

# UNDERSTANDING & PREVENTING SEXUAL HARASSMENT AND OTHER FORMS OF ILLEGAL HARASSMENT

by

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## I. GOALS OF TODAY'S TRAINING

- A. The GOAL for today is NOT to make you an expert. THE GOALS include you understanding:
  - 1. Illegal harassment when you see it,
  - 2. There is a difference between LEGAL/ILLEGAL and RIGHT/WRONG,
  - 3. The company's STRONG stance against such conduct and that
  - 4. WE NEED YOUR HELP TO KEEP ILLEGAL HARASSMENT OUT OF THE WORKPLACE.
- B. When in doubt ... CALL HUMAN RESOURCES.
- C. THE KEY: Following good Employee Relations strategies and treating others THE WAY THEY WANT TO BE TREATED will avoid such problems.

## II. EMPLOYEE RELATIONS V. ILLEGAL ACTIVITY

- A. What is "right and wrong" and what is "legal and illegal" are at best distant cousins.

While we are concerned with what is legal and illegal, we are **MORE** concerned with maintaining a positive atmosphere and good employee relations. There are many things an employer can do that are legal but are highly unethical and “wrong,” as you will see in this training. Maintaining positive employee relations is the highest priority when it comes to keeping harassment out of the work environment.

### **III. TWO TYPES OF SEXUAL HARASSMENT UNDER TITLE VII**

#### **A. Enactment Of Title VII of the Civil Rights Act of 1964**

- 1. What Is A “Protected Class”?**
- 2. The Passage of Title VII**

#### **B. Quid Pro Quo Sexual Harassment: The Original “Tangible Action” Claim**

- 1. The First Type Of Sexual Harassment**
- 2. Message To Employees...**

**NO ONE HAS THE AUTHORITY TO CONDITION ANY ASPECT  
OF YOUR EMPLOYMENT ON SEXUAL FAVORS!!!!**

### **IV. Development Of The Hostile Environment Theory**

#### **A. The Beginning of “Hostile Environment” Harassment**

#### **B. Sexual Harassment Hostile Environment**

- 1. The U.S. Supreme Court’s First Sexual Harassment Case: Meritor**
  - a) In order to be illegal, the offensive conduct must be “unwelcome.”**
  - b) The harasser’s conduct must be “sufficiently severe or pervasive” so as to affect a term, condition or privilege of employment.**

**Therefore, merely being “offended” in the workplace does not violate Title VII.**

- c) Employers must have an effective policy and grievance procedure in place.

2. The U.S. Supreme Court's Second Sexual Harassment Case: Harris

- a) **THE LAW WILL NOT PROTECT HYPERSENSITIVE EMPLOYEES:**

*A "SUBJECTIVE/OBJECTIVE" test is to be used to determine the severity or pervasiveness of the offensive acts.*

- b) Important Lessons Under Harris

- **THE HARASSER'S INTENT IS IRRELEVANT**

The test for "hypersensitivity" is the "*SUBJECTIVE / OBJECTIVE*" Test.

- The test asks what the **victim** felt.
- The test also asks how the "**reasonable person**" in the community would have felt.

**NOWHERE IN THIS TEST DOES IT ASK ABOUT THE HARASSER'S INTENT.**

**WHY? The harasser's intent is "IRRELEVANT."**

**KEY POINT: What is Your Reputation In The Workplace?**

**How Are You Being Perceived By Others When You Act And Speak?**

V. **WHAT IS A HOSTILE ENVIRONMENT UNDER TITLE VII?**

- **UNWELCOME conduct that occurs**
- **BECAUSE OF the victim's PROTECTED CLASS STATUS that is so**
- **SEVERE OR PERVASIVE that it alters the victim's terms or conditions of employment.**

**THIS IS THE LEGAL STANDARD THAT CREATES A HOSTILE ENVIRONMENT**

## **VI. THE “UNWELCOMENESS” REQUIREMENT**

**A. Above All Else...“No” Means “No”**

**B. What Is Your Relationship With The Employee Inside The Workplace?**

**If you tell a co-worker an off-color joke everyday, then the co-worker tells one to you, you have created the reasonable expectation that it was “welcome.”**

In other words...

**If you are going to dish it out,  
you’d better be ready to take it!**

**1. Conduct When Customers MAY Be Near ... Or You Are On A Client Site?**

**NO...NO...NO...NO...NO...NO...NO...NO...NO!!!**

**Pure common sense should be enough to tell anyone that it is IRRELEVANT what your relationship is with your co-workers ... from a client/public relations aspect, professional behavior is the REQUIRED when employees are:**

- **Dealing with clients,**
- **On a client site or**
- **Whenever clients MAY be near.**

In other words, if you decide to engage in questionable behavior ... behavior you would not want us to tell your mother about, then ...

**YOU ASSUME THIS RISK!!!  
AGAIN ... YOU ARE RESPONSIBLE!!!**

- C. **Employees' Obligation To "Speak Up" When They Find Something Offensive**

**We can't fix what we don't know about.**

**VII. THE "BECAUSE OF" REQUIREMENT**

- A. **Legal v. Illegal Harassment: THE PIG DEFENSE**

**REMEMBER:**

**EMPLOYMENT LAW IS NOT ABOUT WHAT YOU DID...  
IT IS ABOUT "WHY DID YOU DO IT?"**

- B. **Protected Class Slurs**

**NEVER...NEVER...NEVER  
use a protected class insult in the workplace.**

- C. **Same Sex Sexual Harassment Is Now Illegal Under Title VII**

**VIII. SEVERE OR PERVASIVE TREATMENT**

- A. **Definition**

**"The offensive treatment must be sufficiently severe or pervasive so as to alter the terms or conditions of the employee's employment. Therefore, the mere utterance of an offensive "epithet" (instance) is not sufficient."**

- B. **What Is Severe Or Pervasive Sexual Harassment?**

1. **We looked at Meritor and Harris**
2. **REMEMBER: The harasser's INTENT IS IRRELEVANT**

- C. **What Is Severe Or Pervasive?**

- D. **What Is *Not* Severe Or Pervasive?**

**The law does not exist to right every wrong.  
It exists to address illegal behavior only.**

## IX. KNEW OR SHOULD HAVE KNOWN STANDARD OF LIABILITY

### A. Employer Liability For Illegal Harassment

1. Draft and distribute a proper anti-discrimination policy throughout the workplace,
2. Draft and distribute a proper grievance policy and procedure throughout the workplace,
3. Train managers in illegal harassment and
4. Communicate to employees the company's anti-discrimination policy, define illegal discrimination for employees and inform the employees of the company's strong stance against such harassment.

**WE HAVE NOW FULFILLED ALL FOUR OF OUR INITIAL REQUIREMENTS FOR PREVENTING ILLEGAL HARASSMENT.**

**Employees are now required to take an active role in preventing and reporting illegal harassment.**

### B. Preventing Illegal Harassment in the Workplace is a JOINT EFFORT.

**Since we have now fulfilled our four initial requirements for preventing illegal harassment,**

**The responsibility for keeping illegal harassment out of the workplace is a now SHARED RESPONSIBIITY...Employees have 50% and Management has 50%.**

1. All employees are **REQUIRED** to report any incidents of Illegal Harassment to HR or to any manager **IMMEDIATELY** in accordance with our policy against discrimination and harassment.
2. The courts **REQUIRE** management to investigate such alleged treatment **IMMEDIATELY**.
3. Human resources is your partner in accomplishing this goal. When in doubt...go to Human Resources!!!

## **REMEMBER:**

### **WE CAN'T FIX WHAT WE DON'T KNOW ABOUT**

#### **X. OTHER TYPES OF ILLEGAL HARASSMENT**

- A. Racial Hostile Environment Harassment**
- B. Pregnancy Hostile Environment Harassment**
- C. ADA Hostile Environment Harassment**
- D. Age-Based Hostile Environment Harassment Under The ADEA**
- E. Same But Different**

#### **XI. OTHER ILLEGAL HARASSMENT ISSUES**

- A. Bystander Harassment: Illegal Harassment Directed At Others**
- B. Off Duty Conduct**
- C. Employers Are Responsible For The Acts Of Non-Employees**
- D. Do The Courts Allow Certain Industries Or Work Environments More “Leeway” In Allowing Harassing Conduct?**
- E. Constructive Notice To Employers: Employees Only Get One “Bite” Of The Apple**

**THE MORAL: DEAL WITH THE HARASSING BEHAVIOR WHEN IT OCCURS ... YOU MAY NOT BE ENTITLED TO NOTICE LATER.**

#### **XII. EMPLOYER’S RESPONSE TO THE ILLEGAL HARASSMENT CHARGE**

- A. Employer Responsibility**
- B. Appropriate Employer Responses**

**C. What Is *Not* An Appropriate Response**

**XIII. NO RETALIATION PERMITTED**

**A. Federal Law**

**XIV. REVIEW OF ANTI-HARASSMENT/ANTI-DISCRIMINATION POLICY**



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- **Masters degree in Labor and Human Resources: The Ohio State University**
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- **Scott's "Human Resource Professional's Guide To Federal Employment & Labor Law" on audio tape is a favorite among HR Professional's and won the 2000 Human Resource Association of Central Ohio's Linda Kerns Award for Outstanding Creativity in the Field of Human Resource Management.**