

Blog Post

EEOC Rescinds Harassment Guidance on Gender Identity: What Employers Need to Know

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Employers are facing renewed uncertainty about workplace protections for gender identity after federal agency guidance was recently withdrawn. On January 22, 2026, the Equal Employment Opportunity Commission (EEOC) voted 2-1 to rescind its 2024 Enforcement Guidance on Harassment in the Workplace, including portions addressing gender identity and sexual orientation. The guidance was intended to help employers understand how federal anti-discrimination law applies to modern workplace conduct, but it is no longer available on the EEOC website.

The EEOC emphasized that enforcement of federal anti-discrimination laws will continue notwithstanding the withdrawal of this specific guidance. Understanding what this development means for employers requires separating what the guidance did from what the underlying law is and remains.

EEOC Guidance vs. Title VII Law

The 2024 guidance consolidated and explained the agency's views on harassment under Title VII of the Civil Rights Act of 1964, including harassment based on sexual orientation, gender identity, and gender expression. It incorporated interpretations of U.S. Supreme Court precedent, including *Bostock v.*

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Clayton County, which held that discrimination on the basis of sexual orientation or gender identity is a form of sex discrimination under Title VII.

The rescinded guidance was not a statute or regulation; it was an interpretive enforcement document intended to explain how the EEOC believed existing law — particularly Title VII — applied to modern workplace harassment scenarios. Among other things, the guidance took clear positions on:

- Misgendering and pronoun usage
- Access to restrooms and other sex-segregated facilities
- Dress codes and grooming standards

Several of these provisions were challenged in court, and at least one federal district court concluded that portions of the guidance exceeded the EEOC's statutory authority. The rescission reflects not only those legal headwinds but also a broader shift in federal enforcement priorities following changes in agency leadership.

Pronouns, Misgendering, and Harassment Claims

Perhaps the most consequential — and misunderstood — aspect of the rescission concerns pronouns and misgendering.

Under the withdrawn guidance, the EEOC suggested that intentional or repeated misgendering could itself constitute unlawful harassment. With that guidance gone, some employers may assume pronoun usage is now legally irrelevant. That assumption would be incorrect.

Title VII does not impose a standalone obligation to use specific pronouns. However, harassment law has never turned on magic words or *per se* rules. Courts instead ask whether conduct, viewed in context, is

sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment.

In practice, this means:

- **Isolated or inadvertent misgendering** — particularly when promptly corrected — is unlikely to support liability on its own.
- **Repeated, deliberate misgendering**, especially when paired with mocking, exclusion, or other antagonistic behavior, may still support a hostile work environment claim under traditional Title VII principles.
- **Intent matters**, but so do impact, context, and pattern of behavior.

The legal inquiry has shifted from “What does the EEOC guidance say?” to “How would a judge or jury interpret this conduct in context?”

What Employers Should Review Now

Many employers revised policies and training programs to align with the 2024 guidance. Others resisted doing so, citing legal uncertainty. Both groups should now take a measured approach.

This is not the moment to dramatically roll back anti-harassment expectations or to declare certain forms of conduct “safe.” Nor is it necessary to preserve guidance language that was expressly withdrawn and criticized by courts.

Instead, employers should:

- Re-anchor harassment policies in **neutral professionalism standards**, not prescriptive social rules
- Train managers to identify **patterns of conduct**, not isolated missteps
- Preserve discretion to address conduct that escalates into hostility or exclusion

- Ensure consistency across departments and jurisdictions

State and local laws may impose independent obligations, and multistate employers should remain particularly cautious about assuming federal retreat equals nationwide permissibility.

Bottom Line

The rescission of the EEOC's 2024 harassment guidance does not alter the legal framework established by Title VII and interpreted by the Supreme Court in *Bostock*. Employers should continue to evaluate discrimination and harassment risk under applicable federal, state, and local laws and should ensure their policies and practices reflect current legal standards — not the presence or absence of a particular guidance document.

Employers with questions regarding rescission of the EEOC's guidance should contact their Akerman Labor & Employment attorney.

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