

An Overview of Discrimination and Harassment Under Federal Law

Lauren A. Smith

Lanier Ford Shaver & Payne P.C.

2101 West Clinton Avenue, Suite 102

Huntsville, AL 35805

LAS@LanierFord.com

256-535-1100

www.LanierFord.com

Sources of Federal Law

- Title VII of the Civil Rights Act of 1964.
- Americans with Disabilities Act (ADA).
- Pregnancy Discrimination Act (PDA).
- Family Medical Leave Act (FMLA).
- Age Discrimination in Employment Act (ADEA).
- Genetic Information Nondiscrimination Act (GINA).
- Uniformed Services Employment and Reemployment Rights Act (USERRA).
- 42 U.S.C. § 1981.
- Equal Pay Act (EPA).
- Immigration Reform and Control Act (IRCA).

Covered Employers

- **Title VII, ADA, GINA**—5 or more employees for each working day in twenty or more calendar weeks in the current or preceding year.
- **FMLA**—50 or more employees.
- **ADEA**—20 or more employees.
- **USERRA**—all employers.
- **Section 1981**—all non-federal employers.
- **EPA**—same coverage as Fair Labor Standards Act (interstate commerce that does \$500k annually).
- **IRCA**—between 3-15 employees.

Public Entities

- **ADEA, EPA, FMLA, PDA**—no minimum employee limit.
- **Title VII, ADA, GINA**—15 or more employees.



What is discrimination?

Taking an adverse employment action against an employee based on his or her membership in a protected class.



Protected Class or Characteristic

- Race
- Color
- Religion or creed
- National origin
- Sex
 - Gender
 - Pregnancy
 - Sexual orientation
- Age
- Physical or mental disability
- Veteran status
- Genetic information
- Citizenship



Adverse Employment Action

An action that affects the terms and conditions of employment.



Adverse Employment Actions

Adverse Employment Actions

- Termination.
- Demotion.
- Failure to hire.
- Loss of pay or other financial benefits.
- Reduction of hours.
- Harassment (more on that later).

NOT

Adverse Employment Actions

- Denial of training.
- Reassignment.
- Changing supervisors.
- “Cold shoulder” from coworkers.
- Poor performance reviews.



Theories of Liability

- Disparate treatment.
- Harassment.
- Disparate impact.
- Failure to accommodate.
- Pattern and practice.
- Retaliation.
- Cat's paw.



Types of Evidence

Direct

- “I am firing you because you are Catholic.”
- Must come from decision maker.

Indirect

- “You Catholics don’t know how to work hard.”
- Most common.
- Triggers *McDonnell-Douglas* burden-shifting framework.

Harassment

- Quid pro quo.
- Hostile working environment.
 - “Severe and pervasive.”
 - Frequency.
 - Physically threatening.
 - Status of harasser.

Retaliation

- Retaliation is also prohibited under most federal employment laws.
- Elements:
 - Statutorily protected conduct.
 - Adverse employment action.
 - Causation.

Equal Employment Opportunity Commission (EEOC)

- Employee has 180 days to submit charge.
- Requirement before filing a lawsuit.
- Procedure:
 - Charge submitted by employee.
 - Employer submits position statement.
 - EEOC may ask for more information or conduct onsite inspection.
 - Right-to-sue letter.
 - File lawsuit within 90 days.

Defenses

- Legitimate, nondiscriminatory reason.
- Decision maker in protected class.
- Bona fide occupational qualification.
- Good-faith reliance on EEOC opinions.
- After-acquired evidence of misconduct.
- Failure to exhaust administrative remedies.
- Job-related, business necessity.
- Undue hardship.

Best practices

- Anti-discrimination, anti-harassment policy.
- Annual performance reviews.
- Consistent application of policies, including discipline.
- Clear communication between management and employees.
- Training.
- Fair internal investigations.
- Take prompt corrective action.

Questions?

