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2018 Employment Law Seminar

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Immigration Compliance and Form I-9 in the Workplace



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Today's Agenda:

- A. Hiring Foreign Students
- B. Temporary Sponsorship
- C. Permanent Sponsorship
- D. Form I-9 and Self Audits



A. Hiring Foreign Students

Hypothetical: Company ABC is considering hiring Anna, an international student who will be graduating in May from the University of Iowa with a bachelor's degree in Mechanical Engineering. HR is concerned about the paperwork, including: Can they hire her? What do they need to know? What obligations does the company have that differ from a normal hire? Can they hire her long term?

A. Hiring Foreign Students, cont.

1. Non-immigrant (no need to test market)
2. F-1 and M-1 (focus here on F-1)
3. How are they authorized to work?
 - I. CPT
 - II. OPT (related to degree)
 - III. STEM OPT extension (requires E-Verify enrollment)
4. Taxes (not covered here)
 - I. <https://www.irs.gov/individuals/international-taxpayers/foreign-students-and-scholars>

B. Temporary Sponsorship

1. H-1B initial petition
2. Specialized job which requires specialized degree
3. No need to test market
4. Cap—lottery

B. Temporary Sponsorship, cont.

5. Initial three year approval, can be extended for another three years
6. May be extended more than six years under certain circumstances (next section)
7. Related: H-1B transfer (already in H-1B status working for another employer)



C. Permanent Sponsorship

1. Permanent resident (green card)
2. MUST test market and document via PERM (Application for Labor Certification)
 - I. Each of the job opportunity's advertised required minimum qualifications has a demonstrable and necessary relationship to the performance of the job
 - II. Potentially qualified U.S. workers were notified of the job opportunity by recruitment conducted in the manner specified by USDOL
 - III. No U.S. worker who applied for the job met all of the required minimum qualifications
 - IV. U.S. workers who lacked one or more of the required minimum qualifications would not have been able to acquire the skills necessary to perform the duties during a reasonable period of on-the-job training



C. Permanent Sponsorship, cont.

3. A SUCCESSFUL recruitment means no minimally qualified US worker was ready, willing, and able to accept the job
4. Once PERM is certified, then ER applies for EE as permanent worker
5. Once approved as permanent worker and visa is available, EE able to apply for green card
6. If visa not available (India, China), can extend H-1B until visa available.

D. Form I-9 and Self Audits

1. Foreign Academic Students <https://www.uscis.gov/i-9-central/complete-correct-form-i-9/complete-section-1-employee-information-and-attestation/foreign-academic-students>
2. Temporary Workers, i.e. H-1B. <https://www.uscis.gov/i-9-central/complete-correct-form-i-9/who-needs-form-i-9/temporary-nonimmigrant-workers>
3. Permanent Residents (Green card is List A document).
4. Resources for Self-Audit:
 - I. <https://www.justice.gov/crt/file/798276/download>
 - II. <https://www.uscis.gov/faq-page/i-9-central-self-audits>

Questions?

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New Harassment Training: How to Update Your Training in the Post-Weinstein Era



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About six-in-ten women say they have been sexually harassed

% saying they have ever personally received unwanted sexual advances or verbal or physical harassment of a sexual nature

	Among women	Among men
All adults	59%	27
White	63	25
Black	50	22
Hispanic	50	34
HS or less	46	24
Some college	65	30
Bachelor's+	70	27
Rep/Lean Rep	56	26
Dem/Lean Dem	63	27

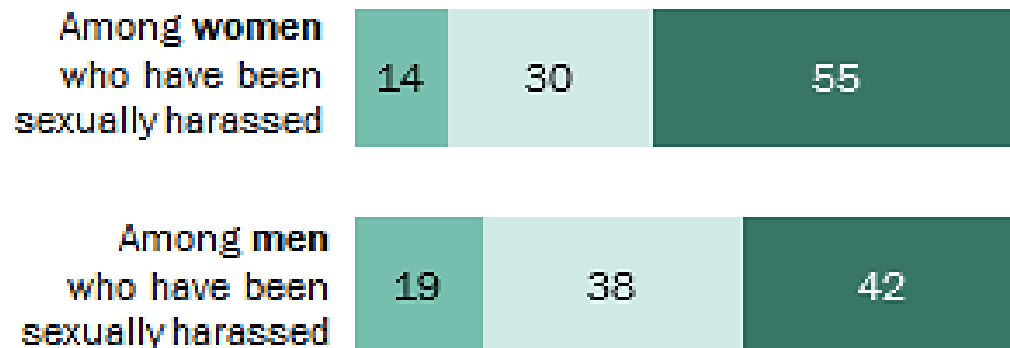
Note: Whites and blacks include only non-Hispanics. Hispanics are of any race. "Some college" includes those with an associate degree and those who attended college but did not obtain a degree.

Source: Survey of U.S. adults conducted Feb. 26-March 11, 2018. "Sexual Harassment at Work in the Era of #MeToo"

More than half of women who have been sexually harassed say it has happened both in and outside of work

% of those who say they have ever received unwanted sexual advances or verbal or physical harassment of a sexual nature saying this happened ...

- In a professional or work setting
- Outside of a professional or work setting
- Both



Note: Share of respondents who didn't offer an answer not shown.
Source: Survey of U.S. adults conducted Feb. 26-March 11, 2018.
"Sexual Harassment at Work in the Era of #MeToo"

Americans more concerned about men getting away with sexual harassment than men being fired prematurely

% saying each is ___ when it comes to sexual harassment and assault in the workplace today



Note: Share of respondents who didn't offer an answer not shown.
Source: Survey of U.S. adults conducted Feb. 26-March 11, 2018.
"Sexual Harassment at Work in the Era of #MeToo"

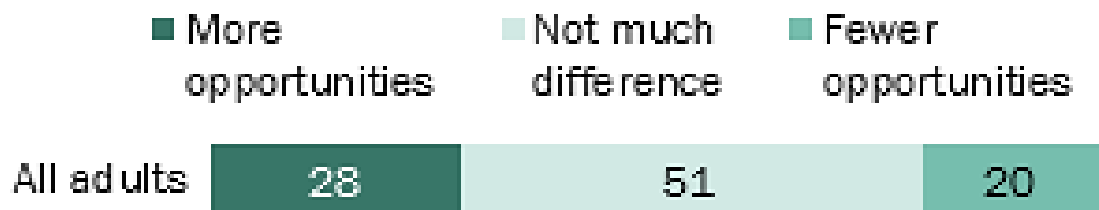
Mixed views on implications of increased focus on sexual harassment

% saying the increased focus on sexual harassment and assault ...

Has made it ___ for men to know how to interact with women in the workplace



Will lead to ___ for women in the workplace



Note: Share of respondents who didn't offer an answer not shown.
Source: Survey of U.S. adults conducted Feb. 26-March 11, 2018.
"Sexual Harassment at Work in the Era of #MeToo"

What should your Company do?

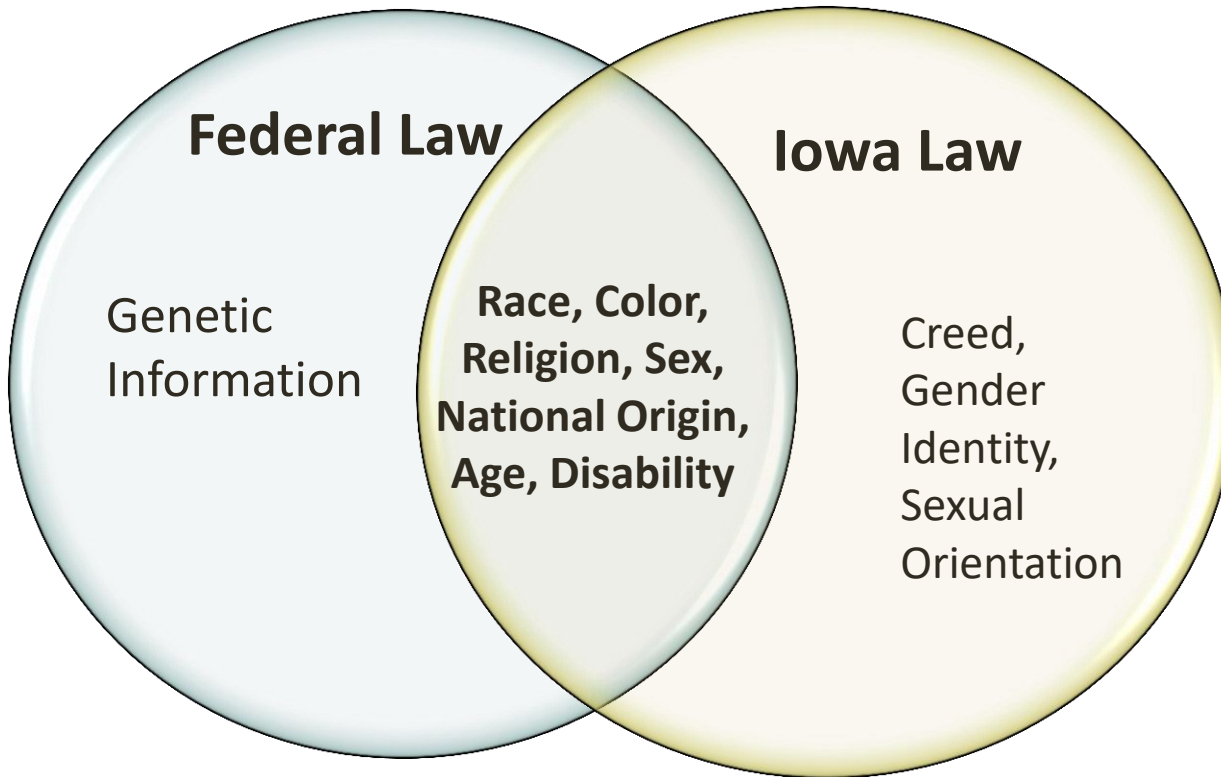
- 1) Evaluate your Company's Culture
- 2) Evaluate your Company's Policies
- 3) Evaluate Your Company's Training



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Protected Classes



Protected Classes: race, color, religion, sex, national origin, age, disability, genetic information, creed, sexual orientation, gender identity



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Evaluate Company Culture

- Zero Tolerance
- Contests
- Aggressiveness Rewarded?
- Who are your Leaders?
- What is the Message from your Leaders?
- Do you foster a culture of **civility** and **respect**?



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Company Culture: Top Performers

Company Culture: Does Your Company Tolerate . . .

- Interruptions?
- Showing signs of dismissiveness, looking away, rolling the eyes or checking messages while someone else is talking?
- Excluding others?
- Referring to certain individuals by first name and others by Mr. ?
- Ignoring emails or messages?
- Stereotyping?



Evaluate Implicit / Unconscious Bias

Wait... So What Can We Talk About or Say at Work?

- Compliments v. Sexual Harassment
 - A Compliment is “a formal act or expression of civility, respect or regard” www.dictionary.com
- How do you know you are giving a compliment?



Evaluate Company Policies

- Policy Against Harassment
- Policy Against Discrimination
- Policy Against Retaliation
- Interviewing Policies



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Key Portions of Policies Against Discrimination, Harassment and Retaliation Policy

1. Equal Employment Opportunity (EEO) Policy



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Key Portions of Policies Against Discrimination, Harassment and Retaliation Policy, cont.

2. Harassment:

- Zero Tolerance
- Mandatory Compliance for All Who Work for (and *with*) Company
- Mandatory Reporting for Supervisors
- Provide Examples of Harassment
- Explain Sexual Harassment: quid pro quo and hostile work environment
- Include a Complaint Procedure



Key Portions of Policies Against Discrimination, Harassment and Retaliation Policy, cont.

2. Harassment:

- Complaint Procedure
 - Provide avenues for complaints
 - Confidential to extent possible
 - Mandatory reporting
- Investigation Procedure



Key Portions of Policies Against Discrimination, Harassment and Retaliation Policy, cont.

3. Retaliation:

- Explain Retaliation
- How to Report, include avenues for reporting



Evaluate Current Investigation Procedure



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Why Have Investigation Policies?

Sheryl Sandberg: “Every workplace should start with clear principles, then institute policies to support them. First, develop workplace training that sets the standard for respectful behavior at work, so people understand right from the start what's expected of them. Second, treat all claims - and the people who voice them - with seriousness, urgency, and respect. Third, create an investigation process that protects employees from stigma or retaliation. Fourth, follow a process that is fairly and consistently applied in every case, both for victims and those accused. Fifth, take swift and decisive action when wrongdoing has occurred. And sixth, make it clear that all employees have a role to play in keeping workplaces safe - and that enablers and failed gatekeepers are complicit when they stay silent or look the other way.”



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Steps to Take

- (1) Train
- (2) Set Investigation Expectations
- (3) Create Investigation Process
- (4) Follow the Process
- (5) Take Swift Action During the Process
- (6) Make it Clear Everyone Has a Role to Play



Role Play: Investigation

- a. Report: “you were in my dream last night” supervisor Sam to employee Chris, overheard by Pat. Pat reports to you.
- b. Report: You are good friends with an employee and see each other frequently outside of work. She confides in you that her supervisor has been brushing up against her, she can’t tell if he means to or not, but it is frequent enough that it seems intentional and is making her uncomfortable. But your friend says: “it’s no big deal” and she is concerned that if he finds out, he won’t place her on the new big project that she is competing for. She says, please I’m just telling this to you “as a friend” and that she would be upset if her supervisor finds out and she doesn’t get the project.
- c. “You look cute today”



Questions?

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FMLA Case Studies to Help Guide Employers



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Managing Employees through the FMLA/ADA Maze*

Susan has been employed by XYZ Company for 2 years on a full-time basis. She informs her supervisor that she will need to take leave because she was recently diagnosed with Lyme disease and her physician believes she will benefit from some time off. Susan has not been a model employee. The Company suspects that she just wants some time off to take a break, given that the company is short staffed and employees have been working a lot of overtime.

*Materials Sourced from National Employment Law Institute 2017 Compliance Manual.



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Medical Documentation

1. What medical documentation can the Company require under the FMLA?
 - a) Request the Certification of Health Care Provider for Employee's Serious Health Condition.
 - b) Provide the Notice of Eligibility and Rights and Responsibilities, and the Designation Notice.
 - c) Department of Labor forms available at <https://www.dol.gov/whd/fmla/forms.htm>



Practical Advice

- Employers are entitled to medical facts supporting the employee's serious health condition; an explanation from the health care provider as to the reasons why the employee could not perform the job in question; and whether additional treatments would be required. Under the regulations, the employer has the right to ask these questions and others in the medical certification form, and to insist upon complete and sufficient medical certification. However, when the information isn't definite regarding duration of leave, be cautious in taking the position that the employee hasn't fulfilled his/her FMLA obligations.
- Keep communicating with the employee, but don't use the employee's supervisor to inquire about health issues. Inform the employee in writing precisely what information is missing or insufficient and give them time to cure (at least seven days). Consider obtaining their permission to talk directly with their health care provider to obtain the information.
- Employers can insist upon the medical certification being provided by a specialist when the employee is being treated by the specialist rather than a primary physician.
- Tell the employee to immediately inform the employer that there is a reason the employee cannot timely submit the medical certification.
- If employees make diligent, good faith efforts to obtain medical documentation within the fifteen day certification period, they should be granted extra time to submit the forms.



Medical Documentation, cont.

2. What medical documentation can the Company require under the ADA?

FMLA provides greater rights at this point. We do not get to the ADA yet.



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Contacting the Physician

3. Can the Company's occupational health nurse contact Susan's physician with questions about her medical condition if the medical documentation she submits isn't detailed?
 - a) If certification forms are completed, we can't get more information. If vague or incomplete or contradictory, provide seven day notice.
 - b) Go to employee and get permission. Tell the employee the nurse will contact her.
 - c) If questions, get a release, and then ask questions about what is missing. Limit the scope of the questions—do not go beyond what is in the form.



Requiring a Medical Exam

4. Can the Company require Susan to have a medical exam by a physician of its choice under either the FMLA or the ADA?
 - a) FMLA – Limited. If doubt the validity of the certification, can get second opinion from an independent, specialist that the company does not regularly contract with or use.
 - b) ADA – EEOC says go to employee’s physician first.



Offering an Alternative

5. Should the Company have a discussion with Susan as to whether there is any other alternative than leave? If yes, who should have the discussion with her about the circumstances surrounding her request? Her supervisor, a Human Resources representative, or both?
 - a) FMLA – very delicate. Do not want to interfere with FMLA rights. If leave says intermittent, talk about it with the employee.
 - b) ADA – Yes, but get the supervisor out of the discussion.



At the same time that Susan requests her leave of absence, a co-worker, Rhonda, presents a doctor's note to her supervisor indicating that she cannot work over 40 hours per week for the foreseeable future. Overtime during the upcoming summer months is mandatory and if Susan goes out on leave the department is going to be really short staffed.

6. Is the Company required to allow Rhonda to not work any overtime under the FMLA? Under the ADA?
 - a) FMLA – Yes, count the hours toward FMLA allotment.
 - b) ADA – Is overtime an essential function of the job? If it is not essential, she gets out of it. If it is an essential function, employee does not get out of it.



The Opinion of Others

7. Rhonda's co-workers are very upset that she is "getting out of" the mandatory overtime because it means that they have to work even more overtime hours. Does this make a difference? What should her supervisor say to employees who ask why Rhonda doesn't have to work overtime like everyone else?
 - a) ADA – Does not make a difference if co-workers are irate. Do not share medical information. Limit what you say to employees. Train employees to say something, just not the wrong thing.
 - b) FMLA – Share limited information, but no medical information.





Eventually, Rhonda is released by her physician and can resume working overtime (after things have slowed down considerably, of course). She later takes a leave of absence for her bad back that she suffered as a result of a car accident. She takes 10 weeks FMLA leave and still has 2 weeks of FMLA leave remaining. She returns at the end of the 10 weeks but with a restriction that she cannot lift over 10 pounds. Her production position requires regular lifting over 15 pounds (an essential job function according to the job description).



Reinstatement Obligations

8. Under the FMLA can the Company deny reinstatement because she cannot perform the essential functions of the job?
 - a) FMLA – Yes.
 - b) ADA –Provide additional leave as a reasonable accommodation.

9. What are the Company’s reinstatement obligations under the ADA?
 - a) ADA – Is 15 pounds in the job description? Is it an essential function? What have we done with others?
 - b) Is reassignment a possibility?



Susan returns to work but her attendance starts to be poor. She has one week of FMLA leave remaining. When she calls in, she tells her supervisor that she is staying home because of her Lyme disease. She doesn't believe her.

10. Can the Company require Susan to bring in a doctor's note verifying that her Lyme disease causes her absence?
- a) Is it the same leave as noted on her certification? Look at the original certification to see if it is covered.
 - b) If it is a different issue, get a new certification.
 - c) If the certification has an end date, close it out with the employee.



When FMLA is Exhausted

11. Once Susan exhausts her FMLA leave can the Company discipline her under the Company's attendance policy? Can it terminate her if the number of absences triggers termination under the policy?
 - a) FMLA – If exhausted, don't worry about it. Count her absences.
 - b) ADA – If additional leave is needed, may grant it. Always look at whether it is an undue hardship. How much additional leave is needed? We can require **RELIABLE, REGULAR, PREDICTABLE** attendance.





The Company also has a call in policy that requires employees to call in 2 hours before the start of their shift if they will be absent. When Susan calls in saying she can't come in to work because of her Lyme disease, she usually calls in 2 hours after the start of her shift.

12. Can the Company discipline Susan for not following the call off policy?

- a) ADA – Warn the employee. Look at all factors, and enforce the policy consistently. Were there extenuating circumstances? You can discipline but conduct your due diligence and document it.
- b) FMLA – Notify us if foreseeable. Ask why calling late? Have a script.



Practical Advice

- Remain consistent when it comes to enforcing notice requirements under the FMLA.
- Absent an unusual circumstance, employers may enforce call-in procedures.
- Review FMLA policy to make certain that it's very clear as to how and to whom an employee should notify an employer of the need for leave. If an employer does not accept texting as a method of notice, say no.
- Use every opportunity to notify employees of absence and FMLA reporting obligations by clearly communicating call-in procedures to employees, including them in handbooks, mandatory postings, and FMLA certification forms. Require employees to direct a request for FMLA leave to Human Resources and to put the request in writing, absent unusual circumstances. If employees do not comply, it is not proper notice and employee will incur attendance points.
- Require specific information from employees who are taking intermittent FMLA leave.
- Train employees how to log call-ins for absences, tardiness, and leaving early or late; information logged should be specific and capture what employee said when calling in.





It's a Friday in July and the weather is predicted to be fantastic - - 80° and sunny with no humidity. Susan calls her supervisor and tells her that she has come down with a migraine headache and won't be in to work. Rhonda calls that same supervisor a few minutes later and tells her that she twisted her back the night before and thinks her old back injury is back and won't be in. The supervisor is suspicious, especially because she knows Susan and Rhonda are good friends and because she heard them talking about a day trip to the beach recently.



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Putting Two and Two Together

13. Can the Company hire a private detective to follow Susan and Rhonda?
- a) Do so carefully – understand your rights and the right to privacy.
 - b) ADA – Does not address.
 - c) FMLA – Is a migraine or the reported health issue related to the original need for leave?
14. If a co-worker reports seeing Susan and Rhonda at the beach should the Company fire them on the spot?
- The company must investigate it and get all sides of the story.



Putting Two and Two Together, cont.

15. Assume Susan has a work-related injury and has been off work for three months, and she cannot return to work. What can/should the Company do?

- a) FMLA leave is expired.
- b) ADA requires consideration of the need for additional leave – but how much leave?
- c) Workers Compensation does not have a provision protecting the employee's position. Termination for absenteeism/inability to do the job may be permissible if there is no reasonable accommodation.



Putting Two and Two Together, cont.

- d) Keep in mind (1) The laws and regulations were written with out much clue what other laws applied; (2) the EEOC still gives employers a little more slack on doing light duty for work injuries; (3) there is nothing in Iowa work comp law mandating/directing accommodation; (4) the work comp carriers do press to return people (to stop temporary benefits or to try to lessen permanency benefits) but they don't have a business to run; and (5) sometimes people just can't return to work



Employers/Managers Should Not:

- Complain that an employee has taken FMLA leave;
- Complain that an employee is missing too many days off (when absent for an FMLA qualifying reason);
- Reference FMLA time off in a performance review;
- Select an employee on FMLA leave for lay off when they had previously not been on “the list” without good reason;
- Employers may not use an employee’s leave as a negative factor in employment decisions such as hiring, firing, promotions, or disciplinary actions.
- Ignore an employee’s inquiries about their FMLA leave (call them back and direct them to Human Resources or have Human Resources call them back); and
- Suggest that an employee not take their statutorily protected leave.



Employers Should:

- Provide information and training to managers regarding FMLA;
- Ensure managers prepare accurate and honest employment evaluations;
and
- Ensure all employees are notified of their FMLA rights.



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Practical Advice

- Employers should assess what is reasonable in terms of completing tasks and goals given an employee's FMLA leave.
- Employers should then revise any goals to ensure employees are not being inadvertently penalized for taking FMLA leave.
- Although the FMLA does not require an employer to adjust its performance standards when the employee is actually working, employers cannot require an employee taking FMLA leave to have the same level of production, sales, completion of projects, etc. as if that employee had not taken leave.



Questions?

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Implicit Bias and How it Impacts Your Workplace



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Implicit or Unconscious Bias

What is Implicit or Unconscious Bias?

Some information taken from Google's rework:
<https://rework.withgoogle.com/subjects/unbiasing/>



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Four Common Types of Bias

Performance

Performance
Attribution

Competence/Likeability
Tradeoff

Maternal Bias



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Performance Bias: Gender

Case Study 1:

U.S. orchestras revealed women's odds of making it past the first round of auditions increased 50% with blind auditions¹

Case Study 2:

Study of identical resumes – one with a man's name and one with a woman's name – found that 79% of applicants with a man's name vs. only 49% of those with a woman's name were 'worthy of hire'²

Case Study 3:

Mothers overestimate their sons' crawling compared to their daughters'³

Findings:

- Relative to females, male performance is often overestimated
 - This is why gender-blind studies usually result in improving the performance of females
- This is especially true in traditionally male domains

1. Goldin, C. & Rouse, C. (200). Orchestrating impartiality: the impact of "blind" auditions on female musicians. *The American Economic Review*, 90(4): 715-741.
2. Steinpreis, R.E., Anders, K.A., & Ritzke, D. (1999). The impact of gender on the review of curricula vitae of job applicants and tenure candidates: a national empirical study. *Sex Roles*, 41(7-8), 509-28.
3. Mondschein, E.R., Adolph, K., & Tamis-LeMonda, C. (2000). Gender bias in mothers' expectations about infant crawling. *Journal of Experimental Child Psychology*, 77(4), 304-316.



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Performance Bias: Race

Case Study 1:

Resumes with white-sounding names received 50% more calls for interviews than identical resumes with black-sounding names. W “white” name is equivalent to about 8 more years of experience⁴

Case Study 2

Law partners were given a mistake-heavy law memo to grade⁵

- When a partner thought the author was black, the memo scored a 3.2 grade whereas the same memo scored a 4.1 where they thought the author was white
- There was also a drastic difference in the qualitative comments. White authors were described as having 'potential' whereas the black authors got comments like " I can 't believe he went to NYU"

FINDINGS

- Like gender, race impacts our perceptions about an individual's competence and ability
- Formal requirements applied rigorously to low status groups, leniently to high-status groups

4. Bertrand, M. & Mullainathan, S. (2004). Are Emily and Greg more employable than Lakisha and Jamal? A field experiment on labor market discrimination. *The American Economic Review*, 94(4), 991-1013.

5. Reeves, A.N. (2014). Written in black & white: exploring confirmation bias in racialized perceptions of writing skills. *Yellow Paper Series*, Nextions Consulting.



Performance Bias

IMPACT

- Not given the same opportunities
- Held to stricter/higher standards than whites/men
- Hired and promoted based on what they have proven and achieved; whites/men hired and promoted based on potential

COUNTERACT

- Objective standards: for hiring, evaluating performance and assigning opportunities
 - Set standards in advance
 - If possible, use gender- and race-blind evaluations in hiring
- Accountability: explain decisions on hiring, evaluation and peer reviews



Competence vs. Likeability: Gender

Case Study

HBS case: Heidi & Howard Roizen

- Equally competent
- Howard more likeable
 - Heidi selfish – “not the type of person you would want to hire or work for”⁹

FINDINGS

- Women face a tradeoff between competence & likeability that men do not
 - Women are communal: nice, submissive, warm
 - Men are agentic: powerful, assertive, action-oriented
- Women leaders seen as effective only when displaying ‘feminine’ aspects

9. Sandberg, S. (2013). *Lean In: Women, work, and the will to lead*. The Lean In Foundation, New York: Alfred Knopf.

Competence vs. Likeability: Gender

IMPACT

Having to produce results AND be liked makes it harder for women to:

- Get hired and promoted
- Negotiate on their own behalf
- Exhibit decisive leadership to drive results
- Avoid more office “housework”

COUNTERACT

- Push back in the likeability penalty
 - Be specific & ask if standards applied to men
- Words to Watch:
 - Aggressive, pushy, abrasive, demanding, difficult
 - Self-promotional, political, not team player
 - ‘Style’, not well-liked
- Take care recognizing accomplishments
- Rotate “housework” (notes, events)
 - Assign so not relying on volunteers

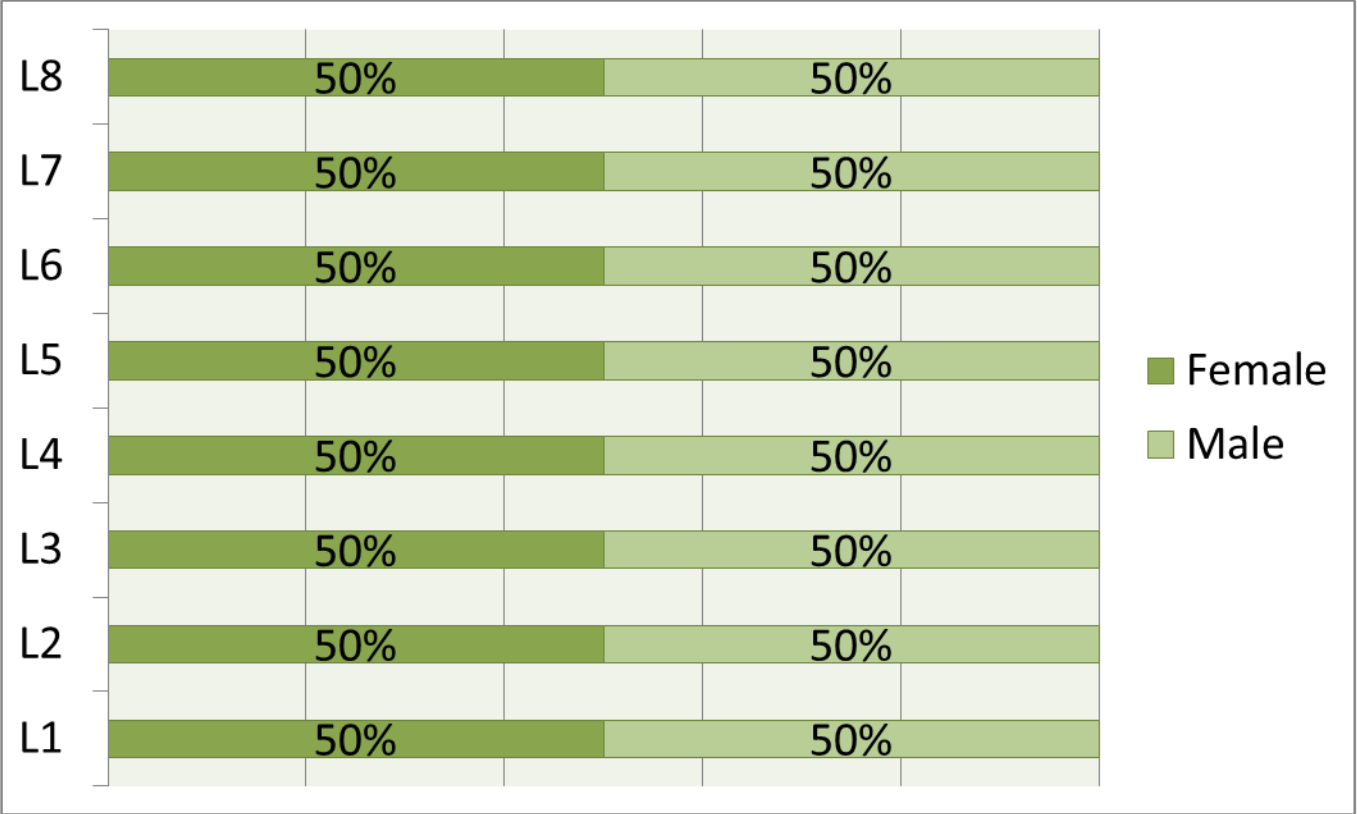


4 Items that Make a Situation More Prone to Implicit Bias

1. Task
2. Numbers
3. Clarity
4. Perceiver



Tiny Bias can Have Big Consequences



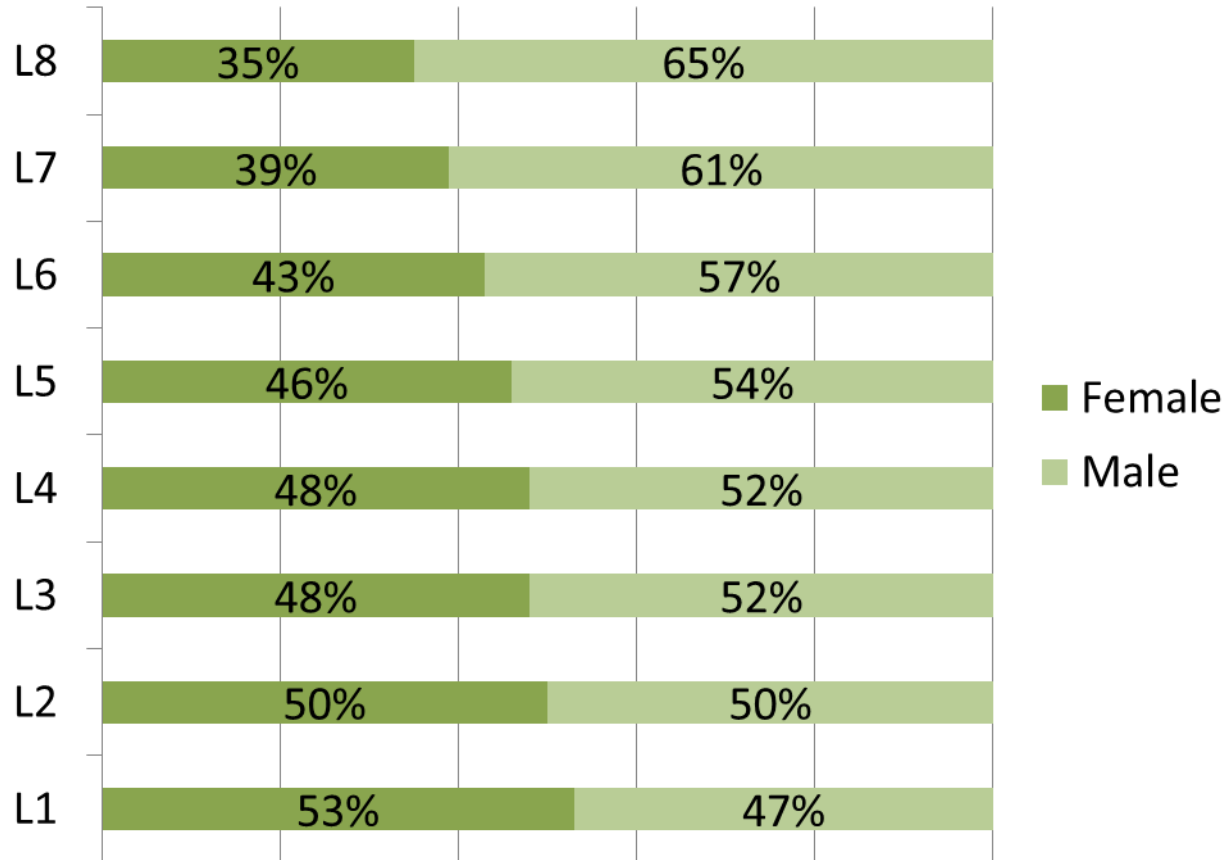
Source: *Male-Female Differences: A Computer Simulations*



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Tiny Bias can Have Big Consequences: Only 35% of Level 8 Employees Would be Female



Source: Male-Female Differences: A Computer Simulation



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Examples of Unconscious Bias at Work

“I want someone vibrant and energetic for this position. I don’t want this position to be filled with someone past their prime.”

“Are you sure you can take on this project? It will require late nights and I know you have young children.”

Interruptions



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How to Combat

- 1) **Create a Structure for Success:** What are structures that the Company can create to address implicit bias?
- 2) **Measure Results:** Consider what data would the Company collect?
- 3) **Evaluate Subtle Messages**
- 4) **Hold Everyone Accountable:** Justify your decisions. Call each other out.



Diverse and Inclusive Workforces Demonstrate:



Corporate Executive Board (CEB), (2012). Global labor market survey. *Creating Competitive Advantage Through Workforce Diversity Report*. Retrieved from <http://www.executiveboard.com/exbd/human-resources/corporate-leadership-council/diversity-and-inclusion/diversity-white-paper/index.page>



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At Firms with Diverse Leaders, Employees Reported They Were:



Hewlett, SA, Marshall, M, & Sherbin, L. (2013). Innovation, diversity and market growth. Center for Talent Innovation, 4-6. <http://www.talentinnovation.org/publication.cfm?publication=1400>



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Take the Implicit Bias Test

<https://implicit.harvard.edu/implicit/takeatest.html>

YOU are biased. And so I am. And **IT MATTERS.**



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ADA Problems and How to Avoid Them



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From the Plaintiff's Perspective

- Plaintiff's Attorney Wish List
 - Focus case on employer
 - Make employer's actions seem threatening
 - Make employer seem disrespectful of law and facts



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Good vs. Bad ADA Policy

- A good ADA policy shows you respect the law and gives the jury a roadmap—your roadmap
- A bad policy (or no policy) will hurt every part of your case



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Role of the Supervisor

- Direct supervisors SHOULD NOT
 - Try to be ADA experts
 - Make ADA decisions without consulting HR
 - Review employee medical documents



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Role of the Supervisor, cont.

- Direct supervisors SHOULD
 - Be trained to recognize ADA issues and send them to HR
 - Provide routine/easy accommodations—breaks to check blood sugar, wrist rests for carpal tunnel
 - Understand that HR needs their input



Role of Human Resources

- Human Resources SHOULD gather information
 - Direct supervisor
 - Employee or applicant
 - Doctors (but be careful!)
- Human Resources SHOULD maintain records for consistency
 - Essential functions for job positions
 - Accommodations granted or denied



What's the Baseline for What's Needed?

- Qualification Standards
 - Keep qualification standards targeted
 - Most qualification standards will screen out some people with disabilities—Illegal unless the standards are consistent with business necessity
 - Need to have consistent evaluation of risk



Medical Information

- Requests for Medical Information in the Interactive Process
 - Keep medical requests targeted
 - Can ask for medical verification when disability/need is not obvious
 - Don't ask for more than you need to make a decision
 - Generally can't require that employee see a specific doctor



Potential Issues

- Delegation/Joint Employer Issues
 - Can't contract away ADA liability
 - Illegal to participate in a contract or other relationship that has the effect of subjecting a qualified applicant or employee to disability discrimination
 - Can't do through another what you can't do yourself
 - You are responsible for temp workers
 - You are responsible for ADA decisions you delegate to doctors or others



What Do Employees Want?

- Don't jump the gun in viewing employees as adverse
 - Most employees want a win-win
 - Want to do their jobs
 - Want to be listened to and respected



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Questions?

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