

Insights, News & Events

IN THE CROSSHAIRS: UNTANGLING THE LEGAL LANDSCAPE ON LGBTQ+ WORKPLACE RIGHTS UNDER TITLE VII

Insights
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The EEOC recently updated its workplace harassment enforcement guidance to reflect a Texas federal court ruling that found the Biden-era EEOC had overstepped its authority by requiring bathroom, dress, and pronoun accommodations under Title VII – but are things as clearcut for employers as they seem? The Biden-era EEOC had defined sexual harassment to include conduct such as denying an individual access to a bathroom consistent with their gender identity, intentionally misgendering someone, or targeting individuals who do not conform to traditional gender-based appearance or behavior norms. But the current EEOC disagreed and, in June, took action to minimize these interpretations. Despite these developments, Title VII continues to prohibit employment discrimination based on sex—including sexual orientation and gender identity—and courts remain free to interpret Title VII independently of the EEOC’s current enforcement position. As the scope of Title VII’s protections continues to evolve, a key question remains: what might discrimination based on sexual orientation or gender identity look like beyond just hiring and firing decisions?

How Did We Get Here?

What prompted the current situation?

- In 2020, the Supreme Court held in [*Bostock v. Clayton County*](#) that sexual-orientation discrimination and gender identity/transgender discrimination are forms of “sex” discrimination under Title VII. While it made clear that it is unlawful to hire, fire, or otherwise discriminate against

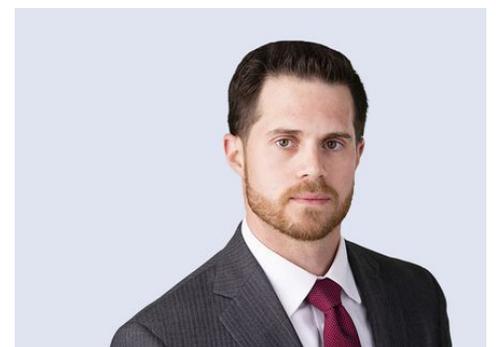
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someone for being gay or transgender, it stopped short of addressing the scope of that protection beyond hiring and firing. The Court did not define what it means to “otherwise discriminate,” and explicitly declined to address how its decision applies to “bathrooms, locker rooms, or anything else of the kind.

- In 2024, [the Biden-era EEOC issued guidance](#) had taken the position that denying those accommodations could amount to unlawful harassment.
- Shortly after taking office, President Trump issued Executive Order 14168, officially titled [Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government](#). The order directed the federal government to adopt a narrow definition of “sex,” requiring agencies to recognize only two sexes – male and female. It also instructed all federal agencies to replace the term “gender” with “sex” in official documents and policies and reverse any policies that allowed individuals to access single-sex spaces, such as bathrooms, based on gender identity.
- In May, a [Texas federal court struck down the portions of the EEOC’s guidance](#) requiring bathroom, dress, and pronoun accommodations. The judge said it was inconsistent with Supreme Court precedent, as well as the text and history of Title VII.
- In response, [the Trump-era EEOC updated the enforcement guidance](#) to reflect the court’s ruling by adding labels to the document and shading portions of the guidance that it says conflict with the court ruling. It also dismissed several lawsuits conflicting with the Order. However, until the EEOC has enough Commissioners to form a quorum, the agency will not be able to formally rescind the guidance (or the portions it believes are no longer good law).

Judicial Interpretations of Title VII Sex Discrimination

Despite the Texas ruling and the EEOC’s revised enforcement guidance, courts have continued to affirm that it remains unlawful to discriminate against an individual in employment because of their sex or transgender status. Still, some courts have been reluctant to clearly define what constitutes discrimination under Title VII in the context of gender identity and sexual orientation.



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Other courts have made nods toward this murky area of the law more recently. On June 5, an Illinois federal court granted transgender employee Natasha Figueroa's request to intervene in her workplace harassment case after the EEOC withdrew. In doing so, the court accepted her amended complaint alleging Title VII discrimination based on sex and transgender status, grounded in claims of harassment and constructive discharge.

This move carries broader implications. By recognizing her discrimination claim as actionable under Title VII, the court signaled that protections based on sex and transgender status are not confined to hiring and firing decisions. They can extend to broader forms of workplace discrimination, including, but not limited to, harassment. The court further emphasized that it "is mindful that, regardless of Executive Order 14168, it is unlawful to discriminate against an individual in employment because of their sex or transgender status."

Breaking the Tension

So where does this leave employers? As the legal landscape around Title VII continues to evolve, employers are left to navigate its uncertain scope – particularly as it applies to sexual orientation and gender identity – amid inconsistent signals from the courts, the EEOC, and the executive branch.

The EEOC has indicated that key portions of its prior guidance are no longer good law thanks to the Texas court's decision, and has demonstrated it will take a more limited federal enforcement posture – but neither step should be viewed as a green light to deny bathroom, dress, or pronoun accommodations outright. The distinction between what is legally required and what may still support a Title VII claim remains unsettled. And until courts provide clearer boundaries, employers should proceed with caution and consistency, applying nondiscriminatory practices that align with *Bostock* and emerging case law.

What Employers Should Do Now

Consider taking the following steps in light of the most recent 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.