



# Employer Education: Harassment and Workplace Bullying

October 3, 2018





# Introduction and Objective

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- **Why, and Why Now?**
- **It's not just Sexual Harassment anymore**
- **When it is NOT harassment**
- **Policy Recommendations**
- **Workplace Bullying, and do I really have to have this policy?**
- **Complaint Resolution Procedure 101**
- **Communicating the Policy**
- **Options for Policy Violations**
- **Success Story - When They Got it Right**



# Why?

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- Expensive
  - Poor morale
  - Reduced productivity
  - Costly lawsuits
- It's the law
  - Ohio Civil Rights Act of 1959
  - Civil Rights Act of 1964
  - Age Discrimination in Employment Act of 1967
  - Americans with Disabilities Act of 1990



# Why Now?

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- Shifting perceptions in the workplace
  - Percentage of Americans who feel sexual harassment in the workplace is a serious problem: 47% → 64%
- We know their names
  - Gwyneth Paltrow, Ashley Judd, Rose McGowan
  - Harvey Weinstein, Bill Cosby, Matt Lauer
- “I believe her,” versus “#MeToo”
  - Evolution from 1991 → 2017



# It's not your parent's Sexual Harassment Policy

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## **Types of Harassment:**

Race, religion, sex, age, national origin, disability or genetic information, veteran status, sexual orientation, gender identity or expression, political affiliation

## **Sexual Harassment is:**

Unwelcome verbal, visual, or physical conduct of a sexual nature

## **Harassment is:**

Demeaning another individual regarding a protected classification

## **Harassment is illegal when:**

- Putting up with the offensive and unwanted actions, communication, or behavior becomes a condition of continued employment, or
- The behavior is severe and pervasive enough to create a work environment that any reasonable individual would find intimidating, hostile, or abusive



# When is it NOT Harassment?

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Personality conflicts  $\neq$  Harassment



# Anti-Harassment Policy Recommendations

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## **FACT:**

Nearly one-third of the more than 90,000 charges filed with the EEOC in 2016 involved a claim of some form of harassment—almost half of which involved sex-based harassment.

## **Strong Policy Components:**

- Include language that pertains to all forms of harassment
- Make it relatable
- Focus on prohibited behaviors
- Give examples of inappropriate behavior
- Consider the scope:
  - **Who**
  - **Where**
  - **What**
  - **How**



# Bullying – Not Just a School Yard Problem

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## **Workforce Impacts:**

Stress  
Absenteeism  
Low productivity  
Lowered self-  
esteem  
Depression  
Anxiety  
High blood pressure  
Insomnia  
Post traumatic  
stress disorder

## **Workplace Bullying is:**

Repeated, health-harming mistreatment of one or more persons by one or more perpetrators. It is abusive conduct that is :

- Threatening, humiliating, or intimidating, or
- Behavior/conduct that prevents work from getting done

## **Workplace Bullying can take many forms, including:**

- Shouting or swearing
- One employee being singled out for unjustified criticism or blame
- Exclusion from company activities, or work/contributions purposefully ignored
- Practical jokes, especially if they occur repeatedly to the same person



# Bullying – Coming Soon to a Water Cooler Near You...

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## **Employer Impacts:**

High turnover

Low productivity

Lost innovations

Difficulty hiring  
quality  
employees

## **Workplace Bullying is NOT:**

- A manager who shouts at or criticizes all of his or her employees
- A co-worker who is critical of everything, always takes credit for successes and passes blame for mistakes, and/or frequently makes hurtful comments or jokes about others

## **When does it become a hostile work environment?**

- Conduct must be intentional, severe, recurring and/or pervasive
- How would a “reasonable person” characterize it?
- What would a “reasonable” reaction be?



# Is This Policy Required?

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An estimated 54 million Americans report being bullied at work.

61% of all targets of bullying end up losing their job

Less than 20% of employers will help a bullied target

**To date, neither federal law nor the law of any state prohibits workplace bullying outright.**

- An increasing number of states are considering anti-bullying legislation

**Bullying is illegal when it violates federal or state laws prohibiting discrimination and harassment in the workplace.**

**To Policy or Not To Policy...**

Pros: Manage potential legal risks, clarify expectations, ensure consistency

Cons: Limits employer discretion, legal risks associated with failure to comply



# Policy the Right Way...or Not At All

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## **FACT:**

**In Ohio, there is no law that requires sexual harassment training.**

## **Key Components to Consider:**

- What is it?
- What shouldn't employees do?
- Emphasize confidentiality – but don't promise!
- Who receives the complaints?
  - Diversify, and branch outside the supervisory chain
- Communicate consequences
- Retaliation and investigation participant protection

# Complaint Resolution Process

The purpose of a complaint resolution process is to provide a quick, effective and consistently applied method for a victim to present his or her concerns for internal resolution.

- STEP 1:** Informal Resolution  
No means no
- STEP 2:** Preliminary Investigation and/or Mediation  
Report the incident to someone who has the authority to take it to the next level
- STEP 3:** Formal Investigation  
This includes executive review, and recommendations based upon findings
- STEP 4:** Close the Loop  
The victim and the offender should be met with individually to inform them of the decision, consequences and options



# Do You Need a Harassment/ Workplace Bullying Policy?

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## The Numbers You Should Know

- Mercy General Hospital, 2012 - **\$168M (sexual harassment)**
- Ford Motor Co., 2018 – **\$16.8M (race discrimination)**
- Staples, 2014 – **\$66M (age discrimination)**
- Southeastern Oklahoma State University, 2017 – **\$1.1M (transgender discrimination)**

Employers can combat harassment lawsuits with an “affirmative defense.”

## The Numbers You Need To Know

- Federal = 15
- Ohio = 4

# Communicating the Policy

- Why was it created?
- What is the purpose?
- How will it be applied?

## The Impact of Effective Communication:

- Explains company stance
- Culture of respect
- Employee awareness
- Empowers managers and supervisors
- Proactive vs. Reactive

## How to Implement a New Policy:

- Handouts or email communication
- Group meetings or presentations
  - Make acknowledgments part of the process
- **Train managers and supervisors**
- Encourage open communication
  - **Informally:** conversations with direct reports
  - **Formally:** staff meetings, new hire on-boarding/ orientation, annual training

# Is annual training required?

25 states do not require specific sexual harassment training

17 states require some form of sexual harassment training

8 states encourage training

## In Ohio:

- As of January 2018, all Ohio lawmakers must attend sexual harassment training.
- Prevention is the Best Medicine:
  - Raising the issue of, stating disapproval of, developing sanctions against and informing employees of their rights and how to raise the issue of sexual harassment are suggested steps, according to Ohio Adm. Code 4112-5-05(J)(7)

# How do you handle policy violations?

## Falsification of Claims:

False and malicious complaints of harassment, discrimination or retaliation. These types of complaints should be subject to appropriate disciplinary action.

## ...May Result in Disciplinary Action

Examples of disciplinary action for infractions may include:

- Training
- Referral to counseling
- Warning
- Reprimand
- Reassignment
- Temporary suspension without pay
- Termination

## ...May Also Result in Criminal Convictions

Employees may also be subject to civil damages or criminal penalties.

## When they got it right -

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### Doing the Right Thing Isn't Always Easy

**The Subject:** Vice Media, global digital media and broadcast company

**The Issue:** To date, 24 female employees have reported that they witnessed or experienced sexual harassment at work, including some who were propositioned for sex.

**The Immediate Action:** Vice fired 3 employees in November 2017 after undertaking a company-wide investigation on sexual misconduct. In January 2018, 2 top executives were suspended.

**The Long-Term Plan:** Vice plans to form an advisory board to educate management and employees on diversity and workplace-conduct issues. Vice now requires sexual harassment training for full-time and freelance employees. Vice promised to ensure pay parity in 2018, and a 50-50 ratio of female to male employees by 2020.

# Questions?

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# Thank You!

