

WHAT IS UNLAWFUL DISCRIMINATION

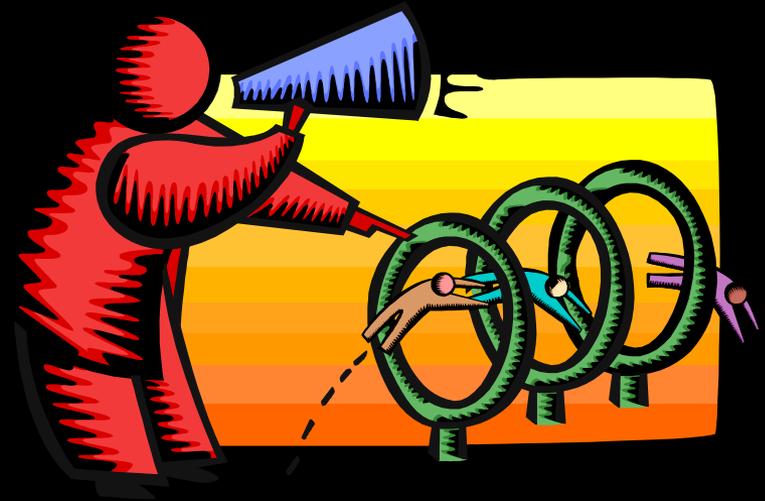
DEFINITION OF UNLAWFUL DISCRIMINATION

- Action or decision
- Based on a protected category



ELEMENTS OF THE DEFINITION

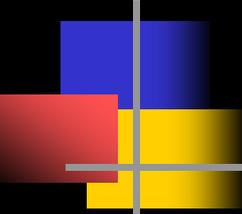
- Respondent-entity covered by the law.
- Adverse Act/Decision.
- Protected Category.
- Nexus or causal connection between #2 & #3.



THE GOAL OF AN INVESTIGATION IS TO DETERMINE

Whether complaint's membership in a protected category caused the adverse act or whether the protected category was a contributing factor in the adverse act.

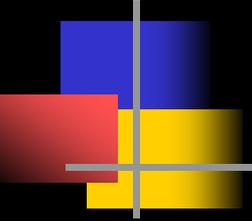




THEORIES OF DISCRIMINATION

1. Direct Evidence or Overt Discrimination
2. Circumstantial Evidence or Disparate Treatment
3. Statistical Evidence or Disparate Impact





STEPS IN ANALYSIS OF FACTS

- Is there a prima facie case?
- What is the defense?
- Do the facts support or rebut the defense?



PRIMA FACIE CASE

“On first sight or view”



- Enough evidence which if unexplained or unrebutted would result in a finding in Complainant's favor.
- Enough evidence from which to infer that “but for” discrimination, the adverse act would not have happened to Complainant.

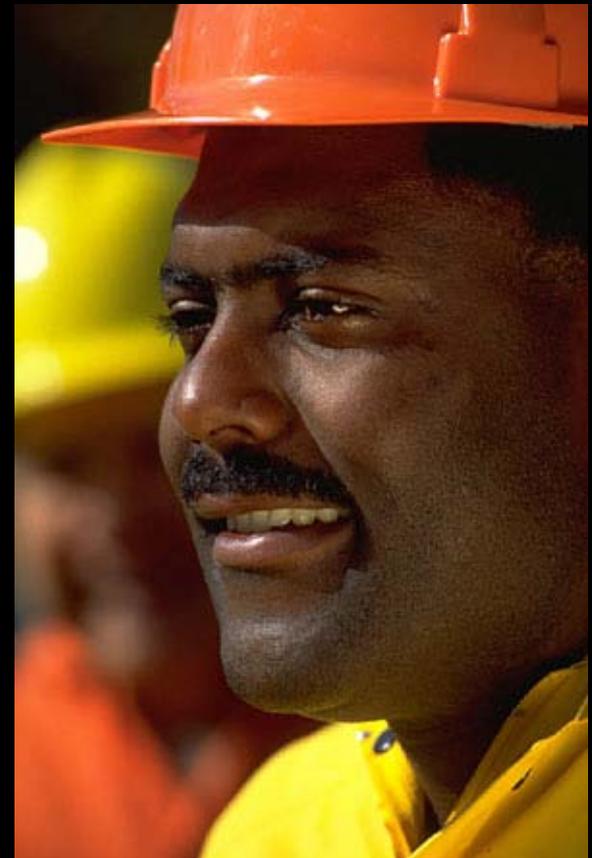
Four Point Prima Facie Case for Circumstantial Evidence Cases

- Member of a Protected Category.
- Applied and was (minimally) qualified (for a position Respondent was attempting to fill).
- Rejected despite those qualifications.



Four Point Prima Facie Case for Circumstantial Evidence Cases

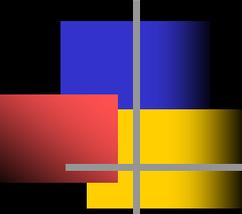
- Respondent hired someone of a different protected category or continued to seek similarly qualified applicants.



3-POINT PRMIA FACIE CASE for Circumstantial Evidence Cases

- Member of a Protected Category.
- Suffered an adverse action.
- Nexus or causal connection between the protected category and the adverse act.





DEFENSES

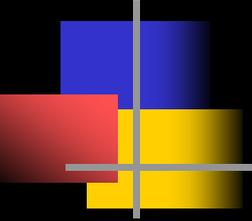
- Denial.
- Jurisdictional.
- Legitimate, Non-Discriminatory Reasons (LNR's).
- Job-Relatedness/
Business Necessity.



DEFENSE

- Bona Fide Occupational Qualification (BFOQ).

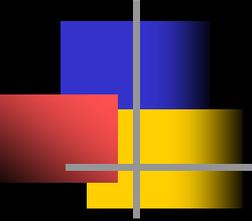




JURISDICTION

The status of
satisfying all statutory
requirements for filing
a charge.



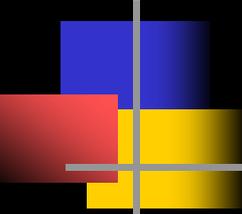


JURISDICTION

Statutory requirements:

1. Timeliness.
2. Standing.
3. Subject Matter.
4. Coverage of Respondent.





REBUTTAL EVIDENCE

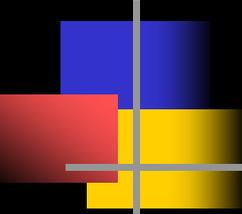
1. Stereotypes are not BFOQ's. (Overt)
2. Policy or Practice with less discriminatory effect. (Impact)
3. Evidence that a LNR is pretextual.
Disparate
Treatment

FACTS

FACTS

FACTS

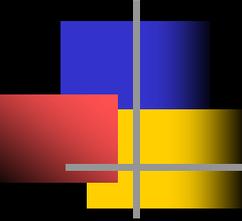
FACTS
FACTS
FACTS



SIMILARLY SITUATED

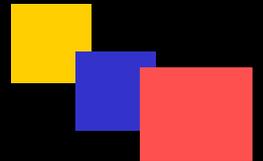
The situations of the people being compared are similar enough that you would expect them all to be treated the same.

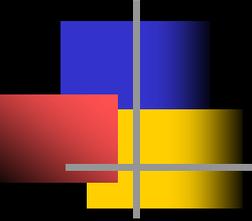




FACTORS TO CONSIDER IN DETERMINING COMPARABILITY

1. Were Complainant's and the comparator's situations covered by the same policy or practice?
 - a. Did Complainant and the comparator break the same rule? What was the nature of the violations?

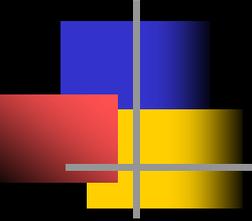




FACTORS TO CONSIDER IN DETERMINING COMPARABILITY

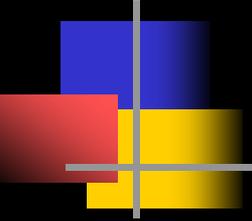
- b. If different, were the rule/policy violations of similar seriousness?

- c. Does Respondent's policy or practice rank the violations the same in terms of seriousness?



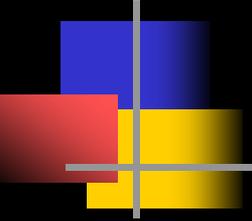
FACTORS TO CONSIDER IN DETERMINING COMPARABILITY

- d. Does Respondent's policy or practice call for the same sanctions/penalties for the violations?
- e. If Respondent's rule/policy applies to all employees then don't limit your search for comparables only to those employees under Complainant's supervisor.



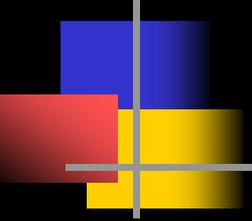
FACTORS TO CONSIDER IN DETERMINING COMPARABILITY

2. Were Complainant's and the comparator's work histories similar? Were these first time offenses or records of cumulative offenses?
 - a. Complainant may not be similarly situated if s/he has multiple violations of that rule/policy and the comparator has only a first time offense.



FACTORS TO CONSIDER IN DETERMINING COMPARABILITY

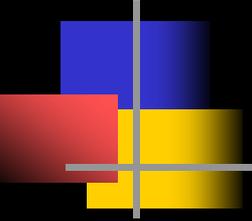
b. What are the time frame considerations in Respondent's policies? Some Respondent's policies provide that after a period of time in which there are no further violations, that an employee returns to the beginning of the progressive discipline process.



FACTORS TO CONSIDER IN DETERMINING COMPARABILITY

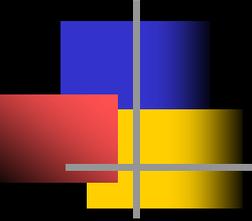
3. Employment Status Considerations:

- a. Union v. management may not be similar.
- b. Probationary v. non-probationary may not be similar.



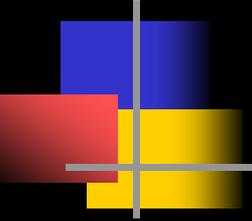
FACTORS TO CONSIDER IN DETERMINING COMPARABILITY

4. Identifying similarly situated persons is done on a case-by-case basis and sometimes on an allegation-by-allegation basis.



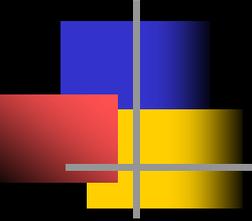
Best Practices

- Enforce your rules equally;
- Treat everyone the same...in similar situations;
- Document, document, document;
- And especially document any exceptions that are made to the rules and the legitimate reasons for those exceptions.



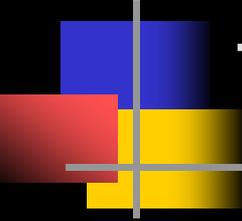
Definition of Sexual Harassment

- Harassment on the basis of sex is a violation of the Missouri Human Rights Act.
- Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment when-



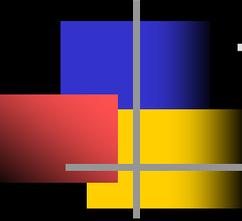
Sexual Harassment

- Submission to such conduct is made a term or condition of an individual's employment or is used as the basis of employment decisions affecting their employment; or
- Such conduct has the effect of creating a hostile, intimidating or offensive working environment.



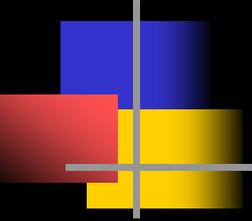
Types of Sexual Harassment

- Quid Pro Quo-Latin for “this for that.” Sexual blackmail where a supervisor extorts sexual favors from subordinates by threatening to take adverse actions or by offering rewards.



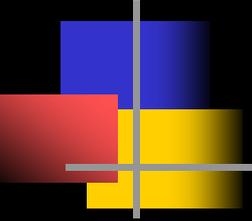
Types of sexual Harassment

- Hostile Environment- where the sexual behavior creates a hostile, offensive or intimidating working environment.



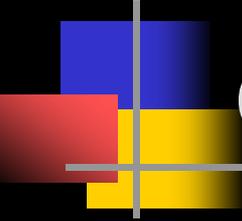
Elements of Proof for Quid Pro Quo

- Member of a protected Category
- Subjected to unwelcome sexual harassment
- Which was based on sex (gender)
- The harassment culminated in a tangible employment action;
- Employers are responsible for the actions of their supervisors.



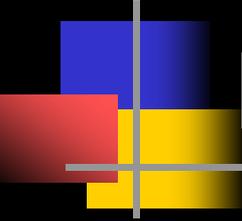
Elements of Proof for Hostile Work Environment

- Member of a Protected Category
- Subjected to unwelcome sexual harassment
- Which was based on sex(gender).
- It did not result in tangible employment actions but
- It created an intimidating, hostile or offensive working environment.



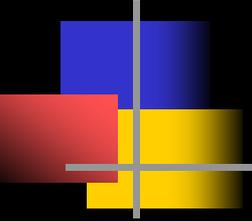
Reasonable Person and Totality of the Circumstances Standards

- Determine whether an environment is abusive by looking at all of the circumstances through the eyes of a “reasonable person.”
Check:
 - Frequency of harassment;
 - Severity of harassment;
 - Whether it was physically threatening or humiliating;
 - Whether it was offensive utterances;
 - Whether it interfered with employee’s work.



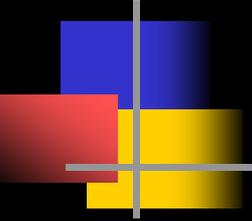
Employer Liability for Harassment by Non-Supervisory Employees

- If a co-worker, a non-supervisory employee, is the harasser, then the employer is obligated to take immediate and appropriate action when it knew or should have known of the harassment.



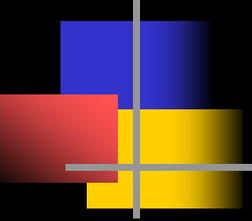
Employer Liability

- For Quid Pro Quo harassment, the employer is always liable when the alleged harasser is a supervisor or manager.
- For Hostile Environment harassment, the employer is always liable unless.....



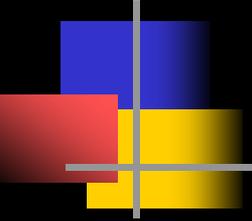
Employer Liability

- The employer can prove :
- It exercised reasonable care to prevent and correct any harassing behavior, and that
- The employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or otherwise avoid harm.



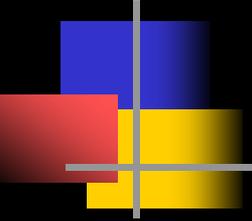
Prevent and Correct Harassment

- Employers should establish, distribute to all employees and enforce a policy prohibiting harassment and setting out a procedure for making complaints.
- The policy should make it clear the employer will not tolerate sexual harassment.



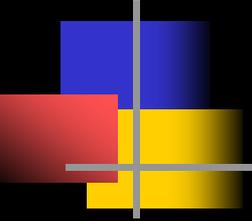
Prevent and Correct Harassment

- Instruct supervisors to report or address all complaints of harassment;
- Correct harassment regardless of whether an official complaint is filed;
- Periodic training of supervisors and managers to ensure their understanding of their responsibilities.



Best Practices

- Act promptly to investigate harassment complaints;
- Make sure there is no more harassment or any retaliation while the investigation is underway;
- Take appropriate action based on the investigation;



Best Practices

- Document your actions;
- Follow-up with the victim and the perpetrator to insure there's no more harassment or any retaliation;
- Have periodic training of all employees regarding harassment policies, reporting and procedures.