

## HR Laws for Small Business

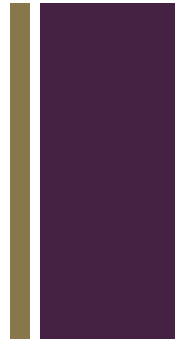


**Dan Fick, Audigy Group**  
**Senior Human Resources Manager**

# + Course Agenda

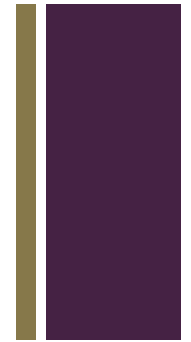
- Introduction
- Why is this important?
- Overview of Laws
- Q & A
- Additional information
  - [dfick@audigygroup.com](mailto:dfick@audigygroup.com)
  - SHRM
  - Dept. of Labor sites
  - Chamber of Commerce

# + Topics to Cover

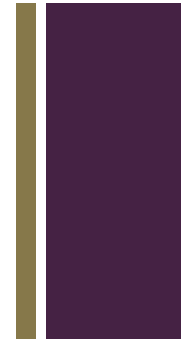


- Federal and State laws
- Wage & Hour issues
- Social Media
- Hostile Working Environment
- Domestic Violence
- Termination Overview
- Personnel Files
- Retaliation
- FMLA
- ADA

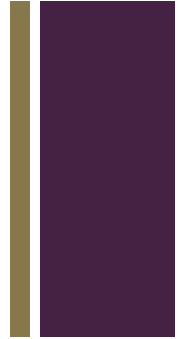
+ **Glass half full or half empty**



# + Human Resource's Perspective



# + Why is this important?



- As a citizen, you are innocent until proven

\_\_\_\_\_.

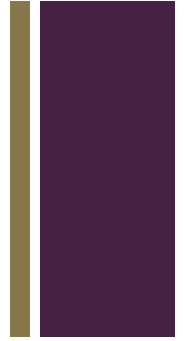
- As an employer . . .

# + You are Guilty

- . . . until you can prove your innocence.



# + **Businesses and Individuals are Liable**



**Individual decision makers can be liable when:**

- **Exercise control**
- **Aid and abet**
- **Discrimination**
- **Tort claims (assault, battery, etc.)**
- **Negligent Supervision**





**WHEN YOU WORK FOR A LIVING, EVERY DOLLAR COUNTS**

# IS YOUR BOSS STEALING FROM YOU?

Breaks denied, unpaid overtime, tips withheld, time away from our families—they all add up.

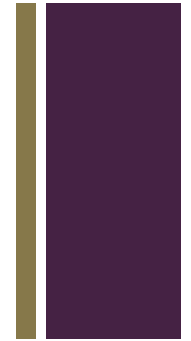
## FIGHT WAGE THEFT

- \* Are you not paid for all the hours you work?
- \* Are you required to skip or shorten your 10-minute break?
- \* Are you forced to interrupt your 30-minute lunch to work?
- \* Do you need to stay at work beyond your scheduled hours & are not paid?
- \* Are you off the clock before your shift starts?
- \* Has your boss kept your tips?

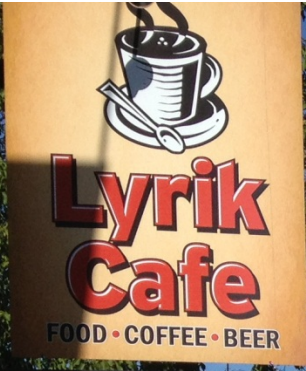
If you answered YES to any of the above, then you may be facing wage theft. Call the Wage Theft Hotline: 503-345-7891

Wage Theft Hotline  
603-345-7891

Wage Theft Hotline  
603-345-7891







LYRIK CAFE HONK 2  
ABUSES SUPPORT  
WORKERS WORKER

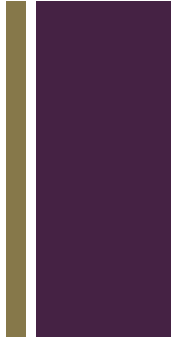


HONK 4  
WORKER  
RIGHTS

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WORKER



# State and Federal Law





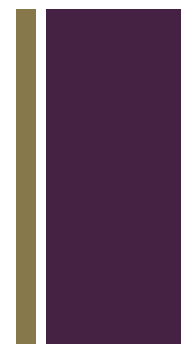
# Intro to State and Federal HR Laws

- Federal laws govern everyone;
  - Most are based on # of employees
- State laws vary widely





# Federal Laws by # of Employees



The following laws apply to all employers:

- Consumer Credit Protection Act
- Electronic Communications Privacy Act
- Employee Polygraph Protection Act
- Equal Pay Act
- ERISA
- Fair and Accurate Credit Transactions Act
- Fair Credit Reporting Act
- Federal Insurance Contribution's Act
- Federal Unemployment Tax Act
- HIPAA
- Immigration Reform and Control Act
- Jury System Improvement Act
- National Labor Relations Act
- OSHA
- Uniform Guidelines on Employee Selection Procedures
- Uniform Services Employment & Re-employment Rights Act

# + Major laws you should know

## ■ FLSA – Fair Labor Standards Act

- Employee vs. independent contractor,
- Exempt vs. nonexempt (salary vs. hourly)

## ■ Title VII – Anti-discrimination

- Race, religion, gender, sexual orientation, etc.

## ■ ADA –

- When a disability needs to be accommodated

## ■ HIPAA & Red Flag

- Patient Confidentiality





# WAGE AND HOUR

## + Pop Quiz!

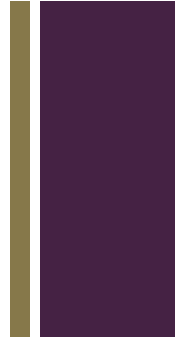
- An employee claims to have worked 100 hours of overtime this year. You know for a fact that the employee has not worked any overtime but do not have documentation.

True or False, you may be obligated to pay?

**TRUE**



## + Wage & Hour Issues



- **Unpaid time worked is a leading cause of formal complaints**
  - Not paid for all hours worked
  - Skipped or shortened breaks
  - Interrupted 30-minute lunch to work
  - Working off the clock before or after your shift



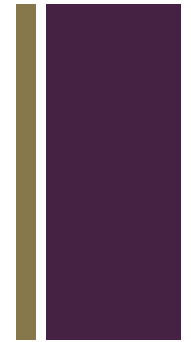
## Exempt vs. Non Exempt

- Exempt (salary) vs. Non-exempt (hourly)
- Always error on the side of Non-exempt

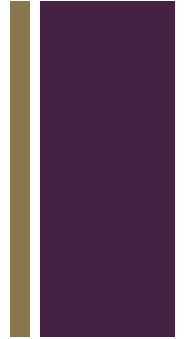
### Penalties:

- 3 years of back wages
- Interest
- Damages and legal fees
- Fines

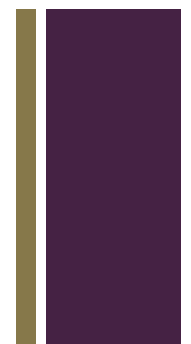
**The burden of proof falls to employer**



## + Administrative Exemption

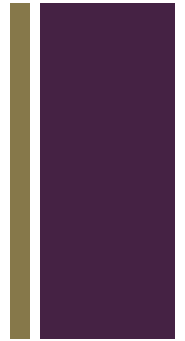


- **All of the following tests must be met:**
  - Earn \$455 per week or more;
  - Primary duty related to the management of business operations; and
  - Must exercise discretion and independent judgment with respect to matters of significance.



# Social Media

# + Pop Quiz! Social Media



## True or False

An employer can terminate when an employee posts on their personal Facebook page:

**“This company messed up again and I’m #@&%’ing done being a good worker.”**

Two other coworkers then “Like” the comment.

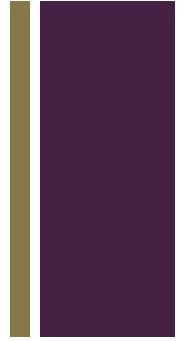
**FALSE**

+ **False**

The National Labor Relation Act protects employees:

- Engaged in “protected concerted activities;”
- When two or more employees are acting together;  
AND
- Attempting to improve working conditions

# + Social Media



- **Social Media Policy**

- **Laws changed on May 30, 2012**

- **Prohibited language in policies include:**

- Inappropriate, disparaging, offensive comments

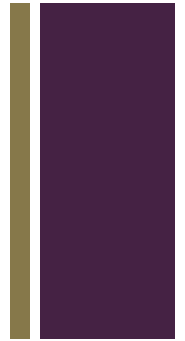
- **Approved language includes:**

- Vulgar, obscene, threatening, harassing, violations of workplace policies and exclude “protected concerted activities”



## Pop Quiz!

## Social Media



### True or False

An employer can be held responsible for coworkers comments, **made after hours, on a private, personal blog** belonging to an employee.

**TRUE**

### Moral of the story:

*Any harassment complaint, whether on or off duty, must be taken seriously*



# + Social Media and Employment Headlines

## Entrepreneur THE DAILY DOSE

Do's and Don'ts of Using Social Media to Screen New Hires

August 9, 2011 by Mikal E. Belicove | 15

f Like 133

in Share 251

Twitter Tweet 564



Why checking that applicant's Facebook page could come back to bite you

December 3, 2010 by Tim Gould

Posted in: Communication, Discrimination, Employment law, Hiring, References, Special Report, policies



## Checking out job applicants on Facebook? Better ask a lawyer

March 2, 2011: 12:56 PM ET

**Bits** The New York Times

Business ■ Innovation ■ Technology ■ Society

August 20, 2009, 3:27 PM

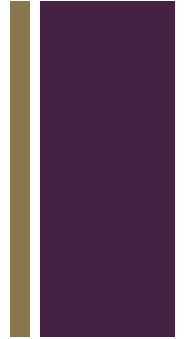
## More Employers Use Social Networks to Check Out Applicants

By JENNA WORTHAM



**HOSTILE WORK ENVIRONMENT**

## + Hostile Work Environment



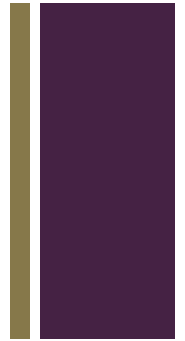
- Cumulative, unwelcome comments or behavior that unreasonably alters an employee's terms or conditions of employment
- Recurring and so severe in nature that employee feels they are unable to perform their job responsibilities
- Discriminatory in nature or relating to protected classes



# BULLYING

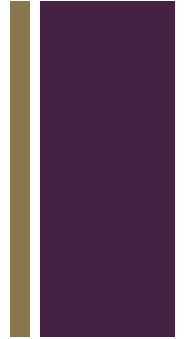


## + Bullying



- Persistent, offensive, abusive, intimidating, or insulting behavior
- 51% of orgs report incidents of bullying

## + Your Responsibilities



- To provide a safe and productive environment for all employees
- All cases of harassment or discrimination should be reviewed
- Bullying can be addressed by policies, code of ethics / conduct, training, and communication.



**NORTHAMPTON IS A  
DOMESTIC VIOLENCE-FREE ZONE**



**SPONSORED BY  
NORTHWESTERN DISTRICT ATTORNEY**

**DOMESTIC VIOLENCE**

## + Domestic Violence

- Obligation to protect employees from recognized hazards
- Do everything reasonably necessary to protect the life, safety and health of employees
- If the organization is aware of danger and does nothing to prevent it, can be fined and/or, subject to civil and possibly criminal liabilities
- National Domestic Violence Hotline

1-800-799-SAFE

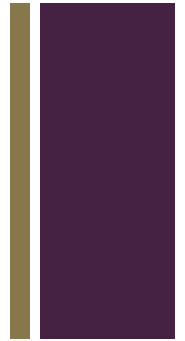






## Pop Quiz!

## Retaliation



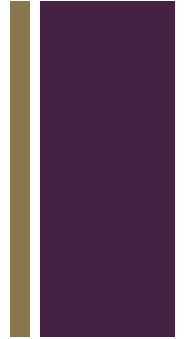
### True or False

- Employer retaliation is the most common claim of unfair employment?

**TRUE**

- 37% of all formal complaints against employers include retaliation claims

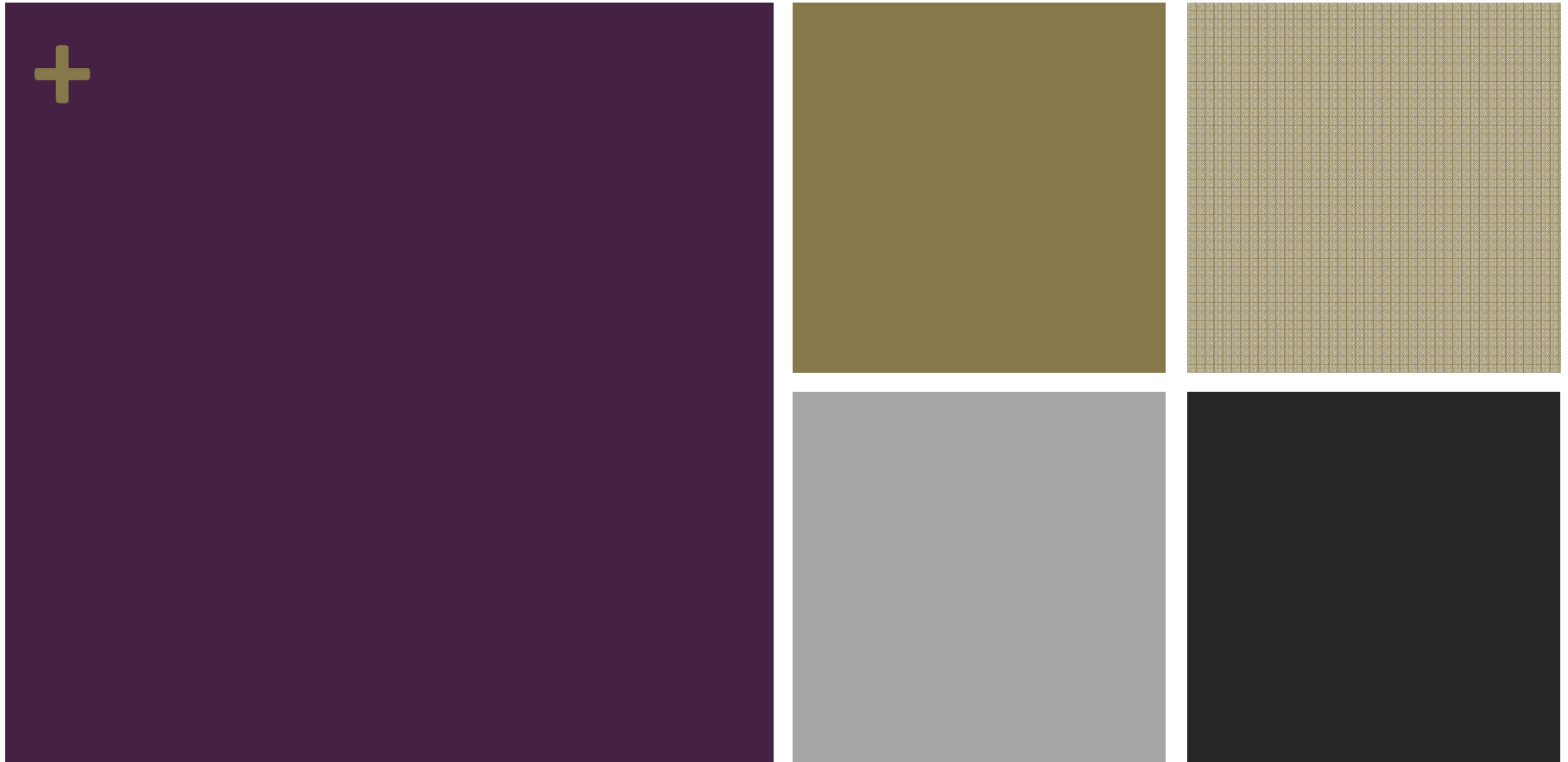
## + Retaliation



- Easiest type of claim to file
- Difficult for employers to win
- 53% of polled juries believe employers routinely retaliate against employees

## + **Best Practices to Prevent Retaliation Claims**

- Any claim by an employee, whether oral or written, should be documented and addressed
- Implement a formal policy on how to investigate and handle complaints consistently
- Be prepared in advance to defend any protected rights
- Consult an attorney at first sign of retaliation complaint



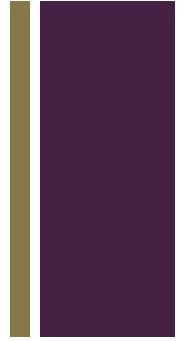
AUDIGY GROUP™  
LLC

# Terminations

## + Termination

- Create evidence and justification prior to termination
- Save all information relating to your decision
- Illegal to destroy or alter anything used to make decisions
- Ensure that a third party can easily determine termination did not violate protected classes

## + Termination – Best Practices



- A termination should never come as a surprise
- Prepare your case in advance
- Goal is for a compassionate and compliant separation

## + Pop Quiz!

### True or False

- 1/3 of all polled employees admit they would take things belonging to an employer if fired?

**FALSE**

51% of all polled employees admitted they would take company property



## + Data Security and Protection

- Twice as likely to steal proprietary information than office supplies
- Can lead to a HIPAA violation



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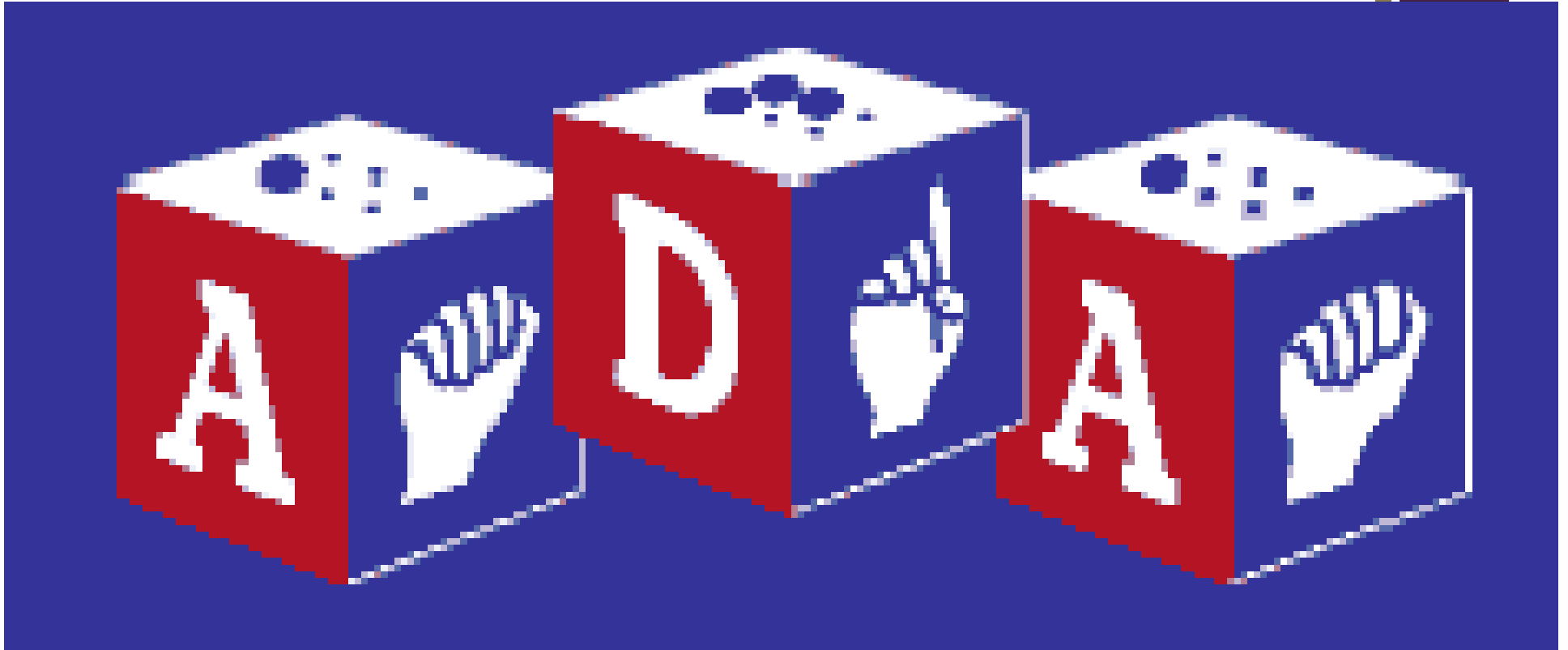
## + FMLA

- Federal law is 50 or more employees
- 40% of workers not covered by federal law
- Some states lowered employee requirement
  - California, Connecticut, Hawaii, Maine, Minnesota, New Jersey, Oregon, Rhode Island, Vermont, Washington, Wisconsin, D.C.

# + Family Medical Leave Act

To qualify as FMLA leave under this policy, the employee must be taking leave for one of the reasons listed below:

- 1) The birth of a child and in order to care for that child.
- 2) The placement of a child for adoption or foster care and to care for the newly placed child.
- 3) To care for a spouse, child or parent with a serious health condition
- 4) The serious health condition of the employee.
- 5) Qualifying exigency leave for families of members of the National Guard or Reserves or of a regular component of the Armed Forces when the covered military member is on covered active duty or called to covered active duty.



## + ADA

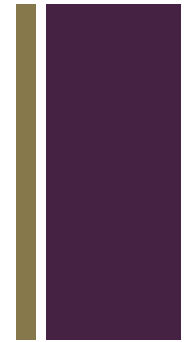
- Applies to all employers with 15 or more employees
- ADA is enforced by the U.S. Equal Employment Opportunity Commission, but many states also have similar laws to ADA which are enforced locally.
- Protects individuals with disabilities from discrimination
- Requires “reasonable accommodation” if needed in order to perform “essential functions” of a job



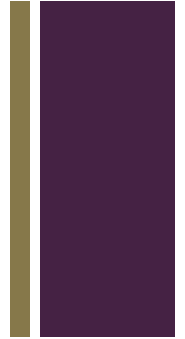
## ADA Areas

The ADA makes it unlawful to discriminate in all employment practices such as:

- Recruiting
- Firing
- Hiring
- Training
- Job assignments
- Promotions
- Pay
- Benefits
- Layoffs
- Leave



## + What is a Disability



- Individual has physical or mental impairment which substantially limits a major life activity.
- Has record of such an impairment.
- Being regarded as having such an impairment
  - Does not apply to impairment with an actual or expected duration of six months or less.



# + What is a Disability

■ Impairment that substantially limits one major life activity need not limit other major life activities to be considered a disability.

■ Definition of a “major life activity” includes:

- > caring for oneself
- > performing manual tasks
- > seeing
- > hearing
- > eating
- > sleeping
- > walking
- > standing
- > lifting
- > bending
- > speaking
- > breathing
- > learning
- > reading
- > concentrating
- > thinking
- > communicating
- > working

# + Making Accommodations

Individuals with disabilities may require an accommodation to perform the essential functions of a job.

A job function may be considered essential for any of several reasons:

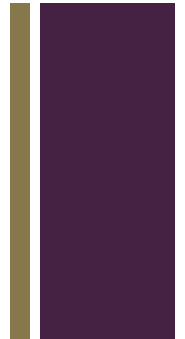
- The job exists to perform that function.
- The function requires specialized skills or expertise and the person is hired for that expertise.
- There is only a limited number of employees to perform the function.

Examples of essential job function accommodations:

- Providing special phone for receptionist with hearing impairment.
- Providing frequent stretching break for employee with muscular/joint/vascular disorder whose job requires long periods of sitting/standing.



# Disabilities and Substance Abuse



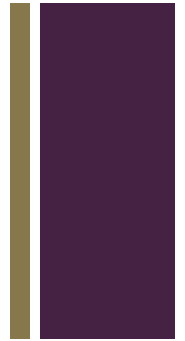
## Alcohol

An alcoholic is protected by the ADA as having a disability.

- [A] person who currently uses alcohol is not automatically denied protection simply because of the alcohol use. An alcoholic is a person with a disability under the ADA and may be entitled to consideration of accommodation, if s/he is qualified to perform the essential functions of a job. However, a[n] employer may discipline, discharge or deny employment to an alcoholic whose use of alcohol adversely affects job performance or conduct to the extent that s/he is not “qualified.”



# Disabilities and Substance Abuse



## Drugs

A drug addict is protected as having a disability only if he or she is receiving recovery treatment and is not a current user.

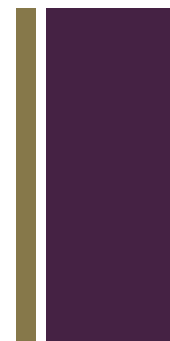
- Persons addicted to drugs, but who are no longer using drugs illegally and are receiving treatment for drug addiction or who have been rehabilitated successfully, are protected by the ADA from discrimination on the basis of past drug addiction.

## + ADA Summary

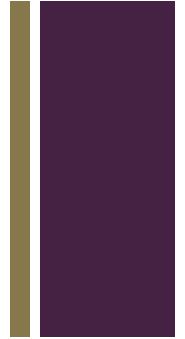
- The ADA makes it unlawful to discriminate in all employment practices, including pre-employment.
- A disability can be physical or mental and include substance abuse.
- Reasonable accommodations should be considered for applicants and employees who can perform essential job functions with an accommodation. What's reasonable will vary by each unique situation.
- There are serious legal consequences for violating ADA in addition to the harmful affect on the employer's reputation in the community.

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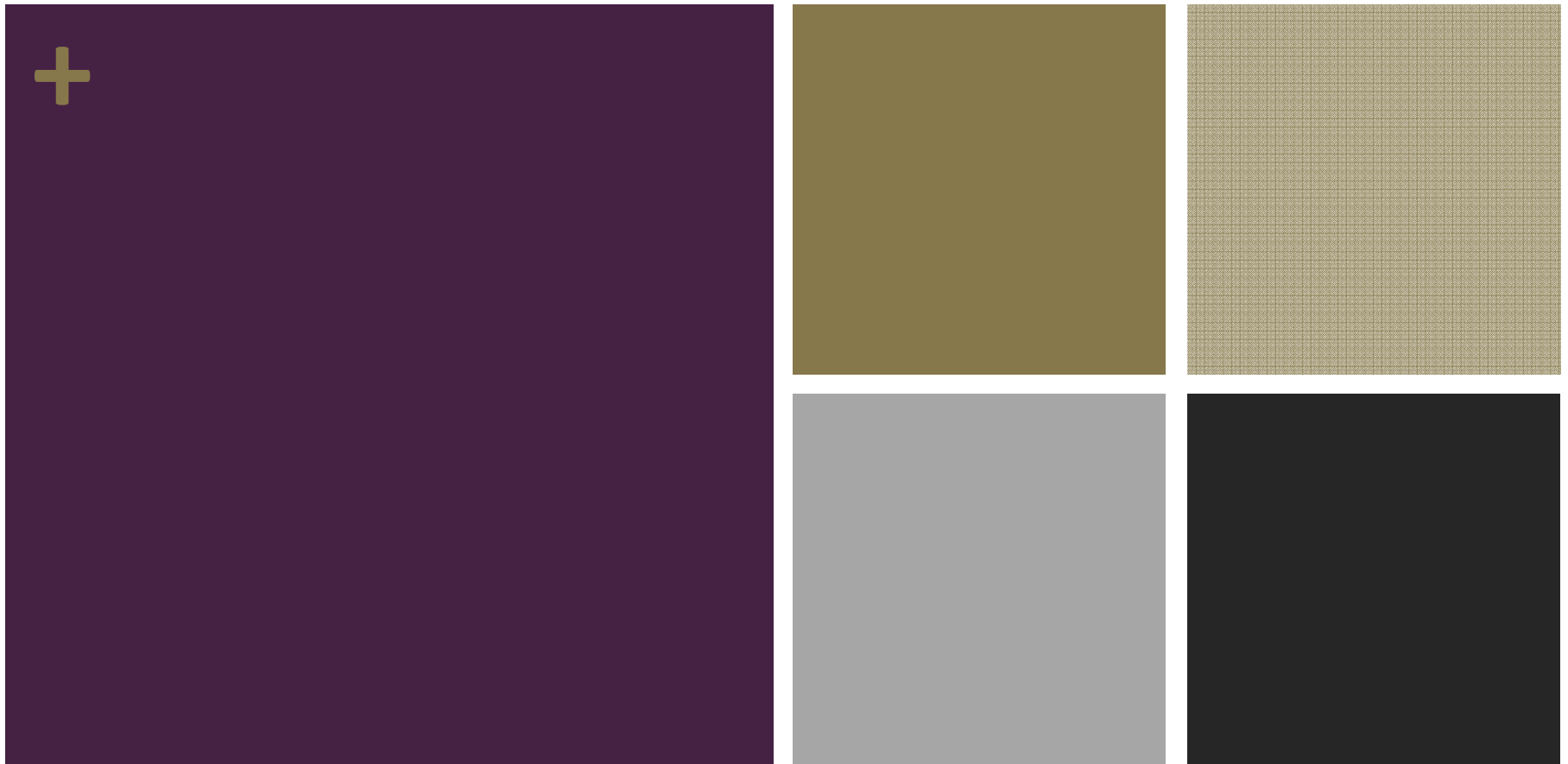
# Q&A



## + Call to Action



- Policies and Procedures are your friend
- Don't have an Employee Handbook → make one!
- Don't have Job Descriptions → write them!
- There are lots of laws out there – state and federal
  - It can be overwhelming
  - Ask for help
- Beware of Wage & Hour and Retaliation Claims

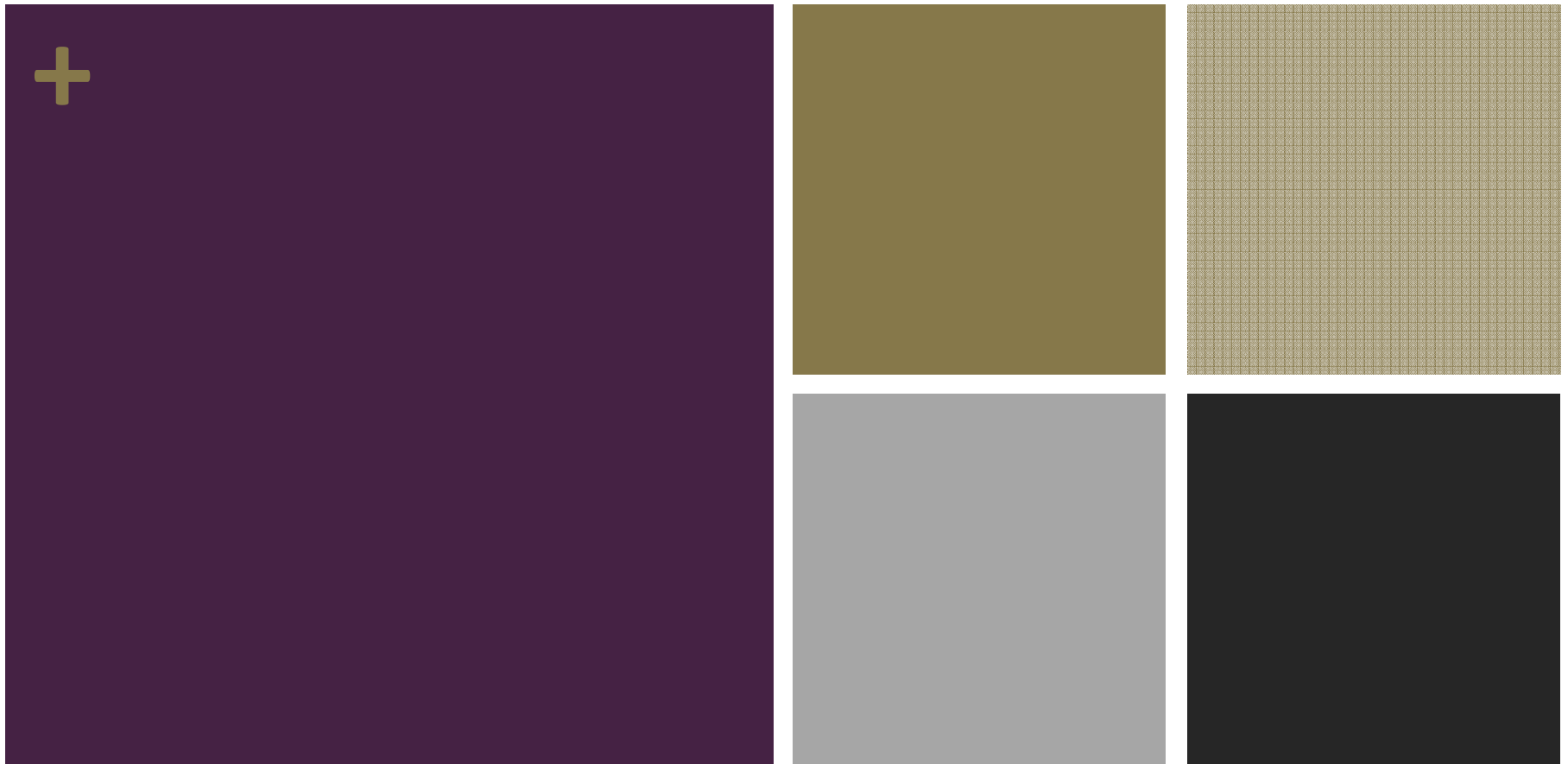


## HR Laws for Small Business



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