

Workplace Inclusivity: Compliance Basics for Organizations of Any Size

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About the presenter:

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Legal Disclaimer

This presentation is for educational purposes only and does not replace the judgement of independent professionals. Statements of fact and opinions are those of the presenter.

Agenda

- Inclusivity Laws
- Governing Bodies
- Applicable Laws
 - Civil Rights (Federal, Ohio, Local)
 - Pregnancy Discrimination Act
- Policies every organization should have
- Reasonable Accommodations – Best Practices



Inclusivity Laws

Or, Non-Discrimination in Employment

- Title VII of the Civil Rights Act of 1964
 - Prohibits discrimination on the basis of race, color, religion, sex, gender, pregnancy, or national origin.
 - *Bostock* decision recognizes gender identity and sexual orientation under “sex discrimination”
- Americans with Disabilities Act & ADA Amendments Act (ADA/ADAAA)



Inclusivity Laws

Or, Non-Discrimination in Employment

- Age Discrimination in Employment Act
 - Prohibits discrimination against people over 40
- Genetic Information Nondiscrimination Act (GINA)
- Equal Pay Act (EPA)
 - Includes Lilly Ledbetter Fair Pay Act
- Uniformed Services Employment & Re-employment Rights Act (USERRA)



Federal Regulatory Entities

- U.S. Department of Labor
 - Fair Labor Standards Act
- National Labor Relations Board (NLRB)
 - National Labor Relations Act
- Equal Employment Opportunity Commission
 - Civil Rights Act of 1964 (Title VII)
 - Age Discrimination
 - ADA/ADAAA
 - GINA

EEOC – When does it apply to us?

- 20 or more employees
 - Age Discrimination in Employment Act
- 15 or more employees
 - Title VII
 - ADA/ADAAA
 - GINA
- Virtually all employees
 - Equal Pay Act



EEOC – When does it apply to us?

Mandatory reporting

- Depending on the size of your organization and if you receive a certain amount of federal contracts, you might be required to:
 - Submit an annual EEO-1 report that shows the race, gender, and classification of your employees
 - Submit an Affirmative Action Plan to the OFCCP



But, I have fewer than 15 employees. Why am I here???



Ohio Civil Rights Act

Protects applicants and employees of private employers; state, county and local governments, educational institutions, labor organizations, employment agencies and personnel placement services from unlawful discriminatory employment practices.

- Applies to employers with **four (4) or more employees**
- Requires state posting (Know Your Rights)
- Enforced by the Ohio Civil Rights Commission (OCRC)





Ohio Civil Rights Act

The law covers:

- Race & Color
- National Origin and Ancestry
- Sex, including Pregnancy, Sexual Orientation, and Gender Identity
- Religion
- Military Status
- Disability
- Age
- Harassment
- Retaliation



Ohio Pregnancy Discrimination Act

In addition to Title VII, Ohio has it's own PDA:

- Applies to employers with **four (4) or more employees**
- Guarantees six (6) unpaid weeks of leave from work for a birthing parent



Another Law You Might Not Know

Break Time for Nursing Mothers

- Covered by *both* Ohio and Federal (Section 7, FLSA) law
- Must provide *reasonable* break time for an employee to express breast milk for their nursing child for one year after birth **each time** the employee needs to express the milk
- Must provide a place (not a bathroom) shielded from view and protected from intrusion



True or False?
Ohio's Civil Rights Act was
enacted before the Civil Rights
Act of 1964?



Policies & Compliance Best Practices



Compliance Best Practices

Required Labor Law Posters

- Ensure you have posted in a *conspicuous location* all applicable federal, state and local labor law posters
 - Get FOR FREE from DOL and Ohio OAG, OCRC
 - Purchase from websites

Mandatory Annual Reporting

- When applicable, make sure you follow guidelines
 - EEO-1, AAP (state and federal)





Compliance Best Practices

Written Job Descriptions

- Ensure “Essential Job Functions” are clear and concise
 - Should also describe skills and qualifications
 - Non-essential job functions
- Include “Physical Demands”
- Include “Work Environment” description

Compliance Best Practices

Training for Managers and Employees

- Ensure managers understand and can reference your policies, procedures, and best practices
- Ensure employees understand where to locate resources and how to ask for assistance

Policies & Disclosures

Key disclosures belong on website, application, and job descriptions:

- Equal Opportunity Employer & Non-discrimination (or inclusion) Statement
- Reasonable Accommodations

Policies & Disclosures

Sample EOE Disclosure:

Ohio History Connection will recruit, hire and maintain a diverse workforce allowing for the inclusion of every employee's unique value, contribution and potential. OHC is committed not only to the principle of equal employment opportunity but also to the letter and spirit of the law. OHC, as an equal opportunity employer, does not discriminate in its employment on the basis of race, color, religion, sex, gender, sexual orientation, gender identity or expression, pregnancy and/or related conditions, national origin, ethnicity, age, veteran status, genetic information, medical condition, physical or mental disability, or on any other basis protected by federal, state or local law. OHC ensures that equal employment opportunity applies to all areas of employment including hiring, promotion, demotion, transfer, recruitment, selection, discipline, termination, compensation, benefits and training.



Policies & Disclosures

Sample ADA Disclosure:

Ohio History Connection is committed to the full inclusion of all qualified individuals. As part of this commitment, OHC will ensure that persons with disabilities are provided reasonable accommodations. If reasonable accommodation is needed to participate in the job application or interview process, to perform essential job functions, and/or to receive other benefits and privileges of employment, please contact the Human Resources Department at 614-297-2390 or by email at applicant@ohiohistory.org.



Policies & Disclosures

Basic, “must-have” HR policies

- Equal Employment Opportunity
- Code of Ethics/Standards
- Anti-Harassment and Non-Discrimination
 - Should include reporting process
- Retaliation
- Whistleblower Protections
- Reasonable Accommodations procedure

Making Reasonable Accommodations



Words of Caution – Law Interactions

Federal, Ohio, and Local Law PLUS

- Family & Medical Leave Act
- Workers' Compensation

Both of these intertwine with Ohio & Federal disability laws. So, when in doubt:



The Interactive Process

Employers and employees with disabilities *who request accommodations* work together to determine what those accommodations should be

- Doesn't need to be a formal request or process if an accommodation is obvious and can be easily addressed without undue hardship to the employer.



The Interactive Process

Examples:

- Your employee has a diagnosis of carpal tunnel syndrome and requests an ergonomic keyboard
- Your employee uses a wheelchair and requests to have their desk placed on blocks so it's at a more accessible height
- Your employee is legally blind and needs better lighting and a large computer monitor in order to work



The Interactive Process

When an accommodation is not so obvious:

- Analyze the particular job involved and determine purpose and essential functions
- Consult with employee to determine the **precise job-related limitations** imposed by the employee's disability and how to overcome with reasonable accommodations



The Interactive Process

When an accommodation is not so obvious:

- Identify potential accommodations with the employee and assess effectiveness each would have in enabling the employee to perform the essential functions
- Consider the preference of the individual to be accommodated and select and implement the most appropriate option(s) for both employee and employer



Recognizing Accommodation Requests

Did my employee ask for an accommodation or not?

- Employees are not required to use specific language or reference the ADA (or Ohio law) to make a request
- They don't even have to use the phrase "reasonable accommodation"
- Err on the side of caution and ask for clarification from the employee. "How can I help?" or "Can you clarify your request?"

Gather Information

Before making a decision, ensure you have what you need:

- Find out the limitation and problem
- Find out from the employee what best works for them; what have they done in the past
- Only ask what is absolutely necessary about a person's condition. You can ask for medical documentation to better understand scope of disability and the employee's needs

Implement & Monitor

Once reasonable accommodations are determined:

- Set a timeline for implementation
- Communicate accommodations to necessary stakeholders
- Document what accommodations were made and when
- Check back in to ensure the accommodations are working, if adjustments are needed, or if a different course of action is warranted



Accommodations & Job Performance

Reasonable accommodations *do not* excuse performance expectations:

- Bad behavior *is* bad behavior
- All applicable policies and procedures, job performance criteria apply unless you make an explicit exception
- Accountability for performance and compliance needs to occur

Questions?



Resources

- **US Department of Labor:** www.dol.gov
- **OAG's Fair Employment Guide for Business Owners:**
<https://www.ohioattorneygeneral.gov/Files/Publications-Files/Publications-for-Business/Fair-Employment-Guide>
- **Opportunities for Ohioans with Disabilities (OOD):**
www.ood.ohio.gov
- **Job Accommodation Network (JAN):** www.askjan.org



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