

Preventing Harassment & Discrimination: Gateway

M0X_ Gateway

Navigating This Course

Interactivity Audio Script:

Take a moment to explore the key features of this course and how to navigate through the experience.

Interactivity text:

Carousel 1: Menu.

Explore the "Menu" icon in the navigation bar to access each section of the course, as well as resources, a glossary, and relevant policies.

Carousel 2: Navigating.

Use the "Continue" and "Back" buttons to move through the course.

Carousel 3: Getting Stuck?

If a "Continue" button is not enabled, it means that you have not yet completed all of the required activities on that page.

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Carousel 4: Listen In!

Explore the "Listen" button to hear selected content in the course.

Carousel 5: We'll Save Your Place.

If you leave the course and return, your progress will be saved and you'll be able to start where you left off.

Important Content Notice

Video Script:

The goal of this course is to give you the skills to be a positive influence in the higher education environment. We will be taking a close look at issues like harassment, discrimination, and retaliation, which affect people at higher education institutions everywhere, and will use examples of harmful stereotypes, statements, and actions for illustrative purposes only, to demonstrate how problematic and discriminatory behavior may manifest itself.

These topics can be challenging to think about and may feel especially sensitive and personal to some. If you have difficulty completing this course, please contact your institution's representative to discuss how to proceed.

Alt-Text:

An employee is sitting in their home office, working on a computer, thinking.

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The Power of Bystanders

Interactivity Audio Script:

Everyone plays a role in creating a positive work environment in which discrimination, harassment and retaliation rarely happen, and are addressed if they occur.

Video Script:

Narrator: People work hard to create environments where they can thrive. Maybe you like to decorate your living space or take part in community activities to improve your neighborhood. It's similar in a work environment. Most people want to work in an environment where everyone supports each other and feels respected, where discrimination, harassment and retaliation happen rarely and are addressed if they occur. If you're wondering, can I do this at my workplace? Do I even have a role in fostering an environment like this? The answer is yes. The building blocks for preventing harassment and discrimination come down to awareness, attitude and action. Everyone has a role to play. Awareness involves recognizing when things are going well and when action is needed to address challenges. Next, we'll explore the attitudes common to a professional, respectful culture. What you can expect from the people you work with and what they can expect from you. Finally, we'll prepare you to take action with a variety of approaches, no matter what situation might arise in the workplace.

Understanding what to do and being ready to take action will empower you and everyone around you to make a difference. You'll learn to build on the skills you

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already have to master the three A's: awareness, attitude, and action.

Developing Awareness and Recognizing Discrimination

Interactivity Audio Script:

The first A in the three A's of bystander intervention is awareness. Developing awareness means taking note of what is happening around you and strengthening your ability to spot problematic situations.

Video Script:

Narrator: The world can get busy, and it can be tempting to tune out. But it's important to sharpen our skills around tuning in, to be aware of what's going on around us. Awareness means becoming alert to how we perceive and interact with others and realizing the influence that bias can have. It means recognizing when something may not be right or that a situation may have the potential to become problematic or harmful. Similarly, discrimination can undermine an otherwise successful work environment. Let's work on further developing awareness by exploring types of discrimination, to be sure we can recognize the range of situations where we can positively shape our workplace.

What is Discrimination?

Interactivity Audio Script:

In this section, we'll focus on developing a sharpened sense of awareness of what's happening around you, so that you can spot the subtle behaviors that

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constitute discrimination and may undermine work culture.

Generally speaking, discrimination refers to unfair treatment toward a person based on certain characteristics, such as their gender, race, or other characteristics.

All discrimination is harmful and may be unlawful when it is based on a category or characteristic that is protected by law and impacts someone's job or educational opportunities.

People in positions of power can set an example by not only avoiding discrimination or the appearance of it, but also by taking steps to prevent it when possible and to report it when it does occur.

Discrimination is harmful, whether it is committed by or against leaders, coworkers, or colleagues, or nonemployees such as students, interns, campus visitors, or contractors.

Harassment is just one type of discrimination, and not all discrimination is harassment. We'll cover harassment in detail in the next section.

Alt-Text:

Two colleagues are standing together, talking.

Understanding Protected Categories

Interactivity Audio Script:

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Anti-discrimination laws explain which categories are protected. Because these laws are at the federal, state, and local levels, a category may be protected in one location, but not in another.

Courts may also interpret laws differently, so even the same law may not offer the same protection, depending on the jurisdiction. For example, almost everyone is protected by federal laws, but if a state law offers additional protections, employees in that state will be protected by both laws.

Under federal law, it is illegal for employers to discriminate based on each of the following bases.

Select each topic to learn more.

Interactivity text:

Tab 1: Age

Federal law protects people 40 years of age and above from discrimination. Other laws about age may protect younger people from discrimination as well.

Tab 2: Genetic Information

The misuse of genetic information is unlawful. For example, a family's genetic health history cannot be used to discriminate in health insurance or employment.

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Tab 3: National Origin

National origin includes more than just the place where a person is from. Not only is it unlawful to discriminate because someone is from a particular part of the world, but ethnicity, accents, language, and a person's actual (or perceived) ethnic origin may also be protected. People are also protected from discrimination due to the national origin of their spouse.

Tab 4: Citizenship & Immigration Status

Federal law protects people from discrimination because of their citizenship or immigration status. Unless a specific law or government contract requires it, employers may not restrict their hiring to only U.S. citizens or permanent residents.

Tab 5: Pregnancy

Not only is pregnancy protected, but also childbirth and medical conditions related to pregnancy and childbirth.

Tab 6: Race

Protections against race discrimination include characteristics associated with race like a person's hair texture, skin color, and certain facial features.

Tab 7: Color

Discrimination based on skin color can be related to race discrimination. Color

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refers to the lightness or darkness of a person's skin tone and includes shade and complexion.

Tab 8: Religion

Religious beliefs are protected. These include traditional, widely recognized religions and faith practices (such as Buddhism, Christianity, Hinduism, Sikhism, Islam, and Judaism) as well as sincerely held "religious beliefs that are new, uncommon, not part of a formal church or sect, or only subscribed to by a small number of people, or that seem illogical or unreasonable to others" according to guidance by the federal Equal Employment Opportunity Commission (EEOC).

Tab 9: Disability

Disability laws can be complex. Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act both prohibit discrimination against people who work and study in higher education institutions that receive federal funds, and require facilities and communications, such as websites, to be accessible. Disability laws also protect people with disabilities or a history of having a disability and people who are perceived to be disabled, even if they are not. Many types of disabilities and conditions can be covered by disability laws.

Tab 10: Sex

Federal law prohibits workplace discrimination based on transgender status, gender identity, or sexual orientation. Discrimination because of sex-based

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stereotypes, like that a woman must look feminine, or that a woman cannot be assertive, is also unlawful. Sex-based discrimination, including harassment, is unlawful no matter whether the person who discriminates or harasses is the same sex or a different sex than the person who is experiencing harm.

Tab 11: Veteran or Military Status

Federal law protects workers from discrimination based on their past or present military service and requires all employers to reemploy returning servicemembers to the job they would have attained had they not been absent while serving in the armed forces. A separate law requires federal contractors and subcontractors to give preferential treatment to qualified veterans who apply for a job and prohibits discrimination against them.

Dig Deeper: Other Harmful Types of Discrimination

Interactivity text:

Tab 3: Other Harmful Types of Discrimination

Here are a few other harmful types of discrimination and examples of how each type might look and sound.

Weight and Height

"I'd rather she didn't present at the conference... at her size, it's not really the image we want out there."

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"We can't have a marketing guy who's short!"

Gender Expression

"I don't want to work with a guy who wears nail polish."

"She looks so unprofessional in those boxy, masculine clothes... you can barely tell she's a woman."

Political Affiliations

"We can't promote someone who believes that kind of garbage..."

"Only someone young and naive would support a candidate like that."

Affluence or Social Class

"We can't hire someone who drives an old car... people won't want to follow their advice."

"She's never even left the country before... she must not have a curious mind like we do."

Understanding Protected Categories

Interactivity Audio Script:

Perspectives: Natural Hair.

Here is one person's perspective on natural hair in the workplace.

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Video Script:

Lower left-hand corner of video, name appears: Sienna When I first started at a previous organization, and was still fairly new, I had my hair pulled back that day just because that was how I decided to wear it. And I had a member of the leadership team in the organization come up to me, and they were very excited and said, "Oh, I love your hair pulled back this way. It's so professional. I can see your whole face. I hope you'll wear your hair like this more often." And I was very taken aback because I wasn't quite sure what to say. And as it sat with me more and more, I realized that the person was saying that my hair as it is, isn't professional. It's not appropriate for the workplace, and that it has to be in a certain way that will make them or other people feel more comfortable.

Dig Deeper: The Impact of Discrimination on Health

Tab 4: The Impact of Discrimination on Health

The effects of discrimination are far-reaching, impacting many parts of a person's life.

Later on, we'll talk about the effects workplace discrimination can have on a person's career.

Right now, take a look at some ways discrimination can impact a person's health.

Mental and Emotional Health

Discrimination has been linked to anxiety, depression, sadness, helplessness and

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low self-esteem.

Cognitive Health

Research has shown that experiencing everyday discrimination can harm a person's memory and also lead to faster memory decline.

Physical Health

Discrimination can result in poor physical health, including increased risk of cardiovascular disease, diabetes and respiratory disease. It has also been linked to sleep disturbance and daytime fatigue.

Title VII: The Civil Rights Act of 1964

Interactivity Audio Script:

Title VII is part of the Civil Rights Act of 1964, which is a critical federal law that protects employees from discrimination on the basis of race, color, sex, religion and national origin.

Flip Card 1: Hiring & Firing

It is illegal to make hiring decisions or to terminate a person's employment based on their protected characteristics.

Flip Card 2: Job Training

It is illegal to deprive someone of equal access to job training based on their

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protected characteristics.

Flip Card 3: Referrals

For employment agencies and labor organizations, it is illegal to refuse to refer someone for a job based on their protected characteristics.

Flip Card 4: Membership

It is illegal to exclude or expel people from labor organizations on the basis of their protected characteristics.

Flip Card 5: Compensation, Terms and Conditions of Employment

When it comes to compensation, and terms and conditions of employment, it is illegal to discriminate based on protected categories.

Flip Card 6: Segregation

It is illegal for employers and labor organizations to separate employees, applicants or members in such a way that it may lead to fewer opportunities for people in one group.

Title VII: The Civil Rights Act of 1964

Interactivity Audio Script:

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Link 1:

LEGAL RESOURCE

Tab 1: Title VII of the Civil Rights Act of 1964

An Act

To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Civil Rights Act of 1964".

§ 2000e-2. Unlawful employment practices

(a) Employer practices

It shall be an unlawful employment practice for an employer –

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms,

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conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee because of such individual's race, color, religion, sex, or national origin.

(b) Employment agency practices

It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) Labor organization practices

It shall be an unlawful employment practice for a labor organization –

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise

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adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) Training programs

It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Businesses or enterprises with personnel qualified on basis of religion, sex, or national origin; educational institutions with personnel of particular religion

Notwithstanding any other provision of this subchapter,

(1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any

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such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and

(2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(f) Members of Communist Party or Communist-action or Communist-front organizations

As used in this subchapter, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950 50 U.S.C. 781 et seq.

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(g) National security

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if –

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Seniority or merit system; quantity or quality of production; ability tests; compensation based on sex and authorized by minimum wage provisions

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures

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earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 206(d) of Title 29 section 6(d) of the Labor Standards Act of 1938, as amended.

(i) Businesses or enterprises extending preferential treatment to Indians

Nothing contained in this subchapter shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Preferential treatment not to be granted on account of existing number or percentage imbalance

Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management

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committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

(k) Burden of proof in disparate impact cases

(1)

(A) An unlawful employment practice based on disparate impact is established under this subchapter only if-

(i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or

(ii) the complaining party makes the demonstration described in subparagraph

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(C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.

(B)

(i) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (A)(i), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decision-making process are not capable of separation for analysis, the decision-making process may be analyzed as one employment practice.

(ii) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

(C) The demonstration referred to by subparagraph (A)(ii) shall be in accordance with the law as it existed on June 4, 1989, with respect to the concept of "alternative employment practice".

(2)

A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this subchapter.

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(3)

Notwithstanding any other provision of this subchapter, a rule barring the employment of an individual who currently and knowingly uses or possesses a controlled substance, as defined in schedules I and II of section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act 21 U.S.C. 801 et seq. or any other provision of Federal law, shall be considered an unlawful employment practice under this subchapter only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, or national origin.

(l) Prohibition of discriminatory use of test scores

It shall be an unlawful employment practice for a respondent, in connection with the selection or referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment related tests on the basis of race, color, religion, sex, or national origin.

(m) Impermissible consideration of race, color, religion, sex, or national origin in employment practices

Except as otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race,

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color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.

(n) Resolution of challenges to employment practices implementing litigated or consent judgments or orders

(1)

(A) Notwithstanding any other provision of law, and except as provided in paragraph (2), an employment practice that implements and is within the scope of a litigated or consent judgment or order that resolves a claim of employment discrimination under the Constitution or Federal civil rights laws may not be challenged under the circumstances described in subparagraph (B).

(B) A practice described in subparagraph (A) may not be challenged in a claim under the Constitution or Federal civil rights laws-

(i) by a person who, prior to the entry of the judgment or order described in subparagraph (A), had-

(I) actual notice of the proposed judgment or order sufficient to apprise such person that such judgment or order might adversely affect the interests and legal rights of such person and that an opportunity was available to present objections to such judgment or order by a future date certain; and

(II) a reasonable opportunity to present objections to such judgment or order; or

(ii) by a person whose interests were adequately represented by another person

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who had previously challenged the judgment or order on the same legal grounds and with a similar factual situation, unless there has been an intervening change in law or fact.

(2)

Nothing in this subsection shall be construed to –

(A) alter the standards for intervention under rule 24 of the Federal Rules of Civil Procedure or apply to the rights of parties who have successfully intervened pursuant to such rule in the proceeding in which the parties intervened;

(B) apply to the rights of parties to the action in which a litigated or consent judgment or order was entered, or of members of a class represented or sought to be represented in such action, or of members of a group on whose behalf relief was sought in such action by the Federal Government;

(C) prevent challenges to a litigated or consent judgment or order on the ground that such judgment or order was obtained through collusion or fraud, or is transparently invalid or was entered by a court lacking subject matter jurisdiction, or

(D) authorize or permit the denial to any person of the due process of law required by the Constitution.

(3) Any action not precluded under this subsection that challenges an employment consent judgment or order described in paragraph (1) shall be

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brought in the court, and if possible before the judge that entered such judgment or order. Nothing in this subsection shall preclude a transfer of such action pursuant to section 1404 of Title 28 United States Code.

§ 2000e-3. Other Unlawful Employment Practices

(a) Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

(b) Printing or publication of notices or advertisements indicating prohibited preference, limitation, specification, or discrimination; occupational qualification exception

It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training

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programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

Link 2:

DIG DEEPER

The Benefits of Diversity

Employment discrimination isn't just unfair. It also prevents institutions from becoming as successful as they could be. Hiring and supporting a diversity of employees benefits everyone.

Creativity

Different identities lead to different perspectives, which can mean more creativity in brainstorming and problem-solving sessions.

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Innovation

Work environments with more diversity are 1.7 times more likely to be innovation leaders in their fields.

Efficiency

A Harvard Business Review study showed that diverse teams are able to solve problems faster than cognitively similar people.

Revenues

A McKinsey & Company report showed that diverse work environments were more likely to outperform their rivals.

Engagement

A Deloitte analysis showed that employers with diverse, inclusive employees had higher engagement, and were better able to retain talent.

Reputation

Employers that prioritize diversity are seen in a more positive light than those that don't.

Title VI. Civil Rights Requirements

Interactivity Audio Script:

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Title VI is part of the Civil Rights Act of 1964, which is a critical federal law that prohibits discrimination on the basis of a person's actual or perceived race, color, national origin, ethnicity, or ancestry, by any program or activity (including institutions of higher education) that receives federal financial assistance. Title VI protects individuals against discrimination involving a range of issues, including discriminatory discipline, racial harassment, and unequal access to educational resources.

Title VI protects against discrimination in all areas of an institution's operations, including academics, extracurricular activities, athletics, and other programs, but only applies to employment practices if the main purpose of the federal funding is to provide employment (e.g., students employed under the work-study program), or if the employment discrimination results in discrimination in providing educational programs or services.

Institutions must take care to monitor their practices and policies to be sure that they do not exclude students who are members of underrepresented groups, even if the intention of the policy was not discriminatory.

A particular focus in this law is to provide people with limited English proficiency meaningful access to programs that receive federal funds by providing language services and equal educational opportunities to English learners.

Interactivity text:

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Legal Resource

Tab 1: Title VI of the Civil Rights Act of 1964.

Title 42-THE PUBLIC HEALTH AND WELFARE

CHAPTER 21—CIVIL RIGHTS

SUBCHAPTER V—FEDERALLY ASSISTED PROGRAMS

§ 2000d. Prohibition against exclusion from participation in, denial of benefits of, and discrimination under federally assisted programs on ground of race, color, or national origin

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Alt-Text:

A group of people are walking across a city crosswalk.

Title IX: Sex Discrimination

Interactivity Audio Script:

Title IX protects students and employees, including faculty and student workers, at federally funded institutions, against discrimination based on sex or gender

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stereotyping in education programs and activities. Title IX also prohibits discrimination based on pregnancy, childbirth or related conditions.

LEGAL RESOURCE

Tab 1: Title IX of the Education Amendments of 1972.

Title 20—EDUCATION

CHAPTER 38—DISCRIMINATION BASED ON SEX OR BLINDNESS

§ 1681. Sex

(a) Prohibition against discrimination; exceptions

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that:

(1) Classes of educational institutions subject to prohibition in regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education;

.... Content omitted for clarity.

(3) Educational institutions of religious organizations with contrary religious

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tenets this section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization;

(4) Educational institutions training individuals for military services or merchant marine this section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine;

(5) Public educational institutions with traditional and continuing admissions policy in regard to admissions this section shall not apply to any public institution of undergraduate higher education which is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one sex;

(6) Social fraternities or sororities; voluntary youth service organizations this section shall not apply to membership practices-

(A) of a social fraternity or social sorority which is exempt from taxation under section 501(c)(6) of title 26, the active membership of which consists primarily of students in attendance at an institution of higher education, or

(B) of the Young Men's Christian Association, Young Women's Christian Association, Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations which are so exempt, the membership of which has traditionally been limited to persons of one sex and principally to persons of less than

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nineteen years of age;

.... Content omitted for clarity.

(b) Preferential or disparate treatment because of imbalance in participation or receipt of Federal benefits; statistical evidence of imbalance

Nothing contained in subsection (a) of this section shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any federally supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, State, section, or other area. Provided, That this subsection shall not be construed to prevent the consideration in any hearing or proceeding under this chapter of statistical evidence tending to show that such an imbalance exists with respect to the participation in, or receipt of the benefits of, any such program or activity by the members of one sex.

(c) "Educational institution" defined

For purposes of this chapter an educational institution means any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or

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department which are administratively separate units, such term means each such school, college, or department.

A Spectrum of Biased Behavior

Interactivity Audio Script:

Problematic and discriminatory behavior exists on a wide spectrum—from small, unintentional comments to more severe, even criminal forms of discrimination.

Select each number to learn more.

Hotspot 1: One

A coworker is discussing a new non-binary employee with another coworker:
"They pronouns are just confusing and hard. I don't get why we have to do this... it's so high maintenance."

Hotspot 2: Two

An employee feels nervous around a coworker with a mental health disorder and order and avoids working with them.

Hotspot 3: Three

A manager doesn't accommodate his male employee's therapy schedule because he thinks its weak for men to process their feelings.

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Hotspot 4: Four

A manager only asks his only female employee to take notes even though that is not a part of her job description.

Hotspot 5: Five

An interviewer recommends that his company not hire an employee born in that country because "everyone in their country is corrupt."

Hotspot 6: Six

One coworker asks another how the new employee is doing, "Oh you know, hard-working and serious, like all Asian people!"

Maternity Misgivings

Interactivity Audio Script:

Warning signs of discrimination are variable and often subtle.

Select a response.

Interactivity text:

Faiza is an independent contractor hired to oversee the design of a website. Faiza doesn't want Dawn, a department employee who is pregnant, to be assigned to the project fearing that she will "take maternity leave and never come back."

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Question-Text:

Is this a warning sign?

Options:

Yes

No

Answer:

Yes

Feedback:

Feedback 1

That's Right

This scenario demonstrates warning signs of bias that could lead to discriminatory conduct if they aren't addressed.

Feedback 2

Not Quite

This scenario demonstrates warning signs of bias that could lead to discriminatory conduct if they aren't addressed. Try again.

Non-Fluent English

Interactivity Audio Script:

Discrimination is not always clear, and it's important to remember that intention is not the deciding factor when it comes to discrimination. Even people with the best intentions can demonstrate problematic behavior.

Select a response.

Interactivity text:

Camilla is hiring a marketing manager who will be responsible for overseeing all external communications in the U.S., including working as a spokesperson who handles public speaking appearances at events where the audience primarily speaks English. She interviews a candidate who reports having moderate fluency in English. The ability to speak fluent English is a requirement of the job. That said, Camilla and the candidate can still understand each other pretty well. However, Camilla decides to move forward with other candidates.

Question Text:

Is this possible discrimination?

Options:

Yes

No

Answer:

No

Feedback:

Not Quite

It is OK to make employment decisions based on someone's capacity to do the job. Camilla does need someone who speaks fluent English for an external communications role that involves public speaking to an English-speaking audience. Try again.

Feedback 2

That's Right

This job requires fluent English because the marketing manager will oversee all external communications in the U.S., including public speaking to an English-speaking audience. If the job involved less outward-facing communication, however, it might be unfair of Camilla to discount the candidate when there were no comprehension issues that would have gotten in the way.

Cultivating Attitudes and Identifying Harassment

Interactivity Audio Script:

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The second A in the three A's of bystander intervention is Attitudes. Your attitude can have a positive impact on your colleagues and the safety of your work environment.

Video Script:

The attitude you bring to work makes a difference, as do the attitudes you expect and encourage from those around you. Harassment is one of the most damaging forms of discrimination and can undermine the attitudes and expectations we all share for a positive workplace. Most people recognize harassment as unacceptable, but maintaining a respectful, equitable environment means actively making it clear that harassment has no place in the workplace. Your attitude is part of creating this environment. More than just what you think and perceive, your attitude includes how you support, encourage, and maintain a professional workplace atmosphere. Here we'll practice the skills necessary to support colleagues who intervene in response to harassment, including sexual harassment.

Discrimination vs. Harassment

Interactivity Audio Script:

Harassment is a particular type of discrimination that includes unwelcome or offensive conduct toward another person.

Discrimination is the generic term for all kinds of biased treatment that negatively impacts a person's job opportunities based on their protected

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characteristics. Like discrimination, certain forms of harassment are prohibited by federal, state, or local laws, and some aren't. For example, workplace bullying (also called "abusive conduct") is generally not illegal, but it's always harmful.

Select each item to learn more.

Interactivity Text:

Tab 1: Hostile Work Environment

Although federal, state, and local laws may have different definitions, a hostile work environment generally involves unwelcome conduct based on a person's sex or other protected characteristics that is intimidating, abusive, or offensive. Petty slights, annoyances, or isolated incidents unrelated to a person's protected characteristics do not generally create a hostile work environment. However, actions and comments may cross the line into unlawful conduct when the behavior creates a work environment that a reasonable person would consider hostile. A "work environment" doesn't just refer to the physical work area, but can be anywhere that harassment impacts work (e.g., online harassment could potentially result in a hostile work environment).

Tab 2: Quid Pro Quo Harassment

This form of harassment typically involves a person in a position of authority asking a subordinate or student to submit to unwelcome sexual conduct in exchange for an academic or a work benefit or decision. Quid pro quo harassment is illegal whenever the conduct is unwelcome, even if the person

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submitting seems to go along with it.

Tab 3: Abusive Conduct (Bullying)

Though many forms of abusive or offensive conduct are not yet prohibited by law, abusive conduct doesn't have to be illegal to cause harm. It's our responsibility to keep our learning and work environment respectful and avoid all kinds of abusive conduct. Like harassment and discrimination, abusive conduct does not have to happen at the physical workplace or during work hours to negatively impact the work environment (e.g., cyberbullying or trolling among coworkers during off-hours).

Alt-Text:

Two colleagues, one of whom looks frustrated, having a conversation.

DIG Deeper:

Who's at Risk?

Anyone can be a target of harassment, but marginalized groups tend to be at greater risk. This includes people who identify as LGBTQIA+, a racial minority, or as having a disability.

Cultural and Language Differences

People who are unfamiliar with a country's customs and laws may find it more difficult to report harassment, particularly if there is a language barrier.

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Undocumented people are at even greater risk. However, federal anti-harassment laws apply regardless of a person's citizenship or immigration status, or their national origin.

Isolated or Remote Work Environments

Working in a setting where there are few people around poses a greater risk of harassment. People who abuse know that, without bystanders, the person being harassed is less likely to receive help or have a witness to prove what happened. Similarly, some employees who work remotely may mistakenly believe that laws and policies against harassing behavior don't apply beyond the physical workplace (they do).

Gender Harassment

LGBTQIA+ individuals who do not conform to stereotypical gender norms for behavior, appearance, or personality traits experience sexual harassment at much higher rates than non-LGBTQIA+ individuals. Gender harassment includes demeaning jokes or comments about an individual or group, especially in work environments where men outnumber women, or the occupations are not typically held by women.

People in Power

When a work environment has significant power disparities, there is greater risk of harassment. People with less power may think harassment is just part of the job. For others, disparities in power make it harder to report harassment for fear

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of repercussions. For example, one in ten female graduate students at major research universities reported being sexually harassed by a faculty member.

People with Disabilities

Individuals with disabilities may be subjected to verbal harassment, ordered to perform work beyond their physical abilities, and assigned to perform work in a space without accommodations, causing them further physical and mental harm.

Independent Contractors and Interns

Someone who works as a non-official part of an institution often has less support if they are harassed. Furthermore, employers may see them as replaceable, leading to less concern over their welfare.

Dig Deeper: Who's at Risk?

Interactivity Audio Script:

Discrimination vs. Harassment.

Harassment is a particular type of discrimination that includes unwelcome or offensive conduct toward another person.

Discrimination is the generic term for all kinds of biased treatment that negatively impacts a person's job opportunities based on their protected characteristics. Like discrimination, certain forms of harassment are prohibited

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by federal, state, or local laws, and some aren't. For example, workplace bullying (also called "abusive conduct") is generally not illegal, but it's always harmful.

Select each item to learn more.

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Alt-Text:

Two colleagues, one of whom looks frustrated, having a conversation.

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research universities reported being sexually harassed by a faculty member.

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Individuals with disabilities may be subjected to verbal harassment, ordered to perform work beyond their physical abilities, and assigned to perform work in a space without accommodations, causing them further physical and mental harm.

Independent Contractors and Interns

Someone who works as a non-official part of an institution often has less support if they are harassed. Furthermore, employers may see them as replaceable, leading to less concern over their welfare.

Types of Harassment

Interactivity Audio Script

Harassment can take on many forms, which makes it challenging to spot—especially when it's subtle.

Let's explore some types of harassing behavior that can manifest in the work environment. Whether they are illegal harassment depends on applicable law and the specific circumstances, but they are all harmful.

Select each topic to learn more.

Interactivity text:

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Tab 1: Sexual or Sex-Based

This includes unwelcome sexual advances, requests for sexual favors, retaliating (or threatening to retaliate) for refusing sexual advances, negative comments about pregnancy or working mothers, sexually suggestive jokes and comments, displaying pornography, inappropriate touch, or sexual assault.

Tab 2: Gender

This includes negative behavior directed at individuals based on their transgender status, sexual orientation, gender identity, gender expression, or any other characteristics that do not conform to stereotypical assumptions about gender. The person experiencing the harmful behavior can be any gender; the person who harasses them can also be any gender.

Tab 3: Disability or Genetics

This can include questions about a person's disability or genetic information, posting stigmatizing images, putting someone's aids or adaptations out of their reach, or making discouraging comments about their capabilities.

Tab 4: Age

This includes stereotyping and harassment based on a person's age, age-related jokes or nicknames, making hostile remarks or assumptions about a person's competence, capabilities, or commitment to their work based on their age, and offensive comments about someone's appearance as it relates to their age.

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Tab 5: Race or Color

This can include racial slurs, putting up offensive images or symbols, touching someone's hair, invasive questioning, or inappropriate and offensive comments about someone's appearance based on their race or the color of their skin.

Tab 6: Religion

This can include unwelcome attempts to convert people or mocking someone's religion. It can also involve invasive questioning or insensitivity to religious observances like holidays, prayer time, or religious dress.

Tab 7: National Origin

Making jokes about a person's country of origin or ethnicity, making offensive comments about someone's accent, or teasing someone about their "weird" name are examples of harassment based on someone's ethnicity or national origin. It can also involve insisting that they "speak English!" or telling someone to "go back where you came from."

Tab 8: Social Class

Biased comments about someone's income level, the neighborhood in which they live ("you make it to work without getting shot?"), or their educational background are examples of harassing behavior toward someone based on their socioeconomic status.

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Tab 9: Weight and Height

Harassment based on a person's size can include making jokes and offensive remarks, or weight or height shaming. It may also involve making unwelcome remarks about someone's size as it pertains to their dating life, eating habits, or health.

Types of Harassment

Interactivity Audio Script:

Perspectives: Abusive Conduct

Here is one person's perspective on the importance of recognizing patterns of inappropriate behavior.

Video Script:

Just because things have been done a certain way in the past, and just because it's traditional to behave a certain way, doesn't mean it's the right thing to do. If I didn't like it, I'm not going to do it to anybody else. The cycle stops with me.

What is Illegal Sexual Harassment?

Interactivity Audio Script:

Sexual harassment is a form of discrimination under federal, state, and numerous local laws.

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Sexual harassment is never acceptable, and some states have specific legal guidance on what constitutes illegal sexual harassment. Some states' laws are listed here for you to explore.

Review the links to explore state laws concerning illegal sexual harassment.

Interactivity text:

Sexual harassment is a form of discrimination under federal, state, and numerous local laws.

Sexual harassment is never acceptable, and some states have specific legal guidance on what constitutes illegal sexual harassment. Some states' laws are listed here for you to explore.

Review the links to explore state laws concerning illegal sexual harassment.

The Spectrum of Potential Harassment

Interactivity Audio Script:

It's likely that you will be able to tell when overt harassment occurs and know when to intervene. But when harassment is subtle, it's harder to determine whether to get involved.

Interactivity Text:

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Tab 1: Disparaging Comments Based on Stereotypes

An employee sees a Latinx colleague yawning after lunch. Once the Latinx employee is out of earshot, she says to another colleague: "You know how those people need their siestas!"

Tab 2: Inappropriate Touch

During a meeting, a senior level staff member sits very close to a new employee and repeatedly touches them on their leg and shoulder, seemingly for "emphasis".

Tab 3: Insensitive Jokes

An older employee asks a younger employee for a reminder about how to log work hours. The younger employee answers but jokes the older one is "going senile".

Tab 4: What Are You?

A biracial employee is asked about her ethnic heritage far more often than her White colleagues are.

Tab 5: Disproportionate Praise

A department head constantly tells a blind employee how "inspiring" he is for doing the same tasks as other employees.

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We Are All Contributors

Video Script:

Creating an environment in which people feel empowered and supported to intervene when necessary, takes commitment by everyone.

After all, a positive workplace culture is formed by our daily attitudes and actions.

Making the choice to intervene when you see harassment or its early warning signs can have a big impact.

Most people want to help and would support a colleague who takes action in a problematic situation, but they often lack the tools to offer their help and support confidently and effectively.

The Bystander Effect

Interactivity Audio Script:

The more people who witness an incident, the less likely it is that someone will intervene—that's the power of the Bystander Effect.

Interactivity Text:

Tab 1: Reason#1

Observing people who witness an incident but do not intervene can cause

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someone to assume that the behavior is acceptable and they're the only one who is uncomfortable.

Tab 2: Reason#2

When many people observe a potentially harmful or unprofessional situation, individuals feel less personal responsibility to intervene. They may assume that, with so many people around, surely someone else will help.

Tab 3: Reason#3

Bystanders often wait in confusion to see if someone else will intervene. This is a natural response, but it doesn't mean the impacted person doesn't need help.

Intervene as Appropriate

Interactivity Audio Script:

Good leaders know there's no "one size fits all" approach to supporting employees. Instead, they must pay attention to the unique nature of each workplace issue.

When interactions lead to conflicts or concerns, supervisors should intervene in a way that matches the nature and seriousness of the problem. Here are some guidelines for those interventions.

Select the arrows to learn more.

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Interactivity Text:**Carousel 1: Be prompt.**

Supervisors have a responsibility to intervene before a small problem grows bigger—they shouldn't wait for things to get worse, or for an "official complaint."

Carousel 2: Use the right strategies.**Use the right strategies.**

Escalating misconduct requires an escalation in response; supervisors have a duty to take appropriate measures to respond proportionately to misconduct that rises to the level of discrimination, harassment, and retaliation, including by reporting it to designated persons.

Alt-Text:

A supervisor sitting behind a desk talking with two employees.

Staying Silent**Interactivity Audio Script:**

Intervening when no one else is responding can feel difficult. However, taking no action is not a neutral behavior. Silence is exactly what harassment needs to thrive.

Select a response.

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Interactivity text:

Greg and Weinan are talking in the break room, where many people are eating. Greg begins speaking loudly in a stereotypical Chinese accent, and Weinan is smiling. Nobody is saying anything or even seems to notice—they all just keep doing what they're doing.

Question-Text:

What should you do?

Options:

- Take a cue from Weinan and the people around you. They must know something you don't, and that's why they aren't intervening . . . maybe it's an inside joke you haven't heard yet.
- Say something. Mocking an accent is offensive. It might be hurtful to other people within earshot, or even Weinan.

Answer:

Say something. Mocking an accent is offensive. It might be hurtful to other people within earshot, or even Weinan.

Feedback:

Feedback 1:

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Not Quite

If you're uncomfortable, the chances are that others are too. Mocking an accent is offensive, and intervening is the right thing to do. Try again.

Feedback 2

That's Right

If you're uncomfortable, the chances are that others are too. Mocking an accent is offensive, and intervening is the right thing to do.

The Cutest

Interactivity Audio Script:

Even well-meaning people can sometimes get caught up in obstacles and miss important moments to take action.

Interactivity Text:

You're in the cafeteria with two colleagues, Jessica and Kim, who is Asian. Jessica sees Kim's phone background. It's a picture of her and her husband. Jessica says "Oooh, your husband's White? He's good-looking! You two have to have lots of babies ... half-Asian babies are the cutest."

Question-Text:

What should you do?

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Options:

- Say nothing. Jessica is giving Kim a compliment, and besides, Kim smiled.
- Intervene. Kim might have felt uncomfortable about Jessica making comments about her race, her husband's appearance, or the prospect of having children.

Answer:

Intervene. Kim might have felt uncomfortable about Jessica making comments about her race, her husband's appearance, or the prospect of having children.

Feedback:

Feedback 1:

Not Quite

Sometimes, even something intended as a compliment can be derogatory or make someone uncomfortable, even if they smile. Try again.

Feedback 2:

That's Right

Sometimes, even something intended as a compliment can be derogatory or make someone uncomfortable, even if they smile.

Taking Action Against Retaliation

Interactivity Audio Script:

The third A in the three A's of bystander intervention is action. Taking action means getting involved if a problematic situation arises, before it escalates into something worse.

Video Script:

Narrator: Most people do not engage in misconduct and don't approve of it, but misconceptions and self-doubts can get in between thinking this is wrong and taking action. While many people feel concerned when they see or hear about misconduct, they may incorrectly assume they are alone or won't be supported in taking action. Sometimes people want to intervene but are unsure how to do so. Not every situation calls for the same approach, but every problematic situation does call for some form of intervention. Like discrimination and harassment, retaliation is a serious threat to individuals and organizations that needs to be addressed to maintain a positive environment in the workplace. Let's look at the problem of retaliation as we explore a variety of options for intervention so that you are ready to get involved if a situation arises.

What Is Retaliation?

Interactivity Audio Script:

Retaliation is when an employee is punished for engaging in an activity that is

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legally protected, including reporting suspected harassment or discrimination.

Retaliation is not only wrong—it's illegal.

Sometimes, this behavior may extend to someone just because they're closely associated with the person who is the main target of the retaliation.

Cultivating a positive workplace culture means supporting one another in taking action against problematic actions and behaviors, including retaliation.

Retaliation is the most common discrimination finding in federal cases and occurs when an employee is punished for engaging in an activity that is legally protected, including reporting suspected harassment or discrimination.

Interactivity Text:

What Is Retaliation?

Retaliation is not only wrong—it's illegal.

Sometimes, this behavior may extend to someone just because they're closely associated with the person who is the main target of the retaliation.

For example, it is unlawful to retaliate against someone because they:

- Reported or participated in investigations or proceedings involving harassment or discrimination
- Refused to engage in discriminatory acts

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- Resisted sexual advances or intervened to protect others
- Requested an accommodation of a disability or for a religious practice

Cultivating a positive learning and workplace culture means supporting one another in taking action against problematic actions and behaviors, including retaliation.

Select the following link to explore Title IX's definition of retaliation.

FEDERAL LAW

Tab 1: Title IX Definition of Retaliation

Retaliation Defined

Summary

Title IX: Retaliation Prohibited

Under Title IX, it is unlawful sex discrimination to retaliate against someone who reported sexual harassment, or filed a complaint, testified, assisted, or participated (or refused to participate) in a Title IX investigation, proceeding, or hearing. Retaliation can be intimidation, threats, or other coercive acts.

In order to protect individuals from retaliation, schools are required to keep the identity of complainants, respondents and witnesses confidential during investigations, hearings, and judicial proceedings, except as necessary to carry out their Title IX responsibilities or to comply with other applicable laws.

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However, it is not retaliation under Title IX to:

Exercise free speech rights

Charge an individual with a code of conduct violation for intentionally making a materially false statement in the course of a grievance proceeding; except that a determination regarding responsibility (e.g., that someone was responsible for the conduct alleged in the grievance), alone, is not sufficient to conclude that a party intentionally made a materially false statement

Code of Federal Regulations

TITLE 34—EDUCATION

SUBTITLE B—REGULATIONS OF THE OFFICES OF THE DEPARTMENT OF
EDUCATION

CHAPTER I—OFFICE FOR CIVIL RIGHTS, DEPARTMENT OF EDUCATION

PART 106—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION
PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

SUBPART F—RETALIATION

§ 106.71 Retaliation. Effective Aug. 14, 2020.

(a) Retaliation prohibited. No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by title IX or this part, or because the individual

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has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or this part, constitutes retaliation. The recipient must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination required to be adopted under § 106.8(c).

(b) Specific circumstances.

(1) The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under paragraph (a) of this section.

(2) Charging an individual with a code of conduct violation for making a

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materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation prohibited under paragraph (a) of this section, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

To review New York City's law defining retaliation, select the link below.

New York City

Retaliation Law

Title 8 of the Administrative Code of the City of New York

Chapter 1 — Commission on Human Rights

§ 8-107. Unlawful discriminatory practices.

.... [Content omitted for clarity]

7. Retaliation. It shall be an unlawful discriminatory practice for any person engaged in any activity to which this chapter applies to retaliate or discriminate in any manner against any person because such person has (i) opposed any practice forbidden under this chapter, (ii) filed a complaint, testified or assisted in any proceeding under this chapter, (iii) commenced a civil action alleging the commission of an act which would be an unlawful discriminatory practice under this chapter, (iv) assisted the commission or the corporation counsel in an investigation commenced pursuant to this title, or (v) provided any information

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to the [New York City Commission on Human Rights] pursuant to the terms of a conciliation agreement. [Content omitted for clarity] The retaliation or discrimination complained of under this subdivision need not result in an ultimate action with respect to employment ... [Content omitted for clarity] or in a materially adverse change in the terms and conditions of employment. [Content omitted for clarity], provided, however, that the retaliatory or discriminatory act or acts complained of must be reasonably likely to deter a person from engaging in protected activity.

.... [Content omitted for clarity]

What Does Retaliation Look Like?

Interactivity Audio Script:

As with discrimination, retaliatory behavior may be overt (for example, termination), or subtle (for example, exclusion from workplace activities).

Interactivity Text:

Hotspot 1: Being denied a promotion, refusal to hire, separation from employer.

This is a very serious form of retaliation, and possibly illegal, if any of these things were done because the employee took an action they had a right to take.

Hotspot 2: Bad performance review.

This is a very serious form of retaliation, and possibly illegal, if any of these things were done because the employee took an action they had a right to take.

Hotspot 3: Transfer to another location, increased workload, change of shift, hours, or duties

This is a serious form of retaliation, and possibly illegal, if any of these things were done because the employee took an action they had a right to take.

Hotspot 4: Exclusion from workplace activities.

This is a serious form of retaliation. Excluding someone from opportunities for collaboration or networking may be violation if it was done because they took an action they had a right to take.

Hotspot 5: Subtle expressions of disapproval or lack of good manners.

This is the most serious form of retaliation and is unlikely to be a policy or legal violation. However, these behaviors are still wrong, and deeply harmful to a positive and professional work culture.

When to Take Direct Action

Interactivity Audio Script:

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A direct action is a way to demonstrate strong disapproval about something. This does not have to be an overt instance of discrimination, harassment or retaliation—it may be a subtle situation at work that needs to be addressed.

Interactivity Text:

Carousel 1: Negative Remarks

If you hear negative remarks like, “They just hired her to meet a quota,” replace them with a positive comment. Instead, try saying, “Really? She’s impressed me with her work so far.”

Carousel 2: Hurtful Rumors

If you hear hurtful rumors that exclude people, deflect them. Instead, try saying, “I don’t think it’s true. Let’s invite them to join us.”

Carousel 3: Discriminatory Jokes

If you hear discriminatory-sounding jokes, don’t laugh or join in. Instead, try saying, “Not cool—this isn’t funny,” or try an eye roll or loud sigh.

How to Take Direct Action

Interactivity Audio Script:

A direct action is a way to demonstrate strong disapproval about something. There are a number of ways to take direct action or intervene, and the best one

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to choose will depend on the situation. Here are three to get you started.

Interactivity Text:

Tab 1: Speak Up.

Speaking up can be powerful. If you feel comfortable doing so, say something to either the person who is behaving inappropriately (such as expressing disapproval) or to the person who is experiencing the bad behavior.

Tab 2: Speak for Yourself.

It's usually best to speak for yourself, not for someone else (do say: "I'm offended by what you said to Julie" as opposed to: "Julie here is offended . . .") "Swooping in" to "save" someone who has the situation under control may instead disempower them.

Tab 3: Don't Participate

Non-participation, coupled with a clear expression of disapproval, sends a quiet but direct message. Nonverbal cues, if clearly expressed (and usually accompanied by speaking up), can send a strong message that you do not support the misconduct.

Tab 4: Expert Opinions: A Concerned Friend.

DIG DEEPER

This expert video covers the sensitive topic of how to address concerning behavior by someone you are close to and respect in the workplace.

Alt-Text:

An employee sitting, working on a tablet computer.

Video Script:

A woman speaks directly to the camera. Lower left-hand corner of video, name appears: Elizabeth Bille, Attorney and E/ERP Prevention Expert If you have a concern in the workplace that someone in particular, somebody you really respect or like or admire is actually someone who is engaging in harassment or disrespectful behavior, that can seem like a really tough conversation and a really tough issue to tackle. But in fact, that's exactly the situation where we would want to step forward because you are a respected friend of that individual. They may be more likely to listen to you when you raise your concern. Speaking to them as a peer for example, or speaking to them in a way that says, "I really respect and admire you, but I was concerned when I saw this happen," can really go a long way and will increase the likelihood that they'll receive that feedback and take it to heart. A woman speaks directly to the camera.

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Lower left-hand corner of video, name appears: Holly Rider-Milkovich, EVERFI Prevention Expert

You start by letting them know how much you care about them and how much you want for them to be a part of your life or you want to keep working with them in ways that are great for both of you. And that is the context of the concern that you're bringing to them. And then naming the behavior that you're seeing as clearly and as carefully as you possibly can. Let them know what it is that you're seeing and then in as nonjudgmental terms as possible, let them know why it is that you're concerned and what you're worried about, both for the person who might be the subject of their actions and for them as well. And let them know that you're there to help and that you'd like to help them get support.

How to Take Direct Action

Interactivity Audio Script:

Expert Opinions: A Concerned Friend

This expert video covers the sensitive topic of how to address concerning behavior by someone you are close to and respect in the workplace.

Video Script:

(Elizabeth Bille, Attorney and EVERFI Prevention Expert) If you have a concern in the workplace that someone in particular, somebody you really respect or like or

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admire is actually someone who is engaging in harassment or disrespectful behavior, that can seem like a really tough conversation and a really tough issue to tackle. But in fact, that's exactly the situation where we would want to step forward because you are a respected friend of that individual. They may be more likely to listen to you when you raise your concern. Speaking to them as a peer for example, or speaking to them in a way that says, "I really respect and admire you, but I was concerned when I saw this happen," can really go a long way and will increase the likelihood that they'll receive that feedback and take it to heart. A woman speaks directly to the camera.

(Holly Rider-Milkovich, EVERFI Prevention Expert)

You start by letting them know how much you care about them and how much you want for them to be a part of your life or you want to keep working with them in ways that are great for both of you. And that is the context of the concern that you're bringing to them. And then naming the behavior that you're seeing as clearly and as carefully as you possibly can. Let them know what it is that you're seeing and then in as nonjudgmental terms as possible, let them know why it is that you're concerned and what you're worried about, both for the person who might be the subject of their actions and for them as well. And let them know that you're there to help and that you'd like to help them get support.

Other Ways to Take Action

Interactivity Audio Script:

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Sometimes taking direct action isn't right for the situation. Distracting, delegating and delaying are three other intervention techniques you can use when direct action isn't an option.

Tab 1: Distract.

Distracting allows you to diffuse a tough situation. It can also be a helpful way to gain more time to seek help from others. Some ways you can employ distraction are:

Asking the person engaging in harassment for the time or interrupting and changing the subject to something neutral.

Telling the person who is being harassed that they have an urgent phone call or meeting. Once you're alone with them, offer your support and admit that you just needed an excuse to get them out of the situation.

Tab 2: Delegate.

Delegating allows you to reach out for support when you need it. It calls on power and safety in numbers, or for help from someone with more authority or social pull. Some ways you can employ delegation are:

Asking your colleagues how they feel about the situation and for help intervening.

Seeking advice from someone you trust if you're unsure whether the concerning behavior is bad enough to report.

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Reporting misconduct to human resource professionals.

Calling security or dialing 911 if you feel a situation is unsafe.

Tab 3: Delay.

Delaying offers support to someone after an incident. It is a good tool for times when in-the-moment interventions are impractical or might do more harm than good. Some ways you can employ delaying are:

- Asking the person if what just happened made them uncomfortable.
- Expressing concern.
- Going with them to report the incident.
- Offering to corroborate their version of events if you witnessed the incident.

Turning Mistakes into Learning Moments

Interactivity Audio Script:

Perspectives Turning Mistakes into Learning Moments

In this video, people explore their personal approaches to mistakes and important lessons learned.

Video Script:

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(Ed) I always want to know if there's something that I've done that's wrong. I need to know about it. I make mistakes. Other people make mistakes, and the important thing is that we try to learn from our mistakes and be conscious of what it is we're doing and how we're doing it. A person speaks directly to the camera.

(Nancy) I grew up in a very small community, one that may have not been the most inclusive, especially when it comes to language. I remember going off to college for the first time. I was making a joke, and I used the word retarded. I remember someone stopping in their tracks and telling me that they didn't appreciate the language that I use, especially since they had a family member who identified as having different abilities and that it was a really hurtful word. And I think it was a moment where I had to really put myself and my pride aside to really listen, and engage, and understand why it was hurtful, what impact it has on the community, and what I could do moving forward. It wasn't enough to apologize for it, but to make the decision that that wasn't a word that I was going to use in my language again. We hear phrases all the time like that's so gay or retarded or you know different things that are really impactful and hurtful towards other people. That was one of the first learning moments for me to think about identity with recognition that, yeah, I have one marginalized identity, but I also have privilege in my other identities. I can harm people with those. And so that was a really good learning moment.

(Cassie) I think getting feedback is a gift, honestly and if someone can, and is willing, to give it to you, that is so generous of them.

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Reporting Is a Duty and a Tool

Interactivity Audio Script:

It is important to understand a supervisory employee's obligation to report misconduct.

Select the arrows to learn more.

Interactivity Text:

Carousel 1: Be a Problem Solver.

Employers have an obligation to investigate a complaint and fix the problem. When harassment, discrimination, or retaliation occurs, our policy generally requires a prompt, thorough and impartial investigation. This investigation may occur even if the person who complained wants nothing done.

Carousel 2: Follow Up Quickly.

Employees with supervisory responsibilities have a duty to take immediate and appropriate action when an investigation determines that misconduct has occurred. Remember, the primary goal is to stop the behavior and make sure it does not happen again. So, if a problem persists, we must escalate our efforts. It is not enough to continue an ineffective response.

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Carousel 3: Prevent Further Problems.

Leaders are in the best position to prevent misconduct and take immediate action when it does occur. Reporting misconduct is a supervisory obligation, and an important bystander tool. While they may consider the various methods presented in this section, they should not try to “prove” whether or not misconduct occurred. That’s best left to designated officials.

Carousel 4: When in Doubt, Report.

No matter whether the person specifically tells you that they want to file a formal complaint, or simply says something that indicates there may be a serious issue like harassment, discrimination or retaliation, supervisory employees are required to report it.

Carousel 5: Reporting Is Preventing.

Supervisory employees need to report even if no one complains. In toxic work environments, employees may become used to harassment and accept it as a norm rather than complaining. By setting clear expectations for healthy and positive work culture, and by reporting problematic behaviors even when no one has complained, true leaders show that a respectful work environment is the new norm.

Don’t Forget to Follow Up

Interactivity Audio Script:

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Addressing the problem is only the first step. It's important to remember that some follow-up may be appropriate.

Select each topic to learn more.

Interactivity Text:

Tab 1: Check in periodically.

Supervisory employees should proactively and periodically check in with the people involved to make sure there are no ongoing issues.

Tab 2: Watch for retaliation.

Everyone, but especially people in leadership positions, should make sure that colleagues do not retaliate against or alienate someone who brought an issue to light, who participated in the investigation, or who was accused and either disciplined or exonerated by an investigation. Supervisory employees aren't allowed to treat an employee differently just because the person complained about discrimination or harassment.

Tab 3: Be sensitive and respectful.

Be sensitive to the trauma that someone may have suffered from harassment, discrimination or retaliation. It's best to stay aware of the potential effects of trauma, while still respecting the person's privacy. Supervisory employees may also introduce options to access therapeutic and support resources to help the

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employee deal with the trauma.

Tab 4: Remain impartial.

Leaders should focus on objective, measurable aspects of performance and helping employees succeed at their job.

Alt-Text:

An employee sitting at a computer, working.

Legal Penalties and Remedies

Interactivity Audio Script:

Employees who commit harassment, discrimination or retaliation can be subject to discipline, including separation from their employer, or legal consequences. There are also remedies for illegal conduct afforded by the law.

Select each topic to learn more.

Interactivity Text:

Tab 1: Penalties

Harassment harms both individuals and the entire workplace. In addition to holding employers responsible, some states' laws also hold individuals responsible. They may face legal actions and penalties.

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Tab 2: Enforcement

There are federal, state or local enforcement agencies that enforce anti-discrimination laws. Workers may seek remedies internally, through federal, state or local enforcement agencies, or through civil action. The agency that enforces federal laws prohibiting discrimination is the U.S. Equal Employment Opportunity Commission (EEOC), and the U.S. Department of Education's [Office for Civil Rights \(OCR\)](#) enforces federal civil rights laws that prohibit discrimination, harassment, and retaliation in education programs or activities that receive federal financial assistance.

Employers may not retaliate against someone for reporting unlawful discrimination and harassment to the EEOC or OCR, and the EEOC may pursue legal remedies on the person's behalf or grant them permission to file a lawsuit.

Tab 3: Remedies

Anyone found responsible for discrimination or harassment will be disciplined. The responsible person may sometimes be fired, but not always. The goal is always to prevent future harm. If misconduct continues, the discipline will escalate.

There are also legal remedies for illegal conduct that a court or other dispute resolution forum may impose if a legal claim is filed outside of the workplace. For example, workers who experience discrimination or harassment may be awarded lost employment opportunities or benefits, such as being hired or

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promoted, given a raise that was denied, or provided with reasonable accommodations.

Cool Conditions

Interactivity Audio Script:

Now that we have defined retaliation, let's take a look at a few scenarios to see whether you can identify retaliation when it occurs.

Interactivity Text:

About a month ago, Louise complained that her supervisor Rose discriminated against her based on age. There was an investigation, but not enough evidence to prove what Louise said. But now Rose treats Louise in a more formal and "cool" way than before

Question-Text:

Is Louise experiencing illegal retaliation?

Options:

- Yes. Rose treated Louise warmly until Rose complained. Then things went downhill.
- No. Rose's behavior likely isn't illegal retaliation--but she should've taken another approach.

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- Maybe, but only if Rose was specifically instructed not to treat Louise differently as a result of the investigation.

Answer:

No. Rose's behavior likely isn't illegal retaliation--but she should've taken another approach.

Feedback:

Feedback 1:

Not Quite

Rose's lack of personal warmth toward Louise after Louise's complaint is not the best way to behave, and it could impact morale and workplace culture. But it is not generally considered illegal retaliation. Try again.

Feedback 2:

That's Right

Rose's new "business only" focus probably does not have enough of an impact on Louise's job benefits or working conditions to rise to the level of illegal retaliation. Even so, Rose's cool treatment of Louise could be perceived as retaliatory, which could hurt morale and work culture, and lead to complaints.

While managers may understandably feel awkward or even tense after a complaint is made against them, they should still take care to treat everyone in a

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way that promotes a positive work environment.

Feedback 3:

Not Quite

Regardless of whether Rose was instructed not to treat Louise differently, doing so is not the best way to behave, and could impact morale and work culture.

Whether a change in treatment following a complaint rises to the level of illegal retaliation depends on how much it would impact Louise's job, benefits or working conditions. Try again.

Hugging Hack

Interactivity Audio Script:

When you have reason to believe that retaliation is occurring, it's important to know how to take action.

Interactivity Text:

Hallie's supervisor James often asks Hallie if she "needs a hug." She says "no," but he often hugs her anyway. One day, Hallie's coworker Sofia intervenes and tells James that "enough is enough." James feels humiliated by the confrontation, feels he can no longer work with Sofia and has her transferred to a different department.

Question-Text:

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Sofia is considering the following actions. Which would be the least effective?

Options:

- Report to human resource professionals.
- Report to James's supervisor.
- Confront James about the transfer.

Answer:

Confront James about the transfer.

Feedback:

Feedback 1:

Not Quite

Reporting to human resource professionals is a good option under these circumstances. Try again.

Feedback 2:

Not Quite

Reporting to James's supervisor is a good option under these circumstances. Try again.

Feedback 3

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That's Right

This is probably not an effective action. When Sofia confronted James about his unwelcome hugging, he responded by transferring her. There's no reason to believe that confronting him again about a different issue would work better.

Summary

Video Script:

In this course, you learned how discrimination, harassment, and retaliation manifest in the work environment, and what you can do to help prevent these actions and behaviors. Let's briefly review.

Awareness

Be aware of what is happening around you and your colleagues in the work environment. Evaluating and assessing your environment and understanding how harassment occurs and is experienced is the first step to being an active, rather than a passive, bystander.

Attitudes

Maintaining a respectful, equitable environment means actively modeling the attitude that discrimination, harassment and retaliation have no place in the work environment. You can also show a positive attitude toward your institution's initiatives to create a respectful work environment. This will let others around you know that you support a respectful, inclusive work

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environment, and that you expect others to do so as well.

Actions

You have the power to act, either by saying or doing something at the moment you see it or by following up after the fact. If taking action on your own makes you uncomfortable, you can still make a difference by seeking help from others or reporting the situation to someone who is in a position to evaluate it and take action, if necessary.

Resources

Interactivity Audio Script:

There are many resources available that focus on harassment and discrimination prevention. Take a moment to explore some of the resources listed to see which may be most helpful to you.

Select the links to learn more.

Interactivity Text:

National Resources

[AAUW \(American Association of University Women\)](#)

[Human Rights Campaign](#)

[Institute for Women's Policy Research](#)

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[Job Accommodation Network](#)

[Rape, Abuse & Incest National Network](#)

[U.S. Equal Employment Opportunity Commission](#)

[U.S. Department of Justice, Office on Violence Against Women](#)

[U.S. Department of Education's Office for Civil Rights](#)

[Harassment Prevention Resources](#)

Law Resources

[Title IX of the Education Amendments Act of 1972](#)

[Title VI of the Civil Rights Act of 1964](#)

[Title VII of the Civil Rights Act of 1964](#)

Nice Work

Interactivity Audio Script:

You have now completed the Preventing Harassment and Discrimination: Gateway course.

Thank you for being a part of the commitment to cultivate and maintain a culture of respect in our institution's working and learning environment. Remember, this is an ongoing process. What you do every single day has a

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positive impact on the lives of others.

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