

COMPLIANCE OVERVIEW

Provided by Sullivan Benefits

Fair Employment and Discrimination – Overview of Federal Laws

Under federal law, many employers are prohibited from discriminating against individuals based on certain protected traits. Employers with 15 or more employees may not discriminate against individuals based on race, color, religion, national origin, sex, disability or genetic information. Employers with at least 20 employees are also prohibited from discriminating based on age against individuals who are age 40 or older. In addition, all employers are subject to equal pay requirements.

This Compliance Overview provides a high-level summary of the federal laws that protect employees and applicants from employment discrimination.

The Equal Employment Opportunity Commission (EEOC) enforces these laws and may file charges or initiate federal court lawsuits against employers that violate them. In discrimination lawsuits, courts may award compensatory and punitive damages to individuals who are adversely affected by an employer's violation.

LINKS AND RESOURCES

- EEOC fair employment [regulations](#)
- EEOC [fact sheet](#) on preventing employment discrimination
- EEOC [information](#) on prohibited employment policies and practices

HIGHLIGHTS

UNLAWFUL DISCRIMINATION

- Federal laws prohibit employment discrimination based on certain protected traits.
- Adverse employment actions are illegal if motivated in any way by a protected trait.
- Unlawful discrimination includes practices that unintentionally disadvantage protected individuals.
- Employers may be required to reasonably accommodate disabilities or religious practices.

EMPLOYER REQUIREMENTS

- Employers must post a notice in locations accessible to all applicants and employees.
- Employers with 100 or more employees must file annual reports with the EEOC.

This Compliance Overview is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

FEDERAL ANTI-DISCRIMINATION LAWS

Federal anti-discrimination laws protect employees and applicants from employment discrimination based on certain “protected statuses” or “protected traits”:

- Race
- Color
- National origin
- Religion
- Age (40 and older)
- Disability
- Genetic information
- Sex

Under EEOC guidance, the traits included under “sex” are pregnancy, childbirth, medical conditions related to pregnancy or childbirth, gender identity and sexual orientation. However, gender identity and sexual orientation may be excluded under case law in some jurisdictions.

The table below lists the specific federal laws that prohibit employment discrimination based on these protected traits.

Federal Law	Applies to:	Prohibits:
Equal Pay Act (EPA)	All employers	Paying different wages to men and women if they perform equal work in the same workplace
Federal Law	Applies to:	Prohibits discrimination based on:
Title VII of the Civil Rights Act (Title VII)	<ul style="list-style-type: none"> • Private employers with 15 or more employees • Employment agencies • Labor organizations • State and local governments 	Race, color, religion, national origin or sex
Pregnancy Discrimination Act (PDA)		Pregnancy, childbirth or related medical conditions
Americans with Disabilities Act (ADA)		Disability (of an otherwise qualified individual)
Genetic Nondiscrimination Act (GINA)		Genetic information
Age Discrimination in Employment Act (ADEA)	<ul style="list-style-type: none"> • Private employers with 20 or more employees • Employment agencies • Labor organizations 	Age (40 or older)

PROHIBITED PRACTICES

Under these federal anti-discrimination laws, virtually any adverse employment practice is illegal if it is motivated in any way by an individual’s protected trait. In addition, all of these laws prohibit employers from retaliating against any individual because he or she opposes illegal employment practices or participates in any proceeding relating to fair employment.

The table below provides an overview of these and other practices that are prohibited under federal fair employment laws.

Prohibited if based on a protected trait:	
<i>Employment terms</i>	Applying different standards of compensation or different terms, conditions or privileges of employment to individuals with a protected trait than those provided to unprotected individuals
<i>Firing/hiring</i>	Discharging or failing or refusing to hire an individual
<i>Adverse classification</i>	Limiting, segregating or classifying an individual in any way that would deprive or tend to deprive him or her of employment opportunities or otherwise adversely affect his or her employment status
<i>Adverse testing</i>	Altering the results of any employment-related test used in connection with selecting or referring applicants or candidates for employment or promotion
<i>Harassment</i>	Harassing or allowing others to harass an individual
<i>Advertising preferences</i>	Including preferences, limitations, specifications or discrimination in job notices or advertisements
<i>Refusing to provide reasonable accommodation for disability</i>	Refusing to provide reasonable accommodation for the known physical or mental limitations of an otherwise qualified individual with a disability
<i>Refusing to provide reasonable accommodation for religion</i>	Refusing to provide reasonable accommodation for religious observances and practices
Prohibited:	
<i>Unequal wages for similar work</i>	Paying unequal wages to male and female employees who perform work involving substantially similar skill, effort, responsibility and working conditions within the same establishment
<i>Disparate impact</i>	Taking an action that unintentionally disadvantages a group of individuals who share the same Title VII-protected trait
<i>Using genetic information</i>	Improperly collecting, using and disclosing genetic information about an individual or his or her family members
<i>Retaliation</i>	Retaliating against an individual for opposing discriminatory employment practices or for making formal or informal complaints about discrimination

EXCEPTIONS/PERMITTED PRACTICES

Employers may engage in otherwise-prohibited practices under certain circumstances. The table below provides an overview of these exceptions. These are generally available to employers as defenses against discrimination claims.

Employers may:	Only if they can show that:
<p>Apply different employment terms to a Title VII-protected individual than those provided to unprotected individuals</p>	<p>The difference is not the result of an intention to discriminate because of a protected trait and is applied either:</p> <ul style="list-style-type: none"> • Under a bona fide seniority or merit system; • Under a system that measures earnings by quantity or quality of production; or • To employees who work in different locations.
<p>Apply an age limit or make employment decisions based on age that negatively affect an individual who is age 40 or older</p>	<p>Age is a bona fide occupational qualification (BFOQ) for a specific job. To establish this, an employer must prove that the age limit or preference is reasonably necessary to the essence of its business and that either:</p> <ul style="list-style-type: none"> • All or substantially all individuals excluded from the job involved are in fact disqualified; or • Some of the excluded individuals have a disqualifying trait that cannot be ascertained except by reference to age.
<p>Take an employment action that results in disparate impact on individuals, as a group, who have disabilities or are members of the same race, color, religion, national origin or sex</p>	<p>The action is both job-related for the position in question and consistent with business necessity.</p>
<p>Take an employment action that results in disparate impact on individuals, as a group, who are age 40 or older</p>	<p>The action is justified by reasonable factors other than age (RFOA). To be justified by a RFOA, a practice must be both:</p> <ul style="list-style-type: none"> • Reasonably designed to further or achieve a legitimate business purpose; and • Administered in a way that reasonably achieves that purpose in light of the particular facts and circumstances that were known, or should have been known, to the employer.
<p>Refuse to provide reasonable accommodation for disability</p>	<p>The requested accommodation would cause undue hardship for the employer's business or enterprise. An undue hardship is an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources, and the nature and structure of its operation.</p>
<p>Refuse to provide reasonable accommodation for religion</p>	<p>Every available method of accommodation would cause undue hardship for the employer's business or enterprise.</p>

Employers may:	Only if they can show that:
Advertise preferences and make employment decisions based on religion, national origin or sex	Religion, national origin or sex is a BFOQ that is reasonably necessary to the normal operation of an employer's business or enterprise.
Reduce or provide lesser benefits to individuals who are age 40 or older under an employee benefit plan	The employer's cost of providing the reduced benefits to employees age 40 or older is no less than the cost of providing benefits to younger workers.
Pay different wages to employees of opposite genders for substantially equal work	The difference in pay is based on factors other than sex, such as: <ul style="list-style-type: none"> • A seniority system that rewards employees based on length of employment; • A merit system that rewards employees for exceptional job performance; • An incentive system that pays employees based on the quality of their work or the amount of work they perform; or • Another factor related to job performance or business operations, such as paying a shift differential to workers on less popular shifts.

EMPLOYER OBLIGATIONS

Federal fair employment laws also impose certain obligations on employers. The table below provides an overview of these responsibilities.

Requirement	Employers must:
Recordkeeping	Make and keep records related to payroll, personnel actions, employee benefits plans and charges of discrimination or lawsuits under federal fair employment laws
Posting	Post the " EEO is the Law " poster in a place and format that is accessible to applicants and employees
Reporting	Report employment data through the EEO-1 survey by March 31 every year (applies only to employers with 100 or more employees and certain federal contractors)

STATE FAIR EMPLOYMENT LAWS

In addition to federal fair employment laws, most states have passed their own laws prohibiting employers from engaging in discriminatory employment practices. In general, these laws provide protection for job applicants and employees that is similar, though not identical, to the protection provided under federal fair employment laws. For example, many state laws protect a wider range of individuals, apply to small employers that are not subject to the federal provisions and provide different exemptions from their discrimination prohibitions. Employers should become familiar with how both federal and state laws apply to their employment practices.