

Addressing Workplace Harassment: Insights into EEOC's Proposed Enforcement Guidance

Article By:

Whitney J. Jackson

Anne R. Yuengert

The Equal Employment Opportunity Commission recently introduced [proposed enforcement guidance](#) aimed at further clarifying and strengthening measures against harassment in the workplace. The 144-page guidance outlines strategies and policies the EEOC believes are necessary to prevent and address workplace harassment based on any protected status (i.e., race, gender, national origin, disability, religion, age, and genetic information).

Key Components of the Proposed

Below are a few noteworthy points in the guidance:

- **Expanded Definition of Sex-Based Harassment:** The guidance specifies that gender-related harassment encompasses mistreatment linked to pregnancy, childbirth, and associated medical conditions (including breastfeeding), as well as a woman's choices regarding reproductive matters, like contraception or abortion. Not surprisingly, the guidance makes clear that harassment based on sexual orientation and gender identity, including how that identity is expressed, is sex

discrimination. The guidance provides examples of mistreatment due to a person not conforming to traditional gender stereotypes in appearance, the deliberate and repetitive use of incorrect names or pronouns, or the refusal to provide access to restrooms or other gender-specific facilities in line with the individual's gender identity.

- **Preventive Measures:** The guidance stresses the importance of employers taking proactive steps to prevent harassment. While none of the suggestions are new, the guidance encourages robust anti-harassment policies, complaint processes, and regular training for all employees regarding the anti-harassment policy and complaint process.
- **Enhanced Response to Complaints:** The guidance outlines steps to promptly and effectively respond to harassment complaints. Again, while none of the information is new, the suggested steps include conducting thorough and impartial investigations, taking appropriate disciplinary action, and ensuring the confidentiality of individuals involved.
- **Documenting Harassment Complaints and Investigations:** The EEOC suggests that employers maintain documentation of all reports of harassment and investigations to identify recurring problems or trends. Per the EEOC, employers should review the records and tweak their strategies for preventing harassment and refine training programs.

Key Takeaways for Employers

Considering the proposed enforcement guidance, employers should:

- Revisit anti-harassment policies to align with the proposed guidance. Make sure that coverage of pregnancy-related issues, sexual orientation and gender identity is explicitly mentioned. The EEOC will likely consider employer policies to

be deficient without such references.

- Update training programs. Make sure that all employees are periodically trained and informed about what is covered and how to file a complaint.

Although this proposed guidance is not legally binding, it provides insight as to how the EEOC will look at workplace harassment complaints. The EEOC has reported high numbers of harassment complaints in the last several years, and it clearly plans to strengthen measures against workplace harassment.

This guidance is proposed at this point but will likely be adopted. Employers should take this opportunity to look at the recommendations and consider incorporating these strategies into their policies and practices. Not only should employers be ready to defend themselves against an EEOC charge, they should also want to create environments where every employee feels valued, respected, and safe from harassment and believes their employer takes the guidance seriously.

© 2024 Bradley Arant Boult Cummings LLP

National Law Review, Volumess XIII, Number 320

Source URL: <https://www.natlawreview.com/article/addressing-workplace-harassment-insights-eeocs-proposed-enforcement-guidance>