



Directions to the High Road: Avoiding EEO Pitfalls

EXCEL

August 13, 2014

San Diego, CA

HIGH ROAD

THIS WAY ----->

CHALLENGING



Challenges

- ❖ The Starting Line
- ❖ Workplace EEO Disputes
- ❖ Education and Training
- ❖ Emerging EEO Issues
- ❖ EEOC Charges of Discrimination

The Starting Line



EEO Policies

TO DO

Workplace
Harassment Policy

TO DO

Reasonable
Accommodation
ADA
Religion

TO DO

NON
RETALIATION

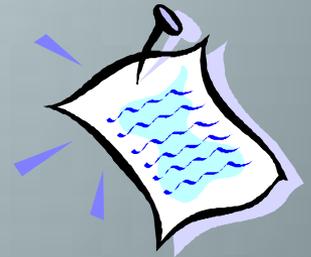
Workplace Harassment

- Written & well disseminated
- Non retaliation provision
- Defines workplace harassment
- Describes discipline that can be taken
- Provides a multi-path reporting mechanism
- Ensures confidentiality, to extent possible
- Regularly reinforced



ADA Reasonable Accommodation

- Affirm reasonable accommodation practice
- Describe who can use policy
- Explain reasonable accommodation
- Outline procedures
- Request for medical records
- Timeframes



SAMPLE POLICIES

<http://askjan.org/links/adapolicies.html>

Religious Accommodation

- Affirm religious accommodation
- Define religious accommodation
- Procedures for requesting accommodation
- Timeframes
- Undue hardship



Workplace EEO Disputes



Workplace Disputes

- Address conflict
 - Meet with antagonists
 - Together?
 - Separately?
 - Affect conflict has on employees
 - Just those involved?
 - Everyone else?
 - Investigation
 - General dispute
 - EEO Related dispute

Investigation – EEO Dispute

- Appropriate Investigator
- Investigation Plan
 - Identify issues
 - Identify witnesses
 - Identify documents
- Conduct detailed interviews
 - Complainant
 - Alleged discriminatory official or employee
 - Witnesses

Investigation – EEO Dispute

- Review documents, if applicable
- Analyze & reach conclusion
- Report back to complaining party:
 - Allegations were/were not substantiated; and
 - Corrective action was or will be taken, if applicable
- Take appropriate, corrective action
- Document Investigation
- FOLLOW UP

Education & Training



Training

- Managers and supervisors
- Employees
- HR

Training

- Reminder emails
- Training sessions
- Web based training
- EEOC Training
 - EEOC Seminars
 - EXCEL
 - Customer Specific Training
 - www.eeotraining.eeoc.gov



Emerging Issues



Emerging EEOC Issues

Examples:

- ADA Issues
- Coverage of LGBT individuals under Title VII
- PDA/ADAAA intersection
 - New Guidance on Pregnancy Discrimination issued July 14, 2014

http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm

EEOC Charges of Discrimination



Preserve Your Records



- All laws require preservation of records
- If a charge is filed you must retain records until final disposition of charge.

Ensure Retaliation Does Not Occur



- All statutes contain non-retaliation provision
- It's illegal
- Most frequently filed charge
- Remind all involved of no tolerance for retaliation

Conduct the Investigation



- Failure to do so may result in:
 - Key evidence being lost
 - Continued discrimination
 - Missed opportunity to correct a problem
 - Appearance of complacency to employees

Responding to EEOC Charge



Position Statement

- Respond to allegations in charge
- Focus on facts
- Be accurate
- Be complete
- Base response on your investigation
- Submit evidence in support of position statement
- Submit comparative information, if appropriate

Consider Resolution Options



Resolution Options

Mediation

- Efficient
- Charging Party gives up Right to Sue
- Mediators neutral
- Confidential
- Informal
- Avoids investigation and/or litigation
- Can help understand why employment relationship broke down and repair it

Settlement

- Voluntary
- Informal
- No admission of liability
- Finality
- Flexibility
- No “Reasonable Cause” Finding or Litigation

Requests for Information



Respond Completely to Requests for Information

- Incomplete responses lead to additional requests
- May lead to an on-site investigation that may not be necessary
- May lead to fact-finding conference that may not be necessary
- Call the Investigator if you have questions
 - We don't know what you have
 - You don't know what we have

Consider Conciliation



Conciliation

- EEOC seeking specified relief
- Voluntary
- Negotiations and counter-offers may be presented
- Final opportunity to resolve charge; after investigation but before litigation
- Removes uncertainty, cost, negative publicity, and animosity surrounding litigation

Resources

www.eeoc.gov

Outreach & Education Managers

www.eeoc.gov/eeoc/outreach/coordinators.cfm

Small Business Liaisons

www.eeoc.gov/employers/contacts.cfm

Easy Street



Contact Information

Debra Moser-Finney
Outreach & Education Manager
Memphis District

debra.moser-finney@eeoc.gov

(501) 324-6372