

US Employment Law 101

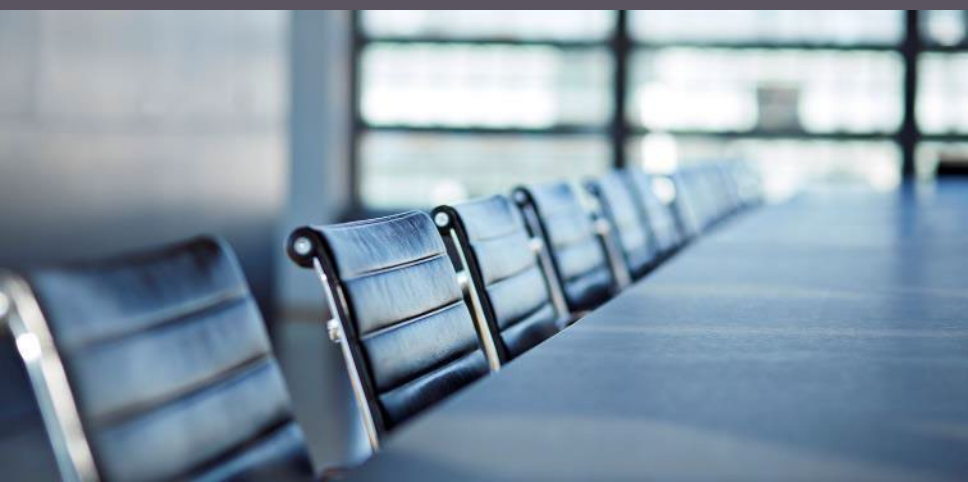


Presented by:

Stephen J. Lu, EMBA, SHRM-CP

**Forensic Leaders Training
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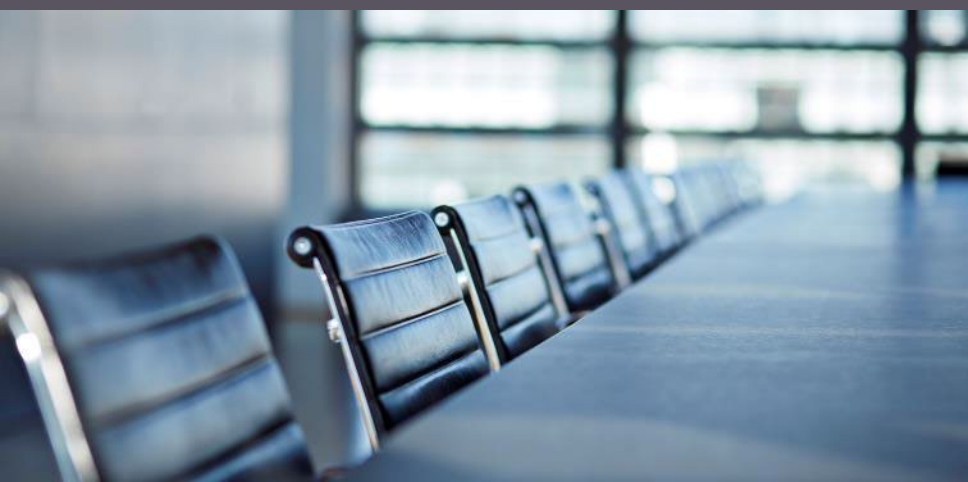
2024 Leadership Livestream



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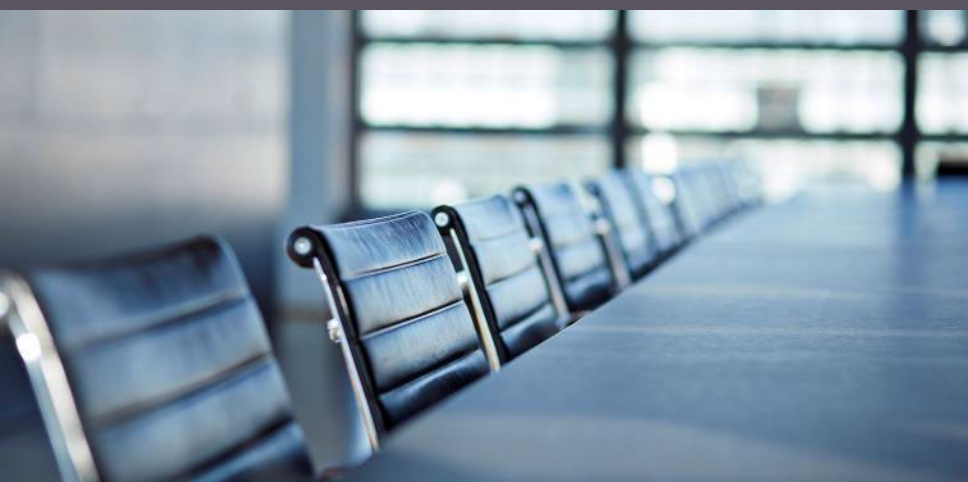
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Livestream Agenda

- Livestream Orientation
- What is FLTC? Who am I?
- Why Employment Law?
- Employee Classifications
- Employee Rights Protection
- Anti-Discrimination Protection
- Q&A; Feedback





Livestream Delay

- 5-10 second delay between real life and the livestream
- Please answer polls **as they pop up** on your screen, not when I address them on the livestream
- You can participate mentally, too
- Thank you!



2024 Leadership Livestream: US Employment Law 101 - 1/17/2024



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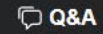


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Q&A



Polls



Type your question



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- FLTC Homepage
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- Employment Law Resources
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- Switch event

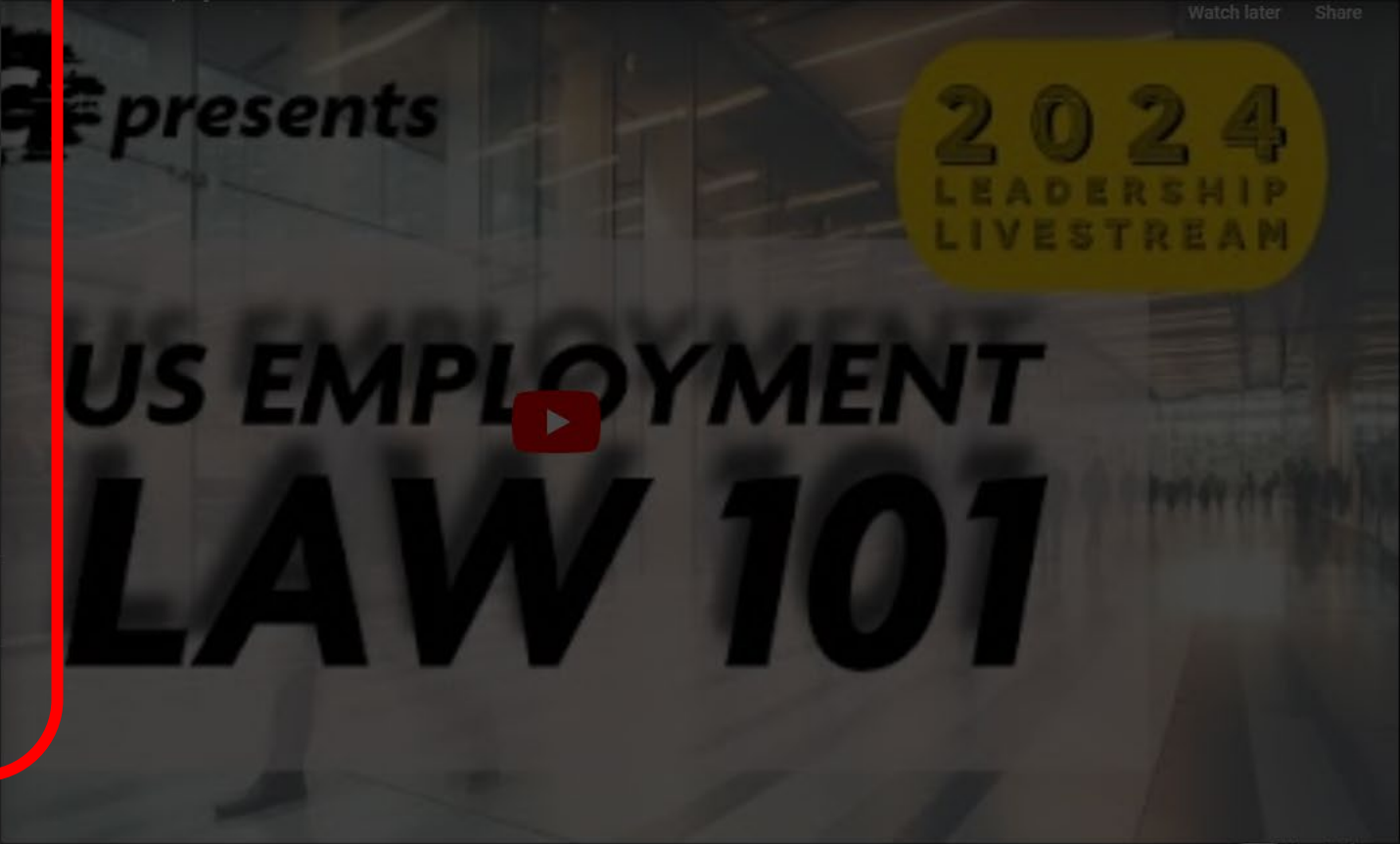
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Q&A Polls

Type your question

Popular Recent 1 question

Stephen J. Lu
2 days ago

Enter your questions in the box above! 😊

Replies

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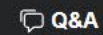


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About FLTC

- **Founded in February 2022**
- **Group of professionals with experience and training in forensic science, leadership, law enforcement, emergency management, business and entrepreneurship**
- **Provide leadership development and coaching solutions, primarily focusing on intrinsic leadership skills, communication, and burnout resilience**
- **Learn more at www.forensicleaders.org**

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Stephen J. Lu

Forensic Leaders LLC

Founder, CEO &
Executive Director

Who am I?

- **Retired Forensic Firearms Examiner and CSI**
- **17 years of forensic experience (Forensic Biology, CSI, CSR, Firearms, Auditing, Training)**
- **Worked for CALDOJ, AZDPS, NFSTC, SDSD**
- **FBI San Diego Citizens' Academy graduate**
- **Executive MBA; SHRM-CP**
- **California Association of Criminalists – Regional Director South; Lead Webmaster; Endowment Committee**

Your Speaker Today



Why Employment Law?

- Understand your fundamental rights as an employee
- Protects both employee *and* employer
- Promotes an equitable and safe working environment
- Reduces risk of litigation, discrimination, harassment
- Better management/leadership





Employee Classification

What type of employee are you?

Employee vs. Independent Contractor

Employee

- Highly regulated
- Long-term relationship with a single employer
- Protected by federal labor standards
- Entitled to certain work benefits

Independent Contractor

- Have significant discretion over how the contracted work is done
- Greater control over work hours
- Can work on multiple projects or have multiple clients at once – non-exclusive relationship
- Usually have specialty experience or training

Employment Classification Tests

Right to Control

- Higher levels of control indicate employee status
- Inclusion on regular payroll
- Mandated use of company resources
- Training requirements
- Controlled work schedule
- Regular progress reports

Economic Realities

- Employees are economically dependent upon a single employer
- Permanence of relationship
- Worker's opportunities for profit and loss
- Centrality of work to employer's business
- Degree of independence

Type of Relationship

- Written contracts
- Relationship permanency
- Employee benefits
- Work performed is a key activity of the business



Employee Rights Protection

What are your rights as an employee?



Fair Labor Standards Act (FLSA)

- Enacted in 1938 following the Great Depression
- Covers minimum wage, overtime pay eligibility, child labor laws, and more
- Has been amended over 30 times since...





Fair Labor Standards Act (FLSA)

- 40-hour work week standard
- Time and a half overtime pay
- Federal minimum wage
- Restrictions on child labor





A Few Key Elements

- **Equal Pay Act (1963)** – Abolished pay discrepancies between the sexes
- **Restrictions on child labor**
- **Time and a half rate of pay for overtime** has existed since 1938
- **Federal Minimum Wage** – started at \$0.25; currently \$7.25; \$2.13 for tipped employees (2024)





Minimum Wage Restrictions

- Employers must pay employees the higher of either the federal minimum wage *or* the state minimum wage (or local MW, if existing)
- California's current minimum wage is \$16.00 (both non-tipped & tipped employees)
- Tipped employees must also be paid the higher wage





FLSA Coverage

- Enterprise coverage – all companies with an annual revenue of at least \$500,000
- Automatic coverage of all schools, hospitals, residential care facilities, and *government entities*
- Individual coverage – covers employees regularly involved in interstate commerce



Exempt vs. Non-exempt

FLSA-exempt

- Not eligible for overtime pay
- High-level workers who receive a regular salary *and* perform specific exempt job duties (next slide)

FLSA Non-exempt

- Eligible for overtime pay
- In general, non-exempt employees are line workers

FLSA Exempt Categories

Executive

- Involves management of at least two other employees
- Control over staffing decisions
- Ability to hire, fire, and promote
- Lab director

Administrative

- Involves office or non-manual work for company management or administration
- Employee exercises discretion and judgement with respect to matters of significance
- School superintendent

Professional

- Involves advanced knowledge or training
- Work may be creative or intellectual
- Doctors, lawyers, teachers, engineers, composers, research scientists



Occupational Safety and Health Administration (OSHA)

- Established in 1970
- Sets and enforces standards for workplace health and safety





Employers must:

- Inform employees of their rights
- Provide employee safety training
- Maintain transparency on violations or injuries
- Protect employees against workplace hazards
- Allow employees to report violations without retaliation
- Provide workers' compensation





Family and Medical Leave Act (FMLA)

- Employees are entitled to up to 12 weeks of unpaid, *job-protected* leave for:
- A serious health condition
- Care for an immediate family member
- Birth of a child



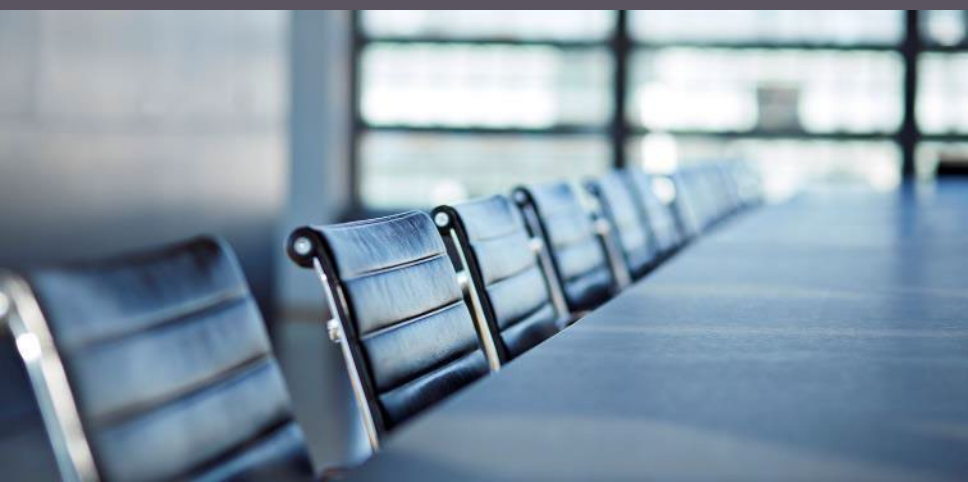
At-Will & Right to Work Explained

At-will Employment

- Most employees are at-will
- Employers do not need good cause to fire employees
- *As long as* the termination does not violate federal, state, or local regulations (such as the ADA) *or* does not violate any exceptions to at-will employment
- Such terminations can result in a wrongful termination lawsuit

Right to Work

- Usually confused as the opposite of at-will, “Right to work” relates to a worker’s right not to be required to join a labor union
- That’s it.



Wrongful Termination

- The motivating reason for firing violates protected employee rights or actions:
- Acts of discrimination
- Acts of retaliation

Wrongful Termination Tests

Discrimination

- **Motivating factor causation**
- Negative action can be proven as illegal if prejudice was any kind of factor
- This is applicable *even if* there were other motivating factors as well (tardiness, poor work performance, etc.)

Retaliation

- **But for causation**
- The plaintiff must show that the *only reason* for their employer's negative action was a desire to punish the plaintiff for past action against discrimination
- "The firing wouldn't have occurred *but for* their complaint or opposition."

Exceptions to at-will employment

Violations of:

Public Policy

- Violation of local, state, or federal regulations
- Ex: an employee is fired for filing a workers' comp claim or refusal to break the law

Implied Contract

- Violation of prior assurances (does not have to be written or verbal)
- Ex: an employee is suddenly fired despite an unwritten 6-week warning company policy

Covenant of Good Faith

- Unjust or malicious motives
- Dishonest or unfair dealings
- Ex: an employee is fired despite meeting or making a good faith effort to fulfill all the stated performance requirements for continued employment



And now...

**5-minute
voice break**



Anti-Discrimination Protection

What are your rights as a human being?



Title VII of the Civil Rights Act (1964)

- Bans unfair and unequal treatment on the basis of sex, religion, national origin, race, or color
- Title VII covers *all* aspects of employment: hiring, firing, work environment, promotion, etc.





Additional Protected Classes (Various Laws)

- Age
- Disability
- Pregnancy
- Veteran status
- Genetics (family medical history)
- Sexual orientation
- Gender identity
- Citizenship/Immigration status





Careful - Unintentional Discrimination

- Any practice* that disproportionately affects a protected class is illegal
- Employers cannot use job descriptions to unfairly discriminate against women, disabled, or any other protected class
- Example: Must be able to lift more than 20 pounds for a non-manual labor job. Requirements must be reasonably appropriate for the position.
- *Exception: If the question is *directly* related to an applicant's ability to perform a job, an employer has a right to ask it





Americans with Disabilities Act (ADA)

- Enacted in 1990
- Bans discrimination against *qualified individuals with disabilities*
- Employers must provide *reasonable accommodations* when requested, so long as they don't cause *undue hardship* to the employer





Some statistics...

- In 2023, 13% of the US population had a reported disability
- Most common types of disability: mobility, hearing, vision, and cognition
- The likelihood of working with someone with a disability is good



Source: US Bureau of Labor Statistics. www.bls.gov

Definition of *Disability*

Disability

- Individual who has a physical or mental impairment that substantially limits one or more major life activities (like work)
- Can be an individual who has a history or record of a disability **or**
- An individual who is regarded by others as having such an impairment

Regarded as Disabled

- If an employee voluntarily discloses a disability to their employer (documentation is not required)
- The employer discovers through other means that the employee has a disability and regards the employee as being disabled

More Definitions

Qualified Individual

- A person who exhibits skill, experience, and other job-related requirements, and can perform the essential functions of the position held or desired, *with or without* reasonable accommodation

Reasonable Accommodations

- When requested, adjustments including, but not limited to, job restructuring, modified schedules, additional unpaid leave, and the acquisition of equipment, devices, facilities, examinations, training materials, or policies
- Employers are *not* required to supply durable medical equipment

Undue Hardship

- An action requiring significant difficulty or expense when considered in relation to factors such as company size, financial resources, and the nature and structure of its operation



Employer Restrictions

May not:

- Require an employee to accept an accommodation without a discussion between the worker and the employer about the accommodation (interactive process)
- Deny a job or other employment opportunities to a qualified individual or applicant based on the person's need for reasonable accommodation





Employer Restrictions

May not:

- Require an employee to take leave (FMLA, etc.) if another reasonable accommodation can be provided that would let the employee keep working
- Retaliate against a qualified individual for reporting or opposing unlawful discrimination or participating in a proceeding, such as an investigation or interactive process
- Interfere with any individual's rights under the ADA





Employer Inquiries

- Employers *may not* inquire job applicants about the existence, nature (including diagnosis), or severity of a disability, or require additional medical exams for people with disabilities
- For existing employees, it is allowable, *as long as* the same questions are inquired of *all* employees (cannot discriminate)
- **Example: COVID-19 pandemic**





Pregnancy Discrimination Act (PDA)

- Bans discrimination against pregnant women, and protects all conditions associated with pregnancy (e.g. breastfeeding and lactation)
- Like the ADA, this applies specifically to qualified individuals





Pregnant Workers Fairness Act (PWFA)

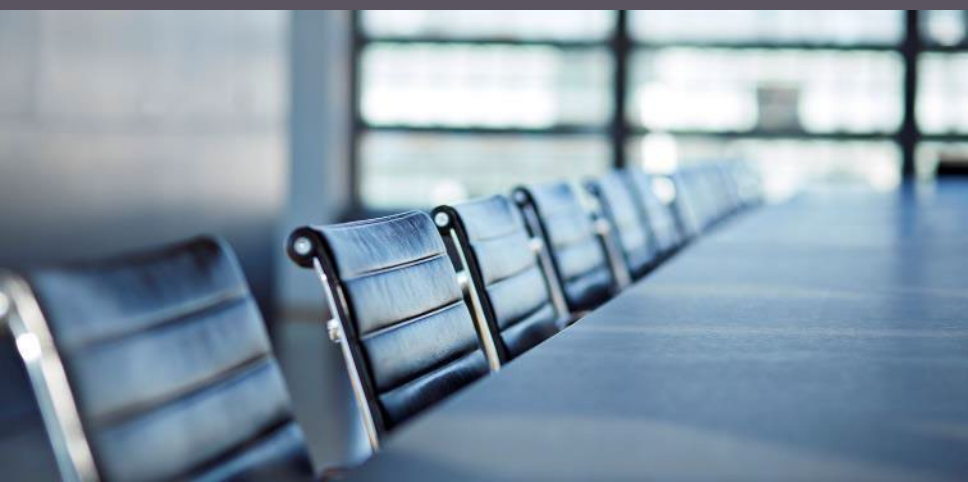
- Recent legislation passed in 2022
- Amended the ADA to include individuals with known limitations related to pregnancy, childbirth, or other related medical conditions unless accommodations will cause undue hardship
- PDA relates to employment, PWFA relates to accommodations



Equal Employment Opportunity Commission (EEOC)

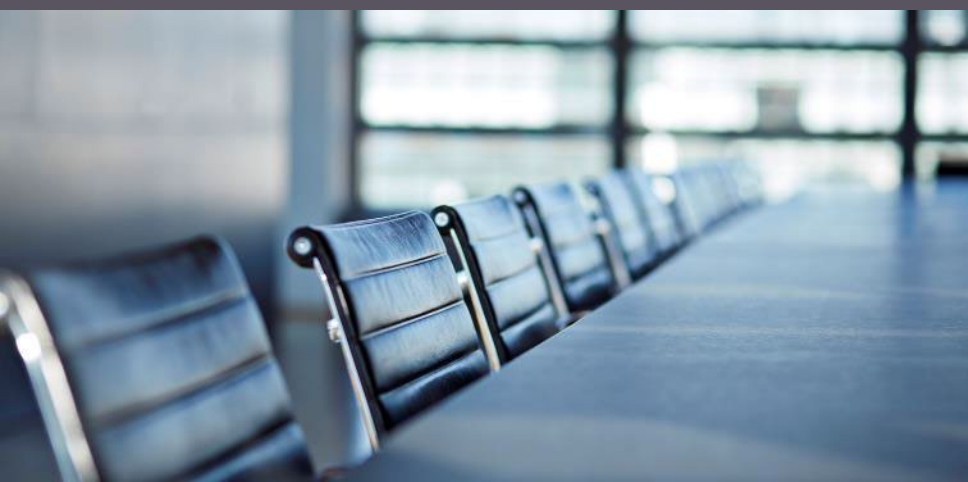
- Handle all charges of discrimination and retaliation
- Retaliation: negative action taken by an employer against individuals who have filed a discrimination charge, or opposed discrimination in the past





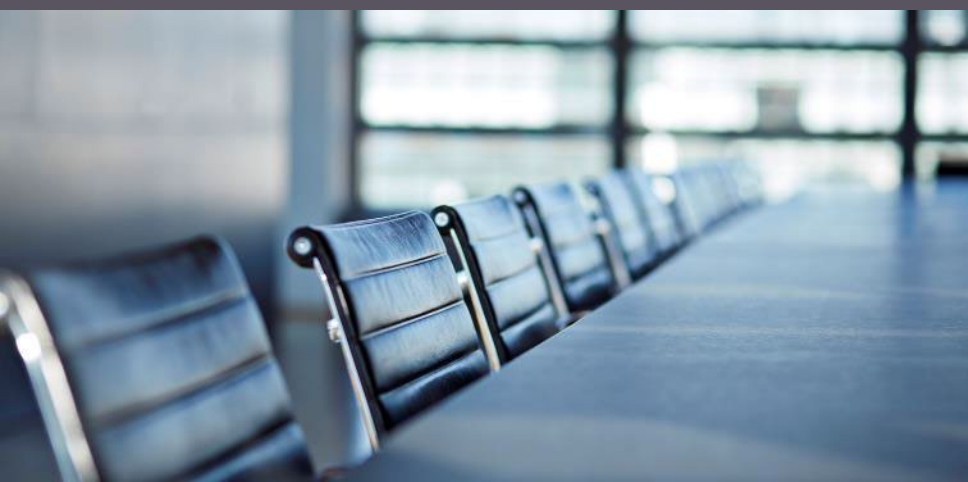
Retaliation

- **Resulting negative action against an individual for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws**
- **Resulting negative action against an individual for reporting, opposing discrimination, or otherwise refusal to break the law**



Harassment

- **Form of employment discrimination**
- **Violates Title VII CRA, ADEA (Age), and ADA (Disability)**
- **Unwelcome conduct that is based on race, color, religion, sex, sexual orientation, gender identity, pregnancy, national origin, age (40+), disability, or genetic information and family medical history**



Harassment

- The harasser can be the victim's supervisor, a supervisor in another area, an agent of the employer, a co-worker, or a non-employee
- Victim does *not* have to be the person harassed, but can be anyone affected by the offensive conduct
- Unlawful harassment may occur without economic injury to, or discharge of, the victim

When does it become illegal?

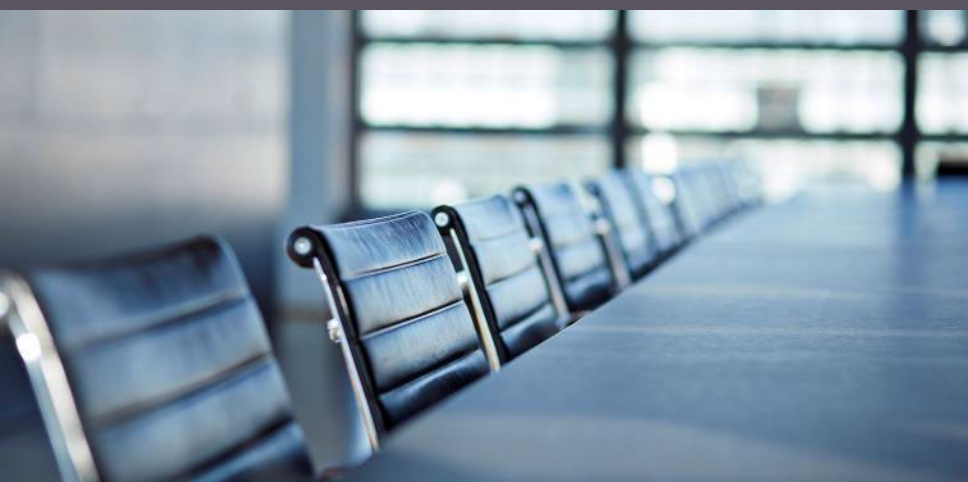
Condition of Employment

- Enduring the offensive conduct becomes a condition of continued employment.

Severe and Pervasive

- The conduct is severe, consistent, or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

To be unlawful, the conduct (harassment) must create a work environment that would be intimidating, hostile, or offensive to reasonable people.



Constructive Discharge vs. Wrongful Termination

- The work environment is so hostile, abusive, or offensive that a reasonable person would have little choice but to resign.
- Wrongful termination – Employer ends the relationship
- Constructive discharge – Employee ends the relationship

THANK YOU



Please let me know what you thought
of this Livestream in the survey



Information presented in this livestream was adapted from
Quantic's online course, *US Employment Law*.

Learn more at quantic.edu

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