

Employment Law 2013

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Employment Law 101

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Goals and Objectives

- Identify Workplace Harassment, Violence, and Discrimination
- Describe Federal Laws Prohibiting Discrimination and Harassment
- Explain the Legal Responsibility of Employers and Employees
- Importance of Forensic Experts in Employment Cases
- Discussion of Unique Cases

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Epidemic of Reporting  
Workplace Harassment,  
Violence, and Discrimination

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Harassment Defined

- Any Conduct
- Oppresses, Threatens, Persecutes, Intimidates
- Another or Group of Individuals
- Causes Those Feelings
- In "Reasonable Person"
- Who has been Oppressed, Threatened, Persecuted, Intimidated

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Violation of Boundaries

- Physical
- Sexual
- Psychological

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Individual Defines Harassment  
Based on Cultural Background!!

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What is Joke to you is Harassment to me!!

- People see behavior differently!!
- People decide conduct, behavior, or situation based on severity!!
- Differing Cultural Traditions, Customs, and Beliefs!!

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Test of Reasonableness!!

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Harassment is a form of violence and  
Violence is a form of Harassment!!

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Bullying is a form of  
Harassment!!

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Violence is a matter of  
Degree and Severity!!

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Violence is physical and/or sexual!!

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### Violence Defined

- Act does Bodily Harm or Threat to do Bodily Harm!!
- Act has sexual or aggressive intent!!
- Threats of physical violence or sexual assault!!
- Damage to property of another!!

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### Discrimination Defined

- Defined By State and Federal Laws
- Confers Privileges on Certain Class
- Denies Privileges on Certain Class

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Protected Class Status

- Race
- Religion
- Sex
- Sexual Orientation
- Age
- Disability
- National Origin

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We are all Members of Protected Classes!!

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Harassment need not be isolated and/or Intentional

- Often times happens as result of
- Thoughtlessness
- Lack of Awareness
- Mistake
- Insensitivity

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### Epidemic of Workplace Violence

- 1.7 million people were victims of workplace violence from 1993-1999
- 75% Simple Assaults
- 19% Aggravated Assaults
- 13,827 workplace homicides from 1992-2010
- Each week in US 20 workers are murdered and 18,000 are assaulted while at work
- Most common discrimination reported.....Retaliation (38.1%), Race (33.7%), and Sex (30.5%)

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### Sources of Harassment and Violence

- Job Stressors
- Lack of Privacy
- Job Security
- Diversity in Workplace
- Lack of Respect for Authority
- Poor Economic Times
- Personal Problem Spillovers

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### Impact of Harassment

- Performance
- Behaviors Change
- Psychological
- Physical

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Zero Tolerance Model

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Zero Tolerance Defined

- Abuse free
- Harassment Free
- Violence Free
- Discrimination Free
- Learning and Working Environment

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Zero Tolerance is an absolute rather than an ideal!!

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As Experts you Evaluate, Assess, and Report!!

- Report is discoverable!!
- Expert Affidavit!!
- Depositions as experts!!

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Forensic Expert and Litigation

- Goal is to assess and evaluate damages
- Viability of Future Employment??
- Cases turn on liability and damages
- What are the damages to my client that you can articulate??

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Critical Component in Preparing  
Case for Litigation!!

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### Important Federal Laws

- Civil Rights Act of 1964 (Title VII)
- Age Discrimination in Employment Act
- Equal Pay Act
- Pregnancy Discrimination Act
- American Disabilities Act

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### Civil Rights Act of 1964 (Title VII)

- Illegal to refuse to hire, discharge, or otherwise discriminate
- Regarding Compensation or Terms and Conditions of Employment
- Based on Protected Class Status
- All Aspects of Employment Covered

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### Age Discrimination in Employment Act

- Prohibits discrimination against persons who are at least 40 years old
- Employers must have at least 20 Employees

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### Equal Pay Act

- Prohibits Gender Based Wage Discrimination for Equal Work

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### Pregnancy Discrimination Act

- Prohibits sex discrimination because of or based on
- "Pregnancy, Childbirth, or Related Medical Conditions"
- Employer must provide "Reasonable Accommodation"
- Can perform essential functions??
- Not undue Burden to Employer??

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### American Disabilities Act

- Enacted in 1992
- Prohibits Discrimination in Employment on basis of Disability
- Perceived or Known Disability
- Law covers 15 or more employees!!

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### Disability Defined

- Physical or mental impairment
- Substantially limits one or more major life activities
- Record of Impairment
- Regarded as having impairment
- Can Employee Perform Essential Functions of Job??

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### Mental or Physical Impairment

- Any Physiological disorder or Condition
- Any Mental or Psychological Disorder

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### Major Life Activity

- Caring for oneself, Performing Manual Tasks
- Walking, Seeing, Hearing, Speaking, Breathing, Learning, Working

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### Sexual Harassment

- Any unwanted sexual or gender based behavior
- Occurs when one person has perceived or actual power over another

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### Two Kinds

- Sex for Benefits (Quid Pro Quo)
- Hostile Work Environment

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### Practical Approach

- Is behavior unwanted or unwelcome??
- Is behavior sex or gender based??
- Is there a power imbalance??
- Would a reasonable person be offended??

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### Impact on Individuals

- Morale Problems
- Less Trusting
- Less Productive
- Confused and Bewildered
- Not Safe at Work
- Angry Towards Employer
- Hostile Working Relationships
- People are Polarized

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### Most Common Form

- Verbal
- Name-calling
- Dirty Jokes
- Workplace Pornography
- Electronic Harassment
- Workplace Romances

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### Causes of Action

- Look to State and Federal Discrimination laws first!!
- Tort Actions
- Assault and Battery
- Intentional and Negligent Infliction of Emotional Distress
- Defamation (Libel and Slander)
- Interference with Contract
- Negligent Supervision
- Negligent Hiring

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### Causes of Action

- Negligent Retention
- Invasion of Privacy
- Wrongful Discharge
- False Imprisonment
- Loss of Consortium

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### Statute of Limitations

- When Cause of Action must be started!!
- One to Three Years is the norm!!

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### Unique Cases

- Reverse Gender Discrimination
- Workplace Homicides
- Disability Cases on the Rise!!
- Age and Reduction in Force Cases
- Whistleblower Cases

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Again Your Role is Critical!!

- Lawyers rely on your expert opinions!!
- What employment future does my client have??
- How has he/she been damaged and to what extent??

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Statistics Show

- 95% of all cases settle
- Pre-litigation Mediation is new trend!!
- Cost of Litigation is Staggering!!
- Better to mediate first!!

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Thank you!!

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