

Wyoming

Labor Standards

1510 E. Pershing Blvd., Rm 150

Cheyenne, WY 82002

307-777-7261

Main Office

Wyoming

Labor Standards Casper Office

851 Werner Court,
Suite 121

Casper WY 82601

307-235-3679



Employment Discrimination

- Title VII of the Civil Rights Act of 1964
- The Age Discrimination in Employment Act
- The Americans with Disabilities Act of 1990
- The Wyoming Fair Employment Practice Act of 1965
- Race, color, sex, religion, national origin, retaliation
- Age (40+)
- Disability
- All of the above

Wyoming

State and Federal Coverage

To obtain State coverage, the most recent discriminatory act must have occurred within six months of the time Charging Party has filed his/her claim.

Federal coverage requires the most recent discrimination to have taken place within 300 days of the time the claim is filed

Wyoming

Wyoming Fair Employment Practices Act of 1965

Prohibits employers from discriminating against applicants and employees based on:

- Race
- Sex
- Creed (religion)
- Color
- National origin/ancestry
- Age
- Disability

Sex

Covers...

- Gender (including sexual stereotypes)
- Sexual desire
- Aversion to a particular sex in the workplace
- Sexual Harassment
- Pregnancy

- Does not cover...
- Sexual orientation
- General horseplay
- Course or boorish language
- Differences in the ways men & women interact in the workplace

What is Sexual Harassment?

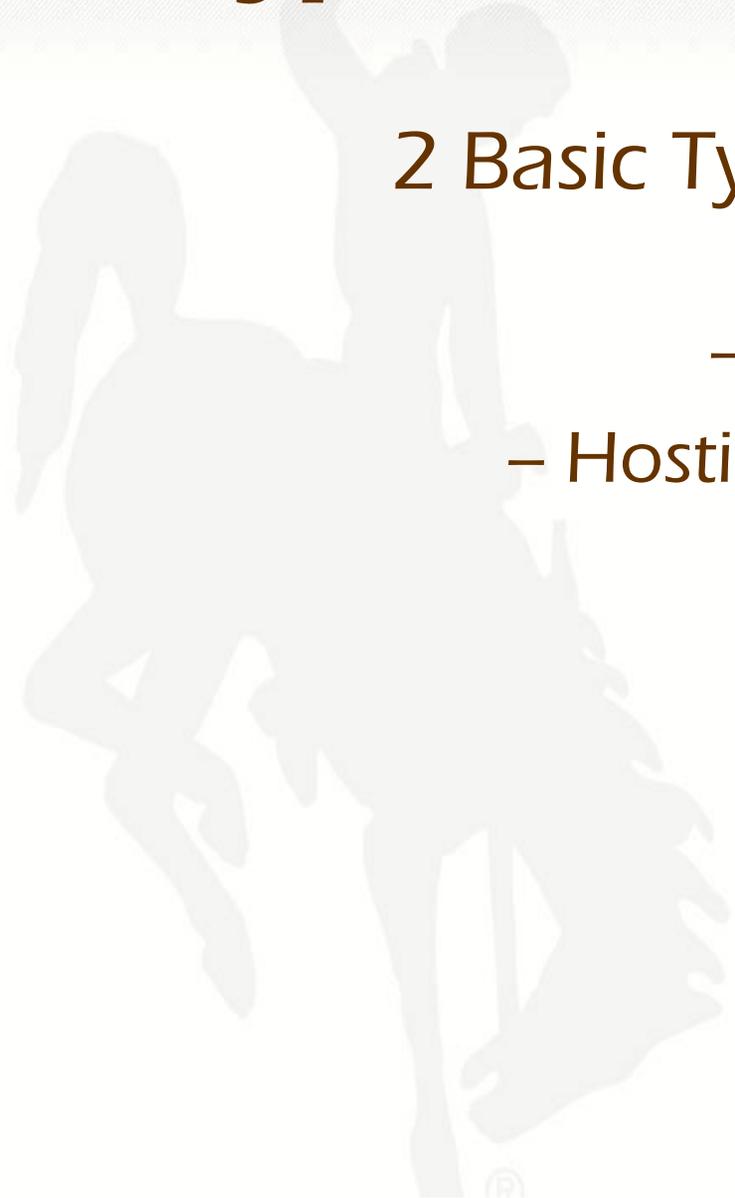
- Sexual harassment is any unwelcome sexual advance or conduct on the job that creates an intimidating, hostile or offensive working environment.
- Any conduct of a sexual nature that makes an employee uncomfortable has the potential to be sexual harassment.

Wyoming

Types of Sexual Harassment

2 Basic Types of Harassment

- Quid Pro Quo
- Hostile Work Environment



Quid Pro Quo

(Latin for “this for that”)

Examples:

- A supervisor implies to an employee that the employee must sleep with him or her to keep the job.
- An employee is denied a raise because he or she rejected advances from the manager.

Hostile Work Environment

An environment at the work place which significantly and adversely affects an employee because of her/his sex.

- Unwelcome sexual advances or conduct.
- Includes taunts, touching, pictures, jokes or other harassing words or actions.
- It may also include isolating or ostracizing others.

Hostile Work Environment

Examples:

- A sales clerk makes demeaning comments about female customers to his coworkers.
- A male employee brags to coworkers about his sex life.
- A computer screen saver shows pornographic pictures.
- An employee sends e-mails to coworkers that contain sexually explicit images, language or jokes and the coworkers are offended.
- A customer fondles a server.

Hostile Work Environment

Examples (continued):

- A male employee who makes constant reference to a female coworker's breasts or other body parts.
- Questions asked of a coworker about his or her sex life.

Hostile Work Environment

- The conduct must be unwelcome to be sexually harassing.
- Conduct that is acceptable to one employee may be offensive to another.
- Unless the conduct is severe, a single comment or incident would not be sufficient to create a hostile work environment.
 - An exception is unwanted touching

Impact

- Sexual harassment is evaluated based on impact or effect – not intent.
- It doesn't matter if the harasser was "only joking."
- If a coworker or subordinate is offended, it may become sexual harassment.

Wyoming

Anyone Can Be Sexually Harassed

The harasser may be:

- The victim's supervisor
- The manager
- A coworker
- A customer or vendor
- Of the same sex

Sexual Harassment Outside the Box

- Traditionally, we think of sexual harassment as men harassing women; however, women can also sexually harass men.
- Women can sexually harass other women.
- Men can sexually harass other men.

Same Sex Harassment

People of the same sex can sexually harass each other.

Examples:

- A man's coworkers constantly bombard him with sexually explicit photos of women and sexually explicit jokes. If this makes him uncomfortable, this behavior may be sexual harassment.
- Calling an individual who does not meet your expectations of what constitutes a man "gay" or "faggot" may be harassment.

Wyoming

IMPORTANT ROLE OF SUPERVISORS

- A supervisor's failure to act can mean liability for the your organization.
 - Supervisor must not participate in any discriminatory or harassing conduct.
 - Supervisor must stop any discriminatory or harassing conduct the supervisor observes in the workplace.
 - Supervisor must respond promptly and appropriately to all complaints of workplace discrimination or harassment made to the supervisor.

PROHIBITED CONDUCT

Other Types of Discrimination

- **Race, Color, National Origin, Ethnic Background**
 - May not be used as basis for employment decisions
 - Ethnic slurs, racial jokes, offensive or derogatory comments or other verbal or physical conduct based on an individual's race, color, national origin or ethnic background are prohibited.

PROHIBITED CONDUCT

Other Types of Discrimination

- **Religion**
 - May not be used as basis for employment decisions
 - Jokes, offensive or derogatory comments or other verbal or physical conduct based on an individual's religion are prohibited.
 - Employees needing an accommodation in scheduling, job assignments, dress code, etc., for religious reasons must contact supervisor.

PROHIBITED CONDUCT

Other Types of Discrimination

- **Sex**
 - May not be used as basis for employment decisions
 - Sexual harassment is prohibited.
 - Pregnancy discrimination is prohibited.
 - may not use pregnancy as basis for employment decisions
 - may not apply special work conditions, rules or procedures based upon pregnancy

PROHIBITED CONDUCT

Other Types of Discrimination

- **Age**
 - Individuals who are 40 years of age or older may not be discriminated against on the basis of age.
 - May not be used as basis for employment decisions
 - Offensive or derogatory comments or physical conduct based on an individual's age (40+) can create a hostile work environment.

Wyoming

THE AMERICANS WITH DISABILITIES ACT (ADA)



Wyoming

ADA BACKGROUND

- Federal law enacted in 1990
- Title I

Prohibits employers from discriminating against qualified individuals with disabilities in hiring, firing, promotion, compensation, job training or any other terms, conditions and privileges of employment.

ADA DEFINITIONS

- “Individual with a disability” is a person who:
 - has a physical or mental impairment that substantially limits one or more major life activities;
 - has a record of such an impairment; or
 - is regarded as having such an impairment.

Wyoming

January 1, 2009

ADA Amendments Act

- On September 25, 2008, President Bush signed the Americans with Disabilities Act Amendments Act of 2008. The Act makes important changes to the definition of the term "disability" by rejecting the holdings in several Supreme Court decisions and portions of EEOC's ADA regulations. The Act retains the ADA's basic definition of "disability" as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment.

Noteworthy Changes

- However, it changes the way that the statutory terms should be interpreted in several ways. Most significantly, the Act:
- directs EEOC to revise that portion of its regulations defining the term "substantially limits" to more closely tie it to a "material restriction."



New Definition of Disability under the Amendment

- ADAA defines disability as:
 1. A physical or mental impairment that substantially limits a major life activity;
 2. A record of a physical or mental impairment that substantially limited a major life activity;
or
 3. When an entity (e.g. an employer) takes an action prohibited by the ADA based on an actual or perceived impairment.



Expands the Definition of "major life activities"

by including two non-exhaustive lists:

- the first list includes many activities that the EEOC has recognized (e.g., walking) as well as activities that EEOC has not specifically recognized (e.g., reading, bending, and communicating);
- the second list includes major bodily functions (e.g., "functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions");

Disability: Major Life Activities

Substantial limitation in a major life activity

- Major life activities include:

- Walking
- Sitting
- Seeing
- Hearing
- Sleeping
- Caring for oneself

- New Major life activities include:

- Reading
- Communicating
- Bending

Wyoming

Also...Major Bodily Functions

- Sexual Reproduction
- Waste Elimination
- Auto-Immune Function
- Cell Growth
- Digestive, Bowel, Bladder Function
- Neurological & Brain Function
- Respiratory, Circulatory & Endocrine Systems

Wyoming

Includes Per Se Disabilities

- Cancer
- Epilepsy
- Multiple Sclerosis
- HIV/AIDS
- Major depression/depressive disorder
- PTSD
- Bipolar Disorder
- Schizophrenia

Clarifying Language

- states that mitigating measures other than "ordinary eyeglasses or contact lenses" shall not be considered in assessing whether an individual has a disability;
- clarifies that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active;

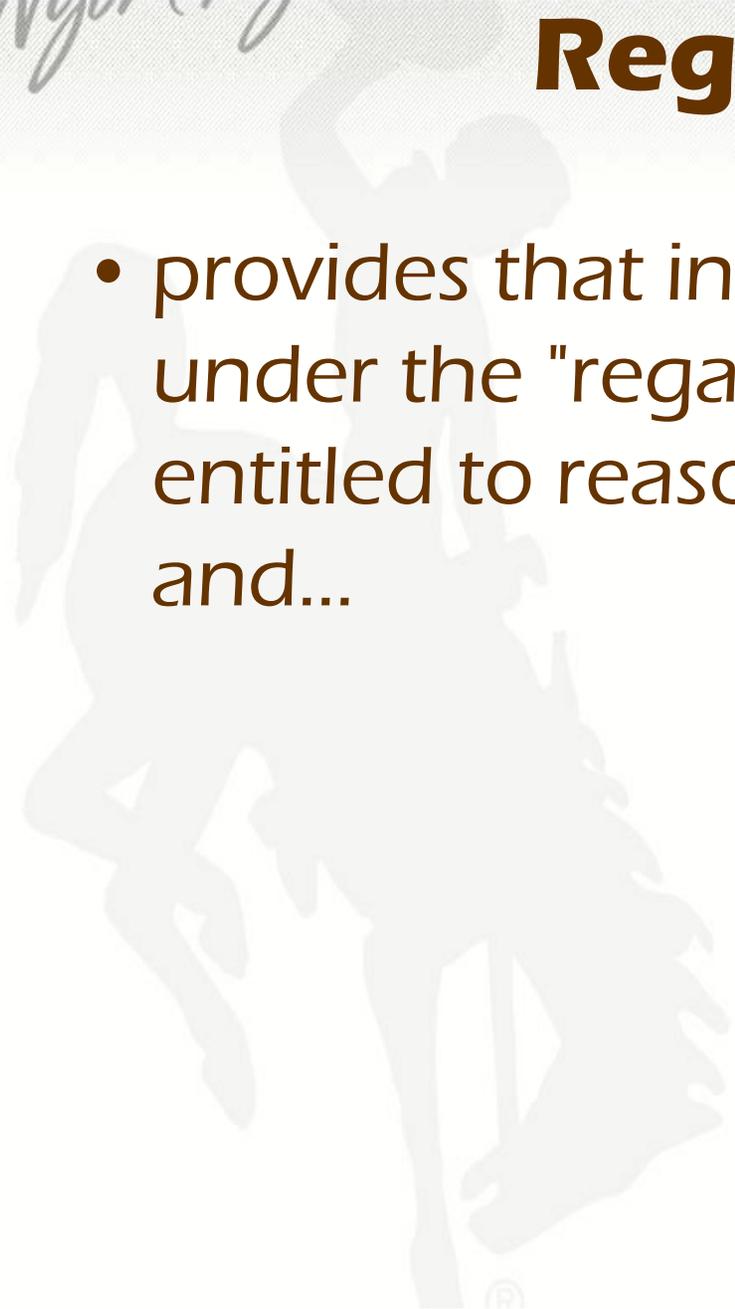
Because of a Disability

- provides that an individual subjected to an action prohibited by the ADA (e.g., failure to hire) because of an actual or perceived impairment will meet the "regarded as" definition of disability, unless the impairment is transitory and minor;

Wyoming

Regarded As...

- provides that individuals covered only under the "regarded as" prong are not entitled to reasonable accommodation; and...



Re Focus Relevant Inquiry

- emphasizes that the definition of "disability" should be interpreted broadly, removing focus from "is the employee disabled?" to the substantive questions of discrimination: "Has there been exclusion or denial of a reasonable accommodation?"

Substantial limitation

- Examine extent, duration and impact
 - Extent: affected (impaired) to a significant degree as compared to the average person in the general population
 - Duration: impairment lasting less than about four to six months won't be a disability
 - Impact: must affect daily living activities, not just job duties
 - Ongoing new guidance from EEOC on impairments

Wyoming

“Materially” Restricts

- “Material” is a term with its roots in common law indicating that something or an action has relevance, measurable effects, notable impact or practical consequences

Wyoming

Daily activities of living

- Include:
- Preparing meals
- Vacuuming
- Dusting
- Laundry
- Personal care and hygiene

Work related injury

- Does not necessarily equate to a disability
- Usually short in duration
- Often limited impact
- Frequently narrowly focused

Wyoming

ADA DEFINITIONS

- Alcoholism or other substance addiction can be a disability.
- Current use of illegal drugs is excluded from the definition of disability.

ADA DEFINITIONS

- Discrimination means:
 - using disability as basis for employment decisions without considering reasonable accommodation that may allow employee to perform essential functions of the job.
- Reasonable accommodation:
 - employer must provide unless it would constitute an undue hardship

ADA DEFINITIONS

- Examples of Reasonable Accommodations:
 - Extended leave
 - Physical changes to workplace
 - Restructuring of job
 - Modifying work schedule
 - Reassignment to a different position
 - Modifying equipment
 - Altering when or how an essential function is performed
- Reassigning an employee to a new or different job if the employee cannot be accommodated in his or her current position.

ADA TIPS FOR COMPLIANCE

- Review and update PDQs
- Do not ask job applicants if they have disabilities or impairments
- Evaluate employees based on job performance. Do not assume an impairment will affect the employee's ability to perform.
- Do not ignore suspected impairments if they impact work performance.

ADA TIPS FOR COMPLIANCE

- Do not retaliate against employees who request reasonable accommodation or otherwise attempt to invoke the protections of the ADA.
- Keep medical information in a confidential medical file separate from the employee's personnel file.
- Do not ask employees about their health.
 - Ask about performance problems and offer reasonable accommodations to address them.

Wyoming

IMPORTANT ROLE OF SUPERVISORS

- **TIPS FOR SUPERVISORS**
 - Do not participate in or tolerate prohibited conduct in the workplace.
 - Do not ignore prohibited conduct or complaints!
 - No Magic words are required so listen closely to the behavior being described or the issue being discussed.

PROHIBITED CONDUCT

Retaliation

- The law strictly prohibits retaliation against an employee who complains of discrimination or harassment by anyone covered by the law, including:
 - managers/supervisors;
 - co-employees; and
 - the individual accused of inappropriate conduct.

The law also makes it illegal to retaliate against anyone who participates in any manner with an investigation of a charge of employment discrimination whether or not the charge is proved valid.

Wyoming

Retaliation Continued

- The U.S. Supreme Court says any conduct that would likely prevent a reasonable person from complaining about discrimination is unlawful retaliation.



Wyoming

Wage & Hour



Minimum Wage

- Wyoming Statute § 27-4-202 provides:

Every employer shall pay to each of his or her employees wages at a rate of not less than five dollars and fifteen cents (\$5.15) per hour.

- Wyoming Statute § 27-4-507 provides:

It shall be unlawful for any employer to pay to any employee a lower wage, salary, or compensation than that provided for or agreed upon ...

Miscellaneous Wage Requirements

- Employers must pay an employee all wages owed within 5 working days of the employee's last day of work.
- Claims for wages may be filed by any employee who no longer works for the employer from which she or he is claiming wages owed.
- Labor can go back 2 years in pursuing wages owed
- Labor has no jurisdiction over independent contractor relationships

Vacation Liability

- Employer's liability for employees' earned vacation is governed by a 1963 Wyoming Attorneys' General Opinion No. 53:
 - 1. There must be an agreement or contract between employer and employee which provides for vacation pay.
 - 2. The agreement must specify some definite time element as to the period of employment which must be completed by employee before a right to vacation pay is earned.
 - 3. Vacation pay must have been earned as provided in the agreement.

Vacation Liability

- Recent statutory changes to the definition of “wages” allow an employer to avoid paying out earned, but unused vacation following an employee’s separation provided:
 - The employer’s written policy specifically states vacation pay will not be paid out upon separation, and
 - The employee acknowledges receiving the policy in writing.

Fair Labor Standards Act (FLSA)

- Federal law passed by Congress in 1938
- Set first federal minimum wage at 25 cents
- Set hours of work
- Child labor restrictions

Hours of Work

- FLSA sets basic hours of work at 40 hours per week
- Hours worked in excess of 40 in a workweek are considered overtime hours and need to be paid at time and one half of employees regular rate of pay.

Hours of Work Continued

- Under the FLSA there are some exceptions to the standard 40 hour workweek for certain employees (law enforcement).
- Certain employees (executive, professional and administrative) may be exempt from overtime.
- Questions on how overtime and exemptions are applied in your agency should be directed to LGLP or US Dept. of Labor – Mike Coulter, Wyoming Compliance Officer, 307-261-6242.

Hours of Work Continued

- Rest and meal periods—There is no statutory requirement, either state or federal, to provide employees rest or meal periods. The law only requires that rest periods of short duration (20 minutes or less) be paid. Meal periods of 30 minutes or more are not considered time worked unless the employee is not completely relieved of their duties.
- Rest and meal periods may be established by policy.

Child Labor

- Must be 14 to work (some exceptions for minors working for their parents)
- No work permits required
- Hours of work restrictions (primarily for 14 and 15 year olds outside of school hours)
- Driving restrictions
- No child under 18 may work in occupations deemed hazardous by Secretary of Labor.
(Currently list of 17 hazardous occupations)

Independent Contractor v. Employee

- Who is an employee governed by 2005 Wyoming State Supreme Court case:

Diamond B Services Inc v. Lawrence Rohde

- “Employee” is defined as “any person who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.”
- An independent contractor “is one who, exercising an independent employment, contracts to do a piece of work according to his own methods and without being subject to the control of his employer except as to the result of the work.”

Considerations

- The key consideration in distinguishing employee versus independent contractor is “employer’s right to control the means and manner of the work.”
 - “When a worker is an independent contractor, the employer is typically interested only in the results of the work and does not direct the details of the how the work is performed”
 - Having a written contract is relevant evidence, but not conclusive. Just because you do not have a contract does not necessarily mean an individual is an employee and vice versa.

Considerations Continued

- The method of payment,
 - Independent contractors generally set the price of their services and bills for services on a regular basis
 - The employer typically sets the employee's rate of pay and deducts taxes for income, social security, and medicare.
- The right to terminate the relationship without incurring liability,
- Furnishing of tools and equipment,
- The scope of the work,
- Control of the premises where the work is to be done.
- Does the worker devote all of his efforts to the position or does he also perform work for others?

Considerations continued

- Employer's also usually pay into worker's compensation and unemployment insurance
- Employees also can participate in benefit programs offered by the employer such as retirement, health insurance, vacation and sick leave.
- Remember no one factor guarantees an individual is an independent contractor. The assessment is done on a case by case basis!

Wyoming

Numbers to Know

- Wyoming Workers Compensation
 - (307) 777-5476
- Unemployment Insurance
 - (307) 473-3789
- U.S. Department of Labor
 - (801)-257-6560
- LGLP
 - (307)-638-1911

Useful Websites

- Wyoming Department of Workforce Services
 - www.wyomingworkforce.org
- U.S. Department of Labor
 - www.dol.gov
- Local Government Liability Pool (LGLP)
 - www.lglpwyoming.org

Wyoming

Questions



- Personnel Management and Policy (Equal Employment Opportunity, Fair Labor Standards Act,
- Describe two employment practices that could be considered discriminatory or unfair?
- **ANSWER:**
 - A refusal to hire, based on qualified handicap person or any person otherwise qualified because of age, sex, race, creed, color, national origin or ancestry
 - discharge, due to handicap, age sex, race, creed, color, national origin or ancestry
 - promote or demote, due to handicap, age sex, race, creed, color, national origin or ancestry, or
 - discriminate in matters of compensation or the terms, conditions, or privileges of employment against a qualified handicapped person or any person otherwise qualified because of age sex, race, creed, color, national origin or ancestry.

ANSWERS!!!

- What law sets the requirements for providing compensation time to employees?
- ANSWER: Fair Labor Standards Act
- When must a covered employer grant eligible employees up to 12 work weeks of unpaid leave?
- ANSWER:
 - birth and care of newborns
 - Placement with employee of a son or daughter for adoption or foster care.
 - To care for an immediate family member which is a spouse, child or parent with a serious health condition
 - To take medical leave when the employee is unable to work due to a serious health condition.

ANSWERS!!!

- Are district supervisors eligible to participate in the Wyoming State Retirement Plan?
- **ANSWER:** No
- List two items that should be included in a District's Employee Policy.
- **ANSWER:** Salaries and compensation, benefits, leave policy, drug and alcohol policies, EEO statement.
- At what rate does the Fair Labor Standards Act require comp time to be provided?
- **ANSWER:** At a rate not less than one and one-half hours for each hour worked overtime.
- When should an agreement between the employee and employer be reached regarding use of comp time in lieu of overtime payment is cash?
- **ANSWER:** Prior to the performance of work.

ANSWERS!!!

- Name the three main categories that determine whether a worker is an independent contractor or an employee.
- **ANSWER:** Behavioral Control, Financial Control, Relationship of the Parties.
- What two types of insurance are districts required to provide for employees?
- **ANSWER:** Workers Comp and Unemployment
- How long does an employer have to pay all wages owed to an employee upon separation?
- **ANSWER:** Within 5 working days