



Employer
Employment Practices
Educator's Legal Liability

Presenter

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What Are Employer Practices?

Deals with the laws and protections under

- Title VII
- ADA
- Civil Rights Act of 1991
- ADEA
- FMLA
- Title IX



EEOC Interprets & Enforces

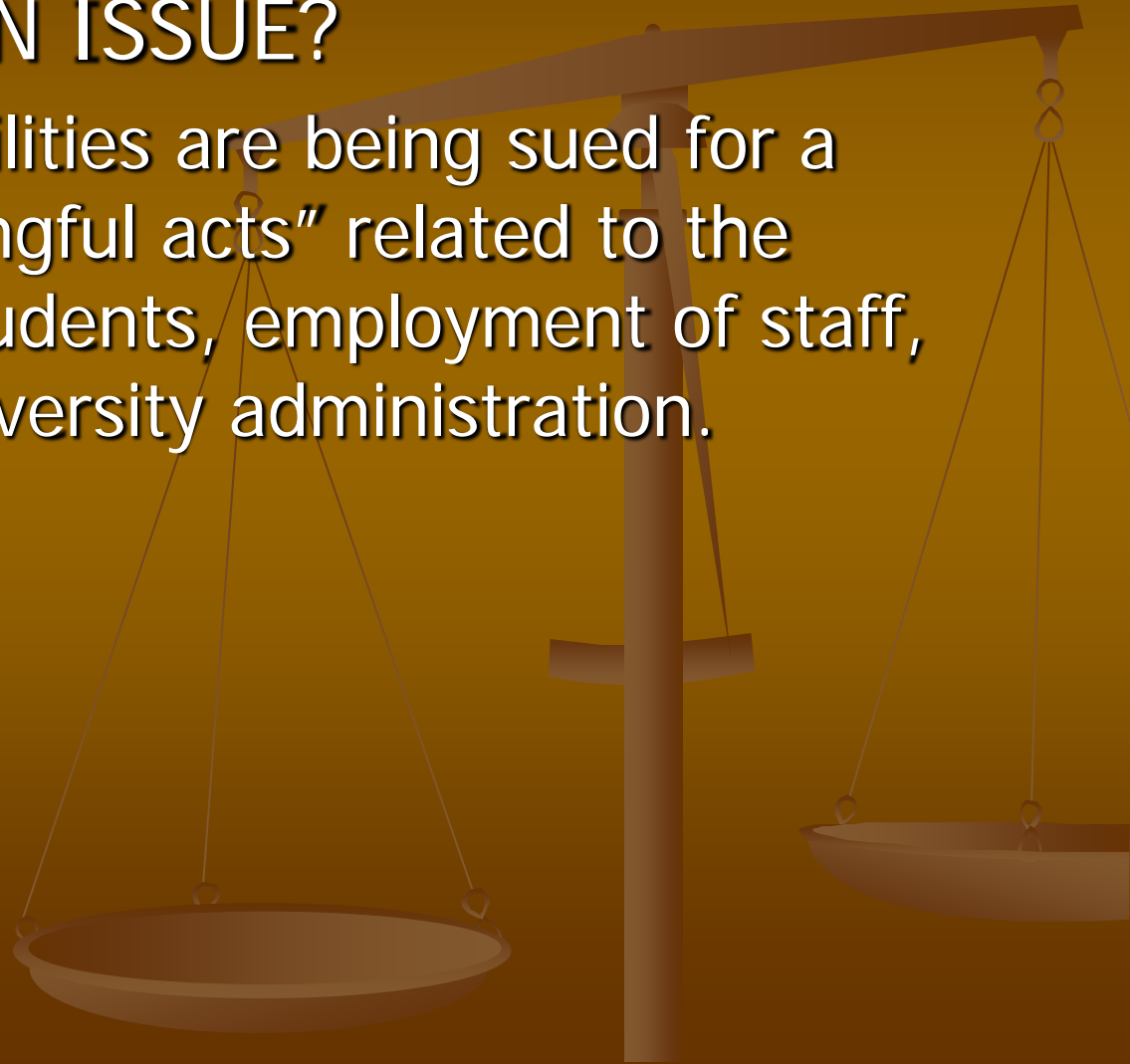
Eleven types of employment practices discrimination:

- Age
- Disability
- Equal Pay/Compensation
- Genetic Information
- National Origin
- Pregnancy
- Race/Color
- Religion
- Retaliation
- Sex
- Sexual Harassment



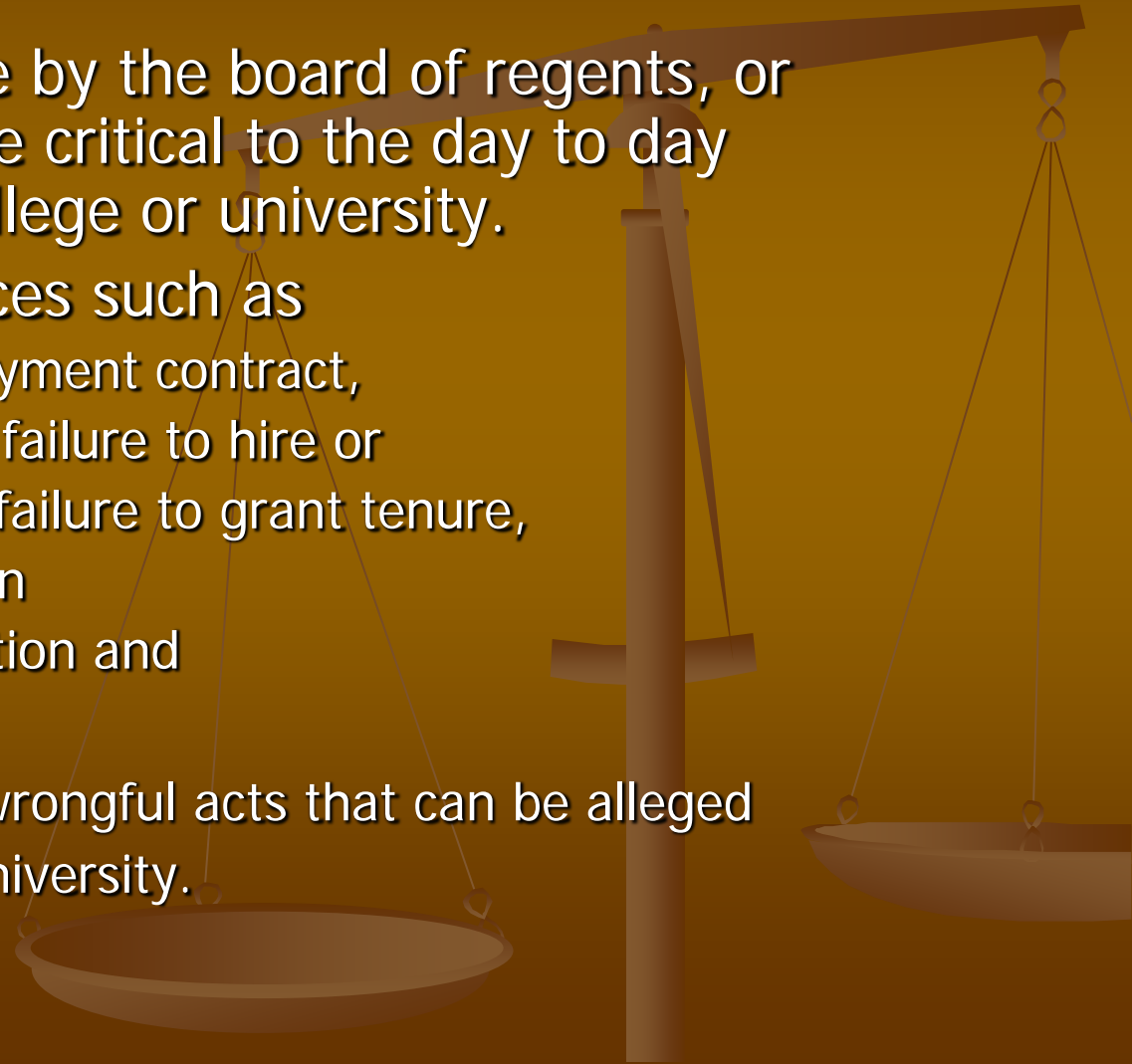
Employer Practices Liability

- WHY IS THIS AN ISSUE?
 - Educational facilities are being sued for a variety of "wrongful acts" related to the education of students, employment of staff, and college/university administration.



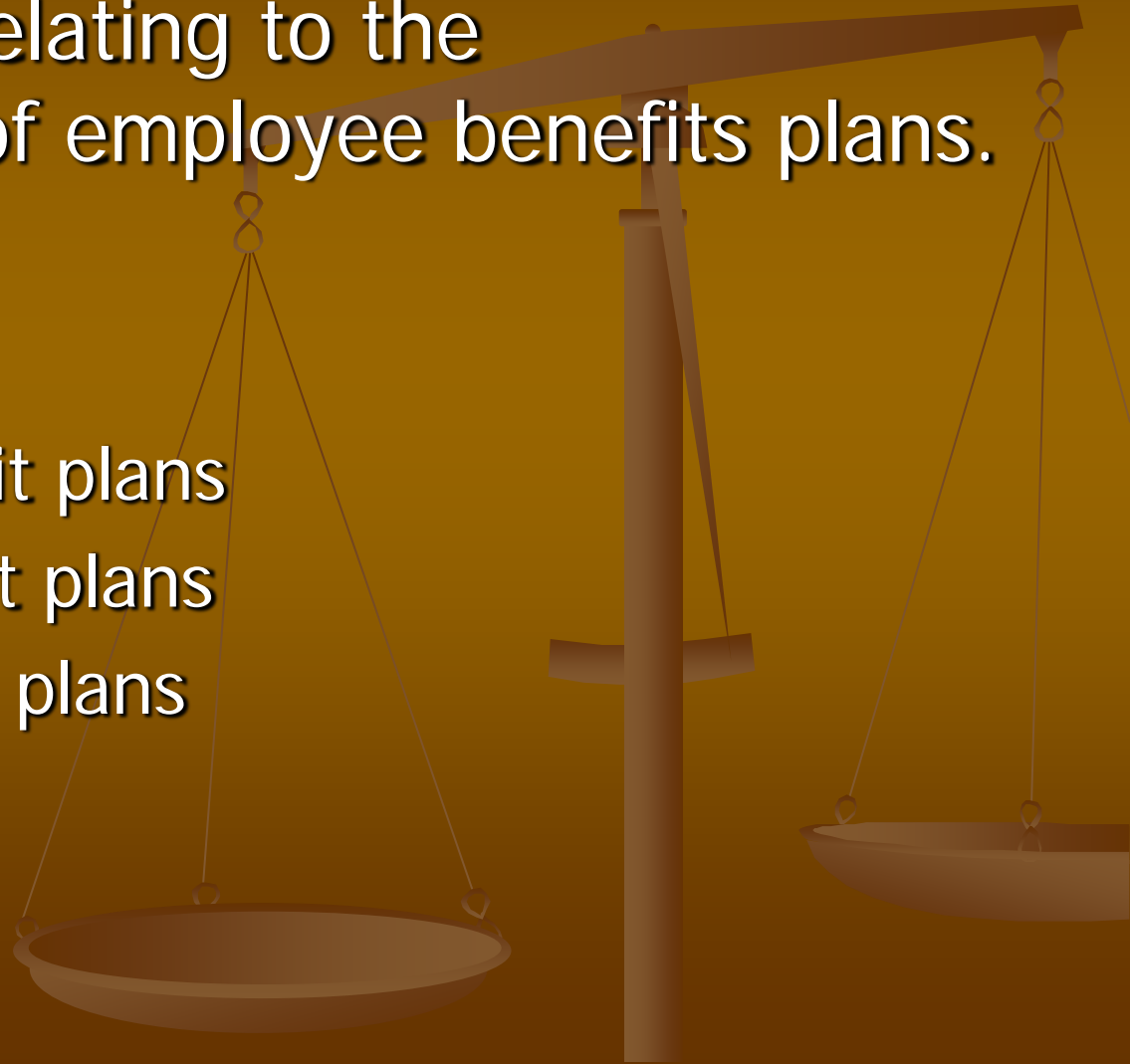
Wrongful employment practices:

- The decisions made by the board of regents, or governing board are critical to the day to day operation of the college or university.
- Employment practices such as
 - breach of an employment contract,
 - wrongful dismissal, failure to hire or
 - failure to promote, failure to grant tenure,
 - Unlawful termination
 - unlawful discrimination and
 - sexual harassmentare just some of the wrongful acts that can be alleged against a college or university.



Employee Benefit Plans

- Wrongful acts relating to the administration of employee benefits plans.
- Such as:
 - Medical plans
 - Disability benefit plans
 - Vacation benefit plans
 - Pension benefit plans



Employee Benefit Plans



- Common claims such as “Denial of Benefit” under disability plans and medical plans and
- Improper denial of coverage or reimbursement
- Other types:
 - Miscalculation of retirement benefit
 - Denial of survivor benefits

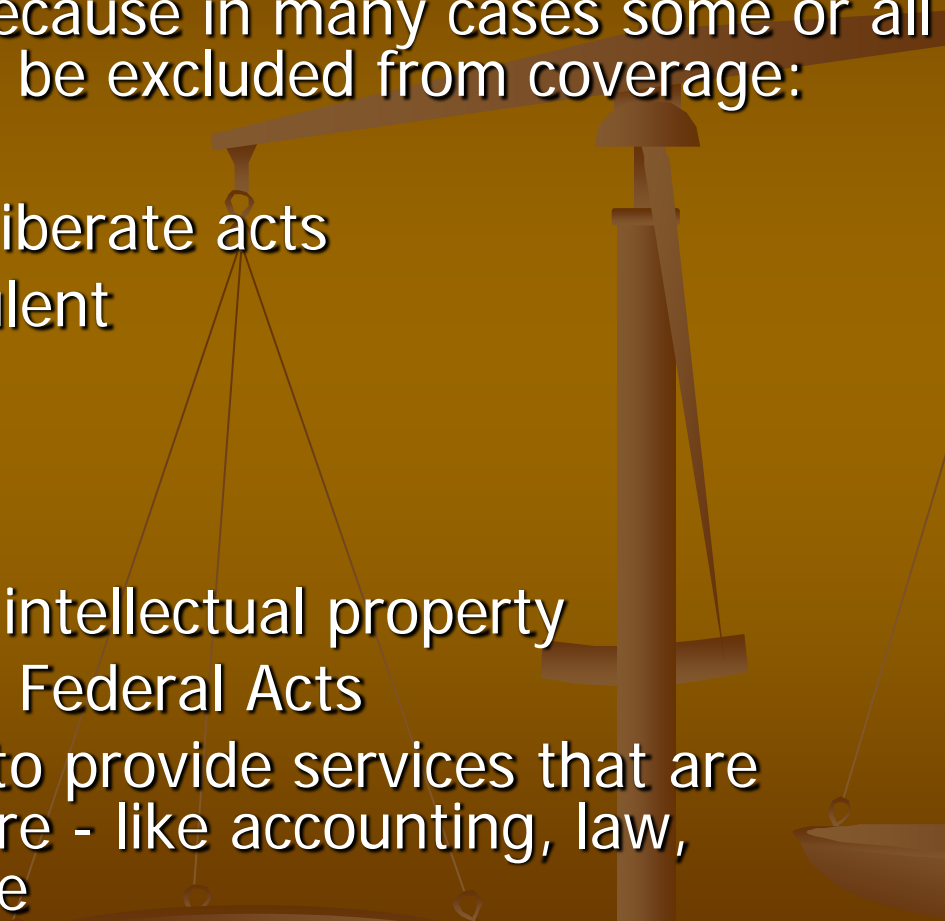
Most Common Claims

EEOC - 2015

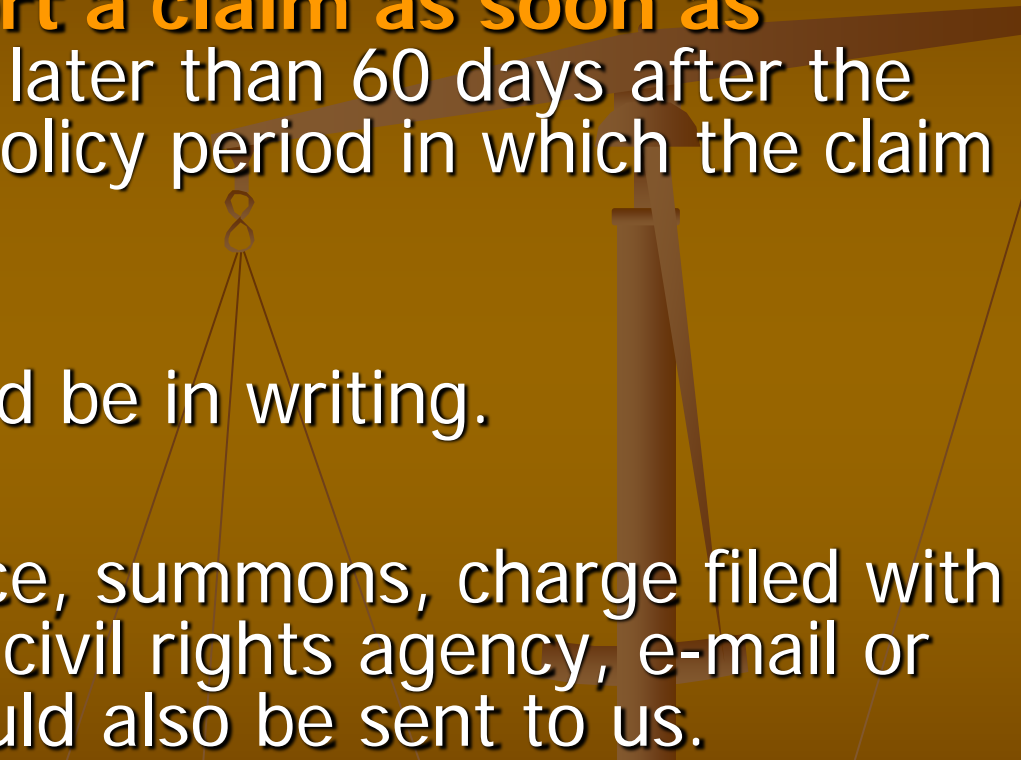
- Retaliation – All Statutes – 44.5%
- Retaliation – Title VII – 35.7%
- Race – 34.7%
- Disability – 30.2%
- Sex – 29.5%
- Age – 22.5%



ELL Insurance **Doesn't Cover**

- EXCLUSIONS – It is important to read and understand these because in many cases some or all of the following can be excluded from coverage:
 - Losses involving deliberate acts
 - Acts that are fraudulent
 - Crimes
 - Sexual Misconduct
 - Pollution
 - Misappropriation of intellectual property
 - Violations of certain Federal Acts
 - Providing or failing to provide services that are professional in nature - like accounting, law, teaching or medicine
- 

Claims

- **You should report a claim as soon as possible,** but not later than 60 days after the expiration of the policy period in which the claim is made.
 - Claim report should be in writing.
 - Any demand, notice, summons, charge filed with the EEOC or state civil rights agency, e-mail or other process should also be sent to us.
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Actual Cases & Judgments

Major damage awards and settlements exceeding \$250,000 that affected

- Colleges, and
- Universities:

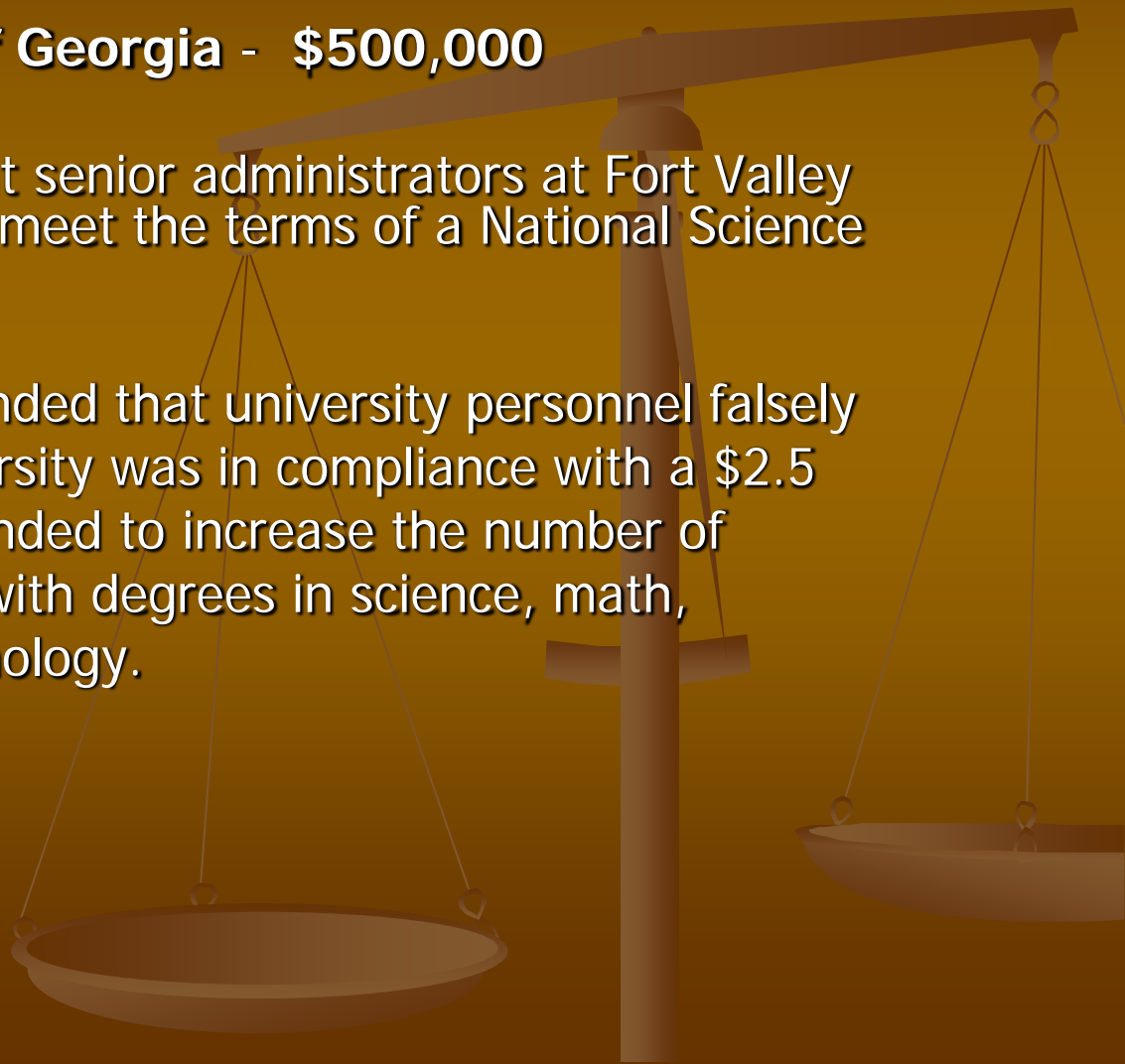


Discrimination – Age & Retaliation

- **The University of Louisiana at Monroe - \$450,000**
- age discrimination and retaliation
- The professor worked for the university for 37 years, retired in 1989 as dean, then was rehired as a professor, but lost his job seven years later due to a new policy prohibiting re-employment of retirees.
- EEOC charges alleging the policy unfairly targeted older workers and, therefore, discriminated on the basis of age.
- That suit was dismissed in 2001 because of a technicality.
-
- The professor applied for numerous positions beginning in 2002.
- The EEOC sued in 2005, claiming that the university repeatedly rejected him for employment because of his age and in retaliation for his earlier age discrimination suit.

Financial

- **University System of Georgia - \$500,000**
- to settle allegations that senior administrators at Fort Valley State University lied to meet the terms of a National Science Foundation grant.
- The government contended that university personnel falsely certified that the university was in compliance with a \$2.5 million agreement intended to increase the number of minorities graduating with degrees in science, math, engineering, and technology.



Harassment



- **Lafayette College in Easton, Pa., - \$1 million**
- to five employees who alleged their supervisor in the public safety department subjected them to repeated and unwelcome sexual harassment.
- Claimed abusive treatment included groping, lewd gestures, displays of sexually explicit materials, and crude comments.
- One employee quit because of the harassment, and another reduced her hours to part-time to avoid seeing the supervisor.

Harassment



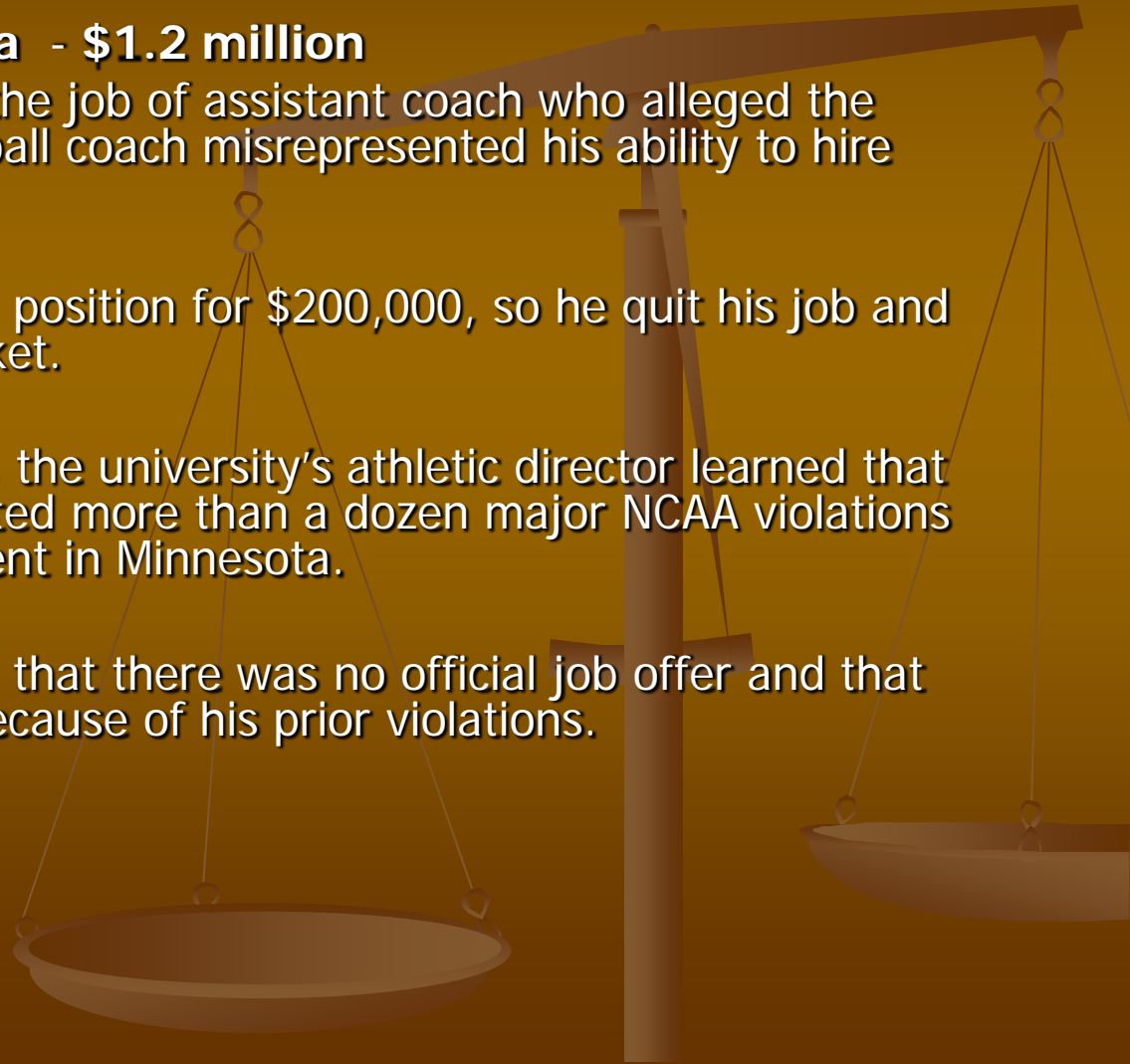
- **Edinboro University of Pennsylvania**
\$495,000
- former student who claimed he was subjected to repeated sexual harassment by a professor in the communications and media studies department.
- The student alleged the professor asked him on dates and suggested that he and another student were in a homosexual relationship. The student said he complained to many school officials.

Harassment

- **Binghamton University in New York**
\$280,000 sexual harassment suit.
 - The fundraiser claimed two officials in the athletics department tried to use her as a "sexual plaything" in exchange for money from potential donors.
 - As part of the agreement, the fundraiser resigned from her position and agreed not to apply for another job at the university.
- 

Hiring & Firing Case

- **University of Minnesota - \$1.2 million**
- to a former applicant for the job of assistant coach who alleged the university's men's basketball coach misrepresented his ability to hire him.
- Believed he was offered a position for \$200,000, so he quit his job and put his house on the market.
- The day after they talked, the university's athletic director learned that the applicant had committed more than a dozen major NCAA violations during his prior employment in Minnesota.
- The university maintained that there was no official job offer and that they could not hire him because of his prior violations.



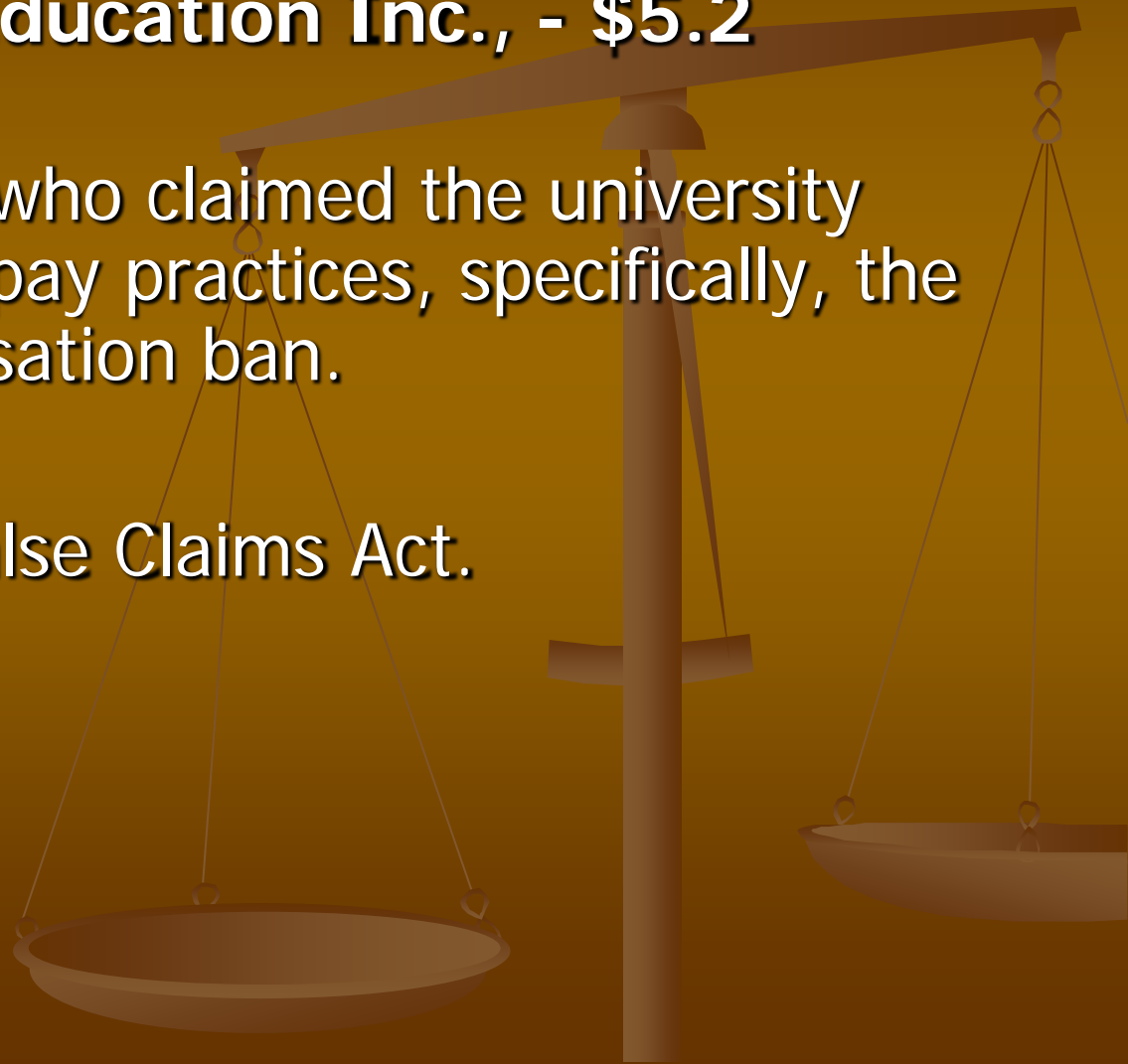
Retaliation



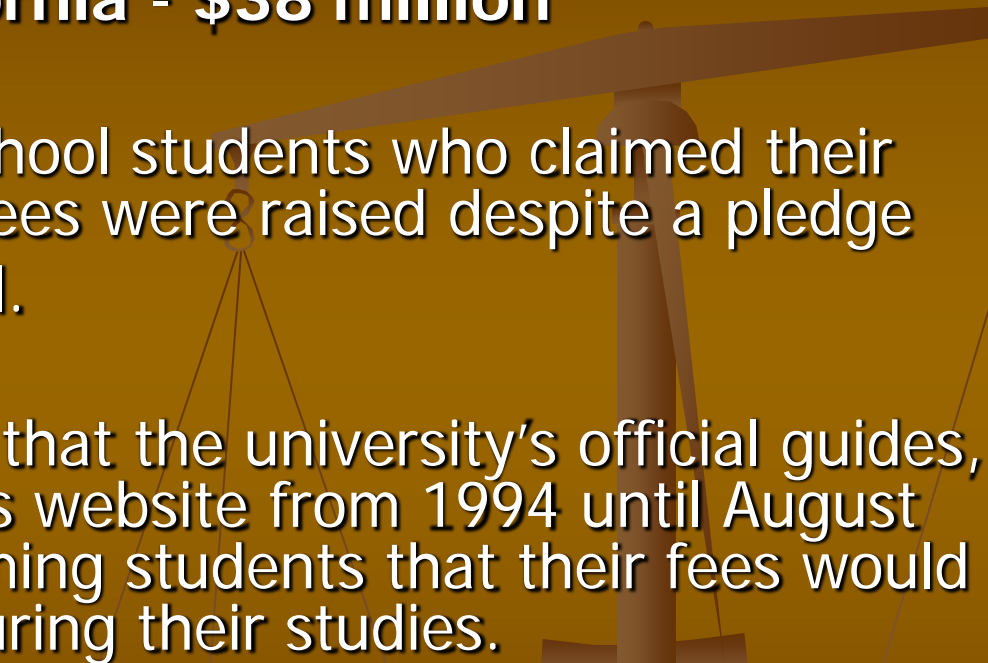
- **Clark College - \$545,000**
- to a former women's basketball coach
- the school terminated him because he expressed concern about compliance with Title IX.
- The award includes \$180,000 in back pay, \$150,000 for future pay, and \$215,000 for emotional distress.

Whistle-Blower

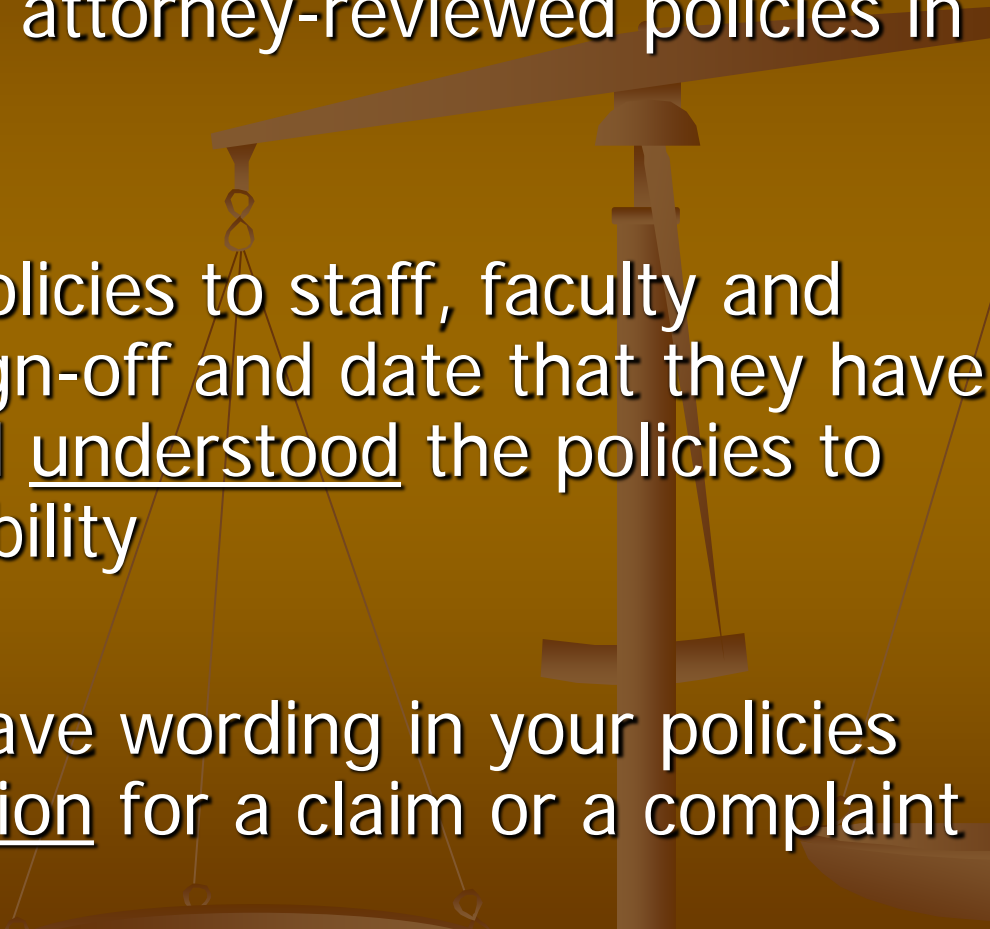
- **Grand Canyon Education Inc., - \$5.2 million**
- former employee who claimed the university violated recruiter pay practices, specifically, the incentive-compensation ban.
- Filed under the False Claims Act.



Financial

- **University of California - \$38 million**
 - 2,900 professional-school students who claimed their professional degree fees were raised despite a pledge to keep the fees level.
 - The judge concluded that the university's official guides, which had been on its website from 1994 until August 2003, promised incoming students that their fees would remain unchanged during their studies.
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What Should You Do To Prevent ELL Issues?

- Have updated and attorney-reviewed policies in place.
 - Distribute those policies to staff, faculty and students with a sign-off and date that they have received, read and understood the policies to the best of their ability
 - Ensure that you have wording in your policies prohibiting retaliation for a claim or a complaint presented to you.
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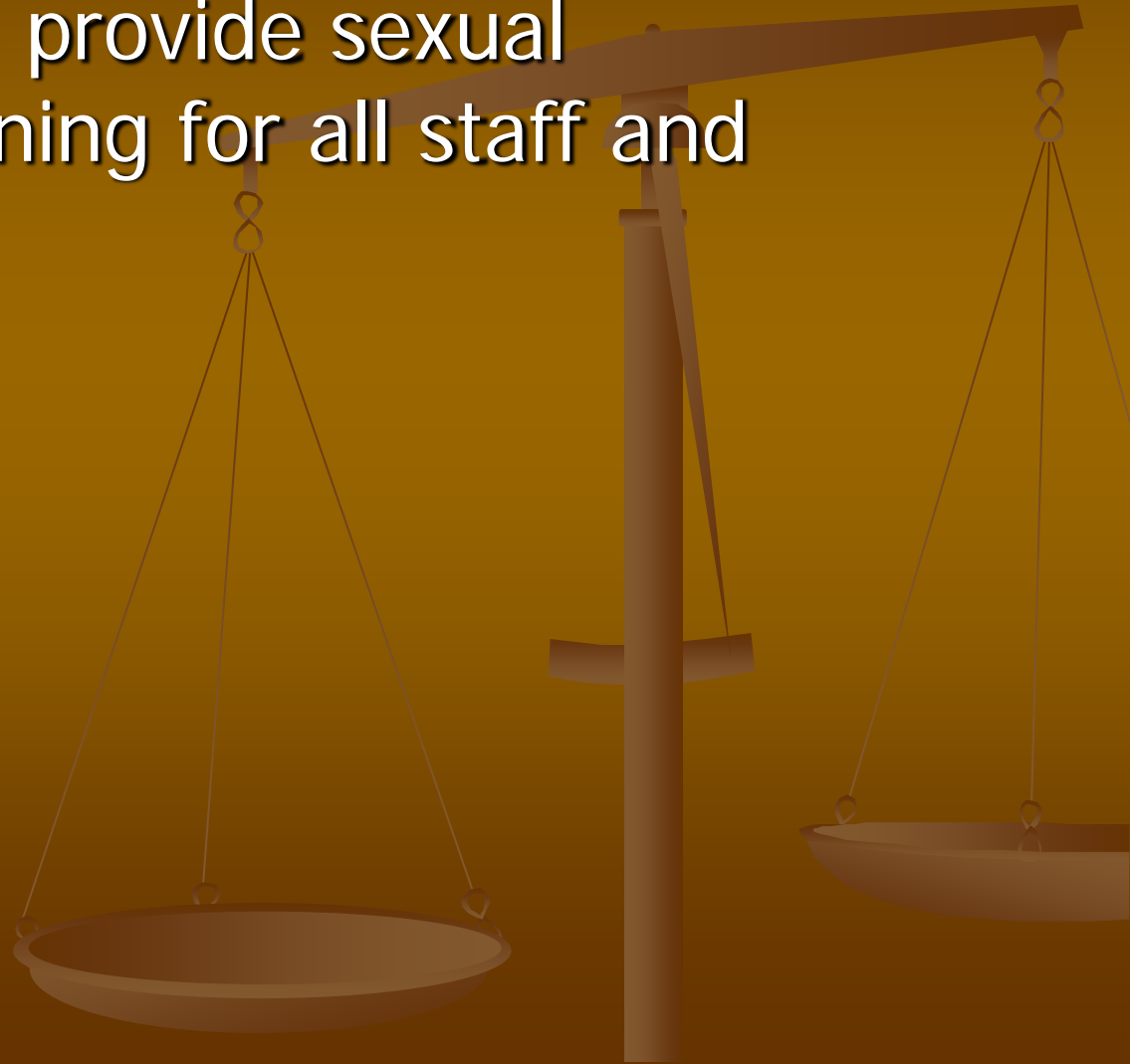
What Should You Do To Prevent ELL Issues?

- Examples of retaliation prohibition policy wording:
 1. Our College/University is committed to maintaining an educational and workplace environment free of retaliation against persons, who, in good faith, complain of discrimination and/or harassment or who assist or participate in the complaint process. – McNeese State University
 2. College/University policy prohibits the taking of any retaliatory action for reporting or inquiring about alleged improper or wrongful activity. -

Northwestern University

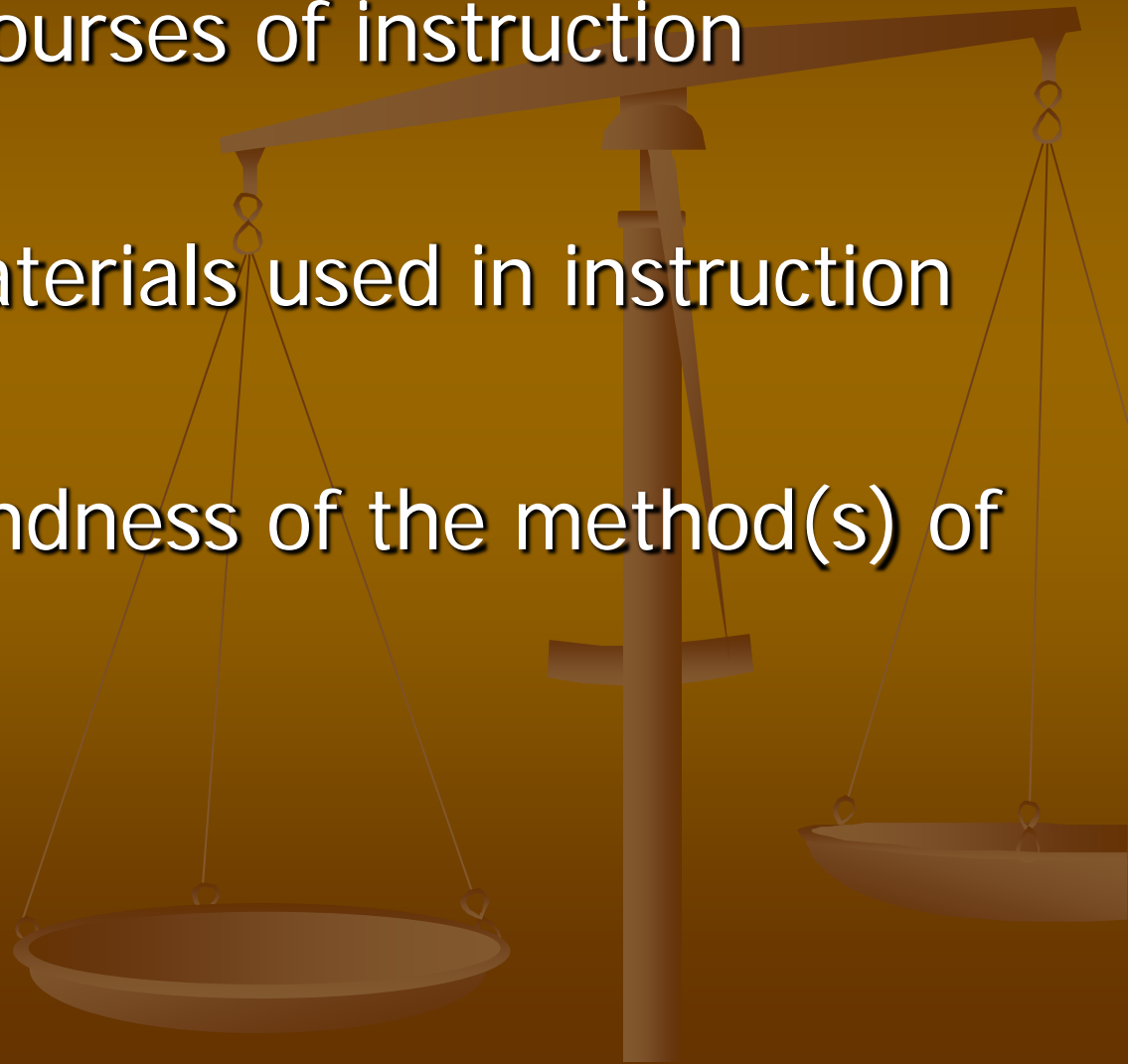
What Should You Do To Prevent ELL Issues?

- Ensure that you provide sexual harassment training for all staff and faculty.
- At hire and,
- annually



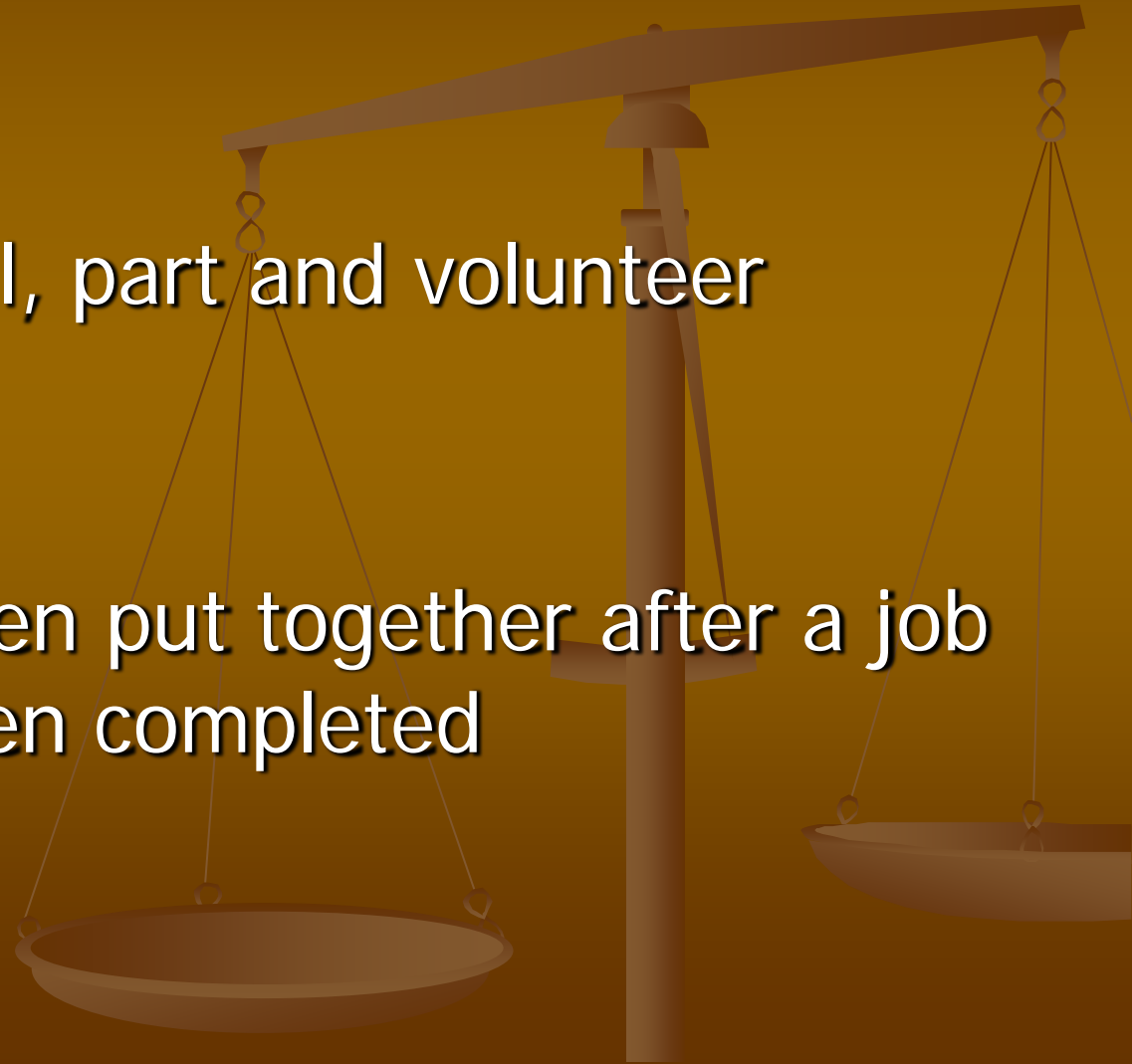
What Should You Do To Prevent ELL Issues?

- Evaluate your courses of instruction
- Evaluate the materials used in instruction
- Review the soundness of the method(s) of teaching



Job Descriptions

- Must be written
- Must include full, part and volunteer positions
- Should have been put together after a job analysis has been completed



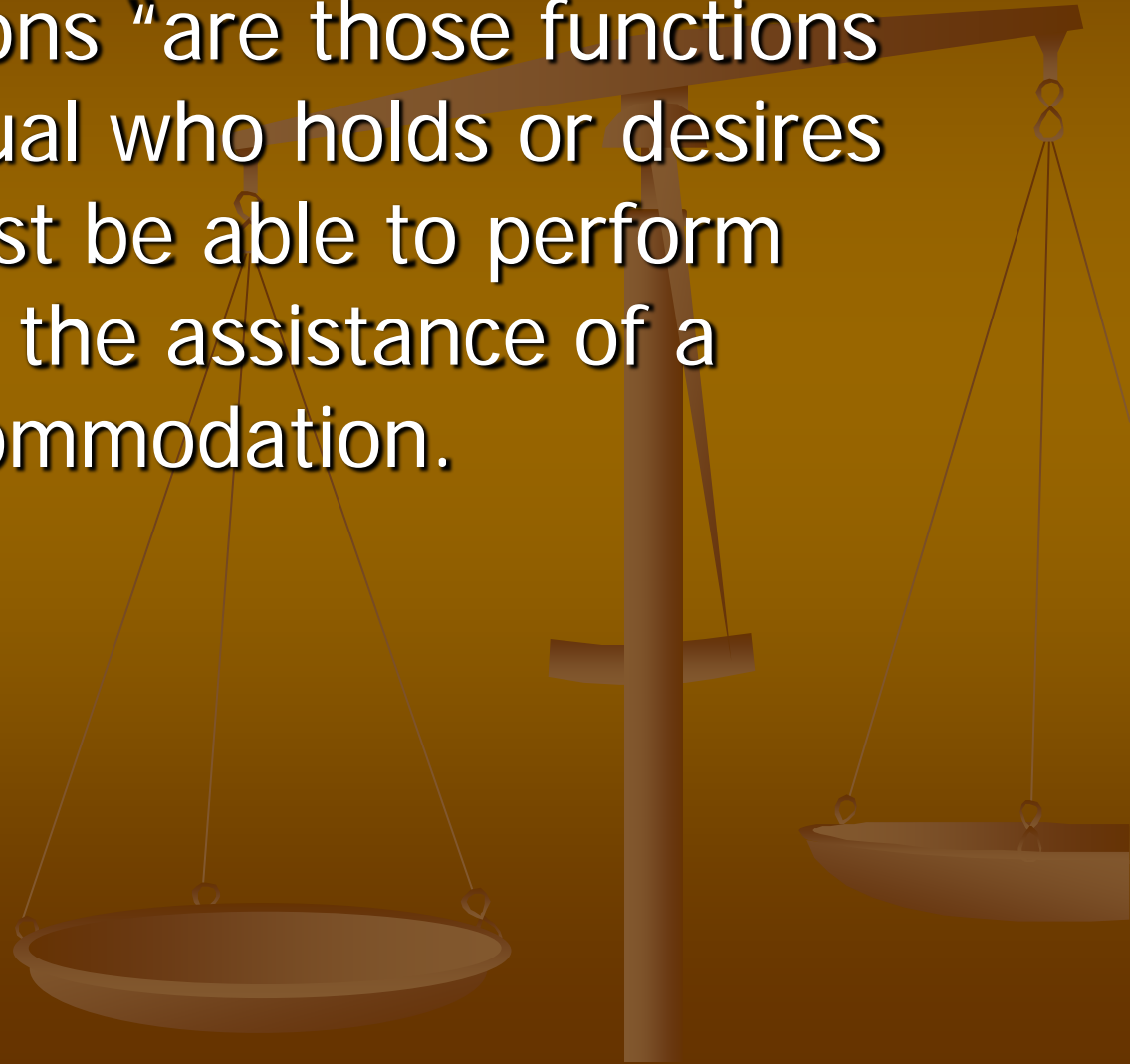
Job Descriptions



- Job title
- Job objective or overall purpose statement
- Summary of the general nature and level of the job
- Description of the broad function and scope of the position
- List of duties or tasks performed critical to success
- Key functional and relational responsibilities in order of significance
- Description of the relationships and roles within the company, including supervisory positions, subordinating roles and other working relationships

Don't Forget to Include the Essential Functions

- Essential functions "are those functions that the individual who holds or desires the position must be able to perform unaided or with the assistance of a reasonable accommodation.



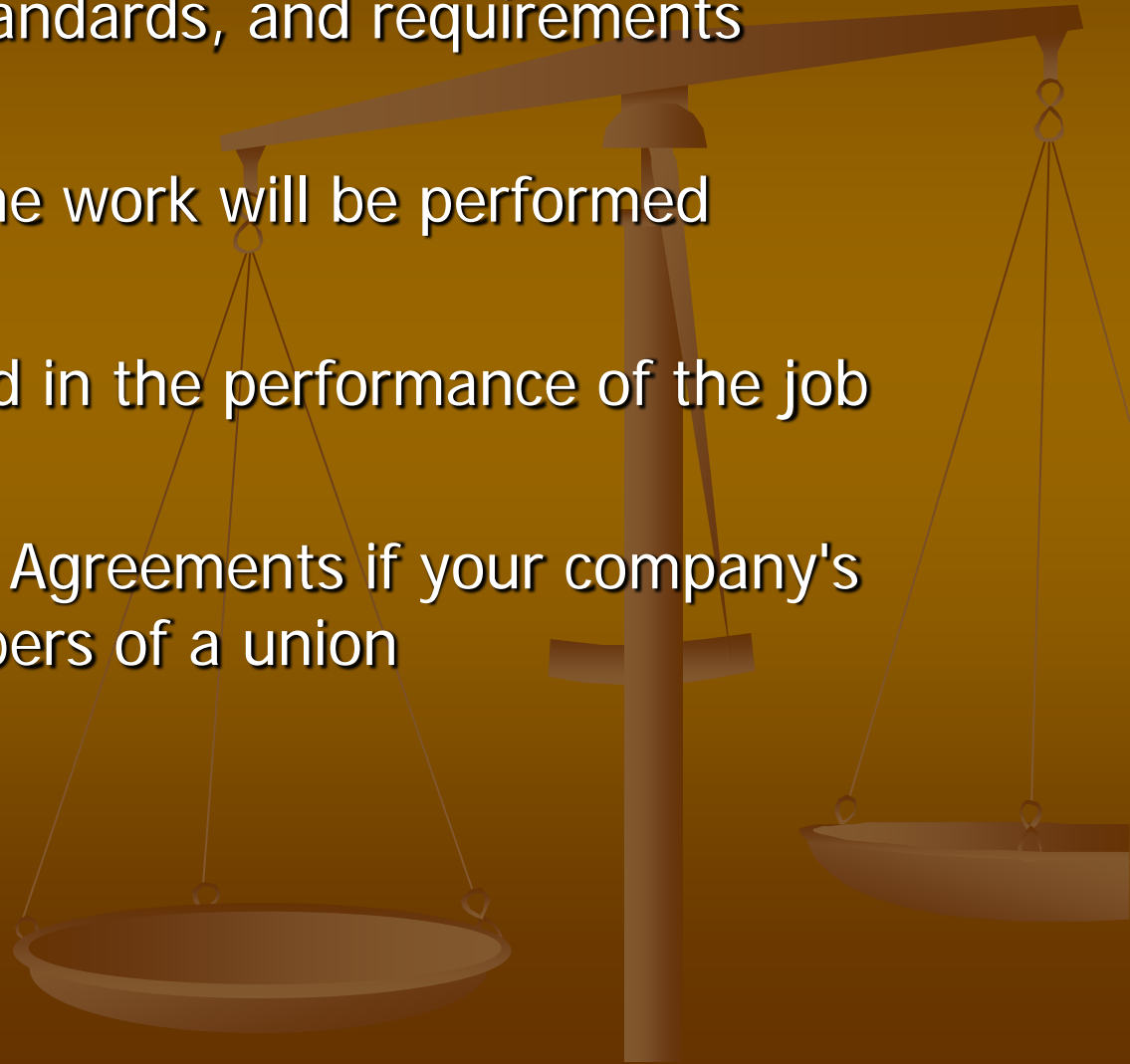
Essential Function Criteria

- Physical & mental demands
- Working conditions
- Quantity
- Quality
- Time
- Process



Job Descriptions

- Job specifications, standards, and requirements
- Job location where the work will be performed
- Equipment to be used in the performance of the job
- Collective Bargaining Agreements if your company's employees are members of a union
- Salary range



What Should You Do To Prevent ELL Issues?

■ Orientation:

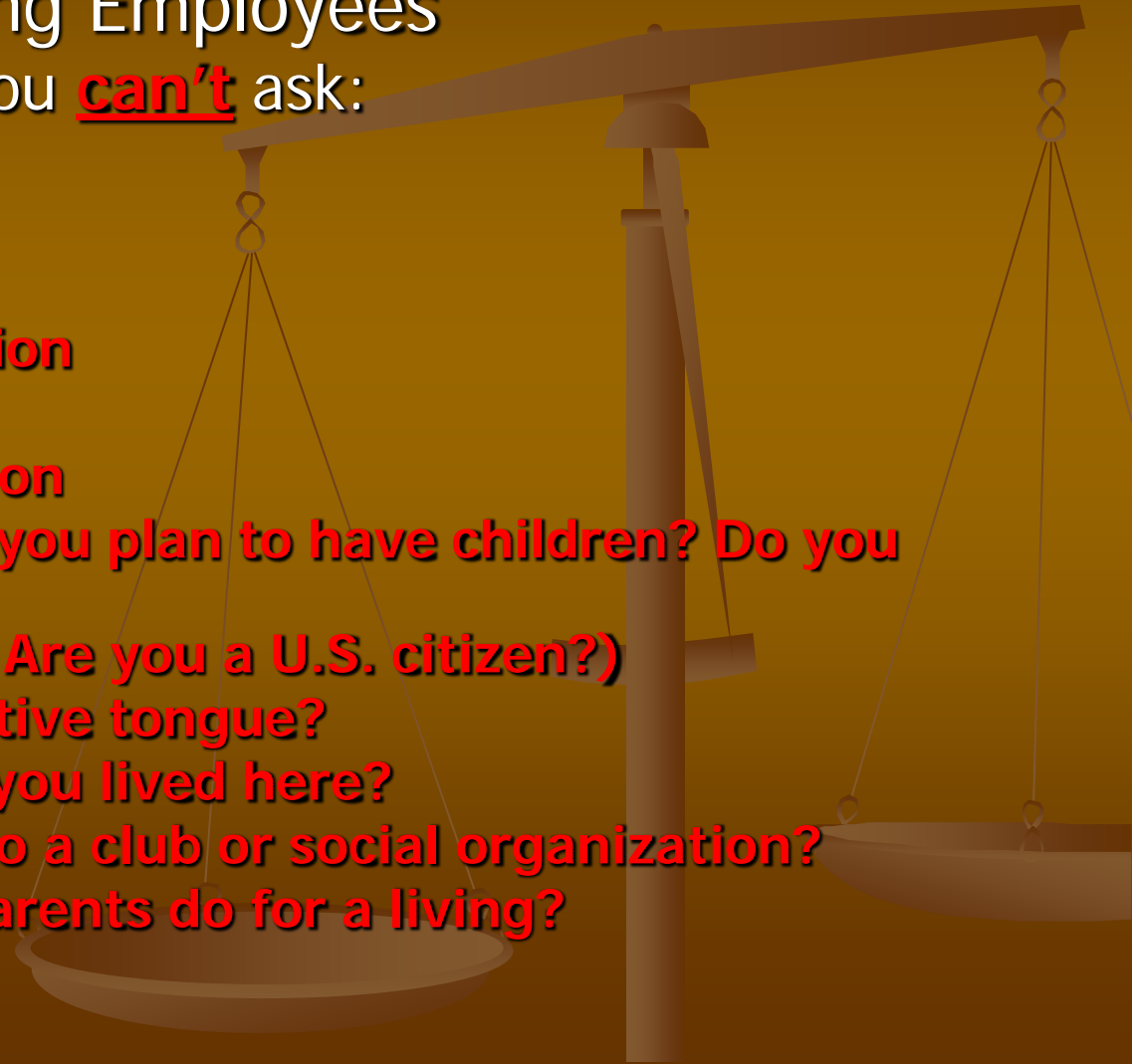
- All new staff and faculty should have an orientation on the policies at the beginning of the school year and annual refreshers thereafter. Current staff should also have refreshers.
- All new students should have an orientation that includes at the very least:
 - school's policies on harassment, hazing, bullying, cyberbullying,
 - who to report complaints to, and
 - General safety such as fire prevention and the use of PPE in sports, science lab and industrial classes.

What Should You Do To Prevent ELL Issues?

■ Hiring and Selecting Employees

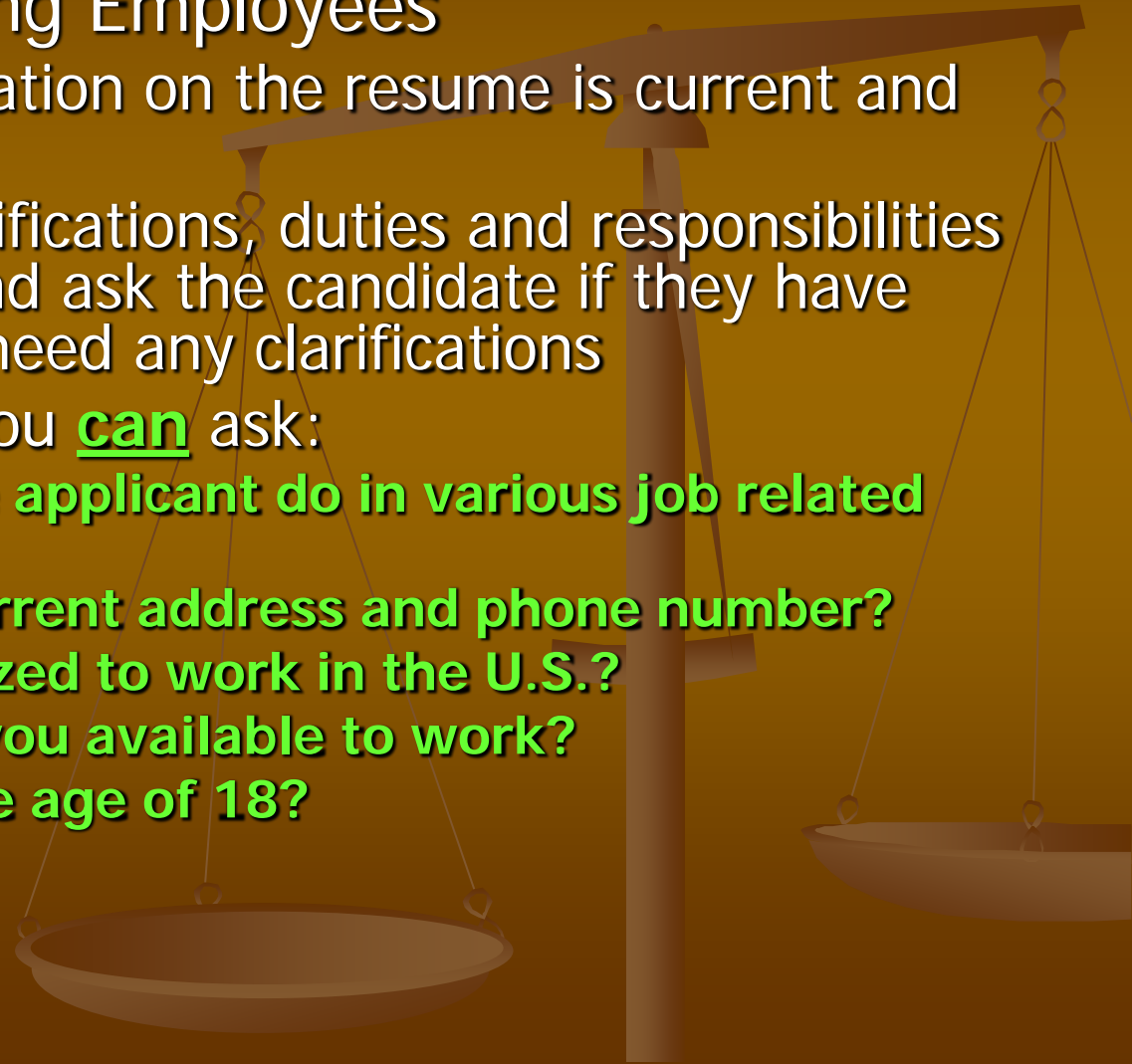
■ Some questions you **can't** ask:

- **Age**
- **Date of Birth**
- **Marital Status**
- **Sexual Orientation**
- **Religion**
- **Political Affiliation**
- **Pregnant or Do you plan to have children? Do you have kids?**
- **Nationality (ex. Are you a U.S. citizen?)**
- **What is your native tongue?**
- **How long have you lived here?**
- **Do you belong to a club or social organization?**
- **What do your parents do for a living?**



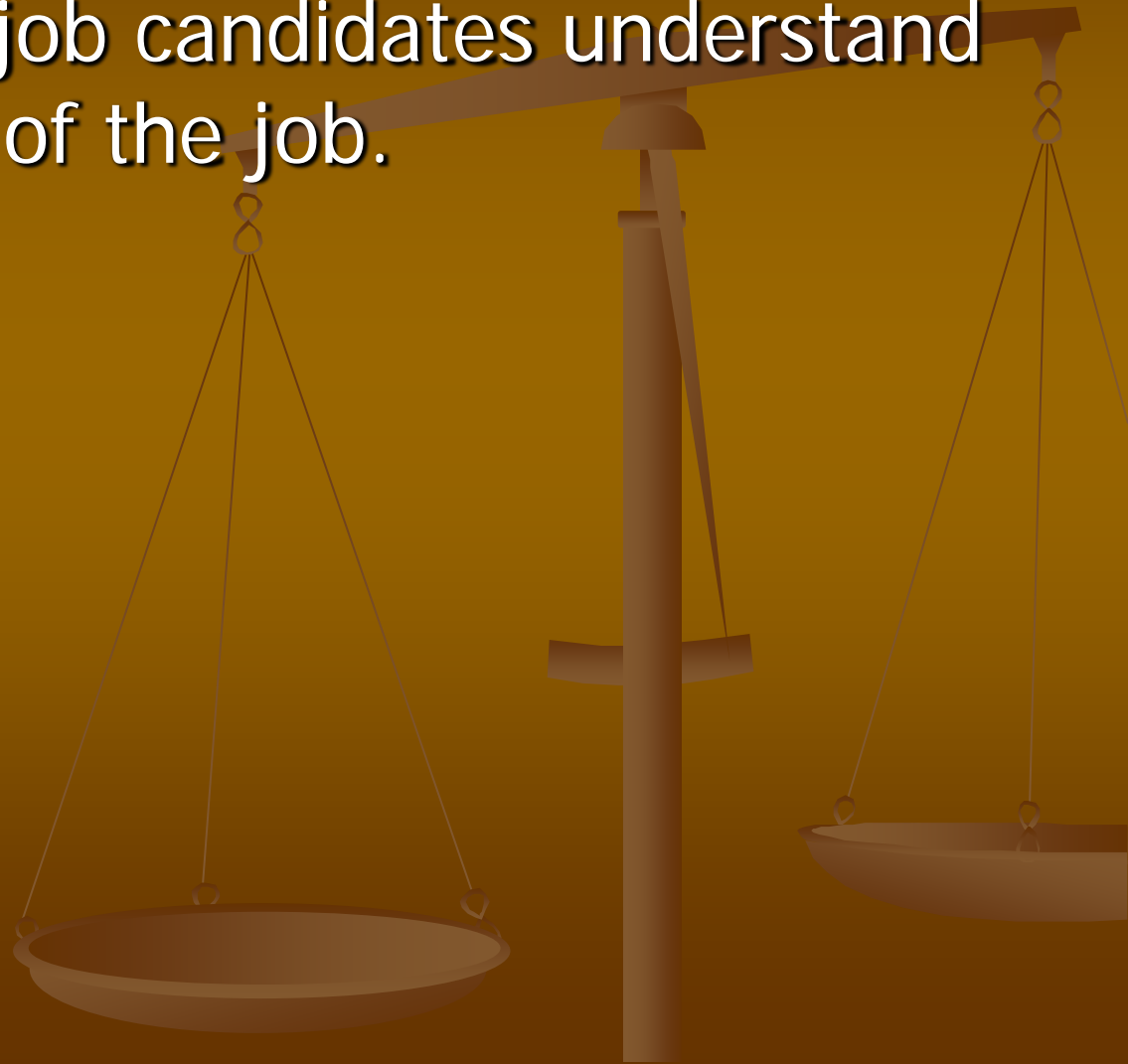
What Should You Do To Prevent ELL Issues?

- Hiring and Selecting Employees
 - Verify that information on the resume is current and accurate
 - State the job qualifications, duties and responsibilities for the position and ask the candidate if they have any questions or need any clarifications
 - Some questions you **can** ask:
 - **What would the applicant do in various job related situations?**
 - **What is your current address and phone number?**
 - **Are you authorized to work in the U.S.?**
 - **What days are you available to work?**
 - **Are you over the age of 18?**



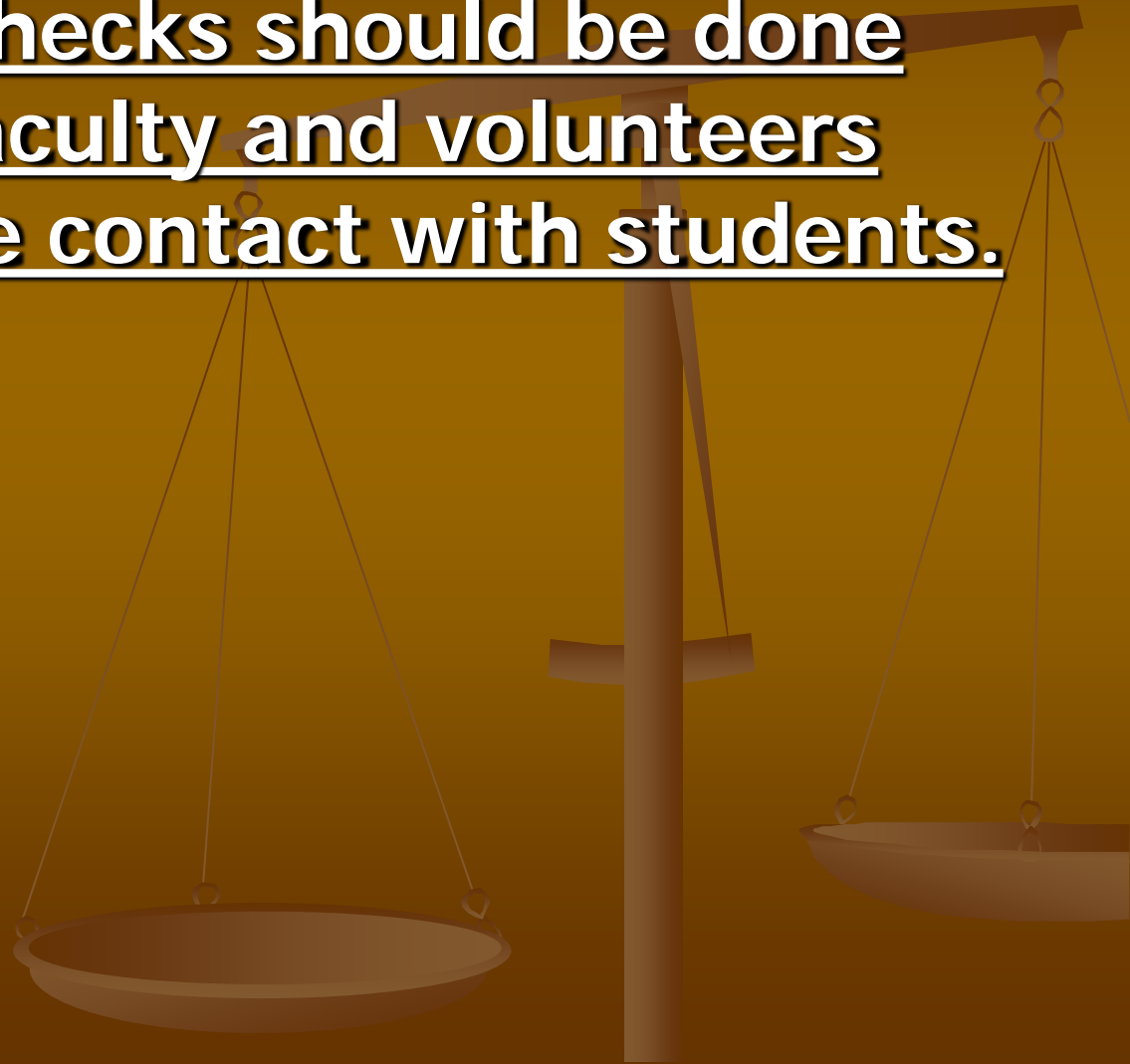
Interview

- Make sure that job candidates understand the parameters of the job.



What Should You Do To Prevent ELL Issues?

- Background checks should be done for all staff, faculty and volunteers who may have contact with students.

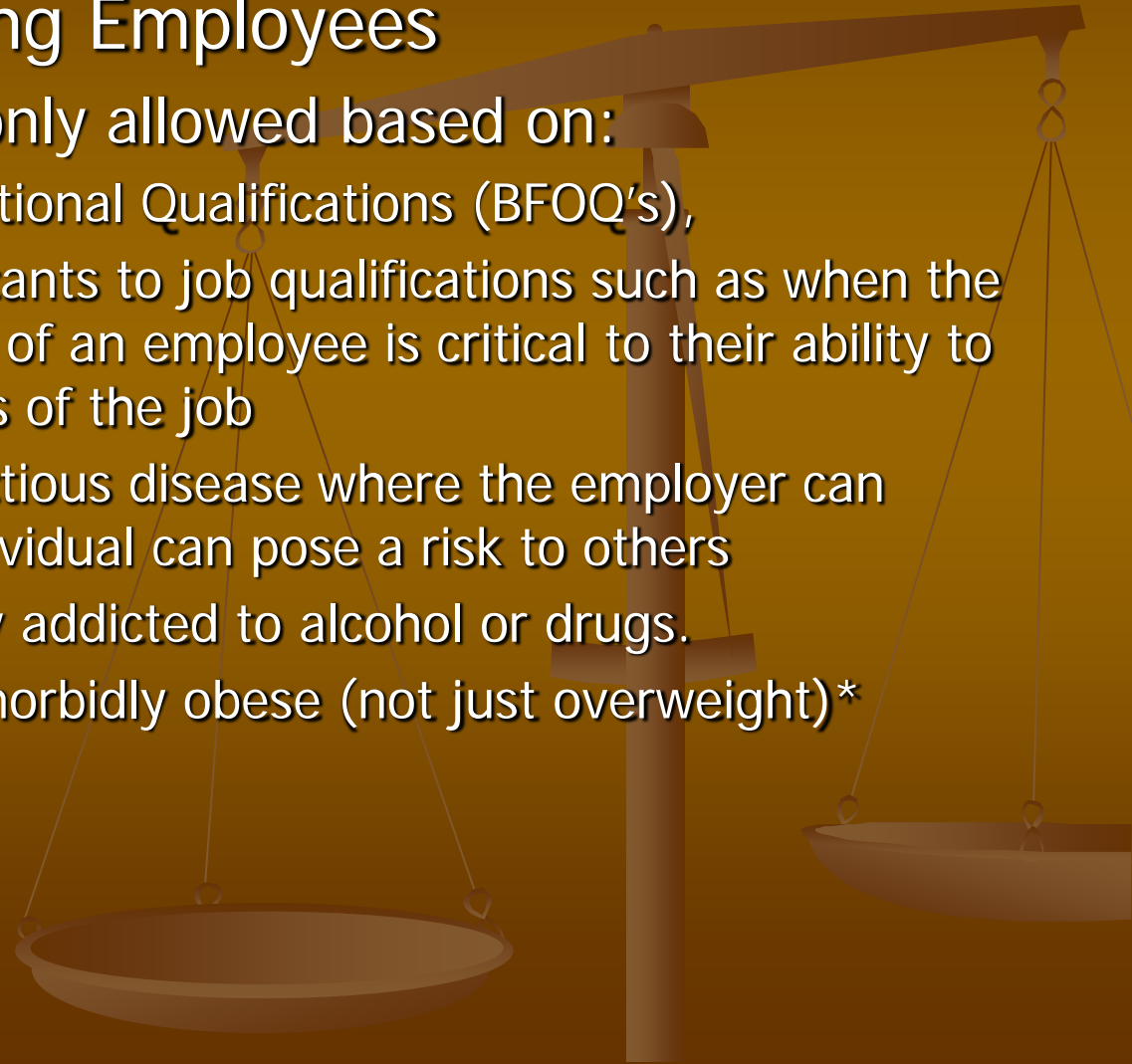


What Should You Do To Prevent ELL Issues?

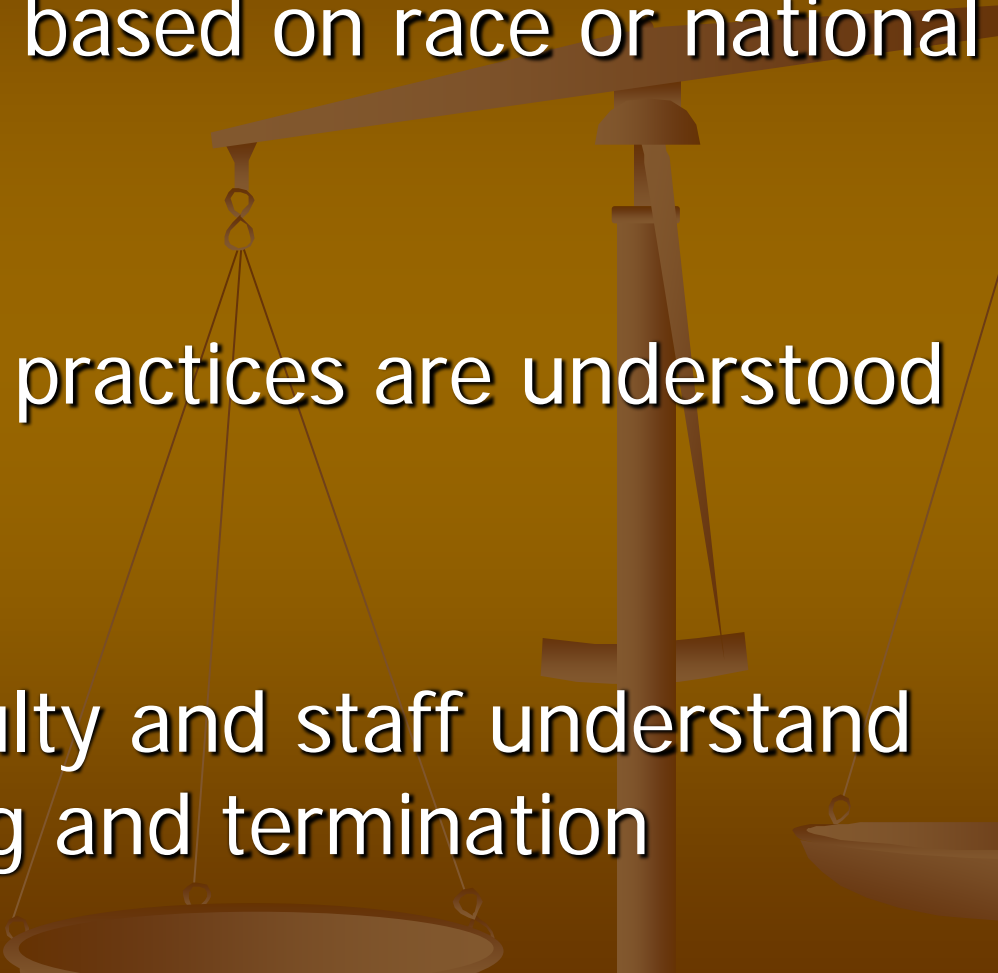
■ Hiring and Selecting Employees

■ Discrimination is only allowed based on:

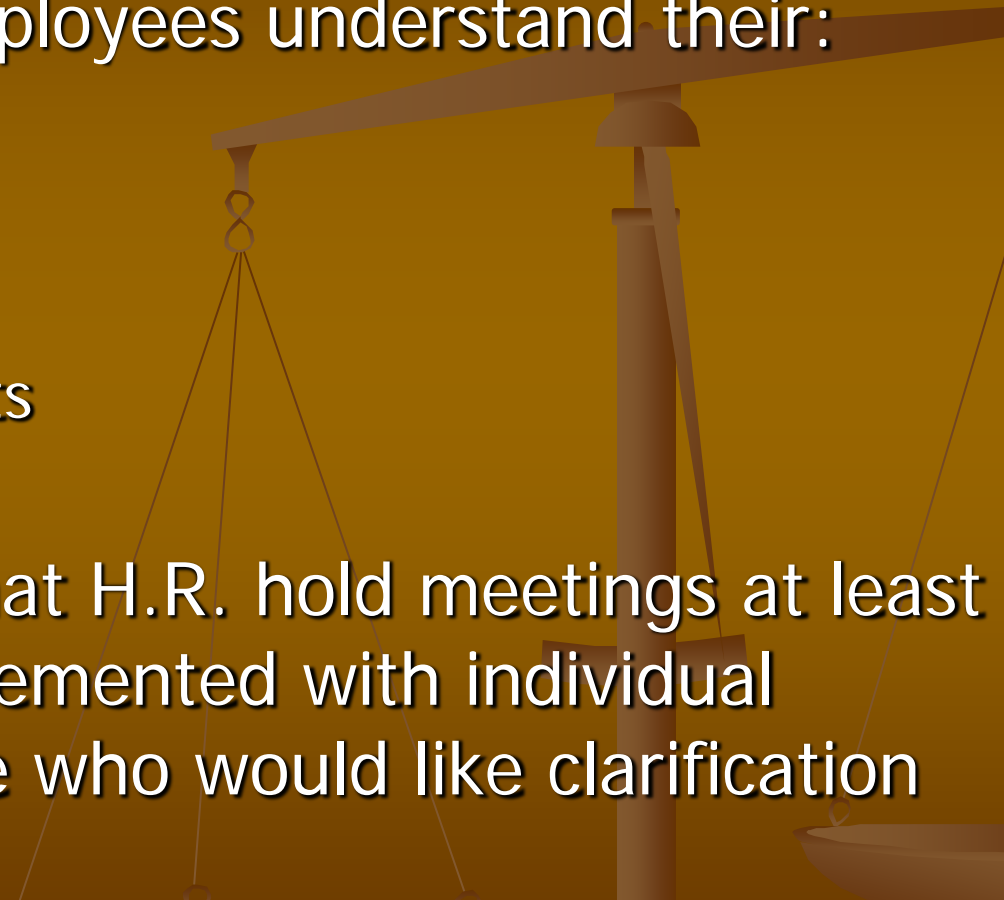
- Bona Fide Occupational Qualifications (BFOQ's),
- Matching of applicants to job qualifications such as when the physical condition of an employee is critical to their ability to perform the duties of the job
- Persons with infectious disease where the employer can show that the individual can pose a risk to others
- A person currently addicted to alcohol or drugs.
- A person who is morbidly obese (not just overweight)*



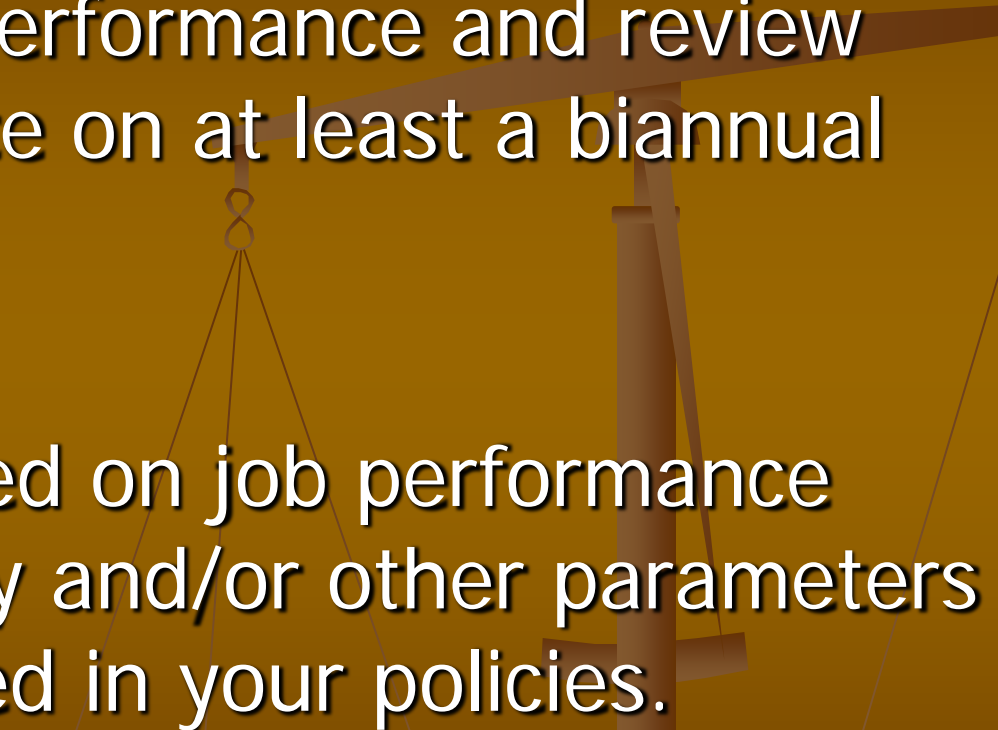
What Should You Do To Prevent ELL Issues?

- Avoid favoritism based on race or national origin
 - Ensure that pay practices are understood and followed
 - Ensure that faculty and staff understand the proper hiring and termination procedures
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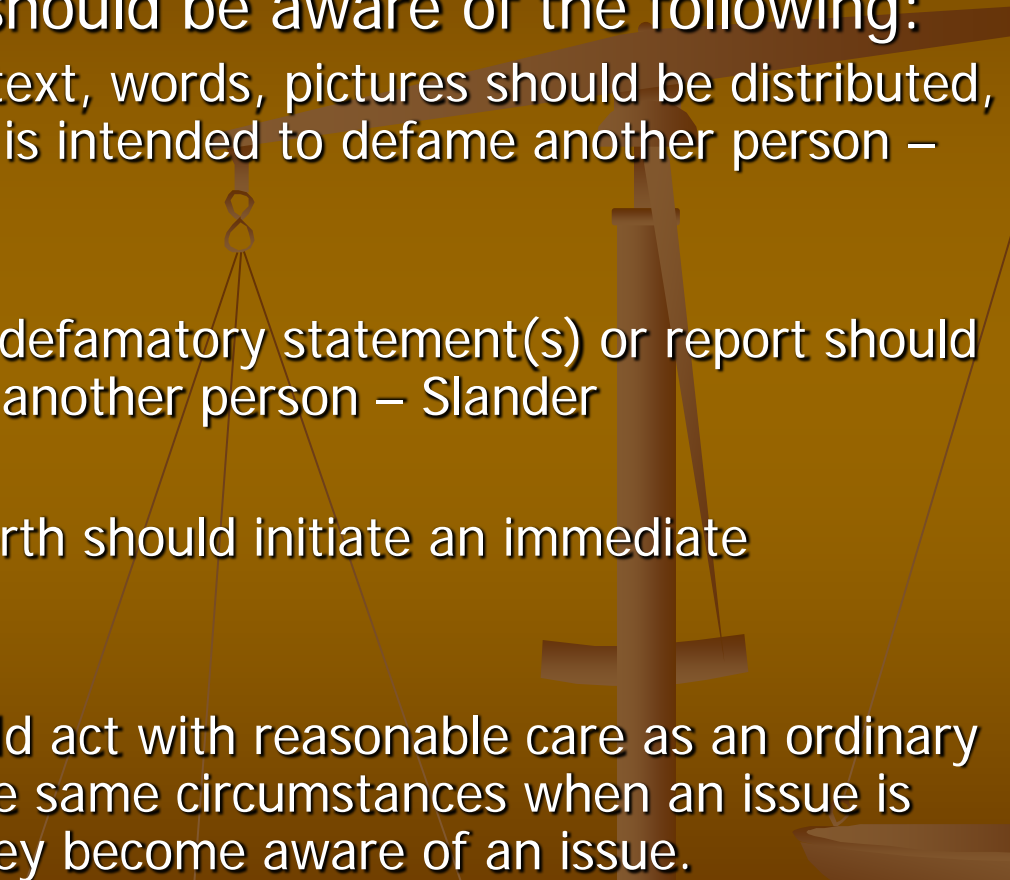
What Should You Do To Prevent ELL Issues?

- Ensure that all employees understand their:
 - Medical Plan
 - Disability Benefits
 - Vacation Benefits
 - Retirement Benefits
 - We recommend that H.R. hold meetings at least twice a year supplemented with individual meetings for those who would like clarification or have questions.
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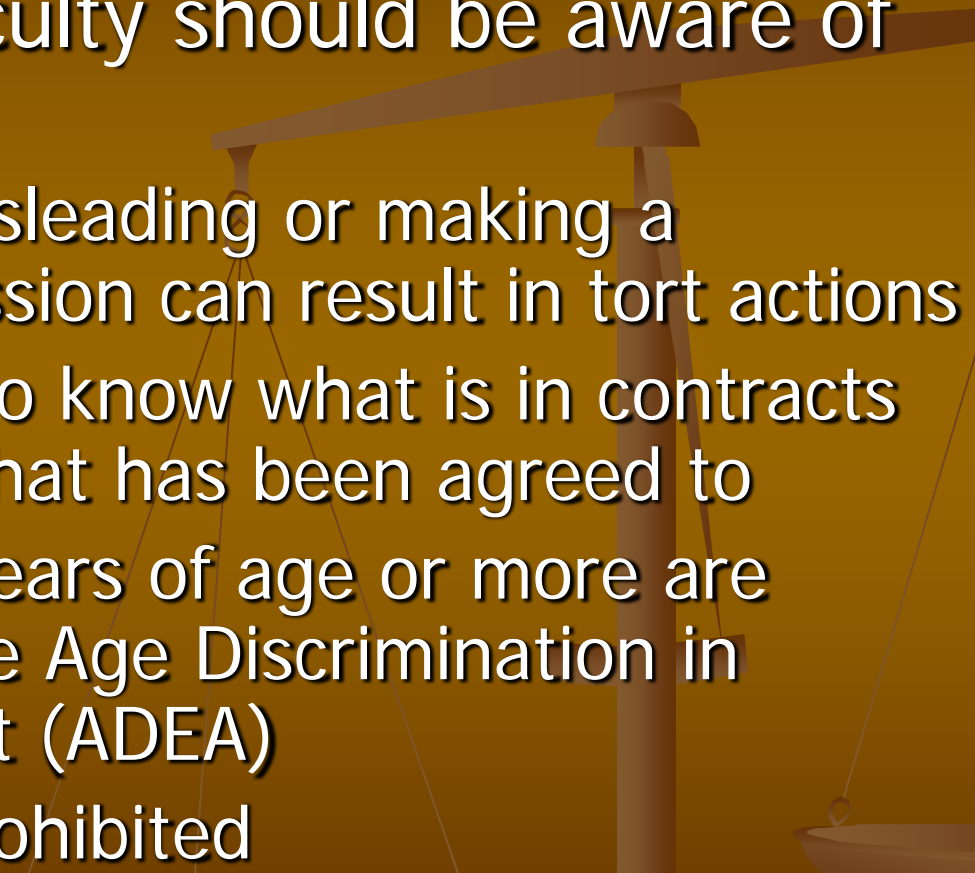
What Should You Do To Prevent ELL Issues?

- Document job performance and review that performance on at least a biannual basis.
 - Promotions based on job performance (merit), seniority and/or other parameters need to be stated in your policies.
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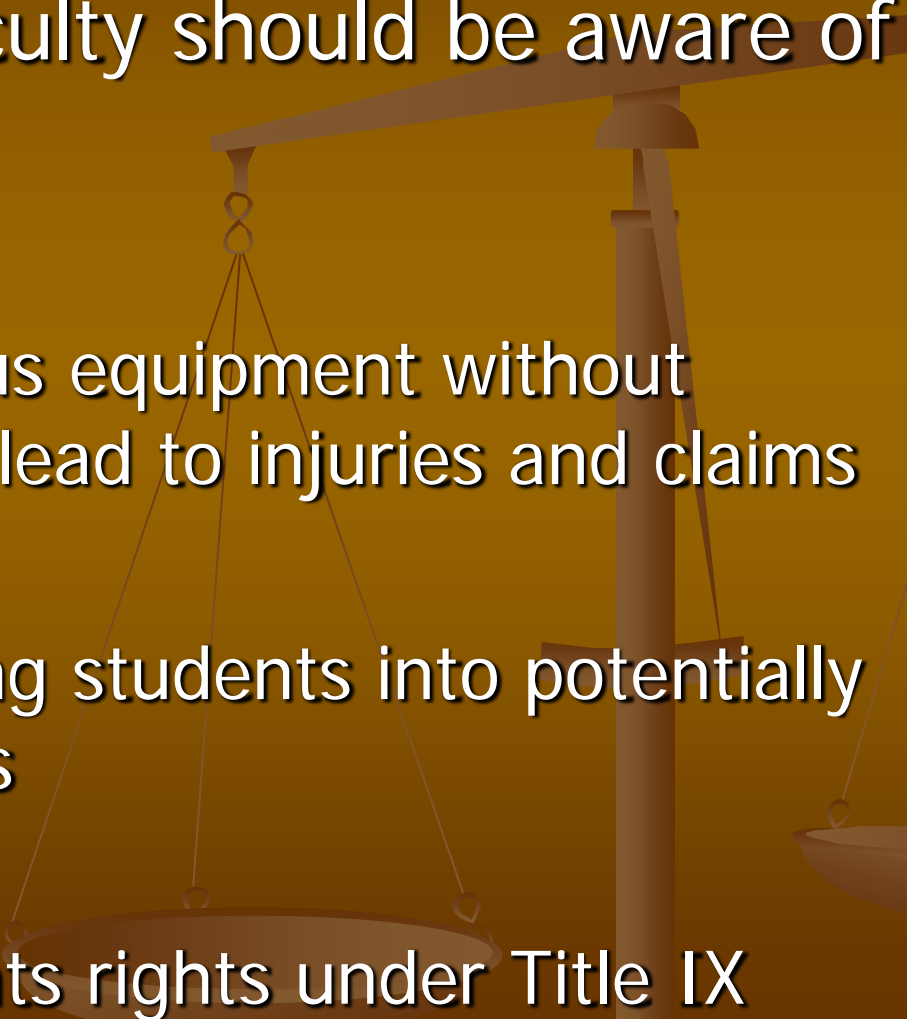
What Should You Do To Prevent ELL Issues?

- All Staff and Faculty should be aware of the following:
 - No written or printed text, words, pictures should be distributed, displayed or sent that is intended to defame another person – Libel
 - No malicious, false or defamatory statement(s) or report should ever be made against another person – Slander
 - Complaints brought forth should initiate an immediate investigation.
 - Staff and faculty should act with reasonable care as an ordinary person would do in the same circumstances when an issue is brought to them or they become aware of an issue.
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What Should You Do To Prevent ELL Issues?

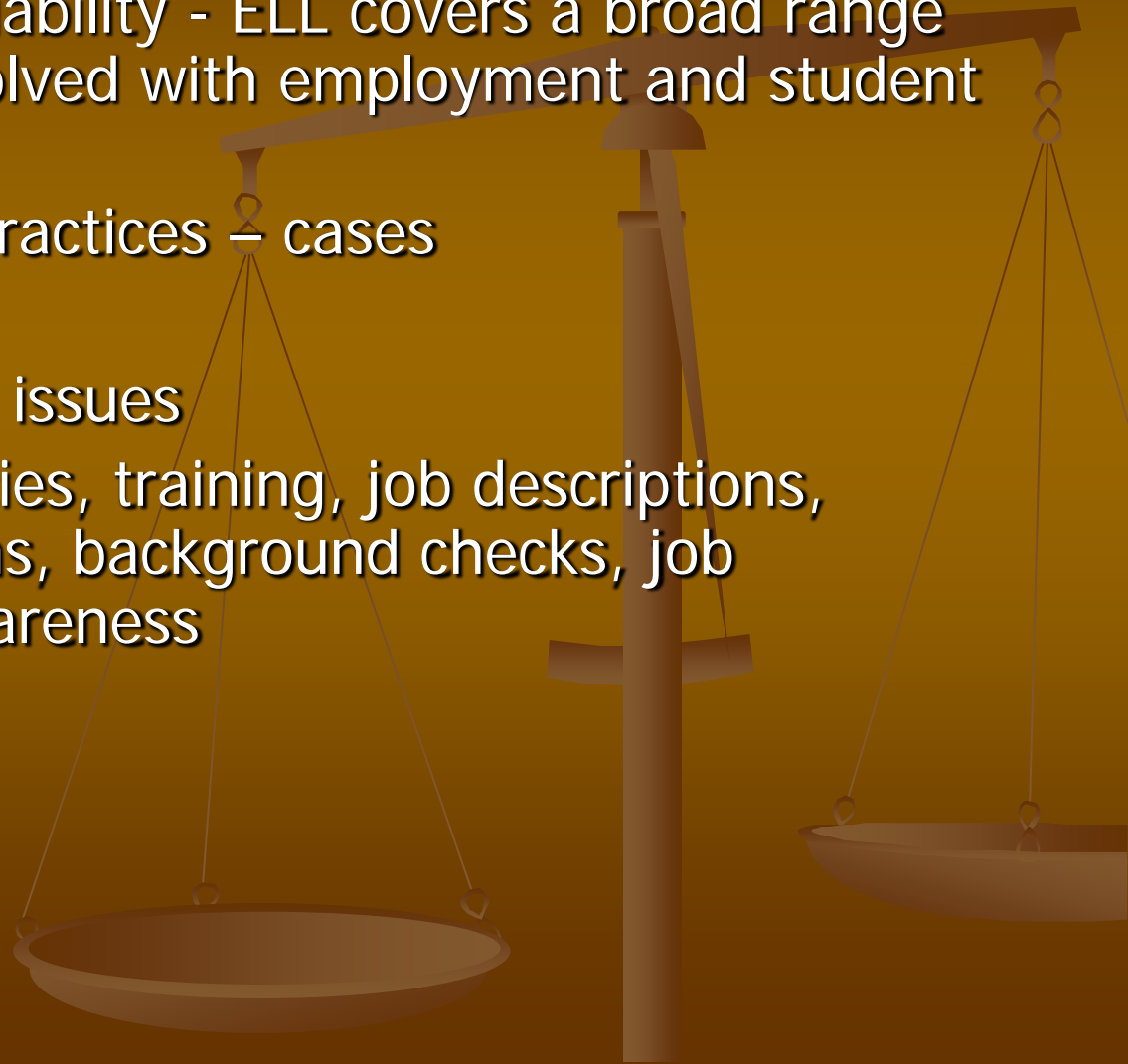
- All Staff and Faculty should be aware of the following:
 - Intentionally misleading or making a misleading omission can result in tort actions
 - It is important to know what is in contracts and to follow what has been agreed to
 - Persons of 40 years of age or more are protected by the Age Discrimination in Employment Act (ADEA)
 - Retaliation is prohibited
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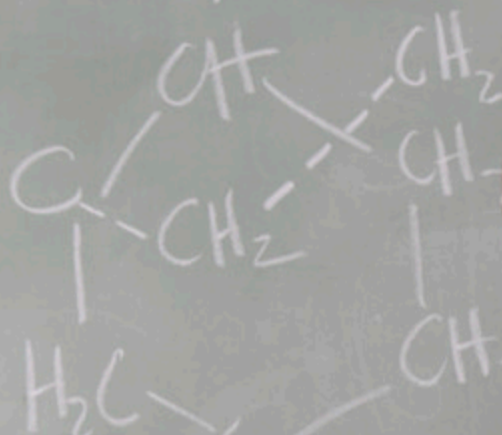
What Should You Do To Prevent ELL Issues?

- All Staff and Faculty should be aware of the following:
 - Use of hazardous equipment without safeguards can lead to injuries and claims
 - Avoid introducing students into potentially hazardous areas
 - Violating students rights under Title IX
- 

Summary

- Employer Practices Liability - ELL covers a broad range of liability claims involved with employment and student education.
- Wrongful employer practices – cases
- What to avoid
- Prevention of liability issues
- Best practices – policies, training, job descriptions, interviewing questions, background checks, job performance and awareness





References:

- United Educators - Large Loss Report 2011
- IRMI
- AICPCU



Title IX Resource Center

- Wright Specialty Insurance
- <http://www.wrmamerica.com/producers/resourcecenter/titleix.htm>



END

