



LGBTQIA+ Rights and the Trump Administration

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Introductions



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Overview of LGBTQIA+ Rights

Some Important LGBTQIA+ Rights

- Marriage equality
 - The government cannot discriminate against married people because they're in a same-sex marriage.
 - *United States v. Windsor*, 570 U.S. 744 (2013)
 - Respect for Marriage Act (2022)
 - The government cannot deny people the right to marry.
 - *Obergefell v. Hodges*, 576 U.S. 644 (2015)
 - Marriage Equality Act (NY, 2011)
- Sexuality
 - The government cannot criminalize you for your sexuality.
 - *Lawrence v. Texas*, 539 U.S. 558 (2003)
 - *New York v. Onofre*, 51 N.Y.2d 476 (NY, 1980)

Some Important LGBTQIA+ Rights

- Employment discrimination
 - Employers cannot discriminate against LGBTQ employees, because that is sex discrimination.
 - Title VII of Civil Rights Act of 1964, as interpreted in *Bostock v. Clayton County*, 590 U.S. 644 (2020)
- Housing, education, and healthcare?
 - Fair Housing Act (1968)
 - Title IX of the Education Amendments of 1972
 - Affordable Care Act (2010)

New York Has Comprehensive Laws

- New York State Human Rights Law
 - Sexual Orientation Non-Discrimination Act (2002)
 - Gender Expression Non-Discrimination Act (2019)
- New York City Human Rights Law
 - Gay Rights Bill (1986)
 - Transgender Rights Bill (2002)
- Gender Recognition Act (2021)
- Trans Safe Haven Law (2023)
- Employment
- Housing
- Public accommodations
- Education
- Government
- Name and gender marker on IDs and records; pronoun use
- Healthcare
 - Including “shield” protections



Summary of Recent Attacks on LGBTQIA+ Rights

Rights Are Under Attack

- Attacks on LGBTQIA+ rights are part of a larger federal attack on rights
 - President seeks to condition all Americans' actions on his personal approval
 - Paul Weiss, CBS, Harvard
 - Deporting U.S. citizens; deporting legal U.S. residents whose speech he dislikes
 - Tik-Tok ("A lot of people want it and it's up to me")
 - President is above the law
 - *Trump v. United States*, 603 U.S. 593 (2024)
 - Failure of impeachment
 - Congressional inaction in the face of lawlessness
 - Attacks on judicial independence
 - Administration disobedience of court orders and threats against judges
 - Big Beautiful Bill Act limits contempt
- There will be no federal rights if there are no limits on Presidential power
 - *J.G.G. v. Trump* (deportation); *CASA, Inc. v. Trump* (citizenship)

Specific Attacks on LGBTQIA+ Rights

- Focus is particularly on transgender people
 - Attacks on healthcare
 - Threats to prosecute healthcare providers who provide lawful care
 - Trans military ban
 - Attempts to erase trans people from existence
 - Executive orders
 - Action on IDs and records
 - Rollback of state and federal anti-discrimination protections
- Focus is also on Supreme Court decisions
 - *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022) ended the right to abortion. Its reasoning arguably applies to marriage and sexuality and could be used to overrule *Obergefell*, *Lawrence*, and other “substantive due process” decisions.
 - Attempts to limit *Bostock* to firing only

Specific Attacks on LGBTQIA+ Rights

- Focus is also on ending free speech protections for LGBTQIA+ people
 - “Don’t say gay”
 - *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 584 U.S. 617 (2018)
 - *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023)
 - Obscenity laws
- Focus is also on making new rules
 - Ending anti-discrimination protections in all federal laws
 - Fair Housing Act
 - Title IX
 - Affordable Care Act
- And more! It’s all in Project 2025.

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Immigration

Erasure of Transgender/GNC Identities on Immigration Documents

Executive Order: ‘DEFENDING WOMEN FROM GENDER IDEOLOGY EXTREMISM AND RESTORING BIOLOGICAL TRUTH TO THE FEDERAL GOVERNMENT’

- “every agency and all Federal employees acting in an official capacity on behalf of their agency shall use the term “sex” and not “gender” in all applicable Federal policies and documents.”
- “Sex” shall refer to an individual’s immutable biological classification as either male or female. “Sex” is not a synonym for and does not include the concept of “gender identity.”
- Immigration forms now interpret sex as “male or female as provided on your birth certificate issued at the time of birth or issued closest to the time of birth”
- Directive to hold transgender women in male-only detention facilities
- *Transgender L. Ctr. et al. v. Immigr. & Customs Enf’t*, 2025 WL 604949 (D.D.C. Feb. 25, 2025)

Attacks on LGBTQIA+ Immigrant Rights

- New policy mandating that denied applications for humanitarian immigration relief (visas for trafficking, crime, and domestic violence survivors) with U.S. Citizenship and Immigration Services must be referred to Immigration Court to initiate removal proceedings
- Ramped Up Immigration Detention and Expedited Removal
 - *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025)
- Raids at Immigration Court
- Crackdowns on trans asylum-seekers engaging in survival sex work - Roosevelt Ave raid in Jackson Heights

Asylum Restrictions

- Circumvention of Lawful Pathways Rule - restricting asylum especially to LGBTQIA+ individuals fleeing persecution
- Removal of LGBTQIA+ issues from asylum officer training guides and State Dept. human rights reports
- Efforts to curtail employment authorization to asylum-seekers, especially harms LGBTQIA+ individuals facing marginalization and employment discrimination
- Pre-Termination of Asylum Applications
 - *Matter of C-A-R-R-*, 29 I&N Dec. 13 (BIA 2025)
- Halt on processing permanent residence applications for asylees

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Key Considerations for Employers in light of Recent Developments

Employer Concerns

- Executive Orders and the Administration
- EEOC Guidelines
- Restroom Issues
- Pronouns & Misgendering
- Religious Objections
- DEI policies
- Preemption of Federal and State Laws
- Other Topics in the News

Executive Orders Impacting Employers

- EO 14173: Ending Illegal Discrimination and Restoring Merit-Based Opportunity
 - *Directly impact federal government, contracts, and grants but indirectly impact private employers through directives to enforcement agencies*
 - *Among other directives, charges the EEOC with ending “discriminatory” DEI programs as a priority*
- EO 14168: Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government
- EO 14201: Keeping Men Out of Women’s Sports
- EO 14190: Ending Radical Indoctrination in K-12 Schooling

EEOC Guidelines

- Acting Chair Andrea Lucas announced an EEOC priority will be to “root out unlawful DEI-motivated race and sex discrimination” during her tenure, as well as to protect American workers from “anti-American national origin discrimination.”
- The EEOC will look to impose protocols that there is a biological and binary reality of sex and related rights, including women’s rights to single-sex spaces, and seek to protect workers from religious bias and harassment.
- On 2.14.25, the EEOC moved to dismiss 6 cases brought on behalf of workers who raised sex-based discrimination claims on the basis of gender identity or sexual orientation.

Attorney General Memo

- On May 19, 2025, the Deputy AG issued a memo discussing the new Civil Rights Fraud Initiative. This memo launches the initiative that will investigate and pursue claims against recipients of federal funds that “knowingly violate federal civil rights laws.”
- In defining what conduct may be a violation, the Memo states that “a university that accepts federal funds could violate the False Claims Act when it encourages antisemitism, refuses to protect Jewish students, allows men to intrude into women's bathrooms, or requires women to compete against men in athletic competitions.”
- The Memo adds enforcement mechanisms to many of the administration’s EOs.

Texas, et al. v. EEOC, N.D. Tex., May 15, 2025

- On May 15, 2025, a Texas federal court ruled the Biden-EEOC's expansion of the definition of "sex" in its [Enforcement Guidance on Harassment in the Workplace](#) was contrary to law and that the EEOC exceeded its statutory authority by expanding the definition of sex under Title VII "beyond the biological binary."
- The EEOC guidance at issue said that harassing conduct under Title VII includes "denial of access to a bathroom or other sex-segregated facility consistent with [an] individual's gender identity" and that harassing conduct includes "repeated and intentional use of a name or pronoun inconsistent with [an] individual's known gender identity."

Restroom Policy

- The Trump Administration is removing previous guidance from executive agencies and regulatory bodies regarding gender identity and gender expression. The administration and agencies are reviewing their issued policies and removing any guidance that informs employers how to protect or respect transgender or gender fluid employees, along with other LGBTQIA+ materials.
- Employers must consider the various obligations presented from both federal law and from state and local laws. If an employer operates in multiple municipalities across different States, ensure that you discuss issues that might arise regarding personal pronouns, restroom issues, and staff visiting different places with different protections.

Gender Identity and Misgendering

- Employers should review their self-identification practices, as well as their pronoun policies. At a minimum, these policies should not be mandatory.
- How employers request information regarding self-identification and requirements regarding pronouns requires a nuanced discussion, consistent with an organization's geography, priorities, and risk profile.
- Federal employees are no longer allowed to include their pronouns in their signature block.
- These executive orders do not yet affect, nor require, private employers—even those that contract with the federal government—to shutter their gender identity policies, training or other programs. But federal agencies are beginning to take issue with policies, training or programs that require others to accept anything other than biological sex with respect to pronouns and intimate spaces.

Recommendations in light of Recent Developments

- Continue to take harassment complaints concerning gender identity seriously.
- Anti-harassment training may continue to include gender identity but review to make sure it isn't too broad (i.e., requires allyship).
- Employers should anticipate more religious accommodation claims from those objecting to training, pronoun use, and restroom usage.
- Employers should also anticipate potential increases in whistleblower activity.

Religious Objections

- Anticipate an increase in requests for religious accommodations objecting to gender identity issues.
- The current standard for employers is *Groff v. DeJoy*, 600 U.S. 447 (2023). The holding in *Groff* states that employers **must accommodate an employee's sincerely held religious belief, practice or observance**, unless it creates an undue hardship.
- All requests for reasonable accommodations need to be considered and the employer is required to consider other reasonable alternatives if the requested accommodation poses an undue hardship:
 - Individuals may need to be excepted from certain trainings if they request such.
 - If an employee expresses an inability to call another employee or a third-party by their personal pronouns, employers can accommodate this by simply requesting that the individual not use any pronoun and instead use the individual's **name** or use **they/them** pronouns.
 - If a healthcare employee asserts a religious objection to providing gender affirming treatment, the employer should engage in a dialogue which attempts to accommodate the employee's sincerely held religious belief but also ensures that the patient receives the gender affirming care and is not disadvantaged in any way.

Is it still permissible to do DEI trainings?

- Be specific about what is being covered.
- Focus on compliance with workplace behavior policies and respect; NOT pressuring participants to adopt a particular viewpoint.
- Present topics as relating to compliance with Title VII and Equal Employment Opportunity principles.
- Avoid divisive topics, e.g., critical race theory, white privilege, oppression, etc.
- Avoid stereotypes and immediately address inappropriate comments by participants.
- Be prepared to engage in the interactive process if an employee raises a religious-based objection.

State and Federal Law Preemption

- Sexual Orientation or Gender Identity
 - 23 states & DC explicitly prohibit discrimination based on either category, while 1 state explicitly prohibits discrimination based on sexual orientation but not gender identity.
- Bathroom Access
 - 8 states have affirmative protections for an individual to use the sex-designated bathroom that aligns with their gender identity.
 - 29 states with no restrictions on bathroom usage based on sex assigned at birth.

EO 14168 May Preempt State Law

- A Presidential executive order has the force of federal law and can preempt state law. See *Mayes v. Biden*, 67 F. 4th 921, 939-42 (9th Cir. 2023) *overruled on other grounds*; *BNSF Ry. Co. v. Swanson*, 2024 U.S. Dist. LEXIS 234230, at *11 (D. Mont. Dec. 30, 2024).
- The Administration's forthcoming guidance will likely determine whether the EO is intended to nullify any gender identity-based theories of liability including at the state and local level.

What We Expect

- All employers
 - Increased investigations and plans for private employer compliance
 - Whistleblowers
 - More internal and external complaints
 - More requests for religious accommodations
 - Investigations a priority for EEOC
- Federal contractors and grantees at higher risk
 - Loss of funding
 - Contract enforcement

Challenges to the New Administration

***not a complete list*

- *US v. Skrmetti*
 - The Supreme Court heard oral arguments on December 4, 2024. The case brings a challenge to a Tennessee state law that bans employers from providing health benefits to employees seeking to cross state lines to obtain access to an abortion. We anticipate a decision shortly.
- [*Moe v. Trump, et al*](#) (D. Mass.); [*Jones v. Trump*](#) (D.D.C); [*Doe v. McHenry*](#) (D.D.C); [*Kingdom v. Trump*](#) (D.D.C);
 - Transgender women in federal prison sue to block the implementation of an EO mandating her transfer to a men's prison facility and end her gender-affirming care.
- [*Nicolas Talbott, et al. v. Donald Trump, et al.*](#) (D.D.C.); [*Shilling v. Trump*](#) (W.D. Wash.); [*Ireland v. Hegseth*](#) (D. N.J.)
 - Servicemembers in the Air Force and other facets of the military challenge the EO banning transgender individuals from serving in the military
- [*PFLAG, Inc. v. Trump*](#) (D. Md.); [*State of Washington et al. v. Donald J. Trump et al.*](#) (W.D. Wash)
 - Nonprofit organizations, three states, and physicians sued the Trump administration, challenging an executive order restricting gender-affirming care for individuals under 19.
- [*Orr v. Trump*](#) (D. Mass)
 - Transgender and nonbinary individuals sued the administration, challenging an executive order which restricts the sex designation on US passports to male or female based on "immutable biological factors at conception."

Recent Developments

- The US Supreme Court refused to hear an appeal from a public middle school student who said his free speech rights were violated when his principal barred him from wearing a T-shirt saying, “there are only two genders,” finding that the school’s decision was solid, because the school was concerned about the demeaning message that could disrupt the learning environment was solid.
- CO just expanded the state’s antidiscrimination laws and now protect transgender people from being “deadnamed” or misgendered in certain places.
- Nonprofits have urged a CA federal judge to block EOs targeting DEI because they are unconstitutionally vague under the 1st and 5th Amendments.

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Healthcare and Healthcare Benefits

Protections Against Healthcare Discrimination

- Title VII
 - *Obergefell*
 - Application to health benefits working its way through courts
- Affordable Care Act
 - Application to LGBTQIA+ status working its way through courts
 - Administration currently not enforcing
 - Rulemaking stayed in *Tennessee v. Becerra*, No. 1:24-cv-00161-LG-BWR
 - Statute still allows for private right of action
- Most states have anti-discrimination laws that provide at least as many protections as Title VII and ACA; many go beyond it
 - Check out Movement Advancement Project – <https://www.lgbtmap.org/>

Executive Orders

- Statements of presidential policy preference - don't change law
- Lawful implementation will take months or years
 - Notice and comment
 - Judicial review
- Currently being litigated
 - Preliminary injunctions in *Washington v. Trump*, 25-cv-127 (W.D. Wa. 2025) and *PFLAG v. Trump*, 25-cv-337 (D. Md. 2025).

Avoiding Over-Compliance

- Advance over-compliance just results in future further requests for compliance

“Do not obey in advance. Most of the power of authoritarianism is freely given. In times like these, individuals think ahead about what a more repressive government will want, and then offer themselves without being asked. A citizen who adapts in this way is teaching power what it can do.” -Timothy Snyder