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Navigating Workplace Inclusivity: How Employers Can Better Understand and Apply the EEOC's Recent Guidance on Workplace Harassment

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On April 29, 2024, the Equal Employment Opportunity Commission (EEOC) issued new enforcement guidance on workplace harassment in a step towards fostering a more inclusive workplace environment. This guidance serves as a crucial resource for employers striving to uphold fairness and equality for all employees, irrespective of gender identity.

The new guidance builds on the U.S. Supreme Court's 2020 decision in *Bostock v. Clayton County, Georgia*, in which the Court held that sex discrimination under Title VII includes discrimination on the basis of sexual orientation and gender identity. The EEOC's new enforcement guidance notes examples of potential harassment based on sexual orientation and gender identity, such as intentional misgendering and access to restroom facilities consistent with an employee's gender identity regardless of objections from coworkers or clients.

Judicial challenges are anticipated, much like with past versions containing similar EEOC guidance affecting LBGTQ+ issues. Specifically, we expect to see challenges regarding restroom access to transgender people with concerns framed within the context of privacy, safety, religious, and moral considerations. Barring judicial intervention, the new guidance is effective immediately and communicates the EEOC's position regarding conduct and behaviors the EEOC believes constitute unlawful harassment. While the EEOC's guidance is not law, it is likely to be cited in legal proceedings and indicates how the commission will interpret harassment cases that are brought to the agency.

For employers, ensuring compliance with the EEOC's guidance is not just a matter of legal obligation but also a demonstration of commitment to diversity and inclusion. Here are key steps employers can take to navigate this guidance effectively:

- 1. Update Policies and Procedures:** Whether independently or with legal counsel, employers should review and revise workplace policies to explicitly include protections related to sexual orientation and gender identity, and to give examples of the kind of behavior that will not be tolerated.

2. **Provide Training:** Employers may wish to provide training sessions for employees to raise awareness about evolving workplace harassment issues, foster understanding, and mitigate any potential biases where possible.
3. **Create Gender-Neutral Facilities:** Employers should ensure access to restroom facilities that align with employees' respective gender identities. Where feasible, employers may wish to consider establishing gender-neutral restroom facilities to provide an inclusive option for all employees.
4. **Address Concerns Proactively:** By fostering open dialogue and promptly addressing employees' concerns or objections in a respectful and proactive manner, employers can prevent issues from escalating. This approach emphasizes the significance of cultivating a supportive work environment where every individual feels valued and heard.
5. **Monitor and Enforce Compliance:** Regularly assess workplace practices to ensure adherence to the EEOC's guidance and promptly address any instances of discrimination or harassment.

By proactively embracing these measures, employers can cultivate a workplace culture that prioritizes respect, equality, and inclusion for all employees, while also minimizing the risk of legal liability. Ultimately, navigating the EEOC's newest guidance on workplace harassment is not just about compliance – it is about fostering a workplace where everyone feels valued, respected, and empowered to bring their authentic selves to work every day.

If you have any questions about the DOL's final rule, please feel free to contact the attorney listed below:

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