

EEO Training for Managers & Supervisors



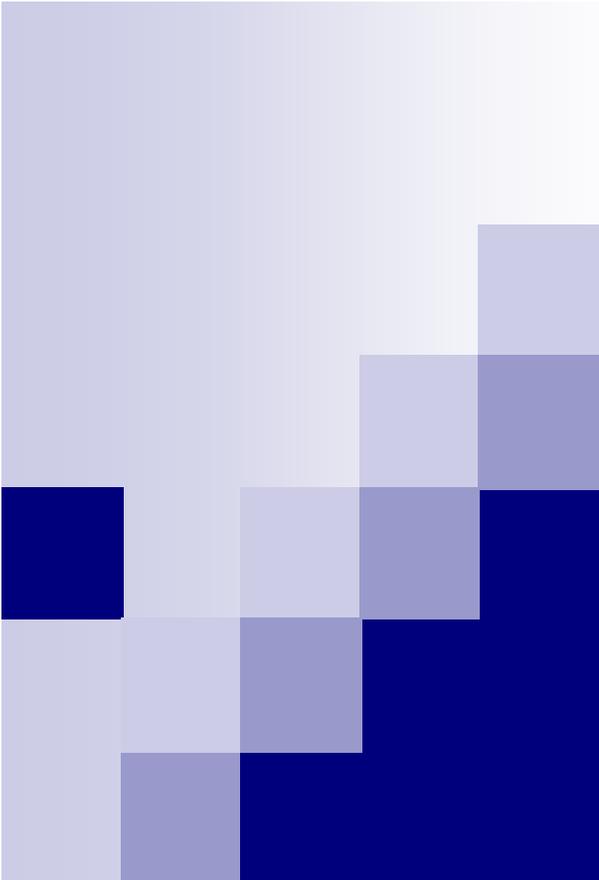
EEO Training

- Title VII vs. Title VI
- Areas of concern identified as a result of polling of NRCS personnel
- Compliance Reviews
- Timeliness & Documentation
- Federal employees held to a higher standard



Training Topics

- The NRCS Reasonable Accommodation Process
- Sexual Orientation as a Workplace Issue
- Overview of the EEO Complaint Process
- Identifying, Preventing & Eliminating Workplace Harassment
- Management's Responsibilities:
Preventing Retaliation



Overview of the NRCS Reasonable Accommodation Process



Timeline

- **1973 - SECTION 501 OF REHABILITATION ACT**
- **1999 - EO 13164**
- **1999 - EEOC GUIDANCE**
- **2002 - DR 4300-008**
- **2002 - NRCS POLICY**
- **2005 - REVISED NRCS POLICY**



Opening - Scenario

John, a State Administrative Officer who is blind, attends a NRCS - sponsored lecture by a visiting presenter. The event planners did not know until the last minute that the presenter would do a Power-Point presentation. John cannot follow the presentation and files an EEO complaint.



The Rehabilitation Act

- An individual with a disability is someone who:
 - ✓ Has a physical or mental impairment that substantially limits one or more of major life's activities



Types of Disabilities: **Obvious/Physical**

- Blind
- Mobility Impairment (CP)
- Paralyzed
- Missing Arm (s) or Leg (s)



Hidden **Not Obvious**

- Mental Illness
- Cancer Patient or Survivor
- Heart Disease
- Multiple Sclerosis
- Deaf or Hard of Hearing



Reasonable Accommodation

Agency Requirements

An agency is **required** to make **reasonable accommodation (s)** of a **known** mental or physical limitation of an otherwise **qualified individual with a disability** unless to do so would cause undue hardship.



Reasonable Accommodation

- Reasonable Accommodation encompasses three aspects of the employment relationship:
 - ✓ The application process
 - ✓ Job performance
 - ✓ Benefits and privileges



Reasonable Accommodation Process

- Reasonable accommodation requested
- Consult with the individual to determine what accommodations she/he believes would enable her/him to do the job.
- If necessary:
 - ✓ Determine what the essential functions of the employee's job are.
- Using the Interactive Process
 - ✓ Assess the effectiveness of various accommodations.
 - ✓ Select the accommodation that is most appropriate in view of the individual's and agency's needs.

Communication is essential to an effective accommodation



Reasonable Accommodation

Process *continued*

- Supervisor needs to know the limitation...the specific medical condition is CONFIDENTIAL
- Agency has the right to request appropriate documentation
- The determination of a disabilities' qualification is made by the CR Division in WDC



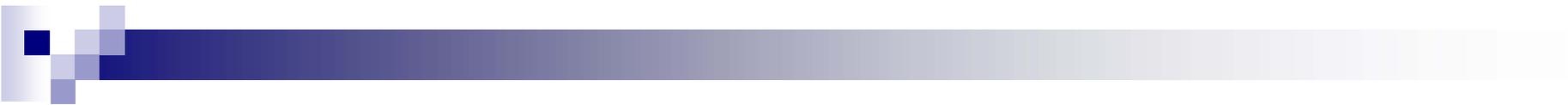
Medical Documentation

- When To Request It
- How Often To Request It
- Who Has Access To It

Request

Report

Denied



Undue Hardship

- Would impose “significant difficulty or expense.”
 - (Based upon cost to the Department not the Agency or State)
- Proof that one specific accommodation would impose an undue hardship does not absolve an agency from considering other proposed or potential reasonable accommodations.



Undue Hardship *continued*

- Agency has the burden of establishing undue hardship & establishing that compliance would interfere with the mission of the agency.
- Agency's National DEPM must be consulted on undue hardship decisions



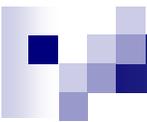
Agency Responsibilities: Individuals with Disabilities

All federal agency programs, training, events, and any other activities must be fully accessible to everyone.



Checklists For Events

- ✓ Handouts available in large print format and on disk, especially if there is visual media shown.
- ✓ Sign language interpreters and/or real-time captioning.
- ✓ Only captioned videos and movies (purchased or made).
- ✓ Fully accessible building with the route to the event clearly marked.
- ✓ Announcements stating what accommodations will be available and providing a contact for requesting other accommodations.



Facility Accessibility

All federal management officials have a responsibility to report any barriers.

- ✓ Doors that are too narrow or too heavy.
- ✓ Entrances that have steps and no ramps.
- ✓ Rest room facilities that are too small.
- ✓ Thresholds that are too high.
- ✓ Furniture that intrudes on passageways.
- ✓ Lights that are burned out or too dim.
- ✓ Loose railings or pavers.
- ✓ Designated parking spaces in distant locations or constantly occupied by cars without appropriate tags.



Interviewing Individuals with Disabilities

- Ask all applicants the same questions about their qualifications, skills, and experience.
- Follow the lead of the individual with a disability. If s/he does not mention the disability, *do not mention it*.
- Focus on the functions of the position and the knowledge, skills and abilities the individual would bring to the job.
- Applicants may request a reasonable accommodation for the interview. Agencies should generically invite applicants to ask for reasonable accommodations on the job application or when setting up the interview.



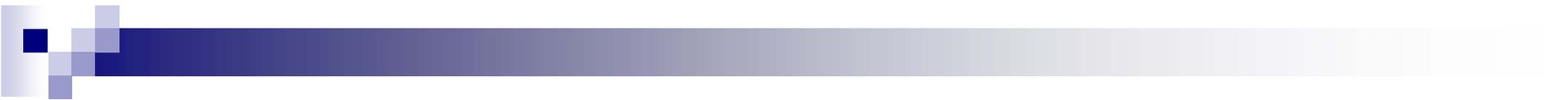
Language



Positive language empowers...

- When writing or speaking about people with disabilities, it is important to put the *person first*.
- Group designations such as "the blind," "the retarded" or "the disabled" are inappropriate because they do not reflect the individuality, equality or dignity of people with disabilities.

- 
- Further, words like "normal person" imply that the person with a disability isn't normal, whereas "person without a disability" is descriptive but not negative.
 - The accompanying chart shows examples of positive and negative phrases.



Affirmative Phrases

- person with an intellectual, cognitive, developmental disability
- person who is blind, person who is visually impaired
- person with a disability
- person who is deaf

Negative Phrases

- retarded; mentally defective
- the blind
- handicapped
the disabled;
- the deaf; deaf and dumb



Affirmative Phrases

- person who is hard of hearing
- person who has multiple sclerosis
- person who uses a wheelchair
- person with a physical disability,

Negative Phrases

- suffers a hearing loss
- afflicted by MS
- confined or restricted to a wheelchair
- physically disabled
crippled, lame;
deformed



Affirmative Phrases

- person with cerebral palsy
- person with epilepsy, person with seizure disorder
- person who has muscular dystrophy
- unable to speak, uses synthetic speech

Negative Phrases

- CP victim
- epileptic
- stricken by MD
- dumb; mute



Affirmative Phrases

- person with psychiatric disability
- person who is successful, productive

Negative Phrases

- crazy; nuts
- has overcome his/her disability; is courageous (when it implies the person has courage because of having a disability)



Reasonable Accommodations

- Applicants and employees with disabilities have a right to request a change or adjustment to an element in the application process and work situation that presents a barrier.
- Management officials should know their agency's procedures and should process requests for reasonable accommodations quickly.
- Failure to respond promptly can be a violation of the employee's rights under the Rehabilitation Act of 1973.



Types of Reasonable Accommodations

- Assistive devices or technology
- Working from home
- Readers, interpreters, and personal assistants
- Modification of work duties
- Flexible work schedule
- Adjustments to work station/office
- A change in work style of management officials and co-workers
- Leave, including LWOP
- Reassignment to a vacant position



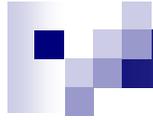
Limitations on Reasonable Accommodations

- An agency is not required to provide a reasonable accommodation if it can prove that doing so would be an *undue hardship* for the *agency as a whole* (not the employee's office).
- Reasonable accommodation does not include personal items such as hearing aids and eye-glasses.



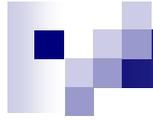
Reasonable Accommodations Guidelines

- Consult with the individual to determine what accommodations would enable her/him to do the job.
- Accommodations are determined on a case- by- case basis.
- Treat the employee with respect.
- Do not draw attention to the accommodation.
- Accommodations should be tested by the employee before purchase whenever possible.



Scenario

“Quibbling among Siblings”



To Summarize...



Management's Responsibilities: Supervising Individuals with Disabilities

- Treat employees with disabilities with respect just like other employees.
- Make employees with disabilities feel that they are part of the staff. Do not allow mistreatment or exclusion.
- Language reflects attitude. Make sure not to use derogatory labels.



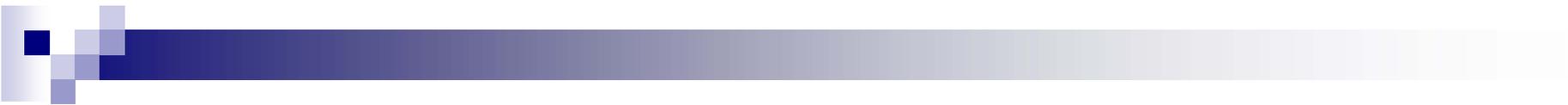
Management's Responsibilities: Job Performance and Recognition

- Communicate performance expectations and provide prompt feedback when performance falls short of expectations.
- Provide equal opportunities to win incentive and other awards and to participate in team projects and other high-visibility assignments.
- Encourage employees with disabilities to obtain training, including management training.



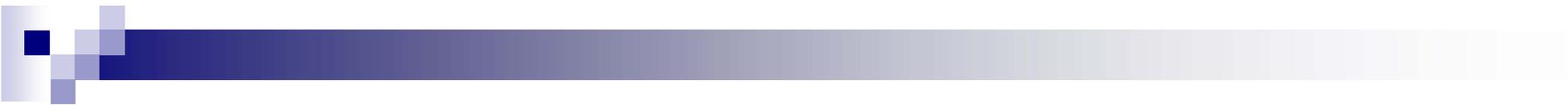
Management's Responsibilities: Adverse Actions

- Performance problems and /or misconduct should be addressed at the earliest possible stage.
- A management official should consider that what appears to be a performance or conduct problem may result from a lack of appropriate accommodations.



Scenario # 2

After conferring with the ASTC, the DC begins to explain a disciplinary action about to be taken when the employee says that a medical issue is the reason for not getting the work done.



Scenario # 3

Todd applies for a Soil Conservationist position and in responding to the application indicates that he does not have a valid driver's license due to a medical condition. In all other aspects, he is qualified.



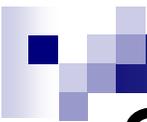
Scenario # 4

Ron is interviewing a candidate who has an outstanding application and credentials. The woman is limping slightly but has not mentioned a disability. Ron is concerned because considerable walking to various sites is required for the job. He considers asking her questions about his concerns. Should he?



Scenario # 5

George has a very limited budget for the year, and he knows his whole agency is in a similar situation. One of his employees, Mary, has a degenerative disease, & has requested a special keyboard and additional file cabinets to fit under her desk. George automatically denies the request because he knows that he probably would not be permitted to do any procurements.



Scenario # 6

Lisa is the Program Manager and has several support staff. Two months ago one of her employees, John, began occasionally coming in late or not showing up. John said that he is being treated for depression and has brought in a letter from his physician saying that his absences were related to his condition. Lisa believes that John is just lazy and wants to charge him with being AWOL.



Scenario # 7

An Ag Engineer, with 16 years of service, has requested computer upgrades (screen & software) because her vision has worsened. NRCS hired her knowing she was visually impaired. She has not provided any new medical information showing her need for new equipment.



Scenario # 8

Raul, a 27 year employee, has developed joint pain & is having problems getting his field work completed. He asks his Supervisor if someone else can gather the field data & that he be allowed to remain in the office & do the design work and complete other documentation that is needed.



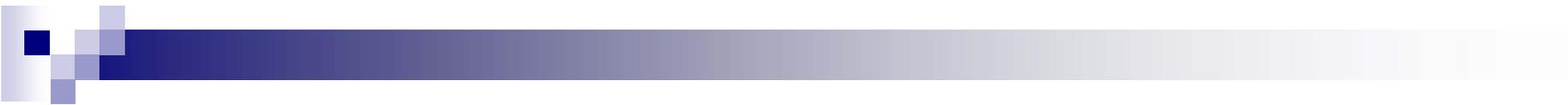
Scenario # 9

Sally is a supervisory Computer Specialist who uses a scooter because of her disability. Her agency holds monthly IT meetings in its historic headquarters building. Sally has reported that the restrooms in this building are inaccessible and requests that they be renovated.



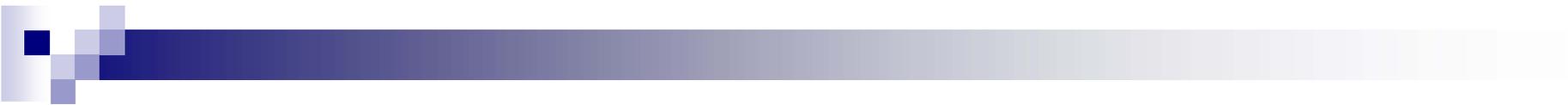
Scenario # 10

Susan supervises a staff of twenty employees. She advertised an entry level position and included in the criteria the ability to give oral presentations to large audiences. One applicant, Henry, is deaf and a recent college graduate. During the interview, he explained that he uses the assistance of a sign language interpreter when he gives presentations. Can he be considered for the position?



Scenario # 11

Dave is Branch Chief for a lively staff. They work hard, but like to tease and play practical jokes. One employee, Tom, has multiple sclerosis, and two of his co-workers make fun of the way he walks. Should Dave say anything, and if so what? What information would you need to decide if Dave should say anything?



Scenario # 12

The job announcement closed a month ago, and Alice is reviewing the applications of the candidates forwarded by the personnel office. In addition, they give Alice an application from a qualified individual who applied last week for a Schedule A position. May Alice consider hiring this candidate?



Scenario # 13

Susan, a new employee, is deaf and does not use her voice. The agency has an interpreter who cannot understand Susan's sign language. Susan has requested that the agency hire a different interpreter. Should this request be considered a reasonable accommodation?



REMEMBER...

Tomorrow You Will Wake Up The
Same As When You Went To
Bed...Male, Female, Black, White,
Hispanic, American Indian Asian,
Have Blue Eyes, Brown Hair, Grey
Hair, No Hair and So On . . .



BUT...

You Could Wake Up Paralyzed, Get Hit By A Car, Fall Off Of A Ladder And Become A Member Of The Most Non-Discriminating Minority Group In The World.

You Could Become a Person With A Disability!!



References

- Target Center

- <http://www.usda.gov/oo/target/>

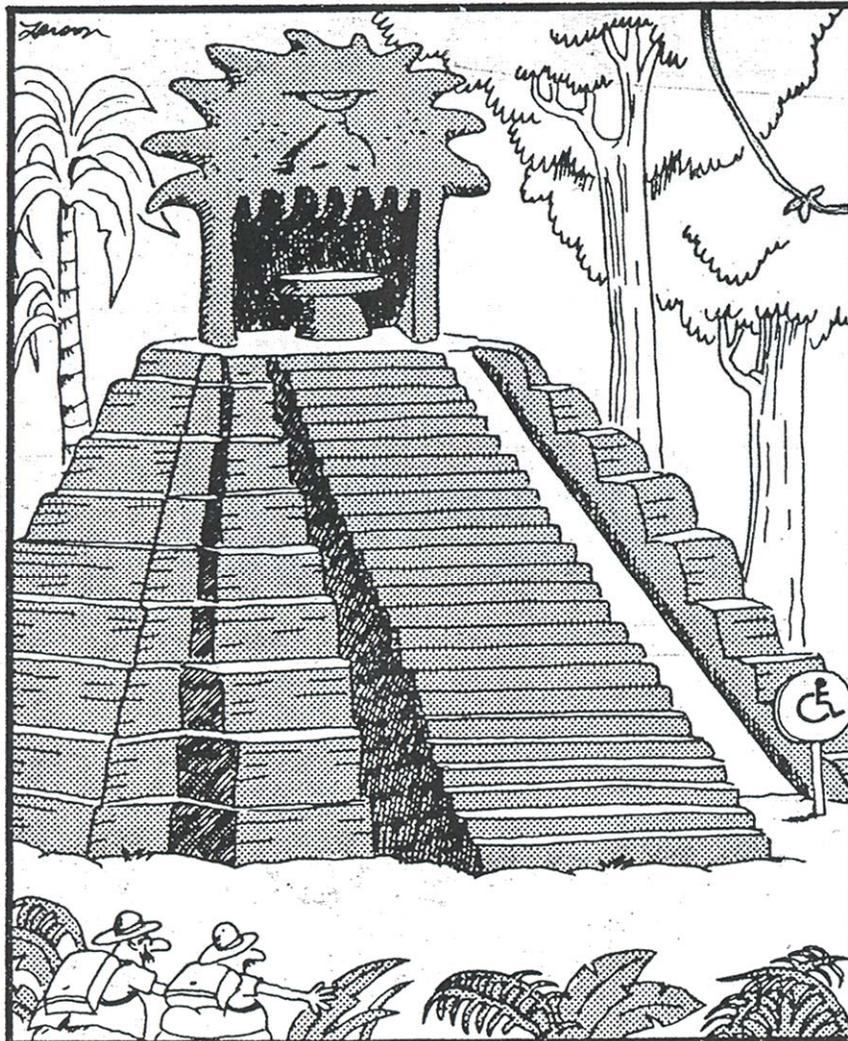
- [NRCS Fact Sheet on RA](#)

- NRCS/CRD Disability Links

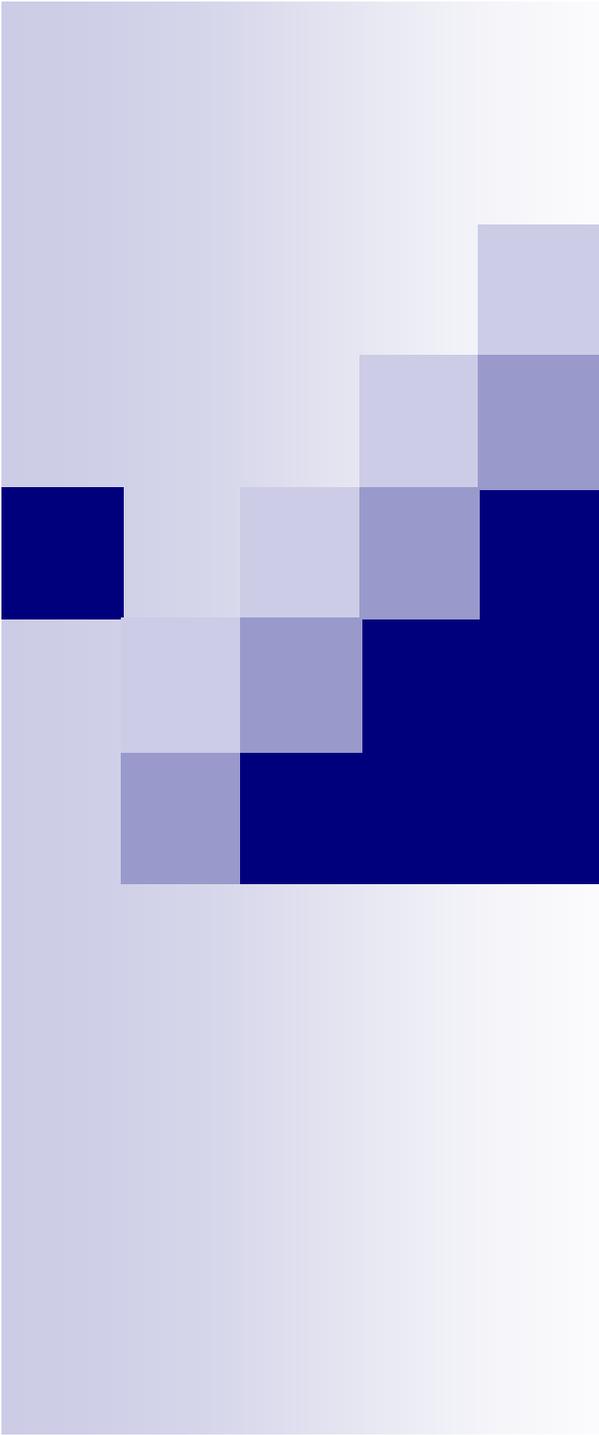
- http://www.nrcs.usda.gov/about/civilrights/disability_resources.html

- GM 230 401 Subpart C RA

- http://policy.nrcs.usda.gov/scripts/lpsiis.dll/GM/GM_230_401_c.htm



Aug. 11, 1959: In the heart of the Bolivian jungle, archaeologists discover an ancient and heretofore unknown sacrificial altar.



Sexual Orientation:

As A Workplace Issue



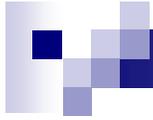
Objectives

- Review Terminology
- Identify Common Myths
- Demographics (In & Out of the Workplace)
- Review Current Protections for GLBT Federal Employees
- Identify Sexual Orientation Discrimination Issues in the Workplace



Session Goals

- We are not here to change your personal beliefs or opinions regarding homosexuality.
- We will provide you with information to help you comply with sexual orientation nondiscrimination.
- We will help you ensure that all USDA employees are treated equally and fairly.



Terminology



Terminology

- GLBT: Abbreviation for Gay, Lesbian, Bisexual and Transgender. Also LGBT.
- Gay: A term given to people of the same gender who are attracted sexually and emotionally to each other. More commonly used to describe male homosexuals.



Terminology

- Lesbian: A term given to females who are attracted sexually and emotionally to some other females.
- Bisexual: A term given to people who are attracted sexually and emotionally to some males and females. Also “bi”.



Terminology

- Gender Identity: Our innermost concept of self as “male” or “female” – what we perceive and call ourselves.
 - **Individuals are conscious of this between the ages of 18 months and 3 years. Most people develop a gender identity that matches their biological sex.**
 - **For some, gender identity is different from biological sex (transsexuals).**



Terminology

- Gender Role: Roles and behaviors assigned to females and males by society – masculine and feminine. People who step out of their socially assigned gender roles are sometimes referred to as transgender. Transgender people seek to make their gender expression match their gender identity rather than their birth-assigned sex. Gender expression is not necessarily an indication of sexual orientation.



Terminology

- Transgender: A term given to people whose *gender expression* at least sometimes runs contrary to what others in the same culture would normally expect.
 - How people externally communicate their gender identity to others
 - Includes transsexuals, cross-dressers, drag queens/kings.



Terminology

- Transsexuals: Term given to those who do not identify with their birth-assigned genders.
 - American Psychiatric Assoc. refers to this condition as *Gender Identity Disorder (GID)*.
 - Transsexuals sometimes alter their bodies surgically and/or hormonally.
 - The transition (formerly called “sex change”) is a multi-step process that may take years and may include sex reassignment surgery.



Terminology

- Coming Out (of the closet): To be “in the closet” means to hide one’s identity.
 - Many GLBT people are “out” in some situations and “closeted” in others.
 - To “come out” is to publicly declare one’s identity.
 - Coming Out is a life long process – in each new situation a person must decide whether to come out or not.
 - Parents, friends and co-workers come out of the closet too.



Terminology

- Heterosexual: Someone who relates to or has a tendency to direct sexual desire toward the opposite sex.
- Homosexual: Someone who relates to, or has a tendency to direct sexual desire toward the same sex.



Terminology

■ Homophobia:

- Term first used by Dr. George Weinberg in the late 1960's to label heterosexuals' dread of being in close quarters with homosexuals as well as homosexuals' self loathing. (*Society and the Healthy Homosexual* - 1972)
- An aversion to gay or homosexual people, their lifestyle, culture or behavior. Irrational fear of homosexuality. (*American Heritage Dictionary*)



Terminology

- Heterosexism: Describes an ideological system that denies, denigrates and stigmatizes any non-heterosexual form of behavior, identity, relationship or community.
 - Like institutional racism and sexism, heterosexism pervades societal customs and institutions.
 - Operates through a dual process of invisibility and attack.



Terminology

- Lavender Ceiling: Occurs when GLBT issues are avoided organizationally and individually.
 - When homophobia and heterosexism are an established part of the workplace culture and the open service, career development and promotional advancement of GLBT employees is impeded or prevented.



Terminology

- Queer: Historically a negative term used against people perceived to be GLBT. “Fag” and “faggot” are also negative terms. “Dyke” is a negative term used to describe lesbians. These terms should not be used.



What Is Sexual Orientation?

According to the American
Psychological Association (APA):

- Sexual Orientation is an enduring, emotional, romantic, sexual or affectional attraction to another person.

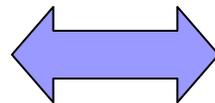
What Is Sexual Orientation?

- Everyone has a sexual orientation. Everyone falls on a scale of somewhere between purely heterosexual and purely homosexual.

Heterosexual



Bisexual



Homosexual

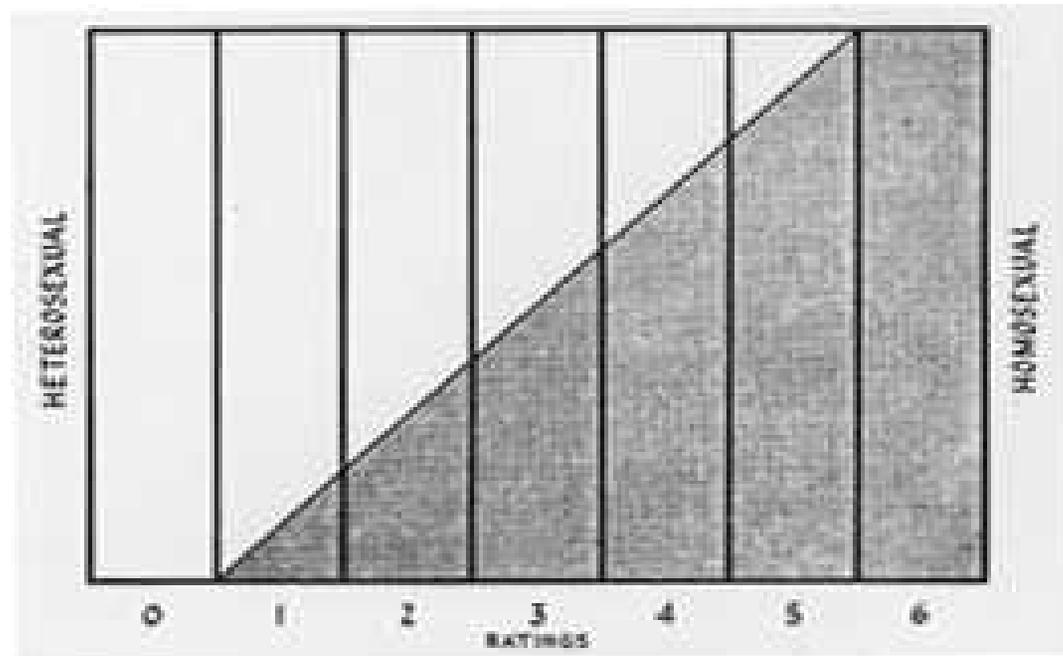


Kinsey Scale

Heterosexual /
Homosexual
Rating Scale

Original
appearance in
“Sexual Behavior
in the Human
Male”

Kinsey, et al.
(1948)



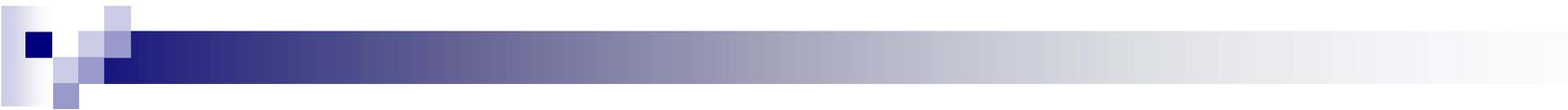


What Is Sexual Orientation?

- Sexual Orientation is different from sexual behavior because *it* refers to feelings and self-concept.
- Individuals may or may not express their sexual orientation in their behaviors.



Common Myths



Sexual Orientation Is Not a Choice

- According to the APA: Human beings cannot choose to be gay or straight.
 - Sexual Orientation is not a conscious choice that can be voluntarily changed.
 - Sexual Orientation emerges for most people in early adolescence (before the age of 5) without any prior sexual experience.



Homosexuality Is Not A Mental Illness

- 1973 – The American Psychiatric Association removed homosexuality from its list of mental disorders.
- 1975 – The American Psychological Association adopted a resolution stating that “Homosexuality implies no impairment in judgment, stability, reliability or general social or vocational capabilities.”



Demographics



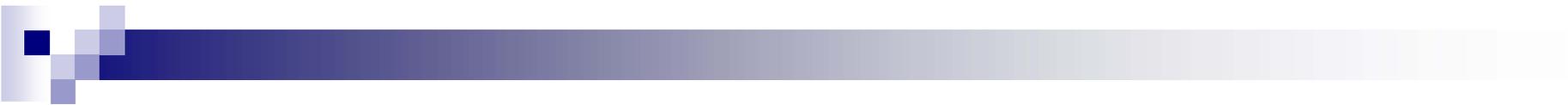
GLBTs & the US Population

- It is estimated that gay, lesbian, bisexual and transgender individuals make up 5% of the U.S. population.
- U.S. Census Bureau estimates the current U.S. population to be 301,266,724 (2/2007).



GLBTs & the US Population

- Estimated number of GLBT individuals in the U.S. is
 - 15,063,000
 - \$641 billion consumer market



GLBTs & the US Population

- According to the 2000 Census:
 - 99.3 percent of U.S. counties reported same-sex cohabitating unmarried partners.
 - The largest increases (since the 1990 Census) were reported in rural, sparsely populated areas.
- Urban Institute Report - Demographics



GLBTs & the US Population

- According to Diversity Inc. 2004
 - There are 15 million self-identified gays and lesbians in the U.S.
 - There are 3.1 million gay & lesbian couples (41% of the total gay/lesbian population)
 - 4 million gays and lesbians have children (MS, SD, AK, SC, LA)



State of the Workplace for GLBT Individuals



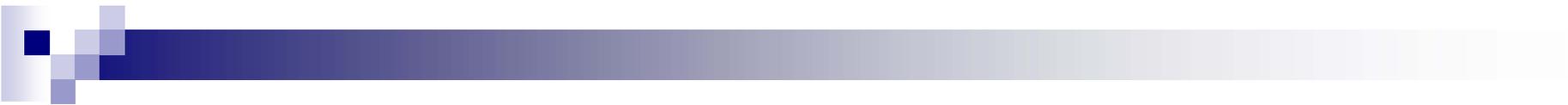
State of the Workplace

- No Federal law prohibits employment discrimination based on sexual orientation.
- Workers in 33 states can be fired because of their sexual orientation or gender identity and expression at any time.



State of the Workplace

- According to Diversity Inc, 2004
 - One out of every 10 GLBT adults says he/she was fired or pressured to quit a job because of sexual orientation.
 - Two out of 5 GLBT workers say they consistently face some form of hostility or harassment on the job.
 - 72% of Americans favor a law that would protect gays against job discrimination.



State of the Workplace

- Employment Nondiscrimination Act (ENDA) – *proposed* legislation would outlaw job discrimination based on sexual orientation in all 50 states.



State of the Workplace

- 17 states and DC prohibit sexual orientation discrimination in the workplace (both public and private sector).
- 10 additional states prohibit sexual orientation discrimination in their public workforces.



State of the Workplace

■ Public Sector Only

Alaska

Arizona

Colorado

Delaware

Indiana

Louisiana

Michigan

Montana

Pennsylvania

Virginia

■ Public & Private Sectors

California

New Jersey

New Mexico

New York

Rhode Island

Vermont

Washington

Wisconsin

New Hampshire

Connecticut

Hawaii

Illinois

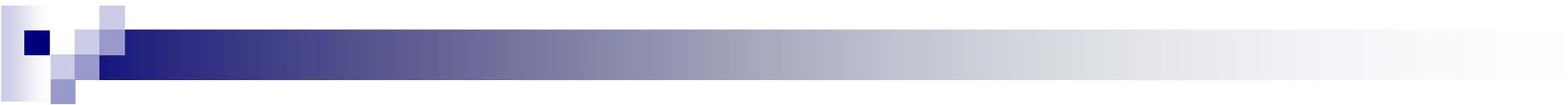
Maine

Maryland

Massachusetts

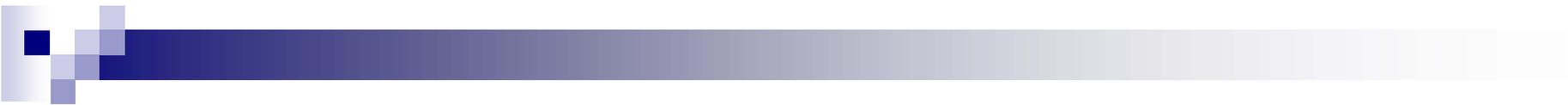
Minnesota

Nevada



State of the Workplace

- CA, IL, ME, MN, NM, RI, WA and DC prohibit all discrimination based on sexual orientation and gender identity.
 - Employment
 - Housing
 - Educational Opportunity
 - Credit
 - Public Accommodations



State of the Workplace

- 2,958 employers have written policies prohibiting workplace discrimination based on sexual orientation.
- 430 of the Fortune 500 companies include sexual orientation in their nondiscrimination policies.

(Human Rights Campaign 12/31/2005)



State of the Workplace

- 9,370 employers provided domestic partner health benefits.
 - 253 Fortune 500 companies offer domestic partner health benefits.
 - 13 states offer health insurance coverage to public employees' same-sex partners.
 - **(CA, CT, IA, IL, ME, MT, NJ, NM, NY, OR, RI, VT, WA)**
- (Human Rights Campaign 12/31/2005)



GLBTs in the Federal Workplace

- **1978 Civil Service Reform Act** – provided protection from non merit based personnel actions.
 - OPM has interpreted this statute to prohibit discrimination based on sexual orientation. Sexual orientation means homosexuality, bisexuality, or heterosexuality.



GLBTs in the Federal Workplace

- **1978 Civil Service Reform Act** – provided protection from non merit based personnel actions.
 - H.R. 3128 – Pending legislation affirming that Federal employees are protected from discrimination on the basis of sexual orientation and to repudiate any assertion to the contrary. (Passed by a unanimous voice vote in the House Government Reform Committee 9/15/05)



GLBTs in the Federal Workplace

- **1993 – USDA Civil Rights Policy**
Statement includes sexual orientation.
- **1995 - EO 12968** – security clearances cannot be denied based on sexual orientation.



GLBTs in the Federal Workplace

- **1998 – Oncale vs. Sundowner**

The U.S. Supreme Court rules that same sex sexual harassment violates the 1964 Civil Rights Act prohibition against discrimination on the basis of sex.



GLBTs in the Federal Workplace

- **1998 – EO 13087** – provides for a uniform policy for the Federal government to prohibit discrimination based on sexual orientation.



GLBTs in the Federal Workplace

- **2004 – Smith vs. City of Salem, OH**
- U.S. Court of Appeals rules a preoperative male to female can file sex discrimination under Title VII of the Civil Rights Act of 1964.



GLBTs in the Federal Workplace

- For Federal Employees, there are only two areas in which GLBT employees can use benefits for their domestic partners.
 - Survivorship Benefits
 - Sick Leave Benefits
 - 5CFR630.401 (Defines SL usage)
 - 5CFR630.201 (Defines family as any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.)



GLBTs in the Federal Workplace

- Heterosexism
 - Inclusion or exclusion
- Harassment & hostile work environment
 - Jokes, comments, threats
- Lavender Ceiling
 - Advancement and promotion



The NRCS Workplace

■ Resources

- [General Manual 401](#)
- [NRCS Civil Rights Division Homepage](#)
- [Managers & Supervisors](#)
- [The E-Mail Policy](#)
- First Steps – [Transgender Issues](#)



What Can Be Done To Overcome the Discrimination GLBT Individuals Experience?

- APA research has found that the people who have the most positive attitudes toward GLBT individuals are those who say they know one or more GLBT individual – often as a friend or co-worker.



What Can Be Done To Overcome the Discrimination GLBT Individuals Experience?

- According to the APA, negative attitudes toward gay people as a group are not grounded in actual experiences but are based on stereotypes and prejudices.



What Can Be Done To Overcome the Discrimination GLBT Individuals Experience?

- According to the APA, educating people about sexual orientation and homosexuality is likely to diminish prejudice.



USDA - Gay & Lesbian Employee Advisory Council

■ GLEAC Activities & Responsibilities

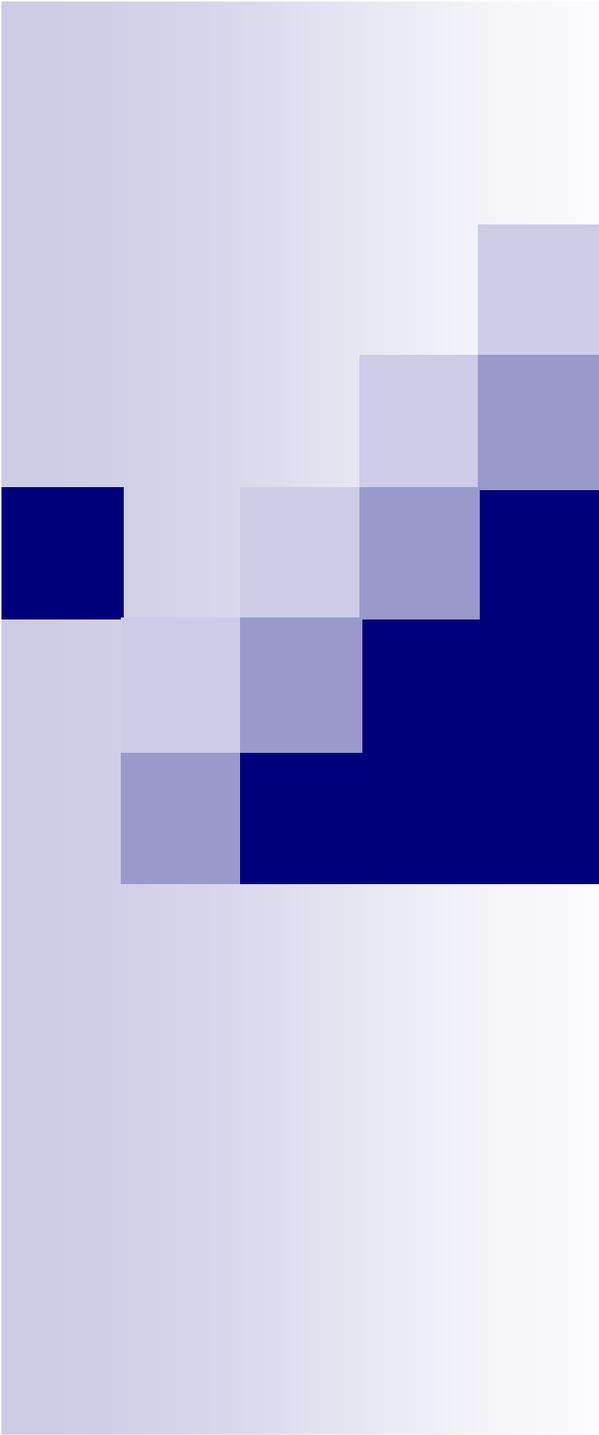
- Employee Listening Sessions
- Awareness
- Development of Educational Materials
- Conduct Informational Presentations
- Technical Resource for Sexual Orientation
Issues



Bill Scaggs

- Program Manager
- Gay & Lesbian Employee Advisory Council (GLEAC)
- Office of Outreach and Diversity
- Office of the Assistant Secretary for Civil Rights

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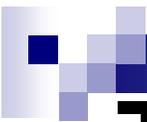


Overview of the Federal EEO Complaint Process



EEO Counseling

An individual has 45
calendar days from date
of alleged discriminatory
event to contact
an EEO Counselor.



Traditional EEO Counseling

aka Informal Complaint

- 30 calendar days to complete.
- Information on rights and responsibilities is provided.
- The complaint process is explained.
- The legal claim and the basis of discrimination are determined.
- A limited inquiry is conducted.
- Resolution is sought.



Alternative Dispute Resolution

Agencies are required to have in place an Alternative Dispute Resolution (ADR) program during pre-complaint and formal complaint process.



ADR & Mediation

- Agencies are free to determine when to offer the ADR program. [\(Form\)](#)
- Agencies may not preclude from ADR entire bases (e.g., race, sex...)
- [Mediation](#) [\(Form\)](#)
- Employee Assistance Program – [Sand Creek LTD](#)



Formal Complaint

- Must be filed within 15 calendar days of Notice of Final Interview.
- Must be signed by complainant or his/her attorney.
- Must be sufficiently precise to identify the complainant and the agency and to describe generally the actions or practices that form the basis of the complaint.
- The agency must acknowledge in writing receipt of the complaint.



Investigations

- An impartial, appropriate factual record upon which to make findings on the claim (s) raised is developed.
- “Appropriate” factual record allows fact -finder to determine whether discrimination occurred.
- Must be completed within 180 days from when complaint was filed.
- The agency must provide complainant with a copy of investigative report including a notice of the right to request either a hearing before or a final decision by the agency.



Investigation & Management Officials

- Management officials **MUST** produce documentary and testimonial evidence.
- Neither complainants nor management officials may fail to cooperate during an investigation without good cause.



If Cooperation is Withheld

If cooperation is not given, the decision maker or the Commissions may:

- ✓ draw an adverse inference against the party failing to cooperate
- ✓ Exclude other evidence offered by party failing to cooperate
- ✓ Issue a decision fully or partially in favor of opposing party



During The Hearing Process

- Administrative Judge (AJ) assumes full responsibility for complaint.
- Administrative Judge presides over any supplementation of complaint file.



During The Hearing Process

- Administrative Judge may dismiss complaints on his/her own initiative, after notice, or upon agency's motion to dismiss.
- The agency's authority to dismiss complaint ends once hearing is requested.



Administrative Judge's Decisions

- AJ will issue decision after hearing or on summary judgment.
- Agency has 40 calendar days to issue final order, which either:
 - ✓ implements the AJ decision; or
 - ✓ does not implement the AJ decision and the agency appeals to EEOC.
- AJ decision becomes agency final action if agency does not issue final order within 40 calendar days.



Types of Relief

- **Equitable Relief**
 - ✓ Monetary
 - ✓ Non- Monetary
- **Compensatory Damages**
- **Attorney's Fees**
- **Reasonable Accommodation**



Appeals

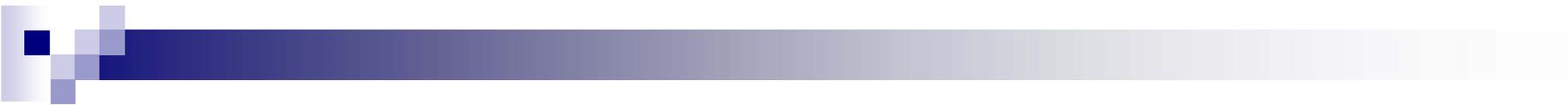
If either party opts to appeal:

- The complainant must appeal within 30 calendar days of receipt of either agency dismissal or final action.
- The agency must appeal within 40 calendar days of receipt of decision if not fully implementing Administrative Judge's decision.



Civil Actions

- Within 90 calendar days of receipt of final decision of agency or on appeal decision from EEOC.
- After 180 calendar days from the filing of formal complaint *if no decision has been issued*.
- After 180 calendar days from the filing of an appeal with EEOC *if no decision has been issued*.



Official Time

- Agency must provide a reasonable amount of official time to prepare a complaint and to respond to agency and EEOC requests for information when:
 - ✓ Complainant is an agency employee,
 - ✓ Complainant's representative is an agency employee.

- Official time shall also be granted for presence at the investigation of or at a hearing on the complaint.



Settlement Agreements

- Disputes may be settled at any time during the complaint process with a written settlement agreement signed by both parties.
- If complainant alleges a breach of the settlement agreement, s/he may request specific enforcement of the agreement or a reopening of the EEO complaint.



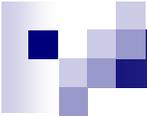
Compliance with EEOC / Agency Orders

- Agency is bound by:
 - ✓ Its order in a final decision finding discrimination
 - ✓ Its order in a final decision on breach of settlement agreement
 - ✓ An order contained in a decision issued by EEOC on an appeal.
- Complainant or agency may petition EEOC to enforce or clarify a decision.



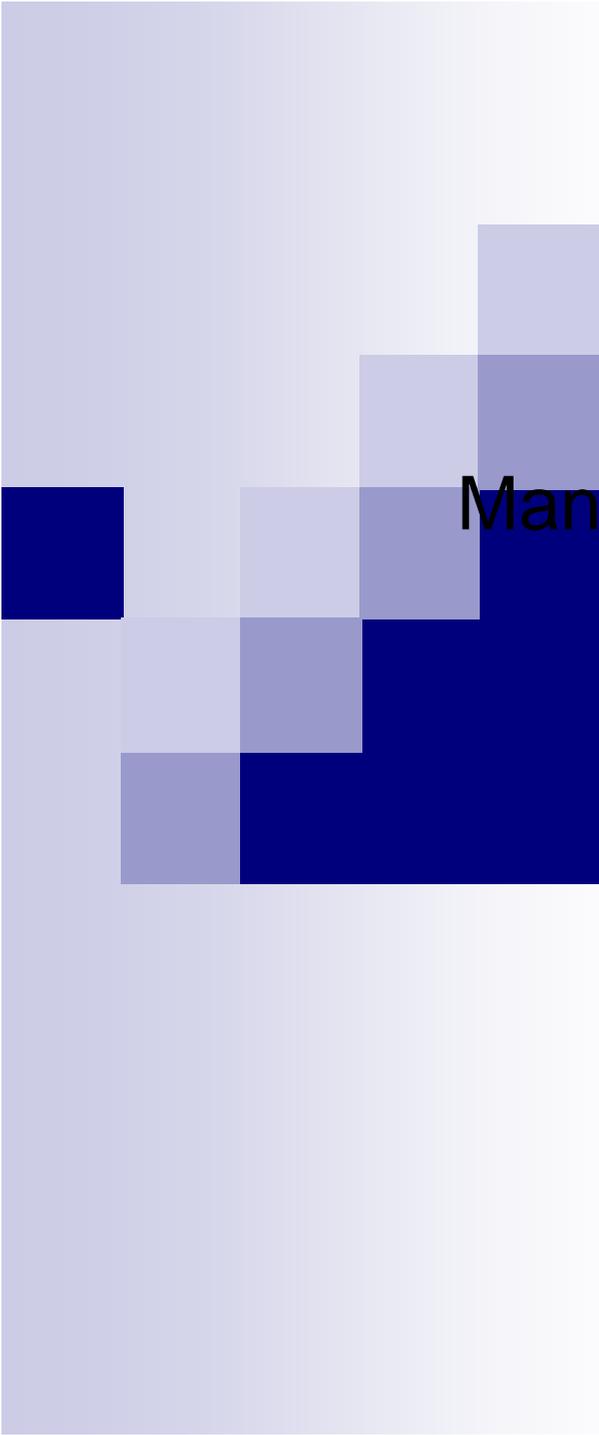
Additional Information

- Employee Rights & Responsibilities
- Program Complaint Process – Title VI



Critical Learning

1. How & where to contact an EEO Counselor
2. The important of 45 days in the complaint process
3. What is ADR / Mediation?
4. What are the bases of discrimination for an EEO complaint by an NRCS employee?
5. Employee Assistance Program



Management's Responsibilities:

Management's Responsibilities:

Identifying, Eliminating and Preventing Harassment

Identifying, Eliminating
and Preventing
Harassment



Opening - Scenario

Deborah's male co-workers frequently engage in bawdy sexual banter and horseplay in the office. They trade stories about their sexual exploits and kid each other about each other's sexual prowess.

Deborah sometimes has conversations of a sexual nature with one of her male co-workers, but she has let the others know that she is offended by their banter and horseplay. Deborah has complained to her supervisor, but he has taken no action.



What is Workplace Harassment?

- Harassment is any unwelcome verbal or physical conduct based on one of the protected bases that is so objectively offensive as to alter the conditions of the victim's employment. This standard is met when:
 - ✓ The conduct culminates in a tangible employment action, or
 - ✓ The conduct was sufficiently severe or pervasive to create a hostile work environment.



Who Can Commit Workplace Harassment?

- A Management Official
- A Co-Worker
- A Non-employee



Elements of a Harassment Claim

- Conduct must be unwelcome
- Conduct based on a protected basis
- Conduct results in a tangible employment action or created a hostile work environment



Unwelcome Conduct

- “Unwelcome” conduct is where the employee did not solicit or invite the conduct and regard it as undesirable.
- Critical Inquiry: Did the complainant explicitly or implicitly communicate that the conduct was unwelcome?
 - ✓ Submission does not mean the conduct was welcome
 - ✓ Active participation may defeat the claim



Basis

- Harassment based on sex, including same-sex (sexual and non-sexual) violates Title VII.
- Harassment based on race, color, national origin, religion, age (40 and over), disability or retaliation for protected activity also violates federal anti-discrimination laws.



Hostile Environment Harassment

- Unwelcome comments or conduct based on a protected basis which unreasonably interferes with an employee's work performance or creates an intimidating, hostile or offensive work environment.
- Anyone can commit this type of harassment, a management official, a co-worker or a non-employee.



Hostile Environment Harassment

Standards

- Key Issues
 - Frequency and severity
 - Reasonable person standard

- Tangible affect on the individual's job not necessary

- Psychological harm not necessary



Agency Liability: Hostile Work Environment Harassment By Co-Worker or Non-Employee

- Agency is liable if it knew or should have known of the harassment and failed to take immediate and appropriate corrective action.
 - ❖ Agency knowledge is assumed if:
 - ✓ The victim complains about the harassment;
 - ✓ The conduct occurred in the presence of a supervisor; or
 - ✓ The conduct is widespread.



Conducting an Investigation

- Relevant Information from the Aggrieve/ Alleged Victim
 - What happened?
 - When did it happen?
 - Where did it happen?
 - How did the alleged victim respond?
 - Were there any witnesses?
 - How frequent was the conduct?
 - Is there documentation of the incident?
 - How would you like to see the matter resolved?



Conducting an Investigation

- Relevant Information from the Alleged Harasser
 - What is the response to the allegation?
 - If false- why would the individual lie?
 - Other individuals with relevant information?
 - Any documentation / other relevant information?



Corrective Action

- If it is determined that harassment occurred, corrective action should be undertaken immediately/ corrective measure should be designed to end the harassment and ensure that it does not recur.
- The severity of disciplinary action should depend on factors such as the severity and frequency of the misconduct, the impact on the complainant, and whether the harasser engaged in similar misconduct



Appropriate Preventative Actions

All Management Officials and Employees should:

- Know the agency's anti-harassment policy
- Set a positive example by treating others with respect
- Never make assumptions about jokes
- Think before speaking and consider others' feelings and perceptions
- Never go along with the crowd if behavior is offensive



Preventative and Corrective Actions For Agencies

Investigate Allegations of Harassment

- Ensure prompt, thorough and impartial investigations
- Be objective, don't make assumptions
- Ensure confidentiality to the extent possible
- Make credibility determinations
- Check personnel records
- Take immediate and appropriate corrective actions



Other Preventive Measures

- Provide anti-harassment training to all management officials and field employees
- Provide for periodic updates on agency's anti-harassment policy and complaint procedures
- Monitor enforcement of anti-harassment policy
- Consult SAO & HR for assistance



How Harassment Affects the Workplace

For agencies:

- High legal costs and damage awards
- Poor public image
- Lower productivity and morale
- Higher costs for hiring and training new employees



How Harassment Affects the Workplace

For employees:

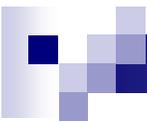
- Emotional and physical pain
- Less effective job performance
- Poor employee morale
- Personal and financial problems



Scenario #2

Joseph is a rude and offensive individual. He constantly makes disrespectful statements to his co-workers about their appearance, knowledge, and job performance. Alex is particularly offended by Joseph's inappropriate behavior.

Joseph daily reminds Alex that he is not on the "best team" and that he did not attend the "right university". Additionally, Joseph frequently tells Alex that he will never be as good as the employees with "military backgrounds." Fed up with Joseph's behavior, Alex initiates the EEO process.



Scenario #3

Kim believes that her supervisor, Ted, subjected her to unwelcome sexual conduct. For example, on one occasion, he gazed at her from head to toe and stated that she looked fantastic. Kim informed Ted that while she appreciated his comment, she did not consider his behavior appropriate for the workplace. Ted replied that Kim needed to loosen up and accept favorable comments.

On other occasions, Kim would notice Ted suggestively looking at her body as she walked by his office area. When Ted interviewed Kim for a promotion, he expressed reservations because Kim was not flexible or loose enough for the position. Kim was denied the promotion. Believing that Ted was punishing her for rejecting his advances, she resigned one month later.



Scenario #4

Charles believes that his co-worker, Bob, engages in behavior that is offensive to Charles based on his race. For example, Bob sent an e-mail to the employees in their unit attaching a series of jokes, beginning with the phrase, “You know you’re in the ghetto when...” Charles told Bob that the jokes were racially offensive. Bob expressed that the word “ghetto” implied something offensive.

On another occasion, Bob sent another email to his co-workers attaching jokes about funny accents. Charles complained to their supervisor, but the supervisor took no action.



Scenario #5

- Anna's supervisor frequently made remarks that were offensive to her and other Hispanic employees. He also made crudely demeaning references to women.
- Anna did not complain to higher management about the supervisor's conduct. One month before Anna resigned, a former employee wrote a letter to the head of Anna's department complaining about the supervisor's harassment. The agency conducted an investigation, and the supervisor was reprimanded and disciplined.



Scenario #6

Jack joins his new secretary, Nancy, at a farewell gathering for an agency employee. During the gathering, he rubs his hands on her shoulder and back and states that he would like to take her out to dinner. Nancy declines the invitation and demands that Jack remove his hands. Jack immediately apologizes and stated that he had misread the signals between the two of them.

This was the first time Jack made an advance toward Nancy, and he never again makes other sexual advances toward her. Nancy considers filing a complaint, but she assumes that no one will believe her since there were no eye witnesses.

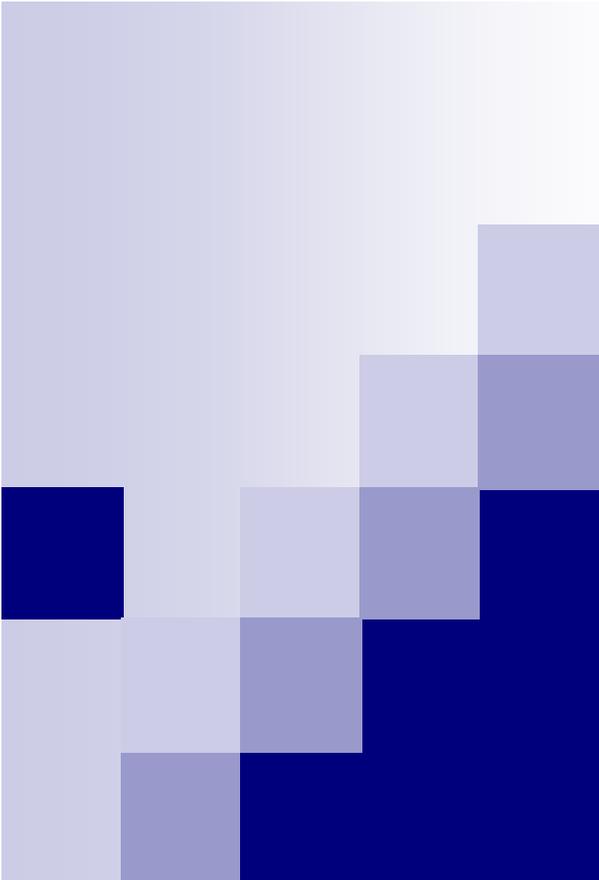


Scenario #7

Joan dreads each time her photocopier breaks down because the repair person assigned to her office always leers at her and makes sexually suggestive remarks.

Joan has complained to her supervisor, but the supervisor says he does not have any control over the repair person because that individual is an employee of the photocopier service company and not an employee of the agency.

The supervisor does relay Joan's complaints to the service company, but no action is taken.



Preventing Retaliation



Opening - Scenario

For the third time in as many months, Lisa, an Area Conservationist, received notice that Fran, a District Conservationist, had filed an EEO complaint naming her as the perpetrator of discrimination. Lisa is absolutely livid. During a subsequent meeting with her staff, she makes the comment that, “the agency’s mission would be best served if we did not have so many complainers.” She, then makes favorable reference to James and Karen as examples of good employees who focus on getting the job done and not complaining.



Management's Responsibilities: Preventing Retaliation

Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Rehabilitation Act and the Equal Pay Act prohibit retaliation by an agency because an employee or applicant for employment or a former employee engaged in *protected activity*.



Retaliation

Treatment that is reasonably likely to deter protected EEO activity is unlawful.



Retaliatory Action

In general, protected activity comes in one of two forms:
participation or opposition.



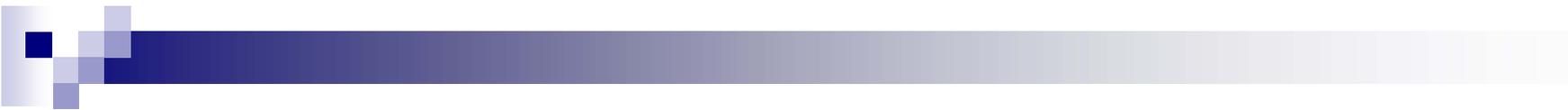
Protected Activity: Participation

The anti - retaliation provisions make it unlawful to discriminate against an individual because s/he has filed a complaint, testified, assisted or participated in any manner in an investigation, proceeding, hearing, or litigation under the governing EEO statutes. In the federal sector, once someone initiates contact with an EEO counselor, s/he has participated in the EEO process.



Examples of Participation

- Filing an EEO complaint
- Serving as a witness in an EEO matter
- Representing an individual in an EEO matter



Protected Activity: Participation

- Participation in a failed EEO complaint is nevertheless considered protected activity.
- The practices challenged in prior or pending statutory proceedings need not have been engaged in by the named responsible management official.
- An individual is protected against retaliation for participating in employment discrimination proceedings involved an entirely different agency.



Protected Activity: Opposition

The anti - retaliation provisions also make it unlawful to discriminate against an individual because s/he opposed any practice made unlawful under the employment anti-discrimination statutes.



Examples of Opposition

- Complaining to a management official about being denied a request for reasonable accommodation.
- Signing a petition to be presented to the administration about a perceived discriminatory practice at the agency.



Post - Employment Retaliation

Retaliation can occur after the employment relationship between the complainant and the agency has ended.

Examples of post -employment retaliation include actions that are designed to interfere with the individual's prospects for employment, such as an

- 1) unjustified negative job reference,
- 2) refusing to provide a job reference,
- 3) informing a prospective agency about the individual's protected EEO activity.



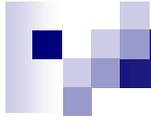
Scenario #2

Roland, a manager in a state office, recently learned that the EEO complaint filed by a subordinate, Harvey, was found to be without merit by the EEOC. Shortly thereafter, Roland reassigns Harvey from his current assigned location to a certain undesirable location assignment. Two days later, Roland also denies Harvey's training request and states that the training does not relate to his new/current job assignment.



Scenario #3

Eric previously worked for the Farm Services Agency. While with the FSA, he filed several complaints alleging sex and race discrimination. Frustrated with what he considered to continuing discriminatory harassment, Eric applies for a job with the NRCS. As a part of the selection process, the NRCS management official learns that Eric filed several complaints over the years. In light of the negative reference, the NRCS does not hire Eric. Later, Eric learns that his FSA supervisor gave him a negative reference.



The End

Thank you.

Please complete the evaluation!!!