



TRAIN. LEAD. REPEAT.

HARASSMENT DISCRIMINATION AND DIVERSITY
John K. Murphy JD



Challenges and Struggles in the Fire & EMS Service

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Fire Commissioner

Deputy Fire Chief (Ret)

SOME OF YOU IN THIS ROOM---

- Will be sued
- Of the 30K Departments in America, about 20% of them are sued for Personnel action
- 10% are sued for MVA events
- 10% are sued for fire and rescue events resulting in a loss of life or property damage
- The rest of you lead a charmed existence with excellent leadership, training, policies and practices.

Today's Objectives

- Review the factors leading to Harassment, Discrimination, and Diversity litigation
- Examine the human resource and personnel issues facing fire departments
- Review Certain Personnel Policies
- Discuss and define Discrimination and its effects on your fire department
- Review, Discuss & Define Harassment, Bullying, Hazing & Pranks
- Review what constitutes Retaliation
- Review the laws at the Federal and State level that support Policy

And Discussing

- Your role in creating and administering policies
- Your role in creating a safe workplace for the employees
- Your role in preventing litigation
- Your role in storytelling
- Your role in having fun at work

Fire & EMS Demographics Of the 1+ Million Firefighters – Career, Combo and Volunteers:

Predominately
male

6.4 % women
(career) 7%
(all)

82%
Caucasian

9.5% Hispanic
or Latino

7.7% Black or
African
American

.07% Asian

EMS Demographics

There are over 176,556 emergency medical technicians currently employed in the United States.

39.1% of all emergency medical technicians are women, while 60.9% are men.

The average emergency medical technician age is 36 years old.

The most common ethnicity of emergency medical technicians is White (66.9%), followed by Hispanic or Latino (15.5%), Black or African American (6.6%) and Unknown (5.6%).

City Demographics - Population 93,264

Avondale Arizona

White alone, percent

26%

Hispanic or Latino,
percent(b)

56.3%

Black or African
American alone,
percent(a)

10%

American Indian and
Alaska Native alone,
percent(a) 1.9%

Asian alone,
percent(a)

3%

Native Hawaiian and
Other Pacific Islander
alone, (a) 0.4%

Is that the makeup of
your community?



Fire & EMS Demographics

What are your Internal
Demographics?

Does it reflect your city or
community demographics?

BIG Issues facing Fire & EMS Services

- EMS/Fire/Rescue/MA
 - Response and Compassion Fatigue
- People Fires
 - Harassment
 - Discrimination
 - Bullying
 - Hazing
 - Retaliation
- Behavioral Health *
- Lack of Diversity
- Recruitment and Retention
- Politics
- Community Homelessness *
- Money
- Social Media
- Mission Creep
- Drug Overdoses
- ??????

Is Ms. Smith suing the fire department?

- A fire department is 6.9 times more likely to be sued by a subordinate
- A fire chief is 5.0 times more likely to be sued by a subordinate
- A chief officer is 4.0 times more likely to be sued by a subordinate/colleague
- A company officer is 1.8 times more likely to be sued by a subordinate or colleague
- A firefighter is 2.6 times more likely to be sued by Mrs. Smith than by a colleague (with the most likely cause being EMS related (51%) or driving apparatus (32%).

Varone, C 2017

A red fire truck is parked in a fire station garage. The truck is on the left side of the frame, and the rest of the station, including other vehicles and equipment, is visible in the background. The scene is dimly lit, suggesting an indoor or shaded environment.

HARASSMENT AND DISCRIMINATION

IS

ONE OF THE MOST LITIGATED ISSUES

IN FIRE AND EMS SERVICES

WITH THE

MOST COSTLY PAYOUT



ANSWER THESE QUESTIONS

- How do you define Discrimination?
- How do you define Harassment?
 - Do you define separately or together?
- How do you define Retaliation?
- How do you define Hazing and Bullying

Some Cases

- The Iowa City Council signed off on a nearly \$1 million settlement to an Iowa City firefighter who sued the city for discrimination.
- The firefighter alleged she was discriminated against based on her sex and sexual orientation.
- Under the settlement agreement, the city has denied and continues to deny all the accusations in the lawsuit.
- The lawsuit was filed in August 2022 and McDowell alleged she heard male firefighters and fire officers make sexually inappropriate comments "nearly every single day" among other allegations.

Some Cases

- A battalion chief with the Sacramento Fire Department has filed suit alleging race discrimination and retaliation.
- The claim states he has been the victim of various instances of discrimination and retaliation on account of him being an African American because he “served [as a] witness in support of a White firefighter during a fact-finding investigation” and because he “escalated” the complaint of a female firefighter against a captain.
- He was later passed over for promotion to deputy chief twice and claimed that his superiors called him a “cancer in the department.”

Some Cases

- A 17-year veteran of Portland Fire & Rescue, filed a racial discrimination lawsuit against the city of Portland, alleging that Portland Fire & Rescue discriminated against him in a variety of ways because he is Black.
- The fire bureau has long acknowledged a need to diversify its workforce, which, according to city figures, is about 80% white.
- In the lawsuit, filed in Multnomah County Circuit Court, Wilson alleges that the fire bureau “discriminated and retaliated against [him] based on his race, his opposition to unlawful discrimination, and his reports of unlawful conduct.”
- Much of the lawsuit focuses on allegations that the fire bureau denied Wilson chances to advance because he’s Black.
- “Plaintiff and other Black employees of Portland Fire & Rescue have systematically been denied training opportunities equal to those afforded to similarly situated, white colleagues.

Some Cases

- A federal court jury in Arizona has awarded a Tucson firefighter \$3.8 million in damages for the department's failure to accommodate her needs as a nursing mother.
- The Firefighter filed suit in 2014, alleging that her fire station did not accommodate her need to express breast milk and that she was retaliated against once her complaints became known.
 - \$50,000 – Gender discrimination
 - \$1.85 million – Gender discrimination retaliation
 - \$50,000 – Nursing Mother's Act (FLSA)
 - \$1.85 million – FLSA retaliation

Some Cases

- The City of Petaluma, CA. has agreed to settle a sexual harassment suit brought by a female firefighter for \$1.25 million
- A Tampa, Fla. firefighter who filed a discrimination and retaliation lawsuit and was terminated the following day. Sued, was rehired, won \$245,000.00.
 - The day after she returned to work, the adverse working conditions started again – she sued again, won and kept her job



LAW

Personnel Issues

Discrimination,
Harassment, Bullying,
Sexual Misconduct,
Retaliation,
Gender Discrimination



Protected Classes

- A protected class is a group of people sharing a common trait who are legally protected from being discriminated against based on that trait.

Cannot
discriminate on
the basis of the
following

- Race
- Religious belief
- National origin
- Age (40 years and up) ADEA
- Gender Identity
- Pregnancy - PDA
- Citizenship
- Familial (family) status
- Disability status
 - ADA
- Veteran status
- Military Status
 - USERRA
- Bankruptcy or bad debt
- Genetic information GINA (Genetic Information Nondiscrimination Act)
- Exception - BFOQ

Protective Laws

- Title VII of the Civil Rights Act of 1964 is an amendment that outlines five major protected classes: race, color, religion, sex and national origin.
- It makes it unlawful to discriminate with regard to any term, condition, or privilege of employment.
- Title VII also makes it unlawful to use policies or practices that seem neutral but have the effect of discriminating against people because of their race, color, religion, sex, or national origin.
- Employees have a private right to action, but claims cannot be brought against a specific individual.

Protective Laws

- Title I and Title V of the Americans with Disabilities Act of 1990, as amended (ADA),
 - Prohibit employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments;
- Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA)
 - Prohibit discrimination based on genetic information concerning insurance and employment

Protective Laws

- Equal Pay Act of 1963 (EPA).
 - Protects men and women from sex-based wage discrimination; Equal Pay Act of 1963 (EPA) and
 - Lilly Ledbetter Fair Pay Act of 2009 (Fair Pay Act)
- Age Discrimination in Employment Act of 1967 (ADEA),
 - Protects individuals who are 40 years of age or older

Other Protective Laws

1. Fair Labor Standards Act (FLSA)
2. Social Security Act
3. Federal Unemployment Tax Act
4. Family Medical Leave Act (FMLA)
5. Affordable Care Act (ACA)
6. Occupational Safety and Health Act (OSH Act)
7. Title VII of the Civil Rights Act (Title VII)
8. Pregnancy Discrimination Act of 1978
9. National Labor Relations Act (NLRA)



LGBTQIA

Transgender and Transitioning
Firefighters & EMT's

Sexual Orientation or
Gender Identity.

Sexual Orientation

- In June 2020, the United States Supreme Court ruled that Sexual Orientation & Gender Identity are protected as forms of Sex Discrimination.
- The law forbids sexual orientation and gender identity discrimination in any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

Cases

- A Georgia fire chief who was terminated after she revealed that despite being born a male, she identified as a female has filed suit alleging gender and disability discrimination.
 - The litigation failed, but the intent was evident in her desire to be treated equally despite her identity as a female.
- A gay firefighter has filed a lawsuit against FDNY, the City of New York, and the lieutenant who served as the chief diversity officer, alleging harassment and hostility.
- A jury awarded \$6.2 million to a LAFD firefighter who was harassed because she is black and a lesbian and brought the lawsuit based on her race and sexual orientation, her superiors made derogatory comments about her and forced her to perform strenuous exercises unsafely. She also alleged that someone at her firehouse put urine in her mouthwash.

2/2024 - Gender-affirming care denied -
Philadelphia PA

Jane Doe, a transgender woman, was denied insurance coverage for gender-affirmation surgeries, resulting in emotional distress and suicidal thoughts has filed suit against the city, IAFF Local 22, Local 22's Health Plan, and Independent Blue Cross alleging gender discrimination by denying her "gender-affirming care and treatment."

The insurance company based its decision on societal norms, disregarding previous court rulings that established such surgeries as essential healthcare.



The suit alleges
a violation of
Title VII of the
Civil Rights Act
of 1964

Violation of Philadelphia Fair Practices Ordinance; gender discrimination under the Affordable Care Act, 42 U.S.C. § 18116;

Disability discrimination under the Affordable Care Act;

Violation of the Americans with Disabilities Act;

Disability discrimination under the Philadelphia Fair Practices Ordinance;

Violation of the Employee Retirement Income Security Act (ERISA);

Failure to accommodate under the Americans with Disabilities Act;

Failure to accommodate under the Philadelphia Fair Practices Ordinance

10/2023 - Mayor Kenney signed **Executive Order No. 4-23** to protect individuals seeking, receiving, and providing gender-affirming health care.

EO 4-23 forbids local government from providing information or assistance to any investigation that seeks to penalize anyone, whether a resident or a visitor, who seeks such care in Philadelphia, except as required by state or federal law.

Moral Argument

- No one should be singled out simply for how they exist in the world – be it for who they are or who they have a relationship with.
- Everyone deserves to feel safe at work and be free from harassment or discrimination.
- Even the Pope weighs in – “Who am I to judge?”

Legal Argument

- The same federal laws that have protected others since 1964 have been clarified in its protections and application to gay and transgender employees.
- Penalties for such discrimination can reach \$300,000 for each offense, depending on the employer's size.
- The Supreme Court ruling further enforces that employers should take precautions to prevent sexual discrimination in the workplace.

Legal Argument

- There are several states with anti-trans legislation that is making life difficult for many employees and employers
- Have an enforceable policy preventing discrimination, harassment and retaliation
- Diversity, Equity, and Inclusion (DEI) training may help prevent internal acts of discrimination.
- Communication training may also be helpful to prevent internal acts of discrimination.

Laws Protecting EMS Providers and Firefighters

- States have Departments of Human Rights
 - <http://www.hum.wa.gov/Employment/> - (i.e.) Washington State
 - <https://www2.illinois.gov/dhr/Pages/default.aspx>- (i.e.) Illinois
- State Laws Against Discrimination
 - Protects against unfair and discriminatory practices in employment, real estate transactions, public accommodations, credit, and insurance, as well as health care whistleblower and state employee whistleblower complaints.

State Statutes - Washington

- Protections are generally found under RCW 49.60 and Title II of the Civil Right Act
 - Gender – Washington State Law Against Discrimination (RCW 49.60)
 - Religion - RCW 49.60 and Title VII of the Civil Rights Act of 1964 prohibit discrimination in employment based on religion or creed
 - Disability - a violation of RCW 49.60 and of the Americans with Disabilities Act.
 - It is also a violation of the law for an employer to fail to accommodate an employee's disability reasonably.


State Statutes - Washington



- Protections are generally found under RCW 49.60 and Title II of the Civil Right Act
 - Race, Color or National Origin – Freedom from Discrimination RCW 49.60
 - Pregnancy - prohibited under the Washington Law Against Discrimination as sex discrimination.
 - Sexual Orientation - Washington Law Against Discrimination prohibits discrimination based on sexual orientation and gender identity under the Washington State Law Against Discrimination (RCW 49.60)

State Statutes – Continued

- Medical Disability - The Washington definition differs from the one in the Americans with Disabilities Act (ADA)—it is broader, covers more medical conditions, and is not restricted to a condition that substantially limits a major life activity.
 - Temporary conditions, including pregnancy-related disabilities, can be included in the protections.
- Harassment - Under Revised Code of Washington (RCW) Section 9A.46.020, the following actions, whether in person, over the phone, or via the internet, could be considered harassment:
- Family and Medical Leave— policies and Statutes are in place to prevent discrimination against those who ask for FMLA in your organization.
 - Medical Leave
 - Crime Victim Leave

A meme featuring Jack Sparrow from the Pirates of the Caribbean franchise. He is wearing his signature wide-brimmed hat and has a serious, questioning expression. The background is a bright, slightly blurred outdoor setting, likely the deck of a ship.

RULES?

**THEY'RE MORE LIKE
GUIDELINES**

Your Policies



- What are they?
 - Appearance & Code of Conduct
 - Ethics
 - Drug and alcohol
 - Appearance
 - Off duty conduct

Your Policies

- Should Include your PEOPLE Issues
- Discrimination
 - Gender
 - Sexual
- Harassment
- Hazing
- Bullying
- Retaliation

Mirror State and Federal Law Enforcement
Prevent Legal Fires



What have you seen or heard on the job?

What have you seen or heard that you questioned but was really unsure?

What are “accepted behaviors” in the fire service that make you uncomfortable?

Have you been asked if you are a victim or target, or do you know of other members who are victims or targets?

CHECKPOINT

BREAK

10 Min



gg63486755 www.gograph.com



HARASSMENT

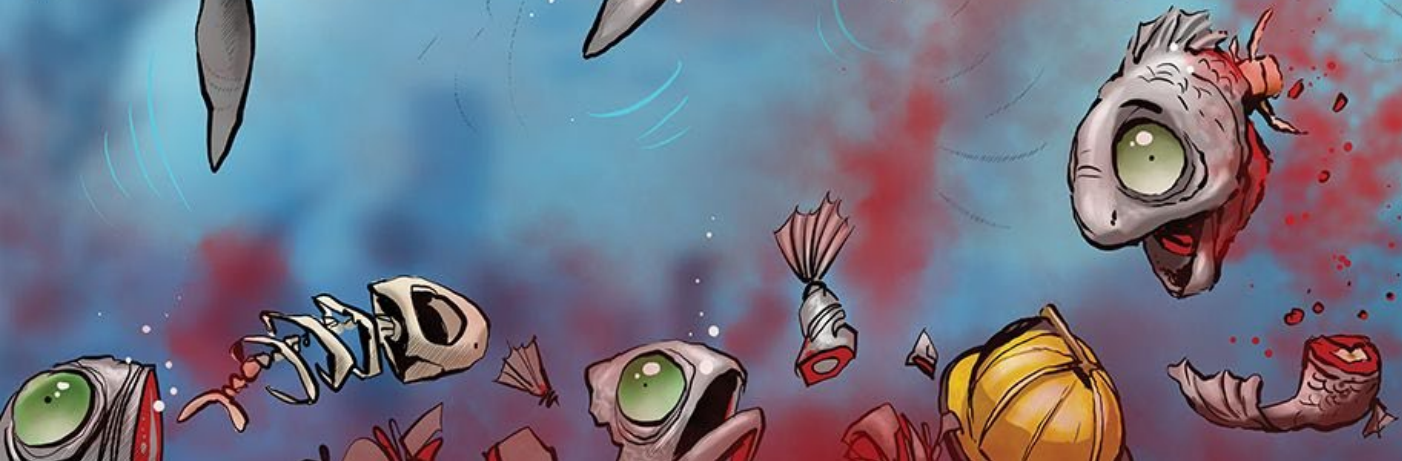


Harassment

- The potential for harassment, including sexual harassment, exists in every workplace.
- Increasing claims as employees are becoming increasingly vocal about harassment in the workplace
- Harassment is a costly proposition for employers.
- It can result in low morale, absenteeism, reduced productivity, employee turnover, damages, litigation costs, and reputation damage



I CALL IT WEEDING
OUT THE WEAK.



HARASSMENT DEFINED

- Harassment is severe or pervasive verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her race, color, religion, gender, national origin, age, disability, or reprisal for participating in the EEO process.
- Harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, (ADEA), and the Americans with Disabilities Act of 1990, (ADA).



HARASSMENT

- Comments or conduct that have the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating or offensive working environment.
- The key issues here are frequency and severity.
 - "Severity" alone may result in discipline
 - A "single event" may result in discipline or termination

HARASSMENT

- Harassment becomes unlawful where:
 - Enduring the offensive conduct becomes a condition of continued employment or
 - The conduct is severe or pervasive enough to create a work environment that a “reasonable person” would consider intimidating, hostile, or abusive.



CAN WE EAT THEM YET?

**BE PATIENT...
THEIR ENTHUSIASM
WON'T LIVE LONG
AROUND THIS CREW.**



PAUL COMBS
DRAWN BY FIRE
FIRE ENGINEERING ©2024

WHAT KIND OF CREW ARE YOU?

Some Cases

- Four lawsuits have been filed against the City of Everett by firefighters who claim they were sexually harassed by a fire academy instructor who is already being sued for sexual harassment.
 - The four male firefighters filed separate suits in Snohomish County Superior Court, accusing the city of failing to address harassment perpetrated by the instructor.
- A firefighter in Texas who was demoted and fired after he complained about sexually harassing behavior by his fire chief has filed suit claiming retaliation.

Some Cases

- The US Department of Justice has filed suit against the town-village of Harrison, New York, and two fire departments within the town, accusing them of sexual harassment, gender discrimination, and retaliation.
- In 2015, a female firefighter joined the Harrison Fire Department. During her first month on the job, a senior firefighter subjected her to unwanted sexual advances. His harassment escalated, including stalking her by repeatedly following her and making numerous phone calls.
- He also used sexually demeaning language to describe her in front of other firefighters.

Some Cases

- Leaders within the Harrison Fire Department were aware of the harassment, as she reported it. However, despite this knowledge, they failed to take any employment action against the firefighter, allowing the harassment to persist.
- In response to her report, the then-Police Chief of Harrison recorded an interaction with her and the harasser.
- During this conversation, the Police Chief referred to her presence at the firehouse as a “temptation” that was “hard to resist sometimes.”
- The Police Chief wanted to “broker a deal with the Town” to resolve the situation, ignoring her rights and well-being.



HARRISON FIRE DEPARTMENT

206 HARRISON AVENUE
HARRISON, NEW YORK 10528
914-835-1106

Chief Ralph Straface

1st. Asst. Chief Vito L. Faga Jr.

2nd. Asst Chief Will Nardozzi

Dear Firefighters,

On June 21, 2023, the Town/Village of Harrison and the United States of America entered into a Consent Decree in the matter of United States of America v. Town/Village of Harrison et al. A copy of the Consent Decree is provided through the hyperlink below.

The Town/Village of Harrison Fire Department and all of its members must maintain accountability in preventing all unlawful discrimination, harassment and retaliation in the workplace.

As Chief, I am committed to ensuring that all members are treated equally and that all reports of discrimination are addressed thoroughly and in accordance with the Town/Village of Harrison Anti-Discrimination and Anti-Retaliation Policies.

I am available to discuss any concerns or questions that Fire Department members may have.

Sincerely,

Chief Ralph Straface
Harrison Fire Department
Fire District #2
206 Harrison Avenue
Harrison, NY 10528



Town/Village Board
One Heineman Place
Harrison, New York 10528



July 10, 2023

Dear Town Personnel,

As you may be aware, the Town/Village of Harrison entered into a Consent Decree in the matter of the United States of America v. Town/Village of Harrison, New York; Fire District Two of Harrison, New York; Harrison Volunteer Fire Department No. 1 of Harrison.

The United States commenced this action on behalf of former Volunteer Firefighter Angela Bommarito, who during her tenure with the Town/Village of Harrison, was subjected to unacceptable and disparate treatment, including being the subject of gender charged harassment and retaliatory actions.

Of paramount importance, as underscored by the Consent Decree, is the responsibility of the Town/Village Board, management and all employees alike to foster and maintain an appropriate and equitable work environment for everyone. Of equal importance, is the gravity of holding those who choose to engage in behavior that is violative of that undertaking, accountable.

Accordingly, Town/Village of Harrison Anti-Discrimination and Anti-Retaliation Policies have been adopted and disseminated to all employees to further emphasize the importance of proactively preventing unlawful discrimination, harassment and retaliation in the workplace.

Any violation of these policies will result in swift and appropriate disciplinary action, which may include verbal or written reprimand, suspension, demotion, termination and/or the loss of volunteer opportunities and accompanying benefits.

The Town/Village Board does not tolerate any form of discrimination or harassment and will do everything in its power, in active concert with an objective investigator, to address complaints of harassment through consistent and immediate action.

Further, all Town personnel should be assured that they will not be subjected to retaliatory treatment for reporting harassment, or participating in a harassment investigation or lawsuit.

A copy of the Consent Decree is accessible by following the hyperlink below.

Sincerely,

Richard Dionisio
Supervisor/Mayor

Lauren Leader
Councilwoman/Trustee

Elizabeth Brown
Councilwoman/Trustee

Fred Sciliano
Deputy Supervisor/Mayor

Gina Evangelista
Councilwoman/Trustee

**SEXUAL
HARASSMENT**

SEXUAL HARASSMENT

- The EEOC defines sexual harassment as unwelcome verbal or physical conduct of a sexual nature:
 - When submission to such conduct is made a term of condition of employment (quid pro quo);
 - When submission to or rejection of such conduct is used as a basis for employment decisions;
- When such conduct unreasonably interferes with job performance or creates an intimidating, hostile, or offense work environment.
- Sexual Harassment is also considered Sexual Discrimination and a violation of the Civil Rights Act of 1967
 - (Elliason v. Brady)



Ellison v Brady

Ellison v. Brady (1991) is considered a landmark sexual harassment case heard in the 9th United States Circuit Court of Appeals in 1990.

The case redefined sexual harassment in the workplace by examining the case more from the **victim's perspective** rather than stereotyped ideas.

Kerry Ellison, who was employed as a revenue agent with the Internal Revenue Service (IRS) in San Mateo, California.

She alleged another employee had been sexually harassing her thus creating a hostile work environment and claimed this harassment was in violation of Title VII of the Civil Rights Act of 1964. 42 U.S. Code § 2000e (1982).

Harassment looks like ---

- Pressure for dates;
- Making offensive remarks about looks, clothing, body parts;
- Touching in a way that may make an individual feel uncomfortable;
- Telling sexual jokes, hanging sexual posters, or having books or magazines in public places and crew quarters;
- Using racially derogatory words, phrases, epithets;
- Demonstrations of a racial or ethnic nature, such as the use of gestures, pictures, or drawings which would offend a particular racial or ethnic group.

---- Cont.

- The harasser, as well as the target, can be a man or woman.
- The Claimant does not have to be the person at whom the offensive conduct is directed but can be anyone directly affected by conduct by being in the area when the conduct occurs.
 - Collateral Harm

HARASSMENT TEST

- SEVERE AND PERVASIVE
- Level of the offensiveness of the unwelcome act or word
- Frequency or pervasiveness of the offensive encounters
- Total length of time over which the encounters occurred
- Context in which the harassing conduct occurred

Cont. -----

Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name-calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance.

It tends to be directed towards minorities and women.

Cont.-----


- Harassment can occur in a variety of circumstances, including, but not limited to, the following:
 - The harasser can be the victim's supervisor, a supervisor in another area, an employer agent, a co-worker, or a non-employee.

Cont. -----

- Comments about an individual's skin color or other racial/ethnic characteristics;
- Negative comments about an employee's religious beliefs;
- Negative stereotypes regarding an employee's birthplace or ancestry;
- Negative comments an employee's age when referring to employees 40 and over;
- Derogatory or intimidating references to an employee's mental or physical impairment.

Bottom Line

To establish a prima facie (at first look) case for workplace harassment, the employee must identify the offensive contact and then prove that it is unwelcome and;



It occurred because of sex, gender or a member of a protected class, affected the terms or conditions of employment, and can be imputed to the employer.

HARASSMENT BY NON-EMPLOYEES

- The liability standard for non-employees is the same as for employees, except consideration is given to the extent of the agency's control over the non-employee.
- For example, an agency may not be able to control the actions of a one-time visitor to its workplace other than to stop the behavior and escort the visitor out of the workplace or;
- The Department would be able to correct harassment by an independent contractor with a regular relationship.

Purpose of a Anti Harassment Policy

- To establish the Fire Departments commitment to provide a work environment free from unlawful harassment and hostile behavior and,
- Guide any employee who believes he/she has been a victim of such behavior based on race, color, religion, gender, national origin, age, or disability, or any other status protected by applicable Federal, State, or Local law.

POLICY

Discrimination
& Harassment

Sexual
Harassment

Responsibilities

Reporting

Investigation

Retaliation

Discipline

Confidentiality

SUPERVISORS

- Monitor workplace behavior and enforce respect.
- Treat all complaints seriously and confidentially. Do not ignore any allegation.
- Post and disseminate the department's Anti-Harassment and other EEO Policies.
- Follow current policies
- Take appropriate corrective action and follow up
- Ensure no retaliation.
- Document your actions.
- And -----

Employer Preventative Action

1

Have a Harassment
policy in place

2

Educate from top
to bottom

3

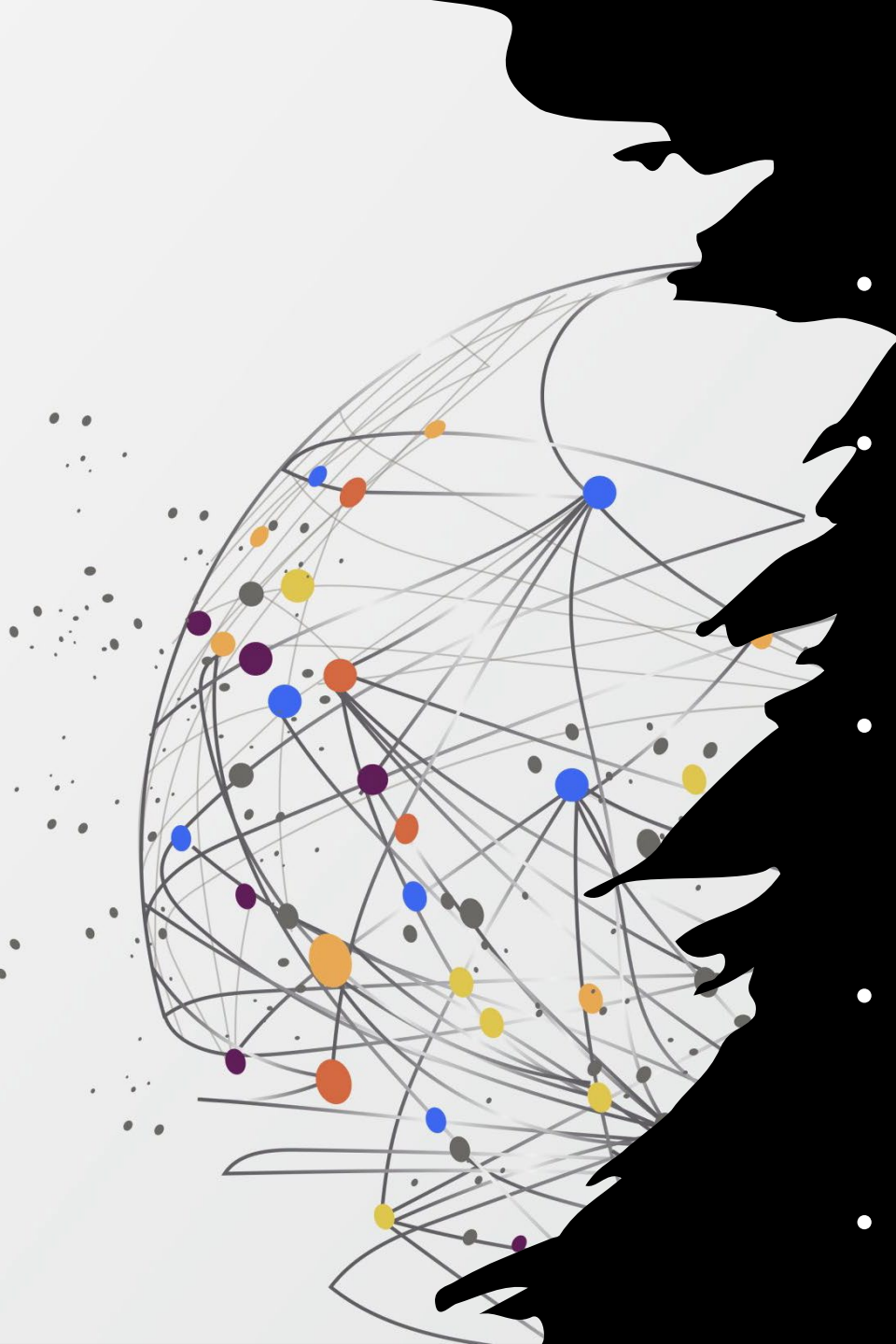
Monitor behavior

4

Have an accessible
and confidential
complaint
procedure

Employee Preventative Action

- Read and understand the Policies
- Be aware of harassment occurring in your workplace
 - Gut feeling
- Be aware that your words and actions are powerful and have meaning
- Intervene when necessary
 - Report bad behavior
- Be nice



HARASSMENT IN A NUTSHELL

- Verbal: derogatory comments, racial or sexual epithets, requests for sexual favors, sexual innuendoes, offensive jokes or stories, repeated propositioning.
- Non-Verbal: Staring, derogatory or suggestive gestures, winking, throwing kisses, shunning, and ostracizing.
- Visual: offensive pictures, photos, cartoons, posters calendars, magazines or objects.
- Physical: unwelcome touching, hugging, kissing, patting, stroking, standing too close.

HARASSMENT IN MANY OTHER FORMS

- Bullying
 - Usually physical and psychological harassing behavior perpetrated against an individual, by one or more persons.
 - The use of superior strength or influence to intimidate (someone), typically to force him or her to do what one wants
 - There are no federal laws defining or regulating workplace bullying.
 - Civil rights laws (Title VII) are not ‘a general civility code for the American workplace.’”

HARASSMENT IN MANY OTHER FORMS

■ Bullying

- The State Laws related to bullying have been created to protect children in schools.
- The Courts have bootstrapped those laws into protecting others as well
- Bullying and harassment have no place in the workplace, but unless they are motivated by the victim's membership in a protected class, they do not provide the basis for an action under Title VII

HARASSMENT IN MANY OTHER FORMS

■ Psychological

- This is humiliating or abusive behavior that lowers a person's self-esteem or causes them torment. This can take the form of verbal comments, actions or gestures.

■ Gaslighting

- Is a form of psychological abuse where a person deliberately causes someone to question their sanity, memories, or perception of reality.
- Gaslighting can have profound legal implications, especially in the context of domestic abuse.
- In many states, emotional abuse is considered a form of domestic violence and can be grounds for a restraining order or protective order.

HARASSMENT IN MANY OTHER FORMS

- Stalking
 - The unauthorized following and surveillance of an individual, to the extent that the person's privacy is unacceptably intruded upon, and the victim fears for their safety.
- Cyberstalking or Electronic Harassment
 - The use of electronic tools such as email or instant messaging to harass or abuse a person or persons.

HARASSMENT IN MANY OTHER FORMS

- Racial Harassment

- The targeting of an individual because of their race or ethnicity.
- The harassment may include words, deeds, and actions that are specifically designed to make the target feel degraded due to their race or ethnicity.
- Example – noose in the fire station

Cont -----
-

- Religious Harassment
 - Verbal, psychological or physical harassment is used against targets because they choose to practice a specific religion. Religious harassment can also include forced and involuntary conversions.
- Hazing
 - To persecute, harass, or torture in a deliberate, calculated, planned, manner. Typically, the targeted individual is a subordinate, for example, a fraternity pledge, a first-year firefighter on probation.
 - Hazing is illegal in all instances.

Cont -----

-

- Pranks
 - A practical joke, or prank, is a mischievous trick played on someone, generally causing the victim to experience embarrassment, perplexity, confusion, or discomfort.
 - Practical jokes performed with an intent to commit harm can constitute bullying, whose intent is to harass or exclude
 - Can it rise to the level of harassment?

Example

- Six City of Miami firefighters have been fired after investigators said someone hung a noose over a black Lieutenant's family photos and drew sexually explicit drawings on them.
 - Someone created a noose out of twine and hung it over a family photo of a black lieutenant."
 - The firings come after the noose was found, triggering a police investigation.
 - "Several of [the lieutenant's] colleagues drew lewd pictures on several other photos, including one of his wife and one of his mother and his children."

Cases

- A San Bruno firefighter is suing the city and several members of its fire department on grounds he was sexually harassed and retaliated against when he complained. The lawsuit says the firefighter, identified as 17-year veteran, was subjected to numerous comments and jokes suggesting he was gay
- A former Rhode Island firefighter who claimed that colleagues harassed and discriminated against her because of her sexual orientation and gender was awarded more than \$800,000 in federal court.

Cases

- A federal jury has awarded \$3.35 million to a female ex-firefighter in Ohio who says she was the longtime (over 14 years) victim of sexual harassment.
- The firefighter of the Circleville Fire Department alleged she was subjected to equipment tampering, clothing destruction and gender-related slurs.
- She also said she was required to meet tougher training and work standards than male counterparts and denied promotions because she's a woman

What have you seen or heard on the job?

What have you seen or heard that you questioned but was really unsure?

What are “accepted behaviors” in the fire service that make you uncomfortable?

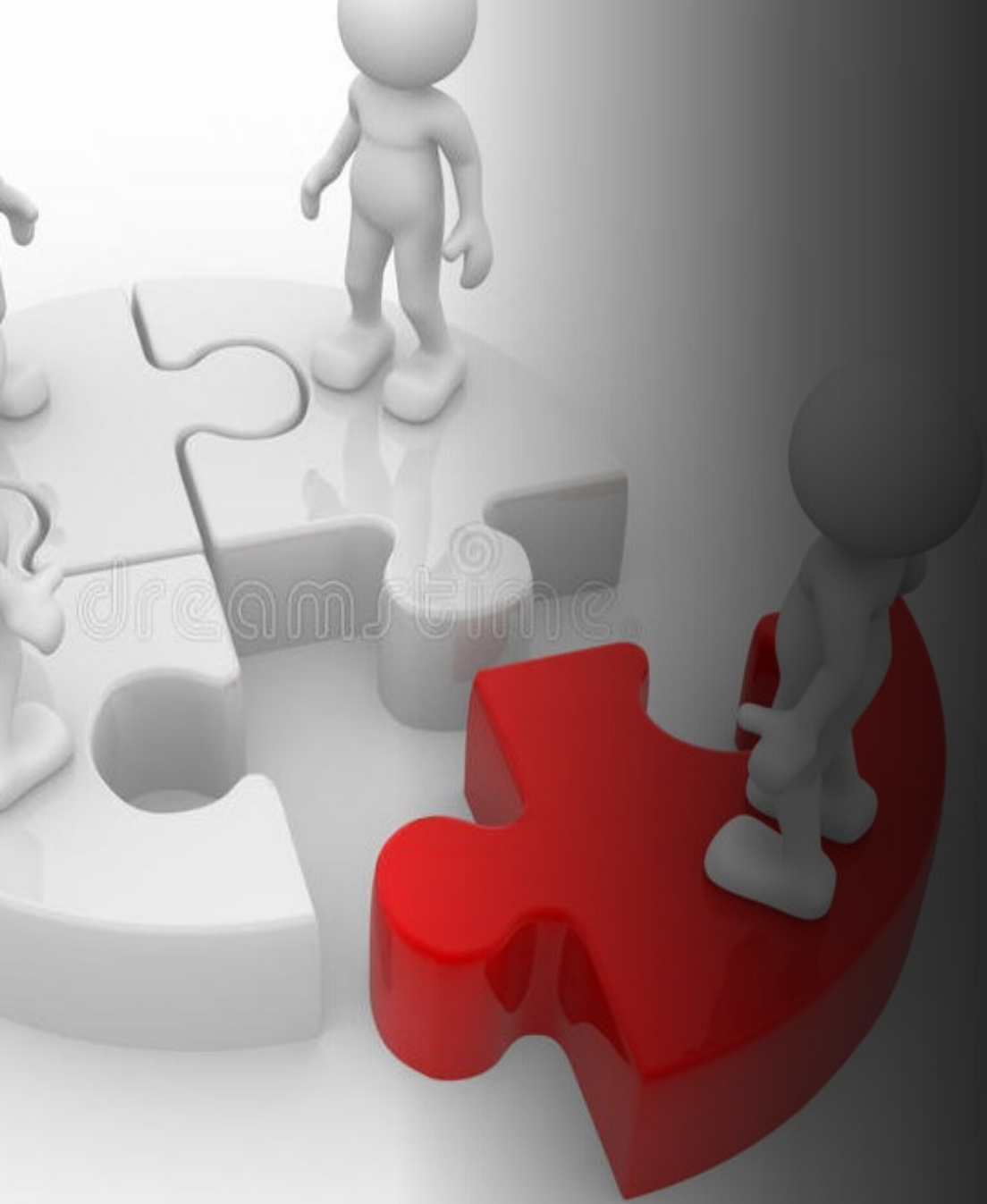
Have you been asked if you are a victim or target of Harassment or do you know of other members who are victims or targets?

CHECKPOINT

BREAK



TIME



Discrimination



good
discrimination
different categories
sex, or a

- The unjust or prejudicial treatment of different categories of people, especially on the grounds of ethnicity, age, sex, or disability
- Examples:
 - Assignment or change in assignment
 - Arbitrary shift change
 - Failure to hire
 - Failure to Promote

Constitutional Protections TITLE VII

Title VII of the Civil
Rights Act of 1964

- 42 U.S.C. subsection
2000(e)

1964

1991

Civil Rights Act of
1991 Amendments

- 42 U.S.C. § 1981a

What discrimination looks like day to day

- Receiving poorer service at stores or restaurants, being treated with less courtesy and respect,
- Being treated as less intelligent or trustworthy may be more common than significant discrimination.
- Under-the-radar discrimination frequently takes the form of “microaggressions,” such as snubs, slights, and misguided comments that suggest a person doesn’t belong or invalidate his or her experiences.

A close-up photograph of a dark wooden desk. In the upper left, a gavel with a dark wood handle and a gold-colored band is visible. In the upper right, a pair of gold-rimmed glasses is partially shown. A white document is placed on the desk, featuring the text 'Pregnancy and maternity discrimination' in a bold, black, sans-serif font. A horizontal line is drawn below the text on the document.

**Pregnancy and maternity
discrimination**

Pregnancy Discrimination

Stereotypes and
Assumptions

Accommodation

- Light Duty – When?

NFPA 1582, Annex D

Lactation Rooms – Under
ACA

The Pregnant Workers Fairness Act (PWFA)

- In 1978, the U.S. Congress added to Title VII of the Civil Rights Act of 1964 the Pregnancy Discrimination Act of 1978, preventing discrimination towards pregnant workers and clarifying the rights of working pregnant mothers
- Pregnancy may not be considered in making employment decisions, and employers must treat pregnancy, like other disabilities, with accommodations.
- The Pregnant Workers Fairness Act (PWFA) was passed in 2022 and came into effect in June of 2023.

PUMP Act

- Breast Feeding is a protected activity found in the Affordable Care Act (ACA)
- There have been many legal cases involving nursing mothers and lactation space available while on the job.
- Providing Urgent Maternal Protections (PUMP) Act, which came into effect in 2022, provided additional protections for nursing mothers in the workplace.

Religious discrimination defined

- Religious discrimination involves treating a person (an applicant or employee) unfavorably because of his or her religious beliefs.
- The law protects not only people who belong to traditional, organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical or moral beliefs.

Religious Discrimination Accommodation

- Clothing
- Grooming
- Hair
- Facial Hair
- Hours of Work
- Prayer Times
- Days off for religious observation



Disability Discrimination

- Has a Disability
- History of a Disability
- Perceived as having a Disability
- Failure to accomodate

ADA Accommodation



ENGAGE IN INTERACTIVE
DISCUSSION



REQUEST MEDICAL INFORMATION
AS CONSISTENT WITH ABILITY TO
PERFORM ESSENTIAL JOB
FUNCTIONS



HAVE A JOB DESCRIPTION & JOB
ANALYSIS READY WITH PHYSICAL &
MENTAL REQUIREMENTS AS WELL
AS JOB HAZARDS (NFPA 1582)



CONSULT WITH APPROPRIATE
PERSONNEL



CONSULT WITH UNION IF
CBA/MOU IN PLACE

ADA Reasonable Accommodation

- Light Duty
- Reallocation of marginal job duties
- Breaks
- Leave of Absence
- Modification of Job Function
- Assist devices
- Therapy Animals





Age – Special Rules

- 40 and Older
 - FLSA 623(j) – Fire Department can refuse to hire or can fire someone because of age, pursuant to a good faith plan that is not meant to evade the purposes of the ADEA or is a stated Business Necessity
 - Chicago – no person over 38 shall get an initial appointment as a probationary or career firefighter
 - Seattle – no age limit
 - Feds – mandatory retirement age and generally do not hire over the age of 35

What have you seen or heard on the job?

What have you seen or heard that you questioned but was really unsure?

What are “accepted behaviors” in the fire service that make you uncomfortable?

Have you been asked if you are a victim or target of Discrimination or do you know of other members who are victims or targets?

CHECKPOINT



DIVERSITY

What is cultural diversity

Gender Expression

Wealth

Physical abilities

Race

Beliefs

Skill Set

Religious Beliefs

Perspective

Age

Personality Traits

Education

Values

Gender Identity

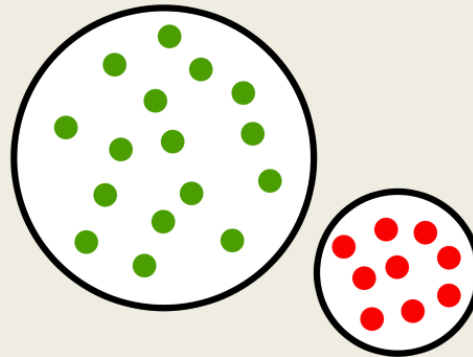
Life Experiences

Sexual Orientation

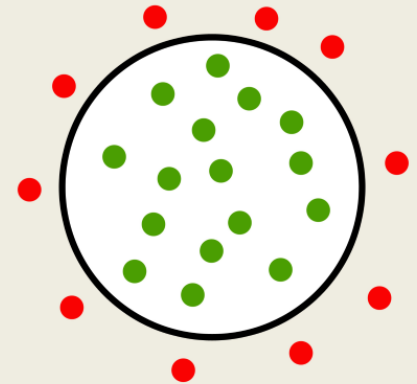
Ethnicity

What is Inclusion

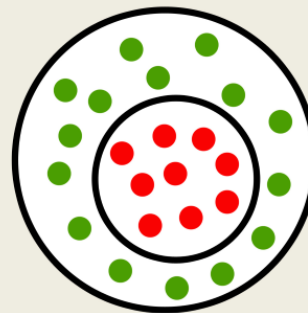
SEPARATION



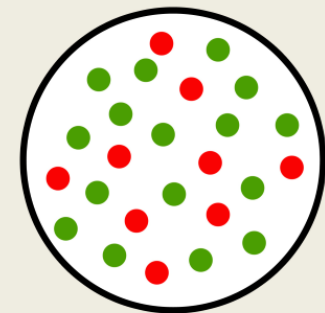
EXCLUSION



INTEGRATION



INCLUSION



Inclusion and Diversity

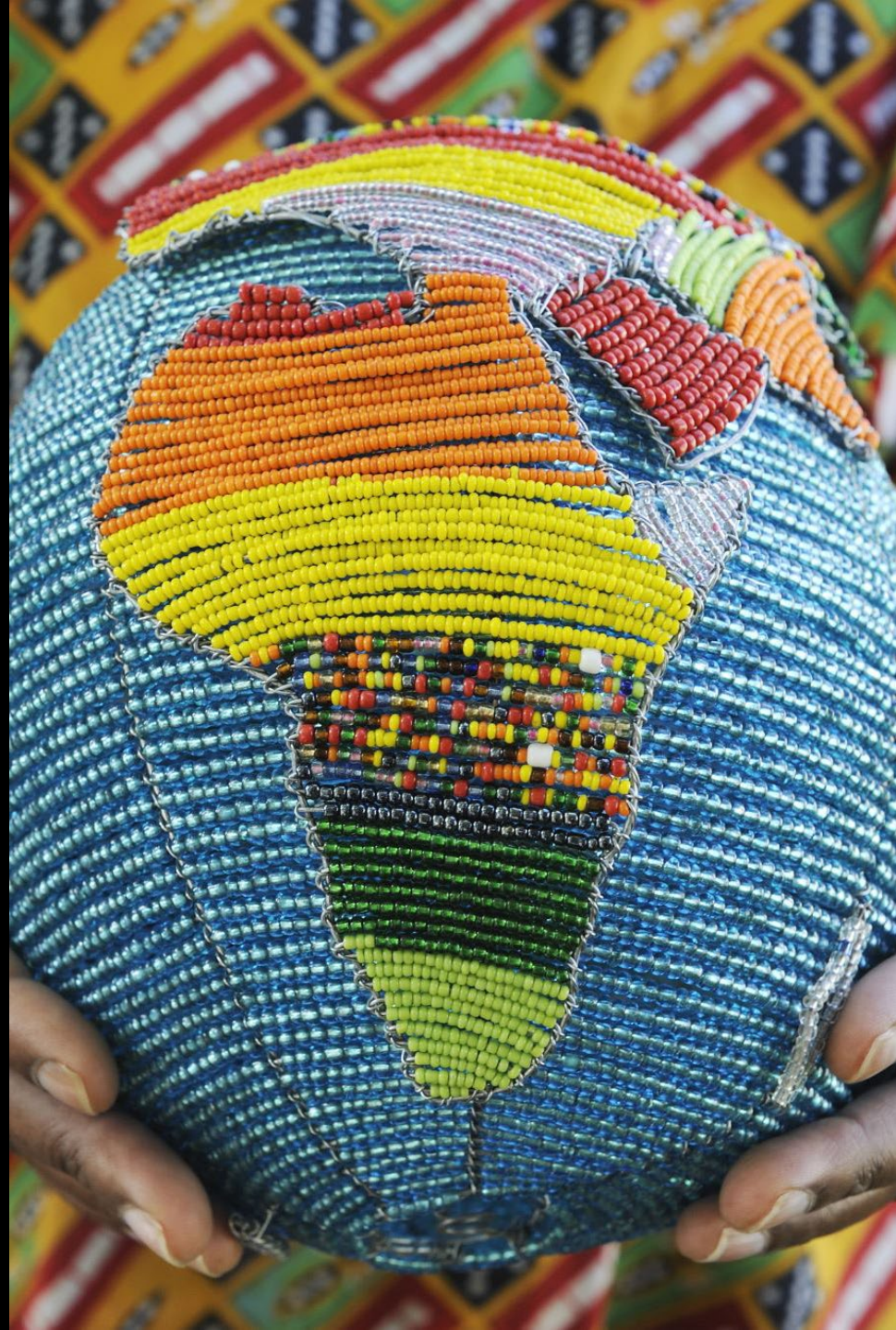
- Usually, Inclusion and Diversity are included in the same sentence
- Inclusion requires that we study how difference has been constructed, access denied, stereotypes perpetuated, and exclusion justified.
- Diversity is a fact of life in the United States
 - Projections have shown that by 2050, no racial or ethnic group will make up as much as 50% of the U.S. population (U.S. Census Bureau, 2009). The United States will become a nation of minorities

Dual Pathways to a Better America

Preventing Discrimination and Promoting Diversity

APA Presidential Task Force on Preventing Discrimination and Promoting Diversity

7/4/2012



MELTING POT OR TOSSED SALAD?



Diversity of the job

- Fire service demographics are changing but not as fast as our communities
 - Does your fire department reflect the community and meet its needs?
- Fire service jobs and how they get done are changing.
 - Fighting fires- structure and contents of varying components
 - EMS- injury to illness; primary care, social worker
 - Community Paramedicine
 - MHP Units
 - Rescue
 - Hazmat
 - Inspection and prefire

Role of Diversity and Inclusion

- Move from tolerance to acceptance and respect
- Inspire you to go the extra mile and go deeper when sharing information
- Promotes open-mindedness, and willingness to see other points of view
- Promotes problem-solving and teamwork.



Distinction Between EEO, Affirmative Action and Diversity & Inclusion

Equal Employment Opportunity	Affirmative Action	Diversity & Inclusion
The enforcement of statutes to prevent employment discrimination	The effort to achieve parity in the workforce through outreach and eliminating barriers in hiring	Leveraging differences in the workforce to achieve better results

Problems

- Organizations tend to believe that diversity in the workplace is essential.
- However, only 30 percent have an agreed definition of "diversity,"
 - Is not well-defined or understood
 - Focuses too much on compliance
- Reporting of diversity places too much emphasis on race and gender



Solving the Diversity and Inclusion “Problem”

- Stop referring to it as a problem. Shift your mindset.
- Diversity and inclusion represent opportunity!
- Diversity does not work without inclusion
- Adopt a multi-modal approach in training.
- **Place diversity and inclusion in the organization’s center in its strategic planning.**

Promoting Diversity

- Recruitment- hire diversely
- Meet people where they are at and present an image where they can see themselves working
- Remove barriers
- Practice inclusion so that it conveys that “anyone can harness their full capabilities, no matter their background (e.g., culture, heritage, gender, etc.)”

(Llopis, G., 2017)

Promoting Inclusion

- Starts with us
- Unconscious bias training is one part of the training.
 - Increase your awareness of your unconscious biases.
 - Visualize interactions with groups and situations you may have a bias toward.
 - In interactions, pay attention to your reactions
 - Practice good communication skills- emotional intelligence
 - Focus on the person and not the process or the policies.

(Smith, K., 2019)

Communication for Inclusion

- Emotional intelligence
 - Self-Awareness- understand emotions of self and others
 - Self-regulation- ability to control emotions and impulses
 - Motivation- willing to defer immediate results for long-term success
 - Empathy- understanding of the wants, needs, and viewpoints of those around you
 - Social skills- help others shine and develop

TED Talk - Celest Headlee,
10 ways to have a better conversation.

“If diversity is being invited to the party,
inclusion is being invited to dance at the
party.”

Verna Meyers,
Vice President of Inclusion Strategy
Netflix

Diversity and Inclusion

- Eliminate the belief that diversity & inclusion mean that Department standards must be lowered
- If Department members are of the mindset that their colleagues are “family,” make sure their actions mirror the mindset
- Identify the steps the Department should take so that every Community member is comfortable walking into the house
- Consider whether your Department is ready to hire and retain its first woman/pregnant woman/religiously observant FF/transgender male....

Diversity and Inclusion

- Identify Department options for participating in events that “showcase” commitment to fostering diversity & inclusion in the workplace
- Remain informed on your Community’s position/response to the current political and social climate
- Examine whether you have “problem children” (both subordinate, peer, and supervisory) who have difficulty with the concepts of diversity & inclusion in Fire/EMS
- Review your Department’s policies on discrimination, harassment, and retaliation.
- Discuss with your colleagues whether they can plainly explain what actions are prohibited, with examples specific to Fire/EMS

UNDERSTANDING INCLUSION



EQUALITY is that everyone gets the same book.



DIVERSITY is that everyone gets different types of books.



EQUITY is that everyone gets the book that is right for them.



ACCEPTANCE is understanding that everyone reads different types of books.

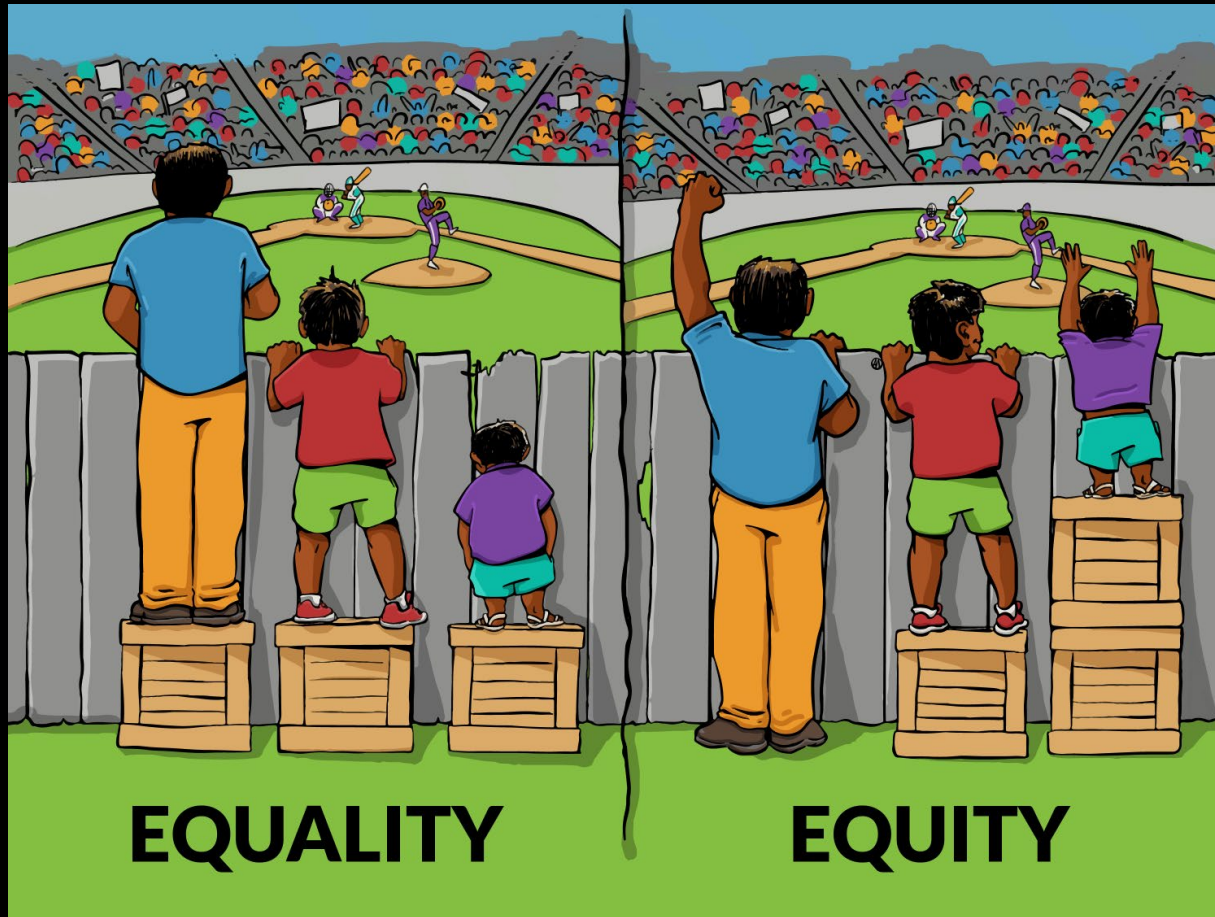


BELONGING is reading any book you want without fear of being judged.



JUSTICE is fighting to make sure everyone has access to books.

The Difference



What have you seen or heard on the job?

What have you seen or heard that you questioned but was really unsure?

What are “accepted behaviors” in the fire service that make you uncomfortable?

Have you been asked if you are a victim or target of discrimination, Harassment, Pranks, or Bullying, or do you know of other members who are victims or targets?

CHECKPOINT



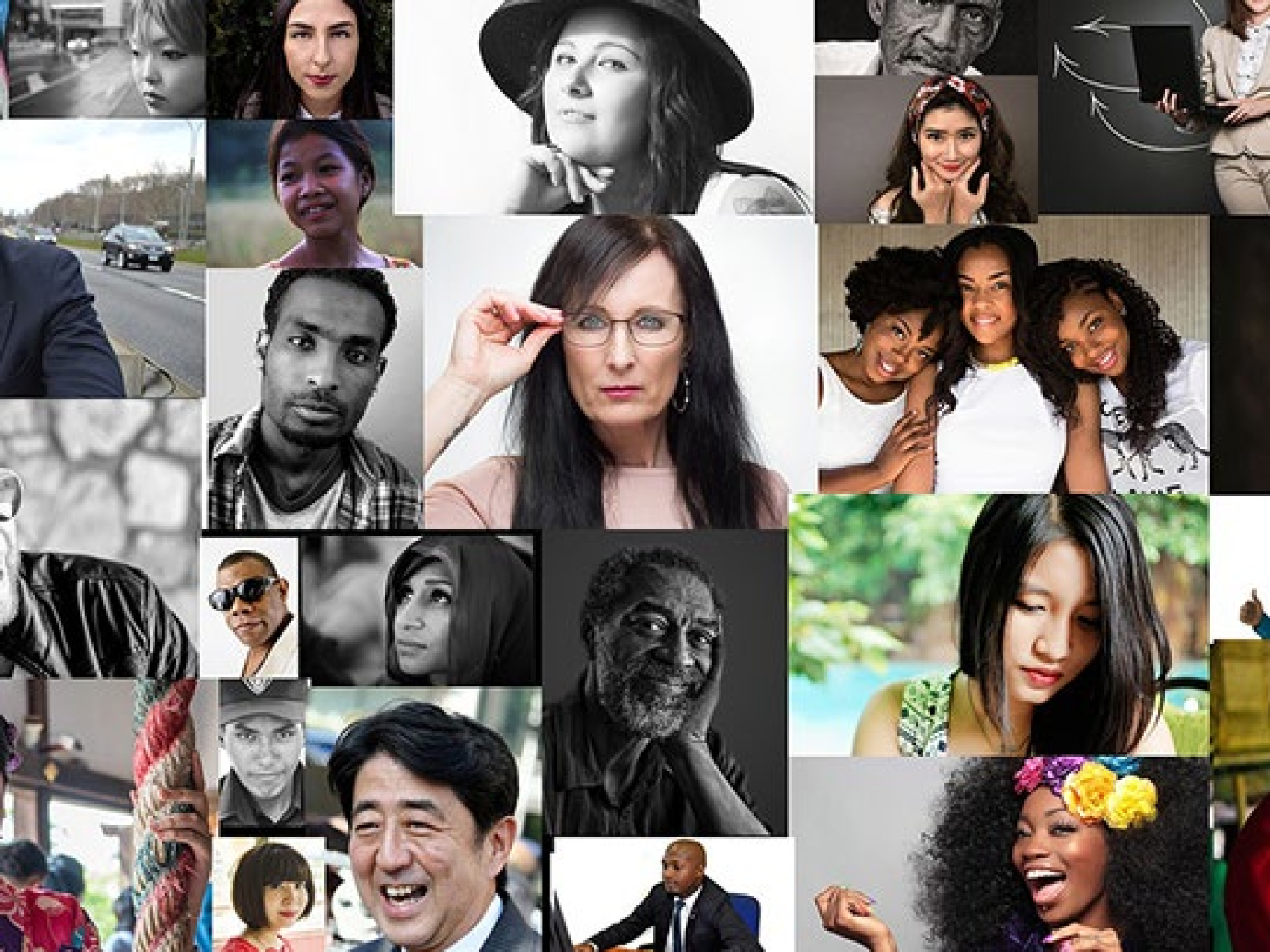
CHANGING THE SUBJECT

Your Workforce

- Language
 - Cultural Differences
 - Religion
-
- Varied Customs
 - Norms and Attitudes

The background of the image is a dense, repeating pattern of butterflies. Most of the butterflies have bright orange wings with black borders and white markings. In the center of the image, there is a single butterfly with vibrant blue wings, which stands out significantly from the surrounding orange ones. The text is overlaid on this pattern.

What else is different
about
your workforce?



Then and Now

- What did your Department look like when you joined? Now?
- What did your Community look like when you joined? Now?
- What initiatives were taken to hire people from different backgrounds when you were hired? Were they successful?



Then and Now

- What initiatives were taken to retain people from different backgrounds when you were hired? Were they successful?
- What initiatives are being taken to retain people from different backgrounds now?
- Who has left your Department since you were hired? Do the people leaving appear to share a protected characteristic?

Community = Fire Department

- A fire department that resembles its community in demographic makeup is more likely to be able to provide effective service and garner more respect from citizens.
- For example, your community has many residents who speak Spanish; firefighters who speak the language can better communicate with citizens during emergencies and non-emergency interactions.
- Community members in an emergency or who have been through one recently may feel more comfortable speaking to someone they can identify with.





Communications

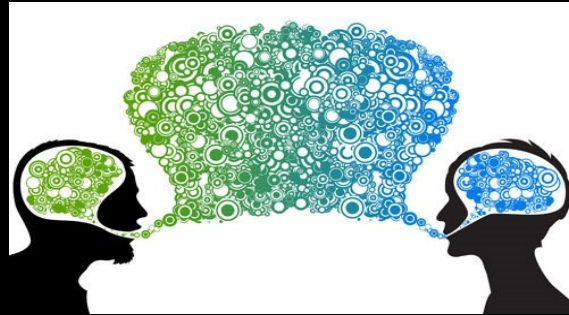


Communication

- Talk to each other and not at each other
- Listen before responding
- Emotional intelligence
 - Self-Awareness- understand emotions of self and of others
 - Self-regulation- ability to control emotions and impulses
 - Motivation- willing to defer immediate results for long-term success
 - Empathy- understanding of the wants, needs, and viewpoints of those around you
 - Social skills- help others shine and develop
- TED Talk - Celest Headlee, 10 ways to have a better conversation.

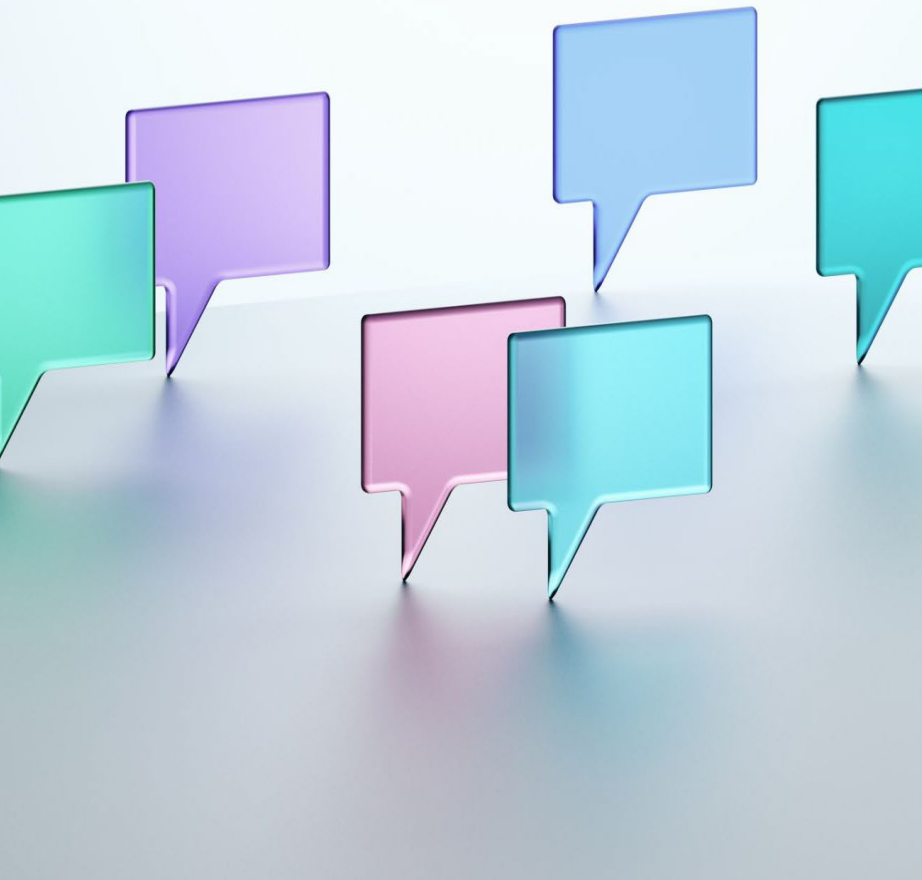
All Communication is Filtered Through Your Biases

- Age
- National origin
- Race
- Sexual orientation
- Religion
- Disability
- Gender
- Education
- Work role/experience
- Personality
- Customs
- Geographic location
- Functional discipline
- Languages used
- Values
- Communication style
- Work Style
- Learning style
- Economic status
- Family situation
- Military experience
- Philosophical perspective



Transparency in Communication

- Recognizing biases is not enough
 - A transparent process that demonstrates inclusion involves tending to social motivations
 - Domains of social motivation include status, certainty, autonomy, relatedness, and fairness.



R.E.S.P.E.C.T.

- **Recognize commonalities:** Look for common ground with your co-workers, and appreciate differences.
- **Embrace change:** We will always have a changing workplace; take it in stride.
- **Support others:** Advocate for others, shine the light on them, and stand up for them.
- **Promote positivity:** Be inclusive and friendly.

R.E.S.P.E.C.T.

- **Engage for understanding:** Reach out and learn about your coworkers, and other cultures. Start from a place of curiosity.
- **Communicate clearly:** Be mindful of your verbal and non-verbal communication. Learn about others' communication styles.
- **Trust:** Build it by being curious, open, and respectful. Accept feedback without judgment.

Cases

- 2023 - 20-year veteran Kansas City, Kansas firefighter has filed suit claiming he was the victim of race discrimination and retaliation.
 - Leejamahl A. Washington alleges he was subjected to racial hostilities throughout much of his career.
 - Still, conditions worsened after he testified in support of Jyan Harris, who won a \$2.3 million case in 2021.
 - His co-workers wore Nazi memorabilia on their uniforms, and he found a noose in front of his locker

Case -----

- The complaint alleges three violations of Title VII of the Civil Rights Act of 1964:
- Count I – disparate treatment and harassment based upon race;
- Count II – hostile work environment based on race; and
- Count III – retaliation.

Case

- The US Department of Justice has announced a court-approved settlement of a claim by an Arizona firefighter that his fire department violated the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) by eliminating his position and refusing to rehire him.
 - The firefighter claims that in 2013, while he was on a US Army Reserve military deployment, the Fire Department eliminated his fire inspector position and refused to rehire him when his commitment was completed.
- The one-year deployment was the firefighter's third extended deployment since 2008.

Cases

- A probationary Tucson firefighter terminated in 2015, has lost the appeal of his wrongful termination suit.
 - The firefighter sued the City of Tucson, claiming he was retaliated against because he filed a workers' comp claim over a back injury he sustained in the fire academy and because he was the victim of disability discrimination.

Case-----

- The suit was filed in 2016 in US District Court for the District of Arizona.
- In 2018, the district court concluded that the firefighter could not establish that he had a disability nor that the city retaliated against him.
 - The court concluded that the city established a legitimate, non-discriminatory reason for his termination, namely that different officers documented a series of problems that the firefighter had over the course of several months.

Supporting your
people programs

- Five Basic Needs
 - Hire Right
 - Good Policy
 - Good Training
 - Good Enforcement
 - Good ways to measure outcomes

MEASURING SUCCESS

How do we
measure success

- Percentage of minorities
- More diverse hiring
- Increased number of minorities at different levels
- Better relationships among members
- Fewer discrimination grievances and complaints
- Improved labor relations
- Reduction of hate incidents
- Better retention

(Brenman, 2012)

Best Practices

- Leadership commitment.
- Effective communication and transparency.
- Equitable employment practices.
- Recruitment outreach.
- Continuous learning and career development.
- Coaching and mentoring.
- Early conflict resolution.
- Flexible work culture.




Cont. -----

Understanding of the federal law's preventing discrimination.



Understanding how Policy can reinforce the existing law.



Preparing your department in changing the culture of their fire department.



Communicate

AN EVENT OCCURS

Is Reporting KEPT Secret?

- There are no secrets in the Fire Service

Supervisors Narrative

- Thank you for letting me know about this issue
- Per Policy, as a supervisor, I am required to report this incident to HR.

REMEMBER

NO RETALIATION

No retaliation or discipline for making a complaint about harassment of any kind



Initiation of a retaliatory act is subject to discipline including dismissal



Reports of retaliation may be made verbally or in writing



Equal Employment Opportunity
Commission position -----

EEOC Viewpoint

- Asserting these EEO rights is called "protected activity," and it can take many forms.
- For example, 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
- Ask managers or co-workers about salary information to uncover potentially discriminatory wages.

Retaliation Prevention

- Retaliation is illegal
- Is a chargeable offense when filing an EEOC complaint.
- Examples:
 - Relocating the person to a less desirable station
 - Altering work hours and job description
 - Unnecessary psychological or fit for duty evaluations
 - Hostile conduct from an officer
 - Poor job evaluations

Effects of Unresolved Complaints

Absenteeism

- Anxiety or Depression

Poor Morale

- Increased work Conflict
- Quitting

Work not getting done

- Litigation

Problems with personal life

Possible
penalties for
non-compliance

LITIGATION

- **Lost wages and benefits through the date of verdict**
 - **Reinstatement or front pay**
 - **\$\$ for compensatory damages – emotional distress**
 - **\$\$ for punitive damages = deterrent**
-
- **Attorneys' fees and costs**
 - **Plus**
 - **Lost time**
 - **Poor morale**
 - **Bad publicity**
 - **Difficulty recruiting**

Other effects

- Financial costs: Discrimination lawsuits can be expensive
 - This can divert resources from other vital areas, such as staffing, equipment, and training.
- Reputation damage:
 - Discrimination lawsuits can damage a FIRE and EMS organization's reputation and undermine public trust.
- Loss of employees:
 - Discrimination can result in a toxic work environment that can cause employees to leave the organization, leading to staffing shortages and increased workloads for remaining employees.

Other effects

- Decrease morale:
 - Discrimination lawsuits can decrease employee morale, who may feel they are not valued or protected by their employer.
- Discrimination lawsuits can create a cycle of legal action.
 - Employees who feel they have been mistreated may be more likely to sue the organization in the future.
- Inability to recruit and retain other employees
 - These may have long-lasting impacts on an organization's ability to attract and retain employees and maintain public trust.





Other effects

Anyone??

Let' take a
break

5 min at
your table



For Additional Information
Read this Article

[The Legal Side of Leadership In 2024 - Fire
Department Law \(fireengineering.com\)](#)

Some prevention measures

- Strong Leadership presence
- Buy-in from Leadership and Membership
- Comprehensive Policy & Training
- Line officer training
- Training on the Laws related to creating a safe workplace

Some prevention measures

- Harassment, Discrimination and Retaliation prevention training
- Discrimination, Equity, and Inclusion Training – what does it look like?
- Training on Mission, Vision, and Codes of Conduct and Ethics
- Take a periodic pulse of your organization
- Management by walking about
- Monitoring behavior

Divide into
two
groups



CASE SENARIOS

- These case scenarios present hypothetical situations that will test your understanding of workplace Harassment and Discrimination.
- Your group will argue for or against the behavior and some corrective action

SCENARIO I

- Female firefighter in recruit academy having difficult time with skills performance – flowing a 1 ³/₄ line
- Instructor places his hand on her upper back and with the other hand, he places it on her hand holding the nozzle.
- He does this several times during the drill while providing direction by talking directly into her ear.
- She seems to have a difficult time managing this drill and the Instructor starts yelling at her that she is not doing it correctly and should not be in the academy.
- Is this gender discrimination?

SCENARIO II

- Chief Ann Chaos sometimes makes comments to her administrative assistant Bill, about how attractive he is. He never says anything when she makes these comments.
- One day, Bill requests a raise. Chaos says that she will consider his requests, and suggest that the two of them go for drinks and dinner after work.
- Bill makes it clear that he wants to keep their relationship purely professional and would, therefore, prefer not to go out with her.
- Chaos says that she understands.

SCENARIO II

- Two weeks later, the Chief informs Bill that she has denied his request for a raise.
- He asks her for an explanation, and she says that if he would be more “cooperative” with her, then his chance for a raise would improve.
- Bill asks what does cooperative means. Chaos smiles and says “You figure it out”.
- Is this harassment, sexual harassment, hostile work environment or discrimination?

Scenario III

- Chief William Rekindle keeps a large bible on his desk at work and always wears a large silver cross around his neck.
- At times, the Chief will use biblical quotations to support his comments and seek assertions that his biblical observations are correct in conversations with his co-workers.
- Additionally, he usually tells people to have a “Blessed Day”.

Scenario III

- Captain Joe has started referring to him as “Saint Willy”. This has gotten many laughs around the office.
- Chief Rekindle has confronted Captain Joe about this and asked him to stop.
- Captain Joe's response was, “Can’t you take a joke?”.
- Captain Joe has not stopped referring to William as “Saint Willy” and has encouraged others to do so.
- Is this religious discrimination, a hostile work environment or harassment

Scenario IV

- John has been a firefighter for over 25 years with your department.
- Lately, he has been having problems during training and with fire-ground activities—such as running through an air bottle in 10 minutes, easily winded during exertion, unable to bend over and pick up tools, and unable to stand up after crawling.
- John claims that he only weighs 295 pounds but appears well over 350 pounds and has had three sets of new bunker gear to accommodate his weight over the last five years.

Scenario IV

- He has a series of non complimentary nicknames that some firefighters believe will embarrass him to get a physical and to lose weight. He's asked the firefighters to stop calling him names
- The firefighters expressed a fear that he could have a heart attack on the job and endanger them during an emergency.
- The Department has a voluntary annual physical fitness program, and the department's physician has never evaluated John.

Scenario IV

- The Chief has received several complaints about John's performance and ORDERS him for a physical or IME
- John responds that the Department is discriminating against him due to his obesity and he threatens a lawsuit. Is he protected?
- Is this a hostile work environment, harassment, or discrimination?

Some Information

- Obesity is **not universally** recognized as a protected class at the federal level in the United States.
- While federal law prohibits employment discrimination based on traits such as age, disability, race, religion, sexual orientation, and gender identity, weight is not explicitly included in this list.
- However, there are some important nuances to consider:
- Michigan and a few U.S. cities expressly prohibit discrimination based on weight or appearance. Michigan's Elliott-Larsen Civil Rights Act includes weight as a protected trait in employment, housing, education, and access to public accommodations
- ADA and Obesity: Under the Americans with Disabilities Act (ADA), whether obesity qualifies as a disability depends on jurisdictional and situational factors. Most jurisdictions have held that obesity alone, without an **underlying physiological disorder**, does not constitute a protected physical impairment.

Some Information

- Weight discrimination remains a significant issue despite the lack of explicit legal protection.
- Unconscious biases associated with obesity, such as stereotypes of laziness and lack of productivity, contribute to weight stigma in the workplace. This stigma can lead to real consequences, including wage gaps for obese workers, especially women.
- Summary: while obesity is not universally protected, efforts to address weight discrimination require challenging powerful institutions and changing public opinion. Advocacy and awareness play crucial roles in promoting fair treatment for individuals of all body types.

Scenario V

- Jean arrived to the station at shift change appearing to be under the influence and exhibiting signs of slurred speech, unsteady gait, not in uniform and her clothes appear dirty and disheveled.
- She has been a stellar firefighter for the past 10 years and admittedly been attending AA due to her admitted alcoholism and drug use.
- She has been “clean” since attending AA and is subject to random testing under an agreed upon “Last Chance Agreement.”

Scenario V

- She disappears into the bunk room, supposedly to get into her uniform but never re-appears at the morning crew meeting.
- Her Captain goes into the bunk room and finds her unconscious on her bunk.
- After providing appropriate medical care, the Captain suggests that she be immediately fired.
- Is she protected or being discriminated against?

Scenario V

- The ADA may protect alcoholic employees if they can prove that they are "substantially limited in a major life activity" or that they are "regarded as" such.
- For alcoholic employees protected by the ADA, reasonable accommodation typically will involve granting appropriate leave to attend a detoxification or rehabilitation program.
- However, courts usually do not expect an employer to grant a second chance to an employee who suffers a relapse after participating in rehabilitation.
- Often, a "last-chance" agreement between an employer and employee can document the employee's treatment and rehabilitation obligations and support disciplinary action if the employee does not live up to the agreement's terms.

See *Salley v. Circuit City Stores*, 160 F.3d 977 (3d Cir. 1998);
Burch v. Coca-Cola Co., 119 F.3d 305 (5th Cir. 1997)

Scenario VI

- Firefighter Tom's dream has been to be a member of the departments hazmat team and was finally accepted for training.
- Part of the training is the use of the Emergency Response Guidebook (ERG).
- During the session of training, Tom was assigned as team leader for a particular hazmat problem and had to use the ERG to create an action plan for this particular chemical response.

Scenario VI

- Although this was not a timed event, Tom had difficulty interpreting the material in the ERG and his team failed the exercise.
- After that failure, Tom failed the course and did not receive his Hazmat Certification. The Department also recommended that Tom be terminated due to this failure.
- Is this discrimination? Does the department need to make an accommodation?

Scenario VII

- Stormy likes wearing tight blouses, short skirts, and high heels.
- When she walks down the hall in the office, many of her male co-workers and some females stare at her, some with knowing smiles, and others shake their heads.
- Occasionally, one individual silently acts as if he is having a heart attack behind her back.
- She has repeatedly indicated to her co-workers that their conduct embarrasses her and has asked them to stop, but without much success.
- Some of her female co-workers have mentioned that she causes her problems by how she dresses.
- Is this harassment, discrimination, or a hostile work environment?

Scenario VIII

- Mary dreads each time her office color photocopier breaks down because the repair person assigned to her office always leers at her and makes sexually suggestive comments.
- She fears that if she complains, nothing will be done because the agency does not have control over the repair person, an employee of the photocopier service company.
- The supervisor does relay Mary's complaints to the service company, but no action is taken.
- Is this harassment or sexual harassment?



Closing & Test

- The policy is not enough – Apply the policies.
- The illusion of following the laws and regulations is not enough.
- Walk the talk
- Valuing, encouraging, and incorporating the uniqueness of your people supports growth.
- Intervene in bad behavior
- Action and not mere words are the key

THANK YOU FOR LISTENING



ANY QUESTIONS

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