

PUBLICATION

EEOC Priorities: Employers Should Take Notice

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On August 16, 2022, the Equal Employment Opportunity Commission (EEOC) held a webinar examining its current priorities and initiatives. It is important for employers to be aware of the EEOC's priorities because these are areas where the EEOC intends to focus its efforts for the near future.

Hiring Initiative to Reimagine Equity (HIRE)

The EEOC launched the "HIRE" initiative in January 2022. HIRE is a joint initiative between the EEOC and the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) aimed at "reimagin[ing] hiring and recruitment practices in ways that advance equal employment opportunity and help provide access to good jobs for workers." HIRE focuses on several key areas related to hiring and recruitment, including:

- examining organizational policies and practices related to hiring,
- identifying strategies to remove unnecessary barriers to hiring,
- promoting equity in the use of tech-based hiring systems, and
- developing resources to promote adoption of innovative and evidence-based recruiting and hiring practices that advance equity.

The EEOC and OFCCP plan to advance the goals of HIRE by hosting a series of roundtables, meetings, and public forums aimed at identifying actionable strategies to promote organizational policies and practices that advance equity. The EEOC and OFCCP next anticipate taking that information and developing resources such as guidance documents or practice resources.

Artificial Intelligence and Algorithmic Fairness Initiative

The EEOC launched an artificial intelligence initiative in late 2021 with the goal of "ensur[ing] that the use of software, including artificial intelligence (AI), machine learning, and other emerging technologies used in hiring and other employment decisions comply with the federal civil rights laws that the EEOC enforces." The AI initiative examines how existing and developing technologies fundamentally change the ways employment decisions are made, and the EEOC hopes to guide employers, employees, job applicants, and vendors to ensure that AI technologies are used fairly and consistently with federal equal employment opportunity laws. The EEOC expects to gather information about the adoption, design, and impact of hiring and other employment-related technologies; hold listening sessions with key stakeholders; identify promising practices; and ultimately issue technical assistance to provide guidance on the use of AI in employment decisions.

Joint Initiative to End Retaliation and Promote Workers' Rights

In November 2021, the EEOC, Department of Labor (DOL), and National Labor Relations Board (NLRB) launched a joint initiative focused on combating retaliation in the workplace. Retaliation is the most frequently cited basis of discrimination in EEOC charges, and the initiative aims to reduce those claims by educating the public and engaging with employers, business organizations, labor organizations, and civil rights groups. The initiative launched with a virtual dialogue with the employer community focused on the importance of anti-retaliation protections for those workers exercising their rights, and the agencies' shared commitment to vigorous enforcement.

In addition to the three initiatives, the EEOC discussed its pay-data collection efforts (perhaps indicating an increased focus on pay equity) and confirmed that the agency is in the process of updating its five-year strategic enforcement plan (expected to be released later in 2022). The EEOC is also looking more closely at LGBTQ+ issues in the workplace in the wake of the Supreme Court's 2020 decision in *Bostock v. Clayton County*, which held that sexual orientation was a protected class under Title VII.

Employers should review their policies and practices to ensure their workers' rights are adequately protected. The EEOC's current areas of focus are not obvious acts of discrimination by an employer. Rather, an employer may be unaware its hiring practice or use of assisted technology in hiring is screening out employees in a protected group. Nevertheless, these inadvertent violations of federal discrimination laws may subject employers to increased scrutiny from the EEOC, as well as legal liability.

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