

Sexual and Other Harassment Education, Awareness and Prevention Training

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Maine Bar Survey -- 1581 Total Responses

In the last 5 years . . .

- Over 8% (128) experienced sexual harassment
- 23% (363) experienced discrimination, bullying, or other harassment
- 10% (160) reported behavior . . . Which means over 200 chose not to make a report
- 35% believe culture issues

The Current Environment

- #MeToo movement
 - has not changed the law, but has heightened awareness
 - Focus is no longer just on who is the harasser; Who knew or should have known about the behavior but failed to stop it?
- Complaints of unprofessional conduct (even if old or not technically unlawful) are drawing significant media attention
- Any complaint can have significant negative impact on the business

Your Two Major Take Away's

- Avoid High Risk Behavior!
- If You Hear or See There is a Problem, then Deal with it!

Harassment Laws It's Not Just About Sex...

- Race, Ethnic Origin, National origin
- Color
- Religion
- Sexual Orientation
- Gender Identity
- Gender stereotypes
- Age
- Disability: Physical or Mental

Discrimination/Harassment

- Employers:
 - Are strictly liable for the harassing conduct of their supervisors
 - Are liable for co-worker harassment if the employer:
 - Knew or should have known about the harassment
 - Failed to act reasonably to stop it.

Sexual Harassment - What is it?

Two kinds of sexual harassment:

1. Quid Pro Quo “this for that”

- Sexual advance, request for sexual favors, and other verbal or physical conduct of a sexual nature when:
 - Submission or rejection becomes a condition of employment; or
 - Submission or rejection is a basis for a “tangible” employment action

2. Hostile Work Environment

- Verbal and/or physical conduct resulting in an intimidating, hostile or offensive work environment that interferes with an employee’s work performance.

Hostile Environment Sexual Harassment

- Elements:
 - Conduct directed at someone on account of their sex
 - Unwelcome
 - Subjectively hostile
 - Objectively hostile
 - So severe and pervasive that it alters the work environment

Some examples of conduct that may constitute harassing behavior:

- Unwelcome sexual advances
- Sexual epithets, jokes, written or oral degrading comments of a sexual nature
- Display of sexually suggestive objects, pictures, cartoons
- Inquiries into one's sexual experiences
- Unwelcome hugging, touching or kissing
- "Elevator eyes"
- Repeated requests for dates

Hostile Environment Sexual Harassment continued . . .

“Totality of the circumstances”- courts focus on both the nature of the conduct and the context in which it occurred.

- This type of conduct can be verbal or physical, and it does not necessarily have to be directed at the person to create a hostile environment.
- The conduct can come from a person not employed by the company

The Conduct in Question must be “Unwelcome”

- Illegal sexual harassment means the conduct in question was unwelcome.
- A lack of protest does not always mean the conduct is welcome
 - the individual may be too afraid or uncomfortable to protest.
- The failure of a victim to directly confront the harasser will not stop a claim of sexual harassment as long as other conduct is consistent with the conclusion that the sexual conduct or advances were unwelcome.
- The focus is on the objective conduct of the persons involved rather than subjective and un-communicated feelings.

Perception vs. Intention

- Well intentioned gestures such as a pat on the shoulder, touching, lewd remarks, jesting comments of a sexual nature, or physical contact may be interpreted as acts of sexual harassment by one recipient, while another may not view it as problematic at all
- Likewise, some individuals may perceive a look as leering or ogling of a sexual nature, while others may attribute no meaning to it

Perception vs. Intention

- Need to take into account your co-workers' own personal history
 - Affects how we perceive each situation
 - Can create “triggers” that cause welcome behavior to become unwelcome
 - Often is not shared with the alleged “harasser,” in part because explanation of why the event is a “trigger” would result in the sharing of personal information

Perception vs. Intention

- Some gauges to measure whether your own conduct is consistent with the law and your Firm's policies:
 - Would you want your spouse, partner, child, or parent to be subjected to the same type of behavior?
 - Would you be willing to engage in the same conduct in front of a family member?
 - Would you be embarrassed to tell the same story in a courtroom in front of a judge and jury?

Rules Supervisors Must Know

- 1) Know the definition of unlawful harassment
- 2) Know the company's policies against it
- 3) Educate employees about the policy
- 4) Model appropriate behavior (and treat your co-workers with courtesy and respect).

Rules Supervisors Must Know

- 5) Avoid engaging in high risk behavior
- 6) If you see risky behavior, deal with it
- 7) If you see conduct that violates the company's policies, deal with it
- 8) If you receive a complaint, deal with it

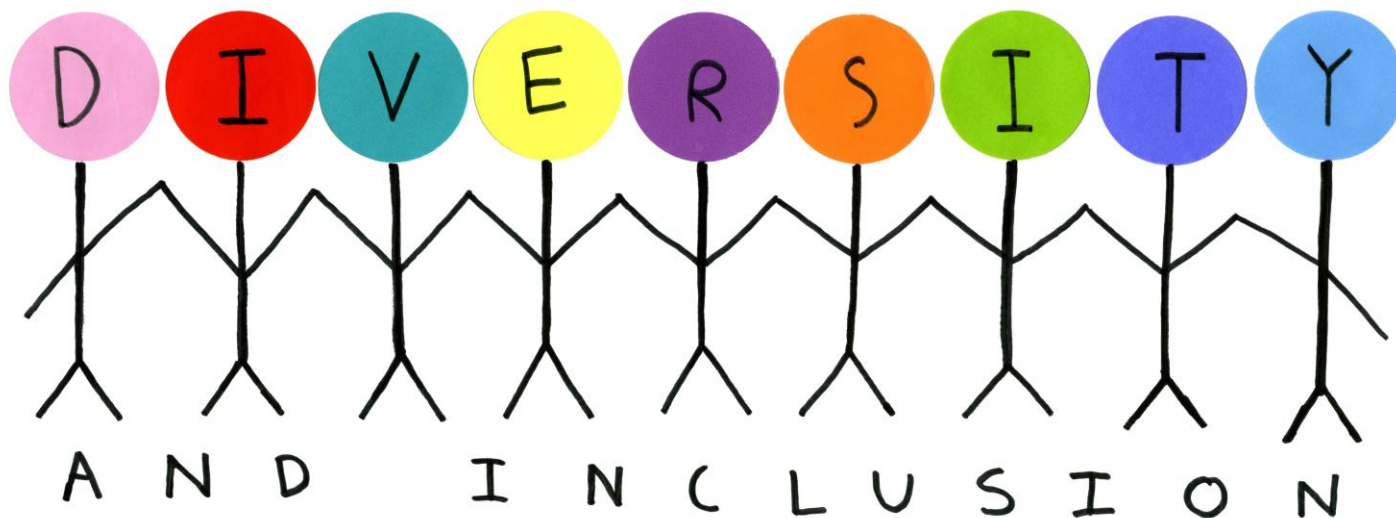
Procedure for Handling Complaint of Workplace Harassment

- Inform employee of policy
- Reinforce that the employee did the right thing by speaking up
- Inform employee of no retaliation for making the complaint
- Inform employee that upper management will be notified
- Explain to employee methods of addressing complaints
- Refer the matter to HR

Rules Supervisors Must Know, continued...

- 9) Maintain appropriate level of confidentiality
- 10) Work with HR to document all complaints and the Firm's response
- 11) Follow up with complaining employee periodically
- 12) Monitor for retaliation (real or perceived)

An employer can have a diverse workplace without having an inclusive culture.



Implicit Bias

What we don't know is hurting
how we manage our employees

We live in a time where
we quickly put people in boxes.

What is Implicit Bias?

20 COGNITIVE BIASES THAT SCREW UP YOUR DECISIONS

1. Anchoring bias.

People are **over-reliant** on the first piece of information they hear. In a salary negotiation, whoever makes the first offer establishes a range of reasonable possibilities in each person's mind.



2. Availability heuristic.

People **overestimate** the importance of information that is available to them. A person might argue that smoking is not unhealthy because they know someone who lived to 100 and smoked three packs a day.



3. Bandwagon effect.

The probability of one person adopting a belief increases based on the number of people who held that belief. This is a powerful form of **groupthink** and is reason why meetings are often unproductive.



4. Blind-spot bias.

Failing to recognize your own cognitive biases is a bias in itself. People notice cognitive and motivational biases much more in others than in themselves.



5. Choice-supportive bias.

When you choose something, you tend to feel positive about it, even if that **choice has flaws**. Like how you think your dog is awesome – even if it bites people every once in a while.



6. Clustering illusion.

This is the tendency to see **patterns in random events**. It is key to various gambling fallacies, like the idea that red is more or less likely to turn up on a roulette table after a string of reds.



7. Confirmation bias.

We tend to listen only to information that confirms our **preconceptions** – one of the main reasons it's so hard to have an intelligent conversation about climate change.



8. Conservatism bias.

Where people favor prior evidence over new evidence or information that has emerged. People were **slow to accept** that the Earth was round because they maintained their earlier understanding that the planet was flat.



9. Information bias.

The tendency to **seek information** when it does not affect action. More information is not always better. With less information, people can often make more accurate predictions.



10. Ostrich effect.

The decision to **ignore dangerous or negative information** by "burying" one's head in the sand. Like an ostrich. Research suggests that investors check the value of their holdings significantly less often during bad markets.



11. Outcome bias.

Judging a decision based on the **outcome** – rather than how exactly the decision was made in the moment. Just because you won a lot in Vegas doesn't mean gambling your money was a smart decision.



12. Overconfidence.

Some of us are **too confident about our abilities**, and this causes us to take greater risks in our daily lives. Experts are more prone to this bias than laypeople, since they are more convinced that they are right.



13. Placebo effect.

When simply believing that something will have a certain effect on you causes it to have that effect. In medicine, people given fake pills often experience the same physiological effects as people given the real thing.



14. Pro-innovation bias.

When a proponent of an innovation tends to **overvalue its usefulness** and undervalue its limitations. Sound familiar, Silicon Valley?



15. Recency.

The tendency to weigh the **latest information** more heavily than older data. Investors often think the market will always look the way it looks today and make unwise decisions.



16. Sallience.

Our tendency to focus on the **most easily recognizable features** of a person or concept. When you think about dying, you might worry about being mauled by a lion, as opposed to what is statistically more likely, like dying in a car accident.



17. Selective perception.

Allowing our expectations to **influence how we perceive** the world. An experiment involving a football game between students from two universities showed that one team saw the opposing team commit more infractions.



18. Stereotyping.

Expecting a group or person to have certain qualities without having real information about the person. It allows us to quickly identify strangers as friends or enemies, but people tend to **exaggerate and abuse** it.



19. Survivorship bias.

An error that comes from focusing only on surviving examples, causing us to **misperceive** a situation. For instance, we might think that being an entrepreneur is easy because we haven't heard of all those who failed.



20. Zero-risk bias.

Sociologists have found that **we love certainty** – even if it's counterproductive. Eliminating risk entirely creates there is no chance of harm being caused.



- The unconscious association of stereotypes with particular groups.
- Implicit Bias does not just involve people outside the group in question (i.e., women, people of color, heavy people), but also people who identify with the group.
- In no way related to a person's intelligence, cognitive ability, or other personality traits.

Identifying & Interrupting Bias in Performance Evaluations

- *Seven Powerful Bias Interrupters*
 - Give evidence
 - Benefit of the doubt
 - Waiver of objective rules/consistency
 - Likeability, modesty, deference
 - Assumptions regarding parents and what they are able to do
 - “Culture Fit”; “Executive Presence” – What does that mean?
 - Honest feedback
 - Notice
 - Opportunity to correct

RACE

GENDER

CULTURE

RELIGION

ETHNICITY

LANGUAGE

EDUCATION

NATIONALITY

GENDER IDENTITY

PHYSICAL ABILITIES

SEXUAL ORIENTATION

Building a RESPECTFUL & INCLUSIVE WORKPLACE

A work environment in which all individuals are:

- Treated fairly and respectfully
- Have equal access to opportunities and resources
- Can contribute fully to the organization's success

BENEFITS OF A RESPECTFUL WORKPLACE INCLUDE:



Improved employee morale, job satisfaction, and teamwork



Lower absenteeism and turnover



Increased productivity



Employees are better equipped to manage conflict collaboratively

CHALLENGES TO CREATING A RESPECTFUL WORKPLACE

Getting used to differences

Coordinating work styles

Learning to communicate

Developing flexibility

Adapting to change

MANAGER'S ROLE IN CREATING A RESPECTFUL WORKPLACE

- ✓ Set clear expectations of behavior
- ✓ Be a positive role model
- ✓ Create a positive work environment
- ✓ Make it how you do business
- ✓ Push back on disrespectful behaviors
- ✓ Maintain open communication

HOW TO DEMONSTRATE MUTUAL RESPECT IN THE WORKPLACE

Listen to your employees

Act on your employees' suggestions

Give timely praise on a job well done

Share company mission, vision, goals and objectives

Learn about your employees' professional and personal goals

Celebrate workplace milestones

TIPS FOR CREATING A RESPECTFUL WORKPLACE

- Respect Differences
- Never Assume
- Encourage Teamwork
- Use the Variety of Experiences Among Coworkers
- Learn – *and use* – Acceptable Terms
- Treat Genders Equally
- Avoid Sexist Comments
- Show Interest in Coworkers
- Learn Names and Use Them Frequently
- Look at Coworkers' Abilities – Not Disabilities

By way of example, phrases to be mindful of . . .

- No offense, but. . .
- Don't be such a prude
- That was a ballsy move
- Wearing the pants
- Don't worry your pretty little head
- It's not a big deal
- Someone is whipped
- Why do all (men/women) . . .
- Grow a pair
- Boys will be boys
- It was just a joke
- Smile
- Working mom (versus working parent)
- When will you take time to start a family?
- For a woman/man you are a great . . .
- Office mom
- It's time to man up
- Are you sure you can handle this?
- "Debbie Downer" or "Negative Nancy"

Questions?

