

# Employment Law



## **OBJECTIVES**

- Review major Employment Laws and Harassment
- Understand the importance of employment law in the workplace
- Evaluate when and how workplace conduct and behavior are governed by law
- Identify and discuss how to prevent various types of workplace discrimination and harassment
- Apply information with case studies and other activities

## Two Areas of Focus in this Workshop

- A) Major Employment Laws
- B) Harassment

### Why are Employment Laws Important?

Employment laws have a uniform purpose: they protect employees' rights and set for them employers' obligations and responsibilities.

The primary functions of labor laws are to provide equal opportunity and pay, employees' physical and mental well-being and safety, and workplace diversity.

1. Employers, and not the employees themselves, will often be held liable for the conduct of their employees
  - a. Employers are seen as directing the behavior of their employees and accordingly must share in the good as well as the bad results of that behavior. By the same token that an employer is legally entitled to the rewards of an employee's labor (profit), an employer also has the legal liability if that same behavior results in harm
2. Litigation, fines and penalties...
3. Demoralized workers...which may lead to turnover
4. Time
5. Reputation of the municipality

## PART A – MAJOR EMPLOYMENT LAWS

### Employment at Will

At-will employment refers to an employment agreement stating that employment is for an indefinite period of time and may be terminated either by the employer or employee. If employment is at-will, such an agreement would typically be expressly included in the relevant employment contract.

- Employment relationships are presumed to be “at-will” in all U.S. states except Montana
- At-will means that an employer can terminate an employee at any time for any reason, except an illegal one, or for no reason without incurring legal liability. Likewise, an employee is free to leave a job at any time for any or no reason with no adverse legal consequences
- Florida employers cannot fire employees for discriminatory reasons or for reasons that infringe on a protected right. For example, they cannot terminate an employee based on religious preference, color, country or origin, disability or race.
- Florida’s employers cannot terminate employees when employment contracts with definitive terms (beginning and ending dates) are in place. It’s important to note that, Florida does not recognize oral or “implied” employment contracts in addition to definitive ones.
- Florida employers are not allowed to fire employees for retaliatory purposes, meaning they cannot terminate employees who file complaints against them or take part in other related “whistleblowing” acts. Any Florida employer found in violation of any of these rules runs the risk of being sued for wrongful termination in a Florida court of law.

- Florida’s Whistle-blower’s Act protects public-sector employees who disclose information regarding suspected violations that create and present “a substantial and specific danger to the public’s health, safety, or welfare.” The statute also protects public-sector employees who disclose information about “[any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty.]”
- Florida is also a “**right to work**” state. It means that unionization is not compulsory, and your employer is not able to force you to participate in a union or to pay union dues. This term does not apply to an employer’s hiring or firing you, nor does it mean you have the right to be employed

## ***Major FEDERAL Employment Laws***

*Note: The below listing provides a brief summary of FEDERAL employment laws and is not intended as a complete or detailed explanation of laws that apply to supervisors.*

### **Age Discrimination in Employment Act (ADEA)**

- Applies to employers with 20 or more employees
- Prohibits employment practices that discriminate on the basis of age
- Protects people age 40 or over
- Prevents employers from having a mandatory retirement age

### **Americans with Disabilities Act (ADA)**

- Applies to employers with 15 or more employees
- Prohibits discrimination against qualified individuals with disabilities in all aspects of employment
- Requires employers to “reasonably accommodate” qualified disabled applicants/employees unless it would impose an “undue hardship.”
  - Qualified means that one can, with or without reasonable accommodation, perform the essential job functions

### **Civil Rights Act of 1964 ~ Title VII**

- Applies to employers with 15 or more employees
- Prohibits employment discrimination based on race, color, sex, religion, or national origin
- Prohibits employers from retaliating against employees who have raised a complaint or filed a claim
- Covers both intentional and unintentional discrimination
- Considers sexual harassment a form of sex discrimination

### **Civil Rights Act of 1991**

- Revised Civil Rights Act of 1964
- Allows employees who file suit for intentional discrimination under certain laws to have a jury trial and to collect compensatory and punitive damages.

## **Equal Pay Act**

- Applies to employers with 15 or more employees
- Prohibits sex-based wage discrimination between men and women in the same establishment who perform jobs that require substantially equal skill, effort, and responsibility under similar working conditions
- Exceptions:
  - a seniority system
  - a merit system
  - a productivity system, or
  - any factor other than sex
    - additional education or training
    - more experience in the industry
    - willingness to work evenings or weekends
    - greater revenue generated by the employee
    - greater employee bargaining power

## **Fair Labor Standards Act (FLSA, or Wage and Hour Law)**

- Applies to most employers with a few exceptions (for example airline employees and small farms)
- The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in Federal, State, and local governments.
- Minimum wage federal is \$7.25/hour
  - Effective September 30, 2023, Florida's minimum wage is \$12 per hour and \$8.98 per hour for tipped workers
  - Overtime pay is a minimum of 1.5 times the regular rate of pay for non-exempt employees after 40 hours of work in a workweek

## **Family and Medical Leave Act (FMLA)**

- Applies to private employers with 50 or more employees and all public employers. Employees must meet eligibility requirements for FMLA leave.
- Requires employers to provide eligible employees with up to 12 weeks of job-protected unpaid leave during any 12-month period for the birth, adoption, or foster care placement of a child, for the employee's serious health condition, or to care for a spouse, child, or parent with a serious health condition.
- Protects most employees' jobs and benefits during the leave.
- Military: Twenty-six workweeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness if the eligible employee is the servicemember's spouse, son, daughter, parent, or next of kin (military caregiver leave).

## **GINA - Genetic Information Nondiscrimination Act**

- Applies to employers with 15 or more employees
- Prohibits the use of genetic information when making employment decisions, restricts employers from requesting, requiring, or purchasing genetic information, and strictly limits the disclosure of genetic information.

## **Pregnancy Discrimination Act**

- Applies to employers with 15 or more employees
- Prohibits employers from basing employment decisions on sex, pregnancy, childbirth, or related medical conditions
- Prohibits discrimination on the basis of pregnancy, childbirth, or related medical conditions
- Requires any employer with short-term disability plans to apply to pregnancy

# ***STATE Employment Laws***

***\*Note: The below listing provides a brief summary of select Florida state employment laws and is not intended as a complete or detailed explanation of laws that apply to supervisors.***

## **Florida Civil Rights Act**

- The general purpose of the Florida Civil Rights Act of 1992 is to secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or *marital status*.
- FCRA has no cap on compensatory damages, which is different from the federal civil rights laws.
- Has a different timeline and procedures than Federal laws.

## **Workers' Compensation**

- Workers' compensation statutes are state laws, so they may vary from state to state.
- Worker's Comp provides benefits for job-related employee injuries and includes benefits for medical expenses, disability, or death.
- In Florida: If the employee's doctor states an employee cannot work because of a work-related injury or illness, the employee should receive compensation equaling 66 2/3% of his/her regular wages at the time the employee was hurt, subject to a statewide maximum reimbursement amount. The employee will not receive temporary disability benefits for the first 7 days of disability unless s/he is disabled more than 21 days due to the work-related injury as determined by the authorized doctor.
- There are additional benefits for certain severe injuries, permanent total disability, and work-related death.

## **Workers Compensation – Supervisor Responsibilities**

1. Focus on safety for employees in the workplace.
2. Ensure you know the guidelines for Ocala so you can advise employees of their rights.
3. Report injuries promptly.
4. Complete the necessary paperwork.
5. You may be required to assist with investigation, cause, and prevention recommendations.

## **Behavioral Model**

1. **Monitor Words and Actions**
  - Screen comments, jokes, behavior (yours and your employees)
  - Do not demean any employee
  - Treat your employees like you treat your best customers
  - Refrain from engaging in offensive or unwelcome behavior
2. **Document**
  - Gather all facts prior to making business decisions
  - Document only the facts
  - Keep accurate and timely records
  - Be objective
  - Don't be afraid to document performance problems

### **3. Utilize Resources**

- Refer to organizational policies
- Contact the appropriate person or department (HR) when you address:
  - Employee concerns
  - Workplace issues
  - Potentially high-risk situations
  - Any issues you are unsure of

### **4. Be Consistent and Professional**

- Know your organization's policies
- Base decisions on business reasons
- Focus on employee's capabilities
- Focus on the problem, not the person
- Do not overreact to situations

### **5. Avoid Unnecessary Disputes**

- Apply the Behavioral Model in every situation
- Correct behavior that does not belong
- Remember, if it isn't written (documented), it didn't happen!
- What will 12 strangers think? Or social media?

## **PART B - HARASSMENT**

Harassment of any kind is bothersome, demeaning, irritating, and annoying behavior. Any harassment that is based on a protected characteristic is a form of discrimination that violates Title VII of the Civil Rights Act and/or applicable state and local laws.

Most harassment is disrespectful behavior toward others. The involved parties can be men or women, supervisors, subordinates, or peers.

We all suffer when our workplace tolerates abusive and demeaning behavior.

All forms of discriminatory harassment are unlawful under applicable local, state, and federal law. Forms of discriminatory harassment include harassment based on race, color, religion, sex (gender), sexual orientation, age over 40, national origin, and disability, and genetics.

Examples of such harassment include:

humor that offends another person based on gender, sex, race, national origin, disability, sexual orientation or any protected category,  
using slurs or negative stereotypes,  
threatening, intimidating, or engaging in hostile acts that relate to a protected characteristic,  
offensive jokes or pranks targeted at members of a protected group,  
placing on walls, bulletin boards or elsewhere on the employer's premises or circulating in the workplace by any medium, oral, written, electronic or graphic material that belittles, mocks or shows hostility toward a person or group because of protected characteristics.

Other harassment conduct includes:

Displaying inappropriate cartoons, calendars, posters, drawings, pinups, or pictures of a sexual nature in the workplace,  
offensive gestures or leering,  
sending suggestive or obscene letters, notes, memos, invitations, e-mails,  
showing electronic bulletin boards or computer graphics that offend another person based on gender, sex, race, national origin, disability, or sexual orientation,  
telling off-color jokes, snide remarks, gossip, chauvinistic comments, racial slurs,  
behaviors designed to trouble or worry the victim, such as tricks, looks, hostile attitudes, blocking the way, and emotional injuries.

### **Sexual Harassment Defined**

Sexual harassment involves influencing, offering to influence, or threatening the career, pay, or job of another person in exchange for sexual favors; or making deliberate or repeated offensive comments, gestures, or physical contact of a sexual nature in a work or work-related environment.

**Unwelcome** sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when any of four conditions is met:

#### **I. Quid Pro Quo is** Latin for “this for that” or “something for something”

Submission to the conduct is either explicitly or implicitly made a term or condition of obtaining employment.

Submission to or rejection of the conduct is used as a factor in decisions affecting that person’s employment;

#### **II. Hostile Environment**

The conduct has either the purpose or effect of “substantially interfering” with a person’s employment.

OR

The conduct creates an “intimidating, hostile or offensive” work environment.

## What May Be Considered Sexual Harassment?

### Verbal conduct such as:

- disparaging remarks about gender, anatomy, or sexual activities
- obscene language
- derogatory comments, slurs, or jokes
- persistent expressions of sexual interest, despite evidence that the interest is unwanted
- comments about clothing, personal behavior, or a person's body
- sexual or gender-based jokes or teasing
- requests for sexual favors; repeated requests for dates
- terms of endearment such as "honey," "dear," "sweetheart," "babe"
- references to an adult as "girl," or "boy," "doll" or "hunk,"
- sexual innuendoes or stories
- leers, grunts, wolf whistles, catcalls
- hoots, sucking noises, lip-smacks and animal noises
- tales of one's partner's sexual inadequacies or prowess
- tales of sexual exploitation
- graphic descriptions of pornography
- demands such as, "Hey, baby, give me a smile"
- exaggerated, mocking "courtesy"
- obscene phone calls
- lies or rumors about a person's personal or sex life
- puns such as turning work discussions to sexual topics

### Physical conduct such as

- lingering near the body
- pressured or coerced sexual conduct
- leaning over, invading a person's space
- inappropriately touching a person or person's clothing
- "accidentally" brushing sexual parts of the body
- indecent exposure, mooning or flashing
- blocking someone's path with the purpose of making a sexual advance
- uninvited neck massaging
- deliberately touching sexually, or brushing up against, or pinching
- pressing or rubbing up against a person
- stalking, grabbing attempted or actual kissing, fondling, hugging, patting, stroking
- actual or attempted sexual assault



## Important Terms

- **BFOQ – Bona Fide Occupational Qualification** - an exception that applies where an employer can prove that an employment preference based on one of the protected class characteristics is reasonably necessary to the normal operation of its particular business or enterprise.
- **Discrimination**—any action that unlawfully or unjustly results in unequal treatment of persons or groups based on race, color, gender/sex, national origin, religion, age, disability or genetic information.
- **Harassment**—the act of harassing, or state of being harassed; a feeling of intense annoyance, anxiety or worry caused by being tormented.
- **Impact vs. Intent**—the impact of the behavior is what the courts consider important. A person’s intent is not relevant in determining whether behavior may be sexual harassment; in other words, the law views the issue from the “eye of the beholder.” *It is important to understand that intent is not relevant in determining whether or not a behavior is sexual harassment.* All that matters is the impact of the behavior on the work environment. Regardless of intent, the behavior will be judged on its impact upon the work environment.
- **Pattern (Pervasiveness) and Severity**—deliberate and repeated behavior that establishes a pattern of behavior is the criterion used in hostile environment situations; the severity of the behavior is also an issue—the more severe the behavior, the less important pattern becomes.
- **Protected Class**—a group named in a law as protected from discrimination.
- **Reasonable Person Standard**—the standard used by courts to assess whether particular conduct is harassment by asking whether a reasonable woman or man would find it offensive.
- **Retaliation**—taking or threatening to take an unfavorable employment action against or withholding or threatening to withhold a favorable employment action from an individual for attempting to complain about sexual harassment or other forms of workplace discrimination or for participating in an investigation of such activities.
- **Sexism, Racism, Ageism, etc.**—attitudes and beliefs that one gender/sex, race, age group, etc., is superior to another.
- **Third Party Harassment**—harassment that affects parties who are not a direct target of the harassing behavior.
- **Unwelcome (Unwanted, Unsolicited)**—not requested, not sought after It is behavior that is not welcome, not solicited, and not wanted by the offended person.

**What Do You Think?** (*True or False*)

1. Only women experience sexual harassment.
2. Harassment is limited solely to a superior/subordinate situation.
3. Sexual harassment occurs because of the basic biological drives of men and women.
4. What is harassment for one person is not necessarily harassment for another.
5. Harassment is a personal interaction between two people, and the organization experiences little impact.
6. A victim of harassment must tell the harasser to stop the behavior to have a case.
7. Victims tend to bring on most sexual harassment through the clothes they wear.
8. It may be considered sexual harassment to call the men or women you work with “honey,” “babe,” “sweetie,” “girl,” or other similar names.
9. Having an affair with a woman or man in your department could be considered sexual harassment.
10. Most working women and men experience some form of sexual harassment during their careers.
11. If a person remains in a job after being harassed, he or she must be enjoying the attention.
12. If everyone laughs at dirty jokes, telling them cannot be considered sexual harassment.
13. Someone who is uncomfortable when sexual or demeaning jokes are told in the office has a poor attitude.
14. When you overhear employees harassing other employees, the best approach is to ignore it.
15. Aside from emotional stress, there are few long-range effects of harassment.

## **Red Flags in Your Behavior:**

*Be careful if you answer "yes" to any of the questions below.*

1. Have you ever told off-color jokes to coworkers or subordinates in your office?
2. Is there a suggestive picture or saying hanging in your workplace?
3. Have you ever witnessed an incident of harassment and ignored it?
4. Have you ever referred to the women in your office as "girls"?
5. Do you call people you work with "honey," "babe," "sweetie," or other types of similar names?
6. Have you ever had an affair with a woman or man in your office?
7. Have you ever made a practice of physically touching coworkers or subordinates in your office?
8. Do you engage in joking or gossiping about the sex lives of others in the office?
9. Did you ever feel that someone uncomfortable with sexual jokes in the office had a poor attitude?
10. Do you joke about others' age, race, religion, ancestry, color, sex, or disability?

## **GENERAL guidelines to ask yourself:**

Would I say or do this behavior if my family was in the room with me?

Would I be embarrassed to see my remarks or behavior displayed on social media, on television, or described to my family?

*If you are doubtful or answer yes - then don't do it!*

## **Resources and Additional Reading:**

Division of Workers Compensation (Florida)  
Equal Employment Opportunity Commission  
U.S. Bureau of Labor Statistics  
U.S. Department of Labor

[www.myfloridacfo.com/wc](http://www.myfloridacfo.com/wc)  
[www.eeoc.gov](http://www.eeoc.gov)  
[www.bls.gov](http://www.bls.gov)  
[www.dol.gov](http://www.dol.gov)