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Bending Toward Justice: 60 Years of Civil Rights Laws Protecting Workers in America

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Executive Summary

Title VII of the Civil Rights Act of 1964 prohibits unlawful discrimination in the workplace and established the U.S. Equal Employment Opportunity Commission (EEOC) as the agency responsible for monitoring, investigating, and enforcing this landmark civil rights law.[1] The EEOC first opened its doors 60 years ago in 1965. The agency now enforces several Federal laws that make it illegal to discriminate against job applicants or employees because of a person's race, color, religion, sex (including pregnancy, sexual orientation, and transgender status), national origin, age, disability, or genetic information. These laws also prohibit punishing job applicants or employees for asserting their rights to be free from employment discrimination, including harassment and retaliation.

While protection against pay discrimination on the basis of sex preceded Title VII, a number of protected bases were not recognized until after Title VII was passed. Title VII served as a model and provided lessons for subsequent civil rights legislation, including the Age Discrimination in Employment Act of 1967 (ADEA), the Rehabilitation Act of 1973, the Pregnancy Discrimination Act of 1978 (PDA), the Americans with Disabilities Act of 1990 (ADA), the Civil Rights Act of 1991, the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), the Genetic Information Nondiscrimination Act of 2008 (GINA), and the Pregnant Workers Fairness Act of 2022 (PWFA).

This report discusses civil rights protections afforded to workers and identifies EEOC resources to help employees, applicants, employers, staffing agencies, unions, and others in both the public and private sectors recognize and prevent discrimination (including harassment and retaliation). It also provides a historical overview of the development of Federal anti-discrimination laws protecting workers. Furthermore, it presents a timeline of amendments, EEOC guidance, and significant court cases relevant to the civil rights laws that the EEOC enforces—highlighting the ongoing evolution of these laws and the important role that the EEOC continues to have in preventing and remedying employment discrimination and advancing equal opportunity for all.

[1] "Title VII of the Civil Rights Act of 1964," EEOC, https://www.eeoc.gov/statutes/title-vii-civil-rights-act-1964.

Introduction

Over 60 years ago, the U.S. Congress passed the Civil Rights Act of 1964. The subsequent enforcement of this historic legislation helped reduce segregation in the United States. Title VII of the Civil Rights Act (Title VII) prohibits unlawful discrimination in the workplace and established the U.S. Equal Employment Opportunity Commission (EEOC) as the agency responsible for monitoring, investigating, and enforcing the anti-discrimination laws.[2] The EEOC opened its doors 60 years ago in 1965.

Title VII, strengthened over time by amendments, paved the way and provided a model for other civil rights laws. In the 60 years since its passage, Congress authorized the EEOC to enforce additional laws to protect workers from discrimination on the job. Today, the EEOC enforces Federal laws that make it illegal to discriminate against job applicants or employees because of a person's race, color, religion, sex (including pregnancy, sexual orientation, and transgender status), national origin, age, disability, or genetic information.

This report discusses protections afforded to individuals and identifies EEOC resources to help employers, staffing agencies, unions, employees, applicants, and others in both the public and private sectors recognize and prevent discrimination, including harassment and retaliation. It also provides a historical overview of the development of Federal anti-discrimination laws protecting workers. Furthermore, it presents a timeline of amendments, EEOC guidance, and significant court cases relevant to the laws that the EEOC enforces—highlighting the ongoing evolution of these laws and the important role that the EEOC continues to have in preventing and remedying employment discrimination and advancing equal employment opportunity for all.

Historical Background

In the decades leading up to the passage of Title VII, social and political tensions grew surrounding the civil rights of disenfranchised populations in the United States. As part of its response, the Federal Government took steps to address employment discrimination.

In 1941, as fears of worker demonstrations rose, President Franklin D. Roosevelt issued an executive order that prohibited government contractors from engaging in employment discrimination based on race, color, or national origin,[3] which helped prevent disruptions to the military supply chain during World War II. In 1948, President Harry S. Truman issued an executive order seeking to achieve equal

[2] "Title VII of the Civil Rights Act of 1964," EEOC, https://www.eeoc.gov/statutes/title-vii-civil-rights-act-1964.

[3] "The Early Years," EEOC, https://www.eeoc.gov/history/early-years.

opportunity without regard to a person's race, color, religion, or national origin, by integrating the U.S. Armed Forces.

In the 1950s, public civil rights demonstrations increased, and policies began to change. Notably, the U.S. Supreme Court decision in *Brown v. Board of Education*[4] in 1954 marked the end of legal segregation in public schools. In 1955, sit-ins and demonstrations followed the arrest of Rosa Parks, leading to a 1956 U.S. Supreme Court decision prohibiting segregation of public transportation.[5]

The 1960s ushered historic steps aiming to create racial equality. In 1961, President John F. Kennedy issued an executive order requiring the Federal Government and Federal contractors to take positive measures to ensure they did not discriminate based on race. In addition, this executive order established the President's Committee on Equal Employment Opportunity and empowered it with enforcement authority.

In 1963, Congress enacted the Equal Pay Act to prohibit sex-based wage discrimination between men and women.

Later in 1963, over 250,000 people participated in the March on Washington for Jobs and Freedom, a peaceful demonstration against racial injustice and inequality. From the steps of the Lincoln Memorial in Washington, DC, Dr. Martin Luther King, Jr. gave his famous "I Have a Dream" speech.

In 1964, Congress passed the Civil Rights Act, the landmark legislation of the Civil Rights Movement. Title VII of the Civil Rights Act prohibits employment discrimination based on race, color, religion, sex, and national origin. It also prohibits retaliation. Today, Title VII applies to employers with 15 or more employees, labor unions, and staffing agencies in the private sector and to employers in the public sector, including all Federal sector agencies regardless of size.[6] These protections against discrimination cover all aspects of employment, including hiring, firing, compensation, assigning jobs, promoting, training, and any other term or condition of employment. Title VII also established the EEOC as a five-member, bipartisan commission with the goal of preventing, addressing, and eliminating unlawful employment discrimination.

Sex was not included as a protected basis in initial drafts of the bill that would become Title VII. Ultimately, a legislator who had supported the idea of an Equal

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[4] "The Supreme Court ruled that separating children in public schools on the basis of race was unconstitutional. It signaled the end of legalized racial segregation in the schools of the United States, overruling the 'separate but equal' principle set forth in the 1896 Plessy v. Ferguson case."

[5] Rosa Parks was arrested for disobeying an Alabama law requiring Black or African American passengers to relinquish seats to White passengers when the bus was full. They also were required to sit at the back of the bus. Her arrest sparked a 381-day boycott of the Montgomery bus system.

[6] "Title VII of the Civil Rights Act of 1964," EEOC, https://www.eeoc.gov/statutes/title-vii-civil-rights-act-1964.

Rights Amendment for women introduced an amendment to add sex to the civil rights bill, which some assert was intended to prevent the bill from passing. Nevertheless, on July 2, 1964, President Lyndon B. Johnson signed the bill into law, with sex included as a protected basis.[7]

After the Civil Rights Act of 1964 was passed, efforts to address employment discrimination continued. In 1965, President Johnson issued an executive order that strengthened enforcement of prohibitions against discrimination by Federal contractors on the bases of color, religion, and national origin.[8] However, the executive order did not include sex, which had also been excluded from previous related executive orders. Women's rights groups urged President Johnson to broaden enforcement to include protections for women employed by Federal contractors. In 1967, President Johnson then amended the executive order to include sex as a protected basis.[9]

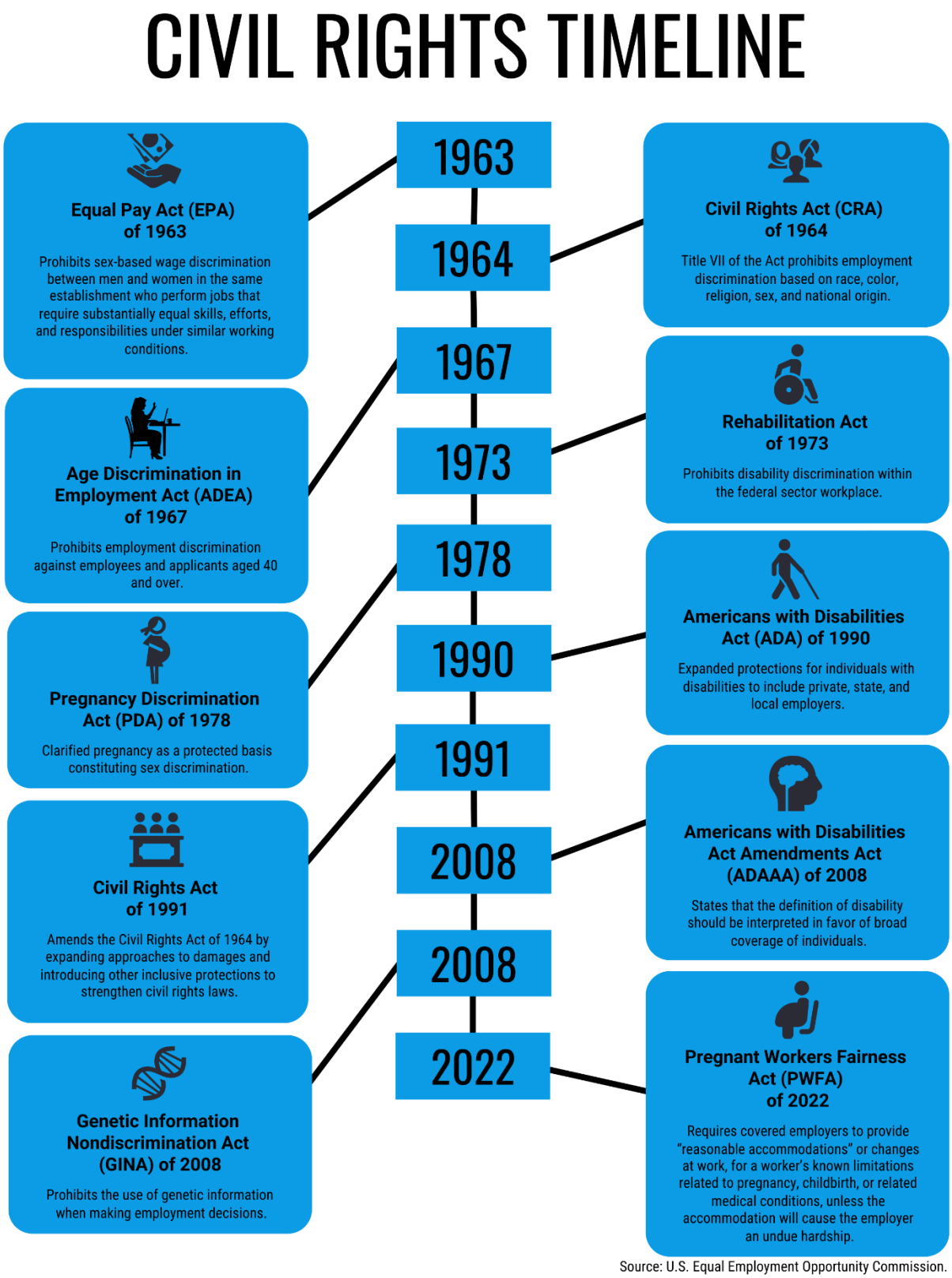
Since that time, efforts to expand civil rights protections have not stopped. While Title VII included protection for five bases, it did not include all the types of equal employment protections that exist for workers today. The development of these protections is discussed in the next sections of this report.

[7] "Women's Rights and the Civil Rights Act of 1964," National Archives, https://www.archives.gov/women/1964-civil-rights-act.

[8] "History of Executive Order 11246," U.S. Department of Labor, https://www.dol.gov/agencies/ofccp/about/executive-order-11246-history.

[9] "History of the Office of Federal Contract Compliance Programs," U.S. Department of Labor, https://www.dol.gov/agencies/ofccp/about/history.

Figure 1. Timeline of Civil Rights Law in Employment



Source: U.S. Equal Employment Opportunity Commission.

Protected Bases

The EEOC's enforcement of Title VII has made workplaces fairer and more inclusive, but the EEOC's work is not finished. In its first year of operation, the EEOC received 8,854 charges alleging violations of Title VII. In the past 10 years, the average number of Title VII charges filed each year has been about 55,000. In fiscal year (FY) 2023, the EEOC received 81,055 new charges of discrimination alleging violations of all equal employment opportunity laws.[10]

This section highlights charge data, significant court cases, and EEOC guidance and other resources on protected bases covered by civil rights laws.

Race/Color

In the EEOC's first full year of operation in 1966, most conciliation agreements[11] addressed race-based discrimination, as workplace facilities largely desegregated.[12] Today, complaints of race-based discrimination are still prevalent.

Table 1 shows that race-based charges have accounted for roughly one-third of all charges of discrimination filed with the EEOC since FY 1997, when 29,199 charges were filed with the EEOC. In FY 2023, individuals alleging race-based discrimination filed 27,505 charges—accounting for almost 33.9 percent of all charges that year.[13]

[10] "2023 Annual Performance Report," EEOC, https://www.eeoc.gov/2023-annual-performance-report.

[11] Conciliation is an informal, confidential, and voluntary process in which both parties join the EEOC in seeking to settle a charge of discrimination through mediated discussions to develop an appropriate solution that avoids formal litigation.

[12] "EEOC History: 1964 – 1969," EEOC, https://www.eeoc.gov/history/eeoc-history-1.

[13] "Enforcement and Litigation Statistics," EEOC, https://www.eeoc.gov/data/enforcement-and-litigation-statistics-0.

Table 1. Race-Based Charges in the Private Sector, FY 2007–2023

Fiscal Year	Total Charges	Race-Based Charges	Percent Race-Based Charges
1997	80,680	29,199	36.2
1998	79,591	28,820	36.2
1999	77,444	28,819	37.2
2000	79,896	28,945	36.2
2001	80,840	28,912	35.8
2002	84,442	29,910	35.4
2003	81,293	28,526	35.1
2004	79,432	27,696	34.9
2005	75,428	26,740	35.5
2006	75,768	27,238	35.9
2007	82,792	30,510	36.9
2008	95,402	33,937	35.6
2009	93,277	33,579	36.0
2010	99,922	35,890	35.9
2011	99,947	35,395	35.4
2012	99,412	33,512	33.7
2013	93,727	33,068	35.3
2014	88,778	31,073	35.0
2015	89,385	31,027	34.7
2016	91,503	32,309	35.3
2017	84,254	28,528	33.9
2018	76,418	24,600	32.2
2019	72,675	23,976	33.0
2020	67,448	22,064	32.7
2021	61,331	20,908	34.1
2022	73,485	20,992	28.6
2023	81,055	27,505	33.9

Source: U.S. Equal Employment Opportunity Commission, Enforcement and Litigation Statistics.

EEOC charge data from the private sector shows a significant increase in charges alleging color-based discrimination in the past few decades. In FY 1997, the EEOC received 762 charges alleging color-based discrimination. That number increased to 5,819 charges in FY 2023—an increase of about 664 percent since FY 1997.[14] This increase may be linked to several factors, including the growing recognition of colorism as a form of discrimination and increased awareness among workers of their rights to file claims.[15]

The EEOC investigates these charges and often resolves them—without filing litigation—through conciliation and mediation. Over the years, they have obtained billions of dollars in total on behalf of victims of discrimination as well as changes to employer policies and practices intended to prevent discrimination from occurring.

Although race and color overlap, they are not synonymous. Especially in the early years of the EEOC's enforcement of Title VII, the EEOC sought to clarify Title VII's coverage of race and color discrimination. Neither Title VII nor the EEOC defines the term "race." However, the EEOC's position, with which courts have agreed, is that under Title VII race includes characteristics associated with a racial group (such as skin color or certain facial features).[16] This applies even when not all members of a racial group share the same characteristics. Title VII also prohibits discrimination based on a condition which predominantly affects one race, unless the practice is necessary for work-related activity. For example, a workplace policy excluding individuals with sickle cell anemia is considered racial discrimination because sickle cell anemia predominantly affects Black and/or African American workers.

Although Title VII does not define the term "color," the courts and the EEOC have defined color to include "pigmentation, complexion, or skin shade or tone." As explained in the EEOC's guidance, color discrimination occurs when an employee is discriminated against based on lightness, darkness, or another color characteristic.[17]

The EEOC also created resource documents and launched initiatives to help the public better understand race and color discrimination prohibited by Title VII. In 2006, the EEOC issued a new section in its compliance manual entitled "Race and

[14] "Enforcement and Litigation Statistics," EEOC, https://www.eeoc.gov/data/enforcement-and-litigation-statistics-0.

[15] "Section 15 Race and Color Discrimination", EEOC, https://www.eeoc.gov/laws/guidance/section-15-race-and-color-discrimination#III.

[16] "Facts about Race/Color Discrimination," EEOC, https://www.eeoc.gov/laws/guidance/facts-about-racecolor-discrimination.

[17] "Section 15 Race and Color Discrimination," EEOC, https://www.eeoc.gov/laws/guidance/section-15-race-and-color-discrimination#III.

Color Discrimination."[18] The EEOC also developed a plain language technical assistance document, "Questions and Answers About Race and Color Discrimination in Employment," to help employers and workers identify race and color discrimination.[19]

In 2007, the EEOC launched the Eradicating Racism and Colorism from Employment (E-RACE) initiative to identify issues and barriers that contribute to race and color discrimination in workplaces. [20] The initiative explored strategies to improve the administrative enforcement and the litigation of race and color discrimination claims. The initiative also aimed to enhance the public's awareness of persistent race and color discrimination in employment.[21]

More recently, in 2023, the EEOC published reports on African American women,[22] Hispanic and Latina women,[23] and American Indian and Alaska Native women[24] employed in the Federal Government. These reports highlight the representation and pay disparities that these groups of women face in the Federal workforce to encourage Federal agencies to further address racial disparities and promote diversity in their workforce and leadership.

The EEOC has litigated many cases in the private sector alleging race and/or color discrimination.[25] Most of these cases also allege discrimination on other bases, such as national origin. The EEOC's litigation usually seeks monetary damages as well as changes to employer policies and practices.

For example, the agency brought cases against two Hooters restaurant owners, Hooters of America[26] (*Equal Employment Opportunity Commission v. Hooters of*

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[18] "Section 15 Race and Color Discrimination," EEOC, https://www.eeoc.gov/laws/guidance/section-15-race-and-color-discrimination.

[19] "Questions and Answers about Race and Color Discrimination in Employment," EEOC, https://www.eeoc.gov/laws/guidance/questions-and-answers-about-race-and-color-discrimination-employment.

[20] "EEOC History: 2000 – 2009," EEOC, https://www.eeoc.gov/history/eeoc-history-2000-2009.

[21] "E-RACE Goals and Objectives," EEOC, https://www.eeoc.gov/initiatives/e-race/e-race-goals-and-objectives.

[22] *African American Women in the Federal Sector*, EEOC, 2023, https://www.eeoc.gov/federal-sector/reports/african-american-women-federal-sector.

[23] *Hispanic Women and Latinas in the Federal Sector*, EEOC, 2023, https://www.eeoc.gov/federal-sector/reports/hispanic-women-and-latinas-federal-sector.

[24] *American Indian and Alaska Native Women in the Federal Sector*, EEOC, 2023, https://www.eeoc.gov/federal-sector/reports/american-indian-and-alaska-native-women-federal-sector.

[25] "Significant EEOC Race/Color Cases (Covering Private and Federal Sectors)," EEOC, https://www.eeoc.gov/initiatives/e-race/significant-eeoc-racecolor-casescovering-private-and-federal-sectors#color. Also, see Office of General Counsel Annual reports at https://www.eeoc.gov/reports/office-general-counsel-annual-reports.

[26] "Hooters of America to Pay $250,000 to Settle EEOC Race and Color Lawsuit," EEOC, https://www.eeoc.gov/newsroom/hooters-america-llc-pay-250000-settle-eeoc-race-and-color-lawsuit.

America, LLC) and Hooters of Louisiana[27] (*Equal Employment Opportunity Commission v. Hooters of Louisiana, LLC)*. In these cases, the EEOC alleged that the employer failed to recall Black or African American employees after laying off staff in 2020 in response to the COVID-19 pandemic. At the Hooters located in Greensboro, NC, when they began recalling employees to return to work in May of 2020, Hooters recalled primarily White employees and those with lighter skin tones. The lawsuit also alleged that "Hooters Girls" with dark skin tones experienced racial hostility and observed preferential treatment of White employees while employed at the restaurant. At the Hooters located in Metairie, LA, none of the former Black employees were rehired despite their qualifications. Instead, Hooters initially restaffed the restaurant solely with non-Black employees. The agency further alleged that a workplace environment of offensive and demeaning remarks based on their race existed since at least 2017.

The EEOC obtained three-year consent decrees in both cases, with Hooters paying affected employees $250,000 in one case and $650,000 in the other for backpay and damages. They were also required to conduct training, revise its policies, provide regular reports to the EEOC, and post a notice affirming its obligations under Title VII. The consent decree in Hooters of America covered four locations in North Carolina and specifically prohibited Hooters from making layoff, or recall and rehire decisions after a layoff, based on race or color in the future.

In 2024, the EEOC resolved a significant case, initially filed in 2010, against delivery company DHL, which assigned its Black employees to routes in neighborhoods with higher crime rates compared to those assigned to its White drivers. Black employees often witnessed crime and sometimes were victims of crime on their assigned routes. Additionally, they reported being assigned to move large, heavy packages while their White counterparts were assigned the far less strenuous task of sorting letters. They also reported being segregated from White employees.

Under the consent decree resolving the lawsuit, DHL paid $8.7 million in compensation to a group of 83 Black employees subject to the alleged discriminatory conduct.[28] DHL was also required to train its workforce on Federal laws prohibiting race discrimination and provide periodic reports to the EEOC on work assignments and complaints of race discrimination.

[27] "Hooters of Louisiana to Pay $650,000 to Resolve EEOC Race and Retaliation Lawsuit," EEOC, https://www.eeoc.gov/newsroom/hooters-louisiana-pay-650000-resolve-eeoc-race-and-retaliation-lawsuit.

[28] "DHL to Pay $8.7 Million in EEOC Race Discrimination Lawsuit," EEOC, https://www.eeoc.gov/newsroom/dhl-pay-87-million-eeoc-race-discrimination-lawsuit.

National Origin

Title VII also safeguards against discrimination based on national origin. Courts and the EEOC have clarified that this type of discrimination involves unfavorable treatment because person: is from a particular country or part of the world; is of a particular ethnicity or has an accent; appears to be of a certain ethnic background (even if they are not); or is married to or associated with a person of a certain national origin. Title VII protects individuals from employment discrimination regardless of their citizenship or immigration status.[29]

National origin discrimination often overlaps with race, color, or religious discrimination because people of certain national origins may be associated or perceived to be associated with a particular religion or race. For example, discrimination against individuals with origins in the Middle East may be motivated by race, national origin, or even the perception that they follow a particular religious practice. As a result, the same set of facts may state claims alleging multiple bases of discrimination.

The number of national origin-based discrimination charges has remained relatively consistent over the years, from 29,199 charges in FY 1997 to 27,505 charges in FY 2023.[30] However, charges in FY 2023 increased by 35.5 percent compared to the previous year, when 20,292 charges were filed.

The EEOC has litigated countless cases alleging national origin discrimination. Notably, in 2010 in *EEOC v. New York University*, the EEOC sued New York University (NYU), the largest private university in the United States and one of New York City's ten biggest employers. The lawsuit alleged that NYU had violated Federal law by creating a hostile work environment for an African-born employees that included degrading verbal harassment based on national origin. The mailroom supervisor at one of NYU's libraries subjected his assistant, a native of Ghana, to repeated slurs and inappropriate and offensive comments. The supervisor also mocked the assistant's accented English and expressed hostility toward immigrants generally and specifically Africans.

Although the assistant complained repeatedly to NYU management and HR personnel, NYU took months to investigate and then took virtually no action to curb

[29] While Title VII applies to employers with more than 15 employees, smaller employers (with four to 14 employees) are also prohibited from discriminating on the basis of national origin under the anti-discrimination provisions of the Immigration and Nationality Act (INA). This provision, enforced by the U.S. Department of Justice, prohibits employers with four to 14 workers from discriminating against workers because of their national origin with respect to hiring, firing, and recruitment or referral for a fee. "8 U.S.C. § 1324b. Unfair Immigration-related Employment Practices," U.S. Department of Justice, 2021, https://www.justice.gov/crt/8-usc-1324b-unfair-immigration-related-employment-practices.

[30] "Enforcement and Litigation Statistics," EEOC, https://www.eeoc.gov/data/enforcement-and-litigation-statistics-0.

the supervisor's harassment, even after the assistant alerted NYU that the supervisor had retaliated against him for complaining. Ultimately, NYU was ordered to pay $210,000 to the employee for lost wages and compensation for the emotional distress he experienced.[31] NYU was also required to: enhance its policies and complaint procedures; designate an equal employment opportunity (EEO) coordinator to monitor its compliance with Federal anti-discrimination laws; conduct in-person, comprehensive EEO training sessions for employees, supervisors, and HR staff; and maintain records (to be reviewed by the EEOC) of its responses to future employee complaints of discrimination, including harassment and retaliation.

The EEOC resolved a notable case challenging an employer's English-only policy in 2019, *EEOC v. DH San Antonio Management, LLC. et al*. The EEOC's lawsuit alleged that the operators of the La Cantera Resort and Spa in San Antonio violated Title VII by subjecting Hispanic banquet staff to a hostile work environment based on their national origin and by retaliating against them. After assuming control of the resort, La Cantera's new managers subjected at least 25 Hispanic banquet employees to verbal abuse and mistreatment because of their Hispanic national origin. The EEOC alleged that the managers had implemented and harshly enforced a policy forbidding banquet staff from speaking Spanish at anytime and anywhere in the resort. One of the managers allegedly referred to Spanish as "a foul language" and used derogatory terms when referring to Hispanic workers. Furthermore, when banquet employees raised concerns about these practices, the employer retaliated against some by demoting and firing them and replacing them with non-Hispanic employees. Through a two-year consent decree obtained by the EEOC, the District Court required the resort to pay over $2.6 million, to change its policies regarding the use of languages other than English in the workplace, and to provide training to La Cantera's employees informing them of their rights under Title VII.[32]

In addition to bringing litigation, the EEOC has created resource documents on national origin discrimination for the public. In 1970, the EEOC first issued "Guidelines on Discrimination Because of National Origin," acknowledging that national origin discrimination extends to characteristics associated with a person's national origin, such as language, height, weight, or ethnic stereotypes,[33] supplementing those guidelines in 1980 to address language issues.[34]

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[31] "NYU Settles EEOC Race and National Origin Harassment and Retaliation Lawsuit,", EEOC, https://www.eeoc.gov/newsroom/nyu-settles-eeoc-race-and-national-origin-harassment-and-retaliation-lawsuit

[32] "La Cantera Resort and Spa to Pay Over $2.5 Million to Settle EEOC National Origin Discrimination Suit," EEOC, https://www.eeoc.gov/newsroom/la-cantera-resort-and-spa-pay-over-25-million-settle-eeoc-national-origin-discrimination.

[33] "EEOC History: 1970 – 1979," EEOC, https://www.eeoc.gov/history/eeoc-history-1970-1979.

[34] "EEOC History: 1980 – 1989," EEOC, https://www.eeoc.gov/history/eeoc-history-1980-1989.

In 2016, the EEOC adopted its "Enforcement Guidance on National Origin Discrimination" and comprehensively updated its summary of the law.[35] This guidance explains how the courts interpret and apply the law of national origin discrimination. It provides fact scenarios to illustrate discriminatory conduct to better inform employees and employers about their rights and responsibilities.[36]

Religion

Another type of discrimination prohibited under Title VII is religious discrimination, which occurs when an employee or applicant is treated unfavorably because of a religious belief, practice, or observance (including based on religious dress and grooming practices).[37] The number of religion-based charges has increased significantly since FY 1997, when the EEOC received 1,709 charges. By FY 2023, that number had climbed to 4,341—an increase of about 154 percent.[38] This growth can be attributed to several factors, including a more diverse workforce and a wider range of beliefs and practices.

Title VII protects employees who belong to traditional, organized religions, as well as employees who hold religious beliefs that are uncommon or not part of a formal church or sect, and to employees without religious beliefs (such as atheists). Title VII also protects employees who are married to or associated with an individual because of religion. In addition, the law prohibits workplace segregation based on religion, such as assigning an employee to a position without customer contact because of actual or perceived customer preference. The law requires an employer to reasonably accommodate an employee's religious observance or practice, unless doing so would cause a substantial burden in the overall context of the employer's business.

Because the definition of religious observance and practice is broad, in 1980, the EEOC issued guidelines clarifying that religious practices include moral or ethical beliefs associated with one's religious view.[39]

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[35] "Enforcement Guidance on National Origin Discrimination," November 18, 2016, https://www.eeoc.gov/eeoc-guidance.

[36] "EEOC Enforcement Guidance on National Origin Discrimination," EEOC, 2016, https://www.eeoc.gov/laws/guidance/eeoc-enforcement-guidance-national-origin-discrimination.

[37] "Religious Discrimination," EEOC, https://www.eeoc.gov/religious-discrimination.

[38] "Enforcement and Litigation Statistics," EEOC, https://www.eeoc.gov/data/enforcement-and-litigation-statistics-0. In FY 2022, there was a significant increase in vaccine-related charges filed on the basis of religion. As a result, FY 2022 data may vary compared to other years.

[39] "Code of Federal Regulations," GovInfo, https://www.govinfo.gov/content/pkg/CFR-2016-title29-vol4/xml/CFR-2016-title29-vol4-part1605.xml.

In 1977, the U.S. Supreme Court decided its first case addressing reasonable accommodation under Title VII. In *Trans World Airlines, Inc. v. Hardison*,[40] the Court considered the contours of the terms "reasonable accommodation" and "undue hardship," as used in Title VII's definition of "religion."[41] Hardison, a member of the Worldwide Church of God, refused to work from sunset on Fridays through sunset on Saturdays because that was his Sabbath. Trans World Airlines (TWA) initially was able to accommodate Hardison's scheduling needs while remaining compliant with its obligations under a collective bargaining agreement (CBA). However, after Hardison bid for and received a transfer, he was moved to a new location that operated under a different seniority list, under which Hardison did not have enough seniority to bid for a shift that did not include Saturdays. TWA asked the union to accommodate Hardison's scheduling needs at the new location, but the union was unwilling to violate the CBA's seniority provisions. TWA considered other potential accommodations but determined that none would work due to impacts on operations, and it eventually discharged Hardison for his refusal to work Saturdays. The Court ruled in favor of TWA, holding that accommodating Hardison's religion-based scheduling needs would have imposed an undue hardship.

A little over 45 years later, in 2023, the U.S. Supreme Court in *Groff v. DeJoy*[42] clarified Title VII's undue hardship standard. Groff, an Evangelical Christian, was a mail carrier for the U.S. Postal Service (USPS). In 2013, when the USPS began making some deliveries on Sundays, it required workers to cover Sunday shifts. Groff was unwilling to work on Sundays, as those shifts interfered with his Sabbath. Although he originally transferred to a different work location that did not deliver on Sundays, eventually the USPS began universal Sunday deliveries, and it disciplined him for failing to work on those days. Shortly after, he resigned and filed a suit against the USPS.

After *Trans World Airlines v. Hardison*, many lower courts relied on a single sentence in the opinion to hold that an employer could establish undue hardship by showing that a religious accommodation would cause more than a *de minimis* harm to business operations. The U.S. Supreme Court in *Groff v. DeJoy* explicitly rejected a *de minimis* harm standard and clarified its previous holding in *Hardison*, stating that "undue hardship is shown when a burden is substantial in the overall context of an employer's business."[43] Undue hardship "takes into account all relevant factors

[40] 432 U.S. 63 (1977).

[41] "EEOC History: 1970 – 1979," EEOC, https://www.eeoc.gov/history/eeoc-history-1970-1979.

[42] 600 U.S. 447 (2023).

[43] *Groff*, 600 U.S. at 468.

in the case at hand, including the particular accommodations at issue and their practical impact in light of the nature, size and operating cost of an employer."[44]

An example of notable litigation brought by the EEOC is *EEOC v. United Parcel Service, Inc*. The EEOC alleged that United Parcel Service (UPS), the world's largest package delivery company, prohibited male employees in supervisory or customer contact positions (including delivery drivers), from having beards or growing their hair below collar length. The EEOC further alleged that, since 2005, UPS failed to hire or promote individuals whose religious practices conflict with its appearance policy, failed to provide religious accommodations to its appearance policy, and segregated employees who maintained beards or long hair in accordance with their religious beliefs into non-supervisory, back-of-the-facility positions without customer contact. UPS's strict appearance policy excluded Muslims, Sikhs, Rastafarians, and other religious groups from equal opportunity in the workplace.

Through a five-year consent decree entered in 2018, the District Court required UPS to pay $4.9 million to a class of current and former applicants and employees.[45] The EEOC required UPS to amend its religious accommodation process for applicants and employees, provide nationwide training to managers, supervisors, and human resources personnel, and publicize the availability of religious accommodations on its internal and external websites.

The EEOC has released resources to help the public understand Title VII's prohibition of discrimination on the basis of religion. In 2008, the EEOC issued a new section in its compliance manual entitled "Religious Discrimination," along with two, plain-language companion documents, "Best Practices for Eradicating Religious Discrimination in the Workplace"[46] and "Questions and Answers: Religious Discrimination in the Workplace."[47] The EEOC issued an updated version of the Religious Discrimination section of its compliance manual in 2021, which addresses all types of religion-based discrimination claims, such as employment decisions, harassment, and reasonable accommodation.[48]

Over the years, the EEOC published additional fact sheets and resource documents. For example, the agency provides guidance and examples for employers on employee rights regarding religious attire and grooming practices. In 2014, the

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[44] *Id.* at 470-71.

[45] "United Parcel Service to Pay $150,000 to Settle EEOC Disability Discrimination Lawsuit," EEOC, https://www.eeoc.gov/newsroom/united-parcel-service-pay-150000-settle-eeoc-disability-discrimination-lawsuit.

[46] "Best Practices for Eradicating Religious Discrimination in the Workplace," EEOC, https://www.eeoc.gov/laws/guidance/best-practices-eradicating-religious-discrimination-workplace.

[47] "Questions and Answers: Religious Discrimination in the Workplace," EEOC, https://www.eeoc.gov/laws/guidance/questions-and-answers-religious-discrimination-workplace.

[48] "Section 12: Religious Discrimination," EEOC, https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination.

EEOC published "Religious Garb and Grooming in the Workplace: Rights and Responsibilities"[49] and "Fact Sheet on Religious Garb and Grooming in the Workplace: Rights and Responsibilities."[50] Most recently, in 2024, the EEOC issued short, printable fact sheets addressing religious accommodations in the workplace[51] and anti-Arab, anti-Middle Eastern, anti-Muslim, and antisemitic discrimination.[52] More information about discrimination based on religion and the EEOC's resources to aid awareness and compliance with the law, is available on the EEOC's website at https://www.eeoc.gov/religious-discrimination.

Sex

After Title VII's passage, applicants and employees were protected from discrimination on the basis of sex. Over time, through new legislation and court interpretations, coverage was expanded to include protections against discrimination on the basis of pregnancy, sexual orientation, and transgender status.

In 1968, one of the EEOC's early actions was finding that the then common practice of publishing "help wanted" advertisements under "male" and "female" column headings violated Title VII.[53]

In addition, the EEOC advanced the position and courts later agreed that sexual harassment such as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature are also unlawful sex discrimination under Title VII. However, unlawful employment harassment based on sex is not always sexual in nature and can include offensive statements about a person's sex. For example, it is unlawful to harass an employee by making stereotypical comments about their sex (such as remarks that women do not belong in senior management or that men do not belong in the nursing profession) or referring to them by sex-based derogatory terms.[54]

In 1980, the EEOC published guidelines stating that comments and other conduct are considered harassment and become illegal under Title VII, including because of sex, when they are so frequent or severe that they create a hostile or offensive

[49] "Religious Garb and Grooming in the Workplace: Rights and Responsibilities," EEOC, https://www.eeoc.gov/laws/guidance/religious-garb-and-grooming-workplace-rights-and-responsibilities.

[50] "Fact Sheet on Religious Garb and Grooming in the Workplace: Rights and Responsibilities," EEOC, https://www.eeoc.gov/laws/guidance/fact-sheet-religious-garb-and-grooming-workplace-rights-and-responsibilities.

[51] "Fact Sheet: Religious Accommodations in the Workplace," EEOC, https://www.eeoc.gov/sites/default/files/2024-11/20241031_ReligiousAccommodationFactSheet_A.pdf.

[52] "Anti-Arab, Anti-Middle Eastern, Anti-Muslim and Antisemitic Discrimination are Illegal," EEOC, https://www.eeoc.gov/sites/default/files/2024-01/AntiMuslimBiasFactsheet.pdf.

[53] "EEOC History: 1964 – 1969," EEOC, https://www.eeoc.gov/history/eeoc-history-1964-1969.

[54] "Sex-Based Discrimination," EEOC, https://www.eeoc.gov/sex-based-discrimination.

work environment or when they result in an adverse employment decision (such as the victim being fired or demoted).[55] The harasser can be anyone that the employee works with regardless of status, including a supervisor, co-worker, subordinate, or someone who is not an employee of the employer (such as a client or customer).

In 1999, the EEOC issued "Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors," following the U.S. Supreme Court decisions in *Burlington Industries, Inc. v. Ellerth* and *Faragher v. City of Boca Raton*. In these decisions, the Court made clear that employers are responsible for unlawful harassment by supervisors. While these cases considered harassment in the context of sex, Title VII prohibits harassment on all protected bases.

Since then, the fight against harassment has continued, with the EEOC filing hundreds of cases seeking justice for employees who experienced harassment. In 2019, as part of a $4.4 million settlement with the EEOC, Uber entered into a nationwide agreement to strengthen its business culture against sexual harassment and retaliation.[56] The settlement resolved a charge of sex discrimination, which ended an extensive investigation in which the EEOC found reasonable cause to believe that Uber permitted a culture of sexual harassment and retaliation against individuals who complained about such harassment.

The EEOC also had a major win against sex discrimination in 2020, when Walmart, Inc. paid $20 million to settle a nationwide hiring discrimination case. Walmart had conducted a physical ability test (PAT) as a requirement for applicants to be hired as order fillers at Walmart's grocery distribution centers nationwide. The EEOC alleged the test excluded female applicants from jobs as grocery order fillers. In addition to paying $20 million in lost wages to women across the country, the consent decree required Walmart to cease all PATs when hiring grocery distribution center order fillers.[57]

Most recently, in 2024, the EEOC issued a new "Enforcement Guidance on Harassment in the Workplace," superseding the agency's five previous guidance documents on aspects of harassment law and liability.[58] The new enforcement guidance presents a legal analysis of standards for harassment and employer liability applicable to claims of harassment under the statutes enforced by the

[55] "Policy Guidance on Current Issues of Sexual Harassment," EEOC, https://www.eeoc.gov/laws/guidance/policy-guidance-current-issues-sexual-harassment.

[56] "Uber to Pay $4.4 Million to Resolve EEOC Sexual Harassment and Retaliation Charge," EEOC, https://www.eeoc.gov/newsroom/uber-pay-44-million-resolve-eeoc-sexual-harassment-and-retaliation-charge.

[57] "Walmart, Inc. to Pay $20 Million to Settle EEOC Nationwide Hiring Discrimination Case," EEOC, https://www.eeoc.gov/newsroom/walmart-inc-pay-20-million-settle-eeoc-nationwide-hiring-discrimination-case.

[58] "Enforcement Guidance on Harassment in the Workplace," EEOC, 2024, https://www.eeoc.gov/laws/guidance/enforcement-guidance-harassment-workplace.

EEOC. This guidance serves as a resource to the public, in particular employers and workers, seeking information on what may constitute unlawful harassment.

The number of sex-based discrimination charges filed with the EEOC has increased slightly since FY 1997, when the EEOC received 24,728 charges. That number accounted for 30.6 percent of all charges that year. By FY 2023, the number of sex-based charges had increased to 25,473.[59] After race, sex was the second most common basis alleged in charges filed with the EEOC in FY 2023, accounting for 31.4 percent of all charges.

Table 2. Share of Sex-Based Charges in the Private Sector, FY 1997–2023

Fiscal Year	Total Charges	Sex-Based Charges	Percent Sex-Based Charges
1997	80,680	24,728	30.6
1998	79,591	24,454	30.7
1999	77,444	23,907	30.9
2000	79,896	25,194	31.5
2001	80,840	25,140	31.1
2002	84,442	25,536	30.2
2003	81,293	24,362	30.0
2004	79,432	24,249	30.5
2005	75,428	23,094	30.6
2006	75,768	23,247	30.7
2007	82,792	24,826	30.0
2008	95,402	28,372	29.7
2009	93,277	28,028	30.0
2010	99,922	29,029	29.1
2011	99,947	28,534	28.5
2012	99,412	30,356	30.5
2013	93,727	27,687	29.5
2014	88,778	26,027	29.3
2015	89,385	26,396	29.5
2016	91,503	26,934	29.4
2017	84,254	25,605	30.4

[59] "Enforcement and Litigation Statistics," EEOC, https://www.eeoc.gov/data/enforcement-and-litigation-statistics-0.

Fiscal Year	Total Charges	Sex-Based Charges	Percent Sex-Based Charges
2018	76,418	24,655	32.3
2019	72,675	23,532	32.4
2020	67,448	21,398	31.7
2021	61,331	18,762	30.6
2022	73,485	19,805	27.0
2023	81,055	25,473	31.4

Source: U.S. Equal Employment Opportunity Commission, Enforcement and Litigation Statistics.

Pregnancy

In 1978, Congress passed the Pregnancy Discrimination Act (PDA), which amended Title VII to expressly expand the meaning of the term "sex" to include pregnancy.[60] The EEOC and courts agree that discrimination on the basis of sex covers current pregnancies, past pregnancies, potential pregnancies, and pregnancy-related and childbirth-related medical conditions.[61] It is illegal to discriminate against or harass an employee or applicant based on pregnancy-related conditions.

In 2014, the EEOC issued guidance on pregnancy discrimination,[62] addressing the requirements of the PDA and the application of the Americans with Disabilities Act (ADA) to workers with pregnancy-related impairments. The EEOC updated its guidance in 2015 in light of the U.S. Supreme Court's decision in *Young v. United Parcel Service, Inc.*, which created a new standard for proving discrimination under Title VII, as amended by the PDA.[63] The guidance explains that, consistent with *Young*, policies that do not explicitly discriminate based on pregnancy could violate Title VII if they impose significant burdens on pregnant workers without a sufficiently strong employer justification.[64] The EEOC's guidance also clarifies that unlawful pregnancy discrimination may occur when employers provide accommodations to nonpregnant employees but then deny accommodations to pregnant employees who have similar ability to work.

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[60] "The Pregnancy Discrimination Act of 1978," EEOC, https://www.eeoc.gov/statutes/pregnancy-discrimination-act-1978.

[61] "Pregnancy Discrimination and Pregnancy-Related Disability Discrimination," EEOC, https://www.eeoc.gov/pregnancy-discrimination.

[62] "EEOC History: 2010 – 2019," EEOC, https://www.eeoc.gov/history/eeoc-history-2010-2019.

[63] "YOUNG v. UNITED PARCEL SERVICE, INC.," Legal Information Institute, https://www.law.cornell.edu/supremecourt/text/12-1226.

[64] "Enforcement Guidance on Pregnancy Discrimination and Related Issues," EEOC, 2015, https://www.eeoc.gov/laws/guidance/enforcement-guidance-pregnancy-discrimination-and-related-issues.

In FY 2010, the first year with data available, the EEOC received 4,029 charges of pregnancy-related discrimination. In FY 2015, the EEOC received 3,543 charges of pregnancy-related discrimination. Since that time, the rate of pregnancy-related discrimination charges has continued to decline. By FY 2023, that number had dropped to 2,966 charges, a decrease of 26.4 percent since FY 2010.[65]

In 2022, President Joseph R. Biden, Jr. signed the Pregnant Workers Fairness Act (PWFA).[66] This law requires covered employers to provide reasonable accommodations to a qualified employee's or applicant's known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an undue hardship, or significant difficulty or expense, on business operations.[67]

The PWFA addressed the gaps for pregnant employees not covered under Title VII, as amended by the PDA, and the ADA. For example, under the ADA, in order to be eligible for an accommodation, a pregnant employee must have a condition that meets the definition of a disability, but uncomplicated pregnancies and some pregnancy-related medical conditions do not rise to the level of a disability. Moreover, Title VII does not require adequate reasonable accommodations that would assist pregnant employees in performing their jobs.

Examples of pregnancy-related reasonable accommodations include:

- Giving permission to sit in a job that requires standing or to carry water to drink.
- Modifying work hours.
- Providing appropriately sized uniforms and safety equipment.
- Allowing breaks to use the restroom, eat, drink, or rest.
- Providing leave or time off to recover from childbirth.
- Removing tasks that require heavy lifting or exposure to certain chemicals.[68]

The EEOC has issued final regulations implementing the PWFA, including interpretative guidance with explanations of key PWFA terms and 78 fact-based examples showing how the regulation operates in practice. The EEOC has user-

[65] "Enforcement and Litigation Statistics," EEOC, https://www.eeoc.gov/data/enforcement-and-litigation-statistics-0.

[66] "The Pregnant Workers Fairness Act," EEOC, https://www.eeoc.gov/statutes/pregnant-workers-fairness-act.

[67] "Regulations To Implement the Pregnant Workers Fairness Act," Federal Register, https://www.federalregister.gov/documents/2023/08/11/2023-17041/regulations-to-implement-the-pregnant-workers-fairness-act.

[68] "What You Should Know About the Pregnant Workers Fairness Act," EEOC, https://www.eeoc.gov/wysk/what-you-should-know-about-pregnant-workers-fairness-act.

friendly resources about the PWFA on its website, including a "Summary of Key Provisions of EEOC's Final Rule to Implement the Pregnant Workers Fairness Act,"[69] "What You Should Know About the Pregnant Workers Fairness Act," and a resource[70] for small businesses. These resources can be found on the EEOC website at https://www.eeoc.gov/more-resources-about-pwfa.

Sexual Orientation and Transgender Status

The U.S. Supreme Court's ruling in 2020 in *Bostock v. Clayton County*, *Georgia* have interpreted Title VII to prohibit discrimination based on sexual orientation and transgender status.[71]

Prior to this landmark decision, the EEOC issued two Federal sector decisions[72] holding discrimination because of transgender status or sexual orientation states a claim of discrimination on the basis of sex under Title VII. In 2012, the EEOC ruled for the first time, in *Macy v. Department of Justice*, that discrimination against an individual because that person is transgender is, by definition, discrimination based on sex and therefore violates Title VII.[73] Macy, a veteran and former police detective, was denied a job as a ballistics technician in a laboratory of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) after coming out as transgender. Although she had a strong military and law enforcement background, as well as specialized familiarity with ATF systems, someone else was hired for the job without the requisite experience. Macy had disclosed her gender transition mid-way through the hiring process, only to be told that the funding was suddenly cut for the position. Prior to this disclosure, the hiring manager had said the job was hers.

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[69] "Summary of Key Provisions of EEOC's Final Rule to Implement the Pregnant Workers Fairness Act (PWFA)," EEOC, https://www.eeoc.gov/summary-key-provisions-eeocs-final-rule-implement-pregnant-workers-fairness-act-pwfa.

[70] "Pregnancy, Childbirth, or Related Medical Conditions Accommodations," EEOC, https://www.eeoc.gov/employers/small-business/pregnancy-childbirth-or-related-medical-conditions-accommodations.

[71] *Bostock v. Clayton County, Georgia*, U.S. Supreme Court, No. 17–1618, 2020, https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf. Legislation focused on expanding civil rights protections prohibiting employment discrimination based on sexual orientation and transgender status have been introduced in some sessions of the U.S. Congress, including the Employment Non-Discrimination Act (ENDA) and the Equality Act.

[72] Federal employees who file a complaint of discrimination against their Federal agency may appeal an agency's final order to the EEOC which will issue a decision on that appeal. More information about the Federal sector complaint process and Federal sector decisions can be found at https://www.eeoc.gov/federal-sector/overview-federal-sector-eeo-complaint-process.

[73] *Macy v. Department of Justice*, EEOC Appeal No. 0120120821, 2012, https://www.eeoc.gov/sites/default/files/migrated_files/decisions/0120120821%20Macy%20v%20DOJ%20ATF.txt.

In 2015, the EEOC held in *Baldwin v. Department of Transportation*[74] that a claim alleging discrimination on the basis of sexual orientation necessarily states a claim of sex discrimination under Title VII. Baldwin was a temporary front line manager at the Department of Transportation (DOT). Typically, temporary front line managers were automatically promoted to permanent frontline managers. Baldwin, who is gay, reported several instances where his supervisor made negative comments about his sexual orientation. His supervisor was involved in the hiring process for the permanent front line manager position and, ultimately, Baldwin was not selected.

In 2015, the EEOC and U.S. Office of Personnel Management (OPM) jointly published "Addressing Sexual Orientation and Transgender Status Discrimination in Federal Civilian Employment: A Guide to Employment Rights, Protections, and Responsibilities."[75] This guide helps Federal employers, employees, and applicants identify sexual orientation and transgender status discrimination.

In the private sector, the EEOC filed a lawsuit in 2014 alleging sex discrimination against transgender individuals.[76] In *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, the EEOC alleged that Harris Funeral Homes fired Aimee Stephens after she informed them that she was undergoing a gender transition from male to female and would be dressing in business attire at work consistent with her transgender status as a woman.[77] The case against Harris Funeral Homes was one of three cases ultimately decided by the U.S. Supreme Court in *Bostock v. Clayton County*.

In 2020, the Supreme Court held in *Bostock v. Clayton County, Georgia* that firing individuals because of their sexual orientation or transgender status violates Title VII's prohibition on sex discrimination.[78] The Court explained that "discrimination based on [sexual orientation] or transgender status necessarily entails discrimination on sex; the first cannot happen without the second."

[74] *Baldwin v. Department of Transportation*, EEOC Appeal No. 0120133080, 2015, https://www.eeoc.gov/sites/default/files/migrated_files/decisions/0120133080.pdf.

[76] "EEOC Sues Detroit Funeral Home Chain for Sex Discrimination Against Transgender Employee," EEOC, 2014, https://www.eeoc.gov/newsroom/eeoc-sues-detroit-funeral-home-chain-sex-discrimination-against-transgender-employee.

[77] "Harris Funeral Homes to Pay $250,000 to Settle Sex Discrimination Lawsuit Involving Transgender Employee," EEOC, 2020, https://www.eeoc.gov/newsroom/harris-funeral-homes-pay-250000-settle-sex-discrimination-lawsuit-involving-transgender.

The EEOC has held in a Federal sector decision that Title VII also prohibits subjecting an employee to a hostile work environment based on sexual orientation or transgender status. As the EEOC explained in *Lusardi v. Department of the Army*,[79] harassment can include offensive comments about sexual orientation (e.g., being gay or straight) or about an employee's transgender status or gender transition. In addition, the EEOC explained that accidental misuse of a transgender employee's name and pronouns does not violate Title VII, but intentionally and repeatedly using the wrong name and pronouns to refer to a transgender employee could contribute to an unlawful hostile work environment.

In 2022, recognizing that presenting only "male" and "female" options does not fully reflect the full range of gender identities, the EEOC fully implemented the option for individuals filing a charge of discrimination with the EEOC to select a nonbinary "X" gender marker during the intake process. The implementation includes the addition of "Mx." as a prefix option, promoting greater inclusion for members of the LGBTQI+ community.[80]

Pay Discrimination

The Equal Pay Act of 1963 (EPA) was the first Federal legislation to focus on sex-based pay discrimination. During its signing, President John F. Kennedy noted the importance of women earning a fair wage for the protection of their children and the family unit. Initially enforced by the Department of Labor, enforcement of the EPA was transferred to the EEOC in 1978. The EPA prohibits sex-based wage discrimination between men and women in the same establishment who perform jobs that require substantially equal skills, effort, and responsibilities under similar working conditions.[81]

The EPA specifically aimed to address the pay gap between women and their male counterparts. In 1963, women were paid 59 cents for every dollar paid to men.[82] Today the pay gap persists with women being paid 84 cents to every dollar paid to men in 2023.[83] For women of color, the pay gap is even wider.

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[79] EEOC Appeal No. 0120133395, 2015 WL 1607756 (Mar. 27, 2015).

[80] "EEOC Adds X Gender Marker to Voluntary Questions During Charge Intake Process," EEOC, 2022, https://www.eeoc.gov/newsroom/eeoc-adds-x-gender-marker-voluntary-questions-during-charge-intake-process.

[81] "Equal Pay Act of 1963," EEOC, https://www.eeoc.gov/history/equal-pay-act-1963.

[82] Jessica Semega and Melissa Kollar, "Income in the United States: 2021 Current Population Reports," U.S. Census Bureau, 2022, https://www.census.gov/library/publications/2022/demo/p60-276.html.

[83] "Women's earnings were 83.6 percent of men's in 2023," U.S. Bureau of Labor Statistics, https://www.bls.gov/opub/ted/2024/womens-earnings-were-83-6-percent-of-mens-in-2023.htm#:~:text=Women%20who%20were%20full%2Dtime,for%20both%20women%20and%20men.

Overall, women filed 91.7 percent of all EPA charges between 2017 and 2021.[84]

Title VII, the ADEA, the ADA, and GINA together prohibit pay and compensation discrimination on the basis of race, color, religion, sex, national origin, age, disability, or genetic information. Title VII's protection against compensation discrimination based on sex (and other bases) is broader than the EPA's protections. For example, under Title VII there is no requirement that the employee and the comparator employee, who is not in the same protected class, work in the same establishment or that their jobs are substantially equal. An individual with a claim under the EPA frequently also has a sex-based pay discrimination claim under Title VII.

A gap in the coverage of Title VII was fixed in 2009 when President Barak Obama signed the Lilly Ledbetter Fair Pay Act, overturning the Supreme Court's 2007 decision in *Ledbetter v. Goodyear Tire & Rubber Co., Inc.*,[85] which severely restricted the time period for filing complaints of employment discrimination concerning compensation. Recognizing the "reality of wage discrimination", the Act reflected the EEOC's longstanding position that each paycheck containing discriminatory compensation is a separate violation regardless of when the discrimination began.[86]

Because of the overlap in these laws, EEOC pay discrimination litigation may be filed under more than one law and include allegations of discrimination based on multiple protected bases. For example, in *EEOC v. University of Denver*,[87] the EEOC sued the University of Denver alleging that it paid female professors at its law school nearly $20,000 less than male professors performing substantially equal work violating both the EPA and Title VII. The university had acknowledged the pay disparity in an earlier memo but failed to correct it. The suit was resolved by a six-year consent decree providing $2.66 million to seven female law school professors and requiring the university to increase their salaries. The decree also required the university to publish salary and compensation information for various faculty positions and to hire a labor economist to perform annual studies on pay equity.

In *EEOC v. Jackson National Life Insurance Company, et al.*,[88] the EEOC alleged that the company subjected female, Black, and African employees to race, color,

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[84] "The Continuing Impact of Pay Discrimination in the United States," EEOC, https://www.eeoc.gov/data/continuing-impact-pay-discrimination-united-states.

[85] Ledbetter v. Goodyear Tire & Rubber Co., 550 U.S. 618 (2007).

[86] "Lilly Ledbetter Fair Pay Act of 2009," EEOC, https://www.eeoc.gov/history/lilly-ledbetter-fair-pay-act-2009.

[87] "University of Denver to Pay $266 Million and Increase Salaries to Settle EEOC Equal Pay Lawsuit," EEOC, https://www.eeoc.gov/newsroom/university-denver-pay-266-million-and-increase-salaries-settle-eeoc-equal-pay-lawsuit.

[88] "Jackson National Life Insurance to Pay $20.5 Million to Settle EEOC Lawsuit," EEOC, https://www.eeoc.gov/newsroom/jackson-national-life-insurance-pay-205-million-settle-eeoc-lawsuit.

sex, and national origin discrimination in promotions, compensation, terms and conditions of employment, discipline, and discharge. Furthermore, the lawsuit alleged that the company retaliated against employees who opposed the discriminatory conduct or filed charges with EEOC. The company paid them less, regularly passed them over for promotion, and selected less-qualified White male employees. The case was resolved in 2020 through a four-year consent decree providing $20.5 million to 21 individuals. Moreover, the company was required to retain an outside consultant to review its policies, promotion, and compensation practices and data as well as future complaints of discrimination, harassment, and retaliation.

Age

To mark the 50th Anniversary of the ADEA, former EEOC Chair Victoria A. Lipnic published a report titled, "The State of Age Discrimination and Older Workers in the U.S. 50 Years After the Age Discrimination in Employment Act (ADEA)." This report described the history and significant developments of the law. According to the report, Congress considered including age as a protected characteristic in Title VII of the Civil Rights Act of 1964, but its inclusion failed.[89] Instead, Congress directed the Secretary of the U.S. Department of Labor to conduct a study and report on the factors which may tend to result in age discrimination in employment. Known as the "Wirtz Report," this study found that employers believed age impacted ability and that workers over age 40 were regularly barred from a variety of jobs. The Wirtz Report also found that age discrimination differed from discrimination based on race, national origin, and religion because it was rooted in preconceived assumptions about ability to work, rather than in prejudicial feelings about people unrelated to their work capabilities. In part due to the Wirtz Report, President Lyndon B. Johnson proposed legislation to protect older workers, which led to the passage of the Age Discrimination in Employment Act[90] in 1967. It was the first law passed after Title VII to protect another category of people from employment discrimination.

When the ADEA was first enacted, it was enforced by the U.S. Department of Labor. Congress was concerned that the EEOC already had a significant backlog of charges just two years into its creation and had insufficient resources to take on the

[89] See report published by former EEOC Chair, Victoria A. Lipnic, to mark the 50th Anniversary of the ADEA. *The State of Age Discrimination and Older Workers in the U.S. 50 Years After the Age Discrimination in Employment Act (ADEA)*, EEOC, 2018, https://www.eeoc.gov/reports/state-age-discrimination-and-older-workers-us-50-years-after-age-discrimination-employment.

[90] "The Age Discrimination in Employment Act of 1967," EEOC, https://www.eeoc.gov/statutes/age-discrimination-employment-act-1967.

enforcement of an additional discrimination law.[91] By 1979, the Carter Administration recognized that the Nation's fragmented enforcement of civil rights laws hindered their effectiveness and therefore, transferred enforcement of the ADEA to the EEOC.

The ADEA has many similarities to Title VII. Like Title VII, it applies to State and local governments,[92] employment agencies, labor organizations, and the Federal Government. Also similar to Title VII, the ADEA prohibits discrimination in any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, employee benefits, and any other term or condition of employment.[93] These include advertisements and job notices, apprenticeship programs, and pre-employment inquiries.[94] In both the private and Federal sectors, it prohibits retaliation.[95] As with all other protected basis, harassment is a form of discrimination under the ADEA. Harassing an older worker because of age is prohibited. Furthermore, employers cannot make assumptions about age. Instead, they are required to consider a worker's individual abilities.

However, the ADEA differs from Title VII in that it does not prohibit discrimination generally on a protected basis. It prohibits employment discrimination against employees and applicants only aged 40 years and older.[96] The ADEA applies to private employers with 20 or more employees, instead of 15 for Title VII. The law

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[91] *The State of Age Discrimination and Older Workers in the U.S. 50 Years After the Age Discrimination in Employment Act (ADEA)*, EEOC, 2018, https://www.eeoc.gov/reports/state-age-discrimination-and-older-workers-us-50-years-after-age-discrimination-employment.

[92] The Supreme Court confirmed, consistent with the EEOC's long-held position, that state and local governments are covered by the ADEA regardless of their size. *Mount Lemmon Fire Dist. v. Guido*, 139 S. Ct. 22 (2018), https://www.supremecourt.gov/opinions/18pdf/17-587_n7ip.pdf.

[93] In 1990, the ADEA was amended by the Older Workers Benefit Protection Act (OWBPA) to expand ADEA protections for older workers in retirement plans and employee benefits, such as health insurance, life insurance, pensions, and disability benefits. However, these laws allow some age-based differences in benefits if justified by the cost of providing those benefits. 29 U.S.C. § 623(f)(2)(b); 29 C.F.R. § 1625.10 (addressing costs and benefits under employee benefit plans).

[94] "Fact Sheet: Age Discrimination," EEOC, https://www.eeoc.gov/laws/guidance/fact-sheet-age-discrimination. See also, *EEOC v. Seafarers International Union*, 394 F.3d 197 (4th Cir. 2005) (unanimously upholding the EEOC's ADEA regulation providing that apprenticeship programs were covered by the ADEA).

[95] *Gomez-Perez v. Potter*, 553 U.S. 474, 128 S. Ct. 1931 (2008) (finding retaliation claims available to a Federal employee despite differing language in Title VII and ADEA prohibitions).

[96] "Age Discrimination," EEOC, https://www.eeoc.gov/age-discrimination. The ADEA was amended in 1986 to remove the maximum age limit of protected employees. "Age Discrimination in Employment Amendments of 1986," EEOC, https://www.eeoc.gov/history/age-discrimination-employment-amendments-1986. When the law was first passed in 1967, employees were only protected up to age 65, then up to age 70 under a 1978 amendment. These age limitations allowed employers to deny jobs to older applicants and to force employees to retire based on age alone. See *The State of Age Discrimination and Older Workers in the U.S. 50 Years After the Age Discrimination in Employment Act (ADEA)*, EEOC, 2018, https://www.eeoc.gov/reports/state-age-discrimination-and-older-workers-us-50-years-after-age-discrimination-employment. Although the ADEA does not protect workers under the age of 40, some States have laws that protect younger workers from age discrimination.

also imposes special requirements on waivers and releases of claims or rights under the ADEA.[97]

The Supreme Court has also distinguished the ADEA in several respects. For example, while disparate impact is available under the ADEA, its standards are somewhat different.[98] Additionally, unlike Title VII, "mixed motive" claims are not available, and plaintiffs must prove that age was a "but for" cause of adverse employment actions.[99]

In 1980, the EEOC's first full year of enforcing the ADEA, charges filed based on age more than doubled, jumping from 5,400 to 11,076.[100] Since FY 1997, ADEA charges have remained relatively stable, with 15,795 charges filed in FY 1997 compared to 14,144 charges filed in FY 2023. However, there was a notable increase in FY 2008, when the number of charges surged to 24,582.[101] Research suggests that this increase was largely due to the Great Recession, when job-losses led to higher rates of charges alleging age-related firing and hiring discrimination.[102]

In 2017, one such charge resulted in a $12 million settlement from national restaurant chain Texas Roadhouse. The EEOC filed a suit seeking relief for a class of applicants that the EEOC charged had been denied front-of-the-house positions—such as servers, hosts, sever assistants, and bartenders—because of their age, 40 years and older. In addition to compensation for those affected by the unfair and unlawful hiring process, Texas Roadhouse was required to changes it hiring and recruiting practices.

As new and innovative technology began to emerge in the workplace, the EEOC identified how these technologies are not exempt from protections for older workers impacted by the use of automated hiring software and artificial intelligence used to screen job applicants. In 2023, the EEOC resolved its first age discrimination lawsuit involving such technology, providing equitable relief for older workers who

[97] In 1990, the OWBPA added these requirements by defining what a "knowing and voluntary" waiver must contain to effectively waive ADEA rights. *See* 29 U.S.C. § 626(f); 29 C.F.R. § 1625.22.

[98] Employer tests, practices, and policies that have a "disparate impact" or disproportionately large negative effect on older workers can violate the ADEA. *Smith v. City of Jackson*, 544 U.S. 228, 125 S. Ct. 1536 (2005).

[99] *Gross v. FBL Financial Services, Inc.*, 129 S. Ct. 2343 (2009). The Supreme Court applies a different, broader liability standard to claims against the Federal government under the ADEA. *Babb v. Wilkie*, 140 S. Ct. 1168 (2020.

[100] "EEOC History: 1980 – 1989," EEOC, https://www.eeoc.gov/history/eeoc-history-1980-1989.

[101] "Enforcement and Litigation Statistics," EEOC, https://www.eeoc.gov/data/enforcement-and-litigation-statistics-0.

[102] Gordon B. Dahl and Matthew M. Knepper, "Age Discrimination Across the Business Cycle", *National Bureau of Economic Research*, https://www.nber.org/system/files/working_papers/w27581/w27581.pdf.

alleged that hiring software automatically rejected older job applicants because of their age in violation of the ADEA.[103]

The EEOC also explored the intersectionality of age (40 years and older) and other protected characteristics of employees in the workplace. In 2024, the EEOC issued a fact sheet, "Older Women at Work: The Intersection of Age and Sex Discrimination," addressing intersectionality of age and sex discrimination in pay, hiring, forced retirement, and other forms of employment discrimination faced by women in the workplace.[104]

The EEOC remains a steadfast resource for guidance and technical assistance for employees and employers handling age discrimination claims. More information about the ADEA, and the EEOC's resources to aid awareness and compliance with the law, is available on the EEOC's website at https://www.eeoc.gov/age-discrimination.

Disability

The Rehabilitation Act of 1973[105] is the first significant Federal law addressing disability rights. Specifically, Sections 501 and 503 of the Rehabilitation Act forbid discrimination against individuals with disabilities in the Federal Government and within the workforce of certain Federal contractors and subcontractors. These employment protections have ensured that individuals with disabilities have equal opportunities to apply for and secure jobs in the Federal sector.

It was not until 1990 that Congress passed the Americans with Disabilities Act (ADA),[106] which expanded protections to individuals employed by private, State, and local employers as well as employment agencies and labor unions with 15 or more employees. This expansion was in part due to the expanded coalition of support that included groups concerned for older working people with disabilities as well as for workers with HIV and AIDS.[107]

In the EEOC's first full year of enforcement of the ADA in 1993, over 16,000 workers filed an ADA charge.[108] In comparison, that number was about eight times the number of charges filed during Title VII's first full year in effect, highlighting the

[103] "iTutorGroup to Pay $365,000 to Settle EEOC Discriminatory Hiring Suit", EEOC, 2023, https://www.eeoc.gov/newsroom/itutorgroup-pay-365000-settle-eeoc-discriminatory-hiring-suit.

[104] "Older Women at Work: The Intersection of Age and Sex Discrimination", EEOC, 2024, https://www.eeoc.gov/older-women-work-intersection-age-and-sex-discrimination.

[105] "Rehabilitation Act of 1973," EEOC, https://www.eeoc.gov/history/rehabilitation-act-1973.

[106] "Titles I and V of the Americans with Disabilities Act of 1990 (ADA)," EEOC, https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada.

[107] Richard K. Scotch, "Politics and Policy in the History of the Disability Rights Movement," *The Milbank Quarterly* 67 (1989): 397-398, https://doi.org/10.2307/3350150.

[108] "EEOC History: 1990 – 1999," EEOC, https://www.eeoc.gov/history/eeoc-history-1990-1999.

need for disability protections in the workplace and showing the public's awareness of and trust in the EEOC's enforcement abilities.

In 2008, the Americans with Disabilities Amendments Act (ADAAA)[109] created important clarifications to the ADA definition of disability. The ADAAA kept the ADA's definition of disability as "a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment." However, it changed the way these terms must be interpreted, making it easier for employees and applicants to establish that they have a disability.

In the year that the ADAAA became effective (2009), the number of ADA charges filed with the EEOC increased by 10.3 percent—from 19,453 charges in FY 2008 to 21,451 charges in FY 2009. The EEOC's FY 2023 data indicates that the EEOC received 29,160 charges alleging disability discrimination, an increase of 35.9 percent since FY 2009.[110]

The Rehabilitation Act and the ADA require employers to provide reasonable accommodations, which do not pose a significant difficulty or expense to an employer, to qualified employees with limitations arising from disabilities.[111] In 1984, the EEOC, interpreting the Rehabilitation Act of 1973 in *Ignacio v. U.S. Postal Service,* decided for the first time that a Federal agency's duty to reasonably accommodate an individual with a disability includes considering the reassignment of the individual to a new job. The interpretation clarified that, if the employer cannot modify the job, the employer cannot simply terminate the individual but must consider placing the individual in a different job.[112]

Ignacio was a veteran who worked for the U.S. Postal Service (USPS) as a distribution clerk. Ignacio was diagnosed with bilateral *pes planue* (flat feet) and a bone spur on his left heel. He also suffered a deformity on his right leg, which resulted from breaking his leg during his time in the U.S. Navy, an injury that never properly healed. The USPS was aware of his medical condition at the time he was hired. Ignacio became unable to work for a short period of time and began using sick and annual leave to cover his absences. The agency initially proposed removing Ignacio from his position, presumably for his unscheduled absences. However, Ignacio was qualified to perform the essential functions of his former position, and the USPS made no attempt to accommodate his disability instead of removal.

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[109] "The Americans with Disabilities Act Amendments Act of 2008," EEOC, https://www.eeoc.gov/statutes/americans-disabilities-act-amendments-act-2008.

[110] "Enforcement and Litigation Statistics," EEOC, https://www.eeoc.gov/data/enforcement-and-litigation-statistics-0.

[111] "Disability Discrimination and Employment Decisions," EEOC, https://www.eeoc.gov/disability-discrimination-and-employment-decisions.

[112] "EEOC History: 1980 – 1989," EEOC, https://www.eeoc.gov/history/eeoc-history-1980-1989.

Accordingly, the EEOC found that the USPS did not consider Ignacio for reassignment to a position in the same department.

Reasonable accommodations allow an individual with a disability to participate in the application process and enjoy the benefits of employment equal to those available to other employees. Reasonable accommodations may consist of acquiring or modifying devices, job restructuring, or reassignment to a vacant position.[113] Other examples include making the workplace accessible for individuals who use wheelchair, providing a reader or interpreter for someone who is blind or deaf, making a schedule change, granting telework, or allowing leave for disability-related treatment or symptoms.

The ADA requires that employers keep all medical records and information confidential. The ADA also places strict limits on employers when it comes to asking job applicants or employees to answer disability-related questions, take a medical exam, or identify a disability.

One of the EEOC's historic lawsuits against disability discrimination and abuse was *EEOC v. Hill Country Farms, Inc.*, which in 2013 resulted in the largest verdict in the agency's history—with damages totaling $240 million. Texas company Hill Country Farms, doing business as Henry's Turkey Service, subjected a group of 32 men with intellectual disabilities to severe abuse and discrimination between 2007 and 2009, after 20 years of similar mistreatment. The EEOC presented evidence that, for years, the company owners and staffers subjected the workers to abusive verbal and physical harassment; restricted their freedom of movement; and imposed other harsh terms and conditions of employment, such as requiring them to live in deplorable and sub-standard living conditions and failing to provide adequate medical care when needed.

Individuals can find EEOC resources on the topic of disability discrimination at https://www.eeoc.gov/eeoc-disability-related-resources. This page describes the Federal EEO disability laws and regulations. It also provides links to EEOC enforcement guidance and technical assistance.

Genetic Information

Building on protections for individuals with disabilities, in 2000, President William J. Clinton signed an executive order prohibiting Federal agencies from making employment decisions based on protected genetic information, the first policy to do so.[114]

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[113] "The ADA: Your Responsibilities as an Employer," EEOC, https://www.eeoc.gov/publications/ada-your-responsibilities-employer.

[114] "Executive Order 13145 To Prohibit Discrimination in Federal Employment Based on Genetic Information," EEOC, https://www.eeoc.gov/history/executive-order-13145-prohibit-discrimination-federal-employment-based-genetic-information.

Eight years later, Congress passed the Genetic Information Nondiscrimination Act of 2008 (GINA),[115] prohibiting employment discrimination based on genetic information. Congress noted that new knowledge of genetics allowed for better treatments against diseases but may lead to the potential misuse of genetic information and potential discrimination in health insurance and employment. As the number and availability of genetic tests increased, so did public concerns regarding discrimination based on having a genetic test performed or participating in genetic research studies.[116]

Title II of GINA, implemented in FY 2010 and enforced by the EEOC, prohibits the use of genetic information when making employment decisions; restricts employers, employment agencies, labor organizations, and joint labor-management training and apprenticeship programs from requesting, requiring, or purchasing genetic information; and strictly limits the disclosure of genetic information.[117]

Genetic information includes information about an individual's genetic tests and those of family members; information about the manifestation of a disease or disorder of an individual's family members (including family medical history); requests for or receipt of genetic services by an individual or family member; and genetic information about a fetus or embryo carried by an individual, family member, or held using assisted reproductive technology.[118]

Family medical history is included in the definition of genetic information because it is often used to determine whether someone has an increased risk of getting a disease, disorder, or condition in the future. In 2014, *EEOC v. Founders Pavilion* was the first-class action case filed by the EEOC under GINA, in which the employer allegedly requested family medical history as part of its post-offer, pre-employment medical examinations of applicants, therefore violating GINA.[119] The EEOC also alleged violations of the ADA and Title VII against the employer. Founders Pavilion was a nursing and rehabilitation center. It was charged with firing an employee after it refused to accommodate her during her probationary period, in violation of the ADA. The lawsuit also charged that Founders fired two women because of perceived disabilities under the ADA, and either refused to hire or fired three

[115] "The Genetic Information Nondiscrimination Act of 2008," EEOC, https://www.eeoc.gov/statutes/genetic-information-nondiscrimination-act-2008.

[116] "Regulations Under the Genetic Information Nondiscrimination Act of 2008," Federal Register, https://www.federalregister.gov/documents/2010/11/09/2010-28011/regulations-under-the-genetic-information-nondiscrimination-act-of-2008.

[117] "Genetic Information Discrimination," EEOC, https://www.eeoc.gov/genetic-information-discrimination.

[118] "Fact Sheet: Genetic Information Nondiscrimination Act," EEOC, https://www.eeoc.gov/laws/guidance/fact-sheet-genetic-information-nondiscrimination-act.

[119] "Founders Pavilion Will Pay $370,000 to Settle EEOC Genetic Information Discrimination Lawsuit," EEOC, 2014, https://www.eeoc.gov/newsroom/founders-pavilion-will-pay-370000-settle-eeoc-genetic-information-discrimination-lawsuit.

women because they were pregnant, in violation of Title VII. The employer in that case paid $370,000 to settle the lawsuit filed by the EEOC.

GINA also prohibits employer from disclosing genetic information about applicants or employees. Covered entities must keep genetic information confidential and in separate medical files, with limited exceptions.

Under GINA, it is also illegal to harass a person because of their genetic information. Harassment can include, for example, making offensive or derogatory remarks about an applicant or employee's genetic information, or about the genetic information of a relative of the applicant or employee.

Since FY 2010, the number of GINA charges filed with the EEOC have increased by 79.6 percent—from 201 charges filed in FY 2010 to 361 charges in FY 2023.[120]

Some of the EEOC's most significant GINA cases occurred in recent years. In 2023, in *EEOC v. Dolgencorp, LLC*, Dollar General violated both the ADA and GINA in its hiring process, resulting in a $1 million settlement. According to the lawsuit, after making job offers to work at one of its Alabama distribution centers, Dollar General required applicants to pass a pre-employment medical exam during which they were required to divulge past and present medical conditions of family members such as cancer, diabetes, and heart disease. The EEOC also alleged the company used qualification criteria that screened out qualified individuals with disabilities. For example, Dollar General rescinded job offers to applicants whose blood pressure exceeded 160/100 or who had less than 20/50 vision in one eye, even when those impairments did not prevent the applicants from safely performing the job.

The EEOC sued on behalf of a class of 498 applicants who were required to divulge family medical history during the hiring process and on behalf of another class of qualified applicants whose job offers were rescinded based on their impairments. Dollar General discontinued its practice requiring pre-employment medical exams for these warehouse jobs after the lawsuit was filed. Ultimately, Dollar General was required to review and revise its ADA and GINA policies and distribute them to all individuals involved in the hiring process. Also, it was required to ensure their medical examiners not request family medical history, to consider the medical opinion of an applicant's personal physician, and to inform applicants how to request a reasonable accommodation if needed.

In 2024, in *EEOC v. Factor One Source Pharmacy, LLC*, the EEOC settled another case that involved a company violating both the ADA and GINA. Factor One Source Pharmacy, LLC, a pharmacy providing specialized pharmacy services to patients requiring complex medications, inquired about employee disabilities and genetic information and pressured employees to use its pharmacy services. Factor One

[120] "Enforcement and Litigation Statistics," EEOC, https://www.eeoc.gov/data/enforcement-and-litigation-statistics-0.

unlawfully asked applicants about their hemophilia, their children's hemophilia, and the medications they or their children took so it could recruit individuals who had hemophilia or had family members with hemophilia.

To increase its profits, Factor One would unlawfully pressure employees to use its pharmacy services for the expensive medications needed to treat hemophilia, the EEOC alleged. Employees who refused were fired or laid off, while employees who used Factor One's pharmacy for hemophilia medications kept their jobs, even if they had worse performance reviews than employees who were let go. The company was required to pay $515,000 in monetary relief and the settlement also ensured that the new owners of Factor One require the company not to employ or contract with the company's prior CEO and owner (under whom the alleged violations occurred). Additionally, Factor One was required to cease adverse employment actions against employees based on their non-use of the company's pharmacy, train employees on the ADA and GINA, and survey employees on their treatment in the workplace.

The EEOC has issued technical assistance about discrimination based on genetic information, "Fact Sheet: Genetic Information Nondiscrimination Act"[121] and additional information can be found on at https://www.eeoc.gov/genetic-information-discrimination.

Protections Against Retaliation

Under Title VII, the EPA, the ADEA, the Rehabilitation Act, the ADA, and GINA, employers are prohibited from punishing job applicants, employees, and former employees for asserting their rights to be free from employment discrimination, including harassment.[122] These laws contain an anti-retaliation provision which protects individuals who have engaged in a "protected activity" and are subjected to an adverse employment action. Asserting their rights under EEO laws is considered "protected activity," which can take many forms. For example, it is unlawful to retaliate against applicants or employees for communicating with a supervisor about employment discrimination, refusing to follow orders that would result in discrimination, resisting sexual advances, or requesting accommodations of a disability or for a religious practice.

For the last decade, retaliation has been the most frequently cited basis for charges of discrimination filed with the EEOC, with 46,047 charges filed in FY 2023.[123] Table

[121] "Fact Sheet: Genetic Information Nondiscrimination Act," EEOC, https://www.eeoc.gov/laws/guidance/fact-sheet-genetic-information-nondiscrimination-act.

[122] "Enforcement Guidance on Retaliation and Related Issues," EEOC, 2016, https://www.eeoc.gov/laws/guidance/enforcement-guidance-retaliation-and-related-issues#A._Protected.

[123] "Enforcement and Litigation Statistics," EEOC, https://www.eeoc.gov/data/enforcement-and-litigation-statistics-0.

3 shows that, while retaliation has not always been the most frequently filed charge of discrimination, the number of charges filed increased over time. Retaliation became the most frequent charge of discrimination beginning in FY 2010, accounting for 36.3 percent of all charges filed in the private sector.[124] Furthermore, retaliation is the most frequently alleged basis of discrimination in both the Federal sector (53.6 percent of formal complaints filed in FY 2020)[125] and private sector (56.8 percent of charges filed in FY 2023).[126] Retaliation is also the most common discrimination finding in Federal sector cases.[127]

Table 3. Retaliation-Based Charges in the Private Sector, FY 1997–2023

Fiscal Year	Total Charges	Retaliation-Based Charges	Percent Retaliation-Based Charges
1997	80,680	18,198	22.6
1998	79,591	19,114	24.0
1999	77,444	19,694	25.4
2000	79,896	21,613	27.1
2001	80,840	22,257	27.5
2002	84,442	22,768	27.0
2003	81,293	22,690	27.9
2004	79,432	22,740	28.6
2005	75,428	22,278	29.5
2006	75,768	22,555	29.8
2007	82,792	26,663	32.2
2008	95,402	32,690	34.3
2009	93,277	33,613	36.0
2010	99,922	36,258	36.3
2011	99,947	37,334	37.4
2012	99,412	37,836	38.1
2013	93,727	38,539	41.1

[124] "Enforcement and Litigation Statistics," EEOC, https://www.eeoc.gov/data/enforcement-and-litigation-statistics-0.

[125] *FY 2020 Annual Report on the Federal Workforce Part 1: EEO Complaint Processing Activity*, EEOC, 2023, https://www.eeoc.gov/fy-2020-annual-report-federal-workforce-part-1-eeo-complaint-processing-activity.

[126] "Enforcement and Litigation Statistics," EEOC, https://www.eeoc.gov/data/enforcement-and-litigation-statistics-0.

[127] "Retaliation," EEOC, https://www.eeoc.gov/retaliation.

Fiscal Year	Total Charges	Retaliation-Based Charges	Percent Retaliation-Based Charges
2014	88,778	37,955	42.8
2015	89,385	39,757	44.5
2016	91,503	42,018	45.9
2017	84,254	41,097	48.8
2018	76,418	39,469	51.6
2019	72,675	39,110	53.8
2020	67,448	37,632	55.8
2021	61,331	34,332	56.0
2022	73,485	37,898	51.6
2023	81,055	46,047	56.8

Source: U.S. Equal Employment Opportunity Commission, Enforcement and Litigation Statistics.

Participating in the complaint process is also protected from retaliation. Other acts to oppose discrimination are also protected if the employee was acting on a reasonable belief that something in the workplace may violate EEO laws, even if they did not use legal terminology to describe it.[128] The laws the EEOC enforces do not prohibit employers from disciplining or terminating workers if motivated by non-retaliatory and non-discriminatory reasons. However, an employer is not allowed to take adverse actions in response to EEO activity that would discourage someone from resisting or complaining about future discrimination.

In 1997, the U.S. Supreme Court ruled in *Robin v. Shell Oil Co.* that Title VII's protection against retaliation applies to both former and current employees.[129] In 2016, the EEOC published "Enforcement Guidance on Retaliation and Related Issues."[130] This guidance addresses the scope of employee activity protected by the law, the legal analysis to be used to determine if evidence supports a claim of retaliation, the remedies available for retaliation, and the rules against interference with the exercise of rights under the ADA. The guidance also offered detailed examples of employer actions that may constitute retaliation.

[128] "Retaliation," EEOC, https://www.eeoc.gov/retaliation.

[129] "Robinson v. Shell Oil Co., 519 U.S. 337 (1997)," Legal Information Institute, https://www.law.cornell.edu/supct/html/95-1376.ZS.html.

[130] "Enforcement Guidance on Retaliation and Related Issues," EEOC, 2016, https://www.eeoc.gov/laws/guidance/enforcement-guidance-retaliation-and-related-issues.

Conclusion

The year 2024 marked the 60th anniversary of the Civil Rights Act of 1964, pivotal legislation in the ongoing effort to achieve equal opportunity. The EEOC undeniably has had a role in realizing the Act's purpose. Protections against discrimination for specific groups of people under employment discrimination law evolved over decades through new laws, amendments, court interpretations, EEOC guidance, and litigation. Title VII of the Civil Rights Act protects against discrimination based on race, color, sex (including pregnancy, sexual orientation, and transgender status), religion, and national origin. Furthermore, Title VII paved the way for subsequent legislation to be passed, protecting against discrimination because of age, disability, pregnancy, and genetic information discrimination.

Ensuring equal employment opportunities through civil rights laws is not only a legal obligation but also a moral imperative that fosters a fair, inclusive, and productive workforce, driving social and economic progress. A better understanding of these laws can help public and private sector employers better identify and prevent employment discrimination. The EEOC continues to advance employment opportunity by enforcing these laws and providing guidance and education to employers, workers, and the general public.

Appendix: Abbreviations

- ADA – Americans with Disabilities Act of 1990
- ADAAA – Americans with Disabilities Act Amendments Act of 2008
- ADEA – Age Discrimination in Employment Act of 1967
- EEOC – U.S. Equal Employment Opportunity Commission
- EPA – Equal Pay Act of 1963
- E-RACE – Eradicating Racism and Colorism from Employment
- GINA – Genetic Information Nondiscrimination Act of 2008
- OWBPA – Older Workers Benefit Protection Act of 1990
- PDA – Pregnancy Discrimination Act of 1978
- PWFA – Pregnant Workers Fairness Act of 2022