

Managerial Training On Eliminating Harassment And Discrimination



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WHY SHOULD YOU CARE ABOUT HARASSMENT AND DISCRIMINATION?

1. #MeToo movement isn't slowing down

3. Claims are costly, time-consuming, humiliating, and stressful for all involved



4. They hurt the reputation of those involved and the organization



**5.
Professionalism
leads to higher
productivity**

**6.
Maintaining high
morale means
lower turnover**



7. You could be held liable under the law

8. You could be held accountable under company policy

9. Taking the recommended steps we suggest will offer your organization a legal defense

10. It's the right thing to do



LEGAL DEFINITIONS YOU NEED TO KNOW ABOUT

- > protected class**
- > discrimination**
- > harassment**
- > retaliation**

“protected class”

- Groups protected from **harassment** or **discrimination**
- Categories that you can't take into account when making hiring decisions or you will commit **discrimination**
- If offensive behavior is targeted at an employee because of a protected class, it becomes **harassment**

What are the protected classes?

- Race
- Color
- Religion
- National origin
- Gender/sex (*includes pregnancy*)
- Age (*if 40 or above*)
- Disability (*mental/physical*)
- Veteran status
- Family leave
- Pregnancy
- Sexual orientation
- Gender identity/transgender status
- Workers' compensation
- Lawful off-duty activities
- Check state laws

“discrimination”

Making an employment decision based on an employee or applicant’s protected class status

- | | | |
|----------------|---------------|-------------------|
| > Hiring | > Promotion | > Training |
| > Firing | > Demotion | > Benefits |
| > Compensation | > Layoff | > Resources |
| > Assignments | > Evaluations | > Other terms and |
| > Transfers | > Discipline | conditions... |

So what *can* you take into consideration?

- Skills
- Experience
- Performance
- Education
- Seniority
- Merit system
- Quantity/Quality
- Training
- Geographic location
- Etc.



Hypothetical



Michael works at an eye clinic assisting patients with post-visit care. When the doctors hired and interviewed Michael he identified as a male and dressed in traditional male clothing. Approximately a year after working at the clinic Michael began wearing makeup and traditionally female clothing, and he informed the doctors he intended to legally change his name to Brandi. Brandi also insisted on using the women's bathroom.

After this, and after coworkers expressed discomfort with Brandi's transition, the doctors stop referring patients to Brandi and her position was eliminated. A few months later, the clinic hired someone to perform a job similar to Brandi's previous position.

Hypothetical

Jenna follows a faith that believes women should always wear long sleeves, long dresses (not pants), and not cut their hair after the age of 10. She has applied for a position in a manufacturing facility that requires everyone to wear a standard uniform which includes a short sleeve shirt, pants, and hat.

- **May the company deny Jenna employment if she refuses to wear the uniform?**



Hypothetical

- Joe has been a long time, valued employee. The company has recently hired some new employees, most of whom are young, including Jake. One day at lunch, Jake tells a group that he really values Joe's experience, and then makes a joke about his hearing aids and gray hair. A week or so later, Jake jokingly asks Joe if he is ever going to retire so the he and others have a chance to take the lead.
- Any problems?

“harassment”

- **Offensive, intimidating, or hostile behavior related to any of the protected characteristics**
- **Unreasonably interferes with work performance**
- **Objectively offensive behavior (to a reasonable person) that subjectively offends the victim (offensive to that specific employee)**

Harassment can come in many forms...

QUID PRO QUO BEHAVIOR

- “this for that”
- Offer of job benefit in exchange for sexual favors
- Threat of job detriment if victim does not go along with request



VERBAL BEHAVIOR

- Derogatory comments
- Slurs or nicknames
- Name-calling
- Jokes or mocking
- Profanity
- Sexual comments (*about body, clothes, walk, etc.*)
- Repeated requests for dates
- Asking about sexual history or experience
- Talking about your own sexual history
- Sexual innuendo
- Whistling, cat-calls

PHYSICAL BEHAVIOR

- **Unwarranted physical contact, such as:**
 - Touching
 - Pinching
 - Patting
 - Grabbing
 - Poking
 - Brushing against
- Hugs
- Kisses
- Neck/shoulder rubs
- Blocking movement
- Standing too close
- Intimidating behavior

VISUAL BEHAVIOR

- **Inappropriate images, such as:**
 - **Photographs**
 - **Posters, pin-ups**
 - **Cartoons**
 - **Drawings**
 - **GIFs, emojis, or other digital images**
- **Texts or emails**
- **Notes or writings**
- **Staring at or directing attention at certain parts of the body**
- **Gestures**
- **Adult toys or props**

“retaliation”

- **Adverse employment action**
- **Taken against an employee who has made a complaint, opposed an unlawful practice, or participated in protected activity**
- **With a motive connecting the two**



WARNING!!



- You cannot treat workers in an unprofessional manner and think you can escape legal liability just because you aren't motivated by protected class status or retaliatory intent (i.e., “bullying” conduct)
- “Equal Opportunity Jerk” defense is not pleasant!



ATTENTION!!



- **Just because conduct does not rise to the legal level of “harassment,” “discrimination,” or “retaliation” does not mean the company cannot discipline them for unprofessional conduct (including you)**

**5-STEP PLAN FOR
PREVENTION AND
COMPLIANCE
(For Your Supervisors
and Managers)**



Know the policy

Look for warning signs

You're always a leader

Handle complaints

Contact HR

Step 1: Know our policy

- **See handout of harassment and EEO policies**
- **Includes definitions of key terms**
- **Includes examples of unprofessional conduct**
- **Reporting policy encourages complaints**
- **Includes several avenues for complaints**
- **No retaliation**

Step 2: Look for warning signs

- Don't ignore conduct that appears “welcomed” or “voluntary”
- Do not go easy on high-performing or high-ranking employees
- No room in your company to allow extra leeway to certain employees, whatever the reason
 - *“that’s just Harvey being Harvey!”*
 - *“he likes to give hugs but he’s harmless”*



Step 3: You are always a leader

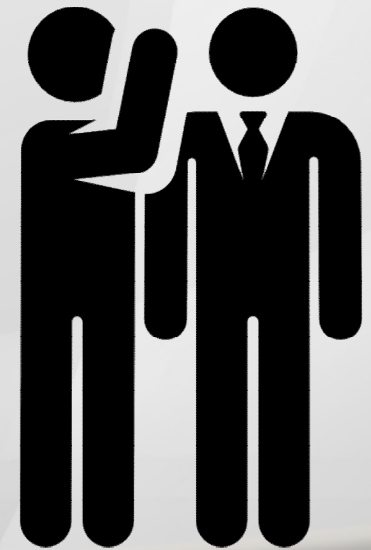
- You are never off-duty, even while not at work (consider texts, social media, after-hours events)
- Model good behavior
 - *No gossip or bad-mouthing others*
 - *Practice acceptance and inclusion*
 - *Set the right tone*

Step 4: Handle complaints

Remember that employees might come to you

- Need to take **immediate** action
- Listen carefully and impartially
- Assure them you will take seriously and there will be no retaliation

- Conclude by telling them that you will protect their privacy but that you must report the situation to human resources
- There can never be an “off-the-record” discussion, it can’t be “just between the two of us”



Step 5: Contact Human Resources

- **Immediately report any potential violation of professionalism policy to Human Resources**
- **Be discreet! No need to tell anyone else unless instructed to do so**
- **Provide any notes you took or relevant emails/texts (and understand they could be discoverable)**

**What if I learned something
new today?**

Human Resources Action Items

- **Conduct investigation, as appropriate**
- **Interview complainant**
- **Interview accused**
- **Interview witnesses**
- **Review relevant documents**
- **Prepare investigation summary**
- **Take appropriate actions**

HYPOTHETICAL SCENARIOS

You overhear two employees on break calling each other racially insensitive names. You know they are joking. Neither of the employees complains to anyone.

- **Is this harassment?**
- **What should you do, if anything?**
- **Does it matter if they are members of the race they are talking about?**



You hear Felicia say she really needs a neck rub. You see John, one of her supervisors, decide to help her out and start to give her a massage at her desk.

- **Is this harassment?**
- **Should you be concerned?**



Mohammed tells you that the delivery guy has been calling him a “terrorist.” You think the delivery guy is a joker who teases many people and really means no harm.

- **Is this a problem?**
- **Can you control a third party non-employee?**
- **Can you ignore teasing?**



Susan, an employee, and Lamar, a manager, are involved in a dating relationship that is consensual and does not appear to interfere with work.

- **Is this a problem?**
- **Should you be concerned?**



Steve loves to tell dirty jokes. One day, he tells a joke to a group that includes Anna, who says, “That’s nothing! Did you hear the one about...?” This leads Steve to tell an even more disgusting joke, at which point Anna gets offended and storms off to complain.

- **Is this harassment?**
- **What about the fact that Anna joined in with the joking?**



Doug browses porn sites on his personal phone while at break. He keeps to himself and has never offered to show them to anyone else at work. Janelle happens to get a glimpse at an image in the break room and complains.

- **Is this harassment?**
- **What about the fact that it was on Doug's personal phone?**
- **What if it were off-premises and after work?**



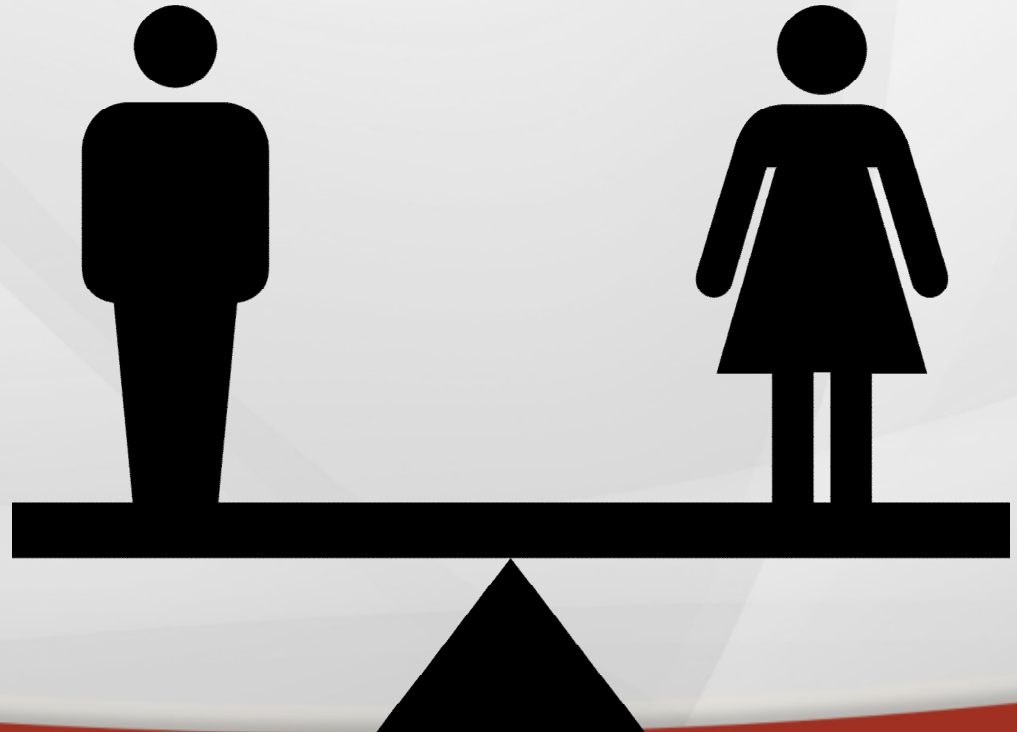
Pamela, a manager, loudly calls one of her subordinates a “dumbass” when she is angry. The employee files a harassment complaint against Pamela.

- **Is this harassment?**
- **What would you do?**



Kayla complains that she is being paid less than her male counterparts. She tells you that she thinks the company is “breaking the law.”

- **If accurate, is this a violation of the law?**
- **How should you handle?**



Sue is a current employee in a branch. She has applied for an open position in accounting. She is qualified. Her accounting manager says they are heading into a big audit. And this role is critical for the audit. Sue is pregnant and will need maternity leave during the audit.

- **Can she be denied the position?**



Hypothetical



- Kelsea comes to you to complain that one of her co-workers was one of the people who liked the above status. She also complains that he always compliments her figure. She says she now feels really uncomfortable around him and wants you to fire him for being a “dirty old man.” What do you do?

Final Questions?



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