Best Practices for Preventing Reverse Discrimination Claims

Premier Consulting Partners

The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal equal employment opportunity (EEO) laws, including Title VII of the Civil Rights Act (Title VII). Title VII prohibits discrimination against an individual on the basis of their protected trait (including race, color, national origin, religion and sex). Employers are prohibited from discriminating against an individual regardless of whether the individual is a member of a minority group or majority group. Discrimination against a member of a majority group is commonly referred to as reverse discrimination.

In some jurisdictions, reverse discrimination claims were historically subject to a heightened evidentiary standard, making it harder for majority group members to bring reverse discrimination claims. On June 5, 2025, in Ames v. Ohio Department of Youth Services, the Supreme Court unanimously held that reverse discrimination claims should be subject to the same evidentiary standard as traditional discrimination claims.

Following the Supreme Court decision, it will be easier for individuals to allege reverse discrimination, which may increase the volume of such claims. Therefore, employers should ensure they understand what reverse discrimination claims are and the steps they may take to prevent such claims.

OVERVIEW OF TITLE VII REVERSE DISCRIMINATION

Title VII is a federal EEO law that prohibits employers with 15 or more employees from failing or refusing to hire, discharging or otherwise discriminating against any individual with respect to the compensation, terms, conditions or privileges of employment on the basis of their protected trait. It also prohibits limiting, segregating or classifying individuals on the basis of their protected trait in a way that deprives them of employment opportunities. Protected traits under Title VII include:

- **Race;**
- **Color;**
- **National origin;**
- **Religion; and**
- **Sex.**

"Reverse discrimination" is not defined under Title VII but is generally considered to be discrimination against an individual who is a member of a **majority group** that has been historically advantaged on the basis of their protected trait. Commonly, allegations of reverse discrimination have been brought by white, male or heterosexual individuals.

Forms of Reverse Discrimination

Title VII broadly prohibits discrimination on the basis of an individual's protected class. Commonly, discrimination allegations are classified as either disparate treatment discrimination or disparate impact discrimination, each of which is described below. In addition to the forms of discrimination described below, employers are prohibited from **harassing** individuals on the basis of their protected trait or **retaliating** against individuals for asserting their rights under the law.

Disparate Treatment

Disparate treatment discrimination occurs when an employer treats an applicant or employee differently than a similarly situated applicant or employee because of that individual's protected trait. For example, hiring an individual who is a member of a minority group because of their protected trait rather than hiring an equally qualified individual who is a member of a majority group is an example of disparate treatment reverse discrimination. In order to prove that an employer engaged in disparate treatment discrimination, an individual must show evidence that an adverse employment action was motivated by the employer's discriminatory animus.

Disparate Impact

Disparate impact discrimination occurs when a facially neutral policy or practice disproportionately affects members of a protected class, regardless of whether the employer had a discriminatory motive. For example, focusing recruiting efforts based on applicant zip codes could be an example of disparate impact reverse discrimination if members of certain minority groups disproportionately live in such zip codes and this results in fewer majority group members being recruited, even if that is not the employer's intent.

Employers should note that there is a push at the federal level to eliminate disparate impact liability. Specifically, on **April 23, 2025**, President Donald Trump issued an executive order seeking to eliminate the use of disparate impact liability in all contexts. However, this executive order alone does not alter the ability of applicants, employees and former employees to assert disparate impact discrimination claims against employers.

Title VII Reverse Discrimination Evidentiary Standard

The traditional framework for analyzing Title VII discrimination claims generally requires an initial showing that the employer acted with a discriminatory motive based on the individual's protected traits. However, circuit courts historically disagreed as to whether individuals alleging discrimination based on their membership in a majority group also show "background circumstances support the suspicion that the defendant is that unusual employer who discriminates against the majority."

In Ames, the Supreme Court unanimously held that the requirement for additional background circumstances is inconsistent with Title VII's text and Supreme Court case law. The Supreme Court explained that Title VII prohibits discrimination based on an individual's protected trait and does not distinguish between minority-group plaintiffs and majority-group plaintiffs. Instead, all discrimination claims are subject to the same evidentiary standard, regardless of whether the plaintiff is a member of a majority or minority group.

While the Supreme Court's ruling does not impose new obligations on employers, it establishes a uniform standard for individuals alleging any claim of employment discrimination, including reverse discrimination. In some jurisdictions, reverse discrimination claims were subject to a heightened evidentiary standard, making it harder for majority group members to bring reverse discrimination claims. Following the Supreme Court decision, it will be easier for such individuals to allege reverse discrimination, which may increase the volume of such claims.

Enforcement and Penalties

Individuals alleging reverse discrimination under Title VII may initiate an action against an employer by filing a charge of discrimination with the EEOC. If there is a local or state law similar to Title VII, individuals may be required to file a charge with the state or local agency that enforces the law, and the EEOC may work with the agency to investigate and resolve the charge. Under Title VII, individuals have **180 days** from the date the alleged retaliation took place to file a charge with the EEOC. The filing deadline is extended to **300 days** if a state or local agency enforces a state or local law similar to Title VII. Individuals must file an EEOC charge before they may file a lawsuit in federal court.

If a court determines that an employer engaged in reverse discrimination, the employer may be subject to the following penalties:

- Injunctive relief;
- Back pay;
- Reinstatement or front pay;
- Compensatory and punitive damages; and
- Attorney fees and costs.

BEST PRACTICES FOR PREVENTING REVERSE DISCRIMINATION CLAIMS

Reverse discrimination claims can result in time-consuming administrative and legal proceedings and expose employers to financial and reputational harm. To reduce the likelihood of reverse discrimination claims, employers may consider implementing the following best practices. However, adopting these practices will not shield employers from liability for discrimination, and these practices may need to be tailored to different workplaces and circumstances.

Review DEI Practices and Policies

Diversity, equity and inclusion (DEI) programs are popular measures employers may take to promote inclusion for historically underrepresented populations. Some examples of DEI initiatives include:

- **Recruiting outreach programs**, which are aimed at reaching out to underrepresented communities, such as attending career fairs that focus on diverse candidates;
- **Employee resource groups**, which are often referred to as affinity groups, in which employees join based on shared experiences, characteristics or interests; and
- **DEI-related workshops and unconscious bias training**, which train employees to identify implicit biases and how they can affect their judgment and decision-making, as well as methods to mitigate them.

However, when not implemented carefully, DEI programs and practices may expose employers to potential reverse discrimination claims. Specifically, programs that are either discriminatory against members of a majority group or that explicitly favor a minority group could expose employers to liability for reverse discrimination allegations.

To help reduce the risk of reverse discrimination claims, employers that have implemented such DEI programs may consider carefully auditing existing DEI-related programs, such as affinity groups or candidate outreach programs, to ensure they do not directly or indirectly discriminate against members of a protected class, regardless of whether that class is a majority or minority group. Specifically, employers should ensure that all workplace programs, activities, resources and opportunities are open to all qualified individuals, regardless of their membership in a protected group.

Assess Other Written Employer Policies

In addition to any written DEI policies, employers should review other employer policies to ensure they do not discriminate against any individuals, including members of a majority class. Some policies that employers may consider reviewing include the following:

- **EEO policies**—Employers may consider reviewing and updating EEO policies to ensure that they are applied consistently to all employees and applicants (as applicable). Employers should avoid using any language that suggests such policies only apply to certain protected traits; and
- **Anti-discrimination, anti-harassment and anti-retaliation policies**—In addition to EEO policies, employers should ensure that all anti-discrimination, anti-harassment and anti-retaliation policies apply equally to all employees by providing protections to majority-group members in the same way they protect minority-group members. Employers may consider including examples of reverse discrimination, harassment or retaliation against majority-group members in these written policies.

Ensure Consistent and Nondiscriminatory Selection Criteria

Employers may also consider reviewing their existing selection criteria (including selection for hiring, recruiting candidate pools, programs, trainings and promotions) to ensure they do not discriminate against any protected class, including individuals who are members of a majority group. Employers should note that selection criteria that are neutral and nondiscriminatory on their face may still be discriminatory if they have a disparate impact on members of a protected class. To avoid potential reverse discrimination claims, employers may consider the following selection practices:

- **Apply clear, consistent and nondiscriminatory criteria**. Employers should base selection decisions on specific measurable skills and qualifications directly related to job performance and applied equally to all applicants. For example, employers should avoid criteria like socioeconomic status, first-generation status or geographic diversity;
- **Avoid diversity quotas**. Employers should avoid policies that require representation of specific racial, sex-based or other protected groups in candidate pools, hiring panels or final selections and should instead focus on nondiscriminatory performance metrics;
- **Eliminate segregation based on protected characteristics**. Employers should avoid organizing workplace programs, activities or resources, including trainings, in a way that separates or restricts access based on protected traits; and
- **Focus on outreach to all qualified individuals**. Employers should generally avoid candidate outreach or other recruiting efforts that are focused on specific demographics and instead target the recruitment of all qualified individuals regardless of their protected traits or any other criteria that may serve as proxies for protected traits.

Document Employment Decisions

In any employment decision, such as hiring, discharging, promoting, disciplining and modifying compensation, employers should document the clear, legitimate and nondiscriminatory rationales for the decisions. Employers should also ensure that any such rationales are applied consistently to all individuals regardless of their membership in any particular protected class. Documentation can help employers defend against potential claims of reverse discrimination.

Train Employees and Managers

Employers should consider administering trainings for both employees and managers regarding employment discrimination and their obligations under applicable anti-discrimination laws, including Title VII. Employers should consider adding discussions and examples of reverse discrimination in training programs.

However, employers should ensure that any training related to anti-discrimination policies is not discriminatory in and of itself. For example, trainings should not require participants to affirm specific ideological positions or personal biases or privileges of the participants based on their protected trait.

Finally, employers must also ensure that any such anti-discrimination trainings (including implicit bias trainings) are provided to all employees regardless of race, sex, religion or any other protected trait and do not segregate participants into groups based on their protected trait.

Implement a Fair Internal Complaint Process

Employers should review their internal complaint and investigation procedures to ensure that appropriate protocols are in place for allegations of reverse discrimination. Specifically, internal procedures should treat reverse discrimination complaints in the same manner as any other allegation of discrimination and provide the same anti-retaliation protections to complainants.

EMPLOYER TAKEAWAYS

Reverse discrimination claims, though less common than traditional discrimination claims, are treated equally under federal anti-discrimination laws and can expose employers to the same legal risks. To prevent allegations of reverse discrimination, employers should take steps to ensure their practices comply with all applicable anti-discrimination laws, including Title VII, and with respect to all employees and applicants (regardless of whether they are members of a majority group or a minority group). By proactively mitigating reverse discrimination risks, employers can limit their exposure to litigation and investigations while fostering an inclusive workplace.

Provided to you by Premier Consulting Partners LLC

This Compliance Overview is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice. ©2025 Zywave, Inc. All rights reserved.