



WORKPLACE LAWS, REGULATIONS, AND POLICIES AFFECTING JUDGES AND COURTS

January 26, 2018

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Overview

Workplace Laws, Regulations, and Policies Affecting Judges and Courts, is an online course developed by the Judicial College of Maryland, Department of Professional Development with guidance and expertise from the Internal Affairs Division, Department of Fair Practices.

In March 2017 this course was mandated for all sitting and senior judges and magistrates of the Maryland Judiciary. In addition, all new judges are required to complete the online course within 30 days of appointment.

Course Structure

This course is designed to provide the judges and magistrates of the Maryland Judiciary with an overview of their role in creating fair and effective workplaces. The course starts with examining Maryland and federal laws and regulations that protect against discrimination, and the internal policies, and procedures on discrimination, harassment, and retaliation. Additionally, the course examines obligations to provide accommodations for disabled employees and religious accommodations. The course concludes with a review of the Judiciary's obligations towards members of the public who request accommodations for disabilities when using Judiciary services.

The course is divided into four interactive modules with three Test Your Knowledge formative assessments developed within the learning management system. The following pages contains screen captures of module and the assessments. Please note, the online course utilizes course variables to recall the learner's name, this is notated as `%TextEntry#%` in the screen captures.

- Module 1: Preventing Discrimination and Harassment
 - Test Your Understanding
- Module 2: Accommodations for Employees
 - Test Your Understanding
- Module 3: Related Legal Protections
- Module 4: Accommodations for the Public
 - Test Your Understanding

Module 1: Preventing Discrimination and Harassment

1.1 Welcome Layout



Module 1:

Preventing
Discrimination
and Harassment

Type your name here then click
the Next button below.

1.2 List Layout

Getting Started



Instructions: Click on the boxes below to review each section, then click Next.

Course Overview

Learning Objectives

Overview (Slide Layer)

Getting Started



Instructions: Click on the boxes below to review each section, then click Next.

Course Overview

Learning Objectives

By the conclusion of this lesson, learners will be able to:

- Identify the Maryland and federal laws and regulations that protect against discrimination.
- Recognize the Maryland Judiciary policies and procedures on discrimination, harassment, and accommodations.
- Utilize best practices to strengthen our workplace based on inclusion and respect.
- Identify resources for reporting complaints and consultation.
- Explore resources to fortify interactions with the public and non-employees.

Objectives (Slide Layer)




Getting Started



Instructions: Click on the boxes below to review each section, then click Next.

Course Overview

Learning Objectives

-  Explain the importance of judges as supervisors within the court.
-  Identify legal protections to ensure fair and effective workplaces.
-  Review the Administrative Office of the Courts' Anti-Harassment Policy and the protected characteristics.
-  Reinforce your knowledge of best practices when receiving complaints.

1.3 Judges' Role as Supervisors

Judges' Role as Supervisors



Instructions: Click on the file folders below to review each section regarding *Forrester v. White*, 484 U.S. 219 (1988), then click Next.

Facts

Proceedings

Key Holdings

Facts (Slide Layer)

Judges' Role as Supervisors



Instructions: Click on the file folders below to review each section regarding *Forrester v. White*, 484 U.S. 219 (1988), then click Next.

Facts

Under Illinois law, presiding circuit court judges had the authority to hire and remove probation officers. Judge White demoted and then terminated a female probation officer, Ms. Forrester, who believed the actions were discriminatory.

Proceedings

Key Holdings

Judges' Role as Supervisors



Instructions: Click on the file folders below to review each section regarding *Forrester v. White*, 484 U.S. 219 (1988), then click Next.

Facts

Ms. Forrester filed a § 1983 claim against Judge White alleging that she was demoted and discharged on account of her sex in violation of the Equal Protection Clause of the Fourteenth Amendment.

Proceedings

The federal district court, after a jury found in favor of the former probation officer, entered summary judgment for the judge on the grounds of absolute immunity. The Seventh Circuit affirmed, but the Supreme Court reversed that decision.

Key Holdings

Key Holdings (Slide Layer)

Judges' Role as Supervisors

Instructions: Click on the file folders below to review each section regarding *Forrester v. White*, 484 U.S. 219 (1988), then click Next.

Facts

Proceedings

Key Holdings

administrative capacity when he demoted and discharged Forrester. Those acts - like many others involved in supervising court employees and overseeing the efficient operation of a court - may have been quite important in providing the necessary conditions of a sound adjudicative system. The decisions at issue, however, were not themselves judicial or adjudicative. . . . **Such decisions, like personnel decisions made by judges, are often crucial to the efficient operation of public institutions (some of which are at least as important as the courts), yet no one suggests that they give rise to absolute immunity from liability in damages under § 1983.**



1.4 Judges' Role as Supervisors

Judges' Role as Supervisors



Check Your Understanding

Based on the key holdings of *Forrester v. White*, 484 U.S. 219 (1988), does a judge have absolute immunity?

Yes

No

Judges' Role as Supervisors



Check Your Understanding

Based on the key holdings of *Forrester v. White*, 484 U.S. 219 (1988), does a judge have absolute immunity?

Yes

No

Not quite, remember %TextEntry%:

The Supreme Court held that judicial immunity depends on the nature of the function being performed. If a judge makes a personnel decision, this is most likely not covered by judicial immunity.

Judges' Role as Supervisors



Check Your Understanding

Based on the key holdings of *Forrester v. White*, 484 U.S. 219 (1988), does a judge have absolute immunity?

Yes

No

You got it, %TextEntry%!

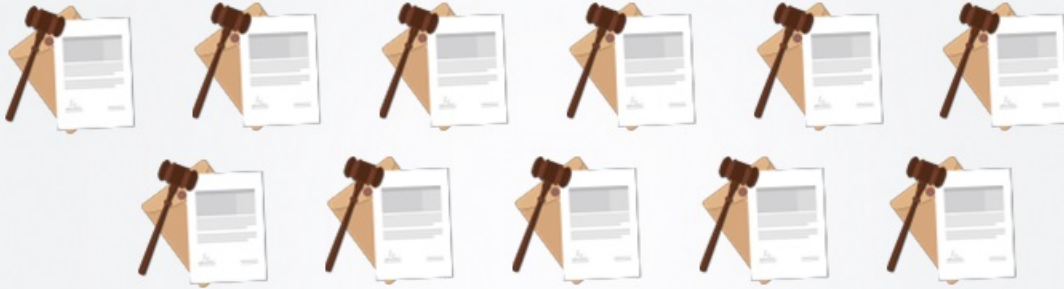
The Supreme Court held that judicial immunity depends on the nature of the function being performed. If a judge makes a personnel decision, this is most likely not covered by judicial immunity.

1.5 Legal Protections

Legal Protections



Instructions: Click on the images below to review the legal protection. After reviewing all of the protections, click Next.



Title VII (Slide Layer)

Legal Protections



Instructions: Click on the images below to review the legal protection. After reviewing all of the protections, click Next.



Title VII of the Civil Rights Act of 1964

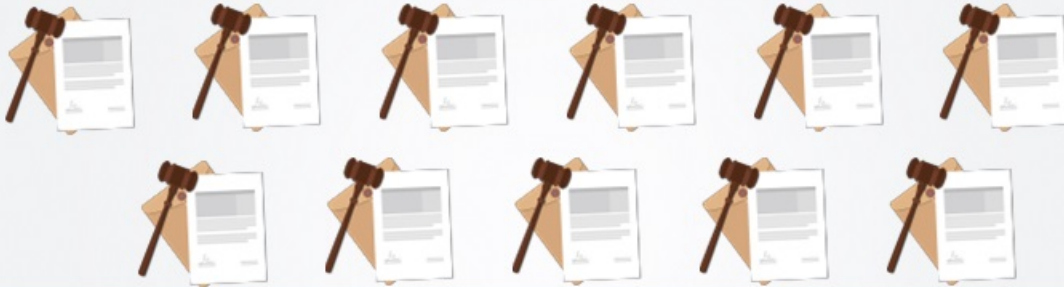
This is the primary federal law prohibiting employment discrimination. Codified in 42 U.S.C. § 2000e, the law is enforced by the federal Equal Employment Opportunity Commission (EEOC), state and local agencies, and private civil actions. Title VII makes it unlawful for an employer to discriminate against any individual with respect to the terms or conditions of employment because of a person's race, color, religion, sex, or national origin. This law also prohibits harassment and makes it unlawful to retaliate against an employee who takes protected activity, such as complaining about harassment or discrimination.

MD Fair Employment (Slide Layer)

Legal Protections



Instructions: Click on the images below to review the legal protection. After reviewing all of the protections, click Next.



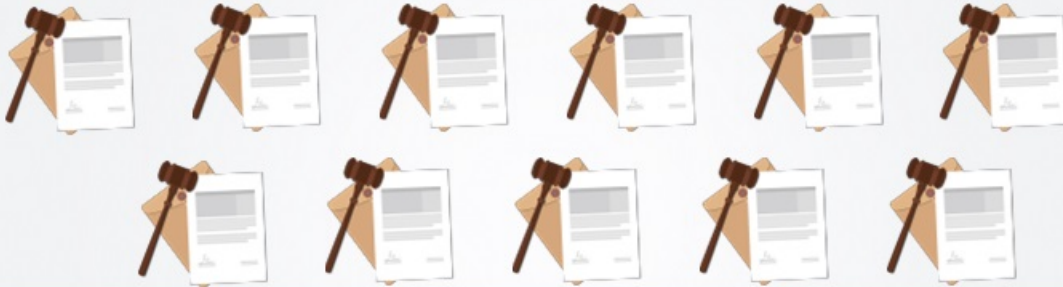
Maryland Fair Employment Practices Act

This is the primary state law prohibiting employment discrimination. Codified in the State Government Article, Title 20-600, the FEPA has similar prohibitions as those contained in Title VII, but extends its coverage to protected characteristics which currently are not expressly covered under federal law, including age both above and below 40 years of age, marital status, sexual orientation, and gender identity. It also includes requirements for employers to make reasonable accommodations for qualified employees with disabilities.

Legal Protections



Instructions: Click on the images below to review the legal protection.
After reviewing all of the protections, click Next.



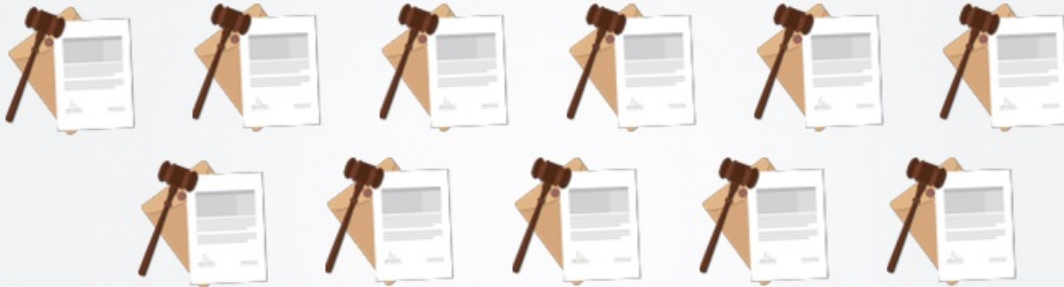
Americans with Disabilities Act

The ADA prohibits discrimination against employees with disabilities and obligates employers to provide reasonable accommodations for qualified employees with a disability. In addition, the ADA obligates state and local governments to ensure that members of the public with disabilities have equal opportunities to participate in and receive benefits from government programs and services. For the purposes of the ADA, a disability means a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of that kind of impairment, or a person who is regarded by others as having such an impairment. A qualified individual is an employee who can perform the essential functions of the job with or without a reasonable accommodation.

Legal Protections



Instructions: Click on the images below to review the legal protection. After reviewing all of the protections, click Next.



Age Discrimination in Employment Act

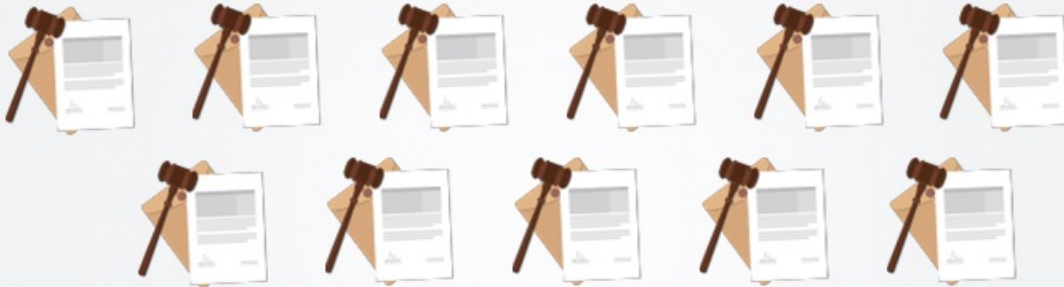
The ADEA is a federal law which prohibits employment discrimination against anyone age 40 or older. Codified at 29 U.S.C. § 621 *et seq.*, the ADEA has unique defenses and limitations on claims not included in Title VII or the Maryland FEPA.

Pregnancy (Slide Layer)

Legal Protections



Instructions: Click on the images below to review the legal protection. After reviewing all of the protections, click Next.



Pregnancy Discrimination Act

The PDA amended Title VII to prohibit sex discrimination on the basis of pregnancy, childbirth, or related medical conditions. In March 2015, in the case of *Young v. United Parcel Service, Inc.*, 135 S.Ct. 1338, the Supreme Court provided additional clarity on whether and when employers are required to provide work-related accommodations to pregnant employees, something that Maryland's FEPA directly requires employers to provide.

FMLA (Slide Layer)

Legal Protections



Instructions: Click on the images below to review the legal protection. After reviewing all of the protections, click Next.



Family and Medical Leave Act (FMLA)

This federal law provides protected leave for eligible employees. Generally, an eligible employee can use up to 12 weeks of protected leave for a birth, adoption, or foster care, for his/her own serious health condition, or for the care of certain family members with a serious health condition. The leave can be taken in continuous periods or intermittently. Even if an employee exhausts or is not eligible for FMLA entitlements, he/she may be eligible for other forms of leave as an accommodation.

Uniformed (Slide Layer)

Legal Protections



Instructions: Click on the images below to review the legal protection.
After reviewing all of the protections, click Next.



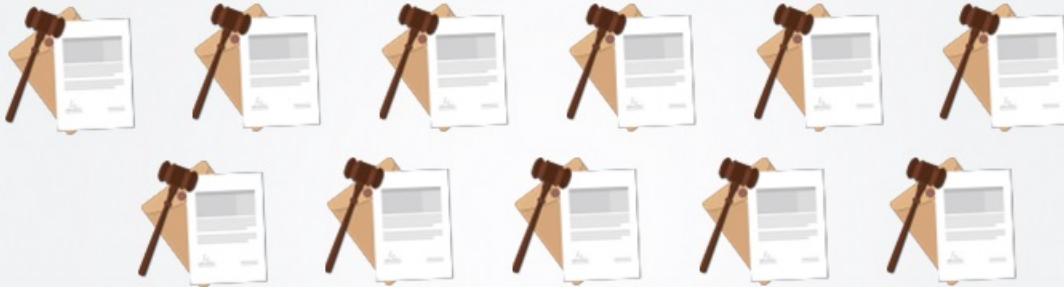
Uniformed Services Employment and Reemployment Rights Act

This federal law provides employment protections to uniformed service members. Generally, employees who serve or have served in the Armed Forces, Reserves, National Guard or other uniformed services are protected from being disadvantaged or discriminated against in their civilian careers because of their service. In addition, these employees must be promptly reemployed in their civilian jobs upon their return from duty.

Legal Protections



Instructions: Click on the images below to review the legal protection.
After reviewing all of the protections, click Next.



Rehabilitation Act of 1973

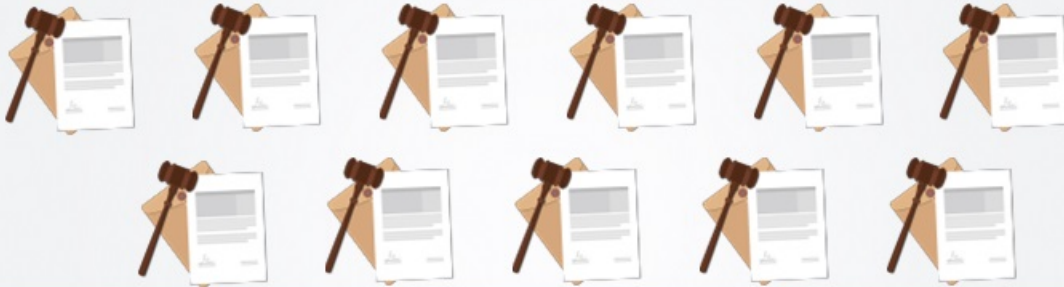
The Rehabilitation Act prohibits disability discrimination by federal agencies, federal contractors, and recipients of federal financial assistance. Codified at 19 U.S.C.A. § 791 *et seq.*, the Rehabilitation Act prohibits discrimination in employment, education, building accessibility, and health, welfare, and social services. Courts have held that private individuals may file actions under the Rehabilitation Act against recipients of federal financial assistance such as state and local governments.

False Claims (Slide Layer)

Legal Protections



Instructions: Click on the images below to review the legal protection. After reviewing all of the protections, click Next.



Maryland False Claims Act

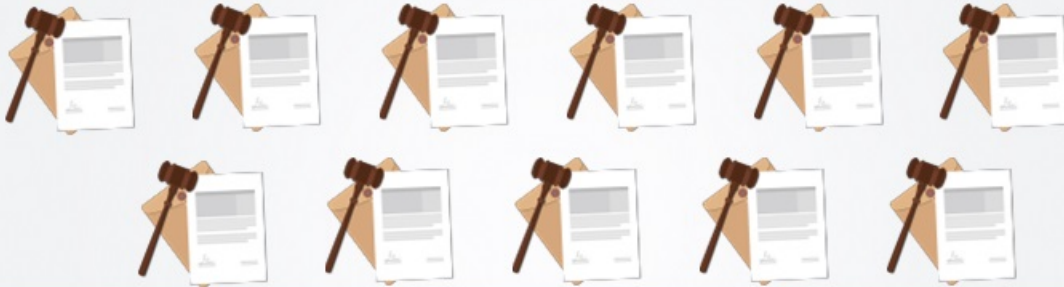
Maryland False Claims Act was enacted in October 2015 and targets false or fraudulent use of governmental funds. In addition to authorizing civil actions against a person who makes a false claim, the law prohibits retaliation against an employee, contractor, or grantee who has reported a false claim or engaged in other protected activities.

Wage (Slide Layer)

Legal Protections



Instructions: Click on the images below to review the legal protection. After reviewing all of the protections, click Next.



Wage & Hour Laws

A variety of laws have been enacted by the State and the federal government to ensure that workers are paid for their work. Generally, non-exempt employees are entitled to overtime pay or compensatory time for work beyond forty hours in a week. Certain employees are exempt from these requirements depending on the duties they perform and how they are paid.

Legal Protections



Instructions: Click on the images below to review the legal protection.
After reviewing all of the protections, click Next.



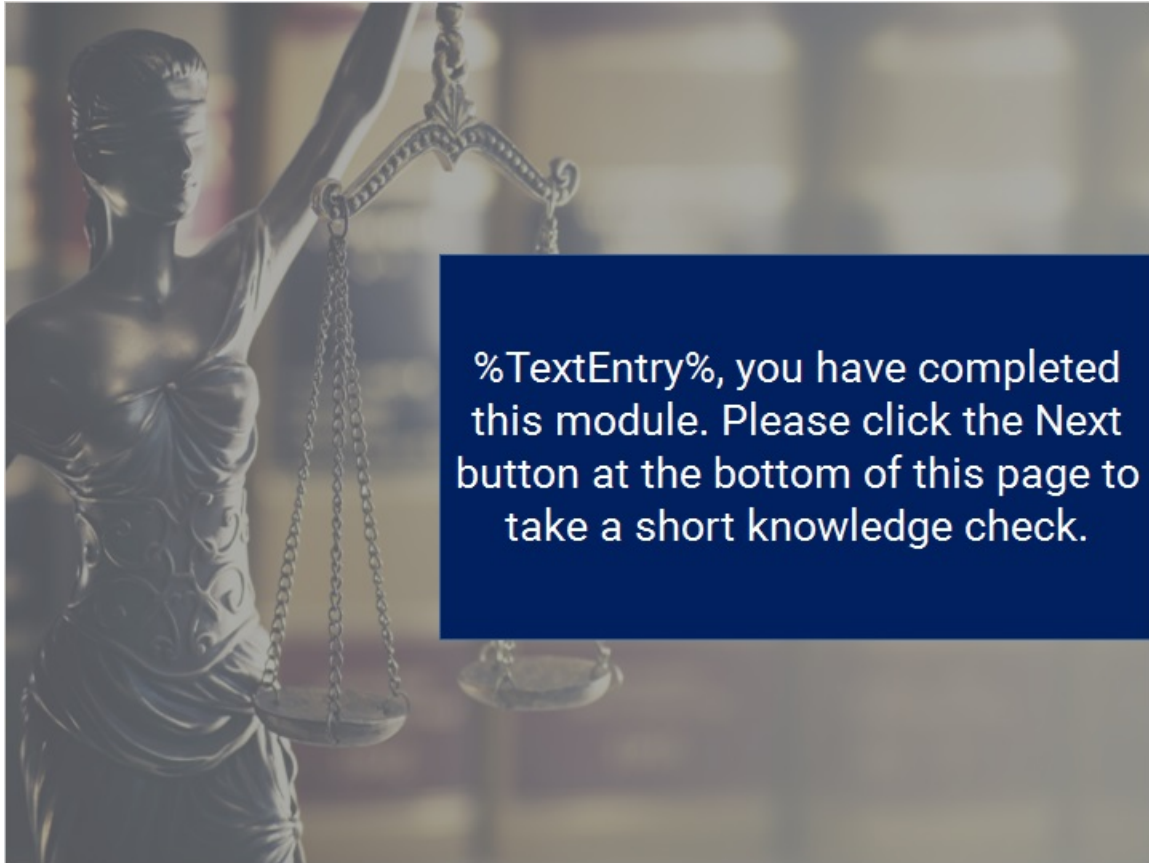
Government Employee Rights Acts of 1991 (GERA)

Amended Title VII and created administrative remedies for employees who work in the personal staff of elected or appointed officials. Previously these employees were excluded from the scope of Title VII. With the amendments, these employees can file administrative claims of discrimination with the EEOC but cannot file a claim in court under Title VII.

1.6 Main Menu




1.7 Exit



2. Protected Characteristics

2.1 Protected Characteristics

Protected Characteristics



Race, Color, National Origin	Religion	Sex	Sexual Orientation
Gender Identity	Pregnancy	Age	Disability/ Serious Health Condition
Familial/ Marital Status	Veteran Status	Genetic Testing/ Information	Political Affiliation

NOT PROTECTED: Personality, personal dislike, performance.

2.2 Protected Characteristics

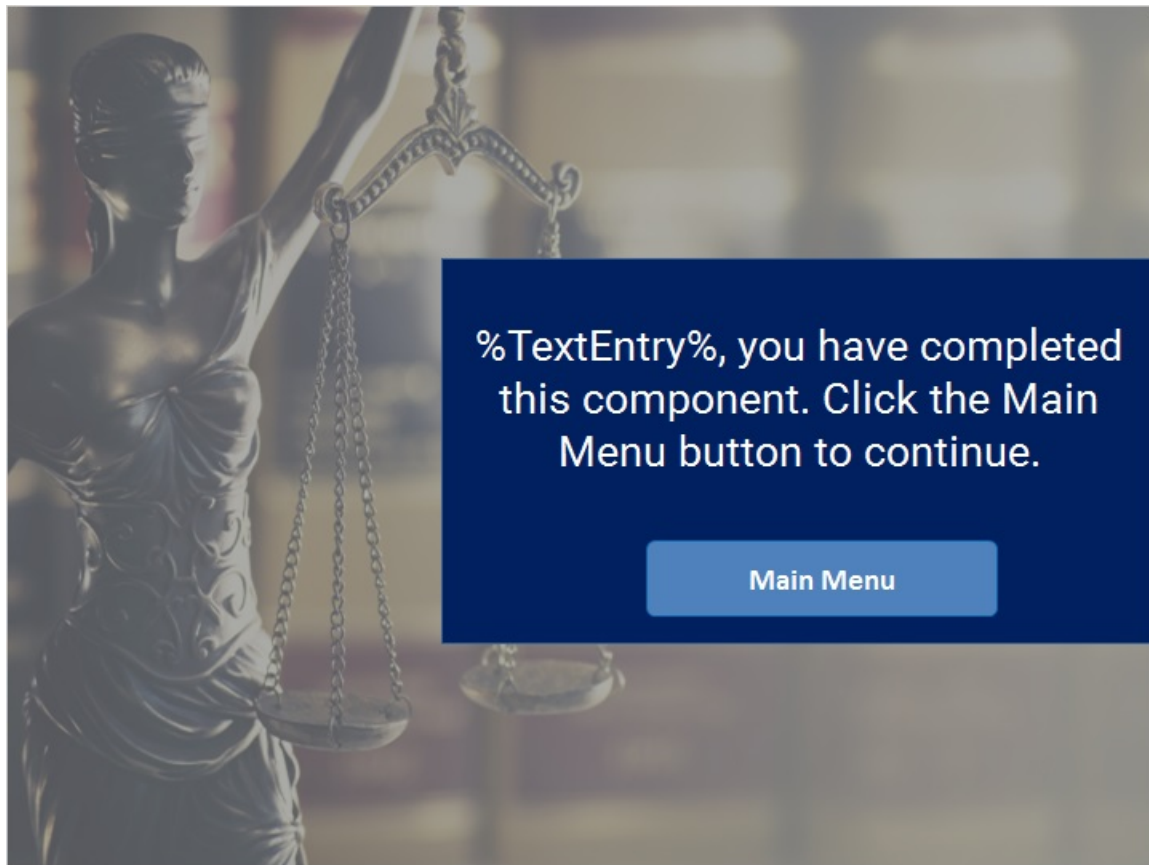
These characteristics are protected by law, meaning that individuals are protected from harassment and discrimination that is based on any of these characteristics. Under the law, these terms have specific, sometimes complicated meanings. For example, race, color, and national origin have many overlapping similarities but all can involve physical characteristics, birthplace, ancestry, culture, accent/linguistic characteristics, perception, association, and race-linked illness.

As another example, genetic information can include the results of genetic testing, as well as an individual's family medical history, such as whether a parent had cancer.

And Maryland law defines "gender identity" as the gender-related identity,



2.3 Untitled Slide



3. Anti-Harassment


3.1 AOC Anti-Harassment Policy

AOC Anti-Harassment Policy



Instructions: Click on the tabs below to review each section, then click Next.

**Policy overview**

**Review the policy**

**Locating the policy**

Overview (Slide Layer)

AOC Anti-Harassment Policy



Instructions: Click on the tabs below to review each section, then click Next.

**Policy overview**

**Review the policy**

**Locating the policy**

Under Maryland Rule 16-806, the State Court Administrator has promulgated personnel policies and procedures concerning equal employment opportunity, anti-discrimination, anti-harassment, anti-retaliation, and anti-nepotism.

These policies apply to all employees in the Judicial Branch, other than judges and employees of the Orphans' Courts and the Registers of Wills, without regard to the source of the funding of their compensation.

The Policy Prohibiting Discrimination, Harassment, and Retaliation contains the core of the prohibitions on discrimination, harassment, and retaliation. The Policy on Accommodation of Disabilities also contains important provisions.

AOC Anti-Harassment Policy



Instructions: Click on the tabs below to review each section, then click Next.



Policy overview

Harassment is a form of Discrimination that undermines the integrity of the employment relationship and the dignity of the harassed employee.



Review the policy

Therefore, any employee found to be responsible for Harassment or creating a hostile, intimidating, abusive work environment in violation of this Policy will be subject to disciplinary action up to and including termination of employment.



Locating the policy

The Judiciary is committed to ensure that employees and applicants are not subject to Harassment or a hostile work environment because of the person's protected characteristics.

Locating (Slide Layer)

AOC Anti-Harassment Policy



Instructions: Click on the tabs below to review each section, then click Next.



Policy overview



Review the policy



Locating the policy

- Both policies are available in CourtNet in the [Judiciary Employee Handbook](#).
- As well as in a separate link with the policies that apply to [employees of Circuit Courts](#).

3.2 AOC Anti-Harassment Policy

AOC Anti-Harassment Policy



The Policy Prohibiting Discrimination, Harassment, and Retaliation includes definitions of what is meant by prohibited discrimination and harassment. Even if the conduct does not violate a law, it may still violate our policy.

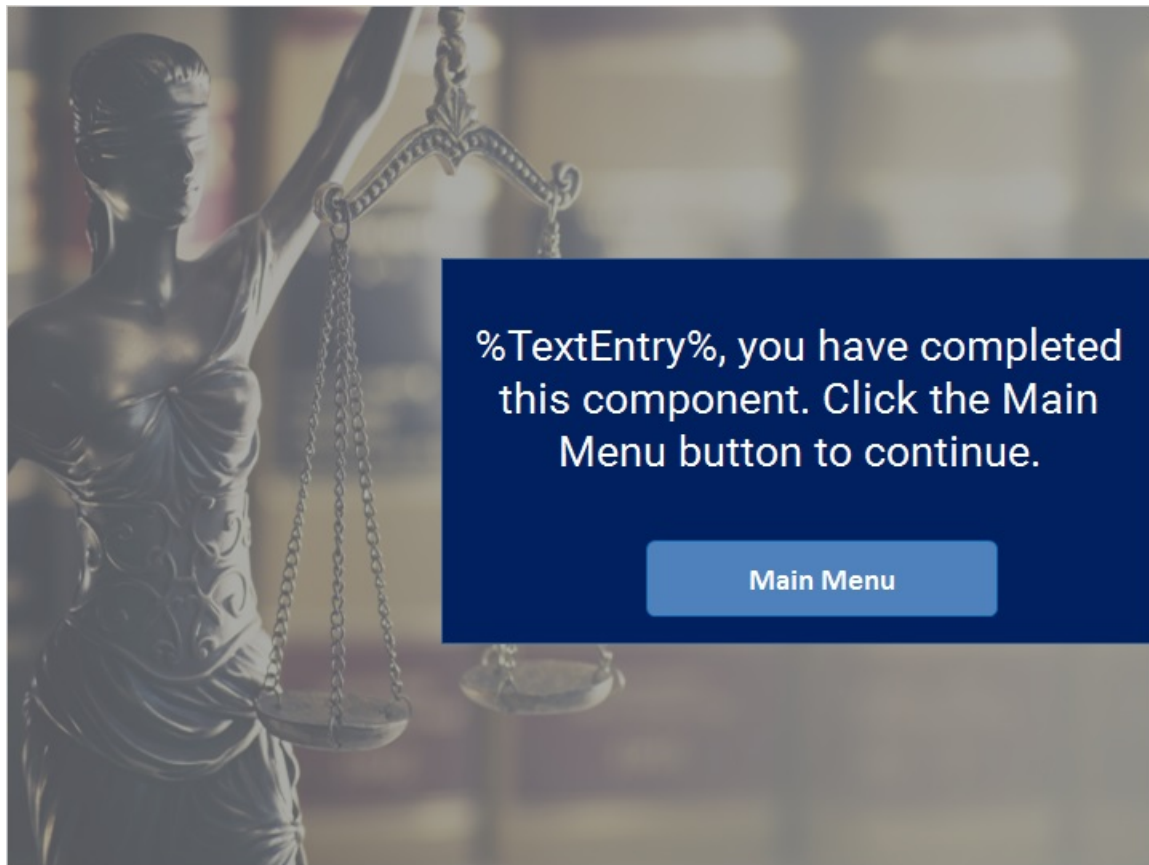
Generally, prohibited **discrimination** is a distinction in employment treatment, intentional or unintentional, which is based on sex, race, disability or any other protected characteristic.

Prohibited **harassment** is conduct that is:

- threatening, intimidating, or demeaning,
- based on an individual's protected class or characteristic, and
- sufficiently severe or pervasive to create an objectively hostile work environment.

IMPORTANT NOTE: The Judicial Code of Conduct includes its own prohibitions of bias, prejudice, and harassment by judges. *See* Md. Rule 18-102.3.

3.3 Untitled Slide



4. Policies

4.1 What Do the Policies Cover?

What Do the Policies Cover?



Discrimination or harassment can occur in many settings related to employment. Some purely social situations are generally not covered by EEO laws, but harassment can occur even in off-duty settings.



We want to make sure the following terms and conditions of employment are determined in ways that eliminate all forms of discrimination, harassment, and retaliation:

- Recruitment
- Selection
- Promotion and demotion
- Transfer, layoff, or recall
- Compensation, assignment of duties, or reclassification
- Discipline
- Termination
- Training and development
- Use of leave and other benefits
- Other terms and conditions of employment

4.2 Prohibited Discrimination

Prohibited Discrimination



Examples of prohibited discrimination may include the following actions if taken because of an individual's protected class or characteristic:

- refusing to hire or promote an individual
- failing or refusing to grant a request for leave or other benefit without justification; or
- otherwise treating an applicant or employee less favorably than those in a non-protected class or characteristic.

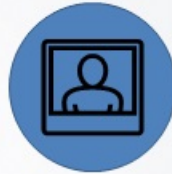


4.3 Prohibited Discrimination

Prohibited Discrimination



Instructions: Click on the images below to review examples of prohibited harassment.



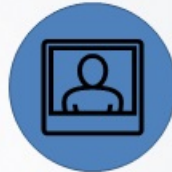
All listed example include, participating in or supporting, either directly or indirectly, such harassment.

Verbal (Slide Layer)

Prohibited Discrimination



Instructions: Click on the images below to review examples of prohibited harassment.



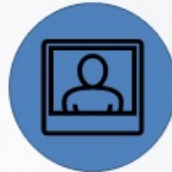
Verbal abuse, offensive jokes, or remarks about or references to derogatory stereotypes that are related to an individual's protected class or characteristic.

All listed example include, participating in or supporting, either directly or indirectly, such harassment.

Prohibited Discrimination



Instructions: Click on the images below to review examples of prohibited harassment.



Transmitting emails, texts, or other communications containing jokes, epithets, slurs, comments that are derogatory or demeaning to an individual's protected class or characteristic, or which promote negative stereotypes. This includes the use of social media while on or off duty when the communication involves references to employees, contractors, or anyone involved in Judiciary programs, services, or operations.

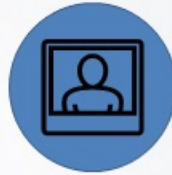
All listed example include, participating in or supporting, either directly or indirectly, such harassment.

Images (Slide Layer)

Prohibited Discrimination



Instructions: Click on the images below to review examples of prohibited harassment.



Display of offensive images that reflect negatively upon a protected class or characteristic, including calendars, posters, photographs, pictures, drawings or cartoons.

All listed example include, participating in or supporting, either directly or indirectly, such harassment.

4.4 Sexual Harassment

Sexual Harassment



Sexual harassment is also prohibited. Sexual harassment is a form of harassment consisting of unwanted physical or verbal sexual advances, requests for sexual favors, or other sexually-oriented conduct in these two situations:

- When submission to such conduct is made a term or condition of an individual's employment, either plainly or by inference;
- When such conduct interferes unreasonably with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

4.5 Sexual Harassment

Sexual Harassment



Instructions: Click on the icons below to review examples of sexual harassment.



All listed example include, participating in or supporting, either directly or indirectly, such harassment.

Touching (Slide Layer)

Sexual Harassment



Instructions: Click on the icons below to review examples of sexual harassment.



Unwelcome touching or near-touching, which can include patting, brushing against, hugging, cornering, invading personal space, or other unwanted physical conduct.

All listed example include, participating in or supporting, either directly or indirectly, such harassment.

Ogling (Slide Layer)

Sexual Harassment



Instructions: Click on the icons below to review examples of sexual harassment.



Unwelcome ogling or leering

All listed example include, participating in or supporting, either directly or indirectly, such harassment.

Jokes (Slide Layer)

Sexual Harassment



Instructions: Click on the icons below to review examples of sexual harassment.



Sexual innuendo, teasing, and other sexually-oriented communication, such as jokes, personal inquiries, and sexist insults.

All listed example include, participating in or supporting, either directly or indirectly, such harassment.

Sexual Harassment



Instructions: Click on the icons below to review examples of sexual harassment.



Requests or demands for sexual favors. This includes subtle or blatant expectations, pressures, or requests for any type of sexual favor accompanied by an implied or stated promise of preferential treatment (often referred to as quid pro quo) or negative consequences concerning one's employment.

All listed example include, participating in or supporting, either directly or indirectly, such harassment.

Pictures (Slide Layer)

Sexual Harassment



Instructions: Click on the icons below to review examples of sexual harassment.



Displays of offensive, sexually explicit images, including calendars, posters, photographs, pictures, drawings or cartoons.

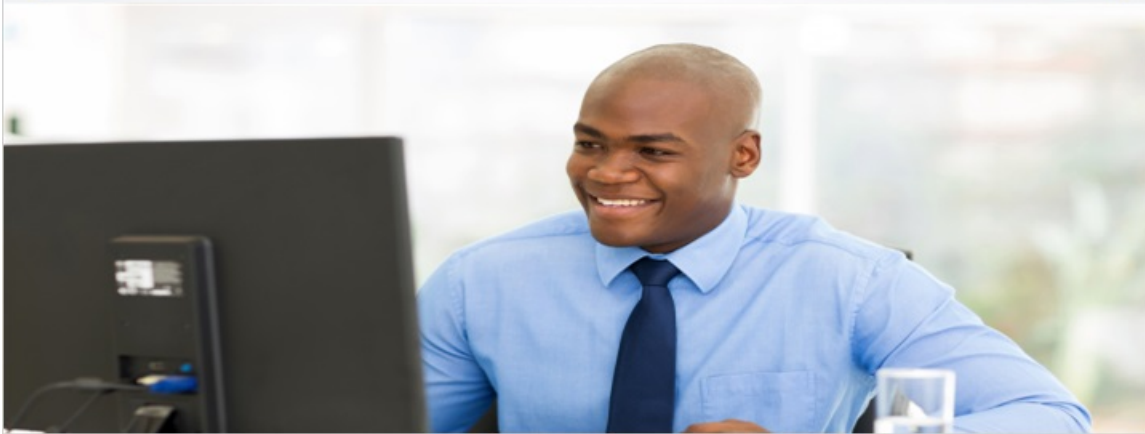
All listed example include, participating in or supporting, either directly or indirectly, such harassment.

4.6 Sexual Harassment

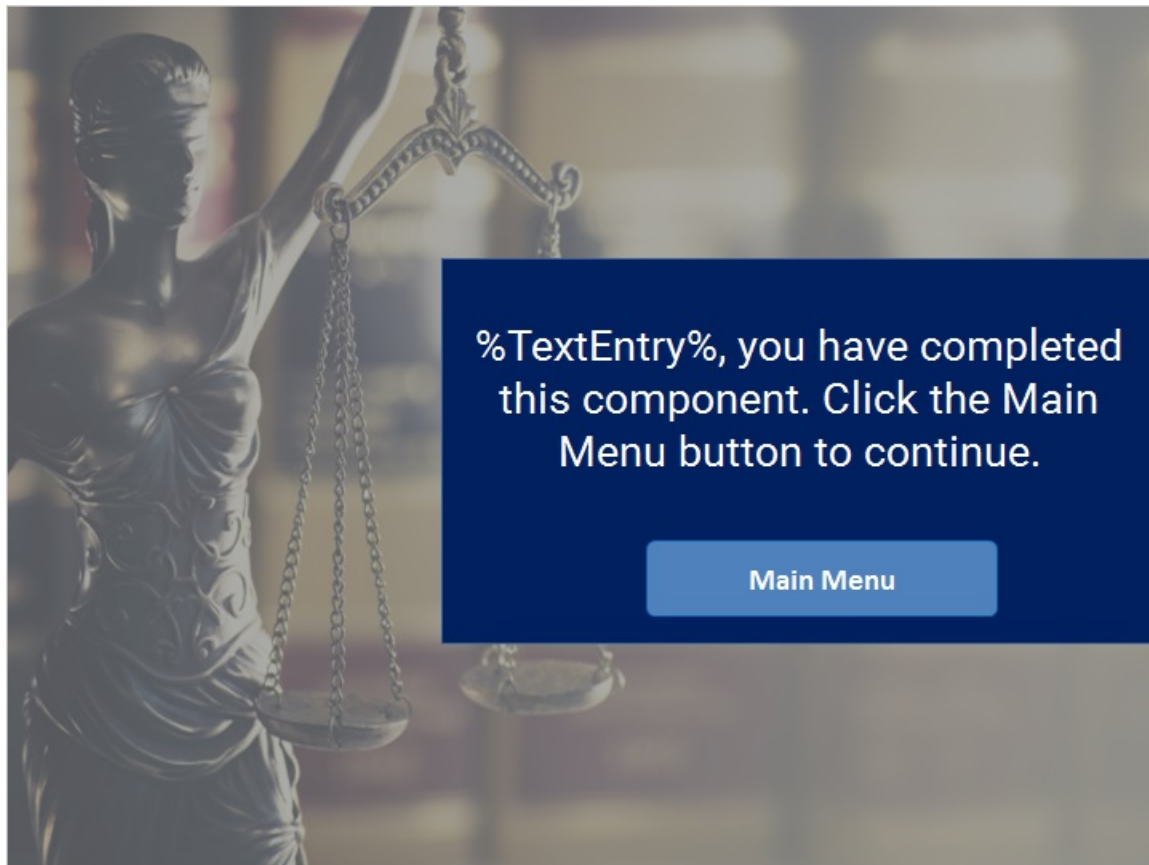
Sexual Harassment



In addition, the law and our policies also cover interactions with employees from other Judicial entities, outside vendors, and other third parties. For example, if an employee complains of harassment by an outside party, we want to take immediate action to investigate and eliminate any harassing conduct.



4.7 Untitled Slide



5. Key Points

5.1 Key Points

Key Points for Supervisors



Not all judges have formal supervisory roles, such as that of an administrative judge or supervisor of chamber's staff or a law clerk. However, due to the role judges play in the courts, the Fair Practices Department believes the following key points for supervisors can also assist any judge who is involved in personnel matters.




Generally, supervisors are encouraged to attempt to resolve issues on their own if the complaint is not about themselves. Supervisors are also encouraged to seek assistance whenever they feel the need.

No matter how an issue is addressed, employees who engage in protected activity, such as making a complaint of harassment, are protected from retaliation. In addition, any employee can bring their complaint to higher level management, including the Fair Practices Department.

5.2 Key Points

Key Points for Supervisors

Instructions: Click on the six images below to review key points for supervisors.





Key Points for Supervisors

Instructions: Click on the six images below to review key points for supervisors.



Supervisors act on behalf of their employer.





The logo for the Maryland Judiciary, featuring the state seal and the words "MARYLAND JUDICIARY".

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Key Points for Supervisors

Instructions: Click on the six images below to review key points for supervisors.







An employer is responsible for investigating and defending supervisors' actions.





Key Points for Supervisors

Instructions: Click on the six images below to review key points for supervisors.






In extreme cases, supervisors may have personal liability.








Key Points for Supervisors

Instructions: Click on the six images below to review key points for supervisors.



Assist with documentation.






The logo for the Maryland Judiciary, featuring the state seal and the words "MARYLAND JUDICIARY".




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Key Points for Supervisors

Instructions: Click on the six images below to review key points for supervisors.



Attempt to resolve complaints at the lowest level.



The logo for the Maryland Judiciary, featuring the state seal and the words "MARYLAND JUDICIARY".

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Key Points for Supervisors



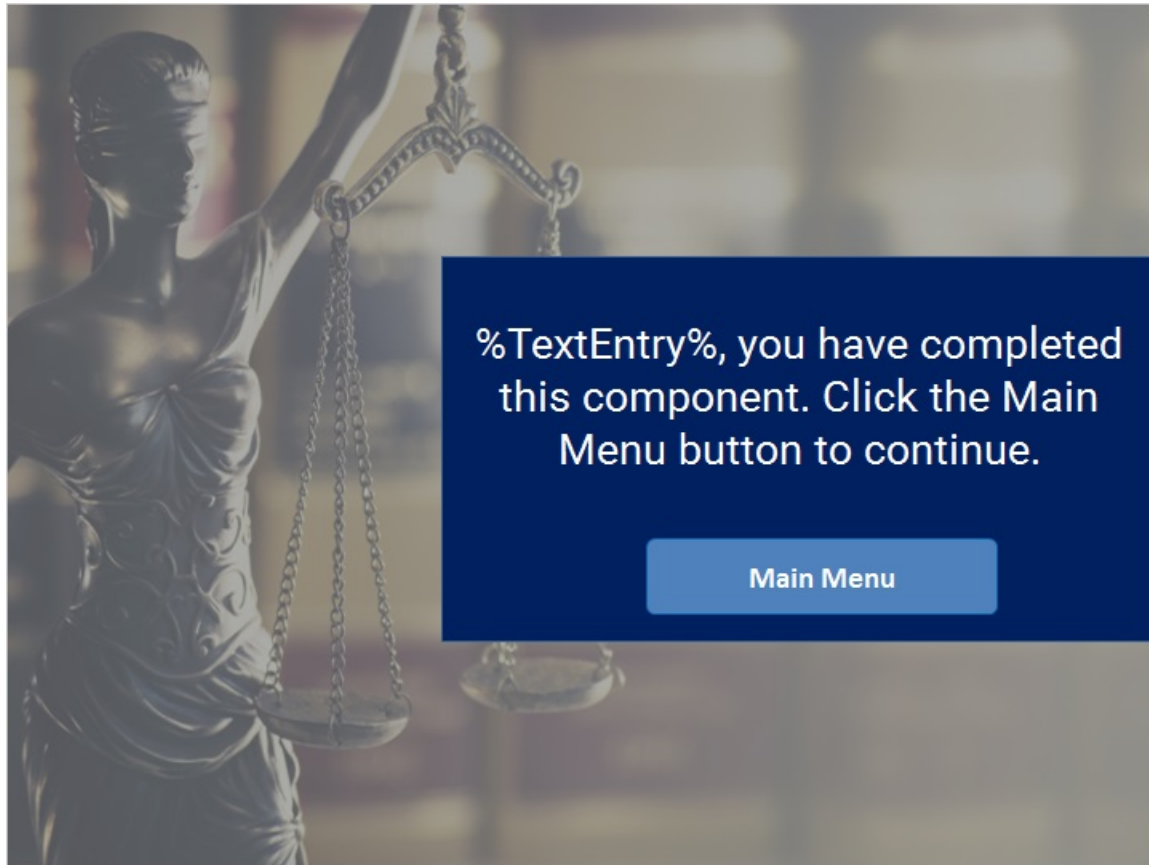
Instructions: Click on the six images below to review key points for supervisors.



When in doubt call the Fair Practices
Department, Judiciary HR, AOC Legal Counsel,
or Office of the Attorney General.



5.3 Untitled Slide



6. Complaints

6.1 Receiving Complaints

Receiving Complaints



Conversation in passing? Chats by the water cooler? Comments during an elevator ride?

Tips to keep in mind...



- No such thing as “informal” complaints.
- State employees can complain to their HR office, any supervisor, or the Fair Practices Department. Supervisors of State employees (e.g., employees of a District Court or of a Circuit Court Clerk) should notify their administrative head and the Fair Practices Department if they receive a complaint.

6.2 Receiving Complaints

Receiving Complaints




Conversation in passing? Chats by the water cooler? Comments during an elevator ride?

Tips to keep in mind...

- Circuit Court employees (i.e., those under the supervision of an Administrative Judge) can complain to any supervisor, to their local EEO Coordinator, or to the Administrative Judge. In most cases, the EEO Coordinator and Administrative Judge confer to handle next steps.
- Complaints received by management or local HR office, the Fair Practices Department, or an EEO Coordinator alleging violations of the Judiciary's Policy Prohibiting Discrimination place the Judiciary entity on notice.



6.3 Untitled Slide

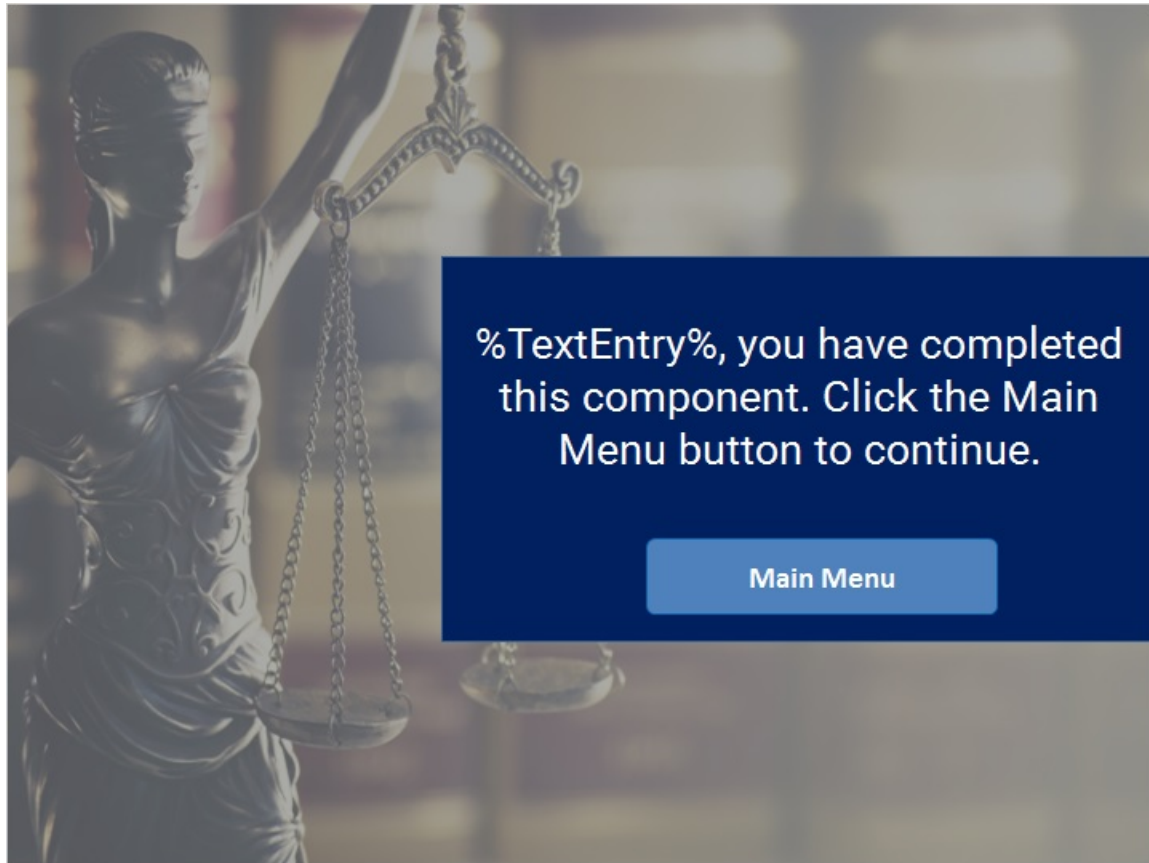


Employees are always welcome to complete the **AOC Fair Practices Complaint Form**.

If you have any questions regarding the process please contact

Fair Practices Department
410-260-3679
fairpractices@mdcourts.gov

6.4 Untitled Slide



7. Retaliation

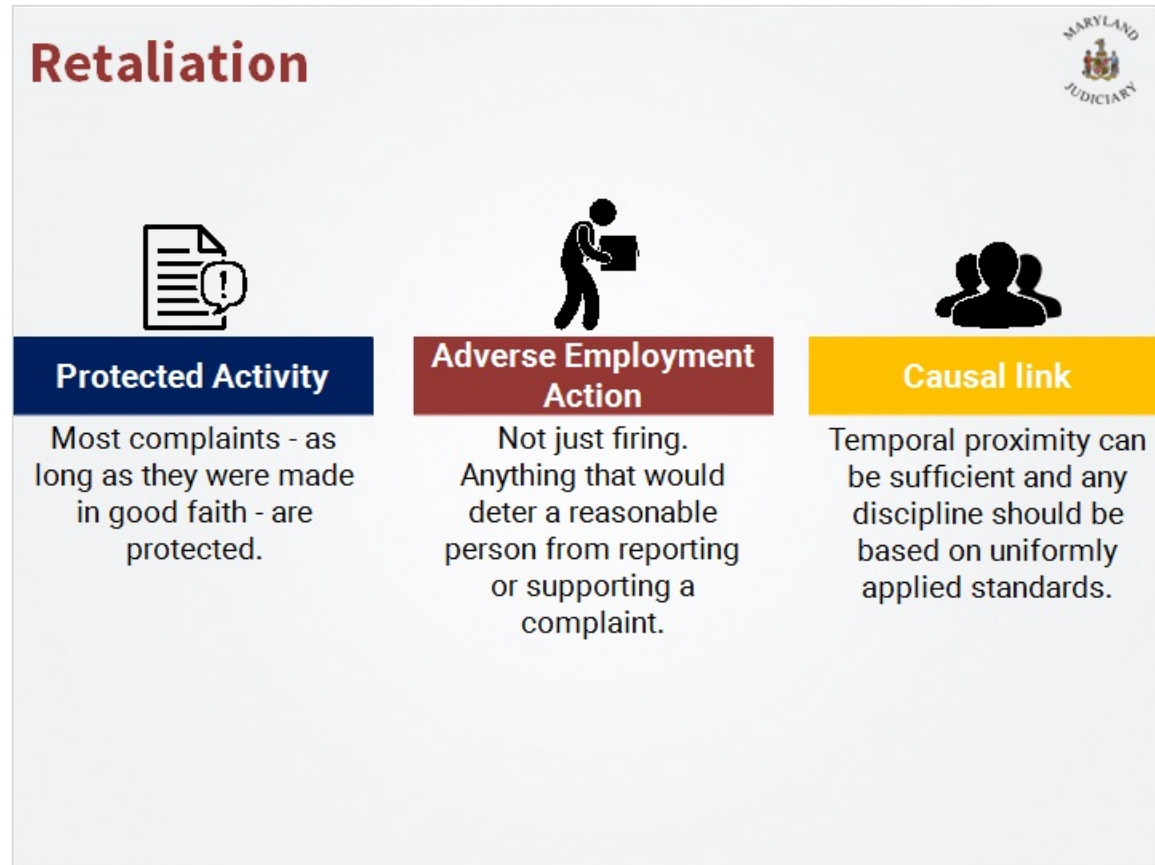
7.1 Retaliation

Retaliation



Retaliation is a prohibited adverse action taken against an employee because he or she complained about harassment or discrimination or participated in an investigation or claim involving discrimination or harassment, for example as a witness. Retaliation is also a prohibited adverse action taken against an employee because he or she requested an accommodation for a disability or religious reasons.

7.2 Retaliation



7.3 Retaliation

Retaliation



The Maryland Judiciary **does not** tolerate retaliation.

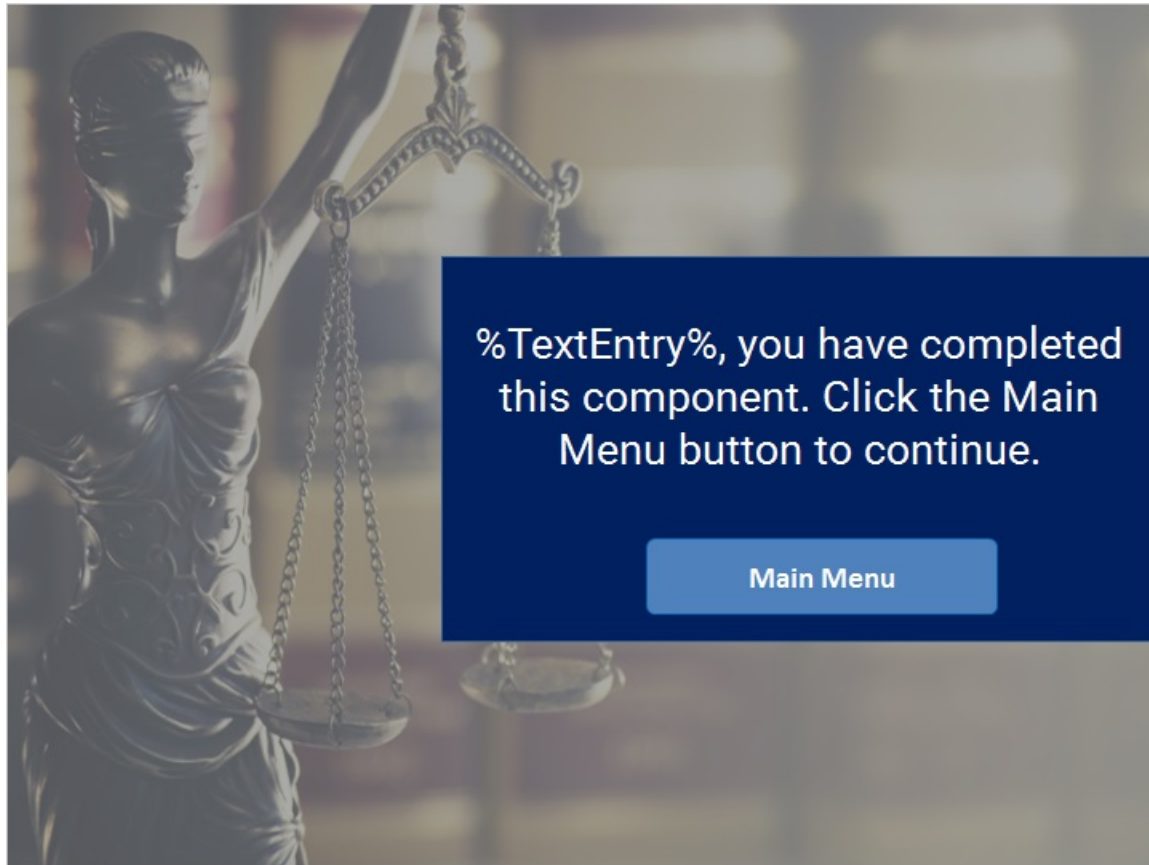
NO retaliation will be permitted against anyone who:

- makes a good faith complaint, even if it is later deemed without merit; or
- participates in an investigation, lawsuit, or other proceeding.

Unlike typical discrimination claims, the adverse employment action in the framework of a retaliation complaint does not have to be an ultimate employment decision, but can be an action which would deter a reasonable person from making or supporting a claim of discrimination.

Resource: [*Edgewood Management Corp. v. Jackson*, 212 Md. App. 177, 203 \(2013\)](#)

7.4 Untitled Slide



8. Documentation

8.1 Best Practices for Documentation

Best Practices for Documentation



Again, even though a judge may not be a formal supervisor, due to the role judges play in the courts, the Fair Practices Department believes the following guidance on documentation by supervisors can assist a judge who is involved in personnel matters.

How and when supervisors and managers document employee conduct, performance, and complaints is important because it is both a shield for the employer and, potentially, a sword against the employer. Supervisors and managers should remain objective and factual in all documentation as it may eventually be used in legal proceedings. In some cases, such as medical records submitted for an accommodation request, the documentation should remain confidential as well. The following tips are ways that supervisors and managers can strengthen how they document concerns about or by employees.

8.2 Key Points

Best Practices for Documentation



Instructions: Click on the nine images below to review best practices for documentation



Best Practices for Documentation



Instructions: Click on the nine images below to review best practices for documentation



Do it - have a system for when and how.

Best Practices for Documentation



Instructions: Click on the nine images below to review best practices for documentation



If you don't write it down, it never happened.

Best Practices for Documentation



Instructions: Click on the nine images below to review best practices for documentation



Write it as if a jury will read it.

Best Practices for Documentation



Instructions: Click on the nine images below to review best practices for documentation



Formality not crucial - words are.

Best Practices for Documentation



Instructions: Click on the nine images below to review best practices for documentation



Keep it simple.

Best Practices for Documentation



Instructions: Click on the nine images below to review best practices for documentation



Manage - make the employee document to you.

Best Practices for Documentation



Instructions: Click on the nine images below to review best practices for documentation



Determine if follow-up is needed and, if it is, ensure it is carried out.

Best Practices for Documentation



Instructions: Click on the nine images below to review best practices for documentation



Don't worry about employee responses - it's not a documentation contest.

Best Practices for Documentation

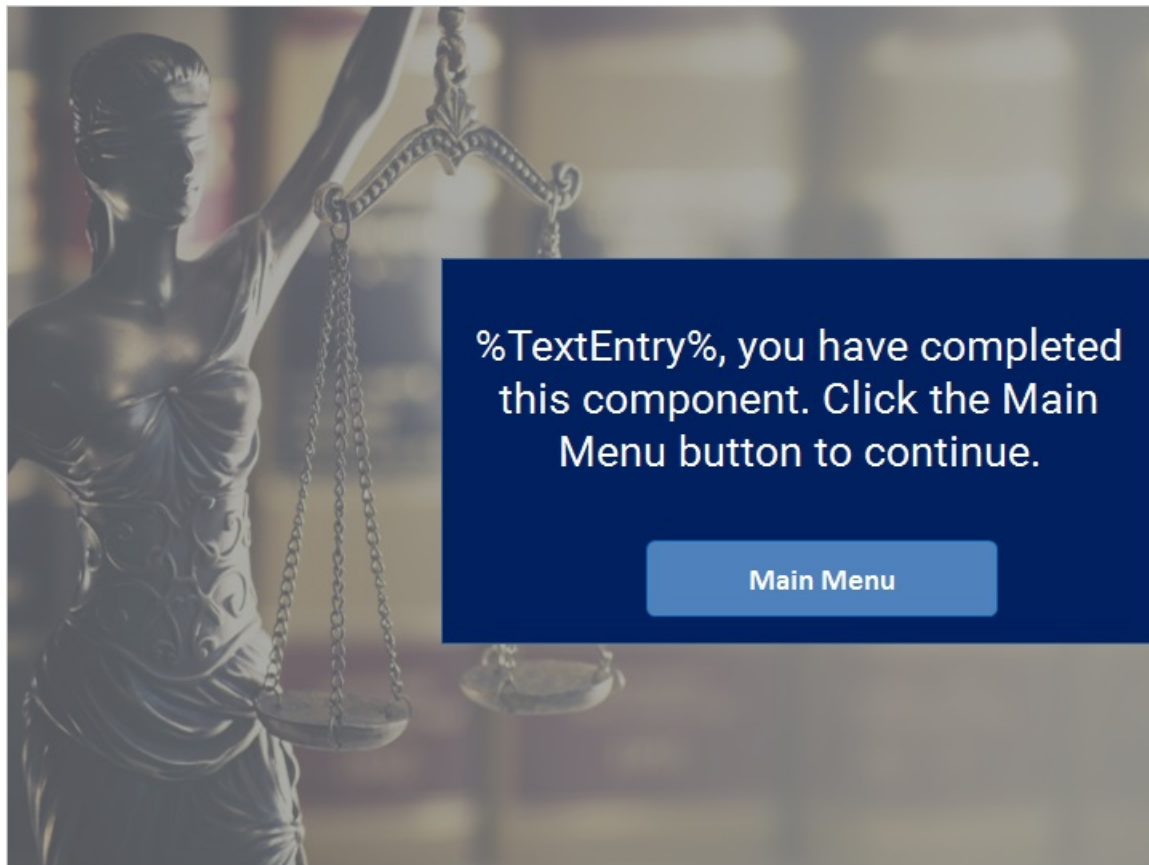


Instructions: Click on the nine images below to review best practices for documentation



Don't write it unless you mean it and will perform it.

8.3 Untitled Slide



Module 1: Test Your Knowledge

Question 1:

J.R. is the new administrative judge for a court. He has announced plans to upgrade the technology used in his courthouse. Soon afterwards, he complains to his assistant that the “old ladies” in the court aren’t supporting the new technology he wants, and that he needs “a man” to do this work and that he wants to hire “young guns” to replace “these grannies who think Twitter is a bird call.”

If he fires two long-time employees, both women, which protected characteristics are most likely to be an issue in any legal proceedings?

- ☐ Education level
- ☐ Sex and age
- ☐ Sex but not age, because the Age Discrimination in Employment Act doesn’t apply to states
- ☐ None. He had a legitimate business reason for the terminations – they couldn’t adapt to new technology.

Question 2:

Which of the following is a term and condition of employment and must be determined without regard to any protected characteristics?

- a) Recruitment
 - b) Promotions
 - c) Training
 - d) Holiday cards
- ☐ Only a & b.
 - ☐ Only b.
 - ☐ Only a, b & c.
 - ☐ All of the above

Question 3:

Which of the following individuals can receive complaints by state employees?

- ☐ Manager
- ☐ Local Human Resources Representative
- ☐ Any member of management
- ☐ Fair Practices Department
- ☐ All of the above

Question 4:

True or false, if the underlying complaint lacks merit, retaliation claims are dissolved.

- ☐ True
- ☐ False

Question 5:

True or false, retaliation claims require less adverse action towards the employee than discrimination claims.

- ☐ True
- ☐ False

Module 2: Accommodations for Employees

1.1 Welcome



Module 2:

Accommodations for Employees




Type your name here then click
the Next button below.

1.2 Getting Started

Getting Started



Learning Objectives

-  Interpret what qualifies as a disability and factors to consider in reviewing employee requests for accommodations.
-  Describe the proper response to accommodation requests using an interactive process.
-  Know the framework of a reasonable accommodation of religion for employees.

1.3 Introduction

Introduction to Accommodations



An employer has an obligation to provide a reasonable accommodation for an employee in these two circumstances: when **a qualified individual has a disability** and for **religious practices**. Sometimes people believe that EEO laws and policies require that we treat everyone equally without any exceptions. It is true that disabilities and religion are also protected characteristics, and employees should not be discriminated against or harassed because of their disability or religion, just like race, sex, sexual orientation, or any other protected characteristic. But in these two situations, we want to do more than treat all employees equally.

As we will see here, there are different factors and standards used to determine whether an employer is required to provide a reasonable accommodation for a disability versus for a religious practice. After reviewing the definition of "disability," we will look at a recent case involving an employee with a mental health disability in a court clerk's office.

1.4 What is a disability?

What is a disability?



Under the Americans with Disabilities Act, a person has a “disability” if he or she either:



has a physical or mental impairment that substantially limits one or more major life activity;



has a record of such an impairment; or



is regarded as having such an impairment.

See [42 U.S.C. § 12102](#). A similar definition of disability is found in [State Government § 20-601](#).

1.5 Introduction

In 2008, Congress amended the ADA to broaden the definition of “disability.” As a result, the term “major life activities” includes a wide variety of activities as well as “major bodily functions.” See 42 U.S.C. § 12102 for further information.



1.6 Disability

What is a disability?



Instructions: Click on the headings below to explore examples of each.

Major Life Activities

Major Bodily Functions

What is a disability?



Instructions: Click on the headings below to explore examples of each.

Major Life Activities

- Caring for oneself
- Performing manual tasks
- Seeing, Hearing
- Eating, Sleeping
- Walking, Standing, Lifting, Bending
- Speaking, Breathing
- Learning, Reading, Concentrating, Thinking
- Communicating
- Work

Major Bodily Functions

What is a disability?



Instructions: Click on the headings below to explore examples of each.

Major Life Activities

Major Bodily Functions

- Functions of the immune system
- Normal cell growth
- Digestive, bowel, bladder functions
- Neurological, brain functions
- Respiratory, circulatory functions
- Endocrine, reproductive functions

1.7 Important Note



Important Note

To be entitled to an accommodation, an individual must be qualified to perform the essential functions of the job with or without an accommodation. One of the best practices is to have job descriptions which are up-to-date and accurately reflect the requirements of a position.

1.8 Reasonable Accommodation of a Disability

Reasonable Accommodation of a Disability

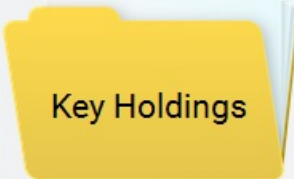
Instructions: Click on the file folders below to review each section regarding *Jacobs v. N.C. Admin. Office of the Courts*, 780 F.3d 562 (4th Cir. 2015), then click Next.



Facts



Proceedings



Key Holdings

Facts (Slide Layer)

Reasonable Accommodation of a Disability

Instructions: Click on the file folders below to review each section regarding *Jacobs v. N.C. Admin. Office of the Courts*, 780 F.3d 562 (4th Cir. 2015), then click Next.

Facts

Proceedings

Key Holdings

Ms. Jacobs told a supervisor that the work at the front counter was stressful for her because she had anxiety disorder, which she had been diagnosed with a few years ago in college. She asked if she could reduce her time at the front counter or work in a position with less public interaction.

Later she emailed her request for a change to her supervisors, including her main supervisor who was on vacation. When that supervisor returned, Ms. Jacobs was fired because she was not "getting it." Her supervisors claimed she had poor performance but had no documentation showing what she had done wrong.

Reasonable Accommodation of a Disability

Instructions: Click on the file folders below to review each section regarding *Jacobs v. N.C. Admin. Office of the Courts*, 780 F.3d 562 (4th Cir. 2015), then click Next.

Facts

Proceedings

Key Holdings

The federal district court had granted summary judgment for the employer on multiple grounds, including that Ms. Jacobs did not have a disability because she could tolerate some social settings and she had not adduced evidence that her employer was aware of her disability. The Fourth Circuit reversed.

Key Holdings (Slide Layer)

Reasonable Accommodation of a Disability

Instructions: Click on the file folders below to review each section regarding *Jacobs v. N.C. Admin. Office of the Courts*, 780 F.3d 562 (4th Cir. 2015), then click Next.

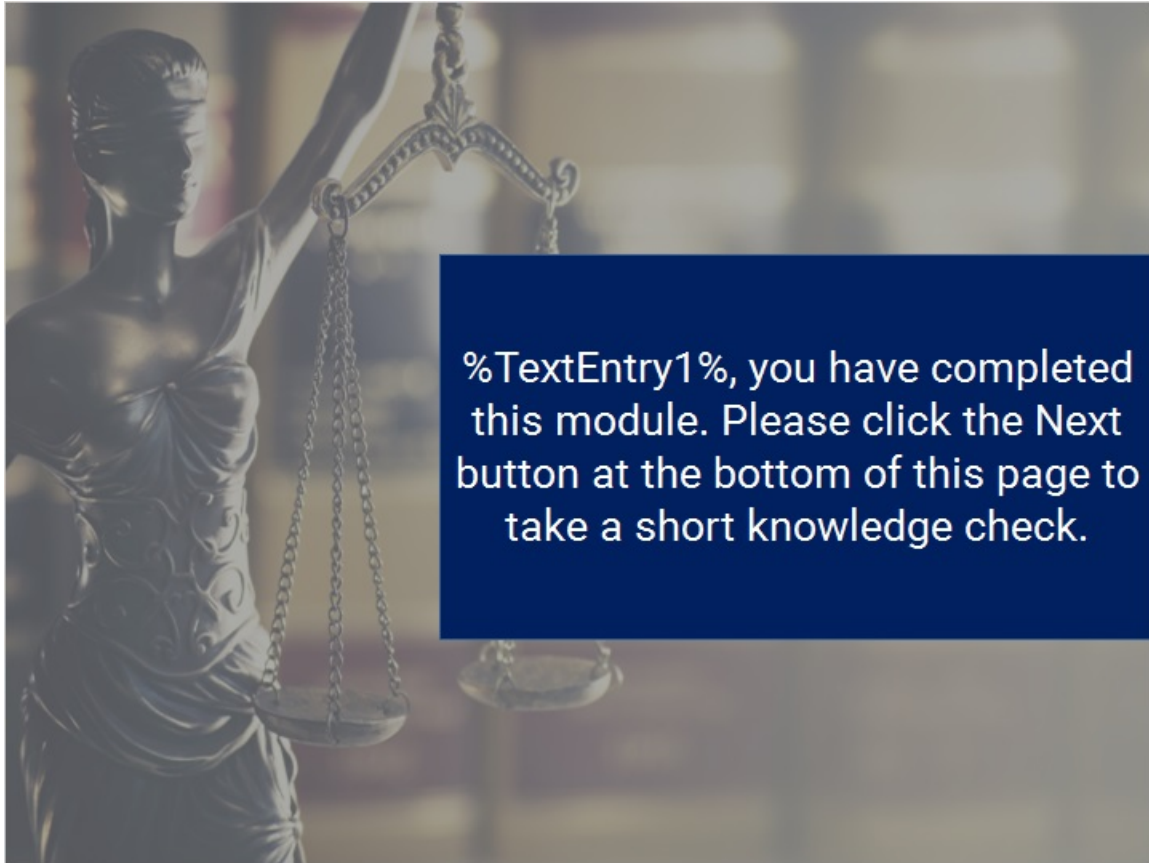
Facts

Proceedings

Key Holdings

- Ms. Jacobs had sufficient evidence to show that she was disabled because she had an impairment to a major life activity, specifically “interacting with others.”
- Furthermore, the only documentation from the employer were written notes that Ms. Jacobs had a medical issue and Ms. Jacobs’ email requesting changes in her work. As result, there was sufficient evidence that the employer had knowledge of her request.
- In addition, there was sufficient evidence that a reasonable accommodation was possible because the clerk routinely trained other

1.9 Exit



Accommodations for Employees



Check Your Understanding

Given the facts of *Jacobs v. N.C. Admin. Office of the Courts*, which of the following would have been a reasonable accommodation?

Reduce the employee's time at the front counter.

Adjusting Ms. Jacobs' work schedule.

Providing Ms. Jacobs an additional break during the day.

Accommodations for Employees



Check Your Understanding

Given the facts of *Jacobs v. N.C. Admin. Office of the Courts*, which of the following would have been a reasonable accommodation?

Not quite, remember %TextEntry1%:

Adjusting an employee's schedule or providing an additional break can be forms of reasonable accommodations, but here they are unlikely to assist the employee. Because the clerk's office had so many staff working away from regular public interaction, it appeared that it was reasonable and not an undue burden to move the employee to a different work area.

Accommodations for Employees



Check Your Understanding

Given the facts of *Jacobs v. N.C. Admin. Office of the Courts*, which of the following would have been a reasonable accommodation?

You got it, %TextEntry1%!

Because the clerk's office had so many staff working away from regular public interaction, it appeared that it was reasonable and not an undue hardship to move the employee to a different work area. Adjusting an employee's schedule or providing an additional break can be forms of reasonable accommodations, but here they are unlikely to assist the employee.

Accommodations for Employees



Check Your Understanding

Given the facts of *Jacobs v. N.C. Admin. Office of the Courts*, which of the following would have been a reasonable accommodation?

Not quite, remember %TextEntry1%:

Adjusting an employee's schedule or providing an additional break can be forms of reasonable accommodations, but here they are unlikely to assist the employee. Because the clerk's office had so many staff working away from regular public interaction, it appeared that it was reasonable and not an undue burden to move the employee to a different work area.

1.11 Interactive Process

An Interactive Process to Respond to Accommodation Requests



When an employer becomes aware that an employee has a disability and desires an accommodation for that disability, the employer has an obligation to respond. See [*Wilson v. Dollar Gen. Corp.*, 717 F.3d 337, 346-47 \(4th Cir. 2013\)](#).

The best practice when handling a request for an accommodation of a disability is to have an **interactive process**. [29 C.F.R. § 1630.2\(o\)\(3\)](#).



1.12 Interactive Process

An Interactive Process to Respond to Accommodation Requests



An **interactive process** means that the employer works with the employee with the goal of identifying the following:

1. the precise limitations resulting from the employee's disability; and
2. potential reasonable accommodations that could overcome those limitations.

If a disability is obvious, this can include asking the employee for suggestions on an accommodation. If a disability is not obvious, this can include asking the employee to provide a letter from a medical provider describing the specific work-related limitations and possible accommodations.

1.13 Interactive Process

An Interactive Process to Respond to Accommodation Requests



A qualified individual with a disability can request an adjustment to a job, the work environment, or the way things are usually done that enables an employee to perform his/her job. Under Maryland law, [State Government § 20-609](#), employers are also required to provide similar accommodations to employees with a disability caused or contributed to by pregnancy.

An employee is not entitled to their preferred accommodation if the employer can show that alternative accommodations are also effective. The best way to identify multiple possible accommodations is through the **interactive process** with the employee.

1.14 Interactive Process

An Interactive Process to Respond to Accommodation Requests



On-site ADA Coordinators are available in every Circuit Court location and at most District Court locations to assist managers and employees. In addition, the AOC has an Office of Employee Relations and ADA Compliance available as a resource and advisor.

- ADA Coordinator contact information can be found on the [Office of Employee Relations and ADA Compliance web page](#).
- The Judiciary's Policy on [Accommodation of Disabilities](#) available in the [Employee Handbook](#).

1.15 An Interactive Process

An Interactive Process



Check Your Understanding

Cliff is undergoing cancer treatment and, as a result, he has been dozing off recently at work, both during breaks and while at his work area. He hasn't told anyone about the diagnosis or treatment, but his co-workers have noticed him dozing and asked him if anything is wrong. Once his supervisor found him sleeping and said he would write him up if it happens again. Cliff has requested an adjusted schedule to help his work performance but has never explained his medical situation.

Which of the following is most true?


A. His co-workers should not ask if anything is wrong.

C. Once Cliff explains his condition, he can't be disciplined for sleeping on the job.

B. Cliff should explain that his request is related to a medical condition and ask for an accommodation.

D. His supervisor should ask Cliff he has any medical issues.

An Interactive Process



Check Your Understanding

Cliff is undergoing cancer treatment and, as a result, he has been dozing off recently at work, both during breaks and while at his work area. He hasn't told anyone about the diagnosis or treatment, but his co-workers have noticed him dozing and asked him if anything is wrong. Once his supervisor found him sleeping and said he would write him up if it happens again. Cliff has requested an adjusted schedule to help his work performance but has never explained his medical situation.

Which of the following is the most appropriate response?

A. He should be asked why he is struggling with performance. But managers should not make a medical inquiry except in limited circumstances.

B. Cliff should be asked for an accommodation.

C. He should be asked if he has any medical issues.

D. He should be asked if he has any medical issues.

An Interactive Process



Check Your Understanding

Cliff is undergoing cancer treatment and, as a result, he has been dozing off recently at work, both during breaks and while at his work area. He hasn't told anyone about the diagnosis or treatment, but his co-workers have noticed him dozing and asked him if anything is wrong. Once his supervisor found him sleeping and said he would write him up if it happens again. Cliff has requested an adjusted schedule to help his work performance but has never explained his medical situation.

Which

You got it, %TextEntry1%!

A. H

Employers are not expected to be clairvoyant or assume that any performance issue is related to non-obvious medical condition. Managers can ask why an employee is struggling with performance. But managers should make a medical inquiry except in limited circumstances.

B. C

is r

ask for an accommodation.

he has any medical issues.

An Interactive Process



Check Your Understanding

Cliff is undergoing cancer treatment and, as a result, he has been dozing off recently at work, both during breaks and while at his work area. He hasn't told anyone about the diagnosis or treatment, but his co-workers have noticed him dozing and asked him if anything is wrong. Once his supervisor found him sleeping and said he would write him up if it happens again. Cliff has requested an adjusted schedule to help his work performance but has never explained his medical situation.

Which

Not quite, remember %TextEntry1%:

A. H

An employer may still hold all employees to the same performance standards. If he is found sleeping on the job, he can receive the same uniformly applied discipline that other employees receive.

B. C

is r

ask for an accommodation.

he has any medical issues.

An Interactive Process



Check Your Understanding

Cliff is undergoing cancer treatment and, as a result, he has been dozing off recently at work, both during breaks and while at his work area. He hasn't told anyone about the diagnosis or treatment, but his co-workers have noticed him dozing and asked him if anything is wrong. Once his supervisor found him sleeping and said he would write him up if it happens again. Cliff has requested an adjusted schedule to help his work performance but has never explained his medical situation.

Which

Not quite, remember %TextEntry1%:

A. H

Nothing prevents co-workers or manager from making normal, polite inquiries about someone's well-being. But managers should not make a medical inquiry except in limited circumstance.

B. C

is r

ask for an accommodation.

he has any medical issues.

1.16 Communications & Disability

Communications about Disabilities



Instructions: Click on each of the question tabs below to learn more on communicating about disabilities.

Should an employer assume an employee is disabled?

What questions are acceptable?

Must exceptions be made for performance standards?

What about the cost of an accommodation?

Is information about a disability confidential?

Communications about Disabilities



Instructions: Click on each of the question tabs below to learn more on communicating about disabilities.

Should an employer assume an employee is disabled?


What questions are acceptable?

Must exceptions be made for performance standards?

What about the cost of an accommodation?

Is information about a disability confidential?

No. The ADA also prohibits discrimination against an employee who is regarded as disabled, even if the employee doesn't actually have a disability. Employers are not expected to be clairvoyant or assume that any performance issue is related to a non-obvious medical condition. Managers can ask why an employee is struggling with performance, but should only make a medical inquiry in limited circumstances.



Communications about Disabilities

Instructions: Click on each of the question tabs below to learn more on communicating about disabilities.

Should an employer assume an employee is disabled?

What questions are acceptable?

Must exceptions be made for performance standards?

What about the cost of an accommodation?

Is information about a disability confidential?

which tend to reveal the existence of a disability or reveal the nature or severity of a disability are also considered medical inquiries and covered by this restriction.

Furthermore, any medical inquiry must be job-related and consistent with business necessity. [See 29 C.F.R. § 1630.14](#). For example, an employer should not ask for an employee's medical history. But an employer can ask about the ability of an employee to perform job-related functions.

Communications about Disabilities



Instructions: Click on each of the question tabs below to learn more on communicating about disabilities.

Should an employer assume an employee is disabled?

What questions are acceptable?

Must exceptions be made for performance standards?

What about the cost of an accommodation?

Is information about a disability confidential?

An employer may still hold all employees to the same performance standards. If Cliff is found sleeping on the job, he can receive the same uniformly applied discipline that other employees receive. If Cliff has requested an accommodation, the employer may still discipline prior performance issues but should also engage in the interactive process to identify a reasonable accommodation which would help him perform his job.

Communications about Disabilities



Instructions: Click on each of the question tabs below to learn more on communicating about disabilities.

Should an employer assume an employee is disabled?

What questions are acceptable?

Must exceptions be made for performance standards?

What about the cost of an accommodation?

Is information about a disability confidential?

An employer is not required to provide an accommodation which would impose an undue hardship on the operations of the employer. See [42 U.S.C. § 12112\(b\)\(5\)](#). An undue hardship can consider costs but not in isolation. See [42 U.S.C. § 12111\(10\)](#). For example, the cost will be considered in relation to the employer's overall budget and not just the budget of a unit or a budget for accommodations. See, e.g., [Reyazuddin v. Montgomery County](#), 789 F. 3d 407 (4th Cir. 2015).

Communications about Disabilities



Instructions: Click on each of the question tabs below to learn more on communicating about disabilities.

Should an employer assume an employee is disabled?

What questions are acceptable?

Must exceptions be made for performance standards?

What about the cost of an accommodation?

Is information about a disability confidential?

Yes. Information obtained through medical inquiries or the interactive process should be treated as a confidential medical record. See [29 C.F.R. § 1630.14](#).

1.17 Religion

Reasonable Accommodation of Religion



Employers also have legal obligations to make reasonable accommodations for an employee's religious observance or practice. A reasonable accommodation of religion is an adjustment to the work environment that will allow an employee to practice his or her religion without creating an undue hardship on the employer.

1.18 Federal Law

Reasonable Accommodation of Religion



What is included as “religion” under federal law?

... all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee’s or prospective employee’s religious observance or practice without undue hardship on the conduct of the employer’s business.

[42 U.S.C. § 2000e\(j\)](#). This definition is broadly interpreted by courts and can include non-traditional and non-theistic belief systems (i.e., those which do not believe in a god).

1.19 Religion

Reasonable Accommodation of Religion



A reasonable accommodation for religious practices is one which eliminates the conflict between workplace rules and the religious practice. [E.E.O.C. v. Firestone Fibers & Textiles Co., 515 F.3d 307, 314 \(4th Cir. 2008\)](#). But if the accommodation would result in more than a minimal cost or burden on operations, an employer is not required to provide it. Additional information is available on the [EEOCs website](#).

1.20 Check Your Understanding

Check Your Understanding




A clerical employee has told his manager that he wants to miss a day of work on Friday for a religious observance. The employee has exhausted all of his other leave and has never before asked for this day off. The manager is unfamiliar with the religious holiday and doesn't remember the employee ever discussing his religion before.

What should the manager do?

- A. Deny the employee the day off because he is out of paid leave.
- B. Demand that the employee provide proof that he adheres to this religion.
- C. Discuss the request with the employee to determine what accommodations might be effective.
- D. Tell the employee that since he never asked for this holiday previously, he is not entitled to the day off.

Incorrect d (Slide Layer)

Check Your Understanding



A clerical employee has told his manager that he wants to miss a day of work on Friday for a religious observance. The employee has exhausted all of his other leave and has never before asked for this day off. The manager is unfamiliar with the religious holiday and doesn't remember the employee ever discussing his religion before.

What should the manager do?


- A. Deny the request.
- B. Deny the request unless the employee provides documentation of the religious observance.
- C. Dismiss the employee for cause, as the employee's religious practice might be disruptive to the workplace.
- D. Tell the employee that he is not entitled to the day off.

Not quite, remember %TextEntry1%:

Generally, a manager should not doubt an employee's religious beliefs unless the manager has a bona fide reason to suspect that religious practice in question is not part of a sincerely held belief.

Correct (Slide Layer)

Check Your Understanding




A clerical employee has told his manager that he wants to miss a day of work on Friday for a religious observance. The employee has exhausted all of his other leave and has never before asked for this day off. The manager is unfamiliar with the religious holiday and doesn't remember the employee ever discussing his religion before.

What should the manager do?

- A. Deny the request.
- B. Deny the request unless the employee provides a letter from a religious authority.
- C. Discuss the request with the employee to determine if the request is reasonable. If the employee's request is unclear, the employer can request additional information reasonably needed to evaluate the request, such as the time needed for the observance. With that information, the manager should consider if the request would create an undue hardship.
- D. Tell the employee that he is not entitled to the day off.

Incorrect b (Slide Layer)

Check Your Understanding




A clerical employee has told his manager that he wants to miss a day of work on Friday for a religious observance. The employee has exhausted all of his other leave and has never before asked for this day off. The manager is unfamiliar with the religious holiday and doesn't remember the employee ever discussing his religion before.

What should the manager do?

- A. Deny the request.
- B. Deny the request. Generally a manager should not doubt that a belief is sincerely held unless the manager has a bona fide reason to do so. However, if a manager reasonably needs additional information to evaluate a request, such as the details of a practice or time and duration of an event, he or she can ask for additional information.
- C. Discuss the request with the employee and determine if the employee is entitled to the day off.
- D. Tell the employee that he is not entitled to the day off.

Incorrect a (Slide Layer)

Check Your Understanding



A clerical employee has told his manager that he wants to miss a day of work on Friday for a religious observance. The employee has exhausted all of his other leave and has never before asked for this day off. The manager is unfamiliar with the religious holiday and doesn't remember the employee ever discussing his religion before.

What should the manager do?

- A. Deny the request.
- B. Deny the request unless the employee can provide documentation of the religious observance.
- C. Discuss the request with the employee's supervisor.
- D. Tell the employee that he is not entitled to the day off.

Not quite, remember %TextEntry1%:

Depending on the circumstances, it may be reasonable to provide unpaid leave, even when an employee has exhausted all other forms of leave.

1.21 Religious Accommodations

Religious Accommodations



Instructions: Click on the tabs below to review the explanation.

What if an employer doubts that the employee sincerely believes in the practice as part of a religion?

Limits

Anti-retaliation protections

Doubts (Slide Layer)

Religious Accommodations



Instructions: Click on the tabs below to review the explanation.

What if an employer doubts that the employee sincerely believes in the practice as part of a religion?

Limits

Anti-retaliation protections

Generally a manager should not doubt an employee's religious beliefs unless the manager has a bona fide reason to suspect that religious practice in question is not part of a sincerely held belief. Just because management is unfamiliar with a religious belief, does not mean that it does not meet the definition of religion. And just because management has never heard of the religion or belief, does not mean the employee's request should not be considered.

Limits (Slide Layer)

Religious Accommodations



Instructions: Click on the tabs below to review the explanation.

What if an employer doubts that the employee sincerely believes in the practice as part of a religion?

Limits

Anti-retaliation protections

Management is not required to grant every request. Employees are not entitled to a religious accommodation:

- which constitutes harassment;
- which creates a safety hazard;
- which infringes on the rights of others; or
- which otherwise imposes more than a minimal cost or burden on the employer.

Protections (Slide Layer)

Religious Accommodations



Instructions: Click on the tabs below to review the explanation.

What if an employer doubts that the employee sincerely believes in the practice as part of a religion?

Limits

Anti-retaliation protections

If an employee requests an accommodation for a religious practice, they are protected from retaliation for making that request. The same protection applies to requests for a reasonable accommodation for a disability.

Module 2: Test Your Knowledge

Question 1:

Bernie is a manager in the ADR office of a District Court. Fran is a family friend who works as a filing clerk in the same court. One weekend, Fran and Bernie run into each other at a local park. Fran shares that she is happy to get out, but hasn't been able to walk very far ever since a bad skiing accident one year ago. She is also upset that her supervisor seems to have been scrutinizing her work since the accident and has started calling her "Frail Frannie." She asks Bernie not to mention this to anyone.

Which of the following is true?

- ☐ Having an injury from a sports activity isn't a protected characteristic under the law so no further action is required.
- ☐ Fran's complaint to Bernie isn't protected because Bernie is not her manager.
- ☐ Fran's complaint is a request for an accommodation.
- ☐ Fran's complaint to Bernie must be treated as a formal complaint.

Question 2:

Mary has been working on filing for the last year on a team managed by a deputy clerk. She recently started working the "front counter" where she handles filings and questions from the public. She recently told Brett, her team lead, that the new work has triggered her social anxiety disorder which she first had in college. She says she gets panic attacks when she doesn't know the answer or how to respond.

What should Brett do?

- ☐ If Mary has a panic attack while working, he needs to discipline her for performance.
- ☐ Talk more with Mary about what she is experiencing.
- ☐ If there is an open position without public interaction, he should immediately transfer her there, even if it pays less.
- ☐ Ask Mary to bring in medical proof that she has social anxiety disorder.
- ☐ Give Mary more training so she is less anxious.

Question 3:

True or false, an employer is required to purchase valuable equipment both for reasonable accommodations of a disability and for religious accommodations.

- ☐ True
- ☐ False

Question 4:

True or false, an employee is protected from retaliation only for requesting an accommodation for a disability.

- ☐ True
- ☐ False

Module 3: Additional Protections

1.1 Welcome



Module 3:

Additional
Protections

Type your name here then click the
Next button below.

1.2 Getting Started

Getting Started



Learning Objectives



Distinguish areas where related laws and leave overlap.



Apply FMLA employee rights and responsibilities to possible occurrences in the workplace.

1.3 Leave Issues



1.4 Leave Issues

Overlaps with Related Laws, Including Leave



Access to possible reasonable accommodations and a work environment free from discrimination, harassment, and retaliation are not the only protections for employees. Employees may be protected from retaliation for other conduct, such as filing Workers' Compensation claims or reporting the fraudulent misuse of government funds.

1.5 FMLA

Overlaps with Related Laws, Including Leave



In addition, employees may be eligible for other forms of leave which have their own protections, including leave under the Family and Medical Leave Act ("FMLA"). For example, under FMLA, even if an employee has exhausted all of his or her paid leave for unrelated reasons, he/she may still be eligible for protected leave to care for his/her own serious health condition or for a family member with a serious health condition. And even if employees have exhausted all of their FMLA eligibility, they may still qualify for a limited amount of leave as a reasonable accommodation for a disability. There are a variety of protections for family members and individuals who serve in the armed forces, and any manager with questions about leave or job protections should contact a human resources liaison or the [Judiciary's Department of Human Resources](#).

1.6 FMLA

Understanding FMLA Employee Rights



Generally, to be eligible for FMLA leave, a State employee must:



have worked for the State for at least 12 months; and



have worked at least 1,250 hours during the 12 months prior to the start of the FMLA leave.

1.7 Important Notes



FMLA
Family Medical Leave Act

Important Notes

- FMLA leave - 12 weeks for serious health conditions, birth or adoption of child
- Even if FMLA is exhausted or inapplicable, ADA/state law may require leave

1.8 Introduction

Judiciary employees who have access to Connect can access forms and instructions regarding FMLA-covered leave in Connect through the Employee Self-Service menu. Employees paid by a county or the City of Baltimore should refer to local policies. Supervisors or employees who have questions about FMLA procedures can also contact the Judiciary Human Resources Department Employee Relations representatives at 410-260-1278 or 410-260-1264.

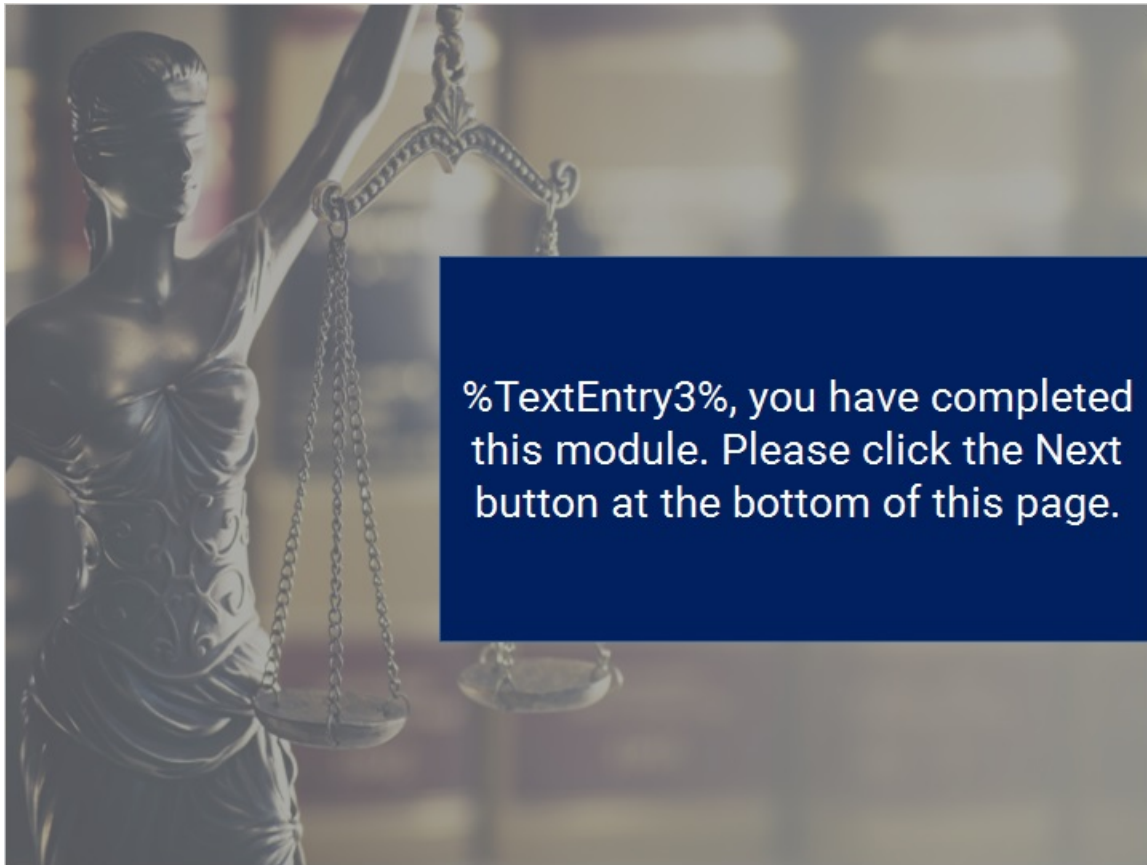
Resources:

[Employee Rights and Responsibilities](#)

[Human Resources FMLA Fact Sheet](#)



1.9 Exit



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Module 4: Accommodations for the Public

1.1 Welcome



Module 4:

Accommodations for the Public





Type your name here then click
the Next button below.

1.2 Getting Started

Getting Started



Learning Objectives

-  Apply Title II of the ADA and the holdings of *Tennessee v. Lane* to requirements of accessibility and requests for accommodations by public users.
-  Recognize possible auxiliary aides and services which may be required under Title II.
-  Analyze a request for an accommodation to use a service animal.
-  Examine how to manage the rights of non-parties' request for accommodation.

1.3 Case Notes: Accessibility to Courts

Case Notes: Accessibility to Courts

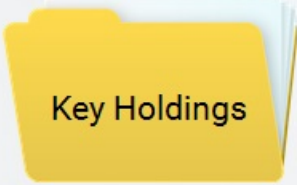
Instructions: Click on the file folders below to review each section regarding *Tennessee v. Lane*, 541 U.S. 509 (2004), then click Next.



Facts



Proceedings



Key Holdings

Facts (Slide Layer)

Case Notes: Accessibility to Courts

Instructions: Click on the file folders below to review each section regarding *Tennessee v. Lane*, 541 U.S. 509 (2004), then click Next.



Facts

Proceedings

Key Holdings

Plaintiffs' George Lane and Beverly Jones both were paraplegics who used wheelchairs for mobility. Mr. Lane had to appear to answer criminal charges on the second floor of a county courthouse that had no elevator. At his first appearance, Mr. Lane crawled up two flights of stairs to get to the courtroom. When Mr. Lane returned to the courthouse a second time, he refused to crawl again or to be carried by officers to the courtroom; he consequently was arrested and jailed for FTA. Ms. Jones, a certified court reporter, could not access a number of county courthouses, and, as a result, had lost both work and an opportunity to participate in the judicial process. The two claimed that they were denied access to, and the services of, the state court system by reason of their disabilities.


Proceedings (Slide Layer)

Case Notes: Accessibility to Courts

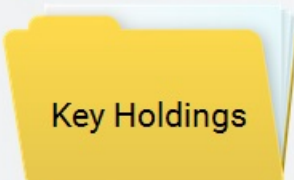
Instructions: Click on the file folders below to review each section regarding *Tennessee v. Lane*, 541 U.S. 509 (2004), then click Next.



Facts



Proceedings



Key Holdings

The plaintiffs filed claims under Title II of the ADA against the State of Tennessee and a number of Tennessee counties, alleging past and ongoing violations of Title II. The defendants argued that Congress had failed to effectively abrogate states' sovereign immunity under the Eleventh Amendment, and the Supreme Court granted certiorari to consider this argument.

Key Holdings (Slide Layer)

Case Notes: Accessibility to Courts

Instructions: Click on the file folders below to review each section regarding *Tennessee v. Lane*, 541 U.S. 509 (2004), then click Next.

Facts

Proceedings

Key Holdings

guarantees of the Fourteenth Amendment.

- In reaching this holding, the Court concluded there has been a history of inadequate provision of public services and access to public facilities, including to courts, for disabled individuals.
- In addition, the Court noted that requirements of providing reasonable accommodations to public users were an appropriate response. While courts do not have to provide accommodations which compromise essential eligibility criteria for public programs or fundamentally alter the nature of the service provided “ordinary considerations

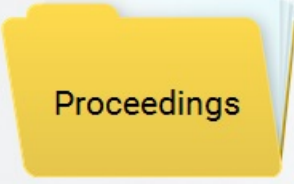
1.4 Case Notes: Rights of Non-Parties

Case Notes: Rights of Non-Parties

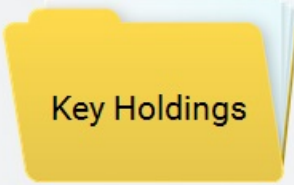
Instructions: Click on the file folders below to review each section regarding *Prakel v. Indiana*, 100 F. Supp. 3d 661 (S.D. Ind. 2015), then click Next.



Facts



Proceedings



Key Holdings

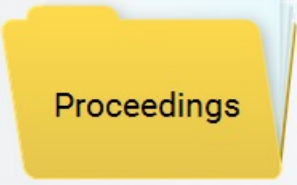
Facts (Slide Layer)

Case Notes: Rights of Non-Parties

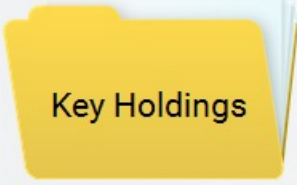
Instructions: Click on the file folders below to review each section regarding *Prakel v. Indiana*, 100 F. Supp. 3d 661 (S.D. Ind. 2015), then click Next.



Facts



Proceedings



Key Holdings

Plaintiffs were a mother and son. The mother faced a criminal charge, and the son, who was deaf, requested that the court provide him with an American Sign Language interpreter so he could follow the proceedings in his mother's case. The court refused to provide him with an interpreter on multiple occasions, stating that he was neither a witness nor a defendant in the case. Court personnel also refused to communicate with the son when he would try to communicate using written notes or video-relay calls.

Case Notes: Rights of Non-Parties

Instructions: Click on the file folders below to review each section regarding *Prakel v. Indiana*, 100 F. Supp. 3d 661 (S.D. Ind. 2015), then click Next.

Facts

Proceedings

Key Holdings

The mother and son sued the courts, local judges, and state administrators, alleging that the defendants denied them equal access to the courts. All parties moved for summary judgment. The federal district court granted summary judgment for the state defendants on the grounds that they had no control over the decisions of the local courts to deny a request for an interpreter. The court also granted summary judgment as to the mother's claim on the grounds of waiver when she assented, through counsel and without objection, to participate in the proceedings without an interpreter. The court otherwise denied the remaining defendants' motion and denied the plaintiffs' motion for summary judgment.

Key Holdings (Slide Layer)

Case Notes: Rights of Non-Parties

Instructions: Click on the file folders below to review each section regarding *Prakel v. Indiana*, 100 F. Supp. 3d 661 (S.D. Ind. 2015), then click Next.

Facts

auxiliary aid or service, they had denied effective communication and equal opportunity to enjoy the benefits of the courts.

Proceedings

Furthermore, the defendants could not show that providing the interpreter would have resulted in a fundamental alteration in the nature of the court proceedings or an undue burden on the courts.

Key Holdings

The son's claims for compensatory damages nonetheless had to go to a jury because there was evidence that the courts had not acted with deliberate indifference in denying his requests for an interpreter.

1.5 ADA Title II - Obligations of Public Entities

ADA Title II - Obligations of Public Entities

Instructions: Click on the tabs below to learn more, then click Next.

The Law

Regulations

**Limits on
Accommodations**

Resource: The ADA Officer for the Judiciary has prepared this [FAQ](#) on the ADA and public users of courts.

ADA Title II - Obligations of Public Entities

Instructions: Click on the tabs below to learn more, then click Next.

The Law

Regulations

Limits on
Accommodations

"[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." [42 U.S.C. § 12132](#).

- Department of Justice enforced
- Department of Justice regulations

Resource: The ADA Officer for the Judiciary has prepared this [FAQ](#) on the ADA and public users of courts.

ADA Title II - Obligations of Public Entities

Instructions: Click on the tabs below to learn more, then click Next.

The Law

Regulations

Limits on
Accommodations

A public entity must “furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity. . .” [28 C.F.R. § 35.160\(b\)\(1\)](#)

Resource: The ADA Officer for the Judiciary has prepared this [FAQ](#) on the ADA and public users of courts.

Limits (Slide Layer)

ADA Title II - Obligations of Public Entities

Instructions: Click on the tabs below to learn more, then click Next.

The Law

Regulations

Limits on
Accommodations

A public entity is not required to provide purely personal services, such as a bathroom attendant, and is not required to make a fundamental alteration in the nature of a service, program, or activity.


In addition, a public entity is not required to provide an accommodation if it would cause an undue financial or administrative burden.


An example of an unreasonable accommodation would be allowing a witness to introduce evidence which would otherwise not be admitted under the Maryland Rules, since this would fundamentally alter the operations of the court.

Resource: The ADA Officer for the Judiciary has prepared this [FAQ](#) on the ADA and public users of courts.


1.6 Auxiliary Aids and Services

Examples of Auxiliary Aids and Services







Interpreters




Qualified Readers



Acquire or Modify
Equipment or
Devices



Written Materials



Large Print Materials

Resource: [28 C.F.R. § 35.104](#)

1.7 Requests for Accommodation by Public Users

Requests for Accommodation by Public Users



Maryland Rule 1-332 provides a framework for an attorney, a party, a witness, a victim, a juror, or a prospective juror to notify the court that they are requesting an accommodation.

The **Request for Accommodation for Person with Disability** form (CC-DC-49) is available online.

- A 30-day advance notice is requested but not required.
- Completed forms should be submitted to the respective court, usually via the Clerk's office.
- Local ADA coordinators assist with accommodations (both for public and employees).

Resources:

- [Request for Accommodation for Person with Disability \(CC-DC-49\)](#)
- [ADA Coordinators](#)

1.8 What is a Service Animal?

Allowing Service Animals as an Accommodation



What is a Service Animal?

One form of an accommodation is to allow a user with a service animal into a public area which otherwise prohibits the presence of dogs and other animals. Maryland law defines a "service animal" as "a guide dog, signal dog, or other animals individually trained to do work or perform tasks for the benefit of an individual with a disability." [Human Serv. § 7-701](#). State law also provides that individuals with disabilities (as well as service animal trainers) who are accompanied by a service animal have the same rights as individuals without disabilities "to the full and free use" of public buildings, public facilities, and other public places. [Human Serv. § 7-704](#).

*Note that the Maryland law is broader than federal standards. Maryland does not limit the species of animals that can be a "service animal"; federal law only recognizes dogs and, in exceptional cases, miniature horses, as "service animals." [28 C.F.R. §§ 35.104](#).

1.9 What questions can a court employee ask of a public user?

Allowing Service Animals as an Accommodation



What questions can a court employee ask of a public user?

Under federal regulations, a public entity should limit the types of questions it asks of individuals with a disability who are accompanied by a service animal. There are two presumptively valid questions:

1. Whether the animal is required because of a disability; and
2. What work or task the animal has been trained to perform.

The Department of Justice advises public entities not to ask any questions if the answers to these questions are readily apparent. In any event, a public entity should not ask a public user about the nature or extent of a person's disability.

1.10 Non-Obvious disabilities

Allowing Service Animals as an Accommodation



Non-Obvious disabilities

In recent years, more individuals without visible disabilities have started working with service animals. For instance individuals with a seizure disorder or a mental health disorder, such as Post-traumatic Stress Disorder, work with service animals which are trained to alert the user to the onset of symptoms.

1.11 Restrictions

Allowing Service Animals as an Accommodation



Restrictions

If an animal is out of control or not house broken, a public entity can instruct the user to get the animal under control. If the user is unable to do so, the public entity can require that the animal be removed.

The Department of Justice advises that even if a service animal is excluded for such a legitimate reason, the public entity should consider alternative reasonable accommodations for the individual.

Resource: [ADA Service Animals FAQs](#)

1.12 Accommodations for Jurors



Accommodations for Jurors

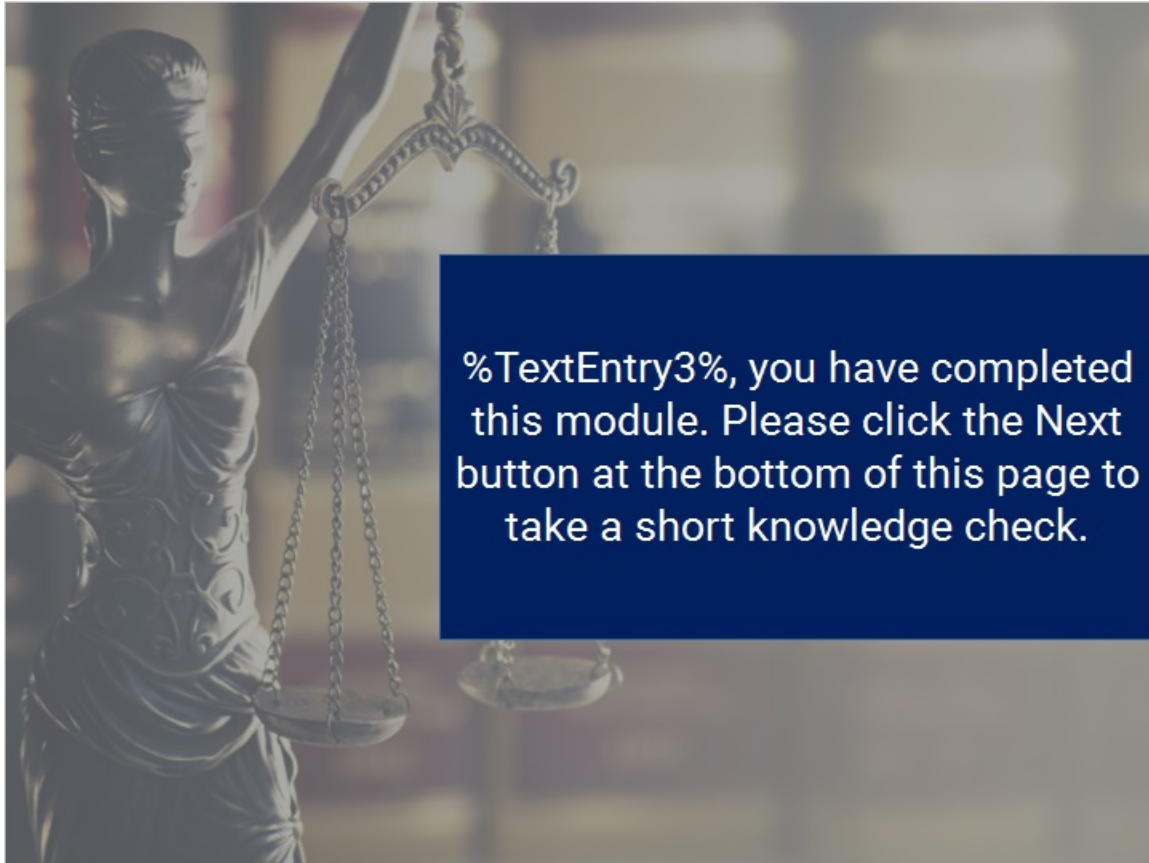
Maryland law prohibits excluding a citizen from jury service due to his/her disability. Jurors who are otherwise qualified to serve in a jury may also request a reasonable accommodation, subject to the Americans with Disabilities Act.

See [Cts. & Jud. Proc. §§ 8-102\(b\) & 8-103\(b\)](#).

Additionally, citizens may not be excluded from jury service on the basis of their economic status, color, national origin, race, religion, or sex.

Id. at [§ 8-102\(b\)](#).

1.13 Exit



Module 4: Test Your Knowledge

Question 1:

True or false, because of their role in law enforcement, courts are exempt from the requirements under Title II of the ADA to provide accommodations to individuals with disabilities.

- ☐ True
- ☐ False

Question 2:

Ty is deaf and uses American Sign Language (“ASL”) to communicate. He has asked for an ASL interpreter for himself at an upcoming civil matter where he is a party. At the last minute, the scheduled ASL interpreter called in sick and couldn’t make it. What should be done?

- ☐ The court should consider other possible accommodations, such as a substitute interpreter or a postponement.
- ☐ Nothing else should be done – the court did its best to accommodate Ty.
- ☐ The court only has an obligation to provide physical accessibility, not to hire a personal ASL interpreter.
- ☐ If a substitute interpreter charges a higher fee, the court doesn’t have to do anything.

Question 3:

A defendant in a civil matter has a disability and relies on a guide dog. When he appears in the courtroom, a courtroom clerk reveals that she is severely allergic to dogs and had previously provided medical information to her supervisor. The clerk says she already can feel symptoms from the presence of the guide dog.

What should be done?

- ☐ The dog and public user should be asked to leave because the employee’s rights outweigh the rights of the public user.
- ☐ The courtroom clerk should be removed because the public user’s rights outweigh the rights of an employee.
- ☐ To avoid excluding or embarrassing anyone, nothing should be done.
- ☐ The court should consider a solution that accommodates both the employee and the public user.