Workplace Disability Harassment

SASHI NISANKARAO, J.D.
Housekeeping

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Disability Employment Awareness Month
This year marks not only the 75th observance of NDEAM, but also the 30th anniversary of the ADA. Both milestones are being commemorated with a range of events and activities centered on the theme "Increasing Access and Opportunity."

The Office of Equal Opportunity and Compliance has partnered with Partners for Inclusive Communities to provide training opportunity for this month.

Please register for additional Disability Awareness Month Webinars at oeoctraining.uark.edu
Accessibility and Accommodations

If there are any questions about accessibility or accommodations for the campus community, please contact the Office of Equal Opportunity and Compliance (OEOC)

• oeoc.uark.edu
• titlevii@uark.edu
• (479) 575-6208

Student Accommodation Requests: Center for Educational Access

• cea.uark.edu
• (479) 575-3104
J’onnelle Colbert-Diaz  
Associate Director  
Compliance Officer &  
ADA Coordinator  

- Oversees the processes for reporting and resolving concerns of discrimination and harassment  
- Oversees requests for disability and religious accommodations  
- Provides training to faculty, staff and students regarding discrimination and harassment
Melanie Chandler
Equal Opportunity Specialist

- Monitors the recruitment process to ensure non-discriminatory practices
- Assist ADA Coordinator with ADA efforts.
Workplace Disability Harassment

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Title I and Rehabilitation Act

Title I prohibits disability discrimination in all aspects of employment covering private employers with 15 or more employees and State and local government employers with any number of employees.

The Rehabilitation Act, as amended by the ADA, gives the same protections to all federal employees and job applicants with disabilities.
Definition of Disability

Having a physical or mental impairment that substantially limits one or more major life activities;

Having a record of such an impairment; OR

Being regarded as having such an impairment.
Title I Reasonable Accommodations

Employers must provide qualified job applicants and employees with disabilities reasonable accommodations -- unless doing so causes undue hardship on business operation.

Reasonable accommodations are changes made to the work environment or to the ordinary course of business that enable an individual with a disability to perform essential job functions and have equal access to all aspects of employment.
Undue Hardship Defense

Employers may deny or change nature of accommodation requested based on “undue hardship” – significant difficulty or expense.

Factors to Consider:

* The nature of employer’s business,
* Employer’s total financial resources,
* Size of the business,
* Cost of the accommodation.
* Incurring “some cost” DOES NOT rise to “undue hardship” defense.
Performance Standards

Individuals with disabilities may be evaluated on the same performance standards as those without disabilities.

A change in policy may be necessary if disability affects individual’s ability to perform essential functions of the job.

Accommodations may not be withdrawn because of failure to meet standards.

Business necessity or Direct Threat may defend declining an accommodation or removing employee from workforce.
Hostile Work Environment and Harassment

A hostile work environment is created by a boss, coworker, or non-employee whose actions, communication, or behavior make doing your job impossible.

The Harassing behavior alters the terms, conditions, and/or reasonable expectations of a comfortable work environment for employees.

The behavior, actions or communication must be discriminatory and pervasive.
Examples of Hostility

A coworker who tells sexually explicit jokes and sends around images of nude people, is engaging in sexual harassment and creating a hostile work environment.

Co-workers or supervisors who make jokes or make fun of someone’s disability, whether obvious or hidden (such as a mental or emotional disorder), may be engaging in discrimination based on a disability, or by regarding someone as having a disability even if the person does not have one, in addition to creating a hostile work environment.
Disability Bullying

Infrequent targeted observations;

Occasional rude comments;

Isolated offhand remarks;

Are Not explicitly prohibited by law.
Examples of Bullying

Teasing a job applicant who uses a wheelchair;

Making loud noise to aggravate an employee’s migraine

Mocking an employee with a speech impediment

Excluding a coworker with bipolar disorder from a work outing

Shouting at a deaf or hard of hearing employee
Disability Harassment
Harassment must be targeted;
Pervasive in nature;
Frequent and continuous
Must pertain to a protected category;
e.g., race, disability, gender, sexual orientation, pregnancy, et al.
Examples of Harassment

- Disabling assistive technology based on failure to meet sales goals or meet a production quota;
- Prohibiting a hypoglycemic individual from carrying and/or eating snacks at the workstation;
- Spreading misinformation about employee with severe anxiety disorder to prevent her from modifying work schedule;
- Removal of accommodations by new manager.
From Bullying to Harassment

Pervasive and continuous Bullying over time can lead to harassment and/or hostile work environment.

Harassment and Workplace Hostility are grounds for filing EEOC charges.

Mere infrequent or occasional “bullying” is not enough to justify EEOC charge.
Origins of Bullying or Harassment

- Harassing behavior can occur by and between co-workers;

- Supervisors and managers against subordinates; and,

- Non-employees against employees (e.g., customers or patients).
Who is Affected by Disability Harassment?

- People with disabilities;
- People associated with people with disabilities;
- ADA prohibits “associational” discrimination; e.g., a co-worker friend of a person with a disability.
Differences - Bullying

Bullying typically occurs infrequently, where an individual will make an off-color comment about an employee with a disability. The overall work environment remains consistent with employer’s ordinary course of business.
Examples of Infrequent Bullying

“what’s the matter? Forgot to take your meds today?”

“Just because you have a disability does not mean you can come to work late everyday...”

“Turn up your hearing aid! You missed everything I said...”

“You are marking all the walls with your cane.”
Differences -- Harassment

Harassment occurs regularly, typically where an individual (or group of individuals) target an employee (or group of employees) with disabilities.

Harassment is pervasive and frequent.
Commonalities

BOTH BULLING AND HARASSMENT MUST NOT BE TOLERATED OR ENCOURAGED IN THE WORKPLACE, even though bullying may not always rise to the level of a discrimination complaint.
Retaliation

Retaliation occurs when an individual punishes an employee for engaging in a “protected action.”

Retaliation claims survive independently even if all other EEO claims are dismissed, including discrimination and hostile work environment.
Think About It: Pam’s Breaks

Pam, an executive assistant to the Dean of a private university, has multiple sclerosis and other disabilities, a side effect of which is frequent usage of the bathroom. The Dean’s office is set to meet with its largest donors to discuss upcoming projects for the university charitable foundation. Dean excludes Pam from the meeting because he is worried that she will have to leave the meeting several times to go to the bathroom, thereby interrupting the meeting.
Pam’s Breaks (continued)

When Pam asks Dean why she was excluded from the meeting, he says, “I wasn’t sure how many times you’d get up and go to the little girls room. We can’t afford to have those kinds of mishaps around here!”

Pam later learns that Dean told all the attendees the reason he didn’t have Pam taking notes was because she had a small bladder and couldn’t stay in one place for too long.
Pam’s Breaks: What’s the Point?

University personnel must maintain confidentiality at all times when engaged in the reasonable accommodations process. Even if the employee did not request accommodations, but did disclose his/her disability, university personnel must not disclose this to others.
Think About It: John’s Interview

John, a postdoctoral fellow in history, has applied for an associate professor position at a state university. He has limb loss in both arms, and he did not disclose this on been asked to attend an interview with the History Department. When John arrives for the interview, Sara, the front desk receptionist, takes one long, shocked look at John and asks him to wait. John is left waiting for fifteen minutes.
John’s Interview (continued)

John is finally called back to meet with the History Department. One of the first questions asked is how John will conduct in-class instruction without the use of his hands. Another interviewer asks how John will type emails and class materials for the students.

What concerns you about in this scenario?
Think About It: Amy’s Textbooks

Amy is a law student, and she has a visual impairment. She uses magnification devices to read print. Because she can’t take her CCTV to class with her, she leaves her textbooks at home and takes detailed notes in class. One day, Professor Peters calls on Amy in Criminal Procedure to read part of an opinion. Professor Peters notices that Amy does not have her book and asks Amy about it in front of the whole class.
Amy’s Textbooks: What’s the Point?

Understand that in a university setting, disability harassment can occur between professors and students, or between any university faculty, staff, administrative personnel and/or students.
Recommended Practices for Employers and Employees

- Adopt a clear anti-harassment policy that includes multiple avenues for submitting complaints;
- Regularly train leadership and employees on the policy;
- Vigorously follow and enforce the policy in good faith with consistency and fairness.
- Promptly and thoroughly investigate both bullying and harassment complaints.
Recommended Practices for Employers and Employees (continued)

- Employees should file complaints in writing;
- Employees should keep record of all evidence that supports disability-related discrimination, harassment, and/or retaliation for reporting incidents.
- Employers should engage all parties involved to carry out investigation – unless a report is “anonymous” and maintain detailed documentation.
- Employers should include a determination letter in the harasser’s file as well as issue a closure letter to the complaining employee when possible.
Questions?

Thank You!

For additional information or ADA Technical Assistance please contact us toll-free at: 800-949-4232
Thank you!

• Future webinars:
  • Designing an Accessible Online Course
    October 21, 1:00 pm
  • Creating a Campus Culture of Access and Inclusion
    October 27, 1:00 pm

• Visit: oecuark.edu/training