



TITLE VII ENFORCEMENT

DISCRIMINATION IN EMPLOYMENT



OUTLINE

- Title VII Overview
 - Covered Conduct
 - Covered Employers and Employees
 - Common Types of Claims and Defenses
- Exhaustion of Administrative Remedies
- DOJ Title VII Enforcement

TITLE VII

- Title VII of the Civil Rights Act of 1964, as amended, which prohibits employment practices that discriminate on grounds of **race, sex** (including **pregnancy, sexual orientation, and gender identity**), **religion**, and **national origin**.
- The Act also makes it unlawful to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

RACE AND NATIONAL ORIGIN DISCRIMINATION

- Discrimination because of:
 - **Race or color**
 - **National origin.** This means the unfavorable treatment is because of:
 - The particular country or part of the world the person is from;
 - The person's ethnicity or their birthplace, ancestry, culture, accent, or other characteristics closely associated with an ethnic group;
 - The person appears to be of a certain ethnic background (even if they are not)
 - **Or marriage or association with** a person of a certain race, color, or national origin. This includes:
 - Membership in or association with ethnic based organizations or groups;
 - Attendance or participation in schools or places of worship generally associated with certain minority groups; or
 - Other cultural practices or characteristics often linked to race or ethnicity

SEX DISCRIMINATION

- Sex discrimination includes unfavorable treatment because of:
 - Pregnancy
 - Sexual orientation or perceived sexual orientation
 - Gender stereotypes, or failure to conform to gender stereotypes
 - Gender identity or perceived gender identity

RELIGIOUS DISCRIMINATION

- Discrimination on the basis of religion involves denying equal employment opportunity to any person because of that person's sincerely held religious, ethical or moral beliefs.
- Religion includes:
 - All aspects of religious observance and practice.
 - Not only traditional, organized religions, but also religious beliefs that are new, uncommon, not part of a formal church or sect, only subscribed to by a small number of people, or that seem unreasonable to others. However, beliefs must be sincerely held.
 - Title VII's protections also extend to those who are discriminated against or need accommodation because they profess no religious beliefs.

REASONABLE ACCOMMODATIONS

- An employer must make reasonable accommodations for religious beliefs, observances or practices unless doing so would cause undue hardship on the employer.
- The burden of proof is on the employer to show undue hardship.
- Undue hardship is more than a de minimis cost or burden. *Trans World Airlines, Inc. v. Hardison*, 423 U.S. 63 (1977).

TITLE VII CONTINUED:

- Discrimination can take the form of refusing to hire, discharging, failing to promote, harassing, or discriminating against a person with respect to any other term, condition or privilege of employment.
- Title VII prohibits not only intentional discrimination, but also practices that have the effect of discriminating against individuals because of their race, color, national origin, religion, or sex.

WHAT EMPLOYERS ARE COVERED BY TITLE VII?

Title VII Covers:

- Employers with 15+ employees, whether public or private
- Employment Agencies
- Unions

WHO IS COVERED?

- Title VII covers:
 - Employees
 - Applicants for employment
 - Former employees
- Independent contractors are not covered

TYPES OF CLAIMS

- Discrimination based on a protected category
 - **Adverse action** taken against an employee **because of** her sex, race, color, national origin, religion
- Hostile work environment based on a protected category (or retaliation)
- Retaliation
 - **Adverse action** taken against an employee **because of** *opposition to* acts prohibited by Title VII or *participation* in the process of enforcing Title VII
- Constructive discharge
 - Quitting because no reasonable person would stay

HOSTILE WORK ENVIRONMENT

- Hostile work environment is often based on a series of actions occurring over a period of time that would not support claim in themselves
- Employee claiming hostile work environment must be able to demonstrate that:
 - Employee was subject to “unwelcome” harassment
 - Harassment occurred “because of” protected trait
 - Harassment was “severe or pervasive”

COMMON DEFENSES

- Cannot establish prima facie case
- Legitimate non-discriminatory reason and no pretext
- Failure to exhaust administrative remedies



EXHAUSTION OF ADMINISTRATIVE REMEDIES

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- Q: What does it mean to exhaust administrative remedies in an employment discrimination case?
 - A: It means presenting employment discrimination grievances to the agency within the timeliness established by regulation.
- Q: Why is exhaustion required?
 - A: It gives the agency the opportunity to resolve grievances, if possible, before they become the subject of a lawsuit.
- Failure to exhaust administrative remedies will normally preclude judicial consideration of a Title VII claim.

WHAT IS A CHARGE OF DISCRIMINATION?

- A **charge of discrimination** is a signed statement asserting that an employer, union or labor organization engaged in employment discrimination.
- Required before an employee can file a job discrimination lawsuit against their employer.
- Must be filed with the **EEOC** or **state enforcement agency**, (the Washington State Human Rights Commission), regardless of who the employer is.
 - Filing with a state agency automatically “dual-files” with the EEOC
- If the EEOC completes an investigation and determines that the charge has merit, and the EEOC's efforts to obtain voluntary compliance are unsuccessful, it refers such a charge to the Employment Litigation Section.

WHEN SHOULD A CHARGE OF DISCRIMINATION BE FILED?

- A charge of discrimination must be filed with EEOC **within 180 days from the date of the alleged violation**, in order to protect the charging party's rights. This 180-day filing deadline may be extended to 300 days if the charge also is covered by a state or local anti-discrimination law.

DISCRETE ACTS V. HOSTILE WORK ENVIRONMENT

- **Discrete Claims of Discrimination:** Each discrete discriminatory act must be administratively exhausted.
- “[D]iscrete discriminatory acts are not actionable if time barred, even when they are related to acts alleged in timely filed charges.” *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 113 (2002).
- **Hostile Work Environment Claims:** “Hostile environment claims are different in kind from discrete acts.” *Morgan*, 536 U.S. at 115.
- Do any of the alleged acts fall within the limitations period?
- Is the conduct part of the same actionable hostile work environment claim?

INDIVIDUAL EEO COMPLAINT PROCESS

- Consultation with EEO Counselor to attempt informal resolution of complaint
- Formal administrative complaint
- Agency investigation of formal administrative complaint
- Request for administrative hearing or immediate final agency decision
- Appeal to EEOC

EXHAUSTION OF ADMINISTRATIVE REMEDIES: SUBSTANTIVE REQUIREMENTS

- Claim in plaintiff's judicial complaint must be encompassed by the administrative charge
- Good faith cooperation during the administrative process is required
- Discrete acts must be separately exhausted
- Continuing violation doctrine retains vitality for hostile work environment claims and in pattern and practice cases

TIME LIMITS FOR FILING CIVIL TITLE VII ACTIONS

Title VII Claims arising from Individual EEO Complaint Process

- Plaintiff must file within 90 days after final administrative decision
- Plaintiff must wait at least 180 days for final administrative decision
- Filing deadline is not jurisdictional, but equitable tolling is not available for garden variety claims of excusable neglect

VENUE FOR TITLE VII CLAIMS

- Any judicial district in the state where the unlawful act is alleged to have been committed
- The judicial district where the employment records relating to the proscribed conduct are kept
- The judicial district where the plaintiff would have worked but for the alleged unlawful act
- Where defendant has its principal office, but only if there is no other appropriate venue



DEPARTMENT OF
JUSTICE
TITLE VII ENFORCEMENT

DOJ CIVIL RIGHTS DIVISION EMPLOYMENT LITIGATION SECTION

- The Employment Litigation Section enforces against **state and local government employers** the provisions of Title VII of the Civil Rights Act of 1964.
- The Section also enforces against **state and local government employers and private employers** the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), which prohibits employers from discriminating or retaliating against an employee or applicant for employment because of such person's past, current or future **military obligation**.
- The Equal Employment Opportunity Commission (EEOC) enforces Title VII against **nongovernment employers**, as well as the Americans with Disabilities Act (ADA), and the Genetic Information Nondiscrimination Act (GINA).

DOJ CIVIL RIGHTS DIVISION EMPLOYMENT LITIGATION SECTION AND THE EEOC

- Complaints under Title VII are filed with the Equal Employment Opportunity Commission (EEOC).
- The EEOC accepts and investigates complaints alleging violations of federal laws that make it unlawful to discriminate against a job applicant or an employee because of the individual's race, color, national origin, sex (including pregnancy, sexual orientation, and gender identity), religion, age (40 or older), disability or genetic information. Individuals must file charges of discrimination with the EEOC within a timely manner.
- The Employment Litigation Section has authority, pursuant to Section 706 of Title VII of the Civil Rights Act of 1964, to file suit against a state or local government employer based upon an individual charge of discrimination referred to the Section by the EEOC, following a determination by the EEOC that the charge has merit and efforts to obtain voluntary compliance are unsuccessful.

PATTERN OR PRACTICE

- The Department of Justice also has authority to initiate investigations and prosecute enforcement actions against state and local government employers where it has reason to believe that a "pattern or practice" of employment discrimination exists.
- "Pattern-or-practice claims, like differential treatment claims, represent a theory of intentional discrimination." *Puffer v. Allstate Ins. Co.*, 675 F.3d 709, 716 (7th Cir. 2012).

PATTERN AND PRACTICE

- Claim that discrimination is the employer's standard operating procedure
- Generally refers to a case (usually a class action) in which plaintiff alleges systemic discrimination against a particular group, not just a specific individual
- Statistical evidence combined with anecdotal evidence from persons who claim to be victims of the alleged discriminatory pattern and practice

FILING A COMPLAINT

- If the employer is a **state or local government employer** and the discrimination is based on a discriminatory **policy or practice** that affects a class of individuals, file a complaint through the **DOJ Portal**:
<https://civilrights.justice.gov/>
- **Individual complaints** of discrimination must be filed first **with the EEOC** (<https://publicportal.eeoc.gov/>) **or the Washington State Human Rights Commission** (<https://www.hum.wa.gov/file-complaint>)
 - Note: The EEOC website is only available in English and Spanish
 - If filing with the EEOC, an investigator with the local district office of the EEOC will contact the aggrieved person by telephone to conduct an interview
 - The EEOC can arrange language interpreters ahead of time
- You can also always contact the USAO Civil Rights Team <https://www.justice.gov/usao-edwa/edwa-civil-rights-webpage> and submitting directly via email to USAWAE.CivilRights@usdoj.gov



Questions?

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- U.S. Attorney's Office Eastern District of Washington
 - Civil Rights Team
 - Email: USAWAE.CivilRights@usdoj.gov
 - Phone: (509) 835-6306
 - Webpage: <https://www.justice.gov/usao-edwa/edwa-civil-rights-webpage>