

VACATUR OF PORTIONS OF EEOC'S 2024 ENFORCEMENT GUIDANCE ON HARASSMENT

On May 15, 2025, the U.S. District Court for the Northern District of Texas, in *Texas v. EEOC*, No. 2:24-cv-173 (N.D. Tex. May 15, 2025), vacated significant portions of the EEOC's 2024 Enforcement Guidance on Harassment in the Workplace ("Guidance"). The decision invalidated the EEOC's interpretative extension of "sex"-based harassment under Title VII to include gender identity-related content. The vacatur has a nationwide effect. Below is a summary of the vacated guidance provisions, the legal rationale employed by the District Court, and key implications for employers in Pennsylvania.

I. SUMMARY OF VACATED EEOC GUIDANCE PROVISIONS

The EEOC's 2024 Guidance expanded the interpretation of "sex"-based harassment under Title VII to include the following positions:

1. ACCESS TO SEX-SEGREGATED FACILITIES:

- Denial of access to bathrooms and other sex-segregated facilities consistent with an employee's gender identity was categorized as a form of unlawful harassment.

2. INTENTIONAL MISGENDERING

- Repeated and intentional use of pronouns or names inconsistent with an employee's known gender identity was deemed actionable harassment under Title VII.

These positions were adopted over the dissent of EEOC Acting Chair Andrea Lucas, who maintained that such interpretations exceeded the bounds of existing and judicial authority.

II. COURT'S RATIONALE IN VACATING THE GUIDANCE

In *Texas v. EEOC*, the Court found the EEOC's interpretive Guidance contrary to law and procedurally improper under the Administrative Procedure Act ("APA"). Key holdings include:

A. SUBSTANTIVE OVERREACH:

- The Court held that the EEOC's interpretation effectively rewrote Title VII's statutory language without Congressional authorization. The Guidance went beyond the Supreme Court's decision in *Bostock v. Clayton County*, 590 U.S. ___, 140 S. Ct. 1731 (2020), which did not address sex-segregated facilities or compelled speech. In other words, the Court held that the EEOC's enforcement position went beyond interpreting existing statutory text; it effectively created new position went beyond interpreting existing statutory text; if effectively created new affirmative obligations, such as compelled pronoun usage and mandatory access to facilities, without any supporting regulation and statutory mandate. The

Court found this was an unauthorized expansion of Title VII, unsupported by Bostock or any subsequent Supreme Court authority.

B. VIOLATION OF THE MAJOR QUESTIONS DOCTRINE:

- The Court emphasized that culturally and legally significant issues require explicit Congressional authorization — a standard unmet by the EEOC. Specifically, the Court held that the EEOC’s attempt to use Bostock to justify sweeping new policies implicated the “major questions” doctrine. Under this doctrine, agencies must have explicit Congressional authorization to decide questions of vast political and economic significance. The EEOC lacked such authority here.

C. IMPROPER PROCEDURAL ACTION AND BROAD ADMINISTRATIVE EXPANSION:

- The guidance was issued without formal rulemaking procedures, violating the APA’s notice-and-comment requirements for substantive rules. Additionally, the Court noted the Bostock Court warned agencies and lower courts not to extrapolate its reasoning to unrelated workplace contexts without further analysis. The EEOC’s Guidance, however, interpreted Bostock as authorizing the blanket treatment of gender identity-related conduct as per se unlawful harassment under Title VII, without a case-by-case factual assessment of severity or pervasiveness.

D. CONFLICT WITH EXECUTIVE ORDER 14168:

- The Court noted President Trump’s Executive Order directing the EEOC to rescind such positions. The Court’s ruling enforced that policy preference.

Bostock held only that an employer who fires an individual merely for being gay or transgender violates Title VII’s prohibition against discrimination “because of sex.” The Court limited its holding to “termination decisions,” and expressly declined to resolve broader workplace conduct questions, such as dress codes, bathroom usage, or pronoun policies. See, Bostock, 590 U.S. ___, 140 S. Ct. 1731, 1753 (2020) (“We do not purport to address bathrooms, locker rooms, or anything else of that kind.”)

The Court also determined that the EEOC’s Guidance conflicted with the First Amendment. It viewed the Guidance’s pronoun provisions as raising serious compelled speech concerns not addressed in Bostock. By interpreting Title VII to require employees or employers to speak in particular ways (e.g., using preferred pronouns), the EEOC intruded into constitutional territory that the Supreme Court in Bostock expressly avoided.

IV. STATUS OF GUIDANCE AND AGENCY COMPLIANCE

As of May 20, 2025, the EEOC has updated its website to label and shade the vacated sections. The remaining portions of the 2024 Guidance remain in effect. The agency is reviewing related documents for consistency with the Court’s ruling.

V. IMPLICATIONS FOR PENNSYLVANIA EMPLOYERS

1. FEDERAL LAW COMPLIANCE

- Employers are no longer obligated under federal law to treat denial of bathroom access based on gender identity or refusal to use preferred pronouns as per se Title VII violations.

III. HOW THE EEOC’S 2024 GUIDANCE EXCEEDED BOSTOCK

The EEOC’s 2024 Guidance cited the U.S. Supreme Court’s decision in Bostock v. Clayton County as foundational authority for its interpretation that harassment based on gender identity, including misgendering and denial of sex-segregated facilities, violates Title VII. However, the District Court in Texas v. EEOC concluded that the EEOC’s reliance on Bostock was misplaced and overly expansive. The Court distinguished Bostock in terms of its scope.

2. STATE LAW CONSIDERATIONS:

- The Pennsylvania Human Relations Commission has interpreted “sex” to include gender identity. That interpretation may still be legally contested but is currently unaffected.

3. PRACTICAL RISK MITIGATION:

- Employers should continue to approach gender identity issues cautiously and balance policy with operational risk management.

4. FUTURE LITIGATION RISKS:

- Employers may still face lawsuits under various legal theories; appellate review is likely.

VI. RECOMMENDATIONS

- Review and Update Internal Policies
- Train Supervisors Carefully
- Monitor Developments

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Lisa's employment counseling and litigation background is extensive.

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Lisa assists companies in developing and implementing policies and procedures, drafts employment handbooks, and prepares and litigates various types of business contracts, including confidentiality and non-compete agreements.

She regularly appears in state and federal court, and has represented clients before the Equal Employment Opportunity, Pennsylvania Human Relations, and Civil Service Commissions. She also advises clients on matters related to unemployment compensation, OSHA investigations, and investigations by the Department of Labor's Wage and Hour Division.