



Summary of Key Provisions: EEOC Enforcement Guidance on Harassment in the Workplace

This summary of key provisions of the **EEOC Enforcement Guidance on Harassment in the Workplace** (<https://www.eeoc.gov/laws/guidance/enforcement-guidance-harassment-workplace>) is intended to provide a broad overview of the document and issues related to workplace harassment.

General Information on Workplace Harassment

1. Which laws enforced by the EEOC prohibit harassment in the workplace?

All laws enforced by the EEOC prohibit workplace harassment that is based on a ***protected characteristic***. The protected characteristics covered by the laws the EEOC enforces are race, color, religion, sex (including sexual orientation; transgender status; and pregnancy, childbirth, or related medical conditions) [1], national origin, disability, age (40 or older), and genetic information (including family medical history).

2. When does workplace harassment violate the law?

For harassment to violate the law, it must be based on a legally protected characteristic (see question [#\[1\]](#)). Being rude, teasing, or mistreating somebody because of a personality conflict, without a connection to a protected characteristic, does not violate the laws enforced by the EEOC.

Further, to violate the law, harassment based on a protected characteristic must either:

- involve a change to the victim's employment (e.g., an employee is fired, demoted, denied a promotion or transfer, reassigned, or receives reduced hours or pay because the employee rejected a supervisor's sexual advances); or
- create a "hostile work environment" (see question [#\[9\]](#)).

3. What are some examples of harassing conduct that is based on legally protected characteristics?

Harassment can take many forms, including:

- saying or writing an ethnic, racial, or sex-based slur;
- forwarding an offensive or derogatory "joke" email;
- displaying offensive material (such as a noose, swastika, or other hate symbols, or offensive cartoons, photographs, or graffiti); threatening or intimidating a person because of the person's religious beliefs or lack of religious beliefs;
- sharing pornography or sexually demeaning depictions of people, including AI-generated and deepfake images and videos;
- making comments based on stereotypes about older workers;
- mimicking a person's disability;
- mocking a person's accent;
- making fun of a person's religious garments, jewelry, or displays;
- groping, touching, or otherwise physically assaulting a person;
- making sexualized gestures or comments, even when this behavior is *not* motivated by a desire to have sex with the victim; and

- threatening a person's job or offering preferential treatment in exchange for sexual favors.

4. Does federal law only protect a person against harassment because of that person's *actual* protected characteristic?

No. A person can be the victim of unlawful harassment even when the harasser is wrong about the victim's protected characteristic. For example, harassment of a Sikh man wearing a turban because the harasser thinks he is Muslim is religious harassment.

Further, harassment based on a person's *association* with somebody who does not share the same protected characteristic as the victim also may violate the law. For example, the EEO laws apply to harassment of a White employee because his spouse is Black or harassment of a Black employee because she has a biracial child.

5. Can a person be harassed based on more than one protected characteristic?

Yes. Harassment based on the combination of two (or possibly more) protected characteristics can be unlawful. This type of harassment is sometimes referred to as intersectional harassment. For example, if a Black woman is harassed based on stereotypes about Black women, such harassment is covered as both race and sex discrimination. Similarly, if a woman who is age forty or older is harassed based on stereotypes about older women, this harassment is covered as both age and sex discrimination. For an example of intersectional harassment based on age and sex, see Example 24 in the Guidance.

6. Can a person be harassed by somebody with the same protected characteristic?

Yes. Harassment can occur when the harasser shares the same protected characteristic as the victim. For example, if a Black employee repeatedly calls another Black employee a racial slur, even after being asked to stop, this might be harassment. As other examples, a woman can sexually harass another woman and a man can sexually harass another man. For additional examples of intra-class harassment, see Examples 21-23 in the Guidance.

7. Can only women be the targets of sexual harassment?

No, any person can be the target of sexual harassment regardless of their sex. In addition, sexual harassment does not need to be based on sexual desire to violate the law. Sexual harassment can result from behavior that is intended to embarrass, intimidate, or belittle a person because of sex.

8. Does behavior have to be sexual in nature or sexualized to be considered sex-based harassment?

No. Harassing conduct that is based on sex but is not sexualized or sexual in nature, for example calling a woman a sex-based epithet or making sexist comments (such as saying that men do not belong in the nursing profession), may contribute to a hostile work environment because of sex and can violate the law.

9. What is a “hostile work environment”?

A “hostile work environment” exists when harassment is so **severe or frequent** (called “pervasive” in the law) that a reasonable person in the employee’s position would find the situation to be abusive.

Each claim must be considered on a case-by-case basis and take into consideration all of the circumstances. Some general guidelines to consider include:

- A victim does *not* need to show that harassment was *both* severe *and* frequent – just one or the other. Sometimes, the more severe the harassment, the less frequent it must be, and vice versa.
- One instance of very serious misconduct may be severe enough. For example, one instance of somebody touching an intimate body part, acting violently, or a supervisor using the n-word can be enough to violate the law.
- The harasser’s status at the employing organization can be important. Harassment by the company’s owner or the victim’s supervisor can sometimes carry more weight than similar behavior by a coworker or customer.
- The victim does *not* need to show that the harassment led to a change in employment, such as a demotion, reduction of hours or rate of pay, or

denial of a promotion. Similarly, the complainant does *not* need to show that the harassment made them perform worse.

10. What are the elements of a *prima facie* hostile work environment claim?

To establish a *prima facie* hostile work environment claim, an employee must show the following:

- Conduct – the employee was subjected to conduct based on a legally protected characteristic;
- Objective hostility – the conduct was either so severe or frequent (it does not have to be both) that a reasonable person in the employee’s position would conclude that the working conditions were abusive;
- Subjective hostility – the employee actually found the conduct to be hostile (i.e., the employee did not welcome the conduct); and
- Liability – the employer can be held liable for the harassment.

11. When determining whether conduct was objectively hostile, what evidence may be considered?

Whether conduct creates a hostile work environment depends on the totality of the circumstances. Some factors that may be considered include the frequency and severity of the harassing conduct; how physically threatening or humiliating it was; whether and if so, how much, it interfered with the employee’s work performance; whether and if so, how much, psychological harm it caused; and any power disparity between the victim and the harasser.

12. Do employers only need to protect employees from harassment by owners, managers, and supervisors?

No. Harassment by *any* person, including coworkers, customers, and clients, can violate federal law.

13. What are an employer’s obligations with regard to harassment in the workplace?

Employers are responsible for preventing workplace harassment (see question #[15]). Employers also are responsible for quickly ending harassing behavior once they learn about it (see question #[14]), even if the harassment has not

yet been severe enough or frequent enough to create a hostile work environment (see question [#9](#)).

14. When does an employer “learn” about potential harassment?

An employer typically learns about potential harassment when:

- Somebody complains. The person who complains does *not* need to be the victim.
- An owner, manager, or supervisor witnesses the harassing conduct.
- The harassing conduct is so open and obvious that an owner, manager, or supervisor reasonably should have known what was happening.

15. What are some steps employers can take to prevent harassment?

Employers are strongly *encouraged* to:

- have a clear, easy-to-understand anti-harassment policy;
- have a safe and effective procedure that employees can use to report harassment, including more than one option for reporting;
- provide recurring training to all employees, including supervisors and managers, about the company’s anti-harassment policy and complaint process; and
- take steps to make sure the anti-harassment policy is being followed and the complaint process is working.

Employers should consider whether employees in their workforce experience barriers to comprehension, including limited ability to speak English, to read, or to understand the material, when the employers are creating, revising, or assessing the effectiveness of an anti-harassment policy, reporting procedures, or training.

16. What resources does the EEOC have online for employers seeking information about effective anti-harassment policies, complaint procedures, and anti-harassment trainings?

The **EEOC Enforcement Guidance on Harassment in the Workplace**
(<https://www.eeoc.gov/laws/guidance/enforcement-guidance-harassment->

workplace# Toc164808050) contains a detailed discussion of anti-harassment policies, complaint procedures, and anti-harassment trainings. This discussion includes lists of features that generally lead to effective anti-harassment tools. The EEOC has also published **Promising Practices for Preventing Harassment (<https://www.eeoc.gov/laws/guidance/promising-practices-preventing-harassment>)**, a resource to assist employers in preventing and addressing harassment, and the EEOC's **Select Task Force on the Study of Harassment in the Workplace, Report of Co-Chairs Chai R. Feldblum & Victoria A. Lipnic (<https://www.eeoc.gov/select-task-force-study-harassment-workplace>)**, which discusses workplace risk factors, potential responses to those factors, and other recommendations. Further, the EEOC has published a promising practice document for federal employers, **Promising Practices for Preventing Harassment in the Federal Sector (<https://www.eeoc.gov/federal-sector/reports/promising-practices-preventing-harassment-federal-sector>)**, which contains information that also may be helpful for non-federal employers.

17. How should an employee report potential harassment?

Employees should be encouraged to report potential harassment early. Early reporting provides employers more opportunity to stop the harassing conduct before it becomes so severe or frequent that it violates a federal EEO law.

An employee can report harassment by following the employer's policy, assuming the policy is adequate and accessible. If an employer does not have a policy, if the policy does not designate points of contact or provide valid contact information, or if the employee has a reasonable concern about complaining to the designated points of contact (for example, the point of contact is the alleged harasser or has close connections to the alleged harasser), then the employee may report potential harassment to a supervisor, manager, or human resources.

An employee may also file a charge or complaint.

- **Private sector and state/local government employees** may file a charge of discrimination by contacting the EEOC at 1-800-669-4000 or by going to **<https://www.eeoc.gov/how-file-charge-employment-discrimination>** (**<https://www.eeoc.gov/how-file-charge-employment-discrimination>**)

discrimination). In many states and localities, people also can file charges with their state or local fair employment practices agency.

- **Federal government employees** may initiate the complaint process by contacting an EEO counselor at their agency; more information is available at <https://www.eeoc.gov/federal-sector/overview-federal-sector-eeo-complaint-process> (<https://www.eeoc.gov/federal-sector/overview-federal-sector-eeo-complaint-process>).

18. What should an employer do in response to a harassment complaint?

There is no one-size-fits-all approach to responding to a harassment complaint. However, an effective response often involves two steps: (1) conducting an investigation; and (2) if needed, taking appropriate corrective action.

When responding to a report of potential harassment, employers should not punish, directly or indirectly, the employee who complains. This is called “retaliation” and it is prohibited by the EEO laws. Employers should caution supervisors and managers not to retaliate. For additional information about retaliation, please visit <https://www.eeoc.gov/retaliation> (<https://www.eeoc.gov/retaliation>).

19. What should an employer consider when investigating a harassment complaint?

An employer should conduct a prompt, impartial, and thorough investigation to determine whether harassing conduct occurred and take appropriate action to promote a safe, fair, and productive work environment. What steps to take, what evidence to gather, and who to interview will depend on the particular facts and circumstances of the allegations. Regardless of the size and scope of the investigation, some indications of an effective investigation may include:

- The employer starts investigating reasonably soon after learning about potential harassment;
- The assigned investigator is trained on harassment law and how to investigate harassment allegations;
- The assigned investigator is impartial and unbiased;
- There is an investigative plan, and that plan is followed;

- Steps are taken to make sure neither the complainant nor the alleged harasser can influence the investigation, the investigator, or potential witnesses;
- Testimony, evidence, and other helpful information is gathered from relevant witnesses and other sources, such as video cameras, company-provided cell phones, and email servers;
- Both the complainant and the alleged harasser are updated on the status of the investigation, as appropriate;
- Both the complainant and the alleged harasser are informed about the employer's conclusions and any actions it plans to take as a result of the investigation; and
- Records of harassment complaints, investigations, evidence, and conclusions are preserved.

20. What if an employee who complains about harassment has no evidence, beyond their own statements, to prove that the harassment occurred?

Not all harassment occurs in the open. Just because harassment was hidden does not make it any less serious – and does not make it any less illegal. In these types of cases, the employer will need to make credibility determinations. Sometimes the victim's testimony alone will be enough for an employer to conclude that harassment has occurred.

21. If an employer investigates a harassment complaint and determines that harassing conduct did occur, is the employer required by law to fire the harasser?

No. If an employer determines that some type of corrective action is appropriate, the employer has the discretion to decide what action should be taken under the circumstances. In deciding what is appropriate, it can be helpful to keep in mind that the goals are to *stop* the harassment and *prevent* future harassment.

There is a wide range of potential appropriate corrective actions. Examples include informal counseling, a written warning, mandatory harassment training, suspension without pay, reassignment, demotion to a non-supervisory position, and ultimately termination.

22. Can an employer reassign or reschedule an employee who reports harassment in response to the employee's report?

It depends. An employer can ask if the employee would like to change their working conditions, such as getting a reassignment to another position or a schedule change. If the employee agrees, then that change is permissible. However, if the employee does not want their working conditions changed, a reassignment or schedule change could be perceived as (or possibly even constitute) illegal retaliation.

Liability Standards in Workplace Harassment Cases

23. What is the liability standard when the harassment involves a termination, demotion, failure to promote, failure to transfer, reassignment, or a reduction in hours or rate of pay, or another negative change?

If the harassment includes or culminates in a change to the victim's employment, then the employer is liable for the harassment. If the evidence establishes that the harassment caused the change in the victim's employment, the employer cannot raise any defense to liability. For example, if an employee is denied a promotion because he rejected a sexual advance from his supervisor, then the employer is liable.

In these cases, the victim does *not* need to show that the underlying harassment was so severe or pervasive that it created a hostile work environment.

24. What is the liability standard in a hostile work environment case?

It depends – *who* is doing the harassing is critical to determining the appropriate liability standard(s). Therefore, the first step usually is to determine the harasser's role. Also, whether there has been a tangible employment action can matter when determining whether an employer can be held liable for workplace harassment. Other considerations may include what steps, if any, the employer took to prevent and cure harassment and what steps, if any, the victim took to complain about the harassment. Each case must be considered

individually, taking into consideration all facts. For more information, **section IV of the Enforcement Guidance on Harassment in the Workplace** (https://www.eeoc.gov/laws/guidance/enforcement-guidance-harassment-workplace#_Toc164808039) includes a detailed discussion of liability standards in harassment cases.

Additional Links and Contact Information

25. How can I obtain additional information about this topic from the EEOC?

For small businesses, liaisons are available to answer questions about the laws enforced by the EEOC, including how to comply with those laws. EEOC's Small Business Liaison directory is available

at <https://www.eeoc.gov/employers/small-business-liaisons> (<https://www.eeoc.gov/employers/small-business-liaisons>).

EEOC Outreach and Education Coordinators are available to discuss EEOC's outreach programs. EEOC's Outreach and Education Coordinator directory is available at <https://www.eeoc.gov/eeoc-outreach-program-coordinators> (<https://www.eeoc.gov/eeoc-outreach-program-coordinators>).

Other EEOC Harassment Resources:

- Enforcement Guidance on Harassment in the Workplace: <https://www.eeoc.gov/laws/guidance/enforcement-guidance-harassment-workplace> (<https://www.eeoc.gov/laws/guidance/enforcement-guidance-harassment-workplace>)
- EEOC Harassment Home Page: <https://www.eeoc.gov/harassment> (<https://www.eeoc.gov/harassment>)
- EEOC Sexual Harassment Home Page: <https://www.eeoc.gov/sexual-harassment> (<https://www.eeoc.gov/sexual-harassment>)
- Small Business Fact Sheet: Harassment in the Workplace: <https://www.eeoc.gov/small-business-fact-sheet-harassment-workplace> (<https://www.eeoc.gov/small-business-fact-sheet-harassment-workplace>)

- Questions and Answers for Employees: Harassment at Work:
<https://www.eeoc.gov/questions-and-answers-employees-harassment-work> (**<https://www.eeoc.gov/questions-and-answers-employees-harassment-work>**)
- Youth@Work Harassment
FAQs: **<https://www.eeoc.gov/youth/harassment-faqs-1#>**
(**<https://www.eeoc.gov/youth/harassment-faqs-1>**)
- Promising Practices for Preventing
Harassment: **<https://www.eeoc.gov/laws/guidance/promising-practices-preventing-harassment>**
(**<https://www.eeoc.gov/laws/guidance/promising-practices-preventing-harassment>**)
- Promising Practices for Preventing Harassment in the Federal
Sector: **<https://www.eeoc.gov/federal-sector/reports/promising-practices-preventing-harassment-federal-sector>**
(**<https://www.eeoc.gov/federal-sector/reports/promising-practices-preventing-harassment-federal-sector>**)
- EEOC's Select Task Force on the Study of Harassment in the Workplace,
Report of Co-Chairs Chai R. Feldblum & Victoria A.
Lipnic, **<https://www.eeoc.gov/select-task-force-study-harassment-workplace>** (**<https://www.eeoc.gov/select-task-force-study-harassment-workplace>**) (including recommendations, checklists, chart
of risk factors for employers, and link to promising practices)

[1] On September 23, 2024, a federal district court in North Dakota issued a **[preliminary injunction \(https://www.eeoc.gov/sites/default/files/2024-10/31%20-%20PI%20Order_508FINAL.pdf\)](https://www.eeoc.gov/sites/default/files/2024-10/31%20-%20PI%20Order_508FINAL.pdf)** that, in relevant part, prohibits the EEOC from initiating any investigation or issuing any notice of right to sue against the Catholic Benefits Association (CBA), the Diocese of Bismarck, CBA members, and those acting in concert with or participating with CBA or a member of CBA, with regard to charges of discrimination alleging certain claims under Title VII of the Civil Rights Act of 1964 related to “abortion, fertility treatments, or gender transition when such is contrary to the Catholic faith,” the “use pronouns inconsistent with a person’s biological sex”; or the use of “private spaces reserved for the opposite sex.”

