



Useful FAQs: Employment Discrimination & the Law

Federal Law Questions & Answers:

I. What Are the Federal Laws Prohibiting Job Discrimination?

- Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits employment discrimination based on race, color, religion, sex, or national origin;
- the Equal Pay Act of 1963 (EPA), which protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination;
- the Age Discrimination in Employment Act of 1967 (ADEA), which protects individuals who are 40 years of age or older;
- Title I and Title V of the Americans with Disabilities Act of 1990 (ADA), which prohibit employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments;
- Sections 501 and 505 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified individuals with disabilities who work in the federal government; and
- the Civil Rights Act of 1991, which, among other things, provides monetary damages in cases of intentional employment discrimination.

The U.S. Equal Employment Opportunity Commission (EEOC) enforces all of these laws. EEOC also provides oversight and coordination of all federal equal employment opportunity regulations, practices, and policies.

Other federal laws, not enforced by EEOC, also prohibit discrimination and reprisal against federal employees and applicants. The Civil Service Reform Act of 1978 (CSRA) contains a number of prohibitions, known as *prohibited personnel practices*, which are designed to promote overall fairness in federal personnel actions. 5 U.S.C. 2302. The CSRA prohibits any employee who has authority to take certain personnel actions from discriminating for or against employees or applicants for employment on the bases of race, color, national origin, religion, sex, age or disability. It also provides that certain personnel actions can not be based on attributes or conduct that do not adversely affect employee performance, such as marital status and political affiliation. The Office of Personnel Management (OPM) has interpreted the prohibition of discrimination based on conduct to include discrimination based on sexual orientation. The CSRA also prohibits reprisal against federal employees or applicants for whistle-blowing, or for exercising an appeal, complaint, or grievance right. The CSRA is enforced by both the Office of Special Counsel (OSC) and the Merit Systems Protection Board (MSPB).

Additional information about the enforcement of the CSRA may be found on the OPM web site: <http://www.opm.gov/er/address2/guide01.htm>; from OSC at (202) 653-7188 or <http://www.osc.gov>; and from MSPB at (202) 653-6772 or <http://www.mspb.gov>.

II. What Discriminatory Practices Are Prohibited by These Laws?

Under Title VII, the ADA, and the ADEA, it is illegal to discriminate in any aspect of employment, including:

- hiring and firing;
- compensation, assignment, or classification of employees;
- transfer, promotion, layoff, or recall;
- job advertisements;
- recruitment;
- testing;
- use of company facilities;
- training and apprenticeship programs;
- fringe benefits;
- pay, retirement plans, and disability leave; or
- other terms and conditions of employment.

Discriminatory practices under these laws also include:

- harassment on the basis of race, color, religion, sex, national origin, disability, or age;
- retaliation against an individual for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices;
- employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a certain sex, race, age, religion, or ethnic group, or individuals with disabilities; and
- denying employment opportunities to a person because of marriage to, or association with, an individual of a particular race, religion, national origin, or an individual with a disability. Title VII also prohibits discrimination because of participation in schools or places of worship associated with a particular racial, ethnic, or religious group.

Employers are required to post notices to all employees advising them of their rights under the laws EEOC enforces and their right to be free from retaliation. Such notices must be accessible, as needed, to persons with visual or other disabilities that affect reading.

Note: Many states and municipalities also have enacted protections against discrimination and harassment based on sexual orientation, status as a parent, marital status and political affiliation. For information, please contact the EEOC District Office nearest you.

III. What Other Practices Are Discriminatory Under These Laws?

Title VII

- Title VII prohibits not only intentional discrimination, but also practices that have the effect of discriminating against individuals because of their race, color, national origin, religion, or sex.

National Origin Discrimination

- It is illegal to discriminate against an individual because of birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group.
- A rule requiring that employees speak only English on the job may violate Title VII unless an employer shows that the requirement is necessary for conducting business. If

the employer believes such a rule is necessary, employees must be informed when English is required and the consequences for violating the rule.

The Immigration Reform and Control Act (IRCA) of 1986 requires employers to assure that employees hired are legally authorized to work in the U.S. However, an employer who requests employment verification only for individuals of a particular national origin, or individuals who appear to be or sound foreign, may violate both Title VII and IRCA; verification must be obtained from all applicants and employees. Employers who impose citizenship requirements or give preferences to U.S. citizens in hiring or employment opportunities also may violate IRCA.

Additional information about IRCA may be obtained from the Office of Special Counsel for Immigration-Related Unfair Employment Practices at 1-800-255-7688 (voice), 1-800-237-2515 (TTY for employees/applicants) or 1-800-362-2735 (TTY for employers) or at <http://www.usdoj.gov/crt/osc>.

Religious Accommodation

- An employer is required to reasonably accommodate the religious belief of an employee or prospective employee, unless doing so would impose an undue hardship.

Sex Discrimination

Title VII's broad prohibitions against sex discrimination specifically cover:

- Sexual Harassment - This includes practices ranging from direct requests for sexual favors to workplace conditions that create a hostile environment for persons of either gender, including same sex harassment. (The "hostile environment" standard also applies to harassment on the bases of race, color, national origin, religion, age, and disability.)
- Pregnancy Based Discrimination - Pregnancy, childbirth, and related medical conditions must be treated in the same way as other temporary illnesses or conditions.

Additional rights are available to parents and others under the Family and Medical Leave Act (FMLA), which is enforced by the U.S. Department of Labor. For information on the FMLA, or to file an FMLA complaint, individuals should contact the nearest office of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division is listed in most telephone directories under U.S. Government, Department of Labor or at http://www.dol.gov/esa/public/whd_org.htm.

Age Discrimination in Employment Act

The ADEA's broad ban against age discrimination also specifically prohibits:

- statements or specifications in job notices or advertisements of age preference and limitations. An age limit may only be specified in the rare circumstance where age has been proven to be a *bona fide* occupational qualification (BFOQ);
- discrimination on the basis of age by apprenticeship programs, including joint labor-management apprenticeship programs; and
- denial of benefits to older employees. An employer may reduce benefits based on age only if the cost of providing the reduced benefits to older workers is the same as the cost of providing benefits to younger workers.

Equal Pay Act

The EPA prohibits discrimination on the basis of sex in the payment of wages or benefits, where men and women perform work of similar skill, effort, and responsibility for the same employer under similar working conditions.

Note that:

- Employers may not reduce wages of either sex to equalize pay between men and women.
- A violation of the EPA may occur where a different wage was/is paid to a person who worked in the same job before or after an employee of the opposite sex.
- A violation may also occur where a labor union causes the employer to violate the law.

Titles I and V of the Americans with Disabilities Act

The ADA prohibits discrimination on the basis of disability in all employment practices. It is necessary to understand several important ADA definitions to know who is protected by the law and what constitutes illegal discrimination:

Individual with a Disability

An individual with a disability under the ADA is a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Major life activities are activities that an average person can perform with little or no difficulty such as walking, breathing, seeing, hearing, speaking, learning, and working.

Qualified Individual with a Disability

A qualified employee or applicant with a disability is someone who satisfies skill, experience, education, and other job-related requirements of the position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of that position.

Reasonable Accommodation

Reasonable accommodation may include, but is not limited to, making existing facilities used by employees readily accessible to and usable by persons with disabilities; job restructuring; modification of work schedules; providing additional unpaid leave; reassignment to a vacant position; acquiring or modifying equipment or devices; adjusting or modifying examinations, training materials, or policies; and providing qualified readers or interpreters. Reasonable accommodation may be necessary to apply for a job, to perform job functions, or to enjoy the benefits and privileges of employment that are enjoyed by people without disabilities. An employer is not required to lower production standards to make an accommodation. An employer generally is not obligated to provide personal use items such as eyeglasses or hearing aids.

Undue Hardship

An employer is required to make a reasonable accommodation to a qualified individual with a disability unless doing so would impose an undue hardship on the operation of the employer's business. Undue hardship means an action that requires significant difficulty or expense when considered in relation to factors such as a business' size, financial resources, and the nature and structure of its operation.

Prohibited Inquiries and Examinations

Before making an offer of employment, an employer may not ask job applicants about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform job functions. A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in the same job category. Medical examinations of employees must be job-related and consistent with business necessity.

Drug and Alcohol Use

Employees and applicants currently engaging in the illegal use of drugs are not protected by the ADA when an employer acts on the basis of such use. Tests for illegal use of drugs are not considered medical examinations and, therefore, are not subject to the ADA's restrictions on medical examinations. Employers may hold individuals who are illegally using drugs and individuals with alcoholism to the same standards of performance as other

employees.

The Civil Rights Act of 1991

The Civil Rights Act of 1991 made major changes in the federal laws against employment discrimination enforced by EEOC. Enacted in part to reverse several Supreme Court decisions that limited the rights of persons protected by these laws, the Act also provides additional protections. The Act authorizes compensatory and punitive damages in cases of intentional discrimination, and provides for obtaining attorneys' fees and the possibility of jury trials. It also directs the EEOC to expand its technical assistance and outreach activities.

IV. Which Employers and Other Entities Are Covered by These Laws?

Title VII and the ADA cover all private employers, state and local governments, and education institutions that employ 15 or more individuals. These laws also cover private and public employment agencies, labor organizations, and joint labor management committees controlling apprenticeship and training.

The ADEA covers all private employers with 20 or more employees, state and local governments (including school districts), employment agencies and labor organizations.

The EPA covers all employers who are covered by the Federal Wage and Hour Law (the Fair Labor Standards Act). Virtually all employers are subject to the provisions of this Act. Title VII, the ADEA, and the EPA also cover the federal government. In addition, the federal government is covered by Sections 501 and 505 of the Rehabilitation Act of 1973, as amended, which incorporate the requirements of the ADA. However, different procedures are used for processing complaints of federal discrimination. For more information on how to file a complaint of federal discrimination, contact the EEO office of the federal agency where the alleged discrimination occurred.

The CSRA (not enforced by EEOC) covers most federal agency employees except employees of a government corporation, the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, and as determined by the President, any executive agency or unit thereof, the principal function of which is the conduct of foreign intelligence or counterintelligence activities, or the General Accounting Office.

The EEOC'S Charge Processing Procedures

Federal employees or applicants for employment should see the fact sheet about [Federal Sector Equal Employment Opportunity Complaint Processing: \(http://www.eeoc.gov/facts/fs-fed.html\)](http://www.eeoc.gov/facts/fs-fed.html).

V. Who Can File a Charge of Discrimination?

- Any individual who believes that his or her employment rights have been violated may file a charge of discrimination with EEOC.
- In addition, an individual, organization, or agency may file a charge on behalf of another person in order to protect the aggrieved person's identity.

VI. How Is a Charge of Discrimination Filed?

- A charge may be filed by mail or in person at the nearest EEOC office. Individuals may consult their local telephone directory (U.S. Government listing) or call 1-800-669-4000 (voice) or 1-800-669-6820 (TTY) to contact the nearest EEOC office for more information on specific procedures for filing a charge.
- Individuals who need an accommodation in order to file a charge (e.g., sign language interpreter, print materials in an accessible format) should inform the EEOC field office so appropriate arrangements can be made.

VII. What Information Must Be Provided to File a Charge?

- The complaining party's name, address, and telephone number;
- The name, address, and telephone number of the respondent employer, employment agency, or union that is alleged to have discriminated, and number of employees (or union members), if known;
- A short description of the alleged violation (the event that caused the complaining party to believe that his or her rights were violated); and
- The date(s) of the alleged violation(s).

VIII. What Are the Time Limits for Filing a Charge of Discrimination?

All laws enforced by EEOC, except the Equal Pay Act, require filing a charge with EEOC before a private lawsuit may be filed in court. There are strict time limits within which charges must be filed:

- A charge must be filed with EEOC within 180 days from the date of the alleged violation, in order to protect the charging party's rights.
- This 180-day filing deadline is extended to 300 days if the charge also is covered by a state or local anti-discrimination law. For ADEA charges, only state laws extend the filing limit to 300 days.
- These time limits do not apply to claims under the Equal Pay Act, because under that Act persons do not have to first file a charge with EEOC in order to have the right to go to court. However, since many EPA claims also raise Title VII sex discrimination issues, it may be advisable to file charges under both laws within the time limits indicated.
- To protect legal rights, it is always best to contact EEOC promptly when discrimination is suspected.

IX. What Agency Handles a Charge that is also Covered by State or Local Law?

Many states and localities have anti-discrimination laws and agencies responsible for enforcing those laws. EEOC refers to these agencies as "Fair Employment Practices Agencies (FEPAs)." Through the use of "work sharing agreements," EEOC and the FEPAs avoid duplication of effort while at the same time ensuring that a charging party's rights are protected under both federal and state law.

- If a charge is filed with a FEPA and is also covered by federal law, the FEPA "dual files" the charge with EEOC to protect federal rights. The charge usually will be retained by the FEPA for handling.

- If a charge is filed with EEOC and also is covered by state or local law, EEOC "dual files" the charge with the state or local FEPA, but ordinarily retains the charge for handling.

X. What Happens after a Charge is Filed with EEOC?

The employer is notified that the charge has been filed. From this point there are a number of ways a charge may be handled:

- A charge may be assigned for priority investigation if the initial facts appear to support a violation of law. When the evidence is less strong, the charge may be assigned for follow up investigation to determine whether it is likely that a violation has occurred.
- EEOC can seek to settle a charge at any stage of the investigation if the charging party and the employer express an interest in doing so. If settlement efforts are not successful, the investigation continues.
- In investigating a charge, EEOC may make written requests for information, interview people, review documents, and, as needed, visit the facility where the alleged discrimination occurred. When the investigation is complete, EEOC will discuss the evidence with the charging party or employer, as appropriate.
- The charge may be selected for EEOC's mediation program if both the charging party and the employer express an interest in this option. Mediation is offered as an alternative to a lengthy investigation. Participation in the mediation program is confidential, voluntary, and requires consent from both charging party and employer. If mediation is unsuccessful, the charge is returned for investigation.
- A charge may be dismissed at any point if, in the agency's best judgment, further investigation will not establish a violation of the law. A charge may be dismissed at the time it is filed, if an initial in-depth interview does not produce evidence to support the claim. When a charge is dismissed, a notice is issued in accordance with the law which gives the charging party 90 days in which to file a lawsuit on his or her own behalf.

XI. How Does EEOC Resolve Discrimination Charges?

- If the evidence obtained in an investigation does not establish that discrimination occurred, this will be explained to the charging party. A required notice is then issued, closing the case and giving the charging party 90 days in which to file a lawsuit on his or her own behalf.
- If the evidence establishes that discrimination has occurred, the employer and the charging party will be informed of this in a letter of determination that explains the finding. EEOC will then attempt conciliation with the employer to develop a remedy for the discrimination.
- If the case is successfully conciliated, or if a case has earlier been successfully mediated or settled, neither EEOC nor the charging party may go to court unless the conciliation, mediation, or settlement agreement is not honored.
- If EEOC is unable to successfully conciliate the case, the agency will decide whether to bring suit in federal court. If EEOC decides not to sue, it will issue a notice closing the case and giving the charging party 90 days in which to file a lawsuit on his or her own behalf. In Title VII and ADA cases against state or local governments, the Department of Justice takes these actions.

XII. When Can an Individual File an Employment Discrimination Lawsuit in Court?

A charging party may file a lawsuit within 90 days after receiving a notice of a "right to sue" from EEOC, as stated above. Under Title VII and the ADA, a charging party also can request a notice of "right to sue" from EEOC 180 days after the charge was first filed with the Commission, and may then bring suit within 90 days after receiving this notice. Under the ADEA, a suit may be filed at any time 60 days after filing a charge with EEOC, but not later than 90 days after EEOC gives notice that it has completed action on the charge.

Under the EPA, a lawsuit must be filed within two years (three years for willful violations) of the discriminatory act, which in most cases is payment of a discriminatory lower wage.

XIII. What Remedies Are Available When Discrimination Is Found?

The "relief" or remedies available for employment discrimination, whether caused by intentional acts or by practices that have a discriminatory effect, may include:

- back pay,
- hiring,
- promotion,
- reinstatement,
- front pay,
- reasonable accommodation, or
- other actions that will make an individual "whole" (in the condition s/he would have been but for the discrimination).

Remedies also may include payment of:

- attorneys' fees,
- expert witness fees, and
- court costs.

Under most EEOC-enforced laws, compensatory and punitive damages also may be available where intentional discrimination is found. Damages may be available to compensate for actual monetary losses, for future monetary losses, and for mental anguish and inconvenience. Punitive damages also may be available if an employer acted with malice or reckless indifference. Punitive damages are not available against the federal, state or local governments.

In cases concerning reasonable accommodation under the ADA, compensatory or punitive damages may not be awarded to the charging party if an employer can demonstrate that "good faith" efforts were made to provide reasonable accommodation.

An employer may be required to post notices to all employees addressing the violations of a specific charge and advising them of their rights under the laws EEOC enforces and their right to be free from retaliation. Such notices must be accessible, as needed, to persons with visual or other disabilities that affect reading.

The employer also may be required to take corrective or preventive actions to cure the source of the identified discrimination and minimize the chance of its recurrence, as well as discontinue

the specific discriminatory practices involved in the case.

XIV. What Is EEOC and How Does It Operate?

EEOC is an independent federal agency originally created by Congress in 1964 to enforce Title VII of the Civil Rights Act of 1964. The Commission is composed of five Commissioners and a General Counsel appointed by the President and confirmed by the Senate. Commissioners are appointed for five-year staggered terms; the General Counsel's term is four years. The President designates a Chair and a Vice-Chair. The Chair is the chief executive officer of the Commission. The Commission has authority to establish equal employment policy and to approve litigation. The General Counsel is responsible for conducting litigation.

EEOC carries out its enforcement, education and technical assistance activities through 50 field offices serving every part of the nation.

The nearest EEOC field office may be contacted by calling: 1-800-669-4000 (voice) or 1-800-669-6820 (TTY).

XV. What Information and Other Assistance Is Available from EEOC?

EEOC provides a range of informational materials and assistance to individuals and entities with rights and responsibilities under EEOC-enforced laws. Most materials and assistance are provided to the public at no cost. Additional specialized training and technical assistance are provided on a fee basis under the auspices of the EEOC Education, Technical Assistance, and Training Revolving Fund Act of 1992. For information on educational and other assistance available, contact the nearest EEOC office by calling: 1-800-669-4000 (voice) or 1-800-669-6820 (TTY).

Publications available at no cost include posters advising employees of their EEO rights, and pamphlets, manuals, fact sheets, and enforcement guidance on laws enforced by the Commission. For a list of EEOC publications, or to order publications, write, call, or fax:

**U.S. Equal Employment Opportunity Commission
Publications Distribution Center
P.O. Box 12549
Cincinnati, Ohio 45212-0549
1-800-669-3362 (voice)
1-800-800-3302 (TTY)
513-489-8692 (fax)**