

# Harassment in the Workplace



# Today's Agenda

- The Reality
- The Impacts
- The Legal Framework
- Your Policy
- Becoming Aware
- Taking Action



# Becoming Aware: The Warning Signs

*Perception is Reality?*




# The Reality

- Times have changed
- What once was OK, may not be today
- Your workplace has changed
- Values, behaviors have moved
- The “line” has blurred
- There’s lots of poor behavior





# The Reality

- Courtesy and respect are often lacking
- Nothing good comes from harassment, discrimination, retaliation
- The price for engaging in poor behavior is high
- Don't think that there's none in your workplace



# The Impacts

- Impact on family
- Lower productivity and morale
- Turnover increased
- High legal costs and fines
- Higher cost of coverage
- Poor public image
- Tarnished personal reputation
- Personal and financial problems
- Stress escalates
- Health costs: Personal and economic
- Employment status



# The Framework

## *Federal and State Law*

- Both Federal and State laws make discrimination in the workplace unlawful.
  - Title VII of the federal Civil Rights Act
    - [42 U.S.C. § 2003-2(a)(1)]
  - NH RSA 354-A:7



# The Framework

## *Federal and State Law*

- Workplace harassment may constitute “unlawful discrimination” under these laws.
- Legal standards governing harassment are not intended to impose a general conduct code.





# The Framework

*... It's the Law!*

Harassment constitutes a form of discrimination. Discrimination in the workplace is illegal when it involves:

- Age
- Creed
- Color
- Marital status
- Race
- Familial status
- Physical or mental disability
- National origin
- Sexual orientation (in NH)
- Gender



# The Framework

## *Your Policy:*

- Workplace harassment, based on factors other than those set forth in law, may not constitute “illegal, discriminatory” harassment, but may still violate employer personnel policies and practices.

\*refer to your policy



# The Framework

*The usual legal definition of sexual harassment:  
Unwelcome sexual advances, requests for sexual favors, and other verbal or physical contact of a sexual nature constitute sexual harassment when:*

- 1) **Submitting to or rejecting this conduct:**
  - a) explicitly or implicitly affects an individual's employment; or
  - b) is used as the basis for employment decisions affecting the individual who submits to or rejects such conduct; or . . .
- 2) **Such conduct has the purpose or effect of unreasonably interfering with individual work performance or creating an intimidating, hostile or offensive working environment.**



# The Framework

*Hostile Workplace* —

Examples of things that make a workplace hostile:

Unwelcomed Touching

Space Invasion

Bullying

Innuendo / Rumor

Retaliation

Pervasive Culture





# Becoming Aware: The Warning Signs

## Recognizing Harassment

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- Direct sexual advances
- Touching, patting, pinching
- Sexually explicit gestures
- Ogling, leering and physical gestures conveying a visual meaning
- Graphic comments about an employee's body
- Sexually suggestive objects or pictures in the workplace
- Repeated dirty jokes
- Sexually degrading words used to describe an employee
- Derogatory or sexually explicit statements about an employee's actual and supposed sexual relationships
- Other sexually related behavior
- Observation



# Becoming Aware: The Warning Signs

## *When Does Conduct in the Workplace Become Harassment?*

- Frequency of Conduct
- Its Severity
  - Physical threat or humiliation vs. “merely offensive” (Is that acceptable?)
- Interference with Workers’ Performance
- Power of the Actor and Recipient
- Unintended Victim
- Location and Time:
  - Need not be just in the “workplace” or during working hours



# Becoming Aware Retaliation

The law very clearly prohibits an employer, a supervisor, co-employees (and others) from taking adverse action against an employee who reports, complains of, or assists in the investigation of a complaint of harassment.



# Becoming Aware

## Retaliation

Retaliation means any form of conduct that would dissuade a reasonable person from reporting or complaining of harassment or assisting in its investigation.

Retaliation is a separate offense under the law and may exist even if an underlying charge of harassment is found not to exist.

### *The Bottom Line:*

Do not retaliate in any way!





# Becoming Aware

Retaliation Looks Like:

Freeze-Out

Re-assignment

Bullying

Inflated Personnel File

Rumor / Innuendo

Threats

Physical Violence



# Becoming Aware: The Warning Signs

## *Common Traits of Harassers and Harassment:*

- Driven by individual's need to *dominate or control* another person. Should not be viewed as aberrant sexual behavior but rather, as the use of *sexuality as a weapon or means of control*.
- Harassers are more prone to acting out when they are *feeling under stress or at risk*.



# Becoming Aware: The Warning Signs

## *Common Traits of Harassers and Harassment:*

- Harassers often *pick targets*, choosing *one victim* to badger and harass; often constitutes *predatory conduct*.
- “*Pack Behavior*” exists when *employees create an intimidating, hostile, or offensive work environment* because *the behavior is accepted and encouraged* by the group culture. This environment will have other dominance/control issues among workers that usually need to be addressed.



# Becoming Aware

## *Why be concerned?*

An employee who engages in sexual harassment, or a supervisor who fails to prevent or remedy harassment by, or of, a supervised employee, or anyone who participates in retaliation, may face adverse employment consequences.

Employees may be disciplined and could even be fired for engaging in harassment.







# Becoming Aware

*Why be concerned?*

## Non-Employer Liability

Harassers may become personally liable for monetary damages under federal law, state law, or under “tort” law (just as a negligent driver can be held accountable for damages).

A supervisor who fails to prevent or correct sexual harassment may face personal liability under any of the foregoing theories.

If the conduct is serious enough, it could involve charges under criminal laws.



# Recap

- The Reality
- The Impacts
- The Legal Framework
- Your Policy
- Becoming Aware
- Taking Action





# Taking Action

- Courtesy
- Respect
- Out of harm's way

