

Best Practice: Human Resources

TORCH Fall Conference 2019

September 10, 2019



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Non-Discrimination

Federal Laws Prohibiting Job Discrimination

- Title VII of the Civil Rights Act of 1964
 - Race
 - Color
 - Religion
 - Sex
 - National Origin

Federal Laws Prohibiting Job Discrimination

- Equal Pay Act of 1963
- Age Discrimination in Employment Act of 1967 (ADEA)
 - 40 years or older
- Americans with Disabilities Act of 1990 (ADA)

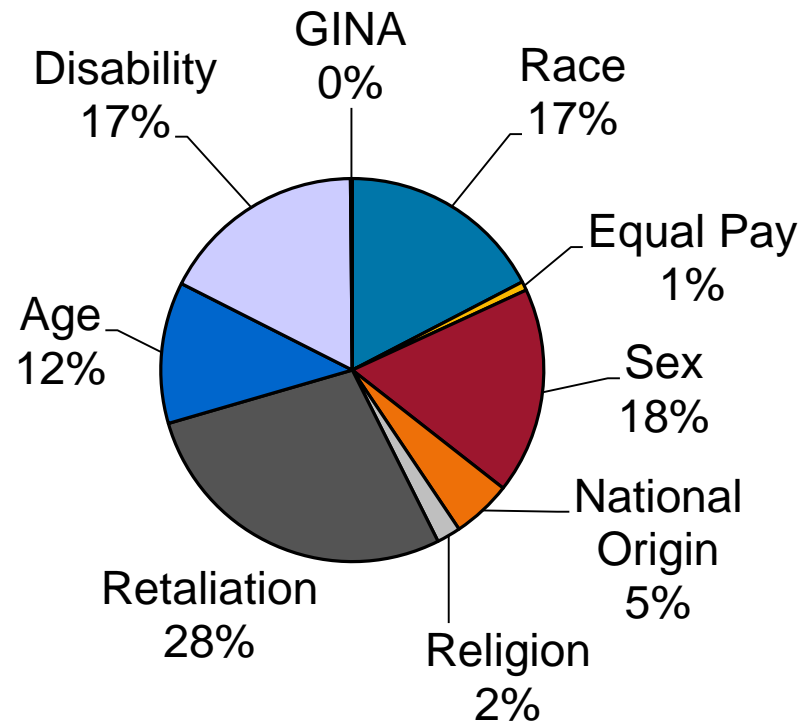
Federal Laws Prohibiting Job Discrimination

- Rehabilitation Act of 1973
 - Government employees with disabilities
- Genetic Information Nondiscrimination Act of 2008 (GINA)
- Civil Rights Act of 1991
 - Amount of damages

EEOC Charges Filed

	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Total Charges	88,778	89,385	91,503	84,254	76,418
Race	31,073	31,027	32,309	28,528	24,600
Sex	26,027	26,396	26,934	25,605	24,655
Retaliation	37,955	39,757	42,018	41,097	39,469
Age	20,588	20,144	20,857	18,376	16,911
Disability	25,369	26,968	28,073	26,838	24,605
National Origin	9,579	9,438	9,840	8,299	7,106
Religion	3,549	3,502	3,825	3,436	2,859
Equal Pay	938	973	1,075	996	1,066
GINA	333	257	238	206	220

Charges Filed with EEOC - 2018



Prohibited Discriminatory Practices

- Illegal to discriminate in any aspect of employment
 - Hiring and firing
 - Compensation, assignment, classification
 - Transfer, promotion, layoff, recall
 - Job advertisements
 - Recruitment
 - Testing
 - Use of facilities
 - Fringe Benefits
 - Pay, retirement, disability leave



Prohibited Discriminatory Practices

- Harassment on basis of race, color, religion, sex, national origin, disability, genetic information, or age
- Retaliation for filing charge, participating in investigation, or opposing discriminatory practices

Prohibited Discriminatory Practices

- Employment decisions based on stereotypes or assumptions about abilities, traits or performance of individuals of a particular group

HOWEVER ...

BFOQ

(bona fide occupational qualification)

POP QUIZ

We have had complaints from patients about employees speaking Spanish in front of the patients.

Can we adopt an English-only policy when employees are in the presence of patients?

National Origin

- No “English only” policies
- Verification that employees are legally authorized to work in the U.S.



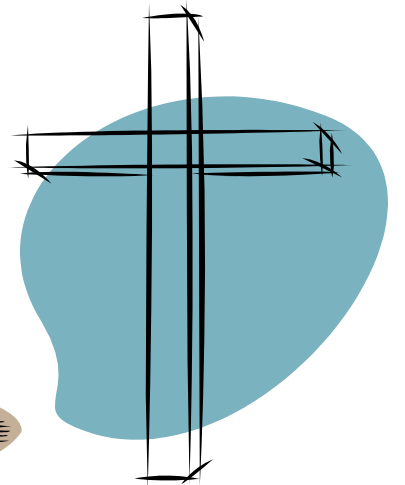
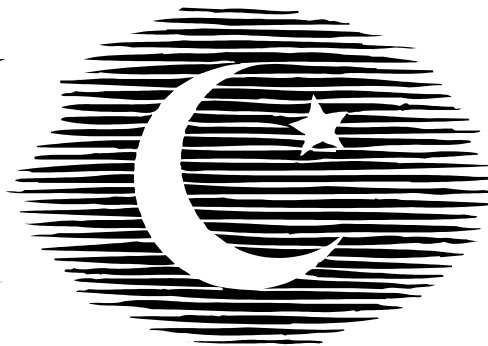
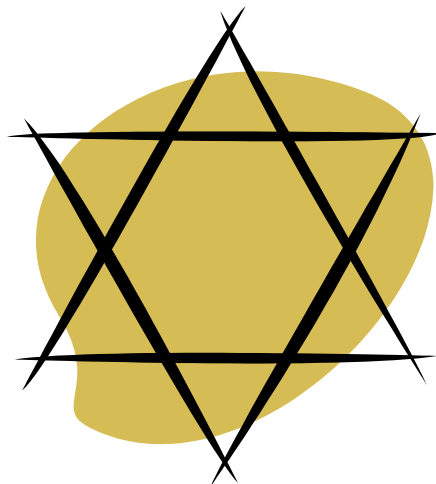
POP QUIZ

A nurse who has worked for us for two years has come to her supervisor with a letter from her pastor stating that she cannot work on Saturdays due to religious reasons.

Can we fire her if she refuses to work Saturday shifts? She knew this job required occasional weekend shifts when she took the position.

Religious Accommodation

- Required to reasonably accommodate the religious belief of an employee unless doing so would impose an undue hardship
 - Accommodations to observe the Sabbath
 - Dress code accommodations



Sex Discrimination

- Sexual harassment
 - Hostile work environment
 - Quid pro quo
- Pregnancy-based discrimination
- Discrimination on basis of gender

Sexual Harassment



Sexual Harassment

“The mother of two told the HR department at the hospital where she worked that an executive there repeatedly came on to her.

‘I thought, What just happened? Why didn't I react? Why couldn't I force words out of my mouth? When I got home, I crumbled. I kept thinking, Did I do something, did I say something, did I look a certain way to make him think that was O.K.?’”

Sexual Harassment

- More visibility
 - #MeToo Movement
 - Time's Up
 - Weinstein, Lauer, Franken, Spacey, Batali, etc., etc.
- Higher stakes
- Higher expectations

Sexual Harassment in Healthcare

- EEOC: 25% of women experience workplace harassment; up to 94% of them don't report it
- Health care industry tops EEOC's list of sexual harassment complaints
- 2014 surveys: 30% of female doctors had been victim of sexual harassment

- Sources: Kaiser Family Foundation, Association of Women Surgeons, JAMA

Sexual Harassment in Healthcare

- Challenges in healthcare setting
 - 24/7 work
 - Chain of command/hierarchies
 - Power disparities
 - Non-employees
 - High intensity/high stress
 - Lack of boundaries

Age Discrimination

- Employees who are 40 years of age or older



Disability Discrimination



Americans with Disabilities Act (ADA)

- Prohibits employers from discriminating against qualified individuals with disabilities
 - Job application procedures
 - Hiring
 - Firing
 - Advancement
 - Compensation
 - Job training
 - Other terms, conditions and privileges of employment

Individual with a disability

- Has a physical or mental impairment that substantially limits one or more major life activities
- Has a record of such an impairment
- Is regarded as having such an impairment

Qualified individual

- Person who, with or without reasonable accommodation, can perform the essential functions of the job in question

Reasonable Accommodation

- Modifications or adjustments to a job application process
- Modifications or adjustments to the work environment or to the manner or circumstances under which the position is customarily performed
- Modifications or adjustments that enable an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by similarly situated employees without disabilities
- Short-term, long-term or hourly leave that does not cause undue hardship on the Hospital

Undue Hardship

- Requires significant difficulty or expense
 - Employer's size
 - Financial resources
 - Nature/structure of operation

Accommodation of Disability

- Does the applicant/employee have a disability?
- Can the applicant/employee perform the essential functions of the job, with or without reasonable accommodation?
- What is a reasonable accommodation?
- Will accommodation cause undue hardship to employer?

POP QUIZ

An employee has come to the office manager complaining of harassment by another employee. The complaining employee is always griping about something and the office manager just doesn't believe her. What do we do?

Investigation of Harassment Complaint

- ASAP after event is known
- Duty to investigate exists w/o regard to complaint being made
- Even if victim says don't investigate
- Employer has duty to create harassment-free workplace

Goals of Investigation



General Rules for the Process

- Be objective and impartial
- Emphasize confidentiality to all
- No retaliation for making a complaint
- Document, document, document
- Behave compassionately
- Don't delay

Standard “Process”

- Interview (1) complainant; (2) accused; (3) all witnesses
- Weigh the evidence
- Make a determination
- Meet with the accused
- Meet with the complainant

UNEMPLOYMENT CLAIM FORM

Personal Information

Name (Last)	(First)	(Middle initial)	Home Telephone
Address (Mailing Address)	(City)	(State)	Other Telephone
E-Mail Address			
Services needed			

How to avoid a wrongful termination lawsuit ...

OR “A Good Way to Get Yourself Sued”










Let's talk about personnel evaluations ...

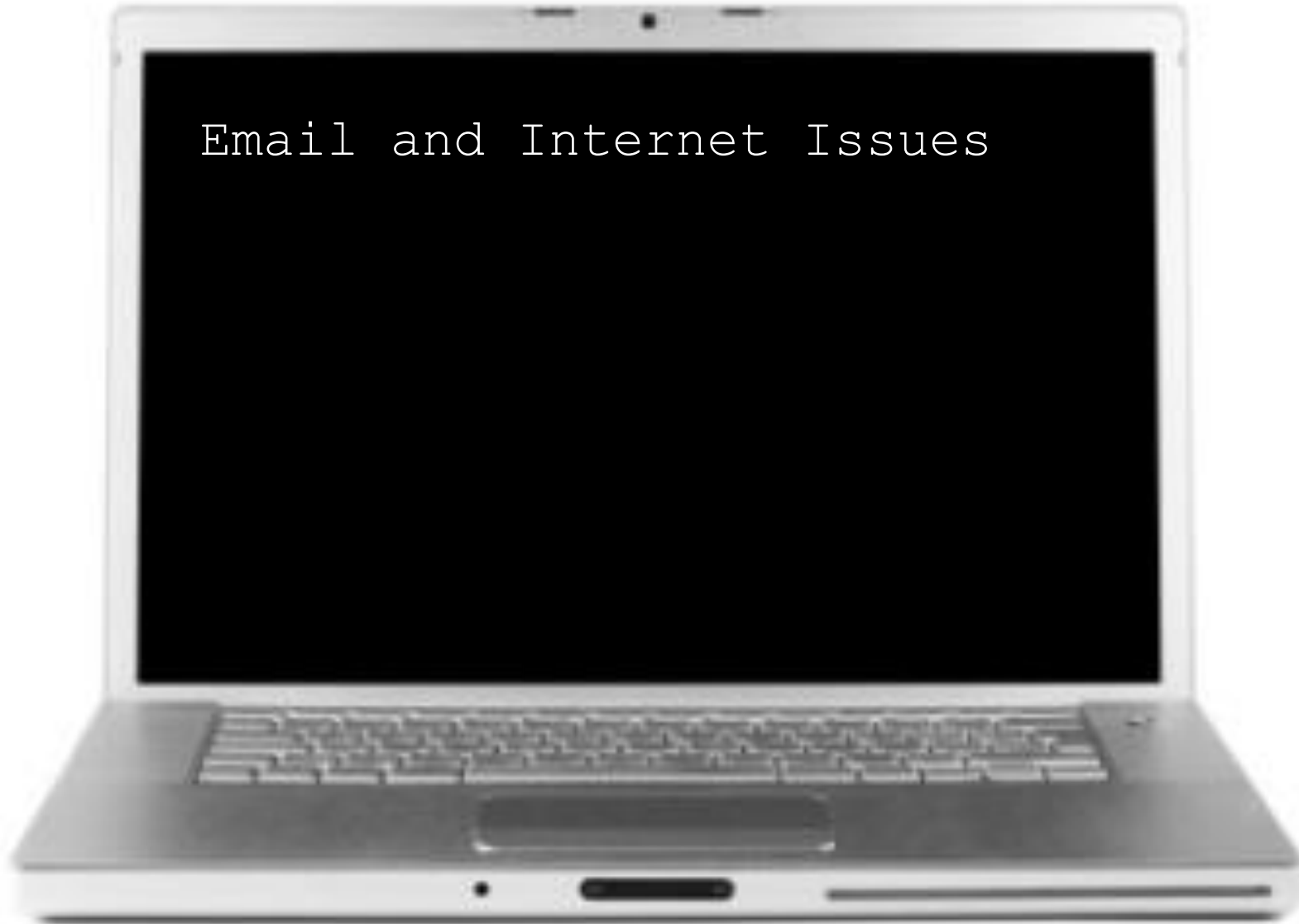


“Welcome to Lake Wobegon, where all the women are strong, all the men are good-looking, and all the children are above average.”



**YOU ARE
FIRED**

Email and Internet Issues



Your culture is defined by the worst
behavior you tolerate.

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Questions?