

Navigating EEO Laws: What Every Employer Needs to Know

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What does the EEOC do?

- ▶ Enforce federal laws prohibiting discrimination in employment
- ▶ Educate and encourage voluntary compliance
- ▶ Investigate and resolve charges of discrimination
- ▶ Litigate in federal court, when necessary

Laws enforced by the EEOC

- ▶ Title VII of the Civil Rights Act of 1964
- ▶ Equal Pay Act
- ▶ Age Discrimination in Employment Act
- ▶ Title I of the Americans with Disabilities Act
- ▶ Genetic Information Nondiscrimination Act
- ▶ Pregnant Workers Fairness Act



What types of discrimination are covered?

- ▶ Race
- ▶ Color
- ▶ National Origin
- ▶ Sex
- ▶ Pregnancy
- ▶ Religion
- ▶ Age (40 or older)
- ▶ Disability
- ▶ Genetic information
- ▶ Retaliation



Fiscal Year 2024 Charge Filings

- ▶ Receipt of Charges 88,531
- ▶ Retaliation: 42,301 (47.8% of all charges filed)
- ▶ Disability: 33,668 (38.0%)
- ▶ Race: 30,270 (34.2%)
- ▶ Sex: 26,872 (30.4%)
- ▶ Age: 16,223 (18.3%)
- ▶ National Origin: 8,266 (9.3%)
- ▶ Color: 6,684 (7.5%)
- ▶ Religion: 3,640 (4.1%)
- ▶ Equal Pay Act: 1,116 (1.3%)
- ▶ Genetic Information: 393 (0.4%)
- ▶ Pregnant Workers Fairness Act: 2,729 (3.1%)



Discrimination on more than one basis

- ▶ Sometimes more than one type of discrimination may occur
- ▶ For example:
 - Discrimination against an African American female could involve discrimination based on race, sex, or both

Who is protected?

- ▶ An employee
- ▶ A temporary employee
- ▶ A job applicant
- ▶ A former employee



Which entities are covered by the laws?

- ▶ Private sector employers with 15 or more employees
 - 20 or more under the ADEA (age); one or more under EPA (equal pay-sex)
- ▶ Educational institutions
- ▶ State and local governments
- ▶ Employment agencies
- ▶ Labor organizations and Joint Labor-Management Apprenticeship and Training Committees
- ▶ Federal agencies (separate process)



Common types of discrimination cases

- ▶ Disparate Treatment
- ▶ Harassment
- ▶ Reasonable Accommodation – Religion, Disability, Pregnancy/childbirth/related medical conditions
- ▶ Retaliation



Disparate Treatment

- ▶ Treating an applicant or employee differently because of their race, sex, national origin, etc.
- ▶ Examples:
 - Paying a woman less than a man in same job based on sex
 - Not hiring American applicant in favor of foreign worker, based on national origin
 - Not promoting African American employee, while promoting white employees with similar qualifications, based on race
 - Discharging employee because of disability



EEOC Lawsuits

- ▶ LeoPalace Resort to Pay Over \$1.4 Million in EEOC National Origin Discrimination Lawsuit
- ▶ New York Beer Project to Pay \$225,000 in EEOC Disability Lawsuit



Harassment

- ▶ Subjecting employee to unwelcome comments or conduct due to a protected basis (race, sex, age, national origin, disability, etc.)
 - That results in a change to terms or conditions of the job (e.g., denial of promotion); OR
 - Was severe or pervasive, and the employer failed take to appropriate actions to prevent or correct the harassment



Harassment

- ▶ Examples of conduct that might constitute harassment:
 - Slurs, biased comments, threats
 - Physical assaults
 - Demands for sexual favors, unwelcome comments about an employee's sex life, appearance

Harassment

- ▶ Harasser can be:
 - Owner or other high level official
 - Manager, supervisor
 - Non-employee such as:
 - Client or Customer
 - Contractors

Employer Liability for Harassment

- ▶ Employers may be liable for harassment depending on factors such as:
 - who the harasser is;
 - whether the harassment included a tangible job action; and
 - what actions the employer took to prevent and/or correct the harassment



EEOC Lawsuits

- ▶ Landry's Seafood House to Pay \$90,000 in EEOC National Origin Harassment Lawsuit
- ▶ Culver's Restaurants Franchisee Settles Two EEOC Race, Sex, and Disability Harassment and Discrimination Cases for \$261,000
- ▶ EEOC Sues Paia Inn for Sexual Harassment and Retaliation
- ▶ EEOC Sues Taco Bell Franchisees for Sexual Harassment and Retaliation



EEOC Public Settlement of Harassment Charge

- ▶ In Largest EEOC Public Settlement in Almost 20 Years, Columbia University Agrees to Pay \$21 Million to Resolve EEOC Antisemitism Charges



Reasonable Accommodation

- ▶ Employers must provide reasonable accommodations for
 - Religion
 - Disability
 - Pregnancy/childbirth/related medical conditions
- ▶ UNLESS accommodation would cause an undue hardship



Religious accommodation

- ▶ Obligation to accommodate sincerely held religious beliefs, observances and practices, absent undue hardship
- ▶ Examples:
 - Exceptions to dress and grooming standards
 - Schedule changes; shift swaps
 - Allowing use of employer facilities for religious practice



Disability accommodation

- ▶ Obligation to accommodate qualified people who have a substantially limiting impairment (or history), absent undue hardship
- ▶ Examples:
 - Changing the way a task is performed
 - Technology/equipment changes
 - Interpreter for deaf applicants or employees
 - Removing marginal functions
 - Leave
 - Reassignment, if necessary



Accommodations for pregnancy/childbirth/related medical conditions

- ▶ Must accommodate known limitations related to pregnancy/childbirth/related medical conditions, absent undue hardship
- ▶ Examples:
 - Allowing water bottles, food, breaks
 - Providing a stool
 - Changing dress policies, or providing safety equipment that fits
 - Changing a schedule (eg part-time work); allowing telework
 - Light duty or help with lifting/manual labor
 - Leave for doctor appointments, childbirth recovery



EEOC Lawsuits

- ▶ [The Venetian Resort Las Vegas Settles Religious Discrimination and Retaliation Lawsuit](#)
- ▶ [Ned NoMad to Pay \\$100,000 in EEOC Disability Lawsuit](#)



Retaliation

- ▶ It is unlawful for an employer to retaliate against someone because they:
 - Opposed discrimination
 - Filed a complaint, testified, assisted, or participated in an investigation, proceeding or hearing concerning prohibited discrimination
 - Requested or received a reasonable accommodation based on religion, disability or pregnancy/childbirth/related medical condition



Examples of retaliation

- ▶ Work-related threats, warnings, or reprimands
- ▶ Negative or lowered evaluations
- ▶ Transfers to less prestigious or desirable work or work locations
- ▶ Reduction in hours
- ▶ Refusing to hire someone, or discharging someone, because they requested an accommodation

EEOC charge filing

People who believe they have been discriminated against may file a charge with the EEOC (or a comparable state or local agency)



EEOC charge process

- ▶ Intake
- ▶ Mediation
- ▶ Investigation
- ▶ Resolution:
 - Settlement,
 - Dismissal, or
 - Reasonable cause finding; followed by conciliation/settlement efforts and possible litigation



Intake

- ▶ In most cases, intake begins via the EEOC's public portal
- ▶ An intake interview is conducted
- ▶ A charge is prepared, identifying the employer and outlining the alleged discrimination
- ▶ The individual signs the charge at the completion of the intake process



Notice of Charge to the employer

- ▶ EEOC sends Notice of the Charge to the employer, usually by email
- ▶ The employer can access the charge via the EEOC's public portal
- ▶ Some charges are dismissed at Intake
- ▶ In most cases, EEOC invites the parties to participate in mediation



Mediation/Alternative Dispute Resolution (ADR)

- ▶ **Convening**

- Scheduling and holding Mediation
- Outcome (Resolution or Investigation)

- ▶ **Voluntary**

- ▶ **Neutral**

- ▶ **Confidential**

Benefits of Mediation

- ▶ National EEOC Resolution Rate Over 70%
- ▶ Early in the Process and at no cost to the parties
- ▶ No decision on the merits
- ▶ In-Person, Virtual, Hybrid
- ▶ Control over the outcome



Employer's position statement

- ▶ If a charge is not settled in Mediation or dismissed at Intake, the investigation continues
- ▶ The employer submits a Position Statement:
 - Position Statement is the employer's response to the allegations in the charge
 - Position Statement is one of the most critical documents an employer can submit to EEOC



What types of information does EEOC consider?

- ▶ Charging Party's allegations
- ▶ Employer's Position Statement
- ▶ Charging Party's response to the Position Statement
- ▶ Relevant documents and data
- ▶ Interviews of witnesses
- ▶ Onsite information



Resolution of charges

- ▶ Settlement
- ▶ Dismissal
 - EEOC decides not to pursue further; does not mean that there was no evidence of discrimination
 - EEOC issues Dismissal/Notice of Right to Sue to Charging Party
 - Charging Party may file suit within 90 days of receipt of dismissal notice
- ▶ Reasonable Cause Finding (Violation)
 - Issue Letter of Determination
 - Conciliation/settlement effort begins



Litigation

- ▶ If conciliation efforts are not successful, EEOC attorneys may consider the case for litigation
- ▶ If suit is approved, EEOC files suit in federal court
- ▶ Court cases are frequently resolved through a settlement which the judge must approve; some cases go to trial



Employer recordkeeping requirements

- ▶ Employers must retain employment records (paper and electronic):
 - In general, all personnel records must be maintained for one year
 - If a charge of discrimination has been filed, all records must be kept until the final disposition of the charge or lawsuit



Questions?



Please take our survey!

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Thank You!



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