







Set Expectations for the Workplace

- What is the Employer's policy?
 - Consistent enforcement of the policy.
- Distribute and educate employees on the policy.
 - Should be done periodically.
 - Give examples of possible violations.
- Make sure the policy has various ways to report allegations.
- Make sure supervisors and HR know their responsibilities.
 - *EEOC v. Hacienda Hotel*, 881 F.2d 1504 (9th Cir. 1989)
 - *Vance v. Ball State Univ.*, 570 U.S. 421 (2013)
- Don't promise confidentiality.

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Don't Ignore Allegations or Signs of a Problem

- The Employer has certain legal and practical responsibilities.
 - The law and workplace expectations aren't the same.
 - *Debord v. Mercy Health Sys. of Kansas, Inc.*, 737 F.3d 642, 650 (10th Cir. 2013)
- Once the Employer is put on notice, it must act.
 - *Sanders v. Madison Square Garden, L.P.*, 525 F. Supp. 2d 364 (S.D.N.Y. 2007).
- Know the policy and set expectations.
- Even if there is no unlawful harassment, there still could be misconduct.

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Always Investigate Allegations of Alleged Harassment

- The investigation depends on the allegations.
- Remember legal restrictions.
 - Garrity/Piper.
 - Search of computers, phones, etc.
 - Social media posts.
 - Collective bargaining agreements.
- What to do with the alleged harasser and victim.
- Document all steps of the investigation.

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Don't Send Mixed Signals

- Be aware of your own behavior and that of supervisors and elected officials.
- Address issues as they arise.
 - Actual issues and workplace rumors.
- Don't blame/shame the victim.

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Be Aware of Possible Related Legal Issues

- OCRC/EEOC charges.
- Grievances/arbitration.
- Public records law.

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Don't Overreact

- Not every allegation requires a full blown investigation.
- Ensure concerns about sexual harassment don't become an excuse for discrimination.
- All workplace relationships are not prohibited.

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Avoid Common Misperceptions

- He's too valuable to the organization.
- We only have to protect women from sexual harassment.
- We can't do anything about a "he said, she said" situation.
- We can't do anything about a customer's behavior toward employees.
- She can handle herself.

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Be Smart, Don't Be Dumb

- Use common sense and encourage employees to do so as well.
- Would you want your spouse or child to be exposed to this conduct in the workplace?
- Are you okay if your conduct ends up on the front page or described to your spouse?
- Employees should be encouraged to report allegations.

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Take Proper Action Based on Facts

- The Employer's duty is to take prompt remedial action based on facts.
 - *Wilcox v. Corr. Corp. of Am.*, 852 F.3d 1283 (11th Cir. 2018).
- Take action necessary to ensure the harassment ends.
- Explain to the alleged victim the findings and steps that have been taken.
- Consult with legal counsel.
- Train and retrain on the policy and workplace expectations.

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Ancillary Issues

- Workplace bullying.
- Sexual orientation and transgender employees.



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Workplace Bullying

- Not all employees who face bullying in the workplace have actionable sexual harassment claims against their employers.
- Under federal employment discrimination laws, only employees who are bullied or harassed because of their sex can assert claims for sexual harassment
- A supervisor who bullies all of his or her employees using gender-neutral language or tactics is not in violation of Title VII because he or she treats men and women equally poorly.
 - *Acosta v. Hilton Grand Vacations Company, LLC*, Civil Action No. 4:15-cv-00495, 2017 WL 1173583 (D.S.C. Mar. 30, 2017)

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LGBTQ+ Sexual Harassment

- Same-sex sexual harassment is actionable under Title VII.
 - *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998).
- Employers should prohibit expressly all forms of harassment, whether between members of the opposite or the same sex, with no consideration as to the sexual orientation of the harasser.
- If a harasser harasses both men and women alike and does not choose victims based on their sex, such harassment does not technically violate Title VII and most state anti-discrimination laws.

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LGBTQ+ Rights

- Sexual harassment can include bullying
 - Jokes or derogatory comments about transgender people
 - Repeated and intentional use of the wrong name or pronouns
 - Invasive, disrespectful personal questions may constitute harassment
- Denying access to facilities consistent with your gender identity can constitute discrimination.
- Employers cannot demand medical or legal documentation of your gender as a condition of restroom access, or limit you to using a specific restroom separate from other employees.
- Agencies also cannot require you to use facilities that are unsanitary, potentially unsafe, or located at an unreasonable distance from your work station.

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Thank You!

**IF YOU HAVE ANY
QUESTIONS, PLEASE ASK!**

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