

Hello, and welcome to Session B of the Harassment Prevention Training, for managers, supervisors and team leaders.

This presentation is by i2i Workplace, dedicated to ensuring a workplace free of harassment and bullying.

Session A covered legal issues and behavioral issues as well as some practical issues from an employee's perspective. Session B will cover more about the practical issues from a manager's perspective - what to say, what to do, how to behave and interact with your staff in order to prevent harassment. With regard to the practical issues, you need to know your rights and responsibilities and also the resources that are available to support you as a manager, supervisor, or team leader.

In this section, we'll talk about the practical issues impacting you as a supervisor or manager. First of all, we'll talk about how to respond to a complaint. Then we'll discuss how to avoid retaliation, how to avoid discrimination and harassment in your day-to-day interactions, and then finally, how to ensure consistency and fairness in all of your decisions.

In terms of responding to a complaint, if an employee comes forward with an issue, problem, concern, question, observation, you want to make sure that you're taking the situation seriously. One of the first things you want to say is "Thank you." Thank the employee for coming forward with this information and for taking the situation seriously. A good rule of thumb is that you want to be empathetic, not necessarily sympathetic. You can certainly tell them that you appreciate what they're going through, but don't add fuel to the fire by making it worse and feeling sorry for them and being overly sympathetic.

Also, you should certainly not do an investigation yourself. An investigation is a term or condition of employment that is best handled by trained HR professionals, attorneys, or investigators. Once you have the facts, then you can decide if you can handle this because you have the skill and the confidence to do so, or it contains a legal issue and you don't feel comfortable handling the situation on your own. That's a good time to refer it to HR or your employee relations person. Now, there's a lot of good reasons to take the initial complaint and give it directly to your HR person, and we'll talk about why. One of the main reasons is to maintain confidentiality. Now, you obviously can't promise complete confidentiality, but you can let the person know that their confidentiality will be respected to the extent possible, and information regarding their complaint will only be shared with someone who has a demonstrated need to know.

Giving the complaint to HR also helps to maintain consistency. As mentioned before, an investigation is a term or condition of employment, and it's hard to be consistent across the board with all managers and supervisors. But if only a few key people are handling investigations, we can maintain consistency in our organization. Another good reason is that this provides help later to defend the organization in case there's an issue that's brought up.

Documentation, rosters, paperwork, investigation notes - all help the organization to demonstrate the concept of reasonable care for the affirmative defense as we discussed in the previous section. Also, giving the complaint to HR helps get you out of the loop, and that's important in terms of maintaining your objectivity as a manager, supervisor, or team leader. It will also help limit your personal liability, which we'll talk about in a moment. Those are all very good reasons to refer the complaint to human resources.

To respond to a complaint, you first of all want to say "Thank you," to the employee and then just say something to the effect of "I understand your concern, your question, or your complaint." Then let them know the process that you're going to follow in terms of referring this complaint to human resources, or whatever your decision is to follow through on that complain. Let the employee know that you can't promise confidentiality as we discussed previously, but you'll only share the information with someone who has a demonstrated need to know, and then follow up with human resources and the complainant. My suggestion is to send a quick email to your HR representative, and let them know you have an issue you'd like to discuss with them. That way, you timestamp the complaint, and you can demonstrate that you took prompt action on the complaint.

Now, let's talk a bit about retaliation. Retaliation requires three elements.

The first element is a protected activity, such as an employee coming forward with a complaint or being called upon as a witness in a situation in those situations. The employee is protected from any adverse action.

The second element is an adverse employment action, and those actions could be either concrete or subtle. Examples of concrete adverse employment actions would be job loss, failure to hire or promote, demotion, loss of pay, those sorts of things. And subtle examples are ignoring, ostracizing an employee, not meeting with them on a regular basis, leaving them out of company events, those sorts of things.

Now, if a connection can be shown between the protected activity and the adverse action, that is enough to demonstrate retaliation. And having retaliation involved in discrimination and harassment complaints makes it all the more difficult to defend the organization.

To avoid retaliation, you first of all want to be respectful of the employees' rights to complain. We do want employees to come forward with information that will help us do a better job of ensuring good employee relations. And so, you definitely want to be respectful in that regard. By treating each and every complaint seriously, we demonstrate that we do take the issue of harassment and discrimination prevention seriously, so treat the complaint seriously and follow through on the investigatory procedure as we've discussed previously.

Avoid any assumptions or preconceptions you might have about the employee. Treat it with an open mind, and certainly seek guidance from your manager or human resources on all the decisions you make about how to handle complaints.

And of course, it's worth reinforcing the idea that you want to maintain confidentiality throughout this process and only share information about it with someone who has a demonstrated need to know. And when we talk about confidentiality, we mean verbal confidentiality as well as confidentiality of any records that you might obtain through this process, so be careful with both verbal and written information.

As an employee of the organization, you obviously have certain rights, but also responsibilities. And one of your responsibilities should be to read the policy, and make sure that your staff reads the policy as well. Employees should also uphold the standards outlined in your employee handbook or policy manual. Some of that is the responsibility of supervisors and managers to step in in case they observe behavior that is not up to standard. That requires you as a team leader or supervisor or manager to remind other people about the policy in case you observe or overhear issues that might be problematic. We can't necessarily require employees to step in in case they see an issue of concern. However, they should bring it to your attention. And if you're aware or you observe or hear a situation that is of concern, you definitely need to step in. An employee should also know about the complaint handling procedure and follow it. They have multiple avenues of complaint available to them, such as a supervisor or manager, anyone in HR, or any senior manager. And so, they should feel comfortable going forward with any complaint or observation. We certainly want employees to speak up if they know where suspect a situation, so we can be aware of it. There are several reasons an employee wouldn't want to get involved. Number one, they wouldn't want to appear as if they were reporting on their friends. Number two, perhaps they just really don't want to be named in any kind complaint themselves. And then, number three, they might fear retaliation, which is obviously a huge concern to us.

Now, as a manager, you have a higher level of responsibility to do what's right, and these issues can come up every step along the way of the employment practice. For example, in recruitment, we want to make sure that we are fair and consistent in everything that we do. We want to avoid questions that are unlawful such as "Are you married?" "Are you a US citizen?" "When did you graduate from high school?" although it's okay to ask about graduation dates from college. You can also not ask about past salary or any criminal background questions. Basically, any part of the recruiting practice has to be fair and consistent and systematic. That includes testing, background checks, I-9 verification, which, of course, the human resources department would do. Any credit checks or any background checks that we do all have to be systematic. Any other hiring practice that we would engage in also has to be fair, consistent, and mindful of all the legal restrictions in terms of pre-employment inquiries.

We also have to be fair and consistent in any decisions we make about day-to-day management issues such as compensation. There are several issues having to do with equal pay for equal work, and our compensation practices have to reflect that. This would also have to do with any assignments that we give to staff, ensuring that all of the tasks and projects we assign are fair and consistent, having to do with skill and seniority and experience, of course, but not having to do with any other arbitrary factors that might be legal issues. Transfer

decisions, of course, have to be fair and consistent and focused on job-related issues. As long as we make decisions based on job related factors, we'll be fine. So, get guidance from your HR representative or your manager whenever you make any decisions about your employees. Promotional decisions, obviously, have to be reflective of experience, performance, those sorts of job-related issues, and not related to some arbitrary factors, again, such as a race, religion, national origin, ethnicity, etc. Also, consider training opportunities such as management development courses or attendance at a conference. Those sorts of things are all opportunities that should be open to all your employees, not necessarily based on any personal characteristics.

Regarding training opportunities, it's important for managers to consider the career development opportunities of staff. So, talk to HR and your manager, and make sure that you are working with employees on training and development plans. And of course, request for leaves of absence. Those are all done by a specific person in your human resources department, and they should all be done consistently and fairly. Leaves of absence could be for pregnancy leave, family leave, jury duty leave, military leave, and they all would follow the same process in terms of paperwork and documentation.

Managers also have to ensure fairness in any performance management actions that are taken such as performance evaluations. Performance evaluation should be fair and systematic and should not reflect any protected information such as if someone took FMLA, leave of absence, or any other protected activity. We should make sure that those don't make comments on that don't make their way into the performance evaluation.

Corrective action should be done in concurrence with human resources, and managers should be particularly effective at doing corrective action, coaching, counseling. Providing feedback should be done on an informal basis, but if there is a performance issue, those issues are addressed appropriately and not done when a problem has already risen. Be proactive about your corrective action and your feedback. Obviously, if a layoff were to occur, those decisions would have to be made in a systematic manner, again, without regard to race, sex, color, religion, or any other protected category. Any decisions about terminations should also be done in concurrence with human resources to ensure that proper documentation is in place. The point is you don't have to go it alone on your termination decisions, but you have an HR department as well as your manager who can support you through the decisions that you make. Providing references should be done in accordance with your company policy, whatever that might be. Certainly, restrictions could be made on information that is provided to other prospective employers regarding your employees, so check with your manager or HR prior to providing references on a past employee.

As we've seen, basically every term or condition of employment is subject to the general rule of thumb of fairness and consistency. That way, we can avoid comments about unfairness or possible discrimination. If you ever have any question regarding your decisions, check with HR and your manager to ensure that you get their stamp of approval.

The next topic is how to avoid being a target of a harassment complaint yourself. Oftentimes, supervisors and managers can get blamed for various actions. To avoid being a target of a harassment complaint, just make sure you're conducting yourself in a professional manner at all time. Never joke or belittle employees and co-workers and certainly, if you hear someone else joking about an employee or making disparaging remarks, you should also step in, so you're setting the stage for appropriate professional behavior by your staff. If you constantly do that, you'll have a reputation of being a very professional manager. Next, it goes without saying that you should not date your employees. Your employees may date each other, but certainly, employees shouldn't be dating if they're in a supervisory subordinate relationship. There are risks associated with dating in the workplace, and one could certainly be an unproductive workplace. Another could be a romance that goes sour that impacts and creates conflict in the workplace, which is not appropriate. You may consider the importance of maintaining a separate social life. Of course, you can socialize with your staff. But when you do so, make sure that your behavior is a hundred percent above board. This would apply to any company parties or sports events, conferences, off-site dinners, those sorts of things. Just be conscious of your conduct at all times with employees. Employees typically look to their supervisor or manager to set the behavioral standards. As we've talked about before, it's very important for you to be a good role model for your staff. We want relationships in the workplace to be smooth, but we also want to avoid legal issues, potentially. So, a hundred percent of the time that you're with employees, you need to be conscious of your conduct. Finally treat all employees, respectfully. Treat employees the way you would like to be treated. And if you do all that, you should have a good reputation with your staff and with other people within the organization, and that will help you to avoid being a target of a harassment complaint and have any employee complain about your conduct, whether it's off-site or on the job.

To summarize this section, we want to make sure that managers, supervisors, and team leaders recognize the fact that they have additional responsibilities to know your resources and to work with them internally. That would be your manager or your HR representative.

This section will focus on these following objectives. First of all, we'll talk about the elements of sexual harassment and the remedies available under state and federal law. Secondly, we'll discuss the forms of unlawful discrimination, harassment, and retaliation under the law. Thirdly, we'll talk about strategies for preventing and responding to unlawful discrimination, harassment, and retaliation.

First objective is to discuss the elements of sexual harassment and the remedies that are available under state and federal law. As we discussed in session A, there are a couple of different forms of sexual harassment divided into two different categories: quid pro quo or hostile work environment. Number one is quid pro quo or sexual favors. In two different ways: a.) it's the demanding of sexual favors in exchange for employment benefits or b.) demanding sexual favors by threatening negative employment actions.

The second kind is hostile work environment, which we'll talk about in a future slide.

The essence of a quid pro quo sexual harassment claim is that a supervisor relies on his or her

apparent or actual authority to extort sexual favors from an employee. The threat could be expressed or implied. Typically, the request is, "If you do this for me, I'll do this for you. Or if you don't do this for me, I won't do this for you." The courts have recognized three varieties of hostile work environment sexual harassment. First of all, it could be hostile work environment which is conduct directed at the claimant. It could also be conduct that is directed at others. Or thirdly, it could be widespread sexual favoritism. All of those components could be included in a hostile work environment sexual harassment complaint.

In session A, we talked about the three different types of sexual harassment under hostile work environment, and those are verbal, visual, or physical. Your company policy includes information of those three different types as well as real life examples to illustrate the types of sexual harassment that could be problematic in people's behavior. Examples of verbal hostile work environment harassment could include foul or obscene language, derogatory comments, explicit discussions about sexual activities, or comments about other people's physical attributes. Anytime those comments are made and a supervisor overhears them, one would expect the supervisor to step in and stop that type of behavior. Examples of visual hostile work environment harassment could be leering, staring, making sexual gestures, displaying sexually explicit objects, pictures, cartoons, graffiti, or posters, or sending graphic emails, text messages, or jokes. It'd be anything that is visually offensive. Physical hostile work environment harassment could include kissing, hugging, grabbing, impeding or blocking movement, or actually assault. As we discussed in session A, you probably don't have the need to touch your employees, so be cautious about your physical interactions with staff.

A couple of other points for amplification is that you should understand that sexual harassment can occur between individuals of the same sex. Another point of amplification is that sexual desire is not required in a complaint. Another point is that adverse employment action is not required. The complainant does not have to have a tangible economic loss or other adverse employment action against them to file a harassment claim. Also, the crux of a harassment claim is the assault on the complainant's personal sense of dignity and well-being. Oftentimes, the common response to charges of sexual harassment is a denial of the charges such as, "It never happened," or "There are no witnesses." The remedies available to a complainant are huge. Injunctive relief would be employer actions that have to be taken to remediate the situation, or there could be damages such as front pay, back pay, medical expenses, and also payment for emotional distress or loss of enjoyment of life., Certainly for a manager or supervisor who's accused of sexual harassment, it could affect your reputation and possibly your career.

Again, for amplification and clarification, there are other forms of unlawful discrimination, harassment, and retaliation under the Fair Employment and Housing Act and other statutes enforced by the Department of Fair Employment and Housing. We have federal law and state law addressing sexual harassment. There are some similarities but many differences in terms of the applicability of the various laws. This slide compares and contrasts the various differences between federal law and state law. As we discussed in session A, there are various protected categories on the federal level as well as on the state level. People are protected by

the law: our employees, applicants, contractors, volunteers, and also unpaid interns. Therefore, the employers' policy would apply to all of these groups. We have to ensure that all people that we encounter in our work day feel like they're being treated professionally and respectfully, and are not treated any differently because their race, gender, or other protected category. Who is liable under the law? Well, the organization could be or a person could be, individually. Every employer or prospective employer could be held liable for sexual harassment, and every person in the workplace could be personally liable for damages caused by unlawful harassment. It could be a supervisor, subordinate, or co-worker. There is, potentially, personal liability of anyone who's found to have engaged in harassing behavior. The individual harasser is personally liable for the damages caused by his or her unlawful actions. So, again, it's very important that people understand the impact of harassment in the workplace. Certainly, no one would want to be personally liable for any inappropriate behavior.

Certainly, there is employer liability associated with unlawful harassment. An employer is strictly liable for the unlawful harassment by its supervisors and agents. But what's the definition of a supervisor or an agent? The next slide discusses that.

This first case involves Braun Electric. They were directed to pay \$82,500 to settle a sexual harassment lawsuit filed by the EEOC. According to the lawsuit, since 2010, a male manager continually subjected his female co-workers to harassment and a hostile work environment. Some of the managers' unlawful behaviors included grotesque sexual remarks and explicit sexual propositions.

Here's a case involving national origin and age harassment when the employer failed to stop co-worker harassment of a guard concerning his national origin and age. The employee worked as a security guard for Guardsmark, and faced constant workplace harassment regarding his East Indian national origin and his age. He was 66 at the time. His co-worker made comments about his age, and the supervisors ignored his complaints, taking no action to address the hostile working conditions. He was then involuntarily transferred, leading to a reduction of his hours and a loss of employee benefits. The lawsuit was settled with the EEOC for \$25,000 and other remediation such as putting up the posters and conducting harassment training. The EEOC District Director stated, "employers need to be proactive about eliminating harassment as soon as they become aware of it.": Regular training in anti-discrimination laws and policies is simply a smart investment in prevention."

Another case involved a \$40,000 settlement for national origin harassment and retaliation. This case involved a family-owned business called Peters' Bakery, who violated federal law when the principal owner harassed a Latina employee by verbally abusing her with offensive ethnic and racial slurs. The manager made generalizations about Mexicans and used racial epithets. Peters, the bakery, then tried to force the employee to accept a lay-off and then wrongfully terminated her when she refused. The bakery then retaliated against her by suing after she filed a lawsuit with the EEOC. The bakery was ordered to pay Ramirez \$40,000, and take steps to prevent future discrimination.

This case involves Sutter Transfer Services, who was sued for race harassment. Sutter Transfer Services was sued for race harassment when the trucking company allowed a supervisor to harass truck drivers with racial slurs. Driver Lonnie Winstead was targeted by his dispatcher with racially charged comments. Winstead alleges that he also heard other racial slurs directed at various ethnic groups. In addition to that, other employees witnessed workplace harassment and even complain to management. However, Sutter failed to take action against the supervisor, so the race harassment continued. Sutter will pay Winstead \$30,000, and provide annual anti harassment training for all employees.

Another case illustrates national origin and religious harassment involving UPS. UPS was found to have violated federal law when it allowed supervisors and co-workers to harass and discriminate against an employee for being Arab and Muslim. The employee faced workplace harassment, both verbal and physical. He was called nicknames and subjected to racial comments. He was also physically harassed with rocks, bottles, and tools. Plus, a dead mouse was placed in his lunch bag. UPS failed to take action, even though he repeatedly reported the harassment to employers.

Those cases all illustrate that employers must take all reasonable steps to prevent the harassment, but then also, certainly, to respond once the issue is brought to their attention. It is unlawful for employers to fail to take all reasonable steps to prevent discrimination, harassment, and retaliation. This would apply to racial harassment, religious harassment, age-based harassment, or anything else that we've discussed in this training. A determination as to whether an employer has complied with Government Code Section 12940(k) includes an individualized assessment dependent upon numerous factors, sometimes unique to the particular employer, including but not limited to workforce size, budget, nature of the business, and the facts of the case. Those specific examples served to demonstrate that employers must implement strategies for preventing and responding to unlawful discrimination, harassment, and retaliation.

One of the first steps in prevention is to have good policies and procedures regarding investigation. The investigation is best handled by a human resources professional, typically, but the employer is obligated to conduct an effective workplace investigation of a harassment complaint and should conduct a thorough interview with the complaining party, give the accused party a chance to share their perspective of the events, and interview all with relevant witnesses. The employer should obtain all relevant documents, investigate all relevant avenues applicable to the allegations, and reach a reasonable and fair conclusion based on the facts. Also, supervisors should be provided with specific protocols to follow, should they be accused of harassment themselves.

Responsibility for enforcing an organization's harassment prevention program starts from the top. Clearly, it's everyone's responsibility to ensure that the workplace is free of harassment. However, it's important that managers and supervisors understand that adherence to the standards of the law and internal policies is required from their position. Top management

should also make sure that they're modeling the desired behavior and provide appropriate support.

In summary, thank you for listening to this section, which provided information on the following subjects: 1.) the elements of sexual harassment and remedies available, 2.) other forms of unlawful discrimination, harassment, and retaliation, 3.) strategies for preventing and responding to unlawful discrimination, harassment, and retaliation, and then finally, a bit more amplification on the concept of abusive conduct in the workplace.

Thank you for participating in the session. And also, thank you for taking the topic seriously. This training class was presented by capreventharassment.com, dedicated to a professional and respectful workplace.

Thank you so much. [END]