

EEOC Revokes Workplace Guidance on Gender Identity: Here's What Employers Need to Know

Insights

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As we anticipated, the Trump administration rescinded Biden-era guidance yesterday on transgender rights in the workplace. In a 2-1 vote, the Equal Employment Opportunity Commission (EEOC) scrapped enforcement guidance requiring employers to provide bathroom, dress, and pronoun accommodations to applicants and workers. While Democratic Commissioner Kalpana Kotagal cautioned that the rule could only be lawfully rescinded through a formal notice-and-comment process, Republican Chair Andrea Lucas said the rule went beyond the EEOC's authority to enforce the civil rights law at issue. Notably, a federal judge already struck down relevant parts of the guidance in May 2025, and the Trump administration has long pledged to remove gender ideology from agency materials. Although not much has changed from a practical perspective for employers, you should be aware of changing priorities at the federal level – and ensure you're still complying with federal, state, and local anti-discrimination laws. Here's what you need to know about evolving guidance and best practices for creating a compliant and inclusive workplace.

Quick Take

The EEOC's move yesterday to formally rescind the guidance doesn't change much for employers' day-to-day activities. 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.

Furthermore, many states and localities have their own laws prohibiting workplace discrimination based on sexual orientation and gender identity. A best practice is to make objective employment decisions based on clear, job-related criteria, and ensure equal opportunity for all employees. Read on to learn more about what happened and what employers should do now.

Background on Biden-Era Guidance

The Biden EEOC issued enforcement guidance in 2021 concerning sexual orientation and gender identity discrimination following the Supreme Court's landmark 2020 decision in *Bostock v. Clayton County*. In *Bostock*, SCOTUS had ruled that sexual-orientation discrimination and gender identity/transgender discrimination are forms of "sex" discrimination under Title VII of the Civil Rights Act. The EEOC's subsequent guidance said employers could not deny employees equal

access to bathrooms, locker rooms, or showers that correspond to their gender identity. However, a federal court in Texas blocked this guidance.

Then, in 2024, the EEOC updated its enforcement guidance on harassment in the workplace, stating that 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* decision.

Shifting Priorities in the Trump Administration

In January 2025, President Trump began his second term by issuing a flurry of executive orders, including one announcing that the federal government will recognize only two sexes while also rolling back Biden-era EEO workplace guidance on LGBTQ+ harassment.

Shortly after taking office, the President appointed Commissioner Andrea Lucas to lead the EEOC, where she vowed to “defend the biological and binary reality of sex and related rights, including women’s rights to single-sex spaces at work.”

In May 2025, the same Texas federal judge who axed the EEOC’s 2021 guidance document also struck down the portions of the EEOC’s 2024 guidance requiring bathroom, dress, and pronoun accommodations. The judge said it was inconsistent with not only Supreme Court precedent but the text and history of Title VII.

In response, the 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. At the time, the EEOC didn’t have enough Commissioners to form a quorum, so the agency could not formally rescind the guidance. Now that the EEOC has a quorum, it was able to do just that, effective immediately – and the guidance has been altogether removed from the agency’s website.

As we mentioned above, however, it’s important to remember that 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.

What Employers Should Do Now

Consider taking these steps in light of the latest developments:

- **Maintain Robust Anti-Discrimination Policies and Practices:** The Trump administration has reminded 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."

- **Review State and Local Rules:** Stay up to date on applicable laws at the state, city, and municipal level to ensure compliance with any restrictions or obligations regarding LGBTQ+ individuals that may apply to your business.
- **Foster a Positive Work Environment:** 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 workplace. 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 [Trump 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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