

ADA Audio Conference Series September 19, 2017

This session is scheduled to begin at
2:00pm Eastern Time

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1

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2

Listening to the Session, *continued*



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3

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4

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- If you are connected via a mobile device you may submit questions in the chat area within the App
- Questions may also be emailed to webinars@ada-audio.org



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5

Customize Your View



- Resize the Whiteboard where the Presentation slides are shown to make it smaller or larger by choosing from the drop down menu located above and to the left of the whiteboard. The default is "fit page"



6

Customize Your View continued



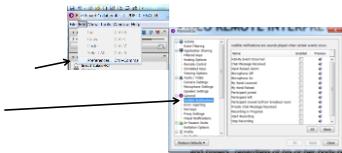
- Resize/Reposition the Chat, Participant and Audio & Video panels by “detaching” and using your mouse to reposition or “stretch/shrink”. Each panel may be detached using the ☰ icon in the upper right corner of each panel.

7

Adjusting Preferences



- **To turn off notifications (audible/visual)**
 - Select “Edit” from the tool bar at the top of your screen
 - From the drop down menu select “Preferences”
 - Scroll down to “General”
 - select “Audible Notifications” Uncheck anything you don’t want to receive and “apply”
 - Select “Visual Notifications” Uncheck anything you don’t want to receive and “apply”
 - For Screen Reader User – Set preferences through the setting options within the Activity Window (Ctrl+Slash opens the activity window)



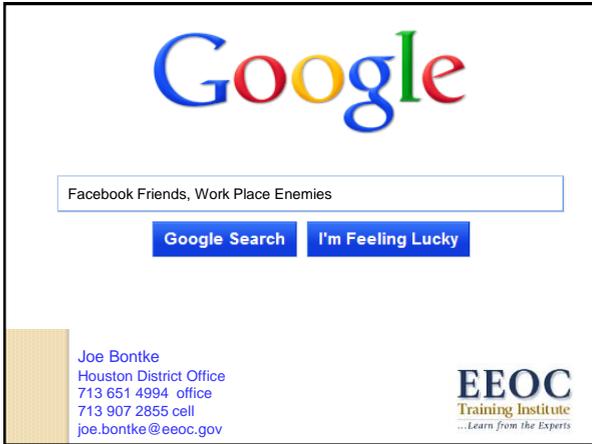
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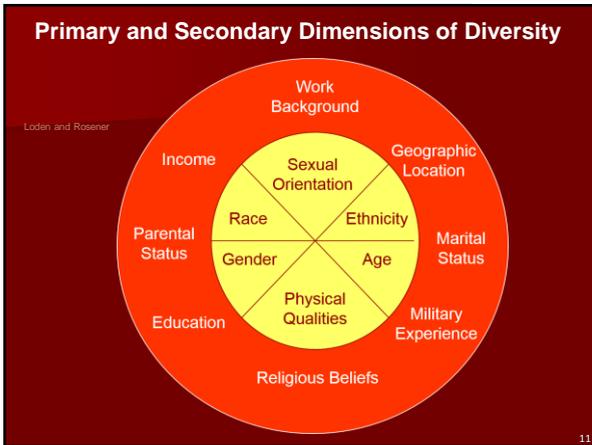
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 1. **In webinar platform:** Send a private chat message to the host by double clicking “Great Lakes ADA” in the participant list. A tab titled “Great Lakes ADA” will appear in the chat panel. Type your comment in the text box and “enter” (Keyboard - F6, Arrow up or down to locate “Great Lakes ADA” and select to send a message); or
 2. **By Email** webinars@ada-audio.org ; or
 3. **Call** 877-232-1990 (V/TTY)

8





Cultural Groups

What are your cultural groups?

“... groups of people who consciously or unconsciously share identifiable values, norms, symbols, and some ways of living that are repeated and transmitted from one generation to another.”

What's in your "backpack"

- It's what we "bring" to work
- It's who I am
- It's my "stuff"

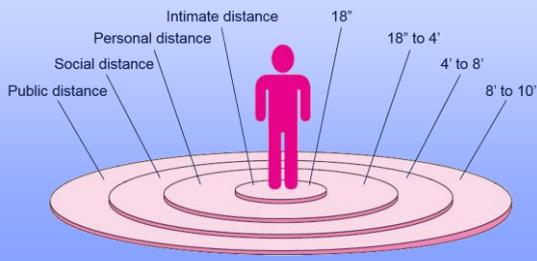


Obligations of Employers

- Make the workplace free of unlawful discrimination, harassment and retaliation
- Promptly and confidentially investigate complaints of discrimination, harassment and retaliation
- Where discrimination, harassment and retaliation may have occurred, take prompt and appropriate remedial action (i.e., discipline commensurate with the offense)

14

Personal Space in the U.S.



Adapted from Personal Space Categories for Those in the United States

12

Protected Federal Categories

Race


National Origin


Color


Genetic


Religion


Disability

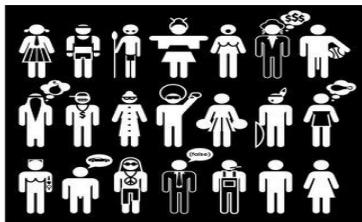

Sex


Age 40+


19

Stereotypes

An oversimplified image or statement applied to a whole group of people, without regard for the individual.



20

Who would you pick for a CEO position?

- Candidate A cannot walk. He cannot stand without braces that run the entire length of his legs; cannot get out of bed, get dressed, reach the bathroom or get to his desk without the assistance of another person and a wheelchair.
- Candidate B has a glandular disorder and back problem. He takes daily medication and often uses painkillers. He has been hospitalized nine times in the last decade, once for 19 days, a couple of times for a week at a time.
- Candidate C has a history of depression.

21



22

Myths, Fears & Stereotypes

Irrational fear
“It’s contagious!”

23

Generational Groups

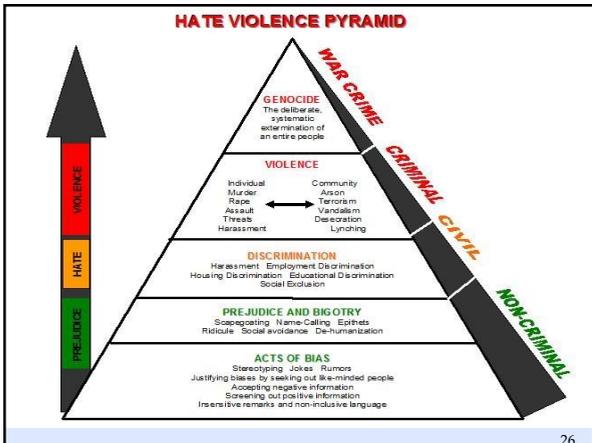
Traditionalists	(prior 1945)
Baby Boomers	(1946-1963)
Generation X	(1964-1980)
Millennial	(1981-2000)
Generation Z	(2000- today)

24

“universal” Dynamics ?

- Define these terms
 - ◆ Appropriate
 - ◆ Casual
 - ◆ **Team player**
 - ◆ Effective communication

25



26

There are about 540,000 words in the English language...

EEOC
Training Institute
...Learn from the Experts

about 5X as many as
during Shakespeare's time.



 **EEOC**
Training Institute
...Leave None the Experts

28

More than 3,000 new books
are published every day



 **EEOC**
Training Institute
...Leave None the Experts

29

Is Social Media A Fad?

<https://www.youtube.com/watch?v=s3rWAd8KQxEhttps://www.youtube.com/watch?v=u06BXgWbGvA>

30

The Digital Age

Welcome to the Virtual World of:

- **"Friends": Facebook & Instagram**
 - Mostly social, but growing business network
- **"Connections": LinkedIn**
 - "Facebook in a suit"
- **"Followers": Twitter**
 - Instant messaging on steroids



31

There are almost **2 billion** registered users of Facebook



32

If **facebook** were a country, it would be the **3rd largest in the world**

(Between India and U.S.)

And this does not include



33

Internet Never Forgets...

- Stacy Snyder
 - 1st Amendment does not cover photos
- Internet records everything and forgets nothing
- Every online photo, Facebook status update, Twitter post and blog entry by and about us can be stored forever



Drunk'in Pirate

34



Employers asking job seekers for Facebook passwords

SEATTLE - When Justin Bassett interviewed for a new job, he expected the usual questions about experience and references. So he was astonished when the interviewer asked for something else: his Facebook username and password.

Bassett, a New York City statistician, had just finished answering a few character questions when the interviewer turned to her computer to search for his Facebook page. But she couldn't see his private profile. She turned back and asked him to hand over his login information.

Bassett refused and withdrew his application, saying he didn't want to work for a company that would seek such personal information. But as the job market steadily improves, other job candidates are confronting the same question from prospective employers, and some of them cannot afford to say no.

Which Annuities Are Best?
Don't Buy Any Annuity Until You Watch This Annuity Video Review 1st

35



Vegas hangover bus gives one Aggie a headache

It's supposed to make you feel better after a night of partying in Las Vegas, but for one Aggie, the Hangover Heaven bus has caused one big headache.

Justin Newman, a Texas A&M graduate student, happened to wander onto the bus April 15, the same time an Associated Press photographer was on the bus for a story on the mobile treatment center.

The bus promotes its service as a way to celebrate and recuperate after a night of partying, and Newman was one of the business' first customers.

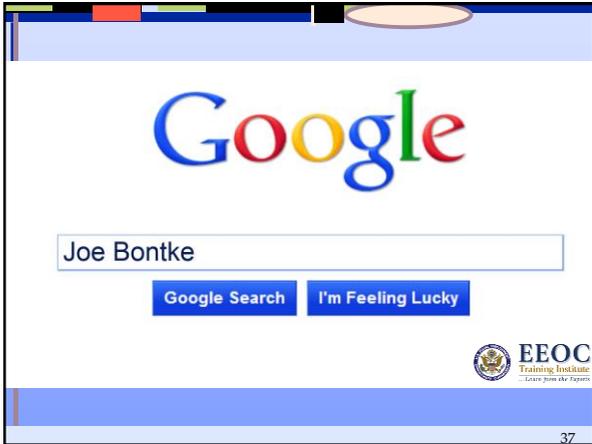
That story ran in Tuesday's paper on Page B7, along with a photo of Newman being prepped for an IV. Did I mention he was wearing an Aggie T-shirt at the time?

The story and photo caption didn't include Newman's name, but seeing his photo in the paper and online in an Aggie shirt was enough to make him worry about how it would be perceived.

He called first thing Tuesday and left a message for me before I got to work asking that the photo be removed from our website because he never gave anyone permission to take his photo.

Because the image was distributed by the Associated Press and widely available on other sites, like here, here and here, I tried to leave it up, but told Newman to share his concerns with AP.

36







IMPORTANCE OF POLICIES

- *"Twoosh"* is a word invented to describe Twitter messages that contain exactly 140 characters.
- Our Twitter policy: *(in 140 characters)*
Be professional, kind, discreet, authentic. Represent us well. Remember that you can't control it once you hit "update."



43

HR Statistics

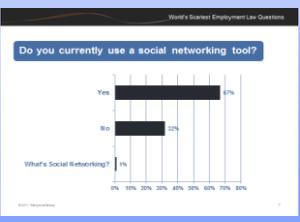
- 75% of U.S. recruiters are required by their companies to do online research of candidates
- 70% of U.S. recruiters report they have rejected candidates because of information found online



44

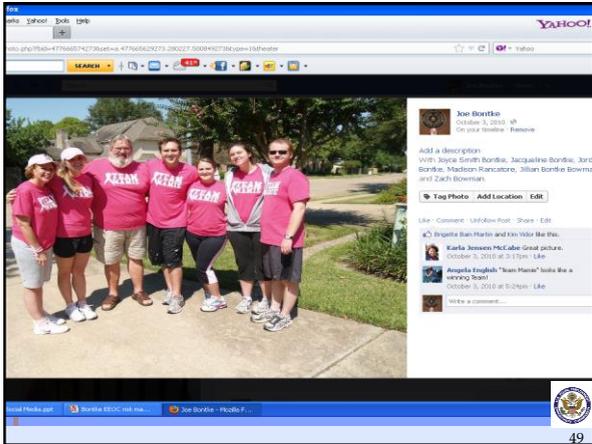
SCREENING TOOL FOR JOB APPLICANTS

- 65 percent of hiring managers "Google" applicants
- 65 percent check social networking sites
- 50 percent of these searches result in job rejections






45



4th Amendment

- Fourth Amendment
(unreasonable searches and seizures)
- Common Law
- Electronic Communications Act of 1986
- Federal Stored Communications Act




EVOLUTION: O'Connor v. Ortega

- U.S. Supreme Court first recognized Fourth Amendment privacy protection in pre-Internet 1987.
- Employee's privacy expectations could be shaped and restricted by the employer's policies and practices.
- HELD: employee had a legitimate expectation of privacy in his desk and file cabinets.



CITY OF ONTARIO V. QUON (2010)



- **ISSUE:** Whether a public employee (a police officer and a SWAT team member) stated a claim for violation of Fourth Amendment rights where the public employer (a police department), reviewed texts sent and received by Quon on his department issued pager.



52

Takeaway

Every employer, whether public or private, must have clearly drafted policies giving employees notice that they have no expectation of privacy in company electronic equipment, whether this be in emails, phone log details or text messages.



53

ELECTRONIC COMMUNICATIONS PRIVACY ACT OF 1986

- Primary federal law addressing privacy concerns is the ECPA.
- Exceptions interpreted to mean that if employer maintains its own email system and assumes “provider status,” employer is allowed to retrieve all stored email messages.
- Two types of communications:
 - (1) Messages in transit (happens in seconds – limited opportunity for interception)
 - (2) Stored messages (most typical work scenario)



54

Federal Stored Communications Act

- “Wiretapping Act”
- Criminal Offense to Intentionally:
 - (1) Access, without authorization, a facility through which an electronic communication service is provided; or
 - (2) Exceed an authorization to access that facility.



55

TAKEAWAY

Do not gain access to employee’s website by either receiving private information through another “friend,” or by going through a person on the employee’s “friends” list.



56



- Definition of social media activities
- Ability of employers to restrict social media activities
 - ◆ On company time
 - ◆ Using company equipment
- Statutory limits on employers
 - ◆ Protected activities using social media
- Lawful social media policies
- Monitoring social media activities
- Disciplinary action for violating social media restrictions

57

Definition of social media activities

- Traditional social media: Facebook, Twitter, Blogs, You Tube, Linked In, Chat Rooms
- Emerging social media: Instagram, Pinterest, Snapchat, Tumblr
- Social media activities include posting, viewing, or utilizing any internet based program that can be shared with others
- Activities can be conducted on any electronic device that accesses the internet



58

Employer restrictions on social media activities

- Blanket prohibition on activities during work time
 - Working time does not include breaks, lunch or before or after the employee's shift
- Can prohibit accessing social media using company issued equipment
 - Computers, ipads, smartphones
 - Grey area: phone owned by employee but monthly fees paid for by employer
- Can limit social media activities during non-work time if conduct would violate company policies



59

HOT TOPIC – "Concerted Actions"

Employee Rights Under the National Labor Relations Act

The National Labor Relations Act (NLRA) guarantees the right of employees to organize and bargain collectively with their employers, and to engage in other protected concerted activity or to refrain from engaging in any of the above activity. Employees covered by the NLRA are protected from certain types of employer and union misconduct. This Notice gives you general information about your rights, and about the obligations of employers and unions under the NLRA. Contact the National Labor Relations Board (NLRB), the Federal agency that investigates and resolves complaints under the NLRA, using the contact information supplied below, if you have any questions about specific rights that may apply in your particular workplace.

Under the NLRA, you have the right to:

- Organize a union to negotiate with your employer concerning your wages, hours, and other terms and conditions of employment.
- Form, join or assist a union.
- Bargain collectively through representatives of employees' own choosing for a contract with your employer setting your wages, benefits, hours, and other working conditions.
- Discuss your wages, benefits and other terms and conditions of employment or union membership with your co-workers.
- Take action with one or more co-workers to improve your working conditions by, among other means, raising work-related complaints directly with your employer or with a government agency, and seeking help from a union.
- Choose not to do any of these activities, including joining or remaining a member of a union.

Under the NLRA, it is illegal for your employer to:

- Prohibit you from talking about or soliciting for a union during non-work time, such as before or after work or during break times; or from distributing union literature during non-work time, in non-work areas, such as parking lots or break rooms.

Under the NLRA, it is illegal for a union or for the union that represents you in bargaining with your employer to:

- Threaten or coerce you in order to gain your support for the union.

60

NLRB VIEW

Monitoring employee's social networking activity has the potential of creating a chilling effect on the employees' communications regarding the terms and conditions of their employment, in violation of the NLRA at 29 U.S.C. §157.



61

KNAUZ BMW (May 24, 2011)

- NLRB alleges unlawful termination of an employee for posting photos and comments on Facebook that were critical of dealership
- Unhappy with quality of food and beverages at a BMW promotion event
- Again non-union: "concerted activity" because it involved a discussion among employees about the terms and conditions of their employment

62

NLRB protections for concerted activities

- National Labor Relations Board (NLRB) has ruled that employees have the right to use social media to engage in concerted activities
- Concerted activities defined as discussing or protesting terms and conditions of employment where:
 - ◆ Two or more employees involved, or
 - ◆ One employee is acting on behalf of others or discusses with others before acting



63

NLRB protections for concerted activities



- Unprotected activities include:
 - Personal gripes that don't impact others
 - Spreading false information that harms the company's business or defames their products/services
 - Threats of violence
 - Unlawful harassment
 - Publishing trade secret information
- NLRB found unlawful restrictions on right to engage in social media activities in two categories:
 - Discipline or discharge of employees
 - Overbroad social media policies

64

NLRB decisions finding unlawful termination



- Termination of employees who posted negative comments about a co-worker who was critical of their job performance on Facebook
- Termination of employees who complained about their supervisor in Facebook posts
- Termination of employees for posting You Tube video about safety concerns
- Termination of employee who posted comments critical of the employer's management in online newspaper comments section and Facebook page

65

NLRB decisions finding social media activities unprotected



- Employee who vented about conflict with his supervisor on Facebook but did not involve other employees
- Employees of youth center who criticized management using multiple expletives in Facebook postings
- Employee who posted pictures of accident at work with denigrating comments
- Employee who complained about co-worker and supervisor on Facebook without any back and forth with other Facebook friends who were employees

66

Best Practice Advise: Create Written Acceptable Use Policies (“AUP”)

By creating and consistently applying policies informing employees that their use of corporate networks, including email access, can be monitored, the employee has waived his/her right to privacy in communications made on the company's network.



67

Permanency of Information

- Viktor Mayer-Schönberger
 - ◆ A society in which everything is recorded will forever tether us to all actions, making it impossible, in practice, to escape them.
 - ◆ Without some form of forgetting, forgiving becomes a difficult undertaking
- No second chances
 - ◆ Worst thing you have done is the first thing people will know about you

68

Ways to Protect Your Image

- Be careful.
 - ◆ Do not post anything on any site that you would not want a potential employer to see.
- Be discreet.
 - ◆ Set your profile to private and block inappropriate comments that others may make on your profile.
- Be prepared.
 - ◆ Regularly check your profile for inappropriate content. Make sure you have an answer ready to explain or counter any “digital dirt” employers may see.

69

When It Becomes Illegal

- When employers base their hiring decision on an applicant's protective status
- When information discovered leads to employer's knowledge of information that would be illegal to use against an applicant in a hiring decision
 - ◆ i.e. discovering an applicant was arrested and using that to disqualify
 - ◆ **Things you cannot ask in an interview are the same things employer cannot research**

70

Questions To Ask When Using Social Media...

- Is it valid?
 - ◆ Does the information predict job performance?
 - ◆ Is the information job-related?
- Is it legal?
 - ◆ No laws have been passed yet
 - ◆ Information posted on the internet is considered "public domain"
 - ◆ Opens organization up to "perception" of using protected information
- Is it worth it?

71

Ways to Protect Yourself...

- Add "off-duty conduct" policy
- Check organization's "cyber reputation"
- Check employees' "cyber reputation"
- Advise caution among employees when posting things on the internet
- social networking policies for their employees while at work, while using employer equipment/facilities, or that will reflect directly on the employer.

72

o What is eDiscovery?

- The legal discovery of electronic documents and data
 - eMail, web pages, word processing files, spreadsheets, meta data, databases, backup tapes, cache memory, hard drives, thumb drives, PDAs, firewall/IDS logs, phone call logs, IM transmissions, etc.
- ⇒ Anything outside of the traditional discovery of writings or business records on paper is “eDiscovery”

An **intrusion detection system** (IDS) is a device (or application) that monitors network and/or system activities for malicious activities or policy violations.

73

Unique Problems With Social Networking Activities

- Blurring of lines between “work” and “personal”
- No “filter” or “edit”
- Reach a vast audience
- Immediate public viewing
- Quicker and less “formal” = users are less guarded and careless

74

Why Facebook Isn't Making You Any 'Friends' at Work

- more than half of workers say social media is negatively affecting workplace productivity, with 57 percent believing that mixing personal and professional connections through social media has the potential to cause problems

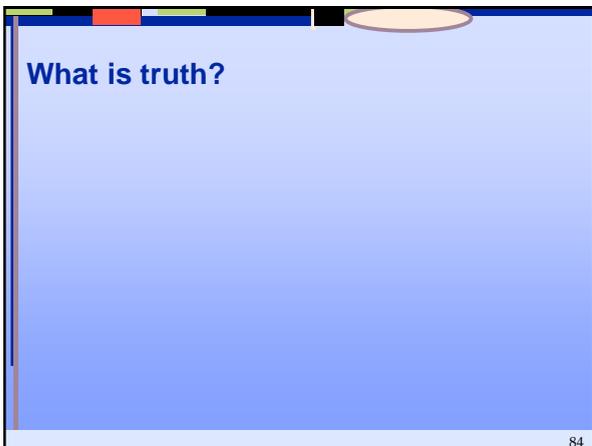
BusinessNewsDaily.com



75







Finished files are the result of years of scientific study combined with the experience of many years of experts.

85

Finished files are the result of years of scientific study combined with the experience of many years of experts.

86

Is your perception Sometimes your truth?

- *Sometimes we have to take another look at what we think we know*



87

Somewhere in America...

- **Every hour**
someone commits a hate crime.
- **Every day**
at least eight blacks, three whites, three gays,
three Jews and one Latino become hate crime
victims.
- **Every week**
a cross is burned.

88

Thirty percent of workers say they've heard colleagues use racial or ethnic slurs in the last 12 months. The same number report hearing sexist comments.



89

What can one person do?



90

Adolph Hitler
IVAN THE TERRIBLE
Adolph Eichmann
Pol Pot
Mao Tse-tung
Idi Amin
Joseph Stalin
Genghis Khan

91

Buddha, Rosa Parks, César Chavez
Dalai Lama
Jesus Christ, *Moses*, Susan B. Anthony
Abraham Lincoln, Martin Luther King
Joan Ganz Cooney, **Mohandas Gandhi**
Amelia Earhart, Muhammad,
Dorothy Day, Bono

A teacher you remember

92



93

Any Questions, Comments, Concerns or Complaints

Joe Bontke
 EEOC Houston
 Outreach Manager and Ombuds
 713 651 4994 office
 713 907 2855 cell
joe.bontke@eoc.gov

or

EEOC Training Institute
www.eetraining.eoc.gov



94

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Questions?

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95

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Thank you for participating in today's
 ADA-Audio Conference Session

The next scheduled session is:

"Parsley or Cilantro? Making Sure Your ADA Self Evaluation and Transition Plan are Seasoned with the Right Ingredients"

October 17, 2017

Register at: www.ada-audio.org or call 877-232-1990 V/TTY

96
