

The Rules of the Road on the Way to a Harassment- and Discrimination-Free Workplace

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Outline

- Why are we here?
- Common claims against elected officials
- Who belongs to a Protected Class
- Red Light Conduct - Illegal Discrimination and Harassment
- The City's Policy – Be prepared if a complaint comes to you.
- Wrap-Up



Why are we here?



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EEOC/CIS Statistics

- In 2017, the Equal Employment Opportunity Commission (EEOC) received over 84,000 allegations of harassment, discrimination and retaliation.
- These same type of claims account for over 80% of CIS' employment claims (457 claims in past 10 years)



Legal Reasons for Training

- The City's employees have the right to work in an environment that is free from unlawful harassment and discrimination.
- The City of Canby is required by law to train its staff on the topics of discrimination and harassment.



Legal Reasons for Training

- The City is *legally* responsible for the acts of:
 - Its supervisors and managers, *as well as elected officials*
 - Co-workers behaving badly (if the City knew or should have known about the bad behavior and failed to fix the problem)
 - Residents/taxpayers, vendors, and other outsiders who interact with City employees as part of the employees' jobs



Non-Monetary Litigation “Costs”

- *Time*: The unquantifiable "cost"
 - Assisting with document requests and discovery
 - Attending your deposition
 - Listening to/reviewing lawsuit updates
 - Mediation: Courts will get you involved
 - Trial
 - Spending quality time with your lawyer
- *Publicity*: The &&^!\$\$!! "cost"



Common Claims Against Public Officials



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Using office for
personal gain



Failure to follow City
policies



Open meetings laws and
removing disruptive
citizens

Employment
decisions



Defamation

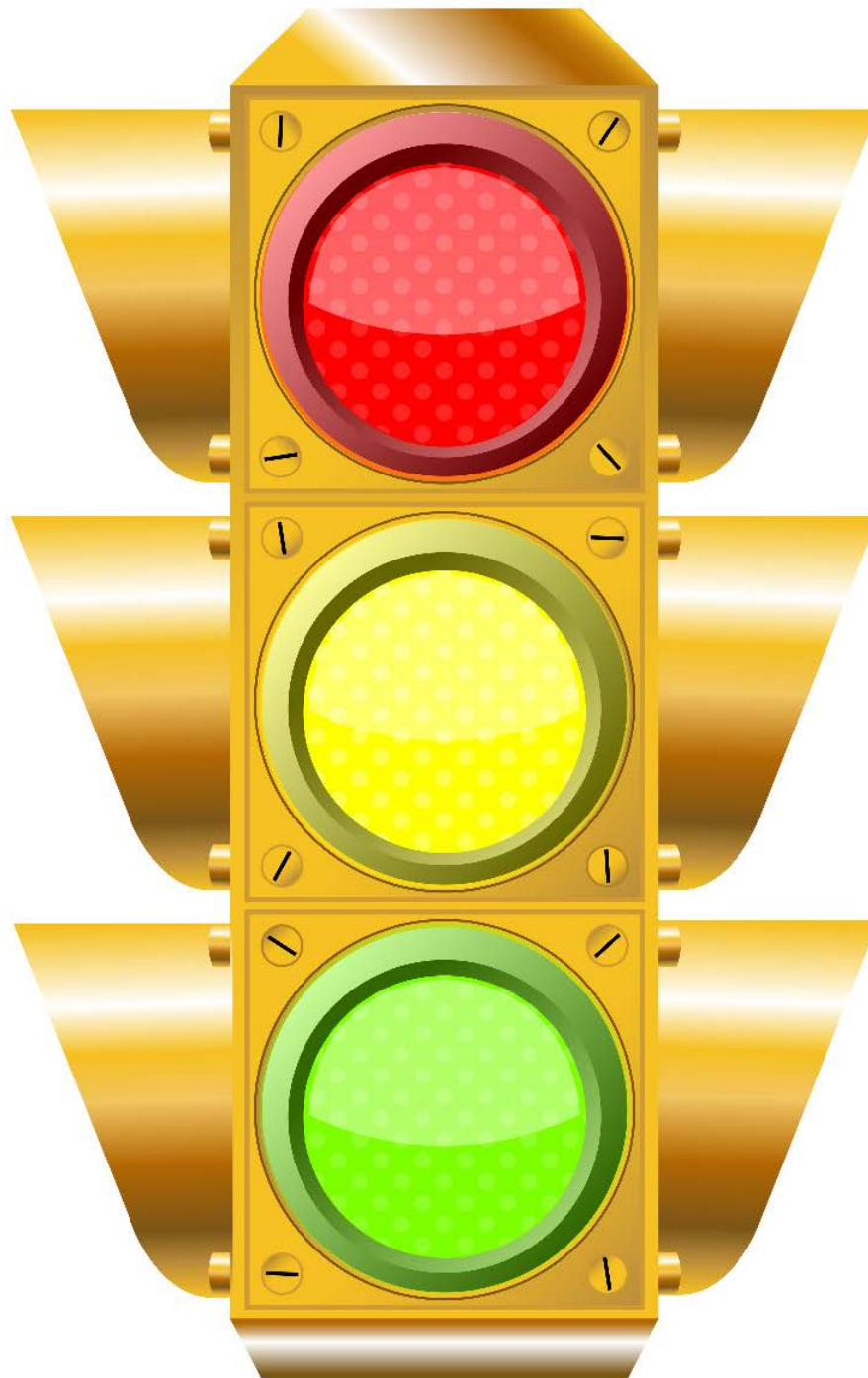
Conflict of
interest claims



Common Claims Against Public Officials

1. Employment decisions: termination, layoff, or suspension
 - Failure to provide due process when terminating
2. Defamation: (or, explaining how the manager is a horrible, corrupt person and you had to fire him/her on your first day)
3. Causing a “hostile work environment” for staff: (or, doing the manager’s job instead of yours)
 - Usually outside the scope of your authority





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First Impression - Where does this conduct fall on the spectrum?

- Giving your co-worker a hug on a bad day
- Complimenting a female co-worker for her driving
- Rolling your eyes at your boss
- Calling someone a nickname
- Giving a coworker a gift after he/she helped you out
- Complimenting a coworker on recent weight loss
- Forwarding photos of a drunk coworker to other coworkers via text, email, or the internet



Protected Classes and Protected Activity



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Protected Classes: Who You Are

- Race
- Color
- National origin
- Sex
- Pregnancy
- Disability
- Religion
- Age (over 18 in Oregon)
- Marital status
- Family relationship
- Injured worker (WC)
- Sexual orientation
 - Gender identity
 - Gender expression
- Genetic background



Protected Classes: What You Did/Do

- Served in the military
- Used protected leave (sick leave, military, family, legislative, bone marrow, jury duty)
- Opposed unlawful practices
- Associated with a member of a protected class
- Had your wages garnished
- Expunged juvenile record
- Filed bankruptcy
- Testified in criminal or civil proceedings
- Used tobacco in off duty hours



Illegal Discrimination, Harassment, and Retaliation



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What is “Unlawful Discrimination”?

- To treat someone differently because of their protected class status; **OR**
- “Hostile work environment”; **OR**
- Retaliation



Deep Dive – Sex Discrimination

- Sex Discrimination includes discrimination:
 - Sex (both male and female)
 - Because of pregnancy, childbirth, and related medical conditions
- Covers all aspects of employment, including decisions about pay, assignments, promotions, training, and benefits!



Deep Dive – National Origin Discrimination

- National Origin Discrimination includes discrimination:
 - Because of an individual's, or his or her ancestor's, place of origin
 - Because of their national origin group
- Covers perception and association. It is illegal to discriminate against someone perceived to be from a certain country whether they are or not



Other Examples of Discrimination

- Age:
 - Not giving an assignment because the person is perceived to be close to retirement.
 - Making accommodation because of the employee's age – “be more careful.”
- Gender:
 - Refusing to promote a woman because she's pregnant and won't be able to travel when the baby comes.



Discrimination: Not Just in Firing

Federal and Oregon law prohibits discrimination in:

- Recruiting, interviewing, hiring
- Compensation
- Benefits
- Terms or conditions of employment
 - Includes trainings, advancement opportunities
 - Includes exclusionary invitations (business-social invitations that are not inclusive of all employees)
- Termination (includes “constructive” discharge)



Types of Harassment

- Hostile Work Environment
- Sexual Harassment
 - Quid Pro Quo Harassment
 - Hostile Work Environment
- Retaliation
- Bullying & Microaggressions



What is a “Hostile Work Environment”?

Harassment violates the law, and creates a “hostile work environment,” if it involves:

- Discriminatory treatment on the basis of
 - Any ***protected class status***; or
 - Any ***protected activity*** under the anti-discrimination or other employment law statutes



What is a “Hostile Work Environment”?

- The law does not prohibit simple teasing or offhand comments – this is not a “civility code”
- The conduct must be ***so objectively offensive*** as to alter the conditions of the victim’s employment
 - The conditions of employment are altered only if the harassment (based on protected class status):
 - Culminated in a tangible employment action; or
 - Was ***sufficiently severe or pervasive*** to create a hostile work environment



Single Incident Harassment

A single episode, or a single comment, can create an unlawful hostile work environment if it is:

- Severe
- Unusually demeaning
- Physical, particularly where threatening

More Importantly: One incident/comment violates the City's policies!



Examples of Harassment

Based on:

- Sexual orientation
 - Homophobic jokes or slurs, comments about mannerisms or sexual activity
- Gender identity or expression
 - Comments about their clothes or the way they style their hair
 - Not using correct names or pronouns
 - Gender-specific dress codes



Examples of Harassment

- National Origin Harassment

Offensive or derogatory comments

- Ethnic slurs
 - Using derogatory names
 - Making fun of someone's accent or the way they say particular words
- Relying on cultural, ethnic, or racial stereotypes



What is Sexual Harassment?

Unwelcomed, unwanted or offensive sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature.



What is “Sexual Harassment”?

- **“Quid pro quo”**

- When submission to sexual demands is a term or condition of employment (or when refusing sexual demands is a basis for employment decisions)
- Offers to give employment benefits or let an employee keep them in exchange for sexual favors
- One single event is enough



What is “Sexual Harassment”?

- A **“hostile work environment”**:
 - Unwelcome sexual advances
 - Visual, verbal, or physical conduct of a sexual nature, or requests for sexual favors
 - ☐ Displaying sexually inappropriate pictures
 - ☐ Unwanted touching
 - ☐ Discussing sex act or using suggestive language



What the Cases Teach Us

- Sexual harassment can be a legal violation long before the conduct affects psychological well being
- Different people can have very different views of the conduct that may constitute sexual harassment — one person's teasing can be another person's "torment"
- It does not depend on the gender of the participants (men can unlawfully harass men)



Retaliation: Also Illegal Discrimination

- **What:** A bad employment action happens (hiring, termination, demotion, etc.)
- **Why:** Because the employee has:
 - Made a good-faith complaint about discrimination, unequal pay, harassment, gross mismanagement of City funds, or some other unlawful conduct; OR
 - Filed a grievance, talked to a lawyer, or filed a complaint with BOLI/EEOC or OSHA



Bullying and Micro-Aggressions



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What is Bullying?

- Actions that are
 - Repeated or serious
 - Unreasonable or unwarranted
- Directed at
 - An individual or group (typically weaker or defenseless)
- If they
 - Are intended to intimidate, offend, humiliate, or degrade or
 - Create a risk to safety and/or mental or physical health



Examples of Bullying Behavior

- Verbal abuse (yelling, swearing)
- Nonverbal abuse (glaring, refusing to communicate at all)
- Making fun of personal beliefs, clothing, appearance, weight, hobbies, food choices
- Placing blame or discrediting, false accusations
- Name calling
- Practical jokes (directed at one person)
- Malicious gossip
- Sabotage
- Threats (any kind)



What ISN'T bullying?

- Having high work standards for everyone
- Having high expectations for everyone
- Enforcing deadline requirements for everyone
- Keeping work and workers on time for everyone
- Tracking attendance for everyone
- Enforcing the rules for everyone
 - Holding people accountable



Micro-Aggressions – The Working Definitions

- Everyday verbal or nonverbal slights, snubs, and insults, which communicate hostile, derogatory, or negative messages to members of non-dominant groups by members of a dominant group.
- Can be intentional, but are often unintentional



What do micro-aggressions look like?

- Complimenting a co-worker who is a person of color “You speak good English.”
- Asking a co-worker of a different race “How long have you been in the United States?” or “Where are you from?”
- Sharing with a co-worker with a disability that you are inspired by the way they have overcome their disability.
- Telling a co-worker that their name is hard to pronounce.



What do micro-aggressions look like?

- Co-workers not sitting at a table with an employee of a different race or color.
- Assuming older employees are not good at technology
“Hold on, let me show you how it works.”
- Telling an employee of a different ethnicity “Don’t be shy, we want to hear from you”.



Micro-aggressions and the Law

- Micro-aggressions alone may not be illegal:
 - Are the comments objectively (instead of subjectively) harassing?
 - Are the comments severe or pervasive to alter the working conditions?
 - Do the comments create an abusive environment?
- But they may be used as evidence of discrimination or a “hostile work environment.”



The City of Canby's Discrimination and Harassment Policies



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Policy



Preventing Discrimination and Harassment

- As an elected official for the City, you must become familiar with and enforce these anti-harassment and no-discrimination policies
- Set a good example by engaging in professional, respectful behavior
- Learn to identify when an employee is raising a concern or making a complaint and understand what to do to address it (even if it is a rumor)



Reporting Discrimination and Harassment

- The City's policy encourages employees to report potential violations of its anti-harassment and no-discrimination policies
 - To their Department (supervisor or Department Head), Human Resources, the Assistant City Administrator or the City Administrator.
 - If they feel they have been the subject of harassment or bullying, or observed conduct
- They are also told to expect that an investigation into their complaint may follow



Reporting Obligations

City employees should report:

- policy violations that are personal
- policy violations that they observe
- policy violations that they did not observe, but about which they have credible information



Be Prepared

As the elected official, you need to know what to do if a report comes to you.

- Direct employee to supervisor or HR.
- Report to the Human Resources ASAP.
- Keep information confidential.
- Tell employee that he or she cannot be retaliated against to bring forward concerns.



What Happens When a Report is Made?

- The City is required to investigate complaints and reports of harassment
- A typical complaint investigation may include:
 - Interviews with the persons involved (including the accused and witnesses)
 - Reviews of documents, files, printed material
 - A decision-making process to determine if the complaint or report is substantiated
 - A decision-making process to determine if discipline or corrective action is warranted



What Kind of Discipline Occurs?

- If a complaint of harassment or discrimination is substantiated:
 - The law requires discipline to ensure that the misconduct will not be repeated.
 - If the misconduct is severe, or repeated, termination is likely.



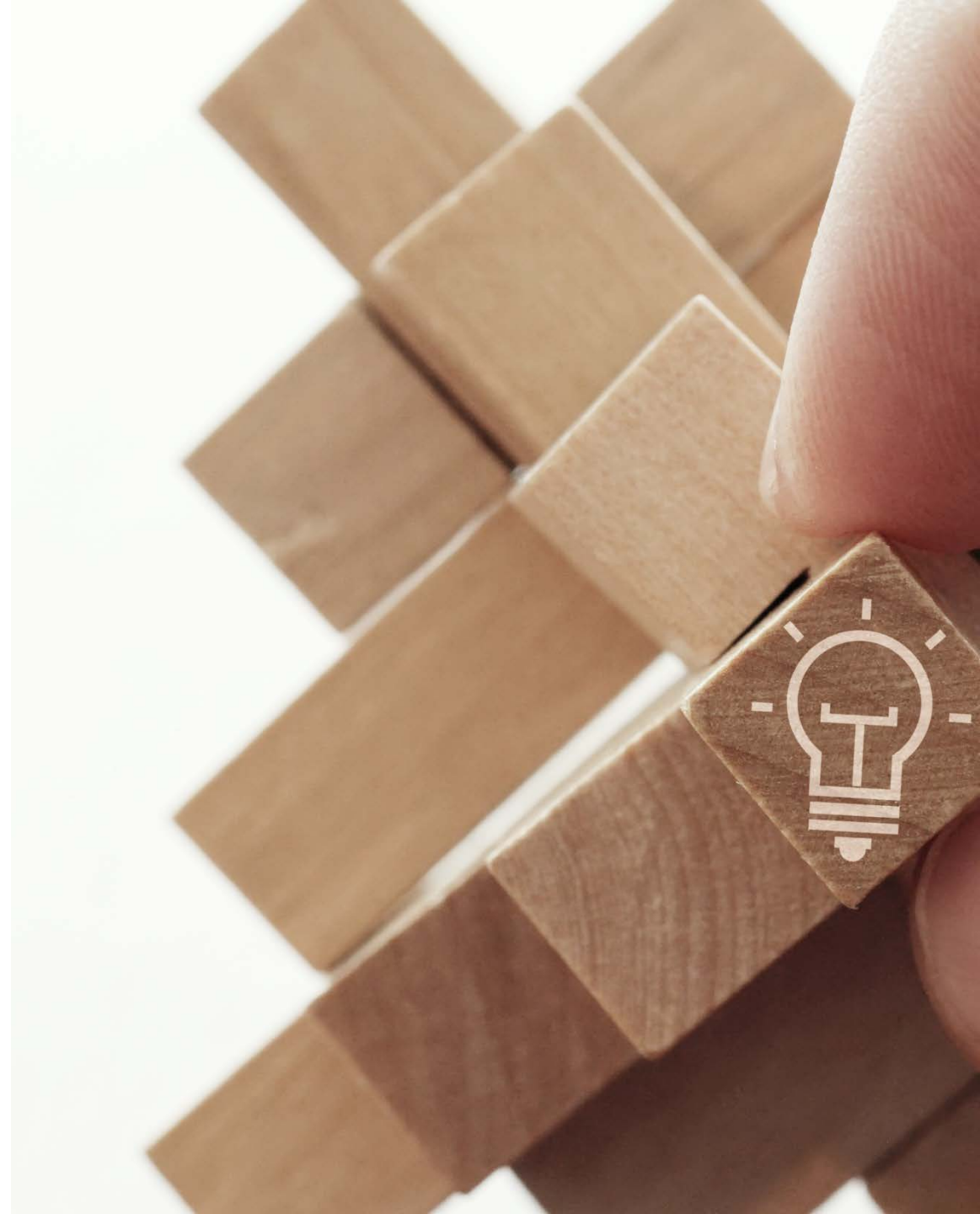
Questions?

“... you can either ask the question
or experience the answer ...”

- Author unknown



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Thank you!

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