

SUPERVISOR BOOTCAMP: WORKPLACE HARASSMENT










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WHAT IS HARASSMENT?

Harassment Is:

Unwelcome conduct based on:



Race



Religion



Sex



Disability



Age



Color

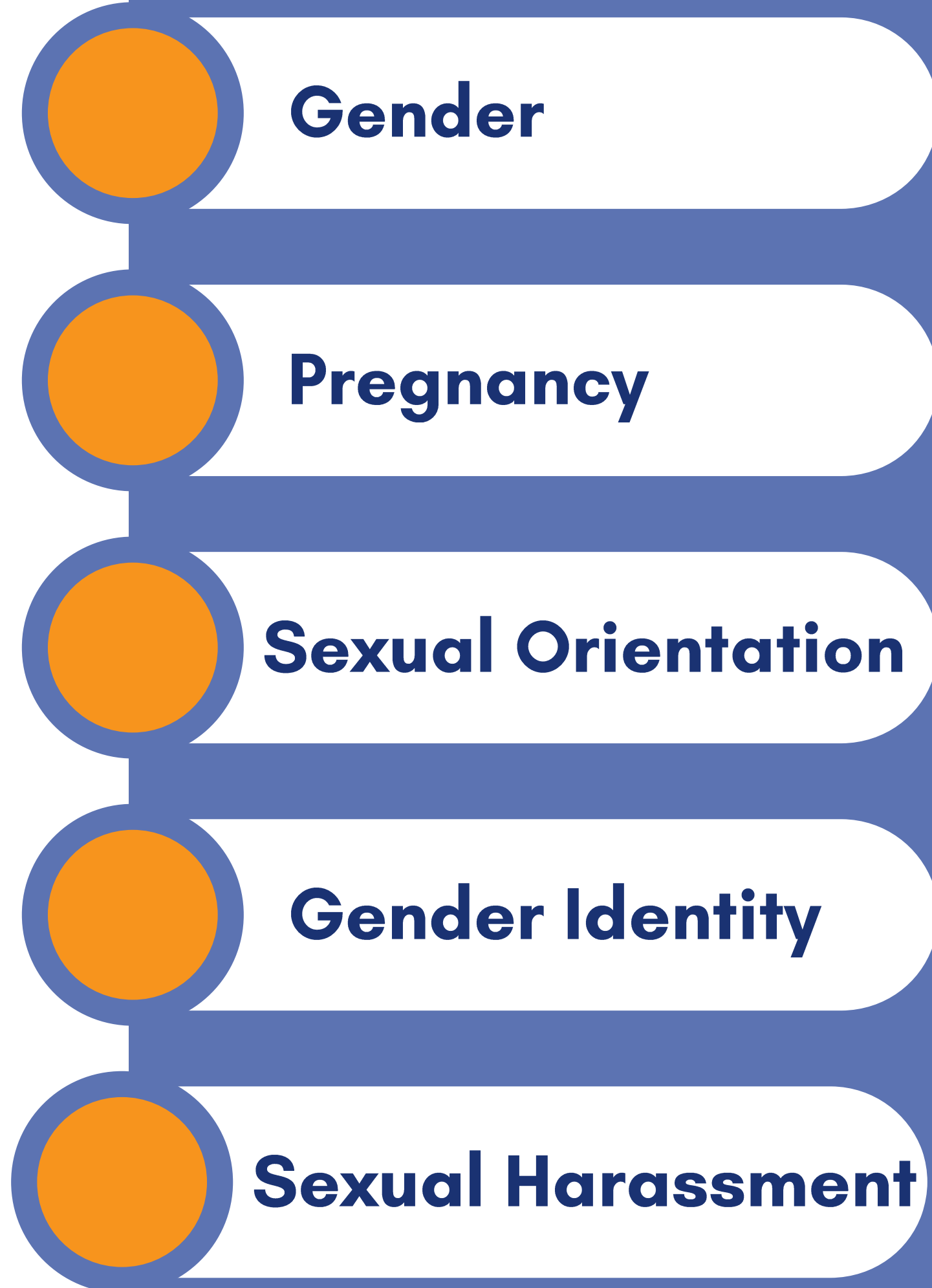


National Origin



Genetic Info.

Harassment & Discrimination Based on Sex



Harassment Based on Gender

Unwelcomed and hostile conduct inflicted because of the victim's gender.

- Distinct from sexual harassment.
- Does not have to be sexually motivated, but instead is targeting the gender of the victim.

Non-sexual conduct may include:

- Slurs
- Negative Stereotypes
- Threats
- Intimidation



Extra Examples

Sally is a construction worker on a road crew. Her supervisor calls her “baby” and “sandwich-maker.” This supervisor also disparages women’s participation in the construction industry, for example by stating that road construction is “a man’s job.”



John, an employee in a supermarket bakery department, works with a coworker, Laverne, who rubs up against him in a sexual manner, tells sexual jokes, and displays dolls made from dough in sexual positions. Based on these facts, Laverne’s harassing conduct toward John is based on his sex.

Discrimination Based on Pregnancy

It is unlawful to discriminate against or harass a worker because of pregnancy, childbirth, or related medical conditions, or because of a pregnancy-related physical or mental disability.

This can include issues such as:

- Current pregnancy;
- Past pregnancy;
- Potential pregnancy;
- Medical conditions related to pregnancy or childbirth (including breastfeeding and/or lactation);
- Having or choosing not to have an abortion;
- Birth control (contraception).



Discrimination Based on Pregnancy

- Automatic light duty assignments;
- Light duty policy that excludes pregnancy; or
- Any condition that is imposed or removed from an employee because they are pregnant.
- You must treat pregnancy like any other temporary disability.
 - Don't assume they need accommodated unless:
 - You see they need accommodations, or
 - They ask for accommodations.



EXAMPLE

Harassment based on pregnancy

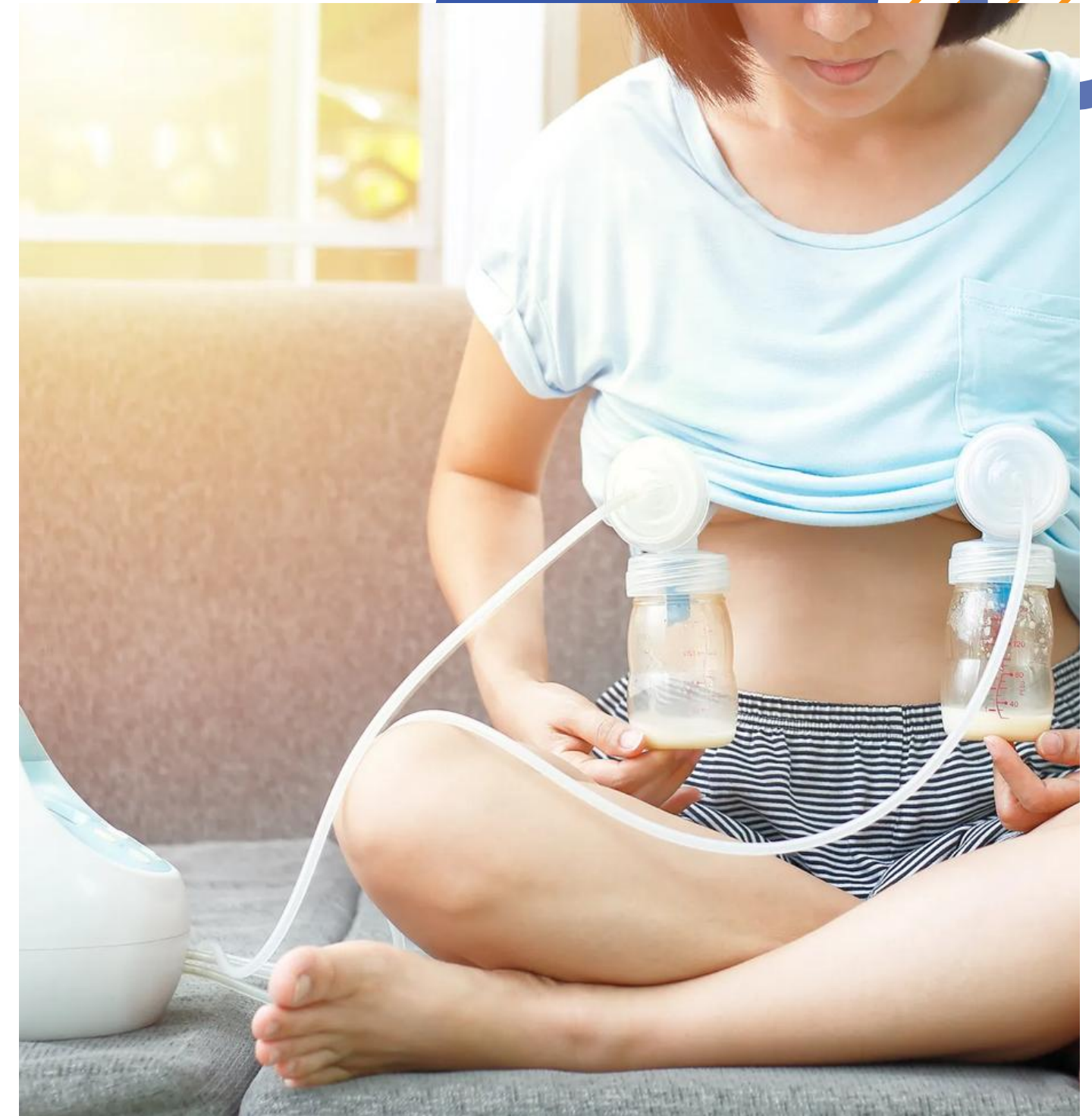
Kendall, a veterinary assistant at a nationwide veterinary clinic chain, recently announced to coworkers that she is pregnant. After Kendall's announcement, one of her supervisors, Veronica, begins berating Kendall's work as slow, shoddy, and scatter-brained, and accuses Kendall of focusing more on getting ready for her new baby than doing her job. Veronica also begins to scrutinize Kendall's bathroom usage and, on at least one occasion, yelled at Kendall for "always" being in the bathroom. As Kendall's pregnancy progresses, Veronica refers to Kendall as a "heifer," and makes the comment, "We don't treat livestock at this office."



EXAMPLE

Harassment based on pregnancy-related condition

Julie is a software engineer for a video game publisher. She recently returned to work after giving birth. Julie uses a lactation room at work as needed to express breastmilk. Julie's co-worker Mike, knocks loudly on the door while Julie is inside and pretends that he is going to enter. Mike also refers to Julie's breasts as "milk jugs" and refers to the lactation room as "Julie's getaway" and asks why he is not allowed to take breaks in private rooms.

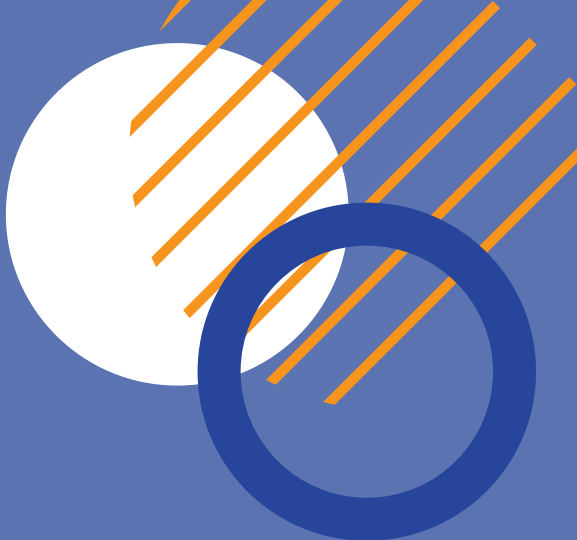


EXAMPLE




Harassment based on pregnancy-related condition

Kristina is experiencing pregnancy-related morning sickness. Kristina's employer accommodates her limitations due to morning sickness by permitting Kristina to telework up to three days per week and utilize flexible scheduling on the days she comes into the office. Kristina's colleagues complain that pregnant women always get special perks and privileges and accuse Kristina of getting pregnant "just so she can kick back, relax at home on the couch, and collect a paycheck." During a team meeting to discuss staffing a new, high-priority portfolio, when Kristina requests to be considered, her coworkers scoff that "if Kristina is so sick that she cannot come into the office, how can she be well enough to work on such an important account?"



DISCRIMINATION/HARASSMENT BASED ON SEXUAL ORIENTATION & GENDER IDENTITY



Bostock v. Clayton County, Georgia

The Bostock case involved a trio of cases alleging discrimination against LGBTQ+ workers.

The United States Supreme Court decided each of these cases together in a single opinion.



Gerald Bostock

Child Welfare Services Coordinator who was fired after his employer learned he joined a “gay” softball league.



Donald Zarda

Skydiving instructor who was terminated after his employer learned he was gay



Aimee Stephens

Funeral director who was fired after employer learned she was going to transition from male to female.

Bostock Continued

The Supreme Court, in deciding this case, held that employment discrimination based on sexual orientation (Bostock and Zarda) or transgender status (Stephens) is discrimination “because of sex,” and is therefore unlawful under Title VII.

“An individual’s homosexuality or transgender status is not relevant to employment decisions. That is because it is impossible to discriminate against a person for being homosexual or transgender without discriminating against the individual based on sex.”



Bostock: But-For Test

It does not matter if the employer can point to another reason for firing an individual.

When it comes to Title VII, the adoption of the traditional but-for causation standard means a defendant cannot avoid liability just by citing some other factor that contributed to its challenged employment decision.

If the employee's sex was one but-for cause of the decision, that is enough to trigger the law.

Example:

- If a car accident occurred both because the defendant ran a red light AND because the plaintiff failed to signal his turn at the intersection, we might call each a "but-for cause" of the collision.

Bostock Cont.

“It doesn’t matter if other factors besides the plaintiff’s sex contributed to the decision. And it doesn’t matter if the employer treated women as a group the same when compared to men as a group. If the employer intentionally relies in part on an individual employee’s sex when deciding to discharge the employee – put differently, if changing the employee’s sex would have yielded a different choice by the employer—a statutory violation has occurred.”



G. Bostok

Bostock Continued

TO RE-EMPHASIZE, It does not matter if:

1. The intentions for discriminatory conduct go beyond sex discrimination.
2. Other factors besides the employee's sex contributed to the decision.
3. Treated women as a group the same as when compared to men as a group.

If the employer intentionally relies in part on an individual employee's sex when deciding to discharge the employee a statutory violation has occurred.



D. Zarda

EEOC Guidance RE: Harassment based on SI or GI

- On April 29, 2024, the EEOC published its “Enforcement Guidance on Harassment in the Workplace.” This guidance, which was passed by a 3-2 vote, provides examples of harassment based on sexual orientation and gender identity.
- On January 20, 21, and 29, 2025, President Trump issued a series of executive orders which concern harassment and discrimination.
- Any modification must be approved by a majority vote of the Commission. As of January 28, 2025, the EEOC no longer has a quorum of its panel of Commissioners.

Bathrooms & Other Facilities

- The Supreme Court in Bostock specifically states, “Under Title VII too, we do no purport to address bathrooms, locker rooms, or anything else of the kind.”
- However, the Equal Employment Opportunity Commission (EEOC), has taken the position that “employers **may not** deny an employee equal access to a bathroom, locker room, or shower that corresponds to the employee’s gender identity.”

Use of Pronouns

- “Intentionally and repeatedly using the wrong name and pronouns to return to refer to a transgender employee could contribute to an unlawful hostile work environment.”
- Unlawful harassment includes unwelcome conduct that is based on gender identity. To be unlawful, the conduct must be severe or pervasive when considered together with all other unwelcome conduct based on the individual’s sex (including gender identity) thereby creating a work environment that a reasonable person would consider intimidating, hostile, or offensive.

Harassment Based on Sexual Orientation & Gender Identity

EEOC Guidance states the following actions may constitute harassment

- Harassment based on how an individual's identity is expressed,
- Harassing conduct because an individual does not present in a manner that would stereotypically be associated with that person's sex,
- Use of epithets regarding sexual orientation or gender identity,
- The repeated and intentional use of a name or pronouns inconsistent with the individual's known gender identity (Misgendering),
- Disclosure of an individual's sexual orientation or gender identity without permission (Outing),
- Denial of access to a bathroom or other sex-segregated facility consistent with the individual's gender identity, and
- Physical assault(s) due to an individual's sexual orientation or gender identity



Example 1:

- Chloe is approached by her supervisor, Alton, who asks whether she was “born a man” because he had heard a rumor that “there was a transvestite in the department.” Chloe disclosed to Alton that she is transgender and asked him to keep this information confidential.
- After this conversation, Alton instructed Chloe to wear pants to work because a dress would be “inappropriate,” despite other purchase order coordinators being permitted to wear dresses and skirts. Alton also asks inappropriate questions about Chloe’s anatomy and sexual relationships.
- Further, whenever Alton is frustrated with Chloe, he misgenders her by using, with emphasis, “he/him” pronouns, sometimes in front of Chloe’s coworkers.

Example 2:

Heidi recently attended a company award ceremony with her wife, Naomi. After the ceremony, one of Heidi's coworkers, Trevor, approaches Heidi and says, "I did not know you were a dike, that's so hot." Trevor asks Heidi questions such as, "because you are both girly-girls, who is the man in your marriage?" And "who wears the pants at home?"



Why Does it Matter?

IT IS ILLEGAL!



- Employees can file an EEOC charge against the employer and the harasser could be charged criminally for conduct that is severe enough, or civilly by the victim(s).
- It violates County policy and will result in discipline, up to and including termination.
- Having a workplace culture that permits harassment can impact productivity and it reduces loyalty and trust an employee has in their employer.

Who Can Commit Harassment?

If harassment occurs at work, it needs to be reported, investigated, and addressed promptly.

An individual's supervisor

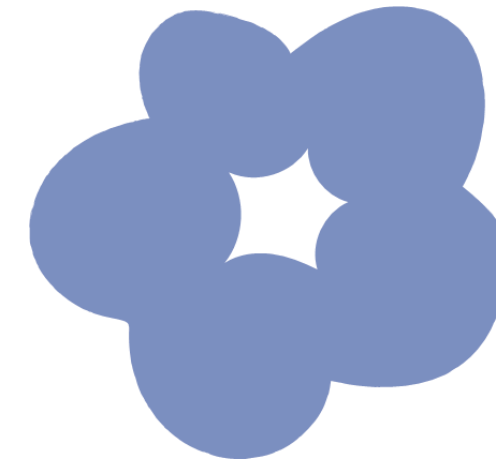
A supervisor in another area

A co-worker

Someone who is not an employee of the county

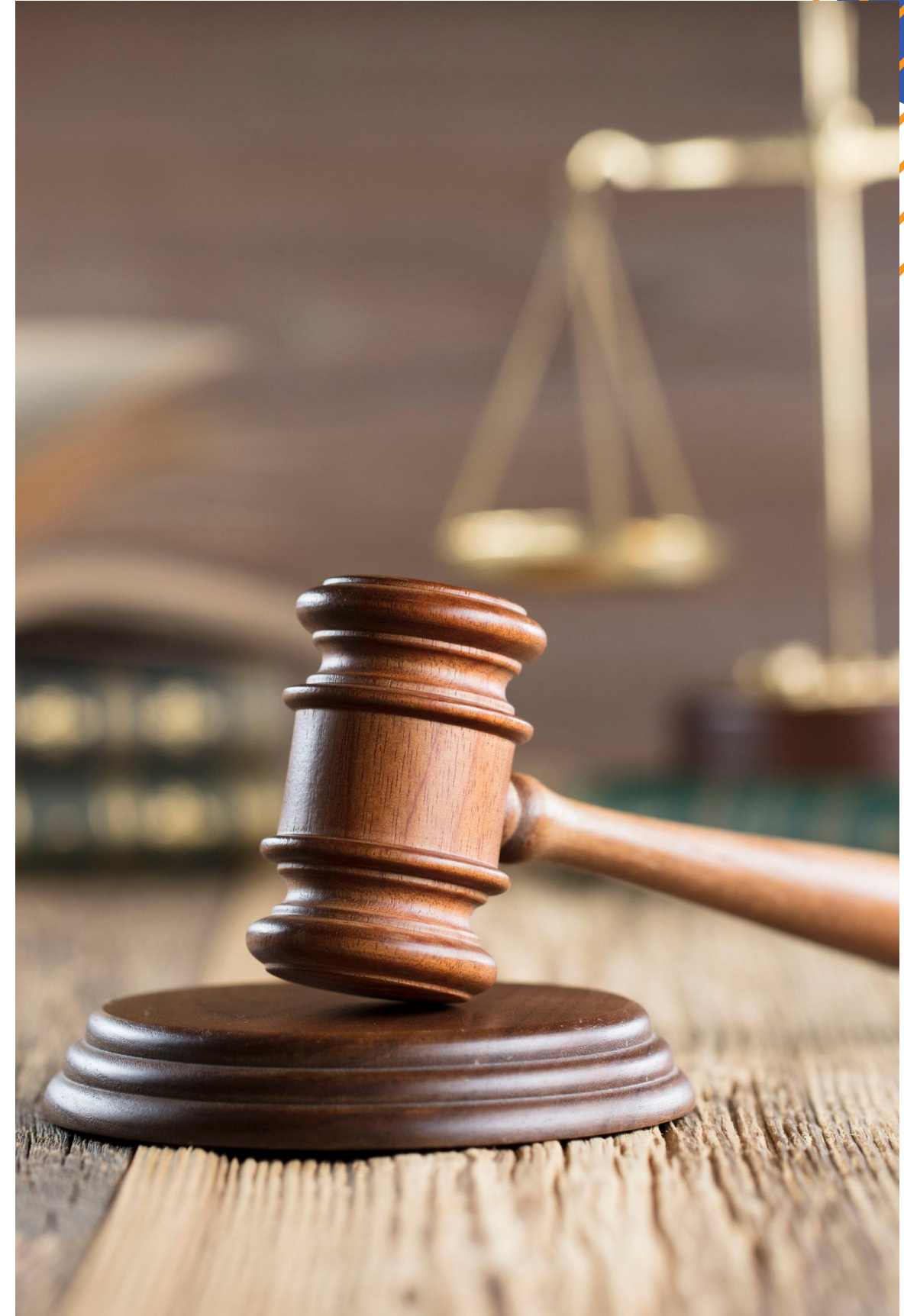
Who Can Bring a Harassment Claim?

- **The Intended victim of the harassment**
- **A bystander or witness**
 - **Anyone who sees the harassing behavior**
 - **This means, even if the recipient of the potentially harassing behavior does not object to it, an observer may have a claim if they find it creates a hostile work environment for them.**



Potential Claims

- Title VII
- Due Process
- Equal Protection
- Intentional Tort Claims
- Criminal Charges for Offenders



Quid Pro Quo

Latin for "this for that" or "something for something."

- Members in a protected class – Sex;
- Sexual advances were unwelcomed by the employee;
- Harassment was sexually motivated by the harasser;
- Employee's reaction to the advances negatively affects tangible aspects of their employment
 - Compensation, promotion, hiring, etc.

Hostile Work Environment (HWE)

Under Title VII, there is no “general civility code for the American workplace.”

Harassment must be more than the ordinary tribulations of the workplace, such as:

- Sporadic use of profanity
- Occasional teasing

Personality conflicts at work that generate antipathy (deep-seated feelings of dislike) and snubbing by supervisors and co-workers ARE NOT ACTIONABLE.



HWE Continued

Speech or conduct that is severe and/or pervasive enough to create an abusive or hostile work environment.

1. Must be objectively hostile, and
2. Subjectively hostile.

Objectively Hostile factors:

- Frequency of the conduct,
- Severity,
- Whether it was physically threatening, humiliating, or a mere offensive utterance, and
- Whether it unreasonably interferes with an employee's work performance.
- Employer knew or should have known it was occurring.



What is NOT a HWE?

These actions can still violate the internal employment policy and should result in disciplinary action if the allegations are substantiated by the investigation.

Simple Teasing

Offhand Comments

**Isolated Incidents (unless
extremely serious)**


**“Ordinary tribulations of
the workplace”**

HWE Employer Knew/Should Have Known

- Complaint is made.
- Formal.
- Informal.
- Behavior is observed.
- Conversation with someone “off-the record” about their behavior.
- Knowledge doesn’t have to come in an “official” complaint.

HWE: No Employer Knowledge

Anderson v. Durham D& M, L.L.C., 606 F.3d 513 (2010)

- White employee claims that black co-workers create hostile work environment.
 - Daily name calling (racial slurs) while employees stood in hallway near supervisor's office.
 - Reported racial comments made by another employee. That employee was disciplined and attended a diversity training.
 - HELD: Employer did not have knowledge of the harassment because it took place in the hallway, it was not reported, and a supervisor was not present.
- 

HWE: Where and When?

DOES NOT have to occur on the premises.

CAN occur:

At Social Events,

Late night phone calls;

Requests to spend time together outside of work hours.

Claims of harassment which occur off the clock or outside of the workplace STILL need to be promptly investigated and remedial action STILL need to take place.



HWE

**Henthorn v. Capitol Communications,
Inc., 359 F.3d 1021 (2004)**

Lewd or Threatening Comments

Physical Touching

Sexual Propositions

**Sexual Comments Made About
the Victim in their Presence**

Retaliation

- 1 An employee complains of harassment or files a charge of harassment with the EEOC**
- 2 The employer takes an adverse action against the employee; AND**
 - Tangible employment actions such as demotion, termination, or reassignment to less desirable job duties.
 - Other action that would dissuade a reasonable employee from making, or supporting, a charge of discrimination.
- 3 The adverse action is causally connected to the complaint or the EEOC charge.**









INVESTIGATING CLAIMS OF HARASSMENT



Employers should set up a mechanism for prompt, thorough, and impartial investigation into alleged harassment.



The Investigation Process

-  **Step 1: Notice**
 -  **Step 2: Assignment to Proper Investigator**
 -  **Step 3: Gather Relevant Documents & Information**
 -  **Step 4: Conduct Interviews**
 -  **Step 5: Findings**
- 

Notice

"An employer's duty to exercise due care includes instructing all of its supervisors and managers to address or report to appropriate officials complaints of harassment regardless of whether they are officially designated to take complaints and regardless of whether a complaint was framed in a way that conforms to the organization's particular complaint procedures."

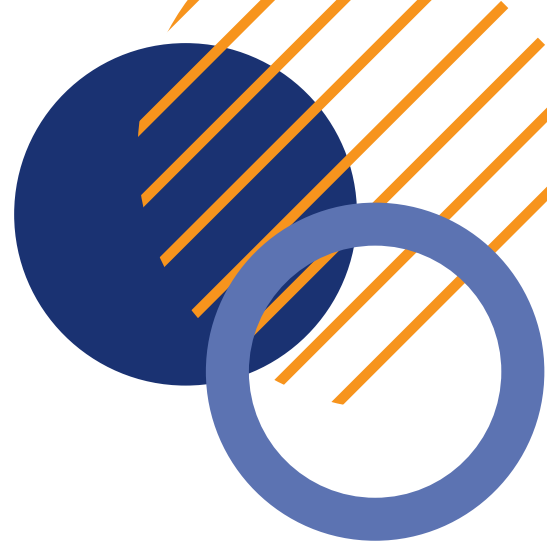
Conduct Interviews

Key Interviews

1. Complaining Party
2. Alleged Harasser
3. Other Parties
 - a. Witnesses
 - b. Individuals Requested to be Interviewed
 - c. Other



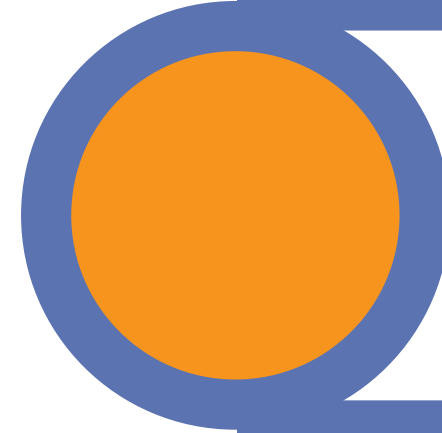
Conduct Interviews



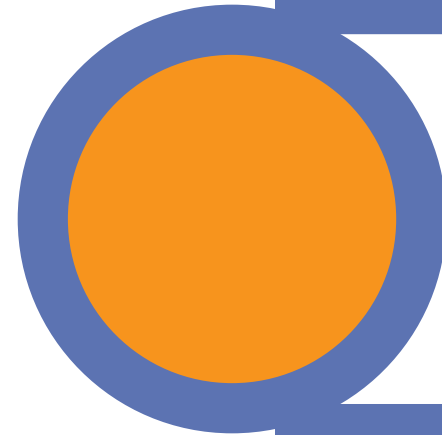
Complaining Employee

- Interview first to ensure you understand the problem.
- Lock in the complaining employee's statement
 - Ask them to provide their statement in writing after interview,
 - Interviewer can draft the statement and ask complaining employee to review, sign, and date, or
 - Follow up in an email reciting your understanding of the complaint and ask the employee to respond in writing if anything is incorrect

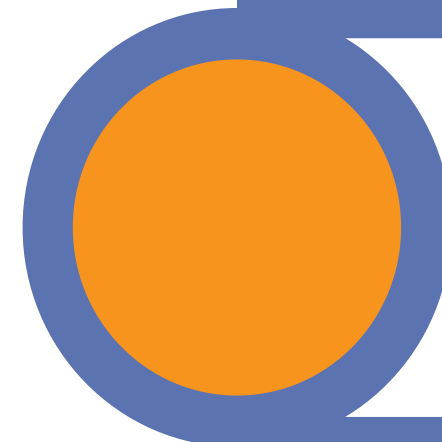
Other Parties



Witnesses to the incident



Individuals the complaining party requests be interviewed



Individuals the alleged harasser requests be interviewed



Collect Documentation & Other Information

Act quickly to ensure all relevant documents, electronic records, and communications are retained.

-  **Employee Files**
 -  **Audio/Video Recordings**
 -  **Photos**
 -  **Text Messages and/or Other Messages**
 -  **Emails**
- 

CONCLUSIONS

DO NOT LEAVE YOUR INVESTIGATION OPEN. ALL INVESTIGATIONS MUST HAVE A CONCLUSION.

If there is no conclusion, put that in your findings. Inconclusive is your conclusion.

If no determination can be made because the evidence is inconclusive, you should undertake further preventative measures, such as training and monitoring.

Unsubstantiated does not mean the allegation is untrue. It means there isn't enough evidence from the investigation to prove it occurred.



Now what?

After your investigation has been completed, what should you do?

An employer should undertake immediate and appropriate corrective action whenever it determines that harassment has occurred in violation of the employer's policy.

- Written reprimand,
- Transfer or reassignment
- Demotion
- Suspension
- Termination
- Training or counseling for the harasser to ensure that he/she understands why the conduct violated the county/departments policy.
- Monitoring of harasser to ensure that harassment stops.

**DOCUMENT
DOCUMENT
DOCUMENT!**

The investigation must be adequately documented!

Confidentiality

Except to the extent disclosure is required by law, or necessary to carry out the County's anti-harassment policy, the complaint and subsequent investigation should remain confidential.

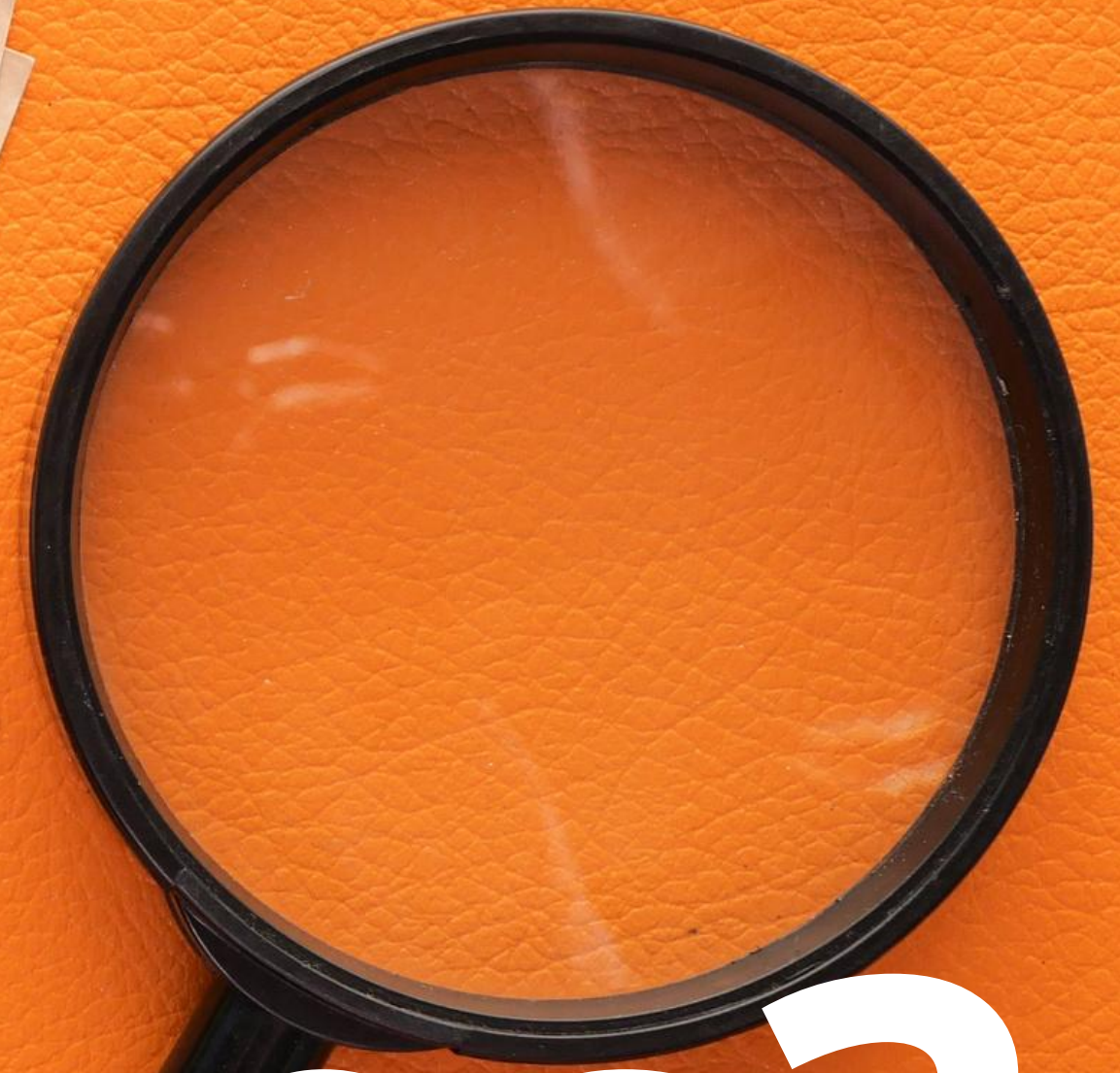
Witnesses, who are interviewed as part of the internal investigation, should be advised of their duty to keep the information confidential as well.



Resignation

What if an employee resigns after he/she makes the complaint of discrimination or harassment?

- You still **MUST** investigate the claim.
- Internal Interviews;
- Review of video/audio if available; and
- Make attempts to reach the complainant to interview them. If they do not cooperate, make a note of your attempts to contact them.



Questions?

CONTACT INFORMATION

Mallory Floyd
MFLOYD@ARCOUNTIES.ORG
501-604-8677