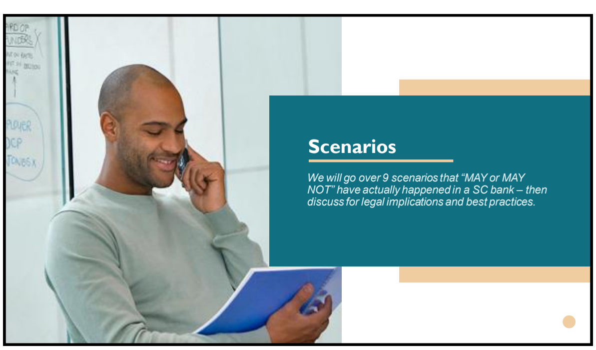

Employment Law 101
for Bankers

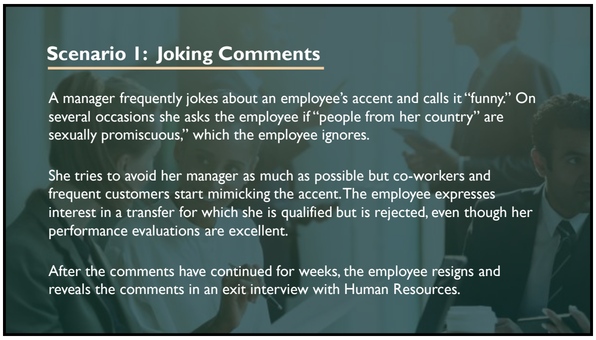
1


D. Michael Henthorne, Attorney
Ogletree Deakins
First Base Building,
2142 Boyce Street, Suite 401
Columbia, SC 29201
michael.henthorne@ogletree.com
www.ogletree.com
Margi M. Fleming, SVP
The Citizens Bank
1600 W. Palmetto Street
Florence, SC 29501
843-519-2552
mfleming@tcbsc.bank
www.tcbsc.bank

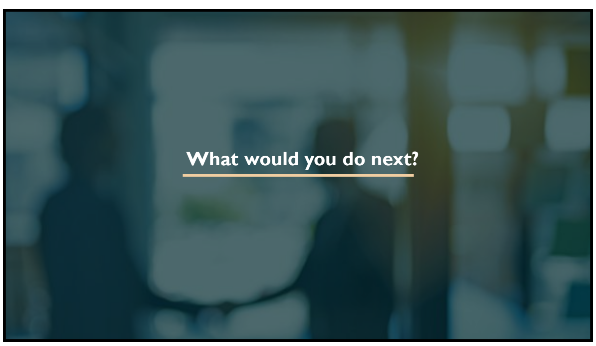
2


Scenarios
We will go over 9 scenarios that "MAY or MAY NOT" have actually happened in a SC bank – then discuss for legal implications and best practices.

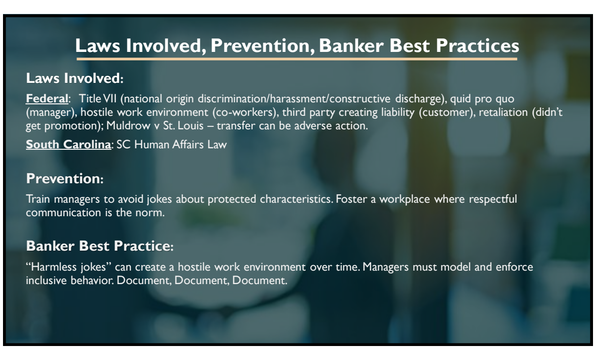
3


Scenario 1: Joking Comments
A manager frequently jokes about an employee's accent and calls it "funny." On several occasions she asks the employee if "people from her country" are sexually promiscuous," which the employee ignores.
She tries to avoid her manager as much as possible but co-workers and frequent customers start mimicking the accent. The employee expresses interest in a transfer for which she is qualified but is rejected, even though her performance evaluations are excellent.
After the comments have continued for weeks, the employee resigns and reveals the comments in an exit interview with Human Resources.

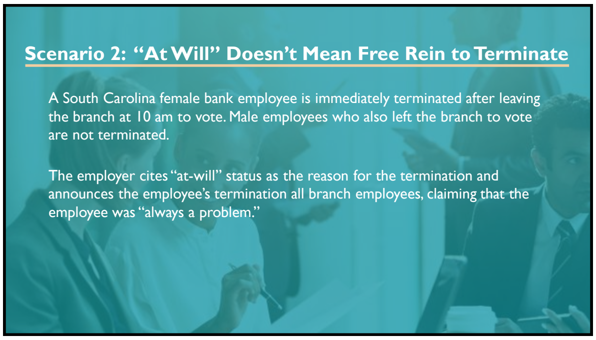
4


What would you do next?

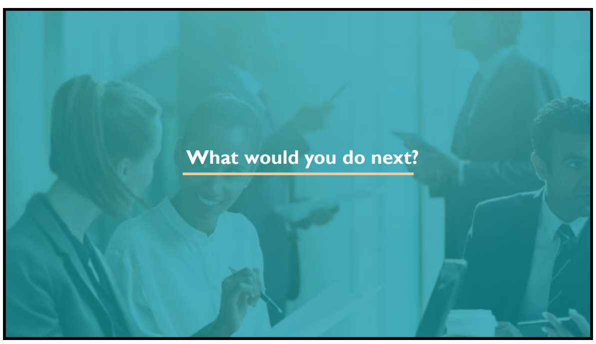
5


Laws Involved, Prevention, Banker Best Practices
Laws Involved:
Federal: Title VII (national origin discrimination/harassment/constructive discharge), quid pro quo (manager), hostile work environment (co-workers), third party creating liability (customer), retaliation (didn't get promotion); Muldrow v St. Louis – transfer can be adverse action.
South Carolina: SC Human Affairs Law
Prevention:
Train managers to avoid jokes about protected characteristics. Foster a workplace where respectful communication is the norm.
Banker Best Practice:
"Harmless jokes" can create a hostile work environment over time. Managers must model and enforce inclusive behavior. Document, Document, Document.

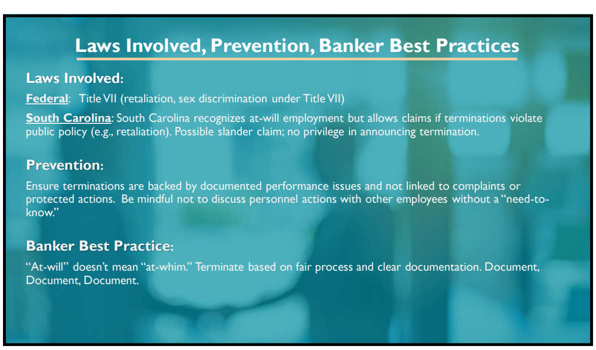
6


Scenario 2: "At Will" Doesn't Mean Free Rein to Terminate
A South Carolina female bank employee is immediately terminated after leaving the branch at 10 am to vote. Male employees who also left the branch to vote are not terminated.
The employer cites "at-will" status as the reason for the termination and announces the employee's termination all branch employees, claiming that the employee was "always a problem."

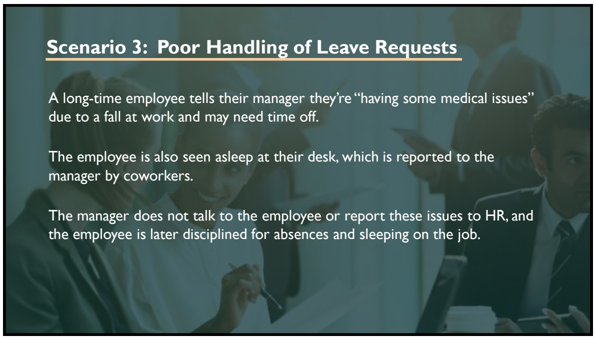
7


What would you do next?

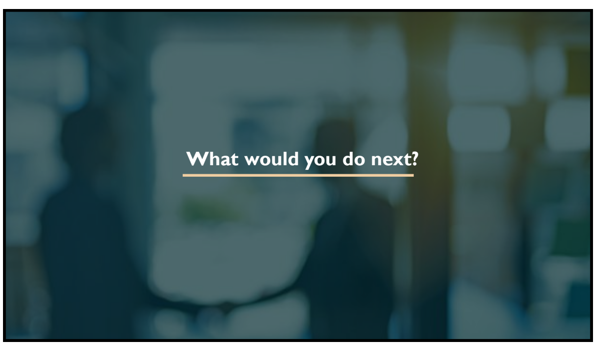
8


Laws Involved, Prevention, Banker Best Practices
Laws Involved:
Federal: Title VII (retaliation, sex discrimination under Title VII)
South Carolina: South Carolina recognizes at-will employment but allows claims if terminations violate public policy (e.g., retaliation). Possible slander claim; no privilege in announcing termination.
Prevention:
Ensure terminations are backed by documented performance issues and not linked to complaints or protected actions. Be mindful not to discuss personnel actions with other employees without a "need-to-know."
Banker Best Practice:
"At-will" doesn't mean "at-whim." Terminate based on fair process and clear documentation. Document, Document, Document.

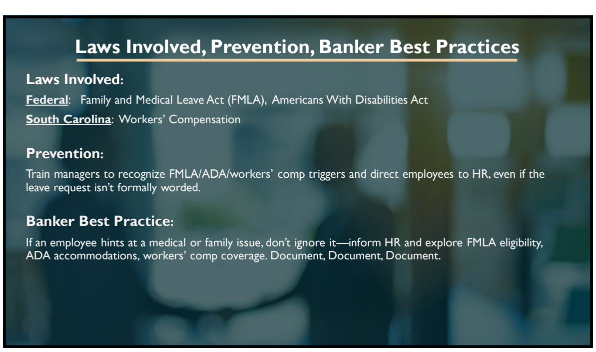
9


Scenario 3: Poor Handling of Leave Requests
A long-time employee tells their manager they're "having some medical issues" due to a fall at work and may need time off.
The employee is also seen asleep at their desk, which is reported to the manager by coworkers.
The manager does not talk to the employee or report these issues to HR, and the employee is later disciplined for absences and sleeping on the job.

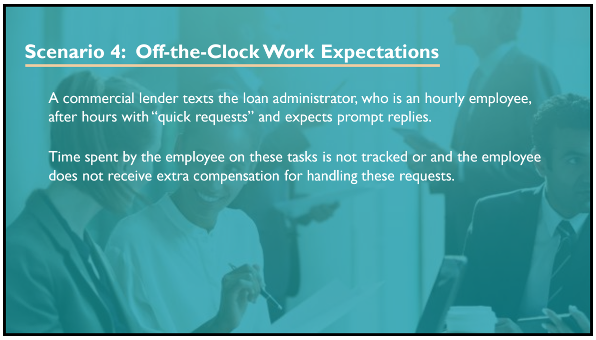
10


What would you do next?

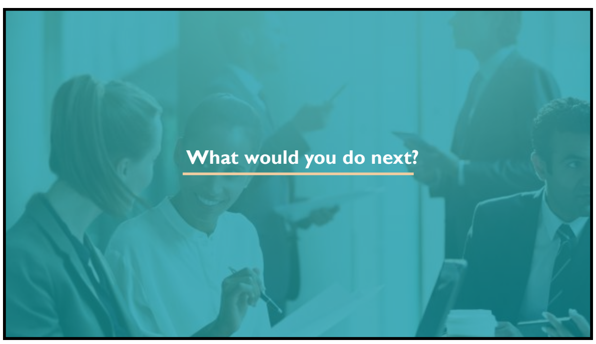
11


Laws Involved, Prevention, Banker Best Practices
Laws Involved:
Federal: Family and Medical Leave Act (FMLA), Americans With Disabilities Act
South Carolina: Workers' Compensation
Prevention:
Train managers to recognize FMLA/ADA/workers' comp triggers and direct employees to HR, even if the leave request isn't formally worded.
Banker Best Practice:
If an employee hints at a medical or family issue, don't ignore it—inform HR and explore FMLA eligibility, ADA accommodations, workers' comp coverage. Document, Document, Document.

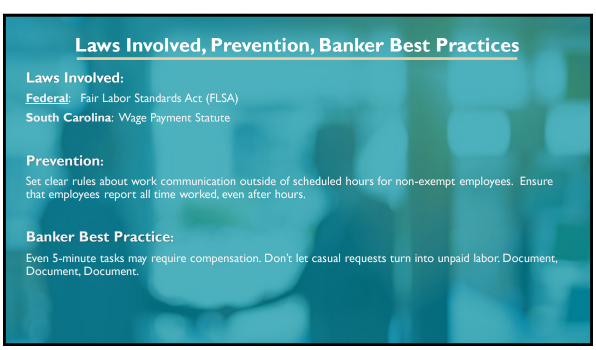
12


Scenario 4: Off-the-Clock Work Expectations
A commercial lender texts the loan administrator, who is an hourly employee, after hours with "quick requests" and expects prompt replies.
Time spent by the employee on these tasks is not tracked or and the employee does not receive extra compensation for handling these requests.

13


What would you do next?

14


Laws Involved, Prevention, Banker Best Practices
Laws Involved:
Federal: Fair Labor Standards Act (FLSA)
South Carolina: Wage Payment Statute
Prevention:
Set clear rules about work communication outside of scheduled hours for non-exempt employees. Ensure that employees report all time worked, even after hours.
Banker Best Practice:
Even 5-minute tasks may require compensation. Don't let casual requests turn into unpaid labor. Document, Document, Document.

15

Scenario 5: Social Media and Political Comments

A customer comes in for a car loan, and the lender offers to lend 90% of the car value, based on the customer's credit. The customer leaves. Then the car dealer comes in and asks why the lender can not loan up to 115% of the NADA loan value. The lender, who is white, responds that he has to reserve that kind of loan for his "good customers, the ones that me cookies at Christmas." Unbeknownst to the lender, this conversation is being recorded by the dealer. Both the customer and the dealer are African-American.

The dealer posts the video on social media with a demand for fairness by the Bank and termination of the lender for discriminating against his customer. The social media post goes viral, and the dealer identifies both the bank and the lender, including the lender's personal address.

16

What would you do next?

17

Laws Involved, Prevention, Banker Best Practices

Laws Involved:

Federal: Fair Lending Act (discrimination)

South Carolina: breach of customer privacy in discussing matter with dealer; internal policies could warrant discipline or termination of lender for violations; no slander/libel claim by Bank against car dealer because Bank is a "public figure" but does lender have cause of action against dealer for inflammatory posting on social media?

Prevention:
Consistent application of Bank policies and clear documentation is necessary. Understand that situations can wind up on social media and be taken out of context.

Banker Best Practice:
Do not share customer information with non-Bank employees. Document, Document, Document.

18

Scenario 6: Religious Accommodation Denied Without Review

An employee asks their manager to adjust their schedule to attend a religious service on Fridays. The employee told the manager that two other employees were willing to help out with the workload while the employee was out.

The manager says, "We don't make special exceptions here" and denies the request.

19

What would you do next?

20

Laws Involved, Prevention, Banker Best Practices

Laws Involved:

Federal: Title VII (religious accommodation)

South Carolina: SC Human Affairs Law

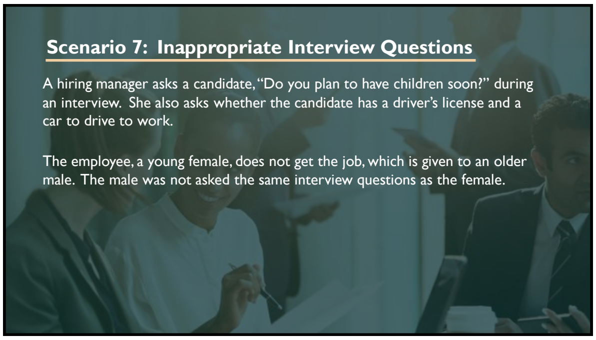
Prevention:

Managers should never flatly deny accommodation requests without consulting HR and assessing whether granting the request will cause undue hardship.

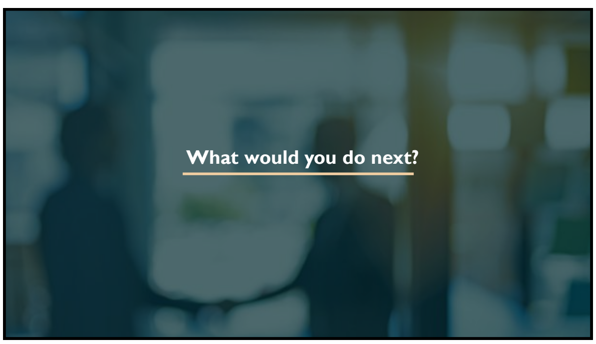
Banker Best Practice:

Accommodations don't mean favoritism—they're a legal requirement. **Always** engage in the interactive process to determine if a reasonable accommodation is possible. Document, Document, Document.

21


Scenario 7: Inappropriate Interview Questions
A hiring manager asks a candidate, "Do you plan to have children soon?" during an interview. She also asks whether the candidate has a driver's license and a car to drive to work.
The employee, a young female, does not get the job, which is given to an older male. The male was not asked the same interview questions as the female.

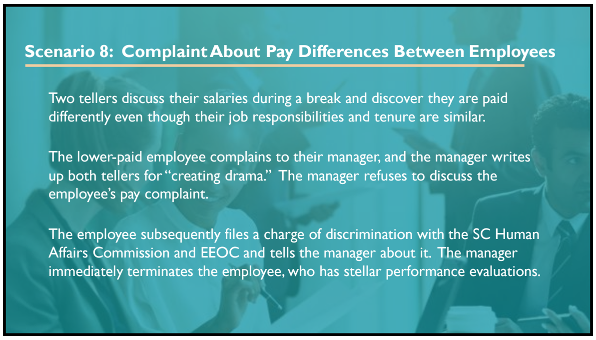
22


What would you do next?

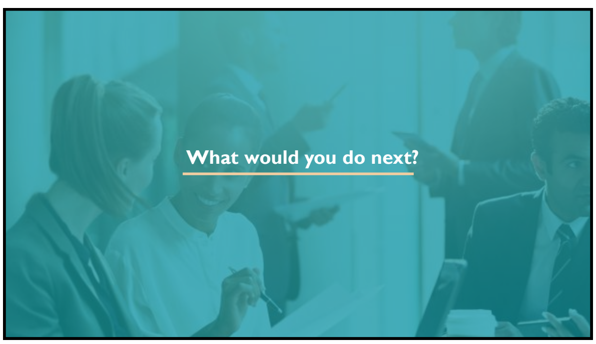
23


Laws Involved, Prevention, Banker Best Practices
Laws Involved:
Federal: Pregnancy Discrimination Act, Title VII
South Carolina: SC Human Affairs Law
Prevention:
Train managers on legal vs. illegal interview questions. Focus on ability to perform job duties.
Banker Best Practice:
Personal questions can trigger discrimination claims. Stick to job-related questions only. Document, Document, Document.
Helpful Hint:
(If you are allowed by bank policy) – you can upload a job description into ChatGPT and t will create job-related questions based on the job description's specific tasks and expectations. ALWAYS VERIFY THE OUTPUT!!!

24


Scenario 8: Complaint About Pay Differences Between Employees
Two tellers discuss their salaries during a break and discover they are paid differently even though their job responsibilities and tenure are similar.
The lower-paid employee complains to their manager, and the manager writes up both tellers for "creating drama." The manager refuses to discuss the employee's pay complaint.
The employee subsequently files a charge of discrimination with the SC Human Affairs Commission and EEOC and tells the manager about it. The manager immediately terminates the employee, who has stellar performance evaluations.

25


What would you do next?

26


Laws Involved, Prevention, Banker Best Practices
Laws Involved:
Federal: Title VII (pay discrimination, retaliation), Equal Employment Opportunity Commission
South Carolina: SC Human Affairs Law, SC Human Affairs Commission
Prevention: Involve HR in all complaints of alleged discrimination/unfair treatment. Immediately uniform HR of any charge/complaint filed.
Banker Best Practice:
Ensure that pay decisions are consistent and well-documented. Investigate and/or escalate complaints to HR for resolution. Do not discipline employees for filing complaints under federal or state law. Document, Document, Document.

27

Scenario 9: Employee with Explicit OnlyFans Content

An employee is discovered to have posted sexually explicit content on OnlyFans and X accounts in her personal time, using an alias.

An anonymous caller called to alert the bank management team of the posts. Once a formal investigation is underway, it is discovered that some of the photos were taken in the bank's restroom.

28

What would you do next?

29

Laws Involved, Prevention, Banker Best Practices

Laws Involved:

Federal: No direct employment law prohibits or protects this behavior, but

- Employers should:
  - Verify information/investigating facts thoroughly, as required by off-duty conduct policies
  - Consider reputation risk (especially in regulated industries like banking)
  - Ensure any disciplinary action is based on policy and not gender-based or selectively enforced.

Prevention:

Ensure your code of conduct and social media policy clearly state expectations for off-duty conduct, especially regarding reputational risk and professionalism.

Banker Best Practice:

You can address off-duty behavior if it affects the bank's reputation or work relationships—but apply policies consistently and avoid moral judgments. Document, Document, Document.

30

REVIEW

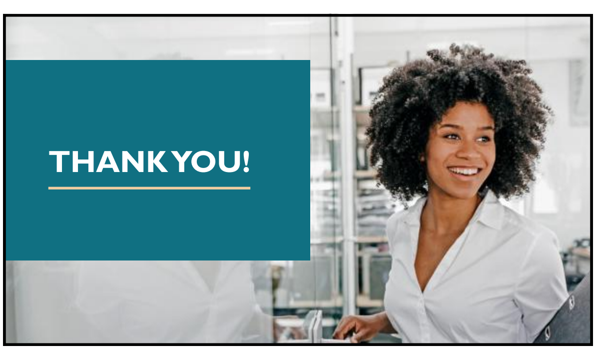
1. **Title VII of the Civil Rights Act** prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation and gender identity), and national origin.
2. Employees have a **right to discuss their wages and working conditions**, even in a non-union environment.
3. **Employment-at-will** is a legal doctrine that allows employer or employee to terminate the employment relationship at any time, not for an unlawful reason, without prior notice and is not a federal law.
4. **Off-Duty conduct** can be addressed only if it violates clear policy or harms the organizations reputation, not based on personal bias or beliefs.
5. Managers should recognize **FMLA/ADA triggers and direct the matter to HR** even when the request is not formally worded or when mentioning a family medical issue.
6. When in doubt, **don't decide alone**. Call HR for guidance before taking actin that could impact someone's job, pay or schedule.

31

REVIEW

6. The elements of a **hostile work environment discrimination claims** generally include unwelcome conduct, based on a protected characteristic, severe or pervasive enough to create an intimidating, hostile or abusive work environment, objectively & subjectively offensive, and the employer knew, or should have known about it to take corrective action. The Conduct could also result in the employee's termination.
7. Inconsistent application of policies and processes is a **leading cause of employment lawsuits.**
8. **Employment-related lawsuits** can result from many different things in the workplace like handing processes and policies inconsistently, poor communication from managers, mishandling of complaints by supervisors, supervisors' inability to accommodate for religious and medical needs and allowing disrespectful communication in the workplace.
9. **Always document employment decisions** – especially terminations, performance issues, complaints and investigations. If it is not written, it did not happen.

32



33