ATIXA Investigating Sex/Gender Discrimination & Disparate Treatment Workshop Agenda

Description:
Not all behaviors prohibited by Title IX fall into the categories of violence or harassment. As a sex/gender equity law, Title IX prohibits discrimination generally. The Investigating Sex/Gender Discrimination & Disparate Treatment Workshop builds upon the information provided in ATIXA’s Gender Equity Foundations course and provides practitioners with an opportunity to sharpen skills for the investigation of discrimination complaints that fall into categories commonly termed disparate treatment (intentional) or disparate impact (unintentional) by the courts. Such complaints often involve investigating the impact of climate/culture, policies, and practices.

Intentional discrimination may include investigations of pay equity issues, favoring or disfavoring by sex, LGBTQ+ exclusion, facilities disparities (housing, locker rooms, etc.), program exclusion, and the like. These types of investigations require different skills and methodologies from harassment investigations and are predicated on different policies.

ATIXA’s expert faculty members will guide participants through ATIXA’s recommended investigation process for sex/gender discrimination complaints, sharing practical knowledge and tips to prepare participants to investigate complex complaints. This workshop will examine elements of an effective equity investigation, including the core elements of gender equity, collective/joint complaints, culture/climate investigations, collecting relevant evidence, and analyzing disparate treatment and intent.

ATIXA recommends that participants complete the Gender Equity Foundations course and the Investigation Foundations course or have pre-existing knowledge of the topics covered in those courses prior to enrolling in this workshop.

Learning Outcomes:
After completing this workshop, participants will be able to…

- Define key terminology, concepts, and elements related to sex/gender discrimination investigations
- Differentiate between disparate treatment and disparate impact, including understanding the “educational necessity” and “substantial legitimate justification” constructs
• Understand the role of proxy respondents, remedies, and how culture/climate investigations can be used to address disparate impact or lay the foundation for disparate treatment charges
• Be able to operationalize the “similarly situated comparator” construct to assess whether a *prima facie* showing of discrimination has been made
• Understand burden-shifting analysis and how to accurately use its three-step rubric
  o Analyze all relevant information using the disparate treatment and intent constructs

### Workshop Topics

#### Gender Equity Foundations
- Defining Sexual Orientation, Gender Identity, and Gender Expression
- Defining Equity and Discrimination
- Disparate Impact vs. Disparate Treatment
- Title IX and OCR Guidance
- State vs. Federal Laws

#### Common Gender Equity Issues/Topics
- Terminology
- Case Review
- Pay Disparity
- Grading
- Retaliation

#### Overview of Title IX DI/DT Investigation Process
- ATIXA’s Recommended Investigation Process
- The *Prima Facie* Showing and the Similarly Situated Comparator
- Burden-Shifting Analysis
- Disparate Impact Exceptions
- Framing the Role of Proxy Respondent(s) in Disparate Impact Investigations
- Assessing Pretext

#### Gender Equity Investigation Framework
- Questioning Guidelines
- Disparate Impact-Based Approach
- Gender Equity vs. Culture/Climate
- Considerations for Employee Complainants
**Issue Spotting**
- Case Studies

**Evidence Gathering**
- Key Elements to Uncover – Students
  - Grading Records
- Key Elements to Uncover – Employee
  - Performance Reviews
  - Salaries/Budgeting
  - Policies and Protocols
  - Gathering Witness Perceptions and Opinions via Surveys and Focus Groups

**Analysis and Report Writing**
- Assessing Intent
- Assessing Disparate Treatment/Impact
- Employing Culture/Climate Investigation Techniques as Remedies or Triggers for Formal Investigations

Note: Workshops do not include a standard break. Participants are welcome to eat and/or drink during the workshop and step away for other needs as necessary. Workshop start and end times for in-person events are determined by the host site. All virtual workshops take place from 11:00 AM – 3:00 PM ET unless otherwise specified.