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EEOC Pulls the Plug on 2024 Harassment Guidance

When President Trump took office, one of his early Executive Orders directed the Equal Employment Opportunity Commission to rescind its *Enforcement Guidance on Harassment in the Workplace*. The EEOC (as it was composed at the time) refused. Trump then fired several Democratic Commissioners, but the Commission could no longer take action because it did not have a quorum.

Now, a year after his inauguration, the EEOC has a quorum again and quickly complied with the President's directive, rescinding the entire *Enforcement Guidance* on January 22nd.

What was the now-defunct Enforcement Guidance? After almost a decade of debate and revision, the EEOC issued its *Enforcement Guidance* in 2024, which consolidated previous guidance on the Commission's interpretation of existing harassment law (fairly non-controversial) and its views on the newly developing law around gender-identity discrimination (sparking heated debate and, of course, lawsuits).

The most controversial portion of Guidance explained the Commissions' view that mis-gendering employees, refusing to refer to them by their preferred name or pronoun and requiring them to use a gendered bathroom inconsistent with their gender identity were all potential forms of illegal harassment. This was an expansion of the Supreme Court's *Bostock* decision which held that gender identity discrimination is illegal as a form of sex discrimination.

The 2026 vote to rescind the Guidance withdrew more than just the sections on gender identity, but the entire Guidance which deals with all forms of harassment – many of which were not controversial interpretations of the law. It's critical to keep in mind that the *Enforcement Guidance* was not the law, just the EEOC's interpretation of the law. But Title VII still remains the law and all of its protections and restrictions (including those on gender identity) remain in place even in the absence the Guidance.

If you have any questions or would like additional information, please contact Al Vreeland at (205) 323-9266 or avreeland@lehrmiddlebrooks.com.