

What Does the White House's Executive Order on Gender + New EEOC Acting Chair Mean for Employers? Five Key Takeaways

A Practical Guidance® Article by Sheila M. Abron, Leanne Lane Coyle, and Emily E. Town, Fisher & Phillips LLP



Sheila M. Abron
Fisher & Phillips LLP



Leanne Lane Coyle
Fisher & Phillips LLP



Emily E. Town
Fisher & Phillips LLP

A pair of back-to-back moves from the new Trump administration demonstrates a clear shift in the way the federal government will approach EEO and anti-bias laws over the course of the next several years. On his first day in office, President Trump issued an executive order announcing that the federal government will recognize only two sexes while rolling back Biden-era EEO workplace guidance on LGBTQ+ harassment. And the next day, Trump appointed EEOC Commissioner Andrea Lucas—a vocal critic of DEI programs and other Biden administration policies—

as Acting Chair of the Commission. What do you need to know about these actions, and what are the five key takeaways for your workplace?

“Gender Ideology” Executive Order

Signed within hours after Trump took office, the executive order is officially titled, “[Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.](#)” It mandates that the federal government recognize only two biological sexes, male and female, as determined at conception. Among other things, the order:

- Directs all federal agencies to replace the term “gender” with “sex” in official documents
- Ensures that government-issued identification (like passports) reflect the biological sex assigned at birth
- Requires the Attorney General to guide federal agencies to reverse any policies that allowed gender-identity-based access to single-sex spaces (like bathrooms)
- Orders the EEOC, Department of Labor, and other agencies to “prioritize investigations and litigation to enforce the rights and freedoms identified” in the order—and—
- Rescinds a slew of Biden-era guidance documents, including the [2024 EEOC workplace harassment guidance](#) that, among other updates to its longstanding harassment guidance, incorporated the agency’s analysis of Title VII protections for LGBTQ+ workers based on the Supreme Court’s holding in [Bostock v. Clayton County](#).

Andrea Lucas as Acting EEOC Chair

Having served on the Commission since 2020, Andrea Lucas now occupies the role of Acting Chair according to [Trump's January 21 announcement](#). She made clear her position right off the bat: "In recent years, this agency has remained silent in the face of multiple forms of widespread, overt discrimination. Consistent with the President's Executive Orders and priorities, my priorities will include:

- Rooting out unlawful DEI-motivated race and sex discrimination
- Protecting American workers from anti-American national origin discrimination
- Defending the biological and binary reality of sex and related rights, including women's rights to single sex spaces at work
- Protecting workers from religious bias and harassment, including antisemitism –and–
- Remediating other areas of recent under-enforcement."

Lucas has twice been a dissenting voice against EEOC actions that helped shape the last several years of workplace law:

- [The EEOC workplace harassment guidance that focused on LGBTQ+ workers](#)–and–
- [The finalized rules regulating the Pregnant Worker Fairness Act \(PWFA\)](#)

The move installing Lucas into power doesn't change the fact that she will be outnumbered on the EEOC by Democratic appointees for the next two years. Commissioners serve five-year staggered terms, and the opportunity for Trump to completely shift the five-member leadership team to a Republican majority will not arrive until 2026. Until then, Democrats will retain majority voting power.

But that's not to say that Lucas will be without power. In conjunction with the Commission's General Counsel—a role that is expected to be filled by a Trump appointee in the near future—Lucas can help guide the EEOC on which kinds of lawsuits the agency will file and other procedural steps it will take.

What Do These Moves Mean for Employers? Five Key Takeaways

One: Stay Tuned for New EEO-1 and Other Government Forms

Under 2023 filing instructions, the EEO-1 form only provided binary options for reporting the sex of your employees—but allowed employers to voluntarily report non-binary employee demographic data in the comments section of the report. You should assume that will change for the next reporting year.

Two: A New Era of Gender Identity Discrimination?

Trump's executive order proclaims that "sex" is not a synonym for and does not include the concept of "gender identity." However, this stance runs counter to [the Supreme Court's Bostock ruling](#), which explicitly determined that "sex" as defined by Title VII includes "gender identity." The Court has tilted right since that 6-3 decision, however, so it's possible that the interpretation could change if the issue were teed up before SCOTUS in the future—which appears to be a distinct possibility. No doubt this issue will be the subject of frequent litigation in the coming months and years, but you should recognize that discrimination against transgender and non-binary/gender non-conforming people remains illegal under federal law.

Three: Expect Litigation Over Bathroom Access

Andrea Lucas has made clear her stance on gender-affirming bathroom access: "[Every female worker has privacy and safety rights that necessitate access to single-sex workplace bathrooms limited to biological women](#)," she said while voting against the EEOC's most recent workplace harassment guidance. And we know where the President stands given his executive order.

Practically speaking, employers could be between a rock and a hard place on this issue: do you permit transgender and non-binary/gender nonconforming employees to use the bathroom that aligns with gender identity and risk EEOC enforcement action, or prohibit such conduct in alignment with the executive order and risk gender discrimination claims in court?

Unfortunately, the Supreme Court decision discussed above specifically avoided the bathroom issue, saying it did "not purport to address bathrooms, locker rooms, or anything

else of the kind.” And Trump’s executive order requires the Department of Justice to “correct” misapplications of that SCOTUS decision. Which means we’ll be seeing lots of litigation over this issue—and perhaps a return trip to the Supreme Court.

Four: Religious Accommodation Requests May Need to Be Considered Anew

The EEOC’s most recent workplace harassment guidance said that employers did not need to grant religious accommodations to employees if the accommodations would create a hostile environment. For example, employers did not have to permit employees to deliberately misgender people because their religious beliefs ran counter to certain gender identity issues, or permit hostility towards LGBTQ+ workers because of an employee’s religiously held belief. But with the guidance now rescinded, the matter is sure to be tested out in litigation, as some employees may now claim their religious beliefs do not permit them to follow gender-identity or sexual orientation-related policies or practices.

Five: Longer Term: Expect the Pregnancy Accommodation Rules to Be Rescinded

The most controversial aspect of the [April 2024 PWFA rules](#) is the requirement that employers accommodate applicants and workers who need time off or other workplace modifications for an abortion procedure. Given that Lucas voted against the rules at the time because they would “[broaden the statute in ways that, in my view, cannot reasonably be reconciled with the text,](#)” we expect the Commission to rescind the PWFA rules shortly after Republicans assume control in 2026.

Want to Understand More About DEI?

Both the Trump executive order and Andrea Lucas’s nomination statement take an aggressive stance against corporate DEI programs. To understand how to respond to this development, read our recent Insight: [Trump Orders Feds to Combat “Illegal” Corporate DEI Programs: 5 Takeaways for Private-Sector Employers + What You Should Do Now.](#)

Conclusion

If you have any questions about these developments or how they may affect your business, please contact your Fisher Phillips attorney or the authors of this Insight. Visit our [New Administration Resource Center for Employers](#) to review all our thought leadership and practical resources, and make sure you are subscribed to [Fisher Phillips’ Insight System](#) to get the most up-to-date information.

Related Content

Resource Kits

- [Workplace Diversity, LGBTQ, and Racial and Social Justice Resource Kit](#)

Practice Notes

- [LGBTQ Protections and Best Practices under Title VII and the ADA](#)
- [LGBTQ Employment Law Compliance](#)
- [Sexual Orientation and Gender Identity and Expression Discrimination State Law Survey](#)

Sheila M. Abron, Partner, Fisher & Phillips LLP

Sheila Abron is a Partner in the Columbia office and Co-Chair of the Firm's Affirmative Action and Federal Contract Compliance Practice Group. She is committed to finding practical, real world solutions to her clients' employment law needs. She represents companies—large and small—as they navigate employment issues related to hiring, discipline, investigations, employment discrimination, unemployment, and other related issues. Sheila provides guidance to higher education institutions on Title IX Compliance and investigations. She has extensive experience providing compliance advice to federal contractors on affirmative action and OFCCP regulations and audits. Sheila also has extensive experience working on collective actions under the Fair Labor Standards Act (FLSA) and class actions under wage and hour state laws. Sheila also provides training for supervisors and managers on harassment, Equal Employment Opportunity (EEO) compliance, the Family Medical Leave Act, diversity and inclusion, and many other areas.

Sheila is involved in various professional and community activities. She is a past president of both the South Carolina Women Lawyers' Association (SCWLA) and the South Carolina Bar Young Lawyers (SCYLD) Division. She also serves on the Board of Directors for Columbia – Society for Human Resource Management (SHRM) and the board of the National Conference of Women's' Bar Associations. Sheila is active in the Richland County Bar, American Bar Association, and is a member of the Junior League of Columbia.

Prior to attending law school, Sheila was a member of store leadership for a Fortune 500 retail company, providing employee supervision and managing a variety of employee issues related to wage and hour, workers' compensation, discrimination issues, performance management, and other personnel issues.

Sheila is a 2019 recipient of the Silver Compleat lawyer Award from the University of South Carolina School of Law Alumni Association. This award recognizes alumni who have made significant contributions to the legal profession and who exemplify the highest standard of professional competence, ethics, and integrity.

She has also been named to the *Columbia Regional Business Report's* list of 2018 Women of Influence, *Columbia Business Monthly's* 2018 Best and Brightest 35 and Under, *Columbia Business Monthly's* Legal Elite of the Midlands in 2017 and the American Bar Association's On the Rise – Top 40 under 40 in 2018. She is also a 2018 South Carolina Super Lawyers – Rising Star and a 2019 recipient of the Leadership in the Law award. She was awarded the Johnathon Jasper Wright Award by The Honorable Matthew J. Perry Chapter of the Black Law Students Association at the University of South Carolina School of Law, is a three-time recipient of the President's Award and a four-time recipient of the Start of the Quarter award from the South Carolina Bar Young Lawyers' Division.

Leanne Lane Coyle, Associate, Fisher & Phillips LLP

Leanne Lane Coyle is a trusted advisor to employers, providing practical guidance on a wide range of workplace issues and defending businesses in employment-related disputes.

Leanne represents employers in litigation and administrative proceedings involving claims of discrimination, harassment, retaliation, wrongful termination, and wage and hour disputes. She has experience defending clients in federal and state courts, arbitration, and before administrative agencies. Her litigation background allows her to offer proactive advice to employers, helping them mitigate risk and navigate complex workplace challenges before they escalate into legal disputes.

In addition to her litigation practice, Leanne serves as a practical strategist for her clients, providing guidance on hiring and terminations, performance management and employee discipline, accommodations, and leave management. She assists with drafting employment policies, handbooks, and agreements to ensure compliance with workplace laws and industry best practices. She conducts trainings for management and employees, with focus on fostering respectful workplace environments. Leanne also conducts wage and hour and pay audits to help employers address potential issues proactively, and supports businesses through reductions in force.

Leanne is an active speaker, frequently presenting on the latest legal developments and their real-world implications. She also serves as the FP Cares liaison for the Philadelphia office, coordinating community engagement initiatives and philanthropic efforts. Committed to giving back, Leanne dedicates time to volunteering and supporting local organizations.

Before joining Fisher Phillips, Leanne was an employment and labor litigation associate at an East Coast-based firm, where she represented clients across industries including healthcare, energy, municipalities, health information technology, and public transit.

Emily E. Town, Of Counsel, Fisher & Phillips LLP

Emily Town advises and represents employers in various workplace law matters, including litigation, contract and policy drafting, regulatory compliance, internal investigations and privacy. Her experience includes representing employers and labor unions in state and federal courts, before administrative agencies, and the National Labor Relations Board (NLRB).

Prior to joining Fisher Phillips, Emily worked in the Pittsburgh office of a national law firm where she represented employers in all phases of litigation.

Emily has been an adjunct professor of law at the University of Pittsburgh School of Law, helping students with practical trial advocacy skills in the Unemployment Compensation Practicum and providing an overview of workplace safety and labor law in Pitt's HR Law Online program.

This document from Practical Guidance®, a comprehensive resource providing insight from leading practitioners, is reproduced with the permission of LexisNexis®. Practical Guidance includes coverage of the topics critical to practicing attorneys. For more information or to sign up for a free trial, visit [lexisnexis.com/practical-guidance](https://www.lexisnexis.com/practical-guidance). Reproduction of this material, in any form, is specifically prohibited without written consent from LexisNexis.