

Today's webinar will begin shortly. We are waiting for attendees to log on.

Presented by:

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Workplace Harassment: What Every Dealership Needs to Know



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MADA Partners with Fisher Phillips

Fisher Phillips, a national law firm representing employers in all aspects of labor and employment law, has joined forces with the Mississippi Automobile Dealers Association to provide an exclusive benefit to MADA's automobile dealer members.

The Legal Services Agreement allows you to obtain assistance with labor and employment issues that arise in your workplace. To use the service, call Steve Cupp or Jaklyn Wrigley and identify yourself as a MADA member who is requesting advice pursuant the MADA Agreement.

If a matter develops into something that cannot be handled under the Agreement, you will have the option to separately engage Fisher Phillips. For instance, if your Dealership needs additional services, such as a handbook review, an FLSA audit, management training on EEO issues, responding to an EEOC charge, etc., we will quote you an hourly rate or a flat rate to resolve the issue or complete the project.

Scope of Today's Presentation

Top 10 Reasons
to Take Action

Deciphering
the Legal Lingo

Six-Step Plan
for Employers

Top Ten Reasons to Take Action NOW!



TOP 10

Top 10

1. The #MeToo movement isn't slowing down



Top 10

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



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

Top 10

5. Professionalism leads to higher productivity
6. Maintaining high morale means lower turnover
7. Taking the recommended steps will offer your organization a legal defense



Top 10



8. YOU could be named in a lawsuit

9. YOU could be held liable under the law

10. YOU could be held accountable under Company policy

What Is Harassment?

**protected
class**

discrimination

harassment

retaliation

“Protected Class”

- Groups protected from **harassment** or **discrimination**
- Categories that you can't take into account when making employment decisions or you may commit illegal **discrimination**
- If offensive behavior that is based on a protected class is targeted at an employee or creates a hostile work environment, it becomes illegal **harassment**



What Are The Protected Classes?

- Race
- Color
- Religion
- National origin
- Gender/sex
- Pregnancy
- Family leave
- Sexual orientation
- Gender identity
- Age (if 40 or above)
- Disability (mental/physical)
- Veteran status
- Other MS classes

“Discrimination”

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

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

“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)

“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

Hypothetical

- A sales manager is sometimes very rude to his employees, raises his voice unnecessarily and uses profanity at employees. He says it's just his "management style."
- *Is this illegal harassment?*



Hypothetical



- Sarah often mimics Sana, who speaks with an accent. Sarah also makes jokes about Sana's clothing, religion, and the food she brings from home for lunch.

- *Is this illegal harassment?*

Elements of Sexual Harassment



Conduct/Content

- Sexual; or
- “Because of” a person’s sex



Unwelcome

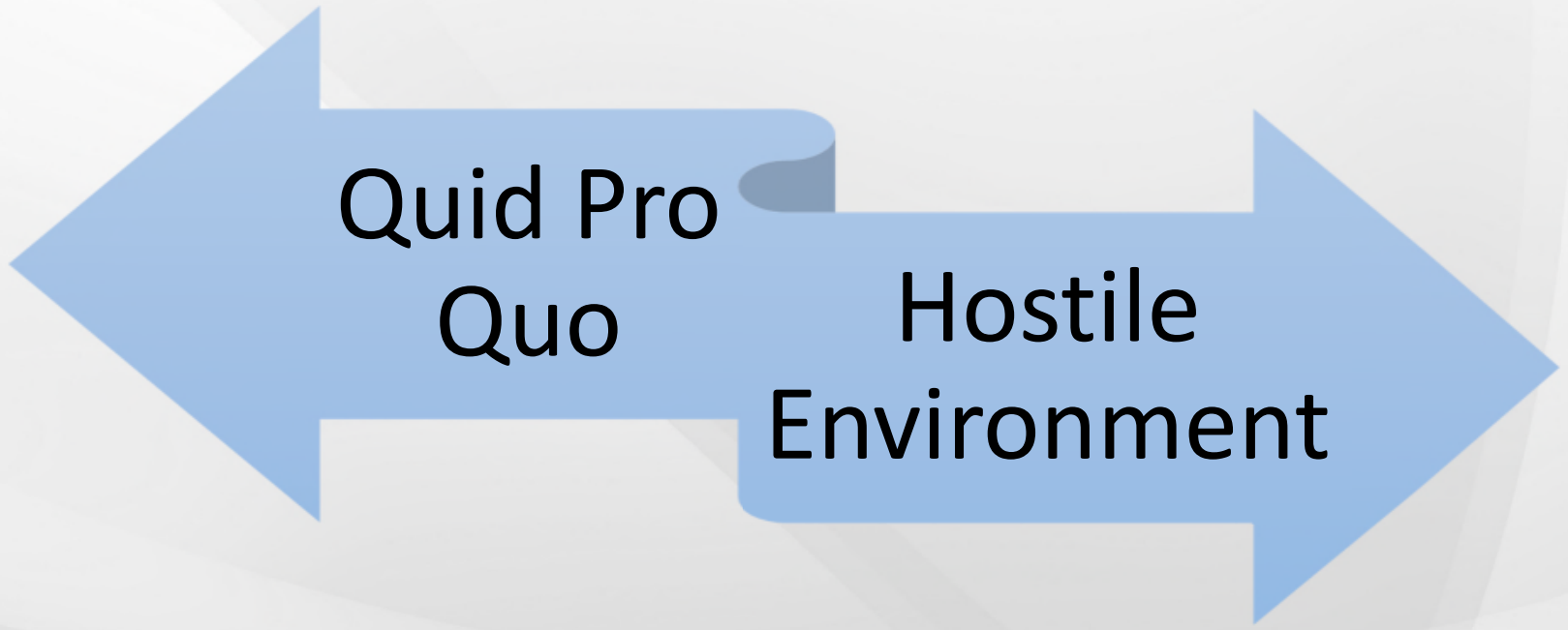
- Offends the victim; and
- Could offend a reasonable person



Affects Work

- Directly (terms and conditions)
- Indirectly (hostile environment)

Two Types of Sexual Harassment



Quid Pro
Quo

The diagram features two large, light blue arrows pointing in opposite directions. The left arrow points left and contains the text 'Quid Pro Quo'. The right arrow points right and contains the text 'Hostile Environment'. The arrows are positioned horizontally across the center of the slide.

Hostile
Environment

Quid Pro Quo Harassment

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



Offers of promotion or pay increase by supervisor in return for a romantic relationship



Threats of demotion or termination by a supervisor for refusal of a romantic relationship

Hostile Environment Harassment

- Unreasonably interferes with an individual's work performance;
- Creates an abusive or hostile work environment; or
- Otherwise adversely affects an individual's employment opportunities



Continued or repeated conduct such as:

- Offensive sexual flirtations
- Advances or propositions
- Verbal abuse of a sexual nature
- Graphic or degrading verbal comments about an individual's appearance
- Display of sexually suggestive objects/pictures (including e-mail)
- Any other sexually offensive or abusive physical contact or gestures

Hypothetical



- 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 illegal harassment?*
- *Should you be concerned?*



Hypothetical

- Steve tells off-color jokes to anyone who will listen. One day he tells some jokes to a group that includes Sheryl, who says, “That’s nothing. Did you hear the one about . . . ?” Then, Steve tells an even more disgusting joke, which causes Sheryl to become upset and run away. Choose the best answer:
 - A. Steve should not be disciplined since no one filed a formal complaint.
 - B. Steve should not be disciplined since Sheryl told a joke also.
 - C. Both Steve and Sheryl should be counseled for telling dirty jokes.

Hypothetical

- 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?



Quid Pro Quo Harassment Liability (sexual harassment only)

If proven, a dealership is automatically liable even if it:

- Has a policy;
- No one else in management knew;
- The employee never complained; **and**
- The employee received a benefit

Hostile Work Environment Liability (all discriminatory harassment)

If harassment by a **manager** is proven, a dealership is liable unless:

- The dealership exercised reasonable care to prevent and promptly correct harassment; **and**
- Employee unreasonably failed to take advantage of opportunities or otherwise avoid harm

Hostile Work Environment Liability (all discriminatory harassment)

If harassment by a **co-worker** or **third-party** is proven, a dealership is liable if:

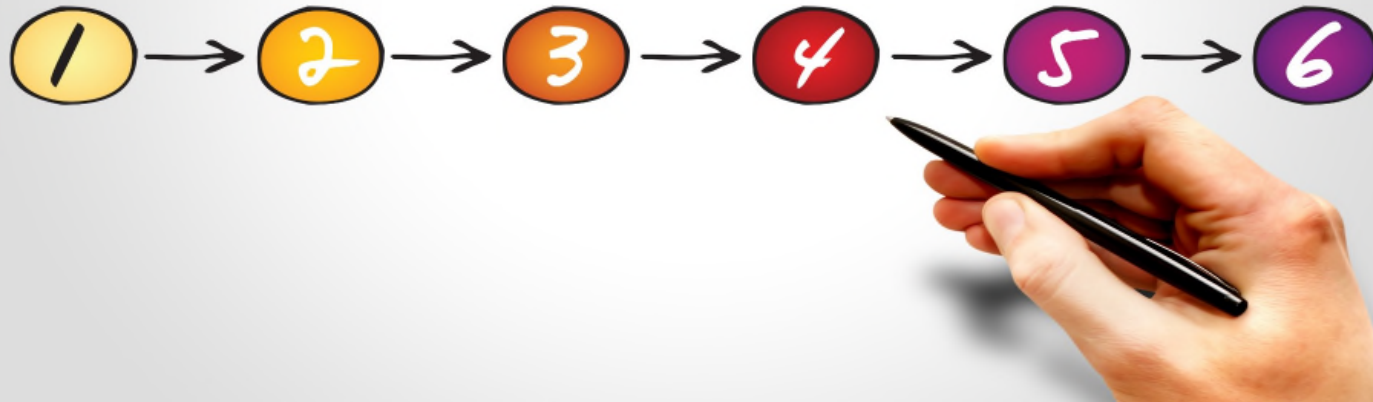
- Management knew or should have known of the conduct; **and**
- Failed to take immediate and effective action



Hypothetical

- 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 management be concerned?*

Success Steps



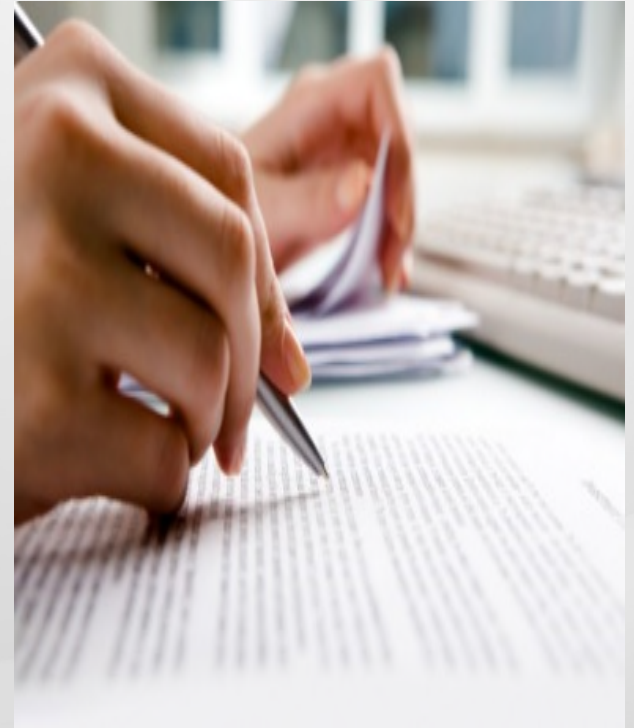
A 6-Step Plan for Dealerships

A 6-Step Plan For Preventing & Correcting Harassment



Guidelines For Responding To A Possible Harassment Situation

- Treat every complaint seriously
- Listen carefully and impartially
- Advise employee that the matter will be (1) immediately investigated, (2) treated confidentially, and (3) there will be no retaliation
- **Document what the employee told you!**
- Involve HR or an objective third party to investigate **immediately**
- Do not wait for a “complaint” – err on the side of caution. Delay could send the wrong signal



Hypothetical



- An employee tells her supervisor about a co-worker's offensive behavior, but asks the supervisor to keep the matter confidential – she just thought he should know.
- *Can the supervisor do this?*

Critical Considerations

- 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!” or “He likes to give hugs but he’s harmless”
- You are never off-duty, even while not at work (consider texts, social media, after-hours events)
- Model good behavior! So, no gossip or bad-mouthing others, practice acceptance and inclusion, and set the right tone



Hypothetical

- A group of employees regularly frequent a local bar after work. During one visit, Harry makes several sexual remarks to and passes at Sally, a co-worker. Sally is very uncomfortable and reports the incident to the Company's HR Department. Can the Company do anything to Harry?
 - A. Yes. Harry can be disciplined for violation of the policy.
 - B. No. Since the incident occurred off the Company premises, the Company cannot do anything.
 - C. No. Since Harry is not a supervisor, nothing can be done to him.

Final Questions



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