

# Annual Report on EEOC Developments: Fiscal Year 2025

AN ANNUAL REPORT ON EEOC CHARGES, LITIGATION, REGULATORY  
DEVELOPMENTS AND NOTEWORTHY CASE DEVELOPMENTS

June 2026

## EXECUTIVE EDITOR

Barry A. Hartstein

## EDITORIAL BOARD

Janell Ahnert  
Alex Berg  
Nancy Delogu  
Tessa Gelbman  
Kevin Kraham

Devjani Mishra  
Brandon Mita  
Terrence H. Murphy  
Elisa Nadeau

James A. Paretti, Jr.  
Benson E. Pope  
Kellie A. Tabor  
Denise Tran-Nguyen

## CONTRIBUTING AUTHORS

Rachel Borgel  
Taylor Brailey  
Lauren Bridenbaugh  
James Bryton  
Ariel Clarke  
Amanda Combs  
Rachel Frey  
Katie Hansen

Bethany Ingle  
Matthew Lerner  
Jasmine Little  
Tanner McCarron  
Hovannes Nalbandyan  
Vinay Patel  
Esther Redman  
Lauren Robertson

Christine Sargent  
Justin Scott  
Kimberly Shappley  
Kelly A. Smith  
Melisa Topic  
Brenton Villasenor  
Carole Wilder

## **IMPORTANT NOTICE**

This publication is not a do-it-yourself guide to resolving employment disputes or handling employment litigation. Nonetheless, employers involved in ongoing disputes and litigation will find the information useful in understanding the issues raised and their legal context.

The Littler Report is not a substitute for experienced legal counsel and does not provide legal advice or attempt to address the numerous factual issues that inevitably arise in any employment-related dispute.

Copyright ©2026 Littler Mendelson, P.C.

All material contained within this publication is protected by copyright law and may not be reproduced without the express written consent of Littler Mendelson.

## ABOUT OUR FIRM

Littler Mendelson is the world's largest labor and employment law firm devoted exclusively to representing management. With over 1,800 attorneys in more than 100 offices around the globe, Littler has extensive knowledge and resources to address the workplace law needs of both U.S.-based and multi-national clients. Littler lawyers practice and have experience in at least 50 areas of employment and labor law. The firm is constantly evolving and growing to meet and respond to the changes that impact the workplace.

## ABOUT OUR EEO & DIVERSITY PRACTICE GROUP

With the steady rise in the number of discrimination, harassment and retaliation claims filed each year, employers must be more vigilant and proactive than ever when it comes to their employment decisions. Since laws prohibiting discrimination statutes have existed, Littler's Equal Employment Opportunity & Inclusion Practice Group has been handling discrimination matters for its clients. Members of our practice group have significant experience working with all types of discrimination cases, including age, race, gender, sexual orientation, religion and national origin, along with issues involving disability accommodation, equal pay, harassment and retaliation. Whether at the administrative stage or in litigation, our representation includes clients across a broad spectrum of industries and organizations, and Littler attorneys are at the forefront of new and innovative defenses in each of the key protected categories. Our attorneys' proficiency in handling civil cases brought by the EEOC and other state agencies enables us to develop effective approaches to defending against any EEOC litigation, whether it involves claims brought on behalf of individual claimants or class-wide allegations involving alleged "pattern and practice" claims and other alleged class-based discriminatory conduct.

In addition, our firm recognizes the value of a workforce that provides equal employment opportunities, and a sense of belonging to all people. We recognize that diversity encompasses an infinite range of individual characteristics and experiences, including gender, age, race, sexual orientation, national origin, religion, political affiliation, marital status, disability, geographic background, and family relationships. Our goal for our firm and for clients is to create a work environment where the merits, unique attributes, perspectives, backgrounds, skills and abilities of each individual are valued. To this end, our EEO & Inclusion Practice Group includes attorneys with extensive experience assisting clients with their own inclusion, equity, and diversity initiatives, providing legally compliant training, and ensuring employers remain compliant with the latest discrimination laws and regulations.

For more information on Littler's EEO & Inclusion Practice Group, please contact either of the following Practice Group Co-Chairs:

- Barry Hartstein, Telephone: 312.795.3260, E-Mail: [bhartstein@littler.com](mailto:bhartstein@littler.com)
- Alyesha Asghar, Telephone: 206.381.4949, E-Mail: [aasghar@littler.com](mailto:aasghar@littler.com)

# Table of Contents

<b>INTRODUCTION</b>	1
<b>I. RELIGIOUS DISCRIMINATION AND ACCOMMODATION IN THE WORKPLACE – AN EEOC PRIORITY</b>	2
A. Introduction	2
B. Title VII and Religion	3
1. What is a Religious Belief?	3
2. Evaluating Sincerity	4
3. Whether the Belief Is in Conflict	5
4. Post- <i>Groff</i> Undue Hardship Analysis	6
5. Scheduling Requests	7
6. Religious Garb and Appearance Policies	9
7. Dietary Restrictions	10
C. Unique Issues Facing the Healthcare and Pharmaceuticals Industries	11
E. Conflicts with Sexual Orientation and Gender Identity	13
F. Religious Expression and Political or Hate Speech	14
<b>II. OVERVIEW OF EEOC CHARGE ACTIVITY, LITIGATION AND SETTLEMENTS</b>	16
A. Review of Charge Activity, Backlog and Benefits Provided	16
B. Systemic Investigations and Litigation	19
C. EEOC Litigation Statistics – Type of Lawsuit, Location, and Claims	21
D. Review of EEOC Litigation Priorities	24
E. Mediation Efforts, Litigation Resolutions and Monetary Relief	25
F. Appellate Cases	26
<b>III. EEOC AGENCY AND REGULATORY-RELATED DEVELOPMENTS</b>	28
A. EEOC Leadership	28
B. Policy Priorities	28
1. Diversity, Equity and Inclusion (DEI) Programs in the Crosshairs	28
2. The Rights of Religious Employees in the Workplace	29
3. White House Executive Order “Protecting” Women; Impact on Sexual Orientation and Gender Identity Discrimination	29
4. Disparate Impact Theory of Discrimination	31
5. Pregnant Workers Fairness Act	31
6. National Origin Discrimination	32
C. Conclusion	32

## Table of Contents

IV. SCOPE OF EEOC INVESTIGATIONS AND SUBPOENA ENFORCEMENT ACTIONS	33
A. EEOC Investigations	33
1. EEOC Authority to Conduct Class-Type Investigations	33
2. Scope of EEOC's Investigative Authority	33
a. Applicable Timelines for Challenging Subpoenas (Waiver issue)	34
b. Procedural Issues	35
3. Standard for Reviewing Subpoena Enforcement	37
4. Review of Recent Cases Involving Broad-Based Investigation by EEOC	37
B. Conciliation Obligations Prior to Bringing Suit	43
1. Impact of Mach Mining	43
2. Investigation and Conciliation Obligations Post-Mach Mining	44
3. EEOC's Challenge that any Conciliation Obligation Exists in Pattern-or-Practice Claims Under Section 707	46
4. Evidence/Documents Relating to Conciliation	46
V. REVIEW OF NOTEWORTHY EEOC LITIGATION AND COURT OPINIONS	48
A. Pleadings	48
1. Motion to Dismiss (or Strike)/Scope of Complaint	48
2. Lack of Particularity	50
3. Key Issues in Class-Related Allegations	50
a. Challenges to pattern-or-practice claims (including Section 706/707 issues)	50
b. Other Issues	51
4. Who Is the Employer?	53
5. EEOC Motions Tied to Pleadings	55
6. Venue	57
7. Related Lawsuit	58
8. Miscellaneous Procedural Issues	59
B. Statutes of Limitations and Unreasonable Delay	59
1. Limitations Period for Pattern-or-Practice Lawsuits	59
2. Equitable Theories to Support Untimely Claims	62
3. Laches-type Issue: Unreasonable Delay by the EEOC	63

## Table of Contents

C. Intervention and Consolidation	65
1. Charging Party’s Right to Intervene in EEOC Litigation	65
2. EEOC’s and Other Non-Charging Parties’ Permissive Intervention in Private Litigation	66
3. Failure to Exhaust Administrative Remedies	67
4. Timely Filing Requirement	68
5. Other Issues	70
6. Adding Pendent Claims	72
7. Individual Intervenor Claims Alongside EEOC Pattern-or-Practice Claims	73
8. Consolidation	73
D. Class Issues in EEOC Litigation	74
1. General	74
2. Identity of Class Members in EEOC Litigation	75
E. Other Critical Issues in EEOC Litigation	76
1. Protective Orders and Motions to Seal	76
2. EEOC Publicizing Litigation Against the Employer	78
3. ESI: Electronic Discovery-Related Issues	79
4. Reliance on Experts, Including Systemic Cases	80
5. Management of Class Discovery – Motion to Bifurcate	82
F. General Discovery by Employer	82
1. Discovery of EEOC-Related Documents and Individuals	82
2. Discovery Involving Claimants and Charging Parties	85
3. Third-Party Subpoenas	87
4. Confidentiality/Protective Orders	89
5. Other Issues	90
G. General Discovery by EEOC and Intervenors	91
1. Deadlines and Scheduling Orders	91
2. Section 30(b)(6) Depositions	92
3. Scope of Permitted Discovery by EEOC	92
4. Sanctions and Spoliation Issues	97

## Table of Contents

5. Third-Party Subpoenas	99
a. Opinion Work Product	99
b. Attorney-Client Privilege and Common Interest	99
c. Personnel Files from Previous Employers	99
d. Medical Records	100
H. Summary Judgment	101
1. EEOC Motion for Partial Summary Judgment	101
2. General Procedural Issues	102
3. Impact of Employer Prevailing on Summary Judgment – Fee Petition	104
I. Default Judgment	105
J. Bankruptcy	107
K. Trial	110
1. Pre-Trial Motions	110
2. Post-Trial Motions	112
L. Remedies	115
M. Settlements	121
N. Recovery of Attorneys’ Fees	126
1. By Employer	126
2. By Intervenor/EEOC	128
VI. APPENDICES	131
Appendix A – EEOC Case Filings and Settlements Involving Religious Discrimination and Accommodation for FY 2025-early FY 2026	131
Case Filings Involving Claims of Religious Discrimination	131
Settlements Involving Claims of Religious Discrimination	133
Appendix B – EEOC Consent Decrees, Conciliation Agreements and Judgments	135
Select EEOC Settlements in FY 2025-2026	135
Select EEOC Jury Awards or Judgments in FY 2025	143
Appendix C – Subpoena Enforcement Actions Filed by EEOC in FY 2025	144
U.S. OFFICES	152
GLOBAL LOCATIONS	153

# ANNUAL REPORT ON EEOC DEVELOPMENTS: FISCAL YEAR 2025

An Annual Report on EEOC Charges, Litigation, Regulatory Developments and Noteworthy Case Developments

## INTRODUCTION

This **Annual Report on EEOC Developments—Fiscal Year 2025** (hereafter “Report”), our fifteenth annual publication, is designed as a comprehensive guide to significant Equal Employment Opportunity Commission (“EEOC” or “the Commission”) developments over the past fiscal year. The Report does not merely summarize case law and litigation statistics, but also analyzes the EEOC’s successes, setbacks, changes, and strategies. By focusing on key developments and anticipated trends, the Report provides employers with a roadmap to where the EEOC is headed in the year to come.

This year’s Report is organized into the following sections:

**Part One** discusses the rise of religious accommodation and discrimination claims over the past year. The EEOC has made combating religious discrimination a priority, and the Supreme Court’s decision in *Groff v. DeJoy* raised the bar for an employer’s undue hardship defense. This opening chapter highlights the types of religious discrimination and accommodation claims employees are raising, how courts are evaluating the merits of these claims, and the extent to which employers must accommodate an employee’s sincerely held religious belief, particularly when doing so may conflict with other employees’ rights and their business operations.

**Part Two** outlines EEOC charge activity, litigation, and settlements in FY 2025, focusing on the types and location of lawsuits filed by the Commission. More details on noteworthy consent decrees, conciliation agreements, judgments and jury verdicts are summarized in Appendix B to this Report.

**Part Three** focuses on the current composition of the EEOC, its regulatory activities, and other agency priorities and initiatives.

**Part Four** summarizes the EEOC’s investigations and subpoena enforcement actions, particularly where the EEOC has made broad-based requests to conduct class-type investigations in pursuit of its goal to combat systemic discrimination. Appendix C to this Report supplements this section in summarizing subpoena enforcement actions filed by the EEOC during FY 2025.

**Part Five** of the Report focuses on FY 2025 litigation in which the EEOC was a party. This discussion is broken down into numerous topic areas, including: (1) pleading deficiencies raised by employers and the EEOC; (2) statutes of limitations cases involving both pattern-or-practice and other types of claims; (3) intervention and consolidation of claims with private counsel representing charging parties; (4) class issues in EEOC litigation; (5) other critical issues in EEOC litigation, including protective orders, ESI and experts; (6) general discovery issues in litigation between the parties; (7) favorable and unfavorable summary judgment rulings; (8) default judgments against employers; (9) trial-related issues and those tied to remedies and settlements; and (10) circumstances in which courts have awarded attorneys’ fees to prevailing parties.

**Appendices A–C** are useful resources that should be read in tandem with the Report. **Appendix A** provides summaries of EEOC case filings and settlements involving allegations of religious discrimination. **Appendix B** includes summaries of significant EEOC consent decrees, conciliation agreements, judgments, and jury verdicts. **Appendix C** includes information on select subpoena enforcement actions filed by the EEOC in FY 2025.

We hope that this Report serves as a useful resource for employers in their EEO compliance activities and provides helpful guidance when faced with litigation involving the EEOC.

# I. Religious Discrimination and Accommodation in the Workplace – An EEOC Priority

## A. Introduction<sup>1</sup>

Employers covered by Title VII of the Civil Rights Act of 1964 (“Title VII”) have long been prohibited from discriminating against employees based on “religion” among other protected categories.<sup>2</sup> After litigation concerning whether Title VII’s prohibition of religious discrimination required employers to also accommodate religious beliefs and practices in the workplace, Title VII was amended in 1972 to codify the accommodation requirement by defining “religion” to include “all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate an employee’s or prospective employee’s religious observance or practice without undue hardship on the conduct of the employer’s business.”<sup>3</sup>

In order for an employee to be potentially entitled to an accommodation of their belief or practice, however, that belief or practice must be sincerely held, religious in nature, and in conflict with the employer’s workplace requirement.<sup>4</sup> Employers and courts have since struggled with what a “sincerely held religious belief” is and whether, and how much, employers can probe both the religious nature and the sincerity of a purported belief or practice. The widespread proliferation of employer requirements that employees take measures against COVID-19 – such as masking, testing, and vaccination – led to requests for religious exemptions, and in turn spawned litigation challenging employers’ handling of those requests that has forced courts to confront the scope of the law’s protections. Further, the second Trump administration has prioritized the investigation of and litigation against employment practices that the Trump EEOC views as anti-religious.

Under EEOC Chair Andrea Lucas, the EEOC has undertaken individual and systemic investigations of employers relating to more than 10,000 filed charges of discrimination claiming employers failed to accommodate religious objections to COVID-19 vaccination and other mandated safety measures implemented during the pandemic, as well as religious accommodation and discrimination charges in other contexts. In August 2025, the EEOC reported that it had recovered \$55 million for workers relating to COVID-19 vaccination mandates.<sup>5</sup> The EEOC has prioritized filing lawsuits against employers relating to religious accommodation and discrimination claims, which filings have accelerated since the EEOC has obtained a quorum.

The EEOC has also undertaken steps in response to Executive Order 14202, signed by President Trump on February 6, 2025, titled “Eradicating Anti-Christian Bias.”<sup>6</sup> Chair Lucas also participates on a Department of Justice Task Force on the topic, along with many other agency heads.<sup>7</sup>

In addition, the federal Office of Personnel Management (OPM) issued two memoranda in July 2025 addressed to “Protecting Religious Expression in the Federal Workplace.”<sup>8</sup> Although focused on federal government employees, private employers should ensure their familiarity with these memorandums as they reflect administration priorities and how the Trump EEOC is and will approach investigations and lawsuits relating to the activities of private employers. For example, despite the federal government’s focus on a return to in-office work, OPM makes clear that agencies are “encouraged” to adopt various leave programs to provide flexibility in religious accommodations including telework, religious compensatory time off, flexible work schedules, credit hours earned under flexible work schedules, annual leave, compensatory time off for overtime work, compensatory time off for travel, leave without pay, and others.<sup>9</sup> OPM has also made clear its position that federal employees “must be allowed to engage in private religious expression in work areas to the same extent that they may engage in nonreligious private expression.”<sup>10</sup> OPM also provided a list of types of religious expression that are specifically protected against

<sup>1</sup> Special recognition is being given to Lauren Bridenbaugh, Bethany Ingle, and Kelly A. Smith, who prepared this opening chapter on Religious Discrimination and Accommodation in the Workplace.

<sup>2</sup> 42 U.S.C. § 2000e-2(a)(1).

<sup>3</sup> 29 C.F.R. § 1605.1.

<sup>4</sup> *EEOC Compliance Manual Section 12: Religious Discrimination*, Subsection 12-I(A) (2021).

<sup>5</sup> Press Release, EEOC, *200 Days of EEOC Action to Protect Religious Freedom at Work* (Aug. 22, 2025).

<sup>6</sup> Exec. Order No. 14,202, *Eradicating Anti-Christian Bias*, 90 Fed. Reg. 9365 (Feb. 12, 2025).

<sup>7</sup> *Id.* See also Press Release, EEOC, *200 Days of EEOC Action to Protect Religious Freedom at Work*, *supra* note 4.

<sup>8</sup> Office of Personnel Management, *Reasonable Accommodations for Religious Purposes*, Memo (July 16, 2025); Office of Personnel Management, *Protecting Religious Expression in the Federal Workplace*, Memo (July 28, 2025).

<sup>9</sup> Office of Personnel Management, *Reasonable Accommodations for Religious Purposes*, Memo (July 16, 2025).

<sup>10</sup> Office of Personnel Management, *Protecting Religious Expression in the Federal Workplace*, Memo (July 28, 2025).

discipline, including the display or use of items for religious purposes, expressions by groups, conversations between federal employees, expressions among or directed at members of the public, and expressions in areas accessible to the public, subject to certain restrictions.<sup>11</sup>

It bears noting that while federal agency guidance can be instructive, it is not binding. The U.S. Supreme Court’s 2024 decision in *Loper Bright Enterprises v. Raimondo*<sup>12</sup> explained the deference given to agency guidance. Judges must exercise their “independent judgment” and give statutes their “best meaning.” Judges can still consider agency guidance when that guidance is persuasive, longstanding, and consistent. But they cannot treat that guidance as “binding”—they must interpret statutes for themselves.

That said, the EEOC is paying close attention to how employers treat religious employees and whether they accommodate those employees’ religious beliefs and practices. A charge of discrimination alleging religious discrimination, harassment, and/or accommodation is likely to be prioritized — and employers more closely scrutinized — than would a “typical” charge. Employers are advised to exercise due care when evaluating accommodation requests and be aware the law in this area is rapidly evolving at both the agency and in the courts.

## B. Title VII and Religion

Conflicts can easily arise between religious mandates and Title VII’s anti-discrimination requirements. For example, while Title VII may generally prohibit an employer from refusing to hire a Jewish employee due to his faith, it would not make logical sense to apply that general prohibition to a Catholic diocese looking to hire a new priest. Title VII therefore contains explicit exception for “religious corporations, associations, educational institutions, or societies.”<sup>13</sup> Courts have generally interpreted these Title VII exceptions to foreclose claims brought on the basis of religious discrimination only, thereby allowing other types of suits against religious entities.<sup>14</sup> Similarly, the Supreme Court and other federal courts have recognized and recently expanded a “ministerial exception” that precludes the application of Title VII and other employment discrimination laws to claims brought by individuals performing vital religious duties.<sup>15</sup> Religiously affiliated entities are actively seeking to broaden the exception still further.<sup>16</sup>

### 1. What is a Religious Belief?

Title VII is “unhelpful” in telling us what religion or a religious belief is.<sup>17</sup> It is therefore not uncommon for the EEOC and courts to look to First Amendment cases to evaluate what a religion is. Nevertheless, even in those cases, a clear definition of “religion” has been elusive.<sup>18</sup> The EEOC has defined a belief as “religious” in a person’s “own scheme of things,” meaning it is “sincere and meaningful” that “occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God ....”<sup>19</sup> Religious beliefs “need not be acceptable, logical, consistent, or comprehensible to others ....”<sup>20</sup> However, in some courts, an “isolated moral teaching” rather than a “comprehensive system of beliefs about fundamental or ultimate matters” may be insufficient to constitute a

<sup>11</sup> *Id.*

<sup>12</sup> 603 U.S. 369 (2024).

<sup>13</sup> 42 U.S.C. §§ 2000e-1(a); 2000e-2(e).

<sup>14</sup> See, e.g., *Zinski v. Liberty University, Inc.*, 777 F. Supp. 3d 601, 633 (W.D. Va. 2025) (denying a motion to dismiss claims of discrimination where the religious school employer terminated an employee due to her transgender status and concluding that Title VII exemptions “provide only narrow exemptions for the religious employer to discriminate on the basis of an employee’s espoused religious beliefs”); *Killinger v. Samford Univ.*, 113 F.3d 196, 198 (11th Cir. 1997) (Catholic school may fire a teacher for entering into a second marriage in violation of Catholic law); *Little v. Wuerl*, 929 F.2d 944, 951 (3d Cir. 1991) (Baptist university may remove a Baptist faculty member from his teaching position because his theological beliefs differed from those of the dean); *E.E.O.C. v. Fremont Christian Sch.*, 781 F.2d 1362 (9th Cir. 1986) (unlawful sex discrimination—not religious discrimination—occurred when school provided health insurance coverage to its married male employees but not to its married female employees, based upon a religious belief).

<sup>15</sup> See, e.g., *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171, 188 (2012) (explaining the First Amendment’s free exercise clause “protects a religious group’s right to shape its own faith and mission through its appointments” and that certain employment discrimination laws cannot be applied “to claims concerning the employment relationship between a religious institution and its ministers.”); *Our Lady of Guadalupe School v. Morrissey-Berru*, 591 U.S. 732 (2020) (holding the ministerial exemption recognized in *Hosanna-Tabor* applied to two Catholic primary school teachers who taught religion and other subjects because they performed vital religious duties, including educating students in the Catholic faith); *Billard v. Charlotte Catholic High School*, 101 F.4th 315 (4th Cir. 2024) (concluding the ministerial exemption to Title VII foreclosed Catholic school teacher’s claims that he was subject to sex discrimination when he was terminated for marrying his same-sex partner).

<sup>16</sup> *Zinski v. Liberty University, Inc.*, 25-1228 (4<sup>th</sup> Cir.) (pending) (arguing that employer can require all employees to conduct themselves in accordance with its doctrinal statement, and is not only exempt from religious discrimination provisions of Title VII).

<sup>17</sup> Andrew B. Rogers, *Beyond Undue Hardship: Religion and Sincerity in a Post-Groff World*, 62 U. Louisville L. Rev. 345, 384 (2025).

<sup>18</sup> *Id.* at 386-392.

<sup>19</sup> *EEOC Compliance Manual* Section 12: Religious Discrimination, Subsection 12-1(A) (2021) (quoting *United States v. Seeger*, 380 U.S. 163, 166 (1965)).

<sup>20</sup> *Thornton v. Ipsen Biopharmaceuticals, Inc.*, 126 F.4th 76, 83 (1st Cir. 2025) (quoting *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 714 (1981)).

religious belief.<sup>21</sup> Yet, “a personal ethical belief that something is morally wrong” may be enough.<sup>22</sup> In *United States v. Meyers*, the Tenth Circuit set forth criteria that **might** indicate a religion under the First Amendment to include: (1) the beliefs address “fundamental questions about life, purpose, and death”; (2) are metaphysical in nature; (3) prescribe a particular way of acting; and (4) are comprehensive in nature.<sup>23</sup>

The definition of “religion” or the scope of protected religious beliefs or practices is **not** limited to organized religions.<sup>24</sup> An individual’s stated religious belief or practice can be new, uncommon, and even inconsistent with the religious group or organized religion that the employee is affiliated with (if any).<sup>25</sup> The EEOC has guided that social, political, or economic philosophies, and personal preferences do not constitute religious beliefs under Title VII; however, how those preferences or philosophies differ from moral or ethical beliefs of right and wrong is not always clear.<sup>26</sup> Further, that an employee’s purported religious objection overlaps with the employee’s non-religious objections to a workplace policy or practice does not render the individual’s beliefs unprotected by Title VII based on that overlap alone.<sup>27</sup>

In sum, employers looking to evaluate whether an accommodation request is based on *religious* belief should exercise caution and not take an overly critical eye or impose the employer’s own views of what is and is not religion, nor question or test the logic of an individual’s stated beliefs.

## 2. Evaluating Sincerity

Only sincerely held religious beliefs may be entitled to accommodation. Courts and the EEOC have historically been hesitant to, and have generally cautioned employers against, questioning the sincerity of an employee’s alleged religious belief.<sup>28</sup>

The EEOC has suggested things an employer may consider when assessing an individual’s sincerity, including the individual’s credibility; an employee’s actions that are markedly inconsistent with their professed beliefs (though the EEOC cautions an individual “doesn’t forfeit his religious rights merely because he is not scrupulous in his observance”); whether the accommodation sought is particularly desirable such that it is likely to be sought for secular reasons; the timing of the request (*i.e.*, following an earlier request for the same benefit for secular reasons); and whether the employer otherwise has reason to believe the accommodation is not sought for religious reasons.<sup>29</sup> The EEOC cautions that “none of these factors is dispositive.”<sup>30</sup> For example, an individual’s beliefs may have evolved over time, and the fact that the individual did not have a particular belief, or did not closely adhere to it, years (or even months) prior to when the accommodation is sought does not necessarily establish insincerity.

In practice, courts are often reluctant to find a plaintiff insincere and prefer to leave that credibility determination to a jury. This reluctance was evident in the case of *Gardner-Alfred v. Federal Reserve Bank of New York*, in which the Second Circuit affirmed the district court’s grant of summary judgment as to one plaintiff, but reversed as to a second plaintiff.<sup>31</sup> In the case of plaintiff Diaz, she requested a religious exemption from obtaining a COVID-19 vaccine, stating her Catholic religious beliefs prohibited her from receiving a vaccine “created using human cell lines derived from abortion.”<sup>32</sup> She also offered non-religious objections to the vaccines, including concerns they were “experimental,” and she espoused a conspiracy theory that the letters of the Delta and Omicron

21 *Fallon v. Mercy Catholic Med. Ctr.*, 877 F.3d 487, 492 (3d Cir. 2017) (citing *Africa v. Pennsylvania*, 662 F.2d 1025, 1032 (3d Cir. 1981)).

22 *Beyond Undue Hardship: Religion and Sincerity in a Post-Groff World*, at 393, *supra* note 14 (internal citations omitted).

23 *Id.* at 420 (quoting 95 F.3d 1475, 1483-84 (1996)).

24 *EEOC Compliance Manual* Section 12: Religious Discrimination, Subsection 12-I(A) (2021).

25 *EEOC Guidelines on Discrimination Because of Religion*, 29 C.F.R. § 1605.1 (“The fact that no religious group espouses such beliefs or the fact that the religious group to which the individual professes to belong may not accept such belief will not determine whether the belief is a religious belief of the employee or prospective employee.”).

26 *EEOC Compliance Manual* Section 12: Religious Discrimination, Subsection 12-I(A) (2021) (quoting *EEOC Guidelines on Discrimination Because of Religion*, 29 C.F.R. § 1605.1) (“Religious beliefs include theistic beliefs as well as non-theistic ‘moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views.’”).

27 *Id.*

28 *Id.* (quoting *Adeyeye v. Heartland Sweeteners, LLC*, 721 F.3d 444, 452 (7th Cir. 2013)) (“[T]he Commission and courts ‘are not and should not be in the business of deciding whether a person holds religious beliefs for the ‘proper’ reasons. We thus restrict our inquiry to whether or not the religious belief system is sincerely held; we do not review the motives or reasons for holding the belief in the first place.’”).

29 *EEOC Compliance Manual* Section 12: Religious Discrimination, Subsection 12-I(A) (2021) (internal citations omitted).

30 *Id.*

31 143 F.4th 51 (2d Cir. 2025).

32 *Id.* at 58.

variants could be rearranged to spell “Media Control.” She simultaneously sought a medical accommodation.<sup>33</sup> The Second Circuit concluded Ms. Diaz’s motives for seeking an exemption – religious and/or secular – were fact questions for a jury to resolve.<sup>34</sup>

In contrast, the same court upheld the lower court’s decision against plaintiff Gardner–Alfred. Ms. Gardner–Alfred alleged she had been a member of the Temple of the Healing Spirit for 20 years, which “opposes the invasive techniques of traditional Western medicine.”<sup>35</sup> However, Ms. Gardner–Alfred admitted she did not attend services with the Temple of the Healing Spirit at the time she submitted her accommodation requests, could provide almost no details about the services she had attended, could not recall if she attended more than five services in the past five years, and otherwise gave inconsistent testimony on her religious practices.<sup>36</sup> Further, Ms. Gardner–Alfred produced no documentation tying herself to the Temple of the Healing Spirit.<sup>37</sup> The court concluded that “unlike Diaz, the evidence of Gardner–Alfred’s religious beliefs is so wholly contradictory, incomplete, and incredible that no reasonable jury could accept her professed beliefs as sincerely held.”<sup>38</sup>

Outside the context of COVID–19, the Seventh Circuit in *Adeyeye v. Heartland Sweeteners, LLC* in 2013 reversed a summary judgment decision, in part, because it held a reasonable jury could find plaintiff Adeyeye was sincere in his beliefs.<sup>39</sup> Mr. Adeyeye sought unpaid leave for lengthy travel to Nigeria to participate in his father’s funeral rites, which participation he claimed was motivated by his religious beliefs.<sup>40</sup> Specifically, Mr. Adeyeye identified his family’s religion as a “blend of Christianity and customs, traditions, and ceremonial rites developed in his Nigerian village. As part of this religion, the specific dictates of each family’s religious practice are identified, determined, and required by the father or male head of the household.”<sup>41</sup> The defendant contended Mr. Adeyeye was observing his father’s belief out of filial obligation, rather than his own religious views.<sup>42</sup> However, the Seventh Circuit held this view was, at most, unclear from the record evidence and felt it was for a jury to decide whether Mr. Adeyeye’s stated beliefs were religious in nature.<sup>43</sup>

As illustrated by these examples, there is no bright line rule to distinguish cases like those of Ms. Diaz or Mr. Adeyeye, who were allowed to make their case to a jury, from those like Ms. Gardner–Alfred, whose case was found to be without merit, given the highly specific fact analysis involved in each of these cases. What is apparent is that challenging a plaintiff’s sincerity is unlikely to result in a successful motion to dismiss. Numerous federal circuit courts have returned cases to the district court for discovery after a religious failure to accommodate claim had been dismissed based on a lack of sincerity alone.<sup>44</sup> Therefore, employers that choose to deny a religious accommodation request based on a perceived lack of sincerity should be prepared to defend those decisions in litigation.

### 3. Whether the Belief Is in Conflict

Even if the belief is both religious and sincerely held, an employee may still not be entitled to an accommodation if the sincere religious belief is not in conflict with the workplace requirement. An obvious example is an employee who requests an accommodation not to work on Saturdays for religious observance. If the employer is not open on Saturdays, or the employee would never be required to work Saturdays, then there is no conflict between the belief and a workplace policy. Of course, most situations are more nuanced. In *Jackson v. Methodist Health Servs. Corp.*, for example, the Seventh Circuit affirmed a lower court’s decision to dismiss a complaint because the plaintiff, after being excused from receiving the COVID–19 vaccine, objected to weekly testing for COVID–19.<sup>45</sup> She stated that the testing requirement “offend[ed] her ‘moral conscience,’” which the court found insufficient to

33 *Id.* at 58–59.

34 *Id.* at 63–65.

35 *Id.* at 60.

36 *Id.* at 60–61.

37 *Id.* at 61.

38 *Id.* at 67.

39 721 F.3d 444, 454

40 *Id.* at 451–452.

41 *Id.* at 452.

42 *Id.* at 453.

43 *Id.* at 453–454.

44 See *Thornton v. Ipsen Biopharmaceuticals, Inc.*, 126 F.4th 76 (1st Cir. 2025); *Bazinet v. Beth Israel Lahey Health, Inc.*, 113 F.4th 9 (1st Cir. 2024); *Sturgill v. Am. Red Cross*, 114 F.4th 803 (6th Cir. 2024); *Prida v. Option Care Entrs.*, No. 23–3936, 2025 U.S. App. LEXIS 3317 (6th Cir. Feb. 11, 2025); *Sibley v. Touro LCMC Health*, No. 24–30189, 2024 U.S. App. LEXIS 31829 (5th Cir. Dec. 16, 2024).

45 121 F.4th 1122, 1126 (2024).

show her religious beliefs and practices were in conflict with the testing requirement.<sup>46</sup> As can be seen from this example, the questions of whether a belief is religious, whether it is sincerely held, and whether it is in conflict with a workplace requirement often overlap.

#### 4. Post-Groff Undue Hardship Analysis

In 2023, the Supreme Court “clarified” that evidence showing “more than a *de minimis* cost” is insufficient to establish an undue hardship that would allow an employer to be excused from accommodating an employee’s religious beliefs under Title VII.<sup>47</sup>

Mr. Groff was a postal worker and Evangelical Christian who requested an accommodation from working on Sundays.<sup>48</sup> While the post office had allowed him to swap shifts or take leave and redistributed Mr. Groff’s Sunday shifts to other employees, he eventually exhausted his time off and received “progressive discipline” for not working on Sundays. Ultimately, he resigned his employment.<sup>49</sup> While the lower courts found in favor of the postal service because exempting Mr. Groff from Sunday work had “imposed on his coworkers, disrupted the workplace and workflow, and diminished employee morale[,]” the Supreme Court reversed, finding these burdens were insufficient to show that excusing him from Sunday work altogether posed an undue hardship.<sup>50</sup> The Supreme Court held that employers must show that granting the accommodation would result in “substantial increased costs in relation to the conduct of its particular business.”<sup>51</sup> The undue hardship inquiry requires all relevant factors be considered including the “nature, size, and operating cost of an employer.”<sup>52</sup>

Following *Groff*, courts have embarked on highly fact-specific inquiries in evaluating whether granting a religious accommodation request would create an undue hardship in light of a particular employer’s business. These inquiries have included reviewing whether employers are consistent in the policy(ies) from which an employee is seeking accommodation, demonstrable monetary or non-monetary (such as reputational) costs to the business rather than speculative costs, safety, and other factors.

For example, in *Hebrew v. Texas Department of Criminal Justice*, issued soon after the *Groff* decision, the Fifth Circuit rejected claims of undue hardship in large part because of inconsistencies in the employer’s policies. Mr. Hebrew was hired as a Correctional Officer but told he had to cut his hair and shave his beard in compliance with the state agency’s grooming policy.<sup>53</sup> Mr. Hebrew kept his hair and beard long in observance of his religious beliefs, as he had done for over two decades.<sup>54</sup> The agency refused to accommodate this practice, citing safety reasons including the potential need to wear a gas mask, that his hair could be grabbed by inmates, and that contraband could not be detected.<sup>55</sup> Although the district court accepted the employer’s hardship arguments, on appeal, the Fifth Circuit evaluated the claim under *Groff*, and reversed, finding that the agency had failed to identify what costs it would face by accommodating Mr. Hebrew, the safety risks were minimized because it already searched all correctional officers entering the facility for contraband regardless of hair or beard length; the agency already allowed beards for those with medical conditions; and the agency permitted female officers to wear long hair despite the alleged concern that prisoners might grab their hair.<sup>56</sup> As such, the court found the agency could not show accommodating Mr. Hebrew would impose an undue hardship.

In another case, *Naylor v. County of Muscatine*, the Eighth Circuit also reversed a lower court’s decision after re-evaluating the employee’s claim of undue hardship under the updated *Groff* standard.<sup>57</sup> Mr. Naylor worked as a jail administrator for the county sheriff’s office until the sheriff’s office was contacted by a reporter about a “treatise” and several YouTube videos Mr. Naylor had posted online in which he made certain negative comments about Muslims relating to his beliefs in the “rapture.”<sup>58</sup> Following the article’s publication, a community member, the

---

46 *Id.*

47 *Groff v. DeJoy*, 600 U.S. 447, 472-473.

48 *Id.* at 454-55.

49 *Id.* at 455.

50 *Id.* at 456, 468.

51 *Id.* at 470-71.

52 *Id.*

53 80 F.4th 717, 719-20 (5th Cir. 2023).

54 *Id.* at 719.

55 *Id.* at 720.

56 *Id.* at 724-725.

57 151 F.4th 973 (8th Cir. 2025).

58 *Id.* at 974-975.

mayor, and the County Board of Supervisors expressed concern about the civil liberties of those detained in the jail and the U.S. Marshals Services had calls with the County concerned about whether to continue to house overflow inmates at the County jail.<sup>59</sup> Mr. Naylor was placed on leave and ultimately fired.<sup>60</sup> The Eighth Circuit rejected the County's argument that Mr. Naylor's comments negatively impacted its public image because the evidence of community concern from one community member and some public officials, and the publication of one news article was insufficient.<sup>61</sup> The court further rejected an argument that retaining Mr. Naylor as an employee would "imperil its business relationships" given the concerns raised by the Marshals Service and another locality over sending overflow inmates to the County because the County had not shown there was not a sufficiently real chance the contracts would actually have been lost if it continued Mr. Naylor's employment.<sup>62</sup>

## 5. Scheduling Requests

Employees often seek religious accommodations relating to their schedule. Some employees may make accommodation requests on an infrequent or rare basis, such as occasional days off to observe specific religious holidays. Others may request specific days or weeks off on a recurring basis, such as an Orthodox Jewish employee requesting every Friday evening and Saturday off to observe the Sabbath. Employees may also ask for multiple breaks during the workday to perform religious acts, such as Muslim employees engaging in daily prayer.

Given the wide variety of potential accommodation requests related to scheduling, it is not surprising that many of the leading court cases on religious accommodation issues have addressed this issue. For several decades, courts applied a *de minimis* standard credited to *Trans World Airlines, Inc. v. Hardison*.<sup>63</sup> In *Hardison*, the plaintiff's religion prohibited its followers from working from sunset on Friday until sunset on Saturday, as well as certain religious holidays.<sup>64</sup> While the employer worked with Mr. Hardison to find coverage for his religious holidays, it was unable to avoid routine Saturday scheduling without violating seniority provisions set forth in the applicable collective bargaining agreement.<sup>65</sup> The airline ultimately terminated him for insubordination for refusing to work during his scheduled shift.<sup>66</sup>

The *Hardison* Court concluded that the airline had made reasonable efforts to accommodate Mr. Hardison and that it would have been an undue hardship for the employer to grant his requested scheduling accommodation.<sup>67</sup> The Court concluded that the duty to accommodate does not require an employer to violate its collective bargaining agreement.<sup>68</sup> Moreover, granting Mr. Hardison's request would effectively mean "the privilege of having Saturdays off would be allocated according to religious beliefs."<sup>69</sup> The Court also explicitly stated that "[t]o require TWA to bear more than a *de minimis* cost in order to give Hardison Saturdays off is an undue hardship."<sup>70</sup>

In the years following *Hardison*, many courts upheld employer decisions to deny religious accommodation requests related to scheduling,<sup>71</sup> although EEOC regulations made clear that employers should accommodate reasonable religious scheduling requests and even provided a non-exclusive list of potential accommodations, including voluntary shift swaps with co-workers, flexible scheduling, and lateral transfers or job reassignments.<sup>72</sup> The EEOC regulations also explicitly state that infrequent payment of premium wages and/or administrative costs tied to rearranging schedules and substitutes did not constitute more than a *de minimis* cost.<sup>73</sup>

59 *Id.*

60 *Id.*

61 *Id.* at 976-977.

62 *Id.* at 977-978.

63 432 U.S. 63 (1977).

64 *Id.* at 67.

65 *Id.* at 77-79.

66 *Id.* at 68-69.

67 *Id.* at 77-79.

68 *Id.* at 79, 83.

69 *Id.* at 85.

70 *Id.* at 84.

71 See, e.g., *Harrell v. Donahue*, 638 F.3d 975, 980-81 (8th Cir. 2011) (giving postal worker Saturdays off constituted an undue hardship because it would have burdened co-workers with more weekend work); *Virts v. Consol. Freightways Corp. of Del.*, 285 F.3d 508, 520-21 (6th Cir. 2002) (holding that accommodations that would potentially adversely impact other employees by causing them to receive less profitable routes or less time off between routes amounted to undue hardship); *Brener v. Diagnostic Ctr. Hosp.*, 671 F.2d 141, 147 (5th Cir. 1982) (holding there was undue hardship where forced shift trades "resulted in disruption of work routines and a lowering of morale" among coworkers and employer was "also harmed because its employees are compelled to accept less favorable working conditions").

72 29 C.F.R. 1605.2(d).

73 29 C.F.R. 1605.2(e)(1).

In *Groff*, the Court explicitly held that “showing more than a de minimis cost ... does not suffice to establish undue hardship under Title VII.”<sup>74</sup> The Court stressed that “courts must apply the test in a manner that takes into account all relevant factors in the case at hand, including the particular accommodations at issue and their practical impact in light of the nature, size, and operating cost of [an] employer.”<sup>75</sup> Undue hardship is only established where “a burden is *substantial* in the overall context of an employer’s business.”<sup>76</sup> The Court directed employers to consider various alternatives, including incentive pay, voluntary shift swapping, and coordination with other locations.<sup>77</sup>

Post-*Groff*, employers should expect courts to thoroughly analyze any claims of undue burden. In *Smith v. City of Mesa*, for example, the District of Arizona applied *Groff* to conclude that the defendant employer’s claim of undue hardship was legally insufficient and therefore the employer was foreclosed from raising an undue hardship defense at trial.<sup>78</sup> The employer had argued granting plaintiff’s requested 1.5 days of leave constituted an undue hardship because the department was busy, had short deadlines, and limited staffing/coverage.<sup>79</sup> The court stated that the employer had failed to “quantify or otherwise explain” how the plaintiff’s absence “would have resulted in substantial increased costs in relation to its business....[or] articulated any concrete financial harm that would result from granting Plaintiff unpaid leave.”<sup>80</sup> Nor had the employer provided “proof of *actual* imposition on coworkers or disruption of the work routine.”<sup>81</sup> The court further criticized the defendant for failing to explain how shifting the plaintiff’s work hours to a different week “would result in a substantial burden,” and the court rejected the employer’s arguments that overtime pay was not generally authorized and would require a supervisor’s presence.<sup>82</sup> In short, the court found that the defendant “failed to demonstrate that **any and all** other potential accommodations to Plaintiff would have imposed undue hardship.”<sup>83</sup>

Similarly, in *Augustine V. v. Dep’t. of Veterans Affairs*, the EEOC’s Office of Federal Operations (OFO) concluded that a federal agency employer was responsible for failing to accommodate a Muslim physician’s request for Friday afternoons off to attend weekly prayer services.<sup>84</sup> OFO concluded that the agency should have allowed her to work extra hours on Monday–Thursday rather than offering her work on Saturday or a switch to a position with fewer hours. OFO criticized the employer, noting “we can find no justification in the record from the Agency to rationalize depriving Complainant of the customary benefit of two full days off. Nor does the Agency explain why it even made sense to go through the trouble of having Complainant work on Saturday rather than just letting her put in [] extra hours on weekdays...Requiring Complainant to come in an extra day as the price to attend her prayer service did not afford her the favored treatment [] she was due.”<sup>85</sup> OFO further stated that the agency had failed to provide “persuasive evidence” that missing Friday afternoons “would cause a substantial decline in patient care,”<sup>86</sup> and it rejected the agency’s arguments that granting the accommodation could impact employee morale.<sup>87</sup>

While OFO’s decision in the *Augustine V.* case is limited to federal employers, the EEOC has also prioritized the litigation of such claims in the private sector. Over the course of 2025, the EEOC publicized multiple settlements with private employers on claims that those employers had failed to grant scheduling accommodation requests. In August, for example, the EEOC announced that a Washington-based staffing and recruiting agency had agreed to pay more than \$215,000 to a Muslim job applicant who alleged he was not hired after he asked about a religious

74 *Id.* at 468 (internal quotations removed).

75 *Id.* at 470-71.

76 *Id.* at 468 (emphasis added).

77 *Id.* at 473.

78 2023 WL 8373495 (D. Ariz. Dec. 3, 2023).

79 *Id.* at \*3.

80 *Id.* at \*4.

81 *Id.*

82 *Id.* at \*5.

83 *Id.* at \*6 (emphasis added). See also *Fields v. DG Distribution GA, LLC*, 2024 WL 5320541, at \*6 (N.D. Ga. Sept. 26, 2024) (stating that defendant was required to thoroughly examine other alternatives even if plaintiff’s requested accommodation of a shift transfer would have created an undue hardship).

84 EEOC Appeal No. 2023004016 (Aug. 4, 2025), available at <https://www.eeoc.gov/sites/default/files/2025-08/2023004016%20DEC.pdf>; see also Press Release, EEOC, *EEOC Issues Three Significant Federal Sector Appellate Decisions* (Aug. 13, 2025).

85 *Id.* at 5.

86 *Id.* at 6-7.

87 *Id.* at 7-8.

accommodation to attend Friday prayer.<sup>88</sup> Similarly, in December, the EEOC announced a \$175,000 settlement with a hotel chain regarding a Seventh-Day Adventist employee's claim that her employer had revoked her religious accommodation and began scheduling her for Saturday shifts.<sup>89</sup> The EEOC has also issued press releases announcing other lawsuits it has filed regarding scheduling accommodation requests.<sup>90</sup>

## 6. Religious Garb and Appearance Policies

Employees often submit religious accommodation requests relating to religious garb and company grooming/appearance policies. For example, employees may seek accommodations allowing them to wear religious clothing or articles, including Muslim hijabs, Sikh turbans, or Christian crosses.<sup>91</sup> Employees belonging to certain Native American tribes or Coptic Christians may seek exceptions allowing them to display religious tattoos. Employees may raise religious objections to certain company dress code requirements, such as objections to pants or short-sleeved shirt requirements for women of certain religions. Employer grooming requirements such as shaving or hair length requirements may conflict with Sikh uncut hair and beard practices, Rastafarian dreadlocks, and/or Jewish peyes (sidelocks).<sup>92</sup>

Employers should generally expect to grant such religious accommodation requests, even if they would deny similar requests attributed to employee personal preferences. Indeed, even pre-*Groff* EEOC guidance explicitly stated “[i]n most instances, employers are required by federal law to make exceptions to their usual rules or preferences to permit applicants and employees to observe religious dress and grooming practices.”<sup>93</sup> Employers should work with their employees to see if certain modifications to their dress code will accommodate the employee's faith requirements, such as including requiring the employee to cover long hair with a hairnet, temporarily cover tattoos, and/or require the employee's religious garments to be the same color as the company's uniform.<sup>94</sup> Similarly, non-religious entities should also keep in mind that they are generally prohibited from requiring their employees to don religious garb, such as Christian crosses.<sup>95</sup>

Courts analyzing these accommodation claims in the post-*Groff* world may consider such factors as whether the policies are universally applied outside the religious context. Recall the correctional officer in the *Hebrew* Fifth Circuit case was fired for refusing to cut his hair and beard.<sup>96</sup> He asserted that he was a member of the Hebrew Nation religion and had vowed for over two decades to keep his hair and beard long.<sup>97</sup> The Fifth Circuit applied *Groff* and ruled in favor of the employee, rejecting the employer's arguments that long hair and beards violated its safety protocols and citing exceptions the employer had granted other groups.<sup>98</sup> Under these circumstances, the employer could not establish that granting Mr. Hebrew's accommodation request would constitute an undue hardship.<sup>99</sup>

Even universal policies will yield absent undue burden following the *Groff* decision. In *United States v. California Dep't. of Corrections and Rehabilitation*, for example, the Eastern District of California granted the plaintiffs' motion for preliminary relief when multiple correctional officers sought religious accommodations allowing them to wear beards.<sup>100</sup> The employer prohibited beards because state policy did not allow facial hair that broke the seal of respirators designed to limit correctional officers' exposure to chemical agents and aerosol transmissible diseases

88 Press Release, EEOC, *Logic Staffing to Pay \$217,500 in EEOC Religious Discrimination, Retaliation Lawsuit* (Aug. 20, 2025); See also Press Release, EEOC, *Mavis Tire to Pay \$303,758 for Religious Discrimination and Retaliation* (Dec. 15, 2025) (EEOC announcing settlement regarding applicant's claims he was not hired after he requested Friday evenings and Saturdays off to observe the Sabbath and that the company also offered him a lower position with a more flexible schedule); Press Release, EEOC, *P.F. Chang's to Pay \$80,000 for Religious Discrimination* (Sept. 15, 2025) (EEOC announcing an \$80,000 settlement with P.F. Chang's regarding a job applicant's claims he was not hired after he requested Sundays off due to his religious beliefs).

89 Press Release, EEOC, *Marriott Companies to Pay \$175,000 in EEOC Religious Discrimination Lawsuit* (Dec. 11, 2025).

90 See, e.g., Press Release, EEOC, *EEOC Sues Omni Hotels for Religious Discrimination and Retaliation* (June 27, 2025) (press release stating EEOC had filed a lawsuit alleging the hotel chain discriminated against an employee by denying his request to not work on Sundays and then retaliated against him for requesting an accommodation by substantially reducing his hours; Press Release, EEOC, *EEOC Charges FCA with Firing Worker for Practicing His Faith* (July 7, 2025) (press release noting EEOC had filed a lawsuit alleging the automobile manufacturer improperly revoked a Jewish employee's reasonable accommodation request).

91 EEOC-NVTA-2014-4, *Religious Garb and Grooming in the Workplace: Rights and Responsibilities* (Mar. 16, 2014).

92 *Id.*

93 *Id.*

94 See *id.*

95 See *id.*

96 80 F.4th 717.

97 *Id.* at 719.

98 *Id.*

99 *Id.*

100 737 F.Supp.3d 977 (E.D. Cal. 2024).

such as COVID-19.<sup>101</sup> The court concluded that the employer had not established “that allowing *any* Correctional Officer to maintain a beard in *any* position across its institutions would constitute an undue hardship.”<sup>102</sup> The court noted that large-scale prison riots “are rare, such that it would not be an undue hardship to ensure that individuals who cannot use respirators for religious purposes are assigned different tasks that would not require them to use a respirator during such an event.”<sup>103</sup> Similarly, in *Smith v. City of Atlantic City*, the Third Circuit held the employer had failed to establish undue hardship justifying its generally applicable beard policy where the employer “can only theorize a vanishingly small risk that [the plaintiff] will be called in to engage in the sort of firefighting activities for which” a respiratory mask was required.<sup>104</sup>

The EEOC is also active in pursuing more quotidian dress code accommodation requests. For example, in August 2025, the EEOC announced that a North Carolina-based dental company had agreed to pay \$61,000 to a former employee who alleged she was fired after she requested a religious accommodation to wear a scrub skirt instead of scrub pants.<sup>105</sup> A few weeks later, the EEOC announced a \$47,500 settlement with a restaurant owner over allegations the company mocked and refused to hire a server candidate who wore long skirts due to her religious beliefs.<sup>106</sup> Earlier, in June, the EEOC announced it had filed a lawsuit alleging a construction company failed to accommodate an employee’s request to wear a skirt over her work pants due to her religious beliefs.<sup>107</sup>

## 7. Dietary Restrictions

Employees sometimes submit accommodation requests relating to their religious dietary restrictions. For example, Jewish employees may follow a Kosher diet, necessitating the separation of meat from dairy and a prohibition on shellfish and pork, among other requirements. Muslim employees may follow Halal dietary restrictions, which prohibit, *inter alia*, pork and alcohol. Hindu employees may avoid beef or follow a vegetarian or vegan diet.

Employees may seek religious accommodations relating to these dietary restrictions. For example, employees may submit religious accommodations to avoid serving or transporting alcohol.<sup>108</sup> Other employees may seek alternative food options at company-provided meals or events. In the post-*Groff* landscape, it will likely be difficult for an employer to argue that providing alternative food options imposes a substantial cost in the overall context of an employer’s business.<sup>109</sup> Employers that serve alcohol at company events should also consider whether attendance at such events can be voluntary.

Religious dietary restrictions can also conflict with other employment requirements. In the post-*Groff* case of *Taylor v. The Southeastern Penn. Transportation Authority*,<sup>110</sup> for example, the plaintiff alleged his employer discriminated against him and violated his First Amendment rights when it required him to provide a urine sample for drug testing, a condition he could not meet during Ramadan when he was unable to consume fluids necessary to ensure an adequate sample collection. The plaintiff proposed scheduling his follow-up drug testing outside of Ramadan and/or outside daylight hours.<sup>111</sup> The court concluded that scheduling the follow-up drug tests outside of Ramadan would constitute an undue hardship because it would require SEPTA to violate federal regulations requiring unannounced drug tests during the work day, and would compromise public safety because employees

101 *Id.* at 980, 982.

102 *Id.* at 981 (emphasis in original).

103 *Id.* at 993.

104 138 F.4th 759, 775 (3d Cir. 2025). *Contra Sughrim v. New York*, 690 F.Supp.3d 355, 380-84 (S.D.N.Y. 2023) (granting summary judgment for plaintiffs who challenged prohibition on one-inch beard while denying summary judgment for plaintiff seeking four-inch beard because the longer beard could pose safety risks or hide contraband).

105 Press Release, EEOC, *The Teeth Doctors to Pay \$61,000 to Resolve EEOC Religious Discrimination Charge* (Aug. 4, 2025); See also Press Release, EEOC, *Chipotle to Pay \$20,000 in EEOC Religious Harassment Lawsuit* (Apr. 1, 2025) (EEOC announcing Chipotle Services, Inc. had agreed to pay \$20,000 to a former employee who alleged her supervisor repeatedly asked her to remove her hijab, grabbed it and partially removed it himself, and refused to schedule her after she reported his behavior).

106 Press Release, EEOC, *Buffalo Wild Wings to Pay \$47,5000 in EEOC Religious Discrimination Lawsuit* (Aug. 26, 2025).

107 Press Release, EEOC, *EEOC Sues CEMEX Construction Materials Florida for Religious Discrimination* (June 4, 2025). See also Press Release, EEOC, *EEOC Sues Apple for Religious Discrimination and Retaliation* (Sept. 30, 2025) (EEOC press release stating it had filed suit against defendant regarding scheduling accommodations and grooming policy violations).

108 See, e.g., *EEOC v. Star Transport, Inc.*, 2015 WL 13597802 (C.D. Ill. Mar. 16, 2015) (employer failed to accommodate Muslim employees whose religious beliefs prohibited them from transporting alcohol).

109 See 600 U.S. at 468.

110 2024 WL 3203318 (E.D. Pa. June 27, 2024).

111 *Id.* at \*26.

could avoid detection if they knew when the drug tests would be scheduled.<sup>112</sup> However, the court nonetheless granted summary judgment to the plaintiff on this claim because it concluded that SEPTA could have accommodated him by scheduling his follow-up tests at the beginning of his shifts.<sup>113</sup>

### C. Unique Issues Facing the Healthcare and Pharmaceuticals Industries

The healthcare and pharmaceuticals industries face particular challenges with employee requests for religious accommodation and unique considerations that may make accommodating those requests an undue hardship, including conflicts with patient health and safety or interruptions to highly sensitive research and development work. As result, these industries may, depending on an employee's role and job duties, have greater difficulties accommodating religious accommodation requests.

In addition to the more common requests for accommodations to work schedules, healthcare and pharmaceutical industry accommodation requests may include changes in assignments so the individual need not perform particular types of work or work with particular types of patients, such as patients undergoing abortions, receiving transplants, or undergoing gender-affirming surgery; the research, development, treatment, and/or prescription of contraceptives, hormone therapies, certain blood products, medications, or other treatments; and exceptions to attire and grooming policies with safety implications such as facial hair, head scarves, or the like.

On the workplace safety front, the abundance of litigation relating to the pandemic continues. However, in a bright spot for these employers, federal appellate courts have increasingly recognized that patient health and safety concerns may be significant enough to make accommodating the requesting employee unduly burdensome. In *Hall v. Sheppard Pratt Health System, Inc.*, the Fourth Circuit affirmed summary judgment for the healthcare provider after it showed that accommodating an unvaccinated employee working with vulnerable patients and her co-workers would constitute an undue hardship in the form of increased risk of outbreaks of COVID-19, disrupted treatment, and financial harm, particularly if it were required to grant each of the 200 religious exemption requests it received.<sup>114</sup> Multiple other federal circuit courts have reached similar conclusions for healthcare providers over the last year.<sup>115</sup>

Employers reviewing these cases will note that each accommodation analysis, including any post-*Groff* undue hardship defense, is highly fact-specific. For example, if a healthcare provider receives a request for accommodation from an employee who does not wish to participate in abortion procedures, whether that employee can be accommodated absent undue hardship may turn on their particular role and how the healthcare provider actually operates. Some individuals who request to be accommodated in relation to abortion do not want to participate in the procedure itself, but do not seek to avoid caring for a patient who has undergone an abortion. Others may be willing to participate if the life of the mother is at stake but not if the abortion is elective. Beliefs vary widely. As such, it is important for employers to understand the scope of the employee's request for accommodation and not make assumptions prior to assessing undue hardship.

In a notable pre-*Groff* decision, *Shelton v. University of Med. & Dentistry*, a pregnant patient had a medical event necessitating an emergency cesarean section.<sup>116</sup> The plaintiff-nurse refused to participate in the procedure because it would terminate the pregnancy.<sup>117</sup> Eventually, another nurse stepped in but it delayed the emergency procedure and the hospital subsequently informed the plaintiff she could no longer work in Labor and Delivery and offered her a transfer to another unit, which she declined.<sup>118</sup> The district court granted the hospital's motion for summary judgment, finding it had reasonably accommodated the nurse's religious beliefs. The Third Circuit affirmed. More recently, in January 2025, the Southern District of Florida denied summary judgment in the case of *Kristofersdottir v. CVS Health Corp.*, in which the plaintiff, a nurse practitioner, refused to prescribe contraceptives to patients despite no one else at that location being qualified to do so.<sup>119</sup> The court granted the defendant's motion for summary

112 *Id.* at \*\*26-27.

113 *Id.* at \*\*28.

114 155 F.4th 747 (2025).

115 *Melino v. Bos. Med. Ctr.*, 127 F.4th 391 (1st Cir. 2025); *Henry v. S. Ohio Med. Ctr.*, 155 F.4th 620 (6th Cir. 2025); *Wise v. Children's Hosp. Med. Ctr. of Akron*, No. 24-3674, 2025 WL 1392209 (6th Cir. May 14, 2025); *Bushra v. Main Line Health, Inc.*, No. 24-1117, 2025 WL 1078135 (3d Cir. Apr. 10, 2025); *Kizer v. St. Jude Child.'s Rsch. Hosp.*, No. 24-5207, 2024 WL 4816856 (6th Cir. Nov. 18, 2024).

116 223 F.3d 220, 223 (3d Cir. 2000).

117 *Id.*

118 *Id.*

119 Case No. 24-CV-80057-RLR, 2025 U.S. Dist. LEXIS 12799 (Jan. 24, 2025).

judgment on the failure to accommodate claim. Employers in healthcare and pharmaceuticals should be particularly cautious of the intersection of religious accommodation requests and unique issues related to patient and co-worker health and safety.

## D. Religious Freedom Restoration Act

The First Amendment to the United States Constitution provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” The much newer Religious Freedom Restoration Act (RFRA) prohibits the government from substantially burdening religious exercise, even by implementing a law of general applicability, unless it can establish a compelling governmental interest and no less restrictive means of achieving that interest.<sup>120</sup> RFRA is limited to federal government action, but dozens of states have passed their own RFRA equivalents. Most courts have recognized that RFRA lawsuits can only be brought against government entities.<sup>121</sup>

In *Burwell v. Hobby Lobby Stores*,<sup>122</sup> the Supreme Court addressed the scope of RFRA protections and ultimately concluded that closely held private companies, as well as individuals, could claim to be burdened in violation of RFRA. Defendant employers had argued that federal regulations mandating health insurance coverage for contraceptives violated the sincerely held religious beliefs of the companies’ owners.<sup>123</sup> The Court concluded that the contraceptive mandate imposed a substantial burden on the exercise of the companies’ religion, and it further held the mandate was unlawful because it did not use the least restrictive means of fulfilling the goal of ensuring women had access to contraceptives.<sup>124</sup>

The Court signaled its broad interpretation of RFRA in *Bostock v. Clayton Co., Georgia*.<sup>125</sup> *Bostock* presented three consolidated cases in which employees were terminated after revealing they were homosexual or transgender.<sup>126</sup> The employees raised discrimination claims under Title VII.<sup>127</sup> The Court conducted a textual analysis of the statute to rule in favor of the employees, and it explained “[a]n employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids.”<sup>128</sup> While none of the employers in that case argued that RFRA impacted their Title VII obligations, the Court recognized the potential conflict between its decision and the RFRA and claims of religious liberty.<sup>129</sup> The Court noted, “[b]ecause RFRA operates as a kind of super statute, displacing the normal operation of other federal laws, it might supersede Title VII’s commands in appropriate cases... But how these doctrines protecting religious liberty interact with Title VII are questions for future cases too.”<sup>130</sup>

In *Braidwood Management, Inc. v. EEOC*,<sup>131</sup> the Fifth Circuit issued one of the first decisions to address the interplay between the RFRA, Title VII, and *Bostock*. The plaintiffs, a church and a privately held Christian management company, filed suit against the EEOC seeking declaratory judgments to the effect that the RFRA compels exemptions to *Bostock*’s interpretation of Title VII.<sup>132</sup> The court found that forcing the private company to comply with Title VII post-*Bostock* would substantially burden its “ability to operate per its religious beliefs about homosexual and transgender conduct.”<sup>133</sup> The court concluded that the EEOC had not shown it had a compelling interest in refusing to grant the company an exception from *Bostock* and noted “[a]lthough the Supreme Court may someday determine that preventing commercial businesses from discriminating on factors specific to sexual orientation or gender identity is such a compelling government interest that it overrides religious liberty in all cases, it has never so

120 42 U.S.C. 2000bb *et seq.*

121 See, e.g., *Ermold v. Davis*, 130 F.4th 553, 564 (6th Cir. 2025) (RFRA does not apply to lawsuits between private parties) (citations omitted); *Billard v. Charlotte Catholic High Sch.*, 101 F.4th 316, 324 (4th Cir. 2024) (referencing the “great weight of court authority” finding RFRA does not apply to private party lawsuits); *Listecki v. Off. Comm. of Unsecured Creditors*, 780 F.3d 731, 736-37 (7th Cir. 2015) (concluding the RFRA does not apply if the government is not a party).

122 573 US. 682 (2014).

123 *Id.* at 688.

124 *Id.* at 691-92.

125 590 U.S. 644 (2020).

126 *Id.*

127 See, e.g., *id.* at 654.

128 590 U.S. 644, 651-52 (2020).

129 *Id.* at 681-82.

130 *Id.* at 682.

131 70 F. 4th 914 (5th Cir. 2023).

132 *Id.* at 921.

133 *Id.* at 937.

far held that.”<sup>134</sup> Moreover, even if the EEOC had established a compelling interest, “forcing [the company] to hire and endorse the views of employees with opposing religious and moral views is not the least restrictive means of promoting that interest.”<sup>135</sup> Going forward, it is likely that employers will rely on similar arguments to challenge generally applicable policies that conflict with their religious beliefs.

## E. Conflicts with Sexual Orientation and Gender Identity

Employers may encounter challenges accommodating employees’ religious beliefs when the requested accommodations potentially expose them to liability for sex discrimination claims from other employees. These challenges can arise in the context of employees who claim their religious beliefs abjure homosexuality or recognizing transgender status; this in turn prevents them from obeying otherwise neutral employer policies, such as using co-workers’ preferred names or pronouns.<sup>136</sup> Post-*Bostock*, homosexual and transgender employees clearly have a Title VII claim if they can show discrimination or harassment based on those protected characteristics. And Pre-*Groff*, the Ninth Circuit said, “An employer need not accommodate an employee’s religious beliefs if doing so would result in discrimination against his coworkers or deprive them of contractual or other statutory rights.”<sup>137</sup> But does this meet the new undue hardship standard *Groff* requires?

Shortly before the Supreme Court’s 2023 decision *Groff*, in *Haskins v. Bio Blood Components*, the Western District of Michigan applied the “more than *de minimis* cost” analysis in evaluating whether a Christian plaintiff who did not want to comply with her employer’s requirement that she use her coworkers’ preferred gender pronouns had stated a *prima facie* case of religious discrimination based on failure to accommodate.<sup>138</sup> Plaintiff alleged that her employer could have accommodated her religious beliefs by allowing her “to simply tell [another employee] that she- he- cannot change the work of the Lord to suit a personal whim or accommodate a mental illness or belief system” or provided other possible accommodations, including transfer to another location. The district court found that the first accommodation – allowing the plaintiff to tell another employee that his gender identity was a personal whim or mental illness – might qualify as harassment and would not be a reasonable accommodation even if it did not violate Title VII.<sup>139</sup> As for the location transfer request, the defendant employer argued this accommodation would not be reasonable because the closest location was 90 miles away. However, the district court did not opine on whether the transfer request was reasonable because those details were not a part of the complaint and, therefore, the district court could not consider them at the motion to dismiss stage.<sup>140</sup> Accordingly, the district court did not dismiss the plaintiff’s failure to accommodate claim because the complaint alone did not show the defendant would be unable to provide a reasonable accommodation without undue hardship.<sup>141</sup>

In *Kluge v. Brownsburg Community School Corp.*,<sup>142</sup> the Seventh Circuit initially held that a public school corporation’s decision to rescind an accommodation allowing a Christian teacher to address students only by their last names, and termination of his employment for failure to follow its rules on addressing transgender students by their chosen first names and preferred pronouns, did not violate Title VII’s prohibition against religious discrimination. However, following the *Groff* decision, the Seventh Circuit vacated its judgment in *Kluge* and remanded the case for the district court to apply the new undue hardship standard for religious accommodation. The district court then determined that granting an accommodation worked an undue hardship because it resulted in substantial student harm and created an unreasonable risk of liability under Title IX. That decision was appealed to the Seventh Circuit and, on August 5, 2025, the circuit court concluded that there were material factual disputes about whether the accommodation was the cause of emotional harm to students, whether it disrupted the

<sup>134</sup> *Id.* at 939.

<sup>135</sup> *Id.* at 940.

<sup>136</sup> Federal courts have held that intentionally misgendering a transgender person can support a claim for hostile work environment. See, e.g., *Washburn v. Kingsborough Cmty. Coll.*, No. 20-CV-0395(DLI)(MMH), 2023 WL 2682521, at \*12 (E.D.N.Y. Mar. 29, 2023) (intentionally misgendering a transgender person can lend support for a hostile work environment claim); *Doe v. Pennsylvania Dep’t of Corr.*, No. 4:19-CV-01584, 2022 WL 3219952, at \*5 (M.D. Pa. Aug. 9, 2022) (finding a reasonable juror could determine that physical intimidation, discriminatory comments and almost daily misgendering created a hostile work environment); *Higgs v. Cava Grp., Inc.*, 239 F. Supp. 3d 257, 259 (D.D.C. 2017).

<sup>137</sup> *Peterson v. Hewlett-Packard Co.*, 358 F.3d 599, 607 (9th Cir. 2004) (granting summary judgment for employer where plaintiff argued the employer’s workplace diversity campaign was “a crusade to convert fundamentalist Christians to its values,” including “the homosexual lifestyle” and had posted anti-gay messages in the workplace in response to the employer’s posters communicating the company’s views on diversity).

<sup>138</sup> No. 1:22-CV-586, 2023 WL 2071483, at \*2 (W.D. Mich. Feb. 17, 2023).

<sup>139</sup> *Id.* at \*3.

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> No. 1:19-CV-02462-JMS-KMB, 2024 WL 1885848 (S.D. Ind. Apr. 30, 2024) *appeal docketed*, No. 1:19-cv-02462 (7th Cir. May 31, 2024).

employer’s learning environment, and whether it posed an undue hardship on the school’s educational mission.<sup>143</sup> As for the employer’s position that the accommodation posed an unreasonable risk of liability under Title IX, the Seventh Circuit held there was no evidence that plaintiff Kluge’s gender-neutral accommodation subjected transgender students to different treatment than non-transgender students.<sup>144</sup> For these reasons, the Seventh Circuit reversed the district court’s grant of summary judgment in the employer’s favor on the undue hardship issue and again remanded the case back to the district court.<sup>145</sup>

Employees also may request religious accommodations in the form of being excused from employer-mandated EEO training that covers gender identity, sexual orientation, and/or diversity and inclusion efforts. In a 2024 Eighth Circuit case, *Norgren v. Minnesota Department of Human Services*, a father and son working for the same employer both requested and were denied religious exemptions from completing a training on gender identity and expression.<sup>146</sup> Plaintiffs later brought Title VII discrimination and retaliation claims against their employer, as well First Amendment claims, all of which stemmed in part from the denial of their requests to be excused from the gender identity and expression training.<sup>147</sup> Both plaintiffs alleged they were treated differently following their exemption requests. The father resigned and claimed he was discriminated against at work to the point he felt “forced to prematurely separate.”<sup>148</sup> The Eighth Circuit affirmed the district court’s dismissal of his claim because he had already given notice of his plan to retire three weeks before his exemption request was denied.<sup>149</sup> The son claimed Title VII discrimination and retaliation because he: (1) was denied a day off due to inclement weather; (2) filed a charge of discrimination with the EEOC regarding the denial of his exemption request; and (3) was not considered for a job for which he had previously been deemed to have met the minimum qualifications.<sup>150</sup> The Eighth Circuit reversed the dismissal of the son’s Title VII claims because the district court had failed to construe factual doubts in the son’s favor as it was required to do at the motion to dismiss stage.<sup>151</sup> The son later settled his claims for a total of \$15,000.

The EEOC has advised that “the content of the training materials may be determinative in deciding whether it would pose an undue hardship to accommodate an employee by excusing him or her from the training or a portion thereof.”<sup>152</sup> “If the training required or encouraged employees to affirmatively support or agree with conduct that conflicts with the employee’s religious beliefs, or signal their support of certain values that conflict with the employee’s religious beliefs, it would be more difficult for an employer to establish that it would pose an undue hardship to accommodate an employee who objects to participating on religious grounds.”<sup>153</sup>

While employers can and should consider exposure to liability of claims of harassment or discrimination from others in assessing whether an employee’s request for religious accommodation poses an undue hardship, the inquiry into potential risk of liability must be fact-specific and not predicated on assumptions and/or lack of information about an employee’s religious beliefs.

## F. Religious Expression and Political or Hate Speech

Religious expression often is alleged to contribute to political or hate speech against certain groups of people. Employer attempts to moderate or control this behavior can implicate the First Amendment’s Free Speech and Free Exercise Clauses as well as Title VII liability. These issues may arise when employers take action against employees for conduct outside the workplace, such as content shared on personal social media accounts.

143 See No. 24-1942, at 23, 29-30 (7th Cir. 2025).

144 *Id.* at 32.

145 *Id.* at 38.

146 Plaintiffs also opposed an anti-racist training, claiming it violated their traditional view of equality under Title VII.

147 96 F.4th 1048 (8th Cir. 2024).

148 *Id.* at 1053.

149 *Id.* at 1056.

150 *Id.* at 1054.

151 See *id.* at 1056.

152 EEOC COMPLIANCE MANUAL, note 228, at § 12.IV.C.7, Example 55 & n.315.

153 *Id.*; see also *Buonanno v. AT&T Broadband, LLC*, 313 F. Supp. 2d 1069, 1081-83 (D. Colo. 2004) (holding that a company could require and instruct employees to treat coworkers with respect in accordance with corporate diversity policy, but that a violation of Title VII occurred where the company did not accommodate employee’s refusal on religious grounds to sign diversity policy asking him to “value the differences among all of us,” which he believed required him to ascribe worth to a certain behaviors or beliefs he believed were repudiated by Scripture rather than simply agree to treat his coworkers appropriately); Andrew B. Rogers, *Beyond Undue Hardship: Religion and Sincerity in a Post-Groff World*, 62 U. Louisville L. Rev. 345, n. 289 (2025).

Within the past few years, conflict in Israel and Gaza led to claims that speech in support of or against Israel amounted to religious expression or political speech. In *Chehade v. Foley & Lardner, LLP*,<sup>154</sup> still pending in the Northern District of Illinois, the plaintiff, an Arab Muslim, alleges a law firm revoked her employment offer after it found her social media posts speaking out in support of Gaza. More specifically, the plaintiff alleges she was interrogated by the defendant about her student activism, community associations, and social media posts concerning Hamas's attack and Israel's response prior to the revocation of her job offer. She claims discrimination based on both ethnicity and religion, among other claims. The court rejected an award of summary judgment to the employer, and so the matter will be set for trial.

*Carter v. Transport Workers Union of America Local 556* is another recent example of a case testing the limits of regulating worker religious expression on social media.<sup>155</sup> There, plaintiff, a Christian flight attendant and staunch opponent of organized labor, was terminated from her job after posting anti-abortion messages and images of aborted fetuses on social media and sharing these with her employer's union leadership through Facebook Messenger. The union leader who received the images through Facebook Messenger described them as "political and religious comments," "incredibly disturbing," "obscene," "violent," and "threatening." She also claimed they violated the airline's Harassment and Workplace Bullying and Hazing policies as well as its social media policy. Following an investigation, the airline terminated the plaintiff based on her Facebook posts. After an arbitrator upheld plaintiff's termination, she sued in federal court and the case proceeded to a jury trial. The jury ruled in plaintiff's favor and the case subsequently went to the Fifth Circuit on appeal of various issues raised by the airline, the union, and the plaintiff.

Noting that no effort was made to accommodate the plaintiff's religious beliefs and distinguishing between belief-based and practice-based religious discrimination claims, the Fifth Circuit analyzed plaintiff's claims for (1) intentional discrimination against her religious beliefs; (2) intentional discrimination against her religious practices; and (3) failing to accommodate her religious practices. The circuit court emphasized that there is no undue hardship defense to a claim alleging intentional discrimination against someone for their religious beliefs. The Fifth Circuit nevertheless reversed the district court's denial of the airline's motion for summary judgment with respect to the plaintiff's belief-based discrimination claim and remanded with instructions for the district court to enter summary judgment in the airline's favor on that claim. As for plaintiff's practice-based claim, the Fifth Circuit held this turned on whether the airline would face undue hardship by accommodating plaintiff's religious beliefs. Notably, the trial occurred before the *Groff* decision, and the jury had been instructed that "[a]n undue hardship means more than a *de minimis* cost." The airline took issue with this jury instruction and argued that it should be allowed to present evidence that the plaintiff's conduct would impose significant cost on the business by devastating employee morale. The Fifth Circuit disagreed, holding they were not required to grant a new trial when intervening precedent raised the burden on the party seeking retrial, and affirmed judgment against the airline on plaintiff's practice-based Title VII claims.

Considering these examples, employers should be careful when they attempt to take action based on employee speech on religious matters, particularly when it occurs outside the workplace, and when those matters may intersect with topics such as national origin or politics. Employers should consider whether the conduct at issue really runs afoul of their current policies as written, as well as whether they may have an obligation to try to accommodate an employee's religious expression in this post-*Groff* era.

For more examples of FY 2025 EEOC case filings and settlements involving claims of religious discrimination and accommodation, please see Appendix A to this Report.

---

154 Case No. 24-cv04414 (N.D. Ill. filed May 29, 2024).

155 Case No. 23-10008 (5th Cir. 2025).

## II. Overview of EEOC Charge Activity, Litigation and Settlements

FY 2025 represents the first full fiscal year in which Chair Andrea R. Lucas led the EEOC and the first full year of enforcement under the second Trump administration. The relatively steady level of charge filings, coupled with markedly higher monetary recoveries, reflects a strategic shift toward what the Commission has characterized as evenhanded, merits-based enforcement and prioritization of cases aligned with administration priorities, including diversity, equity and inclusion (DEI)-related race and sex discrimination, protection of American workers from national origin bias favoring foreign labor, defense of women’s sex-based rights, and robust protection of religious liberty. These priorities are reflected not only in the Commission’s enforcement outcomes, but also in the allocation of agency resources, conciliation practices, and outreach activity during FY 2025.

### A. Review of Charge Activity, Backlog and Benefits Provided

On December 31, 2025, the Commission issued its Agency Financial Report (“FY 2025 AFR”).<sup>156</sup> On April 3, 2026, the EEOC issued its FY 2025 Annual Performance Report (“FY 2025 APR”).<sup>157</sup> The EEOC’s Office of General Counsel also released its own Annual Report that specifically relates to the Commission’s litigation activity in FY 2025.<sup>158</sup>

In FY 2025, the number of charges of discrimination filed with the Commission remained steady, decreasing by less than 1% (i.e., 0.37%) compared to FY 2024. In total, the EEOC received 88,201 new charges of discrimination, which is down slightly from the 88,531 filed in FY 2024. The EEOC indicates that the stability in charge receipts during FY 2025 reflects a strategic shift toward enforcement quality over numerical growth, while preserving access for meritorious claims.<sup>159</sup> The Commission also states that it initiated 17 Commissioner charges in FY 2025. This represents a decline from the 33 Commissioner charges initiated in FY 2024. While FY 2025 saw fewer Commissioner charges than FY 2024 (33), FY 2023 (35), and FY 2022 (29), it far exceeds the three Commissioner’s charges filed in each of FY 2021 and FY 2020.<sup>160</sup>

Fiscal Year	Number of Charges	% Increase/Decrease
2007	82,792	--
2008	95,402	+15.23%
2009	93,277	-2.23%
2010	99,922	+7.12%
2011	99,947	+0.03%
2012	99,412	-0.54%
2013	93,727	-5.72%
2014	88,778	-5.28%
2015	89,385	+1.01%
2016	91,503	+2.37%
2017	84,254	-7.92%
2018	76,418	-9.30%
2019	72,675	-4.90%
2020	67,448	-7.19%
2021	61,331	-9.07%
2022	73,485	+19.82%

<sup>156</sup> EEOC, Fiscal Year 2025 Agency Financial Report, available at [Fiscal Year 2025 Agency Financial Report | U.S. Equal Employment Opportunity Commission](#).

<sup>157</sup> EEOC, Fiscal Year 2025 Annual Performance Report, available at [EEOC Highlights Record-Breaking Results in Agency Reports | U.S. Equal Employment Opportunity Commission](#).

<sup>158</sup> Office of General Counsel, Fiscal Year 2025 Annual Report, available at [Office of General Counsel Fiscal Year 2025 Annual Report | U.S. Equal Employment Opportunity Commission](#).

<sup>159</sup> EEOC FY 2025 APR at 10-11.

<sup>160</sup> EEOC, Commissioner Charges and Directed Investigations, available at <https://www.eeoc.gov/commissioner-charges-and-directed-investigations>.

Fiscal Year	Number of Charges	% Increase/Decrease
2023	81,055	+9.33%
2024	88,531	+ 9.22%
2025	88,201	-.37%

Separately, the EEOC reports that the steady merit factor rate, combined with substantially increased monetary recoveries, reflects refined case selection and an enhanced focus on outcomes grounded in traditional statutory interpretation. Specifically, the Commission highlights that its merit factor rate for these charges stayed consistent at 17.5%. However, this figure is nearly identical to the 18% rate from FY 2024.<sup>161</sup> The dramatic change for Chair Lucas' first year is in the monetary recovery the EEOC obtained in FY 2025. Over the course of FY 2025, the Commission resolved 90,743 charges and secured \$660 million in monetary relief for charging parties during the administrative process.<sup>162</sup> This is a **40.55% increase** from the \$469.6 million that the EEOC recovered in FY 2024 and its third-highest annual recovery for workers. The Commission further highlights the percentage of post-investigation charge resolutions in which the EEOC obtained some form of targeted, equitable relief and boasts that it obtained targeted, equitable relief in 98.9% of conciliation agreements during the administrative process.<sup>163</sup> Overall, the EEOC states that it recovered \$528 million for victims of discrimination in the private sector and local governments, which went to 13,351 aggrieved individuals in the private sector and state and local government workplaces through mediation, conciliation, and settlements.<sup>164</sup> The EEOC secured another \$27 million for 2,505 individuals as a direct result of litigation resolutions, and more than \$104 million was awarded to 1,824 federal employees and applicants.<sup>165</sup>

Transitioning to the EEOC's charge backlog, the Commission reported 49,807 pending charges at the end of FY 2025, which is a slight decrease from the 52,080 pending charges at the end of FY 2024.<sup>166</sup> The EEOC maintains that the reduction in pending charge inventory during FY 2025 reflects direct efforts by Chair Lucas to "effectively manage" the Commission's charge inventory during her first full year, reversing what the Commission contends were upward or stagnant inventory trends of prior years.

Fiscal Year	Charge Inventory	% Increase/Decrease
2007	54,970	--
2008	73,951	+34.53%
2009	85,768	+15.98%
2010	86,338	+0.66%
2011	78,136	-9.50%
2012	70,312	-10.01%
2013	70,781	+0.67%
2014	75,658	+6.89%
2015	76,408	+0.99%
2016	73,559	-3.73%
2017	61,621	-16.23%
2018	49,607	-19.50%

<sup>161</sup> EEOC FY 2025 APR at 37. The EEOC has defined "Merit Resolutions" as charges with outcomes favorable to charging parties and/or charges with meritorious allegations. These include negotiated settlements, withdrawals with benefits, successful conciliations, and unsuccessful conciliations. See <https://www.eeoc.gov/eeoc/statistics/enforcement/definitions.cfm>.

<sup>162</sup> *Id.* at 10.

<sup>163</sup> *Id.* at 17, 36. The EEOC defines *targeted, equitable relief* as "any non-monetary and non-generic relief (other than the posting of notices in the workplace about the case and its resolution), which explicitly addresses the discriminatory employment practices at issue in the case and either provides remedies to the aggrieved individuals or prevents similar violations in the future. Such relief may include customized training for supervisors and employees, development of policies and practices to deter future discrimination, and external monitoring of employer actions, as appropriate." *Id.*

<sup>164</sup> *Id.* at 10.

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

Fiscal Year	Charge Inventory	% Increase/Decrease
2019	43,580	-12.15%
2020	41,951	-3.74%
2021	42,811	+2.0%
2022	51,399	+20.0%
2023	51,100	-0.58%
2024	52,080	+ 1.92%
2025	49,807	-4.36%

According to the Commission, managing its charge inventory included fielding approximately 94,600 emails, over 537,000 calls, and 900 ASL (American Sign Language) videophone calls from the public.<sup>167</sup> The Commission began FY 2026 with 1,809 employees, a decrease from the 2,170 employees at the beginning of FY 2025.<sup>168</sup> The EEOC explains that staffing levels declined contemporaneously with enforcement prioritization, underscoring a policy emphasis on focused deployment of resources rather than expansion of the agency's enforcement footprint.<sup>169</sup>

Fiscal Year	Number of FTEs at End of FY	Number of FTE Increase/Decrease	Percentage Increase/Decrease
2007	2,158	---	---
2008	2,176	18	+0.83%
2009	2,192	16	+0.74%
2010	2,385	193	+8.80%
2011	2,505	120	+5.03%
2012	2,346	-159	-6.35%
2013	2,147	-199	-8.48%
2014	2,098	-49	-2.28%
2015	2,191	93	+4.43%
2016	2,202	11	+0.50%
2017	2,082	-120	-5.45%
2018	1,968	-114	-5.48%
2019	2,061	93	+4.73%
2020	1,939	-122	-5.92%
2021	1,927	-12	-0.62%
2022	2,041	114	+5.92%
2023	2,300	259	+12.69%
2024	2,170	-130	-5.65%
2025	1,809	-361	-16.64%

<sup>167</sup> *Id.* at 12.

<sup>168</sup> *Id.* at 54.

<sup>169</sup> *Id.* ("The EEOC began Fiscal Year 2026 with a total of 1,809 (1,801 full-time and 8 part-time) employees, a decrease from 2,170 employees onboard at the beginning of Fiscal Year 2025. While staffing reductions affected multiple offices, the largest impacts occurred within the Office of Federal Sector (OFS) and the Office of Field Programs (OFF). In response to these staffing constraints, the agency has strategically leveraged the experience, skills, and expertise of its workforce to maintain continuity in addressing the pending private sector charge inventory and federal sector workloads. To support these efforts, effective at the beginning of Fiscal Year 2026, the EEOC implemented an agency-wide realignment to streamline processes and more efficiently and effectively utilize existing technology.").

The Commission spent a sizeable amount of ink in its Reports touting its outreach efforts from this past fiscal year, which included, among other things, the EEOC’s prioritization to educate small and new businesses on their legal responsibilities.<sup>170</sup> To this end, the EEOC held 164 events focused on small businesses, reaching 13,395 attendees.<sup>171</sup> The Commission also conducted 24 outreach and training events reaching 362 attendees on Tribal lands and 262 fee-based training events reach 19,659 attendees. The EEOC also conducted 89 events focused on the administration’s priorities, reaching 10,542 individuals:

- Two events focused on rooting out unlawful race and sex discrimination arising from or related to DEI programs, policies, and practices, reaching 57 attendees.
- 24 events focused on protecting American workers from unlawful national origin discrimination involving preferences for foreign workers, reaching 4,454 attendees.
- Two events focused on defending women’s sex-based rights at work, reaching 109 attendees.
- Seven events focused on supporting religious liberty by protecting workers from religious bias and harassment and protecting their rights to religious accommodations at work, reaching 752 attendees, as well as 17 events focused on religious discrimination, reaching 1,026 attendees.
- 37 events focused on even-handed enforcement of civil rights laws, reaching 4,144 attendees.<sup>172</sup>

## B. Systemic Investigations and Litigation

Although most EEOC lawsuits involved individual charging parties, the Commission has continued to initiate systemic investigations and litigation. Discrimination is “systemic” if it involves a discriminatory pattern, practice, or policy that has a broad impact on an industry, company, or geographic area. The EEOC stated, “[a]ddressing systemic employment discrimination on all protected bases is a high priority for the EEOC, and this year systemic litigation continued to account for notable filings and resolutions notwithstanding the lack of a quorum needed to approve the filing of such cases for much of the year.”<sup>173</sup> During FY 2025, the EEOC filed 6 new systemic lawsuits, nearly half of the 13 systemic lawsuits the Commission filed in FY 2024 and one quarter of the 25 systemic lawsuits in FY 2023. Still, systemic lawsuits account for 6.38% of all merit cases the Commission filed this past fiscal year. The EEOC indicates that the reduced number of systemic filings in FY 2025 was influenced by quorum limitations on case authorization and reflects the agency’s focus on pursuing systemic enforcement aligned with its identified priorities, including protection of American workers, sex-based rights, and religious accommodation, while emphasizing legally durable and successful outcomes.<sup>174</sup>

Year	Merits Case Filings	Systemic Filings	Percentage
2009	281	19	6.8%
2010	250	20	8%
2011	261	23	8.8%
2012	122	10	8.2%
2013	131	21	16%
2014	133	17	12.8%
2015	142	16	11.3%
2016	86	18	20.9%
2017	184	30	16.3%
2018	199	37	18.6%

<sup>170</sup> *Id.* at 28.

<sup>171</sup> *Id.* at 48.

<sup>172</sup> *Id.*

<sup>173</sup> *Id.* at 41

<sup>174</sup> *Id.* at 38 (reporting six systemic lawsuits filed in FY 2025); 42 (noting the absence of a quorum needed to approve systemic filings for much of the year and emphasizing successful resolution of systemic cases); 5, 6, 11, 42 (describing enforcement priorities under Chair Lucas, including sex-based rights, religious liberty, and protection of American workers).

Year	Merits Case Filings	Systemic Filings	Percentage
2019	144	17	11.8%
2020	93	13	14%
2021	116	13	11.2%
2022	91	13	14.3%
2023	143	25	17.5%
2024	111	13	12%
2025	94	6	6.4%

The 6 systemic lawsuits filed by the EEOC in FY 2025 covered a broad spectrum of claims, including Title VII national origin discrimination against American workers in favor of foreign-born workers; Title VII sex discrimination against an employer that refused to hire female employees for laborer positions; Title VII sexual harassment that included persistent sexually offensive remarks, demeaning treatment, and physical misconduct toward female employees based on their sex; ADEA discrimination against older workers based on a collective bargaining agreement that limited short-term disability payments to older workers who receive Social Security Retirement benefits; and ADA discrimination against qualified individuals with hearing impairments.<sup>175</sup> Besides initiating new systemic lawsuits, the EEOC resolved 13 systemic cases, which led to the EEOC obtaining over \$10.8 million in monetary relief for 2,282 victims of systemic discrimination.<sup>176</sup> The EEOC boasts “a remarkable 100% success rate in systemic case resolutions” for FY 2025.<sup>177</sup>

Fiscal Year	Systemic Lawsuits Monetary Recovery
2012	\$36.2 million
2013	\$40 million
2014	\$13 million
2015	\$33.5 million
2016	\$20.5 million
2017	\$38.4 million
2018	\$30 million
2019	\$22.8 million
2020	\$69.9 million
2021	\$24.4 million
2022	\$29.7 million
2023	\$11.7 million
2024	\$23.9 million
2025	\$10.8 million

<sup>175</sup> *Id.* at 42.

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

At the end of the fiscal year, the EEOC had 180 merits cases on its active district court docket, 45% of which (or 81 active cases) were class or systemic cases.

Fiscal Year	Number of Total Pending Litigation Cases	Number of Pending Systemic Cases	% of Systemic Cases in Litigation
2012	309	62	20.0%
2013	231	54	23.4%
2014	228	57	25.0%
2015	218	48	22.0%
2016	165	47	28.5%
2017	242	60	24.8%
2018	302	71	23.5%
2019	275	59	21.5%
2020	201	59	29.3%
2021	180	29	16.0%
2022	177	32	18.0%
2023	227	48	21.1%
2024	205	45	22.0%
2025	180	81	45.0%

The EEOC had notable systemic investigation conciliations, including several involving COVID-19 vaccine requirements and religious-based failure to accommodate claims, resulting in recoveries of \$2.8 million, \$1.74 million, \$1 million, \$772,000, and \$212,280. The EEOC also secured \$181,000 after successfully conciliating an investigation involving a mandatory flu vaccine and religious-based failure to accommodate claims.

As part of the EEOC’s Strategic Plan, the Agency continues to intend to have at least two Enforcement Unit systemic staff members in every District.<sup>178</sup>

### C. EEOC Litigation Statistics – Type of Lawsuit, Location, and Claims

The EEOC filed 94 “merits” lawsuits in FY 2025, of which 59 suits were filed on behalf of individuals—29 of these “multiple victim lawsuits” were non-systemic class suits (typically involving fewer than 20 individuals) and 6 were systemic cases.<sup>179</sup> Down from 111 merits lawsuits in 2024 and 143 merits lawsuits in 2023, the EEOC indicates that the reduced overall number of merits lawsuits filed in FY 2025 reflects the exercise of prosecutorial discretion favoring precedent-setting and compliance-driven cases over year-end filing volume.<sup>180</sup>

Year	Individual Cases	“Multiple Victim” Cases (including systemic cases)	Percentage of Multiple Victim Lawsuits	Total Number of EEOC “Merits” <sup>181</sup> Lawsuits
2005	244	139	36%	381
2006	234	137	36%	371
2007	221	115	34%	336
2008	179	111	38%	270
2009	170	111	39.5%	281

<sup>178</sup> *Id.* at 20.

<sup>179</sup> *Id.* at 38.

<sup>180</sup> *Id.* at 38-39 (reporting total merits filings and describing the composition of cases filed); 39 (emphasizing favorable resolutions in 96.5% of district court cases and identifying the types of claims prioritized); 42 (highlighting the agency’s focus on successful, legally sound litigation outcomes rather than volume).

<sup>181</sup> The EEOC has defined “merits” suits as direct lawsuits or interventions involving alleged violations of the substantive provisions of the Commission’s statutes, as well as suits to enforce settlements reached during EEOC’s administrative process.

2010	159	92	38%	250
2011	177	84	32%	261
2012	86	36	29%	122
2013	89	42	24%	131
2014	105	28	22%	133
2015	100	42	30%	142
2016	55	31	36%	86
2017	124	60	33%	184
2018	117	82	41%	199
2019	100	44	31%	144
2020	68	25	27%	93
2021	74	42	21.1%	116
2022	53	38	41.8%	91
2023	86	57	66.2%	143
2024	76	35	31.5%	111
2025	59	29	30.9%	94

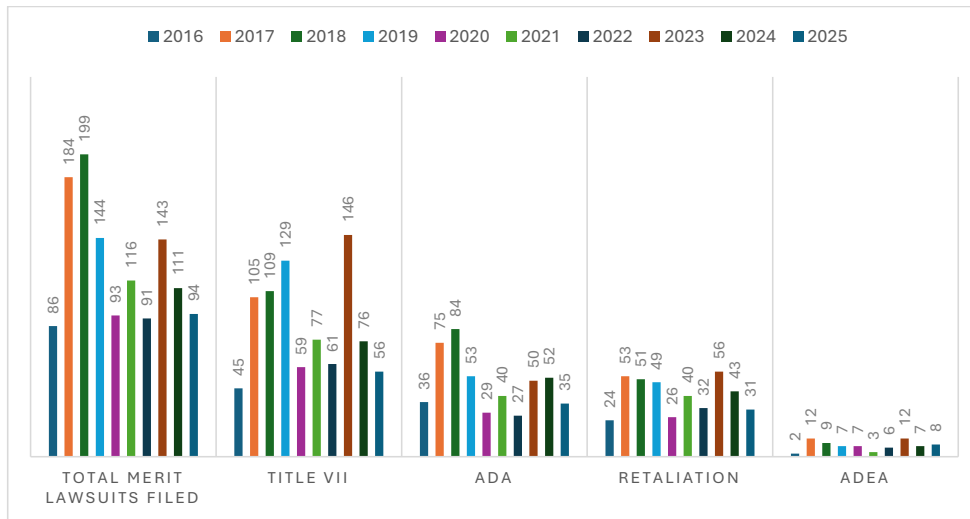
With limited exception, the EEOC typically files scores of lawsuits at the end of the fiscal year, recently filing more lawsuits in the fourth quarter than during the preceding three combined. In FY 2022, the EEOC filed over 60% of all lawsuits filed during the entire fiscal year in the final two months. In FY 2023, the EEOC’s end-of-year filings consisted of approximately 60% of all lawsuits filed during the entire fiscal year. In FY 2024, 67% of merits lawsuits were filed in the fourth quarter of FY 2024. FY 2025 followed this trend, albeit to a slightly lesser degree, with 42.31% of the merits lawsuits being filed in the final quarter of FY 2025.

	2021	2022	2023	2024	2025
1	Texas (14)	California, Texas (8)	Texas (11)	Georgia (12)	Illinois, Georgia, Michigan (7)
2	Florida (10)	Maryland (7)	Florida, Ohio (10)	Texas (11)	
3	Illinois (7)	Georgia, Florida, Washington, N. Carolina (5)	N. Carolina, California (8)	Illinois (9)	Louisiana, Texas, Florida (6)
4	Georgia, Alabama, Colorado (6)	Louisiana, Colorado, Wisconsin (4)	Louisiana, Georgia, New York, Illinois (7)	Maryland (8)	North Carolina (5)
5	California, New York, Pennsylvania, Maryland (5)	Illinois, South Carolina, Arizona (2)	Nevada, Maryland (6)	Florida, New York (7)	California, New York Mississippi, Virginia (4)
6	Mississippi, N. Carolina (4)	Oklahoma, Arkansas, Kentucky, Pennsylvania, Nebraska, Tennessee, New York (1)	Pennsylvania, Tennessee, Alabama, Michigan, (5)	Alabama, Michigan, North Carolina, Ohio (6)	Alabama, Colorado, District of Columbia, Indiana, Maryland  New Mexico, Pennsylvania, Tennessee (3)
7			Colorado, New Mexico (4)	California (5)	Missouri, Minesota, Oklahoma, Wisconsin (2)

8			Arkansas, Oklahoma, Virginia, Massachusetts (3)	Arizona, Louisiana, Oklahoma, Washington (4)	Arizona, Guam, Hawaii, Kansas, Massachusetts, Nebraska, Nevada, New Jersey, Ohio, South Dakota, Utah, Washington (1)
9				Colorado, Kentucky, Minnesota, Pennsylvania, Tennessee, Virginia (3)	
10				Indiana, Kansas, Massachusetts, New Jersey, Puerto Rico (2)	
11				Arkansas, Mississippi, Missouri, Nevada, New Mexico, North Dakota, Utah, Wisconsin, Wyoming (1)	

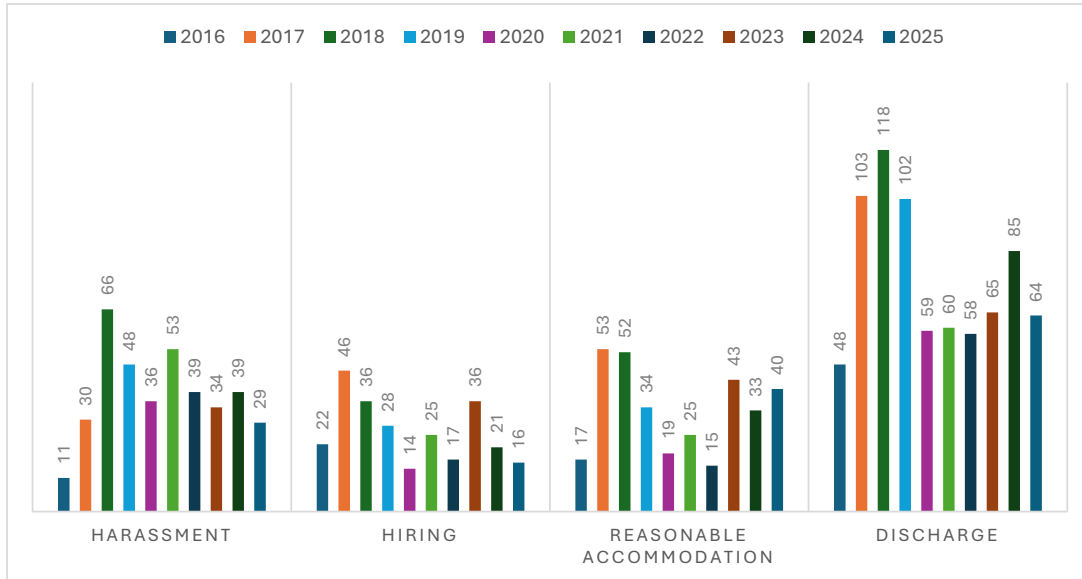
Based on these trends, the states in which the Commission appears to have consistently litigated most heavily include Florida, North Carolina, Georgia, and Texas, with Georgia claiming the top spot for the second year in a row. Interestingly, the number of cases filed in California continues to fall.

The 94 “merits” lawsuits filed in FY 2025 alleged violations covering a wide variety of bases, including sex and/or pregnancy (42);<sup>182</sup> disability (35); retaliation (31); race (2); age (8); national origin (2); and religion (10).



182 “Sex and/or pregnancy” includes all sex discrimination claims brought under Title VII, including but not limited to Title VII pregnancy discrimination claims, as well as all claims brought under the Pregnant Workers Fairness Act (PWFA).

For the past nine years, the EEOC’s reports also provided information on the most frequently identified issues that are the subjects of its litigation efforts.<sup>183</sup> Every year, these most frequently identified issues have been the same – they include harassment, hiring, reasonable accommodations for disabilities, and discharge. The issues raised most frequently in these suits were discharge and/or constructive discharge (64); reasonable accommodation (40); harassment (29); terms and conditions (18); and hiring (16).



### D. Review of EEOC Litigation Priorities

The EEOC was created with the mission to prevent and remedy discrimination in the nation’s workplaces. As such, the EEOC states a major priority for the EEOC in FY 2025 was “evenhanded enforcement” to recover for workers. This is a deviation from the EEOC’s stated priorities of the prior four years.<sup>184</sup> In its FY 2025 APR, the Commission states that it furthered this goal by focusing on enforcement, recovery, and outreach.<sup>185</sup> The EEOC also educated more than 231,740 individuals nationwide regarding workplace rights and discrimination.<sup>186</sup>

In FY 2025, the EEOC secured approximately \$660 million in monetary relief for victims of employment discrimination, including \$528 million for individuals in private sector and state and local government workplaces through mediation, conciliation, and settlements.<sup>187</sup>

Beyond pure litigation, the EEOC adopted leading technologies to improve services, enhance data access and transparency, modernize digital systems, and implement resilient network infrastructure and data analytics for better decision-making.<sup>188</sup> To effectuate this goal, the Commission committed to accelerate the use of Artificial Intelligence (AI) to drive operational efficiencies and improve delivery of services to the public as well as continuing the multi-year initiative to modernize the EEOC’s decade-old public-facing portals.<sup>189</sup>

Moreover, the EEOC also prioritized managing the public’s demand for agency services.<sup>190</sup> This included responding to approximately 537,000 phone calls, 94,600 emails, and 900 ASL videophone calls. The Commission in

<sup>183</sup> *Id.* at 39.

<sup>184</sup> FY 2025 APR, *A Message from the Chair*. Other notable priorities for the Commission for FY 2025 include a comprehensive effort to realign with its founding mission, restore dignity to the American worker, and eliminating discriminatory practice across both the private and public sectors. *Compare* EEOC FY 2023 APR at 4 (“During fiscal year 2023, the agency prioritized tackling systemic discrimination in all forms and on all bases; preventing and combatting workplace harassment; advancing racial justice; preventing and remedying retaliation; advancing pay equity; fostering diversity, equity, inclusion, and accessibility (DEIA) in the workplace to promote equal opportunity; examining the use of technology, including artificial intelligence, machine learning, and other automated systems, in employment decisions; and ensuring that the EEOC has the resources needed to effectively enforce the law and serve the public.”).

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> FY 2025 AFR, Policy, Looking Forward.

<sup>189</sup> *Id.*

<sup>190</sup> FY 2025 APR, Mission, Major Programs, and Organizational Structure, *Ensuring Effective Processes to Better Serve the American Public*.

FY 2025, year over year, reduced private sector charge inventory by 4%; resolved 4% more discrimination charges; resolved 20% more systemic investigations; increased conciliation recoveries by approximately 26%; and increased federal sector appellate resolutions by approximately 67%.<sup>191</sup>

The EEOC indicates that the reduced overall number of merits lawsuits filed in FY 2025 reflects the exercise of prosecutorial discretion favoring precedent-setting and compliance-driving cases over year-end filing volume.<sup>192</sup> At the same time, the Commission's litigation program emphasized legally sound cases capable of producing durable outcomes, as reflected in the agency's high success rate in resolved district court matters and its targeted appellate advocacy aligned with statutory enforcement priorities.

## E. Mediation Efforts, Litigation Resolutions and Monetary Relief

In its FY 2025 APR, the EEOC notes that through its ADR program the Commission successfully resolved 7,929 of the 11,346 mediations conducted (70%), resulting in almost \$245.3 million in benefits to charging parties.<sup>193</sup> The EEOC also notes its federal sector ADR program successfully resolved 149 of the 272 federal sector mediations conducted (~55%), securing \$5.2 million in benefits for federal employees.

This appears to be consistent with the Commission's enforcement approach in FY 2025 in which the EEOC emphasized the resolution of matters through mediation and conciliation, especially since these approaches generate substantially greater monetary relief for workers than litigation while also accelerating relief and conserving agency resources. The Commission reports that high participation and satisfaction rates among both employers and charging parties reinforced the agency's preference for early, voluntary resolutions where feasible.<sup>194</sup>

During the year, the EEOC continued its outreach to respondents, highlighting the benefits of the mediation program, with over 391 events conducted for employers.<sup>195</sup> Overall, the EEOC reports that the vast majority of voluntary ADR participants (99% of employers and 92% of charging parties) indicated they would be willing to participate in the mediation program again if they were a party to an EEOC charge.<sup>196</sup>

As noted, during FY 2025, the EEOC secured almost \$660 million for 17,680 victims of discrimination in private, state and local government, and federal workplaces (its third-highest annual recovery for workers).<sup>197</sup> The EEOC's conciliation and pre-determination settlement efforts alone resulted in \$52.2 million for claimants during this period. The EEOC recovered approximately 26% more as compared to FY 2024, while seeing only a .5% increase in the percentage of reconciliations resolved.<sup>198</sup> The EEOC also recovered approximately \$26.63 million via litigation in FY 2025.<sup>199</sup> This demonstrates a larger trend that the EEOC's rate of recovery for litigation resolutions has stayed below \$50 million following the pandemic. Indeed the \$106 million recovered in FY 2020 from litigation resolutions, including conciliations and settlement agreements during litigation, remains an anomaly. Moreover, considering the monetary recovery for mediations consistently dwarfs the amount obtained via litigation, it is likely that the EEOC will continue to direct greater resources towards seeking favorable outcomes pre-litigation.

---

<sup>191</sup> *Id.*

<sup>192</sup> *Id.* at 38-39 (reporting 94 merits lawsuits filed and describing the categories and nature of cases pursued); 39 (noting favorable resolutions in 96.5 percent of district court cases and identifying priority claim types).

<sup>193</sup> *Id.* at 37.

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

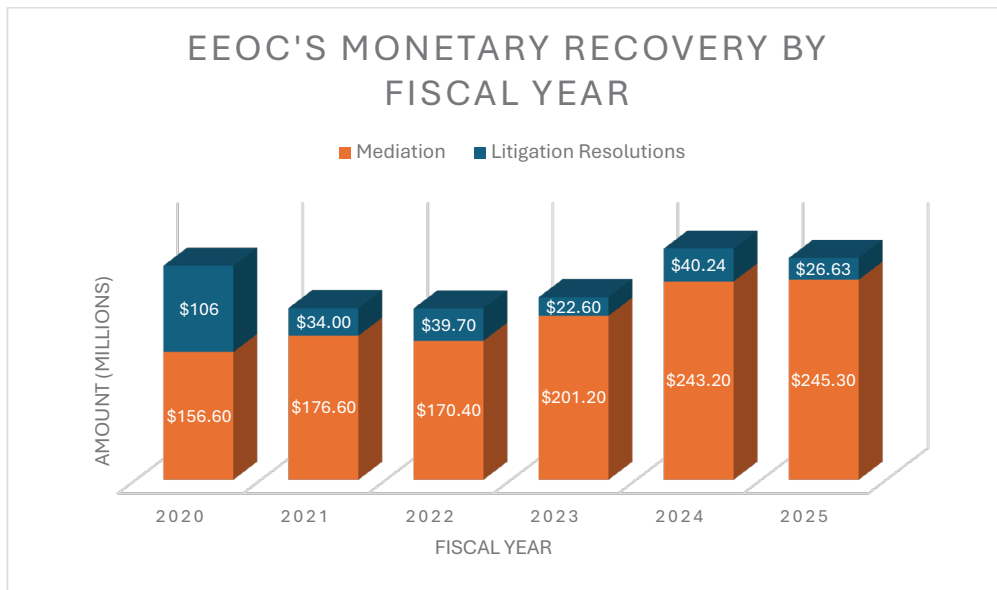
<sup>196</sup> *Id.*

<sup>197</sup> *Id.* at 10

<sup>198</sup> *Compare id.* & EEOC FY 2023 APR, p. 39.

<sup>199</sup> *Id.* at 40.

See Appendix B for information on high-dollar settlements obtained this past fiscal year.



## F. Appellate Cases

The EEOC's appellate activity in FY 2025 reflects a focused strategy of reinforcing core statutory interpretations through selective direct appeals and strategic amicus participation, rather than broad-based appellate filing activity. To wit, the EEOC decreased its participation as *amicus curiae* in U.S. appellate courts in FY 2025, but still filed at least 14 amicus briefs in federal appellate or district courts.<sup>200</sup> The EEOC also filed 9 briefs in appellate case in which it was a party the past fiscal year.<sup>201</sup> At the end of FY 2025, the EEOC had 6 cases pending in courts of appeals and was *amicus curiae* in 10 pending cases.<sup>202</sup>

In addition to these pending cases, appellate courts have issued decisions involving the EEOC, including a significant win for the EEOC in the Eight Circuit's decision in *EEOC v. Drivers Management, LLC*, 142 F.4th 1122 (8th Cir. 2025). In *Drivers Management*, the charging party, who is deaf, sought employment as a commercial truck driver after satisfying the federal physical-qualification standards for commercial truck drivers, graduating from truck-driving school, and obtaining a commercial license. Yet, employer refused to hire him, saying its training program necessitated real-time verbal feedback, and thus it could not safely train a deaf driver. The EEOC brought an ADA discrimination suit, and the jury found for the EEOC, awarding \$75,000 in compensatory damages and \$36,000,000 in punitive damages, which was subsequently reduced to the statutory maximum of \$300,000. The district court later awarded back pay, prejudgment interest, and injunctive relief. Defendant appealed, on several grounds and lost of all of them.

The employer first challenged the district court's directed verdict on the issue of causation. The employer argued it did not hire the charging party for safety concerns as a consequence of his deafness, not because of his deafness. The court cited to direct evidence in which the charging party was told, "No, I'm sorry, we can't hire you because of your deafness." The court also held that for an employer to succeed on an undue hardship affirmative defense, it must establish that the proposed accommodation would create an undue hardship on the business, not just a specific component of it (*e.g.*, training program). Similarly, the court clarified that for an employer to succeed on a direct threat affirmative defense, it bears the burden to establish via an individualized analysis that the proffered reasonable accommodation would create a significant risk to health and safety. As to the question of whether other companies' practices are admissible, the court held they were for the purposes of evaluating the reasonableness of the proposed accommodation.

<sup>200</sup> *Id.* at 44.

<sup>201</sup> *Id.*

<sup>202</sup> EEOC's Fiscal Year 2025 OGC Annual Report, Litigation Statistics, *Appellate Activity*.

Ultimately, the court rejected every issue the employer raised. As a result, the court upheld the award of compensatory damages, punitive damage (deferring to the district court), back pay, injunctive relief, and prejudgment interest.

In *Ames v. Ohio Department of Youth Services*, the Supreme Court unanimously rejected the Sixth Circuit’s “background circumstances” rule, which had required majoritygroup plaintiffs to satisfy a heightened evidentiary burden to establish a *prima facie* case of discrimination under Title VII. The plaintiff, a heterosexual woman, alleged that she was denied a promotion because of her sexual orientation, arguing that discrimination protections apply equally regardless of majority or minority status. The Court held that Title VII’s text prohibits discrimination “against any individual” and does not authorize courts to impose different standards based on group status. The EEOC participated in the case through the Solicitor General and argued that Title VII mandates a uniform evidentiary framework. The decision represents a significant reaffirmation of groupneutral enforcement principles and aligns with the Commission’s stated priority of evenhanded enforcement of civil rights laws.

In *EEOC v. Logic Staffing, LLC*, No. 24-1557 (9th Cir. 2025), the Ninth Circuit addressed the scope of an employer’s obligation to provide religious accommodations during the hiring process. The case arose from the EEOC’s lawsuit alleging that a staffing company refused to hire a Muslim applicant after he requested a scheduling accommodation to attend Friday prayer. The appellate court affirmed that an applicant’s request for religious accommodation during the hiring phase triggers Title VII protections and that employers must engage in a meaningful assessment before rejecting such applicants. The decision reinforces the EEOC’s litigation focus on protecting religious exercise in employment and supports the agency’s broader effort to clarify that religious accommodation obligations apply at all stages of employment.

In *EEOC v. Center One*, No. 22-1242 (3d Cir. 2025), the Third Circuit upheld a judgment in favor of the EEOC in a religious accommodation case involving an employee denied scheduling flexibility for religious observance. The employer argued that granting the accommodation would constitute an undue hardship, but the court held that conclusory assertions of hardship were insufficient under Title VII. The appellate court emphasized the requirement for employers to provide evidencebased support for undue hardship defenses and affirmed injunctive relief ordered by the district court. The decision advances the EEOC’s litigation priority of narrowing unsupported hardship defenses and strengthening enforceability of religious accommodation rights.

In *EEOC v. Venetian Las Vegas Gaming, LLC*, No. 25-1023 (9th Cir. 2025), the Ninth Circuit affirmed approval of a classwide settlement resolving claims that a resort operator denied religious accommodations to employees of multiple faiths and retaliated against those who sought accommodation. While the appeal primarily addressed settlement approval and remedial scope, the court endorsed broad injunctive relief requiring policy changes and training. The case illustrates the EEOC’s appellate strategy of defending robust remedial frameworks in cases implicating religious discrimination and highlights the agency’s emphasis on institutional reform alongside monetary relief.

### III. EEOC AGENCY AND REGULATORY-RELATED DEVELOPMENTS

#### A. EEOC Leadership

The U.S. Equal Employment Opportunity Commission—which spent most of last year without a working quorum or Republican majority—enters its second year fully empowered and already moving forward aggressively to advance the administration’s agenda.

By way of background, on Inauguration Day in 2025, the president designated Commissioner Andrea Lucas (who has served on the Commission since 2020) as the agency’s acting chair.<sup>203</sup> Shortly thereafter, the White House fired two of the EEOC’s sitting Democratic commissioners—Charlotte Burrows, who had chaired the agency during the Biden administration, and Jocelyn Samuels,<sup>204</sup> who served as vice chair during that time—leaving the Commission with only two sitting members—Lucas (whose term expires July 1, 2030) and Democrat Kalpana Kotagal, who has served on the Commission since 2023, and whose term is scheduled to expire in July 2027. This left the Commission without a quorum, making it unable to make new policy, revisit old policies, or take any significant action that would require the approval of a majority of the Commission. It also meant that the agency was limited in its ability to bring certain classes of significant litigation, including lawsuits alleging systemic or “pattern or practice” discrimination, or cases presenting unsettled matters of law or in conflict with precedent in the relevant judicial circuit, and unable to file amicus briefs in court.

This changed in early October 2025, when during the shutdown of the federal government, the U.S. Senate confirmed the nomination of Republican Commissioner Brittany Panuccio, restoring the Commission’s quorum, and giving the agency a two-to-one Republican majority. As we enter the second year of the second Trump administration, the EEOC now finds itself fully restored and expected to move quickly and aggressively forward on the administration’s priorities.

#### B. Policy Priorities

On her first full day in office, Lucas issued a statement acknowledging her designation as acting chair and laying out her priorities and goals for the agency:

I look forward to restoring evenhanded enforcement of employment civil rights laws for all Americans. In recent years, this agency has remained silent in the face of multiple forms of widespread, overt discrimination. Consistent with the President’s Executive Orders and priorities, my priorities will include rooting out unlawful DEI-motivated race and sex discrimination; protecting American workers from anti-American national origin discrimination; defending the biological and binary reality of sex and related rights, including women’s rights to singlesex spaces at work; protecting workers from religious bias and harassment, including antisemitism; and remedying other areas of recent under-enforcement.<sup>205</sup>

In the absence of a quorum, Lucas was somewhat limited in her ability to advance policy goals in her first year. We expect that she will now not waste time, particularly in light of the upcoming midterm elections, which may change the political landscape in Washington, DC.

##### 1. Diversity, Equity and Inclusion (DEI) Programs in the Crosshairs

The elimination of so-called “illegal DEI” in the workplace has been a focus of the administration’s domestic agenda. In the first days of his second administration, the President signed a number of executive orders directly or indirectly relating to diversity, equity, and inclusion (DEI) programs in the federal government and private sector. The most significant order for non-government employers both repealed affirmative action requirements based on race and sex for government contractors and instructed his administration to take other appropriate measures to encourage the private sector to end illegal discrimination and preferences, including DEI.<sup>206</sup>

<sup>203</sup> In November 2025, the White House dropped “acting” from her title, formally designating her as chair.

<sup>204</sup> Samuels has filed a lawsuit challenging her removal prior to the expiration of her term. Insofar as the Civil Rights Act of 1964, which created the Commission, does not expressly prevent the president from removing a commissioner, her challenge is not seen as likely to be successful.

<sup>205</sup> EEOC, Press Release, *President Appoints Andrea R. Lucas EEOC Acting Chair* (Jan. 21, 2025).

<sup>206</sup> Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, 90 Fed. Reg. 8633 (Jan. 31, 2025).

At the EEOC, Lucas has taken the president’s order to heart, citing “rooting out unlawful DEI-motivated race and sex discrimination” as her first priority and has taken what opportunities she has to act unilaterally as acting chair to move forward on preferred policies. Early in her tenure, she sent public “requests for information” to 20 large law firms, seeking detailed information about their alleged activities relating to DEI initiatives.<sup>207</sup> More recently in February 2026, the agency sent letters to the C-Suites of Fortune 500 companies “reminding” them of their obligations under Title VII.<sup>208</sup>

In terms of guidance as to what constitutes “illegal” DEI, in March 2025, the EEOC, in conjunction with the U.S. Department of Justice (DOJ), issued two “technical assistance” guidance documents “focused on educating the public about unlawful discrimination related to ‘diversity, equity, and inclusion’ (DEI) in the workplace.”<sup>209</sup> The guidance stresses that Title VII does not provide any exception for DEI or “diversity interests” in prohibiting discrimination based on race, sex, or other protected category, and a general business interest in diversity or equity is insufficient to support basing any employment decision in whole or in part on a protected characteristic. Both likewise take a very broad view of what may constitute “illegal” DEI in employment actions, ranging from hiring and promotion to compensation, benefits, access to training and other workplace opportunities such as mentorship programs, and employee resource groups (ERGs).

While the EEOC is prohibited from promulgating substantive regulations under Title VII, we expect that with the restoration of a quorum, we will see additional guidance on the agency’s view as to what it considers “illegal” DEI activities, and a focus on investigation and enforcement in these areas. We also expect heightened enforcement efforts, including investigation of charges alleging discrimination arising from DEI programs as well as commissioners’ charges (essentially, agency-initiated investigations) into DEI in the private sector. The agency has already gone to court in several instances to seek judicial enforcement of subpoenas in DEI-related investigations; we fully expect the agency to move forward with high-profile challenges to DEI programs in the private sector in the courts.

## 2. The Rights of Religious Employees in the Workplace

As discussed in the opening chapter of this Report, in 2026 we expect the EEOC will continue to prioritize protection of the rights of religious workers. During the first Trump administration, then-Commissioner Lucas co-chaired a working group that focused on the rights of religious workers, and anti-religious discrimination in the workplace. She also supported the Commission’s revision of its guidance on religious discrimination, which placed heavy emphasis on the need for employers to accommodate the religious practices of their employees.

An employer’s duty to make religious-based accommodations remains a developing area of the law since the Supreme Court’s decision in *Groff v. DeJoy*,<sup>210</sup> which dramatically increased the burden on employers to show that a requested religious accommodation is an undue hardship. Given Lucas’s stated priorities and long-standing interest, and the favorable climate in many courts, we expect that the EEOC in its investigations and litigation will seek to construe *DeJoy* as broadly as possible in favor of religious workers and make investigation and enforcement of charges of religious discrimination or harassment a focus. Lucas has also publicly indicated her view that anti-Christian discrimination and antisemitism are high on her list of priorities, and her desire to hold employers accountable for what she views were overbroad actions involving religious employees during the COVID-19 pandemic.

## 3. White House Executive Order “Protecting” Women; Impact on Sexual Orientation and Gender Identity Discrimination

Chair Lucas has fully endorsed the President’s Executive Order<sup>14168</sup>, “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government,” which, among other things, directs all federal agencies and federal employees to “enforce laws governing sex-based rights, protections, opportunities, and

207 EEOC, Press Release, *EEOC Acting Chair Andrea Lucas Sends Letters to 20 Law Firms Requesting Information About DEI-Related Employment Practices* (Mar. 17, 2025).

208 EEOC, *Reminder of Title VII Obligations Related to DEI Initiatives* (Feb. 26, 2026).

209 EEOC, *What You Should Know About DEI-Related Discrimination at Work*; EEOC & DOJ, *What to do if you experience discrimination related to DEI at work*; see also Jim Paretti, *EEOC and Department of Justice Issue Technical Assistance on DEI*, Littler ASAP (Mar. 20, 2025).

210 *Groff v. DeJoy*, 600 U.S. 447 (2023); see also Dionysia Johnson-Massie, Laura Saracina, N. Brenda Adimora, and Jim Paretti, *Nearly 50 Years Later, the Supreme Court “Clarifies” the Undue Hardship Standard in Religious Accommodation Claims*, Littler ASAP (June 30, 2023).

accommodations to protect men and women as biologically distinct sexes” and orders the removal of statements, policies and other communications that “promote or otherwise inculcate” so-called “gender ideology.”<sup>211</sup>

With respect to LGBTQ issues generally, almost immediately after the new administration was inaugurated, the EEOC removed from its website a number of resources relating to sexual orientation and gender identity discrimination published during the prior administration, and in January 2025 indicated that all charges alleging discrimination on the basis of sexual orientation or gender identity would be sent to national headquarters for review to ensure that they “comply with applicable executive orders to the fullest extent possible.”<sup>212</sup> The agency also indicated that with respect to such charges it will issue a notice of right to sue if asked to by a charging party “as statutorily required.” At this writing it is unclear whether all charges alleging discrimination on the basis of sexual orientation or gender identity are subject to this review.

In January 2026, the EEOC voted to rescind its Enforcement Guidance on Harassment in the Workplace.<sup>213</sup> The proposal to rescind the guidance was approved two-to-one, with Chair Lucas and Commissioner Panuccio voting to repeal the document, and Commissioner Kotagal (D) voting against rescission. The rescission of the guidance was unsurprising, insofar as almost immediately after assuming her role as then-acting chair in January 2025, now-Chair Lucas signaled her opposition to portions of the guidance and indicated that she would seek to rescind or revise it as soon as she had the votes to do so.

Rescission appears to come from the administration’s contention that the Supreme Court’s decision in *Bostock v. Clayton County*,<sup>3</sup> in which it held that Title VII’s prohibition of discrimination “because of ... sex” prohibits discrimination on the basis of sexual orientation and gender identity, has been interpreted too broadly. Among other things, Executive Order 14168 directed the attorney general to issue guidance to “correct” what it perceives as a misapplication of the case. Among the reasons given for rescission of the document by the chair was its position that as a result of *Bostock*, employers must provide trans-identifying employees access to single-sex spaces such as bathrooms, locker rooms, and changing rooms in accordance with their gender identity. It also indicated that purposefully misgendering a transgender worker could constitute harassment.

More recently, the Commission voted 2-1 to approve a new federal-sector appellate decision holding that Title VII of the 1964 Civil Rights Act allows government agencies to exclude workers including “trans-identifying employees” from “opposite-sex facilities” like bathrooms and other intimate spaces.<sup>214</sup> The ruling largely reverses *Lusardi v. Department of the Army*, a 2015 federal sector decision in which the EEOC found the Army discriminated against a transgender worker by not allowing her to use the women’s bathroom and misusing male pronouns.<sup>215</sup> While the decision applies only to federal agencies subject to EEOC administrative complaint process for federal employees, and not directly to private sector employers, it is an insight into how the agency views these matters broadly. Indeed, much of the Commission’s LGBTQ jurisprudence arose in cases involving the federal government (which the agency is charged with adjudicating).

Despite the seeming lack of emphasis by EEOC, employers should still proceed with caution where these issues arise.

First, unless and until reversed, the *Bostock* decision remains the law of the land.<sup>216</sup> Thus, Title VII protects against discrimination on the basis of sexual orientation and gender identity, although the full scope of those protections is not yet entirely clear. When it decided *Bostock*, the Supreme Court expressly noted that it was not “addressing bathrooms, locker rooms, or anything else of the kind” (including, presumably, pronoun usage) and that those were “questions for future cases.” In the wake of *Bostock*, courts have come to differing conclusions as to the scope of the case’s application and protections.

Perhaps more important, many state and local laws and ordinances expressly prohibit discrimination on the basis of sexual orientation and gender identity, irrespective of how the Commission views the scope of federal law. These state and local laws remain in full force and effect.

211 Executive Order 14168, *Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, 90 Fed. Reg. 8615 (Jan. 30, 2025).

212 EEOC, Press Release, *Removing Gender Ideology and Restoring the EEOC’s Role of Protecting Women in the Workplace* (Jan. 28, 2025); see also Jim Paretti, *EEOC Acting Chair Issues Statement on Gender Identity, Removes Guidance on Transgender Issues*, Littler ASAP (Jan. 29, 2025).

213 See Jim Paretti, *EEOC Rescinds Enforcement Guidance on Harassment*, Littler ASAP (Jan. 22, 2026).

214 *Selina S. v. Driscoll*, Appeal No. 2025003976, Agency No. ARRILEY25JUL000171 (E.E.O.C. Feb. 26, 2026).

215 *Lusardi v. Dep’t of the Army*, Appeal No. 0120133395 (E.E.O.C. Apr. 1, 2015).

216 *Bostock v. Clayton County*, 590 U.S. 644 (2020).

Finally, even if the EEOC does not pursue a claim of discrimination or makes a no-cause determination, a private plaintiff can request a right-to-sue letter and institute a civil lawsuit on their own behalf.

#### 4. Disparate Impact Theory of Discrimination

Disparate impact is a theory of liability under civil rights laws in which a facially neutral practice (for example, a credit check or aptitude test to screen job applicants) has a disproportionately adverse effect on a protected class of individuals. Unlike disparate treatment liability, which requires proof of intentional discrimination, disparate impact liability arises from the use of a neutral practice and requires no showing of intent to discriminate. It was first recognized as a viable theory of discrimination by the U.S. Supreme Court in *Griggs v. Duke Power Company*,<sup>217</sup> in which it held that absent a showing of business necessity, the use of a test that disproportionately screens out individuals in a protected category is unlawful. In 1991, via the Civil Rights Act of 1991, Congress codified disparate impact liability in Section 703(k) of Title VII.

In April 2025, President Trump signed an executive order instructing that federal agencies cease using the disparate impact theory of liability under federal civil rights laws, including Title VII of the Civil Rights Act of 1964 (addressing employment discrimination) and Title VI (addressing discrimination in education).<sup>218</sup> The order directed all federal agencies to “deprioritize” enforcement of statutes and regulations relying on disparate impact theory. It further instructed the EEOC chair to review all pending investigations and civil lawsuits that rely on a theory of disparate impact liability and “take appropriate action” consistent with the policy of the executive order.

In September 2025, it was reported that the agency would close almost all pending charges based solely on allegations of disparate impact discrimination by month’s end, according to an internal memorandum, and issue right-to-sue letters to charging parties whose charges will be closed, allowing them to proceed on their own in federal court. While it is not clear whether it was explicitly stated in the memo, it appears reasonably certain the agency itself will not file any litigation premised on disparate impact theory going forward.

As a practical matter for employers, this means that at least through the remainder of the Trump administration, the EEOC is unlikely to investigate charges of discrimination premised on disparate impact liability under Title VII, and unlikely to file new cases in federal court relying on a theory of disparate impact liability. This is likely true as to educational institutions subject to Title VI as well. Whether the EEOC will move to dismiss or otherwise withdraw *pending* lawsuits in which it alleges disparate impact liability is not yet clear, although it is very possible that the agency will seek to voluntarily dismiss those cases, as it did with cases alleging discrimination on the basis of transgender status following the administration’s executive order setting forth its policy with respect to gender identity.

#### 5. Pregnant Workers Fairness Act

In December 2022, Congress enacted the Pregnant Workers Fairness Act (PWFA).<sup>219</sup> Modeled after the Americans with Disabilities Act, the PWFA expands the protections for pregnant employees and applicants by requiring employers with 15 or more employees to make reasonable accommodations to known limitations related to pregnancy, childbirth, or related medical conditions. Employers must provide pregnant workers with reasonable accommodation, provided it does not impose an undue hardship on the employer.

In 2024, the EEOC adopted expansive regulations implementing the PWFA, which dramatically expanded the scope of “pregnancy, childbirth or related medical conditions” under the statute to encompass almost any medical condition arguably related to the reproductive system.<sup>220</sup> Then-Commissioner Lucas voted against the regulations when they were promulgated on the grounds that they were, in her view, overbroad and went beyond the intended purpose of the statute. Separately, portions of the final PWFA regulations requiring employers to make reasonable accommodation for elective abortions were struck down in May 2025 by a federal district court.<sup>221</sup>

<sup>217</sup> *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

<sup>218</sup> Executive Order 14281, *Restoring Equality of Opportunity and Meritocracy*, 90 Fed. Reg. 17537 (Apr. 28, 2025).

<sup>219</sup> 42 U.S.C. §2000gg. See also Mark T. Phillis and Jessica L. Craft, *Congress Expands Protections for Pregnant Employees and Employees Who Are Nursing*, Littler ASAP (Dec. 28, 2022).

<sup>220</sup> EEOC, *Implementation of the Pregnant Workers Fairness Act*, 29 C.F.R. Part 1636 (Apr. 19, 2024); see also Devjani Mishra, Mark T. Phillis, and Jessica L. Craft, *EEOC Releases Expansive Final Regulations to Implement the Pregnant Workers Fairness Act*, Littler ASAP (Apr. 17, 2024).

<sup>221</sup> *State of Louisiana v. EEOC*, No. 2:24-cv-00629 (W.D. La. May 21, 2025); see also Jessica Craft and Devjani Mishra, *Federal Court Vacates Portion of PWFA Final Rule Requiring Accommodation for Elective Abortions*, Littler ASAP (May 22, 2025).

Given the chair’s opposition to the regulations and the adverse decision of the court, it is likely that the EEOC will revisit this regulation via rulemaking in the future, likely a proposal to replace the current rule with something more narrow and focused directly on accommodating pregnant workers during periods of limitation in their pregnancy.

## 6. National Origin Discrimination

In keeping with her stated goal of “protecting American workers from Anti-American national origin discrimination,” the agency in issued a one-page technical assistance document<sup>222</sup> regarding national origin discrimination (in FY 2024, the last year for which data is available, charges of national origin discrimination represented roughly 9% of EEOC’s total charge intake; that number may increase given the administration’s focus on the topic). The agency also announced that it had updated its national origin discrimination landing page so as to provide workers and employers with information about “what national origin discrimination can look like in the workplace” and how employees may obtain EEOC assistance if they feel they have been the victim of discrimination.<sup>223</sup>

The technical assistance document defines national origin discrimination as “treating employees or applicants unfavorably or favorably because they are from a particular country or part of the world, because of ethnicity or accent, or because they appear to be of a certain ethnic background,” and provides several examples of fact patterns that might present unlawful discrimination, including using discriminatory job advertisements, such as ads that suggest an employer prefers or requires applicants from a particular country or with a particular visa status; engaging in disparate treatment, such as terminating employees who are currently in between assignments at a higher rate than employees who are visa guest workers, or making it more difficult for applicants from one national origin to apply for positions (*e.g.*, holding U.S. workers to stricter application processes than H-1B visa holders); harassing an employee based on national origin, such as subjecting them to severe or pervasive unwelcome remarks or conduct based on national origin; and retaliating because an employee has engaged in protected activity such as objecting to or opposing national origin discrimination in the workplace.

The document explains that the EEOC takes the position that certain considerations do not allow an employer to hire foreign workers over American workers, including customer or client preference; lower labor costs (including abuse of visa-holder wage requirement rules); or beliefs that workers of one national origin are “more productive” or possess a better work ethic than others from different groups. Finally, the updated landing page details how employees who believe they are the victims of national origin discrimination may pursue their rights with various federal agencies.

## C. Conclusion

In the first year of the second Trump administration, EEOC was hampered in its ability to move forward aggressively on its policy priorities—although Chair Lucas used her power as chair to advance her initiatives as fulsomely as possible. Now, with a restored quorum, we anticipate the agency will kick into “high gear,” as it moves forward on investigations, guidance, regulation, and high-stakes litigation.

---

222 Unlike guidance documents, which must be approved by a majority vote of the Commission, a technical assistance document, which does not adopt new policy but applies existing policy to different sets of facts, can be issued unilaterally by the agency’s head.

223 EEOC, *National Origin Discrimination*.

## IV. Scope of EEOC Investigations and Subpoena Enforcement Actions

### A. EEOC Investigations

As part of the investigation process, the EEOC has statutory authority to issue subpoenas and pursue subpoena enforcement actions if an employer fails to provide requested information or data or to make requested personnel available for interview. The EEOC continues to exercise this option, particularly when dealing with systemic investigations. As discussed below, the EEOC's authority to issue subpoenas and conduct investigations is quite broad. Because the scope of EEOC investigations and related issues are critical in guiding employer conduct in dealing with the EEOC, the discussion below is not limited to court decisions over the past fiscal year.

#### 1. EEOC Authority to Conduct Class-Type Investigations

Systemic investigations can arise based upon any of the following: (1) an individual files a pattern-or-practice charge or the EEOC expands an individual charge into a pattern-or-practice charge; (2) the EEOC commences an investigation based on the filing of a "commissioner's charge"; or (3) the EEOC initiates, on its own authority, a "directed investigation" involving potential age discrimination or equal pay violations.

The Commission enjoys expansive authority to investigate systemic discrimination stemming from its broad legislated mandate.<sup>224</sup> Unlike individual litigants asserting class action claims, the EEOC need not meet the stringent requirements of Rule 23 to initiate a pattern-or-practice lawsuit against an employer. Thus, the EEOC "may, to the extent warranted by an investigation reasonably related in scope to the allegations of the underlying charge, seek relief on behalf of individuals, beyond the charging parties, who are identified during the investigation."<sup>225</sup>

Title VII also authorizes the EEOC to issue charges on its own initiative (*i.e.*, commissioner's charges),<sup>226</sup> based upon an aggregation of the information gathered pursuant to individual charge investigations. Under a commissioner's charge, the EEOC is entitled to investigate broader claims.

Finally, the EEOC may initiate a systemic investigation under either the Age Discrimination in Employment Act or the Equal Pay Act. Under both statutes, the Commission can initiate a "directed investigation" even in the absence of a charge of discrimination, seeking data that may include broad-based requests for information and initiating a lawsuit for violation of the applicable statute.<sup>227</sup>

#### 2. Scope of EEOC's Investigative Authority

The touchstone of the EEOC's subpoena authority is the text of its originating statute. By statute, the Commission's authority to request information arises under Title VII, which permits it "at all reasonable times have access to . . . any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this subchapter and is relevant to the charge under investigation."<sup>228</sup> The leading case interpreting the scope of this authority is the U.S. Supreme Court decision *EEOC v. Shell Oil Co.*,<sup>229</sup> frequently cited for the proposition that "relevance" in this context extends "to virtually any material that might cast light on the allegations against the employer."<sup>230</sup> Less cited is the Court's admonition that "Congress did not eliminate the relevance requirement, and [courts] must be careful not to construe the regulation adopted by the EEOC governing what goes into a charge in a fashion that renders that requirement a nullity."<sup>231</sup>

<sup>224</sup> See 42 U.S.C. § 2000e-5(b).

<sup>225</sup> *EEOC v. Caterpillar, Inc.*, 409 F.3d 831, 832 (7th Cir. 2005). *But see EEOC v. Burlington Northern Santa Fe Railroad*, 669 F.3d 1154 (10th Cir. 2012) (denying enforcement of the EEOC's subpoena expanding the scope of its investigation involving two individuals); *EEOC v. Royal Caribbean Cruises, Ltd.*, 771 F.3d 757 (11th Cir. 2014) (denying the EEOC's attempt to subpoena information to help support a pattern-or-practice claim, when the case at issue involved one individual only).

<sup>226</sup> See 42 U.S.C. § 2000e-5(b) (a charge may be filed either "by or on behalf of a person claiming to be aggrieved, or by a member of the Commission").

<sup>227</sup> See, e.g., 29 U.S.C. § 626(a) of the ADEA (the EEOC "shall have the power to make investigations. . . for the administration of this chapter"); 29 C.F.R. § 1626.15 ("the Commission and its authorized representatives may investigate and gather data . . . advise employers . . . with regard to their obligations under the Act . . . and institute action . . . to obtain appropriate relief").

<sup>228</sup> 42 U.S.C. § 2000e-8(a); see also 29 U.S.C. § 626(a) (ADEA); 29 C.F.R. § 1626.15 (ADEA); 29 U.S.C. § 211 (FLSA); 29 U.S.C. § 206(d) (EPA); 29 C.F.R. § 1620.30 (EPA); EEOC Compliance Manual, § 22.7.

<sup>229</sup> *EEOC v. Shell Oil Co.*, 466 U.S. 54 (1984).

<sup>230</sup> *Id.* at 59.

<sup>231</sup> *Id.*

What if the initial reason for the charge no longer exists? Courts of appeals for the Ninth and Seventh Circuits have already held that, even if the EEOC issues a right-to-sue letter or even if the charge is withdrawn, the EEOC's authority to investigate remains unabated.<sup>232</sup> But is the same true if the charging party's underlying lawsuit is dismissed on the merits? Such was the issue of first impression for the Seventh Circuit in *EEOC v. Union Pacific Railroad*.<sup>233</sup> There, an employer challenged the EEOC's legal authority to continue an enforcement action after issuing a right-to-sue letter and after the underlying charges of discrimination in a private lawsuit had been dismissed on the merits.<sup>234</sup> While the federal appellate courts have been split on this issue,<sup>235</sup> the Seventh Circuit treated the issue as answered by the Supreme Court's decision in *Waffle House*, where the Court held that the charging individual's agreement to arbitrate did not bar further action on the part of the EEOC.<sup>236</sup>

In *Waffle House*, the Court held that “[t]he statute clearly makes the EEOC the master of its case and confers on the agency the authority to evaluate the strength of the public interest at stake.”<sup>237</sup> This established, for the *Union Pacific* court, that the EEOC's authority is not derivative.<sup>238</sup> And if issuing a right-to-sue letter does not end the EEOC's authority, then the court did not see how the entry of judgment in the charging individual's civil action had any more bearing. “To hold otherwise,” concluded the court, “would not only undercut the EEOC's role as the master of its case under Title VII, it would render the EEOC's authority as ‘merely derivative’ of that of the charging individual contrary to the Supreme Court's holding in *Waffle House*.”<sup>239</sup> The upshot is that, however disposed of, the outcome of a valid charge in the Seventh Circuit does not seem to determine or define the EEOC's authority. The Ninth Circuit in *EEOC v. VF Jeanswear LP* reaffirmed its position that the EEOC's power to investigate instances of discrimination extend beyond the allegations of the individual charging party.<sup>240</sup> Citing Ninth Circuit precedent, the court emphasized, “there is no legal basis for limiting the scope of the relevance inquiry only to the parts of the charge relating to the personally-suffered harm of the charging party.”<sup>241</sup>

#### a. Applicable Timelines for Challenging Subpoenas (Waiver issue)

As part of its investigative authority, the EEOC can and does issue subpoenas to employers seeking information or data. An employer may challenge an EEOC subpoena, but may be barred from doing so in a subpoena-enforcement action in circumstances where it fails to challenge or modify the subpoena in accordance with statutorily-imposed deadlines.<sup>242</sup> Specifically, an employer may “waive” the right to oppose enforcement of an administrative subpoena, unless it petitions the EEOC to modify or revoke the subpoena within five days of receipt of the subpoena.<sup>243</sup> This requirement is set forth in the regulations governing the EEOC's investigative authority. Namely, “any person served with a subpoena who intends not to comply shall petition” the EEOC “to seek its revocation or modification . . . within five days . . . after service of the subpoena.”<sup>244</sup>

For over 15 years, the EEOC has taken an aggressive stance on this “waiver” issue when dealing with employers that have generally failed to respond to its requests for information and subpoenas. The most notable case on this

232 *Watkins Motor Lines, Inc.*, 553 F.3d 593 (7th Cir. 2009); *EEOC v. Fed. Express Corp.*, 558 F.3d 842 (9th Cir. 2009) (holding that the issuance of a right-to-sue letter does not strip the EEOC of its authority to continue its investigation).

233 *EEOC v. Union Pacific Railroad*, 867 F.3d 843 (7th Cir. 2017).

234 *Id.* at 845.

235 See *EEOC v. Hearst*, 103 F.3d 462 (5th Cir. 1997) (holding that the EEOC's authority to investigate a charge ends when it issues a right-to-sue letter); *EEOC v. VF Jeanswear LP*, 769 Fed. Appx. 477 (9th Cir. 2019) (“there is no legal basis for limiting the scope of the relevance inquiry only to the parts of the charge relating to the personally-suffered harm of the charging party.”); *Fed. Express Corp.*, 558 F.3d 842 (9th Cir. 2009) (holding that the issuance of a right-to-sue letter does not strip the EEOC of authority to continue to process the charge, including independent investigation of allegations of discrimination on a company-wide basis).

236 *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 291 (2002).

237 *Id.* at 291.

238 *Union Pacific Railroad*, 867 F.3d at 851.

239 *Id.*

240 *EEOC v. VF Jeanswear LP*, 769 Fed. Appx. 477 (9th Cir. 2019), *petition for cert. filed* (U.S. Oct. 1, 2019) (No. 19-446), *cert. denied* (U.S. Apr. 6, 2020).

241 *VF Jeanswear LP*, 769 Fed. Appx. 477, slip op. at 3, citing *EEOC v. Fed. Express Corp.*, 558 F.3d 842, 855 (9th Cir. 2009).

242 See, e.g., *EEOC v. Bashas, Inc.*, 2009 U.S. Dist. LEXIS 97736, at \*\*9-29 (D. Ariz. 2011) (providing a thorough discussion of the case law discussing the potential “waiver” of a right to challenge administrative subpoena); see also *EEOC v. Cuzzens of GA, Inc.*, 608 F.2d 1062, 1064 (5th Cir. 1979); *EEOC v. Cnty of Hennepin*, 623 F. Supp. 29, 33 (D. Minn. 1985); *EEOC v. Roadway Express, Inc.*, 569 F. Supp. 1526, 1528 (N.D. Ind. 1983).

243 See, e.g., *EEOC v. Chrome Zone LLC*, Case No. 4:13-mc-130 (S.D. Tex. Feb. 22, 2013) (EEOC motion to compel employer's compliance with subpoena arguing waiver by failure to file a Petition to Revoke or Modify Subpoena where the employer had failed to respond to charge of discrimination or EEOC's requests for information or subpoena); *EEOC v. Ayala AG Services*, 2013 U.S. Dist. LEXIS 14831, at \*\*11-12 (E.D. Cal. Oct. 15, 2013); *EEOC v. Mountain View Medical Center*, Case No. 2:13-mc-64 (D. Ariz. July 30, 2013) (same). But see *EEOC v. Loyola Univ. Med. Ctr.*, 823 F. Supp. 2d 835 (N.D. Ill. 2011) (denying enforcement of overbroad subpoena requesting irrelevant information despite employer's failure to file a Petition to Revoke or Modify Subpoena, reasoning a procedural ruling was inappropriate given (1) the absence of established case law on the issue under the ADA, (2) the sensitive and confidential nature of the information subpoenaed, which related to employees' medical conditions, and (3) the fact that the employer had twice objected to the scope of the EEOC's inquiry before the enforcement action was filed).

244 29 C.F.R. § 1601.16(b)(1).

issue is the Seventh Circuit's 2013 decision in *EEOC v. Aerotek*,<sup>245</sup> in which a federal appeals court supported the EEOC's position that an employer waived the right to challenge a subpoena by failing to file a Petition to Modify or Revoke. In *Aerotek*, a staffing agency was accused of placing applicants according to the discriminatory preferences of its clients. The EEOC's subpoena sought a "broad range of demographic information, including the age, race, national origin, sex, and date of birth of all internal and contract employees dating back to January 2006," in addition to information about recruitment, selection, placement, and termination decisions by the company and its clients. Despite receiving from the company about 13,000 pages of documents in response to the subpoena, the EEOC claimed the company failed to provide additional requested information. In addition, although the staffing agency had filed objections to the EEOC's petition, the objections were filed one day beyond the statutorily required five days. The district court determined that the company's objections were waived and ordered it to comply with a broadly worded subpoena, which had been pending for more than three years, because the company filed objections with the agency six days after receipt. The Seventh Circuit agreed with this decision, finding that the defendant "has provided no excuse for this procedural failing and a search of the record does not reveal one ... We cannot say whether the Commission will ultimately be able to prove the claims made in the charges here, but we conclude that EEOC may enforce its subpoena because [defendant] has waived its right to object."<sup>246</sup>

Since *Aerotek*, there have been examples where a court has disagreed with the EEOC's contention that an employer has waived objections to a subpoena due to its failure to timely or properly petition for revocation or modification of the subpoena. Those courts have scrutinized the justifications offered by an employer for failing to file a petition to modify or revoke within the five-day period and have applied the four-factor test articulated in *EEOC v. Lutheran Social Services*.<sup>247</sup>

In *Lutheran*, the U.S. Court of Appeals for the D.C. Circuit held that there is a "strong presumption that issues parties fail to present to the agency will not be heard . . ." but it also stated that the court should still consider "whether the facts and circumstances surrounding [non-compliance] are sufficiently extraordinary" to excuse non-compliance.<sup>248</sup> It further explained that factors that may amount to such exceptional circumstances include whether (1) the subpoena advised the recipient of the five-day petition deadline expressly or by citing the relevant law or regulation; (2) the agency investigator informed the subpoena recipient of the missed deadline; (3) the subpoena recipient repeatedly raised its objections to the agency in some form other than a revocation petition; and (4) the objections are not within the "special competence" of the EEOC.<sup>249</sup> The *Lutheran* court also suggested, however, that this standard would be "quite different" in the more "typical situation where a subpoena recipient's objections rest on relevance."<sup>250</sup>

The EEOC continues to scrutinize whether an employer has timely challenged any subpoenas issued by the agency. In *EEOC v. Ferrellgas, L.P.*,<sup>251</sup> the Eastern District of Michigan granted the EEOC's application to enforce a subpoena. In the agency proceedings, the respondent failed to either respond to the subpoena or to properly challenge it. Citing the requirement for a respondent to file a petition to revoke or modify a subpoena within five days after service of the subpoena, the court found that the right to challenge the subpoena had been forfeited. Further, the court held that the respondent had also failed to present a basis for not enforcing the subpoena because all three requirements of the subpoena enforcement application were met: (1) the charge was valid and the EEOC was authorized to investigate it; (2) the material requested in the subpoena was relevant to the charge; and (3) the respondent failed to show that the subpoena was indefinite or made for an illegitimate purpose.<sup>252</sup>

245 *EEOC v. Aerotek*, 498 Fed. Appx. 645 (7th Cir. 2013).

246 *Id.* at 648.

247 *EEOC v. Lutheran Social Servs.*, 186 F.3d 959 (D.C. Cir. 1999).

248 *Id.* at 959.

249 *Id.* at 964-66.

250 *Id.* at 959.

251 *EEOC v. Ferrellgas, L.P.*, 2023 U.S. Dist. LEXIS 25721 (E.D. Mich. Feb. 15, 2023).

252 *Id.* at \*3-6 (citing *Univ. of Pa. v. EEOC*, 493 U.S. 182, 191 (1990)).

### b. Procedural Issues

It is well established that to bring and maintain an enforcement action, certain procedural requirements must be met. For example, in 2020 the Fifth Circuit addressed whether these procedural requirements were satisfied in *EEOC v. Vantage Energy Services, Inc.*<sup>253</sup> Specifically, the issue on appeal was whether a “later-verified intake questionnaire” was sufficient to constitute a charge under the ADA’s requirement that charges be filed within 300 days.<sup>254</sup>

In *Vantage Energy Services*, the claimant worked on a deep-water drillship for the defendant, and suffered a heart attack while at sea.<sup>255</sup> The defendant subsequently placed him on short-term disability leave, and on the day he was due to return to work, the defendant fired him, citing poor work performance.<sup>256</sup> The claimant, through his legal counsel, submitted a letter to the EEOC asserting the defendant had violated the ADA, and included with the letter an EEOC intake questionnaire.<sup>257</sup> The questionnaire included the claimant’s name, address, nature of the discrimination claim, and the defendant’s stated reason for the termination.<sup>258</sup> The claimant also checked the box at the end of the questionnaire, which stated that he “wanted ‘to file a charge of discrimination’ and ‘authoriz[ed] the EEOC to look into the discrimination’ claim,” and included his unverified signature.<sup>259</sup>

After receiving the intake questionnaire from the claimant, the EEOC added a charge number to the questionnaire, handwriting it at the top of the document.<sup>260</sup> This number remained the same throughout the course of the matter.<sup>261</sup> The EEOC then sent the claimant two letters, which, respectively, acknowledged receipt of the “charge” and requested him to supplement the questionnaire with his address and phone number.<sup>262</sup> The defendant also received notice of the charge, but was informed no action was required pending receipt of a perfected charge.<sup>263</sup>

The perfected charge, belatedly received by the EEOC, was signed under the penalty of perjury, and was dated more than 300 days after the claimant’s job termination.<sup>264</sup> Upon receipt of the perfected charge, the EEOC informed the defendant and requested a position statement, which the defendant submitted.<sup>265</sup>

After conducting an investigation, the EEOC determined there was reasonable cause to believe that the defendant violated the ADA, and the parties submitted to conciliation, which was unsuccessful, resulting in the filing of an enforcement action.<sup>266</sup> The defendant moved to dismiss the EEOC’s complaint, arguing that it failed to exhaust administrative remedies because the formal charge was filed more than 300 days after the employee’s termination.<sup>267</sup> The EEOC opposed the motion, asserting that the intake questionnaire, which was filed within 300 days, satisfied the requirement to exhaust administrative remedies, and it was inconsequential that the intake questionnaire was not verified pursuant *Edelman v. Lynchburg College*.<sup>268</sup>

Although the district court was persuaded by the defendant and dismissed the EEOC’s enforcement action with prejudice, the Fifth Circuit reversed the decision, noting that the defendant’s arguments, upon which the district court relied, were “all contrary to considerable precedent.”<sup>269</sup> The Fifth Court first explained that the Supreme Court previously ruled in *Federal Express Corp. v. Holowecki*<sup>270</sup> that an intake questionnaire could qualify as a charge if it satisfied the charge-filing requirements and could be construed as a request for the agency to take remedial action.<sup>271</sup> Because the claimant’s intake questionnaire in *Vantage Energy Services* identified the parties, described

253 *EEOC v. Vantage Energy Servs., Inc.*, 2020 U.S. App. LEXIS 10560 (5th Cir. Apr. 3, 2020).

254 *Id.* at \*\*5-6.

255 *Id.* at \*2.

256 *Id.*

257 *Id.*

258 *Id.*

259 *Id.* at \*\*2-3. “Following *Holowecki*, the EEOC revised its Intake Questionnaire to require claimants to check a box to request that the EEOC take remedial action. . . . Under the revised form, an employee who completes the Intake Questionnaire and checks Box 2 unquestionably files a charge of discrimination.” *Hildebrand v. Allegheny Cty.*, 757 F.3d 99, 113 (3d Cir. 2014).

260 *Vantage Energy Servs., Inc.*, 2020 U.S. App. LEXIS 10560, at \*3.

261 *Id.*

262 *Id.*

263 *Id.*

264 *Id.* at \*\*4-5.

265 *Id.* at \*4.

266 *Id.*

267 *Id.* at \*\*4-5.

268 *Id.* at \*5, citing *Edelman v. Lynchburg College*, 535 U.S. 106 (2002).

269 *Vantage Energy Servs., Inc.*, 2020 U.S. App. LEXIS 10560, at \*6.

270 *Fed. Express Corp. v. Holowecki*, 552 U.S. 389 (2008).

271 *Vantage Energy Servs., Inc.*, 2020 U.S. App. LEXIS 10560, at \*6.

the action complained of, specifically, the claimant’s belief that the defendant had discriminated against him by discharging him immediately after finishing his short-term disability leave, and indicated that the claimant wanted to file a charge and authorized the EEOC to investigate the alleged conduct, the Fifth Circuit concluded that the intake questionnaire satisfied the *Holowecki* test.<sup>272</sup>

In reaching this conclusion, the Fifth Circuit noted that the EEOC’s treatment of the questionnaire was ambiguous because it emphasized the need for the claimant to verify the intake questionnaire, but also had assigned it a charge number. Still, it determined that, while instructive, “the EEOC’s characterization of the questionnaire is not dispositive. What constitutes a charge is determined by objective criteria.”<sup>273</sup>

Relying on *Edelman*, the appeals court also ruled that the fact the intake questionnaire was not verified upon receipt or within the 300-day filing deadline did not render the charge untimely.<sup>274</sup> It explained that the purposes of the verification requirement was to protect employers from the expense and disruption of a claim unless it was supported by an oath subject to the liability for perjury.<sup>275</sup> The Fifth Circuit reiterated that, under *Edelman*, this purpose is maintained if the technical defect, such as a lack of verification, is corrected by the time an employer must respond to the charge.<sup>276</sup> Thus, because the claimant eventually complied with the verification requirement, it “related back” to the time the intake questionnaire was filed.<sup>277</sup>

Finally, the Fifth Circuit rejected the defendant’s argument that its due process rights would be violated if the intake questionnaire was treated as a charge because it did not receive formal notice of the charge within 10 days of the EEOC’s receipt, as required by 42 U.S.C. § 20003-5(e)(1).<sup>278</sup> The court rejected the argument because the defendant failed to demonstrate what prejudice it suffered by the delay, and there was no evidence of bad faith on part of the EEOC.<sup>279</sup>

### 3. Standard for Reviewing Subpoena Enforcement

The Supreme Court in FY 2017 decided what standard a court of appeals should use when reviewing a district court’s decision to enforce or quash an EEOC subpoena. While almost all circuits used the deferential abuse-of-discretion standard, the Ninth Circuit had stood alone in applying the more searching *de novo* standard. Such was the state of the law until the Court’s 2017 decision,<sup>280</sup> in which it brought the Ninth Circuit into line with its sister circuits. Rejecting the Ninth Circuit’s approach, the Court held that a district court’s decision to enforce an EEOC subpoena should be reviewed for abuses of discretion, not *de novo*.<sup>281</sup> In so holding, the Court was guided by two principles: (1) the longstanding practice of the courts of appeals in reviewing a district court’s decision to enforce or quash an administrative subpoena; and (2) whether, “as a matter of the sound administration of justice, one judicial actor is better positioned than another to decide the issue in question.”<sup>282</sup> For the Court, each favored a more deferential standard. While the Court explained that district courts need not defer to the EEOC on what is “relevant,” it did emphasize *Shell Oil*’s “established rule” that the term “relevant” be understood “generously” to permit the EEOC “access to virtually any material that might cast light on the allegations against the employer.”<sup>283</sup>

### 4. Review of Recent Cases Involving Broad-Based Investigation by EEOC

The EEOC usually is given wide latitude to investigate charges of discrimination, provided it can demonstrate it acted within the scope of its authority and the information sought is relevant and reasonable in scope.

<sup>272</sup> *Id.* at \*\*7-9.

<sup>273</sup> *Id.* at \*\*9-10.

<sup>274</sup> *Id.* at \*\*11.

<sup>275</sup> *Id.*

<sup>276</sup> *Id.*

<sup>277</sup> *Id.* at \*\*11-12.

<sup>278</sup> *Id.* at \*\*13.

<sup>279</sup> *Id.*

<sup>280</sup> *McLane Co. v. EEOC*, 137 S. Ct. 1159 (2017).

<sup>281</sup> *Id.* at 1170.

<sup>282</sup> *Id.* at 1166-67.

<sup>283</sup> *Id.* at 1163. On remand, in the applicable case, *McLane Co. v. EEOC*, 857 F.3d 813 (9th Cir. 2017), the Ninth Circuit reached the same decision, even under the deferential abuse-of-discretion standard. Citing Justice Ginsburg’s concurrence in the above-referenced Supreme Court decision, the court held that, by requiring an unduly heightened showing of relevance, the district court had abused its discretion. The court therefore remanded the case to the lower court, where the employer was free to renew its argument that the EEOC’s pedigree information, while perhaps not irrelevant, was unduly burdensome.

As a result of the EEOC's broad-based investigation powers, courts frequently have enforced a subpoena issued by the agency, unless the subpoenaed party can show judicial enforcement of the subpoena would be an abuse of process or create an undue burden. For example, in *EEOC v. Ferrellgas*, a 2024 case, the Sixth Circuit upheld a district court's decision to enforce an EEOC subpoena that sought information on job applicants.<sup>284</sup> The case involved allegations that the charging party was not hired for certain positions because she failed to disclose two misdemeanor convictions on her criminal record, was paid less than her male counterparts, and was discharged because of her race and sex.<sup>285</sup> The respondent argued the court should not enforce the EEOC's subpoena, as the subpoena was overly broad, unduly burdensome, and not relevant to the charge.<sup>286</sup> The district court granted the EEOC's petition to enforce the subpoena, reasoning that information about job applicants was relevant because it could "provide[] context for determining whether discrimination has taken place."<sup>287</sup> The district court further reasoned that the subpoena did not create an undue burden because there was no evidence it would impact the respondent's daily operations.<sup>288</sup> The Sixth Circuit held the district court did not abuse its discretion in enforcing the EEOC subpoena, and further explained that the respondent had previously complied with a similar subpoena without objection.<sup>289</sup>

Further, as few as five discrimination charges may be sufficient grounds to support a multi-state systemic investigation and related subpoena. In a 2024 case out of the Southern District of New York, the EEOC issued a subpoena to a respondent during its investigation of five charges of pregnancy discrimination.<sup>290</sup> The subpoena sought data regarding employees who sought light duty or a job modification as an accommodation for injury, disability, and pregnancy in the five different states where the charging parties were employed.<sup>291</sup> The respondent served on the EEOC a petition to revoke or modify the subpoena, arguing that the subpoena required it to summarize the requested case files in an inappropriate manner and instead agreed to produce the underlying case files—205,247 pages—but refused to produce the requested information.<sup>292</sup> The EEOC filed a petition to require the respondent to comply with the subpoena.<sup>293</sup> The respondent argued, in part, that the five individual charges did not support a systemic investigation.<sup>294</sup> The court enforced the subpoena, reasoning that regardless of whether the systemic investigation was proper, the information sought was relevant since "[s]howing relevancy in this context is a low bar" and the subpoena targeted information squarely at the center of the EEOC's investigation.<sup>295</sup> The court held that the subpoena properly sought "the date of the accommodation request; the nature of the requested accommodation (*i.e.*, lifting restriction and/or additional breaks); whether the request for a lifting restriction and/or additional breaks was granted, granted in part or denied; and the date of the decision to grant, grant in part or deny the accommodation."<sup>296</sup> The court also held that the respondent did not show that compliance would threaten to unduly disrupt or seriously hinder normal operations of its business, since respondent tracked the disputed information and the request sought information for approximately one thousand case files, while the respondent has over one million employees in the United States.<sup>297</sup>

Even documents containing confidential information may be subject to disclosure in response to an EEOC's subpoena—albeit with certain limitations—as exemplified in *EEOC v. Security Industry Specialists, Inc.*<sup>298</sup> In *Security Industry Specialists*, the EEOC filed an application for an order to show cause why an administrative subpoena should not be enforced against the defendant. The subpoena was issued in connection with the EEOC's investigation into a charge of alleged discrimination by a former employee who provided security services for the defendant at a site of a third-party company. The court granted the EEOC's application for enforcement, but thereafter, the third party filed a motion to intervene and an application for a protective order, seeking to protect its confidential information

284 *EEOC v. Ferrellgas, L.P.*, 97 F.4th 338, 341 (6th Cir. 2024).

285 *EEOC v. Ferrellgas, L.P.*, 2023 U.S. Dist. LEXIS 117964, at \*\*1-2 (E.D. Mich. July 10, 2023).

286 *Id.* at \*\*3-4.

287 *Id.* at \*\*6-8.

288 *Id.* at \*\*8-10 (brackets in original).

289 *Ferrellgas*, 97 F. 4th at 345.

290 *EEOC v. Amazon.com Servs. LLC*, 2024 U.S. Dist. LEXIS 121977 (S.D.N.Y. July 11, 2024).

291 *Id.* at \*\*2-3.

292 *Id.* at \*3-4.

293 *Id.* at \*4.

294 *Id.* at \*8.

295 *Id.* at \*7.

296 *Id.* at \*8.

297 *Id.* at \*13.

298 *EEOC v. Security Industry Specialists, Inc.*, 2023 U.S. Dist. LEXIS 164838 (N.D. Cal. Sept. 15, 2023).

(including the location of a business site, which was not publicly known) from improper disclosure to the public. The third-party company cited the EEOC's status as a public agency subject to requests under the Freedom of Information Act in support of its motion.<sup>299</sup>

The court granted the third party's motion to intervene in the subpoena enforcement action to effectuate full and efficient resolution of the action, and further decided that the defendant was permitted to redact information that was not necessary to the charge of discrimination, including the location of the third party's business site whose location is confidential and not publicly known. It also allowed the defendant to redact further information that was not relevant to the action, including dollar amounts of actual or proposed payment rates made by the third party to the defendant.<sup>300</sup>

In a similar case, *EEOC v. MTV Food Inc.*, the court also required disclosure of documents containing confidential information regarding other employees in response to an EEOC's subpoena.<sup>301</sup> In *MTV Food*, the EEOC sought to enforce an administrative subpoena against the respondent in an action involving allegations of race, age, and sex discrimination, as well as retaliation, and a second charge related to a different employee, which was filed after the original charge.<sup>302</sup> The subpoena sought information applicable to the initial charging party and other employees. For example, the subpoena sought an excel spreadsheet of all of the defendant's employees for a four-year period with the following information: full name, date of birth, sex, race, date of hire, job title, department, name of supervisor, date of employment termination (if applicable) and whether the employment termination was voluntary, reason for any involuntary employment termination, and the employee's last known contact information (street address, phone number, and email address).<sup>303</sup> Further, the subpoena also sought "all documents (including email, text, and chat) related to [charging party's] termination."<sup>304</sup> The respondent sent some, but not all, information requested in response the subpoena's excel spreadsheet request.<sup>305</sup> In response to the request for documents regarding the charging party's termination, the respondent responded that it did not terminate her, but instead that she abandoned her job, so it had no termination-related documents to provide.<sup>306</sup> In granting the EEOC's petition to enforce its subpoena, the court reasoned as follows: (1) the information requested in the subpoena was relevant to the EEOC's investigation, (2) there was no basis for the respondent to withhold the requested information from the EEOC on confidentiality grounds, (3) the respondent had not demonstrated that production of the requested information would impose an undue burden, and (4) the respondent had not provided documents fully responsive to the EEOC's request for all documents related to the end of the charging party's employment.<sup>307</sup>

The Southern District of Florida found an EEOC subpoena enforceable even where there was a chance that the employer was not covered by Title VII. In *EEOC v. Sinclair*, an employee filed a charge with the EEOC alleging sex discrimination and retaliation.<sup>308</sup> As part of its investigation, the EEOC issued subpoenas.<sup>309</sup> The respondents averred that they did not have 15 employees and requested that the subpoena be limited to that effect.<sup>310</sup> When the EEOC did not modify or limit the subpoenas, however, the respondents served responses and objections, including an objection that the EEOC did not have authority to investigate the matter, given respondents did not have 15 employees.<sup>311</sup> The EEOC then filed an application for an order to show cause to enforce the subpoenas.<sup>312</sup> The court held that a subpoena enforcement proceeding is not the proper forum to litigate the question of the EEOC's jurisdiction over the discrimination charge.<sup>313</sup> Putting that issue aside, the court found that the materials and information requested were not overly vague and amorphous; the relevancy of the materials sought was uncontested; and that respondents failed to show how production of the requested materials would be unduly

299 *Id.* at \*\*2-4.

300 *Id.* at \*\*3-4.

301 *EEOC v. MTV Food, Inc.*, 2024 U.S. Dist. LEXIS 164906 (S.D.N.Y. Sept. 12, 2024).

302 *Id.* at \*\*1-5.

303 *Id.* at \*\*5-6.

304 *Id.* at \*7.

305 *Id.* at \*6.

306 *Id.* at \*\*18-19.

307 *Id.* at \*\*15-20.

308 *United States EEOC v. Sinclair*, 2024 U.S. Dist. LEXIS 142977 (S.D. Fla. Aug. 9, 2024), *report and recommendation adopted*, No. 23-23547-Civ-Scola, 2024 U.S. Dist. LEXIS 154447 (S.D. Fla. Aug. 28, 2024).

309 *Id.* at \*3.

310 *Id.* at \*\*3-4.

311 *Id.* at \*\*4-5.

312 *Id.* at \*5.

313 *Id.* at \*\*7-8.

burdensome.<sup>314</sup> Accordingly, the court granted the EEOC's application for an order to show cause and ordered the parties to serve and file written objections, if any, with the district court judge.<sup>315</sup> The respondents did not file timely objections.<sup>316</sup> Thus, the district court affirmed the magistrate judge's ruling, ordering the respondents to comply with the subpoenas.<sup>317</sup>

Taking an even more expansive view, the Second Circuit in *EEOC v. AAM Holding Corp.* held that the EEOC retains investigative authority even after it has issued a right-to-sue letter and the charging party has filed a lawsuit.<sup>318</sup> In *AAM Holding*, an individual who was a former dancer at two adult night clubs in New York City filed a class charge with the EEOC alleging widespread sexual harassment and a hostile work environment at the clubs.<sup>319</sup> The EEOC issued administrative subpoenas seeking employee information from the clubs, which the clubs contested as overbroad and unduly burdensome.<sup>320</sup> The district court granted the EEOC's petition to enforce the subpoenas, and the clubs appealed.<sup>321</sup> While the appeal was pending, the EEOC issued a right-to-sue letter to the charging party, who promptly filed suit against the clubs.<sup>322</sup> The Second Circuit was faced with the question of whether the EEOC retains investigative authority after issuing a right-to-sue letter and the charging party files a lawsuit, and answered that question in the affirmative.<sup>323</sup> The court cited the broad authority granted to the EEOC to investigate charges under Title VII, and in doing so, disagreed with a prior holding by the Fifth Circuit in *EEOC v. Hearst Corp.*, which held that the EEOC's authority ends with the issuance of a right-to-sue letter.<sup>324</sup>

Employers also must take care in dealing with EEOC subpoenas because some courts have held that a subpoenaed party that fails to properly respond to a subpoena may be sanctioned, and may waive any objections it may have to responding to the subpoena.

In *EEOC v. Cambridge Transportation, Inc.*,<sup>325</sup> the charging party, a driver, alleged discrimination claims under Title VII, the ADA, and the EPA. The EEOC sent an RFI seeking (1) a copy of the plaintiff's personnel file, and (2) the name, race, sex, and pay rate of all drivers who drove for the respondent.<sup>326</sup> When the respondent did not respond to the RFI, the EEOC served a subpoena seeking the same documents sought in the RFI, as well as the respondent's tax filing information, data pertaining to all of the respondent's drivers, the total number of individuals who drove for the respondent while the charging party was employed, and a list of all positions the respondent considered to be employees as opposed to contractors.<sup>327</sup> According to the EEOC, the respondent's eventual response and productions were incomplete and non-responsive despite multiple extensions to comply.<sup>328</sup> For example, one of the spreadsheets the respondent produced listed only the gender for some individuals, did not list race information, and did not include the charging party on the list.<sup>329</sup>

The EEOC initiated an action seeking an order directing the respondent to appear and show cause why an order should not issue directing the respondent to comply with the subpoena in full, and an order directing the respondent to comply with the subpoena.<sup>330</sup> Ultimately, the court concluded the respondent had waived any arguments against enforcement of the subpoena based on its failure to respond as directed, and noted that the subpoena sought information "reasonably relevant to an authorized investigation and [was] neither unacceptably vague nor issued for an unauthorized purpose."<sup>331</sup>

This case underscores that there are serious consequences for companies that wholly fail to comply with an EEOC subpoena. As noted, in *Cambridge Transportation*, the EEOC sought to enforce a subpoena it had served on the respondent, and the district court entered an order to show cause why the EEOC's subpoena should not be

314 *Id.* at \*\*12-15.

315 *Id.* at \*16.

316 *United States EEOC v. Sinclair*, 2024 U.S. Dist. LEXIS 154447 (S.D. Fla. Aug. 28, 2024).

317 *Id.*

318 *EEOC v. AAM Holding Corp. (In re AAM Holding Corp.)*, No. 24-1672, 2025 U.S. App. LEXIS 21629 (2d Cir. 2025).

319 *Id.* at \*\*3-4.

320 *Id.*

321 *Id.* at \*\*5-6.

322 *Id.* at \*6.

323 *Id.* at \*\*6-12.

324 *EEOC v. Hearst Corp.*, 103 F.3d 462 (5th Cir. 1997).

325 *EEOC v. Cambridge Transp. Inc.*, 2024 U.S. Dist. LEXIS 36506 (D. Minn. Feb. 27, 2024).

326 *Id.* at \*2.

327 *Id.* at \*\*2-3.

328 *Id.* at \*3.

329 *Id.* at \*4.

330 *Id.* at \*\*5-6.

331 *Id.* at \*10.

enforced.<sup>332</sup> The EEOC filed a status report two-and-a-half months after the court's show cause order, notifying the court that it had not received any response to its subpoena, nor any responses to its requests for status updates regarding the response to its subpoena.<sup>333</sup> The court, in turn, ordered the respondent to retain counsel to enter an appearance on its behalf at a hearing to show cause as to why sanctions for contempt should not be entered against it pursuant to Federal Rule of Civil Procedure 45(g) for failure to comply with the court's order.<sup>334</sup> No representative appeared on behalf of respondent, and the court imposed civil contempt sanctions against the respondent, in the amount of \$100 per day for each day that the respondent remained out of compliance with the EEOC's subpoena.<sup>335</sup> The EEOC requested that the court modify the civil contempt sanctions to a daily civil fine of \$200 per day for each day the respondent remained out of compliance, given the respondent's "repeated disregard for judicial orders and given the lack of progress made on its compliance with the EEOC subpoena."<sup>336</sup> The assigned magistrate judge entered a report and recommendation recommending that the EEOC's motion to modify the civil contempt sanctions be granted,<sup>337</sup> and the district court accepted the report and recommendation.<sup>338</sup> The court imposed the \$200 per day fine for each day it remained out of compliance as requested by the EEOC, and warned the respondent that more serious penalties could be imposed if its current pattern of behavior continued, *including seizure of the business*.<sup>339</sup>

A case involving perhaps even more serious consequences for failure to comply with an EEOC subpoena is *EEOC v. Exchange Pub & Kitchen*. In *Exchange Pub & Kitchen*, the EEOC filed an application for an order to show cause as to why an administrative subpoena issued in connection with its investigation of a sex discrimination and retaliation charge should not be enforced.<sup>340</sup> The court issued an order to show cause to the respondent, ordering the respondent to respond to the EEOC's application by a certain date and to appear at a hearing to show cause as to why it should not be compelled to comply with the subpoena issued to it.<sup>341</sup> The respondent failed to appear at the show cause hearing and also failed to otherwise respond to the EEOC's application. In response, the EEOC also moved for contempt of court and for sanctions against the respondent.<sup>342</sup> The magistrate judge not only recommended that the EEOC's motion to enforce the subpoena be granted, but also recommended that the court grant the EEOC's motion to find respondent in contempt and to be sanctioned.<sup>343</sup> Specifically, the magistrate judge recommended that the sanction include a fine of \$1,000 for both respondent and its owner, and for the fine to increase over time for failure to comply.<sup>344</sup> Further, it was recommended that the owner of respondent be arrested and imprisoned and that the premises of the respondent be locked if respondent still refused to comply within two weeks of any arrest.<sup>345</sup> The magistrate judge also urged the EEOC to file a motion for attorneys' fees and costs.<sup>346</sup> As a result, the EEOC promptly filed a motion for attorneys' fees and costs,<sup>347</sup> and the court granted the EEOC's request, allowing over \$23,000 in attorneys' fees and costs to be awarded as a result of the 59.4 hours the EEOC spent enforcing its subpoena.<sup>348</sup>

Where a subpoenaed party objects to responding to an agency's subpoena on grounds that the subpoena seeks irrelevant information, is too indefinite, was issued for an illegitimate purpose, or is unduly burdensome, district courts will closely scrutinize an employer's objections given the EEOC's broad investigative authority. For example, in *EEOC v. Do & Co Detroit, Inc.*,<sup>349</sup> the district court denied the respondent's petition to revoke or modify a subpoena issued by the EEOC, where the charging party alleged that the respondent did not compensate Black employees and white employees equally and fired Black employees who failed mandatory drug tests but did not do the same for white employees. Following the court's denial of the respondent's petition to revoke or modify the subpoena, the respondent failed to respond to the subpoena.

332 *Id.* at Dkt. 20.

333 *Id.* at Dkt. 23.

334 *Id.* at Dkt. 25.

335 *Id.* at Dkts. 30, 33.

336 *Id.* at Dkt. 36.

337 *Id.* at Dkt. 39.

338 *EEOC v. Cambridge Transp., Inc.*, 2024 U.S. Dist. LEXIS 180762 (D. Minn. Oct. 3, 2024).

339 *Id.*

340 *EEOC v. Exchange Pub. & Kitchen*, 2025 U.S. Dist. LEXIS 45389 (S.D. Ind. Feb. 5, 2025).

341 *Id.* at \*2.

342 *Id.* at \*3.

343 *Id.* at \*\*5-7.

344 *Id.*

345 *Id.*

346 *Id.*

347 *Id.* at Dkt. 22.

348 *Id.* at Dkt. 32.

349 *EEOC v. Do & Co Detroit, Inc.*, 2024 U.S. Dist. LEXIS 81532 (E.D. Mich. May 3, 2024).

The EEOC filed an application for an order to show cause why the subpoena should not be enforced.<sup>350</sup> The Eastern District of Michigan determined that (1) the charge was valid and that the EEOC was therefore authorized to investigate the charge and subpoena evidence for periods beyond that alleged in a charge; (2) the material requested in the subpoena was relevant to the charge and the EEOC was entitled to seek evidence concerning patterns of discrimination without presenting a specific reason for disclosure of the requested information; and (3) the respondent's objections that the subpoena was (a) too indefinite, (b) was issued for an illegitimate purpose, or (c) was unduly burdensome, were unsupported.<sup>351</sup> The court noted that the EEOC may seek "access to virtually any material which might cast light on the allegations against the employer," and that employers may be compelled to compile information in their control to respond to a subpoena.<sup>352</sup> It also cited case law that privacy or "confidentiality is no excuse for noncompliance."<sup>353</sup> The court ultimately granted the EEOC's application and ordered the respondent to show cause within 14 days as to why the subpoena should not be enforced.<sup>354</sup>

The EEOC's subpoena authority is not completely without limitations. For example, nationwide discovery is generally considered by courts to be an impermissible fishing expedition.<sup>355</sup> Thus, in *EEOC v. Visionpro Networks, Inc.*, when the EEOC sought to enforce a subpoena that requested, among other things, information not limited to a charging party's geographic location in a case involving sexual harassment allegations, the court granted the EEOC's petition for enforcement, but held that some limits on the geographic scope of the subpoena were appropriate.<sup>356</sup> Where the charging party was the only technician in Connecticut, however, the court refused to limit the subpoena to just the Connecticut facility; instead, the court ordered that the subpoena be limited to all facilities within Connecticut and New York because the charging party's employing unit was construed as spanning both Connecticut and New York.<sup>357</sup>

Further, in a case out of the Southern District of Indiana, although the respondent was the named entity, the EEOC served a subpoena on that entity's parent company.<sup>358</sup> The respondent filed a petition to modify and enforce the subpoena, which was granted in part and denied in part, with respondent being ordered to respond to the subpoena as modified. When the respondent still did not produce the information sought in the subpoena, the EEOC filed a motion seeking an order enforcing the modified subpoena.<sup>359</sup> The respondent did not argue that it was not required to respond to the subpoena with all non-privileged responsive information, so the court granted the EEOC's motion to the extent that the respondent was ordered to fully and completely respond to the modified subpoena.<sup>360</sup> Thus, the only remaining issue was whether the EEOC was entitled to obtain information from the parent company of the respondent, rather than the respondent, that related to properties other than the one owned and operated by the respondent.<sup>361</sup> Although the court recognized the broad scope of relevance in an EEOC investigation, the court opined that the EEOC's investigation powers were not unlimited. In denying the EEOC's motion to the extent it sought information relating to properties other than that operated by the respondent, the court quoted the Seventh Circuit's opinion in *EEOC v. United Airlines, Inc.*,<sup>362</sup> as follows:

[T]he Supreme Court also has cautioned that the charge and relevance requirements should not be interpreted so broadly as to render the statutory language a nullity. The requirement of relevance, like the charge requirement itself, is designed to cabin the EEOC's authority and prevent fishing expeditions. Indeed, as we have noted previously, although the legitimate scope of the subpoena power includes information that might throw light upon the inquiry raised by the complaint, the "might" is an indication of a realistic expectation rather than an idle hope that something may be discovered. Absent a finding that the material sought is relevant, a court may not enforce an EEOC subpoena.

350 *Id.* at \*2.

351 *Id.* at \*\*4-7.

352 *Id.* at \*6.

353 *Id.* at \*\*6-7.

354 *Id.* at \*7.

355 See, e.g., *Cronas v. Willis Group Holdings, LTD*, 06 Civ. 15295 (GEL), 2008 U.S. Dist. LEXIS 81083, at \*7 (S.D.N.Y. Oct. 8, 2008) (stating that nationwide discovery lead to a "fishing expedition" for plaintiff to search for other employees with similar discrimination claims); *In re Western Dist. Xerox Litig.*, 140 F.R.D. 264, 271 (W.D.N.Y. 1991) (denying company-wide discovery where plaintiffs already had data for over 1,500 similarly situated employees); *EEOC v. Visionpro Networks*, 2024 U.S. Dist. LEXIS 137641 (E.D.N.Y. Aug. 2, 2024).

356 *EEOC v. Visionpro Networks*, 2024 U.S. Dist. LEXIS 137641 (E.D.N.Y. Aug. 2, 2024).

357 *Id.* at \*\*24-25.

358 *EEOC v. Indiana Grand Racing & Casino*, 2025 U.S. Dist. LEXIS 58448 (S.D. Ind. Mar. 28, 2025).

359 *Id.* at \*\*1-2.

360 *Id.* at \*2.

361 *Id.* at \*3.

362 *EEOC v. United Airlines, Inc.*, 287 F.3d 643, 652 (7th Cir. 2002) (internal citations and quotation marks omitted).

In denying the EEOC's motion, the court also noted that the EEOC had failed to cite to any case law that was focused on a third party, rather than a respondent.<sup>363</sup> Thus, the court noted that EEOC's subpoena constituted an improper fishing expedition.<sup>364</sup>

A decision from the Eleventh Circuit in *EEOC v. Eberspaecher North America Inc.* underscores an additional nuanced limitation on the EEOC's subpoena authority.<sup>365</sup> In *Eberspaecher*, the charging party, a former employee, filed a charge with the EEOC alleging he experienced discrimination on the basis of disability when he was fired after accruing points under the respondent's point system for absences and tardiness, where his absences were disability-related. During its investigation, the EEOC uncovered information suggesting that the same discriminatory practice might have affected other employees for the respondent across the country, so it, in turn, filed a commissioner's charge against a single respondent facility rather than the corporate headquarters of the respondent. Pursuant to the charge, the EEOC requested nationwide information regarding the respondent's employees discharged pursuant to the attendance policy. The respondent refused to provide the information, noting that the underlying charge was specific to only one of respondent's facilities. In response, the EEOC issued a subpoena seeking the same information, and the respondent refused to comply. In response to an application for enforcement of the subpoena, the district court ordered the respondent to comply with the subpoena in part. Though the district court agreed with the Commission that the temporal and subject matter scope of the subpoena was "both relevant and reasonable in light of the Commissioner's ADA charge," it limited enforcement to the respondent facility stating: "[T]he geographic scope of the subpoena is too broad when read in conjunction with the Commissioner's Charge and Notice."<sup>366</sup> The district court further concluded that only records pertaining to the violations of the ADA at the facility were relevant and must be produced. The Eleventh Circuit affirmed the decision of the district court, citing the fact that the charge was specific to only one facility, and failed to provide notice of an investigation into the company's facilities nationwide.<sup>367</sup>

More information on the EEOC's subpoena enforcement activities for FY 2025 can be found in Appendix C to this Report.

## B. Conciliation Obligations Prior to Bringing Suit

Before filing a lawsuit under Title VII based on pattern-or-practice claims under Section 707 or "class" claims under Section 706, the EEOC must investigate and then try to eliminate any alleged unlawful employment practice by informal methods of conciliation.<sup>368</sup> Only after pursuing such conciliation attempts may the EEOC file a civil action against the employer.<sup>369</sup> If the EEOC fails to conciliate in good faith prior to filing suit, the court may stay the proceedings to allow for conciliation or dismiss the case.

### 1. Impact of *Mach Mining*

Over the years employers have challenged the sufficiency of the EEOC's investigation and conciliation efforts. In April 2015, the Supreme Court addressed EEOC conciliation obligations in *Mach Mining v. EEOC*.<sup>370</sup> In this case, the Court held that the EEOC's attempts to conciliate a discrimination charge prior to filing a lawsuit are judicially reviewable, but that the EEOC has broad discretion in the efforts it undertakes to conciliate.

Specifically, the Court held that to meet its statutory conciliation obligation, the EEOC must inform the employer about the specific discrimination allegation(s), describing what the employer has done and which employees (or class of employees) have suffered. It also held that the EEOC must try to engage the employer in discussion to give the employer a chance to remedy the allegedly discriminatory practice. It then concluded that judicial review of whether these requirements are met is appropriate, but "narrow." In its view, a court is just to conduct a "barebones review" of the conciliation process and is not to examine positions the EEOC takes during the conciliation process, since the EEOC possess "expansive discretion" to decide "how to conduct conciliation efforts" and "when to end them."

<sup>363</sup> 2025 U.S. Dist. LEXIS 58448 at \*4.

<sup>364</sup> *Id.* at \*5.

<sup>365</sup> *EEOC v. Eberspaecher North America, Inc.*, 2023 U.S. App. LEXIS 11466 (11th Cir. 2023).

<sup>366</sup> *EEOC v. Eberspaecher North America, Inc.*, 2021 U.S. Dist. LEXIS 264693 (N.D. Ala. Aug. 30, 2021).

<sup>367</sup> *Eberspaecher*, 67 F. 4th at 1132-34, 1136.

<sup>368</sup> 42 U.S.C. § 2000e-5(b).

<sup>369</sup> 42 U.S.C. § 2000e-5(f)(1).

<sup>370</sup> *Mach Mining, LLC v. EEOC*, 135 S. Ct. 1645 (2015).

The Court noted that a sworn affidavit from the EEOC stating that it has performed these obligations generally would suffice to show that the agency has met the conciliation requirement, provided that if an employer presents concrete evidence that the EEOC did not provide the requisite information about the charge or try to engage in a discussion about conciliating the claim, then a reviewing court would have to conduct “the fact-finding necessary to resolve that limited dispute.” The Court then held that, even if a court finds for an employer on the issue of the EEOC’s failure to conciliate, the appropriate remedy merely is to order the EEOC to undertake the mandated conciliation efforts. Thus, while some courts previously had dismissed lawsuits based on the EEOC’s failure to meet its conciliation obligation, that remedy appears no longer to be available based on the Court’s decision.

On remand, the EEOC moved to strike part of *Mach Mining*’s memorandum in opposition to the EEOC’s motion for partial summary judgment because it contained information from confidential settlement discussions (and the EEOC wished to bar any future disclosure of “anything said or done” during conciliation).<sup>371</sup> The U.S. District Court for the Southern District of Illinois held that because the Supreme Court determined that “[a] court looks only to whether the EEOC attempted to confer about a charge, and not to what happened (*i.e.*, statements made or positions taken) during those discussions,” it would grant the motion to strike and would bar the parties from “disclosing anything said or done during and/or as part of the informal methods of ‘conference, conciliation, and persuasion.’”<sup>372</sup> The court also held that the defendant-employer had no right to inquire about calculations for damages during the conciliation process.<sup>373</sup>

## 2. Investigation and Conciliation Obligations Post-*Mach Mining*

Courts continue to apply *Mach Mining* to clarify how charges and conciliations affect the EEOC’s authority to investigate and conciliate. As discussed, pursuant to *Mach Mining*, the EEOC “must try to remedy unlawful workplace practices through informal methods of conciliation” prior to filing suit.<sup>374</sup>

For example, in *EEOC v. Hospital Housekeeping Services*,<sup>375</sup> in response to a motion for summary judgment filed by the EEOC, the defendant alleged the EEOC did not conciliate in good faith, and the District of Arkansas cited *Mach Mining* to note its “narrow” and “barebones” review of the EEOC’s conciliation obligation. The court underscored the simple two-step inquiry that is to be applied when reviewing whether the EEOC met its conciliation obligations: (1) whether the EEOC “inform[ed] the employer of the specific allegation ... describing both what the employer has done and which employees (or what class of employees) have suffered as a result,” and (2) whether the EEOC has “engaged the employer in some form of discussion (whether written or oral), so as to give the employer an opportunity to remedy the allegedly discriminatory practice.”<sup>376</sup> Applying the two-step test, the court granted the EEOC’s motion for summary judgment and held the EEOC met its conciliation obligation because it informed the employer of the specific allegations against it in a reasonable cause letter.<sup>377</sup>

In *EEOC v. Princess Martha, LLC*,<sup>378</sup> the Middle District of Florida emphasized the same narrow review but declined to grant the EEOC’s motion for judgment on the pleadings as to the defendant’s failure to conciliate defense, opining that to grant judgment in the EEOC’s favor on that affirmative defense was premature in light of the lack of any evidence indicating that the alleged failure to conciliate rendered the conditional defense inaccurate.

Similarly, in *EEOC v. American Flange and Greif, Inc.*,<sup>379</sup> the EEOC moved for partial summary judgment with respect to one of two of the defendant’s affirmative defenses, which asserted that the EEOC did not meet its statutory obligation to attempt conciliation with that defendant. Specifically, defendant Greif’s fourth affirmative defense to the EEOC’s complaint asserted that the EEOC did not meet its pre-suit statutory obligation to attempt conciliation with Greif. In response to the EEOC’s motion for summary judgment as to that affirmative defense, Greif argued that the EEOC failed to give it notice and an opportunity to conciliate. Based on its review of emails evidencing that the EEOC provided notice and attempts to confer about the charging party’s charge, the court disagreed, and

371 *EEOC v. Mach Mining, LLC*, 161 F. Supp. 3d 632, 635-636 (S.D. Ill. 2016).

372 *Id.* at 635-636.

373 *Id.* at 635.

374 *Mach Mining*, 575 U.S. at 482.

375 *EEOC v. Hospital Housekeeping Services*, No. 2:21-cv-2134, 2023 U.S. Dist. LEXIS 39812 (W.D. Ark. Mar. 9, 2023).

376 *Id.* at \*5 (citing *Mach Mining*, 575 U.S. at 494) (internal brackets omitted).

377 *Id.* at \*6.

378 *EEOC v. Princess Martha, LLC*, 2023 U.S. Dist. LEXIS 88238 (M.D. Fla. May 19, 2023).

379 *EEOC v. American Flange and Greif, Inc.*, No. 21 C 5552, 2023 U.S. Dist. LEXIS 129587 (N.D. Ill. July 27, 2023).

granted the EEOC's motion.<sup>380</sup> According to the court, per *Mach Mining*, the EEOC need only show that it tried "to engage the employer in some form of discussion," and the emails showed that it did. The court also noted that even if the EEOC failed to meet its pre-suit obligations, Greif's requested remedy—dismissal of the EEOC's claims against it—would be improper. Instead, the appropriate remedy when an employer succeeds on its failure-to-conciliate defense is to stay the case and order the EEOC to seek the employer's voluntary compliance.<sup>381</sup>

In *EEOC v. Telecare Mental Health Services of Washington, Inc.*,<sup>382</sup> the Western District of Washington examined whether the EEOC met its conciliation obligations prior to filing its lawsuit against the defendant. In its answer to the EEOC's complaint, the defendant brought an affirmative defense alleging failure to exhaust administrative remedies, which the court presumed was based on the EEOC's failure to attempt the required "informal methods of conciliation" prior to bringing suit.<sup>383</sup> The defendant brought this defense because at the charge stage, it responded to the EEOC's "formal offer to conciliate" and "initial demand" with a counteroffer that was "communicated to the EEOC as an opening offer for conciliation purposes,"<sup>384</sup> and, instead of proceeding to conciliation, the EEOC filed a Notice of Conciliation Failure and then filed suit in federal court.<sup>385</sup> The EEOC brought a motion to strike the defendant's affirmative defense, arguing that under *Mach Mining*, the court lacked authority to evaluate the sufficiency of the conciliation.<sup>386</sup>

The Western District of Washington denied the EEOC's motion to strike, holding that "[t]he allegations before the Court do not indisputably demonstrate that EEOC met its conciliation obligations."<sup>387</sup> The court observed that to the contrary, "the facts show that the EEOC sent [the defendant] what amounts to a single 'take it or leave it' offer (while apparently failing to advise [the defendant] that that is what it was), did not respond to [the defendant]'s counteroffer, and unilaterally declared its conciliation efforts a failure."<sup>388</sup> "It is at the very least a matter of debate whether this exchange of letters can be characterized as a 'discussion.'"<sup>389</sup> The court reiterated that while *Mach Mining* "makes clear that the scope of judicial review of the EEOC's conciliation efforts is narrow," the scope of review still "extends as far as is necessary to determine whether a conciliation in fact took place."<sup>390</sup>

The Northern District of California examined whether the EEOC met its conciliation obligations in ruling on the respondent's motion to dismiss and motion to stay a lawsuit for race discrimination.<sup>391</sup> The respondent sought a stay on several grounds, one being that the EEOC failed to engage in the required pre-suit conciliation.<sup>392</sup> The court found that the EEOC properly notified respondent of the specific allegations against it and the class of employees who allegedly suffered as a result.<sup>393</sup> The court also found that the EEOC engaged in conciliation efforts with the respondent, including a seven-hour, in-person conciliation session.<sup>394</sup> The respondent, however, claimed that the EEOC failed to comply with the conciliation mandate because the EEOC refused to provide any specific facts allowing respondent to understand and remedy the allegedly discriminatory practices, therefore, rendering any attempts of conciliation not "meaningful" or in "good faith."<sup>395</sup> The court held that the EEOC was not required to provide the respondent with facts allowing it to understand what problematic practices it implemented or define the class of employees further and, moreover, the Supreme Court in *Mach Mining* expressly rejected a "good faith" requirement on pre-suit conciliation.<sup>396</sup>

380 *Id.* at \*\*13-14, \*\*21-26.

381 *Id.* at \*25.

382 *EEOC v. Telecare Mental Health Servs. of Washington, Inc.*, 2022 U.S. Dist. LEXIS 55657 (W.D. Wash. Mar. 28, 2022).

383 *Id.* at \*4 & n.2.

384 *Id.* at \*3.

385 *Id.*

386 *Id.* at \*\*1, 6.

387 *Id.* at \*5.

388 *Id.* at \*\*5-6.

389 *Id.* at \*6 (citing *Mach Mining*, 575 U.S. at 488).

390 *Id.*

391 *EEOC v. Tesla, Inc.*, 2024 U.S. Dist. LEXIS 58268 (N.D. Cal. Mar. 29, 2024).

392 *Id.* at \*11.

393 *Id.* at \*12.

394 *Id.*

395 *Id.* at \*13-15.

396 *Id.* at \*14-15 citing *Mach Mining, LLC*, 575 U.S. at 492.

### 3. EEOC's Challenge that any Conciliation Obligation Exists in Pattern-or-Practice Claims Under Section 707

In circumstances in which the EEOC solely relies on Section 707 in any “pattern or practice” lawsuit against an employer, the EEOC cannot circumvent its obligation to engage in conciliation prior to filing suit.

Notably, in *EEOC v. CVS Pharmacy, Inc.*,<sup>397</sup> the EEOC argued that Section 707(a) of Title VII authorizes it to bring actions challenging a “pattern or practice of resistance” to the full enjoyment of Title VII rights without alleging that the employer engaged in discrimination and without following any of the pre-suit procedures contained in Section 706, including conciliation. Specifically, the EEOC argued that Section 707(a) creates an independent power of enforcement to pursue claims alleging a pattern or practice “of resistance” and that Section 707(e), by contrast, requires only that claims alleging a pattern or practice “of discrimination” comply with Section 706 procedures.<sup>398</sup>

The Seventh Circuit rejected this argument, holding that “there is no difference between a suit challenging a ‘pattern or practice of resistance’ under Section 707(a) and a ‘pattern or practice of discrimination’ under Section 707(e),” and that “Section 707(a) does not create a broad enforcement power for the EEOC to pursue non-discriminatory employment practices that it dislikes—it simply allows the EEOC to pursue multiple violations of Title VII . . . in one consolidated proceeding.”<sup>399</sup> Adopting the EEOC’s interpretation, the court reasoned, would read the conciliation requirement out of Title VII because the EEOC could always contend that it was acting pursuant to its broad authority under Section 707(a).<sup>400</sup> Noting that the EEOC’s interpretation would undermine both the spirit and letter of Title VII, the court held that the EEOC is required to comply with all of the pre-suit procedures contained in Section 706 when it pursues pattern-or-practice violations.<sup>401</sup>

### 4. Evidence/Documents Relating to Conciliation

Title VII expressly provides that nothing said or done during the conciliation process “may be used as evidence in a subsequent proceeding without the written consent of the persons concerned.”<sup>402</sup> In a 2008 decision, *EEOC v. CRST Int’l, Inc.*, the Northern District of Iowa granted the EEOC’s motion to strike from the record a letter containing proposed terms of conciliation.<sup>403</sup> In so doing, the court rejected the employer’s arguments that the letter was essential to its ability to disprove one of the EEOC’s allegedly undisputed facts, that the EEOC had waived the statute’s confidentiality protections by initiating a dispute regarding the substance of conciliation, and that the letter was admissible under Fed. R. Evid. 408. Significantly, the court also held, citing *Mach Mining*, that sealing the letter, as opposed to striking the letter entirely, would not serve the purpose of guaranteeing the parties that their conciliation efforts would not “come back to haunt them in litigation.”<sup>404</sup>

The Middle District of Tennessee in 2022 provided further insight into the confines of Title VII’s conciliation confidentiality protections in the absence of consent by both parties to the conciliation. Specifically, in *EEOC v. Whiting-Turner Construction Co.*,<sup>405</sup> the EEOC filed a motion to quash one paragraph of a subpoena issued by the defendant to a non-party job placement agency which had previously conciliated the matter with the EEOC. Paragraph 13 of the subpoena sought “any and all documents, property, and ESI which relate to any charges of discrimination filed against [the subpoenaed party] with any federal, state or local EEO agency (including the Equal Employment Opportunity Commission and the Tennessee Commission on Human Rights),” in connection with the project at issue in the case.<sup>406</sup> It specified that the response should include, but not be limited to, “charges and complaints, statements of position, correspondence, notes, settlement and/or conciliation agreements (including drafts), [and] responses to requests for information.”<sup>407</sup>

397 *EEOC v. CVS Pharmacy, Inc.*, 809 F.3d 335 (7th Cir. 2015).

398 *Id.* at 340-41.

399 *Id.* at 341-42.

400 *Id.* at 342.

401 *Id.* at 343. *But see EEOC v. Doherty*, 126 F. Supp. 3d 1305 (S.D. Fla. 2015), in which a district court took the opposite view.

402 42 U.S.C. § 2000e-5(b).

403 *EEOC v. CRST Int’l, Inc.*, 351 F. Supp. 3d 1163, 1174 (D. Iowa 2018).

404 *Id.* at 1175 (citing *Mach Mining*, 575 U.S. at 493).

405 *EEOC v. Whiting-Turner Construction Co.*, 2022 U.S. Dist. LEXIS 140900 (M.D. Tenn. Aug. 8, 2022).

406 *Id.* at \*\*4-5.

407 *Id.* at \*5.

The EEOC objected to Paragraph 13 of the subpoena, arguing that Title VII’s confidentiality protections prevented disclosure of information regarding conciliation proceedings, and further that conciliation-related documents were not relevant to any claims or defenses in the action because they are inadmissible as evidence “without the written consent of the persons concerned,” which the EEOC had not given.<sup>408</sup> In response, the defendant argued that the majority of the information it requested in Paragraph 13, including the final conciliation agreement between the subpoenaed party and the EEOC (if any) was “purely factual material” and therefore not subject to Title VII’s confidentiality protections.<sup>409</sup>

Observing that Title VII’s confidentiality protections protect materials reflecting what was “said or done” during conciliation efforts, but does not protect “purely factual information about the merits of the charge, gleaned by the [EEOC] during its conciliation endeavors,” the court granted in part and denied in part the EEOC’s motion to quash.<sup>410</sup> The court opined that although “proposals and counter-proposals of compromise made by the parties during [conciliation efforts]” fell under Title VII’s confidentiality protections, any final agreement between the EEOC and the subpoenaed party, if one existed, was *not* so protected.<sup>411</sup> At the same time, the court expressed no opinion as to objections that the subpoenaed party might make on its own behalf.<sup>412</sup>

In *EEOC v. Heartfelt Home Healthcare Services, Inc.*,<sup>413</sup> decided in FY 2023, the EEOC was directed to show cause why the attorney-client or other privilege should attach between itself and the charging party. Specifically, there were questions as to whether the EEOC had an obligation to share settlement offers with the charging party during the conciliation process. The Western District of Pennsylvania held that while courts have recognized the existence of a privilege under different rationales, the EEOC failed to provide sufficient evidence for the same in this particular case.<sup>414</sup> Further, it emphasized that even assuming privilege had attached for purposes of the litigation, it would not extend to communications made during the pre-suit investigative process.<sup>415</sup> In response to a question of whether the employer could require the charging party to participate in a mandatory alternative dispute resolution process, the court also held that the charging party was required to so participate.<sup>416</sup>

---

408 *Id.* at \*6 (citing 42 U.S.C. § 2000e-5(b)).

409 *Id.* at \*\*6-7.

410 *Id.* at \*\*8-9.

411 *Id.* at \*\*14-15 (emphasis added).

412 *Id.* at \*15.

413 *EEOC v. Heartfelt Home Healthcare Services, Inc.*, 2023 U.S. Dist. LEXIS 17116 (W.D. Pa. Jan. 30, 2023).

414 *Id.* at \*\*1-3.

415 *Id.* at \*3 (citing *EEOC v. Texas Roadhouse, Inc.*, 2014 U.S. Dist. LEXIS 125867 (D. Mass. Sept. 9, 2014) (“The EEOC concedes that communications between claimants and witnesses and EEOC investigators and staff, during the investigative process, are not, of course, attorney work product.”)).

416 *Id.* at \*2.

## V. Review of Noteworthy EEOC Litigation and Court Opinions

### A. Pleadings

#### 1. Motion to Dismiss (or Strike)/Scope of Complaint

Multiple courts in FY 2025 addressed pleading issues in litigation pursued by the EEOC and held to several well-worn principles: pleadings should be liberally construed with favorable inferences to the plaintiff to determine if a claim is plausible; the filing of an amended complaint moots a previously filed motion to dismiss; courts are limited in considering documents outside of a complaint on a motion to dismiss, but parties should not make misleading claims they know are contradicted by documents; parties must comply with applicable statutes of limitations; and federal substantive and procedural law are to be applied to federal claims in federal court. With regard to motions to strike filed this year, courts considered more limited alternatives and time limitations.

In *EEOC v. Council for the Advancement of Social Services and Education*, the Western District of Louisiana denied the defendant employer's motion to dismiss based on the timeliness of the filed claim.<sup>417</sup> The charging party, a Black woman formerly employed as a dental assistant, alleged in her charge of discrimination the defendant's dental director made racially offensive remarks to her and others.<sup>418</sup> The charging party further alleged she complained about these remarks to the billing manager, and within an hour after the dental director learned of her complaint, charging party was placed on unpaid administrative leave. The charging party was terminated shortly thereafter and replaced by a white dental assistant.<sup>419</sup> In its motion to dismiss, the defendant argued the EEOC's litigation was untimely, and the EEOC's claims of racial discrimination and retaliation were not adequately pled.<sup>420</sup>

The court disagreed. With respect to the statute of limitations, the court made clear the charging party was required to file her charge with the EEOC within 300 days of the alleged unlawful employment practice, which she did, and this time limit is not applicable to assessing when the EEOC was required to file an enforcement action in court.<sup>421</sup> The court also found the discrimination and retaliation claims were adequately pled. At the motion to dismiss stage, the EEOC was not required to produce a *prima facie* case.<sup>422</sup> Rather, the EEOC was required to "plead sufficient facts on all the ultimate elements" of a disparate treatment claim or a retaliation claim to make its claim "plausible."<sup>423</sup> The court found the discrimination claim was adequately pled because the complaint alleged the charging party is Black, had worked for the clinic for almost a year without qualification concerns, had been placed on unpaid administrative leave then terminated, and was replaced by a white employee.<sup>424</sup> The court also found the retaliation claim was adequately pled because the charging party was placed on administrative leave and terminated within a very short time period after her protected complaints.<sup>425</sup> For those reasons, the court denied the motion to dismiss.

In *EEOC v. Rex Healthcare, Inc.*, after the defendant filed a motion to dismiss the complaint, rather than oppose the motion, the EEOC instead filed an amended complaint.<sup>426</sup> The defendant answered the amended complaint, including a request for the court to dismiss the amended complaint in its entirety.<sup>427</sup> The Eastern District of North Carolina denied the defendant's motion to dismiss the original complaint as moot because an amended complaint was filed, clarifying proper procedure was for the defendant to file a motion to dismiss the amended complaint if defendant believed the amended complaint was still defective.<sup>428</sup> The defendant did not subsequently file a motion to dismiss the amended complaint.

<sup>417</sup> *EEOC v. Council for the Advancement of Social Servs. & Educ.*, 753 F Supp 3d 507, 510 (W.D. La. 2024).

<sup>418</sup> *Id.*, 753 F Supp 3d at 510.

<sup>419</sup> *Id.* at 510-11.

<sup>420</sup> *Id.* at 511.

<sup>421</sup> *Id.* at 513.

<sup>422</sup> *Id.* at 512-13.

<sup>423</sup> *Id.* (internal quotations omitted).

<sup>424</sup> *Id.* at 513-14.

<sup>425</sup> *Id.* at 514-15.

<sup>426</sup> *EEOC v. REX Healthcare, Inc.*, 2025 U.S. Dist. LEXIS 77447, at \*1 (E.D.N.C. Apr. 23, 2025).

<sup>427</sup> *Id.* at \*\*1-2.

<sup>428</sup> *Id.* at \*\*2-3.

In *EEOC v. GBMC HealthCare, Inc.*, the District Court of Maryland denied the defendant's motion to dismiss, but issued a warning to the EEOC regarding the complaint.<sup>429</sup> In this case, the charging party alleged that after accepting an offer for employment as a registered nurse, she disclosed to the defendants she was deaf and requested accommodations. The defendants denied her accommodation requests and rescinded her job offer.<sup>430</sup> The court found these allegations were sufficient at the motion to dismiss stage to plead claims for discrimination and retaliation under the ADA.<sup>431</sup>

In support of their motion to dismiss, the defendants attached documents providing additional context for documents referenced in the complaint concerning the requested accommodations and the defendants' response to them.<sup>432</sup> The court held it could not properly consider these extrinsic documents in support of the motion to dismiss. As such, the defendants' argument that the documents established the charging party could not perform essential functions of her role even with a reasonable accommodation were unsuccessful.<sup>433</sup> However, the court warned, "the Court of course cannot unsee those documents, and therefore also notes at the outset that the EEOC appears to have provided curiously selective quotes from certain documents—perhaps even bordering on misleading."<sup>434</sup> The documents indicated the charging party had requested accommodations regarding lifting and carrying and that she could not only not enter the room in which an MRI scanner was located, but she could not escort or accompany patients to MRI testing.<sup>435</sup> Because these documents contradicted contentions made by the EEOC in the complaint, the court warned EEOC counsel "to proceed with caution in their representations to the Court," that the selective quotations "may become highly problematic," and that counsel could be subject to sanctions under Fed. R. Civ. P. 11.<sup>436</sup>

In *GBMC HealthCare*, the court denied a motion from the EEOC to strike certain documents filed by the defendants that included the charging party's full, unredacted date of birth.<sup>437</sup> Rather than strike the documents, the court ordered they be sealed, as the defendants had already re-filed a properly redacted version of the documents.<sup>438</sup>

A motion to strike was also denied in *EEOC v. Elevation Labs, LLC*, brought in the District of Idaho.<sup>439</sup> In this case, the defendant moved during discovery to strike a portion of the complaint seeking punitive damages on the grounds that Idaho law required the EEOC to obtain the court's permission before making such a request.<sup>440</sup> The court denied this motion as untimely. The case had been active for roughly 17 months, and Fed. R. Civ. P. 12(f)(2) requires a motion to strike to be filed within 21 days after service of the relevant pleading.<sup>441</sup> Additionally, the court stated it would have denied the motion on the merits because the defendant had not shown the request for punitive damages met the standard to be stricken, *i.e.*, that it was "(1) an insufficient defense; (2) redundant; (3) immaterial; (4) impertinent; or (5) scandalous."<sup>442</sup> Further, the court held the Idaho statute did not apply to the EEOC's claims because they were brought under federal law in federal court.<sup>443</sup>

429 *EEOC v. GBMC HealthCare, Inc., et al.*, 2025 U.S. Dist. LEXIS 74961, at \*\*1-2 (D. Md. Apr. 18, 2025).

430 *Id.* at \*\*2-5.

431 *Id.* at \*\*9-10.

432 *Id.* at \*\*7-8.

433 *Id.* at \*\*7-10.

434 *Id.* at \*\*1-2.

435 *Id.* at \*3 n.1.

436 *Id.* at \*\* 3 n.1, 8-9. The court also warned the EEOC against challenging the authenticity of documents without basis, to avoid being "unnecessarily argumentative." *GBMC HealthCare*, 2025 U.S. Dist. LEXIS 74961, at \*7 n.3.

437 *Id.* at \*14.

438 *Id.* at \*\*14-15.

439 *EEOC v. Elevation Labs, LLC*, 2025 U.S. Dist. LEXIS 73702, at \*1 (D. Idaho Apr. 15, 2025)

440 *Id.* at \*2.

441 *Id.*

442 *Id.* at \*3.

443 *Id.* at \*\*4-6.

## 2. Lack of Particularity

EEOC complaints may be subject to motions for more definite statements under Fed. R. Civ. P. 12(e) where a defendant contends the allegations are not sufficiently particular for the defendant to respond. In some cases, these motions are made in tandem with or in the alternative to motions to dismiss for failure to state a claim.

In a case out of the Eastern District of Washington, the EEOC brought sexual harassment claims on behalf of a single employee as well as a potential class claim.<sup>444</sup> The defendant argued the class claims should be dismissed as time-barred because the putative class members had not filed charges of discrimination within 300 days of the alleged harassment.<sup>445</sup> In the alternative, the defendant moved for a more definite statement with respect to the claims of the class members.<sup>446</sup> The court denied both branches of the motion.<sup>447</sup> First, the court applied the Ninth Circuit’s “piggybacking” rule holding class members could join the timely filed claim if the purported class claims were “expressed in or may be implied from the original filing.”<sup>448</sup> The court also found the class claims were sufficiently particular because they specified ways in which a male employee allegedly harassed various putative class members (identified by job title) over certain time periods.<sup>449</sup> The court also noted the motion to dismiss failed because additional details about the alleged harassment would be developed in discovery.<sup>450</sup>

## 3. Key Issues in Class-Related Allegations

### a. Challenges to pattern-or-practice claims (including Section 706/707 issues)

Recent cases have addressed the EEOC’s requirements during the investigation process and in filing complaints to bring pattern-or-practice claims on behalf of a class. This includes requirements to give notice of, investigate, and make a determination regarding these claims during the administrative process and to plead sufficient facts about the nature of such claims in the complaint.

In *EEOC v. Il Fornaio America LLC*, the charge referred to sexual harassment allegations from a single employee at one of the defendant’s 17 restaurant locations.<sup>451</sup> During its investigation, the EEOC sought information concerning other restaurant locations, but the defendant objected and limited its responses to the EEOC’s requests for information to only two restaurant locations.<sup>452</sup> The EEOC determined there was reasonable cause to believe the charging party and a class of similarly situated individuals experienced sexual harassment or retaliation, without limiting its findings to any particular restaurant locations.<sup>453</sup> After the conciliation process failed, the EEOC brought its enforcement action for an alleged companywide pattern or practice of unlawful discrimination.<sup>454</sup> In the action, the defendant moved to dismiss the class action allegations in the EEOC’s amended complaint concerning the company’s other 15 restaurant locations because the EEOC’s investigation only focused on two locations.<sup>455</sup>

The court denied the motion to dismiss, but granted a stay to address a concern with the EEOC’s conciliation efforts.<sup>456</sup> The court rejected the defendant’s argument that the EEOC’s limited investigation deprived the court of subject matter jurisdiction over the other class claims.<sup>457</sup> Relying on *Fort Bend County, Texas v. Davis*, 587 U.S. 541 (2019), the court determined the prerequisites to suit under Title VII were not jurisdictional, even when the suit is brought by the EEOC.<sup>458</sup> This included requirements for the EEOC to serve notice of a charge, investigate, make a cause determination, and engage in conciliation efforts.<sup>459</sup> To the extent that those steps were not taken by the EEOC for the other restaurant locations, it did not deprive the court of jurisdiction.<sup>460</sup>

<sup>444</sup> *EEOC v. Fred Meyer Stores, Inc.*, 759 F. Supp. 3d 1084 (E.D. Wash. 2024).

<sup>445</sup> *Id.* at 1088.

<sup>446</sup> *Id.*

<sup>447</sup> *Id.* at 1091.

<sup>448</sup> *Id.* at 1089.

<sup>449</sup> *Id.* at 1090-91.

<sup>450</sup> *Id.* at 1091.

<sup>451</sup> *EEOC v. Il Fornaio Am. LLC*, 2024 U.S. Dist. LEXIS 208224, at \*1 (C.D. Cal. Nov. 14, 2024).

<sup>452</sup> *Id.* at \*\*4-7.

<sup>453</sup> *Id.* at \*7.

<sup>454</sup> *Id.* at \*8.

<sup>455</sup> *Id.* at \*\*8, 14.

<sup>456</sup> *Id.* at \*\*29-30.

<sup>457</sup> *Id.* at \*\*19-20.

<sup>458</sup> *Id.*

<sup>459</sup> *Id.* at \*19.

<sup>460</sup> *Id.* at \*20.

However, though judicial review of the EEOC’s process is typically “bare bones,” the court raised a concern that following the defendant’s objections in the administrative process, the EEOC appeared to acquiesce to the request to limit the investigation and conciliation process to only two restaurant locations.<sup>461</sup> Although the EEOC had given notice it sought to bring class claims concerning all restaurant locations and alleged a pattern or practice claim involving company-level executives, the court found the EEOC did not make clear the scope of its investigation expanded beyond two restaurant locations.<sup>462</sup> In response, rather than grant dismissal of the broader claims as beyond the scope of the EEOC’s charge and investigation, the court issued a 60-day stay for the EEOC to attempt conciliation and if conciliation failed, to issue an amended letter of determination detailing specific allegations to find cause to believe discrimination had occurred at the other restaurant locations.<sup>463</sup>

*EEOC v. Geisinger Health* addressed the EEOC’s pleading requirement for class action claims in litigation.<sup>464</sup> In *Geisinger*, the charging party alleged the employer had an inflexible leave policy that did not allow her to take extended leave and required her to reapply for her position when she was able to return to work.<sup>465</sup> The charging party applied to several positions, but she was not hired, because, per the employer, she was not the most qualified candidate.<sup>466</sup> The EEOC made a cause determination for violations of the ADA with respect to the charging party and a putative class.<sup>467</sup> In the litigation, the defendants moved to dismiss on multiple grounds, including that the EEOC failed to sufficiently identify a class of aggrieved persons because the EEOC did not sufficiently allege any class member was a “qualified individual,” and because the EEOC did not allege facts to identify the outlines of class membership.<sup>468</sup>

The court disagreed, finding the EEOC had sufficiently pled that the charging party and four others were qualified to perform essential functions of their jobs.<sup>469</sup> The court also explained that to plead a class action claim, “the EEOC is not required to identify or name every potential class member” or plead factual allegations about each of their individual claims.<sup>470</sup> To meet the pleading standard, it would be sufficient for the EEOC to identify, “(1) the statutes that the employer allegedly violated; (2) the time frame in which the alleged violations occurred; (3) the names of at least one presently identified victim; (4) a general description of the class of aggrieved persons; (5) the specific claims alleged and their elements as to the charging party and the class of aggrieved persons; (6) the types of conduct to which the named claimants and the identified class members were subjected; and (7) the remedies being sought.”<sup>471</sup> The court found the EEOC met this standard by pleading claims on behalf of certain individuals, providing a general description of the class, and the type of conduct by the defendants giving rise to the class claims.<sup>472</sup> As a result, the court denied the defendants’ motion to dismiss the class claims.<sup>473</sup>

While the court permitted the EEOC to move forward with the individual and class claims, the court granted the defendants’ motion to dismiss claims without prejudice against certain defendants who were not respondents in the administrative process because administrative remedies had not been exhausted against those defendants, and the EEOC could not be construed as a single integrated enterprise.<sup>474</sup>

### ***b. Other Issues***

When the EEOC determines there is sufficient evidence to support some, but not all, of the alleged unlawful employment practices asserted in a complainant’s charge of discrimination, the EEOC is authorized to pursue relief for those claims for which it has found reasonable cause. In a 2020 decision, *EEOC v. Pediatric Health Care Alliance, P.A.*, the district court denied the defendant’s motion to dismiss the EEOC’s complaint where the EEOC had determined the complainant’s claim of sexual harassment was not sufficiently supported, but there was

461 *Id.* at \*\*10, 28-29 (quoting *Mach Mining, LLC v. EEOC*, 575 U.S. 480, 494 (2015)).

462 *Id.* at \*\*23-27.

463 *Id.* at \*29.

464 *EEOC v. Geisinger Health*, 2025 U.S. Dist. LEXIS 56874, at \*1 (E.D. Pa. Mar. 27, 2025).

465 *Id.* at \*\*3-6.

466 *Id.* at \*\*3-8.

467 *Id.* at \*\*10-11.

468 *Id.* at \*\*15-16, 36.

469 *Id.* at \*37.

470 *Id.*

471 *Id.*

472 *Id.* at \*\*39-40.

473 *Id.* at \*40.

474 *Id.* at \*\*57-58.

sufficient evidence to show retaliation for reporting sexual harassment.<sup>475</sup> In doing so, the court found that the complaint asserted a claim of retaliation only, even though the complaint contained allegations related to the claim of sexual harassment.<sup>476</sup> The court also determined there was no basis to strike the allegations about the alleged sexual harassment, which the EEOC argued provided relevant background for the claim of retaliation, because the court could not conclude there was no relation between these asserted facts and the retaliation claim or that they prejudiced the defendant.<sup>477</sup> The court found defendant's argument regarding the sexual harassment allegations required further factual development, and thus was not appropriate to consider on a motion to dismiss.<sup>478</sup>

In *EEOC v. Justin Vineyards*,<sup>479</sup> a class action brought by the EEOC, the court granted the employer's motion to compel arbitration. The court found the defendant's two contracts containing arbitration provisions applying to "all claims" brought by an employee were valid and applied to the charging parties' claims of fraud in the execution and unconscionability as to the arbitration agreement.

Regarding the charging parties' claims of being "misled" by the contracts, the court pointed to their failures to ask for time to review the contracts or have them fully translated. In evaluating unconscionability, the court reviewed the terms of the agreement and found they were not "so one-sided as to shock the conscience" of the court. The court held the arbitration agreements were valid, refusing to subvert the authority of the Federal Arbitration Act, which provides that any arbitration agreement within its scope "shall be valid, irrevocable, and enforceable."

In *EEOC v. Whiting-Turner Contracting*,<sup>480</sup> the EEOC alleged the defendant exposed Black employees to a racially hostile work environment. The defendant asserted 28 affirmative defenses, and the court issued an order setting a deadline for filing motions to amend the pleadings.

In its first set of interrogatories, the defendant asked whether any class member had filed for bankruptcy. After the deadline to amend the pleadings had passed, the EEOC supplemented its responses to show one class member had filed for bankruptcy. Defendant then sought to amend its answer to add an affirmative defense asserting the one class member's claims were barred and/or estopped because of his failure to disclose the lawsuit in his bankruptcy proceeding.

The EEOC objected, arguing the defendant had not shown good cause for filing its motion after the deadline to amend pleadings. The EEOC further asserted the defendant was improperly seeking to add allegations and arguments beyond its proposed additional affirmative defense, and that the proposed affirmative defense was legally deficient. The defendant countered that good cause existed to allow its untimely proposed amended answer because the EEOC did not disclose the class member's bankruptcy until two months after the deadline for filing motions to amend the pleadings, and the EEOC had not established that the defense was futile. Importantly, the defendant failed to cite any legal authority to support its request to amend in the final stage of proceedings.

The court considered whether defendant had good cause to file an untimely motion to amend its answer, holding that, while defendant satisfied the good cause requirement, the proposed changes in its amended answer were unrelated to the bankruptcy proceeding and, as such, were not permitted. Finally, the court underscored that the EEOC, not the class member, was the party in the action. As such, defendant had not sufficiently pled its proposed estoppel affirmative defense because it had not alleged that the class member was a party to the action.

More recently, in *EEOC v. Sunnybrook Education Association, IEA-NEA*,<sup>481</sup> the court addressed the issue of joinder of a required party under Federal Rule of Civil Procedure 19(a)(1). The EEOC's race discrimination complaint alleged that, in instances where the school district awarded a non-collective bargaining agreement (CBA) salary to non-Black union members, the union either ignored the higher salary or negotiated a memorandum of understanding with the school district. In the charging party's case, however, the union filed a grievance contesting his non-conforming salary. The union filed a motion to dismiss the complaint for failure to join the school district in the litigation. The court denied the motion, holding the union had not carried its burden to show Federal Rule of Civil Procedure 19(a)(1) required joinder, if feasible, of the school district.

475 *EEOC v. Pediatric Health Care Alliance, P.A.*, 2020 U.S. Dist. LEXIS 205660, \*\*2, 4 (M.D. Fla. Nov. 4, 2020).

476 *Id.* at \*4.

477 *Id.*

478 *Id.* at \*\*4-5.

479 *EEOC v. Justin Vineyards*, 2023 U.S. Dist. LEXIS 48985 (C.D. Cal. Mar 17, 2023).

480 *EEOC v. Whiting-Turner Contracting Co.*, 2023 U.S. Dist. LEXIS 44016 (M.D. Tenn. Mar. 15, 2023).

481 *EEOC v. Sunnybrook Educ. Ass'n, IEA-NEA*, 2024 U.S. Dist. LEXIS 11671 (N.D. Ill. Jan. 23, 2024).

In considering whether to dismiss the complaint, the court first examined whether Rule 19(a)(1) required the school district to be joined in the litigation. The union argued that, because the complaint sought injunctive relief in the form of an order compelling the union “to eradicate the effects of its past and present unlawful employment practices,” the order would have “no practical effect” absent joinder of the employer school district.<sup>482</sup> The court disagreed with the defendant’s analysis, finding it had not identified anything the court would need to order the school district to do, or refrain from doing, in order to provide complete relief between the existing parties.<sup>483</sup>

The court next analyzed whether, under Rule 19(1)(B), the absent school district “claims an interest related to the subject matter of the action” and, if so, whether one of Rule 19(a)(1)(B)’s two prongs was satisfied.<sup>484</sup> The court agreed the school district had a potential interest in the interpretation of the existing CBA with the union and any subsequent CBAs, but disagreed with the union that the school district would be subjected to inconsistent obligations (*i.e.*, (1) comply with the CBA; (2) and promote the charging party and pay him a salary that does not conform to the CBA).<sup>485</sup> Finally, the court reasoned there would be no substantial impairment of the school district’s ability to protect its interests, as the underlying claim involved the union’s enforcement decision, and the EEOC did not any allege any discriminatory actions by the school district.<sup>486</sup>

In *United States EEOC v. KVP, LP*, the court considered a stipulation to continue the early neutral evaluation beyond the deadline because of an EEOC scheduling conflict.<sup>487</sup> The court denied the stipulation, concluding that “[g]iven that Plaintiff is a governmental agency represented by numerous attorneys, more explanation is required as to the nature of this scheduling conflict.” Further, District of Nevada Local Rule 16–6(d) requires the early neutral evaluation be held no later than 90 days after the first responding party appears in the case unless good cause is shown. In denying the stipulation, the court found it “fails to show good cause to hold the early neutral evaluation beyond that timeframe.”

#### 4. Who Is the Employer?

Whether a defendant is an employer of the charging party is a frequent subject of litigation. Claims of employment discrimination and related retaliation claims under Title VII, the ADEA, and the ADA generally attach liability to employers only.<sup>488</sup> Thus, claims may be dismissed against a defendant that does not meet the legal standard to be considered the charging party’s employer. In FY 2025, many courts continued to address this issue, with a particular focus on defendants not named in the underlying charge but still included in the lawsuit.

Generally, a party must be named in the EEOC charge before that party may be sued “unless there is a clear identity of interest between [the unnamed party] and a party named in the EEOC charge . . .”<sup>489</sup> An identity-of-interest exception allows a party not named in an administrative charge to be added as a defendant in a lawsuit if there is a sufficient relationship or shared interest between the named and unnamed parties.<sup>490</sup> This exception is applied when the unnamed party had adequate notice of the proceedings and an opportunity to participate, ensuring fairness in the legal process.<sup>491</sup> Courts have held this *Eggleston* test “is satisfied when there is an overlap in ownership and business addresses.”<sup>492</sup>

In *EEOC v. Ephraim McDowell Health, Inc.*, the EEOC alleged defendant Ephraim McDowell Health, Inc. (EMH) discriminated against the claimant on the basis of sex.<sup>493</sup> The EEOC sought to amend its complaint to add Ephraim McDowell Regional Medical Center, Inc. (RMC) and EMHFL, Inc. (HFL) as defendants, arguing the amendment was necessary because these three entities operated “a comprehensive, integrated healthcare delivery system as a single

482 *Id.* at \*\*4-5.

483 *Id.* at \*7.

484 *Id.* at \*\*7-8.

485 *Id.* at \*\*9-10.

486 *Id.* at \*11.

487 *EEOC v. KVP, LP*, 2024 U.S. Dist. LEXIS 6074 (D. Nev. Jan. 10, 2024).

488 See 42 U.S.C. § 2000e-2(a) (Title VII discrimination claims); 42 U.S.C. § 2000e-3(a) (Title VII retaliation claims); 29 U.S.C. § 623(a) (ADEA discrimination claims); 29 U.S.C. § 623(d) (ADEA retaliation claims); 42 U.S.C. § 12112(a) (ADA discrimination claims). Courts are divided on whether the anti-retaliation provision of the ADA, 42 U.S.C. § 12203(a), permits individual liability. See *Constantine v. N.J. Dept. of Banking & Ins.*, 2024 U.S. App. LEXIS 10947, at \*12 n.9 (3d Cir. May 6, 2024) (collecting cases).

489 *EEOC v. Ephraim McDowell Health, Inc.*, 2025 U.S. Dist. LEXIS 125775, at \*5 (E.D. Ky. July 2, 2025), citing *Romain v. Kurek*, 836 F.2d 241, 245 (6th Cir. 1987) (quoting *Jones v. Truck Drivers Local Union No. 299*, 748 F.2d 1083, 1086 (6th Cir. 1984)).

490 *Eggleston v. Chicago Journeymen Plumbers’ Local Union No. 130*, 657 F.2d 890, 905 (7th Cir. 1981).

491 *Ephraim McDowell Health*, 2025 U.S. Dist. LEXIS 125775, at \*5

492 *Id.* at \*6 (citing *Supreme Staffing LLC*, 2023 U.S. Dist. LEXIS 139315, at \*16-17; *Jeff Wyler Eastgate, Inc.*, 2006 U.S. Dist. LEXIS 72344, at \*\*14-15).

493 *Id.* at \*1.

employer.”<sup>494</sup> EMH opposed the amendment on various grounds, two of which included that RMC and HFL were never named in the underlying administrative proceedings and the EEOC failed to provide notice about expanding the scope of the lawsuit.<sup>495</sup> Here, the court found that one individual served as all three entities’ registered agent, general counsel, and chief legal officer, and was informed of the claimant’s first charge and conciliation efforts.<sup>496</sup> The principal business addresses of each of the entities was also located at the same address.<sup>497</sup> Based on the shared identity of interest analysis, the court held the *Eggleston* test was satisfied and granted the EEOC’s motion to amend because there was adequate notice and shared interest among the three defendant entities.<sup>498</sup>

Similarly, in *EEOC v. Tenn. Healthcare Mgmt., Inc.*, the court wrestled with the question of whether to treat two entities as a joint employer or an integrated enterprise.<sup>499</sup> To do so, courts examine four factors: “(1) interrelation of operations, *i.e.*, common offices, common record keeping, shared bank accounts and equipment; (2) common management, common directors and boards; (3) centralized control of labor relations and personnel; and (4) common ownership and financial control.”<sup>500</sup> The court emphasized that all four factors were not required to be met and no one factor was conclusive.<sup>501</sup> The EEOC pointed to several thin, and somewhat confusing factual allegations in the complaint to support their contention that the two defendants were an integrated enterprise.<sup>502</sup> Although the court acknowledged the weakness of the EEOC’s supporting evidence in determining the two entities were a joint employer, it ultimately held that it satisfied its minimal pleading obligations under Rule 12(b)(6) and denied the defendants’ motion to dismiss.<sup>503</sup>

The Middle District of North Carolina considered the question of whether to dismiss a defendant who was named in the lawsuit but not explicitly named in the underlying EEOC charge.<sup>504</sup> In this case, the respondent on the charge was listed as the restaurant that employed the claimant, not the correct corporate names of the defendants.<sup>505</sup> The EEOC argued that because it “may bring a civil action against any respondent. . . named in the charge,” the EEOC could sue the defendants because they do business under the restaurant name that was named in the charge of discrimination.<sup>506</sup> Additionally, a party not named in the EEOC charge, “may nevertheless be subject to a Title VII suit if it receives actual notice of the EEOC proceeding against it.”<sup>507</sup> The court agreed and denied the motion to dismiss, concluding that defendants, as the owners and operators of the restaurant named in the charge, were able to be properly named in the lawsuit even though they were not explicitly named in the charge.<sup>508</sup>

Courts further expanded on the integrated enterprise analysis in *EEOC v. Ryan’s Pointe Houston, LLC*, where the court once again considered whether separate business entities were interrelated enough for a claimant to file a charge against them.<sup>509</sup> The EEOC filed a motion for summary judgment on defendants’ affirmative defense that the plaintiff’s claims are barred due to mistaking the corporate relationship of defendants, stating defendants operated as an integrated enterprise.<sup>510</sup> Although the court acknowledged the defendants were in fact separate entities, it looked toward whether the business conducted by such separate entities was sufficiently interrelated, such as hiring and firing decision making, attendance at meetings, where paychecks were issued, a shared Employer Identification Number, and common financial control.<sup>511</sup> Ultimately, the court held the defendants sufficiently operated as an integrated enterprise and granted summary judgment on defendants’ affirmative defenses.<sup>512</sup>

494 *Id.* at \*2 (internal quotations omitted).

495 *Id.* at \*\*2-3.

496 *Id.*

497 *Id.* at \*7.

498 *Id.* at \*9.

499 *EEOC v. Tenn. Healthcare Mgmt., Inc.*, 2024 U.S. Dist. LEXIS 186083 at \*4 (M.D. Tenn. Oct. 11, 2024).

500 *Id.* at \*4-5 (citing *Swallows v. Barnes & Noble Book Stores, Inc.*, 128 F.3d 990, 993-94 (6th Cir. 1997)).

501 *Id.* at \*5 (citing *Id.*).

502 *Id.*

503 *Id.* at \*6.

504 *EEOC v. Battleground Rests, Inc.*, 2025 U.S. Dist. LEXIS 32071 (M.D.N.C. Feb. 24, 2025).

505 *Id.* at \*10.

506 *Id.* (citing 42 U.S.C. § 2000e-5(f)(1)).

507 *Id.* (citing *EEOC v. 1618 Concepts, Inc.*, 432 F. Supp. 3d 595, 603 (M.D.N.C. 2020)).

508 *Id.* at \*12-13.

509 *EEOC v. Ryan’s Pointe Houston, LLC*, 2025 U.S. Dist. LEXIS 33651 (S.D. Tex. Jan. 21, 2025).

510 *Id.* at \*23-24.

511 *Id.* at \*25-26.

512 *Id.* at \*28.

In *EEOC v. Mile Hi Foods, Co.*, the court considered a motion to stay discovery by one of the defendants, QSR, who alleged it was not involved in the alleged violations and was not part of the EEOC's investigation or conciliation process.<sup>513</sup> In determining whether to stay discovery, the court weighed the following factors: "(1) Plaintiffs' interest in proceeding expeditiously with discovery and the potential prejudice to Plaintiffs of a delay; (2) the burden on Defendant QSR by proceeding with discovery; (3) the convenience to the Court; (4) nonparties' interests in either staying or proceeding with discovery; and (5) the public interest in either staying or proceeding with discovery."<sup>514</sup> In sum, the court found the plaintiffs had a strong interest in expediting discovery to combat lost evidence and fading memories, there was not an undue burden on defendants, and there was a neutral impact on the court and non-parties.<sup>515</sup> As a result, the court denied defendant QSR's motion to stay.<sup>516</sup>

## 5. EEOC Motions Tied to Pleadings

There have been myriad motions filed by the EEOC across the country challenging pleadings, particularly affirmative defenses. Rule 12(f) permits the court to "strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter."<sup>517</sup> "Motions under Rule 12(f) are viewed with disfavor, both because striking a portion of a pleading is a drastic remedy and because such motions are often used as a dilatory or harassing tactic."<sup>518</sup> In *EEOC v. Sofidel America Corp.*, the EEOC filed a lawsuit alleging sexual harassment and retaliation.<sup>519</sup> In its answer, the defendant asserted various affirmative defenses, including that the EEOC lacked standing and failed to reasonably conciliate the discrimination charge.<sup>520</sup> The court granted the EEOC's motion to strike both affirmative defenses, finding them clearly insufficient as a matter of law.<sup>521</sup> The court reasoned that even if the EEOC failed to reasonably conciliate, such failure would not defeat the discrimination claim or limit the defendant's liability – "[i]t would merely permit this Court to order the parties to complete the necessary step of conciliation before proceeding with the lawsuit."<sup>522</sup> In response to the affirmative defense that the EEOC lacked standing, the court held it was derivative of the conciliation affirmative defense and struck it as well.<sup>523</sup>

In *EEOC v. Midwest Farms, LLC*, the defendant asserted 27 separate affirmative defenses and the EEOC moved to strike 23 of them.<sup>524</sup> For 16 of the affirmative defenses, the EEOC argued they should be stricken "because they either (1) assert that the EEOC has failed to plausibly state its claims, (2) is a denial of facts alleged in the second amended complaint, or (3) is a reservation of rights to amend its complaint under Federal Rule of Civil Procedure 15,"<sup>525</sup> none of which are affirmative defenses, which must be pled in an answer. The defendant agreed, and the court struck the affirmative defenses.<sup>526</sup> Similarly, the defendant's third affirmative defense, asserting class members were at-will, was also struck because it was also not an affirmative defense that must be pled.<sup>527</sup> In the defendant's twenty-first affirmative defense of consent, estoppel, waiver, or unclean hands, the court held the EEOC failed to prove that "none of the defenses of consent, estoppel, or waiver could be maintained under any

513 *EEOC v. Mile Hi Foods, Co.*, 2025 U.S. Dist. LEXIS 82373 at \*\*2-3 (D. Colo. Apr. 29, 2025).

514 *Id.* at \*4 (citing *String Cheese Incident, LLC*, 2006 U.S. Dist. LEXIS 97388, 2006 WL 894955, at \*2 (citing *FDIC v. Renda, No. 85-2216-O*, 1987 U.S. Dist. LEXIS 8305, 1987 WL 348635, at \*2 (D. Kan. Aug. 6, 1987)).

515 *Id.* at \*\*4-12.

516 *Id.* at \*12.

517 Fed. R. Civ. P. 12(f).

518 *EEOC v. Midwest Farms, LLC*, 2025 U.S. Dist. LEXIS 49326 at \*6 (D. Colo. Mar. 18, 2025) (citing 5C Charles Alan Wright & Arthur R. Miller, Federal Prac-tice and Procedure § 1380 (3d ed. updated 2024); see, e.g., *Sender v. Mann*, 423 F. Supp. 2d 1155, 1163 (D. Colo. 2006) (citing *Federal Deposit Ins. Corp. v. Isham*, 782 F. Supp. 524, 530 (D. Colo. 1992)); *BJC Health Sys. v. Columbia Cas. Co.*, 478 F.3d 908, 917 (8th Cir. 2007) ("Striking a party's pleading . . . is an extreme and disfavored measure."); *Cortina v. Goya Foods, Inc.*, 94 F. Supp. 3d 1174, 1182 (S.D. Cal. 2015) ("Motions to strike are generally disfavored because they are often used as delaying tactics." (quotation omitted)).

519 *EEOC v. Sofidel America Corp.*, 2025 U.S. Dist. LEXIS 130817 at \*1-2 (N.D. Okla. Jul 10, 2025).

520 *Id.* at \*2-3.

521 *Id.* at \*8.

522 *Id.* at \*5-6 (citing *EEOC v. Darden Rest., Inc.*, No. 15-20561-CIV, 2016 WL 9488709, at \*3 (S.D. Fla. June 1, 2016) (striking failure to conciliate defense as improper affirmative defense because "the remedy to in-adequate conciliation is an order staying case and requiring the parties to conciliate" rather than limiting or defeating plaintiff's ability to recover)). See also *EEOC v. Chipotle Servs., LLC*, 2024 WL 4948888, at \*14 (D. Kan. Dec. 3, 2024) (granting summary judgment to EEOC on failure to conciliate defense, "because failure to conciliate is not an affirmative defense" and cannot bar EEOC's claims as a matter of law); *EEOC v. DolGenCorp, LLC*, No. CIV-21-295-GLJ, 2024 U.S. Dist. LEXIS 18569, 2024 WL 402921, at \*11 (E.D. Okla. Feb. 2, 2024) (same).

523 *Id.* at \*7.

524 *EEOC v. Midwest Farms, LLC*, 2025 U.S. Dist. LEXIS 49326 at \*9 (D. Colo. Mar. 18, 2025).

525 *Id.* at \*10.

526 *Id.* at \*\*10-11.

527 *Id.* at \*11 (the court further agreed with the EEOC that whether "other class members were at-will employees is immaterial to the EEOC's claims because Title VII applies regardless of the parties' contractual relationship.").

set of circumstances,” but only struck the defense of unclean hands because the defendant agreed to dismiss it.<sup>528</sup> The court also struck down the twenty-second affirmative defense, which stated the EEOC could not seek relief on behalf of certain class members who were discovered beyond the investigation.<sup>529</sup> Once again, the court held this assertion was insufficient as an affirmative defense, although the defendant may raise the issue of whether they had notice of class-wide claims in the future.<sup>530</sup> In the same vein, the court struck down affirmative defenses alleging failure to exhaust administrative remedies or provide sufficient notice because the defendant once again conceded to the court that they were not true affirmative defenses.<sup>531</sup>

In *EEOC v. Kanes Furniture, LLC*, the defendant raised 19 affirmative defenses and the EEOC moved to strike five of them.<sup>532</sup> In this case, the court considered the question of what is considered “minimally sufficient to state a legal defense.” The EEOC alleged one of the affirmative defenses (failure to conciliate) was deficient because it lacked particularity as required by Rule 9(c).<sup>533</sup> The court held the defendant may challenge the sufficiency of the EEOC’s conciliation efforts, and concluded this affirmative defense was “is at least minimally sufficient to state a legal defense.”<sup>534</sup> In another defense defendant stated that if the charging party and/or other class members had exhausted their administrative remedies, the scope of the lawsuit is bound by the initial charge underlying the investigation.<sup>535</sup> Once again, the court held this affirmative defense was “at least minimally sufficient to state a legal defense.”<sup>536</sup>

Two additional affirmative defenses subject to the motion to strike alleged that because the EEOC failed to satisfy the pre-litigation obligations for each unidentified class member and failed to identify the class members, its class claims were barred.<sup>537</sup> Both of these affirmative defenses alleged the unidentified class was being used as a “fishing expedition” to uncover additional potential violations.<sup>538</sup> The court held that each of these affirmative defenses was proper because the defendant is entitled to challenge the EEOC’s attempts to gather information beyond the initial charge.<sup>539</sup> The last affirmative defense subject to the motion alleged that the EEOC’s claims on behalf of unidentified women must be dismissed because “[the EEOC] has impermissibly attempted to convert a Section 706 action into a Rule 23 class-based case.”<sup>540</sup> The court held that to the extent this defense asserts a basis to dismiss the class claim, the defense is construed as a specific denial, again denying the EEOC’s motion to strike.<sup>541</sup>

In *EEOC v. Ryan’s Pointe Houston LLC*, the court reviewed the EEOC’s motion for partial summary judgment on the grounds that the defendants insufficiently pled their affirmative defenses.<sup>542</sup> The EEOC argued the defendants could not show the claims were barred by any statute of limitations, waiver, estoppel, the doctrine of unclean hands, laches, failure to exhaust administrative remedies, failure to fulfill conditions precedent, failed to state a claim, failed to establish the defense of fraud, and failed to mitigate.<sup>543</sup> The court ultimately granted partial summary judgment as to all of the defendants’ affirmative defenses.

The defendants argued that the EEOC’s failure to act on the claim until more than two years after the charge was filed supported the affirmative defense of statute of limitations.<sup>544</sup> However, the court determined “there is no statute of limitations on Title VII cases from the time between the Charge being filed and the EEOC filing suit in this Court,” granting the motion for partial summary judgment as to this defense.<sup>545</sup> In response to defendants’

528 *Id.* at \*\*7, 13 (citing *Chavez v. Bd. of Cnty. Comm’rs of Lake Cnty.*, 423 F. Supp. 3d 1106, 1108 (D. Colo. 2019) (quoting *Isham*, 782 F. Supp. at 530); see also *S.E.C. v. Nacchio*, 438 F. Supp. 2d 1266, 1287 (D. Colo. 2006) (“A motion to strike an affirmative defense as insufficient is adjudicated under the same standard as a motion to dismiss: namely, the Court must strike the defense only if it cannot be maintained under any set of circumstances.”).

529 *Id.* at \*15.

530 *Id.* at \*\*18-19.

531 *Id.* at \*\*20-21.

532 *EEOC v. Kanes Furniture, LLC*, 2024 U.S. Dist. LEXIS 214079 at \*2 (M.D. Fla. Nov. 25, 2024).

533 *Id.* at 2; see Fed. R. Civ. P. 9(c) (“Except when required to show that the court has jurisdiction, a pleading need not allege: the legal existence of an organized association of persons that is made a party.”).

534 *Id.* at \*3.

535 *Id.*

536 *Id.* at \*4.

537 *Id.*

538 *Id.*

539 *Id.* at \*6.

540 *Id.* (quotations omitted).

541 *Id.*

542 *EEOC v. Ryan’s Pointe Houston, LLC*, 2025 U.S. Dist. LEXIS 33651 (S.D. Tex. Jan. 21, 2025) at \*23.

543 *Id.* at \*\*28-47.

544 *Id.* at \*30.

545 *Id.* at \*31.

affirmative defense of waiver, the court held defendants failed to state which right was waived by the EEOC—indeed, the court found it “unclear how bad acts or material misrepresentations shows waiver of a right and Defendants provide no authority to support this assertion.”<sup>546</sup> The court granted partial summary judgment on this affirmative defense.<sup>547</sup> In the court’s review of the affirmative defense of estoppel, the defendants alleged the EEOC relied on a misrepresentation by the parties, not the defendants.<sup>548</sup> However, for an estoppel affirmative defense to be pled sufficiently, the party asserting estoppel must have reasonably relied on the misrepresentation to their detriment.<sup>549</sup> As such, the court also granted partial summary judgment on this affirmative defense.<sup>550</sup> Regarding the unclean hands defense, the defendants were unable to show they were seriously injured by any misrepresentations, which prohibited them from invoking the affirmative defense.<sup>551</sup> The court, once again, granted partial summary judgment on this affirmative defense.<sup>552</sup> Similarly, in response to the defendants’ affirmative defense of fraud, because defendants never alleged they were injured by any alleged misrepresentations, they failed to adequately plead a fraud defense.<sup>553</sup>

Defendants also raised an affirmative defense stating the EEOC failed to exhaust its administrative remedies.<sup>554</sup> The court noted that defendants never specifically noted which administrative remedy the EEOC failed to exhaust and granted partial summary judgment on this defense.<sup>555</sup> The EEOC responded to the defendants’ affirmative defenses of failure to fulfill conditions precedent and failure to state a claim, which defendants failed to rebut.<sup>556</sup> For that alone, the court held the defendants abandoned or waived their defenses and granted partial summary judgment.<sup>557</sup> Finally, in response to defendants’ failure to mitigate, the court held the defendants failed to meet their burden in showing that comparable work was available and the plaintiff failed to seek it out, leading to a granting of partial summary judgment on this defense.<sup>558</sup>

## 6. Venue

Because there is a strong presumption in favor of the plaintiff’s choice of forum, a defendant seeking to transfer venue must clear a high hurdle to convince a court to exercise its discretion and transfer the case. Typically, this presumption can only be overcome if private and public interest factors clearly point toward the alternative forum. Such factors include the potential jurisdiction of the transferee district; convenience of the witnesses; convenience of the parties; and the interest of justice.<sup>559</sup>

In *EEOC v. American Screening*, the Eastern District of Louisiana considered the defendant’s motion to transfer venue from the Eastern District to the Western District of Louisiana where the defendant claimed the alleged discriminatory act occurred, where its only office was located, and where the pertinent witnesses to the case resided.<sup>560</sup> While the court ultimately granted defendant’s motion to transfer, the court found the Eastern District

<sup>546</sup> *Id.* at \*34.

<sup>547</sup> *Id.* at \*35 (citing *EEOC v. Mod. Grp., Ltd.*, 725 F. Supp. 3d 577, 594 (E.D. Tex. 2024) (“Once a proper motion has been made, the nonmoving parties may not rest upon mere allegations or denials in the pleadings but must present affirmative evidence, setting forth specific facts, to demonstrate the existence of a genuine issue for trial.”); see also *Tesoros Trading Co. v. Tesoros Misticos, Inc.*, 10 F. Supp. 3d 701, 720 (N.D. Tex. 2014) (holding defendant failed to establish that a genuine dispute of material fact existed as to its affirmative defenses because defendant only asserted two pieces of evidence that did not support each element of its defenses)).

<sup>548</sup> *Id.* at \*36.

<sup>549</sup> *Id.*

<sup>550</sup> *Id.* at \*\*36-37 (citing *VT, Inc. v. GEICO Ins. Co.*, No. 3:03-cv-0522, 2004 WL 1373132, at \*8 (N.D. Tex. June 16, 2004), modified in part sub nom. *VT, Inc. v. Geico Gen. Ins. Co.*, No. 3:03-cv-0522, 2004 WL 2389450 (N.D. Tex. Oct. 22, 2004) (“Because GEICO has not provided any evidence of a misrepresentation that GEICO relied on to its detriment, VT’s motion for summary judgment on GEICO’s estoppel defense is hereby granted.”)).

<sup>551</sup> *Id.* at \*38.

<sup>552</sup> *Id.*

<sup>553</sup> *Id.* at \*43 (citing *In re Yazoo Pipeline Co., L.P.*, 459 B.R. 636, 650 (Bankr. S.D. Tex. 2011) (“The Trustee does not identify which of these misrepresentations the estate or the Trustee allegedly relied on, how they relied, and what injury resulted from the reliance. The general allegations under each element of fraud do not causally connect to each other. The Trustee therefore fails to state a claim for fraud.”)).

<sup>554</sup> *Id.* at \*40.

<sup>555</sup> *Id.* at \*\*40-41 (citing *Mod. Grp., Ltd.*, 725 F. Supp. 3d at 594) (“Once a proper motion has been made, the nonmoving parties may not rest upon mere allegations or denials in the pleadings but must present affirmative evidence, setting forth specific facts, to demonstrate the existence of a genuine issue for trial.”); see also *Tesoros Trading Co.*, 10 F. Supp. 3d at 720 (holding defendant failed to establish that a genuine dispute of material fact existed as to its affirmative defenses because defendant only asserted two pieces of evidence that did not support each element of its defenses)).

<sup>556</sup> *Id.* at \*41.

<sup>557</sup> *Id.* (citing *Roberts v. Overby-Seawell Co.*, No. 3:15-cv-1217, 2018 WL 1457306, at \*11 (N.D. Tex. Mar. 23, 2018) (“As Defendants fail to address these affirmative defenses, much less respond to any of Robert’s arguments in support of his motion for summary judgment on these affirmative defenses, the court concludes that Defendants have abandoned or waived these affirmative defenses.”)).

<sup>558</sup> *Id.* at \*\*46-47.

<sup>559</sup> See, e.g., *EEOC v. Plains Pipeline, L.P.*, 2020 U.S. District LEXIS 52863, at \*2 (D.N.M. Mar. 25, 2020); *EEOC v. Hirschbach Motor Lines Inc.*, 2018 U.S. Dist. LEXIS 199243 (D. Maine Nov. 26, 2018); *EEOC v. FedEx Ground Package System, Inc.*, 2015 U.S. Dist. LEXIS 21801 (D. Md. Feb. 24, 2015).

<sup>560</sup> *EEOC v. Am. Screening*, 2022 U.S. Dist. LEXIS 107298 (E.D. La. June 14, 2022).

was a proper venue.<sup>561</sup> Specifically, the court noted because it was undisputed the alleged unlawful employment practice occurred in Louisiana, venue was proper in *any* district within Louisiana, including the Eastern District.<sup>562</sup> However, the court granted defendant’s motion to transfer, finding the Western District of Louisiana was a more convenient venue given the location of documents and witnesses.<sup>563</sup>

Similarly, in *EEOC v. Minden Seafood, LLC*, the Eastern District of Louisiana granted the defendants’ motion to transfer the case to the Western District of Louisiana.<sup>564</sup> The court emphasized the alleged discriminatory conduct occurred in the Western District, the charging party, alleged harasser, decisionmaker, and the relevant witnesses resided there, and trial in the Eastern District would impose substantial travel burdens.<sup>565</sup> The court rejected the EEOC’s reliance on electronic records and virtual testimony in support of their position, noting the continued importance of in-person witness testimony and the local interest of adjudicating localized disputes.<sup>566</sup>

In a lawsuit against a convenience store chain, the court granted the employer’s motion to transfer venue from the District of Maryland to the Western District of Pennsylvania.<sup>567</sup> The court gave only slight deference to the EEOC’s forum choice because the case had little connection to Maryland and the EEOC is a government agency.<sup>568</sup> The court found the location of key witnesses and documents in Pennsylvania, and the greater convenience for the defendant, tipped the balance in favor of transfer.<sup>569</sup> The court treated the “interests of justice” factor as neutral, noting that docket congestion and other systemic concerns did not affect the outcome.<sup>570</sup>

These decisions reflect a growing willingness by courts to transfer cases where the operative facts, witnesses, and local interests are concentrated elsewhere, notwithstanding Title VII’s broad language. By contrast, courts continue to deny transfer where defendants fail to demonstrate the transferee forum is burdensome.

For example, in *EEOC v. St. Charles Housing, LP*, the Eastern District of New York denied defendants’ motion to transfer the case from the Eastern District of New York to the Western District of Louisiana.<sup>571</sup> Although the plaintiff worked in Louisiana and the alleged discriminatory act occurred there, the court emphasized several countervailing facts: multiple defendants shared offices in New York, key employment records were maintained there, the alleged decisionmakers were located in New York and California, and the EEOC’s New York office conducted the investigation.<sup>572</sup> Thus, the court found most factors were neutral or weighed against transfer and defendants had not met their burden by clear and convincing evidence.

## 7. Related Lawsuit

In addition to venue and procedural disputes, courts continue to scrutinize employer efforts to shift liability to third parties. Recent decisions confirm Rule 14 impleader is narrowly construed in the Title VII context and cannot be used to dilute or deflect an employer’s own statutory obligation.

In *EEOC v. Fla. Care ALF of Amelia Island*, the Middle District of Florida denied the employer’s motion for leave to file a third-party complaint against a staffing agency in a pregnancy discrimination case.<sup>573</sup> The EEOC argued the assisted living facility terminated the charging party after learning of her pregnancy, purportedly citing safety concerns.<sup>574</sup> In response, the employer sought to implead the staffing company for damages, asserting claims of negligence, tortious interference, breach of oral agreement, and negligent misrepresentation.<sup>575</sup>

The court rejected the employer’s attempt to expand litigation, emphasizing Rule 14 permits impleader only where the proposed claims are derivative of the plaintiff’s claims. The court found the employer failed to establish whether the staffing agency could be liable for all or part of the EEOC’s Title VII claim, particularly where the

561 *Id.* at \*4.

562 *Id.*

563 *Id.* at \*6.

564 *EEOC v. Minden Seafood, LLC*, 2025 U.S. Dist. LEXIS 43389, at \*14 (E.D. La. Mar. 11, 2025).

565 *Id.*

566 *Id.* at \*\*13-14.

567 *EEOC v. Sheetz, Inc.*, 2024 U.S. Dist. LEXIS 181512, at \*29 (D. Nev. Oct. 1, 2024).

568 *Id.* at \*10.

569 *Id.* at \*\*9-29.

570 *Id.* at \*\*28-29.

571 *EEOC v. St. Charles Housing, LP*, 2025 U.S. Dist. LEXIS 1973, at \*\*12-13 (E.D.N.Y. Jan. 6, 2025).

572 *Id.* at \*\*6-13.

573 *EEOC v. Fla. Care ALF of Amelia Island*, 2024 U.S. Dist. LEXIS 201014, at \*10 (M.D. Fla. Nov. 5, 2024).

574 *Id.*

575 *Id.* at \*\*8-9.

alleged discriminatory decision rested with the employer itself. The court further noted the motion was filed after the pleading deadline, lacked factual development, and would unnecessarily complicate the proceedings.

## 8. Miscellaneous Procedural Issues

Beyond venue, discovery, and third-party practice, courts are also increasingly asked to resolve procedural motions shaping communications and perceived neutrality. In *EEOC v. Cambridge Transportation, Inc.*, the District of Minnesota denied the EEOC's motion seeking either to compel the employer's general counsel to enter an appearance or to authorize communications with company representatives.<sup>576</sup> The court refused to allow the EEOC to dictate the employer's choice of litigation counsel and declined to issue what amounted to an advisory ethics opinion regarding communications with represented parties.<sup>577</sup>

Courts have likewise rejected efforts to challenge judicial neutrality based on adverse rulings alone. In a case out of the District of Colorado, the court denied the *pro se* intervenor's motion to recuse both the district judge and the magistrate judge, holding unfavorable rulings do not give rise to a reasonable question of impartiality under 28 U.S.C. § 455(a).<sup>578</sup> The court emphasize speculative assertions of undisclosed relationships or generalized dissatisfaction with judicial decisions are insufficient without more to warrant recusal.<sup>579</sup>

## B. Statutes of Limitations and Unreasonable Delay

### 1. Limitations Period for Pattern-or-Practice Lawsuits

Individual claims under Section 706 of Title VII are subject to certain administrative prerequisites, including that in deferral states, the discrimination charge must be filed with the EEOC within 300 days of the alleged discriminatory act; that the EEOC investigate the charge and make a reasonable cause determination; and that the EEOC first attempt to resolve the claim through conciliation before initiating a civil action.<sup>580</sup> Discrete acts such as refusal to hire, termination, or failure to promote are subject to this limitation and are not saved by the "continuing violation doctrine," which applies only to hostile work environment claims or systemic policies.<sup>581</sup> While the EEOC may expand its investigation beyond the original charge, courts generally reject attempts to revive stale claims outside the 300-day window.<sup>582</sup> At the pleading stage, courts rarely dismiss claims on statute-of-limitations grounds unless the complaint itself establishes untimeliness.<sup>583</sup>

Section 707, governing pattern-or-practice actions, incorporates Section 706's procedures, raising the implication that the EEOC must bring pattern-or-practice cases within the 300-day period defined in Section 706.

There has yet to be a court of appeals decision determining whether the EEOC may seek relief under Section 707 on behalf of individuals who were allegedly subjected to a discriminatory act more than 300 days prior to the filing of an administrative charge. The EEOC has often argued that individuals whose claims of alleged harm occurred more than 300 days before the filing of the charge could still be eligible to participate in a pattern-or-practice lawsuit.

In 2018, a district court held that alleged victims of pattern-or-practice discrimination are not bound to file timely claims within 300 days of discriminatory conduct under Title VII or the ADA, "so long as the additional discriminatory practices, or victims, have been ascertained in the course of a reasonable investigation of the charging party's complaint and the EEOC has provided adequate notice to the defendant-employer of the nature of such charges to allow resolution of the charges through conciliation."<sup>584</sup> The court also agreed with the EEOC's contention that ADEA actions "are indisputably not subject to the 300-day charge-filing period applicable to private actions."<sup>585</sup>

576 *EEOC v. Cambridge Transportation, Inc.*, 2024 U.S. Dist. LEXIS, at \*4 (D. Minn. Dec. 18, 2024).

577 *Id.* at \*3-4.

578 *EEOC v. Jackson National Life Insurance Co.*, 2025 U.S. Dist. LEXIS 50684, at \*\*9-10 (D. Colo. Mar. 19, 2025).

579 *Id.*

580 42 U.S.C. § 2000e-5(e)(1). If a jurisdiction does not have its own enforcement agency, then the charge-filing requirement is 180 days.

581 *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 114-15 (2002).

582 *Occidental Life Ins. Co. v. EEOC*, 432 U.S. 355, 371 (1977).

583 *Arizona ex rel. Horne v. Geo Grp., Inc.*, 816 F.3d 1189, 1203 (9th Cir. 2016).

584 *EEOC v. Staffing Solutions of WNY, Inc.*, 2018 U.S. Dist. LEXIS 207186, at \*4 (W.D.N.Y. Dec. 6, 2018), citing *EEOC v. Upstate Niagara Cooperative, Inc.*, 2018 WL 5312645, at \*3 (W.D.N.Y. 2018).

585 *Staffing Solutions*, 2018 U.S. Dist. LEXIS 207186, at \*5.

A handful of other district courts in more recent years have similarly held that the nature of pattern-or-practice cases is inconsistent with the application of the 300-day limitations period.<sup>586</sup> For example, in *EEOC v. New Prime*, a Missouri district court observed that while a “few” district courts have applied the 300-day period to pattern-or-practice cases, “the very nature” of pattern-or-practice cases attacking systemic discrimination “seems to preclude” use of the 300-day period.<sup>587</sup> The court in *New Prime* followed the reasoning in *EEOC v. Mitsubishi Motor Manufacturing of America, Inc.*, a 1998 Illinois district court case, which found that although the language of Section 707(e) requires adherence to other procedural requirements of Section 706, “the limitations period applicable to Section 706 actions does not apply to Section 707 cases.”<sup>588</sup> In doing so, the *Mitsubishi* court reasoned applying the limitations period would essentially act as an arbitrary bar to liability because the EEOC is generally unable to articulate any specific acts of discrimination at the time it files a pattern-or-practice charge.<sup>589</sup> Acknowledging that such an interpretation would leave pattern-or-practice claims without a limitations period and “might place an impossible burden on defendants in other cases to preserve stale evidence,” the *Mitsubishi* court proposed allowing “evidence [of discrimination to] determine when the provable pattern or practice began.”<sup>590</sup>

As another example in pattern-or-practice cases, in *EEOC v. Staffing Solutions of WNY, Inc.*, a district court upheld the magistrate judge’s report and recommendation and declined to limit the EEOC’s ability to seek redress for only those claims that occurred within 300 days prior to the filing of the charge.<sup>591</sup> The *Staffing Solutions* court went further when it also agreed that the EEOC is not subject to the 300-day charge-filing period for ADEA claims.<sup>592</sup>

Other courts have disagreed, however, finding that the statute’s plain language controls and there is no reason why the 300-day period cannot be calculated from the filing of the EEOC’s charge.<sup>593</sup> If a 300-day limitations period is applied, generally, it is triggered by the filing of a charge, which means the court will look back 300 days from the date the charge was filed and require the discriminatory act occur within that timeframe to be actionable.<sup>594</sup> If the discriminatory act is a termination, the “date of the termination” is considered to be the date the employer gives the employee unequivocal notice of the termination.<sup>595</sup> An employer should assert the statute of limitations defense as soon as it has knowledge of facts suggesting that the discriminatory act occurred outside the 300-day window.<sup>596</sup> In rebutting a statute of limitations defense, the EEOC may be granted additional time to conduct discovery, shedding light on which acts will be encompassed in the lawsuit.<sup>597</sup>

Some courts have held that, for the purposes of “expanded claims” (charges initially involving only one charging party that are broadened to include others during the EEOC’s investigation), employers have successfully argued that the trigger for the 300-day period occurs when the EEOC notifies the defendant that it is expanding its investigation to other claimants.<sup>598</sup> This is helpful to employers because it shortens the period during which the EEOC can reach back to draw in additional claimants.

586 *EEOC v. New Prime*, 2014 U.S. Dist. LEXIS 112505, at \*34 (W.D. Mo. Aug. 14, 2014); see also *EEOC v. Spoa, LLC*, 2013 U.S. Dist. LEXIS 148145, at \*\*8-9, fn. 4 (D. Md. Oct. 15, 2013) (refusing to apply 300-day period to pattern-or-practice case).

587 *New Prime*, 2014 U.S. Dist. LEXIS 112505, at \*34.

588 *EEOC v. Mitsubishi Motor Mfg. of America, Inc.*, 990 F. Supp. 1059, 1085 (C.D. Ill. 1998).

589 *Id.* at 1085, accord *EEOC v. LA Weight Loss*, 509 F. Supp. 2d 527, 535 (D. Md. 2007).

590 *Id.* at 1087.

591 *EEOC v. Staffing Solutions of WNY, Inc.*, 2020 U.S. Dist. LEXIS 40474, at \*3 (W.D.N.Y. Dec. 6, 2018) (citing *EEOC v. Upstate Niagara Cooperative, Inc.*, 2018 U.S. Dist. LEXIS 183904, 2018 WL 5312645, at \*4 (W.D.N.Y. Oct. 26, 2018); *EEOC v. Sterling Jewelers, Inc.*, 2010 U.S. Dist. LEXIS 649, 2010 WL 86376, at \*5 (W.D.N.Y. Jan. 6, 2010).

592 *Id.*

593 *EEOC v. Optical Cable Corp.*, 169 F. Supp. 2d 539, 547 (W.D. Va. 2001) (while limitations period is not particularly well-adapted to pattern-or-practice cases, problems are not insurmountable); *EEOC v. Global Horizons, Inc.*, 904 F. Supp. 2d 1074, 1093 (D. Haw. Nov. 8, 2012) (court will not disregard the statute’s text or ignore its plain meaning in order to accommodate policy concerns); see also *EEOC v. FAPS*, 2014 U.S. Dist. LEXIS 136006, at \*69 (D.N.J. Sept. 26, 2014) (“Like the majority of the courts that have reviewed this issue, the Court is convinced that Section 706 applies to claims brought by the EEOC”); *EEOC v. United States Steel Corp.*, 2012 U.S. Dist. LEXIS 101872, at \*\*13-16 (W.D. Pa. July 23, 2012) (noting lack of circuit court decisions on point and citing cases evidencing the split of authority in federal district courts); *EEOC v. Global Horizons, Inc.*, 904 F. Supp. 2d 1074, 1091 (D. Haw. Nov. 8, 2012) (“spate” of recent decisions applying 300-day limitations period).

594 *EEOC v. GMRI, Inc.*, 2014 U.S. Dist. LEXIS 106211 (D. Md. Aug. 4, 2014).

595 *EEOC v. Orion Energy Sys. Inc.*, 145 F.Supp.3d 841, 845-46 (E.D. Wis. Nov. 12, 2015) (date plaintiff overheard employer planned to terminate her employment was not unequivocal notice of final termination decision).

596 *Id.* at 844 (employer lacked diligence by waiting to assert statute of limitations defense where employee had disclosed her knowledge of the alleged discriminatory act, as well as the date she gained that knowledge, during her termination meeting).

597 *EEOC v. DHD Ventures Mgmt. Co.*, 2015 U.S. Dist. LEXIS 167906 (D.S.C. Dec. 16, 2015).

598 See, e.g., *EEOC v. Princeton Healthcare Sys.*, 2012 U.S. Dist. LEXIS 150267, at \*14 (D.N.J. Oct. 18, 2012); see also *Optical Cable Corp.*, 169 F. Supp. 2d at 547; *EEOC v. Freeman*, No. 09-2573, 2011 U.S. Dist. LEXIS 8718 at \*2 (D. Md. Jan. 31, 2011).

In *Arizona ex rel. Horne v. Geo Group, Inc.*, however, the Ninth Circuit disagreed, finding Section 706's "plain language" did not permit tethering the 300-day period to any event other than the filing of the charge.<sup>599</sup> The Ninth Circuit observed that the trial court's choice to instead use the date of the Reasonable Cause Determination may have been due to the initial charge's failure to provide notice to the employer of potential class claims by other aggrieved female employees, but stated, "this concern fails to distinguish the time frame in which the employee is required to file their charge of discrimination (*i.e.*, 300 days after the alleged unlawful employment practice occurred) from the EEOC's responsibility to notify the employer of the results of the EEOC's investigation."<sup>600</sup>

Given the district court trend to apply the 300-day limitation to pattern-or-practice cases, the EEOC is increasingly relying on creative arguments or equitable defenses. For example, in cases involving age discrimination under the ADEA, the EEOC can attempt to avoid Section 706 and 707 prerequisites altogether by bringing a pattern-or-practice suit outside of Title VII. For enforcement actions by the EEOC, the ADEA does not have a 300-day limitation.<sup>601</sup> In such a case, the Commission claims its authority to bring a pattern-or-practice case derives from the ADEA's 29 U.S.C. § 626(b), which adopts "the powers, remedies, and procedures provided in" the Fair Labor Standards Act (FLSA).<sup>602</sup>

In *EEOC v. New Mexico*, the district court accepted this premise without analysis, allowing the EEOC to reach back to 2009 to include the claims of 99 additional aggrieved individuals even though some of these individuals last experienced alleged discrimination well before 300 days prior to the filing of the charge and even though their names had not been disclosed to the employer prior to discovery in the lawsuit, filed in 2015.<sup>603</sup> The court granted summary judgment to the EEOC on the employer's statute of limitations defense because the court found that Title VII's 300-day deadline did not apply to EEOC enforcement actions under the ADEA.<sup>604</sup>

This past fiscal year, employers received mixed results in their attempts to enforce the relevant limitations period in pattern-or-practice cases.<sup>605</sup>

In a matter in the Eastern District of Washington,<sup>606</sup> the defendant moved to dismiss the case, arguing the EEOC cannot maintain a class-wide lawsuit as the claims would be time-barred. Alternatively, the defendant moved for a more definite statement to clarify when/how often the conduct occurred, and how many individuals are in the class. The court denied the defendant's motion to dismiss and request for a more definite statement, finding that the charging party's allegations of sexual harassment placed the employer on notice of potential class claims. Although the court confirmed that claims predating the 300-day period are time-barred, it declined to dismiss any parties before discovery, emphasizing that at least one discrete act within the limitations window preserved the class claims.

Similarly, on the opposite coast, the defendant sought dismissal of claims outside the 180-day period under Title VII.<sup>607</sup> The U.S. District Court for the Middle District of North Carolina refused to adjudicate the statute-of-limitations defense at the motion-to-dismiss stage, noting that such defenses are generally inappropriate unless the complaint clearly establishes untimeliness. This decision underscores that limitations arguments often require factual development and are better suited for summary judgment.

In another FY 2025 lawsuit,<sup>608</sup> the EEOC filed a second charge to broaden an initial sex discrimination charge to include allegations the employer's job application process (requiring disclosure of criminal background) discriminated against racial minorities. Defendants filed a partial motion to dismiss the race discrimination claims occurring more than 300 days before the second, later race discrimination charge. The court disagreed, holding that the EEOC may pursue discrimination of another type uncovered during a reasonable investigation of the original charge and avail itself of the earlier charge's 300-day period.

599 *Arizona ex rel. Horne v. Geo Group, Inc.*, 816 F.3d 1189, 1203 (9th Cir. 2016).

600 *Id.*

601 *EEOC v. New Mexico*, 2018 U.S. Dist. LEXIS 50125, at \*\*14-15, n. 9 (D.N.M. Mar. 27, 2018) ("no statute of limitations on EEOC enforcement actions under the ADEA").

602 *Id.*

603 *Id.* at \*6 ("pattern or practice" not specifically alleged but the EEOC brought a representative action on behalf of "aggrieved" individuals).

604 *Id.* at \*\*14-15 (D.N.M. Mar. 27, 2018).

605 42 U.S.C. § 2000e-5(e)(1).

606 *EEOC v. Fred Meyer Stores, Inc.*, 2024 U.S. Dist. LEXIS 224466 (E.D. Wash. Dec. 11, 2024).

607 *EEOC v. Battleground Restaurants, Inc.*, 2025 U.S. Dist. LEXIS 32071 (M.D.N.C. Feb. 24, 2025).

608 *EEOC v. Sheetz, Inc.*, 2025 U.S. Dist. LEXIS 47214 (W.D. Pa. Mar. 14, 2025).

Finally, in *EEOC v. Lori's Gifts, Inc.*,<sup>609</sup> the EEOC sought discovery beyond the 300-day window and for applicants outside the scope of its complaint. The court affirmed the magistrate judge's denial. Specifically, the court rejected the EEOC's argument that the "continuing violation doctrine" applied, as the alleged acts were discrete and not part of a continuing violation. The court found that the EEOC failed to demonstrate the relevance and proportionality of the requested information about applicants outside the 300-day window. The decision reinforces that the 300-day limitation applies to group claims under Section 706 and that discovery requests must align with the claims asserted in the complaint.

The practical implication here is that employers should promptly evaluate statute-of-limitations defenses when responding to EEOC charges and litigation. While courts rarely dismiss claims on limitations grounds early in the case, these defenses remain critical at summary judgment. Employers should also anticipate that the EEOC may broaden its investigation beyond the original charge, but temporal limits will still constrain actionable claims. Discovery disputes often hinge on proportionality and relevance, and thus requests for data outside the limitations period or unrelated to the pleadings are likely to be denied.

## 2. Equitable Theories to Support Untimely Claims

In an effort to resurrect claims barred by the 300-day statute of limitations applicable to Sections 706 and 707, the EEOC often turns to equitable theories, such as waiver, estoppel, equitable tolling, the single-filing rule—which allows the EEOC to litigate a substantially related non-filed claim where it arises out of the same time frame and similar conduct as a timely filed claim—and the continuing violation doctrine, which allows a timely claim to be expanded to reach additional violations outside the 300-day period.<sup>610</sup>

While there are no decisions on point for FY 2025, earlier cases are instructive. In *EEOC v. Horizontal Well Drillers*, the district court denied an employer's motion to dismiss untimely disability failure-to-hire claims, finding the EEOC had sufficiently alleged the continuing violations theory.<sup>611</sup> The continuing violation doctrine only allows the enforcing party to reach back to conduct that is not "discrete."<sup>612</sup> Although it is sometimes difficult to draw a distinction between discrete and non-discrete actions, the guiding principle is that a discrete action is "actionable on its own" and thus alerts the charging party as to the necessity of pursuing their claim.<sup>613</sup> Termination, failure to promote, and denial of overtime are all examples of discrete actions that are only reachable if within the 300-day limitation, even if they occur as part of a hostile work environment.<sup>614</sup>

However, the EEOC is not always successful in arguing the continuing violation doctrine should apply to pattern-or-practice cases. In *EEOC v. Discovering Hidden Hawaii Tours, Inc.* the court stated:

Under the EEOC's proposal, the continuing violation doctrine protects those who have slept on their rights and resurrects their otherwise expired claims, whenever a subsequent employee whom the dilatory one may never know or be aware of fortuitously appears on scene, is subject to the same type of harassing conduct, and sees fit to file a timely charge. That cannot be the rule.<sup>615</sup>

More recently, in *EEOC v. Army Sustainment, LLC*, the EEOC opposed an employer's motion for summary judgment on timeliness grounds, arguing the continuing violation doctrine extended the charging period and prevented dismissal of its pattern-and-practice claims as all claimants were subjected to an ongoing and continuing policy of discrimination.<sup>616</sup> The district court rejected the EEOC's argument, finding the continuing violation doctrine did not apply as the alleged unlawful employment practices at issue (*i.e.*, failure to grant accommodation to employees

609 *EEOC v. Lori's Gifts, Inc.*, 2025 U.S. Dist. LEXIS 112960 (S.D. Ohio June 13, 2025).

610 *EEOC v. Draper Development LLC*, 2018 U.S. Dist. LEXIS 115124, at \*\*9-10 (N.D.N.Y. July 11, 2018) (adopting flexible approach and excusing charging party's failure to verify charge where employer not prejudiced); *EEOC v. East Columbus Host, LLC*, 2016 U.S. Dist. LEXIS 118993, at \*26 (S.D. Ohio Sept. 2, 2016) (restaurant server's claims against the harasser's coworker permitted where another server had timely filed a charge of discrimination against the main harasser and where the EEOC had given notice that the harassing behavior was not limited to one person); *Princeton Healthcare Sys.*, 2012 U.S. Dist. LEXIS 150267, at \*10 (D.N.J. Oct. 18, 2012) (where the employer's conduct forms a continuing practice, an action is timely if the last act evidencing the practice falls within the limitations period and the court will deem actionable even earlier related conduct that would otherwise be time-barred); *EEOC v. Global Horizons, Inc.*, 904 F. Supp. 2d 1074, 1093, n. 5 (D. Haw. Nov. 8, 2012); *EEOC v. Evans Fruit Co.*, 872 F.Supp.2d 1107, 1112 (E.D. Wash. 2012); *EEOC v. Pitre, Inc.*, 908 F.Supp.2d 1165, 1175 (D.N.M. Nov. 30, 2012).

611 *EEOC v. Horizontal Well Drillers, LLC*, 2018 U.S. Dist. LEXIS 102434, at \*21, following *Bruno v. W. Elec. Co.*, 829 F.2d 957, 960 (10th Cir. 1987).

612 *EEOC v. Phase 2 Inv. Inc.*, 2018 U.S. Dist. LEXIS 65719, at \*51 (D. Md. Apr. 17, 2018).

613 *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 113, 115 (2002) ("each discrete discriminatory act starts a new clock for filing charges alleging that act").

614 2018 U.S. Dist. LEXIS 65719, at \*51.

615 *EEOC v. Discovering Hidden Hawaii Tours, Inc.*, 2017 U.S. Dist. LEXIS 154576, at \*5 (D. Haw. Sept. 21, 2017).

616 *EEOC v. Army Sustainment, LLC*, 2023 U.S. Dist. LEXIS 171406, at \*12-13 (M.D. Ala. Sept. 26, 2023).

cleared to return by placing employees on unpaid leave) constituted discrete acts of discrimination.<sup>617</sup> In rejecting the EEOC's argument, the court explained "the continuing violation doctrine does not apply to untimely claims of discrete acts, 'even when they are related to acts alleged in timely filed charges'" and further noted "neutral policies that give present effect to the time-barred conduct do not create a continuing violation."<sup>618</sup> Thus, the district court ultimately granted partial summary judgment in the employer's favor finding the claims asserted by the EEOC for 7 (out of 17 individuals) arose outside the 180-day charging period and, thus, were untimely.<sup>619</sup>

### 3. Laches-type Issue: Unreasonable Delay by the EEOC

To counter the EEOC's reliance on the continuing violation doctrine to salvage untimely claims, employers may point to *Discovering Hidden Hawaii*, *USF Holland*, and other district court decisions holding that, even in the context of an "unlawful employment practice" claim, such as hostile work environment, the doctrine cannot be used to expand the scope of the claim to add new claimants unless each claimant suffered at least one act considered to be part of the unlawful employment practice, within the 300-day window.<sup>620</sup> Where the EEOC seeks to enlarge the number of individuals entitled to recover, rather than the number of claims a single individual may bring, the employer can make the argument that the continuing violation doctrine does not apply.

Of course, the employer can also raise equitable defenses. In *EEOC v. Baltimore County*, the court found the EEOC's eight-year unreasonable delay in bringing its lawsuit barred any award of backpay or other retroactive relief.<sup>621</sup> In FY 2018, another district court refused to grant summary judgment to the EEOC on the employer's laches defense, finding it an issue of fact whether the EEOC's six-year delay between the filing of the charge and the lawsuit prejudiced the employer.<sup>622</sup>

However, laches is a flexible doctrine left to the court's discretion; the employer must show (1) the plaintiff unreasonably and inexcusably delayed filing the lawsuit; and (2) prejudice to the defendant resulted from the delay. There is no length of delay that is *per se* unreasonable. Instead, courts will consider all the facts to evaluate the reasonable of any delay.

In *EEOC v. Hospital Housekeeping Services*, an Arkansas district court denied defendant's motion for summary judgment based on the employer's equitable defense of laches, finding the evidence did not establish the EEOC unreasonably or inexcusably delayed filing suit.<sup>623</sup> To support its laches defense, the employer argued the EEOC had waited six years after the relevant charges of discrimination were filed and five years after it initiated its investigation before filing suit.<sup>624</sup> In denying the motion, the court reasoned the EEOC was in regular contact with the employer throughout the course of its investigation, and the employer caused some of the delay as evidenced by the EEOC's repeated request for missing information during the investigation.<sup>625</sup>

Even if an employer can prove the EEOC inexcusably and unreasonably delayed filing, employers must still also adduce evidence establishing they were prejudiced by the delay. Indeed, a delay that does not result in prejudice is insufficient to establish the defense of laches, even where the delay is both lengthy and unexcused. In *Hospital Housekeeping Services*, the court rejected the employer's argument that it had shown "demonstrable prejudice . . . through increased potential backpay liability and limited access to management witnesses and personnel records."<sup>626</sup> The court concluded the employer had not proffered sufficient evidence to establish prejudice as a result of the delay.<sup>627</sup> With respect to alleged missing personnel records, the court noted the employer had a duty to preserve and retain documents related to the charges under 29 C.F.R. § 1602.14.<sup>628</sup> The court also reasoned summary

617 *Id.* at \*\*17-18.

618 *Id.*

619 *Id.* at \*20.

620 *EEOC v. Swissport Fueling, Inc.*, 916 F. Supp. 2d 1005, 1033-34 (D. Ariz. Jan. 7, 2013); see also *Evans Fruit Co.*, 2012 U.S. Dist. LEXIS 169006, at \*8 (holding that some individual claims were barred even under the continuing violation doctrine because the alleged unlawful acts were separated by up to 6-8 years).

621 *EEOC v. Baltimore Cty.*, 202 F.Supp.3d 499, 522 (D. Md. 2016).

622 *EEOC v. Wynn Las Vegas, LLC*, 2018 U.S. Dist. LEXIS 115042, at \*\*17-18 (D. Nev. July 10, 2018) (employer must show prejudice resulting from delay in order to prevail on laches defense).

623 *EEOC v. Hosp. Housekeeping Servs.*, 2023 U.S. Dist. LEXIS 39812, at \*9 (W.D. Ark. Mar. 9, 2023).

624 *Id.* at \*8.

625 *Id.* at \*9.

626 *Id.* at \*\*9-10.

627 *Id.* at \*\*10-11.

628 *Id.* at \*\*10-12.

judgment was warranted as the employer had failed to explain how the potential witnesses' lack of memory of specific details prejudiced its defense.<sup>629</sup>

Similarly, in *EEOC v. LogistiCare Solutions LLC*, the Arizona district court refused to grant summary judgment against the EEOC on the employer's equitable defense of laches even where the EEOC did not file suit until seven years after the relevant charges were filed.<sup>630</sup> The district court opined that back pay alone "is not enough to show prejudice" because the court may "take the EEOC's delay into account when crafting a remedy."<sup>631</sup> The court also explained that assertions of prejudice "must be supported by evidence establishing specific prejudicial losses that occurred during the period of delay."<sup>632</sup> While the employer adduced evidence that important fact witnesses had taken other employment during the delay period, the court was not satisfied that the employer had taken even "simple steps to contact the former employees, such as by using their contact information from when they were employed."<sup>633</sup>

In *EEOC v. Hillstone Restaurant Group*,<sup>634</sup> the court granted the defendant's motion to amend to include its laches defense.<sup>635</sup> The defendant argued the EEOC delayed identifying 303 additional claimants beyond the initial claimant until after the deadline to amend pleadings had passed.<sup>636</sup> The court found the EEOC possessed the necessary information to identify additional claimants much earlier but delayed doing so, causing significant prejudice to the defendant.<sup>637</sup> Specifically, defendant highlighted managers who interviewed applicants had left the company, memories of interviews had faded, the primary platform used to solicit applications went out of business, and one of the two restaurants at issue had closed.<sup>638</sup> The court found the EEOC's argument the defendant could have "predicted" a laches defense would be applicable to the claimants the EEOC would ultimately identify ignored the fact the defense was predicated on the late disclosure.<sup>639</sup> In other words, the court reasoned even if the defendant could have anticipated potential claimants, the defendant did not know who those claimants were until the EEOC identified them. This case underscores the importance of timely disclosure in EEOC investigations and the potential for a successful laches defense when there is unreasonable delay and resulting prejudice.

It is worth posing one additional question before moving on to the next subsection. Setting aside whether a discrete act occurring outside the 300-day limitations period is *actionable*, may it be *considered* as relevant evidence in the context of a hostile work environment claim?

In *one FY 2025 case*, a district judge issued a ruling in favor of the EEOC in an enforcement action, addressing whether the court could consider discrete acts—occurring outside the 300-day limitations period—when evaluating a hostile work environment claim.<sup>640</sup> The EEOC brought suit against alleged joint employers on behalf of nine former employees and other aggrieved individuals, complaining of discrimination, retaliation, and harassment on the basis of race, sex, color, and/or national origin.<sup>641</sup> (Seven of the individuals joined as intervenors as well.) In their motion to dismiss, defendants argued that the Title VII claims must be limited to acts occurring on or after February 10, 2009, which marked 300 days prior to the filing of a discrimination charge by the initial claimant.<sup>642</sup> In response, the EEOC and intervening plaintiffs pointed out that conduct predating the 300-day period may be considered by a fact-finder as part and parcel of a hostile work environment claim, and as "background evidence of discriminatory intent."<sup>643</sup> The court noted that the U.S. Supreme Court had not expressly decided the question of "whether discrete acts of discrimination falling outside the 300-day window may be considered in conjunction with

629 *Id.*

630 *EEOC v. LogistiCare Sols. LLC*, 2020 U.S. Dist. LEXIS 215486, at \*10 (D. Ariz. Nov. 18, 2020). The court also denied the employer's alternative motion to dismiss. *See id.* at \*3. The employer maintained it was clear from the EEOC's complaint that the delay in filing suit was "unreasonable," which, along with prejudice, is one of the two elements of a laches defense. *Id.* The court, however, was not persuaded. It explained that even if the allegations in the complaint revealed a lengthy delay, the allegations not "provide insight on why the delay occurred." *Id.*

631 *Id.* at \*9 (citing *Boone v. Mech. Specialties Co.*, 609 F.2d 956, 959 n.1 (9th Cir. 1979)).

632 *Id.* at \*5.

633 *Id.* at \*8. The court also observed that the employer had "not yet provided evidence that the potential witnesses have forgotten the alleged incident," other than "the conclusory statement that memories fade over time." *Id.* at \*9.

634 *EEOC v. Hillstone Rest. Grp., Inc.*, No. 22-cv-3108, 2024 U.S. Dist. LEXIS 95167 (S.D.N.Y. Apr. 9, 2024).

635 *Id.* at \*6.

636 *Id.* at \*\*10-12.

637 *Id.*

638 *Id.* at \*10.

639 *Id.* at \*\*12-13.

640 *EEOC v. Jackson Nat'l Life Ins. Co.*, 2018 U.S. Dist. LEXIS 156258 (D. Colo. Sept. 13, 2018).

641 *Id.* at \*\*2-15.

642 *Id.* at \*16.

643 *Id.* at \*18.

a hostile work environment claim.”<sup>644</sup> Nonetheless, the court ultimately agreed with the plaintiffs and declined to adopt a rule “categorically barring the use of discrete acts to support a hostile work environment claim.”<sup>645</sup> By the same reasoning, the court refused to dismiss claims based on conduct alleged in the complaint that did not include specific dates or a temporal context.<sup>646</sup>

## C. Intervention and Consolidation

This section examines intervention and consolidation by the EEOC, as well as the more common phenomenon of intervention by private plaintiffs in litigation brought by the EEOC, and the standards courts apply to determine whether to grant motions to intervene. This section also surveys recent intervention-related issues decided by courts, including allowing intervention by individuals who have not exhausted their individual administrative remedies, allowing intervention by individuals who have previously stipulated to a dismissal of claims, the complicated issues that arise when hundreds of individuals litigate their individual claims alongside EEOC pattern-and-practice claims, and the balancing of factors used in determining whether cases are consolidated.<sup>647</sup>

### 1. Charging Party’s Right to Intervene in EEOC Litigation

A charging party may want to intervene in a lawsuit filed by the EEOC to preserve their opportunity to pursue individual relief separately if, at any point in the litigation, the EEOC’s and the charging party’s interests diverge.

Title VII and the ADA expressly permit a charging party to intervene in an action brought by the EEOC against the charging party’s employer.<sup>648</sup> The ADEA, on the other hand, makes no mention of intervention. Thus, once the EEOC pursues a lawsuit under the ADEA, the charging party’s right to intervene or commence their own lawsuit terminates.<sup>649</sup>

With respect to intervention in a Title VII or ADA lawsuit filed by the EEOC, Rule 24 of the Federal Rules of Civil Procedure sets forth the legal construct by which a charging party, or a similarly situated employee, may move to intervene. Under Rule 24, intervention is either *a matter of right* (Rule 24(a)) or *permissive* (Rule 24(b)).

Rule 24(a) provides:

**(a) Intervention of Right.** On timely motion,<sup>650</sup> the court must<sup>651</sup> permit anyone to intervene who:

- (1) is given an unconditional right to intervene by a federal statute; or
- (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.

Given Title VII’s and the ADA’s language expressly permitting an aggrieved person to intervene in a lawsuit brought by the EEOC, most courts analyze a charging party’s motion to intervene under Rule 24(a). While courts construe Rule 24 liberally in favor of potential intervenors, an applicant for intervention bears the burden of showing that they are entitled to intervene.<sup>652</sup>

<sup>644</sup> *Id.*

<sup>645</sup> *Id.* at \*\*22-25.

<sup>646</sup> *Id.* at \*\*25-27.

<sup>647</sup> For a more in-depth discussion regarding rules applicable to intervention and case law interpreting it, please see Barry A. Hartstein, *et al.*, *Annual Report on EEOC Developments: Fiscal Year 2013*.

<sup>648</sup> See 42 U.S.C. § 2000e-5(f)(1) (“The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision.”).

<sup>649</sup> See 29 U.S.C. § 626(c)(1); see also *EEOC v. SVT, LLC*, 297 F.R.D. 336, 341 (N.D. Ind. 2014) (explaining the differences between Title VII and the ADEA and specifically noting that the right of any person to bring suit under the ADEA is terminated when suit is brought by the EEOC); *EEOC v. Darden Restaurants, Inc.*, 2015 U.S. Dist. LEXIS 149897, at \*\*4-5 (S.D. Fla. Nov. 3, 2015) (holding the proposed intervenor-plaintiffs “have no conditional or unconditional right to intervene in the ADEA action because the ADEA expressly eliminates such a right upon the EEOC’s filing of an action on a person’s behalf”).

<sup>650</sup> See *EEOC v. PC Iron, Inc.*, 2017 U.S. Dist. LEXIS 141187 (S.D. Cal. Aug. 31, 2017) (citing *U.S. v. Oregon*, 745 F.2d 550, 552 (9th Cir. 1984) (“Mere lapse of time is not determinative”)) and *EEOC v. OnSite Solutions, LLC*, 2016 U.S. Dist. LEXIS 158620 (W.D. Okla. Nov. 16, 2016) (“When determining timeliness for purposes of intervention...[t]he analysis is contextual; absolute measures of timeliness should be ignored.”) (citing *Utah Ass’n of Counties v. Clinton*, 255 F.3d 1246, 1250 (10th Cir. 2001)); but see *EEOC v. JC Wings Enters., L.L.C.*, 2019 U.S. App. LEXIS 26465 (5th Cir. Aug. 30, 2019) (denying intervention for failure to file motion to intervene within 90-day prescription period mandated by ADEA); *EEOC v. Giphx10 LLC*, 2021 U.S. Dist. LEXIS 44157, at \*3 (W.D. Wash. Mar. 9, 2021) (finding motion timely as motion was made at “a very early stage of the proceedings.”).

<sup>651</sup> See *EEOC v. STME, LLC*, 938 F.3d 1305 (11th Cir. 2019) (finding error in district court’s failure to consider and rule on the merits of the motion to intervene because plaintiff had an unconditional statutory right to intervene).

<sup>652</sup> See, e.g., *EEOC v. Herb Hallman Chevrolet*, 2020 U.S. Dist. LEXIS 16743, at \*3 (D. Nev. Feb. 3, 2020); *EEOC v. 1901 S. Lamar, LLC*, 2023 U.S. Dist. LEXIS 223816, at \*10 (W.D. Tex. Dec. 15, 2023).

A minor overlap between the impetus for the EEOC's case and a proposed intervenor's allegations are insignificant where the facts constituting the proposed intervenor's allegations and their requested relief are substantively different from the aggrieved's claims and requested relief.<sup>653</sup> If pendent claims are involved (*e.g.*, tort claims or claims arising out of state anti-discrimination statutes), those claims are analyzed under Rule 24(b).<sup>654</sup>

Rule 24(b) provides:

**(b) Permissive Intervention.**

(1) *In General.* On timely motion, the court may permit anyone to intervene who:

(A) is given a conditional right to intervene by a federal statute; or

(B) has a claim or defense that shares with the main action a common question of law or fact.

(2) *By a Government Officer or Agency.* On timely motion, the court may permit a federal or state governmental officer or agency to intervene if a party's claim or defense is based on:

(A) a statute or executive order administered by the officer or agency; or

(B) any regulation, order, requirement, or agreement issued or made under the statute or executive order.

(3) *Delay or Prejudice.* In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

Rule 24(b) may also apply if the movant is not aggrieved by the practices challenged in the EEOC's lawsuit<sup>655</sup> or the movant is a governmental entity other than the EEOC.<sup>656</sup> Note, however, that some courts have allowed intervention solely on the basis that a motion to intervene is uncontested,<sup>657</sup> but will deny intervention under a traditional Rule 24(a) analysis. For example, in *EEOC v. 1618 Concepts Inc.*,<sup>658</sup> the court denied intervention on the remaining claims of breach of contract and constructive discharge in violation of public policy because the potential intervenor-plaintiff failed to show that he had an interest in the subject matter of the action.

An intervenor-plaintiff's Title VII complaint in intervention is limited to the scope of the EEOC investigation that can reasonably be expected to "grow out of the charge of discrimination."<sup>659</sup> An individual is not required to thoroughly describe the discriminatory practices in order to meet the requirements of Rule 24(a).<sup>660</sup> Courts will also permit intervention even when the individual's complaint includes claims that are legally barred, reasoning that these claims may be used to support a claim that is timely.<sup>661</sup>

## 2. EEOC's and Other Non-Charging Parties' Permissive Intervention in Private Litigation

As the primary federal agency charged with enforcing anti-discrimination laws, the EEOC is empowered to intervene in private discrimination lawsuits—even in instances in which the EEOC has previously investigated the matter at issue and decided not to initiate litigation. Private discrimination class actions are more common targets for EEOC intervention. Given the agency's resource allocation concerns, however, there may be a natural reticence to intervene in private actions unless the agency seeks to raise issues or arguments the private plaintiffs may not be pursuing or emphasizing.

In Title VII actions, at the court's discretion, the EEOC may intervene in private lawsuits where "the case is of general public importance."<sup>662</sup> Courts generally accord a great deal of deference to the EEOC's determination that a matter is "of general public importance" and usually will not require any proof of public importance beyond the EEOC's conclusory declaration.<sup>663</sup> The same approach is followed in dealing with intervention in ADA actions.<sup>664</sup>

653 *1901 S. Lamar, LLC*, at \*9.

654 *EEOC v. WirelessComm*, 2012 U.S. Dist. LEXIS 67835, at \*\*3-4 (N.D. Cal. May 15, 2012).

655 *EEOC v. DiMare Ruskin, Inc.*, 2011 U.S. Dist. LEXIS 136846, at \*\*8-9 (M.D. Fla. Nov. 29, 2011).

656 *EEOC v. Global Horizons*, 2012 U.S. Dist. LEXIS 33346 (D. Haw. Mar. 13, 2012) (granting motion to intervene filed by the U.S. Government (Department of Justice) under Rule 24(b)).

657 *EEOC v. 1618 Concepts Inc.*, 2020 U.S. Dist. LEXIS 2090, at \*\*20-22 (M.D.N.C. Jan. 7, 2020); *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, 2020 U.S. Dist. LEXIS 174176 (E.D. Mich. Sept. 23, 2020).

658 *1618 Concepts Inc.*, 2020 U.S. Dist. LEXIS 2090, at \*\*22-23.

659 *EEOC v. Denton Cty.*, 2017 U.S. Dist. LEXIS 202499 (E.D. Tex. Dec. 8, 2017).

660 *Id.* at \*5.

661 *Id.* at \*6.

662 42 U.S.C. § 2000e-5(f)(1).

663 See *Reid v. Lockheed Martin Aeronautics Co.*, 2001 U.S. Dist. LEXIS 991, at \*6, n.4 (N.D. Ga. Jan. 31, 2001); *Wurz v. Bill Ewing's Serv. Ctr., Inc.*, 129 F.R.D. 175, 176 (D. Kan. 1989).

664 42 U.S.C. § 12117.

As noted above, Federal Rule of Civil Procedure 24(b) generally addresses “permissive intervention” in civil cases, and provides that anyone may intervene who “(A) is given a conditional right to intervene by a federal statute [such as Title VII’s grant of a conditional right to intervene to the EEOC]; or (B) has a claim or defense that shares with the main action a common question of law or fact.”<sup>665</sup>

While not given as much deference as the EEOC’s motions to intervene, courts are still willing to grant non-charging parties’ motions to intervene. For example, in *EEOC v. Teamlyders, LLC*,<sup>666</sup> the court allowed the proposed intervenor’s state-law claims under Rule 24(b) after determining that the claims presented overlapped almost entirely with the claims already pending in the case. In fact, the proposed intervenor in that case was the original complainant who brought the sexual harassment allegations to the EEOC’s attention. Similarly, in *EEOC v. J & R Baker Farms, LLC*,<sup>667</sup> the court granted a motion to amend the complaint to add 10 additional intervenor-plaintiffs in an EEOC pattern-or-practice lawsuit, even though the individuals were not eligible to participate in the lawsuit under the single-filing rule.<sup>668</sup> (The court had previously ruled potential intervenor-plaintiffs whose claims arose after the date any representative plaintiff filed a representative charge could not take advantage of the single-filing rule.) Yet, the court held those individuals could permissively intervene under Rule 24(b)(1)(B) because their claims shared common questions of law and fact with those in the lawsuit.

Rule 24(b) instructs courts to consider whether the intervention request is timely or will unduly delay or prejudice the adjudication of the original parties’ rights in determining whether to grant motions to intervene.<sup>669</sup>

Courts have stated that the timeliness requirement is flexible, subject to district judge discretion. The factors to determine timeliness include: (a) how far the suit has progressed; (b) the length of time the applicant knew or should have known of its interest before making the motion; (c) prejudice to existing parties resulting from the applicant’s delay; (d) prejudice to the applicant if the motion is denied; and (e) the presence of unusual circumstances militating for or against a finding of timeliness.<sup>670</sup> With respect to the knowledge factor, in *EEOC v. Birchez Associates*,<sup>671</sup> for example, a court denied intervention to two non-charging parties who attempted to intervene a year and a half after the complaint had been filed, reasoning that they knew or should have known of their interest well before they made the motion. Similarly, in *EEOC v. Danny’s Restaurants, LLC*,<sup>672</sup> the court denied intervention to the individual owner of the defendant restaurant who sought to intervene well after the trial on damages had concluded.

### 3. Failure to Exhaust Administrative Remedies

Courts are permissive in granting individuals’ requests to intervene in lawsuits brought by the EEOC regardless of whether the proposed intervenors failed to exhaust their administrative remedies.

For example, in *EEOC v. Teamlyders, LLC*,<sup>673</sup> the defendant argued that the employee’s failure to obtain a right-to-sue letter before filing the motion to intervene in a Title VII sexual harassment case barred intervention. Rejecting the defendant’s argument and granting intervention, the court noted that the employee obtained a right-to-sue letter soon after filing the motion to intervene. “This sequence of the filing of suit followed promptly by receipt of a right-to-sue letter,” the court held, “can hardly be said to have prejudiced Defendants, who were already parties to the lawsuit at that time and were familiar with the allegations in the case.”<sup>674</sup>

665 FED. R. CIV. P. 24(B) (as amended Dec. 1, 2007).

666 2025 U.S. Dist. LEXIS 178351 (E.D. Mich. Sept. 11, 2025).

667 *EEOC v. J & R Baker Farms, LLC*, 2016 U.S. Dist. LEXIS 29167 (M.D. Ga. Mar. 8, 2016).

668 Under the single-filing rule, the EEOC may litigate a substantially related non-filed claim where it arises out of the same time frame and similar conduct as a timely filed claim.

669 FED. R. CIV. P. 24(B) (as amended Dec. 1, 2007); see also *EEOC v. Harris Chernin, Inc.*, 10 F.3d 1286, 1292-93 (7th Cir. 1993) and *Mills v. Bartenders Int’l Union*, 1975 U.S. Dist. LEXIS 11320, at \*4 (N.D. Cal. July 23, 1975); see also *Harris v. Amoco Prod. Co.*, 768 F.2d 669, 676 (8th Cir. 1985). In *Wilfong v. Rent-A-Center, Inc.*, 2001 U.S. Dist. LEXIS 16958, at \*5 (S.D. Ill. May 11, 2001), the district court integrated the requirements of Fed. R. Civ. P. 24(b)(2) and stated, “the court must consider three requirements: (1) whether the petition was timely; (2) whether a common question of law or fact exists; and (3) whether granting the petition to intervene will unduly delay or prejudice the adjudication of rights of the original parties.” See also *EEOC v. Am. Airlines Inc.*, 2018 U.S. Dist. LEXIS 68680 (D. Ariz. Apr. 24, 2018) (denying intervention because intervenor-plaintiffs failed to comply with pleading requirements under Rule 24(c) and finding untimeliness when intervenor-plaintiffs sought to intervene five months after judgment was entered thereby prejudicing the parties).

670 *EEOC v. R.G. & G.R. Harris Funeral Homes*, 2017 U.S. App. LEXIS 28212 (6th Cir. Mar. 27, 2017); *Floyd v. City of New York*, 770 F.3d 1051, 1058 (2d Cir. 2014).

671 *EEOC v. Birchez Assocs.*, 2021 U.S. Dist. LEXIS 81104, at \*6 (N.D.N.Y. Apr. 28, 2021).

672 *EEOC v. Danny’s Rest., LLC*, 2021 U.S. Dist. LEXIS 153632, at \*1 (S.D. Miss. Aug. 16, 2021) (“The motion is not well taken and is denied. The trial of this matter has concluded, and a verdict has been rendered. The motion, therefore, is not timely.”)

673 *EEOC v. Teamlyders, LLC*, 2025 U.S. Dist. LEXIS 178351 (E.D. Mich. Sept. 11, 2025).

674 *Id.* at \*\*8-9.

One court allowed the intervention of 10 former or prospective employees who had not filed charges of discrimination at all with respect to their claims. In *EEOC v. Stone Pony Pizza, Inc.*,<sup>675</sup> the EEOC initiated a pattern-or-practice lawsuit alleging the company discriminated against Black employees/prospective employees by failing to hire them for front-of-house positions. Eleven individuals intervened in the action, including 10 who had never filed charges of discrimination. The company filed a motion for summary judgment seeking dismissal of these individuals' claims due to their failure to exhaust their administrative remedies. The intervenors argued they were entitled to intervene as a matter of right because they were "persons aggrieved" by the company's alleged unlawful employment practices under 42 U.S.C. § 2000e-5(f)(1) or, alternatively, were entitled to permissive intervention under the "single filing rule," otherwise known as the "piggybacking rule," allowing them to exhaust their administrative remedies vicariously based on the lone charging party's exhaustion. The court allowed intervention by the 10 individuals because it found the individuals alleged "essentially the same claim" as the charging party-plaintiff—although the court declined to hold the individuals were "persons aggrieved" or entitled to application of the "single-filing rule." The court, however, dismissed the claims of intervenors that arose long before the lone charging party's claims, holding that the charging party's charge could not possibly have put the company on notice of these individuals' older claims.

#### 4. Timely Filing Requirement

Rule 24(b) instructs courts to consider whether the intervention request is timely or will unduly delay or prejudice the adjudication of the original parties' rights in determining whether to grant motions to intervene.<sup>676</sup>

Courts have stated that the timeliness requirement is flexible, subject to district judge discretion. The factors to determine timeliness include: (a) how far the suit has progressed; (b) the length of time the applicant knew or should have known of its interest before making the motion; (c) prejudice to existing parties resulting from the applicant's delay; (d) prejudice to the applicant if the motion is denied; and (e) the presence of unusual circumstances militating for or against a finding of timeliness.<sup>677</sup> With respect to the knowledge factor, in *EEOC v. Birchez Associates*,<sup>678</sup> for example, a court denied intervention to two non-charging parties who attempted to intervene a year and a half after the complaint had been filed, reasoning that they knew or should have known of their interest well before they made the motion. Similarly, in *EEOC v. Danny's Restaurants, LLC*,<sup>679</sup> the court denied intervention to the individual owner of the defendant restaurant who sought to intervene well after the trial on damages had concluded.

In *EEOC v. Papa John's USA Inc.*, the court identified four factors that should be considered when assessing whether a potential intervenor has timely filed a motion to intervene—"(1) the length of time during which the proposed intervenor knew or reasonably should have known of its interest in the case before moving to intervene; (2) the extent of prejudice to the existing parties as a result of the proposed intervenor's failure to move for intervention as soon as it knew or reasonably should have known of its interest; (3) the extent of prejudice to the proposed intervenor if its motion is denied; and (4) the existence of unusual circumstances militating either for or against a determination that its motion was timely."<sup>680</sup> Finding no party would be prejudiced by the potential intervenor-plaintiff intervening in the EEOC's ADA suit (which grants plaintiffs an unconditional right to intervene in ADA litigation brought by the EEOC) and given that the intervenor-plaintiff filed his motion to intervene less than one month after the EEOC filed suit, the court granted the Rule 24 motion.<sup>681</sup>

*EEOC v. Logic Staffing LLC* cited the Ninth Circuit for the following three factors to be considered when assessing the timeliness of a motion to intervene: "(1) the stage of the proceeding at which an applicant seeks to intervene;

675 *EEOC v. Stone Pony Pizza, Inc.*, 172 F.Supp.3d 941 (N.D. Miss. 2016).

676 FED. R. CIV. P. 24(b) (as amended Dec. 1, 2007); see also *EEOC v. Harris Chernin, Inc.*, 10 F.3d 1286, 1292-93 (7th Cir. 1993) and *Mills v. Bartenders Int'l Union*, 1975 U.S. Dist. LEXIS 11320, at \*4 (N.D. Cal. July 23, 1975); see also *Harris v. Amoco Prod. Co.*, 768 F.2d 669, 676 (8th Cir. 1985). In *Wilfong v. Rent-A-Center, Inc.*, 2001 U.S. Dist. LEXIS 16958, at \*5 (S.D. Ill. May 11, 2001), the district court integrated the requirements of Fed. R. Civ. P. 24(b)(2) and stated, "the court must consider three requirements: (1) whether the petition was timely; (2) whether a common question of law or fact exists; and (3) whether granting the petition to intervene will unduly delay or prejudice the adjudication of rights of the original parties." See also *EEOC v. Am. Airlines Inc.*, 2018 U.S. Dist. LEXIS 68680 (D. Ariz. Apr. 24, 2018) (denying intervention because intervenor-plaintiffs failed to comply with pleading requirements under Rule 24(c) and finding untimeliness when intervenor-plaintiffs sought to intervene five months after judgment was entered thereby prejudicing the parties).

677 *EEOC v. R.G. & G.R. Harris Funeral Homes*, 2017 U.S. App. LEXIS 28212 (6th Cir. Mar. 27, 2017); *Floyd v. City of New York*, 770 F.3d 1051, 1058 (2d Cir. 2014).

678 *EEOC v. Birchez Assocs.*, 2021 U.S. Dist. LEXIS 81104, at \*6 (N.D.N.Y. Apr. 28, 2021).

679 *EEOC v. Danny's Rest., LLC*, 2021 U.S. Dist. LEXIS 153632, at \*1 (S.D. Miss. Aug. 16, 2021) ("The motion is not well taken and is denied. The trial of this matter has concluded, and a verdict has been rendered. The motion, therefore, is not timely.")

680 *EEOC v. Papa John's USA Inc.*, 2023 U.S. Dist. LEXIS 64427, at \*1 (M.D. Ga. Apr. 12, 2023).

681 *Id.* at \*2.

(2) the prejudice to other parties; and (3) the reason for and length of the delay.”<sup>682</sup> The court in this case found the intervenor–plaintiff had satisfied all of these factors and the motion to intervene, which was unopposed, was timely. It was filed in the early stages of the litigation when the trial was over a year away, and the court held there was no prejudice to the other parties in the case as the claims in the motion to intervene involved the same claims as in the EEOC’s complaint. And finally, the court found the intervenor–plaintiff’s reasons for the delay in filing the motion—time to find suitable counsel and prepare the proposed complaint—were reasonable. Accordingly, the court granted the motion to intervene.

The intervenor–plaintiff in *EEOC v. Discount Auto Parts LLC*<sup>683</sup> filed a motion to intervene, adding new claims to those in the original EEOC complaint. The defendant did not oppose the request to intervene as a matter of right with respect to the claims in the original EEOC complaint, but opposed the motion with respect to the claims not previously brought by the EEOC, arguing the new claims were untimely and would prejudice the existing parties in the case. The court noted that even though the prospective intervenor complaint asserted new claims it did not assert any new facts but rather reasserted and relied upon the facts alleged by the EEOC, and therefore was not prejudicial to the defendants. In contrast, the court held, the intervenor–plaintiff “would face significant prejudice as her claims may be time barred or otherwise precluded if she is not permitted to pursue them in this case.”<sup>684</sup> In addition, the intervenor–plaintiff had experienced unusual personal circumstances that impacted her ability to timely file the motion to intervene. Based on all these factors the court granted the motion to intervene.

In *EEOC v. PRC Industries, Inc.*, the court found the two potential intervenor–plaintiffs, who had previously filed charges of discrimination against the defendant, satisfied the dual-factor test to intervene under Rule 24(a)(1).<sup>685</sup> Considering whether the potential intervenor–plaintiffs had an unconditional right to intervene, the court acknowledged Title VII grants persons who timely file charges of discrimination an absolute right to intervene in the government’s civil suit. And since the parties had not yet engaged in extensive motion practice after the defendant answered the complaint, the court found the potential intervenor–plaintiffs satisfied the timeliness requirement and granted their Rule 24(a)(1) motions.<sup>686</sup>

One court has also applied the single-filing rule to a prospective intervenor–charging party who failed to timely file her EEOC charge in circumstances where another charging party filed a timely charge involving similar allegations of harassment against the same supervisor. In *EEOC v. JCFB, Inc.*,<sup>687</sup> the prospective intervenor–charging party filed the motion to intervene almost a year after the statutory period for filing a charge of discrimination ended. However, in rejecting defendant’s attempts to distinguish the prospective intervenor–charging party’s claims, the court relied on a timely charge of discrimination filed by another individual involving the same supervisor and applied the single-filing rule in permitting intervention of the late-filed claims by a second charging party based on the timely charge filed by the first.

In *EEOC v. N. Georgia Food Inc.*,<sup>688</sup> the EEOC brought claims against the defendant for sexual harassment and hostile work environment, pregnancy discrimination, and retaliation under Title VII.<sup>689</sup> The intervenor–plaintiff filed a motion under Rule 24(a)(1) to intervene 21 days after the EEOC commenced suit.<sup>690</sup> The EEOC did not oppose the motion and the defendant did not respond, as it had yet to make an appearance in the case.<sup>691</sup> The court granted the intervenor–plaintiff’s motion, recognizing that Title VII authorizes her to intervene and noting that her Rule 24 motion was timely filed.<sup>692</sup>

In *EEOC v. Genesh, Inc.*,<sup>693</sup> the court found that although the motion to intervene was filed almost was nine months after the EEOC filed this sexual harassment class action, the motion was timely and the defendant would not be prejudiced because three months before filing her motion the intervenor–plaintiff was specifically identified

682 *EEOC v. Logic Staffing LLC*, 2025 U.S. Dist. LEXIS 48206, at \*\*2-3 (W.D. Wash. Mar. 17, 2025).

683 *EEOC v. Discount Auto Parts LLC*, U.S. Dist. LEXIS 97711 (S.D. Fla. May 22, 2025).

684 *Id.* at \*7.

685 *EEOC v. PRC Indus., Inc.*, 2023 U.S. Dist. LEXIS 110639, at \*1 (D. Nev. June 27, 2023).

686 *Id.* at \*\*3-4.

687 *EEOC v. JCFB, Inc.*, 2019 U.S. Dist. LEXIS 102862 (N.D. Cal. June 19, 2019).

688 *EEOC v. N. Ga. Foods Inc.*, 2022 U.S. Dist. LEXIS 68541 (W.D.N.C. Apr. 13, 2022).

689 *Id.* at \*1.

690 *Id.* at \*\*1-2.

691 *Id.* at \*2.

692 *Id.* at \*\*2-3.

693 *EEOC v. Genesh, Inc.*, 2025 U.S. Dist. LEXIS 137441 (D. Kan. July 18, 2025).

as a member of the class. The court noted that the case was still in the discovery stage and that it would ameliorate any potential prejudice to the defendant by extending scheduling-order deadlines. In response to the defendant's assertion that if the motion to intervene were denied the intervenor-plaintiff could bring her claims in a separate lawsuit, the court stated that doing so would be inefficient and cause both the parties and the court to expend unnecessary additional resources.

In contrast, in *EEOC v. Activision Blizzard, Inc.*,<sup>694</sup> the Ninth Circuit affirmed the district court's order denying an employee's attempt to intervene five months after the EEOC filed suit and lodged a proposed consent decree.<sup>695</sup> The court rejected the employee's argument her claims could be addressed with "[a]n easy fix," concluding her purpose in intervening was to force a substantive change to the agreement exposing defendant to additional legal liability, and reasoning such imposition would have upset the delicate balance the parties had reached after several rounds of negotiations.<sup>696</sup> The employee also attempted to justify her delay in seeking to intervene by arguing that she "was relying on both her union and [the California Civil Rights Division] to represent her interests."<sup>697</sup> However, the court found this reason insufficient to excuse her delay, noting she had been aware of the litigation and the district court's denial of the CRD's motion to intervene for five months.<sup>698</sup>

While the above-referenced lawsuits involved individuals seeking to intervene, rather than the EEOC, similar factors most likely would apply when assessing the timeliness of the EEOC's motions to intervene.

## 5. Other Issues

In another point considered in *EEOC v. Genesh, Inc.*,<sup>699</sup> the court addressed the intervenor-plaintiff's motion to proceed under a pseudonym. Citing the Tenth Circuit, the court stated that it has discretion to allow a party to proceed under a pseudonym when a party's privacy interest outweighs the public's interest in knowing the identities of the parties. In this case, the court found the defendant knew the intervenor-plaintiff's identity and there was no public interest in knowing it. The court concluded that the highly personal and sensitive nature of the claims in the case, which involved alleged sexual abuse of the intervenor-plaintiff when she was a minor, warranted the use of a pseudonym.

In *EEOC v. Norval Electric Cooperative, Inc.*,<sup>700</sup> the court awarded attorney's fees and non-taxable costs to the intervenor-plaintiff as a prevailing party in the lawsuit, in addition to the \$50,000 in punitive damages she was awarded in the case. The court noted that an intervenor in an EEOC case may be treated as a prevailing party for purposes of awarding attorney's fees if they do not unnecessarily duplicate work done by the EEOC. In this case, the court found that the intervenor-plaintiff was a prevailing party because it had granted her motion for summary judgment, which precluded the defendant from arguing that it was not liable for her sexual harassment and led to the consent decree that resolved the case.

After President Trump issued an Executive Order 14168 titled, "Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government" on January 20, 2025, the EEOC moved to dismiss its complaint in *EEOC v. Rosewood Hotels LLC*, which alleged the defendant created a hostile work environment based on the employee's transgender status.<sup>701</sup> Three weeks after learning that the EEOC intended to dismiss its complaint, the aggrieved employee named in the suit filed a motion to intervene alleging claims under Title VII and New York State Human Rights Law. The court granted the unopposed motion to intervene finding it "both timely and appropriate."<sup>702</sup>

In another decision following the issuance of Executive Order 14168, in *EEOC v. Starboard with Cheese, LLC*<sup>703</sup> the court granted a motion to intervene after the EEOC filed a motion to dismiss its complaint. "As aggrieved parties, Intervenor Plaintiffs have the right to intervene in the EEOC's enforcement action. Furthermore, without the EEOC continuing to pursue litigation, Intervenor Plaintiffs' ability to protect their interests will certainly be impaired

694 *EEOC v. Activision Blizzard, Inc.*, 2023 WL 8908774 (9th Cir. Dec. 27, 2023).

695 *Id.* at \*5.

696 *Id.* at \*3.

697 *Id.* at \*4.

698 *Id.*

699 *EEOC v. Genesh, Inc.*, 2025 U.S. Dist. LEXIS 129183 (D. Kan. July 8, 2025).

700 *EEOC v. Norval Electric Cooperative, Inc.*, 2024 U.S. Dist. LEXIS 200175 (D. Mont. Nov. 4, 2024).

701 *EEOC v. Rosewood Hotels LLC*, 2025 U.S. Dist. LEXIS (W.D.N.Y. June 17, 2025).

702 *Id.* at \*\*3-4.

703 *EEOC v. Starboard with Cheese, LLC*, 2025 U.S. Dist. LEXIS 149622 (S.D. Ill. Aug. 4, 2025).

or impeded unless they intervene. Under Rule 24 and Title VII, the Court must permit Intervenor Plaintiffs ... to intervene in this action,” the court held.<sup>704</sup>

In *EEOC v. Sis-Bro Inc.*,<sup>705</sup> the court granted a motion to intervene despite the fact that it was not accompanied by a proposed pleading in intervention as required by Rule 24(c). Stating that the court has discretion to accept a procedurally defective motion to intervene if no prejudice results, the court noted that although the motion to intervene was filed without the required proposed pleading, the court had allowed an extension of time to submit it, and the intervenor-plaintiff met that deadline. The court also considered the defendant’s claim that it would be prejudiced if the intervenor-plaintiff were allowed to replead causes of action that had been dismissed by the court or abandoned by the EEOC. In this regard, the court denied the request to file an intervenor complaint alleging claims under 42 U.S.C. § 1981, which had been previously dismissed. However, the court granted the motion to intervene as to the Title VII claim for discrimination based on sex and transgender status. Because the claim was similar to claims the EEOC had included in its initial filing but later abandoned following the issuance of Executive Order 14168, the court concluded that there would be no prejudice to the defendant in having to litigate claims it had known about since the case had been filed over a year prior. Moreover, the court held, the intervenor-plaintiff would suffer prejudice from losing the unconditional right to intervene given by the Civil Rights Act if she were not allowed to proceed on her Title VII claim.

In *EEOC v. Horizontal Well Drillers, LLC*,<sup>706</sup> the intervenor-plaintiff alleged class claims despite stating in his charge that he brought his charge individually. However, during the EEOC investigation, the EEOC had requested additional information, including the employer’s hiring policies, methods for screening and recruiting, and records of everyone hired and not hired from the applicant pool. The EEOC later issued a “Notice of Expanded Investigation and Request for Additional Info.” Despite the intervenor-plaintiff’s failing to state that he sought to represent others in his charge, the court permitted intervention. The court was satisfied that the employer was on sufficient notice and should have reasonably expected class claims to grow out of the charge upon receipt of the Notice of Expanded Investigation, along with the requests for additional information.

At least one federal appellate court has held a mandatory arbitration agreement does not preempt an individual’s right to intervene. In *EEOC v. PJ Utah, LLC*,<sup>707</sup> the Tenth Circuit reversed the district court’s denial of intervention by the allegedly aggrieved employee. The EEOC brought an enforcement action against the employer for allegedly denying an employee a workplace accommodation and terminating his employment for requesting an accommodation. The employee sought to intervene in the EEOC’s lawsuit, but the district court held the employee’s claims were subject to mandatory arbitration under an agreement the employee’s mother had signed on his behalf. The court of appeals overturned the district court’s decision, holding that the denial of a motion to intervene is a final order subject to immediate review, and finding the arbitration agreement did not affect the employee’s unconditional right to intervene under Rule 24(a). The court of appeals further held the district court’s order compelling arbitration was not yet appealable because it was not a final decision—as the EEOC’s claim against the employer remained.

In *EEOC v. Activision Blizzard Inc.*,<sup>708</sup> while in the midst of its own parallel state court lawsuit against the defendant, the California Department of Fair Employment and Housing (DFEH) sought to intervene in the EEOC’s federal case against the defendant after the parties agreed to settle and the court’s consent decree was set to be entered.<sup>709</sup> Concerned that the consent decree might release relevant state law claims and could permit evidence for DFEH’s state law claims to be destroyed, DFEH moved to intervene under Rule 24(b)(1).<sup>710</sup> DFEH’s motion was denied, but not before the court noted DFEH’s declared interest in the case, to uphold the rights of all California citizens, exceeded the bounds of Rule 24, as such interest would allow DFEH to potentially intervene in almost every employment action in California.<sup>711</sup> Moreover, the court denied intervention because DFEH’s concern about evidence

---

704 *Id.* at \*6.

705 *EEOC v. Sis-Bro Inc.*, 2025 U.S. Dist. LEXIS 107356 (S.D. Ill. June 5, 2025).

706 *EEOC v. Horizontal Well Drillers, LLC*, 2018 U.S. Dist. LEXIS 102434 (W.D. Okla. June 18, 2018).

707 *EEOC v. PJ Utah, LLC*, 822 F.3d 536 (10th Cir. 2016).

708 *EEOC v. Activision Blizzard Inc.*, 2021 U.S. Dist. LEXIS 250822 (C.D. Cal. Dec. 20, 2021).

709 *Id.* at \*\*1-4.

710 *Id.* at \*\*2-4.

711 *Id.* at \*\*1-2, 4.

destruction, although a potentially sufficient reason to allow intervention in some situations, was found insufficient here because the concern was based on mere speculation, at best.<sup>712</sup>

## 6. Adding Pendent Claims

Courts may allow individual intervenors to assert pendent state or federal law claims in addition to the EEOC's federal claims, but are willing to entertain defendants' motions to dismiss pursuant to Rules 12(b)(6) and 24(b) as discussed below. While determining timeliness for purposes of intervention is not a fixed requirement, courts will uphold the statute of limitations for pendent state law claims.<sup>713</sup>

In some instances, courts have permitted leave to amend the complaint to add factual detail related to pendent claims even when the intervenor-plaintiffs knew most if not all the alleged facts at the time they filed their initial complaint in intervention. In *EEOC v. JBS USA, LLC*,<sup>714</sup> the intervenor-plaintiffs filed amended complaints adding factual detail supporting their pendent claims in response to the defendant's motion for judgment on the pleadings arguing the initial complaints did not contain sufficient factual detail. Although the initial complaints were filed almost nine years prior to the motion to amend, the court permitted amendment, reasoning the first time the intervenor-plaintiffs were on notice of a potentially deficient complaint was when the defendant filed a motion for judgment on the pleadings, which occurred only two months before the intervenor-plaintiffs' motion to seek leave to amend.

In contrast, the district court in Colorado denied 10 motions filed by the intervenor-plaintiff to add additional claims.<sup>715</sup> The court found the motions, which alleged that various parties other than the defendant in the case engaged in a coordinated campaign of harassment against her, had nothing to do with the allegations in the intervenor-plaintiff's complaint and did not have any plausible connection to the defendants in the case.

As explained above, Rule 24(b)(1)(B) allows the court, in its discretion, to permit intervention by a person "who has a claim or defense that shares with the main action a common question of law or fact." In exercising its discretion, the court "must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." This standard is commonly used for analyzing pendent claims. Further, courts will rely on 28 U.S.C. §1367 in asserting supplemental jurisdiction over state law discrimination claims in intervention actions.<sup>716</sup> However, in *EEOC v. Norval Electric Cooperative, Inc.*,<sup>717</sup> the court held that in order for the court to hear an intervenor's state law claims, the intervenor must seek leave from the court to file an amended complaint that contains both her federal and state law claims, reasoning the court lacked authority to remove or consolidate a state court action to federal court. Further, the court also declined to exercise supplemental jurisdiction over the intervenor seeking judicial review of proceedings before the state Human Rights Commission, reasoning there was nothing to be gained in terms of judicial economy or avoidance of risk of conflicting decisions.<sup>718</sup>

In an older decision, *EEOC v. Mayflower Seafood of Goldsboro, Inc.*,<sup>719</sup> the court allowed the intervenor-plaintiff to assert her state law claims for assault, battery, intentional and negligent infliction of emotional distress, negligent hiring, supervision, training, and retention, and wrongful discharge because the factual bases for these claims and the Title VII gender discrimination and sexual harassment claims were closely related, and it would not require a lengthy extension of the case deadlines. Likewise, in *EEOC v. Favorite Farms*,<sup>720</sup> the intervenor-plaintiff survived a motion to dismiss her state law claims for assault and battery because the issue of vicarious liability was more appropriately addressed at the summary judgment stage.

Note that in *EEOC v. LXL Learning, Inc.*,<sup>721</sup> the court permitted intervention even though the parties had stipulated to dismissal of a prior lawsuit with prejudice. After the dismissal and after the EEOC had initiated its own lawsuit, the intervenor-plaintiff sought to intervene on the Title VII claim (which the employer did not oppose based on the

712 *Id.* at \*3.

713 *EEOC v. OnSite Solutions, LLC*, 2016 U.S. Dist. LEXIS 158620, at \*\*8-9 (W.D. Okla. Nov. 16, 2016).

714 *EEOC v. JBS USA, LLC*, 2021 U.S. Dist. LEXIS 24079, at \*\*21-23 (D. Colo. Feb. 8, 2021).

715 *EEOC v. Jackson National Life Ins. Co.*, 2025 U.S. Dist. LEXIS 21833 (D. Colo. Feb. 6, 2025).

716 *EEOC v. PC Iron, Inc.*, 2017 U.S. Dist. LEXIS 141187, at \*\*9-10 (S.D. Cal. Aug. 31, 2017); *EEOC v. Cippo Mgmt. XXIX*, 2021 U.S. Dist. LEXIS 64326, at \*\*3-4 (E.D. Cal. Mar. 31, 2021) (exercising supplemental jurisdiction over California FEHA disability and common law claims under §1367).

717 *EEOC v. Norval Elec. Coop. Inc.*, 2020 U.S. Dist. LEXIS 58548, at \*\*10-11 (D. Mont. Apr. 2, 2020).

718 *Id.* at \*7.

719 *EEOC v. Mayflower Seafood of Goldsboro, Inc.*, 2016 U.S. Dist. LEXIS 101154 (E.D.N.C. Aug. 2, 2016).

720 *EEOC v. Favorite Farms, Inc.*, 2018 U.S. Dist. LEXIS 1482 (M.D. Fla. Jan. 4, 2018).

721 *EEOC v. LXL Learning, Inc.*, 2017 U.S. Dist. LEXIS 200184 (N.D. Cal. Dec. 4, 2017).

prior agreement) under a different factual theory. The intervenor also sought to add a state law claim previously not asserted. The employer opposed such additions on the basis that the stipulated dismissal barred the intervenor-plaintiff from any claims or theories in the case beyond what the EEOC had included in its complaint. However, while the court agreed that the employer did not consent to expand the case, the court conditionally permitted intervention with the understanding that the employer may further pursue its *res judicata* defense.

## 7. Individual Intervenor Claims Alongside EEOC Pattern-or-Practice Claims

Courts have made clear that only the EEOC may pursue Section 707 pattern-or-practice claims, and individuals may not assert such claims.<sup>722</sup> Where individual employees or the EEOC also assert individual claims in a pattern-or-practice lawsuit initiated by the EEOC, however, managing the various individual claims becomes complicated because of the different proof schemes. While there are not any recent reported cases on this issue, *EEOC v JBS USA, LLC*<sup>723</sup> provides useful guidance in dealing with this issue.

In the *JBS USA* case, the EEOC sued a meatpacking company, alleging it discriminated against Somali, Muslim, and Black employees. The agency asserted several pattern-or-practice claims. At the outset of the case, the EEOC and the employer entered into a bifurcation agreement dividing discovery and trial into two phases: (1) the EEOC's pattern-or-practice claims (Phase I); and (2) individual or Section 706 claims (Phase II). More than 200 individuals intervened. At the trial of the Phase I claims, the court found in the employer's favor, and the action proceeded to Phase II. In Phase II, over 200 intervenor-plaintiffs sought relief for their individual Title VII and state law claims and the EEOC brought suit under Section 706 on behalf of 57 individuals, some of whom were also intervenor-plaintiffs.

The employer moved to dismiss the claims of several categories of employees, including those who were proceeding *pro se* and not engaging in discovery. The court granted the employer's motion to dismiss the claims of 16 *pro se* intervenor-plaintiffs for failure to prosecute their cases. The employer also argued that the EEOC could not seek relief on behalf of 18 other individuals whose claims had previously been dismissed for failure to prosecute. The court agreed and held, based on *res judicata* principles, the EEOC could not assert claims on behalf of the individual intervenor-plaintiffs whose claims had been dismissed. In a later proceeding, the court dismissed 13 remaining intervenor-plaintiffs for failure to comply with a court order for each intervenor-plaintiff to file written notice of their current address and telephone number.<sup>724</sup>

The employer also moved to dismiss 36 individuals' claims due to their failure to file Title VII charges. The individuals argued their claims were saved under the single-filing rule, described above. The court declined to adopt a categorical rule that the single-filing rule applies only to class actions and noted only the Third Circuit has so held.<sup>725</sup> Hence, the court denied dismissal and held seven individuals' claims were subject to the single-filing rule because the employer was on notice of potential class allegations, given multiple employees filed charges alleging similar discriminatory treatment on the same day.

## 8. Consolidation

Under Rule 42, a court may "join for hearing or trial any or all matters at issue in the actions; consolidate the actions; or issue any other orders to avoid unnecessary cost or delay" if actions before the court involve a common question of law or fact.<sup>726</sup> While a plaintiff's lawsuit may involve a common question of law or fact brought in a separate lawsuit by the EEOC, courts will use a balancing test to determine whether consolidation would avoid unnecessary costs or delay. Although there were not any reported decisions on this issue in FY 2025, *EEOC v. Faurecia Auto Seating, LLC*,<sup>727</sup> is illustrative regarding the manner in which this issue may be dealt with by the courts.

In *Faurecia Auto Seating*, two plaintiffs with separate lawsuits sought to consolidate their cases with an EEOC lawsuit filed on behalf of 15 claimants. Both plaintiffs alleged ADA discrimination by the same employer and the EEOC did not oppose consolidation. The court denied consolidation, however, given a significant amount of discovery had already been conducted, including 29 depositions. Thus, the court noted that seeking to add the

<sup>722</sup> *EEOC v. JBS USA, LLC*, 2012 U.S. Dist. LEXIS 167117 (D. Neb. Nov. 26, 2012).

<sup>723</sup> *EEOC v. JBS USA, LLC*, 2016 U.S. Dist. LEXIS 110697 (D. Neb. Aug. 19, 2016).

<sup>724</sup> *EEOC v. JBS USA, LLC*, 2017 U.S. Dist. LEXIS 63879 (D. Neb. Apr. 27, 2017).

<sup>725</sup> See *Communications Workers of Am. v. New Jersey Dep't of Personnel*, 282 F.3d 213, 217 (3d Cir. 2002).

<sup>726</sup> Fed. R. Civ. P. 42.

<sup>727</sup> *EEOC v. Faurecia Auto Seating, LLC*, 2018 U.S. Dist. LEXIS 105391 (S.D. Miss. June 25, 2018).

additional parties would require all 29 deponents to be re-deposed and would expand the scope and extend the time of discovery. The court further noted consolidation would also result in a significant risk of prejudice to the employer and increase litigation costs for the parties.

## D. Class Issues in EEOC Litigation

### 1. General

In a FY 2024 EEOC decision involving class issues, the EEOC, relying on Fed. R. Civ. Pro. 42(b), sought to bifurcate a pattern-or-practice claim wherein it alleged staffing agency defendants violated Title VII of the Civil Rights Act of 1964 and Section 102 of the Civil Rights Act of 1991 by selecting, referring, placing, and assigning Hispanic applicants and employees at a disproportionate rate in comparison to Black applicants and employees (Count I). The EEOC also claimed the defendants assigned Black employees to less-desirable and lower-paying roles (Count II). Finally, the EEOC asserted the defendants failed to preserve records relevant to the determination of whether the defendants engaged in unlawful employment practices (Count III).<sup>728</sup>

The EEOC sought to bifurcate the discovery and trial into two phases, with phase one involving whether defendant engaged in a pattern or practice of discrimination and other class-related inquires, and phase two involving discovery and trial on issues related to the individual class members.<sup>729</sup> At the outset, the court denied the EEOC's motion to bifurcate on grounds it was premature since discovery had not yet commenced and such discovery may inform whether bifurcation was warranted.<sup>730</sup>

Considering the factors courts employ under Fed. R. Civ. Pro. 42(b) to ascertain if bifurcation was justified,<sup>731</sup> the EEOC took the position that bifurcation would promote judicial economy and would increase likelihood of settlement.<sup>732</sup> The court was unconvinced that either of those factors weighed significantly in favor of bifurcation as the court pointed out the EEOC's own position reflected that bifurcation not would result in the Commission's winding up its case and not advancing to phase two of the litigation if a jury found the EEOC had not satisfied its burden to prove pattern-or-practice discrimination existed in phase one.<sup>733</sup> As to bifurcation improving the chances that the parties settle, the court found the EEOC's position "rest[ed] mostly on speculation and hypotheticals," and the parties have open opportunities throughout the life of the case to engage in settlement.<sup>734</sup>

Months later, under Fed. R. Civ. Pro. 54(b) and Local Rule 7.3, the defendants brought a motion to reconsider their prior motion to dismiss all counts of the EEOC's complaint; specifically, the defendants had alleged Count I and Count II were untimely, and Count III was not plausible.<sup>735</sup>

Acknowledging that L.R. 7.3 mandates a motion for reconsideration to specifically show a material difference in fact or law from the time the court entered an interlocutory order, the occurrence of new material facts or revisions to the law since the implementation of an interlocutory order, or a failure by the court to consider dispositive law or material facts, the court found the defendants' arguments were underwhelming.<sup>736</sup> With respect to purported new material facts to support their instant motion, the defendants pointed to the EEOC's filing suit on behalf of two individuals after the interlocutory order was issued, which the defendants argued revealed new material facts reflecting the date they were put on notice and supporting the position that the EEOC had not satisfied the statute of limitations.<sup>737</sup> The court found no new material facts existed and the defendants merely asserted bald conclusions without the benefit of discovery to flesh out their speculation.<sup>738</sup>

As to the defendants' argument that the court failed to follow established dispositive law, the defendants asserted the court attempted to impermissibly construe one person's claim of national origin discrimination in his charge as a claim for race discrimination to trigger the date the defendants were notified of the charging party's

<sup>728</sup> *EEOC v. Supreme Staffing LLC*, 2024 U.S. Dist. LEXIS 47232, at \*2 (W.D. Tenn. Mar. 18, 2024).

<sup>729</sup> *Id.* at \*4.

<sup>730</sup> *Id.* at \*\*7-8.

<sup>731</sup> *Id.* at \*3 (Factors include "the possible confusion of the jury, whether the evidence and issues sought to be bifurcated are substantially different, and whether bifurcation would enhance settlement.")

<sup>732</sup> *Id.* at \*8.

<sup>733</sup> *Id.* at \*\*10-11.

<sup>734</sup> *Id.* at \*\*14-15.

<sup>735</sup> *EEOC v. Supreme Staffing LLC*, 2024 U.S. Dist. LEXIS 146228, at \*3 (W.D. Tenn. Aug. 16, 2024).

<sup>736</sup> *Id.* at \*\*5-7.

<sup>737</sup> *Id.* at \*\*6-8.

<sup>738</sup> *Id.* at \*\*7-8.

race discrimination claims from the date the EEOC notified the defendants it was expanding its investigation or the date the defendants received the Letter of Determination to the date the charge was filed.<sup>739</sup>

Agreeing that a national origin charge cannot be construed as a race discrimination charge, the court held the defendants' interpretation of the court's ruling was misplaced, as the court merely applied the expected scope of investigation test to hold that failure to select race on the charge does not mean a charging party could not bring race discrimination claims in a complaint when the body of the charge asserts facts to support discrimination on the basis of race; here, specifically, that Black job applicants were turned away from open jobs that were given to Hispanic applicants.<sup>740</sup> The court further clarified that a defendant is placed on notice of a charging party's race discrimination claim when the information within the body of the charge asserts facts that are identical to the EEOC's complaint; the equitable exception to the normal rule that the charge-filing date triggers defendant's notice is only changed to when defendant is noticed about an expanded investigation when the EEOC is bringing allegations in its complaint that fall outside of an initial charge.<sup>741</sup>

The court concluded that the extraordinary circumstances necessary to support granting an interlocutory appeal did not exist in this case as the questions posed by the defendants were neither matters of first impression nor so difficult to warrant interlocutory review.<sup>742</sup>

## 2. Identity of Class Members in EEOC Litigation

Courts continue to address the issue of identification of class members in EEOC-led class actions. This past fiscal year in *EEOC v. Aaron Thomas Co., Inc. and Supreme Staffing LLC*, the defendants moved to compel more robust Rule 26(a)(1) disclosures from the EEOC that would identify with more particularity the 11 named claimants and the basis for each of their claims.<sup>743</sup> Defendants asserted the EEOC must produce detailed information including why the EEOC filed a lawsuit on the claimants' behalf because (a) the district court judge previously ordered the EEOC to "disclose the individual claims and exact damages calculations for each of the eleven (11) individuals named in the complaint" and (b) the EEOC had not yet confirmed whether it represented the 11 individuals.<sup>744</sup> The court disagreed with the defendants' assertion that the EEOC needed to disclose more than it had already in its Rule 26(a)(1) disclosures to comply with the court's order or to explain its representation of the claimants as its initial disclosures informed the defendants that the person was a class member, identified the person's relationship to the defendants, and specified the knowledge the person may have.<sup>745</sup> The EEOC also served documentation with its Rule 26(a)(1) disclosures that the EEOC asserted detailed the claims in the lawsuit and (at a hearing) defendant Supreme Staffing agreed with the court that it could propound discovery requests to obtain information about the basis for the EEOC's claims (defendant Aaron Thomas Co.'s second motion to compel complete discovery responses from the EEOC was not addressed during the hearing).<sup>746</sup>

The court also found the EEOC's damages calculation was satisfactory as it had disclosed the method it anticipated using to calculate damages on a class basis and shared the categories of damages it sought in its Rule 26(a)(1)(A)(iii) disclosures.<sup>747</sup> At a hearing, the EEOC further clarified that it did not intend to seek individualized damages, but rather, anticipated retaining an expert to run a statistical model to calculate gross, class-wide backpay with a pro-rata distribution. Given the EEOC's position at the hearing, defendant Supreme Staffing echoed that it would not seek damages calculation on individualized damages, and the court found individualized damages calculations for the 11 identified claimants unnecessary.<sup>748</sup>

<sup>739</sup> *Id.* at \*9.

<sup>740</sup> *Id.* at \*\*10-11.

<sup>741</sup> *Id.* at \*\*12-13.

<sup>742</sup> *Id.* at \*\*18-19.

<sup>743</sup> *EEOC v. Aaron Thomas Co., Inc. and Supreme Staffing LLC*, 2024 U.S. Dist. LEXIS 131648, at \*2 (W.D. Tenn. July 25, 2024).

<sup>744</sup> *Id.* at \*\*1-5.

<sup>745</sup> *Id.*

<sup>746</sup> *Id.* at \*6, n.1.

<sup>747</sup> *Id.* at \*\*7-8.

<sup>748</sup> *Id.*

## E. Other Critical Issues in EEOC Litigation

### 1. Protective Orders and Motions to Seal

Although there were no FY 2025 decisions dealing with protective orders and motions to seal involving the EEOC, cases from the prior fiscal year are instructive. In a FY 2024 case from the Western District of Tennessee, the defendant previously brought an Emergency Motion for a Temporary Protective Order (“Emergency Protective Order Motion”) to enjoin the EEOC from soliciting the defendant’s employees via email to participate in the action and to enjoin the EEOC from operating a website that solicited the defendant’s employees via survey.<sup>749</sup> The EEOC opposed the defendant’s Emergency Protective Order Motion, arguing that the agency’s communications with defendant’s employees were privileged. In response, the defendant argued that the EEOC waived any privilege, or it did not exist.<sup>750</sup> Notably, in its reply to the EEOC’s opposition, the defendant offered an alternative path for the parties to exchange information on the solicitations—specifically, the parties might mark communications involved with the EEOC’s solicitation efforts as attorneys’ eyes only (“AEO”) so that the defendant would have access to the identities of its employees who received the EEOC’s solicitations via email as well as the contents of the proposed survey and responses to same.<sup>751</sup> The court denied the defendant’s Emergency Protective Order Motion, holding that whether and for how long the court should stay the EEOC’s solicitation of the defendant’s employees was a separate issue from whether the solicitation efforts were discoverable.<sup>752</sup>

The defendant again sought court intervention, this time moving the court to revise its general protective order to (a) expand the definition of “Protected Information” to include information and communications shared between the EEOC and any person the EEOC believed had been aggrieved and (b) to include an option to designate material as AEO in the same manner the parties designated material as confidential.<sup>753</sup> The EEOC opposed the defendant’s position, arguing the court’s previous ruling on the Emergency Protective Order Motion meant the court could only allow the parties to include an AEO designation after a party brought a motion to compel production of sensitive information and the court granted such motion or the court conducted a preliminary analysis of the merits of a motion to compel sensitive information and the court anticipated such motion would be unsuccessful.<sup>754</sup>

The court declined both options presented by the EEOC, noting such analysis created a false dichotomy and neglected to consider a third alternative available to the court.<sup>755</sup> That is, anticipating the case might involve protected information requiring an AEO designation with respect to the EEOC’s solicitation efforts of the defendant’s employees, the court had full authority proactively to allow the parties to use such AEO designation in anticipation it may be necessary.<sup>756</sup> The court granted defendant’s motion to revise the definition of Protected Information and allowed the parties to designate information AEO.<sup>757</sup> The court also acknowledged that neither party forgoes the opportunity to challenge an AEO designation, and the parties may advance motions to compel before the court to ascertain whether the EEOC must inform the defendant of information related to its solicitation efforts and whether the EEOC’s solicitation efforts were properly subject to an AEO designation.<sup>758</sup>

In another FY 2024 case involving alleged race discrimination premised on the alleged sighting of five nooses at various locations on the defendant’s premises, the EEOC filed a motion to compel the production of responsive documentation and ESI the defendant withheld because the defendant deemed it confidential.<sup>759</sup>

The defendant asserted it withheld such information on grounds that the parties had not yet stipulated to entry of a protective order on confidentiality (and one had not yet been entered), and the defendant’s failure to serve confidential documentation on this basis did not waive its opportunity to do so later.<sup>760</sup> Defendant explained that the EEOC sought court intervention while the defendant was in the midst of making good-faith efforts to discuss

<sup>749</sup> *EEOC v. Aaron Thomas Co.*, 2024 U.S. Dist. LEXIS 80421, at \*4 (W.D. Tenn. May 2, 2024).

<sup>750</sup> *Id.* at \*\*4-5.

<sup>751</sup> *Id.*

<sup>752</sup> *Id.* at \*5.

<sup>753</sup> *EEOC v. Aaron Thomas Co.*, 2024 U.S. Dist. LEXIS 80421 (W.D. Tenn. May 2, 2024).

<sup>754</sup> *Id.* at \*\*6-7.

<sup>755</sup> *Id.*

<sup>756</sup> *Id.* at \*7.

<sup>757</sup> *Id.*

<sup>758</sup> *Id.* at \*\*7-8.

<sup>759</sup> *United States EEOC v. Exxon Mobil Corp.*, 347 F.R.D. 451 (M.D. La. 2024).

<sup>760</sup> *Id.* at 481.

entry of a protective order with the Commission; but, after the parties exchanged one round of edits on a draft protective order, the EEOC emailed counsel for the defendant that it believed the parties reached an impasse and filed the instant motion to compel disclosure of subject confidential documentation two minutes later.<sup>761</sup>

In opposition, the EEOC advanced that the defendant's timely objections on confidentiality were insufficient since the defendant had not immediately sought a protective order on confidentiality and was not the first party to seek entry of a protective order. The court found this argument unavailing, holding the defendant did not waive its objections on confidentiality because the defendant timely raised objections on the basis of confidentiality in response to the EEOC's discovery requests, the defendant provided a draft protective order and motion to the EEOC, and the EEOC prematurely brought the motion to compel.<sup>762</sup>

Having both the EEOC's and the defendant's separate proposed protective orders before it, the court took the opportunity to require the parties to submit draft blanket protective orders to govern the exchange of documents and information in the matter that both parties would be able to utilize, including to designate information as confidential.<sup>763</sup> The court provided guidance on the definition of confidentiality, holding that the parties may designate materials that fall under the categories of "propriety research, technical, or financial information" that the party has maintained as confidential and that pertain directly to the designating party's business or governmental operations" as confidential.<sup>764</sup> However, before providing such guidance, the court informed the defendant that its proposed definition of confidentiality was unworkable, as it was so broad that defendant had initially sought to withhold documentation related to human resources policies under its proffered definition of confidentiality.<sup>765</sup>

Finally, with respect to confidentiality, the court also permitted the parties to save resources by not requiring them to redact personally identifiable information on documents marked confidential; refused to restrict the parties' ability to mark deposition testimony as confidential to the time the parties are on record at the deposition (allowing the parties 30 days after receipt of deposition testimony, instead); did not allow the defendant to pull documents that had already been disclosed outside of discovery or that were publicly available into the scope of confidential documents under the final protective order; and adopted the defendant's language to govern the filing of documents under seal that emphasized that a party must seek leave of court to file a document under seal that had been designated as confidential.<sup>766</sup>

Courts continue to show a willingness to protect sensitive information, especially when there is mutual agreement by the parties, and the parties establish "good cause" to protect such material disclosed during discovery. In a FY 2022 sex discrimination case,<sup>767</sup> a federal court in Washington State approved a stipulated protective order protecting, among other items, the confidentiality of social security and tax numbers, financial information, credit card numbers, dates of birth, immigration status, trade secrets, and even the maiden names of mothers.

While a protective order commonly governs discovery in most employment law cases, protective orders may also be used to assist in settlement discussions. In one FY 2019 case,<sup>768</sup> a magistrate judge held a pre-discovery settlement conference with the parties in which she suggested disclosure of certain confidential financial information and documents might be beneficial for the settlement process. Although discovery had not yet commenced, the parties agreed to be bound by a protective order for the limited purpose of engaging in settlement discussions with the magistrate judge.<sup>769</sup>

The public generally has a right to judicial records. A party seeking to limit public access to such records has the burden to show that sealing is appropriate and must support its position with specific reasons. In a disability discrimination case,<sup>770</sup> a federal court in North Carolina granted, in part, the parties' request to seal certain personal and private medical information of a kind not ordinarily made public, holding privacy interests overrode

---

761 *Id.* at 481-483.

762 *Id.* at 481.

763 *Id.* at 483.

764 *Id.* at 484.

765 *Id.* at 484-485.

766 *Id.* at 485-486.

767 *EEOC v. Chief Orchards Admin. Servs.*, 2022 U.S. Dist. LEXIS 152289 (E.D. Wash. Aug. 24, 2022).

768 *EEOC v. Prestige Care, Inc.*, 2018 U.S. Dist. LEXIS 217857 (E.D. Cal. Dec. 27, 2018).

769 *Id.* at \*\*1-2.

770 *EEOC v. Lofflin Fabrication LLC*, 2020 U.S. Dist. LEXIS 119252 (M.D.N.C. July 8, 2020).

the public's interest in access to such records. The court sealed personal and medical information of limited or no relevance to the case, such as the claimant's medical records regarding irrelevant health conditions. The court also granted the defendant's request to seal deposition transcripts and Occupational Safety and Health Administration records containing health information of employees not parties or claimants on the grounds this information was not relevant. The court declined, however, to seal information about the nature of injuries suffered by employees because it was relevant to the court's decision. The court also denied the parties' requests to seal other types of information. For example, the court disagreed that the name of the claimant's prescription drug at issue in her discharge and the results of a drug test were otherwise sensitive information. The court also refused to seal information concerning dates of treatment and diagnoses because these were relevant to the court's summary judgment decision in the case. The court found a table listing prescriptions employees disclosed per company's drug disclosure policy, but which did not contain personally identifiable detail, also was not confidential.

In 2021, the Southern District of Florida issued a decision in *EEOC v. University of Miami*, involving claims of Equal Pay Act violations.<sup>771</sup> In that case, the parties entered into a confidentiality agreement, stipulating that specific contents of documents be designated as confidential. During discovery, the University produced documents relating to its salary recommendations and justifications for multiple faculty members, as well as documents relating to the decision to promote the plaintiff professor and her alleged comparator. The University attached redacted versions of these documents to its motion for summary judgment and filed a motion to seal the unredacted versions. The EEOC opposed the motion and the court agreed. The court noted that since the documents were filed with a pretrial motion requiring judicial resolution on the merits, they were subject to the common law right of access. Only a showing of good cause could overcome the right of access, which the court found the University failed to demonstrate. The court stated the University's motion to seal, without the benefit of reviewing the unredacted documents at issue, did not show the University's interest in redacting the names of individuals involved in the promotion and tenure review process, nor did it describe the process.

## 2. EEOC Publicizing Litigation Against the Employer

In *EEOC v. Action Insulation Co., LLC*, the defendant asked the court to impose sanctions on the EEOC and the EEOC's counsel after they published a press release about the lawsuit that defendant alleged violated the Southern District of Georgia's Local Rule 11.2 ("L.R. 11.2") and associated case law.<sup>772</sup> L.R. 11.2 provides that "[i]t is the duty of every lawyer or law firm associated with the case not to release or authorize the release of information or an opinion . . . in connection with pending [ ] litigation with which he[r] or his firm is associated, if . . . such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice."<sup>773</sup>

Here, the defendant alleged the EEOC and its counsel's issuance of a press release rehashing the allegations in the lawsuit, acknowledging that federal law prohibits sexual harassment and submitting that the "EEOC will take action when a company allows its highest-ranking officials to continuously harass a female employee," violated the Local Rule.<sup>774</sup>

The court was not convinced. At the outset, the court noted that L.R. 11.2 applies only to lawyers and law firms, not parties to the litigation, and so sanctions against the EEOC were not warranted.<sup>775</sup> Relatedly, the court also declined to find the EEOC's press release would result in the defendant suffering an unfair trial when the press release only summarized the allegations in the public lawsuit and did not attempt to represent its allegations as indisputable facts instead of allegations.<sup>776</sup> As such, the court held the press release could not reasonably be perceived to interfere with the defendant's ability to receive a fair trial, and the EEOC and its counsel had not violated L.R. 11.2.<sup>777</sup>

<sup>771</sup> *EEOC v. Univ. of Miami*, 2021 U.S. Dist. LEXIS 89226, at \*2 (S.D. Fla. May 11, 2021).

<sup>772</sup> *EEOC v. Action Insulation Co., LLC*, 2025 U.S. Dist. LEXIS 173729, at \*1 (S.D. Ga. Sep. 5, 2025).

<sup>773</sup> *Id.* at \*\*3-4.

<sup>774</sup> *Id.* at \*\*2-3.

<sup>775</sup> *Id.* at \*4.

<sup>776</sup> *Id.* at \*\*6-8.

<sup>777</sup> *Id.* at \*\*7-8.

### 3. ESI: Electronic Discovery-Related Issues

With respect to electronically stored information (ESI), courts continue to show their proclivity to permit reasonable discovery, considering the nature of the litigation, but emphasize the parties' obligations to cooperate in crafting search terms with ESI.

In a FY 2024 decision, *EEOC v. Formel D USA Inc.*,<sup>778</sup> the district court ruled on the steps necessary to preserve potentially discoverable ESI. The court held that the defendant did not present sufficient evidence that it took reasonable steps to preserve ESI, such as email and telephone data. As a result, the EEOC was prejudiced by the lost ESI – particularly as it related to relevant text messages. Notably, the court did not take the position that the Federal Rules of Civil Procedure are silent on about which party bears the burden of proving reasonableness of the steps to preserve ESI. Regardless, the court indicated that all parties have a duty to preserve discoverable ESI as soon as they are put on notice of anticipated litigation.

In *EEOC v. Gypsum Express*,<sup>779</sup> the court weighed in on the importance of objecting to a Rule 34 document request seeking ESI and its impact on shifting costs. In this case, the defendant agreed to produce discovery material in the format the EEOC requested. In particular, this case involved allegations of a pattern or practice of discrimination against female driver applicants. The defendant was asked to produce all driver applicant data housed in an applicant tracking system from January 1, 2014, to the present. The defendant estimated the cost to produce this information would range from \$6,000–8,000 and objected. Typically, the presumption is that the responding party bears the expense of complying with discovery requests unless it can demonstrate the requested ESI is not readily accessible or would present an undue burden. Here, the defendant failed to present evidence to satisfy either of these two grounds for objection, so its objections to the request were denied.

In *United States EEOC v. KVP, LP*, a FY 2025 case, the EEOC alleged it informed the defendant in its requests for production (RFP) that ESI must be produced in native and load file format compatible with Relativity, a data platform often used for eDiscovery.<sup>780</sup> The defendant did not object to the EEOC's formatting preference, but did not produce documents consistent with the EEOC's preferred format.<sup>781</sup> As a result, the EEOC sought court intervention to mandate that the defendant meaningfully confer on the EEOC's ESI formatting preference.<sup>782</sup> In response, the defendant submitted that it was unable to comply, in part, because some of the documents at issue existed as paper files, so the defendant scanned and converted them into PDFs before producing them to the EEOC.<sup>783</sup> The defendant further submitted that the remainder of the documents were served as native files, so the EEOC could easily run character recognition to enable search capabilities.<sup>784</sup> The court held that the paper-turned-PDF files were not electronically stored information, and therefore, the defendant was not required to serve them as native and load files; however, the court granted the EEOC's meet and confer request to permit the parties to clear up any confusion about which documents were subject to the EEOC's ESI formatting preferences for ESI.<sup>785</sup>

Further, concerning its ESI search, the defendant informed the EEOC that it was conducting a "diligent search," but did not expand on its search effort with any specificity.<sup>786</sup> Unsatisfied with the defendant's response, the EEOC sought a court order to mandate the defendant specify and disclose the search parameters used for its ESI search.<sup>787</sup> The court sided with the EEOC, holding that such disclosure is "necessary to facilitate future meet and confers," and ordered the defendant to disclose the search terms used for the ESI produced and in process.<sup>788</sup>

In *EEOC v. Champion Media, LLC*, the EEOC and the defendant agreed to a court-filed protocol expressing their intention to cooperatively engage in discovery in compliance with the proportionality limitations established in the Federal Rules of Civil Procedure.<sup>789</sup> The protocol notably addressed the preservation of and scope of ESI

<sup>778</sup> *EEOC v. Formel D USA, Inc.*, 2024 U.S. Dist. LEXIS 164520 (E.D. Mich. Sept. 12, 2024).

<sup>779</sup> *EEOC v. Gypsum Express*, 2024 U.S. Dist. LEXIS 22736 (E.D. Ky. Jan. 24, 2024).

<sup>780</sup> *EEOC v. KVP, LP*, 2025 U.S. Dist. LEXIS 41390, at \*\*5-6 (D. Nev. Mar. 5, 2025).

<sup>781</sup> *Id.* at \*5.

<sup>782</sup> *Id.*

<sup>783</sup> *Id.* at \*\*5-6.

<sup>784</sup> *Id.* at \*6.

<sup>785</sup> *Id.*

<sup>786</sup> *Id.* at \*7.

<sup>787</sup> *Id.*

<sup>788</sup> *Id.* at \*\*7-8.

<sup>789</sup> *EEOC v. Champion Media, LLC*, 2025 U.S. Dist. LEXIS 8965, at \*1 (E.D.N.C. Jan. 13, 2025).

production.<sup>790</sup> Specifically, both parties identified one ESI liaison (a litigation support manager for the defendant and an employee of the EEOC) to lean on for their technical knowledge about ESI and to aid in meet and confer efforts that might arise in the litigation between the parties.<sup>791</sup> The parties also proactively defined key terms, including search terms, database systems, structured data, and aggrieved individuals at the outset of the case.<sup>792</sup> Relatedly, the parties made clear their preservation obligations in an exhibit attached to the protocol that detailed the relevant period for preservation along with the identification of appropriate custodians.<sup>793</sup> The parties also addressed ESI sources, custodians, meta data, and the format of the production.<sup>794</sup> Further, the parties addressed the scope of any ESI collection, including who would supervise the collection.<sup>795</sup>

In *EEOC v. Mia Aesthetics Clinic*, the court found the defendant's blanket assertion that it engaged in a diligent search for the documents responsive to the EEOC's discovery requests insufficient to satisfy the defendant's obligations under Fed. R. Civ. Pro. 26 or to permit the court to assess whether the defendant's assertion was true.<sup>796</sup> In this matter, the EEOC alleged disability discrimination by the defendant concerning its employment of the charging party.<sup>797</sup> The EEOC moved to compel discovery from the defendant with respect to four categories of documents: 1) the charging party's Salesforce data, 2) emails from the charging party to the defendant's managerial employees, 3) the charging party's Google Voice data, and 4) the charging party's Slack communications.<sup>798</sup> The EEOC also requested that the court order the defendant to hire a third-party eDiscovery vendor to help it conduct a more thorough ESI search and review.<sup>799</sup>

The defendant informed the court it had conducted a diligent search for the documents requested, but was unable to secure any such documents following a "diligent search"; as a result, the defendant submitted it was not required to produce non-existent documents per its obligations under the Fed. R. Civ. Pro.<sup>800</sup> While the court agreed the defendant was not required to produce documents it does not possess, the court found the defendant's explanation of its efforts insufficient as it failed to detail its efforts.<sup>801</sup> As such, the court ordered the defendant to conduct a reasonable search for each category of documents the EEOC sought, to produce any documents it found that had not been produced, and to submit a document informing the EEOC of its search efforts.<sup>802</sup>

Concerning the EEOC's request that the court order the defendant to hire a third-party eDiscovery vendor, the defendant argued against the request, saying that such an order was warranted only where there was demonstrated technical incompetence or an attempt to conceal evidence, and such grounds had not been established.<sup>803</sup> The court agreed and held that the defendant's failure to specify its efforts to secure the requested documents did not equate to the defendant's being incapable of doing so.<sup>804</sup>

#### 4. Reliance on Experts, Including Systemic Cases

Testing the limits of expert testimony continues to be a point of emphasis in EEOC litigation.

In *EEOC v. Defender Associates*,<sup>805</sup> an FY 2024 case, the EEOC sued for disability discrimination, and moved to exclude the defendant's expert report from a vocational counselor. The EEOC argued that the report was to opine on whether the charging party could perform the essential functions of her job, but instead focused on the reasonableness of the defendant's decision to terminate her employment. The EEOC further argued the report and opinion (1) would not help the trier of fact understand the evidence or determine a fact in issue; (2) were not based on sufficient facts or data; and (3) were not reliable. The court agreed, reasoning that it relied on largely irrelevant facts, did not state a methodology, and reached a conclusion that would be unhelpful to a jury.

<sup>790</sup> *Id.*

<sup>791</sup> *Id.* at \*3.

<sup>792</sup> *Id.* at \*\*2-3.

<sup>793</sup> *Id.* at \*\*4-5.

<sup>794</sup> *Id.* at \*\*6-27.

<sup>795</sup> *Id.*

<sup>796</sup> *EEOC v. Mia Aesthetics Clinic*, 2025 U.S. Dist. LEXIS 112444 (N.D. Ga. May 30, 2025).

<sup>797</sup> *Id.* at \*1.

<sup>798</sup> *Id.* at \*\*3-4.

<sup>799</sup> *Id.* at \*4.

<sup>800</sup> *Id.* at \*\*4-7.

<sup>801</sup> *Id.*

<sup>802</sup> *Id.* at \*\*6-8.

<sup>803</sup> *Id.* at \*15-16.

<sup>804</sup> *Id.* at \*\*16-17.

<sup>805</sup> *EEOC v. Defender Association of Philadelphia*, 2024 U.S. Dist. LEXIS 155251 (E.D. Pa. Aug. 29, 2024).

*EEOC v. The Modern Group Ltd.*<sup>806</sup> involved both parties moving to strike experts. Here, the EEOC alleged the defendant discriminated against the charging party by revoking his conditional offer of employment following the results of a pre-employment drug screen. The EEOC then moved to exclude the defendant's expert witnesses, attacking the defendant's expert's qualifications. The defendant, in turn, sought to exclude the EEOC's expert, arguing the opinion was not based upon reliable principles or methods. The court issued a lengthy analysis of the facts of the case and standards for expert testimony and granted in part and denied in part the motions. Based upon the analysis and its length, it is apparent that courts are continuing to evaluate expert testimony in EEOC litigation.

In *EEOC v. Ryan's Pointe Houston, LLC*, an FY 2025 case, the EEOC sued the defendant on behalf of a former property manager for alleged national origin and sex discrimination in violation of Title VII.<sup>807</sup> The defendant identified a vocational rehabilitation consultant to testify as to whether the former employee was qualified to perform the property management role for the defendant and whether the former property manager would have remained in the role for more than 10 years.<sup>808</sup>

The EEOC asserted a *Daubert*<sup>809</sup> challenge, and moved to exclude the defendant's Vocational Rehabilitation Consultant's testimony on grounds that the expert's testimony lacked proper factual and legal bases for acceptance of the same.<sup>810</sup> In determining whether to exclude the testimony, the court explained that its assessment must focus on whether the expert's reasoning or methodology is scientifically valid and whether the reasoning is applicable to the facts.<sup>811</sup> Further, relying on Federal Rule of Evidence 702, the court noted its decision must also center on: "1) the qualifications of the expert witness, 2) relevance of the testimony; and 3) reliability of the principles and methodology upon which the testimony is based."<sup>812</sup>

The court ultimately denied the EEOC's motion to exclude the vocational expert's testimony, finding that Fed. R. Evid. 702 supported admitting the testimony because the expert not only relied on her own experience to render her opinion, but also the records available to her, including deposition testimony and record evidence; she also relied on standard methodologies (that the EEOC did not attack) to inform her testimony about the former employee's earning capacity and employability.<sup>813</sup> Notably, the court found the EEOC's attack on the expert's sources for her opinion simply challenged whether the expert's testimony was credible, not whether it should be admissible in accordance with Rule 702.<sup>814</sup>

In *EEOC v. Skywest Airlines, Inc.*, the EEOC challenged the admissibility of the defendant's expert witness's testimony under Fed. R. Evid. 702.<sup>815</sup> The defendant retained an expert to testify at trial in opposition to the EEOC's expert witness concerning the plaintiff-intervenor's alleged psychological distress, diagnoses, and the EEOC's expert's assessment of the plaintiff-intervenor.<sup>816</sup> The EEOC submitted that the defendant's expert was unqualified to render an expert opinion because the defendant's expert had not performed his own psychological assessment of plaintiff-intervenor, had no specialized training on the medical condition in question, nor had the defendant's expert written on the diagnosis.<sup>817</sup> The court agreed with the EEOC.<sup>818</sup>

Analyzing the demands of Fed. R. Evid. 702, which requires the court to assess "the methods, analysis, and principles [an expert] relied upon in reaching the opinion" to determine whether expert testimony will be permitted, the court found the defendant's expert's testimony was "plainly inadequate" to allow the defendant to rely on the same.<sup>819</sup> Specifically, the court held the defendant's expert's decision to rely only on his common-sense and life experiences, as well as a colleague's instead of his own independent review of test data, did not meet the bar set by Rule 702. The court therefore granted the EEOC's motion to exclude the testimony.<sup>820</sup>

806 *EEOC v. The Modern Group, Ltd.*, 2024 U.S. Dist. LEXIS 53275 (E.D. Tex. Mar. 25, 2024).

807 *EEOC v. Ryan's Pointe Houston, LLC*, 2025 U.S. Dist. LEXIS 33651 (S.D. Tex. Jan. 21, 2025).

808 *Id.* at \*\*50-51.

809 *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 592-93, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993).

810 *Id.*

811 *Id.* at \*52.

812 *Id.* at \*52-53.

813 *Id.* at \*62.

814 *Id.* at \*56.

815 *EEOC v. Skywest Airlines, Inc.*, 2024 U.S. Dist. LEXIS 189733, at \*\*1-2 (N.D. Tex. Oct. 18, 2024).

816 *Id.* at \*\*2.

817 *Id.* at \*\*2-3.

818 *Id.*

819 *Id.* at \*\*3-4.

820 *Id.*

## 5. Management of Class Discovery – Motion to Bifurcate

In FY 2025, the Eastern District of Kentucky evaluated how discovery issues should be bifurcated in a pattern-or-practice lawsuit brought by the EEOC.<sup>821</sup> The EEOC alleged the defendant discriminated against female applicants for flatbed-driver positions as well as retaliatorily and constructively discharged two individuals.<sup>822</sup> The parties submitted a Rule 26(f) report where they agreed that trial and discovery should be bifurcated with liability established during Phase I and individual relief and related damages established during Phase II.<sup>823</sup> However, the parties disagreed to when punitive damages should be litigated.<sup>824</sup> The matter was submitted to the magistrate judge who invited the parties to submit briefings.<sup>825</sup> The defendant contended that punitive damages, if appropriate, should be decided in connection with individual evidence regarding defendant’s actions toward each claimant at Phase II, arguing that it would not be prejudicial to the parties and was consistent with authority inside and outside of the district.<sup>826</sup> The EEOC sought to address class-wide punitive damages in Phase I, reasoning that the evidence to establish liability on the pattern-or-practice claim was intertwined with the evidence needed to prove punitive damages liability, it was appropriate because the class was subjected to the same discriminatory hiring policy or practice, and that addressing punitive damages at Phase II would cause inefficiency thereby defeating the purpose of bifurcation.<sup>827</sup>

In the scheduling order, the magistrate judge acknowledged a substantial split in authority on the timing of litigating punitive damages in bifurcated trials, but ended up following an intra-district decision holding that punitive damages were more appropriately assessed at the second phase of discovery and trial.<sup>828</sup> Specifically, the magistrate judge cited the intra-district decision stating, “there is a high likelihood that Defendant would be prejudiced in its defense against the punitive damages assessment were it held at the liability phase” as “Defendant would be unable to rebut any allegations of individual harm to the plaintiff class members[.]”<sup>829</sup>

The EEOC objected to the magistrate judge’s ruling, arguing that a second jury would have to hear the charging parties’ individual claims again to award punitive damages in Phase II.<sup>830</sup> The district court found that the magistrate judge’s order was not clearly erroneous or contrary to the law.<sup>831</sup> Specifically, the district court noted that the magistrate judge acknowledged the EEOC’s concern for some inefficiency, but that such concern could “be mitigated through careful management of the case and its resources,” even if the solution was imperfect.<sup>832</sup>

## F. General Discovery by Employer

The EEOC often takes an expansive view of its discovery rights but argues to limit employer requests for discovery from the agency. However, courts often conclude that the EEOC is subject to much the same discovery obligations as employers in providing requested information, subject to some privileges to which it is entitled.

### 1. Discovery of EEOC-Related Documents and Individuals

Parties must act with diligence when conducting discovery. In *EEOC v. Hooters of America, LLC*, the court admonished the parties for requesting a several-month discovery extension and continuance of trial after their initial ten-month discovery period.<sup>833</sup> The court found that the parties had not acted with due diligence or shown good cause, stating that the parties could not “manage the discovery process efficiently on their own” and, as such, court oversight was necessary.<sup>834</sup> Specifically, the court pointed to the fact that the parties had not appeared to resolve discovery disputes and had not taken any depositions.<sup>835</sup> The court referred to the parties’ “leisurely stroll

821 *EEOC v. Gypsum Express Ltd.*, 2025 U.S. Dist. LEXIS 174569 (E.D. Ky. Mar. 6, 2025).

822 *Id.* at \*2.

823 *Id.*

824 *Id.*

825 *Id.*

826 *Id.* at Dkt. 33.

827 *Id.* at Dkt. 34.

828 *Id.* at \*2 and Dkt. 35.

829 *Id.* at Dkt. 34 (citing *Equal Emp. Opportunity Comm’n v. Wal-Mart Stores, Inc.*, 2008 WL 11344853, at \*2 (E.D. Ky. Apr. 7, 2008)).

830 *Id.* at \*3.

831 *Id.* at \*\*4-10.

832 *Id.* at \*5.

833 *EEOC v. Hooters of Am., LLC*, 347 F.R.D. 445 (M.D.N.C. 2024).

834 *Id.* at 447.

835 *Id.* at 448.

toward resolution,” noting delays in serving and responding to discovery.<sup>836</sup> Further, the court called attention to Federal Rule of Civil Procedure Rule 16(b) stating that the touchstone of good cause is diligence.<sup>837</sup> Finally, the court imposed a number of specific deadlines on the parties including deadlines for submission on ESI protocol, interrogatory verifications, motions to compel, subpoenas, discovery responses, and a court-ordered mediation.<sup>838</sup>

A continuing area of discovery disputes has been the scope of documents that may be obtained and depositions that may be taken of EEOC personnel. This has involved judicial consideration of how various privileges, including the attorney–client privilege and the government deliberative process privilege, apply to the EEOC’s internal and investigative communications with employees.

In *EEOC v. Sunshine Raisin Corp.*,<sup>839</sup> a FY 2024 decision, the defendant served a Rule 30(b)(6) notice of deposition, seeking to depose an EEOC representative on 19 categories of inquiry.<sup>840</sup> The EEOC objected and sought a blanket protective order.<sup>841</sup>

The EEOC conceded it could not object to providing a 30(b)(6) witness.<sup>842</sup> The agency maintained, however, that because it had provided its entire investigative file of more than 3,500 pages, a Rule 30(b)(6) deposition was not proportional to the needs of the case, duplicative, and overly burdensome to an agency with limited resources and a heavy case load.<sup>843</sup> The court found, however, that the EEOC could not assert a blanket privilege or exemption to discovery under Rule 30(b)(6), but had to justify its request for a protective order with particularity as to the specific categories of inquiry.<sup>844</sup>

In reviewing the areas of inquiry, the court noted that categories 1–6 and 10–12 pertained to factual information and documents to support and rebut claims in the complaint and remedies sought.<sup>845</sup> The EEOC claimed inquiry into these categories was barred based on the attorney–work product privilege, government deliberative process privilege, relevance, and duplicativeness.<sup>846</sup> The court disagreed, finding the weight of authority permitted the defendant to proceed with these categories of inquiry, subject to the EEOC’s right to object in the deposition.<sup>847</sup>

The court next noted that categories 7–9 and 17–18 appeared to focus on two topics: (1) the EEOC’s approach to investigation and evaluation of discrimination cases by employers in general; and (2) the EEOC’s own internal policies for investigation and prosecution of sexual harassment.<sup>848</sup> Specifically, as to the latter category 18, the court explained that several courts had found disclosure of the EEOC’s internal policies appropriate where they could be either probative of whether a defendant’s own policies comported with Title VII or evidence an improper motive for the enforcement action.<sup>849</sup> The court agreed that whether the defendant’s policies and processes for investigating sexual harassment were substantially similar to those used by the EEOC could rebut the EEOC’s claims that those policies were inadequate, and denied the EEOC’s protective order motion as to category 18.<sup>850</sup> The court granted the EEOC’s protective order motion with respect to categories 7–9 and 17, finding that the EEOC’s investigation and conciliation obligations depended on its actions in the case, and that such information was publicly available.<sup>851</sup> The court also granted the EEOC’s motion with respect to category 13, which sought the names of all individuals with personal knowledge of the allegations in the complaint, since the EEOC had already provided a witness list.<sup>852</sup>

<sup>836</sup> *Id.*

<sup>837</sup> *Id.*

<sup>838</sup> *Id.* at 450–451.

<sup>839</sup> *EEOC v. Sunshine Raisin Corp.*, 2023 U.S. Dist. LEXIS 102601 (E.D. Cal. June 23, 2023); *EEOC v. Sunshine Raisin Corp.*, 2023 U.S. Dist. LEXIS 152294 (E.D. Cal. Aug. 29, 2023).

<sup>840</sup> *Sunshine Raisin Corp.*, 2023 U.S. Dist. LEXIS 152294, at \*3.

<sup>841</sup> *Id.* at \*\*6–7.

<sup>842</sup> *Id.* at \*\*5–6.

<sup>843</sup> *Id.* at \*6.

<sup>844</sup> *Id.* at \*\*6–7.

<sup>845</sup> *Id.* at \*7.

<sup>846</sup> *Id.* at \*\*7–8.

<sup>847</sup> *Id.* at \*10.

<sup>848</sup> *Id.* at \*\*12–13.

<sup>849</sup> *Id.* at \*\*15–16.

<sup>850</sup> *Id.* at \*16.

<sup>851</sup> *Id.* at \*\*17–18.

<sup>852</sup> *Id.* at \*18.

Categories 14, 15 and 16 sought information concerning the EEOC's claim of representation, the agency's initial disclosures, and documents produced in connection with discovery.<sup>853</sup> The court allowed limited inquiry into these categories, denying the EEOC's motion.<sup>854</sup>

Finally, category 19 sought inquiry into all steps in the EEOC's investigation of the claims asserted in its complaint.<sup>855</sup> The EEOC claimed this information was irrelevant and protected by the government deliberative process privilege, and improperly sought court review of the sufficiency of the EEOC investigation.<sup>856</sup> The court found, however, that the EEOC conflated the discovery process with judicial review of the agency's investigation and that the information sought was relevant to an affirmative defense, and therefore denied the motion as to category 19, subject to later limitation depending on what the employer sought.<sup>857</sup>

Later, the district judge partially granted the EEOC's motion for reconsideration on categories 1-6, 10-12, 14-16, 18 and 19.<sup>858</sup> The EEOC argued that the magistrate judge failed to consider the argument that the categories were "unreasonably cumulative and duplicative" as the EEOC had produced its entire investigative file, but the court noted that the magistrate judge had recognized and rejected such assertion.<sup>859</sup> The EEOC next argued that the 30(b)(6) deposition was unnecessary and not probative because it lacked "factual knowledge of the complaint," EEOC employees had not been identified as witnesses, and the claimants and other pertinent witnesses could speak to what occurred.<sup>860</sup> The court again found that the magistrate acknowledged and rejected that argument.<sup>861</sup>

As to categories 1-6 and 10-12, regarding the factual bases for the complaint allegations, the court agreed with the magistrate's determination allowing the defendant to proceed with the inquiry.<sup>862</sup> The court noted that the magistrate judge relied on pertinent in-circuit authority and that just because the EEOC cited to other in-circuit authorities does not mean the magistrate judges' determination should be reconsidered.<sup>863</sup>

As to category 14 regarding the basis for representation claims, the court again found that the magistrate judge's determination was not contrary to law where the inquiry was limited to pre-representation communications.<sup>864</sup>

The court granted the EEOC's motion to reconsider the determination on categories 15 and 16, related to information in the EEOC's initial disclosures and written discovery.<sup>865</sup> The court found that the EEOC met its burden to demonstrate the need for a protective order where the defendant failed to counter the EEOC's argument.<sup>866</sup>

The court also found the magistrate judge's decision, which allowed the deposition on the topic of how the EEOC investigates claims by its own employees of sexual harassment, to be contrary to law.<sup>867</sup> The court noted that "[b]ecause [defendant] does not assert that its investigatory policies or practices were informed in any way by how the EEOC investigates sexual harassment of its own employees, it cannot claim that it followed the EEOC's lead when complying with Title VII."<sup>868</sup>

Lastly, the court denied the EEOC's motion for reconsideration as to category 19, which sought "[a]ny and all steps in Plaintiff's investigation of the claims asserted in its Complaint."<sup>869</sup> The court noted that "because it is possible that claims in the complaint exceed the reasonable investigation in this case, the Magistrate Judge's order is not contrary to law." The court further clarified that "the inquiry is limited to areas of the complaint which [defendant's] counsel have a good faith basis to believe did not grow out of the investigation of the original charge."

---

853 *Id.*

854 *Id.* at \*\*19-20.

855 *Id.* at \*20.

856 *Id.*

857 *Id.* at \*21.

858 *United States EEOC v. Sunshine Raisin Corp.*, 2023 U.S. Dist. LEXIS 205959 (E.D. Cal. Nov. 16, 2023).

859 *Id.* at \*5.

860 *Id.* at \*5.

861 *Id.* at \*6.

862 *Id.*

863 *Id.* at \*\*6-7.

864 *Id.* at \*\*7-8.

865 *Id.* at \*\*8-9.

866 *Id.*

867 *Id.* at \*\*9-13.

868 *Id.* at \*12.

869 *Id.* at \*13.

In a case decided in FY 2023, *EEOC v. Thomas B. Finan Center*,<sup>870</sup> the court considered whether the defendant could depose both the EEOC as an agency and the EEOC's investigator.<sup>871</sup> In holding that the defendant cannot depose the agency, the court noted that (1) a deposition of the EEOC would essentially be a deposition of the EEOC's counsel, (2) the noticed testimonial topics likely would impermissibly intrude upon non-waived privilege or attorney work product, and (3) the information sought was available and appeared to have been received through other forms of discovery.<sup>872</sup>

The court did hold the defendant could depose the EEOC's investigator on the facts gathered during the investigation, including from whom and when they were gathered, and on any necessary factual clarifications based on the defendant's review of the materials provided.<sup>873</sup> In so holding, the court reasoned, "the government as a litigant seeking affirmative relief ordinarily should have to disclose materials that a private plaintiff would have to turn over in order to avoid unfair surprise to the other side."<sup>874</sup>

## 2. Discovery Involving Claimants and Charging Parties

This year courts have addressed the scope of discovery requested by employers concerning charging parties, particularly with respect to medical records.

In *EEOC v. United Healthcare Services, Inc.*, the EEOC alleged that the charging party's termination for not taking the COVID vaccine was a failure to accommodate her sincerely held religious belief.<sup>875</sup> The court considered whether the EEOC was required to respond to interrogatories and produce documents related to the charging party's vaccination history and to identify every medication, vaccine, food item, cosmetic product, and other product that the charging party rejected because of her religious beliefs.<sup>876</sup>

First, the court considered whether the sought-after discovery was relevant to the *prima facie* case under Title VII.<sup>877</sup> In finding that the information was relevant, the court reasoned that evidence that the charging party "may have acted in a manner inconsistent with her alleged beliefs speaks at the very least to the sincerity aspect of this burden."<sup>878</sup> The court pointed to the EEOC's guidance that "factors that might undermine an employee's credibility as to sincerity could include whether the employee has behaved in a manner markedly inconsistent with the professed belief."<sup>879</sup>

Next, the court assessed the proportionality of the request to the needs of the case.<sup>880</sup> In this assessment, the court considered "the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit."<sup>881</sup> The court found that several factors weighed in favor of granting the defendant's requests, including the information being potentially meaningful to the charging party's sincerely held belief, that there was no reason to believe the defendant otherwise had access to that information, and that the EEOC did not argue that the expense in producing the requested information would outweigh the benefit.<sup>882</sup> The court did not agree with the EEOC's arguments that the requests were overbroad, harassing, invaded the charging party's privacy, or were unreasonably duplicative because the charging party had already been questioned about her medical history at deposition.<sup>883</sup> However, the court limited the scope of certain requests to be more tailored to the charging party's beliefs at issue in the lawsuit, rather than the charging party's overall beliefs.<sup>884</sup> Finally, the court ordered the parties to confer regarding the scope of certain requests since "the parties, not the Court, are in the best position to tailor Request[s]."<sup>885</sup>

870 2023 U.S. Dist. LEXIS 62025 (D. Md. Apr. 7, 2023).

871 *Id.* at \*1.

872 *Id.* at \*3.

873 *Id.* at \*\*4, 6.

874 *Id.* at \*5.

875 *EEOC v. United Healthcare Servs.*, 2025 U.S. Dist. LEXIS 243099, at \*2 (S.D. Ohio Apr. 10, 2025).

876 *Id.* at \*\*4-5.

877 *Id.* at \*\*5-10.

878 *Id.* at \*5.

879 *Id.* at \*\*5-6 (internal quotations omitted) (citing U.S. Equal Employment Opportunity Commission, *Religious Discrimination*, found at <https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination> (last accessed April 10, 2025)).

880 *Id.* at \*\*10-15.

881 *Id.* at \*10 (citing Fed. R. Civ. P. 26(b)(1)).

882 *Id.* at \*\*10-11.

883 *Id.* at \*\*11-15.

884 *Id.* at \*14.

885 *Id.* at \*15.

While courts have found that a charging party's medical history can be relevant and proportional to the needs of the case and must therefore be produced, courts have not required such information to be publicly available on the docket.

In *EEOC v. A&A Appliance, Inc.*, the EEOC moved for Leave to Restrict Documents consisting of the charging party's medical records.<sup>886</sup> The defendant argued that the EEOC failed to meet the requirements of the Colorado statute governing public access to documents and proceedings, was not diligent in seeking restriction, and that there was a heightened public interest in the medical records since the case was brought by the EEOC.<sup>887</sup> The court acknowledged that "[t]he public has a fundamental interest in understanding the disputes presented to and decided by the courts, so as to assure that they are run fairly and that judges act honestly[,]" and therefore there is a "presumption in favor of public access to judicial records that may be overcome where countervailing interests heavily outweigh the public interests in access."<sup>888</sup> The court elaborated that the burden was therefore on the party seeking to restrict access.<sup>889</sup> Despite this, the court agreed with the EEOC that the charging party's medical records should not be shared with the public.<sup>890</sup> Specifically, the court stated that the charging party's medical records were "of little value to the public and [did] not impact the public's understanding of the case because the unrestricted filings that are available to the public in this case include the information that could be of interest to the public."<sup>891</sup> In making this decision, the court pointed to the fact that such information had already been designated "confidential" which restricted either party from disclosing them to the public without the consent of the party that produced the document or an order of the court.<sup>892</sup> Despite the confidential designation, the defendant filed the documents publicly but did not appear to challenge the confidential designation.<sup>893</sup> In all, the court granted the EEOC's Motion for Leave to Restrict Documents, protecting the charging party's medical records from public disclosure.<sup>894</sup>

Prior years' cases focused on other types of information. In *EEOC v. Enterprise Leasing Company of Florida, LLC*,<sup>895</sup> the court considered whether the EEOC was required to produce the agency's statistical analysis performed regarding its ADEA pattern-or-practice claim. The defendant sought information about the statistical analysis performed by the EEOC through several interrogatories and requests for production.<sup>896</sup> The EEOC both objected to the production of that information based on the deliberative process privilege and logged the relevant documents in a privilege log.<sup>897</sup> The defendant moved to compel the production of such documents, arguing that (1) the EEOC waived privilege by failing to timely serve the privilege log, and (2) the statistical analysis was factual and therefore should be produced as it does not fall under the deliberative process privilege.<sup>898</sup>

The court initially held that the EEOC did not waive its privilege by submitting the privilege log six days late, noting that the defendant did not contend that it suffered any prejudice by the six-day delay.<sup>899</sup>

The court next concluded, in an *in camera* review, that the contents of the documents were privileged.<sup>900</sup> The court said that the documents consisted of internal emails and email chains, internal memoranda, "internally created spreadsheets and other documents that reflect the individuals that the EEOC chose to include to conduct its analysis," and "miscellaneous other documents that reflect the EEOC's analysis and opinions."<sup>901</sup> The court found that "[a]ll of these documents reflect the EEOC's deliberations, decisions, opinions, and recommendations in the context of evaluating whether to initiate this lawsuit[,]" and therefore were subject to the deliberative process privilege.<sup>902</sup>

886 *EEOC v. A&A Appliance, Inc.*, 2025 U.S. Dist. LEXIS 134272 (D. Colo. Mar. 7, 2025).

887 *Id.* at \*1.

888 *Id.* at \*\*1-2 (D. Colo. Mar. 7, 2025) (internal quotations omitted) (citing *Huddleson v. City of Pueblo, Colo.*, 270 F.R.D. 635, 636 (D. Colo. 2010) and *United States v. Bacon*, 950 F.3d 1286, 1293 (10th Cir. 2020)).

889 *Id.* at \*2.

890 *Id.* at \*\*4-5.

891 *Id.* at \*4 (internal quotations omitted).

892 *Id.* at \*3.

893 *Id.* at \*\*3-4.

894 *Id.* at \*5.

895 *EEOC v. Enter. Leasing Co. of Fla.*, 2024 U.S. Dist. LEXIS 50245, (S.D. Fla. Mar. 21, 2024).

896 *Id.* at \*2.

897 *Id.* at \*4.

898 *Id.* at \*\*4-10.

899 *Id.* at \*5.

900 *Id.* at \*9.

901 *Id.*

902 *Id.*

The court further denied the defendant’s motion to compel information related to conciliation as “[t]he Court cannot comprehend how the defendant, being the party with whom the EEOC conciliated, would not already have in its own possession the information showing whether the EEOC met the basic requirements of conciliation.”<sup>903</sup>

Finally, the court addressed whether the EEOC had to produce information related to its communications with claimants and potential claimants.<sup>904</sup> The court distinguished a request for information in ADEA actions from requests in other discrimination cases finding that, “other laws do not have the same ‘distinctive enforcement scheme’ as does the ADEA—the termination of an individual’s right to sue once the EEOC brings an ADEA enforcement action.”<sup>905</sup> In finding that the attorney–client privilege applied to the EEOC’s communications with claimants and potential claimants, the court reasoned, “[t]here is no sound reason why employers in such cases should have available the protection of the attorney–client privilege whereas employees would not.”<sup>906</sup>

In *EEOC v. Princess Martha, LLC*,<sup>907</sup> the court considered the defendants’ request for sanctions against the charging party for spoliation of evidence.<sup>908</sup> The defendants argued that the charging party failed to produce a voicemail that defendants left for the charging party.<sup>909</sup> Notably, the parties did not agree on the existence of the voicemail, so the burden of proof was on the defendants to establish that the stated voicemail “existed at one point.”<sup>910</sup> The call logs from both defendants and the charging party showed a 29–30 second call from defendants’ main line to the charging party.<sup>911</sup> Neither the charging party nor any employee of defendants remembered receiving or leaving the voicemail at issue.<sup>912</sup> The court held that the “defendants have not met their burden of proof that a voicemail message existed at one point, which is the evidence they contend [the charging party] spoliated” and therefore, denied the defendants’ motion for sanctions.<sup>913</sup>

In *EEOC v. SkyWest Airlines, Inc.*,<sup>914</sup> the court considered the defendant’s motion for leave to depose the charging party and her husband, a non–party witness, both of whom previously had been deposed.<sup>915</sup> The defendant had already conducted 10 depositions. In arguing good cause for the depositions, the defendant contended that “(1) ‘there was an apparent change in [the charging party’s] stance on the spousal communications privilege at the deposition of [her husband] . . . that differed from the stance previously taken in response to written discovery’; (2) ‘[the defendant] received new information through the production of text communications between [the charging party] and [her husband] in response to both its subpoena for documents to [her husband] and [the charging party’s] supplemental responses to [the defendant’s] written discovery requests . . .’; and (3) it has been over one year since [the charging party’s] deposition, and [the defendant] wishes to question her regarding her updated medical records and state of health since that time.”<sup>916</sup> The court held that the defendant had not demonstrated good cause for the depositions as it “already had ‘ample opportunity’ to obtain the information it seeks” and the information sought was “unreasonably cumulative or duplicative’ of discovery that it ha[d] already obtained.”<sup>917</sup> Overall, the court concluded that the “burden or expense of the proposed discovery outweighs its likely benefit.”<sup>918</sup>

### 3. Third-Party Subpoenas

In a few cases this year, courts addressed third–party administrative discovery issues relating to subpoenas issued on third parties by defendants.

Relevance of the documents sought in a subpoena remains a critical factor in courts’ analyses of whether to quash subpoenas. In *EEOC v. Aspire Regional Partners, Inc.*, for example, the court granted the EEOC’s motion to quash a subpoena duces tecum served on a prior employer of the charging party, that sought applications for

903 *Id.* at \*\*11-15.

904 *Id.* at \*\*15-24.

905 *Id.* at \*18.

906 *Id.* at \*17.

907 *EEOC v. Princess Martha, LLC*, 2024 U.S. Dist. LEXIS 101459 (M.D. Fla. June 7, 2024).

908 *Id.* at \*5.

909 *Id.*

910 *Id.* at \*7.

911 *Id.* at \*5.

912 *Id.* at \*\*6-7.

913 *Id.* at \*\*7-8.

914 *EEOC v. SkyWest Airlines, Inc.*, 2024 U.S. Dist. LEXIS 80193 (N.D. Tex. May 2, 2024).

915 *Id.* at \*1.

916 *Id.* at \*\*9-10.

917 *Id.* at \*\*10-13.

918 *Id.* at \*13, citing Rule 26(b)(1).

employment and documents relating to the charging party’s performance, discipline, job duties, and separation from employment.<sup>919</sup> Analyzing Fed. R. Civ. P. 45, the court determined that defendants failed to demonstrate that the subpoena sought relevant information to the case.<sup>920</sup>

The court first rejected the defendants’ argument that the EEOC lacked standing to object to the subpoena because, according to the defendants, they had failed to raise any such objection.<sup>921</sup> The court cited case law holding that “an individual possesses a personal right with respect to information contained in employment records and, thus, has standing to challenge such a subpoena.”<sup>922</sup> The court declined to address the EEOC’s concern that the subpoena was procedurally defective.<sup>923</sup>

Ultimately, the court determined that the defendants’ arguments about the relevance of the documents sought in the subpoena were untenable and unsupported factually and legally.<sup>924</sup> The charging party’s prior experience building and setting up stores, for example, bore no relevance to the defendants’ proffered reasons for termination at their skilled nursing facility.<sup>925</sup> The court also rejected the defendants’ “credibility issues” argument.<sup>926</sup> Accordingly, the court granted the motion to quash.<sup>927</sup>

Similarly, in *EEOC v. Sis-Bro, Inc.*, the defendant served a subpoena duces tecum on the charging party’s then-current employer seeking various information relevant to the charging party’s wage damages claim and mitigation efforts.<sup>928</sup> The EEOC moved to quash the subpoena, arguing that the defendants should be able to obtain the information through the charging party herself.<sup>929</sup> The court temporarily stayed the deadline for the then-employer to respond to the subpoena and instructed the parties to attempt to obtain the information directly from the charging party.<sup>930</sup> The court also ordered the charging party to appear at a follow-up hearing, which never occurred.<sup>931</sup> After the charging party filed a First Amended Intervenor Complaint that “significantly change[d] the landscape of [the] case with respect to the damages” sought by the charging party, including the omission of damages sought for backpay, front pay and reinstatement, the court determined that the relevance of the documents sought was significantly reduced, if not nonexistent, and granted the motion to quash.<sup>932</sup>

Courts will also consider a charging party’s privacy interests and prejudice resulting from procedurally improper subpoenas. In *EEOC v. Genesh, Inc.*, the defendant served a subpoena on a school district for the education records of the intervenor-plaintiff, who was a minor at the time.<sup>933</sup>

First, the court “had no trouble finding [the defendant] had violated Fed. R. Civ. P. 45(a)(4)” because it had failed to provide notice and a copy of the subpoena to the intervenor-plaintiff and other parties before serving it on the school district.<sup>934</sup> The court found that this procedural defect prejudiced the plaintiff-intervenor by depriving her of her right to file an objection to the school district’s responding to the subpoena, but it also deprived her of rights under the Family Educational Rights and Privacy Act (FERPA).<sup>935</sup> Specifically, the lack of notice deprived the plaintiff-intervenor and her parents of the opportunity to inform the school district that they opposed the release of the school records and it resulted in the release of records over which the plaintiff-intervenor had a FERPA-protected privacy interest.<sup>936</sup> The court also disagreed with the defendant’s arguments that the plaintiff-intervenor’s motion to quash was improper because her counsel failed to object to the use of the education records at depositions or because she strategically delayed bringing the motion.<sup>937</sup> Based on the prejudice suffered by the plaintiff-intervenor as a result of the defendant’s actions, the court quashed the subpoena and ordered the parties

919 *EEOC v. Aspire Regional Partners*, 2025 U.S. Dist. LEXIS 152069 (S.D. Ohio Aug. 7, 2025).

920 *Id.* at \*1.

921 *Id.* at \*\*4-5.

922 *Id.*

923 *Id.* at \*5.

924 *Id.* at \*\*5-8.

925 *Id.*

926 *Id.* at \*\*8-10.

927 *Id.* at \*10.

928 *EEOC v. Sis-Bro, Inc.*, 350 F.R.D. 40 (S.D. Ill. 2025).

929 *Id.* at \*45.

930 *Id.*

931 *Id.*

932 *Id.* at \*46.

933 *EEOC v. Genesh, Inc.*, 2025 U.S. Dist. LEXIS 123750 (D. Kan. June 30, 2025).

934 *Id.* at \*\*10-11.

935 *Id.* at \*\*11-12.

936 *Id.* at \*\*12-14.

937 *Id.* at \*14.

to destroy documents in their possession produced as a result of the non-compliant subpoena.<sup>938</sup> It also struck all references to the documents from deposition records and prohibited the parties from referencing the records or their contents in future depositions or trial testimony in the case.<sup>939</sup>

#### 4. Confidentiality/Protective Orders

*EEOC v. Coughlin, Inc.*<sup>940</sup> was a 2022 decision concerning protective orders addressed to confidential information. A party seeking a protective order has the burden of demonstrating good cause for that order, which usually requires articulating a clearly defined and serious injury that would result absent the protective order.<sup>941</sup> The court, in its broad discretionary power over the discovery process, weighs the countervailing interests of both parties.<sup>942</sup> In *Coughlin*, which involved an alleged class hostile work environment claim, both parties moved for a protective order after trying in good faith to negotiate a stipulated protective order. The parties disputed three provisions: (1) the definition of “confidential information,” (2) the scope of the protective order, including temporal scope and whether the protective order would apply to publicly filed documents, and (3) whether confidential documents would be destroyed at the conclusion of the case.<sup>943</sup>

The court agreed with the EEOC’s more limited definition of “confidential information” as “information that constitutes or contains trade secrets pursuant to the Uniform Trade Secrets Act” or its state law counterpart.<sup>944</sup> The EEOC argued that defendant’s proposal to expand confidential information to include “information a party in good faith contends constitutes or contains trade secrets or other confidential business information that could provide a competitor with a competitive advantage” was too broad, and failed to identify how disclosure would result in a clearly defined, serious injury.<sup>945</sup> The court agreed that the defendant’s proposal provided only a vague definition of confidential information and did not clearly articulate what injury would occur. It agreed that the EEOC’s definition was comprehensive and employable.<sup>946</sup>

The *Coughlin* court also addressed the temporal scope of the protective order and whether it should apply to publicly-filed documents.<sup>947</sup> Given the presumption of openness and access to judicial documents, the court declined to extend the protective order to documents filed with the court beyond the conclusion of the case, subject to a motion to seal if confidential information covered by the protective order was placed in a public document by a party.<sup>948</sup> For information designated as confidential and not filed, however, the court granted the defendant’s proposal to extend conditions of the protective order beyond the conclusion of the action.<sup>949</sup>

Finally, with respect to the destruction of documents at the conclusion of the case, the defendant proposed both parties destroy or return confidential documents.<sup>950</sup> The EEOC opposed the defendant’s position, and the court agreed, explaining, “[c]ourts must exercise caution when issuing confidentiality orders so as not to demand that the EEOC destroy government documents, including notes and memoranda, in conflict with the EEOC’s duty to obey the requirements of the [Federal Records Act].”<sup>951</sup>

Once a protective order is in place, courts may be willing to permit the use of further restrictive designations, subject to permitting the non-designating party to challenge the use of a restrictive designation. In *EEOC v. Aaron Thomas Co, Inc. and Supreme Staffing LLC*, defendant Supreme Staffing, LLC moved to add an “Attorneys’ Eyes Only” (AEO) designation to the existing protective order.<sup>952</sup> The proposed addition would authorize the parties to designate “Protected Information,” including information and communications that were the subject of later briefing in connection with defendant’s emergency motion for a temporary protective order, as AEO in the same manner by

938 *Id.* at \*17.

939 *Id.*

940 2022 U.S. Dist. LEXIS 89372 (D. Vt. May 18, 2022).

941 *Id.* at \*6 (citing *United States v. Int’l Bus. Machines Corp.*, 67 F.R.D. 40, 46 (S.D.N.Y. 1975)).

942 *Id.* (citing *Rossini v. Ogilvy & Mather, Inc.*, 798 F.2d 590, 601 (2d. Cir. 1986)).

943 *Id.*

944 *Id.* at \*\*9-11.

945 *Id.* at \*\*10-11.

946 *Id.*

947 *Id.* at \*\*12-15.

948 *Id.* at \*\*14-15.

949 *Id.* at \*15.

950 *Id.* at \*17.

951 *Id.* (quoting *EEOC v. Kronos Inc.*, 620 F.3d 287, 304 (3d Cir. 2010)).

952 *EEOC v. Aaron Thomas Co., Inc. and Supreme Staffing LLC*, 2024 U.S. Dist. LEXIS 80421, \*2 (W.D. Tenn. May 2, 2024).

which the parties could designate material as “Confidential.”<sup>953</sup> The proposed definition of “Protected Information” as used in the protective order would broaden to include “information and communications shared or exchanged between the EEOC and any individual the EEOC believed to be aggrieved.”<sup>954</sup>

The court explained it could anticipate that the case might involve Protected Information requiring an AEO designation related to the EEOC’s solicitation efforts or otherwise, and could prepare for that with a protective order providing for such a designation before it became necessary.<sup>955</sup> The court stated that in doing so it did not assess the merits of any future motion to compel such information.<sup>956</sup> It further noted that the defendant’s proposal specified that, although the AEO designation covers material that falls under the expanded definition of “Protected Information,” neither party concedes that such information is discoverable or admissible.<sup>957</sup> Further, if a party claims the AEO designation, the non-designating party reserves the right to challenge it.<sup>958</sup> The court thus granted defendant’s motion, noting this preserves both issues in the event of a motion to compel discovery responses – whether the EEOC must disclose information related to solicitation emails and surveys, and whether such a disclosure is subject to an AEO designation.<sup>959</sup>

## 5. Other Issues

In *EEOC v. Transportation Management Group*, the court considered the prejudice resulting from the EEOC’s failure to timely identify aggrieved individuals.<sup>960</sup> There, the EEOC filed suit on behalf of a charging party for disability discrimination.<sup>961</sup> The defendant moved to extend the discovery and dispositive motion deadlines and asked the court to establish a deadline for the EEOC to identify the aggrieved individuals.<sup>962</sup> In its initial disclosures, the EEOC identified the charging party and five individuals affiliated with the defendant as likely to have discoverable information.<sup>963</sup> Nearly 10 months later, the EEOC served supplemental initial disclosures, listing eight new witnesses and two new categories of damages.<sup>964</sup> The defendant argued that the late disclosure deprived them of the opportunity to depose these new witnesses.<sup>965</sup> In granting in part and denying in part the defendant’s motion, the court first found that the EEOC’s late disclosure of witnesses was neither substantially justified nor harmless, and therefore excluded the witnesses from supplying evidence.<sup>966</sup> Second, the court allowed the defendant to complete the charging party’s deposition after the discovery deadline and to obtain targeted discovery regarding the belatedly disclosed witnesses.<sup>967</sup> Finally, the court extended the defendant’s deadline to move for summary judgment and modified the summary judgment briefing schedule.<sup>968</sup>

In *EEOC v. Crain Automotive Holdings, LLC*, the court considered the scope of the attorney–client privilege in relation to the EEOC’s representation of a charging party’s and aggrieved individuals’ interests.<sup>969</sup> At the charging party’s deposition, the parties’ counsel hotly disputed whether (1) communications between the charging party and the EEOC were privileged, and (2) communications between the charging party and his prior lawyer were privileged or waived.<sup>970</sup> As to the first issue, the court noted that courts are split on whether the EEOC has an attorney–client relationship with charging parties, and that because no bright-line rule exists, the privilege may exist if the charging party expressly assents to representation.<sup>971</sup> Here, the EEOC failed to show such express assent, but the court applied the common interest doctrine to protect their communications because they shared a litigation interest.<sup>972</sup>

---

953 *Id.*

954 *Id.* at \*\*2-3.

955 *Id.* at 7.

956 *Id.*

957 *Id.*

958 *Id.*

959 *Id.*

960 *EEOC v. Transp. Mgmt. Grp.*, 2025 U.S. Dist. LEXIS 189840 (M.D.N.C. Sept. 26, 2025).

961 *Id.*

962 *Id.* at \*\*1-2.

963 *Id.* at \*3.

964 *Id.* at \*\*4-5.

965 *Id.* at \*\*6-7.

966 *Id.* at \*17.

967 *Id.* at \*18.

968 *Id.* at \*20.

969 *EEOC v. Crain Auto. Holdings, LLC*, 2024 U.S. Dist. LEXIS 195864 (W.D. Ark. Oct. 29, 2024).

970 *Id.* at \*2.

971 *Id.* at \*\*10-11.

972 *Id.* at \*\*10-12.

As to the second issue, the dispute centered on the charging party's recording of a meeting allegedly at the behest of an unidentified "lawyer," who did not work for the EEOC.<sup>973</sup> The defendant also asked the charging party during his deposition about what he shared with this therapist.<sup>974</sup> The court found that the charging party had clearly and intentionally waived the privilege with his prior lawyer as to the exchange about the recording, but determined that with respect to the therapist conversations, "[n]either the attorney client privilege nor waiver appear[ed] implicated."<sup>975</sup> The court also concluded that the EEOC's pre-deposition communications with the charging party were privileged and protected from disclosure.<sup>976</sup>

Finally, during the deposition, defense counsel complained that the EEOC had not provided employment and medical releases for the charging party until the morning of the deposition, which precluded them from obtaining the records and examining the charging party about them.<sup>977</sup> The EEOC took the position that the medical records it had already provided and discovery responses were sufficient.<sup>978</sup> The court disagreed and permitted the defendant to examine the charging party about the subpoenaed records.<sup>979</sup> At the end of its order, the court also reminded counsel that "objections should not devolve into personal attacks."<sup>980</sup>

## G. General Discovery by EEOC and Intervenors

Several decisions this past fiscal year addressed issues stemming from the EEOC's and/or plaintiff-intervenor's discovery efforts. Many of these decisions focused on discovery deadlines and the scope of permitted discovery.

### 1. Deadlines and Scheduling Orders

Courts increasingly enforce Rule 16(b) schedules and decline extensions absent documented diligence (dates propounded/served, meet-and-confer efforts).

In *EEOC v. Hooters of America, LLC*, the parties jointly requested an extension of the discovery deadline and a continuance of the trial date.<sup>981</sup> The motion was denied, citing lack of diligence under Rule 16(b) and the disruption an extension would cause to the court's calendar and criminal docket.<sup>982</sup> The court emphasized that scheduling orders exist to promote efficient case management and timely resolution of cases.<sup>983</sup> The parties had already been afforded 10 months for discovery—an extended period in the Middle District of North Carolina—particularly in light of their prior participation in EEOC conciliation proceedings.<sup>984</sup> Nevertheless, the parties delayed serving written discovery and resolving disputes, undermining any showing of diligence or good cause. As a result, the court denied the request to extend discovery and continue trial.<sup>985</sup>

*EEOC v. Rivers Edge Enterprises, LLC* further emphasized the parties' obligation to comply with scheduling orders and conduct a reasonable ESI search.<sup>986</sup> The court declined to order the defendant to engage an ESI vendor or award attorney's fees at that stage, but warned that it may require a forensic inspection or shift fees if the defendant's search remained inadequate. The EEOC had complained that the defendant's responses to its First Request for Production omitted emails and text messages from key custodians.<sup>987</sup> In response, the court directed the defendant to amend its production to include relevant documents from specified individuals and cautioned that failure to conduct a proper search could result in an order compelling use of an ESI vendor and an award of reasonable fees.<sup>988</sup>

973 *Id.* at \*\*12-13.

974 *Id.* at \*15.

975 *Id.* at \*\*15-16.

976 *Id.* at \*\*16-17.

977 *Id.* at \*\*17-18.

978 *Id.* at \*17.

979 *Id.* at \*18.

980 *Id.*

981 *EEOC v. Hooters of Am., LLC*, 347 F.R.D. 445, 446-447 (M.D.N.C. 2024).

982 *Id.*

983 *Id.* at 447.

984 *Id.*

985 *Id.* at 450.

986 *EEOC v. Rivers Edge Enterprises., LLC*, 2025 U.S. Dist. LEXIS 161220, at \*\* 4-5 (M.D. Fla. Aug. 20, 2025).

987 *Id.* at \*2.

988 *Id.* at \*\*4-5.

In *EEOC v. Mariscos El Puerto, Inc.*,<sup>989</sup> the court denied the parties' stipulation to extend the initial expert disclosure deadline and restructure discovery so that expert disclosures would occur after the close of discovery, concluding that the stipulation failed to demonstrate diligence. The court explained that it could not assess diligence without details such as the dates on which discovery was propounded and responses were served, and directed that any renewed request provide a more fulsome discussion of the parties' efforts.<sup>990</sup>

After the parties filed a subsequent motion supplying the required detail regarding their discovery efforts and timeline, the court granted a limited 45day extension of the expert deadline.<sup>991</sup>

## 2. Section 30(b)(6) Depositions

In *EEOC v. Qualtool, Inc.*,<sup>992</sup> a case decided in FY 2023, the EEOC sought a Rule 30(b)(6) deposition and filed a motion to compel on the last day of discovery, arguing it had identified deposition topics with reasonable particularity and properly noticed the deposition.<sup>993</sup> The agency further argued that instead of seeking a protective order defendant merely raised boilerplate objections in response to the notice.<sup>994</sup> The court ruled that, although the parties are not required to agree on deposition topics, a defendant cannot decide on its own to ignore a deposition notice, but must seek a protective order if it refuses to make a Rule 30(b)(6) designation.<sup>995</sup> Accordingly, the court granted the EEOC's Rule 30(b)(6) motion to compel because the defendant failed to seek a protective order.<sup>996</sup>

## 3. Scope of Permitted Discovery by EEOC

In an FY 2025 case in Massachusetts district court, the EEOC filed a lawsuit against the defendant, alleging violations of the ADA for failing to provide reasonable accommodations to an employee with autism and ADHD and retaliating against him for requesting them.<sup>997</sup> The charging party, hired as an assistant mechanic in February 2021, submitted an accommodation request in March 2021.<sup>998</sup> Despite efforts to engage with HR and supervisors, he was placed on light duty and later unpaid leave after a foot injury in May 2021.<sup>999</sup> The EEOC claimed the defendant continued to deny the charging party's return to work and refused accommodations through October 2021.<sup>1000</sup>

In discovery, the EEOC sought comparator evidence of disability discrimination complaints within the company's Eastern Operating Unit for 2021.<sup>1001</sup> The court ordered the defendant to produce a New York complaint with personal information redacted involving the same decisionmaker, finding such evidence relevant and proportional, but excluded a Florida complaint.<sup>1002</sup> The court also partially granted the EEOC's motion to compel, requiring the defendant to provide information about positions at three additional locations while upholding some privilege claims over certain documents because the decisionmaker was a lawyer providing labor and employment law advice and direction to management.<sup>1003</sup>

In *EEOC v. Lori's Gifts, Inc.*, the court also limited the EEOC's requests for comparator information. The EEOC alleged that the defendant, which operates gift shops in hospitals nationwide, violated the ADA.<sup>1004</sup> The EEOC contended that the defendant discriminated against the charging party and other applicants for store clerk positions by imposing physical requirements—specifically, the ability to walk or stand for up to five hours and lift up to 30 pounds.<sup>1005</sup> Applicants who answered “no” to these questions were automatically deemed “not qualified” and excluded from the hiring process.<sup>1006</sup>

989 *EEOC v. Mariscos El Puerto, Inc.*, 2024 U.S. Dist. LEXIS 109422 (D. Nev. June 21, 2024).

990 *Id.* at \*3.

991 *Id.*

992 2022 U.S. Dist. LEXIS 200752 (M.D. Fla. Nov. 3, 2022).

993 *Id.* at \*\*11-12.

994 *Id.*

995 *Id.* at \*14.

996 *Id.* at \*\*14-15.

997 *EEOC v. Otis Worldwide Corp.*, 2025 U.S. Dist. LEXIS 80931, at \*2 (D. Mass. Apr. 29, 2025).

998 *Id.*

999 *Id.*

1000 *Id.* at \*\*2-3.

1001 *Id.* at \*\*13-14.

1002 *Id.* at \* 15.

1003 *Id.*

1004 *EEOC v. Lori's Gifts, Inc.*, 2025 U.S. Dist. LEXIS 112960, at \*\*2-3 (S.D. Ohio June 13, 2025).

1005 *Id.* at \*2.

1006 *Id.*

The EEOC sought information regarding applicants who answered “yes” to the ability questions and those who applied more than 300 days before the charging party’s charge.<sup>1007</sup> The magistrate judge denied the EEOC’s motion to compel, concluding that the requested information fell outside the scope of the complaint and was not relevant to the claims asserted.<sup>1008</sup>

Upon review, the district court agreed with the magistrate judge, finding that the EEOC’s complaint did not allege discrimination against applicants who answered “yes” to the ability questions.<sup>1009</sup> Accordingly, that information was not relevant to the claims.<sup>1010</sup> The court also applied the 300-day limitation period under Section 706 of Title VII, holding that the EEOC could not pursue claims for alleged discriminatory acts occurring more than 300 days before the charge.<sup>1011</sup> The court rejected the EEOC’s reliance on the continuing violation doctrine, reasoning that the alleged acts were discrete and did not qualify for the exception.<sup>1012</sup>

In *EEOC v. United Healthcare Services, Inc.*, the court focused on the importance of cooperation and extrajudicial resolution of disputes. This decision included dueling motions to compel discovery. The litigation arose from the termination of the charging party, a telecommuter employed by the defendant, for failing to comply with the company’s COVID-19 vaccination policy.<sup>1013</sup> The charging party asserted that her religious beliefs prohibited vaccination because she believed the vaccines were developed using cell lines derived from aborted fetuses.<sup>1014</sup> After her requests for religious accommodation were denied, the charging party was terminated—a decision the EEOC alleged violated Title VII.<sup>1015</sup>

The defendant sought discovery concerning the charging party’s vaccination history and other products she may have declined for religious reasons, arguing that such information bears on the sincerity of her beliefs.<sup>1016</sup> The court agreed that the requested discovery was relevant but directed the parties to confer regarding the scope and method of production for certain requests.<sup>1017</sup>

The plaintiff’s motion encompassed several categories of discovery, including information about fetal cell lines in vaccine development and the charging party’s employment history.<sup>1018</sup> The court ordered the parties to negotiate search terms and custodians for certain requests and denied the EEOC’s request for litigation hold communications.<sup>1019</sup> Additionally, the court addressed discovery concerning other employees’ exemptions from the vaccine policy, finding the information relevant but requiring the parties to narrow its scope through further discussion.<sup>1020</sup>

Ultimately, the court stayed all discovery deadlines and emphasized the importance of cooperation between the parties.<sup>1021</sup> The parties were ordered to confer on outstanding issues before seeking further judicial intervention.<sup>1022</sup>

In *EEOC v. Aspire Regional Partners, Inc.*, the court highlighted the breadth of discovery permitted when claims involve integrated enterprise status and potential spoliation.<sup>1023</sup> The EEOC filed this matter in August 2022 alleging that the defendant discriminated against the charging party based on sexual orientation. During discovery, the EEOC sought to compel documents establishing corporate identity and operational integration, including articles of incorporation and agreements.<sup>1024</sup>

---

1007 *Id.* at \*\*3-4.

1008 *Id.* at \*4.

1009 *Id.* at \*\*8-9.

1010 *Id.*

1011 *Id.* at \*15.

1012 *Id.* at \*\*19-20.

1013 *EEOC v. United Healthcare Servs.*, 2025 U.S. Dist. LEXIS 68799, at \*2 (S.D. Ohio Apr. 10, 2025).

1014 *Id.*

1015 *Id.* at \*3.

1016 *Id.* at \*\*5-15.

1017 *Id.*

1018 *Id.* at \*\*16-33.

1019 *Id.* at \*\*21-25.

1020 *Id.* at \*\*26-33.

1021 *Id.* at \*34.

1022 *Id.*

1023 *EEOC v. Aspire Regional Partners, Inc.*, 2025 U.S. Dist. LEXIS 85064 (S.D. Ohio May 5, 2025).

1024 *Id.* at \*2.

The court rejected the defendants' objections, finding the EEOC's requests squarely within the scope of permissible discovery.<sup>1025</sup> The court ordered the defendants to produce the requested litigation hold communications and required full responses to interrogatories identifying executive officers, owners, and employee lists, as these were relevant to the EEOC's integrated enterprise theory.<sup>1026</sup>

Following contested ESI adequacy, courts increasingly require parties to disclose custodians, search terms, and hit-reports, and to memorialize parameters used to date. These remedial steps—grounded in Rule 26(g) and proportionality—validate search reasonableness and reduce serial motion practice.<sup>1027</sup>

In *EEOC v. KVP, LP*,<sup>1028</sup> the EEOC challenged the pace and diligence of production rather than nonparticipation. In this case, the EEOC sought more full and complete responses to its request for production. The defendants argued the alleged outstanding documents were no more than a handful relative to the thousands of pages already produced, which they intended to produce, but were still in the process of locating.<sup>1029</sup> The defendants averred that the particularity of the documents and information the EEOC requested required more time, and noted that they engaged a third-party IT contractor to assist them with a more thorough search, which had increased the time involved in production. Defendants maintained that all outstanding requests for documents that were actually in their possession would be produced before the court would address the EEOC's motion to compel, and therefore the court's involvement was unnecessary.<sup>1030</sup>

The court granted the EEOC's motion to compel in part, ordering the parties to meaningfully confer on ESI sources, search terms, and parameters; to produce by a set date any documents responsive to requests without objections; and to disclose prior ESI search terms and parameters, while declining to compel documents previously objected to or not in the defendant's possession.<sup>1031</sup>

The Western District of Tennessee reaffirmed in FY 2025 that Rule 34 does not require parties to create documents or produce oral communications. In *EEOC v. Supreme Staffing, LLC*,<sup>1032</sup> the EEOC moved to compel further responses to its discovery request, asserting that the defendant's responses to its initial discovery requests were deficient in multiple ways. The defendant argued that the EEOC's motion should be denied on substance because, among other reasons, the motion falsely equates oral communications with documents and written exchanges.<sup>1033</sup>

The court went over each contested discovery request in detail, indicating where further responses were needed within 30 days of the order. With respect to the EEOC's request for production of oral communications, the court agreed with the defendant that such communications' "ephemeral nature makes that impossible. Moreover, Supreme is not obligated to create any documents in response to the EEOC's discovery requests."<sup>1034</sup> The court ultimately determined that the responding party need only produce *existing* documents and required documentspecific privilege assertions supported by a privilege log.

In *EEOC v. Mariscos El Puerto, Inc.*,<sup>1035</sup> in which the EEOC alleges the defendants engaged in sexual harassment against female employees, the Commission sought information it deemed essential to its claims, including employee lists and admissions regarding managerial authority. One of the EEOC's interrogatories requested names, gender, and contact information for employees during the relevant period.<sup>1036</sup> The defendants claimed they could not identify complaints responsive to the request and had no additional information beyond prior document production. The court was not persuaded the defendant could not gather this "basic" information, emphasizing that the parties must conduct a reasonable search and provide a sworn declaration detailing efforts to locate information. The court noted the EEOC had demonstrated that similar data had been provided during the administrative investigation, which cast doubt on the defendants' inability to comply. The court therefore granted the EEOC's motion to compel responses to this interrogatory.<sup>1037</sup>

<sup>1025</sup> *Id.* at \*\*7-24.

<sup>1026</sup> *Id.*

<sup>1027</sup> See *EEOC v. KVP, LP*, 2025 U.S. Dist. LEXIS 41390 (D. Nev. Mar. 5, 2025) (ordering disclosure of prior search terms/parameters), and representative orders compelling mutual term/custodian/hit-report exchange.

<sup>1028</sup> *EEOC v. KVP, LP*, 2025 U.S. Dist. LEXIS 41390 (D. Nev. Mar. 5, 2025).

<sup>1029</sup> *Id.* at \*4.

<sup>1030</sup> *Id.*

<sup>1031</sup> *Id.* at \*11.

<sup>1032</sup> *EEOC v. Supreme Staffing, LLC*, 2025 U.S. Dist. LEXIS 40531 (W.D. Tenn. Mar. 6, 2025).

<sup>1033</sup> *Id.* at \*5.

<sup>1034</sup> *Id.* at 11.

<sup>1035</sup> *EEOC v. Mariscos El Puerto, Inc.*, 2024 U.S. Dist. LEXIS 180103 (D. Nev. Oct. 1, 2024).

<sup>1036</sup> *Id.* at \*4.

<sup>1037</sup> *Id.* at \*\*4-5.

Another request sought documents constituting or relating to an employee list.<sup>1038</sup> The court declined to compel creation of such a document, however, noting that Rule 34 does not require parties to create new documents for production. Additionally, the EEOC's reply brief did not pursue this issue, leading the court to deny this portion of the motion without prejudice.<sup>1039</sup>

The defendants also objected to requests asking them to admit whether certain individuals had authority to hire employees, assign work hours, or set salaries, claiming such requests were ambiguous. The court found these objections unpersuasive and indicative of gamesmanship, therefore granting the EEOC's motion to compel "straightforward" requests for admission.<sup>1040</sup>

In *EEOC v. Formel D USA, Inc.*,<sup>1041</sup> a case alleging workplace harassment and retaliation, a dispute arose over whether certain emails were protected by attorney-client privilege and work-product doctrine. The EEOC moved to compel production of nine emails, but the defendant submitted three emails and an updated privilege log for in-camera review.

The court applied the Sixth Circuit's criteria for attorney-client privilege, which require that communications be made for the purpose of seeking legal advice from a professional legal advisor, in confidence, and without waiver. Importantly, privilege does not extend to underlying facts or to communications merely copying an attorney without the intent to seek legal advice.<sup>1042</sup>

Upon review, the court found that the charging party's original email detailing harassment allegations was not privileged. Similarly, an email from the HR Generalist forwarding the charging party's allegations to a company vice president was not privileged because it did not seek legal advice. However, portions of two emails where the vice president forwarded allegations to corporate counsel, were deemed privileged and could be redacted. The court ordered the remainder of those email chains to be produced.<sup>1043</sup>

In *EEOC v. Brinker International Payroll Co., L.P.*,<sup>1044</sup> the EEOC sought production of the defendants' complete Policies and Procedures Manual in effect between December 2020 and April 2021, arguing that the manual was relevant to orientation practices, sexual harassment training, and the defendants' affirmative defenses. The court compelled production, finding it relevant because employees were required to review and acknowledge receipt of the entire manual during orientation, not just the sexual harassment policy.<sup>1045</sup> The court overruled the defendants' overbreadth and confidentiality objections in light of defendants' affirmative defense that claimants failed to utilize internal policies. The court observed that confidentiality concerns can be managed via protective orders.<sup>1046</sup>

Another district court in FY 2025 stressed counsel's duty to verify ESI searches and ensure complete, timely production. In *EEOC v. The Phoenix Center Inc.*,<sup>1047</sup> the EEOC alleged the defendant engaged in unlawful employment practices, including by subjecting applicants to pre-offer medical inquiries and failing to hire one applicant because of her disability, and firing another because of her alcohol addiction. The EEOC's motion to compel sought several categories of information and documents that it believed were either incomplete or missing from the defendant's prior discovery responses, including financial records, organizational charts, personnel files, and training materials, ESI, and current financial data.<sup>1048</sup>

The court largely granted the Commission's motion to compel this information and awarded attorneys' fees and costs. Noting that the individual overseeing discovery was implicated in the allegations, the court emphasized that counsel must test the accuracy of client responses and confirm that appropriate sources of data are searched, collected, reviewed, and produced.<sup>1049</sup>

---

1038 *Id.* at \*5.

1039 *Id.* at \*\*5-6.

1040 *Id.* at \*6.

1041 *EEOC v. Formel D USA, Inc.*, 2024 U.S. Dist. LEXIS 178931 (E.D. Mich. Oct. 1, 2024).

1042 *Id.* at \*\*2-3.

1043 *Id.* at \*4.

1044 *EEOC v. Brinker Int'l Payroll Co., L.P.*, 2024 U.S. Dist. LEXIS 205610 (E.D. Ark. Nov. 12, 2024).

1045 *Id.* at \*\*12-13.

1046 *Id.* at \*14.

1047 *EEOC v. The Phoenix Center Inc.*, 2024 U.S. Dist. LEXIS 184561 (S.D. Ohio Oct. 9, 2024).

1048 *Id.* at \*\*4-13.

1049 *Id.* at \*15.

Recent decisions further clarify that collection from employees' personal devices depends on whether those devices were used for business and whether the employer has possession, custody, or control, with courts rejecting unsupported demands to search personal phones where proportionality and legalright standards are not met.

In *EEOC v. Mia Aesthetics Clinic ATL, LLC*, a disability discrimination case involving an employee who worked for the defendants for only four months, the EEOC moved to compel production of electronic data, including Salesforce records, emails, Google Voice logs, and Slack communications, to support its claim that the employee could have worked remotely.<sup>1050</sup> The EEOC also requested that the court require the defendants to hire a third-party e-discovery vendor to assist in conducting a more thorough search for the requested data.<sup>1051</sup>

The defendants objected, asserting that, after a "diligent search," the information requested by the EEOC no longer existed.<sup>1052</sup> The court held that merely stating a "diligent search" was conducted, without providing details as to *how* the search was conducted, was insufficient under Federal Rule of Civil Procedure 26(g), particularly given the plaintiff's short tenure with the defendants.<sup>1053</sup>

The court found that the defendants had not provided adequate detail regarding their search efforts and ordered them to conduct a comprehensive inquiry into the requested data, including contacting relevant service providers and searching for backups.<sup>1054</sup> The defendants were further instructed to produce any responsive materials located and to provide a detailed explanation of their search and retrieval process to the EEOC.<sup>1055</sup> While the court declined to require the defendants to hire a third-party vendor, it left open the possibility should the defendants fail to comply with the order.<sup>1056</sup>

Following the court's order, the defendants submitted a supplemental response to the EEOC that primarily explained why certain data was unavailable rather than detailing how they attempted to search for the requested files.<sup>1057</sup> Based on this response, the EEOC filed a second motion to compel, arguing that the defendants failed to conduct a proper search for responsive information and did not provide a detailed account of their search efforts.<sup>1058</sup> The EEOC argued that, based on the defendants' noncompliance, a third-party e-discovery vendor was warranted.<sup>1059</sup>

The court found the defendants' supplemental response inadequate and concluded that they had not complied with their Rule 26 obligations or the prior order.<sup>1060</sup> Specifically, the court held that the defendants had not provided any evidence demonstrating that they had made reasonable efforts to locate the information sought by the EEOC.<sup>1061</sup> As a result, the court granted the EEOC's renewed request for a third-party e-discovery vendor, stating that it had lacked confidence in the defendant's ability to properly respond to the EEOC's requests.<sup>1062</sup> The court warned that failure to comply with the order could result in sanctions.<sup>1063</sup>

In *EEOC v. Union Pacific Railroad Co.*, the EEOC sued the defendant under the ADA, alleging that its use of a color vision test unlawfully screened out qualified train conductors and engineers.<sup>1064</sup> The EEOC argued that the test was an improper qualification standard because employees who failed it could still safely perform their jobs.<sup>1065</sup>

During discovery, the EEOC asked the defendant to describe any measures adopted to mitigate harm if an employee misinterprets a railway signal.<sup>1066</sup> The defendant objected, asserting business necessity and a "direct threat" defense, and argued that the information was irrelevant because Federal Railroad Administration (FRA) regulations mandate color vision testing and the case concerned the legitimacy of that test, not other safety

<sup>1050</sup> *EEOC v. Mia Aesthetics Clinic*, 2025 U.S. Dist. LEXIS 112444, at \*4 (N.D. Ga. May 30, 2025).

<sup>1051</sup> *Id.* at \*4.

<sup>1052</sup> *Id.* at \*\*5, 9,12.

<sup>1053</sup> *Id.* at \*\*6, 10-11,13.

<sup>1054</sup> *Id.* at \*\*14, 16.

<sup>1055</sup> *Id.* at \*16.

<sup>1056</sup> *Id.* at \*\*16-17.

<sup>1057</sup> *Mia Aesthetics Clinic*, 2025 U.S. Dist. LEXIS 164943, at \*3 (N.D. Ga. Aug. 18, 2025).

<sup>1058</sup> *Id.* at \*\*3-4.

<sup>1059</sup> *Id.* at \*4.

<sup>1060</sup> *Id.* at \*\*15-16.

<sup>1061</sup> *Id.* at \*\*11-12.

<sup>1062</sup> *Id.* at \*\*14-15.

<sup>1063</sup> *Id.* at \*16.

<sup>1064</sup> *EEOC v. Union Pac. R.R. Co.*, 2025 U.S. Dist. LEXIS 183102, at \*3 (D. Minn. Sep. 18, 2025).

<sup>1065</sup> *Id.*

<sup>1066</sup> *Id.*

protocols.<sup>1067</sup> The EEOC moved to compel, arguing that mitigating measures are relevant to the defendant's direct threat defense, which requires analyzing factors such as the likelihood and imminence of harm.<sup>1068</sup>

The court granted the motion to compel.<sup>1069</sup> It held that Rule 26(b)(1) permits discovery of any nonprivileged matters relevant to claims or defenses and that mitigating measures are directly relevant to evaluating the defendant's direct threat defense.<sup>1070</sup> The court noted that it would be impossible for a trier of fact to assess the defense without knowing whether other safeguards existed to prevent missed-signal train accidents.<sup>1071</sup> The court found the EEOC's request sufficiently tailored, not burdensome, and proportional to the needs of the case.<sup>1072</sup>

*EEOC v. Genesh* underscores the importance of avoiding over-designation of documents as confidential and ensuring that protective orders clearly define the categories eligible for such designation. In this case, the court reviewed the defendant's confidentiality designations for documents produced during discovery and emphasized that the designating party bears the burden of proving that documents meet the protective order's confidential criteria.<sup>1073</sup>

The court found that the defendant failed to justify most confidentiality designations for the produced documents because the documents did not fall within the categories of confidential information specified in the protective order.<sup>1074</sup> As a result, the court ordered the defendant to re-produce the documents without confidentiality designations, except where the documents were clearly covered under the protective order.<sup>1075</sup>

Courts continue to reject arguments that electronically stored information is exempt from production because it exists as "raw data," resides in a dynamic database, or has not been reduced to a static report. For purposes of Rule 34, information must be produced "as kept in the usual course of business," which includes structured and relational data maintained in active systems where such data is reasonably accessible. Where parties rely on business systems and databases to operate their workplaces, they may be required to produce responsive data from those systems, even if production requires reasonable extraction or formatting, provided the request is proportional and properly targeted. This principle aligns with courts' broader unwillingness to permit discovery avoidance based solely on how information is stored.

#### 4. Sanctions and Spoliation Issues

In *EEOC v. Aspire Regional Partners, Inc.*, during discovery, the EEOC learned that the defendant had deleted the subject employee's email account six months after he filed an EEOC charge.<sup>1076</sup> The EEOC subpoenaed the defendant's third-party email vendor for communications related to preservation efforts, including litigation holds.<sup>1077</sup> The defendant moved to quash, asserting attorney-client privilege.<sup>1078</sup> The magistrate judge denied the motion, and the defendant filed an objection to that ruling.<sup>1079</sup>

Overruling the objection, the court found that the EEOC made a preliminary showing of spoliation, which justified the production of litigation-hold communications.<sup>1080</sup> The court determined that (1) the defendant had a duty to preserve the employee's email account once it learned of the EEOC charge; (2) the account was deleted knowingly or negligently after that duty arose; and (3) the deleted emails were relevant to the EEOC's claims.<sup>1081</sup> Accordingly, the court held that the EEOC was entitled to obtain the litigation-hold communications, even though such materials are typically considered privileged.<sup>1082</sup>

---

1067 *Id.* at \*\*3-5.

1068 *Id.* at \*7.

1069 *Id.* at \*4.

1070 *Id.* at \*\*11-13.

1071 *Id.* at \*12.

1072 *Id.* at \*\*13-14.

1073 *EEOC v. Genesh, Inc.*, 2025 U.S. Dist. LEXIS 187635, at \*\*2-3 (D. Kan. Sep. 24, 2025).

1074 *Id.* at \*\*5-8.

1075 *Id.* at \*\*8-9.

1076 *EEOC v. Aspire Reg'l Partners, Inc.*, 2025 U.S. Dist. LEXIS 71490, at \*2 (S.D. Ohio Apr. 15, 2025).

1077 *Id.* at \*\*2-3.

1078 *Id.*

1079 *Id.* at \*\*3-4.

1080 *Id.* at \*\*7-8.

1081 *Id.* at \*\*8-10.

1082 *Id.* at \*10.

The court further held that issues not raised before the magistrate judge were waived for purposes of district court review.<sup>1083</sup> Furthermore, the plaintiff demonstrated the culpable state of mind element because numerous other email accounts were not deleted, in conflict with their policy.<sup>1084</sup> The court held that this was not the basis of the magistrate judge's conclusion, but rather the finding of culpability arose from the fact that the defendant did not contest that DataWorks deleted the email account in the ordinary course of business.<sup>1085</sup>

The court also held that the deleted emails were relevant to the EEOC's claims.<sup>1086</sup> The court rejected the defendant's argument that the magistrate judge made a mistake of fact when she assumed because DataWorks deleted the claimant's email account, any emails sent or received from other people were also deleted.<sup>1087</sup> Although emails from the claimant could exist in the accounts of other individuals, any emails from the claimant that were deleted were now inaccessible.<sup>1088</sup> The court found that the magistrate therefore did not make a clear error in finding that at least some relevant emails could have been forever deleted when the email account at issue was deleted. "Because the Magistrate Judge's findings on each element were neither clearly erroneous nor contrary to law, her conclusion that the EEOC made a preliminary spoliation showing was neither clearly erroneous nor contrary to law."<sup>1089</sup>

In a late FY 2024 decision, *EEOC v. Formel D USA, Inc.*,<sup>1090</sup> the EEOC moved to compel production of additional documents (emails) and for spoliation sanctions. Specifically, the EEOC claimed the defendant failed to preserve emails, laptops, and cellphone data for four custodians, including of the supervisor accused of sexually harassing the charging party, and the supervisor to whom the charging party allegedly complained.<sup>1091</sup> The court found that the defendant did not take reasonable steps to preserve the cellular phone data (the record showed no attempts), warranting remedial measures to cure the lost data.<sup>1092</sup> In granting in part the motion for spoliation, the court relied on the EEOC's explanation that it needed to recreate some of the lost communications, increasing the number of custodians and search terms in an effort to obtain the same type of information from existing emails, and it required production of defendant's litigation hold notice.<sup>1093</sup>

Given the lost evidence, the court took a broader view of document discovery in considering the motion to compel.<sup>1094</sup> The court examined whether (1) nine emails were properly withheld as attorney-client privileged, (2) whether the defendant was engaged in self-collection of ESI in violation of Fed. R. Civ. P. 26(g), and the parties' stipulated ESI order, and (3) various document discovery issues.<sup>1095</sup> Notably, the defendant asserted that the constraints imposed by the European Union's General Data Protection Regulation (GDPR), which restricts distribution of personal data, including emails, to countries outside of the EU with less-stringent personal data protection laws, such as the United States, resulted in undue burden and expense.<sup>1096</sup> However, the GDPR did not limit the defendant's ability to produce any relevant, responsive documents through otherwise normal collection and response practices.<sup>1097</sup> Since the court found the EEOC's requests (the search terms and custodians) were relevant and proportional to the needs of the case, any need to go through a GDPR vendor was obviated.<sup>1098</sup> In granting the motion to compel in part, the court ordered the defendant to conduct searches of the custodians with search terms requested by the EEOC, subject to certain limitations.<sup>1099</sup>

Post-2015, courts require proof of "intent to deprive" to grant adverse-inference or terminating sanctions for lost ESI and will first assess whether the information can be restored or replaced; only then do tailored remedies apply under Rule 37(e)(1).<sup>1100</sup>

---

1083 *Id.* at \*8.

1084 *Id.* at \*12.

1085 *Id.* at \*9.

1086 *Id.* at \*10.

1087 *Id.* at \*9.

1088 *Id.* at \*10.

1089 *Id.*

1090 *EEOC v. Formel D USA, Inc.*, 2024 U.S. Dist. LEXIS 164520 (E.D. Mich. Sept. 12, 2024).

1091 *Id.* at \*\*2-3.

1092 *Id.* at \*\*8-10.

1093 *Id.* at \*\*13-14.

1094 *Id.*

1095 *Id.*

1096 *Id.* at \*19.

1097 *Id.* at \*20.

1098 *Id.* at \*22.

1099 *Id.* at \*\*26-27.

1100 See *Hoffer v. Tellone*, 2025 WL 479041 (2d Cir. Feb. 13, 2025); Fed. R. Civ. P. 37(e).

## 5. Third-Party Subpoenas

### a. *Opinion Work Product*

In *EEOC v. Hillstone Rest. Group Inc.*, the EEOC moved to modify a subpoena issued to a non-party in an age discrimination case that requested birth date and age data related to the lawsuit, including production of underlying communications between the EEOC and the defendant.<sup>1101</sup> The EEOC claimed that the information sought was attorney opinion work product and thus was protected, and that defendant had no substantial need for it and could simply purchase the information from the third-party vendor.<sup>1102</sup> The court rejected the argument that the age data was protected opinion work product because the age data was purely factual and did not seek reasonings behind the data.<sup>1103</sup> Although the information would be part of the EEOC's initial disclosures, the court held that the defendant did have a substantial need for the data requested in order to have sufficient time to independently investigate its accuracy.<sup>1104</sup> Should the defendant be forced to purchase the information from the third-party vendor, its terms of use would prohibit it from using the data in litigation.<sup>1105</sup> Therefore, the defendant established substantial need for the data and the EEOC's motion to quash was denied.<sup>1106</sup>

### b. *Attorney-Client Privilege and Common Interest*

In *EEOC v. Aspire Reg'l Partners, Inc.*, which involved claims of sex discrimination, the EEOC served a subpoena on DataWorks, the third-party vendor that managed the defendant's email system.<sup>1107</sup> The defendant moved to quash one part of the subpoena that requested all communications relating to the duty to preserve information for the EEOC case, including litigation hold letters on the basis that the communications were protected by attorney-client privilege and the common interest doctrine.<sup>1108</sup> While attorney-client privilege can apply to agents of the clients an attorney represents, the court held that the defendants failed to argue the communications relating to the duty to preserve were privileged.<sup>1109</sup> Furthermore, the court stated the defendants did not argue that the communications related to legal advice at all.<sup>1110</sup>

The court also rejected defendant's claim of common interest.<sup>1111</sup> Under the common interest doctrine, a "privileged communications can be exchanged without waiving the privilege, provided the parties have an identical legal interest with respect to the subject matter of the communication."<sup>1112</sup> Here, the common interest in the litigation did not apply because the relationship between defendant and DataWorks was merely commercial, not legal.<sup>1113</sup> On appeal, the court upheld the magistrate judge's ruling that the interest was commercially based on defendant's own admission that "DataWorks would be significantly hampered in its ability to service clients" if the communications were not protected by privilege.<sup>1114</sup> Furthermore, because the communications were not privileged in the first place, the common interest doctrine would not apply anyway.<sup>1115</sup>

### c. *Personnel Files from Previous Employers*

In *EEOC v. Ecoserve LLC*, the EEOC filed an ADEA and Title VII complaint alleging unlawful discrimination by denying employment to applicants who are Black, female, and age 40 or older for non-salaried, non-office positions, and for retaliating against the claimant who opposed the defendant's actions.<sup>1116</sup> The EEOC filed a motion to quash or for a protective order for a subpoena served on a third-party on the grounds that it sought employment records that were overbroad, irrelevant, and non-proportional.<sup>1117</sup> The employment records sought ranged from forms signed

<sup>1101</sup> *EEOC v. Hillstone Rest. Grp., Inc.*, 2025 U.S. Dist. LEXIS 86729, at \*\*1-2 (S.D.N.Y. May 2, 2025).

<sup>1102</sup> *Id.* at \*2.

<sup>1103</sup> *Id.* at \*\*2-3.

<sup>1104</sup> *Id.* at \*\*3-4.

<sup>1105</sup> *Id.* at \*4.

<sup>1106</sup> *Id.*

<sup>1107</sup> *EEOC v. Aspire Reg'l Partners, Inc.*, 2024 U.S. Dist. LEXIS 220393, at \*2 (S.D. Ohio Dec.5, 2024).

<sup>1108</sup> *Id.* at \*3.

<sup>1109</sup> *Id.* at \*\*6-7.

<sup>1110</sup> *Id.* at \*7.

<sup>1111</sup> *Id.* at \*8.

<sup>1112</sup> *Id.*

<sup>1113</sup> *Id.*

<sup>1114</sup> *Id.* at \*\*6-7.

<sup>1115</sup> *Id.* at \*7.

<sup>1116</sup> *EEOC v. Ecoserve LLC*, 2025 U.S. Dist. LEXIS 2236, at \*\*1-2 (W.D. La. Jan. 6, 2025).

<sup>1117</sup> *Id.* at \*2.

by the claimant, backgrounds checks, disciplinary records, job performance reviews, and compensation.<sup>1118</sup> The defendant argued that because it was a Title VII-based claim, the discovery rules were very broad.<sup>1119</sup>

The court balanced the competing interests of the parties in denying the EEOC's motion to quash.<sup>1120</sup> While discovery rules are generally broad, personnel files are treated with special care because they can contain sensitive and potentially embarrassing information.<sup>1121</sup> However, courts will permit disclosure of personnel files only when they contain material highly relevant to the theory of the case and are requested with particularity.<sup>1122</sup> Here, the court held that because the claimant's job performance was at issue, the information sought was nonprivileged and highly relevant.<sup>1123</sup> Furthermore, any confidential and private information could easily be redacted to protect the claimant's privacy interest per the protective order originally granted.<sup>1124</sup>

#### **d. Medical Records**

When the EEOC seeks more than nominal emotional-distress damages on behalf of a charging party, courts routinely find that the charging party has placed their mental and physical condition at issue, resulting in waiver of psychotherapist-patient privilege and permitting discovery of relevant medical records, subject to appropriate protective orders.

In *EEOC v. Eastbox LLC*, the court denied the EEOC's motion to quash subpoenas requesting the claimant's medical history in a discrimination, harassment, and hostile work environment case that sought damages for emotional pain and suffering.<sup>1125</sup> The defendant subpoenaed each of the claimant's medical providers, requesting medical records from 2016 to present, arguing the records were relevant to its defenses.<sup>1126</sup> The EEOC argued that the information sought was protected by psychotherapist-patient privilege or privacy interests.<sup>1127</sup>

The court held that under a local rule, when the party's physical or mental condition is at issue, that party must provide the opposing counsel medical records or authorization to obtain medical records.<sup>1128</sup> Furthermore, the claimant waived the psychotherapist-patient privilege by putting her medical conditions at issue.<sup>1129</sup> In the Fifth Circuit, an award for emotional injury greater than nominal damages must be supported by evidence of the character or severity of the injury to plaintiff's emotional wellbeing.<sup>1130</sup> Since the EEOC sought more than a "trifling sum" for claimant's emotional pain, suffering and inconvenience, her medical conditions were at issue, and she waived any psychotherapist-patient privilege to her medical records.<sup>1131</sup> Furthermore, because the privilege also encompassed her privacy interest, this assertion also failed.<sup>1132</sup>

Lastly, the court held that the EEOC failed to show good cause as to why the medical records should not be disclosed.<sup>1133</sup> The Fifth Circuit looks to the following factors when determining good cause: (1) the relevance of the information requested, (2) the need of the party for documents, (3) the breadth of the document request, (4) the time period covered by the request, (5) the particularity with which the party describes the requested documents, and (6) the burden imposed.<sup>1134</sup> The court held that none of the factors supported the EEOC's position and that the defendant needed the records to be able to fairly explore and develop its defense theories.<sup>1135</sup> Furthermore, the scope of the request was reasonable and the burden was low because the EEOC was already in possession of the records.<sup>1136</sup> Because of this, the court denied the EEOC's motion to quash and ordered it to produce the requested medical records.<sup>1137</sup>

<sup>1118</sup> *Id.* at \*\*3-4.

<sup>1119</sup> *Id.* at \*5.

<sup>1120</sup> *Id.* at \*6.

<sup>1121</sup> *Id.*

<sup>1122</sup> *Id.*

<sup>1123</sup> *Id.* at \*7.

<sup>1124</sup> *Id.*

<sup>1125</sup> *EEOC v. Eastbox LLC*, 2025 U.S. Dist. LEXIS 2329, at \*2 (E.D. Tex. Jan. 7, 2025).

<sup>1126</sup> *Id.* at \*3.

<sup>1127</sup> *Id.* at \*\*3-4.

<sup>1128</sup> *Id.* at \*5.

<sup>1129</sup> *Id.* at \*\*6-7.

<sup>1130</sup> *Id.* at \*8.

<sup>1131</sup> *Id.* at \*10.

<sup>1132</sup> *Id.*

<sup>1133</sup> *Id.* at \*11.

<sup>1134</sup> *Id.* at \*10.

<sup>1135</sup> *Id.* at \*11.

<sup>1136</sup> *Id.*

<sup>1137</sup> *Id.* at \*\*11-12.

## H. Summary Judgment

In FY 2025, federal courts addressed a number of interesting issues while ruling on motions for summary judgment.

### 1. EEOC Motion for Partial Summary Judgment

In *EEOC v. Ryan’s Pointe Houston, LLC*,<sup>1138</sup> the U.S. District Court for the Southern District of Texas addressed the care a defendant must take in drafting affirmative defenses. In that case, the EEOC alleged unlawful employment practices based on sex and national origin, alleging the aggrieved individual was terminated based on her pregnancy and based on her Mexican heritage.<sup>1139</sup> The defendants asserted affirmative defenses that, among other things, the claims were barred by fraud, inasmuch as they contended both that the charging party lied about not receiving a written warning and that they had discovered the charging party had lied about vacation usage and also materially misrepresented her qualifications to secure a managerial role.<sup>1140</sup> The EEOC moved for partial summary judgment as to the defendants’ fraud defenses and any after-acquired evidence defense (to the extent the defendants were even raising the latter), arguing that they did not satisfy the standard for asserting either of these defenses.<sup>1141</sup> The employers countered that the charging party made “material misrepresentations that, taken together, supported affirmative defenses including fraud, waiver, and unclean hands.”<sup>1142</sup> The employers also argued that, but for the misrepresentations regarding her qualifications, they would not have hired the charging party.<sup>1143</sup>

First, the court ruled that the defendants could not pursue fraud as an affirmative defense at trial.<sup>1144</sup> That is because the defendants waived that argument when they failed to object to the magistrate judge’s report and recommendation to dismiss the fraud defense after finding that they “failed to allege actual and justifiable reliance or any resulting injury.”<sup>1145</sup> The district court had already adopted that report and recommendation.<sup>1146</sup> Nevertheless, reviewing the merits of the argument under the highly deferential “plain error” standard, the court held that the defendants failed to plead the fraud affirmative defense with particularity, as required by Federal Rule of Civil Procedure 9.<sup>1147</sup> The court also held that the defendants failed to allege that the charging party intended for them to rely on any false statement, that they in fact relied on the false statement, or that they suffered any injury as a result.<sup>1148</sup>

Second, the court held that the defendants failed to adequately plead their after-acquired evidence defense—“by name or in substance”—in their answers and therefore could not pursue the defense at trial.<sup>1149</sup> The defendants argued that the alleged misrepresentations evidenced that the charging party was unqualified for the role.<sup>1150</sup> However, the court held that “evidence suggesting that [the charging party] was unqualified for the position—or that firing her was justified based on what [the employer] knew at the time—is not the same as alleging that [they] later discovered evidence that would have independently justified firing [the charging party] on grounds separate from those that prompted her actual discharge . . . [a]nd it certainly does not provide fair notice of such a theory.”<sup>1151</sup> Accordingly, the court granted the EEOC’s motion for partial summary judgment, struck the affirmative defenses of fraud and after-acquired evidence, and ordered that the defendants could not raise or pursue those defenses at trial.<sup>1152</sup>

1138 *EEOC v. Ryan’s Pointe Houston, LLC*, 2025 U.S. Dist. LEXIS 110540 (S.D. Tex. Jun. 11, 2025).

1139 *Id.* at \*\*1-2.

1140 *Id.* at \*2.

1141 *Id.*

1142 *Id.* at \*\*2-3.

1143 *Id.* at \*3.

1144 *Id.* at \*4.

1145 *Id.*

1146 *Id.*

1147 *Id.* at \*\*6-7.

1148 *Id.* at \*\*6-8.

1149 *Id.* at \*\*8-9.

1150 *Id.* at \*9.

1151 *Id.* at \*\*9-10.

1152 *Id.* at \*\*10-11.

## 2. General Procedural Issues

In *EEOC v. Chris the Crazy Trader, Inc.*,<sup>1153</sup> the U.S. District Court for the District of Colorado considered the EEOC's motion for partial judgment on the pleadings and motion for partial summary judgment on the defendant's affirmative defenses. The charging party complained that she suffered continuous harassment, demeaning and sexist comments from male salesman and other employees—including peers and managers—and that the employer's managers not only knew about it and failed to correct it, but some of them even participated in the harassment.<sup>1154</sup> The charging party also claimed that she was prevented from applying for a promotional role due to her sex, and that the employer also denied Black employees similar promotional opportunities.<sup>1155</sup> Proceeding on behalf of nine aggrieved individuals, the EEOC sued the employer for hostile work environment based on sex, race, and national origin, as well as discriminatory discharge and retaliation.<sup>1156</sup>

After discovery, the EEOC moved for summary judgment against the employer's second (mitigation of damages), third (after-acquired evidence), eleventh (real party in interest), and twelfth (collateral source) defenses, and parts of the defendant's first (exhaustion and statute of limitations) and sixth affirmative defenses (laches).<sup>1157</sup> It also moved for judgment on the pleadings against the employer's first (statute of limitations), fifth (non-discriminatory motive and same actions absent discriminatory motive), sixth (unclean hands), ninth (at-will employment status), fourteenth (comparative fault), fifteenth (proximate cause), nineteenth (attorney's fees), and twentieth defenses (reservation of right to amend).<sup>1158</sup> The court considered each argument in turn, granting the EEOC's motion in part and denying in part.

As to the exhaustion defense, the court concluded that the EEOC provided adequate notice to the employer of the specific allegations against it at conciliation and granted the EEOC's motion.<sup>1159</sup> The court denied summary judgment as to the statute of limitations defense, holding genuine issues of material fact existed regarding whether at least one act contributing to a hostile work environment occurred within the charge filing window.<sup>1160</sup> Conversely, the court granted the EEOC's motion as to the mitigation defenses, as there was not a genuine issue of fact as to whether suitable positions were available.<sup>1161</sup> Next, the court granted in part and denied in part the EEOC's motion for summary judgment with respect to the after-acquired evidence defense across the aggrieved individuals.<sup>1162</sup> Then, the court granted summary judgment in the EEOC's favor on the defendant's laches defense, because the defendant did not demonstrate with specific evidence that it suffered material prejudice from the delay in bringing suit based on memory issues of aggrieved individuals.<sup>1163</sup> Finally, the court granted dismissal of the defendant's affirmative defenses that the EEOC was not a real party in interest and that the aggrieved individuals' recovery should be offset by payments earned from collateral sources after termination, while noting that any backpay could be properly offset by the individuals' interim earnings from other employment.<sup>1164</sup>

Addressing the motion for judgment on the pleadings, the court rejected the EEOC's argument that the defendant insufficiently pled a statute of limitations defense and that several defenses were not proper affirmative defenses but mere denials.<sup>1165</sup> The court, however, granted the EEOC's motion for judgment as to several defenses asserted as to remedies—specifically, the defenses that (1) the defendant would have taken the same action despite any discriminatory motive, (2) the charging party had unclean hands, (3) the claims were barred by the at-will employment doctrine, (4) the claims were frivolous and justify an award of attorneys' fees to the defendant, and (5) the EEOC's damages were barred or diminished by comparative fault.<sup>1166</sup> Finally, the court dismissed the defendant's reservation of its right to amend the answer and/or bring counterclaims, holding that it can seek leave to amend through a motion if necessary.<sup>1167</sup>

1153 *EEOC v. Chris the Crazy Trader Inc.*, 2025 U.S. Dist. LEXIS 61202 (D. Colo. Mar. 31, 2025).

1154 *Id.* at \*2.

1155 *Id.*

1156 *Id.* at \*3.

1157 *Id.*

1158 *Id.* at \*\*3-4.

1159 *Id.* at \*\*7-17.

1160 *Id.* at \*\*18-23.

1161 *Id.* at \*\*23-26.

1162 *Id.* at \*\*27-28.

1163 *Id.* at \*\*28-31.

1164 *Id.* at \*\*31-35.

1165 *Id.* at \*\*38-41.

1166 *Id.* at \*\*41-47.

1167 *Id.* at \*\*47-48.

The U.S. District Court for the District of Kansas considered an employer's motion to seal or redact exhibits in support of a motion for summary judgment in *EEOC v. Chipotle Services, LLC*.<sup>1168</sup> There, the employer moved to seal (1) employee time records, (2) personnel records, and (3) a daily labor report.<sup>1169</sup> The court noted that it previously denied the defendant's request to seal employee time records and personnel records, and that the current request was broader inasmuch as it sought to seal the files related to more employees than the first.<sup>1170</sup> The court denied the renewed request to seal (1) employee time records and (2) personnel records for the same reasons as before.<sup>1171</sup> As for the daily labor report, the defendant argued that it contained commercially sensitive information about scheduling, including the type of software used to track its' employees' time.<sup>1172</sup> However, the court noted that the defendant failed to show competitors cannot otherwise access the information and, as such, any fear that the information could be exploited is speculative.<sup>1173</sup> As such, the court held that the defendant did not "show[] how its interests outweighed the public interest in access to the materials that inform the court's decision-making process[]" and denied the motion in full.<sup>1174</sup>

In *EEOC v. A&A Appliance, Inc.*,<sup>1175</sup> the U.S. District Court for the District of Colorado considered whether to grant reconsideration of its order granting the EEOC's motion to extend dispositive motions deadlines by two months and denying the defendant's similar motion to extend deadlines in light of a pending motion.<sup>1176</sup> In support, the defendant argued that the EEOC produced a new expert affidavit merely one week before the dispositive motions deadline.<sup>1177</sup>

First, after review of the docket in the case, the court addressed an apparent lack of civility between the parties, noting "it is clear . . . that there is no love lost between the parties[]" and reminding them that it expects they "treat each other civilly."<sup>1178</sup> The court also held that the defendant's efforts to confer were insufficient under the District of Colorado's Local Rules.<sup>1179</sup> On the merits, the court denied the defendant's motion to reconsider.<sup>1180</sup> As the court acknowledged, a motion to reconsider may be granted where, among other things, there is new evidence which was previously unavailable.<sup>1181</sup> The court, however, found that the defendant failed to point to any specific information in the affidavit that was, in fact, new evidence, and held that the defendant's bald assertion that the evidence was new was insufficient to justify reconsideration.<sup>1182</sup> Notwithstanding, the court *sua sponte* granted a modest extension of the dispositive motions deadline in the interests of justice.<sup>1183</sup>

A magistrate judge in the Southern District of Texas addressed several procedural issues raised in cross-motions for summary judgment in *EEOC v. Ryan's Pointe Houston, LLC*.<sup>1184</sup> The EEOC alleged that the defendants in the case operated as an integrated enterprise and could be held jointly liable for the alleged discrimination, supported by an exhibit (Exhibit 14) consisting of EEOC investigators' notes from an interview with Ryan's Pointe's former employee.<sup>1185</sup> The defendants objected to the notes as hearsay, arguing that the notes did not belong to the former employee, but the EEOC investigators.<sup>1186</sup> The EEOC countered that the notes were admissible because the former employee was permitted to answer as the defendant's agent and the interview notes are a record of its regularly conducted business activities.<sup>1187</sup> The court first found that the exhibit qualifies as hearsay, as the EEOC sought "to introduce notes of [the former employee's] interview for the truth of the matter asserted—that the defendants had interrelated operations."<sup>1188</sup> The court then observed that while the notes themselves could qualify as an exception

<sup>1168</sup> *EEOC v. Chipotle Servs., LLC*, 2024 U.S. Dist. LEXIS 185358 (D. Kan. Oct. 10, 2024).

<sup>1169</sup> *Id.* at \*\*2-3.

<sup>1170</sup> *Id.* at \*3.

<sup>1171</sup> *Id.* at \*\*2-3.

<sup>1172</sup> *Id.* at \*3.

<sup>1173</sup> *Id.*

<sup>1174</sup> *Id.* at \*\*1, 3-4.

<sup>1175</sup> *EEOC v. A&A Appliance, Inc.*, 2025 U.S. Dist. LEXIS 21830 (D. Colo. Feb. 6, 2025).

<sup>1176</sup> *Id.* at \*3.

<sup>1177</sup> *Id.* at \*\*3-4.

<sup>1178</sup> *Id.* at \*1.

<sup>1179</sup> *Id.* at \*2.

<sup>1180</sup> *Id.* at \*5.

<sup>1181</sup> *Id.* at \*3.

<sup>1182</sup> *Id.* at \*\*3-5.

<sup>1183</sup> *Id.* at \*5.

<sup>1184</sup> *EEOC v. Ryan's Pointe Hous., LLC*, 2025 U.S. Dist. LEXIS 33651 (S.D. Tex. Jan. 21, 2025).

<sup>1185</sup> *Id.* at \*\*8-9.

<sup>1186</sup> *Id.* at \*9.

<sup>1187</sup> *Id.*

<sup>1188</sup> *Id.* at \*\*10-11.

to hearsay as records of regularly conducted activity, the EEOC failed to identify any hearsay exception applicable to the statements within the notes.<sup>1189</sup> The court reiterated that hearsay within hearsay is inadmissible unless each part of the combined statements conforms with an exception to the rule and excluded the former employee's hearsay statements from the EEOC's notes.<sup>1190</sup>

Next, the court considered the EEOC's objections to a declaration submitted by the defendants in support of their motion for summary judgment.<sup>1191</sup> The EEOC argued that the declaration was unsworn, speculative, and not based on personal knowledge.<sup>1192</sup> However, the court held that an unsworn declaration can substitute for an affidavit where it is made under penalty of perjury.<sup>1193</sup> The court also rejected EEOC's argument that the declaration was not based on personal knowledge and contained factual errors, as it was not the court's duty to make credibility determinations at the summary judgment stage.<sup>1194</sup> Further, the court overruled the EEOC's hearsay objection, finding that it failed to specify its objections and that it was not required to comb through the evidence to determine the EEOC's objections.<sup>1195</sup>

Finally, the court also addressed the EEOC's motion for summary judgment on various affirmative defenses asserted by the defendants.<sup>1196</sup> Addressing the statute of limitations and failure to exhaust administrative remedies defenses, the court recommended granting the motion for summary judgment as the Commission is not subject to a statute of limitations, the underlying EEOC charge was timely filed, and both the defendants received the charge and notice documents.<sup>1197</sup> The court also recommended granting the EEOC summary judgment on the waiver, estoppel, unclean hands, and fraud defenses, because the defendants failed to plead that they were seriously injured by any alleged misrepresentations made by the former employee and failed to plead facts supporting fraud with particularity.<sup>1198</sup> The court recommended judgment in the EEOC's favor on the laches defense for the same reasons.<sup>1199</sup> The court also held that the defendants waived their failure to fulfill conditions precedent and failure to state a claim arguments by failing to respond to the EEOC's arguments to dismiss them.<sup>1200</sup> Finally, the court recommended summary judgment as to the failure to mitigate defense, holding that the former employee's termination from subsequent employment does not equate to failure to mitigate.<sup>1201</sup>

In a separate order only a month later, the district court reviewed the memorandum, order, and recommendation issued by the magistrate judge regarding the cross-motions for summary judgment and the EEOC's motion to exclude expert testimony, overruled the objections of the parties, and adopted the magistrate judge's findings.<sup>1202</sup>

### 3. Impact of Employer Prevailing on Summary Judgment – Fee Petition

In *EEOC v. Princess Martha, LLC*,<sup>1203</sup> the U.S. District Court for the Middle District of Florida denied an employer's motion for sanctions against the EEOC and the EEOC's motion for summary judgment based on the grant of summary judgment in Count I of the amended complaint.<sup>1204</sup> In that case, the EEOC filed a two-count claim against the employer, claiming in Count I that the defendants committed disability discrimination by failing to hire the charging party and claiming in Count II that the defendants failed to reasonably accommodate her disability.<sup>1205</sup> The court granted summary judgment in the defendants' favor as to Count I, but a jury trial resulted in a verdict in favor of the EEOC as to Count II.<sup>1206</sup>

1189 *Id.* at \*11 (citing Fed. R. Evid. 805).

1190 *Id.* at \*12.

1191 *Id.* at \*\*17-18.

1192 *Id.* at \*18.

1193 *Id.* at \*\*18-19 (citing 28 U.S.C. § 1746).

1194 *Id.* at \*\*20-21.

1195 *Id.* at \*\*21-22.

1196 *Id.* at \*\*28-47.

1197 *Id.* at \*\*30-33, 40-41.

1198 *Id.* at \*\*33-38, 42-44.

1199 *Id.* at \*\*38-40.

1200 *Id.* at \*\*41-42.

1201 *Id.* at \*\*44-47.

1202 *EEOC v. Ryan's Pointe Hous., LLC*, 2025 U.S. Dist. LEXIS 32162 (S.D. Tex. Feb. 24, 2025).

1203 *EEOC v. Princess Martha, LLC*, 2025 U.S. Dist. LEXIS 102613 (M.D. Fla. May 30, 2025).

1204 *Id.* at \*\*1-2.

1205 *Id.* at \*2.

1206 *Id.*

The defendants moved for sanctions under Federal Rule of Civil Procedure 11 as to Count I, arguing that claim was frivolous because the “irrefutable facts” demonstrated the decisionmaker was unaware that the EEOC was disabled.<sup>1207</sup> The EEOC responded that the high standard for Rule 11 sanctions was not met and that the defendants “wrongfully used the threat of sanctions as a bargaining chip throughout the litigation.”<sup>1208</sup>

The court ultimately denied the defendants’ motion.<sup>1209</sup> The court found that the EEOC’s filing of Count I was reasonable under the circumstances, that the EEOC’s arguments were neither frivolous nor unreasonable, and that the failure to voluntarily dismiss Count I did not justify Rule 11 sanctions.<sup>1210</sup> In so holding, the court emphasized that “a grant of summary judgment, in and of itself, does not mean an action is frivolous or warrants . . . sanctions.”<sup>1211</sup>

## I. Default Judgment

Courts apply several factors when deciding a motion for default judgment. In a matter heard in the U.S. District Court for the Eastern District of New York in FY 2023, the court weighed the following factors: “(1) ‘whether the defendant’s default was willful; (2) whether defendant has a meritorious defense to plaintiff’s claims; and (3) the level of prejudice the non-defaulting party would suffer as a result of the denial of the motion for default judgment.’”<sup>1212</sup> In this case, *EEOC v. Stardust Diners, Inc.*, the court reiterated prior holdings in the circuit finding that, while a party’s default is viewed as a concession of all well pleaded allegations of liability, it is not considered an admission of damages.<sup>1213</sup> As such, even if the EEOC or a plaintiff establishes liability, they must still prove damages. In that matter, the court found the EEOC: (1) had sufficiently pled facts supporting the motion for default judgment; (2) had adequately demonstrated a Title VII sex-based discrimination violation and retaliation; and therefore (3) the charging party was entitled to compensatory and punitive damages, injunctive relief, and back pay plus prejudgment interest.<sup>1214</sup>

Courts have discretion to set aside default judgments. In a matter out of U.S. District Court for the Northern District of Texas,<sup>1215</sup> the EEOC brought an action against a company for failing to hire a pregnant woman, which the company then moved to dismiss. In response, the EEOC amended the complaint, mooting the motion. When the company failed to respond to the amended complaint, the EEOC moved for default. The company sought to set aside the default 29 days later, arguing that its failure to respond was accidental. In finding good cause to set aside default, the court noted “[g]ood cause’ is interpreted liberally,” and assessed “(1) whether the party’s failure to act was willful, (2) whether plaintiff would be prejudiced, (3) whether the defendant has presented a meritorious defense to the claims asserted, and (4) whether the defendant acted promptly to correct the default.”<sup>1216</sup> While the court found the company’s lack of explanation for its failure to act deficient, and noted the company did not explain its defenses – except to the extent set forth in its previous motion to dismiss – it concluded that the charging party would not be prejudiced by setting aside default, no public interest would be contravened by granting the company’s motion, and 29 days reflected the outer limits of what could be considered sufficiently expeditious in moving to set aside default.<sup>1217</sup> The court emphasized that default judgments are generally disfavored and cases should be resolved on the merits.

Courts are also able to order discovery as to damages relating to an entry of default. In an FY 2024 case in the District of Maryland, the court ordered post-default judgment discovery regarding whether the defendant was insolvent.<sup>1218</sup> The court entered a final judgment against defendant of over \$2 million, at which point the defendant represented that it had discontinued operations and was insolvent, preventing the EEOC from collecting on the

<sup>1207</sup> *Id.* at \*\*2-3.

<sup>1208</sup> *Id.* at \*3.

<sup>1209</sup> *Id.* at \*2.

<sup>1210</sup> *Id.* at \*\*3-5.

<sup>1211</sup> *Id.* at \*4 (quoting *Baker v. Alderman*, 158 F.3d 516, 524 (11th Cir. 1998)).

<sup>1212</sup> *EEOC v. Stardust Diners, Inc.* 2023 U.S. Dist. LEXIS 140037, at \*21 (E.D.N.Y. Aug. 10, 2023).

<sup>1213</sup> *Id.* at \*26.

<sup>1214</sup> *Id.* at \*\*32-33.

<sup>1215</sup> *EEOC v. Barber*, 2025 U.S. Dist. LEXIS 145787 (N.D. Tex., July 30, 2025), adopting report and recommendation of the magistrate judge, *EEOC v. Barber*, 2025 U.S. Dist. LEXIS 147052 (N.D. Tex. June 26, 2025).

<sup>1216</sup> *EEOC v. Barber*, 2025 U.S. Dist. LEXIS 147052, \*3 (N.D. Tex. June 26, 2025).

<sup>1217</sup> *Id.* at \*\*4-8.

<sup>1218</sup> *EEOC v. Green Jobworks, LLC*, 2024 U.S. Dist. LEXIS 4179 (D. Md. Jan. 9, 2024).

judgment.<sup>1219</sup> The EEOC subsequently issued a subpoena seeking financial documents regarding the defendant's owners' assets, to which the owner failed to respond or object.<sup>1220</sup> The EEOC then sought to compel the discovery, which the court granted, noting that a judgment creditor "'may obtain discovery from any person' to aid in execution of a judgment" and that the general rule is that a party may obtain discovery on nonprivileged matters relevant to any claims or defenses.<sup>1221</sup> Upon granting the motion, the court also observed that the owner likely waived any objections by failing to object to the subpoena or file a motion to quash.<sup>1222</sup>

Courts are also able to award a judgment after default is entered when warranted. For instance, in a sexual harassment case in the Eastern District of California, the EEOC sought default judgment, alleging the defendant's supervisor sexually harassed the charging party, repeatedly making unwanted comments during her employment, including asking her to "hook up" with him, and assaulted her in a hotel room after a holiday party, all of which she reported.<sup>1223</sup> The defendant initially failed to respond to the complaint, resulting in a default entry that was later vacated.<sup>1224</sup> The defendant then filed a motion for summary judgment and dismissal for failure to prosecute that was denied.<sup>1225</sup> The defendant's attorney later withdrew as counsel based on the suspension of the corporation and the defendant never obtained new counsel.<sup>1226</sup> The EEOC contended that the defendant corporation had not been formally dissolved and filed an amended complaint against the defendant and the company that had acquired it.<sup>1227</sup> The defendant failed to respond to the amended complaint and the EEOC moved for default judgment again.<sup>1228</sup>

The court weighed the following factors, known as the *Eitel* factors, in deciding on a default: "'(1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action[,] (5) the possibility of a dispute concerning material facts[,] (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.'"<sup>1229</sup> The court found that: (1) the EEOC would face prejudice if default was not entered as no other recourse existed and the EEOC had already spent substantial time and money prosecuting the action; (2) and (3) the merits of the EEOC's claims were sufficient based on both the supervisor's allegedly harassing behavior and the company's failure to take proper remedial action after the charging party complained; (4) the damages sought were reasonable in relation to the seriousness of the defendant's conduct; (5) no dispute of material facts existed as the "court may assume the truth of well-pleaded facts in the complaint (except damages) following the clerk's entry of default"; (6) no excusable neglect existed; (7) the strong policy favoring decisions on the merits was outweighed by the defendant's failure to appear and retain counsel.<sup>1230</sup>

Accordingly, the court recommended default be entered. As for remedies, the court recommended the charging party receive \$7,916 in backpay plus prejudgment interest, \$100,000 in compensatory and punitive damages (the charging party provided a declaration detailing her emotional suffering, and the defendant's failure to address the charging party's complaints and subsequent termination of her employment amounted to egregious discriminatory practices with malice and reckless indifference). The court also enjoined the defendant from engaging in further discrimination or harassing conduct and ordered it to carry out its policies to provide equal employment opportunities for employees and eradicate unlawful employment practices.<sup>1231</sup>

---

<sup>1219</sup> *Id.* at \*\*1-2.

<sup>1220</sup> *Id.* at \*2.

<sup>1221</sup> *Id.* at \*\*2-3.

<sup>1222</sup> *Id.* at \*\*3-4.

<sup>1223</sup> *EEOC v. Elite Wireless Grp.*, 2024 U.S. Dist. LEXIS 37825, at \*\*2-4 (E.D. Cal. Mar. 4, 2024).

<sup>1224</sup> *Id.* at \*6.

<sup>1225</sup> *Id.*

<sup>1226</sup> *Id.*

<sup>1227</sup> *Id.* at \*7.

<sup>1228</sup> *Id.*

<sup>1229</sup> *Id.* at \*8 (citing *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986)).

<sup>1230</sup> *Id.* at \*\*9-15.

<sup>1231</sup> *Id.* at \*\*16-20.

## J. Bankruptcy

A defendant's or charging party's bankruptcy declaration will not necessarily stay an EEOC lawsuit. In FY 2025, in a case out of the Northern District of Mississippi, the EEOC sued the defendant for violation of Title VII, and sought injunctive relief as well as damages for certain employees of the defendant.<sup>1232</sup> The defendant subsequently filed for Chapter 7 bankruptcy and sought to stay the lawsuit. The EEOC contended the action was exempt from the automatic stay provision. The defendant argued that the bankruptcy court, not the federal court, had jurisdiction, and did not address whether an exception to the automatic stay rule applied.

The court concluded that it had jurisdiction – noting the authority cited by the defendant did not actually address the jurisdictional issue.<sup>1233</sup> It further concluded that the case should not be stayed, applying the pecuniary purposes test and the public policy test. In doing so, it cited similar past practice, and observed the EEOC's complaint sought to enforce public policy against employment discrimination, thus justifying an exception to the automatic stay.<sup>1234</sup>

Prior cases are also instructive. In a 2020 case out of the Northern District of Georgia, for example, the EEOC sued the defendant under the ADA seeking injunctive relief, back pay and front pay for defendant's former employee, compensation for pecuniary and non-pecuniary losses, punitive damages, and costs.<sup>1235</sup> The former employee filed her own complaint against defendant, which was consolidated with the EEOC complaint and treated as an intervenor complaint. The defendant subsequently filed for Chapter 11 bankruptcy, filed a notice of the bankruptcy to obtain an automatic stay, and moved to stay proceedings not subject to an automatic stay.

The EEOC opposed the notice and motion to stay, contending that the Bankruptcy Code's automatic stay provision does not apply because the proceeding falls within the governmental unit or police and regulatory power exception under 11 U.S.C. § 362(b)(4). The purpose of the exception is to discourage debtors from initiating bankruptcy proceedings to evade impending governmental efforts to enjoin or deter ongoing debtor conduct that would “seriously threaten the public safety.”

The defendant argued that the police-power exception did not apply because: (1) any injunctive relief the EEOC seeks is likely to be moot, because the defendant intends to sell its assets to another company; and (2) the defendant is unaware of any cases applying the police-power exception in cases involving claims brought by both the EEOC and a private litigant.<sup>1236</sup> After surveying authority from around the country, the court “agree[d] with those courts that have considered the issue and finds that the police-power exception applies to the EEOC” because “the EEOC brings claims under the ADA for injunctive and monetary relief in the course of exercising its police or regulatory powers, and it is therefore not subject to the automatic stay.”<sup>1237</sup> The court also declined to exercise its authority to stay a case pending the resolution of a related case in another forum, finding its discretionary stay authority inapplicable where a more specific stay mechanism (*i.e.*, bankruptcy stay) expressly did not apply.<sup>1238</sup> In doing so, the court rejected the argument that a stay of the intervenor complaint required staying the EEOC lawsuit, recognizing that “while it is true that there is some overlap between the EEOC's claims and those of the intervenor, it is not unusual for litigation to proceed as to the EEOC while the claims of an intervenor are stayed.”<sup>1239</sup>

Finally, the court stated that “the fact that the claims for injunctive relief may end up being moot at the conclusion of the bankruptcy proceedings is not a sufficient reason to stay the claims now—especially when that argument is insufficient to preclude application of the police-power exception to the automatic stay.”<sup>1240</sup>

Similarly, in the Northern District of Texas, the court emphasized that the Bankruptcy Code's automatic stay does not necessarily stop an EEOC lawsuit. In this case, the EEOC sued a medical practice for alleged Title VII violations.<sup>1241</sup> The EEOC sought injunctive relief under Title VII, back pay with prejudgment interest, compensatory damages for past and future pecuniary and non-pecuniary losses, punitive damages, and costs. The defendant

<sup>1232</sup> *EEOC v. Intrepid Gymnastics, LLC*, 2025 U.S. Dist. LEXIS 96812 (N.D. Miss. May 21, 2025).

<sup>1233</sup> *Id.* at \*3.

<sup>1234</sup> *Id.* at \*4.

<sup>1235</sup> *EEOC v. Krystal Co.*, 2020 U.S. Dist. LEXIS 92482 (N.D. Ga. May 21, 2020).

<sup>1236</sup> *Id.* at \*\*3-4.

<sup>1237</sup> *Id.* at \*6.

<sup>1238</sup> *Id.* at \*8.

<sup>1239</sup> *Id.* at \*9.

<sup>1240</sup> *Id.*

<sup>1241</sup> *EEOC v. Shepherd*, 2018 U.S. Dist. LEXIS 175025 (N.D. Tex. Oct. 11, 2018).

subsequently filed for Chapter 7 bankruptcy. In light of the bankruptcy, the court entered an order staying and administratively closing the case pursuant to 11 U.S.C. § 362.

Upon receiving notice of the stay, the EEOC filed a motion to reopen the case and permit it to continue with its claims against the defendant notwithstanding the bankruptcy proceeding. The EEOC averred that the Bankruptcy Code's automatic stay provision does not apply because the proceeding falls within the governmental unit or police and regulatory power exception under 11 U.S.C. § 362(b)(4).

In response, the defendant countered that Section 362(b)(4) does not apply to actions seeking money judgments. The EEOC replied by clarifying that it was seeking to prove defendant's liability for the asserted discrimination claims and obtain a judgment against the defendant for damages and injunctive relief to "prevent [defendant] from 'engaging in future discriminatory conduct in violation of Title VII.'"<sup>1242</sup>

The court applied the Fifth Circuit's "public policy test" and "pecuniary interest test," used to determine whether proceedings fall within Section 362(b)(4)'s police and regulatory power exception. The public policy test asks whether the government is effectuating public policy rather than adjudicating private rights. The pecuniary purpose test asks whether the government primarily seeks to protect a pecuniary government interest in the debtor's property, as opposed to protecting public safety and health. If the purpose of the government's action is to promote public safety and welfare or to effectuate public policy, the exception applies and the stay to the lawsuit would be lifted. If, however, the purpose of the action is to protect the government's pecuniary interest in the debtor's property or primarily to adjudicate private rights (such as seeking damages for a charging party), the exception would not apply and the stay would remain in place.

In its analysis, the court acknowledged that the issue of whether an EEOC enforcement action under Title VII falls within Section 362(b)(4)'s exception was a matter of first impression in the Fifth Circuit. As such, the court looked to and relied upon the Fourth Circuit's precedent, which held that EEOC employment discrimination lawsuits brought under Title VII satisfy the public policy test—even when brought on behalf of specific individuals—because the EEOC is acting to vindicate the public interest in preventing employment discrimination. Further, the court noted the Third and Eighth Circuits have reached the same conclusion regarding Section 362(b)(4)'s application to EEOC enforcement actions.<sup>1243</sup>

Applying the Fourth Circuit's rationale, the court held that Section 362(b)(4)'s exception should apply. In its reasoning, the court emphasized that the EEOC's primary relief sought was a permanent injunction, which was not limited to the individuals named in the EEOC's pleadings. The court noted that although the EEOC sought monetary relief on behalf of specific individuals, there was no indication that the EEOC was seeking to protect a pecuniary interest in the defendant's property. Further, the court underscored the EEOC's acknowledgment that it would not be able to use the proceeding to enforce any money judgment entered against the defendant. Accepting that the EEOC was focused on the public interest and not debt collection, Section 362(b)(4) applied and the stay to the EEOC's lawsuit was lifted.

In another case out of the Southern District of Indiana, the court determined a claimant's failure to disclose his claims in a personal bankruptcy proceeding did not preclude the EEOC from pursuing a disability discrimination lawsuit on his behalf. In this case,<sup>1244</sup> the EEOC alleged a trucking company violated the ADA by asking disability-related questions during the job application process. Four members of the affected class of applicants, however, did not disclose their claims against the company in their personal bankruptcy proceedings. The company alleged that the EEOC should therefore be precluded from pursuing claims on their behalf.

The court explained that generally, under the Bankruptcy Code, a debtor must schedule as assets "all legal or equitable interests of the debtor in property as of the commencement of the case."<sup>1245</sup> Causes of action that arise during the court of the bankruptcy are also deemed property of the bankruptcy estate.<sup>1246</sup> The bankruptcy estate owns the claim, so the debtor lacks standing to pursue an undisclosed claim on the estate's behalf during the pendency of the bankruptcy. Once the bankruptcy has closed, the doctrine of judicial estoppel would normally preclude a claimant from pursuing a previously undisclosed claim. The court, however, emphasized that in this

---

<sup>1242</sup> *Id.* at \*\*2-3.

<sup>1243</sup> *Id.* at \*8.

<sup>1244</sup> *EEOC v. Celadon Trucking Servs.*, 2015 U.S. Dist. LEXIS 84639 (S.D. Ind. June 30, 2015).

<sup>1245</sup> *Id.* at \*50, citing 11 U.S.C. § 541(a)(1).

<sup>1246</sup> *Id.*, citing 11 U.S.C. § 1306(a)(1).

case, the EEOC—not the claimants—was the entity filing suit. The question the court had to consider, therefore, was “whether judicial estoppel applies when the EEOC sues on a claim previously undisclosed by individual charging parties in bankruptcy proceedings.”<sup>1247</sup>

The court responded in the negative, concluding that judicial estoppel did not apply in this instance “because the agency, in fulfilling its enforcement role, does not merely stand in the shoes of individual claimants; in other words, it is not the same ‘party’ that earlier took an inconsistent position before a court. The EEOC is not ‘merely a proxy for the victims of discrimination,’ . . . nor does it sue ‘as the representative of the discriminated-against employee.’”<sup>1248</sup> The ADA in particular “makes the EEOC the ‘master of its own case,’ and confers upon the agency independent authority to evaluate the strength of the public interests at stake in enforcing the statute.”<sup>1249</sup> The individual claimants’ failure to disclose their claims in their bankruptcy proceedings therefore did not prevent the EEOC from recovering damages on their behalf. The court reasoned that because the EEOC was not a party to the bankruptcy proceedings, and the claimants were not parties to the EEOC’s lawsuit, “judicial estoppel does not bar the EEOC from recovering damages predicated on harms they may have suffered.”<sup>1250</sup>

Whether an automatic stay in a defendant’s bankruptcy proceeding could preclude the EEOC from enforcing a subpoena against a third party to determine whether it was a successor-in-interest came before the Western District of Pennsylvania in 2018.<sup>1251</sup> The EEOC filed a motion to show cause why the third party should not be compelled to comply with the EEOC’s discovery subpoena. The court granted the EEOC’s motion. In response, the third party argued that the automatic stay in the defendant’s bankruptcy proceeding applied to the EEOC’s action to enforce its judgment against the third party, and therefore to the EEOC’s ability to subpoena the third party to take discovery. The third party also averred that the stay barred the EEOC from enforcing the money judgment because Bankruptcy Code Section 362(b)(4)’s exception did not apply to money judgments.

The EEOC countered that the automatic stay did not apply to the third party because it is not the debtor and the bankruptcy court did not extend the stay to the third party. Further, the EEOC contended that, even if the stay applied to the third party, the EEOC was still entitled to enforce the nonmonetary portion of its judgment against it and take discovery for that purpose.<sup>1252</sup> The court agreed with the EEOC and explained that Section 362(b)(4) explicitly exempts only the enforcement of money judgments, which implies that government agencies retain the power to enforce injunctions against a debtor in bankruptcy. Given that the EEOC can bring an action to enforce an injunction against a successor-in-interest to the defendant, the court reasoned that the EEOC must also have the ability to subpoena a putative successor-in-interest to determine whether that entity is a successor. The court declined to address whether an automatic stay under 11 U.S.C. §362 would apply to an action to enforce a money judgment against the third party.<sup>1253</sup>

In a 2023 case out of the Middle District of Tennessee, the court considered whether a class member declaring bankruptcy but failing to disclose the class action barred or estopped that individual’s ability to participate in a lawsuit if they failed to disclose the underlying class action in their bankruptcy proceedings.<sup>1254</sup> Specifically, the deadline for motions to amend pleadings in this Title VII action alleging a racially hostile work environment and discriminatory work conditions, was set for April 29, 2022.<sup>1255</sup> The court, however, denied the defendant’s motion to amend its answer, which included a 29th affirmative defense related to a class member’s bankruptcy. The defendant, after asserting 28 defenses, sought to add a defense stating that the class member’s claims were barred due to failure to disclose the lawsuit in a bankruptcy proceeding. The EEOC objected, citing the defendant’s lack of good cause for filing the motion after the deadline, improper inclusion of additional allegations, and legal deficiencies in the proposed defense.<sup>1256</sup>

<sup>1247</sup> *Id.* at \*51.

<sup>1248</sup> *Id.*, citing *In re Bemis*, 279 F.3d 419, 421-422 (7th Cir. 2002) (“The EEOC’s primary role is that of a law enforcement agency and it is merely a detail that it pays over any monetary relief obtained to the victims of the defendant’s violation rather than pocketing the money itself.”) (internal citation omitted)

<sup>1249</sup> *Id.* at \*52, citing *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 122 S. Ct. 754 (2002).

<sup>1250</sup> *Id.* at \*55.

<sup>1251</sup> *EEOC v. Scott Medical Health Ctr., P.C.*, 2018 U.S. Dist. LEXIS 183552 (W.D. Pa. Oct. 26, 2018).

<sup>1252</sup> *Id.* at \*4.

<sup>1253</sup> *Id.* at \*6.

<sup>1254</sup> *EEOC v. Whiting-Turner Contr. Co.*, 2023 U.S. Dist. LEXIS 44016, at \*4 (M.D. Tenn. Mar. 15, 2023).

<sup>1255</sup> *Id.*

<sup>1256</sup> *Id.* at \*\*4-5.

The defendant argued that good cause existed because the EEOC only disclosed the bankruptcy two months after the deadline. According to Rule 16(b), a deadline can be extended only for “good cause,” and Rule 15(a)(2) allows amendments “freely” when justice requires. The court noted that the “good cause” requirement is met if the original deadline could not reasonably have been met despite due diligence and the opposing party won’t suffer prejudice. In this case, the court found that the defendant satisfied the good cause requirement but rejected the proposed amendments as they were unrelated to the disclosed bankruptcy.<sup>1257</sup> The defendant claimed the amendments were minor clarifications, but the court disagreed, stating that without a stated basis for good cause, unrelated amendments could not be allowed.

Specifically, the court found that the proposed 29th defense, claiming the class member’s claims are barred due to bankruptcy, lacked legal support.<sup>1258</sup> The court considered the doctrine of judicial estoppel, which bars a party from asserting a position contrary to a prior sworn position in another proceeding. But the court found the proposed defense futile as it did not sufficiently plead estoppel, failed to establish that the class member is a party to the lawsuit, and lacked specifics on how the bankruptcy petition contradicted the current case. As such, the court denied the proposed 29th defense as futile.<sup>1259</sup>

## K. Trial

### 1. Pre-Trial Motions

Several cases involved pre-trial motions in FY 2025.

In a case before the U.S. District Court for the Middle District of Florida, the court decided cross-motions *in limine* regarding various evidentiary issues and a motion for judicial notice.<sup>1260</sup> Rule 402 of the Federal Rules of Evidence prohibits introduction of irrelevant evidence, and Rule 403 “requires the Court to balance the probative value of evidence against the danger of ‘unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.’”<sup>1261</sup>

In that case, defendants requested the court take judicial notice of the tax treatment of damages recovered by the charging party in a previous car accident lawsuit, contending they were for emotional distress, which she also claimed to have suffered due to defendants’ allegedly unlawful actions. The EEOC argued the tax treatment should not be judicially noticed as it was subject to multiple explanations and did not necessarily show what defendants claimed. A court “may take judicial notice of ‘adjudicative facts’ that are ‘not subject to reasonable dispute’ because they, *inter alia*, ‘can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.’”<sup>1262</sup> The court here agreed with the EEOC’s contention that more than one explanation for the tax treatment of the charging party’s damages existed and declined to take judicial notice as requested by the defendants.<sup>1263</sup>

As for the motions *in limine*, the EEOC first sought to prohibit reference to the charging party’s disability claim with Veterans Affairs because it was decided under a different standard. Defendants countered that they only intended to reference the disability claim as impeachment. The court granted the motion to the extent defendants intended to offer such evidence in their case-in-chief, and denied it without prejudice to the extent the evidence would be offered as impeachment because “[e]vidence used for impeachment purposes is not a subject of the Court’s rulings *in limine*.”<sup>1264</sup> The EEOC also sought to exclude evidence challenging its administrative investigations or findings.<sup>1265</sup> Defendants again stated they intended to use such evidence for impeachment purposes. The court held defendants could not seek to relitigate the EEOC administrative process or challenge exhaustion, but denied the motion without prejudice otherwise, again because impeachment evidence was not appropriate for motions *in limine*.

<sup>1257</sup> *Id.* at \*\*8-9.

<sup>1258</sup> *Id.* at \*\*9-10.

<sup>1259</sup> *Id.* at \*\*10-11.

<sup>1260</sup> *EEOC v. Princess Martha, LLC*, 2025 U.S. Dist. LEXIS 70100 (M.D. Fla. Apr. 14, 2025).

<sup>1261</sup> *Id.* at \*3.

<sup>1262</sup> *Id.* at \*4.

<sup>1263</sup> *Id.*

<sup>1264</sup> *Id.* at \*\*4-5.

<sup>1265</sup> *Id.* at \*5.

The EEOC also sought to exclude an alleged voicemail that resulted from a phone call from the company to the charging party, which defendants contended demonstrated the interactive process, but which the EEOC claimed the court already determined did not exist in an order on a motion for sanctions. The court was satisfied that defendants put forth enough evidence detailing the existence of the voicemail for a jury to conclude there was one, and denied the motion.

The EEOC also sought to exclude a demand letter sent by the charging party's former attorney, which the court granted. The court found no evidentiary basis for its admission, and concluded it would be inadmissible hearsay if offered for the truth of the matter asserted and risked introducing subjects covered by the attorney-client privilege.

The defendants brought motions *in limine* as well. The defendants asked the court to exclude evidence that the charging party identified as a victim of sexual assault, was a military veteran, and references to her child being non-verbal. The defendants argued this evidence had no probative value and would make the jury unduly sympathetic towards her. The court denied the motion, agreeing with the charging party that her history of sexual assault and veteran status were partially the basis for her alleged disability and directly relevant to the case. The charging party also disclosed details about her veteran status, treatment, and the disabilities of her son at her initial interview, making them directly relevant. The need to care for her son also impacted the charging party's damages.

The defendants successfully excluded evidence that the position for which charging party applied became available a year later because the court concluded its potential to cause confusion outweighed any relevance. The court also limited the EEOC's use of evidence of defendants' other properties and wealth. It permitted the EEOC to introduce financial evidence and testimony regarding defendants' net worth during the relevant time period only, and excluded evidence related to proceeds from past sales and other properties not named in the complaint. The court reasoned that the other evidence would be confusing and prejudicial.

The court denied the defendants' request to prohibit the charging party from arguing as a new theory of liability she was not accommodated because the company did not contact her about her positive drug test results. Defendants did not object to the theory at summary judgment, and the court read the complaint broadly to encompass such a theory.

Finally, the court granted defendants' motion to prohibit "me too" evidence. "Me too" evidence may be used as circumstantial evidence of motive or discriminatory intent.<sup>1266</sup> And the "admissibility of such evidence – an assessment of its relevance and any prejudicial value – is a 'fact-intensive, context-specific inquiry' that 'depends on many factors, including how closely related the evidence is to the plaintiff's circumstances and theory of the case.'"<sup>1267</sup> Further, "courts are generally 'reluctant' to consider 'me too' testimony about other bad acts that do not relate directly to the plaintiffs of the case at hand."<sup>1268</sup> In this case, the court concluded that "me too" evidence in the form of an incident involving the same decisionmaker and a pregnancy discrimination claim was not admissible because the situations were not substantially similar and the "me too" evidence occurred after the charging party's employment application. The court concluded that a jury would impermissibly conclude the decisionmaker had a propensity for discrimination were the evidence introduced.

The Eastern District of Arkansas also decided a number of motions *in limine*.<sup>1269</sup> The court denied the EEOC's motion to bar evidence of prior employment as the "bar for relevant evidence is 'extremely low.'"<sup>1270</sup> The court held that derogatory jabs about the federal government and the EEOC and its lawyers would be excluded as they were not relevant, but noted the ruling was narrow.<sup>1271</sup> The court also granted the EEOC's unopposed motion to exclude criminal history.<sup>1272</sup> The court denied the EEOC's motion to exclude witness testimony from an EEOC witness involved in the conciliation process because the court had no knowledge as to why the defendant intended to call the witness.

---

<sup>1266</sup> *Id.* at \*16.

<sup>1267</sup> *Id.*

<sup>1268</sup> *Id.* at \*17.

<sup>1269</sup> *EEOC v. Ranger Tool & Die, Inc.*, 2025 U.S. Dist. LEXIS 80722 (E.D. Ark. Apr. 29, 2025).

<sup>1270</sup> *Id.* at \*1.

<sup>1271</sup> *Id.* at \*2.

<sup>1272</sup> *Id.*

The court further held that the workplace conduct and remarks of a claimant would not be excluded, but her behavior off the clock and post-employment would be excluded as the “risk of embarrassment, sexual stereotyping, and infusing sexual innuendo into trial [was] too high.”<sup>1273</sup> The court excluded untimely produced conveyer belt photographs as the defendant gave no viable reason for the late production and the EEOC did not have the opportunity to question any witnesses about the photographs before trial. The exclusion was “automatic” under Federal Rule of Civil Procedure 37(c)(1) unless the late disclosure was “harmless or substantially justified.”<sup>1274</sup> The court refused to prohibit the term “victim” to be used, stating it would not police the parties’ word choices.<sup>1275</sup>

Finally, the court refused to exclude evidence of the claimants’ compensatory damages. From what the court could glean, the defendant’s objection to the damages calculation appeared to be with the math behind the calculations, rather than the evidence. The court concluded any error there was harmless, particularly when both claimants testified about their non-pecuniary damages and total damages were capped at \$50,000 each.<sup>1276</sup>

In a cautionary tale out of the Middle District of North Carolina, the court denied the parties’ joint request to extend the discovery deadline and continue the trial.<sup>1277</sup> The court criticized both the defendant and EEOC for their lackadaisical approach to completing discovery, calling out lengthy and fruitless efforts to meet and confer regarding discovery issues without ever seeking court intervention. The court refused to consider the motion to continue the trial date because the parties did not provide written consent per Local Rule 40.1(b).<sup>1278</sup> Even if the parties had provided such written consent, the court would have denied the motion because the parties did not show good cause, the “touchstone” of which being “diligence.”<sup>1279</sup> Rather than grant the motion, the court set strict discovery deadlines, micromanaging the case to assist the parties in getting out of the “pickle” in which they found themselves, and cautioned the parties regarding wasting court resources.<sup>1280</sup>

## 2. Post-Trial Motions

Post-trial motions are essential in litigation, allowing parties to seek relief after a trial. These motions can address issues like the taxation of costs, judgments as a matter of law, new trials, and amendments to judgments. The following cases illustrate the application and outcomes of post-trial motions, highlighting the standards courts use when ruling on them.

At trial in *EEOC v. Princess Martha, LLC*, the jury returned a verdict in favor of the plaintiff.<sup>1281</sup> Prior to submitting the case to the jury the parties made cross-motions for judgment as a matter of law pursuant to Federal Rule of Civil Procedure 50.<sup>1282</sup> A motion for a judgment as a matter of law may be made at any time before the case is submitted to the jury.<sup>1283</sup> After a party “has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may: (A) resolve the issue against the party; and (B) grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.”<sup>1284</sup>

In its Rule 50(a) motion, the defendants moved for judgment as a matter of law with respect to seven issues: “(1) the EEOC’s failure to establish that [the charging party’s] prescriptions fell within the drug-screening panel; (2) a failure to accommodate was not the but-for cause of the rejection of [the charging party’s] application; (3) [the charging party] abandoned the interactive process by failing to return the Princess Martha’s phone call on August 25, 2021; (4) the August 24, 2021 voicemail from [the charging party] cannot be considered a request for accommodation; (5) TJM Property Management, Inc., is not a joint employer; (6) the EEOC failed to support its claim for punitive damages; and (7) the EEOC failed to present evidence of pecuniary losses.”<sup>1285</sup> For the seventh

<sup>1273</sup> *Id.* at \*3.

<sup>1274</sup> *Id.* at \*\*3-4.

<sup>1275</sup> *Id.* at \*4.

<sup>1276</sup> *Id.* at \*5.

<sup>1277</sup> *EEOC v. Hooters of Am., LLC*, 347 F.R.D. 445 (M.D.N.C. Oct. 1, 2024)

<sup>1278</sup> *Id.* at 448.

<sup>1279</sup> *Id.*

<sup>1280</sup> *Id.* at 450.

<sup>1281</sup> *EEOC v. Princess Martha, LLC*, 2025 U.S. Dist. LEXIS 82240 (M.D. Fla. Apr. 30, 2025).

<sup>1282</sup> *Id.* at \*2.

<sup>1283</sup> *Id.*

<sup>1284</sup> *Id.*

<sup>1285</sup> *Id.* at \*\*2-3.

issue, the EEOC withdrew its request for damages that were based on pecuniary losses; thus, the court granted the defendants' motion in that regard.<sup>1286</sup> The court granted the fourth issue and provided additional instruction to the jury to prevent confusion regarding the charging party's disability disclosure.<sup>1287</sup> The court denied the motion on the remaining five issues.<sup>1288</sup>

The EEOC moved for judgment as a matter of law on three issues.<sup>1289</sup> The EEOC argued there was no legally sufficient evidence to find that the charging party was not a qualified individual as no evidence diminished the EEOC's claim, that a reasonable jury could not determine that a reasonable accommodation did not exist, and that the defendant did not offer evidence to support its affirmative defense regarding the charging party's mitigation of damages.<sup>1290</sup> As to all three issues, the court found the defendant presented evidence from which a jury could find in the defendants' favor and thus denied the EEOC's motion.<sup>1291</sup>

In a case out of the Northern District of New York, the jury returned a verdict in favor of the EEOC in a disability discrimination case arising under the ADA.<sup>1292</sup> The defendant moved for judgment as a matter of law under Rule 50(b) of the Federal Rules of Civil Procedure, a new trial, or to vacate or remit the damages awarded to the charging party.<sup>1293</sup> The EEOC moved for equitable and injunctive relief.<sup>1294</sup>

A Rule 50(b) motion may only be granted "if there exists such a complete absence of evidence supporting the verdict that the jury's findings could only have been the result of sheer surmise and conjecture, or the evidence in favor of the movant is so overwhelming that reasonable and fair-minded [persons] could not arrive at a verdict against [it]."<sup>1295</sup>

The defendant argued that the EEOC did not establish a *prima facie* case of ADA discrimination.<sup>1296</sup> The court considered the evidence presented at trial and concluded that it was legally sufficient to support the jury's verdict against the defendant and thus denied the defendant's motion for judgment as a matter of law.<sup>1297</sup>

Rule 59(a) of the Federal Rules of Civil Procedure permits a court to grant a new trial "for any reason for which a new trial has heretofore been granted in an action at law in federal court."<sup>1298</sup> In making such a determination, a court must consider whether "the jury has reached a seriously erroneous result or [its] verdict is a miscarriage of justice."<sup>1299</sup> Further, Rule 59 allows a court to order "a new trial limited to damages or, under the practice of remittitur, condition a denial of a motion for a new trial on the plaintiff's accepting damages in a reduced amount."<sup>1300</sup> A jury verdict can be set aside as "intrinsicly excessive" where the "award is so high as to shock the judicial conscience and constitute a denial of justice."<sup>1301</sup>

The defendant asserted that the award of \$150,000 in non-pecuniary damages to the charging party was excessive.<sup>1302</sup> The EEOC argued that the non-pecuniary damages awarded did not shock the conscience and that the defendant did not identify a specific error in the jury verdict.<sup>1303</sup> The court, in considering similar cases presented by the EEOC and the defendant concluded that the compensatory damages were not "so high as to shock the judicial conscience and constitute a denial of justice," and thus did not remit the award of compensatory damages.<sup>1304</sup>

In considering an award of punitive damages, the court assesses the *Gore* factors: "(1) the degree of reprehensibility of the defendant's conduct, (2) the ratio of punitive damages to the actual harm inflicted, and (3) the difference between this remedy and the... penalties authorized or imposed in comparable cases."<sup>1305</sup>

<sup>1286</sup> *Id.* at \*3.

<sup>1287</sup> *Id.* at \*\*6-7.

<sup>1288</sup> *Id.* at \*\*4-7.

<sup>1289</sup> *Id.* at \*7.

<sup>1290</sup> *Id.* at \*\*7-8.

<sup>1291</sup> *Id.* at \*8.

<sup>1292</sup> *EEOC v. McLane/Eastern, Inc.*, 2024 U.S. Dist. LEXIS 229073 (N.D.N.Y. Dec. 18, 2024).

<sup>1293</sup> *Id.* at \*1.

<sup>1294</sup> *Id.*

<sup>1295</sup> *Id.* at \*\*3-4 (quoting *Tepperwein v. Entergy Nuclear Operations Inc.*, 663 F.3d 556 (2d Cir. 2011)).

<sup>1296</sup> *Id.* at \*5.

<sup>1297</sup> *Id.* at \*10.

<sup>1298</sup> *Id.* at \*11.

<sup>1299</sup> *Id.* (quoting *Stampf v. Long Island R.R.* 761 F.3d 192 (2d Cir. 2014)).

<sup>1300</sup> *Id.* (quoting *Echevarria v. Insight Med., P.C.*, 72 F. Supp. 3d 442 (S.D.N.Y. 2014)) (internal citations omitted).

<sup>1301</sup> *Id.* at \*12.

<sup>1302</sup> *Id.* at \*13.

<sup>1303</sup> *Id.* at \*14.

<sup>1304</sup> *Id.* at \*\*18-20.

<sup>1305</sup> *Id.* at \*23 (quoting *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996)) (internal citations omitted).

The court first established that the evidence presented at trial was sufficient to uphold the award of punitive damages and concluded that the combination of compensatory and punitive damages must not exceed \$300,000, the statutory cap.<sup>1306</sup> As a result, the court reduced the punitive damages *ab initio* to \$150,000 and assessed the three *Gore* factors.<sup>1307</sup> The court held that the three factors were satisfied and that the \$150,000 award in punitive damages did not shock the conscience.<sup>1308</sup> Thus, the court declined to grant the defendant’s motion regarding punitive damages.<sup>1309</sup>

Under the ADA, “injunctive relief may be an appropriate remedy when the court determines that an employer has intentionally engaged in or is intentionally engaged in such unlawful employment practice charged in the complaint.”<sup>1310</sup> In the employment discrimination context the factors that are “pertinent in assessing the propriety of injunctive relief... are the balance of equities and consideration of the public interest.”<sup>1311</sup> Such injunctive relief may even be granted when a defendant ceased the conduct at issue.<sup>1312</sup>

The EEOC sought injunctive relief for a period of five years to deter and prevent future disability discrimination.<sup>1313</sup> The court found that injunctive relief was appropriate in this case and reviewed the scope of the remedial order to ensure the relief was “narrowly tailored to fit specific legal violations without imposing unnecessary burdens on lawful activity.”<sup>1314</sup> In reviewing the remedial order, the court reduced the duration of the injunction from five to two years, granted certain revisions to the defendant’s anti-discrimination policy, granted the EEOC’s request for training with some modifications, granted the EEOC’s request for posting a notice of injunction in the defendant’s communal areas, declined the EEOC’s request for the defendant to revise its job postings, denied the EEOC’s request to require the defendant to recruit hearing-impaired and deaf individuals as overly broad and not narrowly tailored, and granted but narrowed the EEOC’s request for reporting and recordkeeping.<sup>1315</sup>

Finally, the EEOC sought compensation for the negative tax consequences of the lump-sum payment of backpay and post-judgment interest starting from the date of entry of the judgment through the date of payment.<sup>1316</sup> The court awarded the charging party \$8,305.50 to compensate for the negative tax consequences and awarded the post-judgment interest.<sup>1317</sup>

In a case out of the Northern District of Texas, a jury found in favor of the EEOC and the intervenor-plaintiff for claims relating to hostile work environment.<sup>1318</sup> The jury awarded the intervenor-plaintiff \$170,000 in past and future compensatory damages, and \$2 million in punitive damages which was reduced to \$130,000 to be in compliance with the statutory cap.<sup>1319</sup> The defendant moved for a renewed judgment as a matter of law as to punitive damages and for a new trial as to compensatory damages, or alternatively, a new trial on all the issues.<sup>1320</sup> Conversely, the EEOC moved for injunctive relief.<sup>1321</sup>

To obtain punitive damages, the plaintiff must demonstrate that the defendant acted with malice or reckless indifference as to the plaintiff’s federally protected rights.<sup>1322</sup> For such damages to be awarded against an employer for its employee’s actions, “the employee must have been employed in a managerial capacity and have acted in the scope of his or her employment.”<sup>1323</sup> The employer can avoid liability where it makes a good-faith effort to comply with Title VII.<sup>1324</sup>

1306 *Id.* at \*25.

1307 *Id.*

1308 *Id.* at \*\*26-30.

1309 *Id.* at \*30.

1310 *Id.* (quoting *Equal Emp. Opportunity Comm’n v. United Health Programs of Am., Inc.*, 350 F. Supp. 3d 199 (E.D.N.Y. 2018) (internal citations omitted).

1311 *Id.* at \*31 (quoting *EEOC v. KarenKim, Inc.*, 698 F. 3d 92 (2d Cir. 2012)) (internal citations omitted).

1312 *Id.*

1313 *Id.* at \*\*31-32.

1314 *Id.* at \*\*36-37 (quoting *Waldman Pub. Corp. v. Landoll, Inc.*, 43 F. 3d 775 (2d Cir. 1994)) (internal citations omitted).

1315 *Id.* at \*\*38-49.

1316 *Id.* at \*\*49, 54.

1317 *Id.* at \*\*54-55.

1318 *EEOC v. Skywest Airlines, Inc.*, 2025 U.S. Dist. LEXIS 38265, at \*1 (N.D. Tex. Mar. 4, 2024).

1319 *Id.* at \*2.

1320 *Id.* at \*1.

1321 *Id.*

1322 *Id.* at \*8.

1323 *Id.*

1324 *Id.* at \*\*8-9.

The court denied the defendant's renewed motion for judgment as a matter of law in this case because there was sufficient evidence to demonstrate that a managerial employee of the defendant acted with malice or reckless indifference for the intervenor-plaintiff's federally protected rights, and that the defendant did not make a good-faith effort to comply with the requirements of Title VII.<sup>1325</sup>

A new trial may be granted "when it is necessary to do so to prevent an injustice."<sup>1326</sup> A court may grant a new trial where it determines that the trial was unfair, the verdict was against the weight of the evidence, or prejudicial error occurred during the trial.<sup>1327</sup> The court rejected the defendant's argument that there was prejudicial error in the admission of four EEOC exhibits because the exhibits were use for a permissible purpose and thereby not prejudicial.<sup>1328</sup> Further, the defendant sought a new trial based on compensatory damages and claimed that the court's rejection of the defendant's requested instruction on the mitigation of damages issue resulted in prejudice.<sup>1329</sup> The court emphasized that the charging party had no duty to mitigate her emotional harm, thus the refusal to provide the instruction was not erroneous.<sup>1330</sup> Accordingly, the court denied the defendant's motion for a new trial.<sup>1331</sup>

Where a court finds the defendant intentionally engaged in unlawful employment practices, the court may order affirmative actions or enjoin the defendant from engaging in such unlawful employment practices.<sup>1332</sup> The court found that the defendant did not establish by clear and convincing evidence that there was no reasonable probability that it will violate Title VII in the future and thus the court granted injunctive relief for a period of three years and provided a corresponding amended judgment.<sup>1333</sup>

The amended judgment provides that the defendant and its officers, agents, employees, attorneys, and all persons involved with the defendant who have actual notice of the amended judgment: (a) are enjoined from subjecting Parts and Maintenance Department employees to a hostile work environment on the basis of sex; (b) must create and distribute a protocol, with instructions provided by the court, to effectively respond to harassment and discrimination; (c) must conduct an annual one-hour training, covering topics provided by the court, for employees in one of the defendant's locations; (d) must conduct an annual two-hour training for the Parts and Maintenance Employee Relations Manager; (e) must post a notice regarding Title VII protections in one of the defendant's Parts and Maintenance Department locations and provide employees with a copy of such; and (f) must notify the EEOC of any complaint of sexual harassment at one of the defendant's Parts and Maintenance Department locations within 30 days of receipt of such complaint.<sup>1334</sup>

## L. Remedies

There were a few noteworthy decisions on the topic of remedies in FY 2025, including several involving punitive damages and requests for injunctive relief.

Following a jury trial and entry of judgment in favor of the EEOC and intervenor-plaintiff, the defendant in *EEOC v. Skywest Airlines, Inc.* moved for judgment as a matter of law on punitive damages. Defendant also moved for a new trial on compensatory damages, or, in the alternative, for a new trial on all issues. The EEOC moved for injunctive relief. The court denied the defendant's motion and granted in part and denied in part the EEOC's motion.<sup>1335</sup> The case alleged hostile work environment and retaliation claims, and the court granted summary judgment, dismissing part of the plaintiff's retaliation claim. The jury awarded the EEOC and intervenor-plaintiff \$170,000 in past and future compensatory damages, and \$2 million in punitive damages, which was reduced to \$130,000 to comply with the statutory cap on the hostile work environment and remaining retaliation claims.<sup>1336</sup>

---

<sup>1325</sup> *Id.* at \*\*8-16.

<sup>1326</sup> *Id.* at \*16 (quoting *Barrow v. Greenville Indep. Sch. Dist.*, 2005 U.S. Dist. LEXIS 16043 (N.D. Tex. Aug. 5, 2005)) (internal citations omitted).

<sup>1327</sup> *Id.*

<sup>1328</sup> *Id.* at \*\*17-19.

<sup>1329</sup> *Id.* at \*17.

<sup>1330</sup> *Id.* at \*21.

<sup>1331</sup> *Id.*

<sup>1332</sup> *Id.* at \*22.

<sup>1333</sup> *Id.* at \*\*25-27.

<sup>1334</sup> *Id.* at \*\*28-31.

<sup>1335</sup> *EEOC v. Skywest Airlines, Inc.*, 2025 U.S. Dist. LEXIS 38265, at \*1 (N.D. Tex. Mar. 4, 2025).

<sup>1336</sup> *Id.* at \*2.

The defendant filed a renewed motion for judgment as a matter of law on the ground that the plaintiffs were not entitled to recover punitive damages. Notably, an employer can avoid liability for an employee's discriminatory acts where it "has undertaken [] good faith efforts at Title VII compliance."<sup>1337</sup> Here, however, the court viewed the evidence in the light most favorable to the jury verdict and found the defendant had not done so. The court found there was legally sufficient evidence for a reasonable jury to have found that defendant's employee acted with malice or reckless indifference to the intervenor-plaintiff's right to be free from working in a hostile environment, including because the employee had received training on defendant's sexual harassment policy, which makes clear discrimination based on a protected characteristic violates federal law.<sup>1338</sup> Accordingly, the court denied the motion.<sup>1339</sup>

The defendant also filed a motion for new trial based on two alleged prejudicial errors. The defendant first contended it was prejudiced when, over a hearsay objection, the court admitted four EEOC exhibits consisting of text messages between the intervenor-plaintiff and her family and friends regarding her experiences working for the defendant. The court, however, concluded the admission of the exhibits was not prejudicial error warranting a new trial and they were offered for a permissible non-hearsay purpose.<sup>1340</sup>

Although the defendant argued it was prejudiced when the court rejected its requested instruction on mitigation of damages, the court found the proposed instruction was incorrect as a matter of law because it assumed intervenor-plaintiff had a duty to mitigate her emotional harm. As such, the court's refusal to give this instruction was not error, and the court denied the defendant's request for a new trial.<sup>1341</sup>

Finally, the EEOC filed an amended motion for injunctive relief. The court can enjoin a defendant from engaging in unlawful employment practices or other such affirmative action as is appropriate if the court finds the defendant intentionally engaged in an unlawful employment practice.<sup>1342</sup> Although issuance of an injunction rests primarily in the informed discretion of the district court,<sup>1343</sup> "absent clear and convincing proof of no reasonable probability of further noncompliance with the law, a grant of injunctive relief is mandatory."<sup>1344</sup> The parties did not dispute the jury's finding the defendant intentionally engaged in an unlawful employment practice. Rather, they disputed whether an injunction should be mandatory because the defendant had not established by clear and convincing evidence there was no reasonable probability it would violate Title VII in the future and, if so, whether the requested injunction was appropriate in scope.<sup>1345</sup> The court concluded the defendant did not meet its burden to establish by clear and convincing evidence there is no reasonable probability it will violate Title VII in the future.<sup>1346</sup> As such, it enjoined the defendant from subjecting any Parts or Maintenance Department employees to a hostile work environment on the basis of sex; directed the defendant to create and distribute a protocol for effectively responding to claim of alleged discrimination and harassment; ordered the defendant to conduct one hour of annual training for all employees at the location at issue, and two hours of annual training for the Employee Relations Manager assigned to the defendant's Parts and Maintenance Department; directed the defendant to post a notice explaining the protections of Title VII in the Parts and Maintenance Department and provide each employee a copy; and ordered the defendant to notify the EEOC within 30 days of receipt of any complaint of alleged sexual harassment in the location's Parts and Maintenance Department. These measures were ordered to remain in place for three years, instead of five years as originally requested.<sup>1347</sup>

In *EEOC v. McLane/Eastern, Inc.*, the EEOC brought an action on behalf of a charging party and against the defendant, asserting a claim for disability discrimination under the ADA.<sup>1348</sup> The jury entered a verdict in favor of the plaintiff, and the defendant filed a motion for judgment as a matter of law pursuant to Fed. R. Civ. P. Rule 50(b),

<sup>1337</sup> *Kolstad v. Am. Dental Ass'n*, 527 U.S. 526, 542-43 (1999).

<sup>1338</sup> *Id.* at \*\*6, 11-12.

<sup>1339</sup> *Id.* at \*16.

<sup>1340</sup> *Id.* at \*\*16-19.

<sup>1341</sup> *Id.* at \*\*17-21.

<sup>1342</sup> *Id.* at \*\* 21-22, citing 42 U.S.C. § 2000e-5(g)(1).

<sup>1343</sup> *Id.* at \*22 citing *Marshall v. Goodyear Tire & Rubber Co.*, 554 F.2d 730, 733 (5th Cir. 1977).

<sup>1344</sup> *Id.*, quoting *EEOC v. Fenyves & Nerenberg, M.D.P.A.*, 1999 U.S. Dist. LEXIS 2893, 1999 WL 134279, at \*7 (Mar. 9, 1999), citing *James v. Stockham Valves & Fittings Co.*, 559 F.2d 310, 354 (5th Cir. 1977).

<sup>1345</sup> *Id.* at \*\*22-23.

<sup>1346</sup> *Id.* at \*\*24-25.

<sup>1347</sup> *Id.* at \*\*26-27.

<sup>1348</sup> *United States EEOC v. McLane/Eastern, Inc.*, 2024 U.S. Dist. LEXIS 229073, at \*1 (N.D.N.Y. Dec. 18, 2024).

or for new trial or to vacate or remit the jury's damages awards pursuant to Fed. R. Civ. P. 59. Plaintiff EEOC also moved for equitable and injunctive relief.<sup>1349</sup>

At the close of the plaintiff's case in chief, the defendant moved for judgment as a matter of law, arguing the EEOC failed to establish the charging party was not interviewed or hired because of her disability. The court denied the motion and submitted the case to the jury, which found for the EEOC and determined the charging party suffered damages as result of the defendant's discrimination and awarded her \$25,000 in lost wages and benefits, \$150,000 in nonpecuniary damages, and \$1,500,000 in punitive damages against the defendant which was reduced to \$150,000.<sup>1350</sup>

Under Rule 50, a district court may grant a motion for judgment as a matter of law if "a reasonable jury would not have a legally sufficient basis to find for the party" on a certain issue and "a claim or defense . . . can be maintained or defeated only with a favorable finding on that issue." If such a motion is made and the court does not grant it prior to submission of the case to the jury, "the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion" upon its renewal after trial.<sup>1351</sup> "In ruling on the renewed motion, the court may: (1) allow judgment on the verdict, if the jury returned a verdict; (2) order a new trial; or (3) direct the entry of judgment as a matter of law."<sup>1352</sup> A Rule 50(b) motion may only be granted if "there exists such a complete absence of evidence supporting the verdict that the jury's findings could only have been the result of sheer surmise and conjecture, or the evidence in favor of the movant is so overwhelming that reasonable and fair minded [persons] could not arrive at a verdict against [it]."<sup>1353</sup>

In assessing the sufficiency of evidence to support a jury verdict, a court must view the record in the light most favorable to the nonmoving party, assuming all reasonable inferences were drawn and credibility differences found in its favor.<sup>1354</sup> The defendant argued the plaintiff failed to establish the defendant "failed to interview or hire [charging party] because of her disability."<sup>1355</sup> The court, however, denied the defendant's motion for judgment as a matter of law because the evidence at trial provided a legally sufficient basis for the jury's verdict against the defendant.<sup>1356</sup>

Pursuant to Fed. R. Civ. P. R. 59(a), a court may "grant a new trial . . . for any reason for which a new trial has heretofore been granted in an action at law in federal court." Fed. R. Civ. P. Rule 59(a).<sup>1357</sup> The court must consider whether "the jury has reached a seriously erroneous result or [its] verdict is a miscarriage of justice."<sup>1358</sup> The defendant argued "the jury's total award of compensatory and punitive damages totaling \$1.65 million exceeds the applicable statutory limit," because compensatory damages awarded . . . and the amount of punitive damages awarded under this section, shall not exceed [] \$300,000" for a defendant "who has more than 500 employees in each of 20 or more calendar weeks in the current or preceding calendar year." The court agreed with this and sought to determine whether further reduction below the statutory cap was appropriate.<sup>1359</sup> The defendant asserted the award of \$150,000 in "nonpecuniary damages related to [charging party's] emotional distress is excessive and must be reduced accordingly." In particular, the charging party testified she had experienced some of her symptoms prior to her rejection from the defendant and did not offer any evidence of medical treatment or testimony from a medical provider.<sup>1360</sup> The court reviewed awards for garden variety emotional distress in similar cases and determined the \$150,000 award did not shock the conscience and upheld the award.<sup>1361</sup>

The defendant also contended the plaintiff "failed to submit evidence to support an award of punitive damages."<sup>1362</sup> In reviewing a jury's award of punitive damages, the court is guided by three factors identified by the United States Supreme Court in *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 575 (1996): "(1) the degree of

<sup>1349</sup> *Id.*

<sup>1350</sup> *Id.* at \*\*2, 25.

<sup>1351</sup> *McLane/Eastern, Inc.*, 2024 U.S. Dist. LEXIS 229073, at \*3.

<sup>1352</sup> *Id.*

<sup>1353</sup> *Id.* at \*\*3-4, quoting *Tepperwien v. Entergy Nuclear Operations, Inc.*, 663 F.3d 556, 567 (2d Cir. 2011).

<sup>1354</sup> *Id.* at \*4, quoting *Advance Pharm., Inc. v. United States*, 391 F.3d 377, 390 (2nd Cir. 2004).

<sup>1355</sup> *Id.* at \*5.

<sup>1356</sup> *Id.* at \*10.

<sup>1357</sup> *McLane/Eastern, Inc.*, 2024 U.S. Dist. LEXIS 229073, at \*11.

<sup>1358</sup> *Id.*, quoting *Stampf v. Long Island R.R.*, 761 F.3d 192, 202 (2d Cir. 2014).

<sup>1359</sup> *Id.* at \*13.

<sup>1360</sup> *Id.* at \*\*14-15.

<sup>1361</sup> *Id.* at \*\*15-16, 20.

<sup>1362</sup> *Id.* at \*21.

reprehensibility of the defendant’s conduct, (2) the ratio of punitive damages to the actual harm inflicted, and (3) the difference between this remedy and the . . . penalties authorized or imposed in comparable cases.”<sup>1363</sup> The court determined the *Gore* factors supported the jury’s award of punitive damages, and that the award of \$150,000 in punitive damages did not shock the judicial conscience. Accordingly, the court declined to grant the defendant’s motion on the issue of punitive damages.<sup>1364</sup>

Finally, the court addressed the EEOC’s motion for injunctive relief to deter and prevent the defendant from engaging in future disability discrimination.<sup>1365</sup> The court found permanent injunctive relief was warranted in this case, as Human Resources employees did not receive training on the ADA, the defendant’s existing policies and procedures were insufficient to prevent discrimination, the jury found the defendant discriminated against the charging party, and most of the relief requested merely required the defendant to take steps to comply with existing federal laws. The court noted any permanent relief must be “narrowly tailored to fit specific legal violations” without imposing “unnecessary burdens on lawful activity.”<sup>1366</sup> Accordingly, the court reviewed the scope of the remedial order and approved the EEOC’s request to enjoin the defendant from discriminating against applicants on the basis of disability – an “obey the law” type order generally disfavored by courts.<sup>1367</sup> Because the conduct in this case took place six years ago and involved only one applicant, the court found a two-year, rather than the requested five-year injunction on the narrow terms at issue appropriately served the public interest in preventing future disability discrimination in interviewing and hiring.<sup>1368</sup> The EEOC also asked the court to order revisions to the defendant’s anti-discrimination policies . . . and require it to provide paper copies of the revised and EEOC-approved anti-discrimination policies to its employees annually as well as to new employees within seven days of hire.<sup>1369</sup> The court granted certain of these requests and declined to order the defendant to remove “any language referring to the issuance of discipline for reporting ‘false claims’” as beyond the scope of the legal violations at issue in this case since there were no allegations of retaliation. Further, there was no evidence the defendant would delete additions to its policies after they were made, particularly because the amendments only served to aid the defendant’s compliance with existing laws, and the defendant would only need to provide paper copies of the revised sections of the policies to its employees at the location at issue.<sup>1370</sup>

The EEOC also requested the defendant be required to provide anti-discrimination training to its employees concerning disability discrimination and employee rights under the ADA.<sup>1371</sup> The court granted the request in part, limiting it to the location at issue, and only to any individual responsible for responding to or investigating internal or external complaints of discrimination or retaliation from location applicants or employees.<sup>1372</sup> Further, because the EEOC has the final say on the defendant’s choice of trainer, the court did not require the defendant to provide the EEOC with “proposed written materials and a training outline for approval.”<sup>1373</sup> The EEOC also requested the defendant be required “to post a notice informing its employees that the company is subject to an injunction” at all of its locations, but the court limited the posting requirement to the location at issue. The court noted the posting should not include the amount of the jury award as it would likely be more confusing than informative to employees.<sup>1374</sup>

The court also denied the EEOC’s request that the defendant be required to include a statement to job applicants expressing the defendant’s commitment to equal opportunity in all aspects of employment and encouraging all applicants to apply, including those with disabilities.<sup>1375</sup> The court found the defendant’s job postings already included a statement that provides all “qualified applicants will receive consideration for employment, without regard to . . . disability” and the defendant’s website contained a statement that the defendant “will provide reasonable accommodations to applicants with disabilities.”<sup>1376</sup>

<sup>1363</sup> *Id.* at \*23; *Stampf v. The Long Island Railroad Company*, 761 F.3d 192, 209, quoting *Gore*, 517 U.S. at 575.

<sup>1364</sup> *Id.* at \*30.

<sup>1365</sup> *Id.* at \*\*31-32.

<sup>1366</sup> *Id.* at \*37.

<sup>1367</sup> *Id.* at \*\*37-38.

<sup>1368</sup> *Id.* at \*38.

<sup>1369</sup> *Id.* at \*39.

<sup>1370</sup> *Id.* at \*\*41-42.

<sup>1371</sup> *Id.* at \*42.

<sup>1372</sup> *Id.* at \*43.

<sup>1373</sup> *Id.* at \*\*44-45.

<sup>1374</sup> *Id.* at \*\*45-46.

<sup>1375</sup> *Id.*

<sup>1376</sup> *Id.* at \*\*46-47.

The EEOC also requested that the defendant “be required to take steps to recruit deaf and hearing-impaired individuals for employment” including submitting its job postings for the location at issue and conducting at least two outreach events per year with organizations serving that community.” The court found the request to be overly broad and not narrowly tailored to address the discriminatory conduct involved in the case and denied such relief.<sup>1377</sup> The EEOC further requested that the defendant be required to provide the EEOC with semi-annual reports . . . reflecting any complaints of disability discrimination received by the defendant from applicants and employees. The court ordered this requested relief for two years, not the requested five, explaining that it was narrowly tailored and not onerous, but denied the EEOC’s additional request that the defendant “begin to log in its Applicant Tracking System all phone calls from applicants to” its facility at issue as likely to be overbroad and burdensome.<sup>1378</sup>

Finally, the EEOC asked the court to award the charging party “an additional amount to account for the negative tax consequences that will result from the jury’s awards,” specifically, a “tax gross-up” that accounts for charging party’s increased tax liability attributable to receiving her backpay award as part of a lump sum instead of as wages in 2018.<sup>1379</sup> The court granted this relief, finding it was necessary to make the charging party whole. An award of post-judgment interest was also provided to plaintiff.<sup>1380</sup>

*EEOC v. Gypsum Express Ltd.* provides guidance regarding when punitive damages should be examined in a bifurcated case, as there is a split of authority on the topic. In this opinion, the EEOC alleged that the defendant engaged in a pattern or practice of discrimination against female applicants for flatbed driver positions. It also alleged retaliatory and constructive discharge as to two individuals.<sup>1381</sup> The parties agreed in their Rule 26(f) report that trial and discovery should be bifurcated with pattern-or-practice liability established first, and then a second phase to resolve individual relief and related damages. They disagreed as to when punitive damages should be litigated, and punitive damages discovery conducted.<sup>1382</sup>

The magistrate noted a significant split of authority on the timing of punitive damages in other bifurcated trials and entered an order in line with an intra-district decision holding that the second phase of discovery and trial was more appropriate for the issue of punitive damages.<sup>1383</sup> The EEOC objected to the scheduling order, arguing the decision on which the magistrate relied did not involve individual claims that diverged from the pattern-or-practice claim. It also argued that delaying punitive damages until Phase II was an improper application of Fed. R. Civ. P. Rule 42(b).<sup>1384</sup> In response, the defendant argued that the EEOC’s objection should be denied because presenting punitive damages for the charging parties to the Phase I jury would prejudice the defendant. The defendant added that charging parties’ claims should, either prior to or after trial on the pattern-or-practice claim, be entirely bifurcated from the pattern-or-practice claim.<sup>1385</sup>

The magistrate determined that punitive damages should be examined in Phase II, acknowledging the EEOC’s concern that some inefficiency may occur when evidence from Phase I is duplicated in Phase II as a second jury would have to hear the charging parties’ individual claims to award punitive damages in Phase II. Presenting a claim for punitive damages on the charging parties’ individual claims to the same jury who will hear the pattern-or-practice claims presents risks of prejudice to the defendant and would likely be confusing to the jury. The magistrate explained that this concern “can be mitigated through careful management of the case and its resources,” and that the “possible prejudice [defendant] may face if these damages are assessed in Phase I” cannot be similarly mitigated with careful case management.<sup>1386</sup>

The decision whether to try issues separately is within the sound discretion of the court, and the scheduling order carefully accounted for these concerns and charted a path that balanced the EEOC’s concerns regarding delay with the risk that the defendant may be prejudiced by introducing the issue of punitive damages of any kind in Phase I. Accordingly, the EEOC’s objection was overruled and the magistrate’s order was not “clearly erroneous or contrary to law.”<sup>1387</sup>

<sup>1377</sup> *Id.* at \*47.

<sup>1378</sup> *Id.* at \*48.

<sup>1379</sup> *Id.* at \*\*49-50.

<sup>1380</sup> *Id.* at \*\*54-55.

<sup>1381</sup> *EEOC v. Gypsum Express Ltd.*, 2025 U.S. Dist. LEXIS 40120, at \*\*1-2 (D. Ky. Mar. 6, 2025).

<sup>1382</sup> *Id.* at \*2.

<sup>1383</sup> *Id.* at \*\*2-3.

<sup>1384</sup> *Id.* at \*3.

<sup>1385</sup> *Id.*

<sup>1386</sup> *Id.* at \*\*7-8.

<sup>1387</sup> *Id.* at \*8.

In addressing the defendant's argument in its response that the charging parties' individual claims should, either before or after trial on the pattern-or-practice claim, be entirely bifurcated from the pattern-or-practice claim, it was determined that there was a split on authority on the issue. The court, however, found the defendants' "response to" the order to be an attempt to backdoor untimely objections raised by the EEOC. Because the defendant did not object to the magistrate's order on the issue within 14 days, the court held that to the extent the defendant's "response" objects to trying the charging parties' individualized claims with pattern-or-practice claims, it is overruled.<sup>1388</sup>

The court's decision in *EEOC v. Key Management Partners, Inc.*, provided some insight into cases involving default judgments and damages. In this case, the EEOC sued the defendant on behalf of charging party for sexual harassment and retaliation in violation of Title VII. The complaint averred that the charging party was entitled to backpay, prejudgment interest, compensatory and punitive damages, and injunctive relief.<sup>1389</sup> The defendant answered, but refused to communicate or cooperate with its attorney during the discovery process. The defendant's attorney withdrew, and the defendant failed to obtain new counsel or cooperate further in the litigation. Accordingly, the clerk entered a default judgment against the defendant and the EEOC moved for a default judgment. The court entered an order denying the default judgment as to the harassment claim and granting it as to the retaliation claim. The court directed the EEOC to submit briefing and documentary evidence in support of its request for relief.<sup>1390</sup>

Damages stemming from a default judgment must be proven by a preponderance of the evidence.<sup>1391</sup> The well-pled allegations in a complaint as to liability are taken as true whereas the allegations as to damages are not, and the claimed damages must not be different in kind from, or exceed the amount demanded in the pleadings.<sup>1392</sup>

The court assessed whether the requested damages were supported by evidence. The EEOC requested specific amounts for lost wages, overtime, bonuses, paid time off, insurance benefits, and penalties, along with prejudgment interest on the same.<sup>1393</sup> The court exercised its discretion and found the charging party was entitled to lost wages and benefits as well as prejudgment interest on the amount awarded at Maryland's statutory interest rate of 6% compounded from the date of the termination to the date of the judgment.<sup>1394</sup> It also determined that the charging party was entitled to compensatory damages at the statutory cap of \$50,000 as the record established that charging party suffered demonstrable emotional distress, which was sufficiently articulated as required.<sup>1395</sup>

The requested injunctive relief was also granted.<sup>1396</sup> "Title VII gives federal courts broad authority to order injunctive relief when 'the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice.'" <sup>1397</sup> The court explained that injunctive relief is proper where the record does not suggest the discriminatory conduct has ended or where it is likely to recur, even where the victim no longer works for the defendant as long as the requested relief will confer benefits on persons other than the plaintiff.<sup>1398</sup> The defendant bears the "heavy" burden to show that "there is no reasonable expectation that the wrong will be repeated."<sup>1399</sup>

The defendant did not meet this burden as it did not provide training to employees on anti-discrimination laws, provide employees with assurances that they will be protected against retaliation for engaging in protected activity under Title VII. Further, the court noted that the primary offender remained the CEO of the company. These factors combined with the defendant's refusal to litigate the matter were found to well support the propriety of injunctive relief.<sup>1400</sup> The EEOC asked the court to enjoin the defendant for five years from retaliating against any employee for engaging in protected activity under Title VII, and to require the defendant to hire a third-party expert to

<sup>1388</sup> *Id.* at \*\*8-10.

<sup>1389</sup> *EEOC v. Key Mgmt. Partners, Inc.*, 2024 U.S. Dist. LEXIS 193230, at \*1 (D. Md. Oct. 24, 2024).

<sup>1390</sup> *Id.* at \*\*1-2.

<sup>1391</sup> *Id.* at \*2, citing Fed. R. Civ. P. 8(b)(6); *Trs. Of the Elec. Welfare Trust Fund v. MH Passa Elec. Contracting, Inc.*, 2009 U.S. Dist. LEXIS 2982951, at \*1 (D. Md. Sept. 14, 2009).

<sup>1392</sup> *Key Mgmt. Partners, Inc.*, 2024 U.S. Dist. LEXIS 193230, at \*\*2-3, citing Fed. R. Civ. P. 54(c); *Educ. Credit Mgmt. Corp. v. Optimum Welding*, 285 F.R.D. 371, 373-74 (D. Md. 2012).

<sup>1393</sup> *Id.* at \*3.

<sup>1394</sup> *Id.* at \*\*4-6.

<sup>1395</sup> *Id.* at \*\*7-8.

<sup>1396</sup> *Id.* at \*\*9-10.

<sup>1397</sup> *Id.* at \*8, quoting *Eller v. Prince George's Cty. Pub. Sch.'s*, 580 F. Supp. 3d 154, 182 (D. Md. 2022), citing 42 U.S.C. § 2000e-5(g).

<sup>1398</sup> *Id.*, citing *U.S. v. Gregory*, 871 F.2d 1239, 1246-47 (4th Cir. 1989); *Eller*, 580 F. Supp. 3d at 182; *EEOC v. Consol Energy, Inc.*, 151 F. Supp. 3d 699, 711 (N.D.W. Va. 2015).

<sup>1399</sup> *Id.*, citing *E.E.O.C. v. LA Weight Loss*, 509 F. Supp. 2d 527, 536 (D. Md. 2007), quoting *Lyons Partnership, L.P. v. Morris Costumes, Inc.*, 243 F.3d 789, 800 (4th Cir. 2001).

<sup>1400</sup> *Key Mgmt. Partners, Inc.*, 2024 U.S. Dist. LEXIS 193230, at \*9.

investigate any future Title VII violations, recommend curative action that the defendant must implement absent good cause shown, and review, implement and disseminate Title VII policies and procedures. The EEOC also asked the court to require the defendant to remove from charging party's personnel file any mention of performance-based termination and, in the future, neutrally respond to any reference requests.<sup>1401</sup> The court determined that given the defendant's past Title VII violations, the EEOC's requested relief was narrowly tailored to help eradicate the defendant's discriminatory practices and, therefore, the court granted the requested injunctive relief.<sup>1402</sup>

Finally, another FY 2025 decision highlights potential remedies that can be requested by parties or imposed by the court when frivolous, unsupported, or unrelated motions and requests are made in a civil action. In January 2025, pro se intervenor plaintiff filed dozens of motions related to allegations that various parties, including her neighbors, the Federal Bureau of Investigation, and numerous other government and private entities were engaged in a coordinated campaign of harassment against her. These were separate from her original employment discrimination claim against her former employer, the defendant.<sup>1403</sup> The quantity, length, and unrelatedness of motions filed by the intervenor plaintiff caused the defendant to file a request for filing restrictions, however, it was ultimately denied because the magistrate judge had already imposed similar restrictions that addressed the defendants' concerns and, the intervenor plaintiff had substantially complied with those restrictions. The order further warned her against filing frivolous motions.<sup>1404</sup>

The court denied the motions for temporary restraining orders because they did not relate to the underlying employment discrimination case or the defendant, but instead involved unrelated allegations of harassment. The court explained that motions for injunctive relief, such as a temporary restraining order or preliminary injunction, must show a connection between the injury claimed in the motion and the conduct asserted in the complaint. The intervenor plaintiff's motions for injunctive relief involved claims that the defendants and various other parties are "harassing" and "gangstalking" her, however, the allegations in the complaint involve workplace harassment claims she experienced when she worked at the defendant, which she left in 2010.<sup>1405</sup>

The intervenor plaintiff filed motions for clarification and reconsideration regarding summary judgment rulings, questioning the denial's basis, specifically regarding timeliness and the consideration of evidence. The court denied these motions because they were untimely and that she failed to show new evidence or clear error.<sup>1406</sup>

She also filed a motion to correct an entry on the docket, explaining entry No. 416 is a "response in opposition" to the defendants' motion to impose filing restrictions. The court granted this part of the motion and directed the clerk to update the docket sheet to correct this naming issue. The order denied the rest of the requested relief, which was to restrict docket entry 416 from the public docket. The document contained similar information to other unrestricted motions, and placing the document under restriction was not warranted.<sup>1407</sup>

Finally, the court granted the defendant's motion to strike the intervenor plaintiff's self-authored "expert witness report" because it was filed long after expert disclosure deadlines had passed and because the dramatic increase in claimed damages was based on implausible allegations unrelated to the underlying complaint.<sup>1408</sup>

## M. Settlements

There were a handful of EEOC decisions in FY 2025 addressing the review and approval of consent decrees.

In one FY 2025 decision, a New York federal court twice rejected the parties' proposed consent decree that would have reduced longstanding judicial oversight and other court-mandated obligations in a Title VII race discrimination case originally filed in 1971.<sup>1409</sup> The federal government claimed Local 580 of the International Association of Bridge, Structural, and Ornamental Ironworkers Local ("Local 580"), the Joint Apprentice-Journeyman Educational Fund of the Architectural Ornamental Iron Workers Local 580 (the "Fund"), and Allied Building Metal Industries

---

<sup>1401</sup> *Id.*

<sup>1402</sup> *Id.* at \*10.

<sup>1403</sup> *EEOC v. Jackson Nat'l Life Ins. Co.*, 2025 U.S. Dist. LEXIS 156878, \*\*1-2 (D. Colo. Aug. 13, 2025).

<sup>1404</sup> *Id.* at \*\*2, 15-16.

<sup>1405</sup> *Id.* at \*\*3-5.

<sup>1406</sup> *Id.* at \*\*5-6, 10.

<sup>1407</sup> *Id.* at \*\*10-11.

<sup>1408</sup> *Id.* at \*\*12-13.

<sup>1409</sup> *EEOC v. Int'l Association of Bridge, Structural and Ornamental Ironworkers Local 580*, 2024 U.S. Dist. LEXIS 202057, \*\*1-2 (S.D.N.Y. Nov. 6, 2024).

had engaged in unlawful employment practices based on race that resulted in disparities for Black and Hispanic union members.<sup>1410</sup>

In 1974, the EEOC was substituted as the plaintiff.<sup>1411</sup> In 1978, the parties entered into a consent judgment resolving the claims, which the New York district court approved.<sup>1412</sup> The consent judgment imposed permanent injunctions against defendants from discriminating on the basis of race and other protected criteria, benchmarks for minority membership goals in Local 580, and strict recordkeeping requirements.<sup>1413</sup> In 1987 and 1988, the court determined that Local 580 and the Fund failed to comply with the consent judgment, and defendants were held in contempt.<sup>1414</sup> Accordingly, the court entered several remedial orders to enforce compliance with the prior consent judgment and that imposed additional constraints including appointment of a special master to oversee and enforce compliance, creation of new rules related to job training and referrals, the development of an information tracking system, and increased recordkeeping requirements.<sup>1415</sup> In 1991, the federal court entered a third remedial order to try and reduce racial disparities in working hours and that also revised job referrals and requirements for Local 580's contractors.<sup>1416</sup> In 2011, the district court held that Local 580 was in contempt for failing to adhere to the court's directives for the job referral system.<sup>1417</sup>

In 2020, the EEOC and defendants jointly filed a proposed consent decree based on their shared belief that "circumstances ha[d] changed dramatically since the entry of the original Consent Judgment in 1978."<sup>1418</sup> The proposed consent decree would have replaced the district court's prior orders and reduced court oversight of the parties that was set to expire in three years.<sup>1419</sup> Furthermore, the proposed consent decree intended to reduce defendants' recordkeeping and reporting requirements and replace the special master with an EEO compliance officer for the remaining three years.<sup>1420</sup> The face of the proposed consent decree "explicitly stated that '[t]he EEOC is satisfied' with defendants' 'ongoing commitment . . . to Black and Hispanic workers' and declared that 'it is fair, reasonable, and in the public interest to modify and eventually to conclude oversight'" of defendants.<sup>1421</sup>

In 2022, the EEOC filed supplemental information in the record, including a report, EEOC forms soliciting information on racial discrimination from union members, an expert report concerning racial disparities in hiring and hours, and a declaration by Local 580's business manager regarding the union's efforts "to achieve proportionate working hours" for Black and Hispanic union members.<sup>1422</sup> While the court "was satisfied with defendants' outreach to Black and Hispanic members," it otherwise found that the EEOC's submissions failed to provide adequate information on union "members' employment opportunities and efforts by defendants to achieve equal hours."<sup>1423</sup> The court highlighted the fact that there was missing data, and no detailed accounting had been provided.<sup>1424</sup> As such, the district court rejected the parties' initial joint motion for the failure to provide adequate information.<sup>1425</sup>

In June 2023, the parties filed another joint motion that requested the court's approval of the proposed consent decree.<sup>1426</sup> However, on November 6, 2024, the district court denied the parties' second joint motion for entry of the proposed consent decree, finding that it would not be fair and reasonable and would harm the public interest.<sup>1427</sup> The court's analysis recognized the applicable standard for deciding whether to enter consent decrees, explaining that at a minimum, the court must find that a proposed consent decree is "fair and reasonable" before it can be approved.<sup>1428</sup> In other words, the reviewing court should determine that the proposed consent decree is

<sup>1410</sup> *Id.* at \*\*1-29.

<sup>1411</sup> *Id.* at \*1.

<sup>1412</sup> *Id.* at \*2.

<sup>1413</sup> *Id.*

<sup>1414</sup> *Id.* at \*\*2-3.

<sup>1415</sup> *Id.* at \*3.

<sup>1416</sup> *Id.*

<sup>1417</sup> *Id.*

<sup>1418</sup> *Id.* at \*\*3-4.

<sup>1419</sup> *Id.* at \*4.

<sup>1420</sup> *Id.*

<sup>1421</sup> *Id.*

<sup>1422</sup> *Id.*

<sup>1423</sup> *Id.*

<sup>1424</sup> *Id.* at \*6.

<sup>1425</sup> *Id.*

<sup>1426</sup> *Id.*

<sup>1427</sup> *Id.* at \*\*9-29.

<sup>1428</sup> *Id.* at \*7 (citing *S.E.C. v. Citigroup Glob. Mkts. Inc.*, 752 F.3d 285, 294 (2d Cir. 2014)).

“legal, clear, reflects a resolution of the actual claims in the complaint, and is not tainted by improper collusion or corruption.”<sup>1429</sup> Furthermore, when a proposed consent decree includes injunctive relief, the reviewing court should also ensure that it would not be against the public interest to enter the proposed consent decree.<sup>1430</sup>

Against this backdrop, the district court denied the parties’ first joint motion for entry of a proposed consent decree based on several continuing deficiencies—particularly, missing data on underlying employment opportunities for Black and Hispanic union members and no detailed accounting of the parties’ efforts to achieve proportionate working hours.<sup>1431</sup> The parties then failed a second time to produce the data requested by the court with their second joint motion for approval of the consent decree.<sup>1432</sup> The court’s orders and judgments required defendants to collect data “to establish a precise record of the hiring experience and hours worked of Local 580 members by race and to ensure that they are providing Black and Hispanic members with equal employment opportunities.”<sup>1433</sup> However, Local 580 failed to comply with court-mandated recordkeeping obligations.<sup>1434</sup> The court further explained that limited referral data from June 2018 to 2019 was insufficient to support the conclusion that defendants “were no longer discriminating against Black and Hispanic union member and now are committed to providing them with equal employment opportunities.”<sup>1435</sup>

Given the missing data, the court found that the parties did not have sufficient grounds for seeking reconsideration of the proposed consent decree, and it was not persuaded by the parties’ attempt to shift responsibility for the missing data to the contractors and the special master.<sup>1436</sup> Indeed, the court found that the special master’s supervisory authority over Local 580 failed to “relieve the union of its recordkeeping and data collection requirements.”<sup>1437</sup> As to the fairness analysis, the court found that “defendants’ failure to keep basic records and collect data” as required “weighs heavily” against entering the proposed consent decree and terminating defendants of their obligations.<sup>1438</sup> In the court’s view “. . . it would be neither fair nor reasonable . . . to enter a new consent decree leading to terminating the defendants’ obligations.”<sup>1439</sup> In this regard, “the missing data and records are critical to determining whether Local 580 can be trusted to treat its Black and Hispanic members fairly without court supervision. Local 580’s apparently persistent indifference to its court-mandated recordkeeping requirements demonstrates that it cannot be trusted to protect its minority workers, and the Court will not reward it for such blatant disregard of its obligations.”<sup>1440</sup>

Without proof of necessary actions taken by defendant to ameliorate racial disparities, the court held that “it would not be fair or reasonable to enter into a new order which reduces the obligations imposed upon defendants to eliminate racial discrimination.”<sup>1441</sup> The court pointed out there being a report in the record with “statistical proof of racial disparities among union members in hours worked” yet “no proof of action taken by defendants to ameliorate those disparities.”<sup>1442</sup> Thus, the court refused to enter the proposed consent decree that provided “a less stringent regime with the aim of winding down any and all supervision in only three years.”<sup>1443</sup>

In addition to the court’s finding that the proposed consent decree was not fair and reasonable, the court also held that it would harm the public interest.<sup>1444</sup> Again, the court’s analysis highlighted defendant’s failure to comply with recordkeeping obligations and pattern of the failure to take action in compliance with the court’s directives.<sup>1445</sup> The court was clear that “Defendants repeatedly have demonstrated . . . that they are unwilling to take action necessary to eradicate racial disparities among their members and to adhere to basic court-mandated obligations, even after more than fifty years of contempt findings, complaints, and judicial admonishments.”<sup>1446</sup> Therefore,

<sup>1429</sup> *Id.* (citation omitted).

<sup>1430</sup> *Id.* (citation omitted).

<sup>1431</sup> *Id.* at \*\*9-10.

<sup>1432</sup> *Id.* at \*10.

<sup>1433</sup> *Id.* (internal quotations altered).

<sup>1434</sup> *Id.* at \*\*10-13.

<sup>1435</sup> *Id.* at \*\*13-14.

<sup>1436</sup> *Id.* at \*15.

<sup>1437</sup> *Id.* at \*\*15-16.

<sup>1438</sup> *Id.* at \*\*16-17.

<sup>1439</sup> *Id.*

<sup>1440</sup> *Id.* at \*17.

<sup>1441</sup> *Id.* at \*23.

<sup>1442</sup> *Id.*

<sup>1443</sup> *Id.* at \*24.

<sup>1444</sup> *Id.*

<sup>1445</sup> *Id.* at \*\*24-25.

<sup>1446</sup> *Id.*

the federal court determined the proposed consent decree that was designed to “further reduce the recordkeeping obligations of known violators not only would reward their recent actions, but would make it even more difficult in the future to ensure that defendants’ Black and Hispanic members were receiving equal employment opportunities and treatment.”<sup>1447</sup> Thus, the court held that the proposed consent decree “would actively harm the public interest in monitoring and eliminating discrimination and in enforcing compliance with judicial orders.”<sup>1448</sup>

Finally, the court in the Southern District of New York was not persuaded by the parties’ argument that the EEOC’s position should be given “significant weight” in favor of the entry of the consent decree.<sup>1449</sup> To this end, the court stated that it was “required to make its own independent determination of the public interest, rather than defer outright to an executive agency whose judgments may vary from administration to administration.”<sup>1450</sup> What’s more, “. . . despite repeated claims that the need for judicial oversight is gone, the Parties have admitted to continued and persistent racial disparities.”<sup>1451</sup> Thus, the proposed consent decree was denied a second time.<sup>1452</sup>

By contrast, in a case filed in Maryland, the district court approved a proposed consent decree submitted jointly by the EEOC and defendant at an early stage of the litigation and after the parties had conducted limited informal discovery for purposes of settlement discussions.<sup>1453</sup> The operative analysis for the court in deciding to enter a proposed consent decree turns on whether it “‘is fair, adequate, and reasonable’ and ‘is not illegal, a product of collusion, or against the public interest.’”<sup>1454</sup>

The fairness and adequacy of the proposed consent decree “involves an assessment of the strength of the [EEOC’s] case.”<sup>1455</sup> The “assessment does not require the court to conduct ‘a trial or a rehearsal of the trial,’ [but] the court must take the necessary steps to ensure that it is able to reach ‘an informed, just and reasoned decision.’”<sup>1456</sup> Moreover, the court also considers “the extent of discovery that has taken place, the stage of the proceedings, the want of collusion in the settlement and the experience of [the EEOC] counsel who negotiated the settlement.”<sup>1457</sup> While the court retains “some level of judicial scrutiny, the court ‘should be guided by the general principle that settlements are encouraged.’”<sup>1458</sup>

After the Maryland district court reviewed the pleadings and the proposed consent decree, it held that the terms of the proposed consent decree were fair, adequate, and reasonable and not illegal or a product of collusion, and not against the public interest.<sup>1459</sup> As such, the court approved the parties’ proposed consent decree.<sup>1460</sup>

In another case in the District of Maryland, the federal court approved a proposed consent decree filed jointly by the parties after about 18 months of litigation, where the parties had substantially completed discovery, participated in a settlement conference and prepared and filed dispositive motions before seeking a stay and negotiating the proposed consent decree over several weeks.<sup>1461</sup> The court first recognized that “consent decrees have a dual nature, carrying elements ‘of both judgment and contract.’”<sup>1462</sup> On one hand, a consent decree “‘embodies an agreement of the parties and thus in some respects is contractual in nature.’ . . . But it is also ‘an agreement that the parties desire and expect will be reflected in, and be enforceable as, a judicial decree.’”<sup>1463</sup> As previously discussed, when considering whether to enter a proposed consent decree, the reviewing court “must satisfy itself that the agreement ‘is fair, adequate, and reasonable’ and ‘is not illegal, a product of collusion, or against the public interest.’”<sup>1464</sup>

1447 *Id.* at \*26.

1448 *Id.*

1449 *Id.* at \*\*26-27.

1450 *Id.* at \*27.

1451 *Id.* at \*28.

1452 *Id.* at \*29.

1453 *EEOC v. Verizon Maryland LLC*, 2024 U.S. Dist. LEXIS 202735, \*1 (D. Md. Nov. 7, 2024).

1454 See at \*\*1-2 (citing *United States v. North Carolina*, 180 F.3d 574, 581 (4th Cir. 1999) (quoting *United States v. Colorado*, 937 F.2d 505, 509 (10th Cir. 1991)).

1455 *Id.* at \*2 (citation omitted).

1456 *Id.* (citation omitted).

1457 *Id.* (citation omitted).

1458 *Id.* (citation omitted).

1459 *Id.* at \*\*2-3.

1460 *Id.* at \*3.

1461 *EEOC v. Thomas B. Finan Center*, 2024 U.S. Dist. LEXIS 215759, \*\*1-3 (D. Md. Nov. 27, 2024).

1462 *Id.* at \*1 (citing *League of Women Voters of Virginia v. Virginia State Bd. of Elections*, 481 F. Supp. 3d 580, 586-87 (W.D. Va. 2020); *Szaller v. Am. Nat. Red Cross*, 293 F.3d 148, 152 (4th Cir. 2002)).

1463 *Id.* (citing *Texas v. New Mexico*, 602 U.S. 943, 144 S. Ct. 1756, 1764 (2024); *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 378 (1992)).

1464 *Id.* (citing *United States v. North Carolina*, 180 F.3d 574, 581 (4th Cir. 1999); *United States v. Colorado*, 937 F.2d 505, 509 (10th Cir. 1991)).

Indeed, determining the fairness and adequacy of the proposed consent decree considers the strength of the EEOC's case.<sup>1465</sup> However, the “assessment does not require the court to conduct ‘a trial or a rehearsal of the trial,’ [but] the court must take the necessary steps to ensure that it is able to reach ‘an informed, just and reasoned decision.’”<sup>1466</sup> Additionally, the court should “consider the extent of discovery that has taken place, the stage of the proceedings, the want of collusion in the settlement and the experience of plaintiffs’ counsel who negotiated the settlement.”<sup>1467</sup> Although the court retains “some level of judicial scrutiny, the court ‘should be guided by the general principle that settlements are encouraged.’”<sup>1468</sup>

After the district court reviewed the parties’ proposed consent decree and relevant pleadings, it held that the consent decree would be approved.<sup>1469</sup> In doing so, the court found that the parties’ proposed consent decree was fair, adequate, and reflected a reasonable settlement of claims and issues raised in the case.<sup>1470</sup> Finally, the court found that the terms were not against the public interest, nor illegal, and the court had not been presented with any information that suggested the terms of the consent decree was a product of collusion.<sup>1471</sup>

A district court in Minnesota approved the parties’ proposed consent decree in a case filed by the EEOC against the defendant, alleging a hostile work environment created by a manager for a group of female employees due to the manager’s comments about their bodies and propositioning one of them for sex.<sup>1472</sup> After the parties reached a settlement, they jointly requested for the court to enter a proposed consent decree that permanently enjoined defendant from engaging in employment practices that violate Title VII, that required defendant to adopt policies and procedures to more appropriately prevent and address any future misconduct and to pay a sum of \$140,000, and that would remain in effect for four years.<sup>1473</sup>

The court recognized that a proposed consent decree “should spring from—and serve to resolve—a dispute within the court’s subject-matter jurisdiction; come within the general scope of the case from the pleadings; and[] further the objectives of the law on which the complaint was based.”<sup>1474</sup> In reviewing a proposed consent decree, the court focused on the elements of “procedural fairness, reasonableness, and legal adequacy.”<sup>1475</sup> As to procedural fairness, the court will review whether the negotiations “have been ‘in good faith and at arm’s length.’”<sup>1476</sup> Indeed, “[t]he ‘candor, openness, and bargaining balance’ of the negotiations are factors to consider, but what matters in the end is whether there was ‘fair play.’”<sup>1477</sup> In this case, the court noted that there was no indication that the proposed consent decree was anything other than the result of fair play because both sides were represented by counsel, and the negotiations were at arm’s length.<sup>1478</sup> Accordingly, the court held the consent decree was the result of procedural fairness.<sup>1479</sup>

As to reasonableness, or substantive fairness, the court reviews whether (1) “the consent decree ‘springs from and serves to resolve a dispute within the court’s subject-matter jurisdiction,’” and (2) “whether the relief it provides ‘comes within the general scope of the case made by the pleadings’ and ‘furthers the objectives of the law upon which the complaint was based.’”<sup>1480</sup> The governing law in the case was under Title VII, which “raises a federal question that falls within the district court’s subject-matter jurisdiction.”<sup>1481</sup> The Minnesota court held that the proposed consent decree served the purpose of Title VII because it proposes a set of conditions that defendant was required to follow to try and prevent future violations.<sup>1482</sup> For example, the consent decree required

<sup>1465</sup> *Id.* at \*\*1-2 (citation omitted).

<sup>1466</sup> *Id.* at \*2 (citation omitted).

<sup>1467</sup> *Id.* (citation omitted).

<sup>1468</sup> *Id.* (citation omitted).

<sup>1469</sup> *Id.* at \*3.

<sup>1470</sup> *Id.*

<sup>1471</sup> *Id.*

<sup>1472</sup> *EEOC v. St. Cloud Area Family YMCA*, 2025 U.S. Dist. LEXIS 85869, \*\*1-2 (D. Minn. May 6, 2025).

<sup>1473</sup> *Id.*

<sup>1474</sup> *Id.* at \*3 (quoting *EEOC v. Prod. Fabricators, Inc.*, 666 F.3d 1170, 1172 (8th Cir. 2012)).

<sup>1475</sup> *Id.* (citing *Ctr. for Biological Diversity v. Strommen*, 114 F.4th 939, 942-945 (8th Cir. 2024); *EEOC v. Prod. Fabricators, Inc.*, 666 F.3d 1170, 1172 (8th Cir. 2012) (quoting *United States v. Metro. St. Louis Sewer Dist.*, 952 F.2d 1040, 1044 (8th Cir. 1992)) (“When reviewing a proposed consent decree, the trial court is to review the settlement for fairness, reasonableness, and adequacy.”)).

<sup>1476</sup> *Id.* (citations omitted).

<sup>1477</sup> *Id.* (citations omitted).

<sup>1478</sup> *Id.* at \*4.

<sup>1479</sup> *Id.* (citation omitted).

<sup>1480</sup> *Id.* at (citations omitted).

<sup>1481</sup> *Id.* (citation omitted).

<sup>1482</sup> *Id.* at \*\*4-5 (citation omitted).

the defendant to establish adequate policies and procedures to prevent future violations and, if violations occur, to immediately and effectively remedy them.<sup>1483</sup> As such, the court found there was nothing that raised an issue of substantive unfairness.<sup>1484</sup>

As to legal adequacy of the proposed consent decree, the court considered whether the proposed consent decree reflects the objectives of the governing law under Title VII.<sup>1485</sup> To be sure, Title VII makes it unlawful to “create[] a hostile or abusive working environment” on the basis of sex.<sup>1486</sup> Therefore, the court found that the proposed consent decree requiring defendant to refrain from future sexual harassment and to implement adequate policies to ensure compliance with same, fulfilled the purpose of Title VII’s objectives.<sup>1487</sup> In sum, the federal court determined that the parties’ proposed consent decree was procedurally fair, reasonable, and legally adequate, and it entered judgment accordingly.<sup>1488</sup>

## N. Recovery of Attorneys’ Fees

Title VII provides that “the court, in its discretion, may allow the prevailing party . . . a reasonable attorney’s fee (including expert fees) as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.”<sup>1489</sup> By its terms, this provision allows either a prevailing private plaintiff or a prevailing defendant to recover attorneys’ fees. The award of attorneys’ fees to a prevailing plaintiff, however, involves different considerations from an award to a prevailing defendant. The prevailing plaintiff is acting as a “private attorney general” in vindicating an important federal interest against a violator of federal law, and therefore “ordinarily is to be awarded attorney’s fees in all but special circumstances.”<sup>1490</sup>

The opposite is true of a prevailing defendant. A prevailing defendant not only is not vindicating any important federal interest, according to the governing standard, but the award of attorneys’ fees to prevailing defendants as a matter of course would undermine that interest by making it riskier for “private attorneys general” to bring claims.<sup>1491</sup> Accordingly, before a prevailing defendant may be awarded fees, it must demonstrate that a plaintiff’s claim was “frivolous, unreasonable, or groundless, or that the plaintiff continued to litigate after it clearly became so.”<sup>1492</sup> This stringent standard does not, however, require proof that the EEOC or a private plaintiff acted in bad faith.<sup>1493</sup> A decision to award fees is committed to the discretion of the trial judge who is “on the scene” and in the best position to assess the considerations relevant to the conduct of litigation.<sup>1494</sup>

### 1. By Employer

The last significant EEOC litigation at the federal appellate level on this issue occurred in 2019 in the Eighth Circuit. In *EEOC v. CRST Van Expedited, Inc.*, the EEOC was required to pay a prevailing employer \$3.3 million in attorneys’ fees for pursuing a “class” sexual harassment claim after it knew or should have known the claims were frivolous.<sup>1495</sup> In the decade-old lawsuit, the EEOC alleged that the employer engaged in a pattern or practice of discrimination against female truck drivers and driver trainees who claimed they were sexually harassed. The employer prevailed at the district court level in 2009, but, on appeal, the Eighth Circuit held that the EEOC did not owe the company costs and fees because the EEOC’s claims had not been dismissed on the merits—but rather for procedural deficiencies. The Supreme Court disagreed, finding that the EEOC can be ordered to pay costs and fees when some or all of its claims are dismissed for failure to satisfy the EEOC’s pre-lawsuit requirements, and remanded the matter back to the district court.

<sup>1483</sup> *Id.* at \*5.

<sup>1484</sup> *Id.*

<sup>1485</sup> *Id.* (citations omitted).

<sup>1486</sup> *Id.* (citation omitted).

<sup>1487</sup> *Id.* at \*\*5-6 (citation omitted).

<sup>1488</sup> *Id.* at \*6.

<sup>1489</sup> 42 U.S.C. § 2000e-5(k).

<sup>1490</sup> *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 416–17 (1978).

<sup>1491</sup> *Id.* at 422.

<sup>1492</sup> *Id.*

<sup>1493</sup> *Id.* at 421.

<sup>1494</sup> *EEOC v. Propak Logistics, Inc.*, 746 F.3d 145, 151 (4th Cir. 2014) (quoting *Arnold v. Burger King Corp.*, 719 F.2d 63, 65 (4th Cir. 1983)).

<sup>1495</sup> *EEOC v. CRST Van Expedited, Inc.*, 944 F.3d 750 (8th Cir. 2019).

On remand, the district court once again held that the company was entitled to attorneys' fees, expenses, and costs. Specifically, the district court applied the *Christiansburg* standard and in an exhaustive, claim-by-claim analysis, determined that the 78 claims dismissed on summary judgment were frivolous, groundless, and/or unreasonable. On appeal, the Eighth Circuit upheld the fee award, finding that the district court did not abuse its discretion in applying the *Christiansburg* standard. The Eighth Circuit agreed that the EEOC's failure to conciliate and investigate the claims was an unreasonable litigation tactic that resulted in frivolous, unreasonable, or groundless claims. In addition, the Eighth Circuit noted that the district court made particularized findings of frivolousness, unreasonableness, and groundlessness as to each individual claim dismissed on summary judgment. The Eighth Circuit also rejected the EEOC's allegation that it sought relief for the remaining women based on the pattern-or-practice burden of proof because the EEOC never actually alleged the company was engaged in "a pattern or practice" of illegal sex-based discrimination. The Eighth Circuit agreed with the district court's reasoning that, "[a]s the master of its own complaint, it was frivolous, unreasonable and/or groundless for the EEOC to fail to allege a pattern-or-practice violation and then proceed to premise the theory of its case on such a claim."<sup>1496</sup>

In regard to company's calculation of attorneys' fees, the Eighth Circuit agreed that the company properly distinguished between costs associated with defending against frivolous, unreasonable, and/or groundless claims and those that did not meet that standard. In doing so, the Eighth Circuit held that the district court is not required "to become a green-eyeshade accountant pour[ing] over the record to calculate each individual claim. Instead, the district court did rough justice by finding that the general method by which [the company] calculated the fees it now seeks was appropriate."<sup>1497</sup>

Federal district courts in FY 2025 continued to apply the *Christiansburg* standard. For example, the U.S. District Court for the Western District of Tennessee confirmed that the *Christiansburg* standard still controls whether a prevailing defendant may be awarded attorney's fees.<sup>1498</sup> In this FY 2025 case, the EEOC had filed a third lawsuit against Aaron Thompson Company, Inc. ("ATC") and Supreme Staffing, LLC ("Supreme"), claiming race discrimination in violation of federal law.<sup>1499</sup> Subsequently, the district court entered a consent decree resolving the EEOC's claims against ATC, and the court also granted Supreme's motion to dismiss the EEOC's case against it based on claim splitting grounds.<sup>1500</sup> Supreme then filed a motion for an award of its attorney's fees and costs that the court denied.<sup>1501</sup>

Supreme's theory was that it was entitled to an award of its attorney's fees as the prevailing party and that the *Christiansburg* standard had been "abrogated by recent Supreme Court decisions reinforcing the traditional rules of statutory interpretation."<sup>1502</sup> The EEOC disagreed, arguing that *Christiansburg* set out "the appropriate standard and has not been overruled by the Supreme Court."<sup>1503</sup> Ultimately, the district court held that the *Christiansburg* standard controlled "whether Supreme, as a prevailing defendant, is entitled to attorneys' fees and costs."<sup>1504</sup> The court also confirmed that it "may not disregard Supreme Court precedent unless and until it has been overruled by the [Supreme] Court itself."<sup>1505</sup>

There was no dispute that Supreme was a prevailing party.<sup>1506</sup> Indeed, the court granted Supreme's motion to dismiss on claim splitting grounds and had entered a judgment in its favor.<sup>1507</sup> The operative analysis for the district court hinged on the *Christiansburg* standard—whether the EEOC's case was "'frivolous, unreasonable, or groundless,' or whether '[the EEOC] continued to litigate after it clearly became so.'"<sup>1508</sup> The court recognized that in *Balmer v. HCA, Inc.*, the Sixth Circuit established factors to be considered as part of the analysis, including: "(1) whether [the

<sup>1496</sup> *Id.* at 757.

<sup>1497</sup> *Id.* at 759 (quoting *EEOC v. CRST Van Expedited, Inc.*, 277 F. Supp. 3d 1000, 1052 (N.D. Iowa 2017) (internal quotations omitted)).

<sup>1498</sup> *EEOC v. Aaron Thomas Co.*, 2025 U.S. Dist. LEXIS 88155 (W.D. Tenn. May 8, 2025), *appeal filed* (6<sup>th</sup> Cir. May 14, 2025) (No. 25-5452); see also *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 422 (1978).

<sup>1499</sup> *Aaron Thomas Co.*, 2025 U.S. Dist. LEXIS 88155, at \*\*2-5.

<sup>1500</sup> *Id.* at \*5.

<sup>1501</sup> *Id.* at \*2.

<sup>1502</sup> *Id.* at \*6 (citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024); *Bostock v. Clayton Cnty., Ga.*, 590 U.S. 644 (2020)).

<sup>1503</sup> *Id.* at \*\*6-7.

<sup>1504</sup> *Id.* at \*7 (citations omitted).

<sup>1505</sup> *Id.* (citing *Taylor v. Buchanan*, 4 F.4th 406, 408 (6<sup>th</sup> Cir. 2021)).

<sup>1506</sup> *Id.* at \*\*7-8 (citing U.S.C. § 2000e-5(k); *Christiansburg*, 434 U.S. at 422).

<sup>1507</sup> *Id.* at \*\*7-8 (citations omitted).

<sup>1508</sup> *Id.* (citing *CRST*, 578 U.S. at 422; *Christiansburg*, 434 U.S. at 422).

EEOC] presented sufficient evidence to establish a *prima facie* case; (2) whether [Supreme] offered to settle the case; and (3) whether the trial court dismissed the case prior to trial or held a full-blown trial on the merits.”<sup>1509</sup>

To try and support its request for an award of attorney’s fees, Supreme argued that “the EEOC’s case was frivolous because it was ‘unreasonable and without foundation for the EEOC to split its claims and file a third lawsuit.’”<sup>1510</sup> In response, the EEOC argued that Supreme’s position relied on “hindsight logic” and that the Sixth Circuit’s *Balmer* factors weighed against awarding attorneys’ fees and costs.<sup>1511</sup> The district court agreed with the EEOC’s position, finding that the *Balmer* factors weighed against awarding Supreme’s attorney’s fees and costs.<sup>1512</sup>

According to the court, the first *Balmer* factor weighed against an award for Supreme’s attorney’s fees and costs because the EEOC had presented sufficient evidence to establish a *prima facie* case of a Title VII violation.<sup>1513</sup> For instance, the EEOC had pointed to multiple examples of alleged discrimination against African American employees in the first amended complaint to properly allege a pattern of discriminatory treatment based on race.<sup>1514</sup> However, the second *Balmer* factor was neutral since Supreme did not try to settle the case.<sup>1515</sup> As to the third *Balmer* factor, the court found that it weighed against an award for Supreme’s attorney’s fees and costs because the court had dismissed the case before trial.<sup>1516</sup> On balance, the court held that the *Balmer* factors weighed against a finding that the EEOC’s lawsuit was “‘frivolous, unreasonable, or groundless,’ or [that] ‘[the EEOC] continued to litigate after it clearly became so.’”<sup>1517</sup>

Finally, the district court found that Supreme was “engaging in the type of ‘hindsight logic’ cautioned against by the Supreme Court” in *Christiansburg*.<sup>1518</sup> The court refused to consider the same type of *post hoc* reasoning presented by Supreme and denied the request for its attorney’s fees and costs.<sup>1519</sup>

## 2. By Intervenor/EEOC

Although the United States cannot be awarded its attorney’s fees as the prevailing party, an intervenor–plaintiff who prevails in a Title VII case can seek to recover reasonable attorney’s fees.

In *Skywest Airlines*, a federal jury in the Northern District of Texas rendered a verdict against a commercial airline defendant and in favor of the EEOC and the intervenor–plaintiff, finding that the intervenor–plaintiff had been subjected to a sexually hostile work environment in violation of Title VII.<sup>1520</sup> The district court entered judgment on the jury’s verdict and awarded the EEOC and the intervenor–plaintiff, jointly, the sum of \$300,000, which consisted of \$170,000 in compensatory damages and \$130,000 in punitive damages.<sup>1521</sup>

The intervenor–plaintiff moved for an award of \$225,590.00 in attorneys’ fees and \$5,111.99 in costs.<sup>1522</sup> The defendant asked the federal court to reject the request or substantially reduce the attorneys’ fees to \$154,570.33, but the court awarded \$220,132.00 to the intervenor–plaintiff, along with her expenses and taxable costs in the sum of \$5,111.99.<sup>1523</sup> Additionally, the EEOC sought to recover its taxable costs in the amount of \$29,567 under the judgment.<sup>1524</sup> The court sustained in part and overruled in part the defendant’s objections to the EEOC’s bill of costs, and it awarded taxable costs to the EEOC in the sum of \$24,607.47.<sup>1525</sup>

<sup>1509</sup> *Id.* (citing *Balmer v. HCA, Inc.*, 423 F.3d 606, 616 (6th Cir. 2005), overruled on other grounds by *Fox v. Vice*, 563 U.S. 826 (2011)).

<sup>1510</sup> *Id.* at \*8-9.

<sup>1511</sup> *Id.* at \*9 (citations omitted).

<sup>1512</sup> *Id.*

<sup>1513</sup> *Id.* (citations omitted).

<sup>1514</sup> *Id.* (citations omitted).

<sup>1515</sup> *Id.* (citations omitted).

<sup>1516</sup> *Id.* at \*\*9-10 (citations omitted).

<sup>1517</sup> *Id.* at \*10 (citation omitted).

<sup>1518</sup> *Id.* (citing *Christiansburg*, 434 U.S. at 422) (“[I]t is important that a district court resist the understandable temptation to engage in post hoc reasoning by concluding that, because a plaintiff did not ultimately prevail, his action must have been unreasonable or without foundation.”).

<sup>1519</sup> *Id.* at \*\*10-11.

<sup>1520</sup> *EEOC v. Skywest Airlines, Inc.*, 2025 U.S. Dist. LEXIS 38283, \*1 (N.D. Tex. Mar. 4, 2025), *appeal filed* (5<sup>th</sup> Cir. Apr. 8, 2025) (No. 25-10491).

<sup>1521</sup> *Id.* at \*\*2, 23; *see also EEOC v. Skywest Airlines, Inc.*, 2025 U.S. Dist. LEXIS 38265, \*2 (N.D. Tex. Mar. 4, 2025) (describing that the jury awarded \$170,000 in compensatory damages and \$2 million in punitive damages, which the court reduced to \$130,000 to comply with the applicable statutory cap).

<sup>1522</sup> *See Skywest Airlines, Inc.*, 2025 U.S. Dist. LEXIS 38283, at \*\*1-2 (citing Fed. R. Civ. P. 54; 42 U.S.C. §§ 1988(b) and 2000e-5(k)); *see also* Rule 54(d)(1) (“Unless a federal statute, these rules, or a court order provides otherwise, costs—other than attorney’s fees—should be allowed to the prevailing party.”); 42 U.S.C. §§ 1988(b) and 2000e-5(k) (recognizing the court retains the discretion to award reasonable attorney’s fees to the prevailing party).

<sup>1523</sup> *See Skywest Airlines, Inc.*, 2025 U.S. Dist. LEXIS 38283, at \*\*1-3, 24 (the defendant did not object to the intervenor–plaintiff’s application for costs in the amount of \$5,111.99).

<sup>1524</sup> *Id.* at \*\*1-3.

<sup>1525</sup> *Id.*

As to the issue of the intervenor–plaintiff’s attorney’s fees, the court recognized that it retained the discretion to award her a reasonable attorney’s fee since she was the prevailing party on her Title VII hostile work environment claim.<sup>1526</sup> Further, the court also recognized that a fee award determination is “a two–step process” that first involves the “lodestar” calculation and then any upward or downward adjustments.<sup>1527</sup>

The lodestar “is equal to the number of hours reasonably expended multiplied by the prevailing hourly rate in the community for similar work.”<sup>1528</sup> When calculating the lodestar fee, the court “should exclude all time that is excessive, duplicative, or inadequately documented.”<sup>1529</sup> The party seeking attorneys’ fees has the burden of substantiating the rates and number of hours.<sup>1530</sup> The fee applicant is required to “present adequately documented time records to the court.”<sup>1531</sup> After the lodestar is calculated, “the court can adjust it based on the twelve factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717–19 (5th Cir. 1974).”<sup>1532</sup> The party seeking the adjustment bears the burden of establishing it is warranted.<sup>1533</sup> “Once the lodestar amount is determined, there is a strong presumption that it represents a reasonable fee.”<sup>1534</sup> Since the *Johnson* factors are presumably accounted for in the lodestar calculation, adjustments “are proper only in certain ‘rare’ and ‘exceptional’ cases, supported by both ‘specific evidence’ on the record and detailed findings[.]”<sup>1535</sup>

In *Skywest Airlines*, the defendant did not contest that the hourly rates requested by the intervenor–plaintiff were unreasonable.<sup>1536</sup> “[T]rial courts are considered experts as to the reasonableness of attorney’s fees[.]”<sup>1537</sup> As such, in applying its expertise in determining reasonable hourly rates, the court held that the hourly rate of \$550 for each attorney was reasonable, given their levels of experience and the nature of the litigation, along with the reasonable hourly rate of \$90 for the two paralegals consistent with fee awards in comparable cases.<sup>1538</sup> After the district court determined that the intervenor–plaintiff’s requested hourly rates were reasonable, it assessed the number of hours reasonably expended as 400.24 hours.<sup>1539</sup>

The *Skywest* court reduced some hours as being excessive time and for clerical tasks.<sup>1540</sup> Additionally, the court reduced certain hours claimed for the intervenor–plaintiff to confer with the EEOC as vague billing entries.<sup>1541</sup> However, the court declined to reduce the time claimed by the defendant as improper travel time since the intervenor–plaintiff had voluntarily reduced her travel time by half.<sup>1542</sup> The court also declined to reduce time on the claimed basis of duplicative, incorrect, or incomplete billing entries due to a clerical error that the intervenor–plaintiff corrected through a supplemental attachment.<sup>1543</sup> Finally, the court declined to reduce any hours based on the alleged failure to exercise proper billing judgment, which “refers to the usual practice of law firms in writing off unproductive, excessive, or redundant hours.” While the court identified some errors, it held that the intervenor–plaintiff had exercised billing judgment and that it did not require perfection.<sup>1544</sup>

Ultimately, the court calculated a lodestar fee in the amount of \$220,132.00, which was based on 400.24 compensable hours at an hourly rate of \$550.00.<sup>1545</sup> The court then considered whether the lodestar amount should be adjusted based on the *Johnson* factors, but it held that no downward adjustment was warranted.<sup>1546</sup> The defendant argued that the court “should adjust the lodestar fee downward for the time and labor required for the litigation,

<sup>1526</sup> *Id.* at \*\*3–4 (citing 42 U.S.C. § 2000e–5(k)).

<sup>1527</sup> *Id.* at \*4 (citing *Jimenez v. Wood Cnty., Tex.*, 621 F.3d 372, 379–80 (5th Cir. 2010)).

<sup>1528</sup> *Id.* (quoting *Jimenez*, 621 F.3d at 379–80).

<sup>1529</sup> *Id.* at \*4 (quoting *Jimenez*, 621 F.3d at 379–80).

<sup>1530</sup> *Id.* (citing *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983)).

<sup>1531</sup> *Id.* at \*\*13–14. (citation omitted).

<sup>1532</sup> *Id.* at \*4 (citing *Jimenez*, 621 F.3d at 379–80).

<sup>1533</sup> *Id.* at \*16 (citing *La. Power & Light Co. v. Kellstrom*, 50 F.3d 319, 329 (5th Cir. 1995); *U.S. Football League v. Nat’l Football League*, 887 F.2d 408, 413 (2d Cir.1989)).

<sup>1534</sup> *Id.* (citations omitted).

<sup>1535</sup> *Id.* (quoting *Pennsylvania v. Del. Valley Citizens’ Council for Clean Air*, 478 U.S. 546, 565 (1986)).

<sup>1536</sup> *Id.* at \*5.

<sup>1537</sup> *Id.* (quoting *Primrose Operating Co. v. Nat’l Am. Ins. Co.*, 382 F.3d 546, 562 (5th Cir. 2004)).

<sup>1538</sup> *Id.* at \*\*5–6 (citation omitted).

<sup>1539</sup> *Id.* at \*15.

<sup>1540</sup> *Id.* at \*\*6–11.

<sup>1541</sup> *Id.* at \*\*12–13.

<sup>1542</sup> *Id.* at \*12.

<sup>1543</sup> *Id.* at \*\*13–14.

<sup>1544</sup> *Id.* at \*\*14–15.

<sup>1545</sup> *Id.* at \*15.

<sup>1546</sup> *Id.* at \*\*16–24.

the novelty and complication of the issues, the skill required to properly litigate the issues, and the amount involved and the results obtained.”<sup>1547</sup>

As to the time and labor required for the litigation, “hours claimed or spent on a case . . . are a necessary ingredient to be considered” for determining a fee award.<sup>1548</sup> If multiple attorneys are involved, the trial court should scrutinize the hours requested for “the possibility of duplication of effort along with the proper utilization of time.”<sup>1549</sup> Indeed, “[t]he time of two or three lawyers in a courtroom or conference when one would do, may obviously be discounted.”<sup>1550</sup>

The intervenor–plaintiff in *Skywest* sought attorney’s fees as a prevailing party in a case that was prosecuted by EEOC, and the court specifically considered to what extent counsel’s participation was “redundant or unnecessary.”<sup>1551</sup> Although the defendant argued that the EEOC took the lead role in prosecuting the case, it failed to meet its burden to prove that the intervenor–plaintiff’s counsel participation in the case was unnecessary, duplicative, or unjustified.<sup>1552</sup> The court found that the intervenor–plaintiff had carefully detailed how her counsel collaborated with the EEOC, including on the filing of motions and the questioning of witnesses, in a manner that maximized efficiency and avoided duplication.<sup>1553</sup> The court firmly held that the issue of whether the “EEOC’s principal role may have rendered the participation of [the intervenor–plaintiff’s] counsel unnecessary or duplicative,” had been “adequately accounted for in calculating the lodestar.”<sup>1554</sup>

Moreover, the court found that defendant failed to meet its burden to establish that a downward adjustment was warranted on any additional basis, including the novelty and complication of the issues, the skill required to properly litigate the issues, and the amount involved and the results obtained.<sup>1555</sup> As to the latter, the *Skywest* court recognized that “[t]he Supreme Court has twice stated that ‘degree of success obtained’ is ‘the most critical factor’ in determining the reasonableness of attorneys’ fees.”<sup>1556</sup> The EEOC and the intervenor–plaintiff were awarded \$300,000—the maximum that intervenor–plaintiff could have recovered for her Title VII claims.<sup>1557</sup> The defendant claimed that because the intervenor plaintiff “achieved only partial or limited success” since the jury only found in her favor on the hostile work environment claim but not the retaliation claim, the lodestar should be reduced downward.<sup>1558</sup> The court disagreed and held that a downward adjustment was not warranted based on the degree of success.<sup>1559</sup> Even if the intervening plaintiff did not prevail on her retaliation claim, she recovered the maximum amount of \$300,000 for her Title VII hostile work environment claim.<sup>1560</sup>

As such, the *Skywest* court reviewed the *Johnson* factors and found that no downward adjustment of the lodestar was warranted, and it awarded the intervenor–plaintiff’s attorney’s fees in the amount of \$220,132.00.<sup>1561</sup>

1547 *Id.* at \*16.

1548 *Id.* at \*\*16-17 (quoting *Johnson*, 488 F.2d at 717).

1549 *Id.* at \*17 (quoting *Johnson*, 488 F.2d at 717).

1550 *Id.*

1551 *Id.* at \*17 (citing *EEOC v. Clear Lake Dodge*, 60 F.3d 1146, 1154 (5th Cir. 1995); *EEOC v. Sage Realty Corp.*, 521 F. Supp. 263, 269 (S.D.N.Y. 1981); *EEOC v. Murphy Motor Freight Lines, Inc.*, 488 F. Supp. 381, 389 (D. Minn. 1980)).

1552 *Id.* at \*\*18-19.

1553 *Id.* at \*19.

1554 *Id.* (citation omitted).

1555 *Id.* at \*\*19-24.

1556 *Id.* at \*22 (citing *Fessler v. Porcelana Corona De Mexico, S.A. DE C.V.*, 23 F.4th 408, 418 (5th Cir. 2022); *Farrar v. Hobby*, 506 U.S. 103, 114 (1992)).

1557 *Id.* at \*23 (citing 42 U.S.C. § 1981a; *Black v. Pan Am. Lab’ys, L.L.C.*, 646 F.3d 254, 264 (5th Cir. 2011) (holding that Title VII damages cap applies per litigant, not per legal theory)).

1558 *Id.* at \*\*22-24.

1559 *Id.* at \*\*22-23.

1560 *Id.* at \*\*23-24.

1561 *Id.* at \*24.

## VI. Appendices

### Appendix A – EEOC Case Filings and Settlements Involving Religious Discrimination and Accommodation for FY 2025-early FY 2026

#### Case Filings Involving Claims of Religious Discrimination

Court and Filing Date	Summary
USDC Eastern District of North Carolina 12/26/2024	EEOC alleged healthcare employer failed to accommodate an employee's religious beliefs and fired her for failing to receive a COVID-19 vaccination. According to the EEOC's lawsuit, in 2021 defendant implemented a policy mandating that all employees receive a COVID-19 vaccination unless they were granted an exemption because of their religious beliefs or a disability. The charging party in the EEOC's suit, who worked remotely, requested a religious exemption in accordance with the policy. Even though the employee had previously been granted an exemption from being required to take the flu vaccination based on her religious beliefs, the request for an exemption from the COVID-19 vaccination was denied, and she was fired her for failing to comply with the vaccine mandate.
USDC Middle District of Florida 5/5/2025	EEOC alleges defendants violated federal law when they failed to accommodate an employee's request not to work Saturdays so she could observe the Sabbath. According to the EEOC's lawsuit, management initially allowed the employee, who is a Seventh-Day Adventist, a religious accommodation that allowed her to avoid Saturday shifts. After a change in management, the companies began scheduling her for Saturday shifts. After the employee made repeated complaints, the EEOC alleges the company changed her schedule, negatively impacting her sales and commissions, and continued to schedule her for Saturdays, forcing her to choose between showing up to work and her religious practice. This led her to resign.
USDC Middle District of Florida 6/4/2025	EEOC alleges company failed to accommodate an employee's request to wear a close-fitting skirt over her pants as required by her religion. According to the EEOC's lawsuit, defendant refused to allow an employee, who is an Apostolic Christian, a religious accommodation that allowed her to wear a skirt over her work pants. The company denied the accommodation because of its policy against loose-fitting clothing. The employee only wore close-fitting skirts over her work pants and was in compliance with company policy. Ultimately, the company forced the employee to choose between wearing a skirt or losing her job. The employee chose to continue wearing a skirt, and she was fired.
USDC Eastern District of Michigan 6/5/2025	EEOC alleges defendant violated Title VII when it discriminated against the charging party by refusing to accommodate his sincerely held religious beliefs (orthodox Judaism, working on the Sabbath), retaliating against him (assessing attendance violations, requiring him to work on Sabbath), and terminating his employment.
USDC Nevada 6/23/2025	EEOC alleges that since at least 2016, Defendants, via their predecessors in interest, unlawfully discriminated against a class of individuals based on religion, including but not limited to refusing to accommodate their sincerely-held religious beliefs, and subjecting them to discrimination in different terms and conditions resulting in an adverse action, including discipline, suspension, discharge, and/or constructive discharge in violation of Title VII. Plaintiff further alleges that since at least 2016, Defendants subjected a class of individuals to retaliation after opposing religious discrimination in violation of Title VII and/or engaging in a protected activity.
USDC Northern District of Illinois 6/26/2025	EEOC alleges hotel violated federal law when it discriminated against an employee by denying his request to not work on Sundays due to his religion. The suit also alleged that it retaliated against the employee for requesting an accommodation by substantially reducing his hours. According to the EEOC's lawsuit, the defendant initially granted the full-time employee's Sabbath accommodation request and allowed another employee to cover the Sunday shift. But the defendant stopped accommodating the employee and demanded he either move to the night shift or become a part-time employee. EEOC alleges hotel management then retaliated against the employee by substantially reducing his hours.
USDC Eastern District of Wisconsin 7/2/2025	EEOC alleges a winter sports park and summer events venue violated federal law when it terminated a lift operations manager because of his religion (Christian). The EEOC alleges that the employee frequently posted Bible verses and faith-based messages on his personal social media account. Although his posts made no mention of the workplace or coworkers, his supervisor told him to refrain from posting them. After confirming with the supervisor that he could continue sharing scripture, the employee was fired three days later for posting another Bible verse.

**ANNUAL REPORT ON EEOC DEVELOPMENTS: FISCAL YEAR 2025**

USDC Minnesota 7/30/2025	EEOC alleges clinic violated federal law when it refused to grant a security guard's request for a reasonable religious accommodation to its mandatory COVID-19 vaccination policy, and threatened to fire the employee, effectively forcing him to receive the vaccine and violate his conscience and religious beliefs to save his job.
USDC Northern District of Illinois 7/31/2025	EEOC alleges hospital violated federal law when it failed to provide a reasonable accommodation to employees who requested to be exempt from receiving the COVID-19 vaccine because of religious and disability reasons. One employee, who worked in the hospital's lab, requested a religious accommodation because taking the COVID-19 vaccine conflicted with her religious beliefs and practices. The EEOC claims the hospital denied the requests for an accommodation and retaliated against them.
USDC Eastern District of Virginia 9/30/2025	EEOC alleges defendant failed to accommodate an employee's Jewish faith and subsequently fired him because of his religion and in retaliation for complaining of religion-based discrimination. The EEOC's suit said beginning in August 2023, shortly after the employee converted to Judaism, he requested an accommodation for observing his Sabbath by not working Fridays and Saturdays. His new store manager rejected the request, claiming defendant's scheduling policy now prohibited him from having both Friday and Saturday off. The EEOC also charged that around this same time, and after requesting his religious reasonable accommodation, defendant began disciplining him for allegedly violating its grooming policies, and shortly after he reminded his supervisor of an upcoming day off for religious reasons, defendant terminated him in January 2024 for violation of its grooming policy.
USDC Eastern District of Pennsylvania 11/18/2025	A commissioner's charge filed in December 2023 alleged that the university subjected faculty and staff to antisemitic harassment and failed to address complaints of harassment. The application for an order to show cause stems from a subpoena issued on the university requesting information about religious discrimination complaints and employee/student contact information.
USDC Northern District of Illinois 12/18/2025	EEOC alleges defendant refused to accommodate a nurse's religious beliefs and fired her for failing to receive a COVID-19 vaccination. The EEOC's lawsuit alleged that in 2021, defendant implemented a policy mandating that all employees receive a COVID-19 vaccination unless they were granted an exemption because of their religious beliefs. A nurse requested a religious exemption in accordance with the policy, and although defendant previously granted her a "lifetime" religious exemption from receiving the flu vaccine, it denied her request for an exemption from COVID-19 vaccination. When the employee, consistent with her religious beliefs, declined to receive the vaccination, defendant terminated her.
USDC Central District of California 12/18/2025	The EEOC is currently investigating a charge of discrimination based on religion against Respondent under Title VII. On March 24, 2021, the charging party filed a charge of discrimination alleging that Respondent discriminated against her and other individuals based on religion. EEOC issued subpoenas seeking a list of employees who had requested accommodations due to religious reasons from March 1, 2020 for the geographical scope of the implementation of the Respondent company's Availability Guidelines, including names, contact information, and employment information. The subpoena also sought documentation of their religious accommodation requests.
USDC Northern District of Illinois 2/3/2026	The lawsuit alleges that in 2023, a front desk clerk, who was also an assistant pastor at a Baptist church, requested not to be scheduled for Saturday overnight shifts because it interfered with his ability to attend and sometimes lead services at his church on Sunday mornings. Although the company expressed its approval of his request, in practice it still scheduled him on Saturday night shifts — and continued to do so even after he objected. Not long after, the company retaliated against him by cutting his hours, according to the suit.
USDC Middle District of Georgia 3/24/2026	EEOC alleges the defendant demoted a Jewish employee because he could not work on his Sabbath. The agency alleges his day off was initially accommodated, but a new manager changed his schedule.
USDC Northern District of Illinois 3/26/2026	EEOC alleges hospital violated federal law when it failed to provide a reasonable accommodation to an employee who requested to be exempt from receiving the COVID-19 vaccine because of her religious beliefs. According to the EEOC's suit, a certified surgical technologist first requested a religious accommodation from the hospital's COVID-19 vaccine mandate in August 2021 because of her Christian beliefs. The hospital denied her request for an accommodation, and retaliated by terminating her employment in November 2021, even though she could have been accommodated without undue hardship, according to the suit.
USDC Southern District of Texas 3/26/2026	EEOC alleges defendant violated Title VII when it discriminated against the charging party by refusing to accommodate his sincerely held religious beliefs and constructively discharging him. The EEOC claims the defendant instituted a new schedule which interfered with the charging party's ability to attend church on Sundays.
USDC District of Nevada 3/31/2026	EEOC alleges defendant violated federal law when it failed to return a Christian employee truck driver to a weekday shift so he could attend Sunday morning church services. The charging party ultimately resigned.

## Settlements Involving Claims of Religious Discrimination

Type of Settlement	Date	Court or EEOC Office	Summary	Settlement Amount
Conciliation Agreement	3/24/2026	Phoenix District Office	EEOC alleged the employer discriminated against a class of employees on the basis of religion and disability by denying their COVID-19 vaccine exemption requests and terminating employees who declined to receive vaccines.	\$15 million
Conciliation Agreement	3/5/2026	New York District Office	EEOC alleged an employer failed to provide a Christian employee, who served as a church leader, with a religious accommodation to attend Sunday services and required meetings, and retaliated against her, forcing her to resign.	\$100,200
Consent Decree	2/20/2026	Eastern District of North Carolina	EEOC alleged the defendant health care provider violated Title VII when it fired a remote worker who refused the COVID-19 vaccination requirement on religious grounds.	\$150,000
Conciliation Agreement	12/15/2025	New York District Office	The EEOC's investigation found reasonable cause to believe that defendant failed to hire an applicant for a managerial position in the Central New York region because, during his interview, he requested Friday evenings and Saturdays off to observe the Sabbath. The EEOC's investigation also concluded that the company then offered him a job as a tire technician, a lower position with a more flexible schedule, but retracted it after the applicant reiterated his request for a religious accommodation.	\$303,758
Consent Decree	11/24/2025	Middle District of Florida	The EEOC's suit charged that management at the hotel defendant initially provided a religious accommodation for a Seventh-Day Adventist employee which allowed her to avoid Saturday shifts so she would not have to work on her religion's Sabbath. After a change in management, the companies revoked her religious accommodation and began scheduling her to work on Saturdays. Although the employee made repeated complaints about losing her religious accommodation, the employer continued to schedule her for Saturdays, negatively impacting her sales and commissions, and forcing her to choose between her work and her faith, leading to her resignation around June 2023, according to the suit.	\$175,000
Conciliation Agreement	9/30/2025	Memphis District Office	EEOC found reasonable cause to believe that the company discriminated against a class of employees based on their sincerely held religious beliefs by denying them a religious accommodation involving the organization's COVID-19 vaccine policy. The settlement with the EEOC resolved a 2021 commissioner's charge filed by then-Commissioner Andrea Lucas and provides relief to a class of employees who worked at the location in question and requested a religious accommodation from the company's vaccine mandate policy.	\$2,800,000
Conciliation Agreement	9/15/2025	Birmingham District Office	According to the EEOC's charge investigation, during the interview process in August 2024 with the restaurant employer's location in Birmingham, the applicant requested Sundays off because of his religious beliefs. The EEOC's investigation concluded he was not hired because of the accommodation request.	\$80,000
Conciliation Agreement	8/13/2025	Chicago District Office	EEOC alleges the health care employer discriminated against employees based on their religion when it denied religious accommodations to employees who requested to be exempt from receiving the COVID-19 vaccine. The charges also alleged that employees who were denied a religious accommodation and did not get the COVID-19 vaccine could continue working only if they signed a form allowing the company to deduct a \$60 monthly fee from their wages, described by the employer as a "vaccine incentive charge." Employees who did not get vaccinated and did not sign the wage deduction form were terminated.	\$1,000,000

**ANNUAL REPORT ON EEOC DEVELOPMENTS: FISCAL YEAR 2025**

Consent Decree	8/13/2025	Northern District of Georgia	EEOC alleges defendant restaurant refused to hire an applicant who sought a server position because she wore long skirts due to her faith.	\$47,500
Consent Decree	8/12/2025	Western District of Washington	EEOC alleges defendant failed to hire the Muslim charging party because he requested a longer lunch break on Fridays to pray.	\$217,500
Conciliation Agreement	8/5/2025	San Francisco District Office	According to the EEOC's investigation, the hospital subjected an employee to mandatory training which he objected to because it incorporated religious content contrary to his beliefs; he also requested to be excused from any future trainings with similar content. The EEOC investigation concluded he was terminated within days.	\$20,000
Conciliation Agreement	8/4/2025	Charlotte District Office	The EEOC's investigation found that a dental practice violated federal law when it failed to provide an employee with a religious accommodation and instead fired her after she requested an accommodation to wear a scrub skirt instead of scrub pants due to her sincerely held religious beliefs.	\$61,000
Conciliation Agreement	7/31/2025	Las Vegas Local Office	The charges filed with the EEOC alleged that the hotel and casino employers denied employees religious accommodations to the companies' COVID-19 vaccine mandate policies. The EEOC investigated the allegations and found reasonable cause to believe both resorts violated Title VII of the Civil Rights Act of 1964.	n/a
Conciliation Agreement	7/23/2025	Washington Field Office	This settlement resolves EEOC charges, including a commissioner's charge brought by Acting Chair Andrea Lucas in 2024 on behalf of a class of all Jewish employees, alleging that since at least Oct. 7, 2023, the university engaged in a pattern or practice of harassment based on national origin, religion, and/or race, in violation of Title VII.	\$21,000,000
Consent Decree	6/26/2025	District of Nevada	The EEOC's suit charged that the resort defendant violated federal law by refusing to accommodate the sincerely held religious beliefs of a class of employees, which included a diversity of faiths as outlined in the complaint. The suit further alleged that the defendant retaliated against employees who opposed these acts of religious discrimination. The suit continues that in some cases, the denial of accommodations led to discipline, denial of promotion opportunities, and discharge or constructive discharge.	\$850,000
Consent Decree	3/28/2025	District of Kansas	The EEOC suit alleged that in July 2021, a restaurant supervisor began harassing one of his employees because of her religion. The employee, a teenager at the time, is a devout Muslim and wears a hijab head covering in observance of her faith. Her supervisor repeatedly asked her to remove her hijab and expose her hair. She rebuffed the requests and explained the religious significance of the hijab. Then, on Aug. 9, 2021, after again pressuring her to take off her hijab, the supervisor grabbed her head scarf and partially removed it himself. She immediately reported the incident, and tendered her two weeks' notice the next day, the EEOC said. The EEOC's lawsuit further charged that the defendant then refused to schedule the teen for the duration of her notice period in retaliation for her complaint.	\$20,000
Consent Decree	10/24/2024	Western District of Pennsylvania	The EEOC's lawsuit alleged that in October 2016, an adherent of Messianic Judaism requested a reasonable accommodation of his religious belief requiring abstaining from work on religious observance days. The EEOC charged that defendant refused to grant the employee a schedule modification to observe religious holidays because he was unable to provide a certification from a religious leader or religious organization supporting his request. Instead, the company imposed disciplinary points against the employee for his religious-based absences, even after being informed he was unable to obtain the requested certification because he was not a member of a congregation, thereby forcing the employee to resign, the EEOC charged.	\$60,000

## Appendix B – EEOC Consent Decrees, Conciliation Agreements and Judgments<sup>1562</sup>

### Select EEOC Settlements in FY 2025-2026

Settlement Amount	Claim	Description	Court	EEOC Press Release
\$21 million	Religious, National Origin, and/or Race Harassment	<p>This settlement resolves EEOC charges, including a commissioner's charge brought by Acting Chair Andrea Lucas in 2024 on behalf of a class of all Jewish employees, alleging that since at least Oct. 7, 2023, Columbia University engaged in a pattern or practice of harassment based on national origin, religion, and/or race, in violation of Title VII.</p> <p>Under the terms of the three-year conciliation agreement, the university agreed to pay \$21 million as well as engage a claims administrator and an external monitor to ensure compliance with the settlement terms.</p>	This settlement was reached during the conciliation process before a lawsuit was filed in court.	<a href="#">7/25/2025</a>
\$15 million	Disability and Religion	<p>EEOC alleges the company discriminated against a class of employees on the basis of religion and disability by denying their COVID-19 vaccine exemption requests and terminating employees who declined to receive vaccines.</p> <p>Under the terms of the three-year conciliation agreement, the company agreed to pay \$15 million to the class, train employees on disability and religious discrimination and reasonable accommodation, provide reports to the EEOC on accommodation requests, and post an EEO notice at the worksite.</p>	This settlement was reached during the conciliation process before a lawsuit was filed in court.	<a href="#">3/24/2026</a>
\$6.7 million	Sex, Pregnancy, Age Discrimination	EEOC resolves a nationwide Title VII (female, including pregnancy), EPA, and ADEA investigation in which it determined that the employer subjected almost 120 female employees to disparate terms and conditions, including lower wages and denied promotions, a hostile work environment, and retaliatory discharge for complaining about discriminatory treatment.	This settlement was reached during the conciliation process before a lawsuit was filed in court.	n/a

<sup>1562</sup> Littler monitored EEOC press releases regarding settlements, jury verdicts, and judgments entered in EEOC-related litigation during FY 2025 and the early months of FY 2026. The significant consent decrees and conciliation agreements in Appendix B include those amounting to \$500,000 or more. FY 2026 settlements are marked with an asterisk (\*). Appendix B also includes notable jury verdicts and/or judgments.

<p>\$6 million*</p>	<p>Age Discrimination  Sex Discrimination</p>	<p>EEOC alleges that since at least 2017, defendant failed to recruit and to hire individuals over the age of 40 and advertised in a way to deter older workers from applying for positions. The EEOC further alleged that the company had, among other things, subjective hiring criteria favoring very young workers, serving as a proxy for age.</p> <p>The company agreed to hire qualified individuals into various positions including laborers, movers, customer service agents, and other positions, committing up to \$1 million annually for four years towards agreeing to hiring aggrieved workers / individuals, i.e. workers who applied, were otherwise qualified, but for discrimination, were not hired, making the total settlement value possibly as high as \$6 million.</p> <p>Under the terms of the 7-year consent decree, in addition to the monetary awards, the company agreed to hire a third-party, independent monitor assist with EEOC compliance, review and revise its policies, review its marketing and requirement process, provide training, conduct audits, and periodically report its compliance efforts to the EEOC. The decree includes a claims process for those claiming to have been denied employment on account of sex and/or age discrimination.</p>	<p>U.S. District Court for the Central District of California</p>	<p><a href="#">12/19/2025</a></p>
<p>\$5.5 million*</p>	<p>Sex Discrimination</p>	<p>The EEOC alleged a trucking company refused to interview or hire women as truck drivers at terminals across the country, even when they were overqualified for the position.</p> <p>Under the terms of the 2.5-year consent decree, the defendant agreed to pay \$5.5 million to the class. In addition, the company agreed to hire a claims administrator, external consultant, and external monitor to assist with consent decree compliance. The defendant also agreed to institute training, revise policies, and post a notice of the settlement.</p>	<p>U.S. District Court for the District of Arizona</p>	<p>n/a</p>
<p>\$3.1 million</p>	<p>Sex Discrimination</p>	<p>The EEOC alleged four waste removal companies systematically failed to hire women as truck drivers.</p> <p>Under the terms of the consent decree, the defendants, acting as a single employer, agreed to revise its recruitment policies and practices, in addition to paying \$3.1 million to a group of female job seekers who were not hired between January 1, 2016, and the date of settlement. The new recruitment policies will involve the collection of job applicants' gender data, creating recruitment materials with pictures of women, and sharing job postings with women's professional organizations. The employer will also conduct trainings and provide employees with instructions on how to file complaints through an online reporting portal.</p>	<p>U.S. District Court for the Northern District of Georgia</p>	<p><a href="#">10/21/2024</a></p>

ANNUAL REPORT ON EEOC DEVELOPMENTS: FISCAL YEAR 2025

\$2.8 million	Religious Discrimination  Failure to Accommodate	Then-Commissioner Andrea Lucas brought a commissioner’s charge against a company, alleging it discriminated against a class of employees on religious grounds by failing to provide a reasonable accommodation to taking the COVID-19 vaccine.  Under the terms of the two-year conciliation agreement, the company agreed to provide back pay and compensatory damages to aggrieved individuals, circulate its religious accommodation policies, and train HR on handling religious accommodation requests.	This settlement was reached during the conciliation process before a lawsuit was filed in court.	<a href="#">9/30/2025</a>
\$2 million*	Sex Discrimination	EEOC alleged defendant manufacturer refused to hire women for jobs on its production floor and fired a human resources official who did not abide by that policy.  Under the terms of the two-year consent decree, among other types of injunctive relief, the company agreed to make outreach efforts to applicants rejected on account of their sex who applied from 2019 until June 30, 2025. Parties will agree on a list of those applicants impacted, and the EEOC will attempt to contact them to determine whether they are still interested in the job. Defendant will then contact those still interested as employment opportunities arise.	U.S. District Court for the Northern District of Ohio	<a href="#">11/21/2025</a>
\$1.95 million	Disability Discrimination  Failure to Accommodate	EEOC alleges company denied reasonable accommodations to a group of employees based on their various disabilities.  In addition to monetary relief, the company agreed, per the terms of the conciliation agreement, to provide management training on reasonable accommodation, and revise its policies.	This settlement was reached during the conciliation process before a lawsuit was filed in court.	<a href="#">9/30/2025</a>
\$1.8 million	Age Discrimination	EEOC alleged the defendant car rental company discriminated against applicants over age 40.  Under the terms of the three-year consent decree, the defendant agreed to pay \$1.8 million, which will be dispersed through a claims administrator, conduct training, implement an applicant tracking system, and investigate—within three business days to the extent feasible—all claims of age discrimination.	U.S. District Court for the Southern District of Florida	<a href="#">9/25/2025</a>
\$1.74 million	Religious Accommodation	EEOC conciliation agreement resolves an investigation for 20 individuals after the agency determined the employer violated Title VII by failing to provide a religious accommodation to the COVID-19 vaccine requirement.	This settlement was reached during the conciliation process before a lawsuit was filed in court.	n/a
\$1.6 million	Sex Discrimination	The EEOC alleged a security company engaged in systemic sex discrimination in hiring and assigning jobs since at least 2017.  Under the terms of the three-year consent decree, the company agreed to pay \$1.6 million in monetary relief to the class of women who were denied certain positions based on their sex. The company further agreed to delete all directives not to hire or select women because of sex, and will conduct training and provide reports on compliance to the EEOC.	U.S. District Court for the Northern District of Alabama	<a href="#">3/10/2025</a>

ANNUAL REPORT ON EEOC DEVELOPMENTS: FISCAL YEAR 2025

<p>\$1.5 million</p>	<p>Sex Discrimination</p>	<p>The EEOC alleged a furniture company unlawfully failed to hire women for certain warehouse and delivery positions.</p> <p>Under the terms of the consent decree, the company agreed to pay the charging party \$33,000 in back pay and \$40,000 in damages, and pay an additional \$1.4 million to a settlement fund to be distributed to class members (women who were not hired for certain positions between May 1, 2021 and May 31, 2024). The company also agreed to change its hiring practices to not exclude women; notify class members of any open positions and not retaliate against them for participating in the litigation; employ an employment attorney to provide anti-bias training, review the company’s hiring data, and make period reports to the EEOC; and create a hotline for reporting incidents of discrimination.</p>	<p>U.S. District Court for the Middle District of Florida</p>	<p><a href="#">1/13/2025</a></p>
<p>\$1.49 million*</p>	<p>Sex Harassment</p>	<p>EEOC alleges defendant failed to address the frequent harassment of female employees and retaliated against them when they complained by giving them more difficult work assignments, and that some were forced to quit as a result.</p> <p>Under the terms of the three-year consent decree, the employer agreed to pay nearly \$1.5 million to the class, provide training, hire a claims administrator, and hire an external monitor to ensure compliance with the terms of the decree by, among other things, conducting audits and climate surveys; maintaining a phone number and online portal for anonymous complaints; and tracking all reports of discrimination, retaliation and harassment.</p>	<p>U.S. District Court for the Central District of California</p>	<p><a href="#">3/27/2026</a></p>
<p>\$1.4 million</p>	<p>Race and National Origin Discrimination and Harassment</p>	<p>EEOC alleges waste management defendant subjected 26 Black and/or Haitian American workers to frequent, severe harassment on account of their race and national origin.</p> <p>Under the terms of the three-year consent decree, the defendant agreed to pay \$1.4 million to the affected workers, provide training on race discrimination to its CEO and human resources employees, appoint an outside compliance officer to oversee the investigation of any race discrimination complaints it receives, provide the EEOC with bi-annual reports on any discriminatory conduct and corrective measures taken, conduct exit interviews, draft a written seniority system for the assignment of trucks and routes on a race-neutral basis, and create a centralized statewide discrimination complaint tracking system.</p>	<p>U.S. District Court for the Middle District of Florida</p>	<p><a href="#">6/25/2025</a></p>
<p>\$1.4 million</p>	<p>National Origin Discrimination</p>	<p>The EEOC alleged a hotel employer discriminated against non-Japanese employees by providing them less favorable wages, benefits, and terms and conditions of employment than their Japanese counterparts.</p> <p>In addition to paying affected employees \$1,412,500 in monetary damages, the employer agreed to hire an external EEO monitor to oversee compliance, training and review of policies/procedures, and reinstatement of former employees interested in being rehired. The monitor will also conduct periodic audits for the consent decree’s three-year term.</p>	<p>U.S. District Court for the Territory of Guam</p>	<p><a href="#">2/18/2025</a></p>

ANNUAL REPORT ON EEOC DEVELOPMENTS: FISCAL YEAR 2025

\$1.25 million*	Race and National Origin Discrimination	<p>EEOC alleges defendant unlawfully fired over a dozen Hispanic employees of Central American origin.</p> <p>Under the terms of the three-year consent decree, the defendant will pay \$1.2 million, submit reports every six months to the EEOC that include information about terminated employees, information about any race- or national origin-based discrimination complaints. The defendant will also conduct EEO training, and post a notice about the settlement.</p>	U.S. District Court for the District of Columbia	n/a
\$1.2 million	Sex and National Origin Harassment	EEOC conciliated a systemic investigation for the charging party and a class of Hispanic employees after the EEOC's investigation found several male supervisors subjected female employees to harassment and sexual harassment based on gender and national origin over a multi-year period.	This settlement was reached during the conciliation process before a lawsuit was filed in court.	n/a
\$1.2 million*	Sexual Harassment	<p>EEOC alleges defendant subjected both male and female employees to verbal and physical sexual harassment by co-workers and supervisors, causing some to be constructively discharged.</p> <p>Under the terms of the three-year consent decree, the defendant agree to pay \$1.2 million, post a notice of the settlement, provide sexual harassment training, establish an online complaint procedure, centralize tracking of reports, provide a follow-up questionnaire to employees who complained of harassment, and hire an external EEO monitor to ensure compliance with the decree.</p>	U.S. District Court for the District of Nevada	<a href="#">11/18/2025</a>
\$1.1 million*	Sex Discrimination	<p>EEOC alleges restaurant engaged in sex discrimination by failing to hire men for non-managerial, front-of-house positions, and failing to adhere to Title VII's recordkeeping requirements.</p> <p>Under the terms of the three-year consent decree, in addition to the monetary settlement, the defendant agreed to revise its hiring procedures, hiring a claims administrator, include images of male servers in any promotional materials, and conduct training.</p>	U.S. District Court for the Middle District of North Carolina	<a href="#">2/4/2026</a>
\$1 million	Religious Discrimination	<p>EEOC alleges the health care employer discriminated against employees based on their religion when it denied religious accommodations to employees who requested to be exempt from receiving the COVID-19 vaccine. The charges also alleged that employees who were denied a religious accommodation and did not get the vaccine could continue working only if they signed a form allowing the company to deduct a \$60 monthly fee from their wages, described by the employer as a "vaccine incentive charge." Employees who did not get vaccinated and did not sign the wage deduction form were terminated.</p> <p>Under the terms of the three-year conciliation agreement, the employer agreed to pay \$1 million and recirculate its EEO policies, provide back pay and compensatory damages to the aggrieved individuals, train HR personnel and those who exercise decision-making authority on religious accommodation requests, and report to the EEOC about religious accommodation requests and decisions related to any system-wide vaccination program.</p>	This settlement was reached during the conciliation process before a lawsuit was filed in court.	<a href="#">8/13/2025</a>

ANNUAL REPORT ON EEOC DEVELOPMENTS: FISCAL YEAR 2025

<p>\$919,000</p>	<p>Disability Discrimination  Failure to Accommodate</p>	<p>EEOC alleges the defendant discriminated against individuals with disabilities, mostly over-the-road truck drivers, through multiple corporate policies. The company's full-duty policy required individuals to be released from any and all medical restrictions in order to work, regardless of whether the individual could work with or without a reasonable accommodation. The EEOC also maintained that the defendant instituted a policy of firing employees if they could not return from FMLA leave within 12 weeks, even if they could have returned with a short extension or other accommodation.</p> <p>In January 2023, a three-week jury trial resulted in a split verdict. The jury found that the defendant's full-duty policy violated the ADA, but that the EEOC did not establish a pattern or practice of discrimination.</p> <p>The parties were scheduled to resume a second phase of litigation when they reached a settlement through a four-year consent decree. Under the terms of this decree, the company agreed to pay \$919,000 to 60 aggrieved individuals, plus undergo mandatory ADA training; hire a monitor to oversee and report further acts of discrimination to the EEOC; ensure its corporate policies are compliant with the ADA; and conduct annual validation of its physical requirements for its drivers.</p>	<p>U.S. District Court for the District of Colorado</p>	<p><a href="#">7/16/2025</a></p>
<p>\$900,000*</p>	<p>Sexual Harassment</p>	<p>EEOC alleged three companies acting as joint employers did not take proper action when three women were sexually harassed by co-workers.</p> <p>In addition to the \$900,000 fund, under the terms of the three-year decree, the defendants agreed to revise their complaint procedure, create a reporting hotline, institute anti-harassment training, and hire an external EEO monitor to ensure the companies abide by the terms of the settlement.</p>	<p>U.S. District Court for the Central District of California</p>	<p><a href="#">2/3/2026</a></p>
<p>\$850,000</p>	<p>Religious Discrimination</p>	<p>EEOC alleged the defendant refused to accommodate the sincerely held religious beliefs of a class of employees of various faiths and retaliated against those who protested.</p> <p>Under the three-year consent decree, the company agreed to pay \$850,000, provide training on religious accommodation policies and complaint procedures, and track compliance with the settlement agreement.</p>	<p>U.S. District court for the District of Nevada</p>	<p><a href="#">7/2/2025</a></p>
<p>\$750,000*</p>	<p>Disability Discrimination</p>	<p>EEOC alleges defendant fired the charging party after he asked for up to two weeks off to recover from two major heart attacks caused by a condition affecting his body tissue. The EEOC alleges the defendant similarly discriminated against other disabled employees across several states by failing to give them leave as an accommodation for their disabilities or by firing them because of them.</p> <p>Under the terms of the three-year consent decree, the defendant agreed to pay \$250,000 to the charging party and \$500,000 to establish a class settlement fund. The defendant also agreed to pay for a claims administrator to administer this fund, and establish a process for identifying potential claimants. The consent decree also provides for training, revision of EEO policies, and notice-posting of the settlement.</p>	<p>U.S. District Court for the Northern District of Georgia</p>	<p><a href="#">12/23/2025</a></p>

ANNUAL REPORT ON EEOC DEVELOPMENTS: FISCAL YEAR 2025

\$697,500	Sex and Race Harassment  Retaliation	EEOC alleges companies subjected truck drivers to sex- and race-based comments at the workplace and fired employees who complained.  Under the terms of the three-year consent decree, the defendants will pay \$697,500 to the claimants, provide neutral references to those affected, exclude information about the litigation from the employees' personnel files, designate an EEOC-approved liaison who will monitor compliance with the decree, provide anti-discrimination training, adopt anti-discrimination policies, and provide reports to the EEOC, among other steps.	U.S. District Court for the Eastern District of Louisiana	N/A
\$650,000*	Sexual Harassment	EEOC alleges defendant did not take steps to stop a male manager and other workers from subjecting young female workers to unwanted touching and other forms of sexual harassment.  Under the terms of the two-year consent decree, the defendant agreed to pay \$650,000 to those affected; consider reinstating workers who were affected; hire an external EEO monitor; create a complaint hotline; provide anti-harassment training; and distribute updated EEO policies.	U.S. District Court for the Southern District of California	<a href="#">12/2/2025</a>
\$640,000*	Sexual Harassment and Retaliation	EEOC alleged defendant's operations manager sexually harassed an employee, and that the managers to whom she reported the harassment did not address her complaints per company policy. She alleges she was instead fired for insubordination when she refused to meet with the alleged harasser one-on-one, and that other employees complained of similar harassment.  Under the terms of the two-year consent decree, the employer agreed to pay \$640,000 to the class, as well as institute training and a procedure for reviewing its surveillance systems for reported complaints of harassment. The company will also extend re-hire offers to those affected employees.	U.S. District Court for the Western District of Tennessee	<a href="#">1/30/2026</a>
\$600,000*	Disability Discrimination  Failure to Accommodate	EEOC alleges the defendant used certain pre-employment inquiries that screened out individuals with disabilities.  Under the terms of the two-year consent decree, in addition to providing monetary relief, the defendant will not make pre-offer inquiries about applicants' physical capacities. In addition, the defendant will provide training on the ADA and accommodations, submit periodic reports to the EEOC regarding applicants who seek accommodations; establish a telephone and email hotline for employees and applicants to report concerns, questions, or complaints regarding the ADA; and provide information on its job application webpage about reporting concerns of disability discrimination under the ADA.	U.S. District Court for the Southern District of Ohio	<a href="#">4/23/2026</a>

ANNUAL REPORT ON EEOC DEVELOPMENTS: FISCAL YEAR 2025

\$525,000	Race Harassment and Retaliation	<p>EEOC alleges four Black employees were subjected to a hostile work environment by their co-workers and supervisors, including frequent use of racial slurs, and open display of nooses and other white supremacist symbols. The EEOC also charged that a white employee who witnessed the racial harassment and reported it to company managers and human resources was retaliated against.</p> <p>Under the terms of the three-year consent decree, the company will pay \$525,000, institute new training and reporting requirements, and establish complaint procedures for reporting harassment.</p>	U.S. District Court for the Northern District of Texas	<a href="#">8/1/2025</a>
\$500,000*	Race Discrimination	<p>EEOC alleges non-profit organization maintained mandatory “affinity caucuses” that were segregated by race, in which employees of other races were not allowed to participate. The EEOC further alleges the organization required staff, on a weekly basis, to attend one- to two-hour sessions of either the segregated racial affinity caucuses or DEI training, and that it denied white employees access to time off that it granted only to Black employees.</p> <p>Under the terms of the conciliation agreement, the organization agreed to pay \$500,000.</p>	This settlement was reached during the conciliation process before a lawsuit was filed in court.	<a href="#">3/19/2026</a>

Select EEOC Jury Awards or Judgments in FY 2025<sup>1563</sup>

Jury or Judgment Amount (before application of damages cap)	Claim	Description	Case Citation
\$2,170,000  (later reduced to \$300,000 + \$24,607.47 in costs)	Sexual Harassment	<p>The EEOC alleged an airline did not take sufficient action when an employee complained of sexual harassment. The complaint also alleged the defendant retaliated against the employee after she complained by placing her on indefinite leave.</p> <p>The jury did not address the retaliation claim, but found the employer failed to act on the employee's complaints. She was awarded \$170,000 in compensatory and \$2 million in punitive damages. Due to the damages cap, on March 4, 2025, the court amended this amount to \$170,000 in compensatory damages and \$130,000 in punitive damages. The court also awarded \$24,607.47 in costs.</p>	<i>EEOC v. SkyWest Airlines Inc.</i> , No. 3:22-cv-01807 (N.D. Tex. Nov. 20, 2024)
\$405,083  (later reduced to \$50,000)*	Disability Discrimination	<p>The EEOC alleged a senior living facility failed to accommodate a veteran's post-traumatic stress disorder. The charging party takes prescribed medication for this condition, and alleges the facility revoked her job offer when she failed a drug test even though she attempted to provide proof of her prescribed medications. At trial, a member of management admitted that the company submitted false information to the EEOC.</p> <p>In April 2025, a jury returned a verdict in favor of the EEOC, awarding the charging party \$5,083 in back pay, \$50,000 in compensatory damages, and \$350,000 in punitive damages. Following post-trial motions filed by both parties, the court reduced the jury's award of compensatory and punitive damages to an unallocated total of \$50,000.</p>	<i>EEOC v. The Princess Martha, LLC</i> , No. 8:22-cv-2182 (M.D. Fla. Jan. 12, 2026)
\$110,000	Sexual Harassment	<p>The EEOC alleged a government contractor unlawfully fired an attorney in retaliation for refusing his advances. The court entered a partial default judgment in favor of the EEOC after the defendant failed to meaningfully participate in discovery.</p> <p>The defendant was ordered to pay \$43,903 in lost wages and benefits, overtime, bonuses, paid time off, insurance and medical benefits, and coverage for late rents and fees incurred due to lost employment. The court also added an additional \$16,234, which amounted to 6% interest on the attorneys' fee award, and \$50,000 for compensatory damages.</p>	<i>EEOC v. Key Management Partners, Inc.</i> , No. 8:21-cv-02496 (D. Md. Oct. 24, 2024)

<sup>1563</sup> Judgments and verdicts entered into in FY 2026 are denoted with an asterisk (\*).

## Appendix C – Subpoena Enforcement Actions Filed by EEOC in FY 2025<sup>1564</sup>

Filing Date	State	Court Name / Case Number / Judge	Defendant(s)	Individual Charging Party or Systemic Investigation	Result
11/27/2024	MI	U.S. District Court for the Western District of Michigan  No. 1:24-mc-00148  Hon. Sally J. Berens	Ascension Borgess Hospital	Individual Charging Party	The court ordered the Respondent to fully comply with the subpoena.
<p><b>Commentary:</b></p> <p>As part of the EEOC’s investigation into a charge of race, religious and sex/pregnancy discrimination, the EEOC issued a subpoena to the Respondent. Of note, subpoena demand number 5 requested the following information: “Provide a complete list of all of the co-workers in the same job category and department as Charging Party for the period of 01 May 2022 to the present. This list should include each individual’s name, job title, race, sex, date hired, date discharged (if applicable), reason discharged (if applicable), beginning rate of pay, and most recent rate of pay.”</p> <p>The Respondent asked five times for an extension of time to file a response. The subpoena deadline was July 31, 2024. On October 30 and November 1, 2024, the Respondent provided an incomplete response to the subpoena as a whole, but stated that a list of requested comparator co-workers would be provided, without saying when. The Respondent did not provide any response to demand number 5, so the EEOC filed this application.</p> <p>On January 6, 2025, the court ordered the Respondent to fully comply with the subpoena. Respondent appealed, but the appeal was denied on March 12, 2025.</p>					
12/11/2024	IN	U.S. District Court for the Southern District of Indiana  No. 1:24mc68  Hon. James R. Sweeney II  Magistrate: Hon. Mark J. Dinsmore	Casino Operation	Individual Charging Party	The court granted the EEOC’s application in part and denied it in part.
<p><b>Commentary:</b></p> <p>The EEOC was investigating charges of race and national origin discrimination and retaliation. The Respondent reportedly had created three categories of hosts: Executive Host, Asian Executive Host, and Executive Host Special Markets-Asian to cater to “high end” clients.</p> <p>As part of its investigation the EEOC issued a subpoena seeking information to determine whether the non-Asian hosts were denied equal terms and conditions of employment based on national origin. By the date of the magistrate’s report and recommendations (March 28, 2025) the Respondent had voluntarily provided much of the requested information. The EEOC withdrew its requests in its subpoena for customer contact information, so Respondent did not provide that information.</p> <p>The remaining issue was whether the EEOC is entitled to obtain information relating to other properties operated by the parent company, and the court denied the EEOC’s motion to the extent it sought information relating to properties other than that operated by Respondent.</p>					
4/4/2025	OH	U.S. District Court for the Northern District of Ohio  No. 3:25mc13  Hon. James R. Knepp II	Kraft Heinz	Individual Charging Party	The EEOC withdrew its application after the Respondent fully complied with the subpoena.

<sup>1564</sup> The summary contained in Appendix C reviews select administrative subpoena enforcement actions filed by the EEOC in FY 2025 and early FY 2026. Subpoena enforcement actions filed in FY 2026 are denoted with an asterisk. The information is based on a review of the applicable court dockets for each of these cases. The cases illustrate that in most subpoena enforcement actions, the matters are resolved prior to the issuance of a court opinion.

Filing Date	State	Court Name / Case Number / Judge	Defendant(s)	Individual Charging Party or Systemic Investigation	Result
<p><b>Commentary:</b></p> <p>EEOC is investigating a charge of disability discrimination. The EEOC alleges the Respondent failed to accommodate the charging party's disability by allowing her to work 8-hour shifts instead of 12-hour shifts, while granting this work change to others. EEOC sought the names and contact information of all employees who requested reasonable accommodations involving limited working hours. The Respondent provided employee identification numbers, but no other contact information, and eventually a spreadsheet listing names of three individuals including the charging party's, but did not provide contact information, or information about a fourth employee who allegedly made a similar accommodation request. Respondent reportedly limited additional production of information to a one-week period only, and did not provide medical files and contact information. The EEOC then issued a subpoena making six requests, which required Respondent to produce three medical files previously requested, contact information for these employees, a list containing information about current or former employees who worked in the same position as the charging party in 2022, and the fourth employee's personnel file. Respondent responded to three of the requests, but otherwise failed to fully comply with the subpoena. The EEOC therefore filed the instant application for the administrative subpoena to be enforced.</p> <p>On April 16, 2025, the EEOC filed a notice of withdrawal of its application for an order to show cause following the Respondent's full compliance with the subpoena.</p>					
5/12/2025	IL	U.S. District Court for the Northern District of Illinois  No. 1:25-cv-05248  Hon. Mary M. Rowland  Magistrate: Hon. Albert Berry, III	Mauser Packaging Solutions	Systemic Investigation – Commissioner's Charge	On August 15, 2025, the magistrate recommended that the subpoena be enforced with certain exceptions. Respondent filed objections.
<p><b>Commentary:</b></p> <p>The EEOC filed an application for an order to show cause why an administrative subpoena should not be enforced. The EEOC sought more information stemming from its investigation into claims that Respondent engaged in illegal hiring practices, including limiting, segregating, or classifying applicants by race, national origin, age, or sex for various facilities, primarily in the Chicagoland area.</p> <p>A charge of discrimination was filed against Respondent in February 2024 by EEOC Commissioner (now EEOC Chair) Andrea Lucas. Then-District Director of Chicago District Office, Diane Smason, also opened a directed investigation into the company's compliance with the ADEA. The EEOC's charge alleged that Respondent denied employment opportunities to applicants on multiple different bases, depending on the facility in question, including white applicants, Black applicants, Hispanic applicants, and female applicants. The EEOC has reason to believe that Respondent may be making inappropriate requests to staffing, placement or recruiting companies to provide it with workers or candidates for various facilities who had demographic characteristics that matched the demographics of the population of employees who already worked at those facilities, effectively segregating various facilities by race, national origin, or sex (for example, preferring Hispanic workers for a facility with a predominantly Hispanic workforce, preferring black workers for a different facility with a predominantly black workforce, etc.).</p> <p>As part of its investigation, the EEOC issued a subpoena requesting (1) an electronic database identifying all candidates who have applied or been referred for employment at any of Respondent's eight facilities from January 1, 2020, through present, and providing demographic, personnel, and contact information for each individual; and (2) an electronic database seeking the same information for each incumbent employee. According to the EEOC, the Respondent has failed to provide responsive information.</p> <p>On August 15, 2025, the Magistrate recommended that Petitioner's Application for an Order to Show Cause be granted, except to the extent it seeks information related to candidates' or employees' discharge from Respondent. On August 29, 2025, the Respondent filed objections to the report and recommendations.</p> <p>On February 25, 2026, the court adopted in part and modified in part the magistrate's report and recommendations. Of note, the court extended the deadline for Respondent to produce the requested databases from 14 days to 30 days.</p>					

Filing Date	State	Court Name / Case Number / Judge	Defendant(s)	Individual Charging Party or Systemic Investigation	Result
6/27/2025	IL	U.S. District Court for the Northern District of Illinois  No. 1:25cv7201  Hon. Judge Berry III  Magistrate: Hon. Albert Berry III	Mauser Packaging Solutions	Systemic Investigation	On January 5, 2026, the court recommended that the EEOC's application for an order to show cause be granted, with a modification that the subpoena allow 14 days for compliance. The Respondent filed objections.
<p><b>Commentary:</b></p> <p>The EEOC is currently investigating charges of discrimination on the basis of sex (female), national origin (Hispanic), race (Black, White), and age, filed against the Respondent under Title VII and the ADEA. Commissioner (now Chair) Andrea Lucas filed a commissioner's charge of discrimination, alleging that from January 1, 2020, to the present, the Respondent had unlawful employment practices and discriminated against applicants on the aforementioned bases.</p> <p>Then-District Director of Chicago District Office, Diane Smason, also opened a directed investigation into the company's compliance with the ADEA. According to the Charge and Notice of Directed Investigation, Respondent used unlawful employment practices related to recruitment, hiring, and placement at its facilities, from January 1, 2020, to the present.</p> <p>As part of the investigation, the EEOC issued a subpoena seeking access to eight of Respondent's facilities on February 20, 2025, at 9:00 a.m., for inspection and photographing of areas frequented by employees (e.g., production lines, shipping and receiving, reception areas, break room, restrooms, and human resources offices), as well as access to employees for interviews. According to the EEOC, the Respondent to date has refused to provide access, and that refusal has delayed and hampered the investigation of the charge. The EEOC therefore asks the court to issue an Order to Show Cause Why the Subpoena Should Not Be Enforced.</p> <p>On January 5, 2026, the court recommended that the EEOC's application for an order to show cause be granted, with a modification that the subpoena allow 14 days for compliance. The Respondent filed objections.</p>					
6/12/2025	MI	U.S. District Court for the Eastern District of Michigan  No. 2:25-mc-50834  Hon. Susan K. DeClercq	Henry Ford Health System	Individual Charging Party	Defendant voluntarily complied with the subpoena.
<p><b>Commentary:</b></p> <p>As part of the EEOC's investigation of a charge of disability and race discrimination, the EEOC issued a subpoena on the Respondent after it failed to respond to issue a position statement or previous requests for information. The subpoena sought the following information: (1) Produce all the documents upon which Respondent will rely to respond to each allegation raised by the Charging Party in her charge of discrimination, along with complete and unredacted copies of each such document; (2) Provide a complete unredacted copy of the Charging Party's personnel file; (3) Provide a complete unredacted copy of the Charging Party's medical file; (4) Provide a complete list of any and all individuals who were employed in the same unit as the Charging Party and were disciplined for the same or similar reason as the Charging Party, during the period of January 1, 2022 to January 1, 2024. Include the full name, job title, date of hire, race, reason for discipline, date of discipline, and current employment status for each listed individual.</p> <p>The EEOC avers the Respondent has not provided any information or a response, including a motion to quash the subpoena, so its subpoena should be enforced in its entirety.</p> <p>On August 4, 2025, the EEOC filed a notice of withdrawal of its application for an order to show cause why the subpoena should not be enforced because the defendant complied with the subpoena.</p>					

Filing Date	State	Court Name / Case Number / Judge	Defendant(s)	Individual Charging Party or Systemic Investigation	Result
7/2/2025	CA	U.S. District Court for the Central District of California  No. 2:25-mc-00058  Hon. Mark C. Scarsi  Magistrate: Hon. Stephanie S. Christensen	Vallarta Food Enterprises, Inc., Daniel Food Enterprises, Inc., Gonzalez Food Enterprises, Inc., Jalos Food Enterprises, Inc., Joya Food Enterprises, Inc., Santa Isabel Enterprises, Inc., Zixta Enterprises Inc.	Systemic Investigation	The magistrate issued a report and recommendation finding that the narrowed subpoenas seek relevant information that is neither overbroad nor unduly burdensome, and therefore the court should order Respondents to produce all requested data.  On December 3, 2025, the court issued an order accepting the findings, conclusions, and recommendations of the magistrate.
<p><b>Commentary:</b></p> <p>EEOC is currently investigating Charges of Discrimination against Respondents alleging they fail or refuse to recruit for employment, hire, or promote individuals based on their race (white, Black, and/or Asian) and their national origin (non-Hispanic), and subject individuals to different terms and conditions of employment based on their race (white, Black, and/or Asian) and their national origin (non-Hispanic) in violation of Title VII.</p> <p>In the course of its investigation, EEOC issued two subpoena duces tecum seeking documents and information. The first subpoena sought applicant and employee data from June 1, 2020 to present. The data sought includes the applicant’s name, mailing address, email address, phone number, date of application, date the application was viewed, location applied to, positions applied to, languages spoken, applicant ID, common ID, and other screening questions such as, are you able to perform the essential functions of the job. The subpoena also asked for each employee’s name, company employer, ID number, mailing address, email address, phone numbers, hire date, pay rate, hours/units, pay frequency, payroll status, salary/hourly, ethnic origin, employee status, job code, employee type, district, location, WC group, and common ID. A second subpoena sought the same information, plus information not previously provided in response to a request for production (trainings regarding recruitment and hiring, job descriptions, identities of employees involved in recruiting, hiring, and promotions, and information regarding race and national origin complaints).</p> <p>Respondents sought revocation of the subpoenas, objecting that they were overbroad. The Commission denied the petition to revoke, and therefore asks the court for an order to show cause why its subpoenas should not be enforced.</p> <p>On October 10, 2025, the magistrate issued a report and recommendation finding that the narrowed subpoenas seek relevant information that is neither overbroad nor unduly burdensome. The R&amp;R therefore recommended that the court order Respondents to produce all requested data. On December 3, 2025, the court issued an order accepting the magistrate’s report and recommendations.</p>					
8/21/2025	NM	U.S. District Court for the District of New Mexico  No. 1:25mc25  Hon. Matthew L. Garcia	Gallup-McKinley County Schools	Systemic Investigation	Pending
<p><b>Commentary:</b></p> <p>The EEOC filed suit to enforce two administrative subpoenas it issued during its investigation into allegations Gallup-McKinley County Schools (GMCS) engaged in intentionally discriminatory hiring and other unlawful employment practices against Native American applicants and employees. GMCS comprises multiple elementary, middle, and high schools serving students in the city of Gallup and other areas of McKinley County, New Mexico. In August 2024, then-Commissioner, now EEOC Chair Andrea Lucas, filed a commissioner’s charge of discrimination against GMCS. The charge alleged GMCS engaged in a pattern or practice of intentional discrimination against Native American employees and job applicants in interviewing, hiring, promoting, classifying, and other employment practices based on race for the job categories of classroom teacher, administrator, or principal. As part of its investigation, the EEOC requested interviews with two high-level GMCS administrators. GMCS initially agreed to these interviews but canceled the interviews the day before they were scheduled to take place and refused to cooperate further with the EEOC’s investigation. The EEOC then issued two administrative subpoenas for deposition testimony from the witnesses, but the witnesses failed to appear for the administrative depositions and GMCS failed to follow the administrative appeal process available for review of an EEOC subpoena.</p>					

Filing Date	State	Court Name / Case Number / Judge	Defendant(s)	Individual Charging Party or Systemic Investigation	Result
11/20/2025*	WI	U.S. District Court for the Eastern District of Wisconsin  No. 2:25-cv-01842  Hon. Stephen C Dries	Northwestern Mutual Insurance Co.	Systemic Investigation	Pending
<p><b>Commentary:</b></p> <p>EEOC filed an application for an order to show cause why a subpoena should not be enforced against Respondent insurance company. EEOC alleges that the charging party and others were denied employment opportunities on account of defendant's DEI initiatives. Charging party also alleges he was denied a promotion due to these initiatives and in retaliation for complaining about them. As part of its investigation the EEOC is seeking documents related to the charging party's employment, the Respondent's various DEI initiatives, and an interview with the defendant's VP of Diversity and Inclusion. Specifically, the EEOC sought information in the following categories: (1) general corporate information regarding the operation of the charging party's department (Requests 1-3); (2) personnel information of specific company employees including charging party (Requests 4-7); and (3) information about the operation of the company's DEI policies and practices (Requests 8-21). EEOC also requested to interview Amy Hanneman, Vice President of Diversity and Inclusion, to obtain information relating to these policies and practices.</p> <p>EEOC claims the Respondent provided incomplete responses to the majority of its requests. The Respondent submitted a Petition to Revoke or Modify the Subpoena. On September 4, 2025, the EEOC issued its Determination, denying Northwestern Mutual's petition to revoke or modify the subpoena. On October 6, 2025, Respondent informed EEOC that, with a minor exception, it intended to stand on its objections and refused to provide the information sought by EEOC. The agency therefore moves forward with its application.</p>					
11/18/2025*	PA	U.S. District Court for the Eastern District of Pennsylvania  No. 2:25-cv-06502  Hon. Gerald J. Pappert	University of Pennsylvania	Systemic Investigation	<p>On January 5, 2026, the court granted the application, but the Respondent filed objections.</p> <p>On March 31, 2026, the court granted the EEOC's application.</p> <p>On April 27, 2026, the court stayed enforcement of its order until the Third Circuit issues its decision and mandate in Respondent's appeal.</p>

Filing Date	State	Court Name / Case Number / Judge	Defendant(s)	Individual Charging Party or Systemic Investigation	Result
<p><b>Commentary:</b></p> <p>A commissioner’s charge filed in December 2023 alleged that the university subjected faculty and staff to antisemitic harassment and failed to address complaints of harassment. The EEOC issued an RFI requesting the following: Produce complaints by employees; including but not limited to: faculty (including, but not limited to, tenured, non-tenured, and adjunct professors), staff, and other employees (including, but not limited to, students employed by the University), of discrimination based on Jewish religion, faith, ancestry/National Origin and/or complaints of anti-Semitism from November 1, 2022, to the present. For each complaint, produce the following information: a. First and Last name of complaining employee; b. Position title of complaining employee; c. Dates of employment of complaining employee; d. The complaint; e. The method of complaint (i.e., hotline, email, in-person, etc.); f. Identify Respondent Official(s) by name (first and last) and position title who had a role in the investigation, disposition or outcome of the complaint; g. What the Respondent did in response to the complaint; and, h. Complete investigation to include witness interviews, disposition reports, corrective action issued, etc.</p> <p>The Respondent produced three complaints it received in response.</p> <p>Produce a list of all clubs, groups, organizations and recreation groups (hereinafter referred to as “organizations”) related to the Jewish religion, faith, ancestry/National Origin. For each organization listed, produce the following information: a. Name of organization; b. Indicate if the organization is run by employees and/or volunteers; c. Identify the organization Point of Contact by first and last name; d. Produce the organizations Point of Contact’s contact information to include phone number, email address and mailing address; e. Produce a roster of organization members. For each member listed, indicate if they are a University employee or volunteer; f. For employees identified on the roster, produce their last known contact information to include personal phone number, email address and mailing address; and, g. Produce the organization’s website, if applicable.</p> <p>EEOC alleges that in response to this request, the Respondent offered a list of organizations but did not identify members on account of confidentiality or lack of access to membership rosters, and argued the request itself was overbroad.</p> <p>Produce a list of employees in the Jewish Studies Program at the University of Pennsylvania department during the period of November 1, 2022, to the present. For each employee listed, produce the following information: a. First and last name; b. Position title; c. Dates of employment; d. Location/campus; and, e. Last known contact information to include personal email address, phone number and mailing address.</p> <p>The EEOC then issued a subpoena with requests identical to the above RFI, and sought additional information about names and contact information for faculty who attended certain listening sessions and information about a specific incident. Respondent submitted a petition to modify and/or revoke the subpoena. The EEOC limited certain requests to employees v. students, but otherwise let the subpoena stand. The EEOC now issues this application.</p> <p>On January 5, 2026, the court granted the application. The Respondent filed objections. On March 31, 2026, the court again granted the EEOC’s application, ordering the Respondent to respond to the subpoena “without revealing any employee’s affiliation with a specific organization.” On April 27, 2026, the court stayed enforcement of its order until the Third Circuit issues its decision and mandate in Respondent’s appeal.</p>					
12/18/2025*	CA	U.S. District Court for the Central District of California  No. 2:25mc132  Hon. Maame Ewusi-Mensah Frimpong and Magistrate Judge A. Joel Richlin	Sephora USA Inc.	Individual Charging Party	Pending

Filing Date	State	Court Name / Case Number / Judge	Defendant(s)	Individual Charging Party or Systemic Investigation	Result
<p><b>Commentary:</b></p> <p>The EEOC is currently investigating a charge of discrimination based on religion against Respondent under Title VII. Specifically, on March 24, 2021, the Charging Party filed a charge of discrimination alleging that Respondent discriminated against her and other individuals based on religion. EEOC issued subpoenas seeking a list of employees who had requested accommodations due to religious reasons from March 1, 2020 to the present for the geographical scope of the implementation of the Respondent company's Availability Guidelines, including names, contact information, and employment information. Subpoena No. 24-116 also sought documentation of their religious accommodation requests.</p> <p>On March 22, 2024, Respondent sent its Petition to Revoke or Modify Subpoena. Respondent's objections to the Subpoena included lack of relevance, overbreadth, and burdensomeness. Respondent also represented that it did not have a central repository or database for religious accommodation requests. In response to Respondent's claim of undue burden to gather the information and documents sought by Subpoena No. 24-116, the Commission also served Subpoena No. 24-120 on April 19, 2024 to seek information so that it could contact Respondent's employees directly. Subpoena No. 24-120 seeks the identity, background employment information, and contact information of store directors, district managers, regional directors, human resources partners and/or employee relations representatives employed by Respondent from May 1, 2019 to the present. Subpoena No. 24-120 also seeks the same information for the Beauty Advisors companywide at any time from May 1, 2019 to the present. Respondent sent a second Petition to Revoke or Modify Subpoena in response, citing lack of relevance, overbreadth, and burdensomeness. EEOC denied the petition, and Respondent requested a reconsideration of the denial. The EEOC then initiated the instant enforcement action.</p>					
2/4/2026*	MI	U.S. District Court for the Eastern District of Michigan  No. 2:26mc50105  Hon. David M. Lawson	Henry Ford Health System	Individual Charging Party	Pending
<p><b>Commentary:</b></p> <p>A charging party alleges he was denied an accommodation for his disability, and that the respondent company instead rescinded his FMLA intermittent leave that had already been provided to him and disciplined him for using such leave. EEOC requested a position statement from the respondent, which was not provided. EEOC then served a subpoena on respondent, seeking information already sought via a request for production. Specifically, the subpoena directed the Respondent to "1. Provide a complete unredacted copy of Charging Party's personnel file, including but not limited to his time, attendance, and payroll records. 2. Provide a complete unredacted copy of Charging Party's medical file, including, but not limited to, all medical documentation collected pertaining to Charging Party's disability. 3. Provide any and all documents, including but not limited to, notes, emails, and memorandum, which reflect any and all discussions regarding the Charging Party, his disability, and his requests for any related accommodations. 4. Provide a complete, unredacted copy of any and all documents related to all internal investigations conducted as a result of complaints made by Charging Party, including, but not limited to: a. Any and all emails, notes, memos, recordings, findings, evidence, recommendations and corrective actions into the matter(s); b. the name, position title and current business address for each and every employee involved in the investigation of each matter; c. any and all steps taken to address the complaint(s). 5. Provide a copy of the Respondent's policy on reasonable accommodations. If no such policy exists, please describe the Respondent's practices and procedures regarding reasonable accommodations, to include but not be limited to, how employees request reasonable accommodations, how the Respondent disseminates relevant policies and procedures to employees, and how the Respondent addresses request for reasonable accommodations. 6. Provide a copy of the Respondent's EEO policy. If no such policy exists, please describe the Respondent's practices and procedures regarding discrimination, to include but not be limited to, how employees are [to] report or complain about discrimination, how the Respondent disseminates relevant policies and procedures to employees, and how the Respondent addresses complaints of discrimination. 7. Provide a copy of documents related to Respondent's investigation into Charging Party's alleged FMLA misuse. 8. Provide a copy of any U.S. Department of Labor investigation finding(s) or determination regarding Charging Party. 9. Provide a copy of Respondent's communications with its third-party FMLA administrator regarding Charging Party. 10. Identify individual(s) who were involved with Respondent's decision to grant Charging Party's request for intermittent FMLA leave. 11. Identify individual(s) who have made the decision to investigate Charging Party's use of FMLA leave. 12. Identify individual(s) who made the decision to discipline Charging Party regarding his FMLA leave."</p> <p>EEOC alleges Respondent has not provided this information, so filed the instant application.</p>					

Filing Date	State	Court Name / Case Number / Judge	Defendant(s)	Individual Charging Party or Systemic Investigation	Result
2/5/2026*	TX	U.S. District Court for the Northern District of Texas  No. 3:26mc9  Hon. Brian McKay	Genuine Parts	Systemic Investigation	Pending

**Commentary:**

EEOC is investigating whether company subjects Black job candidates to employment discrimination on the basis of their race. In May 2024, EEOC Commissioner Kalpana Kotagal filed a commissioner’s charge stating the company may have engaged in a nationwide failure to hire and recruit Black job candidates since 2019. During its investigation, the EEOC issued a subpoena, requiring, among other things, data and documents evidencing its hiring and recruitment practices, including information about its job applicants and employees, identification of company locations and positions available, material showing its hiring and recruitment procedures, and any related complaints of discrimination at the company. The charge remains under investigation, and EEOC filed suit in federal court after company failed to comply with the subpoena.

## U.S. OFFICES

Albuquerque, NM

Anchorage, AK

Atlanta, GA

Austin, TX

Birmingham, AL

Boston, MA

Charleston, WV

Charlotte, NC

Chicago, IL

Cleveland, OH

Columbus, OH

Dallas, TX

Denver, CO

Detroit, MI

Fayetteville, AR

Fresno, CA

Greenville, SC

Houston, TX

Indianapolis, IN

Irvine, CA

Kansas City, MO

Practice Office  
GSC

Las Vegas, NV

Lexington, KY

Long Island, NY

Los Angeles, CA

Downtown  
Century City

Madison, WI

Memphis, TN

Miami, FL

Milwaukee, WI

Minneapolis, MN

Nashville, TN

New Haven, CT

New York, NY

Newark, NJ

Orlando, FL

Overland Park, KS

Philadelphia, PA

Phoenix, AZ

Pittsburgh, PA

Portland, ME

Portland, OR

Providence, RI

Reno, NV

Rochester, NY

Sacramento, CA

Salt Lake City, UT

San Diego, CA

San Francisco, CA

San Jose, CA

San Juan, Puerto Rico

Santa Maria, CA

Seattle, WA

St. Louis, MO

Tysons Corner, VA

Walnut Creek, CA

Washington, D.C.

## GLOBAL LOCATIONS

Belgium	Milan
Bussels, Ghent, Hasselt, Mechelen	México
Brazil	México City, Monterrey, Saltillo
Sao Paulo	The Netherlands
Canada	Amsterdam
Toronto, Ontario, Montréal, Québec, Vancouver, British Columbia	Nicarágua
Colômbia	Managua
Barranquilla, Bogotá, Cali, Medellin	Norway
Costa Rica	Oslo
San José	Panamá
Denmark	Panamá City
Copenhagen	Poland
Dominican Republic	Gdańsk
Santo Domingo	Katowice
El Salvador	Kraków
San Salvador	Poznań
France	Warsaw
Lyon, Paris	Wrocław
Germany	Portugal
Berlin, Duesseldorf, Frankfurt, Hamburg, Munich	Lisbon
Guatemala	Algarve
Guatemala City	Singapore
Honduras	Singapore
San Pedro Sula	Spain
Tegucigalpa	Barcelona, Madrid, Valencia
Ireland	Switzerland
Dublin	Zurich
Italy	United Kingdom
	London

**Littler**<sup>®</sup>

[littler.com](http://littler.com) | Littler Mendelson, P.C.



[littler.com](http://littler.com) | Littler Mendelson, P.C.