



OUR WHY? To partner with local governments so that Texas communities are **STRONGER TOGETHER**

1

Our Coverages



Workers' Compensation



Liability



Property



Cyber Liability



Special Risk

2

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2

Safety Matters. Stay Connected.



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3

Harassment Prevention for Supervisors

***Note:** We are not attorneys and cannot provide legal advice. We strongly encourage you to have discussion related to this topic with your attorney and review your policies, federal, state and local laws, including your charter, ordinances and resolutions.*

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4

Lines between Employees and Supervisors

You are held to a higher standard
than those you supervise.

- Shouldn't complain to staff
- Shouldn't talk bad about other divisions/departments to your staff
- **Nothing is "off the record"**



5

Harassment and/or Discrimination

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6

EEOC Harassment Definition*

Harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, (ADEA), and the Americans with Disabilities Act of 1990, (ADA).

Harassment is unwanted or unwelcomed conduct behavior that is severe or pervasive and based on:

- Race
- Color
- Religion
- Sex
 - (including pregnancy, gender identity, & sexual orientation)
- Mental or Physical Disability
- Nationality
- Age
 - (40 & older)
- Genetic Information
 - (including family medical history)

*<https://www.eoc.gov/harassment>

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7

Harassment*

- Harassment becomes unlawful where
 - Enduring the offensive conduct becomes a condition of continued employment, or
 - The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.
- Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of illegality. To be unlawful, the conduct must create a work environment that would be intimidating, hostile, or offensive to reasonable people.
 - Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance.
- Prevention is the best tool to eliminate harassment in the workplace. Employers are encouraged to take appropriate steps to prevent and correct unlawful harassment. They should clearly communicate to employees that unwelcome harassing conduct will not be tolerated.

*<https://www.eoc.gov/harassment>

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8

Title VII of the Civil Rights Act of 1964 UNLAWFUL EMPLOYMENT PRACTICES*

It shall be an unlawful employment practice for an employer

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

*<https://www.eeoc.gov/statutes/title-vii-civil-rights-act-1964>

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9

Protected Classes

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10

Sex/Gender Based Harassment

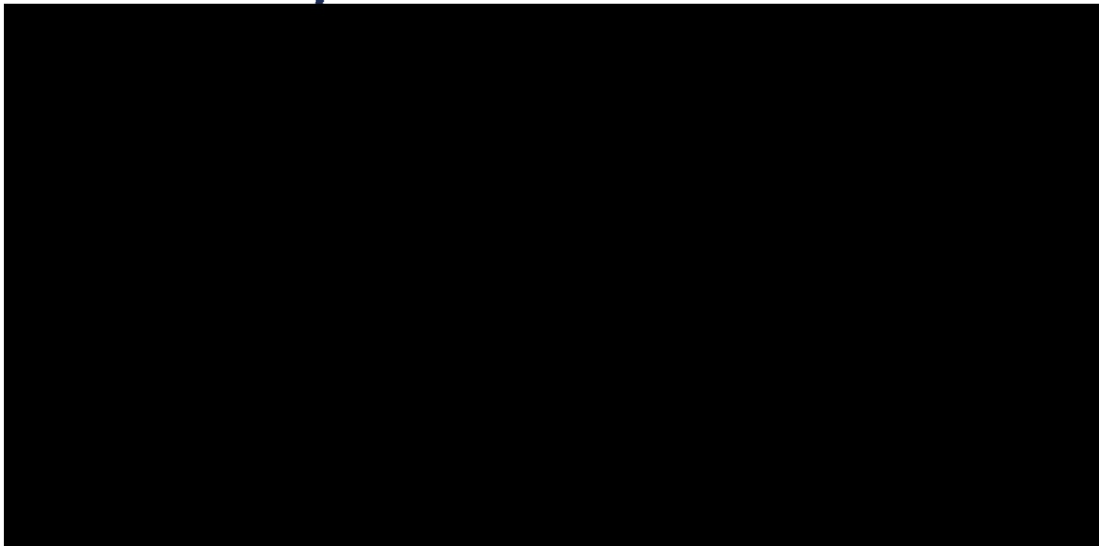
Discrimination based on someone's:

- Sex/gender,
- Sexual orientation
- Gender identity
- Pregnancy

Partner with your HR/Legal team regarding questions



YouTube Example from Nicki Swift



Faragher vs Boca Raton (1998)

- Beth Ann Faragher worked intermittently as an ocean lifeguard for the city of Boca Raton, FL from 1985-1990
- Sued the city and two lifeguards she accused of unwanted touching and making offensive comments and gestures
- Said it was a really good job except for the constant groping by one supervisor and sexual innuendoes and comments by others
- Case went to the Supreme Court where it said that if alleged harassers are supervisors, employers can be liable for damages, even if the employer is not aware of the harassment

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13

SB 45 & HB 21 and what it means to you.

- Effective September 1, 2021
- Individual liability for those who act “directly in the interests of an employer” as well as supervisors and coworkers
- Requires employers to take **immediate** and appropriate corrective action where the employer **knows or should have know** of sexual harassment
- Charge filing period changed from 180 to 300 days



14

Continuing Violation Doctrine*

- To pursue an employment discrimination claim under Title VII, including a harassment case, an employee must file a charge of discrimination with the EEOC within either 180 or 300 days of the unlawful employment practice, depending on which state the employee works in.
- The question in a hostile work environment scenario is, “what constitutes the unlawful employment practice?” that triggers the need to file an EEOC charge since the claim usually involves a series of events rather than a discrete act (such as a pay cut). In *Morgan*, the Supreme Court held that a “hostile work environment claim is comprised of a series of separate acts that collectively constitute one ‘unlawful employment practice.’” (citing Title VII, 42 U.S.C. § 2000e-5(e)(1)).
- In sum, the **continuing violation doctrine** holds that if an employee files an EEOC charge while at least one act constituting the hostile work environment is still timely, then the whole time period of the hostile work environment can be considered for purposes of deciding liability.

**National Law Review* – natlawreview.com

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15

SB 45 & HB 21 and what it means to you.

- Effective September 1, 2021, both apply to employers in Texas with 1 or more employee
- Individual liability for those who act “directly in the interests of an employer” as well as supervisors and coworkers
- Requires employers to take **immediate** and appropriate corrective action where the employer **knows or should have known** of sexual harassment
- Charge filing period changed from 180 to 300 days



16



Houston, TX

VCS News

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TML
RISK POOL

17

What would you do?

- Encourage all employees to say something to the person if they are uncomfortable with someone's behavior
- If you observe someone engaging in this type of behavior, pull them to the side and let them know you saw it and that you expect they will not do it again
- Train your supervisors
- Train your employees
- Train, Train, Train

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TML
RISK POOL

18

Pregnancy Discrimination

Illegal to discriminate against a woman because of:

- pregnancy
- childbirth
- A medical condition related to pregnancy or childbirth

OR

- Intent to become pregnant*



*Pregnancy Workers Fairness Act (6-27-2023)

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19

Race Discrimination

Involves discrimination based on a person's race such as including cultural practices or physical characteristics associated with race (such as hair texture, skin color, or certain facial features).

- CROWN Act - HB567 (Eff. 9/1/23)
 - *Creating a Respectful and Open World for Natural Hair*



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20

National Origin Discrimination

Unfavorable treatment of a person because they are from a particular country or part of the world, because of ethnicity or accent, or because they appear to be of a certain ethnic background (even if they are not).



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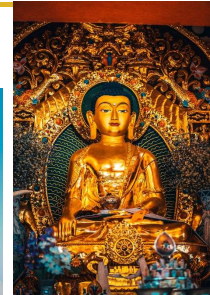
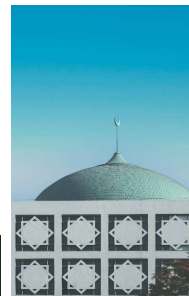
21

Religious Discrimination

- Involves treating an unfavorably because of his or her religious beliefs.
- The law protects people who belong to traditional, organized religions, as well as those who have **sincerely held religious**, ethical, or moral beliefs.*

**Groff v. DeJoy (6-29-2023)*

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22

Mental or Physical Disability Discrimination

- According to the EEOC, disability discrimination occurs when an employer or other entity covered by Title I of the Americans with Disabilities Act (ADA) (which protects private and state and local employees) treats a qualified employee or applicant unfavorably because of disability. The disability laws forbid discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.
- It is illegal to harass an applicant or employee because of a current or past disability an actual or perceived physical or mental impairment that is not transitory and minor, or for association with an individual with a disability. Harassment can include offensive remarks about a person's disability. Harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

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23

Age Discrimination in Employment Act (ADEA)

- Involves treating an applicant or employee less favorably because of his or her age.
- Forbids age discrimination against people who are age 40 or older.



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24

Genetic Information Discrimination ACT (GINA)

- Genetic information includes information about
 - an individual's genetic tests and
 - the genetic tests of an individual's family members
 - information about the manifestation of a disease or disorder in an individual's family members (i.e. family medical history)



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25

Some Things To Think About Regarding Unacceptable Conduct

- Even if the people engaging in the unacceptable conduct are “fine” with it, is not a defense for the unacceptable conduct/behavior (3rd party)
- Remember that professional meetings, business trips and social events are an extension of your workplace (alcohol)

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26

Claim Examples from the EEOC

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27

Potential Cost of Discrimination and Retaliation (GINA and ADA)*

Dollar General required applicants to pass a pre-employment medical exam during which they were required to divulge past and present medical conditions of family members such as cancer, diabetes, and heart disease. The EEOC also alleged that Dollar General used qualification criteria that screened out qualified individuals with disabilities.

\$1,000,000

**U.S. Equal Employment Opportunity Commission
- eeoc@updates.eeoc.gov*

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28

Potential Cost of Discrimination and Retaliation (Race)

Delivery company DHL will pay settlement and be subject to the oversight of a court-appointed monitor to settle a class race discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC).

\$8.7 Million

**U.S. Equal Employment Opportunity Commission - eeoc@updates.eeoc.gov*

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29

Potential Cost of Discrimination and Retaliation (Sex and Race)*

Employee fired because they engaged in protected activity by complaining about discrimination.

\$70,000

**U.S. Equal Employment Opportunity Commission - eeoc@updates.eeoc.gov*

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30

Potential Cost of Discrimination and Retaliation (Sex)*

A cleaning service provider in eastern Wisconsin, will pay and furnish other relief to settle a sexual harassment lawsuit

\$200,000

**U.S. Equal Employment Opportunity Commission -*

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31

Retaliation

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32

What is Retaliation*

When employers treat differently applicants, employees, former employees, or people closely associated with someone who:

- Reported discrimination
- Participated in a discrimination investigation or lawsuit (for example, serving as a witness), or;
- Opposed discrimination (for example, threatening to file a charge or complaint of discrimination).

For example, it is illegal to fire an employee because she filed a charge of discrimination with the EEOC. This is true even if the EEOC concludes that the charge of discrimination does not have merit.

Retaliation is not only illegal, it's also bad for business. It is in your best interest for employees to feel comfortable reporting discrimination to you so you can investigate and address any conduct that violates the law or your company's policies.

*<https://www.eeoc.gov/employers/small-business/8-what-retaliation-and-how-can-i-prevent-it>

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33

Examples of Possible Retaliation*

Depending on the facts, it could be retaliation if an employer acts because of the employee's EEO activity to:

- reprimand the employee or give a performance evaluation that is lower than it should be;
- transfer the employee to a less desirable position;
- engage in verbal or physical abuse;
- increase scrutiny;
- make the person's work more difficult (for example, punishing an employee for an EEO complaint by purposefully changing his work schedule to conflict with family responsibilities).

*<https://www.eeoc.gov/retaliation>

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34

Retaliation*

- The EEO laws prohibit punishing job applicants or employees for asserting their rights to be free from employment discrimination including harassment. Asserting these EEO rights is called "protected activity," and it can take many forms.
- Participating in a complaint process is protected from retaliation under all circumstances. Other acts to oppose discrimination are protected as long as the employee was acting on a reasonable belief that something in the workplace may violate EEO laws, even if he or she did not use legal terminology to describe it.
- Engaging in EEO activity, however, does not shield an employee from all discipline or discharge. Employers are free to discipline or terminate workers if motivated by *non-retaliatory and non-discriminatory* reasons that would otherwise result in such consequences. However, an employer is not allowed to do anything in response to EEO activity that would discourage someone from resisting or complaining about future discrimination.

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*<https://www.eeoc.gov/retaliation>

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35

**What are
most
employees
looking for?**

A positive working environment, where they feel that they matter and are treated fairly.



36

Servant Leadership Is...

- Focusing on the growth and well-being of individuals and the community, rather than on personal power or recognition
- Serving others, fostering trust, and creating a collaborative and inclusive environment
- Prioritizing the needs of the team
- Empowering others to reach their full potential and contribute to a shared vision

Not Just Me BUT We

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37

"Act as if what you do makes a difference. It does." William James



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38



Harassment Prevention for Supervisors

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39



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40