

EEOC Strategic 5-Year Enforcement Plan: What Employers Should Expect

Presenters



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Aaron is a partner in the Labor and Employment practice group where he represents employers in litigation before state and federal courts. Aaron has a broad array of experience in cases involving Title VII of the Civil Rights Act of 1964, state and federal wage and hour, the Americans with Disabilities Act, and the Family and Medical Leave Act. Aaron also has significant experience with restrictive covenant litigation, including prosecuting and defending motions for temporary and permanent injunctions in state and federal court.

Aaron is currently serving as a Board Member with Fund for the Arts, Legal Aid Society and St. George's Scholar Institute in addition to serving on the Dentons Global Inclusion & Diversity Leadership Council.



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Chelsea is a member of the Firm's Litigation and Dispute Resolution group, where she focuses her practice on defending companies against a variety of employment and labor disputes, including discrimination, retaliation, harassment and wrongful discharge as well as complex commercial litigation, a broad range of business disputes, including fiduciary liability, breach of contract, misappropriation of trade secrets and unfair competition claims.

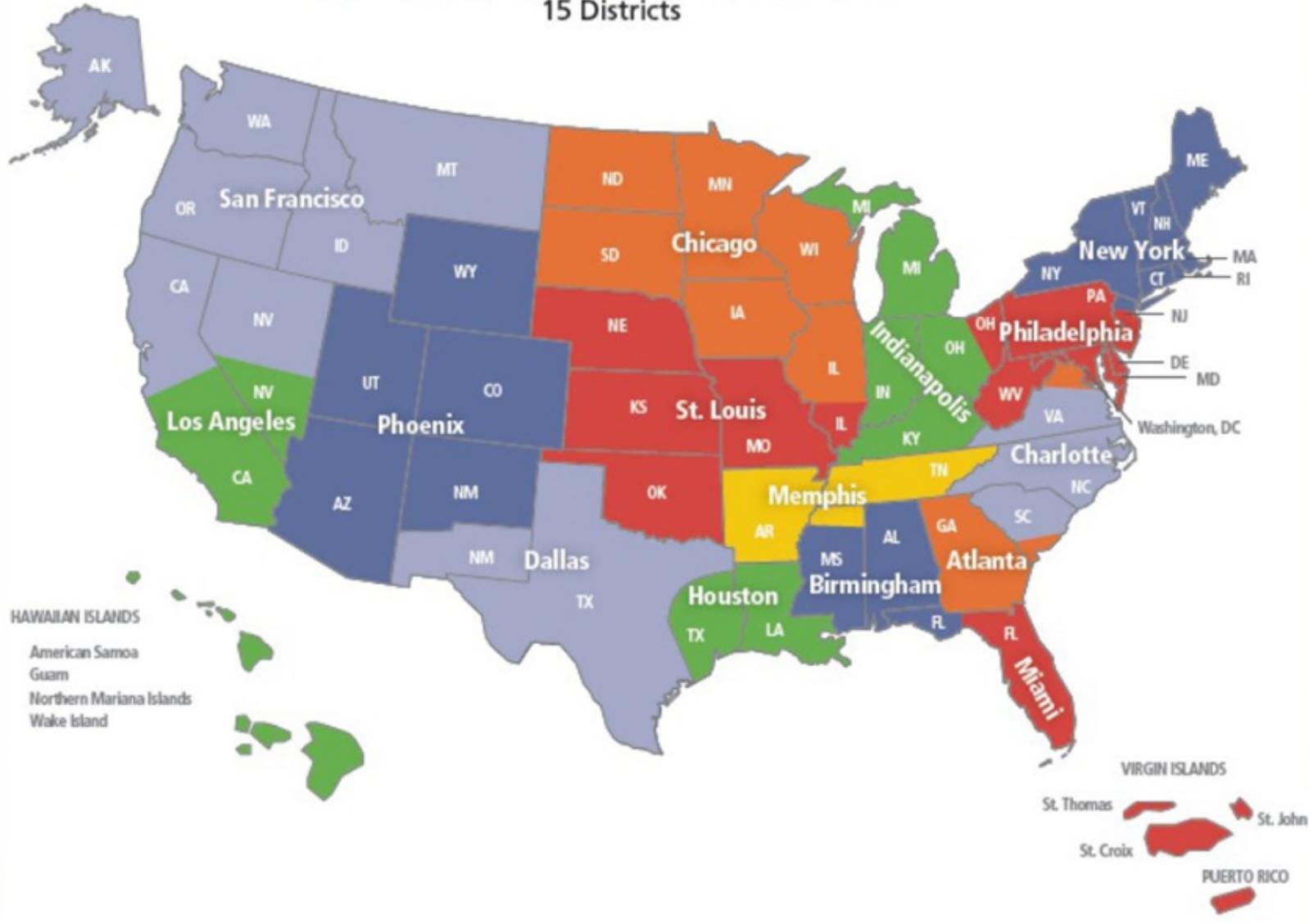
Chelsea is currently serving as Chair of the Litigation Section for the Louisville Bar Association after serving as the Vice Chair of the section in 2022.

United States Equal Employment Opportunity Commission (EEOC)

EEOC Composition – Office of General Counsel

- The Office of General Counsel is responsible for conducting litigation on behalf of the EEOC
- The Office of General Counsel is led by the General Counsel, a presidentially appointed position that serves a 4-year term. The General Counsel manages and provides guidance to the fifty-three field offices
- These district field offices conduct EEOC trial litigation in the geographic areas covered by the respective offices and provide legal advice and other support to district staff responsible for investigating charges of discrimination
- The district field office attorneys also investigate charges of discrimination, and assist with mediations and negotiated settlements

Equal Employment Opportunity Commission
15 Districts



EEOC Guidance

- Regulations
- Subregulatory Guidance
- Commission Decisions
- Opinion Letters
- Memoranda of Understanding
- Informal Discussion Letters

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Policies and Enforcement

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Policies and Enforcement

- Mediation Policy
- Litigation Policy
- Systemic Enforcement Policy

Freedom of Information Act (FOIA) Requests

- Some EEOC records are confidential and will not be released by the EEOC:
 - Employment discrimination charge file records before EEOC completes its investigation
 - Investigative employment discrimination charge file records to a third party
 - An employer's EEO report, unless the requester has filed suit on a charge of discrimination against the employer
 - Records that reflect EEOC's internal decision-making

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EEOC Strategic Plan and Strategic Enforcement Plan

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Strategic Plan v. Strategic Enforcement Plan – How Are They Different?

Strategic Plan

Discusses the EEOC's mission, operations, and processes for reaching its long-term goals and objectives.

Strategic Enforcement Plan

Establishes goals relevant to the EEOC's enforcement authority.

Strategic Enforcement Plan: Previous Enforcement Priorities – FY 2013 to 2016

- Eliminating Barriers in Recruitment and Hiring
- Protecting Immigrant, Migrant and Other Vulnerable Workers
- Addressing Emerging and Developing Issues
- Enforcing Equal Pay Laws
- Preserving Access to the Legal System
- Preventing Harassment Through Systemic Enforcement and Targeted Outreach

Strategic Enforcement Plan: Previous Enforcement Priorities – FY 2017 to 2021

- Eliminating Barriers in Recruitment and Hiring
- Protecting Vulnerable Workers, Including Immigrant and Migrant Workers, and Underserved Communities from Discrimination
- Addressing Selected Emerging and Developing Issues
- Ensuring Equal Pay Protections for All Workers
- Preserving Access to the Legal System
- Preventing Systemic Harassment

Listening Session 1



Listening Session 2



Strategic Enforcement Plan Listening Session II:
**Identifying Vulnerable Workers and Reaching
Underserved Communities**

September 12, 2022

VIRTUAL

Listening Session 3



Strategic Enforcement Plan Listening Session III

Shaping the EEOC's Strategic Enforcement Priorities

September 22, 2022

Draft Strategic Enforcement Plan: Enforcement Priorities – FY 2023 to 2027

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

[EEOC-2022-0006]

Draft Strategic Enforcement Plan

AGENCY: U.S. Equal Employment
Opportunity Commission.

ACTION: Request for information and
comment.

SUMMARY: The U.S. Equal Employment
Opportunity Commission (EEOC) seeks
public comments on a Draft Strategic
Enforcement Plan for 2023–2027 as
part of its strategic planning process.

DATES: Comments must be received by
February 9, 2023.

ADDRESSES: Submit comments
electronically to the Federal
eRulemaking Portal at: [https://
www.regulations.gov](https://www.regulations.gov). Follow the
instructions for submitting comments.
Do not submit the following information
in your comment: confidential business
information, trade secret information, or
other sensitive or protected information
that you do not want to be available to
the public. For the Draft Strategic
Enforcement Plan, comments will not be
accepted through any other method.

video phone).

SUPPLEMENTARY INFORMATION: Please
provide any comments to the Draft
Strategic Enforcement Plan as indicated
in the **ADDRESSES** section above. This
Draft Strategic Enforcement Plan follows
from the EEOC's Draft Strategic Plan for
2022–2026 (Agency Docket Number:
EEOC-2022-0005). The EEOC already
invited the public to comment on the
Draft Strategic Plan, which concluded
on December 5, 2022. Public comments
to the Draft Strategic Plan are available
on <https://www.regulations.gov>.
Comments to the Draft Strategic
Enforcement Plan will be considered
before the Commission votes to approve
a final Strategic Enforcement Plan.

U.S. Equal Employment Opportunity
Commission

Draft Strategic Enforcement Plan

Fiscal Years 2023–2027

Executive Summary

The U.S. Equal Employment
Opportunity Commission (EEOC) was
created by the landmark Civil Rights Act
of 1964 in direct response to calls for
racial and economic justice at the
historic March on Washington for Jobs
and Freedom. As the primary federal
agency charged by Congress with

This SEP updates and refines the
EEOC's subject matter priorities to
reflect progress in achieving the EEOC's
vision of fair and inclusive workplaces
with equal opportunity for all, while
also recognizing the significant
challenges that remain in making that
vision a reality. The tragic killing of
George Floyd, Breonna Taylor, and so
many other Black and brown people
remain a painful reminder of systemic
racism. The COVID-19 pandemic and
its economic fallout continue to
disproportionately impact people of
color and other vulnerable workers,
exposing and magnifying inequalities
in our society. And high-profile incidents
of bias and violence based on race,
religion, national origin, and gender
have impacted communities across the
country—including Black grocery
shoppers and workers in Buffalo, NY;
Taiwanese churchgoers in Orange
County, CA; patrons at an LGBTQI+
club in Colorado Springs, CO; and
Jewish synagogue members in
Pittsburgh, PA, among others. While
these deep-rooted problems extend far
beyond the workplace, the EEOC is
committed to doing our part to address
systemic discrimination in employment.
Addressing inequality in the workplace
is a vital step in the fight for justice and

Draft Strategic Enforcement Plan, 88 FR 1379, 1379-1385 (Jan. 10, 2023)

[https://www.federalregister.gov/documents/2023/01/10/2023-00283/draft-
strategic-enforcement-plan](https://www.federalregister.gov/documents/2023/01/10/2023-00283/draft-strategic-enforcement-plan)

Strategic Enforcement Plan

Key Enforcement Priorities – FY 2023 to 2027

1. Recruitment and Hiring
2. Vulnerable Workers
3. Equal Pay
4. Access to the Legal System
5. Systemic Harassment
6. Emerging and Developing Issues (Artificial Intelligence, Pregnancy Discrimination, COVID-19)

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. . . the use of automated systems, including artificial intelligence or machine learning, to target job advertisements, recruit applicants, or make or assist in hiring decisions where such systems intentionally exclude or adversely impact protected groups

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***Kimberly Hayward, et
al. v. Catholic Health
Systems, et al.***

**United States District Court
Western District of New York (Buffalo)**

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Factual Background and Procedural History

- Claims originated in the New York State Division of Human Rights;
- Plaintiffs issued Right to Sue letters and filed a complaint in the U.S. District Court for the Western District of New York;
- Six Plaintiffs with similar claims of harassment and discrimination, including allegations that:
 - Defendants “regularly mocked, berated, threatened, discriminated against and gave more difficult and dangerous work assignments to Black employees,” including assigning Plaintiffs “COVID rooms” to clean at a higher frequency than other employees.
 - Defendants assigned Black employees to “more difficult work assignments in terms of volume and complexity.”
 - Defendants engaged in discriminatory scheduling practices.
 - Defendants refused leave to Plaintiffs under the Family and Medical Leave Act (“FMLA”) to care for dying family members.

Interplay with EEOC Strategic Enforcement Plan

- New Guidelines that Could Be Affected: Advancing Equal Pay for All Employees & Preventing and Remediating Systemic Harassment.
- The Court's ruling regarding how to address Plaintiffs' allegations that they did not receive equal raise opportunities as other unprotected employees could impact how the EEOC considers future complaints regarding pay secrecy and employees asking about pay.
- The Court's ruling regarding how systemic the harassment problem is, when it involves 5 protected class employees*, could be a benchmark on the EEOC's approach to these types of cases in the future.

Recent EEOC Lawsuits

- U.S. District Court for the Western District of Wisconsin: *Equal Employment Opportunity Commission v. Baumann Farms, LLP* (filed September 14, 2021; settled June 8, 2022)
- U.S. District Court for the Eastern District of New York: *iTutorGroup, Inc., Shanghai Ping'An Intelligent Education Technology Co., Ltd., and Tutor Group Limited* (filed May 5, 2022)

Questions?



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