



FIRE SERVICE

# DISCRIMINATION & HARASSMENT TOOLKIT



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# 1

## Introduction

Many fire departments recognize that adopting proactive measures may help members to identify and respond to discrimination and harassment in the workplace. The **National Volunteer Council (NVFC)**, on behalf of **Women in Fire (WIF)**, has developed this toolkit aimed at helping first responders (volunteer and career) prevent, identify, and respond to discrimination, harassment, and retaliation in the workplace.

The NVFC and WIF believe that educating fire service members on how to be proactive in preventing certain unwanted and potentially unlawful actions in the workplace is an essential service. We encourage fire service organizations to make this toolkit a part of new member orientation and implement an annual review for all members.

This resource aims to equip first responders with the knowledge to recognize, confront, and prevent certain unlawful and/or unwanted employment actions. This guide is not meant to replace legal advice. Language and images are reprinted directly from the U.S. Equal Employment Opportunity Commission to prevent misinterpretation of the law.

When facing discrimination or harassment, individuals and organizations are encouraged to contact an attorney in their geographic area for advisement.

This resource is meant to offer a guide for understanding:

- Who is protected by federal employment laws;
- Who can perpetrate harassment, discrimination, and/or retaliation in the workplace;
- That conduct can be inappropriate for the workplace even if it does not meet the legal definition of unlawful discrimination, harassment, or retaliation;
- What actions can constitute discrimination, harassment, or retaliation in the workplace;
- What to do if you suspect that you are being targeted by harassment, discrimination, or retaliation in the workplace; and
- Where to find available resources.

### National Volunteer Fire Council

**Mission:** To provide a unified voice for volunteer Fire/EMS organizations.

### Women in Fire

**Mission:** Leading the fire service community by providing training, education, advocacy, resources, mentoring, and networking in order to enhance the fire service.

# 2

## Classifying Volunteer Firefighters as Employees

For the purposes of this document, the term “employee” will refer to both career and volunteer firefighters.

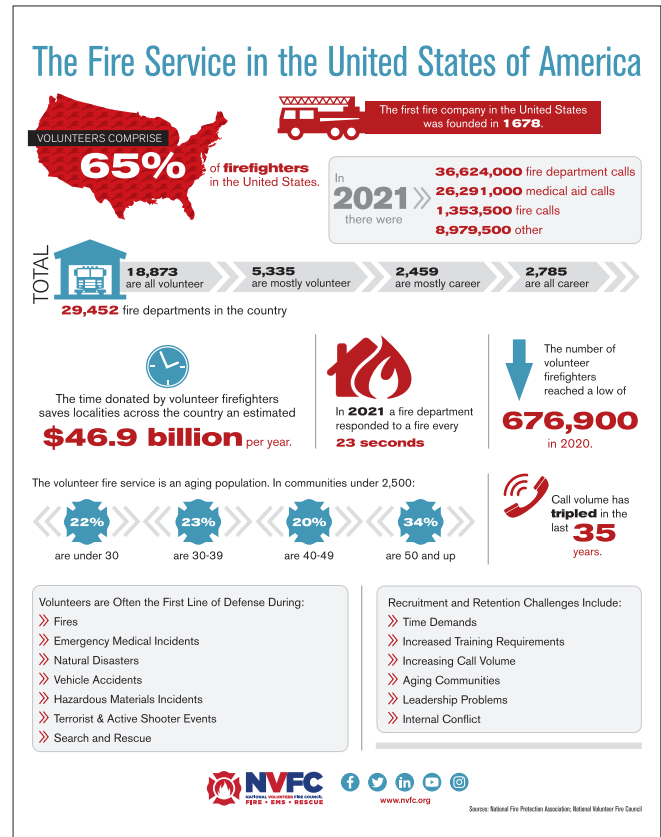
### Classifying Volunteer Firefighters as Employees

For the purposes of this document, the term “employee” will refer to both career and volunteer firefighters.

The National Firefighter Protection Association reports that the United States fire service consists of 1,041,200 firefighters, and 676,900 are volunteers.<sup>1</sup> Members of the fire service and their communities need to understand that volunteer firefighters should have the same protections as their career counterparts.

Under federal law and the laws of most states, certain groups of employees are protected from discrimination. Whether or not a volunteer firefighter is entitled to protection under one or more of these laws is decided on a case-by-case basis.

Some states and municipalities have extended protection from harassment to third parties who deal with an employer; in those jurisdictions, there should be additional protection for volunteers, even if, for some reason, they do not meet the legal definition of employee under federal law (i.e., Title VII of the Civil Rights Act of 1964).<sup>2</sup>



National Volunteer Fire Council.  
The Fire Service in the United States

<sup>1</sup> The National Firefighter Protection Association. U.S. Fire Department Profile 2020

<sup>2</sup> U.S. Equal Employment Opportunity Commission. Title VII of the Civil Rights Act of 1964

# 3

## Discrimination

All members of a fire service organization have a responsibility to address unfair discrimination in the workplace. Preventing and addressing unlawful discrimination is not just a legal requirement but also an ethical and human way to conduct business.

All members of a fire service organization have a responsibility to address unfair discrimination in the workplace. Preventing and addressing unlawful discrimination is not just a legal requirement but also an ethical and human way to conduct business.

Being knowledgeable about discrimination laws and the culture of the workplace is critical for fire service leaders. Most employers are aware that they must and should prevent unlawful discrimination. Failing to address discrimination can be costly and may lead to high absenteeism rates, increased turnover, low employee morale, reduced productivity, legal fees, and higher insurance premium rates.

The relationship between discrimination and turnover is something fire service leaders can't afford to ignore. According to the Society for Human Resource Management, turnover due to discrimination has cost organizations in the United States up to \$172 billion over a five-year span. Losing a seasoned first responder to turnover means losing experience and institutional knowledge.<sup>3</sup> Organizational policies that prevent discrimination and harassment may lead to higher retention rates and reduced recruitment costs.

**Know Your Rights: Workplace Discrimination is Illegal**

The U.S. Equal Employment Opportunity Commission (EEOC) enforces Federal laws that protect you from discrimination in employment. If you believe you've been discriminated against at work or in applying for a job, the EEOC may be able to help.

**Who is Protected?**

- Employees (current and former), including managers and temporary employees
- Job applicants
- Union members and applicants for membership in a union

**What Organizations are Covered?**

- Most private employers
- State and local governments (as employers)
- Educational institutions (as employers)
- Unions
- Staffing agencies

**What Types of Employment Discrimination are Illegal?**

Under the EEOC's laws, an employer may not discriminate against you, regardless of your immigration status, on the bases of:

- Race
- Color
- Religion
- National origin
- Sex (including pregnancy and related conditions, sexual orientation, or gender identity)
- Age (40 and older)
- Disability
- Genetic information (including employer requests for, or purchase, use, or disclosure of genetic tests, genetic services, or family medical history)
- Retaliation for filing a charge, reasonably opposing discrimination, or participating in a discrimination lawsuit, investigation, or proceeding.

**What Employment Practices can be Challenged as Discriminatory?**

All aspects of employment, including:

- Discharge, firing, or lay-off
- Harassment (including unwelcome verbal or physical conduct)
- Hiring or promotion
- Assignment
- Pay (unequal wages or compensation)
- Failure to provide reasonable accommodation for a disability or a sincerely-held religious belief, observance or practice
- Benefits
- Job training
- Classification
- Referral
- Obtaining or disclosing genetic information of employees
- Requesting or disclosing medical information of employees
- Conduct that might reasonably discourage someone from opposing discrimination, filing a charge, or participating in an investigation or proceeding.

**What can You Do if You Believe Discrimination has Occurred?**

Contact the EEOC promptly if you suspect discrimination. Do not delay, because there are strict time limits for filing a charge of discrimination (180 or 300 days, depending on where you live/work). You can reach the EEOC in any of the following ways:

**Submit** an inquiry through the EEOC's public portal: <https://publicportal.eeoc.gov/Portal/Login.aspx>

**Call** 1-800-669-4000 (toll free)  
1-800-669-6820 (TTY)  
1-844-234-5122 (ASL video phone)

**Visit** an EEOC field office (information at [www.eeoc.gov/field-office](http://www.eeoc.gov/field-office))

**E-Mail** [info@eeoc.gov](mailto:info@eeoc.gov)

Additional information about the EEOC, including information about filing a charge of discrimination, is available at [www.eeoc.gov](http://www.eeoc.gov).

**U.S. Equal Employment Opportunity Commission.  
Know Your Rights: Workplace Discrimination is Illegal**

<sup>3</sup> Society for Human Resource Management. SHRM Report: Racial Inequity Persists, Costs American Workplaces Billions Annually



# 3.1

## Discrimination Defined

**Discrimination is the unfair or prejudicial treatment of a person based on characteristics or preconceived characteristics such as race, gender, age, or sexual orientation.**

The law forbids discrimination in any aspect of employment. This includes hiring, firing, pay, job assignments, promotions, layoffs, training, fringe benefits, and any other term or condition of employment.

The laws protect an individual from employment discrimination when it involves:

- Unfair treatment due to race, color, region, sex, pregnancy, gender identity, sexual orientation, national origin, disability, age (age 40 or older), or genetic information.
- Denial of a reasonable workplace change needed because of religious beliefs or disability.
- Improper questions about or disclosure of your genetic information or medical information.

Some types of unequal treatment are considered legal and cannot be the basis for alleging discrimination.

Discrimination is not:

- Personality differences or conflicts leading to different treatment of an individual;
- Changes in employment based on an individual's poor performance;
- Different treatment of an individual to accommodate an employee with a disability;
- Different treatment NOT based on a protected characteristic;
- Rewards or different treatment based on differing levels of employee productivity;
- Different treatment based on individual qualifications, talent, skills, or merit.

Discrimination is not always readily apparent. Discrimination can occur during what seems like innocent banter, hazing, jokes, or the use of stereotypes. Discrimination can still occur even if the person did not mean to be offensive, if "everyone" laughed, or if the offensive behavior was not directed toward the offended person.



### Resource Break

Addressing unethical behaviors, such as discrimination and harassment, is not new to the fire service. For over two decades organizations have been examining and developing tools to combat negative behaviors and be inclusive.

- > Cumberland Valley Volunteer Firemen's Association, *Fire Service Reputation Management White Paper*
- > National Society of Executive Fire Officers, *Firefighter Code of Ethics*
- > International Association of Fire Chiefs, *Bullying and Workplace Violence Prevention Toolkit*
- > International Association of Fire Fighters, *Model Contract Language Manual*

# 4

## Harassment

Unlawful harassment can occur when verbal or physical behaviors show hostility or aversion to an individual because of protected characteristics. The offensive behavior has the effect or intention to create an intimidating or hostile work environment. The offensive behavior has the effect or intention to interfere with an individual's performance or adversely impact employment opportunities.

Members of the fire service should be aware that unlawful harassment contains the following elements:

- The individual is a member of a protected class;
- The conduct is directed at that individual because of their protected class status;
- The conduct is unwelcome;
- The conduct is severe (i.e., rape or a noose in the workplace) or pervasive; and
- The individual's working conditions are altered adversely.

A harasser can be the victim's supervisor, coworker, a leader in another area, an agent/contractor of the employer, or a non-employee. The victim does not have to be the person being harassed and can also be anyone affected by the offensive behavior.

### 4.1

#### Unlawful and Offensive Behaviors

Isolated incidents, annoyances, or petty slights (unless extremely serious) are not deemed illegal.

Harassment becomes unlawful when:

- Enduring the offensive behavior becomes a condition of continued employment; or
- The conduct creates a work environment that a reasonable person would consider intimidating, hostile, or abusive.

**Workplace Harassment**

**How Harassment Affects the Workplace (for agencies)**

- High legal costs and damage awards.
- Poor public image.
- Lower productivity and morale.
- Higher costs for hiring and training new employees.

**How Harassment Affects the Workplace (for employees)**

- Emotional and physical pain.
- Less effective job performance.
- Poor employee morale.
- Personal and financial problems.

**What is Workplace Harassment?**  
Harassment is any unwelcome verbal or physical conduct based on one of the protected bases that is so objectively offensive as to alter the conditions of the victim's employment. This standard is met when:  
The conduct culminates in a tangible employment action, or  
The conduct was sufficiently severe or pervasive to create a hostile work environment.

**Elements of a Harassment Claim**  
Conduct must be unwelcome.  
Conduct based on a protected basis.  
Conduct creates a hostile work environment (which may or may not result in a tangible employment action).

**When is the Agency Liable?**  
1. Was the alleged harasser a "high ranking official?"  
2. Did the conduct/behavior result in a significant change in the complainant's terms and conditions or benefits?  
3. Did the agency know or should the agency have known? Did the agency take corrective action?

**Appropriate Preventative Actions**  
All Management Officials and Employees should:  
Know your agency's anti-harassment policy.  
Set a positive example, treat others with respect.  
Don't make assumptions about practical jokes.  
Think before speaking, consider others' feelings and perceptions.  
Never go along with the crowd if behavior is offensive or inappropriate.

**Who can Commit Workplace Harassment?**  
-Manager/Supervisor/Team Lead  
-Co-worker  
-Non-employee/Contractor/Public

**Unwelcome Conduct**  
"Unwelcome" conduct is where the employee did not solicit or invite the conduct and regarded it as undesirable.  
Critical Inquiry: Did the complainant explicitly or implicitly communicate that the conduct was unwelcome?  
Submission does not mean the conduct was welcome  
Active participation may defeat the claim.

**Is the conduct severe or pervasive enough to create an environment that a reasonable person would find hostile, intimidating or abusive?**

**Does the employee perceive the conduct as such?**

**Corrective Action**  
If it is determined that harassment occurred, corrective action should be undertaken immediately. Corrective measures should be designed to end the harassment and ensure that it does not recur.  
The severity of disciplinary action should depend on factors such as the severity and frequency of the misconduct, the impact on the complainant, and whether the harasser engaged in similar misconduct before.

**FOR ADDITIONAL INFORMATION**  
Compliance Manual Section 8: Retaliation  
<http://www.eeoc.gov/policy/docs/retal.pdf>

U.S. Equal Employment Opportunity Commission.  
Workplace Harassment



Examples of offensive behaviors may include, but are not limited to, the following acts related to a protected characteristic:

- Offensive jokes;
- Slurs and name-calling;
- Physical assaults and threats;
- Intimidation;
- Ridicule and mockery;
- Insults and put-downs;
- Graffiti; and
- Written or graphic material (placed, displayed, or stored) showing hostility, denigration, or aversion towards an individual or group because of protected characteristics. Offensive written or graphic material can be in paper or electronic format, including social media, text messaging, and e-mail.

## 4.2

### Quid Pro Quo Harassment

Quid pro quo in Latin means “this for that.” Quid pro quo sexual harassment occurs when one party in a position of power for recruitment, promotion, adding of benefits, or wage increase threatens to demote or reduce the employee benefits of another party unless the individual engages in sexual favors. It is unlawful and may be considered harassment if a “quid pro quo” advance is linked to an employee benefit.

## 4.3

### Hostile Work Environment Harassment

A hostile environment is a work atmosphere in which a pattern of offensive behaviors is involved. It can result from the unwelcome conduct of anyone the victim interacts with on the job, and the unwelcome conduct creates an atmosphere that is intimidating, hostile, or offensive.

National Aeronautics and Space Administration

STOP

Workplace Harassment

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<p><b>Causes Tension</b></p> <p><b>Causes Emotional Distress</b></p> <p><b>Undermines Productivity</b></p> <p><b>Lowers Morale</b></p> <p><b>Increases Employee Turnover Rates</b></p>	<p><b>Increases Absenteeism</b></p> <p><b>Inhibits Growth and Creativity</b></p> <p><b>Undermines Professionalism</b></p> <p><b>Undermines Inclusion</b></p> <p><b>Insults Dignity of Employees</b></p>
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**Harassing conduct is any unwelcome conduct, verbal or physical, based on individual's race, color, gender, national origin, religion, age, disability, genetic information, sexual orientation, status as a parent, gender identity, or retaliation when:**

(1) The behavior can reasonably be considered to adversely affect the work environment; or

(2) An employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct.

Examples of harassment that may adversely affect the work environment include but are not limited to making jokes or remarks or displaying images, pictures, other materials that may unreasonably interfere with work performance and/or create an intimidating, hostile, or offensive work environment based on an individual's race, color, gender, national origin, religion, age, disability, genetic information, sexual orientation, status as a parent or gender identity. Examples of harassment based upon an employee's acceptance or rejection of harassing conduct include, but are not limited to, a supervisor coercing an employee into an unwelcome sexual relationship and then rewarding the employee with a promotion, or a supervisor taking disciplinary action or denying a promotion to an employee because he or she rejected sexual advances from the supervisor.

www.nasa.gov

Retaliation against an employee for alleging harassment or participating in a harassment fact-finding is also impermissible.

NASA employees who believe they have been subject of an incident of harassing conduct in violation of NASA Policy must not wait – tell the person that his or her behavior is a problem, report the matter immediately to his or her immediate supervisor, the Center Anti-Harassment Coordinator, or other official as designated by the Center Director.

Should you wish to receive additional information on NASA's Anti-Harassment Procedures, please contact:

**Darryl Gaines**  
**Center Anti-Harassment**  
**Coordinator**  
**(228) 342-5461**

Or visit:

**Office of Diversity & Equal Opportunity**  
**(technical advisor)**  
**Building 1100, Room 11147**  
**Stennis Space Center, MS**  
**228-688-1037**

#### NASA. Stop Workplace Harassment

The Department of Labor provides the following examples of offensive behaviors that may contribute to an unlawful hostile work environment:

- The use of microaggressions, or verbal and nonverbal insults, comments, or other unwelcome behavior, that may be intentionally or unintentionally offensive, demanding, or degrading;
- Using the term “tranny” to refer to transgender persons, or asking personal and private questions about a perceived or known transgender person's genitalia;
- Telling racist, sexist, homophobic, transphobic, or xenophobic jokes or stories;
- Teasing, name calling, ridiculing, insulting, mocking, mimicking, or repeatedly commenting on or making gestures about an individual's disability, accent, hair, or other protected characteristic;

- Using “pet” names or sex-based nicknames or other forms of stereotypes;
- Making demeaning, obscene, or lewd comments, slurs, epithets, or suggestions;
- Displaying or discussing inappropriate or sexually suggestive or insensitive objects, pictures, images, or cartoons;
- Exhibiting bullying, intimidating, or threatening behavior;
- Continuing unwelcome behavior (as defined by the policy and procedures) after an individual has objected;
- Displaying belittling caricatures or objects depicting persons of a particular race, national origin, religion, or other protected basis, or other objects with a sordid history based in racism or discrimination, such as the display of Swastikas, nooses, or the Confederate flag;
- Leering at or ogling another person;
- Stalking or following a colleague, including through the use of social media or off site;
- Improperly disclosing confidential information about another person related to their actual or perceived status in a protected class;
- Unwelcome sexual advances or requests for sexual favors; and,
- Unwelcome touching.<sup>4</sup>

## 4.4 Sexual Harassment

Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964.<sup>5</sup> Harassment can include “sexual harassment” or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. Sexual harassment is based on unwelcome



State of Illinois. Sexual Harassment in the Workplace

behavior that is not solicited or wanted by the offended person.<sup>6</sup>

The offensive conduct does not have to be of a sexual nature. It can include offensive remarks about a person’s sex. For example, unlawful harassment can include making offensive comments about women in general. A victim of sexual harassment can be either a man or a woman, and the victim and harasser can be of the same sex.

The harasser can be anyone the victim comes in contact with in the workplace, including non-employees. For

<sup>4</sup> U.S. Department of Labor. What do I need to know about... WORKPLACE HARASSMENT

<sup>5</sup> U.S. Equal Employment Opportunity Commission. Title VII of the Civil Rights Act of 1964

<sup>6</sup> U.S. Equal Employment Opportunity Commission. Sexual Harassment

example, the harasser can be a supervisor, coworker, contract employee, an agent of the employer, client, or customer. The victim does not have to be the person being harassed but can be anyone affected by the offensive behavior.<sup>7</sup>



## Resource Break

Fire departments should implement a sexual harassment prevention policy that complies with local, state, and federal laws.

- > Austin Fire Department, *Harassment Prevention Policy*
- > Firefighters Association of the State of New York, *NY's New Sexual Harassment Law: What Volunteer Fire Departments Need to Know*
- > U.S. Forest Service, *Chapter 8100 Anti-Harassment*
- > Georgia Department of Public Safety, *Policy Manual*



YOUTH@WORK

## Sexual Harassment is Against the Law

Sexual harassment is unwelcome or unwanted sexual conduct that is either very serious or occurs frequently. The harasser may be another employee, a supervisor, the company owner or even a customer. The harasser may be male or female. The sexual conduct can be verbal, physical, in writing or in pictures. Illegal sexual harassment creates a hostile or intimidating work place and interferes with an employee's job performance.

### Examples

**1** An employee regularly tells his co-worker that he really likes her and wants to go out with her, although she continues to say no. When he is close to her at work, he touches her. One day when they are alone, he tries to kiss her. The manager has sexually harassed the employee.

**2** Luisa works after school as a customer service representative. After a company dinner one evening, her supervisor offers to drive her home. During the car ride, her supervisor tells her that he thinks she is beautiful and asks her to have sex with him. Luisa refuses. When she goes to work the next day after school, her supervisor pulls her aside and tells her to look at her "new" work schedule. When she does, Luisa sees that her name has been removed from the schedule for the next several weeks.

Luisa has been sexually harassed by her supervisor and should report the conduct to another manager immediately.

### Keep In Mind

**Be Prepared!** Know your rights and responsibilities as an employee or manager.

**Tell the harasser to stop.** If you don't feel comfortable confronting the harasser or the conduct does not stop, tell your employer.

**Report the harassment to your employer.** If your company has a policy on harassment, it should identify who is responsible for handling complaints of harassment. If you are not comfortable talking to that person or your company does not have a harassment policy, talk to your manager or another manager in the company.

**Keep records** including witness names, telephone numbers and addresses. Document how you were treated as an employee.

**Talk to a parent,** teacher, guidance counselor, or another trusted adult about the harassment.

**Act promptly.** Once your employer knows about the harassment, it has a responsibility to stop the harassment. Also, you may not be the only person being harassed by this individual.

**Contact EEOC.** Our services are free and you do not need a lawyer to file a charge.

### Need to File a Complaint?

If you think you have been discriminated against, you can file a formal complaint, called a "charge of discrimination," with EEOC. We may mediate or investigate your charge and take legal action to stop any illegal discrimination.

We accept charges from applicants, employees (full-time, part-time, seasonal, and temporary), and former employees, regardless of citizenship and work authorization status.

Our services are free, and you do not need a lawyer to file a charge. For more information about how and when to file a charge, visit <https://www.eeoc.gov/youth/filing.html>.



Learn more about your rights as a young worker at [www.eeoc.gov/youth](http://www.eeoc.gov/youth).

You can also email us at [youth.atwork@eeoc.gov](mailto:youth.atwork@eeoc.gov) or call us at 1-800-669-4000 (TTY: 1-800-669-6820).

U.S. Equal Employment Opportunity Commission.  
Sexual Harassment is Against the Law

<sup>7</sup> U.S. Equal Employment Opportunity Commission. Sexual Harassment

# 5

## Employer Liability

Fire service organizations have a legal duty to take action to stop harassment and discrimination as soon as they are made aware of it.

Employers are automatically liable for harassment by a leader/supervisor that results in a negative employment action. Negative employment actions include termination, failure to promote or hire, and loss of income. Employers can mitigate liability if they can prove that they reasonably tried to prevent the harassment, promptly corrected the offensive behavior, and the employee unreasonably failed to take advantage of corrective/preventive opportunities supplied by the employer.

An individual qualifies as an employee's "supervisor" if: the individual has the authority to undertake or recommend tangible employment decisions affecting the employee; or the individual has the authority to direct the employee's daily work activities.

### 5.1 Employer Responsibility for Prevention

Fire service leaders can be proactive in preventing harassment and discrimination by:

- Developing, implementing, and regularly communicating the organization's harassment and discrimination policies;
- Providing training for all department leaders and employees on harassment and discrimination prevention;
- Ensuring clear communication on how to report incidents of harassment or discrimination;
- Empowering department leadership to monitor the work environment to ensure the organization is free of harassment and discrimination;
- Enforcing department leadership to lead by example and model appropriate conduct; and
- Conducting a harassment and discrimination climate check throughout the year.

### 5.2 Employer Responsibility for Investigation

Fire service leaders can take appropriate action during allegations of harassment and/or discrimination by:

- Immediately responding to complaints of harassment and/or discrimination;
- Initiate an inquiry;
- Interview the complainant and take reasonable action to protect the complainant from retaliation or experiencing further alleged harassment and/or discrimination during the investigation;
- Interview all relevant witnesses;
- Interview the alleged perpetrator;
- Document the investigation results and maintain the file as an employment record; and
- Take corrective action as appropriate.

## 5.3

### Employer Responsibility for Corrective Measures

When dealing with harassment or discrimination, it is critical for fire service leaders to take responsibility for corrective measures as applicable.

Fire service leaders should take reasonable action within the organization to reduce the likelihood of future discrimination and/or harassment incidents by:

- Updating policies and communicating them to the workforce;
- Providing supplemental or tailored discrimination and/or harassment training; and
- Restructuring the working environment or reporting relationships.

When necessary, fire service leaders should take appropriate corrective disciplinary action up to and including termination of employment when an organizational policy has been violated. In situations where the conduct in question is concerning but did not arise to the level of discrimination, harassment, or a violation of policy, fire service leaders should consider counseling, training, and closer supervision of the employee.

Fire service leaders should also follow up with the complainant at regular intervals to ensure they and the workplace remain free from harassment and discrimination.



#### Resource Break

To create a holistic harassment prevention program, the U.S. Equal Employment Opportunity Commission provides the following *Checklists and Chart of Risk Factors for Employers*:

- > Checklist One: Leadership and Accountability
- > Checklist Two: An Anti-Harassment Policy
- > Checklist Three: A Harassment Reporting System and Investigations
- > Checklist Four: Compliance Training
- > Chart of Risk Factors and Responsive Strategies



# 6

## Employee Actions

When dealing with harassment or discrimination in the workplace, there are certain steps an employee can take to help stop the mistreatment.

The following tips are not meant to provide or replace guidance from legal counsel.

- Be informed and know your rights. Familiarize yourself with your organization’s workplace policies and federal laws enforced by the Equal Employment Opportunity Commission (EEOC).<sup>8</sup>
- Be direct. If you feel safe addressing the harassment and/or discrimination and feel it may be effective, call out the behavior. Let the offender know you find their behavior inappropriate, intimidating, or hostile, and ask them to stop.
- Put your health and safety first. If you feel unsafe, leave the situation immediately. Find an appropriate third party to intervene.
- Be pro-active. Report incidents of inappropriate, discriminatory, harassing, or abusive behavior to your supervisor, Human Resources department, union, or management.<sup>9</sup>
- Document the behavior. Keep detailed records of what is happening that includes each incident and the time, place, and witnesses of each incident.
- Document all meetings with your employer concerning the behavior. Take detailed notes of who attended each meeting, when and where the meeting occurred, what was said, and the outcome.
- Keep any emails or notes applicable to the situation.
- Keep a file of any documents given, such as performance reviews or disciplinary notices.

### Template for documenting incidents of workplace bullying, harassment and/or discrimination

Please refer to the [SA Health Policies on Respectful Behaviour and Prevention and Management of Workplace Bullying and Harassment Policy Directives](#).

The template below is an example of how an employee could document workplace bullying, harassment and/or discrimination. It is not intended to be used in the formal complaints process, rather a document to assist employees to record the facts of any incidents.

Your name:
Date, time and location of incident/s:
Names of alleged perpetrator/s:
Name/s and contact details of witness/es <b>Seek permission from witness prior to recording name/s and contact details.</b>

PREVENTING AND RESPONDING TO WORKPLACE BULLYING, HARASSMENT AND DISCRIMINATION page 1

Government of South Australia. Template for documenting incidents of workplace bullying, harassment and/or discrimination

<sup>8</sup> U.S. Equal Opportunity Commission. Employees & Job Applicants

<sup>9</sup> U.S. Equal Opportunity Commission. How to Prevent Race and Color Discrimination in the Workplace

- Consider contracting legal counsel for advice.
- Keep a copy of all written documentation in a safe place away from the workplace.
- Contact the EEOC or your local EEOC field office to learn more about your rights.<sup>10</sup>

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<sup>10</sup> U.S. Equal Opportunity Commission. Field Offices

# 7

## Understanding Protected Classes

A Protected Class is a group of people with specific characteristics protected by employment discrimination law. Protected characteristics include race, color, religion, sex, disability, age, and national origin. Every American is a member of some protected class and is entitled to the benefits provided under Equal Employment Opportunity (EEO) laws.

It is important for members of the fire service to understand that applicants, employees, and former employees are protected from employment discrimination and are also protected from retaliation for filing a charge or complaint of discrimination, participating in a discrimination investigation or lawsuit, or opposing discrimination (for example, threatening to file a charge or complaint of discrimination).

Protected Classes include race, color, religion, sex, pregnancy, gender identity, age, genetic information, national origin, disability, and sexual orientation.

U.S. Equal Employment Opportunity Commission

member of, identify as, or are married to/associated with someone of a particular race.

There is a misconception that only people of color are protected against racial discrimination. The EEOC states, "All races, including Whites, Blacks, Asians, Pacific Islanders, Native Americans, and Native Alaskans, are protected from racial discrimination. Bi-racial and multi-racial individuals also are protected from discrimination on the basis of race."<sup>12</sup>

Color discrimination occurs is when an applicant or employee is treated less favorably based on social meanings attached to their skin color. Color discrimination can still occur when the perpetrator and the victim are the

### 7.1

#### Race and Color

Title VII of the Civil Rights Act of 1964 prohibits covered employers from discriminating based on race. The EEOC indicated \$99.3 million of monetary benefits were awarded in 2021 from race-based charges.<sup>11</sup> This does not include any monetary benefits from litigation.

Race discrimination occurs when an applicant or employee is treated less favorably because they are a



#### Resource Break

Tools to facilitate diverse recruitment include:

- > Customizable recruitment materials in the NVFC's *Make Me A Firefighter* department portal to create a diverse recruitment campaign
- > The International Association of Fire Firefighters' *Recruiting Diverse First Responders Toolkit*

<sup>11</sup> U.S. Equal Employment Opportunity Commission. Sexual Harassment in Our Nation's Workplaces

<sup>12</sup> U.S. Equal Employment Opportunity Commission. Race/Color Discrimination

same color or ethnic background. For example, a person of the same color may treat someone unfairly because they are darker in color.

## 7.2 Age

The NFPA reports that 50% of the fire service is 40 or older.<sup>13</sup> Federal laws prohibit unfair treatment of employees or applicants because of age and are in place to protect individuals who are age 40 or older. Age discrimination occurs when an applicant or employee is treated less favorably because of age.

The Age Discrimination in Employment Act (ADEA) “forbids age discrimination against people who are age 40 or older.”<sup>14</sup> It is unlawful to discriminate against a person because of their age with respect to any term, condition, or privilege of employment. Examples of term, condition, or privileges of employment include hiring, firing, promotion, job assignments, and training.

It is unlawful for covered fire departments to limit or deprive opportunities because of an individual's age. It is not illegal for an employer or other covered entity to show favor to an older employee, even if both workers are age 40 or older.

All individuals, regardless of age, should be able to pass and maintain the rigorous academic and physical training to become a certified firefighter.

### 7.2.1 Understanding the Maximum Age of Entry

There is an exception in the ADEA, which permits agencies to treat people differently based on age. The law allows agencies to place a maximum age limitation for people applying to be firefighters. For example, Congress



United States Department of the Interior  
OFFICE OF THE SECRETARY  
Washington, DC 20240

FEB 22 2013

PERSONNEL BULLETIN NO: 12-16

SUBJECT: Maximum Entry Age Requirements and Mandatory Retirement for Law Enforcement Officers and Firefighters

1. **Purpose.** This Personnel Bulletin establishes the Department's policy on maximum entry-age (MEA) for veterans' preference eligibles and for individuals without veterans' preference who enter law enforcement (LE) and firefighter positions (FF). It also establishes procedures for requesting a waiver to MEA and mandatory retirement. It supersedes previous guidance issued under Personnel Bulletin 03-3, dated November 18, 2002. The revision is the result of the Merit System Protection Board decision in *Robert P. Isabella v. Department of State and Office of Personnel Management (OPM)*, 2008 M.S.P.B. 146, and OPM memorandum, Subject: Change in Maximum Entry-Age Requirements for Veterans' Preference Eligibles, dated August 26, 2009.

2. **Authorities.** Title 5, United States Code 3307(c) & (d), 3312, 8331 (20 & 21), 8836(c), 8401(14 & 17), 8412 (d), 8425(b); Title 5, Code of Federal Regulations 831 Subpart I and 842 Subpart H.

3. **Policy.** The Department hereby establishes a policy on MEA for both veterans' preference eligibles and individual without veterans' preference who apply for Department of the Interior (DOI) positions which have MEA restrictions. Qualified veterans' preference eligibles may now apply and be considered for DOI vacancies without regard to MEA or mandatory retirement age restrictions. No additional waiver is required.

Individuals without veterans' preference must meet MEA requirements as determined by the Department. The MEA for individuals without veterans' preference is the date immediately preceding the individual's 37<sup>th</sup> birthday. For both veterans' preference eligibles and non-veterans, bureaus are required to apply suitability, occupational qualification standards, and medical qualification determinations.

4. **Waivers for Non-Veterans.** Congress established a policy of employing a “young and physically vigorous” workforce in all LE and FF positions that involve sufficiently rigorous duties. Non-veterans initially hired into primary FF and LE positions must, with few exceptions, satisfy age and physical requirements in order to comply with Congress. These individuals are expected to maintain a high level of performance throughout their careers.

U.S. Department of Interior. SUBJECT: Maximum Entry Age Requirements and Mandatory Retirement for Law Enforcement Officers and Firefighters

established a policy of employing a “young and physically vigorous” workforce in all firefighter positions.<sup>15</sup>

### 7.2.2 Age Harassment

It is unlawful to harass a person because of his or her age. The EEOC indicates, “Harassment can include, for example, offensive or derogatory remarks about a person's age. Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that aren't very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or

<sup>13</sup> National Fire Protection Association. U.S. Fire Department Profile 2020

<sup>14</sup> U.S. Department of Equal Opportunity Commission. The Age Discrimination in Employment Act of 1967

<sup>15</sup> U.S. Department of Interior. SUBJECT: Maximum Entry Age Requirements and Mandatory Retirement for Law Enforcement Officers and Firefighters

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."<sup>16</sup>

## 7.3 Sex

The fire service has been extremely slow to close the gender gap. A study conducted by Dr. Candice McDonald found that women volunteer three times more than men in their communities, yet the fire service is less than 10% women.<sup>17</sup> Women firefighters have repeatedly described discrimination and harassment as key barriers to career success.

Sex discrimination involves treating someone (an applicant or employee) unfavorably because of that person's sex, including the person's sexual orientation, gender identity, or pregnancy. Discrimination against an individual because of gender identity, including transgender status, or because of sexual orientation is discrimination because of sex in violation of Title VII.<sup>18</sup> Sex discrimination also can involve treating someone less favorably because of his or her connection with an organization or group that is generally associated with people of a certain sex.

Sexual harassment involves harassing someone (an applicant or employee) because of that person's sex. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of sexual nature.



U.S. Fire Administration. Supporting Women in Fire and EMS: The USFA Commitment

### 7.3.1 Equal Pay for Equal Work

The Equal Pay Act of 1963, amending the Fair Labor Standards Act, protects against wage discrimination based on sex. The Equal Pay Act (EPA) protects individuals of all sexes.<sup>19</sup>

All forms of compensation are covered, including salary, overtime pay, bonuses, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses, and benefits. If there is an inequality in wages between people of different sexes who perform substantially equal jobs, employers must raise wages to equalize pay but may not reduce the wages of other individuals.

<sup>16</sup> U.S. Department of Equal Opportunity Commission. The Age Discrimination in Employment Act of 1967

<sup>17</sup> Walden University. Retention of Internal Stakeholders in the U.S. Volunteer Fire Service

<sup>18</sup> U.S. Equal Employment Opportunity Commission. Title VII of the Civil Rights Act of 1964

<sup>19</sup> U.S. Equal Employment Opportunity Commission. The Equal Pay Act of 1963



## 7.3.2 Pregnancy

It is unlawful to harass a worker because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth or because of a pregnancy-related physical or mental disability.

Pregnancy discrimination is against the law under Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act. "Pregnancy" discrimination can be based on:

- Current pregnancy;
- Past pregnancy;
- Potential pregnancy;
- Medical condition related to pregnancy or childbirth including breastfeeding/lactation;
- Having or choosing not to have an abortion; and
- Birth control (contraception).<sup>20</sup>

Under the Pregnancy Discrimination Act (PDA), "an employer cannot fire, refuse to hire, demote, or take any other adverse action against a woman if pregnancy, childbirth, or a related medical condition was a motivating factor in the adverse employment action. This is true even if the employer believes it is acting in the employee's best interest."

## 7.3.3 Gender

It is unlawful to discriminate against or harass an individual because of their gender at birth, gender identity, or expression.

## 7.3.4 Sexual Orientation and Gender Identity

It is unlawful to subject an employee to workplace harassment that creates a hostile work environment based



### Resource Break

Tools to support pregnancy in the fire service:

- > *International Association of Fire Chiefs, Pregnancy, Maternity/Paternity Leave, and Lactation Policy*
- > *Women in Fire, Pregnancy and Risks Associated with Firefighting*
- > *National Library of Medicine, Maternal and Child Health among Female Firefighters in the U.S.*
- > *U.S. Department of Labor, What to Expect from Your Employer When You're Expecting*
- > *International Association of Fire Fighters, Women's Health in the Fire Service*

on sexual orientation or gender identity. Discrimination and harassment because of an individual's sexual orientation or transgender status violates Title VII's prohibition on discrimination because of sex.

The government defines "transgender as an umbrella term for persons whose gender identity or expression (masculine, feminine, other) is different from their sex (male, female) at birth. Gender identity refers to one's internal understanding of one's own gender, or the gender with which a person identifies. Gender expression is a term used to describe people's outward presentation of their gender."<sup>21</sup>

Harassment can include, for example, offensive or derogatory remarks about sexual orientation (e.g., being gay or straight). Harassment can also include, for example, offensive or derogatory remarks about a person's transgender status or gender transition.

<sup>20</sup> Department of Labor. What to Expect When You're Expecting (and After the Birth of Your Child)...at Work.

<sup>21</sup> Center for Disease Control and Prevention. What to Expect When You're Expecting (and After the Birth of Your Child)...at Work

Although accidental misuse of a transgender employee's preferred name and pronouns does not violate Title VII, intentionally and repeatedly using the wrong name and pronouns to refer to a transgender employee could contribute to an unlawful hostile work environment.

While the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that aren't very serious, harassment is unlawful when it is so frequent or severe that it creates a hostile 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.



## Resource Break

Tools to support transgender inclusion in the workplace:

- > *Human Rights Campaign Foundation, Transgender Inclusion in the Workplace: A Toolkit for Employers*
- > *Occupational Safety and Health Administration, A Guide to Restroom Access for Transgender Workers*

## 7.4 National Origin

The law makes it illegal for an employer or other covered entity to use an employment policy or practice that applies to everyone, regardless of national origin, if it has a negative impact on people of a certain national origin and is not job-related or necessary to the operation of the business.

National origin discrimination involves treating people (applicants or employees) unfavorably because they are from a particular country or part of the world, because of ethnicity or accent, or because they appear to be of a certain ethnic background (even if they are not).

National origin discrimination also can involve treating people unfavorably because they are married to (or associated with) a person of a certain national origin.

Discrimination can occur when the victim and the person who inflicted the discrimination are the same national origin.

# IF YOU HAVE THE RIGHT TO WORK



# DON'T LET ANYONE TAKE IT AWAY

If you have the skills, experience, and legal right to work, your citizenship or immigration status shouldn't get in the way. Neither should the place you were born or another aspect of your national origin. A part of U.S. immigration laws protects legally-authorized workers from discrimination based on their citizenship status and national origin. You can read this law at [8 U.S.C. § 1324b](#).

The [Immigrant and Employee Rights Section \(IER\)](#) may be able to help if an employer treats you unfairly in violation of this law.

The law that IER enforces is 8 U.S.C. § 1324b. The regulations for this law are at 28 C.F.R. Part 44.

Call IER if an employer:

Does not hire you or fires you because of your national origin or citizenship status (this may violate a part of the law at 8 U.S.C. § 1324b(a)(1))

Treats you unfairly while checking your right to work in the U.S., including while completing the [Form I-9](#) or using [E-Verify](#) (this may violate the law at 8 U.S.C. § 1324b(a)(1) or (a)(6))

Retaliates against you because you are speaking up for your right to work as protected by this law (the law prohibits retaliation at 8 U.S.C. § 1324b(a)(5))

The law can be complicated. Call IER to get more information on protections from discrimination based on citizenship status and national origin.

**Immigrant and Employee Rights Section (IER)**

1-800-255-7688

TTY 1-800-237-2515

[www.justice.gov/ier](http://www.justice.gov/ier)

[IER@usdoj.gov](mailto:IER@usdoj.gov)



U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section, January 2019

This guidance document is not intended to be a final agency action, has no legally binding effect, and has no force or effect of law. The document may be rescinded or modified at the Department's discretion, in accordance with applicable laws. The Department's guidance documents, including this guidance, do not establish legally enforceable responsibilities beyond what is required by the terms of the applicable statutes, regulations, or binding judicial precedent. For more information, see "Memorandum for All Components: Prohibition of Improper Guidance Documents," from Attorney General Jefferson B. Sessions III, November 16, 2017.



U.S. Department of Justice. Right to Work

# 7.5

## Religion or Belief

The law protects not only people who belong to traditional, organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical, or moral beliefs.

Title VII of the Civil Rights Act prohibits employers with 15 or more employees from discriminating on the basis of religion.<sup>22</sup> Religious or belief discrimination involves treating an individual (applicant or employee) unfavorably because of their religious beliefs. This discrimination can also involve treating an individual differently because that person is married to or associated with an individual of a specific religion.

It is unlawful for workplace discrimination based on:

- An individual being part of or not part of a specific religion;
- An individual holding or not holding a specific philosophical belief;
- An individual is perceived to be part of a specific religion or hold a specific belief; or
- An individual is connected with someone who is part of a specific religion or belief.

### 7.5.1

#### Religious Reasonable Accommodation/Dress & Grooming Policies

Unless it would be an undue hardship on fire department operations, an employer must reasonably accommodate an employee's religious beliefs or practices.

Fire service leaders should be aware of religious customs, as this law applies not only to schedule changes or leave for religious observances but also to such things as dress or grooming practices that an employee has for religious reasons.

These might include, for example, wearing particular head coverings or other religious dress (such as a Jewish yarmulke or a Muslim headscarf), or wearing certain hairstyles or facial hair (such as Rastafarian dreadlocks or Sikh uncut hair and beard). It also includes an employee's observance of a religious prohibition against wearing certain garments (such as pants or miniskirts).

When an employee or applicant needs a dress or grooming accommodation for religious reasons, that person should notify the employer of the need for such an accommodation for religious reasons. If the employer reasonably needs more information, the employer and the employee should engage in an interactive process to discuss the request. If it would not pose an undue hardship, the employer must grant the accommodation.

An employer does not have to accommodate an employee's religious beliefs or practices if doing so would cause undue hardship to the employer. 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.<sup>23</sup>

An employee cannot be forced to participate (or not participate) in a religious activity as a condition of employment.



#### Resource Break

Sample Religious Accommodation Policy

- > *District of Columbia Fire and Emergency Services Department, Religious Accommodation Policy*

<sup>22</sup> U.S. Equal Employment Opportunity Commission. Fact Sheet: Religious Discrimination

<sup>23</sup> U.S. Equal Employment Opportunity Commission. Fact Sheet on Religious Garb and Grooming in the Workplace: Rights and Responsibilities

## 7.6 Disability

The disability laws forbid discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

Disability discrimination occurs when an employer or other entity covered by Title I of the Americans with Disabilities Act (ADA) (which protects private and state and local employees) or the Rehabilitation Act (which protects federal employees) treats a qualified employee or applicant unfavorably because of disability. The ADA directs that the definition of disability is construed broadly, in favor of extensive coverage, to the maximum extent permitted by the law. Nonetheless, not everyone with a medical condition is protected from disability discrimination. Under the law, a person has a disability if the person:

- Has a physical or mental condition that substantially limits a major life activity (such as walking, talking, seeing, hearing, learning, or operation of a major bodily function, such as brain, musculoskeletal, respiratory, circulatory, or endocrine function).
- Has a history of a disability.
- Is subject to an adverse employment action because of a physical or mental impairment the individual actually has or is perceived to have, except if it is transitory (lasting or expected to last six months or less) and minor.<sup>24</sup>

A medical condition does not need to be long-term, permanent, or severe to be substantially limiting. Also, if symptoms come and go, what matters is how limiting the symptoms are when they are active.

### 7.6.1 Reasonable Accommodation and Undue Hardship

It is important for fire service members to understand reasonable accommodation and undue hardship. When applicants or employees request job modifications, the disability laws require employers in the private, federal, and state and local government sectors to provide reasonable accommodations (changes to the ways things are usually done) to employees and job applicants who have or had an impairment that substantially limits a major life activity, unless doing so would cause undue hardship for the employer.

An employer doesn't have to provide an accommodation if doing so would cause undue hardship to the business. Undue hardship means that the 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. An employer may not refuse to provide an accommodation, however, just because it involves some cost. An employer does not have to provide the accommodation the employee or applicant wants, as long as it provides an effective reasonable accommodation. If more than one accommodation effectively meets the disability-related needs, the employer may choose which one to provide.

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<sup>24</sup> U.S. Equal Employment Opportunity Commission. Disability Discrimination and Employment Decisions



# 7.7

## Family and Medical Leave

The Family and Medical Leave Act (FMLA) is designed to help employees balance their work and family responsibilities by allowing them to take reasonable unpaid leave for certain family and medical reasons.<sup>25</sup>

It also seeks to accommodate the legitimate interests of employers and promote equal employment opportunities for men and women.

The Department of Labor states FMLA applies to all public agencies, all public and private elementary and secondary schools, and companies with 50 or more employees. These employers must provide an eligible employee with up to 12 weeks of unpaid leave each year for any of the following reasons:

- For the birth and care of the newborn child of an employee;
- For placement with the employee of a child for adoption or foster care;
- To care for an immediate family member (i.e., spouse, child, or parent) with a serious health condition; or
- To take medical leave when the employee is unable to work because of a serious health condition.

Under FMLA, employees are eligible for leave if they have worked for their employer at least 12 months, at least 1,250 hours over the past 12 months, and work at a location where the company employs 50 or more employees within 75 miles. Whether an employee has worked the minimum 1,250 hours of service is determined according to FLSA principles for determining compensable hours or work. Time taken off work due to pregnancy complications can be counted against the 12 weeks of family and medical leave.<sup>26</sup>

**EMPLOYEE RIGHTS UNDER THE FAMILY AND MEDICAL LEAVE ACT**  
THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

**LEAVE ENTITLEMENTS**  
Eligible employees who work for a covered employer can take up to 12 weeks of unpaid, job-protected leave in a 12-month period for the following reasons:

- The birth of a child or placement of a child for adoption or foster care;
- To bond with a child (leave must be taken within one year of the child's birth or placement);
- To care for the employee's spouse, child, or parent who has a qualifying serious health condition;
- For the employee's own qualifying serious health condition that makes the employee unable to perform the employee's job;
- For qualifying exigencies related to the foreign deployment of a military member who is the employee's spouse, child, or parent.

An eligible employee who is a covered servicemember's spouse, child, parent, or next of kin may also take up to 26 weeks of FMLA leave in a single 12-month period to care for the servicemember with a serious injury or illness.

An employee does not need to use leave in one block. When it is medically necessary or otherwise permitted, employees may take leave intermittently or on a reduced schedule.

Employees may choose, or an employer may require, use of accrued paid leave while taking FMLA leave. If an employee substitutes accrued paid leave for FMLA leave, the employee must comply with the employer's normal paid leave policies.

While employees are on FMLA leave, employers must continue health insurance coverage as if the employees were not on leave. Upon return from FMLA leave, most employees must be restored to the same job or one nearly identical to it with equivalent pay, benefits, and other employment terms and conditions.

An employer may not interfere with an individual's FMLA rights or retaliate against someone for using or trying to use FMLA leave, opposing any practice made unlawful by the FMLA, or being involved in any proceeding under or related to the FMLA.

**BENEFITS & PROTECTIONS**

**ELIGIBILITY REQUIREMENTS**  
An employee who works for a covered employer must meet three criteria in order to be eligible for FMLA leave. The employee must:

- Have worked for the employer for at least 12 months;
- Have at least 1,250 hours of service in the 12 months before taking leave;\* and
- Work at a location where the employer has at least 50 employees within 75 miles of the employee's worksite.

\*Special "hours of service" requirements apply to airline flight crew employees.

**REQUESTING LEAVE**  
Generally, employees must give 30 days' advance notice of the need for FMLA leave. If it is not possible to give 30 days' notice, an employee must notify the employer as soon as possible and, generally, follow the employer's usual procedures.

Employees do not have to share a medical diagnosis, but must provide enough information to the employer so it can determine if the leave qualifies for FMLA protection. Sufficient information could include informing an employer that the employee is or will be unable to perform his or her job functions, that a family member cannot perform daily activities, or that hospitalization or continuing medical treatment is necessary. Employees must inform the employer if the need for leave is for a reason for which FMLA leave was previously taken or certified.

Employers can require a certification or periodic recertification supporting the need for leave. If the employer determines that the certification is incomplete, it must provide a written notice indicating what additional information is required.

**EMPLOYER RESPONSIBILITIES**  
Once an employer becomes aware that an employee's need for leave is for a reason that may qualify under the FMLA, the employer must notify the employee if he or she is eligible for FMLA leave and, if eligible, must also provide a notice of rights and responsibilities under the FMLA. If the employee is not eligible, the employer must provide a reason for ineligibility.

Employers must notify their employees if leave will be designated as FMLA leave, and if so, how much leave will be designated as FMLA leave.

**ENFORCEMENT**  
Employees may file a complaint with the U.S. Department of Labor, Wage and Hour Division, or may bring a private lawsuit against an employer.

The FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law or collective bargaining agreement that provides greater family or medical leave rights.

For additional information or to file a complaint:  
**1-866-4-USWAGE**  
(1-866-487-9243) TTY: 1-877-889-5627  
[www.dol.gov/whd](http://www.dol.gov/whd)  
U.S. Department of Labor | Wage and Hour Division

WH1420 REV 04/16

U.S. Department of Labor. Family and Medical Leave Act (FMLA) Poster

<sup>25</sup> U.S. Department of Labor. Family and Medical Leave Act

<sup>26</sup> U.S. Department of Labor. Family and Medical Leave Act Employee Guide



## 8.1.1

### Time Limits for Filing a Charge with the EEOC

Employers and victims should know the time limits for filing a charge of discrimination.

Anti-discrimination laws outline a limited amount of time for filing a charge of discrimination. The EEOC indicates that the locality where the discrimination occurred may also determine the time limit for filing a Charge of Discrimination. Typically, individuals have 180 calendar days to file a Charge of Discrimination. The deadline is extended to 300 calendar days if a state or local agency enforces a state or local law that prohibits employment discrimination on the same basis.

Time limits for age discrimination charges vary. The filing deadline is only extended to 300 days if there is a state law prohibiting discrimination in employment and a state agency or authority enforcing that law.

In the event of more than one discriminatory event, the issue of the deadline can become murky. The EEOC will look at whether the claim is one of a “continuing” nature in determining whether a filing deadline is met. The EEOC will look at whether the individual is complaining about a discrete act (such as a refusal to provide training) or a series of separate acts. When individuals are filing charges of hostile work environment or sexual harassment, those usually involve a series of acts rather than a discrete act. How the courts in a particular area apply what lawyers call the “continuing violation” doctrine differs depending on where you are in the United States.

Victims and employers should note that the filing time limit outlined by the EEOC will not be extended during internal resolution processes, such as grievance, mediation, or arbitration.

## 8.2

### Limitation of Coverage

Fire service organizations and their employees need to understand the limits of coverage for enforcement by the EEOC.

Not all employees are protected by federal law. Coverage can vary depending on the type of employer, the number of employees, and the alleged discrimination.<sup>28</sup> This variance is based on whether the employer is a private entity, federal, state, or local government agency, an employment agency, or a labor union. Most fire departments will fall under state or local government, business/private employers, or labor unions.

### 8.2.1

#### Coverage of State or Local Governments

State and local government fire departments are covered if “it has 15 or more employees who worked for the agency for at least twenty calendar weeks (in this year or last)” by the law known as Title VII (race, color, religion, sex, national origin, disability, or genetic information) and the ADA. The ADEA includes state and local governments in its definition of “employer.”<sup>29</sup>

### 8.2.2

#### Coverage of Business/Private Employers

Employers need to have at least 15 employees for 20 calendar weeks in the current or past year to be covered by Title VII and the ADA. In some states, under state law, the threshold is less than 15 employees.<sup>30</sup>

<sup>28</sup> U.S. Equal Employment Opportunity Commission. Coverage

<sup>29</sup> U.S. Equal Employment Opportunity Commission. Coverage of State and Local Governments

<sup>30</sup> U.S. Equal Employment Opportunity Commission. Coverage of Business/Private Employers

## 8.2.3

### Coverage of Labor Unions

Labor unions are covered by federal laws when labor organizations either operate a hiring hall or have at least 15 members. Labor unions are prohibited from discriminating in their capacity as an employer, in their capacity as bargaining representatives for their members, or as referral agencies or hiring halls.<sup>31</sup>

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<sup>31</sup> U.S. Equal Employment Opportunity Commission. Coverage of Labor Unions and Joint Apprenticeship Committees

# 9

## EEOC Process

The EEOC will conduct the intake process for all charges filed. However, what happens after that may vary.<sup>32</sup>

### 9.1

#### Dismissal for Lack of Jurisdiction

The EEOC may dismiss the charge because it determines that the threshold requirements are not met. The EEOC will issue a right-to-sue notice to the individual providing them with 90 days to file a lawsuit in federal court.

### 9.2

#### Dismissal without Investigation

The EEOC may decide not to ask the agency (called the Respondent by the EEOC) for a statement explaining its position for further information. The EEOC will issue a right-to-sue notice to the individual providing them with 90 days to file a lawsuit in federal court.

### 9.3

#### Dismissal Following Investigation

The EEOC may investigate and ask the agency to provide a statement explaining its position with respect to the charge and request additional information. The EEOC may then ask the individual for more information. The EEOC will determine whether there is probable cause that the wrongdoing occurred.

If the EEOC issues a probable cause finding, it will invite the parties to attempt to conciliate a resolution. If the

matter is not resolved, the EEOC may issue a right-to-sue notice to the individual providing them 90 days to file a lawsuit in federal court.

A probable cause finding is not a judicial determination. At this point, the evidence is very limited. For example, no depositions have been taken.

### 9.4

#### Referral to EEOC Headquarters

If a probable cause finding is issued, the EEOC may send the matter to its headquarters in Washington D.C. and ask for permission to pursue the case in federal court on behalf of the United States government. If permission is granted, the individual is permitted to intervene in the case – that is, come into the case as an additional party plaintiff.

If headquarters does not give its approval, the EEOC will issue a right-to-sue notice to the individual providing them with 90 days to file a lawsuit in federal court.

### 9.5

#### Individual Request for Right-to-Sue Letter

An individual does not have to wait for a right-to-sue notice if they are ready to go to court. They can

<sup>32</sup> U.S. Equal Employment Opportunity Commission. Federal EEO Complaint Processing Procedures



request that the EEOC issue one before it completes its investigation, typically after 180 days has passed. This is not something an individual should consider unless they have spoken with legal counsel and are ready to proceed in court.

## 9.6 Different Rules for ADEA Claims

If someone is seeking relief for age discrimination under the ADEA, they can file a lawsuit 60 days after they file a charge with the EEOC and do not need to request a right-to-sue notice.<sup>33</sup>

## 9.7 The United States Department of Justice (DOJ)

When units of government are involved, sometimes the EEOC will refer the matter to the United States Department of Justice for prosecution. If the DOJ takes the case, the individual is permitted to intervene. If the DOJ does not take the case, the individual gets the right-to-sue letter.

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<sup>33</sup> Code of Federal Regulations. PART 1626 - PROCEDURES - AGE DISCRIMINATION IN EMPLOYMENT ACT

# 10

## Retaliation

Fire service leaders are prohibited from punishing applicants or employees for asserting their rights to be free from employment discrimination, including harassment.

It is important for individuals who speak up against discriminatory behavior to know that they are protected. EEO anti-discrimination laws are in place to protect individuals from retaliation and opposing employment practices. Retaliation is prohibited against a person that files a discrimination charge, participates in an employment discrimination investigation, testifies, or participates in a lawsuit, investigation, or employment discrimination proceeding.<sup>34</sup>

A retaliation charge may be filed with the EEOC when something bad happens to the individual after (1) they have complained about conduct prohibited by federal law; or (2) they participated in an investigation into conduct prohibited by federal law (EEO activity).

Examples of retaliation because of an individual's EEO activity may include:

- Reprimanding the employee;
- Providing a performance evaluation rated lower than should be;
- Transferring the employee to a less desirable position or duty;
- Refusing to provide the employee with job training;
- Engaging in verbal or physical abuse;
- Threatening to make or actually making reports to the authorities;
- Increasing scrutiny;
- Excluding an employee from work meetings that are essential for employment;

**Management's Responsibilities: Identifying and Preventing Retaliation**

**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Rehabilitation Act, GINA and the Equal Pay Act prohibit retaliation by an agency because an employee or applicant for employment or a former employee engaged in protected activity.**

**RETALIATION**  
Treatment that is reasonably likely to deter protected activity is illegal.  
Adverse treatment that would likely dissuade a reasonable person from making or supporting a complaint of discrimination.  
No requirement that the adverse action be a tangible personnel action.

**PROTECTED ACTIVITY: PARTICIPATION**  
The anti-retaliation provisions make it unlawful to discriminate against an individual because he/she has filed a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, hearing, or litigation under the governing EEOC statutes.  
In the federal sector, once someone initiates contact with an EEO Counselor, he/she has participated in the EEO process.

**PROTECTED ACTIVITY: OPPOSITION**  
The anti-retaliation provisions also make it unlawful to discriminate against an individual because she or he opposed any policy or practice made unlawful under the employment anti-discrimination statutes.

**"REASONABLE" AND "GOOD FAITH" BELIEF**  
**WHAT IS "UN-REASONABLE?"**  
Participating in work stoppages that violate CBA provisions.  
Badgering employees to give supporting witness statements.  
Searching for, copying and disseminating confidential documents relating to discrimination.  
**Unlawful activities or threats of violence...**

**RETALIATORY ACTION**  
Actions need not materially affect the terms or conditions of employment to constitute retaliation.  
The Commission has taken the position that the statutory anti-retaliation provisions prohibit any action that is based on a retaliatory motive and is likely to deter the employee or others from engaging in protected EEO activity.  
In general, protected activity comes in one of two forms: participation or opposition.

**EXAMPLES OF PARTICIPATION**  
1. Filing an EEO complaint.  
2. Serving as a witness in an EEO matter.  
3. Representing an individual in an EEO matter.  
4. Requesting a reasonable accommodation.

**EXAMPLES OF OPPOSITION**  
Complaining to a management official about being denied a request for reasonable accommodation.  
Picketing.  
Signing a petition to be presented to the administration about a perceived discriminatory practice at the agency.

**HOW TO PROTECT AGAINST RETALIATION CLAIMS**  
**EVALUATE** all adverse employment actions prior to implementation.  
**IMPLEMENT** and enforce clear "no-retaliation" policies.  
**COMMUNICATE** with the complaining employee.

**FOR ADDITIONAL INFORMATION**  
Compliance Manual Section 8: Retaliation  
<http://www.eeoc.gov/policy/docs/retal.pdf>

### U.S Equal Employment Opportunity Commission. Retaliation

- Spreading false rumors;
- Treating a family member negatively; or
- Creating a difficult work environment to punish the employee.

<sup>34</sup> U.S Equal Employment Opportunity Commission. Retaliation

## 10.1 Preventing Retaliation

Retaliation is not only unlawful and unethical, but it is also bad for the organization. Fire service leaders should create an environment in which employees feel comfortable reporting offensive conduct so that it can be investigated and addressed.

The EEOC offers the following practices for preventing retaliation:

- Ensure all employees know that retaliation is prohibited;
- Assure all employees that they will not be punished for speaking up in good faith and taking actions that are protected by laws;
- Respond promptly to questions related to discrimination;

- Respond promptly and effectively to all discrimination-related concerns and complaints;
- Ensure those in a supervisory role understand their responsibility for addressing and preventing retaliation; and
- Ensure all employees are held accountable for complying with and enforcing discrimination laws and policies.<sup>35</sup>

## 10.2 Remedying Retaliation

Individuals experiencing retaliation after filing an EEOC complaint or participating in an investigation should notify the EEOC investigator and file a new complaint.

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<sup>35</sup> U.S. Equal Employment Opportunity Commission. What is retaliation and how can I prevent it?

The National Volunteer Fire Council and Women in Fire are focused on raising awareness and education to eliminate harassment and discrimination to create a more respectful fire service. We encourage each of you to demonstrate your commitment to creating a respectful, harassment-free fire service for future generations.

