



Compliance Overview

Highlights

Failure to adequately respond to internal harassment claims can have significant repercussions for employers. Some best practices for responding to internal harassment claims include:

- Properly responding to the initial complaint;
- Planning and conducting a fair investigation;
- Preventing retaliation;
- Making a determination based on the evidence and taking appropriate corrective action;
- Effectively communicating to all parties; and
- Following up as appropriate.

Best Practices for Responding to Internal Harassment Claims

The U.S. Equal Employment Opportunity Commission (EEOC) is a federal agency responsible for enforcing federal equal employment opportunity (EEO) laws. Each EEO law listed below covers certain private-sector employers and prohibits harassment.

- **Title VII of the Civil Rights Act of 1964 (Title VII);**
- **Age Discrimination in Employment Act (ADEA);**
- **Americans with Disabilities Act (ADA); and**
- **Genetic Information Nondiscrimination Act (GINA).**

Failure to properly respond to allegations of harassment can lead to significant financial and reputational harm to employers. Therefore, it is important that employers understand their obligations under these laws and how to respond to claims of harassment. This Compliance Overview summarizes employer requirements under EEO anti-harassment laws and provides best practices for responding to internal harassment claims. Separate obligations apply where an employee has filed a claim with the EEOC or a similar state agency.

Links and Resources

- [EEO Laws Overview](#)
- [EEOC Harassment Overview](#)
- [EEOC Questions and Answers for Employees: Harassment at Work](#)

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Overview of Federal EEO Laws

EEO laws protect employees and applicants from harassment on the basis of certain protected traits. To help prevent claims of harassment, employers should familiarize themselves with the various forms of harassment prohibited under each EEO law and assess whether they are subject to those laws.

EEO Law	Covered Employers	Prohibited Harassment
Title VII	Private-sector employers with 15 or more employees for at least 20 weeks in the same calendar year as or in the calendar year prior to when the alleged harassment occurred	Prohibits harassment on the basis of race, color, religion, national origin and sex (including pregnancy, childbirth or related medical conditions)
ADEA	Private-sector employers with 20 or more employees for at least 20 weeks in the current or preceding calendar year	Prohibits harassment against someone who is age 40 or older on the basis of age
ADA	Private-sector employers with 15 or more employees for at least 20 weeks in the same calendar year as or in the calendar year prior to when the alleged harassment occurred	Prohibits harassment against a qualified person on the basis of their disability
GINA	Private-sector employers with 15 or more employees for at least 20 weeks in the same calendar year as or in the calendar year prior to when the alleged harassment occurred	Prohibits harassment on the basis of an individual's genetic information (e.g., family medical history; genetic tests of an individual or an individual's family members; information about any disease, disorder or condition)

Unlawful Harassment

Unlawful harassment is unwelcome conduct based on an individual's protected trait where:

- Enduring the offensive conduct becomes a condition of continued employment; or
- The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile or abusive.

Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name-calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance.

Employers are liable for harassment by a supervisor that results in a negative employment action (e.g., termination, failure to promote or hire, and loss of wages). If the supervisor's harassment results in a hostile work environment, the employer is liable unless the employer can prove that:

- The employer reasonably tried to prevent and promptly correct the harassing behavior; and
- The employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer.

Employers may also be liable for harassment by nonsupervisory employees or nonemployees over whom they have control if they knew, or should have known, of the harassment and failed to take prompt and appropriate corrective action.

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Sexual Harassment

In addition, sexual harassment is prohibited under Title VII. Unlawful sexual harassment may include unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when such conduct:

- Explicitly or implicitly affects an individual's employment;
- Unreasonably interferes with an individual's work performance; or
- Creates an intimidating, hostile or offensive work environment.

Sexual harassment may include unwanted sexual attention or sexual coercion (e.g., demands or pressure for sexual favors, sexual assault or sexual remarks) as well as nonsexual conduct based on sex (e.g., sex-based epithets, sexist comments or facially sex-neutral offensive conduct motivated by sex).

Enforcement and Penalties

Individuals alleging harassment under federal EEO laws may file a charge of discrimination with the EEOC. Under Title VII, the ADEA, the ADA and GINA, individuals have **180 days** from the date the alleged harassment took place to file a charge with the EEOC. For claims under Title VII, the ADA or GINA, the filing deadline is extended to **300 days** if a state or local agency enforces a state or local law that prohibits the same form of discrimination prohibited under those EEO laws. For claims under the ADEA, the filing deadline is extended to 300 days only if a state agency enforces a law that prohibits age discrimination.

In a harassment case, individuals may be eligible for various forms of relief, including preliminary relief, compensatory and punitive damages, and other remedies such as back pay, front pay or job reinstatement.

Best Practices for Responding to Internal Harassment Claims

Receive and Respond to the Complaint

Recognize the Complaint

The first step to responding to a harassment claim is recognizing that a complaint has been made. A report of harassment may be formal or informal, written or verbal, and may come directly from the complainant or indirectly through a third party. In some cases, an employer may become obligated to act even without a formal complaint if it knew or should have known about the harassing conduct (e.g., because a manager personally observed it). Employers may consider providing multiple channels through which employees can report harassment, such as direct reports to HR; reports to a supervisor or manager other than the alleged harasser; an anonymous hotline or online reporting portal; or reports to designated alternate personnel when the complaint involves HR or senior leadership.

Respond Promptly

Employers should ensure that they respond promptly to any allegations of harassment. In the response, employers may outline the investigative process and any limitations on maintaining confidentiality (e.g., the need to interview relevant parties) and offer interim support or protective measures (as needed), but should generally refrain from making any guarantees to the employee regarding the potential outcome or disciplinary measures.

A timely response can also support an employer's legal defense to the extent an individual does escalate a complaint by filing a claim with the EEOC or similar state agency or filing a lawsuit in court. For certain claims, such as allegations of a hostile work environment, employers will need to show that they took prompt corrective action as part of their legal defense.

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Consider Interim Measures

Depending on the nature of the complaint and the parties involved, it may be advisable to take interim protective measures while the claim is under investigation. Examples of interim protective measures may include adjusting reporting lines, schedules or work locations to separate the parties; placing the accused on paid administrative leave; issuing a no-contact directive between the parties; or temporarily modifying remote work or in-office schedules to minimize contact between the parties.

However, interim measures should be carefully tailored so they are not perceived as punitive toward the complainant, which could raise retaliation concerns. Employers should also generally avoid taking any actions that may be considered an adverse employment action (e.g., demotion, unpaid leave, lack of access to opportunities, etc.) before the investigation is concluded and a determination is made.

Plan and Conduct the Investigation

Select a Neutral Investigator

It is important that any investigation into a harassment claim is fair and objective. Therefore, employers should assign a neutral investigator to lead the investigation. The investigator should generally be an individual who does not have any personal or professional conflict with either party and has sufficient training, experience and authority to conduct the investigation. Examples of neutral investigators may include HR personnel and in-house counsel or, depending on the severity of the claim and the parties involved, outside counsel or another hired third-party investigator.

Plan the Investigation

Once an investigator is selected, the employer may develop an investigation plan that identifies the scope of the allegations, the witnesses to be interviewed, documents or evidence to be gathered, and a reasonable timeline for completion. Investigations should be completed in a timely fashion to improve the accuracy of witness statements, reduce the risk of litigation and prevent ongoing harassment.

Interview Relevant Parties

A key component of the investigation is the interviewing of relevant parties, including the alleged victim, the complainant (if different from the alleged victim), the alleged harasser and any witnesses. As a general matter, the interviewer should remain objective and ask open-ended questions. The interview questions should establish key facts, such as the parties involved, the nature of the alleged harassment, when and where the alleged harassment occurred, and whether there were any witnesses. When interviewing the accused, the interviewer may provide notice of the general nature of the allegations and a meaningful opportunity to respond.

When interviewing a union-represented employee in circumstances that could lead to discipline, employers may be required to offer the employee the opportunity to have a union representative present, depending on the terms of any underlying collective bargaining agreement. The collective bargaining agreement may also establish timelines for discipline or grievance procedures. Therefore, employers should carefully consult any applicable collective bargaining agreements if the interviews involve a unionized employee.

Collect Evidence

In addition to interviews, employers should collect relevant documentary evidence, which may include the initial complaint, emails, text messages, messaging-platform communications, security or badge access records, personnel files and, where relevant and lawfully obtainable, social media posts. Employers may also take steps to preserve the integrity of electronic evidence.

Maintain Confidentiality

While complete confidentiality generally cannot be guaranteed as the accused individual will need to be advised of the allegations in order to respond, employers should take reasonable steps to limit disclosure of information obtained during

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the course of the investigation. Employers should also be aware that blanket confidentiality directives prohibiting employees from any discussion of an ongoing investigation may, in some circumstances, run afoul of the National Labor Relations Act, which can apply to both unionized and nonunionized workplaces. Therefore, confidentiality instructions should be generally tailored to the specific investigation rather than imposed as an automatic blanket rule.

Document the Investigation

As a best practice, employers should thoroughly document each element of the investigation, including the alleged complaint, any communications made regarding the investigation, and interview records and notes made during the investigation. Any records made should be maintained in a file separate from personnel records.

Prevent Retaliation

EEO laws also prohibit employers from retaliating against employees who allege harassment under such laws or who participate in the investigation (e.g., taking an adverse employment action, such as a demotion, compensation decrease or termination, against a complainant or witness because they filed a claim or provided testimony in the course of an investigation). If, however, it is necessary to take an adverse employment action against a complainant or witness for reasons unrelated to the harassment allegation or investigation, the employer should document the independent, legitimate business reason for any such action.

In addition, employers should establish and communicate clear antiretaliation policies to all relevant parties, including the complainant, the accused individual, managers and HR personnel. Employers may also encourage employees to report any perceived retaliation through appropriate channels.

Make a Determination and Take Appropriate Corrective Action

Following the investigation, the investigator will evaluate the evidence gathered and reach a determination as to the veracity of the harassment claim. The investigator should then prepare a final report that summarizes their findings along with any relevant support for their determination. Such report should also be maintained in a file separate from personnel records.

If, following a fair and thorough investigation, an employer determines that harassment has occurred, the next step is determining the appropriate corrective action. The nature of the corrective action should be proportionate to the severity of the harassment and other relevant factors, including whether it is a first offense or a repeated issue. For example, for more minor infractions, employers may consider issuing a verbal or written warning or providing supplemental anti-harassment coaching or training. For more serious instances of harassment, employers may consider terminating the employee's employment.

Employers may also consider whether the investigation revealed broader, systemic concerns, including insufficient policies and training or a pattern of conduct by a particular individual. If so, employers may want to take corrective action at the organizational level.

Communicate to Relevant Parties

Employers should inform the complainant that the investigation has concluded and provide a general description of the outcome (e.g., that appropriate action was taken), without necessarily disclosing the specific discipline imposed on the accused. The accused should be informed of the outcome and any resulting consequences. When communicating with the broader workforce or witnesses, employers should generally share only the information necessary to address legitimate business needs.

Follow-up as Appropriate

In some instances, employers may consider following up with the parties periodically following the conclusion of the investigation to ensure that the conduct has stopped and that neither the complainant nor any witnesses have

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experienced retaliation. Employers may also consider monitoring ongoing workplace interactions between the parties where they continue to work together in close proximity.

Employer Takeaways

Failure to appropriately respond to harassment allegations can lead to significant legal, financial and reputational harm to an employer. Therefore, employers should ensure they understand their obligations under EEO laws and adopt best practices when responding to internal claims of harassment.