

## Sexual Harassment Employee Notes

### Intro:

- What's the difference between an accountant and a lawyer?
  - The accountant knows he's boring.
- With that, I've got a presentation on Sexual Harassment
- Ask to email pamphlet if they want;

### Body

- {SLIDE 2} Sexual harassment is, to an extent, in the eye of the harassed. But can define in three parts→unwelcome, sexual or gender based conduct, occurring at work
  - Unwelcome
    - Not enough to just endure it; the contact must be knowingly and voluntarily consent to actions
    - In some cases, the target of a sexual or gender based action may not be capable of consent
    - Just because conduct was consensual in the past, doesn't mean it is welcome on subsequent occasions.
  - Sexual or gender based
    - Can be male against male
    - Female against female
    - Male against female
    - Or female against male
    - Or third party observing consensual behavior
  - Occur at *or* impact work
    - Remember that your online life can affect your offline life
    - If the conduct makes it difficult for the harassed person to come to work...
      - Unwanted emails; Facebook posts of a sexual nature, etc.
- {SLIDE 3} What Is it? Sexual advances?
  - Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.
  - Although the behavior must be sexual in nature or gender based, it need not be intended to result in sexual gratification.
- {SLIDE 4} Quid Pro Quo
  - "This for that"
    - If you do this act, then I will give you some advantage at work
    - If you don't report what I did, then I will...
    - Ask, does it involve a person's job, pay or career?
- {SLIDE 5} Hostile Work Environment—cause of action (reason for a suit against the district)
  - Intimidating, hostile, offensive, and abusive AND
  - Severe and pervasive, AND
  - Clearly based upon sex or sexual behavior

- A court would look at the totality of the circumstances, asking:
        - Did the conduct unreasonably interfere with the employee or student’s work or school performance?
- {SLIDE 6} Examples of hostile environment
  - Repeated requests for sexual favors
  - Display of sexually explicit material in workplace
  - Offensive language
- {SLIDE 7} Drawing Lines
  - The determination of what is considered sexual harassment is fact-intensive
  - In other words, it depends on the context
  - But we have some guidelines
- {SLIDE 8} Green Light
  - This guidance is not intended to chill polite social interaction
    - But spread it around and don’t get too specific
  - Dr. Bowles used to say it’s not what we’ve taught it’s what they’ve learned
    - Similarly, it’s not what we said it’s what they heard—within reason
- {SLIDE 9} Yellow Light
  - Violating space: professional distance
  - Intrusive questions
  - Unwanted emails: I am sexually harassed daily
    - But seriously, some people think that because it’s in an email, behavior or things they wouldn’t say in person are ok.
    - Also—you’re on record: Do you have an expectation of privacy in your work email? NO
- {SLIDE 10} Be aware of your proximity to others and their comfort
- {SLIDE 11} Red Light
  - I would hope these are obvious
  - Most Red light behavior is preceded by yellow light behavior
- {SLIDE 12} Keep in Mind
  - Male, female, third party observer: doesn’t matter
  - Title VII requires a showing of deliberate indifference
    - School failed to respond adequately upon notice
- {SLIDE 13} Consequences
  - Liability: knew and didn’t do enough
- {SLIDE 14} Policy
  - Creating a climate where sexual harassment isn’t tolerated to begin with will help prevent it from occurring. Clearly convey what types of behavior will not be tolerated.
  - If you see something; say something
- {SLIDE 15} Informal Reporting
  - Victim should verbalize disapproval
    - “stop it. Knock it off. Etc”
  - But cannot be required to before making a report
    - Especially in cases where the harasser is intimidating a victim of lower power
  - No Retaliation: if you have an open complaint, do not take an employment action

- {SLIDE 16} Verbal or Written report (This is notice)
  - Verbal report or written report to a supervisor
  - Could be reported by a third party
  - If a supervisor sees it, they are required to do a preliminary review of the conduct.
- {SLIDE 17} Investigation
  - Gather all the information
  - Interview the Complainant
  - Find out what happened. Get specific details. What happened? Where did it happen? Who was involved? Who saw or heard what happened? When did it happen? How many times has it happened? How did you respond each time?
  - Find out the effects of the harassment on the complainant. For example: When you say you were upset, what do you mean by upset? Have your work/studies been affected? If so how? Did you miss any work/school days? Have you spoken to anyone about your feelings after the incidents?
  - Find out names of witnesses
  - Ask the complainant specifically what action he/she wants taken in order to resolve the complaint.
- {SLIDE 18} Interview
  - Explain purpose of interview
    - We take allegations seriously
    - Attempt to give them a chance to respond to allegations
    - No decision has been made as to the truthfulness of allegations
    - Instruct them to have no contact with alleged victim until investigation is resolved
  - Identify specifically, the basis of claim
    - Have alleged harasser respond in writing
  - **Document** the conversation and get signature from alleged harasser
  - Looking for issues of material fact: in other words, where does the story not line up?
    - 3 sides to every story: what each side said and what really happened.
    - If you have disagreement as to facts, interview witnesses.
  - Remind alleged victim to report any retaliation
- {SLIDE 19} Complete complaint
  - If there was sexual harassment, take corrective action immediately
  - Contact Becky in HR or the superintendency immediately in cases of
    - Repeated violations
    - Severe infractions—criminal touching, quid pro quo, acts that shock the conscience of a reasonable person
- In closing, Pam has given me the wise counsel to distil my message as much as possible for a take home at the end: here's my attempt
- {SLIDE 20} DON'T BE CREEPY
  - Disclaimer: creepiness alone is not harassment but avoiding being creepy is a great place to start.
  - Offer to email a pamphlet