

## A look at the EEOC's Draft Strategic Enforcement Plan

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Last month, the **U.S. Equal Employment Opportunity Commission's (EEOC)** released a draft of its Strategic Enforcement Plan ("SEP"). The SEP is intended to, amongst other goals, establish priorities for the EEOC in the coming years. The draft included five broad nationwide priorities, as follows:

1. **Eliminating Systemic Barriers in Recruiting and Hiring** - Specifically, the draft highlights facially neutral hiring practices, which in practice, adversely impact protected groups (e.g. racial and ethnic minorities, older workers, women and applicants with disabilities). Examples expressed in the draft include: hiring or recruiting practices which have the effect of channeling or steering individuals into specific jobs due to their status in a particular group; restrictive application processes; the use of pre-employment screening tools such as date of birth screens in online applications; and other exclusionary policies and practices.
2. **Protecting immigrant, migrant and other vulnerable workers** –The focus here is on workers who may be unaware of their rights under equal employment laws, and the expressed intent is to target disparate pay, job segregation, harassment against these groups, and trafficking, as well as discriminatory language policies that may prevent certain workers from learning their employment law rights.
3. **Addressing Emerging Issues** - The draft SEP reiterates the EEOC's suitability to tracking and promoting awareness for emerging discriminatory trends, and specifically lists a few emerging issues that it intends to target. These include the following
  - a. **ADA Defenses** -The application of defenses to the Americans with Disabilities Act such as undue hardship, direct threat and business necessity defenses.
  - b. **LGBT Discrimination** -Coverage for lesbians, gay, bisexuals and transgendered individuals under the sex discrimination provisions of Title VII.

c. **Pregnancy Discrimination** -Accommodating pregnancy when women have been forced onto unpaid leave after being denied accommodations routinely provided to similarly situated employees.

4. **Preserving Access to the Legal System** –The EEOC very clearly intends to target policies and practices which impede its investigative or enforcement efforts, or which discourage or inhibit individuals from exercising their rights under employment discrimination statutes. Examples of such practices may include overly broad waivers of liability and retaliatory action.

5. **Harassment** –This is always a focus of the EEOC, however, the SEP indicates some recognition that employers and employees may struggle with how to prevent and respond to harassment in the workplace. The EEOC appears focused on a re-vamped national education and outreach campaign.

The recent draft SEP provides some important and useful guidance for employers regarding what the EEOC will pay attention to in the coming years. It also provides a good reminder to evaluate, or re-evaluate, your company or organization's policies and practices to make sure that it won't become an EEOC target. If there are any doubts that the EEOC has set its sights on topics highlighted in the SEP, several new EEOC lawsuits involving pregnancy discrimination – one of the emerging issues described above -- have emerged over the last two months. Check back on Friday for an overview of these cases, and a discussion of whether your company needs to re-evaluate your pregnancy policies and practices.

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