

Federal Court Nullifies EEOC Guidance on LGBTQ+ Protections

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On May 15, 2025, a federal court vacated portions of the U.S. Equal Employment Opportunity Commission's (EEOC) [workplace harassment guidance](#), specifically, guidance on harassment based on sexual orientation and gender identity. The court vacated portions of the EEOC's enforcement guidance because the EEOC allegedly "exceeded its statutory authority by issuing" it and by "requiring bathroom, dress, and pronoun accommodations inconsistent with the text, history, and tradition of Title VII and recent Supreme Court precedent."

Quick Hits

- A federal district court recently vacated parts of the EEOC's guidance related to workplace harassment of LGBTQ+ employees.
- Despite the Supreme Court's holding in *Bostock* that discrimination based on sex in hiring or firing decisions violates Title VII's prohibition on sex discrimination, the district court vacated the guidance based on the guidance's "expanded" definition of sex discrimination to include sexual orientation and gender identity.
- The court ruled that the EEOC exceeded its statutory authority by requiring accommodations related to bathrooms, dress, and pronouns, which it found inconsistent with Title VII of the Civil Rights Act of 1964 and recent Supreme Court precedent.
- This decision follows President Trump's executive order recognizing sex as binary and immutable, which has created uncertainty for employers regarding compliance with federal, state, and local antidiscrimination laws.

Background

In vacating the EEOC's guidance related to LGBTQ+ workplace harassment, the U.S. District Court for the Northern District of Texas held that the EEOC's April 2024 "[Enforcement Guidance on Harassment in the Workplace](#)" overstepped by stating Title VII's prohibition on sex discrimination also prohibits discrimination based on sexual orientation or gender identity. The EEOC guidance

flowed from the Supreme Court of the United States' 2020 decision in [*Bostock v. Clayton County, Georgia*](#), where the Court ruled Title VII prohibits employers from firing workers for being "homosexual" or transgender. The Court specifically held: "An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids." The Court's key holding in *Bostock* went on to clearly state that "it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex."

Following the *Bostock* decision, the EEOC published guidance in 2021 stating employers may not deny employees access to bathrooms, locker rooms, or showers aligning with gender identity. The 2021 guidance also stated an employer intentionally and repeatedly using an incorrect name or pronoun to refer to a transgender worker constituted unlawful harassment under Title VII. As noted in the district court's memorandum opinion and order, the 2021 guidance was enjoined, but the EEOC issued new guidance in 2024, which the parties challenged.

On January 20, 2025, President Donald Trump released Executive Order 14168 ("Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government"), which established that the federal government recognizes only two genders, male and female. This executive order instructed the EEOC to rescind portions of its harassment guidance that were inconsistent with the order.

On January 28, 2025, EEOC Acting Chair Andrea R. Lucas [rolled back](#) much of the Biden-era technical assistance related to discrimination and harassment against LGBTQ+ individuals. [However, the April 2024 enforcement guidance has not been officially rescinded because the EEOC currently lacks a quorum.](#)

The Court Order

The U.S. District Court for the Northern District of Texas granted summary judgment to the State of Texas and the Heritage Foundation, which had sued to block the EEOC's 2024 guidance. The court concluded the EEOC may not legally:

- define "sex" to include sexual orientation and gender identity; and
- define "sexual orientation" and "gender identity" as a protected class under federal law; and
- prohibit employers from repeatedly and intentionally using the wrong pronouns for transgender employees.

The court's reasoning was based on its conclusion that the EEOC's guidance is "final agency action" and that it "produces legal consequences and determines rights and obligations of covered employers." According to the order, "the Guidance determines the legal obligations of employers in navigating accommodation requests from transgender employees."

According to the court, the EEOC's "Enforcement Guidance contravenes Title VII's plain text by expanding the scope of 'sex' beyond the biological binary. Second, the Enforcement Guidance contravenes Title VII by defining discriminatory harassment to include failure to accommodate a transgender employee's bathroom, pronoun, and dress preferences."

Next Steps

Employers will want to note that it is still unclear whether the court's order—which states the guidance is “vacated”—has nationwide impact, making next steps unclear at this time. Moreover, the vacating of this guidance does not necessarily mean that employers are not required to abide by the EEOC's enforcement guidance.

Despite the court's order, employers should note that *Bostock* continues to be good law. Nevertheless, courts across the country have differed on whether the *Bostock* decision extends to bathrooms, locker rooms, showers, or similar facilities for employees to use, as well as pronoun and name usage. Various state and local laws and guidance both protect single-sex facility usage based on gender identity, and, alternatively (in government buildings), require usage of single-sex facilities based on birth sex. Indeed, many states and localities protect both gender identity as well as sexual orientation under relevant state and local antidiscrimination laws. Employers should carefully assess how to create and maintain workplaces free of harassment, discrimination, and retaliation under all applicable laws, including with regard to using employees' names and pronouns.

Acting Chair Lucas and the Trump administration have indicated their opposition to the EEOC guidance at issue, so it is unlikely that they would appeal this case to a federal circuit court. Employers in all states may wish to review their policies and practices to ensure compliance with state and federal laws banning discrimination based on sex.

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