

# Employment Discrimination

Presented By:



Jesse Chen, Esq., 陳成律師

Call: (412) 848-8853 | Fax: (412) 843-4709 | Email:  
[chen@chenesq.com](mailto:chen@chenesq.com)

Address: 322 N. Shore Dr., Bldg. 1B, Ste. 200  
Pittsburgh, PA 15212

This presentation is for general informational purposes only. It is not legal advice. It is not a substitute for legal advice or services. Consult an attorney if you have a specific question or concern. Legal advice will be provided only when an attorney-client relationship is established. An attorney-client relationship can only be established with me through a mutually signed legal engagement agreement.

# How will this presentation help?

- **For Employers**: Protect your business from an employment discrimination lawsuit, and understand management best practices.
- **For Employees**: Know what's legal and illegal discrimination. Know your rights and responsibilities.
- **Sources**:
  - Statutes (laws from legislature – e.g. Congress)
  - Case law (laws from court case decisions)
  - Examples and case studies

# **WHAT IS ILLEGAL EMPLOYMENT DISCRIMINATION?**

## **GENERALLY:**

- **Race** (e.g. East Asian)
- **Color** (e.g. yellow skin)
- **National Origin** (e.g. China)
- **Sex** (e.g. female – and more – gender identity, family status)
- **Pregnancy**
- **Religion** (e.g. Buddhist)
- **Age** (40-65)
- **Disability** (e.g. blind)
- **Citizenship Status** (e.g. US citizen, or green card holder)
- **Genetic Information** (genetic test results, family medical history)

## AND THERE'S MORE:

- **Retaliation**
- **Discipline**
- **Equal Pay**
- **Workplace Romance**
- **Background Checks**
- **Accommodations**
- **Termination**
- **Promotions**
- **Disparate Impact**
- **References**

## MANY DIFFERENT LAYERS OF LAWS:

- **Federal:** EEOC; Title VII, ADA, ADEA, etc.
- **State:** PHRC; PHRA (Pennsylvania: "Ancestry")
- **Local:** ACHRC (Allegheny County: "Gender Expression", "Guide Animal")

## **REMEDIES: "Very Costly"**

- **Civil Penalties**
- **Licensure Authority Discipline**
- **Reinstatement**
- **Lost Benefits**
- **Interest**
- **Attorney's Fees**
- **Back Pay**
- **Front Pay**
- **Retroactive Seniority**
- **Out-of-Pocket Expenses**
- **Punitive Damages**
- **Emotional Harm**

# **TEST: ILLEGAL DISCRIMINATION OR NOT?**

## **1. PROTECTING PREGNANT EMPLOYEE'S BABY?**

A female employee became visibly pregnant. Her supervisor stated that he cared about her baby and assigned her to work less physically active duties because he did not want her to over-exert herself and harm her baby.

## **2. NEUTRAL EMPLOYMENT TESTS?**

A large company required its job applicants to have a high school diploma and complete a general intelligence test so as to generally "improve the overall quality of the workforce." Black employees sue. The court found that the company did not intend to discriminate against Blacks.

## **3. LANGUAGE PROBLEMS?**

An engineer was terminated after his supervisors became so frustrated that they could not understand him because of his foreign accent. The engineer was assigned to lower-level work and instructed to take an English as a Second Language class.

## **Who wins?**

Employee wins on a sex discrimination claim.

## **Who wins?**

Employees win on a race discrimination – disparate impact claim.

## **Who wins?**

Employee wins on a combined race, national origin and retaliation claim.

# **TEST: WHO WAS RIGHT?**

## **4. CUSTOMER PREFERENCE?**

An airline rejected a male job applicant for a flight attendant position. The airline said that its customers preferred female flight attendants, and so to satisfy its customers' preferences, restricted flight attendants to females only.

## **5. RACIAL PREFERENCES?**

A very prestigious university gave "bonus points" to only Blacks, Hispanics and Native Americans in its admissions evaluation. The stated policy was affirmative action and to promote diversity. Rejected White applicants sue.

## **6. RACIAL PREFERENCES, PART 2**

A very prestigious university used race as a "substantial weight" in determining admissions, had a policy of enrolling a "critical mass" of non-White students, and rejected a White applicant. White applicant sues.

## **Who wins?**

Employee wins on a sex discrimination claim.

## **Who wins?**

White applicants win. The "bonus points" system is "too mechanistic".

## **Who wins?**

University wins. Diversity is a "compelling interest" when race is "narrowly used".

# GAME: SPOT THE PROBLEM

## Hiring Ads:

"Johnny O's is looking for a **few more ladies** to join our team!"



**Johnny O's**  
Like This Page · April 10 · 🌐

Johnny O's is looking for a few more ladies to join our team! We are currently seeking servers & bar tenders with weekend availability! Please message us for more details!

👍 Like    💬 Comment    ➦ Share    📌

👍 24    Top Comments ▼

**Kristen Arnold ...**  
Like · Reply · 👍 1 · April 11 at 2:39am

**Dale Miller Wow**  
Like · Reply · April 12 at 7:53pm

   😊  
Press Enter to post.

Sponsored    Create Ad



**A Sad Day For The UFC. .**  
theesportspass.com  
#Breaking - Conor McGregor, 27, Was Just Announced D ...

# GAME: SPOT THE PROBLEM

## Hiring Ads:

verizon Verizon Careers  
Sponsored · 🌐

Here, you're more than just a number. Practice data story-telling, analytics, and more.



Verizon FP&A careers

[Learn More](#)

“...wants to reach people **ages 25 to 36...**”

### Targeting Information

The reason you're seeing this ad is that **Verizon Careers** wants to reach people interested in **Finance**, based on activity such as liking Pages or clicking on ads.

There may be other reasons you're seeing this ad, including that Verizon Careers wants to reach **people ages 25 to 36 who live or were recently near Washington, District of Columbia**. This is information based on your Facebook profile and where you've connected to the internet.

# **EMPLOYERS: BEST PRACTICES**

## **Hiring:**

- Hiring ads should only include job-related qualifications
- Carefully word hiring ads
- Beware of asking personal questions or making personal comments (e.g. family plans)
- Beware of requesting sensitive information \*(e.g. photograph)
- Follow established hiring procedure
- Hiring ad posting and distribution is scrutinized
- Document interview results, send careful rejection letters

## **Discipline:**

- Follow your own rules
- Be clear and detailed, be consistent
- Focus on work-related behavior
- Investigations should be neutral, fact-based
- Keep a record, keep documents
- Respect employee's disciplinary history privacy

# **EMPLOYERS: BEST PRACTICES**

## **Workplace Environment:**

- Make sure you have all government-required posters and other documents to be provided to your employees
- Maintain good relationships with employees
  - Angry employees more likely to complain/sue
  - Your other employees can help you even if one sues you
- Listen more – find out what your employees' needs are, be extra careful if employee discusses sensitive needs (e.g. sick leave, parental leave, etc.)
- Beware both lateral and vertical discrimination

## **If an Employee Files a Complaint:**

- Never ignore the complaint
- Call a lawyer immediately
- Preserve complaining employee's employment file
- Work with management and lawyer to inform other employees
- Do not make public statements, do not argue or respond on your own

## **EMPLOYEES: PROTECT YOURSELF**

### **Hiring:**

- Ask for a copy of whatever you sign; keep your copies
- Read carefully what you're signing, especially handbooks – don't be afraid to ask for an explanation
- Keep a record of communications between you and your prospective employer
- You do not have to answer discriminatory questions\*

\*National security/background checks

### **Performance and Promotions:**

- Keep copies of your performance reviews
- Understand performance and promotions policy
- Keep track of how co-workers are promoted, and try to get answers in writing if you applied but were denied a promotion
- Do not participate in discriminatory activity
- Avoid using employer IT systems for personal use
- Keep a diary of any patterns of discrimination, and store as dated material

# **EMPLOYEES: PROTECT YOURSELF**

## **Discipline:**

- Be careful what you say – some issues can even involve police
- Get copies of whatever the employer gives you; ask for a copy if you are not given one
- Human Resources, and even your supervisor, are *not* your friend, their duty is to protect the employer's interests *only*
- Be careful of what you are signing

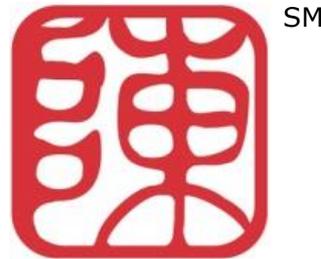
## **Termination:**

- Beware of your own attitude
- Call a lawyer when you think you are facing trouble
- Don't sign anything without carefully considering its effects
- Keep a record of what you sign and receive

# THE END

## ANY QUESTIONS?

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