



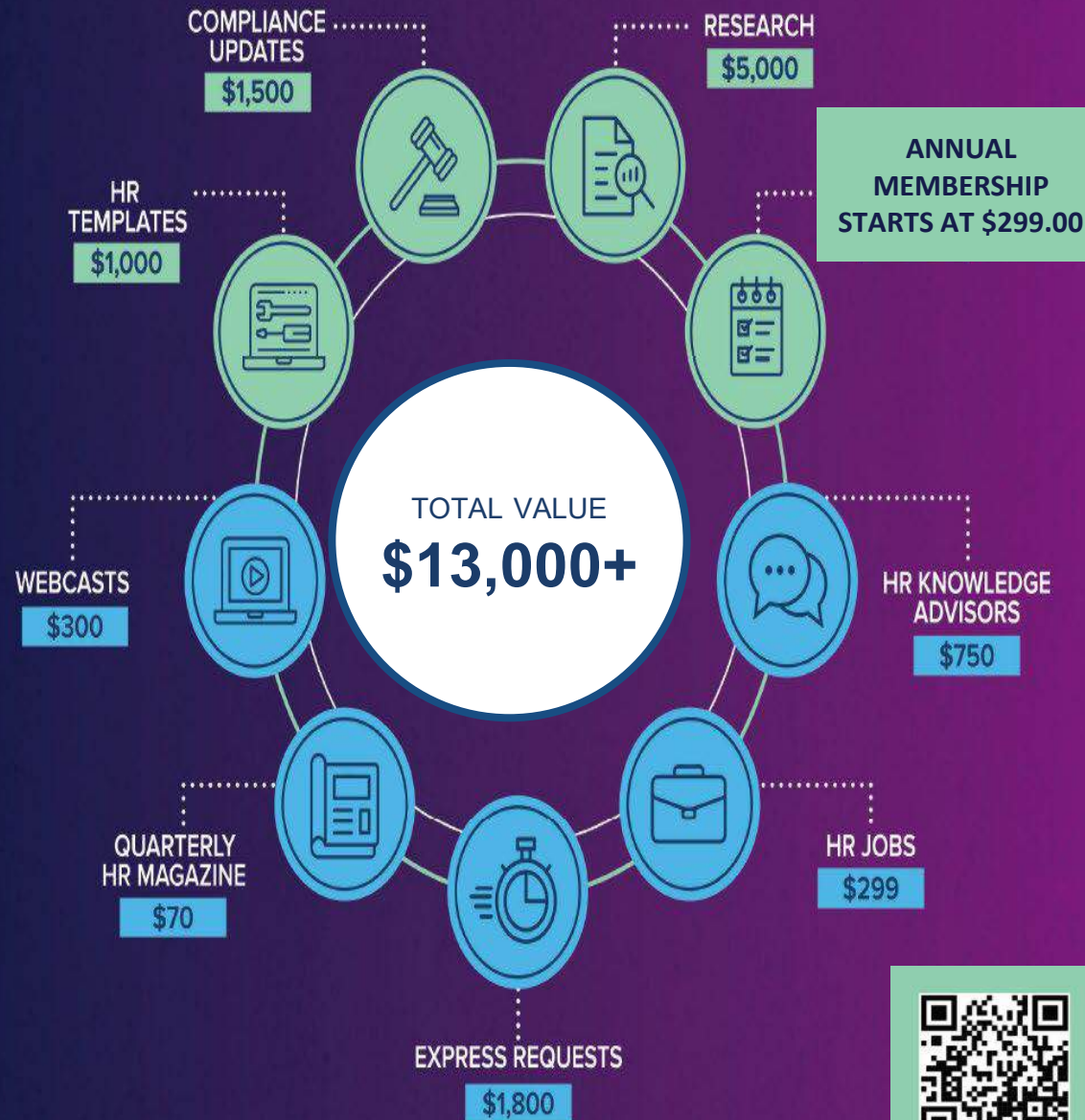
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PREVENTING SEXUAL HARASSMENT

BUILDING A SAFER WORKPLACE TOGETHER

SHRM GUAM BREAKFAST BRIEFING

FEBRUARY 12, 2025

Genevieve P. Rapadas
Calvo Jacob & Pangelinan LLP
259 Martyr Street, Suite 100
Hagatna, Guam 96910
grapadas@calvojacob.com

CALVO JACOB & PANGELINAN LLP
GUAM SAIPAN SAN FRANCISCO



INTRODUCING YOUR SPEAKER

Genevieve P. Rapadas, Esq.

Calvo Jacob & Pangelinan LLP

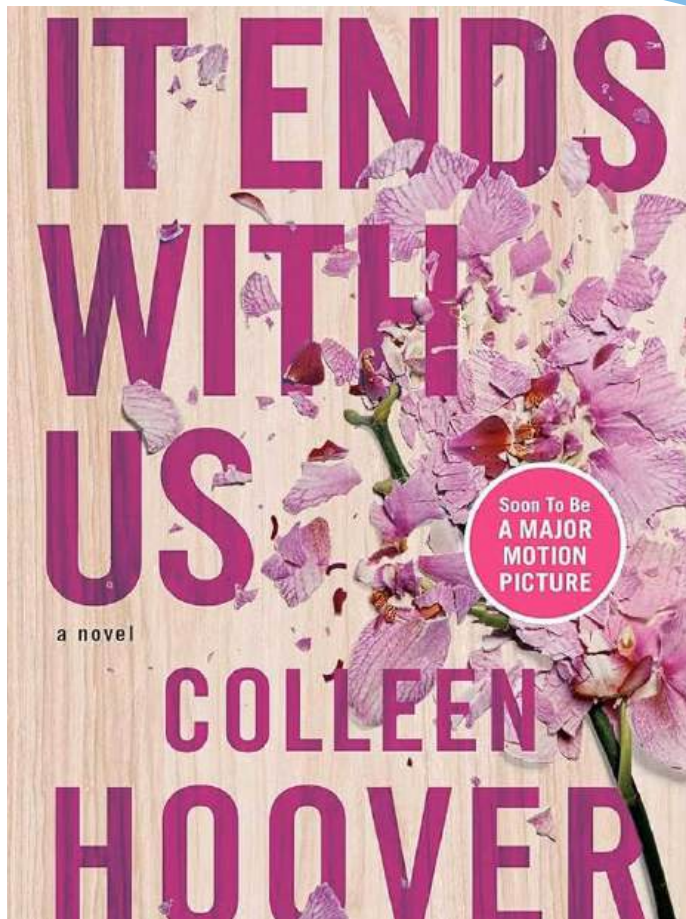


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Additional facts and information or future developments may affect the subjects addressed in this presentation. You should consult with a lawyer about your particular circumstances before acting on any of this information because it may not be applicable to you or your situation.

“IT ENDS WITH US”



1 MANATT, PHELPS & PHILLIPS, LLP
2 ESRA A. HUDSON (Bar No. CA 202881)
3 E-mail: ehudson@manatt.com
4 STEPHANIE A. ROESER (Bar No. CA 306343)
5 E-mail: sroeser@manatt.com
6 CATHERINE ROSE NOBLE (Bar No. CA 334155)
7 E-mail: cnoble@manatt.com
8 2049 Century Park East, Suite 1700
9 Los Angeles, California 90067
10 Telephone: 310.312.4000

11 WILLKIE FARR & GALLAGHER LLP
12 MICHAEL J. GOTTLIEB (D.C. Bar No. 974960)
13 E-mail: mgottlieb@willkie.com
14 KRISTIN E. BENDER (D.C. Bar No. 1630559)
15 E-mail: kbender@willkie.com
16 1875 K Street NW
17 Washington, DC 20006
18 Telephone: 202.303.1000

19 Attorneys for Plaintiff
20 BLAKE LIVELY

21 BLAKE LIVELY, an individual,

22 Plaintiff,

23 v.

24 WAYFARER STUDIOS LLC, a California
25 Limited Liability Company, JUSTIN BALDONI,
26 an individual, JAMEY HEATH, an individual,
27 STEVE SAROWITZ, an individual, MELISSA
28 NATHAN, an individual, THE AGENCY GROUP
PR LLC, a Delaware Limited Liability Company,
JENNIFER ABEL, an individual, RWA
COMMUNICATIONS, LLC, a California Limited
Liability Company, JED WALLACE, an
individual, STREET RELATIONS INC., a
California Corporation, and DOES 1-100,

Defendants.

COMPLAINT FOR DAMAGES FOR:

- (1) **SEXUAL HARASSMENT (CAL. GOV. CODE, § 12940/TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 (“TITLE VII”));**
- (2) **RETALIATION (CAL. GOV. CODE, § 12940/TITLE VII);**
- (3) **FAILURE TO INVESTIGATE, PREVENT, AND/OR REMEDY HARASSMENT (CAL. GOV. CODE, § 12940);**
- (4) **RETALIATION (CAL. LABOR CODE, § 1102.5);**
- (5) **AIDING AND ABETTING HARASSMENT AND RETALIATION (CAL. GOV. CODE, § 12940);**
- (6) **BREACH OF CONTRACT;**
- (7) **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;**
- (8) **NEGLIGENCE;**
- (9) **FALSE LIGHT INVASION OF PRIVACY (CAL. CONST., ART. I, § 1);**
- (10) **INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**

Lively v. Wayfarer Studios, LLC, *CA Civil Rights Dept. (Dec. 20, 2024) & S.D.N.Y (Dec. 31, 2024)*

Relevant Allegations :

- **Inappropriate Comments and Questions:** “Mr. Baldoni and Mr. Heath often spoke of their “previous pornography addiction.” Later, when Mr. Baldoni was once again referencing his experiences with pornography, he revealed in front of other cast and crew that Ms. Lively had never “seen porn.”
- **Sexualized Comments on Appearance:** “Mr. Baldoni often referred to women in the workplace as ‘sexy.’ When they expressed discomfort, he would deflect or try to pass it off”
- **Pressuring and Improper Behavior on Set:** “On the day of shooting the scene in which Ms. Lively’s character gives birth, Mr. Baldoni and Mr. Heath suddenly pressured Ms. Lively to simulate full nudity, despite no mention of nudity for this scene in the script, her contract, or in previous creative discussions.”

Lively v. Wayfarer Studios, LLC, *CA Civil Rights Dept. (Dec. 20, 2024) & S.D.N.Y (Dec.* *31, 2024)*

Relevant Allegations :

- **Wayfarer's Failure to Investigate:** “Despite receiving multiple, detailed reports by Ms. Lively and others about Mr. Baldoni and Mr. Heath’s misconduct, Wayfarer failed to investigate those reports or to otherwise institute protections for the cast.”
- **Retaliation:** “Ms. Lively engaged in protected activity by complaining to Wayfarer, Mr. Baldoni, and Mr. Heath about harassing treatment ... After Ms. Lively engaged in such protected activity, Defendants subjected Ms. Lively to an adverse employment action, including but not limited to by launching a coordinated campaign to cast Ms. Lively in a false light during the publicity and promotion of the Film and thereafter. ”

The Significance of This?



- Sexual Harassment can affect all industries and workplaces.
- Important to be able to recognize and address sexual harassment
- Staying proactive is key to tackling workplace challenges before they spiral out of control.

Sexual Harassment Continues to Exist in our Workplaces

WOMEN IN THE WORKPLACE, 2024 Leanin.Org/McKinsey & Co. Study

- Largest study on the state of women in corporate America
- In 2024, collected information from 281 participating organizations employing over 10 million people, surveying more than 15,000 employees and conducted interviews with people of diverse identities, including women of color, LGBTQ+ women and women with disabilities
- Findings with Respect to Sexual Harassment
 - Sexual harassment is as prevalent today as it was six years ago
 - Women are more likely than men to be on the receiving end of sexual harassment
 - Roughly 4 in 10 women have experienced some form of sexual harassment during their careers
 - Women are significantly less confident than men in their company's handling of sexual harassment claims

Sexual Harassment Hurts Your Company

Hurts the Company Financially

- Absenteeism
- Reduced Performance
- Increased Turnover
- Increased Hiring/Training Costs
- Legal Costs

Hurts the Company's Reputation

- Negative Public Image
 - Loss of Customers or Clients
- Bad Reputation as Employer
 - Hard to Recruit New Hires



Sexual Harassment Hurts All Employees

Everyone Loses (Not Just the Target)

- Absenteeism
- Low Morale
- Gossip
- Tension and Anxiety
- Decreased Job Satisfaction
- Conflict Among Teams
- Decreased Performance
- High Staff Turnover



Sexual Harassment Devastates the Victim

Emotional/Psychological Damage

- Anxiety
- Depression
- Decreased Self-Confidence
- Sadness
- PTSD

Physical Damage

- Migraines
- Sleep Difficulties
- Frequent Sickness
- Alcohol or Substance Abuse
- Eating Disorders



Financial Trouble

- Unpaid Leave
- Lost Wages
- Unemployment

Sexual Harassment Continues to Damage our Businesses . . .



... and Continues to Devastate our People



Do You Know Harassing Behavior When You See It?



Would You Stop It If You Did?



Key Points to be Covered In This Briefing

- * What is harassment?
- * Employer liability and the role of managers & supervisors
- * Examples of anti-harassment policy
- * Creating a Harassment Resistant Workplace

Protected Categories of Harassment?

- Race,
- Color,
- Religion,
- National origin,
- Sex (including pregnancy, childbirth, and related medical conditions; sexual orientation; and gender identity),
- Disability,
- Age (40+), or
- Genetic information.

What is Sexual Harassment?

- * **IT'S UNLAWFUL DISCRIMINATION ON THE BASIS OF SEX (*aka Gender*)** – behavior that subjects an employee to inferior conditions of employment due to their gender, gender identity, gender expression (perceived or actual) and/or sexual orientation.
 - * Sexual harassment in the workplace is an unlawful employment practice and unlawful discrimination under both Federal and Guam law.
 - * Violates Title VII of the Federal Civil Rights Act
 - * Violates Article II of the Guam Employment Relations Act

What is Sexual Harassment?

Definition of Sexual Harassment:

- **Unwelcome** sexual advances or requests for sexual favors
- Other verbal, written, electronic, or physical conduct of a sexual nature that **affects an individual's employment**, unreasonably interferes with his or her **work performance**, or creates an intimidating, **hostile or offensive work environment**.
- Is included within the category of gender discrimination because sexual harassment relates to sex which relates to the victim's gender

What is Sexual Harassment?

THE TWO FORMS OF SEXUAL HARASSMENT ARE:

- **Quid pro quo** (Latin for “this for that” or “something for something”).
- **Hostile work environment**

Quid Pro Quo Sexual Harassment

- Commonly referred to as “supervisor” harassment.
- **Tangible employment action** against the victim.
- Involves **monetary loss or change in job.**

Examples of *Quid Pro Quo* Sexual Harassment:

- A manager/supervisor demands sexual favors in exchange for promotion or raise.
- A manager/supervisor disciplines or discharges an employee who ends a romantic relationship.
- A manager/supervisor changes job performance expectations after the subordinate refuses repeated requests for a date.
- A person in authority threatening to discredit a subordinate employee if they won't attend a party with them after work.

Hostile Work Environment Sexual Harassment

When **unwelcome** sexual advances, requests for sexual favors, or any conduct of a sexual nature has the purpose or effect of **substantially interfering** with an individual's work performance or creating an **intimidating, hostile or offensive** working environment.

Hostile Work Environment Sexual Harassment

UNWELCOME BEHAVIOR

Sexual conduct becomes sexual harassment when the behavior is unwelcome. Behavior that the victim did not solicit or invite, or in the sense that the victim regarded the conduct as undesirable or offensive

Welcome behavior → Unwelcome Behavior

Consent can be revoked at any time.

Hostile Work Environment Sexual Harassment

Speech or conduct that is **severe** or **pervasive** enough to create an abusive or **hostile work environment**.

- Example: Jack Cruz stares at Laura Hernandez every day and intentionally brushes up against her even though he knows she's not interested in him.

Hostile Work Environment Sexual Harassment

Some Factors that May be Considered Include:

- The frequency and severity of the harassing conduct;
- How physically threatening or humiliating it was;
- Whether and if so, how much, it interfered with the employee's work performance;
- Whether and if so, how much, psychological harm it caused; and
- Any power disparity between the victim and the harasser.

Hostile Work Environment Sexual Harassment

Working Environment:

- Not limited to physical location where the employee is assigned
- Extends to other worksites including work off-site, mobile or moving worksites/locations
- Examples include the courthouse for a lawyer, an off-site event for a caterer, team-building happy hour.

Hostile Work Environment Sexual Harassment

Sexual Harassment in Online Environments

Conduct online and through social media can constitute sexual harassment even when it occurs “off the clock”, “off-site”, or even “out of state”.

Online sexual harassment includes using e-mail, cell phone texts/messaging apps, internet posting, online comments, blog posts, and social media to send communications of a sexual nature that interfere with job performance or that create an abusive or hostile work environment.

Examples include:

Flirting and requests or demands to go on a date or have sex

Sending inappropriate pictures or videos including sexually graphic material

Using sexual language or comments including sexually offensive language

Cyberstalking

Examples of Sexual Harassment

Sexual Harassment May Take Different Forms:

- Physical actions, e.g.:
 - Brushing up against a person's clothing, body, or hair.
 - Initiating unwanted contact like kissing, touching, tickling, or hugging.
 - Rubbing or touching someone sexually.
 - Exposing oneself.

Examples of Sexual Harassment (cont.)

- Verbal actions, e.g.:
 - Repeated requests for dates to someone who has not returned interest.
 - Innuendos, jokes, stories, or comments of sexual nature.
 - Unwelcome flirtations.
 - Commenting on someone's body or appearance.
 - Calling someone “baby” or “sweetheart.”

Examples of Sexual Harassment (cont.)

- Non-verbal actions, e.g.:
 - Staring or leering.
 - Blocking or cornering someone.
 - Sexually suggestive gestures.
 - Unwelcome gifts.
 - Sexually suggestive images in emails, texts or on social media.
 - Standing or sitting too close to someone.
 - Following or stalking
 - Sexually suggestive virtual backgrounds in Zoom or Teams meetings.

Four Things That Matter the Most In Identifying Sexually Harassing Conduct

1. It's of a **sexual** nature
2. It's **unwelcome**
3. It **affects the individual's employment**

OR

4. It's **severe or pervasive** enough to create a hostile work environment.

Three Things That Don't Matter at All in Identifying Sexually Harassing Conduct

1. Intent of the harasser

Irrelevant. Sexual harassment may be unlawful even if not motivated by sexual desire.

2. Gender of the harasser and the victim

Irrelevant. Can be opposite or same gender harassment.

3. Location of the harassment

Irrelevant. Sexual harassment can occur outside the workplace.

Who Can Commit Sexual Harassment?

- Supervisors
- Co-Workers
- Customers
- Vendors
- Clients
- Contractors doing work or business on the premises

Who Can Be a Victim of Sexual Harassment?

- Any individual or individuals targeted by the statements or actions.
- Bystanders or witnesses not directly targeted.

What Can I Do If I Experience Unwelcome Sexual Conduct?

If you experience unwelcome sexual conduct, know that:

- **You have the right to tell the person to stop.** The initiating and participating persons must stop the unwelcome behavior upon request. If they continue the behavior or retaliate against you because you asked them to stop, they can be found to have violated the law by engaging in sexual harassment or retaliation.
- **You have the right to report the sexual harassment.** Employers should have multiple reporting options available. Persons who report sexual harassment or participate in investigations are protected from retaliation.

Employer Liability for Sexual Harassment



IS THE EMPLOYER RESPONSIBLE
FOR
SEXUAL HARASSMENT?

Employer Liability for Sexual Harassment

Employers are liable for **Alter Ego or Proxy Misconduct**

- Individuals who possess such high rank or authority that their actions can be said to speak for the employer, e.g. owners, partners, corporate officers, high-level managers
- **Automatically liable (no tangible action necessary)**

Employer Liability for Sexual Harassment

Employers are liable for **Supervisor Misconduct**

- The actions of supervisors or managers are considered the actions of the employer
- **Strict liability** for harassment by supervisors or managers if it results in a **tangible employment action** (if the harassment includes or culminates in a change to the victim's employment, such as termination or demotion or lack of promotion).

Employer Liability for Sexual Harassment

If there's **no tangible employment action**, an employer may establish an affirmative defense by showing:

1. The employer took reasonable steps to prevent and promptly correct sexual harassment in the workplace; and
2. The aggrieved employee unreasonably failed to take advantage of the employer's preventive or corrective measures

This known as the *Faragher/Ellerth* affirmative defense. If the employer can meet these two elements, the employer will not be liable

Employer Liability for Sexual Harassment

Employers can be Liable for **Co-Worker & Nonemployee** Misconduct

- Liable if Negligent
- Failed (1) to act reasonably to prevent the harassment OR (2) to take reasonable corrective action in response to the harassment when the employer was aware, or should have been aware, of it.

Employer Liability for Sexual Harassment

How should an Employer Respond to a Harassment Complaint?

- There is no one-size-fits-all approach
- An effective response often involves two steps:
 - (1) Conducting an investigation; and
 - (2) Taking appropriate corrective action, if needed.
- No Retaliation

Responsibility of Managers and Supervisors

- **HR Leads the Way By:**

- Making policy information readily available
 - All members of the team need to be familiar with the company's policies.
- Responding swiftly
 - Hesitation and delay in responding only make things worse.
- Ensuring proper notification and communication
 - HR should create a detailed report that summarizes interactions and results of investigations

Responsibility of Managers and Supervisors

- **Take All Complaints Seriously.** Supervisors should take all complaints or concerns of alleged or possible harassment seriously no matter how minor or who is involved.
- **Report Incidents to HR Immediately.** Supervisors should report all incidents to HR immediately so that a prompt investigation can occur.
- **Protect the Employees.** Supervisors should take steps right away to stabilize the situation and prevent retaliation or prohibited conduct from recurring while HR investigates.

Responsibility of Managers and Supervisors

- Supervisors should fully understand the harassment policy and reporting procedures.
- Supervisors should communicate policy and reporting procedures to **all employees** reporting to them or under their control.
- Employees should be directed to report complaints immediately to either the employee's direct supervisor or to HR.
- Supervisors should respond promptly and appropriately to complaints or questions about discrimination.

Responsibility of Managers and Supervisors

- Although confidentiality will be maintained to the fullest extent possible, supervisors should **never guarantee confidentiality** of reports or investigations about reports.
- Supervisors should maintain a respectful workplace and not permit inappropriate behavior to go unchecked. HR should be consulted when uncertain about appropriate activities or behavior.
- Supervisors should be models of good behavior and not participate in any harassing behaviors.

Responsibility of Managers and Supervisors

VERY IMPORTANT: Make sure there is no retaliation.

- Retaliation is when an employee suffers an adverse employment action (e.g., demotion, reduction of hours, termination, less desirable job assignment) for engaging in a protected activity (e.g., reporting harassment or cooperating in an investigation).
- **Retaliation is prohibited by law.** Supervisors should refrain from retaliating against any employee and take action to stop and prevent others on the team from engaging retaliation.

Recent EEOC Guidelines for Sexual Harassment (April 2024)

Enforcement Guidance on Harassment in the Workplace

- Consolidates and replaces five prior guidance documents issued between 1987 and 1999.
- In updating the guidance, the EEOC noted the high percentage of discrimination claims involving allegations of harassment since 2016.
- Reflects changes in the law including the U.S. Supreme Court decision in *Bostock v. Clayton County* (held that Title VII of the 1964 Civil Rights Act encompasses both sexual orientation and gender identity).

EEOC Recent Guidelines for Sexual Harassment (April 2024)

- The guidelines identify the legally protected characteristics covered by EEO laws enforced by the EEOC.
 - These include harassment based on race, color, religion, sex (including pregnancy, childbirth, or related medical conditions; sexual orientation; and gender identity), national origin, disability, age (40 or older), or genetic information.
- Notably, sex-based harassment expressly includes harassment based on sexual orientation and gender identity.
- It also incorporates harassing conduct involving lactation, contraception, and abortion.
- With these updates, the EEOC reinforced protections for employees on the basis of gender identity, making it clear the intention to attack harassing and discriminatory conduct targeting an employee's identified sex or gender.

Gender Identity & Sexual Orientation



Gender identity can be defined as one's innermost concept of self as male, female, a blend of both or neither – how individuals perceive themselves and what they call themselves. One's gender identity can be the same or different from their sex assigned at birth.

Recent EEOC Guidelines for Sexual Harassment (April 2024)

Harassing Conduct - Sexual Orientation or Gender Identity:

- Epithets regarding sexual orientation or gender identity;
- Physical assault due to sexual orientation or gender identity;
- Outing (disclosure of an individual's sexual orientation or gender identity without permission);
- Harassing conduct as an individual does not present in a manner that would stereotypically be associated with that person's sex;
- Repeated and intentional use of a name or pronoun inconsistent with the individual's known gender identity (misgendering); or
- The denial of access to a bathroom or other sex-segregated facility consistent with the individual's gender identity

Recent EEOC Guidelines for Sexual Harassment (April 2024)

Example: Harassment Based on Gender Identity

Chloe, a purchase order coordinator at a retail store warehouse, is approached by her supervisor, Alton, who asks whether she was “born a man” because he had heard a rumor that “there was a transvestite in the department.” Chloe disclosed to Alton that she is transgender and asked him to keep this information confidential. After this conversation, Alton instructed Chloe to wear pants to work because a dress would be “inappropriate,” despite other purchase order coordinators being permitted to wear dresses and skirts. Alton also asks inappropriate questions about Chloe’s anatomy and sexual relationships. Further, whenever Alton is frustrated with Chloe, he misgenders her by using, with emphasis, “he/him” pronouns, sometimes in front of Chloe’s coworkers. Based on these facts, Alton’s harassing conduct toward Chloe is based on her gender identity.

Recent EEOC Guidelines for Sexual Harassment (Jan. 2025)

- On January 20, 2025, President Trump appointed Andrea Lucas as Acting Chair of the EEOC.
- Subsequently, two Democratic commissioners were dismissed, altering the commission's composition.
- Executive Order 14168, “Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.” (directs federal agencies to enforce laws governing sex-based rights, protections, opportunities, and accommodations to protect men and women as biologically distinct sexes, and to remove all statements, policies, regulations, forms, communications, or other internal and external messages promoting gender ideology).

EEOC Recent Guidelines for Sexual Harassment (Jan. 2025)

What Does that Mean for the EEOC & the Guidelines?

- The EEOC appears to be moving away from previous gender identity policies.
- This includes removing materials promoting gender ideology and exploring the revising of anti-harassment guidance to exclude references to intentional misgendering and the denial of access to bathrooms as harassment.

EEOC Recent Guidelines for Sexual Harassment (Jan. 2025)

- The Commission acts by majority vote. Acting Chair Lucas voted against the Enforcement Guidelines.
- The Acting Chair Lucas cannot unilaterally revise the Enforcement Guidelines.
- However, Acting Chair Lucas has been vocal in her opposition to portions of EEOC's harassment guidance that took the enforcement position that harassing conduct under Title VII includes "denial of access to a bathroom or other sex-segregated facility consistent with [an] individual's gender identity;" and that harassing conduct includes "repeated and intentional use of a name or pronoun inconsistent with [an] individual's known gender identity."

Recent EEOC Guidelines for Sexual Harassment (Jan. 2025)

What Does This Mean for Employers?

- Clash between the Biden-era EEOC guidance and President Trump's EO
- President Trump is likely to take further action on this issue in the near term.
- However, unless and until Congress amends laws, such as Title VII, private employers remain governed by the law, not the EO.
- MORE LITIGATION!
- Private employers should continue to govern themselves according to and consistent with existing law and precedential case law interpreting it (while still being mindful of the shift in approach signaled by the Trump administration).

SESSION BREAK

15 Minutes



Possible Consequences to the Employer if Sexual Harassment Occurs

- Compensation to the employee (e.g., back pay, emotional distress damages, punitive damages) to make the employee “whole”
- Attorneys' fees and costs.
- Reinstatement if the employee was terminated or demoted.
- Corrective actions (e.g., increased training, revised reporting policies, independent monitor) if required by a court or the EEOC.

Recent Examples of Bad Consequences to Employers for Failing to Protect Employees

Waller's Trucking Company in WY (\$124K) January 2025 – EEOC filed action against a family-owned trucking company for failing to take action to stop the sexual harassment of two female employees by the owner of the company. The alleged harassment occurred for years. The employees were forced to resign due to hostile working environment.

- * Owner frequently made crude and sexually explicit comments to female employees in front of their coworkers and over the mobile radio system.
- * He also inappropriately grabbed female employees without their permission.
- * Five-year consent decree which, *inter alia*, included a letter of apology, revision of reporting policies, and training.

Recent Examples of Bad Consequences to Employers for Failing to Protect Employees

Wireless World LLC in CA (\$108K) December 2024 – EEOC filed action against a former cellular phone retailer for failing to take action to stop the sexual harassment of a teenage female employee by former sales manager.

- * Sales manager made repeated unwelcome advances and requests for sex in 2017.
- * The sales manager later sexually assaulted the employee at a holiday party
- * Although the company shut down in 2021, it agreed to implement various EEO measures, including trainings and policies to ensure its compliance with Title VII, should it resume operations during the term of the decree .

Recent Examples of Bad Consequences to Employers for Failing to Protect Employees

- ❖ **Activision Blizzard (\$18M Settlement).** Video game giant subjected employees to severe sexual harassment and pregnancy discrimination and engaged in retaliation against employees who complained.
 - * **Second largest EEOC sexual harassment settlement ever**
- ❖ **McDonald's Franchisee in NV/AZ/CA (\$2M)** – EEOC filed action against a McDonald's franchisee for knowingly allowing sexual harassment of young teenage employees by supervisors, managers, and co-workers to continue unabated for 6 years.

Scenario 1

Mari's coworker, Alex, has recently separated from his long-term partner. During casual conversations at work, Alex occasionally mentions how challenging it is to adjust to being single. Mari and Alex have always had a friendly rapport and occasionally grab coffee together.

One afternoon, Alex invites Mari to join him for a hike and lunch. Mari, who enjoys hiking and thinks highly of Alex as a coworker, agrees. They have enjoyable day, but Mari realizes afterward that she's not interested in anything beyond friendship. She explains that she would prefer to remain friends and keep things professional. Two weeks later, Alex sends Mari a message asking her out for dinner and drinks. Mari declines.

QUESTION 1: Did Alex sexually harass Mari?

Scenario 1 (cont.)

Answer to Question 1: Is It Sexual Harassment?

- * Probably Not.
- * Mari voluntarily agreed to go out with Alex. No indication of coercion or pressure during this initial interaction.
- * While Alex asked Mari out again after her refusal, this was a single follow-up request made weeks later.
- * There does not appear to be an ongoing or pervasive behavior that negatively affects Mari's ability to work or her workplace environment.

Scenario 1 (cont.)

After Mari refused Alex's request for a second date, he still keeps asking her to go out with him, so Mari complains to her supervisor, and the supervisor (as required) reports her complaint to HR. Alex is questioned about his behavior, and he apologizes. HR instructs him to stop. Alex stops for a while but then starts leaving little gifts for Mari on her desk with accompanying love notes. The love notes are not overtly offensive, but Alex's behavior is starting to make Mari nervous.

QUESTION 2: Did Alex sexually harass Mari?

Scenario 1 (cont.)

Answer to Question 2. Is It Sexual Harassment?

- * Yes.
- * Alex's continued conduct does amount to legally actionable harassment of Mari. His actions are unwelcome and pervasive. Mari should again report his behavior to HR. She is entitled to have effective assistance from HR in getting Alex to stop his inappropriate workplace behavior.
- * **What Should HR Do?** Because Alex returned to pestering Mari after being told to stop, he should be subject to serious disciplinary action.
 - * E.g., Suspension or termination and/or assignment to a department away from Mari

Scenario 2

Carl has recently started working under his new manager, Mark. During one-on-one discussions, Mark often stands very close to him, invading his personal space. He frequently places his hand on Carl's back or arm as they talk.

Carl feels uncomfortable and tries to subtly move away or reposition himself to create distance, but Mark continues to lean in or touch him during these interactions, seemingly unaware or ignoring his discomfort. The behavior persists, making Carl increasingly uneasy during their meetings.

QUESTION 1: Did Mark sexually harass Carl?

Scenario 2 (cont.)

Answer to Question 1. Is It Sexual Harassment?

- * Maybe.
- * It's unclear at this point whether Carl's actions in moving away from Mark conveyed the message to Mark that Carl is uncomfortable with Mark touching him. If it should be obvious to Mark based on Carl's reaction that Mark's behavior is unwelcome, and if Mark still repeatedly does it, then Mark's conduct could be considered pervasive and severe and legally actionable harassment.
- * Carl has options. He can tell Mark to please back off because his closeness and touching is making him uncomfortable or he can complain to his supervisor or HR, who should speak with Mark.

Scenario 2 (cont.)

Before Carl gets around to complaining, Mark brushes up against him back in the conference room before a meeting. Carl is now getting really annoyed but puts off doing anything about it. Later Mark “traps” Carl in the bathroom by standing between him and the door of the bathroom. Carl doesn’t know what to do, so he moves past him to get out. As he does so, Mark runs his hand across Carl’s butt.

QUESTION 2: Did Mark sexually harass Carl?

Scenario 2 (cont.)

Answer to Question 2. Is It Sexual Harassment?

- * Yes.
- * Mark is now engaged in a pattern of escalating behavior. It has now become pervasive and his actions in brushing up against Carl and running his hand across his butt would be considered severe.
- * Even before being trapped in the bathroom, Carl should have reported all of the behavior he had experienced that made him uncomfortable.
- * **What should HR Do?** Any type of sexual touching is very serious. Mark should receive formal discipline, possibly including termination.

Scenario 3

Claire is eager for a leadership role that she knows will soon be available within her department. Her manager, Jason, will play a key role in deciding who gets the promotion. Claire approaches Jason and expresses her enthusiasm for the position, letting him know that she intends to apply. Jason responds, “We’ll see. There will be a lot of strong contenders for the role.”

Scenario 3 (cont.)

A week later, Claire and Jason are scheduled to attend a work conference off-island. Over dinner, Jason mentions to Claire that he really hopes he can promote her because he has always appreciated her work ethic and dedication. He adds that while other candidates might “have stronger resumes,” she is the one he truly believes is the right fit for the role. Jason also implies that he can use his influence to ensure she gets the position.

Later in the evening, Jason suggests that they meet in his hotel room to “unwind and have a drink.” Claire feels uncomfortable and declines the invitation.

QUESTION 1: Did Jason sexually harass Claire?

Scenario 3 (cont.)

Answer to Question 1. Is It Sexual Harassment?

- * Maybe.
- * Jason's behavior, at this point, may or may not constitute *quid pro quo* harassment. Jason made no threat that if Claire refuses his advances he will handle her promotion any differently. But his offer to use his influence followed by a request that they go to his hotel room for to unwind and have a drink might be considered potentially coercive.
- * Even if not yet *quid pro quo* harassment, if Jason continues his advances, this could create a hostile work environment for Claire for which the employer could still be liable because Jason is her supervisor.

Scenario 3 (cont.)

After they return from the trip, Claire asks Jason if he knows when the job will be posted so that she can apply. He says that he is not sure, but there is still time for her to “make it worth his while” to pull strings for her. He then asks, “How about going out to dinner this Friday and then coming over to my place?”

QUESTION 2. Did Jason sexually harass Claire?

Scenario 3 (cont.)

Answer to Question 2. Is It Sexual Harassment?

- * Yes.
- * It is now evident that Jason has engaged in *quid pro quo* sexual harassment by offering to help Claire with the promotion in exchange for sexual favors.
- * **What should HR do?** The employer is now exposed to potential strict liability for Jason's actions if the harassment results in a tangible employment action. If HR becomes aware of this, Jason should be seriously disciplined, including possibly terminated, and he should be excluded from involvement in the decision on the promotion Claire is applying for.

Scenario 4

During the annual work holiday party, Liam, a manager, consumed several drinks and became increasingly talkative and uninhibited. Throughout the evening, he repeatedly commented on how attractive his colleague, Emma, looked in her dress, even suggesting that she should "wear it more often." Emma laughed nervously and tried to steer the conversation elsewhere.

Later in the evening, Liam asked Emma to take a selfie with him. Emma reluctantly agreed, hoping to avoid making the situation awkward. After the party, Liam posted the photo on social media with the caption: "Best-looking coworker award goes to Emma 🔥 🔥 🔥," along with a few drinks-related emojis.

Scenario 4

The next morning, Emma saw the post and felt embarrassed and uncomfortable, especially since it was visible to coworkers and clients. She approached Liam at work and politely asked him to take the photo down, explaining that it made her feel uncomfortable and unprofessional. Instead of apologizing or complying, Liam brushed it off, saying, "It's just a joke. You're overreacting," and refused to remove the post. He later joked about Emma being "too sensitive" in front of other colleagues, further escalating her discomfort.

QUESTION 1: Did Liam sexually harass Emma?

Scenario 4 (cont.)

Answer to Question 1. Is It Sexual Harassment?

- * Yes.
- * Liam's repeated comments about Emma's appearance were unwelcome and made her uncomfortable.
- * The social media post, with its objectifying caption, further crossed professional boundaries and extended the issue into a public and professional space.
- * Liam's subsequent joking in front of colleagues could contribute to a hostile work environment, making Emma feel ostracized or disrespected.
- * **What should HR do?** Investigate whether Liam's conduct violated company policies on harassment and social media use. This includes reviewing the behavior, the social media post, and Liam's subsequent remarks. Depending on company policy, Liam could face disciplinary action, such as a formal warning, required harassment training, or more serious consequences if the investigation confirms the allegations.

Sample: Sexual Harassment Policy

- **Objective.** The objective of this policy is to define workplace sexual harassment and to outline procedures for filing complaints, investigating sexual harassment claims and issuing appropriate disciplinary measures in the case of violations.
- **Scope.** This policy applies to all employees of [COMPANY NAME] at all locations. All workers, at every level, will be subject to discipline, up to and including discharge, for any violation of this policy. Employees are prohibited from harassing others both on and off the employer premises and during or outside of work hours.
- **Defining Sexual Harassment.** Sexual harassment is unwelcome conduct of a sexual nature that is persistent or offensive and interferes with an employee's job performance or creates an intimidating, hostile or offensive work environment.

Sample: Sexual Harassment Policy (cont.)

- **Examples of Prohibited Conduct.** Though sexual harassment encompasses a wide range of conduct, some examples of specifically prohibited conduct including the following:
 - Physical assaults of a sexual nature, such as rape, sexual battery, molestation or attempts to commit these assaults, and intentional physical conduct that is sexual in nature, such as touching, pinching, patting, grabbing, brushing against another employee's body or poking another employee's body
 - Unwelcome sexual advances, propositions or other sexual comments, such as sexually oriented gestures, noises, remarks, jokes, or comments about a person's sexuality or sexual experience.

Sample: Sexual Harassment Policy (cont.)

- Preferential treatment or promises of preferential treatment to an employee for submitting to sexual conduct, including soliciting or attempting to solicit any employee to engage in sexual activity for compensation or reward.
- Subjecting, or threats of subjecting, an employee to unwelcome sexual attention or conduct or intentionally making performance of the employee's job more difficult because of that employee's sex.
- Sexual or discriminatory displays or publications anywhere in [COMPANY NAME] 's workplace by [COMPANY NAME]'s employees.

Retaliation for sexual harassment complaints.

Sample: Sexual Harassment Policy (cont.)

Responding to Conduct in Violation of Policy

* **Employees.** If an employee feels that he or she is being subjected to sexual harassment he or she may immediately inform the harasser that the conduct is unwelcome and needs to stop. If the inappropriate conduct does not cease, or if the employee is unable to or uncomfortable with addressing the alleged harasser directly, he or she should report the incident to his or her own supervisor or to the human resource (HR) director. It is helpful, but not required, to provide a written record of the date, time and nature of the incident(s) and the names of any witnesses.

Sample: Sexual Harassment Policy (cont.)

- * ***Managers and Supervisors.*** Managers and supervisors must deal expeditiously and fairly when they have any knowledge of sexual harassment within their departments, whether or not there has been a written or formal complaint. They must:
 - Take all complaints or concerns of alleged or possible harassment seriously no matter how minor or who is involved.
 - Report all incidents to HR immediately so that a prompt investigation can occur.
 - Take any appropriate action to prevent retaliation or prohibited conduct from recurring during and after any investigations or complaints.

Sample: Sexual Harassment Policy (cont.)

Human Resources.

- The HR director will determine if an in-house investigation will be conducted or if a third party will be contracted to complete the investigation. All complaints involving senior management at the vice-president level or above will be handled by an external third party.

Complaint Resolution Procedures

- Complaints should be submitted as soon as possible after an incident has occurred, preferably in writing. To ensure the prompt and thorough investigation of a sexual harassment complaint, the complainant should provide as much detailed information as is possible.

Sample: Sexual Harassment Policy (cont.)

Discipline. Employees who violate this policy are subject to appropriate discipline. If an investigation results in a finding that this policy has been violated, the mandatory minimum discipline is a written reprimand. The discipline for very serious or repeat violations is termination of employment. Persons who violate this policy may also be subject to civil damages or criminal penalties.

Sample: Sexual Harassment Policy (cont.)

Confidentiality. All complaints and investigations are treated confidentially to the extent possible and information is disclosed strictly on a need-to-know basis. The identity of the complainant is usually revealed to the parties involved during the investigation and the HR director takes adequate steps to ensure that the complainant is protected from retaliation during and after the investigation. All information pertaining to a sexual harassment complaint or investigation is maintained in secure files within the HR department.

Sample: Employee Dating Policy

Objective: [Company Name] strongly believes that a work environment where employees maintain clear boundaries between employee personal and business interactions is necessary for effective business operations. Although this policy does not prevent the development of friendships or romantic relationships between co-workers, it does establish boundaries as to how relationships are conducted during working hours and within the working environment.

Sample: Romance in the Workplace Policy (cont.)

Individuals in supervisory or managerial roles, and those with authority over others' terms and conditions of employment, are subject to more stringent requirements under this policy due to their status as role models, their access to sensitive information, and their ability to affect the employment of individuals in subordinate positions.

Procedures:

- Employees are strictly prohibited from engaging in physical contact that would in any way be deemed inappropriate in the workplace by a reasonable person while anywhere on company premises, whether during working hours or not.

Sample: Romance in the Workplace Policy (cont.)

- Employee off-duty conduct is generally regarded as private, as long as such conduct does not create problems within the workplace. An exception to this principle, however, is romantic or sexual relationships between supervisors and subordinates.
- Any supervisor, manager, executive or other company official in a sensitive or influential position with [Company Name] must disclose the existence of a romantic or sexual relationship with another co-worker. Disclosure may be made to the individual's immediate supervisor or the director of human resources (HR). [Company Name] will review the circumstances to determine whether any conflict of interest exists.

Three Keys to Creating a Harassment Resistant Workplace

- * Focus on Civility
- * Encourage Reporting
- * Bystander Intervention

Three Keys to Creating a Harassment Resistant Workplace (cont.)

* Focus on Civility

- * Make a Commitment to Mutual Respect part of your company's policy.
- * Make reporting inappropriate conduct everyone's duty.
- * Require employees at all levels to follow a higher code of conduct than just not violating harassment and discrimination laws.
- * Pay attention to the workplace to make sure no one ever feels disrespected.

Three Keys to Creating a Harassment Resistant Workplace (cont.)

* Encourage Reporting

- Offer multiple ways to file a complaint
- Give numerous people within the company responsibility for receiving complaints
- Make it clear to your team that harassers are not automatically fired
- Consider other ways to make people feel safe in reporting harassment (e.g., “information escrow”)

Three Keys to Creating a Harassment Resistant Workplace (cont.)

* Bystander Intervention

- Bystander intervention involves safe and positive actions that may be carried out by a person, or a group of people, to prevent harm or intervene where there is a risk or perceived risk of sexual harassment to another.

Three Keys to Creating a Harassment Resistant Workplace (cont.)

What is the Bystander Effect?

The bystander effect occurs when the presence of others discourages intervening in an emergency situation, against a person's bully, or during an assault or other crime. For our purposes today, during an incident of sexual harassment. The greater the number of bystanders, the less likely it is for any one of them to provide help to a person in distress.



Three Keys to Creating a Harassment Resistant Workplace (cont.)

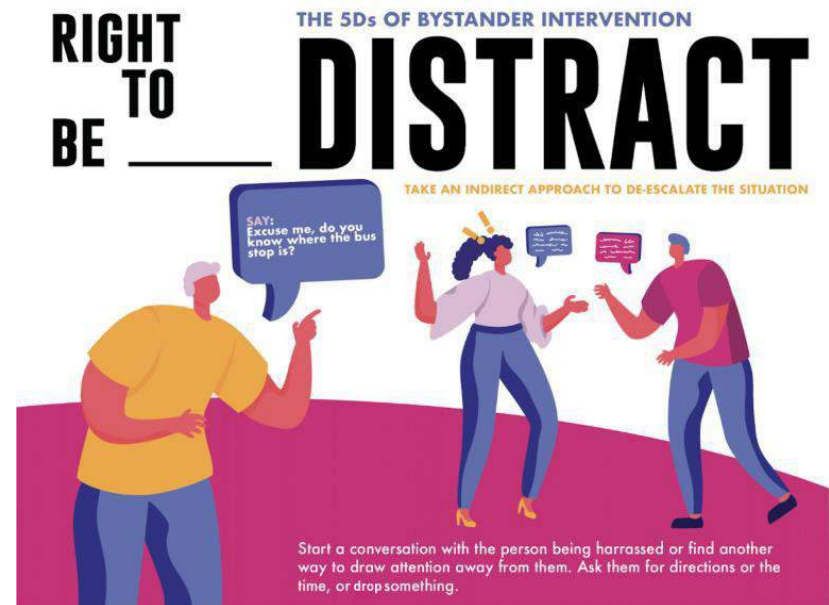
- 5 D's of Bystander Intervention

1. **Distract** (indirect approach to de-escalate)
2. **Delegate** (get help from someone with authority)
3. **Document** (record the incident if safe to do so)
4. **Delay** (check in with the person sometime after its over)
5. **Direct** (intervene directly if safe to do so)

Three Keys to Creating a Harassment Resistant Workplace (cont.)

- Bystander Intervention

- Start a conversation
(with the victim)
- Cause a commotion
- Get in the way



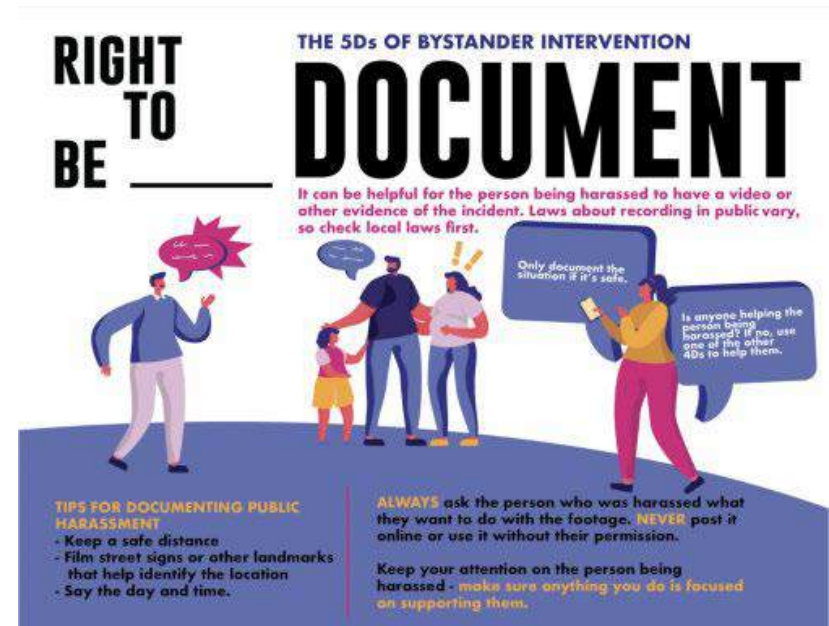
Three Keys to Creating a Harassment Resistant Workplace (cont.)

- Bystander Intervention
- Asking a 3rd Party for help
- Look for delegate
- Provide clear instructions



Three Keys to Creating a Harassment Resistant Workplace (cont.)

- Bystander Intervention
- Record or take notes
- But, first assess the situation
- Ask victim preference



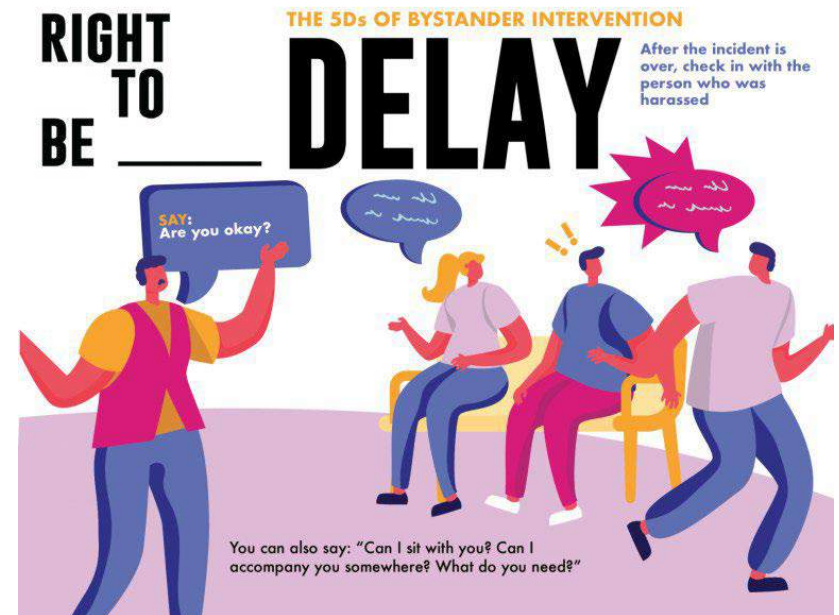
Three Keys to Creating a Harassment Resistant Workplace (cont.)

• Bystander Intervention

Talk to the harasser later

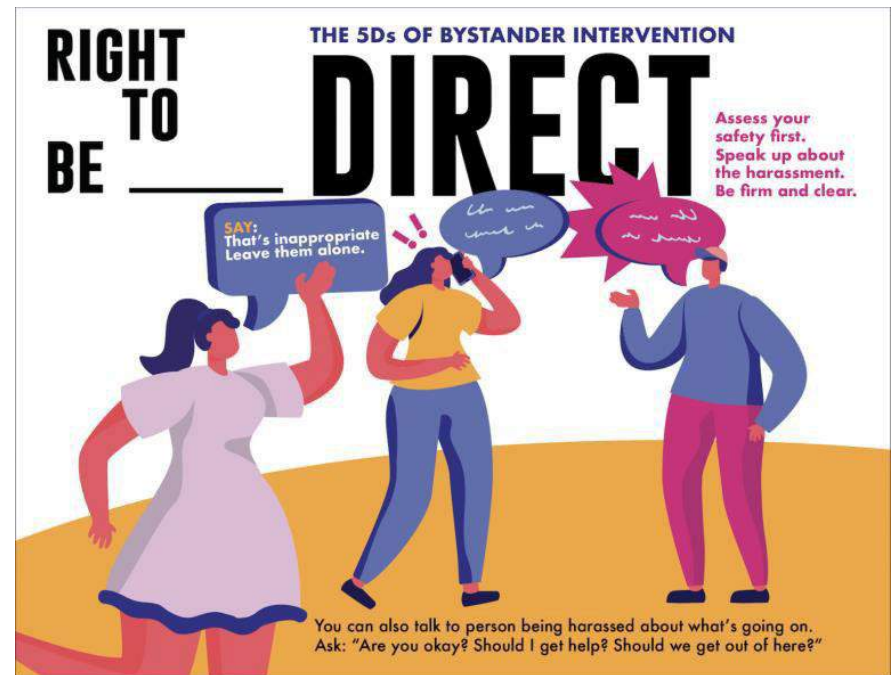
Talk to other bystanders later

Talk to the victim later



Three Keys to Creating a Harassment Resistant Workplace (cont.)

- Bystander Intervention
- Start a conversation
(*with the harasser*)
- Ask the victim if she's okay
- Assess your safety first



Scenario 1

One morning you walk into the office to find the new intern, Susan sitting at her desk looking uncomfortable as the manager, Bob stands behind her with his hands on her shoulders talking to her about the assignment he gave her.

What do you do?

Scenario 1: Try to Remember the 5Ds

Delegate: Tell Bob's supervisor or the Human Resources manager what's happening

Distract: Ask the intern, "Hey, Susan would you like to grab a cup of coffee?"

Direct: Tell the manager, "Hey Bob, give Susan some space."

Delay: As soon as Bob walks away, go and ask Susan, "You looked uncomfortable, are you ok? I saw what happened. Do you need to talk to someone in Human Resources about this? I'll go with you."

Scenario 2

In a meeting of your project group, your manager Sarah welcomes David, a new member to the team. Sarah jokingly tells David, “It’s going to be fun having a new young stud in the office,” as she grabs hold of his hand with a smile. David looks clearly embarrassed.

What do you do?

Scenario 2: Try to Remember the 5Ds

Delegate: Tell Sarah's supervisor or the Human Resources manager what happened.

Distract: Knock over your cup of coffee. Do something to cause a commotion (safely).

Direct: Tell the Sarah, "Take it easy on the new guy, it's only his first day."

Delay: After the meeting, tell David, "I saw what just happened. Are you ok? We can report this you know."

Scenario 3

Bill is excited to have recently been promoted into a position he had previously applied for, but was not selected.

After a couple of weeks in the position, his boss Steve tells him, “I really like you Steve. You know I pushed for you to get this promotion. I think we’re going to make a great team.” He then leans over in Bill’s ear and says, “I expect that you will show your gratitude at the appropriate time,” while squeezing Bill’s bicep. Bill tells you about the encounter at lunch.

What do you do?

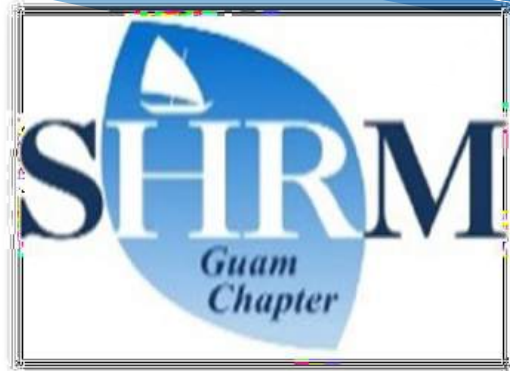
Scenario 3: Try to Remember the 5Ds

Delegate: Tell Steve's supervisor or the Human Resources manager what happened.

Distract: This wouldn't be an option this time since the event is over.

Direct: Tell Steve, "Bill told me about how you welcomed him to the team. I don't think that was appropriate."

Delay: Inform Bill that he should report the incident to Steve's boss or the Human Resources manager, and offer to go with him.



Visit the SHRM Guam Chapter website at <https://www.guam.shrm.org> to become a SHRM member

A Wealth of Valuable Guidance regarding Prevention of Sexual Harassment and sample Workplace Policies is Available on the SHRM Website at the following link: <https://www.shrm.org>



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Webcasts regarding Emerging Changes to Employment Landscape is Available on the SHRM Website at the following link: <https://www.shrm.org/events-education/education/webcasts>

- Navigating Title VII Compliance Amid Recent DEI Policy Changes
- Gender & Inclusion: Navigating New DEI Executive Order



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ANY
QUESTIONS?