



PREVENTING SEXUAL HARASSMENT

PROMOTING A BETTER WORKPLACE

SHRM GUAM BREAKFAST BRIEFING

FEBRUARY 1, 2023

CALVO FISHER & JACOB LLP
GUAM SAIPAN SAN FRANCISCO



Michael A. Pangelinan
Calvo Fisher & Jacob LLP
259 Martyr Street, Suite 100
Hagåtña, Guam 96910
671-646-9355
mpangelinan@calvofisher.com

Sexual Harassment is Not Just a Problem for Supervisors and HR Managers



We're All in This Together



How sexual harassment can make you feel



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- Like a knife stabbing you in the chest with each breath you take
- Other physical symptoms can include a pounding heart, sweaty palms, and a persistent tightness in your shoulders

How sexual harassment can make you feel



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- Like a rain cloud following your every move
- Your mind gets caught in a loop of negativity that's tough to break out of

How sexual harassment can make you feel



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- Like an impostor hijacked your normal self
- An out-of-body quality, like watching an imposter from the outside powerless to fight it off

How sexual harassment can make you feel



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- Like an explosion in your brain, sending your thoughts spiraling out of control
- What's left is a void, a crater of emptiness

Key Points to be Covered In This Briefing

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

What is Sexual Harassment?

- **IT'S UNLAWFUL**

- 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?

- **IT'S UNLAWFUL DISCRIMINATION ON THE BASIS OF SEX**
(aka Gender)
 - Unique type of discrimination
 - Doesn't involve comparing one employee with another as is often the case with other types of discrimination
 - More focused on the individual person and individual situation

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**.

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

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

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

Hostile Work Environment Sexual Harassment (cont.)

In addition to speech or conduct, covers explicit or suggestive items that are e-mailed, texted, or electronically provided or displayed in the workplace that interfere with job performance or that create an abusive or hostile work environment.

- Example: Maria Flores sends WhatsApps to her co-worker with sexually explicit jokes and pictures.

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.

Employer Liability for Sexual Harassment

Remember – Employers are liable for supervisor misconduct

- The actions of supervisors are considered the actions of the employer
- An employer is **strictly liable** for harassment by supervisors if it results in a tangible employment action (such as termination or demotion).

Employer Liability for Sexual Harassment (cont.)

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

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 a 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.

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. Men can harass women and/or other men; Women can harass men and/or other women.

3. **Location** of the harassment

Irrelevant. Sexual harassment can occur outside the workplace (e.g., business trips, holiday parties, sporting events)

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 (cont.)

- **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 (cont.)

- 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 (cont.)

- 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 (cont.)

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.

Possible Consequences to the Employer if Sexual Harassment Occurs

- Compensation to the employee (e.g., back pay, emotional distress damages, punitive damages)
- 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

McDonald's Franchisee in Vermont (\$1.6M)– EEOC action in March 2021 against a McDonald's franchisee for failing to protect female employees from a manager who sexually harassed them over several years.

- Male night shift manager touched employees inappropriately, hit and groped them, and subjected them to derogatory comments and threats of physical harm.
- After employee complained, management revoked her disability-related reasonable accommodation forcing her to quit.
- McDonald's required to pay \$1.6M, implement extensive anti-discrimination training, revise their EEOC policies, and hire an independent monitor to oversee compliance.

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

Wyndham Hotel Operator in Washington (\$370K) – EEOC action in November 2021 against a Hawthorn Suites by Wyndham for failing to protect female housekeepers from a manager who sexually harassed them.

- Male maintenance/housekeeping manager groped the women when they were alone cleaning hotel rooms, mocked them for objecting, made sexually explicit comments to them, and repeatedly threatened them with rape causing one woman to quit.
- After employees complained to the GM, he cut the work hours of the remaining housekeeper and denied her a raise given to other housekeepers.
- Wyndham required to pay \$370K, implement companywide training, and retain an independent consultant to help develop anti-harassment policies and procedures.

Scenario 1

Fred is a supervisor at an air-condition servicing company. One of his employees, Gina, tells him that after completing her work for the day servicing a commercial A/C at a client's jobsite she asked her co-worker Jim if there are facilities at the jobsite for her to take a shower and Jim replied, "You can take a shower at my house." She said on another occasion Jim made sexual remarks in her presence about how "hot" he thinks one of their other female co-workers is, which Gina found offensive and inappropriate.

- What are Fred's responsibilities, if any?
- Did Jim's conduct constitute sexual harassment?

Answer to Scenario 1

Fred's Responsibilities

- Fred must report Gina's complaint to HR
- Fred should consult with HR to determine any interim steps that should be taken (*e.g.*, talk to Jim about his comments, refrain from sending Jim and Gina on jobs together).
- Fred should make sure Gina is aware of the company's harassment reporting procedures and recommend that she contact HR to report these incidents.
- Fred should let Gina know he takes her report seriously and he will take appropriate action.

Supervisors must report all employee complaints to HR even if they don't believe harassment has occurred.

Supervisors have a duty to maintain a respectful workplace and not permit inappropriate behavior to go unchecked.

Answer to Scenario 1 (cont.)

Is it Sexual Harassment?

- Probably not.
- Although Gina found Jim's comments offensive, they would probably not be considered severe or pervasive enough to constitute legally actionable sexual harassment.
- Nonetheless, HR should still investigate and take prompt action to address this situation to prevent it from growing into something severe or pervasive.

Scenario 2

Jack often calls his administrative assistant Linda after working hours to ask her for advice about his troubled marriage. During the calls Jack often describes intimate details of his sexual relations with his wife to explain why he feels frustrated in his marriage and says he needs advice “from a woman’s perspective.” He initially called Linda for advice only once or twice on the weekends, but his calls have become more frequent. Over the past several weeks, he’s been calling Linda for advice almost every night.

Scenario 2 (cont.)

Linda believes Jack is genuinely seeking her advice and not trying to make sexual advances toward her, but talking to Jack about his marital sex life makes her feel very uncomfortable and gives her anxiety. She has explained this to Jack and told him she wants to help him but she can't stand the anxiety. She has asked him politely several times not to call her for advice on this subject, but he still keeps calling.

- Is Jack sexually harassing Linda?

Answer to Scenario 2

- Yes, Jack's conduct probably does amount to legally actionable harassment of Linda. The standard is that the conduct must be unwelcome and must be so severe or pervasive as to create a hostile work environment. For several weeks, Jack has been calling Linda almost every night telling her the details of his sex life, which is a pervasive amount of time.
- Whether the comments have created a hostile work environment is based on both an objective and subjective standard. Here, an objective person would most likely find Jack's description of intimate details of his sex life to Linda were offensive. Linda also subjectively found the comments unwelcome and anxiety-producing and she made that clear to Jack.

Answer to Scenario 2 (cont.)

- The fact that Jack's calls to Linda are not intended as sexual advances does not matter. Remember, the intent of the harasser is irrelevant. Linda told Jack repeatedly that hearing about his sex life with his wife cause her anxiety.
- Linda should not have to endure these unwanted calls from her boss. She should tell Jack that if he does not stop calling her about this she will have no other choice but to report this to HR.

Scenario 3

Nancy works as a receptionist and an urgent care medical clinic. She has developed a close relationship with one of the clinic's doctors, Dr. Blaz, and suspects that he is attracted to her. She finds Dr. Blaz attractive too, and she's told him this, but he's married and much older than her, so she has also told him several times that she wants to stick to being friends and nothing more. The other night Dr. Blaz asked Nancy to leave the receptionist station and walk with him to the supply room so he can show her some new cabinets the clinic just installed. Dr. Blaz asked one of the nurses, Maggie, to cover the receptionist station for a few minutes.

Scenario 3 (cont.)

Nancy walked in front of Dr. Blaz to the supply room and when they were inside Dr. Blaz hugged her tightly from behind and said, “finally we’ve got some alone time” and began kissing the back of her neck and rubbing his hands across her chest and stomach. Stunned by this, Nancy pulled away and walked quickly back to the reception station. Nancy felt so stressed out by this incident that she had to call in sick the next day. She thought about informing the Clinic Manager according to the Clinic’s harassment reporting policy, but she doesn’t want to do that because the Clinic Manager is Dr. Blaz’s wife.

- Was Nancy sexually harassed?
- What should Nancy do?

Answer to Scenario 3

- Yes, Dr. Blaz's conduct probably does amount to sexual harassment because it's unwelcome (Nancy told him several times she wants friendship only), it's severe (tight hug, groping) enough to create a hostile work environment for Nancy. Even considering their prior interaction, a reasonable person would consider this conduct objectively offensive, and Nancy was subjectively very distressed by it.
- Nancy should report the incident to any other supervisor at the clinic or to one of the clinic's other doctors. Even though the Clinic Policy says to report harassment to the Clinic Manager, it is part of the job of all supervisors to protect the Clinic's employees and keep the workplace safe.

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 XYZ Company 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.)

- 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 XYZ Company's workplace by XYZ Company 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.

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: Romance in the Workplace Policy

Employers can prohibit workplace romance OR allow it with some conditions.

- **EXAMPLES:**

- **Prohibited**. Romantic or dating relationships between employees are prohibited.

OR

- **Allowed with Conditions**. XYZ Company strongly discourages romantic or sexual relationships between a manager or other supervisory employee and an employee who reports directly or indirectly to that person, because such relationships tend to create compromising conflicts of interest or the appearance of such conflicts.

Sample: Romance in the Workplace Policy (cont.)

- If any employee of XYZ Company enters into a consensual relationship that is romantic or sexual in nature with an employee who reports directly or indirectly to that employee, or if one of the parties is in a supervisory capacity in the same department in which the other party works, the parties must notify the HR director or other appropriate corporate officer.
- XYZ Company will review the situation with human resources in light of all the facts (reporting relationship between the parties, effect on co-workers, job titles of the parties, etc.) and will determine whether one or both parties need to be moved to another job or department.

Anti-Harassment Resources, Policies, and Templates Are Available Through SHRM

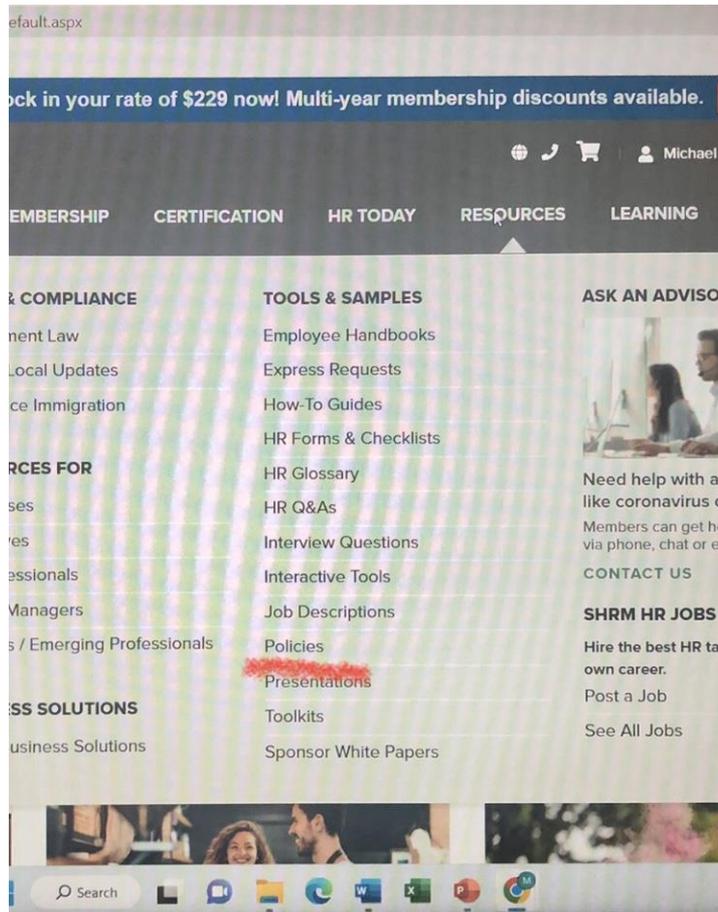
The screenshot displays the SHRM website interface. At the top, a dark blue banner contains a membership update: "SHRM membership increases to \$244 in February, 2023. Lock in your rate of \$229 now! Multi-year membership discounts available." with a "View Benefits of Membership" link. Below the banner is the SHRM logo and a navigation menu with categories: MEMBERSHIP, CERTIFICATION, HR TODAY, RESOURCES, LEARNING, and EVENTS. A search icon is also present.

The main content area is divided into four columns:

- HR TOPICS:** Behavioral Competencies, Benefits, California Resources, Compensation, Diversity & Inclusion, Employee Relations, Global HR, Labor Relations, Organizational & Employee Development, Talent Acquisition, Technology, Workplace Topic Resource Hubs.
- LEGAL & COMPLIANCE:** Employment Law, State & Local Updates, Workplace Immigration.
- RESOURCES FOR:** Enterprises, Executives, HR Professionals, People Managers, Students / Emerging Professionals.
- BUSINESS SOLUTIONS:** SHRM Business Solutions.
- TOOLS & SAMPLES:** Employee Handbooks, Express Requests, How-To Guides, HR Forms & Checklists, HR Glossary, HR Q&As, Interview Questions, Interactive Tools, Job Descriptions, Policies, Presentations, Toolkits, Sponsor White Papers.
- ASK AN ADVISOR:** Includes an image of two people at a computer and text: "Need help with a specific HR issue like coronavirus or FLSA? Members can get help with HR questions via phone, chat or email."
- CONTACT US:** Includes "SHRM HR JOBS" with sub-links: "Hire the best HR talent or advance your own career.", "Post a Job", and "See All Jobs".

A "Feedback" button is visible on the right side of the page. The bottom of the screenshot shows a Windows taskbar with the date 1/30/2023 and time 4:59 PM.

Anti-Harassment Resources, Policies, and Templates Are Available Through SHRM



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 the laws harassment and discrimination.
- 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**

Disrupt the situation
(in a non-confrontational
way 😊)

I'm grabbing a coffee.
Want to come?



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

• Bystander Intervention

Talk to the harasser later

Talk to other bystanders later

I heard what you said to her.
Why did you do that?



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

I heard what he said to you. Are you okay?

• Bystander Intervention

Talk to the victim later





EEOC

- Everything EEOC has issued related to Sexual Harassment Prevention can be found at www.eeoc.gov, including:
 - Select Task Force on the Study of Harassment in the Workplace
 - https://www.eeoc.gov/select-task-force-study-harassment-workplace#_Toc453686310



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>



THANK YOU!





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