

 U.S. Fish and Wildlife Service
Division of Diversity and Civil Rights

   

Avoiding EEO Litigation Landmines

Presented By
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Conserving the Nature of America

    

For Managers and Supervisors

To receive ONE hour of EEO training credit...

Complete the quiz at the end of the webcast

Pass with a minimum score of 70%

Either fax your RESULTS PAGE to 503-231-2322 or

Scan and e-mail your RESULTS PAGE to fw1_dcr@fws.gov

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Learning Objectives

   

- EEO Laws
- EEO Basis of Discrimination
- Discriminatory Practices
- Top 3 Bases in EEO Complaints Filed for the Past 5 Fiscal Years
- Action and comments that could lead to EEO complaints (scenarios)

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 **Learning Objectives (con't)**



- Avoiding EEO complaints based on Reprisal
- Don'ts in Reprisal
- Tips in avoiding a potential EEO complaint

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 **EEO Laws**



Equal Employment Opportunity Commission (EEOC)
- Has jurisdiction over the prohibition against employment discrimination.

Title VII of the Civil Rights Act of 1964 (Title VII)
Prohibits employment discrimination based on:

- Race
- Color
- Religion
- Sex
- National Origin
- Retaliation

Pregnancy Discrimination Act of 1978

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 **EEO Laws (con't)**



Equal Pay Act of 1963

Protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination.



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 **EEO Laws (con't)**



Age Discrimination in Employment Act (1967) (ADEA)

Protects individuals who are 40 or older from discrimination because of age.



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 **EEO Laws (con't)**



Title 1 of the Americans with Disabilities Act of 1990 (ADA)

Prohibits employment discrimination against qualified individuals with disabilities in the private sector, and in state and local government.

Section 501 and 505 of the Rehabilitation Act of 1973

Prohibits employment discrimination against qualified individuals with disabilities in the federal government.

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 **EEO Laws (con't)**



Section 102 and 103 of the Civil Rights Act of 1991

Amends Title VII and the ADA to permit jury trials and compensatory and punitive damage awards in intentional discrimination cases.

 

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 **EEO Laws (con't)**



Genetic Information Nondiscrimination Act of 2008 (GINA)

Protects employees or applicants against discrimination because of genetic information (to include family medical history).



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 **Federal Executive Orders**



Executive Order 13087
Sexual Orientation

Executive Order 13152
Status as a Parent

Other Workplace Laws
<http://www.eeoc.gov/laws/other.cfm>

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 **EEO Basis of Discrimination**



It is illegal to discriminate against an individual on the basis of:

- Race
- Color
- Religion
- Sex
- National Origin
- Disability (Physical or Mental)
- Age (40 and over)

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 **EEO Basis of Discrimination (con't)** 

It is illegal to discriminate against an individual on the basis of: (con't)

- Reprisal (filed a complaint of discrimination, participated in an EEO investigation, or opposed discriminatory practices)
- Pregnancy
- Sexual Orientation
- Status as a Parent
- Genetic Information

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 **Discrimination Practices** 

It is illegal to discriminate in any aspect of employment, including:

- Recruitment;
- Job Advertisements;
- Application and Hiring;
- Job Referrals and Employment References;
- Pre-employment Inquiries;
- Job Assignments and Promotions;

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 **Discriminatory Practices (con't)** 

It is illegal to discriminate in any aspect of employment, including: (con't)

- Pay and Benefits;
- Training;
- Reasonable Accommodation (Disability & Religion);
- Terms and Condition of Employment;
- Discipline and Discharge

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 **Non-Selection (Scenario)**



Jane, a Financial Analyst, tells a friend that she may be filing an EEO complaint for not being selected for the Senior Financial Analyst position. Her friend asks why she's thinking of filing. Jane states that she had talked to Greg, the selecting official, and asked him why he had chosen Donna and not her. Jane states that Greg told her that he was "more comfortable with Donna." Jane's friend asks why she thinks she is better suited for the job than Donna. Jane states that she has twice financial experience than Donna, she has an advanced degree in Financial Analysis, and she she had heard that she scored higher on qualifications than Donna. Jane's friend asks why she thinks Greg picked Donna for the position. Jane states, "I don't know. Maybe he's more comfortable with Donna, because they're the same race."

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 **Non-Selection (con't)**



What should the selecting official have done differently?
- Provide an honest and legitimate answer.

What lesson would you draw from the facts outlined in that scenario?
- Poor communication often leads to EEO complaints.

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 **Ignoring Harassment (Scenario)**



Supervisor Bob tells Supervisor Pam that he walked through Pam's area and saw couple of her employees taping a flyer advertisement about gay pride in Johnson's cubicle. Bob asks Pam what that was all about. Pam chuckles and says, "Yeah, they've been harassing him lately. Couple of months ago they saw someone that looked like Johnson coming out of a gay bar. That started some jokes and they've been having fun ever since." Bob asks, "Do you think he's gay?" Pam answers, "I don't know and I don't care. I figured that none of this is my business, and I'm staying out of it."

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 **Ignoring Harassment (con't)**



Do you see any basis for an EEO complaint in this situation?

- Allowing harassment, regardless of the basis, does provide a basis for an EEO complaint.

What should Johnson's supervisor do in this situation?

- Clearly instruct the employees to stop the harassing activities.

What lesson would you draw from this situation?

- Managers and supervisors are responsible for stopping and preventing harassment in the workplace.

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 **Age Discrimination (Scenario)**



Alfred approached his supervisor, Mark, and says, "I don't mean to be confrontational about this, but why did you deny my request to attend the training conference in Phoenix?" Mark answers, "But you're retiring in five months, right?" Alfred says, "Yeah, but what does that got to do with it? It's a great conference, and they have excellent workshops." Mark says, "I don't doubt it's an excellent training, but it's also the most expensive conference. I need to send someone who's going to be around to apply the training for more than five months." Alfred says, "You mean you're denying my request, because I'm planning on retiring in a few months? That sounds like discrimination."

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 **Age Discrimination (con't)**



What should the supervisor have done differently?

- Better job of communicating.

What lesson would you draw from the facts outlined in this scenario?

- Employee saw the denial as an act of age discrimination rather than a very reasonable use of limited resources.

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 **Reprisal (Scenario)** 

Supervisor Joe calls his employee, Susan, to his office to discuss her year-end performance appraisal. Joe says to Susan as he hands over her performance appraisal, "I believe this is more than a fair appraisal of your performance this year. Well, it's fair enough, I hope, so we don't have to see another EEO complaint over it." Susan looks up and says, "What do you mean? You factored my EEO complaint into this performance?" Joe says, "It's not what I said. What I meant to convey is, I don't want to see another EEO complaint." Susan says in disbelief, "Or else what?"

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 **Reprisal (con't)** 

What problem is there with the supervisor mentioning the employee's previous EEO complaint?

- It suggests at least possibility that the supervisor has or will retaliate.

How might the supervisor have handled this situation better?

- Avoid creating an appearance or suspicion of retaliatory intent or activity.

What lesson would you draw from this situation?

- Raising a suspicion or fear in an employee's mind that he/she would be a target of retaliation is likely to result in yet another EEO complaint.

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 **Avoiding EEO Complaints Based on Reprisal**

Best way to behave after learning that your employee has filed an EEO complaint:

- Act as though nothing is different.
- Avoid being drawn into any kind of discussion about the complaint or its validity with the employee.
- Remain neutral.
- Respect the confidentiality of what is going on.



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Avoiding EEO Complaints Based on Reprisal

“Don’ts” of Reprisal

- Don’t terminate or discipline an employee for engaging in the EEO complaint process.
- Don’t threaten the employee.
- Don’t assign more unfavorable tasks or duties than was normal for the employee previous to participating in the EEO activity, or than are currently normal for other employees. Keep the employee’s job the same unless they complain about having to do a disproportionate share of the undesirable work.
- Don’t give the employee a bad performance review when previous evaluations were good. If performance has deteriorated, write a complete explanation of how it has changed, don’t just check a box.

Con’t

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Avoiding EEO Complaints Based on Reprisal

“Don’ts” of Reprisal

- Don’t refuse to communicate with the employee, or don’t give the employee the silent treatment.
- Don’t over supervise.
- Don’t suddenly enforce work rules previously not enforced or loosely enforced.
- Don’t encourage other employees to shun the person who has filed an EEO complaint.

Con’t

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Avoiding EEO Complaints Based on Reprisal

“Don’ts” of Reprisal

- Don’t make jokes or comments about anything related to any of the basis previously discussed in this course to show you have no bias.
- Don’t tell the employee that you are disappointed with them for filing an EEO complaint.
- Don’t criticize or bad mouth the employee for filing an EEO complaint.

Con’t

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Appearances and employee's perception do matter.

Sound managements are the key to avoiding workplace concerns.

Communication, or lack of it, is the foundation of most EEO complaints.

Common sense is the essential ingredient to dealing with employees and workplace concerns.

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Questions or Guidance

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