



SHRMTM

SOCIETY FOR HUMAN
RESOURCE MANAGEMENT

Employment Law Federal Job Discrimination Law Training

Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, the Age Discrimination in Employment Act, and the Genetic Information Nondiscrimination Act.

These laws also prohibit retaliation against persons who complain of discrimination or participate in an Equal Employment Opportunity (EEO) investigation.

The purpose of this presentation is to provide you with a basic understanding of three key concepts within these laws: discrimination, harassment, and retaliation and to help you recognize and avoid actions prohibited by the law.

Who has less than 20 employees?
Even though you cannot be sued under any of the above mentioned; you still have a lot to lose. Such as reputation risk and doesn't mean some one won't try to sue you (cost).

At the end of this presentation participants will be able to:

- Explain what federal discrimination laws are, and their basic provisions.
- Define discrimination.
- Define harassment.
- Cite categories of harassment.
- Define retaliation.
- Cite costs involved with violations of federal discrimination laws.
- Explain the responsibilities supervisors have in complying with federal discrimination laws.

Title VII, the ADA, the ADEA, and the GINA are federal laws which protect employees from discrimination, harassment and/or retaliation:

- They prohibit employers with at least 15 employees (20 for ADEA), including employment agencies and unions, from discriminating in employment based on race, color, religion, sex(gender), national origin, disability, age, or genetic information.
- They prohibit retaliation against persons who complain of discrimination or participate in an EEO investigation.
- They help to create a workplace where employees are treated with respect and dignity.

The Genetic Information Nondiscrimination Act of 2008 is an [Act of Congress](#) in the United States designed to prohibit the improper use of [genetic information](#) in [health insurance](#) and [employment](#). The Act prohibits group health plans and health insurers from denying coverage to a healthy individual or charging that person higher premiums based solely on a [genetic predisposition](#) to developing a disease in the future.

What are the Basic Provisions of Title VII?

Title VII, the ADA, the ADEA, and the GINA prohibit discrimination in all aspects of pre-hire and the employment relationship including:

- Recruiting
- Interviewing
- Hiring
- Promotion
- Demotion
- Job transfer
- Compensation
- Training
- Discipline
- Benefit Administration
- Termination/Dismissal

Explain training, how can one be discriminated against in a training situation? Which act covers Benefit Administration?

What is Discrimination?

Discrimination is any policy or action taken related to recruiting, hiring, promotion, pay or training practices that result in an unfair disadvantage to either an individual or group of individuals who are considered part of a protected class.

Discrimination includes:

- Retaliation against an individual for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices.
- Employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a certain sex, race, age, religion, or ethnic group, or individuals with disabilities.
- Denying employment opportunities to a person because of marriage to, or association with, an individual of a particular race, religion, national origin, or an individual with a disability. Title VII also prohibits discrimination because of participation in schools or places of worship associated with a particular racial, ethnic, or religious group.

Source: Equal Employment Opportunity Commission (EEOC), Discriminatory Practices Overview

The employment action must result in a “tangible employment action” which is a change in employment status or the privileges of employment AND the basis for doing so must be due to the employee’s protected status.

Discrimination is:

- Illegal
- Costly
- Disrespectful

In the employment and legal context, harassment is defined as conduct or actions, based on race, religion, sex, national origin, age, disability, genetic information, military membership or veteran status, severe or pervasive enough to create a hostile, abusive or intimidating work environment for a reasonable person.

State laws may further define harassment to include additional protections, such as sexual orientation, marital status, trans-gender or cross-dressing, political affiliation, criminal record, prior psychiatric treatment, occupation, citizenship status, personal appearance, "matriculation," tobacco use outside work, Appalachian origin, receipt of public assistance or dishonorable discharge from the military.

Both federal and state laws protect workers from employment discrimination. In most areas these two bodies of law overlap; as an example, federal law permits states to enact their own statutes barring discrimination on the basis of race, gender, religion, national origin and age, so long as the state law does not provide less protections than federal law would

State law will supersede Federal law if it offers a better benefit and vice-versa.

What is Harassment (cont'd)

Harassment is a form of discrimination that violates federal law when it is:

- Unwelcome verbal or physical conduct based on a person's race, color, religion, sex or gender, national origin, age (40 and over), disability (mental or physical), or genetic information.
- Severe, pervasive and persistent conduct that unreasonably interferes with an employee's work performance or creates an intimidating, hostile or offensive work environment.
- An occurrence where an employee's status or benefits are directly affected by the harassing conduct of a manager or person of authority.
- Adverse employment actions (retaliation) against employees who complained of harassment or discrimination or who participated in a complaint procedure.

For some time the Air Force restricted African-American personnel carrying the sickle cell gene from flying for the unfounded concern that they would lose consciousness at high altitudes. A former army officer's embarrassment when his genetic reproductive anomaly was revealed forced him to move out of town. A North Carolina officer worker diagnosed with a genetic disease was fired because of the high drug costs for her employer-insured health plan.

National Origin

- It is illegal to discriminate based on an employee's birthplace, ancestry, culture or linguistic characteristics common to a specific ethnic group. For example, it would be discriminatory harassment to require employees to speak only English unless an employer shows that the requirement is necessary for conducting business.

Disability

- The Americans with Disabilities Act prohibits workplace discrimination on the basis of disability. Illegal harassment occurs when a disabled worker is constantly subjected to pervasive and severe harassment due to his/her disability and which results in a hostile work environment for the employee.

Sex Discrimination

- It is illegal to discriminate on the basis of gender. Requests for sexual favors in exchange for preferential treatment as well as workplace conditions that create a hostile environment for persons of either gender constitute sexual harassment.

Pregnancy Based Discrimination

- Pregnancy, childbirth, and related medical conditions must be treated in the same way as other temporary illnesses or conditions and not used for discriminatory treatment. Harassment for this protected status, for example, would be ridiculing an employee for her appearance during pregnancy.

Age Discrimination (ADEA)

- Protects individuals who are 40 years and older from discrimination. An example of harassment based on age would be referring to an older worker as “gramps” or “granny”, thus creating a hostile work environment.

Race/Color

- It is illegal to discriminate on the basis of race or color. Slurs or jokes, offensive or derogatory comments, or other verbal or physical conduct based on an employee’s race/color constitutes discriminatory harassment if that conduct creates an intimidating, hostile or offensive work environment and prohibits an employee from performing their job.

Religion

- An employer cannot discriminate based on an employee's religious beliefs or practices. Harassment based on religion occurs when an employee is antagonized or ridiculed because of his religious, moral or ethical beliefs. Another type of religious harassment occurs when a co-worker or supervisor "preaches" or proselytizes to an employee and the employee perceives that behavior to be unwanted and offensive, amounting to a hostile work environment.

Unwanted/unwelcomed Behavior or Conduct:

- Flirting, advances and/or propositions of a sexual nature.
- Remarks, insults, humor, jokes which is demeaning to an individual including their body or clothing, national origin, culture, race, age, religion, disability.
- Offensive displays of sexually suggestive objects or pictures.
- Offensive touching, such as patting, pinching, hugging or repeated brushing against an individual's body; sexual assault; and/or suggestions that submission to or rejection of sexual advances will affect decisions regarding an employee's work assignments, status, salary, benefits or other terms or conditions of employment.

- In the employment context, retaliation occurs when an employer takes an adverse action against a covered individual because the employee engaged in a protected activity.
- Terminating employment, demoting or illegal harassment of employees for their filing a charge of discrimination or, participating in a discrimination investigation or proceeding, or their opposing discrimination would be retaliatory action.
- Retaliation is illegal, disrespectful, and costly.

Retaliation does NOT:

- include petty slights and annoyances, such as stray negative comments in an otherwise positive or neutral evaluation, "snubbing" a colleague, or negative comments that are justified by an employee's poor work performance or history.

Source: EEOC Fact Sheet

Penalties/ damages may include:

- Prospective pay.
- Back pay.
- Lost benefits.
- Compensation for emotional damage.
- Actual and hidden costs associated with your organization's reputation in the community.
- Punitive damages if the EEOC finds an employer intentionally discriminated.
- Punitive damages are capped, depending on the number of employees.
- Maximum amount of damages based on the size of your organization and range from \$50,000 to \$300,000.

Your costs as supervisors include:

- Increased work load and lost productivity = More work for you!
- Your reputation in the organization if you are the subject of an EEOC charge or law suit.
- Direct or indirect legal costs which may affect your budget or the organization's profitability.

Know and comply with your policy and procedures. Immediately report any complaint that you receive from your employees or incidents that you witness involving other supervisors' employees to the Human Resources Director or the Authority in your organization. When handling harassment complaints from your employees:

- Respond to employees' complaints as soon as possible.
- Demonstrate your willingness to hear and objectively discuss complaints.
- Inform the employee that you must report all complaints to the HR Director.
- Tell the employee that confidentiality will be respected as much as possible but cannot be assured in order to fully and properly investigate employee concerns/allegations.
- Do not object if an employee prefers to or actually bypasses the standard chain of command.
- Do not engage in retaliation against an employee who complains of harassment or discrimination.

If you are in a leadership role and are notified of any harassment the organization is now notified, regardless of friendship status.

Your Responsibilities as Supervisors (cont'd)

Investigations are conducted by the HR Director or by the company's legal counsel:

- Be available for interviews and provide as much information as possible.
- Make employees available for interviews.

Once an investigation has been completed, if disciplinary action is to be taken, work with the HR Director to make sure that:

- The victim is not adversely affected.
- The harassment stops and does not recur.

Title VII, the ADA, the ADEA, and the GINA are federal laws which protect employees from discrimination, harassment and retaliation.

Discrimination is any policy or action taken related to recruiting, hiring, promotion, pay or training practices that result in an unfair disadvantage to either an individual or group of individuals who are considered part of a protected class.

In the employment and legal context, harassment is defined as conduct or actions, based on race, religion, sex, national origin, age, disability, genetic information, military membership or veteran status, severe or pervasive enough to create a hostile, abusive or intimidating work environment for a reasonable person.

In the employment context, retaliation occurs when an employer takes an adverse action against a covered individual because the employee engaged in a protected activity.

Penalties/ damages for violations of federal laws may include prospective or back pay, lost benefits and punitive damages.

Supervisors are responsible for knowing and complying with our policy and procedures, reporting immediately any complaints or incidents, and cooperating with investigations and any disciplinary action.

Please be sure to complete and leave the evaluation sheet you received with your handouts.

Thank you for your attention and interest!