



Discrimination: What does that mean?

Federal law prohibits discrimination throughout the employee life cycle— including hiring, promotions, pay, benefits, terms and conditions of employment, and termination—based on an employee's age, sex, disability, race, color, national origin, religion, military service, or genetic information. In furtherance of these prohibitions, many large employers are required to provide employment data to the federal government categorized by race, ethnicity, sex, and job category.

Age Discrimination

The federal Age Discrimination in Employment Act (ADEA) prohibits employers with **20 or more employees** from discriminating against employees or applicants who **are age 40 or older** in any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoffs, training, benefits, and any other term or condition of employment. In addition, an employment policy or practice that applies to everyone can be illegal if it has a negative impact on applicants or employees age 40 or older and is not based on a reasonable factor other than age.

The ADEA also prohibits workplace harassment perpetrated against a person because of his or her age. Harassment can include, for example, offensive remarks about a person's age. Harassment is illegal when it is so frequent or severe that it creates **a hostile or offensive work environment** or when it results in an **adverse employment decision**, such as the victim being fired or demoted. The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

[Click here for more on ADEA compliance](#). To determine if your state imposes additional requirements with which your business must comply, check out our [State Laws](#) section.

Sex Discrimination

The federal Civil Rights Act of 1964 prohibits employers with **15 or more employees** from discriminating against employees or applicants on the basis of sex—including gender identity, transgender status, sexual orientation, or pregnancy—in any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoffs, training, benefits, leave, and any other term or condition of employment. Notably, an employment policy or practice that applies to everyone can be illegal if it has a negative impact on applicants or employees of a certain sex and is not job-related or necessary to the operation of the business. Finally, federal law also prohibits sexual harassment.

Equal Pay Requirement

The federal Equal Pay Act requires that men and women in the same workplace—**regardless of employer size**—be given equal pay for equal work. The jobs need not be identical, but they must be substantially equal. Job content—not job titles—determines whether jobs are substantially equal. All forms of pay are covered by this law. However, if there is an inequality in wages between men and women, employers may not reduce the wages of either sex to equalize their pay.

As noted above, the federal Civil Rights Act of 1964 also makes it illegal to discriminate based on sex in pay and benefits. Therefore, someone who has an Equal Pay Act claim against his or her employer may also have a claim under the federal Civil Rights Act of 1964.

Sexual Harassment Prevention Requirement

Federal law also prohibits **workplace harassment** perpetrated against a person because of his or her sex. Harassment can include, for example, “sexual harassment” or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person’s sex. Harassment is illegal when it is so frequent or severe that it creates a hostile or **offensive work environment** or when it results in an **adverse employment decision**, such as the victim being fired or demoted. The harasser can be the victim’s supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer. Finally, both the victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex.

[Click here for more on these federal requirements](#). To determine whether your state imposes additional requirements with which your business must comply, check out our [State Laws](#) section.

Disability Discrimination

The federal Americans with Disabilities Act (ADA) prohibits employers with **15 or more employees** from discriminating against an employee or applicant on the basis of his or her disability in any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoffs, training, benefits, leave, and any other term or condition of employment. Most notably, disability discrimination occurs when an employer treats a disabled employee or applicant unfavorably because he or she:

- Has a disability;
- Has a history of disability;
- Is believed to have a physical or mental impairment that is not transitory or minor, even if he or she does not have such an impairment; or
- Has a relationship with a person with a disability.

The ADA also requires covered employers to:

- Provide reasonable accommodations to disabled employees and job applicants;
- Prevent workplace harassment against disabled employees; and
- Post a notice.

Continue reading for more information on these requirements.

Reasonable Accommodation Requirement

The ADA requires an employer to provide a reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause undue hardship to the employer. A reasonable accommodation is any change to help a person with a disability apply for a job, perform the duties of a job, or enjoy the benefits and privileges of employment. Reasonable accommodations might include, for example, making the workplace accessible for wheelchair users or providing a reader or interpreter for someone who is blind or hearing impaired. **In addition, permitting the use of [paid or unpaid leave](#), [flextime](#), or [telecommuting](#) may also be reasonable accommodation when necessitated by an employee's disability.** An employer does not have to provide the exact accommodation the employee or job applicant wants. If more than one accommodation works, the employer may choose which one to provide.

As noted above, an employer doesn't have to provide an accommodation if doing so would cause undue hardship to the employer. An undue hardship occurs when an accommodation would be too difficult or too expensive to provide, in light of the employer's size, financial resources, and the needs of the business. However, an employer may not refuse to provide an accommodation just because it involves some cost.

Disability Harassment Prevention Requirement

The ADA also prohibits workplace harassment perpetrated against a person because he or she:

- Has a disability;
 - Has a history of disability; or
 - Is believed to have a physical or mental impairment that is not transitory or minor, even if he or she does not have such an impairment;
 - Harassment can include, for example, offensive remarks about a person's disability.
- Harassment is illegal when it is so frequent or severe that it creates **a hostile or offensive work environment** or when it results in an **adverse employment decision**, such as the victim being fired or demoted. The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

Notice Requirement

The ADA requires that employers post a [notice](#) in an accessible format to applicants and employees, describing the law.

[Click here for more on these federal requirements](#). To determine whether your state imposes additional requirements with which your business must comply, check out our [State Laws](#) section.

Race & Color Discrimination

The federal Civil Rights Act of 1964 prohibits employers with **15 or more employees** from discriminating against employees or applicants on the basis of race or color in any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoffs, training, benefits, leave, and any other term or condition of employment. This prohibition includes discrimination on the basis of personal characteristics associated with race, such as hair texture and facial features. Notably, the law prohibits both intentional discrimination and neutral job policies that disproportionately exclude minorities and that are not job related.

Federal law also imposes certain harassment prevention and pre-employment inquiry requirements on employers based on the race and color discrimination prohibition. Continue reading for more information on these requirements.

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Federal law also imposes certain harassment prevention and pre-employment inquiry requirements on employers based on the race and color discrimination prohibition. Continue reading for more information on these requirements.

Harassment Prevention Requirements

Federal law prohibits workplace harassment perpetrated against a person because of his or her race or color. Harassment can include, for example, offensive remarks about a person's race or color. Harassment is illegal when it is so frequent or severe that it creates **a hostile or offensive work environment** or when it results in an **adverse employment decision**, such as the victim being fired or demoted. The harasser can be the victim's supervisor, a supervisor in another area, a coworker, or someone who is not an employee of the employer, such as a client or customer.

Pre-Employment Inquiry Requirements

According to the U.S. Equal Employment Opportunity Commission (EEOC), requesting pre-employment information that discloses or tends to disclose an applicant's race suggests that race is being unlawfully used as a basis for hiring. Solicitation of such pre-employment information is presumed to be used as a basis for making selection decisions. Therefore, if members of minority groups are excluded from employment, the request for that pre-employment information may constitute evidence of discrimination.

However, employers may legitimately need information about their employees' or applicants' race for affirmative action purposes and/or to track applicant flow. One way to obtain racial information and simultaneously guard against discriminatory selection is for employers to use "tear-off sheets" for the identification of an applicant's race. After the applicant completes the application and the tear-off portion, the employer separates the tear-off sheet from the application and does not use it in the selection process.

Other pre-employment information requests that disclose or tend to disclose an applicant's race are criminal history checks. While federal law does not categorically prohibit employers' use of criminal records as a basis for making employment decisions, employers must comply with any applicable state or local law governing employers' use of criminal history information.

[Click here](#) **for more on these federal requirements**. To determine whether your state imposes additional requirements with which your business must comply, check out our [State Laws](#) section.

National Origin Discrimination

The federal Civil Rights Act of 1964 prohibits employers with **15 or more employees** from discriminating against employees or applicants based on their national origin in any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoffs, training, benefits, leave, and any other term or condition of employment. Specifically, national origin discrimination includes treating employees or applicants unfairly because of:

- The particular country or part of the world they are from;
- Their ethnicity or accent;
- Their real or perceived ethnic background; or
- Their association with people of a certain national origin, including marriage to a person of a certain national origin.

Federal law also prohibits workplace harassment perpetrated against a person because of his or her national origin. Harassment can include, for example, offensive remarks about a person's national origin. Harassment is illegal when it is so frequent or severe that it creates **a hostile or offensive work environment** or when it results in an **adverse employment decision**, such as the victim being fired or demoted. The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

[Click here](#) **for more on these federal requirements**. To determine whether your state imposes additional requirements with which your business must comply, check out our [State Laws](#) section.

Religious Discrimination

The federal Civil Rights Act of 1964 prohibits employers with **15 or more employees** from discriminating against employees or applicants based on their religion in any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoffs, training, benefits, leave, and any other term or condition of employment. Specifically, religious discrimination includes treating employees or applicants unfairly because of:

- Their sincerely held religious, ethical, or moral beliefs; or
- Their association with people of a certain religion, including marriage to a person of a certain religion.

Federal law also prohibits workplace harassment perpetrated against a person because of his or her religion. Harassment can include, for example, offensive remarks about a person's religion. Harassment is illegal when it is so frequent or severe that it creates **a hostile or offensive work environment** or when it results in an **adverse employment decision**, such as the victim being fired or demoted. The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

In addition, employers with **15 or more employees** are required to make certain **reasonable accommodations** based on an employee or applicant's religion. Continue reading for more information on this requirement.

Reasonable Accommodation Requirement

Federal law requires employers with 15 or more employees to reasonably accommodate an employee's religious beliefs or practices unless doing so would cause undue hardship to the employer. This means an employer may be required to make reasonable adjustments to the work environment that will allow an employee to practice his or her religion. Examples of some common religious accommodations include flexible scheduling, voluntary shift substitutions or swaps, job reassignments, and modifications to workplace policies or practices, including dress codes. However, an accommodation may cause undue hardship if it is costly, compromises workplace safety, decreases workplace efficiency, infringes on the rights of other employees, or requires other employees to do more than their share of potentially hazardous or burdensome work.

[Click here](#) **for more on these federal requirements.** To determine whether your state imposes additional requirements with which your business must comply, check out our [State Laws](#) section.

Military Service Discrimination

The federal Uniformed Services Employment and Reemployment Rights Act (USERRA) generally prohibits all employers from discriminating against a person on the basis of past military service, current military obligations, or intent to serve. In particular, an employer must not deny initial employment, reemployment, retention in employment, promotion, or any benefit of employment to a person on the basis of a past, present, or future service obligation.

The reemployment, poster, leave, and benefits requirements imposed by the law are summarized below.

Reemployment Requirement

USERRA provides employees the right to be reemployed in their civilian job if they leave that job to perform uniformed service. For USERRA-provided job protection, employees must also:

- Ensure the employer receives advance written or verbal notice of their service;
- Have no more than 5 years of cumulative service in the uniformed services while with that particular employer;
- Return to work or apply for reemployment in a timely manner after their service has ended; and
- Not have been separated from service with a disqualifying discharge or under other than honorable conditions.

Poster Requirement

In addition, employers are required to provide a notice to employees regarding the rights and benefits under USERRA.

Employers may:

- Post the notice where employee notices are customarily placed;
- Mail or hand out the notice to employees; or
- Distribute the notice via email.

[Click here](#) to download a sample notice.

Leave and Benefits Requirements

USERRA also imposes certain leave and benefits requirements for employers. [Click here](#) for more information.

[Click here for more on USERRA](#). To determine whether your state imposes additional requirements, check out our [State Laws](#) section.

Genetic Information Discrimination

The federal Genetic Information Nondiscrimination Act (GINA) prohibits employers with **15 or more employees** from discriminating against employees or applicants based on their genetic information in any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoffs, training, benefits, leave, and any other term or condition of employment. Federal law also prohibits workplace harassment perpetrated against a person because of his or her genetic information. Harassment can include, for example, offensive remarks about a person's genetic information. Harassment is illegal when it is so frequent or severe that it creates **a hostile or offensive work environment** or when it results in an **adverse employment decision**, such as the victim being fired or demoted. The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

Most notably, GINA strictly limits employers from acquiring and disclosing genetic information about applicants or employees. However, GINA **does permit** employers to acquire genetic information about employees or their family members as part of **voluntary** health or genetic services, **including wellness programs**. [Click here](#) for more information.

For more on these federal requirements, [click here](#). To determine whether your state imposes additional requirements, check out our [State Laws](#) section.

EEO-1 Reporting Requirement

The Employer Information Report EEO-1, otherwise known as the [EEO-1 Report](#), is a compliance survey report, mandated by federal law, which requires data about employees' **race, ethnicity, sex, work hours, pay, and job category**. Large employers and federal contractors generally must file the EEO-1 Report annually with the U.S. Equal Employment Opportunity Commission (EEOC).

Who Must File

The EEO-1 Report generally must be filed by:

- Private employers with **100 or more employees**;
- Private employers with **fewer than 100 employees** if owned by or corporately affiliated with another company and the entire enterprise employs a total of 100 or more employees; and
- Federal contractors (private employers) subject to [Executive Order 11246](#) who have **50 or more employees** and a prime contract or first-tier subcontract amounting to \$50,000 or more.

Required Information in the EEO-1 Report

In general, employers (including contractors/subcontractors) subject to the EEO-1 reporting requirement must submit company employment data about employees' **race, ethnicity, and sex** ("Component 1"), as well as data on employees' **W-2 earnings** and hours worked ("Component 2"), by **job category**.

When to File

The deadline for submitting the 2018 EEO-1 Report is May 31, 2019.

Special Update: As a result of court rulings in *National Women's Law Center v. OMB*, employers must submit Component 2 data for 2017 and 2018 calendar years by **September 30, 2019**, via the Component 2 EEO-1 [online filing system](#). According to the EEOC, system login information was to be sent to employers via email and regular mail on the date the web-based portal opened, July 15, 2019.

How to File

The **preferred** and most efficient method of submitting EEO-1 data is through the [EEO-1 Online Filing System](#) or as an electronically transmitted data file. A sample EEO-1 Report is [available in PDF format](#). Paper EEO-1 forms will only be generated by EEOC upon request and only under extreme circumstances where Internet access is not available.

For additional information on this requirement, [click here](#).