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EEOC Rises From the Crypt in Time for Halloween

When President Trump took office in January, four of the five seats on the Equal Employment Opportunity Commission (EEOC) were occupied and a majority of those were filled by Democrats. That quickly changed as President Trump fired two of the Democrats and the Commission was left without a quorum, unable to take any significant agency action. Ten months later, the Senate has now confirmed a Trump appointee to the EEOC and the Commission will finally have a quorum and a Republican majority. What should we expect as the Commission awakens from its months-long slumber?

The newly constituted EEOC has not yet had the opportunity to officially announce its priorities. But the Trump-appointed Commission Chair, Andrea Lucas, gave us a glimpse of what to expect when she took the helm back on January 20th:

- The Commission will examine Diversity, Equity and Inclusion initiatives in the workplace and seek to eliminate those initiatives it views as violating the anti-discrimination laws which the EEOC enforces. The Commission will likely take a broad view of the DEI activities which it views as illegal – not just hiring, promotion and compensation, but also training, mentoring programs and employee resource groups.
- Chair Lucas' early statements placed a heavy emphasis on protecting the religious rights of workers, especially the need to provide accommodation to employees' religious beliefs. We expect an uptick in religious discrimination charges.
- In line with the President's executive order, we expect that the newly constituted Commission will interpret the anti-discrimination laws to protect men and women as biologically distinct sexes and not to endorse what the administration refers to as "gender ideology." This likely portends a de-emphasis by the agency on enforcing the anti-discrimination laws which protect LGBTQ employees and a narrower view of those protections, leaving those enforcement efforts to private litigation.
- When Chair Lucas took charge, she was quick to announce her strong disagreement with the expansive regulations under the Pregnant Workers Fairness Act. Although the EEOC does not have the authority to unwind the Act's protections entirely, it can revisit the regulations which provide expansive definitions of what conditions are protected (e.g., abortion) and what accommodations are required (e.g., undefined leave) from employers.

When the first Trump administration took office, the EEOC's enforcement priorities did not change significantly. This time looks to be very different. As additional Commissioners are confirmed, the EEOC's agenda for change will likely expand, but the Chair's initial statements already highlight ambitious priorities.

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