

Federal Judge Rules EEOC Guidance Directed at LGBTQ+ Employees Unlawful

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On October 1, 2022, a federal judge in the Northern District of Texas ruled Equal Employment Opportunity Commission (EEOC) guidance, directed at protections for LGBTQ+ employees in general workplace policies, was unlawful. 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.

Texas Attorney General Ken Paxton brought a lawsuit in the Northern District of Texas seeking to vacate and set aside the EEOC guidance issued in 2021, arguing that the guidance "misstates the law, increasing the scope of liability for the State in its capacity as an employer-and [EEOC Chair Charlotte] Burrows did not even have authority to issue it." Texas further argued that the Supreme Court's landmark decision in *Bostock v. Clayton County*, which extended the protections of Title VII of the Civil Rights Act of 1964 to LGBTQ+ employees, left open the legal question on workplace policies pertaining to "sex-segregated bathrooms, locker rooms, and dress codes" and therefore, any such policies are not discriminatory under Title VII.

In ruling in favor of the state of Texas, the federal court vacated and set aside the guidance, reasoning that it was unlawful because it improperly interpreted the Supreme Court decision in *Bostock*. The court stated that the Supreme Court established that Title VII prohibits discrimination against employees based on their sexuality or gender identity "but not necessarily all correlated conduct." The court's ruling does not decide whether such "correlated conduct," such as using pronouns and facilities that do not correspond with an employee's gender assigned at birth and sex-specific dress codes, is protected under Title VII. The court simply ruled that this issue was not decided by the Supreme Court in *Bostock* and the EEOC guidance therefore impermissibly extends beyond merely restating the law.

This decision follows a separate legal challenge against the guidance filed by a coalition of twenty states. In July, a Tennessee federal court issued a preliminary injunction in favor of the states and temporarily enjoined the EEOC from enforcing its guidance based on a procedural issue. [Federal Judge Blocks Enforcement of EEOC Guidance Directed at LGBTQ+ Employees.](#)

Although the EEOC guidance has been found unlawful, 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 vacated guidance.

Benesch attorneys are ready to assist with questions or concerns 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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