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CONFERENCE

MAY 7-10

RESORT AT SQUAW CREEK • LAKE TAHOE, CA



Sexual Harassment Prevention Training for Local Agency Officials (AB1661)

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Why Are We Here?

- To ensure a workplace that demonstrates respect, dignity, diversity, and inclusion.
- To ensure a workplace free of harassment, discrimination, and retaliation where everyone feels safe.

What We Will Cover

1. Prevalence, Cost and Effect of Workplace Harassment
2. Unconscious Bias
3. Defining Workplace Harassment and Discrimination
4. Liability for Workplace Harassment
5. Board Members' Duties
6. Retaliation And How to Prevent It
7. Abusive Conduct
8. Workplace Culture

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Prevalence, Cost, and Effect of Workplace Harassment



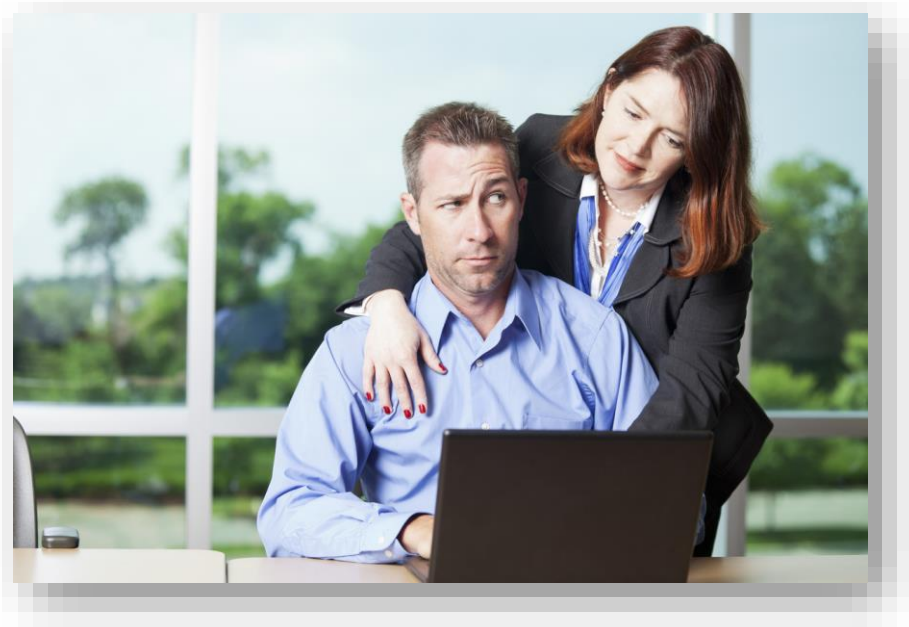
Prevalence of Sexual Harassment

80-90% of working women say they have been subjected to unwanted work-related sexual advances.

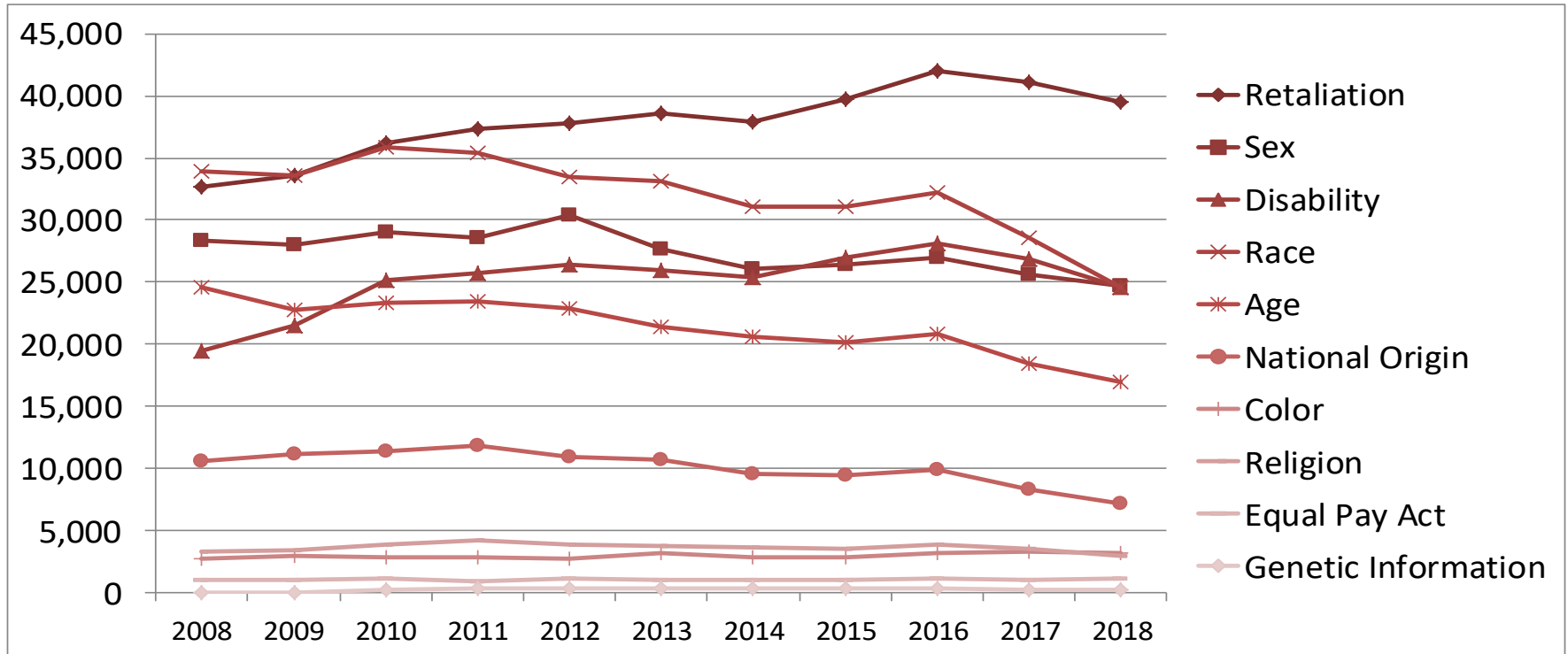


Prevalence of Sexual Harassment

40-50% of working men say they have been subjected to unwanted work-related sexual advances at some time during their careers.



Discrimination Claims From the EEOC (2008-2018)



EEOC – Sexual Harassment Claims From the EEOC (2015-2018)



EEOC – Monetary Relief Obtained by the EEOC (2015-2018)



Prevalence of Sexual Harassment

#MeToo spread virally in October 2017 as a hashtag on social media to demonstrate widespread prevalence of sexual assault and harassment, particularly in the workplace and working relationships. It followed soon after the public revelations regarding Harvey Weinstein's sexual misconduct.

DOUBLE ISSUE

DECEMBER 18, 2017

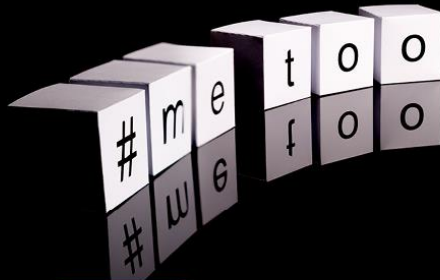
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LES MOONVES



BILL O'REILLY



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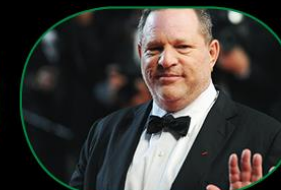
ERIC SCHNEIDERMAN



KEVIN SPACEY



BRUCE WEBER



HARVEY WEINSTEIN



STEVE WYNN

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#MeToo and Sexual Harassment at Work



Is it more challenging now for men and women to navigate their interactions with each other at work?

#MeToo and Sexual Harassment at Work

- Major Concerns include:
 - Men/Women get away with sexual harassment/assault
 - Women/Men not being believed
 - Employers terminating men/women before finding out the facts
 - Women/Men falsely claiming sexual harassment

Prevalence of Sexual Harassment

- Employees who experience harassment commonly respond by:
 - Avoiding the harasser
 - Denying or downplaying the gravity of the situation
 - Attempting to ignore, forget or endure the behavior

Prevalence of Sexual Harassment

- The least common response is to take some formal action
 - Roughly 75% of individuals who have experienced harassment never report the conduct.
 - Approximately 90% of individuals who have experienced harassment never file an administrative charge or a complaint.

Prevalence of Sexual Harassment

- Why do employees commonly fail to report harassing behavior?
 - Fear of:
 - Disbelief of their claim
 - Inaction on their claim
 - Receipt of blame for causing the conduct
 - Social retaliation
 - Professional retaliation
 - Feelings of shame



Effects of Sexual Harassment

- Workplace harassment affects not only those who suffer it, but also others in the workplace, leading to:
 - Emotional and physical harm
 - Reduced productivity
 - Performance issues
 - Decreased professional advancement
 - Diminished employee morale
 - Increased absences and turnover

Why Harassment Allegations Should Matter to Employers

- Direct financial costs to the business related to litigation defense, settlements and/or judgments.
 - In 2018, the EEOC alone recovered nearly \$70 million for workers alleging harassment.



Why Harassment Allegations Should Matter to Employers

- Indirect financial costs, including:
 - Negative media coverage
 - Reputational damage
 - Recruitment and retention issues
 - Organizational shifts
 - Damage to long-term goals

Do You Know...?

- How to address harassment complaints?
- Your harassment prevention policies?
- When should an employer be informed of any complaints?
- Who handles complaints?

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Overcoming Unconscious Bias



Bias

Explicit Bias: Attitudes and beliefs we have about a person or group on a conscious level. Most of the time, these biases and their expression arise as the direct result of a perceived threat.

Implicit Bias: Bias in judgment and/or behavior that results from subtle cognitive processes (e.g., implicit attitudes and implicit stereotypes) that often operate at a level below conscious awareness and without intentional control.

Stereotype: A conventional, formulaic, and usually oversimplified conception, opinion, or belief.

Dovidio, J., Gaertner, S., Kawakami, K., & Hodson, G. (2002), "Why can't we just get along? Interpersonal biases and interracial distrust," *Cultural Diversity and Ethnic Minority Psychology*, 94.

Take the Implicit Association Test ("IAT"): <https://implicit.harvard.edu/implicit/selectatest.html>

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Unconscious Bias

- Read out loud each of the following words as quickly as you can:

RED GREEN BLUE ORANGE BLACK

- Read out loud the color of each of the following words as quickly as you can:

GREEN BLACK RED BLUE YELLOW

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Women in Corporate Leadership

Women currently hold 4.8% of (or 24)** CEO positions at Fortune 500 companies.

Fortune: May 2018

** 6.4% of (or 32) CEOs in 2017

Minorities hold approximately 4% of CEO positions at Fortune 500 companies

*Fortune: June 2017**

**Most recent data available*

Women in Leadership Roles

- Women have the top jobs at the New York Stock Exchange and at NASDAQ.
- Four out of five of America's biggest defense companies are run by women.
- Chicago has its first black female mayor.
- The Democratic leading light, Stacey Abrams, just drew a line in the sand when asked if she would run for Vice President. She replied, "You don't run for second place."

Equal Pay – Never Too Young



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Defining Workplace Harassment



Federal Law: Title VII

- Title VII of the Civil Rights Act of 1964 is the chief source of federal anti-harassment law.
- Applies to businesses with 15+ employees engaged in interstate commerce.
- Protects employees and applicants.



Federal Law: Title VII

- Makes it unlawful “to discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-2(a)(1).
 - Sexual harassment is actionable as “discrimination” on the basis of “sex.” – *In Meritor Savings Bank v. Vinson* (1986)

Federal Law: Title VII

- “Sex” encompasses both sex (i.e., biological differences between men and women) and gender (i.e., a person’s gender-related appearance and behavior regardless of sex assigned at birth).



Federal Law: Title VII

- Enforced by Equal Employment Opportunity Commission (EEOC).
 - Accepts, investigates and prosecutes charges.
 - Authorized to oversee conciliation process.
- Requires that a employee exhaust administrative remedies prior to filing a lawsuit.
 - Must file charge within 180 days after unlawful employment practice occurred.



State Law: FEHA

- California's Fair Employment and Housing Act (FEHA) provides broader protections than Title VII.
- Applies to public and private employers with 5+ employees.
 - But, anti-harassment provisions apply to employers with only 1+ employee(s).
- Protects employees, interns, temporary workers, volunteers, and applicants.

State Law: FEHA

Prohibits discrimination and harassment on the basis of:

- Race
- Religious creed,
- Religion (including religious dress and grooming)
- Color
- National origin
- Ancestry
- Physical or mental disability
- Medical condition
- Genetic information
- Marital status
- Sex
- Gender
- Gender identity
- Gender expression
- Age
- Transgender status
- Sexual orientation
- Citizenship status
- Military or veteran status
- Height and weight
- Domestic violence victim status
- Political affiliation
- Pregnancy, childbirth, breastfeeding or related medical conditions
- Any other consideration made unlawful by federal, state or local law, or ordinance



State Law: FEHA

- The FEHA is enforced by the Department of Fair Employment and Housing (DFEH).
 - Accepts, investigates and prosecutes claims.
- Requires that a employee exhaust administrative remedies prior to filing a lawsuit.
 - Must file complaint within one year from the unlawful act.

State Law: FEHA

- Both the DFEH and the California courts can order employers to:
 - Hire an improperly rejected applicant
 - Reinstatement a terminated employee
 - Pay actual damages, including front and back pay
 - Courts can also order unlimited compensatory damages and punitive damages

Defining Sexual Harassment

- There are two forms of sexual harassment:
 - Quid pro quo harassment
 - Hostile environment harassment



Quid Pro Quo Harassment

- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature where —
 - Submission to such conduct is a term or condition of employment; or,
 - Submission to or rejection of such conduct results in an employment decision.

Quid Pro Quo Harassment

- Occurs when:
 - The grant or denial of job benefits – e.g., getting or retaining a job, receiving a promotion or transfer – are conditioned on submission to conduct of a sexual nature; and,
 - The employee's reaction to such conduct results in a tangible employment action.

Quid Pro Quo Harassment

- Examples:
 - “Sleep with me and you’ll be promoted.”
 - “Unless you sleep with me, you’ll be demoted.”



Hostile Environment Harassment

- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature where such conduct is severe or pervasive as to sufficiently offend, humiliate, distress, or intrude upon its victim, so as to disrupt the victim's emotional tranquility in the workplace, affect the victim's ability to perform the job as usual, or otherwise interfere with and undermine the victim's personal sense of well-being. – Gov't. Code section 12923

Hostile Environment Harassment

- Occurs where unwelcome comments or conduct based on sex unreasonably interfere with a victim's work performance or create an intimidating, hostile, or offensive work environment and
 - Does not require the offensive conduct to be aimed directly at the victim.

The Unwelcome Requirement

- *A subjective* standard
- In determining whether comments or conduct are unwelcome, consider that:
 - Each individual has a unique perspective and sensibilities that aren't always apparent to others
 - People are often too embarrassed to object
 - Clear objection is not required
 - Be alert for non-verbal cues

Severe or Pervasive Requirement

- *Objective* and *subjective* standard
- Determined by looking at all of the circumstances, including:
 - Frequency;
 - Severity;
 - Whether it is physically threatening or humiliating; and,
 - Whether it unreasonably interferes with an employee's work performance

Framework for Assessing Risk of Liability



Requirement

- “A reasonable person subjected to discriminatory conduct would find...that the harassment so altered working condition as to make it more difficult to do the job.”
 - Justice Ruth Bader Ginsburg’s concurrence in *Harris v. Forklift Systems* (1993).
 - Gov’t. Code section 12923.

Assessing Risk of Liability

- A single incident of harassing conduct is sufficient to create a triable issue regarding the existence of a hostile work environment if the harassing conduct has unreasonably interfered with the plaintiff's work performance or created an intimidating, hostile, or offensive working environment.
 - Gov't. Code section 12923.

Assessing Risk of Liability

- The existence of a hostile work environment depends upon the totality of the circumstances and a discriminatory remark, even if not made directly in the context of an employment decision or uttered by a nondecisionmaker, may be relevant, circumstantial evidence of discrimination.
 - Gov't. Code section 12923.

Forms of Harassing Conduct

- Visual conduct
 - Making sexual gestures
 - Displaying sexually suggestive or lewd objects, photographs, cartoons, drawings, posters, or websites



Forms of Harassing Conduct

- Verbal conduct
 - Derogatory comments or slurs
 - Unwelcome remarks about an individual's body, physical characteristics, or appearance
 - Whistles or catcalls
 - Sharing sexual stories or fantasies
 - Jokes or teasing about sexual matters
 - Threats or demands to submit to sexual requests
 - Repeated requests to date or socialize
 - Comments about another's alleged sexual history, interests, or prowess

Forms of Harassing Conduct

- Physical conduct
 - Uninvited touching of any sort
 - Impeding or blocking movements
 - Staring or leering
 - Invading personal space*
 - Assault

*Joe Biden situation



Work-Related Conduct

- The conduct complained of must be workplace related, even if it involves acts occurring elsewhere.
- Socializing outside of the office carries certain risks.

Other Types of Harassment

- Harassment based on any protected characteristic is unlawful.
- Even if harassment is not unlawful per se, it should be prevented.

Hypothetical

- Tim's female supervisor constantly yells at him and tells him he is incompetent. Often, this occurs in front of other employees, causing Tim great embarrassment. Tim complains that he is the victim of "harassment" and demands that the company do something about it.

Could this be unlawful harassment?

1. Yes
2. No
3. Maybe

What should the Company do about it?

Hypothetical

- Answer: No, this is not unlawful harassment.
 - Harassment is only unlawful if it is based on gender or some other protected characteristic.
 - Best practice: Take action to remedy the situation, even though the conduct may not be unlawful.

Hypothetical

- Dan is recently widowed. One of his co-workers, an attractive woman named Linda, asks him out on a date. He declines. Linda persists, sending Dan notes of an increasingly sexual nature, despite his requests that she stop. Dan complains to the manager, who does ask Linda to stop, but she continues. Dan then sues the company for sexual harassment.

Could Dan establish a claim for sexual harassment?

1. Yes
2. No
3. Maybe

Hypothetical

- Answer: Likely, yes.
 - A man is entitled to protection from sexual harassment by a woman. In this case, it is improper to presume that a reasonable man would necessarily welcome overtures from an attractive woman.
 - Best practices: Avoid making judgments based on stereotypes.

Hypothetical

- Alan is a manager with a strange sense of humor. He frequently tells offensive jokes to all of his subordinates, including a couple who are husband and wife. The husband and wife sue for sexual harassment. The company argues that because Alan is equally offensive to men and women, the alleged harassment is not “because of” gender, and therefore it is not unlawful.

Is the Company correct (i.e., is there a defense because Alan was equally offensive to men and women)?

1. Yes
2. No
3. Maybe

Hypothetical

- Answer: No.
 - Offensive conduct of a sexual nature can give rise to liability for harassment, even if it is directed at both genders. The “equal opportunity offender” is not excused.

Hypothetical

- Monica complains of sexual harassment because of sexual jokes, comments, and actions by co-workers. However, this conduct is not directed towards Monica.

Does Monica have a right to complain about hostile work environment harassment when the conduct was not directed towards her?

1. Yes
2. No
3. Maybe

Hypothetical

- Answer: Yes.
 - An employee can be subjected to a “hostile work environment” even if the sexual harassment is not directed at him or her.

Hypothetical

- A company is regularly visited by a UPS delivery person, who consistently makes inappropriate sexual comments to the receptionist. The receptionist complains to the manager at ABC, who tells her there is nothing he can do because the UPS person is not a company employee, and the company does not have a contractor relationship with UPS.

Could the employer be liable to the employee for the actions of the UPS driver, a non-employee?

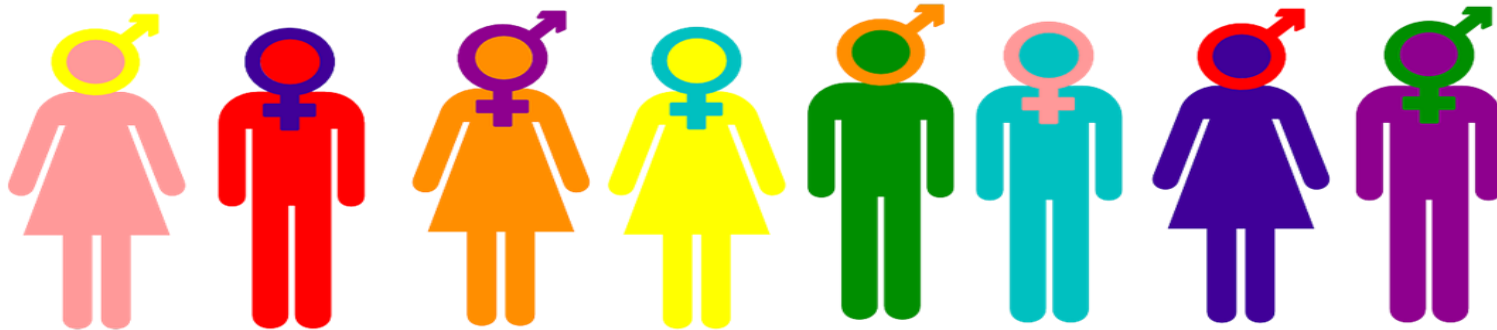
1. Yes
2. No
3. Maybe

Hypothetical

- Answer: Yes.
 - An employer is liable to an employee for known sexual harassment by nonemployees such as clients, customers, contractors, vendors, or anyone with whom employees have contact as part of their job.



Gender Identity and Expression, and Sexual Orientation





Title VII: Sex Stereotypes

- The U.S. Supreme Court has held that discrimination based on sex stereotypes (i.e., assumptions or expectations about how persons of a certain sex should dress or behave) is unlawful sex discrimination.
 - *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989)

Title VII: Transgender Protections

- Some federal courts have held that discrimination against a transgender person is unlawful sex discrimination based on sex stereotyping under *Price Waterhouse*.

Title VII: Sexual Orientation

- The U.S. Supreme Court has held that same-sex harassment is actionable as sex discrimination.
 - *Oncale v. Sundowner Offshore Servs.*, 523 U.S. 75 (1998)

Title VII: Sexual Orientation

- However, Title VII does not expressly prohibit discrimination based on sexual orientation.
 - *But*, the 2nd and 7th Circuit and EEOC have found discrimination based on sexual orientation *is* discrimination because of sex.

FEHA: Gender Identity and Expression, and Sexual Orientation

- Explicitly prohibits discrimination and harassment on the basis of gender identity, gender expression, and sexual orientation.

Definition of Gender Identity

- A person's internal understanding of their gender, or the perception of a person's gender identity, which may include male, female, a combination of male and female, neither male nor female, a gender different from the person's sex assigned at birth, or transgender.



Definition of Gender Expression

- A person's gender-related appearance or behavior, or the perception of such appearance or behavior, whether or not stereotypically associated with the person's sex assigned at birth.





Definition of Transgender

- A general term that refers to a person whose gender identity differs from the person's sex assigned at birth. A transgender person may or may not have a gender expression that is different from the social expectations of the sex assigned at birth.

Definition of Transitioning

- A process some transgender people go through to begin living as the gender with which they identify, rather than the sex assigned to them at birth. This process may include, but is not limited to, changes in name and pronoun usage, facility usage, participation in employer-sponsored activities (e.g. sports teams, team-building projects, or volunteering), or undergoing hormone therapy, surgeries, or other medical procedures.

Hypothetical

- Rachel is a transgender woman. She has repeatedly asked her supervisor to call her Rachel and to refer to her with the feminine personal subject and object pronouns “she” and “her.” Rachel’s supervisor continues to refer to her as Robert and uses the masculine pronouns “him” and “he.” Is this unlawful?

Hypothetical

- Kelly applied for a job with the ABC Company and received a conditional job offer. The ABC Company then asked Kelly to provide documentation regarding her sex as a condition of employment. Is this lawful?

Hypothetical

- Jaime is a transgender man. One day, after Jaime used the men's restroom at work, a patron complained to management. Management told Jaime to use the women's restroom in the future because they did not want him to make patrons feel uncomfortable. Is the employer's action lawful?

Hypothetical

- Alex is a transgender woman. Alex's employer has a grooming policy that only permits female employees to wear makeup. Alex is written up for wearing lipstick and mascara to work. Is the employer's policy lawful? Is the employer's treatment of Alex lawful?

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What if ...



What if?

- Nancy has worked for a company for three years. When she first began her job, she laughed when her co-workers and supervisors shared dirty jokes. However, in the last few months, Nancy has avoided these co-workers. After overhearing a co-worker making a joke, she goes to HR and complains about harassment.
- How should HR respond? Does it matter that Nancy used to make jokes herself?

What if?

- David complains that his male supervisor and male coworkers subjected him to extremely demeaning and sexually explicit comments (gay innuendo, profanity, rude behavior) and gestures. Comments were made both jokingly and in anger. While conduct was graphic, vulgar, and sexually explicit, the words were not an expression of actual sexual desire.
- Does David have a basis to claim harassment?

What if?

- Bill receives from a close friend an e-mail attachment containing a sexually explicit joke. Bill forwards it to his co-worker, Josh, who he has shared such jokes with in the past. Bill knows with certainty that Josh will not be offended. Josh sees the joke and laughs. Jessica comes to Josh's desk to see what is so funny, and she is offended by the joke she sees on the computer.
- Does Jessica have a claim for harassment? How about Josh?

What if?

- Melissa tells HR that her supervisor made unwelcome sexual advances toward her while they were alone in the office. The supervisor denies the allegation and no one witnessed the alleged advances.
- What should HR do? Does Melissa's inability to produce a witness end the inquiry?

What if?

- Tim is working late one evening and sees Melissa come out of her supervisor's office, looking distressed. He asks her what is wrong, and Melissa says that the supervisor "made her really uncomfortable," but she doesn't want to talk about it. Melissa's supervisor is also Tim's supervisor.
- What should Tim do?

What if?

- Amanda is passed over for a promotion, which is instead given to Beth, who is objectively less qualified than Amanda. Amanda finds out that Beth is carrying on a sexual relationship with their mutual supervisor.
- Does Amanda have a claim for harassment? Does it matter if Beth's relationship with the supervisor is consensual and she does not feel coerced?

What if?

- It turns out Beth does not feel that the relationship is consensual, and that she must sleep with her boss to get the promotion. However, she keeps this to herself, fearing that informing anyone of her feelings will cause her to get fired. After a two-year “relationship,” Beth summons the courage to go to HR.
- Are Beth’s allegations diminished because she said nothing for two years?

What if?

- A supervisor frequently hugs female employees chest-to-chest and kisses them on the cheek. The supervisor occasionally hugs male employees. Most employees “grin and bear it,” but one employee gets fed up and goes to HR, claiming harassment.
- Is there any basis for the claim? What should HR do?

What if?

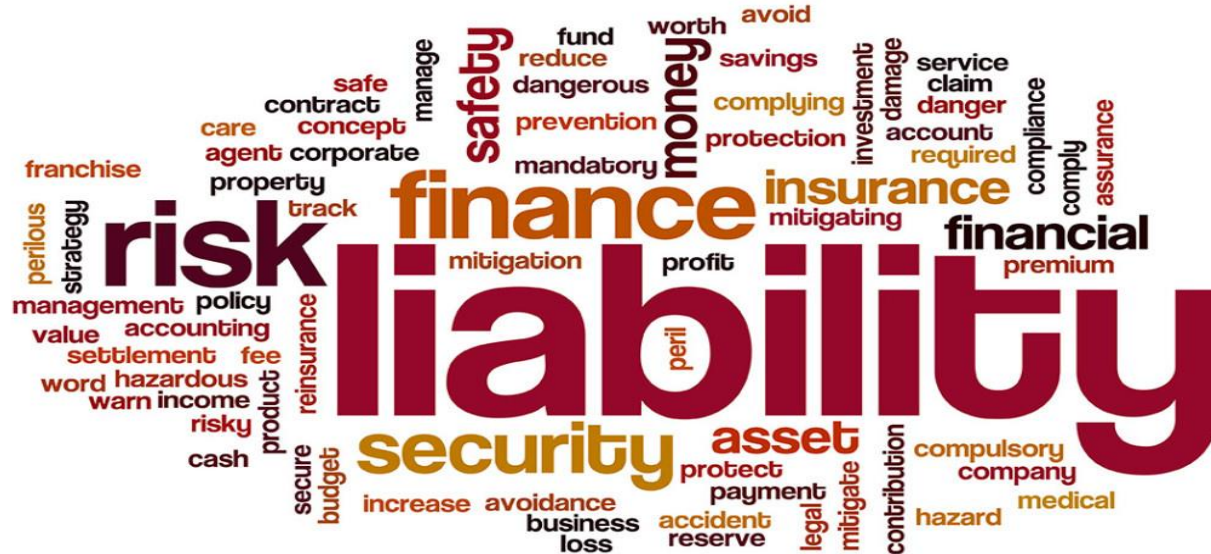
- Tom has had his eye on Bridget, a co-worker. He asks her out on a date, and Bridget says no. Not to be deterred, Tom asks her again three days later and explains that he thinks they would have a really beautiful evening and she should give him a shot because he's a nice guy. She says no again and asks him to stop asking her. Bridget goes to HR and complains she's being harassed.
- What should HR do? What if Tom asks Bridget out again?

What if?

- Alice has been regularly working on a project with Mike, a client who is based out of town. One afternoon while they are working in Mike's office, Mike asks Alice to have dinner with him. Alice is caught off guard by this request, which makes her uncomfortable.

What if?

- Alice calls her boss and tells him she is not comfortable accepting Mike's invitation, because she thinks Mike may have a romantic interest in her. Alice's boss tells her that entertaining clients is part of the job, and that she must accept. At the dinner, Mike rubs Alice's leg, and she gets up and leaves.
- Does Alice's company have exposure for sexual harassment? Does the fact that there was a legitimate business purpose to the dinner matter?



The Employer's Liability

- Title VII
 - Where a supervisor engages in quid pro quo harassment, the employer is strictly liable.
 - Where a supervisor engages in hostile environment harassment, the employer is strictly liable unless it proves that:
 - It exercised reasonable care to prevent and promptly correct the harassment; and,
 - The employee unreasonably failed to complain to management or to avoid harm otherwise.

The Employer's Liability

- FEHA
 - An employer is strictly liable for sexual harassment perpetrated by a supervisor and has no defense to liability.
 - But, under the avoidable consequences doctrine, a plaintiff's damages may be limited if:
 - The employer took reasonable steps to prevent and correct workplace harassment;
 - The employee unreasonably failed to use the preventative and corrective measures; and,
 - A reasonable use of the employer's procedures would have prevented at least some of the harm the employee suffered.

The Employer's Liability

- Title VII & FEHA
 - Where a non-supervisory employee or non-employee engages in hostile environment harassment, the employer is liable if it knew, or should have known, about the harassment and failed to take prompt and appropriate corrective action.

Definition of Supervisor

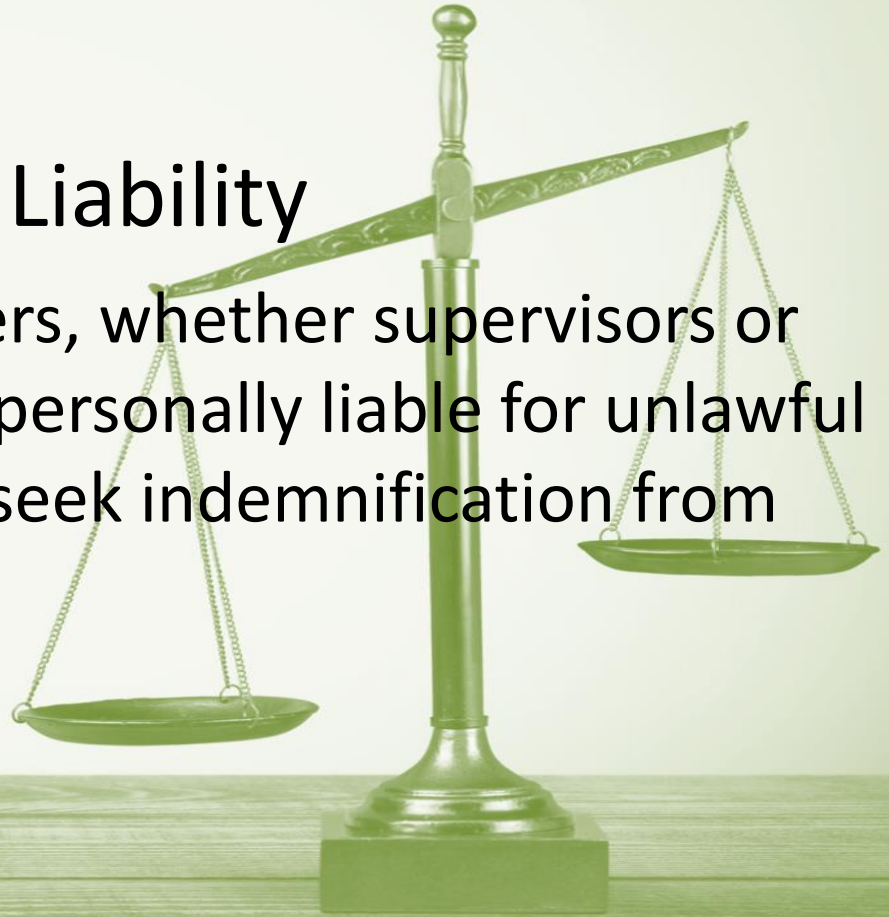
- Title VII
 - A “supervisor” is an employee empowered by the employer to take tangible employment actions against the victim — i.e., to cause a significant change in the victim’s employment status.
 - E.g., firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.

Definition of Supervisor

- FEHA
 - A “supervisor” is an employee having authority from the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them or recommend such action through the use of independent judgment.

Harasser's Individual Liability

- Under the FEHA, harassers, whether supervisors or coworkers, may be held personally liable for unlawful harassment and cannot seek indemnification from the employer.



The Employer's Obligations

- California law requires that employers take “all reasonable steps necessary to prevent discrimination and harassment from occurring.” Gov. Code § 12940(k).
 - Failure to prevent discrimination and harassment is an independent basis for legal liability.

The Employer's Obligations

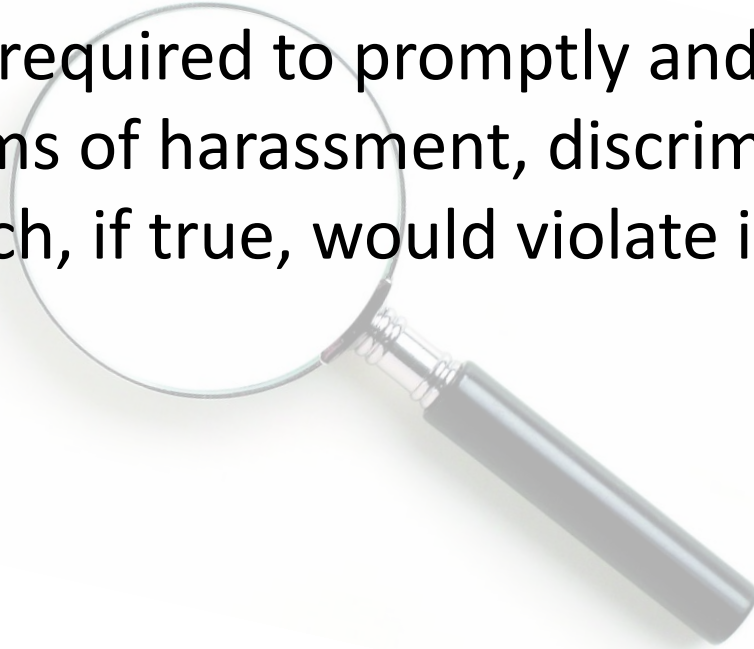
- Employers must:
 - Have a policy
 - Have a complaint procedure
 - Post notices and distribute information
 - Train all employees
 - Take prompt corrective action that is reasonably calculated to end the harassment

Corrective Action

- An employer's obligation to take prompt corrective action requires that the employer:
 - Take temporary steps to address the situation until the employer determines whether the complaint is justified
 - Implement permanent remedial steps to prevent future harassment once the investigation is completed

Workplace Investigations

- An employer is required to promptly and thoroughly investigate claims of harassment, discrimination or retaliation, which, if true, would violate its rules or the law.



Workplace Investigations

- Complaints must be:
 - Kept confidential, to the extent possible
 - Investigated impartially by qualified personnel
 - Documented and tracked for reasonable progress
 - Appropriate remedial action designed to prevent future harassment
 - Closed in a timely manner
 - Results reported to complainant and respondent

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Board Members' Duties



Board Members' Duties

- Board Members have a constitutional and statutory fiduciary duty to administer the retirement system prudently for the benefit of the members and their beneficiaries.

Duty of Loyalty

- Board Members must discharge their duties *solely in the interest of*, and for the exclusive purposes of *providing benefits* to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system.
 - California Constitution, Article XVI, Section 17(b)

Duty of Care

- Board Members must discharge their duties with respect to the system with the *care, skill, prudence, and diligence* under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims.
 - California Constitution, Article XVI, Section 17(c)

Duty to Report

- If a Board Member observes or learns of a possible policy violation or a violation of law involving an agency employee, immediately report it to the Retirement Administrator or General Counsel.

Duty to Report

- If a Board Member observes or learns of a possible policy violation or a violation of law involving the Retirement Administrator, Assistant Retirement Administrator or a Board Member, immediately report it to the Board Chair.
- If a Board Member observes or learns of a possible policy violation or a violation of law involving the Board Chair, immediately report it to the Board Vice Chair.

Duty to Monitor

- Stay informed of the system's applicable policies and procedures.
- Understand when harassment complaints are reported to and handled by the Board.
 - Consider whether the system's general counsel should be involved.
- Ask questions and understand the rationale for actions taken in relation to harassment complaints.
 - Do not “rubber stamp” recommendations.

Duty to Prevent

- Take immediate steps to address any allegations of harassment, discrimination or retaliation received by the Board.
 - Ensure complaints are investigated promptly, thoroughly, and by impartial and qualified personnel.
 - Ensure reasonable corrective action is taken, where appropriate.

Duty to Prevent

- Ensure policies, procedures and reporting mechanisms are current and effective.
- Set an example through your behavior and interactions with fellow Board members and staff.

What if?

- Megan complains to her supervisor about sexually suggestive comments made to her by a male co-worker, but demands that the information be kept strictly “confidential.”
- What should the supervisor do? Can she promise to keep the information confidential?

What if?

- While Megan's supervisor ponders what to do, she knows that Megan and the male co-worker sit right next to each other every day. Megan's supervisor tells Megan to move to the empty office down the hall for the time being while she sorts out Megan's allegations.
- Was this appropriate? What else could the supervisor have done?

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Retaliation and How to Prevent It



Retaliation

- Both Title VII and the FEHA make it unlawful for an employer to retaliate against an employee (or an applicant) who reports or otherwise opposes prohibited discrimination or harassment.

Elements of a Retaliation Claim

- The employee engaged in a protected activity;
- The employer subjected the employee to an adverse employment action; and,
- There is a causal link between the protected activity and the employer's action.

Avoiding Retaliation Claims

- Never disparage individuals for engaging in protected activities, even as a joke.
- Treat all employees fairly and equitably under the circumstances.
- Hold all employees to fair, reasonable, and consistent standards.
- Carefully monitor employee performance and behavior, and document your observations.
- Promptly address any performance problems or misconduct and document your actions.

What if?

- Adam complains to management that he believes he has been the victim of discrimination. An investigation determines that there has been no discrimination. One month later, Adam's wife is laid off. Adam's wife claims that her layoff was in retaliation for Adam's complaint. Is there any basis here?

What if?

- Pam screwed up a major deal, losing her company tens of thousands of dollars. Knowing she is about to be written up, or worse, she tells HR that her supervisor has been making sexual advances toward her. Can the company still go through with the discipline? What if the supervisor admits that he has made sexual advances towards Pam?

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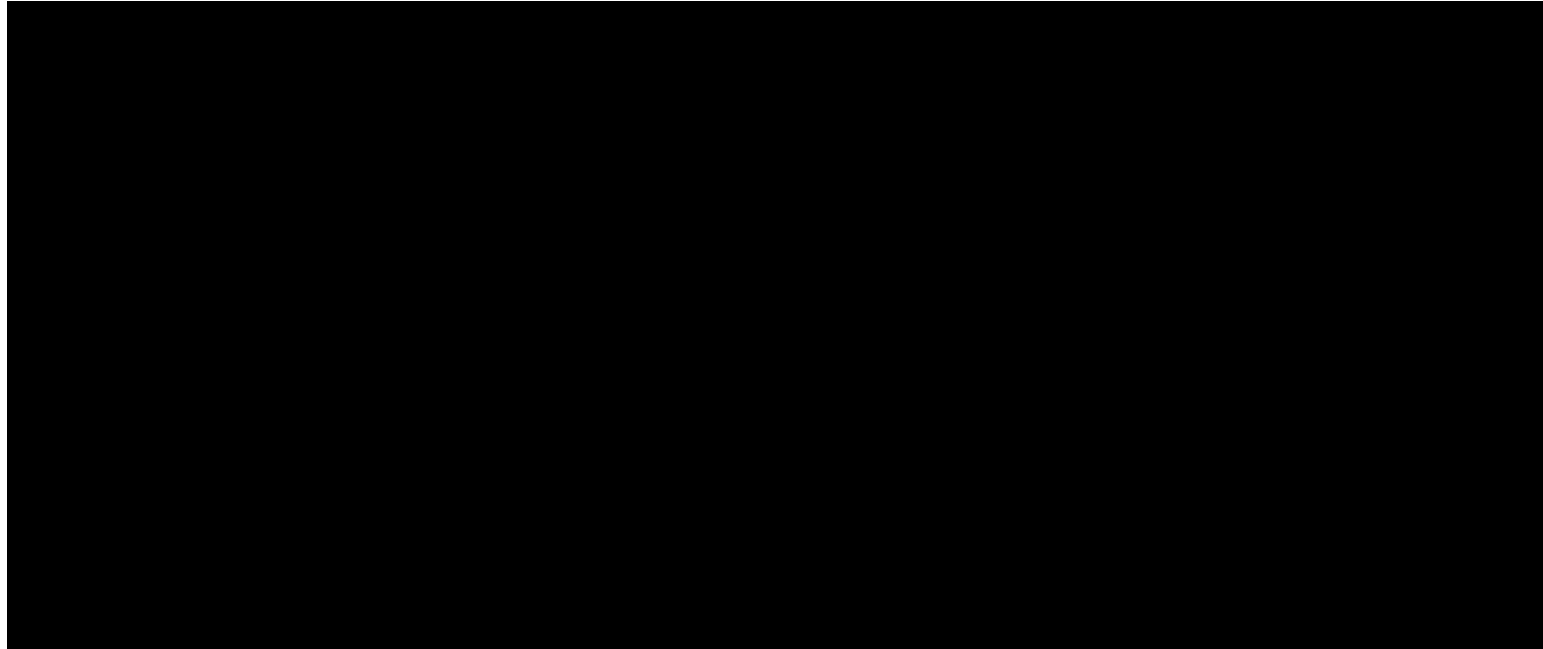
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Abusive Conduct



Workplace Bullying



Abusive Conduct

- Abusive conduct is defined as “[c]onduct of an employer or employee in the workplace, with **malice**, that a reasonable person would find **hostile, offensive, and unrelated to an employer’s legitimate business interests.**”
-- Gov. Code §12950.1





Abusive Conduct

- Abusive conduct may include:
 - Repeated infliction of verbal abuse
 - The gratuitous sabotage or undermining of a person's work performance.
- A single act does not constitute abusive conduct, unless especially severe and egregious.

Abusive Conduct

A 2017 national survey found that:

61% are aware of abusive conduct in the workplace

19% were victims of bullying

19% witness bullying

Abusive Conduct

- Abusive conduct can have a negative effect on productivity and morale, as well as increase absenteeism and employee turnover.
- There is a difference between tenacious management and abusive workplace conduct.

* This training is not intended to prohibit any activities protected by the NLRA.

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Workplace Culture



Workplace Culture

- The workplace culture has the greatest impact on allowing, or preventing, harassment.



Workplace Culture



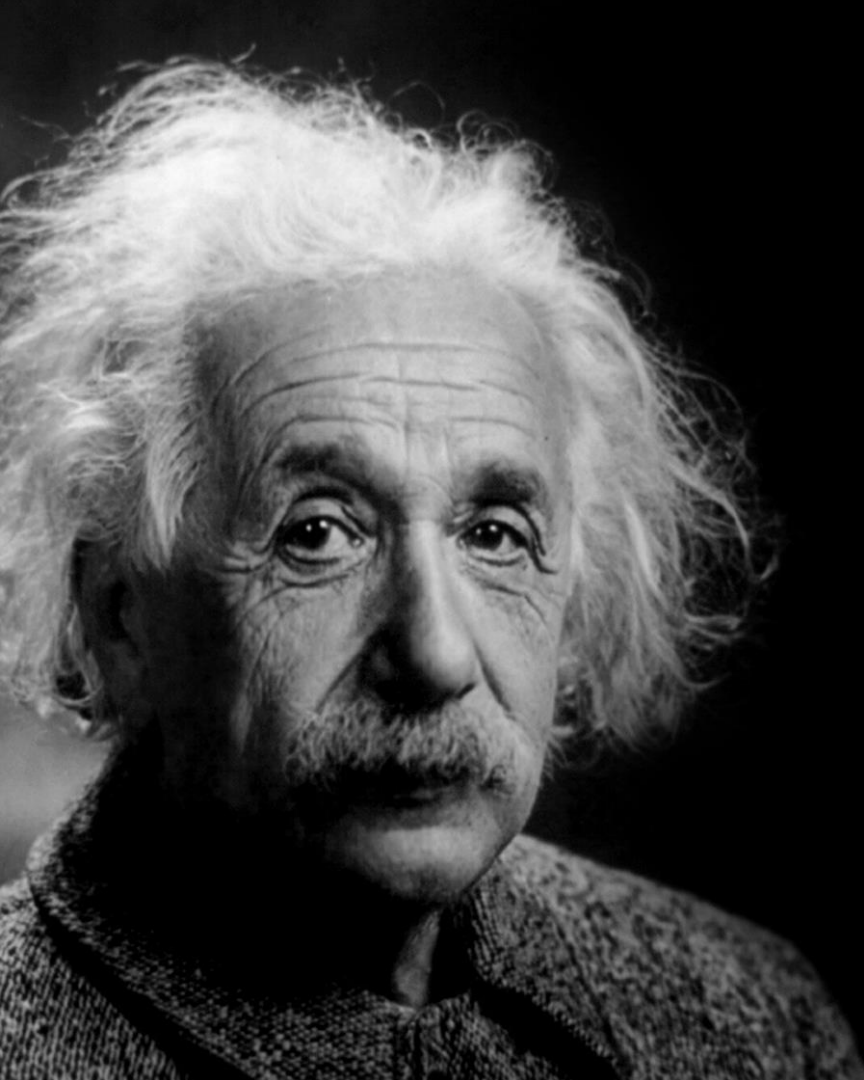
What creates an organization's culture?

- Values
- Leadership
- Accountability

It's On Us

It's on all of us to stop workplace harassment by stepping in and speaking up when we observe problematic behaviors, and to treat every employee with dignity and respect.





*We can't
solve problems
by using the same
kind of thinking
we used when
we created them.*

Albert Einstein

PARTING SHOT

Every Great Dream Begins With A Dreamer

Always remember, you have
Within you the strength,
The patience, and the passion
To reach for the stars
To change the world



HARRIET TUBMAN

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Questions?

