

Managing Through Civil Rights

Leader's Guide

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Introduction

This short course helps management employees develop and maintain a model workplace, improve employee productivity, avoid liability, and comply with federal laws, regulations and guidelines. They also learn about their rights and responsibilities to maintain an environment free from discrimination, harassment and retaliation, and their role in the resolution of employment issues.

It will take approximately three hours to complete this course.

Activities in this section include:

- Facilitator-led presentations
- Hands-on activities
- Work in small groups

Rationale

This course presents fundamental material that all management employees need to know in order to develop and maintain a workplace free from illegal discrimination, harassment and retaliation. It helps managers understand their basic rights and responsibilities under federal laws, regulations, and guidelines.

Objectives

When participants complete this training session they will be able to:

- List at least three ways to manage through civil rights.
- Describe the services provided by the TSA Office of Civil Rights
- Identify illegal discrimination, harassment, or retaliation in the workplace
- Describe management's rights and responsibilities to maintain a workplace free from illegal discrimination, harassment, or retaliation

Trainer's preparation

Things to do before the course

- Review the PowerPoint presentation
- Make sure there is a copy of the workbook for each participant
- Have enough Level 1 evaluation forms
- Prepare a parking lot area to have participants post questions and concerns that arise during the class. Be prepared to follow-up with participants once you have determined the correct response to questions and concerns.
- Make sure there is a sign-in sheet

Certification Requirements

In order to be certified to deliver this course you must:

- Be a TSA Approved Instructor (TAI)
- Have participated in this course delivered by a certified instructor

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- Complete the train-the-trainer session for this course
- Successfully complete an observation at least once a year by a TSA office of Workforce Performance and Training (WPT) Quality Assurance Monitor

Special Note

Although you are certified to deliver this course you are probably not an expert on TSA Civil Rights issues, nor should the participants view you as such. Part of this course provides information on who, in the Office of Civil Rights, they can call with questions. Even if you are an attorney, you may not be able to respond to every question and concern that participants might express. Be prepared to seek guidance from the TSA Office of Civil Rights, research responses and reply to participants when you have the proper response. Use the parking lot to channel questions or issues that you don't have a ready response to or that might interfere with the structure of the course.

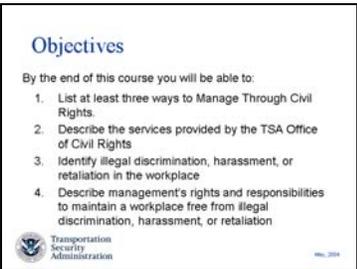
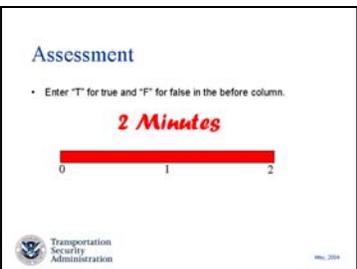
Materials

- Leader's Guide
- Participant's Guide
- PowerPoint presentation
- Level 1 evaluation forms
- A computer to run the presentation
- Projector to project the presentation
- Parking lot
- Flip charts (3 – 4 depending on class size)
- Markers (preferably black, blue and purple)
- Black pens or number 2 pencils for completion of Level 1 evaluations
- Blank paper or tent cards, if desired
- Sign-in sheet

Description Of Activities

	<p>Make sure everyone has signed in before beginning the course.</p>
	<p>Point out the Participant's Workbook. Review the Table of Contents in the participant's workbook and explain that the first part is exercises that we will use in class and the remainder is reference material that they can use back on the job.</p>
	<p>Optional You can use these situations to pique interest in the course.</p> <ul style="list-style-type: none"> • Your prize screener quits alleging hostile work environment. • A screener asks for two years of unpaid leave to complete a religious pilgrimage. • Three screeners are found sleeping at the checkpoint, only the male is fired. • A passenger is very upset and cannot speak English. • You have a female screener who is requesting to wear a skirt as part of the TSA uniform.
 <p>Managing Through Civil Rights</p> <p>"Excellence through diversity and service"</p> <p>Transportation Security Administration</p>	<p>Welcome Introduce yourself and explain that:</p> <ul style="list-style-type: none"> • They will be spending the next three hours discussing how to manage through civil rights. • There is one 15-minute break half way through the session. • This session consists of an interactive presentation with participation encouraged from every one. • They will also spend some time working in small groups. • By the end of the session everyone will have the skill and tools they can use to maintain a workplace where everyone is free from illegal discrimination, harassment and retaliation.
 <p>Introductions</p> <ul style="list-style-type: none"> • Name • Location • Attribute of good management <p>Transportation Security Administration</p>	<p>Icebreaker</p> <p>In groups of 20 or less use two flipcharts. In groups larger than 20 participants, use four flipcharts to conduct the icebreaker.</p> <p>Ask each participant to tell everyone their name, position, and say one word that they consider an essential attribute of a good manager and then have the participant write the attribute on a flipchart.</p> <p>Optional</p>

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	<p>Weave all the words on the flipcharts into a brief paragraph that explains the MD 715 definition of a good manager (model agency).</p> <p>Transition to the objectives by explaining that all of the attributes or terms they mentioned are components of managing through civil rights and, over the course of the next few hours we will hear them come up again and again.</p> <p>Instructor note: Be sure to refer to the attributes as they occur throughout the course.</p>
 <p>Objectives</p> <p>By the end of this course you will be able to:</p> <ol style="list-style-type: none"> 1. List at least three ways to Manage Through Civil Rights. 2. Describe the services provided by the TSA Office of Civil Rights 3. Identify illegal discrimination, harassment, or retaliation in the workplace 4. Describe management's rights and responsibilities to maintain a workplace free from illegal discrimination, harassment, or retaliation <p>Transportation Security Administration</p>	<p>Explain that the goal of this course is to help supervisors and managers recognize and resolve issues and concerns at the lowest possible level. In order to accomplish this goal training will focus on the objectives on the PowerPoint.</p> <p>Note: Concerns raised in the workplace where there is a perception of illegal discrimination, harassment or retaliation when resolved at the most immediate level possible has the effect of:</p> <ol style="list-style-type: none"> 1. salvaging good employees 2. restoring morale in the workplace 3. reinforcing management's credibility <p>The most immediate level possible means the lowest level of supervision.</p> <p>Review the objectives.</p> <p>Transition to the assessment by explaining that before you start the course you're going to find out how much they already know about civil rights.</p>
 <p>Assessment</p> <p>• Enter "T" for true and "F" for false in the before column.</p> <p>2 Minutes</p> <p>0 1 2</p> <p>Transportation Security Administration</p>	<p>Explain that this is not a test. It will not be collected. It is for their information only.</p> <p>Instruct participant to complete the Assessment in their workbook. Write an F or T in the column labeled "Before."</p> <p>Instruct participants to stop after two minutes and explain that they will have a chance at the end of the class to complete the after column and review their responses.</p>



(Optional Family Feud Exercise)

Explain the exercise. Work in small teams and write three reasons why you are here.. Participants will receive five points if the reason appears on the slide, 10 for if the reason that does not appear on the slide but is relevant, and minus 10 if the reason has no correlation with the points on the slide.

Ask a representative read the reasons from each team.

Reveal reasons.

Ask each team to state how many of their reasons are on the slide and the other teams assign points – 5 or 10 depending on how directly the reason is reflected in the slide. Let the other teams score the answers.

Instructor note: Stress how each of the reasons are reflected in what is on the slide.

Instructor information:

If not using the exercise, summarize the below.

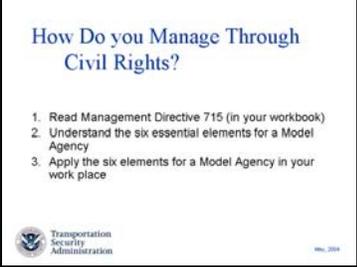
TSA employs over sixty thousand men and women across the country and around the world. The ability of TSA to meet our nation's complex need to secure our transportation and the American people rests squarely on these dedicated and hard-working individuals. Perhaps now more than ever before -- with threats and increased public expectations of governmental institutions -- federal agencies must position themselves to attract, develop and retain a top-quality workforce that can deliver results and ensure our nation's continued growth and prosperity.

This course will help you develop and maintain a model workplace, improve employee productivity, avoid liability, and comply with federal laws and regulations. You will also learn about your rights and responsibilities to maintain an environment free from discrimination, harassment and retaliation, and your role in the resolution of employment issues. By the end of the course you will be able to apply what you've learned.

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<p>What comes to mind when you hear the term Civil Rights?</p> <ul style="list-style-type: none">• The law of the land• Applies to the federal workforce• An effective management tool• An asset when dealing with the general public  <p>May 2011</p>	<p>Ask <i>What comes to mind when you hear the term civil rights?</i> (fairness, equality, freedom, the constitution)</p> <p>Stimulate a short conversation. Explore each point on the slide</p> <p>Instructor information: A civil right is an enforceable right or privilege, which if infringed upon, causes legally cognizable injury. Examples of civil rights are freedom of speech, press, assembly, freedom from involuntary servitude. The most prominent civil rights legislation is the Civil Rights Act of 1964, as amended. Title VII of this civil rights legislation, prohibits discrimination, harassment and/or retaliation against employees, applicants for employment and former employees based on race/color, sex, religion and national origin. These are known as protected bases. Individually, each one is a protected basis. Civil rights laws apply to the Federal government and all of its employees, members of the general public that use our services, and contractors that do work for the federal government. See the resources section of the participants Workbook for a synopsis of the laws, rules, and guidelines.</p>
<p>What is EEOC?</p> <ul style="list-style-type: none">• An acronym for the Equal Employment Opportunity Commission• A government agency enacted by Congress• Responsible for<ul style="list-style-type: none">– Enforcing civil rights laws in the public and private sectors– Providing reports to the President and Congress on the performance of government agencies– Providing guidance and direction to agencies  <p>May 2011</p>	<p>Ask <i>What is EEOC?</i></p> <p>Explain that EEOC is an acronym for the Equal Employment Opportunity Commission.</p> <p>The EEOC is responsible for:</p> <ol style="list-style-type: none">1. Reviewing and evaluating agency operations and reports.2. Providing technical assistance and3. Submitting annual reports to the President and Congress based on data received from individual agencies. <p>Ask <i>Why should you, as a manager, know what the EEOC does?</i></p> <p>The EEOC issued Management Directive 715 on October 1, 2003, to provide guidance to agencies on how to take appropriate steps to ensure that all employment decisions are free from discrimination. This Management Directive (MD) 715 is applicable to you as management's representative in TSA, a federal government agency.</p> <p>There is a summary of MD-715 in the workbook.</p> <p>Instructor Information:</p>

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	<p>The reason we are defining EEOC is because many employees in TSA (i.e., managers, supervisors and non-supervisory personnel) confuse this acronym with the TSA Office of Civil Rights, the Equal Employment Opportunity (EEO) complaint process, or the Informal/Alternative Resolutions to Conflict Division within the TSA Office of Civil Rights. The EEOC is the U.S. Equal Employment Opportunity Commission a five-member, bipartisan commission created by Title VII of the Civil Rights Act of 1964, as amended. The EEOC establishes guidelines to ensure that employees have the right to come to work and perform the duties that they were hired to do in an environment that is free from any behavior that may preclude them from performing their job.</p>
	<p>Summarize that equal employment opportunity, in the federal workplace is necessary in order to recruit and develop a competitive, highly qualified workforce. Federal agencies must fully utilize all employees' talents, without regard to their protected bases. While the promise of workplace equality is a legal right afforded to all of our nation's workers, equal opportunity is more than a matter of social justice. It is a national economic imperative. Federal agencies must make full use of our nation's human capital by promoting workplace practices that free up opportunities for the best and brightest talent available. All employees must compete on a fair level playing field and have the opportunity to achieve their fullest potential.</p>
	<p>Ask, What are the consequences of <i>not</i> managing through civil rights?</p> <p>Explain that it is imperative for managers and supervisors to have a working knowledge of their legal responsibilities and possible barriers when dealing with employees and the general public.</p> <p>Here are some of the consequences of not managing through civil rights. Refer to the bullet points on the slide.</p> <p>Ask: <i>How can not managing through civil rights jeopardize your evaluations and promotions?</i> (All management personnel at TSA, including Leads, Supervisors, Managers, FSDs are evaluated on how well they manage a diverse workforce and promote equal employment opportunity – it's part of the performance evaluation.)</p>

How can it lead to termination? (The Notification and Federal Employee Antidiscrimination and Retaliation Act (No FEAR Act) holds agencies accountable for discrimination, harassment, and retaliation in the workplace. Violations of civil right laws can result in tough penalties, including termination.)

How can it impact your budget or the budget of the airport?

Before the enactment of the No FEAR Act, the Judgment Fund in the Department of Justice was used to comply with settlements of cases and findings of discrimination against federal agencies. The No FEAR Act now requires each federal agency to pay settlements and findings of discrimination from their own budget. This places the financial responsibility directly on DHS and other Federal agencies. In addition, TSA and other federal agencies are not permitted to reduce employee compensation, benefits, or the size of the workforce in order to comply with the No FEAR Act.

The Federal government paid over \$33 million in EEO settlements in 2002.

The cost associated with hiring and training new TSA employees to replace the ones who leave is about \$13,000.

Optionally ask, *Why does it cost the government so much money?* Partially because everyone is protected.

Other concerns might be:

- Poor public image
- Lower productivity and morale
- Higher costs for hiring and training new employees
- Emotional and physical pain
- Less effective job performance
- Poor employee morale

Instructor Information:

Policies and practices that impede fair and open competition in the federal workplace cost the federal government millions of dollars each year. The most obvious costs are out-of pocket costs borne by both agencies and federal workers in connection with workplace disputes. Perhaps less obvious – but just as expensive – are costs associated with decreased morale and productivity and the ineffective and inefficient use of human capital resources. These costs can and should be avoided.

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MD-715 The Model Agency

1. Demonstrated Commitment
2. Mission Integration
3. Management Accountability
4. Proactive Prevention
5. Efficient and fair
6. Responsiveness and Compliance



Instructor note: as you describe the 6 elements, tie them back to the attributes listed in the icebreaker.

1. Instructor information

The EEOC rates TSA and all other federal agencies using the six essential elements as part of a broad plan to hold agencies more accountable for discrimination, harassment, and retaliation in the federal workplace.

Demonstrated commitment:

- Managers must ensure their subordinate employees have a copy of and understand DHS and TSA policies illegal discrimination, harassment and retaliation.
- Managers should ensure that they conduct themselves in the workplace in such a way that they do not create a hostile, offensive or intimidating work environment for their subordinate employees.
- When violations occur, managers should take swift effective, corrective action to eliminate the offensive behavior from the workplace.
- Lead by example

2. Mission integration. Managers must ensure that implementation of policies is done in such a way that it does not adversely affect a protected class in the workplace or in the general public that uses facilities managed by TSA. Further, managers must ensure that internal policies developed in their work units are properly coordinated with the Office of Civil Rights, Office of Chief Counsel, and Office of Human Resources to minimize or eliminate claims of discrimination, harassment or retaliation.

3. Management accountability. MD 715 directs agencies to evaluate managers based on their efforts to prevent discrimination and their ability to develop measurable ways to eliminate barriers to equal employment opportunity. The directive requires managers to analyze barriers to equal employment opportunity and develop creative, agency-specific methods to help employees overcome barriers. Moreover, MD 715 requires managers and supervisors to detail progress on the elimination of identified barriers.

4. Proactive prevention. Once a manager identifies a barrier to equal employment opportunity, he or she should take immediate steps to eliminate the barrier, unless the barrier is necessary for the agency's continued operation.

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	<p>5. Efficient and Fair: Agencies must maintain an efficient, fair and impartial complaint resolution process, establish and encourage the widespread use of a fair alternative dispute resolution (ADR) program that facilitates the early, effective and efficient informal resolution of disputes. At TSA we use transformative mediations as part of our ADR program. Whenever ADR is offered managers at all appropriate levels are encouraged to participate in the process.</p> <p>Note: TSA has delegated to the Office of Civil Rights the authority to determine when a manager is required to participate in ADR.</p> <p>6. Responsiveness and Legal Compliance: TSA is required to ensure that managers/supervisors are in full compliance with federal law, including EEOC regulations, management directives and other guidelines. Managers must respond to EEOC orders within specified timeframes. Management must comply with final EEOC decisions, implement corrective actions, and provide appropriate relief in EEO-related matters.</p>
	<p>The Office of Civil Rights has a three-fold mission:</p> <p>First, the Office of Civil Rights is committed to TSA setting the standard in upholding the nation's civil rights laws and guidelines. With TSA's "zero tolerance" for harassment, illegal discrimination, and retaliation, it helps the agency manage without bias and recognize, respect, and value the diversity of our employees and of our customers</p> <p>Second, the office ensures that TSA complies with federal affirmative employment requirement including the right to access alternative resolutions of conflict.</p> <p>The Office of Civil Rights is also responsibly for ensuring that contractors to TSA and entities that receive money from TSA comply with federal civil rights laws, rules and guidelines. Title VI of the Civil Rights Act provides requirements for federal contractors similar to those under Title VII for federal agencies.</p>

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	<p>Explain that the office of civil rights is available if you ever have any questions about a work-related issue.</p> <p>If any applicant, current or former employee of TSA perceives or believes that they have been discriminated against or harassed because of their protected bases they have the right to initiate the EEO complaint process. In order to initiate the EEO complaint process, aggrieved must contact the Office of Civil Rights at one of these numbers.</p> <p>The EEO complaint process is regulated by the EEOC. The process is very structured and time-sensitive. The first time frame in the process is 45 days. An aggrieved person must contact the office of civil rights within 45 days of when the incident occurred or when they first became aware of the adverse personnel action. Notifying a supervisor does not initiate the EEO complaint process. All employees need to know that they must contact the OCR within 45 days.</p>
	<p>Explain that the Office of Civil Rights provides innovative and expert leadership in ensuring that the Transportation Security Administration complies with all federal laws, regulations, Executive Orders, and DHS and TSA policies pertaining to civil rights and equal employment opportunity. The Office ensures that all of TSA's activities are conducted without regard to discrimination on any prohibited basis. The office is headed by a Director and organized into the following five divisions, each of which is described in detail in the workbook.</p> <p>The Affirmative Employment and Diversity Emphasis Division works to improve employment opportunities for minorities, women, and persons with disabilities. Airports work with this OCR division to identify barriers and develop measurable solution to eliminate these barriers.</p> <p>Informal/Alternative Resolutions to Conflict (ARC) This division provides assistance in resolving employment concerns before they become complaints of employment discrimination.</p> <p>Formal Complaint Division Provides for the prompt, fair, and impartial processing of equal employment opportunity (EEO) formal complaints that were not resolved at the informal stage of the EEO complaint process.</p>

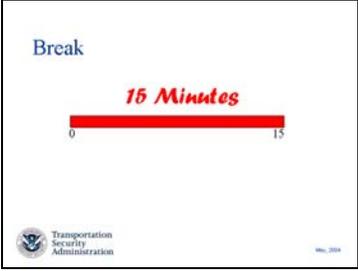
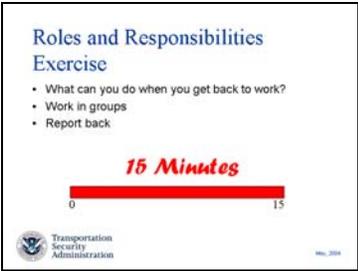
	<p>External Compliance Division When TSA employees hear “Office of Civil Rights,” they probably think “EEO complaints.” While handling EEO complaints for TSA’s current and former employees and applicants is an important function, the Office of Civil Rights also serves TSA’s customers, our passengers at airports around the country.</p> <p>Executive Support Provides general support for the entire Office of Civil Rights</p> <p>Additional Instructor Information on OCR</p> <p>Affirmative Employment and Diversity Emphasis Division The Affirmative Employment and Diversity Emphasis Division in the Office of Civil Rights works to improve employment opportunities for minorities, women, and persons with disabilities. It supports TSA’s strategic goal of achieving a workforce that mirrors our nation’s diversity. Diversity gives the Agency a competitive advantage, enhancing recruitment, marketing, and customer service – all critical activities for TSA.</p> <p>The division’s aim is to identify and eliminate any practices, personnel policies and procedures that may contribute to the under-representation of minorities, women, and persons with disabilities in TSA, at all levels of the agency. It conducts analyses of the TSA work force. These analyses assist TSA’s senior leadership in developing specific strategies to prevent and remove any barriers to the employment and retention of minorities, women, and persons with disabilities throughout the agency, nationwide. The division also works directly with managers, supervisors, employees and TSA leadership on program initiatives. Our services are available to <i>all</i> TSA employees and include the following:</p> <p>Affirmative Employment Process</p> <ul style="list-style-type: none">• Developing and implementing affirmative employment plans designed to effectively recruit and manage a diverse workforce;• Implementing and monitoring affirmative employment plans for persons with disabilities and processing requests from disabled employees for reasonable accommodations throughout TSA;• Collaborating with the Office of Human Resources on the Federal Equal Opportunity Recruitment Program, Disabled Veterans Program, Hispanic Employment
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	<p>Program, and outreach activities that enhance diversity throughout the agency;</p> <ul style="list-style-type: none">• Promoting, coordinating, and facilitating minority student and faculty internships;• Spearheading diversity initiatives with TSA stakeholders, employee organizations, non-governmental organizations, communities, and other special interest groups; and• Coordinating agency-wide diversity awareness activities and special emphasis programs, and providing support and assistance to field offices regarding TSA's equal employment opportunity and diversity initiatives. <p>EEO Data Management</p> <ul style="list-style-type: none">• Developing and maintaining a data system to support affirmative employment planning, work force utilization analysis, EEO reports• Evaluating the accuracy of EEO data in agency personnel systems• Developing and utilizing appropriate evaluation instruments for assessing EEO and affirmative employment programs• Conducting program reviews of agency EEO related policies, procedures, and practices, including civil rights programs, human resources policies and diversity initiatives <p>Special Emphasis Programs</p> <p>The division conducts monthly Special Emphasis and Diversity awareness events that highlight the Federal Women's Program, Hispanic Employment Program, Native American and Alaska Native Program, Black Employment Program, People with Disabilities Program, and the Asian American and Pacific Islander Employment Program. These educational activities promote the benefits of diversity, and encourage community partnerships and related activities throughout the agency.</p> <p>Informal/Alternative Resolutions to Conflict (ARC) Division</p> <ul style="list-style-type: none">• Provides for the prompt, fair, and impartial processing of equal employment opportunity (EEO) informal complaints
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	<p>filed by TSA employees, former employees, and applicants for employment, in accordance with 29 Code of Federal Regulations Part 1614;</p> <ul style="list-style-type: none">• Attempts to resolve EEO complaints at the lowest level possible through counseling and alternative dispute resolution;• Implements various problem-solving methods to include mediation, facilitation, fact-finding conferences, and peer review panels to resolve issues without extensive administrative processing or litigation;• Provides civil rights awareness training to TSA staff and management on applicable civil rights employment laws, regulations, Executive Orders, and guidelines; and• Provides alternative dispute resolution training to TSA staff and management, in accordance with 29 Code of Federal Regulations Part 1614, and the Administrative Dispute Resolution Act of 1996, as amended. <p>Formal Complaint Division</p> <ul style="list-style-type: none">• Provides for the prompt, fair, and impartial processing of equal employment opportunity (EEO) formal complaints filed by TSA employees, former employees, and applicants for employment, in accordance with 29 Code of Federal Regulations Part 1614;• Conducts analysis to determine whether to accept or dismiss formal EEO complaints for investigation;• Attempts to resolve formal EEO complaints through alternative dispute resolution;• Develops investigative plans, and reviews and prepares investigative reports for completed investigations of formal EEO complaints;• Monitors compliance with negotiated settlement agreements of formal EEO complaints;• Provides civil rights awareness training to TSA staff and management regarding their rights and responsibilities in the EEO formal complaint process. <p>External Compliance Division</p> <p>The Transportation Security Administration's (TSA's) Office of Civil Rights External Compliance Division (ECD) enforces constitutional standards, federal laws, regulations, Executive Orders and policies that prohibit unlawful discrimination on the basis of race, color, sex, national origin, religion, and disability in TSA's federally assisted and federally conducted programs. TSA airport screening activities are a federally conducted</p>
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	<p>activity. ECD works to ensure that these activities are conducted in a manner that respects the rights of the traveling public as required by law. External Compliance Division:</p> <ul style="list-style-type: none">• is responsible for receiving, tracking, evaluating, and resolving complaints from TSA customers who allege violations of the applicable civil rights standards, laws, and policies while traveling through TSA security systems. For example, a passenger may file a complaint alleging discrimination based on his national origin when he was singled out for secondary screening.• advises appropriate TSA components of civil rights complaints and works with those components to develop appropriate responses in the civil rights and customer service areas.• examines TSA operational and security policies and procedures and their potential civil rights impact on the traveling public. Where appropriate, the Division proposes changes or revisions to the policies or procedures to ensure compliance with the applicable civil rights standards, laws, and policies.• works with other TSA components to develop and implement plans and guidance to ensure that all individuals, including individuals with limited English proficiency (“LEP”), have access to TSA’s federally conducted and federally assisted programs or activities.• ensures that TSA implements appropriate compliance procedures concerning the federal grants that TSA awards to private companies, corporations, or educational institutions.• provides targeted civil rights training to the TSA workforce to address civil rights concerns affecting the traveling public and to ensure quality customer service at the transportation security systems throughout the country. <p>Executive Support</p> <ul style="list-style-type: none">• Develops administrative and office management guidelines and procedures;• Oversees financial management, personnel management and services, internal control, facilities management, space management, and physical security;• Represents the office in general administrative management meetings and working groups within TSA and other federal agencies;• Serves as office coordinator for TSA management directives, occupational health and safety issues, operational security
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	<p>and records disposition;</p> <ul style="list-style-type: none"> • Manages office training program requirements; • Establishes case files, maintains the office central filing system and case management information system, provides clerical support, and performs office administrative functions; • Staffs the office customer call and complaint line; and • Monitors processing of controlled correspondence, including Executive Secretariat correspondence, and incoming correspondence, both paper and electronic.
 <p>The Transportation Security Administration's Office of Civil Rights is dedicated to delivering excellence through diversity and service to TSA's employees and to the public. Through knowledge, innovation, and leadership, the Office of Civil Rights will set the standard in upholding the nation's civil rights laws and policies.</p>	<p>Remind participants that the Office of Civil Rights vision as well as policies is in their workbook and allow a few moments for participants to read the information on this slide.</p> <p>Explain that when we come back from a 15-minute break we'll start looking at some of the things you can do to manage through civil rights.</p>
 <p>Break</p> <p>15 Minutes</p>	
 <p>Roles and Responsibilities Exercise</p> <ul style="list-style-type: none"> • What can you do when you get back to work? • Work in groups • Report back <p>15 Minutes</p>	<p>Explain that they are going to start transferring what they've been learning to what they do on the job.</p> <p>Divide the class into three groups.</p> <p>Assign each group one of the three items in Exercise Two in their workbook.</p> <p>Explain that they have 15 minutes to list that ways they can accomplish their responsibility at their worksite.</p> <p>Ensure they complete the exercise within 15 minutes</p> <p>Debrief</p> <p>Transition to the next slide by explaining that, now that they know the things they can do to prevent illegal discrimination, harassment and retaliation on the job, we're going to take a look</p>

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	<p>at what happens when something goes wrong.</p> <p>Explain that employees have the right to file a complaint when they believe they have been discriminated, harassed or retaliated against. Even though, as a manager you might be personally surprised or hurt, the complaint is not filed against you; it is filed against the agency that you represent. The most common incidence of retaliation occurs when a manager reacts against an employee who has exercised his or her right to file a complaint and treats that employee differently.</p>
 <p>The slide titled "Protected Bases" lists the following categories:</p> <ul style="list-style-type: none">• Race/Color• National origin• Sex• Age (40 and over)• Religion• Disability• Sexual orientation• Parental status• Genetic information <p>Below the list is a photograph of TSA employees at a checkpoint. At the bottom of the slide, it states: "In addition, no one shall be the victim of retaliation for participating in any activity protected by civil rights statutes or for opposing a prohibited practice." The Transportation Security Administration logo is in the bottom left corner.</p>	<p>Reinforce the difference between basis and bases.</p> <p>Explain that TSA employees, former employees, and applicants for employment can contact the Office of Civil Rights to initiate the Equal Employment Opportunity (EEO) complaint process and have their complaints resolved if they believe they have been subjected to illegal discrimination, harassment or retaliation.</p> <p>The first six (Race/Color through disability) are protected by civil rights laws. The last 3 are protected by Executive orders. All are described in detail in the Participant's Workbook.</p> <p>Explain that retaliation occurs when someone is discriminated against or harassed because they have filed an EEO complaint, because they have had a role in an EEO complaint (like a witness) or because they opposed a prohibited practice (For example, telling your manager that her hiring practice discriminates against people over 40).</p> <p>Instructor Information If the topic of reasonable accommodation comes up when discussing religion and disability, explain that employers have an obligation to provide reasonable accommodation to a qualified employee with a disability that can perform the critical elements of the job. Employers must also try to meet employees' requests for religious accommodation so long as they are reasonable. Reasonable means that the accommodation does not provide an undue hardship. Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer's workforce size, financial resources, and the nature and structure of its operation. For example, a checkpoint might be able to reasonably accommodate a screener who wants to leave two hours early on Saturday evening to accommodate a religious requirement. However, allowing every screener to have Sunday off for religious observances would</p>

	<p>create and undue hardship to the checkpoint and jeopardize the mission of the organization.</p> <p>An individual with a disability is a person who:</p> <ul style="list-style-type: none">• Has a physical or mental impairment that substantially limits one or more major life activities;• Has a record of such an impairment; or• Is regarded as having such an impairment. <p>A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question. Reasonable accommodation may include, but is not limited to:</p> <ul style="list-style-type: none">• Making existing facilities used by employees readily accessible to and usable by persons with disabilities.• Job restructuring, modifying work schedules, reassignment to a vacant position;• Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, and providing qualified readers or interpreters. <p>Note: The burden is on the employee to notify the agency of his or her disability and request reasonable accommodation. An employer is required to make a reasonable accommodation to the known disability of a qualified applicant or employee if it would not impose an "undue hardship" on the operation of the employer's business. Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources, and the nature and structure of its operation.</p> <p>An employer is not required to lower quality or production standards to make an accommodation; nor is an employer obligated to provide personal use items such as glasses or hearing aids.</p> <p>Harassment on the all of the bases violates Title VII. Ethnic slurs, racial "jokes," offensive or derogatory comments, or other verbal or physical conduct based on an individual's protected bases constitutes unlawful harassment if the conduct creates an environment that the complainant considers intimidating, hostile, offensive to a reasonable person or interferes with the employee's work performance.</p> <p>In Fiscal Year 2001, EEOC received 29,910 charges of race-based discrimination. EEOC resolved 33,199 race discrimination charges in FY 2002 and recovered \$81.1 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).</p>
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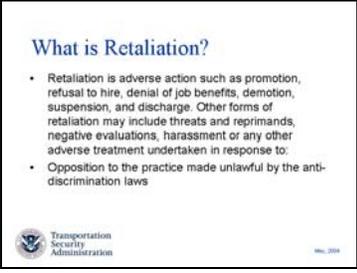
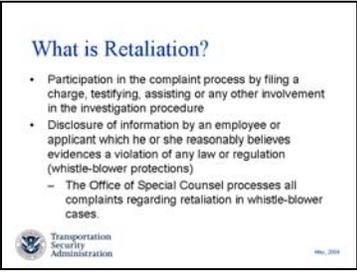
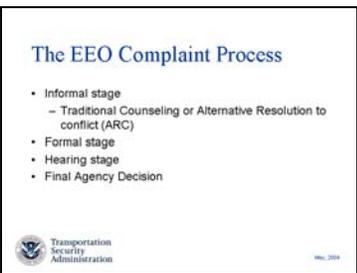
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<p>Illegal Discrimination</p> <p>The denial of employment, or the denial of privileges and/or benefits of employment or the unfavorable treatment of a person or class of people because of their protected status under the law.</p> <p>Discrimination is illegal when you make a business decision based on a protected basis.</p> 	<p>Ask <i>is this redundant? Is there such a thing as legal discrimination?</i></p> <p>Ask, for some examples of legal discrimination. (TSA can't hire a blind screener; you must be a US citizen to work for TSA; selecting a blue car instead of a red one, any type of selection.)</p> <p>Explain that illegal discrimination occurs when employment decisions are made based on an individual's membership in a protected class and not a legitimate, job-related reason. There are two typical forms of discrimination.</p>
<p>Disparate Treatment</p> <p>A person is deliberately treated differently based upon an impermissible consideration. For example: his or her race, sex, religion, color, age, mental or physical disability or national origin. Disparate treatment is therefore another term for intentional discrimination.</p> <p>Disparate treatment:</p> <ul style="list-style-type: none"> • Is intentional • Is generally a practice, policy or statement that on its face demonstrates bias against a protected group and results in an adverse action 	<p>Ask what is disparate treatment?</p> <p>Disparate Treatment is when an employee is deliberately treated differently based upon an impermissible consideration. For example: A supervisory screener only assigns male screeners to baggage screening because he believes female screeners cannot lift the luggage.</p> <p>Disparate treatment is therefore another term for intentional discrimination.</p> <p>Disparate treatment:</p> <ul style="list-style-type: none"> •Is intentional •Is generally a practice that has the effect of excluding an individual in a protected class
<p>For Example</p> <p>It's the holidays and the airport is short-handed. The FSD is requiring all staff to work overtime for the next two weeks. Raymond asks his supervisor for time-off to pick up his son from day care. The supervisor denies the request and says, "Have your wife do it." When Linda and Carol ask the same supervisor for one hour each to pick up their children from day care, the supervisor grants their requests.</p> 	<p>Ask, <i>how is this example disparate treatment?</i></p>
<p>Disparate Impact</p> <p>An employer uses neutral factors in its decision-making process that disproportionately impact a protected group.</p> <p>Disparate Impact:</p> <ul style="list-style-type: none"> • Is unintentional • Applies to a group or class of persons • Is a policy or practice that disproportionately and adversely affects persons in a protected class. 	<p>Explain that disparate impact is when an agency applies a policy equally to all employees. However, the policy adversely affects the members of a protected class.</p> <p>Disparate Impact:</p> <ul style="list-style-type: none"> •Is unintentional •Applies to a group or class of persons <p>It is usually a policy or practice that has the effect of excluding persons in a protected class.</p>

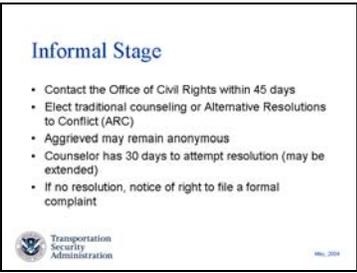
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<p>For Example</p> <p>An agency has a policy that requires all employees wear trousers.</p> 	<p>Ask, <i>How does that impact women?</i> (Women of some religions do not wear trousers.)</p>
<p>Impact or Treatment Exercise</p> 	<p>Explain that we'll now take a look at some other situations and try to determine if they are discrimination, and if so, what kind.</p> <p>Read (or ask a participant to read) each situation, ask the group to decide and then explain why they came to that decision.</p> <p>Transition to the next topic by asking, <i>What other behavior, in addition to discrimination, is prohibited by law?</i> (harassment and retaliation)</p> <p>Instructor note: The answers to this exercise are not always perfectly clear. We might not have enough information to make a good decision. See the answer key in the Reference section of this guide.</p>
<p>Harassment</p> <p>Unlawful harassment is conduct that can create a hostile, offensive, or otherwise intimidating environment for employees and the public. This behavior can occur in relationships among peers, supervisors, and subordinates; between members of the same or different race, religion, or sex; and during TSA's interaction with the public. Harassment may include inappropriate touching, sexual requests, or the use of "jokes" or comments that are offensive to a particular race, national origin, religion or gender.</p> 	<p>Explain that harassment is any unwelcome verbal or physical conduct based on one of the protected bases that is so objectively offensive as to alter the conditions of the victim's employment. This standard is met when:</p> <ul style="list-style-type: none"> • The conduct was sufficiently severe or pervasive to create a hostile work environment. • The conduct culminates in a tangible employment action (demotion, lack of promotion, termination)
<p>Harassment</p> <ul style="list-style-type: none"> • Unwelcome Behavior toward a protected class • The effect (not intent) creates a hostile, offensive, intimidating work environment • Can be verbal, non-verbal, or physical 	<p>Explain that behavior must be unwelcome even if it is voluntary. Like paying taxes voluntarily, not necessarily willingly. You pay taxes because you are aware of the consequences. You may give to charity because you want to. Offensive jokes – and employee might seem to be voluntarily involved by laughing. But in fact they do not welcome the jokes. You might do things voluntarily but not willingly because you are concerned with the consequences.</p> <p>When evaluating a possible issue of harassment, consider both the effect and the intent of the action. The key is not what the harasser intended to do but the effect it had on the victim and what a reasonable person would consider offensive.</p>

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	<p>For example, colleagues of an employee who is getting ready to retire try to make her last few months memorable. They give her roses, theatre tickets, and finally.....a male stripper, which leads to the employee's immediate resignation.</p> <p>Harassment can be verbal, non-verbal, or physical.</p> <p>The "reasonable person" standard is used to determine the line between permissible remarks and unlawful, hostile work environment. The governing standard is whether the conduct is severe or pervasive enough to create an environment that a reasonable person would find hostile or abusive. Other factors considered to determine hostile work environment are the context, frequency, and severity of the unwelcome activity.</p>
	<p>Retaliation is adverse action such as promotion, refusal to hire, denial of job benefits, demotion, suspension, and discharge. Other forms of retaliation may include threats and reprimands, negative evaluations, harassment or any other adverse treatment undertaken in response to: Opposition to the practice made unlawful by the anti-discrimination laws</p>
	<p>Participation in the complaint process by filing a charge, testifying, assisting or any other involvement in the investigation procedure</p> <p>Disclosure of information by an employee or applicant which he or she reasonably believes evidences a violation of any law or regulation (whistle-blower protections) The Office of Special Counsel processes all complaints regarding retaliation in whistle-blower cases. You can find them on the web at www.osc.gov or by phone at 1-800-877-8289.</p>
	<p>Instructor note: Refer participants to the flowchart of the complaint process in their workbook. Do not spend much time on explaining the process or each of the steps. It is more important to have enough time for the scenarios.</p> <p>Explain that we know about who and what is protected we'll look at the process for resolving issues. When an applicant, current or former employee believes or perceives that they have</p>

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	<p>been the victim of illegal discrimination, harassment, or retaliation they have the right to initiate the EEO complaint process by calling the TSA Office of Civil Rights. The complaint process begins with an informal stage. If the issue cannot be resolved in the informal stage, the complaint proceeds to the formal stage.</p> <p>The entire EEO complaint process from initial contact to federal court decision can take up to about seven years.</p> <p>If the employee elects ARC, from the time the parties meet with the mediator to resolution is generally between two to six hours.</p> <p>Let's take a brief look at each step. There is a more thorough description in the reference section of their workbook.</p> <p>Instructor Information Federal employees cannot go directly to federal court to file an EEO complaint without first initiating the complain process. The only exception is Equal Pay Act claim.</p>
	<p>The informal stage starts when someone calls the Office of Civil Rights. The office of Civil Right will assign an EEO Counselor to the caller. The EEO Counselor will communicate with the caller and provide information that will assist the caller in making informed choices on how they wish to proceed. The EEO Counselor will explain the EEO complaint process, and allow the caller to choose between traditional EEO counseling or the Alternative Resolutions to Conflict (ARC) process to resolve their concern. In traditional counseling, the Counselor conducts an informal inquiry in an attempt to resolve the issue at the lowest possible level.</p> <p>The next slide talks about ARC.</p>
	<p>Explain that ARC provides employees at all levels of TSA, the opportunity to resolve their EEO complaints through a private conversation with the management official designated by the agency. The mediator is a neutral third party hired by the agency to facilitate communication between the complainant and the management official. The ARC process is a tool available for parties to work toward resolving issues informally and at the most immediate possible level. Any agreements reached as a result of these discussions are fashioned by the parties, are voluntary, and follow legal guidelines. The conversations often result in the parties being able to better communicate on a daily</p>

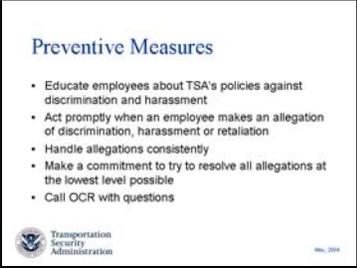
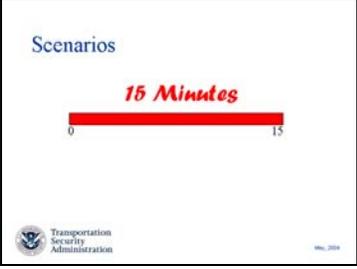
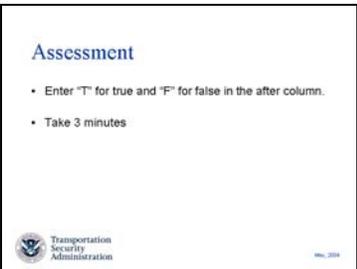
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	<p>basis on-the-job.</p> <p>The most immediate level means directly between the 2 (or more) parties involved in the issue. This can be between supervisor and screener, between screeners, and among managers.</p>
<p>Formal Stage</p> <ul style="list-style-type: none"> • Case may be dismissed by the Office of Civil Rights • Individuals who file formal EEO complaints must adhere to federal regulatory and statutory requirements. • OCR ensures that the review, acceptance, and investigations of formal complaints of discrimination are conducted fairly, impartially and in a timely manner. 	<p>If the issue is not resolved in the informal stage it enters the formal stage and becomes a complaint. TSA determines whether or not to accept the concern. TSA may dismiss the concern for a number of reasons, including lack of timeliness and if the employee fails to make a legitimate case. If TSA accepts the formal complaint it has 180 to conduct an investigation. An investigator questions the complainant, subject, witnesses, and anyone else who might be able to provide information about the case — under oath — and gathers relevant documents. The investigator may be an employee of TSA or a contractor hired by TSA. When the investigation is complete the complainant can ask either the EEOC or DHS to make a decision.</p>
<p>Hearing stage</p> <ul style="list-style-type: none"> • Administrative hearing • EEOC Administrative Judges (AJ) • Formal proceeding • Agency is represented by Office of Chief Counsel • AJ issues decisions • Either party may appeal AJ's decision 	<p>If the complainant elects a hearing, the EEOC will assign an administrative judge to conduct a hearing. The hearing is a formal administrative proceeding that ends with the administrative judge's decision. The decision may be appealed by the complainant or the agency.</p> <p>Instructor Information: Witnesses in EEO cases must be given duty time to prepare for and attend a hearing.</p>
<p>Final Agency Decision</p> <ul style="list-style-type: none"> • Issued by DHS • Based on the records – not a hearing • May be appealed to EEOC Office of Federal Operations 	<p>If the complainant requests a final decision by the agency, DHS will issue the decision for the agency. The decision can be appealed by the complainant.</p>
<p>Vicarious Liability</p> <p>The Agency is strictly liable for a supervisor's harassment if it culminates in a tangible employment action.</p> <p>An individual qualifies as an employee's "supervisor" if:</p> <ul style="list-style-type: none"> • the individual has authority to undertake or recommend tangible employment decisions affecting the employee; or • the individual has authority to direct the employee's daily work activities. 	<p>Explain that there is just one more component of civil rights to cover and then participants will start applying what they've learned.</p> <p>Employers are responsible for maintaining a work environment that is free of illegal discrimination, harassment, and retaliation. If an agency fails to effectively protect its work environment the agency can be held liable (vicariously) for the actions of its</p>

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	<p>supervisors that result in a tangible employment action. This is known as vicarious liability.</p> <p>A tangible employment action is a significant hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.</p> <p>Agencies are strictly (automatically) liable for all incidents of illegal discrimination, harassment and retaliation that result in tangible employment actions. Agencies may also be held strictly liable for illegal discrimination, harassment and retaliation that create an abusive and hostile work environment. When a supervisor causes the hostile work environment, the agency can lessen or avoid liability altogether by taking swift (before it happens again), and effective (it never happens again), corrective actions, to fix the problem. That is, by taking a stance against discrimination (known as affirmative defense) the agency can lessen or avoid liability when no tangible employment action had occurred.</p> <p>For example, in <i>Barrett v. Omaha National Bank</i> (726 F.2d 424 8th Cir. 1984) the victim informed her employer that her co-worker had talked to her about sexual activities and touched her in an offensive manner. Within four days of receiving this information, the employer investigated the charges, reprimanded the guilty employee placed him on probation, and warned him that further misconduct would result in discharge. A second co-worker who had witnessed the harassment was also reprimanded for not intervening on the victim's behalf or reporting the conduct. The court ruled that the employer's response constituted immediate and appropriate corrective action, and on this basis found the employer not liable.</p> <p>If the hostile work environment is caused by someone of sufficiently high rank within the agency (known as alter-ego of the agency), affirmative defense is not available and the agency is strictly liable, even if no tangible employment action had occurred.</p> <p>If there has been tangible employment action, it is still advisable for the agency to take swift effective actions to prevent unlawful harassment, discrimination or retaliation from happening in the future, since the agency may reduce the amount of punitive damages arising out of the lawsuit.</p>
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	<p>Agencies try to protect themselves from vicarious liability by:</p> <ul style="list-style-type: none"> • developing effective policies, • training managers how to maintain work environments free of illegal discrimination, harassment, and retaliation and • training managers how to respond effectively to complaints. <p>Judges may also look at what the employee does to minimize damage caused by the harassment. If an organization has an effective policy in place that provides the organization the opportunity to eliminate the harassment, the employee must first exhaust administrative process established by the policy. In other words, the employee must afford the agency an opportunity to eliminate the harassment before filing in federal court. Otherwise, the case may be dismissed or remanded back to the administrative process.</p>
 <p>Preventive Measures</p> <ul style="list-style-type: none"> • Educate employees about TSA's policies against discrimination and harassment • Act promptly when an employee makes an allegation of discrimination, harassment or retaliation • Handle allegations consistently • Make a commitment to try to resolve all allegations at the lowest level possible • Call OCR with questions <p><small>Transportation Security Administration</small></p>	<p>Review the bullet points. Ask, "What are some other things can you do as management to prevent discrimination, harassment and retaliation?"</p> <p>Here are some examples:</p> <ul style="list-style-type: none"> • Question your own assumptions about illegal discrimination, harassment and retaliation. • Know the agency's policies • Set a positive example by treating others with respect • Don't make assumptions about jokes • Think before speaking • Consider other peoples' feelings and perceptions • Never go along with the crowd if the behavior is offensive
 <p>Scenarios</p> <p>15 Minutes</p> <p><small>Transportation Security Administration</small></p>	<p>Instructor note: These scenarios are the cumulative activity in this course. Participants analyze situations, apply what they have learned, and synthesize a response. This is where participants pull everything together. Make sure you allow enough time.</p>
 <p>Assessment</p> <ul style="list-style-type: none"> • Enter "T" for true and "F" for false in the after column. • Take 3 minutes <p><small>Transportation Security Administration</small></p>	

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	Collect completed Level 1 evaluations and ensure that they are submitted by the training coordinator.
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Reference

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Assessment – answer key

Determine, to the best of your knowledge, if these statements are true (T) or false (F)

	Before	After
1. DHS can be sued and held financially liable when a manager or supervisor illegally discriminates against a TSA employee.	T	
DHS can be held liable for damages and court costs.		
2. Supervisors and managers are responsible and accountable for maintaining a work environment free from illegal discrimination, harassment, and retaliation.	T	
Supervisors and managers can receive negative performance evaluations and be disciplined or even fired for maintaining a work environment that is not free from illegal discrimination, harassment, and retaliation.		
3. The costs of findings and settlements of illegal discrimination, harassment, and retaliation complaints are ultimately the responsibility of DHS.	T	
And those costs can add up to millions of dollars a year.		
4. Federal employees cannot sue an agency in cases of illegal discrimination.	F	
Federal employees can and do sue agencies in cases of illegal discrimination.		
5. Managers are required to consider reasonable accommodation for employees with disabilities.	T	
Managers are required to consider reasonable accommodation. They are not necessarily required to provide a specific accommodation requested by an employee. Contact field counsel with all requests for accommodation.		
6. The only role of the Office of Civil Rights is to process complaints.	F	
The Office of Civil Rights does much more than just process complaints. It provides training, assistance, and guidance throughout TSA.		
7. The first step in the EEO complaint process is to notify your supervisor that you want to file a complaint.	F	
The first step in the EEO complaint process is to call the Office of Civil Rights – 877-EEO-4-TSA. Simply notifying a supervisor does not initiate the complaint process but it does count against the 45 day allowed to file a complaint.		
8. A passenger can file a complaint of discrimination with the TSA Office of Civil Rights.	T	
A passenger can file a complaint of discrimination with the TSA Office of Civil Rights by contacting the External Complaints Division.		
9. An employee who has filed an EEO complaint cannot be disciplined.	F	
An employee who has filed an EEO complaint is not free from disciplinary actions. There is a difference between discipline and retaliation. Any employee can be disciplined when necessary. No employee should be retaliated against, especially for filing a complaint.		
10. Managers and supervisors are responsible for maintaining an	T	

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atmosphere where employees and applicants for employment are judged on the basis of merit and ability.		
Making judgment based on something else might be illegal.		

Answer the following questions.

Who do employees call to file a civil rights complaint? **The TSA Office of Civil Rights**
Telephone Number: **1-877-EEO-4-TSA**

Location of office: **Arlington, VA**

Impact/Treatment Exercise – answer key

	Example	Disparate Treatment	Disparate Impact	Neither/Don't know
1.	A manager has a weekly staff meeting at which he always asks a female staff member to take notes.	?		
On the surface this looks like disparate treatment. We might want to get some more information before we tell the manager that he or she is doing something wrong and possibly illegal. Maybe the entire staff is female.				
2.	George has been working in the agency's accounting department for 20 years. He started with the agency when he finished his MBA at age 22 and has achieved a high level of authority. Recently George has noticed that he is being skipped over for promotions in favor of younger, newer staff.			X
This reads like George is being skipped over for promotions because he is older. We really don't know if there are legitimate business reasons for promoting other people. We really need to know more before making a decision. But, at least now we know that age is a protected basis.				
3.	The FSD has a policy that prohibits all facial hair.		X	
Certain people of color and members of some religions might be adversely impacted by this policy				
4.	Arlene notices that whenever she encounters a heavy bag, her supervisor asks one of her male colleagues to take care of it for her.			X
On the surface it might seem that Arlene's supervisor has a stereotype that women can't or shouldn't lift heavy objects, which might be the case. Or, maybe Arlene has suffered a back injury and the supervisor is trying to support her. In any case, we would need more information to decide. If Arlene's supervisor has a negative stereotype of women there might be an opportunity for some professional development.				
5.	A manager believes that the married males with families are entitled to more overtime and a better shot at promotions because they have wives and children to support.			X
This might seem like a clear case of disparate treatment – different treatment based on sex and marital status. However, a manager can believe whatever he or she wants. They will get into trouble if they make unwise business decisions based on their beliefs.				
6.	There is currently a shortage of baggage screeners, and Charlene has volunteered several times to help out. However, her manager assigns Bob and Tom repeatedly even though they did not volunteer.			X

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	Example	Disparate Treatment	Disparate Impact	Neither/Don't know
	<p>This might seem like disparate treatment – males and females treated differently. However, we don't really know if Charlene has been trained to work in baggage or if there are enough females at the checkpoint to allow her to leave and go work somewhere else.</p>			
7.	<p>The FSD has created a policy that requires employees who drive to be escorted to their vehicles but has no such policy for people who take public transport</p>			X
	<p>The FSD might have some very good business reasons for escorting people through a parking lot, especially if it tends to be a dangerous place. This impacts people who use public transport because they do not get the same treatment. However, we don't where the bus stop is and can't determine if it is as unsafe as the parking lot. In any event, public transport uses is not a protected basis.</p>			

Scenarios

Scenario 1 – Fooling around or Harassment?

Ron told David an offensive, racially charged joke about hanging. David immediately reported this to his supervisor. The supervisor spoke with Ron about the inappropriateness of the joke and requested written statements from Ron, David, and another employee who had witnessed the incident. The Supervisor gave Ron a Letter of Warning and placed it in his employment file.

According to David, his supervisor's treatment of him dramatically changed after he complained about the nooses. The supervisor began to follow him during his meal breaks, warning him to be back to work promptly. She followed and "intently" watched him while he ate. She also began to stand near David while he was at work and to scrutinize his work closely. David also contends his supervisor began to write him up for minor infractions in the workplace that, while violations of policy, were often ignored when committed by Ron and other subordinate employees. However, David never complained of his supervisors conduct.

Several months later, David filed an EEO complaint alleging racial harassment and retaliation.

As the manager, what could and should you have done differently?

At first the manager did the right thing by disciplining Ron. There is no further mention of racially charged jokes. Then it looks like the supervisor started treating David harshly, presumably because of David's complaint. That sounds like retaliation. But David never complained about the supervisors treatment and waited too long to file a complaint of racial harassment, assuming that the harassment stopped when Ron was disciplined. If the harassment continued, David would have the right to file a complaint within 45 days of the last occurrence. If we assume that the supervisor continued to mistreat David, David has every right to file a complaint over retaliation. It is up to David to show that he is being mistreated because he filed an EEO complaint.

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Scenario 2 – Guys being guys or harassment?

Sally was employed as a Human Resource Specialist. Her job sometimes required her to work with employees of the company contracted to provide Information Technology (IT) services to her office. Fred worked for the contractor as a specialist and maintained all of the computer equipment in the office.

One day, Sally met with her manager, and complained that Fred had been sexually harassing her both verbally and physically for over eight months. Sally provided her manager with a litany of examples. In addition, Sally claimed that, every time she requested his assistance with computer-related issues, Fred would answer her requests with sexually explicit comments.

The Manager immediately began to address Sally's complaint. On the very day that Sally complained about Fred, the manager contacted the agency's Office of Civil Rights (OCR) at headquarters to request guidance on how to handle Sally's concern. The next day, after receiving Sally's written statement, the manager reported the matter to the Contracting Officer Technical Representative (COTR) responsible for the IT contract. The IT contractor fired Fred in response to the information provided by the COTR.

After Fred was fired, several of the IT contractor's employees were rude and uncooperative towards Sally, making it difficult for her to perform her job. At times these incidents caused Sally so much stress and embarrassment that she would break down and cry at work.

What could and should Sally's manager have done differently?

The manager did the right thing by immediately calling the Office of Civil Rights for advice. He was also right in contacting the COTR responsible for the contractor. The contractor can discipline his employees and even fire them. The problem is how the situation was handled after Fred was fired. The manager didn't seem to follow up with Sally to see if the problem was fixed. In fact, getting Fred fired created a whole new problem and a hostile work environment.

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Scenario 3 – Friends or Favorites?

Brenda and Tom were good friends. In fact, Brenda helped Tom get a job as a screener at her airport. When Tom finished training he went to work at a checkpoint that Brenda supervised.

Tom spent most of his time doing secondary screening and one day Brenda thought she saw him wand a passenger too high between the legs. She made a mental note of it. A few days later, Tom was wand another passenger and Brenda noticed him go a little further than the procedure required. At break, Brenda reminded Tom about the proper way to conduct a hand-wanding. Tom listened but thought that he had been doing it correctly.

One day, Brenda over heard a loud comment by a passenger that Tom was wand. It seemed like the passenger was offended by the process and, maybe, that Tom was being overly invasive with the wand. She looked into the secondary screening area just as Tom looked up and saw her. Tom blushed deeply, stood up, and continued to wand the passenger, who was clearly upset.

Brenda pulled Tom aside and told him that he must strictly follow the wanding procedures. She said that she has seen him incorrectly wand passengers several times and wants it to stop immediately. She also tells Tom that she is going to make a note of this conversation in the checkpoint journal.

What could and should Brenda have done differently?

What if Brenda realized that Tom only behaved this way with passengers who didn't speak English very well?

Brenda should have taken swift, effective corrective action the first time she noticed Tom doing something incorrectly. She seemed to keep giving him another chance because they are friends, which is not good. Talking with Tom and making a note in the checkpoint journal was probably not sufficient to help Tom understand the seriousness of his actions.

If in fact, Tom was targeting people with limit English proficiency (LEP), who might be less likely to complain, this problem might be even more severe.

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Scenario 4 – Best choice or discrimination?

Phan began working for TSA as a Screener but hoped to capitalize on his public relations background. When a stakeholder Liaison position became available, Phan applied for it. During the next few weeks, Phan was detailed to the Stakeholder Liaison position and the AFSD stated that he would “automatically” be promoted. However, Gail, who had worked as a Stakeholder Liaison at another airport, was selected for the position. A few days later Phan overheard a manager saying that the reason he didn't get the promotion was because he couldn't speak “American.”

Phan began suffering severe emotional distress and depression that suppressed his autoimmune system and made him susceptible to chronic active hepatitis and the Epstein-Barr virus. His emotional and physical problems led to absenteeism. Phan eventually became fully disabled and was unable to work.

Phan filed a complaint alleging that by failing to promote him, the Agency had discriminated against him on the basis of his Cambodian national origin.

What could and should the Agency done differently?

First of all, the AFSD should never have promised an automatic promotion. Almost as bad is a manager saying something so derogatory about a subordinate. Both of these managers clearly need training.

We don't know if management made any effort to explain the reasoning with Phan or tried to accommodate him when he started to become ill. We also do not know if Phan made his illness and the possible cause known to management. If Phan wanted reasonable accommodation it was his obligation to make ask for it.

In any event, this whole episode might have been avoided if the hiring was conducted properly and if management behaved properly. Open, honest communications is the easiest way to prevent misunderstandings.

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Scenario 5 – Business decision or discrimination?

Sandra is a Conservative Jew. She kept a kosher home and strictly observed the three major Jewish holidays, Yom Kippur, Rosh Hashanah and Passover. Sandra had never worked on the three major Jewish holidays.

In December, Sandra told her manager that March 31 was a religious holiday and thus she could not come to work, her manager replied, “You're not here, you're fired.” When Sandra tried to explain, her manager said, “Well, what makes you think it's more important for you to have your holiday off than someone celebrating Easter?” After Sandra told her manager she could not come to work, the conversation ended. Her manager made no attempt to assist Sandra in securing the day off.

On March 31 Sandra did not report to her job. When Sandra returned to work she was fired. Her termination letter claimed Sandra was fired for being insubordinate and for being “AWOL.”

What could and should the Agency have done differently?

Sandra's manager had almost 4 months to find a way to accommodate Sandra's religious requirement. The comment about “your holiday” might lead one to perceive that the manager didn't find the accommodation for reasons based on prejudice. After all, a request for one day well in advance should not have been an issue. The agency should have been able to make a reasonable accommodation that did not create an undue hardship.

While we don't have all the details, this situation looks like one that could easily have been avoided. Sandra should not have been terminated for a one-day absence for which she had notified her manager well in advance.

But, what if March 31 was also Easter Sunday and 75% of the workforce had requested the day off? Would it look like preferential treatment if Sandra was one of the few or only staff members to be given the day off? Perhaps the manager dealt with the situation by denying all requests for leave that day. Still, he could have handled the situation a lot more diplomatically.

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Scenario 6 – Business decision or discrimination?

Both Joanne and Michael apply for and are considered for a Screener Manager position. The FSD selected Michael for the position and Joanne remained a Screener Supervisor.

Joanne filed a claim of sex discrimination against the Agency. The FSD described the reasons for choosing Michael over Joanne as follows:

“I selected Michael based upon his demonstrated performance, his qualifications, and his experience.”

However, the EEO Report of Investigation (ROI) revealed that Michael had never worked at an airport prior to his selection as the Screener Manager. Further, the ROI revealed that Joanne had 10 more years of relevant experience than Michael.

What could and should the FSD have done differently?

The FSD should have made his selection based solely on the qualifications of the job.

While we don't know all the details, the implication presented in this scenario is that the FSD selected a less qualified male over a better qualified female, which is a very bad business decision, if not illegal.

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Scenario 7 – Business necessity or bias?

Carla supervised both passenger and baggage screeners. Since all screeners at her airport were crossed trained, every screener could perform baggage-screening duties. Carla usually selected able male employees but on some days, especially days that followed major football games, she had to send a female to help in baggage.

Katrina was an accomplished athlete and actually competed for the Soviet Union in an Olympic competition. She took her responsibilities very seriously and was willing to help out with whatever was needed. However, it seemed that whenever Carla needed to supplement the guys in baggage, Katrina was selected. There were about a dozen other female screeners who were capable of working in baggage but they were seldom, if ever, selected.

There was a lot of camaraderie among the male baggage screeners and they often made lewd jokes, which offended Katrina.

Recently, one of the guys in baggage quit. Carla informed Katrina that she would have to help out in baggage until they could hire and train a male replacement. Katrina was very upset and decided to start looking for a different job.

What could and should the Agency have done differently?

This scenario implies that Carla treated Katrina differently because of her physical abilities or, perhaps national origin. It seems that Carla thinks that Katrina was the only female screener suitable for baggage screening.

Carla should have corrected the lewd behavior in baggage.

Carla should have rotated other female screeners into the open baggage slots.

Carla should have also done something to correct the problem of males not reporting to work on days after major football games.