

KANTOLA
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Harassment Prevention:

A Commonsense Approach
For Managers



MANAGER
VERSION
Study Guide

Harassment Prevention A Commonsense Approach

Study Guide Manager Version

Produced by
Kantola Training Solutions

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Introduction

The opening scene in the course, *Harassment Prevention: A Commonsense Approach for Managers*, shows an example of inappropriate conduct that involves two colleagues playing a game that is not suitable for the workplace. They continue until they are interrupted by their boss and realize they've crossed a line.



"Name three people..."

While our example might seem relatively harmless, this kind of behavior tends to lower workplace standards and lead to even worse behavior over time. It could also be considered harassment if others learn after the fact that they were targeted by the game, or are otherwise exposed to it and find it to be unwelcome.

This study guide covers laws that protect our rights as individuals in the workplace. But rather than limiting our focus to purely legal issues, we'll also emphasize civility and respect. We'll talk about how you as a manager can become more proactive about maintaining a respectful workplace and protecting your subordinates.

It's your responsibility to know and follow employer policies

In fact, it is your responsibility to apply your employer's policies and keep your workplace free from unlawful conduct like discrimination and harassment. Therefore, the main goal of this course is to review what is necessary for creating an environment where everyone is free to do their best work without the threat of unwelcome behavior.

Remember: If coworkers get along and treat each other with respect, your workplace will be more pleasant for everyone, and your job will be easier and more successful.

Quid Pro Quo

There are two types of unlawful workplace harassment. The first type is “quid pro quo” sexual harassment.

This occurs when someone in a position of power or influence in the workplace takes a tangible employment action for or against an employee who either agrees, or refuses, to go along with a request for sex or romantic activity.

Quid pro quo is a legal phrase taken from Latin. It translates as “this for that” or “this in exchange for that.” In many areas of business and law, quid pro quo can be used as a fairly neutral term describing an even exchange.

Quid pro quo = this for that

In the context of harassment, it’s not an even exchange. When sexual favors are demanded in return for workplace benefits, or to avoid negative consequences, there is an increased likelihood of a claim of quid pro quo harassment.



“What about your sister?”

In this scene from the course, the supervisor crossed the line. Threatening to make schedule changes after his subordinate refused to go along with his sexual advances is clearly quid pro quo harassment. We will discuss the consequences this supervisor faced later in the course.

But what about behavior that is not as obvious?



In this scene, a manager pressured her subordinate to socialize after work, mentioning that they could discuss his upcoming review while having a meal together. Was this request appropriate? Did it cross the line? This manager's motivations may have been innocent. But then again, maybe not.

"Just one beer..."

When an incident of quid pro quo harassment is found to have occurred in the workplace, it is not unusual to discover a prior pattern of the wrongdoer having engaged in "testing" behaviors that started with small, but escalating requests.

Anti-harassment laws protect individuals in situations like this, whether or not they are comfortable speaking up. In her position as the manager, she is the one with the responsibility to keep things professional and notice her subordinate's discomfort. She should have backed off immediately when he first declined her invitation.

Remember: If you can determine or influence an individual's compensation, job duties, schedule, advancement, prestige, or other benefits at work, this gives you power over them. You are required by law and employer policies not to use this power for harassment or discrimination.

Hostile Work Environment

The second type of unlawful sexual harassment is called “hostile work environment” harassment. Hostile work environment harassment is defined as unwelcome behavior, related to a legally protected characteristic, that is ongoing, pervasive or severe, or unreasonably interferes with an individual’s ability to do their job.

Hostile work environment harassment includes unwelcome behavior, tied to a protected characteristic



“In your dreams...”

The “harasser” could be a supervisor, a coworker, or someone who is not an employee, such as a client or customer. The “victim” could be the target of the behavior or an observer. In our example, a couple of coworkers offend another with their “joking around” that includes sexual innuendos.

Harassment does not depend on the gender of the parties involved, nor must it be motivated by sexual desire. Harassers can be of the same or different gender of the recipients of the unwanted behavior.

Harassment can take the form of conduct that is visual, such as offensive images or cartoons; verbal, such as offensive jokes, epithets or slurs; or physical, such as unwelcome touching or blocking someone’s path.

As someone with supervisory responsibilities, you represent your employer. If you know about inappropriate behavior, you must take prompt, corrective action.

Remember: Early intervention is critical — as is educating your team about what kind of behavior is acceptable and what is not in your particular workgroup.

Welcome vs Unwelcome

What qualifies as “unwelcome” conduct? Unwelcome conduct is behavior that is not wanted, not requested and/or not willingly reciprocated.

Unwelcome conduct is behavior that is:

- **Not wanted**
- **Not requested and/or**
- **Not willingly reciprocated**

This means that a person doesn’t like it, didn’t ask for it, and is not freely participating in it.

Notice that the focus is on the recipient or observer of the behavior, not on the person who is doing it. It is the recipient or observer who determines whether conduct is welcome or unwelcome.

It might be obvious to recognize who is the recipient or target of unwelcome behavior. But observers can also be subject to harassment if they witness behavior they find to be unwelcome, whether or not the behavior is directed at them. This is true even when others are willingly joining in on the offensive behavior, and the instigator genuinely did not intend any harm.



“I don’t want to look at this garbage...”

In this example from the course, the IT Technician was exposed to pornography downloaded by a coworker. He found it highly unwelcome and offensive.

Unlike accidental exposure to an offensive message that sneaks past a spam filter, having to deal with pornography accessed or downloaded by another employee is clearly not an expected part of his workday.

The following types of unwelcome behavior may qualify as unlawful sexual harassment:

- *Physical assaults of a sexual nature, such as:*
 - *Rape, sexual battery, molestation, or attempts to commit these assaults.*
 - *Intentional or unintentional physical conduct which is sexual in nature, such as touching, pinching, patting, grabbing, brushing against another employee's body, or poking another employee's body.*
- *Unwanted sexual advances, propositions, or other sexual comments, such as:*
 - *Requests for sexual favors accompanied by implied or overt threats concerning the victim's job performance evaluation, a promotion, or other job benefits or detriments;*
 - *Subtle or obvious pressure for unwelcome sexual activities;*
 - *Sexually oriented gestures, noises, remarks, jokes, or comments about a person's sexuality or sexual experience which ... create a hostile work environment.*
- *Sexual or discriminatory displays or publications anywhere in the workplace, such as:*
 - *Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials, or other materials that are sexually demeaning, pornographic.*

Remember: If the recipient or observer of a certain behavior finds it unwelcome, and if a "reasonable person" in their same situation would agree, then the behavior needs to stop.

Social Media

Managing a workforce has always included the challenge of dealing with potentially inappropriate materials brought in from the outside world. Managers and supervisors have had to address t-shirts, calendars, mugs, greeting cards, and other items carrying borderline or even obviously offensive messages or images. But now the near universal presence of mobile devices has made this challenge even more difficult.

Tweets, texts, photos, recordings, and messages appear just about everywhere

It doesn't matter if inappropriate content is initiated outside of the workplace or on personal devices. Once it enters the workplace, it must be addressed.



"What is that?"

Most employees spend a lot of time online and may regularly witness offensive behavior there. This can lead to a lack of awareness of what is appropriate at work.

Since bad behavior has become so commonplace online, some recipients of unwelcome online behavior may feel intimidated about speaking up. Yet, #MeToo and other movements have raised awareness of individual rights. Therefore, the opposite is also true: some workers are even more likely to recognize offensive behavior in the workplace and raise a concern or bring complaints.

Either way, you need to be prepared to use your position as a supervisor to educate workers about what's OK or not OK in your workgroup. It's better to be proactive rather than simply waiting to intervene when online activities have already gotten out of hand.

Offending employees may ask, "What about my First Amendment right to free speech?"

The First Amendment right to freedom of speech applies specifically to individuals and their government. However, in the workplace, this right

becomes predominantly subordinate to an employer's responsibility to maintain a discrimination- and harassment-free environment.

In general, employers can regulate personal expression in the workplace, especially if such expression makes anyone in the workplace reasonably feel that they are being harassed.

Make sure you understand organizational policies that apply to electronic communications in your workplace. Familiarize yourself with these policies to such an extent that you are able to reference them and enforce them in a manner that is clearly understood and thereby effective. We call this "socializing" your policies.

Remember: It's your responsibility to stay informed, watch for warning signs, and respond promptly to obviously inappropriate use of social media.

Compliments

Workplace compliments can be another area that gets tricky. When compliments are gender-based or too personal, they can feel demeaning to recipients, even if the individuals paying the compliments mean well.

But before giving up on compliments completely, remember that most of us know how to recognize respectful behavior. When we're addressing our parents, teachers, or religious leaders, we know how to act. We just need to apply those same standards of civility when we're at work.

Compliments can show our appreciation, and help us make connections with others

In fact, polite, sincere, and tactful compliments seldom cause offense. But some compliments in the workplace can come across as being sexually loaded or otherwise intrusive or offensive. You have to consider the context of the remark and whether or not it has a positive effect, both on the recipient and on the workgroup culture as a whole.



"You're looking great!"

If there is a close relationship between certain coworkers, compliments may be welcome.

But coming from relative strangers, or when there is a power difference involved, comments about someone's looks or clothing choices may not be professional and can easily cross the line into potential harassment.

Comments that refer to a person's attractiveness can have the effect of diminishing their status in a professional setting, especially when stated in a group setting or under more formal circumstances. Since most of us at work want to be acknowledged for our contribution to the team rather than for our physical appearance, any comment that changes the focus away from our skills and accomplishments can undermine our credibility. Such comments are therefore not always appreciated, even when relatively mild and perhaps even well intended.

Remember: Your business relationships with colleagues and subordinates in the workplace are qualitatively different from your social and personal relationships with friends and family at home. Compliments at work are best when they take context into account.

Unwanted Romantic Attention

Most of us spend a large part of our waking hours at work. And workplaces often provide opportunities for meeting others. We can even make lasting friendships there.

But asking for dates or otherwise trying to create personal or romantic relationships at work can be problematic. These activities may even be discouraged or against policy in some workplaces.

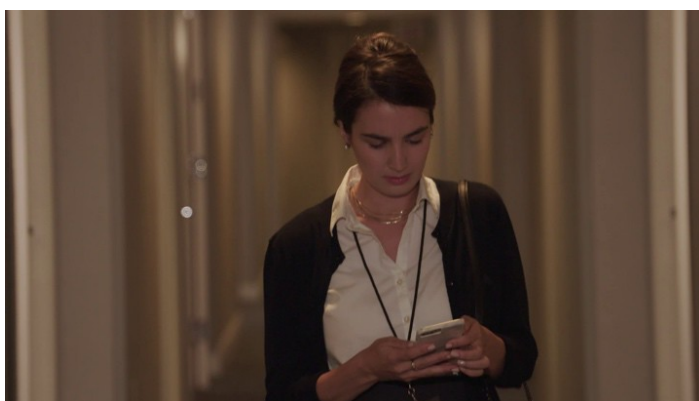
Workplace relationships are complicated by the fact that we all have jobs to do, and the need to work together to get things done adds an extra pressure that doesn't apply to non-work relationships.

Besides, things can go wrong, and misunderstandings can occur that cross the line into harassment.

Just because someone is being sociable and responding conversationally, that should not be interpreted as a green light to persist with romantic attentions.

“No” means no. “Maybe” means no.

Persisting after being turned down is not OK. If a coworker tells another that they aren't interested in a personal relationship—or otherwise indicates disinterest through body language or other non-verbal signals—that refusal must be honored.



“Then he sent me a text...”

Unwanted romantic interest can be a form of harassment if it persists when someone is clearly not interested or has asked for it to stop.

Whether it happens on the job or off-site, the same protections and standards for proper conduct apply if the setting can be considered “related to the workplace.”

Remember: Your employees do have a right to ask you, as a supervisor, for your support if they experience unwanted romantic attention in the workplace or any work-related setting.

Other Protections

Harassment is a form of discrimination because it can lead to a work environment that makes getting a job and keeping it more difficult, unpleasant, or downright unhealthy for certain individuals.

The federal law that underlies the workplace protection against discrimination is Title VII of the Civil Rights Act of 1964. In this legislation, the government prohibited discrimination based on race, color, sex, religion, and national origin.

Enacting the Civil Rights Act of 1964 did not change workplaces overnight. But there has been gradual change. And, as society's awareness has continued to evolve, additional laws have been passed, protecting additional characteristics.

Today, the list of federally protected characteristics includes:

Race

Color

Religion

National Origin

Disability

Sex (including pregnancy)

Age (40 and over)

Veteran Status

Citizenship Status

And More



Harassment of an individual may fall under any of these "protected characteristics," or more than one characteristic.

"I came here when I was little..."

You might wonder how you can keep track of these characteristics, especially because they can change over time. Here are a few simple guidelines:

- Understand that both discrimination and harassment based on protected characteristics are illegal.
- Center all workplace interactions on principles of fairness, basing all employment decisions on job requirements and job qualifications.
- Understand your personal biases and work to overcome them, dealing with each employee as an individual rather than as a member of a group.

Remember: If you treat every employee with a consistent level of courtesy and fairness, it is very unlikely that you will find yourself in a situation of causing offense or being accused of workplace harassment.

Bystander Intervention

While it is ultimately your job and your responsibility to prevent harassment, one of the best ways to protect your workgroup is to encourage team members to stick up for each other and intervene if they see a coworker being targeted. This is called "bystander intervention."



"Does that stuff bother you?"

When coworkers stand up to defend each other, they no longer feel so alone. And the individual who behaves badly is no longer able to pick on an isolated person, but faces peer pressure to do better.

As a supervisor or manager, active encouragement is needed on your part because subordinates may otherwise be hesitant to step in when they see potentially harassing behavior. They may be reluctant to get involved for a number of different reasons. But most of all, they may be unsure whether you will back them up if they take action.

Encourage your team to end harassment, as a team

When you talk to your team, tell them that their efforts will be appreciated and will ultimately make the environment more pleasant for everyone. Let them know that intervening doesn't have to involve directly confronting the harasser. Other options they can try include: changing the subject; making supportive statements to their coworker who is being targeted; or coming to you, other managers, Human Resources, or any other individual designated by your organization to help.

Tell subordinates that a useful framework for remembering these different ways of intervening would be to think about the Four D's:

1. **Distract:** If a conversation is heading in the wrong direction, they could try striking up an unrelated conversation to change topics.

2. **Delayed support:** If they're not sure whether the behavior was unwelcome, they could wait for the offending party to leave and then check in with their coworker, asking how they feel and offering support.
3. **Delegate:** They could get help from you or others with authority, like other managers, HR, or designated resources in your organization.
4. **Direct intervention:** They could ask the individual directly to refrain from their unwanted behavior, if they feel comfortable and safe doing so.

Remember: Bystander intervention does NOT mean putting all the responsibility for harassment prevention onto your team. Make sure they know that, while you expect them to have each other's back, you also expect them to inform you of behavior that crosses the line so you can take prompt, appropriate action.

If You've Been Targeted

What if you are the recipient of harassing behavior? What can you do to stop harassment if you feel that you are a victim of it?

If you are comfortable doing so, speak up. Ask for the behavior to stop.

As you learned earlier, it doesn't matter what the harasser thinks. What matters is how a reasonable person might think. It matters what YOU think.

Here are some things you could say

- *"I find this topic to be inappropriate. Let's change the subject."*
- *"I don't like it when you use that kind of language."*
- *"Why do you think it's OK to say that to me?"*
- *"I'm sure that you don't mean to make me uncomfortable, but you do. Can you please not refer to how I look or dress?" (after unwelcome compliments)*

Sometimes, you need to be even more clear.

- *You're out of line — let's keep this professional*
- *I am not OK with this*
- *I do not consent to this*
- *Do not touch me!*



"I really have to go home..."

You do not have to tolerate unwelcome behavior. If you are caught by surprise or don't know what to say, especially if help is not close at hand, consider getting away from the situation until you have time to think about your response and get help.

Even though speaking up is always advised, you are not obligated to warn someone that their behavior is making you uncomfortable. Your employer has resources in place, ready to help.

>Get help if you want help

>Get help if you feel that your wishes are being disregarded

If you have concerns or need help, don't wait. Speak up or reach out. Go to your boss or your boss's boss or anyone else in your chain of command who can help. Go to HR or others designated by your organization to receive complaints and resolve problems. You can find more information in your organization's policies about the internal complaint process for you to follow.

Remember: Reporting something doesn't suddenly make it a bigger issue; it just means that senior management or HR can help you rectify a situation that is making you feel uncomfortable.

Complaints

Supervisors and managers are required to report any harassment reported to them or which they observe. Once a complaint is filed, an investigation will take place to establish the facts, and then a determination will be made.

Therefore, if someone comes to you with a harassment complaint, always take it seriously. Don't minimize it or suggest that the person making the complaint imagined it. Don't make judgments or jump to conclusions. At this point, what is needed is that the organization gather the facts.

Complaints of harassment require a serious response

Keep in mind, employees coming to you with a complaint are giving credit to you and your organization. They are showing a belief that you will support them and make the situation better.

It is your responsibility to prevent further harm. Tell the person that you appreciate their bringing the matter to you. Let them know that you will do your best to stop any unwelcome behavior that might be going on and that they are protected from retaliation. (We will talk more about retaliation following this section.)



"Tell me what happened..."

Your next step will depend on the policies in your organization. If it is up to you to gather more information, ask the person to give you the details. Take notes, but be sure to stick to the facts when you record any aspect of an employee complaint: who, what, where, when, and how.

Do not express opinions or judgments about what you hear. Do not draw conclusions about the validity of the complaint. If they ask you not to say anything about their complaint, explain that complete confidentiality cannot be promised – others with a "need to know" may be informed of certain details.

Policies for conducting investigations will vary from organization to organization. Specific steps will need to be followed by a person qualified to conduct investigations. Further information will need to be gathered, including interviews with those involved and possible witnesses.

Remember: In addition to internal complaint processes offered by employers, individuals also have the right to file a complaint with government agencies such as those listed at the end of this study guide. They can also pursue a civil claim in the courts.

Retaliation

Almost half of the complaints about harassment or discrimination received by the Equal Employment Opportunity Commission (EEOC) include charges of retaliation. Such charges can result in consequences for those who engage in retaliation, even if the initial complaint is not found to have met the threshold of unlawful harassment

Retaliation is unlawful and brings consequences of its own

Retaliation is unlawful because it can have the effect of discouraging people from exercising their rights to object to harassing behavior in their workplace.



“What a shame...”

The example provided in the course was relatively mild, but even subtle forms of retaliation, such as refusing to work or cooperate with a coworker, must be addressed. If not stopped early on, such conduct can escalate and lead to even worse behavior.

Those protected from retaliation include individuals who have filed a complaint, participated in an investigation (whether willingly or unwillingly), or reported or opposed harassing behavior.

It is not only coworkers who can participate in retaliation. Employers must avoid retaliatory actions, as well.

For example, it could be retaliation for an employer to:

- Reprimand an employee for complaining
- Give a performance evaluation that is lower than it should be after a complaint
- Transfer the employee to a less desirable position
- Engage in verbal or physical abuse
- Threaten to make, or actually make reports to authorities (such as reporting immigration status or contacting the police)
- Increase scrutiny
- Spread false rumors

It would also be considered retaliation to intentionally take action that makes the person's work more difficult (for example, punishing employees for a complaint by purposely changing their work schedule to conflict with family responsibilities).

Does this mean that an employer can't discipline an employee for poor performance or violating company policies after a complaint? No. Filing a complaint does not shield an employee from discipline or even discharge, if warranted.

But after a claim is filed, any negative actions will be closely scrutinized for hints of retaliation. It is critical to avoid the impression that the discipline is undeserved or discriminatory.

Therefore, you must take extra care to ensure that the discipline is truly deserved and applied fairly, consistent with how similarly situated employees have been treated in the past. Be sure to work closely with HR, your legal department or outside experts when applying discipline after a complaint has been made.

Remember: Actionable retaliation by an employer can occur after the individual is no longer employed by that employer. This can include giving an unwarranted negative reference for a former employee.

Remedies

Whenever discrimination is found, the goal of the law is to put the victim of discrimination in the same position (or nearly the same) that he or she would have been if the discrimination had never occurred.

“Remedies” are steps that are intended to make things better after a harassment incident or complaint

Depending on location or situation, remedies may include economic damages, compensatory damages, punitive damages, equitable relief, and attorneys’ fees.

The types of relief will depend upon the discriminatory action and the effect it had on the victim. For example, if someone is not selected for a job or does not receive a promotion because of discrimination, the remedy may include placement in the job and/or back pay and benefits the person would have received if they had been hired or promoted.



The employer will also likely be required to stop any discriminatory practices and take steps to prevent discrimination and harassment in the future.

“He is gone for good...”

A victim of discrimination or harassment may be able to recover attorney's fees, expert witness fees, and court costs. Compensatory and punitive damages may also be awarded in cases involving intentional discrimination or harassment based on a protected characteristic.

- "Compensatory damages" can cover victims' out-of-pocket expenses (for example, costs associated with a job search or medical expenses) or compensate for emotional or physical harm suffered.
- "Punitive damages" can happen in response to malicious or reckless acts of discrimination or harassment, either to apply consequences or serve as a deterrent for others.

Remember: Internal remedies are actions taken by an employer to “make things right,” or changes to an employer’s policies or practices in order to prevent discrimination or harassment from recurring. External remedies can be imposed by government agencies, or result from lawsuits brought by individuals or entities.

Conclusion

We've covered a lot of material, all focused on supporting a workplace environment where unwelcome and harassing behavior is not acceptable, and where everyone can thrive and contribute to the success of your organization.



While it's important to know the legal definitions of the various forms of discrimination and harassment that we've covered, it's even more important to think about the practical examples you've seen... How harassment can creep into a workplace... And what you need to do to prevent or stop it.

"Be the person who makes a positive impact..."

**Workplaces that tolerate harassment have more of it.
Workplaces that do not tolerate harassment have less of it.**

Your response to improper behavior sends an important message — that you take harassment prevention seriously. Responding promptly and appropriately establishes a culture of openness and respect.

Be sure to utilize the resources available to you – management, HR, legal – if you're not sure how to handle a situation. Your employer will want to help!

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