

# LEGAL BRIEFS

Employment Law Training Series



# **Harassment and Discrimination: Promoting Respect and Preventing Discrimination**

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**Facilitator's Guide**

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# Introduction

This program is designed to help your managers recognize the common pitfalls regarding harassment and discrimination, as well as actions they can take to keep themselves and your organization on the right track and out of court.

*Harassment and Discrimination: Promoting Respect & Preventing Discrimination* provides answers to several of the most common questions managers struggle with regarding harassment and discrimination.

- Do managers have to report harassing conduct if no one is complaining?
- Can managers promise employees absolute confidentiality regarding an embarrassing incident?
- Can women harass men?
- What should a manager do if they find out that two of their employees are dating?
- What could happen if a manager knows that harassment or discrimination occurs, but they do nothing to stop it?

In addition, the program provides managers with four actions that they can take to keep themselves and their organizations out of court.

This program is designed to cut through the legal jargon to provide clear and concise information in terms that everyone can understand.

# Uses

This program may be used in many ways:

- 60 minute training session
- Staff meetings
- Conferences
- New manager orientation
- Self-study/self-directed learning

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## Key Learning Points

During the program, participants will learn:

- The definition of "quid pro quo" and "hostile work environment" sexual harassment
- The definition of the "reasonable person" standard
- The five common pitfalls of harassment and discrimination issues
- The four specific actions managers can take to keep themselves and their organizations out of court

## Training Materials

**Video** – The video, *Harassment and Discrimination: Promoting Respect & Preventing Discrimination* is divided into three segments. The first segment provides information on key concepts. The second segment provides the five pitfalls of harassment and discrimination situations. The third segment provides managers with four action steps to help them and their organizations stay out of court.

**Facilitator's Guide** – The facilitation guide contains complete step-by-step directions for conducting this course. With the exception of the session evaluation, the facilitation guide is not reproducible. If additional guides are needed, please contact your vendor.

**Participant's Reference Guide** – The participant's reference guide contains a complete review of the key information covered in this course, along with supplemental information regarding harassment and discrimination. In addition, it includes a pre-assessment and post-assessment. The post-assessment is removable and designed to be included in the employee's personnel file, if desired. The participant's reference guide is not reproducible. If additional copies are needed, please contact your vendor.

## Agenda

This program is designed to be presented in a one-hour training session.

### 60-Minute Agenda

Program Introduction . . . . .	5 minutes
Show and Review Video . . . . .	20 minutes
Optional Review of Supplemental Info. . . . .	30 minutes
Program Debrief . . . . .	5 minutes

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# Facilitator's Checklist

## Before Training

- Read through the entire facilitation manual
- Watch the video several times
- Determine the length of your session
- Send out a memo inviting participants to the training
- Locate audio/visual equipment and make sure it works
- Make copies of any exercises needed for the training
- Identify any personal stories that may make the session more meaningful to participants

## Day of the Training

- Review your notes
- Check the TV/VCR
- Prepare Flipcharts
- Check the lighting of the room
- Set up the room arrangement. Participants will need to get into small groups during the session

## After the Training

- Review the post-assessment and session evaluation
- Document the recommended changes to your presentation or materials
- Follow-up with participants on next steps, comments, or action plans, as agreed

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# Step-by-Step Facilitation Instructions

## Step 1 – Introduce the program.

Communicate the following to participants:

**Harassment and discrimination are probably two of the most well known legal issues you will face as a manager. Unfortunately, they are also the two areas where you can get yourself in the most trouble. You would think that given the amount of publicity on this topic in newspapers and television that managers would be well versed in how to stay out of trouble, but that is not the case.**

**By the end of this program, you should know:**

- **The definition of "quid pro quo" and "hostile work environment" sexual harassment**
- **The definition of the "reasonable person" standard**
- **The five common pitfalls of harassment and discrimination issues**
- **The four specific actions managers can take to keep themselves and their organizations out of court**

**Before we go any further, let's take a few moments to introduce ourselves.**

## Step 2 – Introduce yourself and then have participants introduce themselves.

This would be a good time to share a story or personal experience regarding harassment or discrimination that you have encountered. By opening yourself up and sharing something personal, you will give participants permission to do the same.

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**Step 3 – Distribute a copy of the Participant’s Reference Guide to each participant.**

Communicate the following:

**Before we view the video, I’d like you to take a few minutes to complete the pre-assessment in your desk reference guide. This self-assessment is designed to give you a clearer picture of your present understanding of harassment and discrimination legal pitfalls.**

Give participants a few minutes to complete the assessment. When participants are finished, collect assessments for comparison with the post-assessments that will be done at the end of the session.

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# Pre-Assessment - Facilitator's Copy

## Instructions:

Please read the statements and circle the appropriate response.

1. Quid pro quo sexual harassment literally means "this for that." This form of harassment involves a promise of better benefits, a promotion or a guarantee of continued employment in return for a sexual favor.  
  
True or False
2. Hostile work environment only occurs when inappropriate pictures or jokes are present in the physical environment of the workspace.  
  
True or False
3. If no one is complaining about the harassment, you don't have to report it.  
  
True or False
4. If an organization winds up in court, the jury is asked to look at the conduct from a "reasonable person's" perspective.  
  
True or False
5. If the person complaining about the harassment wants you to keep the information confidential and not report it, you have a moral obligation to respect their wishes.  
  
True or False
6. Men harassing women is the most prevalent kind of harassment because women technically cannot harass men.  
  
True or False
7. Managers or supervisors who date subordinates are subject to claims of quid pro quo harassment.  
  
True or False
8. Having a comprehensive harassment policy pretty much guarantees that you and your organization will not be held liable in discriminatory cases.  
  
True or False
9. If harassment is present and you know or should have known about it, your company may not represent you during a court case.  
  
True or False
10. One important way for managers to stay out of court is to take every complaint seriously. Don't dismiss a complaint as frivolous or as someone being overly sensitive.  
  
True or False

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**Step 4 – Show the Video.**

Communicate the following:

**Now we are going to watch a video that addresses some of the tough questions managers have asked regarding harassment and discrimination. When we are done we will take a few minutes to review the information the video covers and talk about how those ideas apply within our organization.**

Play the video from start to finish.

**Step 5 – Review the key points.**

Communicate the following:

**There are four actions you can take to make sure you are staying out of trouble:**

- 1. Make sure your organization's rules and procedures concerning discriminatory harassment are followed...that means making sure everyone is aware of the prohibited conduct and consequences.**
- 2. Observe actions and attitudes. You should always be aware of what is going on in your work area.**
- 3. Investigate every complaint. Don't dismiss a complaint as frivolous or as someone being overly sensitive. You must investigate complaints immediately and thoroughly.**
- 4. Document your actions. Be sure you document your findings without bias to one party or the other. Obtain written signed and dated statements. Take notes of interviews. Prepare a written report. Do not include opinions or conclusions.**

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**Step 6 – Discuss the case study.**

Communicate the following:

**In order to gain some perspective on the information covered in the video, let's take a few minutes to discuss a hypothetical situation that you might face as a manager.**

**Let's say you work in a large department where you are the manager of 15 employees. Two of the employees in your department are in a team leader position. As you are walking down the hall, you overhear one of your team leaders making a date with one of his or her subordinates. When you get back to your office you discover that you have been sent a sexually suggestive e-mail from this same team leader by mistake. The team leader had obviously intended for the e-mail to go to one of his or her buddies in the department. The e-mail makes inappropriate sexual references regarding several of the staff members in your department. After reviewing the e-mail, there is a knock at your door. Your assistant says that she just ran into this team leader in the break room and this person is having difficulty making eye contact again. When you ask what your assistant means by this comment, she tells you that this team leader has a habit of staring at women's chests when in conversation. Everyone in the department is annoyed by it, but she makes it very clear to you that she doesn't want you to say or do anything about this situation; she just needed to vent her frustration. What are all the issues you would need to consider in this situation and why?**

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**Q. What should the manager have done when they walked by and heard the team leader making a date with a subordinate?**

A. *The manager should have asked to meet with the team leader and discussed the harassment and discrimination risks of dating right away. The manager should also communicate any organizational policy the company has regarding dating at work.*

**Q. What should the manager do about the e-mail situation?**

A. *The manager should confront the team leader immediately about sending inappropriate e-mails from work. The manager should let the team leader know that this type of behavior would be considered hostile work environment sexual harassment. The manager should also let the team leader know that all e-mails are archived and in the event of a sexual harassment lawsuit these types of e-mails could be brought as evidence of harassment. The manager should also point out any organizational policy regarding e-mail usage.*

**Q. What should you do about the information your assistant shared with you?**

A. *First, tell her that you cannot promise to keep the information totally confidential. Tell her you will do your best to maintain her privacy but this is a serious situation that needs to be looked into and you will have to document names in the report.*

**Q. What if the team leader were female? Would that change how you would handle the situation?**

A. *No. Women are capable of harassing other women in the workplace. You need to give all forms of harassment equal attention in the workplace. You would still need to follow organizational procedure for each of the instances in the case study.*

### **Step 7 – Complete the post-assessment.**

Ask participants to complete the post-assessment in their Participant Reference Guide. Then take a few minutes to review the correct answers with the participants.

Ask the participants to sign and date the certification of training, then remove it from the back of the reference guide. The certification should be turned into you at the end of the session.

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# Post-Assessment - Facilitator's Copy

**Instructions:** Read the statements and circle the appropriate response.

1. Quid pro quo sexual harassment literally means "this for that." This form of harassment involves a promise of better benefits, a promotion or a guarantee of continued employment in return for a sexual favor.

True or False (True)

2. Hostile work environment only occurs when inappropriate pictures or jokes are present in the physical environment of the workspace.

True or False (False – A hostile work environment can be created when any type of unwelcome, unwanted behavior is present that negatively impacts a person's ability to do his/her job.)

3. If no one is complaining about the harassment, you don't have to report it.

True or False (False)

4. If an organization winds up in court, the jury is asked to look at the conduct from a "reasonable person's" perspective.

True or False (True)

5. If the person complaining about the harassment wants you to keep the information confidential and not report it, you have a moral obligation to respect their wishes.

True or False (False)

6. Men harassing women is the most prevalent kind of harassment because women technically cannot harass men.

True or False (False)

7. Managers or supervisors who date subordinates are subject to claims of quid pro quo harassment.

True or False (True)

8. Having a comprehensive harassment policy pretty much guarantees that you and your organization will not be held liable in discriminatory cases.

True or False (False – Having the policy alone is no guarantee. It must be consistently enforced.)

9. If harassment is present and you know or should have known about it, your company may not represent you during a court case.

True or False (True)

10. One important way for managers to stay out of court is to take every complaint seriously. Don't dismiss a complaint as frivolous or as someone being overly sensitive.

True or False (True)

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**Step 8 – Wrap up the session.**

Distribute the session evaluation and give the participants a few minutes to complete it.

Communicate the following:

**When it comes to harassment and discrimination, we don't expect you to grasp every nuance of the law. However, to protect yourself and the organization, you are expected to follow the four actions we've just discussed.**

**Your Participant Reference Guide contains answers to more frequently asked questions regarding harassment and discrimination, as well as a list of additional resources available to you.**

**I encourage you to take the time to review the information, and keep the booklet in a handy place for future reference.**

**Thanks for your time.**

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# Session Evaluation

**Instructions:**

*Please answer the following questions. Your answers will help assess the effectiveness of this training and identify areas for improvement.*

As a result of this training, are you better able to:

1. Explain the definition of quid pro quo and hostile work environment sexual harassment?

Yes    No    Not Sure

2. Explain the reasonable person standard?

Yes    No    Not Sure

3. Recognize and stop sexual harassment?

Yes    No    Not Sure

4. Report harassing conduct even if no one is complaining?

Yes    No    Not Sure

5. Identify four specific actions to take to stay out of legal trouble?

Yes    No    Not Sure

6. My overall rating of this presentation is:

a. Excellent    b. Good    c. Satisfactory    d. Needs Improvement    e. Unsatisfactory

**Comments for Presenter:**

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## Supplemental Reference - Facilitator's Copy

The following supplemental reference information is contained in the Participant's Reference Guide.

**Q. What does the EEOC say about sexual harassment?**

- A. *Sexual harassment is a form of sex-discrimination that violates Title VII of the Civil Rights Act of 1964. The Equal Employment Opportunity Commission (EEOC) defines sexual harassment as "unwelcome sexual advances, requests for sexual favors, and any other verbal or physical conduct of a sexual nature...when submission to or rejection of such conduct is used as the basis for employment decisions...or such conduct has the purpose or effect of...creating an intimidating, hostile working environment."*

**Q. What is discrimination?**

- A. *Discrimination occurs when a person or group of people are treated differently from another person or group of people.*

**Q. What is Title VII of the Civil Rights Act of 1964?**

- A. *Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, sex, religion, national origin, color, pregnancy, etc.*

**Q. What is considered harassing behavior?**

- A. *First, the behavior must be unwelcome. The behavior can be very obvious or very subtle. The behavior can be verbal like jokes or inappropriate comments; or visual like pictures, or lewd gestures; or physical like pats, shoulder rubs, brushing up against someone on purpose; or written in the form of memos, letters, or e-mails.*

**Q. What is the profile of the typical harasser?**

- A. *Actually, there is no profile for a typical harasser.*

**Q. Is sexual harassment about sexual attraction?**

- A. *No. Sexual harassment isn't about sexual attraction. Sexual harassment is about the inappropriate use of power over another person.*

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**Q. If an employee consents to sexual activity and then files a sexual harassment claim, will the claim be thrown out due to initial consent?**

A. *No. Consent to sexual activity doesn't mean that an employee can't file a sexual harassment claim. It is also not a defense the organization can use to avoid liability in a sexual harassment suit.*

**Q. What do most people want when they file a sexual harassment complaint?**

A. *Most people that file a sexual harassment complaint just want the behavior to stop.*

**Q. Can your organization be held liable for harassment from someone outside the organization, like a vendor or customer?**

A. *Yes. If an employee were to file a complaint regarding a customer or vendor, you should follow-up with the complaint just as you would if the person were an employee of your organization. Also, if your employees are harassing someone outside of your organization, you are responsible for their behavior in those situations as well.*

**Q. What types of people get harassed?**

A. *Anyone can be harassed. When sexual harassment first became an issue in the workplace, statistics showed women to be the most harassed group of employees. Currently, statistics find that there is just as much harassment of men and homosexual employees as there is harassment of female employees.*

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## For Further Information

Here are some sources for additional information on harassment and discrimination:

### Web Sites

The U.S. Equal Employment Opportunity Commission Home Page—  
<http://www.eeoc.gov/>

Findlaw.com labor and employment law links—  
<http://guide.biz.findlaw.com/01topics/27labor/index.html>

### Telephone Numbers

Equal Employment Opportunity Commission  
1-800-669-4000

Equal Rights Advocates  
1-800-839-7372

National Job Problem Hotline  
1-800-522-0925

National Victim Center  
1-800-FYI-CALL

### Addresses for Harassment and Discrimination Information

U.S. Equal Employment Opportunity Commission  
1801 L Street, NW  
Washington, DC 20590  
1-800-522-0925

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