

EEO/CIVIL RIGHTS – 2004 Updates

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IN BRIEF...

RELIGIOUS DISCRIMINATION

Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against individuals because of their religion in hiring, firing, and other terms and conditions of employment. The Act also requires employers to reasonably accommodate the religious practices of an employee or prospective employee, unless to do so would create an undue hardship upon the employer. Flexible scheduling, voluntary substitutions or swaps, job reassignments, and lateral transfers are examples of accommodating an employee's religious beliefs.

Mandatory "new age" training programs, designed to improve employee motivation, cooperation, or productivity through meditations, yoga, biofeedback, or other practices, may conflict with the nondiscriminatory provisions of Title VII. Employers must accommodate any employee who gives notice that these programs are inconsistent with the employee's religious beliefs, whether or not the employer believes there is a religious basis for the employee's objection.

An employer can claim undue hardship when accommodating an employee's religious practices if allowing such practices requires more than ordinary administrative costs. Undue hardship also may be shown if changing a bona fide seniority system to accommodate one employee's religious practices denies another employee the job or shift preference guaranteed by the seniority system.

RELIGIOUS HARASSMENT

The law against workplace discrimination protects individuals from being subjected to a hostile environment, or religious harassment, in the form of religiously discriminatory intimidation, or pervasive or severe religious ridicule or insult, whether by supervisor or fellow workers. The use of derogatory language in an assaultive manner can constitute statutory religious harassment if it is severe or provided repeatedly.

RELIGIOUS EXPRESSION

An employer shall not restrict personal religious expression by employees in the workplace except where the employee's interest in the expression is outweighed by the government's interest in the efficient provision of service or intrudes upon the rights of others, or creates the appearance of an official endorsement of religion.

RACE/COLOR DISCRIMINATION

It is unlawful to discriminate against any employee for employment because of his/her race or color in regard to hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment.

Discrimination on the basis of an immutable characteristic associated with race, such as skin color, hair texture, or certain facial features violates Title VII, even though not all members of the race share the same characteristics.

Equal employment opportunity cannot be denied because of marriage to or association with an individual of a different race; membership in or association with ethnic-based organization or groups; or attendance or participation in schools or places of worship generally associated with certain minority groups.

NATIONAL ORIGIN DISCRIMINATION

It is unlawful to discriminate against any employee or applicant because of the individual's national origin. No one can be denied equal employment opportunity because of birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group. Equal employment opportunity cannot be denied because of marriage or association with persons of a national origin group; membership or association with specific ethnic promotion groups; attendance or participation in schools, churches, temples, or mosques generally associated with a national origin group; or a surname associated with a national origin group.

SPEAK-ENGLISH-ONLY RULE

A rule requiring employees to speak only English at all times on the job may violate Title VII, unless an employer shows it is necessary for conducting business. If an employer believes the English-only rule is critical for business purposes, employees have to be told when they must speak English and the consequences for violating the rule. Any negative employment decision based on breaking the English-only rule will be considered evidence of discrimination if the employer did not tell employees of the rule.

SPEAK-ENGLISH-ONLY RULE ACCENT

An employee must show a legitimate nondiscriminatory reason for the denial of employment opportunity because of an individual's accent or manner of speaking. Investigations will focus on the qualifications of the person and whether his or her accent or manner of speaking had a detrimental effect on job performance. Requiring employees or applicants to be fluent in English may violate Title VII if the rule is adopted to exclude individuals of a particular national origin and is not related to job performance.

SPEAK-ENGLISH-ONLY RULE HARASSMENT

Harassment on the basis of national origin is a violation of Title VII. An ethnic slur or other verbal or physical conduct because of an individual's nationality constitute harassment if they create an intimidating, hostile, or offensive working environment, unreasonably interfere with work performance, or nearly affect an individual's employment opportunities.

IMMIGRATION-RELATED PRACTICES

The Immigration Reform and Control Act of 1986 (IRCA) requires employers to prove all employees hired after November 6, 1986, are legally authorized to work in the United States. IRCA also prohibits discrimination based on national origin or citizenship. An employer who singles out individuals of a particular national origin or individuals who appear to be foreign to provide employment verification may have violated both IRCA and Title VII.

Employers who impose citizenship requirement or give preference to U.S. citizens in hiring or employment opportunities may have violated IRCA, unless these are legal or contractual requirement for particular jobs. Employers also may have violated Title VII if a requirement or preference has the purpose or effect of discriminating against individuals of a particular national origin.

PREGNANCY DISCRIMINATION

The Pregnancy Discrimination Act is an amendment to Title VII of the Civil Rights Act of 1964. Discrimination on the basis of pregnancy, childbirth, or related medical conditions constitutes unlawful sex discrimination under Title VII. Women affected by pregnancy or related conditions must be treated in the same manner as other applicants or employees with similar abilities or limitations.

PREGNANCY DISCRIMINATION HIRING

An employer cannot refuse to hire a woman because of her pregnancy-related condition as long as she is able to perform the major functions of her job. An employer cannot refuse to hire her because of its prejudices against pregnant workers or prejudices of co-workers, clients, or customers.

PREGNANCY AND MATERNITY LEAVE

An employer may not single out pregnancy-related conditions for special procedures to determine an employee's ability to work. However, an employer may use any procedure used to screen other employees' ability to work. For example, if an employer requires its employees to submit a doctor's statement concerning their inability to work before granting leave or paying sick benefits, the employer may require employees affected by pregnancy-related conditions to submit such statements.

If an employee is temporarily unable to perform her job due to pregnancy, the employer must treat her the same as any other temporarily disabled employee; for example, by providing modified tasks, alternative assignments, disability leave, or leave without pay.

Employers must hold open a job for a pregnancy-related absence the same length of time jobs are held open for employees on sick or disability leave.

Pregnancy employees must be permitted to work as long as they are able to perform their jobs. If an employee has been absent from work as a result of a pregnancy-related condition and recovers, her employer may not require her to remain on leave until the baby's birth. An employer may not have a rule which prohibits an employee from returning to work for a predetermined length of time after childbirth.

AGE DISCRIMINATION

The Age Discrimination in Employment Act of 1967 (ADEA) protects individuals who are 40 years of age or older from employment discrimination based on age. The ADEA's protections apply to both employees and job applicants. Under the ADEA, it is unlawful to discriminate against a person because of his/her age with respect to any term, condition, or privilege of employment – including, but not limited to hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training.

SEXUAL HARASSMENT

Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission to or rejection of this 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 can occur in a variety of circumstances, including but not limited to the following:

- The victim as well as the harasser may be a woman or man. The victim does not have to be of the opposite sex.
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or non-employee.
- The victim does not have to be the person harassed, but could be anyone affected by the offensive conduct.

- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harassers conduct must be unwelcome.

It is helpful for the victim to directly inform the harasser that the conduct is unwelcome and must stop.

THE AMERICAN WITH DISABILITIES ACT OF 1990 (ADA)

A disabled person is one who has a physical or mental impairment that substantially limits a major life activity, a person who has a past record of such impairment, or a person who is regarded by other people as having such an impairment.

Under ADA an impairment must substantially limit on or more major life activities.

Examples are:

- Walking
- Speaking
- Breathing
- Performing manual tasks
- Sitting
- Standing
- Reading
- Seeing
- Hearing
- Learning
- Caring for oneself
- Working
- Lifting

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