

There's No Question – The EEOC's Strategic Enforcement Plan Is In Full Bloom

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You'll recall that the EEOC put out a [Strategic Enforcement Plan to cover FY 2013-2016](#). This Plan offered a peek into what the Agency might tackle in the coming years. One of the Agency's six national priorities was to address emerging and developing issues in equal employment law, which, in the Agency's words included "issues associated with significant events, demographic changes, developing theories, new legislation, judicial decisions and administrative interpretations." Well, based on the Agency's actions over the past week or so, no one can doubt that the EEOC's Strategic Enforcement Plan is in full bloom. What were the two "emerging and developing issues" for the Agency? Those issues were the rights of transgender individuals to be free from discrimination and wellness programs offered by employers. On September 25, the EEOC filed two lawsuits alleging that an employer had violated Title VII of the Civil Rights Act of 1964 by discriminating against an employee who identified as transgender. These lawsuits, both of which were filed on September 25, blazed a new trail for the EEOC because this was the first time the EEOC has ever filed a lawsuit alleging sex discrimination against transgender individuals. This action by the EEOC is not surprising because the SEP referred to "coverage of lesbian, gay, bisexual and transgender individuals under Title VII's sex discrimination provisions, as they may apply." We'll wait and see what develops over the coming months on this "emerging" issue. Then, on September 30, the EEOC filed its second ever lawsuit challenging an employer's wellness program under the Americans With Disabilities Act (ADA). The EEOC is claiming the employer's wellness program was not voluntary and thus violated the ADA. Wellness programs have become quite popular in recent years, so we will be actively tracking this case to see how it develops. These recent cases demonstrate just how active the EEOC has become in litigating what it sees as emerging issues. Stay tuned to see what may be next.

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