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Sexual Harassment Prevention in the Workplace

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COURSE DESCRIPTION & INTRODUCTION

The intent of this course is to satisfy the Continuing Education requirements for Sexual Harassment Prevention Training (SHPT) for license renewals. All professions have a duty to protect the health, safety, and welfare of their employees and the general public. This course will discuss some of the areas in which sexual harassment impacts you, your company, or your agency at work and in the community. There are Federal, State, and Local laws governing the conduct of all, but we will focus on the Federal laws since the State and Local are based on the Federal.

Why SHPT?

A good reason for a course in Sexual Harassment Prevention Training is to satisfy the requirement to complete a Continuing Education course in SHPT for the state or states in which we are licensed. The better reason is to educate ourselves, our coworkers, and the public, on what constitutes harassment... of which sexual harassment is but one of the many forms of harassment. Regardless of the form, harassment should be addressed promptly wherever it occurs.

Some background information

During my career, I have taken independent SHPT courses, as well as annual training courses on this subject. I was also an enforcement officer for part of my time in the military. After the military, I worked closely with State and Federal Law Enforcement officers as a professional engineer working on some of their projects. While involved with these projects, I had many interesting discussions with officers about various cases they had conducted, including some actual harassment and sexual harassment investigations. Some were determined to be actual sexual harassment cases. Others were false allegations that were filed where the "victim" was trying to hurt the alleged "offender's" career and/or reputation, or was using the harassment case to simply get transferred to a different department or location. I will not discuss those investigations in this course but will state there was a price paid by the guilty person (accuser or victim) in each case we discussed.



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Introduction

The U.S. Equal Employment Opportunity Commission (EEOC) defines harassment as “a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, (ADEA), and the Americans with Disabilities Act of 1990, (ADA)”. (See www.eeoc.gov/harassment) Sounds simple enough, right? Or, is it?

The EEOC goes further to state that when it comes to Sexual Harassment: “*It is unlawful to harass a person (an applicant or employee) because of that person's sex. Harassment can include "sexual harassment" or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.*”

As you can see, harassment and sexual harassment are intertwined in the same laws. A case of sexual harassment may also include unwanted and offensive conduct that includes race, age, religion, sexual identity, sexual orientation, political beliefs, retaliation, and more. So, if a person were to be charged with sexual harassment, other charges involving other illegal forms of conduct are likely to be included.

WHAT IS HARASSMENT?

Harassment is probably experienced by all employees, but in most situations, the harassment is not illegal when it is in jest or a practical joke. Regardless, harassment becomes illegal when someone claims the “offensive conduct” is so unrelenting and unwanted that a reasonable person would consider the actions aggressive, abusive, or threatening. Some examples... or indicators... of offensive conduct may include:

1. Having to endure the offender's actions to avoid being fired
2. The frequency of the offensive conduct
3. The severity of offensive actions
4. The impact to the employee's work performance
5. Retaliation for an employee's testimony, charges, or participation in an investigation



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6. Actions creating a toxic work environment for one or more employees either directly or indirectly

Note that the examples provided in this course “may include”, but not necessarily, “will include” the examples. The examples provided may also be combined with other examples, but it is the context in which they occur that will determine the unlawfulness.

Harassment can also be verbal or non-verbal in nature. Some examples of harassment are:

- Offensive nicknames
- Personal insults
- Obscene gestures
- Vulgar or abusive language
- Epithets
- Written, graphic, or hostile material that is emailed, posted, or placed openly in the office
- Offensive jokes
- Disparaging statements about a person’s race, religion, or gender

What is not illegal?

Understanding what is not illegal is also important to understand. Before a person reports or files charges for harassment, it is important to note that someone is going to get hurt by being reported... either the person reported, the person filing the report, or possibly both... even if the “offense” was not intentional or does not rise to the legal level of being harassment.

Trivial snubs, minor irritating actions, and isolated incidents that are not extreme will not meet the requirements of being illegal. To be illegal, the actions must be persistent, threatening, or offensive enough to create an intimidating or hostile work environment to reasonable people.



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WHAT IS SEXUAL HARASSMENT?

Simply stated Sexual Harassment is a form of sex discrimination.

As noted above, the EEOC states: *"It is unlawful to harass a person (an applicant or employee) because of that person's sex. Harassment can include "sexual harassment" or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature."*

It is important to note that Sexual Harassment includes verbal or physical conduct of a sexual nature when the actions **explicitly or implicitly** impact a person's employment, work performance, or creates an offensive work environment. Additionally, the actions do not need to be blatantly obvious; they can be subtle as well. Remember that the actions can be either explicit or implicit.

The EEOC goes on to state... *"Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments about women in general."*

However, the EEOC also states: *"Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment..."*

Sexual Harassment includes unwelcome sexual actions, suggestions, asking for sexual favors, and other verbal or physical conduct in consideration of employment duties.

Consider the following examples of Sexual Harassment:

1. When sexual favors are made a condition of application for a job, salary, or promotion.
2. When sexual favors are used to determine job assignments, vacation days, business trips, or transfers.
3. When sexual favors interfere with an employee's ability to work, impact a person's reputation, or create a hostile work environment.



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EEOC: “The harasser can be the victim's supervisor, a supervisor in another department, an agent of the employer, a co-worker, or even a non-employee.”

Sexual Harassment can be categorized as being Non-Verbal, Verbal, or Physical. The context in which it occurs is considered, but also it must be unwelcomed. Some examples are shown below:

Non-Verbal Sexual Harassment examples can include:

1. Giving unwanted personal, intimate, or sexual gifts
2. Making suggestive gestures
3. Showing sexually explicit graphics
4. Staring at a person

Verbal sexual harassment examples can include:

1. Making suggestive comments on a person's appearance or body parts
2. Discussing sexual experiences, desires, or activities
3. Telling sexual stories and jokes
4. Aggressively asking for dates, trips, or activities after being told “No”

Physical sexual harassment examples can include:

1. Unnecessarily touching, caressing, or even holding a person's hand
2. Standing too close or leaning over a person
3. Putting an arm around a person's waist
4. Putting a hand on a person's shoulder
5. Kissing a person without permission

Remember: Keep a respectful distance away from others regardless of whether they are male or female.

QUID PRO QUO

“Quid Pro Quo” is another type of sexual harassment encountered in the workplace these days. Quid Pro Quo is a Latin term meaning something *given* for something *received*. In a sexual harassment scenario, it is when a sexual favor is required for a



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requested benefit. That requested benefit could be a pay raise, time off, a promotion, selection for a high-profile project, or a special award.

The Quid Pro Quo also could be a sexual favor required in order to **avoid** a dire or negative consequence. The consequence could be a cut in pay, a demotion, a transfer to a bad location, reassignment to a low-profile position, moved from a private office into a cubicle, loss of job, or some other negative consequence.

A HOSTILE WORK ENVIRONMENT

What is a work environment? The work environment is the area where a person works. It could be indoors or outdoors, in a private office or a cubicle, at a desk or a public counter. It is anywhere the employee is required to work. But it also includes the conditions under which the employees are required to work including teams, individually, shared equipment, required tools, dress codes, among other conditions. Additionally, the work environment includes business meetings, office socials, and official business events, regardless of where they are held or located.

The hostile work environment involves situations in which a person's conduct repeatedly interferes with an employee's work performance. The person's actions must be so severe and persistent as to cause an intimidating hostile work environment for one employee or a group of employees.

Who can create a hostile work environment? It could be the owner, manager, department head, supervisor, and/or co-worker(s). It could also be a client or a customer. For example, an offender could require an employee to dress in an unprofessional manner to get or to keep a client.

EEOC: "The victim does not have to be the person harassed, but can be anyone affected by the offensive conduct."

A hostile work environment is often difficult to recover from as the impacts are felt by not only the employees, but also the customers and clients as well. The office can easily suffer from lower productivity, lower morale, increased absences, and higher turnover rates. In addition, the lack of personal, organizational, and public/customer trust makes



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it even harder to keep or get new clients. If the case results in a law suit, the investigations and testimonies can cause stress for the employees, lowering morale even more.

PREVENTING SEXUAL HARASSMENT

Preventing sexual (or non-sexual) harassment begins with the first incident.

Let us look at a scenario where Dana (the person being harassed or possibly harassed) feels uncomfortable with Morgan's (the offender) actions. Dana needs to take immediate action when it first occurs. Allowing the incident to go unchallenged only increases the chances of it occurring repeatedly and with greater frequency. Dana should not simply laugh it off, pretend it did not happen, or assume it was a one-time incident. Dana should tell Morgan that the action is unwanted, is totally unacceptable, and **MUST STOP**. If Dana fails to say something, Morgan may assume that Dana is fine with what was done and interpret nothing said to mean that Morgan can continue. If Dana feels comfortable with speaking up, Dana also needs to tell Morgan in no uncertain terms that the actions must stop, or they will be reported to Dana's supervisor, Morgan's supervisor, and/or the HR Department. (Note that the use of gender-neutral names is intentional and could be male, female, or same sex individuals.)

REPORTING SEXUAL HARASSMENT – THE PROCESS

If Dana is uncomfortable with speaking up when it happens, Dana should report the incident and each subsequent incident to the supervisor, Morgan's supervisor, and the HR Department. Dana should also document in writing the details of each incident, what Morgan said or did, and how Dana responded to the incident at the time it happened... and include whether told Morgan was told "to stop". The report needs to document each occurrence with the date, time of the incident, any witnesses that can validate it, and what the offensive actions were. These documents will be needed to support a case against Morgan. It is then up to the supervisor or HR Department to deal with Morgan and determine what further action is needed.



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WHISTLEBLOWER PROTECTION

The term Whistleblower is used to identify an individual who reports fraud, waste, and abuse found in the public sector whether it be Federal, State, or Local agencies. Whistleblower protections are laws that protect the ones filing or reporting these activities. There are many laws in place, and they often use the Federal laws as a basis for agencies' protections of a whistleblower from retaliation by the employer or coworkers. Examples of retaliation could be poor employee performance evaluations, disciplinary actions, denied promotions, firings, transfers to other departments or locations, threats, and/or other actions.

Note that these whistleblower protections are for cases involving a Federal, State, or Local agency, and some only protect against being fired. These protections are not used to protect employees from cases that do not impact a government agency, *with the exception*, of cases that impact public health or public safety. Some states like Illinois utilize Common Law Protections, Statutory Protections, and other protections that may be included in private contracts or in collective bargaining agreements. What does your state provide? You can research the applicable Federal, State, and Local protections provided for the specific public agency involved. Many states have passed their own version of a Whistleblower Act or Law. Perform an internet search using “(state or agency name) whistleblower protection” to learn more about the available protections.

Another source for assistance may be the Human Rights Department of your state or province. A single call to any of these agencies will often provide you additional guidance and recommendations for assistance available from other agencies.

SUMMARY

This course presented what you should already have learned previously from an employer or HR Department about Harassment and Sexual Harassment Prevention. Hopefully, you will be encouraged to act if you see any of the situations discussed in this course. If you have never taken a Harassment or Sexual Harassment course, remember that the victim does not need to be the one offended. Anyone impacted by the offensive actions of another has the right to file a report.



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Teasing or joking with your coworkers is not illegal unless it escalates to a point that it is not amusing any more and people are taking offense. That is when a person needs to speak up and say “That’s enough and get back to work or please leave.”

Asking for a date once or twice is not sexual harassment, but if it is frequently repeated, includes pressure to accept, and impacts an employee’s work performance, it can be reported and may be treated as harassment. If it seems like sexual harassment, document the dates, actions, and the witnesses present for each occurrence.

Sexual harassment is not limited to physical contact. The harassment can be non-verbal or verbal as well. And Quid Pro Quo is illegal every time it involves unwelcomed sexual favors for anything.

In addition, remember that Whistleblower protection is generally limited to a Federal, State, or Local government agency’s case that involves fraud, waste, or abuse. Some of these cases may only protect an employee from being fired.

If this course prevents only one incident from escalating into an actual harassment or sexual harassment situation, it will have been a success. But to do so requires a person to speak up at the appropriate time and be willing to stop or report it.

Remember: Just do what is right for everyone, and at the right time.