

Prohibited Employment Policies/Practices

Managing employees comes with a multitude of responsibilities and challenges. A large majority of these responsibilities come from the laws enforced by the Equal Employment Opportunity Commission (EEOC). Under these laws, it is illegal to discriminate against someone (applicant or employee) because of that person's:

- ▲ race
- ▲ color
- ▲ religion
- ▲ sex (including pregnancy)
- ▲ national origin
- ▲ age (40 or older)
- ▲ disability or genetic information

It is also illegal to retaliate against a person because he or she complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. Additionally, the EEOC prohibits an employer from using neutral employment policies and practices that have a disproportionately negative effect on applicants or employees of a particular protected class, if the policies or practices at issue are not job-related and necessary to the operation of the business.

The law forbids discrimination in every aspect of employment. Specific types of prohibited employment practices include:

Job Advertisements & Recruitment

It is illegal for an employer to publish a job advertisement that shows a preference for or discourages someone from applying for a job because of his or her protected class. For example, a help-wanted ad that seeks "females" or "recent college graduates" may discourage men and people over 40 from applying and may violate the law.

Another example regarding recruitment: an employer's reliance on word-of-mouth recruitment by its mostly Hispanic work force may violate the law if the result is that almost all new hires are Hispanic.

Application & Hiring

It is illegal for an employer to discriminate against a job applicant because of his or her protected class. For example, an employer may not refuse to give employment applications to people of a certain race.

If an employer requires job applicants to take a test, the test must be necessary and related to the job and the employer may not exclude people of any protected class. In addition, the employer may not use a test that excludes applicants age

40 or older if the test is not based on a reasonable factor other than age.

If a job applicant with a disability needs an accommodation (such as a sign language interpreter) to apply for a job, the employer is required to provide the accommodation, so long as the accommodation does not cause the employer significant difficulty or expense.

Job Assignments & Promotions

It is illegal for an employer to make decisions about job assignments and promotions based on an employee's protected class. For example, an employer may not give preference to employees of a certain race when making shift assignments and may not segregate employees of a particular national origin from other employees or from customers.

An employer may not base assignment and promotion decisions on stereotypes and assumptions about a person's protected class.

If an employer requires employees to take a test before making decisions about assignments or promotions, the test may not exclude people of a protected class, unless the employer can show that the test is necessary and related to the job. In addition, the employer may not use a test that excludes employees age 40 or older if the test is not based on a reasonable factor other than age.

Pay and Benefits

It is illegal for an employer to discriminate against an employee in the payment of wages or employee benefits on the basis of a protected class. Employee benefits include sick and vacation leave, insurance, access to overtime as well as overtime pay, and retirement programs. For example, an employer may not pay Hispanic workers less than African-American workers because of their national origin, and men and women in the same workplace must be given equal pay for equal work.

In some situations, an employer may be allowed to reduce some employee benefits for older workers, but only if the cost of providing the reduced benefits is the same as the cost of providing benefits to younger workers.

Discipline & Discharge

An employer may not take into account a person's protected class when making decisions about discipline or discharge. For example, if two employees commit a similar offense, an employer may not discipline them differently because of their race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.

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When deciding which employees will be laid off, an employer may not choose the oldest workers because of their age.

Also, employers also may not discriminate when deciding which workers to recall after a layoff.

Reasonable Accommodation & Disability

The law requires that an employer provide reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause significant difficulty or expense for the employer.

A reasonable accommodation is any change in the workplace (or in the ways things are usually done) to help a person with a disability apply for a job, perform the duties of a job, or enjoy the benefits and privileges of employment.

Reasonable accommodation might include, for example, providing a ramp for a wheelchair user or providing a reader or interpreter for a blind or deaf employee or applicant.

Reasonable Accommodation & Religion

The law requires an employer to reasonably accommodate an employee's religious beliefs or practices, unless doing so would cause difficulty or expense for the employer. This means an employer may have to make reasonable adjustments at work that will allow the employee to practice his or her religion, such as allowing an employee to voluntarily swap shifts with a co-worker so that he or she can attend religious services.

Harassment

It is illegal to harass an employee because of their protected class.

Harassment can take the form of slurs, graffiti, offensive or derogatory comments, or other verbal or physical conduct. Sexual harassment (including unwelcome sexual advances, requests for sexual favors, and other conduct of a sexual nature) is also unlawful. Although the law does not prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal if it is so frequent or severe that it creates a hostile or offensive work environment or if it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

Harassment outside of the workplace may also be illegal if there is a link with the workplace. For example, if a supervisor harasses an employee in a place outside of work.

Terms & Conditions of Employment

The law makes it illegal for an employer to make any employment decision because of a person's protected class.

That means an employer may not discriminate when it comes to such things as hiring, firing, promotions, and pay. It also means an employer may not discriminate, for example, when granting breaks, approving leave, assigning work stations, or setting any other term or condition of employment - however small.

Pre-Employment Inquiries (General)

As a general rule, the information obtained and requested through the pre-employment process should be limited to those essential for determining if a person is qualified for the job; whereas, information regarding race, sex, national origin, age, and religion are irrelevant in such determinations.

Employers are explicitly prohibited from making pre-employment inquiries about disability.

Although state and federal equal opportunity laws do not clearly forbid employers from making pre-employment inquiries that relate to, or disproportionately screen out members based on race, color, sex, national origin, religion, or age, such inquiries may be used as evidence of an employer's intent to discriminate unless the questions asked can be justified by some business purpose.

Therefore, inquiries about organizations, clubs, societies, and lodges of which an applicant may be a member or any other questions, which may indicate the applicant's race, sex, national origin, disability status, age, religion, color or ancestry if answered, should generally be avoided.

Dress Code

In general, an employer may establish a dress code which applies to all employees or employees within certain job categories. However, there are a few possible exceptions.

While an employer may require all workers to follow a uniform dress code even if the dress code conflicts with some workers' ethnic beliefs or practices, a dress code must not treat some employees less favorably because of their national origin. For example, a dress code that prohibits certain kinds of ethnic dress, such as traditional African or East Indian attire, but otherwise permits casual dress would treat some employees less favorably because of their national origin.

Moreover, if the dress code conflicts with an employee's religious practices and the employee requests an accommodation, the employer must modify the dress code or permit an exception to the dress code unless doing so would result in undue hardship.

Similarly, if an employee requests an accommodation to the dress code because of his disability, the employer must modify the dress code or permit an exception to the dress code, unless doing so would result in undue hardship.