



## Employment Law Note

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# Big Changes at the EEOC



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With the recent flurry of newsworthy appointments and executive orders from the Trump Administration's first month in office, the landscape of employment law has already shifted. This note focuses on one such seismic change: Trump's appointment of a new Acting Chair for the Equal Employment Opportunity Commission ("EEOC" or "Agency"), Andrea Lucas.

### The EEOC, Politics, and Policy

The EEOC was created by a series of executive orders promulgated by the John F. Kennedy and Lyndon Johnson administrations and was codified into existence by Congress in 1965 with the passage of Title VII of the Civil Rights Act. The Agency's purpose was, and is, to oversee, review, and enforce Title VII claims. Notably, while today's EEOC is broadly considered a deeply progressive bulwark for employees, this was not always the case. Since its founding, the EEOC – and, therefore, the enforcement of employment discrimination law – has changed character depending on the proclivities of its leadership.

For example, the first Chair of the EEOC – Franklin D. Roosevelt, Jr. – stated that Title VII's prohibition against sex-based discrimination was a merely a last-minute afterthought, and that the EEOC would not be enforcing or reviewing those claims so as to avoid public "ridicule and confusion." Herman Edelsberg, who directed the EEOC from 1965 to 1967, stated that Title VII's sex discrimination provision was a "fluke" that was "conceived out of wedlock" and that "doesn't carry the same moral overtones as race." The EEOC's then-staff attorney confirmed sex-based discrimination was not on the Agency's radar because it was "essentially a ploy by the opponents to try to derail [Title VII]." Thus, at the

time, the EEOC seldom enforced sex discrimination claims, and even authored guidance stating that sex-segregated advertising (*e.g.*, "Help Wanted Male" or "Help Wanted Female") was lawful.

Ultimately, due to societal and political attitudinal changes in the late 60s and early 70s, the EEOC eventually changed course and prosecuted landmark sex discrimination cases during that era.

On the other hand, in 2011, a progressive EEOC – operating under the auspices of the Obama Administration – issued groundbreaking guidance designating "sex-stereotyping" as a form of illegal sex discrimination, thereby creating a field of potential discrimination claims for lesbian, gay, and bisexual employees. In 2012, the EEOC expanded "sex stereotyping" to include transgender status and gender identity. And in 2015 the EEOC opined that sex discrimination includes discrimination based on sexual orientation.

Suffice it to say, the EEOC's leaders – and their cultural and political attitudes – can and have substantively shaped the enforcement of Title VII.

### EEOC's Leadership Structure

The EEOC is an Agency led by five presidential appointments: the Chair, Vice Chair, and three commissioners. The Chair administers and implements the Agency's policy positions, such as pursuing impact litigation to drive changes in employment law jurisprudence. The EEOC is supervised by its General Counsel, who is another presidential appointee. All six positions must be confirmed by the United States Senate.

## The New Acting Chair

On January 20, 2025, President Trump announced Andrea Lucas as his pick for the new Acting Chair of the EEOC. Acting Chair Lucas has outlined a number of key priorities for the Agency under her leadership, including what she has described as:

- rooting out unlawful [Diversity, Equity and Inclusion] motivated race and sex discrimination;
- protecting American workers from anti-American national origin discrimination;
- defending the biology 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 existing guidelines currently "under enforcement."

In furtherance of her agenda, in an EEOC press release Acting Chair Lucas underscored her intention that "the agency[] return[] to its mission of protecting women from sexual harassment and sex-based discrimination in the workplace by rolling back the Biden administration's gender identity agenda."<sup>1</sup>

To that end, Acting Chair Lucas expressed that, under her leadership, the EEOC will adhere to the President's Executive Order 14168. That Executive Order—entitled "Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government"—directs federal agencies to enforce all anti-discrimination laws in a manner that "protect[s] men and women as biologically distinct sexes." To comply with Executive Order 14168, the EEOC

announced it is henceforth removing the disclosure of preferred pronouns from email signatures from Agency communications, removing "Mx." from the list of prefix options on the Charge of Discrimination form, and modifying the contents of the EEOC's know-your-rights posters and removing "gender ideology" material from the EEOC's internal and external documents and communications (including webpages, statements, social media, forms, trainings, and so on).

In terms of Title VII enforcement—consistent with Executive Order 14168—Acting Chair Lucas has stated she will use the Agency's pulpit to "defend the biological and binary reality of sex ... including women's rights to single-sex spaces at work." It is therefore possible the EEOC will sponsor and prosecute a test case against employers who, for example, provide gender-neutral or gender-inclusive bathrooms. Further, Acting Chair Lucas has emphasized her intent to rescind—or not enforce—prior EEOC guidelines inconsistent with Executive Order 14168, including the Obama-era expansion of "sex stereotyping" discrimination.

## The Upshot

Once again, the EEOC's political underpinnings may well transform federal employment discrimination law as we have come to understand it. While some gender-identity-type claims may lose purchase with the Agency, an entirely new type of actionable claims (such as access to female-only bathrooms) may very likely be born.

Employers with questions about these developments and how they may affect your workplace and obligations under federal employment discrimination laws are encouraged to contact Sebris Busto James.

For more information about this month's Employment Law Note  
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<sup>1</sup> <https://www.eeoc.gov/newsroom/removing-gender-ideology-and-restoring-eeocs-role-protecting-women-workplace>