



EEOC's New Strategic Plan and What It Means for HR Professionals

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In February 2018, the U.S. Equal Employment Opportunity Commission (“EEOC”), which enforces federal employment anti-discrimination laws and works to advance equal opportunity in the workplace, released a four-year Strategic Plan for 2018-2022. The EEOC’s Strategic Plan contains several objectives and signals a shift in EEOC enforcement.

What is the EEOC Strategic Plan?

First, you may be wondering what the EEOC Strategic Plan is. The Strategic Plan sets out a high-level overview of how the Agency will achieve its enforcement objectives and sets forth three strategic objectives. The EEOC’s Strategic Plan is distinct from the Strategic Enforcement Plan. The Strategic Enforcement Plan explains what priorities the EEOC will focus on during a given period. By contrast, the EEOC’s Strategic Plan serves as a framework for the EEOC’s enforcement, prevention, and education objectives for the next four years and provides guidance on how the Agency will implement its priorities.

The Three Strategic Objectives Set Forth in the EEOC’s 2018-2022 Strategic Plan

The EEOC’s 2018-2022 Strategic Plan sets forth three strategic objectives: (1) to combat and prevent employment discrimination through the strategic application of EEOC’s law-enforcement authorities; (2) to prevent employment discrimination and promote inclusive workplaces through education and outreach efforts targeted at both employees and employers; and (3) to achieve internal organizational excellence.

STRATEGIC OBJECTIVE #1: Combat and prevent employment discrimination through the strategic application of the EEOC’s law enforcement authorities.

In connection with the EEOC’s effort to combat and prevent employment discrimination through the strategic application of its law enforcement authorities, the EEOC has identified two outcome goals. The first of these two goals is central to the EEOC’s core mission and is to stop and remedy discriminatory employment practices and provide meaningful relief to victims. The second outcome goal identified is to ensure that the exercise of the EEOC’s enforcement authority is done fairly, efficiently, and based on the circumstances of each charge or complaint. While the EEOC will continue to focus on charges and complaints where systemic discrimination appears to exist, it will increase the number of individual cases it takes in an effort to achieve a more balanced approach to its enforcement efforts. The Strategic Plan also states that the EEOC will continue to exercise its prosecutorial discretion “responsibly” which may signal a less aggressive approach in prosecuting cases and more measured in enforcement efforts. In addition, the EEOC announced that it will increase its resources and enforcement of discrimination in federal government employment.

In connection with this objective, the Strategic Plan also addresses enforcement remedies. The Strategic Plan states that if an investigation has determined that there is reasonable cause to believe that unlawful employment discrimination occurred, the EEOC will increase its emphasis on non-monetary relief such as training for supervisors and employees, development of policies and practices to deter future discrimination, and external monitoring of employer actions.

STRATEGIC OBJECTIVE #2: Prevent employment discrimination through education and outreach

The second strategic objective in the Strategic Plan reflects the EEOC’s interest in engaging in proactive measures to deter employment discrimination before it occurs and to provide guidance to employers that are seeking to comply with EEO laws. In connection with the Agency’s proactive efforts to prevent employment discrimination through education and outreach, the EEOC identified two outcome goals. First, to help members of the public understand the law and their rights; and second, to work with employers, unions, and employment agencies to prevent discrimination, address EEO issues when they occur, and support a more inclusive workplace.

The Strategic Plan states that the EEOC will target outreach to individuals who have historically been victims of employment discrimination, individuals who are new to the workforce – which includes younger workers and immigrants – and low-skilled workers. The Strategic Plan also indicates that the EEOC plans to broaden the use of technology to communicate with diverse employee populations and give its website a much-needed update.

The Strategic Plan also outlines the EEOC’s outreach efforts to connect with employers. These efforts include providing technical assistance to small and new businesses to assist them with compliance. The Strategic Plan highlights the EEOC’s Small Business Task Force, which provides resources for small employers and notes that additional outreach efforts are necessary to reach new and smaller businesses.

The EEOC’s commitment to employer-side outreach and education is consistent with its objective to combat workplace sexual harassment. The EEOC reported a 50% increase in the number of calls, emails, and complaints of sexual harassment it received in the past year. With the ongoing national conversation about sexual harassment and the significant increase of allegations of sexual harassment in the workplace, the EEOC’s outreach objectives are part of its effort to address the growing need for employer education and guidance. While the EEOC has brought two waves of harassment lawsuits this summer, it also seeks to play a larger role in prevention by providing resources, training, and education to employers.

STRATEGIC OBJECTIVE #3: EEOC’s Management Objective of Organizational Excellence

The final strategic objective contained in the Strategic Plan concerns the EEOC’s internal operating structure and achieving “organizational excellence.” The EEOC’s corresponding outcome goals include improving management functions and fostering a culture where staff members exemplify a culture of excellence, respect, and accountability, and effectively allocating resources to achieve the Agency’s goals.

The Strategic Plan & the EEOC’s Enforcement Priorities

As set forth above, the Strategic Plan states how the EEOC will achieve the enforcement priorities set forth in the Strategic Enforcement Plan. The EEOC’s 2017-2021 Strategic Enforcement Plan was approved by the EEOC before the last presidential election and may be revised. However, it is useful for employers to review the substantive areas which the EEOC has identified as priorities. These priorities include the protection of vulnerable workers, including immigrant and migrant workers; the removal of qualification standards and inflexible leave policies that discriminate against individuals with disabilities; accommodating pregnancy-related limitations; ensuring fairness in data-driven employment screening tools; and preserving access to the legal system by eliminating overbroad waivers, releases, and mandatory arbitration provisions; and ensuring equal pay protections.

In addition, the 2017-2021 Strategic Enforcement Plan addressed two new emerging enforcement priorities. One of these developing issues is “backlash discrimination” against “Muslims or Sikhs, or persons of Arab, Middle Eastern or South Asian descent . . . as tragic events in the United States and abroad have increased the likelihood of discrimination against these communities.” The second developing issue identified by the EEOC was clarifying the employment relationship and application of workplace civil rights protections in light of the rise of increasingly complex employment relationships and structures. This includes the rise in the use of temporary workers, independent contractors, and staffing agencies, as well as the increase in workers that are on-demand or work in the “gig” economy. Employers should be on the lookout for incidents that implicate these new enforcement priorities and consult with counsel to ensure their practices comply with the EEOC’s regulations and enforcement history if issues arise in these areas.

What Does the Strategic Plan Mean for Employers?

The EEOC’s 2018-2022 Strategic Plan signals a few subtle shifts in the EEOC’s process to achieve its enforcement priorities.

First, the Strategic Plan makes it clear that while the EEOC still plans to bring charges where systemic discrimination appears to exist, it also seeks to take a more balanced approach by pursuing more individual cases. While the number of sexual harassment cases and investigations are on the rise, the Strategic Plan’s reference to “responsible” prosecutorial discretion may signal a more measured approach to enforcement in other areas. In addition, the EEOC has indicated that it will pay more attention to discrimination in federal government employment. This shift could result in reduced scrutiny of private employment practices.

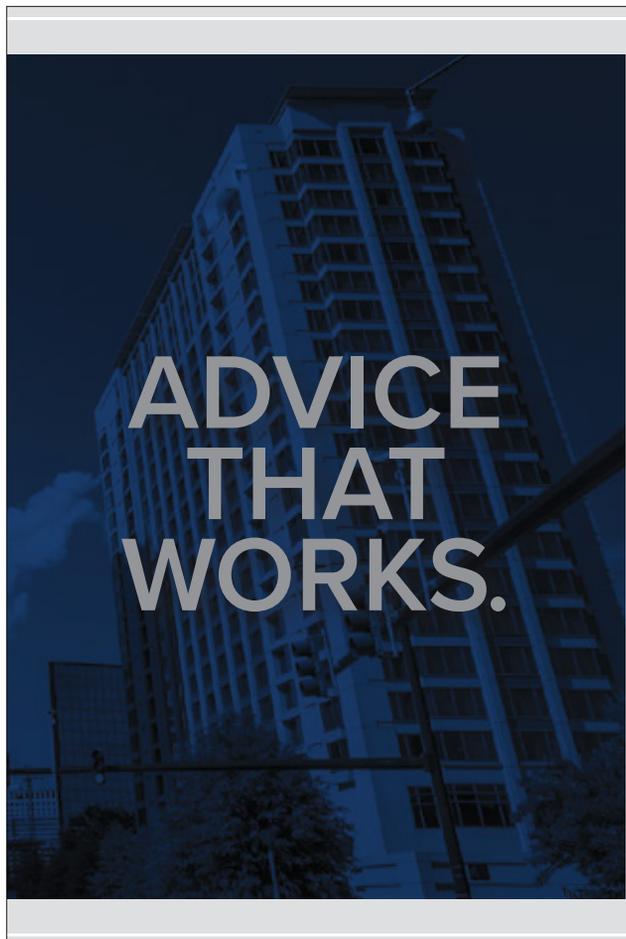
Second, the Strategic Plan indicates a shift from monetary penalties to non-monetary remedies focused on preventing future violations such as training, policy development, and external monitoring where appropriate.

While employers may welcome lower fines, employers should seek legal advice before agreeing to external monitoring and other non-monetary relief which may be burdensome and time consuming and could ultimately be more expensive for employers.

Finally, the EEOC’s efforts to provide employer-side outreach and support may signal increased empathy and leeway for employers, particularly small and new businesses.

While these shifts may appear to be subtle, the Strategic Plan signals a shift towards employer education, guidance, and compliance. Nevertheless, the Strategic Plan makes it clear that the EEOC is still committed to enforcement and prevention to ensure that employers comply with obligations to treat employees fairly, accommodate disabled employees, and promote an inclusive workplace. Employers should review their EEO, harassment, reasonable accommodation, and anti-retaliation policies to ensure that they are up-to-date and develop a plan to ensure compliance if they encounter issues related to the EEOC’s emerging enforcement priorities or claims of sexual harassment. Employers should also engage all employees in regular, interactive trainings to confirm that managers, supervisors, and employees are aware of the company’s commitment to maintaining an inclusive work environment.

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