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June 27, 2024

June Tip of the Month: Updated EEOC Guidance Enhances Gender Identity and Sexual Orientation Protections



On April 29, 2024, the Equal Employment Opportunity Commission (EEOC) issued its new *Enforcement Guidance on Harassment in the Workplace* (the Guidance), the first update to its Guidance in over 20 years. Among the many changes to the Guidance is the interpretation and incorporation of 2020 U.S. Supreme Court case *Bostock v. Clayton Cnty.*, which held that Title VII's prohibition on sex-based discrimination includes discrimination on the basis of sexual orientation and gender identity. For example, the Guidance now provides that the following conduct may be considered gender identity harassment: (1) "outing" the sexual orientation or gender identity of another employee without such employee's permission; (2) repeated and intentional use of a name or pronoun that is inconsistent with the individual's known gender identity; and (3) denying access to a restroom or other sex-segregated facility consistent with the individual's gender identity. The EEOC's updated Guidance is an important reminder for employers to revise their policies to account for gender identity and sexual orientation discrimination and harassment, and to train their employees on how to recognize and appropriately respond to such issues in the workplace.

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