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January 6, 2026

RESPONSE TO PROPOSED RECISSION OF THE EEOC'S HARASSMENT GUIDANCE

Unlawful harassment remains a serious problem in many American workplaces. Unfortunately, the Trump Administration is poised to limit the tools available to keep our workplaces safe and free from harmful and abusive conduct.

The Equal Employment Opportunity Commission (EEOC) issued a comprehensive guidance document in 2024 describing the requirements of federal law prohibiting harassment. This guidance provides concrete, practical information to employers and employees about how to prevent and redress harassment at work. It contains more than 70 real-world examples of how employers can effectively prevent and respond to such conduct.

The guidance addresses harassment on all protected bases – race, color, sex, national origin, religion, age, disability, and genetic information. Importantly, it assists employers, employees, and the general public in understanding that the law's prohibition against harassment on the basis of sex includes harassment based on sexual orientation and gender identity, and on pregnancy, childbirth, and related medical conditions.

On December 29, 2025, the EEOC requested White House approval to rescind this anti-harassment guidance and to do so without any opportunity for public comment to the EEOC. This rescission request is part of this Administration's broader effort to weaken enforcement of federal employment anti-discrimination laws and, simultaneously, to diminish public understanding that federal law firmly prohibits harassment based on sexual orientation and gender identity. It is yet another salvo in this Administration's prolonged attack on LGBTQI+ people.

The Supreme Court has authoritatively spoken on this legal question in Bostock v. Clayton County, which made clear that the law's prohibition on sex discrimination encompasses sexual orientation and gender identity. (In 1986, the Supreme Court had explained that hostile work environment harassment is prohibited under the same subsection of the law that was at issue in *Bostock*.) Various documents from EEO Leaders have further explained this legal protection.

See Understanding the EEOC's 2024 Harassment Guidance (April 2025) and Statement on EEOC's Processing of LGBTQ+ Charges (July 2025).

This Administration and the EEOC Chair may disagree with the Supreme Court's interpretation of the law. But that disagreement does not alter binding precedent which the Administration is obligated to follow. Further, as we have explained previously, lower courts cannot change the Supreme Court's holding that discrimination based on sexual orientation and gender identity is unlawful.

Employers must comply with the law as interpreted by the Supreme Court, not with an agency position that contradicts that Court's precedent. Even if the EEOC rescinds this guidance, it will not change the underlying law – employees and job applicants still will have all of the rights and protections (and employers the same responsibilities) that apply under federal laws and judicial interpretations of those laws.

But Chair Lucas has gone further than targeting one vulnerable community. The Commission has requested approval from the White House to withdraw the entire guidance, depriving workers and employers of ANY guidance on how to identify, preempt, and remedy harassment on ANY prohibited basis.

The Commission sent its request to the White House as a "final rule," rather than as a proposal, thereby asserting that the EEOC has authority to hastily rescind this guidance without notice and comment, despite the fact that the original guidance was issued by the Commission after extensive notice and comment. (The EEOC received 38,102 comments on the proposed guidance, all of which the Commission posted online for the public.) The Commission's action also conflicts with the position that the Trump Justice Department and the EEOC Chair asserted in litigation in February 2025 that the Harassment Guidance is "significant guidance" and therefore "[t]o rescind or revise portions of the [Harassment] Guidance, the Commission will have to follow the notice and comment procedures for significant guidance documents . . . ." In addition, transparency and opportunity for public comments are particularly important when the Commission seeks not just a revision but a complete withdrawal of guidance to overturn existing interpretation of the law.

As of the date of this statement (January 6, 2026), the White House has not yet approved the EEOC's request from December 29, 2025, to rescind the agency's harassment guidance. Although the EEOC has inappropriately failed to provide the public with an opportunity to

submit comments on the rescission of the guidance, **members of the public may request a meeting with the relevant White House office to discuss the proposed rescission of the guidance. A meeting may be requested by filling out this form.**

Federal law provides essential protection against discrimination in the workplace, including harassment. The Commission's efforts to withdraw its anti-harassment guidance will deprive EEOC stakeholders of critical information and heighten the risk that workers across the country will be harmed by harassment. The American people deserve far better.

> The EEOC's 2024 Harassment Guidance is currently available on the EEO Leaders website and will remain available regardless of any rescission by the EEOC. EEO Leaders has established a Restoration Documents page and will add documents as needed.