

### Tony Korioth 3.0 Supervisory Training

Day One Afternoon: Craig Barnes

**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.

**Building for the Future** 



3

### **Learning Objectives**

After attending this training session, participants will be able to:

- Better understand the role of a supervisor as an employee/person
- Continue to apply the framework for organizational values of as they relate to HUMAN resources
- Explain applicable discrimination laws at both the federal and state level
- Identify human resources best practices by participating in activities and discussion related to: *Title VII of the Civil Rights Act of 1964; Family Medical Leave Act (FMLA); and Americans with Disabilities Act (ADA)*

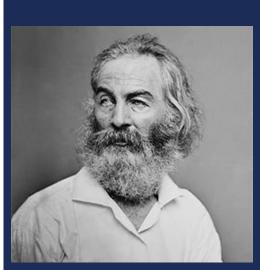
**Building for the Future** 



### **Walt's Wisdom on Winding Down**

"I sound my barbaric YAWP over the roofs of the world."

<u>Song of Myself</u> - Walt Whitman



**Building for the Future** 

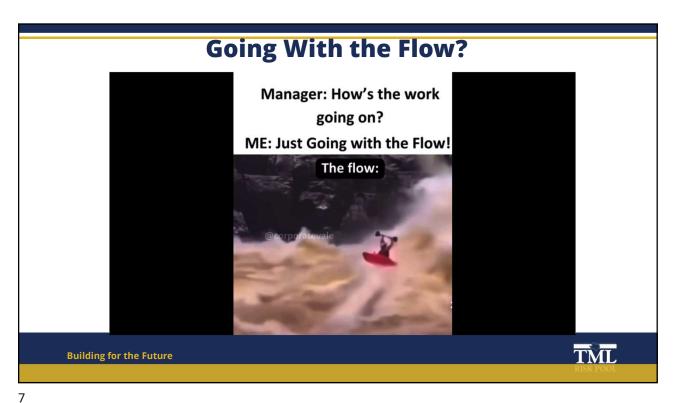
5

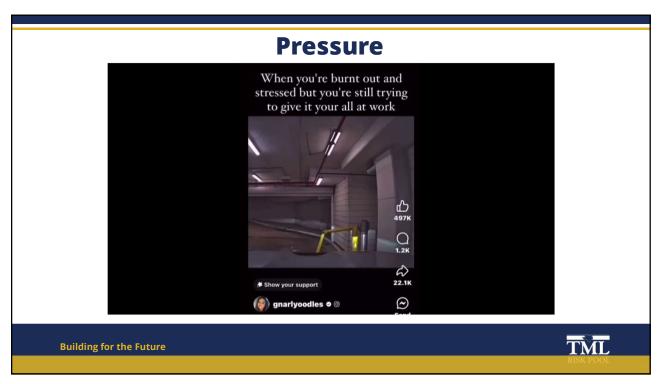
### **My Barbaric Breaths**

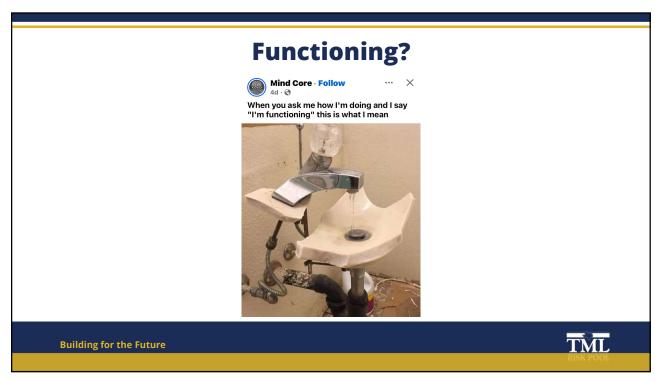


**Building for the Future** 

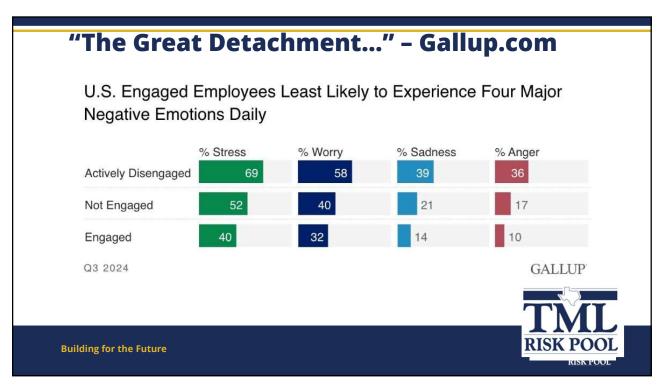
TML RISK POOL

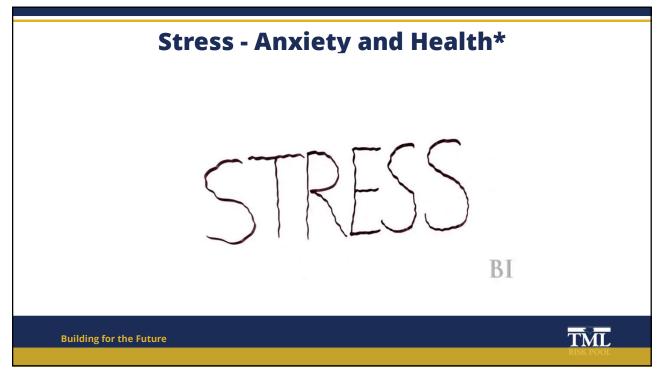












#### It's ALIVE!

Your organizational culture is ALIVE but is it WELL?

Workplace culture is a living organism that will create itself and grow without much effort. However, creating and sustaining a culture that is just not alive, but breathes life into others takes intentional effort and is a journey for the whole organization.

**Building for the Future** 



13

#### **Core Values**

"Discover your core values and purpose beyond just making money (core ideology) and combine this with the dynamic of preserve the core/stimulate progress."

James C. Collins <u>Good to Great: Why Some</u> <u>Companies Make the Leap... and Others Don't</u>

**Building for the Future** 



### **Supervisors GET To**

- Protect the Organization
- Grow the employee



**Building for the Future** 



15

### **Coaching**

The ongoing process of both informal and formal feedback that is intended to support employees in skill development as well as to recognize success.

**Building for the Future** 



### **Performance Management Tools**

#### **ROLE OF A COACH**

- Provide Direction
- Improve Performance
- Open Possibilities
- Resource

**Building for the Future** 



17



No feedback is not good feedback.

In fact, no feedback is irresponsible and a missed opportunity

If you are a leader, you must give feedback. that's your job.

Feedback either helps people get better and grow, or reinforces the positive they are doing to inspire them to do more of it.

If you don't have time to give feedback, then don't be a people leader.

**Building for the Future** 



### **Importance of Relational Engagement**

"In Organizations, real power and energy is generated through relationships. The patterns of relationships and the capacities to form them are more important than tasks, functions, roles, and positions."



Margaret Wheatly

**Building for the Future** 



19



The best bosses are not the ones who have all the answers or work the longest hours, but those who care the most.

A great boss genuinely cares about you, as a human being, not just as a worker.

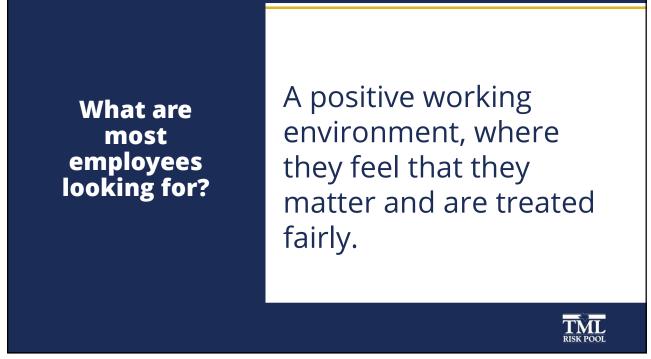
**Building for the Future** 





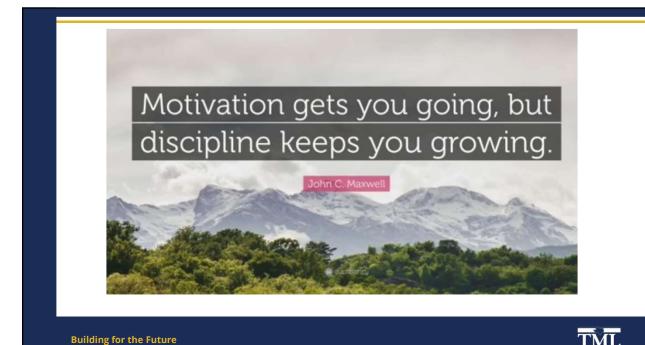












### **Discipline to Disciple**

"We cannot control all of people's choices or actions, but we can positively affect decision-making factors and help people develop clearer perceptions of risk." – **Tom Harvey** - Reducing the Frequency & Severity of Human Error: Optimizing Performance – ASSP

"If you hire people just because they can do a job, they'll work for your money. But if you hire people who believe what you believe, they'll work for you with blood and sweat and tears." – **Simon Sinek** 

**Building for the Future** 



### **Bullying Behaviors**

**Constant and unfair criticisms** 

**Excluding or isolating someone socially** 

Yelling, shouting, or screaming

Insults, put-downs, jokes

**Hostile glares or intimidating gestures** 

**Malicious gossiping** 

**Monopolizing supplies/resources** 

Overt threats, aggression, or violence

**Building for the Future** 

TML RISK POOI

29

### **Bullying**



- Generally, not prohibited by any federal or state law
- Inappropriate and
- Unacceptable

**Building for the Future** 



# Title VII of the Civil Rights Act

**Building for the Future** 



31

#### **Harassment and Protected Classes**

Harassment is unwanted or unwelcomed conduct behavior that is <a href="mailto:severe">severe</a> or <a href="pervasive">pervasive</a>\* 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

**Building for the Future** 



• The target of the harassment

#### AND

 And anyone affected by the offensive conduct (bystander) Who is impacted by the harassment

**Building for the Future** 

33

### **Sex/Gender Based Harassment**

Discrimination based on someone's:

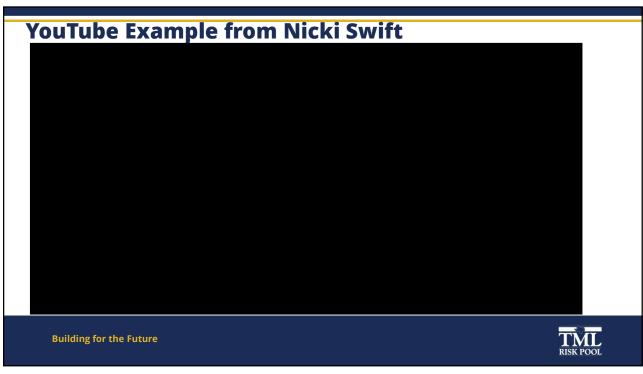
- · Sex/gender,
- · Sexual orientation
- Gender identity
- Pregnancy

Partner with your HR/Legal team regarding questions



**Building for the Future** 





### 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 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

**Building for the Future** 



### **Employer and Supervisor Liability**

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"

**Building for the Future** 



37

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

- Effective September 1, 2021, both apply to employers in Texas with 1 or more employee
- 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 known of sexual harassment
- Charge filing period changed from 180 to 300 days



### **Interview Example - Discrimination Free Hiring?**



**Building for the Future** 

TML RISK POOL

39

### **Bostock vs Clayton County**

June 15, 2020, Supreme Court issued a landmark decision in this case.

Prohibition against sex discrimination in Title VII of the Civil Rights Act of 1964 includes employment discrimination against an individual on the basis of sexual orientation or transgender status.



The prejudicial treatment or consider of a person, racial group, minority, endeaded on category rather than indiviexcluding or restricting members of on the grounds of race, sex, or age

**Building for the Future** 





**Building for the Future** 



41

### **Address Sexual Harassment**



**Building for the Future** 

TML RISK POOL

### 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

**Building for the Future** 



43

### 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

**Building for the Future** 



### **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



TML RISK POOL

**Building for the Future** 

45

### **Race Discrimination**

Involves discrimination based a person race such including cultural practices or physical characteristics associated with race (such as hair texture, skin color, or certain facial features).

- CROWN Act HB567 (Eff. 9/1/23)
  - Creating a Respectful and Open World for Natural Hair

Partner with your HR/Legal team regarding questions



**Building for the Future** 

TML RISK POOL

### **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).



Partner with your HR/Legal team regarding questions

**Building for the Future** 



47

### **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)

Partner with your HR/Legal team regarding questions







**Building for the Future** 



Age Discrimination in Employment Act (ADEA)

- Involves treating an applicant or employee less favorably because of his or her age.
- Forbids age discrimination against people who are age 40 or older.

Partner with your HR/Legal team regarding questions

**Building for the Future** 



49

### **Genetic Information Discrimination ACT (GINA)**

- 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)

Partner with your HR/Legal team regarding questions



**Building for the Future** 



### **Retaliation**

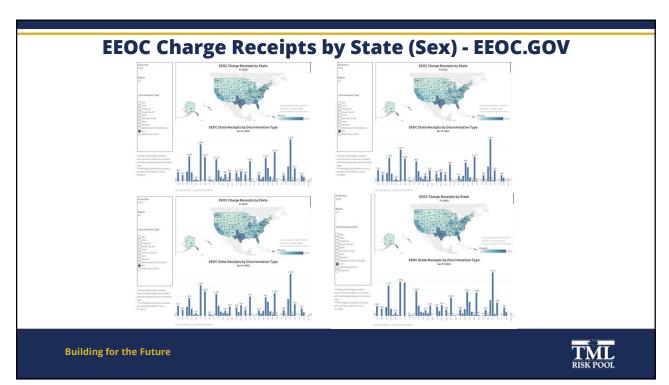
When employers treat differently applicants, employees, former employees, or people closely associated with someone who:

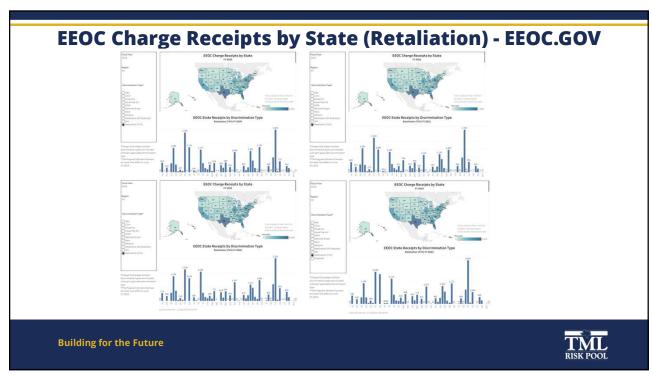
- Reported discrimination
- Participated in a discrimination investigation or lawsuit (for example, serving as a witness), or;
- Opposed discrimination (for example, threatening to file a charge or complaint of discrimination).

**Building for the Future** 

TML RISK POOI

51





### 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 (3<sup>rd</sup> 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

**Building for the Future** 



### 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 - eeoc@updates.eeoc.gov

**Building for the Future** 



55

### 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 -

**Building for the Future** 



### Potential Cost of Harassment and Retaliation (Sex)\*

Walmart to settle EEOC Sexual Harassment and Retaliation Suit

\$415,112

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

**Building for the Future** 



57

### 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 - eeoc@updates.eeoc.gov

**Building for the Future** 



### 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 - eeoc@updates.eeoc.gov

**Building for the Future** 



59

### 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 - eeoc@updates.eeoc.gov

**Building for the Future** 



### **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

**Building for the Future** 



61

## Family Medical Leave Act FMLA

**Building for the Future** 



### FMLA Employer Coverage & Employee Eligibility (per DOL.gov)

The Family and Medical Leave Act (FMLA) provides eligible employees up to 12 workweeks of unpaid leave a year.

The FMLA applies to all:

- public agencies, including local, State, and Federal employers, and local education agencies (schools); and
- private sector employers who employ 50 or more employees for at least 20 workweeks in the current or preceding calendar year

In order to be eligible to take leave under the FMLA, an employee must:

- work for a covered employer;
- have worked 1,250 hours\* during the 12 months prior to the start of leave;

**Building for the Future** 



63

### **FMLA Qualifying Family Members**

- Parent biological, adoptive, step or foster father or mother, or someone who stood *in loco parentis* to the employee when the employee was a son or daughter. Does not include in-laws.
- Spouse A husband or wife as defined or recognized in the state where the employee was married and includes individuals in samesex marriage or common law marriage.
- Son or Daughter For leave other than military family leave, a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is either under 18 years of age, or older than 18 and incapable of care because of a mental or physical disability.

**Building for the Future** 



### **FMLA Amount of Leave**

Eligible employees may take up to 12 workweeks of FMLA leave

- For the birth or placement of a child for adoption or foster care
- To care for a spouse, son, daughter, or parent with a serious health condition
- For the employee's own serious health condition

**Building for the Future** 



65

#### **FMLA Details\***

Is FMLA paid?

• No, is not paid. It only offers job protection. Paid leave can be used concurrently with it.

Can an employee decline FMLA protection?

• No, employers are required to place employees on FMLA.

What if employees don't request FMLA protection?

 If you think leave may qualify then employers are required to place employees on FMLA.

Partner with your HR/Legal team regarding questions

\*DOL.GOV

**Building for the Future** 



### FMLA For the Birth or Placement of a Child

- Both the mother and father are entitled to FMLA leave for the birth or placement of the child and/or be with the healthy child after the birth or placement (bonding time)
- Employees may take FMLA leave before the actual birth, placement or adoption
- Leave must be completed by the end of the 12-month period beginning on the date of the birth or placement

**Building for the Future** 



67

### FMLA Serious Health Condition

- Absences of three or more consecutive days may qualify
- Illness, injury, impairment or physical or mental condition involving:
  - · Inpatient Care, or
  - Continuing Treatment by a Health Care Provider
- · An overnight stay in a hospital, hospice, or residential medical facility
  - Includes any related incapacity or subsequent treatment
- Pregnancy
- · Chronic Conditions
- · Permanent/Long-Term Conditions
- Absence to Receive Multiple Treatments

**Building for the Future** 



#### **FMLA Intermittent Leave**

- Employee is entitled to take intermittent or reduced schedule leave for:
  - Employee's or qualifying family member's serious health condition when the leave is medically necessary
  - Covered service member's serious injury or illness when the leave is medically necessary
  - A qualifying exigency arising out of a military member's covered active-duty status
- Leave to bond with a child after the birth or placement must be taken as a continuous block of leave <u>unless</u> the employer agrees to allow intermittent or reduced schedule leave.

**Building for the Future** 



69

### **Absences Not Protected by FMLA**

Conditions requiring cosmetic treatment (unless inpatient hospital care or complications)

- Absence due to current, untreated substance abuse
- Common colds
- Headaches (other than migraine)
- · Routine dental problems
- Upset stomach
- Earaches
- · Car breaks down
- · To care for a friend
- Pet is ill

**Building for the Future** 



### **FMLA Military Family Leave**

- Qualifying exigency leave, which provides up to 12 workweeks of FMLA leave to help families manage their affairs when a military member has been deployed to a foreign country; and
- Military caregiver leave, which provides up to 26 workweeks of FMLA leave to help families care for covered service members with a serious injury or illness

Generally, FMLA rules and requirements continue to apply

**Building for the Future** 



71

### **FMLA Employer Responsibilities**

- · Same or equivalent job
  - Equivalent pay
  - · Equivalent benefits
  - Equivalent terms and conditions
- Employee has no greater right to reinstatement than had the employee continued to work
- Bonuses predicated on specific goal may be denied if goal not met (but perhaps consider prorating such bonus)
- Key employee exception

**Building for the Future** 



### **FMLA Prohibited Employment Actions**

- Employers cannot:
  - · Interfere with, restrain or deny employees' FMLA rights
  - Discriminate or retaliate against an employee for having exercised FMLA rights
  - Discharge or in any other way discriminate against an employee because of involvement in any proceeding related to FMLA
  - Use the taking of FMLA leave as a negative factor in employment actions (evaluations, excessive absenteeism, raises, etc.)
- For more details on FMLA, check out <u>https://www.dol.gov/agencies/whd/fmla</u>

**Building for the Future** 



73

# Americans with Disabilities Act as Amended - ADAAA

**Building for the Future** 



### **Disability Discrimination**

- Treating a qualified individual with a disability who is an employee or applicant unfavorably because he/she has a disability.
- Also occurs when an applicant or employee is treated less favorably because she has a
  history of a disability (such as cancer) or because she is <u>believed to have</u> a physical or
  mental impairment that is not transitory (lasting or expected to last six months or less)
  and minor (even if she does not have such an impairment).
- The law also protects people from discrimination <u>based on their relationship</u> with a person with a disability (even if they do not themselves have a disability).
   For example, it is illegal to discriminate against an employee because her husband or child has a disability.

**Building for the Future** 



75

### **Definition of Disability**

Not everyone with a medical condition is protected by the law. A person <u>must be qualified for the job</u> and have a disability as defined by the law.

- A person can show that he or she has a disability in one of three ways:
  - 1. He or she has a physical or mental condition that substantially limits a major life activity (such as walking, talking, seeing, hearing, or learning).
  - 2. He or she has a history of a disability (such as cancer that is in remission).
  - 3. If <u>he or she is **believed** to have</u> a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (**even if he <u>does not have</u> such an impairment**).

**Building for the Future** 



#### **Reasonable Accommodations**

The law also requires that employers **reasonably accommodate** applicants and employees with a disability, unless doing so would impose an undue hardship on the operation of the employer's business.



**Building for the Future** 



77

### **Accommodation Interactive Process**

- Communication about possible accommodations is key.
  - ✓ Employers must participate in an interactive process with the employee to determine the essential functions of the job that may or may not be eligible for an accommodation.
  - ✓ Work with your HR representative as they will generally be able to assist with this process.
  - ✓ An interactive process example is available on the JAN website. https://askjan.org/training/library.htm

**Building for the Future** 



### **Disability & Undue Hardship**

- Undue hardship means that the accommodation would be too difficult or too expensive to provide, in light of the employer's size, financial resources, and the needs of the business.
- An employer may not refuse to provide an accommodation just because it involves some cost.
- An employer does not have to provide the exact accommodation the employee or job applicant wants.
- If more than one accommodation works, the employer may choose which one to provide.

**Building for the Future** 



79

### **Disability During Application & Interview Stage**

- The law places strict limits on employers when it comes to asking job applicants to answer medical questions, take a medical exam, or identify a disability.
- An employer also may not ask job applicants if they have a disability (or about the nature of an obvious disability).
- An employer may ask job applicants whether they can perform the job and how they would perform the job, with or without a reasonable accommodation.

**Building for the Future** 



### Weight of the World?

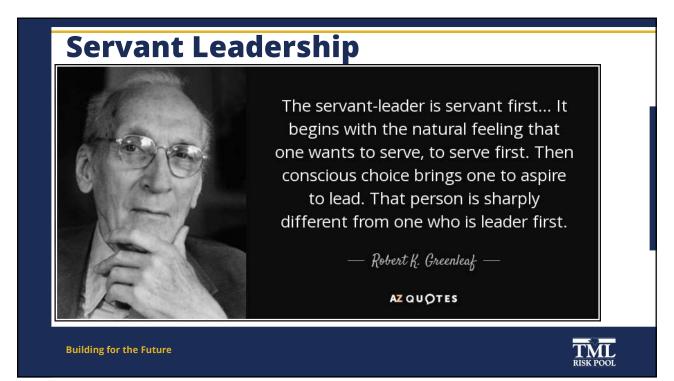
When we see/serve beyond self, we demonstrate our strength by lifting others up.

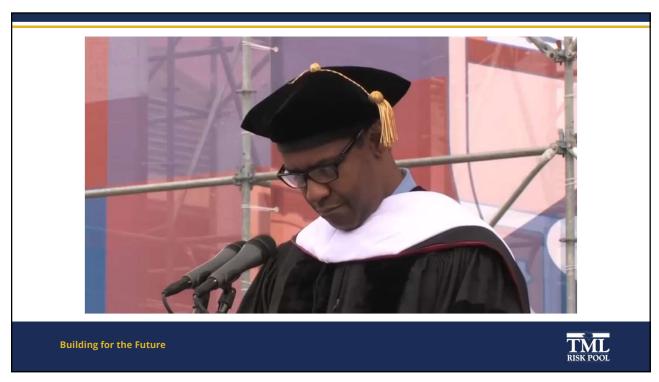


**Building for the Future** 



81





### **Supervisors GET To**

- Protect the Organization
- Grow the employee



**Building for the Future** 

TML RISK POOL

# Don't be entitled... BE INVESTED

**Building for the Future** 



85



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

**Building for the Future** 



87

#### **Homework**

Please complete the Enneagram Test before class tomorrow.

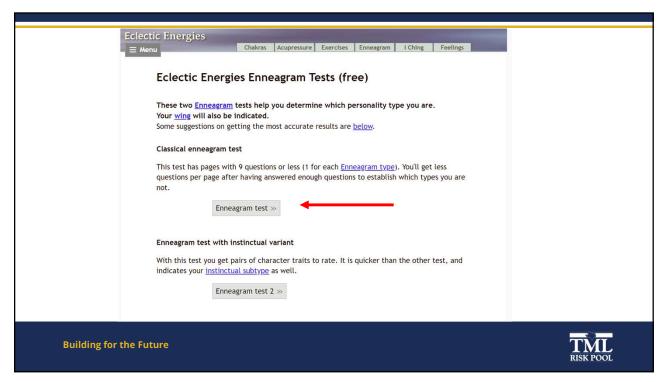
 Use the link below and take the first Enneagram Test. Please print and/or save your test results and bring them with you tomorrow. A significant portion of the discussion in class tomorrow will be centered on the different personality styles/characteristics.

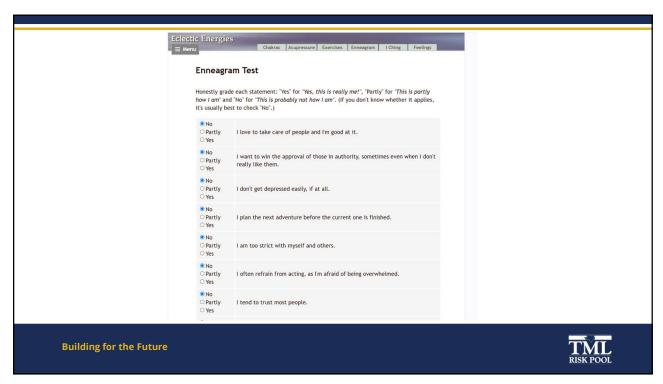
https://www.eclecticenergies.com/enneagram/test

Be sure to print or save your results and bring them with you.

**Building for the Future** 









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

91

**Building for the Future** 

