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BLOGS

Archives; Discipline; Discrimination; Hiring & Firing

EEOC Issues Final Enforcement Guidance on Retaliation

In our January 29, 2016 post, we informed you that the U.S. Equal Employment Opportunity Commission (EEOC) had published a proposed enforcement guidance on Retaliation and Related Issues for public comment. On August 25, 2016, the EEOC issued the final enforcement guidance, which is available here:

<https://www.eeoc.gov/laws/guidance/retaliation-guidance.cfm>.

The new enforcement guidance replaces the retaliation section of the EEOC's 1998 Compliance Manual and addresses the issue of retaliation under various federal anti-discrimination statutes, including the following statutes:

- Title VII of the Civil Rights Act of 1964
- Age Discrimination in Employment Act (ADEA)
- Title V of the Americans with Disabilities Act (ADA)
- Section 501 of the Rehabilitation Act
- Equal Pay Act (EPA)
- Title II of the Genetic Information Nondiscrimination Act (GINA)

The enforcement guidance also addresses the separate interference provisions under the ADA which prohibit coercion, threats, or other acts that interfere with the exercise of rights under the ADA.

While courts are not required to follow the EEOC enforcement guidance, such documents often carry significant weight. In addition, the EEOC itself relies on its enforcement guidance documents when it reviews charges of discrimination.

Employers may find it helpful to review several of the topics discussed in the enforcement guidance. In particular, the enforcement guidance provides detailed examples of employer actions that may constitute retaliation. Other topics include:

- The scope of employee activity protected by the law
- The legal analysis to be used to determine if evidence supports a claim of retaliation
- Remedies available for retaliation