

Navigating the Unexpected: Readiness in Unpredictable Times

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Topics

- SCOTUS: What Did the Court Say?
- One Big Beautiful Bill Act: What Does This Mean?
- False Claims Act: Is This Really a Thing?
- Executive Orders & Govt Agencies: How to Handle?
- Florida, Florida, Florida: What Can We Expect Here?
- Now What?

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This presentation and its accompanying materials should not be used as a substitute for legal advice on a particular matter. Any information provided herein (as well as responses to questions) are necessarily general in nature.

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2025 SCOTUS Decisions

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The SCOTUS Impact

- *Ames v. Ohio Department of Youth Services* (2025)
- *A.J.T. v. Osseo Area Schools* (2025)
- *United States v. Skrmetti* (2025)
- *Texas v. EEOC* (2025)

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Ames v. Ohio Department of Youth Services (2025)

Title VII & Majority-Group Plaintiffs

Facts: Heterosexual woman denied promotion and later demoted in favor of LGBTQ+ candidates; sued under Title VII for sexual orientation discrimination.

Lower Courts: Dismissed her claims for failure to show “background circumstances” of reverse discrimination.

SCOTUS Holding:

Majority-group plaintiffs **do not** need to meet a heightened evidentiary burden to state a Title VII claim. The “background circumstances” rule is **inconsistent** with Title VII’s text and precedent.

Outcome: **Vacated and remanded** for reconsideration under the correct standard.

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A.J.T. v. Osseo Area Schools (2025)

Background

Student with epilepsy was denied evening instruction by her school district, despite medical needs and prior accommodations. Parents sued under IDEA, ADA, and Section 504.

Ruling

The Court struck down the Eighth Circuit’s “bad faith or gross misjudgment” standard, holding that ADA and Section 504 claims in education follow the same standards as other disability discrimination cases.

Key Findings

- The Court determined that student ADA and Rehabilitation Act claims should be subject to the same standards as in other settings and rejected a higher “bad faith or gross misjudgment” standard.
- The decision leaves open the question of what those standards are.

Impact

- Educational institutions may need to adjust their accommodation policies and risk assessments going forward.
- Wait and see if any changes to standard to establish disability discrimination claims.

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United States v. Skrmetti (2025)

Background

The DOJ challenged Tennessee's law banning gender-affirming medical care (e.g., puberty blockers, hormones) for minors, arguing it violated the Equal Protection Clause. Lower courts were split on whether such laws unlawfully discriminate against transgender youth.

Ruling

In a 6–3 decision, the Supreme Court **upheld the law**, ruling that states may prohibit gender-affirming care for minors without violating the Constitution.

Key Findings

- The Court declined to treat transgender status as a suspect class and applied rational basis review, allowing states to regulate based on safety, medical uncertainty, and child welfare.
- The Court emphasized that legislatures, not courts, should decide these medical and moral questions.

Impact

The decision affirms states' authority to restrict gender-affirming care for minors, signaling a judicial retreat from robust Equal Protection protections for transgender youth and weakening the federal government's ability to enforce DEI-related healthcare protections.

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Texas v. EEOC (2025) (N. D. Texas)

Background

The EEOC's 2024 Harassment Guidance interpreted Title VII to include gender identity and sexual orientation, requiring employers to accommodate pronoun, bathroom, and dress preferences.

Ruling

The U.S. District Court held that the EEOC exceeded its statutory authority by expanding the definition of "sex" beyond the biological binary and by requiring gender identity-based accommodations.

Key Findings

- Title VII* does **not** require employers to accommodate gender identity preferences.
- Bostock* was interpreted narrowly—limited to wrongful termination, not broader workplace accommodations.
- The court vacated all portions of the guidance relating to gender identity and sexual orientation.

Impact

The ruling aligns with Executive Order 14168 and applies nationwide. The EEOC cannot currently rescind the guidance due to lack of quorum, but the vacated provisions are no longer enforceable.

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One Big Beautiful Bill Act

-signed on July 4, 2025

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Key Impacts for Employers

Immigration / Non-Citizen Employees

- New fees on immigration applications and processes that cannot be waived or reduced
 - Employment Authorization Documents (EADs) by asylum applicants, parolees, Temporary Protected Status
- Stricter administrative requirements
- More resources to DHS and ICE with focus on I-9 audits, inspections, and other worksite enforcement

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Key Impacts for Employers

Tax Implications

- Employee and Self-Employed Deductions for Tips
- Employee Tax Deduction for Overtime Pay
- Education Assistance Programs - Student Loans
- Employer Tax Credit for Paid Family and Medical Leave

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Key Impacts for Employers

Employee Benefits

- Health Savings Account Expansion
- Telehealth for High-Deductible Plans
- Dependent Care Flexible Spending Accounts
- “Trump Accounts” – Tax-advantaged Savings Accounts for Children

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False Claims Act: Is This A Thing for Employers?

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Executive Orders &
Govt Agency Activism

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Who is the only U.S. President who did not issue an Executive Order?

- 1 George Washington
- 2 William Henry Harrison
- 3 Zachary Taylor
- 4 James Garfield

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Which U.S. President issued the most Executive Orders?

- 1 Woodrow Wilson
- 2 Franklin D. Roosevelt
- 3 Harry S. Truman
- 4 Donald J. Trump

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During Trump's first 100 days in office in 2025, how many Executive Orders did he issue?

- 1 Fewer than 100
- 2 Between 100 and 125
- 3 Between 125 and 150
- 4 More than 150

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Since January 20, 2025:

Over 100 Executive Orders, including

- [Ending Illegal Discrimination and Restoring Merit-Based Opportunity](#)
- [Ending Radical and Wasteful Government DEI Programs and Preferencing](#)
- [Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government](#)
- [Restoring Equality of Opportunity and Meritocracy](#)
- [Ensuring Lawful Governance And Implementing The President's "Department Of Government Efficiency" Deregulatory Initiative](#)

Over 100 lawsuits challenging various actions

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In Broad Strokes

The EOs:

- Enforce prohibition on “illegal DEI” in employment
- Stop federal funds from going to support “DEI” or “gender ideology”

In general, the **LAW** has not changed

But, the **RISK LEVEL** has

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Why the EOs matters – **The RISK**

- Increased investigations and plans for private employer compliance
- Encourages whistleblowers (potential False Claims Act)
- More internal and external complaints
- More requests for religious accommodations
- Potential criminal prosecution?
- Federal contractors and grantees at higher risk
- Impact on funding

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Restoring Equality of Opportunity and Meritocracy Executive Order (4/23/25)

"[T]o eliminate the use of disparate-impact liability in all contexts to the maximum degree possible to avoid violating the Constitution, Federal civil rights laws, and basic American ideals."

EEOC Impact

Federal agencies are expected to limit their enforcement of disparate impact discrimination claims, including under Title VII, consent judgments, and permanent injunctions already in place.

Employer Impact

Employers facing agency action based on a disparate impact theory may be able to limit or stop enforcement in charge and litigation phases; reduce or limit obligations in consent orders, injunctions.

Agency Guidance

Expect agency guidance or technical assistance regarding appropriate methods to promote equal access to employment regardless of whether an applicant has a college education.

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Gender Identity

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EO 14168: Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government

According to the EO:

- Federal funds shall not be used to promote gender ideology.
- Each agency shall assess grant conditions and grantee preferences and ensure grant funds do not promote gender ideology.

Gender identity portions of EEOC Harassment Guidance vacated by Texas federal court
Bostock and state laws still create liability for discrimination/harassment

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What Did the EO Say?

- EO states it is the “policy of the United States to recognize two sexes, male and female.”
- Directs the Attorney General, DOL, and EEOC to “prioritize investigations and litigation to enforce the rights and freedoms identified.”
- Directs the Attorney General to issue guidance:
 - to agencies to reverse Biden administration’s interpretation of *Bostock*, which required gender identity-based access to single sex spaces.
 - to ensure the “freedom to express the binary nature of sex and the right to single-sex spaces in workplaces and federally funded entities covered by the Civil Rights Act of 1964.”

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Affirmative Action

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EO14173: Ending Illegal Discrimination and Restoring Merit-Based Opportunity

- **Revokes Executive Order 11246 of September 24, 1965 - Equal Employment Opportunity (AAP for women and minorities)** along with other various executive orders from previous administrations
- Federal contractors are now required to certify that they do not operate any “illegal” DEI programs (undefined term).
- Denounces “illegal DEI and DEIA policies”
- Orders agencies to terminate all “discriminatory and illegal preferences, mandates, policies, programs, activities, guidance, regulations, enforcement actions, consent orders, and requirements”
- EO now allows private whistleblowers to bring False Claims Act suits against federal contractors who operate “illegal” DEI programs.
- **Does not change the law – Title VII of the Civil Rights Act and other federal and state anti-discrimination laws prohibit discrimination in employment and require equal employment opportunity**

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EO 11246 is Revoked

Proposed Rule Changes to VEVRAA and Section 503

Proposed changes to Section 503 of the Rehabilitation Act:

- Would eliminate disability self identification requirement for federal contractors
- Would eliminate the 7% affirmative action goal for individuals with disabilities.

Proposed changes to Vietnam Era Veterans' Readjustment Assistance Act:

- Procedural updates mainly, removes references to Executive Order 11246 and related regulations
- Makes VEVRAA fully self-contained, independent of EO 11246 framework
- Affirmative action plan (AAP) obligations remain intact for federal contractors

Enforcement Update:

- OFCCP enforcement under Section 503 & VEVRAA resumed (Order 08-2025)
- Complaint investigations may proceed; Nov. 2024 compliance reviews closed
- AAP certification still paused; VAHBP moratorium extended to May 2027
- EO 11246 enforcement remains suspended

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Why the EO Matters to All Employers

- Signals increased investigations and plans for private employer compliance
- Encourages whistleblowers
- More internal complaints, external complaints
- More request for religious accommodations
- Investigation priority of the EEOC

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Potential Narrowing of PWFA

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The PWFA and PUMP Act

The PWFA and PUMP Act

- PWFA requires employers accommodate employees *limited* by pregnancy, childbirth, and *related medical conditions*
 - *Limitations* is a lower threshold than *impairments*—have an obligation to accommodate more
- “**Related medical conditions**” is not defined by the Act. The current regulations are extremely broad, but the future of that interpretation is unclear
 - Post-childbirth recovery, cesarean sections, complicated deliveries
 - Post-partum depression, breaks to express breast milk (PUMP Act also covers breastfeeding accommodations)
 - Limitations due to fertility treatment, miscarriage, early pregnancy termination

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What is Illegal DEI?

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DOJ Perspective On DEI

- On February 5, 2025, US Attorney General Pam Bondi issued a memorandum titled Ending Illegal DEI and DEIA Discrimination and Preferences.
- The memo contains a single footnote that provides some guidance into defining “illegal DEI”, which states that its prohibitions are intended to encompass programs that are **exclusionary in nature and not educational, cultural or historical observances**, such as Black History Month, International Holocaust Remembrance Day or similar events, which “celebrate diversity, recognize historical contributions, and promote awareness without engaging in exclusion or discrimination.”

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EEOC Perspective On DEI

- "What to do if you Experience Discrimination Related to DEI at Work" - technical guidance states any employment action, motivated in whole or in part by a protected characteristic may be unlawful. Examples include efforts to:
 - "Balance" the workforce;
 - Limit, segregate, or classify employees; or
 - Make employment decisions such as hiring, promoting, or diverse interview slates; compensation, access to mentoring, sponsorship, or workplace networking; and participation in internships, fellowships, or mentoring programs based on protected characteristics.
- DEI training may give rise to a colorable hostile work environment claim" and that "[r]easonable opposition to a DEI training may constitute protected activity" that would prohibit employer retaliation.

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EEOC Technical Guidance

- [What You Should Know About DEI-Related Discrimination at Work | U.S. Equal Employment Opportunity Commission](#)
 - Taking an employment action "motivated—in whole or in part—by race, sex, or other protected characteristic."
 - "The EEOC's position is that there is no such thing as "reverse" discrimination; there is only discrimination."
 - "[L]imiting, segregating, or classifying employees or applicants based on race, sex, or other protected characteristics in a way that affects their status or deprives them of employment opportunities"
 - "In order to allege a colorable claim of discrimination, workers only need to show 'some injury' or 'some harm' affecting their "terms, conditions, or privileges" of employment."

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EEOC Guidance: ERGS

- Prohibition “applies to employee activities which are employer-sponsored (including by making available company time, facilities, or premises, and other forms of official or unofficial encouragement or participation), such as employee clubs or groups.”
- “Unlawful segregation can include limiting membership in workplace groups, such as Employee Resource Groups (ERG), Business Resource Groups (BRGs), or other employee affinity groups, to certain protected groups.”
- Prohibits separating employees “into groups based on race, sex, or another protected characteristic when administering DEI or any trainings, workplace programming or other privileges of employment, even if the separate groups receive the same programming content or amount of employer resources.”

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EEOC Guidance: DEI Training

- “Depending on the facts, an employee may be able to plausibly allege or prove that a **diversity or other DEI-related training created a hostile work environment** by pleading or showing that the training was discriminatory in content, application, or context.”
- “In cases alleging that diversity trainings created hostile work environments, courts have ruled in favor of plaintiffs who present evidence of how the training was discriminatory (for example, in the training’s design, content, or execution) or, at the motion-to-dismiss stage, who make plausible allegations that explain how the training was discriminatory.”

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EEOC Guidance: Business Justification

Can an employer justify taking an employment action because the employer has a business necessity or interest in “diversity,” including preferences or requests by clients / customers?

- **No.** Employers violate Title VII if they take an employment action motivated—in whole or in part—by race, sex, or another protected characteristic. “[D]emonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination.”
- **Title VII does not provide any “diversity interest” exception to these rules.** Nor has the Supreme Court ever adopted such an exception. No general business interests in diversity and equity (including perceived operational benefits or customer/client preference) have ever been found by the Supreme Court or the EEOC to be sufficient to allow race-motivated employment actions.

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Request for Information Issued by the EEOC Recently Related To DEI

Based on recent requests for information issued by the EEOC related to DEI, the EEOC is particularly, but not exclusively focused on:

- Diversity fellowships
- Targeted or exclusive programs or initiatives
- Diverse slate policies in hiring, promotion, selection for management roles
- The connection between performance reviews and DEI efforts
- Practices that link compensation to DEI efforts.
- Employee Resource Groups
- Recruitment bonuses or any form of incentive based on protected characteristics
- Diversity scorecards or other metrics including aspirational goals
- Information on client or third-party requests on diversity representation
- Protecting Americans from “anti-American” bias

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Areas to Review for Potential DEI Risks

- “DEI” references
- Numeric representation goals
- Mission statements/values (of the organization or of a DEI Council)
- Pronoun policies
- ERGs/affinity groups
- Celebration days (Black History Month, Women’s History Month, etc.)
- Workplace training distribution/opportunities, leadership training
- Employer or employment agency coding applications or resumes to designate an applicant’s race, including using facially benign terms that implicate race like area codes
- Mentorship, intern and fellowship opportunities
- DEI related philanthropy or scholarships
- External surveys and partnerships
- DEI training
- Diverse slates, diverse hiring panels and other recruiting practices.
- Supplier diversity
- Self-identification of protected characteristics
- Internships, fellowships
- Diversity hiring targets (including aspirational representation goals)

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What Is “Legal DEI”?

- Lawyer answer....*it depends*
- Equal Employment Opportunity
- Practices that encourage **qualified** individuals to **compete** for employment benefits and contracting opportunities, without excluding anybody based on protected characteristics
- Expanding outreach
- Evaluating policies, practices and communications to identify and remove barriers
- Focusing on inclusion and wellness
- Ensuring communications reflect a commitment to equal employment opportunity
- Listening to your employees

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Now What?

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Takeaways

1. Assess Risk Tolerance
2. Review DEI policies, programs, and practices for legal compliance
3. Review external and internal communications (including websites and intranets)
4. Ensure communications reflect commitment to equal opportunity
5. Be careful about drastic changes and impact on workforce
6. Be Patient – lots still to be litigated
7. Don't Overreact; Don't Underreact
8. Pay attention, Be Aware – More changes are coming

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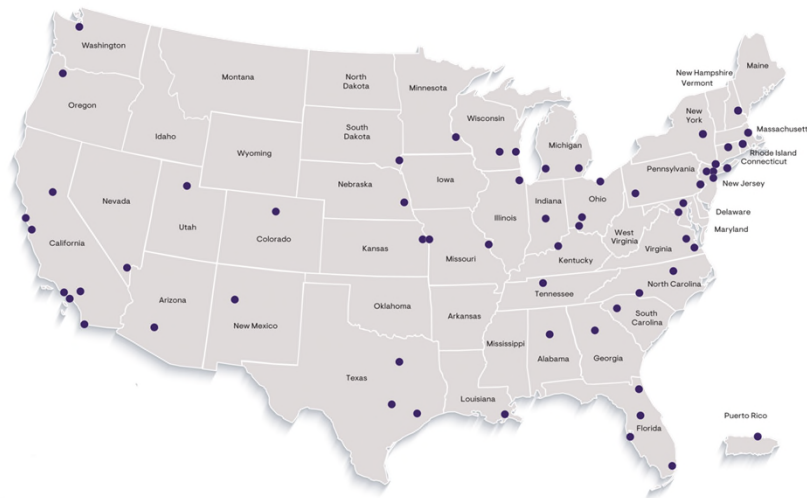
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