

LABOR AND EMPLOYMENT LAW

INFORMATION MEMO

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EEOC Publishes New Guidance on Workplace Harassment for the First Time in Twenty Years

On April 29, 2024, the Equal Employment Opportunity Commission (“EEOC”) published [Enforcement Guidance on Harassment in the Workplace](#) (the “Guidance”). The Guidance took effect immediately and supersedes the EEOC’s previously published guidance from the 1980s and 1990s. Since the EEOC has not published guidance regarding workplace harassment for almost 25 years, the Guidance addresses recent and developing areas such as workplace harassment related to sexual orientation and gender identity, pregnancy and related medical conditions, and remote work.

Sexual Orientation and Gender Identity

The Supreme Court’s 2020 *Bostock v. Clayton County* decision extended employment discrimination under Title VII to include discrimination based on sexual orientation or gender identity. With that expansion, the Guidance provides examples of harassing conduct based on those protected characteristics, and explains that harassing behavior based on sexual orientation and gender identity can include, among other things:

- outing, or disclosure of an individual’s sexual orientation or gender identity without permission;
- harassing conduct because an individual does not present in a manner that would stereotypically be associated with that person’s sex;
- misgendering, or repeated and intentional use of a name or pronoun inconsistent with an individual’s known gender identity; and
- denial of access to a bathroom or other sex-segregated facility consistent with the individual’s gender identity.

Pregnancy, Childbirth or Related Medical Conditions

In the wake of new laws protecting employees with pregnancy, childbirth or related medical conditions (i.e., the Pregnant Workers Fairness Act and Providing Urgent Maternal Protections for Nursing Mothers Act), the Guidance reiterates that sex-based discrimination under Title VII extends to such conditions. To that end, the EEOC confirms that workplace harassment can arise from topics such as:

- changes in physical appearance due to pregnancy;
- lactation;
- morning sickness;

- using or not using contraception; or
- deciding to have or not have an abortion.

Remote Work

Given the rise of remote work, the Guidance emphasized that harassment may occur in a work-related context outside an employee's regular workplace, and extends to harassment through an employer's email, instant messaging system, videoconferencing, social media accounts and other equivalent resources. The Guidance provides the following examples that may contribute to a hostile work environment through remote work:

- 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.

Conclusion

The Guidance, which includes over 70 practical examples, provides advice on a variety of issues related to harassment, and serves as a resource for employers when investigating and deciding workplace harassment issues. However, New York employers should be aware that the federal standard for a hostile work environment (severe or pervasive) is higher than that required by New York state (petty slights or trivial inconveniences). Therefore, conduct that does not rise to the level of unlawful harassment under Federal law, such as Title VII, ADEA, and the ADA (which the Guidance covers), may still be unlawful under New York law. With that distinction, New York employers should exercise caution and avoid overreliance on this new Guidance.

In conjunction with the Guidance, the EEOC also issued a [Summary of the Guidance's Key Provisions](#), [FAQS for Employees: Harassment at Work](#), and a [Fact Sheet for Small Businesses](#).

If you have any questions or would like additional information, please contact [Natalie Vogel](#) or any attorney in Bond's [labor and employment practice](#), or the Bond attorney with whom you are regularly in contact.

