

Sexual Harassment and Discrimination Training

[COMPANY NAME]
[PRESENTER NAME]
[DATE]

Why Are We Here?

Why Are We Here?

- AB 1825 requires supervisors to be trained in harassment and discrimination at least once every two years
- The training must be at least two hours long, and the training must be interactive
- The definition of supervisor is very broad; merely directing the work of another employee makes you a supervisor

Requirements of AB 1825

- What is AB 1825?
 - Mandatory training for supervisors regarding sexual harassment and discrimination

Requirements of AB 1825

- Who must receive the training?
 - Supervisors, which includes anyone who:
 - Directs the work of another employee
 - Hires, Fires, or disciplines another employee
 - Makes recommendations regarding the above

Requirements of AB 1825

- How often must the training occur?
 - Supervisors must receive training at least once every two years

What Is Unlawful Harassment?

Prohibited Harassment Defined

- What makes harassment unlawful?
 - Conduct based on a _____ category

Prohibited Harassment Defined

- How many protected categories can you name?

Protected Categories

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

7. _____

8. _____

9. _____

10. _____

11. _____

12. _____

13. _____

14. _____

15. _____

Protected Categories

1. Race/Color
2. National Origin
3. Ancestry
4. Sex/Gender
5. Sexual Orientation
6. Pregnancy
7. Citizenship Status
8. Marital Status
9. Age
10. Religion
11. Disability
12. Medical Condition
13. Whistleblower
14. Military Service
15. Genetic Information

Hostile Working Environment

- Most harassment cases involve claims of *hostile working environment*, which is:
 - Unwelcome behavior;
 - Offensive to the reasonable man or woman;
 - Severe or pervasive; and
 - Alters working conditions to create an abusive working environment.

Hostile Working Environment

- Due to the challenges associated with disproving harassment claims, most employers have a *zero tolerance policy*

Hostile Working Environment

A or B?

Having a *zero tolerance policy* means the employer has a policy that:

- A. Tolerates no unlawful harassment; or
- B. Tolerates no conduct that might be construed as unlawful harassment.

Hostile Working Environment

A or B?

Having a *zero tolerance policy* means the employer has a policy that:

B. Tolerates *no conduct that might be construed as unlawful harassment.*

[INSTRUCTOR MATERIALS ONLY]

No Bully Zone



What is Workplace Bullying?

- No Universal Definition
- Actions (by an individual or group) that are:
 - Repeated
 - Unreasonable (out of context for situation)
- And cause:
 - An intentional impact on the target (i.e., humiliation, degradation, offense, intimidation) or
 - Dangerous results to the target (i.e., risk to safety and/or mental or physical health issues)
- Bullying is psychological violence

Examples

The Obvious

- Shouting/raising voice
- Ignoring or interrupting
- Invading personal space

Less Obvious

- Isolating or mobbing
- Manipulating ability to do work (unreasonable deadlines, overloading/underloading)
- Taking credit for work of others

Pretextual Performance Management

- Repeated accusations of undocumented errors
- Constant criticism on matters unrelated/minimally related to job performance

Legal Exposure

Bullying *can* lead to other legal claims...

- Disability discrimination (“Authority Figure Stress Reaction Syndrome”)
- Workers compensation stress claims
- Intentional infliction of emotional distress claims
- “Harassment” if tied to protected category

Addressing Bullying

- Commitment from leadership
 - Make it clear to all employees that a bullying management style is not consistent with the organization's mission and values
- The bully must embrace becoming a part of solution
 - Solicit feedback and be open to change
 - Identify Action Plan
 - Make meeting expectations a part of performance review; hold accountable.

The Transgender Work Opportunity Act

- Requires sexual harassment training to include harassment based on *gender identity, gender expression, and sexual orientation*.

Unlawful Inquiries

- Employers may not inquire about or require documentation or proof of an individual's sex, gender, gender identity, or gender expression as a condition of employment.
- Inquiries that directly or indirectly identify an individual on the basis of sex, gender identity or gender expression are generally unlawful.
- Employer may ask employees to provide such information solely on a voluntary basis.

Restrooms and Other Facilities

- Employees must be permitted to use restrooms and other facilities that correspond to the employee's gender identity or gender expression, regardless of the employee's assigned sex at birth.
- "Facilities" includes locker rooms, dressing rooms, dormitories, and similar facilities.
- Single-occupancy restrooms must have gender-neutral signage, such as "Restroom," "Unisex," "Gender Neutral," "All Gender Restroom," etc. ("Porta-Potty" exception for non-flush toilets.)



Restrooms and Other Facilities

- To protect the privacy of all employees, employers shall provide locking toilet stalls, staggered schedules for showering, shower curtains, or other feasible methods of ensuring privacy.
- Transgender employees may not be required to use single-user restroom.

Restrooms and Other Facilities

- Employees need not undergo, or provide proof of, any medical treatment or procedure, or provide any identity document, to use facilities designated for use by a particular gender.
- Employer may make a reasonable and ***confidential*** inquiry of an employee for the sole purpose of ensuring access to comparable, safe, and adequate multi-user facilities.

Names and Pronouns

- If an employee requests to be identified with a preferred gender, name, and/or pronoun, including gender-neutral pronouns, an employer must honor that request.
- An employer may use an employee's gender or legal name as indicated in a government-issued identification document where necessary to meet a legally-mandated obligation, but otherwise must identify the employee in accordance with the employee's gender identity and preferred name.
- An employer shall not discriminate against an applicant based on the applicant's failure to designate male or female on an application form.

Dress Codes and Grooming

- Employers may not to impose physical appearance, grooming or dress standards which are inconsistent with an individual's gender identity or gender expression unless required by business necessity.
- Basic rule: You can apply dress and grooming standards but employees may choose which gender's standards they will follow.

Four Categories of Harassing Behavior

- California puts harassing behavior into four categories:
 - *Verbal* harassment
 - *Physical* harassment
 - *Visual* harassment
 - *Sexual* favors

Verbal Harassment

What are some examples of verbal
sexual harassment?

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

7. _____

8. _____

9. _____

10. _____

Verbal Harassment

What are some examples of verbal *sexual* harassment?

1. Dirty or off-color jokes
2. Discussing sexual topics
3. Flirting / sexual advances
4. Boasting of sexual conquests
5. Intimate question re: sex life
6. Intimate nicknames
7. Excessive compliments
8. Sexual innuendo
9. Whistling, cat-calls, etc.
10. Sexual profanity
11. Harassing voice mails
12. Repeated solicitations

Verbal Harassment

What are some examples of verbal harassment based on *other protected categories*?

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

7. _____

8. _____

9. _____

10. _____

Verbal Harassment

What are some examples of verbal harassment based on *other protected categories*?

1. Slurs and insults
2. Ethnic jokes
3. Name calling
4. Mocking cultural behavior
5. Threatening comments
6. Derogatory references

Physical Harassment

What are some examples of physical *sexual* harassment?

1. _____

6. _____

2. _____

7. _____

3. _____

8. _____

4. _____

9. _____

5. _____

10. _____

Physical Harassment

What are some examples of physical *sexual* harassment?

1. Hugging and kissing
2. Touching hair, body, or clothing
3. Massaging
4. Leaning over, cornering, or pinching someone
5. Exposing oneself

Visual Harassment

What are some examples of visual *sexual* harassment?

1. _____

6. _____

2. _____

7. _____

3. _____

8. _____

4. _____

9. _____

5. _____

10. _____

Visual Harassment

What are some examples of visual *sexual* harassment?

1. Posters, pin-ups, calendars, etc.
2. Magazines
3. E-mail
4. Web-sites
5. Screen savers
6. Facial expressions
7. Elevator eyes

Sexual Favors

- Also known as *quid pro quo* sexual harassment
- What does *quid pro quo* mean?
 - _____ for _____

Non-Work-Related Conduct

Non-Work-Related Conduct

- What might you or your employees do outside of work that could get you into harassment trouble?

Social Networking

- Social networking is the newest fodder for employment litigation
- Myspace, Facebook, Twitter, etc., all present opportunities for harassment and publication of incriminating statements

Social Networking

- What can get you in trouble?
 - Supervisors posting messages that are harassing or show bias
 - Supervisors visiting employees' social networking sites and ignoring information that may affect the workplace, or improperly using information on the site



Edit My Profile

Wilma Martin Bored, bored, bored at work and it's only 9 am! 2 hours ago clear

Wall Info Photos +

What's on your mind? Attach Share

Wilma Martin Bored, bored, bored at work and it's only 9 am! 2 hours ago · Comment · Like

Blanche Gerbigan Wilma! What up, hot stuff?! Hope your idiot boss bought your swine flu excuse for the game! July 9 at 10:45pm · Comment · Like · See Wall-to-Wall

Megan Winter Hey Wilma! I'll be thinking of you during your upcoming cancer treatments. July 9 at 9:30pm · Comment · Like · See Wall-to-Wall

RECENT ACTIVITY

Wilma and Blanche Gerbigan are now friends. · Comment · Like

Wilma Martin Skipping work for the Padres Game!!!! WOOOOOOO! July 9 at 9:23pm · Comment · Like

RECENT ACTIVITY

Wilma is now in an open relationship. · Comment · Like

Write something about yourself.

Information

Relationship Status: In an Open Relationship Birthday: January 1, 1975

Friends

2 friends See All

Find people you know



Create an Ad

Ladies Night At Southside Steve's



Visit our Page and become a Fan.

Become a Fan

Rich Dad Poor Dad Atlanta



Rich Dad's Education is coming to Atlanta. Free financial workshops: July 20th-July 23rd. Uncover the financial secrets of Rich Dad's.



Edit My Profile

Write something about yourself.

Information

Relationship Status: In an Open Relationship
Birthday: January 1, 1975

Friends

2 friends See All

Find people you know



Wilma Martin Bored, bored, bored at work and it's only 9 am! 2 hours ago clear

Wall Info Photos +

Edit Information

Basic Information

Sex: Female
Birthday: January 1, 1975
Hometown: Los Andes, Chile
Relationship Status: In an Open Relationship
Interested In: Women
Political Views: Libertarian Party
Religious Views: Wiccan

Personal Information

Activities: Partying Like Its 1999!
Interests: Surfing, goofing off, biking, Sleeping All Day.
Favorite Music: Rock and roll!
Favorite Movies: Girls Gone Wild!

Contact Information

Email: wcm9210@yahoo.com

Education and Work

College: San Diego State

Employer: Our Company
Position: File Clerk

Create an Ad

Georgia Mom?



Moms in the Peach State are eligible for a free \$10k scholarship! Click here to learn more.

Pet Society



12 million people play every month, you should too! Adopt a pet, decorate its house, visit your friends. Great fun, join now!

Looking to lose weight?

Social Networking

- Tips for supervisors:
 - Don't "friend" employees unless everything on your site is appropriate for very public consumption
 - Don't post information on the internet that could be used against the company
 - Don't review social networking sites for employment purposes – leave it to HR

Liability and Remedies

Who Is Liable for Sexual Harassment?

- You (supervisors) are personally liable
- _____ are liable
- _____ are liable

Non-Employees

- Liability even extends to acts either by or against non-employees

- Like who?

- _____
- _____
- _____
- _____

Remedies

Remedies are what the winner may receive in a lawsuit for harassment:

1. Lost wages (past and future)
2. Reinstatement
3. Emotional distress
4. Punitive damages
5. Attorneys' fees
6. Court orders (e.g., transfers, training, etc.)

Responding to Complaints and Correcting Harassment

Hypothetical

- An employee named Jerry, who you have known for a number of years, tells you that his co-worker, Cassie, is making sexual advances towards him and he finds it uncomfortable
- You offer to speak with Cassie, and Jerry responds by insisting that this is a private matter and demands that you do nothing to respond
- What should you do?

Responding To Complaints

- Even when an employee requests no action, the employer must respond
 - Even when an employee makes “off the record” reports, the employer must respond
- Even when there is no “complaint” the employer must investigate
 - Just witnessing the conduct is enough to require a response by the employer

Hypothetical

- Suppose Jerry, the employee who complained to you about Cassie, never came to you, but instead went over your head and talked to your boss about the problem?
- What if anything should you say to Jerry about coming to you first on such matters?

Responding To Complaints

- Retaliation is forbidden by law
 - An employee who reports harassment or discrimination may not be retaliated against in any fashion
 - Any employee may not be questioned or criticized for bypassing the “chain of command” when reporting harassment

Responding To Complaints

- Investigations of complaints vary, but they tend to include the following:
 - Document the Complaint
 - Consider possible leave(s) of absence
 - Document accounts of witnesses
 - Get the alleged harasser's story
 - Take action to prevent future conduct
 - Communicate action taken

Hypothetical

- Jerry, the employee who complained to you about Cassie, comes into your office very upset
- He indicates that he is uncomfortable with the investigation of Cassie and he fears retaliation
- He indicates that he has decided to quit
- What should you do?

Company Policy

Company Policy

- [INSERT DISCUSSION OF COMPANY NO HARASSMENT POLICY]
 - [EXAMPLES OF PROHIBITED CONDUCT]
 - [COMPLAINTS DIRECT TO _____]
 - [NON-RETALIATION PROVISION]

Discrimination

Defining Discrimination

- What is Employment Discrimination?
 - Treating someone differently with respect to a personnel action based on a _____.

Defining Discrimination

- What are some examples of personnel actions that an employee might claim are related to discrimination?

Discrimination Potential

1. Hiring
2. Firing
3. Discipline
4. Promotion
5. Scheduling
6. Duties
7. Title
8. Pay Issues
9. Office Location

Discrimination In Hiring

Hiring Issues

True or False?

You should never take notes regarding your interview with an applicant.

Documentation Issues

True or False

You should never take notes regarding your interview with an applicant.

FALSE

You can take notes if you wish, but you should never write on the employment application.

Hiring Issues

True or False?

When you decide not to hire someone, you do not need to give them the reason you decided to hire someone else.

Documentation Issues

True or False

When you decide not to hire someone, you do not need to give them the reason you decided to hire someone else.

TRUE

Unless you are relying on a background check, you generally are not legally required to give them an explanation.

Illegal Interview Questions

Not OK

- How old are you?
- When did you graduate?
- Were you in the military?
- Where is your accent from?
- Are you legal, or are you an illegal alien?

OK

- Are you 18 or older?
- Do you have a degree?
- What did you do in the military?
- Are you bilingual, or do you speak Spanish?
- Can you provide proof of authorization to work in the US?

Illegal Interview Questions

Not OK

OK

- How old are you?
- When did you graduate?
- Were you in the military?
- Where is your accent from?
- Are you legal, or are you an illegal alien?

Avoid Illegal Interview Questions

Not OK

- Do you have reliable child care?
- Do you have children?
- How is your health?
- Have you ever been hurt on the job?

OK

- Can you work flexible hours?
- Only discuss if they volunteer the subject
- Can you perform essential functions?
- (Forget about it)

Avoid Illegal Interview Questions

Not OK

OK

- Do you have reliable child care?
- Do you have children?
- How is your health?
- Have you ever been hurt on the job?

Discrimination In Discipline and Terminations

Documentation Issues

True or False?

You do not need to give a reason for terminating an at-will employee.

Documentation Issues

True or False?

You do not need to give a reason for terminating an at-will employee.

FALSE

It is very important that you give an accurate reason for termination in order to avoid discrimination claims.

Documentation Issues

True or False?

A write-up for performance is not necessary if the manager has verbally counseled the employee.

Documentation Issues

True or False?

A write-up for performance is not necessary if the manager has verbally counseled the employee.

FALSE

Verbal counseling is of very limited use in defending claims of discrimination because there is no proof that counseling occurred.

Documentation Issues

True or False?

When documenting discipline or a termination, you should not list every single reason you have for taking action, in order to avoid the appearance of being heavy handed.

Documentation Issues

True or False?

When documenting discipline or a termination, you should not list every single reason you have for taking action, in order to avoid the appearance of being heavy handed.

FALSE

Any legitimate reason for discipline should be documented so that the reason may be used credibly in litigation.

The Sadface File

The Sadface File

Employee: Susie Sadface, Salesperson

Demo's: Female, 41, Nigerian

DOH: January 19, 2005

Sales Nos: Last 6 Mos: 3, 3.5, 5, 4, 6.5, 3

Other: One of two female salespeople; fails to follow sales procedures; customer complaints; frequently late for work; no prior discipline

Sadface File Analysis

- What would her lawsuit look like?
 - If she is terminated now, what legal claims might she attempt to claim?

Sadface Discipline

- If you were to write-up Susie, what would you list as the reasons for the write-up, and what discrimination concerns should you have before using each of the reasons?
 - Low sales?
 - Late for work?
 - Fails to follow procedures?
 - Customer complaints?

Sadface Discipline

- What process would you follow when giving her the write-up?

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