

Diversity & Sensitivity Supervisor Reference Guide

As a Supervisor, your organization relies on you to be a leader, role model, and serve as a resource for employees.

The “Diversity & Sensitivity Supervisor Reference Guide” provides a handy recap of the most important information from our *Diversity & Sensitivity in the Workplace* course.

Definitions

Equal Employment Opportunity is the policy of treating all employees without discrimination, especially on the basis of their sex, race, or age.

Affirmative Action is an action or policy favoring those who tend to suffer from discrimination, especially in relation to employment or education.

A ***Stereotype*** is a widely held but fixed and oversimplified image or idea of a particular type of person.

A ***Bias*** is a strong inclination or preconceived opinion about something or someone. A bias can be either favorable or unfavorable. Studies have shown that biases effect hiring decisions, salaries, and ultimately, career advantages. Stereotypes and unconscious biases can create barriers to inclusion.

Implicit biases are attitudes or stereotypes that influence our understanding, actions, and decisions in an unconscious manner. These biases can be favorable or unfavorable and are activated involuntarily and without our awareness or control. Implicit biases can impact hiring decisions and employee retention and can undermine the entire culture of the organization. Implicit bias is a universal phenomenon, and is not limited by race, gender, or cultural background.

Inclusion is the act of making all groups of people feel valued and important, to create a fair environment that is accepting of diversity. Employees feel included when they are being recognized and valued for their specific skills and contributions and when they feel welcomed and valued among their co-workers and have access to opportunities.

Exclusion is the process in which individuals or groups are systematically blocked from rights, opportunities, and resources that are available to members of a different group. When employees feel singled out, undervalued, or ignored, these experiences corrode the work environment. Employees feel excluded when they are

devalued, dismissed, or ignored for the unique qualities they bring to the table or when they are treated like outsiders because of their differences (e.g., gender, race/ethnicity, nationality, age, religion, sexual orientation).

Discrimination is the unfair treatment of a person or group on the basis of prejudice. Discrimination can appear in various forms and does not have to be intentional to be illegal. For example, not hiring a person because of their race or sex, or denying someone reasonable access to restroom facilities are forms of discrimination.

There are two general types of discrimination that employees are protected by under law: **Disparate Treatment** and **Disparate Impact**.

Disparate treatment intentionally singles out an individual or a group of people for unequal treatment. Victims of disparate treatment are denied positions or promotions because of race, gender, age, etc.

Victims of **disparate impact** are subjected to inappropriate job requirements such as age, height, and weight for jobs that don't actually require them. Examples include English "only" policies. Another example is a strength requirement test for firefighters; this would screen out disproportionate numbers of female applicants for a firefighter job.

Language Discrimination

Language discrimination is illegal under Title VII of the Civil Rights Act of 1964, which prohibits national origin discrimination. Language discrimination occurs when a person is treated differently because of that person's native language or other characteristics of that person's speech. In an employment situation, for example, an employee may be subjected to language discrimination if their workplace has an "English-only" policy but the employee's primary language is something other than English.

An employer may not base a hiring decision upon the applicant's foreign accent unless the accent materially interferes with their job performance. In other words, an employee's accent must have a significant negative effect upon the employee's ability to do the job.

Under U.S. law, an employer may not deny a person an employment opportunity because that person is not proficient or fluent in English, unless the job that person performs actually *requires* English language skills, and the person does not possess the particular type and level of English language skill required.

Reasonable Accommodation

Differently-abled American workers are protected under The Americans with Disabilities Act (the "ADA"). Title I of the ADA prohibits discrimination against qualified persons with disabilities in all terms, conditions, and privileges of employment, including recruitment, pre-employment screening, hiring, benefits, promotions, layoff, and termination.

Under the ADA, an employer must provide an effective reasonable accommodation when a qualified individual with a disability requests a needed accommodation, unless the employer can demonstrate that doing so would be an undue hardship. An employer may not deny an employment opportunity to a qualified applicant or employee with a disability because of a request or need for a reasonable accommodation.

A *reasonable accommodation* is any modification or adjustment to a job, employment practice, or work environment that allows a qualified individual with a disability to perform the essential functions of a job and which is *reasonable*. In other words, the ADA does not require that you bankrupt your business to provide an accommodation. It simply requires that if a reasonable accommodation will allow a qualified individual to perform the job, then that accommodation must be offered.

The only limitation on an employer's responsibility to provide reasonable accommodation is that no modification is required if it would cause *undue hardship* to the employer.

An *Undue hardship* occurs when an accommodation is difficult, expensive, disruptive, or will fundamentally change the nature of the position.

The ADA also protects those who are *perceived* as disabled. A qualified individual with a disability is an individual who:

Satisfies the skill, experience, education and other job-related requirements of the position and can perform essential functions of the position with or without reasonable accommodation.

The following are examples of reasonable accommodation:

- Modifying work sites
- Providing readers and interpreters
- Flexible leave schedules
- Accessible facilities

Religious Accommodation

Religious employees often confront conflicts between their employment obligations and their religious obligations; federal law (and many state and local laws) require employers to try to accommodate those obligations.

Title VII of the Civil Rights Act of 1964 (“Title VII”) prohibits employers from discriminating against individuals because of their religion in hiring, firing, and other terms and conditions of employment. Title VII also requires employers to reasonably accommodate the religious practices of an employee or prospective employee, unless doing so would create an undue hardship for the employer. This means that:

- Employers may not treat employees more or less favorably because of their religion
- Employees cannot be required to participate—or refrain from participating—in a religious activity as a condition of employment
- Employers must take steps to prevent religious harassment of their employees
- Employers may not retaliate against employees for asserting rights
- Requested accommodations vary- an employee may need a particular day off each year for a religious holiday; or to refrain from work every week on his or her Sabbath; or to wear religious garb; or to have a place to pray. An employer must try to arrange to allow the employee to meet these religious obligations.

An employer may not simply refuse to accommodate an employee. If the employer claims that accommodation is not feasible because it would result in an undue hardship, the employer must demonstrate the effect accommodation would have on the business; that is, the employer must prove the undue hardship.

Handling a Complaint- Discrimination/Harassment/Retaliation

When addressing a complaint, a Supervisor must be:

- Objective
- Serious
- Non-judgmental
- Unbiased
- Gentle when asking questions
- Respectful

Remember: Keep an open mind. Reassure the complainant that you will handle the situation according to the law and the organization’s policy. Respect each person’s right to confidentiality. Remember, retaliation is against the law.

Retaliation is defined as punishing job applicants or employees for asserting their rights to be free from employment discrimination.

Examples of retaliation include:

- Termination of job
- Moving employee to less favorable assignment or shift
- Undeserved/negative evaluation
- Intensifying the original harassment

It is unlawful to retaliate against applicants or employees for:

- Filing or being a witness in an EEO charge, complaint, investigation, or lawsuit
- Communicating with a supervisor or manager about employment discrimination, including harassment
- Answering questions during an employer investigation of alleged harassment
- Refusing to follow orders that would result in discrimination
- Resisting sexual advances, or intervening to protect others
- Requesting accommodation of a disability or for a religious practice
- Asking managers or co-workers about salary information to uncover potentially discriminatory wages
- Participating in a complaint process is protected from retaliation under all circumstances

Victims of retaliation have a right to file a retaliation claim with the EEOC or your local state agency.

When addressing a complaint, a supervisor must avoid:

- Making the complainant feel ashamed
- Ignoring the complainant or being distracted
- Downplaying the complaint
- Interpreting what happened
- Making assumptions
- Relying on personal biases

Note: Even if you feel a complainant is making a false accusation, you must always accept the complaint and follow the organization's policy. Focus on "evidence and facts," not on assumptions and uninformed judgments.

Basic complaint record keeping includes documenting:

- Names of all parties involved
- Date(s)
- Time(s)
- Location(s)
- Any other relevant information

WARNING: Once an employee makes a formal complaint, you have a responsibility and liability to make sure the complaint is addressed—even if the employee asks you to keep it confidential or requests that you not tell anyone else. A lack of action opens the door for liability and exposure to lawsuits.

Federal Discrimination Laws

The Age Discrimination in Employment Act of 1967 prohibits employment age discrimination against individuals who are at least 40, but less than 65 years old.

The Americans with Disabilities Act of 1990 (Title I & V) prohibits employment discrimination against qualified individuals who have disabilities.

The Civil Rights Act of 1964 (Title VII) prohibits discrimination in compensation, terms, conditions, or privileges of employment because of race, color, religion, sex, or national origin.

The Civil Rights Act of 1991 amended the Civil Rights Act of 1964, strengthening and improving federal civil rights laws, provide monetary damages in cases of intentional employment discrimination, and for a variety of other reasons.

The Equal Pay Act of 1963 prohibits wage discrimination between men and women who work jobs that require equal skill, effort, and responsibility in the same establishment and under similar working conditions.

The Pregnancy Discrimination Act prohibits discrimination on the basis of pregnancy, childbirth, or related medical conditions.

Under the Family and Medical Leave Act, most employers with 50 or more employees must grant an eligible employee up to a total of 12 workweeks of unpaid leave during any 12-month period for one or more of the following reasons: for the birth and care of the newborn child of the employee; for placement with the employee of a son or daughter for adoption or foster care; to care for an immediate family member (spouse, child, or parent) with a serious health condition; or to take medical leave when the employee is unable to work because of a serious health issue.

The Immigration Reform and Control Act of 1986 makes it illegal for an employer to discriminate based upon citizenship or immigration status. For example, only hiring U.S. citizens or permanent residents.

State laws also provide protection from employment discrimination. Some laws extend similar protection as provided under federal law to employers who are not covered by those statutes. State and local laws cannot take away rights, they bolster federal laws.

Inclusion Best Practices for Supervisors

When employees feel included (valued and have a sense of belonging), they report feeling more team-oriented and innovative.

When employees feel excluded, they show a reduced work effort, reduced retention, increased absenteeism, and lower job satisfaction. When employees are denied equal access to opportunities and resources, it increases the organization's exposure to discrimination, harassment, and retaliation complaints/lawsuits.

To create visible, personal examples of inclusion in day-to-day workplace:

- Respect others' opinions
- Acknowledge cultural & generational differences and historical injustices without becoming defensive
- Be open to learning about other cultures and ideas
- Give others the benefit of the doubt in a dispute
- Seek first to understand, then to be understood
- Do not stereotype
- Do not judge others by your own cultural standards
- Refrain from using derogatory terms
- Give and seek feedback; receive feedback without getting defensive
- Reach out and make contact; approach employees and invite them to share their knowledge and feelings
- Build trust by keeping your word
- Recognize team-members for their skills and for demonstrating inclusive values and workplace etiquette. Shift the focus from impersonal, abstract ideals to actual example of behaviors that show, rather than tell, the true impact of inclusion.
- Monitor progress and setbacks of your inclusion efforts by having an open dialogue with employees
- Validate employees' experiences of exclusion by acknowledging barriers, mistakes, and setbacks. Seek out solutions and share plans that demonstrate an awareness of the problem and the organization's progress toward reaching a solution.

Make inclusionary efforts visible by:

- Developing a system of visible rewards for employees who demonstrate inclusive behaviors; acknowledge these employees during team meetings and recognition ceremonies.
- Reinforcing inclusive behaviors and set the precedent that inclusion is part of the organization's day-to-day operations
- Promoting equality and having a positive attitude toward diversity

Interrupt exclusionary behaviors by:

- Promoting and engaging in authentic dialogue
- Ensuring the connection between what you say and what you do is clear-cut
- Actively seeking feedback from people who don't usually contribute during meetings

Inclusion Best Practices for Employees

Practicing workplace etiquette is essential to developing and maintaining a healthy workplace. It also has the added benefit of being a shortcut to inclusion. If employees take the time to show common courtesy to co-workers, their experience in the workplace will be more pleasant, and all employees will feel included and welcomed.

Punctuality: Tardiness and absence implies that your job is low on your priorities list, whether you are a new employee or a long-term employee. If your co-workers rely on you to start or finish tasks, or if they work the shift after you, your punctuality can impact their ability to do their jobs, remain productive, or go home.

Professionalism: Whether your company has a dress code or not, remember to dress appropriately. In addition to keeping yourself looking professional, remember it is equally important to keep your work area clean and uncluttered.

Be true to your word: Your word is a personal guarantee that you should only give when you intend to follow through. Sometimes you only get one opportunity to prove that you are a trustworthy employee.

Own your mistakes: Everybody falls short at times, and the best way to handle this is to be honest and upfront. Own your mistakes by being apologetic instead of making excuses.

Avoid gossip: Gossiping about others is extremely unprofessional and reflects poorly on you. Limit your comments about co-workers to positive ones only.

Be polite:

- People will notice if you consistently treat them with respect and kindness
- Saying “*please*” and “*thank you*” go a long way
- Try to avoid interrupting others during conversations

Ask before borrowing:

- A co-worker’s work area is their personal space
- Even if you are on good terms with your co-worker, they will not appreciate it when they start to notice that things are missing from their work area without their consent

Be respectful:

- Use common sense in your interactions and do not say anything that may be taken offensively
- Even if swearing and inappropriate language is used freely in your personal life, you never know who you might be making uncomfortable by bringing it into the workplace

Avoid the following at work:

- Swearing or inappropriate language
- Inappropriate jokes
- Racial remarks
- Sexual comments
- Comments on religion

Practice the following at work:

- Learn about the cultural backgrounds, lives, and interests of co-workers. Building relationships through increased understanding and trust helps to nurture inclusion. “Personal Connections” are the most-often cited example of inclusion.
- Learn about one another's cultures by sharing food
- Be aware of one another’s culturally significant events and holidays
- Don’t make assumptions about co-workers
- Be open minded
- Recognize cultural differences that impact how people work and interact with each other:
 - Physical contact and personal space – In some cultures, individuals are less inhibited about engaging in physical contact. In others, individuals are expected to behave modestly.
 - Styles and patterns of communication – Some cultures are more accepting of silence during conversation whereas in other cultures, individuals prefer continuous conversation and “small talk.”

The information provided in the “Diversity & Sensitivity Supervisor Reference Guide” is for informational purposes and to serve as a guide only, not for the purpose of providing legal advice, and should not be relied upon as legal advice. You should contact your human resources or legal representative to obtain advice with respect to any particular issue.