




Discrimination and Harassment: A Minefield of Potential Liability

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Overview:



- (1) “Protected” Categories
- (2) How Can It Effect Your Business?
- (3) How Can You Protect Your Business?

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(1) Protected Categories



- The obvious
 - Sex, Gender, Race, Color, Religion, Age, Disability Status
- The less obvious*
 - National Origin, Citizenship, Gender Identity, Sexual Orientation, Pregnancy, Marital Status, Familial Status, Arrest or Conviction Record
- The ones that may surprise you*
 - Military Status, Predisposing Genetic Characteristics, Status as a Victim of Domestic Violence

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- **Discrimination**
 - “Disparate Treatment”
 - Favoring one group/category/protected class of employees over another
 - “Failure to Accommodate” (disability discrimination)
- **Harassment**
 - “Hostile Work Environment”
 - Severe and pervasive treatment
 - Intolerable environment
 - Extreme “Bullying”
 - “Quid Pro Quo” (sex harassment)
 - “Ultimatum”
- **Retaliation**
 - “Protected Activity” (ex. Complaining to supervisor about discriminatory or harassing behavior)

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- **Equal Employment Opportunity Commission (“EEOC”) –**
 - Federal agency charged with enforcing Title VII, ADEA, ADA, and Equal Pay Act, Pregnancy Discrimination Act, Genetic Information Non-discrimination Act
- **Employer Coverage**
 - Title VII – 15 or more employees
 - ADEA – 20 or more employees
 - ADA – 15 or more employees
 - Equal Pay Act – 1 or more employees

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(3) How Can it Effect Your Business? Fisher Phillips


- **Who can be “guilty” of harassment/discrimination?**
 - Anyone – not limited to treatment of employee by supervisor
 - Co-worker
 - Group or Shift Leader
 - Supervisor or Manager
 - Someone with whom you do business
 - Ex. customer, invitee, contractor, subcontractor

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(3) How Can it Effect Your Business? 


- Isn't it obvious if behavior is harassing or discriminatory?
 - Yes...
 - Derogatory Comments/Slurs
 - Unwanted Physical Contact
 - ...and No
 - Preferential Treatment Relating to...
 - Shifts/Scheduling/Job Assignments
 - Equipment
 - Housing Accommodations
 - Access to Facilities
 - Break and Meal Times
 - "I didn't even realize..." (often times it isn't even deliberate)

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(4) How Can You Protect Your Business? 



- Affirmative Defense for Employers
 - Written Policies/Handbook
 - Training
 - Communication
 - Third-Party HR "Hotline"?

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(5) Disparate Treatment Example 


- Avoid favorable treatment on the basis of a protected characteristic – National Origin discrimination:
 - EEOC alleged farm violated Title VII when "it subjected American and African-American workers to disparate terms and conditions of employment based on their national origin and/or race, including:
 - Segregated buses
 - Segregated work crews
 - Differences in production standards and work assignments
 - Unlawfully terminated qualified American and/or African-American workers and replaced them with foreign workers

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Final Questions

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