

RESEARCH. ENGAGEMENT. SOLUTIONS.



Equal Employment Opportunity / Affirmative Action Plan

Compliance (Ongoing) Tab D

Provided by: Southeast Michigan Community Alliance (SEMCA)
Workforce Intelligence Network (WIN)

Created by: Attorneys of SEMCA WIN

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Voluntary Disability Disclosure

OMB No. 1205-0223 Expiration Date: 03/31/2023

Please check one of the boxes below:

- YES, I HAVE A DISABILITY (or previously had a disability)
- NO, I DON'T HAVE A DISABILITY
- I DON'T WISH TO ANSWER

Your name: _____

Date: _____

Why are you being asked to complete this form?

Because we are a sponsor of a registered apprenticeship program and participate in the National Registered Apprenticeship System that is regulated by the U.S. Department of Labor, we must reach out to, enroll, and provide equal opportunity in apprenticeship to qualified people with disabilities.^[1] To help us learn how well we are doing, we are asking you to tell us if you have a disability or if you ever had a disability. Completing this form is voluntary, but we hope that you will choose to fill it out. If you are applying for apprenticeship, any answer you give will be kept private and will not be used against you in any way.

If you already are an apprentice within our registered apprenticeship program, your answer will not be used against you in any way. Because a person may become disabled at any time, we are required to ask all of our apprentices at the time of enrollment, and then remind them yearly, that they may update their information. You may voluntarily self-identify as having a disability on this form without fear of any punishment because you did not identify as having a disability earlier.

How do I know if I have a disability?

You are considered to have a disability if you have a physical or mental impairment or medical condition that substantially limits a major life activity, or if you have a history or record of such an impairment or medical condition. Disabilities include, but are not limited to: blindness, deafness, cancer, diabetes, epilepsy, autism, cerebral palsy, HIV/AIDS, schizophrenia, muscular dystrophy, bipolar disorder, major depression, multiple sclerosis (MS), missing limbs or partially missing limbs, post-traumatic stress disorder (PTSD), obsessive compulsive disorder, impairments requiring the use of a wheelchair, and intellectual disability (previously called mental retardation).

^[1] Part 30 – Equal Employment Opportunity in Apprenticeship. For more information about this form or the equal employment obligations of Federal contractors, visit the U.S. Department of Labor's Office of Apprenticeship website at <https://www.dol.gov/oa/eeo/>.

Equal Opportunity and Discrimination/Harassment Prevention Policy

[Insert Employer legal name] (the "Company") is committed to providing equal employment opportunity to all persons regardless of age, citizenship, color, disability/handicap, gender identity, genetic information, height, marital status, national origin, race, religion, sex (including pregnancy), sexual orientation, veteran status, weight, or any other status or condition protected in accordance with the requirements of applicable law. The Company will take affirmative action to provide equal opportunity in apprenticeship and will operate the apprenticeship program as required under Title 29 of the Code of Federal Regulations, Part 30. The Company also provides reasonable accommodation for individuals with disabilities in accordance with applicable law. This policy applies to all terms and conditions of employment including, but not limited to, recruiting, hiring, job assignment, training, transfer, promotion, compensation, benefits, layoff, recall, discipline, and termination.

The Company is also ABSOLUTELY committed to providing a work environment that is free of ALL forms of unlawful harassment. We will not tolerate the harassment of our employees by anyone including, but not limited to, supervisors/managers, co-workers, customers, vendors/suppliers, guests, or visitors. All employees have the right to work in an environment free from intimidation and harassment. In other words, the Company is committed to a policy of zero tolerance for discrimination and unlawful harassment. Further, we are committed to having a professional work environment where everyone can comfortably and productively work in all areas.

Sexual Harassment

Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature if:

- Submission to the conduct is in any way made a term or condition of employment (*for example, a supervisor tells an employee to commit a sexual act in exchange for a pay raise*);
- Submission to or rejection of such conduct by an employee is used as the basis for any employment-related decision affecting such employee (*for example, a supervisor demotes an employee because the employee refused to engage in sexual behavior*); or
- Such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile or offensive work environment (*for example, an employee is subject to repeated and unwelcome sexual or derogatory jokes or unwelcome obscene or pornographic material or other forms of harassing conduct*).

This means no:

- Sex-oriented "kidding" or abuse, sexual or sexist language, jokes or innuendo;
- Nude, sexual, profane, or obscene cartoons, posters, drawings, photos or magazines;

- Whistling or catcalling;
- Staring or leering;
- Pinching, patting, inappropriate touching such as brushing against another's body, unwelcome hugging or kissing;
- Texting, e-mailing or otherwise communicating inappropriate sexual messages;
- Accessing pornographic or other inappropriate websites; or
- Any other conduct that might create or contribute to a hostile or offensive working atmosphere.

Dating/Sexual Relationships with Co-workers

Management and supervisory employees in particular must avoid placing themselves in situations where even the appearance of harassment or improper conduct is a possibility. To avoid potential conflicts and misunderstanding in the workplace and to minimize the risk of violating any laws, all employees with supervisory authority are strictly prohibited from dating or otherwise engaging in any dating, romantic or sexual relationship with any employee they are responsible for supervising in any way.

In the event such a dating, romantic or sexual relationship does develop between a manager or supervisor and a subordinate employee, it must be immediately reported to the Human Resources Department who will take appropriate action including: (1) requiring written confirmation from both involved parties of the consensual nature of the relationship; and (2) taking any action deemed necessary to prevent the appearance or occurrence of conflicts of interest, favoritism, or sexual harassment, which action may include, but is not limited to reassignment, demotion, or termination of employment.

While the Company does not prohibit co-workers from dating other co-workers, the Company strongly discourages such relationships given the workplace problems that can result from such relationships.

In addition, the Company absolutely prohibits its employees from dating or having any kind of romantic or sexual relationship with any Company customer or vendor/supplier, since relationships of this nature may also result in serious workplace and operational problems.

Other Forms of Unlawful/Prohibited Harassment

We want to maintain a working environment free from all forms of harassment, whether based upon age, citizenship, color, disability/handicap, gender identity, genetic information, height, marital status, national origin, race, religion, sex (including pregnancy), sexual orientation,

veteran status, weight, or any other status or condition protected in accordance with the requirements of applicable law. By way of further example only, this means no:

- Racial or ethnic jokes;
- Religious slurs;
- Use of offensive "slang" or derogatory terms or slurs denoting race, ethnicity, age, national origin, disability, etc.;
- Mimicking one's speech, accent or disability;
- Derogatory comments regarding any legally protected status or characteristic; or
- Any other conduct that might create or contribute to a hostile or offensive working atmosphere.

Moreover, the use of profane, foul, obscene, insulting, abusive or crude language, and the like, even if spoken or written in non-standard English or a foreign language, bullying, or the making of threats is considered disrespectful, demeaning, and abusive behavior and will not be tolerated.

Reporting Discrimination/Harassment/Retaliation

Any employee who believes this policy has been violated must immediately report all concerns to the Human Resources Manager at [insert phone number] or [insert position and phone number]. If the concern involves a supervisor or manager's conduct, it must be reported directly to the [insert position and phone number] or [insert position and phone number]. Company management must be made aware of the situation so that it can conduct a prompt and impartial investigation and take appropriate action to address the situation. Additionally, if the employee feels comfortable, he or she may immediately inform the perpetrator to the conduct that is unwelcome and needs to stop. It is helpful, but not required, to prove a written record of the date, time and nature of the incident(s) and the names of any witnesses.

Any employee who witnesses or suspects any violation of this policy must also immediately report the matter as described above. It is the duty of all employees to cooperate in the enforcement of this policy.

The Company is committed to taking prompt and decisive measures concerning complaints. When investigation confirms a violation of this policy, appropriate corrective action will be taken, up to and including termination of employment for any employee violating this policy, and appropriate action for any non-employee violating this policy. The Company will endeavor to treat complaints confidentially, and release information only to individuals

who need to know, although enforcement of this policy will be the paramount consideration.

The Company will not tolerate any retaliation against any individual who brings a good faith complaint to our attention; even if the investigation shows that no discrimination, harassment, or retaliation occurred. Further, the Company will not tolerate any relation against any individual who has properly participated in an investigation. Any employee who believes retaliation has occurred must immediately report the conduct through the identified reporting mechanisms described above.

[Following to be included in the handout version only]

Acknowledgement

I acknowledge receipt and agree to read and abide by the conditions of this Equal Opportunity and Harassment Prevention policy. If there is any part of this policy that I do not understand or have any question about, I will seek clarification from the Human Resources Department or [insert name or title].

Employee's Printed Name

Employee's Signature

Date

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Department of Labor Apprenticeship Compliance File — Contents

As required by 29 C.F.R. §§ 30.11(e) and 30.12

Place the following documents in your DOL Apprenticeship Compliance File (keep for 5 years). Your apprenticeship sponsor/intermediary SEMCA/WIN will need to keep a duplicate of this file and will check in with you periodically to obtain documents you add from time to time.

This file should contain all records relating to:

- All Voluntary Identification of Disability forms returned to you (including for those not hired)
- Apprentice applications (including for those not hired)
- Interview notes and records (including for those not hired)
- Reasons for acceptance/rejection (including for those not hired)
- Rotation among work processes
- Penalties or discipline
- Compliance with WIN's Affirmative Action Plan
- Any personnel records relevant to Equal Employment Opportunity complaints by apprentices
- Actions to establish and Implement procedures for handling/resolving complaints about harassment / intimidation based on protected traits and complaints about retaliation for engaging in protected activity
- Recruitment and outreach records including your use of the Universal Outreach Tool
- Posting of the EEO Pledge in your workplace and on electronic media as applicable
- Your Employer/Partner Checklist
- Accommodations under the Americans with Disabilities Act (record on the Action Log at Tab D.3 in this Guide).
- All job assignments in all components of the occupation
- Leaves of absence, sick or other leave
- Records required by the Equal Employment Opportunity Commission's Uniform Guidelines on Employee Selection
- Actions to make the workplace and apprenticeship activities accessible to all apprentices regardless of race, color, religion, national origin, sex, sexual orientation, age, genetic info., or disability (separate or single-user restrooms/changing rooms required)
- Hiring, promotion, demotion, transfer, layoff, return after layoff, termination, pay rates, other compensation, work conditions, work hours, hours of training provided

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Request for Accommodation and Action Log for Applicants and Appre

Recordkeeping Compliance Obligations Established by 29 C.F.R. Part 30.12(a)(5)

Employer: Keep this form up to date and in your DOL Apprenticeship Compliance File.

SEMCA/WIN Apprentice Program Exit Survey

**Recommended best practice for Apprentices who leave the Program
before completion
under 29 C.F.R. Part 30.8(b)(3)**

**All completed Exit Surveys should be placed and kept in the DOL Apprenticeship Compliance File.
Employer: This Survey, with minor edits, can also be used for anyone leaving employment, as
desired.**

To the Apprentice: SEMCA/WIN values your honest feedback and invites you to complete this Apprentice Program Exit Survey. Your feedback will help us to continue our efforts to ensure that our Apprenticeship Program is the best it can be and that your employer is a desirable place to work for apprentices. Please complete this survey on your last day of work in the Apprenticeship Program and return it to: info@winintelligence.org or Amanda Bauerschmidt via email at amanda.bauerschmidt@winintelligence.org. Alternatively, you can mail this completed Exit Survey to WIN at: SEMCA/WIN, 25363 Eureka Road, Taylor, MI 48180. No adverse action will be taken against you for your honest feedback. Thank you!

Name: _____ **Last Day in Apprenticeship Program:** _____

Position Title: _____ **Department:** _____

1. Why have you decided to leave the Apprenticeship Program before completion?

2. What is your opinion of the following?

	Excellent	Good	Fair	Poor
Management	()	()	()	()
Your Wages	()	()	()	()
Opportunity for Advancement	()	()	()	()
Compliance with Equal Employment Opportunity/Affirmative Action	()	()	()	()

Please feel free to add your additional comments: _____

3. How would you evaluate:

Training	Excellent	Good	Fair	Poor
Orientation	()	()	()	()

Adequacy of training specifically
in your apprenticeship () () () ()

Opportunities for career development () () () ()

Please feel free to add your additional comments: _____

4. How would you evaluate:

Employee Communications	Excellent	Good	Fair	Poor
-------------------------	-----------	------	------	------

Communications within the department () () () ()

Communications between
management and you () () () ()

Please feel free to add your additional comments: _____

5. How would you rate the following in your job or department?

	Excellent	Good	Fair	Poor
--	-----------	------	------	------

Cooperation within department
(fellow employees and journeypersons) () () () ()

Cooperation with other departments () () () ()

Please feel free to add your additional comments: _____

6. How would you rate your immediate supervisor/manager on the following points?

	Excellent	Good	Fair	Poor
--	-----------	------	------	------

Demonstrates fair and equal treatment () () () ()

Provides recognition on the job () () () ()

Resolves complaints and grievances () () () ()

Informs apprentices/employees on
matters that directly relate to their job () () () ()

Encourages feedback and welcomes
suggestions () () () ()

Knowledgeable regarding output and
accomplishments of apprentices/others () () () ()

Please feel free to add your additional comments: _____

7. How would you evaluate:

Benefits, as Applicable	Excellent	Good	Fair	Poor
Paid Leave Time	()	()	()	()
Holiday Schedule	()	()	()	()
Retirement Savings	()	()	()	()
Medical Insurance	()	()	()	()
Dental Insurance	()	()	()	()
Vision Insurance	()	()	()	()
Life Insurance/AD&D	()	()	()	()
Short and Long Term Disability Program	()	()	()	()
Tuition Reimbursement Program	()	()	()	()

Please feel free to add your additional comments: _____

8. Please feel free to provide any additional comments for feedback.

Apprentice Signature

Date

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In-Depth Optional Employment Law Manual for Managers and Supervisors Including those over Apprentices

Presented by the Southeast Michigan Community Alliance, Inc., and its Workforce Intelligence Network, by its attorneys

March 2021 Edition

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Objectives/Questions

This Manual is presented by the Southeast Michigan Community Alliance, Inc., and its Workforce Intelligence Network business unit (“SEMCA/WIN”), as part of its services as your Employer’s sponsor-intermediary for apprenticeship programs.

By the end of today’s session, you will:

- Better understand important concepts of key employment laws applicable to your Employer and your role (Segment 1).
- Better understand the application of employment laws to the life cycle of the employment relationship, enabling you to better identify, avoid, and address risky behaviors, minimizing legal risk to you and your Employer (Segment 2).

Segment 1 Employment Law Overview

- For the next hour or more, we will discuss key laws governing employment relationships in Michigan for employers like your Employer.
- Hopefully, this will equip you to better handle issues with employees and avoid risky behaviors.



Duration of Employment Relationship

The employment relationship can be for a definite period of time, such as a day, a week, a year, until age 65, etc., or it may be for an indefinite period of time. Most employees in the United States are employed for an indefinite period of time.



Standards

Theoretically, there are an infinite number of standards that could be used as the standard for ending an employment relationship. From an absolute guarantee of employment on one end of the spectrum to termination for any and all reasons (including the most arbitrary reasons or no reason) on the other end of the spectrum, two theories have emerged as the primary theories: at-will employment and just cause employment.

At-Will Employment

At-will employees may be terminated at any time for any lawful reason, with cause or without cause. Although employees in most states are presumed to be at-will, as a practical matter employers that wish to retain employees on an at-will basis should have at least one written document, such as a job application, a written job offer, an employee handbook or a contract, which clearly states that the employee is employed at-will and can be terminated at any time, with or without cause and with or without notice.

At-Will Employment

Unless a written agreement with an individual employee providers otherwise, employees at your Employer are employed on an at-will basis. Your Employer makes the at-will relationship clear in a number of documents, such as in the employment application and offer letter.

Just Cause Employment

In a just cause or for cause employment relationship, as typically found in union settings, employees cannot be discharged without a reason that amounts to just cause. In a contested discharge case involving a just cause employment relationship, it will be up to a judge, jury, or an arbitrator to decide if the employee was properly discharged for just cause.



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Employment Laws

While there are more than 20 federal statutes and 10 state statutes affecting employment matters at your Employer, we will focus on five key federal statutes and occasionally refer to a Michigan statute.



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Five Key Federal Statutes

- Title VII of the Civil Rights Act of 1964 (“Title VII”), for employers with 15 or more employees
- Age Discrimination and Employment Act of 1967 (“ADEA”), for employers with 20 or more employees
- Americans With Disabilities Act of 1990 (“ADA”), for employers with 15 or more employees
- The Family Medical Leave Act of 1993 (“FMLA”), for employers with 50 or more employees

Five Key Federal Statutes - Apprenticeships

Applicable to employers with apprenticeships:

- Promotion of Labor Standards of Apprenticeship, 29 USC Section 50, and the Department of Labor Regulations issued under the statute, 29 CFR Part 30, Equal Employment Opportunity in Apprenticeship (“EEO/AA in Apprenticeships”)
- These laws are amended periodically. Each of the first four statutes has been significantly amended at least once. The Regulations governing apprentices were recently significantly amended.

Title VII

Title VII prohibits discrimination in employment based on an individual's race, color, religion, sex, or national origin. Individuals are entitled to a jury trial (unless an agreement requiring arbitration or waiving a jury exists), and may recover back pay, front pay (or obtain reinstatement), attorney's fees, costs, damages for mental and emotional distress, and punitive damages subject to certain limits. For employers with 100 employees or fewer, damages for mental and emotional distress and punitive damages are limited to \$50,000.

In June 2020, the United States Supreme Court held that the term "sex" in Title VII protects sexual orientation and transgender status in the workplace.

ADEA – Age Discrimination & Employment Act

The ADEA prohibits age discrimination in employment for individuals 40 years of age or older. Individuals establishing a claim under the ADEA can recover back pay, front pay (or obtain reinstatement), attorney's fees and costs, but cannot recover damages for mental and emotional distress or punitive damages. Instead, if the violation by the employer is "willful", they can recover liquidated damages equal to the amount of their back pay award.

- The Older Workers Benefit Protection Act ("OWBPA")

The OWBPA prohibits discrimination on the basis of age in employee benefit plans and establishes requirements that must be met in order for there to be a valid waiver of an employee's federal age discrimination claims.

Similar State Statute

- In Michigan, the Elliott-Larsen Civil Rights Act ("ELCRA"), also known as the Michigan Civil Rights Act, prohibits an employer from discriminating against an individual because of religion, race, color, national origin, age, sex, height, weight, or marital status. The ELCRA applies to employers with even one employee.
- So, the ELCRA adds height, weight and marital status as protected classifications.
- Unlike Title VII, the ELCRA does not provide any limit on the amount of damages recoverable by a plaintiff for mental or emotional distress.

ADA – Americans with Disabilities Act

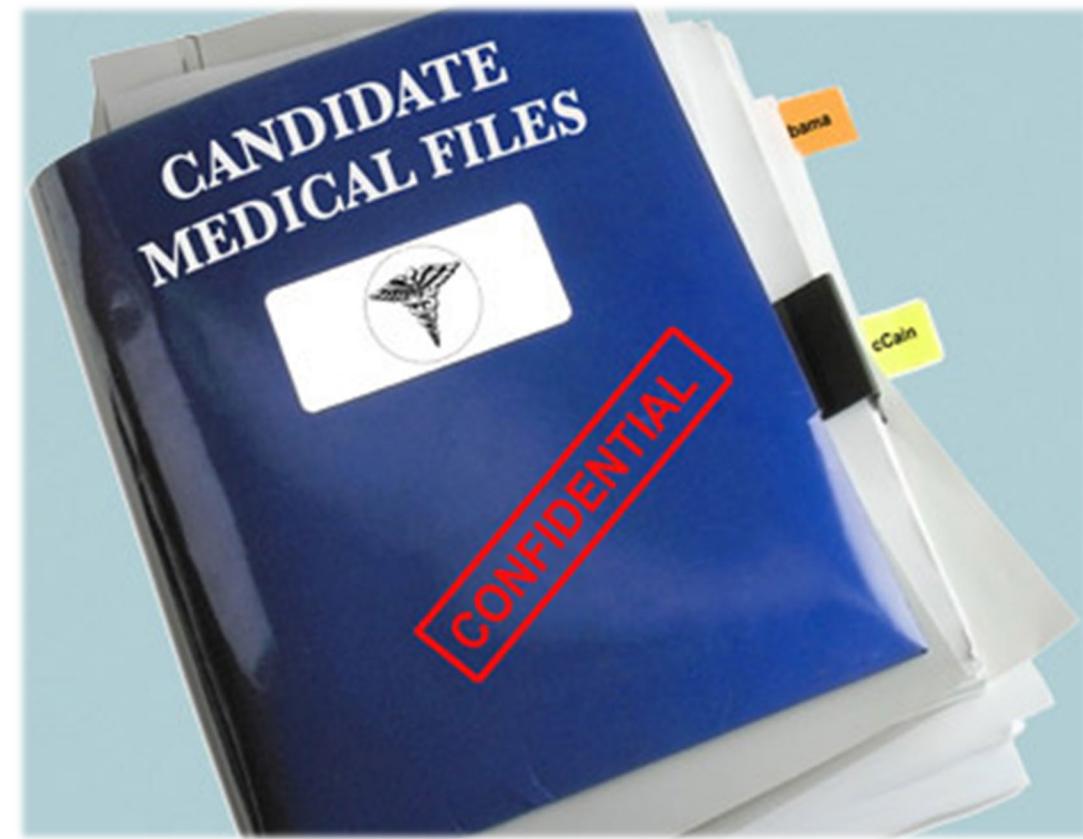
The ADA prohibits employers from discriminating against individuals based on disability. The ADA also requires that employers provide employees with disabilities with reasonable accommodation up to the point of undue hardship. Further, under the ADA:

- Most medical information must be kept confidential, creating the need for separate medical and personnel files.



ADA – Americans with Disabilities Act

- The medical information gathering process is regulated. For example, an employer cannot request any medical information from a job applicant until after an employer has made a conditional offer of employment to the applicant.
- Individuals establishing a claim under the ADA can recover back pay, front pay (or obtain reinstatement), attorney's fees, costs, and damages for mental and emotional distress and punitive damages, subject to the same limits as Title VII.



Similar State Statute

- In Michigan, we have the Persons with Disabilities Civil Rights Act (“PWD CRA”). The PWD CRA applies to employers with even one employee.

The PWD CRA prohibits employers from discriminating against employees on the basis of disability and further requires that employers provide employees with disabilities with reasonable accommodation (although accommodation requirements apply differently based on employer size).



Promotion of Apprenticeship Labor Standards

- The EEO/AA for Apprentices expressly add to protected status sexual orientation and genetic information.
- The EEO/AA regulations also require employers with apprentices to take affirmative action in the areas of race, sex, ethnicity, and disability.
- The EEO/AA regulations require employers to engage in record keeping and notification obligations.

Equal Opportunity Employer in Apprenticeships

Because your apprenticeship sponsor SEMCA/WIN is registered with the U.S. Department of Labor Office of Apprenticeship, you are required to take affirmative action to provide equal opportunity in apprenticeship and must operate the apprenticeship program as required under Title 29 of the code of Federal Regulations, Part 30. You are also required to provide reasonable accommodation for apprentices with disabilities in accordance with applicable law.

Equal Opportunity Employer in Apprenticeships

Because you are an **equal opportunity employer**, you may not discriminate against applicants, employees, or apprentices on the basis of age, citizenship, color, disability/handicap, gender identity, genetic information, height, marital status, national origin, race, religion, sex (including pregnancy), sexual orientation, veteran status, weight, or any other status or condition protected in accordance with the requirements of applicable law, with regard to:

- (i) Recruitment, outreach, and selection;
- (ii) Hiring and/or placement, upgrading, periodic advancement, promotion, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
- (iii) Rotation among work processes;
- (iv) Penalties or disciplinary action;
- (v) Rates of pay, any other form of compensation, changes in compensation;
- (vi) Conditions of work;
- (vii) Hours of work and hours of training provided;
- (viii) Job assignments;
- (ix) Leaves of absence, sick leave, any other leave; or
- (x) Any other benefit, term, condition, or privilege associated with apprenticeship.

Discrimination Complaints - Apprentices

- Because your Employer participates in an apprenticeship program registered for Federal purposes, it may not discriminate against an apprenticeship applicant or apprentice based on race, color, religion, national origin, sex, sexual orientation, age (40 years or older), genetic information, or disability. Your Employer must ensure equal opportunity with regard to all terms, conditions, and privileges associated with apprenticeship.
- An apprentice who believes that they have been subjected to discrimination may file a complaint within 300 days from the date of the alleged discrimination or failure to follow the equal opportunity standards with: Attn. Apprenticeship EEO Complaints, U.S. Department of Labor, Office of Apprenticeship, 200 Constitution Ave. NW, Washington D.C., 20210; or ApprenticeshipEEOcomplaints@dol.gov.
- Each complaint filed must be made in writing and include the following information:

Discrimination Complaints - Apprentices

- (i) Complainant's name, address and telephone number, or other means for contacting the complainant;
- (ii) The identity of the respondent (name, address, and telephone number of the individual or entity that you allege is responsible for the discrimination);
- (iii) A short description of the events that the complainant believes were discriminatory, including but not limited to when the events took place, what occurred, and why the complainant believes the actions were discriminatory (for example, because of his/her race, color, religion, sex, sexual orientation, national origin, age (40 or older), genetic information, or disability); and
- (iv) The complainant's signature or the signature of the complainant's authorized representative.

Selected Legal Principles

Laws applicable to SEMCA prohibit discrimination based on any of the following characteristics:

- **Age**
- **Citizenship or protected immigration status**
- **Color**
- **Disability/Handicap**
 - **Physical**
 - **Mental**
- **Gender Identity**
- **Genetic Information**
- **Height**
- **Marital Status**
- **National Origin**
- **Race**
- **Religion**
- **Sex, including Pregnancy**
- **Sexual Orientation**
- **Transgender Status**
- **Veteran's Status**
- **Weight**
- **Any other status or characteristic protected by applicable law**

Selected Legal Principles

- An employer or supervisor may not treat an individual differently because of any protected characteristic.
- The prohibition on discrimination, or different treatment, applies to all parts of the employment relationship and any term or condition of employment.
 - Job assignments
 - Required Hours
 - Performance Reviews
 - Job promotions
 - Wage/pay adjustments
 - Vacation scheduling
 - Discipline and discharge
 - Etc.

Selected Legal Principles

- There are two basic methods of proving discrimination - **disparate treatment** and **disparate impact**. In order to establish disparate treatment, the applicant or employee must establish that he or she was intentionally treated differently from other similarly situated individuals because of the protected classification.
- The individual alleging disparate treatment discrimination must prove discriminatory intent by the employer. In other words, the individual must establish that the employer treats some individuals less favorably than others because of their race, color, religion, sex or other protected classification.

Selected Legal Principles

- Unlike the disparate treatment theory, under the disparate impact theory a person claims that a set of standards applied to all individuals has an adverse impact on a protected class. Here, the individual need not prove discriminatory intent. Rather, an employment practice that is facially neutral but has a discriminatory effect on the protected class will be unlawful.

Practical Pointers

- Follow your Employer's Equal Employment Opportunity policy.
- Human Resources should be part of all important employment decisions.
- Make all employment decisions based on job-related criteria.



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Practical Pointers

- Always conduct yourself in a professional manner with employees.
- Always encourage all other managers and supervisors to do the same.
- Always refer to employees by their name, not any nickname, etc.
- Never tell, participate in, or condone jokes in the workplace that have as their brunt a certain ethnic group or protected classification.



Practical Pointers

- Keep timely, well-documented, legible records concerning performance issues.
- Do not discourage internal complaints of discrimination.
- Take seriously any complaint of discrimination and immediately coordinate with the person responsible for Human Resources.
- Working with the person responsible for Human Resources, implement any necessary interim measures while Human Resources promptly and properly investigates the matter.

Practical Pointers

- Following the investigation, take prompt and appropriate remedial action as the facts and circumstances warrant.
- Document the investigation and provide a letter memorializing the matter in a letter to both the complainant and the person complained about.
- Make certain that retaliation does not occur against the complainant.
- If you are ever accused of discrimination, immediately involve your supervisor and Human Resources. Never attempt to handle it yourself.

Practical Pointers

- Due to the EEO/AA requirements on employers with apprentices in the United States Department of Labor program, you have seen, and will see in the future, certain paperwork requirements for apprentices that may not be required of other hourly employees.
- By way of example, each year all apprentices must be provided with an invitation to self-identify as an individual with a disability. The employer must keep a record of all such invitations and responses.
- Such responses must be kept in a separate confidential EEO/AA file and released only to those who need to know.

Practical Pointers

- These requirements are not meant to annoy you, but are to comply with the law.
- Responding affirmatively to such inquiries will not in any way result in discriminatory or harmful treatment against you.
- Your Employer's sponsor for the apprenticeship program is SEMCA/WIN. Therefore, you will have some contact with an employee from SEMCA/WIN from time to time. Their role is to help you and your Employer. Please fully cooperate with them.

Quick Quiz

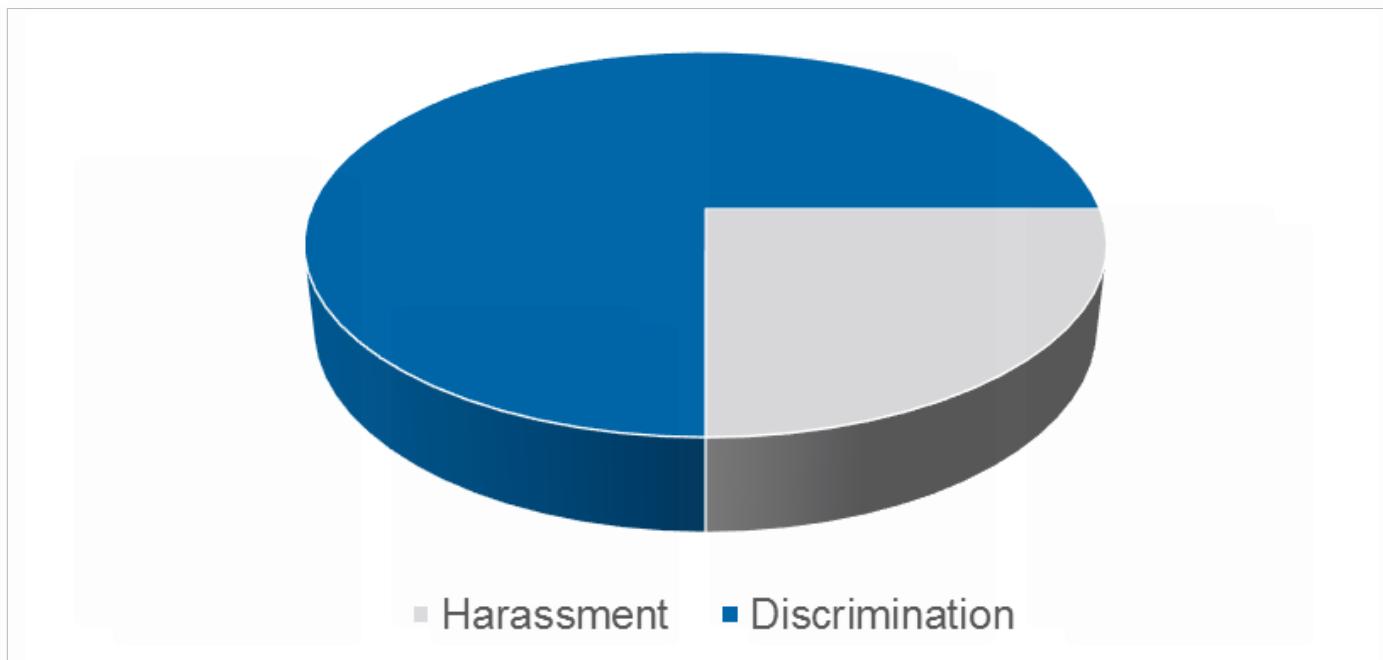
- Employers in Michigan are required by law to not discriminate against their employees on the basis of any protected characteristic? **True or False**
- Which of the following is not presently a protected characteristic based on applicable law to employers in Michigan? **Age, disability, hair color, marital status?**
- It is important as an employee that I follow the employment laws? **True or False**

Answers to Quick Quiz

- Employers in Michigan are required by law to not discriminate against their employees on the basis of any protected characteristic? **True**
- Which of the following is not presently a protected characteristic based on applicable law to employers in Michigan? **Hair color**
- It is important as an employee that I follow the employment laws? **True**

What are Discrimination and Harassment?

- Discrimination is treating someone differently based on a protected characteristic.
- Harassment is a form of discrimination.



What is Harassment?

In general terms, harassment is unwelcome conduct towards an individual (or group) due to a protected characteristic that:

- has the purpose or effect of creating an intimidating, hostile or offensive work environment, or unreasonably interferes with an individual's work, and
- otherwise adversely affects an individual's employment opportunities.

Why it Matters

- Federal and state law requires employers to maintain a workplace free from unlawful harassment.
- In determining whether unlawful harassment occurred, the whole situation will be examined.
- An employee or former employee may name your Employer in a lawsuit and you may be a witness.

Why it Matters

- Under Michigan law, an employee or former employee may sue you, as a supervisor or manager, along with your Employer.
- A supervisor or manager can be personally liable for harassment/discrimination.



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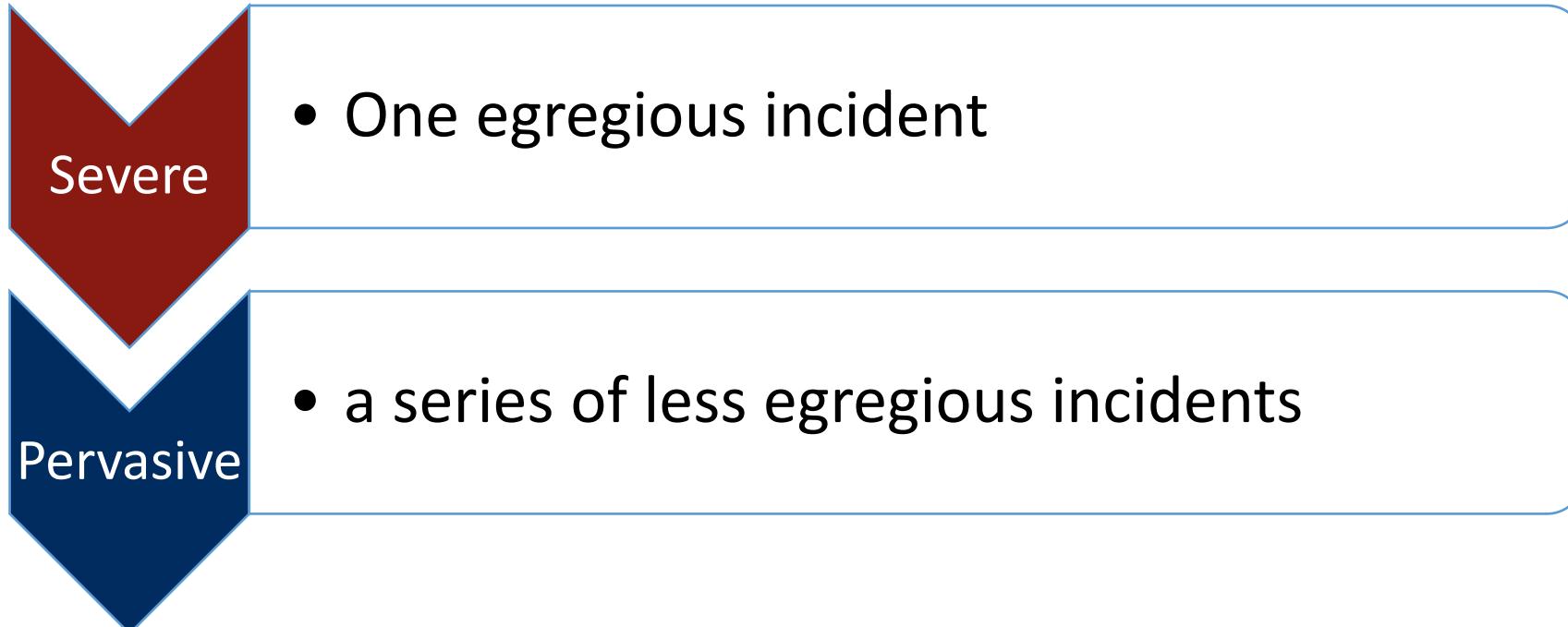
Not Just Sexual Harassment

Prohibited harassment extends to all characteristics protected by applicable law:

- **Age**
- **Citizenship or protected immigration status**
- **Color**
- **Disability/Handicap**
 - **Physical**
 - **Mental**
- **Gender Identity**
- **Genetic Information**
- **Height**
- **Marital Status**
- **National Origin**
- **Race**
- **Religion**
- **Sex, including Pregnancy**
- **Sexual Orientation**
- **Transgender Status**
- **Veteran's Status**
- **Weight**
- **Any other status or characteristic protected by applicable law**

Unlawful Harassment Overview

For legal recovery in a hostile work environment, the unlawful harassment must be pervasive or severe.



Isolated inappropriate comments and the like will not likely result in liability.

By whom?

- Other co-workers, even temporaries
- Supervisors and Managers
- Customers
- Vendors/Suppliers
- Guests
- Visitors



Against Whom?

- Any employee the conduct is directed against
- Those employees who observe, hear and are affected by the offensive conduct, even though not directed at them



Where?

Any place on work time
or at work events



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Liability

Your Employer has strict liability when harassment by a supervisor or manager results in a tangible job loss.

- Tangible job loss includes things such as firing, failing to promote, demotion, reassignment with significantly different duties, or a demotion causing a significant change in benefits.



Practical Pointers

- Follow and enforce your Employer's policy against harassment.
- Do not discourage internal complaints of harassment.
- If you are ever accused of harassment, immediately involve your supervisor and the person responsible for Human Resources. Never attempt to handle it yourself.

Practical Pointers

- Always refer to employees by their name, not even any “nice” nickname like sweetie, babe, honey, etc., and do not permit employees to use such names
- Never tell, participate in or condone sexual jokes in the workplace.
- Prohibit sexually graphic and otherwise offensive magazines, pictures, calendars, etc., in the workplace or any customer site where you work.
- Never date or engage in any romantic or sexual relationship with any employee you are responsible for supervising in any way (ideally, extend this prohibition to any employee, not just those you supervise).

Practical Pointers

- Always conduct yourself in a professional manner with employees, and encourage all managers and supervisors to do the same.
- Again, take seriously any complaint of harassment, and coordinate with your supervisor and the person responsible for Human Resources.
- Working with Human Resources, implement any necessary interim measures while Human Resources promptly and properly investigates the matter.

Practical Pointers

- Following the investigation, take prompt and appropriate remedial action as the facts and circumstances warrant.
- Document the investigation and provide a letter memorializing the matter in a letter to both the complainant and the person complained about.
- Make certain that retaliation does not occur against the complainant.

Selected Legal Principles - ADA

What is “disabled”?

- “Substantially limited” in a *major life activity*
- Can be temporary impairment (but generally six months or more in duration)
- *Perceived* as disabled

What is a “major life activity”?

- Activities generally recognized
 - Walking, standing, lifting
 - Reading, communicating
- Major Bodily Functions
 - Immune system
 - Cell growth
 - Digestive system
 - Circulatory
 - Endocrine

Selected Legal Principles - ADA

- Employers are restricted as to what medical information they can request from job applicants and employees, and when they can request it. For example, an employer cannot request any medical information from a job applicant until after the employer has made a conditional offer of employment to the job applicant.
- During an employee's employment, the employer can only require medical or fitness for duty examinations under certain circumstances.
- Medical information concerning any job applicant or employee should only be provided to those individuals at the employer who have a "need to know."

Selected Legal Principles - ADA

- An employer has a duty to make reasonable accommodations for a disabled employee up to the point of an undue hardship.
- An employer is not required to create a job or make-work for an employee. However, reasonable accommodations may include, for example, job modifications and/or scheduling changes.
- An employer may be required to give non-essential job duties to another employee.

Practical Pointers - ADA

Some perhaps not obvious covered conditions

- Hypertension
- Diabetes
- Migraine headaches
- Mental conditions including anxiety and PTSD

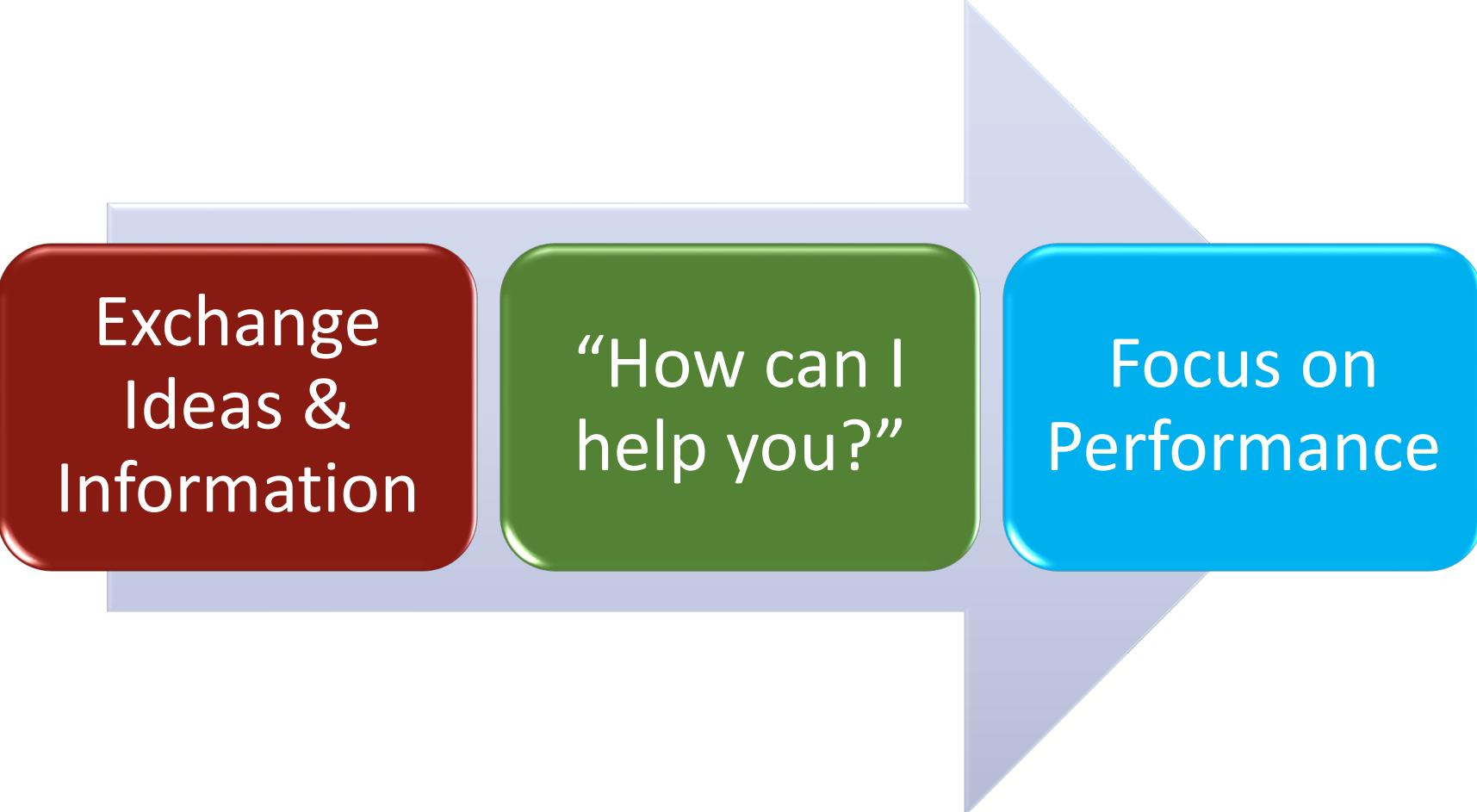
Reasonable accommodations

- Must be considered
- Even for employees with minor restrictions if they have a disability as defined by law

Use Caution

- Involve Human Resources Immediately
- Get more information (ask for medical documentation)
- Participate in the “Interactive Process”

Practical Pointers - ADA



Exchange
Ideas &
Information

“How can I
help you?”

Focus on
Performance

Practical Pointers - ADA

- Take seriously any request for accommodation from an employee (even if you are unaware of any disability), immediately contact Human Resources and engage in the interactive process as appropriate.
- Your Employer must determine, if not apparent, whether the employee has a disability and may request medical records or a medical exam when required.
- Human Resources must properly document the interactive process and provide a letter to the employee describing the steps in the interactive process, its outcome, the reasons for the outcome and any accommodations provided.
- Consider employees with disabilities for all positions and promotions and, if an employee with a job-related disability is the most qualified candidate, then determine if a reasonable accommodation can be made.

Practical Pointers - ADA

Never condone anyone referring to an employee with a disability in any derogatory fashion, e.g., "cripple."

- Human Resources should always be included in any medical issues involving employees.
- Respect the confidentiality of all employees concerning medical issues.

Quick Quiz

- My Employer can be liable for sexual harassment even when the employee that the comments are directed toward does not complain? **True or False**
- My Employer may have to pay damages if I engage in unlawful harassment toward another employee? **True or False**
- If I am ever accused of harassment, the best way to handle it is to keep my mouth shut and not report it to anyone. **True or False**

Answers to Quick Quiz

- My Employer can be liable for sexual harassment even when the employee that the comments are directed toward does not complain? **True**
- My Employer may have to pay damages if I engage in unlawful harassment toward another employee? **True**
- If I am ever accused of harassment, the best way to handle it is to keep my mouth shut and not report it to anyone. **False**

Family Medical Leave Act

The Fourth Federal Statute is the Family Medical Leave Act (“FMLA”).

Available to Eligible Employees

- One year of employment
- 1250 hours

Up to 12 weeks of leave annually

Unpaid

- Usually
- Depends on employer policies

Job Protection

- Return to their job or equivalent position

Selected Legal Principles

New Child Leave

- During Pregnancy
- Applies to Adoption/Foster Children
- Dads, too

Employee Medical Leave

- Serious Health Conditions
- Absences of > 3 days
- Ongoing doctor's care

Family Medical Leave

- Serious Health Condition of Family Member
- Requires Ongoing Care

Military Exigency Leave and Military Caregiver Leave

EFMLA under the Families First Coronavirus Response Act

Summary of FMLA Leaves

New Child Leave

- 12 weeks
- Not intermittent
- Applies to both men and women

Employee Medical Leave

- 12 weeks
- Intermittent leave allowed
- Serious health condition of employee
- Usually triggered after 3-day absence or continuing treatment

Family Medical Leave

- 12 weeks
- Serious health condition of employee's family member
- Intermittent leave allowed

Military Exigency Leave/Military Caregiver Leave

- Usually 12 weeks
- Rest & Recuperation Leave: Up to 15 calendar days
- Up to 26 weeks for Military Caregiver Leave

EFMLA

- Up to 12 weeks paid leave (subject to limitations), when combined with paid sick leave

Selected Legal Principles

- If both a husband and wife are employed by a single employer and eligible for leave, they are jointly entitled to a combined total of 26 weeks of military care giver leave.



Selected Legal Principles

- In certain instances, employees may take FMLA leave intermittently, which means taking leave in blocks of time, by reducing their normal weekly or daily work schedule.
- The Department of Labor's regulations contain extensive definitions of what is a serious health condition. Things like the common cold, non-migraine headaches, certain elective surgeries, etc., are not considered serious health conditions.

Selected Legal Principles

- Employees seeking to use FMLA leave are required to provide thirty (30) days' advance notice of the need to take such leave when the need is foreseeable.
- When the leave is not foreseeable, an employee must notify the employer as soon as possible of the need for leave.

Selected Legal Principles

- Upon return from FMLA leave, an employee must be restored to the employee's original job, or to an equivalent job with equivalent pay, benefits and other terms and conditions of employment.
- An employee's use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to before using FMLA leave nor can it be counted against the employee under a "no-fault" attendance policy or to disqualify the employee from a bonus under an attendance policy.
- For certain "key" employees, an employer may refuse reinstatement to employment unless certain conditions are met.

Practical Pointers

- Human Resources should always be involved concerning any employee's request for FMLA leave.
- If an employee calls in sick and it is anything beyond the routine cold, flu or the like or lasts for 3 days or more, Human Resources should be involved so that possible FMLA eligibility issues can be addressed.
- Human Resources should coordinate all FMLA leave issues.

Similar State Law: Michigan Paid Sick Time

Eligible non-exempt employees who work in Michigan for an employer with 50 or more employees earn one hour of paid sick leave for every 35 hours worked, up to 40 hours per year. Some examples of when state paid sick time can be used:

- (i) to recover from physical/mental illness or injury;
- (ii) to seek medical diagnosis, treatment, or preventative care;
- (iii) to care for a family member who is ill or needs diagnosis, treatment, or preventative care;

Similar State Law: Michigan Paid Sick Time

- (iv) when the worker's place of business is closed by a public official's order due to a public health emergency;
- (v) to care for a child whose school or childcare provider has been closed by order of a public official due to a public health emergency;
- (vi) to care for themselves or a family member.

If an employee already gets other types of paid leave (vacation, paid time off, etc.) that they can use as sick time and it's at least the same amount they would earn under this law (40 hrs.), the paid sick time law does not give the employee any additional paid time off.

Personnel Files

- The ADA expressly provides that an employer must maintain separate medical and personnel files. Those who have a need to know can only review medical files.
- A Michigan statute requires an employer to provide an employee with an opportunity to periodically review his or her personnel file at reasonable intervals (generally not more than twice in a calendar year) and establishes general principles concerning personnel files.

Selected Legal Principles

- An employer may charge a fee for providing a copy of information contained in an employee's personnel file that must be limited to the actual incremental cost of duplicating the personnel record.
- An employer cannot gather or keep a record of an employee's associations, political activities, publications or communications of non-employment activities unless the information is submitted in writing, or is authorized to be kept or gathered in writing by the employee to the employer. This does not apply to activities that occur on the employer's premises or during the employee's working hours that interfere with job performance.

Selected Legal Principles

- Personnel record information must be placed in the personnel file or it may be barred from use in any judicial proceeding.
- Certain notice requirements must be met before divulging any sort of disciplinary record to a third party.
- An employer may keep a separate file for a period of time relating to an investigation of criminal activity.

Selected Legal Principles

- The EEO/AA regulations for employers with apprentices require that employers maintain a separate EEO/AA confidential file for those apprentices. Things that must be included in this file include the Voluntary Disability Disclosure response.
- Contents of the EEO/AA file should only be released to those who need to know, including your sponsor-intermediary SEMCA/WIN.

Practical Pointers

- All supervisors and managers must promptly forward all original personnel documents (discipline, performance reviews, notes, etc.) to Human Resources for inclusion in the personnel file. If they desire, they can keep a copy for their records.
- Human Resources should always handle all requests by an employee to review his or her personnel file.
- If in doubt about whether a document should be included in the personnel file, speak with your supervisor or Human Resources.

Practical Pointers

- Keep confidential all medical records or information concerning an employee, as well as all EEO/AA documents or information regarding apprentices, and provide only to those who need to know.
- Follow your Employer's policy concerning any present or former employee.



Medical Privacy

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Wage and Hour Law

- Fair Labor Standards Act of 1938, as amended ("FLSA").

The FLSA requires most employers to pay employees a minimum wage (presently \$7.25 per hour) and overtime at the rate of one and one-half (1 ½) times the employee's regularly hourly rate for all hours worked in excess of forty (40) per week except for employees who are exempt.

Under Michigan statute, the minimum wage for 2021 is \$9.65 per hour.

- Equal Pay Act of 1963 ("EPA").

The EPA, which amended the FLSA, prohibits wage discrimination among employees on the basis of sex where the work requires equal skill, effort and responsibility and is performed under similar working conditions.

Selected Legal Principles

- Certain employees are exempt from the requirement of overtime pay such as administrative, executive and professional employees and outside sales persons.
- To be exempt, the employee must meet the specific job duties test and be paid on a salary basis, presently of \$684 per week or \$35,568 annually.
- All non-exempt employees are entitled to pay for all hours they are permitted to work.
- All non-exempt employees must be paid for time spent in training required by the job.

Practical Pointers

- Do not let a non-exempt employee start work early, unless it is authorized overtime.
- Do not let an employee do "volunteer" work at the employer (work that benefits the employer).
- Do not permit an employee to work overtime unless the overtime is specifically authorized in advance.
- Never promise an employee pay in addition to that allowed by employer policy.
- Keep an accurate hour record of all hours worked by employees.

Unemployment Compensation

- The Michigan Employment Security Act ("MESA").

The MESA requires most employers to make contributions to the unemployment system, although some employers are reimbursing employers that just reimburse the State the amount paid out in unemployment benefits to (former) employees. The objective is to provide temporary income for employees who have lost their jobs through no fault of their own. Eligible individuals are able to receive unemployment benefits for a certain length of time (typically 26 weeks, but extended to 39 weeks due to the federal legislation as a result of COVID-19) if they are unemployed but able to work.

Normally, an employee is only eligible for the maximum amount of unemployment insurance, an amount less than \$400 per week, but with Federal Pandemic Unemployment Compensation, claims that were payable for certain weeks received an additional amount.

Selected Legal Principles

- An employee is eligible for unemployment benefits even if he or she is terminated, unless the employee has engaged in misconduct, which is defined, as a wanton and willful disregard of the employer's interests.
- In the case of a layoff, employees will almost always receive benefits unless they have not worked a sufficient period of time.
- An employee will not be eligible for benefits if he or she resigns from employment unless there is “good cause” for the resignation attributable to the employer, such as harassment, discrimination, etc.
- Typically, an employee must be seeking work in order to receive unemployment benefits (but due to the federal legislation as a result of COVID-19 the normal search for work requirement was temporarily waived).

Practical Pointers

- Never promise an employee that he or she will receive unemployment benefits. All decisions concerning benefit eligibility are made by the Unemployment Insurance Agency, or judges, and not by the employer.
- An employer's response to the Unemployment Insurance Agency concerning the reasons that an employee is no longer employed must be consistent with what actually occurred or the employer may compromise its ability to defend itself in employment litigation or arbitration filed by the employee.
- Always be truthful with employees concerning the reason for their discipline or termination.

Eavesdropping/Tape-Recording

- The Federal Wiretapping Statute.

This statute generally provides that it is not unlawful for a person to intercept a wire or an electronic communication if one of the parties to the communication has given prior consent.

- Michigan's Eavesdropping Statute.

Any person who is present or who is not present during a private conversation and who willfully uses any device to eavesdrop upon the conversation without the consent of all the parties thereto, or who knowingly aids, employs or procures another person to do the same, is guilty of a felony punishable by imprisonment in a state prison for not more than two years or by a fine of not more than \$2,000 or both. In addition to criminal liability, the Michigan statute further provides for injunctive relief, all actual damages, and punitive damages as determined by a court or jury.

Selected Legal Principles

- Under this Michigan statute, a third party must obtain the consent of all the parties to a conversation to record that conversation. So, it is unlawful for a third party to eavesdrop on, or record, the conversation of persons having a conversation unless the third party has the consent of all the persons in the conversation to do so.
- Michigan courts have recognized that if you are a participant in a conversation, then you do not need permission of the other participants to record the conversation under this statute (but this may create other issues and I am not recommending it).

Practical Pointers

- Always conduct yourself in a professional manner at work. Unbeknownst to you, an employee without authorization could be secretly tape-recording or video-recording your activities and statements.
- Never secretly tape-record a conversation with any employee or third party without the express advance authorization of the Human Resources Manager.
- If it comes to your attention that an employee is making any audio or videotape, notify Human Resources.

Internet Privacy/Selected Legal Principles

- Michigan has a statute known as the Internet Privacy Protection Act, which provides that an employer shall not do any of the following:
 - Request an employee or an applicant for employment to grant access to, allow observation of, or disclose information that allows access to or observation of the employee's or applicant's personal internet account.
 - Discharge, discipline, fail to hire, or otherwise penalize an employee or applicant for employment for failure to grant access to, allow observation of, or disclose information that allows access to or observation of the employee's or applicant's personal internet account.

Selected Legal Principles/Practical Pointers

- The Act does not prohibit or restrict an employer from viewing, accessing, or utilizing information about an employee or applicant that can be obtained without any required access information or that is available in the public domain.
- The Act does not prohibit an employer from monitoring, reviewing or accessing electronic data stored on an electronic communications device paid for in whole or in part by the employer, or traveling through or stored on an employer's network.
- There are other detailed exceptions.
- Always discuss any issues in this area with the person responsible for Human Resources.

Worker's Compensation

- The Worker's Disability Compensation Act of 1969, as amended ("WDCA") governs worker's compensation in Michigan.
- The WDCA is essentially a no-fault system in which most employers are required to have workers' compensation insurance, or be self-insured, and an employee is able to recover benefits if he or she has an illness or injury that arises out of and in the course of employment.

Workers' Compensation

- Workers are entitled to certain wage loss benefits, the cost of medical treatment, and certain rehabilitation services. Most disputes focus on two issues: is the worker disabled and, if so, did the employment cause the disability?



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Selected Legal Principles

- The WDCA provides an exclusive remedy for an employee's injuries or illnesses. In other words, an employee cannot sue the employer in court and attempt to recover damages for his or her illness or injury unless the employer has committed an intentional tort.



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Practical Pointers

- Require employees to always report any work-related injury or illness regardless of how minor.
- Human Resources should always be involved in any work-related employee injury or illness.
- Never allow an injured employee to drive him or herself to a medical facility. Always provide appropriate transportation for the employee.

Practical Pointers

- Do not play doctor. Always allow a trained medical provider to make the decision on whether someone is able to work, etc.
- Always promptly address any safety concerns to avoid injury.
- Alert the worker's compensation insurance carrier in all appropriate circumstances.



Health and Safety

The Michigan Occupational Safety and Health Act ("MIOSHA") requires Michigan employers to provide employees employment, and a place of employment, that is free from recognized hazards that are causing, or are likely to cause, death or serious physical harm to the employee.



Selected Legal Principles

- An employer may be liable under MIOSHA for violations related to COVID-19 requirements as well as have liability under the WDCA.
- An employer may be liable under MIOSHA for workplace violence as well as have liability under the WDCA.
- Like many other states, Michigan recognizes an employer's liability for the negligent hiring, retention or supervision of an employee.
- Negligent hiring occurs when an employer knows, or should have known, of an applicant's dangerous or violent propensities but hires the applicant anyway and then the applicant acts on those propensities.

Selected Legal Principles

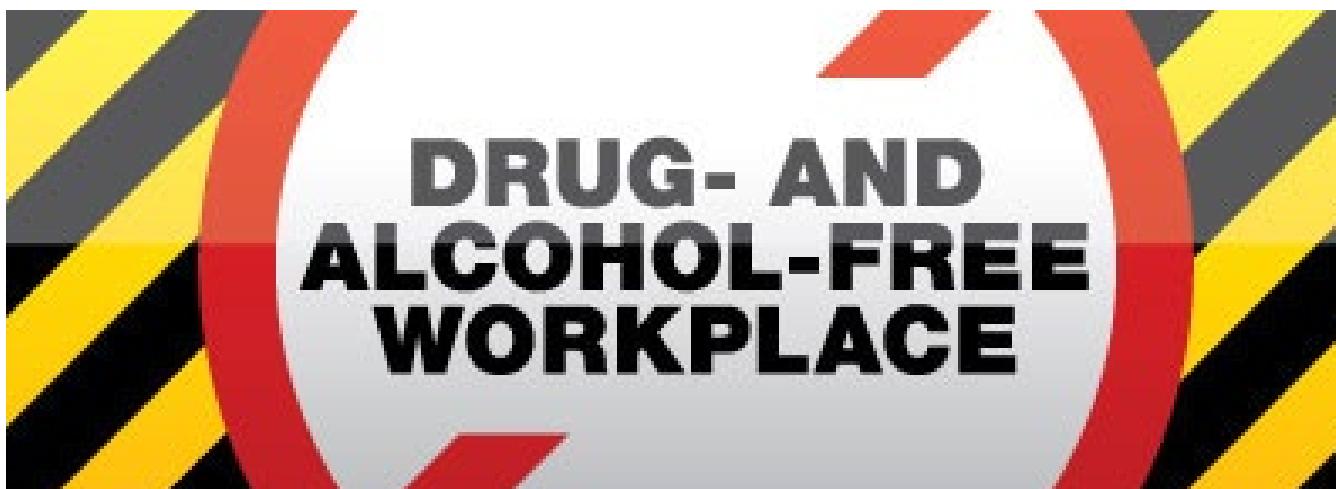
- An employer will be liable for negligent retention and/or supervision when, during the course of the employment relationship, the employer becomes aware, or should have become aware, of the violent propensities of the employee and takes no reasonable precautions to prevent injury to others.
- For example, an employer has been held strictly liable for the rape of an employee by a supervisor since the supervisor accomplished the rape through the exercise of supervisory power over the employee.

Practical Pointers

- Regarding the hiring process:
 - make sure all references are checked;
 - investigate gaps in employment history; and
 - consider conducting civil and criminal checks in applicable courts.
- Make sure all your Employer policies are uniformly followed which address violence prevention, weapons, drugs and alcohol, harassment prevention, equal employment opportunity, and visitors.
- Take seriously all complaints concerning a violation of any such policy, especially any complaint that an individual has made a threat.

Practical Pointers

- Immediately involve security and call 911 as appropriate regarding any threat.
- Take proper action if you observe anyone who appears to be intoxicated, impaired, or otherwise incoherent.



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Practical Pointers

- Take proper action if you learn of potential violence involving any individual on your Employer's property (e.g., observe someone who is badly bruised, etc.).
- Immediately call security or 911 if you observe any disturbance or violence, hear anyone threaten to harm another person, observe anyone with a weapon (gun, knife, etc.) of any sort in the building or on your Employer's property, or observe any conduct or behavior or hear something that would lead you to contact the police if you were at your home.

The Supervisor/Manager's Role

In light of the employment laws, what is the Supervisor's/Manager's role?

Five Critical Principles

- A _____ be f _____ and c _____ (in dealing with employees).
- W _____ in d _____, c _____ it o _____.
- Be p _____, not r _____.
- D _____, d _____, d _____.
- A _____ be p _____ (in dealing with employees)

Five Critical Principles

- Always be fair and consistent (in dealing with employees).
- When in doubt, check it out.
- Be proactive, not reactive.
- Document, document, document.
- Always be professional (in dealing with employees).

Questions? Check with Human Resources!



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BREAK

Take 15 Minutes

Please Return Promptly

Segment 2 Risk Management

Minimizing Legal Risks During the Life Cycle of the Employment Relationship.

Risk Management

Includes Some Observations Based on Over 30 Years
Representing Management on
Labor and Employment Matters.

Risk Management

- For many employers, labor and employment matters often tend to be somewhat of an afterthought.
- Basically, these issues are considered a waste of time with little or no impact on operational issues or the bottom line.
- However, proactively considering the issues and implementing sound practices will greatly minimize risk, save a great deal of time and likely contribute more than expected to the bottom line.

Risk Management

For purposes of this segment of our time together, we will examine the life cycle of the employment relationship in three parts:

- Hiring Process
- Employment
- Termination

Hiring Process – A Decision and Then 8 Steps



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Hiring Process

Decision: Invest the time and effort in making wise decisions.

- The Department of Labor has apparently estimated it costs an employer between 50% and 200% of an executive's salary to replace him/her effectively – regardless of how long the executive has been employed.
- Put the time and effort into making wise hiring decisions (and then retaining employees).

Hiring Process

Step 1: Prepare (or review) a job description that complies with the ADA.

- This task will refine your thinking about your exact needs and the qualities of the ideal candidate.
- Such a job description provides legal protection as you identify the essential functions of the job and the non-essential functions of the job.
- For apprentices, make sure this includes the EEO/AA pledge language (check with Human Resources on the exact language to be included)

Hiring Process

- **Step 2: Announce the opening/publish the job description**
- Announce the opening, preferably with publishing the job description, in all appropriate places including, for example, Pure Michigan Talent Connect
- For all apprentices, make sure you have coordinated with Human Resources on all places where the opening should be announced/job description published to ensure affirmative action compliance
- For all apprentices, make sure the announcement contains the EEO/AA pledge (again, check with Human Resources for exact language)

Hiring Process

- **Step 3: Review of the Employment Application**
- For apprentices, make certain the employment application contains the EEO/AA pledge (again, contact Human Resources concerning exact language) as well as refers to the Voluntary Disability Disclosure form
- For all employees, make certain the employment application contains risk management language addressing topics such as a jury waiver or arbitration, and shortening the limitations period for filing

Hiring Process

Step 4: Resumes/Employment Applications.

- Tools for obtaining complete employment history and other candidate information.
- Select best qualified candidates for interviews based on education, work experience and other qualifications meeting the requirements of the job description (also known as objective criteria).

Hiring Process

Step 5: Interviews

- Conduct interviews.
- Use the same basic non-discriminatory questions for all candidates and keep a record of the answers.
- For apprentices, this is required by the EEO/AA regulations. For others, it is best practices.



Hiring Process

Step 6: Selecting Process

- Use non-discriminatory criteria.
- Keep a record of why one candidate was selected and the others were not.
- For apprentices, this is required by the EEO/AA regulations. For others, it is best practices.



Hiring Process

Step 7: The Conditional Offer Letter

- Make sure the candidate understands the job conditionally being offered and generally its responsibilities.
- Provide for at-will employment.
- Ask about any criminal background, require completion of forms necessary to conduct background check, and send for medical examination if required (make certain Fair Credit Reporting Act requirements are followed, as applicable).

Hiring Process

- Emphasize offer is contingent upon:
 - Passing reference check
 - Criminal background check
 - Acceptable driving record, if driving is essential function of the position
 - Returning agreements if required, like Confidentiality and Non-Solicitation Agreement and any Mediation and Arbitration Agreement

Hiring Process

Step 8: Background Check/Verification/Follow up Letter

- Verify that all required conditions have been fulfilled and all documents provided.
- If not, withdraw the conditional job offer in a carefully worded written letter.



Hiring Process

- As stated above, evaluate the background check and any medical exam and determine whether you will accept this candidate or withdraw the conditional offer of employment.
- Under the ADA, a conditional offer of employment can only be withdrawn if the candidate's medical condition possess a direct health of serious harm or death to the candidate or others if the offer is not withdrawn.
- There are also issues of discrimination to consider in withdrawing any conditional offer of employment based on a criminal background check (if withdrawn, make sure requirements of the Fair Credit Reporting Act are followed, as applicable).
- If the offer is not withdrawn, send a letter accepting the candidate and verifying a start date.

Complete I-9 Form/Provide Employee Handbook

On the first day of employment:

- Properly complete the I-9 form.
- Provide the employee handbook and instruct the employee to read it and require the signed acknowledge form which should be placed in the employee's personnel file. Alternatively, new hires should sign important policies.

Employee Handbook

- Provide job related training including training on harassment and discrimination prevention.
- Address policies for risk management, including harassment prevention, workplace violence prevention, weapons policy, and others.
- Handle other introductory matters like W-4 forms and the like.
- Make certain all Human Resources matters are handled.

Personnel Files

- As required by the ADA, personnel and medical information must be filed and kept separately. Medical information must be provided only to those who “need to know”.
- Likewise, EEO/AA forms must be separately filed and kept confidential.



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Work load/Assignment

- Unequal job assignments over a period of time whether based on time commitments or otherwise can result in claims of discrimination or harassment.
- Excessive work demands and stress can result in requests for FMLA time off due to a health serious condition. (Up to 12 protected weeks each year).

Performance Evaluations

Performance evaluations are:

- Effective tools if used properly.
- Dangerous tools if used improperly.

The employee should be rated on the full scale (of 1-5, or whatever other scale SEMCA chooses to use), not using only the top end of the scale.



Articulation Rating Scale

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Performance Evaluations

- A consistent problem occurs when performance is supposed to be rated on a scale of 1-5, but managers effectively use a 3-5 scale. Numbers 1-2 are really not used
- Supervisors and managers should be evaluated on compliance with EEO/AA requirements



Performance Evaluations

- There is a big problem then when you want to terminate an employee based on poor performance who has been rated average or above year in and year out.
- This is a recipe for claims of harassment, discrimination or retaliation that will likely create a question of fact. In other words, an arbitrator, judge or jury will get to decide who is telling the truth.
- In sum, administer performance evaluations consistently and fairly using the full evaluation scale.

Supervisor Differences

- After spending about 50% of my work life over the span of 20 years defending employers in litigation, I can tell you that in defending a discrimination or harassment claim it is very important that supervisors act consistently.
- In other words, for example, an assertion that WIN supervisors do things differently than the rest of SEMCA supervisors when it comes to discipline and the like is almost certainly not going to be accepted. SEMCA needs to act uniformly and consistently.

Discipline

- While employers need to take a balanced and fair approach with employees, after reviewing hundreds, and probably thousands, of personnel files over the years and discussing the issues with management, there seems to be a pattern.
- Generally, problem employees don't suddenly become a problem.



Discipline

- They are often poor performers from almost the very beginning. However, marginal performance was tolerated.
- Best to weed out poor performers early.
- At the same time, as there is already a big investment in them, give them ample reasonable opportunities to succeed.

Discipline

Written discipline that is signed by an employee (or even a statement that the employee refused to sign), eliminates the majority of issues about whether the event actually happened.



Discipline – Has it happened?

Four basic rules:

1. Understand the applicable employment laws
2. The person responsible for Human Resources should always be involved and investigate before acting
3. Consistently and professionally apply the policies and performance criteria
4. Document

Discipline – Has it happened?

- Counseling vs. Discipline
- Performance Improvement Plans
- Discipline:
 - Oral warning (documented)
 - Written warning
 - Suspension
 - Termination

Discipline – Has it happened?

- Oral warning:
 - Advise employee, orally, of violation or problem
 - Outline action employee needs to take for improvement
 - Suggested language:
 - “This is unacceptable”
 - “This cannot continue”
 - Document the oral warning

Discipline – Has it happened?

- Written warning:
 - Review the sequence of events.
 - Date of infraction
 - Prior warning(s), including counseling/training
 - Explain why this action did not meet standards.
 - Rule violated or performance issue

Discipline – Has it happened?

- Explain the corrective action required.
- Explain the timeframe.
- Explain the consequences if corrective action is not taken.

Suspension:

- May be appropriate when employee engages in a serious violation of policy, but employer does not believe it warrants termination.

Discipline – Has it happened?

Factors when deciding the number of warnings to provide before terminating – even for employees “at-will”:

Seriousness of matter

Interval since prior warning

Employer’s practice in similar situations with other employees

Employee’s length of service

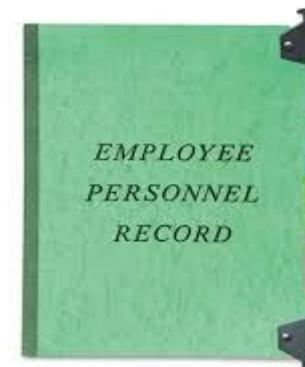
Employee’s overall record

Unfortunate timing that may cast doubt on reason for termination

Discipline

Discipline employees consistently and fairly and make sure all discipline is placed into personnel files.

For example, under Michigan law, the personnel file is to contain, among other things, all records relative to disciplinary action concerning the employee.



Discipline

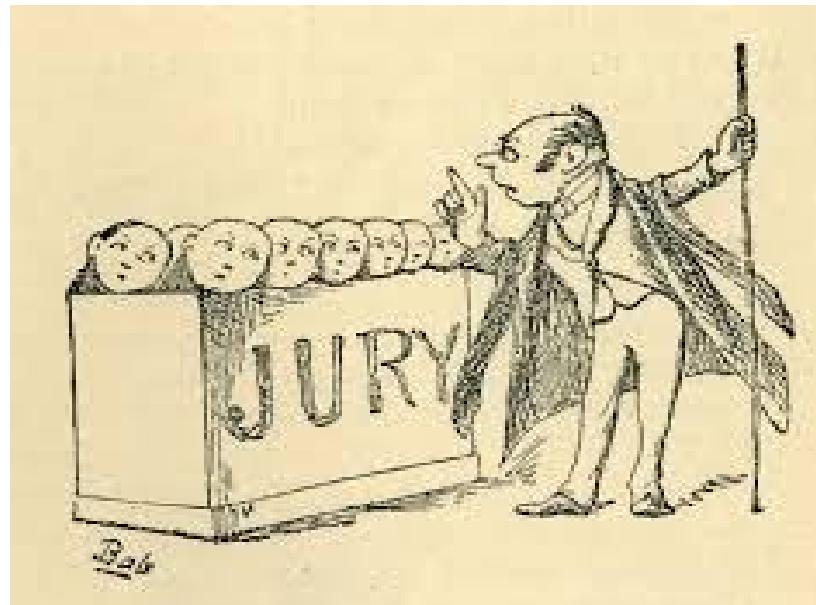
- Personnel record information which has not included in the personnel file but should have been as required by the Act “shall not be used by an employer in a judicial or quasi-judicial proceeding”.
- So, if your Employer has the best written documents in the world leading up to the employee’s termination, but the documents are not timely made part of the employee’s personnel file, your Employer cannot use them in a judicial proceeding or arbitration (subject to some exceptions).

Discipline

- Without documentation in court, it boils down to your word against the employee's word.
- And, for example, who do jurors especially typically identify with?
 - The hard-up, terminated, former employee or what they may perceive, or might be portrayed as, a large, bureaucratic, money-focused organization?

Discipline

- Employers are consistently hamstrung by the lack of timely written discipline.
- No employee is exempt from written discipline:
 - Trial without the written discipline.



Discipline

- To a jury: if it is not written down, it did not happen.
- The disciplinary document should be written in a way that a stranger could read and understand it.
- Promptly document the incident.
- Focus on important incidents.

Discipline

Get employee's side of the story

Avoid the impression of retaliation

Bridge past warnings

Have the employee sign the warning or indicate "refuses to sign"

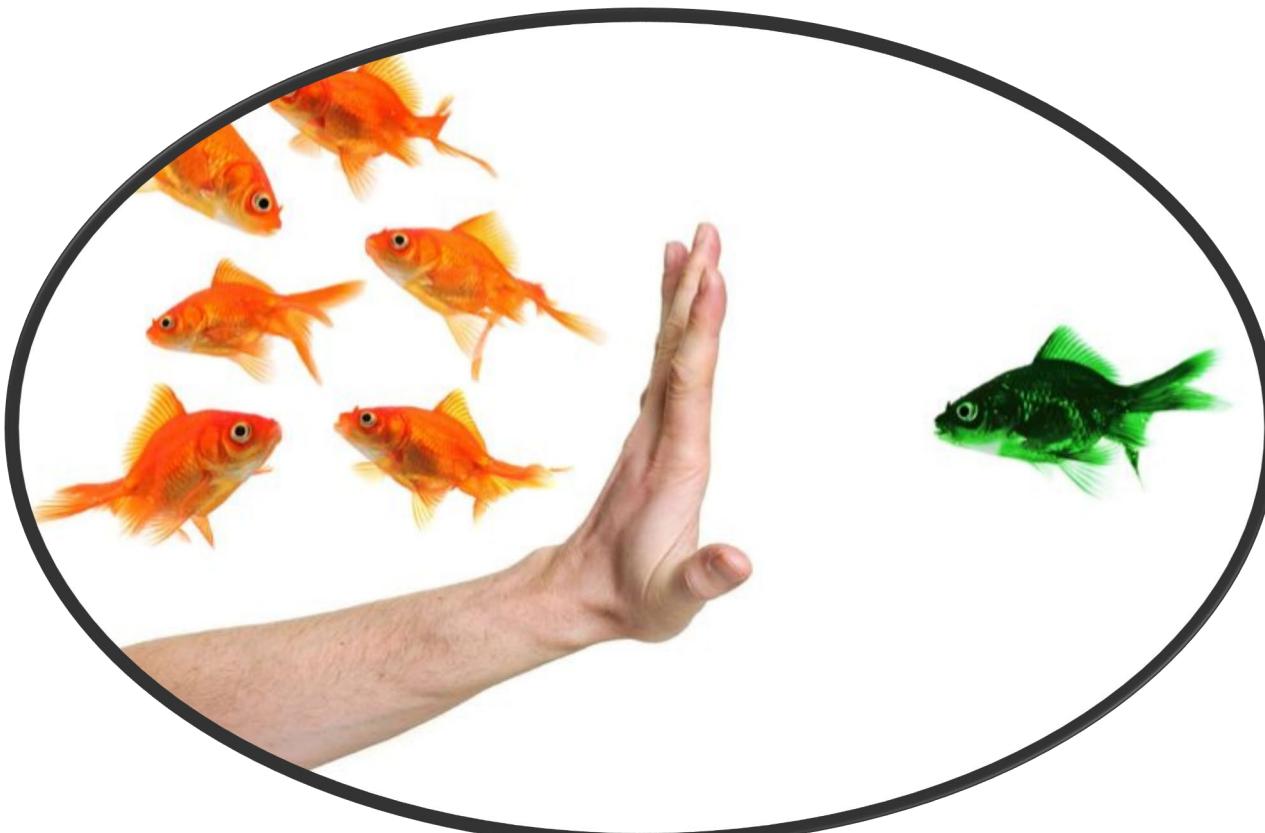
State in documentation that any further deficient performance of any kind could result in further discipline up to and including termination

Harassment Prevention

- An employer has an affirmative duty to maintain a work environment free of unlawful harassment.
- Harassing conduct may be challenged even if the complaining employees are not specifically intended targets of the conduct.

Harassment Prevention

- Under the laws of Michigan, managers and supervisors can be personally liable for harassment, discrimination, or retaliation.



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Harassment Prevention Requires Leadership

- The United States Equal Employment Opportunity Commission (“EEOC”) is the federal government agency that enforces most of the federal discrimination laws. In a study conducted several years ago, the EEOC found that almost one-third of the charges received during an 18 month period included a workplace harassment allegation.
- As part of its Executive Summary based on the study, the EEOC stated that stated that the importance of leadership cannot be overstated. In preventing harassment, leadership must start with the highest level of management and employees at all levels must be held accountable.

Harassment Prevention Requires Leadership

As you know, your Employer has a strong policy prohibiting discrimination and harassment. As stated in your Employer's Equal Opportunity and Harassment Prevention Policy (or something very similar to this):

“The Company is also ABSOLUTELY committed to providing a work environment that is free of ALL forms of unlawful harassment. We will not tolerate the harassment of our employees by anyone including, but not limited to, supervisors/managers, co-workers, customers, vendors/suppliers, guests or visitors. All employees have the right to work in an environment free from intimidation and harassment. In other words, the Company is committed to a policy of zero tolerance for discrimination and unlawful harassment. Further, we are committed to having a professional work environment in all areas where everyone can comfortably and productively work.”

Harassment Prevention Requires Leadership

- As a supervisor or manager at your Employer, you are expected to lead in this area.
- It is not acceptable to leave this to someone else.

Harassment Prevention

- The key is to never come close to the line.
- Strive to eliminate inappropriate conduct and communication in the workplace and outside the workplace in any employee, customer, vendor/supplier, guest or visitor interaction including:



Harassment Prevention

- Vulgar talk
- Demeaning conduct, insulting conduct, undermining or disrespectful conduct and unfair conduct
- All communication, even in languages other than English, that is degrading, harassing, threatening and the like
 - This includes verbal, non-verbal, and written communication in all contexts (photos, documents, notes, cartoons, e-mails, texts, social media, etc.).

Harassment Prevention

- Off-color jokes
- Sexual Suggestions
- Inappropriate forms of touching
- Other inappropriate conduct of any nature



Harassment Prevention

- Avoid explicit sexual statements in the workplace memorialized in text messages for the world to see.
- Use good judgment and professional terminology.

Harassment Prevention

You must consider messages:

- Sent at work, using work devices
- Sent at work, from personal devices
- Sent outside of work from personal or work devices
- Postings to social media



Risk Management

Again, always ask yourself and encourage supervisors and managers to ask themselves before sending an e-mail or text message, making a social media posting, or any other form of electronic or written communication:

“If a lawsuit occurs, would I be comfortable with this message blown up on a big screen for the judge and jury or arbitrator to see?”



Harassment Prevention

Never, ever date any employee or become romantically involved with any employee in the workplace, especially those under your direct or indirect supervision.



Harassment Prevention

It is also best not to engage in such relationships with any customer or vendor/supplier with whom you interact.

Consensual relationships can quickly become non-consensual relationships for one party.

Harassment Prevention

What happens when the tape recorded conversation or video comes out?



Harassment Prevention

Discipline Issues

- Employees are not being timely and fairly disciplined.
- No written discipline.
- No uniformity in discipline.

Harassment Prevention

- Treat employees fairly and with respect.
- Strive for a professional work environment where any employee would feel comfortable working and can work in a productive manner.
- Human Resources should always be involved and lead with any claim or assertion of discrimination, harassment or retaliation.

Harassment Prevention

- Under applicable law, a defense to harassment, discrimination or retaliation is an employer taking prompt and appropriate remedial action.
- Underlying prompt and appropriate remedial action is a complete and fair investigation.



Harassment Prevention

- Employers are best served by handling any claims of discrimination, harassment or retaliation in-house.
 - Address the problem before an employee goes to a federal or state government agency, or files a lawsuit.

Discharge - Documents

- Is there a disciplinary chain in place?
- Are performance evaluations inconsistent with discipline?
- Have you considered a performance improvement plan?
- Have you considered a last chance agreement?



Discharge – Severance Agreements

- Have you considered a severance agreement?
- In certain situations, such an agreement can provide an “insurance” policy against a former employee filing claims.
- If you have properly followed the steps leading up to this point, there will be limited need to use such agreements.

Memorializing Discharge

- Always, always memorialize the termination in writing.
- Prepare a written letter to the employee addressing the reasons for termination.

Memorializing Discharge

- Written documentation is incredibly important in litigation defense.
- It serves as a very useful tool in warding off claims made by plaintiff's employment attorneys.



Memorializing Discharge

When properly done, written discipline and termination letters are worth their weight in gold (and even more than that) in litigation.



Termination Checklist

- What is the scope of the issue precipitating the employee's discharge?
- Can the issue be corrected?
- What is the employee's employment history?

Termination Checklist

- Has the issue been directly addressed with the employee previously?
 - If so, did the situation improve?
 - If not, is there a credible reason why the employer should take an action other than discharge?
- How does the employee's performance compare to others?

Termination Checklist

- Are there alternatives to discharge?
 - Oral warning
 - Written warning
 - Performance improvement plan
 - Suspension

Termination Checklist

- Has there been compliance with discharge policies?
- Have other employees been terminated for the same issues?
 - If not, what corrective action was taken for those employees?

Termination Checklist

- Review all documentation supporting termination.
- Make sure documentation does not contradict the decision to terminate.
 - Has the employee received any commendations for his or her performance?
 - Has the employee received promotions, salary increases, or other objective indicia of acceptable performance?

Termination Checklist

- Is the employee a member of a protected class?
 - If so, has the employee made any complaints?
- Human Resources should always be involved early on:
 - Minimizes risk
 - Allows for increased uniformity in the decision to terminate.
- Check for statistical imbalance.

The Termination Decision

- The conversation to terminate should be between the decision-makers/Human Resources, with all in agreement to terminate.
- Avoid e-mails and other electronic or written communications discussing the termination.
- Prepare a termination letter that can be jury or arbitration exhibit #1, if need be.
- Consider providing severance pay in limited difficult situations, but only if it is paid as part of a complete signed written release agreement.

The Termination Meeting

- Consider whether there are any unique issues that require special planning or considerations.
 - Is the employee prone to outbursts or threats?
- Consider the date/timing of termination.
 - Are there important work-cycle considerations? Is it very close to a holiday?
- Arrange for technology access to be terminated during the meeting.

The Termination Meeting

- Conduct the termination meeting privately, allowing the employee to maintain dignity.
- Have two management representatives at the termination meeting, and the person responsible for Human Resources should be the spokesperson.
- Get directly to the point using the termination letter.

The Termination Meeting

- Allow the employee to read the termination letter and ask any questions (the termination letter should be written in a way so that there are few, if any, questions).
- Do not allow arguments or debate.

The Termination Meeting

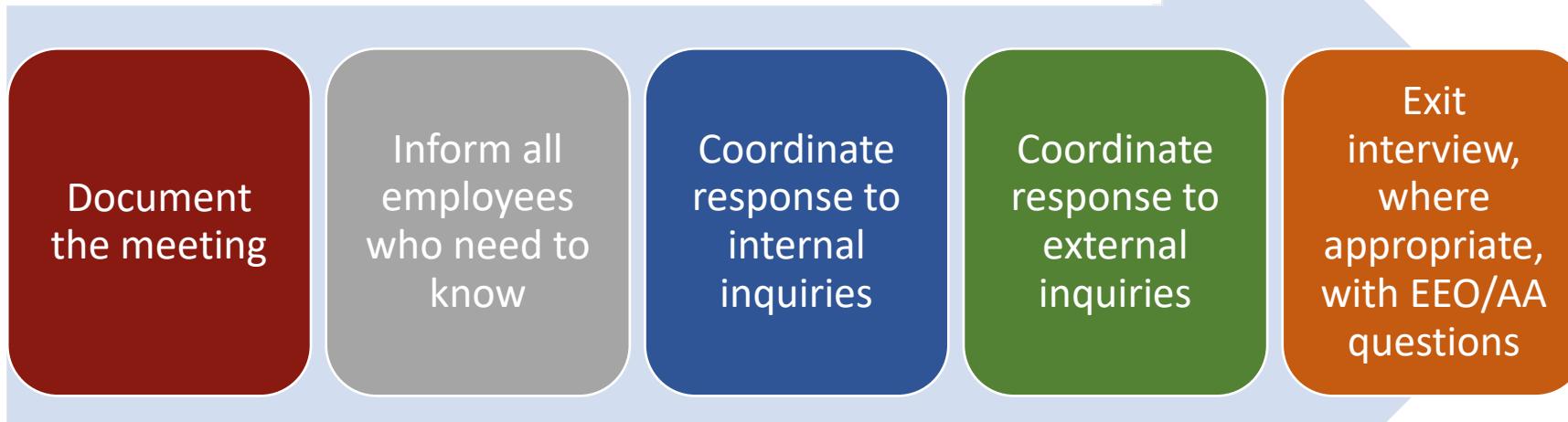
- Do not allow any management representative to say, “I was not in favor of it”.
- Do not apologize for the decision.
 - It is okay to say things like, “I’m sorry it did not work out” but only say things like that if the sentiment is genuine.
- No explanations are required or should be given other than the information contained in the letter.
 - Avoid any “admissions”.

The Termination Meeting

- Avoid personal hostility on anyone's part.
- Retrieve all Employer property and accompany the employee to retrieve his or her personal property (after hours).

The Termination Meeting

Immediately after the termination meeting



Qualities of an Effective Manager

Some tips:

1. Understand and follow policies and rules.
 - Ignorance is inexcusable.
 - Ask if you don't understand.
2. Consistently and objectively apply policies and rules.
 - Don't play favorites.
 - Don't target specific employees.

Qualities of an Effective Manager

3. Issue corrective action and discipline appropriately.
 - Privately
 - Impersonally (objectively)
 - Supported by facts (which are substantiated based on proper investigation)
4. Engage in consistent and meaningful communications.
 - Not demeaning
 - Not abusive
 - Not disrespectful

Qualities of an Effective Manager

5. Acknowledge honest effort and above-average work; deal with lack of effort and poor work.
 - Provide consistent and meaningful feedback.
 - Candid performance evaluations.
6. Have personal concern for employees and respect for other managers.
 - Listen
 - Be loyal to superiors and subordinates alike
 - Be responsive to employees' concerns
 - Don't "pass the buck"
 - Go "to bat" for employees when necessary

Qualities of an Effective Manager

7. Be honest.
 - Keep promises
 - Admit mistakes
8. Timely involve the Human Resources Manager in all Employment Issues.

Questions? Check with Human Resources!



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In-Depth Optional Employment Law Manual for Apprentices and other Hourly Employees

Presented by the Southeast Michigan Community Alliance, Inc., and
its Workforce Intelligence Network Business Unit, by its attorneys

March 2021 Edition

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Objectives

This manual is presented by the Southeast Michigan Community Alliance, Inc., and its Workforce Intelligence Network business unit (“SEMCA/WIN”), as part of its services as your Employer’s Sponsor for apprenticeship programs.

By the end of today’s session, you will:

- Better understand important concepts in key employment laws that apply to your Employer and your role (Segment 1).
- Better understand how the employment laws impact you, enabling you to better identify and avoid risky behaviors to minimize legal risk to you and your Employer (Segment 2).

Segment 1 Employment Law Overview

- For the next 30 minutes or so, we will discuss key laws governing employment relationships in Michigan for employers like your Employer.
- Hopefully, this will equip you to better identify and avoid risky behaviors.



At-Will Employment

Like most employees in Michigan in a non-union setting, employees at your Employer are employed on an **at-will** basis. This means either you or your Employer can terminate the employment relationship at any time, for any lawful reason, with or without cause, and with or without notice. Your Employer probably makes the at-will relationship clear in a number of documents, such as in the employment application and offer letter.

Even in at-will employment, there are certain traits for which an employer cannot terminate an employee. We will discuss protected traits.

Employment Laws

While there are more than 20 federal statutes and 10 state laws affecting employment matters at your Employer, we will focus on five key federal laws and occasionally refer to a Michigan law.



Five Key Federal Laws – All Employees

- Title VII of the Civil Rights Act of 1964 (“Title VII”), for employers with 15 or more employees
- Age Discrimination and Employment Act of 1967 (“ADEA”), for employers with 20 or more employees
- Americans With Disabilities Act of 1990 (“ADA”), for employers with 15 or more employees
- The Family Medical Leave Act of 1993 (“FMLA”), for employers with 50 or more employees

Five Key Federal Laws - Apprenticeships

Applicable to employers with apprenticeships:

- Promotion of Labor Standards of Apprenticeship, 29 USC Section 50, and the Department of Labor Regulations issued under the statute, 29 CFR Part 30, Equal Employment Opportunity in Apprenticeship (“EEO/AA in Apprenticeships”).
- These laws are amended (changed) periodically. Each of the first four statutes has been significantly amended at least once. The Regulations governing apprentices were recently significantly amended.

Title VII

- Title VII prohibits discrimination in employment based on an individual's race, color, religion, sex, or national origin.
- In June 2020, the United States Supreme Court held that the term "sex" in Title VII protects sexual orientation and transgender status in the workplace.

ADEA – Age Discrimination & Employment Act

- The ADEA prohibits age discrimination in employment for individuals 40 years of age or older.
- The Older Workers Benefit Protection Act (“OWBPA”)
- The OWBPA prohibits discrimination on the basis of age in employee benefit plans and establishes requirements that must be met in order for there to be a valid waiver of an employee’s federal age discrimination claims.

Similar State Law

- In Michigan, the Elliott-Larsen Civil Rights Act ("ELCRA"), also known as the Michigan Civil Rights Act, prohibits an employer from discriminating against an individual because of religion, race, color, national origin, age, sex, height, weight, or marital status. The ELCRA applies to employers with even one employee.
- So, the ELCRA adds height, weight and marital status as protected classifications.

ADA – Americans with Disabilities Act

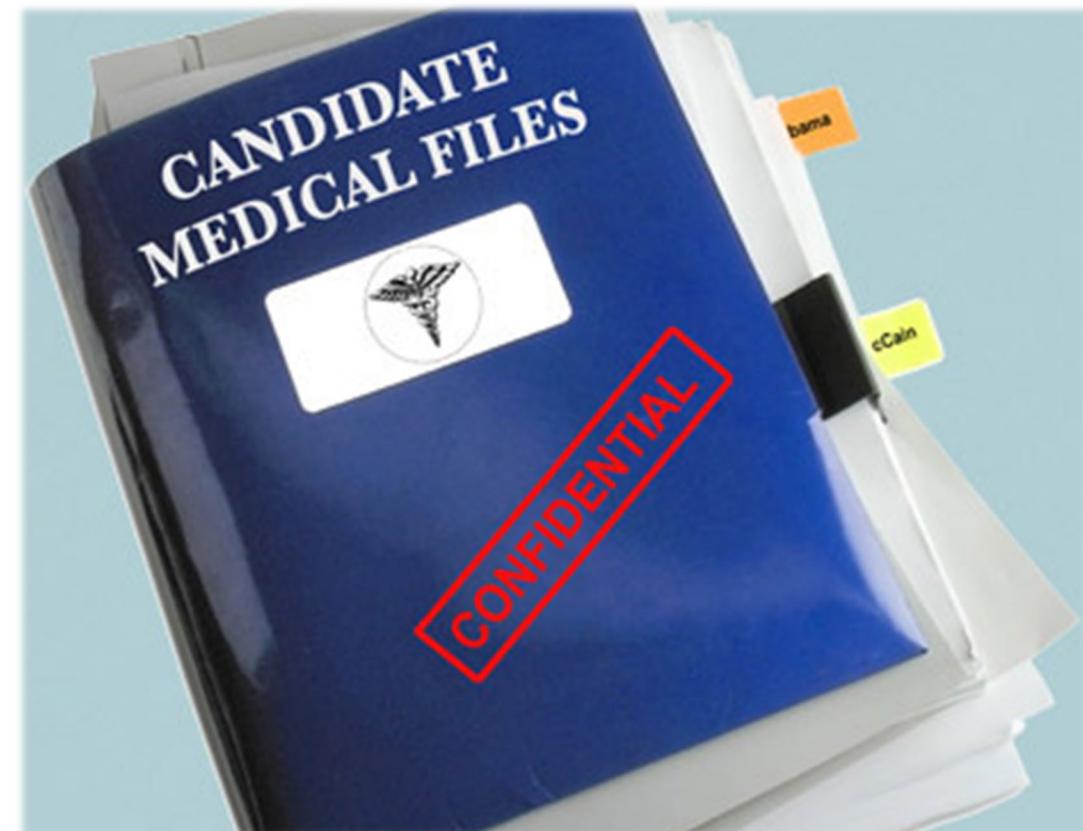
The ADA prohibits employers from discriminating against individuals based on disability. The ADA also requires that employers provide employees with disabilities with reasonable accommodation up to the point of undue hardship. Further, under the ADA:

- Most medical information must be kept confidential, creating the need for separate medical and personnel files.



ADA – Americans with Disabilities Act

The medical information gathering process is regulated. For example, an employer cannot request any medical information from a job applicant until after the employer has made a conditional offer of employment to the applicant.



Similar State Law

- In Michigan, we have the Persons with Disabilities Civil Rights Act (“PWD CRA”). The PWD CRA applies to employers with even one employee.
- The PWD CRA prohibits employers from discriminating against employees on the basis of disability and further requires that employers provide employees with disabilities with reasonable accommodation (although accommodation requirements apply differently based on employer size).



Promotion of Labor Standards of Apprentices

- The EEO/AA for Apprentices expressly adds sexual orientation and genetic information to protected status.
- The EEO/AA regulations also require employers with apprentices to take affirmative action in the areas of race, sex, ethnicity, and disability.
- The EEO/AA regulations require employers to engage in record keeping and notification obligations.

Equal Opportunity Employer in Apprenticeships

To meet U.S. Department of Labor apprenticeship requirements, your Employer will take affirmative action to provide equal opportunity in apprenticeship and will operate the apprenticeship program as required under Title 29 of the code of Federal Regulations, Part 30. Your Employer will also provide reasonable accommodation for individuals with disabilities in accordance with applicable law.

Equal Opportunity Employer in Apprenticeships

Because your Employer is an **equal opportunity employer**, it will not discriminate against applicants, employees, or apprentices on the basis of age, citizenship, color, disability/handicap, gender identity, genetic information, height, marital status, national origin, race, religion, sex (including pregnancy), sexual orientation, veteran status, weight, or any other status or condition protected in accordance with the requirements of applicable law, with regard to:

- (i) Recruitment, outreach, and selection;
- (ii) Hiring and/or placement, upgrading, periodic advancement, promotion, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
- (iii) Rotation among work processes;
- (iv) Penalties or disciplinary action;
- (v) Rates of pay, any other form of compensation, changes in compensation;
- (vi) Conditions of work;
- (vii) Hours of work and hours of training provided;
- (viii) Job assignments;
- (ix) Leaves of absence, sick leave, any other leave; or
- (x) Any other benefit, term, condition, or privilege associated with apprenticeship.

Discrimination Complaints - Apprentices

- Because your Employer participates in an apprenticeship program registered for Federal purposes, it may not discriminate against an apprenticeship applicant or apprentice based on race, color, religion, national origin, sex, sexual orientation, age (40 years or older), genetic information, or disability. Your Employer must ensure equal opportunity with regard to all terms, conditions, and privileges associated with apprenticeship.
- If you are an apprentice and think that you have been subjected to discrimination, **you may file a complaint** within 300 days from the date of the alleged discrimination or failure to follow the equal opportunity standards with: Attn. Apprenticeship EEO Complaints, U.S. Department of Labor, Office of Apprenticeship, 200 Constitution Ave. NW, Washington D.C., 20210; or ApprenticeshipEEOcomplaints@dol.gov.
- Each complaint filed must be made in writing and include the following information:

Discrimination Complaints - Apprentices

- (i) Complainant's name, address and telephone number, or other means for contacting the complainant;
- (ii) The identity of the respondent (name, address, and telephone number of the individual or entity that you allege is responsible for the discrimination);
- (iii) A short description of the events that the complainant believes were discriminatory, including but not limited to when the events took place, what occurred, and why the complainant believes the actions were discriminatory (for example, because of his/her race, color, religion, sex, sexual orientation, national origin, age (40 or older), genetic information, or disability); and
- (iv) The complainant's signature or the signature of the complainant's authorized representative.

Selected Legal Principles

Laws applicable to your Employer prohibit discrimination based on any of the following characteristics:

- **Age**
- **Citizenship or protected immigration status**
- **Color**
- **Disability/Handicap**
 - **Physical**
 - **Mental**
- **Gender Identity**
- **Genetic Information**
- **Height**
- **Marital Status**
- **National Origin**
- **Race**
- **Religion**
- **Sex, including Pregnancy**
- **Sexual Orientation**
- **Transgender Status**
- **Veteran's Status**
- **Weight**
- **Any other status or characteristic protected by applicable law**

Selected Legal Principles

- An employer or supervisor may not treat an individual differently because of any protected characteristic.
- The prohibition on discrimination, or different treatment, applies to all parts of the employment relationship and any term or condition of employment:
 - Job assignments
 - Required Hours
 - Performance Reviews
 - Job promotions
 - Wage/pay adjustments
 - Vacation scheduling
 - Discipline and discharge
 - Etc.

Selected Legal Principles

- There are two basic methods of proving discrimination - **disparate treatment** and **disparate impact**. In order to establish disparate treatment, the employee must establish that he or she was intentionally treated differently from other similarly situated individuals because of the protected classification.
- An employee alleging disparate treatment discrimination must prove discriminatory intent by the employer. In other words, the individual must establish that the employer treats some individuals less favorably than others because of their race, color, religion, sex, or other protected classification.

Selected Legal Principles

- Unlike the disparate treatment theory, under the disparate impact theory, a person claims that a set of standards applied to all individuals has an adverse impact on a protected class. Here, the individual does not need to prove discriminatory intent. An employment practice that is facially neutral but has a discriminatory effect on the protected class will be unlawful.

Practical Pointers

- Follow your Employer's Equal Employment Opportunity policy.
- Always conduct yourself in a professional manner with employees, customers, vendors/suppliers, visitors, and others you may interact with.



Practical Pointers

- Always encourage all other employees to do the same.
- Always refer to employees by their name, not any nickname, etc.
- Never tell, participate in, or condone jokes in the workplace that have as their brunt a certain ethnic group or protected classification.



Practical Pointers

If you have any concern relating to discrimination issues, promptly address it with your supervisor and the person responsible for Human Resources.

- If you observe anyone else at your worksite being discriminated against, promptly bring it to the attention of the person responsible for Human Resources.
- If you are ever accused of discrimination by anyone you interact with at work, immediately involve your supervisor and the person responsible for Human Resources. Never attempt to handle it yourself.

Practical Pointers

- Due to the equal EEO/AA requirements on employers in the United States Department of Labor Apprenticeship program, you have seen, and will see in the future, certain paperwork requirements for apprentices that may not be required of other hourly employees.
- By way of example, each year all apprentices must be provided with an invitation to self-identify as an individual with a disability. The employer must keep a record of all such invitations and responses.
- Such responses must be kept in a separate confidential EEO/AA file and released only to those who need to know.

Practical Pointers

- These requirements are not meant to annoy you, but are to comply with the law.
- Responding affirmatively to these inquiries will not in any way result in discriminatory or harmful treatment against you.
- As an apprentice, your Employer's sponsor for the apprenticeship program is SEMCA/WIN. Therefore, you will have some contact with an employee from SEMCA/WIN from time to time. Their role is to help you and your Employer. Please fully cooperate with them.

Quick Quiz

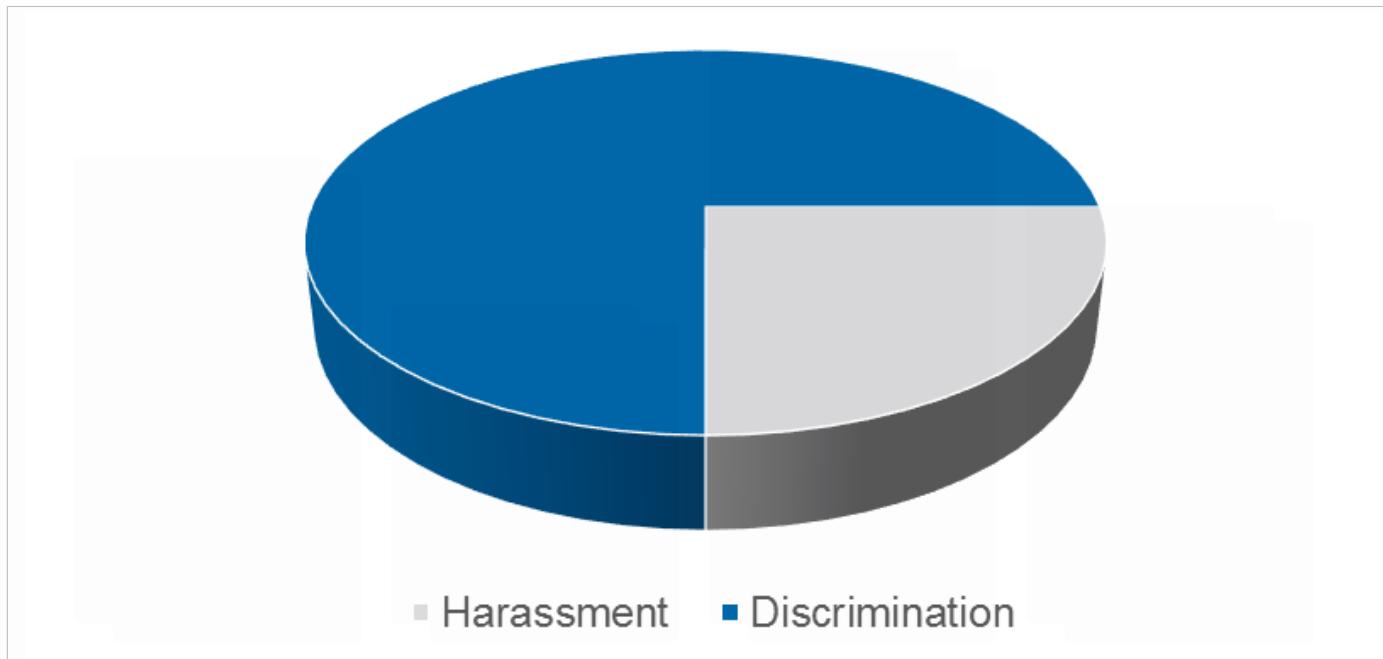
- Employers in Michigan are required by law to not discriminate against their employees on the basis of any protected characteristic? **True or False**
- Which of the following is not presently a protected characteristic based on applicable law to employers in Michigan? **Age, disability, hair color, marital status?**
- It is important as an employee that I follow the employment laws?
True or False

Answers to Quick Quiz

- Employers in Michigan are required by law to not discriminate against their employees on the basis of any protected characteristic? **True**
- Which of the following is not presently a protected characteristic based on Michigan employment laws? **Hair color**
- It is important as an employee that I follow the employment laws?
True

What are Discrimination and Harassment?

- Discrimination is treating someone differently based on a protected characteristic.
- Harassment is one form of discrimination.



What is Harassment?

In general terms, harassment is unwelcome conduct towards an individual (or group) due to a protected characteristic that:

- has the purpose or effect of creating an intimidating, hostile or offensive work environment, or unreasonably interferes with an individual's work, and
- otherwise adversely affects an individual's employment opportunities.

Why it Matters

- Federal and state law requires employers to maintain a workplace free from unlawful harassment.
- In determining whether unlawful harassment occurred, the whole situation will be examined.
- An employee or former employee may name your Employer in a lawsuit and you may be a witness.

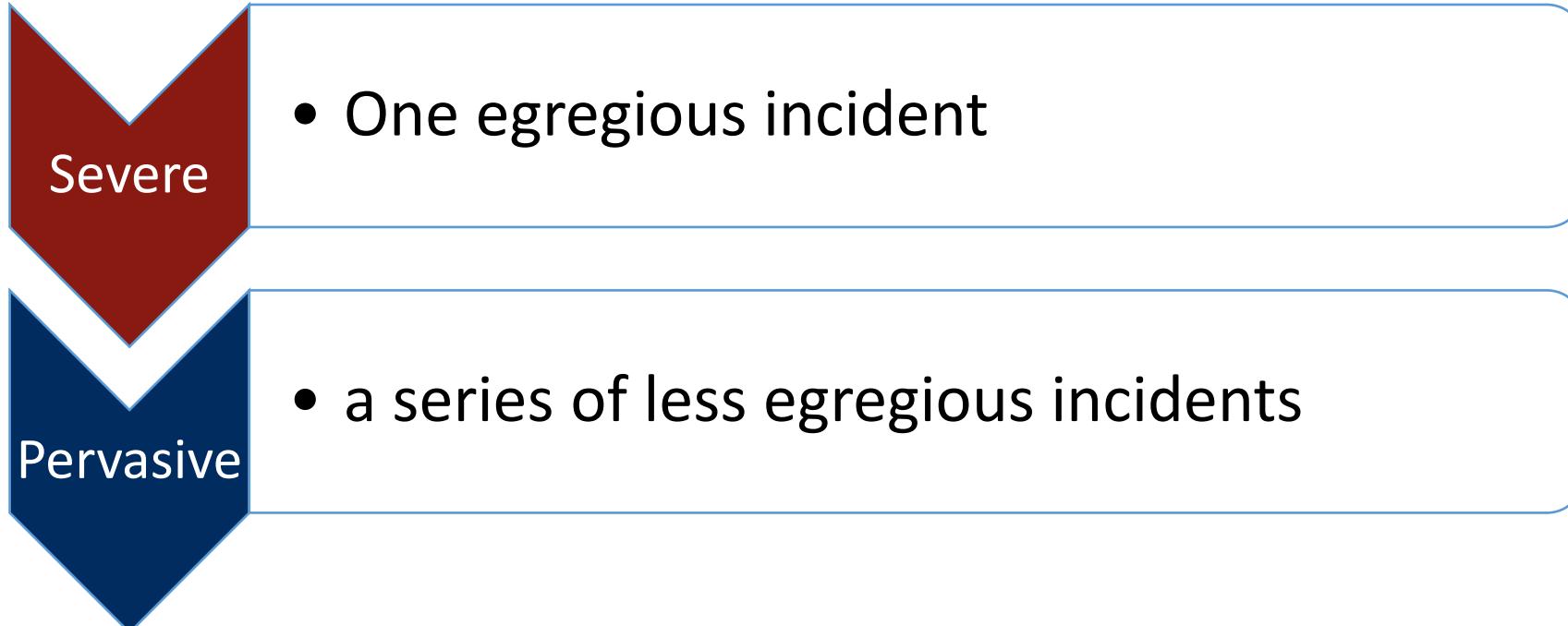
Not Just Sexual Harassment

Prohibited harassment extends to all characteristics protected by applicable law:

- **Age**
- **Citizenship or protected immigration status**
- **Color**
- **Disability/Handicap**
 - **Physical**
 - **Mental**
- **Gender Identity**
- **Genetic Information**
- **Height**
- **Marital Status**
- **National Origin**
- **Race**
- **Religion**
- **Sex, including Pregnancy**
- **Sexual Orientation**
- **Transgender Status**
- **Veteran's Status**
- **Weight**
- **Any other status or characteristic protected by applicable law**

Unlawful Harassment Overview

For legal recovery in a hostile work environment, the unlawful harassment must be pervasive or severe.



Isolated inappropriate comments will not likely result in liability.

By whom?

- Other co-workers, even temporaries
- Supervisors and Managers
- Customers
- Vendors/Suppliers
- Guests
- Visitors



Against Whom?

- Any employee the conduct is directed against
- Those employees who observe, hear and are affected by the offensive conduct, even though not directed at them



Where?

Any place on work time
or at work events



Liability

Your employer may have to pay damages if harassment as defined by law has occurred. It is very important to your Employer that no harassment occur.

If an investigation finds that harassment or inappropriate conduct has occurred, your Employer will take it very seriously.



Practical Pointers

- Follow your Employer's policy against harassment (it may be called a Harassment Prevention Policy).
- If you are ever accused of harassment, immediately involve your supervisor and the person responsible for Human Resources. Never attempt to handle it yourself.
- Always refer to employees by their name, not even any “nice” nickname like sweetie, babe, honey, etc.
- Never refer to any employee by a derogatory name, like old man, old fart, camel jockey, Spic, fag, Bible thumper, fatso, shorty, etc., etc.

Practical Pointers

- Always conduct yourself in a professional manner with other employees and all those you interact with and encourage all other employees to do the same.
- If you ever observe any co-worker being harassed, immediately report it to your supervisor or the person responsible for Human Resources.
- Again, take seriously any complaint of harassment, and report it to your supervisor and the person responsible for Human Resources.
- Fully cooperate in any investigation concerning alleged harassment.

Selected Legal Principles - ADA

What is “disabled”?

- “Substantially limited” in a *major life activity*
- Can be temporary impairment (but generally six months or more in duration)
- *Perceived* as disabled

What is a “major life activity”?

- Activities generally recognized
 - Walking, standing, lifting
 - Reading, communicating
- Major Bodily Functions
 - Immune system
 - Cell growth
 - Digestive system
 - Circulatory
 - Endocrine

Selected Legal Principles - ADA

- Employers are restricted as to what medical information they can request from job applicants and employees, and when they can request it. For example, an employer cannot request any medical information from a job applicant until after the employer has made a conditional offer of employment to the job applicant.
- During an employee's employment, the employer can only require medical or fitness for duty examinations under certain circumstances.
- Medical information concerning any job applicant or employee should only be provided to those individuals at the employer who have a "need to know."

Selected Legal Principles - ADA

- An employer has a duty to make reasonable accommodations for a disabled employee up to the point of an undue hardship.
- An employer is not required to create a job or make-work for an employee. However, reasonable accommodations may include, for example, job modifications and/or scheduling changes.
- An employer may be required to give non-essential job duties to another employee.

Practical Pointers - ADA

Some perhaps not obvious covered conditions

- Hypertension
- Diabetes
- Migraine headaches
- Mental conditions including anxiety, PTSD, other

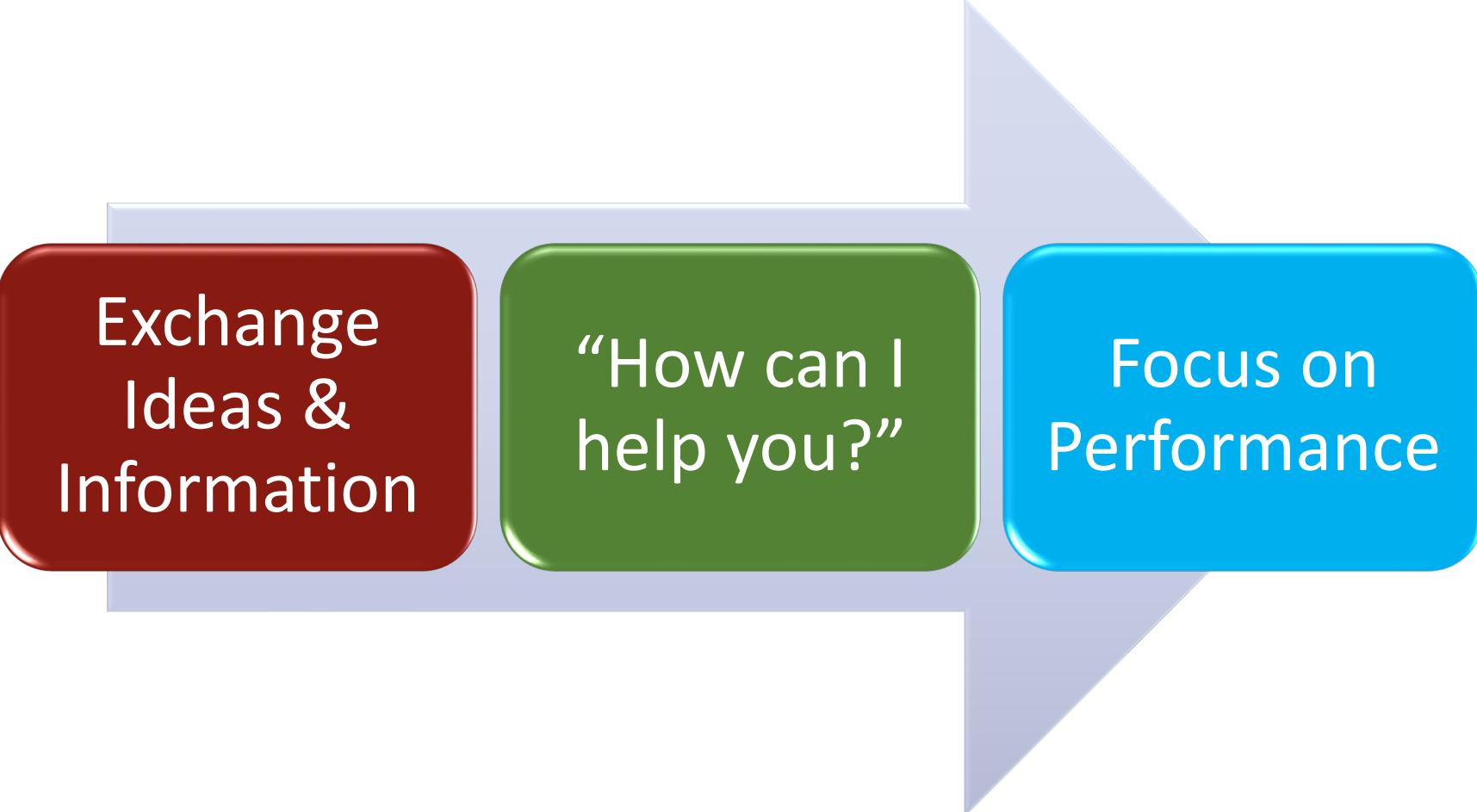
Reasonable accommodations

- Must be considered
- Even for employees with minor restrictions if they have a disability under legal definitions

Use Caution

- Involve Human Resources Immediately
- Get more information (ask for medical documentation)
- Participate in the “Interactive Process”

Practical Pointers - ADA



Exchange
Ideas &
Information

“How can I
help you?”

Focus on
Performance

Practical Pointers - ADA

- If you have a medical condition that you believe is a disability and need accommodation, immediately contact Human Resources.
- Your Employer must determine, if it is not apparent, whether you have a disability and may request medical records or a medical exam.
- Cooperate in the interactive process with Human Resources as requested.
- Never refer to a co-worker with a disability in any derogatory manner, e.g., “cripple”, “imbecile”
- Respect the confidentiality of your co-workers concerning medical conditions.

Quick Quiz

- My Employer can be liable for sexual harassment even when the employee that the comments are directed toward does not complain?
True or False
- My Employer may have to pay damages if I engage in unlawful harassment toward another employee? **True or False**
- If I am ever accused of harassment, the best way to handle it is to keep my mouth shut and not report it to anyone? **True or False**

Answers to Quick Quiz

- My Employer can be liable for sexual harassment even when the employee that the comments are directed toward does not complain? **True**
- My Employer may have to pay damages if I engage in unlawful harassment toward another employee? **True**
- If I am ever accused of harassment, the best way to handle it is to keep my mouth shut and not report it to anyone? **False**

Family Medical Leave Act

The Fourth Federal Statute is the Family Medical Leave Act (“FMLA”).

Available to Eligible Employees

- One year of employment
- 1250 hours

Up to 12 weeks of leave annually

Unpaid

- Usually
- Depends on employer policies

Job Protection

- Return to their job or equivalent position

Selected Legal Principles

New Child Leave

- During Pregnancy
- Applies to Adoption/Foster Children
- Dads, too

Employee Medical Leave

- Serious Health Conditions
- Absences of > 3 days
- Ongoing doctor's care

Family Medical Leave

- Serious Health Condition of Family Member
- Requires Ongoing Care

Military Exigency Leave and Military Caregiver Leave

EFMLA under the Families First Coronavirus Response Act

Summary of FMLA Leaves

New Child Leave

- 12 weeks
- Not intermittent
- Applies to both men and women

Employee Medical Leave

- 12 weeks
- Intermittent leave allowed
- Serious health condition of employee
- Usually triggered after 3-day absence or continuing treatment

Family Medical Leave

- 12 weeks
- Serious health condition of employee's family member
- Intermittent leave allowed

Military Exigency Leave/Military Caregiver Leave

- Usually 12 weeks
- Rest & Recuperation Leave: Up to 15 calendar days
- Up to 26 weeks for Military Caregiver Leave

EFMLA

- Up to 12 weeks paid leave (subject to limitations), when combined with paid sick leave

Selected Legal Principles

- Under the FMLA, if both a husband and wife are employed by a single employer and eligible for leave, they are jointly entitled to a combined total of 26 weeks of military care giver leave.



Selected Legal Principles

- In certain instances, employees may take FMLA leave intermittently, which means taking leave in blocks of time, by reducing their normal weekly or daily work schedule.
- The Department of Labor's FMLA regulations contain extensive definitions of what is a serious health condition. Things like the common cold, non-migraine headaches, certain elective surgeries, etc., are not considered serious health conditions.

Selected Legal Principles

- Employees seeking to use FMLA leave are required to provide thirty (30) days' advance notice of the need to take such leave when the need is foreseeable.
- When the leave is not foreseeable, an employee must notify the employer as soon as possible of the need for leave.

Selected Legal Principles

- Upon return from FMLA leave, an employee must be restored to the employee's original job, or to an equivalent job with equivalent pay, benefits and other terms and conditions of employment.
- An employee's use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to before using FMLA leave nor can it be counted against the employee under a "no-fault" attendance policy or to disqualify the employee from a bonus under an attendance policy.
- For certain "key" employees, an employer may refuse reinstatement to employment provided certain conditions are met.

Practical Pointers

- Human Resources should always be involved concerning any employee's request for FMLA leave.
- If an employee calls in sick and it is anything beyond the routine cold, flu or the like or lasts for 3 days or more, Human Resources should be involved so that possible FMLA eligibility issues can be addressed.
- Human Resources should coordinate all FMLA leave issues.

Similar State Law: Michigan Paid Sick Time

Eligible non-exempt employees who work in Michigan for an employer with 50 or more employees earn one hour of paid sick leave for every 35 hours worked, up to 40 hours per year. Some examples of when state paid sick time can be used:

- (i) to recover from physical/mental illness or injury;
- (ii) to seek medical diagnosis, treatment, or preventative care;
- (iii) to care for a family member who is ill or needs diagnosis, treatment, or preventative care;
- (iv) when the worker's place of business is closed by a public official's order due to a public health emergency;
- (v) to care for a child whose school or childcare provider has been closed by order of a public official due to a public health emergency;
- (vi) to care for themselves or a family member.

If an employee already gets other types of paid leave (vacation, paid time off, etc.) that they can use as sick time and it's at least the same amount they would earn under this law (40 hrs.), the paid sick time law does not give the employee any additional paid time off.

Worker's Compensation

- The Worker's Disability Compensation Act of 1969, as amended ("WDCA") governs worker's compensation in Michigan.
- The WDCA is essentially a no-fault system in which most employers are required to have workers' compensation insurance, or be self-insured, and an employee is able to recover benefits if he or she has an illness or injury that arises out of and in the course of employment.

Workers' Compensation

- Workers are entitled to certain wage loss benefits, the cost of medical treatment, and certain rehabilitation services. Most disputes focus on two issues: is the worker disabled and, if so, did the employment cause the disability?



Selected Legal Principles

- The WDCA provides an exclusive remedy for an employee's injuries or illnesses. In other words, an employee cannot sue the employer in court and attempt to recover damages for his or her illness or injury unless the employer has committed an intentional tort.



Practical Pointers

- Employees must always report any work-related injury or illness regardless of how minor.
- The Human Resources Manager should always be involved in any work-related employee injury or illness.
- An injured employee must never drive him or herself to a medical facility. Always take provided transportation.

Health and Safety

The Michigan Occupational Safety and Health Act ("MIOSHA") requires Michigan employers to provide employees employment, and a place of employment, that is free from recognized hazards that are causing, or are likely to cause, death or serious physical harm to the employee.



Selected Legal Principles

- An employer may be liable under MIOSHA for violations related to COVID-19 requirements as well as have liability under the WDCA.
- Your Employer takes the COVID-19 CDC requirements very seriously.
- An employer may be liable under MIOSHA for workplace violence as well as have liability under the WDCA.
- Your Employer takes any workplace threats or violence very seriously.

Practical Pointers

- Concerning workplace violence or threats, follow the principle of Run, Hide, Fight.
- Immediately involve security and call 911 as appropriate regarding any threat.

Practical Pointers

Take proper action if you observe anyone who appears to be intoxicated, impaired, or otherwise incoherent.



Practical Pointers

- Take proper action if you learn of potential violence involving any individual on your Employer's property (e.g., observe someone who is badly bruised, etc.).
- Immediately call security or 911 if you observe any disturbance or violence, hear anyone threaten to harm another person, observe anyone with a weapon (gun, knife, etc.) of any sort in the building or on your Employer's property, or observe any conduct or behavior or hear something that would lead you to contact the police if you were at your home.

Quick Quiz

- If I sustain a minor injury at work, should I keep working until break time and then report it? **True or False**
- The Michigan Occupational Safety and Health Act is an important Michigan law addressing unemployment claims filed by laid off workers? **True or False**
- Regarding workplace violence, the order of things is: first fight, and if you lose, run and hide? **True or False**

Answers to Quick Quiz

- If I sustain a minor injury at work, should I keep working until break time and then report it? **False**
- The Michigan Occupational Safety and Health Act is an important Michigan law addressing unemployment claims filed by laid off workers? **False**
- Regarding workplace violence, the order of things is: first fight, and if you lose, run and hide? **False**

Segment 2 Risk Management

Further Application of the Employment Law Principles.

Employee Handbook

- Your Employer has its Equal Opportunity and Harassment Prevention policies in the Employee Handbook, and in separate standalone policy provided to employees.
- Make sure that you read it and understand it.
- Ask your supervisor or the person responsible for Human Resources if you have questions.

EEO and Harassment Prevention Policy

As you know, your Employer has a strong policy prohibiting discrimination and harassment. As stated (or very close to it) in your Employer's Equal Opportunity and Harassment Prevention Policy:

“The Company is also ABSOLUTELY committed to providing a work environment that is free of ALL forms of unlawful harassment. We will not tolerate the harassment of our employees by anyone including, but not limited to, supervisors/managers, co-workers, customers, vendors/suppliers, guests or visitors. All employees have the right to work in an environment free from intimidation and harassment. In other words, the Company is committed to a policy of zero tolerance for discrimination and unlawful harassment. Further, we are committed to having a professional work environment in all areas where everyone can comfortably and productively work.”

Harassment Prevention Requires Teamwork

- While your Employer will demonstrate leadership on harassment prevention, there must also be teamwork.
- All employees must be committed to eliminating harassment.
- All employees must be committed to reporting incidents of harassment.

Harassment Prevention

- The key is to never come close to the line.
- Strive to eliminate inappropriate conduct and communication in the workplace and outside the workplace in any employee, customer, vendor/supplier, guest or visitor interaction including:



Harassment Prevention

- Vulgar talk
- Demeaning conduct, insulting conduct, undermining or disrespectful conduct and unfair conduct
- All communication, even in languages other than English, that is degrading, harassing, threatening and the like
 - This includes verbal, non-verbal, and written communication in all contexts (photos, documents, notes, cartoons, e-mails, texts, social media, etc.).

Harassment Prevention

- Off-color jokes
- Sexual Suggestions
- Inappropriate forms of touching
- Other inappropriate conduct of any nature



Harassment Prevention

- Avoid explicit sexual statements in the workplace memorialized in text messages for the world to see.
- Use good judgment and professional terminology.
- Never tell, participate in or condone sexual jokes in the workplace.
- Prohibit sexually graphic and otherwise offensive magazines, pictures, calendars, etc., in the workplace or any customer site where you work.

Harassment Prevention

You must consider messages:

- Sent at work, using work devices
- Sent at work, from personal devices
- Sent outside of work from personal or work devices
- Postings to social media



Risk Management

Again, always ask yourself before sending an e-mail or text message, making a social media posting, or any other form of electronic or written communication:

“If a lawsuit or arbitration claim occurs, would I be comfortable with this message blown up on a big screen for the judge and jury or arbitrator to see?”



Harassment Prevention

Never date or become romantically involved with any employee in the workplace, and preferably not with any customer or vendor/supplier with whom you interact.



Harassment Prevention

Consensual relationships can quickly become non-consensual relationships for one person.

All kinds of unexpected workplace strife often occurs.

Often, discipline, reassignment or even termination is the end result for one or both of the involved persons.

Harassment Prevention

- Treat fellow employees and supervisors fairly and with respect.
- Strive for a professional work environment where any employee would feel comfortable working and can work in a productive manner.
- Always promptly involve Human Resources if you have any concern about discrimination or harassment.

Questions? Please ask Human Resources!



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