
RECOGNIZING HARASSMENT VIOLENCE AND RETALIATION IN THE WORKPLACE

What It Is and What It Is Not

SESSION OBJECTIVES

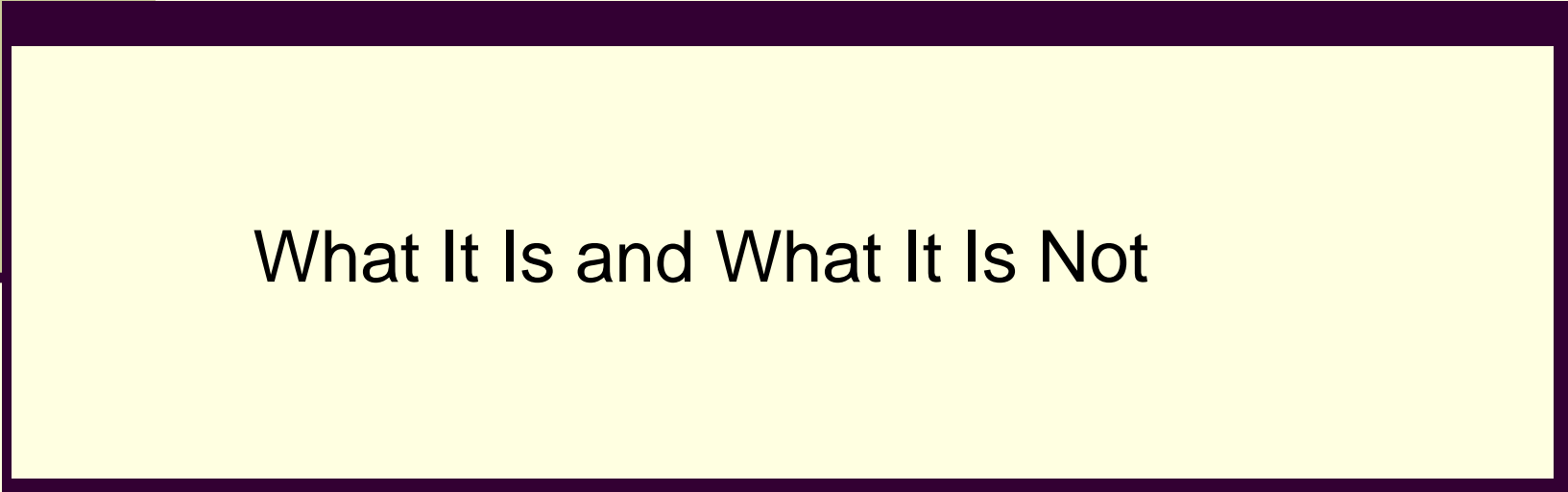
- Understand what harassment is and is not
- Understand what workplace violence is and is not
- Recognizing violent potential
- Techniques to diffuse violence
- The framework of retaliation claims
- Take appropriate action

WHY YOU NEED TO KNOW

- HARASSMENT – VIOLENCE - RETALIATION:
 - Damages organizations
 - Undermines trust and respect
 - Exposes your organization to damaging liabilities



HARASSMENT



What It Is and What It Is Not

DEFINITION

A person is guilty of harassment if he or she maliciously and intentionally commits one of the following acts because of his or her perception of the victim's race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicap.

What Does It Constitute?

- 1. Causes physical injury to the victim or another person
- 2. Causes physical damage to or destruction of the property of the victim or another person; or
- 3. Threatens a specific person or group of persons and places that person, or members of the specific group of persons, in reasonable fear of harm to person or property.

Harassment Is

- Harassment is a form of workplace discrimination and is, therefore, against the law
- Nonsexual harassment involves unwelcome behavior directed at individuals because of their race, national origin, religion, age, or disability
- Harassers can be co-workers, supervisors, or even customers and vendors
- Harassment usually involves a pattern of behavior – something that occurs repeatedly over time, although one serious incident may be enough to trigger a charge of harassment.
- It is often blatant – jokes, slurs, graffiti, cartoons, derogatory comments or threats

Harassment Continued

- It can also take the form of veiled comments, subtle intimidation and language or behavior that may seem to be meant in fun
- It can be nonverbal – staring at someone, standing over someone, invading someone’s personal space in a threatening or intimidating manner
- Harassment may also be based on perceptions or associations – a co-worker harassing an employee because he attends a mosque or another worker because he or she is married to a Hispanic.
- **HARASSMENT CREATES AN INTIMIDATING, HOSTILE OR OFFENSIVE WORK ENVIRONMENT FOR THE VICTIM.**

Harassment Is Not

- Simple teasing
- Offhand comments
- Rude or insensitive behavior
 - Such behavior is inappropriate and also should not be tolerated on the job

What To Do

- Encourage employees to recognize the benefits of diversity
- Promote a fair and diverse workplace by being aware of and trying to correct personal biases
 - Stop people when you hear them joke about or put others down
 - Try to understand where another person is coming from
 - Deal with conflicts right away instead of carrying grudges
 - See each person as an individual



WORKPLACE VIOLENCE



What It Is and What It Is Not

Workplace Violence

- Workplace violence is any physical assault, threatening behavior, or verbal abuse related to the workplace and entails a substantial risk of physical or emotional harm to individuals or damage to company resources or capabilities
- Workplace Violence Includes:
 - Suicides
 - Shootings
 - Intimidation
 - Harassment of any nature
 - Being followed or shouted at

Examples



- Verbal threats to inflict bodily harm, including vague or covert threats
- Attempting to cause physical harm, striking, pushing and other aggressive physical acts against another person
- Verbal harassment; abusive or offensive language, gestures or other discourteous conduct towards supervisors, fellow employees or the public
- Disorderly conduct such as shouting, throwing or pushing objects, punching walls, and slamming doors
- Making false, malicious or unfounded statements against coworkers, supervisors or subordinates which tend to damage their reputations or undermine their authority
- Inappropriate remarks
- Bringing guns into the workplace

It Is NOT

- Annoying behavior
- Disliking a coworker
- A rude customer

Recognizing Violent Potential

HISTORY OF VIOLENCE:

- Demonstrated violence towards inanimate objects
- Evidence of earlier violent behavior
- Fascination with weapons, acts of violence or both



THREATENING BEHAVIOR:

- States intention to hurt someone
- Holds grudges
- Excessive behavior (phone calls, obsessions)
- Preoccupation with violence

INTIMIDATING BEHAVIOR:

- Argumentative
- Displays unwarranted anger
- Uncooperative, impulsive, easily frustrated
- Challenges peers and authority figures



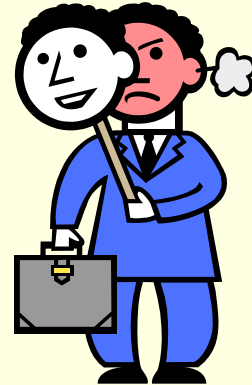
INCREASE IN PERSONAL STRESS:

- An unreciprocated romantic obsession
- Serious family or financial problems
- Recent job loss

Recognizing Violent Potential Cont'd

- Negative Personality Characteristics
 - Suspicious of others
 - Sense of entitlement
 - Unable to take criticism
 - Feels victimized

- Marked Changes in Mood or Behavior
 - Extreme or bizarre behavior
 - Irrational beliefs or ideas
 - Appears depressed or has heightened anxiety
 - Marked decline in work performance



Techniques to Diffuse Violence

- How to spot an aggressive situation
 - Speaking loudly, frantically or quickly
 - Gesturing wildly
 - Aggressive stances and gestures such as pointing, getting close, clinching fists
 - Making threats and personal insults



Techniques to Diffuse Violence Cont'd

- Some violent situations cannot be stopped; however, there are proven techniques that you can use and steps that can be taken to reduce a situation that is escalating.
 - **Assess the situation in your mind**
 - **Project calmness**
 - **Be patient, empathetic and encourage the person to talk**
 - **Focus your attention on the person so they feel that you are interested in what they have to say**
 - **Maintain a relaxed yet attentive posture, position yourself at a right angle instead of directly in front of the person**
 - **Ask for small specific favors, such as if you could talk in a quieter area**
 - **Be reassuring and point out choices**
 - **Arrange yourself so that your exit is not blocked**

RETALIATION

What Does It Look Like???

SO MANY LAWS SO LITTLE TIME

- Retaliation is the most commonly filed claim with EEOC
 - Now comprises 30% of the total charges filed with EEOC
- Frequently brought along with discrimination claims
- Claims result in hefty damage awards
- Claims give plaintiffs free reign to base claims on an increasingly wide range of post-complaint conduct
 - Demotion
 - Poor job assignments
 - Cold shoulder

The Framework

- Three Elements of a Retaliation Claim
 - 1) The employee engaged in protected activity
 - 2) The employer subjected him/her to an adverse action
 - 3) There was a causal connection between the protected activity and the adverse action
 - Link may be established with direct evidence or with inferences derived from circumstantial evidence
 - Casual connection requirement prevents employees from asserting baseless discrimination claims in an attempt to scare their employer from taking an adverse action against them out of fear of liability under an anti-retaliation statute

Why the Increase

- Retaliation claims are more likely to prevail at trial and recover significant damages
- Juries more receptive to retaliation claims than typical discrimination claims
- Court adopted lower standard of harm the claimant must establish to prove he or she was subject to retaliation.
 - For the purposes of Title VII, adverse action is any action by an employer that “well might have dissuaded a reasonable worker from making or supporting a charge of discrimination”.

Why Retaliation Cases Are Different

- The function of human nature and how jurors think people react when they are accused of wrongdoing.
- Anti-retaliation laws require almost super human restraint.
 - Natural inclination to strike back at people who attack them and accuse them of wrongdoing.
- Jurors are predisposed to disbelieve employers
- Routinely awarded punitive damages, some exceeding \$1 million

Preventative Measures

- Have a non-retaliation policy
- Provide training to Managers/Supervisor
 - What constitutes retaliation
 - How to respond
- Have a credible complaint procedure and promptly investigate all complaints
- Be sensitive and thank the employee for the information provided
- Assure employees that retaliation will not be tolerated

Handling Complaints

- Encourage reporting
- Respond to all complaints
- Allow employees to bypass the normal chain of command
- Respect confidentiality
- Strike a balance between confidentiality and the need to investigate
- Protect everyone's rights

Conducting Investigations

- Questions for the employee filing the complaint

*Who
What
? When*

Taking Corrective Action

- Take effective remedial action
- Balance competing concerns
- Make certain the victim is not adversely affected
- Stop the harassment make certain it doesn't recur
- Correct the effects of the harassment
- Follow up to make sure the problem is solved



Time For A Video

- HARASSMENT
- Sex, Religion and Beyond – 24 minutes

Know Your Policy

- Familiarize yourself with your policy
- Publicize your policy
- Enforce your policy
- Review your policy periodically

Your Policy Should:

- Be a statement of your organizations position against harassment
- Promote compliance and prevention by defining responsibilities
- Protect your rights and foster respect for all

KEY POINTS To Remember!

- Harassment, violence in the workplace and retaliation are prohibited by law and workplace policy
- It involves more than physical conduct; it can also be verbal or visual
- Harassment, violence and retaliation harms us all
- You have a responsibility to help prevent it