

# Legal Issues for Supervisors

Office of Human Resources  
Dean of Students Office  
Associate Vice Chancellor, Ronald Pfeifer



UNIVERSITY of WISCONSIN  
GREEN BAY

# Why Training?

- Provide you with a basic understanding of the laws that affect you and your employees
- *Why?*
  - You may often have direct knowledge of employee situation
  - You are the first point of contact when employees have questions
  - Courts and/or government agencies have increasingly held front-line supervisors responsible for knowing the law



# Why Training? Cont.

- UW-Green Bay has policies in place to address most, if not all, of these topics.
- Communication of these policies and their implications is critical.
- Training is the best way to ensure our policies are more than just pieces of paper.
- Training also reduces grievances and/or legal challenges/lawsuits.



# Objectives

- Ensure supervisors receive knowledge and skills for effective day-to-day decision making and action
- Ensure laws and campus policies are uniformly applied across departments and units
- Prevent or limit University legal and financial risk
- Promote positive employee relations
- Not designed to make you a lawyer or HR professionals



# Top 10 Legal Mistakes made by Supervisors

1. Mishandling Employee Complaints
2. Failing to apply policies, procedures and discipline consistently
3. Failure to give continuous feedback and document problems
4. Failure to conduct honest, effective performance evaluations
5. Understanding and following wage & hour laws
6. Creating a perception of retaliation
7. Managing and resolving conflict before escalation, violence or retaliation.
8. Promptly responding to leave and accommodation requests
9. Careless use of email
10. Keeping good records.



# Legal Laundry List & Acronyms

Family and Medical Leave Act (FMLA)

Sexual and Discriminatory Harassment

Affirmative Action and  
Equal Employment  
Opportunity  
(AA/EEO)

Title IX

Fair Labor Standards Act (FLSA)

Affordable Care Act (ACA)

HIPAA

Americans with Disabilities Act (ADA)

Employment Discrimination

FERPA

Workers Compensation



# Affirmative Action and Equal Employment Opportunity

AA/EEO



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# Resources

- UW System
  - Operational Policy EEO 1: Affirmative Action Data  
<https://www.wisconsin.edu/ohrwd/download/policies/ops/eo1.pdf>
  - Operational Police EEO 2: Equal Employment Opportunity  
<https://www.wisconsin.edu/ohrwd/download/policies/ops/eo2.pdf>
- UW – Green Bay
  - Affirmative Action and Equal Employment Opportunity Statement <http://www.uwgb.edu/hr/policies/AAEEO/>





# AA/EEO

- Clarification of Terms:
  - **“Affirmative action”** - positive steps taken to increase the representation of women and minorities in areas of employment, education, and business from which they have been historically excluded.
  - **“Equal Employment Opportunity (EEO)”** laws make it illegal for employers to discriminate against an employee or potential employee in certain workplaces.



# What AA/EEO are NOT

- AA and EEO are NOT preferential treatment, quotas or preferences
  - In recruitment, efforts are made to create a diverse pool of candidates
  - It is the most qualified candidate for the job duties specified that should be hired for a position



# Affirmative Action History

- **Executive Order 10925** (3/6/1961 by John F. Kennedy) – provision that government contractors “take affirmative action to ensure that applicants are employed, and employees are treated during employment, without regard to their race, creed, color, or national origin.”
- **Executive Order 11246** (9/24/65 by Lyndon B. Johnson) – prohibits employment discrimination based on race, color, religion, national origin, and sex by those organizations receiving federal contracts and subcontracts. Requires federal contractors take affirmative action to promote the full realization of equal opportunity for women and minorities.
- **OFCCP – Office of Federal Contract Compliance Programs**



# Equal Employment Opportunity History

- The Equal Employment Opportunity Commission (EEOC), which was created by the Civil Rights Act of 1964, is the federal agency that has the responsibility to "promote equal opportunity in employment through administrative and judicial enforcement of the federal civil rights laws and through education and technical assistance." The EEOC handles complaints about workplace discrimination.
- While state laws may differ, the federal laws prohibit discrimination in employment for:
  - Age
  - Disability
  - National Origin
  - Pregnancy
  - Race
  - Religion
  - Sex or Gender
  - Sexual Harassment



# EEO Purpose

- Promote constitutional right of equality and exercise true democracy
- Eliminate unfair discrimination
- Ensure employment equity
- Achieve a diverse workforce
- Promote economic development



# UW-Green Bay EEO Statement

- The University of Wisconsin-Green Bay is committed to equal opportunity to all individuals regardless of **race, color, religion, sex, sexual orientation, gender and/or gender identity or expression, marital or parental status, genetic information, national origin, ethnicity, citizenship status, veteran or military status (including disabled veteran, recently separated veteran, other protected veteran, or Armed Forces service medal veteran status), age, disability, use or nonuse of lawful products off the employer's premises during nonworking hours, declining to attend a meeting or participate in any communication about religious matters or political matters, or any other category protected by law.** Harassment or discrimination based upon protected status is illegal and will not be tolerated. This policy is applicable to employment practices and all programs within the University. This commitment to all employment and educational practices includes, but is not limited to recruitment and hiring, training, compensation, benefits, promotions, transfers, terminations, layoffs, access to facilities as well as social and recreational programs.

The University's compliance with this statement is the responsibility of all administrators and others whose duties are related to decisions regarding employees. Further, the University of Wisconsin-Green Bay is committed to fully participate in the implementation of all applicable federal and state laws, executive orders, rules, regulations and policies.



# Supervisor Responsibilities

- Encourage/take action to hire and promote minorities and females, and assist in identifying recruitment resources
- Support and participate in diversity awareness and sensitivity
- Consistently apply standards for the qualifications of all employees to ensure minorities and women are provided equal opportunities for transfers, promotions and development actions
- Emphasize/implement career development plans for all employees



# Supervisor Responsibilities, cont.

- Ensure compliance with company policies
  - Policy on Equal Employment and Affirmative Action
  - Policy on Sexual Harassment
  - Compliance with Americans with Disabilities Act
- Address/Resolve Issues/Concerns in a Timely Manner
  - Consult Human Resources
  - Assist in resolution of complaints regarding sexual harassment, unfair treatment or any type of harassment
- Be a leader in taking a stand on “Hostile Work Environment” issues, take action to prevent harassment of employees especially subtle harassment





# Family and Medical Leave Act

FMLA and WFMLA



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# Resources

- UW System
  - Operational Policy BN 4: Wisconsin and Federal Family Medical Leave Acts  
<https://www.wisconsin.edu/ohrwd/download/policies/ops/bn4.pdf>
- UW – Green Bay
  - Wisconsin and Federal Family Leave Act Resources and Informational website  
<http://www.uwgb.edu/hr/policies/FMLA/>



# What is FMLA & WFMLA?

- FMLA – Family and Medical Leave Act
- WFMLA – Wisconsin Family and Medical Leave Act
- Federal and State protection that provides **unpaid, job-protected leave for:**
  - Birth, adoption or foster care placement;
  - Care for parent, child, spouse with a serious (medically certified) health condition;
  - Employees own serious health condition;
  - Or military leave.
- May be taken all at once or intermittently as needed for a specific medical condition
- Protection provides for continued medical benefits while an employee is on approved W/FMLA



# Who is covered by W/FMLA?

STATE EMPLOYEES ARE ELIGIBLE FOR UNPAID LEAVE UNDER W/FMLA IF:

## FMLA

- Employed with the state at least **12 months**
- Worked for the state at least **1,250 hours** during the 12 months immediately preceding the beginning of a request for leave
- Are employed in a worksite where there are at least 50 state employees working within 75 miles of their worksite.

## WFMLA

- Worked for the state for more than 52 consecutive weeks
- Worked for the state at least **1,000 hours** during the 52-week period preceding the beginning of the leave.



# FMLA: The Basics

- All leave (besides FMLA to care for an injured or ill military service member) are based on:
  - Fiscal year for Faculty, Academic Staff, and Limited Employees
  - Calendar year for University Staff
- Leave runs *concurrently* with paid leave benefits and Income Continuation coverage
- Maximum of 12 weeks in the year for all qualifying reasons (except military)
  - *Intermittent leave is broken down into hours based upon FTE.*



# Family Member Definitions

## Who qualifies as a *child* under W/FMLA?

- Biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing **in loco parentis** \*
- Must be under age 18, or if age 18 or older, incapable of self-care because of a mental or physical disability

## Who qualifies as a *parent* under W/FMLA?

- FMLA: Biological parent or individual who stood **in loco parentis**\* to an employee when that employee was a child. Specifically excludes parents “in-law”
- WFMLA: Natural parent, foster parent, adoptive parent, stepparent or legal guardian of employee, employee’s spouse, or employee’s domestic partner



# Serious Health Condition

The most common serious health conditions that qualify under FMLA/WFMLA include:

- Conditions requiring an overnight stay in a hospital or other medical care facility;
- Conditions that incapacitate an employee or family member for more than 3 consecutive days and have ongoing medical treatment (either multiple appointments with a health care provider, or a single appointment and follow-up care such as prescription medication);
- Chronic conditions that cause occasional periods when employees or family members are incapacitated and require treatment by a health care provider at least twice a year;
- Pregnancy (including prenatal medical appointments, incapacity due to morning sickness, and medically required bed rest)



# Intermittent Leave

- Leave taken in separate blocks or on a reduced schedule
- After birth of child **only with employer agreement**
- Must be allowed as medically necessary for self or family care
- Required to schedule in collaboration between employee and supervisor with advanced notice as not to unduly disrupt the departments operations
- Performance standards must still be met
- Requires medical certification





# Starting the FMLA Process

- Contact Human Resources as soon as you are aware of a situation which may require FMLA.
- HR will follow up with the employee to provide documentation including:
  - Notice of Eligibility
  - Employee Request Form
  - Certification by Health Care Provider
- Employee is responsible for completing all paperwork, including their portion of the Certification form, and returning the forms to HR.
- HR reviews paperwork and certifies FMLA designation if appropriate.



# You May be Wondering...?

- Since State/UW policies and rules provide leave benefits for employees in most cases, why bother with the W/FMLA?
  - The W/FMLA may allow intermittent leave or a reduced schedule when policies may not.
  - Failure to designate leave as FMLA may lead to incorrect leave usage reporting – leave needs to be counted toward annual FMLA entitlement.
  - Time off under FMLA cannot be held against an employee in employment actions such as hiring, promotions or discipline.
  - Failure to comply with FMLA and WFMLA can lead to legal liability, including fines.



# Scenario 1

- John is a full-time employee who has worked for the university for six years. He called in today because his father is in the hospital. John stated that he will need time off to care for his dad and may not be back to work for several weeks.
  - Is John entitled to FMLA leave?
  - What should the supervisor do?



# Scenario 2

- Sue tells her supervisors that she needs 2 weeks off from work to care for her child that was in a car accident and is hospitalized. She asks to use her accrued sick leave. You mention the possibility of FMLA for her, but she said she is not interested in applying.
  - What should the supervisor do?



# Scenario 3

- Dan sometimes needs to leave work because of migraine headaches.
  - Does Dan qualify for FMLA?



# Americans with Disabilities Act

## ADA



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# Resources

- UW System
  - Operational Policy EEO4: Accommodations for Individuals with Disabilities  
<https://www.wisconsin.edu/ohrwd/download/policies/eeo4.pdf>
- UW – Green Bay
  - Procedures for Determining Reasonable Accommodations in Employment  
<https://www.uwgb.edu/hr/documents/AmericansWithDisabilities.pdf>



# Americans with Disabilities Act

- Federal law prohibiting discrimination against qualified individuals with disabilities in all conditions of employment (recruitment, interviewing, promotions, discipline, etc.).
- A disability is defined as a physical or mental impairment that substantially limits one or more of a person's major life activities, a history of such impairment, or being regarded as having such impairment.
- Prohibits an employer from retaliating against an employee that exercises ADA rights.





# Why the ADA?

- Intended to “level the playing field” for employees with disabilities.
- Qualified employees must be afforded the same opportunities to succeed.
- Reasonable accommodations must be made to allow individuals to participate equally, unless it would impose an undue hardship on the institution.
- Performance standards must still be met.



# Qualified Individuals

- A person who meets the legitimate skill experience, education, or other requirements of a position that he or she holds or seeks and who can perform the essential functions of the position with or without reasonable accommodation.
- A person is not qualified if he or she poses a significant risk to the health or safety to himself, herself, or others and if the employer cannot eliminate that risk by reasonable accommodation.



# University's Legal Obligation

- Failure to make or offer a reasonable accommodation can constitute discrimination on the basis of disability.
- The laws do not provide an all-inclusive list of what may constitute reasonable accommodations.
- Determinations of whether reasonable accommodation is required are generally made on a case-by-case basis.
- Reasonable accommodation can come in a wide variety of forms.



# Reasonable Accommodation

- Any modifications to a job, to the process of applying for the job, or the work place that will enable a qualified individual with a disability to apply for a job, perform the essential functions of the job, or enjoy the same benefits and privileges of nondisabled employees
- Cannot act as an undue financial or administrative hardship on the employer
- A person is not considered unqualified because he or she cannot perform marginal or incidental functions. *For example, a person who is hired as a typist is not unqualified because he or she cannot, with or without a reasonable accommodation, deliver interdepartmental mail.*



# Reasonable Accommodation

- Changes or adjustments to the job or work environment that *may* include:
  - Acquiring or modifying equipment or devices
  - Job restructuring
  - Part-time or modified work schedules
  - Reassignment to vacant positions
  - Adjusting examinations, training materials, or policies
  - Providing readers and interpreters
  - Making the workplace readily accessible and usable by people with disabilities



# Initiating ADA Process

- Employee is responsible for requesting accommodation
- No magic words are required
  - Employee may merely mention difficulties in performing job due to medical condition
- Once issue is raised, employer should promptly initiate interactive process or paperwork through Human Resources.



# Initiating ADA Process, cont.

- If employee merely mentions disability and/or supervisor suspects that performance concern is result of disability:
  - Do not make assumptions;
  - Do not voluntarily create accommodation;
  - Contact HR and determine how to proceed
    - May include meeting with employee and discussing “performance” issues



# Tips for Employee Discussion

- You should not ask questions about the nature or extent of an employee's disability or chronic medical condition
- You can make clear what level of performance is required and ask questions related to job duties
  - What duties of your job are difficult for you to perform?
  - What do you need to do your job successfully?





# Medical Documentation

- Handled by HR, not supervisor
- Employee should submit supporting medical documentation to support need for accommodation and type required
- Documentation should:
  - Describe the functional limitation(s) cause by impairment(disability); and
  - Specify need for accommodation to assist employee in performing essential job duties
- Verify that health care provider has proper expertise to issue opinion



# Interactive Process

- Engage in interactive discussion between employer and employee. HR should facilitate these discussions
- Discuss limitations and how condition affects major life activity
- Discuss available accommodations, if any
- Document discussion (HR)
- Employee can bring representative to meeting



# Best Practices

- If you suspect an employee is struggling with health condition that is affecting work or attendance, consult with HR
  - Do not sit back and wait
  - Do not take action yourself
  - Do not discuss in office/department
- No good deed goes unpunished
  - Do not provide modifications or adjustments to essential functions unless process has been followed
  - Follow process for responding to request for accommodation



# Best Practices, cont.

- Be creative, but not too creative
  - Find the balance between job requirements and needs of employee
  - E.g., sight-impaired employee
    - Large screen reader vs. hiring TA to grade exams/papers for faculty member
  - E.g., severe depression/anxiety
    - Granting intermittent leave for treatment vs. allowing employee to work from home at his/her discretion



# Best Practices, cont.

- If accommodation is granted, accept it and treat employee like any other employee
  - Do not be resentful, suspicious, or irritated
- When and if co-workers complain about accommodation, properly respond to it
  - Adhere to confidentiality
  - Contact HR for assistance
- Do not assume that condition is no longer present because employee acts certain way
- Do work with HR to receive regular evaluation of need for accommodation through appropriate processes



# Case Study 1

Erin has been off on Family Medical Leave for three months now and has exhausted her leave time. She has now requested additional leave due to her serious health condition.

**Do we allow her this leave?**



# Case Study 2

Peter's job requires him to work on the computer most of his work day and he has stated that his right arm has become sore. He goes to the doctor and tells you he has a medical condition, but does not give you specifics on his condition. Peter stated he would like some accommodations that will help him perform his job.

**What steps should be taken?**

**What if he cannot perform portions of his job any longer?**



# Health Insurance Portability and Accountability Act

HIPAA

<http://www.hhs.gov/hipaa/for-individuals/employers-health-information-workplace/index.html>





# HIPAA

- The Office for Civil Rights enforces the HIPAA Privacy Rule, which protects the privacy of individually identifiable health information.
- Any medical notes/information should be sent to Human Resources and are kept in a separate confidential medical file, independent of the employee's personnel file.

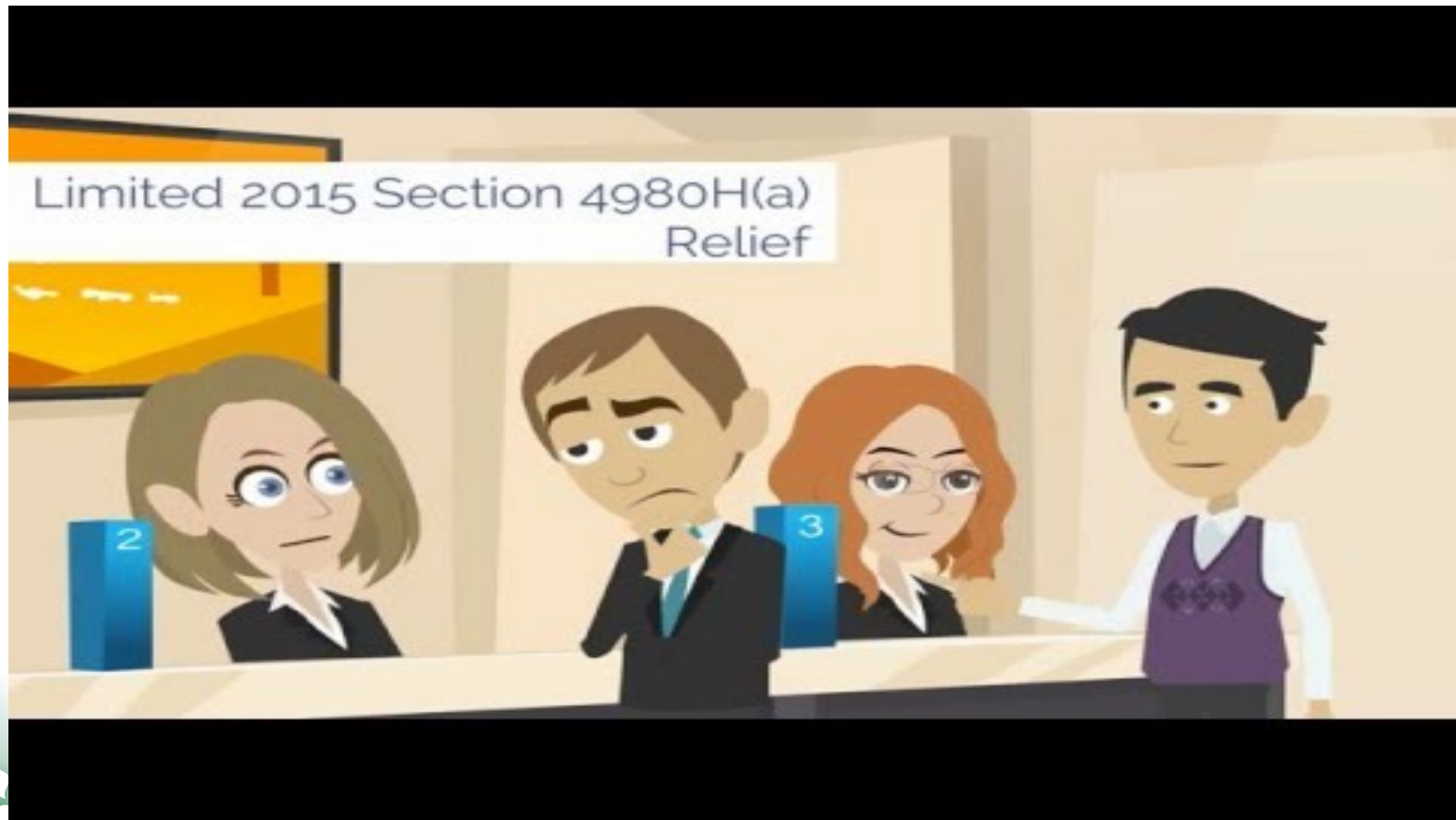


# Patient Protection and Affordable Care Act (ACA)



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# Affordable Care Act (ACA)



# ACA- How does this impact UWGB?

- Limits on hours worked for student help employees
- Likely impacts to:
  - Any employees working less than full time and not offered insurance
    - Temporary Employment (LTE's, adjunct, etc.)
    - Resident Assistants



# Harassment and Discrimination



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# Resources

- UW System
  - Operational Policy: EEO 5- Discrimination, Harassment and Retaliation  
<https://www.wisconsin.edu/ohrwd/download/policies/eEO5.pdf>
- UW – Green Bay
  - Policy and Procedures Prohibiting Harassment and Discrimination  
<http://www.uwgb.edu/hr/documents/HarassmentAndDiscriminationPolicy.pdf>



# Sexual Harassment

- <https://youtu.be/d0pbHOliQu0>



# Sexual Harassment

- There are two basic theories of sexual harassment:
  - Quid pro quo (*i.e., employment benefits conditioned upon sexual conduct*); and
  - Hostile work environment
- Under both theories if the conduct is unwelcome and has a demonstrated effect on the employee's conditions of employment, it may constitute unlawful sexual harassment.





# Quid Pro Quo Sexual Harassment

- Involves situations in which a supervisor exploits his or her authority to exact sexual favors from a subordinate.
- Quid pro quo sexual harassment occurs when submission to or rejection of such conduct is used as the basis for employment decisions affecting that individual.



# Hostile Work Environment

- Employee is required to work in an environment that unreasonably interferes with his or her work performance.
- Conduct must be sufficiently severe and pervasive to create an intimidating, hostile, or offensive work environment.
- Conduct need not be sexual in nature to constitute harassment. Any unwelcome conduct directed at a person because of his or her gender can constitute actionable harassment. The law also recognizes a cause of action for same-sex harassment.



# Liability for Sexual Harassment

- Institution may be held legally accountable for sexual harassment carried out by supervisors or by an employee's co-workers.
- Employer must respond in a timely fashion to all reported instances of sexual harassment.
- Employer is presumed liable if they fail to respond.



# Sexual Harassment Prevention

- Know UW-Green Bay's Sexual Harassment Policy
- Be a role model
- Identify potential problems and address them promptly
- Create an open door policy so employees are comfortable confiding in you
- Maintain confidentiality (to the extent possible)
- Take action on **all complaints**; even if asked not to



# Sexual Misconduct & Title IX of the Education Amendments of 1972



# Resources

- UW System
  - Operational Policy: GEN 28- Sexual Misconduct  
<https://www.wisconsin.edu/ohrwd/download/gen28.pdf>
- UW – Green Bay
  - Dean of Students <https://www.uwgb.edu/dean-of-students/sexual-assault-title-ix/title-ix.asp>



# Sexual Misconduct

- Includes sexual assault, sexual harassment, gender-based stalking, and relationship violence.
- Requires institutions to take immediate and effective steps to respond to reports of sexual misconduct
- Title IX Coordinators:
  - Student Concerns: Dean of Students, Brenda Amenson-Hill
  - Employee Concerns: Special Assistant to the Vice Chancellor, Christopher Paquet



# Supervisor Responsibility

You have an obligation to take action if you know, or should have known, about questionable behavior in your workplace... **Even if an employee does not complain or tell you about sexual harassment!**





# Consensual Relations

<https://www.uwgb.edu/hr/policies/Consensual/>

- Romantic and/or sexual relationships between faculty or other instructional staff/academic staff and students, or between supervisors and subordinates, are of concern to the University of Wisconsin-Green Bay for two primary reasons.
  - Conflict of Interest
  - Abuse of Power Differential



# Case Study 1

- Mitch is a temporary employee who works in a department on campus where several other student employees work. One of the students named Mary told her supervisor that Mitch has been asking her out and she now feels uncomfortable at work. She does not want to get Mitch in trouble however. What do you do?
- After interviewing Mary and others, we learned that Mitch has put his arm around Mary and pulled her onto his lap in the office. Do you think this would rise to the level of sexual harassment?



# Case Study 2

- You are able to send some employees in your department to a conference in Arizona this winter. Mike is easy to get along with so you send him. Maggie is oftentimes grumpy so you figure she would make the trip difficult for others so you do not ask her to go. You know Kenneth has some religious beliefs you think would be problematic with the environment in Las Vegas so you don't ask him even though it would make sense for his job.
- Any thoughts about the decision-making process used?



# Other Discriminatory Harassment

- The same general principles (such as unwelcome, severe or pervasive, hostile environment) that constitute sexual harassment also apply to other forms of harassment, the only difference is that is based on a **protected characteristic** other than sex.
- Conduct of other forms is any verbal, visual, or physical conduct that belittles, mocks or shows hostility towards an individual because of another characteristic protected by law (i.e. race, religion, color, national origin, age, or disability) of a person or their relatives, friends, or associates and that:
  - Has the purpose or effect of creating an intimidating, hostile, or offensive work environment, or unreasonably interfering with an individual's work performance; or
  - Otherwise adversely affects an individual's employment opportunities.



# Fair Labor Standards Act

## FLSA



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# Resources

- Department of Labor  
<http://www.dol.gov/whd/flsa/>
- Wisconsin Department of Workforce Development  
[http://dwd.wisconsin.gov/er/family\\_and\\_medical\\_leave/default.htm](http://dwd.wisconsin.gov/er/family_and_medical_leave/default.htm)
- UW System
  - Operational Policy HR4: FLSA Designation  
<https://www.wisconsin.edu/ohrwd/download/policies/ops/hr4.pdf>



# Fair Labor Standards Act

- Prescribes standards for the basic minimum wage and overtime pay.
- Requires employers to pay covered employees who are not otherwise exempt at least the federal minimum wage and overtime pay of one-and-one-half-times the regular rate of pay.
- The Department of Labor may recover back wages, either administratively or through court action, for the employees that have been underpaid in violation of the law. Violations may result in civil or criminal action.



# Fair Labor Standards Act, cont.

- FLSA overtime rules apply to hours worked, not hours paid.
- Sick leave, vacation, holiday pay, etc. are not considered as part of the 40-hour base on which overtime is calculated.
- Proposed rule changes:
  - Current FLSA exemption is based upon \$23,600 per year (\$455 per week).
  - DOL has proposed changes to **raise the minimum salary threshold** to 40<sup>th</sup> percentile of weekly earnings or **\$50,440 (\$970 per week)**.





# FLSA Proposed Rule Change



# FLSA Proposed Rule Change FAQ's

- Who will this affect?
  - Mostly non-instructional Academic Staff
- How does this affect a part-time or a less-than-100% contract employee?
  - Pay for part-time appointments will not be pro-rated under the new regulations.
- Important next steps:
  - Meeting with Area Leaders, Dean/Division Heads
  - Updated Job Descriptions
  - Accurate depiction of hours worked



# Scenario 1

Your department is going through a budget crisis.

You specifically tell your staff no overtime. However, you learn despite your instructions, Lisa has been working through her lunch and her time report in HRS shows she has worked 45 hours this week.

**Do you have to pay her overtime?**



# Scenario 2

Robert, an *exempt employee* in your office, has taken on some new responsibilities in your department. For the past month, he has been coming in early and worked one weekend to get a large project done.

Monday morning he calls you to say he is taking a few hours off each day this week due to all the overtime he has been putting in.

**Should Robert be required to use accrued leave time for his time off?**



# Family Educational Rights and Privacy Act of 1974

FERPA

<http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>



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# FERPA

- Gives college students the rights, in general to:
  - Control the disclosure of their “education records” to others
  - Inspect and review their “education records”
  - Seek amendment of their “education records”
- FERPA revolves around the central term “education records,” which is defined broadly as all records that are:
  1. Directly related to a student
  2. Maintained in any format (electronic, paper copy) by an educational agency or institution or by a party acting for the agency or institution



# Definition of a Student

- Any individual who is currently enrolled, or was enrolled, in a credit bearing course at UWGB.
- This includes students enrolled in online classes, certification programs, and Outreach programs offering college credit.
- FERPA protections are not granted until a student has enrolled in UWGB courses. Admitted does not equal enrolled.



# Definition of a Record

- Any record directly related to a student which contains personally identifiable information and is maintained by the university or a party acting on behalf on the university
- Such records are available for review by the student by submitting a written request to the office or department responsible for maintenance of the records
- Examples:
  - Test Scores, Final Grades, Transcripts, ID Card Usage, Misconduct Records, University Housing





# Record Exceptions

- Sole Possession Records
- Law Enforcement Records
- Employment Records
- Treatment Records
- Alumni Records
- Peer Grades



# Disclosure of Records

- Directory Information
- To school officials whom the institution has determined to have legitimate “educational interests”
- To the dependent for federal tax purposes such as parents (financial aid)
- To appropriate parties in connection to threat to health or safety
- To comply with a judicial order or lawfully issued subpoena



# Directory Information

## What Can be Shared

- Student name
- Home Address
- Home Telephone
- Campus Email address
- Class Level
- Dates of attendance
- Major field of study
- Degrees
- Honors and awards received
- Participation in officially recognized activities and sports
- Height of members of athletics teams
- The most recent educational agency or institution attended



# Restricted Information

## What Cannot be Shared

- Student ID numbers
- Any portion of a Social Security number
- Marital Status
- Any previous name
- Parent's name and address
- High school academic information
- Transcribed information from another university or college
- Courses completed
- Grades, credits earned or GPA
- Grades or current courses in progress
- Attendance records
- Academic status (i.e. Probation status)
- Academic Advisor's name
- Student misconduct investigations or sanctions
- Racial identity
- Foreign student or visa status
- Military status
- Student photos



# Inspect and Review

- Request must be in writing to the record holder
- Must react information pertaining to other students, but not employees
- The institution must provide access to the records within 45 days of a request and must respond to reasonable requests for explanation
- Appeals of records may be heard in cases of conflict of materials in the record



# FERPA... A Barrier?

- You CAN share concerns about observed behavior to those who need to know.  
**Especially concerns regarding health & safety!**
  - Department Chairs
  - Academic Deans
  - Public Safety
  - Dean of Students Office
  - Counseling & Health Center
  - Individuals who may be at risk



# Executive Order 54

[https://www.uwgb.edu/hr/documents/SuspectedChildAbuseandNeglectPolicy\(not%20signed\).pdf](https://www.uwgb.edu/hr/documents/SuspectedChildAbuseandNeglectPolicy(not%20signed).pdf)

## Reporting of Suspected Child Abuse and Neglect

- Requires all UW-Green Bay employees to report incidents of child abuse and neglect. In addition, this policy extends that obligation to volunteers and contractors performing services for UW-Green Bay.
- Position of Trust



# Jeanne Clery Act Reporting & Compliance



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# What is the “Jeanne Clery Act?”

- Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act
  - Requires the reporting and publication of crime statistics on campus
  - Requires the publication of safety and security policies
  - Requires the issuance of “Timely Warnings” & “Emergency Notifications”
  - **The designation of Campus Security Authorities**



# Timely Warning and Emergency Notification

- Two different things;
  - Emergency Notification; that there is a condition on campus which represents an **real and immediate** danger to the campus community (e.g. known dangerous person on campus)
  - Timely Warning; a qualifying crime occurred on or near the campus community (e.g. shooting at Communiiversity Park)



# What is a CSA?

- A category of students and employees who are mandated to report crimes that are reported to them
  - Non-law enforcement or protective services employees
  - Provide the victim alternatives to reporting to a law enforcement officer
  - Can be mandated by position (e.g. Area Coordinators, Coaches, Student Affairs employees)
    - Employee can also volunteer to be a CSA



# CSA Reporting

- Any qualifying crime that is noticed to a CSA (*whether law enforcement action is taken on it or not*) is reportable under the Clery Act
  - Victim does not need to report to law enforcement or provide contact information
  - CSA MUST submit the report on a periodic basis for inclusion (at UWGB they are reported to Public Safety)



# Supervisors of CSA

- Should be aware of the CSAs you supervise
- Make sure that:
  - The CSA can meet with individuals reporting crime
  - The CSA can make the required reports
- If you are also a CSA, you should make sure that all of the supervised CSAs submit the periodic reports



# Annual Security Report

- Annual Security and Fire Report (ASR) is available at:
- <http://www.uwgb.edu/publicsafety/clery/>
  - Employees should consult this report for policies, procedures, statistics and emergency management guidelines



# Other Legal Issues

- Copyright and Intellectual Property
- Ethics Issues
- Open Meetings/Public Records
- Contracts
- Tenure/Merit/Performance Evaluation
- Hiring/Background/Reference Checks
- Subpoenas
- Confidentiality
- Workplace Violence



# How Do You Navigate the Maze?

- Federal Laws
- State Laws/Administrative Rules
- Case Law and other Court Rulings
- Board of Regents Policies/Rules
- UW System Policy
- Campus Policy/Local “history” (past practice)
- Governance Documents





# Available Campus Resources

- Human Resources  
(920) 465-2846 [hr@uwgb.edu](mailto:hr@uwgb.edu)
- Dean of Students  
(920) 465-2152 [dos@uwgb.edu](mailto:dos@uwgb.edu)
- Public Safety  
(920) 465-2300 [publicsafety@uwgb.edu](mailto:publicsafety@uwgb.edu)
- Secretary of Faculty and Staff  
(920) 465-2211 [sofas@uwgb.edu](mailto:sofas@uwgb.edu)

**WHEN IN DOUBT... CALL SOMEONE!**

