

Avoiding Discrimination Claims

Sources of Liability

- Both State and Federal laws provide bases upon which employees can bring discrimination claims.
- Michigan state law does not have a minimum employee number before employers are subject, unlike most federal statutes.

Sources of Liability

- In Michigan, the main law on point is the Elliott-Larsen Civil Rights Act of 1976:

AN ACT to define civil rights; to prohibit discriminatory practices, policies, and customs in the exercise of those rights based upon religion, race, color, national origin, age, sex, height, weight, familial status, or marital status;

Protected Class

- Both State and Federal laws protect from discrimination based on age, sex, race, religion, national origin, genetic history, handicap, and other “protected characteristics.”
- State law also prohibits discrimination based on height, weight, and marital/familial status.

Bona Fide Occupational Qualification (BFOQ)

- Sometimes, a protected class (but never race) can be an acceptable basis for an otherwise facially discriminatory policy

Age Discrimination

Federal

Age Discrimination in Employment Act (ADEA)

- Covers employers engaged in interstate commerce with 20 or more employees
- Protected Class - Age 40 and older
- Prohibited Practices - any adverse action against someone based on age

Age Discrimination

State

Elliott-Larson Civil Rights Act (ELCRA)

- Covers all employers
- Protected Class - All (this means younger workers also protected)
- Prohibited Practices - any adverse action against someone based on age

Sex Discrimination

Both men and women are protected by the provisions of Title VII (Federal Law) and the Elliott Larsen Civil Rights Act (State Law)

Employer rules or policies that apply only to one gender violate Title VII.

Race Discrimination

Federal

Title VII, 42 USC 1981

- Covers: Title VII - employers engaged in interstate commerce with 15 or more employees; 42 USC 1981 – all employers
- Protected Class: Race
- Prohibited Practices: any adverse action against someone based on race

Race Discrimination **State**

Elliott-Larson Civil Rights Act

- Covers: All employers
- Protected class: All Prohibited Practices: Same as above
- Race: All Prohibited Practices: Same as above

RACE CAN NEVER BE A BONA FIDE OCCUPATIONAL QUALIFICATION!!

Religious Discrimination

Federal Title VII

- Covers: all aspects of religious observance and practice, including sincerely held beliefs
- Prohibited Practices: any adverse action against someone based on race
- Employee must give notice of the interfering aspect of religion or belief, and employer must make reasonable accommodations.

Religious Discrimination State

Elliott-Larsen Civil Rights Act (ELCRA)

- Covers all employees
- Michigan Law: Protects agnostics and atheists
- Duty to accommodate

Discrimination based on Disability

Federal

Americans with
Disabilities Act (ADA)
and others

State

The Michigan Persons
with Disabilities Civil
Rights Act

Federal

Americans with Disabilities Act (ADA) and others

- Covers employers with 15 or more employees
- Protected Class: Any person with a physical or mental impairment that substantially limits that person's life activities.
- Prohibited Practices - any adverse action against someone based on disability, without reasonable accommodation being made.

State

The Michigan Persons with Disabilities Civil Rights Act

- Covers All employers
- Protected Class: Same as Federal
- Reasonable accommodations
- Prohibited practice



Sexual Harassment

Michigan defines sexual harassment by statute as:

unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when any of the following is true:

Sexual Harassment

1. Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment;
2. An individual's submission to or rejection of such conduct is used as the basis for employment decisions affecting him or her; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

In both the federal and state contexts,
this applies to opposite and same-sex harassment.

“Unwelcome”

The conduct in question must be unwelcome or uninvited

The tricky situation of a consensual workplace relationship

Consent might negate the
“unwelcome” element of
sexual harassment under
the law, but this is decided
on a case by case basis.

“Quid Pro Quo”

Consists of:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
2. submission to or rejection of such conduct by and individual is used as the basis for employment decisions affecting such individual (such as not being hired, being fired, denying a raise, or losing a promotion).

The largest number of quid pro quo sexual harassment cases involve actions taken by a supervisor toward a subordinate.

Employer's Duties and Liabilities:

**Quid Pro Quo
Sexual Harassment**

Duty

Liability

Quid Pro Quo Sexual Harassment

Duty

Immediate corrective action
required once informed
(actual notice required)

Liability

Employer

Strict (federal), strict (state)

Harasser:

Strict (federal), strict (state)
and personal liability for the
employee

Strict liability can be defeated, however, under certain circumstances

Hostile Work Environment Sexual Harassment

Hostile work environment harassment occurs when an employee is repeatedly subjected to unwelcome sexual conduct (comments, actions) to the point that the harassment unreasonably interferes with the employee's work performance or creates an intimidating, hostile or offensive working environment.

Employer's Duties and Liabilities: **Hostile Work Environment Sexual Harassment**

DUTY

Immediate corrective action required once informed, either *actually* or *constructively*

LIABILITY

A rebuttable “presumption of liability” (federal), limited (state)
(*only if failed to take prompt, appropriate remedial action after notice of the harassment*)

Best Practices to Prevent and Deal with Sexual Harassment