

WORKPLACE 2025 SERIES

Navigating Legal Trends and Workplace Strategies

“CAN I TALK TO YOU FOR A MINUTE?”

HR and Management’s Handling of Employee Concerns

Date: April 3, 2025

CLE/HRCI/SHRM CREDITS

- This program has been approved for HRCI and SHRM credit, as well as 1.0 hour of CLE credit in Georgia, Illinois, Florida, and New York (via reciprocity). Please note that some programs may not be awarded CLE credits because of content or jurisdictional restrictions. General Certificates of Attendance will be provided upon request for states where applications are not submitted.
- During the presentation, we will announce two CLE codes. To obtain CLE credit, record the course codes on the SGR Attendance Verification form that I'll be attaching momentarily. Then sign and submit the completed forms to Cheryl Smith at casmith@sgrlaw.com within five business days. Once your participation is verified, you will receive a Certificate of Attendance within three weeks.



TOPICS WE'LL COVER

AN EMPLOYEE SUBMITS AN INTERNAL COMPLAINT ABOUT INAPPROPRIATE WORKPLACE CONDUCT. NOW WHAT?

NAVIGATING REQUESTS FOR DISABILITY ACCOMMODATION.

EXECUTIVE ORDERS FROM THE NEW ADMINISTRATION: HOW DO THEY IMPACT HR AND MANAGEMENT RESPONSE TO EMPLOYEE CONCERNS.

RECENT COURT DECISIONS

INTERNAL COMPLAINTS



Buzzword

A word or phrase which has become fashionable or popular, or sounds technical or important and is used to impress people.

Harassment

Bullying

Discrimination

**Hostile
Workplace**

**Toxic
Environment**

UNLAWFUL DISCRIMINATION AND HARASSMENT – A GENERAL OVERVIEW

- Title VII of the Civil Rights Act of 1964 prohibits discrimination, harassment and retaliation on the basis of protected classifications:
 - Sex (including pregnancy, gender nonconformity, sexual orientation, and transgender status)
 - Race
 - Color
 - Religion
 - National origin
- Title VII prohibits adverse employment actions (termination, demotion or change in compensation) based upon an individual's membership in a protected classification
- Title VII prohibits harassment on the basis of an individual's protected classification.



STATE AND LOCAL LAW – AN OVERVIEW

- Like Federal law, most State and Local laws prohibit discrimination or harassment in the workplace on the basis of an individual's protected classification.
- The distinction between Federal and State/Local law is that, in some jurisdictions, it provides great protections and on a lower burden of proof.
 - For example, in New York State and City, the laws protect employees and independent contractors from discrimination and harassment whenever an individual is subjected to inferior terms, conditions or privileges of employment because of their protected classification.
 - New York law also designates additional characteristics as protected under the law including marital status, familial status (including being pregnant, or having a child under 18), height and weight, genetic predisposition, domestic violence victim status, among others.



EMPLOYER DEFENSES TO HARASSMENT AND DISCRIMINATION CLAIMS

Employer must show:

- It took reasonable care to prevent and correct any discrimination and/or sexual harassment behavior in their workplace
- Employee unreasonably failed to take advantage of any preventative or corrective opportunities provided by employer (only applies to Title VII claims)
- Training of both managers and employees on a yearly basis (state law)

Conduct investigations promptly and thoroughly; and follow up to ensure that no retaliation has occurred

Document every discrimination and/or sexual harassment complaint

Document the investigation of, and follow up on, every discrimination and/or sexual harassment complaint

In other words, conducting a prompt and thorough internal investigation is critical to defending against claims for harassment or discrimination!



"CAN I TALK TO YOU FOR A MINUTE?"

How are internal complaints submitted?

- It can be informal, verbal, by e-mail, or written form.
- It can be an employee asking you to speak "off the record" "confidentially" or "as friends".
- ***Remember - even in instances where someone does not want to speak "on the record" or if they ask to speak with you "confidentiality" or "as friends," you still need to report their concerns to Human Resources or, if you are a member of the HR team, ensure the concerns are documented, investigated and addressed.***
- When in doubt, involve HR!

What exactly IS the complaint?

- *"He's harassing me"*
- *"She yells at me"*
- *"This has all created a hostile work environment"*
- *"I am treated differently than other people...."*
- *"It's toxic! It's abusive! It's hostile! It's bullying!"*



INTERNAL COMPLAINTS



Real World Examples of E-Mails to HR:



In my previous job, I was treated with the utmost respect. My supervisor there would create detailed training documents whenever I asked a question. In contrast, at this company, I have felt emotionally harassed and unsupported, with little to no training provided. I could not imagine a work culture could be so toxic as it is here.



Something has to change, or I will not be able to continue working here. I spent most of this last weekend stressed and having anxiety over interactions with Mike. It seems to me that regardless of the situation, Mike is set to prove that I am wrong. It's not just me that he does this to, he constantly belittles my colleagues as well. It is creating a hostile work environment that I honestly don't want to participate in. I am requesting a new supervisor.

INTERNAL INVESTIGATION

You received an internal complaint, now what?

The Company should comply with its internal complaint procedure policy and conduct a prompt and thorough investigation by:

- reviewing the internal complaint and identifying the facts and issues to be investigated;
- interviewing the complainant and accused, and any eyewitnesses identified during the investigation;
- compile and review relevant documents, including e-mails or text messages;
- Finally, based upon the interviews and relevant documents either substantiate or not substantiate the internal complaint allegations and, if necessary, take corrective action to ensure (1) the inappropriate workplace conduct does not occur again; and (2) ensure no retaliatory action is taken in response to the complaint or for cooperating with the investigation.



WHO SHOULD CONDUCT THE WITNESS INTERVIEWS?

SELECTING THE INTERVIEWER

- Investigations should be conducted by an objective, disinterested party. Ideally, a member of the employer's human resources department, or by an independent third party (i.e., attorney) should be chosen for this role. Regardless of who is selected to conduct the interview, an employer must ensure that the investigation is not conducted by any individual named in the employee's complaint or in that person's direct chain of command. All steps should be taken to ensure that objectivity remains an element of the investigation.
- Care should be taken to ensure that no accusatory statements are made by the investigator. Further, the investigator should avoid statements which imply that the accused is guilty, that the complainant is not believed, or that any particular action will be taken if the allegations are true.

PRACTICAL CONSIDERATIONS WHEN INTERVIEWING THE COMPLAINANT

Stress the seriousness of the charge to the Company and explain the Company's policies against harassment and discrimination.

Support the employee's decision to make the complaint and stress that the Company does not permit retaliation just because someone makes a claim or complaint.

Get details. Ask open-ended questions to obtain as much information as possible (who, what, why, when, where and how).

Develop a list of any witnesses to the acts, actions or statements of which the employee has complained. Explain to the complainant that any witnesses named will have to be interviewed.

Ask for copies of any documents - notes, letters, diary entries, tape recordings, photographs, security camera footage, text messages or memoranda - that relate to the complained of conduct.

Explain the Company's expectations of confidentiality concerning the investigation and ask (but do not require) that the complainant not discuss the investigation or facts with witnesses or anyone else during the investigation.

See if the complainant is willing to sign a written statement which sets forth the complaint. However, if the complaining party is reluctant to put the complaint in writing, he or she should not be coerced to do so and the individual speaking with the individual should prepare the necessary documentation.



DO'S



DON'TS

PRACTICAL CONSIDERATIONS WHEN INTERVIEWING THE ACCUSED

Interviewing the Accused

- Inform him or her fully of the charges.
- Sometimes the accused asks if they can have a lawyer or representative with them – with the exception of certain rights for union members, they cannot.
- Explain the Company's interests in fairness to both parties in investigating the complaint and the importance of the accused's honesty, truthfulness and cooperation in attempting to determine the facts involved in the situation.
- The accused should be able to respond to each factual allegation; a general denial is insufficient. Pin him or her down on exactly what he or she denies, admits, or attempts to explain.
- The accused should also be willing to sign a written statement with regard to his or her response to the complaint.



CONCLUSIONS, ACTIONS AND FOLLOW-UP

- Carefully document the investigation.
- Determine the weight and credibility of the overall evidence.
- If sufficient evidence of discrimination or harassment is found, the possible alternative forms of disciplinary action should be considered.
 - Review disciplinary actions taken in past situations involving similar conduct and determine the seriousness of the action to establish what form of discipline should be taken.
 - Verbal or written warning, suspension, demotion, reduction in compensation or bonus, or, depending upon the nature and severity of the conduct, termination.



CONCLUSIONS, ACTIONS AND FOLLOW-UP

- If action is taken against the accused, he or she should be informed of the reasons in writing and a memorandum should be placed in the accused's personnel file.
- The complainant should be advised that appropriate action has been taken against the offender, but there is no need to advise the complainant of the specific action taken.
 - Tell complainant to notify the Company of any further incidents or any retaliatory action by the offender or any member of management or by any coworker.
- If the results of the investigation are inconclusive, both parties should be so advised.
 - The complainant should be advised to notify the Company if any further incidents or retaliation occurs, should be reassured of the Company's commitment to its policies and should be encouraged to report any future complaints.
 - The alleged offender should be reminded of the Company's policies of non-discrimination and non-harassment and informed that the Company will follow up to ensure that the complainant suffers no retaliatory action.

REAL WORLD SCENARIOS



THE GOOD THE BAD AND THE UGLY

The Good

Jury Sides with MetLife in Fired Exec's Pay Bias Suit

- Plaintiff, former CAO Mona Moazzaz, alleged:
 - She was paid hundreds of thousands of dollars less than male counterparts
 - Claimed paid far less for “equally complex work” despite outstanding performance
 - She was passed over for promotion due to her gender and subjected to gendered criticism
 - Not promoted because she was “too mean” and “shouts”
 - Head of HR once called her a “bitch”

The Good

- Plaintiff was denied promotion; later fired
- Company able to document legitimate, non-discriminatory reasons for employment actions
- Court found company was able to show she was terminated due to restructuring, not bias
- Jury verdict for company 12/12/2024
- *Mona Moazzaz v. MetLife Group et al.*
 - *U.S. District Court, Southern District of NY*
 - *Case No. 19-CV-10531*

The Bad

EEOC Says SkyWest Left Harassment Questions “Unasked”

- Female employee subjected to “unrelenting sexual assault jokes”
- Male co-workers joked with her about “prostituting” her out, sexual positions and asking if she liked “whips and chains”
- She *complained to her supervisors*
 - Nothing
- She *complained to HR*
 - Surface level investigation
 - **Interviewed people in the department at random rather than speaking to all people she accused of inappropriate comments**

The Bad

- HR “Investigation”
 - Only minor punishments to wrongdoers
 - Department supposed to undergo harassment training
 - Didn’t occur until 3 years later
 - HR representative “admitted she didn’t want to fire an entire department”
- Company says her complaints were off-hand and other issues like part-time were at issue
- Psychiatrist notes don’t reference harassment

The Bad

SkyWest Airlines Hit with \$2M Verdict in EEOC Harassment Case

- Jury found harassment consistent and pervasive
- Company knew or should have known of harassment
- Company swept allegations under the rug
 - Slipshod investigation
 - Punishments mere slaps on the wrist
 - Mental distress to victim
- VERDICT – 11/20/2024
 - Compensatory damages → \$170,000
 - Punitive damages → \$2,000,000



The Ugly

Walmart truck driver alleged company defamed him when it falsely accused him of fraud and fired him after he was injured on the job and filed a workers compensation claim.

- Worked as driver for 14 years; great job
- Was rear-ended in wreck
- Doctors told him not to drive, bend or stoop
- He told Walmart he was still going to go on two previously scheduled family trips



The Ugly

In response, Walmart hired a private investigator.

- Video showed him bending over
 - But doctors said that's ok; just no "commercial driving"
 - Internal fraud investigations department found employee to be credible and honest
 - Declined to refer him for possible criminal fraud
- So where did things get ugly....?

The Ugly

- Fraud investigator's report given to ethics department
 - *They* unilaterally decided employee had acted with "intentional dishonesty"
 - Did not interview employee or fraud investigator
- Because it was then deemed an "integrity" violation, company skipped its normal progressive discipline process and fired him
- Lawsuit claimed defamation
 - Injury to his reputation
 - "Part of broader scheme to use false accusations to force injured truckers back to work prematurely or, if not, to terminate them so that Walmart can cut down workers' compensation costs."

The Ugly

- California jury verdict for employee on 11/29/24
 - Damages for lost wages, earnings, benefits, and emotional distress, shame and harm to reputation
 - → \$9.7 million
 - Punitive damages due to malicious actions
 - → \$25 million
 - *Jesus Fonseca v. Wal-Mart Associates, Inc.*
 - Superior Court of State of California; County of San Bernadino
 - Case No. CIVDS1909501

CLE CREDITS

CLE Code 1: CIT435

***Note: Both codes are required to receive CLE credit**

ACCOMMODATIONS IN THE WORKPLACE

OVERVIEW

- **The Americans with Disabilities Act** of 1990 (ADA), as amended by the ADA Amendments Act of 2008 (ADAAA), is the primary federal law protecting the rights of individuals with a disability (42 U.S.C. §§ 12101-12213).
- The ADA requires covered employers to:
 - Refrain from discriminating against qualified individuals because of a disability.
 - Provide a reasonable accommodation to otherwise qualified individuals with a disability.
- The ADA requires employers to reasonably accommodate disabilities of employees, unless doing so results in an undue hardship to the employer.
- The ADA does NOT require an employer to hire or retain an individual who cannot perform all essential functions of their job, with or without reasonable accommodations.
 - *Practical Tip:* job descriptions are an important resource when assessing whether the employer can perform their essential job functions, with or without accommodation.

OVERVIEW cont.

- Employers should also be mindful of a relatively new federal law, the Pregnant Workers Fairness Act (the “PWFA”)
- The PWFA requires covered employers to provide a reasonable accommodation to qualified employee’s or applicant’s known limitations related to, affected by, or arising out of pregnancy, childbirth or related medical conditions, unless doing so would cause the employer an “undue hardship”.

UNDUE HARDSHIP

- An undue hardship exists if the accommodation is too difficult or too expensive to provide in light of the employer's size, its financial resources, and the needs of the business.
- The expense or difficulty of providing the accommodation must be significant to claim undue hardship, and the accommodation cannot be denied just because there is some cost.
- ***Practical Tip:*** When considering whether an undue hardship exists contemporaneous documents reflecting the employer's analysis are important to support a defense.



REQUESTS FOR ACCOMMODATION

What do they look like?

- No “magic words” required, and employee does not need to specifically mention the ADA.
- Sometimes the request can be vague. A request doesn’t always include the words “disability” or “accommodation”. You should err on the side of treating a vague request as an accommodation request.
- The initial request can be formal or even informal.
 - A conversation, an e-mail or even a doctor’s note.

Any employee asks for an accommodation, what do you?

- Follow-up with HR who should handle any follow-up requests for appropriate documentation of the request, if necessary (i.e., a doctor’s note) and to engage in the interactive process.

THE INTERACTIVE PROCESS

An informal process to:

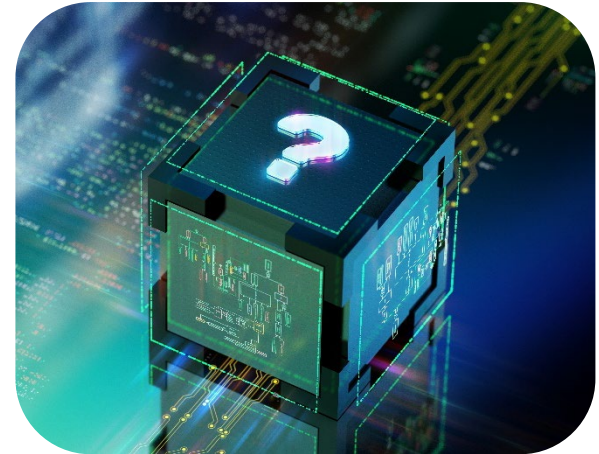
- Clarify what the individual with a disability needs.
- Identify an appropriate reasonable accommodation.

Both the employer and the individual seeking accommodation must participate in the interactive process in good faith.



BE CAREFUL ABOUT DISCUSSIONS

- Do not ask an employee detailed questions about their medical condition and treatment
 - Even if the questions are well-intentioned and compassionate
 - Only consider the core question:
 - *Is the individual able to perform the essential functions of their job with or without reasonable accommodation?*



COMMON MISTAKES

- Everything is evidence
 - Tone and sarcasm don't translate well in texts and emails
 - Employee – long email to management about his cancer and physical effects
 - Manager – *"Geez, this guy will come up with anything to get out of work"*

RETALIATION PROHIBITED

1

Taking adverse employment action against an employee for exercising the employee's rights to a reasonable accommodation under the ADA.

2

Penalizing an employee for work missed during leave taken as a reasonable accommodation.

3

Denying an accommodation to a qualified individual with a disability but granting these requests for similarly-situated non-disabled employees.

TIMING MATTERS

- It's not just WHAT happens that matters
 - WHEN it happens, and in what order, matters
- If adverse action occurs within a short time of protected activity, a presumption of retaliation arises.



COMMON PROBLEMS WITH ADA

- Shooting from the hip
- Management inflexible
 - Don't like time away from work or special treatment
 - But ADA accommodations may *require* special treatment
- ADA situations
 - Engage in “interactive process”
 - Review on case-by-case basis
 - Get HR involved

EXAMPLES OF REASONABLE ACCOMMODATIONS

- Job restructuring.
- Part-time or modified work schedules.
- Telework
- Additional, longer or more flexible breaks
- Light duty or help with lifting or other manual labor
- Reassignment to a vacant position that is equivalent in pay and status, or as close to equivalent as possible, if the employee is qualified for that position.
- Acquisition or modification of equipment or devices.
- Providing qualified readers or interpreters.

RECENT COURT DECISIONS RELATING TO DISABILITY ACCOMMODATIONS

- *EEOC v. Hobby Lobby Stores Inc.*, Case No. 2:22-cv-02258), alleging that Hobby Lobby was assuming, without objective support for its assumption, that the presence of a service animal in the store would have posed an undue hardship.
- Specifically, while the part-time clerk submitted medical documentation supporting her need for a service dog, the Company's district manager and human resources decided, without any supporting evidence, the dog would present a safety issue, even though customers were permitted to bring service and pet dogs to the store.
- Hobby Lobby settled the suit by paying S.C. \$50,000 and agreeing to adopt and maintain policies that service animals can be considered reasonable accommodations and to provide employee training to ensure future compliance with the ADA.
- In its press release announcing the consent decree, the EEOC warned that "[e]mployers cannot reject services animals ... based on unfounded assumptions regarding safety."

RECENT COURT DECISIONS RELATING TO DISABILITY ACCOMMODATIONS

- *Yanick v. Kroger Co. of Michigan*, Case No. 23-1439 (6th Cir. April 29, 2024). alleges the supermarket failed to accommodate a manager after she returned from medical leave due to cancer since she was transferred to a lower position because she was having difficulties performing her job. The Sixth Circuit court held that Ms. Yanick met her burden.
- The court stated that when they evaluate a failure to accommodate claim, they conduct a general assessment to determine if the employee communicated a need for an adjustment at work because of a disability. The court also noted that an employee does not need to use specific words such as "accommodation" or "disability" when they make their request in order to meet this burden. Furthermore, the court emphasized that an employer must draw a reasonable inference from what an employee says based on the context of the situation.
- An employee is not required to connect her requests to her medical restrictions in order to succeed on a failure to accommodate claim. Ms. Yanick used phrases such as "[she] needed some time to get back to normal" and that she "was struggling."
- The court held that under the context of Ms. Yanick's recent breast cancer diagnosis and her use of those phrases, a jury could reasonably conclude that Ms. Yanick was requesting a reduced work schedule, which is considered a reasonable accommodation.

RECENT EXECUTIVE ORDERS AND THE NEW ADMINISTRATION: HOW DO THEY IMPACT HR AND MANAGEMENT RESPONSE TO EMPLOYEE CONCERNS?



So, What is an Executive Order?

- Executive orders are signed, written, and published orders from the President of the United States that manage and are binding on Executive Branch agencies. Executive orders can be used to implement or clarify existing federal law or policies and can direct and manage the way federal agencies interact with private entities. However, executive orders are not a substitute for either statutes or regulations.
- Although the President has extensive powers under Article II of the Constitution, that does not necessarily mean that executive orders can be issued and enforced.
 - As you may have seen in the news, many of President Trump's recent Executive Orders have been challenged in court by advocacy groups, and even law firms.
 - Many of the Executive Orders are currently subject to temporary injunctions, temporarily blocking their enforcement.
 - We expect these issues will continue to play out in the Courts.

RECENT EXECUTIVE ORDERS

- President Trump issued executive order **Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government**. While this order does not affect the private sector on its face, it nonetheless has broad implications for private sector employers.
 - The order states that it is the “policy of the United States to recognize two sexes, male and female.”
 - The order directs federal agencies (i.e., the EEOC) to remove all statements, regulations, forms, communications or other messages that promote or otherwise inculcate gender ideology and cease issuing such statements, policies and ideologies.
 - The EEOC has modified its Know Your Rights Poster and its website to comply with this Executive order
- President Trump also issued an Executive Order titled “**Ending Illegal Discrimination and Restoring Merit-Based Opportunity**” which, among other things, seeks to eliminate certain affirmative action and DEI programs and initiatives, which are referred to in the Order as “race and sex-based preferences”.
 - In response to the EO, on March 19, 2025 the EEOC and the DOJ issued multiple documents explaining the administration’s view of DEI as a form of workplace discrimination. The US Department of Health and Human Services announced action against an unnamed “major medical school in California” relating to its DEI initiatives.
 - **Note:** The DEI EO has been challenged in various Federal Court, resulting in a **partial temporary injunctions enjoining its enforcement**.

What does this mean?

- Employers' policies and training programs must comply with the broad legal standards set forth in Title VII and applicable State and Local law.
 - If an Employer receives an internal complaint regarding discrimination on the basis of gender identity, this must be investigated and addressed.
 - Employer's should ensure hiring and work related opportunities are accessible to all candidates and employees, regardless of their protected characteristics.
 - Employers should always base their hiring and promotional decision on merit-based considerations and not on an individual's protected characteristic.

WORKPLACE 2025 SERIES

Navigating Legal Trends and Workplace Strategies



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June 11, 2025

11:30 a.m. – 1:00 p.m. ET

Navigating the Uncharted Waters of Employment Law Under a New Administration

Does the National Labor Relations Board Still Exist?

- Current State of the NLRB
- What Changes Should Employers Expect in Labor Law
- Best Practices for Employers to Navigate Labor Law

Sex and Gender in the Workplace

- Pregnant Women in the Workforce
- Reasonable Accommodations
- Litigation Trends and Best Practices

How do the President's Executive Orders Impact Employers?

- Executive Orders, what are they exactly?
- Effects of the Repeal of EO 11246
- What is the future of DEI Programs?

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SAVE THE DATE

Please send questions to sgrevents@sgrlaw.com.



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CLE Code 2: YFM205

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QUESTIONS?