

2018 Government Practice Seminar

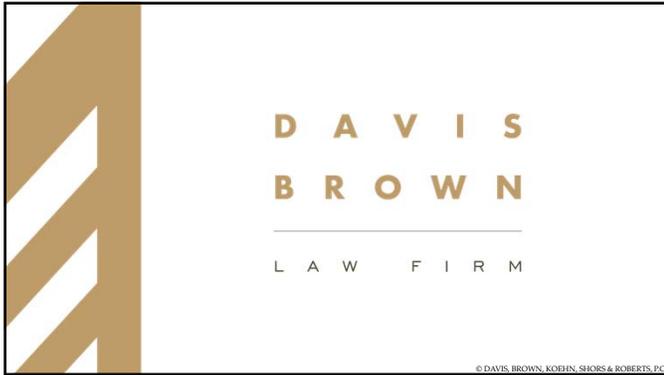
SEXUAL HARASSMENT IN THE WORKPLACE: IT'S ON US

1:00 P.m. - 2:00 p.m.

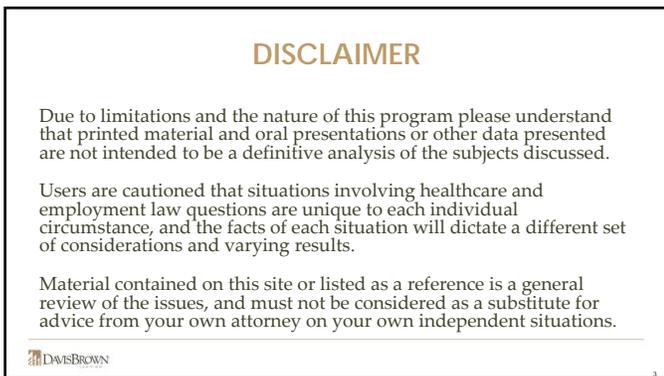


Presented by
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FRIDAY, MAY 4, 2018







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Ms. Hanson's areas of practice include:

- Litigation
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4 Keys to Preventing Sexual Harassment Complaints

- Understand the Law
- Train Your Employees
- Investigate Complaints
- Take Appropriate Action



Training Purposes

- Take a stand against unprofessional and demeaning behaviors
- Promote a respectful workplace
- Ensure fair treatment
- Policy reminder
- Encourage and foster healthy communication



Why Training Doesn't Work

- Reinforces gender stereotypes
- "Identity Threat Reaction"
- Politics
- Aimed at Liability



IT'S ON US!

Discrimination/Harassment

- Harassment is a form of employment discrimination
- Cannot discriminate/harass on basis of:

Race	Sex	Age
Creed	Sexual Orientation	Disability
Color	Gender Identity	Veteran Status
Religion	National Origin	Genetic Information

Sexual Harassment - The Basics

- Sexual Harassment is a form of discrimination



- Unlawful sexual harassment can be initiated by a supervisor, co-worker, volunteer, vendor, or patient

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True or False?

1. As compared to a year ago, there has been a decrease in internal complaints regarding sexual misconduct in the workplace.
2. Since fiscal year 2010, roughly 30% of the approximately 90,000 EEOC discrimination charges involve sex-based discrimination.
3. It is estimated that 45% of American females will experience some form of sexual harassment during their academic or working lives. Yet, just 25% ever tell anyone.

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True or False?



1. Only the individual being sexually harassed is considered affected.
2. Sexual harassment leads to lost productivity, sick leave, and worker replacement.
3. In 2017, more than 1/3 of managers and bosses surveyed indicated an increased discomfort at having meetings one-on-one with an employee of the opposite sex.

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"I shall not attempt [] to
 define [it] . . . But I know it
 when I see it."
 – Justice Stewart, United
 States Supreme Court

How does the *New York Times* define it?

- Sexual harassment in the workplace is an umbrella term that encompasses a *range of unwanted behaviors*. This includes nonphysical harassment, including suggestive remarks and gestures, or requests for sexual favors. Physical harassment includes touches, hugs, kisses, and coerced sex acts.
- It can be perpetrated by anyone — a manager, a colleague, a client. The perpetrator or the recipient may be male or female. It does not need to occur inside the office.

Sample Employee Policy

Sexual Harassment Defined

- **Unwelcome** sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:
 - Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment; or
 - Submission to or rejection of such conduct by an individual is used as the basis of employment decisions affecting such individual; or
 - Such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment



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Verbal Conduct

- Raw and crude language
- Sexual jokes
- Verbal flirtation
- Discussion of inappropriate subjects
- Persistent requests for dates



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Non-Verbal Conduct

- Accessing inappropriate material on the internet or other media
- Standing too close
- Inappropriate gestures
- Staring at someone or following someone
- Giving elaborate personal gifts or cards
- Hugging, kissing, massaging



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Hypothetical

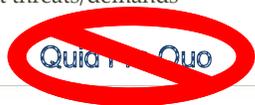
Beyonce asked her supervisor, Jay-Z, for a small raise.

Since Beyonce asked for the raise, Jay-Z has been behaving differently. Sometimes he blocks her way and gets very close when she tries to pass; other times he tells her she's a "good worker" and rubs her back or shoulders.

One day he pulls Beyonce into his office and tells her that she isn't due for a promotion yet; however, if she agrees to go out on a date with him, he could pull a few strings to get her a raise anyway.

"Quid Pro Quo"

- Occurs when the harasser conditions an educational or job opportunity, academic advantage, job benefit, or absence of a detriment upon the victim's compliance with sexual demands
- Includes implicit and explicit threats/demands



Hostile Work Environment

- Occurs when sexual harassment is a persistent condition of school or work, which results in an intimidating, offensive, abusive, or hostile atmosphere
- Includes intimidation, ridicule, jokes, insults that permeate the work place



Hypothetical

You are talking to an employee in the backroom of the building away from any customers and you overhear two of your co-workers sharing a series of "dumb blonde" jokes. A fellow employee, a blonde female, grimaces as she overhears. She does not ask the co-workers to stop making the jokes about blondes.

What do you do?

Hypothetical

Four months ago, Marcia filed an EEO complaint alleging her supervisor discriminated against her based on her sex (which is now in investigation).

After filing the of the complaint, Marcia began to feel alienated; her co-workers started limiting their contact with Marcia and she believed she was not receiving any prime assignments.

This week she received her performance evaluation which rated her as satisfactory. Over the past 3 years, her rating has been twice at the highly effective level, and once at the outstanding level.

Her supervisor's justification for the rating: she was not performing work expected of employees at her level, and she was not working well within the team.

No Retaliation

- Opposed sexual harassment or conduct that could reasonably be construed as a sexual harassment
- Reported, testified, assisted or participated in any manner with an investigation, proceeding or hearing involving sexual harassment



Hypothetical

The Christmas party was a howling success and a large group decided to continue the festivities at a local restaurant where there was a Latino band playing. A newly hired and attractive employee was discovered to be a very provocative and expert salsa dancer. Many at the party eagerly took their turns to be her dance partner.

Five days later, she confides to you that she has little recollection of the celebration and she can't understand why people are looking at her, smiling and chuckling as she walks through the halls. This has made her very uncomfortable.

What do you do?

Where is Harassment Prohibited?

- Prohibited workplace harassment and discrimination is unacceptable in the workplace, in any work-related setting outside the workplace and when using company owned electronic devices (computers, telephones, photocopiers, and faxes.)
- It can happen in or out of the formal workplace. It can happen at a company event like picnic or a party. It usually depends upon your relationship with the harasser and your situation at the time of the offense.

Does intent matter?

- Harassment does *not* have to be intentional
- Harassment does *not* have to be "targeted" at an individual
- The victim can actually engage in some of the same conduct or behavior and still have a claim
- The conduct or behavior does not have to be "sexual" or "racial," etc., in nature, if it is directed at someone because of membership in a protected class

THE REALITIES OF SEXUAL HARASSMENT



Excuses

- That's how I talk to and treat everyone
- She/he is complaining to get attention
- I know my audience
- He/she started it
- He/she liked it
- It was just a joke – everyone should just lighten up
- What? That's not harassment?





Why Complaints Aren't Made

- Embarrassment
- Self blame and guilt
- Concern for the harasser: "I don't want to get anyone in trouble."
- Unaware of policy and practice
- Fear of acquiring a bad reputation and/or the reputation of being "not one of the guys."
- Fear of retaliation





Employer Liability

- Employer is **automatically liable** for harassment by a supervisor that results in adverse employment action.
- If supervisor's harassment results in hostile work environment, employer **can avoid liability** if:
 1. reasonably tried to prevent and promptly correct the harassing behavior
 2. employee unreasonably failed to take advantage of preventive or corrective opportunities provided by employer
- For harassment by **non-supervisory employees or non-employees**, employer liable if:
 - Knew, or should have known about the harassment and failed to take prompt and appropriate corrective action.



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Hypothetical

You and your co-worker have been best friends for years and have known each other since you were children. You regularly get together at her place and share stories about various dates and romantic situations.

Sometimes you talk about these topics when work is slow and there are not any customers in earshot.

It is OK to talk about this at work? We both know we are not offended and talk like this all the time, outside of work.



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Hypothetical

Mary dreads each time her office color photocopier breaks down because the repair person assigned to her office always leers at her and makes sexually suggestive comments.

She has fears that if she complains, nothing will be done about it because the agency does not have control over repair person because he is an employee of the photocopier service company.

The supervisor does relay Mary's complaints to the service company, but no action is taken.

Analyze the supervisor's response. Appropriate?



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How can we prevent?

- Promote an **inclusive culture** in the workplace by fostering an environment of professionalism and respect for personal differences.
- Implement a **strong EEO policy** that is **embraced at the top levels** of the organization. Train managers, supervisors and employees on its contents, enforce it, and hold them accountable.
- **Train** Human Resources managers and all employees on the concepts of **Civility, Respect, Equality**.
- **Foster open communication** and early dispute resolution.
 - INVESTIGATE



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"I hope we talk about *culture* as much as we talk about individuals, and recognize that while the Weinsteins of the world are extreme, the messages we learn about sex, and power, and courtship, and consent, are deeply ingrained and start young — and will take far more than a workplace sexual harassment training to unlearn."

- Jessica Bennett, *NY Times*



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QUESTIONS?

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