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Employment Litigation and Discrimination Update

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“Winners don’t just learn the fundamentals, they master them. You have to monitor your fundamentals constantly because the only thing that changes will be your attention to them.”

-Michael Jordan

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Resource Recap

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Diversity, Equity and Inclusion: Recent Developments

- Recent Executive Orders target workplace DEI Initiatives for both private employers and government contractors
- EO deters DEI programs and principles but does not outlaw practices that highlight inclusion but do not otherwise violate antidiscrimination laws.
- Private corporations may still be under heightened scrutiny for DEI initiatives.

What We Know

- Not a lot
- EOs prohibit “Illegal DEI”
  - Selection, set-asides, balancing based on protected characteristic
  - Benefits or opportunities based on protected characteristic
- EEOC priorities
  - Religious discrimination
  - Sex discrimination
  - National origin discrimination
  - Areas of recent “under-enforcement”

DEI Risk Audits Overview

- Privileged review of a company's policies, practices and programs
- Guidance on legally permissible DEI programs and policies
- Redrafted policy language
- Highlights of actual and potential risks
- Mitigation strategies and revisions while preserving a company's ability to foster and maintain a diverse and inclusive workforce
- Periodic review and updates

Assessment Targets

- High Risk Practices
  - Hiring quotas, balancing and selection criteria based on protected characteristic
  - Internships, scholarships, programs and advancement opportunities with eligibility limited by protected characteristic
- Areas of Consideration
  - Affinity Groups
  - Neutral anti-harassment and conduct policies
  - Anti-bias training

WHAT TO DO IF YOU EXPERIENCE DISCRIMINATION RELATED TO DEI AT WORK

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on protected characteristics such as race and sex. Different treatment based on race, sex, or another protected characteristic can be unlawful discrimination, no matter which employees are harmed. Title VII's protections apply equally to all racial, ethnic, and national origin groups, as well as both sexes.

Before you can sue in federal court, you first must file a charge of discrimination with the EEOC. The U.S. Equal Employment Opportunity Commission (EEOC) investigates charges of discrimination and can file a lawsuit under Title VII against businesses and other private sector employers. The Department of Justice can file a lawsuit under Title VII against state and local government employers based on an EEOC charge, following an EEOC investigation.

What can DEI-related discrimination look like?

Diversity, Equity, and Inclusion (DEI) is a broad term that is not defined in the statute. Under Title VII, DEI policies, programs, or practices may be unlawful if they involve an employer or other covered entity taking an employment action **motivated**—in whole or in part—by an employee's race, sex, or another protected characteristic. In addition to unlawfully using quotas or otherwise "balancing" a workforce by race, sex, or other protected traits, DEI-related discrimination in your workplace might include the following:

What should I do if I encounter discrimination related to DEI at work?

If you suspect you have experienced DEI-related discrimination, contact the EEOC promptly because there are strict time limits for filing a charge. The EEOC office nearest to you can be reached by phone at 1-800-669-4000 or by ASL videophone at 1-844-234-5122.

www.EEOC.gov

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Retaliation Issues

- Employee complaints about DEI trainings or programs
  - Mandatory trainings are still permissible
  - Document and investigate complaints
  - Don’t retaliate
- Conduct violations that implicate religion
  - Facially neutral policies on conduct rather than content

Press Release
03-11-2025

U.S. Equal Employment Opportunity Commission

Security Engineers, Inc. to Pay $1.6 Million in EEOC Sex Discrimination Lawsuit

BIRMINGHAM, Ala. – Security Engineers, Inc., a contract security solutions provider headquartered in Birmingham, Alabama, will pay $1.6 million and provide other relief to settle a sex discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC), the federal agency announced today.

In its lawsuit, the EEOC charged that Security Engineers engaged in sex discrimination throughout Alabama when the company denied security officer jobs and assignments to a class of women, beginning in at least 2017.

The EEOC's court filings referred to discriminatory directives in the Security Engineers human resources database that said: "DO NOT schedule a female for this post" and "Post is MALE ONLY!" The EEOC also alleged that Security Engineers personnel admitted to some women applicants that they would not be selected for security positions or assignments because of sex.

The EEOC's complaint alleged that Security Engineers maintained a pattern or practice of sex discrimination for several years, denying women security officer opportunities despite their experience in security, law enforcement or the military.

Press Release
03-17-2025

U.S. Equal Employment Opportunity Commission

EEOC Sues Taco Bell Franchisees for Sexual Harassment and Retaliation

DETROIT – Six related entities operating Taco Bell restaurants in Michigan violated federal law when they allowed a senior area manager to sexually harass female employees, including multiple teenage employees, he supervised, and fired a local assistant manager the same day she reported the senior area manager's misconduct, the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit filed today.

According to the lawsuit, for months, the upper-level manager sexually harassed female employees, including underage employees, on a near-daily basis at multiple Taco Bell restaurants he supervised. The harassment included inappropriate sexual comments, such as asking if underage employees were sexually active, asking an employee if she would give him "sugar" when she turned 18, unwanted and inappropriate touching of females under age 18, and asking an assistant manager for videos or images of her having sex with her boyfriend.

The defendants failed to take effective action against the senior manager, despite receiving multiple complaints from different employees, supervisors and managers. On the same day a local assistant manager complained of the senior area manager's sexual harassment, she was fired.

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Press Release
03-11-2025

U.S. Equal Employment Opportunity Commission

EEOC Sues Taco Bell Franchisees for Sexual Harassment and Retaliation (cont'd)

"*Employers must take reports of sexual harassment seriously and ensure that appropriate and timely steps are taken to stop the harassment….To fire an employee who reports harassment, while allowing the harasser to continue hurting employees, runs afoul of federal civil rights laws.*"

-Kenneth Bird, regional attorney for the EEOC's Indianapolis office

"*Teenage fast-food workers are particularly vulnerable to workplace harassment, and the EEOC will hold employers accountable for unlawful retaliatory conduct.*"

-Omar Weaver, an assistant regional attorney for the EEOC's Detroit office

Women who believe they were sexually harassed by an area coach at a Taco Bell restaurant in Canton, Dearborn, Romulus, and Ypsilanti, Michigan and individuals who may have information that would be helpful to the EEOC's suit, should contact the EEOC at 313-774-0058 or by e-mail at TacoBell.MI.Lawsuit@eeoc.gov.

Press Release
03-24-2025

U.S. Equal Employment Opportunity Commission

Walmart to Pay $415,112 in EEOC Sexual Harassment and Retaliation Suit

Lewisburg, W.V. – Wal-Mart Stores East, LP (Walmart) will pay $415,112 to settle a sexual harassment and retaliation lawsuit brought by the U.S. Equal Employment Opportunity Commission (EEOC), the federal agency announced today.

According to the EEOC's lawsuit, the former manager of a Walmart Supercenter in Lewisburg, West Virginia subjected female employees to egregious sexual harassment, including unwelcome and offensive sexual touching; requests for sexual acts in exchange for money or favorable treatment at work; requests that female workers expose their breasts; and making crude sexual innuendos.

The EEOC charged that Walmart received multiple complaints about the store manager's conduct and failed to take appropriate action to stop the harassment. After the store manager subjected a female employee to particularly egregious harassment, she reported the harassment to Walmart. The company then fired her in retaliation for her actions opposing the harassment and because she filed a charge of discrimination.

Press Release
03-24-2025

U.S. Equal Employment Opportunity Commission

Walmart to Pay $415,112 in EEOC Sexual Harassment and Retaliation Suit (cont'd)

"*Employers have a duty under federal law to take prompt, reasonable action to stop sexual harassment and prevent it from happening again…Diligent investigations – which include considering relevant past complaints against an alleged harasser, thoroughly interviewing coworkers and others who may know about the work environment, and not demanding supporting witnesses or an admission of wrongdoing as a general prerequisite for taking action – are essential to compliance with that legal duty.*"

-EEOC Philadelphia District Office Regional Attorney Debra M. Lawrence

"*The EEOC remains committed to ensuring that employees have workplaces that are free of unlawful harassment and that workers are not punished for reporting such behavior.*"

-EEOC Philadelphia District Office Director Jamie R. Williamson

Press Release
03-24-2025

U.S. Equal Employment Opportunity Commission

HHS Environmental to Pay $400,000 in EEOC Sexual Harassment Lawsuit

SALT LAKE CITY – HHS Environmental, LLC, a company providing janitorial and other services to hospitals nationwide, will pay $400,000 and provide other equitable relief to settle a sexual harassment lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC), the federal agency announced today.

According to the lawsuit, a group of female housekeepers were repeatedly subjected to sexual harassment by a male employee, who made inappropriate sexual comments and frequently attempted to inappropriately kiss, touch and grab the female employees without their permission.

Despite the employees' multiple and persistent reports of harassment, the EEOC said, the company took no action for over a year to curb the harassment, and it retaliated against the female employees by firing two of them after they reported the sexual harassment. HHS also retaliated against another female victim by doubling her workload until she eventually resigned due to the untenable working conditions.

Press Release
03-24-2025

U.S. Equal Employment Opportunity Commission

Dallas Trial Court Upholds Maximum Damages Award of $300,000 Against SkyWest Airlines, Inc. in EEOC Sexual Harassment Suit

DALLAS – A federal judge has denied SkyWest Airlines, Inc.'s bid for a new trial and upheld an order that SkyWest pay a former parts clerk $300,000 in damages. The ruling came after the U.S. Equal Employment Opportunity Commission (EEOC) filed a lawsuit in which a federal jury found SkyWest liable for subjecting her to a sexually hostile work environment. The court further ordered injunctive relief for a three-year period.

In November 2024, following a six-day trial, a federal jury awarded $2.17 million in damages against SkyWest for sexually harassing Sarah Budd, including $170,000 for past and future compensatory damages and $2 million in punitive damages. The court reduced the jury's award to $300,000 based on the statutory caps under Title VII of the Civil Rights Act of 1964 which are applicable to compensatory and punitive damages.

According to the EEOC, Budd's coworkers and at least one manager made constant offensive and humiliating sexual comments to Budd. These comments included requests for Budd to perform demeaning sex acts and frequent remarks about rape and rape victims. Budd, herself a survivor of sexual assault, experienced physical illness and mental anguish as a result of her work environment. Budd reported the sexual harassment on several occasions to company officials, but SkyWest failed to remedy the situation.

National Origin

“The EEOC is putting employers and other covered entities on notice: if you are part of the pipeline contributing to our immigration crisis or abusing our legal immigration system via illegal preferences against American workers, you must stop. The law applies to you, and you are not above the law. The EEOC is here to protect all workers from unlawful national origin discrimination, including American workers.”

Ames v. Ohio Department of Youth Services (Sup. Ct. 2024)

- While working for the Ohio Department of Youth Services, Marlean Ames, a heterosexual woman, alleges she applied for a promotion but was passed over in favor of a gay colleague and was subsequently demoted to a lower-paying position, with her former role filled by a younger gay man.
- Ames filed suit under Title VII, alleging discrimination based on sexual orientation.
- The District Court rejected her claim, and the Sixth Circuit affirmed, noting that, because she is a member of the "majority group," she was required to provide additional evidence demonstrating "background circumstances" supporting her allegation of *reverse* discrimination.

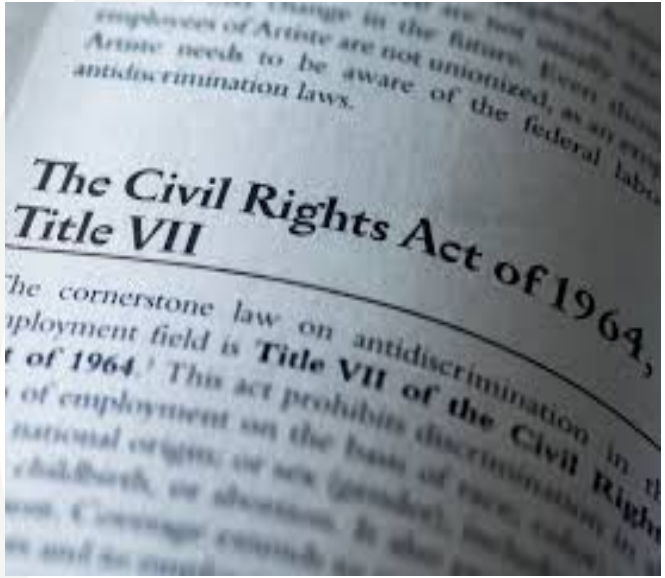
Ames v. Ohio Department of Youth Services (Sup. Ct. 2024)(cont'd)

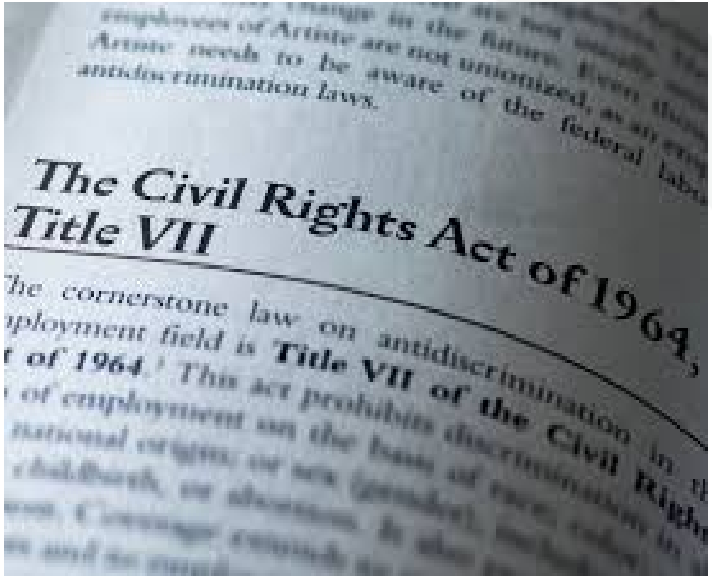
- February 26, 2025 – oral arguments at SCOTUS.
- At issue is whether plaintiffs who belong to a majority group must meet a heightened evidentiary burden by proving "background circumstances" suggesting their employer is the rare one discriminates against the majority.
- By the end of oral argument, the Justices appeared strongly inclined to eliminate the "background circumstances" requirement.

Ames v. Ohio Department of Youth Services (Sup. Ct. 2024)(cont'd)

- While the scope of their ruling remains uncertain, a narrow decision would strike down the Sixth Circuit's approach while leaving room for courts to develop alternative evidentiary frameworks.
- A broader decision could explicitly hold that all Title VII plaintiffs must satisfy the same prima facie test, regardless of their majority or minority status.
- Given the Justices' questioning and Ohio's concessions, the Court's ruling is expected to be a decisive rejection of the heightened burden for majority-group plaintiffs.
- Employers should prepare for the potential consequences, including an increase in what otherwise would have been referred to as reverse discrimination claims.

To-Dos:





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Thoughts…

"Employers should look at qualifications, not quotas, in their hiring decisions."

-Texas Attorney General Ken Paxton

Thoughts…

“Refresh, don’t retreat.”

-Former EEOC Commissioner Chai Feldblum

To-Dos:

- ✓ Assessments.
- ✓ Emphasize and reframe commitment to qualifications, respect, civility.
- ✓ Review hiring and discipline practices—check for patterns, preferences.

To-Dos

- ✓ Train hiring managers to recognize biases, including preferences for foreign workers.
- ✓ Review hiring practices to ensure they don't disadvantage any protected class, including American applicants.
- ✓ Be mindful of prioritizing lower-cost foreign labor, possibly based on customer preferences.

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-Michael Jordan

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Jones v. Fluor: March 5, 2025 (6th Cir.)

- Maintenance worker Jones hired in 2020—only AA employee at facility.
- Co-workers used N word; "ostracized" with their behavior; said he was a "rapper"; said he played basketball due to race, called him "boy".
- "*I bet you're good at basketball*" at least 30 times.

Jones v. Fluor (2025 6th Cir.)(cont'd)

- March 2021 – Jones disciplined for not using safety harness—it disappeared and co-workers would not share theirs. Co-worker reported.
- He reported previous issues/harassment—HR investigated, Jones said it had stopped recently, to his face anyway.
- A co-worker threw grease on Jones' car after the issues came to light.

Jones v. Fluor (2025 6th Cir.)(cont'd)

- Title VII & Kentucky state claims, alleging hostile work environment and retaliation based on race discrimination.
- The District Court granted Summary Judgment, dismissing the claims.
- The 6th Circuit reversed the District Court.

Jones v. Fluor (2025 6th Cir.)

- **Harassment Dismissal Overturned**: "*But Jones' evidence of ostracization, as well as his evidence that he was subjected to pervasive racial comments, stereotyping, and called 'boy,' are fairly considered as contributing to the totality of severe or pervasive racial harassment.*"
- **Retaliation Dismissal Overturned**: "*The grease throwing was an unprovoked, physical attack that could have put Jones' safety in great jeopardy, had Jones driven his car with the grease obscuring his vision…Given the physical nature of the incident, and the risk [the] actions posed to Jones' physical safety, a jury could find that Fluor's minimal response was insufficient.*"

Bashaw v. Majestic Care of Whitehall: March 5, 2025 (6th Cir.)

- ***An employer may terminate an employee for creating legal risk for the company.*** *Williams v. Hous. Auth*. of Savannah, Inc., 834 F. App'x 482 (11th Cir. 2020).
- ***Unauthorized absences from work are a valid reason for termination.*** *Sukari v. Akebono Brake Corp*., 814 F. App'x 108, 113 (6th Cir. 2020).
- ***As is excessive tardiness.*** *Keogh v. Concentra Health Servs., Inc.*, 752 F. App'x 316 (6th Cir. 2018).
- ***An employer can defeat a pretext argument if it can show that it "honestly believed" its proffered reason.*** *Clay v. U.S. Parcel Serv.*, 501 F.3d 695 (6th Cir. 2007).

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Take-Aways

- ✓ Assessment: policies, practices and programs review.
- ✓ Redrafts / reframes where needed.
- ✓ Commitment to qualifications, respect, training.
- ✓ Review hiring practices—check for patterns, preferences.

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