

# Federal Discrimination Laws: Introduction

## Unlawful Discrimination

Federal law prohibits employers from discriminating against an applicant or employee based on any of the following protected classes:

- Age (age 40 or older)
- Disability
- Genetic information
- National origin
- Race or color
- Religion
- Sex (including pregnancy, gender identity, sexual orientation, and transgender status)

Federal law also prohibits discrimination when an individual alleges they've been discriminated against, files a discrimination charge, or participates in an employment discrimination investigation or lawsuit (discrimination and retaliation).

The following federal laws prohibiting workplace discrimination are discussed on this page, and are enforced by the federal Equal Employment Opportunity Commission (EEOC):

- Age Discrimination in Employment Act (ADEA)
- Americans with Disabilities Act (ADA)
- Equal Pay Act (EPA) and Lilly Ledbetter Fair Pay Act (Ledbetter Act)
- Genetic Information Nondiscrimination Act (GINA)
- Pregnancy Discrimination Act (PDA)
- Pregnant Workers Fairness Act (PWFA)
- Title VII of the Civil Rights Act

The Immigration Reform and Control Act (IRCA) and Uniformed Services Employment and Reemployment Rights Act (USERRA), also discussed here, protect against discrimination but are not enforced by the EEOC.

## Age Discrimination in Employment Act

The ADEA protects people who are 40 or older from discrimination because of age.

## Americans with Disabilities Act

Under the ADA, it is illegal to discriminate against a qualified person with a disability. The law also requires that employers reasonably accommodate the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless doing so would impose an undue hardship on the employer's business operations.

## Equal Pay Act and Lilly Ledbetter Fair Pay Act

The EPA protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination.

The Lilly Ledbetter Fair Pay Act amended Title VII, the ADA, and the ADEA, and overturned a Supreme Court decision in *Ledbetter v. Goodyear Tire & Rubber Co., Inc.* that restricted when a pay discrimination complaint can be brought. Under the Ledbetter Act, each paycheck that contains discriminatory compensation is a separate violation regardless of when the discrimination started. In other words, an employee may bring a discrimination lawsuit each time they get a paycheck when their employer has a discriminatory pay practice or policy in place. This acts as an explicit retroactive provision that expands when a discrimination claim may be brought by someone subject to discriminatory compensation, and happens each time:

- An employer adopts a discriminatory compensation decision or other practice.
- An individual is subject to a discriminatory compensation decision or other practice.
- An individual is affected by the application of a discriminatory compensation decision or other practice, including each time an employer pays wages, benefits, or other compensation.

## Genetic Information Nondiscrimination Act

Under GINA, it is illegal to discriminate against applicants, employees, or former employees because of genetic information. **Genetic information** is information about an individual's genetic tests and the genetic tests of their family members, as well as information about any disease, disorder, or condition of a family member (family medical history).

## Pregnancy Discrimination Act

The PDA amended Title VII and made it illegal to discriminate against a pregnant employee because of their pregnancy, childbirth, or a medical condition related to the pregnancy or childbirth.

## Pregnant Workers Fairness Act

The PWFA took effect on June 27, 2023. The EEOC issued its [final regulation](#) to carry out the law on April 15, 2024, and it is effective as of June 18, 2024.

The PWFA requires employers to provide a reasonable accommodation to a qualified employee's or applicant's known limitations related to, affected by, or arising from pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an undue hardship. The PWFA *only* applies to accommodations.

**Note:** The PWFA does *not* replace federal, state, or local laws that are more protective of applicants and employees affected by pregnancy, childbirth, or related medical conditions.

## **Title VII of the Civil Rights Act**

Title VII prohibits employment discrimination based on race, color, religion, sex (including gender identity, pregnancy, and sexual orientation), and national origin.

## **Additional Laws**

### **Immigration Reform and Control Act**

Under the IRCA it is illegal for an employer to discriminate in hiring, firing, or recruitment or referral for a fee, based on an individual's citizenship or immigration status. The law prohibits employers from hiring only U.S. citizens or lawful permanent residents unless required to do so by law, regulation, or government contract. Employers may not refuse to accept lawful documentation that establishes the employment eligibility of an employee, or demand additional documentation beyond what is legally required, when verifying employment eligibility (e.g., completing the Form I-9), based on the employee's national origin or citizenship status.

### **Uniformed Services Employment and Reemployment Rights Act**

USERRA prohibits employers from discriminating or retaliating against a past or present member, applicant, or someone obligated to serve in the U.S. Armed Forces. Additionally, employers may not deny an individual initial employment, re-employment, retention in employment, promotion, or any benefit of employment because of this military status.

## **Covered Employers**

Most employers with at least 15 employees are covered by the federal laws described above. USERRA applies to almost all U.S. employers, regardless of size. The ADEA applies to employers with 20 or more employees.

# Protected Classes

Employers are prohibited from making employment decisions based on an individual's protected class, which includes:

- **Age.** Age discrimination is when an applicant or employee is treated less favorably because of their age. The ADEA forbids age discrimination against people who are 40 or older.
- **Disability.** Disability discrimination is when an employer (or other ADA-covered entity) treats a qualified individual with a disability who is an employee or applicant unfavorably because they have a disability, a history of a disability, are believed to have a physical or mental impairment, or because of their relationship with a person with a disability. Employers must provide a reasonable accommodation to an employee or applicant with a disability unless it would cause them an undue hardship.
- **Genetic information.** Genetic information discrimination (prohibited under Title II of GINA) is when an employer discriminates against an employee or applicant because of genetic information. The use of genetic information in employment decisions is prohibited, and employers, employment agencies, labor organizations, and joint labor-management training and apprenticeship programs cannot request, require, or purchase genetic information. Disclosure of genetic information is also strictly prohibited.
- **Military status.** Military status discrimination (prohibited by USERRA) is when employers discriminate or retaliate against an individual based on their application to serve, past or present service, or obligation to serve in the U.S. Armed Forces.
- **National origin.** National origin discrimination is when an applicant or employee is treated unfavorably because they are from a particular country or part of the world, because of their ethnicity or accent, or because they appear to be of a certain ethnic background (even if they are not). National origin discrimination is also when people are treated unfavorably because they are married to or associated with a person of a certain national origin.
- **Pregnancy.** Pregnancy discrimination is when an applicant or employee is treated unfavorably because of pregnancy, childbirth, or a medical condition related to their pregnancy or childbirth. The PDA forbids discrimination based on pregnancy in any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoffs, training, fringe benefits such as leave and health insurance, and any other term or condition of employment. Pregnant employees also have protections under the temporary disability provisions. Harassment because of pregnancy, childbirth, or a related medical condition is also prohibited.
- **Race or color.** Race discrimination is when an applicant or employee is treated unfavorably because of their race or because of personal characteristics associated with race (such as hair texture, skin color, or certain facial features). Color discrimination is treating someone unfavorably because of skin color or complexion. Race or color discrimination is also when someone is treated unfavorably because they are married to or associated with a person of a certain race or color.

- **Religion.** Religious discrimination is when an applicant or employee is treated unfavorably because of their religious beliefs. The law protects people who belong to traditional, organized religions and those with sincerely held religious, ethical, or moral beliefs. Religious discrimination is also when someone is treated differently because they are married to or associated with an individual of a particular religion.
- **Sex.** Sex discrimination is when an applicant or employee is treated unfavorably because of sex, gender identity, transgender status, or sexual orientation.

## Pre-Employment Inquiries and Conviction Records

Federal law does not prohibit employers from asking about criminal history, but federal equal employment opportunity (EEO) laws do prohibit employers from discriminating when using criminal history information. Using criminal history information to make employment decisions may violate Title VII as follows:

- Title VII prohibits employers from treating people with similar criminal records differently because of their Title VII-protected class.
- Title VII prohibits employers from using policies or practices that screen individuals based on criminal history information if they both significantly disadvantage Title VII-protected individuals and do not help the employer accurately decide if the person is likely to be a responsible, reliable, or safe employee.

**Note:** Employers that obtain an applicant's or employee's criminal history information from consumer reporting agencies also must comply with the federal Fair Credit Reporting Act (FCRA).

## Protected Activity

Employers are prohibited from retaliating against an employee or applicant for engaging in **protected activity**, which is when an applicant or employee asserts their right to be free from employment discrimination, including harassment. For example, employers may not retaliate against an applicant or employee for:

- Filing an internal sexual harassment complaint.
- Filing a discrimination charge with the EEOC, filing a lawsuit, or assisting another employee in either.
- Requesting a reasonable accommodation for a disability.
- Requesting Family and Medical Leave Act (FMLA) or USERRA leave.
- Voicing a concern that an employment decision (either affecting the employee voicing the concern or another) was based on a protected class.
- Reporting an unsafe condition in the workplace to the Occupational Safety and Health Administration (OSHA).

## Unlawful Discrimination Claims

Some basic unlawful discrimination claims are:

- **Disparate treatment.** This is when an employee or applicant is treated differently than others who are similarly situated because of protected class or protected conduct.
- **Disparate impact.** This is when a neutral employment policy or practice disproportionately impacts persons within a protected class and there is no legal business justification for the policy or practice. This can also perpetuate past discrimination. For example, if an employer previously refused to hire women for certain jobs and currently hires most of its employees for those jobs through word-of-mouth recruitment by current employees, the policy may perpetuate the employer's past discriminatory hiring practices.
- **Failing to undertake certain actions prohibited or required by law.** For example, failing to reasonably accommodate a known disability of an employee or applicant.
- **Harassment.** This violates the ADA, ADEA, and Title VII, and is unwelcome conduct based on race, color, religion, sex (including pregnancy, gender identity, transgender status, or sexual orientation), national origin, age (40 or older), disability, or genetic information. Harassment becomes unlawful when:
  - Enduring the offensive conduct becomes a condition of continued employment; or
  - The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.
- **Retaliation.** This is when an employer punishes applicants or employees for asserting their rights to be free from employment discrimination including harassment.