# EXECUTIVE ORDER 14151

# Presidential Documents

**Executive Order 14151 of January 20, 2025**

## Ending Radical and Wasteful Government DEI Programs and Preferencing

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered:

**Section 1**. *Purpose and Policy.* The Biden Administration forced illegal and immoral discrimination programs, going by the name "diversity, equity, and inclusion" (DEI), into virtually all aspects of the Federal Government, in areas ranging from airline safety to the military. This was a concerted effort stemming from President Biden's first day in office, when he issued Executive Order 13985, "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government."

Pursuant to Executive Order 13985 and follow-on orders, nearly every Federal agency and entity submitted "Equity Action Plans" to detail the ways that they have furthered DEIs infiltration of the Federal Government. The public release of these plans demonstrated immense public waste and shameful discrimination. That ends today. Americans deserve a government committed to serving every person with equal dignity and respect, and to expending precious taxpayer resources only on making America great.

**Sec. 2**. *Implementation.* (a) The Director of the Office of Management and Budget (OMB), assisted by the Attorney General and the Director of the Office of Personnel Management (OPM), shall coordinate the termination of all discriminatory programs, including illegal DEI and "diversity, equity, inclusion, and accessibility" (DEIA) mandates, policies, programs, preferences, and activities in the Federal Government, under whatever name they appear. To carry out this directive, the Director of OPM, with the assistance of the Attorney General as requested, shall review and revise, as appropriate, all existing Federal employment practices, union contracts, and training policies or programs to comply with this order. Federal employment practices, including Federal employee performance reviews, shall reward individual initiative, skills, performance, and hard work and shall not under any circumstances consider DEI or DEIA factors, goals, policies, mandates, or requirements.

(b) Each agency, department, or commission head, in consultation with the Attorney General, the Director of OMB, and the Director of OPM, as appropriate, shall take the following actions within sixty days of this order: (i) terminate, to the maximum extent allowed by law, all DEI, DEIA, and "environmental justice" offices and positions (including but not limited to "Chief Diversity Officer" positions); all "equity action plans," "equity" actions, initiatives, or programs, "equity-related" grants or contracts; and all DEI or DEIA performance requirements for employees, contractors, or grantees.

(ii) provide the Director of the OMB with a list of all:

(A) agency or department DEI, DEIA, or "environmental justice" positions, committees, programs, services, activities, budgets, and expenditures in existence on November 4, 2024, and an assessment of whether these positions, committees, programs, services, activities, budgets, and expenditures have been misleadingly relabeled in an attempt to preserve their pre-November 4, 2024 function;

(B) Federal contractors who have provided DEI training or DEI training materials to agency or department employees; and

(C) Federal grantees who received Federal funding to provide or advance DEI, DEIA, or "environmental justice" programs, services, or activities since January 20, 2021.

(iii) direct the deputy agency or department head to:

(A) assess the operational impact (e.g., the number of new DEI hires) and cost of the prior administration's DEI, DEIA, and "environmental justice" programs and policies; and

(B) recommend actions, such as Congressional notifications under 28 U.S.C. 530D, to align agency or department programs, activities, policies, regulations, guidance, employment practices, enforcement activities, contracts (including set-asides), grants, consent orders, and litigating positions with the policy of equal dignity and respect identified in section 1 of this order. The agency or department head and the Director of OMB shall jointly ensure that the deputy agency or department head has the authority and resources needed to carry out this directive.

(c) To inform and advise the President, so that he may formulate appropriate and effective civil-rights policies for the Executive Branch, the Assistant to the President for Domestic Policy shall convene a monthly meeting attended by the Director of OMB, the Director of OPM, and each deputy agency or department head to:

(i) hear reports on the prevalence and the economic and social costs of DEI, DEIA, and "environmental justice" in agency or department programs, activities, policies, regulations, guidance, employment practices, enforcement activities, contracts (including set-asides), grants, consent orders, and litigating positions;

(ii) discuss any barriers to measures to comply with this order; and

(iii) monitor and track agency and department progress and identify potential areas for additional Presidential or legislative action to advance the policy of equal dignity and respect.

**Sec. 3**. *Severability.* If any provision of this order, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of its provisions to any other persons or circumstances shall not be affected.

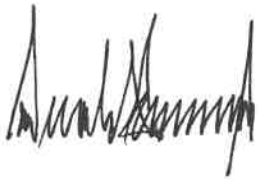
**Sec. 4**. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
*January 20, 2025.*

[FR Doc. 2025–01953
Filed 1–28–25; 8:45 am]
Billing code 3395–F4–P

# EXECUTIVE ORDER 14173

# Presidential Documents

**Executive Order 14173 of January 21, 2025**

## Ending Illegal Discrimination and Restoring Merit-Based Opportunity

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered:

**Section 1**. *Purpose.* Longstanding Federal civil-rights laws protect individual Americans from discrimination based on race, color, religion, sex, or national origin. These civil-rights protections serve as a bedrock supporting equality of opportunity for all Americans. As President, I have a solemn duty to ensure that these laws are enforced for the benefit of all Americans.

Yet today, roughly 60 years after the passage of the Civil Rights Act of 1964, critical and influential institutions of American society, including the Federal Government, major corporations, financial institutions, the medical industry, large commercial airlines, law enforcement agencies, and institutions of higher education have adopted and actively use dangerous, demeaning, and immoral race- and sex-based preferences under the guise of so-called "diversity, equity, and inclusion" (DEI) or "diversity, equity, inclusion, and accessibility" (DEIA) that can violate the civil-rights laws of this Nation.

Illegal DEI and DEIA policies not only violate the text and spirit of our longstanding Federal civil-rights laws, they also undermine our national unity, as they deny, discredit, and undermine the traditional American values of hard work, excellence, and individual achievement in favor of an unlawful, corrosive, and pernicious identity-based spoils system. Hardworking Americans who deserve a shot at the American Dream should not be stigmatized, demeaned, or shut out of opportunities because of their race or sex.

These illegal DEI and DEIA policies also threaten the safety of American men, women, and children across the Nation by diminishing the importance of individual merit, aptitude, hard work, and determination when selecting people for jobs and services in key sectors of American society, including all levels of government, and the medical, aviation, and law-enforcement communities. Yet in case after tragic case, the American people have witnessed first-hand the disastrous consequences of illegal, pernicious discrimination that has prioritized how people were born instead of what they were capable of doing.

The Federal Government is charged with enforcing our civil-rights laws. The purpose of this order is to ensure that it does so by ending illegal preferences and discrimination.

**Sec. 2**. *Policy.* It is the policy of the United States to protect the civil rights of all Americans and to promote individual initiative, excellence, and hard work. I therefore order all executive departments and agencies (agencies) to terminate all discriminatory and illegal preferences, mandates, policies, programs, activities, guidance, regulations, enforcement actions, consent orders, and requirements. I further order all agencies to enforce our longstanding civil-rights laws and to combat illegal private-sector DEI preferences, mandates, policies, programs, and activities.

**Sec. 3**. *Terminating Illegal Discrimination in the Federal Government.* (a) The following executive actions are hereby revoked:



(i) Executive Order 12898 of February 11, 1994 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations);

(ii) Executive Order 13583 of August 18, 2011 (Establishing a Coordinated Government-wide Initiative to Promote Diversity and Inclusion in the Federal Workforce);

(iii) Executive Order 13672 of July 21, 2014 (Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity); and

(iv) The Presidential Memorandum of October 5, 2016 (Promoting Diversity and Inclusion in the National Security Workforce).

(b) The Federal contracting process shall be streamlined to enhance speed and efficiency, reduce costs, and require Federal contractors and subcontractors to comply with our civil-rights laws. Accordingly:

(i) Executive Order 11246 of September 24, 1965 (Equal Employment Opportunity), is hereby revoked. For 90 days from the date of this order, Federal contractors may continue to comply with the regulatory scheme in effect on January 20, 2025.

(ii) The Office of Federal Contract Compliance Programs within the Department of Labor shall immediately cease:

(A) Promoting "diversity";

(B) Holding Federal contractors and subcontractors responsible for taking "affirmative action"; and

(C) Allowing or encouraging Federal contractors and subcontractors to engage in workforce balancing based on race, color, sex, sexual preference, religion, or national origin.

(iii) In accordance with Executive Order 13279 of December 12, 2002 (Equal Protection of the Laws for Faith-Based and Community Organizations), the employment, procurement, and contracting practices of Federal contractors and subcontractors shall not consider race, color, sex, sexual preference, religion, or national origin in ways that violate the Nation's civil rights laws.

(iv) The head of each agency shall include in every contract or grant award:

(A) A term requiring the contractual counterparty or grant recipient to agree that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code; and

(B) A term requiring such counterparty or recipient to certify that it does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws.

(c) The Director of the Office of Management and Budget (OMB), with the assistance of the Attorney General as requested, shall:

(i) Review and revise, as appropriate, all Government-wide processes, directives, and guidance;

(ii) Excise references to DEI and DEIA principles, under whatever name they may appear, from Federal acquisition, contracting, grants, and financial assistance procedures to streamline those procedures, improve speed and efficiency, lower costs, and comply with civil-rights laws; and

(iii) Terminate all "diversity," "equity," "equitable decision-making," "equitable deployment of financial and technical assistance," "advancing equity," and like mandates, requirements, programs, or activities, as appropriate.

**Sec. 4**. *Encouraging the Private Sector to End Illegal DEI Discrimination and Preferences.* (a) The heads of all agencies, with the assistance of the

Attorney General, shall take all appropriate action with respect to the operations of their agencies to advance in the private sector the policy of individual initiative, excellence, and hard work identified in section 2 of this order.

(b) To further inform and advise me so that my Administration may formulate appropriate and effective civil-rights policy, the Attorney General, within 120 days of this order, in consultation with the heads of relevant agencies and in coordination with the Director of OMB, shall submit a report to the Assistant to the President for Domestic Policy containing recommendations for enforcing Federal civil-rights laws and taking other appropriate measures to encourage the private sector to end illegal discrimination and preferences, including DEI. The report shall contain a proposed strategic enforcement plan identifying:

(i) Key sectors of concern within each agency's jurisdiction;

(ii) The most egregious and discriminatory DEI practitioners in each sector of concern;

(iii) A plan of specific steps or measures to deter DEI programs or principles (whether specifically denominated "DEI" or otherwise) that constitute illegal discrimination or preferences. As a part of this plan, each agency shall identify up to nine potential civil compliance investigations of publicly traded corporations, large non-profit corporations or associations, foundations with assets of 500 million dollars or more, State and local bar and medical associations, and institutions of higher education with endowments over 1 billion dollars;

(iv) Other strategies to encourage the private sector to end illegal DEI discrimination and preferences and comply with all Federal civil-rights laws;

(v) Litigation that would be potentially appropriate for Federal lawsuits, intervention, or statements of interest; and

(vi) Potential regulatory action and sub-regulatory guidance.

**Sec. 5**. *Other Actions.* Within 120 days of this order, the Attorney General and the Secretary of Education shall jointly issue guidance to all State and local educational agencies that receive Federal funds, as well as all institutions of higher education that receive Federal grants or participate in the Federal student loan assistance program under Title IV of the Higher Education Act, 20 U.S.C. 1070 *et seq.,* regarding the measures and practices required to comply with *Students for Fair Admissions, Inc.* v. *President and Fellows of Harvard College,* 600 U.S. 181 (2023).

**Sec. 6**. *Severability.* If any provision of this order, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of its provisions to any other persons or circumstances shall not be affected thereby.

**Sec. 7**. *Scope.* (a) This order does not apply to lawful Federal or private- sector employment and contracting preferences for veterans of the U.S. armed forces or persons protected by the Randolph-Sheppard Act, 20 U.S.C. 107 *et seq.*

(b) This order does not prevent State or local governments, Federal contractors, or Federally-funded State and local educational agencies or institutions of higher education from engaging in First Amendment-protected speech.

(c) This order does not prohibit persons teaching at a Federally funded institution of higher education as part of a larger course of academic instruction from advocating for, endorsing, or promoting the unlawful employment or contracting practices prohibited by this order.

**Sec. 8**. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

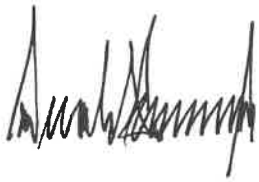
(i) the authority granted by law to an executive department, agency, or the head thereof; or



(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to and does not create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
*January 21, 2025.*

[FR Doc. 2025–02097
Filed 1–30–25; 8:45 am]
Billing code 3395–F4–P

# EXECUTIVE ORDER 14281

# Presidential Documents

**Executive Order 14281 of April 23, 2025**

## Restoring Equality of Opportunity and Meritocracy

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered:

**Section 1**. *Purpose*. A bedrock principle of the United States is that all citizens are treated equally under the law. This principle guarantees equality of opportunity, not equal outcomes. It promises that people are treated as individuals, not components of a particular race or group. It encourages meritocracy and a colorblind society, not race- or sex-based favoritism. Adherence to this principle is essential to creating opportunity, encouraging achievement, and sustaining the American Dream.

But a pernicious movement endangers this foundational principle, seeking to transform America's promise of equal opportunity into a divisive pursuit of results preordained by irrelevant immutable characteristics, regardless of individual strengths, effort, or achievement. A key tool of this movement is disparate-impact liability, which holds that a near insurmountable presumption of unlawful discrimination exists where there are any differences in outcomes in certain circumstances among different races, sexes, or similar groups, even if there is no facially discriminatory policy or practice or discriminatory intent involved, and even if everyone has an equal opportunity to succeed. Disparate-impact liability all but requires individuals and businesses to consider race and engage in racial balancing to avoid potentially crippling legal liability. It not only undermines our national values, but also runs contrary to equal protection under the law and, therefore, violates our Constitution.

On a practical level, disparate-impact liability has hindered businesses from making hiring and other employment decisions based on merit and skill, their needs, or the needs of their customers because of the specter that such a process might lead to disparate outcomes, and thus disparate-impact lawsuits. This has made it difficult, and in some cases impossible, for employers to use bona fide job-oriented evaluations when recruiting, which prevents job seekers from being paired with jobs to which their skills are most suited—in other words, it deprives them of opportunities for success. Because of disparate-impact liability, employers cannot act in the best interests of the job applicant, the employer, and the American public.

Disparate-impact liability imperils the effectiveness of civil rights laws by mandating, rather than proscribing, discrimination. As the Supreme Court put it, "[t]he way to stop discrimination on the basis of race is to stop discriminating on the basis of race."

Disparate-impact liability is wholly inconsistent with the Constitution and threatens the commitment to merit and equality of opportunity that forms the foundation of the American Dream. Under my Administration, citizens will be treated equally before the law and as individuals, not consigned to a certain fate based on their immutable characteristics.

**Sec. 2**. *Policy*. It is the policy of the United States to eliminate the use of disparate-impact liability in all contexts to the maximum degree possible to avoid violating the Constitution, Federal civil rights laws, and basic American ideals.



**Sec. 3**. *Revoking Certain Presidential Actions*. The following Presidential approvals of the regulations promulgated under 42 U.S.C. 2000d–1 are hereby revoked:

(a) the Presidential approval of July 25, 1966, of the Department of Justice Title VI regulations (31 *Fed. Reg.* 10269), as applied to 28 C.F.R. 42.104(b)(2) in full; and

(b) the Presidential approval of July 5, 1973, of the Department of Justice Title VI regulations (38 *Fed. Reg.* 17955, FR Doc. 73–13407), as applied to the words "or effect" in both places they appear in 28 C.F.R. 42.104(b)(3), and as applied to 28 C.F.R. 42.104(b)(6)(ii) and 28 C.F.R. 42.104(c)(2) in full.

**Sec. 4**. *Enforcement Discretion to Ensure Lawful Governance*. Given the limited enforcement resources of executive departments and agencies (agencies), the unlawfulness of disparate-impact liability, and the policy of this order, all agencies shall deprioritize enforcement of all statutes and regulations to the extent they include disparate-impact liability, including but not limited to 42 U.S.C. 2000e–2, 28 C.F.R. 42.104(b)(2)–(3), 28 C.F.R. 42.104(b)(6)(ii), and 28 C.F.R. 42.104(c)(2).

**Sec. 5**. *Existing Regulations*. (a) As delegated by Executive Order 12250 of November 2, 1980 (Leadership and Coordination of Nondiscrimination Laws), the Attorney General shall initiate appropriate action to repeal or amend the implementing regulations for Title VI of the Civil Rights Act of 1964 for all agencies to the extent they contemplate disparate-impact liability.

(b) Within 30 days of the date of this order, the Attorney General, in coordination with the heads of all other agencies, shall report to the President, through the Assistant to the President for Domestic Policy:

(i) all existing regulations, guidance, rules, or orders that impose disparate-impact liability or similar requirements, and detail agency steps for their amendment or repeal, as appropriate under applicable law; and

(ii) other laws or decisions, including at the State level, that impose disparate-impact liability and any appropriate measures to address any constitutional or other legal infirmities.

**Sec. 6**. *Review of Current Matters*. (a) Within 45 days of the date of this order, the Attorney General and the Chair of the Equal Employment Opportunity Commission shall assess all pending investigations, civil suits, or positions taken in ongoing matters under every Federal civil rights law within their respective jurisdictions, including Title VII of the Civil Rights Act of 1964, that rely on a theory of disparate-impact liability, and shall take appropriate action with respect to such matters consistent with the policy of this order.

(b) Within 45 days of the date of this order, the Attorney General, the Secretary of Housing and Urban Development, the Director of the Consumer Financial Protection Bureau, the Chair of the Federal Trade Commission, and the heads of other agencies responsible for enforcement of the Equal Credit Opportunity Act (Public Law 93–495), Title VIII of the Civil Rights Act of 1964 (the Fair Housing Act (Public Law 90–284, as amended)), or laws prohibiting unfair, deceptive, or abusive acts or practices shall evaluate all pending proceedings that rely on theories of disparate-impact liability and take appropriate action with respect to such matters consistent with the policy of this order.

(c) Within 90 days of the date of this order, all agencies shall evaluate existing consent judgments and permanent injunctions that rely on theories of disparate-impact liability and take appropriate action with respect to such matters consistent with the policy of this order.

**Sec. 7**. *Future Agency Action*. (a) In coordination with other agencies, the Attorney General shall determine whether any Federal authorities preempt State laws, regulations, policies, or practices that impose disparate-impact liability based on a federally protected characteristic such as race, sex,



or age, or whether such laws, regulations, policies, or practices have constitutional infirmities that warrant Federal action, and shall take appropriate measures consistent with the policy of this order.

(b) The Attorney General and the Chair of the Equal Employment Opportunity Commission shall jointly formulate and issue guidance or technical assistance to employers regarding appropriate methods to promote equal access to employment regardless of whether an applicant has a college education, where appropriate.

**Sec. 8**. *Severability*. If any provision of this order, or the application of any provision to any individual or circumstance, is held to be invalid, the remainder of this order and the application of its other provisions to any other individuals or circumstances shall not be affected thereby.

**Sec. 9**. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
*April 23, 2025.*

[FR Doc. 2025–07378
Filed 4–25–25; 8:45 am]
Billing code 3395–F4–P

# EXECUTIVE ORDER 14398

Federal Register

Vol. 91, No. 61

Tuesday, March 31, 2026

# Presidential Documents

Title 3—

The President

## Executive Order 14398 of March 26, 2026

## Addressing DEI Discrimination by Federal Contractors

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act (40 U.S.C. 101 *et seq.*) (FPASA), it is hereby ordered:

**Section 1**. *Policy and Purpose.* My Administration has made significant progress in ending racial discrimination in American society, including so- called "diversity, equity, and inclusion" (DEI) activities in which employees, applicants, or contracting parties are treated differently, separated, or singled out based on their race or ethnicity, rather than treated equally and objectively based on their merit and without regard to their immutable characteristics. Despite this progress, some entities continue to engage in DEI activities and often attempt to conceal their efforts to do so.

DEI activities are not only unethical and often illegal, but also cause inefficiencies, waste, and abuse within entities that engage in such practices. Specifically, DEI activities impose artificial costs in hiring, promotion, and operations by precluding implementation of merit-based principles; creating excessive workforce turnover by elevating immutable characteristics over job performance; and jeopardizing the sort of employee collaboration and problem-solving that is essential to fostering efficient and high-quality work. DEI activities also create unnecessary costs by reducing the pool of available labor by artificially limiting companies to hiring or promoting certain individuals, suppliers, or intermediaries based on their race or ethnicity. These costs are inevitably passed on to the Federal Government when it contracts with companies who engage in racially discriminatory DEI activities, or who use subcontractors who do so.

It is therefore the policy of the United States to promote economy and efficiency in Federal contracting by preventing racial discrimination.

**Sec. 2**. *Definitions.* (a) For the purposes of this order, "racially discriminatory DEI activities" means disparate treatment based on race or ethnicity in the recruitment, employment (*e.g.,* hiring, promotions), contracting (*e.g.,* vendor agreements), program participation, or allocation or deployment of an entity's resources.

(b) "Program participation" means membership or participation in, or access or admission to: training, mentoring, or leadership development programs; educational opportunities; clubs; associations; or similar opportunities that are sponsored or established by the contractor or subcontractor.

**Sec. 3**. *Requirements for Federal Contractors.* Within 30 days of the date of this order, executive departments and agencies, including independent establishments subject to FPASA, 40 U.S.C. 102(4)(A) (agencies), shall, to the extent permitted by law, ensure that contracts and contract-like instruments, including contractors' subcontracts and subcontractors' lower-tier subcontracts, include the following clause:

"In connection with the performance of work under this contract, [the contractor/appropriate party (contractor)] agrees as follows:

1. The contractor will not engage in any racially discriminatory DEI activities, as defined in section 2 of the Executive Order of March 26, 2026 (Addressing DEI Discrimination by Federal Contractors);

2. The contractor will furnish all information and reports, including providing access to books, records, and accounts, as required by the contracting agency pursuant to the Executive Order of March 26, 2026 (Addressing DEI Discrimination by Federal Contractors), for purposes of ascertaining compliance with this clause;

3. In the event of the contractor's or a subcontractor's noncompliance with this clause, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor or subcontractor may be declared ineligible for further Government contracts;

4. The contractor will report any subcontractor's known or reasonably knowable conduct that may violate this clause to the contracting department or agency and take any appropriate remedial actions directed by the contracting department or agency;

5. The contractor will inform the contracting department or agency if a subcontractor sues the contractor and the suit puts at issue, in any way, the validity of this clause; and

6. The contractor recognizes that compliance with the requirements of this clause are material to the Government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code (False Claims Act).".

**Sec. 4**. *Penalties.* (a) The Director of the Office of Management and Budget shall issue guidance to contracting agencies to ensure compliance with this order. Consistent with any such guidance provided, contracting agencies shall:

(i) cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract or contract-like instrument, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with the clause described in section 3 of this order; and

(ii) take appropriate action to suspend and debar contractors or subcontractors for such failures to comply.

(b) The Director of the Office of Management and Budget, in coordination with the Attorney General, the Assistant to the President for Domestic Policy, and the Chairman of the Equal Employment Opportunity Commission, shall identify economic sectors that pose a particular risk of entities engaging in racially discriminatory DEI activities based on current or past conduct and issue additional guidance to contracting agencies regarding best practices to ensure compliance with this order within such sectors.

(c) Within 120 days of the date of this order, each agency head shall review the agency's implementation of section 3 of this order and report to the Assistant to the President for Domestic Policy regarding its compliance with that section. Thereafter, each agency head shall regularly review and take appropriate measures to ensure such compliance.

(d) The Attorney General, in consultation with relevant contracting agencies, shall:

(i) consider whether to bring actions under the False Claims Act against any contractors or subcontractors that violate the clause described in section 3 of this order; and

(ii) ensure prompt review of civil actions brought by private persons under 31 U.S.C. 3730(b)(1) concerning Federal contracts or subcontracts, including by rendering a decision on whether to proceed with an action under 31 U.S.C. 3730(b)(4), to the maximum extent practicable, within the 60-day period described in 31 U.S.C. 3730(b)(2).

**Sec. 5**. *Regulations and Implementation.* (a) The Federal Acquisition Regulatory Council, to the extent permitted by law, shall amend the Federal Acquisition Regulation to:

(i) provide for inclusion in Federal procurement, solicitations, and contracts subject to this order the clause described in section 3 of this order; and

(ii) remove any provisions that conflict or are inconsistent with the clause described in section 3 of this order.

(b) The Federal Acquisition Regulatory Council shall, within 60 days of the date of this order, issue deviation and interim guidance under subpart 1.4 of the Federal Acquisition Regulation, as appropriate and consistent with applicable law, regarding agency implementation of the clause described in section 3 of this order before completion of the amendments under subsection (a) of this section.

**Sec. 6**. *Severability.* If any provision of this order, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of its provisions to any other persons or circumstances shall not be affected thereby.

**Sec. 7**. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The costs for publication of this order shall be borne by the Department of Justice.

THE WHITE HOUSE, *March 26, 2026.*

[FR Doc. 2026–06286
Filed 3–30–26; 11:15 am]
Billing code 4410–CW–P

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# DEI and Anti-Discrimination Law and Guidance Under a Changing Legal Landscape

Anna S. M. McCarthy, Esq.

# Agenda

- Where are we?
  - The state of anti-discrimination statutory law
  - Federal orders, guidance, and agency actions regarding DEI
  - Related and ongoing litigation
- We will discuss:
  - Evolving risks for certain organizational activities
  - Considerations for addressing risks and implementing changes
  - Potential action items

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# Legal Background

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# Current Statutory Law

- Federal statutory law remains consistent
- Federally-protected categories: race, color, religion, sex, national origin, disability, age, genetic information
  - Title VII of the Civil Rights Act of 1964
  - Americans with Disabilities Act of 1990
  - Age Discrimination in Employment Act
  - Genetic Information Non-Discrimination Act
  - Equal Pay Act of 1963
- Protections for federal contracts, grants, and programs:
  - Rehabilitation Act of 1973 (Sections 503, 504)
  - Vietnam Era Veterans' Readjustment Assistance Act of 1974
- State law considerations

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# Quick Refresher on Federal Actions

- What is an Executive Order?
  - Presidential directive that manages the operations of the federal government
  - Not law, but has the force of law
- What else can the President issue?
  - Memoranda, proclamations, fact sheets, determinations, letters, notices, etc.
- Federal agencies take their direction from the Executive Branch
  - Compliance efforts through investigations, contract or grant provisions, lawsuits

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# Timeline: January – March 2025

**January 20, 2025**
E.O. 14151. Ending Radical and Wasteful Government DEI Programs and Preferencing

E.O. 14168. Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government

E.O. 14148. Initial Rescissions of Harmful Executive Orders and Actions

**January 21, 2025**
E.O. 14173. Ending Illegal Discrimination and Restoring Merit-Based Opportunity

**February 6, 2025**
Presidential Memorandum directs agencies and the Executive branch to stop funding NGOs that undermine national interest

**February 14, 2025**
The Office of Civil Rights of the U.S. Dept of Education issues a "Dear Colleague" letter advising federally-funded schools regarding their non-discrimination obligations

**March 17, 2025**
EEOC requests information from 20 law firms regarding their DEI-related practices

**March 18, 2025**
Trump Administration issues "Fact Sheet" to "remove DEI from foreign service"

**March 19, 2025**
Joint guidance from the EEOC and DOJ regarding unlawful DEI practices

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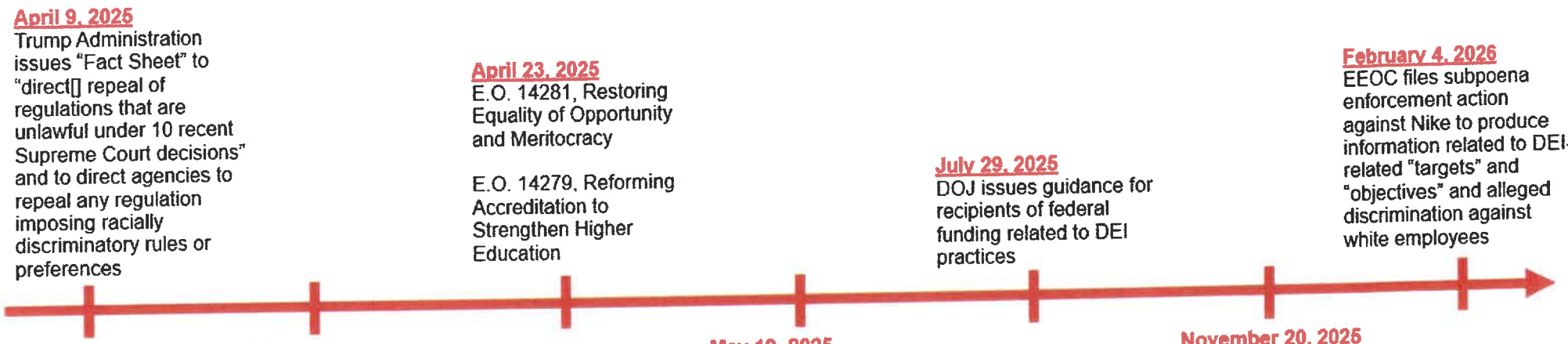
# Timeline: April 2025 – February 2026



**April 9, 2025**
Trump Administration issues "Fact Sheet" to "direct[] repeal of regulations that are unlawful under 10 recent Supreme Court decisions" and to direct agencies to repeal any regulation imposing racially discriminatory rules or preferences

**April 11, 2025**
EEOC reaches settlement with four law firms regarding their DEI practices

**April 23, 2025**
E.O. 14281, Restoring Equality of Opportunity and Meritocracy

E.O. 14279, Reforming Accreditation to Strengthen Higher Education

**May 19, 2025**
DOJ starts a Civil Rights Fraud Initiative, with the goal of investigating and pursuing potential False Claims Act charges against federal funding recipients

**July 29, 2025**
DOJ issues guidance for recipients of federal funding related to DEI practices

**November 20, 2025**
EEOC files subpoena enforcement action against Northwestern Mutual to produce information related to DEI policies and practices, including regarding their promotions

**February 4, 2026**
EEOC files subpoena enforcement action against Nike to produce information related to DEI-related "targets" and "objectives" and alleged discrimination against white employees

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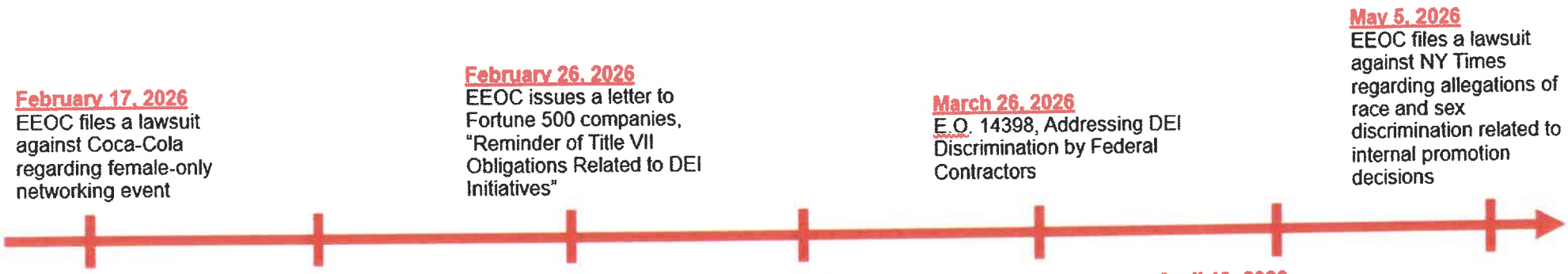
# Timeline: February – May 2026



**February 17, 2026**
EEOC files a lawsuit against Coca-Cola regarding female-only networking event

**February 19, 2026**
DOJ attorney presents at Federal Bar Association's Qui Tam conference, outlining the DOJ's approach to DEI-related violations of the False Claims Act

**February 26, 2026**
EEOC issues a letter to Fortune 500 companies, "Reminder of Title VII Obligations Related to DEI Initiatives"

**March 19, 2026**
EEOC reaches a settlement with a chapter of Planned Parenthood regarding the organization's DEI practices

**March 26, 2026**
E.O. 14398, Addressing DEI Discrimination by Federal Contractors

**April 10, 2026**
First DOJ's False Claims Act settlement with IBM over an alleged failure to comply with anti-discrimination requirements in its federal contracts

**May 5, 2026**
EEOC files a lawsuit against NY Times regarding allegations of race and sex discrimination related to internal promotion decisions

# On the Horizon

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# Agency Actions

- Future DOJ/EEOC investigations, lawsuits
- Increased focus on federal funding and contract recipients

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# Court Cases

- Employment discrimination claims and related EEOC enforcement actions (*Coca-Cola, NY Times)*
- Lawsuits challenging DEI-focused Executive Orders and the fallout from those Orders. For example:
    - In *Fell et al. v. Trump et al.*, a group of ex-federal employees sued the federal government after they alleged they lost their jobs in connection with the Trump Administration's Executive Orders 14151 and 14173
    - Several lawsuits were commenced by cities and other municipalities against various federal agencies, challenging the withholding of federal funds based on new grant conditions prohibiting the operation of DEI-related programs
- Claims under Section 1981, including focused efforts to find and litigate scholarships, programs, fellowships, internships, and other contract-based opportunities that are limited based upon race. For example:
    - American Alliance for Equal Rights sued venture capital firm Fearless Fund Management, LLC, alleging a violation of the federal prohibition on racial discrimination in contracting. Fearless Fund ran a contest that awarded grants to Black women entrepreneurs.
    - Roberts & Freedom Truck Dispatch sued Progressive Preferred Insurance Company for its grant program, which offered money to small businesses. To apply, a small business had to be Black-owned and operated.

# State Updates

- Multi-State Guidance Concerning Diversity, Equity, Inclusion, and Accessibility Employment Initiatives, issued February 13, 2025 by state attorneys general for MA, IL, AZ, CA, CT, DE, HI, ME, MD, MN, NV, NJ, NY, OR, RI and VT
  - Questions authority of E.O. 14173 to prohibit lawful private sector activities or mandate the removal of certain policies and procedures within the private sector
  - Explains benefits of DEIA for preventing workplace discrimination and ensuring compliance with current federal and state law
  - Outlines "best practices" for DEIA in areas of recruitment and hiring, professional development and retention, and assessment and integration
- Pending legislation
- Other State-level actions, including lawsuits

# Assessing the Risks

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# Organization Structure and Purpose

- Key areas:
  - Organizational strategic plans, mission statement
  - DEI offices, positions, and budgets
- Considerations to address risk:
  - Should strategic plans be reviewed to consider repackaging an organization's mission and goals?
  - Should internal policies, positions, and budget spend be refocused on concepts of inclusion and community, rather than diversity and equity?
- Potential action steps:
  - Convene stakeholder discussions regarding risk tolerance concerning DEI matters
  - Review policies, procedures, strategic plan, etc. for DEI-related statements and ensure consistency with desired approach

# Programs and Community Outreach

- Key areas:
  - Programs that focus on beneficiaries within certain protected categories
  - Targeted community support
- Considerations to address risk:
  - Should program criteria be revised to avoid the use of protected categories as a method of exclusion?
  - Should program restrictions be expanded to encourage broad participation?
  - Should an organization's community support be reviewed to consider an inclusive approach?
- Potential action steps:
  - Convene stakeholder discussions regarding risk tolerance concerning DEI matters
  - Review program criteria and outreach for language or goals related to protected categories
  - Ensure program updates are consistent with desired approach

# External Messaging

- Key areas:
  - Website descriptions, including program descriptions, mission statements, etc.
  - Press releases
- Considerations to address risk:
  - Should website text be revised to focus on inclusion and community, rather than diversity and equity, while still accurately reflecting an organization's mission?
  - How much information should be explained publicly, and in what form?
- Potential action steps:
  - Convene stakeholder discussions regarding risk tolerance concerning DEI matters
  - Review external messaging for DEI-related statements and ensure consistency with desired approach

# Other External Communications

- Key areas:
  - Responses to information requests from third parties, including the government, or partner organizations
  - Grant certifications, funding requirements
- Considerations to address risk:
  - Should responses to third parties be a one-size-fits-all approach, or should each third party's goals and requirements be considered individually?
  - In making a certification, should organizations consider the scope and specific language of the certification's requirements?
  - How else can an organization prepare before making a certification?
- Potential action steps:
  - Convene stakeholder discussions regarding risk tolerance concerning DEI matters
  - Conduct a compliance review
  - Seek clarification and/or additional information from third parties where necessary
  - Carefully review certification requirements with legal counsel

# Employment Practices

- Key areas:
  - Candidate searches, employment decisions (hiring, promotions, pay, etc.)
  - Employee support and education
  - Data collection and use
- Considerations to address risk:
  - Should consideration of protected categories be removed from employment decisions?
  - Should training programs and internal support groups be expanded to all employees, without limitation?
  - Should employers collect data if it is not required by law? Should organizations consider the purpose and use of the data to determine whether data collection is justified?
- Potential action steps:
  - Convene stakeholder discussions regarding risk tolerance concerning DEI matters
  - Review current practices and ensure approach is consistent with the law
  - Determine justification for data collection, and determine whether continued collection serves the organization's goals and complies with the law

# DEI Challenges

- How might organizations face challenges?
  - Direct interference with government contracts, federal grants
  - Indirect interference with partnering organizations and other third party relationships
  - Investigations
  - Litigation
- What will those challenges be based upon?
  - Section 1981
  - False Claims Act
  - Tax-exempt status
  - Anti-discrimination laws
  - Others?

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# Making Decisions

- Understand an organization's risk tolerance
- Involve Board oversight in the decision-making process
- Recommend that decisions are made with counsel, under the protection of the attorney-client privilege
- Ensure follow-through is universal and consistent with the ultimate decision

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# Summary Points

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# Summary Points

- Statutory law has not changed, but interpretation of that law is key, so pay attention to legal developments and agency enforcement priorities
- Identify your priorities and risk tolerances
- Assess your existing policies and programs for legal validity and justification, as well as effectiveness and mission alignment
- Understand and seek counsel regarding contract and grant obligations

# Questions?

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# Thank You

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This presentation is intended for general information purposes only and should not be considered as legal advice. The contents are neither an exhaustive discussion nor do they purport to cover all developments in the area. The reader should consult with legal counsel to determine how applicable laws relate to specific situations.

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**EEOC Chair Andrea Lucas**
@andrealucasEEOC

Are you a white male who has experienced discrimination at work based on your race or sex?
You may have a claim to recover money under federal civil rights laws. Contact the @USEEOC as soon as possible.

The EEOC is committed to identifying, attacking, and eliminating ALL race and sex discrimination — including against white male employees and applicants.

Visit EEOC.gov to learn more and read our one-page explainer about DEI-related discrimination.

U.S. EEOC

6:47 PM · Dec 17, 2025 · **6.1M** Views

# WHAT TO DO IF YOU EXPERIENCE DISCRIMINATION RELATED TO DEI AT WORK

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on protected characteristics such as race and sex. Different treatment based on race, sex, or another protected characteristic can be unlawful discrimination, no matter which employees are harmed. Title VII's protections apply equally to all racial, ethnic, and national origin groups, as well as both sexes.

**Before you can sue in federal court, you first must file a charge of discrimination with the EEOC.** The U.S. Equal Employment Opportunity Commission (EEOC) investigates charges of discrimination and can file a lawsuit under Title VII against businesses and other private sector employers. The Department of Justice can file a lawsuit under Title VII against state and local government employers based on an EEOC charge, following an EEOC investigation.

## What can DEI-related discrimination look like?

Diversity, Equity, and Inclusion (DEI) is a broad term that is not defined in the statute. Under Title VII, DEI policies, programs, or practices may be unlawful if they involve an employer or other covered entity taking an employment action **motivated**—in whole or in part—by an employee's race, sex, or another protected characteristic. In addition to unlawfully using quotas or otherwise "balancing" a workforce by race, sex, or other protected traits, DEI-related discrimination in your workplace might include the following:

### Disparate Treatment

DEI-related discrimination can include an employer taking an employment action motivated (in whole or in part) by race, sex, or another protected characteristic. Title VII bars discrimination against applicants or employees in the terms, conditions, or privileges of employment, including:

- Hiring
- Firing
- Promotion
- Demotion
- Compensation
- Fringe benefits
- Exclusion from training
- Exclusion from mentoring or sponsorship programs
- Exclusion from fellowships
- Selection for interviews (including placement on candidate slates)

### Limiting, Segregating, and Classifying

Title VII also prohibits employers from limiting, segregating, or classifying employees based on race, sex, or other protected characteristics in a way that affects their status or deprives them of employment opportunities. Prohibited conduct may include:

- Limiting membership in workplace groups, such as Employee Resource Groups (ERG) or other employee affinity groups, to certain protected groups
- Separating employees into groups based on race, sex, or another protected characteristic when administering DEI or other trainings, or other privileges of employment, even if the separate groups receive the same programming content or amount of employer resources

### Harassment

Title VII prohibits workplace harassment, which may occur when an employee is subjected to unwelcome remarks or conduct based on race, sex, or other protected characteristics. Harassment is illegal when it results in an adverse change to a term, condition, or privilege of employment, or it is so frequent or severe that a reasonable person would consider it intimidating, hostile, or abusive. Depending on the facts, DEI training may give rise to a colorable hostile work environment claim.

### Retaliation

Title VII prohibits retaliation by an employer because an individual has engaged in protected activity under the statute, such as objecting to or opposing employment discrimination related to DEI, participating in employer or EEOC investigations, or filing an EEOC charge. Reasonable opposition to a DEI training may constitute protected activity if the employee provides a fact-specific basis for his or her belief that the training violates Title VII.

## Who can be affected by DEI-related discrimination?

Title VII protects employees, potential and actual applicants, interns, and training program participants.

## What should I do if I encounter discrimination related to DEI at work?

If you suspect you have experienced DEI-related discrimination, contact the EEOC promptly because there are strict time limits for filing a charge. The EEOC office nearest to you can be reached by phone at 1-800-669-4000 or by ASL videophone at 1-844-234-5122.

www.EEOC.gov

***EEOC V. COCA-COLA BEVERAGES NORTHEAST, INC.***

# COMPLAINT

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF NEW HAMPSHIRE**

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

v.

COCA-COLA BEVERAGES NORTHEAST, INC.,

Defendant.

Civil Action No.: 1:26-cv-115

**COMPLAINT**

**JURY TRIAL DEMAND**

## NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 ("Title VII") and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of sex (male) and provide appropriate relief to male employees who have been adversely affected by these practices ("Aggrieved Individuals"). The United States Equal Employment Opportunity Commission ("EEOC" or "Commission") alleges that Defendant Coca-Cola Beverages Northeast, Inc. ("Coca-Cola Northeast" or "Defendant") violated Title VII by denying male employees the same compensation, terms, conditions, or privileges of employment offered and provided to female employees. Specifically, Defendant excluded Charging Party, and a class of similarly aggrieved male employees, from an employer-sponsored trip and networking event based on sex.

## JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C.§ 2000e-5(f)(1) and (3) ("Title VII") and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the District of New Hampshire.

## PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission, is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII, and is expressly authorized to bring this action by Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

4. At all relevant times, Coca-Cola Northeast, a corporation under the laws of New Hampshire, has continuously been doing business in the State of New Hampshire, City of Londonderry, and has continuously had at least 15 employees.

5. At all relevant times, Coca-Cola Northeast has continuously been an employer engaged in an industry affecting commerce under Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

## ADMINISTRATIVE PROCEDURES

6. More than thirty days prior to the institution of this lawsuit, EEOC Charge No. 523-2024-04316 was filed with the Commission alleging violations of Title VII by Defendant.

7. On January 13, 2025, the Commission issued Defendant a Letter of Determination finding reasonable cause to believe that Defendant violated Title VII.

8. The Commission invited Defendant to join with the Commission in informal methods of conciliation to endeavor to eliminate the unlawful employment practices and provide appropriate relief.

9. The Commission engaged in communications with Defendant to provide it the opportunity to remedy the discriminatory practices described in the Letter of Determination.

10. The Commission was unable to secure from Defendant a conciliation agreement acceptable to the Commission.

11. On August 27, 2025, the Commission issued to Defendant a Notice of Failure of Conciliation on the above-noted charge.

12. All conditions precedent to the institution of this lawsuit have been fulfilled.

## STATEMENT OF CLAIMS

13. Since at least September 2024, Defendant has engaged in unlawful employment practices in violation of Section 703(a)(1) of Title VII, 42 U.S.C. § 2000e-2(a)(1), by subjecting male employees to discrimination on the basis of sex with respect to their compensation, terms, conditions, or privileges of employment. Specifically:

a. Defendant produces, sells, and distributes Coca-Cola brand beverages in seven states within the Northeast United States.

b. Charging Party is a male production employee working at Defendant's Londonderry, New Hampshire facility.

c. On September 10, 2024 and September 11, 2024, Defendant held an employer-sponsored trip and networking event at the Mohegan Sun and Casino in Connecticut.

d. Defendant privately invited female employees to the event.

e. Defendant did not invite male employees to the event.

f. The event featured a social reception, team-building exercises and recreational activities.

g. The event also provided participants the opportunity to hear from speakers, including Jennifer Mann, President of Coca-Cola North America Operating Unit, and corporate executives from other companies, who discussed their career paths.

h. Defendant excused female employees who attended the event from their normal work duties on September 10 and 11, 2024 and paid them their normal salary or wages without requiring them to use vacation or other paid time off.

i. Defendant paid for hotel room charges and taxes for female employees who stayed at the Mohegan Sun on September 10, 2024.

j. Defendant provided other benefits to female employees who attended the event including, for example, food and/or beverages.

k. Approximately 250 female employees attended the event.

l. Charging Party and other male employees would have attended the event had they been invited.

m. Defendant did not offer or provide male employees with any of the associated benefits of attendance.

n. Male employees suffered damages as a result.

14. Defendant's exclusion of male employees from attending and participating in the event on September 10, 2024 and September 11, 2024 constitutes a denial of equal compensation, terms, conditions, or privileges of employment on the basis of sex.

15. The effect of the practices complained of above has been to deprive the Charging Party and similarly aggrieved male employees of equal employment opportunities and otherwise adversely affected their status as employees on the basis of sex.

16. The unlawful employment practices complained of above were intentional.

17. The unlawful employment practices complained of above were done with malice or reckless indifference to the federally protected rights of male employees.

## PRAYER FOR RELIEF

Wherefore the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with it, from engaging in discrimination on the basis of sex.

B. Order Defendant to institute and carry out policies, practices, and programs which provide male employees with equal access to employer-sponsored events, and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant to make the Charging Party and the similarly aggrieved male employees whole by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described above, in amounts to be determined at trial;

D. Order Defendant to make the Charging Party and the similarly aggrieved male employees whole by providing compensation for past and future non-pecuniary losses resulting from the unlawful employment practices described above, including emotional pain, suffering, inconvenience, mental anguish, and other nonpecuniary losses, in amounts to be determined at trial;

E. Order Defendant to pay the Charging Party and the similarly aggrieved male employees punitive damages for the malicious and/or reckless indifference described above, in amounts to be determined at trial;

F. Grant such further relief as the Court deems necessary and proper to the public interest; and

G. Award the Commission its costs of this action.

## JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by this Complaint that are triable to a jury.

Dated: February 17, 2026

**FOR THE U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**CATHERINE L. ESCHBACH**
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*EEOC V. COCA-COLA BEVERAGES NORTHEAST, INC.*

# MOTION TO DISMISS

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF NEW HAMPSHIRE**

| | |
|---|---|
| U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,<br><br>Plaintiff,<br>v.<br><br>COCA-COLA BEVERAGES NORTHEAST, INC.,<br><br>Defendant. | Civil Action No. 1:26-cv-115-PB-AJ |

**DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Coca-Cola Beverages Northeast, Inc. ("Coke Northeast" or "Defendant"), by and through its counsel, submits the following Memorandum of Law in support of its Motion to Dismiss Plaintiff's Complaint.

## INTRODUCTION

The United States Equal Opportunity Employment Commission ("EEOC") brings this action on behalf of the charging party Matthew Taylor and a class of alleged similarly aggrieved male employees. The EEOC asserts that Coke Northeast's efforts to provide equal opportunity to women by holding a program in September 2024, intended to increase the pool of qualified candidates for advancement within the Company somehow disadvantaged male employees with regard to their terms, conditions, and privileges of employment. However, the EEOC does not and cannot allege that Coke Northeast in any way disadvantaged male employees regarding any term, condition, or privilege of employment. Coke Northeast's actions were fully compliant with Title VII of the Civil Rights Act of 1964, as well as its then existing affirmative action obligations

imposed by the United States under Executive Order 11246, and in no way trammeled the rights of male employees. The EEOC even fails to allege harm cognizable under the standard established in ***Muldrow v. City of St. Louis, Missouri***, 601 U.S. 346, 354-55 (2024).

Coke Northeast's Women's Forum ("Forum") focused on increasing the pool of qualified candidates for promotion; it did not impact the selection process utilized to fill roles at Coke Northeast. The Forum supplemented, in very modest terms, its many other recruitment efforts targeting both male and female employees. Put simply, the Forum in no way impacted male employees' opportunities for advancement within Coke Northeast.

Though the Forum stands on its own as lawful, Coke Northeast had the legal obligation to engage in affirmative action to address the manifest imbalance of women in its workforce that the Company self-identified as part of its obligation to comply with Executive Order 11246 ("EO 11246"). The President did not revoke EO 11246 until January 21, 2025, more than four months after the Forum took place.

Even absent any obligation under EO 11246, Coke Northeast's good faith efforts to encourage women to consider career opportunities and career paths at Coke Northeast was entirely consistent with its legal right to engage voluntarily in such outreach. ***Johnson v. Transportation Agency,*** 480 U.S. 616, 628-30 (1987); ***United Steelworkers of America v. Weber,*** 443 U.S. 193, 207 (1979) ("…Congress did not intend to limit traditional business freedom to such a degree as to prohibit all voluntary, race-conscious affirmative action."). The EEOC has strongly advocated for decades that employers could and should voluntarily engage in such efforts. The EEOC's advocacy on this point is expansive and includes its official regulatory Guidelines **that remain in effect today**. ***See 29 CFR § 1608***. In May 2024, just months prior to Coke Northeast's September 11 one day Forum, the EEOC argued in an Amicus Curiae brief in a case arising under 42 U.S.C.

§1981 that "[t]he EEOC and the Supreme Court have long agreed that Title VII permits employers to adopt voluntary affirmative-action plans to remedy manifest imbalances in their workforces …" Brief of The Equal Employment Opportunity Commission as Amicus Curiae Supporting Defendants on The Issue Addressed Herein at 2, ***Roberts v. Progressive Preferred Ins. Co.***, 2024 WL 2295482 (N.D. Ohio May 21, 2024), ***aff'd***, 167 F.4th 955 (6th Cir. 2026). Such was the state of the law and the EEOC's formal Guidelines in 2024, and remains so today.

**FACTUAL BACKGROUND**

The EEOC alleges that on September 10-11, 2024, Coke Northeast held an employer-sponsored event that included a "social reception, team-building exercises[,] … recreational activities[,]" and "the opportunity to hear from speakers, including Jennifer Mann, President of Coca-Cola North America Operating Unit, and corporate executives from other companies, who discussed their career paths[,]" and excluded the charging party and a class of alleged similarly aggrieved employees based on sex. ***See Complaint***, at ¶¶ 13(c)-(g), ECF No. 1. The EEOC also alleges Coke Northeast (a) "excused female employees … from their normal work duties … and paid them their normal salary or wages without requiring them to use vacation or other paid time off[;]" (b) "paid for hotel room charges and taxes for female employees [;]" and (c) "provided other benefits to female employees who attended the event including, for example, food and/or beverages." ***See Complaint***, at ¶¶ 13(h)-(J), ECF No. 1.

The EEOC does not allege that male employees lost any wages or benefits that they earned on the day the Forum took place. The EEOC could not make such an allegation as both men and women who reported either to the Forum or to their regular work assignment on September 11, 2024, were paid in the normal course of business.[1] The EEOC takes exception to the fact that

[1] Hourly employees who chose to attend the Forum may have given up an opportunity to earn overtime pay.

Coke Northeast paid female employees if they attended the entire work-related Forum on September 11, 2024, in place of performing their regular work responsibilities on that day. In addition, the EEOC appears to claim that the food provided at this Forum and the cost of a hotel room for a single night for those employees who stayed at the hotel the night prior to the Forum, caused cognizable harm to male employees regarding their terms, conditions, or privileges of employment.

Finally, without any factual underpinning, the EEOC requests this Court to award punitive damages based on a single conclusory allegation that Coke Northeast engaged in the alleged unlawful employment practices "with malice or reckless indifference to the federally protected rights of male employees." Objectively unreasonable and vexatious, this frivolous request should be stricken.

## ARGUMENT

The Complaint must plead facts that, when accepted as true, establish a claim for relief that is plausible on its face or the Complaint must be dismissed under ***Fed. R. Civ. P. 12(b)(6)***. ***Ashcroft v. Iqbal***, 556 U.S. 662, 678 (2009). "[L]egal conclusion[s] couched as … factual allegation[s]" do not suffice. ***Papasan v. Allain***, 478 U.S. 265, 286 (1986). Rather, the EEOC must plead facts that demonstrate there is "more than a sheer possibility [that Coke Northeast] has acted unlawfully. ***Ortiz v. Fed. Bureau of Prisons***, 290 F. Supp. 3d 96, 101 (D. Mass. 2017) (***citing Ashcroft v. Iqbal***, 556 U.S. 662, 678, 129 S.Ct. 1937, 1950, 173 L.Ed.2d 868 (2009)). The Complaint's threadbare allegations fall short as it fails to allege facts that support a claim that Coke Northeast violated Title VII of the Civil Rights Act of 1964. Similarly, the EEOC fails to allege any facts to support its request for punitive damages.

## I. The Forum Was A Lawful Affirmative Effort Designed To Expand Coke Northeast's Pool Of Qualified Candidates Among Existing Employees Without Impacting In Any Way The Selection Process For Advancement.

Coke Northeast designed the Forum to encourage female employees to consider advancement opportunities at the Company as part of an effort to address a self-identified manifest imbalance. As outlined above, the one-time one-day event aimed to encourage female employees to consider pathways toward advancement and to inspire them to seek the same in an effort to broaden the pool of qualified internal candidates for promotions. The Forum did not eliminate the many ways Coke Northeast educates both men and women about such pathways to advancement. The Forum did not and does not have any bearing on decisions with respect to the qualified candidates who have been or who will be selected for promotion.

The law is clear that an affirmative effort to expand the pool of qualified applicants is legal and non-discriminatory. For example, in ***Raso v. Lago***, 958 F. Supp. 686, 704 (D. Mass. 1997), ***aff'd***, 135 F.3d 11 (1st Cir. 1998), the court granted the defendants' Motion to Dismiss a claim of race-based discrimination under Title VI of the Civil Rights Act of 1964 because the plaintiffs failed to demonstrate that the defendants' race based actions were discriminatory.[2] The plaintiffs, a group of predominantly white displaced residents of Boston's West End, alleged that the defendants, which included local developers, discriminated against them when they implemented race-based recruitment strategies in an effort to expand the pool of qualified minority applicants so that the West End development would reflect the "racial and economic diversity of the City at large[.]" ***Id***. at 691. Notably, the court dismissed the claim because while race was a consideration

[2] Courts apply the same legal analysis to sex and race-based discrimination claims propounded under Title VI and VII of the Civil Rights act of 1964. ***Georgia State Conf. of Branches of NAACP v. State of Ga.***, 775 F.2d 1403, 1417 (11th Cir. 1985); ***see also Natl. Ass'n For Advancement of Colored People v. Med. Ctr., Inc.***, 657 F.2d 1322, 1333 (3d Cir. 1981); ***see also Middlebrooks v. Univ. of Md.***, 166 F.3d 1209 (4th Cir. 1999) (unpublished) (table decision) (stating that Title VI and § 1981 claims "are appropriately analyzed under the Title VII proof scheme, first articulated in McDonnell Douglas Corp. v. Green.").

in the defendants' recruitment strategies, applicants were not chosen unless they were qualified. ***Id.*** at 692-93, 703-04. Just like the targeted recruitment strategies implemented in ***Raso***, the Forum was designed to expand the pool of qualified candidates by encouraging qualified women to apply for promotions when they become available. Historically, qualified men did not need such encouragement to throw their hat into the ring. Of the pool of qualified candidates, Coke Northeast selects the best qualified candidate without regard to sex.

In ***Shuford v. Alabama State Bd. of Educ.***, 897 F. Supp. 1535, 1543 (M.D. Ala. 1995), female plaintiffs sued the Alabama State Board of Education (the "Board") *inter alia* for Title VII sex-based discrimination. Subsequently, the parties moved the court to approve a proposed partial consent decree (the "Decree"). ***Id.*** at 1544-45. The Decree contained several provisions, one of which incorporated sex-conscious procedures aimed at expanding the pool of qualified applicants in an effort to cure an underutilization of female employees. ***See Id.*** at 1546. In determining whether the Decree's sex-conscious recruiting methods were legal, the court looked to Title VII and considered inclusive versus exclusive affirmative action techniques and public policy. ***Id.*** at 1550. Inclusive techniques are those that are focused on ***expanding*** the pool of qualified applicants as much as possible while exclusive techniques work to ***select*** some candidates rather than others from a pool. ***Id.*** at 1551. While both inclusive and exclusive affirmative action techniques can be deemed legal, the court noted that inclusive techniques are so benign with respect to third parties or non-beneficiaries that they "do not require the traditional Title VII … analysis." ***Id.*** at 1552. The court concluded that the affirmative sex-conscious recruitment strategies prescribed in the Decree were inclusive and legal because they did not impact the candidate selection process and they aligned with public policy. ***Id.*** at 1556.

A comparable issue arose in ***Barbera v. Metro-Dade Cnty. Fire Dept.***, 117 F. Supp. 2d 1331 (S.D. Fla. 2000). There, a group of male plaintiffs sued the Metro-Dade Fire Department (the "Department") claiming reverse sex-based discrimination under Title VII. ***Id.*** at 1333-1334. The plaintiffs alleged, in part, that the Department modified a hiring test with an aim to maximize the number of eligible female applicants who made it to the interview stage and thereby discriminated against the male applicants. ***Id.*** The court granted summary judgement to the Department and noted that modifying the test to increase the number of qualified female applicants is neither discriminatory nor actionable. ***Id.*** at 1336. The court noted that "'Recruitment and other techniques of inclusion do not affect the selection process for hiring or promotion. Rather, inclusive techniques seek to ensure that as many qualified candidates as possible make it to the selection process'" ***Id.*** at 1337 (***quoting, Shuford v. Alabama Board of Education, supra,*** at 1551). Such efforts to increase the pool of qualified candidates without altering the selection process itself, have no discriminatory impact. ***Id.*** at 1338; ***see also Duffy v. Wolle***, 123 F.3d 1026, 1038-39 (8th Cir. 1997), ***cert. denied,*** 5232 U.S. 1137, 118 S.Ct. 1839, 140 L.Ed.2d 1090 (1998) (In ***Duffy,*** the United States Court of Appeals for the Eighth Circuit analyzed the reverse discrimination in a manner similar to a Title VII claim and held that "The only harm to white males is that they must compete against a larger pool of qualified applicants. This of course is not an appropriate objection and does not state a cognizable harm.").

Similarly, Coke Northeast held the Forum to expand the pool of qualified female candidates with a hope to make inroads in the manifest imbalance of women in myriad roles within Coke Northeast. At no time did Coke Northeast alter the process it utilizes to select employees so as to favor women over men. Accordingly, Coke Northeast's efforts to expand its pool of qualified candidates vis-à-vis the one-day Forum is not discriminatory and not actionable.

## II. The EEOC Failed To Allege Any Actionable Harm Respecting An Identifiable Term Or Condition Of Employment.

Title VII requires the EEOC to show that Coke Northeast's failure to invite the charging party and alleged aggrieved employees to the Forum brought about some "disadvantageous" change in an employment term or condition. ***Muldrow***, 601 U.S. at 354 (citing ***Oncale v. Sundowner Offshore Services, Inc.***, 523 U.S. 75, 80 (1998)). "The words 'discriminate against,' [found in ***42 U.S.C. § 2000e-2(a)(1)***] … refer to 'differences in treatment that injure' employees.'" ***Muldrow***, 601 U.S. at 354 (***citing Bostock v. Clayton Cnty., Georgia***, 590 U.S. 644, 681 (2020)).

To establish a Title VII sex discrimination claim, the EEOC "must show ***some harm*** respecting an identifiable term or condition of employment". ***Muldrow,*** 601 U.S. at 354-55 (emphasis added). In ***Muldrow***, the defendant transferred the plaintiff out of her position as a plainclothes police officer in a specialized Intelligence Division that included status as an FBI-deputized Task Force Officer. ***Id.*** at 350-51. After the transfer, the plaintiff no longer worked with high-ranking officials on departmental priorities, lost access to an unmarked take-home vehicle, and moved to a less regular schedule that included weekend shifts.[3] ***Id.*** at 351. The plaintiff sued under Title VII, alleging that the transfer "'discriminate[d] against' her based on sex 'with respect to' the 'terms [or] conditions' of her employment.'" ***Id.*** (***quoting 42 U.S.C.A. § 2000e-2(a)(1)***). The Supreme Court held that the plaintiff need not show the transfer effected a "significant" change in working conditions producing a material employment disadvantage. ***Id.*** at 359. However, the plaintiff must still show "***some harm*** respecting an identifiable term or condition of employment". ***Id.*** at 354-55 (emphasis added).

Although the Court did not precisely define what constitutes "some harm," it ultimately concluded that the plaintiff's collective allegations had satisfied the requirement "with room to

[3] Although the plaintiff's rank and pay remained the same. ***Muldrow***, 601 U.S. at 351.

spare." ***Id***. at 359. Justice Thomas provided clarification in his concurring opinion: to establish a claim, a plaintiff must have suffered an actual disadvantage as compared to minor changes - *i.e.*, more than a "trifling harm." ***Muldrow,*** 601 U.S. at 360 (Thomas, J., concurring). Justice Alito, in a separate concurring opinion gave the following example: "[w]e do not typically say that we were harmed or injured by every unwanted experience. What would we think if a friend said, 'I was harmed because the supermarket had run out of my favorite brand of peanut butter,' or, 'I was injured because I ran into three rather than the usual two red lights on the way home from work'?" ***Muldrow***, 601 U.S. at 363 (Alito, J., concurring).

In the case at hand, the EEOC fails to allege any cognizable harm. Not being invited to a one-time one-day event that included "a social reception, team-building exercises[,] … recreational activities[,]" a "paid … hotel room[,]" "food and/or beverages," and "the opportunity to hear from speakers … and corporate executives from other companies, who discussed their career paths," and was held over a period of less than 24 hours is far too trifling to amount to some harm. ***Complaint***, at ¶¶ 13(f)-(j), ECF No. 1. None of these allegations, whether viewed individually or collectively, shows "some harm respecting an identifiable term or condition of employment." ***Muldrow***, 601 U.S. at 354-55. Male employees were not made worse off because of this one-day event.

***Muldrow's*** progeny supports this conclusion. ***See Williams v. Memphis Light, Gas & Water***, 2024 WL 3427171, at 5 (6th Cir. July 16, 2024) (where exclusions from meetings did not affect identifiable conditions of employment because the meetings were not related to the plaintiff's role and she was not made worse off by not attending. The employee bears the burden of showing that attendance at such gatherings may have improved employment status or promotion opportunities); ***see also Menchu v. Multnomah Cty. Health Dep't***, 2024 WL 4242514, at 9 (D.

Or. Aug. 16, 2024) ("[a]bsent any such evidence, [a plaintiff] cannot show that his exclusion from social gatherings was an adverse employment action."). In ***Brown v. FCA US LLC***, 2025 WL 3657226, at 3-5 (6th Cir. Dec. 17, 2025) (***quoting*** Brown Declaration, R.28-1, PageID at 634; ***also quoting*** Brown Br. 11), the plaintiff alleged sex and racial discrimination and claimed her supervisor "treat[ed] a white male coworker preferentially, including taking him out to lunch and chit-chatting with him while refusing to speak to [her][,]" thereby denying her "equal access to mentoring and professional camaraderie compared to white male colleagues." The court noted that the plaintiff did not "argue that her supervisor's alleged lunch snub … qualified as an adverse employment action in the first place[,]" and ultimately held that her "nebulous allegation about lack of 'equal access' to 'professional camaraderie' cannot sustain her [discrimination] claim." ***Id.***

By contrast, in ***Strong v. Fort Myer Construction Corp.***, 2025 WL 2643457, 1 (D.D.C. Sept. 15, 2025) (***quoting*** Complaint ¶ 13) (emphasis added) the plaintiff alleged racial discrimination and, among other things, claimed he was not excluded from just one event but instead "was ***frequently*** excluded from team activities and social gatherings". Following the Court's logic in ***Muldrow***, the court held that the allegation concerning his frequent exclusion from team activities and social gatherings "(barely) clears the bar to plausibly allege an adverse employment action," because it "plausibly constitutes worse treatment with respect to the terms and conditions of [the plaintiff's] employment."[4] ***Id.*** at 2-3. If ***Strong*** only narrowly clears the pleading threshold established by ***Muldrow***, then the EEOC's far thinner allegations that a one-time one-day event violates Title VII fall well short of stating a plausible claim.

[4] The court ultimately granted the motion to dismiss because plaintiff failed to allege that "he suffered an adverse employment action because of race." ***Strong***, 2025 WL 2643457, 4.

The EEOC's sensationalized allegations regarding receipt of food, beverages, and a one-night hotel accommodation for those traveling fare no better. ***Complaint***, at ¶¶ 13(i)-(j), ECF No. 1.; ***see Mills v. Amazon.com Servs., LLC***, 2025 WL 861381 at 3 (N.D. Okla. Mar. 19, 2025) ("the denial of fresh pizza, pies, and swag does not relate to a term or condition of plaintiff's employment" and therefore, "does not constitute an adverse employment action.").[5] The EEOC's allegations in the Complaint that the alleged exclusion of male employees from the so-called benefits of food, beverages and one night at a hotel at a one-time, one-day event fall woefully short of establishing an adverse employment action.

Finally, the EEOC's allegation that Forum attendees received their regular wages as did the male (and female) employees who did not attend does not alter the outcome. ***See Complaint*** ¶ 13(h), ECF No. 1. The EEOC does not allege that the men lost any pay. Instead, the EEOC merely argues that the female attendees were not required to perform their regular job duties on September 11, 2024. ***Id***. The performance of different responsibilities on a single day without any disparity in pay is too trifling to come close to satisfying the some-harm standard articulated in ***Muldrow***.

Taken together, the EEOC's allegations fail to show that either the charging party or the alleged aggrieved employees were worse off as a result of their not attending the one-time one-day event. The male employees were not disadvantaged regarding a term or condition of employment and were not disadvantaged in any way regarding opportunities for advancement. Given the absence of harm as defined by ***Muldrow***, the Complaint should be dismissed.

[5] The court ultimately granted the defendant's motion for summary judgment because "plaintiff fail[ed] to show a single adverse employment action." ***Mills***, 2025 WL 861381 at 8.

## III. The EEOC Failed To Allege Facts Sufficient To Support An Award Of Punitive Damages.

Punitive damages are only available in Title VII claims when the employer engaged in intentional discrimination and has done so "with malice or with reckless indifference to the federally protected rights of an aggrieved individual." ***42 U.S.C. § 1981a(b)(1)***. Punitive damages are not available if the employer discriminates with a distinct belief that its discrimination is lawful or reasonably believes that its discrimination satisfies a statutory exception to liability. ***Kolstad v. Am. Dental Ass'n***, 527 U.S. 526, 536-37 (1999); ***see also McDonough v. City of Quincy***, 452 F.3d 8, 24 (1st Cir. 2006) ("[M]alice and reckless indifference concern … the employer's knowledge that it is acting in violation of federal law.").

"Although a complaint need not contain 'detailed factual allegations' to survive a motion to dismiss, 'a plaintiff's obligation to provide the grounds of his entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.'" ***Shukh v. Seagate Tech., LLC***, 873 F. Supp. 2d 1087, 1089 (D. Minn. 2012) (***quoting Bell Atl. Corp. v. Twombly***, 550 U.S. 544, 555 (2007)). This standard holds true regarding claims for punitive damages. ***Id*** at 1090. The EEOC has not alleged any facts that make a claim for punitive damages plausible. The one conclusory statement in the Complaint related to Coke Northeast's state of mind merely regurgitates the elements needed to recover punitive damages.

Even accepting all factual allegations as true, the Complaint is devoid of allegations of Coke Northeast's evil intent, conscious wrongdoing, or its reckless or callous indifference to the alleged aggrieved individuals' federally protected rights. ***Kolstad***, 527 U.S. at 538 (the justification for awarding punitive damages "lies in the evil intent of the defendant[,]" thus, "a positive element of conscious wrongdoing is always required.") (internal citations omitted); ***see also Shukh***, 873 F. Supp. 2d at 1091 (where the allegations in the complaint did not "sufficiently

speak to [the defendant's] state of mind so as to permit a reasonable inference of malice or reckless disregard of [the plaintiff's] rights."). As in ***Shukh***, the Complaint does not "plausibly suggest the requisite state of mind – here that the employer discriminated in the face of a perceived risk that its actions will violate federal law. ***Id.***

Moreover, given the position the EEOC advocated for decades including in the months leading up to the one-time one-day Forum, it is not plausible that the EEOC could address the shortcomings of its Complaint vis-à-vis an Amended Complaint. The EEOC consistently encouraged employers to take affirmative action including the expansion of recruitment pools, in order to provide equal opportunity. Title VII expressly provides a legal defense for employers who act in "good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission[.]" ***42 U.S.C. § 2000e-12(b)(1)***. Just months prior to the Forum, the EEOC advocated that "[t]he EEOC and the Supreme Court have long agreed that Title VII permits employers to adopt voluntary affirmative-action plans to remedy manifest imbalances in their workforces …" ***Brief of The Equal Employment Opportunity Commission as Amicus Curiae Supporting Defendants on The Issue Addressed Herein*** at 2, ***Roberts***, 2024 WL 2295482 (N.D. Ohio May 21, 2024), ***aff'd***, 167 F.4th 955 (6th Cir. 2026). The Court should strike the EEOC's demand for punitive damages.

## CONCLUSION

For all of the forgoing reasons, Defendant respectfully requests that the Court grant its motion and dismiss the Complaint in its entirety, with prejudice, and grant such other and further relief as the Court deems just and proper.

Dated: April 20, 2026

Respectfully submitted,

Coca-Cola Beverages Northeast, Inc.,

By their attorneys,

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**CERTIFICATE OF SERVICE**

I, Frederick B. Finberg, hereby certify that on April 20, 2026, I filed the foregoing via the Court's CM/ECF system, which will automatically send a notice of filing to counsel of record.

/s/ Frederick B. Finberg

*EEOC V. COCA-COLA BEVERAGES NORTHEAST, INC.*

# OPPOSITION TO MOTION TO DISMISS

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF NEW HAMPSHIRE**

| | |
|---|---|
| U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,<br><br>Plaintiff,<br><br>v.<br><br>COCA-COLA BEVERAGES NORTHEAST, INC.,<br><br>Defendant. | Civil Action No.: 1:26-cv-00115-PB-AJ |

**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS**

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Plaintiff, the United States Equal Employment Opportunity Commission ("EEOC"), submits this response in opposition to Defendant Coca-Cola Beverages Northeast, Inc.'s Motion to Dismiss the EEOC's complaint. *See* Def. Mot. to Dismiss and Supporting Memo. of Law (collectively, "Motion" or "MTD"), Dkt. Nos. 6, 6-1.

## I. PRELIMINARY STATEMENT

The EEOC's Complaint is straightforward and sufficiently and plausibly pleads a violation of Title VII. *See* Dkt. No. 1. Rather than address *that* Complaint, Defendant largely admits its intentional discrimination, quibbles with the facts as alleged, and posits the existence of possible defenses based on assertions of alleged facts outside the four corners of the Complaint. To the extent the Motion focuses on Fed. R. Civ. P. 12(b)(6) standards at all, Defendant argues that the EEOC: (1) failed to allege harm sufficient under *Muldrow v. City of St. Louis, Missouri*, 601 U.S. 346 (2024), MTD at 8, and (2) failed to plead facts sufficient to plausibly allege an entitlement to punitive damages, *see* MTD at 12-13. Defendant's arguments fail, and for the reasons set forth below, its Motion should be denied.

## II. PERTINENT FACTS ALLEGED IN THE COMPLAINT.

Defendant produces, sells, and distributes Coca-Cola brand beverages in seven states within the Northeast United States. Complaint ¶ 13(a). The Charging Party is a male production employee who works at Defendant's Londonderry, New Hampshire facility. *Id.* ¶ 13(b). From September 10, 2024 to September 11, 2024, Defendant held an employer-sponsored trip and networking event at the Mohegan Sun and Casino in Connecticut ("Employer-Sponsored Event"). *Id.* ¶ 13(c). It is undisputed that Defendant privately invited female employees to the attend the event but did not invite male employees. *Id.* ¶ 13(d) and (e).

The Employer-Sponsored Event featured a social reception, team building exercise, and recreational activities for female participants. *Id.* ¶ 13(f). Participants also had the opportunity to hear from speakers such as Jennifer Mann, President of Coca-Cola's North America Operating Unit, and corporate executives from other companies, who all discussed their career paths. *Id.* ¶ 13(g). Defendant excused the approximately 250 female employees who attended the work trip from their normal work duties at its facilities without charge to leave or other paid time off and paid them their normal salary and wages. *Id.* ¶¶ 13(h), (k). Defendant also paid for hotel rooms and associated taxes to stay at the Mohegan Sun on September 10, 2024, and provided other benefits to those female attendees, including food and beverages. *Id.* ¶¶ 13(i), (j).

Male employees, who were not invited to the event, were not offered or provided with any of the benefits of attendance, including paid time off. *Id.* ¶ 13(h), (m). The Charging Party and other male employees would have attended the event had they been invited. *Id.* ¶ 13(l). The Complaint alleges that, as a result of being excluded, male employees suffered damages. *Id.* ¶ 13(n). The Prayer for Relief seeks injunctive relief, compensatory and punitive damages, and other relief. *Id.* § Prayer for Relief, ¶¶ A-G.

## III. GOVERNING LEGAL STANDARDS

Dismissal of a complaint under Fed. R. Civ. P. 12(b)(6) is not appropriate if the complaint: (1) contains a short and plain statement of the claim as required under Fed. R. Civ. P. 8(a)(2) showing that the pleader is entitled to relief, and (2) contains enough information to state a facially plausible legal claim. *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009). A party meets this standard by alleging facts that allow the court to "draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 678 (citing *Bell Atlantic v. Twombly*, 550 U.S. 544, 556 (2007)).

When considering a motion to dismiss brought pursuant to Fed. R. Civ. P. 12(b)(6), a court "must assume the truth of all well-plead facts and give plaintiff the benefit of all reasonable inferences therefrom." *Ruiz v. Bally Total Fitness Holding Corp.*, 496 F. 3d 1, 5 (1st Cir. 2007). "[T]here is no need to set forth a detailed evidentiary proffer in a complaint" to conform to the requirements of Fed. R. Civ. P. 8(a)(2) or meet the standard under *Twombly* and *Iqbal*. *Rodríguez-Reyes v. Molina-Rodríguez,* 711 F.3d 49, 54 (1st Cir. 2013). The Supreme Court has also made clear that a complaint in an employment discrimination lawsuit need not contain specific facts establishing a prima facie case of discrimination. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 508 (2002); *see also Sisco v. DLA Piper LLP*, 833 F. Supp. 2d 133, 140-41 (D. Mass. 2011) (citing *Swierkiewicz* and denying a motion to dismiss a Title VII claim against the employer). The issue before this court "is not what the plaintiff is required ultimately to *prove* in order to prevail on her claim, but rather what she is required to *plead* in order to be permitted to develop her case for eventual adjudication on the merits." *Gorski v. New Hampshire Dep't of Corrections*, 290 F. 3d 466, 472 (1st Cir. 2002) (emphasis in original).

## IV. ARGUMENT

### A. The Complaint Sufficiently Pleads That Male Employees Suffered Harm By Being Intentionally Excluded from an Employer-Sponsored Event Based on Their Sex.

#### *1. The Complaint Comports with the Muldrow Decision.*

Title VII makes it unlawful for an employer to "discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment" because of sex. 42 U.S.C. § 2000-e(2)(a)(1). The Supreme Court has held that a plaintiff need only show "some harm [from an employment action] to prevail in a Title VII suit." *Muldrow v. City of St. Louis, Missouri*, 601 U.S. 346, 350 (2024). Analyzing the phrase "discriminate against," the *Muldrow* court explained that Title VII targets practices that "treat[] a person worse" because of sex. *Id.* at 354

(citing *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 658, 681 (2020)). Applying *Muldrow*, the First Circuit has held that "an adverse action is any employment event, regardless of its severity, in which an employer's conduct leaves an employee (1) 'worse off' (2) with respect to the 'terms [or] conditions' of their employment." *Walsh v. HNTB Corp.*, 169 F.4th 330, 339 (1st Cir. 2026) (quoting *Muldrow,* 601 U.S. at 354-55).

The EEOC's Complaint alleges that "Defendant's exclusion of male employees from attending and participating in the event on September 10, 2024 and September 11, 2024 constitutes a denial of equal compensation, terms, conditions, or privileges of employment on the basis of sex." Complaint, at ¶ 14. The *Muldrow* case has made clear that the phrase, "terms [or] conditions," covers more than the "economic or tangible." *Id.* at 354-55. Specifically, the EEOC has alleged that male employees were denied participation in the Employer-Sponsored Event, which included an overnight stay at a casino and resort for a work-related purpose where colleagues from Defendant's facilities in seven Northeastern states were present. *Supra* at § II. The EEOC further alleged that men were intentionally *not* invited to participate in Defendant's social reception, team-building exercises and recreational activities and excluded from the opportunity to hear from speakers, including Mann and other corporate executives, based on their sex. *Id.*

Being excluded from an employer-sponsored networking event most certainly renders male employees worse off than their female counterparts, as they were required to work in their normal jobs under routine working conditions, while female employees enjoyed a paid two-day work trip to a resort and casino where they were invited to network, socialize, engage in team-building exercises and other activities with colleagues from numerous facilities. These allegations plausibly demonstrate harm connected to the "compensation, terms, conditions, or privileges of

employment" under Title VII.

Indeed, the Supreme Court has long held the phrase "'terms, conditions, or privileges of employment' evinces a congressional intent 'to strike at the entire spectrum of disparate treatment of men and women' in employment." *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993) (quoting *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 64 (1986)). In his concurring opinion in *Muldrow*, Justice Brett Kavanaugh confirmed that "the text of Title VII does not require a separate showing of some harm. The discrimination is the harm." *Muldrow*, 442 U.S. at 365. He then noted examples of harm in the context of a job transfer that overlap with the allegations in the Complaint, including loss of "money, time… interest level, perks, professional relationships, [and] networking opportunities. . ." *Id.* One recent case highlights how the principles of *Muldrow* operate when the employer's intent to discriminate has been admitted, as it appears to have been here. *Supra* at II; *see also* MTD at 5. In *Staton v. DeJoy*, the court observed that some of the plaintiff's allegations could have appeared to have been "mere workplace disputes," but "if they were motivated by discriminatory animus" as the plaintiff had alleged in detail, "they are actionable." No. 1:23-CV-03223-SBP, 2025 WL 42821, at *8 (D. Colo. Jan. 7, 2025) (applying *Muldrow* and denying motion to dismiss).

And while Defendant argues that neither male nor female employees lost pay on September 10-11, 2024, MTD at 11, the EEOC has alleged that male employees were denied the same paid time off that the female employees received to attend the event. Paid time off is a form of employment compensation, and courts have recognized that differential treatment relating to paid time off can constitute an adverse employment action under Title VII. *See, e.g., Mckeon v. Robert Reiser & Co., Inc.*, 693 F. Supp. 3d 101, 105 n.2 (D. Mass. 2023) (acknowledging the denial of paid time off as an adverse employment action alleged); *Thomas v. JBS Green Bay,* Inc., 120 F.4th

1335, 1337 (7th Cir. 2024) (applying *Muldrow* and remanding a complaint with allegations concerning the denial of preferred vacation schedule); *Biglow v. Boeing Co.*, 182 F. Supp. 2d 1037, 1054 (D. Kan. 2001) ("treating employees differently with respect to paid time off may constitute adverse employment action"). As such, the EEOC's Complaint meets the pleading standard set forth in *Iqbal* and *Twombly*.

***2. Defendant's Cases Demonstrate That Denial of the Motion is Appropriate.***

Defendant's reliance on non-binding, unpublished decisions citing *Muldrow* is unavailing. *See* MTD at 8-11. *Brown, Mills, Menchu,* and *Williams* were all decided on summary judgment, which evaluates the sufficiency of the evidence, not the sufficiency of the allegations. *Garcia–Catalan v. United States*, 734 F.3d 100, 104 (1st Cir. 2013) ("But summary judgment, like a trial, hinges on the presence or absence of evidence, not on the adequacy of the pleadings."). Rather, these cases confirm that dismissal is inappropriate, and that discovery is warranted to assess whether exclusion from the Employer-Sponsored Event based on sex constitutes an adverse action under Title VII. Several federal district courts have recognized that excluding employees from employer-sponsored events, such as company lunches or golf and tennis outings, can constitute actionable discrimination. *See e.g., Brown v. FCA US LLC*, No. 25-1405, 2025 WL 3657226, at *5 (6th Cir. Dec. 17, 2025) (discussing supervisor's decision not take plaintiff out to lunch); *Mills v. Amazon.com Servs., LLC,* No. 24-CV-0188-CVE-CDL, 2025 WL 861381, at *7 (N.D. Okla. Mar. 19, 2025) (discussing denial of pizza, Thanksgiving pies, secret Santa gifts and Amazon backpacks to employees during manager-led social events);*Menchu v. Multnomah Cnty. Health Dep't*, No. 3:20-CV-00559-AR, 2024 WL 4242514, at *9 (D. Or. Aug. 16, 2024) (discussing exclusion from clinic social gatherings such as baby showers and birthday parties held in the workplace); *Williams v. Memphis Light, Gas & Water,* No. 23-5616, 2024 WL 3427171, at *5 (6th

Cir. July 16, 2024) ("[W]e do not doubt that some social events could be a condition of one's employment[.]"); *Allen v. Napolitano*, 943 F. Supp. 2d 40, 46 (D.D.C. 2013) (noting that the court "declined to dismiss this claim before discovery because [the plaintiff] could have developed evidence that the non-participation in certain meetings resulted in the requisite objectively tangible harm."); *Doria v. Cramer Rosenthal McGlynn, Inc.*, 942 F. Supp. 937, 946 (S.D.N.Y. 1996) (exclusion from company-sponsored lunches and golf and tennis outings constituted discrimination if exclusion was based on sex).

Likewise, Defendant's reliance on *Strong v. Fort Myer Constr. Corp.*, No. CV 25-1011 (SLS), 2025 WL 2643457 (D.D.C. Sept. 15, 2025) is not persuasive. In *Strong*, the court granted the defendant's Rule 12(b)(6) motion because the plaintiff had failed to allege that he was being discriminated against "because of his race." *Id.* at *3. But analyzing the adverse action element, the court found the plaintiff's allegation that he "was frequently excluded from team activities and social gatherings" cleared "the bar to plausibly allege an adverse employment action[.]" *Id.* at *2. Here, there is no dispute that the EEOC's Complaint alleges that male employees were intentionally excluded from the trip and networking event based on their sex, which clearly distinguishes it from *Strong*.

Defendant's Motion should be denied because it can be plausibly inferred from the well-pled allegations of the EEOC's Complaint that male employees suffered harm from being excluded from the Sponsored Event based on their sex.

**B. The "Prayer for Relief" for Punitive Damages is not Subject to Dismissal under Rule 12(b)(6).**

Typically, a "Rule 12(b) motion tests the sufficiency of a claim and not a prayer for relief." *Johnson v. Rapid Sheet Metal, LLC*, 560 F. Supp. 3d 623, 629 (D.N.H. 2020) (internal citation and quotation omitted). It is well-settled that punitive damages are a remedy, and not an independent

claim or cause of action, and a "12(b)(6) motion is not an appropriate vehicle to test a plaintiff's entitlement to a particular form of relief." *Mount Prospect Acad., Inc. v. Philadelphia Indem. Ins. Co.*, No. 25-CV-056-LM-AJ, 2026 WL 686358, at *3 (D.N.H. Mar. 11, 2026); *see also LeBlanc v. Banterra Bank*, No. 24-CV-352-LM-AJ, 2025 WL 1295284, at *2 n. 3 (D.N.H. Feb. 28, 2025) (same); *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2026 WL 521557, at *20 (D. Mass. Feb. 25, 2026) (same). For this reason alone, the Court should deny the Motion with respect to the EEOC's demand for punitive damages.

But even if this Court rejects this argument, striking references to punitive damages at this stage of litigation would be premature. Punitive damages are available under Title VII "where an employer engages in intentional discrimination with 'malice or reckless indifference *to the plaintiff's federally protected rights.*'" *Che v. Massachusetts Bay Transp. Auth.*, 342 F.3d 31, 41 (1st Cir. 2003) (quoting *Kolstad v. Am. Dental Ass'n*, 527 U.S. 526, 534 (1999)) (emphasis in original). "[A]cts of intentional discrimination are just the sort of conduct that punitive damages are aimed to deter." *DiMarco–Zappa v. Cabanillas,* 238 F.3d 25, 38 (1st Cir. 2001).

In this case, the Complaint adequately states that the "unlawful employment practices" set forth in Paragraph 13(a)-(n) were "intentional," *see* ¶ 16, and were done "with malice or reckless indifference to the federally protected rights of male employees," *see* ¶ 17. Defendant has already acknowledged that it intentionally excluded male employees from attending the Employer-Sponsored Event, MTD at 2-3, and "[t]his circuit has held that under federal law the evidence of intent that is necessary to support a punitive damages award 'is the same [evidence of] 'intent' that is required for a finding of discrimination in the first place.'" *See Criado v. IBM Corp.*, 145 F.3d 437, 445 (1st Cir. 1998) (citations omitted). Therefore, Defendant's Motion to dismiss the EEOC's Prayer for Relief as it relates to the remedy of punitive damages should also be denied.

**C. Defendant's Disputes About the Facts Alleged and Attempts to Justify an Intentional Sex-Based Decision Do Not Challenge the Sufficiency of the Pleading.**

Defendant's mischaracterizations, introduction of factual assertions outside the four corners of the Complaint, and assertions of potential defenses do not bear on the sufficiency of the EEOC's pleading and, thus, do not support dismissal.

It is well settled that on a Rule 12(b)(6) motion, "a court ordinarily may only consider facts alleged in the complaint[.]" *Freeman v. Town of Hudson*, 714 F.3d 29, 35 (1st Cir. 2013) (citing *Watterson v. Page*, 987 F.2d 1, 3 (1st Cir.1993)). This Court has noted that when an "argument depends upon facts not alleged in the complaint…it is not an argument that can be raised through a motion to dismiss pursuant to Rule 12(b)(6)." *Ferdinando Ins. Assocs., Inc. v. Inst. of Pro. Prac., Inc.*, No. C-93-83-B, 1994 WL 253377, at *3 n.3 (D.N.H. Mar. 21, 1994). As such, Defendant's recharacterizations of the allegations in the Complaint are of no moment under Rule 12(b)(6). *See, e.g.*, MTD at 5 (the Employer-Sponsored Event was a "one-time, one day event" rather than a two-day employer-sponsored trip and networking event held on September 10 and September 11 as alleged in the Complaint, ¶ 13(b)); MTD at 11 (men and women were paid the same, rather than the Complaint alleging that "Defendant excused female employees… from their normal work duties on September 10 and 11, 2024, and paid them their normal salary or wages without requiring them to use vacation or other paid time off," *Id.* ¶ 13(h)). Disputing the facts alleged does not equate to showing that the facts alleged do not plausibly infer sex discrimination under *Iqbal* or *Twombly*. Fact disputes are resolved after discovery through dispositive motions and do not support dismissal of the Complaint.

Similarly, Defendant suggests that its intentional decision to exclude male employees from the Employer-Sponsored Event is justified because it was a "lawful affirmative effort" designed to address a "self-identified manifest imbalance," MTD at 5, and/or because the Sponsored Event

complied with EEOC Regulations regarding affirmative action plans, 29 C.F.R § 1608.1 and Exec. Order No. 11246, 30 Fed. Reg. 12,319 (Sept. 28, 1965) (rescinded by Exec. Order No. 14173).[1] *See* MTD at 2. However, potential defenses to the EEOC's well-pled allegations are not properly considered under Rule 12(b)(6). *Kmart Corp. v. Seguros Triple-S, Inc.*, No. CIV. 12-1626C-CC, 2013 WL 4647564, at *2 (D.P.R. Aug. 28, 2013) (defendant's argument disputing liability "must be raised in a motion for Summary Judgment, not a Rule 12(b)(6) motion"). The now-revoked Executive Order 11246 and 29 C.F.R. § 1608.1 do not allow an employer to bypass Title VII liability simply upon invocation. If Defendant intends to dispute the allegations raised in the Complaint or introduce evidentiary theories refuting its liability under Title VII, the EEOC must be afforded an opportunity to conduct discovery on these theories and asserted defenses. *Blackstone Realty LLC v. F.D.I.C.*, 244 F.3d 193, 197 (1st Cir. 2001) (citing *Aldahonda–Rivera v. Parke Davis & Co.*, 882 F.2d 590, 591 (1st Cir. 1989)) (denying Rule 12(b)(6) motion where defendant raised affirmative defense which required discovery); *Facet Tech. Corp. v. TomTom Int'l B.V.*, No. 24-CV-00111-PB, 2025 WL 315390, at *6 (D.N.H. Jan. 28, 2025) (denying motion to dismiss where discovery was needed to evaluate defendant's equitable estoppel and invalidity affirmative defense).

To the extent Defendant relies on *Raso v. Lago*, 958 F. Supp. 686 (D. Mass. 1997), *Shuford v. Alabama State Bd. Of Educ.,* 897 F. Supp. 1535 (M.D. Ala. 1995), and *Barbera v. Metro-Dade County Fire Dep't.*, 117 F. Supp. 2d 1331 (S.D. Fla. 2000), *see* MTD at 5-7, to support its argument that the EEOC's Complaint fails to plausibly allege a violation of Title VII, that reliance is seriously misplaced. In citing these cases, Defendant attempts to support its argument that the decision to exclude males from the event at issue is justified as a lawful "affirmative effort to

[1] Exec. Order No. 11,246: https://www.archives.gov/federal-register/codification/executive-order/11246.html.

expand the pool of qualified applicants." MTD at 5. But the EEOC's Complaint does not allege disparate treatment in hiring or promotion and includes no allegations concerning Defendant's hiring practices whatsoever to which these arguments pertain. Further, these cases have questionable persuasive weight in this action. In *Raso*, the court examined policies relating to a federal housing project pursuant to 42 U.S.C. § 1983 and Title VI of the Civil Rights Act, not relating to a Title VII claim. 958 F. Supp. at 703-04. In *Shuford*, the district court analyzed a consent decree requiring defendant to set hiring goals for Black women and recruiting techniques and did not examine pleading standards or even whether liability had been established under Title VII. 897 F. Supp. at 1548. Finally, in *Barbera*, the district court analyzed, on summary judgment, whether a local fire department's affirmative action program, which modified a physical assessment test for female firefighter candidates, was lawful under Title VII. 117 F. Supp. 2d at 1333. As noted *supra*, authorities analyzing facts under Fed. R. Civ. P. 56 are inapposite regarding the Fed. R. Civ. P. 12(b)(6) standard generally and specifically as to whether the Complaint in this case is viable. Given the foregoing, Defendant's disputes about the facts and efforts to justify its decision do not bear on the sufficiency of the EEOC's complaint under *Iqbal* and *Twombly* and, therefore, do not support dismissal.

## V. CONCLUSION

Because the EEOC's Complaint sufficiently and plausibly pleads a violation of Title VII, including some harm as a result, Defendant's Motion to Dismiss the Complaint should be denied in its entirety. Alternatively, should the Court determine otherwise, the EEOC would seek the opportunity to amend its pleading.

Dated: May 4, 2026

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of **U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS PURSUANT TO FED. R. CIV. P 12(b)(6)** was served via CM/ECF on May 4, 2026.

Edumin Corrales

Edumin Corrales

***EEOC V. COCA-COLA BEVERAGES NORTHEAST, INC.***

# REPLY

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF NEW HAMPSHIRE**

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

v.

COCA-COLA BEVERAGES NORTHEAST, INC.,

Defendant.

Civil Action No. 1:26-cv-115-PB-AJ

**DEFENDANT'S REPLY MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS**

Pursuant to Local Rule 7.1, Coca-Cola Beverages Northeast, Inc. ("Coke Northeast" or "Defendant"), by and through its counsel, submits the following Reply Memorandum of Law in Support of its Motion to Dismiss Plaintiff's Complaint.

**ARGUMENT**

**I. The Complaint, As Plead, Fails To Satisfy The Muldrow Standard.**

As the EEOC highlights in its Opposition to Defendant's Motion to Dismiss ("Opposition"), to avoid a judgment on the pleadings, it must have adequately plead that the charging party suffered "some harm respecting an identifiable ***term or condition*** of employment" by way of Coke Northeast not inviting him to attend the one-time one-day Forum intended to encourage women to seek career advancement at the Company. ***Muldrow v. City of St. Louis, Missouri***, 601 U.S. 346, 354-55 (2024) (emphasis added). The EEOC has not satisfied this threshold requirement.

The EEOC paddles upstream in mischaracterizing ***Muldrow's*** progeny to argue that they support a finding that this one-time one-day Forum made the charging party and alleged similarly aggrieved male employees worse off. In doing so, the EEOC fails to give proper attention to a recent opinion from the United States Court of Appeals for the First Circuit, ***Walsh v. HNTB Corp.***, 169 F.4th 330 (1st Cir. 2026).

Applying ***Muldrow***, the First Circuit affirmed an order issued by the United States District Court for the District of Massachusetts granting an employer's motion to dismiss the plaintiff's claim of discrimination under the Age Discrimination in Employment Act. ***Id.*** at 344. The plaintiff successfully completed a performance improvement plan ("PIP") and resigned almost a year later. ***Id.*** at 336-339. On appeal, the plaintiff argued that under ***Muldrow***, the PIP constituted an adverse employment action. ***Id.*** at 339. The Court rejected plaintiff's argument, however, because the "PIP did not assign [the plaintiff] new duties, alter her title or compensation, or limit her ability to seek other opportunities within the company." ***Id.*** at 341. In other words, the PIP did not impact the terms or conditions of her employment. The Court in essence found that even if the PIP was issued for discriminatory reasons, it was too trifling an event to constitute an adverse employment action under ***Muldrow.*** By implication, the Court rejected the suggestion the EEOC makes in its Opposition, that courts should adopt the standard Justice Kavanaugh articulated in his ***Muldrow*** concurrence that a plaintiff need only allege discrimination without also satisfying the some harm threshold.

The EEOC continues to grasp for straws as it grossly mischaracterizes the time spent at the Forum as "paid time off." ***[ECF 9]*** Opposition at p.10-11. Both men and women were paid on September 11, 2024, for their scheduled work. The women who attended the Forum merely had a different work assignment for that workday. The EEOC fails to allege in either the Complaint or

in its Opposition any facts to support its intentional mischaracterization of employees' attendance at the Forum as a day off from work. The EEOC acknowledges that Coke Northeast paid both men and women on September 11, 2024, and makes no attempt to explain why the Forum attendees' assignment should be classified as time off. ***[ECF 1]*** Complaint, at ¶13(h).

Despite the EEOC's dislike of Coke Northeast's citation of unpublished opinions, the EEOC relies on the same. ***[ECF 9]*** Opposition at p.10. However, the cases upon which EEOC relies do little to bolster its argument that the Complaint satisfies ***Muldrow***. Although the court in ***Staton v. DeJoy***, No. 1:23-CV-03223-SBP, 2025 WL 42821, at 8-9 (D. Colo. Jan. 7, 2025) denied the employer's motion to dismiss, it did so because it "lack[ed] specific guidance from the Tenth Circuit concerning the application of *Muldrow's* 'some harm' standard[.]" As noted above, the First Circuit has provided the guidance that was lacking in ***Staton*** by shedding light on what constitutes a term or condition of employment for purposes of applying the ***Muldrow*** standard.

The EEOC fares no better in its misplaced reliance on a plethora of federal district court cases issued since ***Muldrow*** as the plaintiffs in each of those cases alleged a series of or multiple events that together satisfied ***Muldrow.*** None of the cases dealt with a one-time one-day event focused on career advancement. Brown v. FCA US LLC Complaint, ¶¶ 13-23, ***Brown v. FCA US LLC***, No. 25-1405, 2025 WL 3657226 (6th Cir. Dec. 17, 2025) (plaintiff's complaint alleged that she was subjected to sexual harassment and ultimately terminated for reporting the same which led to a loss of earnings, earning capacity, fringe benefits, and diminished professional reputation); Mills v. Amazon.com Servs., LLC Complaint, ¶¶ 15-22, 27, 34-40, 47, 83, ***Mills v. Amazon.com Servs., LLC***, No. 24-CV-0188-CVE-CDL, 2025 WL 861381 (N.D. Okla. Mar. 19, 2025) (plaintiff's complaint alleged several adverse employments actions including falling victim to a false rumor regarding his alleged sexual impropriety, the plaintiff's HR manager's failure to address

the same, denial of holiday perks such as thanksgiving pies, a change from daytime to nighttime shift, denial of company-branded merchandise, failure to receive adequate training, a racially insensitive request from the HR Manager constituting harassment, and the HR department's characterization of his PTSD related behavior as "crazy"); Menchu v. Multnomah Cnty. Health Dep't Complaint, ¶¶ 7-11, ***Menchu v. Multnomah Cnty. Health Dep't***, No. 3:20-CV-00559-AR, 2024 WL 4242514 (D. Or. Aug. 16, 2024) (plaintiff's complaint alleged several adverse employment actions including exclusion from certain office spaces thereby preventing him from participating in certain work events and subjecting the him to public humiliation; denial of a company access badge and invitations to company meetings and educational programs; prescribing additional work duties; reducing shifts and denying payment for last minute patient cancellations; requiring the plaintiff to obtain specific certifications without employer reimbursement while other similarly situated employees were not required to obtain the same; requiring the plaintiff to perform work that violated ethics laws; denying a cost of living increment that was afforded to other similarly situated employees; loss of fringe benefits and merit increases; and denial sick leave discriminatorily among other adverse action); Allen v. Napolitano Complaint, ¶¶ 7-11, ***Allen v. Napolitano***, 943 F. Supp. 2d 40, 46 (D.D.C. 2013) (plaintiff alleged several adverse employment actions including her supervisor's refusal to adequately staff the office that the plaintiff managed, loss of job duties, loss of access to information that was critical to performing her job, supervisor interference with the plaintiff's management of her subordinates, denial of a promotion, and a subsequent demotion); ***Doria v. Cramer Rosenthal McGlynn, Inc.***, 942 F. Supp. 937, 945-946 (S.D.N.Y. 1996) (plaintiff alleged that she was passed over for a promotion, had her job duties reduced, publicly critiqued for performance issues, received a reduced year-end bonus, and was asked to perform job duties while on maternity leave); ***Williams v. Memphis Light, Gas & Water***,

No. 23-5616, 2024 WL 3427171, at 5 (6th Cir. July 16, 2024) (the plaintiff alleged multiple exclusions).

Finally, the EEOC misrepresents the holding in ***Strong v. Fort Myer Construction Corp.***, No. CV 25-1011 (SLS), 2025 WL 2643457 (D.D.C. Sept. 15, 2025). The court in ***Strong*** noted that ***frequent*** exclusions from work related activities and social gatherings "(barely) clear[]the bar to plausibly allege an adverse employment action." ***Id.*** at 2. Simply put, the one-time one-day Forum does not come close to the appropriate bar cited in ***Strong***. The EEOC has failed to articulate any cognizable harm to the charging party and the alleged similarly aggrieved male employees.

**II. The EEOC Fails To Plead Any Plausible Basis For An Award of Punitive Damages.**

The EEOC acknowledges that the First Circuit has not directly addressed whether a Motion to Dismiss is the appropriate vehicle to seek dismissal of a plaintiff's claim for punitive damages. And, though there is a split among federal courts regarding this issue, in most cases in which a court has deemed the request for dismissal premature, a factfinder "could plausibly infer from plaintiff's factual allegations that the standard for punitive damages was met." ***Shukh v. Seagate Tech., LLC,*** 873 F.Supp. 2d 1087, 1090 (D. Minn. 2012). In ***Shukh,*** the court rejected that claims for punitive damages are exempt from *Iqbal* and *Twombly's* pleading requirements.

> Here, months of discovery remain. It is of course **possible** that Shukh could unearth evidence in discovery that would get at Seagate's management's state of mind. And Shukh is correct that some courts have allowed plaintiffs to file an amended complaint adding a punitive damages claim where "facts in [the] amended complaint ... **might** support a claim for punitive damages...." *Coller v. Doucette,* No. 4:09–780, 2010 WL 319652, at *2 (E.D.Mo. Jan. 20, 2010) (emphasis added). But, as described below, the facts in Shukh's Third Amended Complaint do not render it **plausible, *1092** as *Iqbal* requires, that Seagate discriminated against Shukh with malice or reckless disregard to his rights.

***Id.*** at 1091-1092.

Accordingly, where a plaintiff "has failed to allege any facts in the Complaint that would suggest that Defendant acted with malice or reckless indifference to a federally protected right[,]" the plaintiff has "failed to set forth a facially plausible claim for punitive damages under Title VII and those claims will be dismissed." ***Finn v. Porter's Pharmacy***, No. CIV.A. 15-661, 2015 WL 5098657, at 7 (W.D. Pa. Aug. 31, 2015).

In the event the Court finds that the EEOC has cleared the bar set in ***Muldrow***, to plausibly allege that a one-time one-day forum can constitute an adverse employment action under Title VII, the Court will have established a much lower bar than most if not all courts have set in the aftermath of ***Muldrow***, including in ***Strong***, ***supra***. Given both that the EEOC's current regulatory guidance set out in ***29 C.F.R. § 1608*** encourages employers to engage in voluntary efforts to remedy manifest imbalances in their workforces, and that the EEOC has advocated for such voluntary efforts for decades, including in the months leading up to and beyond the one-time one-day Forum, there is simply no evidence of malice or reckless disregard that could be developed during discovery that could ever be sufficient to entitle the EEOC to an award of punitive damages. ***See*** Brief of The Equal Employment Opportunity Commission as Amicus Curiae Supporting Defendants on The Issue Addressed Herein at 2, ***Roberts v. Progressive Preferred Ins. Co.***, 2024 WL 2295482 (N.D. Ohio May 21, 2024), ***aff'd***, 167 F.4th 955 (6th Cir. 2026). Holding Coke Northeast to the cost of defending a punitive damages request against this regulatory backdrop would be punitive in and of itself. ***Fed. R. Civ. P. 1*** declares that the rules governing this action which includes Rule 12(b)(6) "should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding."

## CONCLUSION

For all of the forgoing reasons, Defendant respectfully requests that the Court grant its motion and dismiss the Complaint in its entirety, with prejudice, or in the alternative strike Plaintiff's request for punitive damages and grant such other and further relief as the Court deems just and proper.

Dated: May 11, 2026,

Respectfully submitted,

Coca-Cola Beverages Northeast, Inc.,

By their attorneys,

/s/ Frederick B. Finberg

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## CERTIFICATE OF SERVICE

I, Frederick B. Finberg, hereby certify that on May 11, 2026, I filed the foregoing via the Court's CM/ECF system, which will automatically send a notice of filing to counsel of record.

/s/ Frederick B. Finberg

Cohen, Debra 10/21/2026
For Educational Use Only



2026 WL 3093454
United States District Court, D. New Hampshire.

U.S. Equal Employment Opportunity Commission

v.

Coca-Cola Beverages Northeast, Inc.

Case No. 1:26-cv-115-PB-AJ
|
Filed 10/16/2026

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## MEMORANDUM AND ORDER

Paul J. Barbadoro United States District Judge

***1** The United States Equal Employment Opportunity Commission ("EEOC") brings this action against Coca-Cola Beverages Northeast, Inc. ("Coca-Cola") under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991. It claims that Coca-Cola violated Title VII by denying male employees the opportunity to attend Coca-Cola's Women's Forum, a two-day conference that Coca-Cola asserts was "focused on increasing the pool of qualified candidates for promotion." Doc. 6-1 at 2. Coca-Cola moves to dismiss, primarily arguing that the EEOC fails to allege actionable harm arising from the Women's Forum in its complaint. For the reasons set forth below, I deny Coca-Cola's motion.

## I. BACKGROUND

The EEOC brings this action on behalf of the charging party, a male who works as a production employee at Coca-Cola's Londonderry, New Hampshire facility. Doc. 1 at 3. On September 10 and 11, 2024, Coca-Cola sponsored a trip and networking event labeled the "Women's Forum" at the Mohegan Sun and Casino in Connecticut. Id. Coca-Cola contends that the purpose of the Forum was to "focus[ ] on increasing the pool of qualified candidates for promotion." Doc. 6-1 at 2. The Forum included a social reception, team-building exercises, recreational activities, and an opportunity to hear executives from Coca-Cola and elsewhere speak about their career paths. Doc. 1 at 3. Female employees were invited to the Forum, and those who attended the event were excused from their normal work duties on those days. Id. at 4. Coca-Cola paid female employees who attended the Forum their usual salary or wages without requiring them to use paid time off on the days of the conference, paid for their hotel charges during the conference, and provided food and beverages to attendees. Id. Male employees were not invited to attend the Forum; the charging party and other male employees say they would have attended the event had they been invited. Id. at 3-4. As a result, the EEOC alleges that Coca-Cola did not provide male employees with any of the benefits associated with attendance at the Forum, and that male employees consequently suffered damages. Id. at 4.

The EEOC argues that Coca-Cola's exclusion of male employees from the Forum constitutes a denial of equal compensation, terms, conditions, or privileges of employment on the basis of sex. Id. It further alleges that Coca-Cola's unlawful employment practices were intentional and done with malice or reckless indifference to the federally protected rights of its male employees. Id.

In response, Coca-Cola moves to dismiss the charges against it for failure to state a claim on which relief can be granted. Doc. 6. In that motion, it argues that the EEOC fails to allege any actionable harm arising from the one-time Forum, nor alleges any facts to support an award of punitive damages. Coca-Cola also contends that the Forum was a lawful effort to address imbalances in its workforce by expanding the pool of applicants for promotion.

## II. STANDARD OF REVIEW

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***2** To survive a motion to dismiss for failure to state a claim, a plaintiff must allege facts sufficient to "state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A claim is facially plausible if it pleads "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id.

In testing a complaint's sufficiency, I employ a two-step approach. See Ocasio-Hernandez v. Fortuno-Burset, 640 F.3d 1, 12 (1st Cir. 2011). First, I screen the complaint for statements that "merely offer legal conclusions couched as fact or threadbare recitals of the elements of a cause of action." Id. (cleaned up). A claim consisting of little more than "allegations that merely parrot the elements of the cause of action" may be dismissed. Id. Second, I credit as true all of the plaintiff's non-conclusory factual allegations and the reasonable inferences drawn from those allegations, and then determine if the claim is plausible. Id. The plausibility requirement "simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence" of illegal conduct. Twombly, 550 U.S. at 556. The "make-or-break standard" is that those allegations and inferences, "taken as true, must state a plausible, not a merely conceivable, case for relief." Sepulveda-Villarini v. Dep't of Educ. of P.R., 628 F.3d 25, 29 (1st Cir. 2010).

## III. ANALYSIS

Coca-**Cola's** principal argument is that the EEOC's failure to allege any actionable harm respecting an identifiable term, condition, or privilege of employment arising from male employees' exclusion from the Forum precludes it from proceeding on its Title VII claim. Coca-**Cola** also argues that it cannot be held liable under Title VII because the Women's Forum was a nondiscriminatory effort to expand the pool of qualified candidates for promotion. Finally, Coca-**Cola** contends that the EEOC's request for punitive damages must be dismissed because the complaint fails to allege facts sufficient to support such an award. I assess the sufficiency of the EEOC's complaint with respect to each of Coca-**Cola's** arguments below.

### A. Title VII Adverse Employment Action

Title VII, in relevant part, makes it unlawful for an employer to "discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's ... sex." 42 U.S.C. § 2000e-2(a)(1). To establish a claim for employment discrimination under Title VII, "a plaintiff must show, among other things, that he suffered an adverse employment action on account of a protected ground." Morales-Vallellanes v. Potter, 605 F.3d 27, 35 (1st Cir. 2010) (cleaned up).

As the language of Title VII requires, an adverse employment action must relate to the "terms, conditions, or privileges of employment." § 2000e-2(a)(1). The Supreme Court has consistently made clear that the statute's language "evinces a congressional intent " 'to strike at the entire spectrum of disparate treatment of men and women' " in employment." Meritor Sav. Bank, FSB v. Vinson, 477 U.S. 57, 64 (1986) (quoting L.A. Dep't. of Water & Power v. Manhart, 435 U.S. 702, 707 n.13 (1978)). Accordingly, the Court has explained that the " 'terms [or] conditions' phrase ... is not used 'in the narrow contractual sense'; it covers more than the 'economic or tangible.' " Muldrow v. City of St. Louis, 601 U.S. 346, 354 (2024) (quoting Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 78 (1998) and then Meritor, 477 U.S. at 64). Similarly, "[a] benefit that is part and parcel of the employment relationship" is a "privilege" under Title VII and "may not be doled out in a discriminatory fashion, even if the employer would be free under the employment contract simply not to provide the benefit at all." Hishon v. King & Spalding, 467 U.S. 69, 75-76 (1984).

***3** Until recently, multiple courts, including the First Circuit, required an adverse employment action to be "material" in order to be actionable, meaning that "the challenged conduct was 'more disruptive than a mere inconvenience or an alteration of job responsibilities.' " Walsh v. HNTB Corp., 169 F.4th 330, 339 (1st Cir. 2026) (quoting Marrero v. Goya of P.R., Inc., 304 F.3d 7, 23 (1st Cir. 2002)). But in a 2024 decision entitled Muldrow v. City of St. Louis, 601 U.S. 346 (2024), the Supreme Court rejected the materiality requirement. Instead, the Court imposed a lower standard: a plaintiff "must show some harm respecting an identifiable term or condition of employment" to establish a discrimination claim under Title VII, but the harm need not be "significant."[1] Id. at 354-55 (emphasis added). Interpreting Muldrow, the First Circuit has held that an

adverse employment action is "any employment event, regardless of its severity, in which an employer's conduct leaves an employee (1) 'worse off' (2) with respect to the 'terms [or] conditions' of their employment." Walsh, 169 F.4th at 339 (quoting Muldrow, 601 U.S. at 354-55).

The question of whether an employee has suffered an adverse employment action sufficient to support a Title VII claim is a question of law for the court. See Morales-Vallellanes, 605 F.3d at 33. Here, the EEOC's core allegation is that Coca-**Cola's** exclusion of male employees from the Forum constituted an adverse employment action under Muldrow. In response, Coca-**Cola** argues that the EEOC has failed to allege facts sufficient to satisfy the Muldrow standard—in other words, that the EEOC has failed to demonstrate that Coca-**Cola's** male employees suffered "some harm" because of their exclusion. 601 U.S. at 355.

The EEOC alleges that the charging party and similarly situated male Coca-**Cola** employees suffered harm of three sorts due to their exclusion from the Forum. First, it alleges that male employees' inability to attend the Forum's speaker presentations and networking events—a "social reception, team-building exercises, and recreational activities"—could plausibly constitute harm related to "compensation, terms, conditions, or privileges of employment." Doc. 1 at 3; Doc. 9 at 9-10. Second, it argues that "male employees were denied the same paid time off that the female employees received to attend the event," and that denial of paid time off is itself an adverse employment action under Title VII. Doc. 9 at 10-11. Finally, it contends that male employees were harmed by being denied the tangible benefits incidental to Forum attendance, which included an overnight hotel stay and "food and/or **beverages**." Doc. 1 at 4.

***4** Construing the complaint in the light most favorable to the EEOC, I am unable to conclude at this early stage that these facts fail to present any plausible claim of harm sufficient to satisfy the Muldrow standard. The EEOC's three allegations of harm at least raise a plausible inference that Coca-**Cola's** exclusion of male employees from the Forum may have left them "(1) 'worse off' (2) with respect to the 'terms [or] conditions' of their employment." Walsh, 169 F.4th at 339 (quoting Muldrow, 601 U.S. at 354-55). As the Supreme Court explained in Muldrow, a Title VII plaintiff need only demonstrate "some harm" stemming from the challenged employer conduct, even if that harm is insignificant or immaterial. 601 U.S. at 354-55. Here, at least for purposes of surviving a motion to dismiss, the EEOC has plausibly met that standard by pointing to missed networking opportunities, the potential deprivation of paid time off, and the denial of perks including a company-paid hotel stay, food, and **beverages**. And the fact that these alleged injuries occurred in connection with a formal, employer-sponsored event supports the EEOC's position that the differential treatment at issue here relates to the "terms, conditions, or privileges of employment," especially in light of the Supreme Court's consistently broad reading of that language in the Title VII context. Doc. 9 at 9-10; § 2000e-2(a)(1); see Muldrow, 601 U.S. at 354; see also Strong v. Fort Myer Constr. Corp., 2025 WL 2643457, at *3 (D.D.C. 2025) ("[T]he alleged exclusion from team activities by immediate supervisors plausibly constitutes worse treatment with respect to the terms or conditions of [the plaintiff's] employment." (cleaned up)).

Because the alleged facts "raise a reasonable expectation" that discovery may produce evidence that proves the EEOC's Muldrow-based claims, I cannot at this stage grant Coca-**Cola's** motion on this basis. Twombly, 550 U.S. at 556.

**B. Coca-Cola's Candidate Pool Expansion Argument**

Separate from its contention that male employees did not suffer cognizable harm, Coca-**Cola** argues that the Forum was a lawful effort to expand the company's pool of qualified candidates for promotion by encouraging female employees to seek professional advancement at the company. Doc. 6-1 at 5-7. Specifically, Coca-**Cola** contends that because the Forum was designed to expand the company's pool of candidates and Forum attendance has never had any bearing on the promotion selection process itself, Coca-**Cola's** hosting of the Forum "is not discriminatory and not actionable." Id. at 7. In service of this argument, Coca-**Cola** relies primarily on three district court cases recognizing the lawfulness of inclusive pool-expanding recruitment efforts that had no bearing on hiring or promotion decisions.[2] Id. at 5-7 (citing Raso v. Lago, 958 F. Supp. 686 (D. Mass. 1997); Shuford v. Alabama State Bd. of Educ., 897 F. Supp. 1535 (M.D. Ala. 1995); Barbera v. Metro-Dade Cnty. Fire Dep't., 117 F. Supp. 2d 1331 (S.D. Fla. 2000)).

***5** I am not persuaded that any of the three cases Coca-**Cola** cites offers a roadmap for dismissing the EEOC's Title VII claim. In each cited case, the respective court held that

recruitment efforts are not discriminatory where their only effect is to expand the pool of candidates—or in other words, simply because they force non-minority applicants to compete against additional minority applicants during the hiring or promotion process.[3] But here, the EEOC does not allege that the Forum produced discrimination in Coca-**Cola's** promotion process, nor does it argue that pool expansion itself is an improper or discriminatory practice.[4] Rather, the crux of the EEOC's argument is that the means by which Coca-**Cola** sought to expand its candidate pool deprived male employees of opportunities and benefits in ways that constituted harm to the male employees' terms, conditions, or privileges of employment. Doc. 9 at 9-10. None of the cases Coca-**Cola** cites considered such an argument.[5] And none authorize an employer to utilize a recruitment tactic that discriminates against certain of its current employees with respect to their terms, conditions, or privileges of employment for the sake of broadening its pool of candidates for promotion. Thus, even accepting as true Coca-**Cola's** contentions that the Forum's purpose was to address a gender imbalance in its workforce and that Forum attendance ultimately had no impact on the company's promotion decisions, I am not persuaded that those facts shield it from the specific Title VII challenge the EEOC has raised here. Accordingly, I cannot grant Coca-**Cola's** motion to dismiss on this basis.

### C. Punitive Damages

Finally, Coca-**Cola** moves to dismiss the EEOC's request for punitive damages, arguing that the complaint fails to provide facts sufficient to support such an award. Although the complaint does not appear to allege facts that would support an award of punitive damages in this case, I ultimately agree with my colleague's reasoning in Mount Prospect Academy, Inc. v. Philadelphia Indemnity Insurance Co., 823 F. Supp. 3d 183 (D.N.H. 2026), that punitive damages are "a form of relief" rather than a "claim," and that a "12(b)(6) motion is not an appropriate vehicle to test a plaintiff's entitlement to a particular form of relief." Id. at 189 (quoting Johnson v. Rapid Sheet Metal, LLC, 560 F. Supp. 3d 623, 629-30 (D.N.H. 2020)). Because dismissal of the EEOC's request for punitive damages would be improper at this stage, I reject Coca-**Cola's** argument for dismissal of that request without prejudice to Coca-**Cola's** right to contest the appropriateness of punitive damages at a later point in the proceedings.

## IV. CONCLUSION

***6** For the reasons explained above, I conclude that the EEOC has plausibly alleged that Coca-**Cola's** conduct amounts to actionable harm under Title VII. As such, I deny Coca-**Cola's** motion to dismiss without prejudice to its right to renew its arguments in a properly supported motion for summary judgment.

SO ORDERED.

### All Citations

Slip Copy, 2026 WL 3093454, 2026 DNH 149

Footnotes

1 As the very phrase "some harm" indicates, Muldrow does not altogether eliminate the need for a Title VII plaintiff to make some showing of harm separate from the discrimination itself. In its response to Coca-**Cola's** motion to dismiss, the EEOC invokes Justice Kavanaugh's contrary view that "the text of Title VII does not require a separate showing of some harm" because "[t]he discrimination is harm." Doc. 9 at 10 (citing Muldrow, 601 U.S. at 365 (Kavanaugh, J., concurring)). But Justice Kavanaugh's view is neither binding authority nor in line with the Court's holding in Muldrow. As the Court explained, a plaintiff must still demonstrate that the challenged employer conduct "brought about some 'disadvantageous' change in an employment term or condition." 601 U.S. at 354 (emphasis added) (quoting Oncale, 523 U.S. at 80). Recent First Circuit cases have affirmed this reading of Muldrow, requiring plaintiffs to point to some disadvantageous consequence of their alleged disparate treatment. See, e.g., Rios v. Centerra Group LLC, 106 F.4th 101, 112-13 (1st Cir. 2024) (citing Muldrow, 601 U.S. at 354-55) (rejecting claim of adverse employment action where instance of disparate treatment had no "consequences" and thus "[did] not represent any disadvantageous change in the terms or conditions of the plaintiff's employment"); O'Horo v. Bos. Med. Ctr. Corp., 131 F.4th 1, 18 (1st Cir. 2025) (same).

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2 Coca-**Cola** at various points invokes a handful of other authorities seemingly in support of the same or a similar argument. It alleges, for example, that Executive Order 11246 required it to take affirmative steps to correct the imbalance of women in its workforce. Doc. 6-1 at 1-2. Coca-**Cola** also argues that it relied in good faith on 29 C.F.R. § 1608, a now-rescinded EEOC regulation that provided guidelines for employers implementing affirmative action programs, and on other EEOC advocacy regarding the permissibility of pool expansion efforts. See id. at 2-3, 13. To the extent that Coca-**Cola** attempts to argue that its hosting of the Forum was compliant with either or both of these authorities such that it cannot be held liable under Title VII, it does not sufficiently develop that argument here. And regardless, even if Coca-**Cola** did adequately present that argument, I agree with the EEOC that dismissal based on those contentions would be premature at this stage, where the applicability of any such defense is not clear from the face of the EEOC's pleadings. See Blackstone LLC v. FDIC, 244 F. 3d 193, 197 (1st Cir. 2001) ("[F]or dismissal to be allowed on the basis of an affirmative defense, the facts establishing the defense must be clear on the face of the plaintiff's pleadings." (cleaned up)); see also Facet Tech. Corp., v. TomTom Int'l B.V., 2025 WL 315390, at *6-7 (D.N.H. Jan. 28, 2025) (rejecting defense raised in motion to dismiss because it amounted to "an evidentiary contention that is underdeveloped and far from clear from the face of [the plaintiff's] pleadings").

3 In Raso v. Lago, the court considered whether the defendant land developers discriminated against a group of predominantly white plaintiffs by affirmatively soliciting minority applicants for an apartment development in Boston's West End. 958 F. Supp. at 689. The court ultimately rejected the plaintiffs' discrimination claims because the plaintiffs had not been denied any benefit as a result of the developers' recruitment strategies and had not demonstrated any discriminatory intent. Id. at 703-04. In Shuford v. Alabama State Board of Education, the court assessed the legality of several consent decree provisions that were aimed at including more women in the candidate selection pool in order to resolve the underrepresentation of female employees in Alabama's postsecondary education system. 897 F. Supp. at 1545-47. Noting that there was "no suggestion" that the consent decree's inclusive recruitment strategies "will cause any harm to qualified applicants other than increased competition," the court approved the provisions as legal. Id. at 1553-54. Finally, in Barbera v. Metro-Dade County Fire Department, the court reviewed modifications to a fire department's physical assessment test that made it easier for women to pass the test and therefore become eligible for employment. 117 F. Supp. 2d at 1332-34. Explaining that the test modifications' only effect was to "increase[ ] the number of qualified female applicants in the hiring pool" without actually impacting the hiring selection process itself, the court held that the modifications were nondiscriminatory and legal. Id. at 1338.

4 The EEOC explicitly concedes that its "[c]omplaint does not allege disparate treatment in hiring or promotion and includes no allegations concerning [Coca-**Cola's**] hiring practices whatsoever." Doc. 9 at 16.

5 In Shuford, for example, the court specifically noted that "the decree does not require that any current employee be terminated or adversely affected in his or her employment for the sake of achieving [the employer's diversity] goals." 897 F. Supp. at 1546 (emphasis added). And in Barbera, the court highlighted that the defendant-employer's effort to include more women in the hiring pool "ha[d] only one effect on male applicants," which was to force them to compete with qualified female candidates. 117 F. Supp. 2d at 1336 (emphasis added).

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