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EEOC RELEASES NEW GUIDANCE ON WORKPLACE HARASSMENT

For the first time in over 20 years, the U.S. Equal Employment Opportunity Commission (“EEOC”) has released new enforcement guidance on workplace harassment on April 29, 2024. This new guidance seeks to modernize the legal framework surrounding workplace harassment by addressing topics like technology, sexual orientation, and gender identity. While effective immediately, it is important to note that this new guidance primarily reflects the EEOC’s viewpoints of the law but does not, standing alone, carry the force of law.

New Guidance

The new guidance reinforces the Supreme Court’s 2020 ruling in *Bostock v. Clayton County, Georgia*. In that case, the Supreme Court held that discrimination based on sexual orientation and gender identity violates Title VII of the Civil Rights Act of 1964. The new guidance lists several examples of unlawful discrimination based on sexual orientation and gender identity, including the use of offensive slurs and intentional misgendering of colleagues. The updated guidance also provides that harassment may include actions aimed at co-workers who do not present in a manner typically associated with that person’s sex, as well as the denial of access to restrooms in correlation with an individual’s gender identity.

The new guidance also, acknowledging the rise of remote work, discusses how harassment can happen even in the virtual workplace “if it is conveyed using work-related communications systems, accounts, devices, or platforms.” For example, “sexist comments made during a video meeting” and “racist imagery that is visible in an employee’s workspace while the employee participates in a video meeting” can be considered workplace harassment, even though such acts technically occurred outside the office. The new guidance makes clear, however, that merely offensive behavior is not unlawful. As courts have consistently held, for harassment to be actionable, it must rise above “run-of-the-mill boorish, juvenile, or annoying behavior.” The EEOC goes on to discuss how recent technology, like artificial intelligence used to “computer-generated intimate images” of co-workers, may be utilized as a tool for harassment.

The guidance notes how it may implicate other rights, including freedom of speech and religion. In response to these concerns, the EEOC indicated its intent to review religious defenses to harassment claims on a case-by-case basis. The EEOC is also enhancing procedures and webpages to identify how employers can raise defenses, including religious defenses, in response to a charge. Consistent with well-established law, the EEOC reiterates that employers are not obligated to accommodate religious expression to the extent it creates a hostile work environment.

In addition to racial and sexual harassment, the new guidance addresses many forms of unlawful workplace behavior, including pregnancy-based harassment, age-based harassment, disability-based harassment, perception-based harassment, and associational discrimination. By creating expansive guidance, the EEOC seeks to “ensure that individuals understand their workplace rights and responsibilities.”

A Legal Challenge

Since its issuance, eighteen states have filed suit to stop the implementation of the new guidance. These states claim that it is an overreach of federal power that seeks “to enshrine sweeping gender-identity mandates without congressional consent.” Despite these challenges to the new guidance, employers should still familiarize themselves with it and review examples of what the EEOC views as actionable instances of harassment.

JAH Can Help

If you have any questions regarding the EEOC 2024 workplace harassment guidance, our **labor and employment attorneys** at JAH can help you plan and navigate the new guidance and its application to issues you may experience in your workplace. **[Click here to contact a member of our Employment Practice Group if you require assistance.](#)**

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