**SHRM Employment Law**

Module 5: Diversity





Time:  2 minutes

Running time: 2 minutes

**Objective**: Introduce the topic of Diversity.

**Description**:  Introduction to the topic and why it is important.

**Instructional Method**: Lecture/ice breaker

**Script:**

In a world that seems to be getting smaller and more diverse every day, the subjects of diversity, equity, and inclusion have a place in any course about employment law. While we sometimes don’t realize that DE&I issues are covered in the laws that impact the workplace, they warrant discussion as you will learn in this module. Creating a discrimination-free workplace requires the identification of DE&I issues and taking action to correct them.

**Facilitator Notes:**

Add your name or any other information to this slide in the subtitle.

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Time:  2 minutes

Running time: 4 minutes

**Objective**: Introduce the learning objectives.

**Description**: Show the objectives.  Answer any questions.

**Instructional Method**: Lecture

**Script**:

Here are the student objectives for this module:

* Define the key terms related to Diversity.
* Determine the appropriate laws to apply to given employment situations.
* Discuss how Affirmative Action impacts the workplace.
* Identify laws and practices that promote diversity, equity, and inclusion.

**Facilitator Notes:**

Use the objectives topics to create evaluation for the review.

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Time:  6 minutes

Running time: 10 minutes

**Objective**: Define key terms for Diversity

**Description**: Identify and define key terms for Diversity

**Instructional Method**: Game

**Script**:

Let’s play a game to define some key terms used in the compensation and benefits profession.

**Exercise**:  Key terms Game

**Note**: The winning group will have the most key terms listed correctly

7 Minutes

1. Put students into groups of 3 – 6
2. Have each group number a list from 1 – 13.
3. Read the definition of the term (note what number you read)
4. Have 1 student write the name (or number) of the term on their list.

3 minutes

1. Give students the answers.
2. The team with the most is the winner.

**Facilitator Notes:**

**Key Terms**

1. **Affirmative Action**- The government created affirmative Action laws to help create opportunities for historically disadvantaged persons in terms of race, religion, color, sex, and/or national origin.
2. **Bereavement Leave**- Paid or unpaid leave granted to employees upon the death of an immediate family member.
3. **Bias-** An acknowledged but unfair prejudice for or against a person, group, or thing in comparison to another in a way that produces a negative impact or treatment of them.
4. **Diversity**- Persons from various backgrounds, genders, social statuses, ethnic backgrounds, sexual orientations, etc.
5. **Equity**- Equal access to and distribution of tools and resources that create equal opportunity within the workplace.
6. **Family Medical Leave**- A federal law that temporarily requires employers to provide unpaid medical leave to qualifying employees.
7. **Harassment**- Unwanted verbal, visual, or physical attention based on a protected characteristic.
8. **Inclusion**- The creation of a workplace environment that accepts and invites people from all walks of life and includes consideration of all employees in creating workplace policies and practices.
9. **Maternity Leave**- Paid or unpaid time off from work for the birth or adoption of a child for the mother.
10. **Paternity Leave**- Paid or unpaid time off from work for the birth or adoption of a child for the father.
11. **Religious Leave**- Paid or unpaid time of from work to observe religious holidays or practice.
12. **Reasonable Accommodation**- “any change to the application or hiring process, to the job, to the way the job is done, or the work environment that allows a person with a disability who is qualified for the job to perform the essential functions of that job and enjoy equal employment opportunities. Accommodations are considered “reasonable” if they do not create an undue hardship or a direct threat” (https://adata.org/factsheet/reasonable-accommodations-workplace).
13. **Unconscious Bias**- An unconscious prejudice for or against a person, group, or thing in comparison to another in a way that produces a negative impact or treatment of them.

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Time:  5 minutes

Running time: 15 minutes

**Objective**: Define key terms for Diversity

**Description**: Define the two types of Affirmative action.

**Instructional Method**: Lecture

**Script**:

Recall from Module 2 that Affirmative Action was designed to create opportunities for historically disadvantaged persons regarding race, religion, color, sex, and/or national origin. In terms of creating a diverse workforce, federal, state, and local governments have implemented successful affirmative action plans, as well as federal contractors and private employees. The role of affirmative action in diversity is to provide opportunities to all persons without regard to protected characteristics.

There are two types of affirmative action:

1. Judicial affirmative action occurs when a court orders affirmative actions in the workplace as a result of proven discriminatory activities. In this situation, an employer has already admitted to or been found guilty of discriminatory actions against protected individuals or groups of individuals and the court outlines a performance improvement plan and/or requires compensation to victims of discrimination.

2. Voluntary affirmative action occurs when an employer takes pre-emptive measures to avoid discrimination or when they recognize it exists in their workplace and take measures to eliminate it. These actions can include targeted recruitment of minority groups and evaluation of selection tools for discriminatory issues.

**Facilitator Notes:**   
Reverse discrimination may occur against non-protected individuals when affirmative actions negatively impact them. Allegations of reverse discrimination are difficult to prove and prosecute and typically stem from the fact that many people don’t understand affirmative action laws and practices.

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Time:  5 minutes

Running time: 20 minutes

**Objective**: Discuss how Affirmative Action impacts the workplace

**Description**: Discuss Reasonable Accommodation.

**Instructional Method**: Lecture - Discussion

**Script**:     
Recall from Module 2 the discussion of reasonable accommodation for persons with disabilities. In terms of diversity, equity, and inclusion, reasonable accommodation for those with differences so they can feel safe, seen, appreciated, and valued, is simply the moral thing to do. Unfortunately, we still have to pass laws forcing some organizations and people to treat everyone fairly.

**Ask**: What does it look like in the workplace for Disability and Religion?

**Facilitator Notes:**

Reasonable Accommodation for Disability

Creating a workplace that is inclusive and equitable for persons with disabilities should be the goal of every organization. However, the reality is that many employers still view accommodating disabilities as an unwanted obligation rather than the creation of an inclusive workplace.

*What does it look like in the workplace?*

* Creating accessible buildings, restrooms, and other facilities
* Acquiring or modifying tools and equipment
* Providing closed captioning on all calls and online meetings
* Providing screen readers
* Updating policy to allow service animals
* Adjusting work schedules

Reasonable Accommodation of Religion

Religion can be a very touchy subject in the workplace because it is a topic that is important to some people but not to others. Some employers practice their faith publicly and devoutly, while others don’t follow any specific religious teachings and don’t want to be bothered by the religious views of others, especially in the workplace. Under the Title VII of the Civil Rights Act of 1964, however, employers must allow employees to practice their faith in the workplace unless doing so would place an undue hardship on the employer.

According to the US Department of Labor website, examples of undue hardship are:

* The accommodation is too expensive
* Makes the workplace unsafe.
* Decreases workplace efficiency.
* Infringes on the rights of other employees.
* Requires others to do more than their share or more dangerous work.

*What does it look like in the workplace?*

* Employees are allowed to wear religious clothing in addition to or instead of uniforms.
* Employees are allowed to make personal grooming choices in keeping with their religious faith.
* Employers must allow time and space to pray or observe other religious practices.
* Employers must allow general religious expression in the workplace.



Time:  5 minutes

Running time: 25 minutes

**Objective**: Define key terms for Diversity

**Description**: Identify and define key terms for D. E. I.

**Instructional Method**: Lecture

**Script**:

What is D, E, and I?

***Diversity*** in the workplace means a workforce of people from various backgrounds, genders, social statuses, ethnic backgrounds, religions, sexual orientations, and more.

***Equity*** in the workplace provides equal access to and distribution of tools and resources that create equal opportunity in the workplace.

***Inclusion*** in the workplace creates an environment that accepts and invites people from all walks of life and includes consideration of all employees in creating workplace policies and practices.

When organizations emphasize all three of these topics, they are called D, E, and I. The benefit of creating a diverse workforce that provides equal access to employment opportunities and is inclusive of all persons is the ultimate goal of laws like the Civil Rights Act, the Americans with Disabilities Act, the Equal Pay Act, and more.

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Time:  15 minutes

Running time: 40 minutes

**Objective**: Identify laws and practices that promote diversity, equity, and inclusion.

**Description**: Identify which laws promote work/life balance issues.

**Instructional Method**: Lecture – Exercise - Discussion

**Script**:

One major issue that D, E, and I initiatives commonly address are work/life balance issues. In 2023, women are more likely to miss work than men are due to childcare issues, single parents are a significant part of the workforce (which impacts people of color more), more employees are taking care of aging parents, and since the COVID Pandemic of 2020, more employees are concerned about having quality time with their family than ever.

Flexible leave policies are one way to build a workforce that is accommodating to D, E, & I issues. All employers having 50 or more employees, public agencies such as local, state, and federal government, and education agencies must provide unpaid leave to employees under the [Family and Medical Leave Act of 1993](https://www.dol.gov/agencies/whd/fmla). Under the terms of the law, eligible employees are entitled to:

* Twelve workweeks of leave in a 12-month period for:
  + the birth of a child and to care for the newborn child within one year of birth;
  + the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
  + to care for the employee’s spouse, child, or parent who has a serious health condition;
  + a serious health condition that makes the employee unable to perform the essential functions of his or her job;
  + any qualifying exigency arising out of the fact that the employee’s spouse, son, daughter, or parent is a covered military member on “covered active duty;” or
* Twenty-six workweeks of leave during a single 12-month period to care for a covered servicemember with a serious injury or illness if the eligible employee is the servicemember’s spouse, son, daughter, parent, or next of kin (military caregiver leave).

During this time, the leave is unpaid, but the employer is required to hold the employee’s job and continue to contribute to any employee benefits they contributed to prior to the leave. Employers may require the employee to use any paid leave benefits such as vacation and sick leave concurrently with the unpaid leave.

**Exercise**: Leave policies and laws

1. Students brainstorm types of leave and ways employers can contribute to work/life balance issues. (Professor write down on white board) (3 minutes)
2. Split into groups and research a work life balance issues (or leave policy) and the laws that promote diversity, equity, and inclusion - give each group paper or white board to put their answers. (5 minutes)
3. Share the white boards or papers with all (Gallery Walk in groups) – 5 minutes

*Note*: A gallery walk is when the students walk (or are shown) each of the “answers” that were written down.

In person: walk around the room

Remote: Move from group to group or show each white board on the main screen (like a movie).

**Discuss** in groups or as a large group.

**Facilitator Notes:**

Leave Policies  
As of the beginning of 2023, [11 states](https://www.ncsl.org/research/labor-and-employment/state-family-and-medical-leave-laws.aspx) have paid family leave laws. State paid leave programs are funded through employee payroll deductions and some also require employer contributions to the plan. State leave plans vary in detail, but all offer paid time off for ***maternity*** and ***paternity*** leave.

***Bereavement leave*** policies provide paid or unpaid leave to employees upon the death of an immediate family member. This is not a type of leave that is required by law, but is a common benefit offered to employees.

***Religious leave*** policies provide paid or unpaid leave to employees to observe religious holidays or conduct religious practices or rituals. Religious leave would typically fall under religious accommodation and should be considered on a case-by-case basis.

Flexible Scheduling

Flexible scheduling has become one of the most critical factors in providing work/life balance to employees. We learned following COVID just how toxic and miserable some workplaces are and how much value people place on the flexibility to work in a way that works for their family. Again, there are no laws that require flexible scheduling for employees, but it does contribute to a healthy D, E, and I environment.

Remote Work

COVID also taught us the value of remote work. Employers were forced to allow remote work and where many were uncertain they could still be profitable with employees working remotely, they were surprised to find that they could not only be profitable, but be more employee friendly, more flexible, and still get the job done. Remote work has never been mandated before in the history of our country, and the fact that our technology infrastructure has grown to support it has made it possible to offer this benefit to millions of employees who value the option.

Child/Elder care

Childcare benefits are a fairly common employee benefit designed to help with work/life balance and as our population continues to age, more organizations are offering similar benefits to those taking care of aging parents. The federal government does offer a Flexible Spending Account (FSA) pre-tax deduction that can be used to pay for childcare, but it does not apply to elder care at this time.

Access to Training and Development Opportunities

Another way to ensure a healthy D, E, and I environment in the workplace is to ensure that all employees have equal access to training and development opportunities. As a matter of rule, employers should be doing this anyway to ensure they aren’t being discriminatory but being pro-active in encouraging diverse candidates to engage with training and development opportunities creates an inclusive environment where people feel they have a fair chance at growth.

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Time:  20 minutes

Running time: 60 minutes

**Objective**: Determine the appropriate laws to apply to given employment situations.

**Description**: Discuss Bias and harassment in employment situations and the laws that apply to each.

**Instructional Method**: Exercise – Study Aid Chart handout

**Script**:   We will now dive into many different types of discriminatory harassment and discuss what it looks like in the workplace and what laws apply to each.

**Exercise**: (10 minutes)

1. Break students into (8) groups for each topic on the slide.
2. Have students Create a character who has been harassed this way and answer these questions based on their character:   
   a. What does this look like in the workplace?  
   b. What laws apply to help their character?
3. Debrief: (10 minutes)  
   Have students share their character with the rest of the class

**Note**: Use Study Aid #5 Chart Types of Prohibited Discriminatory Harassment. Handout

**Facilitator Notes:**

**Unconscious Bias**

Unconscious bias is a prejudice for or against a person, group, or thing in comparison to another in a way that produces a negative impact or treatment of them that a person is unaware they have. Several types of unconscious bias impact DE&I in the workplace.

1. **Gender bias**- Persons who have gender bias have a preference for one gender over another.
2. **Beauty bias**- Persons with beauty bias are prejudiced against those they deem less attractive or make assumptions about others based on their physical appearance.
3. **Conformity bias**- Persons with conformity bias strongly desire to fit in with the group, so they do not share their own opposing opinions.
4. **Affinity bias**- Persons who have affinity bias show a preference for those they have something significant in common with.
5. **Confirmation bias**- Persons who have confirmation bias form initial opinions about something and then look for evidence to support the initial opinion, whether or not the initial opinion is accurate.

*What does it look like in the workplace?*

1. **Gender bias**- Assigning only female employees to clean the breakroom kitchen or set up snacks for the meeting.
2. **Beauty bias**- Hiring an inexperienced but attractive young man to work as a bartender over the less attractive but experienced applicant.
3. **Conformity bias**- Not speaking up against a new policy that you feel is discriminatory against some employees because you don’t want to go against popular opinion.
4. **Affinity bias**- Hiring a less qualified applicant because you were both in the same fraternity/sorority.
5. **Confirmation bias**- An interviewer likes a particular candidate, so they ask easier questions that make the applicant look more qualified than they are.

**Sexual Harassment**

We covered the legal description of sexual harassment in Module 3 but identifying it in the workplace in real-time can be challenging because what is fun and joking around to one employee may be highly offensive to another.

*What does it look like in the workplace?*

*Quid Pro Quo Sexual Harassment*

Recall that quid pro quo sexual harassment occurs between an employee and a supervisor or someone who has the power to influence the employee’s conditions of employment. Below are some examples:

* A supervisor offers to let an employee be off on Fridays with pay if they agree to date them.
* A supervisor and employee begin a consensual sexual relationship, and the supervisor threatens to fire the employee when they try to break it off.

***Hostile Work Environment Sexual Harassment***

A hostile work environment is created when employees are allowed to sexually harass and intimidate others. This type of harassment has a wide range of examples and can include many actions such as:

* Sexually suggestive comments, jokes, and remarks are common.
* Inappropriate touching.
* Making derogatory comments about another employee’s appearance, gender, sexual orientation, etc.

Religious Harassment

Religious harassment is based on an employee’s faith or the practice thereof under Title VII of the Civil Rights Act of 1964. It can take many forms and contributes to a hostile work environment.

*What does it look like in the workplace?*

* Derogatory comments about another person’s faith or religious practice.
* Preventing a coworker from practicing their faith.
* Posting images or photos depicting hate against a particular faith (i.e. swastika).

Pregnancy Harassment

Pregnancy harassment is based on an employee’s pregnancy status (or the lack thereof). This type of harassment also contributes to a hostile work environment, and is prohibited by the Pregnancy

Discrimination Act, Title VII of the

**Civil Rights Act of 1964, and the Americans with Disabilities Act.**

*What does it look like in the workplace?*

* Derogatory comments about a woman’s pregnancy and appearance during pregnancy.
* Making complaints to the pregnant employee about having to take on extra work during her maternity leave.
* Unwanted and inappropriate touching.

**Racial Harassment**

Racial harassment is based on an employee’s race or color of their skin. This type of harassment contributes to a hostile work environment and is prohibited by Title VII of the Civil Rights Act of 1964.

*What does it look like in the workplace?*

* Derogatory comments about a person’s race or skin color.
* Excluding persons on the basis of race from work activities.
* Telling racial jokes or allowing racial slurs or name calling.

**Disability Harassment**

Disability harassment is based on an employee’s physical or mental disability and is prohibited by the Americans with Disabilities Act.

*What does it look like in the workplace?*

* Derogatory comments about a person’s physical or mental disability.
* Telling jokes or name calling.
* Complaining to the disabled person about having to accommodate them.

**National Origin Harassment**

National origin harassment is based on an employees’ place of birth and is prohibited by Title VII of the Civil Rights Act of 1964.

*What does it look like in the workplace?*

* Derogatory comments, ethnic slurs, or jokes.
* Calling an employee a “terrorist” because they are of Middle Eastern descent.

**LBTQ+ Harassment**

Harassment on the basis of a person’s gender identity or sexual orientation is prohibited by Title VII of the Civil Rights Act of 1964 and is considered sexual harassment, so *quid quo pro* and hostile work environment rules apply here as well.

*What does it look like in the workplace?*

* Derogatory comments or jokes about a person’s gender identity or sexual preference.
* Name calling.
* Physical intimidation.

**Age Harassment**

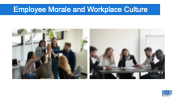
Age harassment is prohibited by the Age Discrimination in Employment Act and contributes to a hostile work environment. It only applies to persons 40 years or older.

*What does it look like in the workplace?*

* Derogatory comments about a person’s age.
* Physical intimidation.
* Age-based insults about using technology or getting tired easily.

Risks and Costs of Harassment

Employers who allow a harassing workplace environment to exist within their organizations face a number of unnecessary risks. Some organizations have higher risk factors for harassment than others, based on a variety of factors. The EEOC provides a [Chart of Risk Factors for Harassment and Responsive Strategies](https://www.eeoc.gov/chart-risk-factors-harassment-and-responsive-strategies)



Time:  5 minutes

Running time: 65 minutes

**Objective**: Identify laws and practices that promote diversity, equity, and inclusion.

**Description**: Use the chart to discuss and Identify laws and practices that promote diversity, equity, and inclusion.

**Instructional Method**: Lecture – Discussion - Chart

**Script**:

When organizational leaders don’t concern themselves with Diversity, Equity, and Inclusion issues, they set the organization up for serious issues. In reviewing the chart above, it is easy to see that the impact of harassment on employees is substantial. In workplaces where harassment is common, turnover rates are higher and the risks of legal action are increased.

**Discussion**: Using the chart (The EEOC provides) discuss Risk factors and strategies  
 [Chart of Risk Factors for Harassment and Responsive Strategies](https://www.eeoc.gov/chart-risk-factors-harassment-and-responsive-strategies):

**Note**: See Chart in appendix

**Facilitator Notes:**

*Legal Risks and Liability*

How much does workplace harassment cost? A study by Vault Platform, [*The Trust Gap: Expectation vs Reality in Workplace Misconduct*](https://vaultplatform.com/the-trust-gap/) revealed some sobering information.

As stated by Segal (2021), the report found:

* Workers who had to take time off in 2021 due to their experience with workplace misconduct missed, on average, six days of work or 43 million sick days. This resulted in a $8.54 billion loss for the U.S. economy.
* 14% of staff who experienced workplace misconduct in the last 12 months ended up leaving their jobs.
* 75% of U.S. office workers have experienced or witnessed some form of workplace misconduct during their working lives.
* Harassment was the most common form of misconduct in the U.S., with over a quarter (26%) of office workers having experienced this at some point in their careers.

*Brand Image*

In a world where everyone has a video camera at their disposal and the ability to put bad behavior on display quickly and easily, most organizations cannot afford the negative reputation that can be earned by allowing employees to act inappropriately in the workplace. For that matter, even inappropriate off-duty conduct while an employee is wearing a company shirt can be problematic. Therefore, protecting brand image is vital and eliminating harassing employees is a smart move for any organization.

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Time: 10 minutes

Running time: 75 minutes

**Objective**: Identify laws and practices that promote diversity, equity, and inclusion

**Description**: Students will review the material by answering the questions on the slide.

**Instructional Method**: Pair and share discussions, exercises, homework

**Script:** Let’s get real about harassment in the workplace.

**Exercise**:

1. Pair students
2. Have students discuss and answer the questions on the slide.
3. Have students share their answers.

**Individual Exercise:**

1. Have each student write a one-page answer to question #2
2. Have students get into to groups of 3-5 and discuss their answers
3. Have students share with the entire class (optional)

**Case Law in the Spotlight**

* [EEOC v. Wal-Mart Stores East, LP, Civil Action No. 6:19-cv-06718-CJS-MWP](https://www.eeoc.gov/newsroom/walmart-pay-410000-settle-eeoc-sexual-harassment-lawsuit) (6/14/21)
* [U.S. Equal Employment Opportunity Commission v. American Piping Inspection, Inc., Case No. 4:21-cv-3187](https://www.eeoc.gov/newsroom/american-piping-inspection-pay-250000-settle-eeoc-race-discrimination-and-retaliation-suit) (12/23/22)

**State Employment Law Focus**

* Visit Justia.com’s [Employment Laws: 50-State Survey](https://www.justia.com/employment/employment-laws-50-state-surveys/employment-discrimination-laws-50-state-survey/) and review the laws for your state and several others. What are the main similarities/differences between the laws? Why do we need state laws to support federal laws?

**Discussion Prompts**

1. Find a recent (less than 5 years old) article about Affirmative Action in the workplace. Summarize the article, share the link, and discuss the information with your peers. How is Affirmative Action being utilized in the current workplace? Is it still necessary? Why or why not?
2. Have you ever experienced or witnessed any type of harassment in the workplace? If you would like to share your experience, please do so. What did you do about it? What would you do differently now that you know more about workplace harassment?

**HR Skills Exercise**

* Your task is to develop a Diversity, Equity, and Inclusion statement for an imaginary company you would like to open someday. Review D, E, and I statements from companies online and develop an original statement that aligns with the law and promotes your organization that would be suitable for an employee handbook.

**Relevant Laws**

* Age Discrimination in Employment Act of 1967
* Americans with Disabilities Act of 1990
* Executive Order 11246
* Pregnancy Discrimination Act of 1978
* Title VII of the Civil Rights Act of 1964

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Time:  15 minutes

Running time: 90 minutes

**Objective**: Review main points in this module. Determine the appropriate laws to apply to discrimination.

**Description**:  Be sure that students have a fun way to remember the material.

**Instructional Method**: Game – Review

**Script**:

Let’s see how much we remember about this module.

**Facilitator Notes:**

Review Exercise:  Create a fun game to review the material.  Remember to use the objectives to measure learning:

* Define the key terms related to Diversity.
* Determine the appropriate laws to apply to given employment situations.
* Discuss how Affirmative Action impacts the workplace.
* Identify laws and practices that promote diversity, equity, and inclusion.
* Have each student submit a question on a piece of paper, crumple it up and toss it in a bucket (clean wastebasket), Instructor will then read them and give points to each team with the correct answer.
* Any game show – Family Feud, Jeopardy, $10,000 pyramid, Password, Tic Tac Toe
* Extra credit quizzes

There are many ways to review material virtually or in person.  Students can use their phones or computers to navigate to various online review websites.

A few are:

* Kahoot
* Quizlet