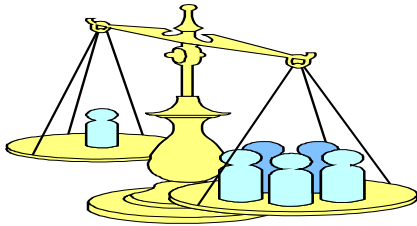


Employment Practices Liability



Harassment Prevention

Statistics

- The median award granted to those who won harassment claims filed with the federal court. **\$100,000**
- Percentage of people who stated that harassment/bullying in the workplace is current and on-going. **61%**
- Number of people who are eventually involved in the active harassment/bullying group. **3.5**
- Percentage of women who are harassed who quit their jobs because of it. **15%**
- Percentage representing the number of women targeted by harassment. **80%**
- The percentage of people who feel they have been harassed that are college educated. **84%**

Statistics

- Percentage of managers who knew about harassment/bullying cases and did nothing about it. **74%**
- Number of people who have been harassed who reported some damage to their health – stress, depression, physical ailments. **34 million**
- Percentage of harassment situations that get worse when ignored. **78%**
- Percentage of women who are sexually harassed who use a leave of absence to avoid the work situation. **25%**
- Largest settlement to date for an individual in an employment discrimination case. **\$29.2 million**
- Increase in harassment claims made to the EEOC in 2009 **10%**

#1

- **Why do employees hesitate to report discrimination, workplace harassment?**

Why Employees Fail to Report?

Fears

- Retaliation
- Isolation – *not “team player”*
- Intimidation
- Being ignored
 - *Because of the work culture*
- Unclear reporting & investigation processes



#2

- What are supervisors' roles in regards to workplace harassment and discrimination?

Supervisors

1. Set a good example
2. Observe the work environment.
3. Don't play investigator, judge, jury, and executioner.
4. Can't keep matter absolutely confidential.
5. Prevent recurrences of harassment or discrimination.

8

Reducing Risk

- **Uniformity among all supervisors.**
 1. Deter
 2. Identify
 3. Rectify



Core Principles of Employee Relations Management

1. Set a good example
2. Fairness
3. Empathy
4. Observation

5. Communication

Communication Principles of Compelling Communication

1. **You Cannot Not Communicate** - *you are always communicating*
2. **You Are the Message, the Messenger, and the Manager** - *you are responsible for understanding*
3. **It's Not What You Say, But How You Say It** – *your attitude*
4. **You Communicate With People, Not To Them** – *feedback, listening*
5. **Giving Effective Praise** - *praise to the human being is what sunshine and rain are to the flower.*
6. **Giving Effective Criticism** - *quietly*

Giving Praise / Criticism

“Praise Loudly”

1. Be sincere
2. Be timely
3. Make it specific
4. Make it public

Giving Criticism:

- *Focus on the Behavior, Not the Person*

1. Don't do it while upset
2. Don't delay too long
3. Do it in person (no e-mails)
4. Be specific
5. Be respectful

Avoid These Very Unprofessional Mistakes

- **NEVER:**

1. Bully, belittle, or make fun of employees
2. Discriminate against or harass
3. Talk down
4. Reprimand in public, yell, or use offensive language
5. Gossip
6. Bad-mouth

#3

- What must an employer do to provide a work environment free from unlawful harassment or discrimination?

Employer's Responsibility

- Employer exercised reasonable care to prevent

1. Policies
2. Practices
3. Reporting



Employer's Responsibility

- and correct promptly any harassment.
 - Fair investigations
 - Investigation team



#4

- What are employees' responsibilities in regards to workplace harassment and discrimination?

Employee's Duty

- Employee must take advantage of any reasonable preventative or corrective opportunities provided by the employer.

Employee's Duty

- Personal accountability
 - Give the entity a chance to rectify

Another employer

- “Just know that when you come to work here, Dan will sexually harass you”
 - *What is the problem with this testimony?*
 - *Actual or constructive knowledge*



#5 True or False?

- Employees reporting harassment or discrimination must put their complaint in writing.

Complaint in Writing?

When is an employer on **NOTICE**?

1. Report is made in writing.
2. Verbal report
3. Venting
4. Anonymous complaint
5. Rumors?

Complaint in Writing?

- Known or should have known standard.
 - “What did you do when you knew?”
 - “You should have known even though you didn’t know.”

#6 True or False?

- If an employee requests that his/ her supervisor keep a report or allegation of workplace wrongdoing confidential, the supervisor should guarantee confidentiality.

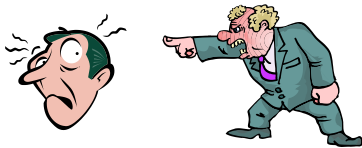
Confidentiality

Agency Law

1. All supervisors acting as agents on behalf of your organization.
2. Supervisor on notice.
 1. Supervisor is under an obligation to take appropriate action.

Confidentiality Pickle

- “Why did you think you could handle the complaint on your own?”
- Why didn’t you pass the information on to those with a “need to know”?



#7 True or False?

- In following the Equal Employment Opportunity Commission guidelines, a complaining employee’s immediate supervisor, or that supervisor’s supervisor should direct the resulting harassment investigation.

Supervisor Investigation?

- “Hot Seat”

- “You never liked me.”
- “You were friends with the harasser.”
- “How could you be fair?”

Trend – Personal Liability

- 23% had an individual named personally in an employment related lawsuit.
 - Participation as a decision maker on important personnel issues.
 - Knowingly permitting to occur or ignoring complaints.



#8 True or False?

- In civil harassment or discrimination cases, it must be proved beyond a reasonable doubt that the harassment or discrimination occurred, the employee was offended, and the conduct was unwelcome.

“Reasonable Doubt”?

- Beyond a reasonable doubt is a burden of proof reserved for criminal cases.
- The applicable standard is for the employee to prove the case “by a preponderance of the evidence.”

“Reasonable Doubt”?

- Generally, “preponderance of the evidence” is an easier burden of proof to satisfy than “beyond a reasonable doubt.”

#9

- When do words or behaviors cross the legal line of harassment?

“Crossing the Line”

- Unreasonably interfere with the work environment?
- With the employee’s ability to do his or her job?
- Threatening, intimidating?
- Or merely an offensive utterance?
- Words as “weapons”?
- Profanity?
- First Amendment rights?



Harassment?

- Work-related harassment is a form of **offensive treatment or behavior**, which to a **reasonable person** creates a hostile, intimidating or abusive work environment based on protected class status.

– Repeated annoying behavior for no legitimate purpose



Hostile Work Environment

- Unlawful discrimination.
- Protected class status is basis of hostile work environment.
- What are the protected classes?



Hostile Work Environment

- Protected classes
 1. Race and color
 2. Religion
 3. Gender/sex
 4. National origin
 5. Age over 40
 6. Disability
 7. Sexual orientation

Defining Sexual Harassment

- **Job related *threats***
- **Requests for sexual *favours***
- **Unwelcome sexual *advances***
- ***Romantic / sexual relations***
- **Jokes, comments, innuendoes, leering**



Hostile Work Environment

- Verbal or physical conduct of a sexual, racial, religious, etc. nature
- **Unreasonably interfering with work performance**
- Creating
 - Intimidating
 - Hostile
 - Offensive working environment



Two requirements for conduct
to **trigger** potential liability

- (1) the conduct must be sufficiently **severe or pervasive** to alter the terms and conditions of employment in the mind of the victim and from the perspective of a **reasonable person** in the **victim's position**.
- (2) the conduct must be **unwelcome**

Objective & Subjective Tests

- **Hypersensitive employee?**
- **Must satisfy both tests**
- **Objective test**
 - Reasonable person standard
- **Subjective test**
 - Complaining employee personally offended?

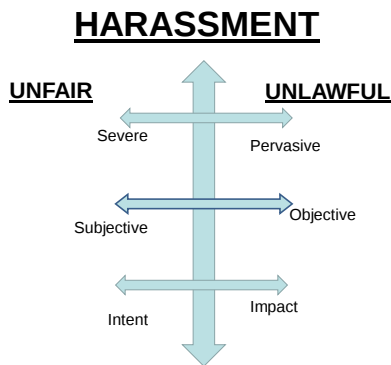
"Reasonable Person" Standard

- *Standard used by courts to assess whether particular conduct is illegal by determining whether a reasonable person would find it **severely or pervasively offensive** under similar circumstances.*
 - Reflects what the Supreme Court has called a "middle path" between these extremes

Actions Constitute Unlawful Harassment?

Actions Must Be **Severe** or **Pervasive**

- **Severe**
 - Alter workplace experience.
 - Even though conduct occurred *once or rarely*.
- **Pervasive**
 - *Defining condition* of the workplace.
 - Even if no single act, viewed by itself, would be a violation.



Was It Welcome?

• **Unwelcome behavior**

- Rejected-did not invite
- *Initially accepted and later rejected*
- Acceptance is *coerced*



Unlawful Harassment?

- *“Is there a list of things not to say? Just give me a list and I won’t say anything on it.”*
- *Context matters – Supreme Court*



#10

- What is the difference between unlawful harassment and bullying, hazing?

Hazing, Bullying & Harassment

- Difference between unfair and unlawful?
- It doesn’t matter what you call it.....must look at the conduct

PERSONAL POLICIES

WHY?

Highest Standard of Conduct is Expected

- Represent the public (public eye and scrutiny)
- Entrusted to provide safety for societies most vulnerable
- Expected to be a role model.
- No Jerks are allowed to participate

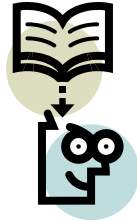
Not all rude, offensive behavior is prohibited by the Anti-Harassment Policy.

- Harassment or offensive behavior NOT BASED ON PROTECTED CLASS is a management problem ...
- Policies
 - Professional Standards & Ethics Policy
 - Intimidation, Bullying, and Menacing Policy

PROFESSIONAL STANDARDS POLICY

General Guidelines

1. **Morality**
 1. Good character
2. **Professional Demeanor**
 1. Courteous and show respect
3. **Cooperation of Employees**
 1. Working with others
4. **Honesty and Integrity**
5. **Off-duty Conduct**
6. **Insubordination**



Conclusion



- **Understand harassment and discrimination – where is the legal “line”?**
- **Don’t create a workplace civility code.**
- **Your responsibilities.**
