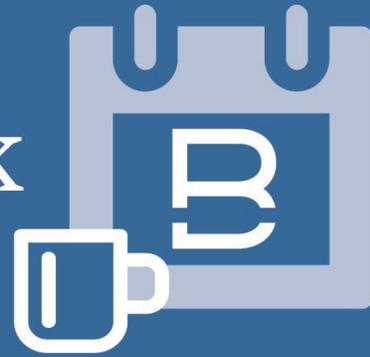


The Work Week

Bassford Remele Employment Practice Group



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Welcome to another edition of *The Work Week with Bassford Remele*. Each Monday, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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EEOC Rescinds Harassment Guidelines: What it Means for Employers

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The Equal Employment Opportunity Commission (“EEOC”) has quietly but dramatically shifted course on workplace harassment. In January 2026, the EEOC voted two-to-one to rescind its 2024 harassment guidance, which had updated prior advisement in response to the Supreme Court’s landmark decision in *Bostock v. Clayton County* (holding that Title VII protects employees against discrimination based on sexual orientation or gender identity), the MeToo era, remote work, and protections for LGBTQ-plus employees (especially transgender workers). The EEOC’s rescission of its 2024 harassment guidance narrows the agency’s interpretive framework, but it does not diminish employers’ core legal obligations under Title VII or applicable state non-discrimination statutes such as the Minnesota Human Rights Act. Employers now have a practical opportunity to use this development to reaffirm and modernize their compliance structures rather than to retrench.

The 2024 EEOC guidance had integrated the *Bostock* decision, MeToo-era standards, remote-work issues, and protections for LGBTQ-plus employees, with particular emphasis on gender identity, restroom access, and misgendering. A federal district court in Texas later vacated the gender identity portions, concluding that the EEOC had exceeded its statutory authority by expanding sex discrimination beyond a biological, binary concept. The EEOC’s January 2026 two-to-one vote to rescind the 2024 guidance, finalized at the Office of Management and Budget without notice and comment, formally withdraws that integrated framework but does not alter binding Supreme Court precedent or statutory text.

Despite this change at the EEOC level, several legal obligations remain unchanged. First, *Bostock* continues to hold that discrimination based on homosexuality or transgender status may

constitute discrimination because of gender under Title VII, and federal courts will still apply that reasoning in adjudicating hostile work environment and disparate treatment claims. Unless and until the United States Supreme Court overturns *Bostock* (which is a possibility given the construction and recent opinions of this Court), it remains good law. Second, the Minnesota Human Rights Act (“MHRA”)—Minnesota’s state non-discrimination statute applicable to private and public employers—is broader in scope than Title VII and expressly prohibits discrimination on the basis of sexual orientation, including gender identity and expression. Minnesota courts have historically construed the statute broadly in favor of remedial purposes. The EEOC’s internal choice to rescind guidance does not and cannot limit the Minnesota Department of Human Rights or state courts in enforcing MHRA standards. Likewise, many other states have state non-discrimination statutes that can provide employees with equal or greater protections than Title VII without implicating the Supremacy Clause of the U.S. Constitution and that employers must take into account. Third, the volume of harassment-related charges remains significant; more than 40% of EEOC charges in fiscal year 2024 included a harassment component, underscoring that exposure remains substantial regardless of federal guidance formatting.

Against that backdrop, employers can make several positive, legally grounded changes. They should consider conducting a comprehensive review of written policies, with particular focus on anti-harassment, equal employment opportunity, complaint procedures, and remote work or electronic communications provisions. Policies should be revised to reflect both Title VII as interpreted in *Bostock*, applicable EEOC non-discrimination guidance, and broader state law protections (including, for Minnesota employers, under the MHRA), and expressly identifying sexual orientation and gender identity as protected categories and clarifying that harassment based on those characteristics is prohibited.

Employers can also recalibrate training programs. Rather than scaling back, they can incorporate current federal case law, recent state case law, and practical examples involving gender identity, sexual orientation, remote communications, and social media. Training for managers and human resources personnel can emphasize their obligations to recognize complaints, even when framed informally, to avoid retaliatory conduct, and to initiate prompt, impartial investigations.

Multi-state employers can also use the rescission as an inflection point to harmonize policies upward rather than downward. By adopting procedures compliant with the most stringent state law standard applicable to the employer, the company can reduce the risk of a patchwork regime and avoid the perception that policies were relaxed in response to a politically driven federal shift.

In short, the rescission changes the EEOC’s formal playbook, but not the core obligations for employers. The safest approach is to maintain robust, inclusive harassment prevention programs that are calibrated to both federal and state law, but that accounts for shifts in federal and state agency guidance.

At Bassford Remele, we actively track emerging and upcoming legislative developments in employment law, with particular attention to workplace policy shifts influenced by recent state

and federal regulatory changes. Feel free to reach out if you need assistance in this continually evolving landscape.

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