practices have a negative impact on a certain demographic group. We expect that the EEOC will continue to target the use of disparate impact analysis by employers. However, neither this public statement nor the Executive Order change existing Supreme Court caselaw upholding

disparate impact liability.

If you have any questions about compliance with the Executive Order or EEO-1 Component 1 data collection, please contact a member of the Kelley Drye Labor and Employment team.