




<b>APRIL 4<sup>TH</sup></b> <i>Recording Now Available</i>	<b>WEBINAR ONE</b> <i>Marijuana in the Workplace: Navigating Potential Potholes</i>
<b>APRIL 9<sup>TH</sup></b> 2:00pm – 3:30pm EST	<b>WEBINAR TWO</b> <i>#MeToo in the Workplace: Understanding, Addressing, &amp; Preventing Sexual Harassment</i>
<b>APRIL 17<sup>TH</sup></b> 2:00pm – 3:30pm EST	<b>WEBINAR THREE</b> <i>To Pay or Not To Pay: That is the Question Regarding your Interns and Volunteers</i>
<b>APRIL 25<sup>TH</sup></b> 2:00pm – 3:30pm EST	<b>WEBINAR FOUR</b> <i>Social Media at Work</i>

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# #MeToo in the Workplace: Understanding, Addressing, and Preventing Sexual Harassment

*Rick Pins*

15122607v1 April 2018



## Training Overview

- Why now? Why necessary?
  - #metoo?
  - Political Correctness?
  - Harvey Weinstein? Matt Lauer? Kevin Spacey?
  - None of the Above
  - All of the Above

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3



## Training Overview (cont.)

- This is not ...
  - Diversity Training
  - A Discussion about Micro-Inequities
  - An Effort to Check a Box
  - “Court Ordered”
- This is ...
  - Intended as a Reminder
  - An Overview
  - Intended to Distinguish Between Law and Activism

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4



## Why Model a Respect/Harassment-Free Workplace?

- Obviously, it's the law and the right thing to do
- It's your agency's policy
- YOU ARE THE AGENCY

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5



## Why Model a Respect/Harassment-Free Workplace? (cont.)

- Potential Legal Liability (and Maybe You Personally)
- Even though Actual Legal Liability May Not Matter
  - McDonald's
  - Arthur Andersen
  - Louis C.K.; Al Franken; Bill O'Reilly

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6



## The Law Prohibits

- Discrimination is prohibited by state and federal law
- State and federal law prohibit discrimination based on:
  - Race
  - Color
  - Religion
  - Gender
  - Sexual orientation
  - National origin
  - Age
  - Disability
  - Genetic information
  - Veteran status
  - Familial status
  - Marital status

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7



## The Law Prohibits

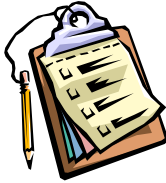
- Sexual harassment
- Harassment on the basis of:
  - Gender
  - Disability
  - Race/Color/Creed
  - National Origin
  - Religion
  - Age
  - Sexual Orientation
  - Marital Status
  - Status in Regard to Public Assistance

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## Anti-Harassment Policy



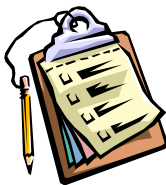
- Strive to ensure a harassment-free work environment
- Promptly and thoroughly investigate all complaints
- Keep harassment investigations as discrete as possible

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9



## Anti-Harassment Policy *(continued)*



- Take prompt remedial action against violations, as appropriate
- There shall be **NO RETALIATION**
- Applies to:
  - Employees
  - Contractors
  - Vendors
  - Customers
  - Visitors
  - Suppliers
  - Consultants

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10



## Sexual Harassment: Two Types

- Quid pro quo
- Hostile work environment

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11



## Quid Pro Quo Harassment



### Legal Definition

“. . . forcing an employee to choose between acquiescing to a superior’s sexual demands or forfeiting an employment benefit such as promotion, raise or continued employment.”

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12



## Examples of Quid Pro Quo Sexual Harassment:

- Demanding sexual favors in exchange for a job offer, promotion or a raise
- Disciplining or firing a subordinate who ends a romantic relationship
- Changing job performance expectations after a subordinate refuses repeated requests for a date

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## Hostile Environment Sexual Harassment

- Unwelcome sexual advances, requests for sexual favors, or other visual, verbal or physical conduct of a sexual nature, where such conduct has purpose or effect of:
  - unreasonably interfering with an employee's work performance; OR
  - creating an intimidating, hostile or offensive working environment

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14



## Hostile Environment Harassment (Not Necessarily Sexual in Nature)

- Unwelcome harassment
- **Directed at an individual because of his/her protected class status**
- Harassment affecting a term, condition, or privilege of employment; and
- The employer knew or should have known about the harassment and failed to take appropriate remedial action

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15



## Hostile Environment Harassment: Three Keys



- Unwelcome
- Severe and pervasive
- Offensive

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16





## What is Unwelcome?

- Undesired, uninvited, unwanted
- The test is **not** simply whether the behavior is consensual or voluntary; conduct does not have to be forcible assault to be unwelcome
- U.S. Supreme Court: “Consensual” affair between supervisor and subordinate can = illegal harassment
- Employee **does not have to object** to offensive behavior to show it is unwelcome

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17



## What is Severe and Pervasive?

- Generally not an isolated incident
- Exception: A single **offensive** touch **may** be enough to create a hostile work environment
- Do Not Make Decisions about **whether** to respond to workplace harassment based on your own judgment of whether it is pervasive – goal is to prevent behavior

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18



## What is Offensive?

- Must Be Both
  - Subjectively offensive - the individual perceived the environment to be harassing
- AND**
  - Objectively offensive – a reasonable person would find the environment hostile or abusive

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## What About ...

- Bullying
- Free Speech
- Section 7 Rights
- Retaliation

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## The Headlines

If it happened here would it be actionable?

- Harvey Weinstein
- Matt Lauer
- Aziz Ansari
- Stormy Daniels

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21



## What About This? From You ...



**Grant Jonathan Sanford**  
November 9

I volunteer to cleave the heads off all our male leaders and the one percent. Without trial, debate, or delay. Eight to twelve hours a day seven days a week until I die of old age; and may all their blood be on my own head. Let me know, thanks  
13504 Tukwila International Blvd #10  
Tukwila, WA  
98168  
Ph# 253-249-8971  
athinvale@gmail.com

Like Comment Share

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## Actionable?

July 18<sup>th</sup> – 1x1 meeting. Inappropriate remarks about women. Lacking leadership presence.

July 21<sup>st</sup> – Impromptu meeting. Lacking leadership presence. Uncomfortable work environment.

July 27<sup>th</sup> – Text he sent me on my personal phone. It was the 3<sup>rd</sup> time in a matter of 2 days he referred to the topic.

August 1<sup>st</sup> – Inquired with me for the 5<sup>th</sup> time about his expenses while living on campus. The fee to him was approximately \$250. Uncomfortable conversations with [redacted] in which she felt pressure to reimburse him versus processing it the correct way.

August 1<sup>st</sup> – Impromptu meeting. Lacking leadership presence. Overshared personal information.

August 1<sup>st</sup> – Email from Sandy regarding the taxability of his expenses while living [redacted]. In a verbal discussion, she expressed her frustration with his persistence.

August 17<sup>th</sup> – Wanted 6 resources to discuss how he felt people were reading his email and going into his office.

Throughout the summer, [redacted] frequently overstepped the normal bounds of a professional relationship. Mr. [redacted] would text Ms. [redacted] nearly every night, complaining about colleagues, primarily women, or [redacted] in general, and then send apologies or overly emotional responses requesting his need for Ms. [redacted] to support him. He also demonstrated controlling behavior or made derogatory comments to Ms. [redacted] about the women who worked as his subordinates in his office, referring to them as unhelpful and incompetent. At one point, Mr. [redacted] shared a picture of a half-naked woman on his phone with a colleague and irresponsibly said “My kid is lucky to be getting a piece of that.” He also continued to share personal issues with Ms. [redacted], specifically, that his ex-wife was a bad person and would share documentation related to their divorce in which he stated his ex-wife’s attorney made a threat to include the police to resolve the matter. Mr. [redacted]’s behavior and comments made Ms. [redacted] grow increasingly uncomfortable and overwhelmed with how to handle the situation given his position, her new relationship with [redacted], and the concern about his mental state and possible motive to uncontrollably act out his irrational behaviors and feelings towards women.

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23



## Hypothetical

- Christy is a young single woman. She frequently goes out to bars and dates a lot of different men, including different men at work. She is very open about her sexuality and frequently discusses her various liaisons with her friends at work. They laugh about her escapades. The conversations are loud and can sometimes be overheard.
- **Would a co-worker have a legitimate complaint about Christy’s behavior?**

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24



## Hypothetical

- Bob has a picture of himself and his wife holding hands in his cubicle. Bernice practices a conservative religion where any public affection is prohibited.
- **Would Bernice have a legitimate complaint about Bob's behavior?**
- **What if the picture was an aborted fetus?**

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25



## Here's How It Starts

Dear Steve:

I am submitting a helpline request, because I have experienced discrimination, a hostile work environment, and there has been a violation of our Code of Conduct. I am submitting via email to you for confidentiality rather than through the standard process, because I have been told that Brett [redacted] gets emailed US reports. I am copying Andrew [redacted], in the event you are currently out of the office.

The way I have been treated, compared to my male counterpart, Brett [redacted] has been unfair. I have not been given the benefits afforded to him for the 3 years that I have been a director at USHO. He is on the 'Executive Payroll' which has a significant upgrade in benefits, specifically related to bonus amounts, share offer, life insurance, top hat program, etc. In addition, I feel that Brett was given the position because he is one of the guys. Brett's performance immediately following the appointment to his expanded role over HR and HR Services dropped off significantly. In late July, he stopped showing up for work. A week or two into his absence, he called me one evening to let me know that he had a problem with alcohol and would be going to rehab. He would be out for the next 30 days.

Since the meeting in July with Shaun where he told me to report to Brett, my staff has decreased, and Shaun continues to show contempt towards me which results in negative interactions. Although I have tried to clear the air and begin a fresh start, it seems as though Shaun has decided to blame me for his poor decisions. Given the reasons stated above, I feel I am working in a discriminatory and hostile work environment and seek resolution through the internal channels offered.

1

## Bad Behavior on Social Media



Are you FB friends with co-workers?

What if an employee includes where they work in their public FB profile?

What if they say something online that would cause you concern if they said the same thing at work?

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And if you watch the video even after they killed Lavoy they kept shooting at his unarmed family in the car.  
Like · 1 · Reply · More · 1 hour ago

**LeRoy Nordgaarden**  
All the cops involved should be tortured & slaughtered in front of the victims family! Cops are pussy fuckin cowards. They have absolutely no integrity or morals. They are trained LIARS & HYPOCRITS! WE the PEOPLE pay you CUNT COPS to protect & serve US, NOT the other way around. & anyone who believes cops are good & they're doing they're job... Wake the fuck up you dipshits! How can anyone refer to the U.S. as a free country when your constantly being watched & harrassed by these lower than life scumbag motherfuckers! When a cop abuses his power they should be executed!  
Like · 4 · Reply · More · 7 hours ago

3 replies

**LeRoy Nordgaarden**  
Well he'll get his karma... Hopefully he gets his throat slit, then his tongue pulled through the opening, & his corpse out on public display!  
They really do need to start a "purge", cuz id start with all the pussy ass coward cops!  
Like · 2 · Reply · More · 2 hours ago

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28



## Hypothetical

- The Company has recently hired an individual who is of Iranian descent and a practicing Muslim. He has complained that his co-workers are subjecting him to a hostile environment by making derogatory comments about Iranians, Muslims and Arabs. He reports being ostracized and treated as though he were a potential terrorist.
- **Is this a harassment issue?**

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29



## Hypothetical

- Sam is a person of Iraqi descent. On the anniversary of 9-11, Sam's co-worker Chris placed American flag pins on all co-workers' chairs, including Sam's chair.
- **Would Sam have a legitimate complaint about Chris' behavior?**

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30



## Hypothetical

- John is a touchy feely kind of guy. He puts his arm around men's and women's shoulders. He frequently gives neck rubs to women in the office. Most of the women ask for them. Susan did not ask for a neck rub, but she did not object when John gave her one. It made her uncomfortable.
- **Is this a harassment issue?**

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31



## Bilal v. Northwest Airlines, Inc. 537 N.W.2d 614 (Minn. 1995)

TOMLJANOVICH, Justice (concurring specially).

I concur with the result reached by the majority, but write to express my concern that this matter ever reached the courts. It is important to be sensitive to racial, religious and gender differences and to avoid discrimination. However, this lawsuit defies common sense.

**The majority pointed out that the word "church" does not possess the inherent derogatory qualities of an epithet. I agree. I believe that a chance remark such as the one in this case that was not motivated by any discriminatory intent should not be actionable just because it includes the word "church."**

**We must eliminate the use of language that diminishes another person's humanity, but this surely was not such language.** How much better it would have been when Ms. Bilal was offended by Ms. Patrick's reference to church if she had sat down with Ms. Patrick and her supervisors and explained her feelings. An apology and a better understanding of the situation would, no doubt, have resulted. The courts simply cannot be the arbitrator of all hurt feelings.

It is important that we communicate our feelings to one another, but if we must live in fear that a lawsuit will result each time we make a comment or use a word that someone, somewhere, sometime might find offensive, all human exchange of words and ideas will cease, and our world will be a worse place in which to live.

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32