

WHAT CONSTRUCTION EMPLOYERS NEED TO KNOW ABOUT THE EEOC'S NEW FOCUS ON DISCRIMINATION IN THE INDUSTRY

Insights
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Construction employers should be mindful of the federal government's renewed focus on combatting discrimination and harassment in the industry. A recent report from the Equal Employment Opportunity Commission (EEOC) identified key issues in the industry, as well as the steps it plans to take to address noncompliance with federal anti-bias laws. While the laws are not new, the agency's recent focus on enforcement means that now is a good time to review your policies and practices for compliance. Here's an overview of the EEOC's findings, as well as six steps all employers in the construction industry should consider taking and five steps specifically for federal contractors.

EEOC's Findings

The EEOC outlined its main findings and the steps it will take to address discrimination and harassment in the construction industry in [a recently published report](#), which noted that "some of the most egregious incidents of harassment and discrimination" the agency has investigated have arisen in the construction industry.

Based on the agency's experience in enforcement, academic research, and reports from workers and experts in the industry, the EEOC found the following:

- Women and people of color are underrepresented in the construction industry, particularly in the higher-paid, higher-skilled trades;

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- Discrimination based on sex, race, and national origin persists and contributes to the underrepresentation of women and people of color;
- Harassment is pervasive on many jobsites and poses a significant barrier to recruiting and retaining women and people of color;
- Racial harassment often takes virulent forms, including visual, physical, and spoken forms of harassment on jobsites;
- Harassment in construction is a workplace safety issue due to the hazardous nature of the work;
- Construction workers often don't know how to report violations; and
- Retaliation is pervasive and hinders efforts to prevent and remedy harassment and discrimination.

EEOC's Next Steps

The EEOC outlined several steps it will take to address the issues outlined above, including:

- Developing industry-specific technical assistance, outreach, and training;
- Partnering with unions, employers, and community-based organizations to provide effective anti-harassment training to apprentices and workers; and
- Using a multilingual approach to outreach to ensure that construction applicants, pre-apprentices, apprentices, and workers understand their rights and know how to file a charge with the EEOC.

6 Steps All Construction Employers Should Consider Taking Now

1. Issue a statement to all employees that discrimination and harassment will not be tolerated.
2. Ensure that discrimination, harassment, and retaliation policies are up to date and incorporate federal, state, and local protections.
3. Provide training to supervisors and managers on how to identify, address, and prevent unlawful conduct.

4. Post notices to employees (and applicants) on how they can report alleged violations and who to contact.
5. Address violations of policy immediately and effectively.
6. Foster a workplace that is welcoming and inclusive to all.

5 Special Considerations for Federal Contractors

Construction employers who are federal contractors must also be mindful of the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) regulations. OFCCP has also recently renewed its focus on the construction industry and has begun increasing the number of compliance evaluations of federal contractors. Under Executive Order 11246, covered federal contractors have several obligations, including the following:

1. **Good Faith Efforts**. Covered construction contractors and subcontractors must make good faith efforts to achieve goals set by OFCCP for the employment of women and minorities in all crafts and trades on their worksites. They must pursue such goals on all their construction work, whether or not it is federal or federally assisted. They must also include a specific equal opportunity clause in each of their non-exempt contracts and subcontracts.
2. **Affirmative Action Steps**. Although they are not required to create written affirmative action programs (AAPs), construction contractors and subcontractors must follow the regulations that require federal and federally assisted construction contractors and subcontractors to take specific affirmative steps to ensure equal employment opportunity. Contractors and subcontractors must also fully document their affirmative action efforts.
3. **Discrimination and Harassment Prohibited**. All construction contractors and subcontractors, whether or not federally assisted, are prohibited from discriminating based on race, color, religion, sex, sexual orientation, gender identity, and national origin in such employment practices as recruitment, rates of pay, hours, upgrading, layoff, promotion, selection for training, advertising efforts, job classifications, seniority, retirement ages, or job fringe benefits such as employer contributions to company pension or insurance plans.

4. **Pay Transparency.** EO 11246 prohibits contractors and subcontractors from taking adverse action against employees or applicants for asking about, discussing, or disclosing their pay or the pay of their co-workers. The regulations also include other specific requirements, [which you can read about here](#).
5. **Retaliation.** Covered contractors and subcontractors are required to take all necessary actions to ensure that no one attempts to intimidate or discriminate against an individual for filing a complaint or participating in a proceeding under EO 11246.

Conclusion

If you'd like more information, please contact your Fisher Phillips attorney, the authors of this Insight, or any member of our [Construction Industry Team](#) or [Affirmative Action and Federal Contract Compliance Group](#). We will continue to monitor developments on this topic. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information direct to your inbox.