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Preventing Sexual Harassment in the Workplace

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Learning Outcomes

After this course, participants will be able to:

- Define sexual harassment
- Identify behaviors that might be considered sexual harassment
- Explain precautions employers can take to exercise due care to prevent and correct sexual harassment
- Define employees' rights and role regarding sexual harassment

What is Harassment?

What Is Harassment?

- Harassment, and more specifically, sexual harassment, is illegal
- Sexual harassment is based upon sex or of a sexual nature; gender harassment; and harassment based on pregnancy, childbirth, or related medical conditions
- Includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature

continued

What Is Harassment?

- Submission to such conduct is made either explicitly or implicitly as a term or condition of an individual's employment, or
- Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual, or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

continued

“Unwelcome” is the critical word

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What is Included?

- Dirty jokes and lewd language
- Sexual content posted on walls and computer screens
- Quid pro quo sexual harassment
- Sexual favoritism
- Leering, suggestive looks
- Inappropriate touching, unwelcome physical proximity, or blocking or impeding someone's movement
- Denied promotions or pay raises because of gender or sexual orientation
- Unwelcome phone calls, emails and text messaging

What is Included?

- Unwanted touching
- Unwanted flirting or asking a co-worker for dates that are repeatedly turned down
- Sending or posting emails or pictures of a sexual or other harassing nature
- Displaying objects, pictures, or posters that are sexually suggestive
- Playing music that is sexually-suggestive
- Displaying sexually-suggestive objects or pictures that are unwelcome
- Making repeated and unwanted sexual advances to a co-worker

Impact of Harassment

- Decreased job satisfaction
- Lower organizational commitment
- Withdrawing from work,
- Ill physical and mental health
- PTSD
- Work disruption, even if not directly impacted
- Financial cost to employers

(National Council for Research on Women, 2014)

Title VII of the Civil Rights Act of 1964

- Federal law that prohibits employers from discriminating against employees on the basis of sex, race, color, national origin, and religion
- “It shall be an unlawful employment practice for an employer ... to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.”

continued

Title VII of the Civil Rights Act of 1964

- It shall be an unlawful employment practice for an employer -
 - to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
 - to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

continued

Title VII of the Civil Rights Act of 1964

- Forbids discrimination including
 - Hiring and firing
 - Compensation, assignment, or classification of employees
 - Transfer, promotion, layoff, or recall
 - Job advertisements
 - Recruitment
 - Testing
 - Use of company facilities
 - Training and apprenticeship programs
 - Fringe benefits
 - Pay, retirement plans, and disability leave
 - Other terms and conditions of employment

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Title VII Key Points

- Title VII is a federal law that was enacted in 1964 to curb incidences of workplace discrimination in the United States
- Classes protected under Title VII are race, color, religion, sex (including pregnancy), national origin, and genetic information
- Employers by Title VII are those with business ventures that employ at least 15 employees in a year, regardless whether government- or private-owned

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Title VII Key Points

- Title VII protects any worker and applicant who is working or applying for a Title VII-covered employer in any area in which the United States has a jurisdiction over
- The United States Equal Employment Opportunity Commission (EEOC) is the federal agency that is mandated to enforce federal laws that make it illegal to discriminate against employees and applicants, like Title VII

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Sexual Harassment in Detail

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Background

- According to a 2016 study by the EEOC, around 75% of people who experience workplace harassment fail to bring it up with a manager, supervisor, or union representative
- In today's society, sexual harassment often takes on more subtle forms

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Causes of Sexual Harassment

- Complex involving socialization, politics, and psychology
- Work relationships can be intimate and intense
- Employees depend on each other for teamwork
- Supervisors and employers can grow accustomed to the power they have over their employees
- Personal problems can also be a factor

continued

Two Types of Sexual Harassment

- Quid pro quo harassment
 - A supervisor's request for sexual favors or other sexual conduct results in a tangible job action
- Hostile work environment
 - Employee is subjected to unwelcome physical or verbal conduct of a sexual nature that is so severe or pervasive as to alter the employee's working conditions or create an abuse work environment

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Types of Inappropriate Conduct

- Clear examples
 - Unwanted kissing
 - Touching of breasts or genitals
 - Butt slapping
 - Rape
 - Sexual assault
 - Requests for sexual favors
 - Sexually explicit comments
 - Uninvited massages
 - Sexually suggestive gestures including catcalls, ogling, or cornering someone in a tight space

continued

Types of Inappropriate Conduct

- Or anything that happened often enough or is severe enough to impact work
 - Repeated compliments of an employee's appearance
 - Commenting on the attractiveness of others in front of an employee
 - Discussing one's sex life in front of an employee
 - Asking an employee about his or her sex life
 - Circulating nude photos in the workplace
 - Making sexual jokes
 - Sending sexually suggestive text messages or emails
 - Leaving unwanted gifts of a sexual or romantic nature
 - Spreading sexual rumors about an employee
 - Repeated hugs or other unwanted touching

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Sexual Harassment by a Supervisor

- Many times, it can be subtle and build up over a period of time
 - Inappropriately leaning too close to talk to you at your desk
 - Unwelcome touching
 - Inappropriate language, dirty jokes
 - Consistently asking what you do with your evening and weekend time
 - Phoning or emailing you at home or off-hours
 - Quid pro quo, expecting something in exchange for a promotion or pay raise (leave)
 - Asking you out on dates

continued

Unwanted Sexual Advances

- Pressure to go on dates or "hang out" outside of work
- A pattern of come-ons and flirting
- Comments about your looks or your body
- Sexually suggestive language
- Flowers, cards and gifts
- Promises of job perks
- Fondling, hugging or other inappropriate touching
- Advances outside of the workplace

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Sexual Assault

- Kissing you against your will
- Lifting your skirt or shirt, or unbuttoning your blouse
- Groping your breasts or backside
- Placing hands down the front or back of your pants
- Pressing against you or pulling you onto their lap
- Holding your arms or blocking your escape
- Disrobing or exposure by the harasser
- Forcing or coercing you to perform or view any sex act

continued

Inappropriate Touching

- Groping or grabbing
- Caressing or "massages"
- Brushing against your body
- Hugging
- Kisses (on the lips, cheek or anywhere)
- Sitting or standing uncomfortably close to you
- Hovering over you while you are trying to work

continued

Sexual Pictures

- Centerfolds or nude pictures
- "Cheesecake" calendars or posters
- Pornographic depictions (photos or cartoons)
- Sexual pictures sent to your work computer or phone
- Other offensive images of a sexual nature

Pornography

- Computer pornography in any form may be sexual harassment
 - Emailed images or email attachments
 - "Sexting" of nude or pornographic images to your cellphone
 - Pornography displayed on a co-worker's computer or screensaver
 - Verbal descriptions of pornographic content
 - Two or more co-workers gathered around a computer watching porn

Sexual Jokes

- Sexual jokes that may be considered harassment can include:
 - Graphic descriptions of sex acts
 - Jokes containing sexual language and profanity
 - Sexual innuendo aimed at you
 - Sex jokes told loudly for all to hear
 - Sexual jokes or cartoons emailed to your work computer

For Example ...



continued

Hostile Work Environment

The conduct must be offensive not only to the employee, but also to a reasonable person in the same circumstances

continued

Hostile Work Environment

- Some behaviors may be more subtle
 - Dirty jokes and lewd language
 - Sexually explicit emails, pictures or pornography
 - Sexual content posted on walls and computer screens
 - Leering, suggestive looks
 - Sexual comments or lewd behavior
 - Inappropriate touching, unwelcome physical proximity
 - Denied promotions because of your sex or sexual orientation
 - Denied or reduced pay raises
 - Unwelcome phone calls, emails and text messages

continued

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Obscene Gestures

- Hip thrusts and other sexually suggestive actions
- Hand gestures that simulate sex acts
- Obscene gestures with the lips or tongue
- Simulating groping or touching
- Use of the middle finger in a threatening or sexual way
- Body language used to corner, trap or threaten
- Leering, ogling and suggestive facial expressions

continued

Foul Language

- Profanity and vulgar language
- Euphemisms such as "boink" or "screw"
- Demeaning terms like "bitch" or "slut" or "MILF"
- Crude references to private anatomy
- Description of sexual acts
- Comments about your body
- Sexual come-ons

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Online Harassment

- This may include communications with sexual come-ons, stalking behavior, pornographic images, sexual jokes or explicit language:
 - Email or instant messaging (IM)
 - Phone calls and voicemail messages
 - Text messages to your cellphone or Blackberry
 - "Sexting" of nude or pornographic pictures
 - Post-it notes or computer printouts with sexual messages
 - Other work-related communications
 - Postings on Facebook and social media

continued

Invasion of Privacy

- Four types of invasion of privacy:
 - Unauthorized intrusion into private matters
 - Unauthorized public disclosure of private facts
 - Misappropriating a person's name or likeness
 - Portraying a person in a false light

continued

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Invasion of Privacy

- Physically invading your personal space, such as at your workstation or desk
- Recording you in the restroom, dressing room or other private area
- Taking your picture without your knowledge and releasing it on the Internet via social media
- Threatening to release confidential information or video/photos of a sexual relationship
- Blackmailing you to conduct sexual acts or engage in a sexual relationship

continued

Let's Practice



continued

Other Facts About Sexual Harassment

- Sexist comments and actions can also be harassment
- Sexual harassment can be from customers or clients
- Sexual harassment knows no gender

Tips for Victims of Harassment

- Send a letter or email to a manager so your complaint of sexual harassment is in writing
- Make it clear to your harasser that the offensive conduct is unwelcome
- Keep a journal with dates and details
- Do not engage in behavior that could be used against you
- Do not drink alcohol with co-workers or managers
- Obtain a copy of sexual harassment policies
- Make a list of all potential witnesses
- Seek help if you are emotional distress, depression, anxiety or other psychological symptoms

LGBT in the Workplace

A Unique Sexual Harassment Scenario

Anyone Can Be Harassed

- Sexual harassment is a gender-neutral offense
- People of the same sex can sexually harass each other
- The line between harassment based on sex and harassment based on sexual orientation becomes blurred when gender-based stereotypes are at play

LGBT in the Workplace

- Protected from unwelcome sexual advances in their place of work
- State laws are being introduced that not only protect lesbian, gay, bisexual and transgender workers, but which also promise repercussions on violations

Incidence

- 15-43% of gay/transgender workers have experienced some form of discrimination on the job
- 8-17% of gay/transgender workers report being passed over for a job or fired
- 10-28% received a negative performance evaluation
- 7-41% were verbally or physically abused or vandalized
- 12-30% of straight workers witnessed discrimination
- 90% of transgender workers report some form of harassment or mistreatment on the job

Incidence

- 47% of transgender workers have experienced an adverse job outcome
 - 44% were passed over for a job
 - 23% were denied a promotion
 - 26% were fired

Incidence

- 20% have experienced discrimination when applying for a job
- LGBTQ people of color (32%) are more likely to experience this type of discrimination than white LGBTQ people (13%)
- 22% have not been equally paid
- 80% of the transgender population employed in 2015 experienced harassment or mistreatment on the job, or took steps to avoid it
- Nearly two-thirds (62%) of LGBT employees heard lesbian and gay jokes at work, while 43% heard bisexual jokes and 40% heard transgender jokes

“I Don’t Feel Welcome”

- LGBT people often cover or downplay aspects of their authentic selves in order to avoid discrimination
- Often conceal information about sexual orientation or gender identity to avoid bias or discrimination
- Talented employees leave workplaces where they don’t feel welcome

The Stories Behind the Numbers



The Stories Behind the Numbers



Economic Consequences

- Discrimination directly causes job instability and high turnover, resulting in greater unemployment and poverty rates for gay and transgender people, as well as the wage gap between gay and straight workers
- Gay men earn 10-32% less than similarly qualified heterosexual males
- Transgender individuals are twice as likely to be unemployed and are four times as likely to live in poverty
- Discrimination diminishes productivity, job satisfaction, and the mental and physical health of all employees

continued

Legal Rights

- Incidents that can trigger an investigation include:
 - Using intimidation tactics that create a hostile work environment
 - Harassing workers on being too masculine or feminine
 - Retaliation for asserting legal rights in the workplace
 - Hiring, firing, demoting or laying off a worker because of his/her sexual orientation
 - Eliminating benefits based on sex
 - Failure to pay LGBT workers because of their sexual orientation

continued

Applicable Law

- Transgender employees are protected from discrimination and harassment under most state laws as well as under various municipal laws that protect gender identity and gender expression

continued

Applicable Law

- Workplace discrimination and harassment includes:
 - Hiring, firing, layoff and demotion decisions based on sexual orientation
 - Intimidation and other actions that constitute a hostile work environment
 - Harassment for acting "unmasculine" or "unfeminine"
 - Retaliation for asserting your legal rights
 - Reducing or refusing benefits based on sexual orientation
 - Failing to pay equal compensation due to sexual orientation

Employer Requirements

Employer Requirements

- Maintain a workplace that is free of sexual harassment
- If a court finds that the employer has violated Title VII, the court may order the employer to pay back-pay, compensatory damages and punitive damages to the employee
- Title VII includes language stating “and any agent of such a person”
 - Some courts interpret this as providing for individual liability of supervisors

Employer Obligations

- Take all reasonable steps to prevent discrimination and harassment from occurring
- Develop and implement a sexual harassment prevention policy with a procedure including provisions to:
 - Fully inform the complainant of his/her rights
 - Fully and effectively investigate
 - Take prompt and effective corrective action if the harassment allegations are proven

Employer Requirements

- Forbid sexual harassment
- Define the prohibited conduct
- Provide examples of prohibited harassment
- Include a catch-all sentence
- Prohibit harassment based on characteristics other than sex
- Apply the policy to all employees, regardless of position or title
- Prohibit retaliation
- Outline the investigation procedure
- Summarize possible consequences
- Identify a variety of people to whom complaints can be directed

Policy

- Define sexual harassment
- State in no uncertain terms that you will not tolerate sexual harassment
- State that you will discipline or fire any wrongdoers
- Set out a clear procedure for filing sexual harassment complaints
- State that you will investigate fully any complaint that you receive, and
- State that you will not tolerate retaliation against anyone who complains about sexual harassment.

continued

Employee Training

- Teach employees what sexual harassment is, explain that employees have a right to a workplace free of sexual harassment, review your complaint procedure, and encourage employees to use it
 - Managers/supervisors should be educated about sexual harassment and explain how to deal with complaints

continued

Prevention/Response Checklist

- Disseminate and Implement the Policy
- Distribute the policy to every employee
- Employees must acknowledge policy
- Post the policy
- Investigate and Resolve Sexual Harassment Complaints Promptly, Thoroughly, and Impartially

continued

Obligations After a Complaint

- Map out a plan for investigation
- Talk with the employee who is complaining
- Inform the employee to report any retaliation
- Ask the employee to tell the whole story
- Tell the person accused that a complaint has been filed
- Assure the person accused that a fair and just investigation
- Interview any potential witnesses in the same manner

Obligations After a Complaint

- Interview the person who is accused of sexual harassment
- Review all information received and attempt to reach a decision
- Make a decision
- Recognize that no one is perfect
- Assure that no further incidents occur by following up and documenting
- Remember, it is possible that the employee has been wrongly accused

Guidelines

- Employer Liability
 - Employers are generally liable for harassment by their supervisors or agents
 - Harassers, including both supervisory and non-supervisory personnel, may be held personally liable for harassing an employee or coworker or for aiding and abetting harassment
 - All reasonable steps to prevent harassment from occurring
 - If an employer knows or could have known that a non-employee has sexually harassed an employee, intern, applicant, or person providing services for the employer, the employer may be held liable

What if it Happens to Me?

- Object
- Document
- Identify witnesses
- Report the harassment
- Call Police if criminal in nature
- Report the incident to governmental authorities as needed

continued

Remember ...

- Persons of any gender can be victims of sexual harassment.
- Sexual harassment is not limited to any level of employment or education
- Charges of sexual harassment can be filed with your state as well as the employer. Know your state laws.
- Know your company policies
- You are protected from retaliation
 - This includes whistleblower protection
- Remember that training and education are the best prevention
- Ignorance of law excuses no one

continued

Case Studies

continued

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Consider this ...

- Is this situation problematic?
 - Why or Why not?
- What are the primary issues?
- How would you reconcile this situation if the employee came to you?
- What additional information would you require to assess the situation?
- Put yourself in the position of the supervisor.
 - What might happen if you do nothing?
 - What should you do next?

continued

“Oh, That’s Just Bob.”



continued

continued[®]

Culture-Based Miscommunication



continued[®]

Office Party



continued[®]

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An Employee Scorned?



continued

A Simple Litmus Test

- Would you do it (or say it) in front of your spouse?
- Your grandparent?
- Would you want your child to say it (or have it said to him/her)?
- Would you mind having it published online or in the news?

**IF YOU ARE ENGAGING IN HARASSMENT, STOP!
IF YOU ARE BEING HARASSED, REPORT IT.**

continued

Rules to Live By

- Respect the rights of your co-workers
- Practice 24 hour a day professionalism when it comes to the workplace and your co-workers
- Understand that "meaning no harm" doesn't save you
- Don't be someone who is a toucher/hugger, or someone who tells sexual or racial jokes, or makes sexual or racial comments

