



WHAT'S YOUR ROLE?

WHAT ADVOCATES & SERVICE PROVIDERS
CAN DO TO HELP TEEN & YOUNG ADULT
SURVIVORS OF SEXUAL HARASSMENT

William R. Tamayo, J.D. San Francisco District Director
Linda Li, San Francisco Outreach & Education Coordinator
U.S. Equal Employment Opportunity Commission

www.eeoc.gov



U.S. Equal Employment Opportunity Commission



**You have the right to
work free from
discrimination and
harassment**





Our services are
free.

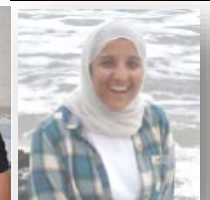
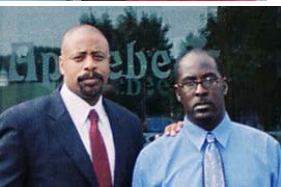
Who is protected?

- Employee
- Temporary worker
- Job applicant
- Former employee
- **Undocumented workers too!**



CA Law: Contractor Volunteer Unpaid intern

What's EEOC's Role?



Civil Rights Act of 1964 establishes EEOC

- Title VII prohibits **DISCRIMINATION** and **RETALIATION**
 - hire, promotion, **all terms and conditions of employment**, termination

Sexual harassment = sex discrimination

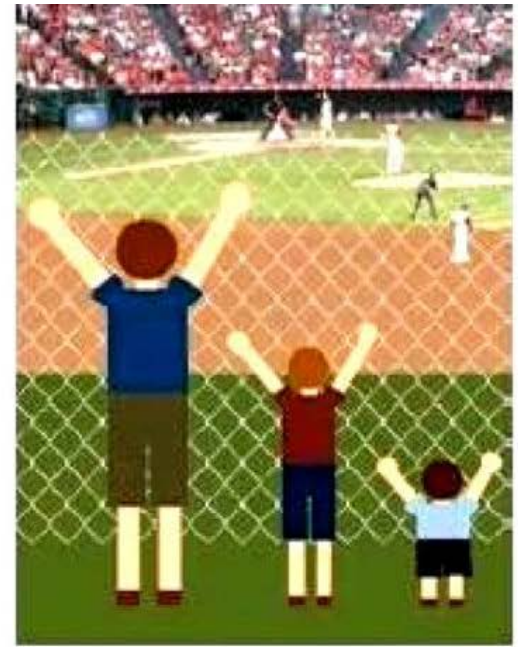
- *Not recognized by Supreme Court until 1986*

race, color, sex (pregnancy, sexual orientation, gender identity), national origin, religion, disability, age (≥ 40), genetic information



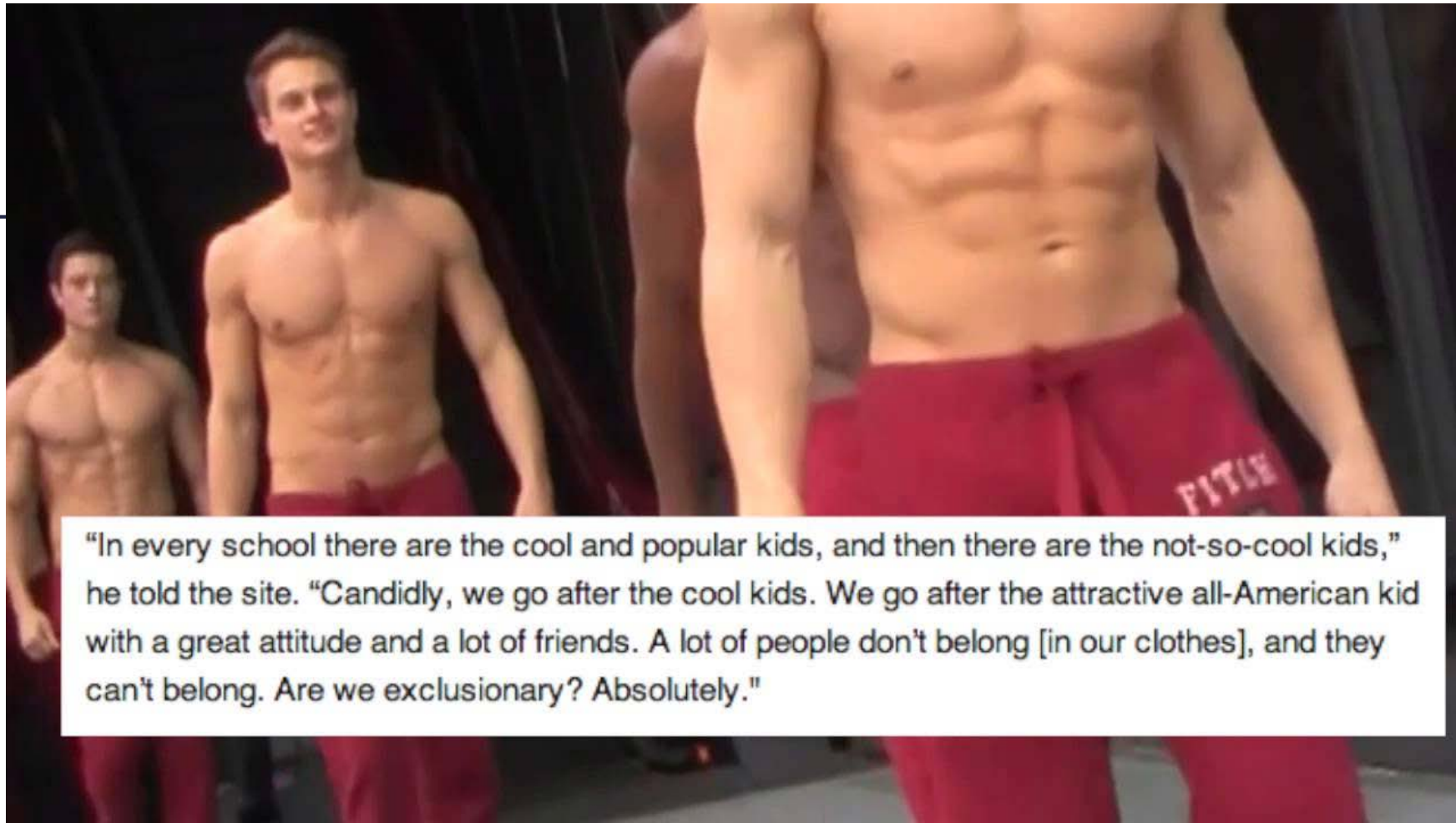
Theories of Discrimination

- Disparate Treatment / Impact
- Accommodation (Disability & Religion)
- Harassment



Disparate Treatment / Impact

All American Look



"In every school there are the cool and popular kids, and then there are the not-so-cool kids," he told the site. "Candidly, we go after the cool kids. We go after the attractive all-American kid with a great attitude and a lot of friends. A lot of people don't belong [in our clothes], and they can't belong. Are we exclusionary? Absolutely."

Accommodation

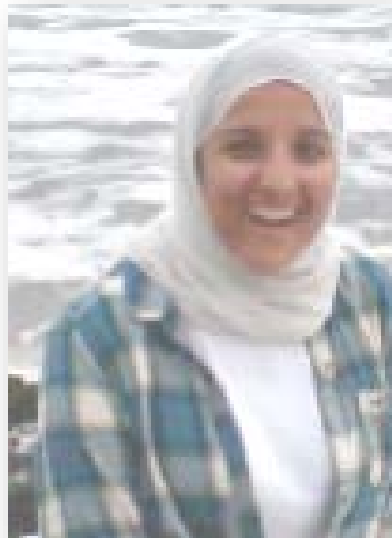
Customer Fears or Prejudices \neq Undue Burden

EEOC v. Abercrombie & Fitch

During a job interview, 18 year old Halla Banafa was asked: Are you Muslim? Can you take that off? The manager's interview notes dismissed Halla as "not the Abercrombie look." Halla left the interview in tears, but later decided to fight back.



College sophomore Hani Khan had a spotless work record when Abercrombie fired her for refusing to remove her hijab at work.



Samantha Elauf

U.S. Supreme Court

Employer has duty to accommodate hijab absent proof of undue hardship. Cannot assume that customers would be offended.

What's your role?

A young person who just started working at a restaurant describes these facts to you:



“He always made sure we were alone before he touched me.”

My supervisor – male in his 50s - started off professional and I trusted him. But then he started with these awkward hugs which gradually lead to more and more touching. I started to notice also he does this to another co-worker, the hugs and standing behind and pressing his body into yours. When I mentioned this to some co-workers, they said “That is just how he is.”

***What other questions would you want to ask?
What actions or advice would you give?***

What keeps people from taking action?

VIOLENCE and CONTROL in the WORKPLACE

- Sexual violence in the workplace is violence.
Sexual violence is a form of sexual harassment.
- Sexual harassment at work: **Hold employer responsible. Make the worker whole. Make the workplace safer.**
- With \$ and reputations at stake, companies often seek to attack claimant credibility, dismiss case, low ball settlements, demand confidential terms.



Bystanders, co-workers, medical professionals, counselors, friends

can help a claimant move forward

Risk Factors

EEOC Select Task Force on the Study of Harassment in the Workplace

<https://www.eeoc.gov/eeoc-select-task-force-study-harassment-workplace>

Homogeneous workforces

Cultural and language differences in the workplace

Workplaces with significant power disparities

Workplace cultures that tolerate or encourage alcohol consumption

Workforces with many young workers

Workplaces where some workers do not conform to workplace norms

Isolated workspaces

Workplaces where work is monotonous or consists of low-intensity tasks

Workplaces that rely on customer service or client satisfaction

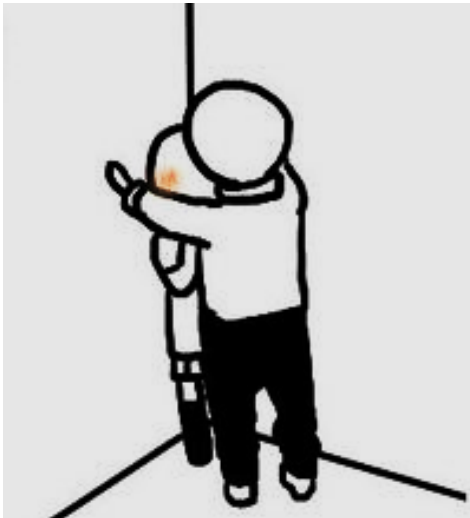
Decentralized workplaces

Workplaces with 'high value' employees

Coarsened social discourse outside the workplace




Harassment Quiz:

Can you prove sexual harassment if...



- The reward or threat for sexual favors was never said out loud?
- The employee participated in sexual banter or had sex with the harasser?
- There are no neutral witnesses or documentary evidence, and the harasser denies the charge?

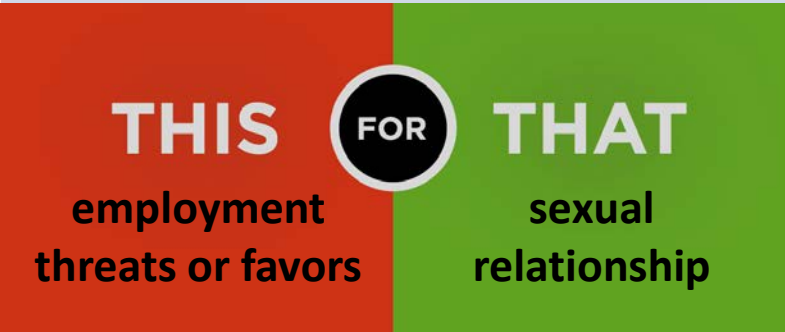
Hostile Environment: Elements

- Unwelcome Conduct   
 - Objectively offensive to reasonable person
 - Subjectively offensive to employee
- Severe or Pervasive
- Employer knew / should have known



Harassment

Defined by case law in two ways

Quid Pro Quo	Hostile Work Environment
 <p>THIS employment threats or favors</p> <p>FOR</p> <p>THAT sexual relationship</p>	<ul style="list-style-type: none">A. Harassing behavior directed toward complainantB. Harassing behavior witnessed by complainantC. Widespread favoritism infects workplace, creating hostile or abusive environment

Examples of Unlawful Harassment

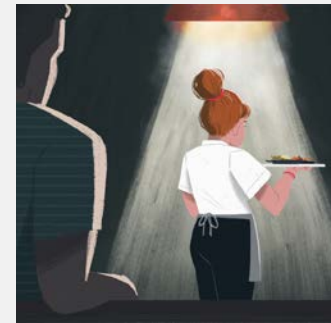
- Racial slurs
- Sexual advances
- Inappropriate comments about attractiveness
- Demeaning someone's religion
- Shunning someone because of their national origin
- Displays that are grossly stereotypical or intrinsically offensive to people based on identity
- Repeatedly applying negative stereotypes

Who
turned the
lights out?

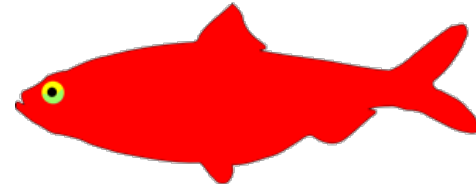


Sexual Harassment by **Non-Supervisor**

Non-supervisor can include
co-workers or third parties
*(non-employee such as a
customer or delivery person)*



Quiz: Does it matter if...



- person targeted didn't explicitly say no?
- person targeted said yes or participated in banter?
- relationship started consensually?
- alcohol /drugs were involved?
- person who said or did the conduct was misunderstood / just joking?
- it didn't happen at the workplace, or during work hours?
- it only happened once?
- there are no other witnesses? (“s/he said, s/he said”)

Sexual Harassment

18 y.o. finds job before the holidays at the mall



"Just because you're a teenager doesn't mean you don't have rights. If you know your rights, you are better able to stand up for yourself."

Tiffany Grabin faced sexual harassment from a co-worker and supervisor, who taunted her and goaded customers into propositioning her.

"I knew that it's not appropriate to be treated that way, but I didn't know what to do about it..."

Part of the problem was management. When a grown man is saying things about you, how do you complain to him?"

Upstander: Mom

Sexual Harassment + Retaliation

19 y.o. America Rios was harassed via text by the Assistant Store Manger. When her immediate supervisor Ka Lam reported the harassment, Lam is fired.



- Rios: “This was my first job... It really meant a lot to have my supervisor speak out for me, and it was horrifying to see him lose his job over it.”

Upstander: Direct Supervisor

HARASSMENT Review



- Can be **verbal, visual, physical, virtual**.
May occur at workplace, off-site or online.
- **Harasser** can be... any gender, opposite or same sex.
Supervisor, agent of employer, co-worker, or third party.
- Need not be based on sexual attraction.
- **Victim** can be someone not directly targeted but still affected by the hostile work environment
- Not just sexual - *also applies to any protected characteristic: gender, race, color, national origin, religion, disability, age*

Seven Afghani Muslim car dealership employees were called “terrorists,” “thieves” and “Osama bin Laden,” and mocked about their skin color with comments like “It’s getting dark in here, turn on the lights.” One employee, a recent college graduate in her first “real job,” said she didn’t know if she would ever feel safe from harassment and bias at work.



National Origin, Religion, Color



Marcy Mitchell, EEOC Attorney: I will always remember this description of the workplace at Barber Dodge. ***“What I remember is, I remember hatred.”*** A lot of people think that discrimination against Muslim, Middle Eastern and South Asian communities began right after 9-11. I was struck by the flagrant and venomous harassment endured by these employees *before* 9-11 but after the bombings of U.S. embassies and the USS Cole in Yemen.

EEOC says Muni contractor fired worker who complained of slurs



Bob Egelko, Chronicle Staff Writer

July 2, 2008 | Updated: Feb. 11, 2012 4:25 a.m.

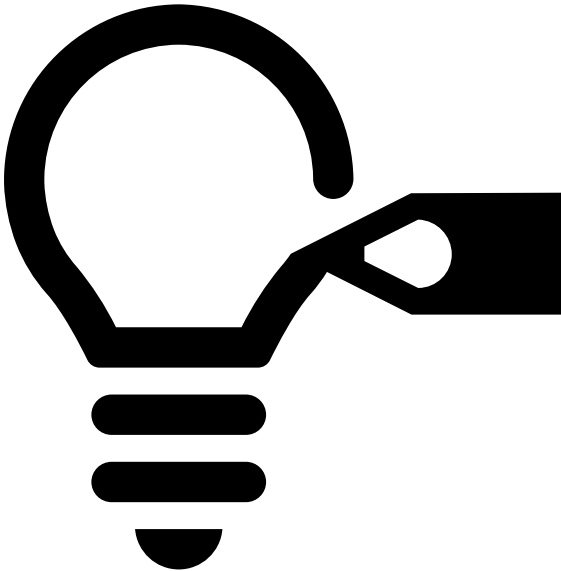
A contractor for San Francisco's Muni railway fired a Chinese-American iron worker after he complained about daily racial slurs and harassment from a foreman, a federal civil rights agency charged in a lawsuit Tuesday.

Construction worker Ru Jian Lin faced daily harassment from white foreman (not direct supervisor), including “ching, chang, chong” and “F*** Chinaman.” Despite reports to management, the harassment continued and Lin was “laid off” without explanation.

"As an immigrant, sometimes you don't know what your rights are, but I knew it wasn't right for the foreman to call me all those names and make fun of me for being Chinese. I just didn't think there was anything I could do about it until the EEOC investigated my case and sued Cadit for me. I'm very thankful to the government for helping me." – Ru Jian Lin

\$37,000 + relief

What will you remember / apply?



Please take one minute to write down

- Two red flags for workplace harassment.
- Two people you can teach this information to.

Proving Harassment: Your Role



Telling her story:

- Describes details? Physical touching, grabbing? Frequency? Location? (***Memory impacted by trauma?***)
- Verbal harassment? What was said?
- Threats by harasser? Manager? Co-workers? Human Resources? Discouraged from complaining?
- Other harassed individuals?
- Did she complain to or tell anyone about the harassment? Who? What was said?

CAVEAT: There may be no other witnesses (aside from perpetrator). Need to assess credibility fairly and reasonably.

Proving Harassment: Your Role



- Corroboration as Witnesses: **Co-workers**, supervisors, parents, spouse, other relatives, **medical professionals, counselors**
 - Actual eyewitnesses? NOTE: Most egregious harassment happens “behind closed doors”.
- ***What was observed? What did claimant say? Injuries? Treatment? Describe trauma?***
 - Emotionally upset? Crying? Trembling?
 - Could also be stoic, giggling – individuals respond to trauma differently
- ***Your notes, your testimony, your observations are extremely important***



Proving Harassment: Investigation Standard

Criminal	Civil
beyond a reasonable doubt	preponderance of evidence i.e. $\geq 51\%$

EEOC v. Harris Farms: Farmworker sexually assaulted by supervisor at gunpoint 3x.

- Deputy sheriff: *Victim is lying. I don't believe her.*
(doesn't speak Spanish)
- Jury: *We believe her and here's \$1 million*

Obstacles to Reporting

- Fear • Shame • Isolation •
 - Fear of family reaction •
- Immigration Status • Peer pressure
 - Need to support family •
- Threats against physical safety (self / family) • Trauma's impact on memory • Language access
 - Not knowing legal rights •

EEOC Tools

- Investigation • Subpoena
- Temporary Restraining Order
 - Preliminary Injunction
 - Equitable Tolling
 - U-Visa Certification
- Bilingual Staff • Partnership with Community Advocates •

It takes a lot of courage to come forward

- *Why didn't you say something earlier?* Just because they don't tell someone right away doesn't mean they are lying. Threats or retaliation may chill survivors from reporting.
- *He said, she said...* Just because there are no other witnesses doesn't mean they are lying.



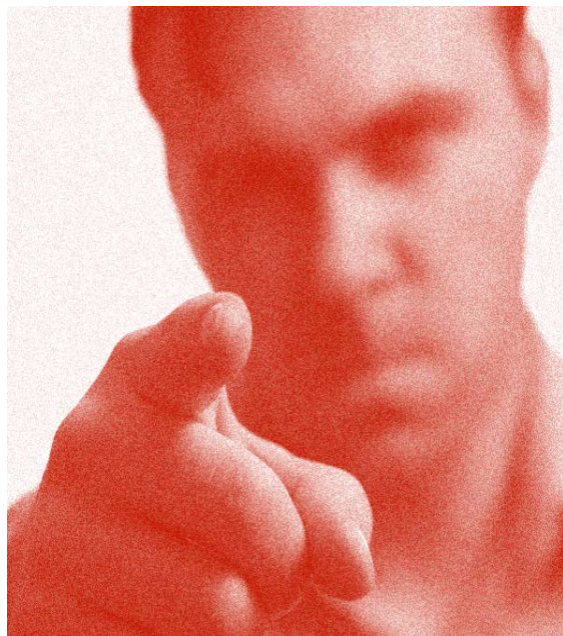
- What a survivor tells you might be critical evidence. Take notes. Build the record. Write down your observations.
- Remember the impact on the victim if s/he is not believed.



RETALIATION

Percentage of all EEOC charges received

2005	2010	2015	2020
29.5%	36.3%	44.5%	55.8%



- **Nearly 100% of sexual harassment lawsuits also have retaliation claim**
- **Claimants don't come to EEOC to complain about harassment. *They first complain that they were fired.***
- **ISSUE: Does the adverse action (termination, demotion, threats to harm or other activity) *discourage a reasonable employee to file a claim?***

Make sure to ask: “Were you discouraged from making a complaint? Who discouraged/ threatened? When? How was threat made? Have others have been threatened or deterred?”

Why File a Charge with the EEOC?

- “Exhaust administrative remedies” - Requirement for filing lawsuit in federal (and some state) court
- EEOC can investigate, see if there are other victims, and determine whether discrimination occurred
- EEOC can try to settle the case for \$ and other relief

**EEOC Intake
appointment**

www.eeoc.gov

1-800-669-4000

Phone

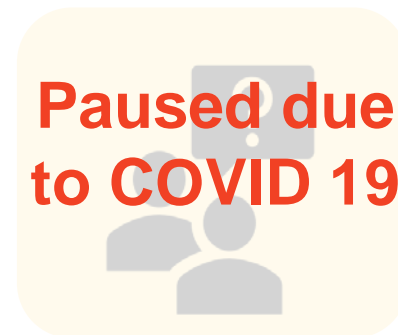


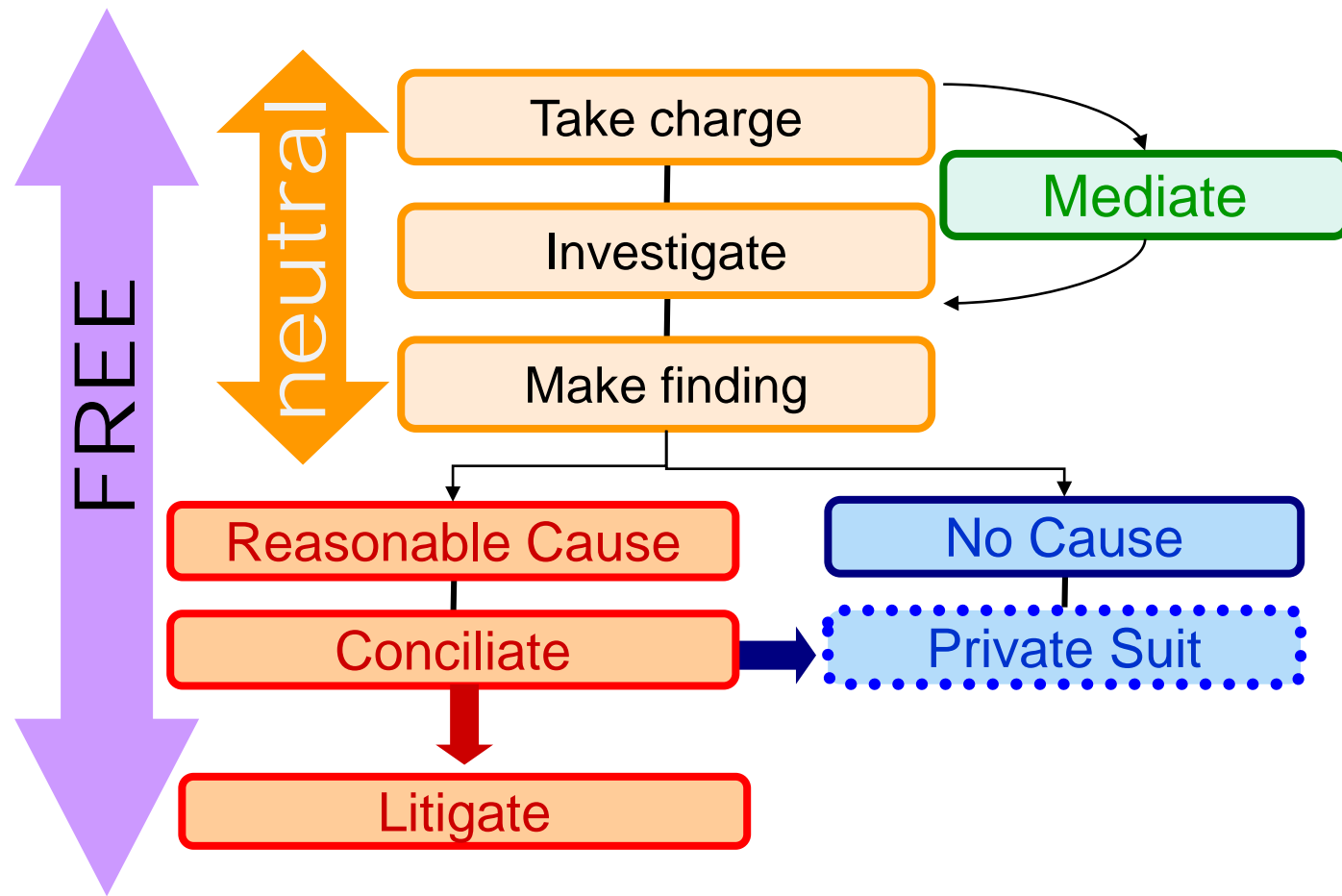
Mail



In person

**Paused due
to COVID 19**



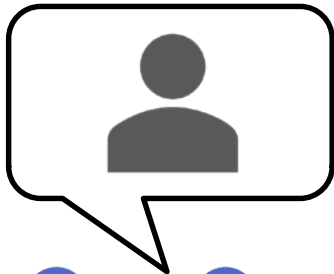


EEOC Process

EEOC: Who can file a charge?



- ▶ All workers employed by an entity in U.S. and its possessions with 15 or more employees. U.S. citizens working abroad for U.S. companies.



- ▶ Third parties (union, church, relative, organization ***including sexual assault program***)



- ▶ Commissioner's charge



EEOC & Immigration Status

Title VII makes no distinction based on immigration status. Undocumented workers are protected and can file charges of discrimination. (*EEOC & Castrejon v. Tortilleria “La Mejor”*)

- ▶ EEOC will not ask status
- ▶ EEOC will fight company inquiries into immigration status during litigation
- ▶ **EEOC can certify for a U-Visa where charging party or witness is victim of “serious crime activity”**
 - ▶ Raise questions of immigration status with EEOC *Regional Attorney or Trial Attorney*



Employment Discrimination

DEADLINES



Must file a charge with EEOC before going to court within
180 days of discrimination

- In certain states including AK, CA, IA, ID, IL, LA, MN, NC, ND, NJ, NM, NV, NY, OR, SC, SD, TX, WA, **deadline is extended to 300 days**
<https://www.eeoc.gov/time-limits-filing-charge>
- **Termination:** clock starts when employee is notified
- For continuing pattern of **harassment** (no meaningful break in conduct), at least one act within last

Check your state agency's filing deadlines.

FREX CA: 3 years. 1 year after you turn 18.

TIMELINESS & EQUITABLE TOLLING

EEOC v. Willamette Tree Wholesale (Oregon)



- Farm worker sexually assaulted from first day, then once a week for 10-12 week. Warned that she, co-employee relatives and family in Mexico would be killed if she told anyone.
- She filed EEOC charge 62 days after **300 day deadline**: Can she still pursue claims?

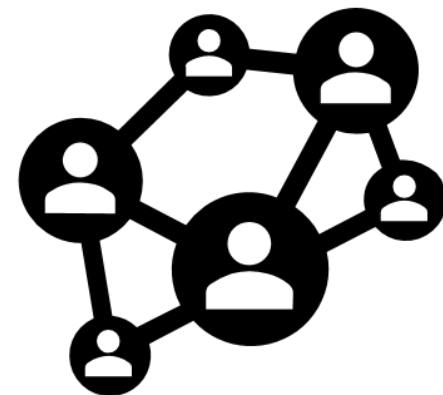
Court grants **equitable tolling** citing *Stoll v. Runyon* (9th Cir. 1999). Company can't benefit from having traumatized claimant so badly that she can't complain. ***Relied on psychologist and therapist reports.*** Case allowed to proceed.



Tips for Workers

- **Know your rights**
- **Don't be a harasser!**
 - Think about your own comments, conversations, behavior
- **Be an ally / upstander**
 - Call out negative behavior. Tell people about their rights. Support your coworkers.
- **Report discrimination**
 - to the company
 - to the EEOC before the deadline
- **Keep records**
 - dates, places, what was said or done, witnesses

YOUR Role



Listen carefully and without judgment

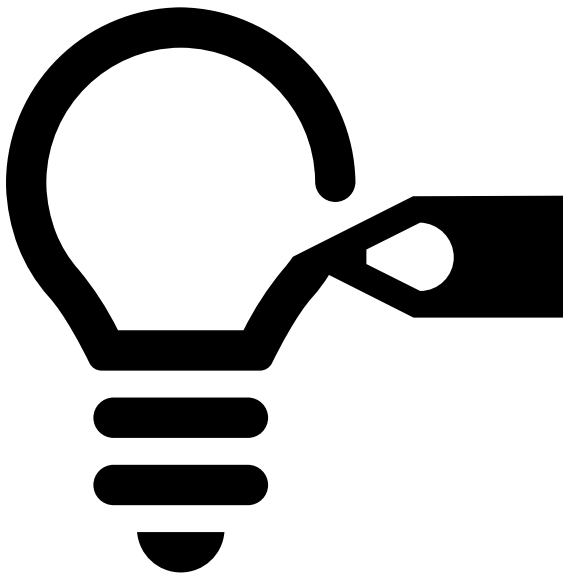
Witness : ***What do you observe? What did claimant say? Injuries? Treatment? Describe trauma?***

- ***Your notes, your testimony, your observations are extremely important***

Refer to EEOC or state agency

- ***Ask if there are other workers who may have been harassed or retaliated against***

What will you remember / apply?



Please take one minute to write down

- Top takeaway from today's discussion
- Reporting can be hard: name two people you could count on to listen and be a witness

Everything EEOC has issued related to COVID-19 can be found at

<https://www.eeoc.gov/coronavirus>



**U.S. Equal Employment
Opportunity Commission**

 Languages ▾

Search

[About EEOC](#) ▾ [Employees & Job Applicants](#) ▾ [Employers / Small Business](#) ▾ [Federal Sector](#) ▾ [Contact Us](#) ▾

[Home](#) » [What You Should Know](#) » [What You Should Know About COVID 19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#)



What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws

Technical Assistance Questions and Answers - Updated on Dec. 16, 2020

INTRODUCTION

- All EEOC materials related to COVID-19 are collected at www.eeoc.gov/coronavirus.
- The EEOC enforces workplace anti-discrimination laws, including the Americans with Disabilities Act (ADA) and the Rehabilitation Act (which include the requirement for reasonable accommodation and non-discrimination based on disability, and rules about employer medical examinations and inquiries), Title VII of the Civil Rights Act (which prohibits discrimination based on race, color, national origin, religion, and sex, including pregnancy), the Age Discrimination in Employment Act (which prohibits discrimination based on age, 40 or older), and the Genetic

Thank you

William R. Tamayo, District Director

william.tamayo@eeoc.gov

(650) 684-0947

Linda Li linda.li@eeoc.gov

(650) 684-0926

www.eeoc.gov

1-800-669-4000

ASL Video Phone: 844-234-5122