

Section 201 – Equal Employment Opportunity

Section 201 of the Congressional Accountability Act (CAA) applies certain rights and protections of title VII of the Civil Rights Act of 1964 (Title VII) to covered employees. Under this section, all personnel actions – such as hiring, discharge, promotion, pay, or benefits – must be free from discrimination based on race, color, religion, sex, or national origin.

Title VII establishes the basic terms of what is prohibited discrimination, and court decisions have more fully and specifically defined the rights and protections under Title VII. The Board of Directors of the Office of Compliance has not adopted regulations on Title VII rights and protections. Employing offices and covered employees may find it helpful to refer to court decisions interpreting Title VII, as well as the interpretations, opinions, and other materials issued by the Equal Employment Opportunity Commission (EEOC), which is responsible for implementing Title VII.

1. Coverage

The CAA provides that all personnel actions affecting covered employees shall be free from discrimination based on race, color, religion, sex, or national origin. This includes all hiring, discharge, promotion, pay, benefits, reassignment, and other personnel actions affecting the terms, conditions, and privileges of employment.

The covered employees and employing offices subject generally to the CAA are described in the “Covered Employees” section of the *CAA Handbook* and the Office of Compliance web site (www.compliance.gov).

2. Discrimination Based on Race, Color, Religion, Sex, or National Origin Prohibited

The law forbids any use of race, color, religion, sex, or national origin as a motivating factor in a personnel action, even if other factors also motivate the action. Proving motivation depends on the facts of a particular case. For example, a covered employee may seek to prove that he or she was treated differently from others in similar circumstances and to prove that race, color, religion, sex, or national origin was a motivating factor (“disparate treatment”). Under certain circumstances, an employing office may need to prove that it took adverse personnel action against a covered employee for non-discriminatory reasons, and accurate records of employees’ job performance may be critical in such a case.

In addition, the law forbids certain employment practices that, while facially neutral, cause a “disparate impact” on the basis of race, color, religion, sex, or national origin. However, the employment practice may be lawful in certain circumstances if the employing office can prove that the practice is job-related for the position in question and is consistent with business necessity.

3. Sexual Harassment and Other Harassment

a. Sexual harassment

Unlawful sexual harassment occurs when a supervisor or manager makes unwelcome sexual advances, requests sexual favors, or engages in other verbal or physical conduct of a sexual nature, if the implication is that submission to such conduct is expected as part of the job. It would also be unlawful for a supervisor or manager to make employment decisions affecting the individual on the basis of whether the individual submits to or rejects sexual conduct.

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A “hostile work environment” occurs when unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.

b. Other kinds of harassment

In addition to the sexual harassment discussed above, harassment on the basis of race, color, sex, religion, or national origin can constitute unlawful employment discrimination. Insults, jokes, slurs, or other verbal or physical conduct or activity relating to race, color, sex, religion, or national origin are unlawful if they create an intimidating, hostile, or offensive work environment, or if they unreasonably interfere with an individual’s work performance.

c. Employing office responsibility

Depending on the circumstances, an employing office may be held responsible for any acts of workplace harassment, by supervisors, managers, co-workers, or non-employees.

In the case of sexual harassment, according to the Supreme Court, the existence of an express written policy prohibiting sexual harassment and an internal procedure by which an employee can complain when sexual harassment occurs is relevant to determining employer liability. [See *Meritor Savings v. Vinson*, 477 U.S. 57 (1986)] The policy should state what conduct is prohibited and provide a procedure by which an employee may complain when harassment occurs. Such a policy should seek to prevent sexual harassment insofar as possible, and require the employing office to promptly investigate and remedy the situation when harassment is reported.

4. Pregnancy

Discrimination because of pregnancy, childbirth, or related medical conditions is considered sex discrimination. A woman may not be fired or be refused a job or a promotion merely because she is pregnant. Pregnancy, childbirth, and related medical conditions must be treated the same as other medical conditions under fringe-benefit plans.

5. Religious Accommodation

An employing office must reasonably accommodate a covered employee’s or applicant’s religious observance or practice, unless the employing office can demonstrate that such an accommodation would impose an undue hardship on the conduct of its business.

Employees and prospective employees frequently request an accommodation because their religious practices conflict with their work schedules. EEOC guidelines suggest a few of the means that might reasonably accommodate an employee’s religious practices: Voluntary substitutes and “swaps” of responsibilities, flexible scheduling, or lateral transfer and change of job assignments.

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6. Exceptions

Title VII provides several exceptions, some of which might be relevant under the CAA. For example, a bona fide seniority or merit system, may be permissible, if there is no intent to discriminate on the basis of race, color, religion, sex, or national origin. In exceptional instances, an employing office might be able to prove that religion, sex, or national origin (but not race) is a bona fide occupational qualification reasonably necessary to the normal operation of the particular office.

It is lawful for certain Congressional offices to consider party, place of residence, or political compatibility in making employment decisions.

7. Intimidation or Reprisal

Intimidation, reprisal, or discrimination against a covered employee for opposing practices or for initiating or participating in a proceeding is prohibited.

8. Remedies

In case of a violation of the Title VII provisions of the CAA, several kinds of remedies may be available:

- ◆ Enjoining unlawful employment practices; ordering that such affirmative steps be taken as may be appropriate, including reinstatement or hiring, with or without back pay; or any other equitable relief as may be deemed appropriate
- ◆ Compensatory damages may be available for discrimination involving race, ancestry, and ethnicity
- ◆ Compensatory damages may also be available for intentional discrimination on a basis other than race, ancestry, or ethnicity (for example, sex, religion); in such a case, compensatory damages for future pecuniary losses, emotional pain and suffering, and other nonpecuniary losses are capped at no more than \$300,000