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ding & Responding to rimination, Retaliation histleblowing Claims
nted by ssa Smith Lloyd yn M. Jereck

Today's Presenters



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ETERMINED, DISTINCTIVE, FEARLESS,

PLUNKETT V COO

 Michigan's economy has resulted in a massive escalation of employment claims, including claims for discrimination, retaliation and whistleblowing

ETHEMINED, DISTINCTIVE, HEARIESS

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"Juries know how hard it is to find a job and may put a heavier burden on employers because the cost of being let go or harassed is greater when other options aren't as available. Until the economy improves, you're going to see more claims and higher verdicts."

- Segal from SHRM online

DEDICAMENT DISTRICTIVE PERSONS

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Discrimination, Retaliation & Harassment Laws

Federal Law

 Title VII of the Civil Rights Act of 1964 prohibits discrimination and harassment on basis of sex, race, color, national origin and religion.

Continued...

DETERMINED, DISTINCTIVE, HEARIESS

Discrimination, Retaliation & Harassment Laws

- Title VII also protects employees who have made complaints of discrimination or who otherwise opposed unlawful discrimination from retaliation.
- Pregnancy Discrimination Act (PDA) prohibits discrimination on the basis of pregnancy

Continued...

BETTERMINED DISTINCTIVE HEARING

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Discrimination & Harassment Laws

 Age Discrimination in Employment Act (ADEA) protects employees over 40-years-of-age from age discrimination.

Continued...

DETERMINED, DISTINCTIVE, HEARIESS

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Discrimination & Harassment Laws

- Equal Pay Act makes it unlawful to pay employees different compensation because of their gender for equal work on jobs of equal skill, effort, responsibility and working conditions in the same establishment.
- Americans With Disabilities Act (ADA) prohibits discrimination on basis of an individual's disability.

Continued...

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Discrimination & Harassment Laws

State Law

 Elliot-Larsen Civil Right Act (Elliott-Larsen) prohibits discrimination on the basis of sex, race, color, national origin and religion, as well as martial status, familial status, weight and age. This includes sexual harassment and harassment against other protected groups.

Continued...

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Discrimination & Harassment Laws

- ELCRA also protects employees who have made complaints of discrimination or otherwise opposed unlawful discrimination from retaliation.
- Michigan Persons With Disabilities Civil Rights Act (MPWDCRA)

Continued...

DETERMINED, DISTINCTIVE, FEARIESS

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Discrimination & Harassment Laws

• Michigan Whistleblowers Protection Act (WPA) protects employees who report a violation or suspected violation of any local, state or federal law, as well as those who are about to, but who have not completed their report, and those who participate in hearings, investigations, legislative inquiries or court cases.

ETERMINED, DISTINCTIVE, FEARLESS

Discrimination Claims

- Intentional Discrimination Having a predisposition to discriminate against a protected class and acting on that predisposition (i.e., women are lazy, tall people can never get the job done)
- Disparate Treatment Treating similarly situated employees differently based upon their protected class (sex, race, national origin, etc.)

Continued...

Division between contra

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Discrimination Claims

 Disparate Impact – Using a neutral policy or criteria that has an adverse impact on a protected group (i.e., tests that, historically, African Americans do much better on than Caucasians, Hispanics, etc. to determine hiring criteria, promotions, etc.)

DETERMINED, DISTINCTIVE, FEARIESS

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Discrimination Claims

Individual Liability

 Under both federal and state law, an employee's agent, (i.e., supervisor, manager, etc.), may be sued and can be held individually liable under any of these theories.

DETERMINED, DISTINCTIVE, FEARLESS

* FINANCE	Starting at the Beginning:		
	Best Hiring Practices		

Hiring Documents, Employee Manual, Application, Interview Evaluation

DETERMINED, DISTINCTIVE, FEARIESS,

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At-Will Status of Employment Statement

Employment with	_	
means that either emplo		
terminate employment re		
with or without cause, ar	nd with or v	without
notice. No representative	e of	_ has
authority to enter into an	y agreeme	ent for
employment for any spe	cified perio	od of time or
to make any agreement	contrary to	foregoing,
with exception of an agre	eement in	writing,
signed by the President	of	
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DETERMINED, DISTINCTIVE, HARLESS,

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Furthermore, any claim or lawsuit relating to an employee's service with _____ must be filed no more than six (6) months after date of employment action that is subject of claim or lawsuit.

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Equal Employment Opportunity Statement

is an equal employment opportunity employer and provides employment and advancement opportunities to its employees without discrimination on basis of race, color, religion, sex, age, national origin, disability or any other protected characteristic as established by law. This policy of equal employment opportunity applies to all policies and procedures relating to recruitment and hiring, compensation, benefits, termination and all other terms and conditions of employment.

Continued..

DETERMINED, DISTINCTIVE, HEARIESS

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Equal Employment Opportunity Statement

If an employee believes that he/she has been the victim of discrimination, he/she should report that fact immediately to his/her supervisor, manager on duty, his/her district supervisor, regional supervisor up to and including the _______. After receiving such a complaint, ______ will undertake a full and complete investigation of the charges.

Continued...

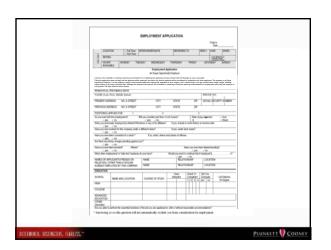
DETERMINED, DISTINCTIVE, HARRIESS.

Equal Employment Opportunity Statement

If it is determined that discrimination has occurred, _____ will take steps to eliminate that discrimination and take disciplinary action against any employee whom it determines engaged in discriminatory behavior. ____ prohibits retaliation against any employee who reports discrimination or harassment, or participates in an investigation of such reports.

Continued...

DETERMINED, DISTINCTIVE, HEARIESS



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RMINER, DISTINCTIVE, HEARIESS,		PLUNKETT V COOM



Do Not Ask

- Applicant's maiden name
- Birthplace of applicant, his or her relatives or spouse
- Applicant's age
- Applicant's religious denomination, religious affiliation or any other information regarding his/her religion

Continued...

DETERMINED, DISTINCTIVE, HARLESS,

Do Not Ask

- Employer cannot require a photograph of applicant prior to hire
- Questions regarding applicant's height or weight
- Questions regarding marital status or children

Continued...

BETTERMINED DISTINCTIVE HEARING

PLUNKETT COONE

Do Not Ask

- Questions regarding arrests that did not result in conviction (except for law enforcement agencies)
- Name and address of nearest relative to be notified in case of accident or emergency
- Names of all clubs, societies and lodges to which applicant belongs

DETERMINED, DISTINCTIVE, HEARIESS.

PLUNKETT V COONE

Do Not Ask

- How many days applicant was absent from work because of illness last year.
- Pre-employment questions about illness may not be asked, because they may reveal existence of a disability.
- However, an employer may provide information on its attendance requirements and ask if applicant will be able to meet those requirements.

Continued...

DETERMINED, DISTINCTIVE, HARLESS

Do Not Ask

- Whether applicant is taking any prescribed drugs.
- Questions about use of prescription drugs are not permitted before a conditional job offer, because answers to such questions might reveal existence of certain disabilities that require prescribed medication.

Continued...

DETERMINED DISTINCTIVE CLASSIFICS

PLUNKETT COONE

Do Not Ask

- Whether applicant has ever been treated for drug addiction or alcoholism.
- Information may not be requested regarding treatment for drug or alcohol addiction, because ADA protects people addicted to drugs, who have been successfully rehabilitated or who are undergoing rehabilitation.

Continued...

DETERMINED, DISTINCTIVE, FEASIESS

PLUNKETT V COON

Do Not Ask

- Whether applicant has ever filed a claim for workers' compensation benefits.
- Employer may not ask about an applicant's workers' compensation history.
- Such questions are prohibited because they are likely to reveal the existence of a disability.
- It is also discriminatory under ADA to not hire an individual with a disability because of speculation that individual will cause increased workers' compensation costs.

DETERMINED, DISTINCTIVE, HARRIESS.

You Can Ask

- Whether applicant has ever worked for the company under different name and any additional information necessary to check work record
- Whether applicant is 18 years of age or older when purpose of the question is to determine if they are of legal age for employment
- Whether applicant's spouse is employed by the company

Continued...

DETERMINED DISTINCTIVE CLASSIFICS

PLUNKETT COONE

You Can Ask

- Whether applicant can perform essential duties of job for which they are applying with or without reasonable accommodation
- All languages that applicant speaks and writes fluently, if it is job related
- Questions regarding academic, vocational and professional education of applicant

Continued...

DETERMINED, DISTINCTIVE, FEARIESS

PLUNKETT V COON

You Can Ask

- Whether applicant has ever been convicted of a crime
- Whether there are any felony charges pending against applicant
- Name and address of person to be notified in case of accident or emergency
- Questions regarding organizations applicant is a member of, excluding any organizations which might indicate race, color, religion, national origin or ancestry of its members

DETERMINED, DISTINCTIVE, FEARLESS

Valuable Job Interview Questions

- Review application and make sure to fill in blanks, times not accounted for
- Work habits, attendance, managerial style, compatibility with managers with different styles
- What is the most fun you have in your current job?

DETERMINED, DISTRICTIVE, FEASIESS

PLUNKETT (COON

Reference Check

- One source indicates that majority of people who sued their former employers had falsified information of some kind on the application form or in the resume.
- Release form for obtaining prior information

Continued...

DETERMINED, DISTINCTIVE, HEASTESS.

PLUNKETT V COON

Reference Check

• Michigan statute provides employers a qualified immunity from defamation liability when they receive a request for information about former or current employees and they disclose, in good faith, "information relating to the individual's job performance that is documented in the individual's personnel file . . ."

ETHEMINED, DISTINCTIVE, HEARIESS





Training, Training, Training

 Train managers and supervisors on your equal employment, and discrimination policies, as well as on how to evaluate, discipline and manage.

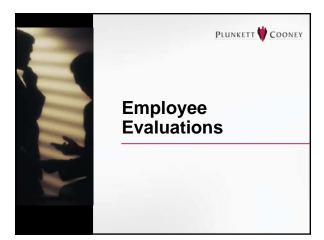
DETERMINED, DISTINCTIVE, HEARIESS,

Training, Training, Training

 Train all employees on company's EEOC and anti-harassment policies.

ETHAMINED, DISTRICTIVE, HARRISTS

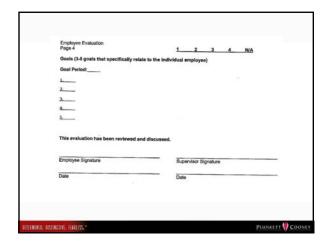
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Employee evaluations can be your best friend or your worst enemy.

DETERMINED, DISTINCTIVE, HARLEST

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Supervisor Comments				
Employee Comments				





Disciplinary Policy Have it in writing. Note that this is not an exception to your "at will" policy. PLUNKETT ♥ COOME PLUNKETT ♥ COO

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December Designation (1981)	PLUNKETT V COONEY
DETERMINED, DISTINCTIVE, HASTESS	PLUNKETT COONEY

Employee Terminations

- Always have potential terminations reviewed by human resources.
- Follow your handbook and prior practice
- Make sure there is documentation

DETERMINED, DISTINCTIVE, HEARIESS.

LUNKETT V COON

Termination Meeting

- Two heads are better than one
- Have a script
- Listen for "trigger words"

OFFIRMUNED, DISTINCTIVE, HEARIESS

Do you use a Severance Agreement?

• If so, what should it include?

BETTERMINED DISTINCTIVE HEARING

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After the Termination

- How to deal with unemployment
- What do you do with the claim of discrimination/retaliation or whistleblowing after the fact?
- How to respond to the attorney demand letter

DETERM NEW, DISTINICATIVE, HEASTESS



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Thank You!	