

RISK COMMUNIQUÉ

Title VII of the Civil Rights Act of 1964— Management Liability/Risk Management for Employment Practices

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex, and national origin. This Communiqué provides analysis and risk management guidelines for adhering to Title VII.

Summary of Title VII of the Civil Rights Act of 1964

Title VII protects individuals against employment discrimination on the basis of sex (including pregnancy), race, color, national origin and religion. The federal statute applies to private sector employers with 15 or more employees and public sector employers at the federal, state and local level. While not covered under Title VII, employers with less than 15 employees may be covered by state or local anti-discrimination statutes.

Title VII prohibits employment decisions based on stereotypes and assumptions about abilities, traits or the performance of individuals on the basis of their protected status. 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 facilities
- training and mentoring programs
- fringe benefits
- pay, retirement plans and disability leave
- other terms and conditions of employment

Additional discriminatory practices under Title VII include:

- 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
- 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

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Sexual Harassment

Sexual harassment is a specific form of sex discrimination that falls under Title VII. Sexual harassment occurs when unwelcome sexual advances, requests for sexual favors and other physical conduct of a sexual nature takes place if submitting to such behavior, or rejecting it, has either an express or implied impact on an individual's employment, unreasonably interferes with the employee's work performance, or creates a hostile work environment.

To violate Title VII, the conduct must be unwelcome. Additionally:

- The victim can be either a man or a woman of the same or opposite sex as the harasser.
- The harasser can be, but does not have to be, the victim's supervisor; harassment by coworkers and other employees can also rise to the level of a Title VII violation.
- The victim does not have to be the direct target of harassment—he or she need only be affected by the offensive conduct.
- Sexual harassment does not necessarily have to cause financial damage to the victim or cause his or her discharge.

Equal Employment Opportunity Commission

The Equal Employment Opportunity Commission (EEOC) is the independent federal agency created by Congress to eradicate discrimination in employment, thus serving as the enforcement agency of Title VII. EEOC has the authority to receive, initiate and investigate charges of discrimination filed against employers who have a statutory minimum number of employees. EEOC's role in an investigation is to fairly and accurately evaluate the charge allegations in light of all the evidence obtained. Since its creation in 1964, Congress has gradually extended EEOC powers to also include creating conciliation programs, filing lawsuits and conducting voluntary assistance programs. EEOC carries out its enforcement, education and technical assistance through 50 field offices serving every part of the nation.

Filing a Charge under Title VII

A charge may be filed with the EEOC by any individual who believes his or her employment rights have been violated. 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. A charge of discrimination may be filed by mail or in person at the nearest EEOC office.

All laws enforced by the EEOC require filing a charge with the EEOC before a private lawsuit may be filed in court. There are strict time limits within which charges must be filed. For example, a charge must be filed with the EEOC within 180 days from the date of the alleged violation, in order to protect the charging party's rights. The 180-day filing deadline is extended to 300 days if the charge is also covered by state or local anti-discrimination law.

In filing a charge, the complainant must include his or her name, address and telephone number. The complaining party must also include the name, address and telephone number of the respondent employer, employment agency or union that is alleged to have discriminated along with the number of employees (if known). The charge must include a short description of the alleged violation (event that caused the complaining party to believe that his or her rights were violated) and the date(s) of the alleged violation(s).

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What Happens after a Charge Is Filed with the EEOC

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

- Investigation—A charge may be assigned for priority investigation if the initial facts appear to support a violation of law. In most situations where 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. In investigating the charge, the 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, the EEOC will discuss the evidence with the charging party or employer, as appropriate.
- Mediation—The charge may be selected for EEOC's mediation program if both the charging party and employer express interest in this option. Mediation is offered as an alternative to a lengthy investigation. If mediation is unsuccessful, the charge is returned for investigation.
- Dismissal—At any time a charge may be dismissed if, in the EEOC's best judgment, further investigation will not establish a violation of 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 that gives the charging party 90 days to file a lawsuit on his or her own behalf.

Risk Management Tips to Adhere to Title VII

Recommendations include, but are not limited to:

- Create and implement an EEO/Anti-Discrimination policy.
- Post notices to all employees advising them of their rights under the laws that the 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.
- Review the current disciplinary policies and procedures in your employee handbook and any applicable memorandum of understanding, to determine what changes, if any, are necessary to comply with Title VII.
- Prepare those designated to handle the human resources function to respond to a Title VII charge of discrimination.
- Rely on outside legal counsel with experience in harassment and discrimination law to respond to any charges filed with the EEOC.
- Utilize an internal or an outside third-party consultant and/or attorney to conduct training for all personnel on Title VII to help prevent workplace harassment and discrimination.