



October 27, 2023

Raymond Windmiller  
Executive Officer, Executive Secretariat  
U.S. Equal Employment Opportunity Commission  
131 M Street NE  
Washington, DC 20507  
*Via Regulations.gov*

RE: Proposed Enforcement Guidance on Harassment in the Workplace  
EEOC-2023-0005, RIN 3046-ZA02

Dear Mr. Windmiller,

Christian Employers Alliance (CEA) is a Christian membership organization founded on the principle that one should live out one's faith publicly in everyday life, including one's ministry, business, and community, not just privately in one's home or church. CEA's members do not check their faith at the door of their for-profit businesses and non-profit organizations. Our members hold to an orthodox Christian faith based on the truth of the Bible. Every day, our members try to live out the Biblical admonition, "whether you eat or drink or whatever you do, do it all for the glory of God." I Corinthians 10:31.

Relevant to EEOC's Proposed Enforcement Guidance on Harassment in the Workplace, CEA's members are committed to following Christian teachings on sexuality. Echoing Christ's teaching in Matthew 19:4 that God "made them male and female," CEA's Statement of Faith and Ethical Convictions provide that "[m]ale and female are immutable realities defined by biological sex."<sup>1</sup> CEA members believe that purported gender transition and reassignment constitute a marring of God's image in human beings.

Given this Biblical understanding of human sexuality as binary and immutable, our members do not adhere to the pervasive ideology that there are multiple genders beyond the male and female sexes. They oppose providing or paying for actions supporting purported gender transition and reassignment, and they oppose speaking in ways that contradict the binary biological fact of male and female sexuality.

With this in mind, we are very concerned with the Proposed Enforcement Guidance on Harassment in the Workplace<sup>2</sup> recently published by the Equal Employment Opportunity

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<sup>1</sup> [Statement of Faith - Christian Employers Alliance](#), Section 2.2.5

<sup>2</sup> PDF available at <https://www.regulations.gov/document/EEOC-2023-0005-0001>

Commission for public comment. According to the Guidance, “sex-based harassment includes harassment on the basis of sexual orientation and gender identity, including how that identity is expressed. Examples include ... harassment because an individual does not present in a manner that would stereotypically be associated with that person’s gender; intentional and repeated use of a name or pronoun inconsistent with the individual’s gender identity (misgendering); or the denial of access to a bathroom or other sex-segregated facility consistent with the individual’s gender identity.”<sup>3</sup>

Under this Guidance, could an employer be liable for a hostile work environment because it takes a position that the Biblically based understanding of sexuality is correct? If so, this raises significant concerns under the First Amendment’s freedoms of speech and religious exercise, the Religious Freedom Restoration Act, and the EEOC’s statutory authority to engage in enforcement consistent with this Guidance. To maintain this Guidance, EEOC should answer objections concerning its clash with these fundamental freedoms and should estimate the legal and economic impact on entities covered by such a standard.

Further, according to the Guidance, “the complainant’s own statement that the complainant perceived conduct as hostile is sufficient to establish subjective hostility. A subjectively hostile work environment also may be established if there is evidence that an individual made a complaint about the conduct, as it follows logically that the individual found it hostile. Similarly, if there is evidence that the individual complained to family, friends, or coworkers about the conduct, it is likely that the individual found it subjectively hostile.”<sup>4</sup>

Could an employer be liable for a hostile work environment for calling an individual by the pronoun matching their sex according to biology, or by their previously given name, i.e., “misgendering”? Could an employer be liable because it objects to speaking falsehoods about sex being male or female, or because it objects to forcing its employees and visitors to speak those falsehoods? If so, this raises the same First Amendment concerns discussed above.

Furthermore, could an employer be liable under this standard for having locker rooms, showers, bathrooms, and other facilities separated by sex without regard to gender identity?

The Guidance also provides, “In addition to being subjectively hostile, the conduct in question must create an objectively hostile work environment, that is, an environment that a reasonable person in the plaintiff’s position would find hostile. The impact of conduct must be evaluated in the context of ‘surrounding circumstances, expectations, and relationships’” and “[t]he determination of whether harassment was objectively hostile requires ‘an appropriate sensitivity to social context’ and should be made from the perspective of a reasonable person of the complainant’s protected class.”<sup>5</sup>

Given the increasing cultural conflict around issues of gender confusion and identity, people of faith are left in a difficult bind. CEA’s Statement of Faith and Ethical Convictions states that “[w]e believe every person is created in the image of God and has inherent dignity, regardless of

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<sup>3</sup> <https://www.regulations.gov/document/EEOC-2023-0005-0001>, pp 10-11

<sup>4</sup> <https://www.regulations.gov/document/EEOC-2023-0005-0001>, p 41

<sup>5</sup> <https://www.regulations.gov/document/EEOC-2023-0005-0001>, p 42

situation, brokenness, or sin.”<sup>6</sup> Given this belief, CEA members are committed to treating people with respect and kindness. That said, they do not believe it is kind or loving to speak, encourage, fund, or engage in actions supporting an inaccurate understanding of gender identity separate and distinct from the biological identity with which an individual is born.

Finally, we find this language in the Guidance particularly troubling: “Special consideration when balancing anti-harassment and accommodation obligations with respect to religious expression: Title VII requires that employers accommodate employees’ sincerely held religious beliefs, practices, and observances in the absence of undue hardship. Employers, however, also have a duty to protect workers against religiously motivated harassment. *Employers are not required to accommodate religious expression that creates, or reasonably threatens to create, a hostile work environment. As with other forms of harassment, an employer should take corrective action before the conduct becomes sufficiently severe or pervasive to create a hostile work environment.*”<sup>7</sup>

This language appears to make the subjective perception of an individual claiming a non-binary gender identity more important than the objective and biologically accurate perspective of a religious employer or employee. The requirement to use a name or pronoun inconsistent with reality and religious conviction or be at risk of “misgendering” and thus, workplace harassment, is a bridge too far. It requires speaking a belief against conviction which violates physical reality and the protected speech of the Christian believer. It exceeds Title VII and the EEOC’s authority.

The Supreme Court made it clear in *Bostock v. Clayton County* that it only ruled with regard to hiring and firing, and it explicitly reserved any overriding fundamental rights such as provided by RFRA or the First Amendment.<sup>8</sup> Yet this Guidance suggests *Bostock* supports its application of gender identity nondiscrimination beyond hiring and firing and without due regard to fundamental rights of religion and speech. The Guidance makes no mention of RFRA or the First Amendment.

We respectfully request you withdraw the Guidance, and that any Guidance issued on this topic first consider the overriding free speech and religious exercise interests, and that EEOC assess and take steps to prevent the negative impact on employers that have sincerely held religious convictions and are seeking to live out their faith in the workplace.

Respectfully,



Shannon O. Royce, JD  
President  
Christian Employers Alliance

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<sup>6</sup> [Statement of Faith - Christian Employers Alliance](#), Section 1.1.8

<sup>7</sup> <https://www.regulations.gov/document/EEOC-2023-0005-0001>, p 93 (emphasis added)

<sup>8</sup> 140 S. Ct. 1731, 1753–54 (2020).