



# COMPLIANCE OVERVIEW

## Best Practices for Preventing EEO Harassment Claims



The U.S. Equal Employment Opportunity Commission (EEOC) is a federal agency responsible for enforcing federal equal employment opportunity (EEO) laws. Each EEO law listed below covers certain private-sector employers and prohibits harassment.

- Title VII of the Civil Rights Act of 1964 (Title VII);
- Age Discrimination in Employment Act (ADEA);
- Americans with Disabilities Act (ADA); and
- Genetic Information Nondiscrimination Act (GINA).

Allegations of harassment under these laws can lead to costly and time-consuming legal proceedings and negatively affect an employer’s reputation and worker morale. Therefore, it is important that employers understand their obligations under these laws and take measures to prevent harassment claims. This Compliance Overview provides a summary of employer requirements under EEO anti-harassment laws, along with best practices to prevent harassment claims.

### Overview of Federal EEO Laws

EEO laws protect employees and applicants from harassment on the basis of certain protected traits. To help prevent claims of retaliation, employers should familiarize themselves with the various forms of harassment prohibited under each EEO law and assess whether they are subject to the laws.

EEO Law	Covered Employers	Prohibited Harassment
<b>Title VII</b>	Private-sector employers with <b>15 or more employees</b> for at least 20 weeks in the same calendar year as or in the calendar year prior to when the alleged harassment occurred	Prohibits harassment on the basis of race, color, religion, national origin and sex (including pregnancy, childbirth or related medical conditions)
<b>ADEA</b>	Private-sector employers with <b>20 or more employees</b> for at least 20 weeks in the current or preceding calendar year	Prohibits harassment against someone who is age 40 or older on the basis of age
<b>ADA</b>	Private-sector employers with <b>15 or more employees</b> for at least 20 weeks in the same calendar year as or in the calendar year prior to when the alleged harassment occurred	Prohibits harassment against a qualified person on the basis of their disability
<b>GINA</b>	Private-sector employers with <b>15 or more employees</b> for at least 20 weeks in the same calendar year as or in the calendar year prior to when the alleged harassment occurred	Prohibits harassment on the basis of an individual’s genetic information (e.g., family medical history; genetic tests of an individual or an individual’s family members; information about any disease, disorder or condition)

### Unlawful Harassment

Unlawful harassment is unwelcome conduct based on an individual's protected trait where:

- Enduring the offensive conduct becomes a condition of continued employment; or
- The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile or abusive.

Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name-calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance.

Employers are liable for harassment by a supervisor that results in a negative employment action (e.g., termination, failure to promote or hire, and loss of wages). If the supervisor's harassment results in a hostile work environment, the employer is liable unless the employer can prove that it:

- Reasonably tried to prevent and promptly correct the harassing behavior; and
- The employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer.

Employers may also be liable for harassment by nonsupervisory employees or nonemployees over whom they have control if they knew, or should have known, of the harassment and failed to take prompt and appropriate corrective action.

## Sexual Harassment

In addition, sexual harassment is prohibited under Title VII. Unlawful sexual harassment may include unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when such conduct:

- Explicitly or implicitly affects an individual's employment;
- Unreasonably interferes with an individual's work performance; or
- Creates an intimidating, hostile or offensive work environment.

Sexual harassment may include unwanted sexual attention or sexual coercion (e.g., demands or pressure for sexual favors, sexual assault or sexual remarks) as well as nonsexual conduct based on sex (e.g., sex-based epithets, sexist comments or facially sex-neutral offensive conduct motivated by sex).

## Enforcement and Penalties

Individuals alleging harassment under federal EEO laws may file a charge of discrimination with the EEOC. Under Title VII, the ADEA, the ADA and GINA, individuals have **180 days** from the date the alleged harassment took place to file a charge with the EEOC. For claims under Title VII, the ADA or GINA, the filing deadline is extended to **300 days** if a state or local agency enforces a state or local law that prohibits the same form of discrimination prohibited under those EEO laws. For claims under the ADEA, the filing deadline is only extended to 300 days if a state agency enforces a law that prohibits age discrimination.

In a harassment case, individuals may be eligible for various forms of relief, including preliminary relief, compensatory and punitive damages, and other remedies such as back pay, front pay or job reinstatement.

## Employer Best Practices for Preventing EEO Harassment Claims

Allegations of harassment can lead to costly and time-consuming litigation and financial and reputational harm to employers. To prevent claims of harassment, employers may consider implementing the best practices below. However, implementation of these best practices cannot eliminate the risk of potential liability for harassment. Employers should also carefully review their legal obligations under state and local harassment laws, which may impose greater requirements than those required under federal law.

### Create a Written Policy

To help prevent harassment claims, employers may create a written anti-harassment policy that is distributed to all employees, either as a standalone policy or as a component of the employee handbook. The policy should include clear definitions of harassment, real-world examples of behaviors that may constitute harassment, and practical steps to prevent harassment in the workplace. The policy should also include information regarding any internal complaint mechanisms through which employees can submit any allegations of harassment, along with any relevant contact information. Finally, the policy should include a statement that unlawful harassment may result in discipline, up to and including termination of employment.

Employers may also consider creating a standalone sexual harassment policy that includes specific examples of sexual harassment, in addition to the elements included in a general harassment policy.

## Train Employees and Managers

To prevent harassment in the workplace, employers may consider training all employees on their rights and restrictions under the employer's anti-harassment policy and under federal anti-harassment laws. Employers may also consider supplemental training for managers, supervisors, HR personnel and other individuals responsible for handling employee complaints.

### Training for All Employees

Employers may consider conducting anti-harassment training for all employees. Effective anti-harassment training should be provided on a regular basis (e.g., annually) and provide clear explanations and examples of what constitutes unlawful harassment under federal EEO laws and the employer's anti-harassment policy. Employers may also consider offering live interactive trainings that offer employees the opportunity to ask questions about the employer's anti-harassment policy. Further, the training should include an explanation of the employer's internal complaint process and what steps employees should take to report instances of harassment. Finally, the training may address the potential disciplinary actions the employer may take against employees who violate the company's anti-harassment policy.

### Training for Managers and Supervisors

Employers may also offer supplementary training for managers, supervisors and other personnel responsible for handling harassment complaints. An effective training program includes guidance on handling and responding to employee complaints, including how to de-escalate and resolve conflicts between employees; requesting appropriate clarification and additional information; how and when to escalate internal complaints to supervisors, HR or in-house counsel; and documenting complaints. The training should also emphasize the potential ramifications for managers and supervisors who engage in harassment, fail to properly respond to allegations of harassment by their direct reports or otherwise fail to comply with the company's anti-harassment policy.

## Establish a Fair Internal Complaint Process

Employers should review their internal complaint and investigation procedures to ensure that proper procedures are established for allegations of harassment. Employers may be liable for harassment by their employees and third parties if the employer knew or should have known of the harassment and failed to take appropriate corrective action. Consequently, it is critical that employers establish a fair internal complaint process that can address any such allegations in a timely and effective manner. In addition, to avoid any potential conflicts of interest (for example, where the alleged harasser is the employee's direct supervisor), employers may consider multiple channels through which employees may submit complaints of harassment. Employers should notify all employees of the availability of such reporting channels and ensure that they are easily accessible to all employees. Further, to the extent a complaint warrants an internal investigation, employers should assign a neutral party to handle any investigations (e.g., an HR director, in-house counsel or outside counsel) to avoid any actual or perceived bias.

## Ensure Proper Documentation

In case of future claims, it is important that employers document all relevant actions related to a claim of harassment. For example, employers should document the initial complaint (including any relevant facts and the parties involved), the steps the employer took to investigate the claim, the determination made at the conclusion of the investigation and any remedial actions taken by the employer.

In addition, because employers may be liable for harassment by a supervisor that results in an adverse employment action, employers should ensure proper documentation of all employment actions taken, including the legitimate and nondiscriminatory reason for the action.

## Employer Takeaways

Harassment claims can expose employers to substantial legal and financial risks. To prevent allegations of harassment, employers should take steps to ensure compliance with applicable anti-harassment laws, take proactive measures to reduce the risk of harassment claims arising in the first instance, and mitigate the risk associated with harassment claims that do occur.

## LINKS AND RESOURCES

- [EEO Laws Overview](#)
- [EEOC Questions and Answers for Employees: Harassment at Work](#)
- [EEOC Promising Practices for Preventing Harassment](#)

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