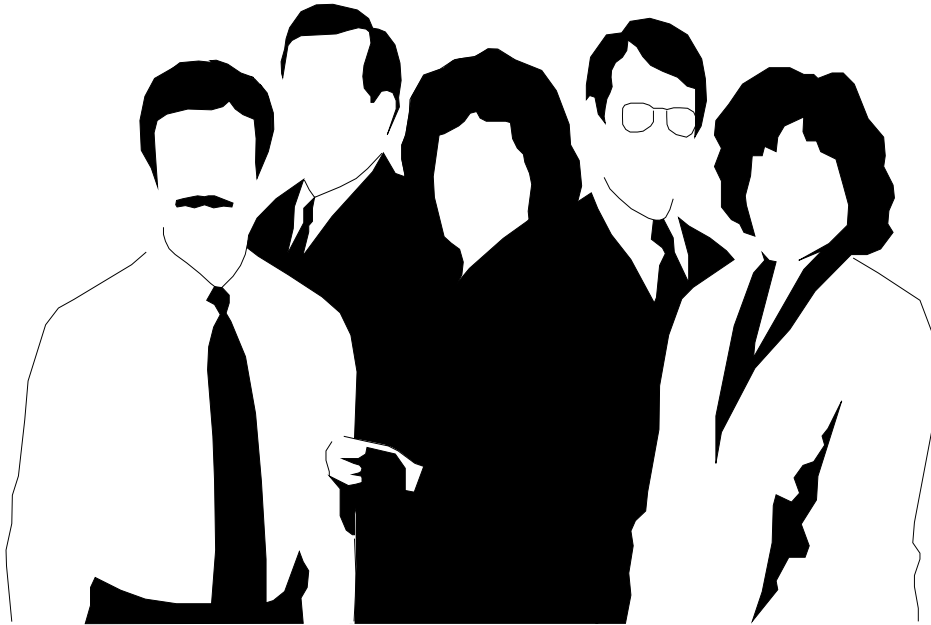


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HARASSMENT IN THE WORKPLACE

AN OVERVIEW



Presentation for: **LORMAN[®]**
EDUCATION SERVICES

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A. THE EVOLUTION OF SEXUAL HARASSMENT/DISCRIMINATION LAW

1. Federal laws such as the Civil Rights Act of 1964 and The Civil Rights Act of 1991 make harassment and discrimination illegal.

(Notes)

2. *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986)
 - There are two types of sexual harassment claims under Title VII.
 - a. Quid pro quo: Harassment exists when a supervisor uses his or her position to force an employee to submit to sexual favors in return for tangible job benefits, or
 - b. Hostile environment: Sexual harassment also occurs when co-workers and/or supervisors subject an employee to unwelcome sexual conduct which unreasonably interferes with the employee's work performance or creates a hostile or offensive work environment.
 - ▶ Harassment must be severe and pervasive.
 - ▶ Harassment must be "unwelcome."
 - ▶ Harassment may be physical or verbal in nature.

(Notes)

3. *Harris v. Forklift Systems*, 114 S.Ct. 367 (1993)
 - a. Employee does not have to show that harassment caused his or her “severe psychological injury.”
 - b. Subjective and objective standard.

(Notes)

4. *Oncale v. Sundowner Off-Shore Servs, Inc.*, 523 U.S. 75 (1998)
 - a. Sexual harassment can occur between members of the same sex.

(Notes)

5. *Farager v. City of Boca Raton*, 524 U.S. 775 (1998) and *Burlington Industries, Ind. v. Ellerth*, 524 U.S. 742 (1998).
 - a. Employers are now vicariously liable for the sexually harassing conduct of supervisors against employees.
 - * Exception (i.e. affirmative defense): Where the harassed employee did not suffer any

detrimental employment action (i.e. termination, suspension, demotion), the employer will not be liable if:

- (1) The employer tried to prevent and promptly correct sexual harassing behavior; and
- (2) the harassed employee failed to use available preventive or corrective measures (such as complaint procedures for sexual harassment) or to otherwise avoid harm.

* Use of employer's sexual harassment policy and complaint procedure for sexual harassment is therefore important to both the employer and the employee.

- b. Employer's liability for co-worker sexual harassment is determined by whether employer knew or should have known of the harassing conduct and failed to take corrective action.

(Notes)

B. TYPES OF CONDUCT WHICH MAY BE VIEWED AS SEXUAL HARASSMENT IN THE WORK PLACE

1. Touching/fondling.

2. Massaging of shoulders.
3. Repeated, unwelcome advances.
4. Sexual comments or jokes.
5. Discussing sex life or activities.
6. Pornographic movies and magazines.
7. Computer e-mail messages.

(Notes)

C. EMPLOYER'S SEXUAL HARASSMENT/DISCRIMINATION POLICY

1. Policy statement.

(Notes)

2. Sexual harassment defined.

(Notes)

3. Reporting of incident.

- ▶ Complaint should be specific.
- ▶ Responsibility of employees under policy.

(Notes)

4. Discipline.

- ▶ An employee found guilty of harassment will be subject to discipline up to and including termination.
- ▶ False accusations.
- ▶ Notification.

(Notes)

5. Retaliation prohibited.

(Notes)

D. INVESTIGATING COMPLAINTS OF HARASSMENT

1. Complainant interviewed first.

- a. Ask questions to secure all relevant facts.
- b. Investigator should determine whether complaining employee made it clear to the accused that the conduct was unwelcome.
- c. Investigator should assure employee that all necessary steps will be taken to protect the employee from further harassment, discrimination and retaliation.
- d. Investigator should advise complainant that investigation will be treated confidentially, but total confidentiality may not be assured; only those with a need to know will be informed.
- e. Complainant should be advised that complaint will be investigated thoroughly.

(Notes)

2. Interview of accused employee (obtain written statement).

- a. Accused advised of the allegations (have another supervisor present for interview).
- b. Accused employee should be allowed to respond to the complaint.
- c. Accused employee should be asked if he or she knows why the other employee would accuse them of such conduct.
- d. Accused employee should identify any witnesses whom he or she believes will have knowledge that the alleged conduct did not occur.
- e. Accused employee should be told to have as little contact with the complaining employee as possible.

(Notes)

3. All witnesses interviewed.
 - a. Written statements obtained from those witnesses who have been identified as having knowledge of the incident.
 - b. Any other corroborative evidence should be obtained.

(Notes)

4. General principles in conducting investigation.
 - a. All complaints taken seriously.
 - b. Objectivity guides the investigation; investigator not to hint about or discuss opinion concerning validity of complaint.
 - c. Investigator will gather all the facts: who, what, when, where, why and how.
 - d. The role of the investigator is not to determine whether the conduct meets a legal definition of sexual harassment, but rather, whether conduct violates the Employer's policy.

(Notes)

E. STEPS TO AVOID LIABILITY

1. Adequate sexual harassment policy.

(Notes)

2. Train employees on policy.

(Notes)

3. Take immediate action on complaint.

(Notes)