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What Is Harassment? An Overview from Federal Employment Law

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Title VII of the Civil Rights Act of 1964 generally prohibits discrimination in the workplace, but it does not expressly prohibit harassment. The Supreme Court has interpreted the statute to prohibit certain forms of harassment, however, including sexual harassment. The Court has established legal standards for determining when such conduct amounts to a violation. *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 66–67, 73 (1986). In general, harassment based on a protected characteristic violates employment antidiscrimination laws when it becomes severe or pervasive. *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 23 (1993). This assessment considers all the circumstances, including the frequency of the discriminatory conduct; whether it is physically threatening or humiliating; and whether it unreasonably interferes with an employee’s work performance. *See, e.g., Equal Employment Opportunity Commission (EEOC) v. Central Wholesalers, Inc.*, 573 F.3d 167, 175–76 (4th Cir. 2009). Courts commonly observe that the bar for showing actionable harassment is high, and they regularly dismiss harassment claims when plaintiffs fail to show sufficient severity or pervasiveness. *See, e.g., EEOC v. Sunbelt Rentals, Inc.*, 521 F.3d 306, 315 (4th Cir. 2008).

Since the Supreme Court first recognized a Title VII sexual harassment claim in its unanimous 1986 *Meritor* decision, courts have expanded harassment doctrines to cover other forms of employment harassment, including harassment based on sexual orientation, gender identity, pregnancy, race, color, national origin, religion, age, disability, military reserve service, opposition to unlawful discrimination, and participation in antidiscrimination proceedings.

Antiharassment case law is still developing, including around issues of sexual orientation and gender identity. The Supreme Court recognized these characteristics as protected by Title VII in 2020. *Bostock v. Clayton County*, 590 U.S. 644 (2020). The EEOC, charged with enforcing Title VII, issued updated harassment guidance in 2024, including guidance addressing these bases. EEOC, EEOC-CVG-1990-8, POLICY GUIDANCE ON CURRENT ISSUES OF SEXUAL HARASSMENT (Mar. 19, 1990). After a lawsuit, the EEOC rescinded the 2024 harassment guidance in its entirety in 2026.

In addition to statutes that bar harassment, Congress has passed other laws to facilitate reporting and prevention. In recent years, Congress has legislated to restrict nondisclosure agreements and mandatory arbitration for some harassment claims.

Antiharassment doctrine is largely judge-made. As many antiharassment obligations are not fully codified, Congress could consider adding specific antiharassment provisions to antidiscrimination laws such as Title VII, the Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327, or others. It could specify examples of harassing conduct and could expand or limit the behavior current law makes illegal.

Contents

Harassment Under Title VII	1
Title VII Sexual Harassment Claims	2
Other Bases for Harassment Claims Under Title VII	4
Employer Liability	6
Harassment Under Other Antidiscrimination Statutes	7
Extending Harassment Protections to Sexual Orientation and Gender Identity	8
EEOC Harassment Guidance Changes	10
Other Harassment-Related Statutory Requirements: Reporting, Disclosure, and Prevention	11
Considerations for Congress	12

Contacts

Author Information	14
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Several federal employment statutes bar discriminatory harassment. This now-common¹ claim is not one typically defined in the statutes themselves, however; instead, harassment claims have primarily been recognized by courts on the theory that harassment can significantly affect plaintiffs' working conditions in violation of statutory protections. Since the Supreme Court first recognized a sexual harassment claim as employment discrimination in 1986,² antiharassment protections have expanded to cover harassment based on a worker's religion, disability, age, and other protected characteristics.

This report describes how the Supreme Court and federal appellate courts have defined the scope of antiharassment protections in the employment context³ and determined the limits of liability, including recent case law applying statutory protections to harassment based on sexual orientation and gender identity. The report also describes legislative responses in the form of harassment-related reporting and confidentiality laws, discusses some developments in agency enforcement, and concludes with considerations for Congress (including recent legislative proposals).

Harassment Under Title VII

Antiharassment law began as a judicial application of Title VII of the Civil Rights Act of 1964, which makes it unlawful for employers to discriminate “against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.”⁴ Though Title VII’s antidiscrimination provisions do not expressly prohibit harassment, the Supreme Court and federal circuit courts have interpreted Title VII’s prohibition on discrimination in the “terms, conditions, or privileges of employment” to prohibit harassment.⁵ The Supreme Court first adopted this interpretation in the context of sexual harassment in the 1986 case *Meritor Savings Bank v. Vinson*, stating that “Title VII affords employees the right to work in an environment free from discriminatory intimidation, ridicule, and insult.”⁶ In reaching its decision, the *Meritor* Court acknowledged guidance and agency precedent from the U.S. Equal Employment Opportunity Commission (EEOC), which is charged with enforcing Title VII and other employment laws, that had treated harassment as covered by Title VII.⁷

Under *Meritor*’s interpretation, where mistreatment based on a protected characteristic is harmful enough, it changes working conditions and can amount to a discriminatory change in the “terms, conditions, or privileges of employment.”⁸ When a plaintiff raises a Title VII harassment claim,

¹ *Enforcement and Litigation Statistics: Table E2a. Charges Alleging Harassment Charge Receipts and Resolutions by Type (All Statutes) FY 2010 - FY 2024*, EEOC (2024), https://rejouer.perma.cc/replay-web-page/w/id-0e8db718707d/37a8eec1ce19687d132fe29051dca629d164e2c4958ba141d5f4133a33f0688f/20260402172354mp_/https://www.eeoc.gov/sites/default/files/2025-02/Table_E2a_Charges_Alleging_Harassment_Charge_Receipts_and_Resolutions_by_Type_%28All_Statutes%29_FY_2010_-_FY_2024.xlsx [https://perma.cc/ULV4-P2HP].

² *Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 66–67, 73 (1986) (recognizing sexual harassment as a violation of Title VII and expressly holding that such claims are actionable under Title VII).

³ Although courts may apply antiharassment precedent from employment cases to other forms of harassment, harassment outside of employment (such as in housing and federally funded programs) is beyond the scope of this report.

⁴ 42 U.S.C. § 2000e-2(a)(1).

⁵ *Meritor*, 477 U.S. at 66–67, 73; 42 U.S.C. § 2000e-2(a)(1); *Sexual Harassment*, EEOC, <https://www.eeoc.gov/sexual-harassment> [https://perma.cc/Z2UM-HX7H] (last visited June 1, 2026).

⁶ *Meritor*, 477 U.S. at 65 (summarizing and agreeing with EEOC guidance and precedent).

⁷ *Id.*

⁸ *Id.* at 64.

federal courts often describe the action as alleging either a “harassment” or a “hostile work environment” claim. That these two terms are used interchangeably perhaps reflects the fact that the statute does not expressly prohibit or define “harassment.”

Courts vary in their formulations of the overall analysis required for Title VII harassment claims, but they generally require a plaintiff to satisfy the following elements for actionable harassment:

- a protected category under Title VII (such as sex)⁹ motivated the harassment;
- the plaintiff *subjectively* viewed the harassment as creating an abusive environment; and
- a “reasonable” person would also *objectively* view the work environment as abusive, characterized by severe or pervasive mistreatment.¹⁰

In practice, most claims turn on the third element, whether the mistreatment was objectively “severe or pervasive”¹¹ enough to create an abusive or hostile work environment. Under this standard, even where there is offensive or harassing conduct, a harasser’s actions will not violate Title VII unless those acts in total were “severe or pervasive,” bringing the plaintiff’s situation in line with other cases courts have found amounted to harassment. Federal courts consider “all the circumstances,” including “the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee’s work performance.”¹²

Mistreatment counts if it is severe *or* pervasive, however; it need not be both. One very serious event, like a sexual assault, may create a hostile environment.¹³ Milder mistreatment may create a hostile environment as well if it happens every day.¹⁴ Courts often review the frequency of harassing incidents in a case.¹⁵ As the Supreme Court has observed, “[t]his is not, and by its nature cannot be, a mathematically precise test.”¹⁶ Perhaps because assessing whether harassment is “severe or pervasive” is such a fact-specific standard, and because there are so many harassment cases to compare as precedent, federal appellate case law sometimes diverges on seemingly similar facts.

Title VII Sexual Harassment Claims

As described above, the Supreme Court first recognized harassment as a viable theory of employment discrimination in a sexual harassment case, and sexual harassment claims are some

⁹ 42 U.S.C. §§ 2000e-2(a)(1), (a)(2).

¹⁰ *See, e.g.,* LeGrand v. Area Res. for Cmty. & Hum. Servs., 394 F.3d 1098, 1102 (8th Cir. 2005) (stating plaintiff must show “an objectively hostile or abusive environment”); Mendoza v. Borden, Inc., 195 F.3d 1238, 1245 (11th Cir. 1999) (en banc) (setting forth similar elements to establish a “hostile-environment sexual-harassment claim”).

¹¹ *Meritor*, 477 U.S. at 67.

¹² *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23 (1993).

¹³ *Lapka v. Chertoff*, 517 F.3d 974, 983–84 (7th Cir. 2008) (“[A]ssaults within the workplace create an objectively hostile work environment for an employee even when they are isolated.”).

¹⁴ *EEOC v. BNSF Ry. Co.*, 150 F.4th 948, 966 (8th Cir. 2025).

¹⁵ *See, e.g.,* LeGrand, 394 F.3d at 1102 (characterizing conduct as “three isolated incidents, which occurred over a nine-month period” to hold conduct did not amount to Title VII violation); *Burnett v. Tyco Corp.*, 203 F.3d 980, 984–85 (6th Cir. 2000) (“[A] single battery coupled with two merely offensive remarks over a six-month period does not create an issue of material fact as to whether the conduct alleged was sufficiently severe to create a hostile work environment.”).

¹⁶ *Harris*, 510 U.S. at 23.

of the most common harassment claims under Title VII.¹⁷ In general, courts most readily conclude that alleged conduct is sufficiently severe or pervasive in sexual harassment cases when the behavior constitutes rape¹⁸ or involves physical threats at work,¹⁹ repeated solicitation for sex,²⁰ repeated touching of intimate body parts,²¹ or daily or regular verbal harassment.²²

Mistreatment need not take the form of unwanted sexual advances or other sexual conduct to constitute sexual harassment, however.²³ Demonstrations of “‘anti-female animus’ can support a sexual harassment claim.”²⁴ This type of hostile environment is one that “is hostile because it is ‘sexist rather than sexual.’”²⁵ It might include frequent gender-specific epithets or targeting a worker for discipline or humiliation on account of sex.²⁶ In one case, the Eighth Circuit²⁷ concluded that plaintiffs could show a hostile environment after pointing to a “plethora of offensive incidents” indicative of hostility to women, including a male worker urinating in a female worker’s water bottle and several men urinating in another woman’s gas tank.²⁸

As is the case with unwanted sexual advances, sexist behavior must be severe or pervasive to qualify as harassment.²⁹ Courts have emphasized that “conduct must be extreme to amount to a change in the terms and conditions of employment,” and that federal law is not meant to become

¹⁷ *Enforcement and Litigation Statistics: Table E2b. Charges Alleging Harassment Charge Receipts and Resolutions by Type (All Statutes) FY 2010 - FY 2024*, EEOC (2024), <https://www.eeoc.gov/data/enforcement-and-litigation-statistics-0> [<https://perma.cc/ULV4-P2HP>].

¹⁸ See *Lapka*, 517 F.3d at 983–84 (concluding co-worker rape was severe enough to constitute actionable harassment under Title VII); *Gary v. Long*, 59 F.3d 1391, 1397 (D.C. Cir. 1995) (holding supervisor’s harassment, culminating in rape, “plainly sufficient to state a claim for ‘hostile environment sexual harassment.’”) (quoting *Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 67 (1986)).

¹⁹ See *Kaytor v. Elec. Boat Corp.*, 609 F.3d 537, 540–41, 550–52 (2d Cir. 2010) (stating conduct was severe or pervasive enough where harasser told her at least six times that he wanted to choke her, often said he wished her dead, told her he would kill her if she reported his comments, and made sexual comments, among other acts).

²⁰ See *Hawkins v. Anheuser-Busch, Inc.*, 517 F.3d 321, 334–35 (6th Cir. 2008) (holding conduct severe or pervasive enough where harasser asked plaintiff to perform oral sex and have sex several times and made regular sexual references to her private body parts, among other mistreatment).

²¹ See *id.* (indicating harasser regularly tried to touch victim, rubbed against her with his private parts, tried to grab her waist, made “lewd and sexual comments ‘all the time’”); *Hulsey v. Pride Rests., LLC*, 367 F.3d 1238, 1248 (11th Cir. 2004) (concluding conduct was severe or pervasive enough where harasser repeatedly attempted to touch victim’s breasts, placed his hands down her pants, tried to pull off her pants, and enlisted others to hold her while he tried to grope her).

²² See *EEOC v. BNSF Ry. Co.*, 150 F.4th 948, 966 (8th Cir. 2025), *reh’g denied*, No. 24-2082, 2025 WL 3085999 (8th Cir. Nov. 5, 2025) (stating hostile environment could be found where plaintiff experienced unsanitary bathroom conditions aimed at intimidating women, “endured discriminatory comments—up to three times a week—and saw sexually explicit graffiti every time that she worked”); *Copeland v. Ga. Dep’t Corr.*, 97 F.4th 766, 776 (11th Cir. 2024) (“Undoubtedly, conduct that occurs daily (even over a shorter span of time) is frequent.”).

²³ See *Oncale v. Sundowner Offshore Servs.*, 523 U.S. 75, 80 (1998); *Williams v. Gen. Motors Corp.*, 187 F.3d 553, 565 (6th Cir. 1999) (“Any unequal treatment of an employee *that would not occur but for the employee’s gender* may, if sufficiently severe or pervasive under the *Harris* standard, constitute a hostile environment in violation of Title VII.”).

²⁴ *Passananti v. Cook County*, 689 F.3d 655, 664 (7th Cir. 2012).

²⁵ *Id.*

²⁶ *Id.* at 664, 667; *Sharp v. S&S Activewear, L.L.C.*, 69 F.4th 974, 979 (9th Cir. 2023) (holding sexual harassment claim can be based on “use of sexually degrading, gender-specific epithets”).

²⁷ This report references a number of decisions by federal appellate courts of various regional circuits. For purposes of brevity, references to a particular circuit in the body of this report (e.g., the Eighth Circuit) refer to the U.S. Court of Appeals for that particular circuit.

²⁸ *Hall v. Gus Constr. Co.*, 842 F.2d 1010, 1012, 1015 (8th Cir. 1988).

²⁹ *Boumehti v. Plastag Holdings, LLC*, 489 F.3d 781, 789 (7th Cir. 2007) (holding plaintiff could make out a harassment claim where her supervisor “made at least eighteen sexist or sexual comments in less than a year’s time”).

a “general civility code.”³⁰ “[S]imple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the ‘terms and conditions of employment.’”³¹

Though plaintiffs often bring Title VII sexual harassment claims as “hostile work environment” claims, they may also show a Title VII violation with evidence of “quid pro quo” harassment.³² This is evidence that a supervisor took a “tangible employment action” against an employee (such as firing the employee or denying them a promotion)³³ in relation to the supervisor’s sexual demands.³⁴ Though some federal appellate courts require a plaintiff to show a tangible employment action resulting from his or her *refusal* to submit to demands for sexual conduct,³⁵ other circuit courts will also accept a showing that an employee submitted to unwelcome advances to avoid a tangible employment action.³⁶

Other Bases for Harassment Claims Under Title VII

A quid pro quo claim is unique to sexual harassment, but other hostile environment claims beyond those based on sex have gained recognition under Title VII. Title VII’s prohibitions against discrimination based on race, color,³⁷ and national origin³⁸ have supported harassment claims on those grounds.³⁹ Such claims have included an employee who alleged that he found a racial epithet written on his locker and, after a string of other insults, discovered a noose hanging

³⁰ Faragher v. City of Boca Raton, 524 U.S. 775, 787–88 (1998).

³¹ *Id.* (citation omitted) (quoting Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 82 (1998)).

³² Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 752 (1998) (as an example of quid pro quo harassment, explaining that such claims may concern allegations that “an employer demanded sexual favors from an employee in return for a job benefit,” which would constitute “explicit” sex discrimination in the terms and conditions of employment).

³³ *Id.* at 761 (“A tangible employment action constitutes a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.”).

³⁴ *See, e.g.*, Hulsey v. Pride Rests., LLC, 367 F.3d 1238, 1245 n.4 (11th Cir. 2004) (observing that quid pro quo is a term courts frequently used, before the Supreme Court’s *Ellerth* decision, to refer to claims “where a benefit of employment was tied to a demand for sexual favors”).

³⁵ *See, e.g.*, Pinkerton v. Colo. Dep’t of Transp., 563 F.3d 1052, 1059–60 (10th Cir. 2009) (stating that to prevail on quid pro quo claim, plaintiff “must show that a reasonable jury could find [that her supervisor] conditioned concrete employment benefits on her submission to sexual conduct and had her fired when she did not comply”); Hernandez-Loring v. Universidad Metropolitana, 233 F.3d 49, 52 (1st Cir. 2000) (“Under Title VII, quid pro quo sexual harassment can be shown where a supervisor uses employer processes to punish a subordinate for refusing to comply with sexual demands.”).

³⁶ *See, e.g.*, Cram v. Lamson & Sessions Co., 49 F.3d 466, 473 (8th Cir. 1995) (requiring evidence of either a refusal that results in a tangible job detriment or submission as an implied or express condition of receiving job benefits); Holly D. v. Cal. Inst. of Tech., 339 F.3d 1158, 1162–64 (9th Cir. 2003) (describing allegations that plaintiff was forced to engage in sexual intercourse with her supervisor, and that “there was an implication that her continued employment depended on her complying with [his] unwelcome sexual advances”).

³⁷ Press Release, EEOC, Rugo Stone Sued for Discrimination Based on National Origin, Religion, and Color (Aug. 3, 2011), <https://www.eeoc.gov/newsroom/rugo-stone-sued-discrimination-based-national-origin-religion-and-color#:~:text=The%20comments%20occurred,in%20the%20cup> [<https://perma.cc/7M86-AK97>]; EEOC v. Cent. Wholesalers, Inc., 573 F.3d 167, 174–77 (4th Cir. 2009) (analyzing Title VII harassment claims based on race and sex); Chislett v. N.Y.C. Dep’t of Educ., 157 F.4th 172, 193 (2d Cir. 2025) (involving race and constructive discharge).

³⁸ EEOC v. WC&M Enters., Inc., 496 F.3d 393, 399–02 (5th Cir. 2007) (analyzing Title VII harassment claims based on religion and national origin).

³⁹ 42 U.S.C. § 2000e-2(a)(1).

in a work shed.⁴⁰ The worker was so upset that he became nauseated and vomited.⁴¹ Another employee, alleging discrimination based on color and national origin, reported almost-daily insults, including the employee being told he was the same color as human feces.⁴²

Title VII's bar on discrimination based on religion also supports harassment claims.⁴³ Allegations in such cases have included a worker being told, after his brother's suicide, that his relative was suffering in hell and the employee would go there too if he did not "find God."⁴⁴ The harasser then called on her coworker daily, for more than three weeks, to find God.⁴⁵ Religious discrimination can also take the form of harassing a worker because they have sought religious accommodations, such as prayer breaks or time off for sabbath observance.⁴⁶

Pregnancy, too, qualifies as a protected class for employment discrimination purposes, falling under Title VII's protections against sex discrimination. In 1978, the Pregnancy Discrimination Act amended Title VII and specified that employers may not discriminate based on pregnancy and related medical conditions.⁴⁷ Courts have recognized that pregnancy harassment, such as managers urging pregnant workers to quit⁴⁸ or to terminate a pregnancy,⁴⁹ can give rise to Title VII claims.⁵⁰

Title VII not only bars sexual, racial, and religious harassment as discussed above, it also generally bars retaliatory harassment. This happens when, for example, a plaintiff reports a potential Title VII violation and a manager reacts by harassing the employee.⁵¹ This cause of action arises from Title VII's antiretaliation provisions. The statute bars retaliatory discrimination for two types of protected activity: *opposing* a potential Title VII violation and *participating* in a Title VII proceeding.⁵² Retaliatory harassment cases have gained recognition as a form of

⁴⁰ *Tademy v. Union Pac. Corp.*, 614 F.3d 1132, 1137 (10th Cir. 2008).

⁴¹ *Id.* at 1137.

⁴² EEOC, *supra* note 37.

⁴³ *WC&M Enters., Inc.*, 496 F.3d at 399–02.

⁴⁴ *Winspear v. Cmty. Dev., Inc.*, 574 F.3d 604, 605–06 (8th Cir. 2009).

⁴⁵ *Id.*

⁴⁶ *Abramson v. William Paterson Coll. of N.J.*, 260 F.3d 265, 279 (3d Cir. 2001).

⁴⁷ 42 U.S.C. § 2000e(k).

⁴⁸ *Zisumbo v. McCleod USA Telecomms. Servs., Inc.*, 154 F. App'x 715, 726 (10th Cir. 2005).

⁴⁹ *Bergstrom-Ek v. Best Oil Co.*, 153 F.3d 851, 854–55 (8th Cir. 1998) (discussing plaintiff's allegation that employer told her at least six times to get an abortion, calling her at home and offering to pay for it); *Hercule v. Wendy's of N.E. Fla., Inc.*, No. 10-80248-CIV, 2010 WL 1882181, at *1 (S.D. Fla. May 11, 2010) (describing allegation that manager encouraged plaintiff to have an abortion).

⁵⁰ CRS Report R46821, *Pregnancy and Labor: An Overview of Federal Laws Protecting Pregnant Workers*, by April J. Anderson (2023).

⁵¹ *Harassment*, EEOC, <https://www.eeoc.gov/harassment> [<https://perma.cc/G4GL-2EUJ>] (last visited June 1, 2026).

⁵² "Opposition" is when an employee "has opposed any practice" Title VI prohibits, and "participation" is when an employee has "participated in any manner in an investigation, proceeding, or hearing" under the statute. 42 U.S.C. § 2000e-3(a); *see also* *Hertz v. Luzenac Am., Inc.*, 370 F.3d 1014, 1015–16 (10th Cir. 2004) ("Protected opposition can range from filing formal charges to voicing informal complaints to superiors."); *Merritt v. Dillard Paper Co.*, 120 F.3d 1181, 1186 (11th Cir. 1997) (holding that plaintiff, by giving deposition testimony in a Title VII proceeding, engaged in protected participation under Title VII). In the EEOC's view, participation in an employer's internal investigation counts as "participation" for purposes of retaliation. *Questions and Answers: Enforcement Guidance on Retaliation and Related Issues*, EEOC (Aug. 26, 2016), <https://www.eeoc.gov/laws/guidance/questions-and-answers-enforcement-guidance-retaliation-and-related-issues> [<https://perma.cc/JS35-WDY2>]. Several courts, however, have reached the opposite conclusion. *See, e.g.,* *Townsend v. Benjamin Enters., Inc.*, 679 F.3d 41, 49 (2d Cir. 2012) ("Every Court of Appeals to have considered this issue squarely has held that participation in an internal employer investigation not connected with a formal EEOC proceeding does not qualify as protected activity under the participation clause.")

prohibited retaliation with the EEOC⁵³ and federal courts, except in one circuit⁵⁴ where the issue has not yet been decided.

There is disagreement among courts, however, about the standards to apply to retaliatory harassment. Some courts apply the usual standard for harassment, requiring that mistreatment be “severe or pervasive.”⁵⁵ Other courts apply a different standard, developed for assessing retaliation cases.⁵⁶ Under this standard, mistreatment qualifies as retaliatory harassment where it is “materially adverse,” that is, when it “well might have dissuaded a reasonable worker from making or supporting a charge of discrimination.”⁵⁷ Some courts have applied a combination of the two standards in retaliatory harassment cases.⁵⁸

Employer Liability

Even when a plaintiff presents adequate evidence of harassment at work, including sufficiently severe or pervasive mistreatment, the plaintiff must also show a reason to hold the employer liable for the harassment.⁵⁹ The Supreme Court has held that employers are not “automatically liable” for harassment.⁶⁰ Under certain parameters,⁶¹ an employer’s liability for harassment turns on the harasser’s authority over the victim (i.e., whether they were the victim’s supervisor), whether the harassment led to a tangible employment action such as a demotion, and whether the employee properly invoked any reporting or complaint system.⁶² While harassment by a supervisor or even a fellow employee is more likely to lead to employer liability, employers can also be liable if they are negligent⁶³ in allowing third parties⁶⁴ (clients or customers) to harass employees. If an employer takes reasonable care to prevent and promptly correct any sexually

⁵³ EEOC, *supra* note 51.

⁵⁴ The Fifth Circuit has observed that it has not “recognized a retaliatory hostile work environment cause of action.” *Heath v. Bd. of Supervisors*, 850 F.3d 731, 742, n.5 (5th Cir. 2017); *see also Blanchard v. Tulane Univ.*, 636 F. Supp. 3d 642, 654–55 (E.D. La. 2022) (“A retaliatory hostile work environment claim is not recognized by the Fifth Circuit.”).

⁵⁵ *Ogbonna-McGruder v. Austin Peay State Univ.*, 91 F.4th 833, 842 (6th Cir. 2024), *cert. denied*, 144 S. Ct. 2689 (2024) (mem.) (ruling on age-based discrimination and retaliation claims and requiring severe or pervasive mistreatment), *abrogated on other grounds as stated in Kellar v. Yunion, Inc.*, 157 F.4th 855, 871 (6th Cir. 2025); *Ray v. Henderson*, 217 F.3d 1234, 1245 (9th Cir. 2000) (stating that retaliatory harassment must be sufficiently severe or pervasive).

⁵⁶ *Carr v. N.Y.C. Transit Auth.*, 76 F.4th 172, 180 (2d Cir. 2023); *Monaghan v. Worldpay US, Inc.*, 955 F.3d 855, 862 (11th Cir. 2020).

⁵⁷ *Hare v. Potter*, 220 F. App’x 120, 128, 131–32 (3d Cir. 2007).

⁵⁸ *Rae v. Woburn Pub. Schs.*, 113 F.4th 86, 101, 109 (1st Cir. 2024), *cert. denied*, 145 S. Ct. 1431 (2025) (mem.) (adjudicating claims of disability discrimination); *Baird v. Gotbaum*, 792 F.3d 166, 171–72 (D.C. Cir. 2015).

⁵⁹ *Gorzynski v. JetBlue Airways Corp.*, 596 F.3d 93, 103 (2d Cir. 2010) (“Beyond demonstrating a hostile work environment, a plaintiff must show a basis for imputing the objectionable conduct to the employer.”).

⁶⁰ *Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 72 (1986) (rejecting the court of appeals’ holding that employers should always be held strictly liable for sexual harassment by supervisors).

⁶¹ These parameters are explained in more detail in CRS Report R45155, *Sexual Harassment and Employment Discrimination Under Title VII: Selected Legal Issues*, by April J. Anderson (2026).

⁶² *Faragher v. City of Boca Raton*, 524 U.S. 775, 807–08 (1998); *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 775, 780 (1998).

⁶³ *Lockard v. Pizza Hut, Inc.*, 162 F.3d 1062, 1074 (10th Cir. 1998).

⁶⁴ 29 C.F.R. § 1604.11(e) (2025) (allowing liability for non-employee harassment when the employer “knows or should have known of the conduct and fails to take immediate and appropriate corrective action”).

harassing behavior, it can potentially avoid liability for harassment either within the company or by third parties.⁶⁵

Harassment Under Other Antidiscrimination Statutes

Beyond Title VII, several other employment statutes support hostile environment claims. In particular, courts have generally construed “the same phrase ‘terms, conditions, or privileges of employment in other anti-discrimination statutes’” to include harassment protections.⁶⁶ Harassment under these statutes generally follows the parameters courts have set out under Title VII, including its rules, described above, for employer liability and retaliation.

Thus, citing Title VII, courts have allowed hostile environment claims under the Americans with Disabilities Act of 1990 (ADA).⁶⁷ Disability harassment claims also arise under the Rehabilitation Act of 1973, which protects federal employees from disability discrimination.⁶⁸ As one example of a successful disability harassment suit, a worker faced ostracism, eavesdropping on her calls, extra drug testing, and probation shortly after management learned she was HIV positive.⁶⁹ Also, after knowledge of the worker’s HIV status came out, company leadership refused to shake hands with the employee.⁷⁰

Courts have also recognized harassment claims under the Age Discrimination in Employment Act of 1967 (ADEA).⁷¹ The ADEA bars discrimination based on age for workers over forty. Age harassment claims have included such treatment as telling an older worker he should retire, repeatedly asking about retirement plans, and sending a worker “a humorous poem on the sexual problems of old age with the notation, ‘I think it just fits you!’”⁷² Further, harassment is barred under the Genetic Information Nondiscrimination Act of 2008 (GINA), which bars discrimination based on genetic information or family health history.⁷³

Harassment claims under one employment statute, the Uniformed Services Employment and Reemployment Relief Act of 1994 (USERRA), have fared differently in court over time based on legislative activity. USERRA protects reserve servicemembers from discrimination based on deployment, training, or other military service obligations.⁷⁴ As originally enacted, the statute did not include a ban on discrimination in the “terms, conditions, or privileges of employment”; rather, the statute barred denial of “any benefit of employment” because of a worker’s military

⁶⁵ See, e.g., *Crockett v. Mission Hosp. Inc.*, 717 F.3d 348, 356–58 (4th Cir. 2013); *Stuart v. Gen. Motors Corp.*, 217 F.3d 621, 633 (8th Cir. 2000).

⁶⁶ *Carder v. Cont’l Airlines, Inc.* 636 F.3d 172, 178 (5th Cir. 2011), *superseded by Statute as Stated in Bennett v. Dallas Independent School Dist.* N.D.Tex. (March 29, 2013); 29 U.S.C. § 29.

⁶⁷ *Flowers v. S. Regional Physician Servs.*, 247 F.3d 229, 234 (5th Cir. 2001); *Kellar v. Yunion, Inc.*, 157 F.4th 855, 873 (6th Cir. 2025).

⁶⁸ 29 U.S.C. § 791; *Quiles-Quiles v. Henderson*, 439 F.3d 1, 4–5 (1st Cir. 2006).

⁶⁹ *Flowers*, 247 F.3d at 229.

⁷⁰ *Id.*

⁷¹ 29 U.S.C. §§ 621–634; *Stamey v. Forest River, Inc.*, 37 F.4th 1220, 1225 (7th Cir. 2022).

⁷² *Guthrie v. J.C. Penney Co.*, 803 F.2d 202, 205 (5th Cir. 1986).

⁷³ See 42 U.S.C. §§ 2000ff–2000ff-11; Pub. L. No. 110-233, 122 Stat. 881 (2008); *Genetic Information Discrimination*, EEOC, <https://www.eeoc.gov/genetic-information-discrimination> [<https://perma.cc/F7X2-4X9E>] (last visited June 1, 2026).

⁷⁴ 38 U.S.C. § 4311.

status.⁷⁵ In 2011, the Fifth Circuit, the first circuit court to address the issue, considered reservist pilots' claims that an employer harassed them by repeatedly complaining about their guard duties, deriding them, attempting to cancel their guard-related leave, and accusing them of "scams."⁷⁶ The court ruled that as USERRA's language was different from Title VII, harassment claims were not included in USERRA's protections.⁷⁷ That same year, the VOW to Hire Heroes Act of 2011 amended USERRA, adding protections to the "terms, conditions, or privileges of employment."⁷⁸ Courts have subsequently recognized that the change in language superseded the Fifth Circuit decision, permitting claims of USERRA harassment.⁷⁹

The employment statutes discussed above (the ADA, the Rehabilitation Act, ADEA, GINA, and USERRA) have another similarity to Title VII; they typically bar retaliation against employees for complaining of discrimination.⁸⁰ Accordingly, these antidiscrimination laws generally bar employers from harassing employees on account of their making a discrimination claim or participating in an investigation, proceeding, or suit under the laws.⁸¹

A separate statute provides myriad antiharassment protections for legislative employees. The Congressional Accountability Act of 1995 (CAA) adopts the protections of the ADA, Rehabilitation Act, ADEA, GINA, and Title VII for legislative employees through cross-reference.⁸² In a rare example of legislation addressing harassment directly, the Congressional Accountability Act of 1995 Reform Act, enacted in 2018, stated a goal to streamline complaint procedures for "claims by employees alleging that employing offices have violated their CAA rights and protections, including protections against sexual harassment."⁸³

Extending Harassment Protections to Sexual Orientation and Gender Identity

As discussed above, courts have recognized harassment claims in new areas since the Supreme Court first recognized Title VII sexual harassment claims in 1986. In 2020, the Supreme Court ruled in *Bostock v. Clayton County* that Title VII's prohibition on discrimination "because of . . . sex" also forbids employers from making employment decisions because of an employee's sexual orientation or gender identity.⁸⁴ *Bostock's* holding opened the way for employees to bring

⁷⁵ *Id.* § 4311(a).

⁷⁶ *Carder v. Cont'l Airlines, Inc.*, 636 F.3d 172, 174 (5th Cir. 2011) *superseded by Statute as Stated in* *Bennett v. Dallas Independent School Dist.* N.D. Tex. (March 29, 2013).

⁷⁷ *Id.* at 178–79.

⁷⁸ Pub. L. No. 112–56, tit. II, § 251, 125 Stat. 712, 729.

⁷⁹ *McDaniel v. Loyola Univ. Med. Ctr.*, No. 13-cv-06500, 2014 WL 4269126 (N.D. Ill. Aug. 28, 2014); *Montoya v. Orange Cnty. Sheriff's Dep't.*, 987 F. Supp. 2d 981, 1013 (C.D. Cal. Aug. 13, 2013).

⁸⁰ EEOC, *supra* note 51; 38 U.S.C. § 4311(b).

⁸¹ EEOC, *supra* note 51 ("Anti-discrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws.")

⁸² Congressional Accountability Act of 1995 (CAA), 2 U.S.C. §§ 1311–1438.

⁸³ Congressional Accountability Act of 1995 Reform Act, Pub. L. No. 115-397, 132 Stat. 5297 (2018); 2 U.S.C. § 1311(A).

⁸⁴ *Bostock v. Clayton County*, 590 U.S. 644, 660, 654, 683 (2020). The Court in *Bostock* expressly declined to "address bathrooms, locker rooms, or anything else of the kind." *Id.* at 681. The decision therefore gave little guidance on whether a Title VII harassment claim is available when transgender employees allege discrimination in access to or (continued...)

harassment claims based on mistreatment because of sexual orientation or gender identity. Accordingly, courts have now considered claims of harassment on such bases, generally applying the same legal standards that apply to other sexual harassment claims under Title VII.⁸⁵ As the Fifth Circuit observed, “the Court expanded the groups of individuals protected by Title VII” but “in no way altered the preexisting legal standard for sexual harassment.”⁸⁶

In particular, courts have observed that harassment based on sexual orientation or gender identity must meet the severe or pervasive threshold applicable to other harassment claims.⁸⁷ Accordingly, courts have considered issues such as the frequency and severity of mistreatment, as is common in harassment claims, even under novel fact patterns. For example, in one case, the Sixth Circuit rejected a harassment claim based on allegations that coworkers sent an employee Bible verses after he came out as gay and gave him gifts such as pink nail polish.⁸⁸ These actions “could be seen as targeting his sexual orientation,” the court acknowledged, but comparing his situation with fact patterns in other sexual harassment cases, the court found his alleged mistreatment was not severe or pervasive.⁸⁹ Similarly, another Sixth Circuit panel found that an employer mistreated an employee because of his sexual orientation by directing him to act more masculine (removing body piercings and changing his hairstyle) and to take down his relationship status on Facebook (showing he was dating a man),⁹⁰ but these isolated actions did not create a hostile work environment in the court’s view.⁹¹

In contrast, the Eleventh Circuit in *Copeland v. Georgia Department of Corrections* held that a transgender prison guard did raise a potentially viable harassment claim.⁹² Among other things, the court pointed to allegations that staff and supervisors consistently laughed at and taunted the plaintiff and called him “ma’am” on the prison-wide radio system. This happened daily, three or four times a day, according to plaintiff.⁹³ At times, coworkers pushed the plaintiff or blocked his way. He identified thirty-four coworkers who participated in this behavior. They also allegedly joked about him in front of inmates, who joined in.⁹⁴ This treatment, the court concluded, would qualify as pervasive.⁹⁵ A factfinder could also find this mistreatment severe, the court concluded, given that supervisors participated and considering the context: dangerous work in a correctional institution.⁹⁶

harassment in same-sex spaces, or what such a claim might look like. *Bostock* also did not make clear whether refusing to use an employee’s preferred name or pronoun is harassment or whether it can contribute to a hostile environment, nor did the decision address other issues of sexual identity, such as bisexuality. *See* *Howse v. Topre Am. Corp.*, No. 24-cv-00034, 2025 WL 2174857, at *3 (M.D. Tenn. July 31, 2025) (“[T]he rationale of the [*Bostock*] decision provides no basis to conclude that discrimination against men who are attracted to men is impermissibly ‘based on sex,’ but discrimination against men who are attracted to men and women is not.”); Nancy C. Marcus, *Bostock v. Clayton County and the Problem of Bisexual Erasure*, 115 NW. U.L. REV. ONLINE 223, 228 (2020).

⁸⁵ *See, e.g.*, *Newbury v. City of Windcrest*, 991 F.3d 672, 677 (5th Cir. 2021); *Kilpatrick v. HCA Hum. Res., LLC*, No. 22-5307, 2023 WL 1961223, at *4 (6th Cir. Feb. 13, 2023).

⁸⁶ *Newbury*, 991 F.3d at 677.

⁸⁷ *Id.*

⁸⁸ *Kilpatrick*, 2023 WL 1961223, at *4.

⁸⁹ *Id.*

⁹⁰ *Boshaw v. Midland Brewing Co.*, 32 F.4th 598, 601 (6th Cir. 2022).

⁹¹ *Id.* at 606.

⁹² 97 F.4th 766, 770 (11th Cir. 2024).

⁹³ *Id.* at 771.

⁹⁴ *Id.*

⁹⁵ *Id.* at 777.

⁹⁶ *Id.* at 778. The plaintiff was allegedly attacked and injured by an inmate. *Id.*

EEOC Harassment Guidance Changes

The EEOC implements Title VII and several other employment discrimination laws, investigating violations and issuing guidance.⁹⁷ EEOC guidance around harassment has fluctuated in recent years. The EEOC initially issued updated harassment guidance in 2024,⁹⁸ adding language to implement the *Bostock* decision (interpreting Title VII to protect discrimination based on gender identity and sexual orientation). Building on the decision in *Bostock*, the guidance identified workplace behaviors that could create a hostile environment based on sexual orientation or gender identity. In particular, the guidance identified, as examples of harassing behavior, “repeated and intentional use of a name or pronoun inconsistent with the individual’s known gender identity (misgendering); or the denial of access to a bathroom or other sex-segregated facility consistent with the individual’s gender identity.”⁹⁹ The guidance stated that it “replaced” several previous EEOC guidance documents, including its 1990 Policy Guidance on Current Issues of Sexual Harassment.¹⁰⁰ The 1990 harassment guidance on EEOC’s website is labeled “superseded” and “rescinded.”¹⁰¹

Following issuance of the 2024 guidance, the State of Texas and the Heritage Foundation sued, claiming the updated guidance exceeded the EEOC’s authority by “requiring bathroom, dress, and pronoun accommodations.”¹⁰² In May 2025, a district court vacated portions of the guidance as contrary to law.¹⁰³ The vacated portions included the section “outlining harassment based on sexual orientation and gender identity.”¹⁰⁴ The district court reasoned that the guidance went beyond *Bostock*’s holding that firing a worker based on his or her gender identity or sexual orientation violates Title VII,¹⁰⁵ as *Bostock* did not address issues of gender-segregated spaces or use of pronouns. Accordingly, the court held, the guidance impermissibly expanded Title VII, as “Title VII does not bar workplace employment policies that protect the inherent differences between men and women.”¹⁰⁶

After the decision, the EEOC marked the vacated portions in the guidance posted on its website.¹⁰⁷ Then, on January 22, 2026, the EEOC rescinded the 2024 harassment guidance in its

⁹⁷ 42 U.S.C. § 2000e-4.

⁹⁸ EEOC, EEOC-CVG-2024-1, ENFORCEMENT GUIDANCE ON HARASSMENT IN THE WORKPLACE 17 (Apr. 29, 2024), [https://static1.squarespace.com/static/67f14b136c5a8838cca88ae0/t/695b09bc75670a15a51b4f70/1767573948611/\[https://perma.cc/9U8Y-CAU8\]](https://static1.squarespace.com/static/67f14b136c5a8838cca88ae0/t/695b09bc75670a15a51b4f70/1767573948611/[https://perma.cc/9U8Y-CAU8]).

⁹⁹ *Id.*

¹⁰⁰ *Id.*; EEOC, EEOC-CVG-1990-8, POLICY GUIDANCE ON CURRENT ISSUES OF SEXUAL HARASSMENT (Mar. 19, 1990), <https://www.eeoc.gov/laws/guidance/policy-guidance-current-issues-sexual-harassment> [<https://perma.cc/3M4P-D6L6>].

¹⁰¹ EEOC, *supra* note 100.

¹⁰² Texas v. EEOC, 785 F. Supp. 3d 170, 176 (N.D. Tex. May 22, 2025).

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 195.

¹⁰⁵ *Id.* at 189.

¹⁰⁶ *Id.*

¹⁰⁷ Sarah N. Niemiroski & Linda L. Yoder, *Employment Law Letter, EEOC Rescinds Guidance on Workplace Harassment: Employee Safeguards Remain*, SHIPMAN & GOODWIN LLP (Jan. 26, 2026), <https://www.employmentlawletter.com/2026/01/eeoc-rescinds-guidance-on-workplace-harassment-employee-safeguards-remain/#:~:text=Portions%20of%20the%202024,guidance%20on%20its%20website> [<https://perma.cc/VW8Q-Q3ZQ>]; *Harassment in the Workplace*, EEOC, <https://www.eeoc.gov/laws/guidance/enforcement-guidance-harassment-workplace> [<https://perma.cc/D7R8-MHUP>] (last visited June 1, 2026).

entirety,¹⁰⁸ with the EEOC Chair emphasizing that “[r]escinding this guidance does not give employers license to engage in unlawful harassment.”¹⁰⁹ Laws “against discrimination, harassment, and retaliation, and Supreme Court precedent interpreting those laws, remain firmly in place,” she stated,¹¹⁰ reiterating the EEOC’s goal of “preventing and remedying unlawful workplace harassment.”¹¹¹ In rescinding the 2024 guidance, the EEOC did not state whether it considered its 1990 guidance to be reinstated. As of this writing, the EEOC still maintains a website stating that “[h]arassment is a form of employment discrimination that violates” Title VII, the ADEA, and the ADA.¹¹²

In a further indication of the EEOC’s current position with respect to harassment, the EEOC’s Office of Federal Employment issued a decision on February 26, 2026, regarding transgender employees in federal workplaces.¹¹³ Overturning a prior decision, the EEOC stated that federal agencies may restrict employees from using facilities aligned with their gender identity.¹¹⁴ The decision followed an executive order defining sex as an “immutable biological classification.”¹¹⁵

Other Harassment-Related Statutory Requirements: Reporting, Disclosure, and Prevention

While Congress has not codified harassment doctrines in federal antidiscrimination law, it has legislated on related matters. The CAA, passed in 2018, has specific provisions addressing harassment claims against Members of Congress.¹¹⁶ Members must reimburse the U.S. Treasury for any awards or settlements resolving claims that a Member of Congress personally engaged in harassment based on race, color, religion, sex, national origin, age, disability, veteran status, or retaliation for reporting the aforementioned harassment.¹¹⁷ The Office of Congressional Workplace Rights (OCWR), which administers the CAA, must publish an annual report detailing payments made to resolve harassment claims.¹¹⁸ OCWR is also tasked with compiling “workplace environment” surveys, including collecting information about sexual harassment.¹¹⁹

The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) requires federal agencies to give employees notice of antiharassment protections and

¹⁰⁸ Press Release, EEOC, EEOC Commission Votes to Rescind 2024 Harassment Guidance (Jan. 23, 2026) <https://www.eeoc.gov/newsroom/eeoc-commission-votes-rescind-2024-harassment-guidance> [<https://perma.cc/93MS-FBH9>].

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Harassment*, EEOC, <https://www.eeoc.gov/harassment> [<https://perma.cc/G4GL-2EUJ>] (last visited June 1, 2026).

¹¹³ *Selina S. v. Driscoll*, No. 2025003976 (EEOC 2026), <https://www.eeoc.gov/sites/default/files/2026-02/2025003976.pdf> [<https://perma.cc/EY4D-NA6E>].

¹¹⁴ *Lusardi v. McHugh*, No. 0120133395 (EEOC 2015), https://www.eeoc.gov/sites/default/files/migrated_files/decisions/0120133395.txt [<https://perma.cc/ZW5S-GRQN>].

¹¹⁵ Exec. Order No. 14168, 90 Fed. Reg. 8615 (Jan. 20, 2025).

¹¹⁶ 2 U.S.C. § 1415; CRS In Focus IF13236, *The Congressional Accountability Act’s Employment Discrimination Provisions*, by Abigail A. Graber (2026); CRS Legal Sidebar LSB10384, *The Congressional Accountability Act of 1995 Reform Act: An Overview*, by Christine J. Back (2019).

¹¹⁷ 2 U.S.C. § 1415(d).

¹¹⁸ *Id.* §§ 1381(l), 1415(d).

¹¹⁹ *Id.* § 1388.

to provide antidiscrimination training.¹²⁰ Agencies must report discrimination complaints and discipline, including those for harassment, to Congress and other agencies.¹²¹ They must also post complaint data on their public websites.¹²²

In 2022, Congress passed the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021.¹²³ The law bars employers from seeking enforcement of pre-dispute arbitration provisions or class action waivers in cases of sexual harassment and sexual assault. A covered sexual harassment dispute is one alleging harassment in violation of federal, tribal, or state law.¹²⁴ Although an employer cannot impose arbitration under the act, a person alleging harassment could choose to implement the arbitration agreement and seek arbitration.

Congress also passed the Speak Out Act the same year, aimed at restricting agreements that bar sexual harassment victims from discussing their experiences.¹²⁵ The Act bars judicial enforcement of pre-dispute nondisclosure or nondisparagement agreements if the dispute involves sexual assault or sexual harassment in violation of federal, tribal, or state law.¹²⁶ Congress indicated in the Act's findings that "[s]exual harassment and assault remain pervasive in the workplace and throughout civic society, affecting millions of Americans."¹²⁷ This context suggests the law seeks to target contract provisions seen in employment or other relationships that require an employee or customer not to discuss any sexual harassment that may occur, even if it occurs years after the agreement. The Act does not address any confidentiality agreements that are part of a post-harassment settlement.

Many states have codified their own employment harassment protections, with some explicitly addressing protections for sexual orientation and gender identity,¹²⁸ requiring written antiharassment policies, or calling for notification of rights or training.¹²⁹

Considerations for Congress

Antiharassment doctrine is defined through case law, extending beyond sexual harassment and beyond Title VII to bar harassment on grounds including disability, religion, family status, age, and military service.

As many antiharassment obligations are not fully codified, Congress could consider adding specific antiharassment provisions to antidiscrimination laws such as the ADA, Title VII, and

¹²⁰ 5 U.S.C. § 2301; 29 C.F.R. § 1614.203 (2025); *Questions and Answers: No FEAR Act*, EEOC, <https://www.eeoc.gov/no-fear/questions-and-answers-no-fear-act> [<https://perma.cc/S2JN-Z8JZ>] (last visited June 2, 2026).

¹²¹ 5 U.S.C. § 2301.

¹²² *Comparative Data, FY 2019-FY 2024: Equal Employment Opportunity Data Posted Pursuant to the No FEAR Act*, U.S. OFF. OF PERS. MGMT., <https://www.opm.gov/equal-employment-opportunity/no-fear-act/#url=Comparative> [<https://perma.cc/JL5S-987T>] (last visited Apr. 2, 2026).

¹²³ 9 U.S.C. §§ 401–402; Pub. L. No. 117-90, 136 Stat. 26 (2022).

¹²⁴ 9 U.S.C. § 401.

¹²⁵ 42 U.S.C. §§ 19401–19404.

¹²⁶ *Id.* §§ 19403(a), 19402(4).

¹²⁷ *Id.* § 19401(1).

¹²⁸ Iris Hentze & Rebecca Tyus, *Sexual Harassment in the Workplace*, NAT'L CONF. OF STATE LEGISLATORS (Aug. 12, 2021), <https://www.ncsl.org/labor-and-employment/sexual-harassment-in-the-workplace> [<https://perma.cc/54QE-4YNK>]; Rob Hopkirk et al., *State Regulation of Sexual Harassment*, 25 GEO. J. GENDER & L. 1043 (2024).

¹²⁹ *Which States Require a Written Harassment Prevention Policy?*, ADP: HR TIP OF THE WEEK (June 30, 2025), <https://sbshrs.adpinfo.com/blog/which-states-require-a-written-harassment-prevention-policy> [<https://perma.cc/XN99-Q6EN>].

others. Congress could either broaden or narrow the range of actionable harassment claims. For example, it could change the “severe or pervasive” standard to make it easier for plaintiffs to show harassment, perhaps by specifying prohibited conduct. It could also specify examples of harassing conduct, including rules for gender identity and use of gender-segregated spaces. It could, conversely, act to limit potential claims by imposing a more restrictive standard, possibly specifying conduct that does not support a harassment claim.

In addressing harassment rules, Congress could draft uniform mandates for various employers, consistent with its Commerce Clause authority, or it could draft narrow rules, aimed at federal workers or federal contractors. It could extend antiharassment mandates to small employers (as those with fewer than fifteen employees are currently excluded from Title VII). Congress could also address issues of training, notice, and confidentiality. It could require reporting of harassment complaints, broadening requirements that currently apply to federal employers. Alternatively, Congress could require private employers to adopt formal antidiscrimination policies, as is required in some state laws.

Legislation introduced in the 119th Congress would address some of these considerations in specific ways. The BE HEARD in the Workplace Act of 2026, originally proposed in 2019,¹³⁰ aims to “prevent and reduce prohibited discrimination, including harassment, in employment.”¹³¹ It would restrict mandatory arbitration and pre-employment confidentiality agreements—going beyond the Speak Out Act’s provisions, which make such agreements unenforceable in court. The Act would also require posting nondiscrimination policies (which must define harassment), training for workers, and surveys of harassment.¹³² It would address the application of *Bostock* by specifying how employers need to accommodate variations in gender identity.¹³³ The bill would impose fines for offenders¹³⁴ and it would expand Title VII’s reach by amending it to apply to small employers.¹³⁵

In addition, the bill would clarify standards of proof for discrimination and employment harassment, codifying some of the judicial developments discussed above. It would specify *quid pro quo* harassment as unlawful and it would define other harassment as conduct having “the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.”¹³⁶ The Act would amend several employment discrimination laws to address disability, age, and religious harassment.

Another proposal from the 119th Congress, the Protections and Transparency in the Workplace Act, would require covered publicly traded companies to report claims of harassment, defined as potential violations of listed federal antidiscrimination statutes.¹³⁷ Settlement, judgments, and payments connected to covered discrimination and harassment claims would also require disclosure.¹³⁸

¹³⁰ BE HEARD in the Workplace Act of 2026, H.R. 7583, 119th Cong. (2026); BE HEARD in the Workplace Act, H.R. 2148, 116th Cong. (2019).

¹³¹ H.R. 7583, § 3.

¹³² *Id.* §§ 101, 102, 105, 111.

¹³³ *Id.* § 1101.

¹³⁴ *Id.* § 101.

¹³⁵ *Id.* § 202; 42 U.S.C. § 2000e(b).

¹³⁶ H.R. 7583, § 204.

¹³⁷ Protections and Transparency in the Workplace Act, H.R. 4599, 119th Cong. (2025).

¹³⁸ *Id.* § 2(b).

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