



Webinar 14 – July 23, 2025

A Review of Discrimination Claims in the Workplace

WEBINAR OUTLINE

INTRO/SETTING THE STAGE

- What is Unlawful Discrimination: Key Definitions

DISCRIMINATION CLAIMS

HANDLING DISCRIMINATION CLAIMS

BEST PRACTICES FOR EMPLOYERS

HRtelligence TIPS

INTRO/SETTING THE STAGE

What is Unlawful Discrimination: Key Definitions

What is Unlawful Discrimination?

“Discrimination” includes conduct or comments directed toward any individual(s) based on that individual’s race, creed, color, religion, age, gender, national origin, sexual orientation, pregnancy, gender identity characteristics or expression, citizenship status, marital status, familial status, caregiver status, veteran status, disability, genetic information, status as a victim of domestic violence, or any other legally protected status or regulation that affects or impacts a term or condition of that individual’s employment.

- Being denied a job
- Being fired
- Being forced to quit
- Being denied promotion
- Being subject to different or less equal treatment
- Being subject to **harassment** and hostile work environment

Title VII of the Civil Rights Act of 1964 – enforced by the U.S. Equal Employment Opportunity Commission (EEOC) – applies to employers with **15 or more employees**

New York State Law

“Discrimination” includes conduct or comments directed toward any individual(s) based on that individual’s race, creed, color, religion, age, gender, national origin, sexual orientation, pregnancy, gender identity characteristics or expression, citizenship status, marital status, familial status, caregiver status, veteran status, disability, genetic information, status as a victim of domestic violence, or any other legally protected status or regulation that affects or impacts a term or condition of that individual’s employment.

It is unlawful pursuant to the New York State Human Rights Law (NYSHRL) for an employer to discriminate because of an individual's age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status.

What Constitutes Unlawful Harassment?

Unlawful harassment is a form of discrimination that violates Title VII of the Civil Rights Act of 1964 and other federal authority. Unwelcome verbal or physical conduct based on “legally protected characteristics” constitutes harassment.

Generally, there are two types of harassment:

- (1) Quid Pro Quo Harassment
- (2) Hostile Work Environment Harassment

Unwelcome verbal or physical conduct based on race, color, religion, sex (whether or not of a sexual nature and including same-gender harassment and gender identity harassment), national origin, age (40 and over), disability (mental or physical), sexual orientation, or retaliation (sometimes collectively referred to as “legally protected characteristics”) constitutes harassment when:

1. A supervisor’s harassing conduct results in a tangible change in an employee’s employment status or benefits (for example, demotion, termination, failure to promote, etc.) – this is called quid pro quo harassment.
2. The conduct is sufficiently severe or pervasive to create a hostile work environment.

-Hostile work environment harassment occurs when unwelcome comments or conduct based on sex, race or other legally protected characteristics unreasonably interferes with an employee’s work performance or creates an intimidating, hostile or offensive work environment. Anyone in the workplace might commit this type of harassment – a management official, co-worker, or non-employee, such as a contractor, vendor or guest.

-The victim can be anyone affected by the conduct, not just the individual at whom the offensive conduct is directed.

-The employee does not gain a benefit or suffer a loss, but is exposed to an environment in which harassing conduct is severe and pervasive. This may include offensive language, jokes, gestures, comments or even offensive picture, calendars or graffiti. Liability is determined by what type of conduct a ‘reasonable person’ will think is offensive, intimidating or rude.

-Generally - Hostile Environment Examples: can include joking, pictures, stories, an environment that an individual may find offensive.

Intent – not just what the speaker/actor intended, but how it was perceived.

The Environment – not just those around you who are part of the conversation.

Understanding the Forms and Behaviors Harassment and Discrimination Can Take

In order to be able to effectively prevent harassment and discrimination in the workplace, it is

important to understand what forms or behaviors harassment and discrimination can take. There

are three main forms of harassing & discriminatory behavior:

- Verbal

- Visual
- Physical

DISCRIMINATION CLAIMS

A claim of discrimination generally requires several elements, including:

- **Protected Class Membership:** The employee must be a member of a legally protected class, such as those defined by race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability, or genetic information.
- **Adverse Employment Action:** The employee must have experienced a negative employment action, such as being denied a job, promotion, or training opportunity; being fired or demoted; experiencing a cut in pay or benefits; or facing harassment or a hostile work environment.
- **Qualification for the Job:** The employee must be qualified for the job in question or have been performing their job duties satisfactorily.
- **Causation:** The employee must demonstrate a causal connection between their protected characteristic and the adverse employment action. This means proving that the employer's decision was motivated, at least in part, by discriminatory animus

A claim of harassment generally requires several elements, including:

- The complaining party must be a member of a statutorily protected class;
- They were subjected to unwelcome verbal or physical conduct related to his or her membership in that protected class;
- The unwelcome conduct complained of was based on his or her membership in that protected class;
- The unwelcome conduct affected a term or condition of employment and/or had the purpose or effect of unreasonably interfering with his or her work performance and/or creating an intimidating, hostile or offensive work environment.

What is NOT Harassment?

The anti-discrimination statutes are not a general civility code. Thus, federal law does not prohibit simple teasing, offhand comments, or isolated incidents that are not extremely serious. Rather, the conduct must be so objectively offensive as to alter the conditions of the individual's employment. The conditions of employment are altered only if the harassment culminates in a tangible employment action or is sufficiently severe or pervasive to create a hostile work environment.

Not a general civility code

Does **NOT** prohibit

- Simple teasing
- Offhand comments
- Isolated incidents that are not extremely serious
- Feedback on job performance
- Feedback with regard to a company policy

Conduct must be so *objectively offensive* as to alter the conditions of the individual's employment.

Who is the Victim/Target?

- The victim can be the person who is the target of the behavior.
- Or it can be a third party who is not the intended recipient of the behavior. This is a person who merely witnesses or overhears the behavior, and finds it offensive.
- Third party complaints are actually fairly common, especially where two or three people frequently joke around with each other and are unaware, or just don't care, how their behavior affects others.

Interns

Interns are protected under the Human Rights Law. The Law defines "intern" as a person who performs work for an employer for the purpose of training under certain circumstances. The work performed by the intern is to provide or supplement training that may enhance the intern's employability, provide experience for the intern's benefit, be performed under close supervision of existing staff and not displace regular employees. If an individual is called an "intern" but paid, that person will likely be considered a regular employee under the Human Rights Law.

Who Can be the Perpetrator/Harasser?

Anyone in the company workplace: A co-worker; A supervisor, owner or manager; Any third party including a non-employee, intern, vendor, customer, etc.

Employers are responsible for preventing harassment of employees, no matter who is causing the problem or where it is occurring.

Off Premises Conduct

People often wonder whether certain off premises conduct is subject to the policy.

These may include:

- Offsite company-sponsored events
- Casual social engagements after work with employees (Ex. Meeting at a bar after work)
- Parties on the weekend where there are many employees in attendance

Many companies entertain customers. In many instances the guidelines WILL apply, particularly if the company is sponsoring the event.

Bullying in the Workplace

Workplace bullying is illegal if it is discriminatory.

Even if an employee or supervisor generally bullies all the employees, a discrimination claim may be viable if the bullying tends to be more frequent or pervasive to a particular employee or group of protected individuals.

What activity likely constitutes bullying in the workplace and should be prohibited?

- Belittling or humiliating comments;
- Spreading malicious rumors;
- Exclusion from work related events;
- Unreasonable work expectations;
- Using abusive, insulting, or offensive language;
- Using or threatening physical violence;
- Withholding information needed to perform an assigned task or job;
- Unfairly denying training;
- Unfairly denying personal leave;
- Regularly threatening to fire an employee; and
- Requiring an employee to do humiliating or inappropriate things.

Anti-Retaliation: retaliation for making a complaint about discrimination or harassment is prohibited by law. If this occurs, there may be a separate claim of retaliation in addition to any claim of discrimination/harassment. Retaliation occurs when the terms and conditions of one's work are unfavorably changed as a result of one's reporting sexual harassment or cooperating with the investigation of a sexual harassment complaint or lawsuit.

What is Retaliation?

Any adverse **action that you or someone who works for you takes against an employee** because he or she has

1) participated in a protected activity or

2) opposed an illegal practice.

Many employment related statutes such as Title VII, ADA, FMLA, FLSA, ADEA and NYS Human Rights Law have retaliation provisions.

Retaliation is defined as any *adverse* action that you or someone who works for you takes against an employee *because* he or she has participated in a protected activity or opposed

an illegal practice.

Neither the Company nor its Management can in any way retaliate against an individual who raises a good faith complaint alleging harassment or discrimination, or cooperates in any investigation. Retaliation is a serious violation of Company policy and will subject any employee who engages in retaliatory behavior to the same strict discipline as the harasser.

Participation in a protected activity can include such things as an employee's participation in a hearing as a party or a witness or an employee's participation in an internal or external investigation.

Examples of Retaliation:

What are some examples of retaliation?

- Not giving an employee a raise who filed a complaint
- Supervisor treating the employee who filed a complaint differently – ostracizes employee
- Suddenly, a popular employee is shunned by co-workers who somehow got 'wind' the employee filed a complaint
- Employee is suddenly being treated differently from others
- Employee who filed a complaint is denied promotion or raise
- Employee who filed complaint is transferred to another position and/or work location

Supervisor Responsibilities

Supervisors are held to a higher standard of behavior. They are:

- Required to report any harassment reported to them or which they observe.
- Responsible for any harassment or discrimination they should have known about
- Expected to model appropriate behavior

HANDLING DISCRIMINATION CLAIMS

Employers should proactively address discrimination claims by establishing clear reporting procedures, conducting thorough and impartial investigations, and taking appropriate corrective action when necessary. This includes understanding applicable anti-discrimination laws, fostering a culture of respect, and implementing policies that prevent discrimination and retaliation.

1. Prevention and Awareness:

- **Anti-discrimination training:** Implement mandatory training for all employees, especially managers, on workplace discrimination laws and best practices.

- **Clear policies and procedures:** Develop and disseminate clear, written policies prohibiting discrimination and harassment, including a well-defined reporting process.
- **Foster a culture of inclusion:** Promote diversity initiatives and equal opportunity hiring practices.

2. Handling Complaints:

- **Prompt and thorough investigation:**
When a discrimination complaint is filed, conduct a prompt, impartial, and thorough investigation.
- **Confidentiality:**
Maintain confidentiality throughout the investigation process, protecting the privacy of all involved parties.
- **Evidence gathering:**
Collect relevant evidence, including witness statements, documents, and other relevant materials.
- **Impartiality:**
Ensure the investigation is conducted without bias or prejudice, interviewing both the complaining party and the accused.
- **Accountability:**
Take appropriate disciplinary action against individuals found to have engaged in discriminatory behavior.

3. Post-Investigation:

- **Corrective action:**
Implement necessary corrective measures, such as retraining, disciplinary action, or policy changes.
- **Retaliation prevention:**
Ensure that no retaliatory actions are taken against the employee who filed the complaint or any witnesses.
- **Follow-up:**
Monitor the situation to ensure the discriminatory behavior has ceased and that the workplace environment is fair and equitable.

BEST PRACTICES FOR EMPLOYERS

Terms, Conditions, and Privileges of Employment

- Monitor compensation practices and performance appraisal systems for patterns of potential discrimination. Make sure performance appraisals are based on employees' actual job performance. Ensure consistency, i.e., that comparable job performances receive comparable ratings regardless of the evaluator, and that appraisals are neither artificially low nor artificially high.
- Develop the potential of employees, supervisors, and managers with EEO in mind, by providing training and mentoring that provides workers of all backgrounds the opportunity, skill, experience, and information necessary to perform well, and to ascend to upper-level jobs. In addition, employees of all backgrounds should have equal access to workplace networks.
- Protect against retaliation. Provide clear and credible assurances that if employees make complaints or provide information related to complaints, the employer will protect employees from retaliation, and consistently follow through on this guarantee.

Adopt a strong anti-discrimination/harassment policy, periodically train each employee on its contents, and vigorously follow and enforce it. The policy should include:

- A clear explanation of prohibited conduct, including examples;
- Clear assurance that employees who make complaints or provide information related to complaints will be protected against retaliation;
- A clearly described complaint process that provides multiple, accessible avenues of complaint;
- Assurance that the employer will protect the confidentiality of complaints to the extent possible;
- A complaint process that provides a prompt, thorough, and impartial investigation; and
- Assurance that the employer will take immediate and appropriate corrective action when it determines that harassment has occurred.



Implement and Adhere to Policies

- Implement a policy and make it clear that anyone who engages in discrimination, harassment or retaliation will be subject to remedial and/or disciplinary action.
- An investigation of any complaint should be completed within a reasonable timeframe.
- The investigation will also be confidential to the extent possible.
- An employee may be required to cooperate as needed in the investigation.

Training and Accountability

- Ensure that management and all employees know EEO laws and provide training. When dealing with discrimination/harassment claims:
- Investigate complaints immediately and thoroughly.
- Prevent and address retaliation.

Take Complaints Seriously: All allegations should be treated as credible and deserving of immediate attention.

Assign an Impartial Investigator: The investigator must be trained and unbiased to ensure an objective review of the matter.

Gather Evidence and Interview All Relevant Parties: Employers need a thorough investigation, including collecting documents – such as emails and messages – and interviewing the complainant, accused, and witnesses.