

EEOC PRESENTATION

Florida A & M University

February 22-24, 2017



**United States Equal Employment
Opportunity Commission**

OVERVIEW OF EEO LAWS

Objectives

To raise awareness of what constitutes
illegal discrimination

To raise awareness of the responsibility to
prevent discrimination in the workplace

Civil Rights Act of 1964

- ❑ A landmark achievement in our historic effort to end:
 - Segregation
 - Discrimination



TITLE VII

- ❑ Title VII's primary aim was and is, to prohibit race discrimination in employment. Facts facing Congress:
 - Blacks relegated to unskilled & semi-skilled work
 - High black unemployment.



- ❑ Importantly, Title VII's prohibitions against "race" and "color" discrimination cover all persons



Demographic Changes

- ❑ Increasing numbers of people of more than one race
- ❑ Increasing numbers of foreign-born workers



U.S. Equal Employment Opportunity Commission



The EEOC is the key civil rights agency responsible for enforcing federal laws that prohibit employment discrimination.

The Commission

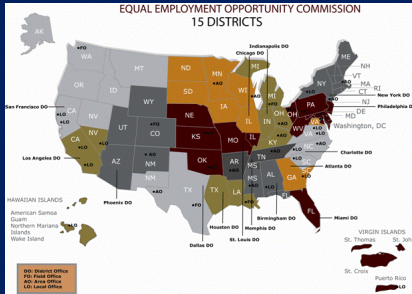
EEOC is an independent federal agency originally created by Congress in 1964 to enforce Title VII of the Civil Rights Act of 1964.

The Commission is composed of five Commissioners and a General Counsel appointed by the President and confirmed by the Senate. The President designates a Chair and a Vice-Chair. The Chair is the chief executive officer of the Commission.

The Commission

The Commission has authority to establish equal employment policy and to approve litigation. The General Counsel is responsible for conducting litigation.

EEOC carries out its work through its headquarters offices in Washington, D.C. and through 53 field offices serving every part of the nation.



Miami District Office

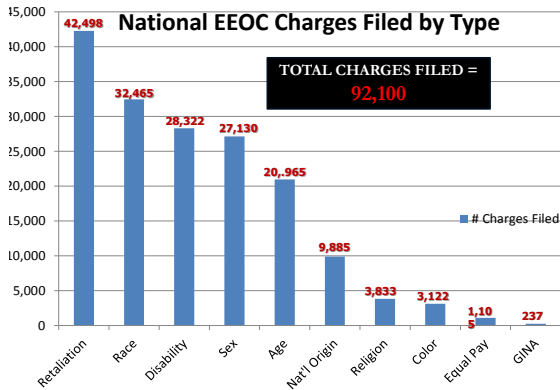
The Miami District Office has jurisdiction over the state of Florida (except the Panhandle area), Puerto Rico and the U.S. Virgin Islands

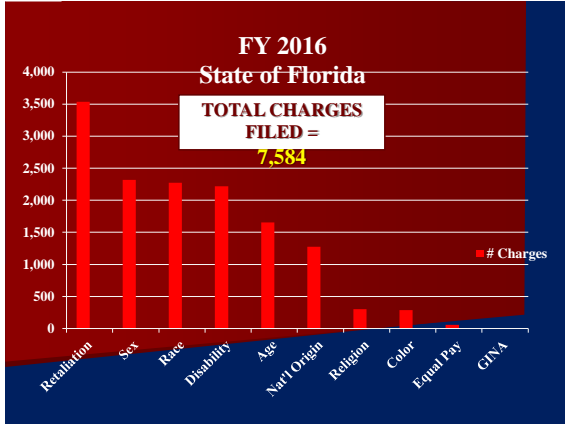


Tampa Field Office
San Juan Local Office

FY 2016

National EEOC Charges Filed by Type





IT'S A FACT

FLORIDA









had the 2nd largest number of EEOC charges filed in the nation in FY2016 though it is the 4th largest in population, and the 22nd largest in geographical size

- Strategic Enforcement Plan (SEP)
National Priorities**
1. Eliminating barriers in recruitment and hiring
 2. Protecting immigrant, migrant and other vulnerable workers
 3. Addressing emerging and developing employment discrimination issues
 4. Enforcing equal pay laws
 5. Preserving access to the legal system
 6. Preventing systemic harassment through systemic enforcement and targeted outreach

Laws Enforced by EEOC


- Title VII of the Civil Rights Act (Title VII)
- Equal Pay Act (EPA)
- Age Discrimination in Employment Act (ADEA)
- Americans with Disabilities Act (ADA)
- Pregnancy Discrimination Act (PDA)
- Genetic Information Nondiscrimination Act (GINA)
- Lilly Ledbetter Fair Pay Act

Protected Federal Categories

Race 	National Origin 	Color 
Religion 	Disability 	Genetic Information 
	Sex/Pregnancy/LGBT 	Age 40 & older 

WHO IS PROTECTED?

- Employee
- Temporary worker
- Job applicant
- Former employee
- Union member
- Undocumented workers are protected!



When Can Employment Discrimination Occur?

- Recruiting, Hiring, Transfer, and Promotion
- Compensation and Other Employment Terms, Conditions, and Privileges
- Job Assignment and Classification
- Discipline and Discharge
- Retaliation



Title VII Race Discrimination

Asian American ♦ African American or Black ♦ White ♦ Native American or Alaska Native ♦ Native Hawaiian or Other Pacific Islander



Unfavorable treatment of an employee based on race or because of personal characteristics associated with race (such as hair texture, skin color, or certain physical features).

- ❖ Racial Epithets
- ❖ Racially Offensive/Threatening Symbols
- ❖ Racial Stereotyping

Race Discrimination

- Ancestry
- Cultural characteristics – e.g., names, or accent / manner of speech
- Perceived race
- Association
- Race “plus”
- Intersection of protected bases – e.g., race/religion; race/sex
- “Reverse” race discrimination

Racial Harassment

- Unwelcome, and Severe or Pervasive (subjectively and objectively)
- Slurs, pictures, name calling, use of the N-word
- Single incident if sufficiently severe (e.g., physical assault or threat of physical assault, noose, etc.)
- Conduct need not be explicitly racial in character – e.g., interference with work

Color Discrimination



Title VII Color Discrimination

- Title VII does not define "color"
- "Color" commonly refers to skin pigmentation, complexion or skin shade or tone
- Color discrimination can occur between persons of different races or ethnicities, or between persons of the same race or ethnicity.

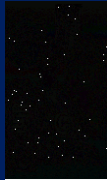


Scenario 1

Melanie, a brown-complexioned Latina, works as a sales clerk for a major department store. She applies for a promotion to Counter Manager for a major line of beauty products, but the employer denies her the promotion because the vendor prefers a "light skinned representative" to manage its product line at this particular location.

Religious Discrimination

- Moral or Ethical beliefs as to right and wrong that are sincerely held with the strength of traditional religious views
- All faiths sincerely held
- Atheism
- Characteristics associated with a religion (clothes, hair, music)
- Association
- Perception



Religious Accommodation

- Employer has a duty to reasonably accommodate known religion unless to do so would cause an undue hardship on the conduct of its business
- Reasonable
- Must meet employee's needs, as well as employer's needs

Scenario 2

Kamila wears a hijab and head covering. She applied for and received a transfer to a new position in which she will be representing the agency at inter-agency meetings and occasionally will speak on behalf of the agency at functions which the public will be invited. Kamilah's manager, Stuart, told her he had "no problem" with her use of the hijab at the inter-agency meetings, but would prefer her removal of the garment for the infrequent times she would be in public meetings.

Does Kamilah have to follow her supervisor's request?

What is Reasonable Accommodation?

- An adjustment to the work environment that eliminates the conflict between the employee's religion and the work rule
- For example:
 - flexible scheduling
 - voluntary substitutions or swaps
 - modifying dress or grooming codes
 - modifying duties
 - excusing union dues

Accommodation Process

- Employer on notice of need for accommodation
- If employer uncertain whether or how it can accommodate the employee, it should engage in interactive process
- Individual obligated to cooperate with the accommodation efforts
- Preferred accommodation does not have to be granted. Individual cannot insist on choice.

Sex Discrimination

- Gender based
- Characteristics associated with gender
- (Child birth, related medical conditions, medical benefits, and child care leave)
- Sexual Harassment
- Pregnancy
- Lesbian, Gay, Bisexual,
- Transgender (LGBT)



Sex-Based Harassment

- Harassment that is based on the fact that someone is male or female
- Offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments about women in general.
- Is not necessarily sexual in nature
- Both victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex.



Sexual Harassment

- It is unlawful to harass a person (an applicant or employee) because of that person's sex.
- Harassment can include "sexual harassment" or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.

Pregnancy Based Discrimination

- ❑ Pregnancy, childbirth and related medical conditions must be treated in the same way as other temporary illnesses or disabilities
- ❑ Maternity leave is determined by the employee and her physician
- ❑ Employers cannot require that an expectant mother begin maternity leave at specified periods



Scenario 3

Rashida told Ed that she was pregnant and asked him to reduce her workload as an accommodation. Ed declined to do so.

Was Ed required to accommodate Rashida's request because of her pregnancy?

Sexual Orientation:

a person's attraction to another person.



Diversity in the LGBT Community

LGBT people, come in all shapes and sizes, all racial and ethnic backgrounds, from every income category. Some LGBT people conform to gender stereotypes and blend in, while other LGBT people may "look" LGBT to others. Also, there is great variation on how "out" LGBT people are with family, friends, coworkers, and larger society.



LGBT / Sex Stereotyping

- ❑ Charges of sex stereotyping are considered claims of sex discrimination under Title VII.
- ❑ Therefore, a charge alleging employment discrimination against an individual who is lesbian, gay, bisexual, or transgender may be filed, because it centers on the way in which an individual **does not conform to traditional gender stereotypes.**



- ❑ i.e., It is illegal for an employer to deny employment because a woman does not dress or talk in a feminine manner or, conversely, because a man dresses in an effeminate manner or enjoys a pastime (like crocheting) that may be associated with women.

LGBT / Sex Stereotyping

Other examples of LGBT-related Sex Discrimination claims:

- ❑ Firing an employee because he is planning or has made a gender transition
- ❑ Denying an employee equal access to a common restroom corresponding to the employee's gender identity.
- ❑ Paying a lower salary to an employee because of sexual orientation.
- ❑ Denying spousal health insurance benefits to a female employee because her legal spouse is a woman, while providing spousal health insurance to a male employee whose legal spouse is a woman.

Test Your Knowledge

If a person transitions from male to female, is this person a transgender man or transgender woman?

Transgender woman



Is a transgender person automatically considered to be "bisexual"?

No

It is better to refer to gay people's significant others as "partners" if they say "spouse"?

No

The Golden Rule

Treat LGBT people as you would want to be treated.

In the transgender context:

- Transgender women are women and like all other women, should be treated like women.
- Transgender men are men, and like all other men, should be treated like men.



National Origin Discrimination

- Nation of Origin
- Ancestry
- Association
- Perception
- Accent
- English Only



Scenario 4

Suhail, an Arab-American, works for a computer software company that thrives on active socializing between employees & decision makers both on & off the job – lunch outings, after-work happy hours, weekend golf outings, family barbeques. Many employees establish strong relationships with decision makers through these informal gatherings, & as a result, tend to get put on the plum projects & get promotions. Suhail has experienced difficulty in building relationships with decision makers -- he often receives invitations late or indirectly from peers, not from the decision makers themselves. Suhail was passed over for several important promotions.

Discrimination Based on Accent

- An employment decision based on a foreign accent does not violate Title VII *if* an individual's accent materially interferes with the ability to perform job duties
- However*, an employer may only base an employment decision on accent if effective oral communication in English is required to perform job duties and the individual's foreign accent materially interferes with his/her ability to communicate orally in English.

Scenario 5

Acme Spool Company is hiring for a bolt tightener job, which is an unskilled entry-level assembly line position. The hiring official, Shauna Smith, tells Yung-Mi Lee, a U.S. citizen born in Korea, that she did not get the job because her foreign accent makes it difficult to communicate with her.

- *Did Shauna Smith discriminated against Ms. Lee by not hiring her?*

Discrimination Based on English Proficiency

❑ To justify a requirement that an individual be fluent in English, an employer would have to show that the level of fluency required was materially related to job performance.

Speak English Only Rules May Violate Title VII

Speak English only rules may violate Title VII unless an employer shows that the requirement is necessary for conducting the business

Scenario 6

Sylvia, Charlene, and Rosa are analysts in the same office. Charlene often overhears Rosa and Sylvia talking to each other in Spanish, especially at lunchtime, but also at other times during the day. Charlene doesn't know what they are talking about but she is worried that they are sharing information about the office and on-going work that she needs to know about. She also thinks they may be talking about her. Charlene complains to her supervisor and her supervisor asks Sylvia and Rosa to conduct all their conversations in the office in English.

Did the supervisor take the correct action?

Retaliation Prohibited under all Federal EEO Statutes



Retaliation Is Prohibited

- It is unlawful to penalize, punish or deny an employment benefit because that person:
 - Opposed an unlawful employment practice
 - Filed a complaint, testified, assisted or participated in an investigation, proceeding or hearing concerning prohibited discrimination
 - Requested a reasonable accommodation because of religion or disability

Elements of Retaliation

- Opposition to discrimination or participation in covered proceedings
- Adverse action
- Causal connection between the protected activity and the adverse action

Age Discrimination in Employment Act (ADEA)

Age Discrimination

Protects individuals who are 40 years of age or older from discrimination based on age



ADEA

- ❑ ADEA only forbids age discrimination against people who are age 40 or older. It does not protect workers under the age of 40, although some states do have laws that protect younger workers from age discrimination.
- ❑ It is not illegal for an employer to favor an older worker over a younger one, even if both workers are age 40 or older.
- ❑ Discrimination can occur when the victim and the person who inflicted the discrimination are both over 40.

Pre-Employment Inquiries

- ❑ Does ADEA prohibit an employer from asking an applicant his/her age or date of birth?



Employment Applications

- ❑ A request on the part of an employer for information such as “date of birth” or “state age” on an employment application form is not, in itself, a violation of the ADEA.
- ❑ But because the request that an applicant state his age may tend to deter older applicants or otherwise indicate discrimination based on age, employment application forms which request such information will be closely scrutinized to assure that the request is for a permissible purpose and not for purposes proscribed by the ADEA.

Discharge, Involuntary Retirement and Reduction In Force (RIF)

Reduction in Force (RIF)

- ❑ Employers must not use age or eligibility for retirement as factors in deciding who is laid off
- ❑ Employers should establish objective criteria and be consistent when applying the criteria
- ❑ Pension Vesting; Health Insurance Costs; High Salaries; Years of Service will be closely scrutinized by EEOC

Scenario 7

Kate's supervisor, Ted, a vice president, subjected her to ageist remarks, such as asking her if she could "tell us what the founding fathers meant, since you were there" and telling her he hoped she was taking advantage of the good deal on life insurance that Alex Trebek was advertising for seniors. Kate was noticeably upset when Ted made such remarks and made it known to Ted. However, Ted thought these comments were funny and did not stop.

When Ted interviewed Kate for a promotion, he expressed reservations because Kate was "too old for this position" and "not the right image". Kate was denied the promotion.

Is the employer liable? If so, why?

Discharge, Involuntary Retirement and Reduction In Force (RIF)

- Rarely is an employee told they are being discharged because they are too old or the oldest one in the group or because they look a certain age.
- Discharge
 - Others treated similarly?
- Mandatory Retirement
 - Cannot force someone to retire due to eligibility for retirement – very few exceptions



Equal Pay Act (EPA)

The Equal Pay Act (EPA)

- Prohibits wage discrimination based on gender
- Both men and women
- are covered under this law.
- Employers may not pay unequal wages to men and women who perform substantially equal work in the same establishment.



The Equal Pay Act (cont'd)



- The jobs need not be identical, but they must be substantially equal.
- Job content (not job titles) determines
- whether jobs are substantially equal.

LILLY LEDBETTER ACT



Lilly Ledbetter Fair Pay Act of 2009

On January 29, 2009, President Obama signed the Lilly Ledbetter Fair Pay Act of 2009, which supersedes the Supreme Court's decision in Ledbetter v. Goodyear Tire & Rubber Co., Inc. The Ledbetter decision had required a compensation discrimination charge to be filed within 180 days of a discriminatory pay-setting decision (or 300 days in jurisdictions that have a local or state law prohibiting the same form of compensation discrimination).



Lilly Ledbetter Fair Pay Act of 2009

- The Act restores the pre-Ledbetter position of the EEOC that each paycheck that delivers discriminatory compensation is a wrong actionable under the federal EEO statutes, regardless of when the discrimination began.
- The Act has a retroactive effective date of May 28, 2007, and applies to all claims of discriminatory compensation pending on or after that date, under Title VII, the ADEA and the ADA.



ADA
AMERICANS WITH
DISABILITIES ACT

Icons: Wheelchair, Keyboard, Hearing aid, Voice, Sign language, Braille, CC

Americans with Disabilities Act of 1990 ADA Amendments Act (ADAAA) of 2008

- ❑ Prohibits employment discrimination against **individuals with disabilities** in the private sector, and in state and local governments
- ❑ ADAAA effective as of January 1, 2009



WHO IS COVERED BY THE ADA?



A "Qualified Individual w/ a Disability"
OR QID is a person...

- ❑ With a physical or mental impairment that substantially limits a major life activity **OR**
- ❑ Has a record of such an impairment **OR**
- ❑ Is regarded as having such an impairment

Impairment

Impairment can be disability even if **episodic** or **in remission**



Substantially Limits...

- ❑ The definition of what “substantially limits” is construed broadly under the ADA :
 - ❑ No “demanding standard” for establishing coverage and that an impairment must “severely restricts” a major life activity
 - ❑ Rejects EEOC’s regulation defining “substantially limits” as “significantly restricts”. So, the standard of what “substantially limits” is now easier to meet

Major Life Activities

Operation of a major bodily function

- Immune system
- Normal cell growth
- Digestive
- Bowel
- Bladder
- Neurological
- Brain
- Respiratory
- Circulatory
- Endocrine
- Reproductive

Activities shown: hearing, thinking, concentrating, sleeping, reading, eating, speaking, standing, lifting, bending, communicating, learning.


Types of Impairments That Should Easily Be Found To Be Substantially Limiting

- ❑ Deafness, blindness, mobility impairments requiring use of a wheelchair, intellectual disability (mental retardation), partially or completely missing limbs
- ❑ Autism, cancer, cerebral palsy, diabetes, epilepsy,
- ❑ HIV infection, multiple sclerosis, muscular dystrophy
- ❑ Mental impairments such as major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive-compulsive disorder, schizophrenia

MITIGATING MEASURES



“Regarded As” Disabled

- ADAAA gives us a much broader definition of “regarded as” disabled
- “Regarded as” covers anyone subjected to an action because of a **real or perceived** physical or mental impairment
- “Regarded as” excludes impairments that are transitory (less than six months) and minor 
- Individuals who are “regarded as” disabled are not entitled to a reasonable accommodation in their workplace

Examples of “Regarded as”

- refusal to hire because of skin graft scars
- termination because of cancer
- termination of employee with angina due to belief the will pose a safety risk
- termination of employee who has bipolar disorder
- refusal to hire an applicant with hand wound that employer mistook as HIV

Individual with a Disability

An employee or applicant with a disability is someone who satisfies skill, experience, education, and other job-related requirements of the position held or desired, and who, with or without reasonable accommodation, can perform the **essential functions** of that position.

Hiring the Person with a Disability

If an employer has several qualified applicants for a job, the Americans with Disabilities Act (ADA) requires the employer to hire the applicant with a disability.

- True
- False

ADA-Disability Related Questions and Medical Exams

❖ General Principles:

- Pre-offer** – no questions or exam
- Post-offer** – all questions/exams are OK as long as required of all applicants in same job category
- During employment** – must be job-related and consistent with business necessity
- To process reasonable accommodation request** – if disability and/or need for accommodation not obvious or already known.

Essential Functions

- The fundamental job duties of the employment position the employee or applicant must be able to perform
- If unable to perform the essential functions with or without a reasonable accommodation, then the employee or applicant is not a covered individual with a disability under the ADA

Reasonable Accommodation

Reasonable accommodation to the known physical and mental limitations of an individual with a disability is required unless the employer can show undue hardship



Undue Hardship

- An action that requires significant difficulty or expense in light of certain factors
- Nature of the accommodation
- Net cost of the accommodation
- Overall financial and other resources of the employer
- Impact of the accommodation on employer's operation





Reasonable Accommodation

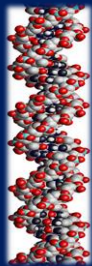
- Employee or applicant must notify employer of need for accommodation or need of accommodation must be apparent
- No fancy words required to request reasonable accommodation
- INTERACTIVE DIALOGUE**

Reasonable Accommodation

- Does not extend to adjustments or modifications for personal benefits
- Applies to all employment decisions, not simply hiring and promotions, i.e., all services *and programs provided in connection with employment*
- Employer chooses the **"effective"** accommodation



Genetic Information Non-Discrimination Act (GINA)



What is "Genetic Information"?

- An individual's **genetic tests**
- Genetic tests of **family members**
- The manifestation of a disease or disorder in family members (**family medical history**)



Genetic Information Nondiscrimination Act

- Prohibits discrimination by health insurers and employers based on individuals' genetic information
- Genetic information
- Results of genetic tests to determine whether someone is at increased risk of acquiring a condition
- Individual's family medical history

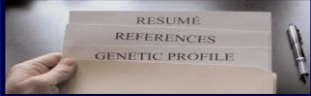
What are the Distinctions between GINA and the ADA?

- GINA** prohibits discrimination based on genetic information and **not** on the basis of a manifested condition. The prohibition to use of genetic information is absolute.
- ADA** prohibits discrimination on the basis of manifested conditions that meet the definition of disability.



Basic Employment Rules

- ❑ Strictly prohibits the use of genetic information to discriminate in employment
- ❑ Restricts the acquisition of genetic information by employers and other entities covered by GINA
- ❑ Requires that covered entities keep genetic information confidential, subject to limited exceptions



Prohibition on Acquiring Genetic Information

General Rule –

- ❑ Covered entities **shall not** request, require, or purchase genetic information of an applicant or employee
- ❑ Prohibition applies where a covered entity engages in actions that it knows or reasonably should know are likely to result in the acquisition of genetic information

EXCEPTIONS

- ❑ There is no liability for inadvertent acquisition of genetic information
- ❑ It is permissible to acquire genetic info through employer-sponsored health services
- ❑ It is permissible to acquire family medical history under FMLA
- ❑ It is permissible to acquire genetic info through commercially & publicly available documents

Exceptions, cont'd

- ❑ It is permissible to acquire genetic info through genetic monitoring
- ❑ It is permissible to acquire genetic info for DNA testing

Workplace Harassment



Harassment

- ❑ Harassment – To make the workplace uncomfortable and hostile for individuals or groups through words or actions
- ❑ Some harassment is willful and some is simply not understanding what is disrespectful to others who are different

Forms of Harassment

- Color
- Race
- Religion
- Sex
- National Origin
- Age (40 and over)
- Person with a Disability
- Retaliation



What is Prohibited?

- Sexual advances/pressure for dates
- Slurs, comments, jokes, innuendos
- Beatings, threats, inappropriate touching
- Inappropriate gestures, pictures, graffiti, slang expressions

Who is Involved in Workplace Harassment?

- Victims
 - Male or female
 - Can be third party
- Harasser
 - Male or female
 - Can be supervisor, co-worker or non-employee
- Victim and Harasser can be of the same protected basis (i.e., same gender sexual harassment)

When Does Such Conduct Constitute Harassment?

- Tangible Employment Action
- Hostile Work Environment

Tangible Employment Action

- Submission to such conduct is either explicitly or implicitly made a term or condition of an individuals employment;
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.
- Harasser is a supervisory official

Hostile Work Environment Harassment Definition

- Does not result in a tangible employment action
- Unreasonably interferes with an employee's work performance
- Creates an intimidating, hostile or offensive work environment
- Anyone can commit this type of harassment – supervisor, co-worker or non-employee

Hostile Work Environment Harassment

Key Issues:

- Context, Frequency and/or Severity
- "Reasonable Person" Standard

Tangible Effect on Victim's Job not Necessary

Severe Psychological Harm not Necessary

Hostile Work Environment

Harassment by a Supervisor

Employer is liable unless:

- Employer exercised reasonable care to prevent and promptly correct any harassment, AND
- Employee unreasonably failed to take advantage of any preventative or corrective opportunities or to avoid harm otherwise.

Hostile Work Environment

Harassment by Co-Worker or Non-Employee

- Employer is liable if:
 - Knew or should have known of harassment and
 - Failed to take immediate and appropriate corrective action
 - Employer knowledge is assumed if:
 - Conduct occurred in the presence of a supervisor, or

Employee's Duty to Exercise Reasonable Care

- Take advantage of any preventive or corrective opportunities provided
- Take advantage of the employer's complaint process

What to Do if You are a Victim of Harassment

- Remain cool and professional
- Be direct and candid, let your feelings be known to harasser
- Follow the employer's policy
- Keep a record of dates, times, witnesses
- Talk to your supervisor or other representative
- Follow-up
- Inform the employer of desired remedy

Bullying

A form of harassment – the willful, conscious desire to hurt another and put him/her under stress through:

- Social alienation, e.g., jokes
- Gossiping, rumors
- Name calling
- Embarrassing others
- Taking personal items
- Threats, physical violence



- Victims are often weaker or in a position of subordination
- The bully acts out only when others are not around and is often hiding their own inadequacies

Harassment Affects the Workplace

- High legal costs and fines (litigation)
- Damaged organizational image
- Reduced productivity and lower morale
- Higher employee turnover
- Higher costs for hiring and training new employees
- *It's against the law!*



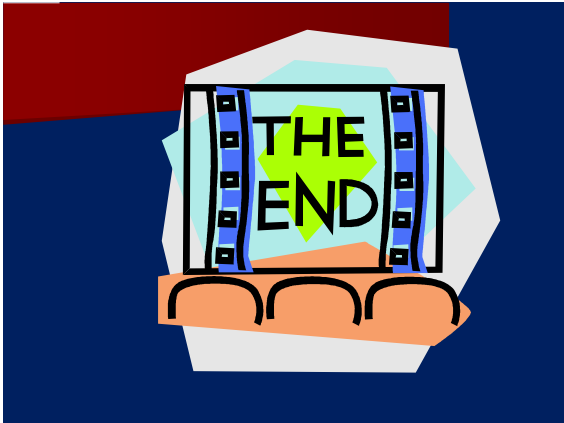
Obligations of Employers

- Make the workplace free of unlawful discrimination, harassment & retaliation
- Promptly and confidentially investigate complaints of discrimination, harassment & retaliation
- Where discrimination, harassment & retaliation may have occurred, take prompt and appropriate remedial action (i.e., discipline commensurate with the offense)

Proactive Prevention: Harassment

- Explanation of prohibited conduct with examples
- Protection against retaliation for those who make complaints or provide information
- Description of complaint process
- Multiple avenues of complaint
- Confidentiality to extent possible
- Prompt, thorough, and impartial investigation
- Immediate and appropriate corrective action if harassment occurred







Your Trainer Today



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