Employment Law Updates to Know in 2024

Texas Association of Regional Councils
Finance and Personnel Association

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Austin, Texas

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AGENDA

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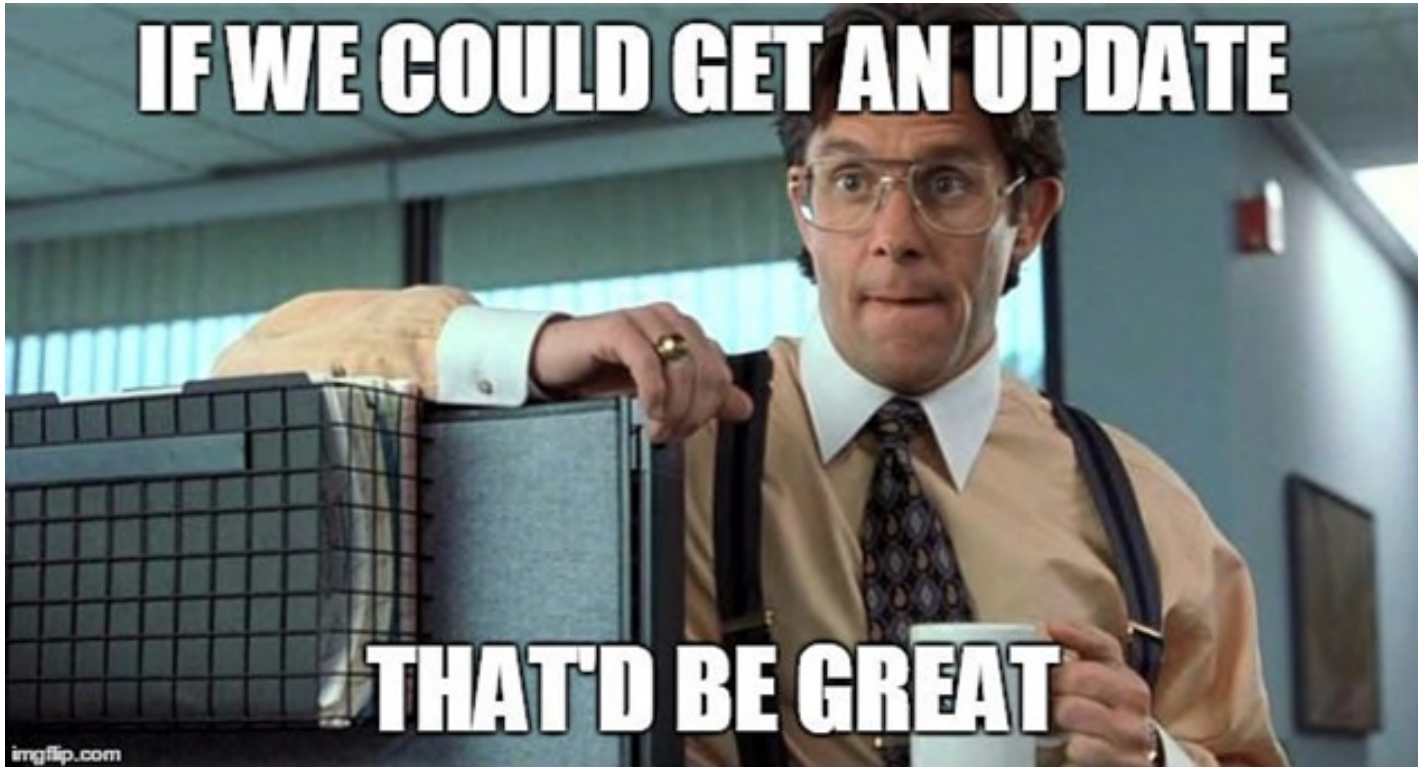
- CASE LAW UPDATES
- STATE LAW UPDATES
- FEDERAL LAW UPDATES
- HANDBOOK POLICY UPDATES



RECENT CASES OF NOTE
(Including Some Refreshers)

DISCRIMINATION – ULTIMATE DECISION

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- Case aligns the Fifth Circuit with Title VII text.
- Nine female detention service officers sued Dallas County, alleging sex-based scheduling policy violated Title VII.
- Fifth Circuit panel upheld the District Court's case dismissal, finding discriminatory scheduling policy did not amount to an "ultimate employment decision" as was precedent in Fifth Circuit. Panel invited full court to revisit standard… which it did.
- Full court held that Plaintiffs plausibly allege disparate-treatment under Title VII regarding the "terms, conditions, or privileges" of employment.
  - "She need not also show an "ultimate employment decision," a phrase that appears nowhere in the statute and that thwarts legitimate claims of workplace bias."
- **Takeaway**: Fifth Circuit now joins most other Circuits with this interpretation, but still a split, unclear where the line will be drawn. Expect Supreme Court to weigh in (*Muldrow v. City of St. Louis, Missouri* oral arguments heard in December 2023)

Hamilton v. Dallas County, 79 F.4th 494 (5th Cir. 2023)

DISCRIMINATION – ULTIMATE DECISION

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- Case decided under new *Hamilton* standard.
- Black female educator and school administrator sought to attend a Leadership Academy for prospective superintendents.
  - Precedent of paying $2,500 tuition for each employee's participation after acceptance (had paid for similarly situated white males).
  - Harrison asked Deputy Superintendent if the District would pay (agreed), but once she was accepted, the Superintendent reneged and refused.
  - Paid fees herself then sued.
- District Court dismissed for failure to state a claim, but the Fifth Circuit reversed under the new *Hamilton* standard.
  - Whether an adverse employment action was only element under dispute.
  - Looked at adversity and materiality – affected her compensation – potential discrimination in terms, conditions, and *privileges* of employment.
- **Takeaway**: Discrimination claims will be expanding.

Harrison v. Brookhaven Sch. Dist., 21-60771(5th Cir. 2023)

HARASSMENT – PROMPT ACTION

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- Hudson was a black woman who sued under Title VII for racially hostile work environment and retaliation.
- District Court granted summary judgment to Lincare and Fifth Circuit affirmed.
- Held that even assuming Hudson suffered from severe/pervasive harassment, Lincare is not liable because it took prompt remedial action, and harassment ceased.
  - Indisputable that once Lincare was aware of racist language, it "initiated an investigation, interviewed the employees involved, and issued final warnings to Torres and Ruiz." That response was "sufficient to shield it from potential liability."
- Retaliation claims were dismissed – no adverse action or causal connection
- **Takeaway**: Prompt and effective remedial action is crucial!

Hudson v. Lincare, Inc., 58 F.4th 222 (5th Cir. 2023)

HARASSMENT – POLICY VERSUS PRACTICE

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- Wallace worked for a construction company and sued for sex discrimination, sexual harassment, and retaliation.
- Performance prevented her from working at elevation because of sex (direct evidence), which effectively demoted her. Harassing comments, found had direct evidence.
- Tried to contact HR to no avail, and other witnesses observed but did not report behavior (violating policy)
- District Court granted summary judgment to Performance Contractors and Fifth Circuit reversed/remanded.
- Held that Plaintiff raised genuine issues of material fact on each claim. Material fact issue whether Performance effectively implemented its anti-harassment policy.
- **Takeaway**: Policy does not protect you if you don't practice what you preach.

Wallace v. Performance Contractors, Inc., 57 F.4th 209 (5th Cir. 2023)

DISABILITY – REASSIGNMENT TO VACANT ROLE

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- Hospital had policy of hiring most qualified candidate, even when employee applied as reasonable accommodation.
  - Employee was not reassigned to vacant position for which she applied
  - Failed to respond to employer letters about alternative accommodations
- EEOC challenged policy (contrary to EEOC guidance) and alleged failure to accommodate Cook.
- District Court granted Methodist's motion for summary judgment on both claims
- Fifth Circuit: "[t]he level of preferential treatment that the EEOC asks for would compromise the hospital's interest in providing excellent and affordable care . . . and would be unfair to . . . other employees."
- Vacated and remanded on specific facts about whether most-qualified applicant policy violated ADA.
- Affirmed District Court's dismissal on failure to accommodate claim. Employee's "unilateral withdrawal from the interactive process is fatal to her claim" if employer engaged in good-faith.
- **Takeaway**: EEOC guidance that transfer to vacant position in ADA accommodation is mandatory is not always correct under Fifth Circuit law. Don't be the one to cause interactive process breakdown!

Equal Employment Opportunity Comm'n v. Methodist Hosps. of Dallas, 62 F.4th 938 (5th Cir. 2023).

DISABILITY? – FAILURE TO ACCOMMODATE

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- Mueck sought a schedule shift to attend court-ordered classes for alcoholism after DWI, eventually terminated due to the schedule/class conflict.
- District Court found Mueck failed to provide sufficient evidence that his alcoholism was a disability or that he requested an accommodation.
- 5th Circuit affirmed, finding Mueck failed to inform La Grange his request was for a disability.
  - La Grange reasonably viewed his request for time of was to deal with legal consequences of recent DWI. Discussions with supervisor were about his DWI and court case.
- Might be a triable issue of fact whether his alcoholism was disability, but here he failed to show he made his *employer aware* that his disability was reason for the request. No triable issue of fact that termination was pretext.

Mueck v. La Grange Acquisitions, No. 22-50064, 2023 WL 4677543 (5th Circ. 2023).

RELIGIOUS ACCOMMODATION

- Groff's religious beliefs dictate he cannot work on Sundays; terminated after prog. discipline
- USPS argued undue hardship because only one other worker
- Reassessment of "undue hardship" in rel. accommodation
- *De minimis* is insufficient—must show "substantial increased costs in relation to the conduct of its particular business"
- Undue hardship on coworkers is relevant if it also affects conduct of the business
- Must consider other available options
- **Takeaway**: mid-level standard; must look at context and resources to determine whether "substantial increased cost"

Groff v. DeJoy, 600 U.S. 447 (2023).

RELIGIOUS ACCOMMODATION & DISCRIMINATION

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- Grooming policy prohibited male officers from having long hair or beards.
- Hebrew had taken a Nazarite vow to keep his hair and beard long as part of his religion.
- He informed TDCJ of his religious vow and filed a religious accommodation request.
- Two months later, his request was denied, citing safety/security reasons.
- TDCJ fired Hebrew when he refused to cut his hair and beard. He alleged religious discrimination and failure to accommodate.
- District court granted summary judgment for TDCJ, citing de minimis standard. Fifth Circuit reversed under the updated *Groff v. DeJoy* standard.
- **Takeaway**: consider other options and costs, requiring a real interactive process

Hebrew v. TDCJ, 80 F.4th 717 (5th Cir. 2023).

TEXAS LEGISLATIVE UPDATE

CROWN ACT

- Prohibits discrimination based on hair texture or protective hairstyle associated with race, including braids, locks, and twists
- Covers schools, employers, labor unions, and employment agencies, and housing practices
- Expands definition of race in Labor Code to include hair texture and protective hairstyles

HB 567; effective September 1, 2023

WORKPLACE VIOLENCE HOTLINE

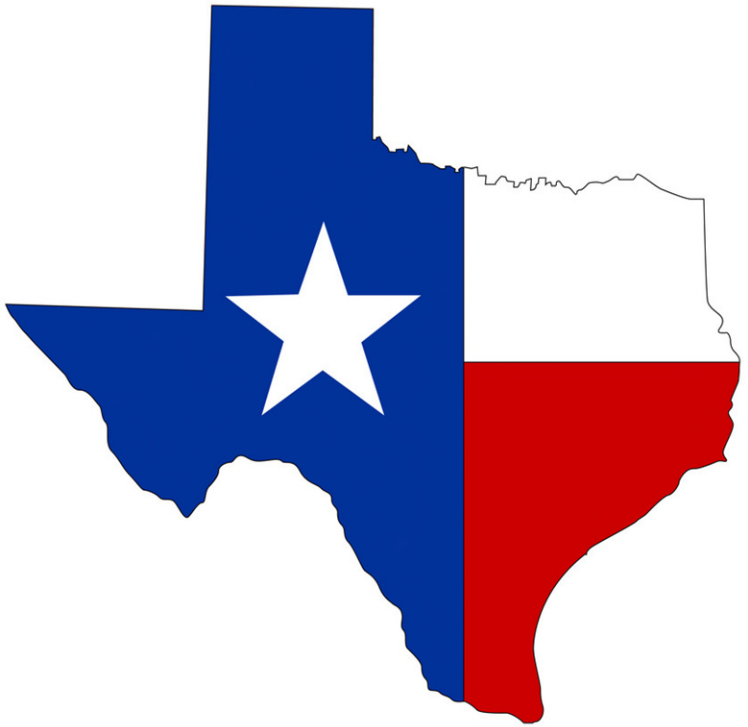
- Establishes a 24-hour toll-free workplace violence hotline for emergency and non-emergency
- Calls may be made anonymously; will be referred to appropriate law enforcement for investigation and response
- Posting requirement; poster to be developed by TWC before March 1, 2024

HB 915; effective September 1, 2023

"DEATH STAR" BILL

- Prohibits municipalities and counties from issuing ordinances and regulations related to matters regulated by specific state laws, including Labor Code, Local Government Code, and others, unless expressly authorized
- Regulations in violation are void and unenforceable; private right of action
- Legal challenges re: constitutionality and specificity

HB 2127; effective September 1, 2023



TIKTOK BAN

- Governmental entities must adopt a model policy prohibiting installation or use of certain applications on any device owned or leased by the entity
  - Any department, commission, board, office, agency in the executive or legislative branch that was created by the constitution or a statute; any court or agency in the judicial branch; and any political subdivision including municipalities, counties, and special purposes districts
- Department of Insurance Resources (DIR) and Department of Public Safety (DPS) to jointly develop the model policy; expected mid-August 2023; 60 days to adopt policy

SB 1893; effective September 1, 2023

Reminder - Texas Sexual Harassment (2021)

- Personal liability for managers and supervisors who do not take "immediate and appropriate corrective action" if they know or should know that sexual harassment is occurring.
- Now applies to workplaces with 1 or more employee
- Expansion of SOL to 300 days
- Prohibits use of public funds to "settle or pay" sexual harassment claim made *against individual*
- Recommendations:
  - Policy updates
  - Training for employees
  - Immediate investigation and appropriate corrective action

FEDERAL UPDATES

PREGNANT WORKERS FAIRNESS ACT

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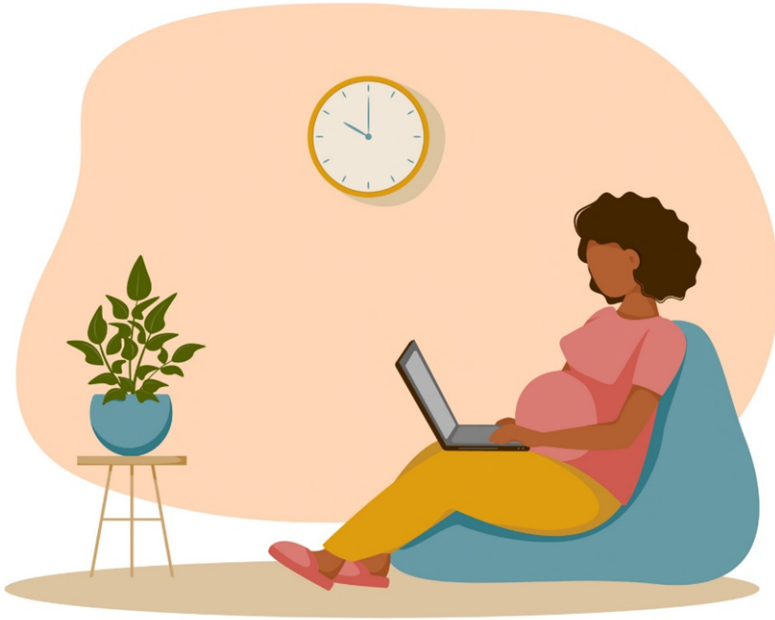
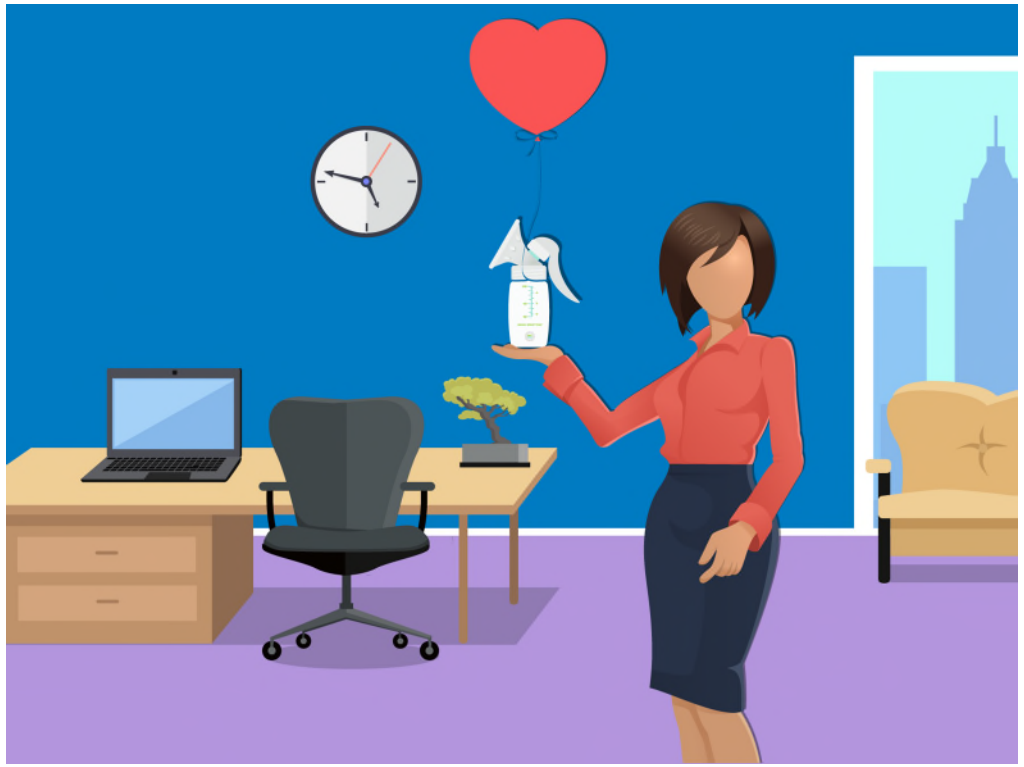
- Must reasonably accommodate pregnant applicants/employees for pregnancy, childbirth recovery, and related medical conditions, including lactation
- Not required to demonstrate disability or show that others received same accommodation
- Pregnant employees cannot be required to take leave when another reasonable accommodation is available.
- Treat requests related to pregnancy the same as ADA requests
- Applies to employers with 15+ employees



PUMP ACT FOR NURSING MOTHERS

- Break Time for Nursing Mothers (2010)
  - Break time and space for covered nonexempt nursing mothers to express breast milk for one year after birth
  - Unpaid breaks, but must allow substitution
  - Space must be functional, shielded from view, free from intrusion, available as needed, and not a bathroom.
  - If <50 employees AND can demonstrate undue hardship, employer does not have to provide nursing breaks.
- PUMP Act (2023)
  - Applies FLSA rules to **EXEMPT** employees
  - Employees must be **completely** relieved from duty for break time to be unpaid
  - New enforcement – immediate lawsuit (10 days for space)



EMPLOYMENT POLICY UPDATES

Top Five Policy Updates for 2024 (if you didn't in 2023)

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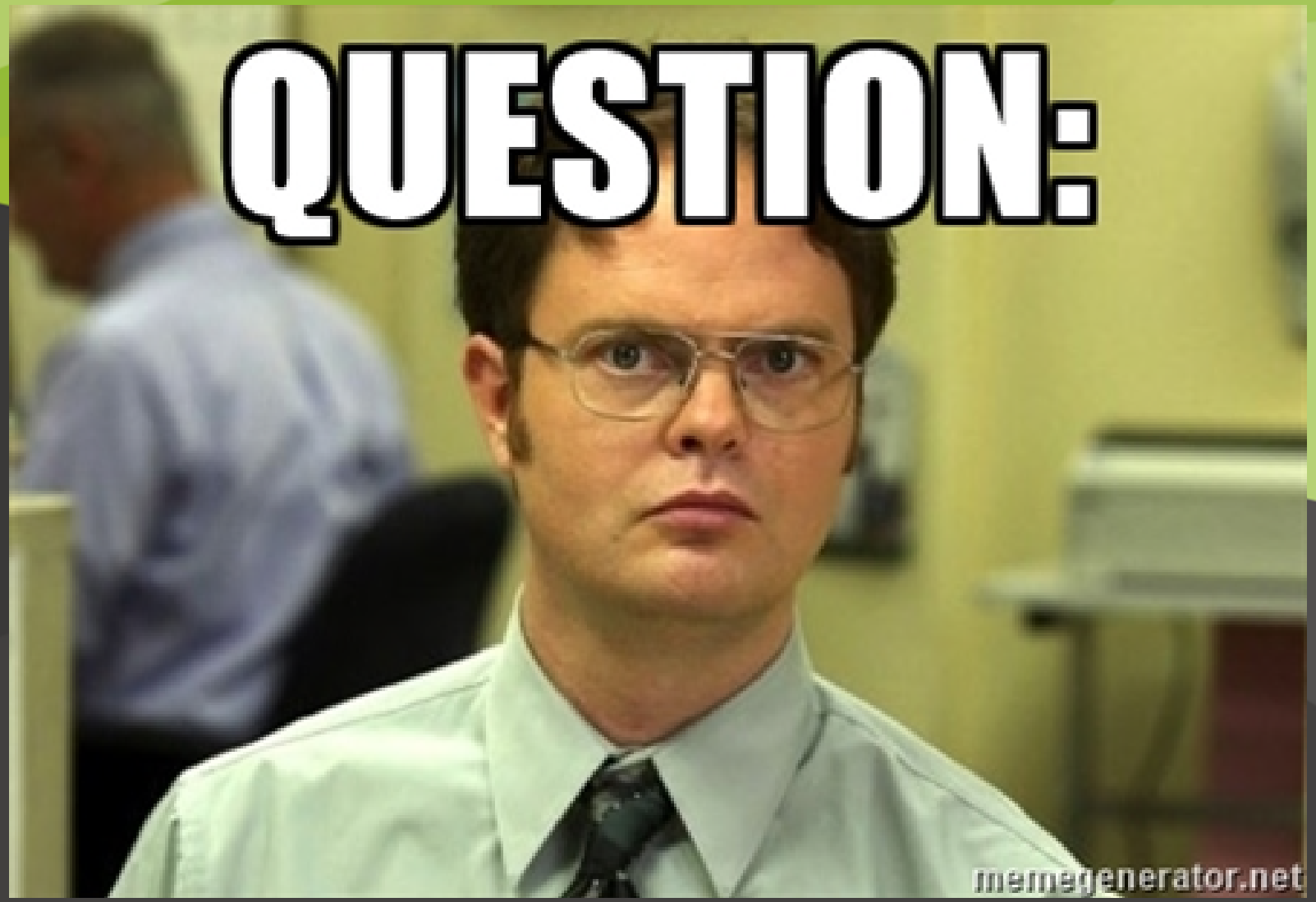
- EEO and Disability Accommodation
  - Add "pregnancy" if not protected class
  - Add language to reasonable accommodation
- Break Time for Nursing Employees
  - Clarify **all** employees and if employee is not completely relieved of job duties, time is considered compensable
- Sexual Harassment Policy
- Drug-Free Workplace Policy
- FMLA Policy – Updated Poster in 2023
- Artificial Intelligence???

WHO'S GOT A QUESTION?



THANK YOU!

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