

**Maintaining a Productive  
Work Environment:  
Preventing  
Discrimination  
Harassment & Retaliation**

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**PART 1:  
LEGAL OVERVIEW**

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**State and federal law generally forbid *discrimination* against or *harassment* of a person because of these “legally protected characteristics”:**

- Race
- Color
- Sex/Gender
- Pregnancy
- Religion
- National Origin
- Citizenship
- Age (40 and older)
- Disability
- Military Service

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## So . . . what is “Discrimination”?

**Generally, it means making decisions about . . .**

- Hiring
- Assignments/Evaluations/Promotions
- Compensation/Pay/Benefits
- Discipline/Suspensions/Demotion
- Discharge
- Terms of Employment
- Conditions of Employment
- Privileges of Employment

***Because of a “legally protected characteristic.”***

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## So . . . what is "Harassment"?

State and federal laws generally forbid two kinds of "harassment":

- ❖ "Tangible Job Action" Harassment
- ❖ "Hostile Environment" Harassment

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## "Tangible Job Action" Harassment\*

Generally, a "tangible job action" occurs when a harassing manager or supervisor **discharges**, **demotes**, **denies a promotion**, or makes other **significant** or **adverse** changes in an employee's terms and conditions of employment **as part of** the harassment.

\*It's also often called "*quid pro quo*" ("this for that") harassment.

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## “Tangible Job Action” Sexual Harassment

Occurs when an person’s *submission* to sexual advances or other sexual conduct is a condition for *favorable* employment decisions, or the person’s *rejection* is the reason for *unfavorable* employment decisions.



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## “Hostile Work Environment” Harassment

- “Unwelcome” conduct
- Targets or affects a “legally protected characteristic”
- Unreasonably interferes with an individual’s job performance or
- Creates a hostile, intimidating or offensive work environment



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## What is “unwelcome” conduct?



Harassing conduct is “unwelcome” if the person feels the conduct is *offensive, undesirable, and uninvited*.

It doesn’t necessarily mean that the person *complains or objects* to the harasser.



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## What *is not* “harassment” by managers?

“Harassment” IS NOT *proper* management.

**Legitimate** job instructions.

**Constructive** criticism.

**Even-handed** discipline.

So avoid bullying or abuse of powers!



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## So . . . what is “Retaliation”?

Generally, it means making decisions about . . .

- Hiring
- Assignments/Evaluations/Promotions
- Compensation/Pay/Benefits
- Discipline/Suspensions/Demotion
- Discharge
- Terms of Employment
- Conditions of Employment
- Privileges of Employment

*Because of a “legally protected activity.”*

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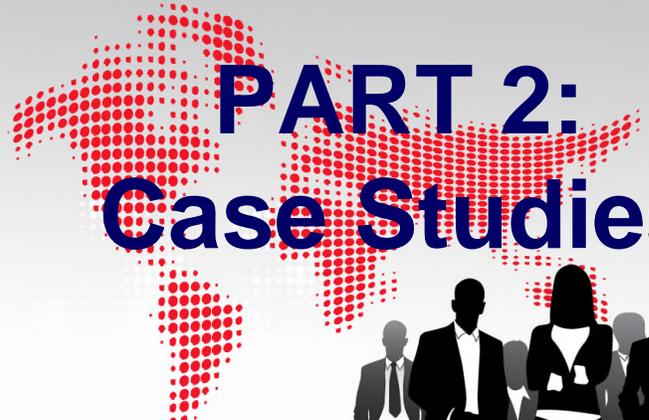


## Examples Of Legally Protected Activity

- Threatening to file a charge or other formal complaint alleging discrimination.
- Complaining to anyone about alleged harassment against oneself or others based on reasonable and good faith belief.
- Refusing to obey an order because of a good faith and reasonable belief that it is discriminatory.
- Requesting reasonable accommodation of a physical or mental impairment or religious belief or practice.
- Requesting workers' compensation benefits after a job injury.
- Actually filing a charge of discrimination with the EEOC.
- Participating in an internal or EEOC investigation of a discrimination or harassment or retaliation complaint.
- Testifying in a discrimination lawsuit.

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# PART 2: Case Studies



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## Who's violating the law?

-----Original Message-----

**From:** John Doe

**Sent:** Tuesday, January 10, 2016 6:55 PM

**To:** Management Team

**Subject:** Goodbye Mary Smith

That hysterical witch, Mary, complained to me again about Ted's "flirtations." Everyone knows Mary likes the attention. And Ted is just kidding around anyway. Mary is a troublemaker and so I fired her. (I gave Ted a warning but we can't afford to lose another Manager right now—we are so short handed!) Have a great day, everyone!  
John

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## Who's violating the law?

During a meeting, Mark makes appreciative comments about the size of his co-worker Torri's breasts. He asks her to wear "something revealing" to a meeting with a government auditor. Torri agrees and jokes that her recent breast augmentation surgery "will now start paying for itself."



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## Who's violating the law?

The company announces that due to low revenue, working hours will be reduced from 40 to 32 hours weekly. In front of Grace Goodlady (age 63), Larry Youngmann (age 27) angrily says to several co-workers, "If Grace would go ahead and retire, we wouldn't have to take a cut in hours." Manager Harry Hands Off hears Larry's comment but does not say or do anything because Grace does not object or complain to him. Over the next several weeks, Larry often gripes that Grace should retire. Larry's comments hurt Grace's feelings.



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## Who's violating the law?

Amaya wears a khimar (a traditional garment that covers the hair, forehead, sides of the head, neck, shoulders, chest, and sometimes extends down to the waist) to a job interview for and advises the manager she always wears it due to her Muslim faith. The maintenance shop's dress policy prohibits headwear and loose-fitting clothing because such apparel could get caught in the machinery's moving parts and injure workers. The manager declines to hire Amaya.



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## Who's violating the law?

Marvin has some mental disabilities. His co-workers and supervisors often call him "retarded," say that he is "one of Jerry's kids," and imitate his speech impediments. One day, they take him to a strip club during work hours and make fun of his reaction. Another day, they strip off his pants and hide them. Management ignores his and his mother's complaints.



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## Who's violating the law?



Melvin gives Harriet a project with a 90-day final deadline and 30-day benchmark deadlines. Melvin asks Harriet about the status of the project every three days. She gives various excuses for being routinely behind. Melvin issues Harriet a written reprimand on the 70<sup>th</sup> day for missing two benchmark deadlines, and suspends her when she fails to meet the 90-day deadline.



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## Who's violating the law?

Bev tells his manager he doesn't want to use the new biometric hand scanner to clock in and out for work. He genuinely believes the scanner would give him "the Mark of the Beast" and allow the Antichrist to recruit him. He offers to check in with his supervisor or to use a time clock. The manager says no, gives him a letter from the scanner manufacturer assuring that the scanner would not place any mark on him, and explains that Holy Scripture only associates the Mark of the Beast with the right hand and Bev could use his left hand.

But the manager allows two other workers with hand injuries to enter their personnel numbers on a keypad to clock in and out.



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# PART 3: Take-Aways & Tips



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## “Hostile Environment” Danger Zones



- Comments on Appearance
- Nicknames
- Stereotypes**
- Office Parties
- Company Travel
- Touching**
- Dating Other Employees
- Cartoons
- Pictures

- Email**
- Internet Use
- Posters
- Clothing
- Rumors
- Jokes**
- Sarcasm
- Innuendo



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**STOP** **Stopping Harassment:  
What *You* Can Do!** **STOP**

**Stopping harassment starts with taking action.**

- Respond quickly, firmly, and professionally to unwelcome words or conduct.
- Make your feelings known. Do not suffer in silence!
- **Promptly report the misconduct under the Company's policy!**

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**STOP** **Stopping Harassment:  
What *You* Can Do!** **STOP**

**If you witness harassment . . .**

- Don't ignore conduct that appears to be harassment.
- **Promptly report under the Company's policy!**
- Encourage the victim to also **promptly report.**

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## **Managers & Supervisors:**

**If an employee complains or reports *to you* about harassment or discrimination or retaliation . . .**

- ❖ Reassure the person that his or her complaint is welcome and will be treated seriously.
- ❖ Advise that he or she must report the harassment immediately under the policy for investigation.
- ❖ Direct the person to the Company's policy and the Policy's reporting instructions.
- ❖ Advise that YOU must and will report the harassment *even if they do not*.
- ❖ **Promptly report under the policy.**



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## **Managers & Supervisors:**

**If an employee complains or reports *to you* about harassment or discrimination or retaliation . . .**

### **YOU MUST NOT:**

- Agree to keep the report or complaint "off the record."
- Do nothing in response.
- Tell the person he or she is being ridiculous.
- Act angry about the complaint or report.
- Represent that any particular outcome will occur.
- Guarantee complete confidentiality.
- Threaten the person's job.



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