

MCRD San Diego 2014

**EEO/ POSH/ NO FEAR ACT**

# Code of Federal Regulations

- The regulation that governs federal employee Equal Employee Opportunity (EEO) discrimination complaints is:



# EEO is the Law

- Equal Pay Act of 1963
- Civil Rights Act of 1964
- Pregnancy Discrimination Act
- Age Discrimination in Employment Act of 1967
- Rehabilitation Act of 1973
- Americans with Disabilities Act of 1990
- Civil Rights Act of 1991
- Genetic Information Nondiscrimination Act

# EEOC has oversight



- The Equal Employment Opportunity Commission (EEOC) enforces all of these laws.
- The EEOC also provides oversight and coordination of all federal EEO regulations, practices and policies.
- EEOC website -- <http://www.eeoc.gov>

# 11 + 1 Protected Bases

29 CFR 1614

Race  
Color  
Religion  
Sex  
Pregnancy  
National Origin  
Age  
Disability  
Reprisal for EEO  
Harassment  
Genetic Info

Executive Order  
13087

Sexual Orientation



# RACE

Are We So Different?

A Project of American Anthropological Association

- “A great division of mankind, characterized as a group by the sharing of certain features, which have been derived from their common descent... and realized best by a composite picture.”

- Earnest Hooton  
“Methods of Racial Analysis”  
Science, Vol. 63, pp. 75-81  
1926

- 2000 US Census Races
  - White
  - Black or African American
  - American Indian or Alaska Native
  - Asian
  - Hawaiian Islander or Pacific Islander
  - Some Other Race
  - 2+ Races
  - “Hispanic and Latino are not races.”

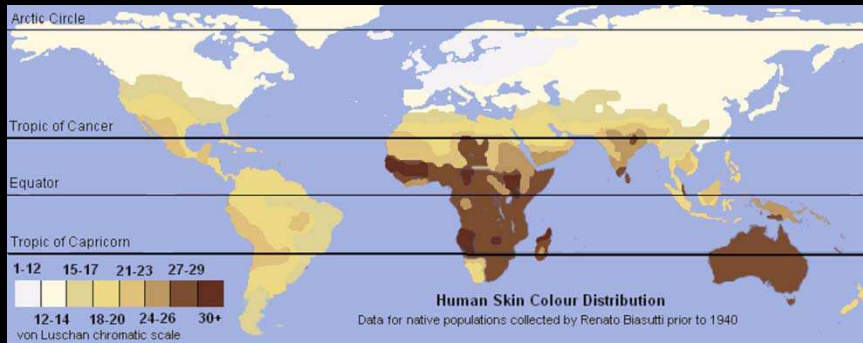
# Color



A human rainbow of skin colors  
Photograph by Sarah Leen



© 2007 National Geographic Society. All rights reserved.



- “Even though race and color clearly overlap, they are not synonymous. Thus, color discrimination can occur between persons of different races or ethnicities, or between persons of the same race or ethnicity.

- Although Title VII does not define “color,” the courts and the Commission read “color” to have its commonly understood meaning – pigmentation, complexion, or skin shade or tone. Thus, color discrimination occurs when a person is discriminated against based on the lightness, darkness, or other color characteristic of the person.”

-EEOC Website

	1	10			19	28	
	2	11			20	29	
	3	12			21	30	
	4	13			22	31	
	5	14			23	32	
	6	15			24	33	
	7	16			25	34	
	8	17			26	35	
	9	18			27	36	

# Religion

- Religious discrimination involves treating a person (an applicant or employee) unfavorably because of his or her religious beliefs. The law protects not only people who belong to traditional, organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical or moral beliefs.

- EEOC Website





# Sex / Gender



- The term “sex” has typically been replaced by “gender” in today’s lexicon.
- It addresses issues of male and female, including assumptions of what is masculine and feminine.

# Pregnancy

- Discrimination on the basis of pregnancy, childbirth or related medical conditions constitutes unlawful sex discrimination under Title VII of the Civil Rights Act of 1964.



# National Origin



- National origin discrimination involves treating people unfavorably because they are from a particular country or part of the world, because of ethnicity or accent, or because they appear to be of a certain ethnic background (even if they are not).

- EEOC Website

# Age

- Age discrimination involves treating someone less favorably because of his age.

The Age Discrimination in Employment Act (ADEA) only forbids age discrimination against people who are age 40 or older. It does not protect workers under the age of 40.

-EEOC Website



# Disability



- Disability discrimination occurs when an employer treats a qualified individual with a disability unfavorably because she has a disability.
- Disability discrimination also occurs when an employer treats an individual less favorably because she has a history of a disability or because she is believed to have a physical or mental impairment that is not transitory and minor (even if she does not have such an impairment).
- The law requires an employer to provide reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause significant difficulty or expense for the employer ("undue hardship").

-EEOC Website

# Reprisal

- All of the laws we enforce make it illegal to fire, demote, harass, or otherwise “retaliate” against people because they:
  - filed a charge of discrimination,
  - because they complained about discrimination on the job,
  - or because they participated in an employment discrimination proceeding (such as an investigation or lawsuit).



# Harassment



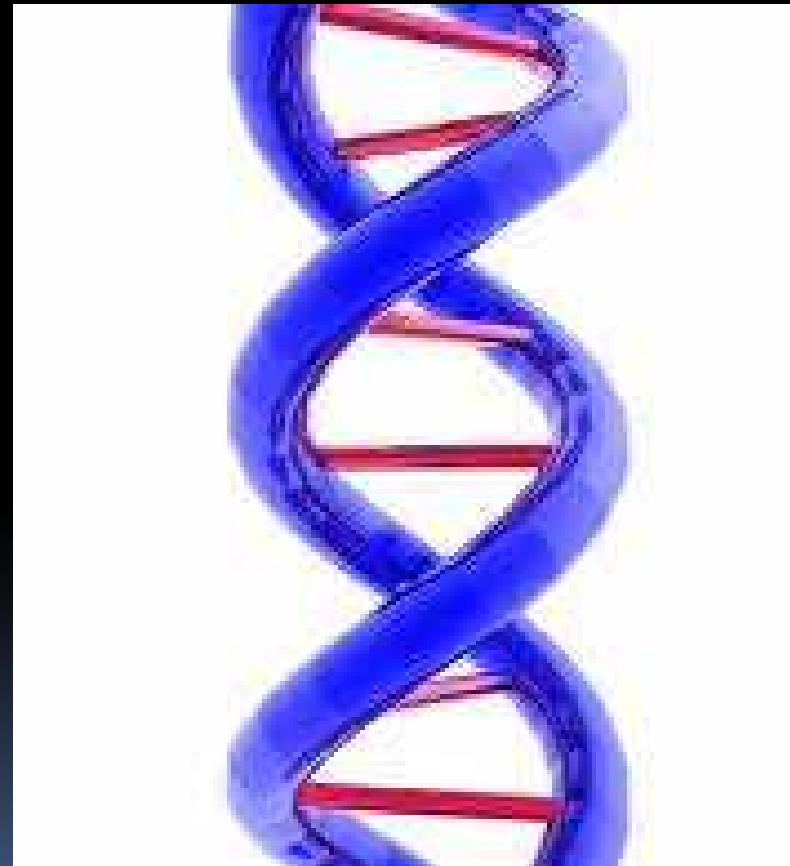
- Harassment is unwelcome conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.
- Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

# Genetic Information

- It is illegal to discriminate against anyone because of genetic information.

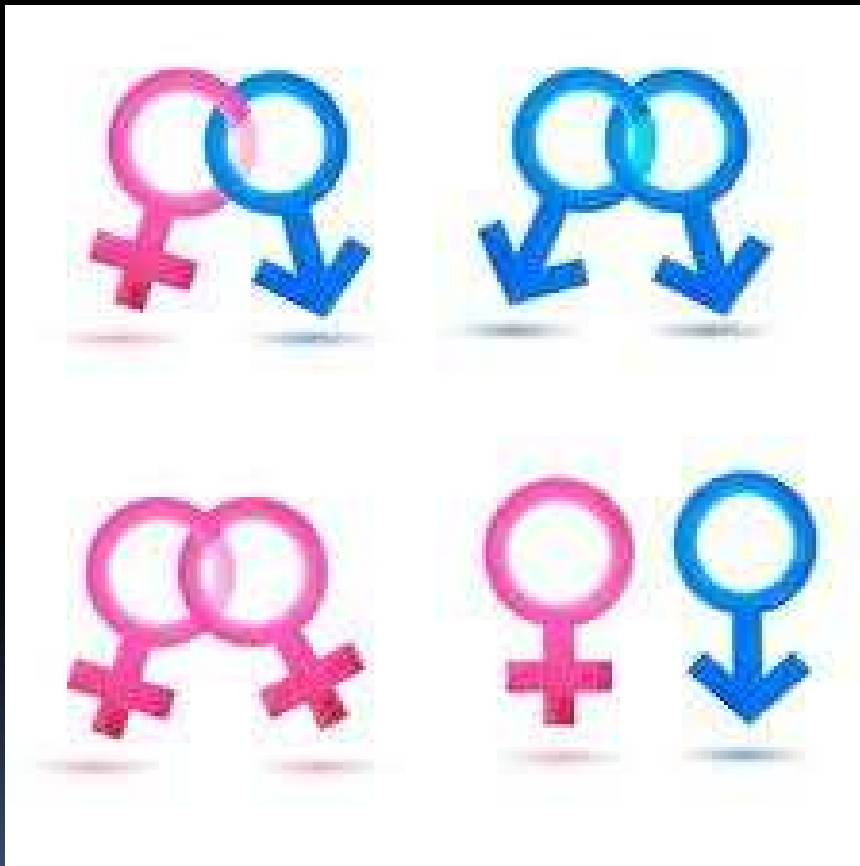
Title II of GINA prohibits the use of genetic information in:

- making employment decisions, ]
- restricts employers from requesting, requiring or purchasing genetic information,
- and strictly limits the disclosure of genetic information.





# Sexual Orientation



- Executive Order 13087 prohibits discrimination based on sexual orientation in the federal civilian workforce.
- Sexual Orientation complaints are not covered under 29 CFR 1614, but may have recourse through Human Resources, the Inspector General's office, the Office of Special Counsel, the Merit Systems Protection Board, Administrative Grievance Procedures, Negotiated Grievance Procedure, or through Alternative Dispute Resolution.

# Discriminatory Practices Prohibited

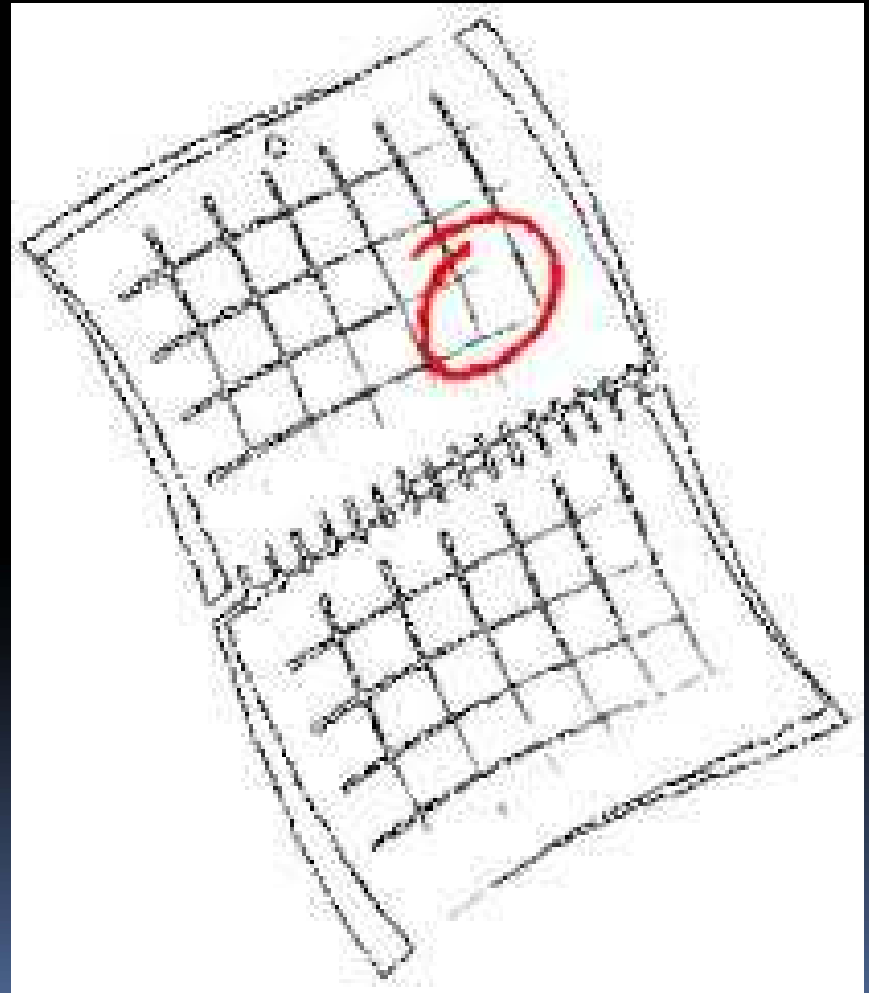
- It is illegal to discriminate in any aspect of employment, including (but not limited to):
  - Hiring and firing
  - Compensation, assignment, or classification,
  - Transfer, promotion, layoff or recall,
  - Job Advertisements
  - Testing
  - Use of company facilities
  - Training and apprenticeship programs
  - Fringe benefits
  - Pay, retirement plans, and disability leave
  - Other terms and conditions of employment.

# Discriminatory Practices Prohibited (Cont.)

- It is also illegal to:
  - Make employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a protected category.
  - Deny employment opportunities to a person because of association with an person in a protected category
  - Deny employment opportunities to a person because of association with an organization, school or place of worship associated with a protected category.

# Contacting an EEO Counselor

- You have 45 Calendar Days from the alleged discriminatory event to contact an EEO Counselor.
- EEO Counselor for MCCS
- 29 Palms, MCAGCC (NAF)
  - Marcie Carter
  - Personnel, Building 1533
  - 760-830-4430
  - [Marcie.l.carter@usmc-mccs.org](mailto:Marcie.l.carter@usmc-mccs.org)

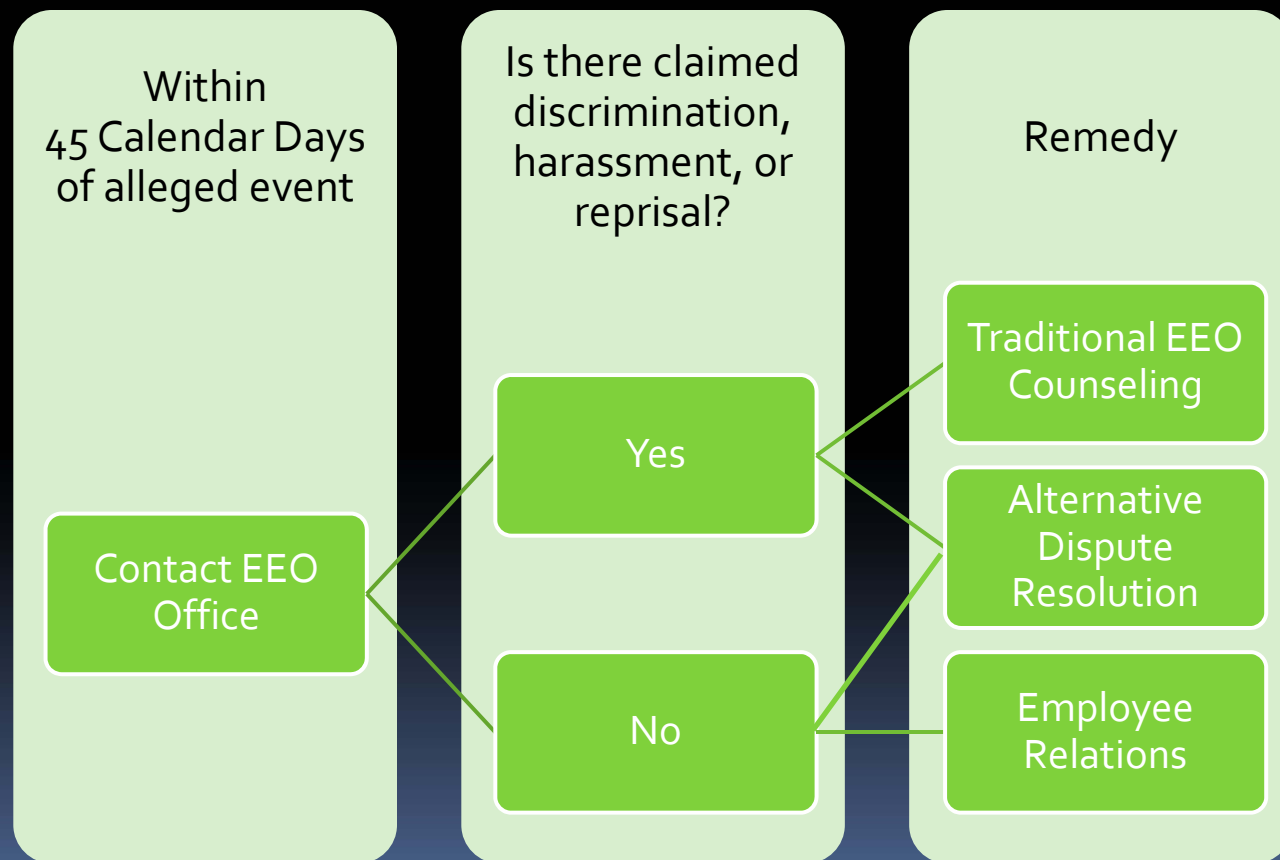


# Who May File?

- Applicants
- Current Employees
- Former Employees
- Contract Employees\*

(\*in very limited circumstances)

# 29 CFR 1614 Pre-Complaint Process



# Other Remedies

- In addition to 29 CFR 1614 remedies, Federal employees have other options available to them.
  - Management
  - Employee Relations
  - Alternative Dispute Resolution (ADR)
  - Inspector General's Office
  - Negotiated Grievance Procedure (NGP)



# Employee's Rights

- You have the right to:
  - File a complaint if you are aggrieved;
  - Use a reasonable amount of official time;
  - Remain anonymous during the pre-complaint stage (to the extent possible)
    - Anonymity is not available during ADR or formal process
  - Representation of your choice throughout the complaint process
    - Excluding Management as a Representative
  - Choose between Negotiated Grievance Procedures (NGP), EEO, or Alternative Dispute Resolution.

Additional rights and responsibilities are addressed by an EEO Counselor during pre-complaint counseling.





From "Discrimination and Harassment Prevention Quiz" – HRTools.com

# CHECKING FOR UNDERSTANDING

# Is this discriminatory?

- Michelle, who is Italian American, receives an email joke that pokes fun at Italian Americans, Michelle is NOT offended by her friend's joke, and finds it funny. Michelle thinks that some of her co-workers might find it funny, so he forwards it to them.
- Can Michelle get in trouble for the email?
- If so, on what basis?

# Potential Discrimination

- Yes, Michelle can get in trouble from the email, because the joke is inappropriate for work and is potentially offensive. Whether or not the joke is offensive is determined by the recipient's perspective, not the sender's.
- The basis for discrimination could be national origin.

# Is this discriminatory?

- Manny has a condition that causes him to occasionally blurt out nonsensical statements. A few of Manny's coworkers will insert nonsensical statements into their own speech or repeat phrases they have heard Manny utter.
- Is this discriminatory?
- If so, on what basis?

# Potential Discrimination

- Manny's co-workers are being discriminatory.
- Manny's conduct is linked to a mental condition and may be disability discrimination.

# Is this discriminatory?

- Most of Gloria's coworkers are friendly and make an effort to make her feel welcome. But Al, who Gloria sees only infrequently, criticizes her for wearing religious jewelry. When she asks him not to comment on her jewelry, he refused and became openly hostile.
- Is Al's behavior acceptable?
  - Yes, Al's comments are not work related.
  - Yes, Al and Gloria have minimal contact. She should suck it up.
  - Yes, Al has a right not to have religions pushed on him.
  - No, Al's conduct might be offensive to Gloria or others.

# Potential Discrimination

- Al's behavior is unacceptable on two counts.
  - Because his comments about Gloria's jewelry are offensive to her, Al should respect her wishes and stop talking about her jewelry.
  - The first basis that should have come to mind was Religion.
  - Moreover, his open hostility in response to Gloria's request could violate the policy against retaliation.

# Is this discriminatory?

- Mike is Asian American. Non-Asian coworkers sometimes mock Mike by assuming an Asian accent when talking to him, even in front of customers. Jerri, another employee, notices that Mike appears embarrassed by this behavior. When Jerri asks Mike about it, he says it doesn't bother him.
- What should Jerry do?
  - Nothing. Jerri isn't involved and should mind her business.
  - Nothing, because Mike said it didn't bother him.
  - Tell Mike's co-workers she finds the behavior offensive.
  - Report the behavior to management and/or human resources.
  - Both d and e.



# Potential Discrimination

- Jerri should let Mike's coworkers know how she feels about their conduct, but she also needs to follow the policy for reporting offensive or inappropriate conduct in the workplace.
- This type of discrimination could fall under the bases of race or national origin.

# Is this discriminatory?

- Jody is the only woman working in a warehouse. Her male coworkers don't think that this an appropriate place for a woman and constantly her she shouldn't be doing "a man's job." They have hid her tools and left her with all the most difficult work trying to get her to quit or prove that she can't handle the work.

Jody, a black belt in karate, thinks that if she can put Butch, the ringleader, in place the rest of the guys will respect her. The next time Butch gives her a hard time, she kicks him.

- Who is subject to disciplinary action?
  - Butch
  - Jody
  - Both

# Potential Discrimination

- Both are subject to disciplinary action.
- Jody has violated the workplace violence policy, regardless of any underlying provocation.
- Butch may be disciplined for bullying, harassment, or sex discrimination.

# Is this discriminatory?

- Anna's job duties include shipping and receiving. Anna generally gets along well with the delivery persons. However, one delivery driver always has a new ethnic joke to tell. Anna is offended by his behavior, but is afraid to complain because many of her coworkers often go out with the delivery driver after work.
- What should Anna do?
  - Report the driver's behavior.
  - Nothing, he isn't a MCCS employee and there isn't anything management can do.
  - Nothing, it is better to not rock the boat since her coworkers might be upset.

# Potential Discrimination

- It is the responsibility of ALL employees to report harassing, discriminatory or inappropriate conduct in the workplace. Even if that conduct is performed by non-employees or customers.
- Suppose you are Anna's manager, what should you do?
  - Reassign Anna so she won't have to work with the driver.
  - Tell Anna to develop a tougher skin. He was just joking.
  - Tell Anna that she should tell the driver to stop.
  - None of the Above.

# Potential Discrimination

- The first three answers were all poor choices.
  - Anna should not have to be reassigned due to someone else's inappropriate behavior.
  - Anna should not have to tolerate inappropriate behavior in her workspace, regardless of who is doing it.
  - Anna has chosen to come to management with her complaint.
- It is management's responsibility to address and correct the issue.
  - Management should also notify Anna that she has a right to discuss her concerns with an EEO counselor, if she chooses.

# Is this discriminatory?

- A supervisor sees that an employee has piles of potentially problematic reading materials in his work area. No one has complained about it.
- What should the supervisor do?
  - Nothing. No one has complained, so it must not be a problem.
  - Ask around to see if anyone has noticed/ been offended by the materials.
  - Report the situation to upper management/ HR.

# Potential Discrimination

- Anytime a supervisor observes discriminatory or offensive materials in the workplace, he or she must immediately report the matter to upper management or Human Resources for guidance.
- Liability begins for an organization once someone in management has been “made aware of” or “put on notice” for the potential of a hostile work environment.



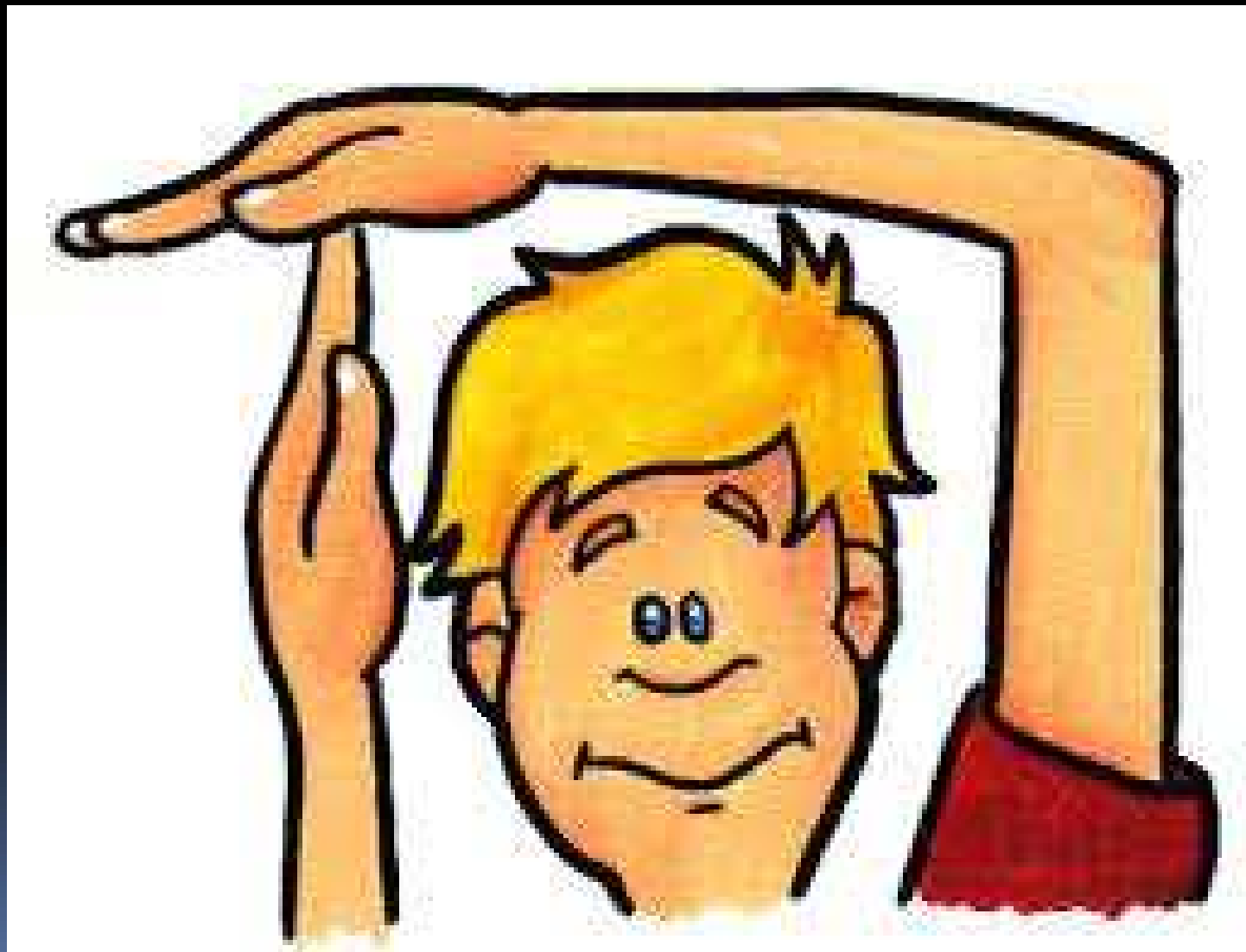
# Is this discriminatory?

- True or False:
  - A victim of harassing behavior tells a supervisor about the behavior, but then asks that no one be told. To respect the employee's wishes, the supervisor should not take further action.

# Potential Discrimination

- False.
- Even if a person who reports harassing or discriminatory behavior asks that no action be taken an organization that does nothing in response can be liable if the behavior creates a hostile work environment.
- The organization, through the supervisor, has been made aware of the situation and now must investigate and take necessary corrective action.

Let's Take a Break





# PREVENTION OF SEXUAL HARASSMENT (POSH)

# As a Reminder- Harassment is Discrimination



- Harassment is unwelcome conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.
- Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

# Sexual Harassment Prohibited



- Equal Employment Opportunity Commission (EEOC) established minimum standards and guidelines for agency use in developing anti-harassment policy and complaint procedure should contain, at a minimum, the following elements:

- **A clear explanation of prohibited conduct;**
- **Assurance that employees who make claims of harassment or provide information related to such claims will be protected against retaliation;**
- **A clearly described complaint process that provides accessible avenues for complainants;**
- **Assurance that employer will protect the confidentiality of the individuals bringing harassment claims to the extent possible;**
- **A complaint process that provides a prompt, thorough, and impartial investigation; and**
- **Assurance that the employer will take immediate and appropriate corrective action when it determines that harassment has occurred.**
- **And to discuss SECNAV Inst. 5300.26D**

# SECNAV Instruction 5300.26D

- A. Sexual harassment is prohibited.
  
- B. No individual within the DON shall:
  - 1. Commit sexual harassment as defined in enclosure (1) of SECNAV Inst 5300.26D;
  - 2. Take reprisal action against a person who provides information on an incident of alleged sexual harassment;
  - 3. Knowingly make a false accusation of sexual harassment; or
  - 4. While in a supervisory or command position, condone or ignore sexual harassment which he or she has knowledge or has reason to have knowledge.



# Sexual Harassment Definition

- Sexual Harassment is defined as “unwelcome sexual advances, requests for sexual favors, and verbal or physical conduct of a sexual nature constitute sexual harassment when:



- Submission to such conduct is made explicitly or implicitly a term or condition of employment;
- Submission to or rejection of such conduct by an individual is used as a basis for an employment decision affecting individuals;
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or
- creating an intimidating, hostile or offensive work environment



# Three Critical Criteria

Unwelcome

Sexual in  
Nature

Occur in or  
impact the  
workplace

# Victims or Perpetrators

- Victims of sexual harassment can be:
  - Male or female
  - Management, Subordinates, Co-workers, Contractors, or Customers.
  
- Perpetrators of sexual harassment can be:
  - Male or female
  - Management, Subordinates, Co-workers, Contractors, or Customers.



# Two Types of Sexual Harassment

## Quid Pro Quo

- Single Instance Standard
- Must be someone in authority
- Trading rewards or punishments (real or implied) sexual favors.

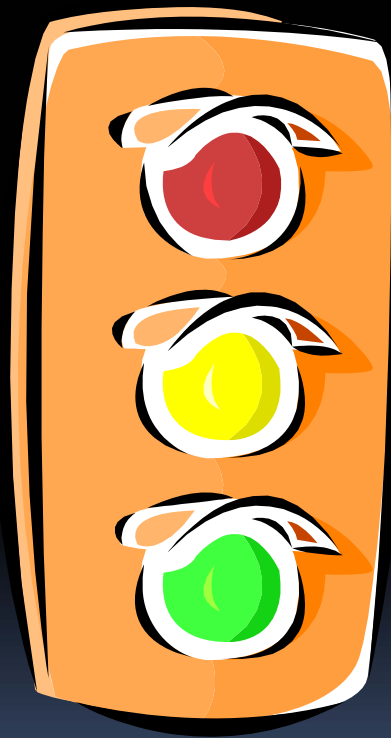
## Hostile Work Environment

- Severe or Pervasive
- May be anyone
- Behavior that interferes with an employee's ability to come to the workplace and/or perform his/ her job.

# “Reasonable Person” Standard

- The legal standard used to determine what behavior is offensive in many types of legal cases, including sexual harassment.
- The court asks how a reasonable person would feel when faced with these situations. Would this behavior substantially affect the work environment or psychological well-being of a reasonable person from the perspective of the victim?
- The court gives substantially more weight to the victim’s **perception** rather than the perpetrator’s **intention**.

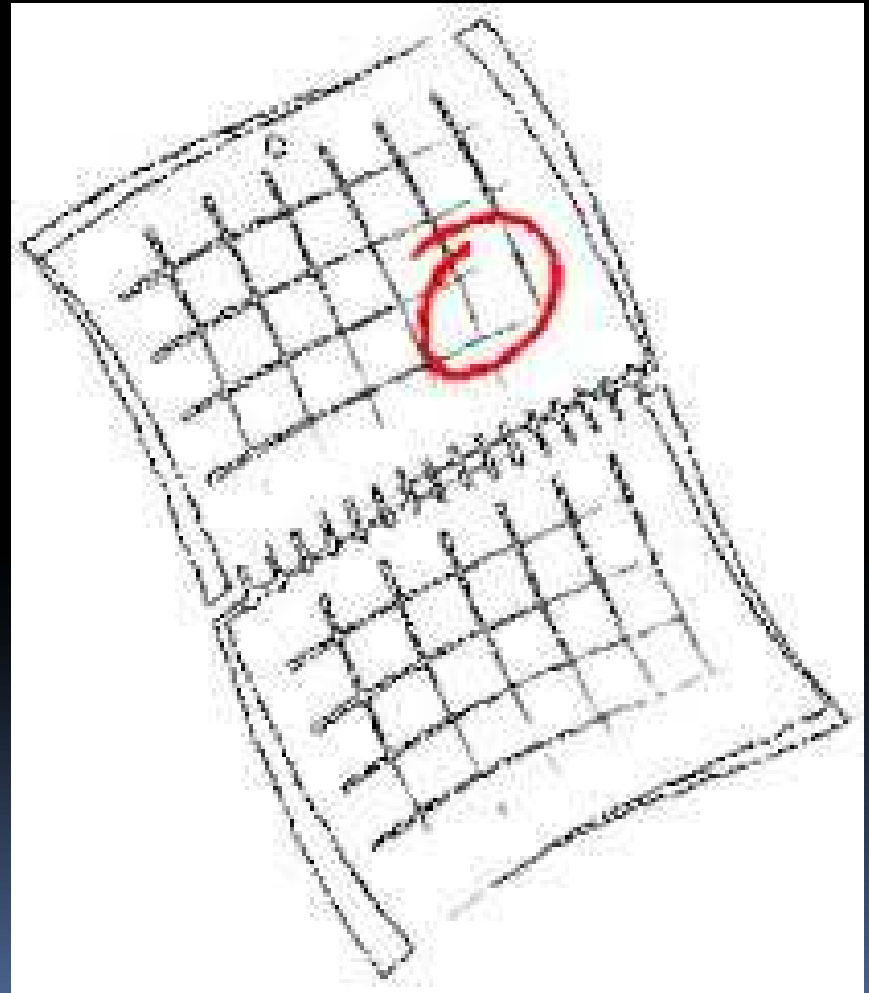
# BEHAVIORAL ZONES



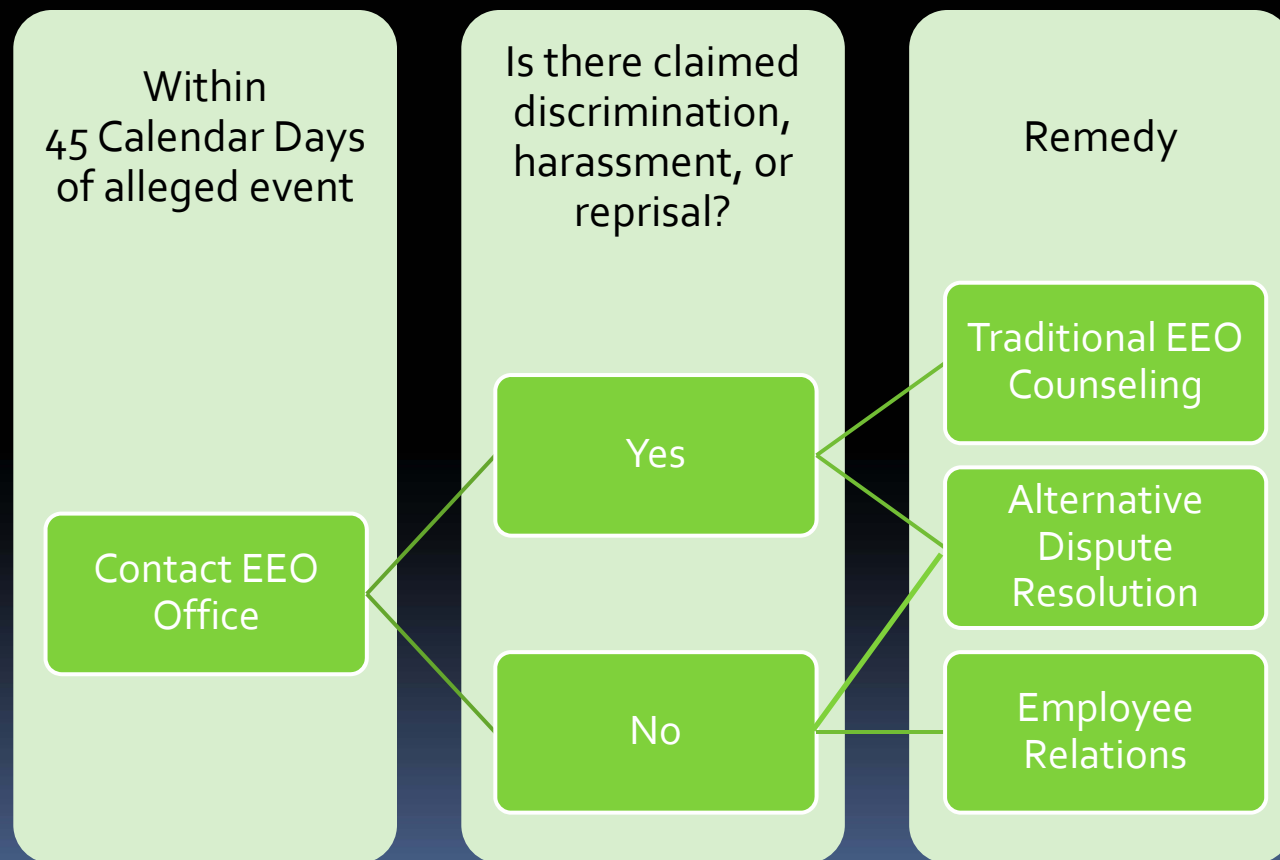
- **RED**
  - **Always Stop**
- **YELLOW**
  - **Proceed with Caution**
- **GREEN**
  - **Proceed**

# Contacting an EEO Counselor

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  - Marcie Carter
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# 29 CFR 1614 Pre-Complaint Process



# Employee's Rights

- You have the right to:
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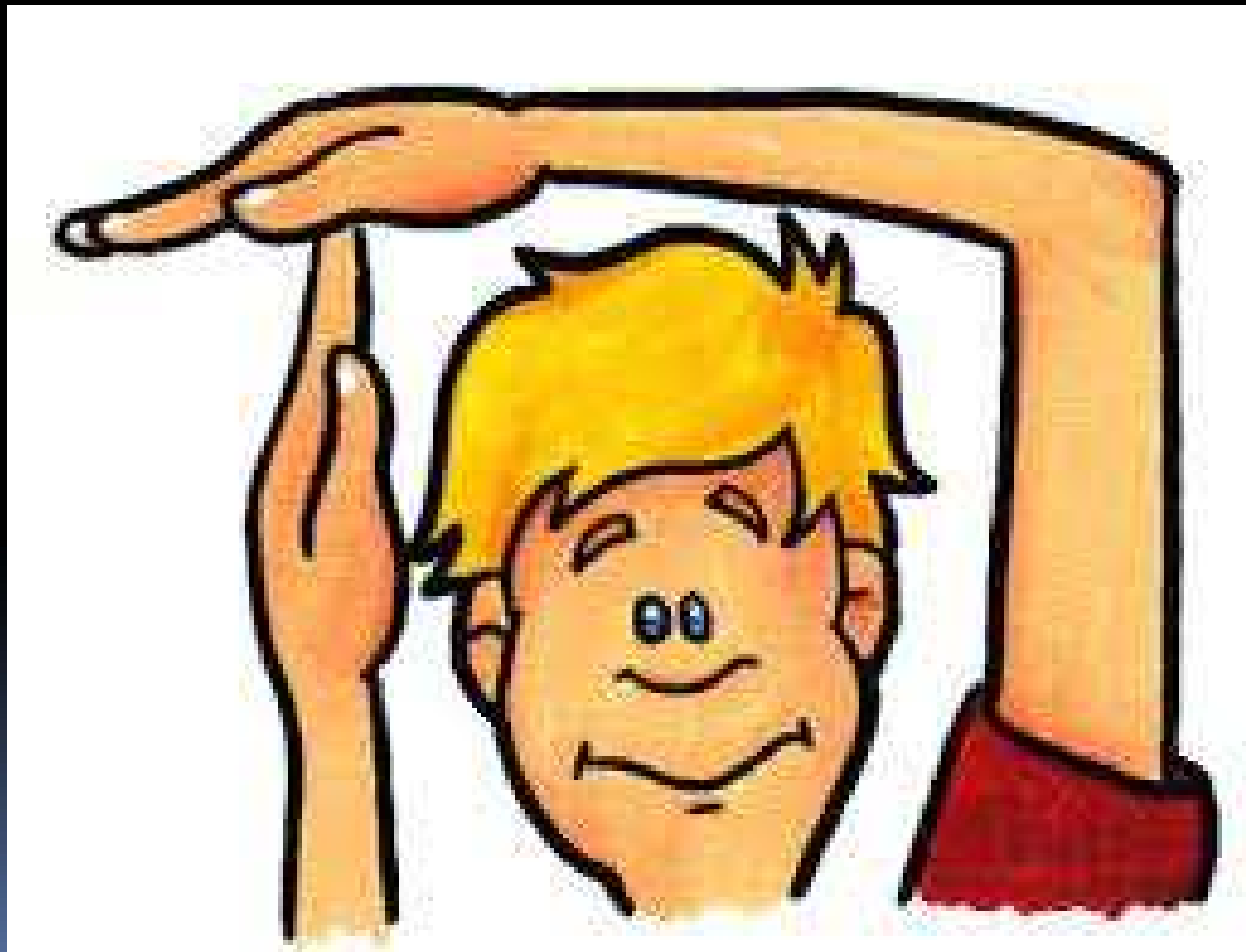


# Group Work



- Break into groups of no more than 5.
- Each group will be presented a scenario.
- Come up with a short skit to show the scenario.
- Answer the questions.
- Everyone must participate in the presentation somehow.

Let's Take a Break





Retaliation, Reprisal and Whistleblower protections

# **NO FEAR ACT OF 2002**

# No FEAR Act of 2002



- Title: Notification and Federal Employee Anti-Discrimination and Retaliation Act of 2002 (effective 10/01/03)
- The Act requires that “Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.”
- The Act also requires that DON inform current employees, former employees and applicants for employment, of the rights and protections available under Federal antidiscrimination, whistleblower protection and retaliation laws.

# Engaging in Protected Activity

- **A Federal agency may not retaliate against an employee or applicant because that individual exercises his or her rights** under any of the Federal antidiscrimination or whistleblower protections laws.

# Protected Activities

## Participation in the EEO Process

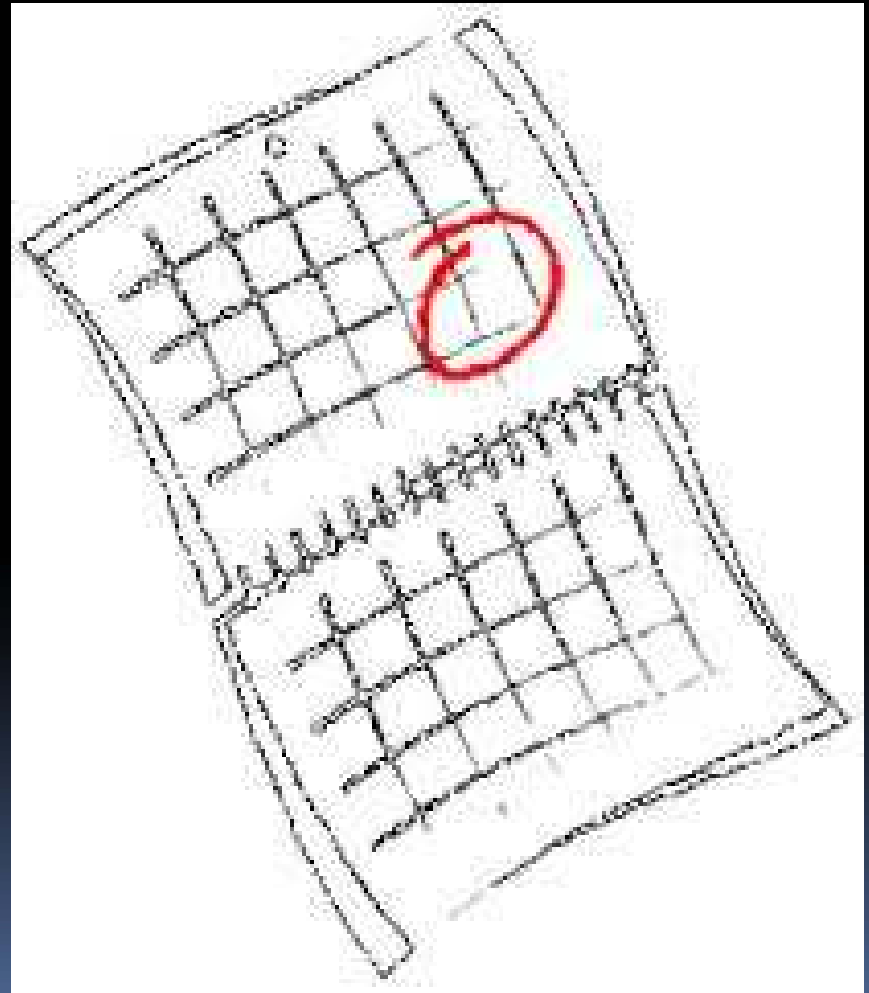
- It is unlawful to discriminate against any individual because s/he has **filed a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, hearing, or litigation** under any of the anti-discrimination statutes.
- The participation clause applies to **all individuals** who participate in the EEO complaints process.
- An agency can be found liable for retaliating against an individual for filing an EEO complaint **regardless of the merits** or reasonableness of the original complaint.

## Opposition to Discriminatory Practice

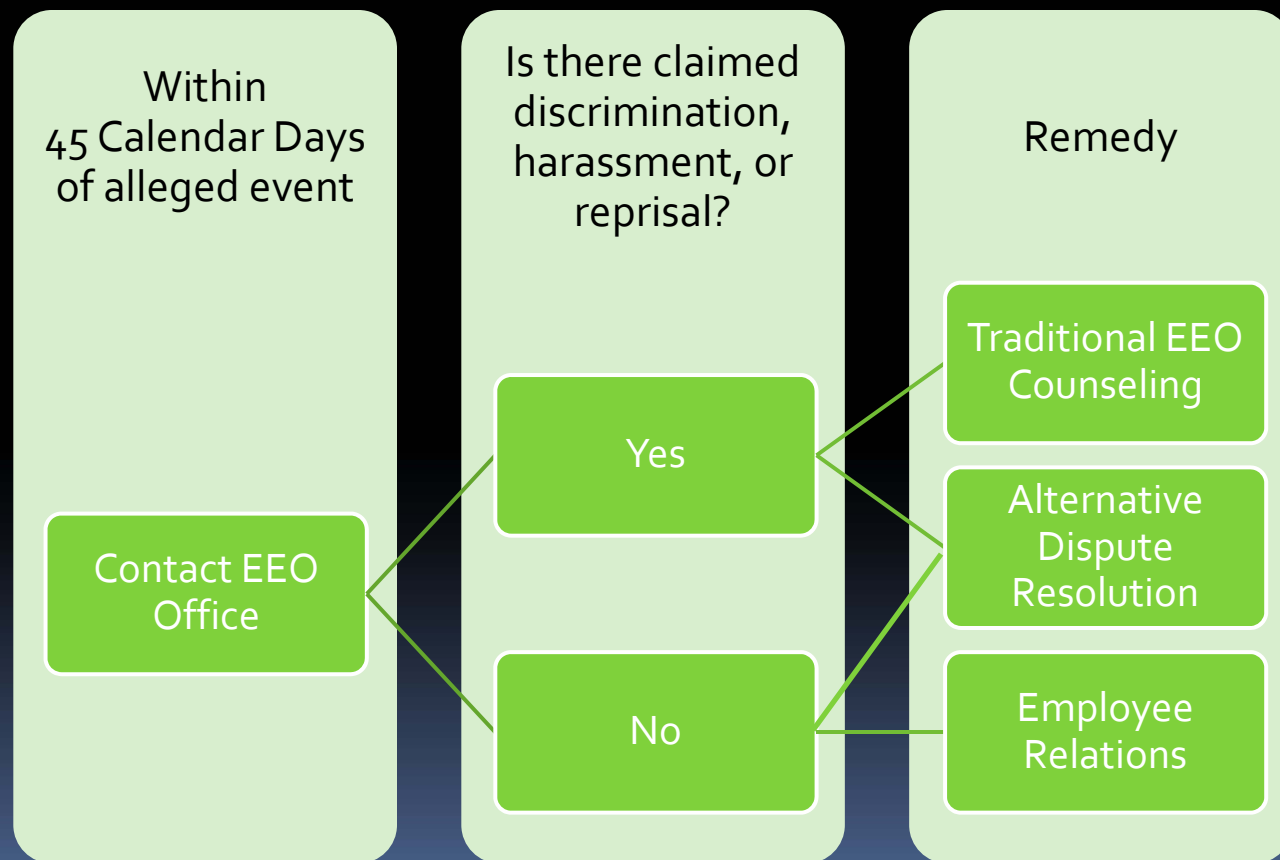
- It is unlawful to discriminate against an individual because s/he has **opposed any practice made unlawful** by Title VII, the ADEA, the EPA, or the Rehab Act.
- A complaint amounts to protected opposition only if the individual **explicitly or implicitly** communicates a belief that the practice constitutes unlawful employment discrimination.
- The complainant **need not be correct** in their belief.
- The opposition clause protects the individual provided that they had a **good faith and reasonable belief** that a violation of the EEO statutes had or was occurring.

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# Whistleblower Disclosures

- No Requirement that employee go through Chain of Command.
- Whistleblower's personal motivation does not affect reasonableness of a disclosure.
- Employee or applicant is protected if employer mistakenly believes he or she is a whistleblower.
- Disclosure is **not** protected (unless made to the Special Counsel or Inspector General), where the disclosure is:
  - Prohibited by law, or
  - Required by Executive Order to be secret for National Security or Foreign Affairs reasons.

# Whistleblower Complaints

- The Office of Special Counsel (OSC) provides a secure channel through which current and former federal employees and applicants may make confidential disclosures.
- OSC evaluates the disclosures to determine whether there is a substantial likelihood that one of the conditions listed above has been disclosed. If such a determination is made, OSC has the authority to require the head of the agency to investigate the matter.
- To make a disclosure contact:  
U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 218  
Washington, DC 20036-4505  
Phone: (202) 254-3640  
Toll Free: 1-800-572-2249  
Hearing and Speech Disabled: Federal Relay Service 1-800-877-8339  
OSC Web site: <http://www.osc.gov>.





EEO/POSH/No  
FEAR Act

# SUMMARY

# Employee Responsibilities



**KEEP  
CALM  
AND  
BE  
RESPECTFUL**

- **Conduct yourself** in a manner that reflects positively on MCCS, the Marine Corps and the Department of the Navy.
- **Avoid the borderline.**
- If you see something, **say something.**
- **Cooperate** with officials.

# Manager Responsibilities

- Enforce **ZERO tolerance** for inappropriate behavior.
- Ensure employees are informed of **rights and responsibilities**.
- **Document**, document, document.
- Treat all complaints **seriously**; confidentially.
- Take **immediate, appropriate** corrective action.



# Management Best Practices



- Set example; “walk the talk”
- Be accessible; “open door policy”
- Regular communication (staff meetings)
- Enforce respect in the workplace; avoid borderline
- Accommodate whenever possible
- Educate staff; reiterate EEO policies



# Certificate of Completion

- **EEO/POSH/No FEAR Act**

- **Employee Name:**

- \_\_\_\_\_

- **Employee ID#:** \_\_\_\_\_

- **Date of Completion:** \_\_\_\_\_