

CLIENT ALERT: EEOC Votes to Rescind Enforcement Guidance on Harassment

On January 22, 2026, the U.S. Equal Employment Opportunity Commission voted 2-1 to rescind its Enforcement Guidance on Harassment in the Workplace (the "Guidance"), effective immediately. The EEOC published the Guidance in 2024. It was the first time updated guidance was issued on the topic in over twenty years. In the Guidance, the EEOC clarified its positions on the legal analysis that applies to claims of harassment in the modern workplace under Title VII and other federal anti-discrimination laws. Nearly 200 pages, the Guidance offered over 75 examples of scenarios employers might encounter and described how harassment based on protected characteristics is defined under federal law enforced by the EEOC. While the Guidance did not have the force of law, it provided practical insight into the ways in which claims of harassment would be handled by the EEOC, and largely reflected information and best practices gleaned from case law addressing discriminatory harassment claims.

The decision to rescind the Guidance follows changes made to the document in 2025 after a federal court in Texas vacated certain portions of the Guidance. This ruling applied to a section on gender identity and sexual orientation, explicitly citing the Supreme Court's 2020 decision in *Bostock v. Clayton County, Georgia*, in which the Court held that discrimination against an employee because of their sexual orientation or gender identity is tantamount to discrimination on the basis of sex. This section described prohibited conduct such as repeated and intentional use of a name or pronoun the individual's known gender identity, and denial of access to a bathroom consistent with their gender identity. Following the decision, the EEOC annotated parts of the Guidance and shaded out the voided paragraphs.

Instead of updating the Guidance to align certain sections with a narrower reading of the *Bostock* decision, for example, the EEOC's recent decision applies broadly to all sections of the Guidance. It is unclear whether updated guidance will be issued to offer employers a roadmap on how federal anti-harassment law applies to real world situations. While employers can benefit from paying close attention to this wholesale rescission of the Guidance, it is important to remember that the EEOC's decision does not

change employees' rights and employers' responsibilities with respect to workplace harassment. Employers should continue to take proactive steps to ensure their workplaces are free of unlawful harassment and discrimination under federal, state, and local laws.

Should you have any questions on the lawfulness of your current policies and practices, please reach out to your MBJ attorney.

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