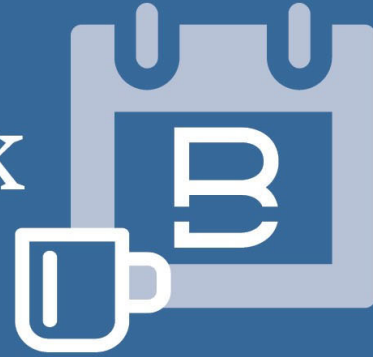


The Work Week

Bassford Remele Employment Practice Group



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Welcome to another edition of *The Work Week with Bassford Remele*. Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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EEOC Publishes Final Guidance on Workplace Harassment

[Wynne C. S. Reece](#)

It has been long settled that mitigating workplace harassment is imperative for cultivating a safe, respectful, and inclusive environment. However, settled best practices differ from the actual application of policies, and in a time of constant societal evolution, where the prevalence of harassment remains staggering, accountability and implementation of policies are critical. With the recent issuance from the EEOC, the time has never been better for employers to do just that.

On April 29, 2024, the EEOC issued its final guidance on workplace harassment, taking into account public input invited through the issuance of its proposed guidance in October of last year; this invitation drew upwards of 38,000 responses. While we hesitate to denote anything as *final* when referencing the law, this proclaimed final version of new guidance clarifies the EEOC's position and consolidates earlier guidelines to address current workplace environments, including virtual settings, and expanding protections under various discrimination laws, marking the first comprehensive update in several decades. The new guidance took immediate effect upon issuance and included key changes that employers are encouraged to update their policies to reflect.

Significant in this new guidance is the alignment with various forms of harassment that had not been explicitly addressed before. For instance, the guidelines reflect the recent ruling under the U.S. Supreme Court decision in *Bostock v. Clayton County, Georgia*, under which Title VII protections were expanded to include discrimination based on sexual orientation and gender identity. The definition also now details protections based on "color" as distinct from race or national origin, recognizing harassment that might occur due to an individual's pigmentation or complexion. Additionally, it underscores harassment related to pregnancy, childbirth, or related medical conditions, including lactation, and includes examples such as negative comments about teleworking due to pregnancy-related conditions.

The guidance also delves further into the importance of employment positions by way of examples of covered harassment and distinctions in the relationship of the involved parties, and clarifies the definition of a supervisor, extending it beyond those who have the authority to make tangible employment decisions to include those perceived by employees to have such authority. This broadened definition aims to strengthen accountability across various levels of management and encourage the implementation of revised policies.

Notably, perhaps as an acknowledgment that virtual work components are here to stay in at least some manner, the guidance also addresses harassment in virtual or hybrid work environments, recognizing that harassment can occur through digital communications as well as in physical workplaces.

While the final guidance leaves some room for what reporting procedures, complaint processes and policies might look like on paper, it is undoubtedly clear that employers should update their harassment policies and training programs to align with the changes. The EEOC emphasizes that effective anti-harassment policies should include clear definitions of prohibited conduct, widespread dissemination of these policies, and comprehensive training that includes examples of what constitutes harassment and how to report it; moreover, and perhaps goes without saying, it is important for employers to have processes in place that not only create an avenue for employees to have discussions, but one that doesn't inherently create issues of mistrust within the organization, disbelief in confidentiality, and fear of retaliation, all of which are exceedingly common issues that we see across professions, creating indirect and direct legal liabilities for employers.

Looking forward, we recommend that (1) employers revise their existing harassment policies to reflect the latest EEOC guidance, and once updated, widely intentionally disseminate them to ensure every employee, whether on-site or remote, understands the standards of behavior that are expected; (2) develop and conduct mandatory training sessions that include real-world scenarios and examples of prohibited behaviors, for all employees, with additional specialized sessions for managers and supervisors on how to handle and report incidents of harassment; and (3) establish a robust reporting mechanism that creates multiple, accessible, safe channels for employees to report harassment.

By staying informed about these guidelines, employers can better recognize what behaviors are considered harassment, which is vital in today's diverse work settings, including remote or hybrid models. In taking these steps, employers can work to prevent issues before they escalate by fostering a respectful workplace that empowers all employees to perform their best without fear of discrimination or harassment.

At Bassford Remele, we have extensive experience advising employers on new and changing laws, regulations, and ordinances from the federal level to the local level. Please reach out to the [Employment Law](#) practice group for guidance, questions, or further assistance. We are here to help.

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