

UNLAWFUL HARASSMENT IN THE WORKPLACE

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“ME TOO” and “TIME’S UP”



- **Women in all black at the Golden Globe Awards**
- **Female Democratic lawmakers in all black at the President’s State of the Union Address**

#MeToo

**TIME’S
==
UP**

MALES BEING FIRED

Post-Harvey Weinstein Era

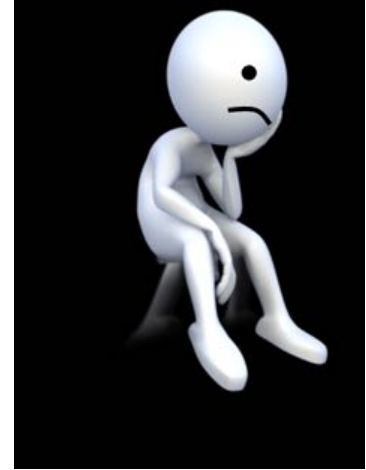
- **Accused being fired**
- **Employers facing liability because management ignored incidents**



WHY SHOULD THIS BE IMPORTANT TO ME?



- **It's against the law!**
- **It affects productivity and morale**



- **Core company value is to treat all with dignity and respect**



WHY SHOULD THIS BE IMPORTANT TO ME?

- **Harassment in any form is undoubtedly in direct conflict with your organization's core values**
- **Includes:**
 - **Engaging in harassment**
 - **Condoning harassment**
 - **Not reporting harassment**
- **Could lead to disciplinary action including termination of employment**

OBJECTIVES

At the end of this session, you should be able to:

- Explain what harassment is and is not;
- State why it is important to prevent harassment in your workplace;
- Be familiar with an example Sexual and Other Harassment Policy; and
- Understand your responsibilities under the Policy, including the Complaint Procedures

TYPES OF UNLAWFUL HARASSMENT

SEX

SEXUAL

ORIENTATION

GENDER

IDENTITY

RACE

COLOR

RELIGION

NATIONAL

ORIGIN

AGE

DISABILITY

DISABLED

VETERAN

STATUS

RETALIATION

EMPLOYER'S OBLIGATION TO PREVENT HARASSMENT

- **Maintain a Workplace Free of Unwelcome *Verbal & Physical* Conduct of an Offensive Nature**
- **Investigate Complaints of Harassment**
- **Take Prompt & Effective Action to Correct Any Harassment**
- **Prevent Retaliation Against Anyone Who Presents a Complaint or Participates in an Investigation**

EXAMPLE HARASSMENT POLICY

- **Defines Types of Unlawful Harassment**
- **Harassment Will Not Be Tolerated**
- **The policy states:**

██████████ is committed to providing a work environment that is free from all forms of discrimination and conduct that can be considered harassing, coercive, or disruptive, including sexual harassment. Actions, words, jokes, or comments based on an individual's sex, race, color, national origin, age, religion, disability, genetic information, or any other characteristic protected by law will not be tolerated.

EXAMPLE HARASSMENT POLICY (cont.)

- **Defines and Discusses Sexual Harassment**
 - **Most Common Form of Unlawful Workplace Harassment**
 - **Accounts For Large Percentage of Discrimination Charges Filed Against Employers**
 - **Is Totally Preventable**

WHAT IS SEXUAL HARASSMENT?

TWO TYPES:

1. Quid Pro Quo
(This For That)

2. Hostile Work Environment



WHAT IS QUID PRO QUO (THIS FOR THAT)?

- **Unwelcome Sexual Advances**
or, Demands For Sexual Favors
- **By a Supervisor or Manager**
Accompanied by:
- **Promise of Favorable Treatment**
(e.g., raise or promotion)
or, Threat of Unfavorable Treatment
(e.g., discharge or demotion)
- **In other words, withholding or granting job benefits in exchange for sexual favors**



“JOB BENEFITS” INCLUDE:

- Hiring
- Firing
- Promotions
- Demotions
- Work assignments
- Positive or Negative Work Reviews
 - Ex. If you want that promotion you have to have sex with me first.
 - Ex. You’ll be fired if you don’t have sex with me.



WHAT IS A HOSTILE WORK ENVIRONMENT?

- **Other unwelcome verbal or physical conduct of a sexual nature**

which

- **Unreasonably interferes with an individual's work,**

or

- **Creates a Hostile, Intimidating or Offensive Work Environment**



WHAT IS A HOSTILE WORK ENVIRONMENT? (cont.)

- **Must be severe and/or pervasive**
- **Must Offend a Reasonable Person**
(The average person, not the hyper-sensitive)
- *And, Must Actually Offend the*
Complaining Person
(Was unwanted and uninvited)

WHAT IS SEXUAL CONDUCT?

- **Jokes of a Sexual Nature**
- **Crude or Offensive Language**
- **Comments on Appearance**
- **Nude/Revealing/Suggestive Pictures or Calendars**
- **Pornography of All Kinds**
- **Rubbing, Spanking, Grabbing or Pinching**
- **Shoulder Rubbing, Back-Scratching, Hugging**

OTHER UNACCEPTABLE BEHAVIORS

Unwanted:

- **Flirting**
- **Requests for Dates**
- **Leering/Long Stares/Sexually Suggestive Looks**
- **Catcalls**
- **Whistling**
- **Winking**
- **Blowing Kisses**



UNACCEPTABLE BEHAVIORS *(cont.)*

- **Use of demeaning or offensive names:**
 - **Honey**
 - **Baby**
 - **Sweetie**
 - **Darlin'**
 - **Missy**
- **Even with clients and patients**

A photograph of a white envelope with the words "Hey Darlin'" written in a black, cursive, handwritten font. The envelope is slightly tilted and has a soft shadow on the surface below it.

UNACCEPTABLE BEHAVIORS *(cont.)*

- Derogatory comments about a person's sexual orientation or gender identity
- Making jokes or comments about a person's physical attributes
- Engaging in conversations about sexual topics
- Viewing or posting of sexual pictures, magazines, posters or videos

UNACCEPTABLE BEHAVIORS *(cont.)*

- **Viewing sexually-based websites**
- **Sending sexually explicit emails**
- **Texting or “sexting” sexually explicit messages or pictures**



IS IT HARASSMENT IF IT DOESN'T HAPPEN AT THE OFFICE?

Harassment can occur anywhere an employee represents the Company:

- **Work Parties/Events**
- **Client Dinners**
- **Charity Events**
- **Conferences**
- **Trade Shows**
- **Sales Calls**



EXAMPLE HARASSMENT POLICY *(cont.)*

Reporting Obligations

The policy states:

If you experience sexual or other harassment in the workplace, you are required to report it immediately to your supervisor. If your supervisor is unavailable or you believe it would be inappropriate to contact that person, you should immediately contact the President [REDACTED] [REDACTED] or any other member of management. To report an incident after normal business hours, you should call [REDACTED] President, at (918) [REDACTED]. You can raise concerns and make reports without fear of retaliation. Retaliation against an individual for reporting harassment or for participating in an investigation of alleged harassment is a serious violation of this policy and may subject the person found to have retaliated to disciplinary action, up to and including termination of employment.

EXAMPLE HARASSMENT POLICY *(cont.)*

Obligations of Supervisors and Managers to Report Incidents

The policy states:

Any supervisor or manager who becomes aware of possible sexual or other harassment must immediately advise the President or any member of management, so it can be investigated in a timely manner.

Consequences of Policy Violations

The policy states:

Anyone engaging in sexual or other harassment will be subject to disciplinary action, up to and including termination of employment.

COMPUTER & EMAIL USAGE POLICY

The policy states:

██████████ strives to maintain a workplace free of harassment and sensitive to the diversity of its employees. Therefore, ██████████ prohibits the use of computers and the e-mail system in ways that are disruptive, offensive to others, or harmful to morale.

For example, the display or transmission of sexually explicit images, messages, and cartoons is not allowed. Other such misuse includes, but is not limited to, ethnic slurs, racial comments, off-color jokes, or anything that may be construed as harassment or showing disrespect for others.

INTERNET USAGE POLICY

The policy states:


Data that is composed, transmitted, accessed, or received via the Internet must not contain content that could be considered discriminatory, offensive, obscene, threatening, harassing, intimidating, or disruptive to any employee or other person.

Examples of unacceptable content may include, but are not limited to, sexual comments or images, racial slurs, gender-specific comments, or any other comments or images that could reasonably offend someone on-the-basis of race, age, sex, religion, national origin, disability, genetic information, or any other characteristic protected by law.

Abuse of the Internet access provided by [REDACTED] will result in disciplinary action, up to and including termination of employment.

VIDEO SURVEILLANCE POLICY

The policy states:

 may conduct video surveillance of non-private workplace areas. Video monitoring is used to identify safety concerns, maintain quality control, detect theft and misconduct, and discourage or prevent acts of harassment and workplace violence.

WHAT CAN YOU DO?

- Know and comply with your organization's sexual and other harassment policies
- Keep sexual and other harassing conduct out of the workplace
- Treat everyone with dignity and respect
- Speak up when you experience or witness harassment

WHAT CAN YOU DO?

- Report it to your supervisor or another member of management
- Cooperate with investigations
- Do not investigate on your own
- Do not retaliate for harassment complaint
 - could lead to discipline and even termination

INVESTIGATION OF HARASSMENT

For those tasked with investigating:

- ✓ **Take Every Complaint Seriously**
- ✓ **Develop Details (Who, What, When, Where) Of Alleged Misconduct From Interview With Complainant**
- ✓ **Question All Possible Witnesses To The Misconduct**
- ✓ **Interview The Alleged Harasser**
- ✓ **Determine Appropriate Response, Including Disciplinary Action, If Warranted**
- ✓ **Explain Company's Response To All Parties**
- ✓ **Document Each Step Of The Investigation**

RECENT ISSUES

- Supervisors and management ignoring knowledge or suspicions they have

This results in:

- Harassment not being addressed and corrected
- Potential liability of the company regardless of the result of the investigation

RECENT ISSUES *(cont.)*

- Alleged harasser being quickly fired.
- Supervisors and management being fired for ignoring and not reporting harassment.



Harassment? You be the Judge.

- John slaps his co-workers, Bob and Mary, on the rear-end in a congratulatory manner after the 3 of them met their sales quota for the month.
- John slaps his co-workers, Bob and *Jim*, on the rear-end in a congratulatory manner after the 3 of them met their sales quota for the month.
- Jane gets a new hairstyle. Tom, her co-worker, tells her that she looks nice.

Harassment? You be the Judge.

- Jane, who has a full figure, wears a tight t-shirt to work. Bob, her co-worker, tells her she looks “hot” today.
- As a practical joke, Joe places a plastic penis on his co-worker Mary’s desk.
- Joe tells Bob about his sexual conquests of the night before. Mary, who works nearby, overhears the entire conversation.

Harassment? You be the Judge.

- Bob asks his co-worker, Ann, if she wants to go out on a date. She says, “No.”
- Bob won't take no for an answer and continues to ask her out almost daily.
- As a practical joke, Tom puts a bumper sticker on his co-worker Jim's truck that says “Small Penis on Board.”
- Tom works in an office that has both male and female employees. Whenever someone annoys him, he grabs his crotch in jest.

Harassment? You be the Judge.

- Susan, who is openly gay, frequently puts her hands on her female co-workers' backs and arms. She also often talks about her sexuality.
- What if Susan is not openly gay?
- What if Susan behaves this way toward men, too?
- Whenever Jane walks by, her co-worker, Sam, whistles.

Harassment? You be the Judge.

- Joe, who works with both male and female employees, regularly uses vulgar language and directs obscene insults at to both sexes.
- Bob starts a false rumor that his co-workers, Joe and Mary, are having sexual relations.
- Tom and Dick like to tease their co-worker Sharon about her personal life and the guys that she dates.

Harassment? You be the Judge.

- John regularly teases his co-worker Jim by calling him “homo,” “fag,” and “wimp.” John also has mocked Jim and asked him about his “boyfriends.”
- Brian, a supervisor, likes to play the guitar and sing. One Friday afternoon, he gathers his team and performs the song “Lady” by Kenny Rogers while frequently locking eyes with his coworker, Suzanne.

Harassment? You be the judge.

- An office manager touches his female employees affectionately and calls them his little ladies. They do not mind.
- A new employee is hired into the above situation. She complains but nothing is done.
- Two employees at the same level in the company become involved in a romantic relationship.
- A supervisor and a subordinate of the opposite sex become involved in a romantic relationship.

Harassment? You be the judge.

- A rumor is circulating that a particular employee is homosexual. Certain employees begin to joke and tease the individual about being gay.
- During a business trip, a female employee makes sexual innuendoes and lewd jokes to a male employee. He complains. The company transfers the male employee and reprimands the female worker.



QUESTIONS?