

COMPLIANCE OVERVIEW

Provided by Power Kunkle Benefits Consulting

Title VII of the Civil Rights Act

Title VII of the Civil Rights Act of 1964 (Title VII) is a federal law that prohibits employers from discriminating against individuals based on race, color, religion, national origin or sex.

Title VII applies to employers with 15 or more employees on each working day in each of 20 or more calendar weeks in a current or prior calendar year. The law also applies to employment agencies and labor organizations.

The Equal Employment Opportunity Commission (EEOC) enforces Title VII and may file charges and initiate federal court lawsuits against employers that violate the law. In Title VII lawsuits, courts may award compensatory and punitive damages to individuals who are adversely affected by an employer's violation of the law.

This Compliance Overview provides a general summary of Title VII's requirements for employers.

HIGHLIGHTS

TITLE VII BASICS

- Title VII prohibits employment discrimination based on race, color, religion, national origin or sex.
- Adverse employment actions are illegal if motivated in any way by a protected trait.
- Unlawful discrimination includes practices that unintentionally disadvantage protected individuals.

EMPLOYER REQUIREMENTS

- Employers must post a Title VII notice in locations accessible to all applicants and employees.
- Employers with 100 or more employees must file annual reports with the EEOC.

LINKS AND RESOURCES

- Text of [Title VII](#)
- EEOC [fact sheet](#) on preventing employment discrimination
- [Regulations](#) relating to Title VII

This Compliance Overview is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.



PROTECTED TRAITS

Title VII prohibits employers from discriminating against individuals based on race, color, religion, national origin or sex. These are known as “protected statuses” or “protected traits.”



While many of Title VII’s protected traits are relatively straightforward, others have been, and remain, the subject of disagreement among federal courts interpreting the law. For example, some courts have held that the term “sex” includes gender identity or sexual orientation, while other courts have ruled that the term is limited to traditional notions of male and female. Through its [enforcement guidance](#), the EEOC has adopted a definition that includes both gender identity and sexual orientation.

Under Title VII itself, the term “sex” includes (but is not limited to) **pregnancy, childbirth and related medical conditions**. The law also specifies that the term “religion” includes all aspects of religious observance and practice.

PROHIBITED PRACTICES

Under Title VII, the following employment practices are illegal if they are motivated in any way by an individual’s protected trait:

- Discriminating against the individual with respect to compensation, terms, conditions or privileges of employment;
- Discharging or failing or refusing to hire the individual;
- Limiting, segregating or classifying the individual in any way that would deprive or tend to deprive the individual of employment opportunities or otherwise adversely affect his or her employment status; and
- Adjusting the individual’s score, using a different cutoff score for the individual, or otherwise altering the results of any employment-related test used in connection with the

*Unlike the federal Equal Pay Act, which requires virtually all employers to pay men and women equally for “substantially equal work,” Title VII prohibits employers with 15 or more employees from pay discrimination based on **any Title VII-protected trait**, even in cases where employees do **not** perform substantially equal work.*

selection or referral of applicants or candidates for employment or promotion.

In addition, Title VII prohibits employers from:

- Including preferences, limitations, specifications or discrimination based on a protected trait in job notices or advertisements;
- Harassing or allowing others to harass an individual on the basis of a protected trait; and
- Retaliating against an individual for opposing discriminatory employment practices or for making formal or informal complaints about discrimination under Title VII.

Disparate Impact Discrimination

Any employment practice that adversely affects Title VII-protected individuals as a group is also illegal under Title VII. These practices are known as “disparate impact” discrimination. A practice that has a disparate impact on Title VII-protected individuals is unlawful even if an employer does not intend for the practice to have that effect. For example, a practice may apply to all employees regardless of gender but still result in a negative impact on female employees.

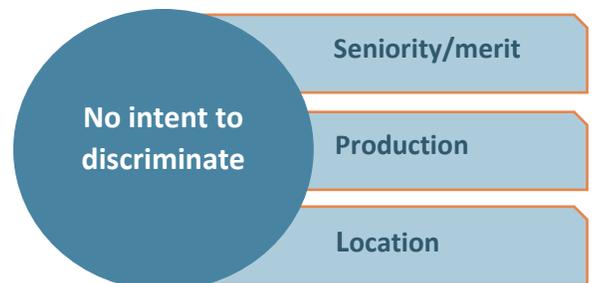
Disparate Treatment Discrimination

In contrast to disparate impact discrimination, disparate treatment discrimination occurs when an employer **intentionally** treats a Title VII-protected individual differently, based on his or her protected trait, from individuals who do not share the same protected trait. For this purpose, an employer violates Title VII if an employment practice is motivated in any way by a Title VII-protected trait, even if other factors also motivated the practice.

PERMITTED PRACTICES

Title VII allows employers to apply different standards of compensation, or different terms, conditions or privileges of employment to individuals with protected traits than they provide to unprotected individuals under certain circumstances. This is permitted as long as the differences are:

- ✓ Not the result of an intention to discriminate because of a protected trait; and
- ✓ Applied either:
 - Under a **bona fide seniority or merit system**;
 - Under a system that measures earnings by **quantity or quality of production**; or
 - To employees who work in **different locations**.



Title VII also allows employers to give, and to act upon the results of, any professionally developed ability test that is not designed, intended or used to discriminate on the basis of a protected trait.

Permitted Disparate Impact Practices

Employment practices that unintentionally disadvantage a group of individuals who share the same Title VII-protected trait are permitted if an employer can demonstrate that the practice is:

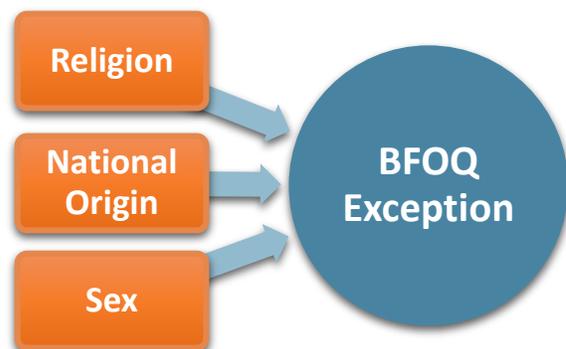
- **Job-related** for the position in question; and
- Consistent with **business necessity**.

Bona Fide Occupational Qualifications

Certain employers may engage in otherwise prohibited job advertising and employment actions if the practices are based on a **bona fide occupational qualification** (BFOQ). This exception applies only for practices that are based on **religion, national origin or sex**.

Specifically, if religion, national origin or sex is a BFOQ that is reasonably necessary to the normal operation of an employer's business or enterprise, the employer may, on the basis of the particular trait in question:

- Indicate a preference, limitation, specification, or discrimination in a notice or advertisement; and
- Make hiring and employment decisions.



Religious Schools

Title VII allows certain religious schools to advertise and make hiring and employment decisions based on whether an applicant or employee shares the school's religion.

Controlled Substance Policies

Under Title VII, employers are allowed to establish policies against employing any individuals who currently and knowingly possess or use certain controlled substances. This type of policy is unlawful only if it is adopted or applied with intent to discriminate based on a protected trait.

ENFORCEMENT

Individuals who are affected by allegedly discriminatory employment practices (or others on their behalf) may initiate an action against an employer by filing a [Charge of Discrimination](#) with the EEOC. If a local or state law prohibits the same form of discrimination, individuals may be required to file a charge with the state or local agency that enforces the law, and the EEOC may work with the agency to investigate and resolve the charge.

Members of the EEOC are also authorized to file charges against employers. Any individual or organization may ask the EEOC to file a charge either on behalf of an affected individual or group or simply for an inquiry into suspected discrimination.

The time allowed for filing a Title VII discrimination charge is within **180 days** after an allegedly discriminatory practice occurs. This may extend to up to 300 days if a local or state law prohibiting the same form of discrimination applies.

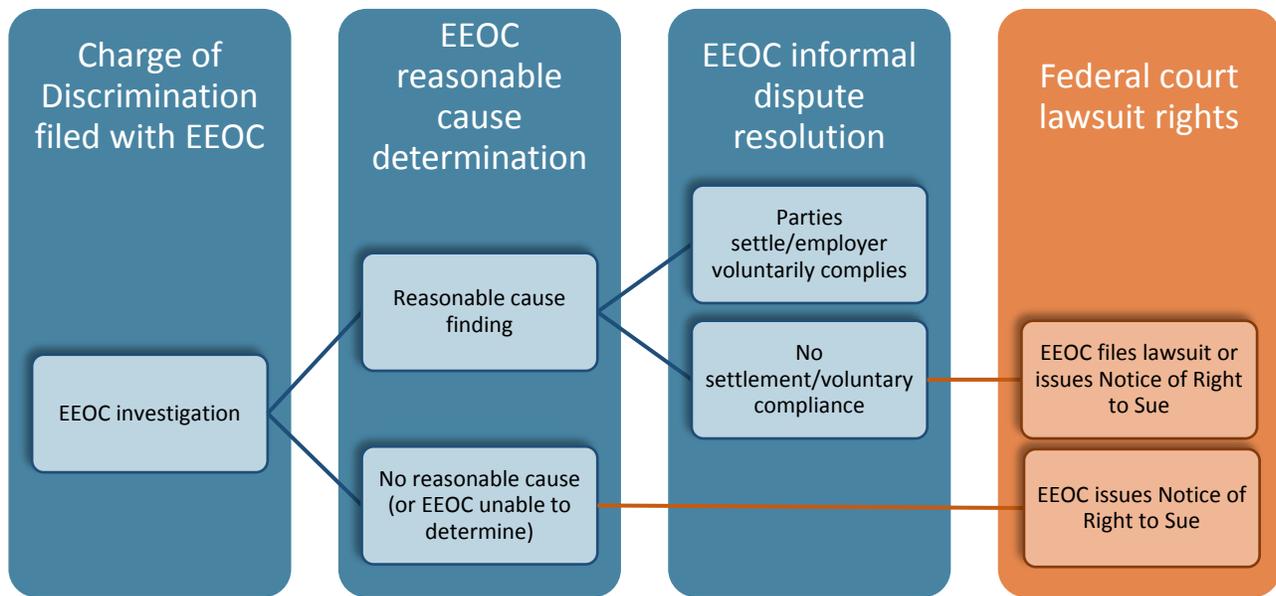
Individuals may **not** sue an employer in court for Title VII violations, unless the EEOC first grants them permission to do so. The EEOC grants this permission by issuing a [Notice of Right to Sue](#). However, the EEOC will not issue this until after it has investigated the circumstances of a filed charge.

Reasonable Cause Determination

Once a charge is filed, the EEOC must send a copy of it to the employer within 10 days. The EEOC will also begin an investigation and, within 120 days, determine whether there is reasonable cause to believe that the allegations in the charge are true.

If the EEOC determines that reasonable cause does **not** exist or that it is unable to determine whether reasonable cause exists, it will dismiss the charge and issue a Notice of Right to Sue to the party that filed the charge. A Notice of Right to Sue allows a charging party to file a lawsuit in a federal district court against the employer within **90 days**.

If the EEOC determines that there **is** reasonable cause to believe the allegations in a charge are true, it will engage the employer in conferences and other informal dispute resolution processes to encourage settlement and voluntary compliance with Title VII. If these processes are not successful, the EEOC may either sue the employer in federal court itself or grant the charging party the right to file a lawsuit. The flowchart below provides a general overview of this enforcement process.



Federal Court Lawsuits

In a Title VII lawsuit, a court may order a noncompliant employer to:

- Stop engaging in unlawful employment practices;
- Pay back wages covering up to two years before the charge was filed;
- Reinstate or hire any affected individuals; and
- Pay any other damages or costs the court deems appropriate.

POSTING REQUIREMENT

All employers subject to Title VII must post the ["EEO is the Law"](#) poster in a place and format that is accessible to applicants and employees.

RECORDKEEPING REQUIREMENTS

Title VII requires employers to preserve all personnel or employment records for **at least one year** from the later of either the date the record was made or the date of the personnel action involved. For this purpose, the materials an employer must preserve include, but are not limited to, all records related to hiring, promotions, transfers, rates of pay and other terms of compensation.

If an employer has been charged with or sued for a Title VII violation, the employer must preserve all records relevant to the charge or action until **final disposition** of the case. These records include, for example:

- Personnel or employment records relating to the affected person and to all other employees who hold positions similar to the one held or sought by the affected person; and
- Job applications or test papers completed by an unsuccessful applicant and by all other candidates for the same position.

REPORTING REQUIREMENT

Employers that have **100 or more employees** (and certain federal contractors) must complete and file an [EEO-1 survey](#) with the EEOC every year. The annual filing deadline for the EEO-1 survey is **March 31**.