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Title VII Protects Transgender Workers' Access to Restrooms

The Trump administration is using every lever of the federal government to limit the rights and opportunities of transgender people, under the guise of “protecting women.”¹ As part of this relentless campaign, the EEOC is weaponizing Title VII to attack the rights of transgender workers,² including their right to access facilities consistent with their gender identity.

For over a decade, the U.S. Equal Employment Opportunity Commission (“EEOC”) recognized in its federal sector decisions that transgender workers have the right to access bathrooms and other sex-segregated facilities consistent with their gender identity—a position that is consistent with the law and necessary to ensure equal employment opportunity for transgender workers. **But now, under the leadership of Chair Andrea Lucas, the EEOC has issued a federal sector decision reversing this longstanding position.**³

Despite the EEOC's harmful actions to undermine transgender workers' rights, federal law and Supreme Court precedent still protect workers from discrimination, including harassment, based on gender identity. Employers may risk liability if they follow this administration's lead and adopt a policy that bars transgender workers from using the restroom consistent with their gender identity. And workers should know that Title VII still protects their right to be free from discrimination, including harassment, based on gender identity. Attorneys and resources exist to support transgender workers in exercising their rights.

The Legal Network for Gender Equity connects workers facing sex discrimination, including discrimination based on sexual orientation and gender identity, with legal help. To be connected with attorneys who can provide free legal consultations, please complete the intake form [here](#).

Denying transgender workers access to bathrooms and other facilities based on gender identity is unlawful sex discrimination.

Title VII of the Civil Rights Act of 1964 protects the right of all workers to be free from discrimination based on sex, including the right to be free from workplace harassment. In *Bostock v. Clayton County*, the Supreme Court affirmed that Title VII's ban on sex-based discrimination applies to discrimination based on gender identity, because "discrimination based on ... transgender status necessarily entails discrimination based on sex."⁴ The Supreme Court has long recognized that Title VII's prohibition on sex-based discrimination includes sex-based harassment.⁵ Accordingly, lower courts have repeatedly affirmed that *Bostock's* reasoning protects transgender workers from sex-based harassment in the workplace.⁶

Federal courts have recognized that denying transgender people access to bathrooms or other facilities that align with their gender identity constitutes unlawful sex-based discrimination.⁷ For example, a court found that when a school district required a transgender school police officer to use only gender-neutral restrooms, the district discriminated against him by treating him differently from other similarly-situated workers based on his sex.⁸

Federal courts have also recognized that prohibiting transgender workers from using facilities consistent with their gender identity can contribute to a hostile work environment in violation of Title VII, which occurs when harassing conduct is so severe or pervasive that it alters the terms and conditions of employment. For example, a court found that there was evidence of a hostile work environment where a transgender woman, who worked as a cook at a restaurant, was "ridiculed and demeaned" when she tried to use the women's restroom, leading her to limit the amount of water she drank in order to reduce the need to use the restroom.⁹ In another case, a court found that a transgender woman working at a doughnut shop stated a claim of a hostile work environment where her employer prevented her from using the women's bathroom, along with other harassing conduct.¹⁰

The EEOC has long recognized in its federal sector decisions that transgender and nonbinary employees are entitled to all the protections afforded to other workers under Title VII. First, the EEOC held that Title VII's prohibition against sex discrimination includes gender identity discrimination in

its 2012 decision in *Macy v. Holder*.¹¹ And then, in 2015, the EEOC recognized that denying workers access to bathrooms and other sex-segregated facilities consistent with their gender identity is a form of sex-based discrimination. In its decision in *Lusardi v. Department of the Army*, the EEOC held that the Department of the Army discriminated against a transgender employee based on sex when it prevented her from using the common women's restroom because of her gender identity.¹² The EEOC also found that denying the employee access to the women's bathroom, combined with other harassing conduct, contributed to a hostile work environment.¹³ These long-standing decisions, issued by the EEOC in cases of discrimination brought by federal employees, "represent[] EEOC's official position on the matter decided" and have for over a decade.¹⁴ **But now, the EEOC is reversing course and adopting a position that directly contravenes federal case law.** The EEOC's February 2026 decision does not change the rights workers have under Title VII, but it makes clear that the EEOC is once again abandoning transgender workers, and it will make it harder for federal employees in particular to enforce their rights under the law.

Denying transgender workers access to bathrooms consistent with their gender identity can cause serious harms.

When transgender workers are denied access to bathrooms that align with their gender identity, they may be forced to use a bathroom that is inconsistent with their affirmed gender, a situation that can put them at heightened risk of harassment. Research shows that transgender people are more likely to be verbally harassed or excluded when they use a bathroom consistent with their sex assigned at birth, as compared to when they use a bathroom consistent with their gender identity. For example, 10.8% of transgender men who regularly used women's bathrooms experienced verbal harassment, as compared to 7.3% of transgender men who regularly used men's restrooms.¹⁵ To avoid such uncomfortable and potentially dangerous situations, transgender people may try to avoid using the bathroom at school, work, or in public places by limiting their food and water intake.¹⁶ Avoiding using the restroom can have serious physical consequences, including urinary tract infections and constipation, kidney stones and other kidney disease, and other health complications.¹⁷

In other instances, transgender workers are restricted to using only single-stall or gender-neutral bathrooms. These restrictions often force transgender workers to wait in long lines or travel long distances to use the restroom due to the limited number of single-stall or gender-neutral facilities, while their cisgender colleagues have readily available access to numerous restrooms—resulting in practical inconveniences and barriers, and further isolating and stigmatizing transgender workers.¹⁸

Trans-exclusionary facilities policies do not protect women and actually make women less safe.

EEOC Chair Lucas has falsely suggested that exclusionary bathroom policies are needed to protect cisgender women and comply with Title VII.¹⁹ She has gone so far as to encourage cisgender women to file discrimination charges if they see someone who they perceive to be transgender using women's bathrooms or other facilities in the workplace.²⁰ Lucas's suggestion is clearly contrary to the law: for more than two decades, federal courts have rejected the premise that the mere presence of a transgender person in a restroom, absent any severe or pervasive harassing conduct, creates a hostile work environment for other workers under Title VII.²¹ Her rhetoric is also dangerous. By falsely suggesting that the presence of transgender people poses a danger to women, comments like these encourage further harassment of transgender people and invite strict gender policing that puts all women, including cisgender women, at risk of greater sex-based scrutiny and harassment.

Exclusionary bathroom policies are not necessary to protect women's safety. Existing laws already prohibit various privacy and safety violations in all settings, including bathrooms and locker rooms. Moreover, numerous jurisdictions have had policies in place for years that protect the rights of transgender people to use restrooms consistent with their gender identity, without any increase in public safety risk or criminal incidents.²² The experiences of these jurisdictions, as well as empirical research, demonstrate that concerns about increased safety risks as a result of inclusive facilities policies are not supported by the evidence.²³

To the contrary, when employers adopt policies that prohibit transgender workers from using bathrooms that align with their gender identity, it actually makes all women, including cisgender women, less safe. These policies encourage colleagues, clients, and the public

to monitor access to bathrooms, inviting scrutiny and intrusive questioning of any woman who does not conform to gender expectations. This scrutiny can lead to confrontation and harassment of women based on their appearance. In 2025 alone, there were multiple documented incidents of cisgender women who were confronted in women's bathrooms because they were perceived to be transgender or too masculine.²⁴ For example, in Florida, a 6'4" cisgender woman working at a retail store was reportedly accosted by a male customer who followed her into the women's bathroom and yelled a slur for transgender people; she was fired a week later after reporting the harassment.²⁵

Conclusion

Denying transgender workers access to bathrooms and other facilities that align with their gender identity is discriminatory, unlawful, and harmful to transgender workers and women. The EEOC's recent actions, and the Chair's rhetoric, sow confusion about Title VII's protections, invite further abuse and harassment of transgender workers, and make it harder for workers to enforce their rights. But these actions do not change federal law, which continues to protect transgender workers from discrimination, including their right to use bathrooms and other facilities that align with their gender identity.

FOOTNOTES

- 1 See, e.g., Commissioner Andrea R. Lucas's Statement On EEOC Enforcement Guidance On Harassment In The Workplace, U.S. EQUAL EMP. OPPORTUNITY COMM'N, <https://www.eeoc.gov/commissioner-andrea-r-lucass-statement-eeoc-enforcement-guidance-harassment-workplace> (last visited Feb. 20, 2025).
- 2 See, e.g., Rebecca Klar & Khorri Atkinson, *Transgender Workers' Options Shrink With EEOC Shift*, Bloomberg Law (last updated Mar. 5, 2025), <https://news.bloomberglaw.com/daily-labor-report/transgender-workers-see-legal-options-shrink-with-eeoc-shift>; Claire Savage, *EEOC Instructs Staff to Sideline All New Transgender Discrimination Cases, Employees Say*, AP News (last updated Apr. 18, 2025), <https://apnews.com/article/transgender-discrimination-gender-civil-rights-88def3b2a735f09cb79d37fc1125b095>.
- 3 *Selina S. v. Dep't of the Army*, Appeal No. 2025003976 (Feb. 26, 2026) (federal sector appellate decision holding that "permits a federal agency employer to exclude employees, including trans-identifying employees, from opposite-sex facilities.").
- 4 *Bostock v. Clayton County*, 590 U.S. 644, 669 (2020).
- 5 *Meritor Sav. Bank FSB v. Vinson*, 477 U.S. 57, 64-66 (1986); *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 78, 80 (1998).
- 6 See, e.g., *Roberts v. Glenn Indus. Grp., Inc.*, 998 F.3d 111, 121 (4th Cir. 2021); *Doe v. City of Det.*, 3 F.4th 294, 300 n.1 (6th Cir. 2021).
- 7 See, e.g., *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 619 (4th Cir. 2020) (holding that Title IX prohibits a bathroom ban for a transgender student); *Whitaker ex rel. Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1049-50 (7th Cir. 2017) (holding that excluding a transgender student from using a bathroom consistent with his gender identity violates Title IX).
- 8 *Roberts v. Clark County School Dist.*, 215 F.Supp.3d 1001, 1016 (D. Nev. 2016); see also *Wedow v. City of Kansas City*, 442 F.3d 661, 667 (8th Cir. 2006) (holding that failure to provide female firefighters with adequate restroom and shower facilities constituted an adverse employment action for purposes of the firefighters' sex-based discrimination claims).
- 9 *Membreno v. Atlanta Rest. Partners*, 517 F. Supp. 3d 425, 431, 443 (D. Md. 2021).
- 10 *Doe v. Triangle Doughnuts, LLC*, 472 F. Supp. 3d 115, 129 (E.D. Penn. 2020).
- 11 See *Macy v. Holder*, EEOC Appeal No. 0120120821, 2012 WL 1435995 (Apr. 20, 2012).
- 12 *Lusardi v. Dep't of the Army*, EEOC Appeal No. 0120133395, 2015, WL 1607756 (Apr. 1, 2015).
- 13 *Id.*
- 14 *Appeals*, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMM'N, <https://www.eeoc.gov/federal-sector/appeals> (last visited Feb. 23, 2026)
- 15 JODY L. HERMAN ET AL., WILLIAMS INSTITUTE, SAFETY AND PRIVACY IN PUBLIC RESTROOMS AND OTHER GENDERED FACILITIES (Feb. 2025), <https://williamsinstitute.law.ucla.edu/publications/safety-in-restrooms-and-facilities/>.
- 16 See, e.g., SANDY E. JAMES ET AL., THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY, NAT'L CTR. FOR TRANSGENDER EQUALITY 153 (updated Dec. 2017), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf> (in a national survey of transgender people, over 30% reported that they avoided eating or drinking to reduce the need to use the public restrooms); *Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 523 (3rd Cir. 2018) (explaining that when people are denied access to restrooms that align with their gender identity, they may "avoid going to the bathroom by fasting, dehydrating, or otherwise forcing themselves not to use the restroom throughout the day," which can lead to health problems); *Membreno v. Atlanta Rest. Partners*, 517 F. Supp. 3d 425, 431 (D. Md. 2021) (plaintiff, a transgender woman working at a restaurant, was prohibited from using the women's restroom and "berated" when she did use it, leading her to avoid using the restroom and "limit the amount of water she drank while working.").
- 17 See, e.g., SANDY E. JAMES ET AL., THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY, NAT'L CTR. FOR TRANSGENDER EQUALITY 246 (updated Dec. 2017) <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>; Jody L. Herman, *Gendered Restrooms and Minority Stress: The Public Regulation of Gender and its Impact on Transgender People's Lives*, 19 J. PUB. MGMT. & SOC. POL'Y 71, 75 (2013).
- 18 See, e.g., Julie Moreau, "Laughed out of interviews": *Trans Workers Discuss Job Discrimination*, NBC News (Oct. 6, 2019, 2:22 PM), <https://www.nbcnews.com/feature/nbc-out/laughed-out-interviews-trans-workers-discuss-job-discrimination-n1063041>; Complaint, *Withdraw v. United States*, No. 1:25-4073 (filed Nov. 20, 2025), [2025-11-20-Complaint-dckt-1-0.pdf](https://www.courts.docket.org/cases/2025-11-20-Complaint-dckt-1-0.pdf) (a transgender employee in the Illinois National Guard had access to only one single-user restroom on the 160-acre campus where she worked, and her position required her to attend meetings and offsite visits where accessing a single-user restroom would take at least fifteen to twenty minutes).
- 19 Commissioner Andrea R. Lucas's Statement On EEOC Enforcement Guidance On Harassment In The Workplace, U.S. EQUAL EMP. OPPORTUNITY COMM'N, <https://www.eeoc.gov/commissioner-andrea-r-lucass-statement-eeoc-enforcement-guidance-harassment-workplace> (last visited Feb. 20, 2025).
- 20 Elizabeth Troutman Mitchell, *How Women Harmed by Men in Their Private Spaces Can Get Justice*, THE DAILY SIGNAL (Feb. 6, 2026), <https://www.dailysignal.com/2026/02/06/biology-is-not-bigotry-civil-rights-chief-urgeswomen-to-challenge-trans-policies/>; Letter from National Partnership for Women & Families and National Women's Law Center to EEOC Chair Andrea Lucas (Feb. 10, 2026), <https://nwl.org/wp-content/uploads/2026/02/NPWF-and-NWLC-letter-to-Chair-Lucas-2.10.26.pdf>.
- 21 See, e.g., *Cruzan v. Special Sch. Dist.*, No. 1, 294 F.3d 981, 984 (8th Cir. 2002) (rejecting a Title VII harassment claim where the plaintiff "[did] not assert [that a transgender colleague] engaged in any inappropriate conduct other than merely being present in the women's faculty restroom."); *Parents for Privacy v. Barr*, 949 F.3d 1210, 1217 (9th Cir. 2020) (finding that under Title IX, "The use of facilities for their intended purpose, without more, does not constitute an act of harassment simply because a person is transgender.").
- 22 MOVEMENT ADVANCEMENT PROJECT, STATE NONDISCRIMINATION LAWS: PUBLIC ACCOMMODATIONS, <https://www.lgbtmap.org/img/maps/citations-nondisc-public-accom.pdf>; Rachel Percelay, *Media Matters for America, 17 School Districts Debunk Right-Wing Lies About Protections for Transgender Students* (June 3, 2015), <https://www.mediamatters.org/sexualharassment-sexual-assault/17-school-districts-debunk-right-wing-liesabout-protections>; Lou Chibbaro Jr., *Predictions of Trans Bathroom Harassment Unfounded*, Washington Blade (Mar. 31, 2016), <https://www.washingtonblade.com/2016/03/31/predictions-of-trans-bathroom-harassment-unfounded>.
- 23 Amira Hasenbush et al., *Gender Identity Nondiscrimination Laws in Public Accommodations: A Review of Evidence Regarding Safety and Privacy in Public Restrooms, Locker Rooms, and Changing Rooms*, 16 SEXUALITY RSCH. AND SOC. POL'Y 70, 81 (July 23, 2018), https://escholarship.org/content/qt4rs4n6h0/qt4rs4n6h0_noSplash_8740e92d7f24b6c89dbd4bd4d27fbbcb.pdf.
- 24 See, e.g., Ryan Adamczeski, *Lesbian teen cornered by server in bathroom and forced to prove gender files charges*, ADVOCATE (Aug. 13, 2025), <https://www.advocate.com/news/minnesota-cisgender-girl-restaurant-bathroom>; Christopher Wiggins, *Cis woman confronted by police officers in Arizona Walmart restroom for looking too masculine speaks out*, ADVOCATE (Feb. 28, 2025), <https://www.advocate.com/news/lesbianmistaken-transgender-arizona-walmart>; Brandon Truitt, *Woman says security guard at Liberty Hotel in Boston confronted her in bathroom, asked to prove gender*, CBS News (May 7, 2025), <https://www.cbsnews.com/boston/news/womenboston-liberty-hotel-bathroom-gender>.
- 25 Daniel Wu, *Walmart fires woman who reported anti-trans threats from man in bathroom*, THE WASHINGTON POST (Mar. 27, 2025), <https://www.washingtonpost.com/>