



Your Irreplaceable Workforce Management Partner

Today's Presenter:

Anne M. Lavelle
CTR Compliance Specialist

Sexual Harassment

Two General Types:

- Quid Pro Quo - “You scratch my back...”
- Hostile Work Environment – conduct is severe OR frequent; does NOT have to result in an adverse employment action/consequence.

Anyone can be a victim:

- This can be male to female; female to male; same-sex, etc.
- Supervisor to subordinate; subordinate to supervisor; co-workers; customers/clients/third parties to employees.

Prohibited by:

- Title VII of the Civil Rights Act of 1964 (covering employers with 15 or more employees)
- Pennsylvania Human Relations Act (covering employers with 4 or more employees)
- Local laws
- Criminal laws – assault and battery; threats; stalking, aiding and abetting, etc.

Three basic forms of sexual harassment:

- Non-verbal – leering, staring, suggestive looks, gestures, exposing oneself, following/stalking, blowing kisses, blocking pathways/doorways,
- Verbal – Jokes, innuendo, requesting sexual “favors,” commenting on a person’s appearance, using suggestive nicknames or terms of endearment; showing sexually explicit videos.
- Physical – any form of unwanted touching, including hugging, kissing, groping, rubbing, pinching, etc.

Employer Basics on Prevention:

- Employer handbook policy prohibiting all forms of harassment, including sexual harassment
- AT LEAST TWO reporting options.
- “Climate Surveys”
- Take anonymous reports seriously
- Employment Practices Liability Insurance (EPLI)
- Difficult to defend – often he said/she said.
- Can include “off-duty” conduct
 - Social Media
 - After hours events

Interesting Statistics:

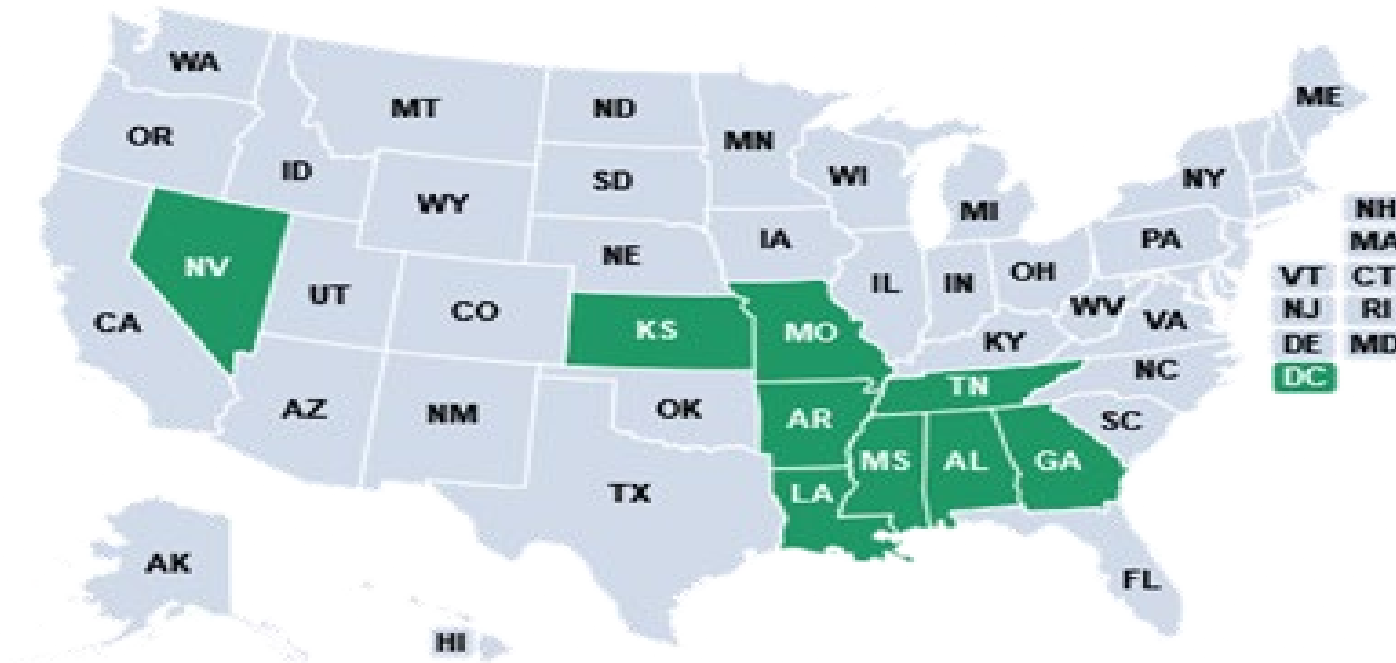
- EEOC (Equal Employment Opportunity Commission) receives between 6,000-8,000 sexual harassment complaints each year. State and local agencies receive more.
- Almost 80% filed by women.
- About 2,000 of the sexual harassment complaints also allege other discrimination; most often race or ethnicity
- Almost half of all sexual harassment complaints also allege retaliation. (Often the retaliation complaint is more concerning than the underlying sexual harassment complaint.)

Common Issues in Complaints:

Issue	
Discharge	48.3%
Harassment (non-sexual)	33.2%
Terms/Conditions	32.5%
Constructive Discharge	20.9%
Discipline	10.3%

Five Most Common Issues, Sexual Harassment Charges, FY 2018 – FY 2021
**SOURCE: U.S. EEOC, Integrated Mission System,
Charge Data, FY 2018 - FY 2021.**

Prevalence by State:



EEOC Collections (FY 2018-21):



\$299.8 million recovered



8,147 people benefited

- Average recovery is about \$37,000
- Does not include private lawsuits, state or local actions
- Does not include attorneys' fees

Equal Employment Opportunity Commission (EEOC) –

Updated Harassment/Hostile Work Environment Guidance:

- The guidance addresses how social media postings and other online content can contribute to hostile work environments, **even if it occurs outside of the workplace and is not work-related**. Specifically, communications conveyed using work-related systems, accounts or platforms – including an employer's email system, electronic bulletin board, instant message system, videoconferencing technology, intranet, public website or official social media accounts – are considered to be conducted within a "virtual work environment," which can contribute to a hostile work environment. Additionally, virtual conduct that occurs in a non-work-related context, such as communications over private phones, computers or social media accounts, may create a hostile work environment if it impacts the workplace. For example, if private communications that use racial slurs are released and/or discussed by co-workers at a workplace, then the communications can contribute to a racially hostile work environment
- The Commission also described affirmative actions for employers to reduce the likelihood of unlawful harassment. 1.) Employers should conduct climate surveys of employees to determine whether employees believe that harassment exists in the workplace and is tolerated 2.) The EEOC further advised employers to conduct bystander intervention training to create a sense of collective responsibility on the part of workers and empower them to be engaged bystanders in preventing harassment.

Rips and Caulk Guns:

- All male crew on gas rig in central Pennsylvania.
- Employees are paid extremely well. Work 12 hour shifts; 2 weeks on, 2 weeks off. Lots of overtime.
- Crew members often visit local “watering hole” in town during their 12 hours off.
- “Joe” is from South Dakota. He drives almost 20 hours every 2 weeks to work – the pay is that good.
- Joe likes the local watering hole – a little too much.
- At the start of every shift is a mandatory safety meeting. Joe misses meeting. Supervisor, “Bob,” sends another worker to retrieve Joe (who is hung over) from the living quarters (a.k.a. a total pit of a trailer that is the living quarters.) Joe show up late to meeting in ripped work uniform. Supervisor is irate. Work uniform is flame retardant and a rip is counterproductive. Supervisor reaches over to Joe and takes hold of the rip and rips it further, while telling him exactly what kind of idiot (yes, I cleaned this up A LOT) Joe is for being hungover, late and in inappropriate safety gear. The rip is on the back of Joe’s thigh. Company provides work uniforms and supervisor instructs Joe to get a new uniform from the supply trailer. Writes Joe up.

Rips and Caulk Guns (con't):

- Later that week, Joe is instructed to go to the supply trailer to obtain more caulk.
- Joe can't find it.
- Joe goes to supervisor's trailer. Bob is there with one of Joe's co-workers. Joe asks for caulk – says his caulk gun is empty. Bob and co-worker utilize their very best sophomoric humor to make a joke about Joe's caulk - ahemmmm – including size and need for a new/better one and/or tips on how to use a caulk gun. Bob and coworker say Joe engages in/reciprocates humor and laughs. Joe says he was mortified and experienced severe emotional trauma.
- On Joe's next 2 week stint, he calls off due to car break down.
- He borrows a car for the next stint.
- He no calls/no shows for the next stint. He is fired.
- Joe sues for sexual harassment. In his claim, he says it wasn't his car but the hostile work environment that caused him to miss work. Does he have a claim; does he win?

Harsh language:

- **This case occurred before same-sex sexual harassment was recognized by the EEOC.**
- Large mining company in Pennsylvania/West Virginia. Three male workers were driving through the coal mine during a work shift. A supervisor and 2 subordinates.
- One of the subordinates, “Carl,” was a former Vietnam veteran who suffered from PTSD from the war.
- Supervisor was unhappy about what he perceived to be a safety violation by Carl (it involved a failure to have a battery for a light or a working helmet light). Supervisor told Carl that he was going “to bend him over the rail and f*ck him up the butt until he bleeds.” After that Carl gets out of the vehicle, the other coworker drives a little bit and then stops and asks the supervisor about the prior comment and expresses his distaste for it.
- Carl says comment retriggered his PTSD because he believes there was rampant homosexuality and venereal disease in Vietnam and now he can no longer work.
- Carl files a workers’ compensation claim. Does he win?

Beware of Eminem in the workplace:

- S&S Activewear permitted its managers and employees to routinely play "sexually graphic, violently misogynistic" music throughout its 700,000-square-foot warehouse in Reno, Nevada.
- The eight plaintiffs were offended by songs that used offensive terms like "hos" and "bitches" and contained themes that denigrated women.
- The complaint mentions Eminem's "Stan," which they allege, "described extreme violence against women, detailing a pregnant woman being stuffed into a car trunk and driven into water to be drowned." The plaintiffs also mentioned music by rapper Too \$hort.
- Despite their frequent complaints regarding the music, the plaintiffs claim that warehouse management maintained that the songs were "motivational."
- Court says harassment. Caution for workplaces – national news, music, posters, calendars, pottery, mugs, etc...

Bad Banker:

- Female employee is allegedly sexually harassed by bank president (who is also her direct supervisor).
- She complains to bank's Chairman.
- Employee terminated after seven months and almost immediately after complaining.
- Father of female employee is an attorney. He tells bank president that an EEOC charge will be forthcoming.
- Father/attorney handled all foreclosure matters for bank.
- Bank pulls all foreclosure cases from father/attorney.
- Father defaults on his own mortgage to bank, since his foreclosure work was the mainstay of his practice. Bank pursues foreclosure action against father.
- Who has a claim and what is it?

Questionable visitor:

- Dal-Tile Corporation was a manufacturer and distributor of tile and stone products. The plaintiff, Freeman, was employed as a customer service representative for Dal-Tile.
- Dal-Tile did a large amount of business with a company that was serviced by Koester, an independent sales representative. Koester frequently visited the Dal-Tile facility and was in contact with Freeman, either in person or by phone, several times per week for a period of three years. During this contact, Koester repeatedly made sexist and racist comments using terms such as "black b----es" and "n----rs", showing Freeman pictures of naked women on his cell phone, making sexual remarks, telling Freeman's co-workers that he would "hook up with one of your daughters", and passing gas on Freeman's telephone.
- Freeman frequently told Koester that his comments were offensive and demeaning, asking him not to use that sort of language anymore. Freeman also reported each instance to her supervisor. Freeman's supervisor's reaction was to laugh, roll her eyes, and state that Koester was an "a--hole".
- After Freeman's supervisor failed to remedy the situation, Freeman reported Koester's remarks to Human Resources. Human Resources promised to permanently ban Koester from the facility. However, Dal-Tile quickly lifted the ban and instead prohibited Koester from communicating with Freeman. Koester remained free to visit Dal-Tile's facilities.

Questionable visitor (con't):

- Upset that she might bump into Koester at work, Freeman took a two and one-half month medical leave, during which time she received treatment for depression and anxiety. When Freeman returned, she was told that Koester no longer represented the same customer, but would continue to do business with Dal-Tile. Freeman resigned, stating that the depression and anxiety became too much for her.
- Did the company “fix” the problem?

Almost Chris Hemsworth...:

- 29-year-old marketing executive “Jim” was often told to do “whatever it takes” to close a sale. This would include entertaining customers, most of whom were female bosses.
- Jim felt singled out because he’s tall and good looking and his female colleagues would say things like, “if you have it, flaunt it” and “nobody would say no to that cute face”.
- His boss (a female) and colleagues would often joke that all he had to do was to ‘please all the sugar mammas to close sales’.
- Although they said it jokingly, and Jim never had to do anything of a sexual nature, he felt uncomfortable about the explicit innuendos.
- Does he have a claim?

File Cabinet Placement:

- Long time salesman worked with three different secretaries.
- Often bought them lunch.
- To get to the file cabinet, he had to “reach” past the secretary sitting next to him. He often did this by putting his hand on their thigh and brushing against their breasts.
- All three women sued.
- Outcome?

Thank you for attending!