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# **IT'S *GAME TIME* – LET'S PLAY!**

## ***HARASSMENT REVIEW* FOR**

### **HR & ORGANIZATION LEADERS**

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***(...and a Non-Soul Crushing Kind of Attorney)***

#### **COURSE MATERIALS AND EXERCISES**

Please note that even though the instructor may be an attorney, no attorney-client relationship exists, and the information presented in this class and in these materials is not intended to be legal advice. Individual situations vary and appropriate resolutions are fact specific. Consult with Human Resources or your organization's legal counsel before you apply this information to specific risk management decisions.



# Creating a Respectful Workplace

## ALL EMPLOYEE TRAINING

### Our Policy

All employees have a responsibility to maintain a respectful workplace free of harassment, discrimination, and retaliation.

- ❖ We are an **equal employment opportunity** employer that is deeply committed to administering a workplace environment that is free of unlawful discrimination and harassment of all types.
- ❖ **Harassment, discrimination, and retaliation in any form will NOT be tolerated.**
- ❖ **SCOPE** and **REACH** are broader than you might think.
- ❖ The **INVISIBLE LINE** you may inevitably cross
  - Protected Classes
  - “I didn’t mean to”
  - Co-worker relationships

### Reporting / Investigations

You have the responsibility to **report complaints** of harassment and discrimination immediately to your supervisor / manager, the Department head, HR, or the Head of the Organization/Agency.

- ❖ The employee complaining of an alleged incident must **identify themselves**.
- ❖ Employees may **bypass their supervisors**.
- ❖ All complaints will be **investigated promptly, thoroughly and impartially**.
- ❖ Investigations will be kept as **confidential** as possible.
- ❖ Anyone providing information in the course of an investigation or as part of a complaint must do so completely and **truthfully** and without any malice or intent to mislead.
- ❖ Once we have completed our investigation, we may advise the complaining employee of the **results to the extent possible under the circumstances**.

### Retaliation Prohibited

Retaliation against those who report in good faith what they believe to be unlawful harassment or discrimination will NOT be tolerated under any circumstances.

- ❖ Anyone found to have engaged in harassment, discrimination, or retaliation or any other violation of this policy will be subject to appropriate disciplinary action.

## Examples of Prohibited Behavior (non-exclusive list):

- Sexual assault, intimidating or hostile acts;
- Displays of nude, obscene photos, cartoons, illustrations, doodles;
- Sexual comments, innuendos and gestures;
- Profane or sexually derogatory language / vulgar language and jokes;
- Questions about an employee's sex life;
- Touching an employee in an intimate area of the body;
- Pinching, patting, shoulder rubs, hugging;
- Staring, leering, whistling;
- Overt sexual suggestions or invitations.
- Repeatedly asking for a date after being turned down;
- Suggestive "compliments" about appearance or clothing;
- Negative stereotyping based on Protected Class status;
- Implying that "cooperation" in sexual activities will favorably affect employment or vice versa;
- Derogatory, insulting, demeaning, offensive and/or intimidating comments, gestures or behaviors relating to an employee's protected class status;**
- BULLYING**
- Retaliation
- Any other behavior that is offensive, derogatory or demeaning.
- Using telephone system, or other communication system, to engage in harassment or retaliation is also prohibited.*
- \*Behavior occurring outside of work IF it impacts the workplace.***

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# WHY DO WE CARE?

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All employees have a responsibility to maintain a respectful workplace free of harassment, discrimination, and retaliation.

## ❖ Liability for *supervisor* conduct –

- ✓ Strict liability: Employer is strictly liable for conduct by a **supervisor / manager** who takes a **tangible adverse action** against an employee (e.g., discharge, transfer, demotion, reassignment)
  
- ✓ Limited liability: If the supervisor engaged in prohibited conduct but **did not** take a tangible adverse employment action, the employer may be able to prove a defense to liability.
  - **Two-Part Defense**
    - **Part 1**: The employer exercised reasonable care to prevent and correct promptly the harassing behavior.
    - **Part 2**: The employee failed to reasonably take advantage of the employer's preventative and corrective measures or to otherwise prevent harm that could have been avoided.

## ❖ Liability for *co-worker* conduct

- ✓ An employer will be liable for hostile work environment harassment by a co-worker if the employer knew or should have known of the harassment and failed to take prompt and appropriate corrective action upon obtaining such knowledge.

## ❖ Personal Liability

- ❖ **Employee Engagement & Customer Service** – not only significantly impacts your ability to manage, develop and lead your team, but also disrupts our efforts to provide outstanding customer service! *Are you breaking trust or building trust?*

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# LEGALLY SPEAKING...

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## DISCRIMINATION

Treating a person differently **BECAUSE of** the person's Protected Class Status or that of his/her relatives, friends or associates.

## RETALIATION

- ❖ Any conduct that “tends to deter” someone from reporting a complaint.
  - ✓ Retaliation against those who report in good faith what they believe to be unlawful harassment or discrimination will NOT be tolerated under any circumstances.
  - ✓ Any individual providing relevant information in an investigation;
  - ✓ Employees are protected even if they are unable to prove any harassment or discrimination as long as the report was made in *good faith*.
  - ✓ **Consequences:** Discipline up to and including termination.

## HARASSMENT

- ❖ **Quid Pro Quo (Sexual Harassment)**
  - ✓ **“This for that.”** -- When a supervisor / lead worker demands sex in exchange for a raise, promotion, or threatens negative treatment for not giving in.
- ❖ **Hostile Work Environment Harassment**
  - ✓ **Unwelcome** – who decides?
  - ✓ **Verbal statements or physical conduct** by a co-worker, manager, supervisor, vendor, visitor, client, volunteer or others.
  - ✓ That **demeans or shows hostility** or aggression to an individual BECAUSE of the person's Protected Class Status or that of their relatives, friends, or associates.

- ✓ That is **severe and pervasive**.
- ✓ Conduct that has the *purpose or effect of*:
  - Creating a hostile, intimidating work environment;
  - Unreasonably interfering with work performance,
  - The submission or rejection is the basis of an employment decision or becomes a condition of employment.
  - **Test:** A reasonable person would find the conduct hostile or offensive.

## REPORTING / INVESTIGATIONS

Employees have the responsibility to **report complaints** of harassment and discrimination immediately.

- ❖ The employee complaining of an alleged incident must **identify themselves**.
- ❖ Employees may **bypass their supervisors**.
- ❖ All complaints will be **investigated promptly, thoroughly and impartially**.
- ❖ Investigations will be kept as **confidential** as possible. NO “Off the Record”!
- ❖ Anyone providing information in the course of an investigation or as part of a complaint must do so completely and **truthfully** and without any malice or intent to mislead.
- ❖ Advise the complaining employee of the **results to the extent possible**.

*While I am not at liberty to discuss confidential personnel information with you, I can assure you that we have addressed the situation. If, however, the behavior continues, or if you continue to feel uncomfortable, please report the situation to me or HR immediately.*

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# SUPERVISOR RESPONSIBILITIES

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- ✓ **Educate** employees about their responsibilities and review the complaint process.
- ✓ **Be accessible** to employees.
- ✓ **Respond** immediately to complaints or observed harassment and retaliation.
  - Even if you observe an employee on another manager's team, respond!
- ✓ **Set an example** by refraining from any Policy violations yourself.
- ✓ **Monitor and maintain** a discrimination, harassment and retaliation-free workplace.
  - Immediately **intervene** to stop any inappropriate conduct.
  - **Report** all complaints to HR – NO “off the record”

*Managers who bear some responsibility for allowing violations to occur may face corrective action if:*

- ✚ Their action or inaction contributed to the problem;
- ✚ They failed to take appropriate action in response to receiving a complaint or witnessing an incident.

## RESPONDING TO A COMPLAINT

- ✓ Understand your policies and your role in the process.
- ✓ Do not attempt to conduct an investigation without authorization from HR
- ✓ Do not tell the employee to “work it out” with the other person
- ✓ Do not tell the employee s/he is overreacting or that s/he should get an attorney
- ✓ **DO SOMETHING!**

