

Blog Post

Biden Administration Heralds New Protections for LGBTQ Employees

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While President Biden’s initial flurry of executive orders largely sought to address the pandemic and undo the regulatory legacy of his predecessor, one order places LGBTQ protection at the heart of the new Administration’s agenda. That order, [“Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation,”](#) states the new Administration’s general policy: “Every person should be treated with respect and dignity and should be able to live without fear, no matter who they are or whom they love.” It then orders federal agencies to review existing regulations, guidance, programs, and other agency actions, and “consider whether there are additional actions that the agency should take to ensure that it is fully implementing” the Administration’s general policy.

The order comes on the heels of the Supreme Court’s June 2020 decision in *Bostock v. Clayton County*, in which the Court held for the first time that the Civil Rights Act’s prohibition against discrimination “because of sex” necessarily prohibits discrimination on the basis of gender identity or sexual orientation.

In addition to its regulatory directives, the order signals the new Administration’s intent to construe and enforce all civil rights legislation more broadly.

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The order asserts the Supreme Court's *Bostock* decision applies with equal force to all "laws that prohibit sex discrimination," listing as examples Title IX, the Fair Housing Act, and the Immigration and Nationality Act.

Given the more conservative makeup of the Supreme Court and the statute-specific reasoning of the *Bostock* decision, the success of any lawsuits embracing this broader interpretation is far from certain. But in any event, employers across the country are likely to see an increase of discrimination claims brought by LGBTQ individuals under a variety of federal statutes. Courts are also likely to see an increase in employers and other defendants seeking religious exemptions from such laws.

Other executive orders confirm the Administration's prioritization of civil rights protections. For instance, President Biden has also ordered:

- the repeal of President Trump's prohibition on transgender individuals serving in the military;
- the rescission of the Trump Administration's 1776 Commission and the removal of its report from the White House website, a report which minimized America's history of racial inequality;
- the rescission of President Trump's ban on diversity and racial inequality training for federal agencies and their contractors; and
- that the White House Domestic Policy Council is to "coordinate efforts to embed equity principles, policies, and approaches across the Federal Government [including] efforts to remove systemic barriers to and provide equal access to opportunities and benefits, identify communities the Federal Government has underserved, and develop policies designed to advance equity for those communities."

In short, the new Administration has wasted little time expressing its strong policy in favor of LGBTQ

and other civil rights protections. In light of this expanding civil rights landscape, employers should (yes, again) revisit their employment policies and practices—this time with an eye toward making sure such policies and practices treat LGBTQ employees the same as their non-LGBTQ peers.

Employers should pay particular mind to policies or practices involving hiring and firing, leaves of absence, accommodation requests, and employee benefits. They should also revisit employee training with a renewed emphasis on employees' roles in following such practices and ensuring an equitable environment for their LGBTQ coworkers. If the Court's reasoning in *Bostock* is any indication of what may come in other statutory contexts, businesses may be liable for discrimination if an individual's LGBTQ status played *any* role, no matter how slight, in that person being treated differently.

For help in drafting anti-harassment, discrimination, and retaliation policies and conducting workplace trainings, or for any other discrimination-related questions you may have, contact your Akerman attorney.

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