Checklist: What HR Should to Do After EEOC Rescinded Its Harassment Guidance

The U.S. Equal Employment Opportunity Commission (EEOC) rescinded its 2024 harassment guidance in early 2026, an action that reflects shifting federal enforcement priorities. The EEOC's action does not alter an employer's obligations to maintain harassment free workplaces under federal anti-discrimination laws. However, the rescission draws into question an employer's obligations with respect to prohibiting harassment based upon an individual's gender identity.

Federally, there are several laws that govern anti-discrimination and harassment prevention obligations of employers that are enforced by the EEOC. These include Title VII of the Civil Rights Act of 1964, which prohibits workplace discrimination based on race, color, sex (including pregnancy, sexual orientation and gender identity), religion, and national origin; the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Pregnant Workers Fairness Act, the Genetic Information Nondiscrimination Act, and the Equal Pay Act.

It is important to emphasize that the rescission of the guidance does not lessen employer obligations to prevent harassment based on protected status, nor does it prevent a person from bringing a harassment lawsuit.

HR leaders should carefully review existing workplace policies and procedures to ensure they comply with EEO laws and that they take sound actions to prohibit discriminatory and harassing conduct, including addressing language that addresses pronouns and bathroom usage. Below is a checklist of actions for HR professionals to consider.

Review Existing Policies

Audit your existing anti-harassment, anti-discrimination, or other related policies, as well as any codes of conduct, to ensure they remain compliant.

- ❑ **Inventory existing policies:** List all anti-harassment, equal employment opportunity, and disciplinary policies, including employee handbooks, training materials, and internal communications.
- ❑ **Locate relevant language**: Highlight language on pronoun use and bathroom access to discuss with counsel.

Review Relevant Federal, State, and Local Laws

Your policies should reflect applicable federal, state, and local protections and requirements.

- ❑ **Compare to relevant laws:** Ensure policies align with EEO laws such as Title VII — which includes prohibiting discrimination based on sexual orientation and gender identity as part of sex discrimination, per the U.S. Supreme Court's ruling in *Bostock vs. Clayton County* — and other applicable laws. If your existing policies included examples based on those included in the rescinded guidance, consider revising or removing those examples.
- ❑ **Check state and local statutes:** Research whether your state or locality has laws that specifically address discrimination beyond federal protections. Two dozen states and the District of Columbia maintain anti-discrimination statutes that expressly prohibit discrimination and harassment based on sexual orientation (with most of those states also prohibiting discrimination and harassment based on gender identity). Some cities have laws as well: For example, the city of Charlotte, North Carolina passed an ordinance in 2021 that prohibits gender identity discrimination in all employment.
- ❑ **Use the Multi-State Comparison Tool:** SHRM's Multistate Law Comparison Tool can help you determine the specific laws where your organization is located.
- ❑ **Tailor policies:** Work with legal counsel to adapt policies to meet the most stringent requirements across the jurisdictions where your organization operates.

What To Do About Pronouns and Bathrooms

The 2024 EEOC harassment guidance includes harassment examples around desired pronouns and bathroom use that coincide with gender identity.

- ❑ **Review pronoun-specific language:** Because some faith-based challenges to pronoun use have been the subject of litigation, employers should carefully consider how to address pronoun use in their policies. For instance, employers should ensure that they put in place a reasonable accommodation process for religious objectors.
- ❑ **Assess bathroom facilities:** Because the Supreme Court has not directly weighed in on whether it is discrimination to deny someone access to a bathroom associated with their gender identity or expression, a policy that requires such access could be subject to a court challenge under federal and some state anti-discrimination laws. That said, a policy that does not allow such access could also be subject to court challenge. Given the state

of flux, employers should work closely with counsel to ensure they have in place a reasonable accommodation process intended to allow individuals to use the restroom where they feel most comfortable based on their religion and/or gender identity/expression.

Policy Analysis and Revision

- ❑ **Consult with legal:** Review proposed changes with employment law experts to ensure compliance. Ask legal counsel for input on any examples you wish to include in your anti-harassment or anti-discrimination policies.
- ❑ **Remove/revise references:**
  - Delete or update any language flagged by counsel.
- ❑ **Review gender identity provisions:**
  - Ensure language is neutral, respectful, and compliant with current federal, state, and local laws.
- ❑ **Ensure policy accessibility:** Any rewrites should ensure policies are easily accessible to all employees and written in clear, understandable language.

What To Keep Doing

The EEOC's recission of the harassment guidance does not lessen employer obligations under federal, state, and local equal employment opportunity laws. Employers must still address conduct that violates these laws and may need to do so even before the conduct becomes actionable in order to create respectful workplaces and avoid liability for negligence.

So, what does HR have to go on in terms of what is sufficiently hostile or abusive to violate federal law? In 2026, Chair Lucas directed employers to the EEOC's 2019 amicus brief filed in an NLRB case, *General Motors LLC*, for good guidance as to what constitutes harassment in violation of Title VII. The brief cites the following factors as relevant circumstances:

- ❑ The frequency of the discriminatory conduct (though conduct can also be so severe that an isolated incident or a few incidents can create a hostile work environment).
- ❑ Its severity (some images and conduct are sufficiently severe that they can create a hostile work environment even if not pervasive).
- ❑ Whether it is physically threatening or humiliating or a one-time offensive utterance
- ❑ Whether it unreasonably interferes with an employee's work performance.
- ❑ The harasser's status (supervisory or co-worker).
- ❑ Whether the harassment occurs in the employee's presence or is learned of secondhand.

- ❑ Whether the harassment is directed at an individual.
- ❑ Whether it occurs in the presence of coworkers.
- ❑ The social context of the behaviors (note: Title VII does not grant leeway to employees who make racist or sexist comments because they have heated feelings about workplace matters).
- ❑ Whether outside of work conduct impacts the working environment.

Stakeholder Engagement and Communication

- ❑ **Notify leadership and staff:**
  - Communicate updates to executive leadership and managers.
  - Prepare talking points for HR and supervisors to address employee questions.
- ❑ **Update training materials:**
  - Revise EEO and anti-harassment training to reflect new policy language.
  - Remove references to rescinded guidance from slides, handouts, and e-learning modules.
  - Review training examples that are based on harassment examples cited in the rescinded guidance.

Focus on a Positive, Inclusive, and Respectful Work Environment

- ❑ **Promote inclusivity:** Promote inclusion in your organization by encouraging a culture of respect. Leaders should support a respectful, equal opportunity work environment and HR should reinforce those values in company communications, conduct policies, and other policies in the employee handbook.
- ❑ **Set conduct standards:** Structure codes of conduct to require treating all fellow employees with respect and dignity.

- ❑ **Encourage reporting:** Create a safe environment where employees feel comfortable reporting concerns without fear of retaliation.
- ❑ **Document procedures**: Thoroughly document complaint investigation procedures and ensure those procedures reflect current legal standards.

Monitor and Improve

- ❑ **Track EEOC activities:** Monitor EEOC announcements and enforcement priorities to anticipate potential changes. Subscribe to SHRM's Workplace Compliance newsletter to stay updated.

- ❑ **Schedule training:** Provide regular training for employees and managers on harassment prevention and compliance with federal laws. Use real-world examples to help employees understand their rights and responsibilities under Title VII. Ensure compliance with applicable state and local training requirements.