

JacksonLewis

Employment Law Basics

Quality Technology Services

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Agenda

- Discrimination/Harassment (Title VII and similar state laws)
- Americans with Disabilities Act
- Family and Medical Leave Act
- Wage and Hour Laws (Fair Labor Standards Act and state laws)
- Hiring & Onboarding (Fair Credit Reporting Act, Application Forms, Ban the Box, Salary History/Transparency)
- Awareness of State Law Issues – Paid Sick Leave, Poster & Notice Requirements, Family Leave, etc.
- Handling Employee Complaints
- Investigations Training

EEO, Discrimination and Harassment

**Equal Employment
Opportunity: The Basics**

Protected characteristic

Adverse employment action

Legitimate business reason

Pretext

Some Protected Characteristics

- Race
- Color
- Religion
- National Origin
- Citizenship
- Sex/gender
- Pregnancy
- Age
- Sexual Orientation
- Gender expression/identity
- Transgender status
- Military status/service
- Genetic information
- Ancestry
- Disability
- Etc.

Other Protected Characteristic Examples

- Arrest record
- Caregiver status
- Credit history
- Unemployment status
- Salary history
- Partnership status
- Status as a victim of stalking and sex offenses

Reasonable Accommodation

Disability

Sincerely held religious beliefs

What you need to know: NO knee-jerk “no”
responses

Case by case analysis

Harassment

Federal Laws Prohibiting Discrimination and Harassment

- Title VII of the Civil Rights Act of 1964: “It shall be an unlawful employment practice for an employer 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.”
- Other Federal Laws
 - American With Disabilities Act of 1990: Prohibits discrimination against a qualified individuals with a disability in regard to the terms, conditions, and privileges of employment.
 - Age Discrimination in Employment Act of 1967: Prohibits discrimination on the basis of age in regard to terms, conditions, and privileges of employment.



State Laws Prohibiting Discrimination and Harassment

[SOME STATES REQUIRE THAT YOU
SPECIFICALLY COVER THE APPLICABLE STATE
LAW. SEE NOTES].



Harassment

- Not just about sexual harassment
 - Other protected characteristics
 - Inappropriate conduct generally
- Respect in the workplace
- Heightened exposure in the #metoo era
- Appropriate workplace conduct is key

Definition of Sexual Harassment

Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitutes sexual harassment when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

Two Types of Unlawful Harassment

Quid Pro Quo

- Someone in management
- Conditions an aspect of employment
- On submission to a sexual advance or favor

Hostile Work Environment

- Unwelcome
- Sexual (or other protected category) in nature
- Severe or pervasive*
- Offensive to a reasonable person
- Interferes with the ability to work
- Creates an offensive, intimidating, or hostile work environment

Examples

- Suggestive or lewd comments
- Unwanted hugs, touching, kisses, groping
- Repeated requests for dates
- Requests for sexual favors
- Sexually explicit communications – in any form – electronic, pictures, texts, IMs, etc.
- Inquiring into personal lives/discussing sex lives
- Whistling/cat calls
- Comments on clothing, body, anatomy
- Staring, leering, winking, suggestive looks or gestures

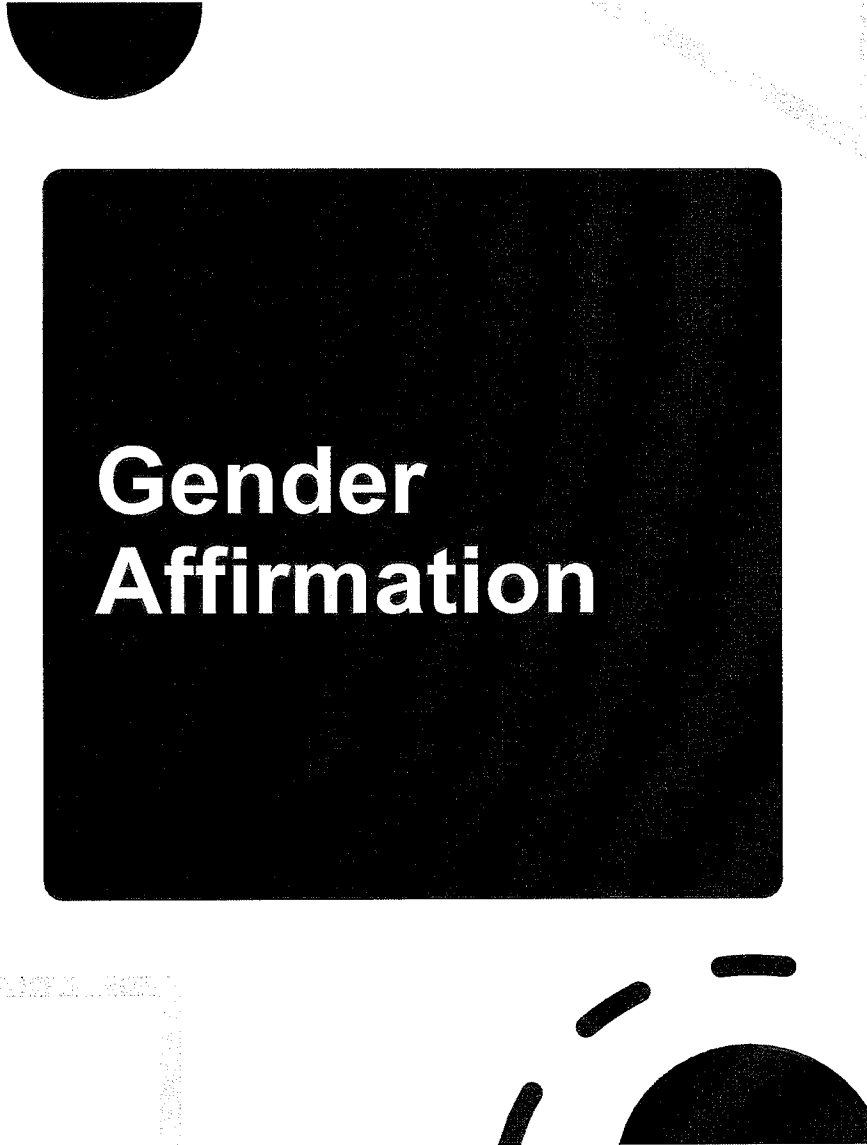
Gender Identity, Gender Nonconforming Individuals, Gender Expression

- **Gender Identity** is a person's innate, internal sense of his, her, or their gender.
- **Gender Expression** is the way in which a person presents his, her, or their gender to the outside world.
- **Gender Non-Conforming** - Behaving in a way that does not match social stereotypes about female or male gender, usually through dress or physical appearance.
- **Gender non-binary** (also known as genderqueer (GQ))
- A catch all category for gender identities that are not exclusively masculine or feminine.



Sexual Orientation, Transgender

- **Sexual orientation** is an individual's physical and/or emotional attraction to the same or a different gender.
- **Transgender** is an umbrella term referring to a person whose gender identity presentation falls outside of stereotypical gender norms and may seek to change their physical characteristics through hormones, gender reassignment surgery or other actions.



Gender Affirmation

- **Gender affirmation (transition)** is the process by which a person modifies his/her/their physical characteristics and/or gender expression to be consistent with his/her/their gender identity.
- Transgender people may *or may not* choose to make social, medical, and/or legal changes to affirm their gender identity, including:
 - **Social:** e.g., clothing, pronouns, name, mannerisms, voice
 - **Medical:** e.g., hormone therapy, gender reassignment or other surgery
 - **Legal:** e.g., changing their name and/or gender on birth certificate, driver's license, etc.

Standards for Liability Depend on Identity of Harasser/Perpetrator

Supervisor/Manager



Strict Liability

Non-supervisor employees



“Knew” or “should have known”

Third parties (contractors, vendors, customers, clients, etc.)



“Knew” or “should have known”




Duty to Act is Paramount: Common Mistakes

- “Mum’s the word.”
- “Off the record . . .”
- “Let me know when you want me to do something about it.”
- “Oh, do you want to make a formal complaint?”
- “Why don’t you go back and write that up and then we’ll take it to HR . . .”
- “As your friend and mentor . . .”
- “It was more of a personal matter – they needed to work it out.”
- “That was just hearsay. I had no *evidence*. I was not there. I did not hear it myself, I did not see it.”
- “I cannot act on rumors or gossip.”



Supervisors

- 
- Supervisors are required to report any harassment that is reported to them
 - They are responsible for any harassment or discrimination that they should have known of with reasonable care and attention to the workplace for which they are responsible
 - They are expected to model appropriate workplace behavior



Supervisors

- Supervisors must report any harassment that they observe or know of, even if no one objects to the harassment. This is true:
 - Even if the supervisor or manager thinks the conduct is trivial
 - Even if the harassed individual asks that it not be reported
- Supervisors and managers will be subject to discipline for failing to report suspected sexual harassment, otherwise knowingly allowing sexual harassment to continue, or for engaging in any retaliation

Retaliation

Retaliation

- Unlawful to retaliate against an employee who:
 - Makes a complaint or raises an issue
 - Participates in an investigation
 - Otherwise exercises a right (e.g., requests a reasonable accommodation)
- No retaliation principle applies even if underlying complaint is unsubstantiated
- If an adverse action follows protected activity, need:
 - Legitimate business reason; and
 - Good explanation as to timing

Potential Remedies

- Injunctive Relief
- Reinstatement
- Mental anguish and emotional pain
- Past economic loss (back pay)
- Future economic loss (front pay)
- Loss of enjoyment of life
- Inconvenience
- Out-of-pocket expenses
- Attorneys' fees and other litigation costs

Complying with the ADA

The ADA Basics

An employer cannot discriminate against:

- A **qualified person** with a **disability**

A person is qualified if:

- They can perform the **essential functions** of a job, with or without a **reasonable accommodation** that does not pose an **undue hardship on the Company**

Who is a "Person With a Disability"?

Has - A person with a physical or mental impairment that substantially limits one or more "major life activities"

Had - A person who has a record of such an impairment

- Past history of a genuine disability
- Misclassified as having a disability

Regarded as Having - A person who is regarded as having such an impairment

- Has an impairment but does not substantially limit a major life activity
- Does not have an impairment, but is treated as having one

Examples of “Major Life Activities”

- Caring for oneself
- Performing manual tasks
- Seeing
- Hearing
- Walking
- Breathing
- Learning
- Speaking
- Working
- Eating
- Sleeping
- Bending
- Reading
- Lifting
- Concentrating
- Thinking
- Communicating
- Standing
- **Major Bodily Functions**

What are “Major Bodily Functions”?

- Immune System (Ex. Lupus, HIV/AIDS)
- Normal Cell Growth (Ex. Cancer)
- Digestive (Ex. Crohn’s disease)
- Bowel (Ex. Ulcerative colitis)
- Bladder (Ex. Kidney disease)
- Neurological (Ex. Epilepsy, multiple sclerosis)
- Brain (Ex. Schizophrenia)
- Respiratory (Ex. Asthma)
- Circulatory (Ex. Hypertension)
- Endocrine (Ex. Diabetes)
- Reproductive

Identifying “Essential Functions”

Fundamental job duties – not marginal

Factors to consider:

- Information on written job descriptions
- Amount of time spent performing function

Spotting Potential ADA Accommodation Issues

- Employee
 - exhausts FMLA but is unable to return to work
 - requests an accommodation to perform a job
 - attempts to excuse performance problems based on a medical issue
 - sustains an injury or illness
 - requests medical leave
 - has repeated absences expressly related to medical issues or treatment
- Employer is aware of a self-disclosed disability

4-Step ADA Analysis

STEP 1

- Does the employee have a disability?

STEP 2

- If yes, is the disabled employee a “qualified” individual (can perform essential functions of the job with or without reasonable accommodations)?

STEP 3

- If yes, what accommodation(s) is being requested, and are there other options (interactive process)?

STEP 4

- Would the accommodation create an undue hardship for the employer making requested accommodation unreasonable?

STEP 1

WHAT IS A DISABILITY FOR ADA PURPOSES?

- Could be almost anything, depending on the severity:
 - E.g., epilepsy, sleep apnea, paralysis, depression/ anxiety, AIDS, diabetes, infertility, missing limb, Crohn's Disease, migraines, carpal tunnel, alcoholism/ drug addiction, back injuries, neck injuries, asthma, allergies/ scent intolerance, schizophrenia, heart disease, some cancers, hearing loss
 - Could also be temporary issue that evolves into a permanent condition
- Likely not true temporary conditions:
 - E.g., sprains, colds, stomach bug, cosmetic surgery

STEP 1: What is a Disability?

Are You On Notice?

- “I can’t keep up with my work due to my medical condition”
- “I know I shouldn’t have yelled at Maya, but lately I just feel so anxious I find myself snapping at people”
- “I have a bad back”
- Employee is often away from work for medical appointments
- You hear from another person that an employee has epilepsy

Is Pregnancy A Disability Under The ADA?

- Normal pregnancy is not a disability under the ADA
 - However, under the ADA, many conditions - even temporary conditions like pregnancy-related impairments - may qualify as disabilities
 - All types of impairments associated with pregnancy (even “typical” pregnancies) such as back pain, leg swelling, carpal tunnel, etc. may meet the ADA’s broad definition of a disability and as a result may require reasonable accommodation (e.g. lifting or bending restrictions, limited standing, etc.) & don’t forget Title VII PDA accommodation requirements
- Accordingly, employer must respond to requests for accommodations from pregnant employees the same as it would for disabled employees

STEP 2

IS EMPLOYEE A “QUALIFIED” INDIVIDUAL?

- Once “on notice” managers should immediately contact HR
- HR should gather up-to-date medical information:
 - Diagnosis & Duration
 - Work Restrictions
 - FMLA?
- Consider giving the employee a job description or reasonable accommodation form to take to their medical provider for additional information

STEP 3

The Interactive Process

- Employee's request for a reasonable accommodation:
 - Verbal request is sufficient
 - There are no "magic words" to qualify as a "request"
 - Need only place employer on notice that they have an impairment and need some assistance
 - Employee is not required to disclose particular disability or medical condition
 - Family members or others may request accommodations on behalf of the employee

What is a Reasonable Accommodation?

- Workplace modifications
 - Physical/software aid (Dragon speech recognition software)
 - Alterations to equipment (e.g. keyboards)
- Modified job duties (e.g. limited travel)
- Modified work schedule (e.g. shorter shifts)
- Job restructuring of marginal job functions
- Temporary exemption from rules (e.g. attendance)
- Unpaid leaves of absence (reasonable time but not indefinite)
- Reassignment/transfer to vacant position (same shift and pay)

What is Not a Reasonable Accommodation?

- Removing essential job functions
- Diluting uniformly enforced productivity standards
- Excusing or forgiving past misconduct or poor performance
- Tolerating current misconduct
- Excessive poor attendance which is not medically related, especially when late or no notice of missing work is provided
- Promotion
- Bumping an employee from a job
- Creating another position or job
- Changing an employee's supervisor; a "stress-free" workplace

Reasonable Accommodations

Considerations

- Employer does not have to choose the best or most expensive option
- No need to eliminate essential functions as an accommodation
- Need not cause others to work harder or longer
- If employee rejects reasonable accommodation, employer has no obligation to continue interactive process

Recent EEOC Position Regarding Extension of Leaves as a Reasonable Accommodation Under ADA

- The EEOC (Equal Employment Opportunity Commission) is the federal government agency responsible for enforcing federal anti-discrimination laws in the workplace, including enforcement of Title I of the Americans with Disabilities Act (ADA).
- In May 2016, the EEOC announced an \$8.6 million settlement with Lowe's for nationwide violations of the ADA.
- According to EEOC's suit, Lowe's violated the ADA and engaged in a pattern and practice of discrimination against people with disabilities by terminating them upon the conclusion of their medical leaves without evaluating whether to make a reasonable accommodation by extending leave beyond the period prescribed by Lowe's policies.

Bottom Line—Managers may have to consider providing unpaid leave beyond the Company FMLA policy as a reasonable accommodation.

What is an Essential Job Function?

Essential functions are “fundamental” job duties of a position

- Essential functions do not include duties that are marginal

A job function may be considered essential for any of several reasons like:

- The job exists to perform that function
- The function requires specialized skills or expertise, and the person is hired for that expertise
- There is only a limited number of employees to perform the function
- Amount of time spent performing the function
- Consequences of not requiring the employee to perform the function

Documenting Essential Functions

Best Practice

- Job descriptions play a crucial role in identifying the essential functions of a job and also assisting in identifying reasonable accommodations – keep them updated and accurate

Reasonable Accommodation Agreement?

- Signed by employee and company:
 - Describe employee's restrictions
 - Describe reasonable accommodation(s) being offered on a temporary basis
 - Identify begin/end dates of accommodation
 - Emphasize the accommodation is temporary and will be re-evaluated on end date
 - Outline employee responsibilities (provide medical updates, notice requirements to company)
 - Outline supervisor responsibilities (ensure employee isn't assigned tasks that exceed restrictions, keep HR advised of any performance/attendance issues)
- Gives employee written notice that the accommodation will be re-evaluated and potentially changed if not meeting employee and company needs

STEP 4

“UNDUE HARDSHIP”

- An "undue hardship" is "an action requiring significant difficulty or expense," when considering various factors, such as:
 - nature and cost of the accommodation
 - employer's financial resources
 - size of employer's workforce
 - impact of the accommodation on employer's business operations (operational impact generally most important factor)
- A reasonable accommodation should be the **least disruptive** change to the business that allows the employee to do the job

Proving Undue Hardship

- Financial hardship depends on the cost of the accommodation and the wealth of the employer
- Operational hardship might include things such as:
 - Employees working harder, longer, different hours
 - Customer dissatisfaction
 - Lost or diminished productivity

Direct Threat

- An employer need not hire or employ individuals with disabilities if they pose a “direct threat” to the safety of the employee or others in the workplace
- A “direct threat” means a “significant risk of substantial harm that cannot be eliminated or reduced through reasonable accommodation”
- Consider severity, likelihood and imminence of harm
- Must be established by medical provider – employer does not make assessment independently

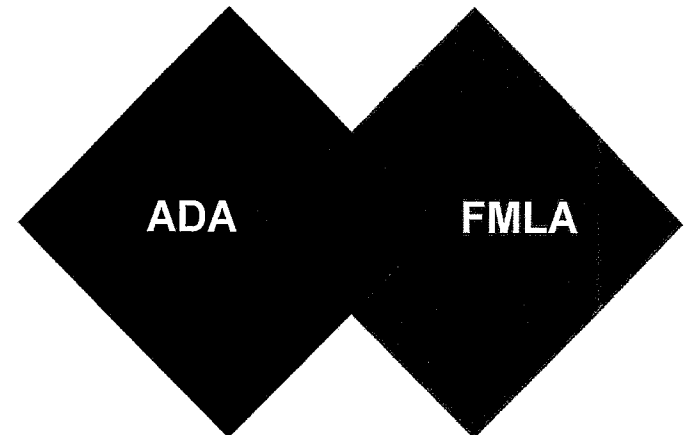
Other Accommodation Issues

- May someone other than the individual with a disability request a reasonable accommodation on behalf of the individual?
 - Yes, e.g. family members
- Do requests for reasonable accommodation need to be in writing?
 - No (but writing is suggested as it may speed up the process of evaluating your request)
- What if the employee fails to participate in good faith in the interactive process, e.g. fails to provide medical documentation in a timely manner, or refuses to communicate with employer regarding accommodation request?
 - The employee's accommodation request may be denied

Leaves of Absence: How Much Is Enough?

ADA and FMLA

- An FMLA serious health condition can also qualify as a disability under the ADA
- After an employee exhausts FMLA, they may be entitled to additional leave as an ADA reasonable accommodation if additional leave would not impose an “undue hardship” on business operations
- Employees who do not qualify for FMLA (due to hours or tenure, may still qualify for leave under the ADA.
- If you have concerns about the impact additional leave will have on business operations, discuss those concerns with legal counsel



Leave as an Accommodation

- A “leave limits” analysis must begin with the EEOC statement that an “otherwise qualified individual with a disability is entitled to more than 12 weeks of unpaid leave as a reasonable accommodation if the additional leave would not impose an undue hardship” on the employer
- Thus, the EEOC views leave under the FMLA as the minimum or floor, but gives no guidance as to the ceiling.
- But, the EEOC gives no guidance as to how much additional leave an employer must provide as a reasonable accommodation under the ADA

THE FAMILY AND MEDICAL LEAVE ACT (FMLA)

The Family and Medical Leave Act

The Family Medical Leave Act (FMLA) entitles eligible employees, in most circumstances, to take up to 12 weeks of unpaid, job protected leave in a 12-month period for specified family, medical and certain family military-related issues

The FMLA's Key Rights

Unpaid leave from work (continuous or intermittent)

Job restoration upon return to work

Continuation of medical benefits during leave

No retaliation/discrimination for taking leave

No interference with leave

The Family and Medical Leave Act

Eligible employees can take FMLA leave for:

- Their own serious health condition
- Birth of a child (includes bonding leave for new fathers)
- Adoption or foster care placement of a child
- A spouse, child or parent's serious health condition
- Certain issues known as "qualifying exigencies" arising from active military duty of a family member
- To care for a family member who is an injured military service member

FMLA Serious Health Condition

An FMLA serious health condition is an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider

FMLA Serious Health Condition

An FMLA serious health condition includes:

- Overnight stay in hospital
- Absence plus treatment
- Pregnancy
- Chronic conditions (e.g., asthma/epilepsy)
- Permanent/long term conditions requiring supervision (e.g., Alzheimer's)
- Multiple treatments for non-chronic conditions (e.g., chemotherapy/physical therapy)

Requesting FMLA Leave

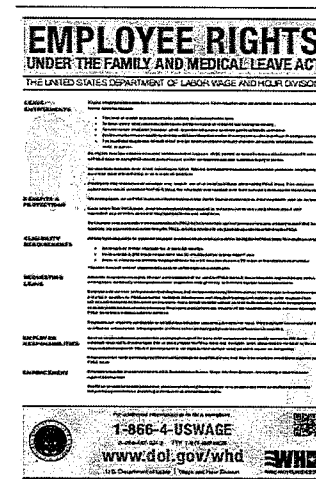
Employees must request or put the company on notice of need for leave, but need not say “magic words,” such as “FMLA”

Situations that may indicate a need for FMLA leave include:

- Time off due to surgery or hospitalization
- Any absence due to pregnancy, including morning sickness, prenatal visits
- Frequent absences or tardiness due to employee’s or family member’s health issues
- Absences due to a family member’s call to active duty or military service-related injury
- Any health related absence lasting more than three calendar days

Employer Notice Requirements

- General notice: FMLA poster
- Employee handbook policy
- Eligibility/Rights and Responsibilities
 - Specific expectations/employee obligations
 - Send within 5 business days of leave request
- Designation
 - Leave determination and leave amount
 - 5 business days after receipt of physician certification



Employee Notice Requirements

- 30 days notice if foreseeable
 - Active duty as soon as “reasonable and practicable”
- Must enable employer to determine whether leave qualifies under FMLA
 - Employee need not expressly assert rights under FMLA or even mention FMLA
- Calling in “sick” without more information is not sufficient
- Must specifically reference qualifying reason if for previously approved FMLA leave
- Employee can be required to follow employer’s call-in procedures

Second and Third Opinions

- If an employer doubts the validity of a medical certification, it may require the employee to obtain a second medical opinion
 - At employer's expense
 - Health care provider may not be employed/contracted by employer on a regular basis
- If a second opinion and medical certification differ, the employer may require the employee to obtain a third opinion from a third health care provider
 - At employer's expense
 - Final and binding

Reinstatement

- Return to same or equivalent position
 - Pay, benefits, terms and conditions
- At conclusion of FMLA leave, FMLA rights end
- Reinstatement rights forfeited if employee does not return to work
- If employee informs employer they are not returning to work, get it in writing
- No greater right to reinstatement than if leave not taken

FMLA Responsibilities

Employee's Responsibility

- To make the manager or HR aware of the need for time off
- To provide the company with necessary documentation
- Must adhere to company policies (must following call out procedures for absences, etc.)
- Must stay in touch with company regarding any changes in the need for leave

Manager's Responsibility

- To listen actively, and to recognize situations where the employee may be eligible for FMLA leave
- To discuss the request with HR
- Don't punish or discipline employees for FMLA absences

FMLA Responsibilities

- HR's Responsibility
 - To assist managers and employees with FMLA questions
 - HR will determine whether a leave meets FMLA eligibility requirements and is approved
 - HR will send FMLA communications and notices to employees
 - To coordinate any necessary details (documentation requests, return dates, next steps, etc.)

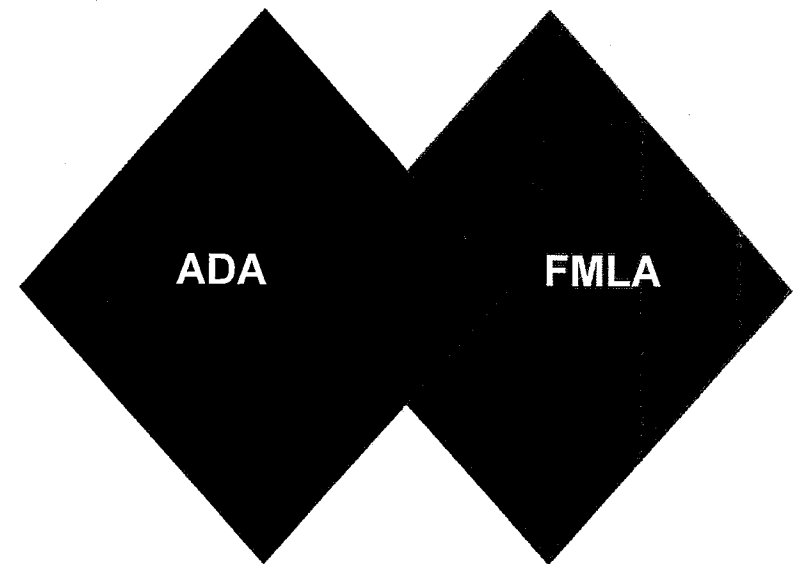
Coordination of Leaves

Coordinate Leaves

- Don't permit leave stacking – FMLA can run concurrently with paid time
- Coordinate state laws, ADA, workers' comp., short-term disability, etc.
- HR should handle the coordination

ADA and FMLA

- An FMLA serious health condition can also qualify as a disability under the ADA
- After an employee exhausts FMLA, they may be entitled to additional leave as an ADA reasonable accommodation



Preventing FMLA Abuse

- Use 12 month rolling leave year a (looking back)
- Don't approve non-qualifying reasons
- Require complete health care certification
- Utilize second/third opinions
- Require recertification when permitted
- Run leaves concurrently
- Require substitution of paid leave where permissible
- Have clear, consistent call out procedures

Spotting Potential ADA Issues

- Employee exhausts FMLA but is unable to return to work
- Employee requests an accommodation to perform a job
- Employee attempts to excuse performance problems based on a medical/mental issue
- Employee sustains an injury or illness
- Employee requests medical leave
- Repeated absences related to medical issues

Common Employer Mistakes

- Failing to notify employees of their FMLA rights
- Granting leave to ineligible employees
- Failure to understand what qualifies as a serious health condition
- Failure to track FMLA leave
- Counting FMLA leave as attendance “occurrences”
- Improperly contacting the health care provider
- Failure to reinstate employees
- Including FMLA in performance evaluations

Wage and Hour Compliance

Overtime

- Time and a half for hours worked in excess of 40 hours per week
 - Unless exemption met
- Department Of Labor Enforcement
- Penalties
 - Overtime pay for the 2 year period (3 for willful violations) before the lawsuit was filed
 - Liquidated damages
 - Attorneys' fees



Exemptions – Basic Rules to Remember

- Exemptions are strictly construed, and it is the employer's burden to prove that the exemption applies
- Require the employee to be paid a salary at or above minimum threshold of \$684 per week.
- An employee's exempt status is based on actual duties performed, not on a job title or a job description

RULES

White Collar Exemptions

- Executive, administrative, and professional are most common exemptions
- Two-part test:
 - Salary basis test – \$684/week **and**
 - Duties test -- exemption specific
- The DOL publishes helpful “Fact Sheets” www.dol.gov/whd/overtime_pay.htm

“Off-the-Clock” Issues

- Meal and rest breaks
- Automatic lunch deductions
- Travel time
- Training and meetings
- Phone Calls, emails and texts before or after work



FLSA Hot Buttons – Non-Exempt

- Compensable “Hours Worked” (*e.g., Prep time; travel time during shift; certain on-call time*)
 - Failing to pay
 - Failing to count toward overtime
- “Off the clock work”
 - Before or after shift
 - During unpaid breaks
 - Working from remote locations/via tablets, PDAs, etc.

On-Call Time

Example:

1. Non-exempt employee must be “on call” for one weekend (48 hours) every month.
2. Last weekend, employee received one call
3. Had to drive into the office and work for 2 hours to resolve it

On-Call Time



Time spent responding to a call compensable



All on-call time may be compensable if restrictions



Or if calls are so frequent the time is not the employee's own

Automatic Deductions for Breaks

- Common practice:
 - Employee supposed to work 8-5 with 1 hour unpaid lunch
 - Employer has employee clock in at 8, and out at 5
 - Time system auto-deducts 1 hour for lunch
- Acceptable if 100% accurate, always
 - Employee never works through lunch
 - Never shortens lunch
 - Lunch never interrupted by work

Automatic Deductions for Breaks

Best practice: punch in whenever work starts and out when it stops

If impractical next best practice: airtight system for employees to report deviations and get them corrected

Bonuses Included In Overtime



Regular rate = total comp for week / hours worked



Pay $\frac{1}{2}$ of regular rate for each OT hour



Includes not just hourly wage, but other payments too, such as bonuses



Discretionary bonuses can be excluded (but very narrow definition)

Bonuses Included In Overtime

- Include bonuses that are:
 - Based on productivity
 - Based on hitting individual or company goals
 - Based on attendance
 - Based on safety
 - Based on anything (other than the company's whim)
 - Described in a plan

Calculation of Bonuses Included In Overtime



Weekly



If longer period must apportion across weeks in which it was earned



Example

Bonuses Included In Overtime

Example: employee is paid \$10/hour, works 50 hours, receives \$200 productivity bonus for week

Wrong

$$\text{\$10/hr} \times 40 \text{ hrs} = \text{\$400}$$

$$\text{\$15/hr} \times 10 \text{ hrs} = \text{\$150}$$

\\$200 bonus

$$\text{\$400} + \text{\$150} + \text{\$200} = \text{\$750}$$

Right

$$\text{\$10/hr} \times 50 \text{ hrs} = \text{\$500}$$

\\$200 bonus

$$\text{Reg rate} = \text{\$700} / 50 = \text{\$14/hr}$$

$$\text{\$7} \times 10 \text{ OT hrs} = \text{\$70}$$

$$\text{\$500} + \text{\$200} + \text{\$70} = \text{\$770}$$

Rules Regarding Minors

- USDOL also enforces child-labor laws
 - Hours
 - Breaks
 - Duties
- Minors (under 18) can't load, operate, or unload many dangerous machines
 - Box compactors at retail store
 - Trash compactors at nursing home or hotel

Hiring & Onboarding

Job Descriptions

- Why are they critical?
 - Notice to employees about position requirements
 - Defense to selection decision
- Key components
 - Essential elements
 - Physical requirements
 - Attendance/Place requirements
 - Complete and Recent
 - Update regularly

Recruiting

- Job postings—must comply with federal and state law—it is illegal to show preference or discourage applications from protected groups
 - "Young, energetic"
 - Male/female
 - Recent graduates
- EEO Language
- Other Disclaimers or Disclosures

Recruiting Risks

Social Media

- Be careful of what you find on the internet—not everything is accurate.
- An internet search may yield information about an applicant's protected characteristics.
 - Age, disability/medical information, race, sex, religious beliefs, pregnancy, sexual orientation, military status, marital status, or other characteristics.
- If the applicant is hired, an employer cannot rid itself of information that later may be used against it in an employment dispute.

Hiring From Competitors

- Risk: "interfering" with legal obligations or "aiding and abetting" breaches of duties owed to former employer.
- Important to ask:
 - Does applicant have employment agreement (esp. non-compete).
 - Does applicant have confidential/trade secrets, of former ER.
- Best practice is to get a written acknowledgement from the applicant:
 - That he/she does not possess confidential information; and
 - That is a condition of receiving offer of employment.

Things To Consider Including With The Application

- Employment-at-will statement
- Consent to conduct reference checks
- Notice of substance-screening policy
- Arbitration agreement or internal dispute resolution program

“Ban the Box”

- Currently 37 states, the District of Columbia, and over 150 cities and counties have prohibitions against requesting a prospective employee’s criminal history on an employment application
- Multistate employers should consider removing criminal background questions from the employment application to ensure compliance

Arrest And Conviction Records In Employment Decisions Under Title VII

- EEOC Guidance Key components:
 - No blanket "no criminal conviction" policies.
 - If policy is to consider criminal convictions, it must be "job related and consistent with business necessity."
 - Employer must conduct a "targeted screen" considering at least the nature of the crime, the time elapsed, and the nature of the job.
 - Need to conduct an individualized assessment.

Individualized Assessment

- Before disqualifying an applicant based on a conviction, give the applicant an opportunity to explain the conviction.
- Other factors to consider as part of this process:
 - Facts or circumstances surrounding the conviction
 - Number of convictions
 - Age at time of conviction or release from prison
 - Evidence that individual performed same type of work with another employer with success
 - Employment history before and after conviction
 - Rehabilitation efforts and references

The FCRA: Background And Purpose

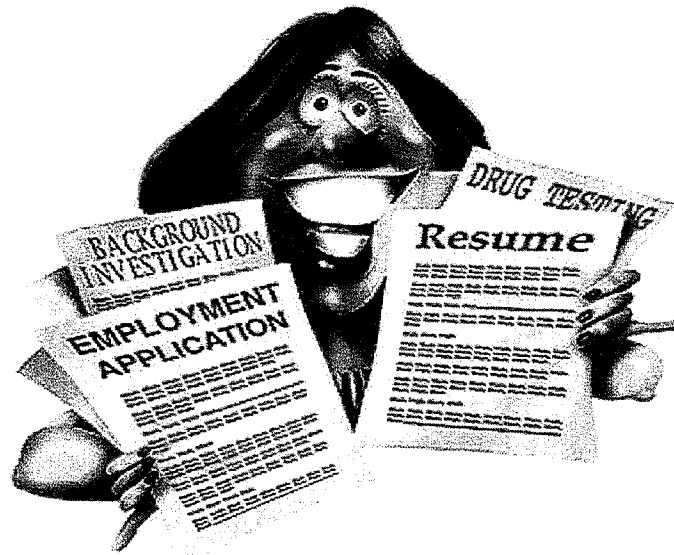
- The FCRA's purpose is to ensure that credit and other decisions, including employment decisions, are based on accurate information.
- The FCRA imposes obligations on :
 - Consumer Reporting Agencies
 - Users—*e.g.*, an employer ordering a background check
- Consumer reports may only be obtained for permissible purposes.
 - Employment is one of those purposes.
- Employers obtaining and using consumer reports must follow certain steps.

FCRA Compliance

1. Pre-procurement requirements:
 - a. Certification
 - b. Disclosure/Notice
 - c. Authorization/Consent
2. Pre-adverse action requirements:
 - a. Provide report and CFPB's summary of rights
 - b. Wait
3. Post-adverse action requirements:
 - a. Notice of adverse action
 - b. Information on CRA and consumer rights

Pre-Procurement

- Advance written disclosure to job
 - Stand-alone notice
 - "Clear and conspicuous"
 - Written authorization
 - Obtain consent



Pre-Adverse Action Notice

- **Before** taking an adverse action an employer must:
 1. Provide the applicant or employee
 - Copy of the report
 - Copy of CFPB's summary of rights under the FCRA
 2. Wait before taking adverse action
 - The FCRA is silent on how long
 - Case law requires a reasonable amount of time to allow person to dispute inaccuracies with the CRA (not necessarily the employer)
 - FTC has found 5 business days to be reasonable

(Post-) Adverse Action Requirements

- **After** adverse action: ER must provide additional information regarding the CRA and consumer rights:
 - Name, address, and toll-free telephone number of the CRA
 - A statement that the consumer reporting agency did not make the decision and is unable to provide the consumer the specific reasons why the adverse action was taken
 - Consumer's right to obtain from the CRA a free copy of the report
 - Consumer's right to dispute accuracy or completeness of the report

FCRA Class Actions

- FCRA cases are often well suited for class treatment – typically there is a common practice or policy
- High potential for class exposure
 - Size of exposure can be enormous
- Willfulness issue is especially important
 - Willful violations may be necessary to obtain class certification

ADA Pre-Employment Procedures

- EEOC has issued specific pre-employment guidelines under ADA and Title VII.
- Employee rights depend on the stage of the hiring process.
 - Pre-offer stage
 - Post-offer stage
 - Post-employment stage

ADA Pre-Offer Prohibitions

- Do **not** ask about disabilities.
- Do **not** seek information that might reveal a disability.
- Do **not** conduct medical examinations (procedures or tests that seek information about a person's physical or mental health or a person's physical or mental impairment).

Pre-Offer

- Two exceptions:
 - Applicant with an obvious disability
 - Applicant voluntarily discloses a non-visible disability or need for a reasonable accommodation
 - Employer may ask whether the applicant needs a reasonable accommodation and, if so, what type of accommodation may be needed

Permissible Questions In The Pre-offer Stage

- Ability to perform specific job functions.
- Ask applicant to describe or demonstrate how they would perform certain tasks (must ask all applicants this).
- Attendance requirements and whether the applicant can meet them.
- An employer may ask questions about an applicant's obvious/disclosed impairments, but not about prognosis.
- An employer may ask an applicant about current illegal drug use.

Drug Tests

- Tests to determine current, illegal use of drugs are not considered medical examinations under the ADA.
- An applicant may be required to submit to a drug test at any stage during the hiring process.
 - Addiction/rehabilitation are treated differently than current use.
 - Drug addiction is generally considered a disability under the ADA.
 - Current drug use is not protected by the ADA.
- **State Laws Vary** so make sure you are in compliance where you have employees
- Ensure you have a written Drug Testing Policy if you are going to do drug testing

State Law Issues

Typical State Law Topics

- Discrimination Laws similar to Title VII, ADEA, ADA, etc. – unique protections
- Wage and Hour Laws – Exemptions, OT, Breaks, Call Pay, Training & Travel Pay, Working Hours, Tips, Child Labor
- Wage Payment and Collection Laws – Final Pay, Pay Frequency, Method of Payment, Deductions from Pay, Definitions of Wages
- Required Posters and Notices – May include unique requirements from state to state
- Leave Laws – family leave, medical leave, Victims, Jury Duty, Voting, Election Duty, First Responders, Blood and Bone Marrow Donors, Civil Air Patrol, others

Trends

Restrictive Covenants

- Remote workers – which state's laws apply
- State laws narrowing non-compete provisions in time and scope
 - Illinois - Freedom to Work Act
 - Oregon – length > 1 year unenforceable
 - Nevada – bans non-compete agreements for hourly workers
 - Colorado – criminalized illegal non-compete enforcement
 - Courts narrowing interpretations of existing laws – Wyoming
 - 20 states have proposed legislation limiting non-competes

Pay Transparency

- Laws passed in several states and NYC requiring employers to disclose salary ranges associated with positions in job postings
 - California, Maryland, Rhode Island and Washington – must disclose pay range if applicant asks after an interview
 - Colorado - must include pay rate or range in job posting plus general description of compensation and benefits
 - Connecticut – must provide pay range upon request and by the time it extends an offer
 - Nevada – must provide pay range to applicants who complete an interview even if not requested
 - Rhode Island – pay range disclosure at hire, promotion or on request
 - New York City – employer must include minimum and maximum in all job ads

Paid Leave

- **Paid Family Leave** - Twelve states - California, Colorado, Connecticut, Delaware, Maryland, Massachusetts, New Jersey, New York, Oregon, Rhode Island, Virginia, and Washington - and the District of Columbia require PFML.
- **Paid Sick Leave** – 22 states plus District of Columbia and Puerto Rico require paid sick leave

Other State Specific Laws

- Drug Testing
- Smoking
- Weapons
- COVID Vaccine
- Biometric Data
- Mini-WARN
- Mini-COBRA
- Mini-FCRA
- Training

Handling Employee Complaints

Employees May Come to You!

- Human Resources **MUST** understand what to do in the event they receive a complaint of discrimination or harassment or witness an incident.
- A supervisor's knowledge will be imputed to the company.
- A supervisor's failure to respond properly to a complaint or incident may lead to individual liability and/or subject the company to liability.
- Supervisor's must report discrimination and harassment to HR promptly.
- HR has a duty to take all reports seriously. Investigate promptly and ensure appropriate actions are taken in response to the complaint.

Duty to Act

- Supervisor's must report any complaints of misconduct to a designated company representative, such as a human resources manager, so the company can try to resolve the claim internally.
- Supervisors are also obligated to report harassing, discriminatory or retaliatory behavior they become aware of.
- HR will be expected to investigate the complaint and advise supervisors on appropriate response.

How to Handle a Complaint or Incident

- **Complaint may be informal**
- **Employee might not use words “harassment” or “discrimination”**
- **Do not discourage or pass him/her on to someone else**
- **Listen; do not offer opinion or substitute your judgment**
- **Inform employee that concerns will be looked into by the appropriate persons within the Company**

Handling Employee Complaints

What not to do:

- Dismiss the complaint
- Assume the employee is confiding in you as a friend
- Excuse yourself from taking action
- Agree with the complaint
- Delay the complaint
- Insist the employee put it in writing (OK to encourage it, just don't insist)
- Promise confidentiality
- Minimize, trivialize or excuse the harassment – “that’s just John being John”

Handling Employee Complaints

- There is no such thing as an “off the record” complaint.
- An employer cannot conduct a “secret” investigation.
- A thorough, prompt, and fair investigation of a complaint will be conducted—employees must cooperate with all investigations.
- The conduct will stop!
- Appropriate corrective action/discipline will be taken.
- Managers should be discreet but should not promise complete “confidentiality,” as there is an obligation to share information with those who have a business need-to-know it.

Handling Employee Complaints

- You cannot maintain an employee's confidence; no complaint is "off the record"
- "Confidentially"
- "I don't want to issue a formal complaint"
- **No matter how small the complaint managers should involve Human Resources**
- Do not discuss the complaint with anyone else
- Respect the rights and interests of all involved

Employers must follow up on all complaints of harassment...

- Promptly
- Impartially
- Thoroughly (via an investigation conducted by a qualified person and with due process)
 - Confidentiality will be kept by employers to the extent possible
 - Documentation and tracking for reasonable progress
 - Appropriate options for remedial actions and resolutions
 - Timely closures
- Without retaliation

Adverse Employment Actions

WHAT IS AN “ADVERSE EMPLOYMENT ACTION”?

Any action or inaction which represents a negative consequence to the employee.

Examples:

- Not Hiring
- Promotion
- Termination
- Change in Pay, Schedule, Overtime
- Refusal to Grant Time Off Requested

Protected Activity

What is “Protected Activity”?

- Any action taken by an employee which is “protected” under one or more employment laws or other laws.

Examples:

- Complaint of harassment, discrimination or retaliation (protected by Title VII, State Statutes)
- Participating in an EEOC investigation (Title VII)
- Complaint regarding unsafe conditions either internally or to OSHA, or participating in an OSHA investigation or proceeding (protected by OSHA Act Section 11(C))
- Complaint regarding unpaid wages (Wage and Hour Division)

The Complainant

WHAT/WHO IS A “Complainant”?

- The individual who engages in the “protected activity”.

Examples:

- Mary complained that her manager was sexually harassing her.
- Tom told his supervisor that he felt it was unsafe to carry the box of files because his back was hurting.
- Billy told his Site Supervisor that the Employer’s pay practices were not legal because they were not paying him for overtime hours worked.
- Julio told his supervisor that Mike favors White males.

Conducting Workplace Investigations

When Do You Conduct An Investigation ?

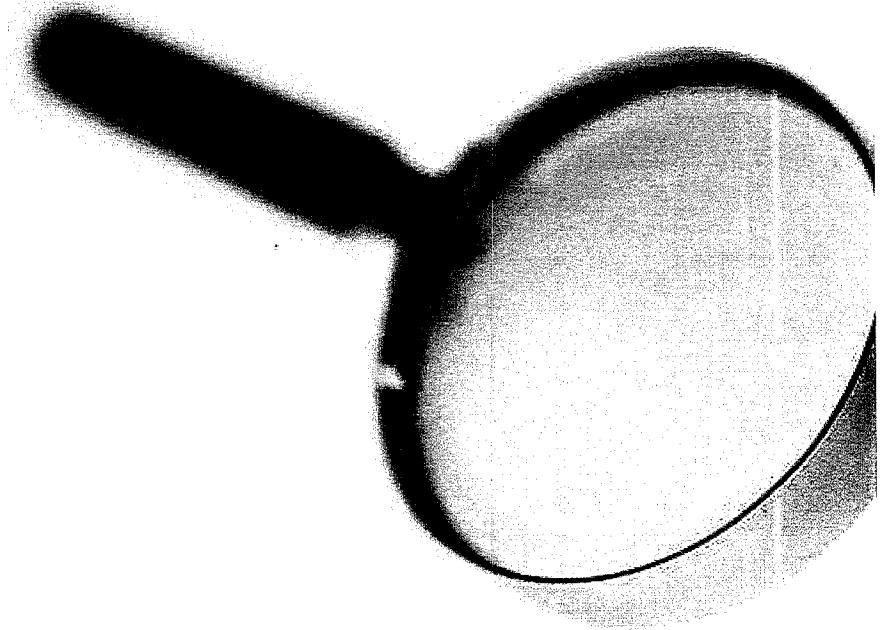
Types of Complaints:

- Informal Report
- Formal Internal Complaint (written or verbal)
- Anonymous letters, email messages
- Observation
- Exit interview
- Complaint letter
- EEOC or other agency complaint
- Lawsuit

Initial Contact with Complainant - Documenting the Complaint

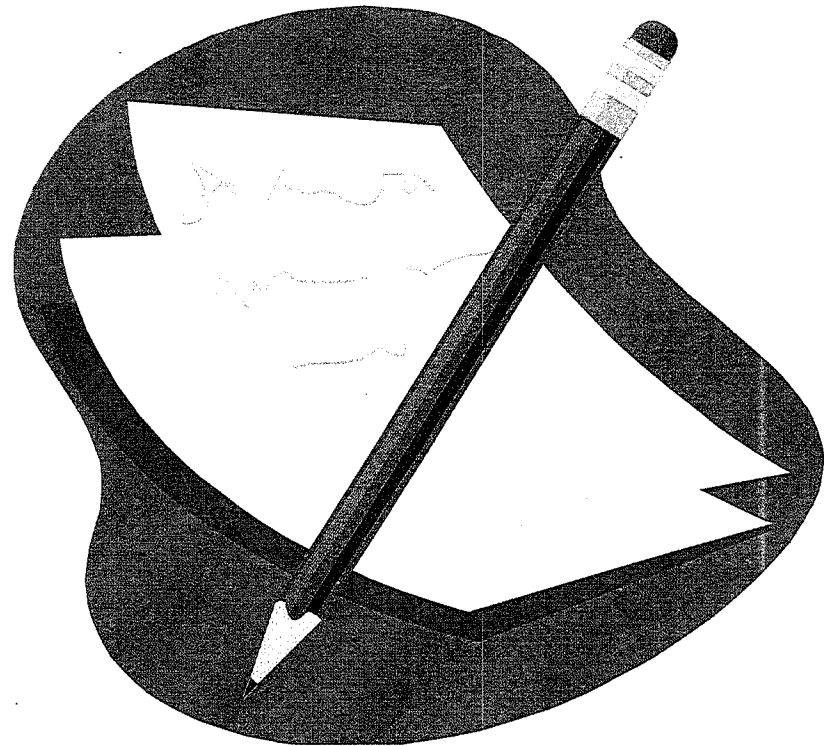
Ask for **basic** facts:

- What happened?
- Who did it?
- Where did it happen?
- When did it happen?
- Were there any witnesses?
- Any other information necessary to understand complaint.



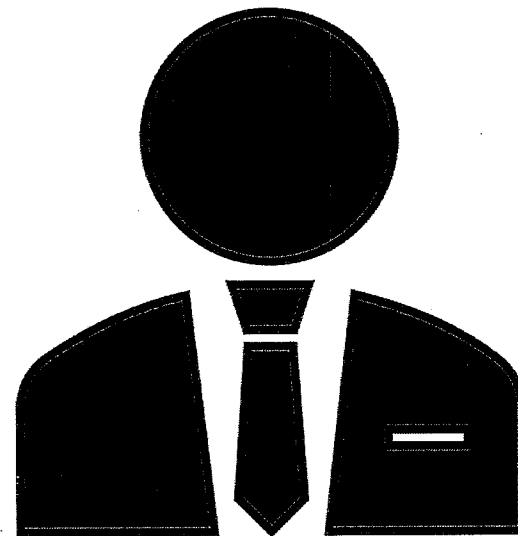
Initial Contact with Complainant – Documenting the Complaint

- If account is second-hand, ask the employee how the employee learned about the situation
- Take the issue seriously and do not try to talk the employee out of pursuing it
- **TAKE NOTES** during the conversation and/or summarize the discussion afterward in writing (preferably both)



Initial Contact with Complainant (cont'd)

- Encourage the employee to summarize the complaint and its factual background in writing
- Remind the employee that the Company takes complaints seriously
- Tell the employee that the Company will conduct an investigation, which will include a further interview with the employee



Initial Contact with Complainant (cont'd)

If the complaint involves hostile behavior or harassment, find out whether complainant can continue to work with the accused during the investigation

If not, explore options for keeping the parties separate

Initial Contact with Complainant (cont'd)

Suggest to the employee that she/he should keep the matter confidential.

Explain that you will attempt to do the same to the extent possible, but that you **CANNOT PROMISE COMPLETE CONFIDENTIALITY!**



Initial Contact with Complainant (cont'd)

- Tell the employee that the Company will not permit retaliation and that the employee should come to you if she/he experiences retaliation
- Tell the employee that you will contact her/him regarding the action taken
- Document conversation in writing



Issue Spotting

- “Keep it confidential”
- “We resolved it ourselves – I just wanted you to know.”
- The incident is so minor – “it’s no big deal”
- The incident took place after working hours.

When to Investigate

- Alleged violations of law
- Alleged or suspected harassment
- Suspected violation of rule or regulations
- “Reasonable suspicion” of employee misconduct
 - Specific and articulable facts that taken together give a rational inference
- Affirmative duty to investigate EEO complaints
 - Do not wait for a formal complaint
 - Duty to investigate can arise based on observations and rumors
 - Complainant cannot dictate whether an investigation occurs
- What if reported misconduct involves off-duty conduct?
 - May still need to investigate
 - Determine whether a **nexus** to job duties and responsibilities warrants an administrative investigation

What Should be Investigated?

- Whether the conduct in question *violated a policy*
- Take every complaint seriously, no matter how trivial it may appear
- Investigate whenever you hear trigger words:
 - i.e., bother, annoy, hostile, unsafe, intimidate, uncomfortable, “it didn’t seem right”
- Investigate even if the person reporting the incident asks you not to



When Should Investigations Take Place?

- Immediately!!!
- Unless extenuating circumstances, initial contact with complainant within 24 hours after incident / report
- Complete investigation as soon as reasonably possible while maintaining quality
 - Make it a priority!
- Delays undermine conclusion, call into question the company's commitment



What is the rush?

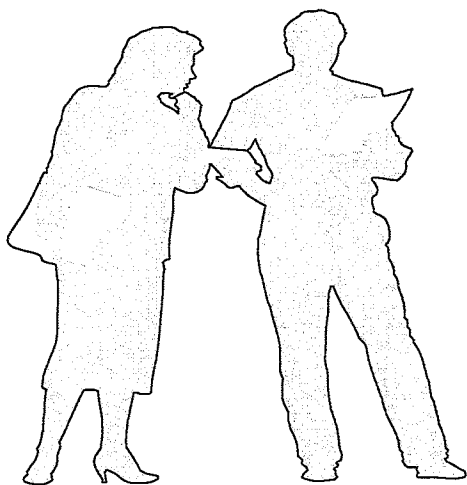
- To avoid further harassment/injury
 - Review separating employees involved (schedule changes/LOA).
 - Threat of imminent physical harm?
- To protect integrity of investigation
 - Warn accused and others about retaliation against complainant
 - Warn against destruction of evidence/Preserve-Preserve
- Memory Fades

How to Conduct the Investigation?

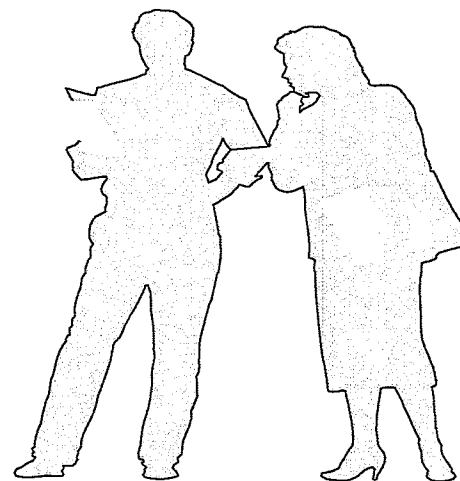
Human Resources

Compliance/Audit

Legal Counsel



**Consider potential
conflicts of interest**



Investigator Selection

Should consider:

1. Credibility, rank and authority – of the accused and the investigator
2. Personality, demeanor and character
3. Neutrality - Is there a conflict, real or perceived?
4. Investigative experience
5. Complexity of issues involved
6. Knowledge of subject matter involved
7. Performance as a witness in the future
8. Privilege

Attorney-Client Privilege - When Does It Apply?

For the attorney-client privilege to apply there must be a confidential communication between a client and his or her lawyer in the course of an attorney-client relationship.

The privilege is lost if the client shares the privileged communication with a third party.

Get Organized

- Create an investigation file
 - Copies of policies and procedures and other critical documents (i.e. complaint)
 - Draft ongoing investigative report
 - Record witness information
 - Copies of correspondence to and from witnesses

Identify Issues for Investigation

- Study the complaint and identify:
 - The issues
 - Facts that need to be determined
 - Extent to which facts are in agreement
 - Extent to which facts are in dispute
 - Which witnesses likely have first-hand knowledge
 - Possible subject(s) of the investigation
 - Documents to gather for review

Witnesses to Interview

- Appropriate witness to interview is any person "reasonably...expected to have relevant information"
 - Complainant
 - Individuals suggested by the complainant
 - Percipient witnesses (usually an eyewitness)
 - Similarly situated individuals
 - Accused
 - Individuals suggested by the accused

Gather All Relevant Documents Before Interviews

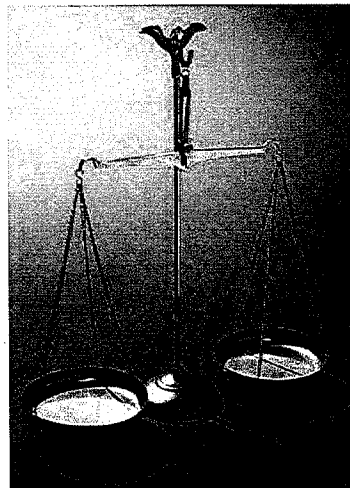
- Determine and gather all relevant documents
 - complaint documents
 - policies
 - manuals
 - personnel files
 - prior complaints made by/against parties
 - prior discipline
 - emails
 - texts
- Consider a Litigation Hold?

Identify Key Witnesses and Sequence of Interviews

- Suggested order:
 - Complainant
 - Direct witnesses
 - Corroborative witnesses
 - Prior similar complainants
 - Accused – At times you may choose to interview the Accused 2nd
 - Individuals suggested by the accused (if necessary)
 - Clarifying interviews to tie up loose ends (if needed)
- Typically give accused the last word

Most Important Trait of Investigator?

NEUTRALITY



Why Is Neutrality Critical?

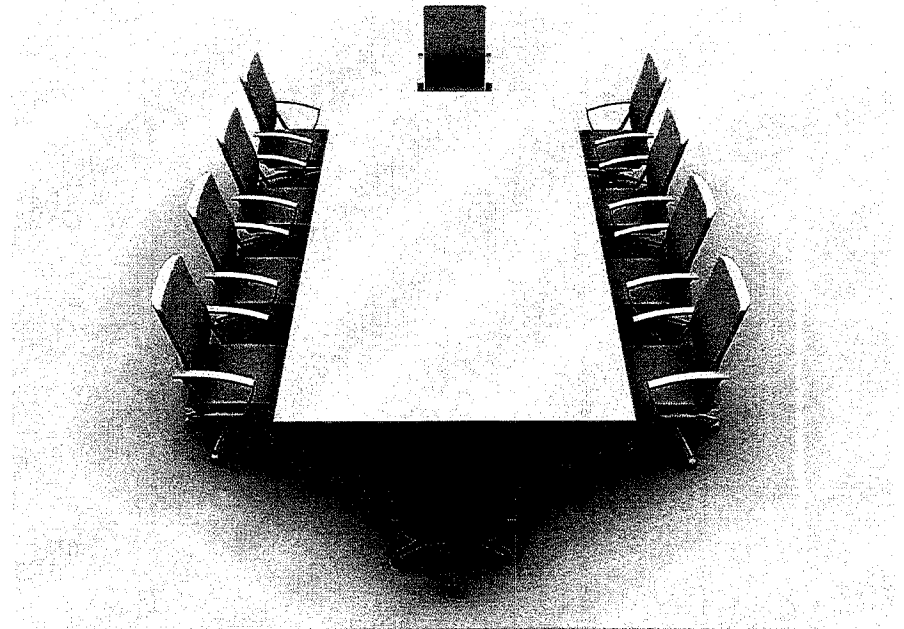
- Investigator and his/her findings are discoverable
 - Investigator subject to being called to testify in any disciplinary proceeding by either party
 - Most discussions between the investigator and witnesses are discoverable in litigation, *even when an attorney conducts the investigation*

How to Maintain Neutrality

- Check your biases
- When interviewing witnesses, remain impartial and open to different sides of the same story
 - Stick to facts – e.g. Who, What, When, Where, Why
 - Ask open-ended questions
 - Try not to lead the witness
- Do not make findings/conclusion until all evidence gathered and synthesized

Choose an Appropriate Location

- Confidential
 - No “fishbowl” conference room
 - No group interviews
- Free of interruption
- Conducive to rapport with witness
- Does not have to be onsite.



How to Prepare for an Interview

- Outline list of **issues** to address
 - Do not produce laundry list of questions to ask
 - Think generally about what goal of investigation is
 - What is it trying to discover?

Interviewing, cont.

- Scripted opening and closing statements are helpful
 - Explain neutrality
 - Confidentiality – will be maintained to greatest extent possible
 - Note, the NLRB does not allow for employers to require employees to keep their participation in an internal investigation confidential
 - No tolerance for retaliation
 - How to report perceived retaliation
 - Recording clarification
 - Use and disclosure of interview findings

What to Do When in the Interview

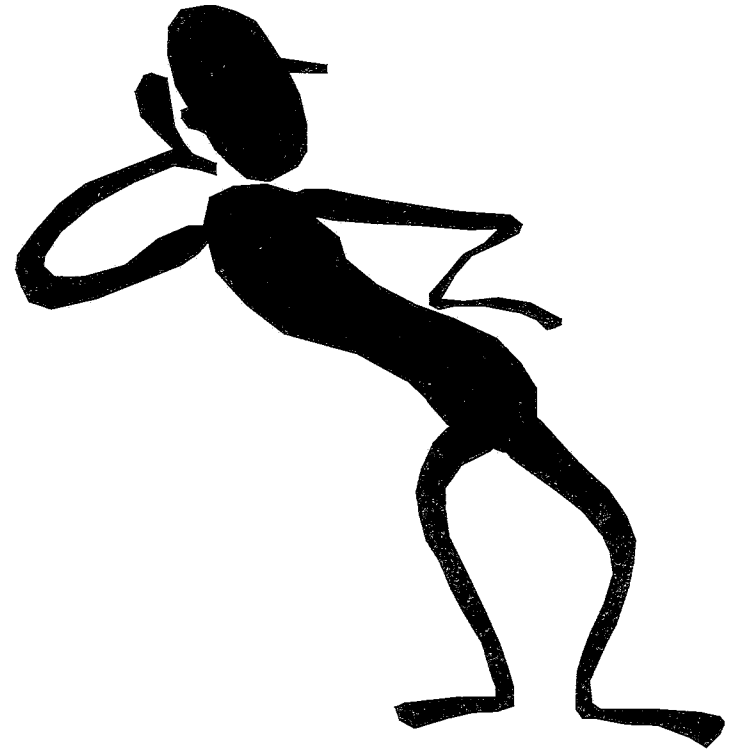
- First, try to build rapport at the beginning of each witness interview
 - Handshake
 - Eye contact
 - Explain role
 - Address any preliminary questions/concerns
 - Save “difficult” questions for the end of the interview

What to do When in the Interview (cont'd)

- Get the facts – do not accuse
- Start “big” and narrow
 - Ask general Who, What, When, Where, Why questions first for each relevant incident
 - Start with easy, general questions to determine witness’s demeanor when telling the truth
 - Work up towards tougher, more specific questions which are in dispute
 - Pause between answer and next question; try not to interrupt
- Observe body language
- End with “is there anything else you’d like to add?”
- Follow up each question – don’t be restricted to your outline

Interviewing the Complainant

- Allow complainant time to “vent”
- Try not to lead
- Identify all potential witnesses
- Identify if other “victims” of accused
- Ascertain what resolution complainant would like



Controlling the Interview

- Make sure interview stays on topic
 - Control the subject matter
 - Do not allow employee to distract or intimidate
 - Allow witness to clarify at the end
- Maintain calm demeanor
- Avoid sarcasm or commenting on responses

Before You Conclude the Interview

- Clarify answers if needed
- Provide opportunity to “add or subtract”
- Invite witness to contact investigator

Should You Record Interviews?

ADVANTAGES

- Ensures accurate and reliable record
 - Prevents disputes over what was said
- What seemed irrelevant can become critically important later on
- Tone of voice
- Capture pregnant pauses
 - Can bear directly on credibility
- Alleviates need for copious note taking which distracts from ability to maintain rapport and listen

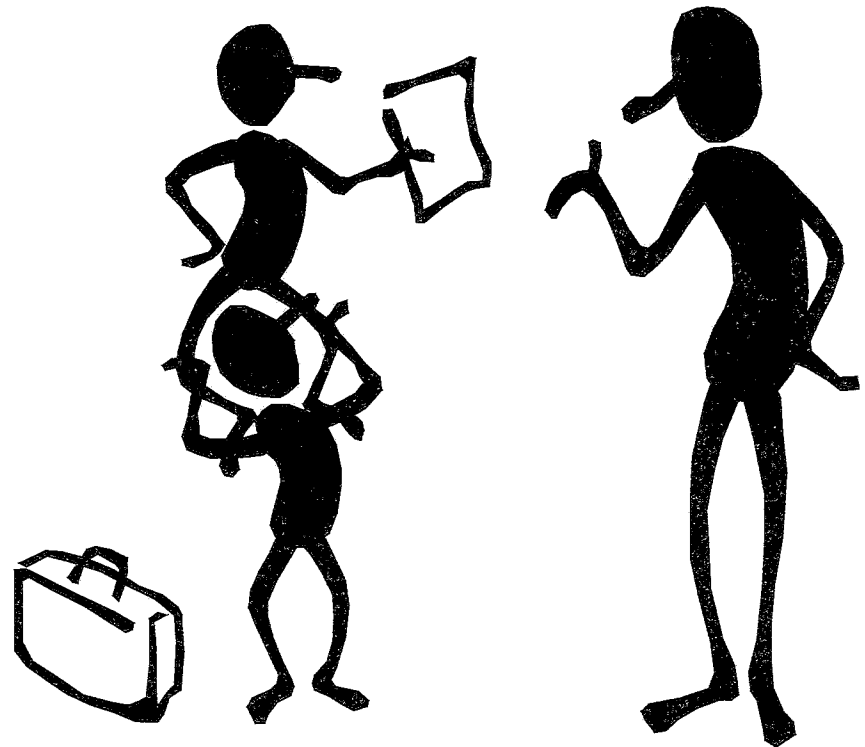
Should You Record the Interviews?

DISADVANTAGES

- Can be intimidating for witnesses
 - May cause witness to be reluctant to provide information
 - Consider having witness sign a written statement of his/her version of events after interview as an alternative
- Not a substitute for investigator's notes regarding the witness's demeanor and credibility
- Discoverable

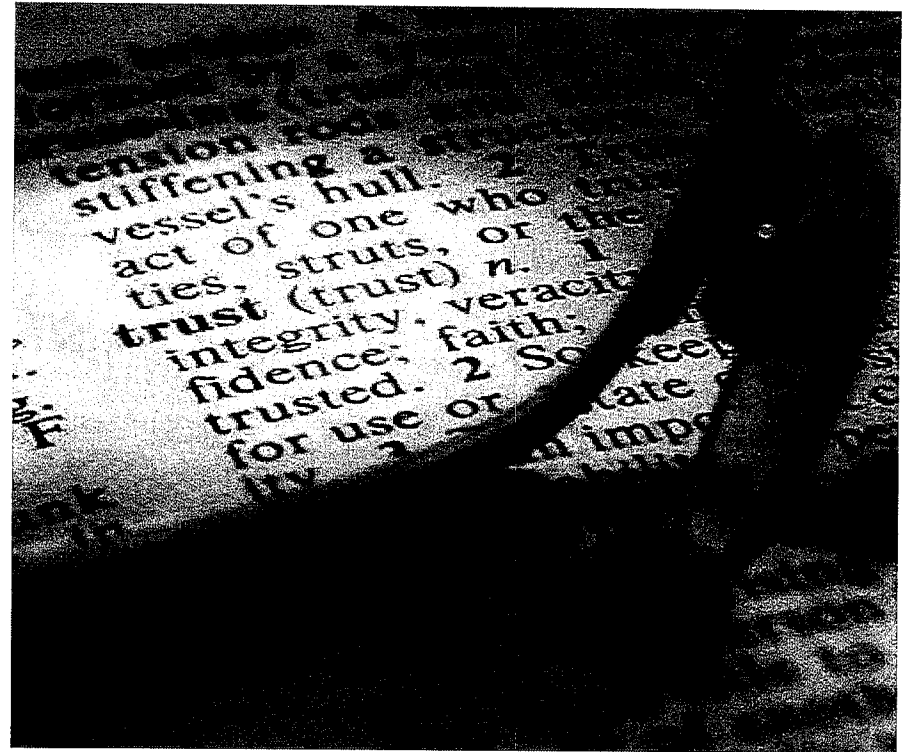
Notice of Recording

- **Must give notice that recording**
- Be sure to indicate on the record that you are recording



Determining Credibility

- EEOC guidance: “If there are conflicting versions of events, employer will have to weigh each party’s credibility”
 - Such assessments can be critical in determining what occurred



Factors to Consider When Assessing Credibility

EEOC guidance: factors to consider

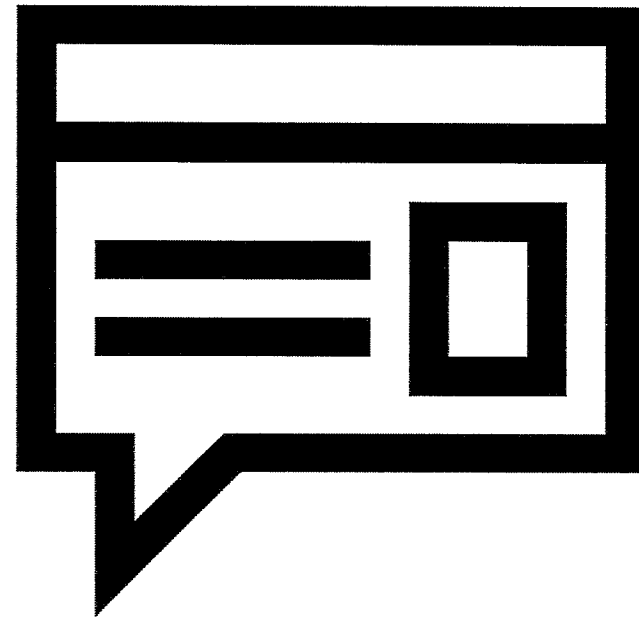
- **Consistency**
- **Inherent plausibility**
- **Demeanor**
- **Motive to falsify**
- **Corroboration**
- **Past record**
- **Possible bias**



Documentation

Effective note taking includes:

- Accurate records of information received from complaining employee, witnesses and alleged wrongdoer
- Close to verbatim / use quotes even if language is profane/vulgar/slurs
- Identify those present, date, time, location
- Record Qs & As
- Review and affirm information
- Statements are critical



- The 5 “W’s” – Who, What, When, Where and Why.
- Use open-ended questions.
- If knowledge is secondhand, determine the source.
- Assess credibility.
- Anything else I should know?
- Provide contact info for follow-up if additional info to share.
- Do not promise confidentiality and be cautious about requiring confidentiality from the associate.
- Assure no retaliation.

Conducting the Interview



Documenting Interviews

- Date of Statement
- Employee Name, Title/Position, Department, Supervisor
- Date of the incident/event
- Individuals involved in the incident/event
- Employee's relationship to those involved in the complaint, particularly to the accused
- Names and contact info of other witnesses
- Employee's accounting of the incident(s)/event(s) and specific facts
- Clarity regarding employee's specific allegations
- Policy/Policies that may have been violated
- Standard language indicating how statement was created
- Signature and date

Reaching a Determination



- EEOC guidance: once evidence is in and “credibility issues are resolved,” management “should make a determination as to what occurred”
- Critical in “he said/she said” situations

Consider Credibility of Each Party and Witness

- Inherent plausibility
 - Is the testimony believable on its face?
 - Does it make sense?
- Demeanor
 - Did the person seem to be telling the truth or lying?
- Motive to falsify
 - Did the person have a reason to lie?
- Corroboration
 - Is there *witness testimony*
 - Is there *physical evidence*
- Past record
 - Did the alleged wrongdoer have a history of similar behavior in the past?

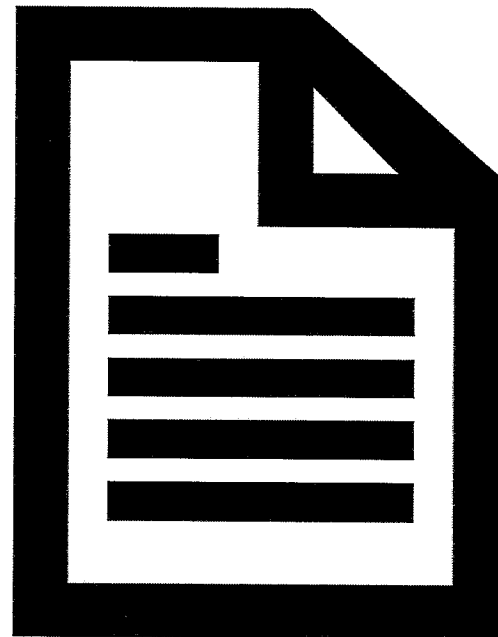


Journal of Evidence

- Truth prevails
- Inconsistencies vs. corroborated fact
- Credibility role/assessments
- Role of motive/bias, if any
- What “you” determine happened
- If the claim alleges violation of the Code/Policy/Guidelines, etc., use the language as your guide.

Prepare the Investigative Report

- OK to Make
 - Credibility Assessments
 - Applications of Policy
 - “Here is your risk...”
- Not OK to Make
 - Legal Conclusions
(e.g., “it was sexual harassment,” “It created a hostile work environment.”)
- Avoid Using Conclusory Language
 - “hostile work environment”
 - “disability”



On-going Response

- Close the loop with accuser and accused.
- Do not discuss any information obtained during the investigation except on a “need-to-know” basis.
- Preserve the evidence until advised by legal counsel.
- Check in with the accuser several times during the weeks and months following the complaint to ensure that any inappropriate conduct has stopped and no retaliation has occurred.
- Document efforts to follow up with the accuser in the file.

Recommendations/ Assistance with Workplace Healing



- Treat all employees with respect and dignity
- Encourage (or provide for) an open, supportive environment that encourages communication
- Enforce all policies fairly and consistently
- Ensure all employees receive training and are held accountable
- Monitor for retaliation against complainant(s) or witnesses
- FOLLOW-UP!

Questions?

JacksonLewis

Thank you.