Civil Treatment® Workplace
RESOURCE GUIDE

ELI

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How to Use This Guide

This Resource Guide contains information about laws and workplace issues discussed in your Civil Treatment® Workplace class. It provides a number of additional examples, practical tips, and best practices as you consider ways to incorporate what you learned into your day-to-day actions. It is not intended to replace your organizational policies. Always consult Human Resources and your organizational policies for additional information.

PART A. BEHAVIORAL MODELS

Civil Treatment® Foundations

The Civil Treatment® Foundations provide a model for preventing, detecting, and correcting any type of inappropriate behavior in the workplace. While your specific role and responsibilities may determine how you act in line with these rules, they apply to everyone as a way to build and sustain a positive culture for the organization.

How Leaders Can Apply the Civil Treatment® Foundations

- GUARD WORDS AND ACTIONS
  - Model organizational values and appropriate behavior.
  - Do not allow inappropriate comments, jokes, or behavior in the workplace.

- SPEAK UP AND LISTEN
  - Create an open environment where people are comfortable raising concerns.
  - Listen with intention when others share concerns, feedback, or ideas with you.

- BE CONSISTENT AND PROFESSIONAL
  - Treat people fairly and base workplace decisions on objective criteria and policy.
  - Keep accurate and timely records of workplace activities.

- HOLD ACCOUNTABLE
  - Communicate standards and consequences for not upholding them.
  - Intervene and take action to stop conduct that violates standards.

- GET HELP
  - Refer to policies and engage identified resources when you become aware of issues.
  - Follow up to ensure that concerns are being addressed.

PART A. BEHAVIORAL MODELS

How Employees Can Apply the Civil Treatment® Foundations

- GUARD WORDS AND ACTIONS
    - Model organizational values and appropriate behavior.
    - Do not participate in inappropriate comments, jokes, or behavior in the workplace.

- SPEAK UP AND LISTEN
    - Say something when you have a concern.
    - Listen with intention when others share concerns, feedback, or ideas with you.

- BE CONSISTENT AND PROFESSIONAL
    - Act inclusively and respectfully with everyone.
    - Acknowledge individuals for the ways they contribute to our success.

- HOLD ACCOUNTABLE
    - Take responsibility for your actions.
    - Remind others of their responsibility to help maintain a positive workplace.

- GET HELP
    - Report concerns and policy violations.
    - Ask questions if you're uncertain about policies or procedures.

JustTalk Model™

Effectiveness in the workplace requires that people feel comfortable speaking with each other about a wide range of topics. When something is bothering you, that is probably an indication that you need to speak with someone. It may be that you have a good idea that isn't being considered, or perhaps someone made a comment that made you uncomfortable. Maybe something just doesn't feel right. These are exactly the kinds of things that we need to be willing to talk with each other about.

The JustTalk Model™ describes steps to take when speaking up to someone or listening to them about any such topics, including concerns about inappropriate behavior.

The steps are:

- Explain Your Point of View
- Listen with Intention
- Check for Understanding
- Plan Next Steps
- Express Appreciation

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Just**Talk** Model™

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PART A. BEHAVIORAL MODELS

Explain Your Point of View

If you need to speak up, think about who it is that you need to talk with. What is your goal going into the conversation? Think about stories or examples related to your ideas or concerns that you could offer to help illustrate your point of view. Consider jotting down your ideas and, if the situation permits, practice presenting your message in front of a mirror until you're sure you can make your points clearly.

If someone speaks up to you, you may not have the benefit of preparing for the conversation. Nonetheless, you should still explain your perspective in a professional, non-confrontational way. Make sure not to reject the speaker's perspective. Instead, speak from your own experience ("I heard…" or "I felt"… or "I was trying to …").

explain your point of view

DESCRIPTION/TIPS

» Speak clearly, confidently, and succinctly.

» Talk about the experience from your own perspective ("I heard/felt…").

» Avoid statements that make assumptions about others' intentions ("You made a snide remark…").

» Stay positive, and focus on solutions.

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explain your point of view

PROMPTS

• "Hey! Do you have a few minutes to talk about something?"

• "I'm sure you didn't mean anything by this, but I felt _____ when you said _____."

• "I can understand why you'd feel that way. From my point of view…"

• "I value your opinion. I agree/disagree because…"

PART A. BEHAVIORAL MODELS

Listen with Intention

Demonstrate a willingness to listen by removing distractions in your environment. For example, close your laptop and silence and put away your cellphone.

Be conscious of body language. Your own body language should be welcoming and supportive. Monitor the other person's body language for signs that you may need to deliver your message differently. (Note that body language may differ based on speakers' cultures and personalities.)

- Examples of positive body language may include good eye contact, a smiling or neutral expression, nodding, and uncrossed arms.
- Examples of negative body language may include avoiding eye contact, scowling or frowning, crossed arms, or physically turning away from the person who is speaking.

As you listen, keep an open mind. Try not to be distracted by your own feelings or opinions. Always assume that the speaker has good intentions. Do not interpret feedback or disagreement as a rejection of your feelings, ideas, or value.

Depending on how you process information and the nature of the conversation, it may help to take notes. If you want to do this, check with the other person first. A simple "Hey, do you mind if I take notes, just so I get it all straight?" does wonders. It acknowledges the good intention of note taking so that you don't come across as confrontational or suspicious.

listen with intention

DESCRIPTION/TIPS

» Remove distractions (close your laptop, silence your phone, shut the door).

» Focus on listening to what the person has to say, not what you'll say in response.

» Make sure your body language is welcoming and encourages the other person to speak.

» Ask probing questions to show you value the other person's perspective.

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listen with intention

PROMPTS

- "You mentioned _____. Can you tell me more?"
- "I'm glad you're bringing this up. Is it okay if I take notes to keep the details straight?"
- "Based on what you've told me, what do you see as an ideal outcome?"
- "What do you think the impact would be if...?"

PART A. BEHAVIORAL MODELS

Try to truly engage with the other person in ways that get them to say more. Do not offer your own opinions or ideas, but instead:

- Ask questions of clarification. ("I'm not sure I understand XYZ. Could you go through that again?")

- Ask for more examples. ("Could you give me an example of XYZ to make sure I understand what the issue is?")

- Ask for more details. ("Could you say a little more about XYZ?")

Asking questions not only shows that you are really listening but that you value the other person's thoughts. Moreover, by asking questions, you can bring up information that provides new insights for both you and the speaker.

Check for Understanding

Even the most articulate speakers can be misheard or misunderstood. Consequently, it's important for everyone participating in the discussion to check for understanding. Try paraphrasing what you heard, and ask the speaker if your interpretation is correct.

For example:

- "If I understand you correctly, you heard two co-workers make a racial joke. That made you uncomfortable, and it's harder for you to contribute to the team now. Is that right?"

Alternatively, if you are presenting the idea or concern, you can proactively ask if there is anything you can clarify. For example:

- "Is there anything in what I've said that you're not clear about or that you want to hear more about?"

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check for understanding

DESCRIPTION/TIPS

» Recognize that even the most articulate speakers can fumble their words or be misunderstood.

» Ask the speaker to restate the issue or provide more details if you are unclear.

» Paraphrase what you heard, and ask if your interpretation is correct.

» Ask the listener to summarize their understanding of what you've said.

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check for understanding

PROMPTS

- "If I'm understanding you, you feel that…"

- "Could you explain that again? I was unclear about…"

- "Is there anything I can clarify?"

- "Would you mind summarizing what you heard me say, just so I make sure I was communicating clearly?"

PART A. BEHAVIORAL MODELS

Plan Next Steps

Sometimes you can reach a solution in a single discussion. That is, you can both agree on what the issue is and what steps to take to correct the situation and/or prevent it from happening again.

If you cannot resolve the issue, you and the other person should collaborate on identifying what the next step(s) should be that will get you closer to a solution. Set deadlines, and decide when and how you will check in with each other on progress. If laws, policies, or other limitations dictate what steps must be taken, state what must happen and why.

Once an agreed-on solution is put in place, be sure to check in with the other person to discuss how that solution is working, and follow up on progress at or before designated times. Be honest about what has been accomplished and whether current strategies are working.

plan next steps

DESCRIPTION/TIPS

» Determine if you have reached a solution. If you haven't, identify and confirm the next steps for reaching one.

» Make specific plans with one another to follow up on progress.

» Consider whether other people need to be involved to fully resolve the situation.

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plan next steps

PROMPTS

• "Let's work together to come up with some action steps."

• "What can we do in the short term to move to a solution?"

• "Let's follow up on [date] to talk about progress."

• "Let's see if [person] might have some other ideas about this."

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PART A. BEHAVIORAL MODELS

Express Appreciation

If you initiate the dialogue, be sure to thank the listener for their time and input.

Alternatively, if someone approaches you with an idea or concern, thank the person for coming forward. Demonstrating appreciation for input and initiative helps build trust and camaraderie and promotes a more positive, successful workplace.

express appreciation

DESCRIPTION/TIPS

» Thank the person for listening and sharing their thoughts.

» Recognize the time, effort, and courage that went into the conversation.

» Verbalize the value that came out of the conversation.

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express appreciation

PROMPTS

- "Thanks for taking the time to speak/listen to me."

- "I'm really glad we talked about this."

- "I appreciate that we're working together to reach a solution."

- "What you've shared today has really made me think. Thank you."

Additional Tips for Using the JustTalk Model™

■ These steps are not linear. You may find yourself jumping back and forth — for example, between explaining, listening, and checking — multiple times in a conversation.

■ The model is designed for a two-way conversation. In other words, both the person who starts the conversation and the receiver of the conversation can apply the model to resolve a problem or concern.

■ This model is not reserved for resolving concerns. You can also use it to effectively speak up and listen to new ideas and thoughts as well.

Uncivil Behavior Triangle

Inappropriate behavior may not be illegal, but it is still disruptive. It may be unprofessional, rude, dismissive, disrespectful, or even bullying. Even if inappropriate behavior never turns into a legal claim, the organization still wants you to avoid any uncivil behaviors that conflict with its values. Otherwise, the organization and those who work there may suffer any or all of the negative outcomes listed below.

The following is a summary of U.S. federal laws that pertain to the content covered in Civil Treatment® Workplace. Additional federal, state, and local laws and organizational policies also apply to specific workplace situations. Always consult Human Resources and your organizational policies for additional information.

ILLEGAL

ABUSIVE/BULLYING

DISMISSIVE/UNWELCOMING

RUDE/UNPROFESSIONAL
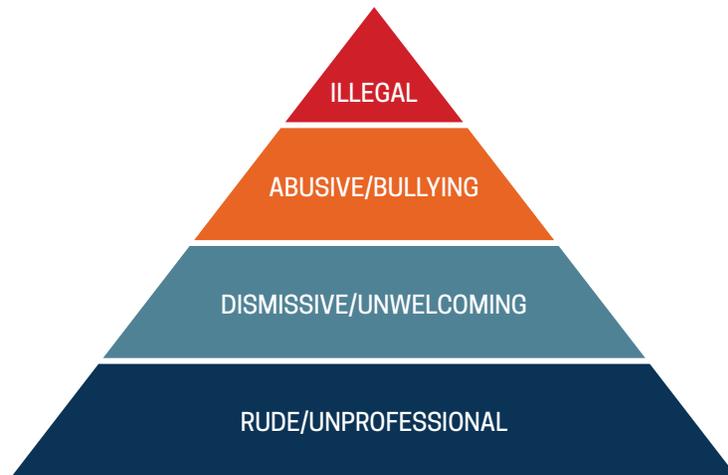
OUTCOMES OF UNCIVIL BEHAVIOR

- Decreased Efficiency
- Low Morale
- Brand Damage
- Low Productivity
- Reduced Engagement
- Decreased Performance
- Turnover
- Distrust
- Increased Disruption
- Accidents or Safety Concerns
- Decline in Quality
- Lawsuits and Claims

Protected Characteristics

Federal employment laws in the United States (covering all U.S. states and territories) list a number of traits that cannot be considered when an employer is making hiring or other employment decisions, and should not be the basis for treating any employee(s) differently than others. These traits are called **protected characteristics**.

Title VII of the Civil Rights Act prohibits employment harassment and discrimination based on the following protected characteristics:

- Race
- Color
- Religion
- Sex
- National origin
- Pregnancy
- Sexual orientation
- Gender identity, including transgender status

Other federal laws also prohibit harassment and discrimination based on the following protected characteristics:

- Disability (physical or mental)
- Age (for workers over 40)
- Genetic and/or medical information
- Veteran status or military service

In some cases, state and local laws may also prohibit harassment and discrimination based on other personal characteristics, such as:

- Criminal/arrest history
- Ancestry
- Economic status
- Family status
- Political affiliation

Organizations may identify additional standards to protect others from harassment and discrimination at work.
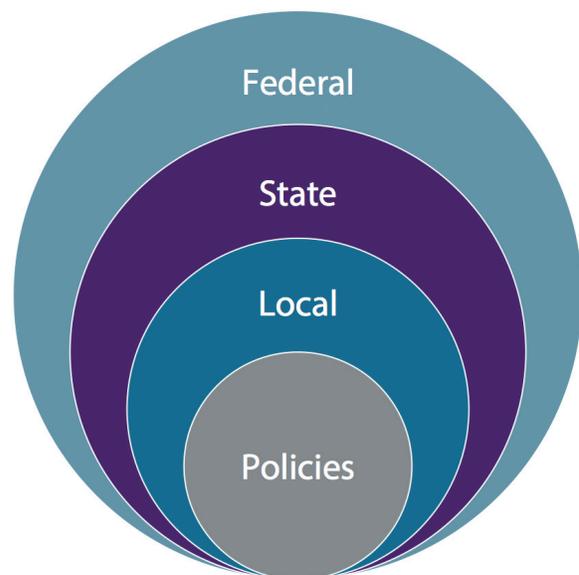
Harassment

Unlawful harassment is unwelcome conduct that is based on protected personal characteristics. Harassment occurs when the offensive conduct becomes a condition of employment or when the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

Action Steps for Everyone

» Guard words and actions at all times by avoiding comments, jokes, or other behaviors based on personal characteristics such as race, sex, age, color, national origin, religion, disability, pregnancy, sexual orientation, gender identity including transgender status, or any other protected personal characteristic.

» Do not initiate or participate in inappropriate electronic communications (emails, social media posts, blogs, text messages, etc.).

» Speak up if you witness or become aware of any harassing behavior.

Additional Action Steps for Leaders

» Follow your Duty to Act.

» An employer may be legally responsible for the actions of non-employees in the workplace. If a manager knows or should have known that a third party is engaging in inappropriate behavior but fails to take reasonable action, the organization may be liable for the conduct.

» In addition, most organizations pledge that their employees will be treated respectfully at work. Allowing such conduct violates this commitment.

» Talk about the organization's anti-harassment and anti-discrimination policies with your employees regularly.

» Immediately remove any and all inappropriate materials displayed anywhere in the workplace.

» Model the values of the organization each and every day.

» Discourage employees from telling jokes or making comments that focus on personal characteristics (e.g., sex, race, age, national origin, disability, pregnancy, genetic information, sexual orientation, gender identity, etc.), even if no one seems to mind.

» Immediately address any inappropriate comments or jokes from employees. Some situations may be so extreme that you should get help immediately.

» Make sure employees know that you want them to speak up about harassment or other unprofessional conduct in the workplace. Welcome their concerns by making yourself available to talk to them and listening without interrupting.

Types of Harassment

Sexual Harassment

Sexual harassment is unwelcome sexual advances, requests for sexual favors, and other conduct of a sexual nature. It is illegal and a violation of organizational policy.

Even if the harassment is not of a sexual nature, offensive behavior directed toward someone because of his or her sex can also be sexual harassment (e.g., rude behavior directed only toward women).

Sexual harassment can involve situations between males and females or individuals of the same sex. The issue is the specific nature of the behavior, not the gender of the people involved.

There are two types of sexual harassment: **quid pro quo** and **hostile work environment**.

Quid Pro Quo

Quid pro quo is a Latin phrase that means "this for that."

Quid pro quo harassment occurs when a manager or supervisor makes a job or job benefit contingent upon an employee's providing sexual favors. Examples include:

■ A manager promises an employee a promotion if the employee agrees to date him/her; the employee refuses to date, and the promotion is subsequently denied.

■ A manager threatens to relocate an employee who refuses his/her sexual advances, and the employee is subsequently relocated.

An employer will generally be held liable if a supervisor or manager engages in quid pro quo harassment. Others might also be held legally liable depending on the specific facts of a particular situation.

PART B. LEGAL ISSUES

Hostile Work Environment

A sexually hostile work environment happens when an employee is repeatedly exposed to sexual material or behavior (such as comments, jokes, pictures, etc.) that the employee — and a reasonable person in the employee's position — would find hostile or abusive. However, sexual material and behavior may be so severe that a single incident is sufficient to create a hostile work environment.

The inappropriate comments or behaviors can be transmitted by words, emails, faxes, Internet material, posters, calendars, blogs, etc. They can involve anyone in the workplace: a supervisor or manager, co-workers, vendors, customers, and so on.

Generally, conduct that creates a hostile work environment must fulfill the following criteria:

- Repeated sexual behavior that pervades the workplace
  - However, some conduct can be so severe that one incident may qualify as creating a hostile work environment
- Offensive to a reasonable person
- Offensive to the recipient

While sexual harassment may be easily defined, determining whether sexual harassment actually occurred can be difficult. Generally, the decision is left to a jury.

A work environment may be considered hostile if an employee or group of employees feels their manager and/or co-workers have created an environment that:

- Makes it difficult or impossible for them to fully contribute
- Makes them uncomfortable in the workplace

If a manager creates a hostile work environment and the employee involved is terminated or suffers some other negative employment action, the employer will generally be liable for the manager's behavior.

The employer may be able to avoid liability if it can show the following:

- No actions were taken against the employee.
- The employer has taken steps to prevent and stop harassment.
- The employee failed to complain of harassment or take advantage of the employer's protections against harassment.

If someone other than a manager (such as a co-worker, vendor, or customer) creates the hostile work environment, the organization is responsible for that harassment if management knew or should have known about the harassment but failed to take action.

PART B. LEGAL ISSUES

Third-Party Harassment

Third-party harassment refers to any instance in which a person not employed by the organization subjects an employee to a hostile work environment based upon a protected characteristic.

Increasingly, employees work with third parties outside their organizations. Third parties include the following:

- Clients
- Contractors
- Vendors
- Customers
- Consultants
- Any other parties not employed by the organization, including members of the public at large

Examples of unlawful third-party harassment include these situations:

- A delivery person continues to ask an employee on dates, even after the employee has asked him to stop.
- A client makes repeated sexual requests of her service representative and threatens to discontinue business with the organization when the requests are denied.
- A restaurant customer makes racial remarks to her server when her order is wrong.
- A patient makes ethnic slurs toward his doctor and refuses to allow her to treat him.

Discrimination

In the eyes of the law, **discrimination** exists when employees or job applicants are treated less favorably than similarly situated employees or applicants based on protected characteristics. However, that does not mean you can discriminate based on any other characteristics, even those not legally protected. **The goal should always be to treat all employees fairly, consistently, and with respect.**

Discrimination may exist without evidence of written or verbal comments.

PART B. LEGAL ISSUES

Action Steps for Everyone

» Treat co-workers equally despite any differences in personal characteristics or personal opinion.

» Act respectfully toward others by listening to them, including them, and refraining from teasing or harassing them.

» If you have concerns about someone's behavior or observe inappropriate treatment of others, talk to your manager, another manager, or Human Resources.

Additional Action Steps for Leaders

» Focus on performance and other business-related criteria and ensure consistent, respectful treatment of all employees.

   – If an employee has concerns about working with someone because of their personal characteristics, remind the employee of the organization's policies. Help them focus on business issues.

» Base employment decisions — hiring, firing, promotion, etc. — on objective criteria such as seniority, merit, performance, skills/ competencies, and job qualifications, without regard to an employee's personal characteristics (e.g., race, sex, color, age, national origin, disability, religion, pregnancy, sexual orientation, gender identity, etc.) or knowledge of an employee's personal situation (e.g., family, financial status, etc.).

» Avoid making assumptions about an employee's abilities, career goals, or intentions based on personal characteristics.

» Maintain accurate records regarding performance and other business decisions throughout employees' tenure.

   – During workforce reductions and related activities, keep detailed documentation and post required legal notices. Get help from Human Resources and/or legal counsel before acting.

   – Document discussions with employees regarding requests for accommodations (religious, disability, pregnancy, etc.) and all subsequent related conversations.

» Apply all policies consistently, and refer to past practice when making business decisions.

Types of Discrimination

Age Discrimination

The **Age Discrimination in Employment Act** (ADEA) is designed to prevent discrimination against employees who are 40 years of age or older. The ADEA applies to all employers, labor unions, and employment agencies with 20 or more employees. Some state laws protect younger employees from age discrimination.

The purposes of the ADEA are:

- Promote employment of older persons based on ability rather than age
- Prohibit arbitrary age discrimination in employment
- Help employers and employees find ways of solving problems related to age in employment
- Prohibit retaliation against employees who have claimed age discrimination

The **Older Workers Benefit Protection Act** (OWBPA), an amendment to the ADEA, prohibits an organization from forcing an employee to waive his/her rights and claims under the ADEA upon termination of employment unless the waiver is knowing and voluntary and fulfills specific minimum requirements.

Age discrimination may occur when a manager engages in the following:

- Refuses to hire, promote, or transfer an older applicant or employee because he/she believes the applicant or employee may not fit in with the younger co-workers in the department
- Assumes an older employee cannot handle duties requiring physical stamina
- Pressures an employee over 40 to take early retirement during workforce reductions
- Refuses to promote an employee because the organization suspects he/she will retire soon
- Makes comments about younger employees having more energy

PART B. LEGAL ISSUES

Disability Discrimination

The **Americans with Disabilities Act** (ADA) applies to all organizations with 15 or more employees. It requires organizations to make reasonable accommodations for disabilities in the workplace, and it prohibits discrimination based on disability.

An applicant or employee is disabled under the ADA if the employee can demonstrate that he/she has "a physical or mental impairment that substantially limits one or more major life activities." Major life activities include any major bodily function or physical or mental tasks, such as:

■ Caring for oneself	■ Performing manual tasks	■ Seeing
■ Hearing	■ Eating	■ Sleeping
■ Walking	■ Standing	■ Lifting
■ Bending	■ Speaking	■ Breathing
■ Learning	■ Reading	■ Concentrating
■ Thinking	■ Communicating	■ Working

An individual can also be considered disabled under the ADA if the individual has a record of such an impairment or is regarded as having such an impairment.

Potential disabilities include the following:

- Injuries, such as a back or head injury
- Illnesses, such as diabetes or cancer
- Psychological illnesses or injuries, such as depression

Disability discrimination occurs in the following situations:

- An employer bases decisions on an employee's disability, record of a prior disability, or the perception of a disability.
- An employee suffers harassment based on his/her disability.
- An employer fails to make a good-faith effort to reasonably accommodate a disabled employee or applicant.

The law requires that the employer have knowledge of the condition before it can be found that discrimination based on that condition occurred.

PART B. LEGAL ISSUES

Examples of disability discrimination include situations in which a manager and/or the organization engages in the following behaviors:

- Refuses to consider a person for a job because they think the person's disability will make it difficult for him/her to perform the job
- Refuses to hire a person because they think that customers or employees will be uncomfortable with that person's disability
- Fails to reasonably accommodate a qualified employee
  - Sometimes this happens when a manager assumes an accommodation will be too expensive, such as deciding on their own — without getting help or studying past practices — that a wheelchair ramp will cost too much.

Disability Accommodation

Every covered organization must make a good-faith effort to reasonably accommodate employees with disabilities so that the employee may contribute to the best of their ability. The organization must also provide reasonable accommodations to job applicants to allow them to take part in the hiring process.

Good-faith efforts include discussing reasonable accommodation options with the employee and evaluating them in terms of the burden (financial or otherwise) each accommodation places on the organization.

The organization should establish standard practices around requests for accommodations by employees, such as:

- Having an interactive process with employees and their medical advisor to determine the following:
  - Whether the individual is disabled (including, if necessary, obtaining a second medical opinion)
  - Whether the individual can perform the essential job functions
  - Whether the individual requires an accommodation in order to perform the essential job functions and, if so, what the accommodation should be
- Providing a reasonable accommodation if such accommodation will allow the employee to perform the essential job functions
- Being consistent in deciding what is and is not "reasonable." Any actions taken should be consistent with past practice
- Documenting all actions taken in response to a request for accommodation

Action Steps for Leaders

» When having discussions with employees, guard words and actions to maintain confidentiality. Discuss any request for accommodation only with people who have a business need to know the information (such as Health Services, Human Resources, or legal counsel).

» Get help by consulting with Human Resources, legal counsel, or appropriate organizational representatives who handle accommodation requests, especially before denying an accommodation request.

» Document the request and any subsequent conversations about the request or actions taken in connection with the request.

» Take care to follow your organization's procedures for managing medical information, which must be treated confidentially. The organization should maintain medical information and documents (such as doctors' notes) received from employees in a file separate from the personnel file.

National Origin Discrimination

National origin discrimination occurs when employees or applicants are treated less favorably than others because of their national origin. This can include a change in the terms or conditions of employment.

Any jokes, assumptions, stereotypes, other inappropriate comments, or business decisions based on the following criteria are unacceptable and perhaps illegal:

- Birthplace, culture, ethnicity, language, or dialect
- Marriage or association with individuals of a particular ethnic group
- Physical traits associated with a particular ethnic group, including physical features or style of dress
- Perception that an employee is a member of a particular ethnic group

PART B. LEGAL ISSUES

Pregnancy Discrimination

The **Pregnancy Discrimination Act** (PDA), which is an amendment to Title VII of the Civil Rights Act, prohibits employers from making employment decisions that are motivated by an employee's sex, pregnancy, childbirth, or related medical condition.

Pregnancy discrimination may occur in the following situations:

■ Employment decisions are based on an individual's pregnancy.

■ Assumptions are made about an individual's pregnancy or their work ability because of their pregnancy.

■ A female is subjected to a work environment hostile to pregnancy.

■ An organization refuses to hire a pregnant applicant.

The federal **Family and Medical Leave Act** (FMLA) requires that eligible employees be granted job-protected unpaid leave for up to 12 weeks for certain family and medical reasons. This law applies to employers having 50 or more employees within a 75-mile radius.

Employees are eligible for FMLA leave if they have fulfilled these criteria:

■ Worked for a covered employer for at least 12 months

■ Worked for 1,250 hours over the previous 12 months

Under the law, an organization must grant unpaid leave to covered employees for the following reasons:

■ To care for the employee's child after birth or after placement of a child in the employee's home through adoption or foster care

■ To care for the employee's spouse, child, or parent who has a serious health condition

■ For the employee's own serious health condition when the employee is unable to perform his/her job

■ For "any qualifying exigency" that arises out of the fact that the spouse, child, or parent of the employee is on active duty, or has been notified of an impending call or order to active duty, in the National Guard, Reserves, or Regular Armed Forces

■ To care for the employee's spouse, child, parent, or next of kin who is a current or former member of the armed forces and is injured in the line of duty or aggravates a pre-existing injury or illness through service in the line of duty. With regard to veterans, the injury or illness must have occurred within the five years preceding the date of treatment. (This category of leave is different from other FMLA leave because the employee may take up to 26 weeks of leave within a 12-month period.)

PART B. LEGAL ISSUES

As another option, employers may substitute certain kinds of paid leave for unpaid leave. Generally, the employee must provide 30 days' advance notice when the leave is foreseeable.

The employer may require a medical certificate to support a request for leave because of a serious health condition and a medical clearance before the employee is able to resume his/her job.

Upon return from the FMLA leave, employers must restore employees to their original or equal positions with equal pay, benefits, and other employment terms.

- For the duration of FMLA leave, the employer must allow the employee the option of continuing coverage under any group health plan.
- The use of FMLA leave cannot cause an employee to lose any employment benefit that arose before the start of his/her leave.
- An employer may not retaliate against an employee for requesting or taking FMLA leave.

Many states have adopted their own family and medical leave regulations that may have more stringent requirements than the FMLA. Such requirements may apply in addition to those under federal law. As a matter of policy, employers may elect to provide more generous leave provisions than those required by law.

FMLA regulations are complex and sometimes conflict with other legal requirements, and interpretations of both are constantly evolving. Many states have additional leave or protections related to taking time off to address family situations, and organizations may also provide expanded benefits beyond what is required under the FMLA. Consult with Human Resources on any family leave issue.

PART B. LEGAL ISSUES

Race Discrimination

Race discrimination may occur in the following situations:

- An employee's race is a motivating factor for an employment decision.
  - This can be proved where a manager treats an employee of one race less favorably than an employee of another race with no legitimate business reason to explain the difference.
- An employee suffers a work environment that is hostile to his/her race.
- An applicant is denied a job because of his or her race.
- An employer has a policy that appears to be neutral but actually disproportionately harms people of a particular race, with no legitimate business reason for the policy.

Examples of discrimination based on race include the following:

- A manager refuses to hire someone because other employees or customers may be uncomfortable working with this person because of his/her race.
- A manager places more employees of a specific race into one level of a job category.
  - For example, an organization hires Hispanics only as janitors, but never hires Hispanics as customer service representatives.
- A manager creates job requirements that are not essential to do the work in order to exclude potential employees of a specific race.

Religious Discrimination

Religious discrimination occurs when an employee or applicant is treated less favorably than others because of their religion. This could include experiencing adverse action, including a change in the terms or conditions of employment, because of his/her religion.

Religious discrimination can also occur by failing to provide a religious accommodation.

Managers should not tolerate any unlawful workplace conduct including jokes, assumptions, stereotypes, or other inappropriate comments based on the following criteria:

- Religion, birthplace, culture, ethnicity, language, or dialect
- Marriage or association with individuals of a particular religious group
- Physical traits associated with a particular religious group, including style of dress
- Perception that an employee is a member of a particular religious group

PART B. LEGAL ISSUES

Religious Accommodation

Organizations have an obligation to provide a **religious accommodation** unless doing so would cause more than a minimal hardship. Managers and the organization should treat requests for religious accommodation consistently with policy and past practice. Inconsistent treatment can serve as evidence of religious discrimination.

Managers should always get help before allowing or denying a request for religious accommodation or before asking employees to take actions that may violate their religious beliefs (such as requiring an employee to shave his beard or forbidding an employee to wear a head covering). When getting help from Human Resources (or another resource identified by the organization), the following factors, in addition to others, may go into the decision of whether to allow or deny a request:

- The nature of the request, such as the amount of time the employee needs and the dates he/she will be away from work.
- The cost of the request and the amount of disruption an accommodation would cause to typical operating procedures.
  - A manager may be asked to provide input about the effect of the employee's absence on the productivity of the team and, ultimately, the bottom line.
- Past practice in handling similar requests for accommodation.

Action Steps for Leaders

» Never question the employee about their religion to determine whether the request is valid.

» Always tell an employee you will consider their request. Document the request, take time to evaluate the situation, and get help before giving them an answer.

» Get help. Contact Human Resources and/or legal counsel to determine whether your proposed decision is consistent with other decisions and for advice on how to proceed.

» If the request is denied, do the following:

  - Document the request and the business reasons you feel it should be denied.

  - Request assistance from Human Resources or legal counsel to determine proper wording of the denial. (If litigation occurs, the document may become the employer's defense.)

  - Provide the employee with business justifications for refusing the request.

  - Refer the employee to Human Resources if they are upset about the decision.

PART B. LEGAL ISSUES

Sex Discrimination

Sex discrimination occurs when an employee or applicant for employment is treated less favorably in regard to hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment because of his/her sex.

Sexual Orientation/Gender Identity/ Gender Expression/Transgender Discrimination

The term **sexual orientation** indicates the sex that an individual is emotionally, romantically or sexually attracted to. Individuals are generally categorized as heterosexual, homosexual, or bisexual.

The term **gender identity** refers to a person's self-identification as male, female, a blend of both or neither, or transgender.

Gender expression refers to all external characteristics and behaviors a person exhibits that generally are socially defined as either masculine or feminine and that communicate gender to others, such as dress, mannerisms, physical characteristics, and speech patterns.

Transgender refers to people who have a gender identity or gender expression that differs from cultural expectations based on their sex recorded at birth.

In June 2020, the U.S. Supreme Court ruled that Title VII of the Civil Rights Act of 1964 protects employees from discrimination and harassment based on sexual orientation and gender identity (which includes transgender status). Specifically, the Court noted that the prohibition against discrimination and harassment based on "sex" under Title VII included discrimination and harassment based on sexual orientation or gender identity. The majority opinion noted, "An individual's homosexuality or transgender status is not relevant to employment decisions. That's because it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex."

Disparate Treatment

If an employer treats an employee or applicant less favorably than others based on the employee's or applicant's race, sex, national origin, religion, disability, color, age, pregnancy, genetic information, sexual orientation, gender identity including transgender status, or other characteristics protected by law, the employer likely has engaged in **disparate treatment**.

An employer likely is not liable for differences in treatment if they are the result of legitimate business reasons.

Questions about disparate treatment commonly arise in situations involving the following types of decisions:

- Promotions
- Assignments
- Conferences
- Training
- Travel
- Performance ratings
- Pay increases
- Staffing
- Mentoring
- Internships

If a manager does any of the following for discriminatory reasons, it may be disparate treatment:

- Requires an employee who has permission to leave early on Fridays due to religious reasons to complete a time sheet, but does not require it of other employees in similar positions (based on religion)
- Allows the male employees in his/her department to take a longer lunch break than the female employees (based on gender)
- Pays Hispanic employees lower wages than Caucasian employees, even though they all do the same job (based on national origin)
- Selects older workers when conducting a reduction in force (based on age)
- Requires documentation for leave due to mental health reasons but not for leave due to back injuries (based on disability)

Retaliation

Retaliation occurs when an employee suffers a materially adverse action because he/she engages in a protected activity like making a good-faith complaint, participating in an investigation or lawsuit, or taking legal action. Materially adverse actions can involve termination, denial of promotion, loss of pay, or other similar actions. In fact, any action that would likely dissuade a reasonable worker in the complainant's position from raising a discrimination complaint may be sufficient to support a claim of retaliation.

Retaliation against an employee is illegal and can lead to additional litigation or damages in a lawsuit. In addition, allowing retaliation in the workplace will likely discourage other employees from speaking up.

Any of the following actions taken because an employee raised a concern, filed a complaint, or participated in an EEOC investigation or lawsuit against the organization may be considered retaliation:

- Assignment of undesirable tasks
- Excluding an employee from a particular project, important meeting, or team activities
- Spreading false rumors
- Harassment and intimidation
- Shift change
- Discipline or corrective action
- Termination

Courts often look at retaliation from the perspective of the employee, not the employer. In 2006, the United States Supreme Court broadened the scope of retaliation claims by taking into account the effect that adverse actions have on an employee's willingness to bring forward complaints of discrimination.

If the answer to both of the following questions is "yes," the court may find retaliation has occurred.

1. Did the employer take an adverse action against the employee (whether inside or outside the workplace) that would likely dissuade a reasonable employee in the plaintiff's position from raising a complaint of discrimination?
2. Did the employer take the adverse action against the employee because the employee raised a complaint of discrimination?

Any change in an employee's job or working conditions could be evidence of retaliation, even if the change only impacts the employee outside of work. Even subtle actions, such as cutting back on an employee's responsibilities, can still give rise to a claim.

PART B. LEGAL ISSUES

Employee-to-Employee Retaliation

While retaliation claims and cases generally are the result of manager or supervisor action, a co-worker's retaliatory actions can also create liability for the organization. Employee-to-employee retaliation may take the form of harassment, intimidation, or ostracism of an employee who has reported a violation of law or policy.

Even if an employee's retaliatory behavior toward a co-worker doesn't rise to the level of a legal violation, it likely violates organizational policy. Any retaliatory behavior is unacceptable because it harms employees' ability to perform their jobs.

The organization is committed to preventing retaliation, no matter how egregious or subtle it may be. All forms of retaliation have a negative impact on the organization and will not be tolerated.

Action Steps for Everyone

» Never harass, intimidate, ostracize, or otherwise treat a co-worker inappropriately because the co-worker reported a violation of law or policy.

» Speak up if you feel that you are a victim of retaliation.

Additional Action Steps for Leaders

» Work to build an open, welcoming environment where employees can feel comfortable raising any concerns without fear of retaliation.

» Inform employees about the importance of speaking up and about the organization's policies prohibiting retaliation. Make sure your behavior is consistent with organizational policy.

» Apply the Civil Treatment® Foundations.

   – Guard words and actions when you receive a complaint. Avoid snide comments, rude remarks, and body language that might suggest an intent to retaliate.

   – Be consistent and professional in handling any complaints or concerns raised by employees.

   – Get help before altering any aspect of an employee's job if that employee has previously raised a concern.

PART C. RISKY BEHAVIORS

Workplace Bullying/Abusive Behavior

Workplace bullying or abusive behavior is repeated verbal or physical attacks against another person that undermines their self-esteem and confidence. The perpetrator and victim can be anyone: co-workers, supervisors/managers, contract workers, or labor representatives.

Unlike constructive criticism or performance counseling, bullying is unprofessional and generally does more harm than good. It affects both the victim and anyone who witnesses or is aware of the bullying.

Examples include:

- Being constantly sarcastic or demeaning
- Name-calling
- Shouting or yelling at people
- Continually ridiculing someone
- Excluding or socially isolating someone
- Purposely undermining someone
- Physically intimidating someone
- Making physical gestures intended to make fun of someone
- Making decisions out of malice
- Intentionally damaging someone's reputation
- Purposely withholding vital information from someone
- Ganging up on an individual (also called "mobbing")
- Discussing an employee's performance issues in front of others
- Making negative comments about someone that don't relate to work

Workplace bullying or abusive behavior is not acceptable between employees or as a management style.

> ### *Action Steps for Everyone*
>
> » If you witness abusive/bullying behavior or are the target of that behavior, speak up and get help. Talk to your manager, Human Resources, or another appropriate source as soon as you can.
>
> » If you are the target of bullying or abuse, remember that it is not your fault. The problem is with the people who are doing the bullying or abuse, and management will deal with them.

PART C. RISKY BEHAVIORS

Additional Action Steps for Leaders

» You have an immediate Duty to Act to stop any abusive/bullying behavior you witness or learn about. If you allow bullying among your employees, you are setting a bad tone, and even worse behavior may occur. It also damages your credibility and impacts your ability to manage effectively and objectively.

» Get help from Human Resources or another appropriate source to determine the best way to handle the situation.

» Document the incident; record facts of what you saw or heard to support the organization's investigative process.

» Always act appropriately yourself.

   – Abusive behavior by leaders creates a perception that the organization accepts such tactics as appropriate conduct.

   – Leaders can be "demanding" or "tough" without being bullies, as long as they apply the Civil Treatment® Foundations and their motivation is to obtain the best performance by setting high, yet reasonable, expectations.

   – Leaders should always be consistent and professional.

Inappropriate Mutual Banter

Having fun at work helps build teamwork and camaraderie. And the organization wants employees to be able to talk freely with each other.

However, conversations can become unacceptable if they involve joking around or comments that make other people feel disrespected, excluded, or uncomfortable. This type of behavior is called **inappropriate mutual banter** and may be in violation of organizational policy.

The following are examples of inappropriate mutual banter:

■ Jokes or comments based on protected characteristics such as:

- Sex/gender
- Race
- Color
- Age
- Religion
- Disability
- National origin
- Pregnancy
- Genetic information
- Sexual orientation
- Gender identity, including transgender status

■ Jokes or comments based on characteristics that are not protected and therefore not illegal but that are divisive or insensitive such as:

- Height
- Weight
- Baldness
- Hobbies
- Favorite sports team
- Anything that could make a person feel uncomfortable or excluded

PART C. RISKY BEHAVIORS

Action Steps for Everyone

» Guard words and actions, even if no one appears offended by a conversation.

» Speak up and listen respectfully when made aware of inappropriate workplace behaviors.

» Hold others accountable by speaking up about inappropriate behaviors.

» Get help if you aren't comfortable addressing inappropriate behavior directly with a colleague or if you've had a conversation with the offender but the behavior continues.

Additional Action Steps for Leaders

» Use your best judgment to determine when inappropriate mutual banter puts your work environment at risk and therefore requires your Duty to Act.

» Tell your employees that you will not tolerate inappropriate behavior.

» Stop inappropriate banter early so it does not degenerate into a more serious situation. A simple statement such as "Cut it out" or "That's not appropriate work talk" may be enough to get the message across. However, if the inappropriate behavior continues, a firmer approach should be taken immediately.

» Document what you observed and what you have done to address the inappropriate behavior.

» Apply all policies consistently.

PART C. RISKY BEHAVIORS

Electronic Communications/Social Media

Inappropriate use of **electronic communications or social media** can have a significant impact on the workplace. Employees at any level can put their jobs at risk by using social media sites inappropriately.

Examples of inappropriate use of electronic communications or social media include:

- Divulging certain confidential organizational information or processes
- Making disparaging comments about co-workers, customers, or suppliers
- Posting discriminatory, harassing, or bullying statements
- Making threats
- Posting malicious or obscene material
- Posting information that demonstrates untruthfulness (such as calling in sick and then posting your status as at a baseball game)

Here are some additional important facts about electronic communications and social media:

- Once you send a message to someone or post something online, the content is out of your control and could be forwarded to anyone internal or external to the organization. It can be duplicated and can spread quickly.
- Electronic communications do not disappear after the receiver deletes them; they may become a permanent record preserved on the computer's hard drive or the network.
- Electronic communications or social media postings that are offensive or disturbing may impact the ability of a team to work together and can do harm to an organization's reputation or brand.
- The content of electronic messages and social media postings may include violations of organizational policy and therefore may be grounds for disciplinary action.
- When you use your organization's equipment or email address to send a message, that content becomes organizational property. It is not your private property, even if you use a password to access it.
- Laws regarding social media and the use of electronic communications in the workplace are developing quickly.

Favoritism

Favoritism happens when a manager treats a specific employee differently from all other employees, in a way that benefits that employee.

Favoritism does not usually involve "disparate treatment" based on a protected characteristic and therefore is not usually illegal. However, it creates division and distrust in the workplace and can create conflicts of interest, so it should be avoided.

Action Steps for Leaders

» Because you make decisions regarding employee pay, work assignments, evaluations, and discipline, your responsibility as a manager is to display fair, impartial, and consistent treatment toward every employee.

» Make sure your personal preferences are not part of your decision making.

» Avoid becoming romantically involved with any employee whose terms and conditions of work may be influenced by your decisions.

» Demonstrate common sense in your relationships with other employees, particularly with subordinates.

» Refrain from counseling employees regarding personal problems. Instead, refer the employee to Human Resources or other resources (e.g., employee assistance program) that are better equipped to support employee issues and problems.

PART C. RISKY BEHAVIORS

Romantic Relationships in the Workplace

Sexual or other inappropriate romantic relationships between a manager and employee taint the legitimacy of business decisions and reduce the confidence that other employees have in your leadership.

Relationships between co-workers may also disrupt the work environment.

> ### *Action Steps for Leaders*
>
> » Get involved when workplace behavior violates policy. If you become aware of inappropriate workplace behavior by co-workers who are romantically involved, communicate the importance of maintaining a professional, businesslike relationship at work.
>
> » Get help if the relationship is between an employee and a senior leader in the organization.
>
> » Get help when a potential conflict of interest arises.
>
> – For example, if someone you are romantically involved with transfers into your department, notify Human Resources or your manager. Such action ensures that you maintain objectivity when managing your work environment. In addition, disclosing the potential concern in a proactive way will help avoid the perception of favoritism and the appearance of impropriety or violations of business codes of conduct.

Unconscious Bias

Unconscious bias occurs when you make spontaneous judgments or assumptions about people or situations based on things like your own past experience, culture, background, exposure to media or social media, etc. It often manifests as an impression or gut feeling that shapes your perception.

It is human nature to perceive things and then begin to fill in the blanks with your own experiences and point of view. This tendency shows up in every decision you make. For example, in your personal life, the instantaneous assumptions you make about people influence who you date, who you are friends with, who you allow your kids to play with, etc. This is normal, and it may even be a form of self-preservation, even if it is not factually supported.

PART C. RISKY BEHAVIORS

Examples of unconscious bias may include:

- Gravitating toward people with personal characteristics
    - Always sitting next to people who share personal characteristics with you
    - Always saying hello to people who share personal characteristics with you but not saying hello to others
- Making generalizations about behavior based on a personal characteristic
    - Perceiving behavior as assertive from certain people, but perceiving the same behavior as aggressive or hostile from others
- Asking personal questions about or commenting on physical or cultural characteristics that are different from yours
    - Asking questions about hairstyles that are unusual to you, even if you are asking out of genuine curiosity
    - Commenting about holidays or customs that are different from yours
- Giving someone the benefit of the doubt or making excuses for someone because of his/her personal characteristics
    - Automatically siding with those who are the same race as you in racially tense situations or debates
    - Holding someone to different behavioral standards because you think he/she "was raised that way"
- Giving more credence to someone's opinion because of his/her personal characteristics
    - Unconsciously assuming those who are like you are more likely to be right
    - Assuming that someone has reached a higher level of education based on his/her personal characteristics

> ### *Action Steps for Everyone*
>
> » Make an effort to reach out to co-workers who are not like you or with whom you do not have a close relationship.
>
> » Avoid making assumptions about co-workers' capabilities, ambitions, or work styles.
>
> » Be inclusive of all co-workers when seeking feedback or organizing work groups, and try to be conscious of who on your team may feel like an outsider.
>
> » Allow everyone to express his or her thoughts without interruptions and by listening diligently and respectfully.
>
> » Keep in mind that some team members may be introverts; therefore, their ideas may not be heard as readily as those of more extroverted co-workers.
>
> » Include everyone in work-related group activities.

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Duty to Act

Any leader in the organization must take action if they become aware of any violation of safety regulations, policies, organizational values, or the law. This is called the **Duty to Act**, and it is a legal requirement for organizations and leadership.

- A manager who chooses not to follow through on the Duty to Act puts themselves at risk if the organization does not authorize them to make that decision on their own.
- If you are unsure of whether you must act on a workplace situation, get help from
  Human Resources or legal counsel.

You may become aware of violations through the following channels:

- Direct complaints or concerns from employees
- Third-party reports, gossip, or rumors (from someone other than the affected employee)
- Direct observation of a possible violation

Sometimes a situation may involve an employee you do not manage or a third party (such as a vendor or customer), but you must still take action.

A manager's Duty to Act is triggered when they learn about an actual or potential violation of any workplace laws, such as harassment or discrimination based on the protected characteristics.

Even if an employee asks that the concern remain "off the record" or that it be kept confidential, managers have a Duty to Act. The organization must investigate and stop any inappropriate conduct directed at employees while on the job. "On the job" also includes organization-sponsored functions or events held at work or at other locations.

> ### *Action Steps for Everyone*
>
> » If you become aware of behavior that potentially violates organizational policy, safety regulations, or the law — or that may violate organizational values — speak up to your manager.
>
> – Get help even if you are unsure about what you saw or experienced.
>
> » Recognize that managers are expected to get help when they learn of situations that might be a violation of the organization's policy. As such, your manager cannot promise confidentiality but would handle the issue with discretion.

PART D. BEST PRACTICES

Additional Action Steps for Leaders

» Guard words and actions by immediately stopping any behavior or activity that suggests a violation in progress.

» Get help. Consult with upper management, Human Resources, or legal counsel for help to ensure consistent decisions. Realize that getting help may be mandatory under your organization's policy.

» Do your part to help your organization be consistent about decisions and consequences.

» Be sure to document what you did to stop the inappropriate behavior, as well as how and when you got help.

» In some cases, your responsibility may simply be to let someone else know about the issue. The Duty to Act may be elevated to a senior member of the organization who will follow through with the next steps.

» If the inappropriate behavior happens outside the work environment but involves employees or managers, get help.

Get Help ASAP

» When confronted with any high-risk business issue, such as a theft of the organization's property or an employee who brings a gun to work, you should get help as soon as possible. The same is true for a potentially hostile work environment or evidence of workplace discrimination. Get help and address the situation when you first gain knowledge of it. By doing so, you minimize liability for the organization.

Bystander Intervention

Bystanders are individuals who witness or know about inappropriate behavior (including harassment, discrimination, bullying, etc.). Bystanders also include individuals who are subsequently informed of an incident involving inappropriate behavior. Bystanders can include leaders, employees, and third parties.

The organization encourages all bystanders to **intervene** and stop or report inappropriate workplace behavior.

Action Steps for Everyone

» If you are comfortable doing so, you may choose to intervene directly by stepping in to stop the behavior and speaking to the harasser in the moment.

» Remain calm and non-aggressive. Explain to the offender that the behavior is not appropriate. It may be as simple as saying, "We don't act like that here."

» You may also choose to intervene indirectly by asking someone else to step in to stop the inappropriate behavior in the moment.

» You should also report the behavior by speaking up to your manager, Human Resources, or another appropriate resource.

» Always be mindful of your personal safety and well-being. If the conversation becomes heated, then walk away. If you don't feel safe having a conversation with someone on your own, get help.

Raising Concerns

If you have a concern or if you become aware of inappropriate behavior, you should speak up to your manager, Human Resources, or another appropriate resource. Refer to organizational policy for more specific information on where to speak up.

Handling Complaints

Always apply the Civil Treatment® Foundations, especially when handling complaints:

- Guard your words and actions when interacting with employees. Do not discuss the complaint or your feelings/opinions about the complaint in public.
- Cooperate with the organization's attempts to investigate and document the situation.
- Get help if you have questions or concerns about the complaint and/or the investigation.
- Be consistent and professional in all business decisions, including those that involve the employee who filed the complaint.

Handling Complaints Against You

The obligation to behave appropriately in the workplace does not change even if someone files a complaint of harassment, discrimination, or retaliation against you or your organization. This obligation extends to employees as well as leaders.

If you are the subject of a complaint, never retaliate in any way against an employee, even if the employee's complaint turns out to be invalid. Employees have a legal right to complain based on a reasonable, good-faith belief that something unlawful happened.

Provided that the employee's complaint is based on a reasonable, good-faith belief that something illegal happened, the employee is protected from retaliation of any kind regardless of whether the complaint is ultimately found to be without merit.

If, however, an investigation determines the complaint was brought maliciously or fraudulently, it would not be considered "good faith." In that case, discipline against the employee may be warranted. But leaders should consult Human Resources before taking any such action.

Handling Employees Who Don't Want to Cooperate

When a manager knows about a problem, they must take action, even if the employee who raised the complaint will not give firsthand information. In addressing each situation, the employee's willingness to cooperate may become a factor in determining the solution (e.g., discipline, training, etc.).

However, you cannot force an employee with a complaint to cooperate, and his/her refusal may affect the final investigative results. Get help if you are not sure how to deal with an employee who tells you about a problem but refuses to participate in its resolution. Be sure to document the employee's refusal to cooperate.

Creating a Welcoming Environment

It often takes courage for employees to raise concerns. That's why it is essential to create an environment where they feel comfortable doing so. Employees' willingness to speak up and your willingness to listen can actually lead to a stronger business outcome, such as an improved product, better customer service, etc.

> *Action Steps for Leaders*
>
> » Lead by example. Make sure your daily behavior and interactions communicate respect and professionalism. Show employees they can trust you by being straightforward, honest, and consistent in all your daily interactions, whether they involve performance management, goal setting, or problem identification.
>
> » Show appreciation when an employee raises a concern or does a good job.
>
> » Be approachable and responsive in discussions of any and all issues with employees. Keep your door open as much as possible, and make it clear to employees that they should feel free to talk with you at any time.
>
> » If a matter falls outside your area of expertise, refer the employee to the appropriate individual or department.
>
> » Actively listen to employee concerns. Your employee may bring some emotionally charged issues to you that are difficult to hear. Be sure to give him/her ample time and encouragement to explain the situation, so you'll have all the necessary facts to handle the concern.
>
> » Monitor your nonverbal communication when taking in a concern. Be careful not to roll your eyes, cross your arms, or otherwise convey negative body language. Maintain a respectful and calm tone of voice and demeanor.
>
> » Follow up. Even if you are not in a position to provide details, reassure the employee that steps are being taken to address the concern and that when it is resolved, you or someone else in the organization will let them know.
>
> » Communicate the options employees have for raising concerns.

Workplace Environment

Employees should be mindful of their behavior whenever they are in the **workplace environment**.

The workplace environment includes organizational property at any time, organization-related or-sponsored activities, or anywhere business is conducted.

Electronic communications, and even social media posts, also may be considered part of the workplace, especially when the subject of the communication pertains to proprietary information, co-workers, clients, etc.

Examples of the workplace environment include the following:

- A workplace picnic
- Happy hour, if the organization is sponsoring it
- A third-party or vendor location visited on behalf of the organization
- Locations where employees stay/work when on business travel (e.g., hotel, airport, conference venue)
- Wherever an employee goes while wearing a company uniform or otherwise representing the organization

Effective Documentation

Documentation of workplace events, including inappropriate behavior, should include these elements:

- Date document was created
- Name of person creating document
- Purpose of documentation (e.g., written warning, lodging a complaint, summarizing a meeting, etc.)
- Critical facts of situation: Who, What, When, Where, Why, and How
- Statement of expectation, problem, and consequences
- How the event impacted business
- References to relevant policies and procedures (attach copies)
- References to past documentation relevant to the event (attach copies)
- Corrective action taken
- Plan for follow-up
- Signature with dates (If an employee refuses to sign, make a note on the document and have a witness sign the note.)

<div style="text-align:center">**PART D. BEST PRACTICES**</div>

Documents should not include these elements:

- Opinions, assumptions, stereotypes, speculation, or legal conclusions
- Fabricated or false information
- Information unrelated to the situation
- Idioms, expressions, or colloquialisms (e.g., "You can't teach an old dog new tricks.")

A manager is not expected to independently create documentation. Get help to make sure a document contains everything that it should. A thorough document can help prove that an organization acted lawfully. Having others review your document can also make the document more credible and trustworthy.

Remember to document positive results and behaviors as well, to offer a balanced perspective.

Diversity

Diversity in the workplace refers to the many differences between people in the organization. Diversity includes not only personal characteristics like race, sex, age, religion, color, national origin, disability, pregnancy, genetic information, sexual orientation, and gender identity including transgender status, but also characteristics like tenure in the organization, educational background, work styles, language, culture, socioeconomics, personal experiences and beliefs, and much more.

Inclusion

An inclusive work environment is one in which employees of all demographics and backgrounds are welcomed, supported, and encouraged.

Inclusion ensures that all employees in the organization are valued and respected, have equal access to opportunities and resources, and are encouraged to contribute to the organization's success. This includes how individuals are accepted in day-to-day conversations and business meetings; how their ideas are considered and evaluated; and how they are integrated into normal office social events and functions, etc.

PART D. BEST PRACTICES

Action Steps for Everyone

» Avoid making assumptions about co-workers' capabilities or personalities. Such behavior is counterproductive to the team and the organization. Instead, treat people with different backgrounds and experience levels as equals.

» Welcome new ideas, input, and suggestions from co-workers with different backgrounds and experiences. Even though you may approach your jobs differently, you are still working toward the same goal.

» Recognize that all co-workers contribute to the organization's well-being. Everyone brings different strengths that give the organization its diversity and versatility.

» Find opportunities to make newcomers to your team or department feel welcome. Bring them up to speed with how the department functions and treat them with the dignity and respect they deserve.

» Help all co-workers get the information they need to do their jobs effectively. Find opportunities to assist others with completing job tasks when possible, even when your job responsibilities are not directly connected.

» Consistently demonstrate respect for all co-workers by being welcoming, friendly, and open.

Additional Action Steps for Leaders

» Initiate conversations with your employees about how different groups can contribute new knowledge and unique perspectives.

» Ask people about their needs and preferences and build on their strengths.

» Personalize communication styles. Be flexible and find creative ways to meet the preferences of the team and the individual.

» Pursue different perspectives. Choose people with varied backgrounds and perspectives to work on projects together.

» Communicate behavioral standards and make sure all employees understand that jokes about differences can be hurtful and negatively impact the team.

» Be consistent and professional in all business decisions. Don't assume any differences that may not exist.

» Make sure that all employees are invited to all work-sponsored social gatherings or arranged outings.

PART D. BEST PRACTICES

Conducting Job Interviews

The Uniform Guidelines on Employee Selection Procedures provide principles for employers to help them comply with their obligations to avoid discrimination in hiring practices based on protected characteristics.

> ### *Action Steps for Leaders*
>
> » Get help from the appropriate individual(s) or department(s) prior to conducting job interviews. For example, a person from Human Resources with hiring experience could help you structure the process and interview questions.
>
> » If possible, have someone else accompany you in the job interviews and assist with the decision-making process.
>
> » Ask only questions that help determine whether the candidate will be able to perform the job. This includes exploring their knowledge, skills, abilities, and other attributes related to critical skills required for the job.
>
>   – Avoid questions that focus on personal characteristics or preferences.
>
>   – Use the job description or posting for the job as a starting point for developing questions.
>
> » Be consistent in the questions you ask all candidates during the interview process.
>
>   – Be sure to gather similar information about each job candidate so you can make an objective decision.
>
> » When documenting candidate responses to questions, include only factual, objective information the candidate has provided (or failed to provide). Do not include your personal opinions.

Performance Management

Action Steps for Managing Employee Performance

» Provide consistent feedback and coaching.

» Include specific examples in performance appraisals, and identify both strengths and areas for improvement. Performance appraisals should never be used to discriminate against employees on the basis of personal characteristics such as race, color, religion, sex, national origin, pregnancy, disability, age, genetic information, sexual orientation, or gender identity including transgender status.

» Provide performance feedback in private or with the support of an appropriate resource, which may include Human Resources, legal counsel, or your own manager.

  – Do not discuss negative comments about an employee's performance with others on the team or criticize employees publicly.

» Ask employees what you or the organization can do to help them achieve the stated performance expectations.

» Remind employees of development or help resources that may be available to them (e.g., internal training/development, employee assistance program, etc.).

» Ask employees what they can do to improve their performance. Get them involved in their development plan.

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PART D. BEST PRACTICES

Action Steps for Correcting Performance Issues

When circumstances arise in which an employee's behavior warrants discipline, follow these guidelines:

» Follow policies relating to performance management, progressive discipline, and/or corrective action.

» Get help as required by policies and before introducing more formal steps (such as a performance improvement plan).

» Give employees who receive a poor performance appraisal a reasonable chance to improve. A majority of the time, an employee should not be dismissed, demoted, or otherwise penalized because of a single adverse incident (unless it was so severe as to warrant such actions).

» Properly document and retain performance records, and have the employee sign an acknowledgment of the information/follow-up procedures if required by policy. If the employee is later dismissed, this will provide clear and objective information to back up the decision.

» Use objective criteria as a guide when handling employee performance issues. It should be measurable, factual, linked to business objectives, and easily documented.

  – Do not make performance decisions based on subjective opinions or assumptions.

  – Avoid using any personal knowledge of an employee's situation — such as family relationships, financial status, or membership in a social club — as the basis for action.

» Guard words and actions by steering clear of inflammatory and emotive language when speaking to an employee about performance issues.

  – Remain calm.

  – Be sure that criticisms relate to actual job requirements and are not based on personal or irrelevant issues that have little or no connection to job requirements.

» Before suggesting or discussing termination, consult the organizational policies, management, and Human Resources.

Job References

Checking References for a Potential Hire

■ Check your organization's protocols for contacting references. There may be certain restrictions on the questions that you can ask.

■ Get help from Human Resources or another appropriate source before contacting a candidate or their reference(s).

■ If a friend, relative, or former colleague contacts you directly with a reference for a candidate, be cautious about considering the recommendation.

　– Business decisions based on opinion and personal preference can open the organization to risk. Focus instead on the objective facts regarding each candidate's ability to meet the requirements of the position.

Providing References

If you are authorized to give out a reference, here are some reminders:

■ Follow your organization's policies; get help as needed to make sure you are consistent in how you respond to a request.

■ Only respond to written reference requests. These written requests should show that the former employee has given you permission to release information about him/her.

■ Make it brief and stick to the facts.

　– If an employee was discharged because he/she violated a rule, you may state that the employee was discharged, but do not explain the events leading to the termination.

■ Avoid mention of an employee's criminal acts or unethical conduct. This could be considered defamatory and places you and the organization at risk.

■ All references are official business of the organization. If a friend asks you for a reference, do not treat it any differently than other reference requests.

■ Be balanced in your evaluation. State both the positives and any negatives about the employee in question.

■ Only state information that you know is the truth.

■ If you are not authorized to give out a reference, take action consistent with your organization's policies.

Minimizing Personal and Business Risks

Managers risk being sued personally for failing to adhere to business standards of professional behavior. In most cases, the organization's general liability coverage does NOT cover the defense or judgment in an employment discrimination case involving managers who have committed intentional, unlawful acts.

Even if a case does not go to court, a manager could face disciplinary action, loss of reputation, or termination of employment if they fail to act in ways consistent with the law and the organization's policies. This is why it is critical to prevent, detect, and correct potential workplace issues.

Action Steps for Leaders

No organization can prevent all lawsuits. But you can minimize the chances that you personally and/or the organization may be sued by:

» Applying the Civil Treatment® Foundations.

  –Guard your words and actions.

  –Be a role model of professional, civil behavior.

  –Speak up if you observe or learn about inappropriate behavior.

  –Listen to concerns from employees.

  –Hold everyone (including yourself) accountable for their behaviors.

  –Get help whenever needed to make sure you are being consistent with the organization's policies and values.

» Fulfilling your Duty to Act.

  –Take action quickly to stop inappropriate behavior.

» Reinforcing positive behaviors by employees.

For more information on Civil Treatment® Workplace issues, visit www.eliinc.com/blog.

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