KNOWING YOUR RIGHTS IN THE WORKPLACE

Instructor's Packet

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Knowing Your Rights in the Workplace

Employment Law is a very complicated field. It is also very misunderstood. This module is intended to give you some basic information what is illegal discrimination and what is illegal harassment in the workplace. Also, you will learn what you have a right to expect in the workplace and some things that may surprise you about what is "not" illegal in the workplace.

Instructional Plan:

Administer Knowing Your Rights in the Workplace Pre-Test.

To introduce some examples of discrimination and harassment in the workplace, refer to Worksheet # 1 – Is This Harassment or Discrimination? and have learners answer the questions about each scenario with YES or No. After they have time to read each question and respond, discuss each scenario. Direct learners to keep their completed Worksheet as they will review it at the end of the class session.

Direct learners' attention to Overhead # 1 & 2 – Common Myths about Employee Rights. Ask for volunteers to read each of the 4 Myths listed. List on the board the categories under discrimination learners need to be aware of: (age, race, sex, national origin, religion and disability).

Next, take a look at the definitions for discrimination and harassment in Overheads # 3-10. Discuss the information in the overheads and have learner take notes on what is legal and not legal in the workplace. Emphasize important points.

Discuss the Employee's Legal Rights – Worksheet # 2 as well as some things job applicants can expect to encounter with employers.

Divide class into two groups, assign one group the article on "How to assert your legal right" – Worksheet # 3 and the other group “Legalities you should know when job hunting”, - Worksheet # 4. Allow time for them to read and discuss within the group the topics. Ask each group to report back to the class the major points of their topic.

Have learners complete Worksheet # 5 - Quiz on Sexual Harassment and then discuss the correct answers.
Closure:

Have learners retrieve their completed *Worksheet # 1* and discuss what changes they would make in their answers to each scenario after completing this lesson. Review any areas of concern.

Administer the Knowing Your Rights in the Workplace Post-test.
Knowing Your Rights in the Workplace Pre/Post Test (Circle Pre or Post)

1. What is discrimination in the workplace?

2. Two employees, one male and one female are working in the same place, doing equal work and receiving unequal pay. What is this called?

3. What office should you contact to report discrimination in the workplace?

4. Employees cannot be fired without cause. True or False Circle the best answer.

5. Treating an employee badly in the workplace is harassment. There are two types of sexual harassment. What is quid-pro-quo harassment?

6. Which of the following is not a legal right in the workplace?
   a. The right not to be discriminated against
   b. The right to a safe workplace
   c. The right to pay raises based on merit
   d. The right to privacy in personal matters

7. Potential employers have the right to check your credit rating before they hire you. True or False Circle the best answer.

8. Employers have the right to test new applicants for traces of drugs if:
   e. The applicant knows that such testing is part of the screening
   f. The employer has not offered the applicant the job
   g. The employer tests at least one in five applicants
   h. The employer pays for the test. Circle the best answer.

9. Typically, once employed, if an employee tests positive for drugs, who must pay for retesting?

10. Harassment by an employer just because he doesn’t like you is illegal. True or False Circle the best answer.
Answer Key for Knowing Your Rights in the Workplace

1. Discrimination is the act of treating people differently, not based on merit but based on the color of their skin, the shape of their eyes, their manner of speaking, their sex and so forth. Accept similar answers.

2. Sexual discrimination

3. Equal Employment Opportunity Commission

4. False

5. "This for That"; Trade for sex. Accept similar answers

6. C) The right to pay raises based on merit

7. True

8. A) The applicant knows that such testing will be part of the screening process

9. Employee

10. False
Worksheet # 1

IS THIS HARASSMENT OR DISCRIMINATION?
YOU BE THE JUDGE

Read the following and decide if each situation illustrated represents a case of discrimination or harassment in the workplace. After you make a decision, write yes or no. Discuss your answers.

1. A small group of account executives have regular weekly meetings with their manager, John. John always asks Susan, the only female executive, to serve coffee and refreshments to the others (five males). Is Susan being sexually harassed?

2. Marcia's boss asks her to join him for dinner after work to discuss her new project. Is this harassment?

3. Male students were presented with a written job application (which, unknown to the students, was the same for all applicants) and required to do a telephone interview of a female applicant. A picture of the applicant (evaluated beforehand by a test group to be a picture of a physically attractive or unattractive female) was attached to the application. The factual record produced by this process looked like an accurate portrayal of the applicant in every instance. But the interviews done of attractive applicants were consistently longer. The interviewer showed interest in the attractive applicant and the applicant responded by bringing out more about her background and qualification. It is not that the interviewer falsified the applicant's answers but that the interviewer never elicited the kind of information in one case he elicited in another. Moreover, this difference in the interviewer's interest about the applicant led to a difference in whether the interviewer recommended hiring the applicant. Is this discrimination?

4. Valerie's boss offers her a promotion if she agrees to sexual favors. Valerie accepts and as a result receives the promotion that two other women were striving for. Is this discrimination?

5. Frank, a Mexican construction worker, constantly finds in his tool box cartoons about his ethnic background and notes that he finds offensive. Is this harassment?

6. Stephen and Susan constantly talk to each other in a suggestive manner. Stephen remarks how lovely Susan looks each day, while Susan tells Stephen how she enjoys watching him play tennis outside of the building during lunch hour. Is this harassment?
7. The company in this scenario was losing business and had to cut its sales-force back. The district manager considered what to do and decided to lay off two people. He then considered each of the six senior salespersons to let go. It turns out that a given account – Account X – was posting a large loss. Two salespersons had been jointly responsible for the account. Cliff was 39 and Harry was 59 at the time. The manager had given them both identical performance ratings before the layoff was needed. Five months before the layoff, the manager stated, “Harry enjoys a good relationship with his customers and is conscientious about increasing sales.” He stated, “Cliff performs in a very conscientious and consistent manner.” Regardless of these evaluations, the manager decided to lay off these two men, his two oldest supervisors. Is this discrimination?

8. Mary’s boss always makes remarks about her “sexy” legs? Is this sexual harassment?

9. Todd, a plant manager, made homosexual advances to one of his employees, Perry. Perry told Todd he was not interested. Over the next several weeks, Todd continued to make advances, after Perry asked him to stop. Then, Perry reported the incidents to Todd’s supervisor. Todd denied the charges and subsequently fired Perry because he complained. Is this harassment?

10. A female applicant seeking the job as a welder in a steelmaking plant was all but offered employment by her male interviewer based on her extensive experience and skills. The interviewer told her he would get back to her after getting his boss’ approval to hire her. The interview was basically over when the female (who was a single parent of two young children) asked the question, “Do you have a lot of overtime here?” After a pause, the interviewer said, “Yes.” After the female left, the interviewer marked her application, NOT WILLING TO WORK OVERTIME,” and rejected her. Is this discrimination?
COMMON MYTHS ABOUT EMPLOYEE RIGHTS

Below are a variety of common incorrect beliefs about employee rights.

**Myth #1: Employees Cannot Be Fired Without Cause**

This is the most common myth regarding employee rights. In most states, employment is "at will". This means that the employer can fire the employee for no reason or any reason.

**There are two exceptions to this general rule:**

1) **Discrimination**

Employers cannot discriminate against employees are the basis of age, race, sex, national origin, disability, and a variety of other reasons. Employers cannot discriminate against an employee because he or she has ["whistleblown"] which is reporting illegal activity of the employer. They also cannot discriminate against an employee for engaging in other protected activities, such as filing workers' compensation claims.

If an employer fires an employee because of one of these factors, that is against the law, and the employee can sue.

2) **Contract**

If any employee has a contract with the employer, the employee probably cannot be fired without just cause. Contracts can be written or implied. A common way for an employee to have a written contract is to be in a union.

Other than these exceptions and a few rare others, employers can fire employees for any reason, even because they just don't like the employee.

**Myth #2: Employees Cannot Be Harassed**

"Harassment", standing alone, is not illegal. The harassment must be based on an illegal factor, like those listed above under "discrimination." In other words, the employer cannot harass the employee because of his race. But he can harass him because he just doesn't like him.
Myth #3: Employees Can Always Sue for Emotional Distress if They Are Fired Wrongfully

If an employee has a right not to be fired except for just cause because of a contract, and if fired, he can sue only for his lost wages and benefits. He cannot sue for emotional distress.

If the employee is fired for an illegal reason, such as racial discrimination, he can sue for emotional distress, in addition to lost wages, punitive damages, and attorneys fees.

Myth #4: Employers Cannot Reduce Pay

Unless the employee has a contract to the contrary, there is nothing to stop an employer from reducing pay. This reduction cannot be based on an illegal reason, such as the employee's race. It must be because of a business decision (which can include greed).

However, if an employee has done work, expecting to receive a certain rate of pay, the employer must pay for those hours at that rate. Reductions in pay can only be for potential pay; they cannot be retroactive.
DISCRIMINATION

WHAT IS DISCRIMINATION?

Literally, discrimination is nothing more than the act of making or recognizing a difference between two things. Often, in the workplace, discrimination means the act of treating people differently, not based on merit but based on the color of their skin, the shape of their eyes, their manner of dress or speaking, their sex and so forth. Sometimes we treat a person better because he or she is like us or worse because he or she is different from us. It is at these times that we might engage in illegal discrimination.

WHAT IS ILLEGAL DISCRIMINATION?

The major types of illegal discrimination occur when an employer, a labor union or an employment agency:

➢ Treats an employee, applicant or former employee (or member or person seeking a referral) differently because of his or her race, color, sex, national origin, religion, age or disability;

➢ Uses a selection procedure, test, qualification, employment rule or other device, neutral on its face but which causes a substantial, negative impact upon a group of persons because of their race or color, sex, national origin, religion, age or disability.

➢ Fails to provide a reasonable accommodation to an employee’s, applicant’s, or former employee’s (or member’s or person seeking referral’s) religious or disability-based needs;

➢ Helps create or condone a work environment that includes harassment of such frequency and/or severity that it rises to the level of a condition of employment for one or more persons working in the environment and such that the harassment is based upon race or color, sex, national origin, religion, age or disability; or

➢ Retaliates against a person for opposing a practice made illegal as described above or for participating in any investigation or proceeding under one of the Federal employment discrimination laws Equal Employment Opportunity Commission administers.
WHAT IS NOT ILLEGAL DISCRIMINATION?

You can see from the above that each type of discrimination involves more than different treatment, adverse impact, failure to accommodate, harassment or retaliation. The difference in treatment must be caused by race, color and so forth. The impact must arise because of one of the reasons covered in the laws EEOC administers. The need for accommodations must be grounded in a person's religion or disability rather than personal preference. The harassment must be based upon sex, nation origin and so forth. The retaliation must be more than a hostile reaction to a complaint. The original complaint has to have been a complaint that one of the laws EEOC administers was broken.

This means that unfair treatment is not by itself illegal. A strong personality clash with your boss or a deep difference of opinion about something at work that leads to a harsh work environment is not by itself illegal. Harassment of you for any reason other than your race, color, sex, national origin, religion, age or disability is not by itself illegal. FOR SUCH MATTERS TO BE ILLEGAL, THE EVIDENCE MUST SHOW A LINK BETWEEN THE TREATMENT, THE IMPACT, THE FAILURE TO ACCOMMODATE, THE HARASSMENT OF THE RETALIATION AND YOUR RACE, COLOR, SEX, NATIONAL ORIGIN, RELIGION, AGE, DISABILITY OR PRIOR COMPLAINT (OR PARTICIPATION).
Overhead # 5

Sexual Discrimination

EQUAL PAY FOR EQUAL WORK

A Federal law, the Equal Pay Act requires employers to pay all employees equally for equal work, regardless of their gender. It was passed in 1963 as an amendment to the Fair Labor Standards Act.

While the Act technically protects both women and men from gender discrimination in pay rates, it was passed to help rectify the problems faced by women workers because of sex discrimination in employment. And in practice, this law has almost always been applied to situations where women are being paid less than men for doing similar jobs.

The wage gap has narrowed slowly since 1980, when women's earnings were only 60% of men's; the 2000 figure has women earning about 75% as much as working men. But the Equal Pay Act likely has little to do with it. The law's biggest weakness is that it is strictly applied only when men and women are doing the same work. Since women have historically been banned from many types of work and had only limited entree to managerial positions, the Equal Pay Act in reality affects very few women.

To successfully raise a claim under the Equal Pay Act, you must show that two employees, one male and one female:

- are working in the same place
- are doing equal work, and
- are receiving unequal pay.

You must also show that the employees in those jobs received unequal pay because of their genders.

Determining Equal Work

Jobs do not have to be identical for the courts to consider them equal. In general, the courts have ruled that two jobs are equal for the purposes of the Equal Pay Act when both require equal levels of skill, effort and responsibility and are performed under similar conditions.

There is a lot of room for interpretation here, of course. But the general rule is that if there are only small differences in the skill, effort or responsibility required, two jobs should still be regarded as equal. The focus is on the duties actually performed. Job titles, classifications and descriptions may weigh in to the determination, but are not all that is considered.

The biggest problems arise where two jobs are basically the same, but one includes a few extra duties. It is perfectly legal to award higher pay for the extra duties, but some courts have looked askance at workplaces in which the higher-paying jobs with extra duties are consistently reserved for workers of one gender.
Determining Equal Pay

In general, pay systems that result in employees of one gender being paid less that the other gender for doing equal work are allowed under the Equal Pay Act if the pay system is actually based on a factor other than gender, such as merit of seniority system.

How to Take Action

The Equal Pay Act was passed one year before Title VII of the Civil Rights Act. Both laws prohibit wage discrimination based on gender, but Title VII goes beyond ensuring equal pay for equal work, as it also bars discrimination in hiring, firing and promotions. In addition, Title VII broadly prohibits other forms of discrimination, including that based on race, color, religion and national origin. For more information contact your local EEOC office.

Concerned about Equal Pay – For Good Reason

According to a recent nationwide survey by the AFL-CIO, money is foremost in the minds of America’s working women. Asked to cite their top workplace concerns, about 94% of the women polled rated equal pay for equal work; and 78% cited sexual harassment.

The math supports the mindset. On Average, according to the Institute for Women’s Policy Research, women earn $24,000 annually – much less than men’s average $32,000 yearly average. If these figures hold, today’s 25 year old woman who puts in 40 years of work before retiring will earn about a half million fewer dollars than a male worker at the same age and stage.
HARASSMENT

Everyone has a right to a workplace free of harassment.

"Harassment", standing alone, is not illegal. The harassment must be based on an illegal factor, like those listed above under "discrimination." In other words, the employer cannot harass the employee because of his race. But he can harass him because he just doesn't like him.

If an employer treats an employee badly because of race, it is racial harassment. If it is because of sex or gender, it is sexual harassment, etc. But there is no law against general "harassment" or bad treatment of an employee.

SEXUAL HARASSMENT IN THE WORKPLACE

The definition of sexual harassment is an unwelcome advance, request, or other verbal, visual or physical conduct of a sexual nature and:

1. It is implied that your continued employment depends on your sexual submission;
2. The offensive conduct has the purpose or effect of unreasonably interfering with your work performance or creating an intimidating, hostile, or working environment;
3. It is used as the basis for employment decisions affecting you, such as promotions

Sexual harassment is one of the most complicated areas of employment law. It is also one of the areas that receives the most press.

One the next sheet is a basic guide to sexual harassment in the workplace. Please note that sexual harassment often goes hand-in-hand with other illegal acts, like gender discrimination. If you have a problem with sexual harassment, you should think about what else might be going on as well.
The Two Types of Sexual Harassment

There are two types of sexual harassment, "quid-pro-quo" and "hostile environment."

Each will be explained separately, although where there's one, there's often the other.

Quid-Pro-Quo Harassment

"Quid-pro-quo" is Latin for "this for that." It is a trade. When the trade is on the basis of sex, it is illegal.

This is the when the employer makes sex a prerequisite to getting something in the workplace. For example: sleep with me and you'll get the job." That's illegal. This type of sexual harassment is the "casting couch" cliché.

Quid-pro-quo can also include negatives. For example, "sleep with me or you're fired" is also illegal.

Who can sue?

Obviously, the woman who is fired because she wouldn't sleep with the boss can sue. But so can a woman who the boss didn't even want to sleep with.

Take for example a situation where the boss asks one of his assistants to sleep with him in exchange for a promotion. She does it and gets the promotion. Under the law, she has a claim, because her agreeing to his sexual demands was a condition of the promotion. She also has a claim if she refused and didn't get the promotion.

Now, if she was just having an affair with him because she wanted to, there is no claim.

What about the other assistants? Do they have a case because the other assistant got a promotion because she was sleeping with the boss, and they did not? Probably not. In most states, there is no sexual harassment or discrimination claim because a lover got special treatment. However, if the boss made sexual demands which they refused, and that's why they didn't get the promotion or other benefits, they have a claim.

What about the person who accepts the offer of advancement in exchange for sex. Can she sue? She can certainly sue - she either deserved the promotion or didn't deserve it; she shouldn't have been put in the position of considering whether or not to sell her body to get it. The problem is the idea of "consent". Sexual harassment must be unwelcome. If she was happy with the trade-off, she has a difficult case.
Hostile Environment Harassment

Hostile environment sexual harassment is a situation in which the employer (or a supervisor or co-worker) does or says things that make the victim feel uncomfortable because of his or her sex. Hostile environment sexual harassment does not need to include a demand for an exchange of sex for a job benefit. It is the creation of an uncomfortable environment.

First, the conduct must be offensive. If two employees have a good time exchanging sexual jokes, it would not be sexual harassment. If one employee kept telling another employee sexual jokes that the second employee found offensive, it would be sexual harassment. If two employees dated and engaged in consensual sex, this would not be sexual harassment. If one of the two then wanted to terminate the relationship, and the other used the unequal relative terms and conditions of employment of the workplace to further the relationship, this would be sexual harassment.

Jokes, pictures, touching, leering, unwanted requests for a date have all been found by courts to be sexual harassment. Sexual harassment can be between people of the same sex. Sexual harassment can be a woman harassing a man.

Who Can Sue?

Anyone who is offended by a sexually harassing environment may theoretically sue. However, that employee’s offense must be reasonable. An extremely sensitive person might not be able to maintain a claim, because her feelings of having been offended were not reasonable.

The reasonableness is evaluated by a standard that is the same as a person in the victim’s circumstances. For example, what a reasonable woman might think is a hostile environment is not necessarily the same as what a man might think is a hostile environment. If it’s a woman who was harassed, it’s the woman’s point of view that counts.
Overhead # 10

**Damages In Sexual Harassment Cases**

Victims of sexual harassment can recover for their lost wages, future lost wages, emotional distress, punitive damages, and attorney's fees.

If you are sexually harassed by your employer, supervisor, or another employee at your place of work, you need to keep a record. Every time, write down what happened, who said what, the place or area on your worksite it occurred, the date and the time. Find out if your company has a sexual harassment policy or procedure, and try to follow the company's procedure. Sexual harassment is illegal and you do have legal right under the law. If you need or want help in knowing your specific rights, contact your local Human Relations Commission or the Equal Employment Opportunity Commission.

Examples of what may, if unwelcome and severe or pervasive, constitute sexual harassment, besides sexual advances and requests for sexual favors include, but are not limited to:

- sexually suggestive physical contact or behavior, such as grabbing, groping, kissing, fondling, rubbing or massaging someone's neck or shoulders, stroking someone's hair; unwelcome leering, whistling, pinching, brushing against the body; suggestive, insulting, or obscene comments or gestures;

- the display in the workplace of sexually suggestive or explicit objects, pictures, posters or cartoons, including, but not limited to, offensive electronic communications or voice-mail messages; access to pornographic images through the Internet or e-mail;

- verbal abuse of a sexual nature including foul or obscene language, lewd, off-color, sexually oriented comments or sexual jokes or any graphic verbal commentary about an individual's body.

**Title VII of the Civil Rights Act of 1964** states that sexual harassment is illegal. It is illegal even if the harasser is not your boss, and even if he is not threatening your job if you don't go along.
Worksheet # 2

WHAT ARE YOUR LEGAL RIGHTS IN THE WORKPLACE?

Depending upon the size of your employer, the state in which you live and your profession, you may be entitled to certain legal protections in the workplace, including:

- the right not to be discriminated against on the basis of your race, national origin, skin color, gender, pregnancy, religious beliefs, disability or age (and in some places, marital status or sexual orientation)

- the right to a workplace free of harassment

- the right to be paid at least the minimum wage, and an overtime premium for any hours worked over forty in one week (or, in some places, over eight hours in one day)

- the right to a safe workplace

- the right to take leave to care for your own or a family member's serious illness, or following the birth or adoption of a child, and

- the right to some privacy in personal matters.
Worksheet # 3

HOW TO ASSERT YOUR LEGAL RIGHTS

If you think that your legal rights may have been violated, what should you do about it? Here are several steps you can take:

1. Talk to Your Employer

The first thing to do is talk to your employer. An intelligent discussion can resolve most wrongs, or at least get your differences out on the table. Most companies want to stay within the law and avoid legal tangles. Unless you work for a truly uncaring and antagonistic employer, chances are that your problem is the result of an oversight, a misunderstanding or a lack of legal knowledge.

Here are a few tips on how to present your concerns to your employer:

- **Know your rights.** The more you know about your legal rights in the workplace, the more confident you will be in presenting your problem. If you need or want help in knowing your specific rights, contact your local Human Relations Commission or the Equal Employment Opportunity Commission.

- **Stick to the facts.** Before meeting with your employer, write a brief summary of what has gone wrong and your recommendation for resolving the problem. It might help to have someone more objective, such as a friend or family member, review the facts and brainstorm with you about possible resolutions. Make sure not to leave any important facts out.

- **Don't be overly emotional.** Dealing with a workplace problem can be stressful, but unfounded accusations and emotional outbursts won't help you get your point across. Practice your presentation ahead of time to make sure you can remain professional and calm.

- **Decide the next steps.** Before finishing your discussion with your employer, come to some agreement with your boss as to what will happen next. Will the company investigate the problem? Will your boss talk to your co-workers or supervisor? Will evaluations, job responsibilities or reporting relationships be changed?

2. Follow Up With Your Employer

Once you have spoken to your employer, make sure to follow up on the meeting. If your employer promised to investigate the matter or talk to other employees, check back to find out the status of those actions. After a few weeks have passed, schedule another meeting with your employer to discuss what progress has been made in resolving your problem.
Worksheet #3 – (Page 2)

3. Document the Problem

If talking things over with your employer does not resolve the dispute, or if your employment situation seems to be headed downhill, protect yourself by gathering documentation. Take notes of key conversations and events, including the time, date and names of others who were present. Gather documents that might support your side of the story, such as company policies, offer letters, performance reviews, memoranda, correspondence or employee handbooks.

Be careful, however, to collect only those documents you have legitimate access to. Taking or copying confidential documents – even if they are related to your dispute – could get you fired and could compromise your legal claims.

If your co-workers saw or heard any of the incidents that contributed to the problem (such as a verbal performance review, a harassing comment or a search of your workspace), ask them to write down what they saw and heard in signed, dated statements.

4. Don't Miss Legal Deadlines

If your employer doesn't seem to be taking your complaint seriously, or you are demoted or fired, you will have to consider whether to take legal action. The law sets deadlines (often called "statutes of limitations") for filing certain types of claims or lawsuits, ranging from several weeks to several years. If one of these deadlines applies to your case, you will have to think sooner rather than later about whether to go to court. You might want to consult with a lawyer about your problem to figure out how strong your claims are, whether any filing deadlines apply to your dispute and what you might expect to gain or lose if you file a lawsuit.
LEGALITIES YOU SHOULD KNOW WHEN JOB HUNTING

Can Potential Employers Check Your Credit?

Do potential employers have the right to peep into your credit file? They do. And they often will.

Many employers now do routine credit checks on employees and job applicants, relying on the same credit bureau files used by companies that issue credit cards and make loans. Unfortunately, there is very little you can do to prevent employers from evaluating your credit history in deciding whether to hire, promote or even continue to employ you.

Employers' Access to Your Record

A federal law, the Fair Credit Reporting Act requires credit agencies to share their data only with those who have a legitimate business need for the information, and employers generally qualify. Employers are given broad access to an individual's credit report, which they can use to evaluate eligibility for "employment, promotion, reassignment or retention." In short, as far as your employer or prospective employer is concerned, your credit rating is an open book.

Credit bureaus typically track not only your bill-paying habits, but also all companies that have asked to see your credit rating when you apply for credit, insurance, a place to live or a new job. The result is that employers increasingly use credit bureau files to find out whether an employee is job hunting with other companies. And prospective employers may use a shaky credit report to conclude that it is risky to welcome you aboard.

However, a recent amendment to the Fair Credit Reporting Act gives you some rights to know how and whether a current or prospective employer is using credit information about you. It requires an employer to get your written permission before peeping at your credit report. And the words granting permission can't be buried deep within a job application form or other word-laden document; you have to sign separately to signal your approval.

While this sounds like strong stuff at first, the truth is that if you refuse to give approval to the employer's wondering eyes, you will leave the impression that you have something to hide — and that will likely kill your chances for getting or keeping the job. Also, the amendment mandates that a prospective employer who rejects you for a job based "in whole or in part" on an item on your credit report must give you:

- a copy of the report before turning you down, and
- written instructions on how to challenge the accuracy of that report.

Again, while this may seem like strong consumer protection, the reality is that it is tough to track whether employers have followed the letter of the law. They remain free to claim
that you were turned down for reasons entirely separate from the harsh marks your credit report.

Worksheet # 4 (Page 2)

**How to Take Action**

An employer who uses your credit information against you is not only supposed to fess up to it, but must also give you the name, address and telephone number of the credit agency that provided the report about you. You are entitled to a free copy of the report from that agency.

You also have the right to correct any errors in credit reports compiled about you, and most experts recommend that you check and correct your file every few years, especially if you will be job hunting or applying for credit. Finally, if you suspect a misuse of your credit report, you may want to contact your state consumer protection agency or attorney general to see whether state laws give you additional avenues for action.
Worksheet # 4 (Page 3)

2. Can you pass the test?

It is nerve wracking to interview for a new job. And it can be even more unnerving when a job offer depends on passing a test such as those for drug and alcohol use. Let's look at when and whether they are legal.

Prospective employers and employees want the same thing: to match the best possible person with the most fitting job. But these days, there are a number of tests that purport to take the guesswork out of this process. Plowing through the Information Age, many employers are quick to welcome outside evaluations of an individual's mental and physical fitness and integrity, and to believe in their results — often at the risk of sacrificing individual privacy rights.

Medical Examinations

A number of insurers require employees to undergo medical evaluations before coverage will begin. Beyond that, and often in addition to that, employers may require specific physical and mental examinations to ensure a qualified workforce. However, there are strict rules on when those exams can be conducted — and on who can learn the results.

Employers may legally give prospective employees medical exams to make sure they are physically able to perform their jobs. However, timing is crucial. Under the federal Americans with Disabilities Act, or ADA, covered employers cannot require medical examinations before offering an individual a job. They are, however, free to make an employment offer contingent upon a person's passing a medical exam.

Courts have also ruled that the constitutional right to privacy covers medical information and that honesty is the only policy when it comes to medical tests for prospective and existing employees. That is, employers must identify what conditions they are testing for — and get individual consent to perform the tests before they proceed.

During the course of a medical exam, a company-assigned doctor may ask anything at all about an applicant's health and medical history. However, the final medical evaluation is supposed to include only a stripped-down conclusion: able to work, able to work with restrictions, not able to work.
Worksheet # 4 (Page 4)

Testing for Drugs and Alcohol

The abuse of drugs such as alcohol and cocaine has been widely publicized for many years -- and many private employers now test for drug and alcohol use. The laws regulating drug use in the workplace and testing employees for such use, however, are relatively new and still being shaped by the courts. Currently, there is a hodgepodge of legal rules controlling drug testing -- some in the Americans with Disabilities Act, some set out in specific state laws and a number established through court decisions.

The major law on workplace drugs is narrow -- and it contains a few teeth. The Drug-Free Workplace Act, passed in 1988, dictates that workplaces receiving federal grants or contracts must be drug-free or lose the funding, although it does not call for testing or monitoring workers.

Work-related drug tests take a number of forms. Analyzing urine samples is the method most commonly used, but samples of a worker's blood, hair and breath can also be tested for the presence of alcohol or other drugs in the body. Typically, state laws set out the testing methods that must be used. Many statutes provide for retesting, at the employee's expense, following a positive test.

Metabolics of illegal substances remain in urine for various periods: cocaine for approximately 72 hours, marijuana for three weeks or more. Detectable residues apparently remain in hair samples for several months.

In general, employers have the right to test new job applicants for traces of drugs in their systems as long as:

- the applicant knows that such testing will be part of the screening process for new employees
- the employer has already offered the applicant the job
- all applicants for the same job are tested similarly, and
- the tests are administered by a state-certified laboratory.

Today, most companies that intend to conduct drug testing on job candidates include in their job applications an agreement to submit to such testing. If, in the process of applying for a job, you are asked to agree to drug testing, you have little choice but to agree to the test or drop out as an applicant.
3. **Should you inflate your Resume?**

Lying on your resume may leave you out of luck if you later want to file a complaint against your employer for wrongful termination or discrimination. Many jobseekers inflate their resumes by exaggerating their experience or credentials. A recent study revealed that:

- 9% of job applicants falsely claimed they had a college degree, listed false employers, or identified jobs that didn't exist.
- 4% listed incorrect job titles.
- 11% misrepresented why they left a former employer, and
- nearly 33% listed dates of employment that were off by more than three months.

Employers have always been free to fire employees who lie about a significant qualification. Now they may be able to use this misinformation to defend against lawsuits for wrongful termination or discrimination. Courts reason, in essence, that employees who lied to get a job cannot later come to court and claim the employer did them wrong.

The emerging tactic even has a name: the After-Acquired Evidence Theory. Conduct that has been admitted as after-acquired evidence has included:

- 150 instances of falsifying company records
- failing to list a previous employer on a resume
- failing to admit being terminated for cheating on timecards
- failing to reveal a prior conviction for a felony
- lying about education and experience on a job application
- fabricating a college degree during an interview, and
- removing and copying the company's confidential financial statements.

If you did lie on your job application or resume, however, you may not be completely out of luck. Your employer can use the misinformation as a defense only if it was truly related to your job duties or performance. The employer must be able to show that you would have been fired — or not hired in the first place — if he or she had known the truth. Proving this type of second-guessing may not be easy.
Worksheet # 5

Quiz on Sexual Harassment

For each question, place a check mark beside your answer. When you've completed the quiz, check your answers.

1. Janet Harris, a factory line supervisor at XYZ Inc., and Philip Roth, an employee working in her section, are both consenting adults involved in a torrid love affair. Their relationship:

- A. is legal.
- B. is inadvisable.
- C. can create a legal liability for both the supervisor and the business.
- D. all of the above.

2. Roth is transferred away. When he returns nearly two years later, Harris wishes to resume the affair, but Roth has become engaged to be married and does not want a sexual relationship with Harris. When Harris tells Roth his next promotion may be contingent on resuming their affair, Roth sues. Based on current precedents, the court is likely to rule that:

- A. Having willingly participated in a consensual affair, Roth can't claim harassment.
- B. Harris is guilty of quid pro quo harassment. Both she and XYZ Inc. may be held liable.
- C. Roth may claim harassment, but because of his willing involvement in the earlier affair, he may not collect damages.
- D. The case would likely be thrown out of court.

3. A "yard duty" supervisor at an elementary school has witnessed repeated incidents in which four sixth grade boys surround a fourth-grade girl and tease her about "getting boobs" and "having cute buns" until she cries. The girl's parents take the case to court. The supervisor:

- A. has no legal liability.
- B. is responsible for stopping and correcting the problem immediately.
- C. can be called to court as a witness, but not as a defendant.
- D. may be sued, together with the school.
- E. both B and D.
Worksheet # 5 (Page 2)

4. Joe Kaiser, a supervisor at XYZ, describes himself as a "touchy" or "huggy" person who is always touching his employees. When Joe's supervisor, Mark Lindsay, questions his behavior, Joe argues that no one has ever complained about it before and Mark lets it go. Should an employee in Joe's section sue?

   A. there are no grounds for harassment claims.
   B. Joe and Mark may be found personally liable and ordered to pay damages, as may XYZ Inc.
   C. harassment may be charged, but can never be proven.
   D. Mark Lindsay alone is at fault for not taking more forceful action with Joe Kaiser. He alone may be liable for damages.

5. Many workers who feel they have been harassed while on the job never reported it. When asked why, they said:

   A. it wasn't that serious and didn't really bother them.
   B. they weren't sure they were being harassed.
   C. they feared retribution against their jobs.
   D. they just didn't want to cause trouble.

6. Hank Willets, a supervisor in the clerical pool at XYZ, keeps posters of nude women in his corner cubicle. The posters:

   A. are his business and of no concern to others.
   B. are not a problem unless someone complains.
   C. may be grounds for proving sexual harassment.
   D. are protected under the First Amendment as freedom of expression.

7. A person who does not intend anything offensive in his or her behavior:

   A. may be charged with harassment, but cannot be found guilty.
   B. may still be found guilty of sexual harassment.
   C. cannot be charged with harassment.
   D. cannot commit harassment.
Worksheet # 5 (Page 3)

8. Dan and Joanna are coworkers in the hazardous materials management section at XYZ, Inc. Dan continually makes lewd or suggestive comments directed at Joanna. Joanna has:

- A. every right to file a lawsuit immediately.
- B. a legal responsibility to tell Dan to stop the behavior.
- C. an ethical responsibility to tell others to beware of the harasser.
- D. both B and C.

9. People in the clerical pool at XYZ, both male and female, routinely give each other neck rubs.

- A. There are no grounds for harassment.
- B. A suit may potentially be brought by anyone involved in neck rubs.
- C. A suit may be brought by anyone in the office, even someone not directly involved in the neck rubbing.
- D. Suits may be brought by anyone, but only someone who was touched could win such a case.

10. Roland Hanson, superintendent of schools in Goodtimes, California, has two executive assistants, both women, working in his office. Eileen is young and attractive and Hanson frequently makes passes which she laughs off. He never makes passes or offensive remarks to Collette. Who might bring suit?

- A. Eileen may bring suit based on the quid pro quo definition of harassment, but Collette cannot sue because she is an uninvolved third party.
- B. There are no grounds for action.
- C. Collette may sue under the hostile environment definition.
- D. Both Eileen and Collette have grounds for action, Eileen based on the quid pro quo definition and Collette based on a hostile environment.
ANSWER KEY: IS THIS HARASSMENT? YOU BE THE JUDGE

1. No. But although it may be subtle, Susan is being discriminated against because she is a woman. She is being asked to serve coffee and refreshments – a task that is not required by the others, who are men. Susan should make it clear that she does not want the job of serving coffee to her colleagues each week. She might suggest to John to split the task among all of the executives, or asking everyone to serve himself.

2. No. not unless Marcia’s boss had implied sexual overtones and Marcia does not welcome them. Regardless, meetings of this sort are best conducted in the office or with others present.

3. Yes, in a subtle manner. The interviewers are unfairly assuming the unattractive applicant will not be as good an employee based on a self-fulfilling prophecy about a person’s looks. This assumption causes them to shorten or expand the interview based on a preconceived notion they the interviewers have about the women’s appearance which has nothing to do with their ability to perform the job.

4. Yes. Valerie’s boss used his position of authority to gain sexual favors in return for improved job status (quid pro quo). Additionally, the two other women who did not get the job are also victims of sexual harassment.

5. Yes. Finding offensive cartoons and notes in his toolbox unreasonably interferes with and creates an intimidating environment for Frank.

6. No. Since the behavior in this situation is not unwelcome or offensive to either party, this is not considered sexual harassment (unless their actions infringe on others’ abilities to do their work). Remember that sexual harassment policies are intended to prevent a hostile environment they are not meant to prevent any type of welcome personal relationship in a working environment.

7. Yes. Because of the ages of these two employees, the manager believes that it is not necessary to try hard to train the employees to do better on Account X but rather because they are the oldest employees, he feels it is only fair to let them go despite their performance reviews.

8. Yes. Making comments about someone’s physical characteristics could be considered illegal sexual harassment. Whether it is illegal depends if Mary is offended.

9. Yes. Perry’s employment was terminated only because he refused Todd’s sexual advances.
10. Yes. The interviewer had a stereotype belief about the applicant because she was a mother and he assumed she would not have sufficient child care to work overtime when in fact the woman would have welcomed the overtime and only applied for the job because she was told she would be able to get overtime.
Answers to Quiz on Sexual Harassment

1. D All of the above

2. B Harris is guilty of quid pro harassment. Both she and XYZ, Inc. may be held liable.

3. E Both B and D

4. B Joe and Mark may be found personally liable and ordered to pay damages, as may XYZ, Inc.

5. C They feared retribution against their jobs.

6. C May be grounds for proving sexual harassment.

Or

D Are still protected under the First Amendment as freedom of expression (may still be grounds for establishing a hostile environment).

7. B May still be found guilty of sexual harassment (Harassment is judged by the impact upon the target rather than the intent.).

8. B A legal responsibility to tell Dan to stop the behavior.

9. C A suite may be brought by anyone in the office, even someone not directly involved in the neck-rubbing (3rd party precedent established in California).

10. D Both Eileen and Colette have grounds for action. Eileen based on the quid pro quo definition and Colette based on a hostile environment.