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 - May 15th – Cleveland
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Workplace Harassment: What Every Business Needs to Know

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Scope of Presentation

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graph TD; A[Scope of Presentation] --- B[Top Ten Reasons to Take Action Now]; A --- C[Deciphering the Legal Lingo]; A --- D[Six-Step Plan for Employers];
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Top Ten Reasons
to Take Action
Now

Deciphering the
Legal Lingo

Six-Step Plan for
Employers

TOP 10

Top Ten Reasons To Take Action Now

Top 10

1. #MeToo movement isn't slowing down



Top 10

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



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

Top 10

5. Professionalism leads to higher productivity
6. Maintaining high morale means lower turnover





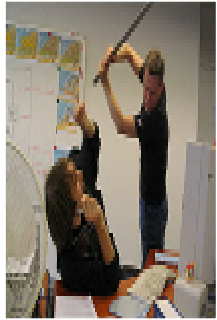
7. You could be named in a lawsuit
8. You could be held liable under the law
9. You could be held accountable under company policy

10. Taking the recommended steps will offer your organization a legal defense



Problems Caused by Harassment

Impacts



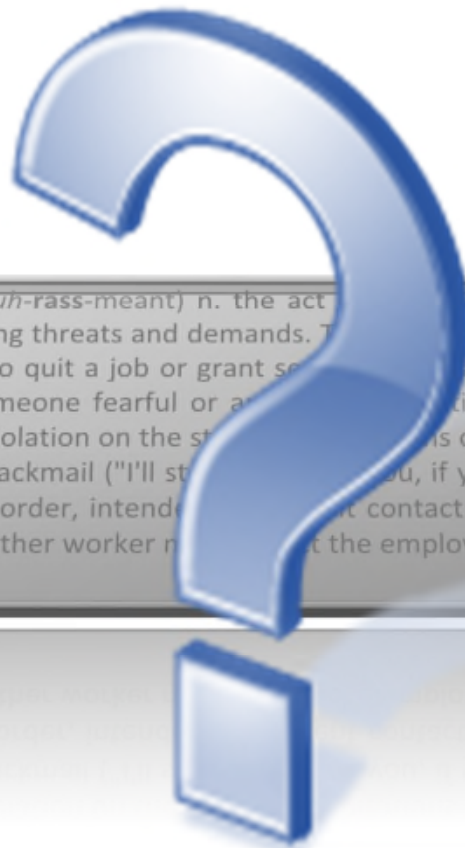
Violence, Safety,
Productivity, Quality



Morale / Teamwork



Turnover / Loss of
Good Employees



harassment (either *harris-meant* or *huh-rass-meant*) n. the act of systematic and/or continued unwanted and annoying actions of one party or a group, including threats and demands. The motives may vary, including racial prejudice, personal malice, an attempt to force someone to quit a job or grant some favor, to apply illegal pressure to collect a bill, or merely to gain sadistic pleasure from making someone fearful or afraid. Activities may be the basis for a lawsuit if due to discrimination based on race or sex, a violation on the state or federal laws on collection agencies, involve revenge by an ex-spouse, or be shown to be a form of blackmail ("I'll stop loving you, if you'll go to bed with me"). The victim may file a petition for a "stay away" (restraining) order, intended to prevent contact by the offensive party. A systematic pattern of harassment by an employee against another worker may result in the employer to a lawsuit for failure to protect the worker. (See: [harass](#))

What is Harassment?

The Law

- Prohibits discrimination based on “protected categories”
- Harassment is a form of discrimination





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 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?

FEDERAL LAW includes...

- Race
- Color
- Religion
- National origin
- Gender/sex (*includes pregnancy*)
- Age (*if 40 or above*)
- Disability (*mental/physical*)
- Veteran status
- Family leave

STATE/LOCAL LAW adds others such as...

- Sexual orientation
- Gender identity/transgender status
- Marital status
- Age (*with lower age limit*)
- Family relationships
- Injured workers
- Workers' compensation
- Domestic violence leave
- Crime victims
- Expunged juvenile records
- Lawful off-duty activities

“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

Mr. Meanhead

A department 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?*



I Was Just Curious...



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

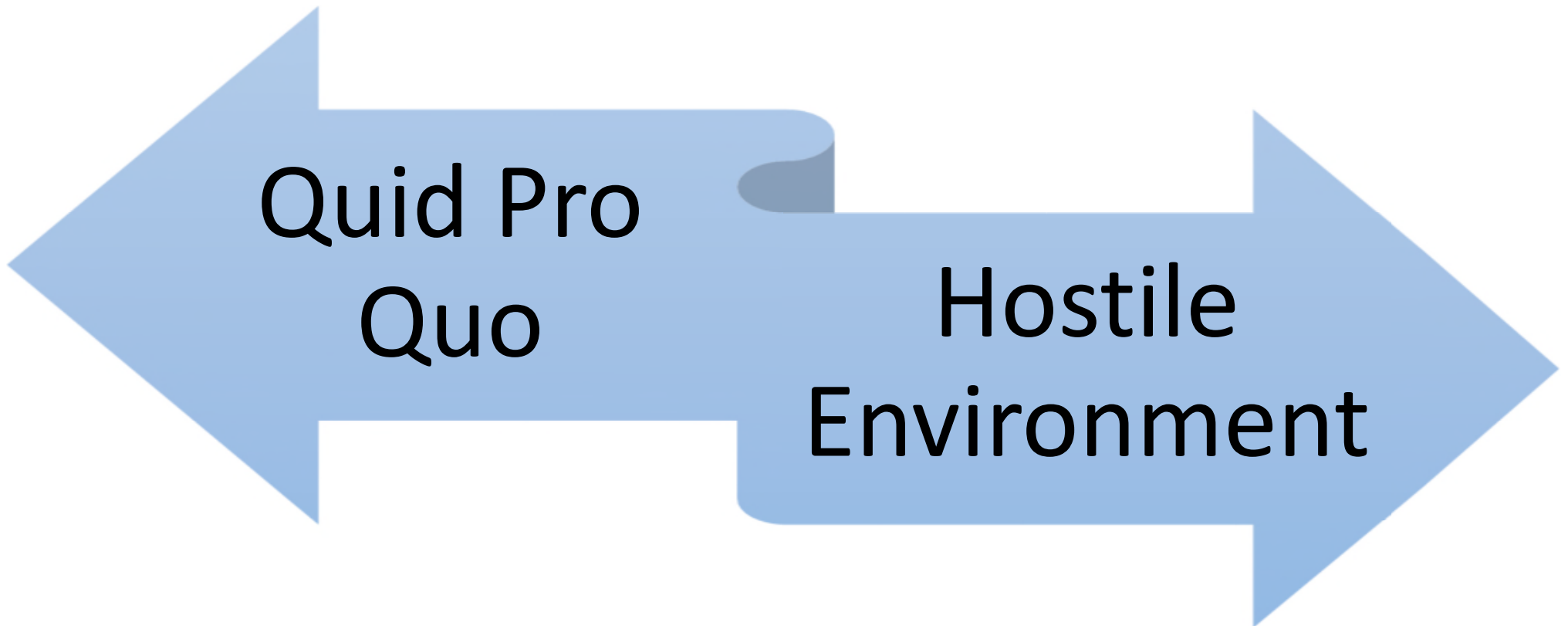
- Offends the victim and
- Could offend a reasonable person



Affects Work

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

Types of Sexual Harassment



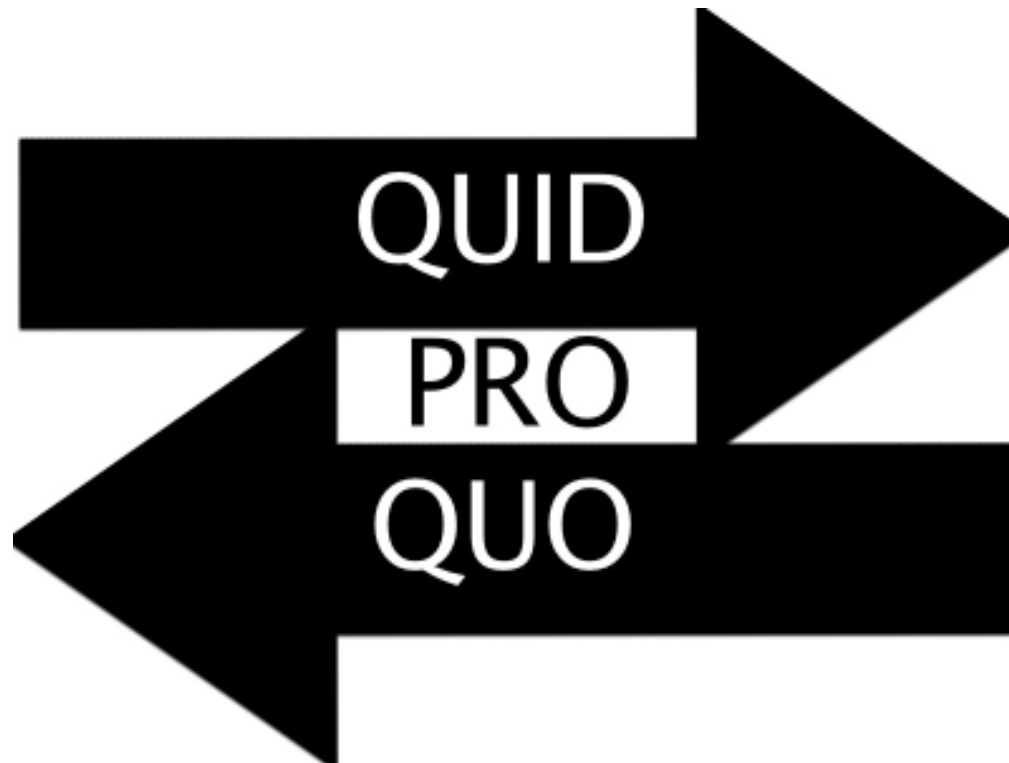
Quid Pro Quo

The diagram consists of two large, light blue arrows pointing in opposite directions. The left arrow points to the left and contains the text 'Quid Pro Quo'. The right arrow points to the right and contains the text 'Hostile Environment'. The two arrows overlap in the center, with the right arrow appearing to be layered on top of the left one.

Hostile Environment

Quid Pro Quo Harassment

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



Examples of Quid Pro Quo Sexual Harassment



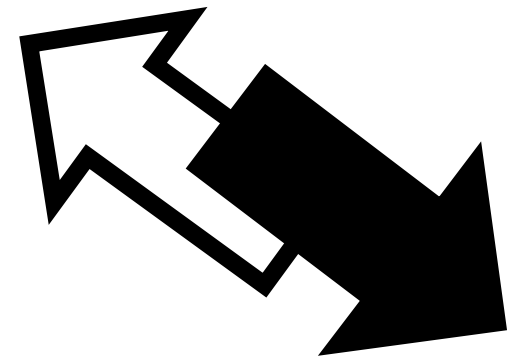
Offers of promotion or pay increase by supervisor in return for a romantic relationship



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

Hostile Environment Harassment

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



Examples of Hostile Environment Sexual Harassment



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

I Was Just Trying to Help!



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?

I Was Only Joking!!!!



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.

What is Discriminatory Harassment?

Abusive / hostile conduct based on:

Race

Color

Religion

Sex

Pregnancy

National
Origin

Ancestry

Age

Disability

Genetic
Information

Veteran or
Military Status

Citizenship

Other Discriminatory Harassment



Includes intimidation, ridicule or insult that:

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

Applies to such conduct that is based on an individual's race, color, religion, age, gender, disability, national origin, veteran status, military status or other legally-protected categories





Repeated Verbal Abuse



Conduct that demeans or exhibits hostility or dislike toward an individual



Inappropriate jokes, slurs or cartoons



Harassment can be verbal or communicated via email, postings, texts, printed on t-shirts

Examples of Discriminatory Harassment

Lighten Up!

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 – Company automatically liable even if:

- Have a policy;
- No one else in management knew;
- Employee never complained; **and**
- Employee received benefit

Hostile Environment Harassment Liability (all discriminatory harassment)

If proven harassment by a **manager**,
Company liable unless:

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

Hostile Environment Harassment Liability

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

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

Retaliation

Job-related protection

For making a complaint or participating in an investigation regarding discrimination or harassment

Investigate if retaliation is suspected

Corrective/
disciplinary action

Retaliation is prohibited by the Company's policy and by law

Reasons for Failure to Report Harassment



I didn't know we had a policy against harassment.



I didn't know how to report the harassment.



I was afraid they wouldn't take me seriously.



The person to whom I was supposed to report was the harasser.

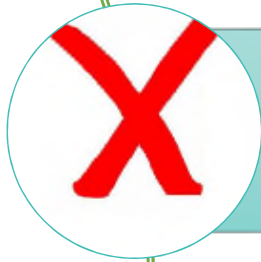


The managers all do it – why would I think they'd care?

Reasons for Failure to Report Harassment



I was not comfortable bringing my complaints to the person designated



I reported harassment before and nothing was done about it



I was afraid I'd get fired



I did not want everyone to know what happened

It's All Good...



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?



WARNING!!



- **Management cannot treat workers in an unprofessional manner and think it can escape legal liability just because it is not 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 an employee for inappropriate conduct**
- **This applies to EVERY employee**

Success Steps



6-Step Plan for Employers

Six-Step Plan for Preventing and 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 immediately investigated
- Assure that the matter will be treated confidentially and there will be no retaliation
- **Document what the employee told you**



Guidelines for Responding to a Possible Harassment Situation

- 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

*DON'T
WAIT!*



Don't Tell Anyone...

I Just Want You To Know...

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!”
 - “He likes to give hugs but he’s harmless”

Just Us....



Two African American co-workers jokingly refer to each other in racial terms.

- *Is this okay?*

Critical Considerations

- 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



Cheers!

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.



Guys Being Guys....



A male employee tells his male co-workers that he believes his true gender is female and starts to become more feminine in appearance. His co-workers start jokingly calling him, “sissy” and “pretty boy.”

- *Is this a violation of Company policy?*

Your Role

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graph LR; A[Your Role] --- B[Establish, Follow and Enforce Company Policies]; A --- C[Monitor Employee and Own Behavior]; A --- D[Embrace Workplace Diversity]; A --- E[Immediately Investigate Incidents, Complaints and Suspicions];
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Establish, Follow and Enforce Company Policies

Monitor Employee and Own Behavior

Embrace Workplace Diversity

Immediately Investigate Incidents, Complaints and Suspicions

The Golden Rule

**TREAT
OTHERS**


the way

you

want to be

TREATED.

Questions?



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