LEGAL UPDATES

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# EEOC Casts New Focus on Construction Industry

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Last month, the Equal Employment Opportunity Commission (EEOC) issued a report shedding light on the alleged prevalence of employment discrimination and harassment issues in the construction industry, as well as steps the EEOC is taking in response. The EEOC's report alleges that discrimination and harassment in the industry have historically been unaddressed with egregious incidents often unreported. The EEOC proposes to adopt a collaborative approach at tackling these industry issues by partnering with unions, industry groups, employers, and civil rights organizations.

**Key findings**

The report identifies several key findings regarding discrimination and harassment within the construction industry based on previous EEOC reports and charges, witness testimony at EEOC hearings, data from the Bureau of Labor Statistics, and reports from academic researchers. The findings in the report include:

Women and people of color are significantly underrepresented (specifically in higher-paid jobs and skilled trades).

*Noteworthy statistics*:

- Women represent 11% of the workforce, including office and clerical positions.
- Women represent 4% of the skilled trade workforce.
- Black construction workers represent 7% of the workforce.
- Asian construction workers represent 2.1% of the workforce.

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Discrimination based on sex, race, and national origin contributes to the underrepresentation of workers, forcing many to leave the industry.
Discrimination in recruitment and apprenticeships is prevalent; and
Barriers placed in higher-paying construction careers, as well as unequal treatment in terms and conditions of employment such as training, work hours, and work assignments, all contribute to push women and minorities out of the construction industry.

Racial and sexual harassment are pervasive on construction sites, hindering efforts to recruit and retain women and minority workers.
A 2021 survey by the Institute for Women's Policy Research revealed that of over 2,600 tradeswomen, 1 out of 4 women reported ***constant sexual harassment***, and 1 out of 5 women reported having ***experienced racial harassment "always" or "frequently"*** on the job.

Construction workers often lack knowledge about whom or where to report violations.

Retaliation is a significant concern in the construction industry and likely curbs reporting of incidents.

Racial harassment in construction has taken egregious forms, with nooses appearing at an alarming frequency across jobsites in the U.S. as well as use of ethnic slurs, racist graffiti, references to slavery, threats of violence, and physical assaults.

Harassment in the construction industry poses a danger to workers' physical safety, as it often occurs within teams, increasing the risk of injuries when construction workers experience harassment on the job.

**EEOC's next steps to address construction industry issues**

The EEOC has identified multiple proactive measures it will take to address the issues identified in the Report, including:

Providing construction industry employers with information about lawful diversity, equity, inclusion, and accessibility (DEIA) practices.

Developing industry-specific technical assistance for employers, unions, and workers to ensure equitable hiring practices, equal treatment on the job, and safe and inclusive workplaces.

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Meeting with unions, employers, civil rights organizations, industry groups, and other worker's organizations to gain insights into their specific needs and provide them information about workers' rights and employers' duties under federal laws.

Providing specialized training and developing coalitions for pre-apprentices, apprentices, and workers to help them understand their rights under the law and equipping them with the knowledge to file a charge with the EEOC. These efforts also include multilingual outreach.

Providing industry-specific training to employers and unions on best employment practices and harassment prevention, focusing specifically on small businesses.
The EEOC will also prioritize training specific to apprenticeship programs, which the EEOC identifies as vital to new workers entering the construction industry.

**Best practices for employers**

Although many construction industry employers are already taking measures to promote diversity, equity, and inclusion and not all are impacted by discrimination and harassment, the report does suggest a trend within the industry that employers should acknowledge and proactively address, particularly given the EEOC's proclaimed focus on the industry. Furthermore, while employee claims are evaluated on a case-by-case basis, there are several recommended best practices construction industry employers should consider implementing to mitigate risks:

Implement mandatory training for management/leadership to effectively prevent, recognize, and respond to harassment and discrimination in the workplace
This is often the first – and best – defense to claims of alleged discrimination. EEOC investigators and mediators will recognize a company's efforts to educate employees about their rights and the importance of appropriate responses to discriminatory or otherwise unacceptable conduct.

Review and update the company's non-discrimination, anti-harassment, Code of Conduct and any other policies and procedures regularly.
This, too, is something that the EEOC investigators and mediators will value. The first thing the EEOC will ask for is the company's applicable policies.
Ensure the equal employment opportunity and harassment policies are clear, comprehensive, easily understandable, and consistently communicated to all employees.

Create a "speak-up" culture regarding employee concerns.

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Encourage employees to voice their concerns and make reporting of concerns simple and accessible to all employees.
Have multiple avenues for employees to raise concerns, including implementing anonymous reporting mechanisms.
Ensure employees that retaliation is not tolerated and address any reports of retaliation swiftly and consistently with disciplinary action.

Offer bystander intervention training, to empower employees to recognize and respond to workplace incidents and discrimination.

Offer workplace civility training, emphasizing the positive aspects of what employees should engage in, rather than focusing solely on what they should not do.

Take steps to foster a diverse and inclusive environment for employees.

In conjunction with outside employment counsel (for purposes of attorney-client privilege protection), periodically evaluate wages paid within each worker's classification and promptly address any wage discrimination concerns.

**What this means to you**

Construction industry employers should be aware of the EEOC's new industry focus, as it could lead to increased scrutiny and employment litigation. Employers should take note of best practices to ensure they are effectively addressing ongoing issues and mitigating risks.

**Contact us**

Should you have any questions or if you would like assistance implementing the best practices listed here, contact Tom O'Day, Melissa Caulum Williams, or your Husch Blackwell attorney. Husch Blackwell will continue to monitor and provide the latest updates from the EEOC on its construction industry focus.

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