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# The Harassment Quiz<sup>SM</sup>

*prepared for*

## Greater Valley Forge HR Summit



*presented by*

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# PART I: INTRODUCTION

## Legal Background

1. Two types of unlawful harassment
  - a. Quid pro quo
  - b. Hostile environment on account of any protected group

# Legal Background

## 2. Examples of employment “protected groups\*”

- Age
- Civil union/domestic partners
- Citizenship
- Disability/handicap (physical or mental)
- Family status\*
- Gender Identity\*
- Genetic information
- Marital status\*
- National origin/ancestry
- Pregnancy
- Protected complaints/activity
- Protected leave
- Race/color
- Religion/creed
- Sex/gender
- Sexual orientation\*
- Veteran’s status/military status

\* Depending on state or local laws.

# Costs of Harassment

1. Legal liability
  - a. Who can be held liable?
    - i. Employer
    - ii. Individual (state law)

# Costs of Harassment

1. Legal liability (continued)
  - b. What are the potential damages?
    - i. Economic damages
    - ii. Pain and suffering
    - iii. Punitive damages

# Costs of Harassment

2. Cost of litigation
  - a. Financial
  - b. Time

## Costs of Harassment

3. Adverse career consequences (for engaging in or tolerating harassment)



# Costs of Harassment

## 4. Productivity

# Costs of Harassment

## 5. Employee relations

# Costs of Harassment

## 6. Public relations

# Costs of Harassment

## 7. Erosion of stock value

# Costs of Harassment

## 8. Erosion of core values

# PART II: EXAMPLES OF UNACCEPTABLE CONDUCT

## Examples of Unacceptable Conduct (regardless of whether unlawful)

1. Linking any employment decision, benefit, etc. to a subordinate's submission or refusal to submit to sexual advances [Always illegal]
2. Asking for sex and other sexual advances or propositions (even if no demand or threat)

## Examples of Unacceptable Conduct (regardless of whether unlawful)

3. Sexual flirtations, bantering, etc.
4. Engaging in sex while at work
5. Repeated request for dates [Initial request risky if supervisory-subordinate relationship]



## Examples of Unacceptable Conduct (regardless of whether unlawful)

6. Sexually explicit or suggestive conversations, comments, questions, stories, etc. (whether mixed gender or same gender)
7. Questions or comments about an employee's actual or perceived sexual orientation

## Examples of Unacceptable Conduct (regardless of whether unlawful)

8. Comments with regard to appearance of a sexual or suggestive nature or at inappropriate times or frequency
9. Sexual or physical assault [Always illegal]
10. Unwelcome and/or inappropriate touch, such as patting, pinching or brushing against someone

## Examples of Unacceptable Conduct (regardless of whether unlawful)

11. Sexual or suggestive “jokes”

12. Racial, ethnic or religious “jokes” or “jokes” which make fun of, belittle or stereotype any other protected group

## Examples of Unacceptable Conduct (regardless of whether unlawful)

13. Mimicking or making fun of someone's accent, disability, diction, gestures or manner of speech or religious, racial or ethnic attire or dress
14. "Joking" about or making fun of historical tragedies (e.g., slavery) or violent crimes (e.g., rape)
15. Obscene, sexual or suggestive materials, cartoons, objects, photos, etc., including calendars and other pin-ups

## Examples of Unacceptable Conduct (regardless of whether unlawful)

16. Racist, sexist or other hate-based graffiti
17. Hate symbols, such as a noose, a swastika and a KKK symbol
18. Hate slurs/epithets which relate to any protected group, such as the “N” word and the “C” word

## Examples of Unacceptable Conduct (regardless of whether unlawful)

19. Nicknames which relate to any protected group, such as “Grandma”
20. Stereotypic comments, such as “you don’t sound...”
21. Derogatory/unwelcoming messages (e.g., “Speak English or Go Home” sticker)

## Examples of Unacceptable Conduct (regardless of whether unlawful)

22. Cursing and other foul language

23. Verbal or non-verbal innuendo of a sexual, suggestive or threatening nature

24. Hostile behavior targeted at employee because of his or her membership in protected group

## Examples of Unacceptable Conduct (regardless of whether unlawful)

25. Other inappropriate or unprofessional conduct which relates to or is directed at a protected group



## Prohibitions Apply To

1. Off site work, social and other events
2. Written, oral, electronic and all other forms of communication (including social networking)
3. Non-employees, such as customers/clients/patients, contractors, vendors and suppliers

# PART III: SUPERVISORY RESPONSIBILITIES

# Supervisory Responsibilities\*

## 1. Refrain from

- a. Unlawful discrimination, harassment and retaliation
- b. Other unacceptable conduct, even if not unlawful

\* While this seminar focuses on unlawful harassment, these supervisory responsibilities apply equally to unlawful discrimination and retaliation

## Supervisory Responsibilities

2. Report all complaints by an employee of unlawful discrimination, harassment or retaliation or other inappropriate conduct to your HR function, even if employee
  - a. Requests that nothing be done
  - b. Asks for absolute confidentiality
  - c. Does not use legal buzz words
  - d. You do not believe that the complaint has merit

## Supervisory Responsibilities

3. Respond proactively to possible unlawful discrimination, harassment or retaliation or other inappropriate conduct, even in the absence of a complaint
  - a. Silence equals tacit support
  - b. You cannot tolerate unacceptable conduct even if no complaint
  - c. Consult with your HR function about appropriate corrective action

## Supervisory Responsibilities

4. Remedy unlawful discrimination, harassment and retaliation and other inappropriate conduct (even if not unlawful)
  - a. Focus on inappropriateness, not illegality
  - b. Consult with your HR Function about appropriate corrective action

## Supervisory Responsibilities

5. Refrain from unlawful retaliation
  - a. Applies not only to complainants but also to witnesses and others who participate in the investigatory process

## Supervisory Responsibilities

5. Refrain from unlawful retaliation (continued)
  - b. Covers not only tangible employment actions but also
    - i. Other material terms and conditions of employment
    - ii. Retaliation independent of the workplace



## Supervisory Responsibilities

5. Refrain from unlawful retaliation (continued)
  - c. Fact that complaint lacks legal merit is not a defense to unlawful retaliation

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