

# Sex Discrimination

Duffy Jamieson, Assistant Chief  
Civil Rights Section



**MIKE DEWINE**

== ★ OHIO ATTORNEY GENERAL ★ ==

# IMPRESSIONS FROM AN OFFICE

—Natasha Josefowitz

**HIS desk is cluttered.**

**He's obviously a hard worker and a busy man.**

**HER desk is cluttered.**

**She obviously a disorganized scatterbrain.**

**HE's getting married**

**He'll get more settled.**

**SHE's getting married.**

**She'll get pregnant and leave.**

**HE's having lunch with his boss.**

**He's on his way up.**

**SHE's having lunch with her boss.**

**They must be having an affair.**

**HE's having a baby.**

**He'll need a raise.**

**SHE's having a baby.**

**She'll cost the company money in maternity benefits**



# Agenda



Why are we still talking about sex discrimination today?

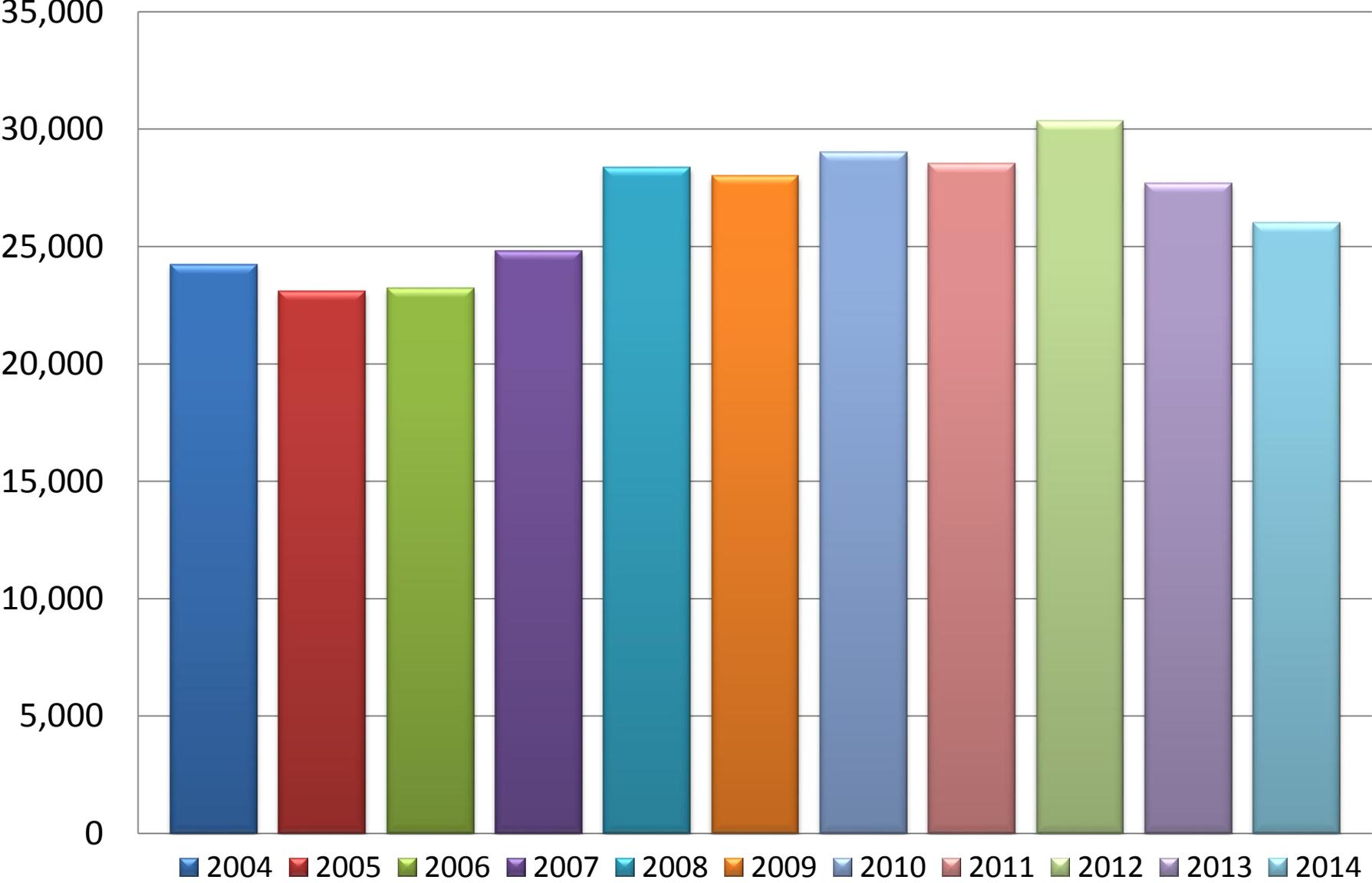
How have sex discrimination issues evolved?

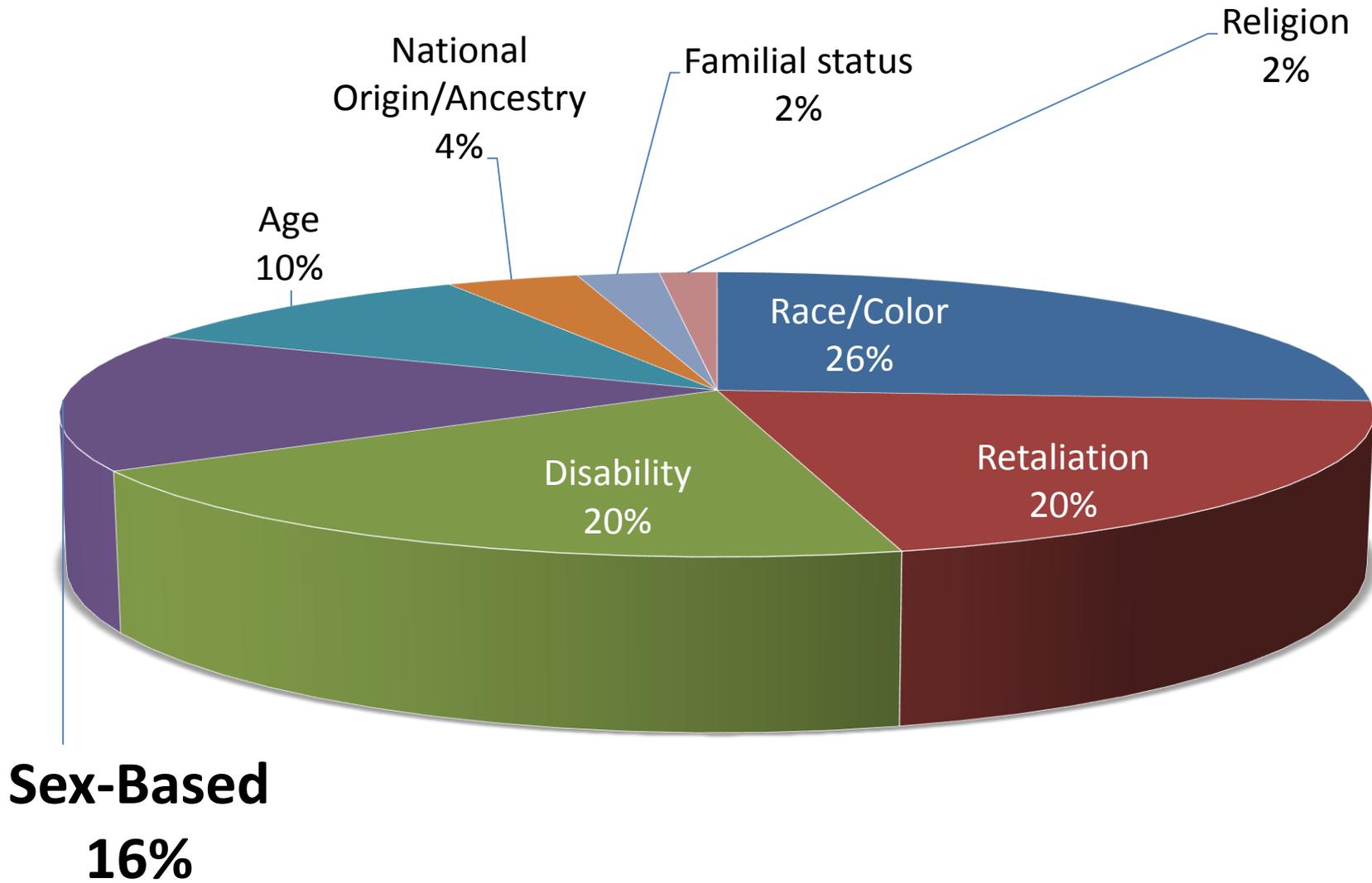
What laws might apply to sex discrimination issues?

What are some best practices to avoid sex discrimination claims?



# Sex-Based Charges





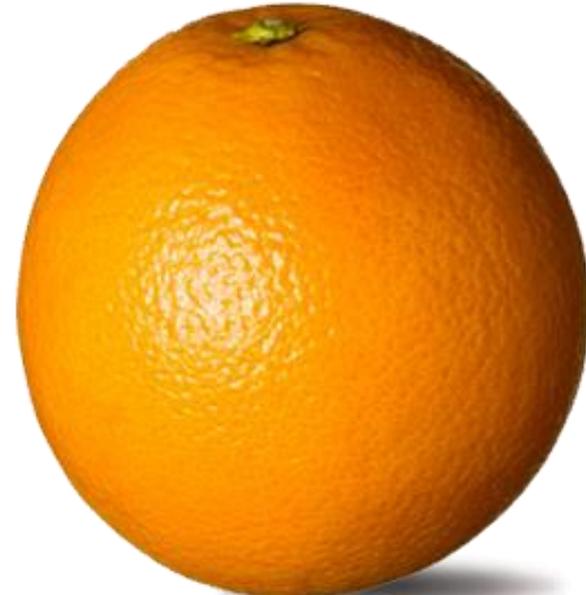
**Percent of Charges Based on Protected Class - 2014**

# “Pure” Sex Discrimination

“Pure” sex discrimination is the treatment of a person unfavorably because of that person’s gender



**Apple**



**Orange**

District  
Manager who  
was demoted,  
then fired

Very good  
performance  
record

Hired too  
many  
women





Lupi v. Suarez Corp. (1994)

# Lessons we can learn



The women were good at  
their job = pretext

The supervisors said and did  
stupid things = stereotypes

# Sex “Plus” Discrimination



Sex Plus Child Care



Sex Plus Marital  
Status



Sex Plus Extramarital  
Relations

## Not so good

Do you have child care arrangements?

Are you pregnant?

Will you return after your maternity leave?

Are you married?

## Better

Are you available to work 8:00 to 5:00?

Are you available to work overtime on occasion?

What are your long term goals?

Why are you qualified for this job?  
(There is no alternative question)

**Sex “Plus” Discrimination**

**Family Responsibility  
Discrimination**



**Caregiver  
Discrimination**

# The “New Normal” – Working Parents

40% - The percentage of unmarried women who account for new births.

70% - The percentage of children raised in families with a single working parent or two working parents.

75% - The percentage of women entering the workforce who will become pregnant.

40% - The percentage of working women who return to work within three months after their pregnancy.



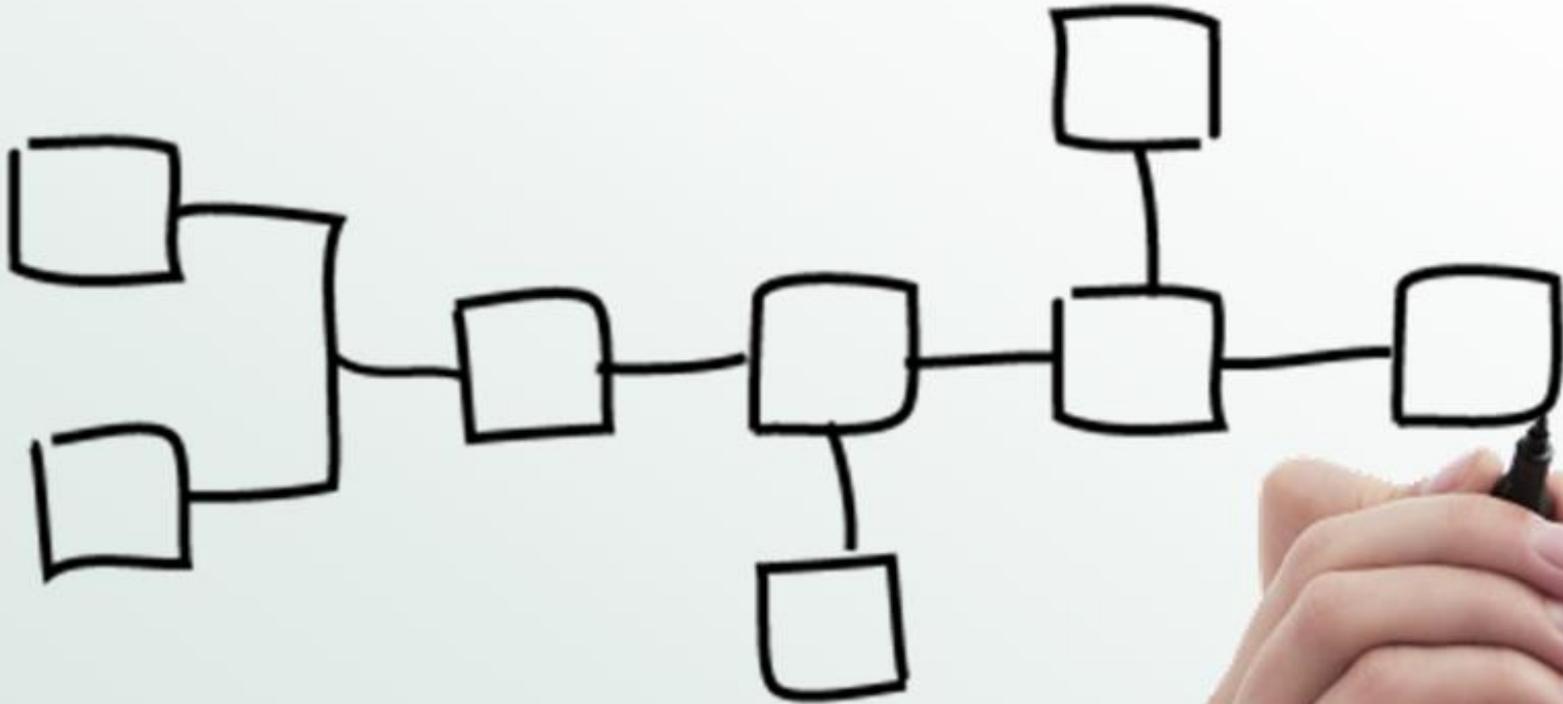
# The “New Normal” Aging Parents

The number of  
older workers is  
growing.

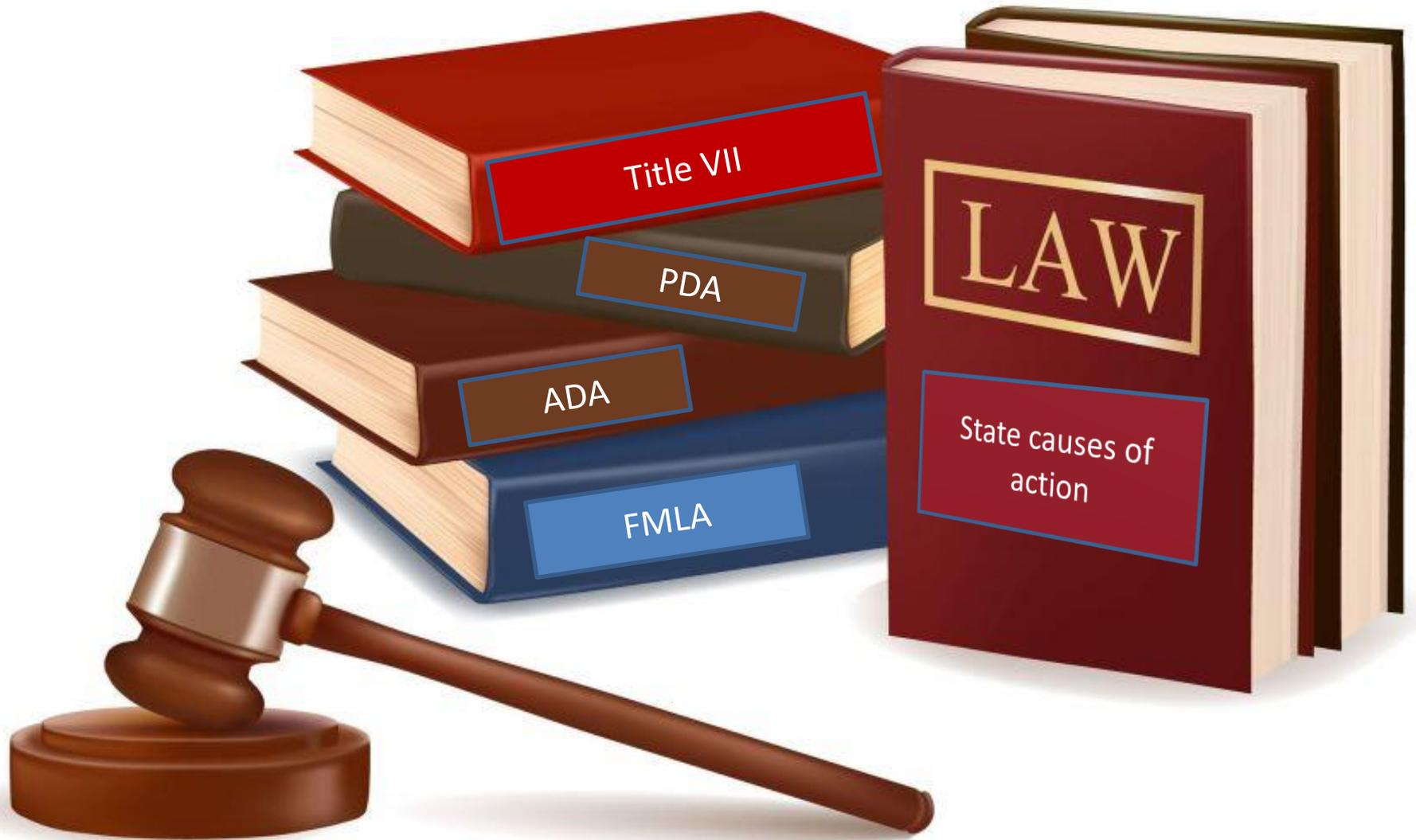
17% of Americans  
provide care and  
assistance for an  
elderly person

The “typical”  
family caregiver is  
a 49 year old  
working woman

# Common caregiver scenarios



- New Supervisor Syndrome
- Second Child Bias
- The Elder Care Effect



What type of claims are involved in Caregiver discrimination?

# Sex “Plus” Pregnancy



# Sex “Plus” Appearance

Why courts are reluctant to hold companies liable over dress codes

Title VII was designed to combat practices that seriously impair employment opportunities

The “plus” was aimed at fundamental or immutable characteristics

Most policies with grooming codes are roughly burdensome on both sexes



# Sexual Harassment

A close-up photograph of a woman with dark, curly hair, wearing a teal top and large hoop earrings. She is looking slightly to the left of the camera with a serious expression. In the foreground, a silver microphone is visible. In the background, the faces of other people are partially visible, including a man with glasses on the left and a woman on the right.

Corne v. Bausch & Lomb (1975)

Tompkins v Public Service (1976)

Miller v. Bank of America (1976)

Meritor Savings Bank v. Vinson (1986)

Williams v. General Motors (1999)

A woman with short, grey hair is shown in a state of distress. She is sitting at a desk cluttered with stacks of papers. Her right hand is pressed against her forehead, and her eyes are closed, suggesting she is overwhelmed or experiencing a headache. The background is a blurred office environment with computer monitors and windows. The overall tone is somber and highlights the impact of workplace harassment.

**Gender Harassment**



# Gender Stereotyping

Price Waterhouse v. Hopkins (1989)





# Transgender Discrimination

**Smith vs. Salem (2004)**

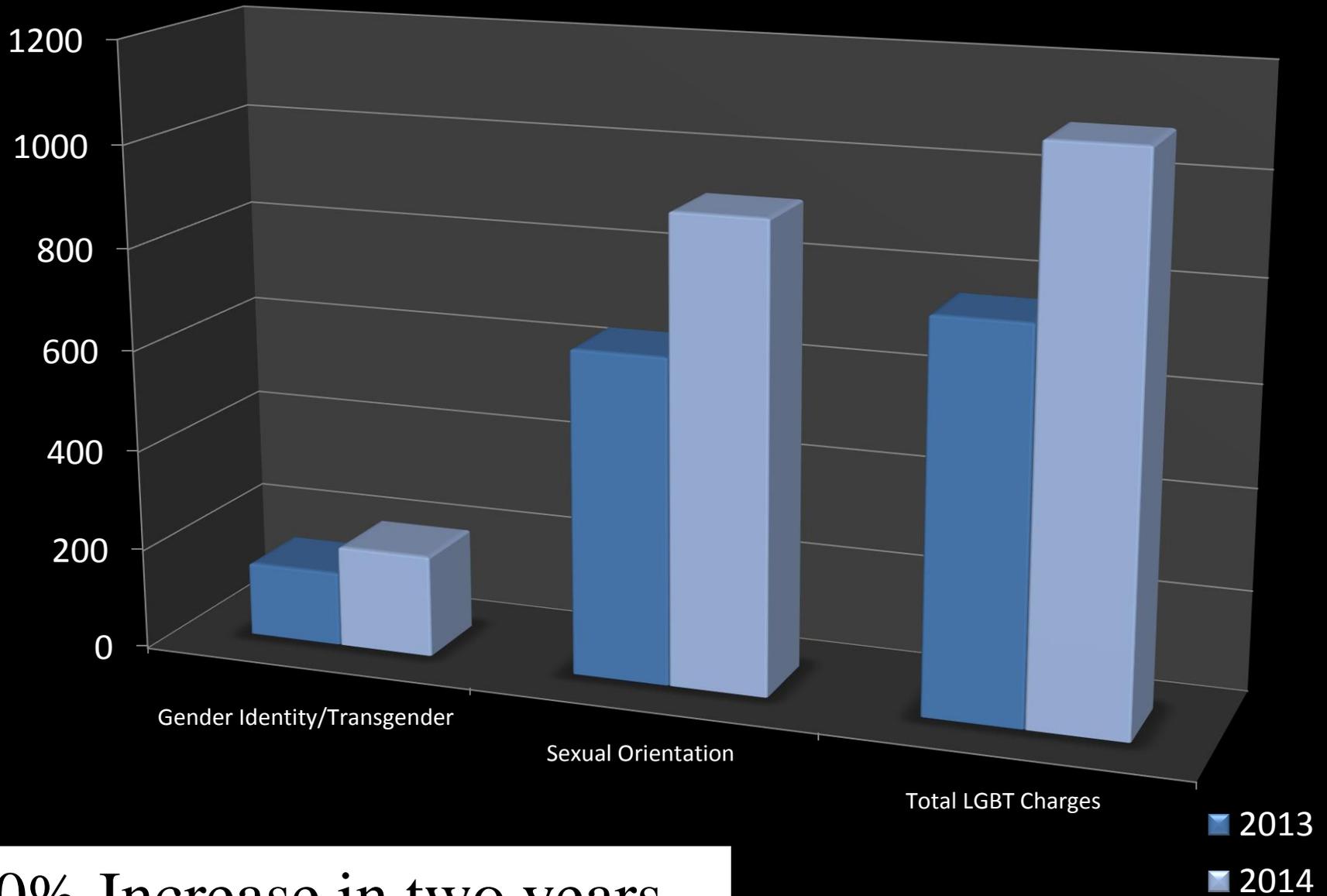
**Macy v Dept. of Justice (2012)**

# Sexual Orientation Discrimination

Terveer v. Billington (2014)

Complainant v. Foxx and the  
Department of Transportation (2015)





**70% Increase in two years**





Avoid the appearance of pretext by making decisions based on objective criteria

Avoid stereotypes by evaluating employees based on their qualifications



**Best practices**

Focus on qualifications

Be flexible

Keep objective

The End

# I'm Cheryl.



# Fly me.

You think I'm just another pretty face?

I'm not.

I'm a fresh attitude towards air travel. A bright look on the outside, a personal way of thinking on the inside.

Back in the old days in the airline business (last year), everyone seemed to think airlines were pretty much alike. And a lot of them were. So we decided to change a few minds.

Part of the challenge was to come on out and tell you who we are, why we're special, and what we're doing to be even better.

Here's who we are: We're Cheryl (me), and Linda and Margie and Laura and Jo. And a lot of people you never see, behind the scenes, like Bob and Tommy and Ron and Lee. (They're not just pretty faces, either.)

And here's what we're doing (and why we're special): We're helping people (hopefully you) go places, like Florida and California and New York and Europe. Quickly. Comfortably. Conveniently. On great airplanes like the 747 and, starting this winter, the spanking new DC-10. And we're helping people have fun doing it, too.

The way we figure it, the more we like you, the more you'll like us. It's that simple.

So we're not just a bunch of people. We're an airline.

And you can call us by our first name:

National.

Fly Cheryl.  Fly National.

**BMW**  
The Ultimate Driving Machine

National honors American Express, BankAmericard, Carte Blanche, Drivers Club, Master Charge/Inter