Creating and Maintaining a Respectful Workplace

January 3, 2020 - 2020 Legislative Session

Leslie Hayes, Deputy Attorney General, Civil Litigation Division
Idaho Office of the Attorney General
Why Respectful Workplace Discussion?

Everyone is entitled to:
- Be Treated Fairly
- Be Empowered to Ask a Harasser to Stop
- Refuse to Participate in Harassing Behavior
- Have a Safe Person to Report to
- Help in Ending the Harassment
Why Respectful Workplace Discussion?

• 60% of women experienced unwanted sexual attention or coercion or sexually crude conduct or sexist comments in the workplace
• 40-70% of people experienced harassment based on racial or ethnic status
• 70% of individuals that experienced the above, never lodged a complaint
Why Don’t People Report?

- Humiliation
- Ostracism
- Damage to Reputation or Career
- Retaliation
- Blame
- Don’t Want to get Others in Trouble
- Disbelief
- Behavior Minimalized
Presentation Outline

- Review Legislative Branch’s Respectful Workplace Policy
- What is Harassment and Types of Harassment
- What is Retaliation
- What is a Complaint
- How to Decrease Harassment
- Misperceptions
Idaho Legislative Branch – Respectful Workplace Policy

• Applies to
  • Members of the Legislature
  • Legislative Employees
  • Legislative Partners
  • Press
  • Guests
Idaho Legislative Branch – Respectful Workplace Policy

• Prohibits
  • Harassment
  • Sexual Harassment
  • Discrimination
  • Retaliation
Idaho Legislative Branch – Respectful Workplace Policy

- Complaints Reported to any of the following:
  - President Pro Tempore of the Senate
  - Speaker of the House or Representatives
  - Director of Legislative Services Office
  - Chief Operations Officer of Legislative Services Office
  - Director of the Office of Office of Performance Evaluations
  - Assistant Chief Deputy of Office of Attorney General
  - Secretary of the Senate
  - Chief Clerk of the House of Representatives
  - Sergeant at Arms or Assistant Sergeant at Arms
What is Harassment?

• Unwelcome or unwanted sexual advances, requests or demands for sexual favors, or other conduct based on a protected status when:
  • Submission to such conduct is made explicitly or implicitly a term or condition of employment; or
  • Submission or rejection of such conduct is used as the basis for employment decisions; or
  • Such conduct has the purpose *OR* effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile, or offensive work environment.
Types of Harassment

- Written Harassment
- Verbal Harassment
- Non-Verbal Harassment
- Physical Harassment
But, I Didn’t Intend to Offend Anyone.

• **Quid Pro Quo**
  • Was there an adverse action?
  • Was it solely based on or in-part because of a protected status?

• **Hostile Work Environment**
  • Did the employee believe that the work environment was hostile?
  • Would a reasonable person in the same position as the employee consider the work environment hostile?
Retaliation is Prohibited

- Protected by State and Federal Law
  - Filing a complaint in good faith
  - Opposing discriminatory or harassing practices
  - Participating in investigation, testifying in deposition or court
What is Retaliation?

- Taking materially adverse employment action against an employee because s/he engaged in activity protected by law
  - What is adverse action?
    - Any action that may dissuade a reasonable person from participating in the protected activity
Examples of Retaliation

• Failure to hire/promote
• Termination or suspension
• Poor performance ratings
• Performance improvement plans
• Denial or different treatment concerning compensation, terms, conditions, or privileges of employment benefits
What is a Complaint?

- Any communication that identifies an issue that *could* be harassment, discrimination, or a hostile work environment
  - Does not have to be written
  - Does not have to use the “magic words”
  - Could *only* use the “magic words”
What to do With a Complaint

• All complaints need minimal inquiry to determine next steps
  • What was said
  • When was it said
  • Specific incidents
• If the above determines appropriate, complaint needs to be referred per policy
• Depending on gravity or level of detail, Respectful Workplace Committee determines whether complaint requires an investigation
• Debrief for complaining individual
<table>
<thead>
<tr>
<th>How to Decrease Harassment</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Promote a Culture Where Civility is Fostered</td>
</tr>
<tr>
<td>• Do Not Tolerate Harassment</td>
</tr>
<tr>
<td>• Conduct Cultural Assessments to Identify Risk Factors</td>
</tr>
<tr>
<td>• Training</td>
</tr>
<tr>
<td>• Discipline when Harassment Occurs that is Proportionate to the Policy Violation</td>
</tr>
<tr>
<td>• Accountability for Failure to Stop/Prevent Harassment</td>
</tr>
<tr>
<td>• Quality Control of Investigations and Policies</td>
</tr>
<tr>
<td>• Resources to Prompt, Thorough Investigations</td>
</tr>
</tbody>
</table>
Misperceptions

• Employer is not responsible for conduct outside of work or after work hours between employees
• Employers are not responsible for conduct of non-employees
• Complainant has an obligation to ask harasser to stop before bringing complaint
• If the complainant laughed or participated, then it is not harassment
Misperceptions, Cont.

• It cannot be harassment if the employee harassed me back
• It cannot be harassment if the person was joking about their own race/gender/etc.
• It cannot be harassment unless a supervisor is involved
Why Respectful Workplace Discussion?

• Everyone is entitled to:
  • Be Treated Fairly
  • Be Empowered to Ask a Harasser to Stop
  • Refuse to Participate in Harassing Behavior
  • Have a Safe Person to Report to
  • Help in Ending the Harassment
Questions?