



RECENT DEVELOPMENT

Employers, It's Time to Update Your EEO Poster

By Chelsea Smialek and Jim Paretti on October 25, 2022

It is old news to most covered employers¹ that they are obligated to post certain notices for their workforce. What these employers may not know, however, is that the EEOC recently updated and replaced its "EEO is the Law" poster.

The "Know Your Rights: Workplace Discrimination is Illegal" poster, which covered employers must post in lieu of the old "EEO is the Law" poster, was initially released on October 19, 2022, only to be superseded by a further update on October 20, 2022.

So what is different about the "Know Your Rights" poster? Like the "EEO is the Law" poster, the "Know Your Rights" poster explains that aspects of employment, including discharge, harassment, hiring or promotion, benefits, and pay, can be challenged as a form of discrimination, and specifies that discrimination can be based on:

- Race
- Color
- Sex
- National origin
- Religion
- Age (40 and older)
- Equal pay
- Disability
- Genetic information
- Retaliation for filing a charge

Unlike that poster, however, the “Know Your Rights” poster uses more straightforward formatting and plain English to summarize the laws prohibiting job discrimination, and to explain how employees and job applicants can file a charge with the EEOC if they believe they have experienced discrimination. The new poster also includes a few substantive changes, by:

- Stating that harassment is a prohibited form of discrimination;
- Clarifying that sex discrimination includes discrimination based on pregnancy and related conditions, sexual orientation, or gender identity;
- Adding a QR code for digital access to information about filing a charge of discrimination; and
- Stating information about equal pay discrimination for federal contractors.

While no compliance deadline was noted by the EEOC when it released the “Know Your Rights” poster, covered employers should update their poster as soon as possible, taking care to ensure they have the “Know Your Rights: Workplace Discrimination is Illegal” poster, marked “Revised 10/20/2022,” posted in a conspicuous place of the workplace. The posting also must be accessible to applicants and employees with disabilities.

Some employers might elect to post the notice electronically to make the poster more accessible to persons with disabilities, and while the EEOC encourages this, employers with physical work locations should still make sure they are posting the notice in a physical location as well. It is the EEOC’s position that electronic posting of the poster generally only supplements the physical posting requirement, except in limited circumstances, such as employers with entirely remote workplaces.

Although it is atypical for an agency to come onsite to monitor compliance with notice requirements, noncompliance with a poster requirement can be an easy target when an agency already is onsite for another reason. A willful failure to post the “Know Your Rights” poster may result in a maximum fine of up to \$612 per separate offense, *i.e.*, per location, and may not just be limited to financial penalties. Noncompliance has, at times, been considered a sign of “bad faith,” which has the potential to impact damages in an employee lawsuit, for instance, either by inflating a damage award or eliminating a good-faith defense. Failure to post the applicable EEO poster has also been a basis to extend the statute of limitations due to the lack of notice on applicable time limits.

¹ Covered employers include employers with 15 or more employees.

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