

HR BASICS EMPLOYMENT LAWS TITLE IX, ADA AND FMLA

Presentation for the
2022 ACADEMIC LEADERSHIP TRAINING

July 2022



TOPICS COVERED

- What the laws pertaining to each are:
 - Equal Employment Opportunity (EEO)
 - Title IX (TIX)
 - Americans with Disabilities Act (ADA)
 - Family Medical Leave Act (FMLA)
- Why do we have to comply?
- How do we comply?
- Where to seek assistance
- List of available resources

EQUAL EMPLOYMENT OPPORTUNITY LAWS & POLICIES



FEDERAL LAWS

- Title VII of the Civil Rights Act of 1964
- The Pregnancy Discrimination Act of 1978
- The Equal Pay Act of 1963 & Lilly Ledbetter Fair Pay Act 2009
- The Age Discrimination in Employment ACT of 1967
- The American with Disabilities Act of 1990
- Section 503 of the Rehabilitation Act of 1973
- Vietnam Era Veterans' Readjustment Assistance Act of 1994
- Office of Federal Contract Compliance Programs Regulations
- Sections 102 & 103 of the Civil Rights Act of 1991
- Genetic Information Non-Discrimination Act and Employment

SDBOR POLICIES & STATUTES



IMPORTANT BOR POLICIES

- BOR POLICY 1:19 – EQUAL EMPLOYMENT OPPORTUNITY, NON-DISCRIMINATION AND AFFIRMATIVE ACTION
- BOR POLICY 1:17 – SEXUAL HARASSMENT
- BOR POLICY 1:17:1 – PREVENTION OF DATING VIOLENCE, DOMESTIC VIOLENCE, SEXUAL ASSAULT AND STALKING
- BOR POLICY 1:18 – HUMAN RIGHTS COMPLAINT PROCEDURES

SDBOR EQUAL OPPORTUNITY – BOR POLICY 1:19

“The institutions under the jurisdiction of the Board of Regents shall offer equal opportunities in employment and for access to and participation in educational, extension and other institutional services to all persons qualified by academic preparation, experience, and ability for the various levels of employment or academic program or other institutional service, without discrimination based on sex, race, color, creed, national origin, ancestry, citizenship, gender, gender identification, transgender, sexual orientation, religion, age, disability, genetic information or veteran status or on any other status that may become protected under law against discrimination.”

SD CODIFIED LAW – EMPLOYMENT



SOUTH DAKOTA CODIFIED LAW

SDCL 13-49-14. Employment of officers, instructors and employees--Compensation and terms of employment--Disparate treatment on certain grounds prohibited.

The Board of Regents may employ and dismiss all officers, instructors, and employees of such institutions, necessary to the proper management thereof, to determine their number, qualifications, and duties, fix the term of their employment, and rate and manner of their compensation, provide for sabbatical leave on part pay, and provide for a retirement program.

No person may be employed or dismissed, or accorded preferential, adverse, or unequal treatment with respect to any application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, or any term or condition of employment, by reason of the person's:

- (1) Ideological, political, or sectarian opinions or perspectives; or
- (2) Race, color, creed, religion, sex, ancestry, disability, or national origin.



WHY IS THIS IMPORTANT

#1 - SDBOR strives to provide a work and learning environment that offers equal opportunities in employment and educational opportunities to all individuals.

MANAGING RISKS

- In FY2021, there were **61,331** charges filed to the Equal Employment Opportunity Commission (EEOC)
- In FY2020, approximately \$439 million was paid in cases filed with and charged by EEOC.



TITLE IX

Title IX and the associated BOR policy 1:17 prohibits sexual harassment within an institution's education program or activity and lays out the process for investigating and determining when sexual harassment has occurred.

What is sexual harassment?

- Sexual harassment is conduct on the basis of sex that satisfies one or more of the following:
 - An employee of an institution conditioning the provision of education benefits on participation in unwelcome sexual conduct (i.e. quid pro quo).
 - Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the institution's education program or activity.
 - Sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA), the definitions of which are set forth in BOR Policy 1:17.1.



TITLE IX CONTINUED

Important points of awareness:

- **Sexual harassment can occur in a variety of relationships**
 - **Student/student, employee/student, employee/employee, etc.**
 - **If sexual harassment allegations involve an employee, the process is largely the same, with some differences.**
 - **Informal resolution is not permitted in cases involving employees.**
- **Actual knowledge of sexual harassment:**
 - **An institution is required to respond to a report of sexual harassment when the report is made via a report or formal complaint to the TIX coordinator, but also when “any employee of the institution who has the authority to institute corrective measures on behalf of the institution or any employee of the Special Schools” receives notice of sexual harassment or allegations of sexual harassment within an institution’s educational program or activity.**

TITLE IX CONTINUED



Important points of awareness:

- **Educational Program or Activity:**
 - Any locations, events, or circumstances taking place in the United States where the institution exercised substantial control over both the respondent and the context in which the alleged violation occurs—including locations that correspond to land, buildings, facilities, and other property in the possess of, or owned, used, or controlled by, the institution, and adjacent streets and sidewalks. For purposes of Policy 1:17, the term also includes any building owned or controlled by a student organization that is officially recognized by the institution.



TITLE IX

If you observe conduct that could constitute sexual harassment OR someone (student, employee, colleague) reports an allegation of sexual harassment to you, you should:

- Refer them to your campus TIX office (coordinator name and contact information).
- Let them know that you will report the information to the TIX coordinator as well.

HOW TO COMPLY



KNOW THE RULES

- Be aware of regulations, policies and university practices
- Treat people the same – BE CONSISTENT

BE FAIR, CONSISTENT AND WHEN IN DOUBT - CALL HUMAN RESOURCES

RESOURCES

- BOR Policy Manual
- Employee Handbooks
- Your university Human Resources Department

EMPLOYEE ACCOMODATIONS AND FMLA



AMERICANS WITH DISABILITY ACT OF 1990 - ADA

The Americans with Disabilities Act, also known as the ADA, prohibits discrimination against individuals on the basis of disability. An amendment to the ADA, the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), clarified that a disability is a **mental** or **physical** condition or impairment that substantially limits one or more major life activities or bodily functions.

- The ADA makes it unlawful to discriminate in ALL employment practices, including: recruiting, compensation, hiring, firing, promotion, training, leave, benefits, job assignments, and so forth.
- **Examples of Major Life Activities** - Walking, standing, lifting, self-care, seeing, hearing, sleeping, communicating, eating, etc.
- Disabilities are generally long-term and chronic conditions, but can also include episodic conditions that substantially limit one or more major life activity.



ADA Eligibility

- 1) Qualified individuals with a disability
- 2) An individual with a record of a disability
- 3) Individual who is regarded as having a disability

ADA COMPLIANCE



- The ADA requires employers to make reasonable accommodations for employees with disabilities.
- Reasonable accommodations – Do not create undue hardship for the employer.
- Undue hardship: An accommodation would be unduly costly, extensive, substantial or disruptive, or would fundamentally alter the nature or operation of the business.

BASICS FOR COMPLYING

- Treat all employees and candidates the same
- Don't make assumptions
- ADA doesn't require that an employee specifically reference ADA when requesting an accommodation
- Retaliation is *always* prohibited.
- Call Human resources for guidance
 - Interactive Process
 - Medical information
 - If necessary, HR or your ADA Office will help determine reasonable accommodations



FAMILY MEDICAL LEAVE ACT

The Family Medical Leave Act (FMLA) entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. Eligible employees are entitled to:

- Twelve workweeks of leave in a 12-month period for:
 - the birth of a child and to care for the newborn child within one year of birth;
 - the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
 - to care for the employee's spouse, child, or parent who has a serious health condition;
 - a serious health condition that makes the employee unable to perform the essential functions of his or her job;
 - any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty;" or
- Twenty-six workweeks of leave during a single 12-month period to care for a covered servicemember with a serious injury or illness if the eligible employee is the servicemember's spouse, son, daughter, parent, or next of kin (military caregiver leave).

FMLA COMPLIANCE



FMLA ELIGIBILITY

- Works for a covered employer (SDBOR is a covered employer),
- Has worked for the employer for at least 12 months as of the date the FMLA leave is to start,
- Has at least 1,250 hours of service for the employer during the 12-month period immediately before the date the FMLA leave is to start, and
- Works at a location where the employer employs at least 50 employees within 75 mile

HOW TO COMPLY

- **Call Human Resources** for guidance when one of these triggering events occur:
 1. The employee requests advanced sick leave for 3 or more days;
 2. The employee has called in sick three days and/or requires time off work due to serious health condition for self or immediate family member
 3. The employer is notified that an employee's absences may be for an FMLA qualifying reason.



BOR POLICIES RELATED TO FMLA

- BOR Policy 4:15 – LEAVES AND MEDICAL LEAVE
 - Coordination with leave
 - Benefits
 - Expectations on notice
 - Medical certification
 - Return to Work
- BOR Policy 4:10 – TENURE & CONTINUING APPOINTMENTS
 - Section 1:5 – Automatic extension of tenure review period with qualifying FMLA Event
 - Faculty option to opt-out of automatic extension