

S H E E H A N P H I N N E Y

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# **Peak Performance, Minimal Risk: Employment Law Guide for Managers**

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# About Us



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# Agenda

*What we will cover today*

- 01 Harassment Prevention**  
Legal framework, liability, EEOC filing, best practices
- 02 Workplace Accommodations**  
ADA, PWFA, Title VII , recent cases, interactive process, ski resort scenarios
- 03 Retaliation: The #1 Risk**  
Protected activities, whistleblower law, Muldrow, prevention
- 04 Wage & Hour Compliance**  
FLSA, seasonal exemption, NH-specific rules
- 05 Seasonal Workforce & AI in Hiring**  
Onboarding, layoffs, documentation, AI
- 06 Best Practices for Managers**  
Handbook essentials, documentation, retaliation avoidance
- 07 Key Takeaways & Q&A**  
Action items and open discussion

# Harassment Prevention

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# Legal Framework

## *Federal and New Hampshire anti-harassment law*

- **Title VII** 42 U.S.C. § 2000e -- prohibits harassment based on race, color, religion, sex, national origin (ADEA covers age; ADA covers individuals with disabilities)
- **NH RSA 354-A** Broader protections: expands age, sexual orientation, gender identity, marital status, disability
- **Coverage** Title VII: 15+ employees; NH law: 6+ employees -- most resorts covered by both
- **Protected Activity** Reporting, participating in investigations, opposing unlawful practices
- **Ames v. Ohio (2025)** No heightened burden for majority-group plaintiffs -- same standard applies to all

**Key takeaway:** NH law covers MORE protected classes than federal law -- always apply the broader standard

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# Question 1

Jim is a 6'2" white, heterosexual male working in finance in Concord, NH. He is 27 years old; he has ADHD that he manages through medication.

*How Many Protected Traits Does Jim Have?*

## Question 1

A. 2

0%

B. 3

0%

C. 4

0%

D. 5

0%

# Answer

- FIVE!
- (1) White (race), (2) heterosexual (sexual orientation), (3) male (gender/gender identity), (4) 27 (age), and (5) ADHD (disability)
- NH & ME: age discrimination applies to all older than 18
- FEPA agencies seeing substantial increase in “reverse discrimination” claim because of Ames

# Types of Harassment

*Two recognized legal theories*

## Hostile Work Environment

- Unwelcome conduct because of protected class
- Severe OR pervasive (not isolated minor incidents)
- Alters conditions of employment
- Objective + subjective standard
- Example: repeated sexual jokes in lodge break room or using a ski pole suggestively or repeatedly singling-out minority team member

## Quid Pro Quo

- Submission to sexual conduct = condition of employment or benefit
- Gives into conduct
- Typically involves supervisor authority
- One instance generally sufficient
- Example: manager conditions premium shifts on dating or sexual favors

**Key takeaway:** Both theories can create individual and vicarious liability – your job to prevent and stop both

# Employer & Individual Liability

*The resort AND you personally can be held liable*

## Employer Liability

- Strict liability for supervisor harassment with tangible employment action (demotion, termination)
- Co-worker harassment: liable if knew or should have known and failed to act
  - Faragher/ Ellerth defense: (1) reasonable care to prevent/correct AND (2) employee failed to use complaint procedures
- Third parties (guests, vendors): must act when informed

## Individual Liability (Fred Fuller, 2016)

- Supervisors, managers, HR can be personally liable under RSA 354-A
- Aiding & abetting: RSA 354-A:2, XV(d)
- Retaliation: RSA 354-A:19
- Liability for actions AND inactions that allow harassment to continue
- YOU can be named as a defendant -- not just the company

**Key takeaway:** Your grievance/ reporting system must actually function -- personal liability means personal financial exposure

# The EEOC/ NHCHR Filing Landscape

The barrier to filing is lower than ever -- online portal, no lawyer required

~90,000 formal charges filed per year from those inquiries

300-day filing deadline in NH (dual-filing state)

Retaliation is consistently the #1 charge category

Employee populates form and employer (and potentially manager) are embroiled in multi-year investigation/ lawsuit

# 640,000+

*EEOC inquiries received  
in FY2024 alone.*

Source: EEOC FY2024 Annual Performance Report

## Sample Charge

CHARGE OF DISCRIMINATION				AGENCY	CHARGE NUMBER
This form is affected by the Privacy Act of 1974; See Privacy act statement before completing this form.				<input type="checkbox"/> FEPA	
_____ and EEOC <i>State or local Agency, if any</i>				<input checked="" type="checkbox"/> EEOC	
NAME (Indicate Mr., Ms., Mrs.)					HOME TELEPHONE (Include Area Code)
STREET ADDRESS			CITY, STATE AND ZIP CODE		DATE OF BIRTH
<small>NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below)</small>					
NAME		NUMBER OF EMPLOYEES, MEMBERS		TELEPHONE (Include Area Code)	
		+15			
STREET ADDRESS			CITY, STATE AND ZIP CODE		COUNTY
NAME		NUMBER OF EMPLOYEES, MEMBERS:		TELEPHONE (Include Area Code)	
STREET ADDRESS			CITY, STATE AND ZIP CODE		COUNTY
CAUSE OF DISCRIMINATION BASED ON (Check appropriate box (es))					DATE DISCRIMINATION TOOK PLACE
<input type="checkbox"/> RACE	<input type="checkbox"/> COLOR	<input type="checkbox"/> SEX	<input type="checkbox"/> RELIGION	<input type="checkbox"/> NATIONAL ORIGIN	EARLIEST (ADEAJEPA)
					LATEST (ALL)
<input type="checkbox"/> RETALIATION		<input type="checkbox"/> AGE	<input type="checkbox"/> DISABILITY	<input type="checkbox"/> OTHER Pregnancy Act	<input type="checkbox"/> CONTINUING ACTION
THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s))					
[x] I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone Number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.				State of Virginia City of Richmond to wit:	
I declare under penalty of perjury that the foregoing is true and correct.				I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.	
Date: _____ Charging Party: _____				/x/ _____ SIGNATURE OF COMPLAINANT DATE	
				Sworn to and subscribed to before the undersigned notary public in and for said jurisdiction this ____ day of _____, 200__.	
				My commission expires: / /	
				_____ Notary Public	
EEOC Form 5 modified					

# Key Harassment Cases

*Recent decisions reshaping employer obligations*

## **Muldrow v. City of St. Louis (2024)**

Supreme Court: Only 'some harm' needed for discrimination claim -- eliminates 'significant disadvantage' threshold. Lateral transfers, shift changes now actionable.

## **Ames v. Ohio Dept. of Youth Servs. (2025)**

Supreme Court: No heightened burden for majority-group reverse-discrimination plaintiffs. Same standard for all.

## **Walsh v. HNTB Corp. (1st Cir. 2025)**

First Circuit (binding in NH): A PIP is NOT an adverse employment action under Muldrow. Routine performance management tools remain non-actionable.

## **Burlington Northern v. White (2006)**

Anti-retaliation provision is BROADER than discrimination standard -- covers any action that would dissuade a reasonable worker from filing.

## Question 2

Sarah, a rookie lift operator, is stationed at the summit shack of the "High Roller Express" with Jake, a 16-year lift mechanic. During slow periods, Jake repeatedly makes lewd comments about female guests and shows Sarah sexually explicit TikToks.

Sarah reports everything to her immediate supervisor. He, completely stressed about being short-staffed for MLK Day weekend, sighs and says: *"Look, Jake's an idiot. He does that with everyone and means no harm. Tell him you're just not interested."*

The resort's employee handbook explicitly states: *"All harassment claims must be submitted in writing to HR."* Sarah never submits a written claim to HR. She finishes the season, moves away, and two months later, the resort receives notice that she has filed an EEOC charge

***Does the resort have a strong defense because Sarah failed to follow the employee handbook policy by not submitting her complaint in writing to HR?***

## Question 2

A. Yes. If an employee fails to follow the designated reporting procedure, the company cannot be held liable

0%

B. Yes, but only because she finished the season without bringing it up again

0%

C. No. She reported it to her direct supervisor

0%

D. No, but the manager can be sued personally instead of the resort

0%

# Answer

- Choice C is correct
- Choice D is a close second
- The manager's statement of "he does this" will be Exhibit A in the lawsuit and could be grounds for individual liability because the manager knew of Jake's proclivities
- If the harassment continued for "Sarah", the manager could face liability for aiding and abetting harassment
- The "not interested" advice is a significant lost opportunity

## Question 3

*Does the fact that Sarah waited until two months after the season ended to file her EEOC charge invalidate her claim?*

### Question 3

A. No, but her damages are capped at whatever wages she lost during those two months

0%

B. Yes. A two-month delay shows the behavior was not actually severe or pervasive enough to alter her working conditions

0%

C. No. Employees generally have up to 300 days to file an EEOC charge after the last incident of harassment

0%

D. Yes. Seasonal employees must file claims before their seasonal contract expires

0%

# Answer

- Choice C is correct
- Choice A is a close second
- As a seasonal employee Sarah's damages are limited, unless it can be proven that she would have returned the next year but-for Jake's comments and her manager's inaction
- Grounds for constructive discharge

# Workplace Accommodations

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# ADA & NH State Law

## *Disability accommodation requirements*

- **ADA** 42 U.S.C. § 12101 -- covers employers with 15+ employees; prohibits disability discrimination and requires affirmative conduct of “workplace accommodation”
- **NH RSA 354-A:7** Covers employers with 6+ employees; similar protections, broader in some areas
- **Qualified Individual** Can perform essential functions WITH or WITHOUT reasonable accommodation
- **Essential Functions** Fundamental job duties -- not marginal tasks; determined by employer (must be legitimate)
- **Undue Hardship** Significant difficulty or expense -- the employer's burden to prove, not assumed

**Key takeaway:** Physical jobs do NOT exempt you from the ADA -- you must still engage in the interactive process

# Accommodations - Interactive Process

*No magic words required -- recognize and respond*

- 1 Recognize the Request**  
Employee need not say 'ADA' or "disability" or "accommodation"-- any statement linking a condition to a work limitation triggers the duty. Request triggers "Interactive Process"
- 2 Gather Information**  
Request documentation limited to functional limitations relevant to the specific job
- 3 Identify Options**  
Brainstorm accommodations collaboratively; consider the employee's suggestions; consult JAN
- 4 Select & Implement**  
Choose an effective accommodation; need not be employee's first choice; document
- 5 Follow Up**  
Monitor effectiveness; adjust if needed; maintain ongoing dialogue

**Key takeaway:** If in doubt, START the interactive process -- failure to engage is itself a violation



*The fact that an employee can perform her job without a reasonable accommodation does not mean that she must.*

**Tudor v. Whitehall Central School District (2d Cir. 2025)**

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The Second Circuit held that an employee may qualify for accommodation EVEN IF she can perform essential functions without it. This aligns with the 1st, 5th, 6th, 8th, 9th, 10th, 11th, and D.C. Circuits -- making it effectively the law nationwide. If an employee requests an accommodation, you cannot deny it simply because they are 'getting the job done.'

# Key Accommodation Cases

*2025 decisions expanding employer obligations*

## **Tudor v. Whitehall (2d Cir. 2025)**

Employee may qualify for accommodation EVEN IF she can perform essential functions without it. Now aligned across nearly all circuits.

## **Strife v. Aldine ISD (5th Cir. 2025)**

Delay of SIX MONTHS in responding = failure to accommodate. Accommodations can address pain/comfort, not just essential functions.

## **Mullen v. New Balance (2019)**

Employee stating that she “needed to wash her face” was sufficient to trigger workplace accommodation request under the ADA

## **US Airways v. Barnett (2002)**

Accommodation must be 'reasonable on its face' -- employer proves undue hardship, not employee proves reasonableness.

# Pregnant Workers Fairness Act (PWFA)

*Effective June 27, 2023 | EEOC Final Rule effective June 18, 2024*

## Scope

Employers with 15+ employees must accommodate "known limitations" related to pregnancy, childbirth, or related conditions -- unless undue hardship

## Known Limitation

A physical or mental condition communicated to employer -- can be modest, minor, or episodic (morning sickness, lifting restrictions, need for breaks)

## Key Difference

Employee can be "qualified" even if temporarily unable to perform essential functions -- if temporary, performable "in the near future," and reasonably accommodated

## Cannot Force Leave

Employer cannot require employee to take leave if another reasonable accommodation exists

## Predictable Assessments

Virtually never undue hardship: carrying water, restroom breaks, sit/stand as needed, eating breaks

## Documentation Limits

Employer cannot always demand a doctor's note; self-confirmation often sufficient for obvious conditions

**Key takeaway:** If an employee mentions ANY physical difficulty related to pregnancy -- even informally -- treat it as a PWFA request. Engage the interactive process immediately.

# Religious Accommodations: The New Standard

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

**OLD** Standard (Hardison, 1977): Employer could deny accommodation if it imposed "more than a de minimis cost" -- very easy to meet

**NEW** Standard (Groff, 2023): Employer must show accommodation would result in "substantial increased costs in relation to the conduct of its particular business"

Major Shift: The bar is now much higher for employers to deny religious accommodations

**WARNING:** Be very careful when probing sincerity of religious beliefs

Must Consider ALL Options: Employer cannot just assess one accommodation and deny -- must explore alternatives

Context-Specific: Courts consider nature, size, and operating cost of employer

**DE MINIMIS (Old)** → Any trifling cost sufficed to deny    **SUBSTANTIAL INCREASED COSTS (New)** → Must show real burden to business operations

## Question 4

During the morning lineup, Dave, a veteran ski patroller, limps into the locker room. He tells the Patrol Director: *"My ortho doc told me yesterday that I have severe arthritis in my right knee. It's been throbbing all morning."*

The Patrol Director, wanting to be proactive, asks: *"Dave, do you need me to take you off the steep routes today or put you on a snowmobile assignment instead?"*

Dave shakes his head and replies: *"No, no. I just need to start moving; I'll be fine."* Dave subsequently sues the Resort for not giving him the accommodation he wanted of working the radio during cold days.

***Is this an accommodation request?***

## Question 4

A. No, but only because arthritis is not covered under the ADA

0%

B. No. He vented and explicitly declined an accommodation when one was offered

0%

C. Yes, because the manager clearly recognized the need for an accommodation by offering one

0%

D. Yes, because he formally notified his manager of a diagnosed medical condition

0%

# Answer

- Choice B is correct - Dave is primarily venting about a known condition. He is not requesting an accommodation that is linked to his condition
- Outcome wo
- Manager acted correctly by offering an accommodation regardless
- NOTE, however, that just because Dave can continue to work the steep slopes without an accommodation does not mean he is required to do so

# Retaliation: The #1 Risk for Managers

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# Retaliation Dominates EEOC Filings

Retaliation is the #1 basis for EEOC charges -- every year since 2009

Often easier to prove than the underlying discrimination claim

Burlington Northern: broader standard than discrimination itself

Muldrow (2024): lower 'some harm' threshold applies to underlying claims too

Temporal proximity alone can establish causal connection

56%

*of all EEOC charges filed  
include a retaliation claim.*

Source: EEOC Charge Statistics FY2023-2024

# What Is Retaliation?

*Protected activities + adverse actions = liability*

## Protected Activities

- Filing a complaint (EEOC, OSHA, DOL)
- Reporting harassment or discrimination
- Requesting an ADA accommodation
- Reporting wage/hour violations
- Participating in an investigation
- Refusing to participate in illegal activity
- Filing a workers' compensation claim

## Adverse Actions

- Termination or demotion
- Schedule changes or reduced hours
- Exclusion from meetings or opportunities
- Sudden negative performance reviews
- Increased scrutiny or micromanagement
- Reassignment to undesirable duties
- Threats or intimidation

### **The "But-For" Test (Nassar, 2013):**

Would the employer have taken the same action absent the protected activity? Timing is the #1 factor courts examine.

# NH RSA 275-E: Whistleblower Protection

*Broad protection for employees who report violations*

## **RSA 275-E:2**

Protects employees who report violations of ANY law (state, federal, local) in good faith (based on subjective reasonable belief only)

## **Refusal to Execute**

Protects employees who refuse to execute directives that violate law (RSA 275-E:3)

## **Participation**

Protects employees who participate in investigations, hearings, or court actions

## **Remedies**

Reinstatement, back pay, fringe benefits, seniority rights, injunctive relief, attorneys' fees (RSA 275-E:4)

## **Limitations**

3-year period; must first use employer grievance procedure (RSA 275-E:5)

## **Wage Complaints**

FLSA § 215(a)(3): unlawful to discharge/discriminate for filing wage complaint

**Key takeaway:** Employees reporting ANY legal violation in good faith are protected -- this is broader than you think

# Preventing Retaliation: What Managers Must Know

*Five rules to protect your resort*

**01**

## **Timing Matters Most**

Courts scrutinize proximity between protected activity and adverse action -- days/weeks = strong inference

**02**

## **Document Independently**

Performance issues must be documented BEFORE the protected activity -- not created retroactively

**03**

## **Consistency Is Key**

Treat all employees the same -- cannot selectively enforce rules after a complaint

**04**

## **Don't Isolate or Exclude**

Removing someone from meetings, shifts, or social events after a complaint = retaliation

**05**

## **When in Doubt, Call Counsel**

Before ANY adverse action against someone who engaged in protected activity, consult L&E counsel

## Question 5

A lift operator files a harassment complaint against her supervisor in January. The resort investigates and issues a written warning to the supervisor.

In March, the resort announces seasonal layoffs. The lift operator is included on the layoff list. Her supervisor prepared the list. She had no documented performance issues. Three co-workers with the same role and similar seniority were also dismissed

***Permissible or Impermissible?***

## Question 5

Permissible

0%

Impermissible

0%

# Answer

- Likely permissible because three co-workers were also involved in the layoff
- Still, the proximity between the investigation and RIF is problematic and the supervisor should not have had any involvement in the RIF
- To protect itself, the Resort should have assembled a RIF committee

# Wage and Hour Compliance

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# FLSA & NH Wage Law Overview

## *The dual federal/state framework*

- **FLSA** 29 U.S.C. § 201 -- federal minimum wage (\$7.25/hr), overtime (1.5x after 40 hrs/week) – Exemptions for Executive, Administrative, and Learned Professional Exemptions
- **NH RSA 279** NH Minimum Wage Law -- currently follows federal rate; applies to most employees
- **NH RSA 275** Payment of Wages -- timing, method, deductions, final pay requirements
- **Overtime** Non-exempt employees: time-and-a-half for hours over 40 in a workweek
- **Time** Your obligation to ensure hours are adequately tracked; review time sheets meticulously

**Key takeaway:** NH law mirrors federal minimum wage but adds significant procedural requirements (RSA 275)

# FLSA Seasonal Exemption

*Section 13(a)(3) -- the ski resort overtime exemption*

## Two-Part Test (must meet ONE):

### Test A: 7-Month Test

The establishment does not operate for more than 7 months in any calendar year. Most NH ski resorts (Nov-Apr) qualify.

### Test B: Revenue Test

Average receipts for any 6 months were not more than 33 1/3% of average receipts for the other 6 months.

- If exempt: no overtime obligations or minimum wage applies
- Applies to the ESTABLISHMENT, not individual employees
- Year-round operations (e.g., summer activities) may disqualify
- Overtime exception does not apply if entity provides services on land owned by BLM

# NH Two-Hour Reporting Rule

Weather closure: lift operator reports 7:30 AM, mountain closes 8:15 AM for wind

Snowmaker called in at 2 AM; temps rise, sent home 2:45 AM

Ski school instructor reports; no bookings for the day\*\*

Groomer arrives for shift; machine down, no alternate work

Best practice: maintain a list of alternative tasks to fill 2-hour minimums

\*\* “This section shall also not apply to ski and snowboard instructional employees at ski resorts, *provided that these employees receive other compensation that is at least equal to their rate of pay.*”

# 2 hrs

*minimum pay required when  
an employee reports to work.  
RSA 275:43-a*

NH RSA 275:43-a (Minimum Reporting Pay)

# Standby & On-Call Time

*When must waiting time be compensated?*

## COMPENSABLE: Engaged to Wait

- Must remain on/near premises
- Cannot use time for own purposes
- Ski patrol on standby at base lodge
- Groomer waiting in equipment barn
- Instructor between lessons, must stay in lodge

## NOT COMPENSABLE: Waiting to Engage

- Free to use time for own purposes
- Just must be reachable
- Snowmaker on call at home
- Maintenance tech with phone, free to leave
- Key: degree of restriction on freedom

**Key takeaway:** The test is the DEGREE OF RESTRICTION on freedom, not the label you give it

# Safe Harbor & Recordkeeping

*FLSA Regs. 29 C.F.R. 541.603 good faith defense* 29 C.F.R. § 541.603

## Deductions

Creates tolerance for inadvertent salary deductions without jeopardizing exempt status under “white collar” exemptions

## Clear Policy

Handbook must have clear reporting procedure for employee to raise concerns

## Payment

Must restore payments upon validated grievance

## Recordkeeping Best Practices:

- Maintain accurate time records for ALL non-exempt employees (3-year retention)
- Track actual hours worked, including early arrivals and late departures
- Document meal breaks -- automatic deductions are risky if breaks are interrupted
- Keep seasonal exemption calculations on file
- Preserve records of pay rate notices at hire (RSA 275:43)

# Managing the Seasonal Workforce & AI Deployment

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# Onboarding Best Practices

*Getting it right from Day 1*

01

## **Interview Questions about Job and Skill – Not Abilities**

Under ADA, employers cannot elicit information about medical information until post-offer/ pre-employment

02

## **Written Offer Letter**

Rate, schedule, seasonal/at-will nature, expected end date

03

## **At-Will Acknowledgment**

Signed acknowledgment: employment is at-will, seasonal, no guarantee of rehire

04

## **Policy Acknowledgments**

Signed receipt of handbook, harassment policy, safety rules, substance abuse policy

05

## **NH Wage Notice**

RSA 275:43 requires written notice of pay rate, pay period, and conditions at hire – SIGNED BY EMPLOYEE

**Key takeaway:** Build a seasonal onboarding checklist and DO NOT skip steps under time pressure

# Layoff, Rehire & Documentation

## *End-of-season and return expectations*

### **Set Expectations**

Communicate at HIRE that position is seasonal with expected end date; repeat mid-season

### **NH RSA 282-A**

Seasonal employees generally eligible for UI at season end; affects experience rating

### **Separation Language**

Use 'seasonal layoff' -- never 'terminated' or 'resigned' -- to protect UI eligibility

### **Rehire Risk**

Consistent rehire practice + 'see you next year' statements can create implied contract

### **Documentation**

Document performance issues AS THEY HAPPEN; same rules for all (progressive discipline)

**Key takeaway:** If it is not documented, it did not happen -- juries believe paper over memory



*An employer cannot escape liability under Title VII simply because it delegated its hiring decisions to a third-party algorithm.*

**Mobley v. Workday, Inc. (N.D. Cal. 2024)**

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The court allowed claims against Workday as an 'agent' of employers using its AI screening tools. Also: EEOC v. iTutorGroup (2023) -- \$365,000 settlement for age-based AI screening. Harper v. Sirius XM: algorithmic screening challenged. Eightfold AI: under EEOC investigation. The message is clear: vendor AI = YOUR liability.

## Question 6

During an internal meeting, Sarah mentions a surge in FMLA leave requests. Sarah has an AI Note-Taker enabled that records, transcribes, and summarizes all meetings for the “convenience” of the team. Frustrated by scheduling gaps, Samantha remonstrates: *“Leaves are killing our Q3 numbers. Moving forward, let’s look for ‘highly available’ candidates who don’t have these kinds of outside distractions.”*

Three months later, a 52-year-old applicant with a chronic condition is rejected.

***What’s the most significant problem here?***

## Question 6

A. No problem

0%

B. The Company records meetings

0%

C. The Company is not accommodating applicants

0%

D. The Company is not considering the benefits of intermittent leave

0%

# Answer

- B – The Company is recording its internal meetings!
- **WHY? WHY? WHY?**

# Best Practices for Managers

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# Know Your Handbook & Work with HR

*Managers are the front line -- courts look at what you knew, said, and did*

- 01 Know the Company Handbook**  
Be familiar with accommodation procedures, anti-discrimination policies, complaint reporting channels, and investigation protocols
- 02 Work with HR Early**  
The moment an employee raises a concern touching on discrimination, accommodation, or a complaint -- involve HR immediately. Do not try to resolve legal issues independently
- 03 Never Act Alone**  
Do not make unilateral decisions on accommodation requests, discipline of a complaining employee, or termination with potential legal implications -- always escalate and document
- 04 Understand Your Role**  
You are often the company's first point of contact. What you say and do can create legal liability -- or prevent it

# Documentation & Avoiding Retaliation

*Consistency and timing are everything*

**Document in Real Time:** Keep written records of performance issues, complaints, and accommodation discussions as they happen -- not after a lawsuit is filed

**Be Consistent:** Apply policies uniformly -- if you tolerate tardiness from one employee, you cannot discipline another for it after they file a complaint

**Avoid Even the Appearance of Retaliation:** Any adverse action close in time to a complaint or accommodation request will be scrutinized -- when in doubt, pause and consult counsel

**Maintain Confidentiality:** Medical information, complaint details, and investigation findings must be kept on a need-to-know basis

**Communicate Clearly:** Put expectations in writing -- oral promises and vague assurances create legal risk

**Key takeaway:** Inconsistent documentation is the #1 evidence used by plaintiffs' attorneys

# If it feels like a legal issue, it probably is.

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Accommodation request?	→ HR
Harassment complaint?	→ HR
Discipline after a complaint?	→ HR + Legal
Termination of anyone in a protected class?	→ HR + Legal

**Your best defense is a 30-second phone call BEFORE you act.**

# Resources & Contact Information

*Where to go for help*

**EEOC** [www.eeoc.gov](http://www.eeoc.gov) -- Enforcement guidance, Public Portal, AI-specific guidance (2022-2023)

**NH DOL** [www.nh.gov/labor](http://www.nh.gov/labor) -- State wage/hour complaints, posters, FAQs

**NH Human Rights** NH Commission for Human Rights -- state discrimination complaints

**DOL Wage & Hour** [www.dol.gov/whd](http://www.dol.gov/whd) -- FLSA guidance, opinion letters, seasonal exemption

**JAN** Job Accommodation Network ([askjan.org](http://askjan.org)) -- free accommodation consultation

**Sheehan Phinney Bass & Green -- Labor & Employment Group**

Contact: Brian Bouchard | 603.627.8118 | [bbouchard@sheehan.com](mailto:bbouchard@sheehan.com)