EEOC GUIDELINES FOR WHAT IT TAKES TO PROVE DISCRIMINATION[1] BASED ON SEX, RACE, NATIONAL ORIGIN, COLOR, RELIGION AND AGE

There are many things that happen on the job that are unkind, unpleasant, unfair, or downright insulting! Sometimes these things happen because of poor management, or even because someone is mad at, or dislikes, someone else. If something like this has happened to you, it may or may not be unlawful.

An employment decision made by your employer can be unfair, and not be unlawful. An employment decision can be unreasonable, and not be unlawful. An employment decision can be based on false information, or false assumptions, and not be unlawful. An employment decision can fail to comply with a union contract, or the employer's own policies, and not be unlawful under any of the statutes enforced by the EEOC.

The EEOC provides the following information that we are describing below to help complainants determine what evidence they need to prove their case. By providing you with the information that follows, the EEOC does not expect you to become an expert on proving discrimination or to personally provide all of the evidence needed. Nor does EEOC claim that the information contained in this document provides an adequate basis for assessing every conceivable factual circumstance, or legal interpretation. However, EEOC believes you should know that there are certain standards of proof that must be met before it can be concluded that the law was violated. The standards of proof required are those that have been established by EEOC regulation and by the courts in lawsuits involving employment discrimination.

What do you have to prove to prevail in a case alleging sex, race, national origin, color, religion and age discrimination?

In order for an employment action to be unlawful under Title VII of the Civil Rights Act, or the Age Discrimination in Employment Act, that action must have been taken because of your sex, race, national origin, color, religion and/or age. In order to show that something happened to you because of your race, sex, etc., it is not enough to simply say, *"Well, I'm Black, and I was not promoted, therefore, I must have been denied the promotion due to my race."* Nor is it enough to say, *"I am a female, and a male was given a bigger office than my office, therefore I was denied a bigger office due to my sex."* There must be some additional, independent factor that could be pointed to in order to show that your sex was a consideration in your employer's decision to give a bigger office to the male. If a bigger office was given to you, the male employee could also claim that he was denied a bigger office because of his sex.

[1] According to Equal Employment Opportunity Commission (EEOC) regulations and guidelines

The most common way of showing that the action taken against you was because of your sex, race, etc., is to look at how other people of a different sex, race, etc., were treated who work under the same rule requirements as you. If something happens to you that doesn't happen to a person of a different race, etc., or if that person was treated more favorably than you, that may be a matter for concern--but standing alone, it is not enough to prove that the action was based on race, etc. If you were disciplined and someone of a different race, etc., was not disciplined, it may be that you violated the employer's rules, and the other person did not. Or, you may have violated the rules more frequently, or for a longer period of time. Or, the employer may not have known that the other person violated the rules. Or, the other employee may have a different supervisor who enforces the rules differently for his or her employees. Difference in treatment is not unlawful if there was some legitimate, nondiscriminatory reason for that difference in treatment.

Before it can be concluded that you were discriminated against, there needs to be proof that:

1. You were treated differently than someone of a different sex, race, national origin, color, religion, or age. Note that discrimination means to be treated differently than someone who is in the same or similar situation as you. It does not mean that you suffered an adverse action taken by someone who happens to be a different sex, etc., than you. Being a different race, sex, etc., than your supervisor doesn't necessarily mean the adverse action was taken due to your race, sex, etc. Conversely, being the same race, sex, etc., as your supervisor doesn't necessarily mean you were not discriminated against due to your race, sex, etc. It's not what the supervisor is, but how s/he treats others compared to you that determines the presence or absence of discrimination.

We will ask you what you know about the person whom you believe was treated more favorably than you. You should be able to provide the person's name, their race, sex, approximate age, or other information related to the protected bases you are bringing forth in your case. You should know where they worked, who their supervisor was, and the job they did. You should also be able to tell us how they were treated compared to you. You may not have all of this information; however, the more information you have, the better.

2. Someone who is very similar to you in position, rank, or job duties, and who is of a different sex, etc., was treated more favorably under similar circumstances.

When looking at the person you believe was treated more favorably than you, we will want to know whether that person worked under the same rules and regulations that you did. For example, did they work for the same service, the

same unit, the same supervisor? Did they do the same job as you? Did they do a similar job, or a completely different job? Did they work in the same physical conditions, such as in the office, in a lab, outside? Were they a member of a union while you were not, or the other way around? Were they a member of management while you were not, or the other way around? Were they at a higher, or lower, level of management? How long had they been on the job compared to you? Did they have more experience than you?

3. There was no legitimate, nondiscriminatory reason why the employer treated you differently.

Once you have identified the person(s) whom you believe was treated more favorably than you, we will then want to know whether there may have been some reason other than sex, race, etc., that might have caused the employer to treat this person more favorably. For example, was the person treated more favorably because they earned the right to be treated more favorably, such as having higher ratings than you; possessing more qualifications; more experience; better attendance? Was the supervisor angry at you because of something you did (or didn't do) that did not relate to your age, race, sex, etc.? What were you told was the reason the action was taken? Do you believe what you were told? If not, why not? Can the employer back up their position with evidence? Can you?

Evidence takes several forms. It includes information gathered from you through your response to a written affidavit or interview. It also includes written materials such as policies, evaluations, notes, letters, memos, computer records and the like. You will be asked to provide any documents you have that relate to your case. The types of evidence may include one or more of the following:

Documents--This category of evidence includes any record that is written such as policies, procedures, letters, notes, files, personnel action forms, and so on. It also can include such things as computer disks and tapes, tape recordings, photographs, drawings, etc. If you have any document you believe would help your case, you should provide it. If you mail it, always mail a copy, not an original. If you know of documents that you don't have yourself, such as attendance records, production records, etc., that your employer has that would help your case, you should tell us about that.

EEOC GUIDELINES FOR WHAT IT TAKES TO PROVE DISCRIMINATION[1] BASED ON DISABILITY

There are many things that happen on the job that are unkind, unpleasant, unfair, or downright insulting! Sometimes these things happen because of poor management, or even because someone is mad at, or dislikes, someone else. If something like this has happened to you, it may or may not be unlawful.

An employment decision made by your employer can be unfair, and not be unlawful. An employment decision can be unreasonable, and not be unlawful. An employment decision can be based on false information, or false assumptions, and not be unlawful. An employment decision can fail to comply with a union contract, or the employer's own policies, and not be unlawful under any of the statutes enforced by the EEOC.

The EEOC provides the following information that we are describing below to help complainants determine what evidence they need to prove their case. By providing you with the information that follows, the EEOC does not expect you to become an expert on proving discrimination or to personally provide all of the evidence needed. Nor does EEOC claim that the information contained in this document provides an adequate basis for assessing every conceivable factual circumstance, or legal interpretation. However, EEOC believes you should know that there are certain standards of proof that must be met before it can be concluded that the law was violated. The standards of proof required are those that have been established by EEOC regulation and by the courts in lawsuits involving employment discrimination.

What do you have to prove to prevail in a case alleging disability discrimination?

To prove that an employment action taken against you was because of your disability, we will look at some or all of the following factors, depending on the nature of your allegation.

1. You must be a "Qualified Individual with a Disability."

To be covered by the law, you must possess all the qualifications required for the job, and you must be able to perform the **essential functions** of the job, either with or without an accommodation. You must have some medical condition that **substantially limits one or more of your major life activities.** Major life activities include such things as seeing, hearing, breathing, walking, talking, learning, reading and concentrating. The impairment to your major life activity

[1] According to EEOC regulations and guidelines

must be **substantial** and of **significant duration**. It cannot be merely slight or temporary. We will ask you to provide information covering all of these areas.

We will need verification from your physician(s) as to the nature, extent, and duration of your disability. This documentation should be presented at the time you contact an EEO Counselor, or as soon thereafter as possible.
NOTE: The mere fact that you are receiving disability benefits from some other source such as the VA (for a service connected disability), social security, or worker's compensation, does not necessarily mean that you are disabled under the Americans with Disabilities Act (ADA) definition of a disability.

2. The employer must have known about your disability.

Some disabilities are immediately observable but most are not. In order to take an action because of a disability, the employer must know that the disability exists. Usually, the employer will know because you tell them, because your medical records contain information about your disability, or because you were injured on the job. You should be able to provide, or tell us where to find, information that will establish that the employer knew about your disability.

3. The employer thought you had a disability, when you did not.

You can allege that an employer has taken an adverse employment action against you because the employer believes you have a disability when in fact, you do not. In making an allegation of this nature, there would need to be some proof that the employer had reason to believe that you had a disability. This usually occurs where you have some kind of illness or disease, but the condition does not, in fact, cause you to be disabled despite how management treated you. For example, an individual might have cancer, and still be perfectly able to perform their job. However, you can allege that the employer may think that because you have cancer you have a disability and take an employment action against you for that reason. The employer would usually find out about such "perceived" disabilities in the same manner as described in Item #2 above.

4. You have a record of a disability.

You can allege that an employer may have taken an adverse employment action against you because you were identified as being disabled at some time in the past. An employer could become aware of such a record in the same manner as described in Item #2 above, and the proof requirements (not included above) would be the same.

a. You can allege that an employer took an employment action against you because you have a disability, or a record of a disability, or the employer thought you had a disability.

Even if the employer knew, or thought it knew, that you had a disability that is not enough to prove that the employment action taken against you was for this reason. There would have to be some independent evidence or i.e., some record that would establish the reason for the action. In some cases, the employer is quite open about having taken an employment action against you because of your disability. This usually occurs because the employer thinks that you are unable to perform your job, or because there is some dispute about your ability to return to work. The evidence here could be presented through your response to a written affidavit or interview, management's response to a written affidavit or interview, supporting medical documentation from your doctor(s), and any other documents related to your disability.

5. You can allege that the employer denied you a reasonable accommodation, after you let it be known one was needed.

An individual with a disability has an obligation to let the employer know that they need an accommodation (unless the disability is obvious: you are blind, or in a wheelchair, or have one or more missing limbs, etc.), and the employer has an obligation to provide a "reasonable" accommodation. You may also advise your employer as to what kind of accommodation you believe would be most suitable for your condition. However, an accommodation can be considered "reasonable" even though it may not be the accommodation you requested. The proof that you let your employer know that you needed an accommodation would be part of your response in your written affidavit or interview and any documents you might have, such as a doctor's statement. The proof that the employer either did or did not make an appropriate effort to provide you with a reasonable accommodation would include your response to a written affidavit or interview, management's response to a written affidavit or interview, any documents the employer may have accumulated during the process, such as written notes about conversations with you, medical examinations, contacts with accommodation experts and so on.

What do you have to prove to prevail in a case alleging REPRISAL for EEO activity?

If you believe that an adverse employment action was in retaliation for engaging in protected EEO activity (talking to an ORM Investigator; filing an EEO complaint); testifying in someone else's EEO complaint; or protesting something that you believe to be discriminatory towards yourself or others), comparisons will be made as with other EEO bases except the focus of the reprisal basis will be on you and anyone else with protected activity as compared to anyone with no protected activity.

We will also look at your treatment before and after the protected activity. For example, if you never had any work problems and then started receiving the worst work assignments after you filed an EEO complaint, a preliminary conclusion could be made that the assignments were retaliatory for filing an EEO complaint. This alone would not prove reprisal however.

A link or connection would have to be established between the protected activity and subsequent harm. On the other hand, if you are disciplined for tardiness (or anything else) after filing an EEO complaint and the record reflects that you had problems with tardiness (or anything else) before you filed the EEO complaint, a preliminary conclusion could be drawn that you would have received the disciplinary action even if you had not filed an EEO complaint.