



# Discrimination And Harassment

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April 17, 2024





# FEDERAL, STATE EMPLOYMENT LAWS

- United States Constitution
- Title VII (race, color, religion, national origin, age, disability, genetic information, retaliation)
- Americans with Disabilities Act (ADA)
- Family Medical Leave Act (FMLA)
- Uniformed Services Employment and Reemployment Act (USERRA)
- Fair Labor Standards Act (FLSA)
- Pregnant Workers Fairness Protection Act (PWFA)
- Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP)



# PROTECTED CLASSES

**Race**

**National  
Origin**

**Gender (sex)**

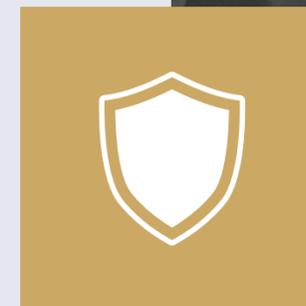
**Age**

**Religion**

**Disability**

**Military status**

**One who complains  
of or reports these  
things**



# DISCRIMINATION

How a policy, practice, or action **IMPACTS** someone (Disparate Impact)

- Policy or decision on its face appears neutral but it results in discrimination

How a policy, practice, or action **TREATS** someone (Disparate Treatment)

- Terms or names—N word, “boy,” etc.
- Jokes directed at a certain race, national origin, gender, etc.



## SAY NO TO GENDER BIAS!!!

“Women garden-men mow”

“Men compete-women are cheerleaders”

“Women answer phones, file papers-men do the heavy lifting”

“It’s a man’s job.”



# THE TEST

Legitimate

Non-discriminatory

Non-retaliatory



# WHAT WOULD YOU DO?

You find out at the local café that Officer Betty is 4 months pregnant. Officer Betty works night shift in a gang infested district, where there is a greater likelihood that she will be exposed to more physically demanding tasks and/or physical harm and/or danger, as opposed to what she'd face if she were temporarily reassigned to a different shift or team.

# WHAT WOULD YOU DO?

Male applicant applies for job as police officer at the same department as his same sex partner.

The City has a nepotism policy that does not allow married individuals to work in the same department. The applicant is advised that he will not be considered for the position.

# WHAT WOULD YOU DO?

Department of 50 officers, 10 of which are female. Although several females have applied for promotions, none have ever promoted higher than Sergeant.

# RELIGIOUS ACCOMMODATION

Reasonable accommodation required unless it imposes an undue hardship on the employer

- Observance of a religious holiday
- Prayer break during working hours
- Practices concerning dress and other personal grooming habits
- Allow employees to convey their religious message in a less intrusive way



# WHAT WOULD YOU DO?

The police department announces a new uniform policy requiring all officers to wear standard-issue caps or hats while on duty for safety and uniformity purposes. One officer is a devout Sikh who wears a turban and maintains uncut hair, as mandated by his faith. He is concerned about how this new policy might affect him.

# WHAT WOULD YOU DO?

Officer Rodriguez was a patrol officer in District 14 and he is also a devout Catholic. District 14 officers were assigned to an abortion clinic during protests every Saturday morning. He requested that he not be assigned clinic duty for religious purposes. His Supervisor declined but offered to transfer him permanently to another district.

# WHAT WOULD YOU DO?

Police Captain Fields commands 26 officers and an additional 5 supervisors. The PD in which he works participates in community policing, which includes attending community events at religious (and other) locations around the City. An Islamic Society was hosting a Law Enforcement Appreciation Day and the Chief ordered Captain Fields to request volunteers from his shift to attend. When no one volunteered, the Chief ordered the Captain to assign two officers and a supervisor to attend. The Captain refused and was disciplined for such refusal.

# WHAT WOULD YOU DO?

You get a call from a Citizen Bob that claims Officer Smith pulled him over for speeding. During the interaction, Officer Smith asked Citizen Bob if he believed in God. Citizen Bob was very offended and threatened to sue the City if Officer Smith was not fired.

# ADA: AMERICANS WITH DISABILITIES ACT

1. A physical or mental impairment (work related or not) that substantially limits one or more major life activities; or,
2. A record of impairment; or
3. Being regarded as having an impairment.



# INTERACTIVE PROCESS

- What does this mean?
- How does it look?
- What is required?
- Undue hardship?
- What do your written, job descriptions say about job duties and requirements



# REASONABLE ACCOMODATION UNDER THE ADA

- Make facilities accessible
- Part-time or modified schedule
- Acquiring or modifying equipment
- Interpreters
- Reassignment to a vacant spot



# UNDUE HARDSHIP UNDER THE ADA

To determine an undue hardship under the ADA, employers must consider:

- The nature and cost of the accommodation
- The employer's overall financial resources
- The number of persons employed
- The number, type, and location of its facilities



# WHAT WOULD YOU DO?

You have an employee who establishes that he is wheelchair bound. He requests that a wheelchair ramp be installed at both the east and west ends of City Hall, which is where the dispatch center is located.

# WHAT WOULD YOU DO?

**Officer injures back in a boating accident on Memorial Day weekend. She is eventually released with permanent restrictions of “no lifting of 100 lbs. or more.”**





## FMLA QUALIFYING EVENTS

- Pregnancy or adoption
- Illness or Injury of employee or family member
- Worker's compensation
- 3 consecutive sick days



Family Leave

When requesting Paid Family Leave, I certify that the information I provide is true and accurate and contains no willful falsifications, misstatements, misrepresentations, or omissions that may disqualify me from receiving Paid Family Leave. I hereby authorize responsible person to contact current and previous employers for background investigation, and check my driving record.

Last Name	First
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## WHAT MUST YOU DO, UNDER THE FMLA?

- Display the FMLA poster
- Include an FMLA policy in Employee Handbook (if you have 50 or more employees)
- Provide Notice of Eligibility within 5 days of request/notice of leave, to employee
- Provide Rights and Responsibilities, to employee



Family Leave

...g Paid Family Leave, I certify that the information I provide is true and accurate and contains no willful falsifications, misstatements, representations, or omissions that may disqualify me from receiving FMLA benefits. I hereby authorize responsible person to contact current and previous employers for background investigation, and check my driving record.

Last Name	First

# WHAT WOULD YOU DO?

**Officer calls in sick 3 days in a row and only states  
“I am sick and won’t be in”.**

# WHAT WOULD YOU DO?

**Officer suffers OJI that requires surgery and she will be off work for up to 8 weeks.**

# WHAT WOULD YOU DO?

**Officer's disabled, adult daughter has a medical procedure. Officer requests to FMLA Leave to care for her.**

# WHAT WOULD YOU DO?

**Officer injures back on the job, and is released with permanent restrictions of “no sitting for longer than 2, consecutive hours.”**

# WHAT WOULD YOU DO?

Officer injures back in a boating accident on Memorial Day weekend. She is eventually released with permanent restrictions of “no lifting of 100 lbs. or more.”

# ADEA: AGE DISCRIMINATION IN EMPLOYMENT ACT

- Over 40 years old
- Qualified for the position and/or performing satisfactorily
- Adverse employment action
- Replaced with a younger worker



# DON'T SAY THIS!

Old Fart

Too old to learn new tricks

Need young blood in this office

Weed out older employees

Any race-based word.

Aren't you ready to retire?

Can't keep up with the times

Old dogs won't hunt

It's a man's job.

It's a woman's job.



# PUMP FOR NURSING MOTHERS ACT

Employers must provide:

- Reasonable break time to express breast milk for her nursing child, for up to one year after the child's birth
- A private location **OTHER THAN** a restroom, that is shielded from view and free from intrusion



# PREGNANT WORKERS FAIRNESS PROTECTION ACT (PWFA)

Requires ADA like accommodations for pregnant applicant or employee, even if the pregnancy otherwise causes no temporary/short-term disability



# OKLAHOMA USERRA

Adopt USERRA compliance procedures

Train human resource personnel on the rights, benefits, and obligations of the OK USERRA

Display USERRA poster (federal is sufficient)

Submit to the Committee on Veterans and Military Affairs (in the Oklahoma House of Representatives and in the Oklahoma State Senate) by December 31 a report on the number of military service members whose reemployment was impossible or unreasonable



# HARASSMENT





# TYPES OF HARASSMENT

## Sexual

- This for that (Quid Pro Quo)
- Hostile Work Environment (HWE)

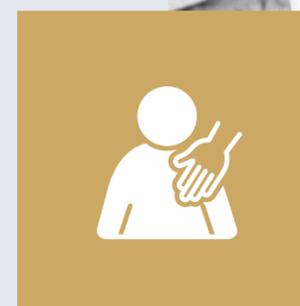
## Non-Sexual

- based on a protected class, AND
- unwelcome, pervasive, offensive, intimidating, degrading, AND
- unreasonably interferes with employee's performance.



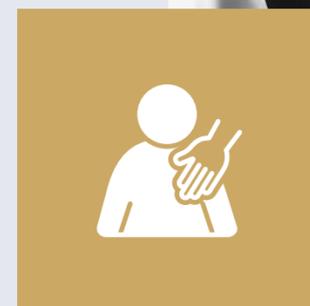
## HWE-SEXUAL HARASSMENT

- Staring in a sexually suggestive or offensive manner, or whistling
- Making sexual comments about appearance, clothing, or body parts
- Inappropriate touching
- Asking sexual questions, such as inquiries about someone's sexual history or their sexual orientation
- Making offensive comments about someone's sexual orientation or gender identity



## HWE SEXUAL HARASSMENT FACTORS TO BE CONSIDERED

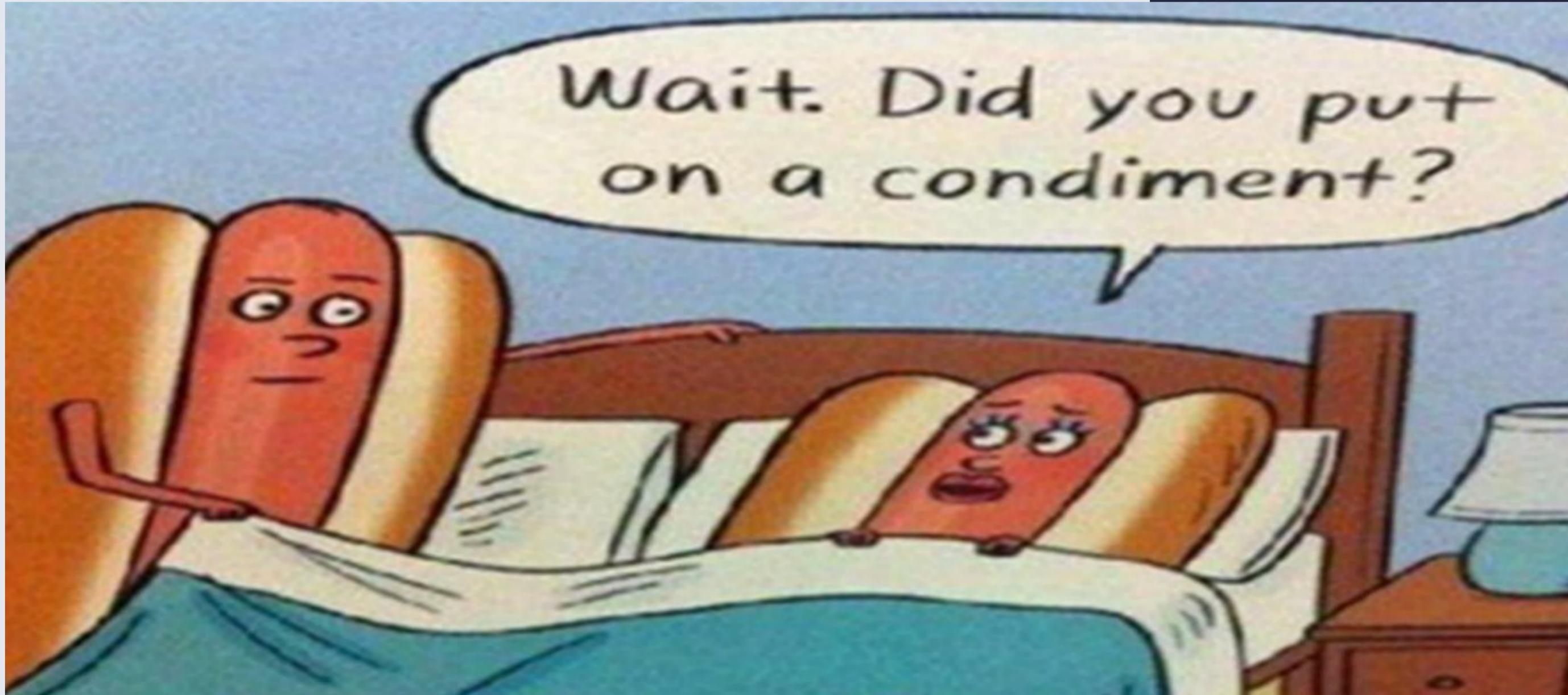
- Frequency of discrimination conduct
- Severity of conduct (Is it unwelcome?)
- Physically threatening, humiliating or mere offensive utterance
- Conduct affects work performance or alters condition of employment



## EXAMPLES OF HWE NON-SEXUAL

- Making negative comments about an employee's disability, personal religious beliefs, or trying to convert them to a certain religious ideology
- Using racist slang, phrases, or nicknames
- Making remarks about an individual's skin color or other ethnic traits
- Displaying racist drawings, or posters that might be offensive to a particular group
- Making offensive gestures
- Making derogatory age-related comments
- Wearing clothing that could be offensive to a particular ethnic group





ARE YOU OFFENDED BY THIS?

# WHAT WOULD YOU DO?

While waiting to start work, two employees of same gender are commenting on the great body & tight clothes the new female employee wears. The discussion includes a debate on how good she would be in the sack. She does not hear the comments but the supervisor does.

# WHAT WOULD YOU DO?

A supervisor stands very close to people when talking and touches others on the arm a lot. The supervisor treats everyone this way, but no one else seems to care.

What is this were a co-worker, not a supervisor?

# WHAT WOULD YOU DO?

A local resident routinely calls 911 for assistance when he knows Officer Judy is on shift. When she arrives, the resident is completely naked and wants to be handcuffed and patted down. Officer Judy is offended by this and asks the supervisor to send someone else.

# WHAT WOULD YOU DO?

Applicant shows up to the recruit office for his fitness test. This applicant is young, athletic build, college educated, well-spoken, and a legacy to well respected law enforcement in Oklahoma. The female recruiting officer says to him “You might just be my next sexual harassment complaint!” She then nicknames him Cinderella because he can physically touch his toes. She calls him this throughout the day.

## RETALIATION

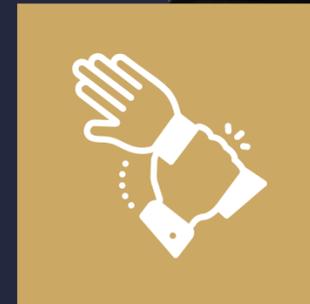
What is it?

What does it look like?

- Changing a work schedule
- Excluding employees from training
- Reassigning duties
- Discipline
- Demotion
- Termination
- Not including employee in office lunch



# THE CONSEQUENCES





# WHAT CAN AN UPSET EMPLOYEE DO?

- Quit (Constructive Discharge)
- Workplace morale
- EEOC Complaint
- Lawsuit
  - Back wages; Damages; Injunctions
  - Attorney's fees and costs
  - Punitive damages against individual



WHO CAN BE  
LIABLE?

Employer	Co-workers
Supervisor	You!!

WHY DO YOU CARE?

Time	Reputation, good name
Money	Relationships
Stress	Your job





WHAT SHOULD  
YOU DO.....

....OR NOT DO?



## Don't do this!

Don't say it jokingly

Don't engage in locker room or shop talk with employees

Don't have closed door meetings without a witness present

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## Do this!

If you hear or see something, stop it.

If you hear of something, investigate.

Document, document, document.



# THE BOTTOM LINE

**Would you want these things  
said or directed at your spouse,  
child, parent, etc.?**

**Kindness-it works!**



# HELPFUL HINTS

Treat all employees with respect

Discuss performance issues with employees as they happen

Decisions should be based on an individual's ability to do their job

Document, Document, Document!!!!

If you don't know – ASK!!!







# EMPLOYMENT POSTERS (STATE)

OESC poster (August 2021)

OK Minimum Wage poster

OK OSHA poster

OK Workers Compensation poster (January 2021)

OK Anti-discrimination poster



**Your Rights as an Employee in Oklahoma**

**Employee Rights**  
It's against the law for employers to hire workers who are not qualified for the job. Employers must pay workers the minimum wage and overtime pay.

**Federal Minimum Wage**  
Unless the law says it's okay, employers must pay workers at least \$7.25 per hour.

**Employment Contracts**  
The law defines an "employee" as a person who works for an employer for more than 13 weeks.

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**Investigation**  
The law says the Commissioner of Labor will investigate complaints about wage and overtime pay. If the Commissioner finds that an employer has violated the law, the employer must pay the worker the amount owed.

**Employment Contracts**  
If a court finds an employer hasn't paid a worker the amount of wages or overtime pay, the employer must pay the worker the amount owed plus court costs and reasonable attorney's fees.

**IT'S TIME TO GET YOUR RIGHTS**  
Oklahoma Department of Labor

**UNEMPLOYMENT**

**NOTICE**  
If you lose your job or if you work fewer hours, you may be eligible for unemployment benefits. You can claim a benefit if you are unemployed - intentionally or unintentionally - for a certain period of time.

**EMPLOYERS:** It is required by Sec. 505 of the Oklahoma Employment Security Act that you shall post and maintain accessible to individuals in your employment the Oklahoma Employment Security Act poster.

1-800-551-1234

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**Notice of Rights and Instruction to Employees**

**Employer's Responsibilities in Case of Work-Related Injury**

**Employer's Responsibilities**

**Workers' Compensation Commission**

**OKLAHOMA LAW PROHIBITS DISCRIMINATION IN EMPLOYMENT BECAUSE OF RACE, COLOR, RELIGION, NATIONAL ORIGIN, DISABILITY, AGE, SEX OR GENETIC INFORMATION**

**Office of the Oklahoma Attorney General**

**Office of Civil Rights Enforcement**

**Connecting the Office of Civil Rights Enforcement does not conflict with or affect any other rights you may have, including any appeal procedures you may have through the Oklahoma Merit Protection or any internal grievance procedures you may have through your employer. However, an Employment Discrimination Complaint must be filed with the Office of Civil Rights Enforcement within 180 days after the alleged discriminatory act(s).**

**\*Title 23, Oklahoma Statutes, Section 1202.**



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OMAG is excited to offer an intensive training series on law enforcement liability for select law enforcement personnel around the State: the **OMAG LELA Training Series**. The purpose of the OMAG LELA Training Series is to provide CLEET-accredited, in-depth training on common and emerging legal issues facing law enforcement in Oklahoma. Learn more by going to [www.omag.org/lela](http://www.omag.org/lela).