

Breakfast **Bites**[®]

**HOW TO AVOID, MITIGATE RISK,
AND DEFEND AGAINST CLAIMS
OF HARASSMENT AND FAILURE
TO ACCOMMODATE DISABILITIES**

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Overview

- Understand laws governing harassment and disabilities in the workplace
- Create processes for responding to harassment complaints, accommodation requests, and harassment and disability in the workplace
- Involve Management team in documenting appropriately and following up on internal complaints and requests



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THE LAWS GOVERNING HARASSMENT AND DISABILITIES IN THE WORKPLACE

ELLIOTT-LARSEN CIVIL RIGHTS ACT AND TITLE VII OF THE FEDERAL CIVIL RIGHTS ACT OF 1964



HARASSMENT AND ANTI-DISCRIMINATION STATUTES

Federal

- Title VII of the Civil Rights Act of 1964 (“Title VII”)

Michigan

- Elliott-Larsen Civil Rights Act (“ELCRA”)

DISABILITY ACCOMMODATION

Federal

- Americans with Disabilities Act (“ADA”)

Michigan

- Persons with Disabilities Civil Rights Act (“PDCRA”)

HARASSMENT AND ANTI-DISCRIMINATION STATUTES

Under both ELCRA and Title VII, it is unlawful for an employer to discriminate on the basis of a protected class in the terms, conditions, or privileges of an individuals employment

- Disparate-Treatment Claims
 - Hiring, Firing, Promotions, etc.
- Harassment Claims
 - Work environment itself is tainted with harassment, and it affects the terms and conditions of employment

TITLE VII

Prohibits any employer with at least 15 employees from discriminating against an employee or applicant due to:

- (1) Race;
- (2) Color;
- (3) Religion;
- (4) Sex;
- (5) National origin; or
- (6) Sexual orientation and gender identity

42 USC 2000e(b)

ELLIOTT-LARSEN CIVIL RIGHTS ACT

Prohibits any employer with one or more employees from discriminating against an employee or applicant due to:

- (1) Religion;
- (2) Race;
- (3) Color;
- (4) National origin;
- (5) Age;
- (6) Sex;
- (7) Height;
- (8) Weight;
- (9) Marital factors; or
- (10) Sexual orientation and gender identity

MCL 37.2202

DISABILITIES AND REASONABLE ACCOMMODATIONS

Both the ADA and PDCRA require an employer to provide reasonable accommodation to individuals with disabilities, unless such accommodation would pose an undue hardship

DISABILITIES AND REASONABLE ACCOMMODATIONS

ADA – 42 USC 12101 et seq.

- No bright-line test for what constitutes a “reasonable accommodation”
- Case by case basis

PDCRA – MCL 37.1101 et seq.

- Formulaic test to determine whether purchasing any equipment, device(s), or hiring any readers or interpreters constitutes an undue hardship. MCL 37.1210

RESPONDING TO COMPLAINTS AND REQUESTS FOR ACCOMMODATION



DEALING WITH HARASSMENT COMPLAINTS

What processes and procedures can employers implement in order to ensure it properly responds to any harassment complaints?

- Design and implement a clear and informative harassment policy
- Understanding of prohibited conduct and protected classes
- Establish clear reporting guidelines and follow-up procedures

HARASSMENT POLICY

An effective harassment policy should contain 3 basic aspects

- A clear definition of “harassment”
- A statement prohibiting any form of harassment
- Clear procedures and processes for reporting

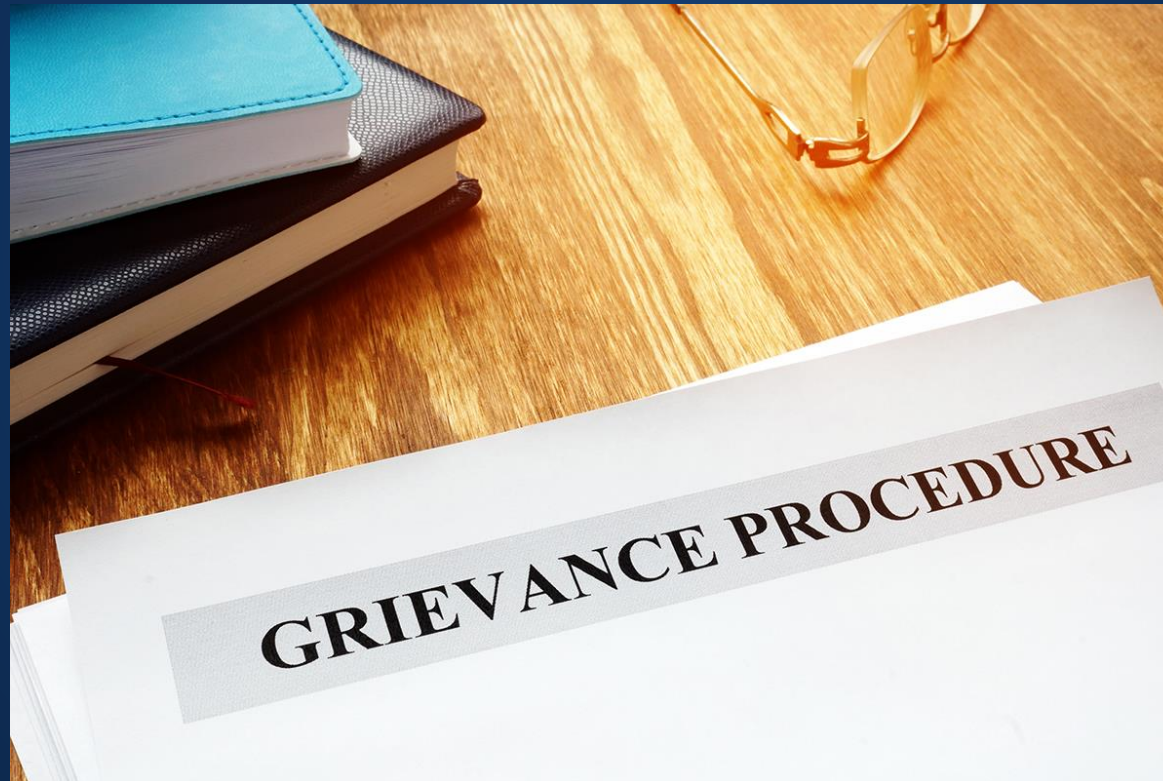
UNDERSTANDING PROHIBITED CONDUCT

How can employers stay up to date on harassment and discrimination standards and prohibited conduct?

- Stay up to date on relevant federal and state case law
- Review legal articles discussing labor and employment issues
- Attend seminars or discussions concerning harassment and discrimination in the work place
- Consult with an labor and employment lawyer

REPORTING PROCEDURES AND GUIDELINES

You received a harassment complaint. Now what?



REPORTING PROCEDURES AND GUIDELINES

Critical that both employees filing complaints, and the supervisors/managers handling the complaints have a complete understanding of the policies and procedures

- Make everything as simple and as clear as possible
- Goal is to resolve any and all complaints at the earliest possible stage
- Protect against any potential litigation or administrative investigations

REPORTING PROCEDURES AND GUIDELINES

If employees do not believe the overall process is fair and effective, they are less likely to report any inappropriate behaviors

- Identify who may receive and handle harassment complaints
 - Diversify if possible
- Clear and strict guidelines for reporting, investigating, and following up on complaints

REPORTING PROCEDURES AND GUIDELINES

Any complaints must be put in writing

- Employees should always be encouraged to file any complaints in writing
- However, supervisors/managers need to immediately memorialize any oral complaints to writing
- Complaints, reports, and other relevant materials must be saved in a secure, but accessible area, with “need to know” access
- Obligation to report any harassment they witness, regardless of whether or not an employee files a complaint

HANDLING ACCOMMODATION REQUESTS

- A clear process for employees to file requests and identifying persons to handle accommodation requests are vital
- Document any requests and conversations in writing
- Supervisors and managers likewise should have a clear process and guidelines for handling accommodation requests

DOCUMENTING COMPLAINTS AND ACCOMMODATION REQUESTS



DOCUMENTATION AND RECORD KEEPING

- Employers must ensure not only that these policies and procedures are in place, but also that those responsible actually enforce and follow them!
- The policies should specifically address each and every step in documenting, responding to, and following up on harassment complaints and discrimination requests
 - Remove any “independent decision making”

COMMON PROBLEMS IN ENFORCEMENT

- Broad, vague, or otherwise missing records and notes
- Saving or storing documents in incorrect places
- Failing to notify necessary persons or following up on complaints or requests

COMMON PROBLEMS IN ENFORCEMENT

Failure to adhere to these policies and procedures can cause substantial problems later on

- Trust in the system
- “Bad actors” remain in the company
- Confidentiality concerns
- Litigation and agency investigations

ADHERING TO THE POLICIES AND PROCEDURES

- There is no “one size fits all” solution for employers
 - Size, employee make up, industry, remote vs in office, and many other factors will impact how effective and enforced these policies are
- Regardless of the exact policies and procedures implemented by the employer, the most important aspect is ensuring that all employees and personnel are aware of their specific duties and responsibilities, and that they are followed

ADHERING TO THE POLICIES AND PROCEDURES

Training, Training, Training!

- All employees should receive training
- Individuals who are selected to receive and handle complaints and accommodation requests must fully understand their duties and responsibilities

ADHERING TO THE POLICIES AND PROCEDURES

Staying up to date on any changes to the law and updating internal policies and procedures

- Continuing training and education
- SHRM/ICLE seminars
- Title VII, ELCRA, ADA, and PWDCRA changes
- Frequent reviews of handbooks, materials, and policies
- Consult a labor and employment attorney

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QUESTIONS

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THANK YOU

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