

EEOC to Resume Processing Some Gender Identity Charges of Discrimination, by Keith J. Gutstein, Esq. and Benny Menaged, Esq., 8-7-2025

The United States Equal Employment Opportunity Commission (EEOC) has announced that it will resume processing some charges of discrimination filed by transgender workers.

Background

In January 2025, following an Executive Order by President Trump that stated that “it is the policy of the United States to recognize two sexes, male and female,” the EEOC halted the processing of all charges of discrimination and lawsuits it was involved in related to gender identity/transgender discrimination. This represented a reversal of policy where the EEOC sought to enforce discrimination complaints made by transgender workers. This enforcement approach was ultimately affirmed by the U.S. Supreme Court in its 2020 decision, *Bostock v. Clayton County*, which affirmed that gender identity discrimination was illegal.

Notwithstanding, in a July 2025 email to EEOC leadership, the EEOC’s Director of Office of Field Programs stated that the EEOC will resume processing some discrimination complaints that “fall squarely” within the Supreme Court’s Bostock holding — specifically those complaints involving “hiring, discharge or promotion.” Notably, this new guidance omits harassment complaints made by transgender employees.

Still, even with this shift, charges of discrimination by transgender workers will continue to face heightened scrutiny. All gender identity-related complaints will require approval by EEOC Chair, Andrea Lucas, who has previously stated that one of her priorities is to “defend the biological and binary reality of sex.” Ms. Lucas was confirmed to her position by the U.S. Senate on July 31, 2025, but had been serving as Acting Chair since the early days of the Trump Administration.

What This Means for Employers

While there is still uncertainty as to how the EEOC will treat complaints of discrimination made by transgender workers, employers are still advised to maintain compliant policies and practices related to transgender employees, particularly as regulations in many state and local jurisdictions prohibit such forms of discrimination.

Even if the EEOC does not process the charge or will not proceed to file its own lawsuit based on transgender discrimination, they will likely still issue Notices of Right to Sue for all transgender complaints. This means transgender workers can still sue their employers under Title VII regardless of how the EEOC proceeds with the administrative process of their claim. Further, courts are still bound by the *Bostock* precedent, which bars discrimination against transgender workers.

State Law Protections Remain Intact

As referenced above, many states, including New York, California, and Illinois have state civil rights laws that continue banning discrimination based on gender identity. As a result, transgender workers in these states would still be allowed to sue their employers for discrimination regardless of the EEOC’s current policies.

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