



What Does the White House's Executive Order on Gender + New EEOC Acting Chair Mean for Employers? 5 Key Takeaways

Insights

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A pair of back-to-back moves from the new Trump administration demonstrates a clear shift in the way the federal government will approach EEO and anti-bias laws over the course of the next several years. On his first day in office, President Trump issued an executive order announcing that the federal government will recognize only two sexes while rolling back Biden-era EEO workplace guidance on LGBTQ+ harassment. And the next day, Trump appointed EEOC Commissioner Andrea Lucas – a vocal critic of DEI programs and other Biden administration policies – as Acting Chair of the Commission. What do you need to know about these actions, and what are the five key takeaways for your workplace?

“Gender Ideology” Executive Order

Signed within hours after Trump took office, the executive order is officially titled, “Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.” It mandates that the federal government recognize only two biological sexes, male and female, as determined at conception. Among other things, the order:

- directs all federal agencies to replace the term “gender” with “sex” in official documents;
- ensures that government-issued identification (like passports) reflect the biological sex assigned at birth;
- requires the Attorney General to guide federal agencies to reverse any policies that allowed gender-identity-based access to single-sex spaces (like bathrooms);
- orders the EEOC, Department of Labor, and other agencies to “prioritize investigations and litigation to enforce the rights and freedoms identified” in the order; and
- rescinds a slew of Biden-era guidance documents, including the 2024 EEOC workplace harassment guidance that, among other updates to its longstanding harassment guidance, incorporated the agency’s analysis of Title VII protections for LGBTQ+ workers based on the Supreme Court’s holding in Bostock v. Clayton County.

Andrea Lucas as Acting EEOC Chair

Having served on the Commission since 2020, Andrea Lucas now occupies the role of Acting Chair according to Trump’s January 21 announcement. She made clear her position right off the bat: “In

according to [Trump's January 21 announcement](#). She made clear her position right off the bat: In recent years, this agency has remained silent in the face of multiple forms of widespread, overt discrimination. Consistent with the President's Executive Orders and priorities, my priorities will include:

- rooting out **unlawful DEI-motivated** race and sex discrimination;
- protecting American workers from **anti-American national origin** discrimination;
- defending the biological and binary reality of **sex and related rights**, including women's rights to single-sex spaces at work;
- protecting workers from **religious bias and harassment**, including antisemitism; and
- remedying other areas of recent under-enforcement."

Lucas has twice been a dissenting voice against EEOC actions that helped shape the last several years of workplace law:

- [the EEOC workplace harassment guidance that focused on LGBTQ+ workers](#); and
- [the finalized rules regulating the Pregnant Worker Fairness Act \(PWFA\)](#).

The move installing Lucas into power doesn't change the fact that she will be outnumbered on the EEOC by Democratic appointees for the next two years. Commissioners serve five-year staggered terms, and the opportunity for Trump to completely shift the five-member leadership team to a Republican majority will not arrive until 2026. Until then, Democrats will retain majority voting power.

But that's not to say that Lucas will be without power. In conjunction with the Commission's General Counsel – a role that is expected to be filled by a Trump appointee in the near future – Lucas can help guide the EEOC on which kinds of lawsuits the agency will file and other procedural steps it will take.

What Do These Moves Mean for Employers? 5 Key Takeaways

1. Stay Tuned for New EEO-1 and Other Government Forms

Under 2023 filing instructions, the EEO-1 form only provided binary options for reporting the sex of your employees – but allowed employers to voluntarily report non-binary employee demographic data in the comments section of the report. You should assume that will change for the next reporting year.

2. A New Era of Gender Identity Discrimination?

Trump's executive order proclaims that "'sex' is not a synonym for and does not include the concept of 'gender identity'." However, this stance runs counter to [the Supreme Court's *Bostock* ruling](#),

which explicitly determined that “sex” as defined by Title VII includes “gender identity.” The Court has tilted right since that 6-3 decision, however, so it’s possible that the interpretation could change if the issue were teed up before SCOTUS in the future – which appears to be a distinct possibility. No doubt this issue will be the subject of frequent litigation in the coming months and years, but you should recognize that discrimination against transgender and non-binary/gender non-conforming people remains illegal under federal law.

3. Expect Litigation Over Bathroom Access

Andrea Lucas has made clear her stance on gender-affirming bathroom access: “Every female worker has privacy and safety rights that necessitate access to single-sex workplace bathrooms limited to biological women,” she said while voting against the EEOC’s most recent workplace harassment guidance. And we know where the President stands given his executive order.

Practically speaking, employers could be between a rock and a hard place on this issue: do you permit transgender and non-binary/gender nonconforming employees to use the bathroom that aligns with gender identity and risk EEOC enforcement action, or prohibit such conduct in alignment with the executive order and risk gender discrimination claims in court?

Unfortunately, the Supreme Court decision discussed above specifically avoided the bathroom issue, saying it did “not purport to address bathrooms, locker rooms, or anything else of the kind.” And Trump’s executive order requires the Department of Justice to “correct” misapplications of that SCOTUS decision. Which means we’ll be seeing lots of litigation over this issue – and perhaps a return trip to the Supreme Court.

4. Religious Accommodation Requests May Need to Be Considered Anew

The EEOC’s most recent workplace harassment guidance said that employers did not need to grant religious accommodations to employees if the accommodations would create a hostile environment. For example, employers did not have to permit employees to deliberately misgender people because their religious beliefs ran counter to certain gender identity issues, or permit hostility towards LGBTQ+ workers because of an employee’s religiously held belief. But with the guidance now rescinded, the matter is sure to be tested out in litigation, as some employees may now claim their religious beliefs do not permit them to follow gender-identity or sexual orientation-related policies or practices.

5. Longer Term: Expect the Pregnancy Accommodation Rules to Be Rescinded

The most controversial aspect of the April 2024 PWFA rules is the requirement that employers accommodate applicants and workers who need time off or other workplace modifications for an abortion procedure. Given that Lucas voted against the rules at the time because they would “broaden the statute in ways that, in my view, cannot reasonably be reconciled with the text,” we

expect the Commission to rescind the PWFA rules shortly after Republicans assume control in 2026.

Want to Understand More About DEI?

Both the Trump executive order and Andrea Lucas's nomination statement take an aggressive stance against corporate DEI programs. To understand how to respond to this development, read our recent Insight: [Trump Orders Feds to Combat "Illegal" Corporate DEI Programs: 5 Takeaways for Private-Sector Employers + What You Should Do Now.](#)

Conclusion

If you have any questions about these developments or how they may affect your business, please contact your Fisher Phillips attorney or the authors of this Insight. Visit our [New Administration Resource Center for Employers](#) to review all our thought leadership and practical resources, and make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information.

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