

# Safety Matters. Stay Connected. | Control |

#### **HR Session Presentation Handouts**



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#### Tony Korioth 3.0 Human Resources Training

Day One Afternoon: Craig Barnes

**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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#### **Learning Objectives**

After attending this training session, participants will be able to:

- Better understand the role of a supervisor as an employee/person
- Continue to apply the framework for organizational values of as they relate to HUMAN resources
- Explain applicable discrimination laws at both the federal and state level
- Identify human resources best practices by participating in activities and discussion related to: *Title VII of the Civil Rights Act of 1964; Family Medical Leave Act (FMLA); and Americans with Disabilities Act (ADA)*

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# What is HR?

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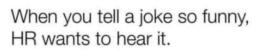




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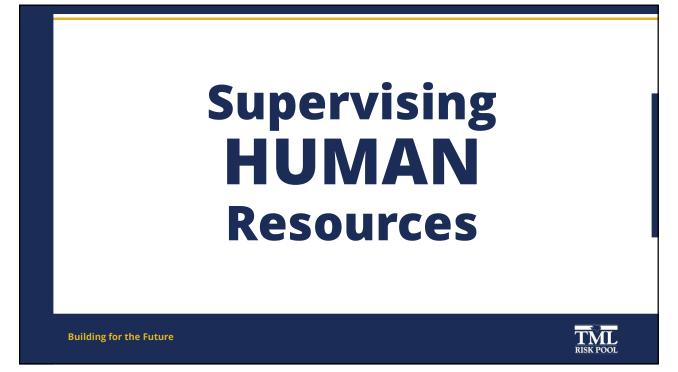


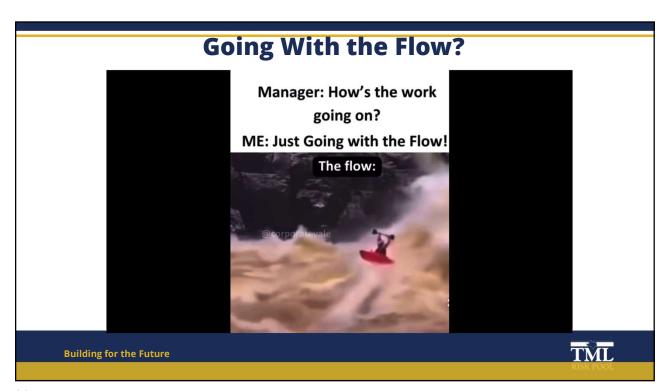


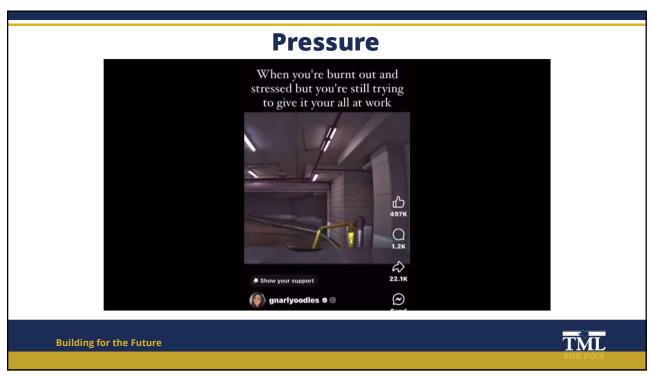
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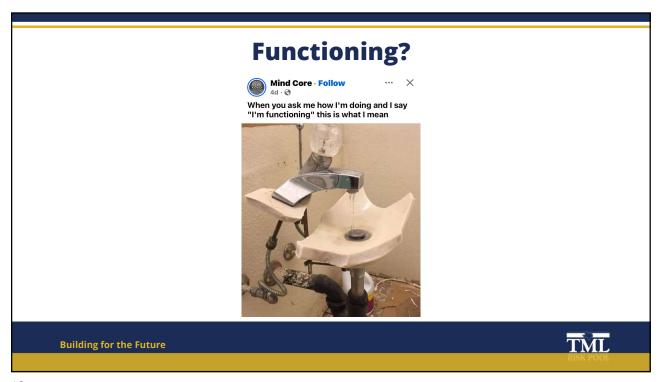


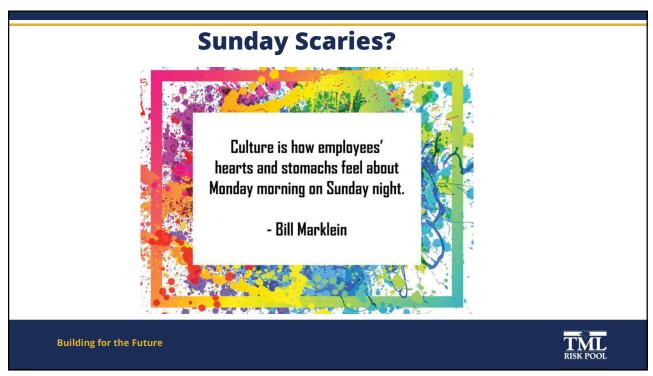


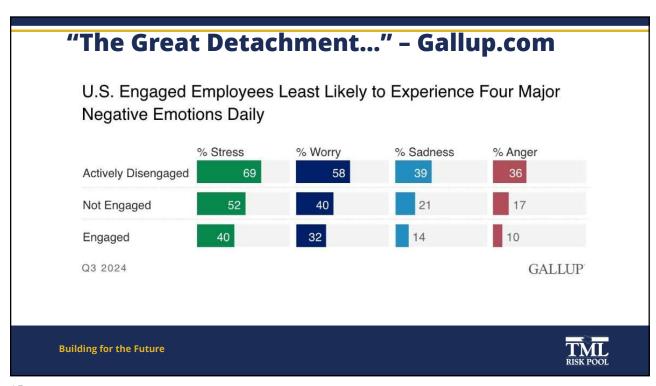


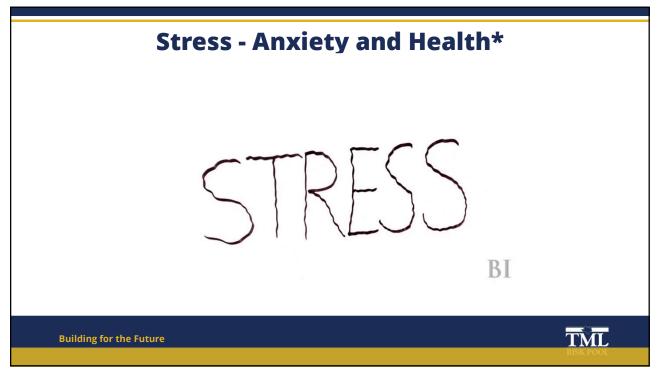












#### It's ALIVE!

Your organizational culture is ALIVE but is it WELL?

Workplace culture is a living organism that will create itself and grow without much effort. However, creating and sustaining a culture that is just not alive, but breathes life into others takes intentional effort and is a journey for the whole organization.

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#### Can You Hear the "POP"?

"DISCOVER your core values and purpose beyond just making money (core ideology) and combine this with the dynamic of PRESERVE the core/STIMULATE progress."



James C. Collins <u>Good to Great: Why Some</u> <u>Companies Make the Leap... and Others Don't</u>

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### Servant Leadership

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#### **Supervisors GET To**

- Protect the Organization
- Grow the employee

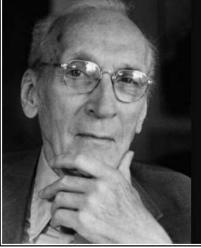


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TML RISK POOL

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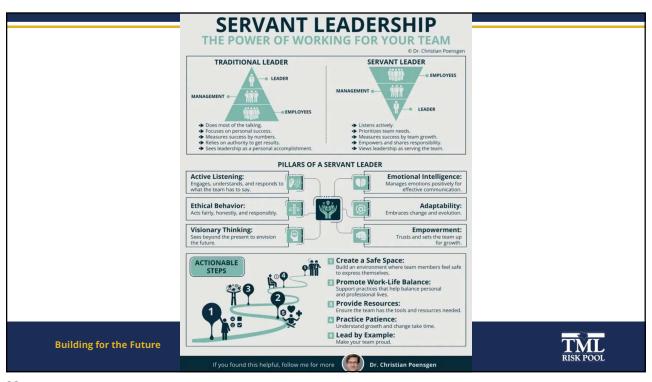
The servant-leader is servant first... It begins with the natural feeling that one wants to serve, to serve first. Then conscious choice brings one to aspire to lead. That person is sharply different from one who is leader first.

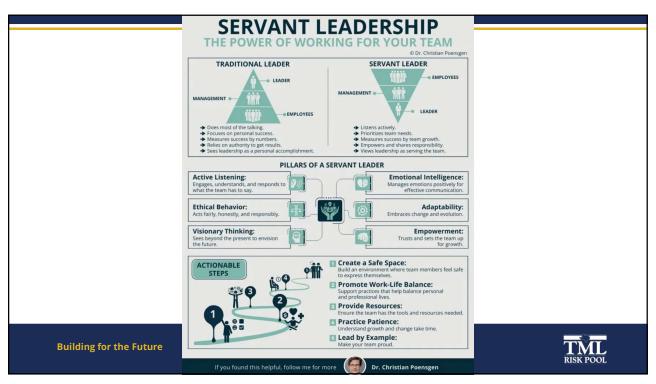
— Robert K. Greenleaf -

AZ QUOTES

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**Voltaire** 





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#### 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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#### **Coaching**

The ongoing process of both informal and formal feedback that is intended to support employees in skill development as well as to recognize success.

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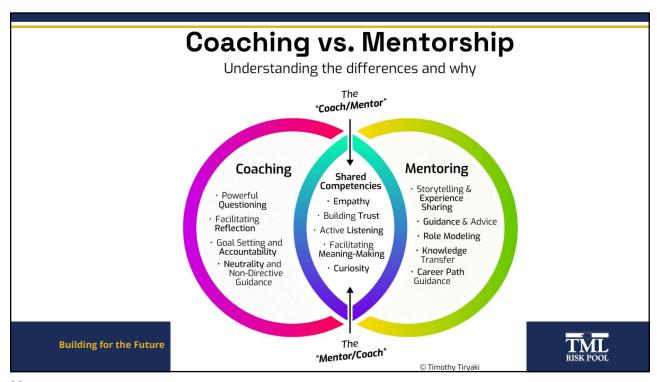
#### **Performance Management Tools**

#### **ROLE OF A COACH**

- Provide Direction
- Improve Performance
- Open Possibilities
- Resource

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#### **Importance of Relational Engagement**

"In Organizations, real power and energy is generated through relationships. The patterns of relationships and the capacities to form them are more important than tasks, functions, roles, and positions."



Margaret Wheatly

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The best bosses are not the ones who have all the answers or work the longest hours, but those who care the most.

A great boss genuinely cares about you, as a human being, not just as a worker.

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# The BE's of an Effective Leader \*\*RESPECTFUL\* \*\*GENUINE\*



# Un-Civilized Workplace and Possible Effects

**Robert I. Sutton, PhD** identified some possible behavior traits and potential organizational costs because of an uncivilized workplace.

- "Behavior that demeans or belittles others. This could include verbal abuse, bullying, or undermining colleagues."
- "Financial and emotional costs that toxic individuals impose can reduce productivity, increase employee turnover, and create a hostile work environment."
- "The toll toxic behavior takes on employees can lead to stress, anxiety, burnout, and decreased job satisfaction. This emotional damage not only affects individual well-being but also reduces overall team performance and engagement."

Dr. Sutton shares in our organizations we should strive to maintain a "respectful, positive workplace culture by not hiring or tolerating people who engage in toxic behavior" and "that organizations must enforce this rule consistently to protect their culture."



# Five Strategies for Addressing Toxic Behavior in the Workplace\*

\*inclusiongeeks.com

"Toxic behavior **corrodes** trust, **stifles** innovation, and **breaks down** the very foundation of a successful workplace. It shows up in unchecked behaviors, in cultures that value outcomes over people, and in power dynamics that silence or exclude."

Five strategies to possibly address toxic behavior in the workplace

- 1. Set the standard for behavior
- 2. Acknowledge power and privilege
- 3. Equip people to navigate conflict
- 4. Model accountability at every level
- 5. Build psychological safety



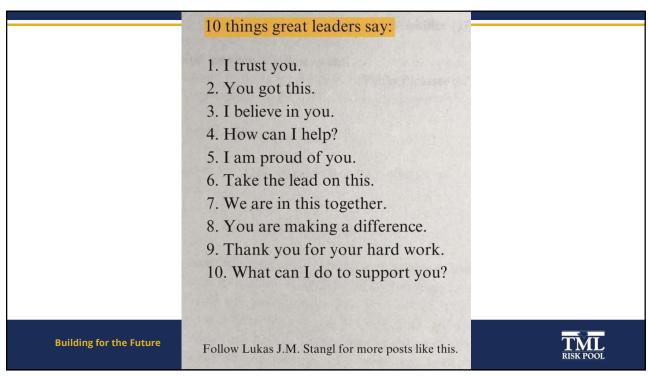
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What are most employees looking for?

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









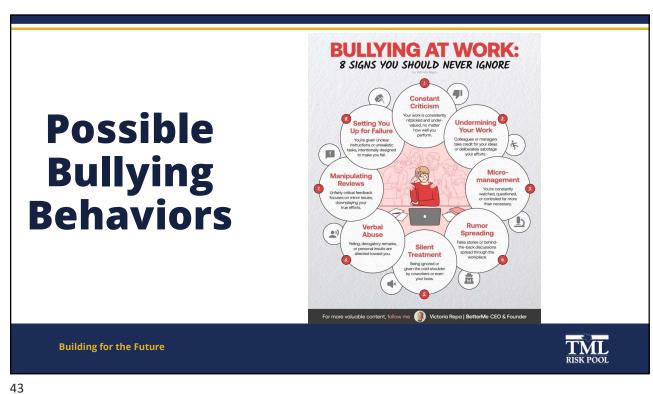
#### **Discipline to Disciple**

"We cannot control all of people's choices or actions, but we can positively affect decision-making factors and help people develop clearer perceptions of risk." – **Tom Harvey** - Reducing the Frequency & Severity of Human Error: Optimizing Performance – ASSP

"If you hire people just because they can do a job, they'll work for your money. But if you hire people who believe what you believe, they'll work for you with blood and sweat and tears." – **Simon Sinek** 

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#### **Bullying**



- Generally, not prohibited by any federal or state law
- Inappropriate and
- Unacceptable

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TML RISK POOL

# Harassment and/or Discrimination

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#### **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 <u>severe</u> 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)

\*EEOC.GOV

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• The target of the harassment

#### **AND**

 And anyone affected by the offensive conduct (bystander) Who is impacted by the harassment

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#### **Sex/Gender Based Harassment**

Discrimination based on someone's:

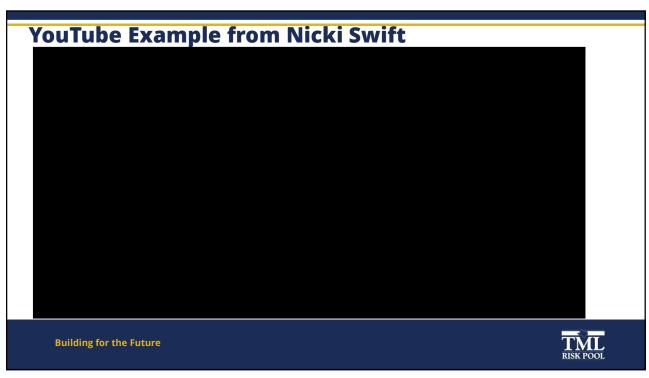
- · Sex/gender,
- · Sexual orientation
- · Gender identity
- Pregnancy

Partner with your HR/Legal team regarding questions



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#### 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
- If a peer is harassing a peer, the employer is only liable if it knew or should have known about the harassment

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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\*

\*Possible Continuing Violation Doctrine



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#### **Interview Example - Discrimination Free Hiring?**



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#### **Address Sexual Harassment**



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#### 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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#### **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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#### **Race Discrimination**

Involves discrimination based a person race such 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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#### **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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#### **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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#### **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).

Partner with your HR/Legal team regarding questions

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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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#### **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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#### 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).

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## 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 (3<sup>rd</sup> party)
- Remember that professional meetings, business trips and social events are an extension of your workplace (alcohol)
- Social media is also a possible source of harassment (have a policy addressing harassment on social media)
- Non-employees such as citizens, vendors, contractors, elected officials are possible sources of harassment

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## 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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## 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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# 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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# 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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# Family Medical Leave Act FMLA

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## FMLA Employer Coverage & Employee Eligibility (per DOL.gov)

The Family and Medical Leave Act (FMLA) provides eligible employees up to 12 workweeks of unpaid leave a year.

The FMLA applies to all:

- public agencies, including local, State, and Federal employers, and local education agencies (schools): and
- private sector employers who employ 50 or more employees for at least 20 workweeks in the current or preceding calendar year

In order to be eligible to take leave under the FMLA, an employee must:

- work for a covered employer;
- have worked 1,250 hours\* during the 12 months prior to the start of leave;

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#### **FMLA Qualifying Family Members**

- Parent biological, adoptive, step or foster father or mother, or someone who stood in loco parentis to the employee when the employee was a son or daughter. Does not include in-laws.
- Spouse A husband or wife as defined or recognized in the state where the employee was married and includes individuals in samesex marriage or common law marriage.
- Son or Daughter For leave other than military family leave, a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is either under 18 years of age, or older than 18 and incapable of care because of a mental or physical disability.

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#### **FMLA Amount of Leave**

Eligible employees may take up to 12 workweeks of FMLA leave

- For the birth or placement of a child for adoption or foster care
- To care for a spouse, son, daughter, or parent with a serious health condition
- For the employee's own serious health condition

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#### **FMLA Details\***

Is FMLA paid?

· No, is not paid. It only offers job protection. Paid leave can be used concurrently with it.

Can an employee decline FMLA protection?

· No, employers are required to place employees on FMLA.

What if employees don't request FMLA protection?

 If you think leave may qualify then employers are required to place employees on FMLA.

Partner with your HR/Legal team regarding questions

\*DOL.GOV

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## FMLA For the Birth or Placement of a Child

- Both the mother and father are entitled to FMLA leave for the birth or placement of the child and/or be with the healthy child after the birth or placement (bonding time)
- Employees may take FMLA leave before the actual birth, placement or adoption
- Leave must be completed by the end of the 12-month period beginning on the date of the birth or placement

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#### FMLA Serious Health Condition

- · Absences of three or more consecutive days may qualify
- · Illness, injury, impairment or physical or mental condition involving:
  - · Inpatient Care, or
  - · Continuing Treatment by a Health Care Provider
- · An overnight stay in a hospital, hospice, or residential medical facility
  - · Includes any related incapacity or subsequent treatment
- Pregnancy
- · Chronic Conditions
- · Permanent/Long-Term Conditions
- · Absence to Receive Multiple Treatments

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#### **FMLA Intermittent Leave**

- Employee is entitled to take intermittent or reduced schedule leave for:
  - Employee's or qualifying family member's serious health condition when the leave is medically necessary
  - Covered service member's serious injury or illness when the leave is medically necessary
  - A qualifying exigency arising out of a military member's covered active-duty status
- Leave to bond with a child after the birth or placement must be taken as a continuous block of leave <u>unless</u> the employer agrees to allow intermittent or reduced schedule leave.

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#### **Absences Not Protected by FMLA**

Conditions requiring cosmetic treatment (unless inpatient hospital care or complications)

- Absence due to current, untreated substance abuse
- Common colds
- Headaches (other than migraine)
- · Routine dental problems
- Upset stomach
- Earaches
- · Car breaks down
- · To care for a friend
- Pet is ill

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#### **FMLA Military Family Leave**

- Qualifying exigency leave, which provides up to 12 workweeks of FMLA leave to help families manage their affairs when a military member has been deployed to a foreign country; and
- Military caregiver leave, which provides up to 26 workweeks of FMLA leave to help families care for covered service members with a serious injury or illness

Generally, FMLA rules and requirements continue to apply

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#### **FMLA Employer Responsibilities**

- · Same or equivalent job
  - · Equivalent pay
  - · Equivalent benefits
  - · Equivalent terms and conditions
- Employee has no greater right to reinstatement than had the employee continued to work
- Bonuses predicated on specific goal may be denied if goal not met (but perhaps consider prorating such bonus)
- · Key employee exception

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#### **FMLA Prohibited Employment Actions**

- Employers cannot:
  - · Interfere with, restrain or deny employees' FMLA rights
  - · Discriminate or retaliate against an employee for having exercised FMLA rights
  - Discharge or in any other way discriminate against an employee because of involvement in any proceeding related to FMLA
  - Use the taking of FMLA leave as a negative factor in employment actions (evaluations, excessive absenteeism, raises, etc.)
- For more details on FMLA, check out <u>https://www.dol.gov/agencies/whd/fmla</u>

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# Americans with Disabilities Act as Amended - ADAAA

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#### **Disability Discrimination**

- Treating a qualified individual with a disability who is an employee or applicant unfavorably because he/she has a disability.
- Also occurs when an applicant or employee is treated less favorably because she has a
  history of a disability (such as cancer) or because she is <u>believed to have</u> a physical or
  mental impairment that is not transitory (lasting or expected to last six months or less)
  and minor (even if she does not have such an impairment).
- The law also protects people from discrimination <u>based on their relationship</u> <u>with a person with a disability</u> (even if they do not themselves have a disability).
   For example, it is illegal to discriminate against an employee because her husband or child has a disability.

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#### **Definition of Disability**

Not everyone with a medical condition is protected by the law. A person <u>must be qualified for the job</u> and have a disability as defined by the law.

- A person can show that he or she has a disability in one of three ways:
  - 1. He or she has a physical or mental condition that substantially limits a major life activity (such as walking, talking, seeing, hearing, or learning).
  - 2. He or she has a history of a disability (such as cancer that is in remission).
  - 3. If <u>he or she is **believed** to have</u> a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (**even if he <u>does not have</u> such an impairment**).

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#### **Reasonable Accommodations**

The law also requires that employers **reasonably accommodate** applicants and employees with a disability, unless doing so would impose an undue hardship on the operation of the employer's business.



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#### **Accommodation Interactive Process**

- Communication about possible accommodations is key.
  - ✓ Employers must participate in an interactive process with the employee to determine the essential functions of the job that may or may not be eligible for an accommodation.
  - ✓ Work with your HR representative as they will generally be able to assist with this process.
  - ✓ An interactive process example is available on the JAN website. https://askjan.org/training/library.htm

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#### **Disability & Undue Hardship**

- Undue hardship means that the accommodation would be too difficult or too expensive to provide, in light of the employer's size, financial resources, and the needs of the business.
- An employer may not refuse to provide an accommodation just because it involves some cost.
- An employer does not have to provide the exact accommodation the employee or job applicant wants.
- If more than one accommodation works, the employer may choose which one to provide.

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# **Disability During Application & Interview Stage**

- The law places strict limits on employers when it comes to asking job applicants to answer medical questions, take a medical exam, or identify a disability.
- An employer also may not ask job applicants if they have a disability (or about the nature of an obvious disability).
- An employer may ask job applicants whether they can perform the job and how they would perform the job, with or without a reasonable accommodation.

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# Closing Reminders

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### **Strength in Serving Beyond Self**

When we see/serve beyond self, we demonstrate our strength by lifting others up.



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#### Can You Hear the "POP"?

"DISCOVER your core values and purpose beyond just making money (core ideology) and combine this with the dynamic of PRESERVE the core/STIMULATE progress."



James C. Collins <u>Good to Great: Why Some</u> Companies Make the Leap... and Others Don't

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

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These pocket picks are intended to serve as 2 reminders

- 1. As an individual "musician" in your organization, YOU absolutely are making a difference to others on a daily basis with the passion of service you bring.
- 2. You are a VITAL part of your organization's symphony, not only sharing your expertise and talent but also blending it in harmony with the other "musicians" who surround you.

We are each a member of our organization's "symphony" and are daily connecting to/impacting something bigger than just self getting to demonstrate our mission, vision and values in a collective harmony.



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# For Tomorrow

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#### **Homework**

Please complete the Enneagram Test before class tomorrow.

 Use the link below <u>and take the **first** Enneagram Test</u>. Please print and/or save your test results and bring them with you tomorrow. A significant portion of the discussion in class tomorrow will be centered on the different personality styles/characteristics.

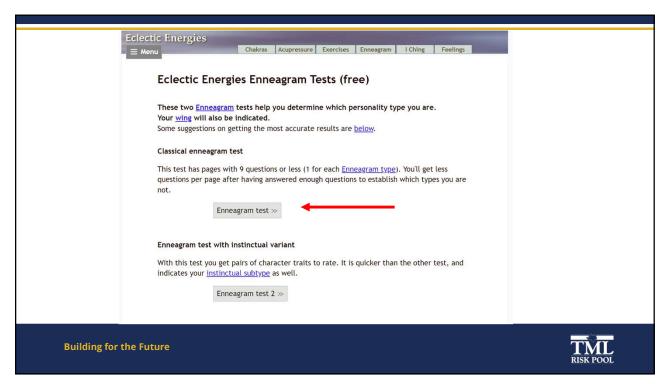
https://www.eclecticenergies.com/enneagram/test

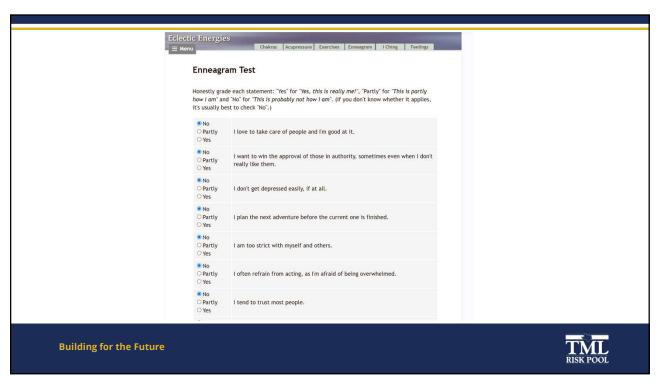
Be sure to print or save your results and bring them with you.

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

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