

OCTOBER 9, 2023 | DISCRIMINATION, HARASSMENT & RETALIATION

EEOC Proposes Updates to Workplace Harassment Guidance

The Equal Employment Opportunity Commission (EEOC) has proposed [updated guidance](#) for employers on workplace harassment. This article will point out some, but by no means all, of the most significant changes in the proposed guidance. Importantly, these guidance documents, even when final, are not law. Rather, they serve as a roadmap for how the EEOC will enforce the laws it is tasked with enforcing. 

The new guidance, which covers a range of topics, incorporates explicit protections for reproductive choices and for LGBTQ+ workers. The guidance includes as sex-based harassment “harassment based on a woman’s reproductive decisions, such as decisions about contraception or abortion.” It also includes as sex-based harassment “...intentional and repeated use of a name or pronoun inconsistent with the individual’s gender identity (misgendering); or the denial of access to a bathroom or other sex-segregated facility consistent with the individual’s gender identity.”

The updated guidance further requires employers to provide an effective complaint process, that, at minimum:

- provides for prompt and effective investigations and corrective action;
- provides adequate confidentiality protections; and
- provides adequate anti-retaliation protections.

The updated guidance also requires employers to provide adequate training, which should include, at minimum, the following:

- an explanation of the employer’s anti-harassment policy and complaint process, including any alternative dispute resolution process, and confidentiality and anti-retaliation protections;
- a description, with examples, of prohibited harassment, as well as conduct that, if left unchecked, might rise to the level of prohibited harassment;
- information about employees’ rights if they experience, observe, become aware of, or report conduct that they believe may be prohibited;
- information for supervisors and managers about how to prevent, identify, stop, report, and correct harassment, such as actions that can be taken to minimize the risk of harassment, and clear instructions for addressing and reporting harassment that they observe, that is reported to them, or that they otherwise become aware of;
- information that is tailored to the workplace and workforce;

- regular refresher training; and
- a clear, easy-to-understand style and format.

The new proposed guidance is not yet in effect. The EEOC's proposed guidance is now open for a 30-day public comment period, which will close on November 1, 2023. The agency will then evaluate the comments and eventually issue the final guidance document. It is not clear at this point when, or if, the final guidance document will be released. In 2017, the EEOC unveiled proposed updates, but they stalled and never resulted in a final guidance document.

What Should Employers Be Doing Now?

Although the current guidance is not yet in effect, employers should review and consider whether their anti-harassment policies and procedures require any updates. Employers should also continue to monitor the EEOC's future actions related to this proposed guidance for further insight into how the agency will handle harassment claims.