

Triple Play or Foul?  
Title VII & Title IX  
Curve balls

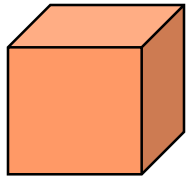
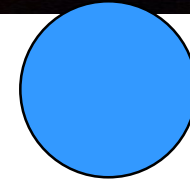
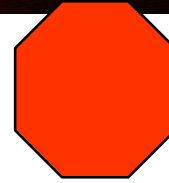
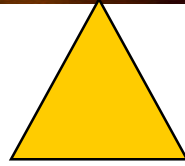
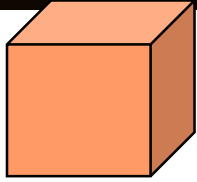


Hailey Kilpatrick, J.D.

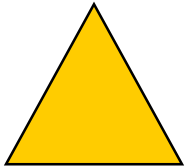
Nancy Sylvester, CPCU, ARM-P

Both with Arthur J. Gallagher & Co.

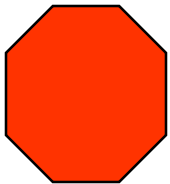
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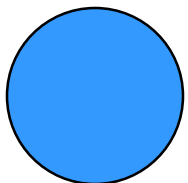
Quiet, organized, dependable, intelligent



Very bright, creative, motivated, energetic



Secure, intelligent, confident, excellent manager



Highly influenced by money, sex and booze

A close-up, low-angle shot of a baseball, showing the stitching and the texture of the leather. The lighting is dramatic, with a strong highlight on the top of the ball, creating a sense of depth and focus.

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## Title VII and Title IX

- Title VII - Federal law enacted in 1964

Enforced by:

- Equal Employment Opportunity Commission (EEOC)
- Federal courts

- Title IX – Federal law enacted in 1972

Enforced by:

- U.S. Department of Education, Office for Civil Rights
- Federal courts

## Title VII

- Prohibits discrimination in the workplace on the basis of:
  - Race
  - Color
  - Religion
  - National Origin
  - Sex, including gender, gender identity, pregnancy and sexual orientation

Prohibits retaliation based on a complaint regarding discrimination

# Types of Discrimination in the Workplace

- Compensation (payment to or on behalf of employees for remuneration of employment)
- Terms of Employment
- Conditions of Employment
- Privileges of Employment
- Sexual Harassment
- Harassment (other than sex)

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For the rest of this presentation, consider:

**DEPARTMENT/AGENCY =  
YOUR TEAM**



## Harassment in the Workplace

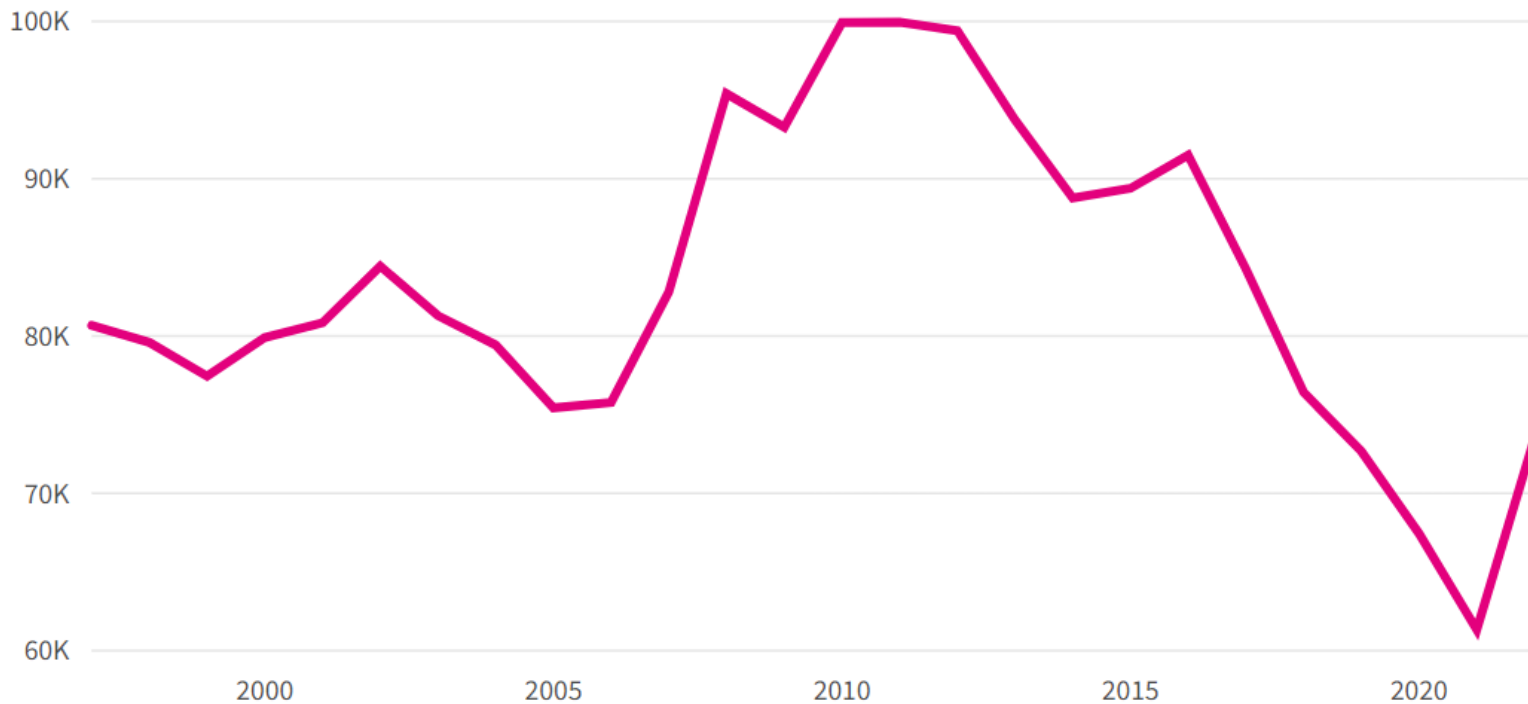
- Harassers can be:
  - Supervisors
  - Co-Workers
  - Non-Employees
- Victims can be:
  - Targets of the harassment
  - Bystanders



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## USA Score Card as of fiscal year 2022

Discrimination charges filed with EEOC





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## A curve ball - Impact of discrimination on your team

### Indirect costs of harassment:

- Depression, PTSD, eating disorders, physical health problems
- Decreased productivity, work withdrawal, tense environment
- Increased employee turnover
- Reputational harm to employer and potentially team members



## Discrimination Based on Sex

- Harasser and victim can be male or female
- Harasser and victim can be the same gender
- Includes gender identity (including transgender)
- Includes sexual orientation
- Includes pregnancy and childbirth
- Harassment isn't limited to a sexual nature

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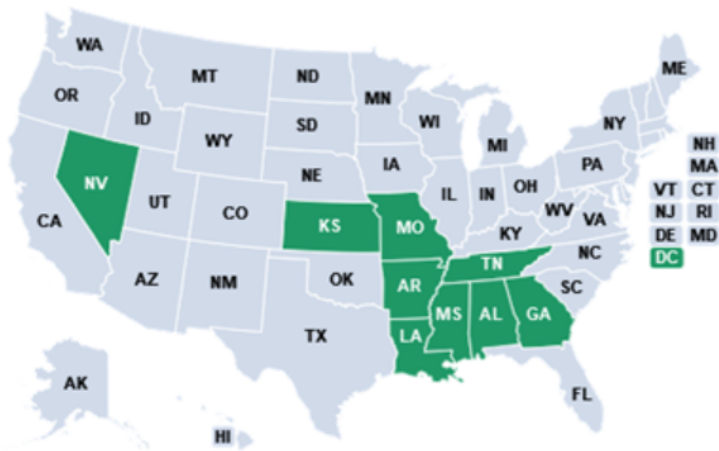
## Sexual Harassment =

- Unwelcome
- Verbal or Physical Conduct
- Based on Sex/Of a Sexual Nature
- Term or Condition of Employment
  - Quid Pro Quo
  - Hostile Environment



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**Figure 7.** Top 10 States with the Most Sexual Harassment Charges per 10,000 Population Ages 16 Years and Older, FY 2018 – FY 2021



SOURCES: U.S. EEOC, Integrated Mission System, Charge Data, FY 2018 – FY 2021. 2015-2019 American Community Survey (ACS) 5-Year Estimates, 16 Years and Older, Civilian Labor Force.

**Figure 2.** Percent of Sexual Harassment Charges Filed by Women, FY 2018 – FY 2021

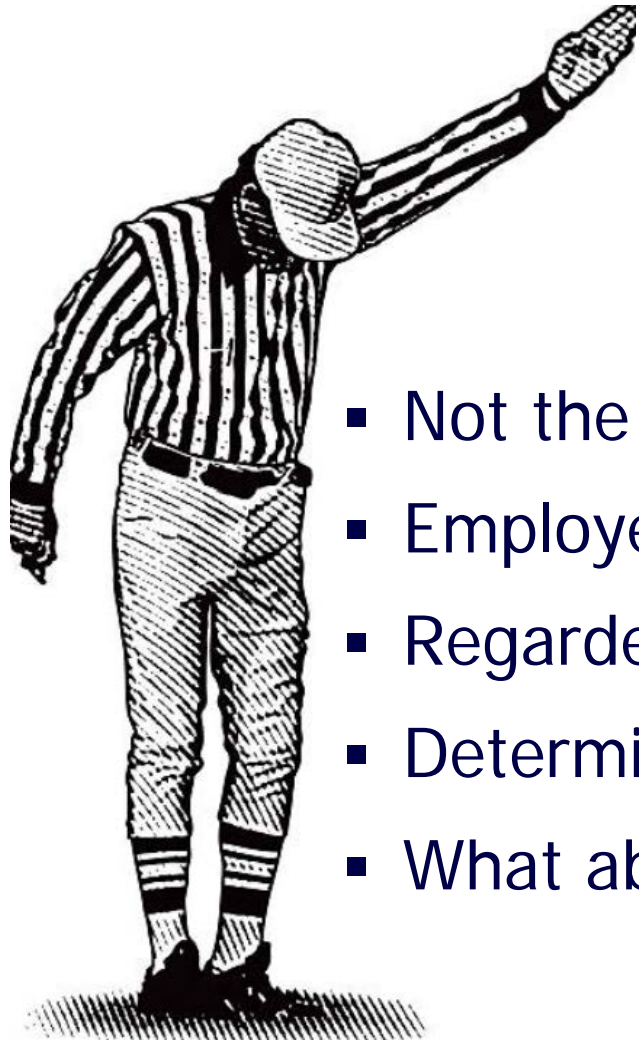


**Figure 3.** Percent of All Harassment Charges Filed by Women, FY 2018 – FY 2021



SOURCE: U.S. EEOC, Integrated Mission System, Charge Data, FY 2018 – FY 2021.

## Sexual Harassment--Unwelcome



- Not the same as involuntary or non-consensual
- Employee did not solicit or invite it
- Regarded as undesirable or offensive
- Determined based on facts and circumstances
- What about a breakup scenario?



## Sexual Harassment—Quid Pro Quo

- This for That
- Harassment becomes a term or condition of employment
  - Explicitly or implicitly
- A single incident may be the basis of quid pro quo sexual harassment





## Sexual Harassment—Hostile Environment

- Sufficiently severe or pervasive
- Creates an intimidating, hostile, or offensive work environment

OR

- Unreasonably interferes with individual's work performance

## Sexual Harassment—Hostile Environment

- Consider
  - Frequency
  - Severity
  - Verbal vs. Physical vs. On-line vs. Print
  - Co-worker vs. Supervisor
  - How many participated
  - How many targeted
  - Effect on employee (work, psychological, physical)

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## Sexual Harassment—Hostile Environment

- Objectively and Subjectively Offensive
  - Reasonable person would find hostile or abusive
    - Not concerned about the overly sensitive individual
  - Target personally found it offensive
    - Mutual joking and kidding possibly, but

**may be a foul.**



## Discrimination Based on Sex

- Unfavorable treatment
    - Discrimination in terms or conditions of employment
    - Harassment and offensive remarks
  - Because of the person's sex
    - Male or female
    - Gender identity/Gender norms/Sexual Orientation
      - *Oncale v. Sundowner Offshore Services*
    - Includes pregnancy and childbirth
- “Your degrees and experience tick every box and then some....but we need a man. Sorry.”

## Discrimination Based on Race/Color

- Unfavorable treatment
  - Discrimination in terms or conditions of employment
  - Harassment
    - Offensive remarks, slurs, symbols, “pranks”
- Because of the person’s race, characteristics associated with race, or skin color
  - Can be between people of same or different races or colors



# Discrimination Based on Race/Color

- Prohibits both:
  1. Intentional Discrimination
    - Segregation and Classification
  2. Neutral Policies with Disproportionate Effect
    - Criminal Background Checks
    - Education and Testing Requirements



# Discrimination Based on Religion

- Unfavorable treatment
  - Discrimination in terms or conditions of employment
  - Harassment and offensive remarks
- Because of the person's religious beliefs
  - Including the lack thereof
- Law requires reasonable accommodation
  - Schedule and Leave, Dress and Grooming Policies



## Discrimination Based on National Origin

- Unfavorable treatment
  - Discrimination in terms or conditions of employment
  - Harassment and offensive remarks
- Because the person:
  - Is from a particular country/part of the world
  - Has an accent or speaks another language
  - Is/appears to be of a certain ethnic background



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## How to Deal with Title VII Issues

- Prevent It



- Follow Policy



- Promptly Correct It

However...



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## Game plan following a report/complaint:

- Policies (like batting orders) are meant to be followed
- Training
- Reporting Procedures
- Prohibit Retaliation



Class	Pos.	Name	No.
JF	CF	Connor Aube	1
SO	C	Will Olson	5
JF	CF	Andrew Miller	21
JF	2B	Anthony Dominguez	10
JF	3B	Don Cook	20
JF	SS	Jack Weyant	14
JF	B	Dylan Paul	8
SO	IF	David Forman	29
SO	IF	Frank Rodriguez	9

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## Responding to Title VI & Title IX Complaints



- Investigation
  - Prompt
  - Thorough
  - Confidential to the Extent Possible
  - Same way every time, regardless of accuser or accused



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## Responding to Title VII & IX Complaints, continued...

- Remedial Action – Foul or Out
  - Prompt
  - Reasonably calculated to:
    - End the harassment/discrimination
    - Deter future harassment/discrimination
  - Proportionate to the conduct





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## Title IX

- Prohibits discrimination on the basis of sex in any education program or activity offered by a recipient of federal financial assistance.
  - K-12 - Universities
  - And certain state agencies...

**DOTD student programs** allow students to gain valuable work experience in civil engineering and the transportation field.

Student Employment - Louisiana

[wwwsp.dotd.la.gov/Inside\\_LaDOTD/Divisions/Mgmt\\_Finance/...](http://wwwsp.dotd.la.gov/Inside_LaDOTD/Divisions/Mgmt_Finance/...)



The Louisiana Department of Education has received the official approval of its plan to secure **\$2.6 billion** in federal relief aid. The Department will use these funds to address unfinished learning, student engagement and infrastructure shortages.

LDOE receives second part of federal relief, approval for \$2.6B bud...

[www.thenewsstar.com/story/news/2021/08/27/ldoe-receives-second-part-fed...](http://www.thenewsstar.com/story/news/2021/08/27/ldoe-receives-second-part-fed...)

✓ The LDWF's Hunter Education Program is partially funded by the Federal Aid in Wildlife Restoration Act, also known as the Pittman-Robertson Act. This act provides funding to states for various wildlife conservation and education programs, including hunter education. The LDWF utilizes these funds to offer hunter education courses and promote safe and responsible hunting practices among students

A close-up, low-angle shot of a baseball, showing the stitching and the texture of the leather. The lighting is warm, creating a golden glow around the ball.

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## Brief list of Title IX requirements:

- Title IX written policy in place
- Identify the Title IX coordinator(s)
- **Communication** provided to students and guardians:
  - The students' rights
  - Who is the applicable Title IX coordinator?
  - How to report an incident
  - Post information concerning Title IX policy and procedures
  - Ensure prompt, equitable grievance process and effective documentation

A close-up photograph of a baseball bat and a baseball, with the bat in the foreground and the ball slightly behind it, both illuminated by warm, golden light.

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## Fall 2024, Title IX changes are coming

- **Sexual assault survivors:** The new rules will have sweeping effects on survivors of sexual misconduct and those accused of crimes. Among the changes: The definition of sexual assault will be expanded in K-12 schools and colleges.
- **LGBTQ+ students:** Biden's Title IX update stipulates protections from sex discrimination based gender identity for the first time.
- **Pregnant and parenting students:** The new regulations extend the definition of "sex-based harassment" to include pregnant people on campuses.

A close-up, low-angle shot of a baseball, showing the texture of the leather and the stitching. The lighting is warm and dramatic, highlighting the curve of the ball.

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**THANK YOU!**