



U.S. Equal Employment Opportunity Commission

Employment Rights of Immigrants Under Federal Anti-Discrimination Laws

Immigrants are protected from employment discrimination by laws enforced by the Equal Employment Opportunity Commission (EEOC). This pamphlet answers questions often asked by people who think that they have suffered discrimination in employment. It describes what the law covers, how to file a complaint, and typical examples of employment discrimination.

What the Equal Employment Opportunity Commission does

The EEOC is a federal agency responsible for enforcing laws prohibiting employment discrimination and harassment because of race, color, sex, religion, national origin, age (40 and over and physical or mental disability). Employers with 15 or more employees (20 or more for age discrimination), employment agencies, unions, employer-union apprentice programs, and local, state, and federal agencies must obey these laws. If you think that you have been discriminated against on the job or while applying for a job, you should contact the EEOC. The law has strict time limits for filing a charge of discrimination, and in some cases the EEOC will not have jurisdiction unless the charge is filed within 180 days of the occurrence of discrimination. Because of these filing limits, we suggest that you contact our office as soon as the discrimination has occurred.

When a charge of discrimination is filed, EEOC conducts an impartial investigation to determine if the laws were violated. You may call 1-800-669-4000 to be connected with the nearest EEOC field office to you.

What you should know about National Origin Discrimination under Title VII

The law protects people against employment discrimination on the basis of their national origin. Following are some examples of employment discrimination based on national origin.

Discrimination Because of a Person's or His or Her Ancestor's Place of Birth

- Unlawful national origin discrimination may include discrimination because of a person's looks, customs, or language. It isn't necessary for a person to show that his or her ancestors are from a particular country or region to prove national origin discrimination. A claim can be proven if a person is discriminated against for having the characteristics for a different group. For example, a person might mistakenly be thought to be Haitian and may be discriminated against based on certain characteristics, even though he is not actually Haitian. Similarly, a person may be perceived as being foreign born or of foreign ancestry and may be discriminated against in violation of the law.

Discrimination Based on Association with Persons of a Different National Origin Group

- The law prohibits discrimination because a person associates with people of a national origin group, (discrimination because of attendance at schools or places of worship used by persons of a particular nationality, and discrimination because a person's or spouse's name is associated with a national origin group). For example, if someone is denied a promotion or otherwise discriminated against because she is married to a Hispanic man, that violates the law.

Practices May Have an Adverse Effect on Particular National Origin Groups

- Some employment practices, such as citizenship requirements, minimum height requirements, and policies against hiring individuals with arrest and conviction records, may screen out people of a particular national origin. For example, a minimum height requirement for certain jobs, such as police officers or firefighters, may disproportionately screen out people of certain national origins, such as Hispanics and Asians, and would be against the law unless the employer could prove that it is related to the job and needed for the employer to operate safely or efficiently. Another policy that may discriminate against certain national origin group members would be a high school diploma requirement, which may not be job related for certain positions such as laborers.

Harassment Based on National Origin

- Ethnic slurs and other verbal or physical conduct because of nationality are illegal if they are severe or pervasive and create an intimidating, hostile or offensive working environment, interfere with work performance, or negatively affect job opportunities. Examples of potentially unlawful conduct include insults, taunting, or ethnic epithets, such as making fun of a person's foreign accent or comments like, "Go back to where you came from," whether made by supervisors or by co-workers.

Discrimination Based on Accent

Treating employees differently because they have a foreign accent is lawful only if accent materially interferes with being able to do the job.

- Generally, an employer may only base an employment decision on accent if effective oral communication in English is required to perform job duties and the individual's foreign accent materially interferes with his or her ability to communicate orally in English.
- Jobs that may require effective oral communication in English include teaching, customer service, and telemarketing to English speaking clients.
- If a person has an accent but it is able to communicate effectively and be understood in English, he or she cannot be discriminated against.

Speak-English –Only Rules

The EEOC has stated that rules requiring employees to speak only English in the workplace violate the law unless they are reasonable necessary to the operation of the business.

- A rule requiring employees to speak only English in the workplace at all times, including breaks and lunch time, will rarely be justified.
- An English-only rule should be limited to the circumstances in which it is needed for the employer to operate safely or efficiently.
- Circumstances in which an English-only rule may be justified include: communications with customers or coworkers who only speak English; emergencies or other situations in which workers must speak a common language to promote safety; cooperative work assignments in

which the English-only rule is needed to promote efficiency.

- Even if there is a need for an English-only rule, an employer may not take disciplinary action against an employee for violating the rule unless the employer has notified workers about the rule and the consequences of violating it.

Discrimination Based on Appearance

Discrimination based on a person's ethnic appearance violates the law.

- For example, suppose that Radika, a native of India, applies for a job as a receptionist. At her interview, the selecting official says that Radika would not be right for the job, because the company is looking for someone with "an all American front office appearance." She is dressed appropriately, and is certain that the only thing about her appearance that is not of the "front office" type is that she is of Indian ancestry. If Radika can show that the selecting official viewed her appearance as inappropriate because of her Indian features, she can establish a violation of the law. Similarly, if this employer refuses to allow an Indian employee to wear a sari, but imposes no dress restrictions on any other employees, this may also violate the law.

The Immigration Reform and Control Act of 1986

Discrimination based on citizenship is expressly prohibited by the Immigration Reform and Control Act of 1986, commonly referred to as "IRCA." IRCA also prohibits discrimination on the basis of national origin by employers with between four and fourteen employees.

- IRCA is enforced by the:

United States Department of Justice
Office of Special Counsel for Immigration Related Unfair Employment Practices
OSC Employer Hotline: 1-800-255-8155
OSC Employee Hotline: 1-800-255-7688
1-800-237-2515 (TTY for employees/applicants)
1-800-362-2735 (TTY for employers)
<http://www.justice.gov/crt/about/osc>

A memorandum of understanding between the EEOC and the Office of Special Counsel (OCS) provides for the EEOC to refer to the OSC charges filed with EEOC that allege IRCA violations. EEOC will forward these complaints to OCS in Washington for investigation. Examples of prohibited citizenship discrimination under IRCA:

- "U.S. citizen only" policy which discriminates against legal resident aliens authorized to work in the United States.
- "Green card only" policy which discriminates against legal resident aliens authorized to work in the United States who do not have a "green card."
- Requiring applicants for employment to provide certain specific or additional work authorization documents, rather than accepting any of the several forms of documentation an applicant is permitted to submit under IRCA.

What you need to know about other kinds of Employment Discrimination that may affect you

The laws enforced by the EEOC also prohibited employment discrimination based on race, sex, color, religion, age, and physical or mental disability. In addition you cannot be retaliated against for filing a charge, protesting or opposing employment discrimination, or participating or serving as a witness in an investigation or lawsuit. These laws cover all aspects of work including

recruitment, hiring, promotion, demotion, termination, layoff, compensation, employee benefits, work assignments, and all other terms or conditions of employment.

Here are some examples of these other kinds of discrimination that often affect immigrant workers.

- When Mei Li applied for a job as a presser in a garment shop she was told that only men are hired as pressers. When Wah applied as a sewing machine operator he saw that only women are operating sewing machines. He was told that he would not be hired as an operator but was offered work as a presser. He is a qualified sewing machine operator. This is a job classification based on sex and is against the law.
- When Mae celebrated her 65th birthday the shop owner told her she was too old to be a sewing machine operator, and offered her work as a thread trimmer. This is unlawful age discrimination.
- Clara was pregnant and requested a 3 month paid leave of absence. Her company will give sick employees up to a 3 month paid leave of absence but denied her request for leave. This is pregnancy discrimination, which is a type of unlawful sex discrimination.
- Maria was told by the boss that if she wants to keep her job she should date him. This is sexual harassment and is against the law.
- John's co-workers consistently call him names that refer to his race and use racial slurs and epithets which he finds offensive and unwelcome. He has complained to his boss, but nothing has been done to stop it. This is a racial harassment that is against the law.
- Joan requested a change in her schedule to celebrate an important religious holiday. Her employer refused to consider her request although she could easily be accommodated. This is a form of religious discrimination that is against the law.
- Jasha noticed that Sarah was not being paid as much as he was although they were both doing the same job under similar working conditions. When he objected to the unfair treatment of his coworker, he was fired. The employer has violated the law because Jasha is protected from retaliation based on his opposing possible discrimination. Sarah may also be entitled to protection under the law because unequal pay based on sex is also against the law.
- Sang developed a back impairment that limited his ability to carry parcels weighing more than 5 lbs. Delivering parcels is an essential function of his job. He requests a low-cost cart with wheels to permit him to do his job. The employer refuses to provide the cart, even though it poses no undue hardship. By refusing to provide a reasonable accommodation, Sang's employer has discriminated against him on the basis of his disability.
- Omar went to his native country for a visit. When he returned, his boss refused to let him return to work until he had been checked out by a doctor, because the boss believed that Omar had contracted a contagious disease during his vacation. Unless the boss reasonably believes that Omar's medical condition endangers the health or safety of Omar's coworkers, the requirement that Omar be examined by a doctor is unlawful.
- Jose is from the Dominican Republic and worked for a company owned by a Dominican. Jose's skin is darker than the owner or any of the other employees. He is the only employee who was not given supervisory training. If the failure to provide supervisory training was based on the color of his skin, this violates the law.
- Antoine, who is Black, and Claude, who is White, get into a fight at work. The employer investigates and is unable to determine who started the fight. Antoine is fired and Claude is suspended without pay for one week. This may be a case of race discrimination because the person of color was fired while the White employee was only suspended from work. If Antoine had a prior record of fighting on the job but Claude did not or if Antoine was a supervisory employee while Claude was not, then the harsher penalty imposed on Antoine may be justified by this difference.
- When an EEOC investigator is about to interview Anne, her boss warns her that her job may

be in danger if she doesn't lie to the investigator. This kind of intimidation violates the law because employees cannot be retaliated against because they participate in an EEOC investigation.

**REMEMBER – IT IS YOUR RIGHT TO WORK WITHOUT BEING SUBJECT TO
EMPLOYMENT DISCRIMINATION**



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Facts About Sexual Harassment

Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. Title VII applies to employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when 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 a 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 a 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 harasser's conduct must be unwelcome.

It is helpful for the victim to inform the harasser directly that the conduct is unwelcome and must stop. The victim should use any employer complaint mechanism or grievance system available.

When investigating allegations of sexual harassment, EEOC looks at the whole record: the circumstances, such as the nature of the sexual advances, and the context in which the alleged incidents occurred. A determination on the allegations is made from the facts on a case-by-case basis.

Prevention is the best tool to eliminate sexual harassment in the workplace. Employers are encouraged to take steps necessary to prevent sexual harassment from occurring. They should clearly communicate to employees that sexual harassment will not be tolerated. They can do so by providing sexual harassment training to their employees and by establishing an effective complaint or grievance process and taking immediate and appropriate action when an employee complains.

It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on sex or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under Title VII.

Questions and Answers for Small Employers on Employer Liability for Harassment by Supervisors

Title VII of the Civil Rights Act (Title VII) prohibits harassment of an employee based on race, color, sex, religion, or national origin. The Age Discrimination in Employment Act (ADEA) prohibits harassment of employees who are 40 or older on the basis of age, the Americans with Disabilities Act (ADA) prohibits harassment based on disability, and the Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits harassment of an employee based on genetic information. All of the anti-discrimination statutes enforced by the EEOC prohibit retaliation for complaining of discrimination or participating in complaint proceedings.

The Supreme Court issued two major decisions in June of 1998 that explained when employers will be held legally responsible for unlawful harassment by supervisors. The EEOC's [Guidance on Employer Liability for Harassment by Supervisors](#) examines those decisions and provides practical guidance regarding the duty of employers to prevent and correct harassment and the duty of employees to avoid harassment by using their employers' complaint procedures.

1. When does harassment violate federal law?

- Harassment violates federal law if it involves discriminatory treatment based on race, color, sex (with or without sexual conduct), religion, national origin, age, disability, genetic information, or because the employee opposed job discrimination or participated in an investigation or complaint proceeding under the EEO statutes. Federal law does not prohibit simple teasing, offhand comments, or isolated incidents that are not extremely serious. The conduct must be sufficiently frequent or severe to create a hostile work environment or result in a "tangible employment action," such as hiring, firing, promotion, or demotion.

2. Does the guidance apply only to sexual harassment?

- No, it applies to *all* types of unlawful harassment.

3. When is an employer legally responsible for harassment by a supervisor?

- An employer is always responsible for harassment by a supervisor that culminated

in a tangible employment action. If the harassment did not lead to a tangible employment action, the employer is liable unless it proves that: 1) it exercised reasonable care to prevent and promptly correct any harassment; *and* 2) the employee unreasonably failed to complain to management or to avoid harm otherwise

4. Who qualifies as a "supervisor" for purposes of employer liability?

- An individual qualifies as an employee's "supervisor" if the individual has the authority to recommend tangible employment decisions affecting the employee *or* if the individual has the authority to direct the employee's daily work activities.

5. What is a "tangible employment action"?

- A "tangible employment action" means a significant change in employment status. Examples include hiring, firing, promotion, demotion, undesirable reassignment, a decision causing a significant change in benefits, compensation decisions, and work assignment.

6. How might harassment culminate in a tangible employment action?

- This might occur if a supervisor fires or demotes a subordinate because she rejects his sexual demands, or promotes her because she submits to his sexual demands.

7. What should employers do to prevent and correct harassment?

- Employers should establish, distribute to all employees, and enforce a policy prohibiting harassment and setting out a procedure for making complaints. In most cases, the policy and procedure should be in writing.
- Small businesses may be able to discharge their responsibility to prevent and correct harassment through less formal means. For example, if a business is sufficiently small that the owner maintains regular contact with all employees, the owner can tell the employees at staff meetings that harassment is prohibited, that employees should report such conduct promptly, and that a complaint can be brought "straight to the top." If the business conducts a prompt, thorough, and impartial investigation of any complaint that arises and undertakes swift and appropriate corrective action, it will have fulfilled its responsibility to "effectively prevent and correct harassment."

8. What should an anti-harassment policy say?

- An employer's anti-harassment policy should make clear that the employer will not tolerate harassment based on race, sex, religion, national origin, age, disability, or genetic information, or harassment based on opposition to discrimination or participation in complaint proceedings. The policy should also state that the employer will not tolerate retaliation against anyone who complains of harassment or who participates in an investigation.

9. What are important elements of a complaint procedure

- The employer should encourage employees to report harassment to management before it becomes severe or pervasive.
- The employer should designate more than one individual to take complaints, and should ensure that these individuals are in accessible locations. The employer also should instruct all of its supervisors to report complaints of harassment to appropriate officials.
- The employer should assure employees that it will protect the confidentiality of harassment complaints to the extent possible.

10. Is a complaint procedure adequate if employees are instructed to report harassment to their immediate supervisors?

- No, because the supervisor may be the one committing harassment or may not be impartial. It is advisable for an employer to designate at least one official outside an employee's chain of command to take complaints, to assure that the complaint will be handled impartially.

11. How should an employer investigate a harassment complaint?

- An employer should conduct a prompt, thorough, and impartial investigation. The alleged harasser should not have any direct or indirect control over the investigation.
- The investigator should interview the employee who complained of harassment, the alleged harasser, and others who could reasonably be expected to have relevant information. The Guidance provides examples of specific questions that may be appropriate to ask.
- Before completing the investigation, the employer should take steps to make sure that harassment does not continue. If the parties have to be separated, then the separation should not burden the employee who has complained of harassment. An involuntary transfer of the complainant could constitute unlawful retaliation. Other

examples of interim measures are making scheduling changes to avoid contact between the parties or placing the alleged harasser on non-disciplinary leave with pay pending the conclusion of the investigation.

12. How should an employer correct harassment?

- If an employer determines that harassment occurred, it should take immediate measures to stop the harassment and ensure that it does not recur. Disciplinary measures should be proportional to the seriousness of the offense. The employer also should correct the effects of the harassment by, for example, restoring leave taken because of the harassment and expunging negative evaluations in the employee's personnel file that arose from the harassment.

13. Are there other measures that employers should take to prevent and correct harassment?

- An employer should correct harassment that is clearly unwelcome regardless of whether a complaint is filed. For example, if there is graffiti in the workplace containing racial or sexual epithets, management should not wait for a complaint before erasing it.
- An employer should ensure that its supervisors and managers understand their responsibilities under the organization's anti-harassment policy and complaint procedures.
- An employer should screen applicants for supervisory jobs to see if they have a history of engaging in harassment. If so, and the employer hires such a candidate, it must take steps to monitor actions taken by that individual in order to prevent harassment.
- An employer should keep records of harassment complaints and check those records when a complaint of harassment is made to reveal any patterns of harassment by the same individuals.

14. Does an employee who is harassed by his or her supervisor have any responsibilities?

- Yes. The employee must take reasonable steps to avoid harm from the harassment. Usually, the employee will exercise this responsibility by using the employer's complaint procedure.

15. Is an employer legally responsible for its supervisor's harassment if the employee failed to use the employer's complaint procedure?

- No, unless the harassment resulted in a tangible employment action or unless it was reasonable for the employee not to complain to management. An employee's failure to complain would be reasonable, for example, if he or she had a legitimate fear of retaliation. The employer must prove that the employee acted unreasonably.

16. If an employee complains to management about harassment, should he or she wait for management to complete the investigation before filing a charge with EEOC?

- It may make sense to wait to see if management corrects the harassment before filing a charge. However, if management does not act promptly to investigate the complaint and undertake corrective action, then it may be appropriate to file a charge. The deadline for filing an EEOC charge is either 180 or 300 days after the last date of alleged harassment, depending on the state in which the allegation arises. **This deadline is *not* extended because of an employer's internal investigation of the complaint.**

Further guidance on harassment can be found in the 1999 Guidance on Employer Liability for Unlawful Harassment by Supervisors; the 1980 Guidelines on Sexual Harassment; the 1990 Policy Statement on Current Issues in Sexual Harassment; the 1990 Policy Statement on Sexual Favoritism; and the 1994 Enforcement Guidance on *Harris v. Forklift Sys., Inc.*. These can all be found on EEOC's web site <http://www.eeoc.gov>. They are also available by calling the EEOC's Publications Distribution Center (800-669-3362 or TTY 800-800-3302), or send inquiries to:

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