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EEO Update

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EEOC DEVELOPMENTS

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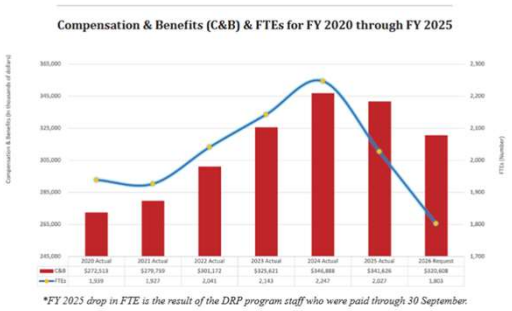
View from the Top

- Trump appointee Andrea Lucas remains chair
- Trump appointee Brittany Panuccio added late 2025
  - 2016 law school grad, worked on Title IX changes at DOE
  - Gives EEOC quorum for pattern/practice cases and issuing (or rescinding) regulations
- Priorities
  - Religion (Task Force to Eradicate Anti-Christian Bias)
  - DEI as discrimination
  - Anti-American discrimination
  - Women-only bathrooms (exited at least 7 trans lawsuits)
  - Universities

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By the Numbers

- Fewer employees
- Some dismissals without position statements
- Few cases filed
  - FY26: 97
  - FY23: 144
  - Pre-2010: 100s
- BUT: shorter deadlines



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By the Numbers: FY 2025

- Oct. 1, 2024 – Sept. 30, 2025 (crosses administrations)
- 270,000 inquiries (up 9%)
- 88,000 charges (steady)
- 90,000 resolutions (up 4%)
- Private sector "inventory" down 4%
- $660 million for 17,700 individuals
  - 80% pre-suit (conciliation, mediation, admin. settlements)
- Southeast is busy: 7/10 highest states per capita, inc. NC

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By the Numbers: Charge Bases

- Retaliation remains most common basis
- Disability edging up
- Religion peaked with COVID
- Pregnant Workers Fairness Act took effect 2023

	FY 2023	FY 2024	FY 2025
Retaliation (All Statutes)	57%	48%	62%
Disability	36%	38%	41%
Race	34%	34%	33%
Sex	31%	30%	31%
Age	17%	18%	19%
National Origin	9%	9%	9%
Religion	5%	4%	4%
Pregnancy	0.2%	3%	4%
Equal Pay Act	1%	1%	1%
Genetic Info.	0.4%	0.4%	0.5%
TOTAL	81,055	88,531	88,201

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By the Numbers: Resolutions

- Remarkably steady since 2000
- About 80% end in "no reasonable cause" or admin. closure
- Adverse conclusions are rare

	FY 2023	FY 2024	FY 2025
TOTAL	81,180	87,219	90,744
Settlement	9%	8%	8%
Withdrawn w/ Benefits	7%	8%	7%
Administrative Closure	19%	18%	19%
No Reasonable Cause	62%	64%	63%
Reasonable Cause	2%	2%	3%
Successful Conciliation	1%	1%	1%
Unsuccessful Conciliation	1%	1%	2%
Merit Resolution	1%	1%	2%
Monetary Benefits (millions)	$342.1	$440.5	$469.6

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Abandoning Affirmative Action

- Requirement for EEO demographic reports since 1966
  - 2-1 vote in July to rescind EEO reporting requirement, arguing it encourages anti-white and anti-male discrimination
  - No final rule yet, so TBD for this year
  - May still get requests from EEOC
- Affirmative Action Guidelines gave safe harbor since 1979 for programs to expand opportunity for under-represented groups
  - 2-1 vote in June to rescind guidelines & compliance manual
  - Title VII has not changed, but current government enforcement has

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"~~Reverse~~" Discrimination

Recall: *Ames v. Ohio Dept of Youth Services* (SCOTUS 2025)

- Unanimous opinion by Biden appointee Justice Ketanji Brown Jackson
- Straight woman sued after new position went to lesbian woman
- Appeals court required majority-group members to show defendant was "that unusual employer who discriminates against the majority"
  - Standard in 5 of the 12 regional circuits, but never our Fourth Circuit
- SCOTUS: Nope. Title VII standard "does not vary based on whether or not the plaintiff is a member of a majority group."

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E.g., *EEOC v. New York Times*

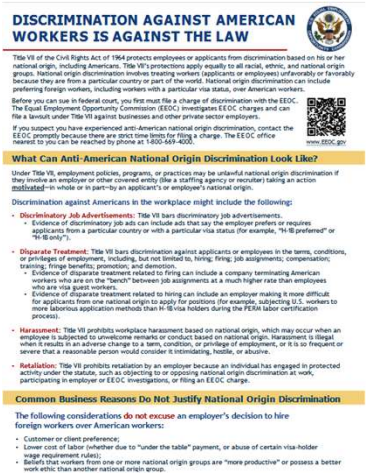
- May 2026: EEOC sues alleging race and/or sex discrimination
  - A white male editor was not selected for deputy real estate editor
  - 4 finalists with one white person and one male, but no white men
  - Cited NYT's 2021 "Call to Action" hiring plan, D&I reports with stats, diverse slates for candidates and interviewers, D&I in leader reviews
  - Editor: NYT leaders went from 83% white to 68% white in a decade
- NYT counter-suit: baseless retaliation for NYT's speech, part of administration-wide effort to punish perceived enemies
  - Also, selected multiracial woman was more qualified due to service journalism, compelling vision, deputy editor experience

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Anti-American Discrimination?

New educational EEOC poster in late 2025: "Discrimination Against American Workers"

- "preferring foreign workers, including workers with a particular visa status, over American workers"
- Job postings for a particular country or visa status ("H-1B preferred")
- Disparate treatment (firing more Americans who are "on the bench" between assignments than visa workers)
- Harassment
- Retaliation



DISCRIMINATION AGAINST AMERICAN WORKERS IS AGAINST THE LAW

Title VII of the Civil Rights Act of 1964 protects employees or applicants from discrimination based on his or her national origin, including Americans. Title VII's protections apply equally to all racial, ethnic, and national origin groups. National origin discrimination involves treating workers (applicants or employees) unfavorably or favorably because they are from a particular country or part of the world. National origin discrimination can include preferring foreign workers, including workers with a particular visa status, over American workers.

Before you can sue in federal court, you first must file a charge of discrimination with the EEOC. The Equal Employment Opportunity Commission (EEOC) investigates EEOC charges and can file a lawsuit under Title VII against businesses and other private sector employers.

If you suspect you have experienced anti-American national origin discrimination, contact the EEOC promptly because there are strict time limits for filing a charge. The EEOC office nearest to you can be reached by phone at 1-800-669-4000.

www.EEOC.gov

What Can Anti-American National Origin Discrimination Look Like?

Under Title VII, employment policies, programs, or practices may be unlawful national origin discrimination if they involve an employer or other covered entity (like a staffing agency or recruiter) taking an action motivated—in whole or in part—by an applicant's or employee's national origin.

Discrimination against Americans in the workplace might include the following:

- **Discriminatory Job Advertisements:** Title VII bars discriminatory job advertisements.
  - Evidence of discriminatory job ads can include ads that say the employer prefers or requires applicants from a particular country or with a particular visa status (for example, "H-1B preferred" or "H-1B only").
- **Disparate Treatment:** Title VII bars discrimination against applicants or employees in the terms, conditions, or privileges of employment, including, but not limited to, hiring; firing; job assignments; compensation; training; fringe benefits; promotion; and demotion.
  - Evidence of disparate treatment related to firing can include a company terminating American workers who are on the "bench" between job assignments at a much higher rate than employees who are visa guest workers.
  - Evidence of disparate treatment related to hiring can include an employer making it more difficult for applicants from one national origin to apply for positions (for example, subjecting U.S. workers to more laborious application methods than H-1B visa holders during the PERM labor certification process).
- **Harassment:** Title VII prohibits workplace harassment based on national origin, which may occur when an employee is subjected to unwelcome remarks or conduct based on national origin. Harassment is illegal when it results in an adverse change to a term, condition, or privilege of employment, or it is so frequent or severe that a reasonable person would consider it intimidating, hostile, or abusive.
- **Retaliation:** Title VII prohibits retaliation by an employer because an individual has engaged in protected activity under the statute, such as objecting to or opposing national origin discrimination at work, participating in employer or EEOC investigations, or filing an EEOC charge.

Common Business Reasons Do Not Justify National Origin Discrimination

The following considerations do not excuse an employer's decision to hire foreign workers over American workers:

- Customer or client preference;
- Lower cost of labor (whether due to "under the table" payment, or abuse of certain visa-holder wage requirement rules);
- Beliefs that workers from one or more national origin groups are "more productive" or possess a better work ethic than another national origin group.

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Anti-American Discrimination, cont'd

- Furniture store chain paying $1.3M for allegedly favoring Hispanic applicants
- Farm paying $150k for allegedly giving more and better work to foreign workers than U.S workers (mostly Black)
- EEOC sued IT staffing agency for "ONLY H-1B" job posting
- EEOC sued Asian supermarket chain for allegedly favoring Chinese workers in pay, promotions, scheduling, discipline
- EEOC sued janitorial service that allegedly "excluded qualified American and non-Hispanic applicants from janitorial jobs"
- EEOC sued construction group for allegedly firing U.S.-born Hispanic carpenter who complained about "anti-American slurs [from] Mexican coworkers" who "derided him because he could not speak Spanish fluently" (harassment, retaliation)

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Religion & Accommodation

- Recall: *Groff v. DeJoy* (SCOTUS 2023)
  - Unanimous opinion by Justice Samuel Alito
  - Lower courts long followed 1977 SCOTUS decision suggesting Title VII had a higher standard for religious accommodations
  - U.S. Postal Service mailman would not work Sundays due to Sabbath; disciplined for missing scheduled Sundays until he quit
  - District court and appeals court sided with employer
  - SCOTUS: Forget the 1977 decision and accommodate religion-based requests unless they impose undue hardship, i.e., "substantial increased costs in relation to the conduct of [a] particular business"

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Religion & Accommodation in Action

- EEOC secured over $1 million each from several employers who allegedly failed to provide religious exemptions to COVID vaccine requirements, including healthcare employers who had federal mandate upheld in court
  - Another employer paid $180k to end investigation of flu vaccine mandate
- Manufacturer settled after allegedly failing to accommodate a religious employee regarding pronouns for transgender colleague
- Las Vegas casino paid $850k and entered consent decree with monitor for allegedly denying Sabbath days off and retaliation for opposition
- Ski park paid $20k after allegedly firing Christian employee due to religious posts on personal social media
- EEOC sued Blue Bell ice cream maker for allegedly firing Jewish employee who refused to shave his beard
- Café chain paying $23k after allegedly firing fasting Muslim employee for seeking shift swap to accommodate sunset fast-breaking meal

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CASE DEVELOPMENTS

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Supreme Court

- No EEO cases
- Few employment law cases
- *Jules v. Andre Balazs Properties*
  - Does a federal court that previously stayed litigation to require arbitration have jurisdiction to confirm or vacate an arbitration award?
  - Yes: 9-0 Justice Sotomayor decision
  - Another in a long line of pro-arbitration Supreme Court decisions

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4th Circuit

- Several interesting decisions in the past year
- Support for the tactical decision to seek motion to dismiss when appropriate
- Mixed-messages about who are proper comparators when an employee/plaintiff alleges co-workers were more favorably treated ("similar in all material respects" vs. a "meaningful" comparison that raises an inference of discrimination)

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4th Circuit, cont'd

- *Billesdon vs. Wells Fargo Securities (4th Cir. Aug. 2026)*
  - Billesdon worked for Wells Fargo for 30 years, rising to a highly paid managing director position in California
  - At all relevant times, he was disabled with paralyzed bladder and colon
  - For many years, he managed with no accommodation
  - August 2017: Condition worsened and informed supervisor he would periodically need to step away from desk to use bathroom – request granted

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4th Circuit, *(Billesdon cont'd)*

- In early 2020, COVID made things easier, as Billesdon worked from home
- He relocated to Charlotte where supervisor assured him he could continue to work-from-home when needed when office re-opened
- 2021: (i) Wells Fargo commenced RIF, (ii) Wells Fargo announced return to work, and (iii) Billesdon received new supervisor
- So, Billesdon requested work-from-home as an accommodation

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4th Circuit, *(Billesdon* cont'd)

- October 2021: HR communicated with supervisors about the request
- In written communications, supervisors: (i) expressed surprise and skepticism, (ii) wanted to know how they could "push back," and (iii) expressed belief that granting the request would "delay the inevitable"
- Wells Fargo revenues continued to drop

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4th Circuit, *(Billesdon cont'd)*

- In November, Billesdon selected for RIF: approved in December, and implementation planned for February
- December: Wells Fargo return to work plan was delayed
- Told Billesdon that there was no need to decide his work-from-home request because it already was being met and request could be renewed when return-to-work was re-launched in March
- Billesdon fired in February

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4th Circuit, *(Billesdon* cont'd)

- Billesdon filed a lawsuit in WDNC asserting claims for: (i) failure to accommodate, (ii) disability discrimination, and (iii) retaliation
- He won at trial: (i) $6M in back pay, (ii) $14M in front pay, (iii) $100K emotional distress, and (iv) $2M in punitive damages
- Wells Fargo appealed

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4th Circuit, *(Billesdon cont'd)*

- Failure to accommodate claim reversed
  - There are two types of failure to accommodate claims: (i) not providing reasonable accommodation to a qualified individual, and (ii) denying employment opportunities to a qualified individual to avoid an accommodation
  - Billesdon pursued only the first type of claim
  - Wells Fargo: (i) allowed work-from-home at all relevant times, (ii) never denied work-from-home, and (iii) encouraged him to re-apply when return to work began
  - A reasonable jury could not conclude that Wells Fargo failed to make an accommodation that continuously was provided

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4th Circuit, *(Billesdon* cont'd)

- Discriminatory discharge – reversed
  - Billesdon was required to prove that his disability was a "but-for" cause of this termination
  - A discrimination claim "demands evidence of motive based on protected *status*"
  - A lengthy gap between knowledge of disability and adverse action negates causation
  - Here, the decision makers were aware of his disability for years before the termination decision
  - A reasonable jury could not find a causal connection

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4th Circuit, *(Billesdon* cont'd)

- Retaliatory discharge – affirmed
  - ADA prohibits retaliation for requesting an accommodation
  - "The timeline alone supports finding causation"
  - The decisionmakers learned of the work-from-home accommodation request in late October and by late October 2021 or November 2021, Billesdon was added to the RIF list
  - In addition to close temporal proximity, the written communications of decisionmakers suggested retaliatory animus
  - Surprise and skepticism; how could they "pushback;" "delay the inevitable"
  - The fact that Billesdon was discussed as one of several possible RIF candidates before the protected activity does not prevent a retaliation finding

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4th Circuit, *(Billesdon* cont'd)

- Remedies
  - Given these rulings, the court vacated some of the punitive damages and emotional distress damage awards
  - The court also trimmed the back pay award from $6M to $4.3M
  - The court affirmed the front pay award of $14M
    - While front pay is an equitable remedy, Wells Fargo failed to ask the trial court to decide the issue and let the jury decide, which prevented Wells Fargo from raising that issue on appeal
- In sum, Billesdon remains entitled to at least $18.3M

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4th Circuit, *(Billesdon* cont'd)

- Lessons
  - Retaliation claims are highly risky
    - Even if an employer has non-retaliatory reasons for a decision, if the adverse action occurs close in time to protected activity, you face jury trial risk
    - Written (email, text, etc.) discussions about employment actions often are discoverable and may reveal discriminatory or retaliatory animus
      - Consider conducting such discussions live with HR memorializing the decision but not everything everyone said
  - High-wage earners yield potentially sizable adverse action risk
  - Avoiding flatly "denying" an accommodation request can be helpful, if possible
  - Work-from-home remains a thorny issue

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Dieng v. Orkin (4th Cir. Aug. 2026)

- Dieng was a pest control technician
- This was a physically demanding job that required lifting equipment heavier than 50 pounds
- Dieng was injured at work in February 2016 and was out on unpaid leave until July 2016
- In July 2016, Dieng provided Orkin with medical records indicating that while he no longer could perform his pest control technician position, he could return to work in a less physically demanding position

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Dieng v. Orkin (cont'd)

- Orkin did not respond, and Dieng reached out again in August, seeking a light duty role
- Dieng's supervisor said he would check with HR, but no one from HR ever reached out to Dieng to discuss the situation
- In October, Dieng's lawyer sent a letter, reiterating that Dieng who remained on unpaid leave, was eager to return to work in a light duty role
- Orkin again failed to respond
- Dieng remained on unpaid leave through June 2017 when he resigned because no one at Orkin would speak with him about his light duty request

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Dieng v. Orkin (cont'd)

- Dieng filed a charge with EEOC and then a lawsuit
- Discovery revealed that: (i) two types of light duty positions (customer service and sales representative) had been available while Dieng was on unpaid leave, (ii) that Dieng would have accepted them, and (iii) other people were hired for them
- Orkin moved for summary judgment, which was granted:
  - Dieng could not perform essential functions of his pest control tech job and thus was not a "qualified" individual with a disability
  - Orkin provided a reasonable accommodation by providing an unpaid leave of absence
- Dieng appealed and 4th Circuit reversed

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Dieng v. Orkin (cont'd)

- The district court erred in focusing on whether Dieng could perform the essential functions of the pest control tech position
- It should have focused on whether he could perform the essential functions of the light duty position he requested
- The evidence showed that Dieng could have performed the essential functions of the customer service and sales representative positions

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Dieng v. Orkin (cont'd)

- The district court also erred when it concluded that the 16-month unpaid leave was a reasonable accommodation
- Sometimes, an unpaid leave of absence can be a reasonable accommodation
  - For example, if any employee has a short-term condition, a temporary unpaid leave of absence could be reasonable
- Dieng's condition, however, was permanent and an indefinite unpaid leave of absence was not reasonable
- This was particularly true because Orkin completely failed to participate in the interactive process
- While job reassignment may not be the preferred accommodation, it was reasonable here because positions that Dieng could perform were available

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Lessons

- When someone requests an accommodation, you need to engage in the interactive process
- Even if you feel like you have provided a reasonable accommodation, if you do not engage in the interactive process, you put yourself in a worse position if you have to defend your decision
- Job reassignment can be a reasonable accommodation in certain circumstances
- Don't forget to think about employees who remain on extended periods of unpaid leave

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