Employee Discrimination (Federal Laws) - FAQs

Information from the U.S. Equal Employment Opportunity Commission (EEOC)

What Are the Federal Laws Prohibiting Job Discrimination?

- Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits employment discrimination based on race, color, religion, sex, or national origin;
- The Equal Pay Act of 1963 (EPA), which protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination;
- The Age Discrimination in Employment Act of 1967 (ADEA), which protects individuals who are 40 years of age or older;
- Title I and Title V of the Americans with Disabilities Act of 1990, as amended (ADA), which prohibit employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments;
- Sections 501 and 505 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified individuals with disabilities who work in the federal government;
- Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which prohibits employment discrimination based on genetic information about an applicant, employee, or former employee; and
- The Civil Rights Act of 1991, which, among other things, provides monetary damages in cases of intentional employment discrimination.

The U.S. Equal Employment Opportunity Commission (EEOC) enforces all of these laws. EEOC also provides oversight and coordination of all federal equal employment opportunity regulations, practices, and policies.

What Discriminatory Practices Are Prohibited by These Laws?

Under Title VII, the ADA, GINA, and the ADEA, it is illegal to discriminate in any aspect of employment, including:

- Hiring and firing
- Compensation, assignment, or classification of employees
- Transfer, promotion, layoff, or recall
- Job advertisements
- Recruitment
- Testing
- Use of company facilities
- Training and apprenticeship programs
- Fringe benefits
- Pay, retirement plans, and disability leave
- Other terms and conditions of employment

Discriminatory practices under these laws also include:

- Harassment on the basis of race, color, religion, sex, Nat'l origin, disability, genetic information, or age
- Retaliation against an individual for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices
- Employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a certain sex, race, age, religion, or ethnic group, or individuals with disabilities, or based on myths or assumptions about an individual's genetic information
- Denying employment opportunities to a person because of marriage to, or association with, an individual of a particular race, religion, national origin, or an individual with a disability. Title VII also prohibits discrimination because of participation in schools or places of worship associated with a particular racial, ethnic, or religious group.

Employers are required to post notices to all employees advising them of their rights under the laws EEOC enforces and their right to be free from retaliation. Such notices must be accessible, as needed, to persons with visual or other disabilities that affect reading.

Note: Many states and municipalities also have enacted protections against discrimination and harassment based on sexual orientation, status as a parent, marital status and political affiliation. For information, please contact the EEOC District Office nearest you.

Title VII

Title VII prohibits not only intentional discrimination, but also practices that have the effect of discriminating against individuals because of their race, color, national origin, religion, or sex.

National Origin Discrimination

- It is illegal to discriminate against an individual because of birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group.
- A rule requiring that employees speak only English on the job may violate Title VII unless an employer shows that the requirement is necessary for conducting business. If the employer believes such a rule is necessary, employees must be informed when English is required and the consequences for violating the rule.

The Immigration Reform and Control Act (IRCA) of 1986

- Requires employers to assure that employees hired are legally authorized to work in the U.S. However, an employer who requests employment verification only for individuals of a particular national origin, or individuals who appear to be or sound foreign, may violate both Title VII and IRCA; verification must be obtained from all applicants and employees. Employers who impose citizenship requirements or give preferences to U.S. citizens in hiring or employment opportunities also may violate IRCA.

Religious Accommodation

- An employer is required to reasonably accommodate the religious belief of an employee or prospective employee, unless doing so would impose an undue hardship.

Sex Discrimination

- Sexual Harassment - This includes practices ranging from direct requests for sexual favors to workplace conditions that create a hostile environment for persons of either gender, including same sex harassment. (The "hostile environment" standard also applies to harassment on the bases of race, color, national origin, religion, age, and disability.)
- Pregnancy Based Discrimination - Pregnancy, childbirth, and related medical conditions must be treated in the same way as other temporary illnesses or conditions.

Age Discrimination in Employment Act

The ADEA's broad ban against age discrimination also specifically prohibits:

- Statements or specifications in job notices or advertisements of age preference and limitations. An age limit may only be specified in the rare circumstance where age has been proven to be a bona fide occupational qualification (BFOQ);
- Discrimination on the basis of age by apprenticeship programs, including joint labor-management apprenticeship programs; and
- Denial of benefits to older employees. An employer may reduce benefits based on age only if the cost of providing the reduced benefits to older workers is the same as the cost of providing benefits to younger workers.

Equal Pay Act

The EPA prohibits discrimination on the basis of sex in the payment of wages or benefits, where men and women perform work of similar skill, effort, and responsibility for the same employer under similar working conditions. Note that:

- Employers may not reduce wages of either sex to equalize pay between men and women.
- A violation of the EPA may occur where a different wage was/is paid to a person who worked in the same job before or after an employee of the opposite sex.
- A violation may also occur where a labor union causes the employer to violate the law.

The Civil Rights Act of 1991

The Civil Rights Act of 1991 made major changes in the federal laws against employment discrimination enforced by EEOC. Enacted in part to reverse several Supreme Court decisions that limited the rights of persons protected by these laws, the Act also provides additional protections. The Act authorizes compensatory and punitive damages in cases of intentional discrimination, and provides for obtaining attorneys' fees and the possibility of jury trials. It also directs the EEOC to expand its technical assistance and outreach activities.

Title II of the Genetic Information Nondiscrimination Act of 2008

GINA prohibits discrimination against applicants, employees, and former employees on the basis of genetic information. This includes a prohibition on the use of genetic information in all employment decisions; restrictions on the ability of employers and other covered entities to request or to acquire genetic information, with limited exceptions; and a requirement to maintain the confidentiality of any genetic information acquired, with limited exceptions.

Title I and Title V of the Americans with Disabilities Act of 1990

The ADA prohibits discrimination on the basis of disability in all employment practices. It is necessary to understand several important ADA definitions to know who is protected by the law and what constitutes illegal discrimination:

Reasonable Accommodation

Reasonable accommodation may include, but is not limited to, making existing facilities used by employees readily accessible to and usable by persons with disabilities; job restructuring; modification of work schedules; providing additional unpaid leave; reassignment to a vacant position; acquiring or modifying equipment or devices; adjusting or modifying examinations, training materials, or policies; and providing qualified readers or interpreters. Reasonable accommodation may be necessary to apply for a job, to perform job functions, or to enjoy the benefits and privileges of employment that are enjoyed by people without disabilities. An employer is not required to lower production standards to make an accommodation. An employer generally is not obligated to provide personal use items such as eyeglasses or hearing aids. A person who only meets the "regarded as" definition of disability is not entitled to receive a reasonable accommodation.

Undue Hardship

An employer is required to make a reasonable accommodation to a qualified individual with a disability unless doing so would impose an undue hardship on the operation of the employer's business. Undue hardship means an action that requires significant difficulty or expense when considered in relation to factors such as a business' size, financial resources, and the nature and structure of its operation.

Prohibited Inquiries and Examinations

Before making an offer of employment, an employer may not ask job applicants about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform job functions. A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in the same job category. Medical examinations of employees must be job-related and consistent with business necessity.

Drug and Alcohol Use

Employees and applicants currently engaging in the illegal use of drugs are not protected by the ADA when an employer acts on the basis of such use. Tests for illegal use of drugs are not considered medical examinations and, therefore, are not subject to the ADA's restrictions on medical examinations. Employers may hold individuals who are illegally using drugs and individuals with alcoholism to the same standards of performance as other employees.

Which Employers and Other Entities Are Covered by These Laws?

- Title VII, the ADA, and GINA cover all private employers, state and local governments, and education institutions that employ 15 or more individuals. These laws also cover private and public employment agencies, labor organizations, and joint labor management committees controlling apprenticeship and training.
- The ADEA covers all private employers with 20 or more employees, state and local governments (including school districts), employment agencies and labor organizations.
- Title VII, the ADEA, GINA, and the EPA also cover the federal government. In addition, the federal government is covered by Sections 501 and 505 of the Rehabilitation Act of 1973, as amended, which incorporate the requirements of the ADA. However, different procedures are used for processing complaints of federal discrimination. For more information on how to file a complaint of federal discrimination, contact the EEO office of the federal agency where the alleged discrimination occurred.

What Happens after a Charge is Filed with EEOC?

The employer is notified that the charge has been filed. From this point there are a number of ways a charge may be handled:

- A charge may be assigned for priority investigation if the initial facts appear to support a violation of law. When the evidence is less strong, the charge may be assigned for follow up investigation to determine whether it is likely that a violation has occurred.
- *EEOC can seek to settle a charge at any stage of the investigation if the charging party and the employer* express an interest in doing so. If settlement efforts are not successful, the investigation continues.
- In investigating a charge, EEOC may make written requests for information, interview people, review documents, and, as needed, visit the facility where the alleged discrimination occurred. When the investigation is complete, EEOC will discuss the evidence with the charging party or employer, as appropriate.
- The charge may be selected for EEOC's mediation program if both the charging party and the employer express an interest in this option. Mediation is offered as an alternative to a lengthy investigation. Participation in the mediation program is confidential, voluntary, and requires consent from both charging party and employer. If mediation is unsuccessful, the charge is returned for investigation.
- A charge may be dismissed at any point if, in the agency's best judgment, further investigation will not establish a violation of the law. A charge may be dismissed at the time it is filed, if an initial in-depth interview does not produce evidence to support the claim. When a charge is dismissed, a notice is issued in accordance with the law which gives the charging party 90 days in which to file a lawsuit on his or her own behalf.

How Does EEOC Resolve Discrimination Charges?

- If the evidence obtained in an investigation does not establish that discrimination occurred, this will be explained to the charging party. A required notice is then issued, closing the case and giving the charging party 90 days in which to file a lawsuit on his or her own behalf.
- *If the evidence establishes that discrimination has occurred, the employer and the charging party will be* informed of this in a letter of determination that explains the finding. EEOC will then attempt conciliation with the employer to develop a remedy for the discrimination.
- If the case is successfully conciliated, or if a case has earlier been successfully mediated or settled, neither EEOC nor the charging party may go to court unless the conciliation, mediation, or settlement agreement is not honored.
- If EEOC is unable to successfully conciliate the case, the agency will decide whether to bring suit in federal court. If EEOC decides not to sue, it will issue a notice closing the case and giving the charging party 90 days in which to file a lawsuit on his or her own behalf. In Title VII and ADA cases against state or local governments, the Department of Justice takes these actions.
- Federal employees or applicants for employment should see the fact sheet about Federal Sector Equal *Employment Opportunity Complaint Processing*.

What Is EEOC and How Does It Operate?

EEOC is an independent federal agency originally created by Congress in 1964 to enforce Title VII of the Civil Rights Act of 1964. The Commission is composed of five Commissioners and a General Counsel appointed by the President and confirmed by the Senate. Commissioners are appointed for five-year staggered terms; the General Counsel's term is four years.

EEOC carries out its enforcement, education and technical assistance activities through 53 field offices serving every part of the nation.

Employment Discrimination - Overview

Since the enactment of Title VII of the Civil Rights Act of 1964, four broad theories of employment discrimination have been developed under U.S. law. These are:

1. **Disparate treatment**

   Disparate treatment discrimination occurs when an employer intentionally takes an employee's protected status into consideration when taking an adverse employment action, such as a termination or layoff decision. An example of intentional discrimination would an employer that learns of an employee's pregnancy and, based at least in part upon that, selects the pregnant employee for layoff rather than a less-qualified employee who is not pregnant.

2. **Disparate impact**

   Disparate impact discrimination, also known as adverse impact discrimination, occurs when an employer adopts a policy or practice that seems neutral and nondiscriminatory on its surface but has a disproportionately negative effect on members of a protected class. Practices that have been found to have a disparate impact on protected groups include:

   - **Minimum height requirements.** These have been found to disproportionately affect women, Hispanics and Asians.
   - **Physical agility tests.** These can have a disparate impact on women.
   - **Clean-shaven requirements.** These have been found to adversely affect African-American men who are disproportionately affected by a skin condition that is aggravated by shaving.

   In a court proceeding, once disparate impact is established, the employer has the burden of demonstrating that the challenged requirement is job-related for the position in question and consistent with business necessity. If the employee can point to a less discriminatory way to satisfy the business needs, the employer may be obligated to adopt that alternative.

3. **Harassment**

   Unlawful harassment is a form of disparate treatment (i.e., intentional) discrimination. The theory has its roots in sexual harassment cases under Title VII, but courts have applied the same reasoning to harassment on the basis of other protected characteristics, such as race or religion

   Sexual harassment can occur in two forms:

   - "Quid pro quo" harassment.
   - Hostile environment harassment.

   Quid pro quo harassment involves unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when submission to such conduct is made either explicitly or implicitly a term or condition of employment, or when submission to or rejection of such conduct by an employee is used as the basis for employment decisions, including termination.

A *hostile work environment* exists when conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment. In order for a hostile environment to be unlawful, it must be so pervasive and severe that it effectively alters the terms of employment. The environment must be such that a reasonable person would find it hostile or abusive, and the particular employee must have perceived it as such.

In 1998, the U.S. Supreme Court handed down a pair of decisions that dramatically changed the landscape of sexual harassment cases where the alleged harasser is the victim's supervisor. The cases were ***Burlington Industries v. Ellerth*, 525 U.S. 742** and ***Faragher v. City of Boca Raton*, 524 U.S. 775**. In those cases, the court held that an employer will not be **vicariously liable** for a supervisor's sexual harassment (whether quid pro quo or hostile environment) if the employer can demonstrate all of the following conditions:

- The harassment did not culminate in a tangible employment action against the employee. (A "tangible employment action" is any action that significantly changes employment status. Termination, of course, would qualify.)
- The employer exercised reasonable care to prevent and promptly correct any harassment.
- The employee unreasonably failed to complain to management or to otherwise avoid harm.

4. **Retaliation**

Most U.S. laws that prohibit employment discrimination also prohibit retaliation against an employee because the employee has exercised rights under the statute at issue. For example, Title VII of the Civil Rights Act of 1964 makes it illegal for an employer to discriminate against an employee because that employee opposed any discriminatory practice, made a charge of discrimination, or testified, assisted or participated in any manner in an investigation, proceeding or hearing. The individual employee who claims to be the victim of discrimination can also claim to be the victim of retaliation for complaining about it.

Lawsuits based on retaliation can be even more difficult for employers to defeat than lawsuits based on direct discrimination. Employers must exercise caution not to attempt, or appear to attempt, to "get even" when conducting disciplinary terminations or layoffs where the affected employees have participated in protected activities.

- Retaliation can be prevented by employers when taking the following steps:
- Adopt and disseminate a strong anti-retaliation policy.
- Inform employees about the process for reporting alleged retaliation.
- Train managers on the subject of retaliation.
- Remind supervisors who are accused of discrimination of the company's policy prohibiting retaliation against the complainant or witnesses.
- Monitor the treatment of employees who complain of discrimination or provide information related to discrimination complaints to ensure that they are not subjected to retaliation.
- Investigate allegations of retaliation and take prompt corrective action when retaliation occurs.

If unlawful retaliation occurs despite these efforts, your organization's preventive and corrective measures will help to limit its liability. Promptly stopping retaliation cuts off the harm to the victim, thereby limiting the compensatory damages to which he or she would be entitled. Moreover, a court will not award punitive damages if the retaliating manager's actions were contrary to your organization's good faith efforts to comply with the law.