

The Trump Transformation – Major Shifts in EEOC and Employment Law

Barbara E. Hoey, Mark A. Konkel, Blythe E. Lovinger

January 23, 2025

Less than 24 hours after assuming the presidency, Donald Trump announced significant changes in the leadership and focus of the Equal Employment Opportunity Commission (“EEOC”), as well as other policy changes which will reverberate through the workplace (and the nation) over his term.

His most rapid actions focused on three areas: the leadership and thus focus of the EEOC, DEI policies and initiatives, and the rights of LGBTQ and transgender employees and citizens.

And, to round it out, he ordered all or most federal employees back to work, in their offices, five days per week.

New EEOC Acting Chair Andrea Lucas

As predicted in our December webinar, Andrea Lucas, the lone Republican-appointed Commissioner, was appointed the Acting Chair of the EEOC. While this appointment does not come as a surprise, its speed is notable, and is the first step in promoting the agenda that President Trump and his allies signaled in the months prior to his inauguration.

Ms. Lucas was appointed “Acting” Chair, and thus does not need Senate confirmation. This grants her some immediate powers, but leaves the door open for Trump to appoint another individual as the EEOC Chair in the future. It is entirely possible—and indeed, perhaps likely—that this individual may be handpicked without prior ties to the agency at all, as there is currently a vacancy on the Commission that Trump will almost certainly fill.

Ms. Lucas’s ability to act—at least in the short term—may be limited due to the fact that the remainder of the agency’s Commissioners are Democrats and will hold a majority in the agency through 2026. Commissioners currently serve five-year staggered terms.

Unsurprisingly, Ms. Lucas has been at ideological odds with the Democratic commissioners on a series of issues for some time. For instance, Ms. Lucas has opposed the agency’s rules explaining the Pregnant Workers Fairness Act. She also opposed the EEOC-issued guidance stating that “misgendering” an individual employee could be considered harassment, and disagreed with the agency’s stance on Diversity Equity & Inclusion (“DEI”) measures.

Ms. Lucas wasted no time getting out a statement, which was on the EEOC website this morning:

Consistent with the President’s Executive Orders and priorities, my 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.

She also stated that the EEOC would emphasize rights for all, and not just for members of certain groups:

Our employment civil rights laws are a matter of individual rights. We must reject the twin lies of identity politics: that justice is measured by group outcomes and that civil rights exist solely to remedy harms against certain groups," Lucas said. "I intend to dispel the notion that only the 'right sort of' charging party is welcome through our doors and to reinforce instead the fundamental belief enshrined in the Declaration of Independence and our civil rights laws—that all people are 'created equal.' I am committed to ensuring equal justice under the law and to focusing on equal opportunity, merit, and colorblind equality.

Further changes to the agency's directives are certain to follow in the coming months and years.

In fact, there is speculation that the agency's current General Counsel, Karla Gilbride, will be replaced as well. Ms. Gilbride was nominated by President Biden in early 2023 and confirmed later that year by the Senate to a four-year term. Although her term is not up, the new President could terminate her.

Federal DEI Regulations Suspended

Donald Trump allocated a portion of his inaugural speech to a promise that he would suspend DEI initiatives at the federal level. He made good on that promise already, with the release of numerous Executive Orders. One of these orders immediately dismantled all future diversity efforts carried out by federal employees.

The Office of Personnel Management issued a memorandum requiring all DEI officials to be placed on immediate (paid) administrative leave and all DEI contractors immediately terminated. This memo further directed federal agencies to suspend all language or advertisements about their DEI initiatives and withdraw all directives that would undermine the new orders. Finally, the memorandum instructed agency heads to inform DEI officials that their offices would be closed and that employees would be questioned about whether there were any efforts that remained "in disguise" by using "coded or imprecise language."

While the federal suspension does not impact private employers now, it was followed up with a separate Executive Order aimed at the private sector encouraging them to follow the federal government's lead.

The Order states that DEI policies "undermine our national unity, as they deny, discredit, and undermine the traditional American values of hard work, excellence, and individual achievement in favor of an unlawful, corrosive, and pernicious identify-based spoils system." While obviously outside direct executive control, the Executive Order directed federal agencies to investigate the compliance of private corporations and foundations with federal guidelines.

These efforts worked in tandem with the rescission of several executive orders previously signed by President Biden.

Gender Identity Executive Orders

In a series of Executive Orders also issued on Monday, Donald Trump proclaimed that it is now "the

policy of the United States to recognize two sexes, male and female.”

The Order—titled “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government”—explicitly states that “[t]hese sexes are not changeable and are grounded in fundamental and incontrovertible reality.” The Order defines “sex” as an individual’s “immutable biological classification as either male or female” and states that sex “is not a synonym for and does not include the concept of ‘gender identity.’”

The Order further imparts the following policy changes:

- The State Department and Department of Homeland Security must require that “government-issued identification documents, including passports, visas, and Global entry cards, accurately reflect the holder’s sex.”
- Federal funds “shall not be used to promote gender ideology.”
- The Attorney General is tasked with ensuring that “no Federal funds are expended for any medical procedure, treatment, or drug for the purpose of conforming an inmate’s appearance to that of the opposite sex.”
- Single-sex spaces such as prisons and shelters must be designated by sex and not gender identity.
- Finally, federal agencies must rescind all “inconsistent” guidance documents, including but not limited to “The White House Toolkit on Transgender Equality” and the “U.S. Department of Education Toolkit: Creating Inclusive and Nondiscriminatory School Environments for LGBTQI+ Students.”

It remains to be seen what further efforts the Executive Branch will take to suspend gender-based protections in the workplace.

What Should Employers Do Now?

First, keep abreast of the news and register for our webinar on these topics, "[Trump Reframes the EEO Agenda: What Does It Mean for Your Business?](#)," which we are holding on **January 30**. We hope there will be more guidance issued by the agencies before then.

Second, keep your state and local laws and enforcement agencies in your sights. As was the case during the first Trump presidency, state and local laws which are more employee-friendly remain in effect, and many state and local EEO agencies will step up enforcement, especially in areas where the federal agencies may stand down or become less aggressive.

Next, train your HR Department and your managers to be mindful of employee issues. With so much talk in the news regarding employee rights, DEI, and other similar “hot button” topics, it is very possible that this news filters into your workplace. Emotions are running high, and tempers may flare, so be aware of the pulse of your workplace and on alert for employee disputes.

Finally, look to your Kelley Drye attorney for guidance. We continue to monitor developments and will provide guidance relevant to private-sector employees as the situation evolves.