Hello and welcome.
This portion of the Compliance Program will introduce you to the topic of Employment Discrimination, and the University's policies and procedures relating to Equal Employment Opportunity.
The content of this training is consistent with Chapter 21, Section 21.010 of the Texas Labor Code.
Equal Employment Opportunity
Training Requirement

- All new employees must be trained during the first 30 days of employment at U.T.
- All employees must receive training every two years.

EEO is the establishment and maintenance of a nondiscriminatory work environment.

The Texas Legislature has mandated that all new state employees receive training on equal employment opportunity during the initial 30 days of employment, and supplemental training every two years thereafter.

Equal Employment Opportunity is the establishment and maintenance of a nondiscriminatory work environment. This environment includes, but is not limited to, policies, practices and conditions of employment.
Discrimination is defined in the Webster's Dictionary as “to make a difference in treatment or favor on a basis other than individual merit.”

There are federal and state laws as well as university policies which prohibit treating people differently on the basis of certain characteristics.
Federal laws have been enacted which prohibit employment discrimination on the basis of sex, race, national origin, color, religion, age, and disability.

These laws apply to all personnel decisions that could affect equal employment opportunities for employees or applicants for employment.
University policy prohibits discrimination on the basis of sexual orientation, gender identity, or gender expression. Federal and State laws do not include these categories and as such, some benefits cannot be extended to all employees based on these criteria.
Employees should be aware that at the state level, the Texas Commission on Human Rights Act prohibits discrimination in all personnel decisions based on federally codified characteristics. In 1983, the State of Texas created the Texas Commission on Human Rights and the TCHR Act, which is parallel to legal protection provided through the federal laws. Each employee at U.T. is protected by these laws.

In 2004, responsibilities of the Texas Commission on Human Rights have been transferred to the Texas Workforce Commission, Civil Rights Division.
All persons have the right to be treated fairly and without bias.

As an employer, UT complies with both the federal and state laws prohibiting employment discrimination. University policies, found in the Handbook of Operating Procedures and Board of Regents’ Rules and Regulations, prohibit discrimination, including discrimination on the basis of sexual orientation, gender identity, and gender expression.

The University will promptly investigate complaints of discrimination and will take disciplinary action against individuals who are found to have engaged in discriminatory behavior.

Let’s take a closer look at the federal Civil Rights Laws Pertaining to Employment Discrimination.
Civil Rights Laws

- Federal Government has enacted four laws addressing employment discrimination.
  - Equal Pay Act, 1963
  - Title VII of the Civil Rights Act, 1964
  - Age Discrimination in Employment Act, 1967
  - Americans with Disabilities Act Amendments Act, 2008

Beginning in 1963, the federal government enacted four laws addressing employment discrimination:
- the Equal Pay Act,
- Title VII of the Civil Rights Act,
- the Age Discrimination in Employment Act, and

Many of these laws have been amended over time and courts continue to define coverage and legislative intent of these laws.
The first of the employment discrimination statutes, the Equal Pay Act, is very narrow in its application. It addresses differences between men and women in compensation. It stems from historic situations when both men and women were doing the same job but the man was paid more than the woman based solely on the difference in their gender.

This act prohibits employment discrimination in pay based on gender when the circumstances are the same. If this law is violated, the complainant may receive employment opportunities such as a job or lost wages denied because of discrimination. The complainant may also receive monetary damages absent a good faith effort and at the discretion of the court. A complainant is not required to file a complaint with the EEOC before a lawsuit may be filed.
The second of the employment discrimination laws is Title VII of the Civil Rights Act of 1964. This law is the broadest in coverage in that it describes five characteristics including race, color, national origin, religion, and sex, which may not be used in making employment decisions.

Title VII of the Civil Rights Act has been amended several times. For example, it was amended in 1978 to prohibit discrimination on the basis of pregnancy. Later, it was amended to prohibit sexual harassment.

If this law is violated, the complainant may be entitled to employment opportunities or lost wages denied because of discrimination, as well as monetary damages.

As is true for the other civil rights laws, there is a strong prohibition against retaliatory treatment for filing a complaint, opposing employment discrimination, or for assisting in the investigation of allegations of discrimination.
The Age Discrimination Act of 1967 prohibits employment discrimination in all personnel decisions because of a person's age (40 years and older).

When initially enacted, the statute provided for mandatory retirement at age 65. This was later changed to age 70 and was subsequently removed.

If this law is violated, the complainant may receive employment opportunities, such as a job or lost wages denied because of discrimination as well as damages under certain circumstances. No punitive damages may be awarded for a violation under this Act.
The Americans with Disabilities Act Amendment Act (ADAAA), passed initially in 1990 and amended in 2008, is the newest of the employment discrimination statutes.

This law prohibits employment discrimination by public and private employers in all personnel decisions, based on a psychological or physical disability.
Title II of the ADA requires U.T. Austin to ensure our campus is modified to enable both disabled and non-disabled individuals to have access to U.T.’s programs and services. U.T. has made changes to various buildings such as modifications to Texas Performing Arts, the Football Stadium, and the Erwin Center, just to name a few.

Students with disabilities are encouraged to visit the Services for Students with Disabilities, located in the Student Services Building, where assistance is provided. Employees with disabilities are encouraged to visit Office for Inclusion and Equity for assistance.
Both applicants and employees are covered. This includes new employees and those employees who become disabled. However, if UT is unaware of your disability, you will not be covered by the ADA.

Not all illnesses or psychological health conditions constitute a disability under the ADA. If an individual wants to seek an ADA accommodation, the individual's impairment must meet the definition of a qualified disability.
A qualified individual with a disability is a person who:
- Has the requisite skills, education and experience and other job related requirements for the job; and has a physical or mental impairment that substantially limits one or more major life activities; or
- Has a record of such an impairment, or
- Is regarded as having such an impairment.

Some disabilities are obvious, such as mobility impairments or vision impairments, but many disabilities are not obvious, such as physical disabilities like back problems, or psychological problems. Each employee’s situation is unique, and each situation requires a personal, reasonable accommodation plan.

Once an individual is identified as a qualified individual with a disability, he or she can seek a workplace accommodation. The University's process for seeking and receiving information related to the ADAAA, including workplace accommodations is provided by the Office for Inclusion and Equity. This service is confidential, within confines of the law.
Under the ADA, the employer has an affirmative duty to make a reasonable workplace accommodation that would enable a qualified individual with a disability to perform all the essential functions of his or her position. The accommodation, however, cannot constitute an undue hardship on the employer, which means that it cannot cause significant difficulty or expense in relation to the resources and circumstances of the employer.

Examples of reasonable accommodations include acquiring or modifying equipment or devices, physically altering the work site, modifying work schedules, and providing readers or interpreters. The decision as to the appropriate accommodation must be made on a case-by-case basis. A reasonable workplace accommodation allows the qualified employee with the disability to perform at the same level of effectiveness and efficiency as other qualified non-disabled employees. At the university, workplace accommodations are provided through the Office for Inclusion and Equity.

Let’s talk about discrimination allegations and the ADA. If this law is violated, external administrative remedies must be exhausted before a lawsuit may be filed. The complainant may receive employment opportunities, such as the job or lost wages denied because of employment discrimination, as well as damages under certain circumstances.
Now that we have reviewed the federal laws, let’s review the Texas Commission on Human Rights Act. This law prohibits employment discrimination in all personnel decisions because of a person’s race, color, disability, religion, sex, national origin, and age.

The TCHR Act codifies existing federal laws, including Title VII, the Age Discrimination in Employment Act, and the Americans with Disabilities Act Amendments Act. The law is enforced by the Civil Rights Division of the Texas Workforce Commission.
A complainant is required to file a complaint with the Civil Rights Division of the Texas Workforce Commission within 180 days after the alleged discrimination and external administrative remedies must be exhausted before a lawsuit can be filed in state court.

If this law is violated, the complainant may receive employment opportunities, such as a job or lost wages denied because of discrimination, as well as damages.

The TCHR Act prohibits retaliation against an employee who opposes employment discrimination or a person who assists in the investigation of a complaint of employment discrimination.
There are federal statutes which specifically prohibit student discrimination:

- Title IX of the Education Act Amendments of 1972,
- Title VI of the Civil Rights Act of 1964, as amended,
- Age Discrimination Act of 1975.
Prohibition of Discrimination Against Students

The University of Texas at Austin prohibits discrimination and harassment on the basis of race, color, religion, national origin, gender, including sexual harassment, age, disability, citizenship, veteran status, sexual orientation, gender identity, and gender expression in its programs and activities.

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Prohibition of Discrimination Against Students

The following office has been designated to handle inquiries regarding the non-discrimination policies:

✓ The Office for Inclusion and Equity
   101 E. 27th St., Suite 4.302
   Austin, TX 78712
   (512) 471-1849

✓ See the complete Nondiscrimination Policy at HOP 3-3020

The following office has been designated to handle inquiries regarding the non-discrimination policies:

The Office for Inclusion and Equity
101 E. 27th St., Suite 4.302
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See the University’s Nondiscrimination Policy 3-3020 for a complete listing of protected groups.
In the 1970's lawsuits were filed in federal courts to better define the parameters of these new laws. The Supreme Court established these two legal theories of discrimination which continue to be relevant today. They are Disparate Treatment which is Difference in Treatment and Disparate Impact, Difference in Impact.

Let's review the first legal theory.
First Legal Theory for Determining Employment Discrimination

**Disparate Treatment Theory:**
Complainant is treated differently from other similarly-situated employees who are not in the same protected group.

**Difference in Treatment**

- *McDonnell Douglas Corp. v. Green*
  411 U.S. 792 (1973)

- *McDonald v. Santa Fe Trail Transportation Company*
  427 U.S. 273 (1973)

Disparate Treatment focuses on whether the complainant was treated differently from other similarly-situated employees who are not in the same protected group as the complainant.

If difference in treatment exists, then there may be reasonable cause to believe that illegal employment discrimination has occurred. There are two generally accepted examples of this theory: McDonnell Douglas Corp. vs. Green and McDonald vs. the Santa Fe Trail Transportation Company.
Percy Green, a Black man, worked for McDonnell Douglas. He and others were laid off in the course of a reduction in the company's workforce. Mr. Green then illegally protested against the company. After Mr. Green's protest, the company advertised for qualified mechanics. Mr. Green applied for re-employment and was rejected. He challenged the company's refusal to rehire him.

The U.S. Supreme Court held that Mr. Green established the basic case of discrimination, and held that the company legitimately did not rehire Mr. Green for a nondiscriminatory reason. The reason? Mr. Green illegally protested his layoff by the company and therefore was considered not eligible for rehire.

In this court case, you should note that the court established the basic elements of a discrimination allegation:

- a person bringing a complaint must be a person in a protected class;
- the person was qualified for the position but was not selected; and
- someone not of the same protected class got the position.

The employer is then afforded an opportunity to provide a nondiscriminatory reason for its action. (Which, in this case, was Mr. Green's illegal protest.)
Another example of the Disparate Treatment Theory is found in the U.S. Supreme court case McDonald vs. Santa Fe Trail Transportation Company.

Here's the story:

Three employees, two White employees and one Black employee, whose job it was to load and unload trucks, stole 60 gallons of antifreeze from the company. The only difference between these three individuals was their race. The two White employees were terminated and thus were subject to different disciplinary action than the Black employee who was just suspended and reinstated. Although the circumstances were the same (theft of company property), and all three employees were like or similarly situated, they were treated differently.

The decision by the Company officials to more severely discipline the two White employees versus the Black employee constituted employment discrimination against the two White employees because of race, under the difference in treatment theory.
The second legal theory for determining employment discrimination is Disparate Impact. This theory also evolved from a court case. The theory is based on a practice, policy or procedure which appears neutral on its face but has a greater impact on a member of a protected class. The question turns on whether the employer can demonstrate a business justification.

An example of the Disparate Impact Theory is the U. S. Supreme Court Case---Griggs v. Duke Power Co.
Here's the story.

Mr. Griggs was a Black man working for Duke Power. Prior to 1964, Mr. Griggs attempted to transfer from the yard into the Plant where the working conditions and the pay were better. Duke Power officials refused to transfer Mr. Griggs into the plant because of a segregation policy that only White employees were employed inside the plant.

After the passage of Title VII of the Civil Rights Act, Duke Power's attorneys advised the company's officials that the policy of employing only Whites in the plant violated Title VII.

The attorneys recommended that the company institute two new policies. First, to work inside the plant, employees would be required to have a high school diploma and second, employees would be required to pass two professionally prepared aptitude tests to work inside the plant. These policies were neutral on their face since they applied to all employees subsequently hired to work in the plant.

Mr. Griggs applied again to be transferred into the plant but was denied the transfer. Mr. Griggs did not have a high school diploma nor did he rank high enough on the tests. The evidence showed that White employees had been working well in the plant for many years who did not have a high school diploma or had not taken the tests.

Therefore, the high school degree and the successful scores on the tests were not job related qualifications. This ruling established the disparate impact theory under laws prohibiting employment discrimination.
So, what can you do if you believe you have been subjected to employment discrimination?

Every applicant or employee of U.T. Austin has the right to raise concerns regarding employment discrimination. The University of Texas at Austin takes these concerns very seriously.

The President of U.T. Austin has authorized the Office for Inclusion and Equity to serve as an internal administrative review of allegations of discrimination. So please feel free to visit the Office for Inclusion and Equity website for relevant university policies, which can be downloaded. Or, call the office at 512-471-1849 for information, consultation, or an appointment.

Confidentiality will be maintained, within confines of the law.

It is the hope of U.T. that you will raise your concerns to this office, which will provide resolution within required timelines.

You may also contact one of two external administrative agencies, which are: the Texas Workforce Commission, Civil Rights Division within 180 days of the incident, or the Equal Employment Opportunity Commission within 300 days of the complaint. Although there is no requirement that you exhaust internal administrative review options prior to filing a complaint with these agencies, it is The University’s hope that you utilize our internal services.

Filing a complaint internally does not negate your right to file an external complaint, and as we stated earlier, there is no retaliation for asserting your right.
Here are some real life examples of applying the information we have seen in this training module.

A female accountant was hired and started work. She learns that her salary is less than a male accountant who started two weeks earlier. When she asks her boss about the salary difference, the supervisor cannot provide a reason.
Compliance Exercise #1

- A female accountant is hired.
- Her salary is less than equally qualified male accountant.
- Supervisor cannot provide a reason for this difference.

Salary differences cannot be based upon gender.

*This illustrates possible sex discrimination under Title VII of the Civil Rights Act, or the Equal Pay Act.*

Salary differences may be influenced by job related objective justifications such as prior experience, education and market factors. Salary differences cannot be based upon gender.

This may be an example of sex discrimination based on Title VII of the Civil Rights Act, or depending on the facts, the Equal Pay Act of 1963.
Here's another story:

Some employees in the department are telling racial jokes. A minority employee hears them and complains to the supervisor. What should the boss do?
Some jokes are abusive and hurtful. It's important for the supervisor to speak up because sometimes the offended are not willing to speak up.

UT is committed to creating and maintaining a working environment which is respectful, inclusive, positive and supportive. Offensive jokes are not consistent with this goal.

This may be an example of racial discrimination under Title VII of the Civil Rights Act. Jokes that involve age, national origin, gender, religion, color, or disability may also create a divisive and disrespectful working environment.

Also note that if the offense were reversed, the action should be the same.
Another example:
An employee complains that two Hispanic co-workers speaking in Spanish are giving him a headache. The employee also thinks they were talking about other workers. Should the supervisor instruct the two Hispanic employees to stop talking in Spanish?
Compliance Exercise #3

- Employee complains that co-workers are speaking in Spanish.

The supervisor should explain that employees may speak any language while on the job. 

*This may be national origin discrimination under Title VII of the Civil Rights Act.*

No. The University's position is that an employee can speak any language that he or she prefers to speak. Languages other than English need not be confined to breaks or lunch.

This example may be national origin discrimination under Title VII of the Civil Rights Act.
Compliance Exercise #4

- An applicant is vision impaired.
- The applicant needs a magnifier to enhance the computer monitor.

Here's another example:
An applicant who has a vision impairment and uses a magnifier to enhance the computer monitor applies for a position at U.T. Can the hiring department refuse to hire this applicant because of the impairment?
Compliance Exercise #4

- An applicant is vision impaired.
- The applicant needs a magnifier to enhance the computer monitor.

The University must provide reasonable accommodations to qualified applicants. *This example may be discrimination under the Americans with Disabilities Act.*

No. The University must provide reasonable accommodations to qualified applicants and employees with disabilities.

If the candidate is refused employment because an accommodation is needed, this may be discrimination under the Americans with Disabilities Act.
Here's another example:

A supervisor tells the staff that a special project will require their working over the weekend. One employee approaches the supervisor to ask for some flexibility in the scheduling so that the employee may attend religious services. What should the supervisor do?
Compliance Exercise #5

- Supervisor needs employees to work over the weekend.
- One employee wants to attend religious services.

The employer must make an attempt to accommodate the worker’s request.

*This illustrates possible religious discrimination under Title VII of the Civil Rights Act.*

An employer must make an attempt to accommodate an employee’s sincere religious beliefs as long as the accommodation does not present an undue hardship. This may be religious discrimination under Title VII of the Civil Rights Act.
Compliance Exercise #6

- Unit is funded by a grant which has been cut.
- Grant funding will cease in six months.
- Employees positions are going to be terminated.
- An employee thinks he is being released because of his age.

Here's another example:
A research unit is funded by grants. The unit is informed that the grant has been cut and funding will cease in six months. Employees are told that their positions are going to be terminated.

One employee, who has worked in the unit for twenty years believes he is being released because of his age. What do you think?
Compliance Exercise #6

- Unit is funded by a grant which has been cut.
- Grant funding will cease in six months.
- Employees positions are going to be terminated.
- An employee thinks he is being released because of his age.

If the same criteria are applied to those under as well as over forty, age would not be a factor. This example addresses the Age Discrimination in Employment Act.

If the criteria are applied to those under forty as well as to those over forty, age would not be a factor. This example addresses the Age Discrimination in Employment Act.
This concludes our presentation on Equal Employment Opportunity. To receive credit for the course you will need to complete and return quiz questions. Please follow the instructions on the quiz.

If you have questions about the training please email trainingicompliance.utexas.edu