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Legislative Update

The Defending Women Executive Order Presents Potential Clash Between Federal and State Antidiscrimination Law

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Introduction:

On January 20, 2025, President Donald Trump issued an executive order titled “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government” (Defending Women EO). The Defending Women EO seeks to cement President Trump’s interpretation that “women are biologically female, and men are biologically male,” including by offering protections to private sector employees who express such sentiment, and by directing the federal Equal Employment Opportunity Commission (EEOC) to rescind contrary enforcement guidance. How the Defending Women EO will ultimately interact with state efforts to recognize and protect transgender rights, remains uncertain. For now, the most immediate impact will be at the federal regulatory level. Private employers should understand how this order will scale back some federal regulatory guidance, including from the EEOC.

Key Elements of the Defending Women EO

The stated purpose of the executive order is to “defend women’s rights and protect freedom of conscience by using clear and accurate language and policies that recognize women are biologically female, and men are biologically male.”

Of most relevance to private sector employers, the Defending Women EO directs:

1. The U.S. attorney general to issue guidance ensuring the freedom to express the binary nature of sex and the right to single-sex spaces in workplaces is covered by the Civil Rights Act of 1964.
2. Relevant agency heads, including the chair of the EEOC, to prioritize investigations and litigations necessary to enforce the freedom of employees to voice that sex is binary.
3. The EEOC to rescind parts of its “[Enforcement Guidance on Harassment in the Workplace](#)” (April 29, 2024) that are inconsistent with the order or the U.S. attorney general’s to-be-issued guidance.

As to this last point:

- The EEOC previously issued enforcement guidance following the U.S. Supreme Court’s 2020 decision in *Bostock v. Clayton County*, which determined that Title VII protects workers from discrimination based on their gender identity or sexual orientation.

- The EEOC made clear in its subsequent enforcement guidance that sex-based harassment includes harassment based on gender identity and expression, including the repeated and intentional use of the wrong pronoun or harassing conduct directed at an individual who does not present in a manner that would stereotypically be associated with that person's sex.
- The guidance noted that, while *Bostock* concerned a discriminatory discharge, the Supreme Court's reasoning should extend to claims of harassment.

Impact to Employers and Next Steps

Immediately, the Defending Women EO does not require any action by private employers. The order directs the U.S. attorney general to issue guidance, but the timing and specific contents of that guidance are difficult to predict.

The order further directs the EEOC to "promptly" rescind its prior enforcement guidance on harassment. However, to do so, requires the EEOC to have a quorum, which it presently does not have. Two of the three Democratic EEOC commissioners were released; two of the three Republican commissioner positions remain vacant. At present, no nominees for the vacant EEOC commissioner positions have been identified.

Setting aside timing, just as the EEOC's prior guidance did not have the force of law (as the guidance itself acknowledges), its rescission, too, will have no legal effect. That said, the Defending Women EO does articulate the formal position of the federal government. Thus, employers should consider to what extent their practices or policies will be impacted by this federal regulatory change, if at all, and to what extent they have conflicting state obligations.

We are here to support and collaborate with employers as they navigate the challenges posed by the Defending Women EO, the Ending Illegal Discrimination executive order (client alert [here](#)) and the evolving employment landscape.



If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

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