

Prevention of Workplace Harassment and Discrimination

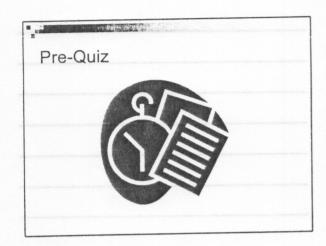
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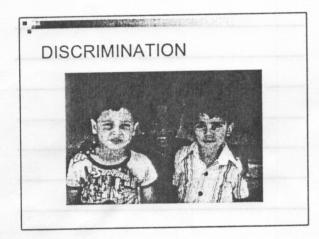
San Joaquin County MVCD March 13, 2007

Discrimination (Cont.) Protected Classifications Include: Age Ancestry Color Creed Disability Marital Status Medical Condition National Origin Race Religion Sexual Orientation Sex/Gender/Transgender Pregnancy and related medical conditions

Discrimination (Cont.) Discrimination Laws Prohibit the Wrongful Denial of Employment Opportunities Including the opportunity to: Be hired Receive Benefits Keep a Job Receive Training Receive a Promotion/Job Assignment Receive Compensation Receive the Same Conditions/Opportunities as Others

Discrimination (Cont.) Discrimination Can Include: Harassment on the Basis of a Protected Classification Intentional Conduct that Adversely Impacts Protected Individuals or Classes Conduct that Appears Neutral or Unintentional but has an Adverse Impact Retaliation Failure to Accommodate Disabilities/Religious Beliefs





■ Federal and State Law Prohibit Discrimination Based on Protected Classifications. □ Without reading ahead, how many classifications can you name?

Biologiane Risk Services - Cerry Preciado

A CONTRACTOR OF THE PARTY OF TH Video Training You Are The Jury Is this a hostile work environment? THE PARTY OF THE P Elements of Hostile Work Environment 1. Offensive conduct to a reasonable person 2. Based on a protected characteristic 3. Unwelcome 4. Sufficiently severe or pervasive to alter the conditions of employment * TEXTSON I What do I do if someone offends me? ■ Talk to them. ■ Talk to your supervisor. ■ Talk to HR/Personnel.

The Four Elements of Hostile Work Environment



- Offensive conduct to a reasonable person
- Based on a protected characteristic
- Unwelcome
- Sufficiently severe or pervasive to alter the conditions of employment

What if I . . .

- Speak in a fake foreign accent?
- Feign being an "emotional woman" when I speak?
- Feign being a "thoughtless man" when I speak?
- What if I tell a really funny joke that is only a little "off color"?

What if I say it or do it . . .

■ When "they" are not around?

- But do not mean anything by it?
- And nobody objects?
- And I tell them they can reciprocate?

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Talk to The Offender

- I am not sure what you meant when you [said/did/wrote], but it offended me and I thought you should know.
- I know we have been coworkers for a while and I have never said anything before, but it really bothers me when . . .
- Please stop because I find that offensive.

Some people like my advice so much that they frame it upon the wall instead of using it.

-- Gordon R. Dickson

What is Workplace Retaliation?

When an employee suffers an adverse employment action as a result of having engaged in some protected activity.

What types of protected activity are we talking about?

Protected Activities May Include:

■ Reporting safety violations

PERMANANTAL STATE

- Reporting illegal activity
 - ☐ Discrimination
 - ☐ Sexual harassment
 - ☐ Theft
 - ☐ Civil Rights violations
- Engaging in free speech
- Requesting leave (FMLA, CFRA, PDL, etc.)
- Making a Worker's Comp claim

Retaliatory Measures <u>May</u> Include:

- ☐ Retaliatory measures can include termination, demotion, reduction in pay or work hours, loss of benefits, or denial of other employment opportunities.
- □Things done with good intentions can be viewed as retaliatory. An unannounced visit to an injured employee may be considered badgering.

Retaliation (Cont.)

■ Workers' Compensation Retaliation

THE PART OF STREET

- □ Retaliation against injured employees create several types of liability risks:
 - Liability under Labor Code § 132a
 - Employee Turnover
 - Division and discord in the workplace
 - Increased litigation exposure

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Things to Consider

- Proximity of protected activity to adverse employment action
- Basis of the adverse employment action
- Whether or not the adverse employment action is necessary

SEXUAL HARASSMENT

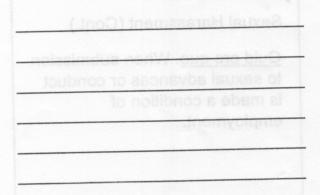


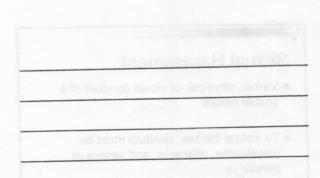
Sexual Harassment (Cont.)

- Both federal and California law prohibit sexual harassment in the workplace.
- Sexual harassment is commonly categorized into one of the following:
 - ☐ Hostile work environment
 - □ Quid Pro Quo

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The Four Elements of Hostile Work Environment



- Offensive conduct to a reasonable person
- Based on a sex
- Unwelcome
- Sufficiently severe or pervasive to alter the conditions of employment

Sexual Harassment (Cont.)

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Quid pro quo. When submission to sexual advances or conduct is made a condition of employment.

Sexual Harassment

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- Verbal, physical, or visual conduct of a sexual nature
- To violate the law, conduct must be unwelcome, offensive, and severe or pervasive

Examples of Inappropriate Verbal Conduct

- Inappropriate verbal conduct may consist of (but is not limited to):
 - □ Demands for sexual favors
 - □ Sexually-graphic statements
 - □ Demeaning jokes of a sexual nature
 - □The description of an employee's anatomy or body in direct sexual or sexually-suggestive terms
 - □ Dirty jokes

Examples of Inappropriate Physical Conduct

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- Inappropriate physical conduct may consist of (but is not limited to):
 - □Touching
 - ☐ Grabbing, patting, or touching a body part, particularly in an area that cannot be explained as inadvertent
 - ☐ Kissing/hugging
 - □ Encroaching upon an individual's physical space
 - ☐ Blocking an individual's movement so he or she must brush up against someone else to pass

Examples of Inappropriate Visual Conduct

- Inappropriate visual conduct may consist of (but is not limited to):
 - □Pornography

- ☐ Sexually-suggestive screen savers on computers
- ☐ Cartoons or pictures that depict either sex in a demeaning way
- Other individuals engaged in sexual behavior, even of a non-graphic nature

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The Four Elements of Hostile Work Environment



- Offensive conduct to a reasonable person
- Based on a sex
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Who can create sexual harassment?

- Co-workers
- Managers/Supervisors
- City Council/Board Members
- Temporary Workers
- Vendors
- Members of the Public

What does it look like?

17-14-1-15 SAME

- Sexual harassment most commonly occurs by way of a <u>Man Harassing a</u> <u>Woman</u>. However, it is also unlawful for:
- Men to harass other men
- Women to harass men
- Women to harass other women

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What Types of Conduct Can Create Sexual Harassment?

- Sexual conduct that is welcome is not sexual harassment.
- To constitute sexual harassment, the conduct must be unwelcome.

What is Unwelcome?

- Sexual conduct could be considered unwelcome if:
 - It was rejected initially
 - It was initially accepted but later rejected
 - It was accepted after coercion

What types of conduct are we talking about?

- . Jokes
- Cartoons
- Flirting
- Gestures
- Leering
- Propositions
- Conversation
- Email Messages

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Severe v. Pervasive

- Severe enough to alter an employee's workplace experience even though the conduct occurred once or rarely (ex., a sexual assault).
- Pervasive enough to be more than merely an accidental or isolated event, and thus becoming a defining condition of the workplace, even if no single act viewed by itself would be harassment. Therefore, typically, a single offensive joke would not be sexual harassment.

Video Training Clips

Sexual Harassment (Cont.)

- Sexual Harassment Warning Signs:
 - □ Refusing to work with, or asking not to work with, another employee.
 - □ Asking for a transfer or leaving employment for no apparent reason.
 - ☐ Missing work or having a drop in productivity for no apparent reason.
 - □Personal arguments between employees.

Sexual Harassment (Cont.)

- □An employee suddenly, for no apparent reason, becomes uncommunicative or hard to work with.
- ☐ A dating or sexual relationship, or the appearance of such a relationship, between employees, whether consensual or not.
- ☐ Signs of hostility between employees who were once, or who now are, partners in a sexual or dating relationship.

Sexual Harassment (Cont.)

- LIABILITY. In California, employers are strictly liable for sexual harassment by supervisors.
- LIABILITY. Under federal law, employers are strictly liable if an employee suffered adverse tangible employment action because of a supervisor's sexual harassing conduct.

Can I be personally liable as a manager supervisor?

Take Aways

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- Be a leader regardless of your title
 Do the right thing when the right thing is called for on a consistent basis!
- Toying with the hazards carries risk—so step on solid places and you will be fine
- What one person does can dramatically affect the workplace
- A little bit of effort on a daily basis will make a difference

