

THE RESPECTFUL WORKPLACE

Civility and Harassment Avoidance Training (AB 1825/AB 1661)

WELCOME

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THE RESPECTFUL WORKPLACE

CIVILITY IS PREVENTATIVE MEDICINE FOR
RELATIONSHIP DYSFUNCTION IN THE WAY THAT
EXERCISE IS PREVENTATIVE MEDICINE FOR HEART
DISEASE. WE CAN KEEP THE HURT IN RELATIONSHIPS
TO A MINIMUM BY TEACHING OURSELVES TO
BE GOOD AT BEING WITH OTHERS.

P.M. Forni, [Choosing Civility: The Twenty-Five Rules of Considerate Conduct](#)

AGENDA

- **CIVILITY**
 - Defining civility
 - Causes of incivility
 - Simple civility
- **HARASSMENT AVOIDANCE**
 - Discrimination Law Overview
 - Sexual Harassment
 - Gender Identity/ Expression/ Orientation
 - Retaliation

THE RESPECTFUL WORKPLACE

- **WHAT DO WE MEAN BY CIVILITY?**
- **WHY DO WE CARE ABOUT CIVILITY?**
- **HOW ARE WE GOING TO SUPPORT A CULTURE OF CIVILITY?**

WHAT DO WE MEAN BY “CIVILITY”?

TICKLE THE GREY MATTER

ON YOUR OWN, **IN 1 MINUTE**, THINK OF THREE WORDS THAT YOU ASSOCIATE WITH CIVILITY. BE PREPARED TO DISCUSS YOUR SELECTED WORDS.

HOW OTHERS DEFINE CIVILITY

Civility is that which “protects people from each other and yet allows them to enjoy each others company.”

Richard Sennett, [The Fall of the Public Man](#)

HOW OTHERS DEFINE CIVILITY

Civility is about more than being polite, although being polite is an excellent start. Civility is about being aware of other people's feelings, and listening and **seeking common ground** as an initial point for dialogue when differences occur, while at the same time, recognizing that differences are enriching. Through positive, respectful communication, one person has the power to improve morale, productivity, and teamwork.

Ryerson University, "Guide to Civility"

WIIFM? (WHAT'S IN IT FOR ME)

- When you have a reputation for behaving civilly, the positive regard of those who work with you will increase your own self-esteem.
- Civility creates a positive working environment in which you and those around you will feel more motivated and more productive.



WIIFM?

- Civility promotes effective self-awareness and effective social awareness, helping to avoid emotional landmines that can have an adverse impact on your success.
- The deliberate practice of civility increases your emotional intelligence, helping you to learn to control anger and frustration and to be more attuned to the needs of others in relation to your own needs and wants.



CAUSES OF INCIVILITY

LACK OF SELF-RESTRAINT

Allowing assertiveness to become aggressiveness or exhibiting annoying behaviors to seek attention. Engaging our mouth before we engage our brain.

ANONYMITY

Studies have shown that we have less inhibition when we know we are likely not to be held accountable for our actions, such when we allow ourselves to be rude to a stranger or to voice temper on the phone or share unfavorable comments on social media.

CAUSES OF INCIVILITY

STRESS

Both personal and work-related stress create fatigue, frustration and depression, all of which can readily be channeled to or aimed at the individuals that we interact with on a daily basis.

A SENSE OF ENTITLEMENT

Increasingly we are victims of those who believe “each to his own,” which leads to arrogant, self-centered, self-indulgent behaviors.

CAUSES OF INCIVILITY

BIAS and DISCRIMINATION

Dismissing, alienating, or excluding a person on the basis of pre-conceived notions about his/her race, gender, religion and ability to make positive contributions to the workplace or the group.

COMPETITION and CONFLICT

Competition for scarce resources or opportunities paired with a lack of conflict management and negotiating skills can encourage defensive behaviors that impede appropriate and respectful resolution of differences.

MULTIPLE CHOICE OR TRUE/FALSE

True or False?

Anonymity can be a cause of incivility. Studies have shown that when we know we will not be held accountable, we sometimes feel more free to act inappropriately.

CAUSES OF INCIVILITY

TICKLE THE GREY MATTER

WHAT OTHER CAUSES ARE THERE FOR
INCIVILITY IN THE WORKPLACE?

CONSIDER THIS

Most incivility in the workplace is unintentional.



PARA-VERBAL COMMUNICATION

Para-verbal communication refers to **HOW** we say something, not the actual words that we use. It is found in –

Intonation

Pitch

Volume

Emphasis

Pacing

PARA-VERBAL COMMUNICATION

I didn't know that you wanted to be on this team.

I didn't **know** that you wanted to be on this team.

I didn't know that **you** wanted to be on this team.

I didn't know that you wanted to be on **this team**.

CONSIDER THIS

As much as **80%** of the message that we send or receive comes from non-verbal communication.

WHY DO WE CARE ABOUT CIVILITY?

- **96%** of employees report they have been the recipient of incivility at work
- **60%** of employees report that they are stressed by the uncivil behavior of bosses or co-workers
- **50%** of employees are afraid to say anything about incivility due to anxiety about repercussions
- **88-94%** of employees have gotten even with co-workers or the organization due to unresolved issues around incivility

Christine Pearson and Christine Porath, [The Cost of Bad Behavior](#)

WHY DO WE CARE ABOUT CIVILITY?

Employees are affected deeply by incivility and consciously or unconsciously react to the hurt it has caused them with...

- Lower productivity
- Higher absenteeism
- Reduced engagement
- Loss of respect for “The Enablers”
or, in the worst case scenario, by...
- Leaving the job



WHO ARE “THE ENABLERS”?

- Supervisors who turn a blind eye to incivilities
- Managers who don't model civil behavior
- Organizations that do not actively promote civility as a core value

WHO ARE “THE ENABLERS”?

- Co-workers who don't call out incivility when they see it
- Each of us when we fail in ways – small and big – to behave civilly toward others

“THE RESPECTFUL WORKPLACE”

Civility dictates that we do not treat others harmfully; further it dictates that we do not allow others to treat us harmfully, either.

P.M. Forni, [Choosing Civility: The Twenty-Five Rules of Considerate Conduct](#)

“THE RESPECTFUL WORKPLACE”

TICKLE THE GREY MATTER

Take a few moments to think of a time when you witnessed, or were the target of, incivility and consider how you responded.

“THE RESPECTFUL WORKPLACE”

**GOSSIP
IS
TOXIC
WASTE**

**IT WASTES TIME, IT WASTES ENERGY, AND IT
WASTES GOOD WILL**

“THE RESPECTFUL WORKPLACE”

TICKLE THE GREY MATTER

Take a few moments to think of a past or current situation with a co-worker where you were or are challenged to behave civilly toward him/her.

SIMPLE CIVILITIES

Demonstrate Respect

- Say a heartfelt “good morning” to each of your co-workers each day
- Keep your cell phone on vibrate or silent while you are working and make personal phone calls in private
- Avoid profanity and disparaging comments

SIMPLE CIVILITIES

Demonstrate Respect

- Make sure to always use a positive tone
- Clean up your own mess in shared spaces and keep your own workspace tidy
- Monitor your volume and that of your iPod and radio

SIMPLE CIVILITIES

Demonstrate Respect

- Practice active listening
- Be considerate of others' belongings, workspaces, and privacy
- Use your co-workers time wisely



SIMPLE CIVILITIES

Demonstrate Respect

Do not forget small kindnesses, and do not remember small faults.

Chinese proverb



SIMPLE CIVILITIES

Demonstrate Respect

BE ON TIME

&

BE PRESENT

SIMPLE CIVILITIES

THINGS NOT TO DO

- Don't interrupt no matter what you have to say
- Don't roll your eyes no matter how idiotic you think the other person is being
- Don't use email to avoid a problem

SIMPLE CIVILITIES

THINGS NOT TO DO

- If you wouldn't be talking while someone else is talking, don't be texting either
- Don't exclude others
- Don't litter – with “trash” talk or thoughtless words



SIMPLE CIVILITIES

THINGS NOT TO DO

- Fail to make returning phone calls, emails, or correspondence a priority
- Demand attention from subordinates outside of work hours
- Fail to recognize or purposefully discount the contributions of others

CIVILITY CORE COMPETENCIES

TO BE CIVIL IS TO BE:

HONEST - AUTHENTIC

EMPATHETIC

CURIOUS

PROACTIVE

COLLABORATIVE

POSITIVE

RESPECTFUL

MINDFUL IN WORD AND ACTION

DEALING WITH DIFFICULT PERSONALITIES

Most of us respond to difficult people by focusing on ways to minimize the stress that they cause us rather than exploring how to create a more workable relationship and eliminate the stress entirely.

We tend to avoid the dominant personality types, treat the overly-dependent dismissively, and get even with the passive-aggressive whenever possible.



DEALING WITH DIFFICULT PERSONALITIES



Left to our own first inclinations, we are likely to avoid dealing with difficult personalities and to tolerate or even accept the inevitable dysfunctional relationship.

How many times have you said or heard, “Oh, that’s just his way of acting out; He’ll get over it” or something equally excusing of toxic behavior?

DEALING WITH DIFFICULT PERSONALITIES

THAT IS JUST WRONG, WRONG, WRONG.

He (or she) will not “get over it,” will continue to behave badly, and will continue to poison the worksite.

You will not “get over it,” will continue to be diminished by the intolerable behavior.

DEALING WITH DIFFICULT PERSONALITIES

Civility provides the best avenue for calling difficult personalities to account for their unacceptable behavior. It does so by creating a positive atmosphere that allows you to...

...set and negotiate boundaries

and

...provide feedback regarding more acceptable ways to interact with others

“THE RESPECTFUL WORKPLACE”

I cannot say whether things will get better if we change; what I can say is that they must change if they are to get better.

Georg C. Lichtenberg



“THE RESPECTFUL WORKPLACE”

**IF NOT YOU, THEN WHO?
IF NOT NOW, THEN WHEN?**

HILLEL THE ELDER

“THE RESPECTFUL WORKPLACE”

**BE THE CHANGE YOU
WANT TO SEE IN OTHERS**

MAHATMA GANDHI

“THE RESPECTFUL WORKPLACE”

PROUD TO BE A

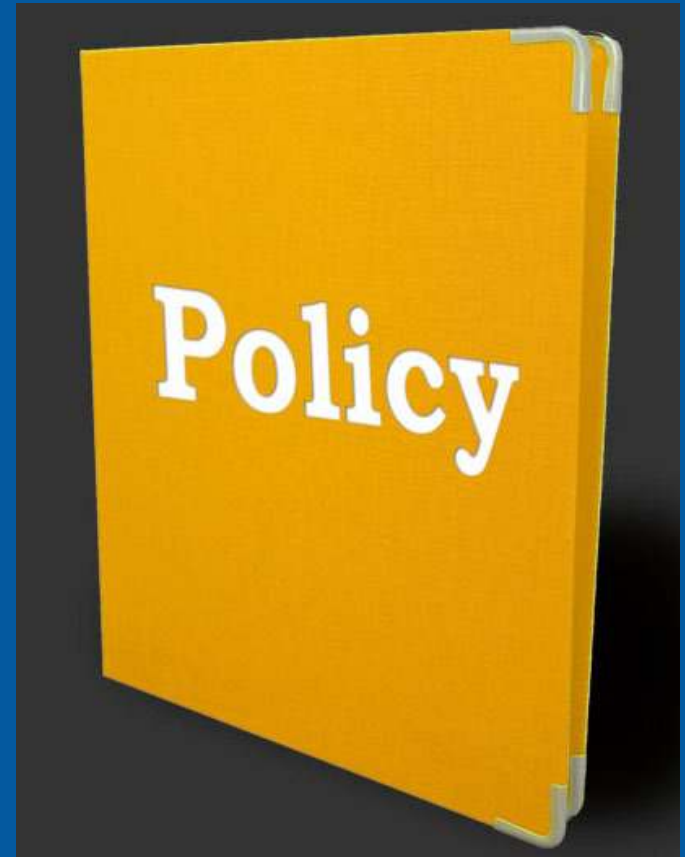
CIVILITY SERVANT

SEXUAL HARASSMENT IN THE #METOO ERA



THE NEW TRAINING REQUIREMENTS AB1825 AND BEYOND

- California continues to lead the nation in training requirements
 - AB 1825 – Harassment Avoidance
 - AB 2053 – Abusive Conduct
 - AB 1661 – Extends to Elected & Appointed
 - SB 396 – Gender Identity & Sexual Orientation
 - Pending: Broader scope, Bystander Intervention & Respectful Workplace
- Training, Policies & Complaint Procedures



DISCRIMINATION LAWS

GENERAL PRINCIPLE

- No employer may treat an employee poorly
 - Because of any protected category
 - In any way that affects “terms and conditions of employment”
- Generally this principle is embodied in Title VII of the Civil Rights Act (Federal) and the California Fair Employment and Housing Act.

THE PROTECTED CATEGORIES

- CALIFORNIA EDITION -

- Race
- National Origin
- Color
- Ancestry
- Sex
- Sexual Orientation
- Gender Identity/
Expression
- Age
- Physical and
Mental Disability
- Religious Creed
- Medical Condition
- Marital Status
- Veteran



THE PROTECTED CATEGORIES - FEDERAL EDITION -



- **Age - 40 and older** (*ADEA*) 29 U.S.C. § 621
- **Race** (*Title VII*) 42 U.S.C. § 2000e, et seq.
- **Color** (*Title VII*)
- **National Origin** (*Title VII*)
- **Gender** (*Equal Pay Act* 29 U.S.C. § 206(d), *Title VII*)
- **Religion** (*Title VII*)
- **Mental or physical disability** (*ADA*) 42 U.S.C. § 12101 et seq.

MULTIPLE CHOICE OR TRUE/FALSE

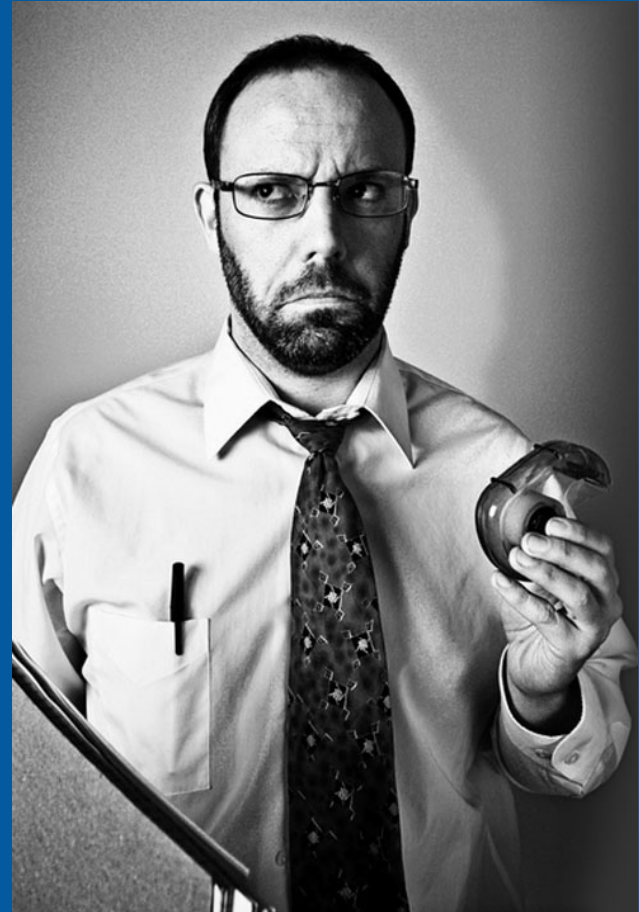
Multiple Choice:

Which of the following is not a protected category?

- A. Sexual Orientation
- B. Political Party Affiliation
- C. Disability
- D. Gender Identity

TERMS & CONDITIONS OF EMPLOYMENT

- Can Include:
 - Hours of employment
 - Pay
 - Physical setting
 - Geographic location
 - Benefits
 - Work Environment

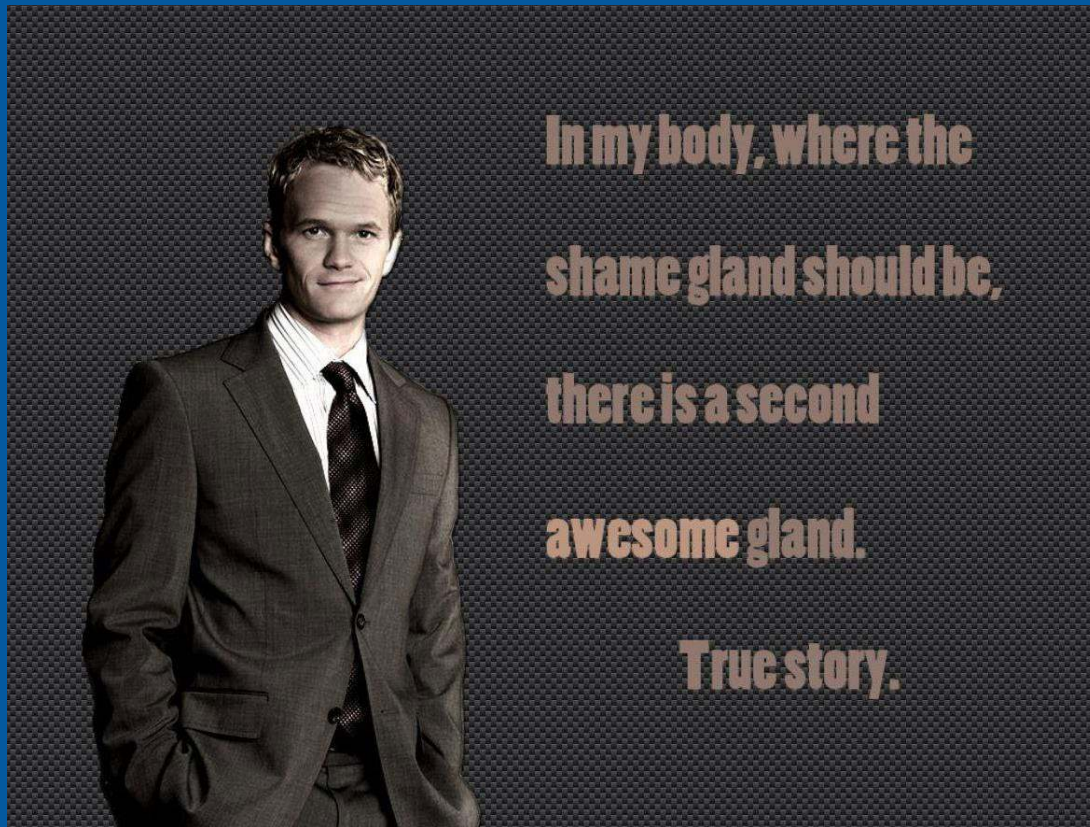


WHY IS SEXUAL HARASSMENT SO PREVALENT?

A word cloud on a grey gradient background. The words are arranged in a somewhat circular pattern. The most prominent word is "#MeToo" in a bright pink color. Other words in black include "SHAME", "DISCRIMINATION", "FEAR", "HARASSMENT", "SEXISM", "RAPE", "ASSAULT", "INTIMIDATION", "SILENCE", and "HELPLESS".

SHAME DISCRIMINATION
FEAR HARASSMENT
SEXISM #MeToo RAPE
ASSAULT INTIMIDATION
SILENCE HELPLESS

CULTURAL ACCEPTANCE OF PREDATORY BEHAVIOR



CULTURAL ACCEPTANCE OF PREDATORY BEHAVIOR



THE 2018 OFFICE ROMANCE SURVEY

ARE WE SURPRISED BY THE RESULTS?

- **52%** of workers have had an office romance.
- **24%** have engaged in “random hookups” with colleagues.
- **16%** had “ongoing but casual” workplace romances.
- **41%** have avoided a potential workplace romance.
- **22%** of office romances start at a happy hour or an office party.
- **96%** think that workplace romances are acceptable in some form (**24%** say all are acceptable).
 - Only **43%** think it is unacceptable for different levels.
- **48%** know of co-workers who’ve had affairs.

THE TWO KINDS OF SEXUAL HARASSMENT

- Sexual harassment is a form of sex-based discrimination
- There are two kinds of sexual harassment:
 - **Quid Pro Quo Harassment**
 - **Hostile Work Environment**



QUID PRO QUO

“SOMETHING FOR SOMETHING”

- **QUID PRO QUO:**
 - Is it sexual?
 - Is it unwelcome?
 - Is it a condition of employment?

CACI 2520



SEXUALLY CHARGED HOSTILE WORK ENVIRONMENT

- NOT “HOSTILE” IN THE COMMON SENSE
- **SEXUALLY CHARGED HOSTILE WORK ENVIRONMENT:**
 - Is it sexual?
 - Is it unwelcome?
 - Does it unreasonably interfere with the employee’s job performance?



SEXUALLY CHARGED HOSTILE WORK ENVIRONMENT



- Factors considered by the courts:
 - **SEVERITY** - verbal, physical, or both;
 - **PERVASIVENESS** - Frequency of conduct;
 - **PRESENCE OF AUTHORITY** - Whether the alleged harasser was a co-worker or supervisor (comparative authority of the parties involved);
 - **CULTURE OF HARASSMENT** - Who participated;
 - **SCOPE OF VICTIM CLASS** - Whether the conduct was directed at more than one individual.

MULTIPLE CHOICE OR TRUE/FALSE

Multiple Choice:

Which of the following is not a factor used to determine whether the conduct unreasonably interfered with an employee's job?

- A. Severity
- B. Pervasiveness
- C. Level of Humor
- D. Scope of the Victim Class

IS IT SEXUAL?



IS IT UNWELCOME?

- The challenged conduct must be unwelcome in the sense that the employee did not:
 - Solicit; or
 - Incite it

Henson v. City of Dundee (11th Cir. 1982) 682 F.2d 897.



IS IT UNWELCOME?

- Ken likes to make **“that’s what she said”** jokes every day, creating a sexual innuendo anytime anyone discusses a **hard task**. He thinks everyone loves his jokes. His subordinate, Bill, files a complaint against Ken after he gets written up for excessive tardies.
- Joey alleges his manager, Shane, created a hostile work environment by constantly **joking that Joey is “gay for”** his best friend and co-worker, Jim. On several occasions, Joey joked that Shane was also **“gay for”** their department head. Joey filed a sexual harassment charge the day after he was transferred to a new department.

SB 396 – GENDER IDENTITY, GENDER EXPRESSION & SEXUAL ORIENTATION

- Sexual Orientation: In the prior hypothetical, is Joey subject to sexual harassment or sexual orientation harassment? Would it matter whether Joey identifies as homosexual?
- Gender Identity & Expression: Pat is an employee who is transitioning from male to female. She has requested that the employer use the female pronoun in referring to her and that she be identified as “Patricia.” In addition, she has grieved a write up given by her supervisor for her long hair, which is in violation of the grooming standards applicable to male employees. The supervisor would like to require “Pat” to get a doctor’s note to “prove he has this gender identity issue.”



STOP MAKING PEOPLE FEEL UNCOMFORTABLE!!!

Is your conduct **UNWELCOME?**

Ask yourself the following:

- Is there equal power between me & the person I'm interacting with?
- Is there equal initiation & participation?
- Does the person I'm interacting with give any visual signs that they are not comfortable with my conduct?



TYPICAL EXAMPLES OF SEXUAL HARASSMENT

Generally: Unwelcome and sexually charged written items, verbal statements, or physical contact.

Written: Letters, emails, text messages, social media posts.

Verbal: Sexual comments, slurs, jokes, sexual advances or propositions (even if in jest).

Visual: Leering, hate stares, gestures, displays, pictures, cartoons, or graffiti.

Physical: Unwelcome touching, massages, or blocking movement.

EXPRESSING INTEREST IN A COWORKER

- It is not illegal to express romantic interest before being informed the interest is unwelcome.
- Continuing to express interest can create a hostile work environment.



Case Study



THE HARASSER NEED NOT BE ATTRACTED TO THE VICTIM

- Can women sexually harass men?
- Can men sexually harass other men?
- Can women sexually harass other women?
- What about the person who is rude to everyone?
...the “Equal Opportunity” Harasser?



HARASSMENT BY THIRD PARTIES

- Employers have an obligation to protect employees from harassment by third parties:
 - Customers
 - Clients
 - Vendors
- The employer must take immediate corrective action once it knows or is in a position where it “should have known” of the conduct.





BEST BEST & KRIEGER
ATTORNEYS AT LAW

Case Study



IF YOU SEE OR EXPERIENCE SEXUAL HARASSMENT

- You must report the conduct immediately to Human Resources.
- Make certain the person is aware that the conduct is unwelcome.
- Do not discuss it with other employees.
- Be familiar with and follow your anti-harassment policy.



THE INVESTIGATION



Once harassment has been reported, your employer will investigate:

- Ask you questions
- Potentially ask you to put your report in writing
- Interview other employees/witnesses
- Interview the alleged harasser
- Review any relevant records
- Advise you of the results of the investigation

THE INVESTIGATION

If interviewed as part of a harassment investigation:

- Be open, honest & specific
- Answer questions thoroughly
- Ask questions – but remember that personnel matters are confidential
- Do not form opinions based on the questions
- Do not discuss the investigation with others
- Do not let your personal feelings stop you from doing what is right

THE TYPICAL POLICY PROVISIONS

- Definition of harassment
- Zero tolerance statement
- List of all protected categories
- Statement regarding who is covered
- Description of the reporting procedure
- What the company will do upon complaint



EMPLOYER LIABILITY

Harassment by non-supervisors

- Employer liable if knew or should have known and failed to take immediate corrective action.

Harassment by supervisors

- STRICT LIABILITY – Employer is strictly liable to a victimized employee for a hostile work environment created by a supervisor.

DEFENSE – OFF DUTY CONDUCT

- An employer may avoid strict liability by establishing that the harassing conduct resulted from a “completely private relationship unconnected with the employment”

Myers v. Trendwest Resorts (2007) 148 Cal.App.4th 1403.

DEFENSE – “REASONABLE CARE”

- California (*McGinnis* case) & Federal (*Faragher* case)
- Defense applies when no adverse action on victim and:
 - Employer took reasonable steps to prevent & correct sexual harassment in the workplace;
 - Employee unreasonably failed to use the corrective measures available; and
 - Employee’s reasonable use would have prevented the harm.



BEST BEST & KRIEGER
ATTORNEYS AT LAW

Case Study



RETALIATION

- The law prohibits employers and coworkers from retaliating against (1) anyone who complains of harassment in good faith; (2) anyone who opposes prohibited conduct; and (3) anyone participating in a harassment investigation.
- Any retaliation must be reported immediately.
- Claims of retaliation must be investigated separately the same way harassment claims are investigated.

RETALIATION

- If you are intent on disciplining or otherwise adversely impacting the complainant, then:
 - Document the legitimate business reasons;
 - Get a second opinion;
 - Be honest about the reasons for the action; and
 - Be consistent in your practices.

WHAT CAN I DO?

- Set a positive example:
Be professional and respectful.
- Think twice before engaging in unprofessional banter or asking personal questions.
- Don't assume that jokes and gestures meant to be friendly are not offensive.



WHAT CAN I DO?



- Know your policies.
- Don't be part of or accept behavior that is offensive. Voice your concerns!
- Support people who are being harassed by cooperating in investigations & keeping them confidential.
- Do not ignore an informal complaint of harassment.

SUPERVISOR'S GUIDE

- A Supervisor Should Be Prepared To:
 - Explain policies
 - Assure the employee of our sincerity and dedication to eliminating harassment
 - Explain the investigation and follow-up procedures
 - Explain why confidentiality is important
 - Advise the employee of the significance of being honest and truthful
 - Acknowledge the employee had done the right thing by reporting harassment

“THE RESPECTFUL WORKPLACE”

TIME FOR QUESTIONS

