

# Respect in the Workplace #YesPlease not #MeToo

Prevention and Response  
To Sexual Harassment



# COMMUNITY SAFETY NETWORK

*Because everyone deserves a safe place...*

*Including at work*



COMMUNITY  
SAFETY  
NETWORK  
307.733.SAFE




# Class Objectives

- ▶ Learn how to recognize and address harassment
- ▶ Understand the values behind the law and your employer's anti-harassment policy
- ▶ Appropriately and effectively respond to and manage harassment challenges among staff and customers.
- ▶ Identify behaviors that impact that negatively impact the workplace.  
Recognize the financial benefits of a healthy, safe, supportive workplace.



**1 in 3 women ages 18 to 34  
has been sexually harassed  
at work.**

Cosmopolitan Survey



**81% surveyed had experienced  
some form of verbal harassment  
in the workplace.**

Cosmopolitan Survey

## MYTHS OR FACTS?

- ▶ In restaurants, sexual harassment and other forms of violence happen in both the front and back of the house.
- ▶ A person who never loses their temper can still be a domestic violence perpetrator.
- ▶ A customer slowly rubs their hand down a server's back and offers a bigger tip in exchange for a kiss. That is not sexual violence.

## What is harassment?

- ▶ Behavior which has the effect of humiliating, intimidating, or coercing someone through personal attack.
- ▶ Behavior that can cause the recipient to be embarrassed, uncomfortable, and cause distress.
- ▶ Behavior that is unwelcome, unwanted, or unsolicited where the recipient regards it as offensive or undesirable.

Why does harassment happen and what makes a workplace “ripe” for sexual harassment.

- ▶ Write down answers on a index card.





# What are the laws

## ▶ Primary Federal Laws -

- ▶ Title VII of the Civil Rights ("Title VII") Act of 1964
- ▶ Americans with Disabilities Act of 1990 ("ADA")
- ▶ Age Discrimination in Employment Act of 1967 ("ADEA")
- ▶ Unfair treatment because of your race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability or genetic information.
- ▶ Harassment by managers, co-workers, or others in your workplace, because of your race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability or genetic information.
- ▶ Denial of a reasonable workplace accommodation that you need because of your religious beliefs or disability.
- ▶ Retaliation because you complained about job discrimination, or assisted with a job discrimination investigation or lawsuit.

## ▶ Wyoming Laws -

- ▶ The Wyoming Fair Employment Practices Act makes it illegal for an employer to discriminate against a qualified disabled person or any person otherwise qualified, because of age (age 40 and over), sex, race, creed, color, disability, national origin, ancestry or pregnancy.

# Discriminatory Harassment

## The protected classifications under the law

- ▶ Sex/Gender
- ▶ Age
- ▶ Race
- ▶ Color
- ▶ National Origin (actual or perceived)
- ▶ Religion
- ▶ Citizenship
- ▶ Genetic Information
- ▶ Military or Veteran's Status
- ▶ Pregnancy/Lactation
- ▶ Physical Disability
- ▶ Mental Disability
- ▶ Medical Condition
- ▶ Sexual Orientation
- ▶ Gender Identity
- ▶ Family Status
- ▶ Gender Expression
- ▶ Marital Status



## What is sexual harassment?

Unwelcome sexual advances, requests for sexual favors and other verbal behavior or physical conduct of sexual nature when:

- Submission to such conduct is made an implicit condition of an individual's employment.
- Submission to or rejection of such conduct affects employment opportunities.
- **Such conduct interferes with an employee's work or creates an intimidating, hostile or offensive work environment.**

# Types of Sexual Harassment

- ▶ Quid Pro Quo - “this for that”
- ▶ Hostile Work Environment



## Examples of Quid Pro Quo

- ▶ Supervisor demands sexual favors in exchange for a promotion or a raise
- ▶ Supervisor disciplines or discharges an employee who ends a romantic relationship
- ▶ Supervisor changes job performance expectations after subordinate refuses repeated requests for a date

# What is a hostile work environment?

- ▶ Unwanted sexual advances (what is unwanted and how do we know?)
- ▶ Visual conduct: leering, making sexual gestures, displaying of suggestive objects or pictures, cartoon or posters
- ▶ Verbal conduct: making or using derogatory comments, epithets, slurs, and jokes
- ▶ Verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes or invitations
- ▶ Physical conduct: touching, assault, impeding or blocking movements

## Example of behaviors that create a hostile environment:

- ▶ Off-color jokes or teasing
- ▶ Comments about body parts or sex life
- ▶ Suggestive or demeaning pictures, posters, calendars or cartoons
- ▶ Leering, staring or gesturing
- ▶ Touching - brushes, pats, hugs, pinches
- ▶ Assault

## Who is protected?

- ▶ Staff
- ▶ Independent Contractors
- ▶ Unpaid Interns
- ▶ Volunteers





# Flirting or Harassment?

---

Asking someone you work with out on a date?

Saying, "Wow, you look great today, did you get a new dress?"

Sending a snapchat of your butt to someone you work with?



## Flirting is:

- ▶ Wanted
- ▶ Equally motivated
- ▶ Legal
- ▶ Complimentary
- ▶ Mutual
- ▶ And makes the receiver feel good, flattered, in control and confident

## Harassment is:

- ▶ Unwanted
- ▶ Power motivated
- ▶ Illegal
- ▶ One sided
- ▶ Demeaning
- ▶ And makes the receiver feel sad, angry, powerless, helpless and demeaned.

# What can a victim legally request as a result of harassment?

- ▶ Back Pay
- ▶ Future Pay
- ▶ Compensatory Damages
  - ▶ Emotional Distress
  - ▶ Medical Costs
- ▶ Punitive Damages
- ▶ Attorneys' Fees
- ▶ Out-of-pocket costs
- ▶ Reinstatement
- ▶ Training
- ▶ Injunctive Relief

# Bullying in the workplace

- ▶ Examples:
  - ▶ Repeated verbal abuse
    - ▶ Derogatory remarks
    - ▶ Insults
    - ▶ Epithets
  - ▶ Verbal or physical conduct that a reasonable person would find threatening, intimidating, shaming and/or humiliating;
  - ▶ Gratuitous sabotage or undermining of a person's work

# Bullying can easily turn into harassment lawsuit

- ▶ Look back the the protected classes - Everyone is in a protected class because everyone has a gender

## Why does it happen?

- ▶ Love or Lust
- ▶ Power
- ▶ Teasing
- ▶ Ignorance
- ▶ Culture



## Intent is irrelevant

“I was just joking around”

“She started it”

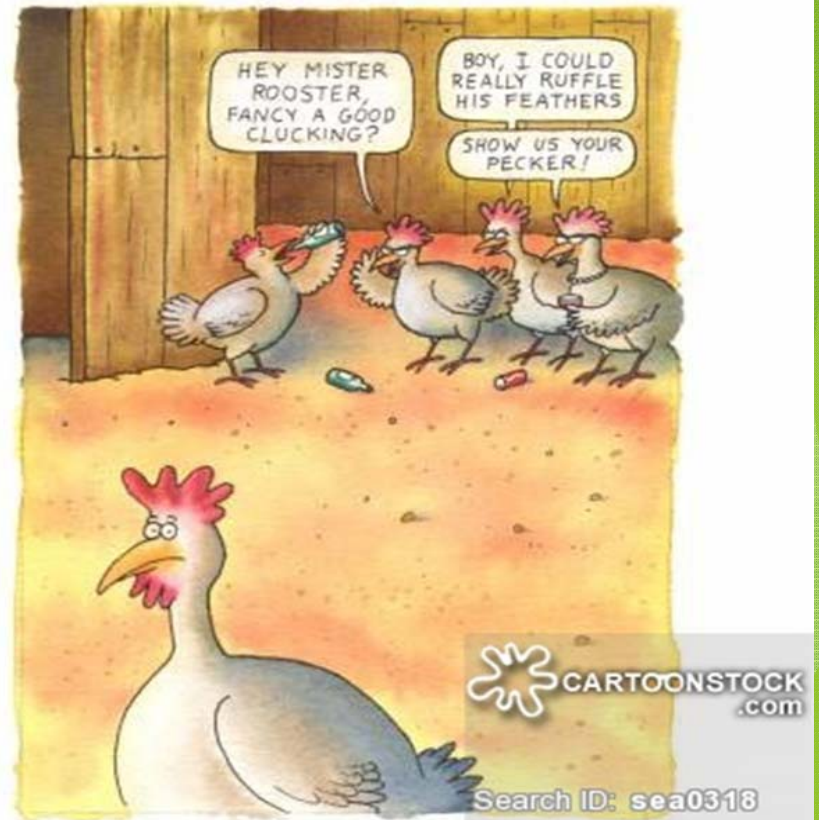
“I didn’t mean anything by it”

“I’m not attracted to her”

“I didn’t think it bothered her”



I was just being funny...



Hen behaving badly.



## What's the big deal: Liability

### **\*In Quid pro quo situations:**

- \*Harasser is always liable
- \*Employer is always liable

### **\*In Hostile environment situations:**

- \*Harasser is always liable
- \*Employer is liable unless the employer proves they exercised reasonable care to prevent and remedy the harassing conduct and the complainant failed to take advantage of preventive and corrective measures



## What is the employer's responsibility and how do you prevent harassment?

- ▶ Prevent Sexual Harassment
  - ▶ Anti-harassment and discrimination policies
  - ▶ Training
- ▶ Investigate and resolve complaints of harassment
- ▶ Do not retaliate.

## Reasons why victims fail to report or delay reporting.

- ▶ Embarrassment
- ▶ Fear of not being believed
- ▶ Blaming themselves
- ▶ Fear of retaliation—especially if harasser is manager
- ▶ Fear of personal safety
- ▶ Fear of being laughed at
- ▶ Don't want to get the harasser in trouble

## Examples

- ▶ Sexual Harassment?—You Decide...
- ▶ Male writers of a comedy show about a group of single adults engaged in the following behavior in front of their assistant:
  - ▶ Graphically discussed their own sexual preferences, experiences and fantasies
  - ▶ Feigned masturbation
  - ▶ Colored on obscene coloring books
  - ▶ Discussed the actresses on the show using sexually demeaning language

# What did the California Supreme Court decide?

- ▶ Not sexual harassment
  - ▶ Not directed at plaintiff
  - ▶ She was not subjected to an environment different from the men- no disparate treatment based on gender.
  - ▶ Creative environment for creating scripts for adult-oriented TV show
  - ▶ Women were also engaging in discussion regarding their sex life for the purposes of coming up with storylines.
  - ▶ Derogatory comments about actresses were few and not directed at plaintiff and therefore not severe or pervasive.

## Sexual Harassment?—You Decide...

- ▶ Told plaintiff she had a “nice ass,”
- ▶ Bragged of his sexual prowess and how he could satisfy plaintiff sexually;
- ▶ Repeatedly asked plaintiff to go out with him, knowing she had no interest in him as a romantic partner;
- ▶ Phoned plaintiff many times at home and attempted to engage her in conversations of a personal nature unrelated to work;
- ▶ Lured plaintiff to his residence, claiming he had to pick up something work-related. He drove into his garage, closed the garage door, grabbed plaintiff’s breasts, thrust his hand into her groin area, and urged plaintiff to have sex with him. Plaintiff attempted to resist these sexual advances but was overpowered.
- ▶ Myers v. Trendwest Resorts Inc., \_\_ Cal.Rptr.3d \_\_, 148 Cal.App.4th 1403

- ▶ Court held that the employer liable for supervisor's acts of sexual harassment even if the employer did not know about the harassment.

## But what about this...

- ▶ River raft guide is having affairs with three different female subordinates. Sarah, who is not having an affair, is passed up for a promotion one of the women who is having an affair with the leader, even though Sarah is much more qualified for the job. The other women are also provided with promotions and other employment benefits. When Sarah complains to officials about the affairs and unfair treatment, one of the women yells abusively at her and starts making her work life miserable by forcing her to take on more work and giving her the most undesirable tasks.



# This is a hostile work environment!

Miller v. Department of Corrections, 36 Cal.4th 446, Supreme Court of California (2005)

- ▶ **Widespread** favoritism based upon *consensual* sexual affairs may imbue the workplace with an atmosphere that is demeaning to women because a message is conveyed that managers view women as “sexual playthings” or that the way required to secure advancement is to engage in sexual conduct with managers. Even in the absence of coercive behavior, certain conduct creates a work atmosphere so demeaning to women that it constitutes an actionable hostile work environment.

# Harassment based on Gender

- ▶ An individual can make a sexual harassment claim when the behavior is not sexual in nature, but bullying based on a person's gender.
- ▶ For example, calling a female employee derogatory names, such as "dumb blonde" or "bitch" along with other discriminating or intimidating behavior can lead to a sexual harassment claim.
- ▶ One case, in Ohio, a male co-worker who did not always fit the standard gender stereo-types, such as pretending to be pregnant and not interested in watching sports and drinking beer after work, was subjected to obscene sexual pranks and other mean behavior from his coworkers. He was ultimately fired and sued for sexual harassment. A judge found he presented enough evidence to send the case to a jury.

# Retaliation

- ▶ It is absolutely prohibited to retaliate against an employee for complaining about sexual harassment, even if the investigation determines that sexual harassment did not occur.
- ▶ Retaliation is a separate cause of action, and the employer can be liable for both.

Two employees get in a physical fight on the job site. After the investigation it was clearly instigated by one party. In order not to deal with it, you fire both people because it seems simpler that way.



# How can you prevent harassment in the workplace?

- ▶ Employers must have a clear policy statement provided to all employees prohibiting harassment.
- ▶ Discuss the policy with all employees so that they have a clear understanding of what constitutes harassment and the consequences for violating the policy.
- ▶ Have a clear procedure for reporting incidents of harassment.
- ▶ Investigate every complaint! Don't dismiss just because you "know it didn't happen."
- ▶ Live your policy.

# Why does harassment happen and what makes a workplace “ripe” for sexual harassment.

Lets look at those index cards now

- ✓ Difference in Power
- ✓ Exploitation of power and status
- ✓ Lack of consequences for poor behavior
- ✓ Belief that they can

As a employer you can make an impact on many of these things.

## Coworkers

If you witness or suspect that a coworker is experiencing harassment, the most important thing that you can do to help is to speak directly with the victim and let them know that:

- ▶ You saw it;
- ▶ You think it is wrong; and,
- ▶ You would like to know how you can help.
- ▶ Offer to assist them in calling CSN or checking out some on line resources.
- ▶ Reinforce that you believe your coworker, that she or he deserves to be respected, and that everyone deserves a workplace free from sexual harassment, violence, and discrimination

## For victims

- ▶ **Make it clear that you want the harassment to stop**
- ▶ If you experience something you believe to be harassment, you should immediately let that person know that their behavior made you uncomfortable.
- ▶ **Be firm, specific, and suggest a behavior that is more appropriate. Never apologize.** It might look something like this — "Hey Josh, your remarks about my outfits on a daily basis make me uncomfortable. I'd prefer if you would stop making these comments."
- ▶ There are two benefits to calling out this behavior. One, it helps educate the person about what is inappropriate or uncomfortable behavior. Two, you've clearly communicated to the individual that you want their behavior to stop.
- ▶ Make sure to document this interaction! If you don't feel comfortable directly confronting this individual or the harassment continues despite your efforts to tell the person to stop, you still have options.



## Lets practice

“That’s not cool.....that's harassment”

“You need to stop \_\_\_\_\_now.”

“I am not interested, don’t ask me again.”

“ \_\_\_\_\_ is not professional and you need to stop.”

Once you have asked the person to stop document the incident and any witnesses.



## Sample workplace policy here

- ▶ [Employer] institutes this policy as part of its commitment to a safer and more supportive organizational climate and to the prevention and reduction of the incidence and effects violence, sexual violence, harassment, and stalking [hereinafter “violence”] at the workplace. [Employer] recognizes that domestic violence, sexual violence, harassment and stalking present unique issues for its workforce.
- ▶ It is the goal of [name of employer] to promote a workplace that is free of violence. Sexual harassment of employees occurring in the workplace or in other settings in which employees may find themselves in connection with their employment is unlawful and will not be tolerated by this organization. Further, any retaliation against an individual who has complained about sexual harassment or retaliation against individuals for cooperating with an investigation of a sexual harassment complaint is similarly unlawful and will not be tolerated. To achieve our goal of providing a workplace free from sexual harassment, the conduct that is described in this policy will not be tolerated and we have provided a procedure by which inappropriate conduct will be dealt with, if encountered by employees.
- ▶ Because [name of employer] takes allegations of sexual harassment seriously, we will respond promptly to complaints of sexual harassment and where it is determined that such inappropriate conduct has occurred, we will act promptly to eliminate the conduct and impose such corrective action as is necessary, including disciplinary action where appropriate.

## ▶ Definition of Sexual Harassment

- ▶ The legal definition for sexual harassment is this: "sexual harassment" means sexual advances, requests for sexual favors, and verbal or physical conduct of a sexual nature when:
  - ▶ submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; or,
  - ▶ such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment.
- ▶ Under these definitions, direct or implied requests by a supervisor for sexual favors in exchange for actual or promised job benefits such as favorable reviews, salary increases, promotions, increased benefits, or continued employment constitutes sexual harassment.
- ▶ The legal definition of sexual harassment is broad and in addition to the above examples, other sexually oriented conduct, whether it is intended or not, that is unwelcome and has the effect of creating a work place environment that is hostile, offensive, intimidating, or humiliating to male or female workers may also constitute sexual harassment.
- ▶ While it is not possible to list all those additional circumstances that may constitute sexual harassment, the following are some examples of conduct which if unwelcome, may constitute sexual harassment depending upon the totality of the circumstances including the severity of the conduct and its pervasiveness:
  - ▶ Unwelcome sexual advances -- whether they involve physical touching or not
  - ▶ Sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding one's sex life; comment on an individual's body, comment about an individual's sexual activity, deficiencies, or prowess
  - ▶ Displaying sexually suggestive objects, pictures, cartoons, text messages
  - ▶ Unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments
  - ▶ Inquiries into one's sexual experiences, and
  - ▶ Discussion of one's sexual activities

All employees should take special note that, as stated above, retaliation against an individual who has complained about sexual harassment, and retaliation against individuals for cooperating with an investigation of a sexual harassment complaint is unlawful and will not be tolerated by this organization.

## ► Complaints of Sexual Harassment

"If you believe there has been a violation of the EEO policy or harassment based on the protected classes outlined above, including sexual harassment, please use the following complaint procedure. (Company) expects employees to make a timely complaint to enable the company to investigate and correct any behavior that may be in violation of this policy.

- Report the incident to \_\_\_\_\_. This person will promptly investigate the matter and take appropriate corrective action. Your complaint will be kept as confidential as practicable.
- (Company) prohibits retaliation against an employee for filing a complaint under this policy or for assisting in a complaint investigation. If you perceive retaliation for making a complaint or your participation in the investigation, please follow the complaint procedure outlined above. The situation will be investigated.
- If (Company) determines that an employee's behavior is in violation of this policy, disciplinary action will be taken, up to and including termination of employment.
- All employees are required to cooperate in Company investigations. Impeding an investigation or giving false, inaccurate or misleading information will result in discipline up to and including termination."



- ▶ **Disciplinary Action**

- ▶ If it is determined that inappropriate conduct has been committed by one of our employees, we will take such action as is appropriate under the circumstances. Such action may range from counseling to termination from employment, and may include such other forms of disciplinary action as we deem appropriate under the circumstances.

- ▶ **State and Federal Remedies**

- ▶ In addition to the above, if you believe you have been subjected to sexual harassment, you may file a formal complaint with either or both of the government agencies set forth below. Using our complaint process does not prohibit you from filing a complaint with these agencies. Each of the agencies has a short time period for filing a claim (EEOC - 300 days; MCAD - 300 days).

- ▶ [The United States Equal Employment Opportunity Commission](#) ("EEOC")

- ▶

# On Line Resources

- ▶ [Workplacesrespond.org](http://Workplacesrespond.org)
- ▶ [BetterBrave.org](http://BetterBrave.org)
- ▶ [CSNJH.org](http://CSNJH.org)
- ▶ [TetonJustice.org](http://TetonJustice.org)
- ▶ [ACTjh.org](http://ACTjh.org)
- ▶ [Acolgin@jhattorneys.com](mailto:Acolgin@jhattorneys.com)



Co-Sponsored by Jackson Hole Chamber of Commerce,  
Allison Colligan, J.D and ACT JH

LEVY  
COLEMAN  
BRODIE LLP  
ATTORNEYS AT LAW



JACKSON HOLE  
CHAMBER OF COMMERCE

