



# Trump Grabs Control of EEOC Through Unprecedented Move – But Will Commissioner Firings Hold Up in Court? Employer FAQs to Help Sort Through Confusion

Insights

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President Trump just took the unprecedented step of firing two Democratic members of the Equal Employment Opportunity Commission and freed himself up to quickly install a majority of Republican commissioners rather than having to wait until their normal terms expire over the next two years. The terminations of Charlotte Burrows and Jocelyn Samuels, revealed yesterday, will have reverberations in workplaces across the country and will certainly set off legal challenges over the scope of presidential power. In the meantime, employers will be left to grapple with the appropriate responses during a limbo period. What is the impact of these terminations and how should employers adjust? Here is a set of FAQs to help guide you through these tumultuous times.

## What does the EEOC do?

The EEOC is the federal agency that enforces anti-bias workplace laws based on race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age, disability, and genetic information. The main statutes it supports include Title VII, the Equal Pay Act, the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA), and the most recent addition, the Pregnant Workers Fairness Act (PWFA).

- The Commission **investigates discrimination complaints** and often **files lawsuits** against employers on behalf of applicants, workers, and former workers.
- Additionally, it **issues binding regulations**, and occasionally releases **non-binding guidance** to help inform employers about its positions on certain key matters.

## How does the EEOC typically work?

The EEOC is led by a five-member commission, each of whom is presidentially appointed and, typically, enjoys a staggered five-year term. These Commissioners wield tremendous power in approving regulations and technical guidance, along with steering the direction and focus of the agency itself. If Trump had followed precedent, the two Democratic commissioners would have remained on the Commission until 2025 (Burrows) and 2026 (Samuels) – after which point Trump would have had the opportunity to nominate replacements and capture a majority.

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Rather than wait, Trump informed Commissioners Burrows and Samuels that they had been terminated with immediate effect late on Monday evening. The news was revealed yesterday. Trump also announced the termination of EEOC General Counsel Karla Gilbride, but that move was expected and on par with what previous administrations have done during presidential transitions.

## **Who is in charge?**

As of today, there are only two EEOC Commissioners – Andrea Lucas (appointed by Trump in 2020), and Kalpana Kotagal (appointed by Biden in 2023). Trump appointed Lucas as Acting Chair last week, but she'll need at least one more Commissioner to join her in order to form a three-member quorum and accomplish significant actions such as adopting new regulations or issuing legal guidance.

## **What will happen next?**

Two things should happen in short order:

- Trump will install at least one new Commissioner to create a working quorum and hand Republicans a working majority (although he has up to three vacant seats to fill).
- Both of the terminated Commissioners said they were considering their legal options, but no doubt legal actions will be launched to overturn their terminations (either by the former Commissioners themselves or those who seek to challenge Trump's power). While we might see immediate court orders in these cases granting temporary injunctions, the actual litigation itself could take years to sort out, possibly ending up in front of the Supreme Court. (These firings may also play out in court side-by-side with Trump's unprecedented termination of an NLRB board member, discussed here.)

## **What changes can we expect?**

Unless a court orders the two Commissioners to be immediately reinstalled, we expect Trump to appoint at least one replacement in order to permit the EEOC to begin taking action in line with his agenda. Using Acting Chair Lucas's statement of intent that accompanied her appointment last week as a guide, you will most likely see the EEOC take action as follows:

- **DEI programs will be on the chopping block:** Lucas has focused much of her early work on attacking "unlawful DEI-motivated race and sex discrimination" in the workplace. Don't be surprised if we see technical guidance or even a rule purporting to regulate private sector DEI programs
- **Pregnant Workers Fairness Act rule will be rescinded:** Lucas dissented when the EEOC passed the April 2024 PWFA rules given the requirement that employers accommodate applicants and workers who need time off or other workplace modifications for an abortion

procedure. Look for the entire slate of rules to be rescinded (and it's an open question if they will be replaced).

- **Expanded religious rights for workers:** Lucas also said she is intent on “protecting workers from religious bias and harassment” – which might see reduced opportunities for LGBTQ+ workers to bring claims alleging hostility or misgendering from coworkers who assert religious opposition to their status.
- **Restricted approach to gender identity:** While one of Trump’s executive orders from last week proclaims that “sex” is not a synonym for and does not include the concept of “gender identity,” this stance runs counter to the Supreme Court’s *Bostock* Title VII ruling. While discrimination against transgender and non-binary/gender non-conforming applicants and workers remains illegal under federal law, expect to see guidance from the EEOC restricting the application of this decision as narrowly as possible.
- **Conservative approach to worker bathroom access:** Lucas has already made clear her stance on gender-affirming bathroom access: “Every female worker has privacy and safety rights that necessitate access to single-sex workplace bathrooms limited to biological women,” she said while voting against the EEOC’s most recent workplace harassment guidance (which was rescinded almost immediately by Trump last week). Expect to see a new rule or guidance requiring employers to offer single-sex bathroom access to employees based only on the gender assigned at birth.
- **Stronger “reverse discrimination” principles:** Lucas has said she aims to protect workers from “anti-American national origin discrimination,” so you can expect to see a focus on prosecuting “reverse discrimination” claims or otherwise supporting the legal tenets backing such theories.
- **Reduced enforcement and outreach:** In recent years, the EEOC’s greatest expenditures were for private enforcement and outreach, as well as federal employee programs. The number of lawsuits filed by the EEOC has increased dramatically just since 2022, and some argue its outreach programs are geared more toward encouraging employees to file complaints than educating employees as to their workplace rights. We may see the EEOC become less activist and more of an administrative board.

## What are the potential roadblocks to take into account?

The “chaos” scenario would see the Lucas-led EEOC take any number of the above actions in the coming months (or years) – and then for a court to rule that Trump’s terminations were unlawful and call all of those actions into question. In such a scenario, the steps taken by the EEOC in the interim might be immediately rolled back or otherwise struck down. Or, we could see a limbo period where the Commission insists that the rules or technical guidance it has issued remain valid and viable despite the legal setbacks and any court order that says otherwise. Sign up to [receive our Insights](#) and stay updated on the latest changes.

## Conclusion

If you have any questions about these developments or how they may affect your business, please contact your Fisher Phillips attorney or the authors of this Insight. Visit our [New Administration Resource Center for Employers](#) to review all our thought leadership and practical resources, and make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information.

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