

# HR Lessons from the World's Best Boss, Michael Scott & *The Office*

(An American TV Series)

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# Sexual Harassment



# Sexual Harassment

Sexual harassment is a form of unlawful discrimination. The protected class involved in sexual harassment is sex/gender.

Sexual harassment is when an employee is treated differently and negatively by the employer (managers or supervisors) or other employees related to the employee's sex or gender.

# Sexual Harassment

## Title VII

- Prohibits discrimination in the workplace on the basis of:
  - Race
  - Color
  - Religion
  - National Origin
  - Sex

Prohibits retaliation based on a complaint regarding discrimination

# Sexual Harassment

## Title IX

- Title IX is a federal law that prohibits sex or gender based or related discrimination in institutions that receive federal funds.
- Title IX encompasses interactions involving institution and student, faculty and student, staff and student, student and student, and even institution/employee and employee.
- Title IX covers everything from: inequities amongst men's and women's sports teams, to sexist conduct in classrooms, to romantic relationships between faculty/staff and students, to sexual assault by a student towards another, and so on.

# Sexual Harassment

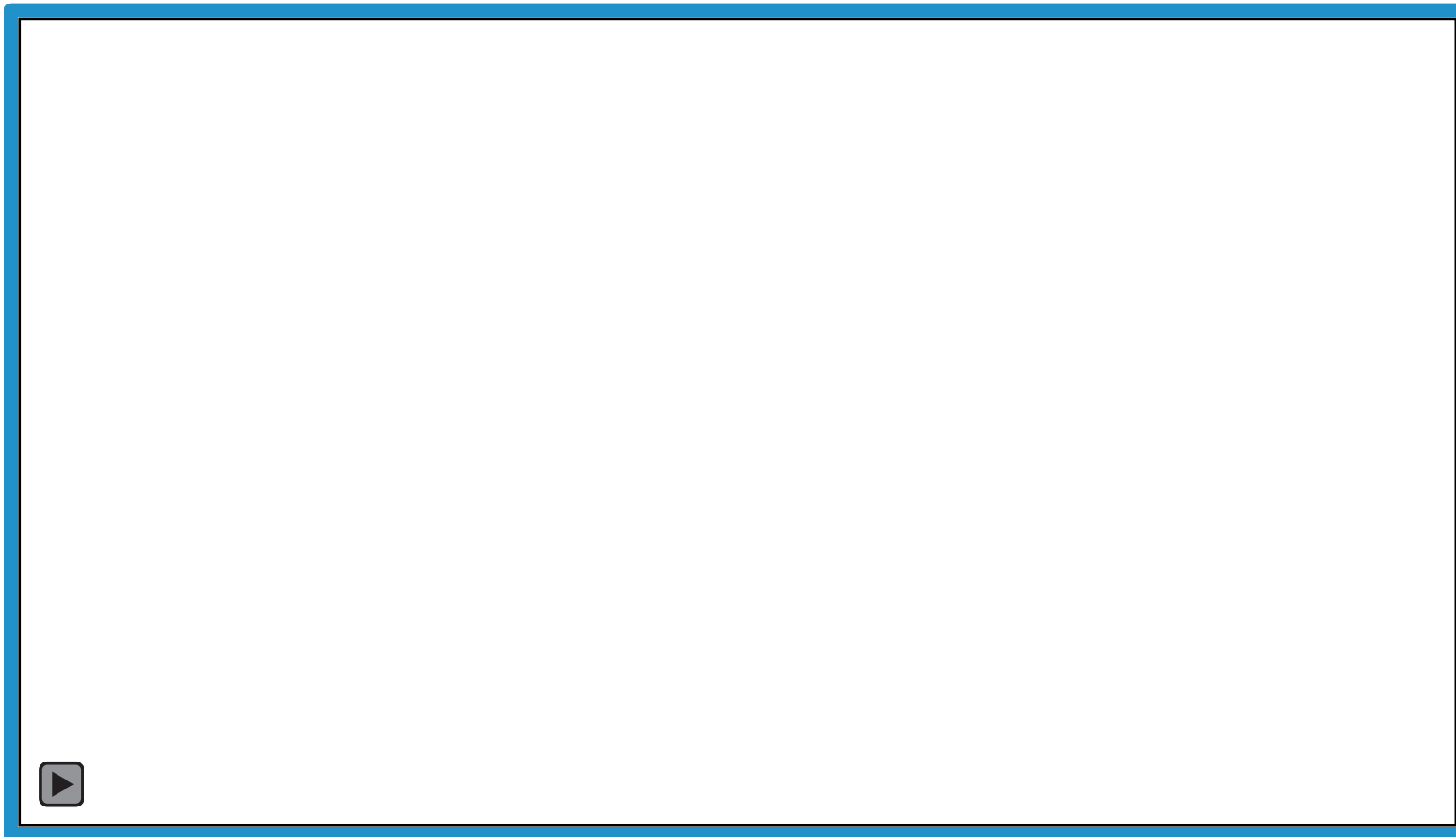
- Sex Discrimination Includes
  - Harasser and victim can be male or female
  - Harasser and victim can be the same gender
  - Includes gender identity (including transgender)
  - Includes sexual orientation
  - Includes pregnancy and childbirth
- Need not be of a sexual nature

# Sexual Harassment

## Sex Discrimination Includes

- A manager, supervisor, or coworker makes sexual or romantic advances.
- Making requests for sexual favors.
- Providing employee with more pay and better evaluations because she is open to flirtation with supervisor.
- Looking at or towards certain body parts of an employee.
- Making compliments that could be construed to be of a sexual nature.
- Using offensive language (such as profanity and swear words).
- Telling offensive or uncomfortable jokes, innuendos, or stories related to sex or gender – even telling sexual stories involving oneself and one's significant other.
- Displaying offensive or uncomfortable graphics or art – such as calendars or photos with swimwear or nude art.
- Engaging in unwelcome physical touching (hugging, touching or patting body parts, kissing) towards men or women.

# Sexual Harassment





# Sexual Harassment

## Sex Harassment- Quid Pro Quo

- This for That
- Harassment becomes a term or condition of employment
- Explicitly or implicitly
- A single incident may be the basis of quid pro quo sexual harassment

# Sexual Harassment

## Sex Harassment- Hostile Work Environment

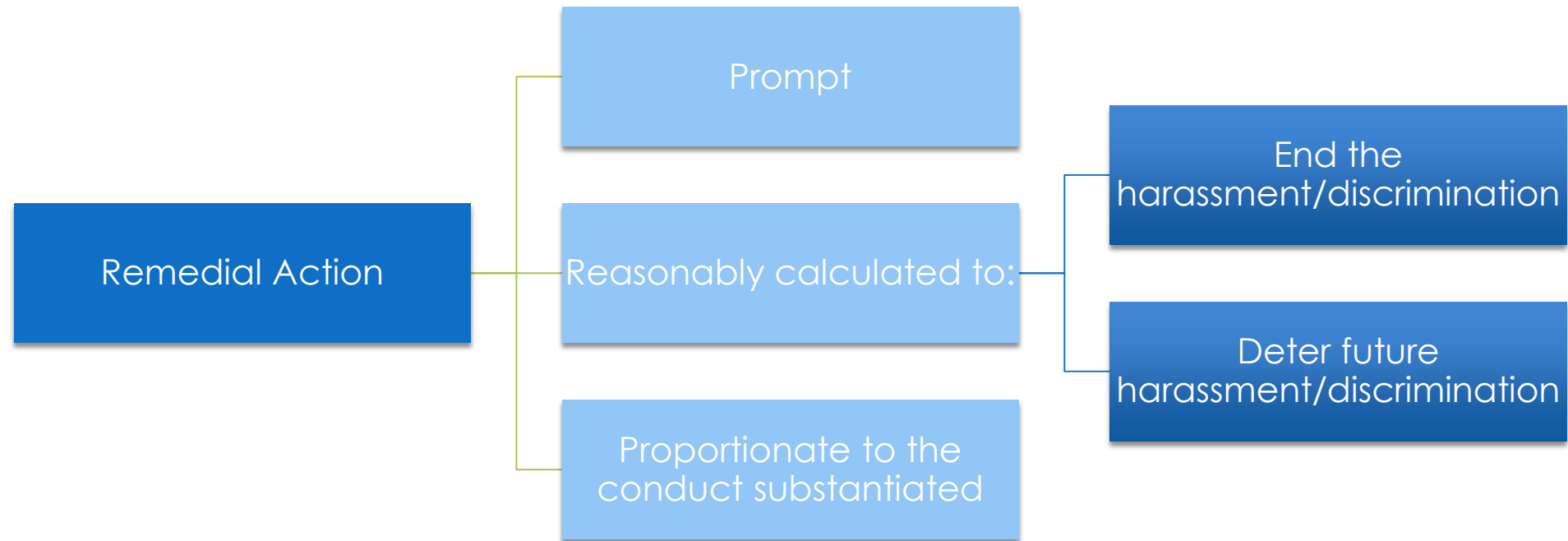
- Sufficiently severe or pervasive
- Creates an intimidating, hostile, or offensive work environment
  - OR
- Unreasonably interferes with individual's work performance

# Sexual Harassment

Sex Harassment-  
Administrators have  
an obligation to  
investigate and cure  
complaints

- That an investigation is being conducted says nothing about the legitimacy or accuracy of the concern or complaint.
- Persons who may be a witness or can provide relevant information should be interviewed.
- It is prohibited to try to affect the information provided by a witness.
- It is prohibited to retaliate – act in a negative way – towards a person for making a complaint or participating in an investigation.
- Managers/supervisors and HR cannot guarantee 100% confidentiality.

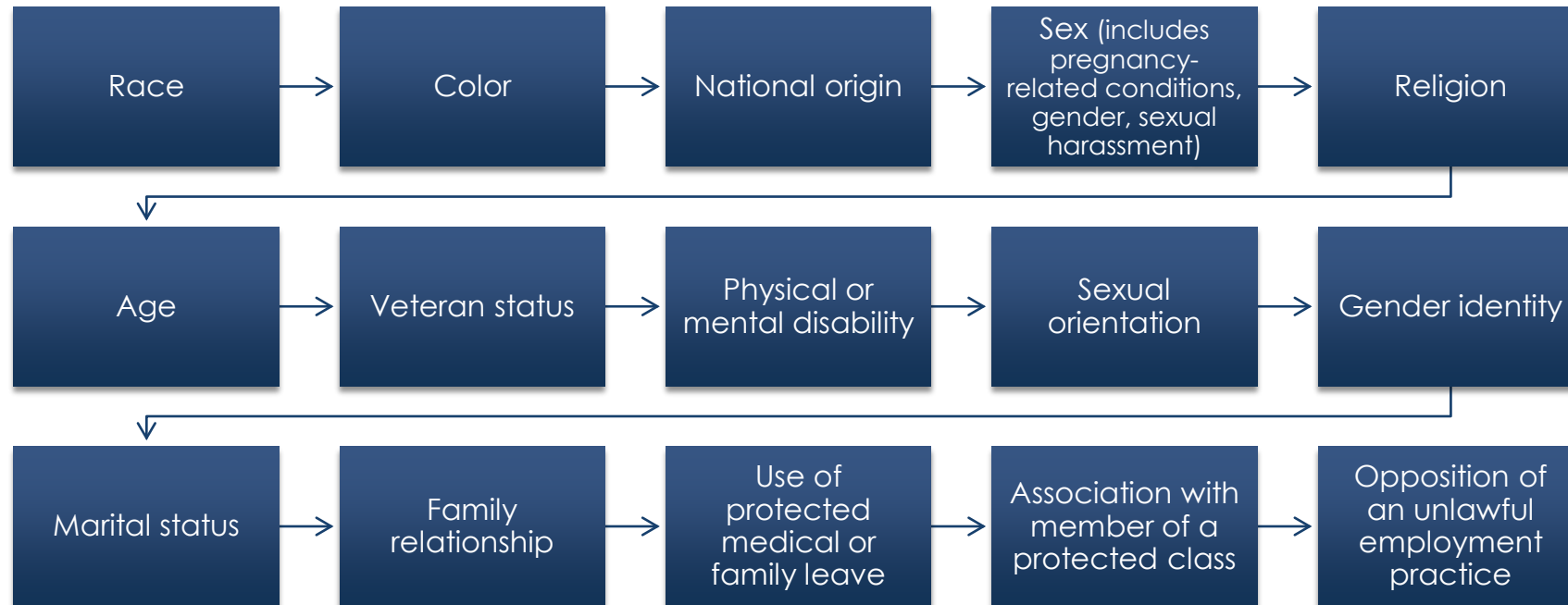
# Sexual Harassment



# Employment Discrimination



# Employment Discrimination



# Interviewing Job Applicants



# Interviewing Job Applicants

## Questions To Avoid

### 1. Do you have children under the age of 18?

This question is usually viewed as discriminatory when asked only of women.

### 2. Will you have to make arrangements for child care?

Again, this is a question usually asked of women, but the prohibition is to asking this question of anyone prior to employment.

### 3. Do you have a credit record?

Rejecting applicants because of a poor credit rating tends to have a disproportionately greater effect on minority and female applicants. (Many married women have no independent credit history). Such questions are unlawful unless there is a business necessity for the question.

### 4. Are you pregnant? Or, do you have children?

Discrimination based on pregnancy is unlawful under Title VII. (Obviously, primarily a concern for female applicants).

### 5. Have you ever been arrested or convicted of a crime?

The Equal Employment Opportunity Commission has stated that members of some minority groups are arrested disproportionately more often than whites, so making a personnel decision based on arrest records could have a disparate effect on those groups. (Depending on the position, the employer could have a legitimate interest in excluding such applicants; but the screening process for certification in Arkansas probably would take care of any such concerns).



# Interviewing Job Applicants

## Questions To Avoid

### **6. What is your date of birth?**

Questions which reveal an applicant's age could indicate unlawful age discrimination.

### **7. When did you graduate from high school or college?**

Same as No. 6, above. However, questions about an applicant's educational qualifications are appropriate. Simply look at their resume.

### **8. Are you available to work on weekends?**

This innocent-sounding question could be used to screen for applicants whose religion would prohibit working on Fridays, Saturdays or Sundays. Best practice is to ask if the applicant could be available 24/7 in case of deadlines or emergencies.

### **9. What is the lowest salary you would accept?**

This question could discriminate against women and, perhaps, minorities who might have been paid less in the past.

### **10. Have you ever filed a workers' compensation claim?**

This question could reveal an applicant's disabilities.

# Interviewing Job Applicants

## Questions To Avoid

### **11. Do you have a disability? Or, What is the nature of your disability?**

The Americans with Disabilities Act prohibits a prospective employer from making any inquiry about an applicant's disability *prior to* making an offer of employment.

### **12. Do you own your home?**

Again, this question could indicate discrimination based on income.

### **13. What is your religion? Or, where do you go to church?**

Discrimination on the basis of religion is prohibited, and asking such questions could indicate that the employer is either screening against certain religions or screening out those who are not religious.

### **14. Are you a member of a union?**

For a prospective superintendent, this seems unlikely. Nevertheless, it should not be asked. (There are a few superintendents who are members of the AEA).

### **15. Do you have any relatives working for the District?**

This question could be interpreted to mean that the employer gives a preference to those who have relatives employed in the District. However, the Board needs to know any conflicts of interest.

# Interviewing Superintendent Candidates

- Board interviews with candidates can be done in executive session
  - ONLY the board should be present. Not the mayor, leadership team or even the current superintendent
    - Lawfully, the current superintendent, as the top administrative officer, could be present, but not good optics
    - Board needs to take full responsibility for its hire
- Public presentation by the candidate, open to all
- Meetings with leadership team (no board members present)
- Meetings with community leaders
- FOIA: The press would only be invited if it were a public event or a board meeting where candidates were being discussed in open session. This is why the board should not be present at private meetings.

# Interviewing Superintendent Candidates

- Interview Questions
  - Create a set of questions before and do not veer off course.
  - Philosophy of education
  - Experience with curriculum
  - Experience with construction
  - Experience with finance
  - Leadership style
  - Vision for your District
  - Background questions: education, professional organizations, military experience, government service
- Determine what is important to your District and create a set of questions that allows the applicant freedom to talk openly so you can learn as much as you can

# Employee Privacy Rights



# Employee Privacy Rights



Medical Records: Employee has an absolute right to privacy related to medical documents. Could only be shared with a 3<sup>rd</sup> party benefit provider.



Computer Records: The District owns the employee's email account and computer, and thus all data on the computer can be reviewed.



Personnel File: Some parts are public while some are private. Salary, resume, application, contracts are generally public.



Drug Testing: The law previously did not allow for drug testing of employees except bus drivers. The law not allows for drug testing of all employees, but there is no model policy.



Social Media: State law forbids an employer from suggesting an employee provide social media passwords, access or requiring supervisor to be a "friend" or "follower".

# Educator Interaction with Students



# Educator Interaction with Students



CODE OF ETHICS FOR ARKANSAS  
EDUCATORS



STANDARD 1



AN EDUCATOR MAINTAINS A  
PROFESSIONAL RELATIONSHIP WITH  
EACH STUDENT, BOTH IN AND OUTSIDE  
THE CLASSROOM.



# Educator Interaction with Students

- Includes:
  - acts of physical, sexual and verbal child abuse or unlawful sexual acts
  - harassing behavior on the basis of protected status (race, gender, sexual orientation, national origin, religion, disability, etc.)
  - soliciting, encouraging or consummating inappropriate written, verbal, or physical relationship with student

# Recording Meetings



# Recording Meetings

Ark. Code Ann. § 5-60-120

- Arkansas recording law stipulates that it is a one party consent state. Only one person has to agree to be recorded (i.e. the one recording).
- In Arkansas it is a criminal offense to use any device to record communications whether it's wire, oral or electronic without the consent of at least one person taking part in the communication.

# Accommodating Disabled Employees



# Americans with Disabilities Act

- Protects individuals from discrimination on the basis of his/her disability, perceived disability, or association with an individual with a disability
- Requires employers to provide reasonable accommodations to qualified individuals with a disability to allow the person to perform the essential functions of his or her job
- Restricts disability-related inquiries

# Americans with Disabilities Act

- A physical or mental impairment that substantially limits a major life activity
  - The impairment's impact on the major life activity is evaluated without regard to mitigating measures such as medical treatment, medication, or assistive devices
- Record of such an impairment
- Regarded as having such an impairment

# Americans with Disabilities Act

- A qualified individual is someone who:
  - Meets the skill, experience, and education requirements of the position; and
  - Can perform the essential functions or basic duties of the job, with or without a reasonable accommodation.

# Americans with Disabilities Act

- A reasonable accommodation is any modification or adjustment to a job, practice, policy, or the work environment that allows an individual with a disability to participate equally in an employment opportunity.
- Examples include:
  - Making existing facilities accessible
  - Modifying a work schedule
  - Altering training materials, tests, or policies
  - Acquiring or modifying equipment
  - Providing an interpreter
  - Restructuring a job
  - Leave without pay
  - Reassignment to a vacant position



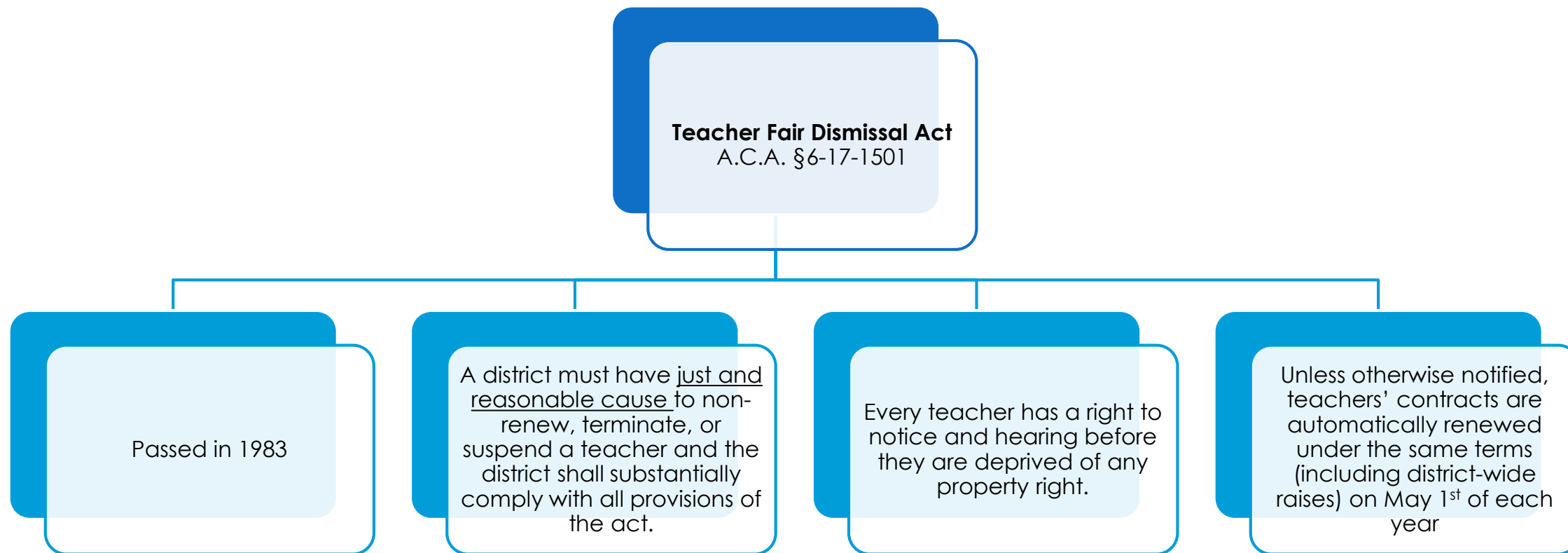
# Americans with Disabilities Act

- The ADA requires employers to provide accommodations to qualified individuals with disabilities:
- Reasonable accommodations, not all accommodations;
- Effective accommodations, not preferred accommodations;
- Accommodations must not pose an undue hardship to the employer
- It is the employee's responsibility to make a request
- No "magic words" required

# Disciplining Employees



## Disciplining Employees

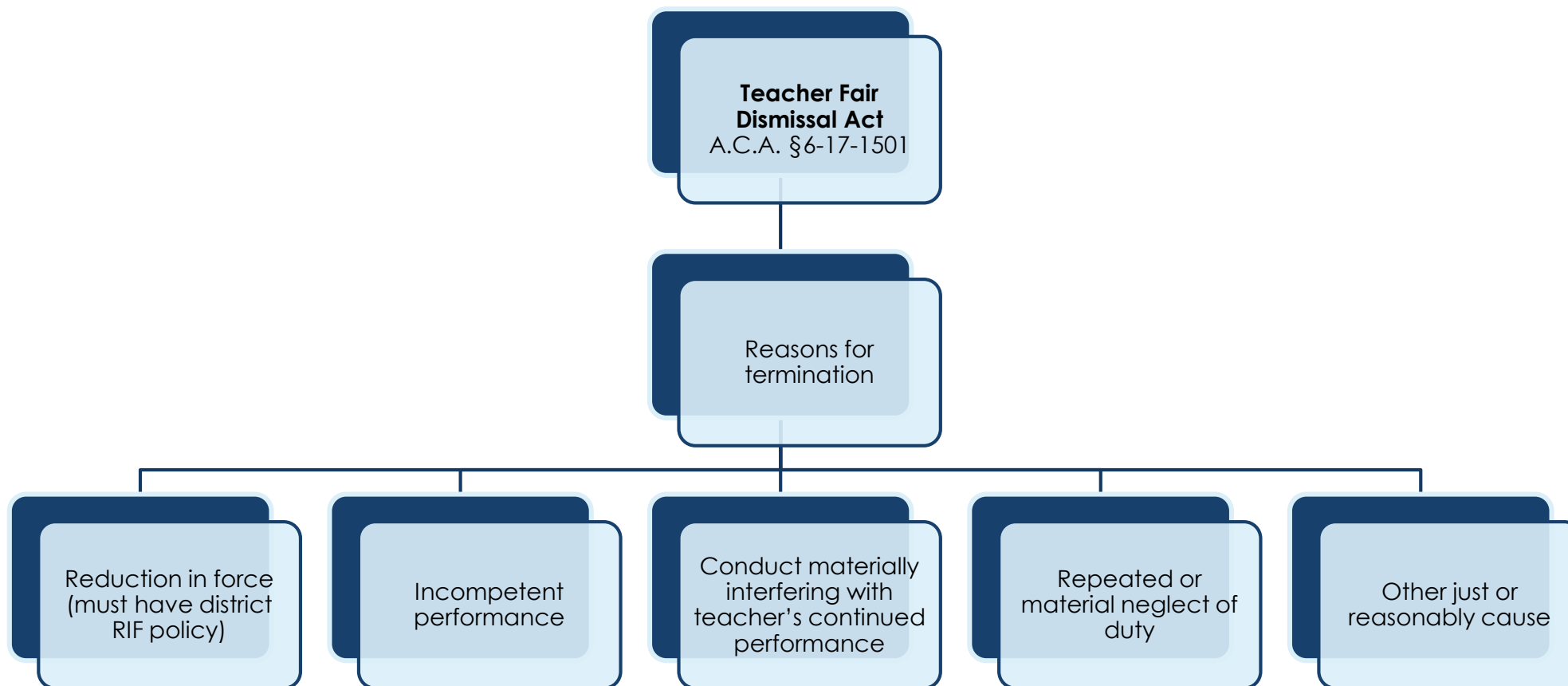


# Disciplining Employees

- ▶ Teacher Fair Dismissal Act A.C.A. §6-17-1501
- ▶ Teacher: Any employee who holds a teaching license, regardless of whether required for position, EXCEPT superintendent and assistant superintendents
- ▶ More than just classroom teachers (specialist, counselors, principals)



# Disciplining Employees



# Disciplining Employees

## **Teacher Fair Dismissal Act** A.C.A. §6-17-1501

- Section 1504
- If a superintendent or other school administrator charged with the supervision of a teacher believes or has reason to believe that the teacher is having difficulties or problems meeting the expectations of the school district or its administration and the administrator believes or has reason to believe that the problems could lead to termination or nonrenewal of contract, the superintendent or other school administrator shall:
  - (1) In writing, bring the problems and difficulties to the attention of the teacher involved; and
  - (2) Document the efforts that have been undertaken to assist the teacher to correct whatever appears to be the cause for potential termination or nonrenewal.

# The End

## THANK YOU

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