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EMPLOYMENT LAW

Equity, Compliance, and Human Dignity at Work

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Before the warning goes out

A HYPOTHETICAL SCENE

At 8:17 on a Monday morning, a manager opens the attendance report and sees that an employee has reached the final step under the company's policy. Payroll has the dates. The handbook has a point system. The manager is ready to send the written warning.

Then HR asks what the employee said when she called out. The manager pulls up the message. The employee had written that she was receiving treatment and might need to miss the same afternoon every other week. The manager had replied, "Thanks for letting me know," and recorded the absence the way he always did.

What did the company know before it counted the absences? Did the employee's message give it enough information to trigger a leave or accommodation inquiry? What should she be told about the review and the schedule she is expected to follow in the meantime?

The employer has a legitimate reason to track attendance. The employee has a right to whatever protections apply to her circumstances. Both are served by a decision that accounts for the facts before the warning goes out.

Equity starts with the decision process

Can qualified people access the opportunity, and can the employer explain its decision using criteria that matter to the work?

Consider a promotion. A company posts a supervisor role internally, and anyone can apply. The selection committee gives the most weight to experience leading high-visibility assignments. Those assignments have always gone to employees whom senior leaders know personally. By the time the role is posted, an informal process has already shaped who can demonstrate a qualification the committee values.

Who knew the assignments were available? How were people selected? Did the committee give credit for comparable leadership on less visible projects? A structured interview or a job-related work sample might give candidates a fairer way to show the same skill.

Look at how the policy operates

Title VII distinguishes between disparate treatment, which concerns intentional discrimination, and disparate impact, which can arise when a facially neutral practice disproportionately excludes people based on a characteristic protected by the statute. A disparity warrants examining the practice and the evidence. The legal analysis can turn on whether the specific practice caused the disparity, whether it is job-related and consistent with business necessity, and whether an available alternative would serve the employer's needs with less discriminatory impact.

Apply the same care to programs described as diversity, equity, and inclusion. A company can broaden recruiting outreach, publish qualifications for a development program, and make applications accessible. Using race, sex, or another protected characteristic to decide who gets an interview, training slot, or mentoring opportunity raises a different legal question. Review eligibility, selection criteria, and instructions to managers before launching the program.

Apply the same decision process

Employers often say, "We apply the policy to everyone." The next question is what the policy requires the employer to consider before applying it.

Return to the attendance report. If the employee is eligible for leave under the Family and Medical Leave Act and the absences qualify and are protected, the employer cannot count them against her under its attendance policy. The employee does not have to use the term "FMLA" the first time she seeks leave for a potentially qualifying reason. What she tells the employer and what the employer already knows matter. If FMLA leave is unavailable or exhausted, a disability-related request may still require review under the Americans with Disabilities Act. State or local protections may also apply.

A manager who hears "I need time off for treatment" should know where to send that information and what to do about the attendance entry while it is reviewed. HR can identify the dates at issue, check notice and documentation rules, and tell the employee what information is needed and what schedule to follow while the review is pending.

Identify the accommodation standard

An employee with a disability, an employee with a pregnancy-related limitation, and an employee seeking to observe a religious practice may all ask, “Can I work different hours?” The legal analysis depends on the reason for the request and the governing law.

Disability. Under the ADA, a covered employer generally must provide a reasonable accommodation to a qualified applicant or employee with a disability unless it would cause undue hardship. An individualized discussion can help identify the barrier, the essential job functions, and an effective accommodation.

Pregnancy, childbirth, or related medical conditions. The Pregnant Workers Fairness Act requires covered employers to reasonably accommodate a qualified worker’s known limitations related to pregnancy, childbirth, or related medical conditions, absent undue hardship. It also prohibits requiring leave when another reasonable accommodation can be provided.

Religion. Title VII can require a reasonable accommodation for a sincerely held religious belief, practice, or observance. Under *Groff v. DeJoy*, undue hardship requires a burden that is substantial in the overall context of the employer’s business.

Protect private information

Suppose an employee is approved to start work an hour later twice a week. The supervisor needs the updated schedule and a coverage plan. Coworkers may need to know who is opening on those days. Medical information belongs in the confidential accommodation process, with disclosure limited to what applicable law allows.

A supervisor can say, “Jordan will start at ten on Tuesdays and Thursdays. I’ll handle opening coverage, and you can bring scheduling questions to me.” That gives the team the information it needs and leaves Jordan free to decide what to share personally.

If the employer cannot provide the employee’s preferred accommodation, explain what was considered and discuss effective options that are available. If a decision is pending, give the employee a contact person and a date for an update.

Take complaints seriously at intake

An employee says, “Ever since I told my supervisor I was pregnant, she’s stopped putting me on the schedule for client visits.” The employee has described a change, a point in time, and a possible connection. That is enough to ask informed follow-up questions.

When did the assignments change? Who decides who goes on client visits? What reasons were given at the time? How were similar assignments handled before and after the disclosure? Are there schedules, emails, or messages that help establish the sequence?

A fair investigation gives the employee an opportunity to explain the concern and gives the person whose conduct is at issue a fair opportunity to respond. An impartial investigator looks for records that can support or contradict either account and distinguishes established facts from disputed facts and findings under the applicable policy.

Tell the person who raised the concern when the review is complete and share what the employer can appropriately disclose. If a work arrangement changes while the review is underway, explain how it will operate and whom the employee should contact if a problem arises.

Watch what happens after a report

An employee who raises a discrimination concern may still be coached, evaluated, or disciplined for legitimate reasons. When a manager recommends an adverse action close in time to protected activity, have someone independently review the facts and how comparable situations were handled. Under federal EEO retaliation law, an action may be materially adverse if it could deter a reasonable person from engaging in protected activity. Depending on the circumstances, that can include a schedule change, a transfer, or a lowered evaluation.

Who knew about the complaint? When was the performance concern first raised? Was the same expectation communicated to others? If the concern was genuine but poorly documented, establish what can be verified and identify where the account depends on recollection.

Respect protected group activity

Employees covered by the National Labor Relations Act may also have protections when they discuss wages or other working conditions with coworkers, including in nonunion workplaces. Review the circumstances before treating a group complaint about pay or scheduling as a conduct issue.

Review how people are paid

An employee logs out at five and spends another fifteen minutes answering work messages. A supervisor sees the replies and thanks her for staying on top of things. The timecard shows five o’clock.

For covered nonexempt employees, work an employer requires or allows generally counts as hours worked under the Fair Labor Standards Act, even when the employer did not request the work in advance. An employer can set and enforce rules for approving overtime. It still needs to account for compensable time the employee actually worked.

If the people praised for responsiveness are routinely answering messages after clocking out, tell employees how to report that time and address after-hours expectations with managers. Supervisors determine whether people feel able to report the minutes that make the timecard accurate.

Pay decisions deserve the same scrutiny. If a company offers two people different starting salaries for comparable work, the decision-maker should be able to explain the difference and show how the same criteria are used in other decisions. A written salary range is a starting point. The records showing how people were placed within it tell you how the system works.

Six questions before you decide

Before issuing a final warning, denying an accommodation, passing someone over for promotion, or ending employment, have the decision-maker answer these questions in writing.

1. **What are we deciding?** Name the policy, expectation, or job-related criterion and who has authority to decide.
2. **What facts can we verify?** Record dates and relevant evidence. Identify material facts that are disputed or unknown.
3. **What has the employee told us?** Review any potential leave, accommodation, discrimination, wage, safety, or other protected-rights issue.
4. **How have we handled comparable cases?** Look at the role, prior notice, expectations, and surrounding circumstances.
5. **What options did we consider?** Record feasible alternatives and why the proposed action fits the facts.
6. **How will we communicate the decision?** Decide who will explain it, what can be shared, and what happens next.

A closing reflection

Return to the manager looking at the attendance report. A good process gives him somewhere to take the question before he sends the warning. It gives HR the dates and the employee's own words. It gives the employee an opportunity to explain what she needs and a clear answer about what happens next.

The company may still have a staffing problem to solve. It may need to revise coverage, review earlier attendance entries, or explain which expectations apply going forward. It can do that work while treating the employee as someone entitled to a fair decision and an explanation.

At the end of the conversation, can the employee tell you what the company decided, what it based the decision on, and what happens next? If those answers are unclear, the decision may be recorded, but the work of communicating it is still unfinished.

Legal references

Title VII of the Civil Rights Act, 42 U.S.C. § 2000e-2

EEOC guidance on DEI-related discrimination

U.S. Department of Labor fact sheet on FMLA protections

U.S. Department of Labor fact sheet on employee FMLA notice

EEOC guidance on ADA accommodations and undue hardship

EEOC guidance on the Pregnant Workers Fairness Act

EEOC guidance on religious discrimination and accommodation

EEOC enforcement guidance on retaliation

National Labor Relations Board guidance on concerted activity

U.S. Department of Labor fact sheet on hours worked under the FLSA

This article provides general information on U.S. federal employment law. Coverage varies by statute. State and local laws, employment agreements, and collective bargaining obligations may affect a specific decision.