

EEOC Rescinds ‘Enforcement Guidance on Harassment in the Workplace’

WRITTEN BY

Emily E. Schifter | Nancy Fisher Onaderu

Rescission of the 2024 Harassment Guidance

On January 22, 2026, the Equal Employment Opportunity Commission (EEOC) voted 2–1 to rescind its “Enforcement Guidance on Harassment in the Workplace” (guidance), which was approved in 2024.^[1] At issue in the guidance was its definition of sex-based harassment under Title VII, which included “repeated and intentional use of a name or pronoun inconsistent with the individual’s known gender identity (misgendering); or the denial of access to a bathroom or other sex-segregated facility consistent with the individual’s gender identity.”^[2]

The rescission of this guidance is consistent with EEOC Chair Andrea Lucas’s vocal opposition to it dating back to 2024. She dissented from the guidance when it was first issued, criticizing the bathroom-access and pronoun portions based on her belief that they “eliminate single-sex workplace facilities” and “impinge on women’s (and indeed, all employees’) rights to freedom of speech and belief.”^[3] After President Donald Trump appointed Lucas as EEOC acting chair in January 2025, she quickly announced her mission to “protect[] women from sexual harassment and sex-based discrimination” by rolling back the “gender identity agenda,” and promptly took steps to remove materials “promoting gender ideology” on the commission’s internal and external systems, such as voluntary pronoun identification in Microsoft Outlook and Teams.^[4]

The EEOC’s decision to rescind the guidance came at the heels of the Trump administration’s [Executive Order 14168](#), which adopted a federal policy recognizing only two biological sexes — male and female — and directed agencies to remove materials that “promote gender ideology,” and a [May 2025 decision](#) by the U.S. District Court for the Northern District of Texas, which vacated the portions of the guidance addressing harassment based on sexual orientation and gender identity. In the case, the state of Texas and the Heritage Foundation challenged the guidance as, among other things, contrary to law. District Judge Matthew J. Kacsmaryk agreed, holding that the guidance’s broadened definition of sex, including sexual orientation and gender identity, lacked statutory or Supreme Court authority. Specifically, the court disagreed with the EEOC’s reliance upon the 2020 Supreme Court decision in [Bostock v. Clayton](#) in broadening the definition of “sex” beyond the biological binary.

Bostock’s Holding and Application

Although *Bostock* did not redefine “sex” under Title VII, it explicitly extended Title VII’s protections against discrimination and harassment to prohibit discrimination on the basis of an individual’s gender identity or sexual orientation. The Supreme Court held that firing a transgender woman, who presented as male upon hiring, shortly

after she advised her employer that she intended to live and work as a woman, violated Title VII. Although the Court refrained from answering questions regarding bathroom or locker room use, it “resolved at last the disagreement among the courts of appeals over the scope of Title VII’s protections for homosexual and transgender persons,” reasoning that “it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex... [t]hat has always been prohibited by Title VII’s plain terms.” Therefore, although “sex” as it is defined under Title VII has not been amended, the Court concluded that sexual orientation and gender identity are components of sex and, as such, Title VII prohibits discrimination in employment based on these characteristics.

What This Means for Employers

Following the rescission of the guidance, Lucas has assured employees that “[r]escinding this guidance does not give employers license to engage in unlawful harassment” and that “[f]ederal employment laws against discrimination, harassment, and retaliation, and Supreme Court precedent interpreting those laws, remain firmly in place.”^[5] Thus, employers should be aware that the rescission of the guidance does not change existing legal obligations. EEOC guidance is frequently used as helpful examples to follow, but it is not binding law like the Title VII statute or Supreme Court opinions. Title VII prohibitions on harassment are still in place and *Bostock* still stands to ensure that employees do not face adverse employment decisions due to their gender identity or sexual orientation. Likewise, local law continues to develop in this area, with many states and cities enacting legislation, or courts issuing decisions, to provide similar protections for persons identifying as LGBTQ+. Further, despite the current lack of federal guidance on this point, many states’ nondiscrimination statutes explicitly protect employees’ right to dress or use facilities that align with their gender identity.^[6] Ultimately, the absence of this EEOC guidance does not relieve employers of their obligation to treat their employees equally, regardless of their sex, sexual orientation, or gender identity, or any other protected characteristic.

Employers should continue to be vigilant in training employees, investigating all complaints, and assessing all employee behavior in light of all circumstances, and in line with Title VII’s obligations to prevent discrimination, harassment, and retaliation based on any protected characteristic. Due to varying state policies, employers should also ensure continued compliance with both federal law and the laws of each state in which they have employees.

Related Issues – EEOC Focus on National Origin Discrimination

Lucas has also prioritized national origin discrimination, noting in a February 2025 press release that the EEOC was “putting employers and other covered entities on notice: if you are part of the pipeline contributing to our immigration crisis or abusing our legal immigration system via illegal preferences against American workers, you must stop.”^[7] By the end of 2025, the EEOC issued new guidance and revised existing material regarding what qualifies as national origin discrimination, highlighting that it can include a preference for “foreign workers” and “workers with a particular visa status” over American workers.^[8] Under the current administration, ICE has conducted raids at worksites in multiple states, targeting businesses suspected of hiring unauthorized workers, and serving notices of investigation and subpoenas demanding that employers provide I-9 documentation for their employees.^[9] An increase in investigations, compliance checks, and litigation will likely continue under the current administration. Employers should ensure compliance with the law and remain flexible as federal, state, and local immigration policies continue to develop.

[1] EEOC, *EEOC Commission Votes to Rescind 2024 Harassment Guidance* (Jan. 23, 2026), <https://www.eeoc.gov/newsroom/eeoc-commission-votes-rescind-2024-harassment-guidance>.

[2] EEOC, *Enforcement Guidance on Harassment in the Workplace* (Apr. 29, 2024) <https://perma.cc/23Z6-XCWX> (archived).

[3] EEOC, *Commissioner Andrea R. Lucas's Statement on EEOC Enforcement Guidance on Harassment in the Workplace* (Apr. 29, 2024) <https://www.eeoc.gov/commissioner-andrea-r-lucass-statement-eeoc-enforcement-guidance-harassment-workplace>.

[4] See our previous publication predicting EEOC changes following President Trump's election and Chair Lucas's appointment here: <https://www.troutman.com/insights/new-leaders-new-focus-navigating-eeoc-updates/>.

[5] EEOC, *supra* note 1.

[6] See e.g., Cal. Code Regs. tit. 2, § 11034 (“Employers shall permit employees to use facilities that correspond to the employee’s gender identity or gender expression, regardless of the employee’s assigned sex at birth.”); N.J.S.A. 10:5-12(p) (“...an employer shall allow an employee to appear, groom and dress consistent with the employee’s gender identity or expression.”); Va. Code Ann. §§ 2.2-3901, 2.2-3905 (prohibiting discrimination based on gender identity, which is defined as “gender-related identity, appearance, or other gender-related characteristics of an individual, with or without regard to the individual’s designated sex at birth”).

[7] EEOC, *EEOC Acting Chair Vows to Protect American Workers from Anti-American Bias* (Feb. 19, 2025), <https://www.eeoc.gov/newsroom/eeoc-acting-chair-vows-protect-american-workers-anti-american-bias>.

[8] EEOC, *EEOC Releases New and Updated Educational Materials on National Origin Discrimination* (Nov. 19, 2025), <https://www.eeoc.gov/newsroom/eeoc-releases-new-and-updated-educational-materials-national-origin-discrimination>.

[9] Guttentag, *Immigration Policy Tracking Project*, <https://impolicytracking.org/policies/reported-ice-has-resumed-worksite-raids/>.

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