

FEBRUARY 10, 2026 | DISCRIMINATION, HARASSMENT &amp; RETALIATION

# EEOC Rescinds 2024 Harassment Guidance

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On January 22, 2026, the EEOC decided in a 2-1 decision to rescind its comprehensive “Enforcement Guidance on Harassment in the Workplace.” This guidance was published by the EEOC on April 29, 2024, representing the EEOC’s first significant update since 1999 to its enforcement guidance on harassment. Now, as harassment claims continue to rise, employers have less guidance to determine what constitutes harassment and to understand EEOC expectations for how employers can effectively avoid and address such claims. Over the last few years, since a brief slump around the height of the pandemic, the number of harassment claims filed with the EEOC has been on the rise. In FY 2024, complainants filed 35,774 claims, which represents an approximately 12% increase from FY 2023 and about a 32% increase since FY 2022.

When the EEOC published its harassment enforcement guidance in 2024, the intent was to pull together best practices for preventing and responding to harassment and to address recent developments in the law, including the Supreme Court’s decision in *Bostock v. Clayton County, Georgia*. In *Bostock*, the Supreme Court held that Title VII prohibits discrimination based on sexual orientation and gender identity because this constitutes discrimination based on sex. In its 2024 guidance, the EEOC included a section on sexual orientation and gender identity harassment to incorporate this recent case. The Commission explained what types of actions could be considered harassing in this context and included specific examples. The 2024 guidance also provided updated information and examples addressing harassment based on race, national origin, and pregnancy/childbirth, among other protected classes. Importantly for employers, the guidance discussed the different types of harassment that can occur in the workplace, standards for evaluating claims of harassment, and different avenues of liability, providing illustrative examples within each topic.

The decision to rescind this guidance follows executive orders issued in 2025 that updated the federal government’s position toward some Title VII protected classes. For example, Executive Order 14168 establishes the federal government’s policy to recognize only two sexes. The rescission also follows the decision of a federal district court in Texas to vacate parts of the 2024 guidance focused on gender identity, holding that the EEOC exceeded its authority in expanding Title VII’s definition of “sex.”

In the EEOC’s [News Release](#) announcing its decision to rescind the 2024 guidance, the Commission did not address the scope of the rescission, but EEOC Chair Andrea Lucas explained that “[r]escinding this guidance does not give employers license to engage in unlawful harassment” and “committed [the EEOC] to evenhanded

enforcement of [Federal employment] laws.” She also pointed out that, even after the decision to withdraw the guidance, applicable federal laws and Supreme Court precedent “remain firmly in place.” The News Release directs employers to the EEOC’s general guidance on harassment that remains on its website.

As the EEOC acknowledges, Title VII and court decisions interpreting harassment in the context of Title VII, including the Supreme Court’s decision in *Bostock*, continue to govern employer activity. Even though the guidance document no longer represents EEOC policy, employers must continue to adhere to the relevant laws’ requirements. Additionally, about 20 states, including but not limited to California, New York, and Illinois, maintain anti-discrimination laws that explicitly prohibit discrimination based on sexual orientation, and most of those states also forbid discrimination based on gender identity. Several localities – cities and counties – also maintain laws that specifically prohibit discrimination based on sexual orientation and gender identity. Thus, although the EEOC looks to be reorienting its enforcement priorities and how it might apply Title VII, state and local agencies will continue to enforce anti-discrimination laws applicable in their jurisdictions.

Now that the EEOC has a three-member quorum, we expect additional changes at the Agency and will closely follow any such changes.