

FEDERAL JUDGE SCRAPS BIDEN EEOC'S GENDER IDENTITY GUIDANCE: HERE'S WHAT IT MEANS FOR THE WORKPLACE

Insights
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A federal judge in Texas just ruled that the Equal Employment Opportunity Commission (EEOC) exceeded its authority by issuing enforcement guidance requiring bathroom, dress, and pronoun accommodations. In yesterday's order striking down relevant parts of the Biden-era guidance, the judge said it was inconsistent with Supreme Court precedent, as well as the text and history of the federal civil rights law at issue. The news comes after President Trump and the new EEOC Acting Chair already vowed to remove gender ideology from agency materials. Here's what employers need to know about the latest developments and how they impact your workplace.

Quick Refresher

We've seen a flurry of activity in recent years on workplace protections based on sexual orientation and gender identity. Here's a brief timeline of the major actions:

- **2020:** The Supreme Court issued a **groundbreaking decision** in ***Bostock v. Clayton County***, holding that sexual-orientation discrimination and gender identity/transgender discrimination are forms of "sex" discrimination under Title VII of the Civil Rights Act.
- **2021:** The EEOC issued a **technical assistance document** concerning sexual orientation and gender identity discrimination, which said employers cannot deny employees equal access to bathrooms, locker rooms, or showers that correspond to their gender identity. The same federal court in Texas blocked this guidance.

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- **2024:** The EEOC [updated its enforcement guidance on harassment in the workplace](#) for the first time in 30 years. Notably, the agency said **harassment of LGBTQ+ workers – particularly transgender employees – can be considered a Title VII violation**. The EEOC concluded that this was a natural extension of the Supreme Court's *Bostock*.
- The State of Texas and a conservative think tank sued the EEOC and asked a federal court to vacate and set aside the 2024 guidance (*Texas v. EEOC*).
- **2025:** 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, **he appointed EEOC Commissioner Andrea Lucas** – a vocal critic of Biden administration policies – as Acting Chair of the Commission. Lucas [said she aims to](#) “defend the biological and binary reality of sex and related rights, including women’s rights to single-sex spaces at work.”
- **Ongoing:** Various court battles have been playing out that **challenge both Biden-era and new Trump administration actions** – creating confusion for employers when it comes to their compliance efforts and best practices. There is still another challenge to the EEOC’s 2024 guidance pending in a federal court in Tennessee that was brought by a group of states. **We may see this issue reach the Supreme Court**, with the Justices revisiting the scope of *Bostock*. We will continue to monitor developments and provide updates when warranted. You can subscribe to receive [FP Insights](#) directly to your inbox.



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Why a Federal Court Still Stepped In

You may be understandably a little confused. Didn't President rescind Biden-era guidance documents? While this is true, the administration hit a roadblock:

- After **President Trump rescinded the [2024 EEOC workplace harassment guidance](#)**, the three Democrat-appointed EEOC Commissioners reaffirmed their commitment to the principal guidance.

- Trump then **fired two of the Democrat commissioners**, which left only Acting Chair Lucas and one remaining Democrat, Commissioner Kalpana Kotagal. This means Lucas still needs at least one more Commissioner to join her in order to form a **member quorum** and accomplish significant actions, such as rescinding or adopting legal guidance.
- The EEOC issued a statement in January explaining, “Based on existing authority, **the Acting Chair cannot unilaterally renege or modify** certain gender identity-related documents subject to President’s directives in the executive order.”
- The 2024 EEOC guidance therefore **remained active policy** until the *Texas v. EEOC* case lived on.

Key Takeaways from the *Texas v. EEOC* Ruling

Judge Matthew Kacsmaryk of the U.S. District Court for the Northern District of Texas reviewed the guidance and **formally vacated relevant parts of it on May 15**, finding that they exceeded the EEOC’s authority. He noted the following points in his order:

- The guidance **impermissibly expanded the scope of “sex” under Title VII** beyond the biological binary.
- The guidance contravened Title VII by **defining “discriminatory harassment”** to include failure to accommodate a transgender employee’s bathroom, pronoun, and dress preferences.

Kacsmaryk’s order deemed unlawful parts of the guidance that defined “sexual orientation” and “gender identity” as protected categories under Title VII.

What Employers Should Do Now

Consider taking the following steps in light of the latest developments:

- **Continue to Combat Unlawful Workplace Bias:** **Recent guidance from the Trump administration** reminds employers that Title VII prohibits employment discrimination based on protected characteristics, including race, color, national origin, sex, and religion. The EEOC has explained that the law protects against such discrimination “no matter which employees are harmed,” and noted that Title VII’s protections “apply equally to all

racial, ethnic, and national origin groups, as well as both sexes."

- **Keep Informed:** We expect more court decisions, as well as federal and state guidance, on hot topics impacting workplace anti-discrimination policies.
- **Review State and Local Rules:** The major shift from the federal government will certainly cause confusion for employers that must comply with varying federal, state, and local anti-discrimination laws. You should note that many states and localities still have laws prohibiting workplace discrimination based on sexual orientation and gender identity. A best practice is to make objective decisions based on clear, job-related criteria, and ensuring equal opportunity for all employees.
- **Create a Plan:** These can be challenging times for employers, but this is also a great opportunity to propel your organization further. You can take this opportunity to reexamine your organizational culture and ensure you are providing a safe and professional working environment for everyone in your service. Reach out to your Fisher Phillips attorney to help prepare your compliance plan.

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.