

HARASSMENT PREVENTION TRAINING SCRIPT

Slide 1 Title Slide

Welcome to the UTEAP training titled Workplace Harassment Prevention Training.

This training class will take approximately _____ minutes and once you start the presentation you should plan to complete the entire training. At the end of the class you will need to complete a brief quiz and you will then be able to print a Certificate of Completion for your records.

The content of this training is designed for both employees and supervisors to use in learning more about harassment prevention and to increase sensitivity and awareness in interacting with others within the workplace

Slide 2 A few Quick Points

Before we start the training today I would like to review a few introductory comments.

This training is not meant to provide legal advice but rather, it is designed to be used as an educational tool. We will use examples of case studies throughout the training. These are included for educational purposes only and although based in fact they are not actual events.

Every effort has been made to ensure that the content of the training is correct, and this training was developed in cooperation and with oversight of legal counsel. Court rulings may change over time and individual state laws may differ from one location to another and some content of the training may not apply in all locations.

UTEAP makes no warranties in relation to accuracy or completeness of the information. Once again we want to clearly state this training is not meant as professional legal advice and in no event will UTEAP be liable for any incidental or consequential damages resulting from the use of the information in this document.

As I mentioned, laws are different from state to state please review the specific laws related to workplace harassment in your state. You will find a wealth of information on federal and state sexual harassment policies and you can ask questions at www.eeoc.gov/types/sexual_harassment.html

We would also remind you that your human resource department is an excellent resource for additional information on harassment.

Slide 3 Goals for Today

Let's go over what we hope to accomplish today.

First, we will define harassment in the workplace, what it is, what it is not and how to avoid being a harasser or the victim of harassment.

Second, we want to talk about policies related to harassment. Most organizations have very specific policies that clearly state that harassment will not be tolerated. You should know how to find the policy at your organization and you should review the policy on at least an annual basis.

Third, we will present some specific case examples of harassment and questionable workplace behavior. Our goal is to use these examples in learning how to prevent and respond to harassment situations.

Finally we want you to be able to pass our post training quiz. It is not a difficult quiz but you will need to listen and pay attention in order to pass.

Slide 4 Policy Related to Harassment

Most organizations have a harassment policy that clearly outlines the types of harassment and the consequences of harassing behavior within the workplace. A typical policy will be similar to the following

“Our organization will not tolerate workplace harassment by any employee toward another employee or toward any persons with whom our organization does business nor by anyone who does business with our organizations toward any of our employees”.

This statement is somewhat of a tongue twister. In brief the policy states “Our Organization will not tolerate harassment”.

Slide 5 History of Harassment

When UTEAP does this presentation live there are always lots of questions and one of the most frequent questions asked of the presenter is “how did we get here, how is it we need to spend time and energy learning about harassment ?” Well to answer that question and understand why this training is important, we need to understand the history of harassment in the workplace and how we arrived at this point through the courts and the establishment of laws and regulations.

Back in 1964, Congress passed Title 7 of the Civil Rights Act which for the first time prohibited discrimination within the workplace because race, color, religion, national origin and sex. Prior to that time, discrimination and harassment were much more common and often accepted within the workplace.

There were very few or no protections and very few alternatives for an employee against a discriminating or harassing employer or supervisor. The passage of Title 7, for the first time, required employers to be responsible for protecting employees within the workplace.

In 1972, a second important event occurred. Congress created the Equal Employment Opportunity Commission—often simply referred to as the EEOC. This act gave the EEOC power to enforce the Title 7 law.

In 1976 the concept of “quid pro quo” was recognized by the US Supreme Court. We will define this term later in the presentation so doesn’t worry about it right now.

In 1991 a new Civil Rights Act was passed to amend the Civil Rights Act and for the first time financial damages were awarded in cases of intentional employment discrimination and harassment.

Following this amendment, there was a significant increase in the number of discrimination and harassment complaints filed. In 1992, the first year after the amendment, the number of reported complaints rose by 62%.

In 1993, the US Supreme Court defined the element of a “Hostile Environment” as a harassment claim.

One year later in 1994, the Trial Court in California made the first major financial award to a plaintiff of \$7.1 million after a law firm failed to end harassment which resulted in a hostile work environment.

Slide 6 History of Harassment Continued---

In 1998 the Supreme Court ruled that employees who refuse sexual advances of a supervisor but did not have any tangible job consequences (such as being terminated or demoted), may still recover damages against the employer without showing the employer was negligent in preventing the action or at fault for the supervisor's actions.

Later in that year the US Supreme Court ruled same-sex -- sexual harassment is actionable under Title 7 and for the first time protecting men as well as women in sexual harassment complaints.

By the late 1990's many organizations became very proactive in providing training and education to their employees on harassment prevention. To ensure that training continue, many states enacted their own requirement for harassment prevention training and in 1995 California passed a law requiring that all supervisors receive two hours of sexual harassment prevention training every 2 years.

Slide 7 What is Sexual Harassment

The Courts have ruled in many cases related to prohibited discrimination and harassment over the years and today it may seem fairly simple to define harassment and prevent people from harassing each other. Unfortunately this is not the case. When you look at the interaction between people on a daily basis, the definition becomes more difficult.

Our comments, interactions and behaviors in relationship to ethnic backgrounds, cultural values, sex, religious beliefs, handicapping conditions, age and other factors quickly becomes complicated within the workplace. What is a harmless joke to one person can be extremely offensive to another and behavior that is OK one day may not be acceptable the next, and at that point you have suddenly stepped over the line.

Today, in our training, we are going to address several types of harassment, but our main focus will be on **hostile work environment sexual harassment** and to get started let's look at a definition

"Hostile work environment sexual harassment is defined as unwelcome sexual conduct which creates an intimidating or abusive work environment on the basis of sex."

"Sexual Harassment is a form of employment discrimination prohibited under Title 7 of the Civil Rights Act of 1964".

So, you might ask yourself, what is a good definition of Harassment? (Next slide)

Slide 8 What is harassment in general

The term Harassment refers to behaviors or comments or actions which are personally offensive, impairs morale and interferes with the work effectiveness of an employee.

Harassment is also usually an issue of one person's abuse power over another.

Remember that in 1998 the Supreme Court ruled that an employer can be held liable for harassment even if they did not know the harassment was taking place.

An employer or supervisor is required to provide a safe work environment in compliance with applicable state and federal law.

And Finally: Harassment is a form of discrimination related to one or more legally protected characteristics of an employee.

In this general description of harassment, I just introduced a new term ***“legally protected characteristics of an employee”***. This term refers to a wide range of characteristics that include many different areas of potential Harassment and Discrimination. Let's discuss those areas next.

Slide 9 Examples of Prohibited Types of harassment /discrimination

You may not have realized that you and everyone else have several *legally protected characteristics*. Let's review what some of those characteristics are"

Age is a legally protected characteristic of all employees in the workplace. Derogatory comments about someone over 40 is prohibited. A comment such as "you can't teach an old dog new tricks" can be interpreted as a harassing statement.

Also comments related to **Race or Color**. Using slang expressions about someone's race or the color of someone skin is prohibited.

National Origin or Ancestry is another area of potential harassment. Using ethnic slurs or telling ethnic jokes is not tolerated nor is making comments about a person's ancestry or their country of origin.

Also **Religion**---making references or comments about beliefs, religious holidays or customs is prohibited.

Disability making reference to or labeling someone with a handicapping condition, or limiting an individual's activities on the job because of their disability can be considered harassment. For example talking softly to the hearing impaired, placing obstacles in the path of a blind person, putting items out of reach for someone in a wheelchair is harassment.

You might ask yourself, "Who would do something like that?" Well most people wouldn't but it does happen. Let me give you an example.

Let's say an employee in a wheel chair comes to you and says, "You know when the delivery guy comes and leaves the boxes in the hall way it makes it difficult for me to get by. Can you have them put the boxes of paper somewhere else?" You respond "sure thing, no problem" The next week the boxes are again in the hall – you forgot to tell the delivery person to make the change. The person again asks you to have them stored somewhere else—you again forget. Eventually, after several requests and no action on your part, this can be seen as the creation of a hostile and harassing workplace.

Sexual—comments about sex, jokes, brushing against, blocking the way in a hallway, repeatedly asking someone out after they have said no, inappropriate emails, printed material or other dominant behavior.

Gender and Gender Stereotyping, harassment based o perceived differences from typical gender expectations.

As you have just seen and heard, there are many types of harassment and discrimination. The important message here is that you need to be sensitive and think before you make inappropriate statements or engage in behavior that others may perceive as inappropriate.

Slide 10 Who Decides when it's Discrimination (Insert the word employee on the third line -- Comments made by Employees and Supervisors.)

Frequently, we hear comments like "that's not what I meant ", "they are just taking what I said in the wrong way" "He or she is just over sensitive."

That may be how *you* feel and you may not purposely made a harassing comment, but you may be surprised to know that as the harassing person, it is *not you who makes the decision* about if what you did or said was discriminating or harassing --- it is the other person.

The fact is, the "victim" or the person hearing the comment or seeing the behavior is the one who decides if it was discrimination or harassing. A simple rule here is this: "Harassment is always determined by the victim".

Now, that does not mean that every behavior that may be perceived as wrong is harassing or discriminating, but if someone feels that what you said or did was inappropriate they can lodge a complaint.

Over the years we have heard many troubling comments made by employees and supervisors.... I would like to share a few of those with you as examples of what NOT to say or do.

Just how many times a week do you have sex? This one does not require discussion....this is simply a question you should never ask in the workplace and probably not anywhere else as well. Sex is simply something that should never be discussed in the workplace.

"Why don't you meet me after work to discuss this problem" That comment carries many potential hidden messages to the person hearing the statement.....Perhaps you had a very busy day and after work is the only time you have available to meet and discuss a possible solution to a problem. This statement might also mean you are asking the person out after work..... Or it could be interpreted as unprofessional behavior.

"Wow, you look great did you lose weight?" You might have meant that as a compliment but it might not sound that way to the other person.

"We were just treating her like one of the guys" We heard that comment from someone on a construction site. Just what does "treating her like one of the guys mean?"

"How about can I call you a home tonight" Again as we discussed earlier, this comment may have purely business intentions, but it can sound very different to someone who reports to you or works with you.

"I usually take all the people who work on my team out for a beer on Friday night, you should join us." Well first of all it is not a good decision for any supervisor to be inviting employees out for a beer. The really operative word here is 'should'. Now, if I'm working for this person and he or she is my supervisor, and I don't show up on Friday night, and on Monday morning I'm given the task of sweeping out the warehouse when my regular job is something else I might see this as--- "well because I didn't

join you on Friday night you are now punishing me by assigning me to sweep out the warehouse on Monday morning". That could be seen as punitive and the creation of a hostile workplace.

Finally "Did you hear the joke about"? Well, if that joke is about any of the *legally protected personal characteristics* we just described in the previous slide, then you might reconsider telling the joke. In fact, it is far better to refrain from telling any jokes in the workplace.

At this point in the presentation you may be thinking "this seems completely unfair that the victim always gets to decide about if something is harassing." Well, in fact, it is not quite that simple. The court has some protections around how statements and actions are interpreted. This is called the "*Reasonable Person Standard*".

Slide 11 Reasonable Person Standard

The *Reasonable Person Standard* is also referred to in some States as the Reasonable Woman Standard and it goes like this.

Given the same or similar situation or circumstance, would a reasonable person see this as sexual harassment or a hostile work environment?

Now this is the standard used by courts to determine whether unlawful conduct has occurred. If you ask three or four people who are reasonable and they conclude that it is a hostile work environment or harassing comment, then the court would also probably conclude that it is as well.

Slide 12 The reasonable person standard--Coach

Here is an example of a reasonable person standard and try to understand the meaning. This is an action that takes place over and over on the athletic field.

A coach football smacks his player on the buttocks as he heads onto the field. Is this unlawful harassment?

Well it could be, but if you watch enough sporting events you will see this behavior happening all the time. A reasonable person would probably conclude that the behavior was not meant to harass or defame.

Slide 13 The reasonable person Standard Secretary slide 2

Now, suppose that same coach smacks his secretary on the buttocks as she is leaving his office. Is this unlawful harassment?

Probably--most reasonable persons would consider this to be very inappropriate and would consider it a potentially harassing situation. Even though the behavior is the same, the context of the behavior is very different and most "reasonable people" would say this is very inappropriate behavior.

It is important to remember that the behavior and the context play a big role in how a reasonable person will interpret the behavior.

In a moment we will come back to the Reasonable Person Standard and look at other examples of harassment and try to understand them in greater detail, but first let me talk a bit about who is liable in harassment.

Slide 14 Who is Liable

First of all, the *Organization* has some liability since an employer can be held liable for the conduct of any employee, supervisor, even if they did not know the behavior was happening. Employers are required to provide a safe work environment.

The organization is also responsible for the conduct of *non supervisors* if they know or should have known that harassment was taking place.

Supervisors also have liability, and can be held liable for their own harassment of employees who they supervise.

And *employees* have liability. The offending employee or employees can be held individually liable for harassing actions towards a co worker.

So in summary the organization, the supervisor and employees can all be held liable. Both individually or in one or more combinations and damages could be awarded to a victim for emotional distress, actual financial damage, plus punitive amounts and attorney fees could also be awarded to a victim.

Slide 15 Employer Liability—who is a Supervisor

I would like to spend a few minutes talking about supervisor liability. Since supervisors have some extra liability in harassment situations it is important to know who a supervisor is....We have seen court cases where someone who did not believe they were a supervisor over another person often are found to be in a position of authority and as a result they are determined to indeed be a supervisor.

The employer is subject to **Vicarious Liability** for harassment if the harassment was committed by a “supervisor with immediate authority over the employee”.

Let’s look at this in more detail. Employers are liable for their supervisors and employees activities under what is known as **Vicarious Liability**. This type of liability is imposed upon an individual or an employer even though not a party to a particular event or action. For example, if you own a motor vehicle you are *vicariously* responsible for injuries even though you are not driving the car at the time of an accident. In the case of an employer, they are liable for the actions of their employee because they are engaged in some form of joint or collective activity in this case the operation of the business or organization.

So how is the status of being a supervisor determined and how does someone qualify as an employee’s supervisor?

- Someone is a supervisor IF they have the authority or ability to make or recommend tangible employment decisions that influence or affect the employee within the work environment. (This might include salary determinations or working hours for example).
- A supervisor may be someone who is temporarily authorized to direct another employee’s daily work. (Perhaps the regular supervisor is on vacation or out of the office).
- Someone is considered a supervisor if the individual has authority to direct the employee’s daily work activities.

This definition means that many people in the workplace may function as a supervisor and not really know they are in that role. Bottom line is you don’t have to have the title Supervisor to actually be a Supervisor.

On the other hand, someone who merely relays other leader’s instructions regarding work assignment and reports back to that other leader does not have true supervisory authority.

Slide 16 Non Direct Supervisor

The Courts have also ruled that employers might have liability from people who are not direct supervisors.

This means that non direct as well as direct supervisors would fit the definition of Vicarious Liability meaning that a supervisor who does not have actual authority over the employee still has liability should they harass another employee.

Liability is present in these cases *if* the employee reasonably believed that the harasser had such supervisory power.

An example of this might include:

A chain of command that is not clear. Perhaps there is a co worker who requires accuracy in reports from another employee but does not supervise the person. This person may make the assumption that this person is a supervisor since they return documents to them for correction.

Or

A direct supervisor is responsible for the employee's work but that person does not report to them. For example a director who is responsible for the overall work or production of a business unit but the employee reports to another supervisor in a different part of the work unit.

All of these descriptions would be seen as non direct supervisors.

Slide 17 Tangible Employment Action.

The biggest liability concern for employers is harassment situations that have resulted in a supervisor causing a “*tangible Employment Action*”

This would involve employer liability for harassment by a supervisor that culminates in a tangible employment action. There are several forms of Tangible Employment Actions.

- Any action that inflicts economic harm is a tangible employment action. This might include termination, being passed over for a promotion, a shift change or reassignment.
- It is important to remember that Tangible Employment Actions can only be caused by a supervisor or other person who is acting with the authority of the organization.

There are certain actions that are not considered Tangible. For example, employment actions does not reach the threshold of “tangible” if the action only results in insignificant change in employment status. Altering an individual’s job title does not qualify if there is no change in salary, benefits, duties or prestige within the workplace.

Slide 18 Liability may include Claims

It is important to note that employer and employee liability can extend beyond harassment alone and include other situations of liability.

As a part of a harassment legal proceeding the harassing employee and the organization can also be sued for

- Assault and Battery
- Intentional infliction of emotional distress
- Constructive termination
- And Defamation of character or reputation

There have been cases of employees being arrested or being held liable for harassment related behaviors such as stalking, damage to a co workers property, threatening phone calls, repeatedly driving past a co workers home and other similar activities.

Slide 19 Two types of harassment

Generally, harassment falls under two main categories. Quid pro quo and a Hostile Work Environment.

Quid pro quo is Latin for the term “this for that” or “something for something” and refers to an exchange of something of value. In this case the exchange would be between a supervisor and a subordinate. In sexual harassment this could include the exchange of sex for promotion.

A hostile work environment would be defined in this situation as unwelcome conduct of a sexual nature creating nature severe enough to create an intimidating, offensive, abusive or disruptive work environment.

Slide 20 Quid pro quo

Let's start by looking at quid pro quo as it may relate to sexual harassment. First let me clarify that quid pro quo usually occurs less frequently than a hostile work environment.

Quid pro quo occurs when an employment decision or condition is based upon whether an employee is willing to grant sexual or other favors in exchange for something in the workplace.

- “have sex with me and I will give you that promotion you want”
- “If you want to stay with this company you will meet me after work and convince me why you should keep this job.
- “If you are nice to me, I will change your shift”

Quid pro quo is usually blatant and the victim is told pretty clearly what he or she must do to keep their job or to get a promotion.

A person does not have to prove that they suffered an economic loss to prove quid pro quo sexual harassment. It is enough to show a “threat of loss” was made or “reasonably “implied.

Quid pro quo does not have to occur more than once to prove someone was a victim of sexual harassment.

Slide 21 Case Example Quid pro quo

Here is an example of how quid pro quo might happen.

John supervises Irene at the company. They are traveling to a training seminar. They go to dinner together and later have several drinks. John then asks Irene to join him in his room for a few minutes to talk about a new position she has applied for. They have more to drink and John becomes more friendly. He tries to embrace Irene. She refuses his advances and returns to her room. Three weeks later, John announces that that promotion goes to another employee.

Is it Sexual Harassment?

Was this quid pro quo?

Was Irene qualified for the position?

This certainly could be a harassment case, and here are few reasons why.

Slide 22 Quid Pro Quo John & Irene slide 2

First, John is Irene's supervisor and he needs to take extra care that his actions will not be interpreted wrong by those he supervises.

Second, people travel all the time. It's important to remember that when you are traveling on business that you are "always in the workplace". Conduct business in public places at a dinner table, around a conference table, someplace other than a hotel room.

Even if Irene encouraged the contact and the discussion the fact that the invitation to talk about the position in a hotel room would probably cause a reasonable person to most likely conclude that the promotion was denied due to Irene's rejection of John's advances.

Every employee should remember that future events will be interpreted through past behaviors.

Slide 23 Hostile Work Environment

A few minutes ago, we defined a hostile work environment as one in which unwelcome conduct of a sexual nature creates an intimidating, offensive or disruptive work environment.

Unwelcome Conduct of a sexual nature can take on many different forms such as: Sexually explicit talk, comments in an email, provocative screen savers and inappropriate touching are only a few examples of what can contribute to a Hostile Work Environment.

Slide 24 Case Example.

The scenario on the screen is an example of a Hostile Work Environment.

Rhonda is the only female working at the company. At times, she wears very tight clothing (although it does not violate company dress code) and other co-workers think it is amusing to make sexual comments about her dress and her relationship with her boyfriend. At one time, someone left sex toys in her work area. Rhonda complained to her shift supervisor and his response was to counsel her on dressing in a less revealing manner. Rhonda feels she is following the written dress code and the behavior and comments continue.

Does this example meet the requirements we just discussed for a Hostile Work Environment?

Slide 25 Hostile Work Environment cont. 3

This example could easily escalate into a Hostile Work Environment Harassment case.

- First, Rhonda's rights may be violated when her physical attributes and relationship (protected characteristics) are being discussed in the workplace.

Secondly, Sexual comments and sex toys should not be tolerated in the workplace.

And last, Rhonda's supervisor did not take her complaint seriously and is not doing his job. His job is to provide a safe work environment.

Slide 26 Unwelcome Behavior on the last bullet, change supervisor to employee

Have the statement read "As an employee it's your job to be aware of how you respond to others and how you approach others. Your behavior should be acceptable and not offensive to others."

Remember its *unwelcome behavior* that creates a hostile work environment, and is a major component of sexual harassment.

Behavior is Unwelcomed when it is uninvited, unacceptable and seen as offensive in the eyes of the other person. Unwelcome behavior might be physical, verbal or simply a gesture or repeated action that the victim has asked to be stopped.

For this reason it's important to think carefully about how others might react or perceive your actions. As an employee and coworker it's your job to be aware of how you respond to others and how you approach others. Think before you act. Your behavior should be acceptable and not offensive to others.

Slide 27 Supervisors must (insert the word) Also Take “Reasonable Care”

For a moment we will shift our conversation away from employee and talk more specifically about the supervisor’s role in preventing Unwelcome Behavior.

Supervisors must be aware of what’s happening in the workplace and respond effectively and immediately when they observe inappropriate behavior. This immediate response is known as practicing and implementing the Supervisory *Standard of Reasonable Care*.

So, what does that mean? What is the Standard of Reasonable Care?

The Supreme Court has given employers a defense in some hostile work environment cases. To take advantage of the defense, an employer must show that they “exercised reasonable care to prevent and correct promptly any sexual or other harassing behavior.”

It is the supervisor’s job to stop behavior that is offensive in the workplace. To do that, they must be observant and listen to the comments being made by others, they must also confront offensive behaviors. You as an employee can be helpful by simply talking with your supervisor when you find the comments or behaviors of a co worker offensive.

Slide 28 What degree of harassment violates the law

I’m often asked, what are the necessary conditions for a situation to actually become sexual harassment?

First, the conduct must be unwelcomed and....second result in a tangible employment action—that could mean “quid pro quo” or perhaps a change in work status such as pay, shift or title.

OR

Be sufficiently *Severe or Pervasive* to “alter the condition of employment creating an abusive working environment”. This would be called a Hostile Environment.

Severe or Pervasive means the more serious the conduct the less frequently it has to occur to meet the standard.

For example someone’s bad day comment needs to occur quite a few times to create and meet the “standard” where if someone was intimidated by receiving a sexually offensive email or sex toys being brought into the workplace, this may only need to happen once to meet the standard.

Slide 29 Questions for assessing sexual harassment change Claims to Complaints.

There are a couple questions that can be asked to determine if someone's comments or behavior might meet the standard for a harassment complaint.

- How frequent is the conduct –does it continue or has it been repeated?
- How severe is the conduct?
- Is the conduct sexual in nature?
- Is the conduct physically threatening or humiliating?
- Was the comment a result of someone having a “bad day” and saying something they normally would not say. People do make mistakes in comments and there are times when a comment can be simply taken the wrong way.
- Does it interfere with work performance?

All of these questions are a good starting point to determine if a harassment condition exists and if a complaint should be filed.

Slide 30 Common Forms of Sexual harassment

There are four types of common sexual harassment that happen in the workplace.

The first is Verbal: **READ SLIDE CONTENT**

Sexual Harassment can also be Non Verbal-- **READ THE SLIDE CONTENT**

Physical contact can also be considered sexual harassment – **READ THE SLIDE.**

Today we also see are seeing more and more new types of electronic or visual forms of harassment. These Environmental forms of Harassment include inappropriate ---**READ THE SLIDE CONTENT**

All of these forms of electronic and internet communications are becoming more and more common in harassment complaints.

SLIDE 31 Unwelcome Behavior Case Example.

Let's turn our attention to another case example of unwelcome behavior. This example involves touching. The use of touch is a way of extending a welcome as in shaking hands and saying "Hello, my name is----"or ----"perhaps giving a brief hug to express concern or happiness. Unfortunately, touching can also be invasive and not at all welcome by many co workers.

Jesse has a habit of touching people on the shoulder or arm when he talks to them and most people see him as a friendly outgoing person. Jesse has worked with Joan for over two years.

Jesse comes over to Joan and tells her how nice her hair looks. He begins to touch her hair and also tells her how soft it feels. Joan walks away and later tells another employee what Jesse did and that it made her feel uneasy.

Is this sexual harassment?

Slide 32 Unwelcome Behavior case example slide 2

The answer is somewhat complicated. At this point it probably would not be seen as a sexual harassment situation yet...but it could become one if the behavior continues.

Jesse is seen as friendly and it seems that people are not offended. Joan needs to tell him she is uncomfortable with his behavior and that it is offending to her. He may not have ever been told directly that his touching is inappropriate by his supervisor or his co workers and simply does not know.

Since Jesse has a habit of touching others Joan may have tolerated the behavior up until this time but that no longer matters. If the behavior offends her today it must stop today.

Often we do not know what might be offensive to someone else, once we learn that our actions are seen as inappropriate it is best to say "I'm sorry" and never repeat the offensive action or behavior.

Slide 33 Jerry Ed et al Case Example

This case presents another example of unwelcome behavior in the workplace

Jerry, Ed and Lisa all work at the same company and eat lunch together. During a lunch break, they ask Lisa if she has heard the joke about what blondes say when they have sex. Lisa, who has blonde hair, has had it with Jerry and Ed's jokes. She shakes her head, gets up, and moves to another table.

Telling jokes in the workplace is simply something that should not be done. Many jokes have a theme that is sexual, political, ethnic or religious and you can be assured that someone will be offended.

Slide 34 Case example slide 2

In this case, Lisa is not interested in hearing the joke. "she has had it and gets up and moves" and if she has told Jerry and Ed that she does not appreciate their jokes in the past, then this could easily result in a harassment complaint.

We don't know what Lisa may or may not have told Jerry and Ed previously. But it is clear and both Jerry and Ed should realize by her behavior that she is offended. Her response is clear. She did not appreciate the joke and Jerry and Ed should have promptly apologized.

Often people say "I just didn't know I was being offensive" Well the bottom line is-- that is not a defense. Remember the reasonable person standard. In this case if a reasonable person heard the joke would they find it offensive? If the answer in your mind is yes, then this is harassment.

If Lisa happens to be supervised by Jerry or Ed she may not be comfortable expressing directly to them that she is offended for fear of retaliation. This would be very troubling in this complaint if that were the situation.

Finally, Jerry and Ed are making references to sex in the workplace. Talking about sex in the workplace is simply not tolerated.

In summary if Ed and Jerry have a pattern of telling jokes of a sexual, ethnic, racial, religious nature they are indeed harassing their co workers.

Slide 35 Could the following behavior be perceived as Unwelcome

After going through the previous slides and case examples related to Unwelcome Behavior, how would you answer this question?

You have a screen saver on your computer from your vacation to Hawaii last year with your wife in a Bikini.

Is this Welcomed? It certainly could be. In the office it is good to stick to standard screen savers.

Unwelcomed? Again, standard screen savers rather than personal photos are best, but in this case we do not know if anyone has made a comment about the screensaver.

Would it depend on who is looking at your screen? Yes, different people will be offended by different photos.

Generally, visual material that might be distracting in the workplace is not welcomed.

Slide 36 Could the following behavior be perceived as Unwelcome--2

Here is another question for you to consider.

You are standing behind a co worker at a desk and your put your hand on their shoulder.

Would this be considered Welcome behavior? No, a reasonable person would probably say it was not appropriate to put your hands on a co workers shoulders.

Would it be Unwelcomed? Yes, most certainly by most people

Would it depend? No, most reasonable people would consider this unwelcomed behavior.

What if you took this one step further and you gave them a short neck massage. Would this make it more or less Unwelcome? Giving a short neck massage would certain escalate this into a complaint.

Neither of these scenarios are appropriate. Touching a co worker in the workplace is a bad idea. You cannot know when a touch or a hug can be interpreted in a suggestive way.

Slide 37 Could the following behavior be perceived as Unwelcome--3

One more example I would like to use is Unwelcome Behaviors relating to political views.

You feel very strongly about your political opinions on an upcoming election and you talk about it at work.

Is this welcomed? Probably not. Most people do not want to discuss politics at work

Unwelcomed? In most cases it would be.

Depends? If someone asked your opinion perhaps a discussion could be had--- UNLESS you are in a position of power and it could be seen as you trying to influence someone in one direction or another.

Expressing your personal and Political Opinions regarding politics could hurt or offend someone in your work environment. Many people have very strong political opinions and can be passionate about a cause. Regardless of political party or the political action you wish to pass in your local election, your opinion is just that----your opinion.

Slide 38 Variations in Harassment

We have discussed many terms and behaviors in this presentation. One thing is sure, Harassment and Sexual Harassment in particular may occur in and under a variety of circumstances and it is not always between a man and a woman or between a supervisor and a subordinate. Other variations in harassment may include:

Peer to Peer Harassment—persons of equal authority can harass each other

Subordinate harassment of their Supervisor—when this happens to a supervisor they must seek assistance from a higher level of management and ask for assistance in having the behavior of the subordinate stopped.

Same Sex Harassment—Sexual Harassment is unwelcome behavior regardless of gender.

Third Party Harassment—Non employees can harass staff. The delivery person who always has the not quite appropriate joke or the copier repair person who touches people a little too much. Or the consultant that is so condescending they are offensive or even that “great customer with the large purchase order” who is always asking out members of your purchasing team.

If harassing behavior is observed or if an employee feels uncomfortable they should report their observations or feelings to their supervisor and the vendor confronted on their behavior and told that their behavior is just not tolerated in your workplace.

Slide 39 Key Points. On the last bullet take out the “very important for supervisors”

It’s time for a quick review of some key points that we have covered.

- First everyone interprets events, comments and actions based upon their own background, experiences and sense of personal space and privacy.
- Your behavior is your responsibility and you cannot be sure that someone will interpret your questionable behavior as innocent. Keep in mind the *Reasonable Person Standard*. Other people will get to decide if your behavior is appropriate.
- Your actions today will be viewed in light of subsequent events. What might be seen as innocent behavior today may not be seen the same way tomorrow.

Slide 40 If You Believe that you have been harassed

If you believe that you have been harassed or observe others being harassed, you need to tell the person their behavior is offensive and must stop. If you are not comfortable or are fearful of confronting the harasser talk with your supervisor or another supervisor or contact your Human Resource Representative or EEOC.

Normally we find that if someone simply says to the other person “I find your action offensive please stop” that is all it takes. Most people will apologize and say something like “I’m so sorry. I did not realize I was out of bounds in what I said”. The behavior stops and never happens again.

If the behavior does not stop or if you are fearful of approaching the other person for fear of harm or retaliation, you should take additional action and seek assistance from your organizations Human Resource Department. By reporting the incident to HR, you are providing the organization the opportunity to assist you and to meet their obligation to provide a safe work environment.

Your Human Resource Department will investigate all reports or complaints of harassment. The investigation will be completed in a manner that is discrete and will not be discussed with others consistent with the organizations need to gather information about the incident. No retaliation will be taken against any employee who makes a good faith complaint about harassment.

Your employer realizes that holding your observations, comments or complaint in confidence is mandated and that what you share with HR or a supervisor is not to be discussed with others. Let’s talk a little more about confidentiality.

Slide 41 What About Confidentiality

Protecting the confidentiality of everyone involved in a harassment complaint and investigation is always of paramount concern. We are frequently asked about confidentiality and if what a person says and talks about will be held in confidence when they report a harassment situation. In general the answer to this question is yes, but there are some circumstances and certain limits where information may or must be disclosed.

If an employee comes forward to a supervisor and says “I have something I need to tell you but you can’t tell anyone who told you”, that confidentiality may not always be protected. The supervisor is required to take action on any complaint. But that can be done discretely.

When someone does disclose an observation or does come forward with a complaint, any other employees involved in the situation will need to be interviewed and the reason for the complaint will need to be discussed.

This information is usually only shared with those having a “need to know basis” and those who are working on the investigation. What this means is those individuals will only be told what is needed to conduct the investigation.

Those individuals are required to keep any information confidential and they are not to discuss the complaint or any responses with co workers, supervisors or others.

Should a complaint later become a legal proceeding or if there is a Court Action, then applicable law will determine the scope of confidentiality related to the release of any information gathered by the organization.

Slide 42 If you Receive a Harassment Complaint

Some of those viewing this training may be a supervisor or HR Representative. The next few slides will cover information related to what happens where there is a complaint made to a supervisor directly. For those viewing the presentation who are not supervisors this information will also be of interest and important.

At times people may share information with a co worker or a supervisor and they are unsure if they *really want to make a complaint.*

In this situation, and if you are a supervisor, it is appropriate to ask directly and in a supportive way, *“Are you making a harassment complaint?”* You may also want to clarify up front that as a supervisor, you are required to report the harassing behavior and to provide a safe work environment.

If you are a co worker, you may want to encourage or even assist the other person in contacting the appropriate person within the organization to talk with about the harassment concern.

If as a supervisor you do receive a complaint here are a few steps you should take.

- **First protect the victim.** No contact with the aggressor, diffuse the situation. Offer to have the victim stay in your office, or take them with you when you take the next step which is to
- **Contact Human Resources** to immediately alert them to the situation and ask them what actions should be taken next.
- **Separate the Parties**—by this I mean physically separate those involved by sight and hearing. Your goal is to prevent any additional intimidation through eye contact or overhearing comments. In addition if there are multiple individuals involved as victims or as perpetrators they all should be separated—from each other. This prevents additional harassment and will assist in gathering each individual’s unique perception of what happened as the interviews take place. This will prevent the “lets get our story straight” syndrome from happening.
- **Document Carefully** what you were told by the victim. You will need to be able to clearly remember exactly what was told to you later during the investigation. Listen carefully to what everyone is saying and yes, it is OK to take notes and *do* record specific information such as time, date and who may have heard the comment or seen the event happen. Do not make light of the situation or defend the aggressor. Making statements such as “That’s just the way Jimmy is, he says those things to everyone” does not relay a sense of understanding or concern.
- Be sure to **Offer the EAP.** Advise both parties that the EAP is available to them to be able to talk about what happened.

It is also important to not draw conclusions until you have all the facts. The assumption of guilt or innocence should not be made. Only after the investigation will an accurate determination be made about what happened.

Slide 43 Encourage Employee to Report Promptly

Everyone within your organization wants a work environment that is happy, healthy and one where people feel safe and can come to work and do a good job and be productive without distraction or fear.

Supervisors need to be observant and aware of what is happening in the workplace and send the clear message to employees that it is safe for an employee to approach their supervisor and speak up.

Supervisors can and should set an example of how to behave and send the clear message that they expect everyone to treat each other with respect.

Supervisors need to be receptive to concerns

Take time at staff meetings to discuss your organization's policy on Harassment as well as reviewing other policies regarding workplace behavior.

Harassment prevention policies should be reviewed annually with staff.

Remind your staff that they are protected against retaliation,

And educate those you lead about harassment and harassment prevention. You may for example ask them to also take this training.

Slide 44 A few Reasons Employees may hesitate to file a complaint.

There are reasons why employees do not file a complaint or delay in coming forward to report a situation.

- For some individuals it may be the fear of retaliation or the perception that they may lose their job.
- Others may fear that people won't believe them or that others may humiliate them for coming forward.
- There can be a fear of being blamed or the perception that they "brought this on themselves" or they are "too sensitive"
- Depending on the event they may feel embarrassed
- Or perhaps they simply do not know about the procedure to make a complaint within the organization or they may be fearful of having a harassment complaint listed in their personal file.

The role of the organization and the supervisor is to eliminate these fears and misperceptions. That is usually accomplished through training and education such as this training.

Slide 45 Information to be learned and documented

As a supervisor you are usually the individual who the victim first comes to for help.

If you are a co worker, you may be involved in a harassment situation as an observer of an event, or you may also have heard an inappropriate comment. In that case you will probably be interviewed.

Documentation of what happened and what was said is very important as the investigations in initiated. You will need to be able to recall

- Where did the behavior occur?
- Who all was involved?
- Were there any witnesses, did anyone else see the event?
- Did the employee talk to anyone else about what happened?
- Have you seen or recorded this type of behavior or comments being made prior to this event?
How long has the behavior been going on?
- Was the person told the behavior was unwelcomed and asked to stop the behavior?
- What else may have happened that has not been reported?
- And most important what does the employee want to have happen?

Generally this last question is answered in two ways. Sometimes the response is "Well I don't want anything to happen" That is not an option the action has now been reported and it will be investigated. The other response is "I want them to be fired, I want them out of here". That may not happen either. The goal of the Human Resource Department is to stop the harassing behavior. If this happens the goal has been accomplished. The termination of the aggressor can happen and usually the severity of the event will also play a role in making this decision.

Slide 46 What Not To Do

When there is a reported harassment complaint there are things that both employees and supervisors should avoid doing.

First you should not defend the situation. Comments such as “maybe you are too sensitive” or “That’s just the way he is, and you just need to tolerate him” are not helpful and comments such as these could also be seen as creating a hostile work environment.

Avoid the “Why” questions.....”Why didn’t you do something about this before?” Questions of this nature are considered judgmental.

Avoid multiple choice questions: “so tell me did she touch you on the arm, the shoulder or the face?” Rather ask “Where did the person touch you?” or “could you please be more specific about that?”

Avoid leading and suggestive questions such as ---“Well, I think we can just handle this informally don’t you?” “Don’t you think that is something everyone might say from time to time”

Don’t minimize the persons experience.....learn what happened in detail and document what you are told about the situation. That is the best way to handle a complaint.

Slide 47 Retaliation

We briefly discussed the fear of retaliation as a reason why people hesitate to file a complaint.

Retaliation in response to a complaint is against both state and federal law just like harassment and discrimination are against the law.

Retaliation is an action taken by the employer or supervisor, following a harassment complaint, that is threatening or results in a change in employment conditions or status. For example it would be considered retaliation if someone were changed to a different shift or in some other way had their work environment or position changed. If as part of the complaint the person asked to be changed to a different shift or if they requested a different job within the organization, that would not be retaliation.

Once a potential harassment situation is raised, everyone who has knowledge about the event is responsible for ensuring that a proper investigation takes place free from fear or concern that filing a complaint or reporting a situation will result in an adverse action or retaliation.

Slide 48 False Accusations

Although it is infrequent, there are times when someone may fabricate a situation and make a false accusation against a co worker or supervisor. False Accusations do occur, some on purpose and some more accidental. This is why it is important to always conduct a very detailed investigation.

As we discussed earlier, the purpose of the Investigation is to determine exactly what happened and validate that the accusation is true and can be supported by fact.

False Accusations can be made by any combination of people, it is not just employee and supervisor but also male female and same gender false accusation.

Once a complaint is reported the company *must* investigate all claims even those that turn out to be false or may not seem valid at the time of the complaint.

Some findings of false accusations turn out to be a mistake of understanding and are not malicious attempts to be harmful.

False claims can leads to discipline and financial damages and costs for the accuser.

Slide 49 Is Your Behavior Unwanted.... Ask yourself.

As we near the end of this presentation, you may be feeling a little overwhelmed with information and may even be looking back at some things you have recently said or done and questioning “was I actually harassing in that comment”, or “maybe that joke I told was not really appropriate.”

Those are good questions and they mean you are thinking about your past actions which usually means you will change your future actions.....before they become harassing.

Let me ask you a couple more self searching questions you might consider asking if you are in doubt about how other might perceive your intentions.

- Would I want my behaviors to be the subject of public discussion or appear on the evening news?
- Is there equal power between me and the person I’m interacting with?
- Here is a good one, “Would I behave the same way if my spouse or partner were standing next to me”?
- OR
- “Would I want someone to act the way I’m acting toward someone I’m in a relationship with?”
- “Has the person told me to stop the behavior”?
- Do I want to be personally responsible for my harassing behavior and face financial and legal consequences?”

Slide 50 Bottom Line

Most people spend in excess of 30% of the hours in the day at work.

- Work is where many people meet potential partners.
- Work is where many individuals share emotions, discuss family issues and make friends.
- Some days we may be happy and other upset by a problem at home or our commute to work that morning and those emotions come to work with us. And on those days we may say things that are not what we really mean.
- We may find we are more similar to some people in our thought and background and very dissimilar to others.
- The point is we are all different and we respond differently every day to each other depending on lots of factors going on in our lives.

We need to recognize these factors and constantly be aware of our interactions and comments to those with whom we work.

Not too long ago, someone attending one of our trainings said “It seems like we can’t have fun at work anymore”—Well that’s not true, we can have fun at work but not at the expense of others.

I would urge you to

- Be Sensitive
- Think before you make a comment
- Confront inappropriate and behavior when you see it.

The Bottom Line Is

1. Most People do not want to file a harassment complaint.
2. Most people are not interested in bringing legal action against their employer or supervisor.
3. Most people just want to come to work and do a good job and go home.
4. Most people expect employers to provide a safe and harassment free workplace
And
5. Most people may from time to time make mistakes in their comments, behavior and interactions with others. When this happens a simple “I’m Sorry” is appreciated and those two words can solve a world of potential problems.

Closing Comment

On behalf of the UT Employee Assistance Program I want to thank you for joining us in this training today. We hope you found it informative and interesting.

It is now time to apply what you have learned by taking a short post training quiz.

You will need to pass the test to receive your certificate of completion. We are confident you will pass and if needed, you can print the certificate to provide to your HR Representative as documentation of taking the class.

Thank You