EEO and Diversity Management Training
Presented by OHR’s EEO Compliance and Diversity Management Division
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Today’s Instructor

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Today’s Topics

- Types of Discrimination
- How to Perform an Intake
- How to Conduct an Investigation
- Practice Scenarios
Types of Discrimination
What Constitutes Discrimination?

- Employees are in a protected class (based on race, gender, and so on).
- They receive different treatment because they are in a protected class.
- There must be an adverse action that is related to the specified protected class.
- Employees outside of the specified protected class receive different or favorable treatment.
Adverse impact is a seemingly neutral policy or practice that results in an adverse impact on members of a protected class.

Discrimination can result from neutral employment policies and practices which are applied evenhandedly to all employees and applicants, but which have the effect of disproportionately excluding women and/or minorities.
Adverse Impact Example

► Gina applies to become a police officer.
► One of the requirements is to be 5’8’ and weight at least 180 pounds.
► Gina is concerned that she is 5’7” and weights only 140 pounds.
► She voices her concern to hiring personnel, and they state that this requirement is required of all applicants. She replies that she thinks this is gender-based discrimination.
Disparate treatment:

- Intentional or unintentional to exclude individuals from employment, opportunities, or any terms or conditions of employment, or
- Different treatment related to a protected class.

To establish disparate treatment, employees must be “similarly situated.”

- “Who are you comparing yourself to?”
Disparate Treatment Example

- Joy is the only female in her division.
- Joy complains that she is treated differently because she is female.
- She states that her supervisor writes her up for being late but does not do so for her male coworkers, who are often late as well.
Accommodation

- This is a failure to accommodate employees’:
  - Religious observances or practices.
  - ADA-related accommodation requests, unless the request would create undue hardship to the employer.
Julio says that at his depot, during snowstorms, co-workers keep prayer cards at the dinner table and at each meal, someone reads one of the prayers aloud.

He says he feels uncomfortable because he is agnostic.

Julio requests that the practice be discontinued as a religious accommodation to him.
Retaliation

This is when an employer takes an adverse action against employees because they:

- File a discrimination complaint.
- Verbally complain of discrimination.
- Assist another employee in filing a discrimination complaint.
- Act as a witness in a discrimination complaint.
- Otherwise participate in EEO-protected activities.
Retaliation Example

► Jeff complains to his manager that his supervisor and co-workers refer to him as “old timer.” He has asked them to stop but they continue.

► Management addresses this by sending out a memo to his supervisor and coworkers, reminding them of the EEO policy and the inappropriateness of referring to a person’s age.

► During a staff meeting, Jeff’s supervisor reviews the memo with staff and says, “Some of us know how to take a joke” and looks directly at Jeff. He follows it up with, “Jeff, you’re on bathroom cleanup duty for the next two weeks.”
How to Perform an Intake

Intake Guidelines | Best Practices
Intake Guidelines

1. Be prepared, as the complainant may request to:
   - Obtain information on leave issues as well as the overall process, such as next steps.
   - Meet outside of normal work hours and work location.
   - Request to have an attorney present.

2. Set a time to privately interview the complainant and draft your questions beforehand.
   - Note: If an individual shares that a discriminatory act occurred, you must investigate. You cannot keep it confidential at the complainant’s request.
3. **Interview the complainant and record the facts:**
   - When and where did this occur? Who was present? What happened?
   - Do you have and can you share proof of your allegation? What type of records would support what you are alleging?
   - Maintain a file and log of all contacts, meetings, and communications (e.g., email, forms, etc.).
   - Instruct the Complainant to go online and file a complaint at [www.montgomerycountymd.gov/EEO](http://www.montgomerycountymd.gov/EEO).
4. **Report the case.**
   - Send an email with the basic facts to OHR’s EEO Compliance & Diversity Management Division at Patricia.Miller@montgomerycountymd.gov

5. **Once EEO determines that a discrimination case has been established:**
   - EEO will establish who will handle the complaint (the Department or OHR’s EEO Division).
6. If the Department will be handling the investigation, notify all parties of the complaint, the specific allegations, your intention to investigate, and confidentiality requirements (Notice of Complaint or NOC):
   - Department Director, Complainant, and Respondent

7. Immediately commence an investigation into the allegations.
Intake Best Practices

► Maintain confidentiality at all times.
  ► You can be disciplined for not doing so.
  ► No tape recorders allowed.
► It is okay to have a second person to assist you during the interview with the complainant (tag team).
► You are “on” as an investigator.
  ► Be aware of your verbal and non-verbal communication.
  ► You may need to change your professional “persona,” conduct and relationship.
Intake Best Practices (continued)

- **Just the facts:**
  - Remain neutral and remember that you are fact finding.

- **Offer support and guidance...**
  - But remember that you do not “represent” them.

- **Open and close an Intake even if there is no EEO basis.**
  - Be sure to justify why it is not an EEO complaint and address it as a Labor issue (if applicable).
How to Conduct an Investigation
Preparing | Interviewing
Analyzing Evidence & Reporting
Prepare an investigative plan, and reach out to EEO if you need help:

1. Make a list of witnesses to interview.
2. Prepare your interview questions for the witnesses and respondent.
3. Decide which documents are pertinent to the case and review them.
4. Set up the respondent interview first, followed by witness interviews, and let all interviewees know that attorneys cannot be present because this is a personnel matter.
5. After the interviews, you may need to re-visit your investigative plan.
Interviewing Respondent & Witnesses

**Important questions to ask:**

- What is your relationship to the complainant?
- Were you present and did you witness the allegation in question?
- If you were not present, when and how did you hear of the allegation?
- Prepare any other questions that you think may apply and send them to EEO for review.

**Respondents should be told what the specific allegations are against them.**

**Best practices:**

- Witnesses (except the respondent) should not be advised of the specific allegations.
- Always interview witnesses privately.
- Establish the veracity of the witness.
- No tape recorders allowed.
Analyzing Evidence & Reporting

Analyzing the evidence:
- Department should work with OHR's EEO Division to discuss evidence and determine findings.
- If there is evidence to support the allegation, discuss remedial or disciplinary action.

Reporting:
- Send OHR's EEO Division copies of all statements obtained, the notice to all parties that a complaint was received, and any other pertinent documentation or evidence.
- Write a brief follow up report to summarize key findings that address each of the complainant's allegations.
- If disciplinary action is decided upon, it must be reviewed and approved by both EEO and Labor.
- A copy of the final disciplinary action should be submitted to EEO.
Practice Scenarios:

What Would You Do?
Amanda has been an Equipment Operator with the department for eight years. She recently returned from maternity leave and approached her supervisor requesting a private place to pump breast milk.

Her supervisor advised her that she would have to make her own arrangements and submit a leave slip for the time she spent expressing milk.
Sarah, who recently transitioned from male to female, reports that when she enters the breakroom many other employees immediately depart the area. She alleges that some of the employees give her menacing looks or openly stare at her as they are leaving.
Scenario #3

► David complains to you that employees treat him as if he has the plague.
► He claims employees are saying that he brought a virus into the workplace.
► He believes that they are saying this because he is from China.
Scenario #4

- Maria contacts you and states that she needs to meet with you privately.
- She tells you she has a sexual harassment complaint but does not want to meet at the office.
- She requests that management meet her at her home because she has been sexually assaulted and it’s the only place she feels safe.
Scenario #5

► Jenny enters the staff meeting room appearing to be extremely agitated.
► You are handing out assignments and there are five other employees present.
► Jenny yells, “Roger is crazy, he’s going to kill somebody!”
Scenario #6

► Joanna (24 years of age) comes in to complain that she believes that she is being discriminated against because of her age.

► She says her supervisor talks to her as if she is a child.

► Joanna further complains that the supervisor never allows her to operate the heavy equipment.

► Finally, the supervisor is always remarking to her in front of others that she is still “wet behind the ears.”
Scenario #7

► Dawn comes to you upset and crying.
► She tells you that coworkers (male) are constantly making sexual innuendo in her presence. She has asked them to stop but they continue this behavior.
► You ask her who the employees are but Dawn says she does not want to disclose, she just wants an immediate transfer.
Scenario #8

- Bill works 8 am to 4 pm Monday to Friday.
- Because of a recent medication change due to his disability, Bill requests to change his hours to 9:30 am to 5:30 pm, Monday to Friday.
Scenario #9

► Last month, Charles complained of discrimination to upper management regarding his immediate supervisor, John.

► As a result, John received disciplinary action.

► Last week, Charles said that ever since he filed his complaint with management, John has not spoken to him or shared vital information he needs to do his job.
Questions?
In Our Own Voices: Telling Our Stories

► Recurring virtual event series that highlights employees from different cultures and backgrounds

► Panelists share their experiences from their workplaces and communities, followed by an FAQ session

► Look for this special event in the monthly MCG Employee Training & Events email and follow the steps to register!
Thank you for attending, and for helping to prevent and address workplace harassment.

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