

# CHRO Discriminatory Complaint Processing and Sexual Harassment

*Presented by CHRO Attorneys*



# Our Mission . . .

To eliminate discrimination through civil and human rights law enforcement and to establish equal opportunity and justice for all persons within the state through advocacy and education.



# Sexual Harassment at Work



# Sexual *Harassment*



What is it?

- Form of Sex Discrimination
- Unwanted sexual conduct that effects an employment/educational decision

OR

- Sexual Demands in exchange for benefits (Quid Pro Quo)

OR

- Hostile Environment

# The Legal Definition of Sexual Harassment

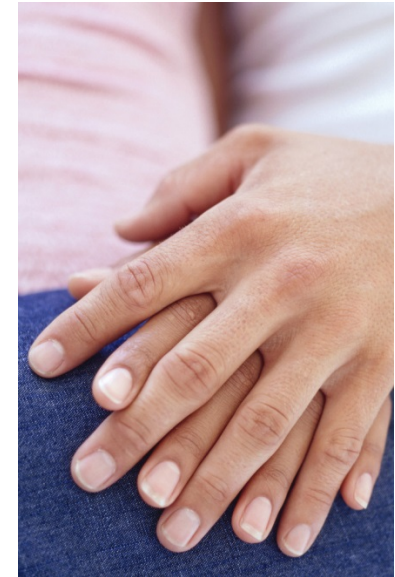
- Illegal Sexual Harassment is any unwelcome sexual advances or request for sexual favors or any conduct of a sexual nature when:



# The Definition of Sexual Harassment

## *-Quid Pro Quo*

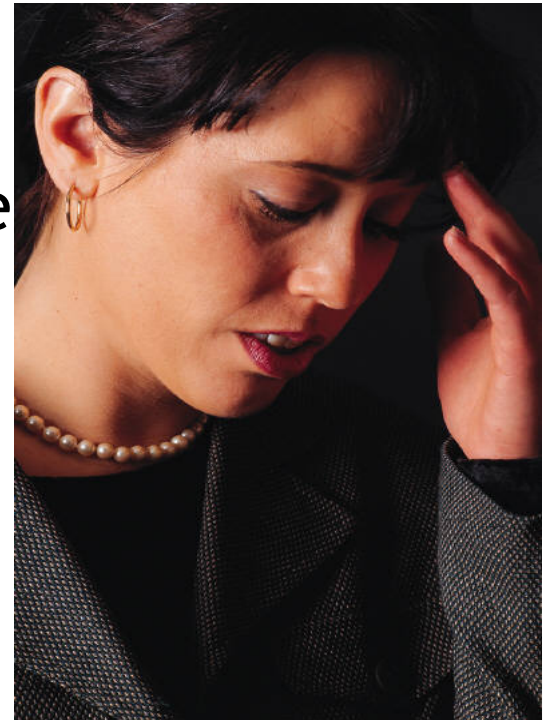
- Submission to such conduct is made either explicitly or implicitly a term or condition of a person's employment or
- Submission to, or rejection of, such conduct by an individual is used as the basis for a decision affecting such individual



# The Definition of Sexual Harassment

## *Hostile Work Environment*

- Such conduct has the purpose or effect of substantially interfering with an individual's work performance or
- creating an intimidating, hostile offensive working environment



# Sexual Harassment Protections

- Employees/interns are protected from harassment by managers staff, and *all others* in the workplace setting
- Coverage extends to *any* work location





# Examples of Sexual Harassment



- Sexual propositions or threats
- Lewd comments or jokes
- Unwanted or inappropriate touching
- Sexual gestures
- Use or display of pornographic materials
- Obscene noises or leering

# Sexual Harassment is an Abuse of Power that is Expressed Sexually

- Supervisor v. Subordinate



- Peer v. Peer



# Sexual Harassment Law

- Title VII
- Conn. Gen. Stat.  
§46a-60(8)
- Conn. Gen. Stat.  
§46a-54(15)



# Sexual Harassment Under Civil Rights Act

- **Civil Rights Act – Title VII – 1964**
  - ❑ Prohibits sexual/racial discrimination at work on the basis of protected classes.
  - ❑ EEOC guidelines interpreting Title VII “sex discrimination” form the framework defining sexual harassment.
  - ❑ Law applies to all public employees, labor organizations, employment agencies and private employers with 15 or more employees.



# Sexual Harassment Under CT State Law

- C.G.S Sec. 46a-60(8), prohibits sex based employment discrimination and specifically forbids employers and those acting for employers to sexually harass employees at work.
- Definition mirrors federal guidelines.
- This law applies to all public employees, labor organizations, employment agencies and private employers with three or more employees.
- C.G.S. 46a-64(c) applies to places of public accommodation.



Social Media, the internet, cellphones and  
e-mail



**Changing  
the world of  
sexual  
harassment  
claims**



# #MeToo/#Time'sUp

**“For nurses, sexual harassment from patients is ‘par for the course’”  
NBCnews.com**



**USA Today survey reports 94% of women surveyed experienced some sexual harassment or assault**

**“Guess's Paul Marciano Giving Up Daily Duties After Sexual Harassment Allegations”  
yahoostyle.com**

# Proposed Legislative Reaction in Connecticut

- Require all employees to participate in training
- Increase the statute of limitations
- Elimination of confidential settlements
- Email sexual harassment policies to employees
- Possibility of punitive damages





# What is the Employer/Administrator Responsibility for Harassment by co-workers?

**Use reasonable care to prevent harassment from occurring**

- \* Sexual harassment policy in place
- \* Systematic sexual harassment training

**Take prompt remedial action to correct harassment**

- \* Take steps to end harassment
- \* Prompt and neutral investigation
- \* Disciplinary policy

**Use preventative and corrective opportunities**



# Microaggressions

“a comment or action that subtly and often unconsciously or unintentionally expresses a prejudiced attitude toward a member of a marginalized group (such as a racial minority)”

Merriam-Webster.cc



# Workplace Bullying

- Is it discrimination?
- Does it violate your work policies?
- Does it violate any contracts you have in place?



# Sexual Orientation/Gender Identity Issues

- These are treated the same as any other protected class with respect to State Employment
- Anti-Harassment
- Can not be basis for any employment/job-related decisions

# Definitions

- Sexual Orientation means Having a preference for heterosexuality, homosexuality or bisexuality, having a history of such preference or being identified with such preference” CONN. GEN. STAT. §46a-81a.
- Transgender means that ones identity as a person is at odds with the physical gender of his/her body.

Gender identity or expression means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose.

# Gender Identity– A Real Life Issue

- **What to do about the restroom dilemma?**
  - Most important is to ensure all employees have a convenient, safe and dignified restroom to use when necessary.
  - Allow individuals who are transgendered to use a bathroom consistent with their present gender identity (may have to designate a specific or separate bathroom at first to ease the transition).



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# Sexual Orientation and Gender Identity – Real Life Issues

- What about employees who have other protected concerns
  - ▶▶ i.e., Religious Objections





# Q & A

- **Q: Is it sexual harassment if I ask a co-worker for a date?**
- **Q: I had an intimate relationship with a co-worker but broke it off. If that co-worker harasses me, can I still bring a claim for sexual harassment?**
- **Q: I was denied a promotion, and I've learned that the promotion went to my supervisor's boyfriend. Is this sexual harassment?**

# More Q & A

- **Q: If no one complains about sexual comments or jokes at work, does a manager who observes the behavior need to do anything about it?**
- **Q: If an employee's intentions are good, is it still sexual harassment?**
- **Q: If an employee is offended by break room comments, why don't they just move to another area?**
- **Is an employer responsible for a vendor's behavior?**

# Q & A cont'd

- **Q: A fellow employee spends a lot of time downloading pornography from the Internet to his work computer. Is this sexual harassment?**
- **Q: The other day, a fellow employee told me a joke that had mild sexual content. I wasn't offended by it, and we both found the joke to be funny. Today, we both got a memo from our boss saying our conduct was inappropriate and a potential violation of the company's sexual harassment policy. Was the joke harassment?**
- **Q: Is sexual harassment ever a criminal matter?**

# History of Sexual Harassment

1980 – EEOC issues guidelines forbidding “sexual harassment” as a form of sex discrimination.

- 1986 - **Meritor Savings Bank, FSB v. Vinson** – The Supreme Court first recognized “sexual harassment” as a violation of Title VII and established the standards for analyzing whether the conduct was welcome and levels of employer liability.
- 1993 - **Harris v. Forklift Systems, Inc** – plaintiff does not need to show psychological harm. In addition to Meritor, the factors when analyzing whether sexual harassment occurred include:
  - o Frequency
  - o Severity
  - o Whether the conduct is physically threatening or humiliating
  - o Or is a mere offensive utterance
  - o Whether the conduct unreasonably interferes with employees work performance
  - o **Totality of the Circumstances Test**

1998 - **Faragher v. City of Boca Raton** - Supreme Court decision that establishes that an employer is subject to vicarious liability for hostile environment created by a supervisor **unless** the employer can demonstrate that it exercised reasonable care to prevent and correct promptly any sexually harassing behavior **and** that the employee unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer.

1998 - **Burlington Industries, Inc v. Ellerth** - Companion Supreme Court decision to Faragher that further elaborates that the employer's "Faragher" defense to vicarious liability is **not available** if the employee suffers a tangible job consequence as result of supervisor's actions.

# Sexual Harassment Not Limited to Male/ Female

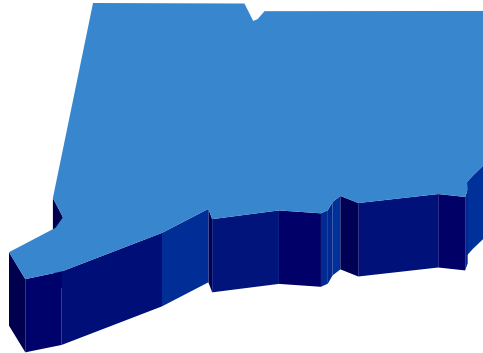
Patino v. Birken Mfg. Co. - CT  
Supreme Court finds Employers  
Liable For Anti-Gay Harassment



# Our Offices . . .

- Legal Division and Housing unit located in Central Office in Hartford
- Four regional offices (Employment and Public Accommodation complaints)
  - Hartford
  - Waterbury
  - Bridgeport
  - Norwich

# Where to File a CHRO Complaint in Connecticut



To file an employment discrimination complaint, the public can go to the [contacting us](http://www.ct.gov/chro) link at <http://www.ct.gov/chro>

to find the town in which the alleged discriminatory act took place, and the phone number of the Regional Office that serves that town.



# PROTECTED CLASSES IN CONNECTICUT

How many can you identify?

- ✓ Age
- ✓ alienage
- ✓ ancestry
- ✓ color
- ✓ criminal record (state)
- ✓ Genetics
- ✓ Gender Identity/expression
- ✓ Learning disability
- ✓ Marital status
- ✓ Mental disability
- ✓ Intellectual Disability (formerly MR)
- ✓ National origin
- ✓ Physical disability
- ✓ Previously opposed discrimination
- ✓ Race
- ✓ Religion/Religious creed
- ✓ Sex (including pregnancy & breastfeeding, caregiving)
- ✓ Sexual orientation
- ✓ Veteran Status

# Employment Discrimination

Covers various  
“Class  
Bases” (ie, race,  
sex, religion,  
disability, sexual  
orientation)

Discriminatory acts:

- Refusal to hire
- Termination
- Denial of promotion
- Unequal compensation for same job
- Denial of equal terms and conditions of employment
- Retaliation
- Failure to Accommodate

# Are there any exceptions?

- Independent contractors
- Ministerial exceptions
- Under three employees
- Post office
- Federal Employer
- Native American Reservations



Exemptions interpreted narrowly, when in doubt, we will retain jurisdiction because we are dealing with remedial civil rights statutes

# PREGNANCY

- Public Act 17-118
  - Defines pregnancy to include pregnancy, childbirth or related condition and lactation
  - Specifies accommodations that are reasonable

| being permitted to sit while working | light duty assignments   |
|--------------------------------------|--|
| more frequent or longer breaks       | modified work schedules  |
| periodic rest                        | temporary transfers to less strenuous or hazardous work          |
| assistance with manual labor         | time off to recover from childbirth                              |
| job restructuring                    | break time and appropriate facilities for expressing breast milk |
|                                      |  |

# PREGNANCY (con't)

- It is discriminatory to limit, segregate or classify a pregnant employee in a way that would deprive of opportunity;
- To force to accept an accommodation or leave;
- To refuse to make a reasonable accommodation;
- To require leave if a reasonable accommodation can be made;
- To retaliate based on requesting a reasonable accom.
  
- Employees must continue to reinstate into the same position. Burden on employer to show accommodation reinstatement (private only) not reasonable.

# Housing Discrimination

## Class Bases:

- Listed in Conn. Gen. Stat. § 46a-64c



## Discriminatory Acts:

- Refusal to rent or sell
- Otherwise make unavailable or deny
- Terms and conditions
- Make print or publish
- Failure to accommodate

# Public Accommodation Discrimination

- Discrimination in places of public accommodation like restaurants, court houses, stores, etc
- May include schools
- Breast-feeding in public
- Service animals



# 180 day Statute of Limitations

Complaints must generally be filed within 180 days of the date of the alleged act of discrimination, or within 180 days of the date that complainant became aware of the act.

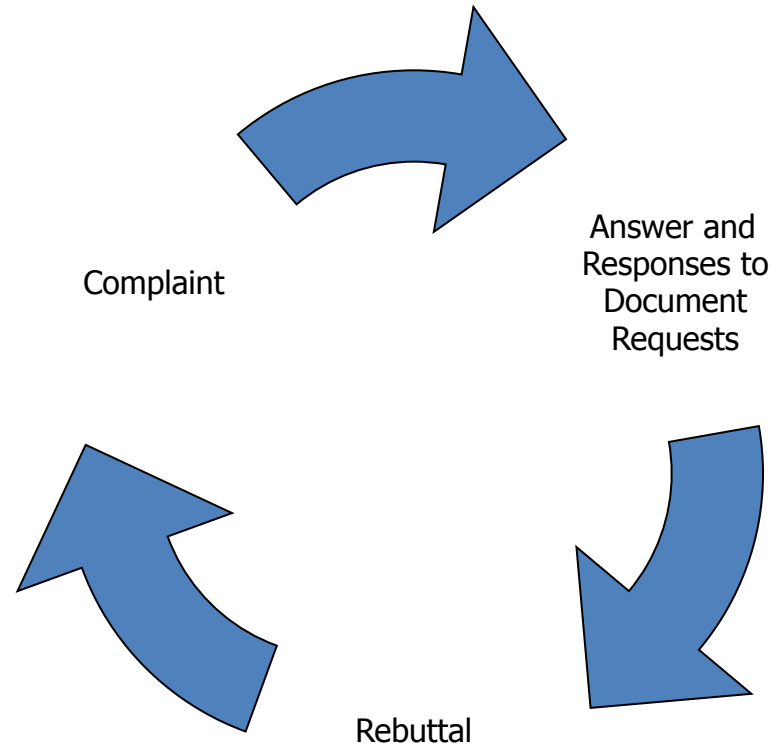
There may be tolling, when in doubt, file!





# CHRO Complaint Process

- Complainant files a complaint
- Respondent files an answer and responses to “Schedule A”
- Complainant may file rebuttal



# NEW FOCUS ON MEDIATION



Mediation will  
take place  
shortly after  
each case is  
retained or  
reinstated

# An Investigator Will Be Assigned Cases shortly after a failed mediation



- If a case is not successfully mediated it will quickly be assigned to an investigator
- Cases should no longer sit in file drawers

# Investigations



FACT FINDING CONFERENCE AND/OR OTHER COMPLETE  
INVESTIGATIONS

Written finding of Reasonable or No Reasonable Cause issued

# BEST PRACTICES

- Companies, Contractors, Sub-Contractors, Private and Public Employers should have an anti-discrimination policy that is enforced by managers at all levels
- TRAINING, TRAINING, TRAINING  
Managers need to be trained on the anti-discrimination policy
- Supervisors need to be trained on the anti-discrimination policy

# Discrimination complaints

- A report of discrimination should be taken seriously, i.e.
  - Investigation
  - Evidence gathering
  - Documentation
- An employer should take action of violations of the company's policy immediately

# BEST PRACTICES

- The anti-discrimination policy should be posted
- The anti-discrimination policy should be given to ALL employees
- Management and Staff should value the anti-discrimination policy and take it seriously

# BEST PRACTICES-Reporting procedure

- The company should have a clearly outlined reporting procedure
- Employees need clear steps to report incidents
- Carefully select the individuals to whom incidents of discrimination should be reported



# BEST PRACTICES-DISCIPLINE



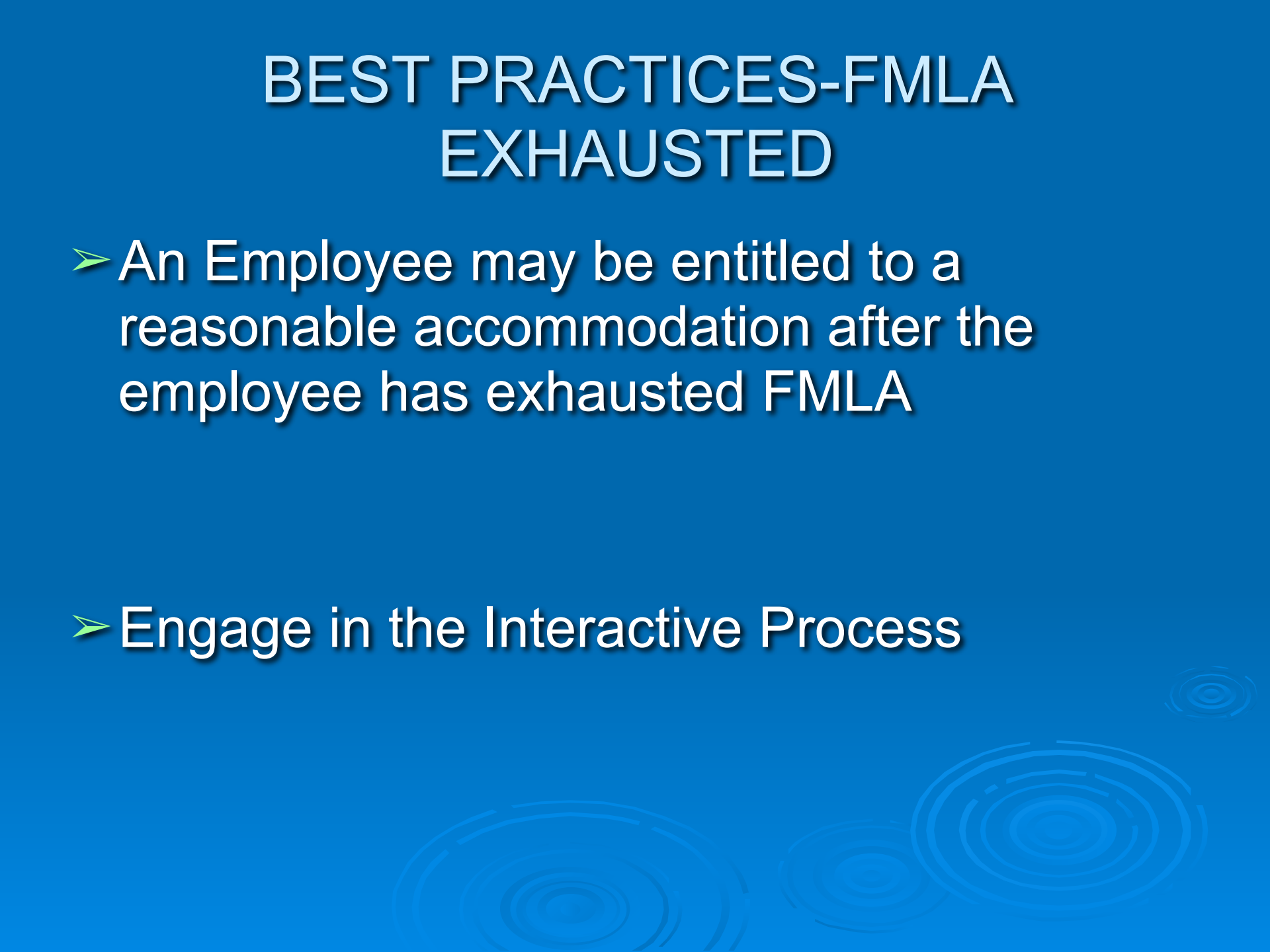
# BEST PRACTICES -Discipline

- Have a clear progressive discipline policy
- Follow the progressive discipline policy
- Apply the progressive discipline policy consistently
- Document the progressive discipline
- Make sure the tone of any correspondence to an employee regarding performance issues is professional and factual

# BEST PRACTICES – DISABILITY

- If an employee requests a reasonable accommodation engage in the interactive process with the employee
- Be open and creative in exploring reasonable accommodations
- Maintain clear, specific and consistent communications with an employee who has requested an accommodation

# BEST PRACTICES-FMLA EXHAUSTED

- An Employee may be entitled to a reasonable accommodation after the employee has exhausted FMLA
  - Engage in the Interactive Process
- 

# BEST PRACTICES-Advertisement

- Advertise as an equal opportunity employer
- Be an equal opportunity employer
- Reap the benefits of treating employees fairly

**CHRO**



# Questions ?????



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It is accurate as of the date that it was prepared; updates in the law after this date are not and will not be reflected.