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The background of the slide is a photograph of a classical building facade, featuring tall, white columns and ornate architectural details. The image is slightly faded and serves as a backdrop for the text.

EEOC Civil Rights Enforcement in a Changing Landscape and its Impact on Workplace Harassment Investigations

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Agenda

- Introduction
- Political Shifts
- Changes in EEOC guidance in diversity, equity and inclusion
- Changes in EEOC guidance and enforcement regarding transgender discrimination
- The role of investigators
- Key takeaways

Primary Changes

- EEOC under prior administrations
- Leadership Overhaul & Executive Orders; Andrea Lucas – EEOC Acting Chair:
 - Root out “unlawful DEI-motivated race and sex discrimination”
 - Protect “American workers from anti-American national origin discrimination”
 - Defend the “biological and binary reality of sex, including women’s rights to single-sex spaces at work”
 - Protect workers from religious bias and harassment

Primary Changes

Trump Executive Order - “Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.”

- Recognizes only two sexes: male and female
- Distinguishes “sex” from “gender identity.”
- Directs federal agencies to revise terminology and documentation accordingly.

Primary Changes

- Eliminated the “X” gender marker from discrimination intake forms.
- Removed “Mx.” from prefix options.
- Revised “Know Your Rights” poster and other materials.
- Removed gender ideology content from EEOC websites and training materials, including EEOC Enforcement Guidance of 2024
- Attempted to rescind the 2024 Guidance and remove "sexual orientation" and "gender identity" as protected categories.

EEOC also scaled back DEI

Latest Change

- The EEOC will now discharge all complaints based solely on disparate impact, following an executive order from President Trump.
- EEOC will not investigate disparate impact claims.
- Workers can still pursue claims in court, but without EEOC support, the process becomes more burdensome.

- Today, we'll explore how these shifts affect your work as HR professionals and legal practitioners, and how you can adapt your policies, training, and investigative practices to remain compliant and effective in this changing landscape.

DEI Poll

Let's take a poll – who knows what DEI related discrimination is?

Can any of you provide examples of DEI programs at your agencies?

Changes Regarding Diversity, Equity and Inclusion

Trump Administration Executive Orders

- EO 14151- Ending Radical and Wasteful Government DEI Programs and Preferencing
- EO 14173- Ending Illegal Discrimination and Restoring Merit-Based Opportunity

Changes in EEOC Guidance Regarding DEI

- What You Should Know About DEI-Related Discrimination at Work

<https://www.eeoc.gov/wysk/what-you-should-know-about-dei-related-discrimination-work>

- What To Do If You Experience Discrimination Related to DEI at Work

<https://www.eeoc.gov/what-do-if-you-experience-discrimination-related-dei-work>

Changes in EEOC Guidance Regarding DEI

Highlights:

- DEI is a broad term not defined under Title VII
- DEI-related discrimination looks like "policies, programs, or practices may be unlawful if they involve employer taking an employment action motivated by an employee's race, sex, or another protected characteristic."
- Unlawful use of quotas or "balancing" a workforce by race, sex, or other protected traits

Changes in EEOC Guidance Regarding DEI

Highlights:

- DEI-Related Discrimination
 - o Exclusion from training
 - o Exclusion from mentoring or sponsorship programs
 - o Exclusion from fellowships
 - o Limiting membership in workplace groups, such as affinity groups, to certain groups
 - o DEI training may give rise to hostile work environment claim
 - o Reasonable opposition to DEI training may constitute protected activity

How Should Investigations Be Handled?

- Learn to identify potential DEI-related discrimination reports or claims from employees
- Treat the report just like any other employee complaint
- Treat reports or claims of discrimination against "majority" groups just as you would claims of discrimination against "minority" groups
- Investigate reports or claims just as you would any other

Changes in EEOC Guidance Regarding Transgender Discrimination & Their Impact on Workplace Investigations

- Executive Orders of the President of the United States ("EO's")
- Department of Justice ("DOJ") Memoranda
- What about federal law?
- What about California law?
- What should we do differently?

- "Initial Rescissions of Harmful Executive Orders and Actions", January 20, 2025 – Rescinded:
 - EO 13988 "Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation"
 - EO 14075 "Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals"
 - EO 14021 "Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity"
- EO 14168 "Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government"
- DOJ Memo dated July 29, 2025

- EEOC provides several pages with guidance relating to discrimination based on transgender status, but how those resources address the issue is inconsistent
- Examples:
 - "Prohibited Employment Policies/Practices"
 - <https://www.eeoc.gov/prohibited-employment-policiespractices>
 - "Sex-Based Discrimination"
 - <https://www.eeoc.gov/sex-based-discrimination>
 - "Enforcement Guidance on Harassment in the Workplace"
 - https://www.eeoc.gov/laws/guidance/enforcement-guidance-harassment-workplace#_Toc164808005
 - "What Is Employment Discrimination?"
 - [https://www.eeoc.gov/youth/what-employment-discrimination#:~:text=The%20laws%20enforced%20by%20EEOC,older\)%2C%20or%20genetic%20information](https://www.eeoc.gov/youth/what-employment-discrimination#:~:text=The%20laws%20enforced%20by%20EEOC,older)%2C%20or%20genetic%20information)

- As held by the United States Supreme Court in *Bostock v. Clayton Cnty., Georgia* (590 U.S. 644, 669 (2020)), discrimination and harassment based on transgender status still violates Title VII of the United States Civil Rights Act's prohibition on sex discrimination
- Ninth Circuit has followed this precedent
 - For example, in *Doe v. Snyder* (28 F.4th 103, 114 (9th Cir. 2022)), the Court cited *Bostock* for the proposition "firing a person based on his sexual orientation or transgender status is discrimination 'because of sex' in violation of Title VII."

What about California Law?

- The California Civil Rights Department ("CRD") still prohibits discrimination and harassment based on either gender expression or gender identity
- It is unlawful "to discriminate against anyone or treat them unequally because of their sexual orientation, gender identity, gender expression, or sex."
 - CRD LGBTQ Fact Sheet, September 2022



What Should We Do Differently?

- For now, not much
 - While guidance from the EEOC is now inconsistent, some guidance still prohibits discrimination based on transgender status
 - Federal case law still prohibits discrimination in employment based on transgender status
 - California state law, including guidance from the CRD, still prohibits discrimination based on gender identity or gender expression
- One key difference: Investigating Complaints of Retaliation
 - An employer cannot retaliate against an employee for complaining about or opposing conduct they "reasonably believe" is illegal under Title VII
 - That "reasonable belief" does **not** have to be correct
 - Previously, likely would have been unreasonable to believe transgender status was not a protected class in employment
 - But what might be a "reasonable belief" now?

The 2024 EEOC Guidance still provides workplace investigators with tools to:

- Conduct **legally sound investigations** that meet both federal and state standards.
- Document **good faith efforts** to prevent and address harassment, which can serve as a defense in litigation.
- Create **training programs** that reflect both current law and best practices.

1. Assess DEI Programs

- Review hiring, promotion, and workplace policies to ensure compliance with EEOC's new enforcement approach.
- Be aware of legal risks if DEI policies explicitly consider race or sex.

2. Review Workplace Policies & Training

- Consider updating training materials to reflect revised definitions of sex and gender.
- Monitor EEOC guidance on issues like transgender restroom use and accommodations under the **Pregnant Workers Fairness Act (PWFA)**.

As of now, abortion accommodation vacated: June 2025, Louisiana Federal Court struck down the EEOC's inclusion of elective abortion as a protected condition under the PWFA, stating the agency exceeded its authority.

3. Check Compliance with Posting Requirements

- Stay alert for updates to the **“Know Your Rights” poster**, which is legally required in workplaces.

4. Continue to investigate disparate impact claims, especially in AI-assisted hiring, to ensure fairness

What should employers do?

- **Invest in investigator training** that emphasizes legal standards, trauma-informed practices, and cultural competence.
- **Monitor political and legal developments** to anticipate changes in enforcement and adjust your compliance strategies accordingly.
- **Foster a culture of trust and transparency**, where employees feel safe reporting concerns and confident that their complaints will be taken seriously.
- **Beware** of quotas or targets. Remove any policies that use demographically based "diversity" goals, targets, or quotas, which could be perceived as discriminatory.
- **Reinforce** merit-based decisions. Use standardized, objective criteria based on skills, experience, and qualifications to make hiring and promotion decisions.

What should employers do?

- **Monitor guidance and court rulings.** Regularly monitor for changes to EEOC guidance, new court decisions, and shifting enforcement priorities from federal agencies.
- **Consult legal counsel.** Given the potential for shifting priorities, consulting with legal counsel on policies and procedures is a critical and proactive measure.
- **Prompt, thorough, and impartial investigations** are not just best practices—they are legal necessities. Investigators help organizations navigate uncertainty while maintaining trust, compliance and accountability.

An employee at a public agency emails their supervisor complaining they were excluded from an LGBTQIA+ leadership training program because they are not part of the designated “underrepresented group.” The HR Manager explains that the program is part of its broader DEI initiative to increase diversity in management roles. The employee claims this exclusion constitutes illegal discrimination.

What do you do?

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Thank you!

Questions?

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