

The EEOC Changed Enforcement Position Regarding DEI

The EEOC has undergone a significant shift in its approach to DEI initiatives in the workplace under the current Trump administration. The underlying law—Title VII—has not changed; preferential employment practices based on protected characteristics have always been prohibited. What has changed is the EEOC's enforcement posture, which now actively prioritizes investigating and litigating claims of discrimination arising from DEI programs, including claims by majority-group members.

I. The Chair's Position.

Under Chair Andrea Lucas, the EEOC has taken the position that longstanding Title VII principles prohibiting employment discrimination based on race, sex, and other protected characteristics apply fully to programs and policies labeled as “DEI.” The agency’s core message is that DEI initiatives, policies, programs, or practices may be unlawful if they involve an employer taking an employment action motivated—in whole or in part—by an employee’s or applicant’s race, sex, or another protected characteristic.

II. Key Actions and Guidance.

- a. In January 2025, President Trump issued two executive orders addressing DEI programs. Executive Order 14151, issued January 20, 2025, focused on “Ending Radical and Wasteful Government DEI Programs and Preferencing” within the federal government. Executive Order 14173, issued January 21, 2025, titled “Ending Illegal Discrimination and Restoring Merit-Based Opportunity,” addressed both federal government and private sector DEI programs, declaring that “critical and influential institutions of American society” have adopted “dangerous, demeaning, and immoral race-and sex-based preferences under the guise of so-called (DEI)” that “can violate the civil-rights laws.” These orders directed agencies to terminate “discriminatory and illegal preferences, mandates, policies, programs, activities, guidance, regulations, enforcement actions, consent orders, and requirements” and to “combat illegal private-sector DEI preferences.” These Executive Orders and related agency actions have met legal challenges. *See, e.g., Perkins Coie LLP v. U.S. Dep’t of Just.*, 783 F. Supp. 3d 105 (D.D.C. 2025).
- b. In March 2025, the EEOC and DOJ jointly released educational resources explaining how they interpret DEI programs under existing civil rights law, asserting that Title VII violations can occur when a DEI policy disproportionately disadvantages members of any group, including majority groups.
- c. In March 2025, the EEOC sent letters to 20 major law firms requesting detailed information about their DEI-related employment practices, expressing concern that certain programs may involve unlawful disparate treatment, limiting or segregating employees based on protected traits, or classifying employees in ways that could violate Title VII.
- d. In December 2025, Chair Lucas posted a video on social media directly soliciting discrimination complaints from white male employees, encouraging them to contact the EEOC if they experienced workplace discrimination based on race or sex.

- e. In February 2026, Chair Lucas issued a letter reminding Fortune 500 companies of their Title VII obligations related to DEI initiatives, reiterating the agency’s commitment to combating discrimination against all workers.

III. Enforcement Actions.

- a. In February 2026, the EEOC filed its first DEI-focused lawsuit, a Title VII action alleging that a professional development opportunity restricted to female employees constituted sex discrimination. *EEOC v. Coca-Cola Beverages Northeast, Inc.*, Case No. 1:26-cv-00115.
- b. The EEOC filed an action in federal court to compel NIKE, Inc. to produce information related to allegations that the company discriminated against white workers, including as a result of NIKE’s Diversity, Equity, and Inclusion-related 2025 Targets and other DEI-related objectives.
<https://www.eeoc.gov/newsroom/eeoc-files-subpoena-enforcement-action-against-nike>
- c. In FY 2025, the EEOC secured settlements with six law firms (Kirkland & Ellis, Latham & Watkins, Simpson Thacher & Bartlett, Milbank, A&O Shearman, and Skadden Arps) requiring commitments to merit-based practices.
<https://www.eeoc.gov/newsroom/eeoc-settlement-four-biglaw-firms-disavow-dei-and-affirm-their-commitment-merit-based>
- d. On May 5, 2026, the EEOC sued the New York Times for DEI-related race and sex discrimination. EEOC Sues The New York Times for DEI-Related Race and Sex Discrimination | U.S. Equal Employment Opportunity Commission

IV. Changes to Guidance and Investigative Approach.

- a. The EEOC rescinded Biden-era anti-harassment guidance, including guidance recognizing unlawful harassment over sexual orientation and gender identity.
<https://www.eeoc.gov/newsroom/eeoc-commission-votes-rescind-2024-harassment-guidance>
- b. The EEOC has indicated it will use a wide range of tools, including the ability to search archived web content to identify companies that have changed DEI language without substantively altering underlying practices. Public statements about diversity initiatives, recruiting programs, and internal leadership pipelines may all become part of enforcement investigations.

V. Takeaways for Employers.

- a. Inventory DEI-related programs—including mentoring, leadership development, internships, networking events, and training—to identify potential disparate-treatment risks.
- b. Review eligibility criteria and selection processes to determine whether any programs limit participation based on protected characteristics.
- c. Reframe DEI around compliance-safe principles such as equal opportunity, barrier removal, skills-based hiring, and broad outreach.

- d. Review public-facing descriptions of diversity initiatives, including on websites, recruiting materials, and ESG disclosures, as these may be examined during investigations.
- e. Ensure documentation reflects legally defensible intent, emphasizing nondiscrimination, equal treatment, and business-driven rationales.

Accommodating Animals in the Workplace

I. The Legal Framework.

Title I of the ADA prohibits employers from discriminating against disabled employees “on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.” 42 U.S.C. § 12112(a). Under the ADA, employers must, among other things, accommodate an employee’s known physical or mental limitations. 42 U.S.C. § 12112(b)(5)(A). The ADA’s implementing regulations define “reasonable accommodation” to mean:

- (i) Modifications or adjustments to a job application process that **enable** a qualified **applicant** with a disability **to be considered** for the position such qualified applicants desires; or
- (ii) Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that **enable** an **individual** with a disability who is qualified **to perform the essential functions of that position**; or
- (iii) Modifications or adjustments that enable a covered entity’s employee with a disability to **enjoy equal benefits and privileges of employment** as are enjoyed by its other similarly situated employees without disabilities.

28 C.F.R. § 1630.2(o)(1)(i)-(iii). The regulations make clear that employers do not have to provide as an accommodation “any amenity or convenience that is not job-related.” 29 C.F.R. § Pt. 1630, App. § 1630.9.

Unlike Titles II and III of the ADA (which govern public entities and places of public accommodation), Title I of the ADA (the employment provision) does not have any specific regulations, guidance, or definitions relating to service animals.

II. Essential Functions v. Benefits and Privileges of Employment.

Some courts have held that an animal can only be a reasonable accommodation if it is necessary to enable an applicant with a disability to be considered for a position, to enable them to perform the essential functions of their job, or to enable them to enjoy equal benefits and privileges of employment. In other words, some courts have looked to the regulations to evaluate whether an employer is required to allow an employee to bring an animal to work as a reasonable accommodation. Most of those cases require the individual seeking to bring their animal to work to prove that they need the animal to perform the essential functions of their job and suggest it will be difficult, if not impossible, for an employee to prove they need the animal to equally

enjoy the benefits and privileges of employment unless they can show that their employer allows non-disabled people to bring their animals to work.

A number of courts have held that employers are not required to allow disabled employees to bring their dogs to work to achieve objectives like being a “better employee,” gaining “more skills,” having “heightened self-confidence,” or generally experiencing less anxiety—if they do not allow non-disabled employees to do so. For instance, in *Hopman v. Union Pacific R.R.*, 68 F.4th 394 (8th Cir. 2023), *cert. denied*, 144 S. Ct. 1003 (2024), the court found that a veteran with PTSD who could perform the essential functions of his job was not entitled to bring his service dog to work because “benefits and privileges of employment” refers only to (1) employer-provided services, (2) must be offered to non-disabled individuals in addition to disabled ones, and (3) does not include freedom from mental and psychological pain. Similarly, in *Howard v. City of Sedalia, Missouri*, 103 F.4th 536, 542 (8th Cir. 2024), the court held that “[p]roviding a service dog at work so that an employee with a disability has the same assistance the service dog provides away from work is not a cognizable benefit or privilege of employment.”

In *Arndt v. Ford Motor Co.*, 247 F.Supp.3d 832 (E.D. Mich. 2017), the court granted summary judgment for an employer where the plaintiff’s service dog was trained for the “betterment of the Plaintiff’s life,” finding that was “simply not sufficient to carry Plaintiff’s burden to establish . . . that having [the dog] by his side in all aspects of his job . . . would have enabled him to perform the essential functions” of his position.

III.No Requirement to Link to an Essential Function.

Other courts have held that the ADA requires employers to make reasonable accommodations regardless of whether an employee can perform the essential functions of their job.

For instance, in *Tudor v. Whitehall Central School District*, 132 F.4th 242 (2nd Cir. 2025), the plaintiff was a teacher who suffered from PTSD. For years, the school allowed her to take two 15-minute breaks per day. After a change in the administration, the school said she could no longer do so. She sued the school for violating the ADA by failing to accommodate her disability. The school moved to dismiss the case because she admitted she could perform the essential functions of her job. The district court granted the school’s motion and dismissed the case. On appeal, the Second Circuit reversed and found that the school was required to offer the teacher a reasonable accommodation, such as a modified work schedule, even if she was able to perform the essential functions of her job without an accommodation.

The Second Circuit based its ruling on the plain text of the ADA, specifically the language stating that:

- It is a violation of the ADA not to make “reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an . . . employee” unless “the accommodation would impose an undue hardship” on the employer. 42 U.S.C. 1221(b)(5)(A); and
- The term “reasonable accommodation” may include “job restructuring [or] part-time or modified work schedules.” 42 U.S.C. 12111(9).

IV. Reasonable Accommodation v. Preferred Accommodation.

It is well established that an employee is not entitled to his or her preferred accommodation—only to a reasonable accommodation. As the Fifth Circuit stated in *Thompson v. Microsoft Corp.*, 2 F.4th 460, 469 (5th Cir. 2021): “The appropriate accommodation need not be ‘the employee’s preferred accommodation,’ and the employer is free to ‘choose the less expensive accommodation or the accommodation that is easier for it to provide.’”

Both parties must engage in the interactive process. An employer cannot be held liable under the ADA where it is the employee who refuses to engage in, or causes the breakdown of, the interactive process. In *E.E.O.C. v. Kohl’s Dept. Stores, Inc.*, 77 F.3d 127, 132 (1st Cir. 2014), the court held that if the employer engages in good faith but the employee fails to cooperate, the employer cannot be held liable for failure to provide reasonable accommodations. Thus, if an employee refuses to consider reasonable accommodations other than their animal, the employer may avoid liability based on the employee’s failure to cooperate in the interactive process.

V. Takeaways for Employers.

1. Employers should consider asking the employee to identify essential job functions they cannot perform without the dog, or a specific benefit/privilege of employment they have been denied.
2. Employers can request medical documentation explaining the nexus between the disability, the limitation, and how the dog specifically addresses that limitation in the workplace.
3. The employer may propose alternative accommodations rather than simply granting the request to bring the animal to work.
4. Generalized improvements to well-being or reductions in anxiety may be insufficient to establish an animal is a necessary reasonable accommodation.
5. The ADA “is not a weapon that employees can wield to pressure the employers into granting unnecessary accommodations or reconfiguring their business operations.” *Tchankpa v. Ascena Retail Group, Inc.*, 951 F.3d 805, 809 (6th Cir. 2020).