

Employment Law Corner

Monthly Report



FOLEY & FOLEY^{PC}
ATTORNEYS AT LAW

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August Updates

[Comply Don't Buy: New Mandatory Poster Time!](#)

Employment Law Corner: Workplace Discrimination - The Stakes Have Never Been Higher

This year marks the 60th anniversary of the Civil Rights Act of 1964 (Title VII), which bans workplace discrimination based on race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, disability, age (age 40 or older) and genetic information. Six decades of Title VII have shown one thing clearly: this area of workplace law is never stagnant. Employers are liable for intentional discrimination and for policies and practices that even unintentionally adversely affect employees and applicants in protected classes.

Recent Trends:

The EEOC (Equal Employment Opportunity Commission) is the agency charged with enforcing many of the federal laws that ban workplace discrimination, including Title VII. Recent data from the EEOC indicates a strong crack down on workplace discrimination and harassment. In the past year there has been a significant rise in employment discrimination lawsuits and resulting damages associated with them. In 2023 alone, victims of discrimination received over \$665 million through EEOC enforcement and litigation.

Here are some more startling numbers: The EEOC received 81,066 new discrimination charges in 2023, marking a 10% increase from the previous year. The agency itself filed 143 discrimination or harassment lawsuits representing a more than 50% increase from 2022. These lawsuits addressed various discrimination and harassment issues, including those related to recruitment and hiring barriers, workplace harassment (including sexual harassment), pay disparities, and protections for vulnerable workers.

Earlier this year, the EEOC released its long-awaited enforcement guidance on workplace harassment, clarifying standards for harassment and employer liability. Beyond federal efforts, cities and states are also strengthening employee protections. New York City recently joined other cities in expanding protected characteristics to include height and weight. This is just one example where state laws go beyond the federal standards: employers must navigate a patchwork of discrimination and harassment rules from various jurisdictions.

Remember the #MeToo movement? It continues to impact workplaces, with employees increasingly speaking out publicly about discrimination, harassment, and unequal pay, often amplifying their voices through social media.

The Cost of Noncompliance:

- **Money and...** As if I potentially owing millions in settlement costs or jury awards is not bad enough, employers also face indirect costs from workplace discrimination and harassment: lost productivity, increased turnover, and reputational damage. Social media amplifies that.
- **A moving target:** Workplace discrimination standards continue to evolve, meaning employers must update policies, procedures, and practices to minimize risk.
- **Individual liability:** Did you know that supervisors can be held *individually liable* for their conduct towards employees, in addition to causing company liability? This significant financial exposure makes it more critical than ever for employers to implement robust protections to prevent these issues and have strategies to address them promptly.

Protecting Your Business:

Prevention is the key to protecting your business. Here are critical steps:

1. **Implement comprehensive policies:** Develop and enforce clear, comprehensive policies preventing discrimination and harassment. These policies should cover all forms of prohibited conduct and protected characteristics. Periodically review and update the policies to ensure they follow current laws.
2. **Implement clear processes and reporting mechanisms:** Create and enforce a process for fairly detecting and confidentially investigating reports of discrimination and harassment and ensure employees are aware of the process for reporting.
3. **Training:** Create and provide adequate training to both employees and supervisors, on recognizing, preventing and addressing discrimination and harassment. In some states, this is legally required.
4. **Conduct thorough investigations:** Ensure prompt investigation of all reports of discrimination and harassment, thoroughly and neutrally. Decide as to the outcome of the investigation and take appropriate action as necessary. See [here](#) for our helpful overview of Employee Investigations.
5. **Hold supervisors accountable:** Ensure supervisors are aware of their responsibilities in preventing and addressing discrimination and harassment. Hold them accountable for their conduct and their role in enforcing company policies.
6. **Post mandatory notices:** Ensure that you display the EEOC's mandatory [notice](#) to employees in a conspicuous location in the workplace where notices to applicants and employees are normally posted and publish the notice electronically where possible. Keep state and federal posters up to date. We have a free resource [here](#).
7. **File Necessary EEOC Reports:** If your business consists of 100 or more employees, or you are a federal contractor with more than 50 employees and contracts totaling \$50,000 or more, you must create and file mandatory workforce data via an EEO-1 Report with the EEOC.

We Can Help

Every day, we help employers nationwide. We partner with companies large and small to prevent and address workplace issues. We can help with policies and procedures. We can answer questions as they arise. We can develop a training program specific to your industry or business. We can help. [Contact us.](#)

Who We Are:

- We represent employers exclusively from coast to coast in all facets of employment law and litigation. Our mission is solving problems and anticipating issues so you can concentrate on your business.
- We are constantly searching for the trends and upcoming issues in the law that will impact our clients. We want our clients to be informed and ready. Our familiarity with the workplace and our approach sets us apart from other law firms, making us well equipped to handle your unique needs.
- We are not like other firms: Anyone can tell you what the law states and its limits. That is easy. We find creative solutions within those restrictions that move your business forward. We seek to minimize your risk so you can get back to business. Learn how we can help your business: [Foley & Foley PC attorneys specialize in Employment and Labor Law in the Public and Private Sectors \(foleylawpractice.com\).](#)

[Meet Martine Wayne](#)

Martine concentrates her practice on advising and representing businesses on a wide range of labor and employment matters. Martine's experience includes employment litigation and providing strategic guidance on a myriad of employment issues, including discrimination, employment policies and agreements, wage and hour issues, leaves of absence and terminations.

Prior to joining Foley & Foley, Martine worked at a large management side law firm where she served as labor and employment counsel for employers both large and small. Martine also has valuable experience working in both human resources and employee relations at a Fortune 100 company. Martine is passionate about employment law and is dedicated to delivering practical and solution-oriented counsel to her clients.



Contact Us



www.foleylawpractice.com

info@foleylawpractice.com

(844) 204-0505