

Employment Discrimination: The Basics and Current Trends



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Why Should You Care?

- It's illegal
- It's against company policy
 - Conduct may violate the company policy even if it is not unlawful
- #metoo movement has brought these issues to light.
- Social Networking; texts/sexts, emails, posts do not disappear!
- It creates employee morale issues and impedes productivity



Rights and Responsibilities

- You have a **RIGHT** to work in an environment free from harassment and discrimination.
- You have a **RESPONSIBILITY** to **REFRAIN** from harassment and discrimination and to **REPORT** if it happens to you or you witness it happening to someone else.

What Does the Law Require?

- It is against the law to discriminate against employees based on membership in a “protected classification.”
- These classifications can include:
 - Race/Color
 - Religion
 - Sex/Pregnancy
 - National Origin
 - Ancestry
 - Disability
 - Age
 - Sexual Orientation or Preference
 - Veteran Status
 - Genetic Information
 - Gender Identity
 - Marital Status
 - Domestic Partnership and/or Civil Union Status



What Does the Law Require?

- It is against the law to retaliate against or intimidate an employee for:
 - Pursuing rights
 - Complaining about discrimination, unfair treatment or harassment
 - Participating in an investigation or proceeding
- Aiding and Abetting:
 - There may be individual liability for supervisors aiding and abetting discrimination.
 - Protect yourself as well as your employer by reporting unlawful harassment/discrimination

What is Harassment?

- Definition

- a. Unwelcome

- b. Unsolicited

- c. Conduct

- 1) Of sexual nature; or

- 2) Because of one's sex (including pregnancy), gender identity, race, color, religion, national origin, age, veterans status, status as the victim of domestic violence or sexual assault, disability, marital status, sexual orientation, domestic or civil union partnership status, genetic information or other protected classification

What is a Hostile Work Environment?

- **Hostile Environment Harassment**

1. Conduct that has the **purpose** or **effect** of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.
2. The conduct must be **severe** or **pervasive** enough given the totality of the circumstances so that it alters the conditions of the victim's employment and creates an abusive environment.
3. The **reasonable victim** under like circumstances would perceive, and the victim actually did perceive, that an abusive working environment has been created.

Current Trends in Discrimination Law

- 18 States have passed some form of the CROWN Act:
 - CROWN stands for “Creating a Respectful and Open World for Natural Hair”;
 - The law prohibits race-based hair discrimination, which is the denial of employment and educational opportunities because of hair texture or protective hairstyles including braids, locs, twists or bantu knots;
 - Currently, there is some form of this law in California, New York, New Jersey, Virginia, Colorado, Washington, Maryland, Connecticut, New Mexico, Delaware, Nebraska, Nevada, Oregon, Illinois, Maine, Tennessee, Louisiana, and Massachusetts;
 - A federal version passed the House of Representatives;

Current Trends in Discrimination Law

- Salary transparency;
 - Requiring disclosure of salary ranges for job postings;
 - Salary should be set based upon the position – not who is applying for it.
 - Currently, California, Colorado, Connecticut, Maryland, Nevada, Rhode Island, Washington State, and New York City have such laws on the books. New York State legislature has approved it, but it has not been signed into law yet.

Current Trends in Discrimination Law

- President Biden ends mandatory arbitration of sexual assault and harassment claims;
 - Arbitration is sometimes a tool that employers use to avoid jury trials on these issues;
 - Amendment to the Federal Arbitration Act (“FAA”);
 - Employees who have the option to invalidate arbitration agreements and class or collective action waivers for sexual assault and sexual harassment claims;
 - It applies to all claims that arise after March 3, 2022, regardless of when the agreement was signed;

Best Practices

- Routinely update your Employee Handbook;
 - Ensure that it has a robust complaint procedure that is followed;
- Learn how to investigate;
- Take all complaints of harassment seriously;
- Conduct annual training;
 - Some states require training (California, Connecticut, Delaware, Illinois, Maine, and New York) as well as Chicago and New York City;
 - EEOC strongly encourages training;

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