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SEXUAL HARASSMENT AWARENESS TRAINING: IT'S NOT THE BOOGIE MONSTER

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I. INTRODUCTION

Sexual harassment awareness has only recently become a standard feature of employment training. The topic of sexual harassment has become part of every day discussions around the coffee pot and vending machines in light of such high profile cases as the United States Supreme Court confirmation hearings for Supreme Court Justice Clarence Thomas. Companies and organizations have scrambled to protect themselves by hiring consultants to educate and train their employees on sexual harassment. As a result, consultation and training on the topic of sexual harassment has evolved into a multi-million dollar industry.

However, the training methods which have been applied have not always adequately treated the problem due to the sensitive nature of "sexual harassment." The words "sexual harassment" usually strike fear in the hearts of employers and employees alike. Employers fear the cost of legal battles and damage to their reputation. Employees fear that they will be accused unfairly for "just one joke." Many training programs emphasize and, maybe even capitalize on the fears of both employers and employees. Consequently, such training is often received negatively by the work force. This is evidenced by comments such as "Now we can't say anything to anybody" or "We aren't supposed to have fun at work any more." Unfortunately, this type of training often backfires because rather than encouraging the work force to talk about the issue of sexual harassment, it creates an atmosphere of fear and

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resentment which discourages employees from addressing the issue directly.

The legal and psychological problems that arise as the result of sexual harassment and other offensive behaviors can, however, be prevented by effective training. In fact, sexual harassment training should not scare anyone. On the contrary, effective training should merely provide legal and working definitions, as well as consequences of harassment that can be used on a daily basis to evaluate behavior. It should also highlight and reinforce informal and formal ways to respond to offensive behavior. More importantly, effective training should eschew the concept that sexual harassment is a "boogie monster" that might be looming around any corner. Instead, it should promote the idea that sexual harassment is a work place issue that can be managed.

II. WHY SHOULD WE PROVIDE SEXUAL HARASSMENT AWARENESS TRAINING?

There are several reasons why an organization should choose to develop an integrated system to deter and prevent sexual harassment in the work place. Legal liability, most important to employers, may be limited through an effective sexual harassment prevention program. According to the United States Court of Appeals for the Ninth Circuit, "[t]o avoid liability under Title VII, employers may have to educate and sensitize their work force to eliminate conduct which a reasonable victim would consider unlawful sexual harassment."¹ Most courts consider whether the employees were educated on sexual harassment when determining if the employer had knowledge of the harassment and is thus liable.² This argument is based on the notion that if employees are unaware of the policies against sexual harassment they will not know how or when to complain. Therefore, courts may find an employer liable even if the employer did not know of the harassment. In the same respect, efforts by an employer to implement, disseminate and educate its employees about sexual harassment can be used to defeat the plaintiff's claim of lack of knowledge about how to complain.

1. *Ellison v. Brady*, 924 F.2d 872, 880 (9th Cir. 1991).

2. *See, e.g., Davis v. Tri-State Mack Distribs., Inc.*, 981 F.2d 340, 344 (8th Cir. 1992) (finding for plaintiff despite absence of evidence that plaintiff complained to employer, stating that "[a]lthough we recognize that the 'mere existence of a grievance procedure and a policy against discrimination,' does not necessarily 'insulate [an employer] from liability[,] if Tri-State had had an effective sexual harassment policy in place the results of this case may have been different.") (quoting *Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 72 (1986)); *Continental Can Co., v. State*, 297 N.W.2d 241, 250 (Minn. 1980) (stating that even without harassers' identities, Continental could have disseminated an anti-harassment policy).

Another issue relating to legal liability relates to the employer's duty to do more than simply end the harassment of one employee. Although important, courts are beginning to look not only at whether the employer took timely and appropriate action in response to a complaint of harassment, but also at whether the employer's response served as a general deterrent to work place harassment.³ Therefore, any action taken by an employer to reduce and deter harassment in the overall work force may act as a shield to liability.

Although potential legal liability is often the reason motivating employers to take steps to eliminate sexual harassment in the work place, there are other more tangible benefits employers experience from the reduction in harassing behaviors within the work place. Employers often do not realize that sexual harassment leads to absenteeism, employee turnover, low morale, and low productivity.⁴ The costs associated with these events are estimated at \$6.7 million dollars each year for a typical Fortune 500 company.⁵ Reducing sexual harassment through an effective training program can eliminate some of these costs for the employer.

III. TOP MANAGEMENT ATTITUDE AND TRAINING: BEGIN AT THE TOP: TRICKLE DOWN TRAINING

Employers who wish to deter sexual harassment and other offensive behaviors must do more than simply decide that they will not tolerate offensive behaviors. Deterrence will not occur without the creation of an organizational value relating to these issues and a commitment from the top of the organization. Furthermore, in order to prevent the perception that upper management only pays "lip service" to these issues, top executives must thoroughly and completely understand the issues.

Management must be convinced that sexual harassment is a serious issue.⁶ Sexual harassment trainers can address the common concerns of management in order to help them understand why it is important to take the issue of sexual harassment seriously. The common concerns of management generally relate to the risk of financial loss associated with legal battles and lost productivity.

3. See *Fuller v. City of Oakland*, 47 F.3d 1522, 1528-29 (9th Cir. 1995) (stating that effectiveness of actions taken should be measured not only by the ending of current harassment, but also the deterrence of future harassment).

4. Ronni Sandroff, *Sexual Harassment—the Inside Story*, WORKING WOMAN MAG., June 1992, at 50.

5. Louise Washer, *Six Steps to Stopping Harassment*, WORKING WOMAN MAG., June 1992, at 51 (citing SUSAN L. WEBB, *STEP FORWARD SEXUAL HARASSMENT IN THE WORKPLACE—WHAT YOU NEED TO KNOW* (1991)).

6. *Id.*

While a good training program for management should address each of these concerns, it is equally important to stress the ethical or moral issues related to harassment and not only the risk of financial loss. One commentator has stated that: "Millions of dollars are being spent to minimize corporate and public sector liability, yet the attitudes and values which allow the perpetuation of sexual harassment continue with little substantive challenge. It is as though the behavior is being condemned with a wink and a nod."⁷ Changing attitudes about sexual harassment will have the most impact on creating actual change. For that reason, a good training program will work to create an environment that promotes treating all workers with dignity and respect.

To accomplish this, an organizational value must be created. This entails evaluating the climate of the organization, developing values or standards relating to the issues of discrimination, sexual harassment and offensive behavior, and preparing a plan for implementing changes within the company. This should be an ongoing process, not just a one time training session.

To achieve such objectives, a training program should begin with an informational/background presentation to top executives and upper level management to equip these executives with a basic understanding and background on the relevant issues. The following types of information can be extremely helpful to a thorough understanding of the issues surrounding sexual harassment:

1. Legal and practical definitions;
2. Problem awareness and identification;
3. Legal obligations;
3. Managing complaints effectively;
4. Information on harassers and targets; and
5. Prevention and training.

After management has gained a thorough understanding of the issues surrounding sexual harassment, the trainer should focus on policy development and implementation of a specific program. The implementation plan will include training for other employees.

IV. POLICY DEVELOPMENT AND IMPLEMENTATION: HOW TO MAKE IT TRICKLE DOWN

Policy development is a critical step in the formation of a good prevention program. An effective trainer assists the company or organi-

7. Fran Sepler, *Sexual Harassment: From Protective Response to Proactive Prevention*, 11 *HAMLIN J. OF PUB. L. & POL'Y* 61, 75 (1990).

zation in establishing a policy and implementation program that implements the organizational values developed in the prior sessions. The goals of the policy and procedures should be to develop understanding about sexual harassment, to encourage employees to report sexual harassment, and to create an environment free from offensive and degrading behaviors.

The management team should already have an understanding of the issues surrounding sexual harassment in their work place. With this information in hand, the trainer works with the management team to develop a policy and implementation program that will work within that particular company. Obviously, this is easier said than done. While every policy and implementation program must contain certain elements,⁸ the trainer can assist the company in determining which elements should be customized to the company to ensure that the procedures put in place can and will be followed.

Generally, this will include an evaluation of the organization based on the information given in the previous session and other information gained from discussions with management. While trainers may use different methods, a quality trainer will lead the management team through an evaluation of the current climate and the most recent policies and procedures. The evaluation can then be used to identify the present needs of the company. Only after an evaluation will the management team have sufficient information to develop new standards or adapt existing standards, policies, and procedures to meet its organizational values.

Interestingly, many companies experience complaints of offensive behavior that may not technically constitute sexual harassment. However, such behavior is clearly offensive to the individual making the complaint. Therefore, employers may want to consider implementing a general offensive behavior policy rather than a sexual harassment policy. An offensive behavior policy would contain prohibitions against both sexual harassment and other forms of offensive behavior, such as discrimination.

8. See Washer, *supra* note 5, at 51, 78 (citing SUSAN L. WEBB, SEXUAL HARASSMENT: INVESTIGATOR'S MANUAL). The standard elements of a sexual harassment policy include: (1) A statement of commitment indicating that sexual harassment is prohibited within the company; (2) A definition of sexual harassment which identifies the prohibited conduct in a clear fashion; (3) A statement identifying the complaint recipients within the company; (4) A statement setting forth the procedures for making and investigating complaints; (5) A statement setting forth the sanctions which may be imposed for violating the policy; and (6) A statement indicating that the company will not tolerate retaliation. *See id.*

Once the policy is in place, the company must determine how to implement the policy. A trainer may assist the company in developing training for all employees, based on need.

V. EFFECTIVE TRAINING TIPS: HOW TO GET THE MESSAGE ACROSS

There are three elements to any sexual harassment training session which are essential to understanding the issues surrounding sexual harassment: 1) Defining Sexual Harassment; 2) Making the Training Personal; and 3) Highlighting Prevention.

A. DEFINING SEXUAL HARASSMENT

Without a clear definition of sexual harassment, employees will find it extremely difficult to comprehend what constitutes appropriate behavior under the company's sexual harassment policy. If one of the goals of the policy is to stop certain behaviors, it is essential that employees understand what behavior is or is not appropriate.

Generally few, if any, employees understand the legal definitions of sexual harassment in the relevant statutes well enough to determine if a particular behavior would be prohibited. Thus, employees need an introduction to the legal definitions in order to help recognize what constitutes unlawful sexual harassment. This training must also focus on practical definitions and examples which can be used to evaluate actual situations within the work place. There are many practical definitions and "rules of thumb" available that can assist individuals in their day to day working experiences.⁹

Some of the common "rules of thumb" which assist employees in evaluating their own behavior, as well as the behavior of others, include the following:

1. How would you feel if someone behaved that way toward someone you loved such as your spouse, child or parent?
2. Would you be embarrassed to see your remarks or behavior reported in the newspaper or broadcast on the radio?
3. Would you be embarrassed to see your remarks or behavior described to your own family?
4. Would you say the remarks in front of your spouse, parent, or child?

9. See, e.g., SUSAN L. WEBB, *STEP FORWARD SEXUAL HARASSMENT IN THE WORKPLACE—WHAT YOU NEED TO KNOW* 25-29 (1991). This author provides one example of a practical definition as follows: "Sexual harassment is a deliberate and/or repeated, sexual or sex-based behavior that is not welcome, not asked for, and not returned." *Id.* at 25-26.

Although defining sexual harassment is essential to a complete understanding of the issue, it is also important to remind employees and their supervisors that they do not need to determine whether a particular behavior actually constitutes sexual harassment. Employees and supervisors should report any behavior they find offensive, without trying to determine on their own if the behavior actually constitutes sexual harassment. It is up to management, and/or the courts, to determine if there is actual sexual harassment, regardless if the accused harasser actually knew his or her behavior constituted sexual harassment. The definitions should therefore only be used to assist employees in understanding the issue and recognizing potential offensive behavior.

B. MAKING THE TRAINING PERSONAL

Another essential element to an effective training program is making the presentations personally relevant. By doing this, participants not only understand the concepts but also can begin to identify aspects of their working environment and their own personal behavior that need adjusting. In addition, participants will understand that everyone is accountable for responding to the offensive behavior in the work place. To personalize training, it is helpful to give descriptions of who potential harassers may be, what motivates the harassers,¹⁰ and who is affected by the harassment. Relating specific examples of harassment will also create awareness of potential problems. Moreover, detailing the devastating impact that harassment has on individuals, emotionally, physically, and on their job performance, will likely create greater sensitivity to the issue.¹¹

An effective training program becomes personally relevant when it includes information on appropriate interventions that individuals can use to confront and manage harassment.¹² Participants are given specific

10. See Donna M. Stringer et al., *The Power and Reasons Behind Sexual Harassment: An Employers Guide to Solutions*, 19 PUB. PERSONNEL MGMT. 43 (1990) (providing a detailed discussion of motivations of harassers). The motives behind sexual harassment fall into two major categories: 1) To obtain a sexual relationship or activity; 2) To abuse or increase one's personal or social power. *Id.* at 43. These categories are not mutually exclusive. *Id.* Some harassers abuse their power to obtain sexual favors, while others use sexual behavior to gain power. Many harassers aren't interested in a sexual relationship at all, they simply want to intimidate and bully the target. *See id.*

11. See Sandroff, *supra* note 4, at 50. For the target of sexual harassment, the immediate impact is that of feeling angry, violated, humiliated, intimidated, ashamed, and vulnerable. Over the long term, more serious consequences emerge, such as impaired job performance, physical symptoms that result from stress, and emotional problems. *Id.* Targets of harassment also report significant losses that include the loss of autonomy, self-confidence and self esteem, trust, jobs, careers, economic security and the loss of feeling safe at work. *Id.*

12. Responding to sexual harassment is very difficult. We encourage targets to get the support they need through talking with other people, documenting the offensive behavior, and getting professional help if they need it.

information on the formal organizational policy and procedure usually accompanied by the written company policy. Moreover, participants are given several suggestions for managing offensive behavior in an informal and immediate manner. Because most individuals who are the targets of harassment choose to ignore or minimize the harassment, programs should encourage such persons to respond to the harassment in a manner that ensures their safety, yet allows a continued working relationship if desired. Possible suggestions for responses could include a one-to-one conversation, a memorandum, a letter, a telephone call, and/or supervisory intervention.

C. HIGHLIGHTING PREVENTION

It is an absolutely essential that training include information about prevention. It is important to review organizational responsibilities that facilitate prevention, such as having a written posted policy, offering training, and responding immediately and appropriately to all complaints. The presentation must also challenge all participants to be responsible for prevention by encouraging them to evaluate their own behavior as well as their working environment for sexual harassment or any behavior that threatens the dignity and respect each individual deserves. The goal of prevention efforts is to create a safe working environment for all.

VI. FOLLOW-UP TRAINING: MAINTAINING THE PROCESS

Employers often assume that sexual harassment will disappear from their work place after training is completed. These employers assume that there is a magical cure for sexual harassment within the work place. Clearly, this is not the case. Once the training is completed, there needs to be a plan for follow-up training and evaluation to reinforce the seriousness of the issue and to assess the impact and effectiveness of the previous training.¹³

It is not necessary to repeat the same "definition/recognition" type training outlined above. However, employees will need to be reminded about the policy and their specific responsibilities. It is helpful to offer training that reinforces the themes of the previous training such as communication skills, conflict resolution, and creative problem solving.

13. Washer, *supra* note 5, at 78.

VII. SELECTING THE RIGHT TRAINING PROGRAM FOR YOU: MAKING TRAINING FIT

There are many trainers who work with companies to prevent and control sexual harassment in the work place. Selecting the appropriate trainer for your company can be extremely confusing. The following tips should be helpful in choosing the best trainer for your organization:

1. Determine if the trainer intends to evaluate company policies and procedures to understand the current climate of the company. You may or may not need to change your policies; however, if you do need to make changes you should do so before you attempt to train employees about your policies.
2. Has the trainer asked you about previous company training? A good trainer will review the previous training. If previous training has been conducted you do not want to repeat it; rather, the trainer should seek to build on the training already conducted.
3. Obtain recommendations from colleagues. What is the reputation of the trainer? In particular, ask colleagues how the participants responded to the training. Was there an atmosphere of anxiety, fear and dread after the training or did the atmosphere become more calm, relaxed, and comfortable?
4. Ask trainers if you can observe their presentations. This can be accomplished by attending a session at another company or you may ask the trainer to give a brief presentation to the group of individuals who will choose the trainer.
5. Look for trainers who will tailor their presentation to your organization as well as the audience to be addressed. For example, the presentation to upper management should be different from the presentation to general employees.

VIII. CONCLUSION

There is little question that an effective, integrative, and personalized training program can benefit companies and organizations. However, this is only one of many elements in a system designed to deter and prevent sexual harassment. Other elements include: an updated offensive behavior policy, accessible complaint procedures, prompt investigation procedures, as well as a comprehensive prevention plan. To make the most out of any training program, organizations and companies must address all of these elements. Evaluating these elements, as well as

organizational needs and values, will determine the best training for a particular organization. It is important to remember, even though training can limit legal liability, effective training is not about scaring anyone. It *is* about encouraging people to enhance their working environment and improving work performance.