

Staffing Challenges

Avoiding the Landmines



Top HR Landmines

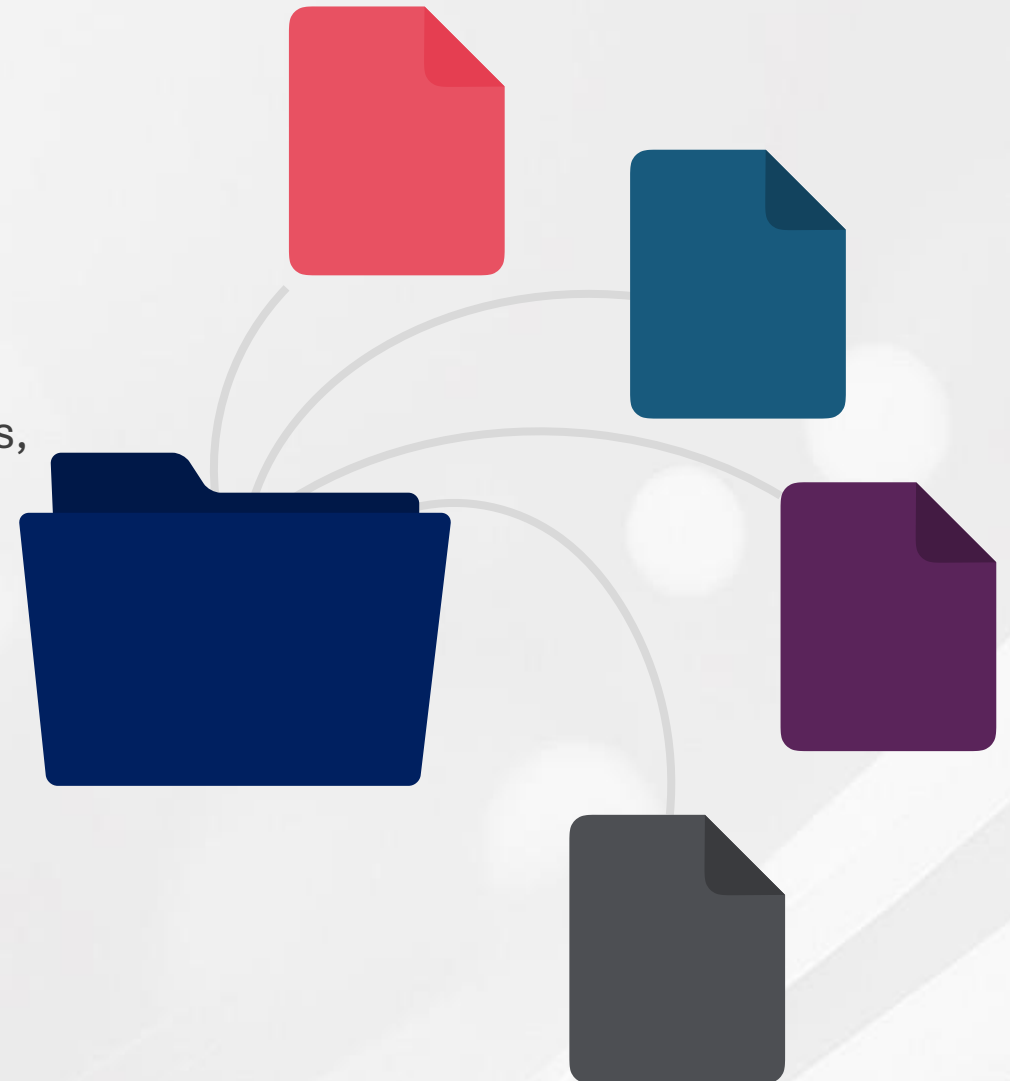
- **EEOC complaints & investigations**
- **Accommodations**
- **Employee conflict & disruptive behaviors**
- **At-will & exempt employees**
- **Termination & resignation**



Handbooks & Policies

- ◆ **Keep it simple**
- ◆ **Keep it current**
- ◆ **Have legal review**
- ◆ **Include**

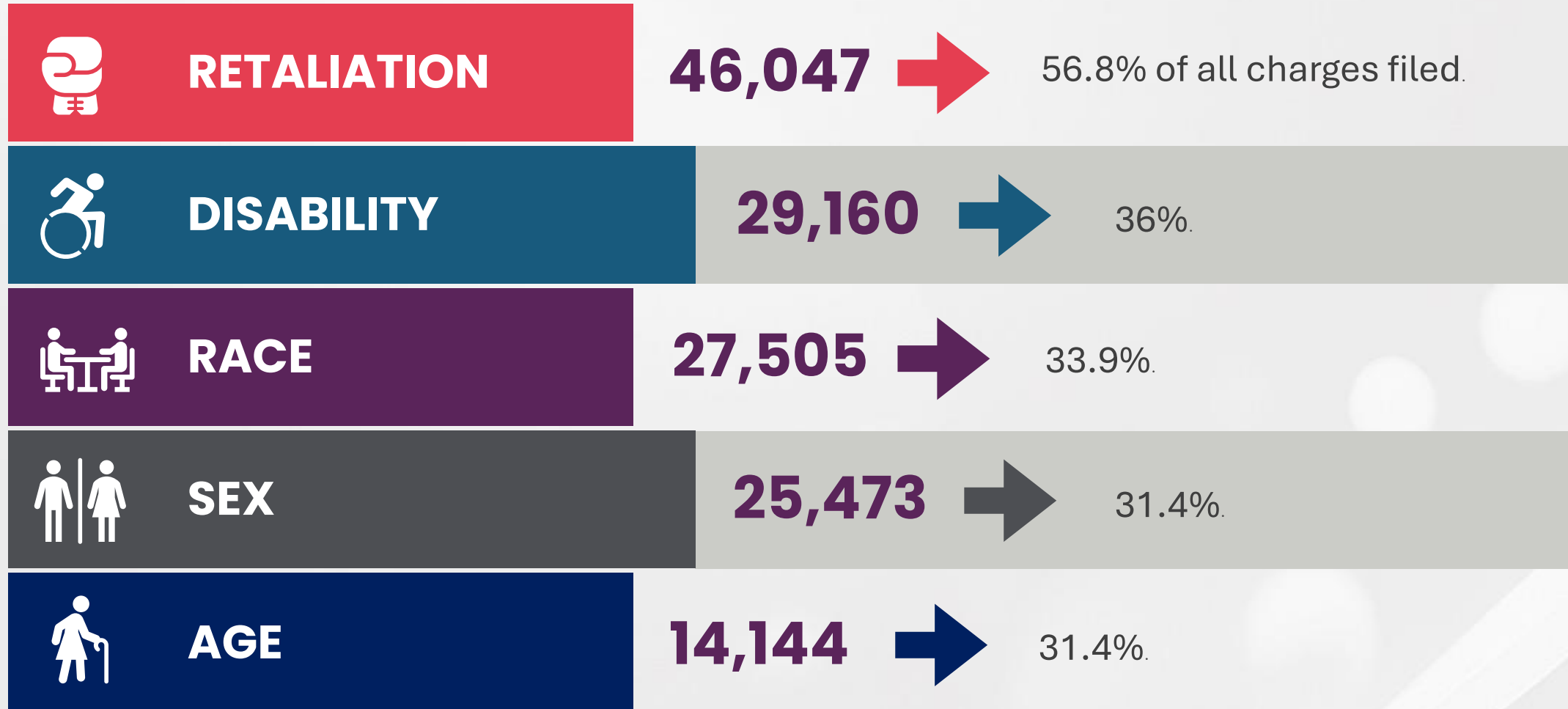
- Company overview
- Anti-discrimination, anti-harassment & anti-retaliation statements
- Terms of employment (at-will clarification, pay policy, benefits, etc.)
- Code of conduct - behavior expectations, social media
- Time off, attendance policies, holidays, etc.
- Dress code
- Advancement & evaluation processes
- Discipline
- Complaint procedures
- Disclaimer



EEOC Complaints & Investigations



EEOC 2023 Fiscal Enforcement and Litigation Data



<https://www.eeoc.gov/data/enforcement-and-litigation-statistics-0>

*Data includes all charges filed under the above referenced statute, basis, or issue, as well as those filed concurrently under other statutes, bases, or issues enforced by the EEOC. Therefore, the sum of data across statutes, bases, or issues will exceed actual totals.

EEOC Laws Prohibit Retaliation



Includes **punishing job applicants or employees for asserting their rights** to be free from employment discrimination including harassment. Asserting these EEO rights is called "protected activity," and it can take many forms. Examples on next slide.



Participating in a complaint process is protected from retaliation under all circumstances. Other acts to oppose discrimination are protected as long as the employee was acting on a reasonable belief that something in the workplace may violate EEO laws, even if he or she did not use legal terminology to describe it.



**PROTECTED
ACTIVITIES**

Requesting
accommodation of
a disability or for a
religious practice

Refusing to
follow orders
that would result
in discrimination

Communicating with a
supervisor or manager about
employment discrimination,
including harassment



Filing or being a
witness in a EEO
charge, complaint,
investigation, or
lawsuit

Answering questions
during an employer
investigation of
alleged harassment

Resisting
sexual
advances or
intervening to
protect others

Asking managers or
co-workers about
salary information to
uncover potentially
discriminatory wages

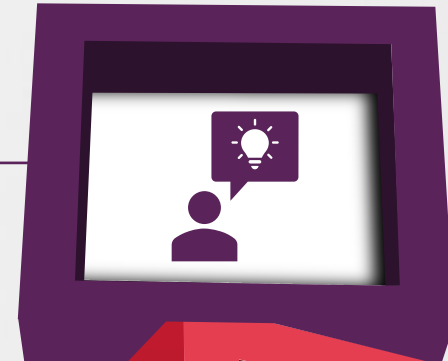
Retaliation Examples



Discrimination

The Smart Choice

Consistently follow personnel policies and disciplinary procedures



Your Choice

You can be fair or consistent



Every Claim

Begins with an accusation “I was treated differently because of...”



The Process

- Who will investigate
- What will be investigated
- What evidence needs to be collected
- Who will be interviewed
- Determine order of interviews
- Use open ended questions
- Do not be aggressive
- Determine witness credibility
 - Plausibility, demeanor, motive, corroboration, past behaviors



The Report

- Incident, accusations, etc.
- Dates
- Individuals involved
- Key facts & determinations
- Applicable policies
- Summaries of witness statements
- Specific conclusions
- Issues that could not be resolved
- Employer actions, if any

Investigation Essentials

Be quick

Be thorough

Be objective

Be confidential



Reach a conclusion

Follow-up

**Cooperate with
outside agencies**

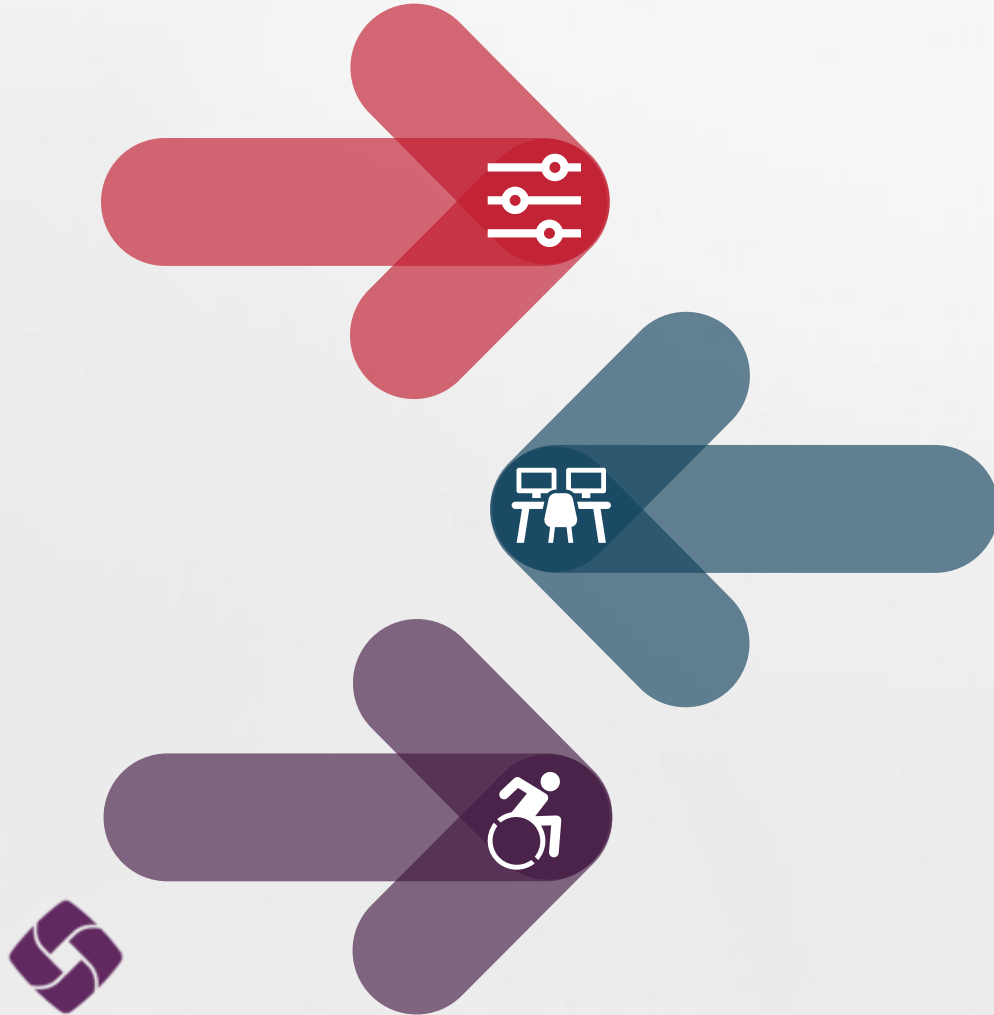
**Consider an outside
investigator**



Accommodations



What Is An Accommodation



An adjustment to a job or work environment that makes it possible for an individual with a disability to perform their job duties



May include specialized equipment, modifications to the work environment or adjustments to work schedules or responsibilities



Not all people with the same disabilities need the same accommodations

What Is Reasonable

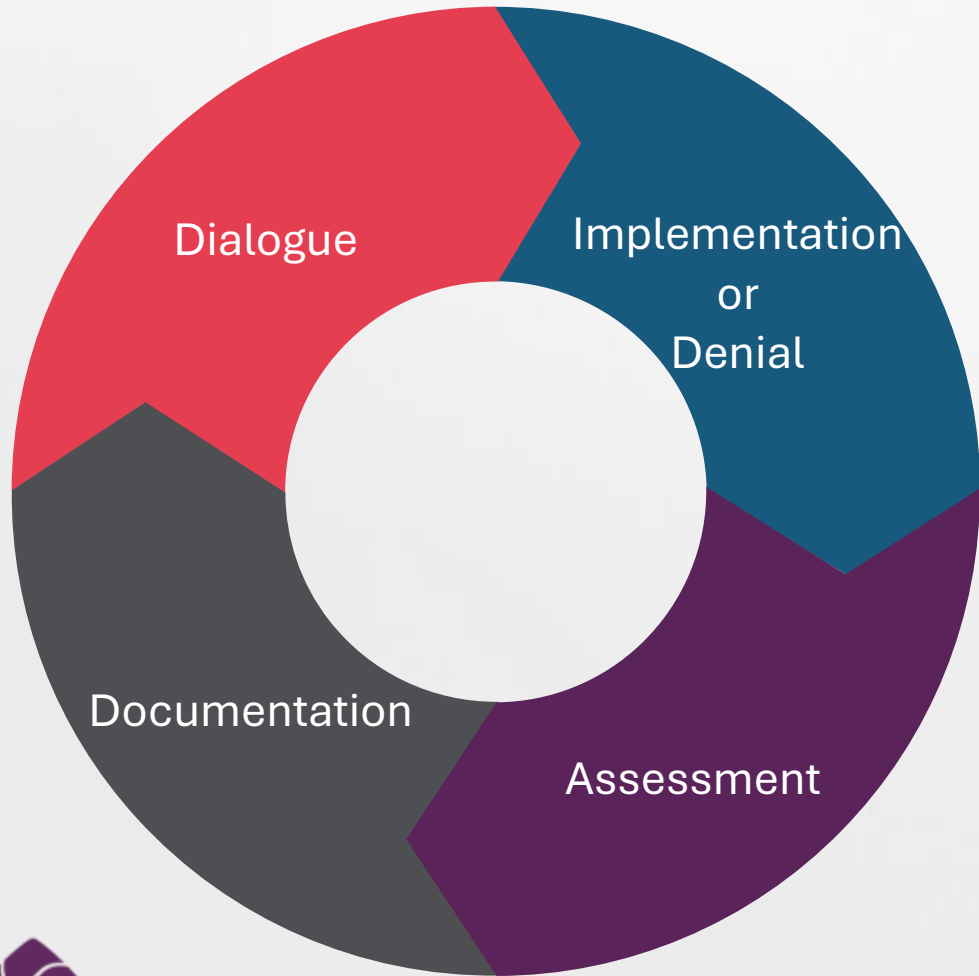
→ Adjustments to the job application process so a qualified applicant with a disability can be considered for a position

→ Modifications to the physical work environment, or to the way a job is usually performed, so an individual with a disability can perform the **essential functions** of that position

→ Changes that enable an employee with a disability to enjoy equal benefits and privileges of employment like those that are enjoyed by other employees without disabilities



Determination Process



Dialogue

- Employee discloses the disability
- What might resolve it
- Obtain medical documentation if needed
- Work together to reach an effective accommodation



Implementation or Denial

- Employee must be able to perform “essential functions”
- Employer has final decision what to put in place
- If denied, provide an explanation of the “undue hardship”
- Significant difficulty, overly extensive or disruptive, or could impact the actual running of the business
- Only employees with a need to know should know



Assessment

Ongoing evaluation and dialogue regarding effectiveness and impact



Documentation

Clearly record the conversations, evaluation process, decision(s) & rationale



Real World

Accommodation Examples

- Physical changes
 - Ramps, office layout
- Accessible & assistive technologies
 - Computer software, videophones
- Accessible communications
 - Braille, large print documents
- Policy enhancements
 - Adjusting work schedules

Challenges

- Requests do not require fancy words
- Self-diagnosed conditions
- Staffing
- Discrimination



Remote Work

- **Eligibility**

- Positions
- Case by case determination

- **Environment**

- Workspace
- Equipment
- Childcare
- Privacy

- **Performance**

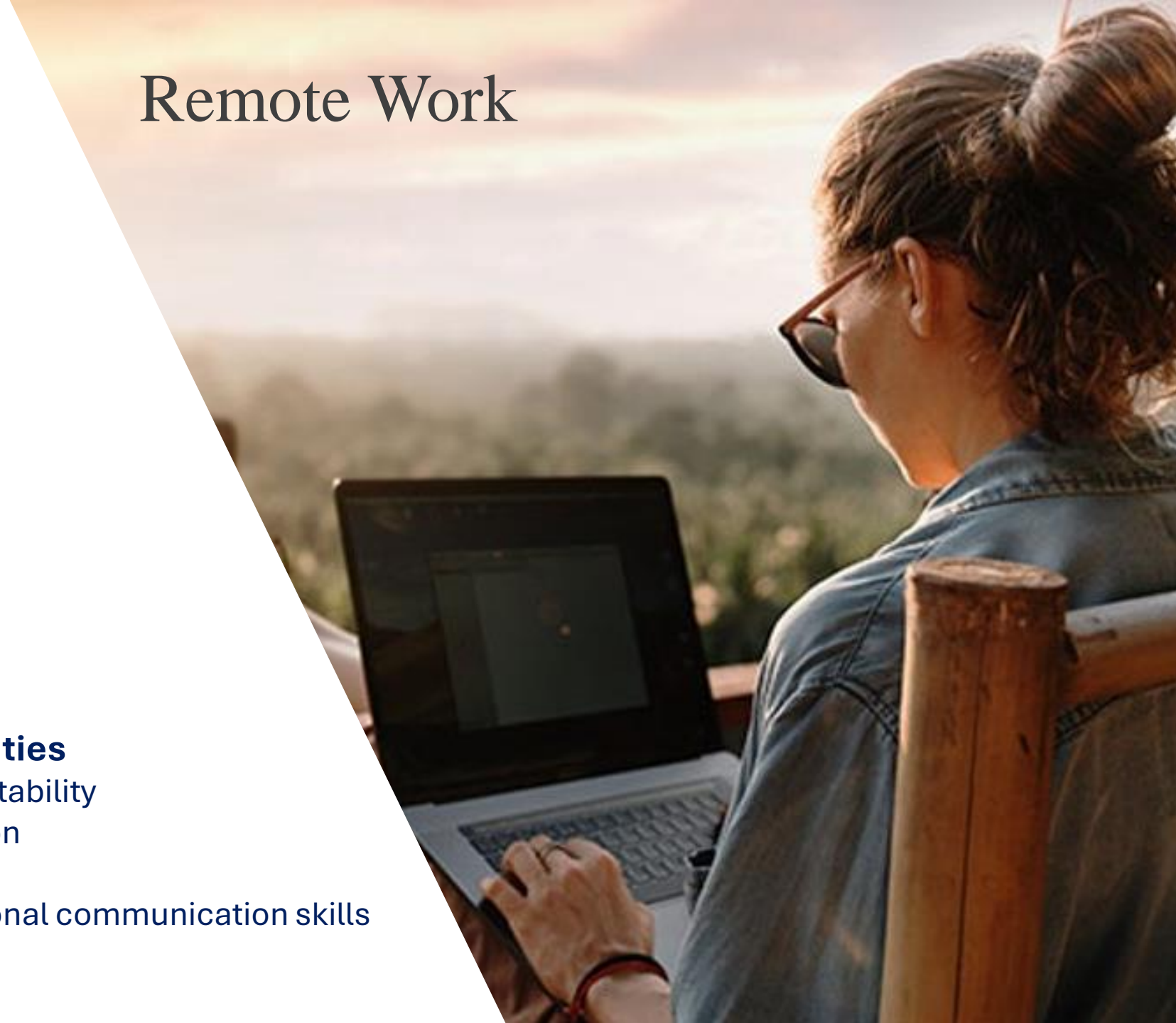
- How measured
- Routine evaluation
- Availability

- **Compensation**

- Additional stipend
- Office set-up
- Wi-Fi, phone

- **Job responsibilities**

- Employee suitability
- Self motivation
- Initiative
- Highly functional communication skills
- Reliability



Employee Conflict & Disruptive Behaviors



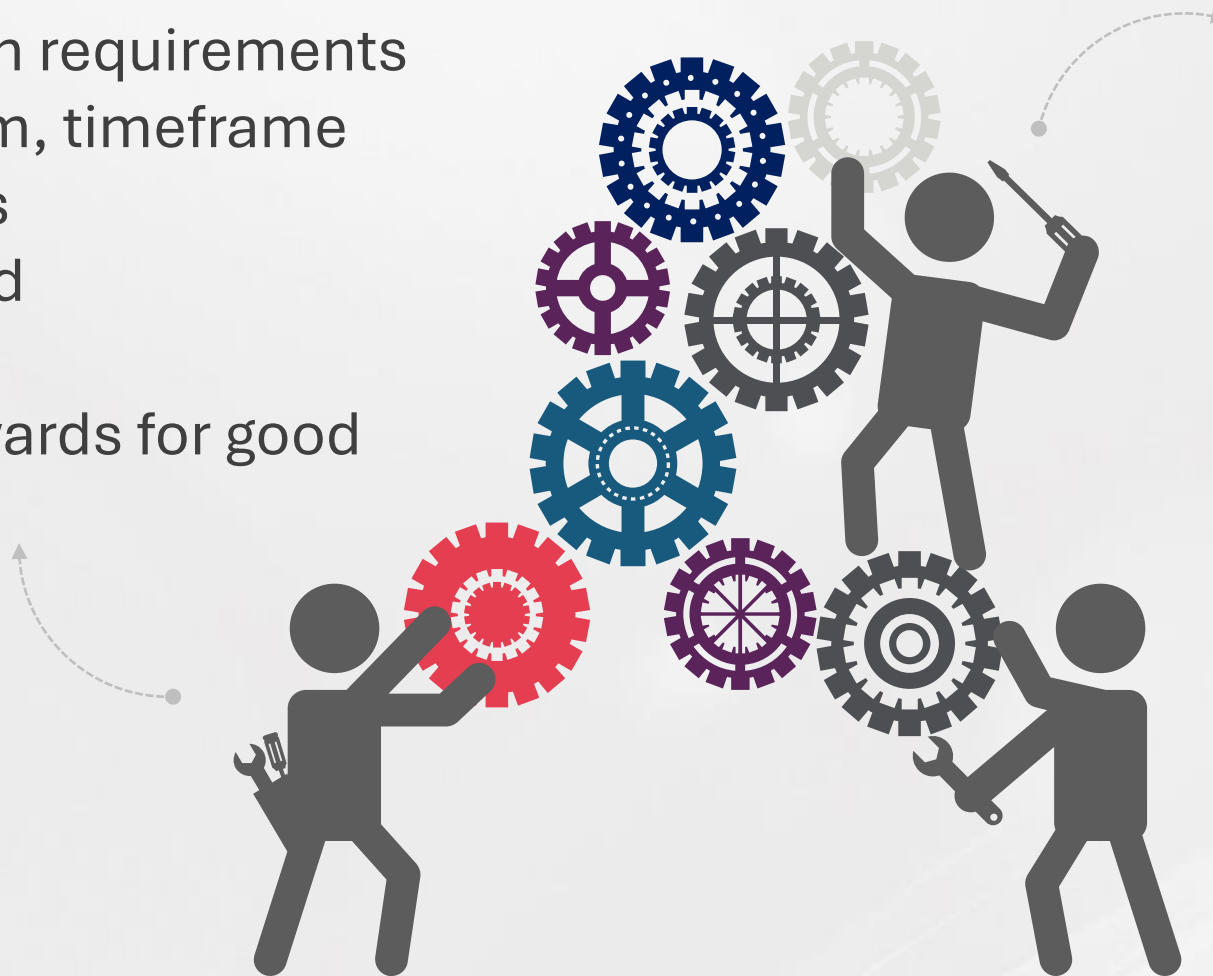
Attendance Policy Best Practices

Include:

- Notification procedures
- Documentation requirements
- Tracking system, timeframe
- Consequences
- New hire period
- Holidays
- Benefits or rewards for good attendance

Define:

- Tardy
- Absent
- Early departures
- Excused vs. unexcused
- Time clock usage
- Abandonment
- Good attendance



“Mental Health Days” – Protect Yourself

You have not provided us with any medical evidence of any disability, and this is not an accommodation under the ADA.

We are allowing you to take this day off without penalty under our attendance policy as a temporary matter. We may or may not allow future days off at our discretion and reserve the right to enforce our attendance policy as written in the future.

If you need an accommodation because of a medical condition, please follow our ADA and/or FMLA policies as applicable.



Incivility Cycle

Stress

Work and life related circumstances cause overwhelm

Incivility

Unmanaged stress results in workplace rudeness and disrespect



Ineffectiveness

Lack of civility leads to mistakes and creates more stress

Shutdown

Unresolved incivility stops communication including sharing knowledge and seeking help

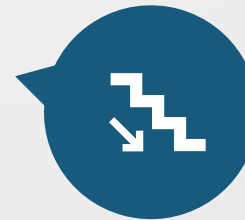


80 % lost work time worrying about the incident



63% lost work time avoiding the offender

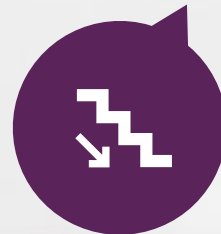
Incivility costs



66% said their performance declined

48% intentionally decreased work effort

47% intentionally decreased time spent at work

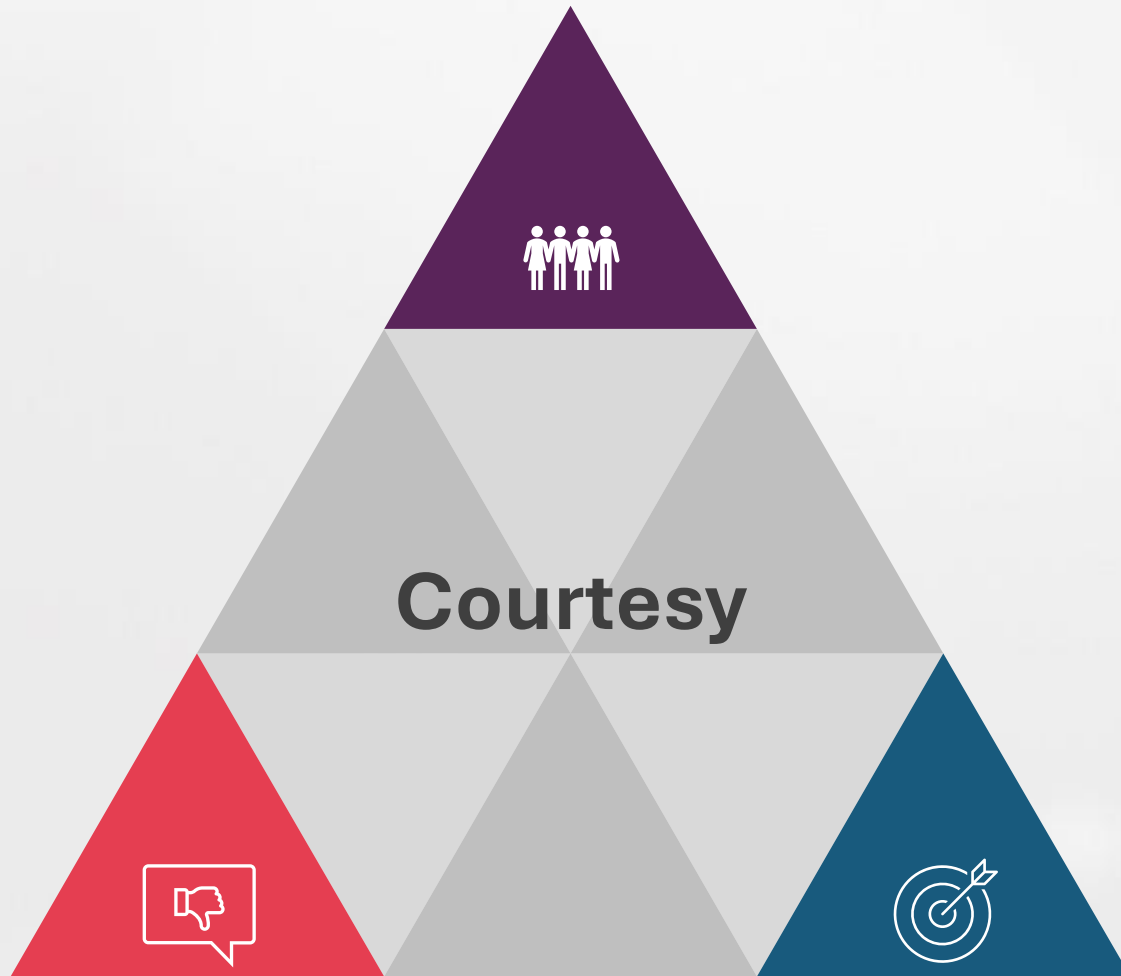


78% said their commitment to the organization declined

38% intentionally decreased quality of work



No More Team Drama



Courtesy

Leaders must articulate, enforce, role model, and skill build an expectation of courtesy and respect in all interactions, between all members of the team.



Camaraderie

Familiarity, connection, and bonds of belonging lead to higher levels of team performance.



Conflict

Healthy conflict must occur regularly for teams to reach the highest levels of performance.



Cause

A common cause leads to interdependence and shared effort on a team.



**Stop
disrespectful
behaviors**

Gossiping

Forming cliques

**Failing to respond to a
request for assistance**

Eye rolling, swearing

Holding grudges

**Ignoring your
biased thinking**

“That’s not my job”

Talking down to someone

**Withholding information
out of spite**

Excluding teammates

**Disproportionate
workload**

**Refusing to comply with
standards/policies**





Increase courteous behaviors

Say hello

Assume good intentions

Give full attention when someone is speaking to you

Make eye contact

Smile

Give credit whenever possible

Be on time and prepared for work

Treat your bias like a bad habit to break

Regulate tone of voice and body language

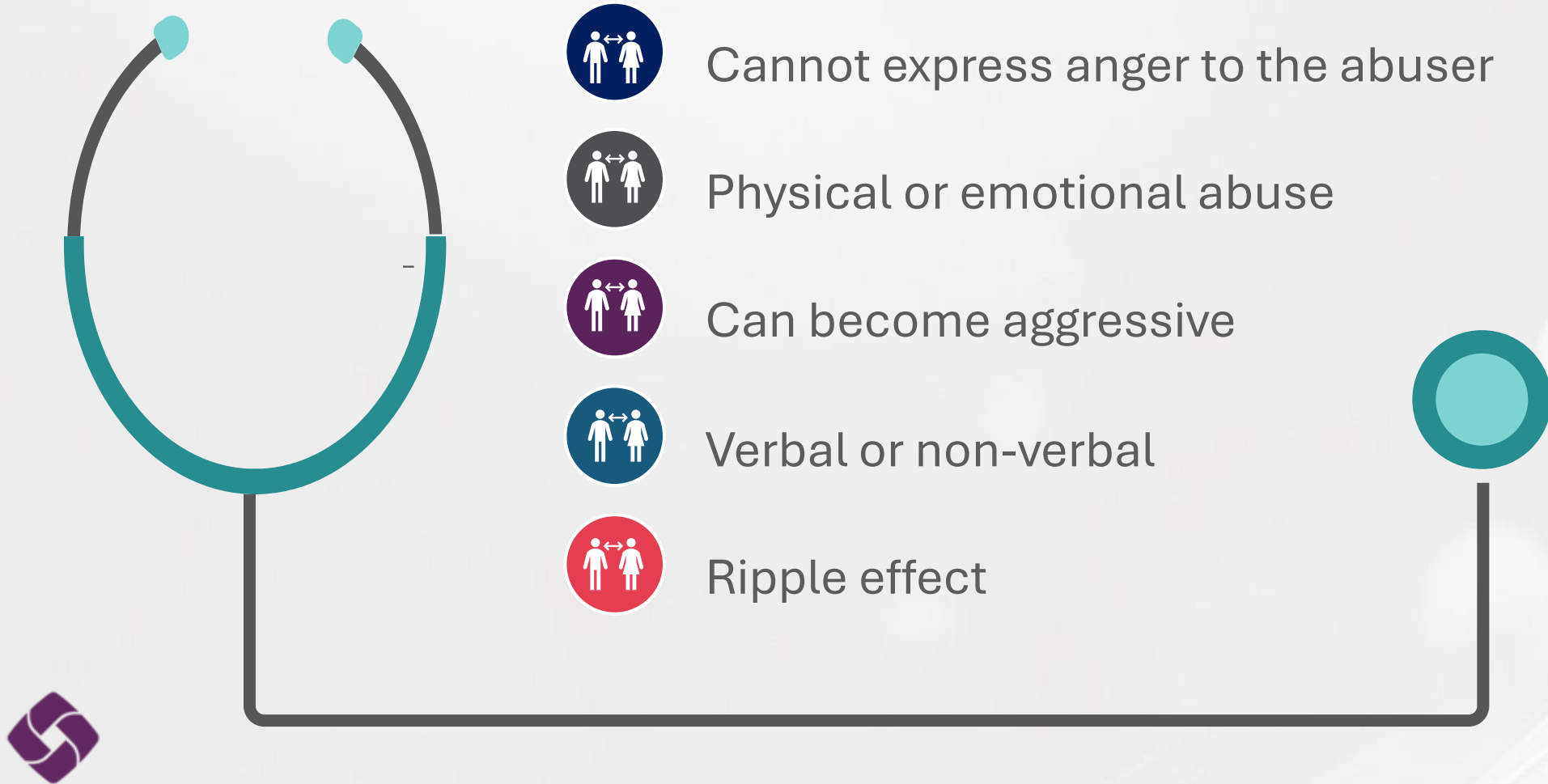
Return messages promptly

Pitch in and help everyone

Be clear on what you can and can't deliver



Horizontal Hostility



Employee Conflict



When to get involved



- Employees are threatening to quit
- Disagreements are getting personal
- Coworker respect is eroding
- Affecting morale & organizational success

How to address



- Go directly to the source(s)
- Bring the parties together
- Agree to a resolution



Off the Clock, But...

Q Can I discipline employee off-duty activities or behavior?

A Maybe...

- Is the activity lawful or protected?
- Is there a relationship between the off-duty conduct of the employee and the performance of the employee's job?
- Does the employee's off-duty conduct put your business in an unfavorable light with the public?
- Does the employee's conduct have a potential for harming the business?



Addressing Off-Duty Behavior

- Establish policies to define at work expectations
 - Impairment
 - Behavior
 - Dress code
 - Workspace
- Establish a policy to address the potential impact of off-duty activities that are illegal and/or may negatively impact the employer's reputation
- Investigate as appropriate
 - Confirm facts – accusations, identity, legal status
 - Beware defamation
 - Maintain privacy
- Apply policies & discipline universally
- Document actions & rationale



At-Will & Exempt Employees



At-Will Employees

Q Can I fire an at-will employee at any time for any reason?

A Maybe...

- Employees without an employment agreement or who have not been hired for a definite term may typically be released for any reason or no reason at all so long as the reason is not discriminatory
- Almost every employee falls into a protected class
- Each termination should be analyzed and based on a bona fide reason with supporting documentation and in accordance with policy and previous terminations

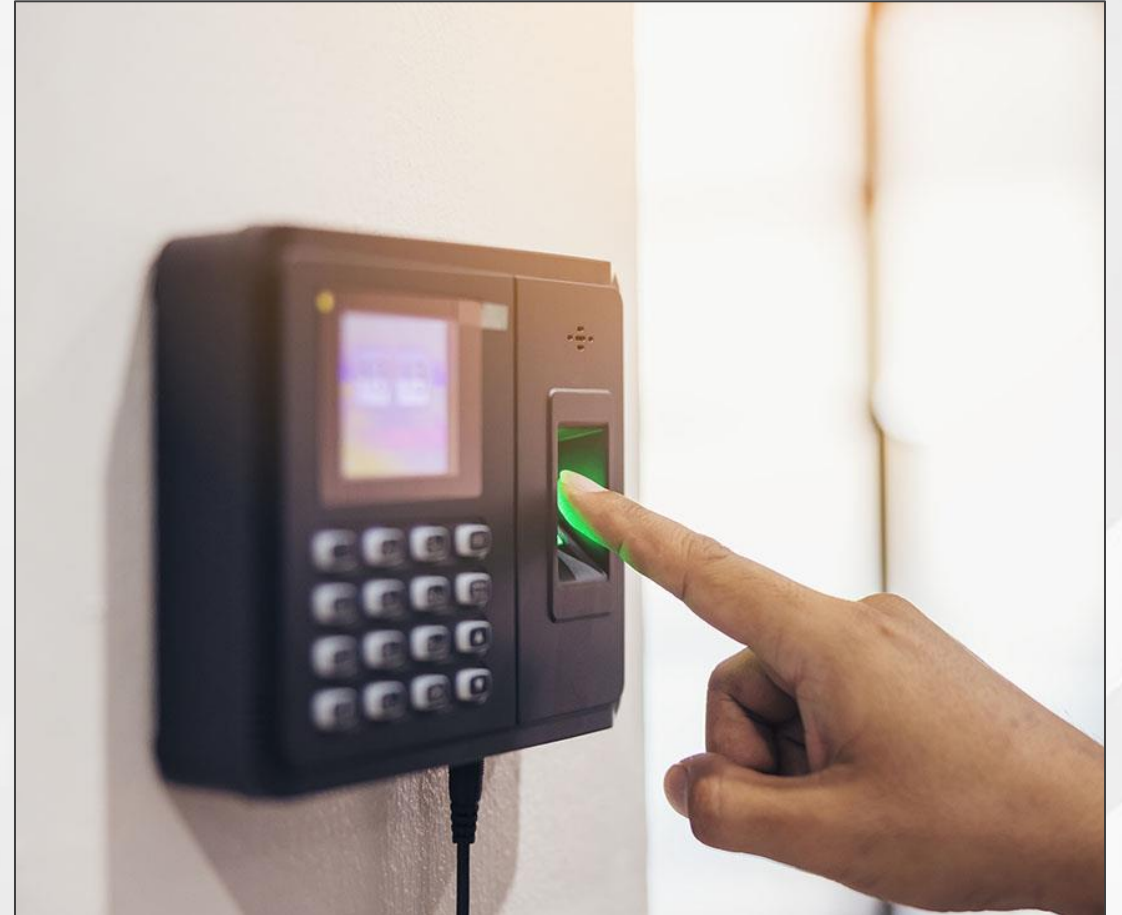


Payroll Issues

Not paying minimum wage

Not paying time & a half for overtime

Giving “comp time”



Overtime



Must be paid for any hour or portion of an hour over 40 hours per week which an employer “suffers or permits” an employee to work



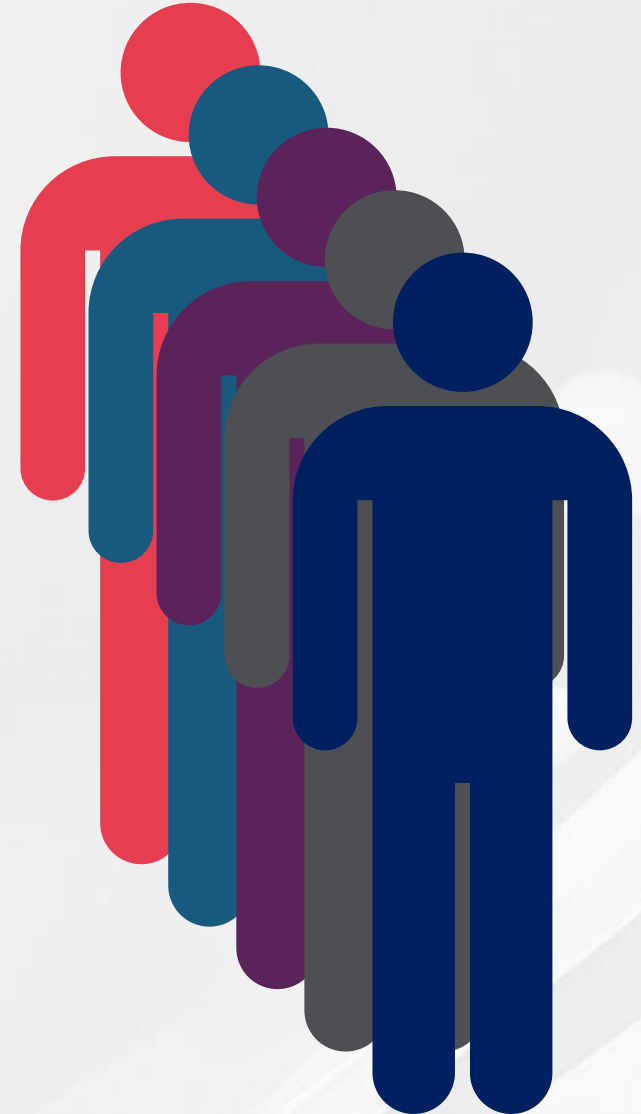
One workweek = one period of 168 hours (seven consecutive 24-hour periods)



You may not average hours over two or more weeks, except certain hospital and residential care facilities



Must be paid in the regular pay period during which the overtime is earned



Overtime Exemption



The employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (the “salary basis test”);



The amount of salary paid must meet a minimum specified amount (the “salary level test”); and



The employee’s job duties must primarily involve executive, administrative, or professional duties as defined by the regulations (the “duties test”)

Overtime Exemption – Salary Basis/Level Tests

Exempt employees must
be salaried

Regular, pre-determined
amount

No reduction in pay because of
the *quantity* or *quality* of work

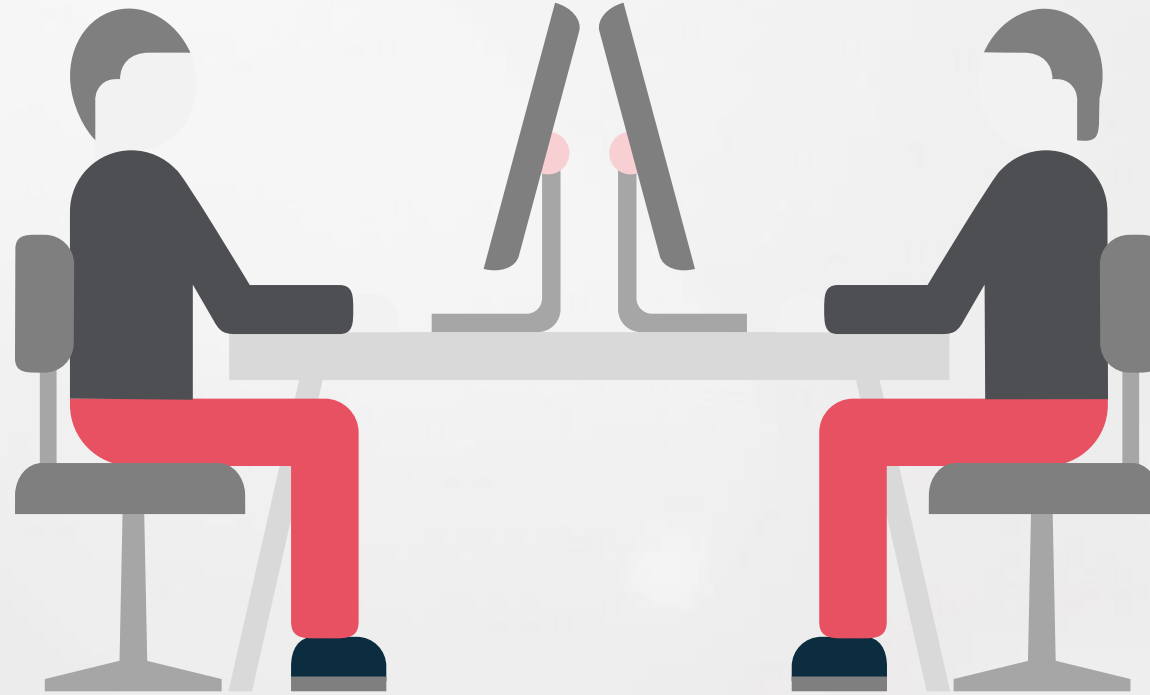
No deductions for absences of less
than one day

No deductions for sickness unless covered by
PTO or absence is for entire workweek

Currently \$684 per week/\$35,568 per
year*



Overtime Exemption – Duties Test



1 Executives
management with ability to hire and fire

2 Administrative Employees
office or non-manual work requiring “discretion and independent judgment with respect to matters of significance”

3 Professionals
prolonged course of instruction
Registered Nurses can meet the exemption, LPNs do not

4 Computer Employee
Systems analyst, programmer, software engineer

6 Highly Compensated
Performs office or non-manual work and paid annually \$132,964 or more

5 Outside Sales
Employee’s primary duty must be making sales and working away from business

Termination & Resignation

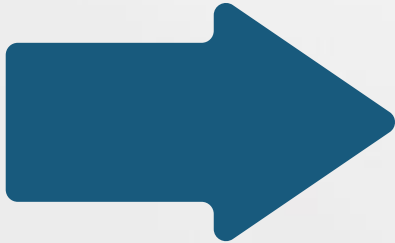


Termination



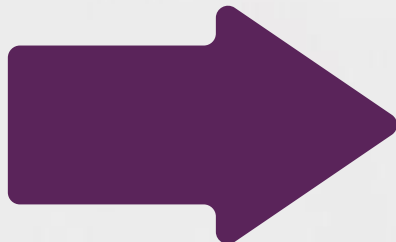
When

- If for performance, only after progressive discipline
- If for misbehavior, only after investigation
- Otherwise, now! (patient safety, workplace violence, etc.)



Why

- Do not “engineer” the reason
- “Eliminating the position” is not a free pass
- Honesty may not be the only policy, but it is always the best policy



How

- Two people in the room
- Be brief & decisive, prepare a written statement
- Have final paycheck, severance, release, etc. as appropriate prepared
- Do not invite discussion or argue



Termination Logistics

- End of day or week
- Do not make a scene
- Prepare for contingencies
- Give thought to access, systems, building, etc.
- Arrange time for employee to retrieve belongings in a respectful way or deliver the belongings



Follow-up Documentation

What happened during the termination process?

What did the employee say?

Threats, hostility, claims of discrimination

What was given to employee?

Paperwork, severance, final paycheck

What was taken from employee?

Equipment, uniforms, keys



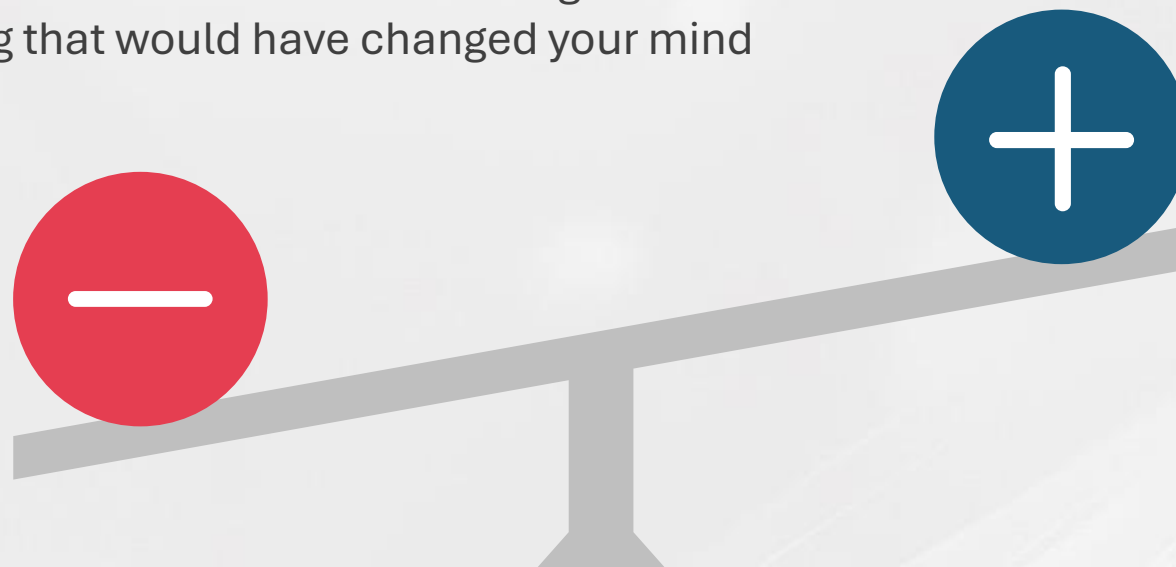
Resignations

What NOT to do

- Panic
- Throw money at them
- Beg
- Let them leave without understanding why...
 - What prompted you to look for another job?
 - Do you feel we give you what you needed to succeed?
 - Do you feel your job changed after you started?
 - Do you feel your work and efforts were recognized?
 - Is there anything that would have changed your mind

What TO DO

- Create a culture where they feel valued
- Find out what is important to them
- Develop & empower them
- Processes should make both work & patient care better
- Eliminate toxic employees
- Offer a competitive wage



Takeaways - Get A Grip on Reality



Build a culture

- Hire for attitude
- Highlight your workplace positives
- Treat them like an asset & provide benefits that mean something

Invest in them

- Onboarding - build your own training & orientation programs
- Provide ongoing development
- Find out what is important to them

Update your thinking

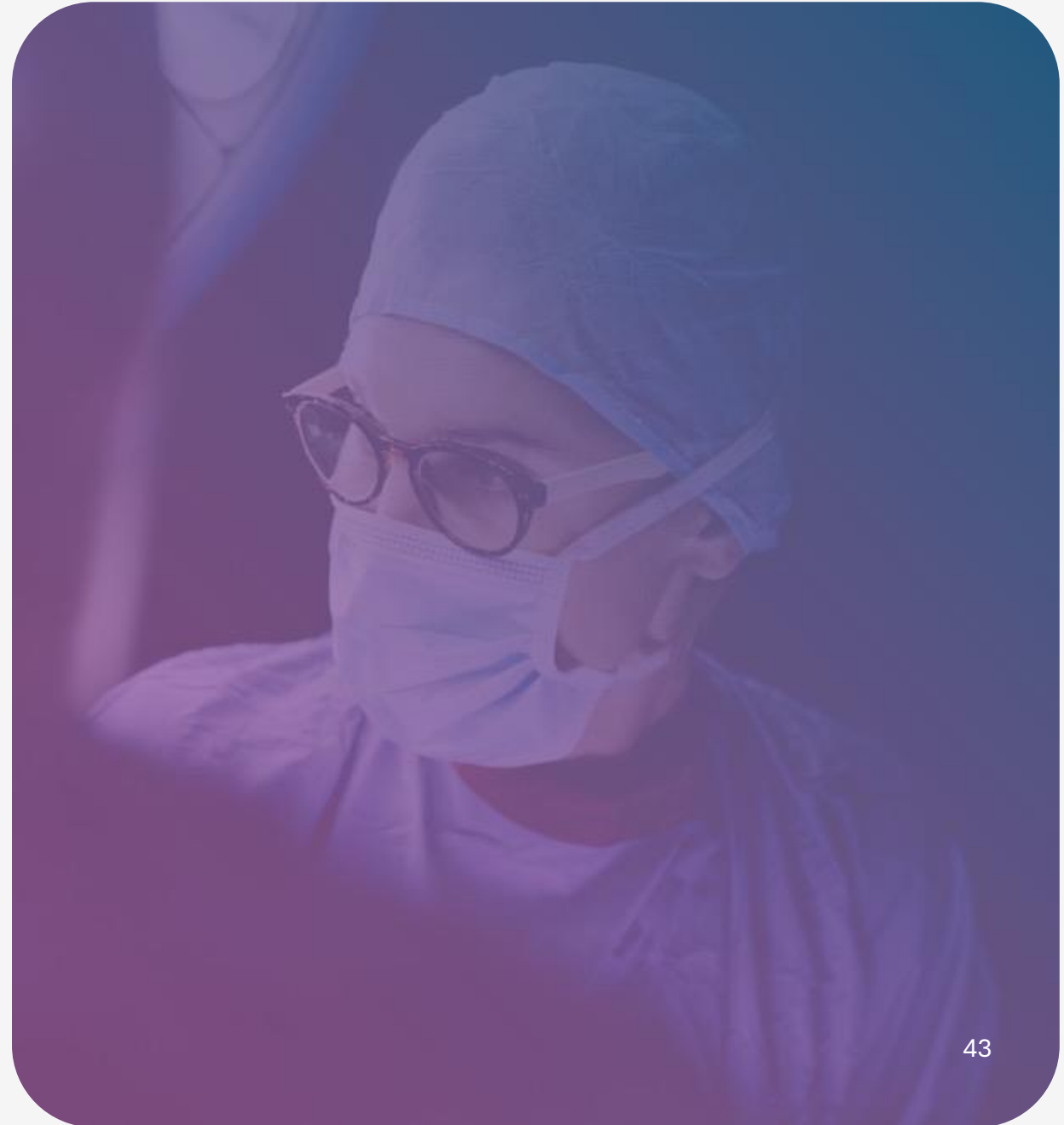
- Drop the stereotypes
- Consider individuals returning to the workforce
- Is job sharing, remote or hybrid work an option
- Can automation or standardization reduce the human need
- Is everything really necessary

Thank you for your time.

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We aggressively defend good doctors practicing good medicine

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- SVMIC offers medical practice management consulting as a value-added service to all policyholders at no additional charge.
- Our team has hundreds of years of experience leading physician practices and other healthcare organizations.
- All consultants have obtained Fellowship in the American College of Medical Practice Executives demonstrating their knowledge of the principles of medical group management.
- Consulting, resources & education on topics including financial management, governance, operations, compliance, payment reform, billing, human resources, patient relations, employee relations and culture.



Human Resources Files

Official Personnel Files

- Application & resume
- Licenses and certifications
- Orientation checklist
- Equipment and property check-out forms
- Receipts for handbook and other policies
- Training records
- Performance appraisals
- Compensation adjustment forms
- Job status change forms
- Disciplinary records
- Commendations, awards, documents of accomplishment



Confidential Personnel Files

- References
- Background checks
- Criminal history reports
- Pre-employment screening
- Interview notes
- I-9 forms *
- Benefit forms
- Tax forms (W-4 etc.)
- Attendance records
- Investigation files of complaints by or against employee
- Supervisory notes/correspondences
- Exit interview



Restricted & Separate Personnel Files

- Medical history questionnaires
- Medical evaluations and related documents
- Notes from doctors
- FMLA requests & documents
- ADA accommodations & documents
- Workers' Comp history, claims & documents
- Drug/alcohol tests & documents
- Any documents about past or present health, medical condition or disabilities

