

MODULE 5

Protection from Discrimination

Module Overview

Time:	90 minutes plus Introductions
Objectives:	<ul style="list-style-type: none"> • to name what types of discrimination in the work place are against the law • to review who is protected against discrimination under the Massachusetts Fair Employment Practices Act (and related Federal laws) • to examine the concept of “employee-at-will” • to review agencies which are responsible for enforcing the law • to practice applying laws to common workplace situations • to understand and evaluate different responses to discrimination: complaints, law suits, concerted activity, keeping your mouth shut
Preparation:	<ul style="list-style-type: none"> • read Schwartz, <i>Your Rights on the Job</i>, Chapters 7, 8, 9, 10, and 11 • prepare flipcharts • read and copy handouts: <i>Participant’s Outline</i>; <i>The Massachusetts Fair Employment Practices Act and Title VII in Brief</i>; <i>State and Federal Disability Laws in Brief</i>; <i>Is this Discrimination?</i>
Materials:	flipchart, markers, tape

Module Outline

Welcome and Introductions

Time: 10 minutes

Flipcharts: *Objectives* and *Agenda*

Module Detail

Welcome and Introductions

Welcome participants, introduce yourself and review workshop objectives and agenda. It is helpful to put the Objectives and Agenda on flipcharts to post. Ask participants to introduce themselves, giving their name and union or organizational affiliation, if any.

What Types of Discrimination in the Workplace are Illegal?

Time: 15 minutes

Flipchart: *Examples of Workplace Discrimination* (title only)

Activity 1: What Types of Discrimination in the Workplace are Illegal?

Ask the group to name some things which happen in the workplace which they think are examples of discrimination and are, or should be, against the law.

Put their responses on flipchart *Examples of Workplace Discrimination*. Point out that not everything that seems “wrong” or “unfair” is, in fact, illegal. The next activity will look at what the law says about what is or is not illegal and then we’ll come back to this list.

What Does it Mean to be an Employee-at-will?

Explain to participants the concept of “employee-at-will” as follows:

“Without a union contract you are an **employee-at-will**. This means your employer can fire you at any time for any reason **unless it is discriminatory under the law**. Some examples include: OK to fire because employer is in a bad mood, even though worker hasn’t done anything wrong. OK to fire because worker asks for sick day. OK to fire after 18 years of work because worker doesn’t want to take the night shift, or even because worker comes in wearing green and employer doesn’t like green.”

What Does the Law Offer?

Time: 10 minutes

Flipcharts: *Massachusetts Fair Employment Practices Act; Other Anti-discrimination Laws*

Handouts: *The Mass. Fair Employment Practices Act and Title VII in Brief; Disability Protection Laws in Brief*

Activity 2: What does the law offer: The Massachusetts Fair Employment Practices Act (FEPA)

Ask participants to listen to the following mini-rap on the Massachusetts Fair Employment Practices Act (FEPA):

Mini-rap:

“There are several laws that together offer broad protection against discrimination. For Massachusetts workers the most important is the **Massachusetts Fair Employment Practices Act (FEPA)** The federal version of this is Title VII of the Civil Rights Act of 1964. (Refer participants to handout: *The Mass. Fair Employment Practices Act and Title VII in Brief*)

The law bars discrimination in employment based on **race, color, sex, religion, national origin, age over 40, handicap, gender identity or sexual orientation**. (Refer to flipchart: *Mass. Fair Employment Practices Act*)

(Cont. On next page)

The law prohibits discrimination in **hiring, promotion, discharge, pay, fringe benefits and other aspects of employment. It also forbids sexual harassment on the job.** *Refer back to flipchart.*

Complaints are filed with the Mass. Commission Against Discrimination (MCAD). Other laws which bar discrimination in the workplace include: The Equal Pay Act; Executive Order 11246, for federal workers; the Age Discrimination in Employment Act; The Americans with Disabilities Act; The Mass. Equal Rights Act and regulations developed by the EEOC (Equal Employment Opportunity Commission) and the MCAD (Mass. Commission Against Discrimination).”
Refer to flipchart: *Other Anti-discrimination Laws*

Ask what questions they have about the law?”

Note to Facilitators:

Avoid detailed discussion about specific violations of the law. Call their attention to handouts: “Mass. Fair Employment Practices Act and Title VII in Brief” and “State and Federal Disability Laws in Brief” for additional information.

Direct group back to flipchart from Activity 1: *Examples of Workplace Discrimination*, and with the group write “illegal” and “legal” next to each example. Point out that what is not “illegal” can only be addressed through collective action - a union or other forms of working with other workers. Note that many unionized workers have language in their contracts addressing these issues.

What Are Remedies for Discrimination? Time:
10 minutes **Flipchart:**
What Should Happen to the Employer?

Activity 3: What Does the Law Say About Remedies for Discrimination?

Ask participants what they think an employer should have to do if he violates the law? What if the employer unfairly denies someone a promotion, fires them, pays them less than others, or treat them differently based on their race, sex, age, sexual orientation, gender identity, religion, disability or nationality? Put responses on flipchart: *What Should Happen to the Employer?(title only).*

Review the 2 handouts with the participants. Focus on remedies provided by law and compare to list of remedies on the flipchart which the group generated.

Identifying and Responding to Discrimination

Time: 10 minutes

Flipchart: *Responding to Discrimination*

Handout: *A Partial List of Advocacy Organizations (in Appendix)*

Evaluating Cases of Discrimination

Time: 40 Minutes

Handouts: *Is This Discrimination?; Drawings numbers 5, 6, 14 and 15*

Sum-up by pointing out that if an employer is found guilty of discrimination they may be ordered to hire, promote or restore your job, pay back pay, stop discrimination and pay damages or attorney's fees. But it takes time. The MCAD can take a year, or even longer, to resolve a case. Collective action can be quicker and more effective. If you have a union your contract may provide a faster grievance process and additional remedies.

Activity 4: Identifying and Responding to Discrimination

Ask participants to listen to the following mini-rap on Identifying and Responding to Discrimination:

Mini-rap:

"There are three ways of responding to discrimination on the job: Refer to flipchart: *Responding to Discrimination*

1. No response
2. Individual response: talking to your supervisor, going to the MCAD, suing in court.
3. Group response: go to your union, if there is one; go to an advocacy group (*see list from handout*); talk and act with other workers (e.g. go as a group to talk to your employer or organize a union)"

Invite participants to discuss the pros and cons of each response? For example: for "no response," if the discrimination is minor and you are concerned about keeping your job and building a work record you might choose to say nothing. But if you do nothing the discrimination may continue and others may be affected. Sometimes more than one response is needed, e.g. going to the union and complaining to the MCAD."

Activity 5: Evaluating Cases of Discrimination

Divide participants into small groups and ask them to review the cases in the hand out and decide:

- (1) if the law has been violated and
- (2) what they would do if this happened to them.

Suggest that group members take turns reading each scenario to the group. Groups should try to reach consensus on their answers. Drawings 5, 6, 14 and 15 may used instead of written case studies. (*Note: the pictures do not all show the same cases as the written scenarios.*) Have groups report back their answers, one question at a time. Discuss each scenario before going on to the report from the next group.

Summary and Remedies**Time:** 5 minutes**Summary and Remedies**

“Most employees in Massachusetts are protected from job discrimination on the basis of sex, race, national origin, religion, age over 40, disability and sexual orientation. It’s important to know our rights on the job and to act to protect those rights. It is illegal for an employer to fire an employee for exercising her or his rights. But above all, we have more protection as a group than we do as individuals. If you have a union your contract may provide a faster grievance process and additional remedies.

Immigrant workers, whether documented or undocumented, are covered by anti-discrimination laws. It is not always safe, however, for undocumented workers to go to state and federal agencies with complaints, as those agencies might notify Immigration and Customs Enforcement (ICE). Undocumented workers should check first with an advocacy organization (see handout: *Partial List of Advocacy Organizations*). The handout *Safe and Unsafe Agencies for Immigrant Workers* can be used as a guideline.

Remedies that attempt to ‘make you whole’ include: getting your job back or a promotion to which you are entitled; back pay or benefits; a clean record, etc.”

MODULE 5

Protection from Discrimination

Participant Outline

90 minutes

Objectives:

- to name what types of discrimination in the work place are against the law
- to review who is protected against discrimination under the Massachusetts Fair Employment Practices Act (and related Federal laws)
- to examine the concept of “employee-at-will”
- to review agencies which are responsible for enforcing the law
- to practice applying laws to common workplace situations
- to understand and evaluate different responses to discrimination: complaints, law suits, concerted activity, keeping your mouth shut

Welcome and Introductions

Activity 1: What Types of Discrimination in the Workplace are Illegal?

Brainstorm a list of things that happen in the workplace which are or should be against the law.

Activity 2: What does the law offer: The Massachusetts Fair Employment Practices Act (FEPA)

Review the Massachusetts Fair Employment Practices Act, which bars discrimination in the workplace.

Activity 3: What Does the Law Say About Remedies for Discrimination?

Review the remedies available to respond to workplace discrimination.

Activity 4: Identifying and Responding to Discrimination

Determine and evaluate different ways to respond to discrimination on the job.

Activity 5: Evaluating Cases of Discrimination

Practice analyzing and responding to cases of workplace discrimination.

Summary

Is this discrimination?

Read the following descriptions of employment situations. Discuss what is happening in each case, and then answer the following questions:

1. Is this illegal discrimination?
 2. If yes, what right or law is being violated?
 3. What could the person do about it?
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1. Henry, an African-American man, applies in person for a job that was advertised in the paper. When he gets there he is told that there are no jobs available. On the way out he notices a young white woman sitting in the reception area, filling out a job application form.
 2. Rhonda is pregnant and has been on the job as checkout person at the local supermarket for two weeks. Her back hurts and her ankles are swollen and both problems are worse after standing for 8 hours at a time, with only short breaks. She has asked her supervisor for a stool to sit on, but the supervisor told her no.
 3. Sonia has been working in the clerical area of a large insurance company for over a month. She likes her work, but has been having problems with her supervisor. Every time he gives her work he puts his hand on her shoulder and leans in close. He makes comments on her clothing and her body, and sometimes blocks her way to her desk with his body. She doesn't want to lose her job, but his attention is putting a lot of stress on her and making it hard to concentrate on her work.
 4. Linda has been working at the coffee shop for three months, doing an 8-3 shift. It allows her to be home when her kids are home and has worked well for her. Now she is being told that if she can't work Saturdays she will be fired.

(Facilitator's Answers)

Read the following descriptions of employment situations. Discuss what is happening in each case, and then answer the following questions:

1. Is this illegal discrimination?
2. If yes, what right or law is being violated?
3. What could the person do about it?

1. Henry, an African-American man, applies in person for a job that was advertised in the paper. When he gets there he is told that there are no jobs available. On the way out he notices a young, white woman sitting in the reception area, filling out a job application form.

This is a violation of the Massachusetts Fair Employment Practices Act (FEPA) and Title VII of the Civil Rights Act, barring discrimination on the basis of race or sex.

Henry should talk to the young woman and find out what she was told. He could then either confront the employer, talk with an employment counselor if he has one, or contact the MCAD. If the advertised job is unionized, he could contact the union.

2. Rhonda is pregnant and has been on the job as checkout person at the local supermarket for two weeks. Her back hurts and her ankles are swollen and both problems are worse after standing for 8 hours at a time, with only short breaks. She has asked her supervisor for a stool to sit on, but the supervisor told her no.

This is not a violation of the ADA (Americans with Disabilities Act), which requires an employer to make a "reasonable accommodation" to an employee's disability. Pregnancy itself is not considered a disability under the ADA.

Luckily for Rhonda, Massachusetts has the Pregnant Workers Fairness Act which will require employers to provide reasonable accommodation to pregnant workers, even if they are not disabled by their pregnancy.

Massachusetts also has a law giving employees the right to a seat as long as the work can be performed safely while sitting. Even though they're not pregnant, the other cashiers who work with Rhonda may appreciate being able to sit on the job. It would be a good idea for Rhonda to ask the other cashiers if they'd like to go together to management to ask for seats.

In addition, there is an amendment to the FLSA that could help Rhonda in the near future: Employers are required to provide "reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk." A private location other than a bathroom must be made available. Law does not apply to employees who are exempt from federal overtime pay requirements.

3. Sonia has been working in the clerical area of a large insurance company for over a month. She likes her work, but has been having problems with her supervisor. Every time he gives her work he puts his hand on her shoulder and leans in close. He makes comments on her clothing and her body, and sometimes blocks her way to her desk with his body. She doesn't want to lose her job, but his attention is putting a lot of stress on her and making it hard to concentrate on her work.

This is sexual harassment and illegal under the Massachusetts Fair Employment Practices Law (FEPA) and Title VII of the Civil Rights Act of 1964. It is a form of harassment called "hostile work environment," and is affecting Sonia's ability to do her job. She should tell the supervisor to stop what he is doing. She could also talk to her co-workers and enlist their help, go to the supervisor's supervisor if the harassment doesn't stop, file a grievance through her workplace sexual harassment grievance process, or go to her union, if she has one.

4. Linda has been working at the coffee shop for three months, doing an 8-3 shift. It allows her to be home when her kids are home and has worked well for her. Now she is being told that if she can't work Saturdays she will be fired.

While this hardly seems fair to Linda, there is no violation of the law here. There is no law that protects Linda's job because her status as a parent makes it difficult for her to work on Saturday

Flipcharts for MODULE 5: Protection from Discrimination

Flipcharts for Welcome and Introduction

Objectives

- to name what types of discrimination in the work place are against the law
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- to practice applying laws to common workplace situations
- to understand and evaluate different responses to discrimination: complaints, lawsuits, concerted activity, keeping your mouth shut

Agenda

- Welcome and Introductions
- What Types of Discrimination in the Workplace are Illegal?
- What does the law offer: The Massachusetts Fair Employment Practices Act (FEPA)
- What Does the Law Say About Remedies for Discrimination?
- Identifying and Responding to Discrimination
- Evaluating Cases of Discrimination
- Summary

Flipchart for Activity 1 (title only)

Examples of Workplace Discrimination

Flipcharts for Activity 2

FEPA

What's protected?

No discrimination on the basis of:

- race, color, sex, religion, national origin, age over 40, handicap, gender identity or sexual orientation

What can't an employer do?

No discrimination in:

- Hiring, promotion, discharge, pay, fringe benefits and other aspects of employment
- No sexual harassment on the job

File complaints with: MCAD

Other Laws Barring Discrimination

- The Equal Pay Act
- Executive Order 11246, for federal workers
- Age Discrimination in Employment Act
- The Americans with Disabilities Act
- The Massachusetts Equal Rights Act
- Regulations developed by the EEOC (Equal Employment Opportunity Commission) and the MCAD (Massachusetts Commission Against Discrimination)
- Massachusetts Domestic Workers Bill of Rights

Flipchart for Activity 3 (title only)

What Should Happen to the Employer?

Flipchart for Activity 4

Responding to Discrimination

1. No Response
2. Individual Response
3. Group Response