

EEOC to Focus on Diversity in the Construction Industry

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In its report, "[Building for the Future: Advancing Equal Opportunity in the Construction Industry](#)," the U.S. Equal Employment Opportunity Commission (EEOC) identifies the challenges to diversity and inclusion in the industry and promises to take steps, including releasing industry-specific technical assistance for employers, unions, and workers, to enhance diversity and inclusion.

Referencing the Infrastructure Investment and Jobs Act of 2021 (IIJA) and the CHIPS and Science Act of 2022, the Report notes these "federal infrastructure investments provide a once-in-a-generation opportunity to break down barriers and expand opportunity in the construction industry."

The Report provides numerous examples of alleged harassment and discrimination in the construction industry against women and minorities. EEOC proposes to collaborate with key industry stakeholders — including contractors, unions, worker representatives, and civil rights organizations — to address these challenges.

Key Findings

EEOC identified areas requiring renewed focus and action:

- Women and People of Color are underrepresented in the construction industry as a whole, especially in higher-skilled, higher-paid positions in trades and management.
 - Women constitute 47% of the overall U.S. workforce, but only 11% of construction workers, and they hold only 8.5% of construction management positions.
 - African Americans constitute 12.6% of the overall U.S. workforce, but only 6.7% of construction workers, and they hold only 5.3% of construction management positions.
 - Hispanic workers are more highly represented in construction (34.2% of workers) than in the overall workforce (18.5%), but they are significantly underrepresented in higher paying positions.
- Discrimination based on sex, race, and national origin persists and contributes to the underrepresentation.
- Harassment is pervasive on many worksites and poses a significant barrier to improving workforce representation.
- Racial harassment often "takes virulent forms" and "nooses appear with chilling frequency" on jobsites across the country.
- Harassment in construction constitutes a workplace safety issue, as well as a civil rights issue.
- Construction workers often do not know how or to whom they can report violations.
- Retaliation continues to be a serious problem.

Identified Causes of Continuing Underrepresentation, Discrimination, Harassment

EEOC asserts that, historically, the best jobs in construction were reserved for white men, due to bias by both employers and unions. In addition to outright discrimination, construction jobs often went to individuals with connections to union leaders or relied heavily on connections to existing members of the workforce — both of which worked against women and minorities who did not have access to these informal networks of “friends and families.” While EEOC believes there has been some progress in this area, it encourages employers to continue to break down these barriers.

A significant part of the Report focuses on discrimination in apprenticeship programs as a barrier to entry. As EEOC notes, these programs are a pipeline to the higher-status, higher-paying trades, but women and minorities continue to be underrepresented, even compared to their representation in the construction workforce. Further, EEOC states that women and minorities who are admitted to apprenticeship programs suffer from discrimination that results in lower apprenticeship completion rates and fewer opportunities for those who complete the programs.

EEOC also cites continuing discrimination in assignments, pay, promotion, and termination as factors discouraging women and minorities from entering the construction workforce and preventing them from advancing if they do. EEOC notes that each of these problems results in women and minorities leaving the construction workforce and in employers losing skilled and trained workers who cannot be readily replaced.

Planned Next Steps

EEOC states that it will take the following steps:

- Develop industry-specific technical assistance for employers, unions, and workers.
- Meet with employers, unions, workers, and advocacy groups to understand their needs and to develop coalitions for action.
- Provide information on lawful diversity, equity, inclusion, and accessibility (DEIA) best practices that can foster opportunities for all workers.
- Partner with employers, unions, and community-based organizations to provide effective anti-harassment training to apprentices and workers.
- Work cooperatively with other federal, state, and local anti-discrimination agencies to advance equal employment opportunities in the industry.

Implications for Construction Employers

EEOC Chair Charlotte Burrows has clearly identified discrimination and harassment in the construction industry as focus areas for the immediate future. On June 21, 2023, President Joe Biden nominated Chair Burrows for her third term on the EEOC, which would extend through July 1, 2028.

To prepare for possible EEOC scrutiny following the Report, employers can consider the following:

- Review and update, as necessary, non-discrimination, anti-harassment, and related policies.
- Ensure workers who believe they have been harassed or discriminated against have multiple avenues to report alleged violations of policy and takes steps to ensure worker know to whom and how to file a complaint.
- Implement or reassess training for managers and supervisors on preventing,

identifying, and addressing worker equal employment opportunity complaints.

- Improve compliance with non-discrimination and anti-harassment policies through a variety of methods, including greater human resource presence, legal department walk-arounds, and management reference to DEIA in team meetings and town halls.
- Secure an objective DEIA assessment to identify vulnerabilities and develop best practices.
- Periodically conduct pay disparity studies, in conjunction with outside counsel to maximize protection of attorney-client and other privileges.

Construction employers should take advantage of this notice from EEOC and ensure they are addressing the issues identified in the Report and taking action to enhance diversity and inclusion in their workforces to help mitigate the risks of EEOC scrutiny.

If you have questions, contact the author or the Jackson Lewis attorney with whom you regularly work.

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