



Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

Manager Workbook

Preview Only

Copyright © 2009
StoneArch Creative® and Engelmeier & Umanah, P.A.

StoneArch Creative
710 South 2nd Street, 7th Floor
Minneapolis, MN 55401
Tel: (612) 379-4678
www.stonearchcreative.com

Engelmeier & Umanah, P.A.
12 South Sixth Street, Suite 1230
Minneapolis, MN 55402
Tel: (612) 455-7720
www.e-ulaw.com

This written material is intended only for use by those organizations that purchased rights to use the *Creating the Respect Effect* product/program. Otherwise, all rights are reserved. The reproduction or utilization of this work in any form or by any electronic, mechanical, or other means, known now or hereafter invented, including xerography, photocopying, and recording, and in any information storage and retrieval system by an organization that has not purchased rights to use the *Creating the Respect Effect* product/program is forbidden without the written permission of StoneArch Creative® and Engelmeier & Umanah, P.A. This manual may not be changed or reprinted in any other form without the written permission of StoneArch Creative® and Engelmeier & Umanah, P.A.

Disclaimer: The information provided herein is not a substitute for the advice of a competent attorney. Potential users are advised to seek legal counsel to assist them in applying the law to specific employment situations.

PowerPoint® is a registered trademark of Microsoft Corporation.



Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

Section 4 Manager Workbook

CONTENTS

Introduction

- A Respectful Workplace Is Important to Everyone 3
- Learning Objectives 3

Part 1: Defining Harassment, Discrimination and Retaliation 4

Part 2: Identifying Sexual Harassment, Gender Discrimination and Retaliation Issues

- Video and Discussion: *At the Sales Meeting* 8
- Discussion: *Why Don't People Speak Up?* 9
- Video and Discussion: *Keeping the Customer Happy* 10

Part 3: Identifying Other Harassment, Discrimination and Retaliation Issues

- Video and Discussion: *Welcome Aboard* 12
- Video and Discussion: *Conversations at Lunch* 13
- Video and Discussion: *His New Bride* 14

Summary and Ending 15

Preview Only



Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

Introduction

A Respectful Workplace Is Important to Everyone

Our Company is committed to providing a respectful workplace. This requires every employee, at every level of the organization, to engage in appropriate behaviors in the workplace, in any other setting and when representing our Company.

When employees are engaged in appropriate behaviors in the workplace, a climate of respect becomes part of the corporate culture. It's called *Creating the Respect Effect*. It's like a ripple effect—everyone joins in. Respect becomes the norm. And a respectful corporate culture is essential to keeping our Company competitive and successful, which benefits all of us.

Managers Are Held to a Higher Standard

Managers have additional responsibilities of:

- Modeling appropriate behavior.
- Intervening when inappropriate behavior occurs per policy and procedures.

Managers also must remember:

- In some states, managers can be held individually liable for allowing discriminatory, harassing and/or retaliatory conduct to occur.
- Even where there is no personal liability, our Company holds every manager accountable for addressing any discriminatory, harassing or retaliatory conduct you know about.

Learning Objectives

Upon completion of this program, you will be able to:

1. Define the two types of harassment: ***quid pro quo*** and ***hostile work environment***.
2. Explain why harassment and discrimination based on a person's **age, race, color, sex, disability, national origin, religion** and other protected categories are prohibited at our Company.
3. Understand the difference between **the intent versus the impact** of behavior by employees, vendors and others.
4. Explain the **higher standard** for managers in terms of your own personal conduct and your special responsibilities for identifying and minimizing workplace discrimination, harassment and retaliation.
5. Become our Company's **first line of defense** against harassment, discrimination, retaliation and other disrespectful behavior by complying with Company policies and engaging in respectful behavior.



Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

PART 1: **Defining Harassment, Discrimination and Retaliation**

Discrimination

Most people understand that discrimination is treating one person unfairly compared to another according to factors unrelated to their ability, such as sex, race, age, disability or national origin. The more difficult concept to define under the law is harassment. We will, therefore, spend time defining “harassment.”

The Legal Definition of Sexual Harassment

Sexual harassment is a form of unlawful sexual discrimination under Title VII of the 1964 Civil Rights Act. The Equal Employment Opportunity Commission (EEOC), the federal agency that enforces Title VII, **defines sexual harassment as:**

- Unwelcome sexual advances;
- Requests for sexual favors;
- Sexually motivated physical conduct; or
- Other verbal or physical conduct of a sexual nature, when:
 - Submission to that conduct is made a term or condition of an individual’s employment;
 - Submission to that conduct is used as a factor in making employment decisions affecting an individual;or
 - The conduct has the purpose or effect of unreasonably interfering with an individual’s employment, or creating an intimidating, hostile or offensive employment environment.

In 1986, the United States Supreme Court recognized two different types of harassment:

- *Quid pro quo* harassment.
- Hostile work environment harassment.

Quid Pro Quo Sexual Harassment

- *Quid pro quo* is a Latin term that means “this for that,” and implies an exchange of one thing for another.
- *Quid pro quo* harassment generally occurs when an employee is encouraged or pressured to trade sexual favors in return for an employment-related benefit, such as continued employment or a promotion.
- The person who is pressuring the employee must have the authority to control the employee’s working conditions; this person is usually a supervisor. In a typical *quid pro quo* case, a supervisor abuses his or her supervisory authority by pressuring a subordinate for sexual favors.

Examples of *quid pro quo* harassment:

- Demanding sexual favors in exchange for a promotion, raise or other job benefits.
- Threatening to deny an expected raise, promotion or other job benefit if sexual favors are not provided.

Hostile Work Environment Harassment

- A pattern of ongoing harassing conduct that is so offensive or unpleasant that it unreasonably affects the employee’s working conditions and creates a hostile work environment.
- Covers more than sexual conduct. May be based on an employee’s age, race, color, sex, disability, national origin, religion, or other protected characteristic.
- Conduct may be verbal, physical or visual, and the harasser may be a supervisor or a co-worker.
- Harasser can be someone who interacts with employees but does not work for our Company, such as customers or vendors.



Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

Examples of sexually hostile work environment harassment (either alone or in combination with other factors) may include:

- Pornographic pictures or magazines in the workplace and vulgar comments about them.
- Offensive sexual comments made to and about the person based on his or her sex.
- Unwanted touching on someone's shoulder, arm, back, knee, etc.

What Determines if Conduct Is Harassing?

Other factors contribute in determining whether a hostile work environment exists:

- How **frequently** the offensive or discriminatory conduct occurs.
- Whether the conduct is **unwelcome**.
- The **severity** of the conduct.
- Whether the conduct is **physically threatening or humiliating**.
- Whether the conduct **unreasonably interferes with an employee's work performance**.
- The **impact** of the conduct on **the employee's psychological well-being**.

The courts apply a "reasonable person" standard to judge these factors.

The conduct must be because of a protected characteristic. Federal anti-discrimination laws prohibit harassment of an employee based on certain protected characteristics, such as the person's sex, race, color, religion, national origin, age or disability.

Elements of Harassment

An employee has to establish that:

- There was **conduct** that was
- **Related to a protected category**; and it was
- **Unwelcome**; and
- **Offensive to a reasonable person**; and
- **So severe or pervasive** that it
- **Affected a term or condition of his or her employment**.

Who Is Liable for Harassment?

In 1998, the United States Supreme Court ruled that employers are liable for unlawful sexual harassment by supervisors with one limited exception. This heightened standard of liability is based on three principles:

1. An employer is responsible for the acts of its supervisors;
2. Employees should be encouraged to avoid harassment; and
3. Employers are required to take reasonable steps to prevent harassment and avoid or limit the impact of harassment.

The Supreme Court held that an employer is always liable for harassment committed by a supervisor that results in a "tangible employment action." A tangible employment action is a "significant change in employment status" that usually inflicts direct economic harm on the person who was harassed.

Examples of tangible employment actions include:

- Hiring and firing
- Promotion and failure to promote
- Demotion
- Reassignment that results in a significant change in an employee's status
- An employment decision causing a significant change in an employee's benefits and/or compensation.



Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

If harassment by a supervisor does not result in a tangible employment action, then the employer is liable for the harassment unless the employer can show that:

1. The employer took reasonable care to prevent and promptly correct any harassing behavior; and
2. The employee unreasonably failed to take advantage of the preventive or corrective opportunities the employer provided, or otherwise to avoid harm.

One way an employer may be able to establish it took reasonable care to prevent and promptly correct any harassing behavior is to show it has:

1. A comprehensive policy against harassment, discrimination and retaliation that was communicated to employees; and
2. An effective complaint procedure for employees to report suspected misconduct. If the employer also can show the employee unreasonably failed to use the complaint process, then it may be able to defend itself against liability for the harassment. Of course, training goes a long way toward showing good prevention and corrective action.

Employer Liability for Harassment by a Co-Worker

An employer may be held liable to an employee for harassment committed by a co-worker if the employer knew or should have known about the conduct and failed to prevent or promptly fix the situation. Courts generally presume information a Company supervisor knew or should have known is information the Company knew or should have known.

Employer Liability for Harassment by a Non-Employee

Employers also may be held liable for harassment of employees by individuals outside our Company with whom the employees interact, such as customers, suppliers, outside contractors or other persons who are present in the employees' work environment. The standard for employer liability for the conduct of third parties is the same as when a co-worker commits the harassment. The employer is liable if it knew or should have known about the harassment but failed to promptly correct it.

Retaliation (Reprisal)

Federal law and most state laws also protect from retaliation employees who oppose or report discrimination or harassment. Specifically, it is unlawful for an employer to retaliate against a person for opposing an unlawful practice, filing a charge or participating in an investigation into unlawful conduct.

To establish a claim of retaliation, the individual must show that:

1. He or she opposed discrimination, or participated in a covered proceeding (e.g., helped someone file a charge, provided information to the EEOC or testifying as a witness);
2. He or she suffered an adverse employment action; and
3. A causal relationship exists between the protected activity and the adverse employment action.

An example of "opposing discrimination" is filing a formal charge with the EEOC. However, informal behavior, such as voicing opposition to a supervisor about potentially discriminatory acts, may also qualify as protected opposition.

In addition to engaging in a protected activity, an individual making a claim of retaliation must show that the employer took an "adverse action" against him or her. Adverse actions generally include significant employment actions such as termination, discipline, demotion or reduction in wages and benefits. In contrast, less important matters that the employee may not like, such as not getting a new computer or being assigned to a different truck, usually do not constitute adverse actions under Title VII.



Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

Under the Law

- Filing a charge is protected.
- Providing information or being a witness is protected.
- Voicing opposition to a supervisor may be protected.

If any employee is mistreated as a result of engaging in these protected activities, our Company could be liable for illegal retaliation.

Managers May Have Individual Liability

Generally speaking, individual managers are not personally liable for employment discrimination or harassment under Title VII, the Americans with Disabilities Act (ADA) or the Age Discrimination in Employment Act (ADEA).

However, some state and local equal employment opportunity (EEO) laws prohibit both employers and individual managers from discriminating, harassing or retaliating, or failing to prevent discrimination, harassment or retaliation. In addition, individual employees may be liable under state common law theories for their harassing behavior. Thus, an individual employee who sexually harasses someone may be personally liable for state common law violations, such as intentional or negligent infliction of emotional distress or assault and battery. And, managers who fail to act to address issues can be individually liable for aiding and abetting discrimination and harassment.

Similarly, managers who respond in a negative way to an employee's opposition to illegal behavior in violation of the EEO laws can be held individually liable for retaliation under some states' laws.

Preview Only



Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

PART 2:

Identifying Sexual Harassment, Gender Discrimination and Retaliation Issues

Video and Discussion: *At the Sales Meeting*

1. What inappropriate behaviors did you see while Trish was talking to her co-workers?
2. What type(s) of harassment did you observe in this situation?
3. What did Trish do or say to indicate she found the behavior of her co-workers to be offensive or unwelcome?
4. Do you think a “reasonable person” would have been offended by the behaviors of Trish’s co-workers?
Do you think her co-workers intended to offend her?
5. Does it matter that this behavior occurred outside of the office?
6. What inappropriate behaviors did you see when Trish talked to her manager?
7. What should the manager have done?
8. Does the way this manager handled the situation create any issues for the Company or for him individually?
9. Could Trish have done or said more in these situations? Did she need to?



Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

Discussion: Why Don't People Speak Up?

Individuals often do not complain about workplace harassment, discrimination, retaliation or other forms of disrespect. Below are some common reasons why people who have been harassed and/or discriminated against often stay silent about their experiences. Ask, "Can you think of any others?"

No one will believe me. Individuals who have experienced harassment, discrimination, disrespect or retaliation may be reluctant to report misconduct because they are afraid no one will believe them. Particularly when sexual favors are solicited in exchange for a job benefit, no witnesses may be available to verify what happened.

I am embarrassed and afraid I will be blamed. Individuals may be concerned their own behavior is going to be closely scrutinized to see if they "asked for it." In addition, the individual may be embarrassed about what happened.

Whom would I tell? An individual may be unaware that our Company has a policy prohibiting harassment, discrimination or retaliation, as well as a procedure for individuals to report problems. More important, an individual may be reluctant to talk to the designated Company representative because he or she has not developed trust in or rapport with that person.

Nothing will be done or no one will take me seriously. Individuals may believe nothing will be done about a harassment, discrimination or retaliation complaint, or there may be a concern that any investigation will be a mere formality. In many companies, because the managers and Human Resources personnel cannot talk much about the results of what happens when complaints are brought forward, rumors circulate that nothing happened in response to the issues raised.

Everyone will find out. Individuals may be afraid that they will lose their privacy because the situation will not remain confidential. Sexual harassment allegations, for example, can be a juicy topic for office gossip.

I can handle it on my own. Individuals may think they can handle the harassment without realizing the physical and emotional impact it may have on them. Even though employee assistance programs, Human Resources or other avenues for help may exist within our Company, the employee may be reluctant to use these resources, believing he or she should "tough it out."

I just applied for a promotion and I'm afraid I will jeopardize my chances if I complain. Individuals may be afraid they will suffer retaliation for complaining. Or, a concern they will be branded a "troublemaker," overly sensitive or "not a team player" may make some individuals hesitate to report misconduct.



Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

Video and Discussion: *Keeping the Customer Happy*

1. What inappropriate behavior did you see happening between Brad (the driver) and Lisa (the customer)?
2. What type of harassment is Lisa engaging in?
3. For whom is Lisa's behavior creating liability issues?
4. What do you think about how Brad handled the customer? What else might he have done?
5. Did Brad's comments to his manager constitute a complaint? Was his manager's response effective?
6. Is this a situation where the manager knew, or should have known, that harassment was occurring?
7. What else could/should the manager have done? Or, what must the manager do next?
8. What if the manager does the things just discussed but, a month later, Lisa's company pulls its business and, shortly after that, Brad is fired. Any issues?



Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

Part 3:

Identifying Other Harassment, Discrimination and Retaliation Issues

In this section we will cover other types of harassment and discrimination:

- Age
- Race
- Color
- Sex
- Disability
- National origin
- Religion

Preview Only



Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

Video and Discussion: *Welcome Aboard*

1. What did you think about the comments Gloria made to the new financial analyst, Richard, in the first scene?
2. Was there anything “illegal” about Gloria’s comments?
3. Did Richard regard Gloria’s comments as welcome or unwelcome? How can you tell?
4. Did Gloria intend to offend Richard? Does it matter?
5. When he talked with Mr. Wyatt, Richard specifically said he wanted Mr. Wyatt to be aware of the situation, but he could handle it. By telling Mr. Wyatt, did Richard register a complaint?
6. Did Mr. Wyatt handle this situation correctly? What should Mr. Wyatt have done differently?
7. Was Gloria’s behavior toward Richard appropriate in the second scene? If not, what should be done about it?



Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

Video and Discussion: *Conversations at Lunch*

1. What do you think about the comments made in the lunchroom? Could these comments alone constitute harassment under the law? What type? Were they appropriate or inappropriate?
2. Does it matter that the employees in the lunchroom did not know Nadia could hear them?
3. What about the one woman's remark to Nadia about "freedom of speech"? Is she correct in her statement?
4. What if a manager or supervisor had been in the lunchroom and didn't say anything about the rude comments? Would that make a difference?
5. If you were a manager in that lunchroom, what should you do and why?
6. If you were a manager in the lunchroom, would you have any obligation to speak with Nadia, if you knew she heard the conversation? If you weren't sure whether or not she heard the conversation?
7. Let's say you are Nadia's manager. What would you do if she asked for permission to pray during the workday? And is it okay for her to wear a hijab at work?



Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

Video and Discussion: *His New Bride*

1. What was going on here? What kind of comments did Ray, the older worker, have to listen to? Were they appropriate?
2. Do you see anything wrong with the comments that were made?
3. What protected classes did the comments involve? Did this scenario involve harassment?
4. Would the comments rise to the level of a hostile work environment?
5. Are comments in the workplace about a person's health problems, like Ray's back trouble, a cause for concern? Why or why not?
6. What impact are these comments likely to have on Ray? What is the impact on the team? What is the impact on the business as a whole?
7. What should a manager do who is involved in this situation (saw it or the employees reported it)?



Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

Summary and Ending

- Important action items to remember:
 - Managers play a very important role in preventing and addressing harassment, discrimination, retaliation and other disrespectful behavior.
 - Managers are also in a unique position, different from employees, in regard to these issues.
 - Managers must enforce our Company's policy. And, managers must be role models, not only of what is legal, but also of compliance with our Company's policy.
- Now that you know about preventing harassment, discrimination and retaliation, you can be a role model. Your respectful behavior toward others goes a long way in creating a positive work environment.
- Your effective responses to challenging situations also support creating a *Respect Effect* in our workplace.

Preview Only