

# *Sexual and Other Harassment Education, Awareness, and Prevention Training*

Presented by:



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# *Agenda*

- Inappropriate behavior in the practice of law
- Overview of laws prohibiting harassment
- Hypothetical situations/Quiz
- Rules supervisors and management should follow

# *The Current Environment*

- #MeToo movement
  - has not changed the law, but has heightened awareness
- Complaints of unprofessional conduct (even if old or not technically unlawful) are drawing significant media attention
- Any complaint can have significant negative impact on the employer
- Are the sexual harassment laws evolving into a civility code?

# *Maine Bar Survey*

- 8% experienced sexual harassment
- 23% experienced bullying or other harassment
- 10% reported behavior
- 35% believe culture issues

# *Harassment Laws*

## *It's Not Just About Sex...*

- Race, Ethnic Origin, National origin
- Color
- Religion
- Sexual Orientation
- Gender Identity
- Gender stereotypes
- Age
- Disability: Physical or Mental

# *Laws Prohibiting Discrimination/Harassment*

- Title VII of the Civil Rights Act
- Americans with Disabilities Act (ADA)
- Age Discrimination in Employment Act (ADEA)
- Family and Medical Leave Act (FMLA)
- State Human Rights laws (MFEL)
- USERRA (veterans employment rights)
- Code of Professional Responsibility

# *Discrimination/Harassment*

- Employers:
  - Are strictly liable for the harassing conduct of their supervisors
  - Are liable for co-worker harassment if the employer:
    - Knew or should have known about the harassment
    - Failed to act reasonably to stop it.
- Employers must:
  - Display a poster with employee legal rights concerning sexual harassment/discrimination

# *Sexual Harassment - What is it?*

Two kinds of sexual harassment:

## 1. Quid Pro Quo “this for that”

- Sexual advance, request for sexual favors, and other verbal or physical conduct of a sexual nature when:
  - Submission or rejection becomes a condition of employment; or
  - Submission or rejection is a basis for a “tangible” employment action

## 2. Hostile Work Environment

- Verbal and/or physical conduct resulting in an intimidating, hostile or offensive work environment that interferes with an employee’s work performance.



# *Tangible Employment Actions*

- Hiring and firing
- Failing to promote
- Reassignment
- Change in benefits

# *Hostile Environment Sexual Harassment*

- Elements:
  - Conduct directed at someone on account of their sex
  - Unwelcome
  - Subjectively hostile
  - Objectively hostile
  - So severe and pervasive that it alters the work environment
- Some examples of conduct that may constitute harassing behavior:
  - Unwelcome sexual advances
  - Sexual epithets, jokes, written or oral degrading comments of a sexual nature
  - Display of sexually suggestive objects, pictures, cartoons
  - Inquiries into one's sexual experiences
  - Unwelcome hugging, touching or kissing
  - "Elevator eyes"
  - Repeated requests for dates

# *Hostile Environment Sexual Harassment*

## *continued . . .*

**“Totality of the circumstances”**- courts focus on both the nature of the conduct and the context in which it occurred.

- This type of conduct can be verbal or physical, and it does not necessarily have to be directed at the person to create a hostile environment.
- The conduct can come from a person not employed by the company
- The reasonableness of the victim's reaction will also be considered.

## *The Conduct in Question must be “Unwelcome”*

- Illegal sexual harassment means the conduct in question was unwelcome.
- A lack of protest does not always mean the conduct is welcome
  - the individual may be too afraid or uncomfortable to protest.
- The failure of a victim to directly confront the harasser will not stop a claim of sexual harassment as long as other conduct is consistent with the conclusion that the sexual conduct or advances were unwelcome.
- The focus is on the objective conduct of the persons involved rather than subjective and un-communicated feelings.

## *Perception vs. Intention*

- Well intentioned gestures such as a pat on the shoulder, touching, lewd remarks, jesting comments of a sexual nature, or physical contact may be interpreted as acts of sexual harassment by one recipient, while another may not view it as problematic at all
- Likewise, some individuals may perceive a look as leering or ogling of a sexual nature, while others may attribute no meaning to it

# *Perception vs. Intention*

- Need to take into account your co-workers' own personal history
  - Affects how we perceive each situation
- Can create “triggers” that cause welcome behavior to become unwelcome
- Often is not shared with the alleged “harasser,” in part because explanation of why the event is a “trigger” would result in the sharing of personal information

# *Perception vs. Intention*

- Some gauges to measure whether your own conduct is consistent with the law and your Firm's policies:
  - Would you want your spouse, partner, child, or parent to be subjected to the same type of behavior?
  - Would you be willing to engage in the same conduct in front of a family member?
  - Would you be embarrassed to tell the same story in a courtroom in front of a judge and jury?

# *Questions*

- There are two types of sexual harassment: quid pro quo and hostile environment.
  - A. True
  - B. False
- Sexual Harassment can only occur between people of opposite gender.
  - A. True
  - B. False



# Questions

- Whether conduct is sexual harassment depends on the perception of the alleged victim, rather than the intent of the alleged harasser.
  - A. True
  - B. False
- A male worker no longer gets the choice assignments as before. They go to a new male hire, whom everyone knows is dating the female supervisor. Is this favoritism sexual harassment?
  - A. Yes
  - B. No

# Questions

- A male supervisor tells his female subordinate that she looks really good in one of her dresses. This would be considered sexual harassment.  
  
A. True  
B. False
- A female supervisor tells her female subordinate that she looks really good in one of her dresses. This would not be considered sexual harassment.  
  
A. True  
B. False

# Questions

- If the employer concludes a person engaged in sexual harassment, no matter how severe, the person will be fired.  
  
A. True  
B. False
- A female employee who dresses as a man and uses the men's restroom is protected by the company's policy against harassment.  
  
A. True  
B. False

# *Questions*

- Can I still tell a joke while at work?
  - A. Yes
  - B. No
- If I think I'm being subjected to unlawful harassment of any kind, can I tell the person engaging in the offensive conduct to stop rather than go my supervisor first?
  - A. Yes
  - B. No

# *The Importance of Supervisor Status*

- Member of “management”
- Supervisor’s actions can bind the company
  - “everything you say can and will be used against you” and the company

## *Rules Supervisors Must Know*

- 1) Know the definition of unlawful harassment
- 2) Know the company's policies against it
- 3) Educate employees about the policy
- 4) Model appropriate behavior

## *Rules Supervisors Must Know*

- 5) Avoid engaging in high risk behavior
- 6) If you see risky behavior, deal with it
- 7) If you see conduct that violates the company's policies, deal with it
- 8) If you receive a complaint, deal with it

# *Procedure for Handling Complaint of Workplace Harassment*

- Inform employee of policy
- Inform employee of no retaliation for making the complaint
- Inform employee that upper management will be notified
- Explain to employee methods of addressing complaints
- Start documenting
- Ask employee to put complaint in writing (but don't require it)



## *Rules Supervisors Must Know, continued...*

- 9) Maintain appropriate level of confidentiality
- 10) Document all complaints and the Firm's response
- 11) Follow up with complaining employee periodically
- 12) Monitor for retaliation (real or perceived)