

Federal Judge Blocks Enforcement of EEOC Guidance Directed at LGBTQ+ Employees

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Protections for LGBTQ+ persons, especially transgender individuals, continue to be trending topics in both legal and social circles. Lia Thomas, recently nominated for NCAA Woman of the Year, has captured front page headlines as the first transgender NCAA champion after dominating in women's swimming. On the heels of this news, on Friday July 15, 2022, a federal judge blocked enforcement of Equal Employment Opportunity Commission (EEOC) guidance directed at protections for LGBTQ+, and particularly transgender, employees.

Twenty states, led by Tennessee, sought a preliminary injunction in the Eastern District of Tennessee to enjoin the EEOC and Department of Education from enforcing federal guidance issued in 2021. The EEOC's guidance, a "Technical Assistance Document," provides examples of employer actions that may constitute discrimination, including obligations related to dress codes, bathrooms and locker rooms, and preferred pronouns or names.

The court held that the states had sufficient standing to bring suit because, among other things, they were currently enforcing statutes that conflicted with the EEOC guidance as to the legality of certain conduct related to sexual orientation and gender identity. The court rationalized the EEOC guidance does not simply explain employers' obligations under Title VII, but rather uses mandatory language to identify the EEOC's established legal positions, and in practical effect requires employers to comply with its positions to avoid liability.

In issuing a preliminary injunction in favor of the states, the court enjoined the EEOC from enforcing its guidance based on a procedural issue, holding that the EEOC had failed to comply with the proper procedures to issue binding guidance that has a legal effect. If an agency attempts to issue a legislative rule without abiding by the procedural requirements - specifically, a notice and comment period allowing the public to comment on the rule - the rule is invalid.

Although the EEOC is enjoined from enforcing its guidance, it may be advisable for employers to continue to comply with the guidance. The EEOC may re-issue the guidance following the proper notice and comment rulemaking procedures, and employees and applicants may advance individual suits under the same theories espoused in the now unenforceable guidance.

Benesch attorneys are ready to assist with questions or concern and will continue to track new developments.

For more information, please contact a member of Benesch's [Labor & Employment Practice Group](#).

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