ANTI-DISCRIMINATION LAWS

- **Title VII of the Civil Rights Act of 1964 (Title VII):**
  - Prohibits discrimination based on race, color, religion, sex, and national origin.
  - Unlawful to discriminate in such areas as recruitment, selection, promotion, discipline, training, and details, etc.

- **The Equal Pay Act of 1963 (EPA):** Protects men and women who perform substantially equal work from sex-based wage discrimination.

- **The Age Discrimination in Employment Act of 1967 (ADEA):** Prohibits employment discrimination against individuals who are 40 years of age or older.
ANTI-DISCRIMINATION LAWS

Rehabilitation Act of 1973:

※ Sections 501 and 505 prohibit discrimination in Federal employment against qualified individuals with disabilities.
※ Also requires employers to provide “reasonable accommodation” to qualified individuals with disabilities who are employees or applicants for employment.

Civil Rights of 1991:

※ Provides rights to jury trials and monetary damages in cases of employment discrimination.

The NO FEAR Act:

※ Prohibits discrimination and retaliation against Federal workers for participating in EEO process or whistle-blower activities.
※ Requires posting of complaint activity, training, and paying settlements or judgments out of agency operating funds.

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ANTI-DISCRIMINATION LAWS

- Genetic Information Nondiscrimination Act of 2008 (GINA)

- Title IX of the Education Amendments of 1972 – recently updated
  - Title IX of the Education Amendments of 1972 (revised 2014) prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance. Sexual harassment of students can be a form of discrimination prohibited by Title IX.
  - Requires written policies and wide dissemination of policies, training, specialized reporting.
  - Applies to everyone on campus.
  - Forbids retaliation.
  - Requires Title IX Coordinator.

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Illegal harassment is severe or pervasive verbal or physical conduct that denigrates, shows hostility or aversion toward an individual because of his/her race, color, religion, gender, national origin, age, disability, or reprisal for participating in the EEO process.

The EEOC defines sexual harassment as unwelcome verbal or physical conduct of a sexual nature:
- when submission to such conduct is made a term of condition of employment;
- when submission to or rejection of such conduct is used as a basis for employment decisions;
- when such conduct unreasonably interferes with job performance or creates an intimidating, hostile, or offense work environment.

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Workplace Harassment: Categories

- **Quid Pro Quo (usually involves power differential):**
  - Behavior is unwelcome
  - Protected group/status
    - Subjected to unlawful harassment based on sex or other protected status.
  - Harassment affected aspects/terms of employment/education – i.e., “fired,” “failed”
  - Submission is used:
    - as term of employment/education
    - to make decisions that affect the employee/student.
Workplace Harassment: Categories

- Environment (Hostile Work Place)
  - Environment is tainted with sex, gender based, and/or other protected status discrimination such that the terms, conditions or privileges of employment/education are adversely affected.
  - Unwelcome in nature.
  - Gender or protected status was the cause of harassment.
  - Had the effect/purpose of creating an intimidating, hostile, humiliating or sexually offensive work/education environment.
  - Interfered with work/education; altered the terms or conditions of employment/education

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Unpleasant Behavior is not Always Unlawful Discrimination

- Individuals often use the phrase “hostile environment” to describe any condition they find unpleasant.
- Law does not require work/school to be an “idyllic retreat.”
- Threshold questions under law:
  - Are all employees/students treated consistently?
  - If conditions are inconsistent, is inconsistency related to protected characteristic, such as race or sex?

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HOSTILE ENVIRONMENT
HARASSMENT

Examples of Actions:

- Pressure for dates
- Making offensive remarks about looks, clothing, body parts
- Touches in a way that may make an individual feel uncomfortable
  - Telling sexual jokes, hanging sexual posters
  - Using racially derogatory words, phrases, epithets
  - Demonstrations of a racial or ethnic nature such as the use of gestures, pictures or drawing which would offend a particular racial or ethnic group.

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Examples of Actions (cont.)

- Comments about an individual’s skin color or other racial/ethnic characteristics
- Negative comments about an employee’s religious beliefs
- Negative stereotypes regarding an employee’s birthplace or ancestry
- Negative comments on employee’s age when referring to employees 40 and over
- Derogatory or intimidating references to an employee’s mental or physical impairment.
RECOGNIZING HARASSMENT

- The conduct must be unwelcome to the target of the harassment. “Unwelcome” means that the employee did not solicit or incite the conduct and regarded it as undesirable.
- The harasser can be the victim’s supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
- Harassment can be verbal, physical, or pictorial.
- The harasser as well as the target can be a man or woman.
- Claimant does not have to be the person at whom the offensive conduct is directed but can be anyone affected by conduct.

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RECOGNIZING HARASSMENT

VERBAL......

- Telling sexual stories or jokes and using “four-letter” obscenities
- Using such terms as sweetie, doll, honey, dearie, babe
- Making sexual comments and innuendoes about a person’s body or appearance
- Probing into a person’s sexual experience or preferences
- Making suggestive sounds or whistling at a person
- Stereotyping (older people lack energy, “they” are all stupid)

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RECOGNIZING HARASSMENT

- **NONVERBAL...**
  - Leering and ogling suggestively at a person
  - Following a person or blocking their way
  - Showing a sexually explicit picture, cartoon or other visual
  - Making suggestive gestures or body movements
  - Sending unwanted notes or other written material
  - Giving unwanted personal gifts

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RECOGNIZING HARASSMENT

❖ PHYSICAL...

➢ Touching a person’s clothing or hair
➢ Massaging a person’s neck or shoulders
➢ Leaning over, standing too close to, or brushing up against a person; invading their space
➢ Kissing, caressing or pinching a person
PREVENTING SEXUAL HARASSMENT

Employees should:

- Avoid behavior that may be misconstrued as possible sexual harassment
- Avoid sexual jokes, comments, and e-mails
- Respect a person’s indication that your conduct or attention is not welcome
- Not invade another individual’s personal space
- Not touch anyone without their permission
- Clearly inform those engaging inappropriate sexual orientated behavior that they find it objectionable
- Seek assistance promptly if they are the target of or observe severe or repeated instances of behavior that they believe qualify as sexual harassment

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WHAT SHOULDN'T A VICTIM OF HARASSMENT DO?

A victim of harassment should:

- Clearly communicate to the harasser - verbally, in writing, through a third party, or in some other way - that the conduct is unwelcome.
  - Evidence that the victim participated in the conduct that she or he later challenged, would generally defeat an harassment claim, since participation communicates that it’s welcome.
  - However, participation does not necessarily mean the conduct is welcome.
  - In particular acquiescence or submission to sexual demands does not necessarily mean that the conduct was welcome.
- Promptly report it or file a complaint - if the conduct continues after the perpetrator becomes aware it is unwelcome.
- Document everything: Personal log, evidence, record of action taken, phone calls, witness statements.

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HARASSMENT PREVENTION

❖ Employees’ Responsibilities:

➢ Employees are expected to maintain a productive environment that is free from harassing or disruptive activity.

➢ No form of harassment will be tolerated including harassment for the following reasons: race, color, national origin, religion, sex, sexual orientation, disability or age.

➢ Any employee who believes that he/she is victim of unwelcome harassment has the responsibility to report or file a complaint about the situation as soon as possible.

➢ The report or complaint should be made to the employee’s supervisor; or Senior Management if the complaint involves the supervisor or manager.

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HARASSMENT PREVENTION

- Supervisors’ Responsibilities
  - Monitor workplace behavior, enforce respect.
  - Treat all complaints seriously and confidentially.
  - Do not ignore any allegation.
  - Post/disseminate EEO Policy.
  - Respond to allegations immediately; investigate, as appropriate.
  - Be sensitive but impartial.
  - Interview parties and relevant witnesses.
  - Ask opened-questions.
  - Collect relevant documentation/evidence.
  - Take appropriate corrective action, follow-up.
  - Ensure no retaliation.
  - Document your actions.

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