

KEY THINGS TO REMEMBER ABOUT EDR RIGHTS

EDR Coordinators **SPOT ISSUES**, they don't decide issues.

DISCRIMINATION

- Generally, an **adverse employment action**
 - that **substantially affects** the **terms, conditions, or privileges of employment** (e.g., hiring, firing, failing to promote, significant change in benefits), **and**
 - is **based on or motivated by Protected Categories** (race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age, disability)
- It is **also discrimination** to not provide a **reasonable accommodation** for **religious beliefs or practices** or for an **ADA disability**.
 - As to ADA issues:
 - Disability is construed broadly under the ADA
 - Employing Office should focus on whether an accommodation is needed for the medical condition and whether it is reasonable and effective

DISCRIMINATORY HARASSMENT

(including SEXUAL HARASSMENT)

- Generally, when a workplace is **permeated** with **discriminatory intimidation, ridicule, and insult** that is sufficiently **severe or pervasive** to **alter the conditions** of the employment and create an **abusive working environment**
 - Unwelcome physical, verbal or nonverbal conduct **based on, or motivated by, a Protected Category**
 - It is unlawful where tolerating the harassment is a condition of employment or is so severe or pervasive that it affects the terms, conditions, or privileges of employment.
- Sexual harassment **can include** unwelcome sexual advances, requests for sexual favors, and other **verbal or physical harassment of a sexual nature**. It includes making **offensive remarks about a person's gender**. The harasser can be a supervisor, a coworker, or someone who comes into the workplace.

The Judiciary encourages reporting of discriminatory harassment any time an Employee experiences or observes unwelcome conduct – BEFORE it becomes **severe or pervasive**. The Judiciary wants to take **immediate corrective action** to prevent any future occurrences.

ABUSIVE CONDUCT

- Generally, a **pattern of demonstrably egregious and hostile** conduct *not* based on a Protected Category that **unreasonably interferes** with an Employee's work and creates an **abusive working environment**
- Reasonable communications and actions related to performance management is not "abusive conduct."

RETALIATION

- Generally, a **materially adverse action** for **reporting or opposing** wrongful conduct; assisting in the **defense** of EDR rights; or reporting fraud, waste, and abuse (being a **whistleblower**)
 - **Materially adverse** = would **dissuade** a **reasonable person** from engaging in the protected activity