

## Recent Anti LGBTQ+ Laws: Managers Should Adapt Policies

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*Recent law has placed management in a conundrum concerning LGBTQ+ employee civil rights. Established law has protected those employees from discrimination. Many employers have led the way to that end. Yet certain federal and state legal efforts now seek to roll back rights, expose liability, and loss to employers that continued to protect them. Management can honor both its obligations to employees and to the firm, by carefully redesigning policies and practices to avoid triggering concerns while still protecting the civil rights of all employees that the law has established.*

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### INTRODUCTION

Although progressive state and local laws began to protect LGBTQ+ civil rights more quickly (Gayly, 2019), the Supreme Court's affirmation took decades to achieve. The Court initially refused to find a Constitutional right of privacy when it affirmed a criminal conduct conviction of a gay couple. (*Bowers v. Hardwick*, 1986) Ten years later in 1996, and to the surprise for many, the Court sided with local governments right to provide status-based protections, in the face of a state's own constitutional amendment to the contrary. (*Romer v. Evans*, 1996). In 1998 the Court recognized same-sex harassment was actionable under Title VII of the Civil Rights. (*Oncale v Sundowner Offshore Services*, 1998) Then in 2003, it found a Constitutional right of privacy for gay sexual relations, reversing its view of 1986. (*Lawrence v Texas*, 2003) Thereafter, in a series of decisions, it ultimately solidified a Constitutional right to same-sex marriage, with all associated rights, and with full recognition throughout the country. (*Obergefell v. Hodges*, 2015) Still, employment rights for LGBTQ+ were yet to be addressed by the Court, though the Equal Opportunity Employment Commission already took the position, by various actions, that LGBTQ+ employees were protected. (Sperino, 2024)

### DISCUSSION

#### Equal Rights in the Workplace

In the landmark decision of *Bostock v. Clayton County* (2020), the Court finally addressed LGBTQ+ employment rights. It adopted the EEOC's position holding LGBTQ+ employees were protected from discrimination in the workplace by Title VII of the Civil Rights Act of 1964, finding such discrimination was "because of sex". While the Court's holding has been read narrowly by some to only address discriminatory termination, there is a strong argument for a broader reading that forbids all forms of workplace sex discrimination under Title VII, given that *Oncale*, the Court's 1998 case recognizing same

sex harassment, was cited as authority in the decision. So far no federal or state court has contradicted *Bostock*. However, in an era of renewed federal and state antagonism toward the LGBTQ+ community and particularly transgender individuals, employers are facing renewed conflicting signals when attempting to safeguard rights of LGBTQ+ employees and maintain a welcome, inclusive, and nondiscriminatory workplace that is fair to all.

### **LGBTQ+ Rights Have Popular Support**

Recent governmental efforts to reduce protection come at a time when more Americans than ever support the LGBTQ+ community. Rolling back LGBTQ+ rights to work have been particularly unpopular and lack support of the growing majority of firms and individuals in favor of full equal treatment of LGBTQ+ workers as a protected minority. This is buttressed by nearly every poll and survey taken on the point since the Court's *Bostock* decision, as well as subsequent judicial decisions, which strongly support equal treatment in the workplace. In the workplace, American workers are over four times more likely to work for an employer that supports LGBTQ+ workplace rights (Bloom, 2022). In fact, surveys show LGBTQ+ discrimination is now opposed by 80% of Americans. (Sullivan, 2025)

A year-long nationwide survey of U.S. employers taken in 2023-24 by LGBTQ+ advocate, Human Rights Campaign (HRC) found uncompromised business support in the workplace: "... [W]e saw extremists in opposition of LGBTQ+ equality, take aim at our corporate partners.... corporations rose to the challenge and continued their commitment to maintaining and improving upon their workplace environments to be inclusive of all employees." (HRC, 2024). Further, employer efforts to support LGBTQ+ workers were the highest recorded in the 20 years the HRC survey was conducted. Supportive efforts broadly include nondiscrimination policies, equitable benefits for LGBTQ+ employees and their families, an inclusive company culture, and efforts outside the workplace as an integral part of the firm's social responsibility. In 2002, only 13 major firms had a score of 100% for such efforts. But in 20 years since, 545 major companies achieved that perfect score. (HRC, 2024).

### **Regressive Measures Are Under Judicial Challenge**

#### *Executive Orders (EOs)*

The Trump administration has proven to be no friend to the LGBTQ+ community, issuing series of Executive Orders (EOs), in part to handicap gay and transgender rights. The latest Trump EO attempt to roll back civil rights laws, primarily in public employment, but are so broad in sweep that they can impact many private employers as well. At least nine are anti LGBTQ+ and all have been challenged in Federal Courts throughout the country.

Of those, three are aimed at eliminating Diversity, Equity and Inclusion programs, with substantive attacks on established LGBTQ+ civil rights. EO 14151, EO 14168, and EO 14173 direct an end to numerous legal protections for LGBTQ+ federal employees, private sector employees receiving federal funds, and nonprofits providing medical care and services. Included in the EO many declarations: that actionable sex discrimination be limited to two distinct biological sexes, that all reference to "gender" cease, an order directing the attorney general to reconsider whether to enforce *Bostock*, and that all support be eliminated for transgender individuals by all other funded organizations. The aim for these three EO has been characterized as an attempt to erase LGBTQ+ and especially transgender individuals from public life in the country. (ABA, 2025)

The EO are entirely inconsistent with *Bostock*'s rationale that LGBTQ+ workplace discrimination is indeed sex discrimination. The EEOC complied by rolling back its protection (Spiggle, 2025) and paused all enforcement efforts for pending gender identity discrimination cases. (Golden, 2025) However, the Commission subsequently announced it will resume processing cases, but on a selective basis. It will not do so for sexual harassment complaints, presumably because *Bostock* did not involve a harassment claim. That will be an issue for future litigation. However, the EEOC assures that it will continue to issue requisite right-to-sue letters for suits to be filed without its sponsorship. (Mark, 2025)

More than 19 federal court suits have been filed in response, contesting the legality of the EO on several constitutional grounds, (ABA, 2025) including *San Francisco AIDS Foundation v Trump* (2025),

filed against enforcement of all three EO's, where the court granted a preliminary injunction so to allow nine area plaintiff nonprofits to continue providing critical medical care to the LGBTQ+ community while the case proceeds and *Schiff v Office of Personnel Management* (2025), ordering a restoration of medical information to LGBTQ+ individuals on doctors websites deleted by the EO pending first amendment considerations.

Other EO's roll back protection for the LGBTQ+ community by imposing censorship on curriculum and withdrawing federal funds for K-12 schools that allow "gender ideology" (EO 14190), or that allow transgender female athletes to compete in girls and women sports teams (EO 14201), ban transgender individuals from serving in the military (EO 14183), and ban gender-affirming care to transgender youth (EO 14187).

#### *State Anti LGBTQ+ Measures*

Despite *Bostock*, more than 850 new bills in state legislatures to restrict equal LGBTQ+ rights have been filed in 2025 alone, most directed toward transgender individuals, concerning issues outside of the workplace. (Reed, 2025). Many measures mimic the Trump EO's by attempting to restrict transgender health care and Medicaid coverage. Others seek to censor discussion of LGBTQ+ topics in schools, nullify protection from bullying, or ban transgender girls from school sports. Several of these measures have been successfully challenged in court, but more litigation is forthcoming. Though the vast majority of these healthcare and education laws do not effect most employers, they negatively impact the LGBTQ+ community, and therefore indirectly the workplace. (Pappy, 2024).

## MANAGEMENT IMPLICATIONS

All in all, adverse executive orders, agency interpretations, and inconsistent state measures may discourage the enforcement of rights. But consideration for them should be tempered by the variable and temporary character of the federal executive stance toward LGBTQ+ workers-varying with each change of controlling party affiliation, and by the narrow support for anti-LGBTQ+ measures in general. Employers should understand that LGBTQ+ employee rights are fully protected by *Bostock*, a Supreme Court decision that takes precedence over conflicting authorities, both state and federal. Absent a reversal by the Court or an act of Congress, it is the law.

#### Strategies to Reduce Risks

However, the specter of recent anti DEI and anti-LGBTQ+ laws, threatens employers with legal challenge and liability for use of nondiscrimination policies aimed at including, and, when necessary, accommodating LGBTQ+ employees, even though just and appropriate. Risks include reverse discrimination claims, loss of federal contracts and funding, and damage to the community's reputation from litigation. While all legal risk cannot be eliminated, several strategies can be adopted to reduce risk. (Saint, 2025)

1. While continuing to provide a supportive and inclusive culture, place careful attention on the language used in all written firm policies and procedures governing hiring, training, promotion, benefits, and accommodations.
2. Change how demographic identity driven firm policy criteria are voiced. If possible, criteria used in those policies should have a business rationale that focus on needs and positive firm outcomes and values, instead of identity.
3. For instance, hiring or promotion criteria to "improved employee engagement and innovation" or "promote first generation college grads" or as "part of firm efforts to improve retention" are identity neutral and tied to firm HR needs.
4. Criteria used to "in order improve firm competitiveness" or "better serve a customer segment" or to increase market reach" are identity neutral and tied to firm marketing needs.

5. Criteria used that furthers basic operational needs like employee skills and behaviors, workplace health, psychological safety, leadership, accountability, and communication, are also identity neutral.
6. Redesign and eliminate practices that may cause high legal risk. Certainly, these include hiring or promotion quotas or targets tied to class identity, but also internships and fellowships tied with a demographic criterion. Tie these instead to business neutral criterion.
7. Use counsel to make a legal review of all policy criterion, and periodically audit policies to improve conformity with the evolving governing law.

## CONCLUDING REMARKS

Managers need to understand that while recent federal and state law may require changes in policies to mitigate risk of legal exposure, LGBTQ+ individuals in the workplace are fully protected by Title VII of the Civil Rights Act. Employers should continue to foster an inclusive firm culture that values all employees and one that allows them to feel safe, valued, welcome, and productive, by enforcing nondiscrimination with sound workplace policies. (Teitelbaum, 2025)

Employers should also take note that in American history, the struggle for equal rights of minorities has been a long-fought battle, but those rights tend to strengthen over time, rarely contract, and if so, rarely for long, because they further the principle of equality. It has been said that the arc of moral wisdom is long but “bends toward justice.” (King, 1968) Most employers have already adopted that wisdom, and will stay the course.

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