

EEOC Releases Q&A Fact Sheet On Application Of Title VII And ADA To Victims Of Domestic Violence, Sexual Assault, And Stalking

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The Equal Employment Opportunity Commission's (EEOC) most recent official guidance involves the application of federal anti-discrimination laws to employees and applicants who have experienced domestic or dating violence, sexual assault, or stalking. The Q&A Sheet can be [found here](#).

Because victims of these offenses are not explicitly protected under federal law, employers may not realize certain employment decisions can run afoul of Title VII (prohibits discrimination on the basis of sex and sex stereotyping, among other categories) or the Americans with Disabilities Act (ADA).

Examples that might lead to charges of discrimination under Title VII include:

- Terminating an employee after learning she has been the subject of domestic violence because the employer fears the possible "drama battered women bring to the workplace."
- Failing to select a male applicant after learning applicant obtained a restraining order against his male domestic partner because hiring manager believes men can't be victims of domestic violence and should be able to protect themselves.
- Allowing males a leave of absence to appear in court for the prosecution of an assault, but denying females leave to testify in domestic violence case. Employer believes the former to be a "real crime" while the latter is "just a marital problem."

The ADA prohibits discrimination based on actual or perceived impairments, and one can easily foresee situations when domestic/dating violence or sexual assault can result in such impairments. Examples where employers may be found liable for unlawful disability discrimination under such circumstances include:

- Deciding not to hire applicant employer discovers is the complaining witness in a rape prosecution and has seen a therapist for depression because employer believes applicant may need time off in the future to deal with symptoms or for counseling sessions.
- Failing to address and stop harassment by co-workers regarding employee with facial scars/skin grafts resulting from attack by former domestic partner.
- Failing to accommodate an employee not eligible for FMLA leave by refusing to give her time off to seek treatment for depression and anxiety following a sexual assault. The employer tries to justify the refusal by stating that leave and attendance are uniformly applied to all employees.
- Failing to honor an employee's request for reassignment to available vacant position at different location for which she is qualified when ex-boyfriend who currently works in the same building is stalking her, causing her major depression. Employer cites "no transfer" policy as reason for refusal.

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· (Supervisor) disclosing to other co-workers an employee's post-traumatic stress disorder resulting from incest.

Although these are the examples given by the EEOC, indirect discrimination allegations under Title VII and the ADA can arise in numerous situations that would not necessarily be readily apparent to even well-trained and sophisticated employers. Of course, it is always a good idea to seek guidance from experienced employment counsel when employers are given pause about an employment decision, even when the employer is not entirely sure why they might be hesitating.