

DISCRIMINATION

SERIES

WITHOUT  
REGARD...

To Race,  
Religion, Sex,  
National Origin,  
Age or Disability

PARTICIPANT  
GUIDE



VIVID EDGE

## Without Regard . . .

to Race, Religion, Sex, National Origin, Age or Disability

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# Introduction to Video Development Program

***Our organization does not discriminate based on race, religion, sex, national origin, age, or disability.***

We have all read this disclaimer on countless job ads, applications and forms. And most of us truly believe that all employees should be hired, rewarded or reprimanded strictly based on job qualifications and job performance, without regard to race, age, sex, disability, religion, or national origin.

But the reality is that discrimination—especially subtle discrimination and harassment—continues to thrive in our workplace. While some discrimination is obvious, much of it is not. In fact, everyday stereotypes and assumptions about our differences are the basis for most discrimination claims.

When discrimination prevails, the cost is high for both the organization and individuals.

## **Legal Costs**

- Costly legal proceedings
- High judgments

## **Unseen Costs**

- Employee morale
- Lost productivity
- Lost talent

## **Emotional Cost**

- Stress
- Career advancement stops
- Pain
- Lost or untapped talent

To avoid the high cost of workplace discrimination, organizations and their employees must be educated on what is and isn't discrimination, as well as what actions to take if discrimination occurs.

## Begin the Training Session

### To Begin the Training Session

This self-paced video development program provides an overview of work place discrimination, including ten vignettes that depict different discrimination scenarios. Participants may follow along with the video and/or use the review pages included with this manual as a quick reference.

To begin training, take the pre-test on the following page. This will help stimulate the thought process for the training materials. Read through the initial program materials on pages 6-10. Then you may begin the video and participate in the interactive exercises included with the video. Following the conclusion of the video, read through the review pages to solidify your understanding of the materials. You may also use this manual as a periodic review for the prevention of discrimination. When you have finished this manual, complete the post test to determine your acquired knowledge.

At the top of each page, you will see the following:

Check When Page Completed

These checks are intended to help those who must complete the training program in different stages. Check each box as you complete the page. This will allow you to keep track of your progression through the training program.

## Discrimination Pre-Test

**Instructions:** Answer the following questions to the best of your ability. It will help determine your current knowledge about discrimination practices and laws. This test is only intended to stimulate thought on the subject, and will not be used to penalize you.

1. What law protects against age discrimination?
2. Are disabilities protected by the Civil Rights Act of 1964?
3. Under the Equal Pay act, can a company lower a man's pay to make it equal with a woman who was earning less?
4. Companies are sometimes allowed to not institute a discrimination policy if they can prove that doing so would cause an undue hardship to their company. What might constitute "undue hardship" for an employer?
5. Does the Civil Rights Act of 1964 apply only to African Americans?
6. Name three ways an organization can help prevent a hostile work environment.
7. Is it age discrimination if an employee over 40 is replaced by another employee over 40?

# What is Discrimination?

Discrimination occurs when an employee or group of employees is treated less favorably than similarly positioned employees of a different race, sex, age, national origin, religion, etc.

## What Constitutes Different Treatment?

Being treated different can be blatant or subtle.

Blatant treatment:

- Jokes
- Slurs
- Innuendoes
- Direct Statements

Subtle treatment:

- Job assignments
- Training
- Promotions
- Pay

## Our Laws:

Several federal laws protect employees from discrimination based on race, sex, age, religion, national origin, and disability. They are:

### • **THE CIVIL RIGHTS ACT OF 1964**

Makes it illegal to discriminate against an employee based on his/her race, sex, religion, or national origin. Several civil rights acts have been passed since 1964 that strengthen and expand the original law.

### • **EQUAL PAY ACT OF 1963**

Makes it illegal to pay men and women different pay rates for equal work.

### • **THE AGE DISCRIMINATION IN EMPLOYMENT ACT**

Makes it illegal to discriminate against an employee based on his/her age.

### • **THE AMERICANS WITH DISABILITY ACT**

Makes it illegal to discriminate against an employee based on his/her disability.

## Retaliation

These laws also protect employees against retaliation for complaining about harassment or discrimination, or for participating in an investigation or lawsuit either as a party or a witness. Retaliation can independently be the basis of a complaint or lawsuit.

# The Laws that Protect Us

For the most part, an employer is able to hire or fire anybody at any time, and for whatever reason, unless directly prohibited by federal law. The concept of “employment at will” allows employers to terminate employees for any reason. This is the same principle that applies to employees who may quit their job for any reason without regard to the employer’s needs. However, employers may not hire or fire any person based on discriminatory reasons. Discrimination in the workplace is prohibited by state and federal law.

## What Is Employment Discrimination?

Employment discrimination is when an employer treats one employee less favorably than it treats another employee based on race, sex, age, religion, national origin, or disability; or retaliates against an employee for participating in any proceeding related to another person’s discrimination claim. In some cases, the law extends to employees who may face discrimination because they are married to, or associated with, a person of a particular race, religion, national origin, or disability.

## What the Laws Are

There are several federal laws, which combined, prohibit employment discrimination based on race, color, religion, sex, national origin and disability. They are:

- **Title VII of the Civil Rights Act of 1964 (Title VII):** prohibits employment discrimination based on race, color, religion, sex, or national origin.
- **The Equal Pay Act of 1963 (EPA):** protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination.
- **The Age Discrimination in Employment Act of 1967 (ADEA):** protects individuals who are 40 years of age or older.
- **Title I of the Americans with Disabilities Act of 1990 (ADA):** prohibits employment discrimination against qualified individuals with disabilities in the private sector.

## Who is Bound by These Laws?

- Title VII and the ADA apply to all private employers, state and local governments, and education organizations that employ 15 or more individuals. These laws also cover private and public employment agencies as well as labor organizations.
- The ADEA covers all private employers with 20 or more employees, state and local governments (including school districts), employment agencies and labor organizations.
- The EPA covers all employees who are covered by the Federal Wage and Hour Law (the Fair Labor Standards Act) regardless of the size and type of organization.

# The Laws that Protect Us

## What Practices are Prohibited by Law?

It is illegal to discriminate in any aspect of employment, including:

- hiring and firing
- compensation
- assignment
- classification of employees
- transfer
- promotion
- layoff
- recall
- job advertisements
- recruitment
- testing
- use of company facilities
- training and apprenticeship programs
- fringe benefits
- pay
- retirement plans
- disability leave
- other terms and conditions of employment.

Discrimination under any of these workplace conditions is against the law, and may be used as a basis in a discrimination lawsuit.

# The Principles That Guide Us Worksheet

**Instructions:** This video training program bases its anti-discrimination message on six principles—RESPECT, INTEGRITY, HONESTY, TRUST, RESPONSIBILITY and CITIZENSHIP. In the spaces below, write in your definition for these principles. When you are finished, turn to the next page to learn more about our views of these principles and how they apply to discrimination prevention.

RESPECT

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INTEGRITY

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HONESTY

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TRUST

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RESPONSIBILITY

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CITIZENSHIP

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## The Principles That Guide Us

Discrimination can be stopped when individually and collectively we commit to six simple and unarguable principles – Respect, Integrity, Trust, Responsibility, and Citizenship. Read through our definition of these principles and compare them to your own. If you are participating in a group session, discuss each others thoughts and definitions. Once you have discussed and/or reviewed these principles, turn to the next page to begin the video program.

### RESPECT

The quality or state of being esteemed. When we commit to the principle of respect, our actions are ones that honor our differences – our diversity. We treat others with dignity and fairness.

### INTEGRITY

The firm adherence to a code of moral values. When we commit to the principle of integrity, we say what we mean, do what we say, and stand up for what is right.

### HONESTY

The refusal to lie, steal or deceive in any way. When we commit to the principle of honesty, we are truthful and forthright in all of our dealings.

### TRUST

The assured reliance on the character, ability, strength or truth of someone or something. When we commit to the principle of trust, we are open and candid with our organization and/supervisor by expressing concerns or sharing observations regarding discriminatory behavior.

### RESPONSIBILITY

An ethical, legal, or intellectual accountability. When we commit to the principle of responsibility, we take it upon ourselves to speak up, report concerns, and behave appropriately. Our organization has the responsibility to provide us with a workplace that is free from discriminatory behavior.

### CITIZENSHIP

The quality of an individual's response to membership in a community. When we commit to the principle of citizenship, we follow the laws of our countries and those of the other countries with which we do business.

## Getting Started with the Video

The video, ***Without Regard...*** is designed to be a brief but effective overview of workplace discrimination. Several vignettes of possible discriminatory behavior are depicted, with commentary and a legal viewpoint following each vignette.

This manual is designed to flow with the video. As you view the video, follow along in the manual. A few interactive exercises are included as part of the viewing experience. The video allows time for completion of these short exercises.

Upon completion of the video program, please stop the videotape.

Directly following the main program, each vignette is replayed in its entirety without commentary or narration. These scenes will be used as part of the review portion of this program covering important information you need to know about discrimination prevention.

Begin the video when you are ready; the approximate running time is 25 minutes.



Start Video

## View: Wouldn't or Couldn't?

**Janet**

I realize that we were only scheduled from ten to eleven...

**Jack**

And it's eleven twenty...

**Janet**

I know. We got a bit off track. And Merdad, you said you had to leave by eleven thirty at the latest. But I really think we can wrap this thing up once and for all in an hour. I'll order lunch to be brought in...

**Jack**

(Acting put out) Let me go switch a few things around.

*Jack leaves the conference room. Merdad simply looks at his watch.*

**Janet**

Merdad, say you'll stay, please.

**Merdad**

I'd really like to. But I must leave.

**Janet**

Look, I need you here, now.

**Merdad**

Yes, I understand. I'm sorry. Perhaps we can reschedule for this afternoon.

**Janet**

Yah. We'll see.

*Merdad leaves. Janet makes a face after he leaves the room. Jack comes back in after Merdad has left.*

**Jack**

(Looks around) Merdad couldn't stay?

**Janet**

Wouldn't might be a better word. You know about him, don't you? Got some praying thing – four or five times a day – north or south. I can't keep it straight.

**Jack**

Well, I'm here.

**Janet**

I'm just not sure about his commitment.

## Which Might It Be?

### Discrimination based on:

- Race
- Religion
- Sex
- National Origin
- Age
- Disability
- Retaliation
- None of the above

## View: Bad for Business

*District Manager and Supervisor meeting at a restaurant table.*

**Sabina:**

I don't know. It's been a little slower than usual. But the weather's been so nice, I think people are just aching to be outside.

**District Manager:**

Hope so. Everything else looks good. Anything else you wanted to go over with me?

**Sabina:**

Yah, I'm thinking about participating in a few local organizations that have approached me for sponsorship. I understand that I need clearance from corporate.

**District Manger:**

Yah, I think I still have some of the forms you need to fill out... (He reaches for his briefcase)

*Out of the corner of his eye, the district manager sees a mentally handicapped young man, busing tables.*

**District Manager:**

Who's that?

*Sabina looks around, sees Johnny and smiles.*

**Sabina:**

Oh, that's Johnny. We hired him three weeks ago or so. He's doing good, really good.

**District Manger:**

Why didn't I know about this?

**Sabina:** (Confused)

You don't know when I hire anyone, let alone a busboy.

**District Manager:**

We'll have to do something. It's not good for business. He can't be out front here...

## Which Might It Be?

### Discrimination based on:

- Race
- Religion
- Sex
- National Origin
- Age
- Disability
- Retaliation
- None of the above

## Participant Activity

Look at these six images. Write down any reactions that quickly come to mind for each.



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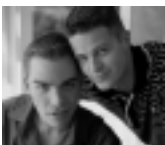
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## View: Just The Right Place

**Jared**

You know, your numbers have been really good. You're doing well. And Mike, I think you've got some great opportunity here.

**Mike**

I'm ready.

**Jared**

Well, we need to talk territories. But here's what I'm thinking initially. We have some openings, but there's two in particular that I think would be right up your alley.

**Mike**

I'm listening. Keep talking.

**Jared**

There are two I have in mind. Here in town is the east side from E14th to E103rd. The other is in Chicago - south side. Lots of opportunities that you'd be able to capture in both places.

**Mike**

These, uh, aren't the most affluent areas...

**Jared**

Yes, we haven't traditionally been able to make the most of these territories - but I think you're the man to do it.

**Mike**

I appreciate the confidence, but isn't there something else - you know that isn't 'my kind of neighborhood'?

## Which Might It Be?

### Discrimination based on:

- Race
- Religion
- Sex
- National Origin
- Age
- Disability
- Retaliation
- None of the above

## View: Kung Foo

**Angela**

Danny's just a shy kid you know. Doesn't fit in much at school. Did you ever have that problem?

**Tim**

Nah, but I know it's tough for some kids. Whoever said high school is the best time was just lying...

**Angela**

A couple of older kids are giving him trouble. I don't know what to do. Thought about enrolling him in some classes, you know, those defensive thing-a-ma-jobs.

*Kent, who is keeping track of the conversation, finds his moment to add his two cents to the conversation.*

**Kent**

Save yourself some money, I bet Jackie Chan over there knows some moves he can show him, hong kong fuey?

*Tim good-naturedly tries to respond.*

**Tim**

No more than you...

**Angela**

Mind your own bee's wax, Kent

**Kent**

Oh don't you get your underwear in a bunch. I'm just trying to have fun.

*Kent leaves the area. Angela continues.*

**Angela**

Sorry. I'm not sure teaching Danny to fight is the right thing. He just doesn't have a bit of self-confidence.

**Tim**

That's where it's at...

*Kent, who is now outside the area, knocks on the window and does his rendition of a stance like the Karate Kid.*

## Which Might It Be?

### Discrimination based on:

- Race
- Religion
- Sex
- National Origin
- Age
- Disability
- Retaliation
- None of the above

## View: Exactly Who We Want ...

*Conference room. Two white men are in the midst of a planning meeting.*

**Executive**

Let's talk about staffing. Where are our needs?

**Employee**

Well, we need three more in marketing, two in IS, and there is never enough for sales.

**Executive**

Sounds reasonable. What's our strategy?

**Employee**

Well, ads don't work. We have to take all kinds of time and talk to hundreds of people we don't really want to see. So I would suggest we go through an employment service--let them do the weeding out process for us.

**Executive**

That's an expensive way to go. We've got the budget for it?

**Employee**

Oh yeah, add up the manpower it takes for us to do it ourselves and we've more than invested the money.

**Executive**

Let's get on it, then.

**Employee**

All right. Great. Can do.

**Executive**

As long as we're spending the extra money, we might as well let the recruiter know exactly who we want.

**Employee**

OK... (*Questioning*) ... exactly who we want... What do you mean?

**Executive**

Well, for the IS and marketing positions-- I don't care. We can use male or female. But for sales-- I'd kind of like to have a guy in there. So let's tell them just men. And no accents. In general, no accents.

## Which Might It Be?

### Discrimination based on:

- Race
- Religion
- Sex
- National Origin
- Age
- Disability
- Retaliation
- None of the above

## Participant Activity

Write down three types of jobs where being a woman or having an accent would have a negative effect on job performance – one that you think could hold up in a court of law.

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

## View: Trash Like You

*Three women, Pam, Denise and Diane sit in a lunchroom having a great time with each other. A co-worker, Brad, enters the lunch room with his lunch in hand. It is clear the women don't care for him and are not shy about expressing it. Brad tries to ignore the women and have a quiet lunch. The women are further irritated by Brad ignoring them and call the behavior as they see it.*

**Diane**

What's the matter Bradley – don't like us any more?

**Pam**

*(To the other women)* I guess not. Hey Brad. Bradley? Why the cold-shoulder?

**Brad**

Just minding my own business ladies.

**Diane**

*Oooo.* Ladies? How polite. You too good for us or something?

**Pam**

I think he's prejudiced against you Denise?

**Diane**

Maybe he doesn't go for uneducated trash like you Pam.

**Pam**

Whatever it is – you're kinda a stuck up frat boy.

**Diane**

You're pathetic, c'mon *ladies*.

## Which Might It Be?

### Discrimination based on:

- Race
- Religion
- Sex
- National Origin
- Age
- Disability
- Retaliation
- None of the above

## View: The Cold Shoulder

*Brenda sits in her cubical office. A couple of coworkers stand by and whisper something to each other about Brenda. Brenda looks down embarrassed. She gets up and walks down the hallway receiving another cold greeting from a coworker. Brenda comes to an office and knocks on the door of her manager, Ben.*

**Ben:** Come on in.

**Brenda:** Hi. Do you have a minute?

**Ben:** Sure. Sit down.

**Brenda:** I'm getting the cold shoulder.

**Ben:** Your imagination, I'm sure.

**Brenda:** No one is talking to me. My phone doesn't ring.

*Ben remains aloof and distant. He has a fake friendly attitude.*

**Ben:** It's just a slow time. And all that chit-chat really isn't a critical part of your job.

*Brenda takes a moment and dejectedly asks about a deposition that she was involved with regarding a gender discrimination claim.*

**Brenda:** What I said was suppose to be private. How do they even know?

**Ben:** I dunno. That stuff gets around, Brenda. What did you expect?

**Brenda:** This isn't even about me. I just answered what they asked. (Changes to a more upbeat, positive mode) I need something to dig into. What about the customer care survey you asked me to head up this Fall. Maybe that's what I should get started on.

*Ben continues to put her off.*

**Ben:** Oh yeah. I had forgotten I talked to you about that. I gave it to Shane last week. He's already got it going.

**Brenda:** But you gave that to me?

**Ben:** Must not have written it down. I'm sorry.

**Brenda:** Something else then?

**Ben:** Well no. Everything's covered right now. If something come up . . .but thanks for asking.

**Brenda:** I can't do my job if I'm invisible.

**Ben:** You're very visible Brenda. Very. Just do your job. Okay?

## Which Might It Be?

### Discrimination based on:

- Race
- Religion
- Sex
- National Origin
- Age
- Disability
- Retaliation
- None of the above

## View: Flashbulbs Were Blue?

*Jan is pacing around the office, while her manager sits calmly at his desk.*

**Jan**

Lateral move, my foot.

**Frank**

Your pay will be the same, your responsibilities have changed. We think this is a good move for you now.

**Jan**

It's dead-end job, a well-known pasture. No contact with clients. No advancement opportunities, oh, except for retirement of course.

**Frank**

That's not how we see it.

**Jan**

Of course, you don't. I like where I'm at now – I've been told I do a good job. Why is Julie is taking over my current position?

**Frank**

Julie has the same qualifications that you do. This will be a step up for her and give her the opportunity for some new experiences. Your move will give you new experiences as well.

**Jan**

Move the old out and the young in.

**Frank**

She's old.

**Jan**

I'm 56, she's 40. I remember when flashbulbs were blue; she doesn't... she would be what I would call younger.

**Frank**

Flashbulbs were blue?

## Which Might It Be?

### Discrimination based on:

- Race
- Religion
- Sex
- National Origin
- Age
- Disability
- Retaliation
- None of the above

## View: Tit for Tat

*Two employees are talking as they work.*

**Mary**

My parents come from the most gorgeous place in the world. Green like you've never seen with the most brilliant flowers growing wild everywhere.

**Lenny**

*(Joking)* Where's that? Central Park?

**Mary**

*(Laughing)* No, Ireland. And I'm going there this summer.

**Lenny**

Ah, that's going to be a fun trip. I read a book about Ireland, uh, what was it called...Angela's...

**Mary**

Angela's Ashes?

**Lenny**

Yeah, Angela's Ashes. There's those people in the book, I bet they're your parents. What do you call them, tinkers? No tinkers? Tinkers, that was it.

**Mary**

Hey, watch what you're saying.

**Lenny**

Ooh a little sensitive. Tinker. It's such a cute word

**Mary**

Look, you obviously don't know this, but calling me a tinker is like calling you...

## Which Might It Be?

### Discrimination based on:

- Race
- Religion
- Sex
- National Origin
- Age
- Disability
- Retaliation
- None of the above

## View: Potential Problem

*A promising job candidate is interviewing for a position.*

**Rose**

You must be tired, Heather. This is what, you're fourth interview today?

**Heather**

Yes, it's been a whirlwind. But I knew it would be a big day. I appreciate you flying me in to further discuss the position.

**Rose**

Well, we knew from your resume and our phone conversations that you were a great candidate for this position. Did Rhonda overview for you our benefit package?

**Heather**

She did, Thank you.

**Rose**

I see that you're married. If you do choose to relocate with us, we provide assistance with job placement for spouses. Here I have some infor---

*Rose attempts to hand her some information.*

**Heather**

Oh, no, that's not necessary. Thank you though.

*Heather extends her hand to say 'No Thank You'. Rose seems a little concerned.*

**Rose**

Your husband is self-employed then?

*Heather looks a bit uncomfortable but proceeds.*

**Heather**

He's disabled. He's not working now.

**Rose**

Oh. Will he be able to work soon?

**Heather**

We're not sure yet. But he's doing well.

*Rose writes a few notes on her pad...*

## Which Might It Be?

### Discrimination based on:

- Race
- Religion
- Sex
- National Origin
- Age
- Disability
- Retaliation
- None of the above



Stop video when ended and move on to review section.

## Introduction to Review Session

Now that you have completed the video program, continue on to the review portion of this program. Each page will instruct you to replay a particular dramatic vignette and then review what additional information you may need to know about that particular form of possible discrimination or problematic behavior.

5 seconds after the conclusion of the main program, you will find all ten vignettes replayed without the narrative for your convenience. To replay as instructed on pages 33-34, simply push play on your VCR. Stop or pause the VCR after each vignette while you review the written material that follows each.

The following review pages can also be used as a future reference tool.

## Replay: Wouldn't or Couldn't?

### What you need to know about discrimination based on RELIGION

#### Summary

- Religious discrimination is forbidden under Title VII of the Civil Rights Act of 1964.
- This law applies to all private businesses, federal and state governments, and educational organizations who employ 15 or more individuals.
- Under this law, an employer is required to reasonably accommodate the religious belief of an employee or prospective employee, unless doing so would impose an undue hardship.

#### Accommodate Religious Beliefs

How do you accommodate religious beliefs in the workplace? In general, be careful to not schedule activities for an employee, or even a prospective employee, that is in conflict with his or her stated religious needs, unless of course, taking that action creates an undue hardship for your organization.

Organizations can accommodate an employee's religious beliefs through such actions as:

- Flexible scheduling
- Voluntary substitutions or swaps
- Job reassignments
- Lateral transfers

Employers and managers should be careful not to:

- schedule examinations or other selection activities in conflict with a prospective employee's religious needs
- inquire about an applicant's future availability at certain times
- maintain an unnecessarily restrictive dress code
- refuse to allow observance of a Sabbath or religious holiday, unless the employer can prove that not doing so would cause an undue hardship.

#### What Might Constitute Undue Hardship?

- When accommodating an employee's religious practices requires more than ordinary administrative costs.
- When a bona fide seniority system has to be changed to accommodate one employee's religious practices, denying another employee the job or shift preference guaranteed by the seniority system.

*Please consult with your organization's human resource or legal department if you have any questions or concerns related to religious or any other type of discrimination.*

## Replay: Bad for Business

### What you need to know about discrimination based on DISABILITY

#### Summary

- The Americans with Disabilities Act (ADA) protects job applicants and employees who, although disabled, are otherwise qualified for a job in terms of skills, experience, training or education.
- Employers are required to make a reasonable accommodation to a qualified individual with a disability, unless doing so would impose an undue hardship to the employer.
- The ADA applies to all private employers, state and local governments, and education organizations that employ 15 or more individuals.

#### Who Qualifies Under ADA?

The ADA defines a disabled person as someone who has a physical or mental impairment that substantially limits one or more major life activity. Major life activities are activities that an average person can perform with little or no difficulty such as walking, breathing, seeing, hearing, speaking, learning and working.

#### Prohibited Inquiries and Examinations

Before making an offer of employment, an employer may not ask job applicants about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform job functions. A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in the same job category. Medical examinations of employees must be job-related and consistent with business necessity.

#### What Is Reasonable Accommodation?

Reasonable accommodation may be necessary to apply for a job, to perform job functions, or to enjoy the benefits and privileges of employment that are enjoyed by people without disabilities. An employer is not required to lower production standards to make an accommodation, nor is an employer generally obligated to provide personal use items such as eyeglasses or hearing aids. Reasonable accommodation may include, but is not limited to:

- making existing facilities used by employees readily accessible to and usable by persons with disabilities
- job restructuring
- modification of work schedules
- providing additional unpaid leave
- reassignment to a vacant position
- acquiring or modifying equipment or devices
- adjusting or modifying examinations, training materials or policies
- providing qualified readers or interpreters.

#### What Is Undue Hardship?

Undue hardship means an action that requires significant difficulty or expense when considered in relation to factors such as a business' size, financial resources, and the nature and structure of its operation.

*Please consult with your organization's human resource or legal department if you have any questions or concerns related to disability or any other type of discrimination.*

## Think It Can't Happen? Think Again.

### ADA Case Study

*The following press release was issued by the EEOC. Although this is an actual case, names have been removed for privacy.*

-----MUST PAY MAXIMUM DAMAGES UNDER THE ADA TO MENTALLY RETARDED EMPLOYEE FOLLOWING MULTI-MILLION DOLLAR JURY AWARD . A federal court here has rejected----- efforts to overturn a November jury verdict that found the company liable under the Americans with Disabilities Act (ADA) for firing a mentally retarded janitor.

The jury originally awarded \$13 million in punitive damages against the ----- chain. In the decision issued yesterday, the court reduced that amount as required by the ADA, but imposed the maximum allowed under federal law. In so doing, the court stated that "the breathtaking magnitude of an eight-figure punitive damages award demonstrates that the jury wanted to send (-----) a loud, clear message."

The lawsuit, brought by the U.S. Equal Employment Opportunity Commission (EEOC), claimed that ----- violated the ADA when a district manager fired -----, the disabled worker, because the manager did not want "those people" working in the restaurant. The firing took place despite the vigorous protests of the restaurant's manager, who was also ----- immediate supervisor. Last -----, -----, the jury, in addition to awarding \$13 million in punitive damages, awarded back pay and damages for emotional distress in the amount of \$70,000.

EEOC Chairwoman --- -. ----- said, "We applaud both the jury and the court for the loud, clear, message' that discrimination against people with disabilities will not be tolerated." In yesterday's decision, Magistrate Judge --- ----- found that the evidence supported the jury's finding that -----, who is mentally retarded, autistic and non-verbal, was qualified for his job cleaning the ----- facility, with the assistance of his job coach provided by ----- & -----, a community vocational rehabilitation program. The court further found that his performance had been satisfactory during the three weeks prior to his termination.

The court noted the testimony of ----- supervisor that, after she was criticized by the regional manager for hiring one of "those people," she unsuccessfully sought help from the corporate human resources department, asking, "Can someone please help me with this situation, so we can at least give this guy a chance? We are an equal opportunity employer, are we not?"

Judge ----- also upheld the jury's award of \$70,000 for emotional distress damages, rejecting ----- argument that ----- should not receive such damages because he was unable to testify himself at the trial about his feelings. The court noted the testimony of -----'s foster mother that he "literally jumped for joy and hit his head on the ceiling when he first told her family about his job at ----- -. -----'s." In light of this testimony, Judge ----- approved the jury's conclusion that -----'s distress over losing his job was greater than that suffered by the ordinary victim of a wrongful discharge. The jury's award of \$13 million in punitive damages was reduced by the court to \$230,000 which, when added to the compensatory damages of \$70,000, is the maximum of \$300,000 permitted by the ADA. Judge ----- held that this amount was not excessive under the facts of the case. The court also ordered that ----- be reinstated to his former position, and that ----- -. -----'s provide training to its managers about the requirements of the ADA.

EEOC General Counsel -. ----- said: "This case serves as a clear illustration of the consequences of making employment decisions based on fears and stereotypes, rather than on the qualifications of an individual to perform his job."

EEOC trial lawyers ----- and ----- litigated the case for the EEOC. -----, who represented --, ----- in the case both as his attorney and guardian ad litem, is employed by the ----- for -----, an organization that champions the rights of the disabled.

The EEOC is the federal agency responsible for enforcing Title I of the Americans with Disabilities Act, which prohibits discrimination in employment against qualified individuals with disabilities in the private sector and state and local governments; Title VII of the Civil Rights Act of 1964, which prohibits workplace discrimination based on race, color, national origin, sex, or religion; the Equal Pay Act of 1963; the Age Discrimination in Employment Act of 1967; and sections of the Civil Rights Act of 1991.

## Replay: Just The Right Place

### What you need to know about discrimination based on RACE

#### Summary

- Racial discrimination is forbidden under Title VII of the Civil Rights Act of 1964.
- This law applies to all private businesses, federal and state governments, and educational organizations which employ 15 or more individuals.
- Title VII prohibits not only intentional discrimination, but also practices that have the effect of discriminating against individuals because of their race, color, national origin, religion, or sex. The law prohibits organizations from assigning primarily minorities to predominantly minority establishments or geographic areas.

#### Who Is Protected?

While largely associated with the struggle for African-Americans to achieve justice and equality in the workplace, the Civil Rights acts protect persons of all racial and national backgrounds, and apply to both men and women.

#### What is Affirmative Action?

An offshoot of the Civil Rights movement, affirmative action is the use of goals, special recruitment efforts, set-asides, or quotas to increase job opportunities for minorities and women. Most affirmative action laws were engendered during the civil rights movements of the 1960s and are responsible for providing employment opportunities to many individuals who had previously been denied employment because of their race, nationality or gender.

#### The Continuing Debate on Affirmative Action

Many consider affirmative action “reverse discrimination” because it provides preferential rather than equal treatment to individuals of a protected class. Many persons in protected classes also question the use of preferential treatment. Like everyone else, they want to be hired and promoted based on their abilities, not because they help meet a quota. Most civil rights groups, however, support the continuation of affirmative action policies as they believe injustice and discrimination will continue without these laws in place.

#### Corporate America

Despite the continuing debates regarding affirmative action policies, corporate America is beginning to recognize the benefits of a diverse workforce. More qualified workers, of any racial or national background, means more productivity. And while it may be self-serving, corporations do realize that greater representation by persons of all racial and national backgrounds can provide greater marketing and public relations opportunities to an increasingly diverse market.

*Please consult with your organization’s human resource or legal department if you have any questions or concerns related to race or any other type of discrimination.*

## Replay: Kung Foo

# What you need to know about discrimination based on NATIONAL ORIGIN

### Summary

- Title VII of the Civil Rights Act of 1964 protects individuals against employment discrimination on the basis of national origin. This law applies to all private businesses, federal and state governments, and educational organizations which employ 15 or more individuals.
- Under this law, an employer cannot discriminate against any employee or applicant because of the individual's national origin, birthplace, ancestry, culture or linguistic characteristics common to a specific ethnic group.
- Employment opportunities cannot be denied anyone because of:
  - national origin
  - membership or association with specific ethnic promotion groups
  - attendance or participation in schools, churches, temples or mosques generally associated with a national origin group
  - a surname associated with a national origin group.

### Are English Only Rules Legal?

A rule requiring employees to speak only English on the job may violate Title VII, unless an employer shows it is necessary for conducting business. If an employer believes the English-only rule is critical for business purposes, employees have to be told when they must speak English and the consequences for violating the rule.

### Can a Person's Accent Inhibit Him or Her from Performing the Job?

An employer must show a legitimate nondiscriminatory reason for the denial of employment opportunity because of an individual's accent or manner of speaking. Requiring employees or applicants to be fluent in English may violate Title VII if the rule is adopted to exclude individuals of a particular national origin and is not related to job performance.

### Immigration Related Policies

The Immigration Reform and Control Act of 1986 (IRCA) requires employers to prove all employees hired after November 6, 1986, are legally authorized to work in the United States. IRCA also prohibits discrimination based on national origin or citizenship.

*Please consult with your organization's human resource or legal department if you have any questions or concerns related to national origin or any other type of discrimination.*

## Replay: Exactly Who We Want

### What you need to know about discrimination based on SEX

#### Summary

- Title VII of the Civil Rights Act of 1964 protects individuals against employment discrimination on the basis of sex.
- This law applies to all private businesses, federal and state governments, and educational organizations which employ 15 or more individuals.

#### How to Avoid Gender Bias in Hiring

When placing an advertisement or posting job opportunities, it violates the law to indicate a preference of male or female, unless sex is a legitimate occupational qualification. When hiring, avoid the following:

- Labeling positions as 'Men's jobs' or 'Women's jobs'. Doing so unnecessarily bars one sex or the other from equal opportunity.
- Assumptions about a woman's long-term commitment to her job as compared to a man's long-term commitment. For example, a woman will leave the workforce early to care for a family while a man won't.
- Assumptions about personality stereotypes based on sex. For example, men are dominant while women are passive, therefore a man would make a better sales manager. Men are less caring, women are more caring, therefore a woman would be a better candidate for a customer service position.

#### How to Avoid Gender Bias in the Workplace

As with hiring, equal care must be taken to avoid gender bias in promotions and opportunities in the workplace. It is illegal to label jobs as a man's job or a woman's job, and likewise illegal to base promotions or work assignments based on those labels. Assumptions cannot be made about a person's personality or job commitment based on his or her gender.

#### Equal Pay Act

In 1963, The Equal Pay Act (29 U.S.C. §206) was passed as an amendment to the Fair Labor Standards Act. It requires employers to pay all employees equally for equal work, regardless of their gender.

##### What is Equal Work?

Two jobs do not necessarily have to be one and the same to be considered equal. To be considered equal under the EPA, both jobs must entail:

- Equal levels of skill
- Equal effort and responsibility
- Be performed under similar conditions

If there is only a small difference in skill, effort, responsibility and conditions, the two jobs in question should still be regarded as equal.

##### What is Equal Pay?

An employee of one gender should be paid the same as the other gender for doing equal work. Historically, the most obvious form of gender discrimination has been paying women less than men for doing the same kind of work. The practice, although illegal, is still widespread. Women still earn only about 76 cents for every dollar earned by men. Employers may not reduce wages of either sex to equalize pay between men and women.

*Please consult with your organization's human resource or legal department if you have any questions or concerns related to sex or any other type of discrimination.*

## Think It Can't Happen? Think Again.

### Gender Discrimination Case Study

*The following press release was issued by the EEOC. Although this is an actual case, names have been removed for privacy.*

#### **FOR IMMEDIATE RELEASE**

#### **EEOC WINS PRELIMINARY INJUNCTION AGAINST -----, ---.**

DETROIT -- The U.S. Equal Employment Opportunity Commission (EEOC) announced today that it has obtained a consent order from United States District Judge -----, after filing an Application for Preliminary Injunction in an egregious case of employment discrimination against ----- . On March 9, 2000, a former employee of ----- filed a charge of discrimination with the EEOC which alleges that the company was screening applicants for employment on the basis of race, sex, ethnic origin, religion and disability status, all in violation of federal anti-discrimination statutes.

The EEOC obtained reliable documentary and testimonial evidence in support of this charging party's allegations, and it sought immediate judicial relief. Prior to filing the action, ----- agreed to the relief sought by the EEOC. United States District Judge ----- ordered ----- to consider and place applicants for employment without regard to sex, race, ethnic origin, religion or disability status in considering applicants for placement with its client; to notify all of its employees of the consent order, and to provide a similar notice to all of its clients. The Court further ordered ----- to provide the EEOC with the names of its clients and all applicants for employment in the last two years, to enable it to investigate and remedy all violations of the law.

EEOC Chairwoman --- said: "This case represents one of the most important areas for the Commission to investigate and root out unlawful employment discrimination. Evidence obtained in the case so far shows that ----- was accepting and complying with job orders from ----- employers that stated, for example, 'no females,' 'no ----- residents,' and no employees with accents."

--- added: "It is indeed unacceptable to find such practices still exist, thirty- five years after the passage of the first comprehensive statute prohibiting employment discrimination. The Commission will continue its work to fully vindicate the public's interest in ending discrimination in the workplace, as well as the interests of the individual victims who were denied equal employment opportunities."

EEOC General Counsel ----- said: "The charging party in this case is a very brave woman who stepped forward to uncover an egregious case of employment discrimination that affects virtually every group of applicants. We take our mission to enforce this nation's anti-discrimination statutes seriously, and to seek justice for those who were unknowingly turned away from jobs they were fully qualified based solely on their race, sex, religion, ethnic origin or disability status."

He added: "Employers throughout ----- and the country should be on notice that they cannot use employment agencies and referral companies to avoid the requirements of federal anti-discrimination laws. We will seek preliminary injunctions and aggressively pursue litigation whenever we uncover such practices."

EEOC enforces Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, religion, sex or national origin; the Age Discrimination in Employment Act; the Equal Pay Act; Title I of the Americans with Disabilities Act, which prohibits employment discrimination against people with disabilities in the private sector and state and local governments; prohibitions against discrimination affecting individuals with disabilities in the federal government; and sections of the Civil Rights Act of 1991.

## Replay: Trash Like You

### What you need to know about HOSTILE WORK ENVIRONMENT

#### Summary

- Hostile work environment occurs when unwelcome sexual advances or other verbal or physical conduct of a hostile or discriminatory nature unreasonably interferes with an individual's work performance, or creates an intimidating, hostile or offensive working environment.
- Any hostile behavior should be reported, investigated and stopped.

#### Affect of the Hostile Work Environment on the Individual

Hostile work environment is really nothing more than an attack on an individual. The basis for an attack may be based on a person's "differentness"—his or her race, nationality, gender, etc. But it is just as likely to be based on a person not fitting in with the crowd, making waves in a company, personality conflicts with others in key positions, or even for being perceived as a threat to someone else's position. In their book "Mobbing: Emotional Abuse in the American Workplace," authors Noa Davenport, Ph.D., Ruth Distler Schwarts, and Gail Pursell Elliott describe a modern workplace practice known as "mobbing". They describe mobbing as an aggression or personal assault against anyone, not just those in a protected class. Mobbing can be condoned by the organization or it can be carried out by one or more individuals against another. The mobbed individual becomes the target of abusive or disrespectful behavior and the victim of innuendo, rumor and public discrediting.

#### Costs of a Hostile Environment in the Workplace

The costs of a hostile work environment can be measured in lost productivity, low morale, human suffering and in dollars—both lost revenue and potential lawsuits. Teamwork in a hostile environment becomes difficult and employees on sick leave increases due to emotional burnout. Factionalism also can occur as individuals begin taking sides in management disputes.

#### How to Prevent a Hostile Environment

Organizations can help prevent the creation of a hostile environment by following these guidelines:

- Create an organizational structure with clear chains of command
- Create clearly defined job descriptions for each position in the company
- Reward teamwork as well as individual performance levels
- Provide adequate training for all employees
- Provide an employee assistance program (EAP)
- Create an environment of open and honest communication

*Please consult with your organization's human resource or legal department if you have any questions or concerns related to hostile work environment or any other type of discrimination.*

## Replay: The Cold Shoulder

### What you need to know about RETALIATION

#### Summary

- Retaliation occurs when an employer harasses or punishes an employee because that employee:
  - Complained about discrimination
  - Opposed a practice believed to be discriminatory
  - Testified in an investigation or proceeding
  - Participated in an investigation or proceeding
- It is easier to demonstrate retaliation in court than it is to demonstrate discrimination.

#### Examples of Retaliation

The following situations are common forms of retaliation:

- An employee complains to his supervisor's boss that his supervisor makes racial jokes in front of him frequently. The supervisor is informed of the complaint. The supervisor responds by talking to the employee about his poor 'attitude' and transfers the employee to another shift.
- An employee files gender discrimination claim stating that she did not receive a promotion based on her sex. When her manager learns of the complaint, the manager stops talking to her and assigns her lower-level work.
- An employee is subpoenaed to be a witness in a discrimination case brought by another employee. Following her testimony in the investigation her supervisor starts to find fault in all of her work, she receives a high number of write ups and is continually subject to disciplinary action.

*Please consult with your organization's human resource or legal department if you have any questions or concerns related to retaliation or any other type of discrimination.*

## Replay: Flashbulbs Were Blue

### What you need to know about AGE DISCRIMINATION

#### Summary

- The Age Discrimination in Employment Act of 1967 (ADEA) protects employees and prospective employees who are 40 years of age or older from employment discrimination based on age.
- The ADEA covers all private employers with 20 or more employees, state and local governments (including school districts), employment agencies and labor organizations.

#### An Update to the Law

The Older Workers Benefit Protection Act of 1990 (OWBPA) amended the ADEA to specifically prohibit employers from denying benefits to older employees. An employer may reduce benefits based on age only if the cost of providing the reduced benefits to older workers is the same as the cost of providing benefits to younger workers.

In a recent U.S. Supreme Court unanimous decision, it was ruled that employers who replaced workers over the age of 39 with significantly younger individuals might in fact be in violation of the law, even if the new employee is also over the age of 39. This new ruling overturns a lower court ruling that an employee cannot claim age discrimination if replaced by a person of age 40 and over.

#### Job Notices and Advertisements

The ADEA makes it unlawful to include age preferences, limitations, or specifications in job notices or advertisements. As a narrow exception to that general rule, a job notice or advertisement may specify an age limit in the rare circumstances where age is shown to be a "bona fide occupational qualification"

#### Pre-Employment Inquiries

The ADEA does not specifically prohibit an employer from asking an applicant's age or date of birth. However, because such inquiries may deter older workers from applying for employment, or may otherwise indicate possible intent to discriminate based on age, requests for age information will be closely scrutinized to make sure that the inquiry was made for a lawful purpose, rather than for a purpose prohibited by the ADEA.

#### Lay-offs, downsizing and right sizing

As employees stay on the job longer, typically compensation rises and benefits increase. Older workers are many times considered more expensive to keep around. When organizations go through layoffs, downsizing and right sizing, they need to be particularly careful not to target older workers with higher salaries.

#### Waivers or agreements not to sue

Employers can ask older workers to sign waivers – agreeing not to sue for age discrimination. In return for signing the waivers, the employer offers the employee an incentive to leave the job voluntarily, such as a significant amount of severance pay. There are some restrictions on these kinds of waivers:

- The employer must make the waiver understandable to the people who are likely to use it.
- The waiver must specify that it only covers the employee's rights under the ADEA.
- The employer must offer something of value over and above what is already owed to the employee in exchange for signing the waiver.
- The employer must advise the employee, in writing, that the employee has the right to consult an attorney before signing the waiver.
- The employee must be given a fixed time in which to make a decision on whether or not to sign the waiver.

*Please consult with your organization's human resource or legal department if you have any questions or concerns related to age or any other type of discrimination.*

## Replay: Tit for Tat

What you need to know about name calling, jokes and innuendos in the work environment

### Summary

- Many discriminatory actions and words are often exchanged in seemingly innocent situations.
- We are not always aware that certain words or actions are offensive to other people. However, offending another person's race, nationality, religion, gender, age, disability, **or sensibility**—even out of ignorance—is not acceptable. Nor is reacting to offensive behavior with further offensive behavior.

### Be Respectful of Other's Feelings

Some of my best friends are...African-American, or Jewish, or Hispanic, or...you fill in the blank. This tired cliché, even if true, does not excuse insensitivity to another's feelings. What's acceptable to you or your best friends—even if they fall into a protected class—may not be acceptable to others. The guideline to remember is to treat others according to their level of acceptable behavior, not yours. What might be appropriate or funny to you, may be offensive to others.

### An Innocent Exchange

Even an innocent exchange between two or more people can become potentially offensive. Many of us are not familiar with cultures outside of our own, and base much of our knowledge of other cultures on second-hand information and assumption. It is possible to use a slang term or a gesture that seems innocent to us, but is offensive or threatening to the other person. If someone offends you, even mistakenly, do not respond by providing examples of equal offensiveness—tit for tat. Instead, point out the person's error and explain why what he or she said or did is offensive to you. Likewise, if someone points out a word you have used that is derogatory to him or her, apologize, and remember to avoid using the term in the future.

### Avoid Jokes, Slang and Nicknames

Joking in the workplace is often overlooked and sometimes accepted, but it is potentially offensive behavior and legally dangerous to allow. Humor is a very personal expression, and what one finds humorous, another might find offensive. For example, you may be friends with a colleague with blonde hair and know she doesn't mind laughing at a few blond jokes; she may even tell some herself. But that doesn't make the behavior right. Even though she thinks blonde jokes are funny, you can't be sure who might overhear and take offense. You should send email jokes with greater caution—or rather do not send them on office computers at all. Email is a self-propagating medium and your original email may get sent on by your recipient, or accidentally attached to a mail list, and sent to someone you never intended to see it. Remember, your name will be attached to this email as the original sender. The potential for offense and insult is great.

Using slang, cultural expressions, or assigning nicknames or names based on nationality, should also be avoided in the workplace. You may be friends with someone of Irish descent who doesn't mind being called "Mick". But someone may overhear you use this nickname and take offense. Or perhaps your friend is offended by this term, but is embarrassed to tell you how he feels. **You can't ever go wrong by using a person's proper name.**

*Please consult with your organization's human resource or legal department if you have any questions or concerns related to name calling, joking, innuendo or any other type of discrimination.*

## Replay: Potential Problem?

What else you might need to know about the not so obvious forms of discrimination

### Summary

- Not all forms of discrimination are obvious. Discrimination can be subtle, be done by association, and even go unrecognized by the person doing the discriminating.
- The laws against discrimination also protect persons who may suffer personally or professionally even if those in power do not intend to discriminate or do not recognize the discrimination.

### Diversity in the Workplace

It is a generally accepted social observance that people like to be surrounded by others of like background, culture and interests. We enjoy and seek out the familiar. Unfortunately, while this may be a natural behavior, it is also a potentially discriminatory behavior. Many studies have shown that minorities working in primarily caucasian businesses, do not get promoted through the company as quickly as caucasian workers. Those doing the promoting may not consciously be holding minority workers back, but they are unconsciously promoting those that are most like themselves. To avoid this trap, organizations need to create an environment that is open and accepting of all cultures and backgrounds. Acceptance of our diversity should be promoted and championed; diversity and sensitivity training might be beneficial for many organizations.

### Less Obvious Forms of Discrimination

Employees are often discriminated against because of their association with another person or because of their situation in life. For example, a husband taking care of a disabled wife may not be hired or promoted because the employer assumes that taking care of his spouse's needs will prevent the employee from devoting the necessary time to his job. Another example is that of a pregnant woman or a mother of young children. Women often hit the proverbial "glass ceiling" because employers assume or expect them to spend more time with their family and less time at the office. These assumptions, and others like them, are wrong. You should hire or promote based on an individual's qualifications and desire; doing otherwise is discriminatory.

### More Examples of Discrimination by Association

Assumptions based on association are not just based on a person's relationships with others. They are also made based on a person's dress, appearance and personal demeanor. For example, what thoughts come to mind when you think of someone with multiple tattoos or a pierced nose. Do you think differently of someone who wears ethnic dress, or clothes worn in another part of the country or world, but not your own? How do you feel about men who grow beards? Or women who color their hair? Do you assume certain things about people who are quiet? Or about people who talk a lot? People who are physically active? Or those who lead a more sedentary life?

We are all different. And making assumptions about these different qualities can lead to potentially discriminatory behavior. We should learn to appreciate and respect each others personal choices and mannerisms. Most importantly, we should not assume that any one aspect of an employee's personality will affect his or her ability to perform well in the workplace.

*Please consult with your organization's human resource or legal department if you have any questions or concerns related to the not so obvious forms of discrimination or any other type of discrimination.*

# Prevention and Protection

## Recommended Guidelines for the Employer and the Manager

### 1. ESTABLISH A NO TOLERANCE POLICY

Establishing a no tolerance policy means declaring that the employer and the manager will not stand for sexual harassment, discrimination or retaliation in the workplace.

The policy should state that all complaints will be investigated, and any violation may result in disciplinary action, including termination.

Under laws such as the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disability Act, employers and managers have an affirmative duty to rid their workplace of sexual harassment and discrimination.

### 2. MAKE SURE THE POLICY IS WIDELY DISSEMINATED

**Communicate.** Every employee should know his or her employer's policy that forbids sexual harassment, discrimination and retaliation. And, they should know that a violation of the policy may lead to disciplinary action that could include termination. Both the policy and the consequences of violating it should be taught in training, printed in employee handbooks, and, where appropriate, posted in the workplace.

Obviously, most employees know that discrimination, sexual harassment and retaliation are wrong. Nonetheless, when an employer disseminates its policy against discrimination, sexual harassment and retaliation, abiding by that policy becomes a condition of employment.

### 3. MAKE IT EASY FOR EMPLOYEES TO COMPLAIN

Employees should be able to complain to someone other than their immediate supervisor if they choose. This is important, since the supervisor is often the subject of the complaint. Someone outside of the employee's chain of command should be available to hear complaints, such as human resources personnel.

Make sure that the complaint procedure is clear and uncomplicated.

### 4. INVESTIGATE COMPLAINTS PROMPTLY AND OBJECTIVELY

A prompt and objective investigation should be the standard response to any complaint of sexual harassment or discrimination. Even in the absence of a complaint, if management has knowledge of discrimination or sexual harassment in the workplace, it should conduct an investigation.

A prompt and objective investigation says to everyone involved--the accuser, the accused, the EEOC and the courts--that the employer takes complaints of sexual harassment and discrimination seriously. Under the law, an employer can be found liable for failing to conduct a proper investigation.

### 5. TAKE APPROPRIATE REMEDIAL ACTION TO PREVENT A REOCCURRENCE

If an employee has engaged in sexual harassment or discrimination, disciplinary action needs to be taken to prevent a reoccurrence, including termination. The measure of appropriate remedial action is that it prevents a reoccurrence. That means that the situation should be monitored, even after disciplinary action has been taken.

# How to File a Complaint

## **What is a Manager's Duty**

Managers and employers have a duty to prevent harassment and discrimination in the workplace. When an employer becomes aware of harassment or discrimination in the workplace, appropriate measures must be taken to rid it from the workplace as soon as possible.

The Equal Employment Opportunity Commission and the courts have established procedures that employers should follow to prevent sexual harassment and discrimination in the workplace. Failure to follow these procedures can be the basis of an employer's liability.

Furthermore, employers cannot retaliate against employees who complain of discrimination.

## **What should an employee do if he or she is the victim of discrimination or retaliation?**

The best, and first thing an employee should do, is talk to someone within the organization. Ideally, an employee should be able to talk to his or her supervisor. If this is not appropriate, or if it is the supervisor the employee has a problem with, then he or she should talk to someone in the Human Resources Department, the Legal Department or to another person in the organization who is in a position to lend help. If all these channels remain closed to an employee, then that individual may file a complaint with the Equal Employment Opportunity Commission (EEOC).

## **EEOC Guidelines**

Whenever possible, employees and employers should work together to resolve any disputes. When this is not possible, or when an employer fails to meet the above requirements, an employee may file a complaint with the local Equal Employment Opportunity Commission (EEOC) office within 180 days of the last discriminatory incident. A Federal government employee may file a complaint with his or her agency's equal employment opportunity counselor within 45 days of the time the alleged discrimination took place. In addition, the employee should consult an attorney who practices employment discrimination law.

## Conclusion

As we said at the start of this program, discrimination can be stopped when individually and collectively we commit to six simple and unarguable principles – Respect, Integrity, Trust, Responsibility, and Citizenship.

### RESPECT

The quality or state of being esteemed. When we commit to the principle of respect, our actions are ones that honor our differences – our diversity. We treat others with dignity and fairness.

### INTEGRITY

The firm adherence to a code of moral values. When we commit to the principle of integrity, we say what we mean, do what we say, and stand up for what is right.

### HONESTY

The refusal to lie, steal, or deceive in any way. When we commit to the principle of honesty, we are truthful and forthright in all of our dealings.

### TRUST

The assured reliance on the character, ability, strength, or truth of someone or something. When we commit to the principle of trust, we are open and candid with our organization and/supervisor by expressing concerns or share observations regarding discriminatory behavior.

### RESPONSIBILITY

An ethical, legal, or intellectual accountability. When we commit to the principle of responsibility, we take it upon ourselves to speak up, report concerns, and behave appropriately. Our organization has the responsibility to provide us with a workplace that is free from discriminatory behavior.

### CITIZENSHIP

The quality of an individual's response to membership in a community. When we commit to the principle of citizenship, we follow the laws of our countries and those of the other countries with which we do business.

Follow these principles and all employees will work in an environment they deserve. One where individuals and organizations are able to succeed. One where all employees are provided equal opportunity WITHOUT REGARD to Race, Religion, Sex, National Origin, Age or Disability.

# Notes

## Discrimination Post Test

**Instructions:** The following questions will help determine your acquired knowledge about discrimination practices and laws. Answers to this test can be found in the video or by reading the review sections of this manual. If there are any questions you still do not understand, review the appropriate sections in this manual or ask your Human Resources Department for guidance. Answers can be found on page 51.

1. What law protects against age discrimination?
2. Are disabilities protected by the Civil Rights Act of 1964?
3. Under the Equal Pay act, can a company lower a man's pay to make it equal with a woman who was earning less?
4. Companies are sometimes allowed to not institute a discrimination policy if they can prove that doing so would cause an undue hardship to their company. What might constitute "undue hardship" for an employer?
5. Does the Civil Rights Act of 1964 apply only to African Americans?
6. Name three ways an organization can help prevent a hostile work environment.
7. Is it age discrimination if an employee over 40 is replaced by another employee over 40?

## Acknowledgement of Discrimination Training

On, \_\_\_\_\_, I \_\_\_\_\_ participated and concluded a training program on employment discrimination. I understand the following:

I have the responsibility to not engage in any behavior that could be considered discriminatory.

- Agree  
 Disagree

All employees have the right to work in an environment that is free from all types of discrimination and harassment.

- Agree  
 Disagree

I am expected to engage in the process of preventing and correcting any discriminatory behavior by:

- Having a zero tolerance for discriminatory behavior, actions or words
- Accepting and investigating all complaints received (if in a managerial position today or in the future)
- Taking appropriate action to stop other employees who may engage in any kind of discriminatory behavior by either reporting such behavior or disciplining such behavior.

- Agree  
 Disagree

If I feel that I am personally being discriminated against, I understand that:

- I have the right to submit a complaint
- I have the responsibility to allow my employer to offer assistance by submitting a complaint

- Agree  
 Disagree

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Print name:

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Sign name:

Thank you for your time and attention during this important training session. We all play an important role in creating and maintaining a workplace free from discrimination.

## Pre and Posttest Answer Key

**Instructions:** Following are the answers for the pre and posttest questions. After taking the posttest, if there are still questions you do not understand, you may review portions of this training session or consult your Human Resource Department for assistance.

**1. What law protects against racial discrimination?**

The Age Discrimination In Employment Act.

**2. Are disabilities protected by the Civil Rights Act of 1964?**

No, they are protected by The Americans with Disability Act

**3. Under the Equal Pay act, can a company lower a man's pay to make it equal with a woman who was earning less?**

No. Employers may not reduce wages of either sex to equalize pay between men and women.

**4. Companies are sometimes allowed to not institute a discrimination policy if they can prove that doing so would cause an undue hardship to their company. What might constitute "undue hardship" for an employer?**

Undue hardship means an action that requires significant difficulty or expense when considered in relation to factors such as a business' size, financial resources, and the nature and structure of its operation.

**5. Does the Civil Rights Act of 1964 apply only to African Americans?**

No. The Civil Rights Act of 1964 protects persons of every race, nationality and gender.

**6. Name three ways an organization can help prevent a hostile work environment.**

Possible answers include:

- Create an organizational structure with clear chains of command
- Create clearly defined job descriptions for each position in the company
- Reward teamwork as well as individual performance levels
- Provide adequate training for all employees
- Provide an employee assistance program (EAP)
- Create an environment of open and honest communication

**7. Is it age discrimination if an employee over 40 is replaced by another employee over 40?**

Possibly. In a recent U.S. Supreme Court unanimous decision, it was ruled that employers who replaced workers over the age of 39 with significantly younger individuals might in fact be in violation of the law, even if the new employee is also over the age of 39.

# Notes