

EEOC Issues Proposed Enforcement Guidance on Unlawful Harassment

The Equal Employment Opportunity Commission is seeking public comment on its newly proposed [enforcement guidance](#) addressing unlawful workplace harassment under the federal anti-discrimination laws. The initial deadline for employers and other members of the public to submit input regarding the proposed guidance was February 9, but on February 3 the EEOC [announced](#) that it was extending the deadline to March 21.

The publishing of the new proposed guidance stems from the recommendations made last June by the EEOC's Select Task Force on the study of harassment in the workplace. If put into effect, the new guidelines would supersede pre-existing agency guidelines created during the 1990s. The EEOC issued a [press release](#), in which EEOC Commissioner Chai Feldblum was quoted as saying: "This guidance clearly sets forth the Commission's positions on harassment law, provides helpful explanatory examples, and provides promising practices based on the recommendations in the report."

The majority of the 75-page guidance offers an overview of the EEOC's positions on the following topics:

- harassment based on protected characteristics (race, color, national origin, religion, sex, age, disability, and genetic information);
- establishing causation;
- harassment resulting in discrimination based on a term, condition, or privilege of employment;
- defining hostile work environment claims;
- employer liability standards; and
- systemic harassment.

In its guidance, the EEOC also suggests a number of "promising practices" to help employers eliminate workplace harassment including:

- committed and engaged leadership;
- strong and comprehensive harassment policies;
- trusted and accessible complaint procedures; and
- regular and interactive anti-harassment trainings.

In its [press release](#) accompanying the issuance of the proposed guidance, the EEOC stated that the new guidance is necessary because the number of harassment claims filed over the past several years is on the rise. According to the EEOC, between 2012 and 2015, the percentage of private sector charges that included an allegation of harassment increased from slightly more than one-quarter of all charges annually to over 30% of all charges. In 2015, the EEOC received 27,893 private sector charges that included an allegation of harassment, accounting for more than 31% of the charges filed that year.

Employers who are interested in providing input on the proposed guidance may do so by submitting comments through www.regulations.gov, or by sending written feedback to: Public Input, EEOC, Executive Officer, 131 M Street, N.E., Washington, D.C. 20507. The EEOC will consider input from the public before finalizing and issuing the guidance. In addition, this would be an opportune time for employers to review their anti-harassment policies and complaint procedures, to revise those policies and procedures if necessary, and to conduct some anti-harassment training for employees.

If you have any questions about this Information Memo, please contact [Alyssa N. Campbell](#), or any of the [attorneys](#) in our [Labor and Employment Law Practice](#), or the attorney in the firm with whom you are regularly in contact.



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