

Client Alert

Global Human Capital & Compliance

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What Employers Need to Know About the State of the EEOC

On January 27, 2025, President Trump removed Commissioners Charlotte A. Burrows and Jocelyn Samuels from the Equal Employment Opportunity Commission ("EEOC"), as well as General Counsel Karla Gilbride. In light of President Trump's termination of these commissioners, the EEOC now lacks the necessary quorum to conduct important aspects of its work. These removals occurred hours after the President removed General Counsel Jennifer A. Abruzzo and Board member Gwynne A. Wilcox from the National Labor Relations Board ("NLRB"), which has similarly left that agency without a quorum.

Until the EEOC has a three-member quorum, it cannot initiate major shifts in policy, guidance, or litigation. Employers should be aware, however, that the Commission's routine work will continue, including the intake of employee charges of discrimination, investigations, ongoing litigation, and the initiation of single-plaintiff litigation.

THE STATE OF THE EEOC FOLLOWING PRESIDENT TRUMP'S REMOVAL OF COMMISSIONERS BURROWS AND SAMUELS AND GENERAL COUNSEL GILBRIDE

Created by Title VII of the Civil Rights Act, the EEOC is the sole federal agency charged with enforcing the nation's federal anti-discrimination laws with respect to employment.

The EEOC is composed of five commissioners, each of whom is appointed by the President and confirmed by the Senate for a term of five years. By law, the Commission cannot have more than three commissioners from the same political party. The General Counsel of the Commission—who is appointed by the President and confirmed by the Senate for a term of four years—has the responsibility to conduct and oversee litigation on the EEOC's behalf.

Commissioners Burrows and Samuels were the first commissioners in history to be removed before the expiration of their terms, which were set

to expire in July 2028 and July 2026, respectively. Following their removals, both Commissioners stated that they are exploring their legal options.

Now, the EEOC—which already had one vacancy—is left with only two commissioners: Andrea Lucas, who President Trump appointed as Acting Chair on January 21, 2025, and Kalpana Kotagal, appointed by President Biden in 2023.

As for the vacancy created by the removal of General Counsel Gilbride, President Trump named Andrew Rogers as Acting General Counsel for the EEOC on February 4, 2025. According to the EEOC's press release, Rogers has served as a chief counsel to Acting Chair Lucas since October 2020.

LIMITATIONS ON THE EEOC WITHOUT A QUORUM

With just a two-member Commission and an Acting General Counsel, the EEOC cannot undertake notice-and-comment rulemaking; issue, modify or revoke formal guidance (including Biden-era guidance); or initiate any major forms of litigation.

Regarding litigation specifically, the EEOC's existing litigation delegation resolution states that when the Commission lacks a quorum, it cannot initiate cases involving allegations of systemic discrimination, pattern or practice litigation, litigation involve a major expenditure of resources, cases taking positions contrary to agency guidance, and cases "likely to generate public controversy." It is also unable to file *amicus curiae* briefs in cases of interest to the agency.

Even without a quorum, however, the following activities of the EEOC may continue:

- Charges filed by employees will still be investigated;
- Ongoing litigation will continue;
- The Acting Chair of Commission may issue or revoke "technical assistance" (informal guidance to employers and the public); and
- The General Counsel may initiate litigation on behalf of the EEOC as long as it does not fall into any of the categories listed above.

ACTING CHAIR LUCAS

Following her appointment, Acting Chair Lucas announced priorities in contrast with existing EEOC guidance. While acknowledging that she "cannot unilaterally remove or modify" formally adopted guidance and enforcement plans, Acting Chair Lucas stated that one of her priorities is to "defend the biological and binary reality of sex and related rights, including women's rights to single-sex spaces at work," and to "root[]out unlawful DEI-motivated race and sex discrimination."

Acting Chair Lucas has already used her authority regarding EEOC "technical assistance" consistent with her announced priorities. For example, on January 27, 2025, several technical assistance documents were removed from the EEOC's website, including assistance regarding the agency's interpretation of the Supreme Court's decision in *Bostock v. Clayton County* (2020), which held that discrimination based on a person's homosexual and transgender status constitutes sex discrimination under Title VII. Likewise, on January 28, 2025, she announced the removal of, in her words, "materials promoting gender ideology" from the agency's website and other agency materials, including internal documents, statements, forms, and training documents.

An EEOC spokesperson noted that Acting Chair Lucas has directed that all charges that "implicate" President Trump's Executive Orders related to "gender ideology" will be elevated for review at the EEOC headquarters. The

spokesperson further noted that “[t]o the extent that a charging party requests a notice of right to sue for one of those charges, EEOC will issue that notice of right to sue, as statutorily required.”

NEXT STEPS FOR EMPLOYERS

Until new commissioners are nominated and confirmed by the Senate, employers should not expect any meaningful changes in the EEOC’s operations. But big changes could be on the horizon.

In the meantime, employers should identify all charges and investigations currently pending before the EEOC, as well as civil actions brought by the EEOC, and consult with counsel about the impact of these changes on current matters. In addition, employers should review existing policies and practices, including diversity, equity, and inclusion policies and practices, to ensure compliance with federal anti-discrimination laws.

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