

New EEOC Guidelines on Workplace Harassment: A Practical Guide for Pennsylvania Employers

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Federal law requires U.S. employers to maintain a harassment-free workplace. Recently, the U.S. Equal Employment Opportunity Commission (EEOC) issued [new guidance on harassment in the workplace](#) aiming to simplify compliance for employers and promote a respectful work environment. The updated guidelines also discuss new issues raised by remote working and online harassment. Employers who are familiar with this guidance and implement it in their workplace will be better placed to avoid penalties and expensive litigation.

What's in the new EEOC Guidance on Harassment?

The EEOC's updated guidelines on workplace harassment are lengthy. Through detailed explanations and helpful examples, the guidance clarifies what constitutes harassment, the underlying case law and legislation, and practical steps for employers.

Harassment Defined: The EEOC reiterates that harassment encompasses any unwelcome conduct based on one or more protected characteristics – race, color, religion, sex (including pregnancy, identity, and orientation), national origin, age (40 or older), disability, or genetic information. This behavior becomes unlawful when it causes an explicit change to the terms or conditions of employment or when the conduct is severe or pervasive enough to create a work environment deemed intimidating, hostile, or abusive to reasonable persons.

Scope of Employer Liability: A critical aspect of the guidance is the delineation of employer liability and the reminder that employers can be liable for harassment by non-managers and even non-employees. The EEOC explains that employers are liable for the harassing conduct of their proxies, alter egos, and supervisors. However, liability or damages may be limited in the case of harassment by a supervisor that does not result in tangible employment action (i.e hiring, firing, promoting, demoting, changes in compensation, changes in benefits or reassignments). If the harassment is caused by someone who is not the employer or a supervisor, the employer is only liable if they knew or should have known about the harassment and failed to take appropriate action to stop it.

Minimizing Employer Exposure: The EEOC places significant emphasis on the employer's responsibility to prevent and promptly correct workplace harassment. This includes the development and enforcement of a clear anti-harassment policy, regular and comprehensive employee training,

and effective mechanisms for reporting and addressing complaints. In the case of supervisor harassment without tangible employment action, an employer may be able to avoid or reduce liability by showing that they acted reasonably to prevent and correct the harassment and that the complaining employee acted unreasonably by not using the employer's complaint procedure or taking other steps to minimize their harm. An employer will not be liable for the harassment of a co-worker or non-employee unless the complainant can prove that the employer unreasonably failed to prevent the harassment or knew (or should have known) about the harassment and failed to take reasonable corrective action.

Non-retaliatory Employer Response: Employers are reminded that they should take immediate action upon receiving a complaint or becoming aware of potential harassment, and that any retaliation against a complainant is unacceptable. An employer's investigation should be prompt, thorough, and impartial, followed by appropriate corrective measures to resolve the situation and prevent recurrence. The EEOC stresses the importance of confidentiality and non-retaliation policies to protect all parties involved.

Systemic Harassment: When multiple employees in a protected group are subject to similar harassing conduct, or a pattern of harassment, the harassment may be systemic. This may require an organization-wide response or change to be properly addressed and corrected. An employer must investigate and correct the full scope of the harassment, not just its effects on a complaining individual or known affected group.

Practical Advice for Pennsylvania Employers

Employers can take proactive steps to maximize compliance and minimize risk:

- 1. Develop Clear Anti-Harassment Policies:** Draft and disseminate a clear anti-harassment policy that outlines unacceptable behaviors, establishes a procedure for making complaints, and details the consequences of engaging in harassment. Ensure this policy is easily accessible to all employees.
- 2. Conduct Regular Training:** Organize training sessions for employees and management to understand their rights and responsibilities under the EEOC guidelines and your company's anti-harassment policy. Training should be conducted regularly to reinforce the message and update any changes in the law or company policy.
- 3. Establish a Confidential Complaint Process:** Create a secure and confidential mechanism for employees to report harassment without fear of retaliation. This could include multiple reporting channels to ensure employees can bypass their immediate supervisor if necessary.
- 4. Prompt and Impartial Investigations:** Take every complaint seriously. Conduct prompt, impartial, and thorough investigations into harassment complaints. Sometimes companies should consult a third-party independent investigator to obtain a truly neutral perspective. This demonstrates the company's commitment to addressing and resolving issues.
- 5. Take Appropriate Corrective Actions:** Based on the investigation findings, take immediate and appropriate action against perpetrators of harassment. Actions may range from training or counseling to more severe disciplinary measures, depending on the severity of the harassment. Harassment does not necessarily have to lead to termination, but in some circumstances it will.
- 6. Document Everything:** Your HR department should maintain detailed records of complaints,

investigations, and actions taken in response to harassment claims. Documentation is crucial for defending against potential legal actions and demonstrating compliance with EEOC guidelines.

Trusted Support for Employers

At 95 pages long, the consolidated EEOC guidance is thorough but cumbersome, and the realities of running a business makes it challenging for many employers to stay on top of all of the nuances in this field. For basic questions, the [Small Business Fact Sheet: Harassment in the Workplace](#) is a great place to start, but for in depth questions about an employer's obligations, it is advisable to seek legal advice from a trusted employment lawyer in your state. An experienced attorney can help you understand how to implement the guidance in your business, identify other legal principles that are not covered in this guidance, and explain any local and state laws that may also be applicable to you.

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