

Legal Update

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EEOC Issues Guidance on Retaliation and Interference During the COVID-19 Pandemic

On Nov. 17, 2021, the Equal Employment Opportunity Commission (EEOC) issued new answers to frequently asked questions ([FAQs](#)) about how employers can avoid violating anti-retaliation provisions under federal equal employment opportunity (EEO) laws during the COVID-19 pandemic.

The new FAQs, which were added to [the EEOC's existing guidance on COVID-19 and fair employment issues](#), address the rights of employees and applicants who believe they suffered retaliation for protected activities under the Americans with Disabilities Act (ADA), Title VII of the Civil Rights Act or other employment discrimination laws.

Retaliation and Interference Guidance

Among other things, the new FAQs clarify that:

- Anti-retaliation provisions of federal EEO laws protect not only applicants and current employees but also former employees;
- Unlawful retaliation includes any employer action in response to protected activity that could deter a reasonable person from engaging in protected activity; and
- The ADA prohibits not only retaliation for protected EEO activity but also "interference" with an individual's exercise of ADA rights.

Employer Impact

The new FAQs do not create any new obligations or change any existing rules for employers. Instead, they explain existing provisions and how they may apply during the COVID-19 pandemic. Employers should become familiar with the EEOC's full guidance and review their policies to ensure compliance.

Highlights

New FAQs on Retaliation

The EEOC's new FAQs explain how employers may avoid engaging in unlawful retaliation for protected activity under federal fair employment laws.

Protected Activity

Protected activity can take many forms, such as filing a charge; complaining to a supervisor; or requesting accommodation of a disability or religious belief, practice or observance, regardless of whether the request is granted or denied.

The EEOC's new FAQs provide examples of COVID-19-related actions that could be unlawful retaliation under federal fair employment laws.