

Prevention of Workplace Harassment and Discrimination

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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

Pre-Quiz



DISCRIMINATION



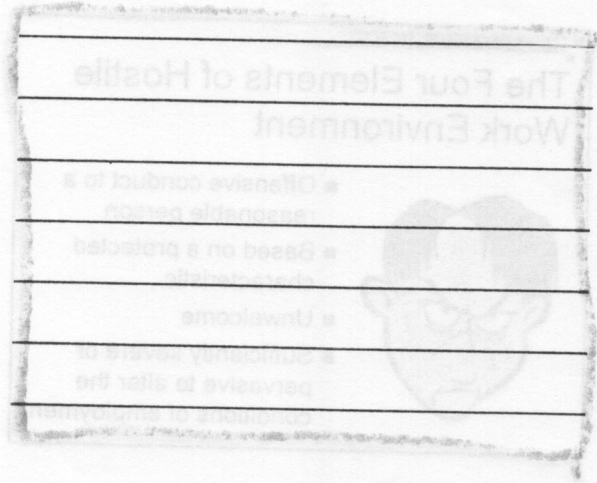
Discrimination

■ Federal and State Law Prohibit Discrimination Based on Protected Classifications.

□ Without reading ahead, how many classifications can you name?

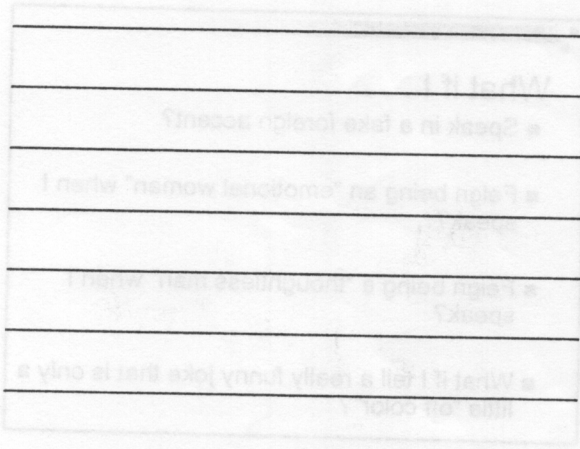
Video Training

You Are The Jury
Is this a hostile work environment?



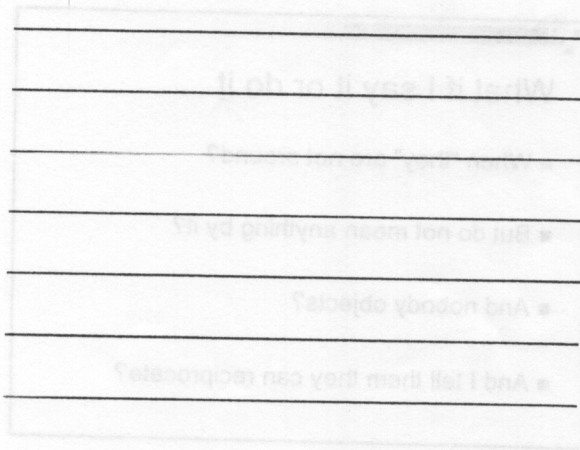
Elements of Hostile Work Environment

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




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

Video Training

You Are The Jury

is the hostile work environment

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"?

Elements of Hostile Work Environment

is based on a protected characteristic

Unwelcome

Sufficiently severe or pervasive to alter the conditions of employment

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?

What do I do if someone offends

Talk to them

Talk to HR

Talk to your supervisor

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
- 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 May 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
 - 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

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

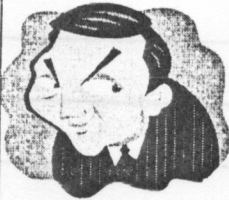
SEXUAL HARASSMENT



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

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

Things to Consider

Sexual Harassment (Cont.)

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

SEXUAL HARASSMENT

Sexual Harassment

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

Sexual Harassment (Cont.)

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

- 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

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

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?

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

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

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.

Take Aways

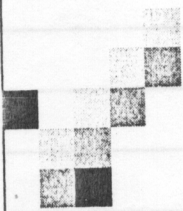
Sexual Harassment (Cont.)

- **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

- 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



You have been fabulous!

Thank you