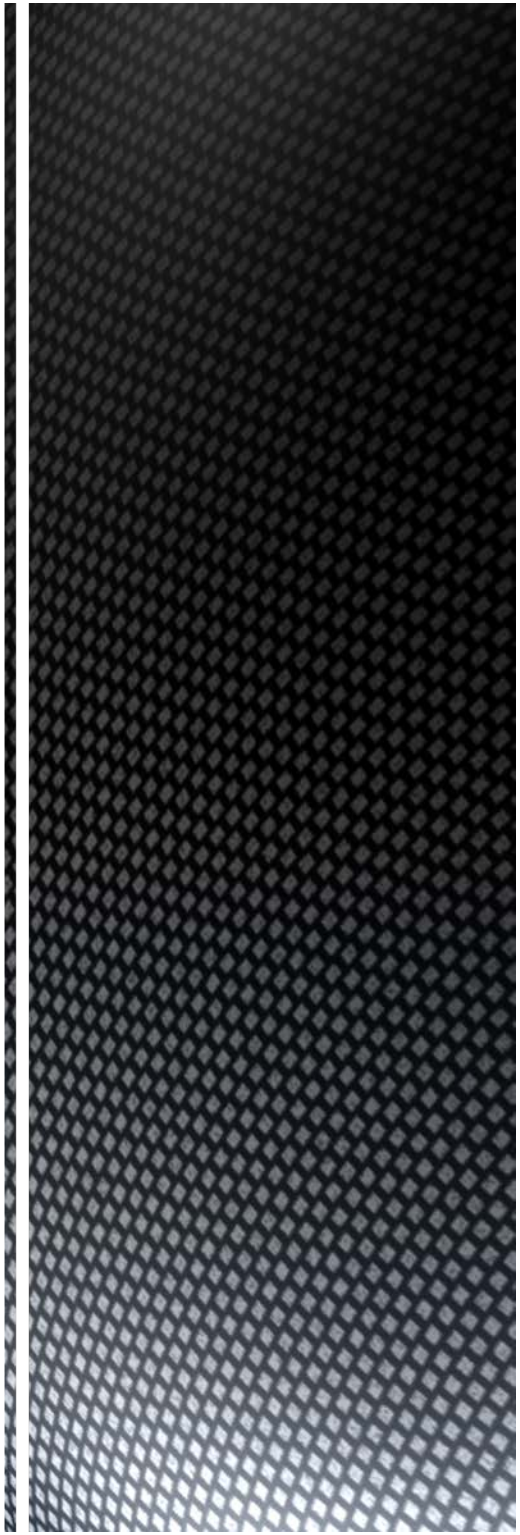

Preventing Discrimination & Harassment

Presented by
Brena Moyer Lopez, Sr. Assistant Attorney General
Sylvia Van Dyke, Sr. Assistant Attorney General
Labor & Employment Section
Oregon Department of Justice

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Pre-Test

Sexual harassment can only involve people of the opposite sex.

a) True

b) False

Pre-Test, Cont'd

Will a complaint be investigated if the person complaining was not the victim but a witness?

a) True

b) False

Pre-Test, Cont'd

It is okay for co-workers to make sexual comments about other employees when they are at lunch off-site.

a) True

b) False

Why is this Training Required?

Not to:
Scare us all into compliance or because anyone has been "bad."

But to:
- Remind us to treat everyone with dignity and respect.

- Help us understand what might be harassing or inappropriate behavior, including updates in the laws that govern workplace conduct

- Understand our responsibilities to stop harassing or inappropriate behavior.

Civil Rights Violations vs. "Bad Behavior"

Civil Rights Violation
ILLEGAL!

- ❑ Discrimination
- ❑ Harassment
- ❑ Based on a protected class or condition of employment

Can result in:

- BOLI investigation
- EEOC investigation
- Civil lawsuit

"Bad Behavior"
STUPID - with consequences!

- ❑ Personality conflict
- ❑ Bad treatment
- ❑ Intimidation
- ❑ Humiliation

Can result in:

- Disciplinary action
- Workers' Comp claim

BOTH are wrong and not tolerated by State policies!

Harassment
A Legal History

Executive Order 11246

Civil Rights Act of 1991

Meritor Savings Bank v. Vinson, 106 S Ct. 2399 (1986)

Ellison v. Brady, 924 F2d 872 (1991)

Harris v. Forklift Systems, Inc., 114 S Ct. 267 (1993)

Oncale v. Sun-downer Offshore Services, 118 S Ct 998 (1998)

Burlington Industries v. Ellerth, 118 S Ct. 2257 (1998)

Faragher v. City of Boca Raton, 118 S Ct. 2275 (1998)

Title VII

- Prohibits employment discrimination based on race, color, religion, sex, or national origin.

- Makes it illegal to discriminate in any aspect of employment including:
  - Hiring/firing
  - Compensation/assignment/classification, transfer, promotion, layoff, or recall.

Excerpt from State Law: ORS 659A.030

659A.030 Discrimination because of race, religion, color, sex, sexual orientation, national origin, marital status or age prohibited. (1) It is an unlawful employment practice:

(a) For an employer, because of an individual's *race, color, religion, sex, sexual orientation, national origin, marital status or age* if the individual is 18 years of age or older or because of the race, color, religion, sex, sexual orientation, national origin, marital status or age of any other person with whom the individual associates, or because of a juvenile record, that has been expunged pursuant to ORS 419A.260 and 419A.262, of any individual, to refuse to hire or employ or to bar or discharge from employment such individual…

Protected Classes: Federal and Oregon Civil Rights Laws
Unlawful harassment or discrimination falls under these class protections

FEDERAL	STATE OF OREGON
Title VII of the Civil Rights Act of 1964	**Oregon Revised Statutes (ORS), Chapters 659**
❑ Race ❑ Color ❑ National origin ❑ Sex (includes same-sex) ❑ Religion ❑ Association with a protected class ❑ Retaliation *(for opposing unlawful employment practices, for filing a complaint, for testifying about violations or possible violations)*	❑ Race ❑ Color ❑ National origin ❑ Sex ❑ Religion ❑ Association with a protected class ❑ Retaliation *(for opposing unlawful employment practices, for filing a complaint, for testifying about violations or possible violations)*
Age Discrimination in Employment Act (ADEA)	**ORS, Chapters 659**
❑ Age *(40 and older)*	❑ Age *(18 and older)*
Americans with Disabilities Act (ADA)	**ORS, Chapters 659**
❑ Physical or mental disability	❑ Physical or mental disability
Family and Medical Leave Act of 1993 (FMLA)	**Oregon Family Leave Act (OFLA)**
❑ Medical care/treatment for self, family	❑ Medical care/treatment for self, family
	Additional Classes Protected by State Laws, ORS 659A
	❑ Marital status ❑ Family relationship ❑ Genetic screening, brain-wave testing ❑ Use of lawful tobacco products on off-duty hours ❑ Leave to donate bone marrow ❑ Leave to serve in the state legislature ❑ Sexual orientation
	Additional Classes Protected by City Ordinances in Oregon
	❑ Source of income - Ashland, Corvallis, Eugene, Portland

Oregon Department of Agriculture Harassment Policy

Oregon state government provides a work environment free from unlawful discrimination or workplace harassment based on or because of an employee's protected class status. Additionally, Oregon state government provides a work environment free from sexual harassment. Employees at every level of the organization, including state temporary employees and volunteers, must conduct themselves in a business-like and professional manner at all times and not engage in any form of discrimination, workplace harassment or sexual harassment."

–DAS Policy 50-010-01, Discrimination and Harassment Free Workplace,

Harassment Defined

Unwelcome, unwanted or offensive conduct based on or because of an employee's protected class status.

Sexual Harassment is a Form of Discrimination

Sexual Harassment comes in two types:

- Quid pro quo harassment
- Hostile work environment harassment

Quid Pro Quo Harassment

Occurs when

- Submission to the conduct is made a term or condition of employment;

OR

- Submission to or rejection of the conduct is used as the basis for employment decisions.

Quid Pro Quo Harassment

- Requires a "tangible employment action";
- Applies to supervisory employees who have authority over the victim (direct or indirect).

Hostile Work Environment

Occurs when

Unwelcome, unwanted, or offensive conduct:

- Creates a hostile or offensive work environment

OR

- Unreasonably interferes with his/her work.

"Unwelcome" Conduct: How is Unwelcome Determined?

- This is a legal standard that is evaluated at the time someone makes a complaint;
- This means that you cannot depend on someone's consent as a defense;
- Conduct must be subjectively and objectively unwelcome.

The Reasonable Person Standard

Q: Who is a "reasonable person?"

A: A reasonable person in the employee's place – and what he/she would find to be offensive, intimidating or unwanted behavior.

Sexual Harassment: How Bad Must It Be?

- The more egregious the conduct, the fewer incidents are necessary;
- The more pervasive, the more likely the employer knew or should have known about it.

Verbal Harassment

- *Racial epithets*
- *Ethnic, sexual, "off-color" jokes or comments*
- *Persistent intimate inquiries or courting*
- *Derogatory, demeaning comments*

Does it meet the elements of unlawful harassment?

1. ***Perceived*** *by the receiver as unwelcome or unwanted.*
2. *Based on a* ***protected class*** *(age, sex, race, color, disability, etc.).*
3. *Meets the "****reasonable person****" test.*

Physical Harassment

- *Unwanted touching or closeness*
- *Leaning over, pinching, rubbing*
- *Physical interference with normal work or movement (cornering)*
- *Assault – that's VIOLENCE in the workplace!*

Does it meet the elements of harassment?

1. ***Perceived*** *by the receiver as unwelcome or unwanted.*
2. *Based on a* ***protected class*** *(age, sex, race, color, disability, etc.).*
3. *Meets the "****reasonable person****" test.*

Visual/Audio Harassment

- *Offensive posters or pictures*
- *Degrading or offensive songs*
- *Degrading cartoons or drawings*

Does it meet the elements of harassment?

1. ***Perceived*** *as unwelcome or unwanted.*
2. *Based on a* ***protected class*** *(age, sex, race, color, disability, etc.).*
3. *Meets the "****reasonable person****" test.*

Behavior Continuum

How do you say: “I like your jeans.”

Who Can Commit Harassment?

- Supervisors/ managers
- Co-workers
- Non-employees – Suppliers, vendors, business visitors, citizens, temporary employees, etc.

Who must report harassment?

- The receiver or a bystander
- Department of Agriculture policy requires reporting by managers

How to report harassment: Where do you go?

- Your supervisor or manager
- Any other supervisor or manager
- Department of Agriculture Human Resources
- BOLI or EEOC

Preventing Workplace Harassment: Employee Responsibility

- Be professional and courteous to everyone in the workplace.
- Treat everyone with dignity and respect.
- Don't stand for harassing behavior - *you don't have to take it!*
- If possible, advise the offending person about their behavior first, but you don't have to *(no "professional suicide" required).*
- Communicate concerns to management promptly.

Preventing Workplace Harassment: Employer Responsibility

Take immediate appropriate corrective action

Which is simply:
"action reasonably calculated to end the harassment and to keep it from recurring."

Source: Oregon Bureau of Labor and Industries

Retaliation

Department of Agriculture "prohibits retaliation against anyone who files a complaint, participates in an investigation, or reports observing discrimination, workplace harassment or sexual harassment."

–DAS Policy 50-010-01, Discrimination and Harassment Free Workplace,

Civil rights law prohibits retaliation.

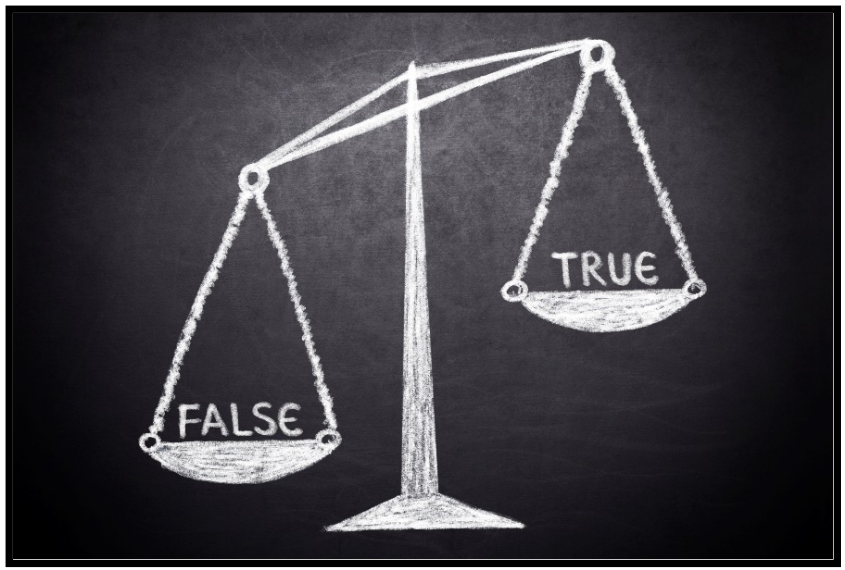
Technical Assistance for Employers Program
Oregon Bureau of Labor and Industries

Retaliation

- The claim has two components:
  - Protected activity: Employee complained about the conduct, participated in an investigation, or opposed such conduct; and
  - Employment Consequence: Employee subjected to an adverse employment decision or consequence.

True or False?

Off-duty conduct is not the concern of the employer.



True or False?

You can never give your coworkers compliments, because that's harassment.

True or False?

Only someone who has harassment directed at them can complain to management.

True or False?

The employer cannot enforce the anti-harassment policy if someone is not a Department of Agriculture employee.

Questions

Preventing Discrimination & Harassment

Thank you for attending