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# EEOC Releases Guidance on the Application of Title VII and the ADA to Applicants and Employees Who Experience Domestic Violence, Sexual Assault and Stalking

By Nicole M. Paterson / Nov 01, 2012

The Equal Employment Opportunity Commission (EEOC) has issued a Questions and Answers fact sheet that provides guidance on when Title VII of the Civil Rights Act of 1964 (Title VII) and the Americans with Disabilities Act (ADA) may apply to applicants and employees who have experienced domestic or dating violence, sexual assault, or stalking.

Title VII prohibits employment discrimination on the basis of race, color, sex, religion, and national origin. The ADA prohibits employment discrimination on the basis of disability. Neither Title VII nor the ADA directly prohibit employment discrimination on the basis of domestic or dating violence, sexual assault, or stalking. However, the recently published Questions and Answers fact sheet provides examples of situations in which an employer's discrimination against an applicant or employee on the basis of domestic or dating violence, sexual assault, or stalking may constitute discrimination under either Title VII or the ADA.

The EEOC provides the following examples of when an employer may violate Title VII, which prohibits discriminatory and disparate treatment, on the basis of sex:

- An employer terminates an employee after learning she has been subjected to domestic violence, saying he fears the potential "drama battered women bring to the workplace."
- A hiring manager, believing that only women can be true victims of domestic violence because men should be able to protect themselves, does not select a male applicant when he learns that the applicant obtained a restraining order against a male domestic partner.
- An employer allows a male employee to use unpaid leave for a court appearance in the criminal prosecution of an assault, but does not allow a similarly situated female employee to use equivalent leave to testify in the criminal prosecution of domestic violence she experienced. The employer says that the assault by a stranger is a "real crime," whereas domestic violence is "just a marital problem" and "women think everything is domestic violence."

Under Title VII, employers may also be liable for sexual harassment by creating a hostile work environment by allowing the stalking of an employee by a co-worker when the employee complains to management but no action is taken. In accordance with current law, the Questions and Answers also reaffirms that employees who complain of such harassment or discrimination are protected from retaliation.

Additionally, the Questions and Answers provides examples of situations in which an employer may be required to provide reasonable accommodations to applicants or employees who experience domestic or dating violence, sexual assault, or stalking under the ADA:

- An employee who has no accrued sick leave and whose employer is not covered by the FMLA requests a schedule change or unpaid leave to get treatment for depression and anxiety following a sexual assault by an intruder in her home. The employer denies the request because it "applies leave and attendance policies the same way to all employees."
- In the aftermath of stalking by an ex-boyfriend who works in the same building, an employee develops major depression that her doctor states is exacerbated by continuing to work in the same location as the ex-boyfriend. As a reasonable accommodation for her disability, the employee requests reassignment to an available vacant position for which she is qualified at a different location operated by the employer. The employer denies the request, citing its "no transfer" policy.

Furthermore, under the ADA, employers may be liable for making employment or hiring decisions based upon a presumed or actual impairment that was caused as a result of domestic or dating violence or sexual assault. As an example, an employer may be liable for deciding not to hire an applicant, for fear that the applicant may require time away from work for treatment, after it learns that the applicant experienced a sexual assault.

Although the Questions and Answers fact sheet appears to confirm that the EEOC may extend Title VII and the ADA to applicants and employees on the basis of domestic or dating violence, sexual assault, or stalking, an individual assessment of the facts is necessary to determine whether discrimination actually occurred. Additionally, while federal and state courts are not bound by the EEOC's publication of the Questions and Answers, it provides insight into how the EEOC interprets laws, including Title VII and the ADA. Therefore, employers should review their policies and employment and hiring practices to ensure compliance with the EEOC's latest interpretations.

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