

EXCEL CONFERENCE

Thursday, August 14, 2014

3:15 p.m. – 4:30 p.m.

I got a letter from the EEOC and it's not an invitation to a seminar. Now what do I do?

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Stop! Get Your Emotions In Check.

- ▶ It is time to take charge. Take your personal emotions and pride out of the situation. Get good legal advice about the law, your exposure and follow through with what is best for the organization and what is the best solution to the problem.
- ▶ Unless you are the discriminating official, this situation is probably not about you and “winning”.



TAKE CHARGE

- ▶ Do not ignore the problem. It will not go away on its own!



ACKNOWLEDGE SOMETHING PROBABLY WENT WRONG SOMEWHERE



- ▶ It doesn't mean you discriminated, but acknowledge something likely went wrong somewhere.
 - Is there a commitment from top management to maintain an environment free of discrimination/retaliation?
 - Are all supervisors and managers adequately trained in all aspects of EEO?
 - Did you cut human resources? Do you value human resources?

ACKNOWLEDGE SOMETHING PROBABLY WENT WRONG SOMEWHERE



- ▶ It doesn't mean you discriminated, but acknowledge something likely went wrong somewhere.
 - Do you have solid policies and procedures?
 - Do you conduct internal audits/self checks on hiring, wages, promotions, training, assignments, terminations?

ACKNOWLEDGE SOMETHING PROBABLY WENT WRONG SOMEWHERE



- ▶ It doesn't mean you discriminated, but acknowledge something likely went wrong somewhere.
 - Were you consistent in your treatment of employees?
 - Do you really have open/honest communication?
 - Did you handle the internal complaint competently?
 - Were you honest with the complainant at all times? Did you give honest feedback/evaluations?

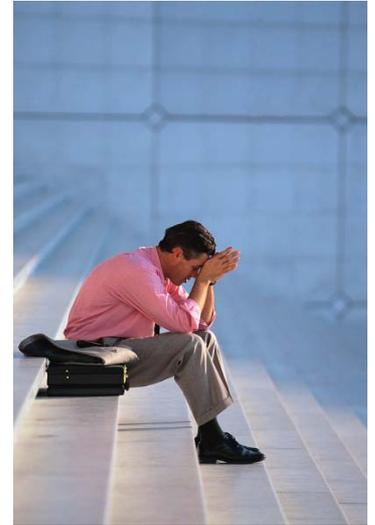
ACKNOWLEDGE YOU HAVE YOUR OWN BIAS AS WELL AS THE ALLEGED DISCRIMINATING OFFICIAL

- ▶ Unconscious Bias is Real
 - Examples of Unconscious Bias?
- ▶ Guarantee: Individuals See the World Differently Based on Their Truths



WHY DO WE WANT TO BLAME THE VICTIM?

- ▶ What we want to believe:
 - Good Things Happen = Good People
 - Bad Things Happen = Bad People
- ▶ What we know:
 - Bad things do happen to good people.
 - When you start to question the victims actions, statements, etc – remember this.....



REVIEW ALL DOCUMENTS INCLUDED IN THE CHARGE PACKET

- ▶ Review all allegations in the charge of discrimination.
- ▶ Jurisdictional Information Sheet
 - Is the charge filed timely?
 - Is there an employer/employee relationship?
 - Is there an exemption under the law?
 - Unsure?
 - <http://www.eeoc.gov/policy/docs/threshold.html>



REVIEW ALL DOCUMENTS INCLUDED IN THE CHARGE PACKET

- ▶ Review the non retaliation provisions.
 - ▶ DO NOT RETALIATE. IT IS THE FASTEST WAY TO GET OUR ATTENTION!
 - ▶ Do not suspend, move, transfer, isolate or in any way affect the complainant. If the action is likely to deter someone else from complaining of discrimination, it is retaliation.
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REVIEW ALL DOCUMENTS INCLUDED IN THE CHARGE PACKET

- ▶ Review the Recordkeeping responsibilities
 - Review the recordkeeping provision responsibilities in general under EEOC regulations, the ADEA, and the FLSA.
- ▶ Secure all documents / records relevant to the allegations: hiring; performance evaluations; attendance records; disciplinary records; promotions; prior complaints; salary information; emails; medical documents; videos, and more.

REVIEW ALL DOCUMENTS INCLUDED IN THE CHARGE PACKET

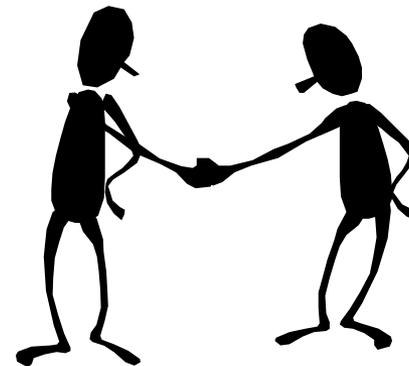
- ▶ Did you receive an invitation to mediate?
MEDIATE!!!
- ▶ You want to mediate, but did not get an invitation to mediate? Ask us!

- Free
- Neutral
- Confidential
- Saves Time and Money
- Discover Real Issues
- Improves communication
- Everyone WINS!



REVIEW ALL DOCUMENTS INCLUDED IN THE CHARGE PACKET

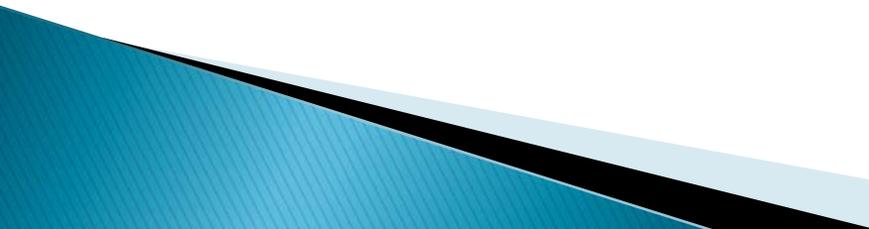
- ▶ Is there an offer to discuss settlement?
- ▶ Consider resolving the charge throughout the entire investigation.
 - Mediation
 - Fact Finding
 - Settlement
 - Conciliation
- ▶ All Confidential – Litigation is NOT Confidential



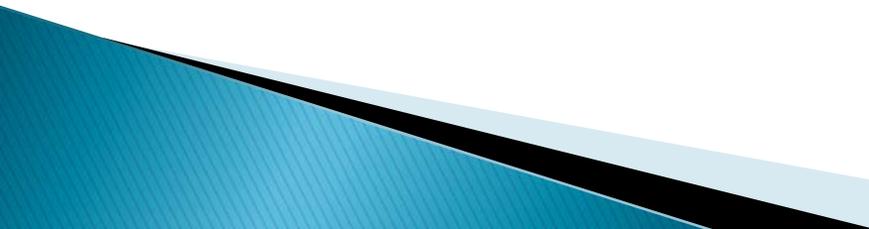
REVIEW ALL DOCUMENTS INCLUDED IN THE CHARGE PACKET

- ▶ I was asked to submit a position statement. Where to start?
 - Be honest. If you lie to EEOC, you lose at the investigative level.
 - A well drafted position statement can help us accelerate the investigation and limit requests for additional information
 - Include specific, factual response to every allegation in the charge.
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REVIEW ALL DOCUMENTS INCLUDED IN THE CHARGE PACKET

- ▶ I was asked to submit a position statement. Where to start?
 - Provide copies of documents supporting your position and/or version of the events.
 - Provide the company's legal name and address, name, address, title and telephone number of the person responsible for responding to the charge. Provide the number of employees.
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REVIEW ALL DOCUMENTS INCLUDED IN THE CHARGE PACKET

- ▶ I was asked to submit a position statement. Where to start?
 - Provide copies or descriptions of any applicable practices, policies or procedures.
 - Identify any other individuals who have been similarly affected by these practices, policies or procedures; describe the circumstances in which the practices, policies, or procedures have been applied.
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REVIEW ALL DOCUMENTS INCLUDED IN THE CHARGE PACKET

- ▶ I was asked to submit a position statement.
Where to start?
 - Explain why individuals who were in a similar situation to the Charging Party were not similarly affected.
 - Identify official(s) who made the decisions or took action relating to the matter(s) raised in the charge
 - Be specific about dates, actions and locations applicable to this case
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REVIEW ALL DOCUMENTS INCLUDED IN THE CHARGE PACKET

- ▶ I was asked to submit a position statement. Where to start?
 - Provide copies of internal investigations of the alleged incidents or grievance hearing reports
 - Inform EEOC if the matter has been resolved or can be resolved; if it can be resolved, please indicate your proposal for resolution
 - An effective position statement is clear, concise, complete and responsive.
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REVIEW ALL DOCUMENTS INCLUDED IN THE CHARGE PACKET

- ▶ I was given a request for information that doesn't make sense for how we retain records.
 - Call the Investigator for EEOC assigned the case. Have a discussion regarding how the documents are stored and what makes sense.



THE INTERNAL INVESTIGATION

- ▶ Some common mistakes:
 - Policy
 - Non exists
 - Policy is buried
 - Policy does not cover all EEOC statutes

- ▶ Failure to investigate “frivolous” “trivial” or “informal” complaints seriously

- ▶ Failure to warn alleged harasser to avoid retaliation (his or her friends too)



THE INTERNAL INVESTIGATION

- ▶ Some common mistakes:
 - Transfer the complainant
 - Delay the investigation
 - Poor quality investigation/investigator
 - Promises of absolute confidentiality
 - Results not recorded
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THE INTERNAL INVESTIGATION

- ▶ Some common mistakes:
 - Inadequate corrective action
 - Failure to advise the complainant and alleged harasser of results of investigation
 - Only interviewing the victim once in the process
 - Investigating with the goal of proving harassment didn't happen
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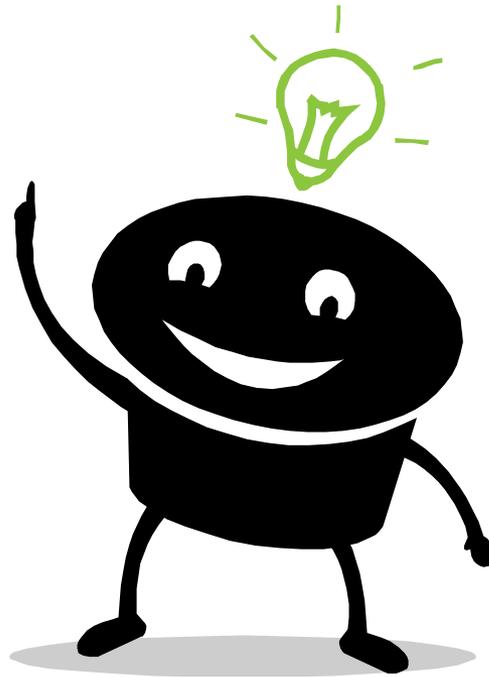
CHARACTERISTICS OF A GOOD INVESTIGATOR

- ▶ Brainstorming



WHAT ARE YOUR INVESTIGATIVE TIPS FOR THE NEW INVESTIGATOR?

- ▶ Brainstorming



THANK
YOU