



**Loudon-Monroe HR Association Employment Law Seminar:
EMPLOYEE TRAINING:
HARASSMENT IN THE WORKPLACE**

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Agenda

- Introduction
- Overview of Employment Laws
- Defining and understanding unlawful discrimination and harassment
- Why it is important to prevent unlawful discrimination and harassment in the workplace
- Case Study Exercise
- Understanding your rights and responsibilities
- Questions & Answers



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Laws Governing EEO

- Title VII of the Civil Rights Act of 1964 (“Title VII”)
 - Title VII prohibits employment discrimination on the basis of a number of “protected classes.”
- The Americans with Disabilities Act (“ADA”)
 - The ADA prohibits discrimination against individuals with disabilities in all areas of public life, including in the workplace.
- The Age Discrimination in Employment Act (“ADEA”)
 - The ADEA prohibits employment discrimination on the basis of an employee’s age.
- State and Local Laws

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Protected Classes

- Classes protected by the numerous federal employment anti-discrimination laws include:
 - Race/Color/Ethnicity/National Origin
 - Sex/Gender (including gender identity and sexual orientation)
 - Religion
 - Age
 - Disability
 - Marital Status
 - Pregnancy/Familial Status
 - Citizenship
 - Military/Veteran Status
 - Genetic Information

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Protected Classes

- Classes protected by numerous Tennessee employment anti-discrimination laws include:
 - Race/Color
 - National Origin
 - Gender
 - Religion/Creed
 - Age (over 40)
 - Disability (physical, mental, or visual)

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What Does it Mean to Unlawfully Discriminated?

Discriminate – 1: Distinguish, Differentiate; 2: to make a difference in treatment on a basis other than individual merit – Discrimination *n.*

Merriam-Webster, Inc., *Merriam-Webster Dictionary, Home and Office Edition*, p. 149

To make a difference in treatment based on something unlawful, *i.e.*, an individual's race, sex, age, disability, etc.



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Does the word “harassment”
appear in Title VII?

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What happened?

Vinson v. Meritor Savings Bank



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What Does it Mean to Unlawfully Harass?

- Unlawful Harassment = Unlawful Discrimination
- Harassment is unwelcome conduct that is based on an individual's protected characteristic(s)
- Harassment becomes unlawful when (1) enduring the offensive conduct becomes a condition of continued employment, or (2) the conduct is severe and pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.



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Sexual Harassment

» Sexual Harassment is:

- » Not just about sex. Behavior designed to make a person feel uncomfortable because of their gender
- » Unwelcome (employee did not solicit or invite conduct, or regarded the conduct as undesirable)
- » Sexual or sex-based or based on sexual orientation
- » Conduct that adversely impacts an individual's ability to do his/her job



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Quid Pro Quo Harassment

- Quid Pro Quo Harassment is harassment that results in tangible employment benefits/detriments by the employee's acceptance/rejection of unwelcome requests (sexual or not) by a superior or supervisor.
- Example: Supervisor who fires or denies a promotion to an employee for refusing to be sexually cooperative
- Example: Supervisor who requires a subordinate to participate in religious activities as a condition of employment.

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Hostile Work Environment Harassment

- Hostile Work Environment Harassment occurs when the unwelcome conduct of a supervisor, co-worker, customer, or anyone else an employee interacts with on the job renders the workplace atmosphere intimidating, hostile, or offensive.
- Examples:
 - Discussing sexual activities
 - Using racial, misogynistic, homophobic, xenophobic, etc. slurs.
 - Unnecessary touching
 - Using crude language
 - Engaging in hostile physical conduct

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Hostile Work Environment Harassment

- Ex: Supervisor harassed Arab employee by telling him that he “dressed like [he was] going to blow up the World Trade Center.”
- Ex: Restaurant manager consistently pressed himself against, grabbed, and groped female employees.
- Ex: Manager made repeated comments about a female employee’s body, made sexual comments, and send suggestive emails and phone calls to the employee. When the employee complained, she was fired.
- Ex: Co-workers made racially charged threats to two African-American employees, using racial slurs and even leaving a noose on one of the employee’s desk.



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When Harassing Conduct Violates the Law

- Harassing Conduct violates the law when:
 - Unlawful harassing is unwelcome **and** is based on the victim's protected classification; *and*
 - The conduct is **subjectively** abusive and **objectively** severe and pervasive enough that a reasonable person would find it abusive or hostile.

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When Harassing Conduct Violates the Law

- Whether conduct is "severe and pervasive" is determined by considering:
 - The frequency and severity of the unwelcome conduct,
 - Whether the conduct was physically threatening or merely an offensive statement,
 - Whether the conduct interfered with the employee's work performance,
 - The effect on the employee's psychological well-being, and
 - Whether the harasser was a superior.

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When Harassing Conduct Violates the Law

■ Examples:

- Supervisor asking for a date or sexual relationship in exchange for a raise.
- A co-worker frequently bullying, or making verbal or physical threats to harm another co-worker.
- A co-worker making rude or offensive comments about another employee's disability
- Employees using racial slurs or jokes that are funny to them, but are harmful to another employee who overhears the remarks.

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Anyone Can Commit Discrimination or Harassment in the Workplace

- Men/Women
- Women/Men
- Men/Men
- Women/Women
- Third Parties/Employees
- Employees/Third Parties

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Discrimination Does Not Only Happen At Work

- At work
- Conferences, Seminars
- Off Work (Work-sponsored functions, events)
- Anytime, day or night.

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Sexual Orientation Discrimination

- **Sexual Orientation Discrimination:** Not hiring, discharging, or otherwise treating individuals differently with respect to an employee's terms and conditions of employment because of sexual orientation
 - **Sexual Orientation:** Physical, romantic, or emotional attraction to members of the opposite sex, same sex, or both sexes
- **Gender Identity Discrimination:** Not hiring, discharging, or otherwise treating individuals differently with respect to an employee's terms and conditions of employment because of the gender with which an individual identifies
 - **Gender Identity:** Individual's internal, personal sense of their own gender



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Behaviors To Avoid

- Touches
- Looks/Leers
- Jokes
- Storytelling
- Bragging
- Inquiries
- Language/Cursing
- Cartoons/Photos
- Email/Screen Savers/Text Messaging
- Repeated Requests
- Water Cooler Discussions
- Horseplay

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Social Media Use

- Use common sense when on social media!
- Remain mindful of what you post on social media and how it can affect others:
 - HIPPA: Posting the medical conditions of co-workers
 - Anti-defamation: Posting derogatory statements about co-workers
 - Anti-bullying: Using social media to bully, harass, or intimidate co-workers
 - Confidentiality
- “Social Media” includes, but is not limited to, Facebook, TikTok, Twitter, Instagram, Snapchat, Google+, LinkedIn, YouTube, etc.

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What to Do:

- Be on the look out for “severe single incidents”
- Be conscious of accumulating circumstances
- Get HR involved early
- Be prepared for investigation
- Remember, harassment can occur based on other protected characteristics
 - Race, color, religion, national origin, and/or disability

- Contact HR to help assist you in the response process
- Investigate any complaints promptly, objectively and as confidentially as possible.
- Take prompt, effective, remedial action, if warranted
- Prohibit retaliation against an employee who makes a good faith complaint of harassment.
- Interview the complainant, if available, the alleged discriminator/harasser, and **all** witnesses

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That Never Happens Anymore

- » Red Robin (September 2022)
- » EEOC brought lawsuit.
- » Allegation is that restaurant allowed a male line cook to sexually harass female employees.
- » Offensive sexual comments, unwanted remarks, leering and touching.

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That Never Happens Anymore

- » When females complained the cook retaliated by calling them sexist slurs and refusing to give them their food orders.
- » Multiple complaints to management. But no effective action.
- » Settled in 2024 for \$600,000



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That Never Happens Anymore

- » October 2022 Settlement. EEOC alleged that since 2017 class of monolingual Spanish speaking female employees were subjected to harassment.
- » Unwanted touching, groping, sexual advances.
- » *Quid pro quo* – threatened for rejecting advances and rewarded for acquiescing.
- » Settlement amount:
- » \$500,000



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That Never Happens Anymore

- » Enforge, LLC (December of 2022)
- » Auto parts company in their North Carolina location.
- » Female subjected to vulgar comments and unwelcome touching by co-workers.
- » Complained to shift supervisor and other managers and concerns not addressed.



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That Never Happens Anymore

- » In October of 2020 she complained a coworker exposed himself to her.
- » Told to take a few days off and then call production manager to return.
- » Production manager never returned her calls so she was effectively discharged.



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Fidelity Home Energy (January 2020)

- » Claim was based on national origin discrimination.
- » Employee was telemarketing supervisor.
- » Within first week she learned that all potential customers perceived to be Middle Eastern or Indian were to be rejected for sales appointments for home energy systems.
- » Employee was of Afghan descent.



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Fidelity Home Energy (January 2020)

- » Distress of having a discriminate against would be customers cause the employee to resign.
- » So how can she sue?
- » Constructive discharge.



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Everyone's Responsibilities

- Be a role model. Demonstrate good behavior. Know and Comply with the terms of your policies. Ask questions.
- Be prudent and thoughtful in what you say.
- Be prudent and thoughtful in what you do.
- Be certain your words and actions pass the Reality Test:
 - Would you say or do it in front of your spouse? Your child?
 - Would you say or do it if it was going to appear on the front page of the newspaper?
 - Would you say or do it to a member of the same/opposite sex in the same way?
 - Why does it need to be said or done? *What business of the company is furthered?*

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QUESTIONS?

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