

Preventing Workplace Discrimination and Harassment

Presented by:
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1. Legal obligation to promote a work place free from unlawful discrimination and harassment.
2. Good for employee relations. Studies show that when unlawful discrimination occurs within the workforce – **there is lost time from the job** and/or **productivity decreases**.
3. Right thing to do – treat all people fairly.

It is an adverse employment decision based upon someone's membership in one or more protected classes.

An “employment decision” includes:

- recruitment, hiring and firing
- pay and benefits
- promotions, transfers and layoffs
- training and apprenticeships
- retirement plans and disability leave

- Race or color
- Religion
- Sex
- Marital Status
- Sexual Orientation/Gender Identity
- Pregnancy
- Age (40 and over)
- Disability (any sensory, mental or physical disability)
- HIV/AIDS and Hepatitis C Status
- Veteran Status
- National Origin
- Filed a complaint or advocating rights

Disparate Treatment	Disparate Impact
<ul style="list-style-type: none"> › Intentional Discrimination ▪ Individual treated differently because he/she is member of a protected class. ▪ Employer using different standards for employees based upon their membership in a protected class. <p>Example: Not hired because 42 years and German.</p>	<ul style="list-style-type: none"> › Unintentional discrimination ▪ Policy has unequal consequences or impact on members of protected group. ▪ Usually related to mandatory screening factors or job prerequisites tied to unessential requirements of job. <p>Example: Must lift 100 pounds to work factory line.</p> <p>Result – many more women, disabled, and pregnant candidates are excluded from applying for the job. May impact some nationalities of smaller physical stature.</p>

What is Retaliation? Unlawful retaliation occurs when an Employer takes an adverse action against an employee who exercises their rights under the law, *any of their employee rights including safety!*

It is a form of sex discrimination that involves unwanted sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

WHAT ARE THE TWO TYPES OF SEXUAL HARASSMENT?

- QUID PRO QUO (“This for that” – sex for job). Quid pro quo harassment occurs when a supervisor, manager or a person acting with authority, withholds, demands and/or promises a benefit by pressuring an employee with unwelcome sexual conduct.
- HOSTILE WORK ENVIRONMENT. A hostile work environment is repeated offensive words, conduct or displays of materials of a sexual nature by supervisors, employees or non-workers in the workplace, that make it difficult for a worker to do his or her job.

WHO CAN BE ACCUSED OF SEXUAL HARASSMENT?

- All variations possible: female to male; male to male; and female to female.
- Supervisors and co-workers.
- Third parties (contractors, vendors, business invitees)

OTHER THINGS TO CONSIDER...

- INTENTION vs. PERCEPTION
- Everyone brings diverse background to work
- Harassment begins in eyes of beholder, not intention of speaker/actor

The Employer can generally limit their liability for co-worker or non-employee discrimination/harassment if:

- Employer/supervisor did not know about the discrimination/harassment
- Organization exercised reasonable care to prevent discrimination and harassment
- Upon learning of any suspected discrimination/harassment, took prompt and effective corrective action

Every organization should have a written policy against unlawful discrimination and harassment that includes multiple reporting methods and non-retaliation clause.

- Publish in Employee handbook
- Provide copy to all new hires
- Review policy, expectations, reporting methods, and non-retaliation during new hire orientation for all new hires
- Document that you provided this policy to all new hires
- Conduct and document supervisor training annually
- Promptly investigate all claims or suspicions of discrimination/harassment
- Take prompt and effective corrective action when warranted
- Document all investigations and corrective actions taken

All organizations should provide training on their policy to their supervisors annually, and document the training.

- To operate a workplace that is free from unlawful Discrimination and Harassment, remember...you have personal liability too!
- Secure the safety of any victim or reporter of Discrimination or Harassment
- Immediately report all claims of Discrimination and Harassment
- Assist unbiased in the investigation
- Maintain confidentiality at all times and demand the same of your staff
- Clearly set the expectation to your staff that retaliation is prohibited
- Immediately report any suspected retaliation to HR

Best Practices:

- Think before acting, remain calm and professional
- Don't retaliate against employees
- Don't play favorites, treat all employees fairly and consistently
- Avoid assumptions based on stereotypes
- Take action when a problem occurs: Don't ignore problems
- Document performance issues and coaching
- Enforce all policies/rules, not just some of them
- Focus on performance or conduct, not personal attributes
- Ask for help: reach out to HR or legal counsel when needed

Questions?