Objectives

- Provide a summary of important employment laws
- Share general trends
- Clarify the leader’s role relative to compliance & provide tips on how to minimize your risk and risk to the College
- Identify resources to aid in understanding and compliance
Selected Laws

• New York State Sexual Harassment Law

• Wage & Hour Laws
  - Fair Labor Standards Act (FLSA)
  - Equal Pay Act

• Non-discrimination Laws
  - EEO Overview
  - ADA/ADAAA
  - ADEA
  - USERRA
  - Title VII
  - Title IX

• Family & Medical Leave Act (FMLA)

• New York State Paid Family Leave (PFL)
New York State Sexual Harassment Law

81% of women and 43% of men said they had experienced some form of sexual harassment or assault in their lifetime.
New York State Sexual Harassment Law

**Brief Summary (more in-depth training to come!)**

- Took effect in October 2018
- Calls for Employers to:
  
  ✓ Have a *policy* that contains legally required items; distribute to employees (can be electronically)
  ✓ **Define harassment** and provide examples of prohibited conduct
  ✓ Alert supervisors of *responsibility to report*
  ✓ Have an *investigatory process* that is well-documented
  ✓ Provide information on how to contact the **NYS Division of Human Rights** or the **EEOC** (and law enforcement)
  ✓ Provide a *complaint form*
  ✓ Be clear that substantiated claims of sexual harassment will carry *sanctions*
  ✓ Be clear that *retaliation of any kind is not tolerated*
  ✓ **Train all employees by October 19, 2019** and each year thereafter; interactive training

**Guidance for Supervisors:** Under NYS law, you are **REQUIRED** to report incidences of sexual harassment! Contact the Office of Human Resources if you witness or receive a report of sexual harassment. Do the same if you are a victim of harassment. Be prepared to participate in an investigation. Work with the Office of Human Resources if workplace accommodations are needed.
Wage and Hour: FLSA

- Establishes standards for minimum wage & payment of overtime
- What is the minimum wage in NYS?

- 12/31/18
  - Non-Exempt: $11.10/hr
  - Exempt: $43,264/yr

- Dictates exempt vs. non-exempt
- Directs payment for ALL time worked
- Defines rules around meal periods
- Increase in FLSA claims in recent years

Guidance to Supervisors: Always pay attention to recorded work time; ensure employees avail themselves of meal periods; keep job descriptions up to date and accurate; remember our work week is 37.5, so anything from 37.5-40 per week for non-exempt employees is straight time and anything above 40 is overtime.
Wage and Hour : Equal Pay

• Part of the Fair Labor Standards Act and EEO

• Prohibits discrimination on the basis of gender in compensation (including most fringe benefits) for substantially equal work in the same establishment

Guidance to Supervisors: When recommending start rates or changes in pay, make sure to base the recommendation on performance, seniority, experience, etc. and not gender.
Non Discrimination: EEO

• EEO: includes Title VII, Title IX, ADA, ADEA, Equal Pay Act, Sections 503 & 504 of the Rehabilitation Act, Pregnancy Discrimination Act, and more.

• All of these laws prohibit discrimination in the workplace.

• The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcement.

• Employers must file certain reports periodically to prove EEO compliance.

• EEO claims against employers usually increase year over year.

Note: At the State level, these claims are filed with the NYS Division of Human Rights (or DOL, if appropriate)

REMEMBER THAT MOST EMPLOYMENT LAWS APPLY TO THE APPLICANT AND HIRING PROCESS AS WELL!
EEOC Charges by Type
(chart depicts primary charges, through 2017)

Note: In 2017 48.8% of all charges filed included a primary or secondary claim of retaliation (https://www.eeoc.gov/eeoc/newsroom/release/1-25-18.cfm)
Non Discrimination: Title VII, Title IX

• **Title VII** of the Civil Rights Act of 1964 prohibits harassment and unequal treatment on the basis of race, color, religion, sex or national origin in all areas of employment from advertisement for new employees through termination or retirement. Overseen by EEOC. NYS law covers more protected classes for non-discrimination.

• **Title IX** of the Education Amendments of 1972 prohibits discrimination against students in education programs or activities that receive federal financial assistance on the basis of sex ( overseen by Office of Civil Rights).

Guidance to Supervisors: ANY complaints of harassment, discrimination or any form of unfair treatment taken by a supervisor must immediately be shared with the appropriate internal resource

Title VII - Office of Human Resources

Title IX - Title IX Coordinator (Lisa Green) or Deputy Title IX Coordinator (Alane Varga or Dave Fontaine) or the Office of Campus Safety.

Go to [https://www.utica.edu/college/tix/](https://www.utica.edu/college/tix/) for more Title IX information.
Non Discrimination: Americans with Disabilities Act (as amended)

• ADA is the Americans with Disabilities Act; ADAAA is amended version

• Prohibits discrimination of individuals with known disabilities, whether "perceived" or told

• Burden is on employers to remove barriers or make "reasonable accommodations" wherever possible

• Employers are required to engage in the "interactive process"

• Updated in past decade or so to include more conditions to be classified as disabilities

Guidance to Supervisors: Contact Human Resources immediately if you suspect an employee is suffering medically in some way, get help, think about accommodation requests (fair and equitable?), keep separate from performance documentation, keep medical information separate (send to HR!).
Non Discrimination: ADEA

According to U.S. Bureau of Labor Statistics, 40% of people age 55 and older were working in 2014 and that will continue to climb through 2024

Non Discrimination: ADEA

• ADEA is the Age Discrimination in Employment Act

• Prohibits employers from engaging in age-based discrimination against individuals who are age 40 or older (unless age is a bona fide job qualification)

• One provision says the employer cannot force a person to retire

• The employer may, in some cases, offer voluntary retirement

• It is anticipated that there will be a greater number of ADEA claims filed against employers in coming years due to the aging of a large segment of the population.

Guidance to Supervisors: Never use age as the basis for decision on hiring, firing, promoting or for offering educational opportunities to employees. If an employee expresses a desire to retire early, make sure to request it in writing.
Non Discrimination: USERRA

• USERRA is the Uniformed Services Employment and Reemployment Rights Act

• Ensures that members of the armed forces can return to their job after serving; protects employees from discrimination based on present or future membership in the armed forces

• If serving <5 years and honorably discharged, employee returns to the same job, same pay, and all seniority and seniority-related benefits are restored

• Also protects employees who become disabled as a result of service

Guidance to Supervisors: Notify Human Resources immediately of any upcoming military leave; HR will need to keep track of pay, seniority and seniority-related benefits for the employee.
Family and Medical Leave Act (FMLA)

- Established to help families balance their work and life needs
- Provides 12 weeks of unpaid leave (which can be intermittent); requires at least 1,250 hours of service
- Offers job protection and continuation of health benefits during the leave period
- Available for employee’s own leave, to care for a relative with a serious health condition, for child birth or adoption
- Amended in 2008 to provide leave for those caring for family member who became ill or injured due to military service
- Employees must apply and be approved for FMLA (when feasible); medical certification will be required

Guidance for Supervisors: Always notify Human Resources of FMLA requests; HR will contact the employee to start required paperwork. Do not allow employee to return to work without a full release from physician and notify HR of that release.
NYS Paid Family Leave

NEW YORK'S PAID FAMILY LEAVE
STARTS JANUARY 1, 2018

New York’s new Paid Family Leave program will provide wage replacement to employees who need time away from their jobs to bond with a child, care for a close relative with a serious health condition, or when a family member is called to active military service. In addition to paid leave, this program guarantees that employees will be able to continue receiving their health insurance while on leave and return to their jobs after their leave concludes.

BONDING
A parent may take Paid Family Leave during the first 12 months following the birth, adoption or fostering of a child.

SOLOMEN
A parent may take Paid Family Leave during the first 12 months following the birth, adoption or fostering of a child.

HOW IT WORKS
Workers who have been employed for 26 consecutive weeks, or part-time for 175 days, will be eligible for a Paid Family Leave benefit based on their average weekly wage (AWW). In 2018 the benefit will be capped at 50% of the statewide AWW, but by 2021, the benefit will increase to 67%. The AWW for 2016 is $1,305.92. For example, if you earn $1,000 per week, you’d receive $500 per week in paid leave benefits.

FAMILY CARE
If an employee's family member has a serious health condition, the employee can take Paid Family Leave to care for them. These relators can live outside of New York State and include the following categories:
- Spouse
- Parent-in-law
- Domestic Partner
- Grandparent
- Child
- Grandchild

MILITARY
An employee may be eligible to take Paid Family Leave to assist with family situations arising from a family member on active duty or one who has been notified of an impending active duty assignment.

PAYABLE % OF AN EMPLOYEE'S AWW

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<th>2020</th>
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<td>50%</td>
<td>55%</td>
<td>60%</td>
<td>67%</td>
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PAID FAMILY LEAVE

Paid Family Leave

starts January 1, 2018 and phases in over four years

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<table>
<thead>
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<th>2018</th>
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NYS Paid Family Leave

• **Eligibility:** Employees must work 20 hours per week and must be employed for at least 26 consecutive weeks; or must work less than 20 hours per week and work for at least 175 days.

• For birth, adoption, foster care, to provide care for family member’s serious illness (see handbook for definitions of qualified situations and family members), care for a family member who is a service member

• Not for a person’s OWN illness or injury

• Can run concurrently with other leave (FMLA, for example)

• Requires documentation to be submitted to Office of Human Resources

• Employees must provide 30-day notice when the leave is foreseeable

• PFL will be supplemented with the employee’s available leave time (not sick time, since it is not the employee’s own illness or injury) unless the employee tells the Office of Human Resources that they do not wish to use leave time

For more information:
[https://www.utica.edu/policies/policies.cfm?id=151](https://www.utica.edu/policies/policies.cfm?id=151)

• **Guidance for Supervisors:** Always notify Human Resources of PFL requests; HR will contact the employee to start required paperwork. HR is responsible for tracking all leave periods.
Anti-retaliation

Employers may not retaliate against any employee for raising issues under these laws!

If the employee has performance problems that coincide with a complaint, make sure to keep detailed documentation of the issues. Further, keep all performance-related documentation separate from any information concerning a complaint.

Don’t be accused of retaliation – always contact Human Resources for guidance!
General Recommendations

Top mistakes *YOU* won’t make

- Not being nice enough or being too lenient
- Not documenting important discussions/meetings
- Not checking with the appropriate office internally
- Not telling the HR rep everything the first time
- Thinking that the law is simple to apply
- Not implementing disciplinary steps (not considering behavioral issues to be performance issues!)
- Not enforcing rules/guidelines/policies uniformly
- Not reading important policies/employee handbook/collective bargaining agreement (CBA)
- Not calling HR when you need help!
General Recommendations

• If you have employee medical information, keep it completely secure and away from anything related to job performance. Better yet, send it to HR.

• Keep detailed documentation of employee issues, but use e-mail cautiously

• Beware of “off the record” conversations

• Refrain from making promises of pay, benefits, terms and conditions of employment, etc. without seeking the proper approvals.

• Avoid guessing; use the resources available to you (e.g. HR)
Questions
Resources

- [https://www.labor.ny.gov/workerprotection/laborstandards/workprot/lshmpg.shtm](https://www.labor.ny.gov/workerprotection/laborstandards/workprot/lshmpg.shtm)
- [https://www.eeoc.gov/eeoc/newsroom/release/1-25-18.cfm](https://www.eeoc.gov/eeoc/newsroom/release/1-25-18.cfm)

Utica College Resources

- [https://www.utica.edu/college/tix/](https://www.utica.edu/college/tix/) (Title IX web page)
- [https://www.utica.edu/policies/policies.cfm?id=151](https://www.utica.edu/policies/policies.cfm?id=151) (NYS Paid Family Leave Policy)
- [https://www.utica.edu/policies/policies.cfm?id=114](https://www.utica.edu/policies/policies.cfm?id=114) (FMLA Policy)
What Else Do YOU Want to Know About?

☐ Other laws?
☐ When is it capital “H” harassment?
☐ Subpeonas?
☐ Litigation holds?

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