

YOUR **TOMORROW** IS IN YOUR HANDS **TODAY!**



The AAA is fighting for you!



The Round Up – Important HR Cases and what we can learn from them



The information contained in this presentation is educational and intended for informational purposes only. It does not constitute legal advice, nor does an attorney-client relationship exist.

If you are in need of legal advice, you should seek the help of an independent, trained and licensed attorney in your jurisdiction.



Candidate applies for a position with your service as an EMT. He goes to your occupational screening provider for a pre-hire medical screening. He informs the provider that he was born female but is transitioning to male. Physician contacts your company and asks how should the sex be noted on the physical.

How would you handle this situation?



Terms

Gender Identity – internal sense of being

Transgender – gender role

Transition – transition period to identified
gender



Law

EEOC held that discrimination based on gender identity is sexual discrimination

(Macy v. Dept. of Justice, April 20, 2012)





Practical Implication & Suggestions

- Amend your policies
- Locker Rooms
- Bathrooms
- Uniforms





A female paramedic comes into your office and tells you that she just discovered she is pregnant and that she plans on working as long as she can provided her physician says it is okay. A few months later, she informs you that her doctor has told her that she cannot lift more than 25 lbs. for the remainder of her pregnancy. She requests an alternative duty assignment for the remainder of her pregnancy.



Law

- Young vs. UPS (March 25, 2011)
 - 2006
 - Delivery driver
 - Put on lifting restrictions
- UPS has light duty program for WRI, DOT Cert Loss, & ADA





- EEOC must accommodate *Young* because they accommodate other individuals with similar restrictions.
- Employers have a “high legal burden” to accommodate some and not pregnant employees
- Reasonable Accommodations





Practical Implication & Suggestions

- Examine existing Alternative Duty Policies
- Consider existing practices





A new EMT comes to you to inform you that his partner has been incredibly difficult to work with. He states that he has been calling him the FNG, telling him to keep his mouth shut & listen, identified the side of the truck he can occupy. He says he frequently ridicules him in front of co-workers. He adds that he has spoken to the Supervisor who essentially has blown him off. He states he is beginning to lose sleep.





- 26 States have introduced legislation for workplace bullying
- MA (2013) 1/3 of employees will directly experience “health endangering” workplace bullying.





Hostile Work Environment



Severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive



Practical Implication & Suggestions

Investigate the complaint

Set expectations for employees





A female EMT reports that she had been dating a coworker for over year and recently they broke up. Since ending the relationship he has been repeatedly calling her cell phone. When she doesn't answer, he comes to the base and demands to speak to her. She states that she just wants the behavior to stop.

- He is a supervisor
- She takes our a RO
- Order is subsequently vacated due to lack of evidence



Law

Employer Liability

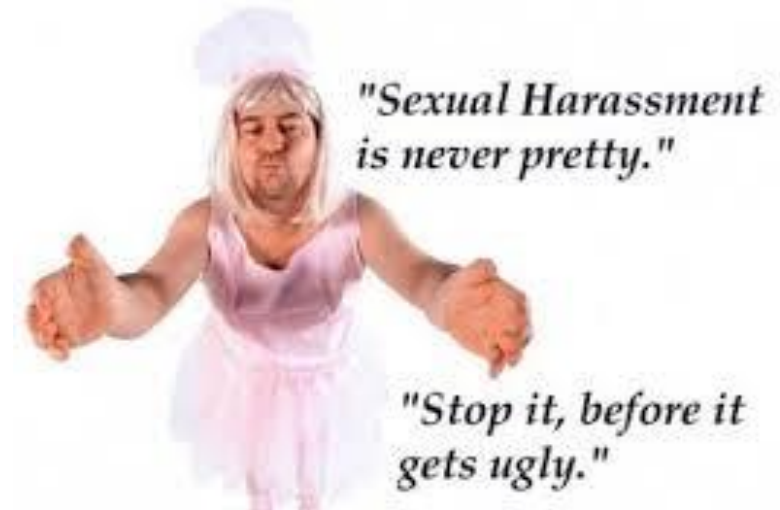
1. Employer exercised reasonable care to prevent and promptly correct any harassment; and
2. The employee unreasonably failed to complain to management or to avoid harm otherwise





Practical Implication & Suggestions

- Investigate
- Clear Policy
 - Disclosure
- Change Reporting Structure
- “Love Contract”





During your new employee orientation your organization covers the dress code & personal hygiene policy. Your policy requires that all males be clean shaven. One of your new employees approaches you and tells you that he his religion does not permit him to be clean shaven.

Or, you interview a candidate who is wearing a hijab. Your company does not allow any type of head-wear.



Law



- EEOC v. Abercrombie & Fitch
 - Applicant interviewed with Hijab
 - Image Policy
 - Applicant never stated reason

Question in case was employer's knowledge of religious practice

- Knowledge not necessary
- “Motivating Factor”





Practical Implication & Suggestions

- Interactive process
- Reasonable Accommodation
- Undue Hardship
- Look at Dress Code Policies





Your CEO approaches you and is very unhappy about a Facebook posting by one of the EMTs stating that he/she is a blowhard know-it-all who is driving the company into the ground. He/she wants it addressed.

Your CEO approaches you and is very unhappy about a Facebook posting by one of the EMTs stating that the organization has poor facilities, bad health insurance, and low wages. He/she wants it addressed.



77% of employers state that they use social media for recruitment, internal and external marketing and recruiting efforts.





Law

Social Media Policies

- “Sweeping that they prohibit protected, concerted activity”
- “Mere gripes” not in connection with some group activity





Practical Implication & Suggestions

- Check Social Media Policies
 - Phillips 66 Decision ([16-CA-087373; 360 NLRB No. 26](#)) Houston, TX, Jan 15, 2014
- Confidentiality Agreements
 - Broad Language





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