

Construction Companies Become Latest Targets of EEOC

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The Equal Employment Opportunity Commission (EEOC) promised in a March 2022 hearing to address what it considered to be “severe and pervasive” discrimination in the construction sector. According to EEOC Chair Charlotte Burrows, “[M]any women and people of color have either been shut out of construction jobs or face discrimination that limits their ability to thrive in these careers.”

The EEOC is keeping its promise. Since the March hearing, the EEOC has filed numerous lawsuits against construction companies throughout the country, including Arizona, California, Florida, New York, Washington, and Wisconsin. Tackling harassment issues in the construction industry appears to be the primary theme.

Examples of EEOC Actions

For example, the EEOC filed suit in California against a construction company claiming that supervisors subjected Latino workers to national origin harassment. The agency alleged that the supervisors referred to the workers as “wetbacks” and “Home Depoters” and mocked them if they could not speak English. The alleged harassment also included anti-Latino graffiti found in portable restrooms at the worksite that included abusive terms and offensive imagery demeaning to Latino workers.

In July 2022, the EEOC settled a lawsuit it filed against a Washington construction contractor in which the agency alleged that seven current and former female employees had endured sexual harassment during their employment. The company’s owner purportedly made comments that female employees did not belong in the industry. The female employees also claimed the company failed to investigate harassment complaints.

In September 2022, the EEOC filed two different race discrimination suits against companies in Florida. In one of the suits, the EEOC alleged that the company’s management regularly used the N-word in front of Black employees and that another manager humiliated a Black employee by ramming a shovel from the back between his legs. After objecting to the assault, the company terminated the Black employee the same day. In the second suit, the EEOC alleged that management routinely used derogatory slurs by referring to Black employees as “boy,” “biscuit lips,” and “African bastards,” as well as frequent use of the N-word. Management also allegedly referred to Latinos as “stupid Mexicans,” “wetbacks,” and “these f—ing Puerto Ricans,” among other slurs. When the employees complained, the company allegedly terminated them in retaliation.

How to Avoid Claims

Construction companies need to be proactive if they want to avoid claims from the EEOC or the private bar.

Title VII of the Civil Rights Act prohibits employers from discriminating against applicants and employees because of race, color, gender, national origin, and religion in the terms and conditions of employment. Other laws also protect individuals from discrimination due to age, military status, disability, citizenship, and genetics. The terms and conditions of

employment include one's working environment; therefore, harassment based on any one of these protected classes can be a violation of federal law — and sometimes state law.

Companies should start by taking a hard look at their equal employment opportunity policies, including their harassment policies. After ensuring these policies are up to date, companies need to ensure that supervisors are properly trained on (1) what conduct they are prohibited from doing and (2) how to respond if they become aware of a potential violation of the policy.

Companies should not forget about training hourly workers. The training should ensure that employees know what the company policy is and that they know how to file a complaint. Companies should also assure workers that they will not suffer retaliation for reporting a violation of company policies, participating in an investigation, or opposing discrimination or harassment. This training is particularly important in the construction industry as construction companies typically do not have a human resource office on a construction site.

Please contact a Jackson Lewis attorney with any questions.

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