

HARASSMENT & DISCRIMINATION

EEOC RESCINDS BIDEN-ERA PROTECTIONS GUIDANCE

THE U.S. Equal Employment Opportunity Commission in January 2026 rescinded a Biden-era workplace anti-harassment and discrimination guidance mainly focused on protections for LGBTQ+ individuals and breastfeeding and pregnancy-related issues.

The move, which came after the EEOC achieved a quorum and a Republican majority, follows through on the policy priorities of the Trump administration.

But while the rescission signals a shift in federal enforcement priorities, it does not change the underlying legal framework governing workplace harassment. Employers may still face exposure to employee lawsuits due to binding Supreme Court precedent, differing court interpretations and state and local laws.

What the rescinded guidance covered

The 2024 guidance expanded a number of protections against harassment and discrimination under Title VII. Although the guidance was not legally binding, it signaled how the EEOC intended to investigate and litigate harassment and discrimination claims.

The guidance covered:

Sexual orientation or gender identity – The guidance identified conduct that could contribute to a hostile work environment, including:

Examples of hostile conduct

- The “outing” of an employee’s sexual orientation or gender identity,
- Repeated and intentional misgendering such as calling an employee a man when they identify as a woman.
- Denying access to bathrooms or other sex-segregated facilities consistent with an individual’s gender identity, and
- Harassment and discrimination tied to nonconformity with sex-based stereotypes.

Sex-based harassment, discrimination – The guidance expanded the definition of sex-based discrimination under Title VII to include lactation, contraception or abortion decisions when discrimination is linked to an individual’s sex.

Color or national origin – The 2024 guidance also clarified that harassment or discrimination based on “color” could occur even among employees of the same race or national origin, such as discrimination tied to skin tone.

Effect on employers

Although the guidance has been withdrawn, it was never binding law, and its repeal does not insulate employers from harassment claims. Courts — not the EEOC — ultimately determine whether conduct violates Title VII, and private plaintiffs can still pursue lawsuits even if the EEOC declines enforcement.

Importantly, the Supreme Court’s decision in *Bostock v. Clayton County* remains controlling precedent, holding that adverse employment actions based on sexual orientation or gender identity are unlawful sex discrimination under federal law.

While *Bostock* did not resolve all harassment-related questions, it continues to shape litigation, and many state and local laws independently impose explicit protections. As a result, employers should remain acutely aware of applicable law, including federal requirements, evolving court interpretations, and state and local statutes.

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