

EEOC Issues New Proposed Enforcement Guidance on Harassment in the Workplace

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The U.S. Equal Employment Opportunity Commission (EEOC) recently released a proposed enforcement guidance to combat workplace harassment.

According to the EEOC, the updated proposed guidance “reflects notable changes in the law, including the Supreme Court’s decision in *Bostock v. Clayton County*, the #MeToo movement, and emerging issues, such as virtual or online harassment.” *Bostock* held that it is unlawful to discriminate against an individual “because of” the individual’s sex by firing someone simply because they are gay or transgender.

The proposed guidance will “explain legal standards and employer liability applicable to harassment claims under the federal employment discrimination laws enforced by the EEOC” to protect “covered employees from harassment based on race, color, religion, sex (including sexual orientation, transgender status, and pregnancy), national origin, disability, age (40 and older) or genetic information.”

The guidance provides a wealth of “updated examples” of potential harassment in the workplace. These examples reflect realistic situations that employees and employers might face. Each example incorporates modern case law on harassment in the workplace.

The EEOC is also taking a major step to “address the proliferation of digital technology and how social media postings and other online content can contribute to a hostile work environment.”

EEOC Chair Charlotte A. Burrows has encouraged public input and participation. The EEOC has targeted harassment as a “serious workplace problem.” Between the fiscal years of 2016 and 2020, “more than one-third of charges received by the EEOC included an allegation of harassment.”

As a result, the EEOC has drafted a Strategic Enforcement Plan for the Fiscal Years 2024-2028. This plan aims to “coordinate the agency’s work” over a long period and provides a “sustained impact in advancing equal employment opportunity.”

These developments are consistent with the EEOC's trending growth and expanded enforcement over the past several years. The Biden administration's proposed budget for 2023 included \$464.65 million for the EEOC, an increase of about 10% (\$60 million) from its 2022 allotment. All signs indicate that employers should expect these trends to continue.

Before this guidance is finalized and published on the EEOC website, employers should consult their attorneys for training and education opportunities, as well as to ensure policies and procedures are up to date with recent changes in the law.