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Federal District Court Vacates Parts of EEOC's Workplace Harassment Guidance Pertaining to LGBTQ+ Employees

As we reported in a previous [Client Alert](#), shortly after returning to office, on January 20, 2025, President Trump signed Executive Order 14168, titled [Defending Women from Gender Ideology Extremism And Restoring Biological Truth to the Federal Government](#). This Executive Order announced the federal government's return to "biological," "sex-based" categories of male and female. The Executive Order also directed the U.S. Equal Employment Opportunity Commission ("EEOC") to rescind, among other things, those portions of [Enforcement Guidance on Harassment in the Workplace](#) ("Harassment Guidance") that conflict with the Executive Order.

Months after this Executive Order, the EEOC has effectively remained in limbo, unable to rescind or modify any portion of the Harassment Guidance as directed by President Trump. This standstill is ongoing because, pursuant to agency rules, the EEOC is not authorized to rescind or modify the Harassment Guidance without a majority vote of the five-seat Commission. But the Commission has lacked a quorum since late January 2025 due to having three vacant seats. As such, even though the EEOC's Acting Chair Andrea Lucas has voiced clear opposition to the portions of the Harassment Guidance that conflict with the Executive Order, the Commission has been unable to rescind or modify any of its provisions.

In a recent federal case decided on May 15, 2025, *Texas v. Equal Employment Opportunity Commission*, the U.S. District Court for the Northern District of Texas held the Harassment Guidance's expansion of the definition of "sex" was unlawful insofar as it "expand[ed] the scope of 'sex' beyond the biological binary" and "contravene[d] Title VII by defining discriminatory harassment to include failure to accommodate a transgender employee's bathroom, pronoun, and dress preferences." In so holding, the Court noted the Harassment Guidance relating to sex and gender identity had incorrectly interpreted and expanded the U.S. Supreme Court's decision in *Bostock v. Clayton County*. The Court reasoned that *Bostock* had decided only the question of whether "'fir[ing] someone simply for being homosexual or transgender' violated Title VII's prohibition on sex discrimination," and that "the *Bostock* court firmly refused to expand the definition of 'sex' beyond the biological binary," noting *Bostock* "'d[id] not purport to address bathrooms, locker rooms, or anything else of the kind.'"

The Texas federal court thus vacated those portions of the Harassment Guidance that specifically pertain to sexual orientation and gender identity. This includes any provisions in the Harassment Guidance that pertain to harassment based on sexual orientation and gender identity in the context of sex-segregated facilities and preferred pronouns.

Importantly, this recent decision from Texas affects not only the parties in the case but also applies on a national level. For context, there is debate currently as to whether federal district court decisions should apply only to the parties in the lawsuit or take effect on a nationwide basis. Here, the Texas federal district court looked to Fifth Circuit precedent and concluded its decision "operates nationwide because it 'operates on the status of agency action in the abstract.'"

Despite this recent decision, the EEOC still cannot rescind or deny even the vacated parts of its Harassment Guidance due to its lack of a quorum. The EEOC has nonetheless taken some action to help the public determine which parts of the Harassment Guidance have been vacated by shading the vacated sections of the Harassment Guidance in gray and adding alerts regarding the vacatur on the official EEOC website.

Concerning the current legal landscape, the *Bostock* decision remains good law unless and until it is reversed. In other words, for now, Title VII continues to protect against workplace discrimination on the basis of sexual orientation and gender identity to the extent that employees may not be terminated because of their sexual orientation or gender identity. Further, although the EEOC likely will not file litigation based on sexual orientation or gender identity discrimination given its most recent actions, technically, the agency still retains authority to do so. And as of now, such claims may continue to be pursued via private actions.

We will continue to monitor developments pertaining to the Harassment Guidance, including any changes to the Commission's current lack of a quorum. In the meantime, employers should ensure that they are complying with the portions of the Harassment Guidance that have not been vacated unless those portions are officially rescinded or modified.

If you would like more information to determine whether your current harassment-related policies or procedures may need to be revised, or if you would simply like to discuss a review of your employment policies, please contact your Kutak Rock attorney or any of the attorneys in the firm's [National Employment Law Group](#).

