

EEOC ISSUES NEW ENFORCEMENT GUIDANCE ON WORKPLACE HARASSMENT

On April 29, 2024, the U.S. Equal Employment Opportunity Commission (“EEOC”) issues its final **Enforcement Guidance** on harassment in the workplace (the “Guidance”). We previously reported about the EEOC’s proposed guidance on workplace violence in [this post](#) when it was initially introduced in October 2023.

The Guidance was influenced by the Supreme Court’s recent decision in *Bostock v. Clayton*, which held that Title VII’s prohibition against discrimination “because of sex” includes sexual orientation and gender identity. The Guidance was also influenced by the prevalent number of charges of employment discrimination filed with the EEOC which allege unlawful harassment based on race, sex, disability or another characteristic protected under law.

The Guidance is not binding and does not have the force and effect of law. Instead, the Guidance is a resource on the legal standards and employer liability for harassment claims under federal employment laws (“federal EEO laws”). Along with the Guidance, the EEOC issued other educational resources related to workplace harassment, including a [summary of key provisions](#), a [question-and-answer guide for employees](#) and a [small business fact sheet](#).

DEFINITION OF HARASSMENT

In the Guidance, the EEOC emphasized that harassment in the workplace violates the law if it is based on a legally protected characteristic (e.g., race, color, religion, national origin, sex (including sexual orientation; gender identity; and pregnancy, childbirth or related medical conditions), disability, age (40 or older) and genetic information (including family medical history). The EEOC further explained that such harassment must either (a) involve a change to the employee’s employment, or (b) create a hostile work environment. The Guidance provides many hypothetical examples of federal EEO laws’ application to harassing conduct. The EEOC, however, notes that whether harassing conduct in the workplace violates a law is fact-specific.

HOSTILE WORK ENVIRONMENT MUST BE SEVERE OR PERVASIVE

The EEOC explained in the Guidance that harassing conduct need not be both severe *and* pervasive (i.e., frequent) to establish a hostile work environment. Instead, a hostile work environment exists when the harassing conduct is severe *or* pervasive. The Guidance also provided that to establish a hostile work environment, the harassing conduct must also create an environment that a reasonable person would find hostile or abusive. According to the EEOC, a hostile work environment can result from a wide range of behavior, including physical or sexual assaults or threats; offensive jokes, slurs, epithets or insults; intimidation, bullying or ridicule; ostracism; offensive objects or pictures; and interference with work performance.

HARASSING CONDUCT OUTSIDE OF EMPLOYEES’ REGULAR WORKPLACE

The EEOC acknowledged in the Guidance that conduct within a virtual work environment, such as comments made during a video meeting or typed in a group chat can contribute to a hostile work environment. While recognizing that employers are generally not responsible for conduct outside the workplace, the EEOC stated in its Guidance that posting on a personal social media account can contribute to creating a hostile work environment if it impacts the workplace.

EMPLOYER’S DEFENSE TO HOSTILE WORK ENVIRONMENT CLAIMS

The EEOC explained that employers that exercise “reasonable care *both* to prevent the harassment *and* to correct harassment” may be a defense for employers against a hostile work environment claim. The EEOC provided in its Guidance that whether employers have taken reasonable steps generally begins with a review of employers’ policies and practices to prevent harassment and its response to complaints. The Guidance also identified “features” that the EEOC found effective for an anti-harassment policy, complaint procedures and training. For instance, the Guidance listed that an effective anti-harassment policy includes defining what conduct is prohibited, being widely disseminated and understandable for employees, providing multiple methods for reporting harassment and requiring supervisors to report harassment when they are aware of it. The EEOC explained that developing an anti-harassment policy, complaint process and training is not enough to establish that employers have acted with reasonable care to prevent harassment; they must also implement these policies, procedures and training.

PRACTICAL TAKEAWAYS

Employers should review and update their anti-harassment policies and practices to ensure compliance with the EEOC's Enforcement Guidance on workplace harassment. Further, employers should train their managers and supervisors on how to recognize, respond to and prevent workplace harassment.

If you have any questions, need assistance in evaluating or implementing your anti-harassment policy or would like additional information about the EEOC's Enforcement Guidance, please contact:

- Kathryn Jones at (248) 457-7846 or kejones@hallrender.com; or
- Your primary Hall Render contact.

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