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# EEOC, Like NLRB, Lacks Quorum, Stalling Rulemaking Under New Administration

**Law and the Workplace** on **January 31, 2025**

On Monday, January 27, 2025, President Trump removed Equal Employment Opportunity Commission (the "EEOC" or the "Commission") commissioners Charlotte A. Burrows and Jocelyn Samuels, the two confirmed in separate statements. The move, which may face legal challenges, marks the first time that a president has removed an EEOC commissioner without cause prior to the expiration of their five-year term. The removals leave the EEOC, a five-member Commission, with only two remaining commissioners: Andrea R. Lucas, a Republican tapped by President Trump last week to serve as Acting Chair, and Kalpana Kotagal, a Democrat appointed by former President Biden, whose term is set to expire on July 1, 2027. The final seat on the Commission has been vacant since July 1, 2024, when former Commissioner Keith Sonderling, who was recently nominated by President Trump to serve as deputy labor secretary, completed his five-year term.

President Trump also fired EEOC General Counsel Karla Gilbride, who confirmed her dismissal on Tuesday, January 28, 2025. Gilbride, who was nominated by former President Biden and confirmed by the Senate in October 2023, was slated to serve a four-year term set to expire in 2027.

**Removal of EEOC Commissioners**

Title VII of the Civil Rights Act of 1964 created the EEOC, which functions as a bi-partisan, independent commission. The law provides that commissioners are nominated by the President and confirmed by the Senate to five-year staggered terms. In addition, Title VII establishes that no more than three of the commissioners may be members of the same political party. Notably, Title VII does not specify any grounds for removal of EEOC commissioners. In the past, however, after a new administration has entered the White House, commissioners have served out the remainder of their five-year term.

Burrows, who served as Chair of the Commission under the Biden Administration, was confirmed by the Senate to a third term in November 2023 that was set to expire on July 1, 2028. Samuels, who was appointed by President Trump during his first term, was later nominated by former President Biden for a second term that was set to expire on July 1, 2026. In separate statements, Burrows and Samuels expressed their disagreement with the President's "unprecedented" actions and vowed to explore the "legal options" available to them.

**Implications for EEOC Actions Moving Forward**

In the absence of any removals by President Trump, Democrats would have maintained a majority on the Commission until the expiration of Samuels' term in 2026. Now, with only two members left in Lucas and Kotagal, the Commission lacks a quorum. Under Title VII, the EEOC must have three commissioners to form a quorum. Without a quorum, the EEOC cannot initiate formal rulemakings and cannot issue, modify, or revoke formal guidance. As a result, without a quorum, EEOC guidance remains effectively at a standstill.

As Proskauer previously covered, on Tuesday, January 21, 2025, newly appointed Acting Chair Lucas issued a statement setting forth her enforcement priorities. On Tuesday, January 28, 2025, Lucas issued another statement announcing that the EEOC "is returning to its mission of protecting women from sexual harassment and sex-based discrimination in the workplace by rolling back the Biden administration's gender identity agenda" consistent with President Trump's Executive Order 14166, "Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government."

The statement, however, noted that Acting Chair Lucas "cannot unilaterally remove or modify certain 'gender identity' related documents subject to the President's directives in the [aforementioned] executive order" without a majority vote of the Commission. For the time being, Acting Chair Lucas is precluded from formally rescinding any EEOC guidance that she deems to be inconsistent with Executive Order 14166, including the EEOC's April 2024 guidance, entitled "Enforcement Guidance on Harassment in the Workplace." Lucas, however, noted that she voted against this guidance and stated that while she "currently cannot rescind portions of the agency's harassment guidance that are inconsistent with Executive Order 14166, [she] remains opposed to those portions of the guidance."

In the wake of these removals, it is anticipated that President Trump will seek to appoint two commissioners, in addition to Lucas, to reach a Republican majority on the Commission. And, if that occurs, the Republican Commissioners would then have the majority vote needed to issue new rulemakings and revoke formal guidance. When that occurs, employers should expect Acting Chair Lucas to formally rescind "Enforcement Guidance on Harassment in the Workplace" as directed by the Executive Order.

President Trump's EEOC removals came just hours after President Trump removed National Labor Relations Board General Counsel Jennifer A. Abruzzo and Democratic Board member Gwynne A. Wilcox in a similarly unprecedented move that left the NLRB without a quorum. More on these removals on our Labor Relations Update blog here.

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