


# Compliance 101: Nondiscrimination Laws


November 28, 2023

© 2023 Husch Blackwell LLP


1




## Presenters



**Kristine Zayko**  
Husch Blackwell  
312.526.1615  
Kristine.zayko@huschblackwell.com



**Ellen Armentrout**  
Husch Blackwell  
512-703-5730  
Ellen.armentrout@huschblackwell.com



**Mackenzie Conway**  
Husch Blackwell  
816.983.8242  
Mackenzie.conway@huschblackwell.com

© 2023 Husch Blackwell LLP

2

ELL

## Agenda

- Title VI and Title VII
- Title IX
- PWFA
- ADA and Section 504
- Age Discrimination Act & ADEA
- Best Practices and Takeaways



© 2023 Husch Blackwell LLP

ELL

© 2023 Husch Blackwell LLP

ELL

## Title VI

- 

© 2023 Husch Blackwell LLP

TEL



ELL

## Requirements

- Must publicly post notices of Title VII requirements in “prominent and accessible places where notices to employees, applicants and members are customarily maintained”

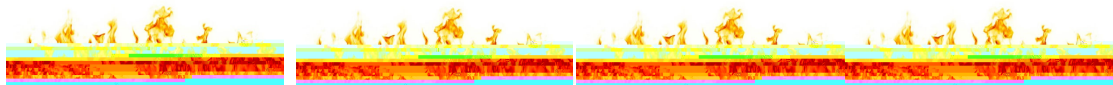
© 2023 Husch Blackwell LLP

11

ELL

## Hot Topics

- Dear Colleague Letter from OCR (November 7, 2023)
  - Reminds schools of their legal obligation under Title VI to address discrimination and harassment and provide all students a school environment free from discrimination based on race, color, or national origin
- Numerous recent OCR resolution agreements addressing harassment and discrimination based on ancestry.
- EEOC guidance (September 29, 2023)
  - Incorporating *Bostock v. Clayton County* U.S. Supreme Court decision, which expanded protected characteristic of “sex” to include sexual orientation and gender identity under Title VII.



12

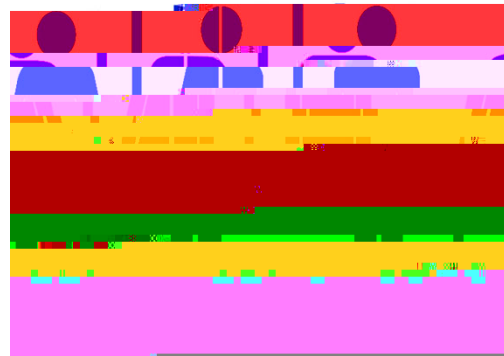
---

# Title IX and PWFA

© 2023 Husch Blackwell LLP

ELL

- “No person in the United States shall, on the basis of sex, be excluded from



© 2023 Husch Blackwell LLP

ELL

## What does Title IX Cover?

- Recruitment, admissions, counseling
- Financial Assistance
- Gender equity in athletics
- Sex-based Harassment, including sexual assault and other forms of sexual violence
- Pregnancy and parenting
- Treatment of LGBTQI+ students
- Discipline
- Single-sex education
- Employment

© 2023 Husch Blackwell LLP

15

ELL

## Common Areas of Challenge

- Remembering that Title IX covers more than just sexual harassment (gender equity in athletics, pregnancy and parenting)
- Organizational structure
- Following proper procedures – and routing reports appropriately
- Training personnel
- Conflicts of interest/bias

© 2023 Husch Blackwell LLP

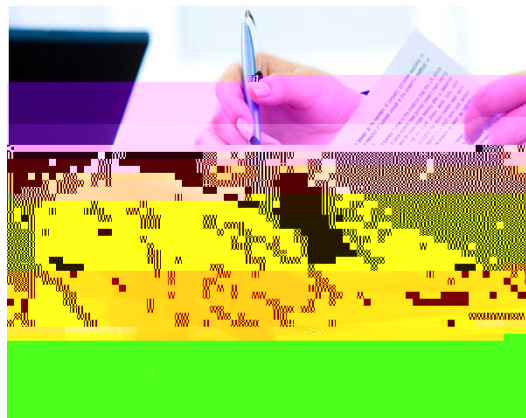
16



ELL

## Compliance Requirements

- Designate a Title IX Coordinator
- Adopt and follow a grievance process to address Title IX Sexual Harassment
- Provide required training
- Document and keep appropriate records



© 2023 Husch Blackwell LLP

17

ELL

## What sexual harassment does Title IX apply to?

- Title IX applies to sexual harassment in the “education program or activity” of a federal funding recipient
- Title IX defines “education program or activity” to include the “operations” of educational institutions
- Title IX does not apply to private conduct occurring in private location that is not part of education program/activity



© 2023 Husch Blackwell LLP

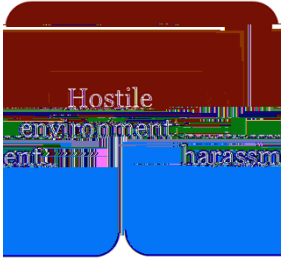
18

THE

What is sexual harassment?

Conduct on the basis of sex that is:

Quid pro quo  
harassment



Sexual  
assault



© 2023 Husch Blackwell LLP

---

# Scenario

© 2023 Husch Blackwell LLP



## Pregnant Workers Fairness Act

- Pregnancy Protections in Title IX and the ADA
- Relatively new law (effective June 27, 2023) that applies only to accommodations
- Designed to address limitations under Title VII, ADA, and FMLA
- Does not replace federal or state laws that are more protective
- Proposed regulations issued August 11, 2023 (comments were due October 10, 2023)

© 2023 Husch Blackwell LLP

23



## Who is protected?

- Employees and applicants of “covered employers” who have known limitations related to pregnancy, childbirth, or related medical conditions
- “Covered employers” include public and private employers with at least 15 employees (among others)

© 2023 Husch Blackwell LLP

24

ELL

## Areas addressed

- Coverage is the same as Title VII and the ADA
- Reasonable accommodations are available (without undue hardship)
  - To help apply for a job
  - To perform a job
  - To enjoy equal benefits and privileges of employment
  - To temporarily suspend the performance of an essential function of a position (if certain conditions are met)
- Note: PWFA allows workers with uncomplicated pregnancies to seek accommodations, recognizing that even uncomplicated pregnancies may create limitations for workers

© 2023 Husch Blackwell LLP

25

ELL

## Examples of accommodations

Ability to:

- Sit or drink water
- Receive closer parking
- Have flexible hours
- Receive appropriately sized uniforms and safety apparel
- Have additional break times
- Leave or time off to recover
- Be excused from strenuous and/or unsafe activities

© 2023 Husch Blackwell LLP

26



ELL

© 2023 Husch Blackwell LLP



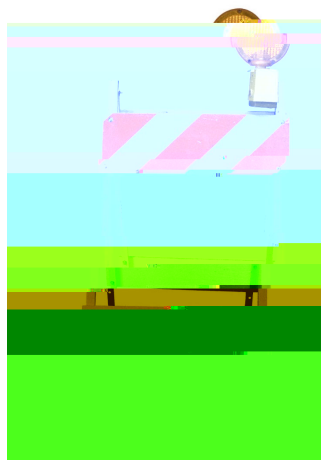




ELL

## Common Areas of Challenge

- Academic and work accommodations
- Housing accommodations
- Animals on campus
- Threatening & self-harming Students
- Facility accessibility
- Digital accessibility



© 2023 Husch Blackwell LLP

35

ELL

## Compliance Requirements: ADA Title II

- ***Designation of responsible employee.***
  - Designate at least one employee to coordinate its compliance efforts
  - Publish the coordinator's name, office address, and telephone number
- ***Complaint procedure.***
  - Adopt and publish grievance procedures providing for prompt and equitable resolution of disability discrimination/harassment complaints.

© 2023 Husch Blackwell LLP

36

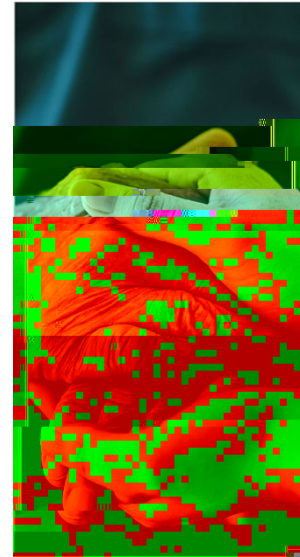
TEL

© 2023 Husch Blackwell LLP

ELL

## Age Discrimination Act

- The Age Discrimination Act of 1975 prohibits discrimination based on age in programs or activities that receive federal financial assistance.
- The law does not cover employment discrimination (ADEA).



© 2023 Husch Blackwell LLP

ELL

## Compliance Obligations

- **Designation of responsible employee.**
  - Designate at least one employee to coordinate compliance efforts.

© 2023 Husch Blackwell LLP

ELL

## Age Discrimination in Employment Act

It shall be unlawful for an employer-

- to fail or refuse to hire or to discharge any individual or other discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;
- to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual or employment opportunities or otherwise adversely affect his status as an employee because of such individual's age . . .

29 U.S.C. 623(a)

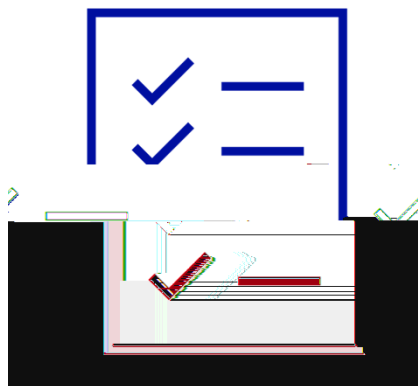
© 2023 Husch Blackwell LLP

41

ELL

## Application

- Applies to employers with 20 or more employees, including state and local governments
- Protects individuals 40 years of age or older
- Protections include
  - Apprenticeship programs
  - Job notices and advertisements (BFOQ exception)
  - Pre-Employment Inquiries (asking age only allowed if for a lawful purpose)
  - Benefits (although reductions based on age are allowed in certain circumstances)



© 2023 Husch Blackwell LLP

42

ELL

## Waiver of ADEA rights

- An employer may ask an employee to waive their rights/claims under the ADEA if the waiver:
  - Is in writing
  - Specifically references ADEA rights or claims
  - Does not waive rights or claims that may arrive in the future
  - Is in exchange for valuable consideration
  - Advises the individual in writing to consult an attorney before signing the waiver
  - Provides at least 21 days to consider the agreement and at least seven days to revoke it after signing

© 2023 Husch Blackwell LLP

43

---

## Practice Pointers

© 2023 Husch Blackwell LLP

44



ELL

## Respond to Incidents of Discrimination

- Respond and take corrective action when on notice of discrimination or harassment.
- Conduct prompt, thorough, and impartial inquiries designed to reliably determine what occurred.
- Assure responses are reasonable, timely, and effective.

© 2023 Husch Blackwell LLP

47

ELL

## Process

- Implement policies and procedures in accordance with appropriate level of due process before reaching a finding and/or imposing discipline.
- Assure decision makers and others involved are trained on the process and their role.
- Be vigilant for signs of bias in the process or by decision-makers.



© 2023 Husch Blackwell LLP

48





## Remediation

- If discrimination or harassment is found, take reasonable, timely, and effective corrective action.
- Act to stop the harassment, eliminate the hostile environment, and remedy the effects of the harassment on the individual who was harassed.
- Take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate.

© 2023 Husch Blackwell LLP



© 2023 Husch Blackwell LLP