

### **EEOC Alerts Employers to Potential Title VII and ADA Rights of Employees Who Experience Domestic Violence, Sexual Assault or Stalking**

The U.S. Equal Employment Opportunity Commission (EEOC) recently issued a ["Questions and Answers" document](#) regarding the application of Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act (ADA) to victims of domestic violence, sexual assault or stalking. The document highlights that employers should be sensitive to these issues when dealing with both job applicants and employees.

New York employers should also keep in mind that New York State and New York City law include heightened protections for domestic violence victims.

**Best Practices.** Employers should be mindful that improper handling of issues involving domestic violence, sexual assault and stalking can result in disparate treatment, harassment or retaliation on the basis of sex, sex-based stereotypes or disability. While the new guidance from the EEOC does not expand the protections afforded by Title VII and the ADA, it emphasizes that employers should exercise caution when faced with such sensitive situations.

Employers should train their employees to address and respond to these issues in a prompt, appropriate, and sensitive manner. As part of their regular equal employment opportunity and anti-harassment training, employers should note that:

- Harassing individuals because of their experience with domestic violence, sexual assault or stalking is impermissible and will lead to disciplinary action;
- Making employment or assignment decisions on the basis of an individual's experience as a victim—including the perception of the victim's special needs or the validity of the victim's claim—is impermissible and can expose the employer to liability under federal law;
- Allegations of sexual assault or stalking by a coworker will be taken seriously and responded to promptly;
- Employees who have filed claims of sexual assault or stalking must be treated no differently because of those claims;
- Employees who are victims of domestic violence, sexual assault or stalking may require reasonable accommodation in order to deal with the effects of those incidents;
- An employee's disclosure of personal medical information relating to the domestic violence, sexual assault or stalking incident must be treated as confidential.

**Title VII.** Title VII prohibits discrimination on the basis of race, national origin, sex and religion. The EEOC's article indicates that certain actions taken by an employer or its employees against a victim of domestic violence, sexual assault or stalking may constitute sex-based discrimination, harassment or retaliation under Title VII.

Examples of prohibited activity discussed by the EEOC include firing a domestic violence victim because of concerns regarding potential "drama battered women bring to the workplace"; giving a male employee unpaid leave to testify in an assault prosecution but refusing to offer a similarly situated female employee unpaid leave to testify in a domestic violence prosecution because it is "just a marital problem"; and taking adverse employment actions against an employee because she filed a complaint that a company manager sexually assaulted her.

**ADA.** The ADA bars discrimination against an individual on the basis of his or her disability. If an employee or applicant is disabled, in certain circumstances an employer may be required to grant that person a reasonable accommodation that allows him or her to perform the essential functions of his or her job. As disabilities may include issues resulting from domestic violence, sexual assault or stalking, the EEOC noted that the ADA may be implicated when dealing with employees who are victims.

In one of the EEOC's examples, an employer searched online for information about an applicant and discovered that she was a rape victim and had received counseling for depression. The employer decided not to hire her based on a concern that she could require time off in the future to deal with continuing symptoms or treatment of her depression. Such an action would violate the ADA.

In another example, the EEOC highlighted how leave policies can also be implicated in these situations. There, an employee with no accrued sick leave whose employer was not covered by the Family and Medical Leave Act (FMLA) requested unpaid leave or a schedule change to get treatment for anxiety following a sexual assault. The employer denied the request because it "applies leave and attendance policies the same way to all employees." The EEOC's position is that because this employee had a disability and requested an accommodation, the employer's flat denial of her request violates the ADA.

If an employer is covered by the FMLA, an employee who is a victim of domestic violence, sexual assault or stalking may have the right to unpaid leave under that statute.

**New York.** New York employers should also be aware of specific state and local laws regarding victims of domestic violence, sexual assault or stalking.

The New York State Human Rights Law includes "domestic violence victim status" as a protected status, and states that an employer may not "refuse to hire or employ or... bar or... discharge from employment such [an] individual or... discriminate against such [an] individual in compensation or in terms, conditions or privileges of employment." N.Y. Executive Law § 296-1(a).

The New York City Human Rights Law bars employers from taking adverse employment action against any individual because of his or her actual or perceived status as a victim of domestic violence, sex offenses or stalking, or to discriminate against such an individual in compensation or other terms and conditions of employment. N.Y. Admin. Code § 8-107.1. Employers must also make "a reasonable accommodation to" any such employee to enable him or her to "satisfy the essential requisites" of his or her job. *Id.* If such an employee requests a reasonable accommodation pursuant to this statute, an employer may request documentation of his or her victim status. *Id.*

**This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.**

<a href="mailto:lecleary@pbwt.com">Lisa E. Cleary</a>	212-336-2159	<a href="mailto:lecleary@pbwt.com">lecleary@pbwt.com</a>
<a href="mailto:cawilliams@pbwt.com">Catherine A. Williams</a>	212-336-2207	<a href="mailto:cawilliams@pbwt.com">cawilliams@pbwt.com</a>
<a href="mailto:apinto@pbwt.com">Adam Pinto</a>	212-336-2156	<a href="mailto:apinto@pbwt.com">apinto@pbwt.com</a>
<a href="mailto:kricher@pbwt.com">Kristen L. Richer</a>	212-336-2177	<a href="mailto:kricher@pbwt.com">kricher@pbwt.com</a>

**IRS Circular 230 disclosure: Any tax advice contained in this communication (including any attachments or enclosures) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication. (The foregoing disclaimer has been affixed pursuant to U.S. Treasury regulations governing tax practitioners.)**

**To subscribe to any of our publications, call us at 212.336.2186, email [info@pbwt.com](mailto:info@pbwt.com), or sign up on our website, [www.pbwt.com/resources/publications](http://www.pbwt.com/resources/publications).**

**This publication may constitute attorney advertising in some jurisdictions.**

**© 2013 Patterson Belknap Webb & Tyler LLP**