

Harassment and Discrimination Prevention Training

Supervisor Handouts



GOALS OF TODAY'S SESSION

- **Understanding what constitutes unlawful discrimination & harassment**
- **Your responsibilities**
- **Accountability**



IDENTIFYING RISK

**Don't shoot
the messenger!**



WHY MORE LAWSUITS TODAY?

Let's hear your opinion!

Why is the courthouse a preferred forum for resolving disputes rather than handling matters within the emergency services organization?



WHY MORE LAWSUITS TODAY?

- **Wrongdoing occurs**
- **Know their rights**
- **Increased legal standards**
- **Attorney advertising**
- **Perception of monetary awards**
- **Media coverage**



RIVER OF DENIAL

- **NIMBY - Not in my backyard**
- **“Life is like a box of chocolates, you never know what your gonna get.”**
- **Solution:**
 - Understand risks**
 - Take compliance steps**



FEDERAL COURT - EXPERIENCES

**NUMBER ONE PRIORITY:
PROTECT EMPLOYEES &
VOLUNTEERS FROM UNLAWFUL
WORKPLACE PRACTICES**



COMMON SENSE JUDGE

- **Accountability for BOTH SIDES OF THE WORKING RELATIONSHIP**
 - **Emergency services organization**
PREVENTION & RESOLUTION PROGRAMS?
 - **Volunteer or employee**
ATTEMPTS TO RESOLVE THE MATTER AND EXHAUST INTERNAL REMEDIES?
- **Courts**
 - **Push to resolve incidents at the lowest possible level.**



QUESTION:

Emergency services organizations are held to a high standard for preventing and promptly responding to workplace harassment or discrimination.

True or False?



How You're Viewed

- **Emergency services organization is different, yet you're viewed as the same.**
- **Held to a high standard by society and the law.**
- ***“Different kind of workplace.”***
- **Unlawful harassment - You be the judge!**
- **Negligence is the key!**



QUESTION:

An emergency services organization can be sued and held civilly liable for alleged harassment or discrimination that was never reported during a former employee or volunteer's working relationship.

TRUE or FALSE?



EMPLOYER'S DUTIES

- **Employer can be held liable for workplace wrongdoing:**

-Even if the employer didn't know wrongdoing occurred and the employer had a policy against it.



WHY EMPLOYEES FAIL TO REPORT?

- **FEAR**
- **Retaliation**
- **Isolation**
- **Intimidation**
- **Being Ignored**
- **Loss of dignity or re-victimization**
- **Loss of privacy**
- **Unclear reporting & investigation processes**



3RD PARTY INVESTIGATOR

**Who selects
the 3rd party
investigator?**



3RD PARTY INVESTIGATOR

Confidentiality

- **Cannot promise confidentiality**
- **Tell those with a “need to know”**



EMPLOYER'S RESPONSIBILITY

- **Affirmative defense**
- **Employer exercised reasonable care to prevent and correct promptly any harrassment.**



MEETING AFFIRMATIVE DEFENSE

Objective Proof

- **Affirmative defense**
- **What has the organization done in the last 12 months to prevent and properly address workplace harassment?**



QUESTION:

Employees or volunteers have a legal responsibility to utilize safe and reasonable internal reporting procedures should they observe or be subjected to workplace wrongdoing, such as harassment or discrimination.

TRUE or FALSE?



EMPLOYEE'S DUTY

- **Employee must take advantage of any reasonable *preventive or corrective opportunities* provided by the employer**
- **Personal Accountability**



NON-REPORTING PROBLEM

- ***Encourage reporting.***
- **“Advertise” policies and internal reporting procedures**
- **Conduct Professional Investigation**
-NEUTRAL 3RD PARTY INVESTIGATOR?



QUESTION:

Ryan's coworkers frequently and relentlessly taunt and mock him about growing up in Oklahoma. Ryan, a probationary member and now only referred to as the "Okie from Muskogee", feels so isolated that he feels forced to quit. Ryan is being subjected to unlawful workplace discrimination.

TRUE or FALSE?



HOSTILE WORK ENVIROMENT

- **Unlawful discrimination**
- **Protected class status is basis of hostile work enviroment**
- **What are the protected classes?**



WHO IS PROTECTED FROM DISCRIMINATION

- **Race and Color**
- **Religion / Creed**
- **Gender / Sex-Sexual harassment**
- **National Origin**
- **Age-Over 40**
- **Disability**
- **Sexual Orientation**
- **Military Status**
- **Marital Status**



DISCRIMINATION LAW

- **Equal treatment, not preferential**
- **The law of comparision**
- **Protected vs. non-protected personnel**



WORKPLACE DISPARITY

- **Hiring or selection**
- **Retention**
- **Promotion**
- **Demotion**
- **Transfer**
- **Compensation**
- **Layoff benefits**
- **Training**
- **Receiving the same *conditions or opportunities as others***



MIXED MESSAGES

- **Television**
- **Movies**
- **Magazines**
- ***What is appropriate?***
- **Relativism**



WHAT IS SEXUAL HARASSMENT?

Defining Sexual Harassment

- **Unwelcome sexual advances**
- **Requests for sexual favors**
- **Job related threats**
- **Adverse tangible employment action**
- ***Jokes, comments, innuendoes, leering***



WAS IT WELCOME?

Unwelcome behavior

- **Rejected**
- **Initially accepted and later rejected**
- **Acceptance is coerced**



WHO CAN CREATE A HOSTILE ENVIROMENT?

- **Managers / Supervisors**
- **Co-workers**
- **Volunteers**
- **Community members**
- **Commissioners**
- **Vendors**
- **Board members**
- **Visitors**
- **Temporary workers**



COMMON QUESTIONS

- **Can women sexually harass men?**
- **Can men harass other men?**
- **Can women harass other women?**



HOSTILE WORK ENVIROMENT

- **Verbal or Physical conduct of a sexual, racial, religious, etc. nature**
- **Unreasonably interfering with work performance**
- **Creating**
 - **Intimidating**
 - **Hostile**
 - **Offensive working enviroment**



ACTIONS CONSTITUTE UNLAWFUL HARASSMENT?

Actions must be severe or pervasive

- **Severe**

- Alter workplace experience
- Even though conduct occurred once or rarely

- **Pervasive**

- Defining condition* of the workplace
- Even if no single act, viewed by itself, would be a violation



OBJECTIVE & SUBJECTIVE TESTS

- **Hypersensitive members?**
- **Must satisfy *both* tests**
- **Subjective test**
 - **Complaining employee or volunteer personally offended.**
- **Objective test**
 - **Reasonable person standard**



QUESTION:

Tom is extremely offended by sexually related comments made by coworkers while on the job. Because Tom regards the comments as offensive and unwelcome, the coworkers statements would be considered sexual harassment?

TRUE or FALSE?



QUESTION:

*Tammy receives multiple email jokes that are sexual in nature from two coworkers. Tammy forwards several of these emails to friends outside and within the organization. Most reasonable would believe the content of the email messages is offensive and would probably constitute sexually harassing material. A couple of weeks later, Tammy lodges a formal complaint within the organization stating the two coworkers that sent her the emails are guilty of committing sexual harassment. **Is Tammy's complaint valid or invalid?***



“CROSSING THE LINE”

- **Unreasonably interfere with the work environment or ability to do his or her job?**
- **Shocking language or behavior?**
- **Words used as weapons?**



QUESTION:

Employees or volunteers must first tell the person responsible for creating the uncomfortable “harassing” environment to stop making the comments or otherwise cease the behavior in question.

True or False?



QUESTION:

Employees or volunteers can only be held responsible for their discriminatory statements and / or actions while they are on duty.

True or False?



UNLAWFUL HARASSMENT

- **No tolerance policy**
- **Scope**
- **Subjective test**
 - **On the job**
 - **During any work-related activity**
- **“Bring back” off duty conduct into the work environment?**



QUESTION:

If an employee or volunteer requests that his / her supervisor keep a report or allegation of workplace wrongdoing confidential, many courts recognize the legal obligation placed on the supervisor to keep that information confidential. Otherwise, the constitutionally protected personal privacy rights are compromised by the supervisor-subordinate breach of confidentiality.

True or False?



QUESTION:

Fred is offended by two of his co-workers' jokes and comments about African-Americans. Fred is a white male. Therefore, he has no legal standing for a discrimination complaint.

True or false?



FALSE ALLEGATIONS

- **Intentionally make false allegations?**
- **Knowingly false?**
- **Malicious?**
- **Good faith belief that you were harassed?**
- **Misunderstood what behavior crosses the “legal line”?**

