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LGBTQ+ Workplace Protections: Less Guidance Does Not Mean Less Risk

By Andrew Adelman, Joseph Greenwald and Laake | Nov 17, 2026
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Employers should think twice before scaling back LGBTQ+ workplace protections to align with shifts in federal policy. Doing so risks mistaking agency policy for a legal safe harbor. Title VII prohibits discrimination because of sex, and the Supreme Court has held that this protection extends to sexual orientation and gender identity. A recent federal court decision underscores the potential employer liability when institutional policies seek to erase transgender identity. For human resources, less federal guidance does not mean less risk.

According to a 2024 report (https://williamsinstitute.law.ucla.edu/publications/lgbt-workplace-discrimination/) from the Williams Institute, employment discrimination against LGBTQ+ people continues to be persistent and widespread, with 47% of LGBTQ+ employees reporting experience discrimination or harassment at work. Before changing a handbook, eliminating institutional policies or dismantling employee resource groups, employers must distinguish enforcement priorities from binding law. Everyday management decisions affecting LGBTQ+ workers require a separate assessment: Could the proposed change expose employees to discrimination or harassment?

The Federal Floor Remains

Bostock *Is the Floor, Not the Whole Answer*

The Supreme Court's 2020 decision of *Bostock v. Clayton County* held that firing someone merely for being gay or transgender violates Title VII's prohibition against discrimination because of sex. That decision remains a foundational protection for LGBTQ+ workplace equality. As the Supreme Court explained: "An individual's homosexuality or transgender status is not relevant to employment decisions. That's because it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex."

While *Bostock* did not decide questions about bathrooms, locker rooms or related issues, those opportunities do not leave employers without directions. Denying a transgender employee access to bathrooms or locker rooms or the option to use names/pronouns consistent with their gender identity can contribute to a hostile work environment. The case law says so, and so does good business practice.

Harassment Depends on the Whole Environment

For multijurisdictional employers, the federal harassment standard is only the starting point. Under federal law, conduct generally must be sufficiently severe or pervasive to alter employment conditions and create an objectively hostile or abusive environment. Frequency, severity, humiliation, threats and interference are all facts that can determine whether conduct is severe or pervasive enough to constitute a hostile work environment. While many state laws follow this federal standard, others cover a broader range of conduct. Washington, D.C., law, for example, defines harassment as conduct that has the "effect of creating an intimidating, hostile, or offensive work environment," and the local laws in Montgomery County, Maryland explicitly state that conduct need not be considered severe or pervasive. Satisfying the federal threshold does not answer every legal claim.

Evaluate the whole environment, not just isolated incidents. The following conduct, alone or in combination, may contribute to a hostile work environment:

- Demeaning or derogatory slurs about gay, lesbian, or transgender people.
- Comments about being "too masculine" or "too feminine."
- Comments or questions about an employee's body, e.g., the size of their chest, their hair or hairstyle, or references to whether they have certain anatomical features as a transgender person.
- Derogatory jokes or comments relating to an employee's sexual orientation or gender identity, e.g., being told their identity is a choice, that they are normal for a queer person or that they are harming their kids by not having a traditional family.
- Use of stereotypes or crude or derogatory statements, e.g., being called a pedophile or sex worker/prostitute.
- Repeated and/or intentional use of the wrong name, pronouns, or honorifics.
- Prohibitions on bathroom use.
- Exclusion from social gatherings.

- Being told to keep their identity to themselves or being made to feel that they will be treated differently if they present themselves authentically.
- Questions about their personal life, including dating or sexual history.

Seawright*: Workplace Policy Can Be Part of the Alleged Harm*

On October 2, 2026, a federal district court in California issued an opinion in *Seawright v. Lucas* reflecting an important affirmation that anti-LGBTQ+ workplace policies can create liability. Marc Seawright, a queer transgender man and former U.S. Equal Employment Opportunity Commission director of information governance and strategy, sued the EEOC asserting, in relevant part, that the onslaught of new administrative policies seeking to erase transgender people created a hostile work environment. Seawright asserted that the EEOC's denial of the legitimacy of transgender identity, its condoning of misgendering, its removal of EEOC systems to identify pronouns and nonbinary honorifics, its erasure of transgender people from the EEOC's materials, and its efforts to block transgender complainants from obtaining the EEOC's services contributed to harassment. The court found that this conduct – in the form of policy directives and administrative decisions – can constitute harassment. The court recognized that the following actions can be sufficiently severe or pervasive:

- Excluding sexual orientation and gender identity from workplace harassment policies.
- Dismantling employee resource groups.
- Removing references to an employee's protected groups from company materials.
- Removing an employee's ability to identify his pronouns in internal communications.
- Excluding access to bathrooms consistent with gender identity.

The lesson is that alleged harassment is not confined to an insult from a coworker or supervisor; institutional actions may contribute to creating a hostile environment.

Where the EEOC Currently Stands

Over the last two years, the EEOC has taken a pointed shift away from prior enforcement of claims involving discrimination based on gender identity or sexual orientation.

On January 22, 2026, the EEOC voted to rescind its 2024 Enforcement Guidance on Harassment in the Workplace (https://www.naacpldf.org/wp-content/uploads/Enforcement-Guidance-on-Harassment-in-the-Workplace.pdf), withdrawing the entire document and all its illustrative examples of prohibited harassment on the basis of race, color, religion, sex, etc. The harassment guidance had stated that harassing conduct based on sexual orientation or gender identity includes conduct such as epithets, physical assault, outing (disclosing an individual's sexual orientation or gender identity without permission), harassing conduct based on sex-stereotypes, repeated and intentional use of the incorrect name or pronoun, and denying access to a bathroom or other sex-segregated facility consistent with the individual's gender identity.

The EEOC has also shifted its litigation, charge-processing, and federal-sector positions. It has withdrawn from affirmative litigation advancing claims of discrimination based on gender identity, deprioritized private-sector charges asserting these claims, and issued decisions affecting the rights of federal employees that align the agency's position with executive orders that seek to deny the existence of transgender people. Together, these actions seek to dismantle federal agency guidance on LGBTQ+ workplace protections.

But withdrawing nonbinding guidance or changing administrative prosecution does not repeal Title VII or reverse Supreme Court precedent. The law has not changed, and changes in federal priorities do not undermine legal protections.

Next Steps: Review Protections Before Removing Them

A reflexive rollback is a prescription for liability. In evaluating workplace policies and decisions, employers should consider:

- Keeping clear protections. Retain policies that prohibit discrimination and harassment because of sexual orientation and gender identity.
- Evaluating proposed changes in context. Assess how workplace facilities, communication systems, employment benefits and resource-group decisions affect employees in practice.
- Investigating patterns. Consider the impact of institution-wide conduct on the workforce.
- Identifying applicable legal standards. Review state and local requirements and monitor relevant court decisions rather than relying exclusively on federal administrative guidance.

While the EEOC's regulatory actions change a guiding resource, they do not eliminate LGBTQ+ employee rights. *Seawright* reinforces the need to examine both individual conduct and institutional choices. Employers should make respectful treatment the operational baseline.

Andrew Adelman (https://www.jgllaw.com/attorney/andrew-adelman/) *is a Principal at Joseph Greenwald & Laake whose practice is dedicated to advocating for the rights of employees. He regularly represents employees and individuals in discrimination, retaliation and whistleblower cases and successfully represents LGBTQ+ individuals facing discrimination in employment, healthcare and public accommodations. He can be reached at aadelman@jgllaw.com* (mailto:aadelman@jgllaw.com).

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