

# **Discrimination and Harassment: How to Avoid Trouble**



Richard Lentini  
[lentini@ryanlaw.com](mailto:lentini@ryanlaw.com)

# Federal and State Equal Employment Opportunity (EEO) Laws

- Define protected classes
- Prohibit discrimination/harassment in the workplace
- Require reasonable accommodation for disabilities and religious practices
- Prohibit retaliation
- Employment policies reinforce these laws

# Protected Classes

- Age (40 and over)
- Race/Color
- National Origin
- Religion
- Sex
- Marital Status
- Disability
- Sexual Orientation/Gender Identity, Expression
- Veteran Status
- Pregnancy
- Genetic Information

# Discrimination Prohibited

- Termination because of class
- Adverse action because of class (including hiring)
- Terms or conditions impacted because of class
- Harassment (mistreatment or denigration) because of class
- Retaliation

# Complaints

- A company has notice of a complaint of discrimination or harassment if a supervisor/manager observes or hears about it
- All reports must be investigated.
- Never promise complete confidentiality
- The employer's legal duty is to conduct a prompt and reasonably thorough investigation, and to take prompt and effective corrective action for any violation

# Investigations

- Prompt, thorough and reasonable
- Two interviewers
- Interview all potential witnesses
- Review records
- Retaliation is not tolerated
- Document the investigation
- Draw a reasonable conclusion
- Take appropriate and effective corrective action

# Sexual Harassment

- Unwanted sexual advances
- Unwanted visual, verbal, or physical conduct of a sexual nature
- Offering benefits in exchange for sex
- Reprisals for rejecting advances

# Examples

- Visual conduct: leering, sexual gestures, displaying suggestive objects, pictures, drawings, cartoons
- Verbal conduct: derogatory comments, slurs, jokes
- Physical conduct: touching, impeding or blocking movement



# Other Forms of Harassment

Any conduct (visual, verbal, physical) denigrating or relating to a protected class (age, race, religion, disability, etc.)

# Is it Harassment?

- “Why is this project late?”
- “I need you to stay late with me tonight.”
- “You’d better take your Geritol, it’s gonna be a tough day.”
- “If your performance doesn’t improve, your job is in jeopardy.”

# Text Messages

- “Drinks after work?”
- “Y R U ignoring me?”
- “You look good today.”
- “Here’s a pic of me by the pool.”

# Danger Zones

- “What I don’t like about office holiday parties is looking for a job the next day.”
- “It was a joke. I didn’t mean to offend anyone.”
- “She laughed at it.”
- “I wasn’t talking to them.”
- “Everybody does it.”

# Accommodation

- **Disability:** any abnormal physical or mental condition may constitute a disability
- **Reasonable Accommodation:** any modification which enables employee to perform the essential functions of job, without imposing an undue hardship on the employer
- **Interactive Process:** Dialogue with employee and health care provider regarding condition, restrictions, job duties/requirements/expectations, and possible accommodations

# Retaliation

- Adverse action or harassment because employee engaged in protected activity
- Protected activity: making complaint; reporting discrimination; providing information; assisting complainant/victim (good faith); work injuries; pay disputes; safety complaints

# Policies and Procedures

- Require compliance with laws against discrimination
- Report discriminatory conduct to supervisor/manager
- Company investigation
- Prompt and effective corrective action
- Retaliation is not tolerated
- **DOCUMENT**