
EEOC Issues Updated Strategic Enforcement Plan for 2017-2021

By Anne-Marie V. Welch / Oct 28, 2016

On Monday, October 17, 2016, the Equal Employment Opportunity Commission ("EEOC") issued its updated [Strategic Enforcement Plan](#) ("SEP") for 2017-2021. The SEP identifies the following six priorities:

1. Eliminating barriers in recruitment and hiring.

The EEOC will continue its focus on class-based recruitment and hiring practices that discriminate against racial, ethnic, and religious groups, older workers, women, and people with disabilities. The lack of diversity in technology and the increasing use of data driven screening tools are recognized as focus areas within this priority. For more information about the use of data driven screening tools, be sure to [register](#) for Clark Hill's November 17, 2016 free webinar, *Using Big Data to Make Employment Decisions: Are the Benefits Worth the Risks?*

2. Protecting vulnerable workers, including immigrant and migrant workers, and underserved communities from discrimination.

The EEOC will continue its focus on job segregation, harassment, human trafficking, pay, retaliation and other policies and practices harmful to vulnerable workers, including immigrant and migrant workers, and individuals perceived to be members of these groups, and against underserved communities. To do so, the EEOC will have district offices and its federal sector program identify vulnerable workers and underserved communities within their areas for focused attention.

3. Addressing selected emerging and developing issues.

The EEOC advises that the issues listed below fall within this category. Items (d) and (e) are new.

- a. Qualification standards and inflexible leave policies that discriminate against individuals with disabilities;
- b. Accommodating pregnancy-related limitations under the Americans with Disabilities Act Amendments Act (ADAAA) and the Pregnancy Discrimination Act (PDA);
- c. Protecting lesbians, gay men, bisexuals and transgender (LGBT) people from discrimination based on sex;
- d. Clarifying the employment relationship and the application of workplace civil rights protections in light of the increasing complexity of employment relationships and structures, including temporary workers, staffing agencies, independent contractor relationships, and the on-demand economy; and
- e. Addressing discriminatory practices against those who are Muslim or Sikh, or persons of Arab, Middle Eastern or South Asian descent, as well as persons perceived to be members of these groups, arising from backlash against them from tragic events in the United States and abroad.

4. Ensuring equal pay protections for all workers.

The EEOC reinforces its efforts to address pay discrimination based on sex, but now seeks to also combat pay discrimination on the basis of race, ethnicity, age, and disability.

5. Preserving access to the legal system.

The EEOC will focus on:

- a. overbroad waivers, releases and mandatory arbitration provisions;
- b. employers' failure to maintain and retain applicant and employee data and records required by EEOC regulations; and
- c. significant retaliatory practices that effectively dissuade others in the workplace from exercising their rights.

6. Preventing systemic harassment.

The EEOC emphasized that harassment continues to be one of the most frequent complaints received by the Agency, especially from federal employees. The EEOC will focus on strong enforcement through monetary and injunctive relief, as well as the promotion of training and outreach to deter future violations.

The EEOC's SEP demonstrates that the EEOC intends to continue to push its agenda in the areas listed. To prepare for these challenges, employers should:

- Review your hiring and promotion practices to ensure they do not create barriers for applicants and employees in recruiting and promotions;
- Review your employment practices to avoid any practice which may discriminate against immigrant or migrant workers;
- Examine your use of temporary workers, staffing agencies, independent contractor relationships, and workers in the on-demand economy to avoid findings of an employer-employee or joint employer relationship;
- Prevent harassment of all employees in a protected category including Muslim or Sikh, or persons of Arab, Middle Eastern or South Asian descent;
- Review employee pay to ensure that you can justify differences in pay between employees who perform the same or similar work; and

-
- If you require arbitration of employment claims, ensure that the arbitration agreement signed by the employees provides due process including some limited discovery, a neutral arbitrator and the ability to recover the damages allowed by statutes such as Title VII.

If you have any questions about the SEP or would like more information, please contact Anne-Marie Vercruysse Welch at (248) 988-1810 | awelch@clarkhill.com, or another member of Clark Hill's Labor and Employment Law Practice Group.