

Intersectionality at Work: Navigating Multiple Forms of Discrimination

This call is being recorded.

Gretchen Grappone:

All right, so we're going to get started. Okay. So welcome everyone. My name is Gretchen Grappone. I'm a training associate here at the Center for Psychiatric Rehabilitation at Boston University. I'll be the moderator for today's Ask Me Anything About Employment web. This question and answer session is titled Intersectionality at Work: Strategies for Navigating Multiple Forms of Discrimination. We know black, indigenous, and people of color who experienced mental illness or other mental health challenges frequently face multiple forms of injustice, inequality, and discrimination at work. Our guest speakers today, two experienced employment lawyers, who are generously donating their time, will spend the next hour answering your questions about these topics. Please post your questions in the chat box and we will answer as many as possible. Today's event is funded by the National Institute on Disability, Independent Living and Rehabilitation Research. The content of the webinar does not represent the views or policies of the funding agency and you should not assume endorsement by the federal government. This webinar is not intended to constitute legal advice. Instead, all content discussed during the webinar is for general information purposes. This webinar will be recorded, transcribed and posted as an archive on our center's website. And before we introduce our guests, I'd like to note that we acknowledge that the territory on which Boston University stands is that the Wampanoag and the Massachusetts [people]. Our classrooms and BU's campus are places to honor and respect the history and continued efforts of the native and indigenous community, which make up Eastern Massachusetts and the surrounding region. I'd like to thank Sigal Vax, Melody Riefer, and Zack Cutler for their tech support today, and Lucille Traina, who is our ASL interpreter. Just a zoom related reminder at the top right corner of your zoom screen if you click on gallery view, you can see all participants or you click on speaker view if you want to focus on our speakers today, and we ask that you keep yourselves on mute please. And to introduce our first guest speaker today, Jennifer Bills, she's been litigating and advocating on behalf of employees and individuals for 16 years. She joined the Noble Law Employment Law Firm Office in 2017. She's a frequent teacher, lecturer, and skilled investigator who concentrates on workplace investigations and trainings for managers and employees for the best employment practices and compliance issues. She previously worked for nine years as a senior attorney at Disability Rights in North Carolina. Ms. Bills teaches disability law as an adjunct professor of law at UNC Chapel Hill and she frequently lectures and teaches courses on a range of employment-like topics. Our other guest expert

today is Christine Rodriguez. Ms. Rodriguez is her law firm's founder. She's an experienced negotiator, litigator and trial attorney. She represents employees in all types of workplace negotiations and legal disputes, and also advises employers on how to implement the appropriate and lawful employment practices. She assists clients with matters before they pursue claims who run administrative agency or in court and represents clients seeking alternative dispute resolution. When necessary, she helps her clients with administrative filings in state agencies, with the EEOC, and in state and federal courts in New York and North Carolina. We're going to ask that everybody mute yourself please. Okay. So, um, we're going to get started with the questions and we're going to...

Sigal Vax:

Gretchen you are muted.

Gretchen:

I'm sorry. Uh, so I was, I was muted there for a second. I apologize. Um, you heard my introduction. Okay. Okay. So Christine, the first question goes to you. What legal protections from discrimination does a person have in the workplace?

Christine Rodriguez:

Well, the simple answer to that question, unfortunately, is that in most scenarios in most States, employees actually don't have a lot of legal protections or a lot of legal rights upfront. Most of the States in the United States have what's called employment at will. So an employer can hire and fire a person for any reason or no reason at all. Employers basically have the freedom to choose who works in their workplaces. However, there are some protections that cover people in certain protected classes and from unlawful conduct usually when it comes to discriminatory practices. The protected classes of people are, you know, people who have certain..., if you're being discriminated against because of your gender, your race, your age, and some states actually have protections for transgender individuals, sexual orientation, protections against discrimination because of family makeup and pregnancy and other things. There are also protections with respect to wage, wage disparity, differences in pay for the same type of work. But if you don't fall into a category that is specifically defined in the law, you don't have any specific protection. The only time that this actually is different is if you have a job that's covered by a specific contract that outlines in detail, the terms and conditions of your employment and guarantees you, you know, certain pay for a certain time with certain rights or you

are an individual that's protected by a union. Certain municipal agencies and federal government positions are protected by unions; some hospitals too, that's generally where that comes up. And usually there is something called a collective bargaining agreement, which is just like a contract that covers the members of the union and gives them certain rights. But other than that, you actually don't have specific rights. So, it's a difficult situation sometimes for employees and you have to really sort of be aware of, you know, the specific situation that you're in.

Jennifer Bills:

Just to add that there are different laws. Christina's right, that the rights differ based on different state laws we see apply to situations of discrimination. Um, there's an adage people say, employers can fire you for a good reason, a bad reason, or no reason at all; just not a discriminatory one. That generally look to federal laws, which is a Civil Rights Act, 1964, Title 7, and the Americans with Disabilities Act, the Age Discrimination and Employment Act. Each of those have slightly different rights, but in general, the conduct that is outlawed would be, you hear the term hostile work environment a lot and many people work in environments that could be considered hostile under the dictionary definition of hostile, but hostile work environment is a legal term of art that really means the hostility or the adverse action, the negative action by the employer is based on one of the protected characteristics or categories that Christine mentioned. So, a lot of people may work in workplaces that have unpleasant experiences, but they don't necessarily rise to the level of legal discrimination unless they fit these sort of legal terms. We'll try to explain them more as we go on with some specific examples, but, the protections do apply also in all aspects of employment, so they can apply if you're applying for work or while you're working, or in the process of losing a job in some cases, even afterwards if there's retaliation that happens beyond the job.

Gretchen:

Great. Thanks Jen. So, to kind of continue with the theme of the environment of the workplace, Jen, I'd like to ask you what strategies should employers use to provide a culture of respect in the workplace.

Jennifer:

Thank you. I have a lot to say about this, but we have a short amount of time, but I believe we have a lot of human resources professionals with us, hopefully some employers, hopefully lots of employees who stand too ready to advocate for themselves in the workplace. In general, I think we advocate for employers to have very clear policies outlying what constitutes discrimination, harassment, retaliation, and employers

really can set the stage for creating a workplace where complaints are welcomed. In some of the trainings we do we talk about bystanders, we talk about the importance of speaking up and not having the burden fall on just an employee, but having everyone in the workplace reminded by those in human resources, those who empower the owners of the company or organization, that we want people to speak up. We want to address things before they get out of hand, we want to prevent discrimination and so of course that entails treating everybody with respect. It also entails having very clear policies. It entails having training for both employees and managers on what to do when complaints arise. There are a lot of reasons people don't complain. Most of us live and rely on our income to survive and support families and so if you fear that you might be retaliated, you might put up with bad treatment rather than trying to speak up. So, if employers have very clear anti-retaliation policies, that's a really important step. Another thing is to acknowledge what's going on in the world, potential difficulties, pressures that people might be under when there are things going on in the news when Black Lives Matter, the movement for Black lives is in the news, it's important for employers to acknowledge that could be impacting people's lives in the workplace. Disability Awareness Month happens every October, National Coming Out day also happens in October and if employers are proactive in acknowledging diversity in the workplace and making affirmative efforts to include people and formative efforts at equity that goes a long way to employees then feeling comfortable about speaking out when problems start before they get, again, too far.

Gretchen:

That's great.

Christine:

Gretchen, I'd just like to add to that one of the things that I see in my practice in particular, and Jen probably sees this too, is employer responsiveness to complaints, how quickly they deal with a complaint and what they do when they receive a complaint. I've seen a lot of cases come in where an employer will sort of take their time about responding to a discrimination complaint, for whatever reason, it might be a large corporation and things have to go through various levels of red tape in order to get to the right individual. There may be procedures and policies in place, but that actually sort of deters people from complaining and also creates a very difficult situation in which not everything that someone complains about may necessarily be discriminatory initially, but how an employer deals with that complaint could turn something that's not necessarily discrimination, but maybe a misunderstanding or misperception, into something that could be, or could appear to be retaliatory or discriminatory if it's not dealt with properly. So, you know, taking too long in an investigation, ignoring a complaint, not addressing a

complaint right away, putting an employee on leave without pay while addressing a complaint, not speaking to a supervisor, not taking efforts to deal with the individuals that are the subject of the complaint, even making an employee feel uncomfortable or leaving an employee to kind of figure out their situation and tell them to just work it out. All of those things can turn, even a nondiscriminatory situation into a really, sort of uncomfortable and retaliatory situation that then creates problems later. Employers can do a service to their business and to their employees by addressing things promptly.

Gretchen:

Great. We have a few questions that are sort of similar, and I'm gonna close this one to you, Christine, and kind of put a few questions together. So the question is what can employment specialists do to help individuals advocate for themselves, either at work or if they need to address maybe some concerning situation, or even what questions should individuals with mental illness be asking during the job interview process?

Christine:

Well, I think one of the first things that's really critical is that you have to know what your specific needs are in terms of what job you're seeking. So, if you are someone who has mental health concerns that might impact doing certain tasks in a job, maybe you need more time to do something, or maybe you need a specific quiet environment, or you need to communicate in a certain way, so say video conferences are very uncomfortable for you and you prefer text or just voice, knowing those things up front and addressing those things up front goes a long way to, you know, making an environment and making, making sure that you are in an environment that you can perform well. It also signals to the employer that, you know, and lets them know that you'll be able to do a job, which is really sort of the important aspect of it, and that they need to make that happen so that you can do a job. That might, you know, require them, giving you an accommodation of some sort and depending on what it is, a lot of times, that's really a simple thing. It's a simple fix. So, I think first knowing what issues you may have concerns about and any difficulties that you may have, knowing what might be required of you in a job, and the employment specialist, obviously when they're assisting individuals finding employment, and really knowing the specifics of a job and whether or not that matches and doesn't interfere with a person's needs is very, very important. Also encouraging applicants and prospective employees to really communicate what their needs are, which is not an easy ask. Most people don't want to disclose certain things about themselves upfront and sometimes it's not necessary, but sometimes disclosing in a very particular way upfront really puts you in a better playing field because once the employer is on notice, they do have to address that. Sometimes there are accommodations that they can't make, there aren't that many, but there are. So that information is upfront. I think that's really

important. Also I think with employment specialists sort of, teaching the people that they're serving, how to advocate for themselves, knowing the policies, procedures for a particular employer, once they get there, knowing the system, knowing what they can avail themselves up if they're having a problem, knowing that they can speak up and not being afraid to do that, if at all possible, or if they're in an uncomfortable situation what different avenues there are. Every employer has different policies and procedures, and really getting the employer involved early on is definitely helpful.

Gretchen:

Great.

Jennifer:

I would just like to echo what Christine said, with a couple of pointers that the Americans with Disabilities Act, as Christine mentioned, does only come into play if a person discloses a disability or needs an accommodation really and an employer won't be held liable for discrimination if they didn't have any way of knowing that a disability existed. So there's pros and cons, right? So there's not necessarily a need to disclose, but if there is a need for accommodations, they can be available at all stages. An important resource to note is the Job Accommodation Network, which is a free resource run by West Virginia University and it's available for employers and employees, and it's specific to psychiatric disabilities. It makes suggestions for accommodations for employees with mental illness. So it's very specific, you can program in the type of job, the position, the field, and, um, there's...

Lucille Traina (ASL interpreter):

Excuse me, the interpreter. Can you repeat that resource again?

Jennifer:

Yes. The Job Accommodation Network and it's available online, and you can search a database for suggested accommodations based on different diagnoses and different industries, but you can also interact with individuals via chat or phone to talk about specific situations.

Gretchen:

Great. And we'll try to get that link posted for the JAN in a second. And, and speaking of resources, Melody Riefer one of our employees here helping us out today, just posted three websites that include the EEOC: Equal Employment Opportunity Commission, the U.S. Department of Labor Office of Disability Employment Policy, and then the National

Disability Rights Network website, which will allow people to search for their disability rights center in their state. And so, I don't know if Jen, you could talk a little bit about, since you used to work at the Disability Rights Center, why there is one in each state?

Jennifer:

Sure. I could talk for hours about this too, but I'll try to be brief. It's an interesting Genesis. So, back when Geraldo Rivera was actually an investigative reporter, and doing really important work, he helped publicize the disaster that was Willowbrook State Hospital in New York, where people with intellectual and mental health disabilities were being warehoused and severely neglected and abused. And so he brought that to the public's attention, among other doctors who became whistleblowers and other advocates, self advocates, people with disabilities, families and others, and sort of got national attention to the issue. And Congress appropriated funds so that each state could monitor institutions where people with disabilities were, for abuse and neglect. And so that's the Genesis of what's called now the Protection and Advocacy Network. And now each state and territory in the U.S. have what's called a Protection and Advocacy System, and some of those are part of state government and many of those are independent private nonprofits who received the federal grant money. And over the years, there've been several additional grants, appropriated some there's a specific land grant for people with mental illness. There's a specific grant for people with intellectual and developmental disabilities, there are specific grants focused on employment or education. So, these are current targets. So, where you're living may impact the organization, and your state may or may not currently have employment as a focus, they may be focused on housing or education or Medicaid services, but, these are an important place to start. They're very important resources. They're lawyers, they're free if they can serve you, they do so at no cost, as long as you are a person with a disability needing help that meets their targets.

Gretchen:

Great. Thanks so much. We have a question that was asked from I don't know, but the question is, and I'll pose this first to you Christine. The statement is: Isn't HR really about managing the complaints to avoid financial risks for the employer or the company?

Christine:

I did see that, that that question did catch my eye. The short answer is yes; HR is not your friend. They really are there to manage risk for the company. But what happens when you go to HR is that you do trigger legal protection that you otherwise would not have. Most of the laws that, you know, outlaw discriminatory conduct, or give you protection against

discriminatory conduct, both on the federal level and on the state level, require you to put the employer on notice basically. What I like to say to my clients is make the company in HR do their job and try to fix it first. And then if they don't fix it, or they do a poor job of fixing it, and then they treat you worse, right, then you know you have other legal protections and other legal resources. But if you are experiencing discrimination at work or you need an accommodation, and you've never really addressed it with your employer, and you never brought that up, so you've never given them an opportunity to see if that can be done. Or, you know, something is happening, like you're denied a promotion and you know, that it's specifically because you're a woman at home with kids, and your employer wants somebody who doesn't have the burden of having children for this specific position, whatever it is, right; if that happens and you never go to HR and you never make a complaint and you want to raise a claim later, the first thing that an employer is going to say is, "well, we didn't know, and so how could we have helped, how could we have fixed this?" "You know, maybe your supervisor did that, but we didn't know we would have fixed it." So, that's where HR and really engaging in those discussions, and being interactive, and we use that term-- that's a term that we use, particularly with disability cases and the interactive process, you know, letting your employer know that you need something and letting them engage with you back and forth to figure out what it is that works best that the company can provide and that allows you to do your job. That communication is key in all aspects of any kind of situation where you find that you're being treated unfairly, you feel that you're being discriminated against, or you feel that you're being retaliated against. And without that communication, right, you cannot really avail yourself of other legal protections that you might have until you do something first and you advocate for yourself.

Gretchen:

Great. And Christine, I'm going to follow up because I think you've sort of answered this, but I want to just clarify for the person who asks. Someone asked, what options does a person have to reapply for work at a company where they were previously, let go for behavior due to their mental illness, but they had never disclosed they had a mental illness. Are there options for that person to reapply and disclose upon application?

Christine:

Well, I think the answer to that, is that it depends on how they were let go. You know, whether or not there was some sort of agreement that they don't reapply, and what the conduct was, right, and whether or not it could even be accommodated. Each one of these situations is very fact specific, and that's one of the challenges that we as employment lawyers have, we really have to get the specific facts of each situation and every problem that we encounter. There's no, you know, fix all for everything like, every mental health

question or every mental illness question. So there is the opportunity to reapply if it can be addressed, there is the opportunity to go back and say to the employer, you know, this situation presented itself because I have this issue, could you accommodate it? It would still be up to the employer. Right, because it was not initially disclosed, the employer might be within their rights to say, well, we couldn't address it then and we really can't address it now. But I think that in a situation like that, you'd really have to get into the specifics of what was the behavior, whether or not the employer thought it was a risk to any of their employees or to clients or production, you know, and what would be required to mitigate that behavior. So, I think that's sort of one of those questions, the bags, you know, more of a one-on-one, we really need more information to answer that.

Gretchen:

Yeah. So maybe a good consult with the state specific Disability Rights Center?

Christine:

Well the state's Disability Rights Center, and if there continues to be an issue with the employer, if it's a situation that can be addressed, maybe counsel to assist and guide if they needed that.

Jennifer:

We certainly can assist people at times in trying to help negotiate a reasonable accommodation on the job and sometimes we're successful in doing that. So sometimes a lawyer can help.

Gretchen:

Great. So next question, what happens when a supervisor says to the employee that they are acting as if they have a mental problem, however, the employee is afraid to disclose that they actually do have mental health challenges. Jen, I'll throw that one to you.

Jennifer:

So my first advice is document document document, because that sounds like there's discriminatory intent. So employers are not allowed to base any employment decision on a person's disability. They can base employment decisions on behavior and actions, but not on a disability. So if they use that language, they're clearly focusing on disability and not focusing on action. My counsel to employers is focusing on the action, focus on the action, focus on the action, right? So if you hear that kind of a statement, that's potentially trouble, and that's an opportunity as Christine mentioned to go directly to human resources right away and report the comment. So that's two parts. So, one is the

problematic comment that was made by the supervisor. The second piece is, well, maybe you do have a mental health disability, and maybe you need an accommodation, or maybe you don't, but first of all, you want to address this language right away and complain about it in writing. So don't just verbally go to HR, but complain about it and document it in writing. And then secondly, this is a situation again, where the situation's quite specific and individual. And so if you believe that there are some changes to the job, accommodations can be physical, they can be an ergonomic desk. Accommodations could be modifying policies to have a later start time if you have some grogginess from medicine in the morning. Accommodations could be potentially anything, but they have to help you perform the essential functions of your job. So if there is something that would help you perform the essential functions of your job, that could be a reasonable accommodation. And, and so that's going to be something you're going to have to think about. Is there something that could help me in this particular situation do better or perform the functions I need to.

Gretchen:

Great. So Jen, a follow up, because we just got this question and the question is, what if you do not have an HR department?

Jennifer:

Okay, that's a great question. So you can always start with your supervisor unless the supervisor is the problem, and then it's not always helpful to complain. Well, you can try being direct and, and approaching it with the problem directly, respectfully and professionally. But if there's not an HR department, I would look to, and Christine, you can jump in, an owner of a company, a CEO, anybody in management-- go to that person and ask if you have a complaint about a condition going on in the workplace. Where do I go? Because some companies might not have HR staff, they might have a third party vendor. If their policy handbooks are up to date, you might look through there and find somewhere to report complaints, or there might be a policy directing you to report them directly to the office manager or the owner. But if there's no direction, you just try going up the management chain.

Christine:

Yeah. I mean, those situations are really sometimes difficult situations. And I think my first recommendation would be a recommendation that Jen just made overall, and in these cases in particular, is to document every single thing that happens, because at a certain point you may need to go outside for help just to kind of have someone advocate for you and be that buffer, particularly if you're facing a situation where say the supervisor or the owner of the company has a problem, and there is nowhere else to go, and then you have

to go outside and get an advocate from an organization or an attorney to speak on your behalf and you want to have that documentation. You do want to put that supervisor, even if they're not going to help you, on notice that there is an issue, so that they're notified of that.

Gretchen:

Christine, we just got a follow up question, kind of to where you're talking about. The question is what kind of documentation is needed?

Christine:

Well, it depends on where you work. I mean, sometimes there are formal processes to make complaints, sometimes there's a, you know, an ethics hotline, sometimes there is a form that you fill out. Most of the time it's, you know, you've had a conversation with your boss or your supervisor and something came up and you want to, you know, document back to them what your understanding of the conversation was. So you write that email, you print out and keep a copy for yourself or, you know, forward a copy to yourself at home so that it's no longer just on your company's computer and just kind of keep a file of everything. As long as there's something that, you know, can be traced back. In this age of internet and email and Slack messages and things like that, sometimes it's harder to keep copies of say text chats. But anything that you can have a copy of, a printed copy of, a local copy of where you kind of keep on your own is a good thing. You can also keep notes in a diary for timeline purposes, but when I say documenting, I do mean documenting in terms of putting the employer on notice of what your understanding of the situation is and what you want to have done about if you need assistance of some sort

Gretchen:

Great, Jen, I'll ask you this. The question is: how do you make a strong case that covert discrimination is occurring?

Jennifer:

I mean, it's a great question. You know, we do race discrimination, sex discrimination cases all the time, disability, and it's not every case where you see epithets, you see, you know, discriminatory words or language or name calling. We don't see that as much, although we still do see that. And so I assume the per the question, I would call that overt discrimination, but, covert is perhaps not as blatant, perhaps more insidious, just as damaging of course, and so a lot of times it's the circumstances that are going to show that discrimination is occurring. And so by that, I mean, if you believe you're being paid

differently than coworkers of a different race, that no one's using any names or name calling, but that's going to be shown. The documentation there would be your pay stub and their pay stub, or, you know, salary information, wage information, and you might not have access to all of that. It is legal to discuss the terms and conditions of your employment with your coworkers, even though employers often discourage that, you can ask what your coworkers are making and they might volunteer that information. But, if you have a union or other job protections, that information if you're a public employee, should be available. But, if the discrimination is not a direct or overt, it still can be very damaging and it still can create a hostile work environment. So I still would recommend documenting whatever you are able to in terms of different treatment or negative treatment.

Christine:

Yeah, a lot of times we see patterns, and that's a lot of what we use as approval. So for example, you're in a company and all of a sudden, you know, you've been doing really well, your reviews start to go down the drain, they really start to get bad for no reason at all. And there's no been no difference in your performance or anything, but your supervisor starts to give you bad reviews and criticize you, and then you learn that this has happened (you're a black woman), and this has happened to, you know, the previous three black women in that department and the exact same thing has happened, or you've seen it happen. So that becomes a pattern that you can point to, to say, and it's not happening to any of your white coworkers. Or with an age discrimination case. You know, maybe there's a reduction in force and so the company is saying, well, this is legal, we have to reduce our workforce because we're not making enough money, but for some reason, all of the employees they've chosen for this reduction in force are above the age of 50, and they're bringing in other staff, that's, you know, 30 something. Those types of patterns are what we use to try and prove that there's discrimination, even though it's not as obvious, we don't always get the proverbial noose hanging from the locker. And thank goodness we don't get that, but by the same token, it makes our job that much harder because we have to really prove the sort of underlying secret things, and that the implicit bias that sometimes fuels discriminatory practices.

Gretchen:

Okay. Jen, I'm going to ask you another question submitted, so I want to see what you think about this. So, for individuals who not only have a mental health condition, but also have additional disabilities such as autism or Down syndrome, how can an employment specialist ensure their mental health needs are met and not overshadowed by their other protected identities?

Jennifer:

So again, this would depend on individual situations and what the needs are, and as Christine mentioned earlier, hopefully an employer or individuals supporting that person, ideally can identify supports that are needed on the job. So, if a person has dual diagnoses with mental health and intellectual or developmental concerns, we can start all the way back to pre employment. Vocational rehabilitation may be involved, there may be job placement, there may be a job coach, there would be peer support available. So I would say that educating employers on what the needs are, is the most important thing. And if a person feels like an employer is focusing on one aspect and neglecting another, then it's on the employee or their supporters to kind of bring that up and request the specific accommodation that's needed, or request fair treatment if there's no accommodation needed. And it's perceived perception on the part of the employer, the Americans with Disabilities Act also protects against that. So a lot of people are in the workforce with disabilities, and a lot of times disabilities don't necessarily impact your job and there's no accommodation needed, you just want to be given a chance to have the same opportunities as people, without disabilities in the workplace. So if the employer is focusing on, or pointing out, or asking if you need accommodations and you don't, that could be a form of discrimination in and of itself. So, the Americans with Disabilities Act protects against discrimination, if it's based on perception of a disability, even where there's no need. Again, there are other resources like JAN for individuals with intellectual and developmental disabilities. There's a lot of guidance in some sort of universal measures that can be taken in communication, communicating slowly, communicating format, and writing. There are a lot of things that people can do to ensure that the workplace is inclusive and accessible, and so those things can be done on the front end.

Gretchen:

Great. Christine, I'll throw this question to you. We just got a very basic question: What are the steps to consult a lawyer, if you think you might need one?

Christine:

Pick up the phone and give us a call! Well, obviously, you know, choosing a lawyer is not an easy thing and it's a very personal decision. So what you can do in your particular state is you can go to the State Bar Association for recommendations for specific employment issues, you can either go to the National Employment Lawyers Association or the chapters in your state. I practice in both New York and North Carolina and then I know that NELA, the National Employment Lawyers Association has chapters in both and they will refer you to a lawyer that may also deal with your specific area. Most employment lawyers are generalists to some degree, but there are some who specialize in certain areas. So some may specialize in, you know, an education law and employment, or in federal agency discrimination issues, or like union practices and collective

bargaining. There are some people, some employment lawyers, who just do labor practice and don't do the full spectrum of everything. Ask specific questions of your lawyer that, you know, if you find a lawyer and you want to consult with them, schedule a consultation to see if they'll talk to you initially just to kind of feel them out, find out how long they've been practicing, if they practice in the place where you need help. Sometimes I get calls from other states and I really can't help someone and I have to refer them out. Also find out what their experience is with your particular type of issue. You know, if they've encountered it, if they've dealt with it before, if they've had experience in resolving things before they go to court, very specific questions in that sense. But also a comfort level, you know, not every lawyer is for everyone. And I say that to every prospective client; you need to trust and feel comfortable with me, for me to represent you and that's really, really important because if you don't then it's fine. I don't take it personally. There may be someone else that you work with better and you can go to that person. But you do need to, what I would say, is for employment practice issues and discrimination issues, look for an employment lawyer. Don't look for a generalist lawyer or contract lawyer, you know, look for someone who really does practice in that area and that's specifically what they do, it's not just one part of what they do, and they do 10 other things. Because you want someone who actually has been doing it a long time and really knows the ins and outs of the different laws in the jurisdictions, federal versus state law and local laws, whether or not you have more or less protection, depending on where you live and those things, and all the timelines too, for raising claims, which can be daunting for lawyers even to keep track of.

Jennifer:

On that note, I just want to mention if you're looking for an attorney, I agree with everything Christine said, those are great resources to look to. You also don't have to have an attorney. You can file a charge of discrimination at the Equal Employment Opportunity Commission on your own and you need to be mindful that in most States you do only have 180 days to do so. In some States it's longer, but there are very strict timelines as Christine mentioned. So, it will be useful to make sure you don't miss those timelines while you're trying to locate an attorney.

Gretchen:

Great point, Jen, another question I'm gonna throw this one to you. How do you address the hostility that accompanies addressing equity issues in the workplace; racist practices or policies, for example, in some cases I've seen this labeled as contributing to a negative culture. I think this person is asking, for those of us in the workplace who try to point out when there's a policy that perpetuates structural racism, for example, sometimes we get pushback. So I think it's asking: how do you address that within the company, if you're

forgetting hostility, for just trying to make the workplace a more equitable place for everyone?

Jennifer:

That's a great question and I see that in my practice frequently. So, once in a while, employees will take advantage of something like Christine pointed out, like an ethics hotline that might be anonymous in order to raise concerns if you feel like there's a very high potential for retaliation, but even better, employees can get together and raise concerns on behalf of more than one employee. There's always the power and strength. So, if you can find an ally within the company that seems receptive and that is in a position of a supervisor or management that's one way to approach it. But like with anything else, if you document what you're doing and you're raising your concerns in writing, if you then do experience pushback, that's another potential claim of discrimination. So there might be structurally racist policies in pay or treatment or other conditions of work, and then a person complains about it and experiences additional negative treatment or retaliation, there might be two separate claims of discrimination. So, it's important to do it in writing and to do it collectively if possible, and to find a sympathetic ear.

Gretchen:

Great. Christine, did you have anything to add to that answer?

Christine:

No. You know, the only thing that I would add is, when in the workplace, when we're dealing with these issues, and I think this is to a degree based on the climate that we have right now, overall in the country, it's sort of new, although it's been going on for a long time. It's new in the sense that it's in our face right now. I think that both employees and employers need to just be sensitive about watching their language, being tolerant, being sympathetic and sensitive. I think that goes on from both sides because these are difficult topics for both employees and employers; they can be very personal, language can get heated, discussions can get heated, and it can cause hostility in the workplace and an employer may say, yes, you're raising these issues and we're trying to address these issues, but you're being very hostile about it and so we can't have that kind of hostility. So, I think we all have to be mindful about checking our emotions, sort of gaging in these discussions, which isn't an easy ask, you know, a lot of these discussions are personal, they impact people personally, they impact people's livelihoods, they impact people's families, you know, tolerance and sensitivity and compassion are things that I think we all need to be mindful of during these discussions. And sometimes, unfortunately not

every employer is going to get it, not every employee is going to deal with it in the right way, and we just have to kind of get through it.

Gretchen:

Well we have about five minutes left, so I just wanted to take an opportunity. I'll ask Jen first, Jen, is there anything that you feel like is really important for participants to know about these topics that we haven't covered yet?

Jennifer:

I think that I'm really pleased that we have participants from lots of different points in the process and there's employees and there's some HR staff members. And so, I would reiterate that there are a lot of proactive things we can all do to make workplaces more livable and workable. And so, awareness about different disabilities, awareness about racism going on, and sexism going on in the world, and homophobia are important to be educated about. That's going to go a long way. And from the employer side, I counsel small employers as well as representing employees. I mostly represent employees, but occasionally I have an opportunity to counsel small employers, and I always say welcome any complaints, even when they're small, because it's going to be a light to let shine on something that could develop into a bigger problem. So most employers do want to know if there are problems so they can be addressed. So I always encourage everyone to stay open, as Christine said, especially employers and HR staff members: be open to complaints and take them seriously and investigate them promptly and neutrally. If you need an outside party to do it, that's always helpful and try to continue to keep open communication.

Gretchen:

Great. Christine, I'll throw that same question to you. Anything else that we haven't covered that's really important for us to be said before we wrap it up today?

Christine:

Sure, I think it's important for me to just let everyone know that I should bring this full circle because I know I started out by saying that employees don't have any rights. That's sort of a general statement, right? In most States there is at will employment, but, the reality is that yes, you don't have a right to be employed. But you do have a right to be treated fairly and you do have a right not to be discriminated against. And depending on where you live and what state you're in, in addition to federal law, every state has its own set of laws and some local jurisdictions have their own set of laws. I mentioned that I practice in New York and North Carolina. They are very, very different States when it

comes to employment law. In New York, particularly New York City has some robust laws that cover some areas where, you know, say the Americans with Disabilities Act may not cover a certain situation, but in New York, the New York City Human Rights Law might actually cover certain situations and that goes for a variety of different things. I think I say that to say that every, every situation is specific and different and your situation is your own unique situation, and don't ever lose hope that there isn't a solution. Maybe you're not being discriminated against, maybe it's a misunderstanding, but there's always a way to navigate every situation, and you do have the right to be treated fairly and respectfully, and as a professional, no matter what. And so there's always an answer of some sort.

Gretchen:

That's great. That's a lovely note to end on. I'd like to thank both Jennifer Bills and Christine Rodriguez for answering the questions today and thank everyone for attending this webinar today. For the next few days, you're going to be receiving a survey about this Q and A session and hopefully you'll be willing to give us feedback about the event. I'm really curious about if this was helpful. I really enjoyed it, so that's my feedback. So thank you all so much and we look forward to having you join us again.

Christine:

Thank you for having us. Thank you very much, everyone. Bye.