



# Hot Topics in Labor and Employment Law



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# Know Your Local Law

- Labor and employment issues are often regulated at the local level
- Requirements for employers vary widely from state to state, locality to locality

# Notable Philadelphia Ordinances

# Philadelphia: Paid Sick Leave

- Employers with 10 or more employees must provide employees with minimum of 1 hour paid sick time for every 40 hours worked

# Philadelphia: Leave Due to Domestic Violence, Sexual Assault, or Stalking

- Employers must permit employees to take specific period of unpaid leave to address domestic violence, sexual assault, or stalking
- Employers must keep all matters confidential
- Employers must maintain health benefits during leave and restore employee to position upon return

# Philadelphia: Criminal Background Checks

- Employers may not make inquiry, require person to disclose, or take adverse action against any person on the basis of arrest or criminal accusation which is not then pending and which did not result in a conviction
- Includes application process, before or during the first interview

# Philadelphia: Breastfeeding Accommodation

- Employers with 1 or more employees must provide reasonable accommodation for women who need to pump breast milk
- Employers must provide safe, sanitary non-bathroom space
- Employers must allow employees to use unpaid breaks or mealtimes to express breast milk

# Monitor Popular Issues and Trends



# On the Horizon

- LGBTQ issues
  - Accommodation
  - Gender-neutral restroom facilities
- Sexual orientation and gender identity
  - Title VII does not explicitly include sexual orientation
  - Some states have enacted anti-discrimination laws relating to both

# On the Horizon

- Employment credit checks
  - Part of background check process
  - Some states limit credit checks in hiring process
  - Others will soon
- Workplace Bullying
  - Some states considering legislation, outside of Title VII, which requires protected trait

# On the Horizon

- Bring Your Own Device Policies
  - Personal device/e-mail for business purposes
  - Outside of work hours
- Social Media and Privacy

# Current State of Affairs: Avoiding Discrimination and Harassment Claims

In 2012, the EEOC instituted a Strategic Enforcement Plan (SEP) with a primary focus on reducing and deterring discriminatory practices in the workplace.

# Title VII of the Civil Rights Act of 1964

- Applies to Employers with 15 or more employees
- Protects individuals against employment discrimination on the basis of race, color, religion, sex, or national origin
- Applies to recruitment, hiring, and advancement, harassment and hostile work environment, compensation, segregation and classification of employees and retaliation

# You Need a Policy

# Policy against Discrimination and Harassment

- A non-discrimination pledge is not enough
- The non-discrimination policy needs to be SPECIFIC
- The policy must cover: sexual harassment and other forms of unlawful discrimination, such as age, race, ethnicity, and disability etc.



# Policy against Discrimination and Harassment

- The policy should include specific examples
  - Choose wording carefully
  - Focus on inappropriate behavior
- The application should be clear
  - Applies to electronic communications, including e-mail, text messages, social media
  - Applies while off-duty at work related events
  - Applies to suppliers, vendors, applicants and other non-employees

Do YOU Know What Constitutes



Unlawful Sexual Harassment?

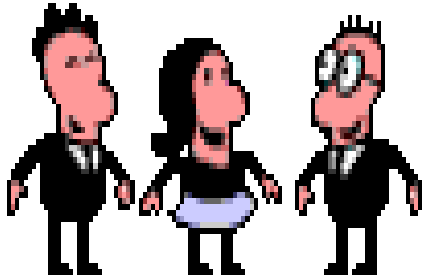
# Prohibited Sexual Harassment Includes:

- “Quid Pro Quo” – Explicitly or implicitly conditioning a job, raise or benefits of any kind on tolerating sexual conduct, discussions or behavior, or on a personal relationship with anyone; or
- “Hostile Environment” – Harassing an individual based on gender or sex to such a degree that the harassment interferes with work performance or makes working conditions intolerable.

# THE GENDER OF THE ALLEGED HARASSER AND ALLEGED VICTIM IS IMMATERIAL

# What Are Some Examples of Offensive and Prohibited Behavior?

- Verbal Conduct
- Nonverbal Conduct
- Physical Conduct



Sexual jokes, innuendos  
or comments

Displaying calendars  
or sexual pictures



Suggestive comments  
about someone's  
personal appearance,  
body or clothes



# Sexual Advances

Improper or invasive comments or questions about an Employee's sexual life

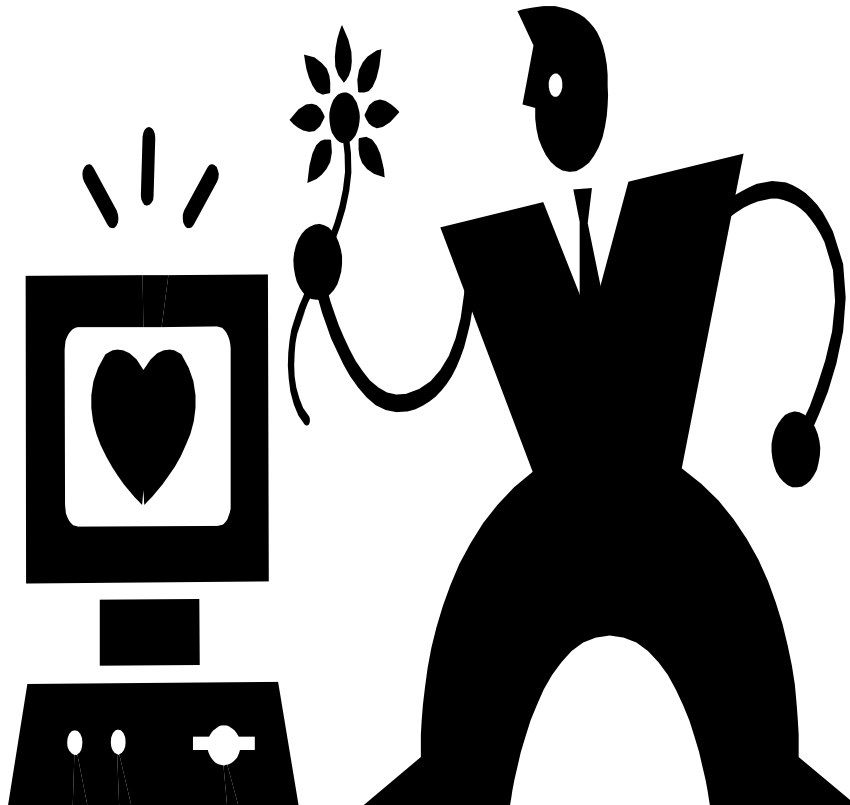


# Examples (cont'd)

- Business expressions that contain sexual innuendo/metaphors
- Repeating sexual content found in pop culture.



# Viewing pornographic websites



on  
Company  
computers

OBSCENE !!!!

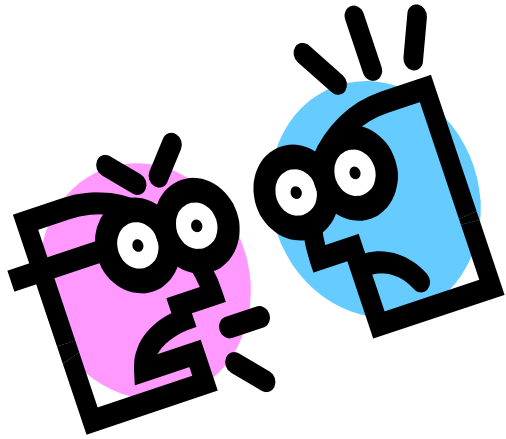


Gestures

Referring to individuals by gender-related epithets or referring to co-workers or members of the opposite sex as

- Honey
- Sweetie
- Doll
- Hunk
- Cutie

or any diminutive terms which can detract from the professional nature of the individual and the work



Treating individuals of  
one gender  
more harshly than another

Invading another person's space  
by physical conduct  
or close proximity



Looking a person "up and down,"  
leering or staring at someone suggestively



What if the person  
does not intend to offend  
or harass anyone?

**The effect on the person subject to the conduct determines whether the conduct is harassing; the intent of the actor is irrelevant.**

# Standards- How can you tell if conduct or speech is hostile or offensive?

## Unwelcome

How do you know whether the conduct/speech is welcome?

- Silence, or even laughter or banter does not mean it is welcome.
- Dangerous to assume any sexually suggestive or gender-based remarks or conduct are welcome.

People are different  
and react differently.

What would not be offensive to you may  
be offensive to a person of a different  
sensitivity.



**WHEN IN DOUBT**

**DO NOT DO IT!**

**DO NOT SAY IT!**

# What is Other Unlawful Harassment?

**Other types of unlawful harassment includes harassment or discrimination based on any category protected by federal, state or local law.**

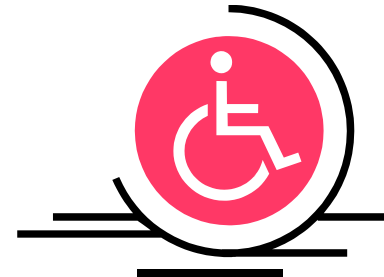


## Hostile acts that relate to

- race
- creed
- color
- religion
- national origin
- age
- disability
- sexual orientation/preference
- civil union or marital status
- gender identity
- Ancestry
- Pregnancy
- Marital status
- Veteran/military status
- protected complaints
- protected leave
- any other protected factor



This includes “jokes” or “pranks” that are hostile or demeaning



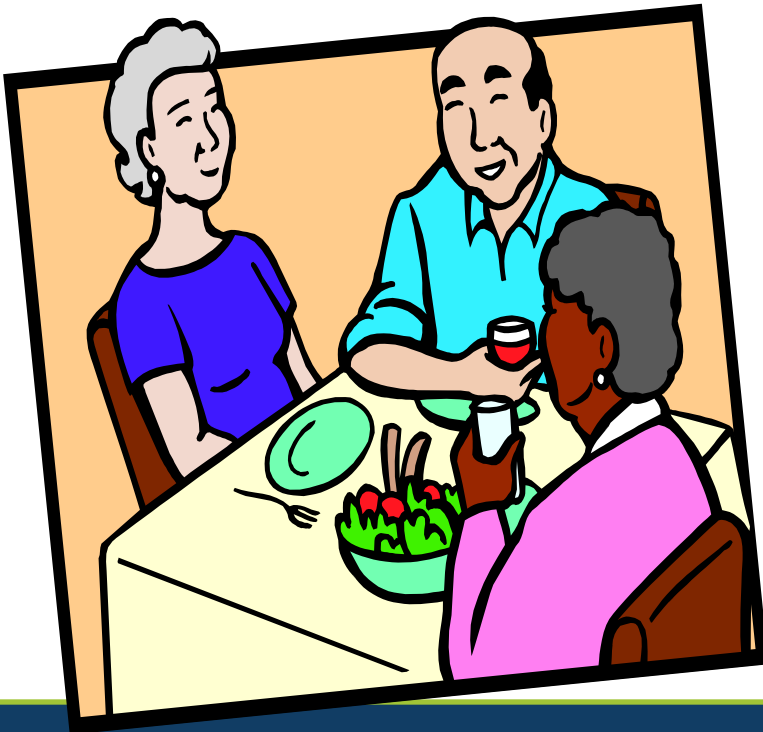
# What Kinds of Conduct Constitute Unlawful Harassment?

Harassment is defined as verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her race, color, religion, gender, national origin, age, veteran status, disability, that:

- has the purpose or effect of creating an intimidating, hostile, or offensive work environment;
- has the purpose or effect of unreasonably interfering with an individual's work performance; or
- otherwise adversely affects an individual's employment opportunities

# What About Conduct That Occurs Away From the Workplace?

**Conduct on AT or AWAY from the workplace can give rise to charges of harassment, such as:**



- happy hours
- company functions or parties
- a meal with a co-worker
- company sports events
- meetings or training sessions
- any other place where there is interaction between employees

# Need a Policy Against Retaliation

## **Company policy:**

**Do not retaliate against a person who has made a complaint or participated in an investigation.**

# Need a Complaint Procedure

- Make sure procedure covers all types of unlawful harassment
- Make sure it covers conduct by employees and non-employees
- Confidentiality is not absolute (investigation)

# Complaint Procedure (cont.)

- Include references to discipline
- Make sure there is an appeals process
- Make sure all employees receive a copy of procedure and policy
- Sign off that the employee “read and understands” the policy

# Who to Report to

- An open door policy is not enough
- Report to supervisor OR human resources
- Have both men and women to report to
- Need a non-retaliation statement



# Supervisory Responsibilities

- Know the company policy
- Report all potential issues even if the employee:
  - Requests that nothing be done
  - Asks for absolute confidentiality
  - Does not use “legal buzz words”
  - Is speaking with you as “a friend”
  - Appears to express only minor concerns
  - Never complains

# Supervisory Responsibilities (cont.)

- Be proactive when aware of possible unlawful discrimination, harassment or retaliation
- Refrain from unlawful retaliation
  - Applies to complainants, witnesses, and others that participate in the investigative process
  - Covers not only tangible employment actions but also:
    - Other material terms and conditions of employment
    - Retaliatory comments
    - Retaliation independent of the workplace

# Common Mistakes By Employers

- (1) Failing To Investigate At All
  - He Said/She Said
  - Employee Did Not Complain In Writing
  - Employee Did Not Say The Words “Sexual Harassment”
  - Employee Said “I Just Want You To Know” or “I Don’t Want Anything Done About It”
  - Complaint Was Made By A Male

# Common Mistakes By Employers (cont.)

- (2) Failing To Investigate Promptly
- (3) Inadequate Investigation
- (4) Questioning the Validity Of The Complaint Or Not Treating It Seriously
- (5) Failing To Take Interim Remedial Action
- (6) Premature Discipline
- (7) Failing to Communicate Conclusions
- (8) Inconsistent practices

# Americans with Disabilities Act

- Applies to employers with 15 or more employees
- Protects individuals with disabilities against discrimination
- Applies to application procedures, hiring, firing, advancement, compensation, and job training etc.

# Americans with Disabilities Act

Two fundamental questions:

- Does individual have a *disability* at all?
- Is individual *qualified* to perform essential job functions, with or without reasonable accommodation?

# Reasonable Accommodation

- An employer must provide a reasonable accommodation to known limitations of an otherwise qualified disabled individual unless an undue hardship is demonstrated.



# Examples of Reasonable Accommodation

- Job restructuring
- Modification of work schedule
- Equipment changes or adjustments
- Accessible facilities
- Reassignment
- Temporary leave



# Religious Accommodation

Employers must reasonably accommodate sincerely-held religious beliefs of applicants and employees, unless doing so would amount to an undue hardship

# THANK YOU

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