



Harassment Prevention Program

Manager's Training Guide

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Workplace Harassment: Manager's Training Guide

I. Introduction

This booklet is intended to provide managers with valuable information about the Company's zero-tolerance policy against workplace harassment, our procedure for responding to incidents of harassment, and your role as a manager in recognizing, preventing, and responding to workplace harassment. Please read it carefully, and keep it for future reference. If you have questions about anything contained in this booklet, contact a member of the Human Resources Department.

Our Company will not tolerate harassment based on sex (including same-sex harassment), race, color, religion, national origin, age, disability, or any other legally protected status. We are committed to preventing harassment and promptly resolving any incidents of alleged harassment, and we are taking affirmative steps toward these objectives.

It is the responsibility of every manager to foster a working environment free from harassment and to make known to employees (by words, actions, and example) the Company's absolute intolerance of harassment. Managers and supervisors are responsible for taking affirmative, pro-active steps to prevent harassment, and must take appropriate action to stop harassment and involve proper Company authorities when harassment is observed, suspected, or reported.

Apart from a personal desire to treat your co-workers and subordinates with fairness and respect, there are other compelling reasons to end harassment in the workplace. Workplace harassment is illegal and violates Company policy. The Company can be held responsible for acts of harassment that its managers commit, condone, tolerate, or fail to report to proper Company authorities. In addition, managers who engage in harassment may be sued and held personally liable for their actions under various legal theories. By engaging in workplace harassment, you may subject yourself to serious discipline, including termination, as well as personal embarrassment and monetary loss in the event that legal proceedings are brought against you. In addition, studies show that reduction of productivity, poor employee morale, increased absenteeism, and high turnover are common by-products of workplace harassment which directly affect the Company's bottom line and your success as a manager.

This booklet is designed to teach you:

1. The definition of workplace harassment;
2. Examples of prohibited conduct that may subject you to discipline by the Company and/or legal liability;
3. The Company's procedure for handling harassment complaints;
4. Your responsibilities as a witness or victim of workplace harassment; and
5. Your role as a manager in preventing and responding to harassment complaints.

After you have read the entire contents of this booklet, you will be asked to complete a quiz to test your understanding of the booklet's contents.

Please keep this booklet in a safe place in case you wish to refer to it at any time during your employment with the Company.

II. What Is Harassment?

Harassment is a form of unlawful discrimination that includes all types of physical or verbal conduct which shows hostility toward a person because of that person's **sex (including same-sex harassment), race, color, religion, national origin, age, disability, or any other legally protected status**. Many states, counties, and cities have laws that prohibit harassment on the basis of other characteristics, such as one's sexual orientation, marital status, and certain inherited genetic traits.

Harassment is prohibited whether it occurs in person, in writing, by telephone, facsimile, e-mail, via the Internet, or through any other means of communication.

Harassment can be physical, verbal, or visual.

Physical

Examples of prohibited physical harassment include, but are not limited to, unwelcome physical contact, invading one's physical space, damaging one's personal property, offensive gestures, or any other offensive or demeaning act directed at someone because of his/her sex, race, color, religion, national origin, age, disability, or other legally protected status.

Verbal/Visual

Examples of prohibited verbal or visual harassment include, but are not limited to, unwelcome comments, jokes, epithets, threats, insults, name-calling, negative stereotyping, possession or display of derogatory pictures or other graphic materials, and any other words or conduct that demean, stigmatize, intimidate, or single out a person because of his/her sex, race, color, religion, national origin, age, disability, or other legally protected status.

In addition to violating Company policy, workplace harassment may also be illegal under anti-discrimination laws. To establish illegal harassment, one must show that:

1. the conduct occurred *because of* the victim's membership in a protected category, including his/her sex, race, color, religion, national origin, age, disability, or other category protected by state or local law;
2. the conduct was uninvited or unwelcome; and
3. the conduct was sufficiently severe or pervasive to create a hostile, intimidating, or offensive work environment, to unreasonably interfere with a person's work performance, or to otherwise adversely affect the terms, conditions or opportunities of a person's employment.

III. Special Concerns Regarding Sexual Harassment

The EEOC defines sexual harassment as:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when:

1. submission to such conduct is made either implicitly or explicitly a term or condition of employment;
2. submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. 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.

“Hostile Environment” and “Quid Pro Quo” Harassment: Sexual harassment can occur in two forms: *hostile environment* harassment or *quid pro quo* harassment.

Examples of conduct that constitutes hostile environment sexual harassment include, but are not limited to:

- Touching, including hugs, shoulder rubs, patting, pinching, groping and/or purposely brushing against someone;
- Blocking or impeding someone's movement;
- Dirty jokes, sexually suggestive words or sexual innuendo;
- Excessive flirtation;
- Inappropriate compliments about one's appearance or body parts;
- Comments or references to one's physical attributes or body parts;
- Jokes or stereotyping about gender-specific traits;
- Possession, display, or exchange of sexually-explicit or suggestive objects, posters, calendars, cartoons, diagrams, pictures, or other graphic material;
- Exchange of sexual “gag” gifts;
- Staring, leering, winking, or making other suggestive looks;
- Sexual propositions or advances;
- Sexual gestures or sounds such as catcalls or whistling;
- Repeated (unsuccessful) requests for dates;
- Unwanted attention or gifts such as flowers, love letters or cards;
- Sexually oriented notes, telephone calls, e-mail or faxes;
- Practical jokes of a sexual nature;
- Telling lies or spreading rumors about a co-worker's sex life;
- Discussion about one's sex life, sexual experiences, or desires;

- Demands or pressures (actual or implied) for sexual favors; and/or
- Continuing to express sexual or romantic interest after being informed the interest is not welcomed.

Quid pro quo is a Latin phrase that means “this for that.” *Quid pro quo* harassment is both the most serious type of harassment and the easiest to recognize. This type of harassment occurs when a manager or supervisor (or anyone in a position of authority who can affect the terms or conditions of the targeted employee’s employment) threatens or imposes an employment action based upon an applicant’s or employee’s willingness or unwillingness to participate in a personal or sexual relationship.

Examples of blatant *quid pro quo* harassment include the following:

- A manager informs a subordinate that he will promote her if she sleeps with him.
- An employee informs his assistant that he will terminate her unless she goes on a dinner date with him.
- A waitress is reassigned to a less desirable shift/station after declining a supervisor’s advances.
- A supervisor conducting a job interview tells the applicant that in order to get the job, she would have to join him later for cocktails.

Examples of more subtle forms of *quid pro quo* harassment include the following:

- A restaurant manager tells a waitress that she’ll “get bigger tips and maybe even a bigger bonus if she’ll just loosen up and show a little more cleavage.”
- An employee inquires why she received no merit increase and is told by her boss, “You have a bad attitude. Of course, you can always make more money if you see things my way... You can start with dinner tonight.”
- A manager tells his subordinate that he might be able to get her a bigger office “if she acted a little friendlier to him.”

Both types of sexual harassment may be illegal and are strictly prohibited by the Company.

Non-Sexual Gender Stereotyping/Gender Bias

Negative gender-specific comments or gender stereotyping can also lead to claims of sexual harassment in the workplace. Statements such as “that’s a man’s job, a woman could never handle it,” or “women are too sensitive to handle pressure jobs,” or “if she didn’t dress that way, he would never have harassed her” are examples of inappropriate gender stereotyping that are strictly prohibited by the Company. It is also inappropriate and illegal to subject employees of one gender to differential treatment, such as harsher work conditions or stricter attendance requirements.

Same-Sex Harassment

In 1998, the Supreme Court recognized a cause of action for “same-sex” sexual harassment. This means that a sexual harassment claim may arise from inappropriate sexual conduct by

one employee toward another employee of the same sex, regardless of the sexual orientation of the persons involved. It is important to remember that neither the harasser nor the victim needs to be homosexual in order for same-sex-harassment to occur.

Sexual Orientation

Although not yet recognized by federal law, harassment on the basis of one’s sexual orientation is illegal in many states, cities, and localities, and is strictly prohibited in our workplace.

Men and Women Are Equally Protected

The law protects both genders equally. Harassment is unlawful whether it is committed by a man against a woman, a woman against a man, or when both parties are of the same gender. Thus, a person of either gender can bring a claim of sex harassment, whether it is based on a *quid pro quo* theory, gender stereotyping, same sex harassment, or any other form of hostile environment sex harassment.

IV. Other Things You Should Know

Remember - It’s Not Just Sexual

Although sexual harassment is perhaps the most well-known type of prohibited harassment in the workplace, you should remember that harassment based on race, color, religion, national origin, age, disability, or any other legally protected status is just as prohibited and may subject you to disciplinary action and/or legal liability.

Rank Does Not Matter

Any member of an organization can be liable for harassing any other member of the organization. For example, harassment is prohibited whether it is committed by an employee against another employee, by an employee against a manager or executive, by a manager or executive against a subordinate, or by a manager or executive against another manager or executive.

Abuse of Supervisory Authority

No supervisor or other member of management has the authority to harass any applicant or employee, nor to suggest to any individual that his/her employment will be affected in any way by participating (or failing to participate) in any form of harassment, or by entering into (or refusing to enter into) any form of personal relationship with the supervisor or member of management. Such conduct is a direct violation of our No-Harassment policy.

Harassment by Non-Employees

Our Company is committed to providing every employee with a comfortable, harassment-free working environment. Our No-Harassment policy is designed to protect employees from harassment by anyone with whom they have contact as result of their employment, including non-employees such as customers, vendors, couriers, and sales representatives.

Examples of prohibited non-employee harassment include:

- A favored customer asks the employer to terminate an employee because she rejected the customer's sexual advances.
- A client makes a racial slur in front of an employee.
- A vendor refuses to do business with a particular employee because of his disability.
- A client unwelcomely hugs an employee each time he visits the establishment.
- An important client propositions an employee for a date, stating that he could "put in a good word" to her boss if he could only get to know her better.

Harassment committed by non-employees should be addressed by managers in the same manner as any other form of employee harassment. If you witness or become aware of harassment committed by a non-employee toward any employee of the Company, take appropriate measures to stop the conduct, and immediately report it to proper Company officials designated to handle harassment claims.

“Severe or Pervasive” Requirement

To be illegal under federal discrimination laws, harassment must be “severe or pervasive.” Generally, the more frequent the conduct, the less severe it needs to be to constitute illegal harassment. Conversely, the less frequent the conduct, the more severe it must be. One isolated incident of harassment may be sufficient to violate the law if it is extremely severe, such as a physical assault. One instance of quid pro quo sexual harassment, or any form of harassment resulting in a tangible employment action (e.g., termination, demotion, denial of promotion, decrease in pay), is usually sufficient to constitute illegal harassment. Remember, our Company has a zero-tolerance policy against harassment. This means that, regardless of the “severity” or “pervasiveness” of the behavior, one isolated incident of inappropriate conduct may subject the offender to serious discipline, including termination, even though the conduct may not be regarded as illegal.

Unwelcomeness

“Unwelcome” means that the victim of harassment did not solicit/incite the conduct or regarded it as undesirable. Unwelcomeness may be communicated in a number of ways. For example, a person might grimace, frown, turn away, back up, pretend not to hear or see the comments or conduct, tell the harasser directly that the conduct is offensive, or immediately complain to management about the conduct.

Silence or acquiescence does not necessarily mean that the person welcomes the conduct at issue. The appearance that some individuals are not offended by harassing conduct can be deceiving. An employee might go along with harassment, or not actively oppose it, out of fear of losing his/her job, becoming subjected to adverse treatment by co-workers or managers, being ridiculed or ostracized for being too “sensitive,” or not having the complaint taken seriously. Supervisors should be aware that an employee's acquiescence or submission to sexual demands does not necessarily mean that the conduct is welcome. So, for example, if a supervisor demands sexual favors in return for a promotion, and the subordinate

acquiesces, a claim of sexual harassment could still be established. Our Company prohibits all forms of harassment, even if the person to whom it is directed appears to welcome the behavior or reciprocates it.

Witnesses/Onlookers

A claim of harassment does not have to be made by the person at whom the conduct is directed, nor by a member of the protected group targeted by the harassment. A harassment claim can be asserted by any employee affected or offended by the conduct, including witnesses and onlookers. Remember that, even though your behavior may be acceptable to some, other employees who witness or become aware of the behavior may find it offensive. For example, certain employees or managers may find it acceptable to exchange intimate details about their relationships or other matters of a sexual nature. Another employee who overhears the conversation may find it offensive and may lodge a complaint of sexual harassment. Similarly, an employee who overhears a co-worker telling a racial joke during a personal telephone conversation may have a claim, even if it was not intended for him to hear, and even if he is not a member of the racial group mentioned. For this reason, managers and employees are prohibited from engaging in any conduct that violates our No-Harassment policy, without exception, whether it is among “willing” participants, part of a “private” conversation, or under any other circumstance.

The “Overly Sensitive” Victim

People have different values and standards, and some may be offended by behavior you think is proper. Always remember that your actions will affect different people differently. What one person might find humorous or harmless may be extremely offensive to another. If an employee expresses discomfort with something you have said or done, never conclude that he/she is being overly sensitive. Apologize for your actions and immediately stop the behavior.

Harassment Away From Work

Our No-Harassment policy applies to all activities and interactions related in any way to your employment, including but not limited to Company-sponsored social events, holiday parties, training courses, business trips, etc., as well as all non-Company events that could impact your relationship at work. Your interactions outside of the office can have a direct effect on your comfort level at work. Inappropriate behavior away from work can carry over into the working environment by making someone feel uncomfortable, upset, or distracted from his/her job. You are expected to treat all employees appropriately and with respect regardless of whether you are at work, at an off-premises event related to work, or at a non-Company event with co-workers. As a manager, you are also obligated to address harassment away from work (whether observed or reported) in the same manner as harassment occurring at the workplace.

No One Is Exempt

Harassment toward any employee is strictly prohibited, whether it is committed by an executive, manager, or employee. No one within our organization is exempt from our No-Harassment policy.

E-mail/Internet

Today's business environment relies heavily on the use of e-mail and Internet communications. Our No-Harassment policy applies to all e-mail and Internet activity conducted at work (including communications sent to and from work). It is against Company policy to access, download, view, or send inappropriate text or graphics in the workplace.

Electronic communications sent to, from, or within the workplace are never private. E-mail and Internet usage at work may be monitored at any time. In addition, records of e-mail and Internet usage may wind up as evidence in lawsuits, including suits involving alleged discrimination or harassment. As a general rule, when writing e-mail messages and using the Internet, you should always assume that your activity will be monitored, recorded, and made accessible to the public. Moreover, be aware that e-mail messages can be disclosed, forwarded or inadvertently read by individuals other than the intended recipient. Even if the intended recipient does not find the e-mail offensive, it may offend someone whom it reaches.

V. No Retaliation

Federal law specifically prohibits employers from retaliating against an applicant or employee for engaging in "protected activity." Protected activity is defined as: filing a complaint or charge of harassment or discrimination; or testifying, assisting, participating, or cooperating in any manner in an investigation, proceeding, or hearing in connection with a claim of harassment or discrimination.

As a manager, you may not use your authority to retaliate against any applicant or employee for making a report of harassment (either internally or to a governmental agency), for resisting or opposing harassment, or for participating in a harassment investigation conducted by the Company or a governmental agency. **This applies regardless of the merit or validity of the employee's underlying report.**

Examples of retaliatory acts include, but are not limited to, the following:

- refusal to hire or rehire;
- demotion;
- denial of promotion;
- transfer to less desirable position;
- negative job evaluation or performance review;
- unwarranted disciplinary action, counseling, or reprimands;
- over-scrutinizing performance or conduct;
- harassment;
- subjecting the employee to stricter rules or standards than those applied to other employees;
- excluding the employee from meetings or events;
- moving the employee to a less desirable office space; and/or
- any other negative personnel action or adverse treatment affecting the employee's working conditions.

Employees are also protected from retaliation after they leave the employ of the Company. The Supreme Court has held that it is unlawful to give a former employee a negative job reference, or to withhold giving a job reference, based upon that employee's engagement in protected activity. Similarly, the Court held that it is unlawful to inform an employee's prospective new employer of the fact that he/she engaged in protected activity while employed with your organization. Before responding to any request for an employment reference, you should always check with Human Resources to ensure that you are complying with the Company's procedures for providing references.

Retaliation is illegal and against Company policy. Managers who engage in any form of retaliation will be subject to discipline, up to and including immediate termination.

VI. Your Responsibilities If You Become Aware of Harassment

As a manager, you are obligated to report every potential violation of the Company's No-Harassment policy to proper Company officials designated to receive harassment complaints (as established in the Company's No-Harassment policy), or to a member of Human Resources. This applies whether you are the victim, witness, recipient of a complaint, or otherwise come to suspect or learn of harassment involving your subordinates or any other member of our organization (including another employee's receipt of preferential treatment in exchange for participation in harassing activities).

Failure to comply with these reporting guidelines may subject you and the Company to legal liability, and may result in disciplinary action up to termination.

Because you are a member of management, the Company is automatically charged with your knowledge of employee harassment. Employers are liable for harassment committed by employees if a manager has "actual" or "constructive" knowledge of the harassment, yet the Company fails to take prompt, remedial action to correct it. A manager is deemed to have *actual* knowledge of harassment if he/she witnesses the conduct or receives a complaint about the conduct. A manager is deemed to have *constructive* knowledge of harassment when the conduct occurs in a manner such that the manager "reasonably" should have known about it. For instance, a manager may be charged with constructive knowledge of harassment if the conduct occurred repeatedly near his/her office, in meetings over which the manager presided, in areas that the manager frequented, or where the harassment was so widespread that the manager could not have avoided it.

Thus, if you ignore incidents of harassment (whether observed, suspected, or alleged) and/or fail to notify proper Company officials about potential violations of our No-Harassment policy, you may expose the Company to serious liability for knowing of harassment and failing to take appropriate action to correct it.

If You Witness (or Suspect) Harassment

If you witness or suspect harassment involving others (including another employee's receipt of preferential treatment in exchange for participation in harassing activities), whether committed by another member of management, an executive, an employee, or a non-employee toward any employee, you should:

- (If you are a direct witness to the harassment) stop the conduct from continuing and inform the offender(s) that the conduct violates Company policy and will be reported to proper Company officials for further handling.
- Report the conduct immediately to the Company official(s) designated to receive harassment complaints as set forth in the Company's No-Harassment policy.
- (If the harasser is one of the persons designated by the Company to receive harassment complaints) report the harassment to another Company official designated to receive harassment complaints, to any member of Human Resources, or to the President of the Company.
- Prepare a written report outlining the details of the incident, including a summary of the actions you took to stop the conduct, names of other witnesses, and any other information relevant to the incident, and submit it to the Company official to whom you direct your complaint.

Remember, you are responsible for reporting any conduct that you suspect violates the Company's No-Harassment policy, even if you have not observed such conduct first-hand.

If You Receive a Complaint of Harassment

The Company's employees have been informed that workplace harassment is illegal and against Company policy. They have also been instructed to immediately report all incidents of harassment to specific Company officials designated to handle harassment complaints. Notwithstanding, an employee may feel more comfortable talking to you, and you may find yourself the recipient of a complaint even though you are not one of the individuals designated to handle such complaints.

If you receive a complaint of harassment from any employee, you should respond as follows:

- Listen to the details of the complaint and let the complainant know that the Company takes his/her concerns seriously;
- Tell the complainant that you will promptly report his/her concerns to appropriate Company officials and that someone will be following up with him/her;
- Report the conduct immediately to the Company official(s) designated to receive harassment complaints as set forth in the Company's No-Harassment policy.
- (If the harasser is one of the persons designated by the Company to receive harassment complaints), report the harassment to another Company official designated to receive harassment complaints, to any member of Human Resources, or to the President of the Company.
- Prepare a written report outlining the details of the complaint as it was presented to you, and submit it to the Company official to whom you direct your complaint.

Other Things to Keep in Mind When Responding to Harassment

Take All Complaints/Incidents Seriously

Never let your personal opinions or emotions dictate how you respond to an incident or complaint of harassment. Remember that what one person might find humorous or harmless may be extremely offensive to another. Even if you think a complaint is frivolous or the complainant is overreacting to an innocent situation, you must take the allegations seriously, and you must immediately report the complaint to a Company official responsible for handling harassment claims.

Respond/Report Even If No One Has Complained

You are responsible for reporting violations of the Company's No-Harassment policy even if no one has complained or objected to the conduct. For example, if you see offensive graffiti in the restroom, or you observe inappropriate flirting among employees, you must respond and report, even if no one has complained or appears to be offended by the conduct.

Respond/Report Even If Complainant Does Not Follow Proper Reporting Procedures

You must respond to all complaints of harassment even if the persons involved fail to follow proper reporting procedures. For instance, if an employee reports an incident to you instead of a Company official designated to handle harassment complaints, you are obligated to respond and report the complaint in accordance with the Company's reporting procedures. Similarly, a complaint should never be ignored on the grounds that the victim refused to put the complaint in writing, failed to identify witnesses, or otherwise failed to follow any aspect of the Company's reporting procedures.

Respond/Report Even If Victim Asks You Not To

If a victim or other employee confides in you about an incident of harassment and asks you not to report it nor to take any remedial action, explain to him/her that as a manager you have no choice. Explain that the Company has an obligation to investigate all incidents of harassment and must take appropriate corrective action to stop the harassment from recurring. You may tell the person that the matter will be kept as confidential as possible but that certain people within the organization would have to be told about it in order for the investigation to be effective. Never promise absolute confidentiality. Remember, your knowledge of the alleged harassment is imputed to the Company. By failing to properly report the incident, you will expose the Company to serious legal liability by interfering with its ability to investigate and correct the harassment.

Do Not Wait

You should respond to (and report) all incidents or complaints of harassment immediately. If possible, address the incident or complaint during the same shift in which you become aware of it.

Be Discreet

If you witness harassment or receive a complaint of harassment, do not share information about the incident with anyone other than the Company officials designated to handle harassment claims, or other members of upper management involved in resolving the complaint on a “need-to-know” basis.

VII. What To Do If You Are a Victim of Harassment

If you feel you have been harassed in any way by any other manager, executive, co-worker, subordinate, customer, vendor, or anyone else with whom you have contact as a result of your employment with our Company, you should:

- Tell the harasser directly how you feel about his or her actions and that you would like the conduct to stop.
- Report the conduct immediately to the Company official(s) designated to receive harassment complaints as set forth in the Company’s No-Harassment policy.
- (If the harasser is one of the persons designated by the Company to receive harassment complaints), report the harassment to another Company official designated to receive harassment complaints, to any member of Human Resources, or to the President of the Company.

You should also write down as many details as possible about what happened, including a list of any other individuals who may have witnessed the incident, and submit it to the Company official to whom you direct your complaint.

Do not assume that the Company is aware of your problem. Bring your complaints and concerns to the Company’s attention promptly so that we can resolve them. In the event you are not satisfied with the disposition of your complaint, please report your concern to the President of our Company.

VIII. What To Do If You Are Accused of Harassment

If an employee tells you he or she finds your behavior offensive, do not get angry or insulted. Remember that one’s actions affect different people differently. Apologize to the employee and stop the complained-of conduct immediately.

The Company is obligated to investigate all complaints of harassment. During the investigation, the Company may separate the accused harasser from the complainant, suspend the accused harasser, or take other appropriate action as it deems necessary under the circumstances. Once a complaint is lodged, the accused harasser is strictly prohibited from intimidating, coercing, or engaging in any retaliatory conduct toward the complainant or any other witness or participant in the investigation.

IX. How the Company Handles Harassment Complaints

The Company takes all complaints of harassment seriously. All complaints will be investigated promptly and thoroughly. Investigations will be objective and complete.

Information obtained during the investigation process will be kept confidential to the extent possible under the circumstances. Although it may be the best intentions of the investigator and the Company, it is almost impossible for any organization to guarantee complete confidentiality in a harassment investigation. In order to conduct an effective investigation and take appropriate corrective action, it may be necessary for the investigator to inform the alleged harasser of the complainant’s identity and nature of the allegations, to notify the supervisor(s) of the parties involved, and to share relevant information with other Company officials or advisors on a “need-to-know” basis.

Typically, the investigator will gather facts by interviewing the person reporting the harassment, the alleged harasser, and key witnesses named by one or both parties. The parties may be asked to prepare or sign a written statement to assist with the investigation. The investigator may look for additional relevant information in the parties’ personnel records, through interviews with non-employees, and by visually inspecting relevant objects, pictures, notes, etc.

Individuals who knowingly provide false information in an investigation, or refuse to cooperate in an investigation, may be subject to disciplinary action.

When the investigation is complete, the Company will advise the person who brought the complaint and the alleged harasser of the outcome of the investigation. If an investigation confirms that the Company’s No-Harassment policy has been violated, the Company will take whatever appropriate corrective action is warranted under the circumstances, including discipline up to and including termination of employment.

Remember that the Company strictly prohibits retaliation against any employee for making a report of harassment or for participating in an investigation of alleged harassment. If you feel you are being retaliated against because you reported harassment or participated in a harassment investigation, or if you are aware of retaliation directed toward another employee, report it immediately to any of the Company officials designated to receive harassment complaints or directly to the President of the Company.

X. Prohibited Conduct/Disciplinary Action

It is strictly against Company policy, and may also be illegal, for any manager to:

- Participate, engage in, or condone any form of harassment toward any applicant or employee (including temporary workers, part-time employees, trainees, other managers, executives, and any other individuals who have an employment relationship with the Company) on the basis of his/her sex, race, color, religion, national origin, age, disability, or other legally protected status;
- Subject an applicant or employee to any form of differential treatment (whether favorable or negative) with respect to any aspect of employment, including but not

limited to hiring, job assignment, promotion, demotion, transfer, termination, work hours, shifts, office selection, pay rate, enforcement of disciplinary rules, attendance requirements, or performance standards, on the basis of his/her sex, race, color, religion, national origin, age, disability, or other legally protected status;

- Promise or suggest (whether actual or implied) preferential or adverse treatment as a result of an applicant's or employee's acceptance or rebuttal of sexual advances;
- Retaliate against an applicant or employee for refusing sexual advances or refusing to engage in a personal relationship;
- Subject an applicant or employee to any adverse personnel decision or negative treatment on the basis of his/her opposition to any form of harassment, report of alleged harassment, or participation in any investigation concerning a complaint of harassment; and/or
- Fail to report any incident of harassment (whether observed, suspected, or reported) to proper Company officials in accordance with the Company's reporting procedures.

Any member of management who engages in any such prohibited conduct is subject to disciplinary action up to and including immediate termination.

XI. Legal Liability

The question of liability only arises after there is a determination that unlawful harassment has occurred. If it is determined that unlawful harassment has occurred, liability may be imposed upon both the Company and the individual perpetrator(s) under various legal theories.

Corporate Liability

Under federal discrimination statutes, an employer can be held liable for harassment committed by its employees and/or managers as follows:

1. Harassment by managers resulting in a tangible employment action

If a manager engages in quid pro quo sexual harassment, or any other type of harassment that culminates into a tangible employment action, the employer is automatically liable for the manager's acts. Tangible employment actions include, but are not limited to, the following:

- refusal to hire or rehire;
- failure to promote;
- demotion;
- undesirable reassignment or transfer;
- undesirable work assignment;
- a decision causing a significant change in benefits;
- compensation decisions; and/or
- termination.

2. Harassment by managers not resulting in a tangible employment action

This standard applies when the harassment is sufficiently severe or pervasive to alter the terms and conditions of the victim's employment, without resulting in a tangible adverse employment action. In this context, if the perpetrator is the victim's immediate supervisor (or some other manager with authority over the victim), the Company will be liable unless it can establish both elements of a two-part affirmative defense: (1) the employer must first prove that it exercised reasonable care *to prevent and promptly correct any harassing behavior*; and (2) the employer must also show that the victim failed to take advantage of any preventive or corrective opportunities provided by the employer. Accordingly, to utilize this defense, it is essential for every manager to take affirmative steps to prevent harassment and to immediately report all potential violations of the Company's No-Harassment policy to proper Company officials.

3. Harassment by non-managerial employees, including non-employees with whom the victim had contact as a result of his/her employment

This standard also applies when the harassment is sufficiently severe or pervasive to alter the terms and conditions of the victim's employment, without resulting in a tangible adverse employment action. In this context, the employer is liable if it has "actual" or "constructive" knowledge of the harassment *and fails to take immediate and appropriate corrective action to redress the harassment*. An employer has actual knowledge of the harassment when any manager witnesses or receives a complaint about the conduct. An employer has constructive knowledge of the harassment when the conduct is so widespread that the employer should have known about it, or under any other circumstance which would have reasonably prompted management to learn of the conduct. Again, this means that every manager has a duty to actively monitor the workplace for inappropriate conduct, and to immediately report all incidents that potentially violate the Company's No-Harassment policy to proper Company officials.

Individual Liability

Some federal, state, and local discrimination statutes permit employees to pursue an individual manager for engaging in illegal harassment. In addition, there are many non-statutory, "common law" theories that have been brought against individual managers in connection with workplace harassment. These include:

- **Intentional Infliction of Emotional Distress:** To prevail, the victim must show that the behavior was so shocking in character, or so extreme in degree, that a person of normal sensibilities would consider it "outrageous."
- **Battery:** A claim for battery exists when the harassment involves a harmful or offensive touching. Pinching, patting, grabbing, and fondling are typical allegations raised in a battery claim.

- **Assault:** A person may allege assault when the harassment involves "conduct resulting in the imminent apprehension of a harmful or offensive contact." Threatening words, intimidation, and other forms of verbal harassment not resulting in physical contact may constitute an assault.
- **Negligent Hiring, Supervision, or Retention:** These claims may be asserted against a manager who fails to fulfill a duty of reasonable care owed to employees, such as failure to investigate an applicant's background, which would have revealed a propensity to harass; failure to properly supervise, monitor, or prevent harassment; or failure to take appropriate corrective steps when an employee has demonstrated a propensity to harass.
- **Invasion of Privacy:** An invasion of privacy claim may exist when the harasser "intrudes upon the victim's physical solitude" or unnecessarily passes private information (whether true or false) about the victim to others.
- **False Imprisonment:** This occurs when a harasser confines someone within boundaries or restricts someone's movement, such as cornering someone, holding someone in a fixed place, or locking someone in a room.
- **Loss of Consortium:** This may be alleged by the spouse of a harassment victim when the spouse has been denied sexual relations by the victim as a result of the harassment.

Damages

Depending on the type of claim brought and the applicable statute or legal theory alleged, employers and/or individual managers could be found liable for the following types of damages: back pay (for the victim's lost earnings through the date of the lawsuit), front pay (for lost earnings into the future), compensatory damages for emotional distress and/or physical harm, punitive damages, attorneys' fees, and litigation costs.

XII. Illustrations of Illegal Harassment and/or Inappropriate Conduct Prohibited by Our Company's No-Harassment Policy

Sex

Sexual harassment most commonly involves sexually explicit words, pictures, gestures, or unwanted sexual advances. Sexual harassment can also occur when an employee is subjected to a positive or negative personnel action in exchange for accepting or refusing a supervisor's sexual advances. Conduct that shows gender bias, even if it is not sexual in nature, also is a form of sexual harassment. Sexual harassment is prohibited regardless of the gender or rank of the perpetrator or the victim.

Example

A supervisor regularly awarded promotions, cash bonuses and other benefits to attractive female employees and to women who socialized with him outside of work. A female employee who was not directly affected by the conduct brought a lawsuit alleging hostile environment sex harassment. The court found that the preferential treatment of certain employees on the basis of their sex had become so pervasive that co-workers could reasonably conclude that granting sexual favors was the only way to advance in the organization. While no significant conduct was ever directed at the woman who brought the lawsuit, the court found that she was subjected to unlawful sex harassment. The court suggested that male employees in that environment would also be able to state a claim for sex harassment.

Example

A male manager appointed an all-male staff to a project that would entail extra work for overtime pay. No women were asked to participate despite having equal qualifications for the project. When a female employee inquired, the manager stated that he did not consider any female employees for the project because he was being sensitive to their needs and desires to be at home with their families after work. When the woman became upset at his response, another employee added that women cannot handle the added stress of late hours and extra work. Although these comments were not "sexual" per se, they showed gender bias which is a prohibited form of sexual harassment.

Race/Color

Race harassment usually occurs in the form of offensive comments, epithets, jokes, slurs, gestures, or through symbolic objects or drawings. Federal law prohibits all forms of harassment on the basis of one's race or color, even when the victim is white or when the victim and harasser are the same race.

Example

A black teacher at a high school claimed that the principal exhibited hostility to black students, subjected them to harsher discipline than white students for the same misconduct, and failed to discipline a white teacher for making a racial joke. Even though most of his allegations involved conduct directed toward others, his claims were sufficient to state a legal claim for race harassment.

Example

A white mechanic working in a predominately black establishment was subjected to slurs from his co-workers, including being called a "honky." Additionally, whites were assigned the most undesirable jobs, and white supervisors were demoted and replaced with less experienced black employees. A court found that the white mechanic presented sufficient evidence to maintain a claim for race harassment.

National Origin

An individual can state a claim for national origin harassment when he/she is subjected to derogatory conduct aimed at his or her nationality, ancestry, foreign name, accent, appearance, or culture.

Example

A car salesman of Italian ancestry brought a national origin harassment claim against his employer. His dark complexion had drawn comments from the car dealership's finance manager, who repeatedly hurled the offensive epithet "spic" at him - even after the salesman informed him that the slur commonly applied to those of Hispanic descent, not Italians. The court allowed the salesman's claim to proceed, reasoning that the epithets were intended to be derogatory, and that the employee's complexion (which was tied to his national origin) was what prompted the epithets.

Example

A cashier at a convenience store was repeatedly ridiculed by co-workers regarding her appearance and accent. She was from India and chose to wear the traditional *sari* dress to work. Her co-workers commented that her dress looked like "an ugly curtain" and that she should wash her face to remove the *bindhi* from her forehead. A supervisor also told her to "learn English" even though her communication skills were sufficient for the job she performed. The employee was subjected to a hostile environment based on her ancestry, appearance, and accent, which constitutes unlawful national origin harassment.

Religion

Religious harassment typically occurs when an employee is subjected to jokes, comments, or other demeaning conduct for affiliating with a certain religion, observing religious holidays, or dressing in accordance with a religious affiliation. Religious harassment can also occur in the form of coercion to participate or not to participate in religious activities. A supervisor or manager may not, explicitly or implicitly, insist that an employee participate in religious activities or hold particular religious views as a condition of continued employment, promotion, preferred job assignments, or any other benefit or privilege of employment.

Example

A supervisor requires an atheist employee to work unreasonable hours on Sundays and religious holidays because the employee does not share the supervisor's religious beliefs.

Example

A group of employees subjects a fellow employee to a barrage of comments about his strict religious beliefs, conservative lifestyle, and involvement in church activities.

Example

A supervisor, who is a born-again Christian, tells an employee that she considers the office to be "a place of God," and that if the employee is unwilling to shape up and "play by God's rules," the employee will be replaced.

Age

Federal law protects persons over forty years of age from discrimination and harassment in the workplace.

Example

A manager excludes an older employee from a computer training course, stating that it would be a waste of time because "you can't teach an old dog new tricks."

Example

Co-workers tell an employee that he is too old for the stress and grief of the job and constantly encourage him to consider retirement.

Disability

Federal law protects employees from harassment on the basis of perceived or actual disabilities. Disabilities may be physical or mental. Even if an employee is not actually disabled, but is only perceived as disabled, employees are prohibited from harassing that individual on the basis of the perceived disability. Examples of perceived or actual disabilities may include, but are not limited to: alcoholism; asthma; blindness; blood disorders; brain/head injuries; cancer; cardiovascular/heart problems; cerebral palsy; carpal tunnel syndrome; cystic fibrosis; depression; diabetes; disfigurement; dwarfism; drug addiction excluding current illegal abuse; epilepsy/seizures; hearing impairments; HIV/AIDS; learning disabilities; mental retardation; missing digits/limbs; multiple sclerosis; paralysis; psychiatric disorders; and speech impairments.

Example

A jury found a company liable for harassment when its employees had subjected an individual with dyslexia and related neurological disorders to cruel comments, taunting, and threatening gestures. For example, co-workers had publicly ridiculed him for his spelling mistakes, mimicked his speech, and called him "stupid," "paranoid," "moron," and "dunce."

Example

Co-workers started a rumor that a homosexual employee was HIV positive. The employee was subjected to cruel comments and jokes, including accusations that he had "contaminated" the restroom and drinking fountain. Even though the employee did not actually have HIV or any other recognized disability, his co-workers engaged in prohibited harassment by treating him as if he did.

QUIZ

Complete this quiz after you have read the entire contents of this booklet.

1. True or False: It is not harassment for a subordinate employee to make unwanted sexual advances toward her boss.
2. True or False: Harassment only becomes unlawful if the person you have offended tells you that he/she finds your conduct offensive or asks you to stop.
3. True or False: It is a violation of Company policy to tell a racial joke to an employee whom you know will not take offense and who has told you racial jokes in the past.
4. True or False: Making fun of the way a person speaks can be a form of unlawful harassment.
5. True or False: If you are subjected to offensive conduct, you should wait until the conduct affects your ability to work before you tell the harasser to stop or report it to appropriate Company officials.
6. True or False: The laws do not protect white employees from race harassment at work.
7. True or False: If an employee informs you that she has been harassed by another employee, but states that she does not want the employee to get in trouble and does not want anyone else to know about it, you do not need to report it to proper Company officials for further investigation.
8. True or False: It is not harassment for a Hispanic employee to tease another Hispanic employee about his accent.
9. True or False: An employee who feels harassed by a customer on the telephone cannot maintain a claim for workplace harassment.
10. True or False: Teasing an employee about the country or region of the world where he, his parents, or ancestors came from can be considered harassment.
11. True or False: A manager or employee cannot be disciplined for violating the Company's No-Harassment policy unless his/her conduct constitutes illegal harassment.
12. True or False: The Company does not have an obligation to investigate a harassment complaint if the victim refuses to provide a written account of the alleged harassment or otherwise fails to cooperate in the Company's investigation.
13. True or False: Telling jokes about a certain religion, even if a member of that particular religion is not present, can be considered harassment.
14. True or False: All complaints of harassment will be kept completely confidential.
15. True or False: It is not harassment for a black employee to make derogatory comments to another black employee about the darkness or lightness of his skin tone.

16. True or False: It is not retaliation to subject an employee to adverse treatment (e.g., stricter performance standards) based on her complaint of harassment if the Company's investigation of the complaint showed that the complaint was unsubstantiated or without merit.
17. True or False: It is not a violation of the Company's No-Harassment policy to make unwanted sexual advances toward a co-worker during a happy hour that has no connection with work.
18. True or False: It is unlawful to harass someone about being an alcoholic.
19. True or False: An applicant can bring a claim of workplace harassment against the Company based upon harassing comments made during the interview process.
20. True or False: To be illegal, harassment must culminate into a tangible job detriment, such as failure to hire, denial of promotion, pay decrease, or termination.
21. During lunch breaks, an employee frequently talks to his friends on the telephone about dating and his sexual encounters with women. During these "private" conversations he lowers his voice in an effort to be discreet, but another employee complains that she can hear him from where she sits. Has he engaged in inappropriate behavior under the Company's No-Harassment policy?
22. You overhear two co-workers laughing and exchanging racial insults. You interrupt and ask if everything is OK. They both assure you that everything is fine, that they are longtime friends, and that they always joke with each other like that. Neither appears offended or upset by the other's conduct. You accept their explanation and do not report the incident, even though you found their words to be offensive. Has anyone violated the Company's No-Harassment policy?
23. A co-worker tries to convince you to attend church on Sundays to help you get through a rough time in your personal life. You decline and explain that you do not believe in organized religion. The co-worker starts e-mailing you scripture and daily prayers, and gives you a religious "inspirational" greeting card. Has your co-worker engaged in inappropriate conduct?
24. A group of employees starts an incentive program in which the top salesperson each month gets to appoint a co-worker or supervisor as his or her "slave" for the day. A black employee expresses discomfort with the slave concept, and refuses to participate. Several other black employees tell her that she is being too sensitive and that it is just a game. If the majority of black employees are not offended, should you intervene and stop the program?
25. You observe a male supervisor giving a female employee a shoulder massage at her desk. She later confides in you and tells you that she does not like when he touches her, but asks you not to say anything because she is up for her annual raise soon and is afraid her supervisor would give her a negative evaluation if she complains about his conduct. How should you advise her?

26. A group of male employees regularly posted magazine photos of nude women, articles about sex, and sexually-explicit messages in the form of graffiti in the men's restroom. This went on for several months and no one complained about it nor attempted to remove the materials. A new employee claims that he is deeply offended by the materials, and he complains to management. If a harassment claim surfaces, can the Company escape liability by claiming that there had never been any past complaints about the materials to prompt the Company to take them down?
27. Two employees are engaged in a mutual, romantic relationship for several months. The woman eventually breaks it off, and the man keeps bothering her at work. He sends her flowers, love letters, e-mails, and leaves numerous messages on her voice mail asking her to reconsider her decision not to date him. Can the Company be held liable if she files a claim of harassment?

ANSWER KEY

1. False. Any member of the Company can be liable for harassing any other member of the Company. Harassment is prohibited whether it is committed by an employee against another employee, by an employee against his/her boss, by a manager or executive against a subordinate, or by a manager or executive against another manager or executive.
2. False. Although every employee is expected to communicate to the offender how he/she feels about the offensive conduct, harassment is still against Company policy (and possibly unlawful) even if the victim never says he/she is offended nor asks the offender to stop.
3. True. Harassment is prohibited regardless of the audience's reaction or their participation in similar conduct. Remember that, even though your behavior may be acceptable to some, other employees who witness or become aware of the behavior may find it offensive. In addition, you should never assume that an employee welcomes your conduct based on his/her reaction to it. The appearance that some individuals are not offended by harassing conduct can often be deceiving.
4. True. Making fun of the way a person speaks may constitute a form of national origin harassment if the harassment is based on the person's foreign accent. If the harassment relates to a speech impediment, the conduct may constitute an unlawful form of harassment on the basis of a disability.
5. False. You should report all incidents of harassment immediately – before they escalate into more serious problems.
6. False. Any employee subjected to harassment on the basis of his/her race may bring a claim for race harassment under federal law.
7. False. A manager has an obligation to respond to all incidents of alleged harassment, even if the persons involved request otherwise. A manager's knowledge of alleged harassment is imputed directly to the Company. If you become aware of alleged harassment yet fail to report it to proper Company officials, you are exposing the Company to serious legal liability by interfering with the Company's ability (and legal obligation) to take prompt remedial action to correct the harassment.
8. False. Harassment on any basis (including sex, race, color, religion, national origin, age, or disability) can occur between members of the same protected category.
9. False. Harassment by non-employees is prohibited in the same manner as any other form of workplace harassment.
10. True. Such teasing may constitute a form of national origin harassment. An individual can state a claim for national origin harassment when he/she is subjected to derogatory conduct aimed at his or her nationality, ancestry, foreign name, accent, appearance, or culture.
11. False. Even if the conduct does not rise to the level of illegality, it may nevertheless subject you to discipline, up to termination, under the Company's policy. The Company has a zero-tolerance for harassment, and one isolated incident of inappropriate conduct may be sufficient to subject an individual to discipline.
12. False. The Company is obligated to investigate all claims of harassment to the best of its ability, even if the persons involved do not cooperate or fail to follow the Company's reporting procedures.
13. True. A member of the targeted group need not witness or become aware of the conduct for it to be deemed harassment. Remember, any witness who is offended by the conduct may bring a harassment claim, even if that person is not a member of the targeted group.
14. False. The Company cannot promise complete confidentiality. Once the Company initiates an investigation of the complaint, the identity of the complainant, the details of the complaint, and all information obtained during the investigation process will be kept confidential to the extent possible under the circumstances. However, in order to conduct an effective investigation the Company cannot guarantee strict confidentiality. For example, it may be necessary for the investigator to inform the alleged harasser of the complainant's identity and nature of the allegations, to notify the supervisor(s) of the parties involved, and to share relevant information with other Company officials or advisors on a "need-to-know" basis.
15. False. The law prohibits harassment on the basis of skin color. Courts have recognized harassment claims involving two black employees who exchanged derogatory comments about the darkness/lightness of each other's skin tone.
16. False. An employee subjected to adverse treatment for making a harassment complaint can state a claim for illegal retaliation, even if the underlying harassment complaint had no merit or could not be substantiated through an investigation.
17. False. Because harassing conduct away from work has the potential to interfere with an employee's ability to work, it is strictly prohibited by Company policy and may also be an illegal form of workplace harassment.
18. True. Alcoholism is a recognized disability under federal law, and it is illegal to subject an employee to harassment on the basis of any actual or perceived disability.
19. True. Applicants may bring legal action against a Company or an individual manager for workplace harassment in the same manner that an employee can. The Company's No-Harassment policy prohibits harassment against applicants, employees, temporary workers, part-time employees, trainees, managers, executives, and any other individuals who have an employment relationship with the Company.
20. False. Harassment can be illegal even if it does not affect a tangible aspect of the victim's job. A hostile environment harassment claim does not require a showing that the victim was fired, denied a promotion, or otherwise penalized in a tangible way as a result of the harassment. The focus is on the work atmosphere, and if that atmosphere is made intimidating, hostile, or offensive as a result of unwelcome conduct (based on one's sex, race, color, religion, national origin, age, disability, or other legally protected status), then the conduct may be deemed illegal.

21. Yes. Discussing one's sexual encounters at work, even during a break and even when the conversation is intended to be private, is a violation of the Company's No-Harassment policy.
22. Yes. The employees exchanging racial insults have engaged in a form of harassment that violates Company policy. It is inappropriate to utter racial insults, even if the exchange is mutual and no one appears offended by the conduct. In addition, as a manager who witnessed conduct that violates the Company's No-Harassment policy, you had a duty to report the conduct to proper Company officials.
23. Yes. Coercion to practice or observe certain religious beliefs is a form of religious harassment, despite the employee's good intentions.
24. Yes. The fact that other black employees are not offended by the conduct does not mean it is lawful or appropriate. What one person might find harmless or acceptable may be extremely offensive to another. If it is questionable whether an employee will take offense to certain conduct, it probably means the conduct is inappropriate for the workplace. If an employee states that he/she is offended by the conduct, or that he/she perceives the conduct as harassment, it is best to stop the complained-of conduct immediately.
25. You should advise her to report the conduct immediately. The Company strictly prohibits any manager or supervisor from retaliating against an employee for making a good faith complaint of harassment. Employees should never feel compelled to accept harassment or to refrain from making a complaint of harassment for fear of negative personnel action. The prohibition against retaliation also protects employees who testify, assist, participate, or cooperate in any manner in an investigation, proceeding, or hearing involving a harassment or discrimination complaint.
26. No. A Company can be held liable for harassment if it "knew or should have known" about the harassment and failed to take prompt, remedial action to correct it. The Company would have a difficult time establishing that it did not know about the harassment given that the materials were prominently displayed in the restroom for a period of several months. If any manager had actually seen the materials and failed to remove them, his/her knowledge of the harassment (and failure to redress it) would be imputed directly to the Company, and the Company could face liability for the manager's inaction. Remember, you are responsible for responding to all violations of the Company's No-Harassment policy, even if no one has complained or objected to the conduct.
27. Yes. When a target of harassment initially welcomed the sexual conduct but no longer welcomes it, she should make it absolutely clear to the other person that his advances are no longer welcome and that she wants them to stop. If he nevertheless persists, the conduct can constitute a form of illegal harassment. The Company can be held liable for such harassment among employees if any manager knew of the harassment and the Company failed to take appropriate action to stop it.

MANAGER'S ACKNOWLEDGMENT

By signing below, I acknowledge that I have read and understood the entire contents of the booklet entitled Workplace Harassment: Manager's Training Guide, and that I have successfully completed the quiz at the end of the booklet.

I understand the Company's prohibition against harassment and retaliation, and I will not engage in any prohibited activity as described in this booklet or in any other Company policy addressing workplace harassment. I also understand that I have a duty to report to proper Company officials all potential violations of the Company's No-Harassment policy (whether observed first-hand, suspected, or reported to me) affecting any employee.

Signature: _____

Name (printed): _____

Date: _____

The booklet is yours to keep.

After signing this Acknowledgment, remove this page and return it to Human Resources. This page will be kept in your personnel file.