

Quorum-Less EEOC and New Acting Chair: What Are the Impacts for Employers?

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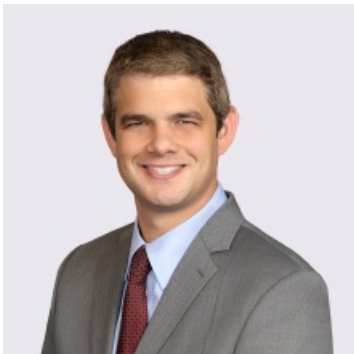
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Takeaways

- Following President Trump's removal of two EEOC commissioners, the EEOC is without a quorum until another commissioner is appointed and confirmed.
- Acting Chair Andrea Lucas has outlined policies to implement the president's Executive Order 14168, "Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government."
- Existing EEOC litigation and charge investigations are likely to proceed as usual with an increased focus on certain charges, and employers should consider the new policy initiatives.

Related links

- [New Presidential EO Says Federal Government Recognizes 'Two Sexes' Only](#)
- [Statement re: Vote on Final Rule to Implement the Pregnant Workers Fairness Act](#)
- [Removing Gender Ideology and Restoring the EEOC's Role of Protecting Women in the Workplace](#)
- [The State of the EEOC: Frequently Asked Questions](#)
- [Post-EO DEI Assessments: What Are They and Why Should You Do Them?](#)

Article

The start of the second Trump Administration has brought significant changes to many areas of employment law, including to federal agencies, and the Equal Employment Opportunity Commission (EEOC) is no exception. Some moves were anticipated, but others were not.

Thus far:

- As expected, on Jan. 21, Commissioner Andrea Lucas was named acting chair.
- Also as expected, on Jan. 27, President Donald Trump fired General Counsel Karla Gilbride.
- On Jan. 27, in an unanticipated move, President Trump removed Commissioners Charlotte Burrows and Jocelyn Samuels, ending a Democratic Commission majority that was expected to exist until 2026. Only Acting Chair Lucas and Commissioner Kolpana Kotagal remain. The Commission now has only two members, one of each party, the Commission is short one member required for a quorum.
- On Feb. 4, 2025, President Trump named Andrew B. Rogers as acting general counsel. Rogers previously served as chief counsel to Acting Chair Lucas.

New Policy Directives

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In an agency press release issued on Jan. 28, 2025, Acting Chair Lucas set forth policies she was implementing within her power as acting chair that reflect the president's [Executive Order 14168, "Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government,"](#) including:

- Announcing the priority to "defend the biological and binary reality of sex and related rights, including women's rights to single-sex spaces at work."
- Removing the agency's "pronoun app."
- Ending the use of the "X" gender marker and "Mx." prefix for the charge intake process.
- Removal of materials promoting "gender ideology" on the Commission's internal and external websites and documents.

There was discussion of potential changes in EEOC posters, but no such changes have been implemented yet.

Although Acting Chair Lucas supported the Pregnant Workers Fairness Act (PWFA), she voted against the final Commission Rule implementing the PWFA because "the rule fundamentally errs in conflating pregnancy and childbirth accommodation with accommodation of the female sex, that is, female biology and reproduction." (See [Statement re: Vote on Final Rule to Implement the Pregnant Workers Fairness Act](#)) We would expect to see emphasis on pregnancy and childbirth accommodations as outlined with the vision set forth in this statement. In fact, in one pending case challenging the PWFA final regulations, the EEOC filed a motion in which it stated, "The Acting Chair has indicated that she intends for the Commission to reconsider portions of the regulation at issue in this case once a quorum is established."

Impact on EEOC Guidance and Strategic Enforcement Plans

Acting Chair Lucas's ["Defending Women"](#) press release also recognizes what *cannot* be done without a Commission quorum, noting that prior approved guidance and strategic enforcement plans cannot be undone without a Commission vote. It is unclear when additional Commissioners will be appointed and confirmed, so a quorum-less Commission could be in place for a while.

With no quorum, changes are not likely in:

- Revoking old guidance or instituting new guidance
- Revising or implementing regulations
- Changing existing EEO-1 requirements

Impact on Litigation

The lack of a quorum may affect new litigation filings. Under a prior Commission resolution, the Commission must approve certain types of litigation, such as pattern and practice cases and systemic litigation. Although other cases are delegated to the authority of the general counsel (or acting general counsel), there is no current mechanism for the Commission to approve pattern and practice or systemic cases without a quorum. The existing delegation makes clear that an acting general counsel can still file new litigation when the EEOC lacks a quorum if the case does not fall within the categories that require a Commission vote.

We also expect there to be a greater focus and increase in EEOC-initiated litigation on

issues Acting Chair Lucas has championed in the past and in her policy statement, such as alleged illegal DEI policies that make race- and sex-conscious hiring decisions, pregnancy discrimination, and religious discrimination and accommodation issues.

Litigation already pending is likely to continue, though Acting General Counsel Rogers may have new views on the merits and strategies used in these cases. Cases involving issues that contradict the acting chair's policy initiatives, in theory, could be withdrawn, although the likelihood of that remains uncertain.

Impact on Charges

Field offices will continue to investigate charges, both existing and new filings. This includes any existing Commissioner charges, even those of Commissioners no longer at the agency. It remains to be seen if any additional processing requirements will be implemented for certain categories of cases other than charges involving transgender issues, which are to be referred to EEOC headquarters for centralized processing.

Impact on Subpoenas

According to the EEOC's recently released [FAQs](#), EEOC field offices will continue to have the authority to issue subpoenas. Although challenges to administrative subpoenas are typically decided by the Commission, the EEOC can issue a determination on a subpoena challenge in the absence of a quorum.

Impact on Conciliation Agreements

The EEOC has made clear that those employers currently engaged in the EEOC process, including as to conciliation and settlement, will continue. The agency's new policy initiatives and the lack of a quorum, however, may impact the likelihood that litigation will be filed if conciliatory efforts are not successful.

What Can Employers Do?

Although this remains a fast-changing environment, existing EEOC litigation and charge investigations are likely to proceed as usual with an increased focus on certain charges as noted above. Those facing subpoenas and those engaged in the conciliation process may wish to re-evaluate strategy considering these new policy initiatives depending upon the scope of claims alleged. Regardless, employers should take steps to consider practical solutions to mitigate the risk of charges and litigation, as well as brand and reputational risk, such as, for example, conducting a privileged [DEI assessment](#), or a review of current policies and handbooks.

Jackson Lewis' attorneys are available to discuss your questions about these developments.

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