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Labor & Employment Update

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Keeping Up with the EEOC: Agency Files Slew of Lawsuits Ahead of Its Fiscal Year End

The recent lawsuits focus predominantly on three of the EEOC's stated strategic priorities: protecting vulnerable workers, addressing selected and emerging issues, and preventing and remedying systemic harassment.

As its fiscal year wound down on September 30, the U.S. Equal Employment Opportunity Commission (EEOC) conducted its annual race to the courthouse. The EEOC filed 110 lawsuits during its past fiscal year, over 50 of which were brought in the last week of September.^[1] This flurry of suits aligns with and reflects the EEOC's continuing effort to advance the strategic aims and enforcement priorities it announced for 2024.

In September 2023, the EEOC released its Strategic Enforcement Plan for fiscal years 2024 to 2028 (the "SEP"),^[2] which announced six "subject matter priorities" for enforcement. For more information on the SEP, please see Gibson Dunn's client alert, [Keeping Up with the EEOC: 10 Key Takeaways from its Just-Released Draft Strategic Enforcement Plan](#). The subject matter priorities announced in 2023 are:

1. "[Eliminating Barriers in Recruitment and Hiring](#)." Focus will be on the use of artificial intelligence tools in job ads, recruiting, and hiring decisions; and underrepresentation of women and workers of color in certain industries and sectors (for example, construction and manufacturing, high tech, STEM, and finance, among others).
2. "[Protecting Vulnerable Workers and Persons from Underserved Communities](#)." Focus will be on employer practices that affect LGBTQI+ individuals, older workers, immigrant and migrant workers, and individuals employed in low wage jobs, including teenage workers.

3. “Addressing Selected Emerging and Developing Issues.” This priority relates to workplace matters arising as backlash to current events, as well as enforcement related to the Pregnancy Discrimination Act and the Pregnant Workers Fairness Act and “inflexible policies or practices” that discriminate against individuals with disabilities.
4. “Advancing Equal Pay for All Workers.” This priority relates to employer practices related to pay secrecy, and reliance on salary history or applicants’ salary expectations to set pay.
5. “Preserving Access to the Legal System.” The EEOC will target employee release and confidentiality agreements and arbitration agreements that it believes improperly restrict access to the legal system.
6. “Preventing and Remedying Systemic Harassment.” The EEOC will continue to bring systemic harassment cases on all protected bases. The EEOC separately published new enforcement guidance on harassment in the workplace this past April, the first issued since 1999.[\[3\]](#)

Overall, the recent lawsuits focus predominantly on three of these strategic priorities: protecting vulnerable workers, addressing selected and emerging issues, and preventing and remedying systemic harassment:[\[4\]](#)

Protecting Vulnerable Workers. Multiple suits focus on discrimination and harassment towards workers who are members of what the EEOC describes as “vulnerable” populations, such as teenage workers and individuals from the LGBTQI+ community. One complaint, for instance, alleges that a hospitality employer fired a transgender housekeeper the day after the individual complained that a supervisor misgendered them and made anti-transgender statements.[\[5\]](#) Another lawsuit alleges that employees who identify as LGBTQI+ were sexually harassed by a retail store manager, who purportedly inquired about sexual acts relating to the employees’ sexual orientations and gender identities.[\[6\]](#) The EEOC also initiated suits against two companies that allegedly failed to prevent and remedy sexual harassment against teenage employees at a chain restaurant and a sports training facility.[\[7\]](#) The EEOC’s Acting Director of the Memphis District Office commented, “sexual harassment of young employees regardless of the industry is a serious problem, and combatting this remains a priority of the EEOC.”[\[8\]](#)

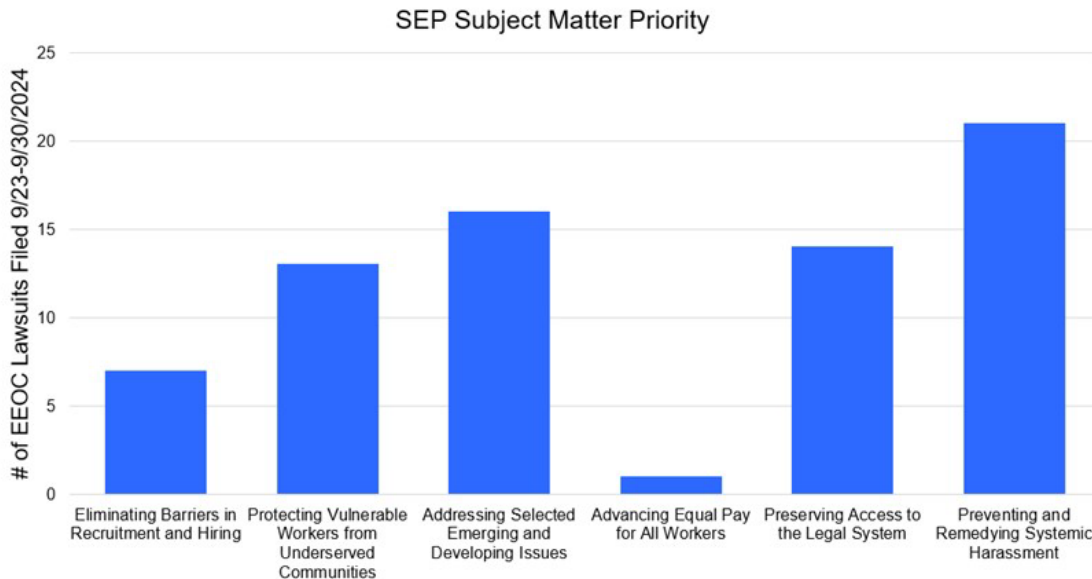
Addressing Selected and Emerging Issues. The EEOC sued several employers for alleged violations of the Pregnant Workers Fairness Act (PWFA) and the Americans with Disabilities Act (ADA) (as it relates to pregnancy-related disabilities). The PWFA, which went into effect on June 27, 2023, requires employers with 15 or more employees to provide reasonable accommodations for qualified applicants or employees with known pregnancy-related limitations, unless they would cause undue hardship;[\[9\]](#) the first EEOC lawsuit alleging a violation of the PWFA was announced on September 10, 2024.[\[10\]](#) The EEOC’s September filings include allegations that employers failed to accommodate pregnant employees, including by refusing to excuse absences due to a pregnancy-related condition and by forcing an employee to take unpaid leave instead of allowing her a chance to sit and take breaks at work.[\[11\]](#) One suit alleges that a trucking manufacturer denied a pregnant employee’s request to be transferred to a role that did not require her to lie on her stomach.[\[12\]](#) According to the EEOC, the employee was

only offered unpaid leave, when light duty positions had purportedly been made available for non-pregnant employees who made similar accommodation requests.

In addition, several of the lawsuits allege that employers engaged in other forms of disability discrimination by maintaining inflexible policies and practices, including in recruitment and hiring. For example, one suit alleges that an employer discriminated against a blind call center employee when it took “only minimal steps to facilitate the employee’s use of screen reader software.”^[13] Two other complaints allege that employers failed to hire hearing-impaired applicants who were otherwise qualified for the positions they sought.^[14] Litigation in these areas is consistent with the EEOC’s release during 2023 of two guidance documents also targeted at protecting individuals with hearing and visual disabilities in the workplace.^[15]

Combatting Systemic Harassment. A significant number of lawsuits initiated in the final days of the EEOC’s fiscal year allege that employees were subjected to hostile work environments based on their sex and race. Two lawsuits filed on September 30 in New York district courts allege that supervisors at a car dealership and hospitality company sexually harassed female employees, failed to take corrective action, and made conditions so intolerable that the employees were forced to resign.^[16] Another suit alleges that a vehicle auctioneer forced the resignation of a Black employee who was subjected to persistent racial harassment for over a year.^[17] The EEOC also accused a group of construction and auto-mechanic companies of creating a hostile work environment for Black and Hispanic employees in which the employees were allegedly subjected to racial epithets and derogatory remarks about national origin on a regular basis.^[18]

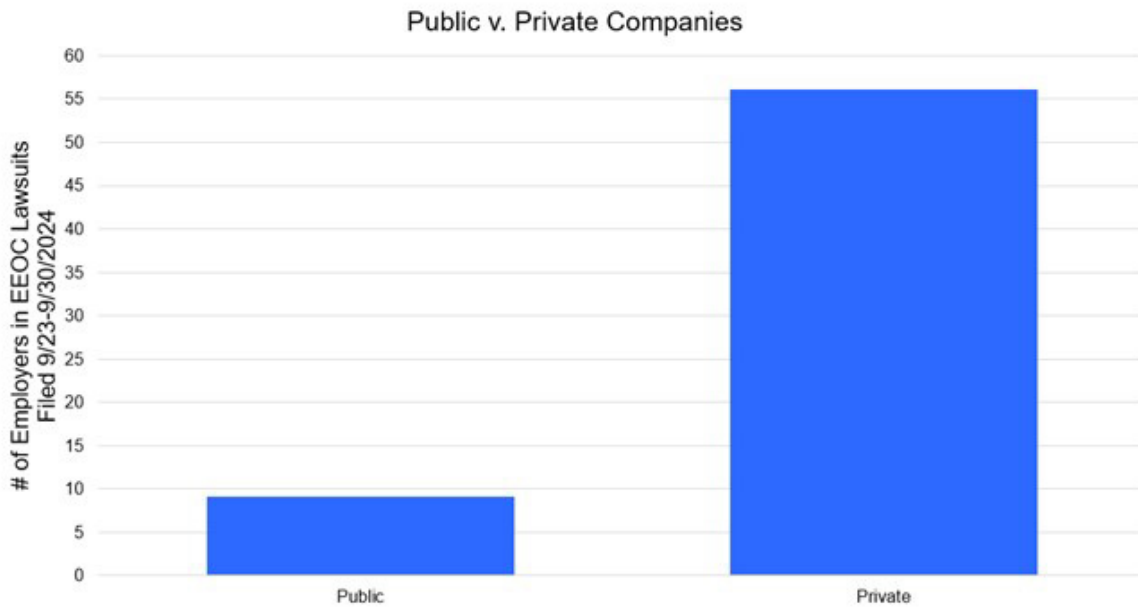
The relative focus of the EEOC among its stated SEP subject matter priorities is illustrated by the distribution of its end-of-year filings among those priority areas.^[19]

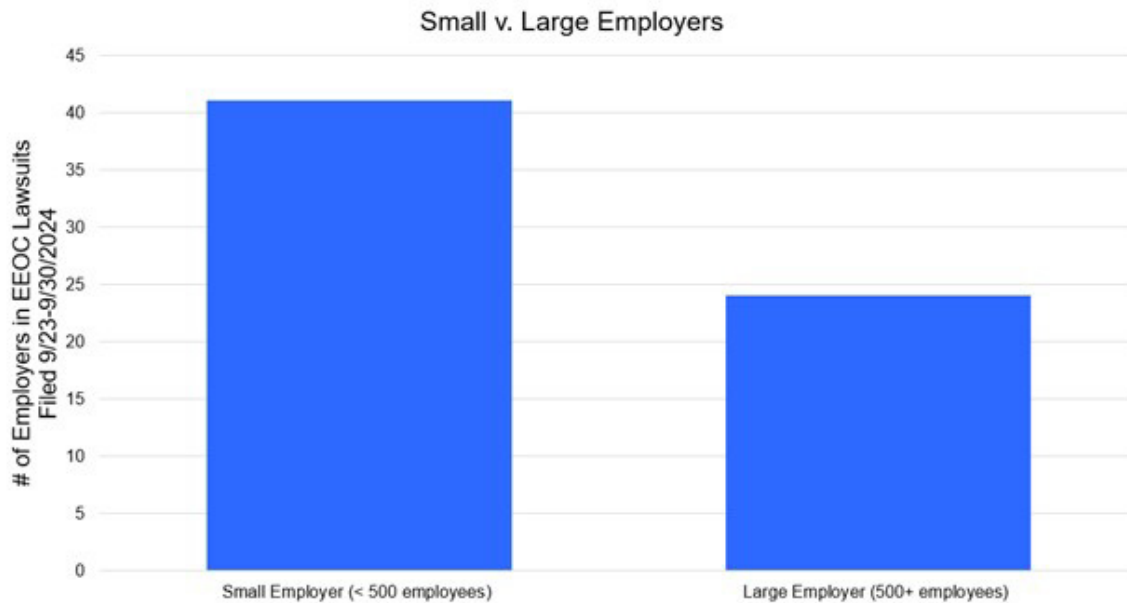


As for targeted industries, the EEOC’s end-of-year filings primarily target industries that employ low wage or manual workers, such as the restaurant, hospitality, retail, construction, and

manufacturing industries.^[20] In one lawsuit, where the EEOC alleges that a pizza chain retaliated against an employee who opposed sex-based discrimination, the Regional Attorney for the agency's Chicago District Office stated, "retaliation in the restaurant industry remains a serious problem."^[21] Similarly, an assistant regional attorney for the EEOC's St. Louis District Office noted that "[s]exual harassment continues to be a problem in the fast-food industry" when commenting on a lawsuit alleging sexual harassment of teenage female employees at multiple fast food franchise locations.^[22] In another case alleging racial discrimination in the construction industry, the EEOC's Miami Regional Attorney emphasized that, "Title VII applies to everyone and every industry."^[23]

Moreover, the EEOC primarily targeted smaller, private companies in its recently filed lawsuits, as depicted by the approximate distributions below.^[24] And attached as Appendix A below is a chart providing additional details about the filed suits.





Overall, while the number of filings by the EEOC in fiscal year 2024 decreased from the prior year, the cases that the agency is pursuing reflect a strong continuing focus on its announced priority objectives. Given this focus, employers facing EEOC charges that raise allegations falling into these priority areas should be prepared for close scrutiny and for the agency potentially to take a more aggressive stance in handling such charges.

[1] EEOC, *Newsroom*, <https://www.eeoc.gov/newsroom/search?page=0>.

[2] EEOC, *Strategic Enforcement Plan Fiscal Years 2024 – 2028* (Sept. 21, 2023), <https://www.eeoc.gov/strategic-enforcement-plan-fiscal-years-2024-2028>.

[3] EEOC, *Enforcement Guidance on Harassment in the Workplace* (Apr. 29, 2024), <https://www.eeoc.gov/laws/guidance/enforcement-guidance-harassment-workplace>. This guidance presents the agency’s view of the legal standards applicable to workplace harassment claims, which emphasizes, among other things, that Title VII prohibits harassment based on gender identity and that harassment can occur in a remote work environment.

[4] Indeed, the EEOC issued a press release expressly noting its focus in fiscal year 2024 on cases involving emerging issues and underserved, vulnerable populations. See *Fiscal Year 2024 EEOC Litigation Focuses on Emerging Issues and Underserved, Vulnerable Populations* (Oct. 9, 2024), <https://www.eeoc.gov/newsroom/fiscal-year-2024-eeoc-litigation-focuses-emerging-issues-and-underserved-vulnerable>.

[5] *EEOC Sues Boxwood and Related Hotel Franchises for Discriminating Against Transgender Employee* (Sept. 26, 2024), <https://www.eeoc.gov/newsroom/eeoc-sues-boxwood-and-related-hotel-franchises-discriminating-against-transgender-employee>.

[6] *EEOC Sues Two Employers for Sex Discrimination* (Oct. 1, 2024), <https://www.eeoc.gov/newsroom/eeoc-sues-two-employers-sex-discrimination-0>.

[7] *EEOC Sues Two Employers for Sexual Harassment of Teens* (Sept. 30, 2024), <https://www.eeoc.gov/newsroom/eeoc-sues-two-employers-sexual-harassment-teens>.

[8] *Id.*

[9] EEOC, *What You Should Know About the Pregnant Workers Fairness Act*, <https://www.eeoc.gov/wysk/what-you-should-know-about-pregnant-workers-fairness-act>.

[10] *EEOC Sues Wabash National for Pregnancy Discrimination* (Sept. 10, 2024), <https://www.eeoc.gov/newsroom/eeoc-sues-wabash-national-pregnancy-discrimination>.

[11] *EEOC Sues Two Employers Under the Pregnant Workers Fairness Act* (Sept. 26, 2024), <https://www.eeoc.gov/newsroom/eeoc-sues-two-employers-under-pregnant-workers-fairness-act>.

[12] *EEOC Sues Wabash National for Pregnancy Discrimination*, *supra* note 10.

[13] *EEOC Sues The Results Companies for Disability Discrimination* (Sept. 24, 2024), <https://www.eeoc.gov/newsroom/eeoc-sues-results-companies-disability-discrimination>.

[14] *EEOC Sues Timken for Disability Discrimination* (Sept. 26, 2024), <https://www.eeoc.gov/newsroom/eeoc-sues-timken-disability-discrimination>; *EEOC Sues Heart of Texas Goodwill for Disability Discrimination* (Sept. 26, 2024), <https://www.eeoc.gov/newsroom/eeoc-sues-heart-texas-goodwill-disability-discrimination>.

[15] See EEOC, *Hearing Disabilities in the Workplace and the Americans with Disabilities Act* (Jan. 24, 2023), <https://www.eeoc.gov/laws/guidance/hearing-disabilities-workplace-and-americans-disabilities-act>; *Visual Disabilities in the Workplace and the Americans with Disabilities Act* (Jul. 26, 2023), <https://www.eeoc.gov/laws/guidance/visual-disabilities-workplace-and-americans-disabilities-act>.

[16] *EEOC Sues Two New York Area Employers for Sexual Harassment* (Sept. 30, 2024), <https://www.eeoc.gov/newsroom/eeoc-sues-two-new-york-area-employers-sexual-harassment>.

[17] *EEOC Sues Insurance Auto Auctions For Racial Harassment* (Sept. 30, 2024), <https://www.eeoc.gov/newsroom/eeoc-sues-insurance-auto-auctions-racial-harassment>.

[18] *EEOC Sues Trebor USA Corp., Colt Truck Care, LLC, and Wholesale Building Products, LLC, for Discrimination Against Hispanic and Black Employees* (Sept. 30, 2024), <https://www.eeoc.gov/newsroom/eeoc-sues-trebor-usa-corp-colt-truck-care-llc-and-wholesale-building-products-llc>.

[19] Note that certain lawsuits were identified as falling into multiple categories of the SEP subject matter priorities.

[20] The EEOC Chair Charlotte Burrows spearheaded a hearing to examine purported discrimination in the construction sector. See EEOC, *EEOC Shines Spotlight on Discrimination and Opportunities in Construction* (May 17, 2022), <https://www.eeoc.gov/newsroom/eeoc-shines-spotlight-discrimination-and-opportunities-construction>.

[21] *EEOC Sues Reggio's Pizza for Retaliation* (Sept. 25, 2024), <https://www.eeoc.gov/newsroom/eeoc-sues-reggios-pizza-retaliation>.

[22] *EEOC Files Three Sexual Harassment Lawsuits* (Oct. 1, 2024), <https://www.eeoc.gov/newsroom/eeoc-files-three-sexual-harassment-lawsuits>.

[23] *EEOC Sues Trebor USA Corp., Colt Truck Care, LLC, and Wholesale Building Products, LLC, for Discrimination Against Hispanic and Black Employees*, *supra* note 18.

[24] Because the EEOC sued groups of employers in certain lawsuits from the last week of September, the approximate numbers depicted in the graphs are higher than the total number of lawsuits filed that week.

APPENDIX A

Recent EEOC Filings

The following Gibson Dunn lawyers prepared this update: Jason C. Schwartz, Katherine V.A. Smith, Karl Nelson, Christina Andersen, and Hannah Morris*.

Gibson Dunn's lawyers are available to assist employers who are facing EEOC charges or litigation in any of these priority areas, or who otherwise have questions regarding the EEOC's activities and areas of focus. To learn more about these issues, please contact the Gibson Dunn lawyer with whom you usually work, any member of the firm's Labor and Employment practice group, or Jason Schwartz and Katherine Smith.

Karl G. Nelson – Partner, Labor & Employment Group
Dallas (+1 214.698.3203, knelson@gibsondunn.com)

Jason C. Schwartz – Partner & Co-Chair, Labor & Employment Group
Washington, D.C. (+1 202.955.8242, jschwartz@gibsondunn.com)

Katherine V.A. Smith – Partner & Co-Chair, Labor & Employment Group
Los Angeles (+1 213.229.7107, ksmith@gibsondunn.com)

*Hannah Morris, an associate in the firm's Dallas office, is admitted to practice only in New York.

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