

Anti-Discrimination and Anti-Harassment Training

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Introduction

◆ Elizabeth

◆ You

- Please share your:
 - District?
 - Your career background in 1-2 sentences
 - Whether you supervised employees?

Agenda

- ◆ Employment resources
 - ◆ Background information
 - ◆ Anti-discrimination laws and best practices
 - ◆ Anti-harassment laws and best practices
 - ◆ Retaliation
 - ◆ Confidentiality
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- ◆ Disclaimer: This is not a complete discussion of all employee-related obligations (not discussing wage and hour issues, leave issues, accommodation issues)

Resources

Congratulations! You're an employer!



Resources

You have broad authority to hire, fire and generally run your office

- ◆ HR Manager Amanda Jorgenson (608) 264-8471
- ◆ Pat Fuller (Assembly) (608) 266-1501
- ◆ Jeff Renk (Senate) (608) 266-2517
- ◆ Employee Handbook available at:

<http://legis.wisconsin.gov/assembly/acc/assembly-information/>

Background

- ◆ Anti-discrimination and anti-harassment laws are all rooted in the concept of “protected characteristics.”
 - A characteristic about a person that the law deems worthy of protection
 - Heart of the law—cannot discriminate or harass based on protected characteristics
 - Laws are concerned with motivation

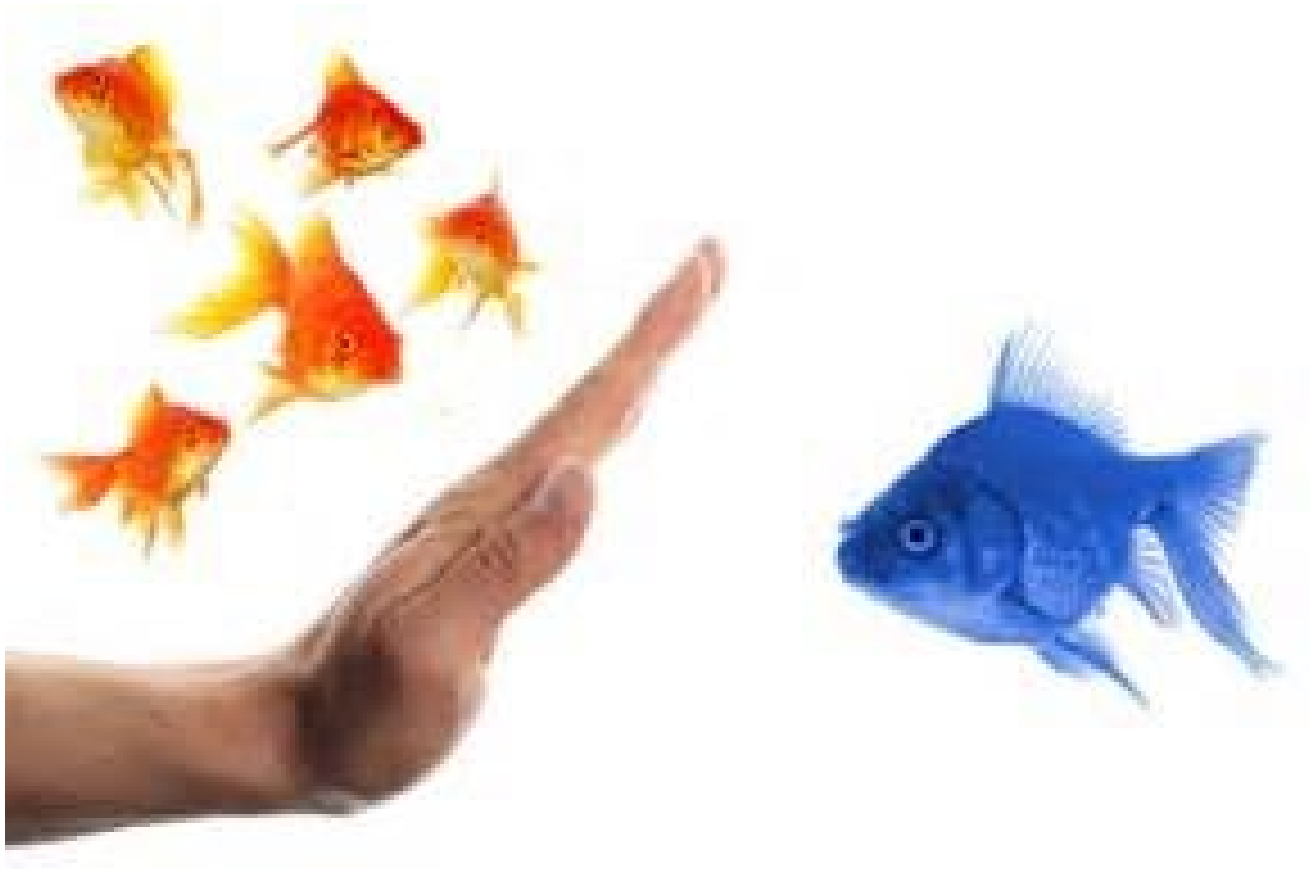
Background

- ◆ Protected Characteristics under Federal Law
 - Gender, race/color, religion, national origin (Title VII)
 - Pregnancy (Pregnancy Discrimination Act)
 - Disability (ADA)
 - Age 40+ (ADEA)
 - Military service (USERRA)

Background

- ◆ **Additional Protected Categories under State Law**
 - Sexual orientation
 - Arrest/conviction record
 - unless substantially related to the duties of the job
 - Marital status
 - Use of a lawful product while off duty and away from work premises
 - Cigarettes, alcohol

Discrimination



Discrimination

What is discrimination?

- ◆ making an employment decision based on a protected characteristic



Discrimination

Who can discriminate?

- ◆ The “employer”
- ◆ Anyone with managerial authority, including supervisors

Discrimination

When can discrimination happen?

- ◆ Any employment decision
 - Hiring
 - Firing
 - Discipline
 - Annual evaluation
 - Denial of raise
 - Denial of training opportunity

Discrimination

Motivation is the key

- Why did the employer make the decision?
 - Based on a protected category?
 - (“Elizabeth is too old to do this job”)
 - Based on a legitimate characteristic?
 - (“Elizabeth doesn’t have the P.R. experience we need”)
- The law requires these decisions to be motivated by **legitimate and non-discriminatory reasons**

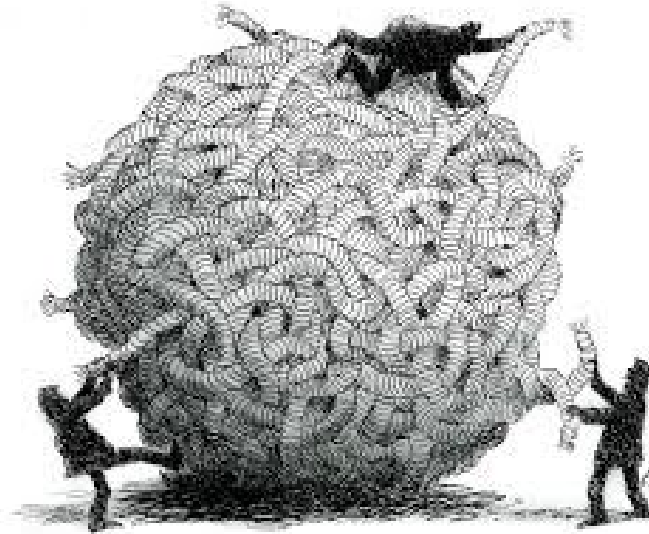
Discrimination

How & when problems arise—practical examples

- ◆ Termination—termination of any employee that has a protected characteristic and doesn't buy in to the reason for termination
- ◆ Hiring/promotion—final candidates are one that falls into a protected category and one that doesn't
- ◆ Two employees competing with one another
- ◆ Situations when loaded terms have been used

Discrimination

A special word about disability, age and arrest/conviction



These protected categories can be very tough to handle

Discrimination

Best Practices

- ◆ Set performance & conduct expectations
- ◆ Communicate expectations clearly to all employees
- ◆ Consistently enforce expectations
- ◆ Provide regular feedback about performance
 - Provide warnings before possible discipline
 - Give employees a chance to improve
- ◆ Make negative employment action predictable



Discrimination

Best Practices

- ◆ Make decisions based on performance-related criteria and communicate the reason
 - Performance
 - Conduct
 - Experience
 - Skills
 - Professional relationships
 - Education
 - Quality of application/interview
 - Professional interests/goals
 - Demonstrated work ethic
 - Attendance (except if absent due to FMLA/disability/pregnancy)



Discrimination

Best Practices

- ◆ Document your expectations and reasons for decisions
 - Written policies and procedures
 - Put performance expectations in writing
 - Provide reasons for employment decisions in writing
 - Document reasons for your decisions at the time you make them
- ◆ Keep your documentation



Discrimination

Best Practices

Avoid language that focuses on protected characteristics

- ◆ “Looking for a fresh, young staffer”
- ◆ “Too old to have the energy for this position”
- ◆ “He doesn’t have the right look for my constituents”
- ◆ “Honey,” “dear,” etc.
- ◆ “You people”



Discrimination

Why words matter

- ◆ Discrimination is all about motivation
- ◆ Can't see “motivation.”



Discrimination

Why words matter

- ◆ Language and conduct surrounding protected categories can be important evidence of motive
 - Disrespectful terms used or tolerated in the office
 - Disrespectful jokes told
 - Disrespectful references towards an employee
- ! A dangerous combination:
 - Disrespectful treatment
 - +
 - Surprising employment decision



Harassment



Harassment

Two Types of Harassment

1. Quid Pro Quo—harassment must be tolerated as a condition of employment
 - ◆ Can be caused only by a supervisory employee
 - ◆ Often sexual in nature
 - ◆ Classic example—must submit to sexual advances to keep a job
 - ◆ Best practice: Avoid the appearance of impropriety

Harassment

Two Types of Harassment

2. Hostile Environment


Unwelcome conduct directed at an employee because of a protected characteristic where the conduct is severe or pervasive enough that a reasonable person would find the work environment to be intimidating, hostile or abusive

- Verbal--Jokes/offensive terms
- Physical—threatening, sexual or harmful touching
- Psychological—elevator eyes, offensive pictures/items, freezing one employee out

Harassment

Important concepts in Hostile Environment Harassment

- ◆ Severe
- ◆ Pervasive
- ◆ Reasonable person

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- ! There is no “line” that can be walked
 - ! Think of the line like a de-militarized zone—don’t get close

Harassment

Where can harassment occur?

- ◆ Anywhere the employee is on duty
 - Inside your office
 - Inside another Legislator's office
 - Interacting with constituents
 - Fundraising
- ◆ Anywhere your employee interacts with co-workers
 - Sports bar
 - UW football game
 - State Street
 - Social media

Harassment

Who can be a harasser?

- ◆ **Anyone** your employees interact with on the job
 - Co-worker
 - Supervisor
 - Constituent
 - Lobbyist
 - Party official
 - Another legislator

Harassment

Special concerns

- Legislators have a higher than average percentage of employees in their 20's
- Your employees will be at social events (alcohol)
- Your employees will have lots of time out of the office
- Party power--your employees are entry level employees in a powerful system that is bigger than your office—extra dynamics
 - May be an increased reluctance to report problems



Harassment

Most common types of harassment

- **Sexual Harassment**
- Race
- Age
- Disability

Harassment

Best practices

- ◆ Be a hands-on staff manager
- ◆ Emphasize professionalism
- ◆ Make your conduct expectations clear
- ◆ Educate employees about the anti-harassment policy
- ◆ Open communication with employees about alcohol on the job
- ◆ Be approachable
- ◆ If you hear of a problem, act quickly.



Harassment

An employee complained.
What do I do?



- Investigate to be sure you understand the whole situation
- Use your resources—first line resources can involve the Department of Justice
 - Pat Fuller (Assembly) (608) 266-1501
 - Jeff Renk (Senate) (608) 266-2517
 - Amanda Jorgenson (HR Manager for Legislature) (608) 264-8471
- Take steps to make sure harassment won't happen again and follow up
- Keep a record of the investigation and resolution
- HR office can provide help

Retaliation

Retaliation

- ◆ It is unlawful to retaliate against an employee because they complained of discrimination or harassment



Retaliation

What is Retaliation?

- ◆ Taking action against an employee because they filed a complaint that would chill future complaints of unlawful action.
- ◆ Firing, discipline, refusing opportunities, denying raises, denying training, freezing the employee out, complaining about the report

Retaliation

Best Practices

How to avoid retaliation

- ◆ Keep complaint as confidential as possible
- ◆ Instruct supervisors about anti-retaliation obligations
- ◆ Check in with employee frequently
- ◆ Carefully analyze reason for any negative decision within 3 months after complaint



Confidentiality

Confidentiality and public records

- ◆ Confidentiality is important—very sensitive situations
- ◆ However, don't promise confidentiality
 - May need to disclose as you investigate
 - Open records laws (more in next session)
- ◆ You will hear more about these rules later today

Conclusion

Conclusion

- ◆ Steps that avoid discrimination and harassment also create a well-functioning, effective team.
- ◆ Know and use your resources
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