



January 28, 2017



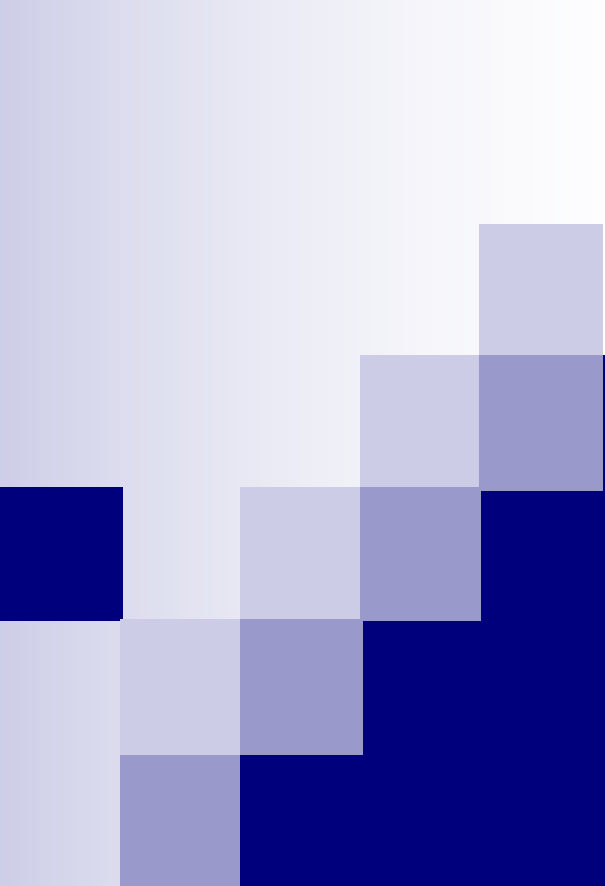
U.S. Equal
Employment
Opportunity
Commission

www.EEOC.gov

**Daron L. Calhoun,
Director**

Richmond Local Office

January 28, 2017



Know Your Rights
Workplace Discrimination Issues
How to Identify,
Prevent and Eliminate Workplace
Harassment and Discrimination
Race and Social Justice Initiative

Course Materials and Training Provided by the

**U.S. Equal Employment
Opportunity Commission**

Laws Enforced by the EEOC

- **Title VII of the Civil Rights Act (TVII)** of 1964, as amended;
 - *Race, color, religion, national origin and sex (gender) – sexual harassment*
- **Age Discrimination in Employment Act (ADEA)** of 1967, as amended;
 - Over 40 years of age
- **Americans with Disabilities Act (ADA)** of 1990, as amended (ADA-AA of 2008);
 - *Persons with disabilities, regarded as having, record of a disability*
- **Genetic Information Nondiscrimination Act** of 2009
 - *Use of family genetic information unlawful in employment decisions.*
- **Equal Pay Act (EPA)** of 1963, as amended (ERISA-DOL)
 - *Difference in pay on basis of gender*
- **Pregnancy Discrimination Act (PDA)** of 1973

COVERED EMPLOYEES

- Title VII/ADA/GINA – Employers with 15 or more employees for 20 calendar weeks out of the year.
- ADEA – 20 or more employees for 20 calendar weeks out of the year.
- EPA – 2 employees



What is Unlawful Employment Discrimination?

To treat someone in the workplace different because of a protected basis.

What is Harassment?

ANY

Unwelcome, unwanted verbal or physical conduct of a _____ nature.



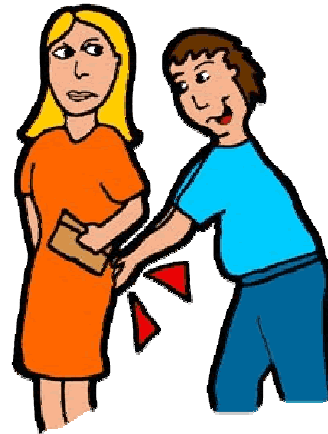
What are the Protected Bases

- Race
- Color
- Religion
- Sex
- National Origin
- Age (40 and over)
- Disability
- Retaliation
- Genetic Information



What is Unwelcomeness?

- Employee did not solicit or invite the conduct.
- Employee regarded the conduct as undesirable



What is Prohibited

- Unwelcome conduct that alters the conditions of employment, e.g.
 - Sexual advances/pressures for dates
 - Slurs, racial comments, jokes, innuendos
 - Beatings, threats, inappropriate touching
 - Inappropriate gestures, pictures, graffiti, slang expressions



Who is Involved in Workplace Harassment?

- Victims:
 - Male or Female
 - Third party

- Harasser
 - Male or Female
 - Supervisor, co-worker or non-employee

Victim and Harasser can be same protected basis

Elements of Unlawful Workplace Harassment

- Unwelcome conduct
- Protected Basis
- Workplace Harm
 - Hostile Work Environment
 - Tangible Employment Action
- Employer Liability





Tangible Employment Actions

Significant change in employment status.

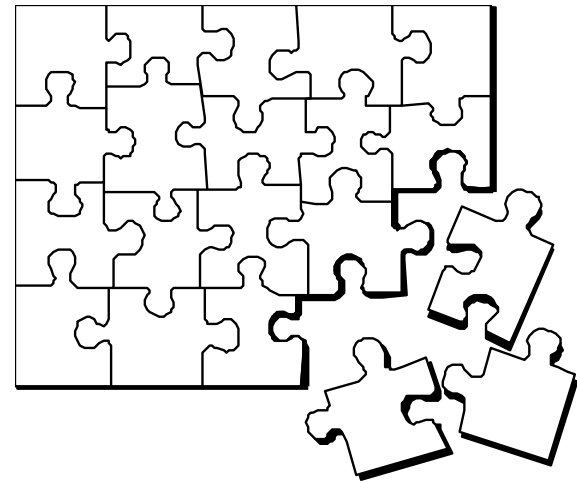
Tangible job benefits are granted/denied based on submission rejection of unwelcome conduct.

Harasser is a supervisory official.

Tangible Employment Actions

Examples include:

- Hire and/or Failure to Hire
- Termination
- Promotion or Failure to Promote
- Demotion
- Reassignment
- Compensation
- Work Assignment
- Benefits, Terms Conditions (Change)



Employer Liability Tangible Employment Action

- Employer considered always liable when:
 - Harasser is a supervisor
 - Harasser has authority to undertake or recommend tangible employment decisions affecting the victim
 - Harasser has the authority to direct victim's daily work activities.

Hostile Work Environment Harassment

Definition

- Does not result in a tangible employment action.
- Unreasonably interferes with an employee's work performance.
- Creates an intimidating, hostile or offensive work environment.
- Anyone can commit this type of harassment
 - supervisor, co-worker or non-employee

Hostile Work Environment Harassment

- Key Issues:
 - Context, Frequency and /or Severity
 - “Reasonable Person” Standard

Tangible effect on Victim’s Job Not Necessary
Severe Psychological Harm Not Necessary

Employer Liability

Hostile Work Environment

Harassment

- High Ranking Official
 - Automatic Liability
- Supervisor
 - Liable unless both part of the affirmative defense are established (*reasonable care to prevent and ee failed to take advantage*)
- Co-Worker or Non-Employee
 - Liable if the employer knew or should have known about the harassment and did not correct it!



Hostile Work Environment

Harassment by a Supervisor

Employer is liable unless:

- ❑ Employer exercised reasonable care to prevent and promptly correct any harassment, AND
- ❑ Employee unreasonably failed to take advantage of an preventative or corrective opportunities or to avoid harm otherwise.



Hostile Work Environment

Harassment by Co-Worker or Non-Employee

Employer is liable if:

- Knew or should have known of harassment and failed to take immediate and appropriate corrective action**

Employer knowledge is assumed if:

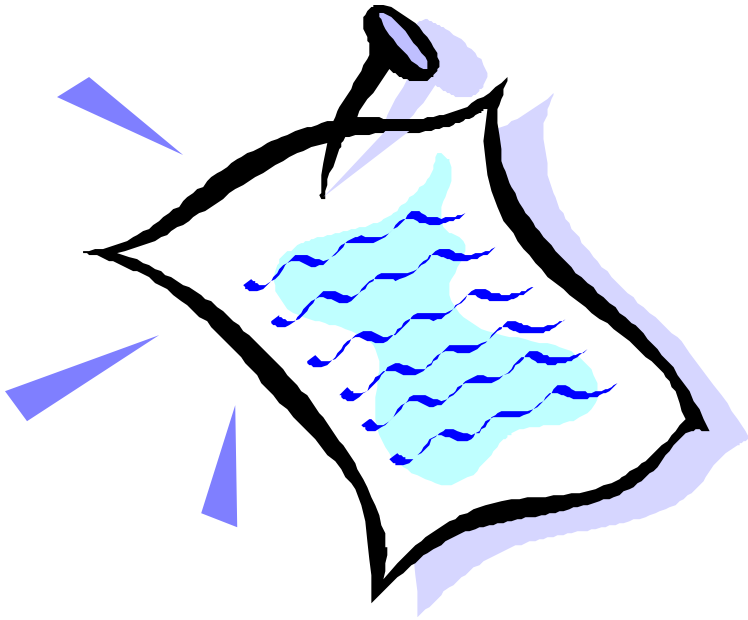
- The victims complains to a supervisor, or conduct occurred in the presence of a supervisor, or conduct is widespread or reoccurring.**

Appropriate Preventive Actions

- Anti-Harassment Policy
- Training
- Internal Complaints Procedure
- Monitor Enforcement of Policy



Anti-Harassment Policy



- Be written and well disseminated
- Protect against retaliation
- Define workplace harassment
- Establish a complaints procedure
- Create multiple paths in the complaint process
- Establish disciplinary action
- Ensure confidentiality

Appropriate Corrective Actions

- Stop Harassment Immediately
- Investigate
- Protect Against Retaliation
- Provide Appropriate Relief



Corrective Actions to Stop and Prevent Harassment

Examples include:

Oral or written warning or reprimand

Transfer or reassignment

Demotion

Suspension or discharge

Training or counseling harasser

Monitoring harasser

Harassment Affects the Workplace

High legal costs and fines (litigation)
Damaged organizational image
Reduced productivity and lower morale
Higher employee turnover
Higher costs for hiring and training new employees

IT'S AGAINST THE LAW!

