

LEGISLATIVE UPDATE

February 2015

EEOC announces increased scrutiny of workplace harassment

Recently, the U.S. Equal Employment Opportunity Commission (EEOC) announced an initiative to focus on regulation and enforcement of workplace harassment. As part of this initiative, the EEOC has formed a task force to identify strategies to prevent and remedy workplace harassment. The EEOC also plans to undertake an outreach campaign aimed at both employers and employees to prevent harassment.

What is workplace harassment?

Harassment is generally any unwelcome conduct that is based on race, color, religion, sex, pregnancy, national origin, age (for 40 or older), disability, or genetic information. Harassment becomes unlawful when enduring the offensive conduct is a condition of continued employment or the conduct is severe or pervasive enough to create a work environment that a reasonable person would find intimidating, hostile, or abusive.

Offensive conduct includes, but is not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance

According to the EEOC, approximately 30% of the complaints it receives are for workplace harassment.

What you should do to prepare:

- Make sure your employee handbook is up-to-date, and includes language that prohibits harassing and “bullying” language or conduct.
- Conduct or update training for supervisors on how to identify and prevent harassment.
- Implement an effective complaint process that encourages victims to come forward with complaints about harassment.
- Investigate all complaints of harassment.



Covered employers must post OSHA 300A annual summary

This is a reminder that all covered employers should have completed and posted in a conspicuous area the 2014 annual summary of work-related injuries and illnesses (OSHA 300A form) as of February 1, 2015. The OSHA 300A form should remain posted in a common area until April 30, 2015. The summary form 300A reports the total year-end number of fatalities, missed workdays due to injury or illness on the job, job transfers or restrictions, injuries and illnesses as recorded on Form 300; and the number of employees and hours they worked for the year. A company executive must certify that he or she has reviewed the related records and that the posted summary is accurate and complete. Further information on how to complete OSHA 300A may be found at www.osha.gov/recordkeeping/new-osh300form.

Don't walk your company into FMLA coverage

In *Tilley v. Kalamazoo County Road Commission, et al.*, the U.S. Sixth Circuit Court of Appeals held that an employee who was not otherwise eligible for FMLA coverage, was rendered eligible for coverage because of his employer's inaccurate statements.

At the time relevant to his lawsuit, Tilley had been employed by the Kalamazoo County Road Commission for 18 years, but had received a final disciplinary warning requiring him to complete certain tasks by a specified date. Before he could complete the tasks, Tilley was taken from work to the hospital for chest pain. His doctor recommended he remain off work, and consequently, Tilley missed his deadline.

An employer representative sent Tilley FMLA paperwork that indicated he was eligible for FMLA protected leave. In actuality, Tilley did not meet one of the requirements for coverage because the Road Commission did not employ at least 50 employees at, or within 75 miles of, Tilley's jobsite. In addition to providing Tilley with an incorrect eligibility notice, the Road Commission's employee handbook statement on FMLA eligibility failed to mention the 50 employee requirement.

FMLA's general requirements, applied at the time of the FMLA request:

- (1) Employee must be employed for at least 1 year
- (2) Employee must have worked at least 1,250 hours in the prior 12 months
- (3) Employer must have at least 50 employees at, or within a 75 mile radius of, the requesting employee's worksite

All 3 requirements must be met for coverage

Tilley submitted his properly documented FMLA request, but was terminated for failing to meet the deadlines in his final warning, which expired while he was on FMLA requested leave. Tilley sued for FMLA interference. The trial court found in favor of the employer because Tilley was not eligible for FMLA. On appeal, the Sixth Circuit overturned that ruling and held in favor of Tilley.

The Sixth Circuit agreed that Tilley did not meet the eligibility requirements set forth in the statute. However, the appellate court found that Road Commission inaccurately stated the requirements for FMLA eligibility in both its employee handbook and the correspondence sent to Tilley. Because Tilley relied on those incorrect statements in seeking FMLA protected leave, the Road Commission could not deny Tilley FMLA protected leave.

Employers can prevent these errors by providing accurate language in their employee handbooks and making sure to assess employee's eligibility using all three requirements at the time the request is made. But, since the Road Commission did not do either in this case, it obligated itself to providing FMLA coverage despite Tilley's ineligibility.

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