Preventing Harassment and Discrimination Training for Employees

Key Concept #1 – Discrimination and Harassment in the Workplace

Discrimination and harassment in the workplace are strictly prohibited by a variety of federal, state and local laws, including: Title VII of the Civil Rights Act of 1964 & 1991; the Age Discrimination Act of 1967; the Americans with Disabilities Act of 1990; and the Pregnancy Discrimination Act of 1978.

It is important to recognize that the various types of harassment described in this training module are a violation of state and federal laws. As an employee, you must comply with these laws while you are at work. Your behaviors, words and statements cannot be discriminatory or harassing in nature.

In addition to being against the law, harassment and discrimination can result in costly lawsuits. They can also negatively affect an organization’s morale, productivity and reputation in the community.

The Equal Employment Opportunity Commission (EEOC) is the federal agency, which issues rules and adjudicates cases that cannot be successfully settled locally.

Key Concept #2 – Prohibited Conduct

Prohibited conduct includes unwelcome verbal, nonverbal, physical behaviors, or written matter that ridicules, denigrates, threatens or shows hostility to an individual or group, regardless of intent. Conduct is unwelcome if the employee did not solicit it and if the employee regards the conduct as undesirable or offensive.

- **Verbal**: Includes suggestive comments, insults, threats, jokes, sexual propositions or other forms of verbal communication related to another person's gender, age, race, sexual orientation, or other personal traits.

- **Nonverbal**: Includes suggestive or insulting gestures, staring, leering, mimicking, ridiculing and similar nonverbal behaviors.

- **Physical**: Includes suggestive touching, pinching, brushing up against, grabbing, inappropriate body contact and invading another individual’s personal space by getting extremely close.
• **Written:** Includes explicit graffiti, drawings, posters, graphically suggestive pictures, and the like. Written communication can take the form of letters, posters, art, e-mails, IMs, text messages, calendars, Social Networking communications and other written or graphic transmissions.

• **Social Media:** Includes explicit language, pictures and declarations of derogatory and defamatory comments. This may take the form of strong and disrespectful comments regarding matters that appear to be private.

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**Key Concept #3 – Protected Classes**

Harassment and discrimination are illegal in the workplace when targeted toward race, color, religion, national origin, age, disability, gender, marital status, sex, sexual orientation, pregnancy, physical/behavioral characteristics, or genetic information.

Race, color, religion, age, disability, gender, marital status, sex, sexual orientation and physical/behavioral characteristics are relatively straightforward. Some of the lesser-known forms of discrimination include:

**National Origin Discrimination:** This form of harassment and discrimination is usually not highlighted, but is an area that is enforced by the EEOC. Harassment and discrimination based on national origin is prohibited in all hiring, promotion and job placement decisions. It encompasses language accent discrimination, language fluency requirements and English-only rules without business purpose.

**Pregnancy Discrimination:** The Pregnancy Discrimination Act (PDA) amended Title VII of the Civil Rights Act of 1964 to expressly cover pregnancy discrimination. The PDA provides that discrimination “on the basis of pregnancy, childbirth, or related medical conditions” constitutes unlawful sex discrimination.

The PDA prohibits discrimination in all aspects of employment, including hiring, firing, promotion, pay, and other employment benefits. It not only prohibits discriminatory policies that limit or preclude women from performing specific jobs simply because they are fertile or pregnant but also prohibits actions or policies that disparately impact women because they are pregnant or able to become pregnant.

**Genetic Information Discrimination:** The Genetic Information Nondiscrimination Act of 2008 (GINA) is a federal law that protects Americans from being treated unfairly because of differences in their DNA that may affect their health. The new law prevents discrimination from health insurers and employers.

The law was needed to help ease concerns about discrimination that might keep some people from getting genetic tests that could benefit their health. The law enables people
to take part in research studies without fear that their DNA information might be used against them in health insurance or the workplace.

**Key Concept #4 – Two Forms of Sexual Harassment**

Sexual harassment can take two forms:

**Quid Pro Quo**, which is a Latin phrase meaning "this in return for that." It refers to situations in which raises, promotions, better working conditions or privileges are contingent on agreeing to a sexual favor or a request made by a supervisor or a boss.

Examples of Quid Pro Quo:
- A male supervisor suggests to a female employee that her chances for a raise or a promotion would be improved if she go out on a date with him.
- A female supervisor frequently pats a male employee's butt. When he protests, she tells him he needs to lighten up if he wants a raise.

Note: In instances of quid pro quo sexual harassment, if the immediate supervisor is the harasser, the affected employee(s) is permitted to bypass that supervisor and report the incident(s) directly to higher management or to the HR Department.

**Hostile Environment** refers to behavior that might include language of a sexual nature, unwelcome sexual jokes, pictures or physical contact inflicted on one employee or a group of employees by another employee, supervisor, vendor or customer. It can also involve "gender bashing" which is not explicitly sexual in nature, but which ridicules or "puts down" employees of another gender. Hostile Environment Harassment does not have to have an economic impact on the victim. It simply results in the victim forced to work in an intolerable environment.

It should be noted that one single incident is normally not enough to constitute a Hostile Environment claim unless it is sufficiently forceful, or if it was done by someone who is in a position of authority. Normally, a pattern of abuse needs to be established after the victim complains and the offending actions occur repeatedly.

Examples of Hostile Environment:
- An employee who ridicules "feminists" or "girly men" that he works with.
- An employee who likes to talk openly about his or her sexual activities while in the presence of other employees.
Key Concept #5 - Intentions

The intentions of the perpetrator mean nothing: How the behavior is perceived or interpreted by others is the relevant determining factor of harassment. One employee's "humor" may be perceived as hurtful, demeaning, or threatening by a co-worker.

Examples:
"I was only joking" or "I was only breaking the tension" are unacceptable defenses. Likewise, it is not the role of the supervisor to interpret or decide which behaviors are OK, or excuse it with phrases such as "Joe was only kidding" or "He's harmless."

Key Concept #6 - Complaints

If an employee complains to a supervisor about alleged harassment, the supervisor is obligated to report even the mildest accusation to management and take the situation seriously. It is not the role of the supervisor to interpret or otherwise judge, minimize, or excuse the alleged behaviors.

Examples:
"Joe doesn't mean anything by his remarks – he's an older guy and that was OK in his day" or "Terri is merely trying to be funny. Loosen up" are unacceptable supervisory responses! Supervisors must take all complaints seriously and adhere to the employer's stated procedures for reporting and investigating.

Supervisors may be personally subject to fines up to $300,000.00 if they do not respond properly to complaints of sexual harassment or if they themselves are perpetrators or co-conspirators of the abuse.

Key Concept #7 – Same Gender Sexual Harassment

Sexual harassment can occur even when both parties are of the same gender. Just because those present are all male (or female) is of no consequence. In 1998, the United States Supreme Court ruled that the victim and perpetrator might indeed be of the same sex. This means that the old "locker room" concept that anything can be said because everyone is a male (or a female) is not viable.

Examples:
- John, whose daughter was raped several years ago, becomes extremely agitated and offended when Frank talks loudly about his sexual exploits.
• Mary is a practicing Christian. She finds it difficult to concentrate on work when other women in her assembly unit talk about their weekend sexual escapades.
• Technology doesn't have to be used during work hours for communications to be considered harassment. Posting a "harassing comment" from home on a coworker's blog can create a hostile work environment.

### Key Concept #8 - Retaliation

Retaliation against an employee who reports harassment is forbidden by law. Such retaliation is itself a violation of harassment policy and must be addressed by the supervisor in charge or management.

**Examples:**
- There must be no hardship, no loss of benefits or no penalty imposed on an individual who files a complaint of harassment in good faith.
- There must be no hardship, no loss of benefits or no penalty for an employee appearing as a witness in a harassment investigation or against an employee who offers testimony regarding the employee who is allegedly harassed or the alleged harasser(s).

### Key Concept #9 – Third Party Harassment

The victim of harassment may be someone other than the intended victim. This is known as "third-party harassment."

**Examples:**
- Jean works within 50 feet of Tom, who is constantly commenting on Sue's figure. Sue does not seem to be bothered by Tom's remarks in any way. Jean is offended and distracted by Tom's frequent suggestive remarks. Jean can indeed claim sexual harassment.
- Jack is deeply offended when co-workers Mike and Nancy periodically engage in fondling and kissing in the employee break room.

If the offending behaviors are recurrent and within view of another employee and if that employee is negatively affected by the behavior and unable to maintain concentration, then that employee may claim sexual harassment even though he or she is not the intended target or object of the behavior.
Key Concept #10 - Complaints

Every effort should be made to settle sexual harassment complaints quickly and adequately. The following guidelines offer a recommended path:

1. If an employee is being harassed, he or she should try to settle things with the harasser by pointing out the offensive behavior and asking that it not be repeated. In most cases, this will end the problem, but if not, the employee should report the behavior to the supervisor or to Human Resources.
2. If the harassed employee is intimidated by the harasser either physically or psychologically, he or she may take the complaint directly to the immediate supervisor, to Human Resources or to management.
3. Upon receiving a complaint of alleged harassment, the supervisor should report to Human Resources immediately.
4. An impartial investigation should be initiated as soon as possible.
5. All statements made during the investigation should be put in writing, and should include the date, approximate time, location, any witnesses and the precise nature of the incident.
6. The victim and alleged harasser should be kept apart as much as the job permits during the investigation.
7. All parties involved should be informed that untruthful statements would be subject to severe discipline.
8. Nothing in the written anti-harassment policy shall prevent the complainant or the respondent from pursuing formal legal remedies or resolution through state or federal agencies or courts.

When claims of sexual harassment cannot be satisfactorily resolved within the workplace, the victim may petition the State Human Rights Board for redress.

Key Concept #11 – Other Protected Classes besides Gender

Besides sexual harassment by gender, there are other protected classes recognized by the EEOC. These include race, color, religion, national origin, age (40 and over), disability, pregnancy, citizenship, familial status, veteran status and genetic information. The EEOC includes gender presentation and sexual orientation as protected classes under sex.

The harassment can be the result of unwelcome conduct, verbal, nonverbal, written or physical actions by a supervisor, manager, coworker or even by customers.
Key Concept #12 – The American with Disabilities Act

The Americans with Disabilities Act was passed by Congress in 1991 and specifically prohibits discrimination in the hiring of disabled persons who otherwise can do the job with some degree of accommodation. The ADA also prohibits the harassment of individuals on the job because of their disability.

Examples:
- Stan suffers from a degenerative hip disease and requires two canes in order to walk. Two of his co-workers are always hiding his canes "as a joke."
- Betty is a diabetic who needs to inject insulin. Her co-workers have recently begun calling her "the junkie" a term she considers embarrassing and degrading.

Key Concept #13 – Employment Discrimination is Illegal

The Age Discrimination in Employment Act (ADEA) was passed by Congress in 1967 to offer protections to workers who are 40 years of age or older. The law prohibits age-based discrimination in hiring employees. It also protects workers from age-related harassment and ridicule on the job.

Examples:
- Phil is 62 years old and nearly 20 years older than anyone else in his department. He often finds items like empty bottles of Geritol and Viagra in his locker, or ads from funeral chapels pasted to the door. These actions really bother Phil and are affecting his ability to work with other members of his team.
- Fifty-eight year old Marian is very interested in learning new computer skills but is concerned that her supervisor, who constantly refers to her as "granny", will recommend a younger employee for the training program.
**Key Concept #14 – Employee’s Responsibilities**

A good employee will do his or her best to proactively discourage harassment when it begins. Employees should defend their workplace from demeaning behaviors. The motives and intentions of the perpetrator mean nothing – it is the perceptions or the effects on the victim that are the determinant of what is construed as "harassment".

All employees, including staff, supervisors, and officials, are required to comply. Employees are expected to be professional and exercise good judgment in work-related relationships with everyone they come into contact in the course of business. In addition, all employees are expected to take fitting measures to prevent sexual harassment. Behavior of a harassing nature should be stopped before it becomes pervasive and rises to a violation of law.

**Examples:**

- Everyone is aware that co-worker Mike is scheduled for a vasectomy on Tuesday. At the water cooler, Betty overhears some of Mike's co-workers discussing how "funny it would be" if Mike were to find a package of condoms on his desk when he returns on Wednesday. Betty gently admonishes the group by saying "Come on folks; let's not add to Mike's stress."
- Jane learns that the guys at the office are passing around an X-rated email that started with John. Even though she didn't receive the email, Jane verbally reminds John that sending unwanted, suggestive emails can constitute sexual harassment – even to same-sex colleagues.

**Key Concept #15 – Pregnancy Discrimination**

Discrimination against women due to birth or maternity leave is prohibited by the Pregnancy Discrimination in Employment Act of 1978. Employers must treat pregnancy and childbirth the same as any type of temporary disability. Pregnant employees must not be relegated to a lesser status than other employees nor treated differently by other employees or supervisors unless the pregnant woman herself requests special accommodations.

Additionally impairments resulting from pregnancy (for example, gestational diabetes or preeclampsia, a condition characterized by pregnancy-induced hypertension and protein in the urine) may be disabilities under the Americans with Disabilities Act (ADA). An employer may have to provide a reasonable accommodation.
Examples:

- Female employees should be allowed to work as long into their term of pregnancy as they wish.
- Upon returning to work, females who have given birth are entitled to the same or similar job and pay grade as before their leave.
- If a pregnant woman handles chemicals or is involved with other dangerous tasks that could adversely affect her pregnancy, management must warn her of the potential dangers, but allow her the right to continue in her job if she wishes.

Break Time for Nursing Mothers: Section 7 of the Fair Labor Standards Act (FLSA) regulations require employers to provide "reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child’s birth each time such employee has need to express the milk." Employers are also required to provide "a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk."

Only employees who are not exempt from section 7, which includes the FLSA’s overtime pay requirements, are entitled to breaks to express milk. While employers are not required under the FLSA to provide breaks to nursing mothers who are exempt from the requirements of Section 7, they may be obligated to provide such breaks under State laws.

Employers with fewer than 50 employees are not subject to the FLSA break time requirement if compliance with the provision would impose an undue hardship. Employers are not required under the FLSA to compensate.

Key Concept #16 - Confidentiality

When an allegation of harassment or discrimination affects your business, you should maintain confidentiality. This entails discussing the case strictly on a need-to-know basis, but refraining from discussing it with co-workers or family members. Maintaining confidentiality is not only the professional and respectful way to treat both the victim and perpetrator, it will also help to protect you from being accused of "defaming" any involved parties. Defamation charges can lead to civil lawsuits.

Example:

- Supervisor Joe Flannigan has told his bowling buddies to stop asking him for details of a sexual harassment investigation at the company.
- Charlene Davis is supervisor Joe Flannigan's secretary. When Joe meets with investigators from the State Department of Human Rights in regard to a sexual harassment case in his department, she quietly shuts his office door so that nothing can be overheard.
Key Concept #17 – Harassment is a Form of Discrimination

Harassment involves insulting or demeaning speech or behavior toward someone at work because of his or her race, religion, sex, national origin, age, or disability.

Since harassment can create a hostile workplace, it is considered a form of discrimination and is covered by the same laws and employment policies that govern the larger category of discrimination.