

A Better Partnership®



INVESTMENT RECOVERY ASSOCIATION

HARASSMENT AND DISCRIMINATION IN THE WORKPLACE

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James G. Cavanagh

**To Historical Victims of
Discrimination,
History Is Reality**

Unless We Change It



The Legal Rules

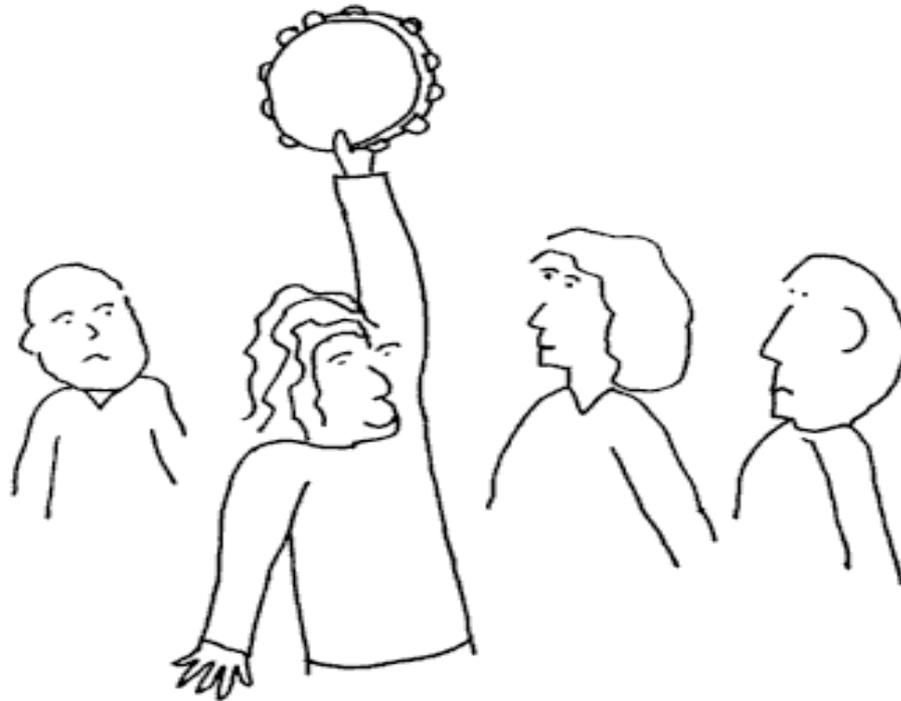


Discrimination and Harassment are Illegal

Federal and State Law strictly prohibit DISCRIMINATION and HARASSMENT based on a person's:

- race
- national origin
- sex
- age (40 and over)
- religion
- height
- weight
- color
- citizenship
- pregnancy/childbirth
- disability
- U.S. military service
- marital status
- genetic information





PEOPLE DISCRIMINATE AGAINST
ME BECAUSE I USE A TAMBOURINE
AS I GO ABOUT MY DAILY BUSINESS



Discrimination is Illegal

- Definition: Less favorable treatment because of my race, sex, age, disability or other covered personal characteristic
- Can include decisions on hiring, discharge, discipline, layoff, promotion opportunity, or any other employment issue



Harassment Is Illegal

- Conduct or statements that make a person's workplace hostile or offensive because of the person's race, sex, age, disability or other covered personal characteristic
- Any adverse employment action against an employee by a manager or supervisor because s/he won't submit to harassment
- Any favoritism towards an employee because s/he does submit to harassment



Retaliation Is Illegal

- Adverse employment action or making a person's work environment hostile or offensive because they protest Discrimination, Harassment, or other illegal behavior.



Can Be Liable If

- A manager / supervisor takes adverse employment action against an employee if the action is motivated by illegal Discrimination, Harassment or Retaliation



Can Be Liable If

- A hostile or offensive employment environment results from harassment, unless
- Employer has a policy against harassment
- The Employee knows/should know of policy, and
 - The Employee doesn't complain, or
 - The Employee complains and Employer takes reasonable steps to stop the harassment



You Can Be Liable If

- A manager, supervisor or employee can be held legally liable for statements or behavior that violates the legal rules against Discrimination, Harassment or Retaliation

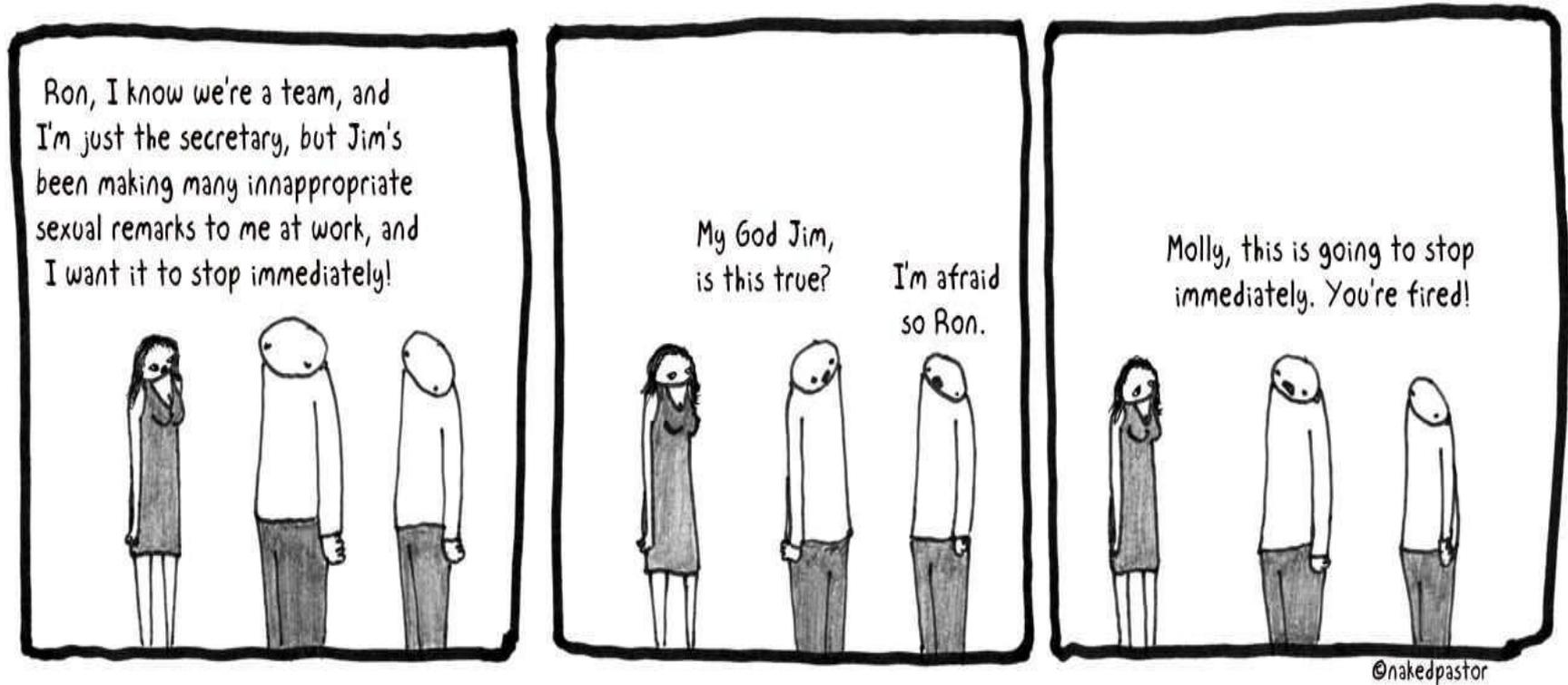


Investigation

- Identify the suspect(s) and victim(s)
- Identify the witnesses
- Preserve the evidence
 - ◆ (E-mails and text messages – OMG!)
- Conduct interviews
- Reach a conclusion



How Not to Conduct an Investigation



Question: I don't have to worry about what I say because if someone doesn't like it they'll complain, right?

- Answer: Wrong
 - ◆ A victim of harassment may not complain because s/he doesn't want to "make trouble"
 - ◆ Anyone who violates our policies against discrimination, harassment or retaliation is subject to discipline up to and including discharge even if no one complains
 - ◆ An Employer must and will take action even if the victim does not want action taken



Question: Does this mean we can't kid around at work?

- Answer: No, it just means that some kinds of kidding are prohibited:
 - ◆ "kidding" about a person's race, color, national origin, sex, sexual orientation, or other personal characteristics
 - ◆ "kidding" that includes sexual or off-color language or conduct
 - ◆ "kidding" that is really bullying or demeaning others



Question: Do the Discrimination and Harassment policies cover off-duty conduct?

- Answer: Yes, all unlawful harassment of one colleague by another is prohibited.



There's always one idiot at the staff Christmas party who goes too far. If you work for yourself, that would be you.



Question: What about posts on Facebook, Twitter, etc.?

- Answer: Yes, if it violates Employer's harassment and discrimination rules, it is grounds for dismissal.



Main Federal Statutes

- Sherman Antitrust Act 1890
 - ◆ Combination or Contract 15USC § 1-7
 - › Elements for Section 1
 - An Agreement
 - Which unreasonably restrains competition
 - Which affects interstate commerce
 - ◆ Monopolistic Power
 - › Elements for Section 2
 - Monopoly power in the marketplace
 - Willful acquisition or maintenance of that power v. distinguished growth, superior products, etc.



Main Federal Statutes (continued)

- Clayton Act (1914) – added practices to the list
 - ◆ Price discrimination between purchasers
 - ◆ Exclusive dealing agreements
 - ◆ Tying agreements
 - ◆ Mergers and acquisitions that reduce competition
- Robinson Patman Act of 1936
 - ◆ Amendment to the Clayton Act which;
 - › Proscribed certain anti-competitive practices in which manufacturers engage in price discrimination



Case Studies

- Banana Slug, Inc.
- Sawtooth Brothers Corporation
- Rin Tin Tin, Inc.
- Fishin and Fusion



➤ Banana Slug, Inc.

- Banana Slug, Inc. is a manufacturer of heavy equipment
- Very successful
- Fine product, great dealer network and good service
- After being in business for over 50 years, has achieved a 70% market share
 - ◆ Does Banana Slug's market share amount to a monopoly?
 - ◆ Is Banana Slug in violation of antitrust law?



➤ Banana Slug, Inc. (continued)

- In every new contract with its parts suppliers, Banana Slug demands a better price for parts than any other competitor
 - ◆ If the part suppliers enter into such a contract is that in violation of antitrust law?
 - > If so, Why?
 - > If not, Why?



➤ Banana Slug, Inc. (continued)

- In all new contracts with suppliers, Banana Slug demands suppliers charge competitors not less than 10% more than the price they give Banana Slug
 - ◆ Is the contract in violation of antitrust law?
 - > If so, Why?
 - > If not, Why?



➤ Sawtooth and Sawdust

- Sawtooth Brothers sells power saws throughout the state of Washington
- Sawdust Sisters sells power saws in Washington also
- Sawtooth and Sawdust meet at a trade association conference
- Each agree that one will sell in the northern part of the state and the other will sell in the southern part of the state
 - ◆ Is this a violation of antitrust law?
 - > If so, Why?
 - > If not, Why?



➤ Rin Tin Tin, Inc.

- Rin Tin Tin Inc. sells expensive scrap metals (nickel, copper, etc.) to Andy Conda, Inc. for retail with its suggested retail price attached
- Andy Conda marks down RTT's scrap metal 10% from RTT's SRP
- RTT learns of this and threatens to raise the price of scrap metal purchases unless AC sells at the SRP
 - ◆ Are RTT's threats against AC a violation of antitrust laws?
 - > If so, Why?
 - > If not, Why?



➤ Rin Tin Tin, Inc. (continued)

- Same fact scenario
- This time Andy Conda reluctantly agrees
 - ◆ Is this a violation of antitrust laws?
 - > If so, Why?
 - > If not, Why?



➤ Fishin and Fusion

- STEF Funny Power Company invites several companies to submit competing bids for a nuclear power project
- In its RFP, SFPC indicates it is willing to let the job to the 2 lowest bidders
- Unknown to SFPC, the Presidents of Fishin and Fusion share with each other the prices they intend to bid
 - ◆ Is the information shared by F&F a violation of antitrust law?
 - > If so, Why?
 - > If not, Why?



➤ Fishin and Fusion (continued)

- Same facts
- Fusion had been preparing a bid that was lower than Fishin, but now raises its bid price to meet that of Fishin
- F&F are the lowest bidders
 - ◆ Is this a violation of antitrust laws?
 - > If so, Why?
 - > If not, Why?



Questions & Answers

Thank you!

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