Harassment in the Workplace

* Everyone interprets events based upon their own background, experiences, and sense of personal space and privacy.
* You cannot be sure that someone will interpret your questionable behavior as innocent. Remember the reasonable person standard – other people will get to decide.
* Current events will be interpreted in light of subsequent events – very important for supervisors.

Everyone wants to enjoy his/her job.

Everyone wants a safe and comfortable place to work.

Everyone has unique personalities.

Everyone likes things done a certain way.

Everyone has a different perception of what are appropriate boundaries

When you mix different personalities with different way of doing things with different ideas of what is acceptable, conflict can arise.

When conflict is not resolved, it can turn into harassment.

Workers Compensation Act

* Statutes which establish liability of employers for injuries to workers while on the job or illness caused by the job, and requirements for insurance to protect workers.
* Duties of employers, workers and supervisors:
  + Ensure or protect health and safety
  + Includes workplace bullying and harassment
* Occupational Health and Safety (OHS) policies on workplace bullying and harassment.
* Harassment is usually an issue of one person’s abuse of power over another
* An Employer/Supervisor is required to provide a safe and hostile-free work environment in compliance with applicable law
* Harassment is a form of discrimination related to one or more legally protected personal characteristics of an employee

Victims of harassment in the workplace do not only have to be those who are harassed. Rather, anyone who is affected by the inappropriate behavior may claim workplace harassment.

If you witness a coworker being harassed, that can be its own form of harassment in the workplace as that person is made to feel uncomfortable by the harassing event.

Workplace harassment covers a wide range of behaviors that can be subtle to overt and aggressive.

Harassment comes in many forms from uncomfortable humor to outright bullying. The major forms of harassment include:

1. Discriminatory
2. Personal
3. Physical
4. Power
5. Psychological
6. Online
7. Retaliatory
8. Sexual
9. Quid Pro Quo
10. Third Party
11. Verbal
12. Hazing

Two main types of Harassment:

* Quid Pro Quo: “This for That” or “Something for Something” Occurs when an employment decision or condition is based upon whether an employee is willing to grant favors. Usually from a superior but can be any staff member.
* Hostile Work Environment: Unwelcome conduct and severe enough to create an intimidating, offensive, abusive or disruptive work environment

**Bullying:** Bullying may occur when an employee is exposed repeatedly and over time to negative actions on the part of one or more other employees. Bullying behavior is meant to hurt another person and is carried out by someone who is seeking power or control over another person.

**Intimidation:**  Intimidation is intentional behavior by an employee or group of employees that places another employee or group of employees in fear of harm from person or property. Intimidation can be manifested emotionally or physically, either directly or indirectly, and by use of social media.

**Harassment:**Harassment is the intentional behavior by an employee or group of employees that is disturbing or threatening to another employee or group of employees.

Intentional behaviors that characterize harassment include, but are not limited to stalking, hazing, social exclusion, name calling, unwanted physical contact and unwelcome verbal or written comments, photographs and graphics.

Harassment may be related, but not limited to, race, religious orientation, sexual orientation, cultural background, economic status, size or personal appearance. Harassing behaviors can be direct or indirect and by use of social media.

Bullying – trying to feel powerful

Intimidation – attempt to dissuade certain behavior or actions

Harassment – threatening behavior or actions

Workplace harassment can be committed by:

* A new policy
* A manager or supervisor
* A coworker
* A group of managers
* A group of coworkers
* A customer
* A member of the public commenting on social media

Examples of a hostile work environment:

Leaving negative comments about a coworker on social media where that person can see them.

Leaving negative comments about a coworker on company social media

Leaving papers or pamphlets in breakrooms or on people’s desks with negative or offensive statements about a worker.

Leaving offensive messages on phone messages.

Sending offensive comments or content through emails.

Talking behind a person’s back.

Verbally attacking a person

Throwing something at a person

Physically assaulting a person

Threatening a person with more work, termination or other work action.

Sabotaging someone’s work

Excluding coworkers from activities or social discussions

Persistent criticisms, particularly about petty issues that are insignificant

Performing gestures toward a person

Vulgar language

Racial or cultural humor

Gossiping, spreading false rumors

Uninvited and unwanted touching

Physical acts such as slapping, punching, kicking

Verbal, written, or physical threats

Destroying property

Vandalizing property

Name calling

Cyber-bullying

Using weapons

Theft

Robbery

Stalking

Unsolicited Advances

Unsolicited Statements

How Do You Know?

Are you offended?

Do you feel uncomfortable?

Do you feel threatened?

Are you humiliated?

* Was the behavior in question unwelcome?
* Did the incidents occur multiple times over a time period?
* Did the incidents occur against someone whose class is protected?
* Was the incident a hostile one?

So is it harassment?

* Would a *reasonable person* perceive this as sexual harassment or a hostile work environment?
* This is the standard used by the courts to determine whether or not unlawful conduct as occurred

From the company’s *standpoint*, it is harassment if you *feel* it was harassment.

Liability

* The Organization/Employer
  + The organization can be held liable for the conduct of its supervisors even if it does not know that harassment is taking place. The organization is responsible for proving a safe work environment
  + The organization is also responsible for the conduct of non-supervisors if they know or should have known that the harassment is taking place
* Supervisors
  + The supervisor/manager can be held personally liable for their own harassment of co-workers or employees that they supervise
* Employees
  + The offending employee(s) can be held individually liable for harassing actions towards a co-worker
* Harassing conduct may also result in claims for:
  + Assault and battery
  + Intentional infliction of emotional distress
  + Constructive termination
  + Defamation

The Fair Employment and Housing Act requires that employers take “all reasonable steps necessary to prevent discrimination and harassment from occurring. An employer is responsible for the harassment in these cases:

* Harassment by a supervisor that ends in termination, failure to promote, failure to hire, or loss of wages, the employer is automatically liable
* When a supervisor makes requests to the employee for sexual favors in exchange for work benefits, the employer liable. This is because the supervisor acts on behalf of the employer when managing employees
* When non-supervisory employees that is under the control of the employer (co-workers, customers, contractors, etc.) are the harassers AND the employer knew (or should have known) of the harassment but did not take any action to stop it from happening again

The employer is not liable when:

* The employer knows about the harassment by a supervisor and can provide proof that 1) it made reasonable efforts to stop the harassment; and 2) the employee made unreasonable choices not to take advantage of preventive or corrective opportunities that the employer has provided

The company considers any event to be harassment if the subjective party considers it harassment.

What to do?

* If you are the target of, or witness to, bullying and harassment:
  + Tell the bully what behavior was inappropriate
  + Make it clear the behavior is unwanted and unacceptable
  + Stay calm
  + Don’t retaliate
  + Report it

What to do

* You are encouraged to tell the individual causing the harassment that his or her behavior is offensive and must stop.
* If the behavior does not stop immediately or you are uncomfortable telling the individual to stop, you must immediately report the incident to your supervisor, the Human Resources department, or another appropriate supervisor.
* The Human Resources department will investigate all reports of harassment. Investigations will be kept confidential, consistent with the organization’s need to investigate.
* No retaliation will be tolerated against any employee who makes a good faith complaint of harassment to the company.

What Not to Do

* Defend the situation: “that’s just the way Charlie is; we just tolerate him.” “perhaps you are overacting to this.”
* Why questions: “why didn’t you do something about this before?” why questions are often considered judgmental.
* Multiple choice questions: “did she touch you on the arm, the shoulder, or the face?” instead ask “where did the person touch you?” or “can you be more specific?”
* Leading questions: “I think we can handle this informally, don’t you?”
* Minimize the person’s experience

Indirect forms of workplace harassment that administration should be aware of include:

* Increased absenteeism
* Increased staff turnover
* Poor employee satisfaction surveys
* Low productivity
* Increased customer complaints
* Issues with vendors, loss of vendor contracts
* Low workplace morale
* Staff withdrawn, isolated, not participating in company activities

It won’t stop until you say something.

Reasons people don’t speak out is due to fear:

* Being overlooked for advancement
* Becoming part of the Rumor Mill
* Being wrong
* Retaliation
* Not being believed
* Ostracized by coworkers

Or being labeled:

* trouble maker
* feminist
* overly sensitive
* hypersensitive male
* Effeminate male
* Mentally unstable

Discrimination

* A supervisor or person in authority making employment decisions related to hiring, firing, transferring, promoting, demoting, benefits, compensation, and other terms and conditions of employment, because of an employee’s protected class status.
* An employee who harasses another employee because of their protected class status, or sexually harasses another employee, while away from the workplace and outside of working hours, may be subject to the provisions of this policy if that conduct has a negative impact on the environment at work and/or working relationships and/or the employer’s business.

Examples of discrimination include:

* A supervisor refusing to hire a well qualified candidate because she is pregnant.
* Upon “discovering” an employee’s age, a supervisor transfers a well qualified 45 year old employee from the “teen unit” to the “senior citizen unit.”

The company takes all complaints of discrimination, bullying, intimidation, and harassment extremely seriously.

All employees are encouraged to report any forms to a manager or administration.

Harassment doesn’t have to happen to you – if you see something, say something.

The company considers someone witnessing harassment, bullying, intimidation, or discrimination of a coworker and NOT saying or doing anything as complicit with the negative behavior and will be subject to disciplinary action of a level appropriate to the negative behavior witnessed.

* Retaliating against employees who file complaints, participate in investigations, or report observing discrimination, workplace harassment or sexual harassment is prohibited.
* If an employee believes they have been retaliated against, the employee should report the retaliatory behavior to their supervisor, another manager, or the agency Human Resource section, Executive Director or chair.
* Complaints of retaliation will be investigated promptly.

Comments considered harassing:

* “How often do you have sex?”
* “Why don’t you meet me after work to discuss this problem?”
* “Wow, you look great! Did you lose weight?”
* “We were just treating her like one of the guys!”
* “How about if I call you at home tonight?”
* “I usually take all the people who work on my team out for a beer on Friday nights; you should join us.”
* “Did you hear the joke about…?”

What isn’t harassment?

* Expressing differences of opinion
* Offering constructive feedback
* Making a legitimate complaint about another worker’s conduct
* Reasonable management action, including decisions about:
  + Job duties and work to be performed
  + Workloads and deadlines
  + Layoffs, transfers, promotions, and reorganizations
  + Work instruction, supervision, or feedback
  + Work evaluation
  + Performance management
  + Discipline, suspensions, or terminations

How the company encourages employees to report

* By making it safe for an employee to speak up
* By setting an example of how to behave
* By being receptive to employee concerns
* By reminding employees of policies related to harassment
* By reminding employees of the various ways they can raise concerns
* By reminding employees of the protections against retaliation
* By educating employees about harassment in the workplace as a measure of prevention

Retaliation

* Just like harassment and discrimination, retaliation in response to a complaint is against state and federal law.
* Retaliation is conduct by the   
  Employer that would discourage a reasonable person from reporting harassment.
* Retaliation against an employee after a complaint or threatening to retaliate if he or she complains or participates in an investigation is *ILLEGAL.*
* Once a potential harassment situation is raised, all persons who have knowledge are responsible for ensuring an investigation is undertaken.

Employer Obligations

* Develop procedures for dealing with / investigating incidents or complaints
* Prevent or minimize bullying and harassment
* Draft a workplace policy statement
* Develop reporting procedures
* Train workers and supervisors

Employee Obligations

* Not reporting will only make things worse
* Management can’t do anything if they don’t know anything
* Report if you observe or experience bullying or harassment
* Do not engage in workplace bullying and harassment
* Apply and comply with workplace   
  policies and procedures on bullying   
  and harassment

Your supervisor should

* Not engage in bullying, harassment, or retaliation
* Apply and comply with workplace policies and procedures on bullying and harassment
* Be available to hear complaints
* Listen
* Resolve complaints
* Consider implementation of new policies that might prevent future incidents

What can everyone do?

* Document details of what you see to share in an investigation
  + Dates
  + Details
  + Witnesses
* Offer support
* EAP programs
* Don’t Gossip about the incident
* Tell the bully to stop
* Intervene where appropriate

Reporting

* Report to supervisor.
* If the employer or supervisor is the alleged bully or source of harassment, contact:
  + Office of the Labor Commissioner   
    555 E. Washington Avenue, Suite 4100   
    Las Vegas, NV 89101
  + Phone: (702) 486-2650   
    Fax: (702) 486-2660   
    Email: mail1@LaborCommissioner.com

Everybody wants to enjoy going to their job and feeling fulfilled by a good day’s work.

A workplace free of harassment, bullying, intimidation, and discrimination is everyone’s responsibility.

Speak up, and if you see something say something.