DISCRIMINATION AND DISCRIMINATORY HARASSMENT IN THE WORKPLACE

QUIZ – AND ANSWERS – YES – NO – OR MAYBE – AND WHY?!

1. It is legal to require employees to speak English on the job.
   A. Employees may be required to speak English to clients or customers in appropriate situations, or in emergency situations. There is no reason to require that they speak English to fellow workers all the time unless some are excluded from information they need if English is not spoken. [The common sense management note: we seek out bilingual workers in many cases, but still view other languages with mistrust.]

2. Having a discrimination and harassment policy in place will protect the employer.
   A. It is not enough to have it in place; it must contain certain information (such as how to report harassment); it must be promulgated; and employees must be trained in its substance and in its reporting information.

3. An institution is safe from liability if it did not know what its managers were doing, and would not have condoned harassment (and does not now condone it).
   A. Employers cannot use the ignorance excuse to condone the existence of a hostile environment of its managers. There are managerial and organizational obligations to create and maintain a workplace free of harassment. In many cases, managers get reports of wrongdoing and do not act, or they are the wrongdoers. The organization will be liable, and there may be individual responsibility as well.

4. Just one incident of inappropriate conduct does not constitute harassment.
   A. That is generally true. However, one incident that is severe because of the circumstances in which it occurred can constitute harassment. This is particularly true in cases involving threats or physical actions.

5. Due to First Amendment protections, employees may say whatever they want in the workplace.
   A. First Amendment rights are not absolute in the workplace, or we could not have laws prohibiting discrimination and harassment. The employer is not trying to control ideas, thoughts or opinions, but can limit the expressions of hate words, racial slurs, sexual innuendoes, etc., in order to maintain a harassment-free workplace.

6. If an employee does not complain about being harassed, there is no need to do anything about it.
A. Employees may not complain due to fear of retaliation, real or perceived vulnerability, fear of not being believed, or similar reasons. If a manager is aware of this and does not act, the harassment may drive out that affected employee and later subject the organization to suit for constructive discharge. In addition, a hostile environment for employees is not as likely to be productive.

7. Employees cannot harass supervisors.

A. They can, and do, and management should not permit this. A supervisor may be a minority in the workplace (a woman in an all-male environment, an ethnic minority in an otherwise white office, or a member of a religious minority in a totally Christian group). There may be differences in physical size. There may be higher levels of supervisors who permit or encourage this. It is still harassment and proscribed.

8. Employers are only concerned about harassment within their workforce; third-party harassment is not their problem.

A. Employers must protect their employees from third parties who are connected to the workplace. These can include clients, contractors, delivery personnel, and others similarly situated. An employer may not be able to take direct action against the offender, but must deal with the situation.

9. If an employee wants you to keep something confidential, even if it refers to harassment, you must honor that request.

A. There is not usually any protection for or requirement for a supervisor who has been informed of harassment to keep the information confidential [i.e., not to report it to the proper authorities]. While the matter is handled confidentially [on a need-to-know basis], as personnel matters usually must be, there is no way to act on such a matter, including taking appropriate action and recording it, keeping the disclosure confidential.

10. There can’t be racial harassment if everyone in the work group is white.

A. How do we know when members of a group are of a particular racial or ethnic group? These are assumptions we should not be prepared to act on. In addition, a workplace of apparently an all-white group in which racial slurs, disparagement of ethnicities and countries of origin, and similar conduct occurs, may be one in which age, gender, marital status, religion or other inappropriate remarks are made. None of these create a workplace free from harassment. Respect and professionalism, which underlie the harassment-free workplace, are the basis of refusing to indulge in any harassing behavior.

11. Age discrimination and harassment can only be claimed by people over 40.
A. Workers over 40 are in a special protected category in ascertaining age discrimination but there can be harassment based on age for older and younger workers.

12. Employees can make homophobic comments in the workplace if their religion teaches that homosexuality is a sin.

A. Workers are entitled to their own religious beliefs, as well as political and other opinions. They may not, however, use this as a method to harass their co-workers. Their religious beliefs regarding gays are not a legitimate excuse to use slurs, continually make comments that create a hostile environment, make hateful memos or notices, or commit similar hate and bias-based acts in the workplace.

13. Employees can never discuss religion in the workplace.

A. Yes, they can. But a major difference in considering whether there is harassment is whether employees are proselytizing, whether they are insulting or condemning their co-workers’ religions, and whether the assumptions of belonging to a certain religion or holding certain beliefs are workplace expectations. These are not acceptable and can create a hostile environment.

14. An employee should not expect an employer to permit him or her to pray on the job.

A. There is no prohibition against praying on the job; it is the form it takes and how it affects the workplace. Loud preaching or praying in a common work area might not be appropriate, but many large employers or institutions have chapels or meditation rooms (such as one in the MUB at UNH), and there are many situations where one is at work and one can pray. A Muslim worker may wish to find a place to pray the required daily prayers; these are the accommodations that a respectful and inclusive workplace will try to arrange.

Please direct all questions or concerns on these matters to Donna Marie Sorrentino, Director and Title IX Coordinator at dms@unh.edu

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