








Significant Laws

Title VII of the Civil Rights Act of 1964	<ul style="list-style-type: none">Prohibits discrimination based on race, color, religion, sex, and national originProhibits retaliation
Pregnancy Discrimination Act	<ul style="list-style-type: none">Prohibits discrimination based on pregnancy, childbirth, or a medical condition related to pregnancy or childbirthProhibits retaliation
Age Discrimination in Employment Act	<ul style="list-style-type: none">Prohibits discrimination based on age (over 40 years)Prohibits retaliation
Americans with Disabilities Act	<ul style="list-style-type: none">Prohibits discrimination based on disabilityProhibits retaliation





Significant Laws

Equal Pay Act	<ul style="list-style-type: none">Prohibits payment of different wages to men and women if they perform equal work in the same workplaceProhibits retaliation
Genetic Information Nondiscrimination Act	<ul style="list-style-type: none">Prohibits discrimination based on genetic information, including genetic tests, family members' genetic tests, and family medical historyProhibits retaliation
New York State Human Rights Law	<ul style="list-style-type: none">Prohibits discrimination based on race, color, gender, religion, religious creed, sex, familial or marital status, age, national origin or ancestry, physical or mental disability, genetic information, predisposition or carrier status, military or veteran status, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender, pregnancy (including childbirth) and related medical conditions, and related medical conditions related to lactation, citizenship, and domestic violence victim statusProhibits retaliation



Protected Statuses

- Race
- Color
- Gender
- Religion
- Creed
- Sex
- Pregnancy
- Sexual Orientation
- Self-Identified or Perceived Sex
- Gender Identity
- Gender Expression
- Transgender Status
- National Origin or Ancestry
- Citizenship
- Age
- Disability
- Military or Veteran Status
- Marital Status
- Familial Status
- Criminal or Arrest History
- Genetic Predisposition or Carrier Status
- Domestic Violence Victim Status

COMPLAINT INTAKE – FIRST STEPS

- ☐ Complaint form
- ☐ Details, details, details...
- ☐ Identify potentially relevant evidence
- ☐ Note: Reporting conduct to a Union representative/officer only **does not** constitute a report to the Employer.

DO WE REALLY NEED TO INVESTIGATE THIS?

- ☐ Are there allegations of *unlawful* discrimination or harassment?
- ☐ Meet with the complaining party
- ☐ Investigating is always the prudent course of action



INVESTIGATION

- ❑ Identify additional witnesses
- ❑ Immediate corrective action?
 - ❑ Administrative leave
 - ❑ Adjust work schedules/locations
 - ❑ Stay away orders
- ❑ DO NOT...



WHO SHOULD INVESTIGATE?

- It depends...
- Management official vs. outside counsel
- Factors to consider
 - Relationship between potential internal investigator and the involved parties
 - Seriousness/complexity of the allegations
 - Appearance of impropriety
 - Fresh set of eyes



WHO SHOULD INVESTIGATE?

- ... Additional factors to consider:
 - Attorney-client privilege
 - Timeliness
 - Experienced note-taking
 - Identifying other relevant evidence and potential corrective action
 - Drafting investigation report

INVESTIGATION BASICS

- ❑ Who should be interviewed?
- ❑ Investigator + witness
- ❑ What should be documented in interview notes?
- ❑ Questioning witnesses
 - ❑ Objectivity is imperative
 - ❑ Follow-up interviews

INVESTIGATION BASICS

- ❑ Document all evidence received
- ❑ Union setting – may need to invite union representation
- ❑ No retaliation
- ❑ Don't promise absolute confidentiality

FINDINGS

- ❑ Identify laws, policies, rules implicated by the allegations
- ❑ Is there sufficient evidence to corroborate the claim(s)?
- ❑ Basic factual determinations:
 1. Allegations are sustained
 2. Allegations are without merit
 3. Insufficient evidence to corroborate the claim(s)
 4. Allegations are not sustained; however, other misconduct or wrongdoing was proven by evidence during the investigation



INVESTIGATION REPORT

- ☐ Summarize the allegations
- ☐ Describe the scope of the investigation – documents reviewed, persons interviewed, etc.
- ☐ Summarize witness statements and interviews
- ☐ Summarize pertinent evidence
- ☐ Identify applicable laws, policies, rules
- ☐ Findings / Conclusions
- ☐ Recommendations



CONCLUDING INVESTIGATION

- ☐ Notify the involved parties of the outcome
- ☐ No retaliation
- ☐ Follow through on any corrective action needed to prevent future occurrences



KEEP IN MIND...

- ☐ Critical that employees know how and where to file complaints of harassment and discrimination
- ☐ Make complaint forms and procedures easily accessible
- ☐ Consider employee acknowledgment forms



Ryan G. Smith
Partner

T: 716.842.2800 | F: 716.845.6709
rsmith@websterszanyi.com

QUESTIONS?
