



Pride Month is Here: Employer Resources for Supporting LGBTQ+ Workers and Staying Compliant All Year Long

Insights

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Federal employment protections for LGBTQ+ individuals have greatly expanded over the past four years. While the U.S. Equal Employment Opportunity Commission (EEOC) remains committed to preventing workplace discrimination based on sexual orientation or gender identity, this area of the law keeps evolving. You might feel overwhelmed or confused by rapidly changing and sometimes contradictory developments. But we're here to help. We've compiled a robust list of resources to help you create work environments that are diverse, inclusive, and legally compliant.

Protecting LGBTQ+ Workers From Discrimination & Harassment

Landmark Supreme Court Ruling

The modern approach to supporting LGBTQ+ workers begins with the Supreme Court's *Bostock* decision. In 2020, SCOTUS ruled that federal law prohibits employers from discriminating against employees based on their sexual orientation or transgender status. As a result, employers nationwide who are subject to the federal Title VII law must take proactive steps to protect LGBTQ+ employees from workplace discrimination – or risk facing a discrimination claim. [Click here for a full recap of *Bostock* and what it means for employers.](#)

Subsequent Agency Action

Since *Bostock*, the EEOC has been taking steps to expand workplace protections for LGBTQ+ individuals. In 2021, the EEOC developed resources and issued new guidance on sexual orientation and gender identity discrimination in the workplace. That guidance, for example, states that employers may not discriminate against an employee because they do not conform to sex-based stereotypes about traditional feminine or masculine behavior. [Here are five employer takeaways.](#)

Recent EEOC Guidance

Earlier this year, the EEOC released enforcement guidance that includes broad protections for LGBTQ+ workers and clarifies what may constitute harassment in the modern workplace. For example, the EEOC states that denying an employee access to a bathroom consistent with the individual's gender identity could support a workplace harassment claim under federal law. You

should consider refreshing your harassment-prevention policies, procedures, and trainings. [Read here for more about the guidance and what to expect next.](#)

Recent Federal Court Ruling in Favor of Transgender Employee Seeking Health Benefits

A federal appeals court recently held an employer liable under Title VII because its health insurance plan excluded coverage for gender-affirming care and the court found that this exclusion was based on transgender status. [Here's what employers and health plans need to know about the decision.](#)

Check State and Local Laws

Many states and localities have anti-discrimination laws that vary in scope from federal law. Title VII's LGBTQ+ protections apply nationwide regardless of state or local law. But you will need to determine whether your business is subject to any state or local laws that provide broader workplace protections than those provided in Title VII. And if Title VII does not apply to you because you have fewer than 15 employees, you could potentially be subject to state or local anti-discrimination laws that have a lower employee threshold.

Making Your Workplace a Safe and Supportive Place for LGBTQ+ Employees

Enhance Your DEI Efforts

Diversity, equity, and inclusion (DEI) efforts can benefit underrepresented groups of individuals as well as your business. [Here's a six-step guide to utilizing DEI to grow your workforce.](#)

Foster a Diverse and Inclusive Work Environment

It remains more important than ever for employers to take appropriate steps to create and sustain a diverse and inclusive work environment, including protecting LGBTQ+ employees from discrimination and harassment. Last year, the EEOC filed a lawsuit ([which ultimately settled](#)) against a New York restaurant, claiming that the employer subjected a former employee to a hostile work environment based on his transgender status. [Learn more about the first-of-its-kind lawsuit and three best practices for creating an inclusive work environment.](#)

Use Employees' Requested Pronouns

The EEOC takes the position that intentionally and repeatedly using the wrong pronouns to refer to LGBTQ+ employees may support an actionable Title VII claim. By referring to employees by their preferred names and gender pronouns, you can reduce your risk of discrimination claims and help advance a culture where employees are treated with dignity and respect. [Here are three best practices for employers.](#)

Create a Plan for Supporting Transitioning Employees

As workplace policies and protections expand, transgender employees may feel more comfortable being their authentic selves at work. If you know that an employee is going through a gender transition, consider developing a plan that focuses on communication, education, and accommodation. [Check out this employer guide on gender transitioning in the workplace.](#)

Don't Forget About Federal Protections for Same-Sex Marriage

In 2022, President Biden signed the Respect for Marriage Act into law, strengthening protections for same-sex couples by essentially codifying [SCOTUS precedent](#). You must ensure that your workplace policies and benefit plan eligibility requirements align with current federal law and that your employees are trained on the same. [Learn more about the Respect for Marriage Act and its impact on the workplace.](#)

Support Your LGBTQ+ Employees on International Business Trips

More than 60 countries still criminalize same-sex relationships. You should take proactive steps to support your LGBTQ+ workers during the travel planning process and while they're away. [Here are five tips for creating an inclusive and safety-focused travel program.](#)

Conclusion

We will continue to monitor any developments, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information directly to your inbox. To learn more about how can create a work environment that is inclusive and legally compliant, please contact your Fisher Phillips attorney or the authors of this Insight.

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