



OUR WHY? To partner with local governments so that Texas communities are **STRONGER TOGETHER**

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Our Coverages



Workers' Compensation



Liability



Property



Cyber Liability



Special Risk

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Safety Matters. Stay Connected.



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Harassment Prevention for Supervisors

Note: We are not attorneys and cannot provide legal advice. We strongly encourage you to have discussion related to this topic with your attorney and review your policies, federal, state and local laws, including your charter, ordinances and resolutions.

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Lines between Employees and Supervisors

You are held to a higher standard than those you supervise.

- Shouldn't complain to staff
- Shouldn't talk bad about other divisions/departments to your staff
- **Nothing is "off the record"**
- **Favors may have consequences**



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Protected Classes

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EEOC Harassment Definition*

Harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, (ADEA), and the Americans with Disabilities Act of 1990, (ADA).

Harassment is unwanted or unwelcomed conduct behavior that is severe or pervasive and based on:

- Race
 - Color
 - Religion
 - Sex
 - (including pregnancy, gender identity, & sexual orientation)
 - Mental or Physical Disability
 - Nationality
 - Age
 - (40 & older)
 - Genetic Information
 - (including family medical history)
- *EEOC.GOV

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Sex/Gender Based Harassment

Discrimination based on someone's:

- Sex/gender,
- Sexual orientation
- Gender identity
- Pregnancy



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YouTube Example from Nicki Swift*

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*<https://youtu.be/Fo8fF0IMPTI?si=NhxPeX4W9Dkn7yQ>

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Address Sexual Harassment



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Employee Empowerment

Empower employees to stand up for themselves (in a professional manner) and let the other person know that the behavior is not acceptable.



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Has the Line Changed?

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**<https://youtu.be/FVZap10vxi0?si=R0jboHGXEfcQfLU>*

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What would you do?

- Contact HR.
- PROMPTLY and thoroughly investigate the complaint
- Document the outcome including your decision and any discipline and/or other actions taken
- Complainant could charge discrimination and litigate – it is time consuming, it is costly, it could be embarrassing to your organization, it could be humiliating for you, your employees and families, it could cause backlash from customers

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What would you do?

- Encourage all employees to say something to the person if they are uncomfortable with someone's behavior
- If you observe someone engaging in this type of behavior, pull them to the side and let them know you saw it and that you expect they will not do it again
- Train your supervisors
- Train your employees
- Train, Train, Train

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Some Things To Think About Regarding Unacceptable Conduct

- Even if the people engaging in the unacceptable conduct are “fine” with it, is not a defense for the unacceptable conduct/behavior (3rd party)
- Remember that professional meetings, business trips and social events are an extension of your workplace (alcohol)
- Social media is also a possible source of harassment (have a policy addressing harassment on social media)
- Non-employees such as citizens, vendors, contractors, elected officials are possible sources of harassment

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Faragher vs Boca Raton (1998)

- Beth Ann Faragher worked intermittently as an ocean lifeguard for the city of Boca Raton, FL from 1985-1990
- Sued the city and two lifeguards she accused of unwanted touching and making offensive comments and gestures
- Said it was a really good job except for the constant groping by one supervisor and sexual innuendoes and comments by others
- Case went to the Supreme Court where the it said that if alleged harassers are supervisors, employers can be liable for damages, even if the employer is not aware of the harassment
- If a peer is harassing a peer, the employer is only liable if it knew or should have known about the harassment

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Faragher vs Boca Raton (1998)

US Supreme Court also ruled that employers can also be liable if there is no tangible job repercussions to the victim

- The court outlined a two-pronged defense for employers
 1. They should have a sexual harassment policy to prevent harassment and promptly investigate complaints,

AND

 2. The employee must go through the channels outlined in the policy
- Eventually ruled that the City was ultimately responsible for the discriminatory actions of the supervisors
- "City could not be found to have exercised reasonable care to prevent the supervisors' harassing conduct"

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SB 45 & HB 21 and what it means to you.

- Effective September 1, 2021
- Individual liability for those who act "directly in the interests of an employer" as well as supervisors and coworkers
- Requires employers to take **immediate** and appropriate corrective action where the employer **knows or should have know** of sexual harassment
- Charge filing period changed from 180 to 300 days



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Continuing Violation Doctrine*

- To pursue an employment discrimination claim under Title VII, including a harassment case, an employee must file a charge of discrimination with the EEOC within either 180 or 300 days of the unlawful employment practice, depending on which state the employee works in.
- The question in a hostile work environment scenario is, “what constitutes the unlawful employment practice?” that triggers the need to file an EEOC charge since the claim usually involves a series of events rather than a discrete act (such as a pay cut). In *Morgan*, the Supreme Court held that a “hostile work environment claim is comprised of a series of separate acts that collectively constitute one ‘unlawful employment practice.’” (citing Title VII, 42 U.S.C. § 2000e-5(e)(1)).
- In sum, the **continuing violation doctrine** holds that if an employee files an EEOC charge while at least one act constituting the hostile work environment is still timely, then the whole time period of the hostile work environment can be considered for purposes of deciding liability.

*National Law Review – natlawreview.com

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Pregnancy Discrimination

Illegal to discriminate against a woman because of:

- pregnancy
- childbirth
- A medical condition related to pregnancy or childbirth

OR

- Intent to become pregnant*

*Pregnancy Workers Fairness Act (6-27-2023)

Partner with your HR/Legal team regarding questions



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National Origin Discrimination

Unfavorable treatment of a person because they are from a particular country or part of the world, because of ethnicity or accent, or because they appear to be of a certain ethnic background (even if they are not).



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TML
RISK POOL

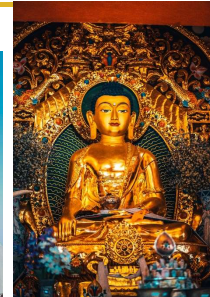
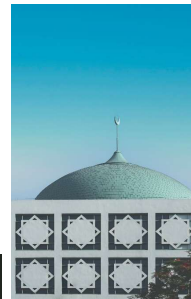
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Religious Discrimination

- Involves treating an unfavorably because of his or her religious beliefs.
- The law protects people who belong to traditional, organized religions, as well as those who have **sincerely held religious**, ethical, or moral beliefs.*

**Groff v. DeJoy* (6-29-2023)

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Mental or Physical Disability Discrimination

- According to the EEOC, disability discrimination occurs when an employer or other entity covered by Title I of the Americans with Disabilities Act (ADA) (which protects private and state and local employees) treats a qualified employee or applicant unfavorably because of disability. The disability laws forbid discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.
- It is illegal to harass an applicant or employee because of a current or past disability an actual or perceived physical or mental impairment that is not transitory and minor, or for association with an individual with a disability. Harassment can include offensive remarks about a person's disability. Harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

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Age Discrimination

Forbids age discrimination against people who are age 40 or older.



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Genetic Information Discrimination

- Genetic information includes information about
 - an individual's genetic tests and
 - the genetic tests of an individual's family members
 - information about the manifestation of a disease or disorder in an individual's family members (i.e. family medical history)



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Retaliation

When employers treat applicants, employees, former employees, or people closely associated with someone who:

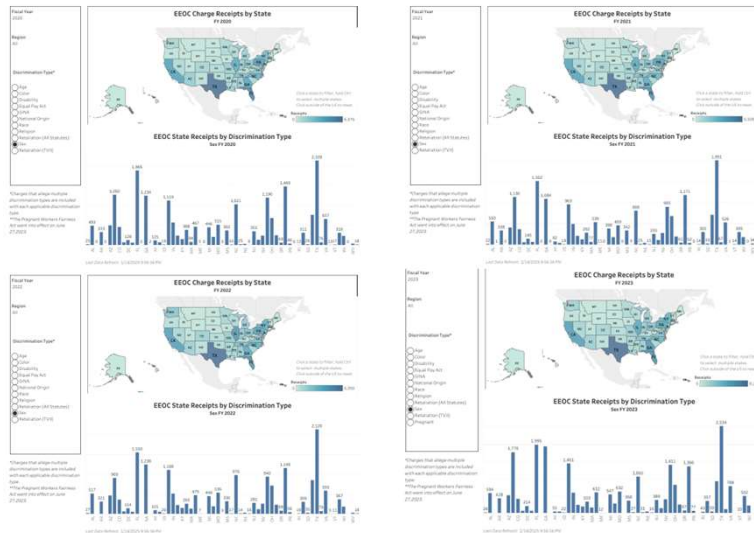
- Reported discrimination
- Participated in a discrimination investigation or lawsuit (for example, serving as a witness), or;
- Opposed discrimination (for example, threatening to file a charge or complaint of discrimination).

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EEOC Charge Receipts by State (Sex) - EEOC.GOV



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EEOC Charge Receipts by State (Retaliation) - EEOC.GOV



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SUPERVISOR'S ROLE IN HARASSMENT PREVENTION



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How do you help prevent harassment?

- Review policies with staff regularly
- Hold everyone accountable for their behavior
- Keep confidential information private



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Potential Cost of Discrimination and Retaliation (Sex and Race)*

Employee fired because they engaged in protected activity by complaining about discrimination.

\$70,000

**U.S. Equal Employment Opportunity Commission -
eoc@updates.eeoc.gov*

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Potential Cost of Discrimination and Retaliation (Sex)*

A cleaning service provider in eastern Wisconsin, will pay and furnish other relief to settle a sexual harassment lawsuit

\$200,000

**U.S. Equal Employment Opportunity Commission -*

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Potential Cost of Harassment and Retaliation (Sex)*

Walmart to settle EEOC Sexual Harassment and Retaliation Suit

\$415,112

**U.S. Equal Employment Opportunity Commission -
eoc@updates.eeoc.gov*

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Potential Cost of Discrimination and Retaliation (Sex)*

The evidence at trial showed that management at Cigar City Motors — part of the Ferman Automotive Group, which had five Harley-Davidson dealerships in Florida — had never promoted a female employee to general manager prior to the EEOC's lawsuit.

\$500,000

**U.S. Equal Employment Opportunity Commission -
eoc@updates.eeoc.gov*

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Potential Cost of Discrimination and Retaliation (GINA and ADA)*

Dollar General required applicants to pass a pre-employment medical exam during which they were required to divulge past and present medical conditions of family members such as cancer, diabetes, and heart disease. The EEOC also alleged that Dollar General used qualification criteria that screened out qualified individuals with disabilities.

\$1,000,000

**U.S. Equal Employment Opportunity Commission - eec@updates.eeoc.gov*

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Potential Cost of Discrimination and Retaliation (Race)

Delivery company DHL will pay settlement and be subject to the oversight of a court-appointed monitor to settle a class race discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC).

\$8.7 Million

**U.S. Equal Employment Opportunity Commission - eec@updates.eeoc.gov*

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EEOC Lawsuits*

- EEOC Sues HCL America for Age and National Origin Discrimination
 - *Federal Agency Charges Tech Company Rejected Job Applicant Because He is "Too Old" and Indian*
- EEOC Sues Alto Ingredients for Disability Discrimination

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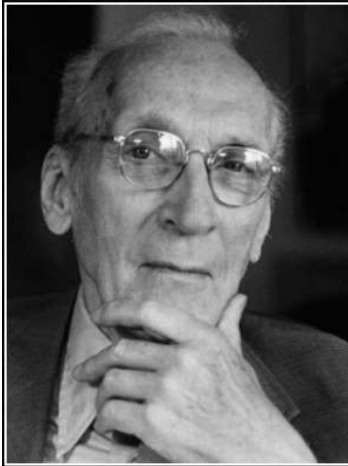
**What are
most
employees
looking for?**

A positive working environment, where they feel that they matter and are treated fairly.



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Servant Leadership



The servant-leader is servant first... It begins with the natural feeling that one wants to serve, to serve first. Then conscious choice brings one to aspire to lead. That person is sharply different from one who is leader first.

— Robert K. Greenleaf —

AZ QUOTES

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"Act as if what you do makes a difference. It does." William James



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