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Workshop K: Jeopardy in the Aerospace Workplace

**Identifying Hazmats, Managing
Employees and Keeping the
Workplace Safe**

What Will We Address, Today?

- Employment Discrimination Laws
 - Alerting you to the laws so you recognize circumstances and do not inadvertently violate them
- Occupational Safety and Health
- Aircraft Part Hazardous Materials

Some Employment Laws

- Civil Rights Act [Title VII]
- Age Discrimination in Employment Act (ADEA)
- Pregnancy Discrimination Act (PDA)
- The ADA Amendments Act (ADAAA)
- Family and Medical Leave Act (FMLA)
- Uniformed Services Employment & Reemployment Rights Act of 1994 (USERRA)

Anti-Discrimination Laws

Most anti-discrimination laws that apply to the workplace forbid discrimination when it comes to any aspect of employment, including:

- Hiring
- Firing
- Pay
- Job assignments
- Promotions
- Layoff
- Training
- Fringe benefits
- Any other term or condition of employment

Title VII of the Civil Rights Act

- Employers may not discriminate based on:
 - Race
 - Sex
 - Color
 - Religion
 - National Origin

Age Discrimination in Employment Act

- The ADEA forbids age discrimination/harassment against people who are age 40 or older
 - Some state laws may protect younger workers from age discrimination
 - Harassment can include, for example, offensive remarks about a person's age - harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).
- An employment policy or practice that applies to everyone, regardless of age, can be illegal if:
 - it has a negative impact on applicants or employees age 40 or older and
 - It is not based on a reasonable factor other than age

Pregnancy Discrimination Act

- Bans discrimination “because of or on the basis of pregnancy, childbirth, or related medical conditions”
- Pregnant employees must be treated the same as other employees
- Does not require more favorable treatment of pregnant employees

The ADAAA: Who is Protected?

- “Qualified Individuals with Disabilities”
- Individuals Who Have a *Record* of Impairment
- Persons Who Have a *Relationship with a Disabled Individual* (Association)
- Persons Who are *Regarded* as Disabled

Pre-Employment Inquiries / Examinations of Applicants

- Before making a job offer, an employer may not ask an applicant about:
 - Existence, nature or severity of disability
 - Prognosis or expectation regarding condition
 - Whether will need leave or special treatment
- However, an employer can ask a job applicant about:
 - Ability to perform job functions, even non-essential functions
 - Ability to meet attendance requirements
 - Demonstrating ability to perform job tasks

Pre-Employment Medical Examinations of Applicants

- An employer may require a medical examination and/or make medical inquiries under these conditions
 - Required after making a *conditional job* offer
 - Required of all candidates for all jobs or all candidates for certain positions (uniformity)
- Employer may not refuse to hire based on results, unless reason is job-related and consistent with business necessity

Pre-Employment Medical Examinations of Employees

- Employer may make medical inquiries and/or require medical examinations of employees only where job-related and consistent with business necessity
- Information obtained from medical inquiries and examinations should be kept in separate files and treated as confidential

Who is a “Qualified Employee with a Disability”

- The person must satisfy employer’s legitimate requirements for the job
 - E.g., education, experience, skills, licenses
- The person must be able to perform the job’s essential functions
 - Nonessential, marginal tasks are irrelevant
 - Employer cannot refuse to hire based on disability preventing an applicant from performing a marginal (non-essential) job function
 - Performance of essential functions at time of decision
 - not at some point in the future
 - *Must consider whether reasonable accommodations could allow performance!*

What are Essential Functions?

- Consider:
 - Are other employees actually required to perform the function in question?
 - Would removing the function which the individual is unable to perform fundamentally change the job?
 - Does the position exist to perform the function?
 - Are other employees available to help?
 - Is the task consistent with the written job description?

What Are Reasonable Accommodations?

- Three General Types:
 - Changes in the job application process so that a qualified applicant with a disability can be considered for the job;
 - Modifications to the work environment – including how a job is performed – so that a qualified individual with a disability can perform the job; and
 - Changes so that an employee with a disability can enjoy equal benefits and privileges of employment (lunchrooms, lounges, restrooms)

Things You Can Do that May Reflect Reasonable Accommodations

- Job restructuring
- Part-time or modified work schedules
- Reassignment to a vacant position
 - An employer is *not* required to bump another employee
- Acquiring or modifying equipment
- Changing exams, training materials, or policies; and
- Providing qualified readers or interpreters

Has the employee requested an accommodation?

- It is enough if the employer is on notice that the employee has a disability that requires an accommodation
 - No magic language is required
 - Need not use the term “reasonable accommodation”
 - Knowledge of disability + knowledge of need for accommodation may be enough
 - Even if the employee did not request an accommodation
 - Does not need to be made in writing

Undue Hardship Exception

- Reasonable accommodation is not required where accommodation would impose an “undue hardship” on the employer
- Things to consider:
 - nature and cost of the accommodation,
 - overall financial resources of the employer, and
 - effect on expenses or impact of accommodation on the operation of the employer

Family and Medical Leave Act

- FMLA requires covered employers to grant eligible employees up to 12 weeks of unpaid leave in a 12-month period
 - Covered employers are those with 50+ employees
 - Eligible employees must meet certain criteria including having worked at least 1,250 hours during the prior 12 months
 - State law may expand benefits
- FMLA prohibits retaliation by the employer
- FMLA leave may be taken for:
 - The birth or adoption of an employee's child;
 - For an employee to care for a child, spouse or parent with a serious health condition; or
 - When an employee is unable to work because of his or her own serious health condition

FMLA Military Amendments

- Extended leave (up to 26 workweeks of leave in a single 12 month period) for caring for a covered service member:
 - On temporary disability retired list
 - With a serious injury or illness for which he/she is undergoing medical treatment or therapy
 - Otherwise on outpatient status
- Persons may use the normal 12 weeks of FMLA leave for any “qualifying exigency” arising out of fact that a covered service member is on active duty or called to active duty status in support of a contingency operation
- May be taken intermittently where necessary

Uniformed Services Employment & Reemployment Rights Act

- Prohibits discrimination against persons because of
 - membership,
 - application for membership,
 - performance of service,
 - application for service, or
 - obligation for servicein the Armed Forces Reserve, the National Guard, or other uniformed services.
- Protects the right of veterans, reservists, and National Guard members to reclaim their civilian employment after being absent due to military service or training

Re-employment

- Upon completion of military service, the returning employee “shall be promptly reemployed.”
- What job/benefits does the returning employee get?
 - “Escalator Principle”
 - Employee is entitled to the position, pay and benefits he/she “would have achieved” had he/she been continuously employed

- *Practice Tip:* Do not ask questions in job interviews about any of the subjects where discrimination is prohibited

Occupational Safety General Duty Clause

(a) Each employer—

(1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;

(2) shall comply with occupational safety and health standards promulgated under this chapter.

(b) Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this chapter which are applicable to his own actions and conduct.

29 U.S.C. § 654

Occupational Safety General Duty Clause

- Employers have an obligation to provide a safe workplace
- Employers have an obligation to comply with the published standards
- Unsafe workplaces can lead to penalties
 - Discovered through inspection
 - Discovered *post-hoc* after an accident or injury

Home-Based Worksites (e.g. outside sales force)

- OSHA will not conduct inspections of employees' home offices
- OSHA will not hold employers liable for employees' home offices, and does not expect employers to inspect the home offices of their employees
 - BUT employers are responsible in home worksites for hazards caused by materials, equipment, or work processes which the employer provides or requires to be used in an employee's home

Workplace Violence

- OSHA has issued guidance on the subject
 - Preventing workplace violence falls under the OSHA general duty clause
 - "Each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."
 - OSHA “recommends” workplace controls

Workplace Violence Control Mechanisms

- Management commitment/employee involvement
 - Smaller sites: clear goals for worker security
 - Larger organizations: written program
- Worksite analysis
 - identify high-risk situations through employee surveys, workplace walkthroughs, and reviews of past data
- Hazard prevention and control
 - Engineering, administrative, and work practice controls to prevent or limit violent incidents
- Training and education

Failure to Prevent

- Problem: Failure to prevent workplace violence could be considered a violation of the general duty clause
- Must you implement all of the OSHA recommendations as a defensive posture?
- There are no clear standards to apply here
- Post-incident response and evaluation

Many Aircraft Parts Present Potential Workplace Jeopardy

They may be hazardous materials!

Hazardous Materials Divided Into Nine Classes

- | | |
|------------------------|--|
| Class 1: (6 Divisions) | - <u>Explosives</u> |
| Class 2: (3 Divisions) | - <u>Gases</u> |
| Class 3: (No Division) | - <u>Flammable Liquids</u> |
| Class 4: (3 Divisions) | - <u>Flammable Solids</u> |
| Class 5: (2 Divisions) | - <u>Oxidizers</u> |
| Class 6: (2 Divisions) | - <u>Toxic / Poisonous Materials</u> |
| Class 7: (No Division) | - <u>Radioactive</u> |
| Class 8: (No Division) | - <u>Corrosives</u> |
| Class 9: (No Division) | - <u>Miscellaneous Dangerous Goods</u> |

Classification

- Found in Section 3 of the DGR
 - Each class is described in the appropriately numbered subsection
 - E.g. Class one is identified in section 3.1, class two is identified in section 3.2. 2tc.
 - Each class description includes packing group classification criteria (where there is a packing group)

Explosives

- Explosive substances
- Explosive articles
- Each explosive will have a compatibility group letter

Explosives



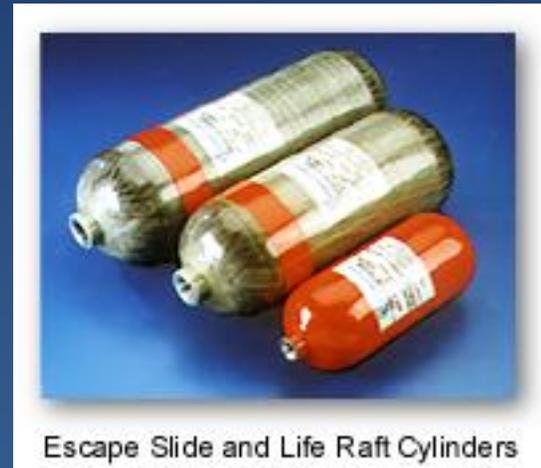
- Including explosive squibs and actuators
- E.g., in the fire suppression systems
- Most aviation explosives are division 1.4

Gasses

- At 50° C (122° F) it has a vapor pressure of 300 kPa
or
- Is completely gaseous at 20° C (68° F) at a standard pressure of 101.3 kPa
- *NOTE: a non-flammable gas that is below vapor pressure standards is not hazmat UNLESS it has a subsidiary hazard (e.g. O₂)*

Gasses

- 2.1 Flammable gas
- 2.2 Nonflammable gas
- 2.3 Toxic gas



Flammable Liquids

- Class 3 includes those liquids with a flash point of 60° C (140° F) or less
- Note a slight difference from the US standard, which is 60.5° C (141° F)

Flammable Liquids



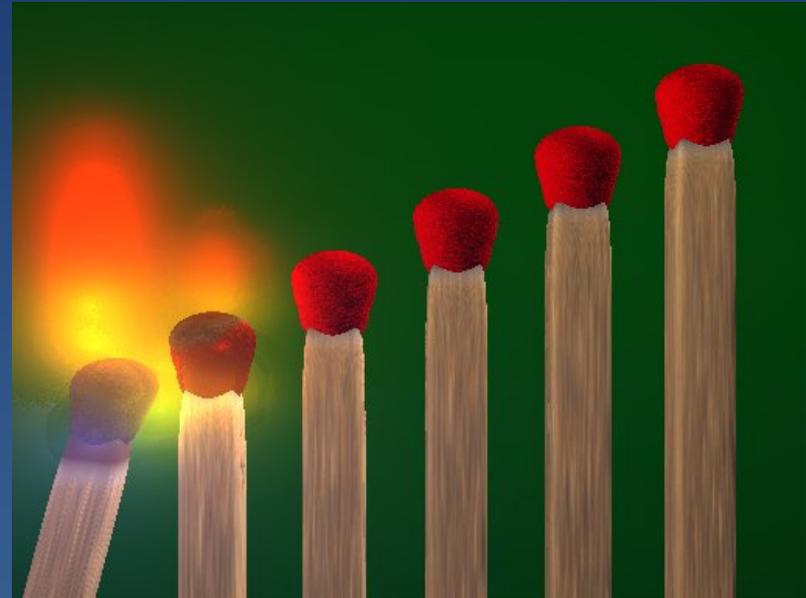
- Fuel
- Paint
- Solvents
- Cleaners

Flammable Solids

- 4.1 – Flammable solids
 - Readily combustible solids
- 4.2 – Self-reactive substances
 - Thermally unstable substances
- 4.3 – Solid desensitized explosives
 - Wetted
 - Diluted

Flammable Solids

- Matches are a good example of flammable solid



Oxidizers

- 5.1 – Oxidizing substances
- 5.2 – Organic peroxides

Oxidizers

- Oxygen generators
 - Spent oxygen generators are dangerous goods, too (US distinction – spent generators are treated as class nine)
 - Be wary of passenger service units – they may contain oxygen generators!



Toxics

- 6.1 – Toxic substances
- 6.2 – Infectious substances

Toxics

- Certain coatings (e.g. rust-inhibiting coatings containing strontium chromate)
- Certain greases
- Some chemical films and coatings, like Alodine

Radioactives

- Anything that contains radionuclides where the activity concentration and total activity exceed certain values (found in chapter IATA 10)
- It is important to check the actual activity level!

Radioactives

- Depleted uranium counterweights may be found in some control surfaces, particularly older ones
- Radium, used in older instrument dials



Corrosives

- Cause severe damage to living tissue (full thickness destruction of intact skin tissue after exposure)
- Cause aluminum or steel corrosion

Corrosives

- Batteries may be hazardous materials
- Many articles with batteries in them, like flight data recorders, must therefore be treated as hazmats



Miscellaneous Dangerous Goods

- Articles that present a hazard to aviation but that do not meet the requirements of another class

Miscellaneous Dangerous Goods

- Aircraft first aid kits
- Magnetized material
- Environmental hazards
- Life-saving appliances
- Parts with residual fuel
- Battery-powered equipment
- Engines
- Lithium batteries



Thank You

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