

MODULE 5
Protection from Discrimination
Participant Outline

90 minutes

Objectives:

- to name what types of discrimination in the work place are against the law
- to review who is protected against discrimination under the Massachusetts Fair Employment Practices Act (and related Federal laws)
- to examine the concept of “employee-at-will”
- to review agencies which are responsible for enforcing the law
- to practice applying laws to common workplace situations
- to understand and evaluate different responses to discrimination: complaints, law suits, concerted activity, keeping your mouth shut

Welcome and Introductions

Activity 1: What Types of Discrimination in the Workplace are Illegal?

Brainstorm a list of things that happen in the workplace which are or should be against the law.

Activity 2: What does the law offer: The Massachusetts Fair Employment Practices Act (FEPA)

Review the Massachusetts Fair Employment Practices Act, which bars discrimination in the workplace.

Activity 3: What Does the Law Say About Remedies for Discrimination?

Review the remedies available to respond to workplace discrimination.

Activity 4: Identifying and Responding to Discrimination

Determine and evaluate different ways to respond to discrimination on the job.

Activity 5: Evaluating Cases of Discrimination

Practice analyzing and responding to cases of workplace discrimination.

Summary

Is this discrimination?

Read the following descriptions of employment situations. Discuss what is happening in each case, and then answer the following questions:

1. Is this illegal discrimination?
 2. If yes, what right or law is being violated?
 3. What could the person do about it?
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1. Henry, an African-American man, applies in person for a job that was advertised in the paper. When he gets there he is told that there are no jobs available. On the way out he notices a young, white woman sitting in the reception area, filling out a job application form.

 2. Rhonda is pregnant and has been on the job as checkout person at the local supermarket for two weeks. Her back hurts and her ankles are swollen and both problems are worse after standing for 8 hours at a time, with only short breaks. She has asked her supervisor for a stool to sit on, but the supervisor told her no.

 3. Sonia has been working in the clerical area of a large insurance company for over a month. She likes her work, but has been having problems with her supervisor. Every time he gives her work he puts his hand on her shoulder and leans in close. He makes comments on her clothing and her body, and sometimes blocks her way to her desk with his body. She doesn't want to lose her job, but his attention is putting a lot of stress on her and making it hard to concentrate on her work.

 4. Linda has been working at the coffee shop for three months, doing an 8-3 shift. It allows her to be home when her kids are home and has worked well for her. Now she is being told that if she can't work Saturdays she will be fired.

(Facilitator's Answers)

Read the following descriptions of employment situations. Discuss what is happening in each case, and then answer the following questions:

1. Is this illegal discrimination?
2. If yes, what right or law is being violated?
3. What could the person do about it?

1. Henry, an African-American man, applies in person for a job that was advertised in the paper. When he gets there he is told that there are no jobs available. On the way out he notices a young, white woman sitting in the reception area, filling out a job application form.

This is a violation of the Massachusetts Fair Employment Practices Act (FEPA) and Title VII of the Civil Rights Act, barring discrimination on the basis of race or sex.

Henry should talk to the young woman and find out what she was told. He could then either confront the employer, talk with an employment counselor if he has one, or contact the MCAD. If the advertised job is unionized, he could contact the union.

2. Rhonda is pregnant and has been on the job as checkout person at the local supermarket for two weeks. Her back hurts and her ankles are swollen and both problems are worse after standing for 8 hours at a time, with only short breaks. She has asked her supervisor for a stool to sit on, but the supervisor told her no.

This is not a violation of the ADA (Americans with Disabilities Act), which requires an employer to make a "reasonable accommodation" to an employee's disability. Pregnancy itself is not considered a disability under the ADA.

Luckily for Rhonda, Massachusetts recently passed the Pregnant Workers Fairness Act which will require employers to provide reasonable accommodation to pregnant workers, even if they are not disabled by their pregnancy. This law will go into effect April 1, 2018.

Massachusetts also has a law giving employees the right to a seat as long as the work can be performed safely while sitting. Even though they're not pregnant, the other cashiers who work with Rhonda may appreciate being able to sit on the job. It would be a good idea for Rhonda to ask the other cashiers if they'd like to go together to management to ask for seats.

In addition, there is an amendment to the FLSA that could help Rhonda in the near future: Employers are required to provide "reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk." A private location other than a bathroom must be made available. Law does not apply to employees who are exempt from federal overtime pay requirements.

3. Sonia has been working in the clerical area of a large insurance company for over a month. She likes her work, but has been having problems with her supervisor. Every time he gives her work he puts his hand on her shoulder and leans in close. He makes comments on her clothing and her body, and sometimes blocks her way to her desk with his body. She doesn't want to lose her job, but his attention is putting a lot of stress on her and making it hard to concentrate on her work.

This is sexual harassment and illegal under the Massachusetts Fair Employment Practices Law (FEPA) and Title VII of the Civil Rights Act of 1964. It is a form of harassment called "hostile work environment," and is affecting Sonia's ability to do her job. She should tell the supervisor to stop what he is doing. She could also talk to her co-workers and enlist their help, go to the supervisor's supervisor if the harassment doesn't stop, file a grievance through her workplace sexual harassment grievance process, or go to her union, if she has one.

4. Linda has been working at the coffee shop for three months, doing an 8-3 shift. It allows her to be home when her kids are home and has worked well for her. Now she is being told that if she can't work Saturdays she will be fired.

While this hardly seems fair to Linda, there is no violation of the law here. There is no law that protects Linda's job because her status as a parent makes it difficult for her to work on Saturday.

Flipcharts for **MODULE 5: Protection from Discrimination**

Flipcharts for **Welcome and Introduction**

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Agenda

- Welcome and Introductions
- What Types of Discrimination in the Workplace are Illegal?
- What does the law offer: The Massachusetts Fair Employment Practices Act (FEPA)
- What Does the Law Say About Remedies for Discrimination?
- Identifying and Responding to Discrimination
- Evaluating Cases of Discrimination
- Summary

Flipchart for **Activity 1** (title only)

Examples of Workplace Discrimination

Flipcharts for Activity 2

FEPA
What's protected? No discrimination on the basis of: <ul style="list-style-type: none">• race, color, sex, religion, national origin, age over 40, handicap, gender identity or sexual orientation
What can't an employer do? No discrimination in: <ul style="list-style-type: none">• Hiring, promotion, discharge, pay, fringe benefits and other aspects of employment• No sexual harassment on the job
File complaints with: MCAD

Other Laws Barring Discrimination
<ul style="list-style-type: none">• The Equal Pay Act• Executive Order 11246, for federal workers• Age Discrimination in Employment Act• The Americans with Disabilities Act• The Massachusetts Equal Rights Act• Regulations developed by the EEOC (Equal Employment Opportunity Commission) and the MCAD (Massachusetts Commission Against Discrimination)• Massachusetts Domestic Workers Bill of Rights

Flipchart for Activity 3 (title only)

What Should Happen to the Employer?
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Flipchart for Activity 4

Responding to Discrimination

1. No response
2. Individual response
3. Group response