

Minding your P's & Q'sor Rather Your Employee Handbooks": Best Practices and Key Provisions to Address the Changing Employment Environment

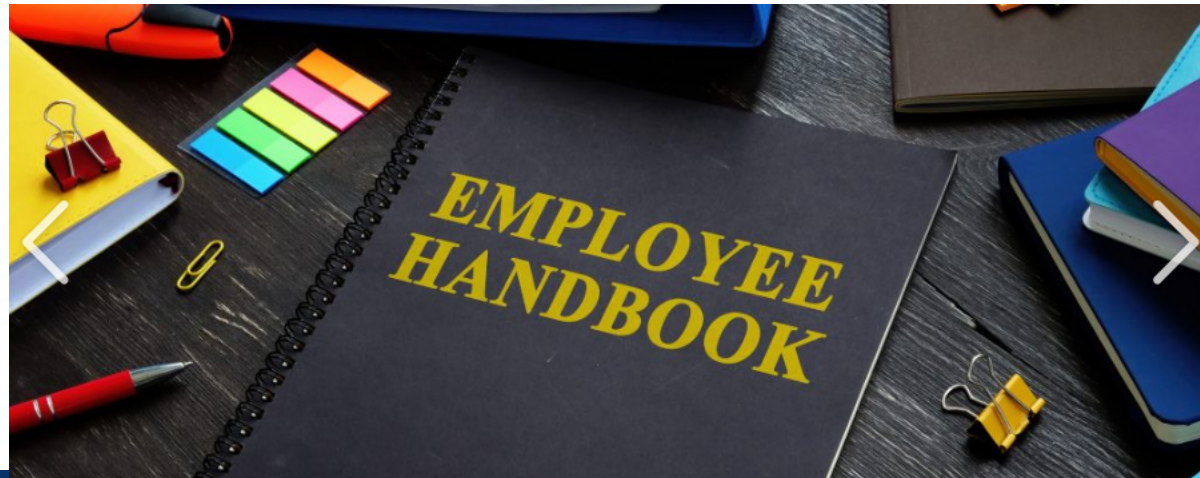
Robin G. Sagstetter, Esq. October 10, 2023



GORDON REES SCULLY MANSUKHANI
YOUR 50 STATE LAW FIRM™

WHAT WE WILL COVER:

- Effective employee handbooks- guidance on recent employment law changes and tips for drafting an effective employee handbook
- Why have them, who should have them, who should draft them and what to include within them
- What- Detailed subjects including recent laws for each- Policies that will be covered include wages, classification, overtime, discrimination, harassment, retaliation, accommodations, work performance, disciplinary action, leave, and workplace safety



ARE EMPLOYEE HANDBOOKS REQUIRED?

No, but....

Powerful tools in providing protection against lawsuits
Ramifications of not having an employee handbook



WHY HAVE EMPLOYEE HANDBOOKS?

- Clear expectations between employees and employers in a Code of Conduct
- Define the employer's culture- Have it applicable to your particular business
- Policies that inform employees about the law and instruct employees to comply with the law
- Help employees understand and comply with your rules and expectations
- Help prevent problems that may result in complaints/litigation
- Limit employers' liability should a complaint or litigation arise



WHICH EMPLOYERS SHOULD HAVE AN EMPLOYEE HANDBOOK?

- Employers with over 50+ employees?
- Employers with over 5 employees?
- All employers?



How to Ensure You Have an Effective Employee Handbook

- Make sure you have it drafted by a licensed attorney
- Make sure you have it updated on a regular basis by a licensed attorney
- Make sure you use an attorney who practices Employment Law on a regular basis
- Make sure you use an attorney licensed in your state
- Make sure your Employee Handbook complies with the law



IMPORTANCE OF HAVING A LICENSED ATTORNEY DRAFT YOUR EMPLOYEE HANDBOOK

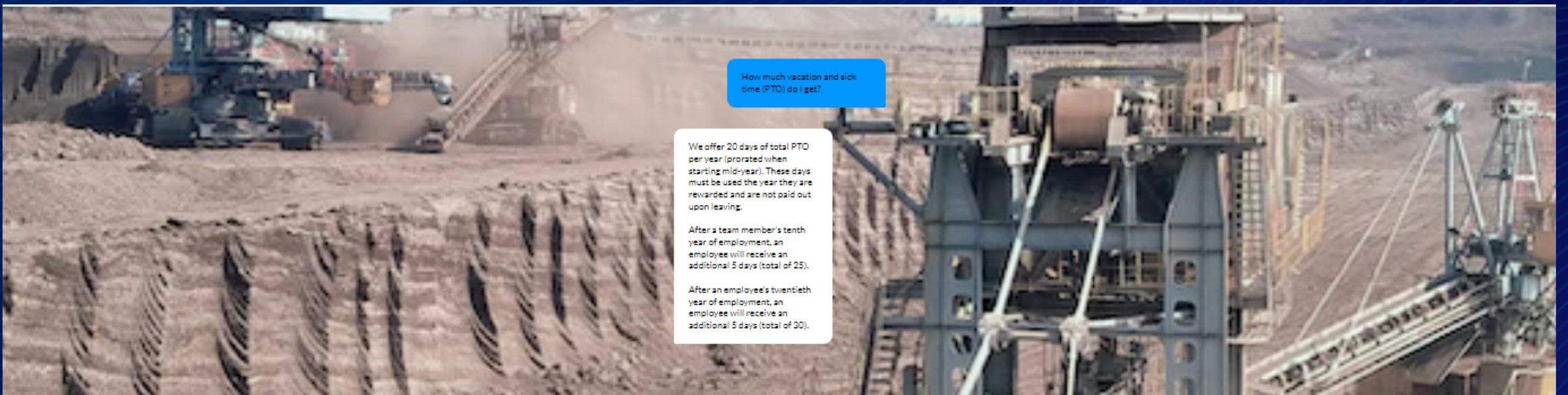
- Worse case scenario - downloaded off the web
- Unfamiliar with laws
- Out of date policies
- Inapplicable law- state/fed and grey areas



WHAT DO EFFECTIVE EMPLOYEE HANDBOOKS INCLUDE?

- Policies that cover wages, classification, overtime, discrimination, harassment, retaliation, accommodations, work performance, disciplinary action, leave, and workplace safety.
- Employee Acknowledgement stating the employee received, reviewed and agreed to comply with the policies and procedures outlined within
- Mission statement that is professional, respectful and informative stated in plain language which adopts the company's values and culture
- Termination policy



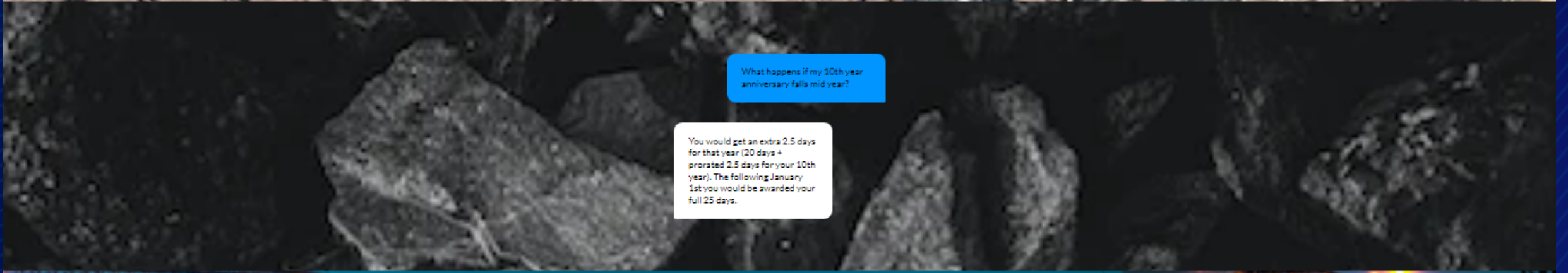


How much vacation and sick time (PTO) do I get?

We offer 20 days of total PTO per year (prorated when starting mid-year). These days must be used the year they are rewarded and are not paid out upon leaving.

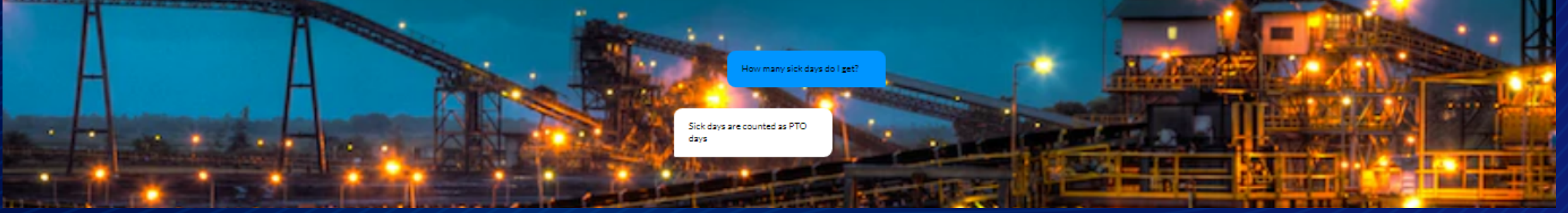
After a team member's tenth year of employment, an employee will receive an additional 5 days (total of 25).

After an employee's twentieth year of employment, an employee will receive an additional 5 days (total of 30).



What happens if my 10th year anniversary falls mid year?

You would get an extra 2.5 days for that year (20 days + prorated 2.5 days for your 10th year). The following January 1st you would be awarded your full 25 days.



How many sick days do I get?

Sick days are counted as PTO days

On Your First Day



New Employee - Read On Your First Day

1

Benefits

We offer full time employees a range of great benefits! Learn all about them below:

Health

1

Dental

Disability Insurance

Vacation, Holidays, And Time Off

Vacation Policies

Sick Leave

Trello Company Holidays

Reasonable Work Schedule

Jury Duty Pay

Travel, Conferences & DevDollars



Why conferences and professional development?

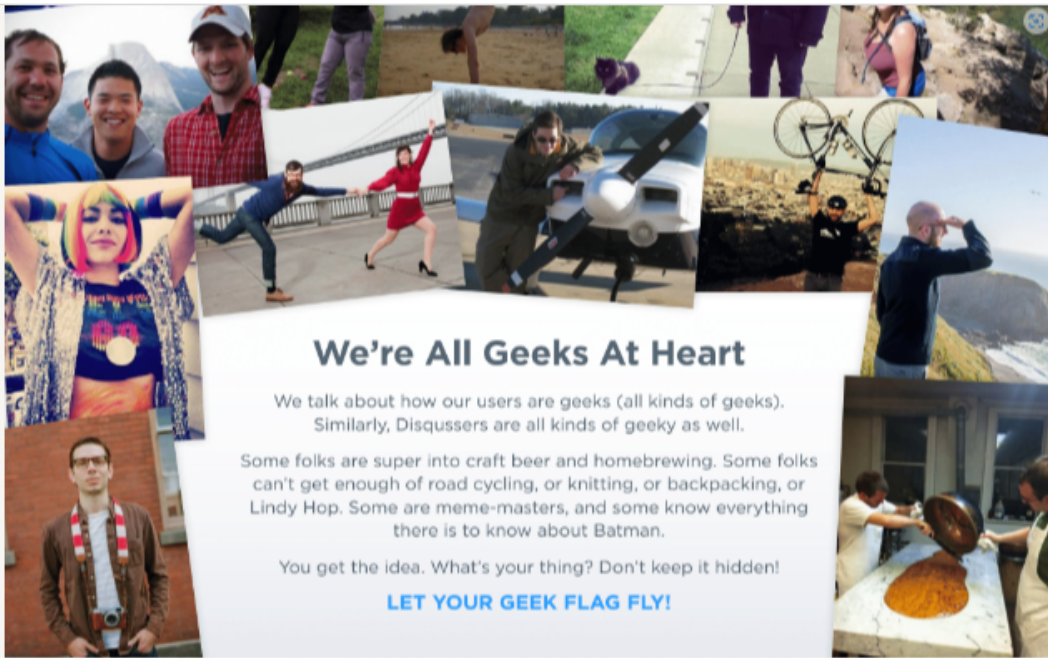


How it works.

Speaking at Conferences

This document is
part manifesto and
part employee handbook.

It's part who we are and
part **who we aspire to be.**



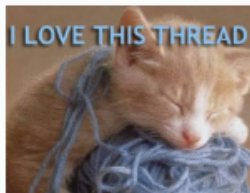
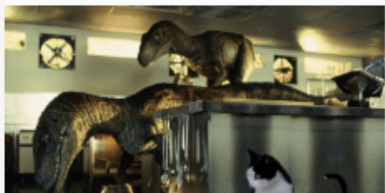
We're All Geeks At Heart

We talk about how our users are geeks (all kinds of geeks). Similarly, Disquissers are all kinds of geeky as well.

Some folks are super into craft beer and homebrewing. Some folks can't get enough of road cycling, or knitting, or backpacking, or Lindy Hop. Some are meme-masters, and some know everything there is to know about Batman.

You get the idea. What's your thing? Don't keep it hidden!

LET YOUR GEEK FLAG FLY!



EFFECTIVE WORKPLACE SAFETY POLICIES

- Recently OSHA announced a new rule for electronic injury and illness recordkeeping which will take effect starting January 1, 2024. The new rule represents an important shift on OSHA's part toward more transparent reporting of the safety and compliance of private and public companies.
- Why has OSHA done this?
- What will likely happen?
- What can employers do?



EFFECTIVE NON-DISCRIMINATION POLICIES

- What is Discrimination?
- Protected classes: race, color religion, sex (pregnancy, sex orientation, gender identity), national origin, disability, age (age 40 or older), or genetic information
- General Non-Discrimination Policy
- Procedures for reporting discrimination
- Requirements for supervisors who receive complaints
- Procedures for investigating complaints
- Consequences for violating the policy



NEW LAWS ON DISCRIMINATION

- LAW: *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023)
- U.S. Supreme Court case in which the court held that race-based affirmative action programs in **college admissions processes** violate the law
- What is affirmative action?
- How does a college admissions case this affect employment law?
- What should employers do?
- ***Race or gender should not be used as a “plus factor” to improve workplace diversity***
- ***Race or gender should not be a factor when deciding who advances at any stage of the selection process.***

EFFECTIVE LEAVE POLICIES



- How to obtain leave, how to be eligible for leave, procedure for requesting it
- Include a provision in the Employee Handbook that states the employer will comply to give leave to employees who qualify for it for medical or religious reasons, as required by law
- Require supervisors to respond promptly to leave requests.
- Require that supervisors keep genetic or medical information received as a result of a leave request confidential and in a separate medical file.
- Employers should include a statement that prohibits denying a requested reasonable accommodation of an employee's sincerely held religious beliefs or practices – or lack thereof –

NEW LAW: RELIGIOUS ACCOMMODATIONS

Groff v. DeJoy, 143 S. Ct. 2279 (2023)

Rule: An employer can deny an employee religious exemptions from work if they can show "**undue hardship**" in making the accommodation, a vague phrase at the center of *Groff*.

OLD LAW: Undue hardship was satisfied if an accommodation did not impose more than a **de minimis** cost or burden on business operations.

NEW LAW: The court clarified that increased costs that are more than 'de minimis' are not sufficient to demonstrate 'undue hardship', and that **the onus is on the employer** to demonstrate that granting the exemption would incur "**substantial increased costs**" compared to the normal costs of business.

The Supreme Court held that "undue hardship is shown when a burden is substantial in the overall context of an employer's business," "tak[ing] into account all relevant factors in the case at hand, including the particular accommodations at issue and their practical impact in light of the nature, size and operating cost of an employer."



EFFECTIVE LEAVE POLICIES

- What this means for employers? Employers have to prove a higher standard to deny a request for a religious exemption, including a substantial burden on business operations instead of just more than a de minimis cost or burden on business operations
- Employers should take into account all relevant factors, including the particular accommodations at issue and their practical impact in light of the nature, size and operating cost of the employer
- Employers should consider implementing in their employee handbooks examples applicable to their business of substantial burdens and costs
- Substantial burdens may include:
 - Causing a lack of necessary staffing;
 - Jeopardizing security or health; or
 - Causing the employer substantial increased costs



PREGNANT WORKERS FAIRNESS ACT OF 2022

Pregnant Workers Fairness Act (PWFA)

- Took effect on June 27, 2023 requires covered employers to provide “reasonable accommodations” to a worker’s known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an “undue hardship.”
- Only applies to accommodations
- Examples of reasonable accommodations: parking, hours, breaks, leave, harmful exposure
- The law applies not only to pregnancy but to childbirth and "related medical conditions." That term applies to having an abortion, using birth control, menstruation, lactation, fertility treatments and miscarriage



EFFECTIVE REASONABLE ACCOMMODATION POLICIES

- Include a statement that the employer provides reasonable accommodations to a worker's known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an undue hardship
- Provide specific contact information for those responsible for handling reasonable accommodation requests so they can engage in interactive processes to determine the accommodations
- Require supervisors to respond promptly and effectively to reasonable accommodation requests
 - Consider proposing temporary accommodation(s) if the agreed-upon accommodation cannot be provided immediately.



REASONABLE ACCOMMODATION POLICY

- Explain that the employer may need to request additional information and/or documentation to establish whether the individual's medical condition or religious beliefs are protected by law, or to determine whether and what types of accommodations would be effective. Encourage employees to respond to these requests promptly.
- Include a statement that requires management to keep medical information confidential and in a separate medical file.
- Consider including that the employer's decisions to either deny accommodation requests or to provide accommodations other than the requested accommodation(s) be explained to the applicant or employee.



REDUCING WAGE CLAIMS FOR EMPLOYERS

- Unpaid wages, overtime, double-time and meal and rest breaks are some of the biggest claims for Plaintiff employees against employers, which is why it is really important to have policies in place
- Realize the huge importance of a little before and a little after
- Small wage claims can snowball into large amounts
- Consider having employees track their own time
- Ensuring employees are taking meal and rest breaks



EFFECTIVE WAGE POLICIES

- Include a statement that employees are responsible for accurately reporting time and falsification of time records are grounds for disciplinary action, including termination
- Define the start of work and the end of the day
- Include a rule that an employee must alert a supervisor when leaving or returning from work
- Include a policy that prevents employees from starting work early or staying late
- Maintain a policy of not allowing any overtime and/or double-time without supervisor approval
- Include a policy that an employee must take meal and rest breaks for certain employees



RETALIATION IN THE WORKPLACE

- What is retaliation?
 - Retaliation occurs when employers treat applicants, employees or former employees, or people closely associated with these individuals, less favorably for reporting discrimination or participating in a discrimination investigation or lawsuit (for example, serving as a witness)



SCOTUS CASE BEING HEARD TODAY

- LAW: Today, October 10, 2023, the Supreme Court will hear arguments in *Trevor Murray vs. UBS Securities, LLC, et al.* (citation pending) Docket No. 22-660
- Issue: Whether a whistleblower must prove his employer acted with a “retaliatory intent” as part of his case in chief, or whether the lack of “retaliatory intent” is part of the affirmative defense on which the employer bears the burden of proof.

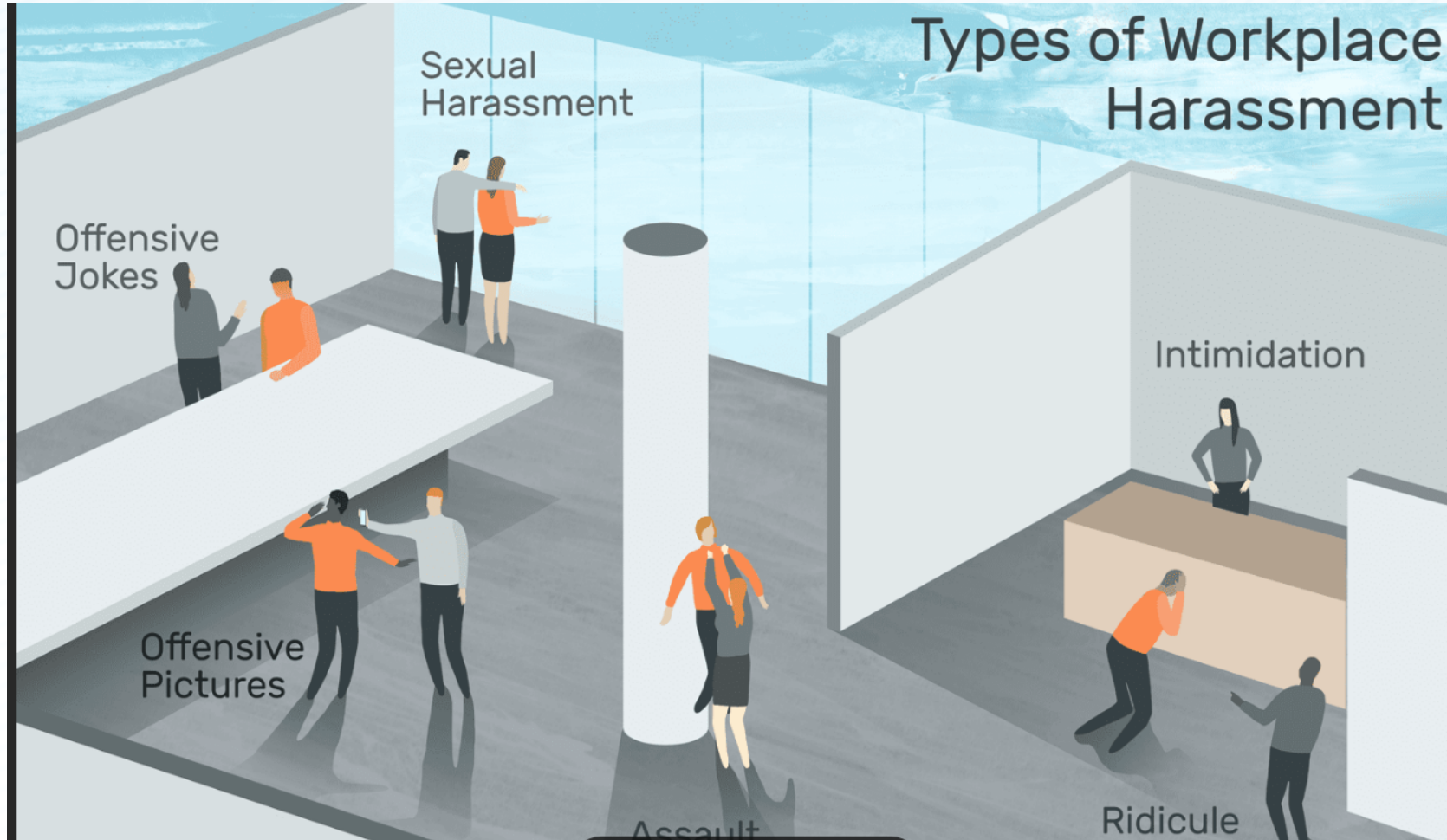


EFFECTIVE TERMINATION POLICY/DISCIPLINARY ACTION POLICIES

- Set standards for a clear roadmap of disciplinary action for certain activities; or
- Set standards that an employer is not required to go through a series of steps



WHAT IS HARASSMENT?



EFFECTIVE ANTI-HARASSMENT POLICIES

- Harassment Policy- Statement prohibiting harassment with examples
- Examples include insults or put-downs, offensive objects or pictures, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery
- Explain how employees can report it
- Employees will not be punished
- Require supervisors to respond appropriately
- State employers will protect the confidentiality of those who report harassment



THANK YOU FOR ATTENDING!

- ROBIN G. SAGSTETTER, ESQ.
- rsagstetter@grsm.com
- 949-255-6962
- **Practice Groups**
 - Commercial Litigation
 - Labor
 - Employment Law
 - Construction
 - Retail & Hospitality
 - Artificial Intelligence





GORDON REES SCULLY MANSUKHANI

YOUR **50 STATE** LAW FIRM™

grsm.com