

The Evolving Landscape of Discrimination Law and University Policy

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Agenda

- Employment laws, policies, and updates
- Education (student) laws, policies, and updates
- First Amendment
- Questions



Civil Rights Laws - Employment

- **Title VII of the Civil Rights Act of 1964 (Title VII)**
 - Prohibits discrimination or harassment based on sex (including sexual orientation or transgender status), race, color, creed, national origin or religion
 - **Pregnancy Discrimination Act** - prohibits discrimination on the basis of pregnancy, childbirth, or related medical conditions
- **The Americans with Disabilities Act of 1990 (as amended in 2008 (ADAAA))**
 - Prohibits discrimination or harassment based on disability and requires employers to provide certain *reasonable accommodations* to employees and job applicants
- **Age Discrimination in Employment Act of 1967 (ADEA)**
 - Protects individuals who are 40 years of age or older from employment discrimination or harassment based on age
- **The Genetic Information Nondiscrimination Act of 2008 (GINA)**
 - Prohibits discrimination in employment based on genetic information



Civil Rights Laws - Employment

- The civil rights laws apply to:
 - Employees (regardless of status as P/T or F/T, permanent or temporary or seasonal)
 - Student employees
- University policy extends protections to:
 - Interns
 - Volunteers
 - Contractors
- Civil rights laws enforced by the EEOC
- Retaliation is strictly prohibited



Discrimination

- It is unlawful to discriminate or harass a person because of their protected status or marriage to or association with an individual of a protected status
- Discrimination or harassment can include, for example, offensive remarks or taking employment action because of a person's protected status
- The harasser can be the victim's supervisor, a supervisor in another area, or an influential co-worker
- Harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being terminated or demoted)



Hostile Work Environment

- Can be about any protected characteristic (sex, race, religion, national origin, disability, age, pregnancy and more)
- This conduct can occur between or among anyone, regardless of position (can be the victim's supervisor, a co-worker, a student or someone who is not an employee or student of the university, such as a volunteer or contractor)
- HWE is conduct so severe or pervasive that it creates an offensive and unpleasant working atmosphere that affects the victim's ability to do the job
- HWE does include sexual harassment
- Can include comments, conduct, jokes, e-mails, images, physical touching, and more
- The harasser's intent is irrelevant—it is all about perception!



Sexual Harassment (Quid Pro Quo)

- Quid Pro Quo sexual harassment is a form of unlawful discrimination.
- Quid Pro Quo harassment involves a demand for sexual favors by a superior from a subordinate employee in exchange for some employment benefit/advantage
 - Offering or granting better working conditions or opportunities
 - Threatening adverse working conditions (like demotions, shift alterations or work location changes) or denial of opportunities
 - Using pressure, threats or physical acts to force a sexual relationship
 - Retaliating against employee for refusing to engage in a sexual relationship



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Discrimination and Harassment Free Workplace

- The University is committed to a discrimination and harassment (including sexual harassment) free work environment
- All employees are expected to conduct themselves in a business-like and professional manner and not engage in discriminatory or harassing behavior
- University Policy 501 prohibits discrimination or harassment (including sexual harassment) and outlines the types of prohibited conduct, as well as procedures for reporting and investigating prohibited conduct



University Policy 501

- The University of North Carolina at Charlotte is committed to providing a respectful, safe, and inclusive environment for all University community members and guests of the University. The University affirms that its educational and employment decisions must be based on the abilities and qualifications of individuals and may not be based on irrelevant factors, including personal characteristics, that have no connection with academic abilities or job performance.
- All University employees are expected to report alleged violations of this Policy to the University's Office of Civil Rights and Title IX and may be subject to disciplinary action, up to and including dismissal, for failing to report.



University Policy 501

- Effective as of July 7, 2022
- Prohibits discrimination based on the following categories:
 - race;
 - color;
 - religion, including belief and non-belief;
 - sex, including but not limited to
 - pregnancy, childbirth, or related medical condition, and
 - Parenting/familial status;
 - sexual orientation;
 - gender identity;
 - age;
 - national origin;
 - physical or mental disability;
 - veteran status; and
 - genetic information.



University Policy 501

- All University employees are expected to report alleged violations of this Policy to the University's Office of Civil Rights and Title IX and may be subject to disciplinary action, up to and including dismissal, for failing to report.
- Note - *Sexual misconduct (including but not limited to sexual harassment and sexual exploitation) and interpersonal violence are reportable under University Policy 502.*
- **Retaliation is strictly prohibited**
 - Retaliation includes threatening, intimidating, or coercive behaviors and other adverse actions that would deter a reasonable person in the same or similar circumstances from reporting alleged violations of federal law or cooperating in the University's investigation of any such report, even if the behaviors do not ultimately have that effect.

Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act of 2022)



PUMP Act

- Went into effect on December 29, 2022.
- This bill expands the requirement that employers provide certain accommodations for nursing mothers to cover salaried employees and other types of workers not covered under existing law.
- Time spent to express breast milk must be considered hours worked if the employee is also working.
- Clarifies that pumping time counts as time worked when calculating minimum wage and overtime if an employee is not completely relieved from their work duties during the pumping break.
- The bill also extends statutory protections from one year to two years.



PUMP Act

- Almost entirely closes the coverage gap that left 1 in 4 women of childbearing age without federal protection of their right to break time and a private space to pump during the workday.
- Makes it possible for an employee to file a lawsuit against an employer that violates the law. Before the PUMP Act became law, employees who were harmed when their employer did not provide break time and space were not able to seek a monetary remedy in court.
- Clarifies that pumping time counts as time worked when calculating minimum wage and overtime if an employee is not completely relieved from their work duties during the pumping break.



University Policy: 101.20 – Lactation Break Policy

- Been in effect since 2016 (currently in the process of being updated).
- Provide nursing mothers who are employees with a private place and reasonable break time to express breast milk for a nursing child for up to one year after the child's birth.
- The University has a designated lactation room (A Mother's Place) in CHHS Rm. 305 and a designated lactation room (A Mother's Place "Too") in Atkins Rm. G38
- If an employee has a private office, it may be used for this purpose. If a dedicated lactation room is not accessible, supervisors should consider other options such as reserving a conference room as needed, adapting a clean and infrequently used small room, or converting an unused office or other room.

Pregnant Workers Fairness Act (PWFA)



PWFA

- On December 23, 2022, Congress passed the Pregnant Workers Fairness Act (the “PWFA”) as an amendment to the 2023 Consolidated Appropriations Act.
- President Biden signed into law on December 29, 2022.
- The PWFA is set to go into effect on June 27, 2023.
- The EEOC will start accepting charges under the PWFA on June 27, 2023.
- Preamble of the house bill:
 - *To eliminate discrimination and promote women’s health and economic security by ensuring reasonable workplace accommodations for workers whose ability to perform the functions of a job are limited by pregnancy, childbirth, or a related medical condition.*

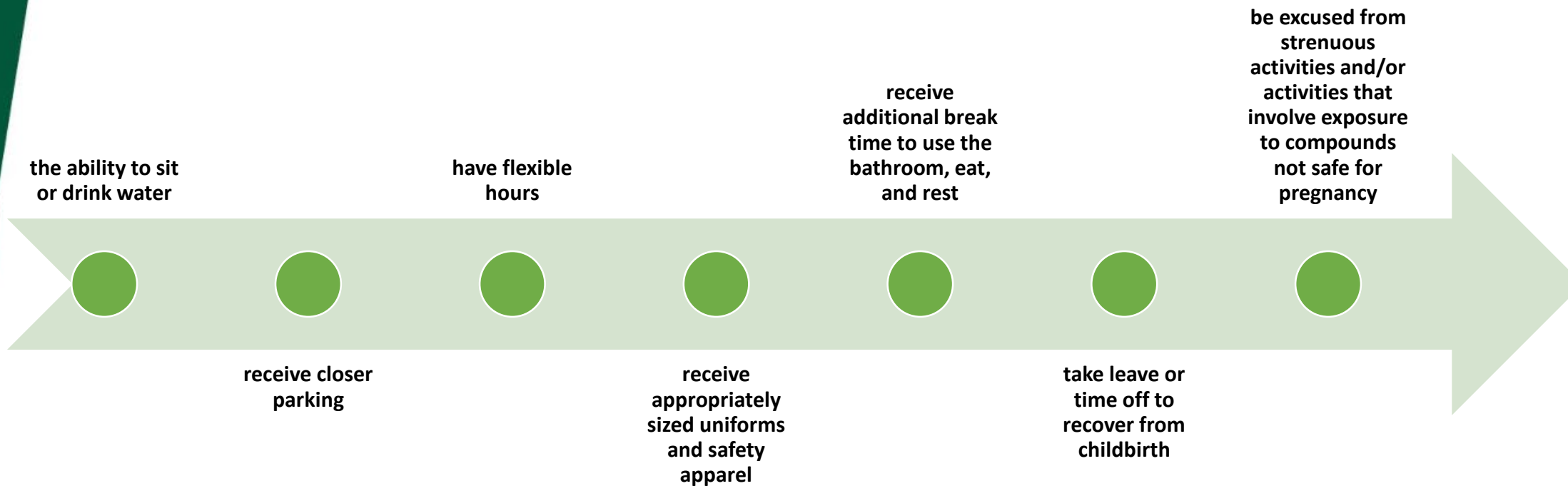


PWFA

- The PWFA expands existing federal law with respect to the accommodation of pregnant employees in at least three significant ways.
 - requires employers to make reasonable accommodations for pregnancy-related medical conditions irrespective of whether those conditions rise to the level of a disability, as long as the accommodations do not impose an undue hardship on the employer.
 - employers may only require employees to use leave to accommodate pregnancy-related restrictions if no other reasonable accommodations are available.
 - pregnant employees must be provided with reasonable accommodations even if they cannot perform all essential functions of the job, as long as their inability to perform those essential functions is temporary.

PWFA

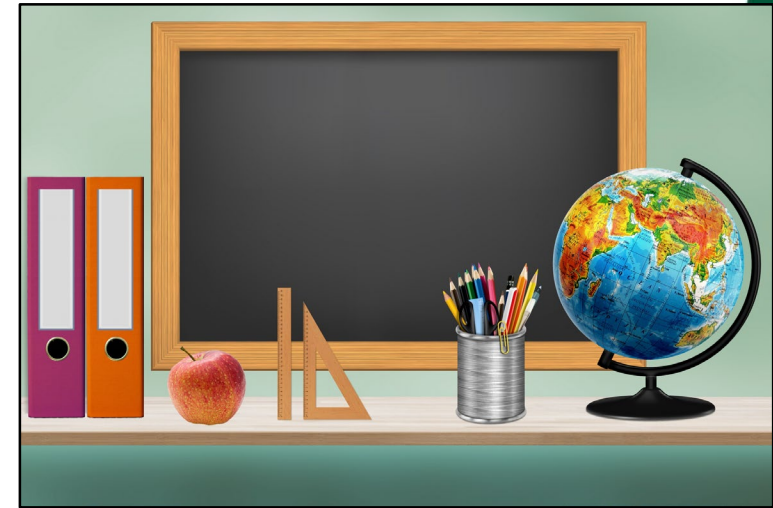
- *What are some examples of “reasonable accommodations” for pregnant workers?*



Education-Specific Landscape

Relevant Education Laws

- **Title IX** (1972) is a federal law that prohibits sex discrimination in education programs or activities
 - Requires the university to respond promptly to reports of sexual assault or sexual harassment in its programs or activities
 - Quid pro quo and hostile environment harassment (discussed earlier) are both covered
 - New regulations (coming soon!) will likely cover gender identity and sexual orientation more explicitly and give more detail to the university's obligations re: pregnant students



Relevant Education Laws

- **Title VI** (1964) is a federal law that prohibits discrimination based on race, color, or national origin in education programs or activities
 - Current case at U.S. Supreme Court on race-conscious admissions practices; we will likely receive new rules in that area in June 2023
- **Americans with Disabilities Act (ADA)** is a federal law that prohibits discrimination based on disability in education programs or activities
 - It also requires the institution to provide reasonable accommodations to a qualified individual with a disability (unless fundamental alteration or undue burden)



Relevant Education Laws

- These laws apply to students but also apply to University employees (and sometimes guests/visitors).
- The University must not itself (through its agents/employees) engage in discrimination or discriminatory harassment.
- In addition, if the University knows or reasonably should know that an employee or student is experiencing discriminatory harassment, it must promptly and effectively respond.
 - Response may, but not necessarily, include an investigation
- Retaliation is strictly prohibited under all of these laws
- Any possible violations must be reported to Civil Rights & Title IX

University Policies (as of July 2022)

- University Policy 504, Title IX Grievance Policy
 - Applies when allegations meet narrow Title IX definitions & jurisdiction
- University Policy 502, Sexual Misconduct and Interpersonal Violence
 - Applies to sexual or interpersonal misconduct allegations that do not meet the Title IX definitions and jurisdiction
 - Separate procedural documents for student respondents vs. faculty/staff respondents
- University Policy 501, Nondiscrimination
 - Applies to allegations of discrimination or harassment based on a protected class (including straightforward sex/gender discrimination)
 - Separate procedural documents for student respondents vs. faculty/staff respondents

University Policies

- University Policy 501.1, Nondiscrimination on the Basis of Disability Regulation
 - Alleged disability discrimination is investigated through UP 501
 - Reasonable accommodation requests will first be facilitated through Disability Services (students) or HR (employees) before being investigated through UP 501
- University Policy 409, Religious Accommodation for Students
 - Revised in April 2023
 - Provides process for students to request religious accommodations from academic courses OR any other university program or activity
 - (Note that religious accommodations for employees are facilitated through HR)



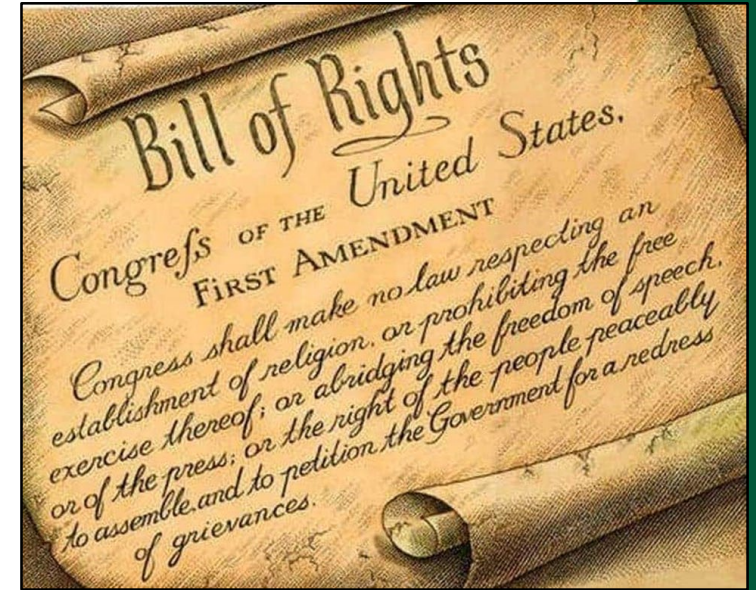
Scenario 2

A student athlete wants to observe a religious holiday the day before a big game. He requests an accommodation from his athletic coach to skip practice that day, but his coach denies the request. In the weeks that follow, the student athlete receives very little playing time and seems to be targeted for extra reps and clean-up duty during practices. His teammates start asking him what he did to make the coach mad.



Note on the First Amendment

- Under the First Amendment, the government (e.g. UNC Charlotte) generally cannot punish someone's pure speech, even if it's offensive or hateful
- Academic freedom is generally considered to be protected by the First Amendment
- One category of unprotected speech is harassment
 - Must be severe or pervasive and
 - Must deny or limit ability to work or engage in education
- Under the Equal Protection Clause, the government (e.g. UNC Charlotte) must have a compelling interest (and narrowly tailored process) for discriminating between different groups of people based on a protected class (race, national origin, etc.)
 - The government almost never meets such a high standard



Scenario 3

During English class one day, Professor Smith illustrates an important grammar rule using a sexually explicit sentence. A few students giggle, but several others are clearly offended. Two students report the incident to the department chair and provide at least three other similar examples of Professor Smith's "inappropriate" lessons during the semester. They want the department chair to put a stop to Professor Smith's sexual harassment of female students.



Questions?



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