

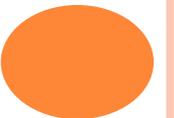


UNDERSTANDING HARASSMENT AND DISCRIMINATION IN THE #METOO ERA

By: Clarissa M. Rodriguez
Denton, Navarro, Rocha, Bernal, Zech, PC
San Antonio

ROADMAP TO PRIME TIME HARASSMENT POLICY!

- Understand the law- what harassment is and types of harassment.
- Understand what is expected and what to do when harassment occurs.
- For every employee to KNOW they have a right to work in a respectful environment.
- Know HOW to deal with harassment when it happens.
- Best Practices for Creating a Respectful Workplace



WHY DO WE CARE ABOUT POLICIES, PREVENTION AND REPORTING OF HARASSMENT?

- Three reasons for concern about workplace discrimination and harassment:
 - To help maintain a respectful work environment
 - To comply with the law
 - To comply with our organization's policy
- Employees who engage in prohibited behaviors will be disciplined, which could include termination.



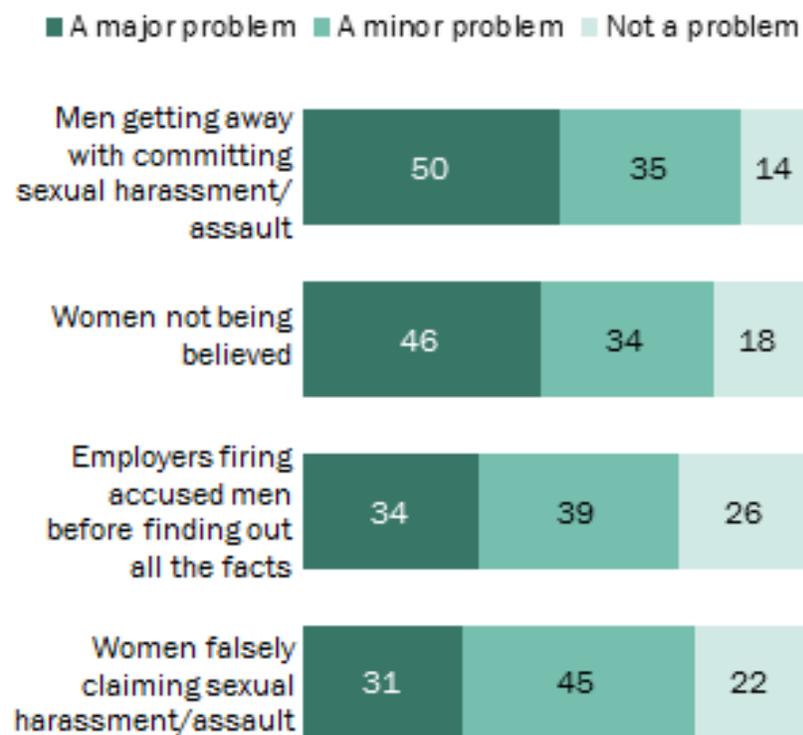
HARASSMENT STATS IN THE #METOO ERA

- 35% of Workers Feel Bullied at Work
- 16% Suffered Health Problems as a Result
- 17% Quit Their Jobs to Escape the Bullying
- Most complaints are about being bullied by a Supervisor or Coworker.



Americans more concerned about men getting away with sexual harassment than men being fired prematurely

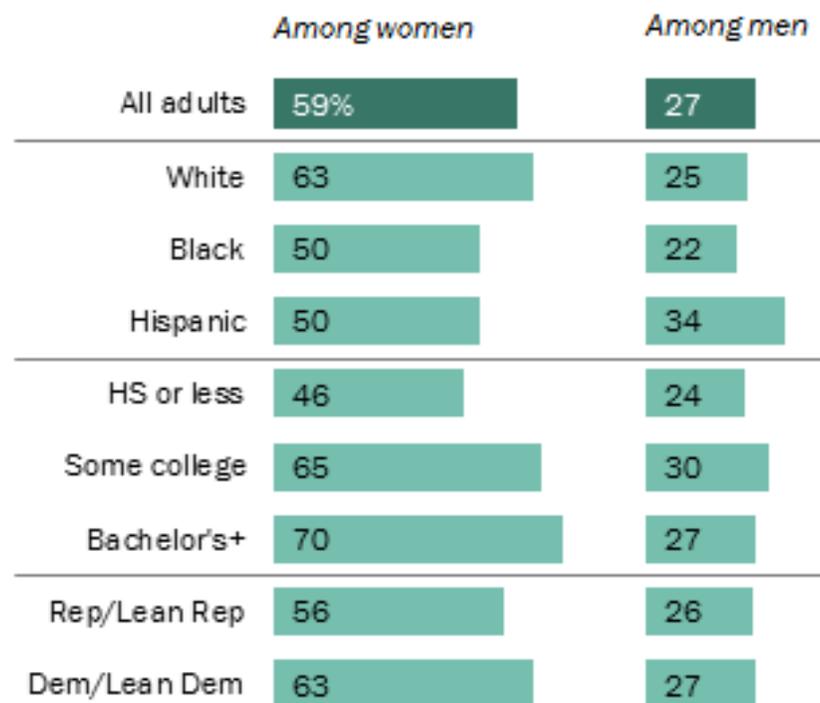
% saying each is ___ when it comes to sexual harassment and assault in the workplace today



Note: Share of respondents who didn't offer an answer not shown.
Source: Survey of U.S. adults conducted Feb. 26-March 11, 2018.
"Sexual Harassment at Work in the Era of #MeToo"

About six-in-ten women say they have been sexually harassed

% saying they have ever personally received unwanted sexual advances or verbal or physical harassment of a sexual nature

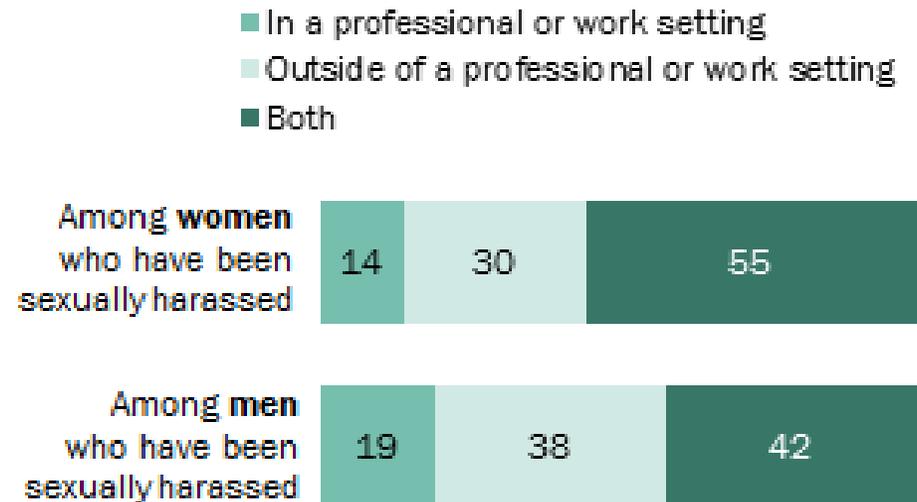


Note: Whites and blacks include only non-Hispanics. Hispanics are of any race. "Some college" includes those with an associate degree and those who attended college but did not obtain a degree.
Source: Survey of U.S. adults conducted Feb. 26-March 11, 2018.
"Sexual Harassment at Work in the Era of #MeToo"



More than half of women who have been sexually harassed say it has happened both in and outside of work

% of those who say they have ever received unwanted sexual advances or verbal or physical harassment of a sexual nature saying this happened ...



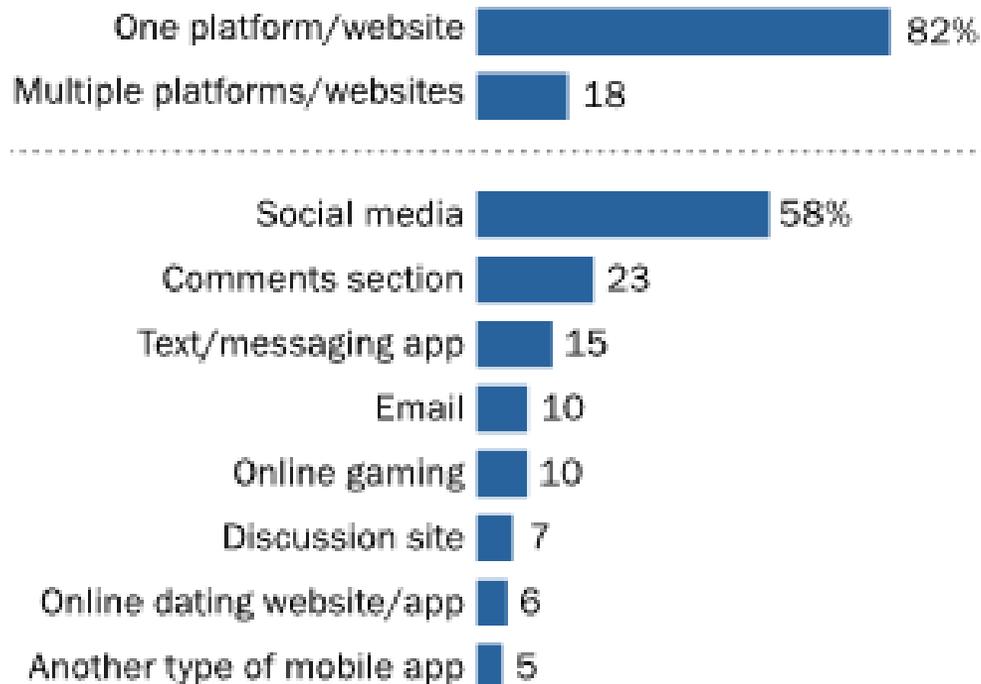
Note: Share of respondents who didn't offer an answer not shown.
Source: Survey of U.S. adults conducted Feb. 26-March 11, 2018.
"Sexual Harassment at Work in the Era of #MeToo"

PEW RESEARCH CENTER



Social media is the most common venue for online harassment experiences

Among the 41% of U.S. adults who have experienced any online harassment, % who say their **most recent** incident took place on ...



Note: Total may not add to 100% because respondents could select multiple options.

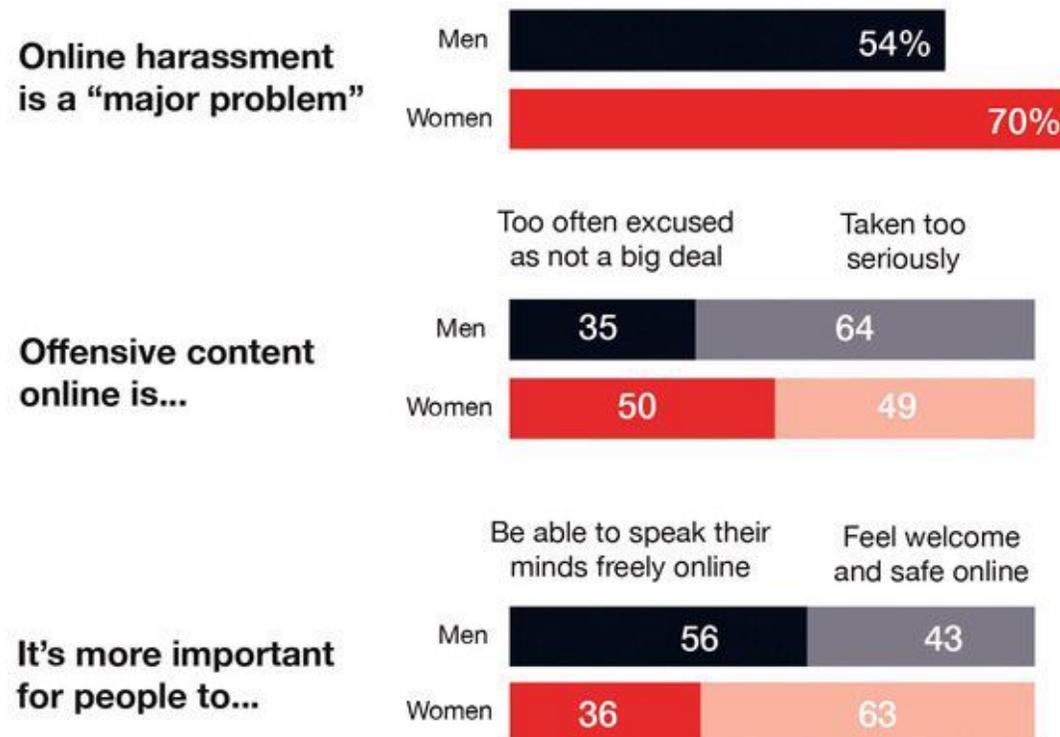
Source: Survey conducted Jan. 9-23, 2017.

"Online Harassment 2017"

PEW RESEARCH CENTER

Attitudes towards online harassment vary between men and women

Percentage of U.S. adults who think...



Source: Pew Research Center



PEOPLE OR CLASSES- DO NOT HARASS...

These are considered unacceptable with serious consequences:

Gender

National Origin

Disability

Veteran's Status

Race

Sex

Sexual Orientation

Color

Religion

Age

Pregnancy

Physical

Appearance



EEOC 2017 STATISTICS

- Texas
 - Sex- 2,740- 31% of all Charges in state
 - **Retaliation- 4,470- 54% of all Charges in state**
 - Race- 2,999- 34% of all Charges in state
 - Disability- 2,642- 30% of all Charges in the state
 - Age- 1,975- 22% of all Charges in state
- USA
 - 12,428
 - \$46.3 million in monetary benefits to employees
- Mediations, conciliations, lawsuits
 - Westin San Antonio lawsuit- Spanish speakers



WHY THE HESITATION ON REPORTING?

- Why do employee's hesitate to report discrimination, workplace harassment and sexual harassment?
 - Failure to understand policies
 - Fear of losing their job
 - Fear of retaliation
 - Fear of getting someone into trouble
 - Fear of disrupting the workplace
 - Fear of being embarrassed
 - Fear of not being believed



HARASSMENT: THE LAW BRIEFLY

○ Title VII

- The entity, or any of its employees, may not discriminate against any individual with respect to compensation, terms, conditions, or privilege of employment because of such individual's race, color, religion, sex, or national origin or veterans status.
- Applies to:
 - Employees
 - Residents
 - Customers
 - Visitors
 - Contractors



WHAT DOES AN EMPLOYEE HAVE TO PROVE?

- Belong to a protected class
- Subjected to unwelcome harassment (sexual or otherwise)
- Harassment complained of based on protected class
- Harassment affected a term, condition, or privilege of employment



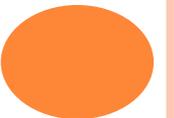
TYPES OF HARASSMENT

- Sexual Harassment
- Quid Pro Quo Harassment
- Hostile Work Environment
- Third Party Harassment



LEGAL TERMS IN NORMAL SPEAK...

- Sexual Harassment
- Quid Pro Quo
- Hostile Work Environment
- Third Party Harassment



QUID PRO QUO

- Submit to unwelcome sexual conduct in order to participate in a program or activity or...
- An employee, in particular supervisor, causes a employee believe that the employee will make an employment decision based on whether or not the employee submits to unwelcome sexual conduct
- Exchange in sexual conduct for benefit or maintain job



HOSTILE WORK ENVIRONMENT

- Unwelcome sexually harassing conduct is
 - Severe, persistent, or pervasive
- The frequency and severity of the conduct;
- Whether it was physically threatening or humiliating;
- Whether it was directed at the alleged victim;
- Whether it was engaged in by a supervisor or a co-worker; and
- Whether it interfered with an individual's work performance.

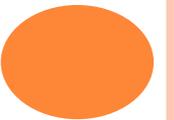
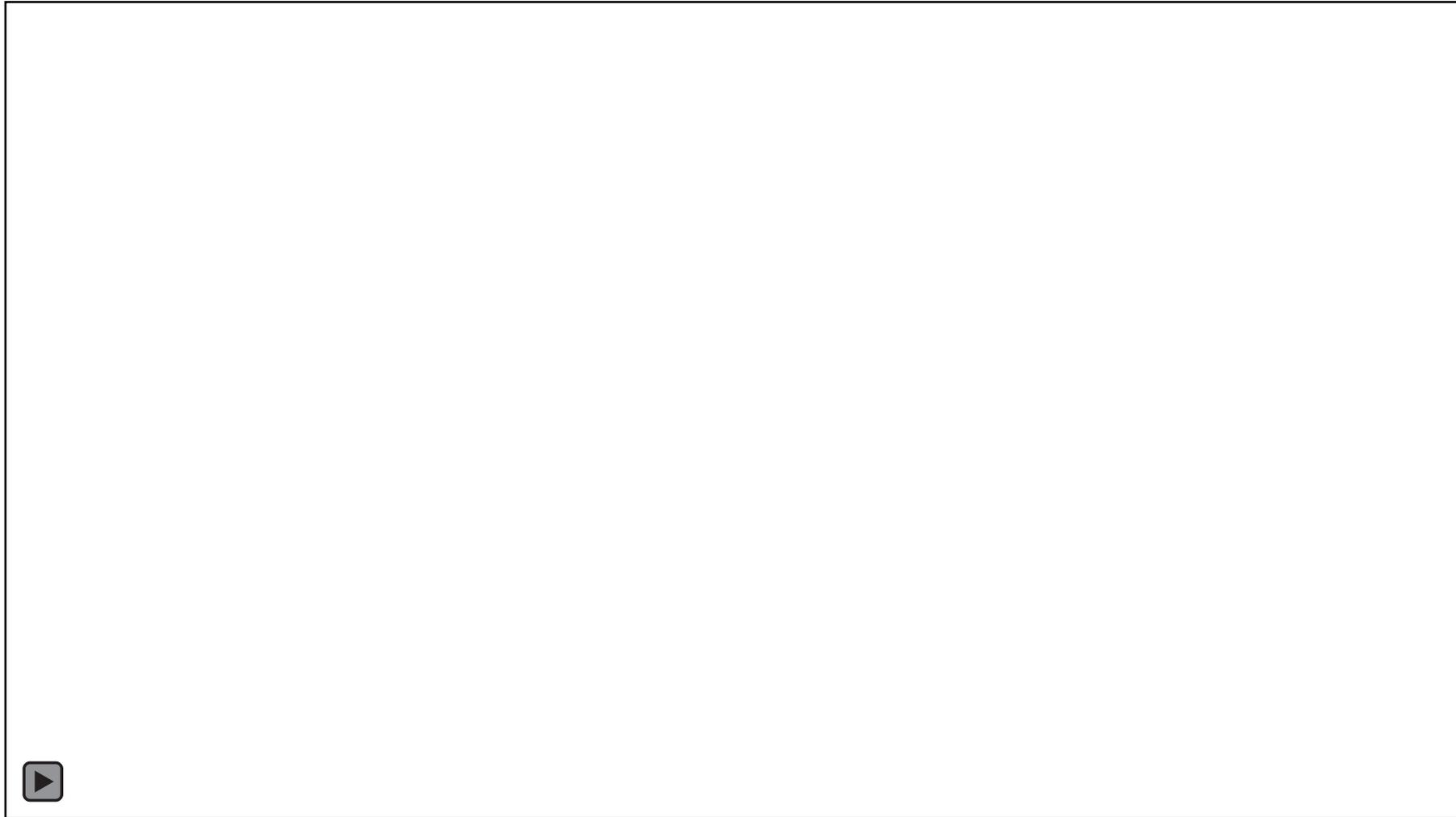


FORMS OF HARASSMENT

- Physical
- Emotional
- Relational
- Bystander victimization
- Cyber/Social Media—a relatively new phenomenon



VIDEO- THE OFFICE HARASSMENT EXAMPLE



VERBAL HARASSMENT

○ Verbal

- Derogatory, explicit or offensive comments, epithets, slurs, or jokes;
- Inappropriate comments about an individual's body, appearance, or culture;
- Repeated unwelcome propositions or flirtations; veiled threats;
- Direct or subtle pressure or repeated unwelcome requests for dates or activities.



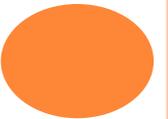
VISUAL

○ Visual

- Offensive gestures or the display of suggestive, obscene, or derogatory objects, pictures, cartoons, posters or drawings.
- Pictures, cartoons, posters, or drawing depicting a protected class in an unflattering, derogatory, or humiliating manner.
- Caricatures or stereotypical representations.



VISUAL HARASSMENT



INTERNET, E-MAIL AND SOCIAL MEDIA

E-harassment modes include —

- E-mail
- Web-surfing
- Instant-messaging (IM)
- Twitter, Instagram

Statistics:

- 10% use IM at work for sexual, romantic and pornographic chat
- 27% of organizations have faced sexual e-harassment claims
- 26% of employers have terminated employees for e-harassment
- 70% of porn web traffic is during business hours





I can only write within a draft

Meaning?

I imagine there are people who can sit down and with enough time just write something

But I need a draft and then a day and then I'll add something and then a day and so on

I need time but only time if I start with a draft

Got it. What do you generally wear when you write?

Seriously?

Well, not entirely.

Well I don't generally write

Oh.

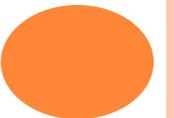
HOSTILE WORK ENVIRONMENT HARASSMENT

- Courts are likely to find an illegal hostile work environment where there is:
 - Pornography
 - Vulgar Language
 - Sexual Touching
 - Sexual Propositions
 - Degrading Comments
 - Embarrassing Questions
 - Sexual Jokes



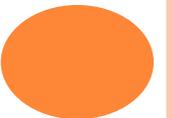
THIRD-PARTY & NON-PARTY HARASSMENT

- Behavior not found offensive by some employees can facilitate an offensive environment for other employees.
 - A group of employees talking about each other's sex lives in the presence of another person who feels very uncomfortable about such discussions.
- Sexual harassment on-the-job by a non-employee, for example: *Vendors, Contractors, Customers or Visitors is NOT* excusable behavior.
- Harassment on-the-job by a non-employee CAN lead to harassment allegations, just as harassment by any employee would.



SEVERE OR PERVASIVE

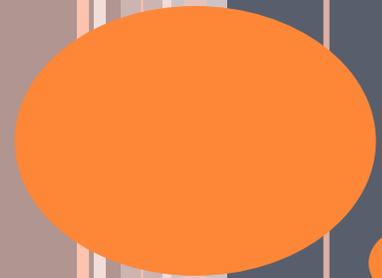
- Frequency
- Degree to which conduct is physically threatening or humiliating
- Degree to which the conduct interferes unreasonably with an employee's work performance
- Examples



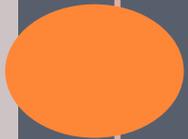
TANGIBLE EMPLOYMENT ACTION

- Significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.





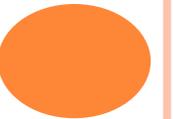
POLICY, POLICY & TRAINING, TRAINING





PREVENTING HARASSMENT

- Leadership
- Accountability
- Effective Policy
- Regular & Effective Training



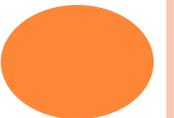
BASIC HARASSMENT POLICY

- Anti-Harassment Statement
- Harassment Definitions
- Reporting Procedures
- Anti-Retaliation Statement
- Investigation & Corrective Action Procedures
- Prompt Remedial Action
- Should not be complicated
- Update it!



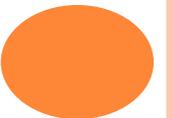
ANTI HARASSMENT STATEMENT

- It is the policy of the city to provide and maintain a work environment that is free of any and all forms of harassment based on race, age, gender, religion, color, disability, or national origin.
- No city employee may engage in conduct at work that involves or could be construed as involving harassment toward any city employee, resident, customer, or visitor on the basis of race, age, gender, religion, color, disability, or national origin.



REPORTING POLICY

- Need not be recipient of alleged harassment
- Need not be in writing
 - PITFALL
- If you are offended by behavior, you can be a complainant
- Investigate no matter what
- Recognize behavior
- Respect – Workplace



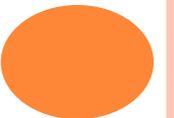
REPORTING POLICY

- Employees are expected to promptly raise questions and concerns regarding alleged violations of policy.
- Promptly raising questions or concerns allows for the concerns to be addressed quickly and can assist in preventing problems from occurring or escalating.
- Any employee who believes that they have been subjected to discrimination, or sexual harassment based on a protected class or retaliation based on a protected activity, another form of harassment or who becomes aware of a threatening situation as described in this policy is encouraged to immediately report it to their supervisor.
- What if my supervisor is the alleged harasser?



CONSEQUENCES OF A VALID COMPLAINT OR INVALID COMPLAINT

- Findings of discrimination, harassment or retaliation against an employee may result in discipline up to and including discharge.
 - Supervisors may experience more severe discipline for the same type of behavior than other employees.
- No retaliation may occur for a good faith report.



NO RETALIATION POLICY

- Retaliation violates our policy and the law.
- You may not discipline, demote or terminate an employee for reporting discrimination or harassment.
- We may not take adverse action against an employee for participating in proceedings concerning another employee's claim.
- Complaining employee must have good-faith, reasonable belief that the conduct is unlawful.
- Supervisory employees who engage in unlawful retaliation will be disciplined.



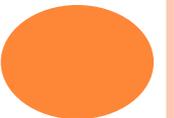
STRENGTHENING YOUR HARASSMENT POLICY

- Clarify who may Make Complaints
 - Victim
 - Third Party Witnesses
- Multiple Points of Contact
- Detail Prohibited Conduct (in definitions)
- Be Clear on Protection of Employees – No Retaliation
- Take Strong Action on Investigation and Corrective Action
- Signatures of Employees to Acknowledge Policy



BUT ELECTED & APPOINTED OFFICIALS AREN'T EMPLOYEES....

- Harassment not permitted; handled differently
 - Employment policy manual not applicable
- Consider establishing policies
- Complaints against public officials
 - Government Code 551.074
 - Evaluate & Investigate!
- Penal Code- Chapter 39
 - Abuse of Official Capacity
 - Official Oppression (sexual harassment)



POLICY IMPLEMENTATION

Protect yourself by documenting your actions as follows:

- Be accurate and truthful
- Don't delay
- Be thorough
- Review your documentation
- Have someone else review it

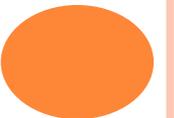


DO NOT IGNORE COMPLAINTS!

Remember these rules when responding to complaints:

1. Listen carefully and take all complaints seriously;
2. Be familiar with policies;
3. Don't promise to keep the complaint confidential;
4. Assure the employee that there will be no retaliation; and
5. Report all complaints to Human Resources.

Make clear your willingness to receive complaints and take appropriate action.



DANGEROUS WORDS

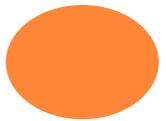
- When responding to a complaint, be careful that these words don't come out of your mouth:

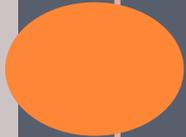
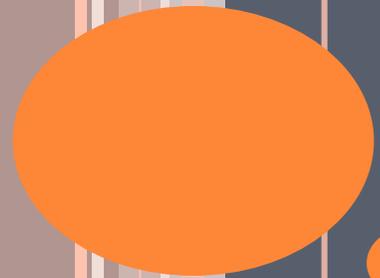
- It's just teasing – no big deal
- I know he/she didn't mean anything like that.
- You need to learn to handle these things.
- Just ignore it. That's the way things go around here.
- You must have wanted it, otherwise you would have told him no.
- It's just a joke, Lighten up.
- We've never had a complaint, so we don't have a problem.
- It's a matter of hormones we can't control that.
- If we had to discipline every employee who used bad language we'd never get anything else done.
- The people in our work would never do...
- It's your fault for dressing so provocatively.
- He puts his arms around everyone.
- Why can't you learn to accept a compliment?
- That's how they do things where he comes from.
- No one's filed a charge so our hands are tied.
- This kind of behavior is all part of growing up.
- It's just a prank that got out of hand.



BEST PRACTICES FOR POLICIES

- Document, Document, Document
- Training, Training, Training





A RESPECTFUL WORKPLACE

IMPLEMENTING CIVILITY IN THE WORKPLACE

Civility demands that one speaks in ways that are respectful, responsible, restrained and principled...

... and avoid that which is offensive, rude, demeaning, and threatening.



IMPACT OF INCIVILITY IN THE WORKPLACE

- 48% - intentionally decreased their work effort
- 47% - intentionally decreased the time spent at work
- 38% - intentionally decreased the quality of their work
- 80% - lost work time worrying about the incident
- 63% - lost work time avoiding the offender
- 66% - said their performance declined
- 78% - said their commitment to the organization declined
- 12% - said they left their job because of the uncivil treatment
- 25% - admitted to taking their frustration out on customers

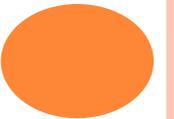
Porath and Pearson



STOP

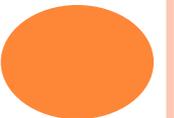


SOURCE
TARGET
OBSERVER
PERSON IN
AUTHORITY



SOURCE

- The source of the disrespectful behavior has the responsibility to stop behaving in such a manner.
- What about US? Are we part of the problem? Have we added to the disrespectful behavior?

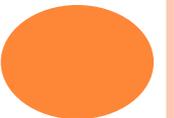


TARGET

- The *target* must help confront the Harassment/Harasser!
- If we are offended by other's actions or words, we need to let them know and ask them to stop.

Consider this:

- The source of the disrespectful behavior may not even know that his or her behavior is offensive to us or others.
- How can this person correct his or her behavior if he or she is unaware of its impact?



OBSERVER

- Those who *observe* disrespectful or harassing behavior have a responsibility to stop it when it occurs; and one who *notices* such is NEVER an innocent bystander!

It is simply the right thing to do.

Is it offensive to you?

What do your policies say to do?



PERSON IN AUTHORITY

- Every person in authority has a duty to keep the workplace free from offensive and harassing behavior.
- Each person in authority is crucial to creating a respectful workplace.
- Who are these people? Supervisors, Department Heads, Management



PERSON IN AUTHORITY

Handling the Harassment Complaint:

- Take the report seriously
- Listen, sympathize, but don't judge
- Don't delay
- Respond to concerns
- Document
- Follow up on the complaint
- Avoid using “dangerous words”



GOOD POLICIES: A RESPECTFUL WORKPLACE...

- Improved employee **morale and job satisfaction**, improved teamwork, lower absenteeism and turnover, and increased productivity.
- Employees are better equipped to **manage conflict collaboratively** and cope with workplace challenge and change.
- Employees are **much less likely to perceive their workload as excessive** or to submit workers' compensation claims.
- Teams and organizations that are seen as positive places to work will **attract and retain highly skilled staff**.



RESOURCES

○ EEOC

- <https://www.eeoc.gov/eeoc/newsroom/wysk/preventing-workplace-harassment.cfm>
- https://www.eeoc.gov/employers/smallbusiness/resources_harassment.cfm

○ Society of Human Resources Management

- <https://www.shrm.org/resourcesandtools/hr-topics/employee-relations/pages/workplace-harassment-resources.aspx>

○ Department of Labor Civil Rights Center

- <https://www.dol.gov/oasam/programs/crc/index.htm>



CLARISSA M. RODRIGUEZ

Clarissa.rodriguez@rampage-sa.com

Denton Navarro Rocha Bernal & Zech, P.C.

2517 N. Main

San Antonio, TX 78212

(210) 227-3243

Austin Office

2500 W. William Cannon, Suite 609

Austin, TX 78745

(512) 279-6431

Harlingen Office

701 East Harrison, Suite 100

Harlingen, TX 78550

(956) 421-4904

