

3 Things To Watch As EEOC Consolidates Litigation Authority

By **Vin Gurrieri**

Law360 (January 29, 2026, 8:37 PM EST) -- The U.S. Equal Employment Opportunity Commission's leaders recently expanded their authority to approve or scuttle new lawsuits, a move that will shift enforcement priorities and reflects sentiments that had been brewing at the agency for years, experts say.



EEOC commissioners will now have to approve most lawsuits the general counsel wants to pursue, including those that allege systemic bias, pattern or practice of discrimination, or cases that involve at least 15 aggrieved workers. (iStock.com/Syahrir Maulana)

Last week, the commission by a **2-1 party-line vote** issued a new resolution of litigation authority that builds upon restrictions adopted in 2021 limiting its general counsel's ability to sue employers for violating antidiscrimination laws without first getting a formal approval from a majority of the five-member commission.

EEOC Chair Andrea Lucas and Commissioner Brittany Panuccio, both appointees of President Donald Trump, approved the updated resolution, while Democratic Commissioner Kalpana Kotagal opposed it. Two seats on the five-member commission are vacant.

Although only a change to the commission's internal enforcement processes, the shift toward requiring most lawsuits to be approved by commissioners has the potential to vastly reshape the types of cases the

agency commits resources to litigate, experts say.

"It certainly takes away any discretion for the field offices or the general counsel to make a decision as to whether to pursue a claim on behalf of an employee and vests all that discretion in these three commissioners," said Tracey Diamond, a management-side partner at Troutman Pepper Locke. "It's a way for the commissioners to focus their funds and resources on those types of cases that the [current Republican majority] feel are most important and fit within their agenda."

Here are three things to know about the power shift at the EEOC.

Greater Commissioner Control Not New Idea

The new resolution, which was approved on Jan. 21, lists specific criteria for the types of cases that always trigger a commission vote, like big-ticket lawsuits that allege systemic bias, pattern or practice of discrimination, or cases that involve at least 15 aggrieved workers.

Lawsuits centered around unsettled or potentially controversial legal issues, matters that will be resource-intensive for the agency, and cases in which the general counsel plans to argue against applicable circuit precedent would also need a thumbs-up from commissioners to land in court.

For more routine cases where the general counsel's office has had more leeway to pursue unilaterally in the past, the EEOC in its latest resolution further tightened the process to require formal commission approval going forward, save limited exceptions like suits over recordkeeping or settlement enforcement.

Lucas said in a Jan. 23 statement that the resolution is the latest step in restoring the "critical responsibility to authorize litigation" that Congress "expressly entrusted" to commissioners through Title VII of the Civil Rights Act of 1964 but that had been delegated away in the 1990s.

James Paretti, co-chair of Littler Mendelson PC's Workplace Policy Institute who previously served as a senior EEOC legal adviser, said he doesn't believe the updated resolution was due to instances of any recent general counsel overstepping their delegation. But he said the revised resolution is part of a longstanding belief among some commissioners that more potential EEOC lawsuits must cross their desks before being initiated.

"When I worked for [former acting EEOC Chair] Vicki Lipnic, we sort of had the same thought, which is, the commission should be seeing and voting on more cases," Paretti said. "That said, in the eight years I was there I can't but think of once or twice where I thought, 'Hmm, the general counsel filed that case without sending it upstairs [and it] probably should have gotten a commission vote.' They were very ... rare exceptions."

"I think it's going to be unlikely, assuming that there is some level of communication, which I'm sure that there is, ... that the general counsel is going to send up a case that he or she doesn't believe in the first instance is likely to be approved," Paretti said.

David Lopez, a professor at the Sandra Day O'Connor College of Law at Arizona State University who served as EEOC general counsel from 2010 to 2016, noted that the delegation of authority adopted in the 1990s had been tiered, with certain cases, like those alleging systemic discrimination or involving controversial issues, would go to the commission, while some cases would go to the general counsel and others delegated to EEOC regional attorneys.

He called the longstanding process a "good government measure" that promoted efficiency and placed responsibility in the hands of agency staff who dealt directly with courts and witnesses. But the new resolution, he said, restores a "vertical hierarchy" that adds work at each layer of the approval process.

"There's now going to be two rounds of litigation: internal litigation, and if you get [a case] out, external litigation," Lopez said.

New Systemic Cases May 'Dry Up'

One category of cases that bears watching under the revised litigation authority are those that are part of the agency's systemic litigation program — high-profile, resource-intensive matters that can have a wide-ranging effect on an industry, profession, company or geographical area, attorneys say.

While these cases previously required a commission vote, the number of suits with a systemic scope that percolate up to the commissioners might drop.

Lopez said he believes the latest resolution "a way to administratively mothball the agency."

"It's not about approving, it's what kind of cases they'll hold up, right? So the minute you start holding up cases and start voting down the cases, then the investigations dry up and you don't work in that area," said Lopez, who is now a member of EEO Leaders, a coalition of a dozen former top officials at the EEOC and U.S. Department of Labor who have been critical of the Trump administration's workplace policy moves.

"They just dry up because there's actually no incentive for the field offices to develop cases if it's going to be two years of sunk cost and the case isn't going to get into court and it isn't going to get litigated," he added.

Deborah Vagins, an attorney with the gender justice organization Equal Rights Advocates, said that the revised litigation authority was a way to make EEOC enforcement line up with the Trump administration's policy goals.

She also pointed out that EEOC policy shifts don't change the law, and that it's important for workers to know that their legal rights remain the same.

But if the agency's agency litigators get the sense that large-scale cases are going to encounter resistance at the commissioner level, it's possible that such claims won't get developed, according to Vagins, who served as chief of staff to former EEOC Chair Charlotte Burrows.

"So on paper, the delegation authority may look the same, but I also think that there is a substitution of judgment of this commission in the place of the general counsel and field offices, and that can change the landscape of litigation that comes to the chair," Vagins said. "And I think, in fact, it's intended to do that."

Overall Volume of Cases Expected to Remain about the Same

With commissioners having final say on nearly all cases going forward, experts said that it bears watching what effect — if any — the updated resolution will have on the total number of new lawsuits the agency adds to its docket.

In its most recent fiscal year, which ended on Sept. 30, 2025, the EEOC filed just under **95 merit suits**, which are cases accusing employers of substantive anti-discrimination law violations or suits aimed at enforcing settlements. That was down from about 110 in fiscal year 2024, and about 140 in fiscal year 2023.

Paretti of Littler Mendelson said he believes the effect of the updated litigation authority resolution won't significantly shift the total number of new agency lawsuits given that the EEOC had already moved toward sending more cases to commissioners for a formal vote in recent years.

"I don't think it's going to dramatically affect the number [of new lawsuits]," Paretti said. "It takes, most often times, years for a case to go from a charge to an investigation to a cause finding to the decision to conciliation, to the decision to litigate. Sending it [to commissioners] for a vote adds maybe two weeks to that process, so I don't know that it's going to have a dramatic effect."

Diamond noted that the number of EEOC-initiated lawsuits has already been on a downward trajectory in recent years. While it's "hard to know right now whether [it] will be the case" that new case volume drops even lower, Diamond speculated that there may be increases in the subset of cases that involve issues "where the EEOC is trying to be more proactive."

As to which types of cases will regularly receive the commission's approval on a regular basis, Diamond said priorities that Lucas has shared in various public forums offer a road map.

"I expect what we'll see coming out of the EEOC in terms of lawsuits and amicus briefs would be more religious accommodation cases, more 'reverse' discrimination cases, more national origin discrimination cases [that are] about an anti-American bias since those seem to be the three areas where the focus is in this current administration," Diamond said.

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