



# Workplace Harassment & Retaliation Awareness, Prevention & Response

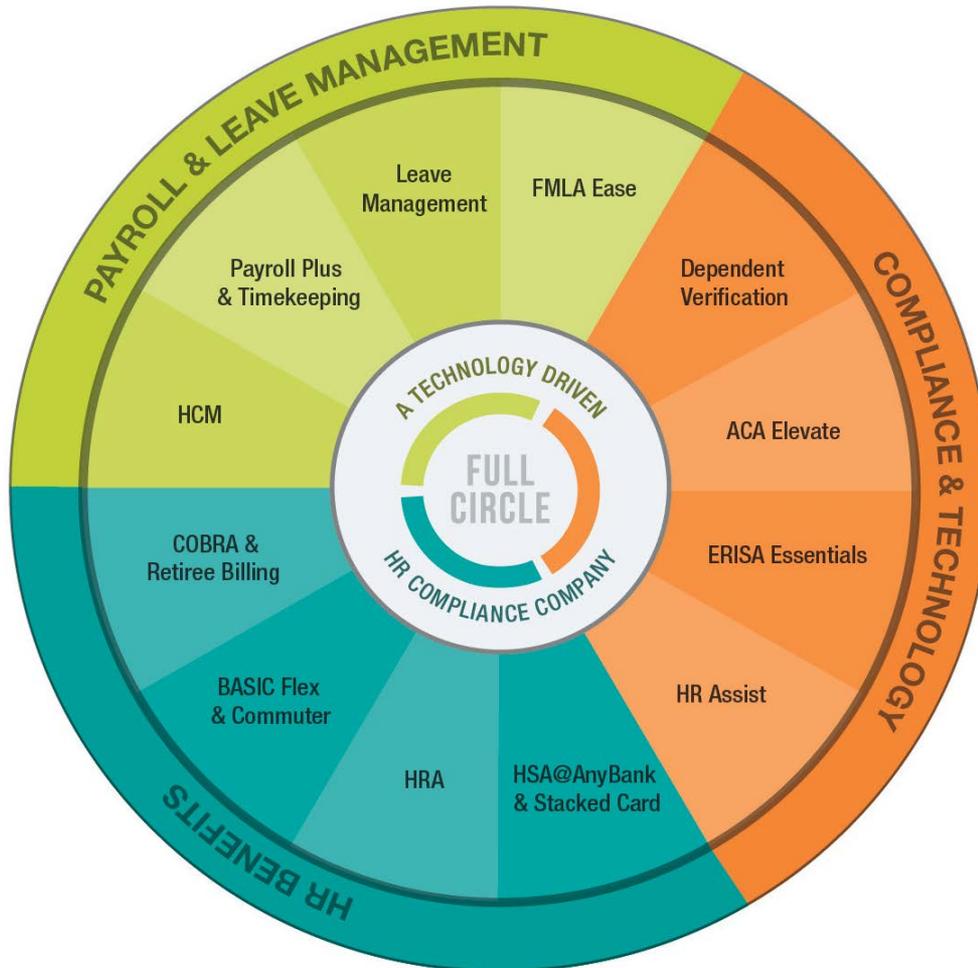
Presented by: Kit Goldman & Memo Mendez  
Workplace Training Network



- HR Benefits
- Compliance
- Payroll & Leave

We're proud to offer a full-circle solution to your HR needs. BASIC offers collaboration, flexibility, stability, security, quality service and an experienced staff to meet your integrated HR, FMLA and Payroll needs.

# HR Solutions Come Full Circle



HR solutions should be simple.  
**Keep it BASIC.**

BASIC's integrated HR solutions come full circle for employers nationwide. Consistently recognized as an Inc. 5,000 Fastest Growing Private Company, our expertise allows you to control costs, manage risks and improve staff focus and effectiveness.

# Welcome and Kudos For Being Here!



- The best defense against Harassment is an informed workforce!
- Warning: we are going to engage in some inappropriate behavior. We need to show it to talk about it!
- The fact you are here shows you understand the need!
- We'll look at the current landscape and a few “hot button” issues, including gender identity, social media and bystander intervention.

# Just a Few of the Harassment Headliners



# Some Costs Of Harassment & Retaliation



- Emotional impact on the targets
- Dysfunctional work relationships
- Loss of trust
- Loss of team unity
- Loss of time and resources to address legal issues
- Damage & destruction to brands and reputations
- Cost of fines or settlement from litigation
- Loss of talent
- Damage to careers and finances

# Don't Be a Harassment/Retaliation Statistic



EEOC Pay-outs Obtained for Complainants in 2017  
**\$398 million**

EEOC Sexual Harassment Claims in 2017  
**26,978**

EEOC Retaliation Claims in 2017  
**41,097**

**The number of incidents it takes to create negative  
consequences for your workplace...**

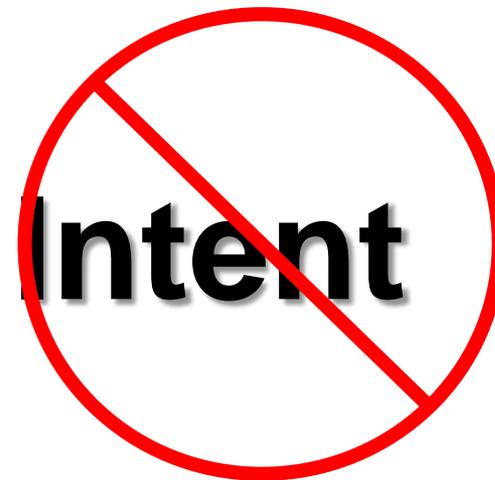
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# Sample of Penalties by EEOC, State and Local Agencies



- Washington Electronics Retailer \$2.3 million
- New Mexico Restaurant \$2 million
- Memphis Office Supply Company \$1.5 million
- New Mexico Restaurant Group \$1 million
- Washington Saw Mill Operator \$900,000
- New York City Steak House \$600,000
- California Fire Department \$494,150
- Multi-State Construction Company \$451,000
- Maryland Medical Practice \$350,000
- National Eyeglasses Retailer \$192,500

# Harassment is about...



# Harassment is Unwelcome Conduct



**Unwelcome to someone you're  
interacting with directly  
OR  
Others in the work environment**

# How Do We Know What's Welcome?



How do we know what's welcome?

Does **CONSENT** = **WELCOME**

# How Do We Know What's Welcome?



The law is about **WHAT IS WELCOME** and not necessarily about what is consented to!

Supervisors must never call into question whether employees are consenting to what they don't welcome!

Why might an employee do this?

- ✓ **Approval or job benefits**
- ✓ **Fear of retaliation**
- ✓ **Peer pressure**

# Harassment Laws



Harassment laws apply to protected categories under Federal and State law.

**Sexual Harassment and other forms of Workplace Harassment and Discrimination are illegal under Title VII of the 1964 Civil Rights Act and other Federal and State laws passed since then.**

# Protected Categories



- ✓ Race
- ✓ Color
- ✓ Religion
- ✓ National Origin
- ✓ Sex
- ✓ Age
- ✓ Disability

- ✓ Sexual Orientation
- ✓ Gender Identity
- ✓ Gender Expression
- ✓ Pregnancy
- ✓ Marital Status
- ✓ Veteran Status
- ✓ Genetic Make-Up

# Gender Identity, Gender Expression & Sexual Orientation



## **DEFINITIONS:**

Sexual orientation: a pattern of romantic or sexual attraction to persons of the opposite or same gender, or to more than one gender.

Gender identity: internal perception own gender. Could be:

- Male, female, combination of both
- Neither male nor female
- A gender different from sex assigned at birth
- Transgender
- Non-binary

Gender expression: gender-related appearance or behavior, or perception of it whether or not generally associated with sex assigned at birth.

Transgender: gender identity different from sex assigned at birth.

Non-binary: gender identities not exclusively masculine or feminine

# Gender Identity, Gender Expression & Sexual Orientation



## **PRACTICAL EXAMPLES OF THIS KIND OF HARASSMENT:**

- ✓ Repeatedly and purposely calling a transgender man “she” despite requests to use “he”, or someone who identifies as non-binary “he” or “she,” when they have requested “they” and “them” be used
- ✓ A manager not allowing a transgender woman the use of a facility because they believes she is “actually a man”
- ✓ Homophobic comments or jokes
- ✓ Derogatory remarks or graffiti
- ✓ Demeaning jokes or comments
- ✓ Slurs or name calling
- ✓ Physical contact, acts of aggression or intimidating and threatening behavior

# Gender Identity, Gender Expression & Sexual Orientation



- Employees have a right to safe and appropriate restroom facilities corresponding to their gender identity
- Employers may implement gendered dress codes, however employees in CA and some other states may comply with dress codes corresponding to their gender identity and expression

**It is unlawful to discriminate against or harass employees based on gender identity, gender expression, or sexual orientation.**

# Harassment is Workplace Conduct



## **Harassment laws apply:**

- **In the workplace**
- **On school campuses**

There is a big world outside of work for those who like to get a little wild and crazy!

# What is the Workplace?



Anywhere work-related activity takes place.  
This includes:

- ✓ **Company parties and other employer-sponsored social events**
- ✓ **Business travel, e.g. meetings and conferences**

# What is the Workplace?



For managers and supervisors...

The workplace is **ANYWHERE**  
**EMPLOYEEES ARE**  
**PRESENT!**

# Harassment is Non-Work Related Conduct



Non-Work related conduct is conduct not needed to perform your job.

✓ **Can differ depending on the workplace**

# Not Majority Rule



Harassment is not about majority rule.

**Individual sensitivities must be respected!**

# “It’s my culture!” Not a Defense



**Harassment can't be defended  
on the grounds of being acceptable  
in someone's home country or culture.**

# Quid Pro Quo

(“this for that” in Latin)



## Definition

**An exchange of sexual favors for a job benefit or basing employment decisions on an employee accepting, tolerating or participating in unwelcome conduct of a sexual nature.**

**The old “casting couch” scenario!**

## Typical Quid Pro Quo

**A manager or supervisor basing a promotion, assignment, raise, or the job itself on a subordinate submitting to unwelcome sexual advances or putting up with inappropriate behavior.**

# Quid Pro Quo Sexual Harassment



- ✓ If proven, there is **absolute liability**
- ✓ No legal defense
- ✓ Managers and supervisors may have **personal liability**

# Hostile Environment Harassment



- ✓ Unwelcome conduct that a reasonable person would find inappropriate, offensive, hostile or intimidating that is sexual or touches on a protected category
- ✓ Ongoing, severe, pervasive
- ✓ Impedes job performance
- ✓ Verbal, visual or physical

# Common Examples of Verbal Harassment



- ✓ Offensive teasing, joking, banter, innuendoes
- ✓ Racial or ethnic slurs, stereotyping
- ✓ Profane or vulgar language
- ✓ Put downs involving a protected class
- ✓ Male or female bashing
- ✓ Homophobic comments
- ✓ Unwelcome comments about appearance
- ✓ Nicknames such as “honey,” “babe,” “sweetie”

# Verbal Harassment Compliments & “Coming On”



Personal comments, such as compliments about appearance can be risky, especially for supervisors!

Best to keep compliments work related.

Another example: repeated, unwelcome requests for dates or social interaction.

# Complaint Procedure



Employees **MUST** be educated about the complaint procedure!

- ✓ **Let the immediate supervisor know**
- ✓ **If immediate supervisor is the problem, go to the next level of management**
- ✓ **Speak with Human Resources**
- ✓ **Speak to a member of management with whom they feel comfortable**
- ✓ **Call the employee hotline if available**

# Managers & Supervisors Mandatory Legal Duty



- ✓ Managers and supervisors are agents of the company
- ✓ The company and its agents have a mandatory legal duty to take **IMMEDIATE APPROPRIATE ACTION** if aware of possible harassment **EVEN IF ASKED NOT TO BY A COMPLAINANT**
- ✓ The company is responsible for protecting employees against harassment by non-employees, such as customers, vendors, and contractors

# Immediate & Appropriate Action for Managers & Supervisors



## If you witness harassment:

- ✓ **Take action to stop it**
- ✓ **Document it**
- ✓ **Notify HR or management**

## If you hear about harassment or get a complaint:

- ✓ **Document it**
- ✓ **Notify HR or management**

# Investigative Procedure



- ✓ Contact and meet with parties involved
- ✓ Take steps to insure any harassment stops immediately
- ✓ Emphasize importance of confidentiality to all concerned
- ✓ Determine appropriate investigative process
- ✓ Inform the parties of how things will proceed
- ✓ Investigate and document, including witness interviews if required
- ✓ Reinforce prohibition against retaliation to all involved
- ✓ Determine truth of the matter and take appropriate action
- ✓ Monitor situation for repetition or retaliation
- ✓ Inform complainant of outcome to the extent possible



## **Complete confidentiality cannot be promised!**

The promise supervisors  
can make and must keep:

**“What you tell me will be kept as  
confidential as possible and only shared  
on a ‘need to know’ basis”**

# Examples of Visual Harassment



- ✓ Offensive gestures or suggestive posing
- ✓ Leering or ogling
- ✓ Inappropriate pictures, cartoons, publications
- ✓ OFFENSIVE SOCIAL MEDIA POSTINGS ABOUT COLLEAGUES
- ✓ INAPPROPRIATE TEXTS, EMAILS, VIDEOS, SCREEN SAVERS, DOWNLOADS
- ✓ Offensive messages or images on clothes, objects, or body art
- ✓ Unwelcome, offensive notes or cards

# And Speaking of Social Media.....Reality Check!



## **Jury Awards County Employee \$800,000 In Harassment Claim Based on Co-worker Blog**

The plaintiff, a county corrections worker, was born without fingers on his right hand.

Co-workers started an anonymous blog, where they referred to him as the "one handed bandit" and rat claw."

The blog became increasingly offensive, using obscenities, calling him "one hand bandit", saying "You can shove that claw of yours up..." and some vulgar comments about his mother.

The employee learned of the blog from a sympathetic coworker.

He complained .Management did little other than ask employees to shut down the blog. However, it continued for eight weeks while management investigated.

The County claimed it was outside the workplace and therefore they were not responsible. However, their own investigation showed employees accessed the blog and made postings on workplace computers!

### **ITEMS FOR YOUR WORKPLACE "TOOL KIT":**

- ✓ **Unmonitored use of social media by employees creates a myriad of risks for employers and therefore supervisors.**
- ✓ **Employers need social media policies and employees need to know the rules of road.**
- ✓ **Social media can create major heartburn with respect to:**
  - \***Harassment**
  - \***Retaliation**
  - \***Defamation**
  - \***Confidentiality**
  - \***Corporate reputation**

# Examples of Physical Harassment



- ✓ Hugging
- ✓ Kissing
- ✓ Squeezing, grabbing, groping
- ✓ Back or bottom slapping
- ✓ Knee patting
- ✓ Aggressively invading “personal space”
- ✓ Neck or shoulder massages
- ✓ Blocking someone’s movement

# Live Action Scene 1



# LIVE ACTION SCENE #1

# Scene 1 Discussion Points



- ✓ Hostile environment
- ✓ Inappropriate verbal & physical conduct
- ✓ Intent vs. impact
- ✓ Age
- ✓ Sexual orientation
- ✓ Gender identity
- ✓ Genetic make-up
- ✓ Confidentiality
- ✓ Supervisory responsibility / liability
- ✓ Complaint procedure
- ✓ Retaliation

# Live Action Scene 2



## Live Action Scene #2

# Scene 2 Discussion Points



- ✓ Physical, verbal, visual hostile environment harassment
- ✓ Withdrawal of consent
- ✓ Social media
- ✓ Gender identity
- ✓ Bystander intervention
- ✓ Female-to-male harassment
- ✓ Supervisor legal duty: immediate, appropriate action
- ✓ Gossip & the rumor mill
- ✓ Personal/professional overlap
- ✓ Harassment as a safety issue: potential for violence

# Live Action Scene 3



## Live Action Scene #3

# Scene 3 Discussion Points



- ✓ Workplace romance: perils and pitfalls
- ✓ FAVORITISM
- ✓ Welcome vs. consenting
- ✓ Abuse of power and authority
- ✓ Consequences

# U.S. Supreme Court Rulings: Harassment Policy & Training Essential



- ❑ 1998: Burlington Indus. v. Ellerith & Faragher v. City of Boca Raton
- ❑ Affirmative defense requires employers to prove:
  - \*They exercised reasonable care to promptly prevent and correct harassing behavior
  - \*Employee unreasonably failed to take advantage of preventive or corrective opportunities or to otherwise avoid harm
- ❑ Average punitive damages \$250,000, not counting attorney fees
- ❑ To avoid punitive damages employers must:
  - \* Have clear, well communicated anti-harassment policy
  - \* Provide effective training, including the complaint procedure
- ❑ Employers must conduct a prompt, thorough investigation of harassment claims and respond effectively to be protected.



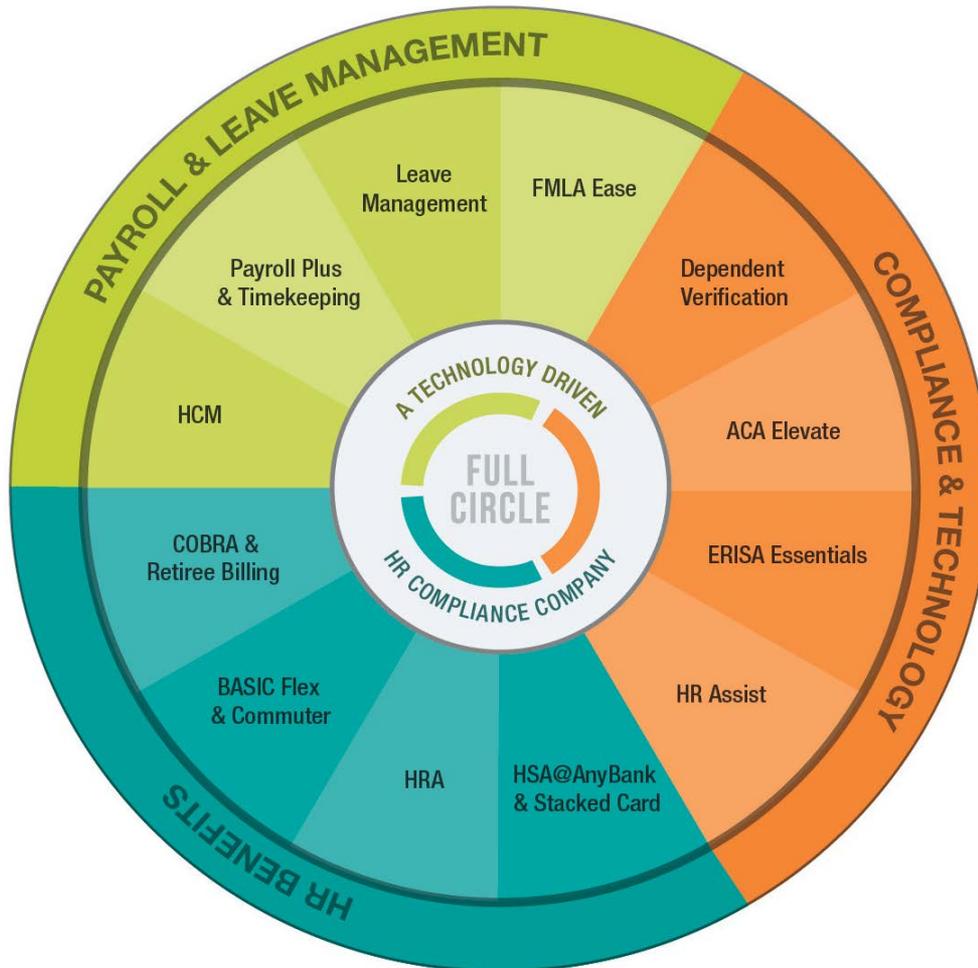
# Questions



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# Contact Us



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