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Best Practices for Preventing Harassment in a Remote Work Environment

The U.S. Equal Employment Opportunity Commission (EEOC) is a federal agency responsible for enforcing federal equal employment opportunity (EEO) laws. Each EEO law listed below covers certain private-sector employers and prohibits harassment:

- Title VII of the Civil Rights Act of 1964 (Title VII);
- Age Discrimination in Employment Act (ADEA);
- Americans with Disabilities Act (ADA); and
- Genetic Information Nondiscrimination Act (GINA).

Employers with a partially or fully remote workforce face unique challenges in preventing harassment. This Compliance Overview provides a summary of employer requirements under EEO anti-harassment laws, potential pitfalls in a remote work environment and best practices employers can use to prevent harassment in a remote work environment.

Links and Resources

- EEO Laws Overview
- EEOC Questions and Answers for Employees: Harassment at Work

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Overview of Federal EEO Laws

EEO laws protect employees and applicants from harassment on the basis of certain protected traits. To help prevent claims of harassment, employers should familiarize themselves with the various forms of harassment prohibited under each EEO law and assess whether they are subject to those laws.

EEO Law	Covered Employers	Prohibited Harassment
Title VII	Private-sector employers with **15 or more employees** for at least 20 weeks in the same calendar year as or in the calendar year prior to when the alleged harassment occurred	Prohibits harassment on the basis of race, color, religion, national origin and sex (including pregnancy, childbirth or related medical conditions)
ADEA	Private-sector employers with **20 or more employees** for at least 20 weeks in the	Prohibits harassment against someone who is age 40 or older on the basis of age

	current or preceding calendar year	
ADA	Private-sector employers with **15 or more employees** for at least 20 weeks in the same calendar year as or in the calendar year prior to when the alleged harassment occurred	Prohibits harassment against a qualified person on the basis of their disability
GINA	Private-sector employers with **15 or more employees** for at least 20 weeks in the same calendar year as or in the calendar year prior to when the alleged harassment occurred	Prohibits harassment on the basis of an individual's genetic information (e.g., family medical history; genetic tests of an individual or an individual's family members; information about any disease, disorder or condition)

Unlawful Harassment

Unlawful harassment is unwelcome conduct based on an individual's protected trait where:

- Enduring the offensive conduct becomes a condition of continued employment; or
- The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile or abusive.

Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name-calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance.

Employers are liable for harassment by a supervisor that results in a negative employment action (e.g., termination, failure to promote or hire, and loss of wages). If the supervisor's harassment results in a hostile work environment, the employer is liable unless the employer can prove that:

- The employer reasonably tried to prevent and promptly correct the harassing behavior; and
- The employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer.

Employers may also be liable for harassment by nonsupervisory employees or nonemployees over whom they have control if they knew, or should have known, of the harassment and failed to take prompt and appropriate corrective action.

Sexual Harassment

In addition, sexual harassment is prohibited under Title VII. Unlawful sexual harassment may include unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when such 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 may include unwanted sexual attention or sexual coercion (e.g., demands or pressure for sexual favors, sexual assault or sexual remarks) as well as nonsexual conduct based on sex (e.g., sex-based epithets, sexist comments or facially sex-neutral offensive conduct motivated by sex).

Remote Harassment

Harassment is not limited to a physical workplace. Illegal harassment can occur in a virtual work environment, in the same way as in a physical environment, through online communication platforms and systems, including an employer's email system, instant messaging system, electronic bulletin board, videoconferencing technology, intranet, public website, social media accounts or other equivalent services or technologies.

Examples of harassing conduct in a remote work environment include:

- Sexist comments made during a video meeting;
- Ageist or ableist comments typed in a group chat;
- Racist imagery that is visible in an employee's workspace while the employee participates in a video meeting; or
- Sexual comments made during a video meeting about a bed being near an employee in the video image.

Enforcement and Penalties

Individuals alleging harassment under federal EEO laws may file a charge of discrimination with the EEOC. Under Title VII, the ADEA, the ADA and GINA, individuals have **180 days** from the date the alleged harassment took place to file a charge with the EEOC. For claims under Title VII, the ADA or GINA, the filing deadline is extended to **300 days** if a state or local agency enforces a state or local law that prohibits the same form of discrimination prohibited under those EEO laws. For claims under the ADEA, the filing deadline is extended to 300 days only if a state agency enforces a law that prohibits age discrimination.

In a harassment case, individuals may be eligible for various forms of relief, including preliminary relief, compensatory and punitive damages, and other remedies such as back pay, front pay or job reinstatement.

Best Practices for Preventing Harassment in a Remote Work Environment

Implement an Anti-Harassment Policy

As a best practice, all employers should adopt a written anti-harassment policy that is distributed to all employees, either as a standalone policy or as part of the employee handbook. Employers with a remote workforce should ensure that their policy explicitly covers remote harassment. The policy may state that it applies everywhere work occurs, including at home, and provide examples of conduct that could constitute unlawful harassment in a remote work environment, such as inappropriate messages, offensive virtual backgrounds, unwanted behavior on video or unwelcome after-hours conduct.

The policy should clearly state how employees may report instances of harassment and outline the consequences for failing to comply with the organization's anti-harassment policy. Finally, the policy should be easily accessible to remote employees by including it on the organization's intranet website or sending it to all employees via email.

Employers should regularly review their anti-harassment policies to ensure they are up to date with current federal, state and local requirements.

Provide Virtual Training

An important step in preventing harassment is providing anti-harassment training to all employees that identifies their rights and restrictions under the employer's anti-harassment policy and applicable laws. Employers with a remote workforce will generally need to administer such training virtually. To increase the virtual training's efficacy, employers may consider using an interactive training protocol (and may be required to do so under certain state anti-harassment training requirements). Employers may also consider providing a live training that includes a mechanism for employees to ask questions during the training (e.g., through a chat messaging system).

The training should give clear examples of harassment that may occur in a remote work environment, how other employees can identify such harassment, steps employees can take as a bystander to prevent and mitigate harassment, how employees can report such harassment through the company's reporting system and the consequences for failure to comply. The training should also establish that the same professional standards apply regardless of where the work is occurring and provide clear standards.

Employers may also consider providing separate training for managers and supervisors (and may be required to do so under certain state laws). Such training should teach managers and supervisors how to identify potential harassment in remote environments, how to respond to formal and informal complaints (including how to escalate to HR personnel or other more senior employees) and how to avoid retaliating against employees who allege harassment.

Develop an Effective Virtual Reporting Mechanism

Reporting harassment may be more difficult in a remote work environment, as employees often have less frequent interaction with the parties responsible for receiving and responding to allegations of harassment. Therefore, it is imperative that employers with a remote workforce establish effective virtual reporting mechanisms and communicate the reporting mechanism clearly to all employees. Employers should list the parties with whom employees may file claims of harassment (e.g., their direct manager, HR personnel or a designated alternate for situations in which the manager or the HR representative is the subject of the claim) and provide their contact information. Employers may also provide an anonymous online portal or hotline employees can use to report harassment.

Finally, employers should ensure that guidelines for reporting harassment are easily accessible to remote employees, such as including the information on the company's intranet website or in an employee handbook or standalone policy.

Establish Guidelines for Technology and Communication

In some instances, remote work environments are more casual and informal, which can inadvertently lead to unprofessional behavior. To mitigate this problem, employers may consider establishing written expectations for how remote employees communicate and use the organization's work platforms. For example, employers may require a professional tone and limit the use of such channels to appropriate work-related discussions during regular business hours. Employers may also establish guidelines for video meetings, including appropriate backgrounds, attire and behavior. For example, employers may require business casual attire or ask employees to adopt a neutral virtual background for video calls. In all cases, employers should emphasize that the virtual workplace calls for the same level of professionalism that would be expected in an office or other in-person environment.

In addition, employers may establish internal guidelines for how the organization monitors communications made through its platforms. Employers who choose to monitor employee communications should generally advise employees of such monitoring in a written policy and ensure compliance with state laws regarding electronic monitoring.

Employer Takeaways

Harassment claims can lead to significant legal penalties and reputational harm to employers. Employers with a remote workforce face unique challenges in preventing and responding to allegations of harassment as the lines between work and home are blurred. To prevent harassment in a virtual workplace, employers should modernize their anti-harassment practices to reduce the risk of harassment claims.

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