Preventing Harassment - Learning Goals
Supervisory Core

In this session, participants will:

1. Learn the legal definition of sexual harassment.
2. Examine the laws regarding sexual harassment.
3. Learn key behaviors that constitute discriminatory and sexual harassment.
4. Review specific management responsibilities for keeping the workplace free of harassment.
5. Review recommendations for addressing complaints.
Harassment Prohibited

The Department of Administration prohibits harassment (zero-tolerance) of any type in the workplace. Federal and state equal opportunity laws and Minnesota state policies also prohibit any type of discriminatory harassment including harassment based on any of the following:

- Race
- Color
- Creed
- Religion
- National origin
- Sex (including sexual harassment and pregnancy)
- Marital status
- Status with regard to public assistance
- Disability
- Sexual orientation
- Age
- Membership or activity in a local (human rights commission)

Harassment based on protected class status is a severe type of discrimination and is illegal in the employment environment. If discriminatory harassment takes place in the workplace, the employee exhibiting harassing behavior can be held liable for such harassment. Additionally any employee, including a supervisor, may be held personally responsible for such acts of harassment.

General harassment is also prohibited. This is harassment not based on protected class such as race, color creed, etc. This type of harassment results in intimidation, ridicule, entrapment, degradation, coercion or harm with the purpose or effect of unreasonably and substantially interfering with and or jeopardizing an individual employee's work or creates a hostile, intimidating or offensive work environment.

**Exercise: Costs of Harassment Discussion**

What are the effects when harassment occurs in the work place?

- On the agency
- On the harasser
- On the person being harassed
Sexual Harassment Awareness

Terminology

- **Sexism** is an *attitude*. It is the attitude of a person of one sex that s/he is superior to a person of the other sex.
- **Sex discrimination** is a *behavior*. It occurs when employment decisions are based on an employee’s sex or when an employee is treated differently because of his or her sex.
- **Sexual harassment** is a *behavior* defined as *unwelcome and of a sexual nature*.
- **Sex-role stereotype** is a *learned perception* about what it means to be male or female in society.

The Legal Definition of Sexual Harassment

*Sexual harassment is “…unwelcome sexual advances, requests for sexual favors, and other verbal and physical conduct of a sexual nature.”*
Federal and State Laws

Under Federal Law (EEOC), sexual harassment occurs when:

1. Submitting to such conduct becomes a **term or condition** of employment (hiring or firing).
2. Submitting to or rejecting such conduct becomes a **basis for employment decisions**.
3. Such conduct **interferes** with a person’s **work performance** or creates an **intimidating or hostile work environment**.

States have the right to expand or extend the federal law. Under Minnesota law, the definition is expanded:

1. Submission to that conduct or communication is made a **term or condition**, either **explicitly or implicitly**, of obtaining **employment**, public accommodations or public services, education or housing.

2. Submission to or rejection of that conduct or communication by an individual is **used as a factor in decisions affecting that individual’s employment**, public accommodations or public services, education or housing.

...and managers take note of this!

3. That conduct or communication has the purpose or effect of **substantially interfering with an individual’s employment**, public accommodations or public services, education, or housing, or **creating an intimidating, hostile, or offensive… environment**; and in the case of employment, the **employer knows or should know** of the existence of the harassment and **fails to take timely and appropriate action.**
What is a Significant Change in Employment Status?

Significant Change

= An official action taken by the employee’s manager or supervisor (who acts as a representative of the agency) that has undesirable consequences for the employee.

Undesirable consequences for the employee may include:

- Termination
- Failure to promote
- Demotion
- Undesirable work assignments
- Significant changes in benefits or pay
- Substantial change in job
Key Factors in Sexual Harassment

There are key factors that must be present to claim sexual harassment. Let’s examine behaviors that can contribute to sexual harassment discrimination.

Video: Free Speech

What were the key behaviors in the video that could be construed as sexual harassment?

- **Behaviors of a sexual nature:**
  - Physical ________________________________
  - Verbal ________________________________
  - Visual ________________________________
  - Gender ________________________________

- Regarded as unwelcome and unsolicited by the recipient.
- Deliberate.
- Repeated.

Reference: Examples of Sexual Harassment

Exercise: Questions You’ve Always Wanted to Ask
Examples of Sexual Harassment

Verbal

- Referring to an adult as a girl, a boy, hunk, doll, babe, or honey
- Whistling at someone, making cat calls
- Making sexual comments about a person’s body
- Making sexual comment or innuendos
- Turning work discussion to sexual topics
- Telling sexual jokes or stories
- Asking about sexual fantasies, preferences, or history
- Asking person questions about social or sexual life
- Making sexual comments about a person’s clothing, anatomy, or looks
- Repeatedly asking out a person who is not interested
- Making kissing sounds, howling, and smacking lips
- Telling lies or speaking rumors about a person’s sex life

Non-Verbal

- Looking a person up and down (elevator eyes)
- Staring at someone
- Blocking a person’s path
- Following the person
- Giving personal gifts
- Displaying sexually suggestive visual
- Making facial expressions such a winking throwing kisses, licking lips
- Making sexual gestures with hands or through body movements

Physical

- Giving a massage around the neck or shoulders
- Touching the person’s clothing, hair, or body

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Questions About Sexual Harassment
You’ve Always Wanted to Ask

1. Is it illegal to flirt with, date or have a sexual relationship with someone at work?

2. Is it sexual harassment if I tell an off-color joke to my coworkers?

3. Whose standards determine how offensive an act of sexual harassment is: men’s or women’s?

4. Is touching required to allege sexual harassment?

5. In order to claim sexual harassment, does the harassment have to be repeated?

6. If a person has tolerated repeated requests for dates by his or her supervisor, does s/he still have grounds for claiming sexual harassment?

7. If an employee claims they were sexually harassed by their supervisor or coworker, does it mean the person doing the harassment will lose their job? Does the name of the employee who brings forth a complaint have to be shared with the alleged harasser?
Sexual Orientation Harassment

Sexual orientation harassment is not addressed in Federal law; however, each state can develop its own laws and policies regarding this type of discrimination. In Minnesota, the Minnesota Human Rights Act, Chapter 363A, addresses sexual orientation harassment.

A partial list of behaviors that can constitute sexual orientation harassment and either interferes with an individual’s employment or creates a hostile work environment are as follows:

- Stating or implying in a joking manner that an employee is a gay, lesbian, bi-sexual, transgender or heterosexual individual.
- Making jokes about gay, lesbian, bi-sexual, transgender or heterosexual individuals.
- Inquiring into the sexual practices of gay, lesbian, bi-sexual, transgender or heterosexual individuals as a group.
- Using derogatory slang about a gay, lesbian, bi-sexual, transgender or heterosexual individual. Examples: the individual is “light in the loafers”, is a “queer,” is “AC/DC,” or “swings both ways.”
- Repeatedly expressing negative opinions about gay, lesbian, bi-sexual, transgender or heterosexual individuals.
- Making jokes about AIDS or HIV.

Any harassing activity that is directed towards an employee due to the employee’s sexual orientation, or that is negative about differing sexual orientations, can constitute sexual orientation harassment.
Discussion of “My Right to Be Who I Am”

Laws and policies regarding discrimination are in effect to prevent harassment in the workplace. The Department of Administration is responsible for providing an environment free of harassment for its employees. This liability extends to the manager, who, by law, acts as the employer’s agent. Discriminatory behavior by managers and/or their employees cannot be brushed off as unintentional—that this behavior reflects “who I am.” Even though a person may say their intention was innocent, it can be difficult for others to discern between intentional behavior and behavior that was not. The only gauge the person receiving the behavior has to go by is the impact of the behavior on them. Sexual harassment laws, policies and procedures are based on the premise that sexual harassment is in the eye of the beholder.

Discussion of Intent vs. Impact

How do you know if your comments or actions are unwanted or unwelcome? Test yourself by asking these questions:

- Is there equal power between me and the person I’m interacting with?
- Is there equal initiation and participation between me and the person I’m interacting with?
- Would I behave the same way if the person I’m in a relationship with were standing next to me?
- Would I want someone else to act this way toward a person that I’m in a relationship with?
- Would I want any of those behaviors to be the subject of a column in my agency’s newsletter or to appear on the evening news?
- Have I examined and acknowledged my sex-role stereotypes?
Definition of Workplace

Sexual harassment can occur anywhere an employee performs his or her job duties:

- Buildings (including restrooms, cafeteria, etc.)
- Training programs/conferences.
- State vehicles.
- Unpaid breaks.
- Agency-sponsored parties/picnics/holiday events.
- Work relationships with independent contractors.
- Work relationships with visitors to the agency.

Exercise:
Test Your Knowledge Case Studies
Discriminatory/Sexual/General Harassment
Preventing Discriminatory Harassment Case Studies

1
Tiffany is a young, attractive, single woman who works at the Department of Human Services. She and her coworker, Jill, who is divorced, recently went to lunch and the topic of sexual harassment came up. You are at the table next to them and overhear their conversation. Which woman reported she had been harassed more often, Tiffany or Jill?

2
John is a supervisor at Department of Health, and he oversees a division receptionist position. He recently hired a new person, Brian, who is outgoing and very good with customers. John has noticed that lately several of the women in the division gather around the reception desk to talk with Brian. John suspects that while most of the discussion is work-related, some of the discussion includes sexual innuendoes and jokes. Who should John talk to about this situation: Brian, or the group of women?

3
Bill and Roger are supervisors in the Plant Management Division at Admin. In a conversation about the upcoming discriminatory harassment class, they agreed that men are less likely to be sexually harassed than women. Do you agree? Why or why not?

4
Pam and Tom work at the Department of Revenue as auditors. In a recent discussion about sexual harassment, Pam told Tom that men and women often invite sexual advances based on the clothing they’re wearing. Tom disagreed. Do you agree with Pam or Tom? Why?

5
Mike works in the mailroom at the Department of Administration. As part of his job, he accepts packages daily from a delivery person representing one of the major courier services. Several times in the past month, she has leaned over Mike’s shoulder as he signs for packages and has made comments about the smell of his cologne. She has also asked him to meet her for drinks after work several times, and he has declined. Her behavior is becoming increasingly uncomfortable for Mike, and he has decided to do something about it. What should he do?

6
Ron is a supervisor of an OET project team. This team, including Ron, spends many hours working at computers. It is an accepted practice among team members to massage each others’ necks and shoulders to relieve stress throughout the day. Jeff is new to the team and is uncomfortable with this practice although he feels the best way to handle the situation is to not say anything. What advice would you give to Jeff? To Ron?

7
A new person, Joe, has been recently hired at the Department of Transportation. Several of the staff members have a long-standing habit of having lunch at the gentlemen’s club down the
street on Fridays. The group invites Joe to join them for lunch, and he declines, saying, “My girlfriend doesn’t like me to do that sort of thing.” One of the staff members says with a laugh, “Maybe it’s really because you don’t like the ladies.” After six weeks on the job, Joe is still bombarded with these kinds of comments when he declines to go to lunch with the group. Is harassment occurring in this case? What should Joe do?

8

Dan works for the Department of Finance and Employee Relations. He receives an email from a friend of his who works for an organization outside of state government that contains the latest nude photos of the centerfold model from a men’s magazine. He proceeds to forward the file to the male staff on his project team, some of whom send back appreciative comments. Later a few team members stop by Dan’s work area and he opens the file on his computer and there is laughing and joking. Could Dan’s actions constitute sexual harassment?

9

Burt, an employee in his late fifties, and Vivian, an employee in her early fifties, work on a project team at the Pollution Control Agency. The remaining members of the team range in age from 25 to 35. The team members like to joke around with each other and frequently tease Burt that he can’t perform certain job duties because he is too old. They also joke with Vivian when they help her with a technical issue on the computer that she “reminds them of their Mom” or they say things like, “This is how I helped my Mom learn this.” Sometimes the team members say they like “helping out an old guy” and many team members have begun to call Vivian, “Mom.” At first Burt and Vivian laughed along, but now the jokes are coming so fast that they are beginning to be offended by them. Could the joking by the team create a hostile work environment?

10

Jake is 5’5”, 130 pounds, bald and works for the Department of Natural Resources. His coworkers have nicked-named him “short and shiny” and tease him daily about his small stature and whether he’s “man enough” to do the job. Could these behaviors constitute hostile work environment?

11

Patty works for the Department of Commerce and is a trans-gender individual. She is scheduled for gender reassignment surgery next month, which is a term for the surgical procedures by which her physical appearance and function of her existing sexual characteristics will be altered to resemble that of a man. As Patty’s supervisor, what would you do to prepare your work group for Patty’s return to work to ensure the workplace is free of discriminatory harassment?

12

Jason is a Management Analyst who often debates policy interpretation with his team members. In a debate about a particular policy, his coworker David says, “Why don’t you just go back to your gay neighborhood?” When Jason tells another coworker about the incident, the coworker says, “I think David saw your civil partner’s name on an emergency contact list that the
supervisor recently circulated in the office.” Could David’s comments be considered sexual harassment?
Employee Actions for Reporting Harassment

- The laws do not require employees to confront the harasser. However, if the employee is comfortable doing so, they should inform the person causing the harassment that their behavior is objectionable and ask them to stop.

- If the behavior does not stop, the employee should advise their immediate supervisor.

- If the immediate supervisor is causing the harassment, the incident should be reported to the Human Resources office or the agency’s designated Affirmative Action Officer. (The employee may be asked to complete and file a formal, written complaint using their agency’s form).

- None of the actions above replace the right of any employee to file a formal complaint with the EEOC, Minnesota Department of Human Rights or to hire an attorney.
Management Strategies and Tips

In general, the following are the manager’s most important responsibilities when dealing with harassment.

- A manager/supervisor cannot harass an employee.
- A manager/supervisor cannot ignore discriminatory harassment.
- A manager/supervisor must take action when s/he knows or should know of discriminatory harassment.

Limit the Risks: Managers Must Be Proactive!

- Remind employees’ of their right to a harassment-free work environment.
- Communicate to your employees that you are accessible and responsible for addressing human resource problems, concerns, and discriminatory behavior.
- Ensure employees are trained in this topic and understand the policies and reporting procedures in your agency.
- Affirmatively raise the subject of discriminatory harassment and express disapproval of actions that may be discriminatory.
- Know your work team’s culture.
- Change team norms that allow harassment to occur. Establish rules, norms and standards that enhance productivity, allow open communication and discourage harassing behavior.
- Serve as a role model for others. Assess your own behaviors.
- Challenge your peers and subordinates to change their behaviors.
- Make regular and effective use of job descriptions, ongoing feedback and performance reviews to ensure objectivity in your employment decisions.
- Be fair, objective and clear about your expectations with all employees to avoid the perception of favoritism.

Meeting the “Should Have Known” Standards

- Know your workplace culture.
- Take all complaints seriously.
- Investigate complaints quickly and take remedial action to prevent it from recurring.
Monitoring the Workplace

Management should not rely on sexual harassment complaints to guide them in recognizing when harassment is occurring. Instead, monitor the workplace by asking yourself the following:

- Do you see interactions where there is not equal initiation and participation?
- Do you supervise an employee who has a reputation for engaging in sexual and or sex-based behavior?
- Are sexually suggestive visuals or materials displayed in your department’s work areas?
- Do you overhear sexual innuendoes or jokes?
- Do you hear derogatory comments about women and/or men?

*If you answer yes to any of the questions above, it’s time to meet with the employees you supervise to review the sexual harassment policy.*

Ask employees if peer behaviors are unwanted or offensive. As uncomfortable as this can be, it may save the agency thousands of dollars in lawsuits. Watch for signs and symptoms of harassment and investigate immediately. These may include:

- Unexplained employee sensitivity to another employee, manager/supervisor or client.
- A history of good performance reviews, then a poor one.
- Unexplained or unusual changes in employee employment status: promotion, demotion, raises or pay cuts.
- Unexplained resignations.
Recommendations for Addressing Complaints

- If an employee comes to you and reports harassment, supervisors/managers need to tell that employee the agency is legally obligated to take action when such a complaint is brought forward.
- If you have an employee who is being harassed by their peers or other managers, follow the reporting process, document the incident, and notify Human Resources. Keep them informed of your ongoing actions.

Document the following:

- The concern that was brought to your attention.
- The date you were told of the concern.
- The details of what the employee reported.
- The action you took.

- Taking timely and appropriate action means: consulting with a designated person in your Human Resources office who handles discriminatory complaints to investigate the allegations, make a factual determination and decide what action should be taken. Don’t wait! Supervisors have been found to be aiding and abetting in sexual harassment when timely and appropriate action is not taken. Agencies have also avoided costly lawsuits simply because complaints were dealt with immediately.
- Managers/Supervisors must report harassment even if the employee who brings forth a complaint is not a direct report.
- Regarding the language in Minnesota state law: “LIABLE IF KNOWN, SHOULD HAVE KNOWN.” If a request is made by the harassed employee that the manager/supervisor not take action, the manager/supervisor should do the following:

  - Thank the employee for bringing the information to your attention.
  - Express your concern about the situation.
  - Explain that Admin takes seriously all complaints regarding possible discriminatory harassment and that these concerns must be investigated to ensure that the workplace is safe and that discriminatory harassment is not affecting employees.
  - Explain the next action that you will be taking, including the fact that you will be consulting with a staff member of Human Resources who handles discriminatory complaints. This provides assurance to the employee that their complaint is being taken seriously.
  - Ask the employee to provide written documentation of the concerns they shared with you.
  - Explain that agency policy prohibits retaliation against anyone for having brought forward a complaint of discriminatory harassment and that the employee should tell you (or human resources) if s/he believes that retaliation is taking place after the harassment is reported.
o Inform the employee that the accused harasser will be advised that s/he cannot retaliate against the complainant.

o Explain it is not possible to guarantee the employee confidentiality in matters regarding the complaint because an investigation MUST be conducted to determine if discrimination has occurred. A thorough investigation can only be done if specific questions are asked, some of which will likely identify the complainant.

o The harassed employee should be informed that action has been taken with regard to the complaint, but not necessarily be informed of the specifics.

In general, the manager must:

- Take immediate action and follow the procedures outlined in agency policy.
- Contact human resources to inform them that discriminatory harassment has possibly occurred.
- Inform the employee’s manager, if the employee is not a direct report, of the situation.
- Explain the complaint process to the employee.
- Make further inquiries of the employee to gather relevant information.