

DIVERSITY IN THE WORKS: An Update on the Biden Administration's LGBTQ+ Equality Efforts

May 27, 2021

Executive Summary: During President Biden's first 100 days in office and beyond, the Administration has taken a number of actions aimed at promoting diversity and inclusion and addressing disparities for LGBTQ+ Americans across the country. Below is an update on the Administration's key actions in furtherance of this policy.

- **EO 13988: Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation**
 - On January 20, 2021, President Biden signed this Executive Order stating, "Every person should be treated with respect and dignity and should be able to live without fear, no matter who they are or whom they love."
 - The Executive Order recognized the Supreme Court's holding in *Bostock v. Clayton County* that Title VII's prohibition on sex-based discrimination includes discrimination based on gender identity and sexual orientation.
 - The Executive Order gave each agency 100 days to develop plans to implement and enforce statutes prohibiting sex discrimination consistent with the Supreme Court's reasoning in *Bostock*.

- **EO 14004: Enabling All Qualified Americans to Serve Their Country in Uniform**
 - On January 25, 2021, President Biden signed this Executive Order stating, "All Americans who are qualified to serve in the Armed Forces of the United States ('Armed Forces') should be able to serve. The All-Volunteer Force thrives when it is composed of diverse Americans who can meet the rigorous standards for military service, and an inclusive military strengthens our national security. It is my conviction as Commander in Chief of the Armed Forces that gender identity should not be a bar to military service."
 - The Executive Order expressly revoked two of President Trump's Memorandums on Military Service by Transgender Individuals.

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- The Executive Order states that “it shall be the policy of the United States to ensure that all transgender individuals who wish to serve in the United States military and can meet the appropriate standards shall be able to do so openly and free from discrimination.”
- **EO 14020: Establishment of the White House Gender Policy Council**
 - On March 8, 2021, President Biden signed this Executive Order stating, “Advancing gender equity and equality is a matter of human rights, justice, and fairness . . . It is therefore the policy of my Administration to establish and pursue a comprehensive approach to ensure that the Federal Government is working to advance equal rights and opportunities, regardless of gender or gender identity.”
 - The Council is charged with coordinating Federal Government efforts to advance gender equity and equality.
- **EO 14021: Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity**
 - On March 8, 2021, President Biden signed this Executive Order citing Title IX and stating, “It is the policy of my Administration that all students shall be guaranteed an educational environment free from discrimination on the basis of sex, including discrimination in the form of sexual harassment, which encompasses sexual violence, and including discrimination on the basis of sexual orientation or gender identity.”
 - The Executive Order gave the Secretary of Education 100 days to conduct a review to ensure that agency actions are consistent with the Administration’s policy of equality.
- **A Proclamation on Transgender Day of Visibility, 2021**
 - On March 31, 2021, President Biden issued a Presidential Proclamation recognizing Transgender Day of Visibility.
 - The Proclamation stated in part, “Today, we honor and celebrate the achievements and resiliency of transgender individuals and communities. Transgender Day of Visibility recognizes the generations of struggle, activism, and courage that have brought our country closer to full equality for transgender and gender non-binary people in the United States and around the world.”

Bottom Line for Employers: Employers and others subject to federal law should review their policies and procedures to ensure they are aligned with *Bostock* and the Executive Orders addressed above and take action to address any discrimination or harassment based on sexual orientation, gender identity, gender expression, and/or transgender status. Employers subject to federal law should also ensure their policies are applied equitably to prevent discrimination against the LGBTQ+ community. While these orders may not directly impose new requirements on non-governmental employers, subsequent changes in federal agency regulations made in compliance with the orders may have a significant impact on employers in the private sector.

Employers committed to diversity and inclusion recognize that people are their most valuable resource and that each person brings unique beliefs, values and ideas, which ultimately create an innovative workforce. By seeking to establish an inclusive work environment, employers encourage collaboration and fairness, and embolden employees to contribute their full potential. Employers should be committed to fostering diversity not only because it is the right thing to do, but because sustaining a culture of

inclusion aids in attracting and retaining the best talent and is integral to delivering the best possible service and products to their customers.

If you have questions regarding this Diversity Alert, please contact the author, [Kristin Gray](#), partner in our Spartanburg, South Carolina office at kgray@fordharrison.com.

This alert is part of our Diversity Legal Alert Series – Diversity in the Works. Members of FordHarrison's [Diversity and Inclusion](#) practice group publish Alerts in this series addressing a variety of legal topics that may impact employers' diversity initiatives. For information on other diversity, equity, and inclusion training modules available to your organization, including details on our recent six-part webinar series, click [here](#). To inquire about our training resources, implementing diversity and inclusion programs and initiatives in your workplace, or FordHarrison's commitment to diversity please contact our Diversity and Inclusion Partner, [Dawn Siler-Nixon](#), at dsiler-nixon@fordharrison.com.

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