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**PRO-LIFE**  
AMERICA

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Chair Charlotte A. Burrows  
U.S. Equal Employment Opportunity Commission  
131 M Street NE Washington, DC 20507

RE: Proposed Enforcement Guidance on Harassment in the Workplace, RIN 3046-ZA02, Docket ID EEOC-2023-0005

Dear Chair Burrows,

The Equal Employment Opportunity Commission (EEOC) published [proposed guidance](#) on harassment in the workplace on October 2, 2023. The new guidance includes harassment based on pregnancy, childbirth or related medical conditions as well as [“woman’s reproductive decisions, such as decisions about contraception or abortion”](#) within the “sex-based harassment” category. As a result, the guidance raises significant questions as to what constitutes “harassment” surrounding reproductive decisions in the workplace. The Commission makes no reference to any protection for employers or organizations who hold particular convictions regarding abortion. Additionally, the proposed guidance does not reference the Pregnant Workers Fairness Act (PWFA) – even though in the draft PWFA regulations the EEOC [proposes adding harassment](#) to the retaliation and coercion section of the regulation. We most certainly oppose employer coercion or forcing a woman to have an abortion. However, we urge the Commission to provide clarity on whether employers would be subject to a gag rule forcing sincerely held beliefs to be abandoned in the workplace.

Throughout the United States, there are most certainly numerous employers and organizations that hold to the belief in life-affirming care. This proposed guidance does not address what would be considered harassment in the context of reproductive decisions – including contraception and abortion. If an employer expressed support for life-affirming care through their mission statement, would this be considered harassment? If an organization had a bulletin board in which a pregnancy resource center informational flyer was posted, would this qualify as harassment? The Commission does not provide direct examples of harassment in this context, aside from [encouragement to have abortion](#) by an employer or [adverse employment actions](#) against an employee based on her decision to have an abortion. This ambiguity must be addressed by the Commission.

The proposed guidance also does not provide [First Amendment or conscience](#) protections on behalf of employers and organizations. There is no mention of protection for religious employers under the First Amendment ministerial exception or the Title VII religious organization exemption. In fact, there is no mention of any protection for employers or organizations who may have any religious, moral, conscience, scientific, health or other objection regarding abortion. Would a religious non-profit be able to share life-affirming information with its employers without legal recourse? Would a science organization committed to ethical research be silenced internally from expressing their core tenets? These are critical questions

that must be answered by the Commission to ensure that the EEOC is not violating the First Amendment rights of employers to express their sincerely held beliefs via this proposed guidance.

Additionally, the EEOC needs to address how the guidance would apply to the PWFA. There needs to be clarity of the connections between the PWFA and this guidance. The proposed guidance does not reference the PWFA, even though the Commission via the [PWFA proposed rule](#) suggests that “harass” be included in retaliation and coercion section of the draft PWFA regulation. Again, this creates significant confusion for employers about what would be prohibited in the workplace, especially for employers and organizations who have objections to abortion or who wish to promote life-affirming care.

We urge the EEOC to address these critical gaps in their proposed enforcement guidance on harassment in the workplace. The Commission must provide more clarity as to what constitutes “harassment” surrounding reproductive decisions in the workplace, it must address the lack of First Amendment and conscience protections for employers with regard to enforcement; and it must make clear the connection between the PWFA proposed rule and this proposed enforcement guidance. We support women and want to protect them from being forced or coerced to have an abortion. This guidance is not at all clear on whether employers would be subject to a gag rule forcing sincerely held beliefs to be muted.