

Fighting the Good Fight: Creating a Positive Culture and Supporting Civil Rights

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“That’s Just Charlie being Charlie...”



Just Charlie Being Charlie...

- ▶ Kyle Godfrey-Ryan, a former assistant to Rose in the mid-2000s and one of the three accusers who spoke to the Washington Post on the record, claimed that Rose walked nude in front of her at one of his homes in New York City.
- ▶ He also called her in the wee hours to describe fantasies of watching her swim naked.
- ▶ She said that she reported his calls to Rose's longtime executive producer, Yvette Vega, who apparently told her, "That's just Charlie being Charlie."

Just Charlie Being Charlie....

- ▶ Vega told the Washington Post and later confirmed to ABC News that **she regretted not doing more for Godfrey-Ryan and others who mounted similar complaints.**
 - ▶ Godfrey-Ryan said that ultimately, Rose fired her, and she later left journalism.
 - ▶ Charlie Rose denied these allegations and those from at least 8 other women, saying he **“always believed he was pursuing shared feelings.”**
 - ▶ (Sources: Washington Post, MSNBC)
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That's just Charlie being Charlie....

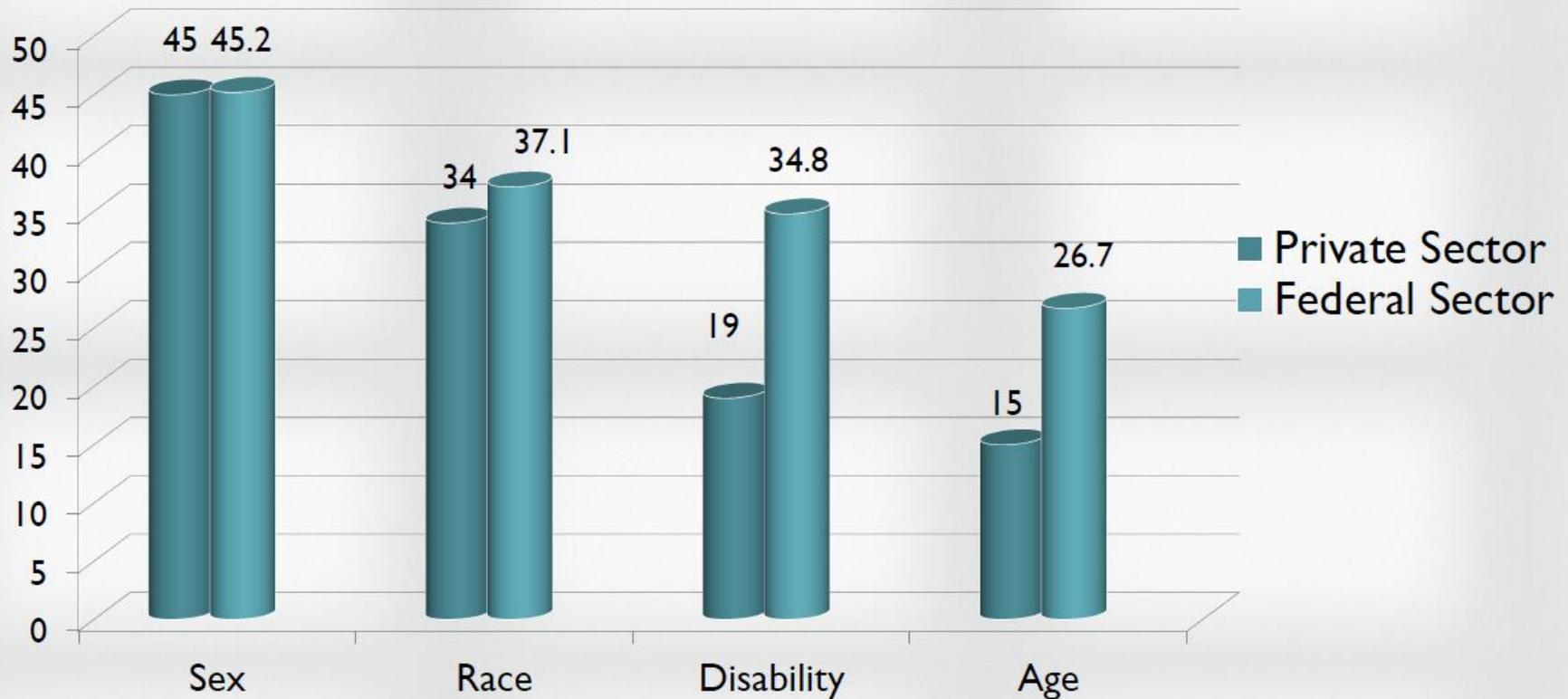
- ▶ Internal investigations and WAPO interviews have detailed harassing behavior by Rose as far back as the mid 1980s, when a suit was filed by several women for “hostile work environment” in connection with his “Nightwatch” show.
- ▶ Susan MacArthur interviewed in the late 1990s for a job as Rose’s assistant. A female producer “looked me dead in the eye and said “You are going to be working alone with this man and being alone with him in his hotel. You need to think really hard about whether or not you want to do that.” She withdrew her job application shortly thereafter. And stopped returning Rose’s calls. (Source:

WAPO 5/3/17)

“Not everything that is
faced can be changed,
but nothing can be
changed until it is
faced.”

–James Baldwin

Harassment Charges and Complaints by Category Fiscal Year 2015

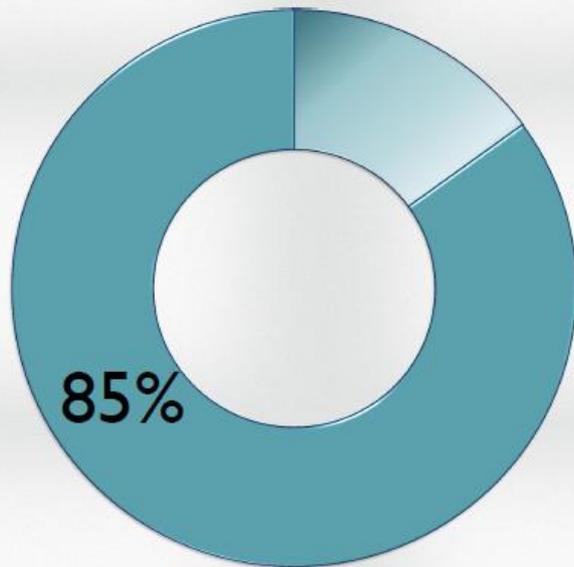


(By Percentage of all charges; will add up to more than 100% because of multiple claims per charge.)

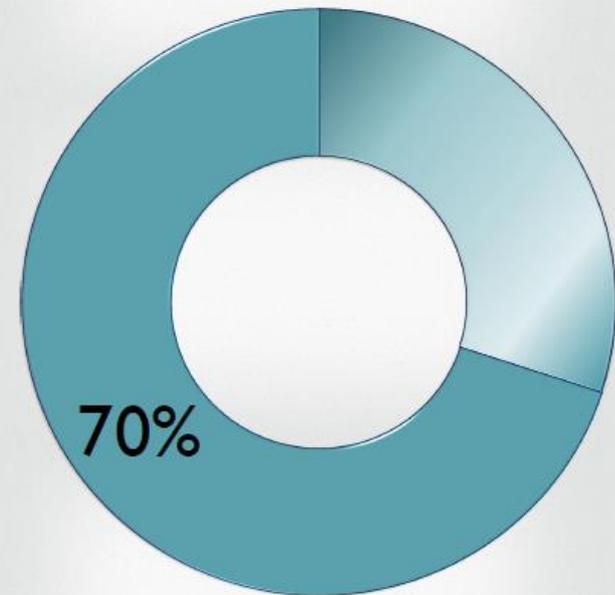
Source: EEOC, Select Task Force on Sexual Harassment In the Workforce 2016

Harassment of All Types Are Vastly Underreported

- Source: EEOC, Select Task Force of Sexual Harassment in the Workforce 2016



Upwards of 85% of people never file a formal legal charge.



Approximately 70% of employees never even complain internally.

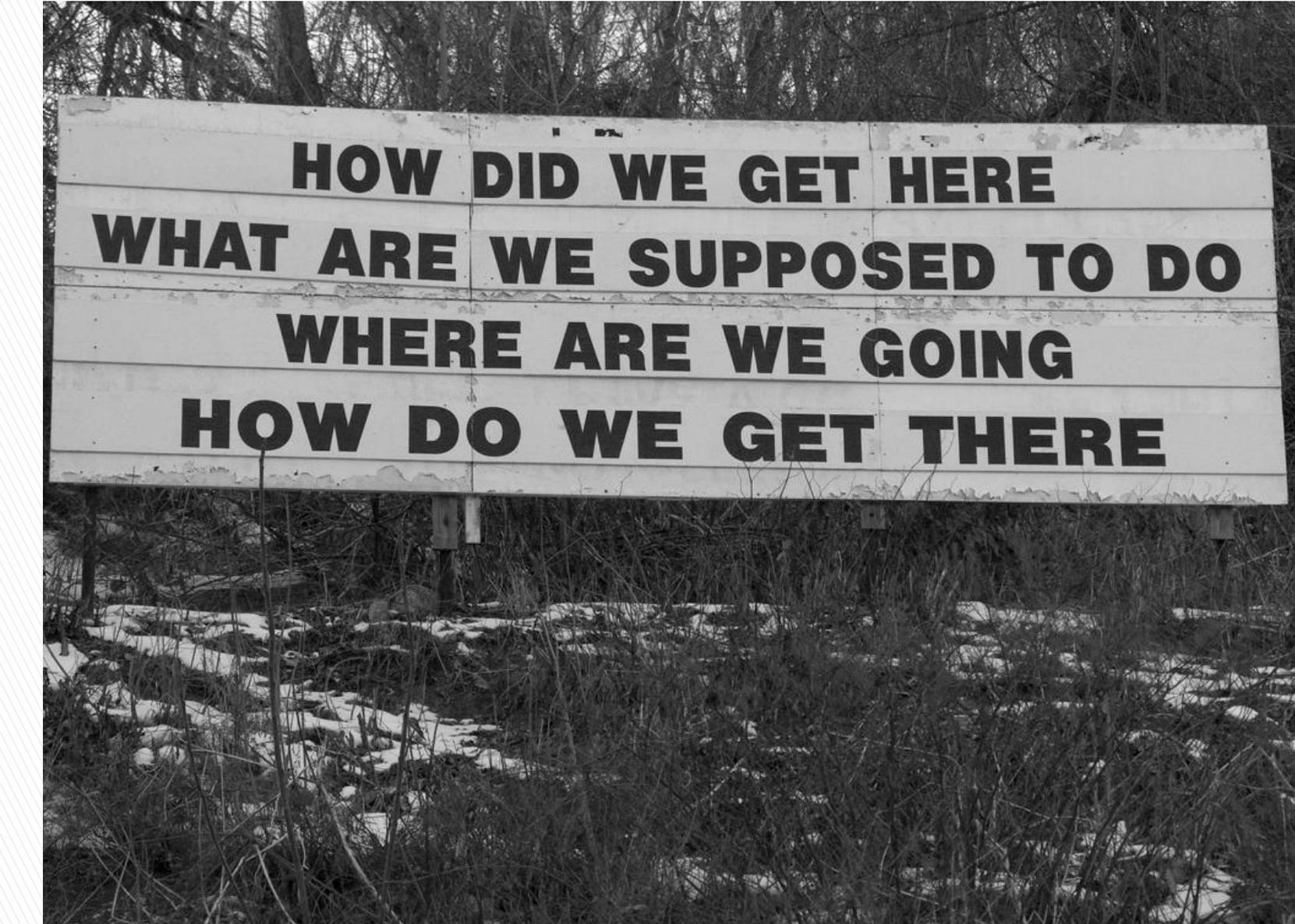
Why the Under-Reporting?

FEAR



- Humiliation
- Ostracism
- Damage to Reputation
- Damage to Career
- Retaliation
- Inaction
- Blame
- Disbelief

Source: EEOC, Select Task Force of Sexual Harassment in the Workplace 2016



HOW DID WE GET HERE
WHAT ARE WE SUPPOSED TO DO
WHERE ARE WE GOING
HOW DO WE GET THERE

How did we get here? Pop Quiz

- ▶ 3/5; 1/3; 2/9
 - ▶ Oney Judge
 - ▶ 13, 14, 15, 19, 24, 26
 - ▶ Title VII, EPA, ADA, FMLA, ERA
 - ▶ Loving, VMI, Lawrence, Obergefell
- 

Advertisement.

ABSCONDED from the household of the President of the United States, **ONEY JUDGE**, a light mulatto girl, much freckled, with very black eyes and bushy black hair, she is of middle stature, slender, and delicately formed, about 20 years of age.

She has many changes of good clothes, of all sorts, but they are not sufficiently recollected to be described—As there was no suspicion of her going off, nor so provocation to do so, it is not easy to conjecture whither she has gone, or fully, what her design is;—but as she may attempt to escape by water, all masters of vessels are cautioned against admitting her into them, although it is probable she will attempt to pass for a free woman, and has, it is said, wherewithal to pay her passage.

Ten dollars will be paid to any person who will bring her home, if taken in the city, or on board any vessel in the harbour;—and a reasonable additional sum if apprehended at, and brought from a greater distance, and in proportion to the distance.

FREDERICK KITT, Steward.

How did we get here?

- ▶ Past is Prologue
 - ▶ Idealistic but Imperfect
 - ▶ Explicit and Implicit Bias
 - ▶ Failure of Good People to Act
 - ▶ Real Change Takes Time – and Persistence
- 

Lead. Be Accountable.

- ▶ Identify Core Values
- ▶ Set an Example for Others – Live those Values
- ▶ Create policies and culture that embody those Values
- ▶ Continually Communicate Values
- ▶ Collectively, Agree to Hold Each Other Accountable for Behavior
- ▶ Create Opportunities to Voice Concerns and to Make Suggestions
- ▶ Promptly Review/Investigate issues
- ▶ Make Bad Behavior Stop

LEADERSHIP

ACCOUNTABILITY

**What Are Some Core
Values Needed for a
Positive and
Successful Workplace?**



Be
Honest

Be Kind

Be
Respectful

Widen the
Circle

Do Your
Best

Be Fair

Having FUN is good too.

Setting appropriate boundaries and having fun are NOT mutually exclusive!



Too much of anything usually leads to trouble!

Modulate, and expect employees to do the same.

At Will Employment

- ▶ **Employer and Employee each have right to end relationship**
 - ▶ **No reason, no notice**
 - ▶ **There are exceptions**
 - ▶ **Contracts, policies, past practices, etc.**
 - ▶ **Every employee has a common law duty of loyalty to his or her employer**
- 

Employers May Establish Work Rules About....

- ▶ An Employee's Performance;
- ▶ An Employee's Behavior; and/or
- ▶ An Employee's Attitude.

Set the expectations early; Be patient; Be consistent; Be persistent.



Being Honest, Fair, Respectful

- ▶ Reasonable and Lawful Work Rule
 - ▶ Notice to Employees of Work Rule
 - ▶ Notice to Employees of Consequences of Failure – up to and including termination
- 

Being Honest, Fair, Respectful

- ▶ Fair and Consistent Application of Rule
- ▶ Fair and Impartial Investigation of Violations
- ▶ Consideration of Mitigating Factors
 - Including past discipline and work history

Being Honest, Fair, Respectful

- ▶ Discipline must be proportionate to the event – i.e. “the punishment must fit the crime.”

The Building Blocks of a Respectful Workplace



BASIC GOOD
MANNERS
AND EMPATHY



COMPLIANCE
WITH
POLICIES AND
CORE VALUES



UNDERSTAND
BIAS AND
VALUE
DIVERSITY



UNDER-
STANDING
THE LAW

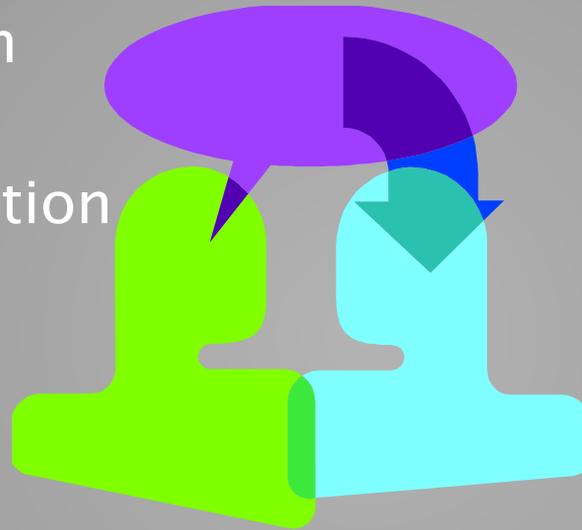


Valuing Diversity – What Does It Mean?



We all have different cultural perspectives, based on life experience....

- ▶ Age
- ▶ National origin
- ▶ Race
- ▶ Sexual orientation
- ▶ Religion
- ▶ Disability
- ▶ Gender
- ▶ Education
- ▶ Work role/experience
- ▶ Personality
- ▶ Customs
- ▶ Geographic location
- ▶ Functional discipline
- ▶ Languages used
- ▶ Values
- ▶ Communication style
- ▶ Work Style
- ▶ Learning style
- ▶ Economic status
- ▶ Family situation
- ▶ Military experience
- ▶ Philosophical perspective

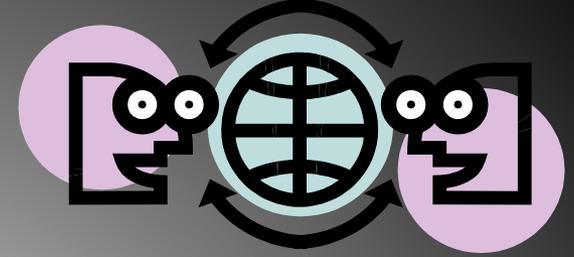


Valuing Diversity

- ▶ Valuing diversity is not about approval or even acceptance.
- ▶ It is about being respectful of differences and even finding ways that differences can provide strength to the entire group.

It is about listening to understand and learn, instead of listening simply to reply.

Valuing Diversity



- ▶ Show respect, even if you disagree.
 - ▶ Acknowledge cultural/ generational differences and historical injustices without becoming defensive.
 - ▶ Be open to learning about other cultures and ideas.
 - ▶ Seek first to understand others' point of views; then to be understood.
- ✦ Don't stereotype.
 - ✦ Don't judge others by your own cultural standards.
 - ✦ Don't assume your culture's way is the only way.
 - ✦ Don't talk down to others

Employers Cannot Discriminate Based On:

Title
VII
and
PDA

- Race, Color, National Origin
- Sex, Pregnancy and Religion

ADA,
ADEA,
FMLA,
NLRA

- Disability, Age (40+ Fed), use of FMLA, Section 7 rights (NLRA), Nursing Mothers

GINA,
USERRA,
IRCA

- Genetic Information, Citizenship Status
- Military Obligation or Veteran Status

Discriminate Prohibited, Based On:

VFEPA

- Race, Color, National Origin
- Sex, Pregnancy, Religion, Disability,
- Age (18+), HIV+ status

VFEPA

- Place of Birth, Ancestry
- Gender Identity, Sexual Orientation

Other laws

- Use of Parental/Family Leave, Earned Sick Leave or Nursing Mother rights
- Request for Flexible Work Arrangements
- Credit History; Ban the Box (criminal HX);
- Workers' Compensation History or Use
- Need for Health Insurance; Social Media Passwords

Employer Must Provide a **REASONABLE** Accommodation for:

Religion

Pregnancy
and related
conditions

Known
Disabilities

Americans with Disabilities Act

What is a Disability?

- a physical or mental impairment,
 - that substantially limits
 - one or more major life activities;
- a record of same; or
- being regarded as having same.

Reasonable Accommodations

- ▶ Rule Number 1: IT DEPENDS
- ▶ Rule Number 2: LET ME SEE YOUR MATH
– PROCESS MATTERS
- ▶ Rule Number 3 – Reasonable Accommodations are not Set in Stone
(they may change over time)

Reasonable Accommodations

- ▶ Rule Number 4 – Individualized inquiry
 - each situation should be judged on its own merits and based on CURRENT SOUND MEDICAL KNOWLEDGE
 -
- ▶ Rule Number 5 – the Answer can be NO, if the accommodation requested is not Reasonable or causes an Undue Hardship.

Reasonable Accommodations

- ▶ What do you need?
 - ▶ How long do you need it?
 - ▶ If we do this, let's talk about how the work gets done....
 - ▶ Have you thought of any alternatives?
 - ▶ No guarantees, but try – unless there is a demonstrable undue hardship.
- 

Retaliation

Employees are protected from **adverse action** based on their participation in **legally protected activities**.

What does this mean?

Discrimination laws provide that employees cannot be terminated, disciplined or otherwise have their employment materially altered based on their participation in certain activities.

Retaliation

By law, employees are protected from retaliation for:

- ▶ Making or filing a complaint pursuant to state and federal anti-discrimination statutes;
- ▶ Requesting an accommodation for a disability or for religious purposes;
- ▶ Participating in an internal or external investigatory process relating to complaints of discrimination or harassment

Retaliation

Other examples of law that include anti-retaliation provisions:

- ▶ Exercising rights under state and family leave laws;
 - ▶ Utilizing rights under Vermont's nursing mother's law or Vermont's flexible work arrangements law; and
 - ▶ Inquiring about or discussing wages in the workplace
- 

Retaliation

Retaliation can also include materially adverse conduct that would “dissuade” an employee from participation in protected conduct. Examples include:

- ▶ Intimidation or harassment based on protected activity;
- ▶ Changes in scheduling or shifts tied to engaging in protected activity;
- ▶ Threats of changes in terms or conditions of workplace or threats of disciplinary action for participation in protected activity

State and Federal Anti-discrimination statutes apply to all aspects of employment:

- ✓ Hiring
- ✓ Treatment
- ✓ Evaluations
- ✓ Wages
- ✓ Promotions
- ✓ Discipline
- ✓ Termination



Individual Liability

- ✓ In Vermont, individual managers can be held personally liable for damages in VFEPA cases
- ✓ If a management level employee is accused of unlawful discrimination or harassment, the employer is not automatically required by Vermont or federal statute to provide legal defense.



Unlawful Harassment

What is it?



How can it be prevented?

What is Unlawful Harassment?

- ▶ Unlawful harassment is a form of unlawful discrimination.
- ▶ It results when people are treated differently because of a protected characteristic.
- ▶ It is “unwelcome” behavior.



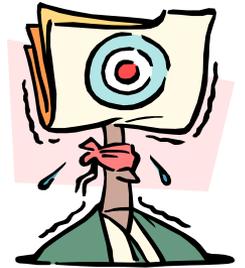
What is Unlawful Harassment?

- ▶ Being treated differently for other reasons (slow work, bad attitude, attendance, personality) may not be unlawful.



- ▶ Being treated FAIRLY does not always mean being treated the SAME as other people.

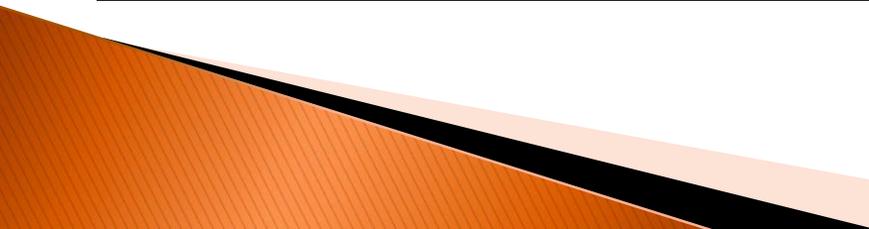
Sexual Harassment Is....



- ▶ Unlawful Harassment of any kind is just a form of discrimination
- ▶ Sexual Harassment is a form of Sex Discrimination
 - Treating a person in a certain way because of his or her SEX
 - It does not have to involve sexual attraction
- ▶ But, the most common form of sexual harassment is defined as:

“unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when...”

And other verbal or physical conduct of a sexual nature, when...

- ▶ submission to such conduct is made either implicitly or explicitly a term or condition of employment, OR
 - ▶ such conduct by an individual is used as a basis for employment decisions affecting that individual, OR
 - ▶ such conduct has the purpose or effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile or offensive working environment.
- 

Sexual Harassment

Quid pro quo

- Employees are forced to choose between giving in to sexual demands of persons in authority or forfeiting an employment benefit.

Hostile work environment

- Sexual conduct interferes with an employee's performance or creates an offensive work environment.

QUID PRO QUO HARASSMENT

The conduct is unwelcome and:

- ▶ Job security depends on acceptance or participation;
- ▶ Opportunities or compensation decisions depend on acceptance or participation;
- ▶ Rejection is punished or punishment is threatened.

QPQ harassment can occur even if threats are not carried out.

Hostile Environment Harassment

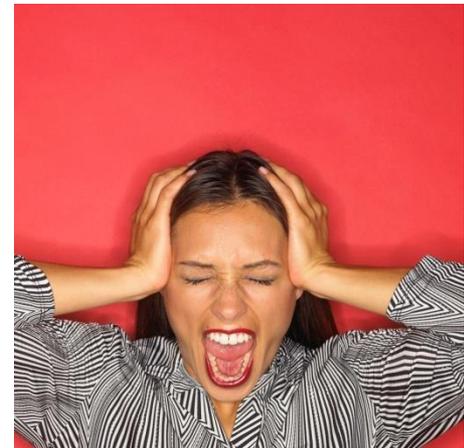
- ▶ INTENT to harm is not required...the EFFECT may be enough to create liability.
- ▶ The environment would be considered hostile or abusive by a reasonable person; and
- ▶ The victim perceives the environment to be so abusive as to have actually altered the conditions of his/her employment or interfered with his/her ability to get the job done.
- ▶ Must be SEVERE and/or PERVASIVE.

Factors to Consider in Determining Whether Environment is “Hostile”

- ▶ Level of Participation of others
- ▶ Deliberate Indifference of Supervisors/Managers
- ▶ Level of Interference with Employee’s Ability to Do His or Her Work
- ▶ Objective and Subjective viewpoints



What does Hostile mean?



Type of conduct – verbal, physical or both.

- ▶ Threats
- ▶ Deliberately hostile language or acts
- ▶ Patently offensive
- ▶ Unwelcome touching
- ▶ Activity occurs repeatedly; isolated incidents are not enough

EEOC v. Pallet Cos. (2016)

- ▶ Sex and sexual orientation discrimination, as well as sexual harassment were claimed.
 - ▶ EEOC sued on behalf of employee in federal court.
 - ▶ Female employee, who was a lesbian, worked the night shift.
 - ▶ Supervisor regularly made sexualized and degrading comments to her.
- 

Stereotypes can cost you...

“You would look good in a dress”

“I want to turn you back into a woman...”

“Do you even have any breasts?”

“Are you a girl or a man?”

The Supervisor grabbed his crotch and stared at her numerous times.

The Supervisor would recite biblical passages about it being wrong for men to be with men and women to be with women.

Stereotypes can cost you...

- ▶ After weeks of enduring this behavior at the beginning of her employment, the employee went to another supervisor and complained.
- ▶ No action was taken. The behavior continued.
- ▶ She complained to the General Manager and to HR. She was fired shortly thereafter.

How did the case end up?



Preventive and Corrective Measures



Preventive and Corrective Measures

- ▶ Set the Tone for Interaction with Each Other and Employees
 - Managers AND Employees are Responsible for Respectful Communication
 - Let people know the appropriate boundaries
 - Respectfully Communicate your expectations for interaction
 - Be consistent in your expectations
 - Be the model for appropriate behavior
 - Communicate any issues early on

Preventing Problems

Your Responsibilities:

- Set the bar for behavior high – if your colleagues know that they are expected to act professionally...they will likely rise to the challenge.
- Try not to be Overly Sensitive – Forgive Others
- Foster positive interaction by your own example
- Address Situations As they Come Up...Do not Let Things Fester
- Be Professional in Addressing Situations.

LEAD BY EXAMPLE

▶ Talk the Talk and Walk the Walk

- Understand your own biases; then try to overcome them
- Educate yourself
- Watch your own language
- Be mindful of your own actions in the workplace
- Understand and correct for the “FACEBOOK EFFECT”
 - Casual relationships, ever-changing boundaries

Upon Receipt of A Complaint

Follow the Established Process:

- investigate promptly, thoroughly
- take immediate, appropriate corrective action
- work with the complainant to make the behavior stop
- take disciplinary action against offender (where warranted)
- follow up
- avoid any actions that could be retaliation

The Consequences for Failure

- ▶ Liability for the Employer
 - ▶ Potential Personal Liability for participants of discriminatory or harassing behavior.
 - ▶ An external investigation
 - ▶ A civil lawsuit
 - ▶ For Employees – Discipline, up to and including termination
 - ▶ Negative impact on the reputation of the Employer or Employee
- 

The Consequences

- ▶ Beyond the legal consequences, there are consequences in the workplace.
 - ▶ The Complainant and the Accused may still have to work together – so communication must be restored, and healing must begin.
 - ▶ Relationships get broken; reputations get destroyed; people get hurt.
- 

Beware the Metadata You Leave Behind

- ▶ Computers, Cell Phones, Tablets – Work Tools and Window to the World
- ▶ Employees have limited rights of privacy when using business assets; personal assets may also be subject to subpoena and examination.
- ▶ BEWARE what you RECEIVE, DISTRIBUTE, SEND and POST
 - *Your Digital Footprint matters.*
- ▶ Delete Does Not Mean it is Gone. Usually, data can be recovered.
- ▶ E-Discovery – courts have rules about maintaining and producing electronic data

Summary

- ▶ Creating a respectful workplace starts with basic manners and thoughtfulness.
- ▶ Set a standard of professionalism, kindness and basic courtesy.
- ▶ If you make a mistake, apologize and learn from it.
- ▶ If you are offended by someone, be honest and respectful in your own communications, as you work through it.

Be Kind.

