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**OPERATING WITH INTEGRITY**

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COMMITMENT COMPLIANCE CULTURE

# Preventing Discrimination, Harassment and Retaliation

Presented by Eduardo F. "Jim" Cuaderes



- Ground Rules
- Unlawful Discrimination, Harassment and Retaliation
- BBNC's EEO Policies
  - Conduct that is prohibited
  - How to prevent prohibited conduct
  - Reporting prohibited conduct
  - Discipline for engaging in and/or not reporting prohibited conduct
- Applying BBNC's Policies to Hypothetical Scenarios

- **No Confessions or Discussing Specific Events**
  - **No Arguing the Law or the Policy**
  - **No Legal Advice**
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# What Is Unlawful Discrimination?

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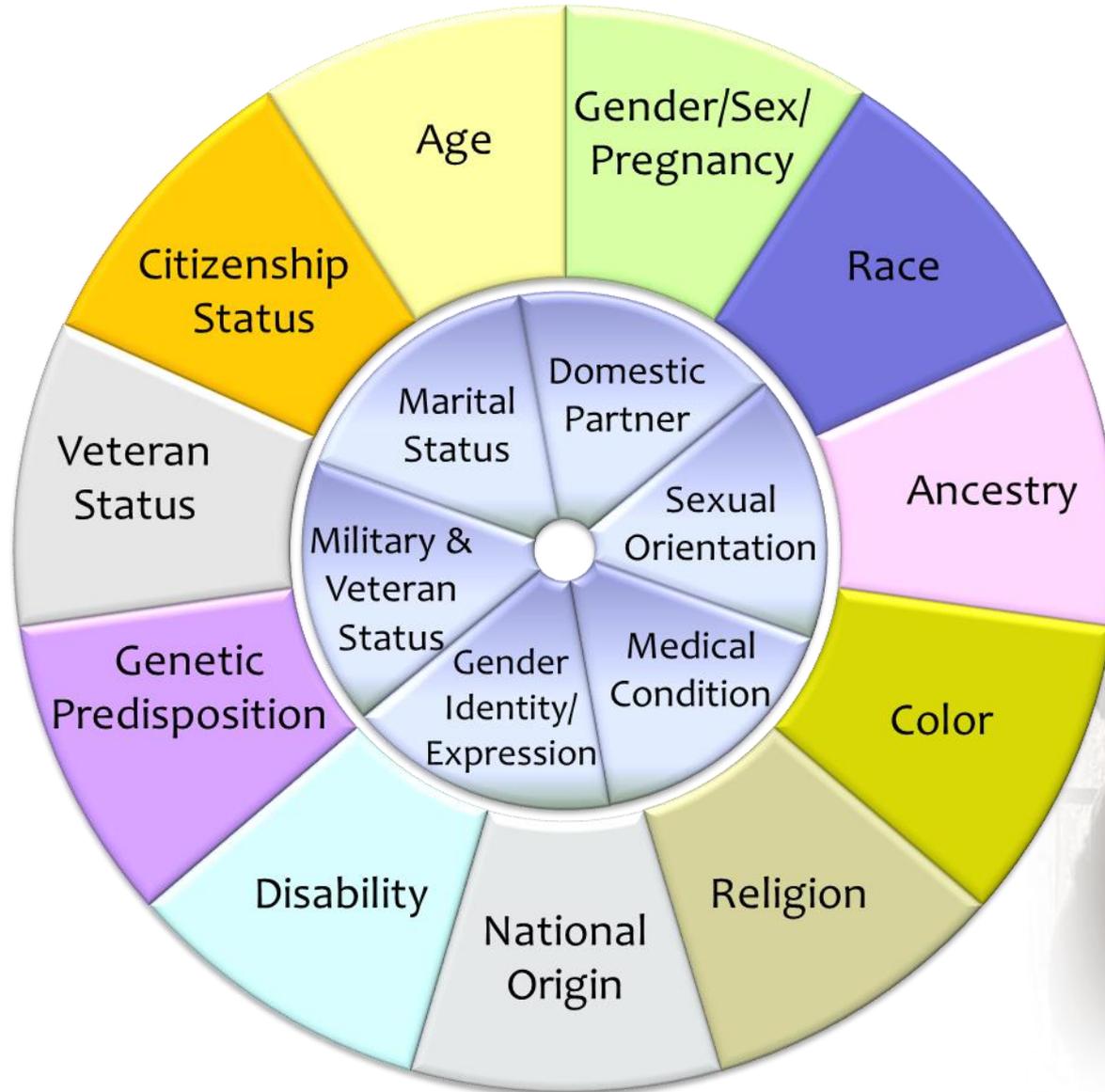
**When employment decisions or other actions are (1) based on a “protected category,” and; (2) these actions interfere with an employee(s) equal employment opportunities.**

# What Is A Protected Category?

Federal



State



- Employee Handbook Section 3.2:
  - It is the Policy of BBNC, as an Equal Opportunity Employer, to select the best-qualified applicants for employment. BBNC will hire, promote, compensate, and provide terms of employment for its employees without regard to an individual's race, color, religion, marital status, pregnancy, parenthood, national origin, ancestry, age, sex, disability, sexual preference, veteran's status, or any other legally protected status in accordance with applicable local, state, and federal laws.
  - (same basic policy is in the Code of Ethics and Business Conduct)
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- Employee Handbook Section 7.4:
    - Discrimination or harassment is strictly forbidden and will not be tolerated in the BBNC workplace.
  - Employee Handbook Section 7.5:
    - BBNC strictly prohibits any acts of reprisal or retaliation against any employee who in good faith reports an allegation of harassment or other discrimination or who in good faith participates in any investigation of such report.
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## Where Will Denying Equal Employment Opportunities Get Employers Into Trouble?

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- Hiring
- Assignments
- Training
- Promotions, demotions
- Invitations to meetings
- Discipline
- Terminations, layoffs (RIFs)



## Single Plaintiff and Class Action Cases

- \$540,000: single plaintiff sex harassment August 2016 in Massachusetts
- \$1,200,000: single plaintiff retaliation case March 2016 in New York
- \$8,000,000: class action settlement against a big box retailer in a sex discrimination case
- \$1,300,000: class action settlement against the New York City Fire Department in a failure to promote and hire case.



- Unwelcome conduct based on someone's membership in a protected category that unreasonably:
  - Interferes with an employee's job performance, or
  - Creates an intimidating, hostile, or offensive work environment



# Unwelcome Conduct Directed At Protected Category

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Verbal



Physical



Nonverbal /  
Visual

Unwelcome Conduct  
Directed At Protected Category

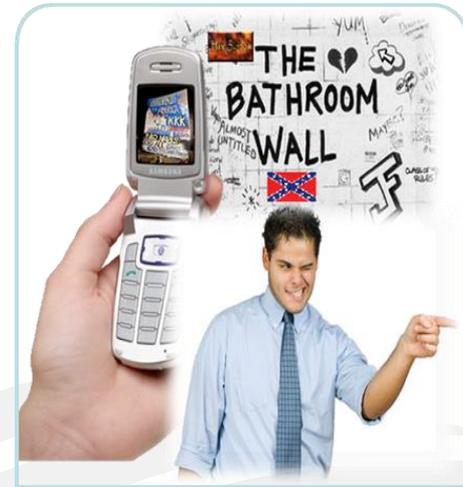
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- Verbal
  - Jokes, derogatory comments, slurs, or epithets about protected category stereotypes (sex, ethnicity, religion, etc.)
  - Asking for a date after rejections; unwanted sexual advances
  - Intrusive questions about dating, race, or religion, etc.
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## Unwelcome Conduct Directed At Protected Category

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- Nonverbal
  - Posters or e-mails directed at a protected category
  - Winking, throwing kisses, “leering”
  - Looking a person up and down
  - Threatening gestures or intimidation based on a protected category (race, color, ethnicity, etc.)



- Physical
  - Shoulder massaging
  - Hugging
  - Sexual activity
  - Blocking exits



## Unwelcome Conduct Directed At Protected Category Where Can It Occur?

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- In the workplace
- At work-related events
- Wherever employee conduct occurs that can interfere with an employee's job performance



## It Doesn't Matter That:

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- The person did not target the complainant
- The person intended to be funny
- Others thought it was funny
- The person complaining seemed to go along at the time
- The people complaining were “only” bystanders



- A Higher standard
  - *There is a wide range of what could be considered inappropriate behavior under BBNC's policy even though such behavior may not be considered unlawful.*



- 1. What characteristics are protected under the policy?
  - BBNC is committed to treating employees fairly and without regard to race, color, religion, marital status, pregnancy, parenthood, national origin, ancestry, age, sex, disability, sexual preference, veteran's status, or any other legally protected status in accordance with local, state, and federal laws.



- 2. To whom does the policy apply?
    - BBNC *prohibits and will not tolerate discrimination or harassment by supervisors, co-workers, non-employees such as contractors, vendors, or suppliers.*
    - *Policy applies to managers, supervisors, and employees: (1) any time they are on BBNC premises; (2) any time they are performing work-related activities whether on BBNC premises or off-premises; and (3) during any event sponsored by BBNC.*
    - *Policy may also apply any time an employee's off-premises behavior affects the workplace.*
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3. To whom can you report complaints?

- An employee who believes that he or she (or any other employee) is being unlawfully harassed should consider making his or her feelings known to the offending employee.
  - Report to a supervisor
  - Report to the Vice President of Human Resources.
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- 4. What does BBNC say about retaliation?
  - BBNC strictly prohibits any acts of reprisal or retaliation



5. What are the consequences for violating the policy?

- Any person found to engaged in harassing or discriminating behavior is subject to appropriate disciplinary action, up to and including termination.
  - \* A violation of BBNC's policy could lead to a first occurrence termination whether or not it violates the law.
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## Polling the Audience

- Yes**      **“Okay” behavior means behavior that does not violate the Anti-Harassment Policy.**
- No**      **“Not Okay” behavior violates the policy.**
- May be**      **“Risky” behavior means behavior that is in a gray area. You might be unsure whether it violates the policy, but it could be perceived as a problem at BBNC. A person should exercise caution in engaging in “risky” behaviors.**

Patsy, a supervisor, tells  
John to take  
fewer breaks.



Charley asks his co-worker Sam out on a date to the movies. Sam responds, “No, thank you; I already have plans.”



While at a BBNC-sponsored dinner, a vendor continually tells sexual jokes and then invites a few BBNC employees out to a strip club at the supplier's expense. Everybody laughs at the sexual jokes and no one complains about the supplier's behavior.



Joe routinely says to Joan, “Hey Pocahontas! If you don’t go to church and read the Bible, you’ll burn in hell!”



Emily just filed a complaint of harassment against Steve. Jessica, a co-worker, then tells Emily, “Don’t bother hanging around us anymore. You’re just causing trouble for the rest of us women who work here.”

Sam says to Pam, “You look nice today.”



Javier was recently hired, and, since his first day on the job, he has been constantly teased by coworkers about the “funny” way he talks



# 1. Your child test



## When is Conduct Over the Line? Three Tests

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**1. Your child test**

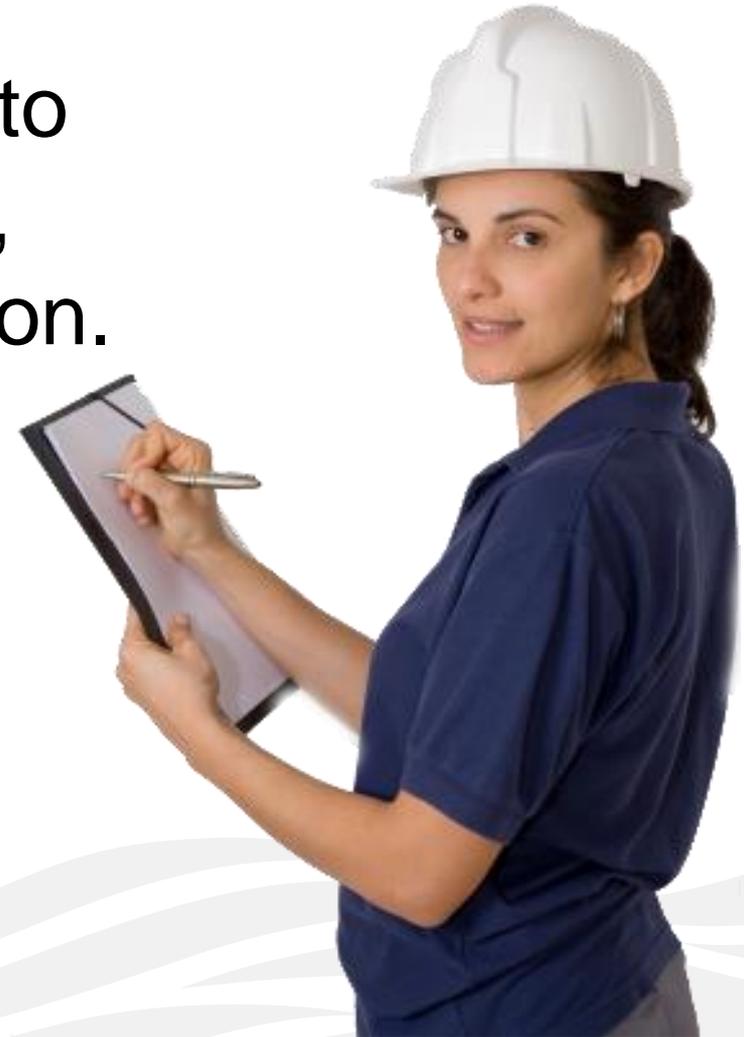
**2. Your parent test**



1. Your child test
2. Your parent test
3. Newspaper test



Everyone must work to  
prevent discrimination,  
harassment, and retaliation.



THANK YOU



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