

# EEOC Proposes New Enforcement Guidance on Harassment in the Workplace to Protect Employees

PUBLISHED ON

**October 2, 2023**

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On Friday, September 29, 2023, the [Equal Employment Opportunity Commission](#) issued long-awaited proposed [Enforcement Guidance on Harassment in the Workplace](#). While this proposed guidance does not have the effect of law and does not bind the public, it is intended to provide clarity on how the EEOC interprets legal issues regarding workplace harassment.

Some notable new proposed guidance includes:

- An employee's reproductive decisions such as the use of contraception or abortion can be the basis of sex-based harassment.
- Sex discrimination can be based on gender identity and it can be considered harassment to misgender someone or deny access to a bathroom consistent with the individual's gender identity.
- Harassment may be based on more than one protected characteristic and may also overlap with other characteristics based on an actual or perceived connection between the two characteristics.
- While employers are required to accommodate an employee's sincerely held religious beliefs, employers also have a duty to protect other employees against religiously motivated harassment. Employers are not required to accommodate religious expression that creates, or reasonably threatens to create, a hostile work environment.
- Harassment based on the perception that an individual belongs to a protected class is still harassment even if the perception is incorrect.
- Conduct should be evaluated in the context in which it arises - although sometimes the conduct is not facially discriminatory, the use of "code words" or the larger context in which the conduct occurs can be discriminatory. E.g. using the phrase "you people."
- A complainant is not required to demonstrate that discriminatory conduct adversely affected their work performance in order to establish a hostile work environment.
- The more directly harassment affects the complainant, the more likely it is to negatively affect the complainant's work environment. Thus, harassment is generally more probative of a hostile work environment if it occurs in the complainant's presence than if the complainant learns about it secondhand.

The proposed guidance is open for public comment for the next 30 days. If you would like to submit comments on the guidance, you can comment electronically via the link below:

<https://www.regulations.gov/document/EEOC-2023-0005-0001>.

If you have any questions regarding the proposed guidance and how it may impact your business or organization, please contact [Susanna Fultz](#) or any member of the Barley Snyder [Employment Practice Group](#).

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