THE PANDEMIC’S IMPACT ON RACE & DISCRIMINATION IN THE WORKPLACE

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WHAT TO EXPECT FROM TODAY’S PRESENTATION

- Entering the Endemic & Rethinking EEO
- Perception is reality
- EEO investigations
  - Prima Facie
  - Credibility Assessment
  - Case Study – Conducting an Investigation
During this presentation, Covid-19 guidance will be discussed periodically. It is imperative that each individual here stay abreast to the updates and requirements from the CDC, EEOC, state, county and/or local municipality.
# Finding Our Footing in the Ever-Changing Landscape

<table>
<thead>
<tr>
<th>Challenges</th>
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<tr>
<td>New variants &amp; vaccine protocols</td>
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<tr>
<td>Social justice movement</td>
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<td>Court cases</td>
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<td>Changing guidance from federal, state, and local officials</td>
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ENTERING THE ENDEMIC & RETHINKING EEO
HOW DO REAL WORLD EXPERIENCES AND CONFLICT SHOW UP IN YOUR WORKPLACE?

- Covid-19
- Inflation
- Recession
- Confusion
- Accommodations
- Protests
- LGBTQI+ Rights
- Black Lives Matter

- Pandemic
- Divisiveness
- Conflict
- Vaccination
- Discrimination
- Exhausting
- Women’s Rights
WHAT IS CHANGING

Intersectionality of Covid and:

- Race
- Gender
- Religion
- Disability
- Essential workers still have EEO protections
- Social justice movement intersecting with the workplace
- Asian hate in the workplace
Discipline for Wearing BLM Masks Was Not Based on Employees’ Race - I

Frith v. Whole Foods Mkt., No. 21-1171 (1st Cir. June 28, 2022).

- Plaintiffs alleged race discrimination when Whole Foods enforced dress code policy against both Black and non-Black employees who wore Black Lives Matter face masks.
- Plaintiffs’ theory that their race is irrelevant if they advocate on behalf of Black people is foreclosed by Bostock.
- Replaces textual “because of such individual's race” with “because of such individual’s advocacy for protected inds.”
Frith v. Whole Foods Mkt., No. 21-1171 (1st Cir. June 28, 2022).

- Per Bostock, proper focus in assessing Title VII claim is on the protected characteristic of the plaintiff.
- In typical associational claim involving interracial relationship, plaintiff alleges discrimination based on own protected status and associating with someone of another race.
- Here, not based on race of complainants.
Supervisor’s Use of N-word Created Hostile Work Environment Based on Race – 1

Woods v. Cantrell, 29 F.4th 284 (5th Cir. 2022).

- Black plaintiff alleged that his Hispanic supervisor directly called him a “lazy a__ n_____” in the presence of other employees.

- The 5th Circuit had previously indicated that a single instance of a racial epithet will not create a hostile work environment.

- Circuit had also indicated, though, that a single incident could be sufficiently severe under totality-of-circumstances test to be actionable.
Supervisor’s Use of N-word Created Hostile Work Environment Based on Race – 2

Woods v. Cantrell, 29 F.4th 284 (5th Cir. 2022).

- As recognized by other circuits, “[p]erhaps no single act can more quickly ‘alter the conditions of employment and create an abusive working environment’ than the use of an unambiguously racial epithet such as [the N-word] by a supervisor in the presence of his subordinates.”

- Quoting then-Judge Kavanaugh in a D.C. Circuit opinion: “The N-word has been further described as ‘a term that sums up ... all the bitter years of insult and struggle in America, [a] pure anathema to African-Americans, [and] probably the most offensive word in English.’”
GENDER & COVID-19

- Caregiving Responsibilities & Covid-19
- Sex-based and sexual harassment in the workplace has changed due to the pandemic
  - Perception of women v. men in the workplace
  - Sexual harassment
**HARASSMENT: TITLE VII/SAME-SEX**

**Same-sex Harassment Established by Stereotyping Evidence**

*Roberts v. Glenn Indus. Grp., 998 F.3d 111 (4th Cir. 2021).*

- Plaintiff who worked in all-male environment alleged supervisor sexually harassed him, calling him “gay” and making sexually explicit comments.
- Gender stereotyping evidence also shows harassment was sex-based.
- Bostock extends broadly to workers who fail to conform to gender stereotypes.
- Actionable harassment includes any gender-based conduct, not just sexual conduct.
RELIGION & COVID-19

- Accommodations for sincerely held religious beliefs
  - Accommodations regarding vaccinations
  - Mask mandates
  - Religious expressions
Members of Same Faith May Require Different Religious Accommodations


- Muslim bus driver was denied religious accommodation to wear untucked shirt and ankle-length skirt.
- Other Muslim employee wore shorter skirt over pants did not mean it was reasonable in this case.
  - Two members of same faith may have different religious practices and degrees of observance.
- Jury question as to undue hardship: EEOC offered expert evidence that skirt not unsafe; but Defendant offered no evidence on safety.
Demonstrative Prayer Is Protected Speech and Religious Expression – 1


- Did not reach Coach’s Title VII religious accommodation claim; constitutional decision.
- However, if a public employer asserts that accommodating a religious employee is an undue hardship due to concern about violating the Establishment Clause, then this analysis is relevant to assessing undue hardship.
Demonstrative Prayer Is Protected Speech & Religious Expression – 2


- High school football coach was suspended for kneeling in prayer on 50-yard line immediately after games ended.
- His prayer was private and not government speech; not coercive
- School district action not based on a neutral & generally applicable rule.
- Free Speech, Free Exercise, & Establishment Clauses are complementary.
- Establishment Clause does not include “heckler’s veto” allowing limits on religious conduct based on discomfort.
- Establishment Clause is interpreted by “reference to historical practices”
DISABILITY & COVID-19

- More accommodation requests
- Different accommodation needs for the same disability
- Difference in treatment complaints from other employees
- Maintaining confidentiality in light of infections & accommodation needs
Although many people with COVID-19 get better within weeks, some people continue to experience symptoms that can last months after first being infected, or may have new or recurring symptoms at a later time. This can happen to anyone who has had COVID-19, even if the initial illness was mild. People with this condition are sometimes called “long-haulers.” This condition is known as “long COVID.”
COVID-19 leveled the playing field for some, while widening the gap for others, but created a new reality model and version of work for workplaces, resetting expectations and amplifying injustices.

The “Lens” by which employees and employers have traditionally used to view their workplace changed as a result of the impact and outcomes related to COVID. This lens reflected differently regarding the reasons people work, their values, purpose and their politics changed direction (i.e. political polarization, health care focus, food insecurities, caregiver responsibilities, finances and access to justice).
CHANGING IDEAS OF WORK

1. Employees are wanting more engagement from their workplaces.
2. Employees want more understanding and compassion from their workplaces.
3. Employees are expect professionalism and timely responses to their needs.
PERCEPTION IS REALITY
Discrimination and harassment can be about an individual’s perception of actions. This does not mean that just because their perception differs from yours that discrimination/harassment did not occur.

As investigators, our perception of others can affect the reality of an EEO case.

Understanding our biases (this is for another training) and being self-aware, allows us to conduct more thorough, impartial and complete investigations.
EEO INVESTIGATIONS
A REMINDER:

- Civil Law Enforcement v. Criminal Law Enforcement:
  - Preponderance of Evidence v. Beyond a Reasonable Doubt
  - More likely than not that discrimination or harassment occurred—a 51% threshold for the finding of a violation
STEP # 1

ESTABLISH YOUR CREDIBILITY AND INTEGRITY
Get employees to raise concerns as soon as they arise

- Which means supervisors and managers get the best results when complaints are at the “nuisance” level
- Counter productive to label those raising early issues as “whiners” or “thin skinned”
- These are manageable conflicts
I cannot guarantee that what you tell me can stay between us.

If something is causing you concerns, it is unlikely to go away on its own. I’d certainly like to help you address it before it gets worse, but I cannot keep it a secret.

What are your worries if you tell me what is on your mind?
<table>
<thead>
<tr>
<th>GIFT GETTING</th>
<th></th>
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</thead>
<tbody>
<tr>
<td><strong>Thank</strong></td>
<td>Thank them</td>
</tr>
<tr>
<td><strong>Express</strong></td>
<td>Express appreciation and prompt for more</td>
</tr>
<tr>
<td><strong>Name</strong></td>
<td>Name feelings</td>
</tr>
<tr>
<td><strong>Get</strong></td>
<td>Get the contours of the issue</td>
</tr>
<tr>
<td><strong>Determine</strong></td>
<td>Determine safety</td>
</tr>
<tr>
<td><strong>Finish</strong></td>
<td>Finish with action</td>
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ELEMENTS OF EFFECTIVE COMPLAINT HANDLING

- Listen. Listen more.
- Don’t debate or argue.
- Name the feelings.
- Don’t cast blame or assign responsibility.
- Give them all the time they need and then some more.
- No hot potatoes. You are “it.”
- Don’t judge. Ask an open-ended question until the impulse goes away.
AVOID

- “Why” questions
- “What was your part in it?”
- Closed ended questions (Did you tell them to stop?)
- Directly asking what they want
  - Use “magic wand” or “crystal ball”
GOALS OF COMPLAINT HANDLING

Let the employee know you will take them seriously.

Let the employee know that how they feel matters.

Let the employee know that, if what they describe is happening, it will stop.

Let the employee know you will take action.
GOALS OF AN INVESTIGATION/INQUIRY
GOALS OF INVESTIGATION

To establish a sound, factual basis for any employment-related decisions or management actions

Reveal whether misconduct has occurred, identify or exonerate specific employees and deter future misconduct or inappropriate behavior
THE INVESTIGATION

Must be knowledgeable concerning agency policies, have good interviewing skills, be well-organized and be able to communicate well with all the potential interviewees.

Person selected to be investigator/counselor must be credible and regarded as objective.

Must be flexible because new allegations may be identified during investigation/inquiry.
INVESTIGATOR MUST BE TRUSTWORTHY WITH CONFIDENTIAL AND SENSITIVE INFORMATION

ALL THE RELEVANT DOCUMENTS AND INFORMATION KNOWN BEFORE THE COMMENCEMENT OF THE INVESTIGATION SHOULD BE IDENTIFIED, GATHERED, AND REVIEWED PROMPTLY FOLLOWING THE COMPLAINT.

MUST PRESERVE ALL POTENTIALLY RELEVANT DOCUMENTS OR ITEMS
- Make sure the complainant understands the policy, procedures, and investigative process
- Reassure the complainant about the process
- *Take a strong stand against retaliation & check in*
- Ensure that the investigation is impartial
- The investigator must be trained and effective; consider alternate options as needed
- Complainant should NOT be made to feel uncomfortable in any way about bringing forward concerns.
CREATION OF INVESTIGATIVE FILE

- MUST BE DONE AS SOON AS POSSIBLE
- SHOULD CONTAIN:
  1. All of the relevant documents including emails, letters, etc.
  2. Company policies
  3. Appropriate documents from personnel files
CREATION OF INVESTIGATIVE FILE CONT.

4. Prior complaints by complainant
5. Prior complaints against accused
6. Written plan identifying who will be interviewed*

*The file should be constantly updated with any new relevant information, including witness interview notes, signed statements from witnesses as appropriate and ultimately a copy of the investigator’s or team’s final report and recommendations.
STEP #2

DETERMINE THE APPROPRIATE STATUTE, THEORY OF DISCRIMINATION AND ELEMENTS OF PROOF
- Disparate Treatment
- Disparate Impact
- Harassment
- Reasonable Accommodation – Religious
- Reasonable Accommodation – Disability
- Retaliation
DISPARATE TREATMENT - PRIMA FACIE CASE

- Charging Party is a member of a protected group.
- Charging Party was harmed.
- Others not of Charging Party’s class were not treated the same (i.e. discipline, discharge, lay off, terms and conditions) although they were similarly situated.
HIRING AND PROMOTION - PRIMA FACIE CASE

<table>
<thead>
<tr>
<th>Charging Party belongs to a protected class.</th>
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<tbody>
<tr>
<td>A vacant position existed.</td>
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<tr>
<td>Charging Party applied for or expressed interest in the position.</td>
</tr>
<tr>
<td>Charging Party was qualified for the position.</td>
</tr>
<tr>
<td>Charging Party was not selected but a lesser qualified person not of Charging Party's class was selected.</td>
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</tbody>
</table>
IS THE MANAGEMENT’S REASON LEGIT OR PRETEXT?

- Management has articulated a legitimate, non-discriminatory reason for the employment decision
- The management’s stated reason for the employment decision is pretext
- Is there direct evidence that supports Charging Party’s allegation?
- Were similarly situated employees outside of Charging Party’s protected group treated more favorably? (Indirect or circumstantial evidence)
INDICATORS OF PRETEXT DURING INVESTIGATION

- False information
- No information and/or documentation
- Normal policy/practice not applied evenly
- Normal policy/practice arbitrarily changed
- Inconsistent or conflicting data
- Changing defenses in mid-stream

**Three analytical steps:**
- Does policy or practice have significant disparate impact?
- If so, has the employer proven that the policy or practice is job related and consistent with business necessity?
- Is there a less discriminatory alternative that meets the business need?
BEHAVIORS THAT CAN BE HARASSMENT

<table>
<thead>
<tr>
<th>Behavior</th>
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<tbody>
<tr>
<td>Unwelcome teasing, jokes, remarks, that are sexual, derogatory based on a protected bases, or ethnic slurs.</td>
</tr>
<tr>
<td>Unwelcome letters, telephone calls, e-mails or distribution of materials that are sexual or derogatory based on a protected bases.</td>
</tr>
<tr>
<td>Physical assaults based on a protected bases.</td>
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<tr>
<td>Demands for sexual favors for job benefits.</td>
</tr>
<tr>
<td>Unwelcome and deliberate touching.</td>
</tr>
<tr>
<td>Unwelcome sexually suggestive looks/gestures.</td>
</tr>
<tr>
<td>Unwelcome pressure for sexual favors or dates.</td>
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<tr>
<td>Favorable treatment for sexual favors.</td>
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</table>
Harassment is unlawful only if it is unwelcome.

Unwelcome:

- Employee did not solicit or incite it and
- Employee regarded the conduct as undesirable or offensive.
DETERMINING WHETHER BEHAVIOR IS HARASSMENT UNDER THE LAW

Use “reasonable person” standard

• What’s “reasonable”?

Primary criteria

• Context
• Severity
• Frequency

Isolated comments rarely create a hostile environment

A single incident of physical sexual conduct can create a hostile environment
WHAT WILL MAKE AN EMPLOYER LIABLE FOR WORKPLACE HARASSMENT?
CO-WORKER/NON-EMPLOYEE HARASSMENT

Liability is not automatic.

Must establish the employer knew or should have known about the harassing conduct.

Employer must then show it took immediate and appropriate corrective action to correct harassment and prevent its recurrence.
WAS HARASSMENT BY AN ALTER EGO OF THE EMPLOYER?

- Liability is automatic
- Alter ego - someone of sufficiently high rank to be treated as the employer’s proxy.
- Examples - president, owner, partner, corporate officer.
HARASSMENT BY A SUPERVISOR

Types of supervisory harassment

<table>
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<tr>
<th>Tangible employment action harassment</th>
<th>Hostile environment harassment</th>
</tr>
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<tr>
<td>• Automatic liability</td>
<td>• Liability not automatic</td>
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<td></td>
<td>• Recourse to the affirmative defense</td>
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The affirmative defense is available to the employer to avoid liability.

The employer has the burden and must prove both prongs of the affirmative defense:

First prong: did the employer exercise reasonable care to prevent and correct the harassment?

Second prong: did the employee unreasonably fail to utilize the employer’s complaint procedure or to avoid all harm otherwise?
ELEMENTS OF PROOF FOR RELIGIOUS ACCOMMODATION

- Did Charging Party request an accommodation for sincerely held religious belief or practice?
- Did management deny the request?
- If so, could respondent have provided a reasonable accommodation without undue hardship (more than a minimal burden on the business operations)?
<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is Charging Party a qualified individual with a disability?</td>
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<tr>
<td>Can Charging Party perform the essential functions of their position</td>
<td></td>
</tr>
<tr>
<td>Did Charging Party request an accommodation?</td>
<td></td>
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<tr>
<td>Did the employer engage in the interactive process?</td>
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<tr>
<td>Was the request denied?</td>
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<tr>
<td>If so, could a reasonable accommodation without undue hardship (significant difficulty or expense)?</td>
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RETAIATION THEORY

Opposition to Discrimination or Participation in a Protected Activity

An adverse employment action occurred

Causal connection between the opposition or participation and the adverse action
**THRESHOLD ISSUES: ADVERSE ACTION**

**Must a change in Terms or Conditions be “materially adverse” to be actionable?**

- Judicial doctrine: courts require plaintiffs to show action was “materially adverse.”
  - Some actions, e.g., lateral transfers, excluded under this standard.

- DOJ and EEOC filed briefs –
  - Statutory language does not include materiality threshold.
  - Any change to a term/condition/privilege of employment based on a protected characteristic is actionable.
  - Decision like a lateral transfer is actionable because it is a term/condition/privilege of employment.
Shift Change Is Covered Adverse Action


- Raced-based shift change is actionable under Title VII.
- To "discriminate" incorporates "an adversity and a materiality" threshold ensuring that claim involves “meaningful difference in the terms of employment and one that injures the affected employee.”
- “[O]ur approach honors a de minimis exception that forms the backdrop of all laws.”
- Shift change from preferred day to night, or vice versa, exceeds de minimis exception or text of Title VII.
**Lateral Transfer Is Adverse Action**

**Chambers v. District of Columbia**, 35 F.4th 870 (D.C. Cir. 2022) (en banc).

- Sex-based lateral transfer is actionable under Title VII.
- Undefined phrase “terms, conditions, or privileges of employment” shows intent of Congress to “strike at the entire spectrum of disparate treatment ... in employment.”
- ”Discrimination” refers to “differential treatment” and includes no distinction between “economic”/“non-economic” or “tangible”/”intangible” discrimination.
### EVIDENCE OF CAUSAL CONNECTION MAY INCLUDE:

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<th>Category</th>
<th>Description</th>
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<tr>
<td>Timing</td>
<td>Deciding official in adverse action knew of (or should have known) of the opposition/participation.</td>
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<td></td>
<td>Contrast in treatment before and after opposition or participation.</td>
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<td></td>
<td>Disparate treatment of similarly situated persons not engaged in protected activity.</td>
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<td></td>
<td>Direct evidence of retaliatory motive.</td>
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GOOD INVESTIGATORS ARE

- Knowledgeable
- Inquisitive
- Focused
- Strategic
- Flexible

- Analytical
- Objective/Open-minded
- Confident
- Persuasive
YOU HAVE A COMPLAINT... NOW WHAT?
You are recently hired as an Employee Relations Specialist at Educators R Us, a national tutoring company. You receive an email from Thomas Olivos, a Hispanic male in his 20s, a tutor from the Southwest Region, Las Vegas Office, who has one year on the job. Las Vegas is one of 5 offices in the Southwest Region, currently overseen by Jackie Forest, SW Regional Manager, an African American female in her 50s. Thomas seems to be complaining about Jackie. Your new boss, asks you to handle it.
4/11/22
To the HR Dept:
Can we talk? I have had problems under our SW Regional Manager, Jackie. I just don’t feel that she treats our LV team fairly. James and Bradley get the best assignments, where it seems easy for them to get the more lucrative tutoring contracts. The others work their tails off — especially Yolanda — while James and Bradley just don’t seem to carry their weight. I’ve brought this to her attention several times, and she just dismisses me and now gets irritated when I bring anything up. Jackie is overly friendly with James and Bradley, to the point of creepy. I can’t deal with this toxic environment anymore, and I feel I need to take time off to deal with the anxiety this is all causing me.
Sincerely,
Thomas Olivos
STEP #3

INTERVIEW THE COMPLAINANT
THE PURPOSE OF AN INTERVIEW

WHY WOULD YOU WANT TO INTERVIEW?
WHEN AND HOW INTERVIEWS ARE CONDUCTED IS IMPORTANT.
BEFORE BEGINNING THE INTERVIEW YOU SHOULD KNOW:

<table>
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<th>Question</th>
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<tr>
<td>What is the purpose of the interview</td>
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<tr>
<td>What to do to prepare for the interview</td>
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<tr>
<td>What potential problems you may face</td>
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<tr>
<td>What will the witness seek from you</td>
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<tr>
<td>What do I need to do to prepare the witness after the greetings have been exchanged</td>
</tr>
<tr>
<td>What topics that I will cover</td>
</tr>
<tr>
<td>What are the key questions I want to ask</td>
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</table>
BREAK OUT ROOMS:
IDENTIFY THE FOLLOWING

- Basis(es):
- Issue(s):
- Statute(s):
- Theory of Discrimination:
- Elements of Proof:
- List of questions you would ask to Thomas Olivos at your first interview
It’s very easy for a conversation to go into a direction that has no bearing on the topic at hand. Try and stay focused on the reasons you are conducting the interview.

Aside from establishing rapport, and maybe initial small talk to establish a sense of comfort understand that as the interviewer, you establish the pace of the interview.
ONCE THEY START TALKING

- Be an active listener.
- Be patient
- Listen for critical content (and always be open to revisiting a particular element of their story later on in the interview).
- Be mentally prepared for whatever information they may give you. Don’t let your physical reactions impact their story.
ONCE THEY START TALKING

- Ask follow up questions
- Ask open-ended questions
- Get details, including any information that may corroborate their story: timeline, places, witnesses, documents to obtain
- Remember, this is a first hand account for them, try to get as comfortable with their facts as they are
- Avoid getting emotional
QUESTION TYPES

- Direct (yes/no)
- Leading
- Open-ended questions
- Factual question
- Opinion Question
- Sequence Questions
DIRECT QUESTIONS

- When to use these?
- Pros?
- Cons?
- When an absolute answer is needed and nothing else. Remember, an individual responding to this type of question may not be forthcoming with subsequent information.
- EX: “Did you say Randy was a ….”
LEADING QUESTIONS

Be very careful with these.

When used in conjunction with an admission, it could reflect poorly on the interviewer.

Used mainly to introduce the scope of the complaint or transcend into a new realm of the interview.

EX: “So tell me Sally, you were there when the incident with Ray and Sarah took place right?”
OPEN-ENDED QUESTIONS

Considered by many to be the best.

These questions serve as the standard in getting full responses from the person being interviewed.

Understand you may get some information that may not seem relevant, but it all plays an important part.

EX: “So what can you tell me about the incident where Mike was allegedly being too touchy with Pam”
FACTUAL QUESTIONS

Similar to yes/no, though usually used towards the end of the interview once the interviewer has a sense of familiarity and is seeking confirmation.

When you need to get to the specifics.

When you want to establish witnesses.

When you need to substantiate particulars to the complaint.

EX: “So then you do admit to saying it”
When you want someone’s opinion.

Helps establish specifics with issues that seem subjective.

I.E Interpretations of hiring/promotion criteria.

Always remember the capacity of the individual whose opinion you are getting and its practical relevance to the situation at hand.
SEQUENCE QUESTIONS

Start out big and work your way in.

Pyramid theory.

Tends to put the interviewee at ease

Open ended question to gather the information to make you familiar enough with the situation that will empower you with the confidence to be able and derive conclusive answers from some direct and follow up open ended questions.
Be familiar with company and state regulations with respect to consent when it comes to audio recordings.

Always take notes.

A team approach is a proven technique that allows for one to ask questions and the other to take detailed notes.
THE IMPORTANCE OF FOLLOW UP QUESTIONS

Follow up questions are a necessity in an interview. They allow the investigator to delve deeper into the interviewee’s story.

If you are unsure what someone means—ask clarifying questions. It’s better to fully understand than guess or assume what someone meant.
Someone somewhere is going to review your notes and what your notes contribute to with respects to a follow up report.

You are essentially introducing someone new to the ordeal that you just became somewhat familiar with. Do what you can to share you sense of familiarity with the reader.

Decision makers need to have confidence in those collecting the information at the interview stage.

Include your impartial assessment – credibility call
DETERMINING CREDIBILITY

- Think Objectively
- Describe the behavior and how that impacts credibility
  - Did the story change?
  - Note the tone of voice and inflection during the questioning
  - Describe the body language, facial expressions, eye contact—did it match with the emotions and information being provided?
- Remember different cultures may have different behavioral cues and that should be taken into account when determining credibility
- Individuals who have been through a traumatic event may not be able to provide sequential information – cognitive interviewing skills or trauma informed interview training should be considered for EEO investigators
CREDIBILITY ASSESSMENT

A credibility assessment should be part of your report:
- It allows you to remind yourself of the behavior of the individual you interviewed
- It allows others to understand the individual that was interviewed
- It can aide in your investigation
STEP #4

DRAFT A PLAN
### BREAK OUT ROOMS: DRAFT THE INVESTIGATIVE PLAN

<table>
<thead>
<tr>
<th>Question</th>
<th>Description</th>
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<tbody>
<tr>
<td>What are you investigating (bases, issues, statutes, elements of proof)</td>
<td>What are you investigating (bases, issues, statutes, elements of proof)?</td>
</tr>
<tr>
<td>What is the scope of the investigation?</td>
<td>What is the scope of the investigation?</td>
</tr>
<tr>
<td>What documents/information do we need and in what format?</td>
<td>What documents/information do we need and in what format?</td>
</tr>
<tr>
<td>Why do we need it?</td>
<td>Why do we need it?</td>
</tr>
<tr>
<td>Where do we get it?</td>
<td>Where do we get it?</td>
</tr>
<tr>
<td>Who do we need to talk to and why?</td>
<td>Who do we need to talk to and why?</td>
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<tr>
<td>Methodology</td>
<td>Methodology</td>
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<tr>
<td>Time frames</td>
<td>Time frames</td>
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METHODOLOGY - INVESTIGATIVE STRATEGY DECISIONS

- Review documents: personnel files, other complaints, job descriptions, announcements, applications, resumes, interview notes, pay records
- Interview decision maker(s)
- Interview witnesses
- Interview prior employees
- A combination of the above
<table>
<thead>
<tr>
<th>Basis(es):</th>
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<tbody>
<tr>
<td>Issue(s):</td>
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<td>Statute(s):</td>
</tr>
<tr>
<td>Theory of Discrimination:</td>
</tr>
<tr>
<td>Elements of Proof:</td>
</tr>
<tr>
<td>What documents are needed &amp; why?</td>
</tr>
<tr>
<td>Who should we talk to and why?</td>
</tr>
<tr>
<td>Methodology</td>
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<tr>
<td>Time frames</td>
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</tbody>
</table>
STEP #5
(DEPENDING ON METHODOLOGY)

INTERVIEW THE ALLEGED DISCRIMINATING OFFICIAL
WHO IS OUR ALLEGED DISCRIMINATING OFFICIAL?
STEP #6
(DEPENDING ON METHODOLOGY)

INTERVIEW THE WITNESSES
WHO WOULD YOU INTERVIEW AS A WITNESS?
STEP #7
(DEPENDING ON METHODOLOGY)

REVIEW THE DOCUMENTS/ INFORMATION
WHAT DOCUMENTS WOULD YOU WANT TO REVIEW?
STEP #8

ANALYZE THE EVIDENCE TO MAKE A DETERMINATION
**REVIEW/ANALYZE:**

- Refer back to your investigative plan
- Cross reference the evidence you have with the elements of proof
- Which elements are met? Which are not?
- How does credibility factor in?
- How do you fix the situation? Start thinking about remedies
- The facts leading up to your determination must be clear, with evidence to substantiate the recommendation every step of the way
- The investigation and determination should be well-documented.
STEP #9

YOUR PRESENTATION OF RECOMMENDATIONS & PROPOSED CORRECTIVE ACTIONS
PRESENTATION TIPS

Prepared
Positive
Persistent
Persuasive
Patient
Practical
IMPARTIAL
- Investigator is competent, effectively trained
- Prompt (starting & ending)
- Confidential to the extent possible
- Starts with the complainant
- Thorough
- Casts a wide enough net
EFFECTIVE EEO INVESTIGATIONS – BEST PRACTICES

- Detailed questioning of players involved
- Gathers all the relevant evidence
- Sufficient information to determine credibility
- Well documented
- A determination is made based on the evidence obtained/analyzed
- Keeps the parties informed and reassured
- Zero tolerance against retaliation
PROPER DOCUMENTATION

IF IT’S NOT DOCUMENTED—HOW CAN YOU PROVE IT REALLY HAPPENED?
INVESTIGATION DOCUMENTATION

- Take notes for each interview you conduct
- Make sure the notes are legible (type them up if possible)
- Always include date, time, place, and who you interviewed
- Keep separate any notes of your analysis, thoughts of the allegations
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