

Federal Laws Prohibiting Job Discrimination

Questions And Answers

I. What Are the Federal Laws Prohibiting Job Discrimination?

- Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits employment discrimination based on race, color, religion, sex, or national origin;
- the Equal Pay Act of 1963 (EPA), which protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination;
- the Age Discrimination in Employment Act of 1967 (ADEA), which protects individuals who are 40 years of age or older;
- Title I and Title V of the Americans with Disabilities Act of 1990 (ADA), which prohibit employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments;
- Sections 501 and 505 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified individuals with disabilities who work in the federal government; and
- the Civil Rights Act of 1991, which, among other things, provides monetary damages in cases of intentional employment discrimination.

The U.S. Equal Employment Opportunity Commission (EEOC) enforces all of these laws. EEOC also provides oversight and coordination of all federal equal employment opportunity regulations, practices, and policies. Other federal laws, not enforced by EEOC, also prohibit discrimination and reprisal against federal employees and applicants. The Civil Service Reform Act of 1978 (CSRA) contains a number of prohibitions, known as prohibited personnel practices, which are designed to promote overall fairness in federal personnel actions. The CSRA prohibits any employee who has authority to take certain personnel actions from discriminating for or against employees or applicants for employment on the bases of race, color, national origin, religion, sex, age or disability. It also provides that certain personnel actions can not be based on attributes or conduct that do not adversely affect employee performance, such as marital status and political affiliation. The Office of Personnel Management (OPM) has interpreted the prohibition of discrimination based on conduct to include discrimination based on sexual orientation. The

CSRA also prohibits reprisal against federal employees or applicants for whistleblowing, or for exercising an appeal, complaint, or grievance right. The CSRA is enforced by the Office of Special Counsel (OSC) and the Merit System Protection Board (MSPB).

II. What Discriminatory Practices Are Prohibited by These Laws?

Under Title VII, the ADA, and the ADEA, it is illegal to discriminate in any aspect of employment, including:

- hiring and firing;
- compensation, assignment, or classification of employees;
- transfer, promotion, layoff, or recall;
- job advertisements;
- recruitment;
- testing;
- use of organization facilities;
- training (formal or on-the-job) and apprenticeship programs;
- fringe benefits (awards);
- pay, retirement plans, and disability leave; or
- **other terms and conditions of employment**.

Discriminatory practices under these laws also include:

- harassment on the basis of race, color, religion, sex, national origin, disability, or age;
- retaliation against an individual for filing a claim of discrimination, participating in an investigation, or opposing discriminatory practices;
- employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a certain sex, race, age, religion, or ethnic group, or individuals with disabilities; and
- denying employment opportunities to a person because of marriage to, or association with, an individual of a particular race, religion, national origin, or an individual with a disability. Title VII also prohibits discrimination because of participation in schools or places of worship associated with a particular racial, ethnic, or religious group.

Employers are required to post notices to all employees advising them of their rights under the laws EEOC enforces and their right to be free from retaliation. Such notices must be accessible, as needed, to persons with visual or other disabilities that affect reading.

III. What Other Practices Are Discriminatory Under These Laws?

Title VII

Title VII prohibits not only intentional discrimination, but also practices that have the effect of discriminating against individuals because of their race, color, national origin, religion, or sex.

National Origin Discrimination

- It is illegal to discriminate against an individual because of birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group.
- **A rule requiring that employees speak only English on the job may violate Title VII unless an employer shows that the requirement is necessary for conducting business.** If the employer believes such a rule is necessary, employees must be informed when English is required and the consequences for violating the rule.

Religious Accommodation

- An employer is required to reasonably accommodate the religious belief of an employee or prospective employee, unless doing so would impose an undue hardship. (Undue hardship has been defined as having a significant impact on business operations where attempts have been made to find alternatives allowing the employee's absence.)

Sex Discrimination

Title VII's broad prohibitions against sex discrimination specifically cover:

- Sexual Harassment - This includes practices ranging from direct requests for sexual favors to workplace conditions that create a hostile environment for persons of either gender, including same sex harassment. (The "hostile environment" standard also applies to harassment on the bases of race, color, national origin, religion, age, and disability.)
- Pregnancy Based Discrimination - Pregnancy, childbirth, and related medical conditions must be treated in the same way as other temporary illnesses or conditions.

Additional rights are available to parents and others under the Family and Medical Leave Act (FMLA), which is enforced by the U.S. Department of Labor. For information on the FMLA, or to file an FMLA complaint, individuals should contact the nearest office of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division is listed in most telephone directories under U.S. Government, Department of Labor or at http://www.dol.gov/esa/public/whd_org.htm.

Age Discrimination in Employment Act

The ADEA's broad ban against age discrimination also specifically prohibits:

- statements or specifications in job notices or advertisements of age preference and limitations. An age limit may only be specified in the rare circumstance where age has

been proven to be a *bona fide* occupational qualification (BFOQ) such as police, fire fighters, air traffic control technicians;

- discrimination on the basis of age by apprenticeship programs, including joint labor-management apprenticeship programs; and
- denial of benefits to older employees. An employer may reduce benefits based on age only if the cost of providing the reduced benefits to older workers is the same as the cost of providing benefits to younger workers.

Equal Pay Act

The EPA prohibits discrimination on the basis of sex in the payment of wages or benefits, where men and women perform work of similar skill, effort, and responsibility for the same employer under similar working conditions.

Note that:

- Employers may not reduce wages of either sex to equalize pay between men and women.
- A violation of the EPA may occur where a different wage was/is paid to a person who worked in the same job before or after an employee of the opposite sex.
- A violation may also occur where a labor union causes the employer to violate the law.

Titles I and V of the Americans with Disabilities Act

The ADA prohibits discrimination on the basis of disability in all employment practices. It is necessary to understand several important ADA definitions to know who is protected by the law and what constitutes illegal discrimination:

Individual with a Disability

An individual with a disability under the ADA is a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Major life activities are activities that an average person can perform with little or no difficulty such as walking, breathing, seeing, hearing, speaking, learning, and working.

Qualified Individual with a Disability

A qualified employee or applicant with a disability is someone who satisfies skill, experience, education, and other job-related requirements of the position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of that position.

Reasonable Accommodation

Reasonable accommodation may include, but is not limited to, making existing facilities used by employees readily accessible to and usable by persons with disabilities; job restructuring; modification of work schedules; providing additional unpaid leave; reassignment to a vacant position; acquiring or modifying equipment or devices; adjusting or modifying examinations, training materials, or policies; and providing qualified readers or interpreters. Reasonable accommodation may be necessary to apply for a job, to perform job functions, or to enjoy the benefits and privileges of employment that are enjoyed by people without disabilities. An employer is not required to lower production standards to make an accommodation. An employer generally is not obligated to provide personal use items such as eyeglasses or hearing aids.

Undue Hardship

An employer is required to make a reasonable accommodation to a qualified individual with a disability unless doing so would impose an undue hardship on the operation of the employer's business. Undue hardship means an action that requires significant difficulty or expense when considered in relation to factors such as a business' size, financial resources, and the nature and structure of its operation.

Prohibited Inquiries and Examinations

Before making an offer of employment, an employer may not ask job applicants about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform job functions. A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in the same job category. Medical examinations of employees must be job-related and consistent with business necessity.

Drug and Alcohol Use

Employees and applicants currently engaging in the illegal use of drugs are not protected by the ADA when an employer acts on the basis of such use. Tests for illegal use of drugs are not considered medical examinations and, therefore, are not subject to the ADA's restrictions on medical examinations. Employers may hold individuals who are illegally using drugs and individuals with alcoholism to the same standards of performance as other employees.

The Civil Rights Act of 1991

The Civil Rights Act of 1991 made major changes in the federal laws against employment discrimination enforced by EEOC. Enacted in part to reverse several Supreme Court decisions that limited the rights of persons protected by these laws, the Act also provides additional protections. The Act authorizes compensatory and punitive damages in cases of intentional discrimination, and provides for obtaining attorneys' fees and the possibility of jury trials. It also directs the EEOC to expand its technical assistance and outreach activities.

IV. Which Employers and Other Entities Are Covered by These Laws?

Title VII and the ADA cover all private employers, state and local governments, and education institutions that employ 15 or more individuals (20 or more under the ADEA). Title VII, the ADEA, and the EPA also cover the federal government. In addition, the federal government is covered by Sections 501 and 505 of the Rehabilitation Act of 1973, as amended, which incorporate the requirements of the ADA. However, different procedures are used for processing complaints of federal discrimination. For more information on how to file a complaint of federal discrimination, contact the EEO office of the federal agency where the alleged discrimination occurred. The CSRA (not enforced by EEOC) covers most federal agency employees except employees of a government corporation (Postal Service, TVA), the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, and as determined by the President, any executive agency or unit thereof, the principal function of which is the conduct of foreign intelligence or counterintelligence activities, or the General Accounting Office.

V. What Is EEOC and How Does It Operate?

EEOC is an independent federal agency originally created by Congress in 1964 to enforce Title VII of the Civil Rights Act of 1964. The Commission is composed of five Commissioners and a General Counsel appointed by the President and confirmed by the Senate. Commissioners are appointed for five-year staggered terms; the General Counsel's term is four years. The President designates a Chair and a Vice-Chair. The Chair is the chief executive officer of the Commission. The Commission has authority to establish equal employment policy and to approve litigation. The General Counsel is responsible for conducting litigation. EEOC carries out its enforcement, education and technical assistance activities through 50 field offices serving every part of the nation.

VI. Where to file an EEO complaint?

Any employee or applicant for employment who feels he/she has been discriminated against because of race, color, religion, sex, national origin, age (40 years of age or over), or mental, physical handicap or reprisal for EEO involvement may file a complaint by contacting the EEO Office within 45 days following the alleged discriminatory act.

EEO Office is located on the 2nd Floor of Bldg 1472, HRO, Yokosuka, Japan.

Mailing address:
Commander U.S. Naval Forces, Japan
Human Resources Office
Equal Employment Opportunity Office(N134)
PSC 473 Box 22
FPO AP 96349-0022.

DSN Tel: 315-243-8163or9579 DSN Fax:315-243-9962
Local Tel/Fax: 046-816-8163or9579/046-816-9962
Int'l Tel/Fax: 011-81-46-816-8163or9579/011-81-46-816-9962