



## Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

# Employee Workbook

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# Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

## Section 2 Employee Workbook

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## Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

### Introduction

#### A Respectful Workplace Is Important to Everyone

Our Company is committed to providing a respectful workplace. This requires every employee, at every level of the organization, to engage in appropriate behaviors in the workplace and other work settings when representing our Company.

When employees are engaged in appropriate behaviors in the workplace, a climate of respect becomes part of the corporate culture. It's called *Creating the Respect Effect*. It's like a ripple effect—everyone joins in. Respect becomes the norm. And a respectful corporate culture is essential to keeping our Company competitive and successful, which benefits all of us.

#### Learning Objectives

Upon completion of this program, you will be able to:

1. Define the two types of harassment: ***quid pro quo*** and **hostile work environment**.
2. Explain why harassment and discrimination based on a person's **age, race, color, sex, disability, national origin, religion** and other protected categories are prohibited at our Company.
3. Describe the difference between **the intent versus the impact** of behavior.
4. Become our Company's **first line of defense** against harassment, discrimination and other disrespectful behavior by complying with Company policies and engaging in respectful behavior, which includes no retaliation.
5. Understand how the *Respect Effect* benefits our Company and each of you individually as employees.



## Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

### **PART 1:** **Defining Discrimination, Harassment and Retaliation**

#### **Discrimination**

Most people understand that discrimination is treating one person unfairly compared to another according to factors unrelated to their ability, such as sex, race, age, disability or national origin. A more difficult concept to define under the law is harassment. We will, therefore, spend time defining “harassment.”

#### **The Legal Definition of Sexual Harassment**

Sexual harassment is a form of unlawful sexual discrimination under Title VII of the 1964 Civil Rights Act. The Equal Employment Opportunity Commission (EEOC), the federal agency that enforces Title VII, defines sexual harassment as:

- Unwelcome sexual advances;
- Requests for sexual favors;
- Sexually motivated physical conduct; or
- Other verbal or physical conduct of a sexual nature, when:
  - Submission to that conduct is made a term or condition of an individual's employment;
  - Submission to that conduct is used as a factor in making employment decisions affecting an individual;or
- The conduct has the purpose or effect of unreasonably interfering with an individual's employment, or creating an intimidating, hostile or offensive employment environment.

#### **In 1986, the United States Supreme Court recognized two different types of harassment:**

- *Quid pro quo* harassment.
- Hostile work environment harassment.

#### **Quid Pro Quo Sexual Harassment**

- *Quid pro quo* is a Latin term that means “this for that,” and implies an exchange of one thing for another.
- *Quid pro quo* harassment generally occurs when an employee is encouraged or pressured to trade sexual favors in return for an employment-related benefit, such as continued employment or a promotion.
- The person who is pressuring the employee must have the authority to control the employee's working conditions; this person is usually a supervisor. In a typical *quid pro quo* case, a supervisor abuses his or her supervisory authority by pressuring a subordinate for sexual favors.

#### **Examples of *quid pro quo* harassment:**

- Demanding sexual favors in exchange for a promotion, raise or other job benefits.
- Threatening to deny an expected raise, promotion or other job benefit if sexual favors are not provided.

#### **Hostile Work Environment Harassment**

- A pattern of ongoing harassing conduct that is so offensive or unpleasant that it unreasonably affects the employee's working conditions and creates a hostile work environment.
- This covers more than sexual conduct. It may be based on an employee's age, race, color, sex, disability, national origin, religion or other protected characteristic.
- Conduct may be verbal, physical or visual, and the harasser may be a supervisor or a co-worker.
- Harasser can be someone who interacts with employees but does not work for our Company, such as customers or vendors.

#### **Examples of sexually hostile work environment harassment (either alone or in combination with other factors) may include:**

- Pornographic pictures or magazines in the workplace and vulgar comments about them.
- Offensive sexual comments made to and about the person based on his or her sex.
- Unwanted touching on someone's shoulder, arm, back, knee, etc.



## Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

### What Determines if Conduct Is Harassing?

Other factors contribute in determining whether a hostile work environment exists:

- How **frequently** the offensive or discriminatory conduct occurs.
- Whether the conduct is **unwelcome**.
- The **severity** of the conduct.
- Whether the conduct is **physically threatening or humiliating**.
- Whether the conduct **unreasonably interferes with an employee's work performance**.
- The **impact** of the conduct on **the employee's psychological well-being**.

The courts apply a "reasonable person" standard to judge these factors.

**The conduct must be because of, or directed at, a protected characteristic.** Federal anti-discrimination laws prohibit harassment of an employee based on certain protected characteristics, such as the person's sex, race, color, religion, national origin, age or disability.

### Who Is Liable for Harassment?

- An employer is liable for conduct it engages in, and, in addition, an employer may be liable for harassment committed by a co-worker against another employee, if the employer fails to take action to address the problem, once it becomes aware of the issue.
- Employees who engage in harassing behavior may be individually liable in some states.

An employee has to establish that:

- There was **conduct** that was
- **Related to a protected category**; and it was
- **Unwelcome**; and
- **Offensive to a reasonable person**; and
- So **severe or pervasive** that it
- **Affected a term or condition of his or her employment**.

### Retaliation (Reprisal)

Federal law and most state laws also protect from retaliation employees who oppose or report discrimination or harassment. Specifically, it is unlawful for an employer to retaliate against a person for opposing an unlawful practice, filing a charge, or participating in an investigation into unlawful conduct.

To establish a claim of retaliation, the individual must show that:

1. He or she opposed discrimination, or participated in a covered proceeding (e.g., helped someone file a charge, provided information to the EEOC or testified as a witness);
2. He or she suffered an adverse employment action; and
3. A causal relationship exists between the "protected activity" and the adverse employment action.

In addition to engaging in a protected activity, an individual making a claim of retaliation must show that the employer took an "adverse action" against him or her. Adverse actions generally include significant employment actions such as termination, discipline, demotion or reduction in wages and benefits. In contrast, less important matters that the employee may not like, such as not getting a new computer or being assigned to a different truck, usually do not constitute adverse actions under Title VII.

### Under the Law

- Filing a charge is protected.
- Providing information or being a witness is protected.
- Voicing opposition to illegal conduct may be protected.

If any employee is mistreated as a result of engaging in these protected activities, our Company could be liable for illegal retaliation.



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### **Employees May Have Individual Liability**

Generally speaking, individual employees are not personally liable for employment discrimination, retaliation or harassment under Title VII, the Americans with Disabilities Act (ADA) or the Age Discrimination in Employment Act (ADEA).

However, some state and local equal employment opportunity (EEO) laws prohibit both employers and individual employees from discriminating, harassing or retaliating behavior. In addition, individual employees may be liable under state common law theories for their harassing behavior. Thus, an individual employee who sexually harasses someone may be personally liable for state common law violations, such as intentional or negligent infliction of emotional distress or assault and battery.

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## Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

### **PART 2:**

#### **Identifying Sexual Harassment, Gender Discrimination and Retaliation Issues**

##### **Video and Discussion: *At the Sales Meeting***

1. What inappropriate behaviors did you see while Trish was talking to her co-workers?
2. What did Trish do or say to indicate that she found the behavior of her co-workers to be offensive or unwelcome?
3. Do you think a “reasonable person” would have been offended by the behaviors of Trish’s co-workers? Do you think her co-workers intended to offend her?
4. Does it matter that this behavior occurred outside of the office? Does our Company’s policy allow such behavior in this context?
5. If you were a co-worker of Trish, standing with her while these conversations were going on, what would you do?
6. Do you think these men laughing and talking to Trish may have been sending unintentional messages? Does this matter when assessing compliance with the law and our policy?
7. What inappropriate behaviors did you see when Trish talked to her manager?
8. Could Trish have done or said more in these situations? Did she need to?



## Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

### Discussion: Why Don't People Speak Up?

Individuals often do not complain about workplace harassment, discrimination, retaliation or other forms of disrespect. Below are some common reasons why people who have been harassed, disrespected and/or discriminated against often stay silent about their experiences.

**No one will believe me.** Individuals who have experienced harassment, discrimination, disrespect or retaliation may be reluctant to report misconduct because they are afraid no one will believe them. Particularly when sexual favors are solicited in exchange for a job benefit, no witnesses may be available to verify what happened.

**I am embarrassed and afraid I will be blamed.** Individuals may be concerned their own behavior is going to be closely scrutinized to see if they “asked for it.” In addition, the individual may be embarrassed about what happened.

**Whom would I tell?** An individual may be unaware that our Company has a policy prohibiting harassment, discrimination or retaliation, as well as a procedure for individuals to report problems. More important, an individual may be reluctant to talk to the designated Company representative because he or she has not developed trust in or rapport with that person.

**Nothing will be done or no one will take me seriously.** Individuals may believe nothing will be done about a harassment, discrimination or retaliation complaint, or there may be a concern that any investigation will be a mere formality. In many companies, because the managers and Human Resources personnel cannot talk much about the results of what happens when complaints are brought forward, rumors circulate that nothing happened in response to the issues raised.

**Everyone will find out.** Individuals may be afraid that they will lose their privacy because the situation will not remain confidential. Sexual harassment allegations, for example, can be a juicy topic for office gossip.

**I can handle it on my own.** Individuals may think they can handle the harassment without realizing the physical and emotional impact it may have on them. Even though employee assistance programs, Human Resources or other avenues for help may exist within our Company, the employee may be reluctant to use these resources, believing he or she should “tough it out.”

**I just applied for a promotion and I'm afraid I will jeopardize my chances if I complain.** Individuals may be afraid they will suffer retaliation for complaining. Or, a concern they will be branded a “troublemaker,” overly sensitive or “not a team player” may make some individuals hesitate to report misconduct.



## Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

### Video and Discussion: *Keeping the Customer Happy*

1. What inappropriate behavior did you see happening between Brad (the driver) and Lisa (the customer)?
2. Does it make any difference that it is a woman “complimenting” a man in this scene?
3. What do you think about how Brad handled the customer? What else might he have done?
4. Did Brad do the right thing by discussing the situation with his manager?
5. If, on Brad's next visit, Lisa continues to engage in the same type of behavior, what should he do?
6. Is it okay for the customer to refuse to work with the Company or Brad because he will not “play along?”

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## Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

### **PART 3:** **Identifying Other Harassment, Discrimination and Retaliation Issues**

#### **Video and Discussion: *Welcome Aboard***

1. What did you think about the comments Gloria made to the new financial analyst, Richard, in the first scene?
2. Was there anything “illegal” about Gloria’s comments?
3. Did Richard regard Gloria’s comments as welcome or unwelcome? How can you tell?
4. Did Gloria intend to offend Richard? Does it matter?
5. If you were in the area and overheard the conversation between Richard and Gloria, what would/could you do to help?
6. Do you see any significant problems in the second conversation between Richard and Gloria?
7. If the objective is to have a respectful workplace where everyone feels comfortable, what might Gloria have done differently in this vignette? What might Richard have done differently? What might Mr. Wyatt, the Company owner, have done differently?



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### Video and Discussion: *Conversations at Lunch*

1. What do you think about the comments that were made in the lunchroom? Do these comments alone constitute harassment? Were they appropriate or inappropriate?
2. Does it matter that the employees in the lunchroom did not know that Nadia could hear them?
3. Do you have a right to free speech at work?
4. If you were in that lunchroom, what would/should you have done?

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## Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

### Video and Discussion: *His New Bride*

1. What was going on here? What kind of comments did Ray, the older worker, have to listen to? Were they appropriate?
2. Do you see anything wrong with the comments that were made?
3. Are comments made in the workplace about a person's health issues, like Ray's back trouble, a cause for concern? Why or why not?
4. What impact are these comments likely to have on Ray? What is the impact on the team? What is the impact on the business as a whole?
5. What could/should you do if you observed this behavior in your work area?

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## Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

### Report Harassing Behavior

- You should report harassing behavior immediately to your supervisor, another member of management or a Human Resources representative.
- For other resources or assistance, talk to Human Resources if applicable or another EEO person.
- The only way the Company can address problems is to know about them.

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## Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

### Summary and Ending

- Important action items to remember:
  - When there is a problem on a respect issue, educate others about what you feel is appropriate and inappropriate behavior, and be receptive when others educate you on those issues.
  - Speak up when you see or experience disrespectful behavior. Tell the person to stop his or her behavior immediately. Respect each other by keeping the *Respect Effect* in mind when you interact with other employees.
  - Report harassing behavior to a supervisor or Human Resources.
  - Don't allow disrespectful, discriminatory, retaliatory or harassing behavior to occur in our work environment.

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