WESTBROOK PUBLIC SCHOOLS

Sexual Harassment Prevention Training

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Objectives

To reiterate the standard of a respectful workplace

To stress a commitment to maintaining a workplace free of sexual and other harassment
Objectives

To explain what conduct constitutes sexual harassment

To highlight the role of employees in preventing and addressing harassment

To encourage communication: “If you see (or hear) something, say something”
Simple Steps To A Respectful Workplace

• Don’t joke, tease or talk about sex, gender, sexual orientation, race, or ethnicity
• Don’t gossip about your colleagues
• No touching
• Just because it is a personal communication or “hot topic” in the media doesn’t make it ok
• Be mindful of written communication (e.g. emails, IMs, etc.)
• Speak up if you see something that is not respectful, whether directed at you or someone else

It’s simple: treat people with respect
The “Time’s Up Act” – S.B. 3

• Requires all workplaces with 3 or more employees to provide two hours of sexual harassment prevention training to **all employees** by October 1, 2020.

• Requires all workplaces, regardless of number of employees, to provide two hours of sexual harassment prevention training to **all supervisors** by October 1, 2020.

• The CHRO is tasked with developing a web program for conducting the training, but nothing is developed yet.
The “Time’s Up Act” – S.B. 3

- Expands the filing timeframe for bringing an action at the CHRO
- Provides for greater remedies for claimants at the administrative level
- Authorizes punitive damages if there is a lawsuit filed in court.
- Employers must also provide the sexual harassment poster to all employees by e-mail within three months of hire.
- Laws will go into effect October 1, 2019, but all current employees will need to be trained by October 1, 2020 (those trained by October 1, 2018 will not have to be “re-trained.”)
Employee Responsibilities

• Although supervisors are responsible for setting the tone for the workplace, individual employees are ultimately responsible for their own behavior.
The “Golden Rules”

• Respect others
• Treat others like you expect to be treated
• Draw a line between professional and social behavior in the workplace
• Understand the power of words
Know Your Company’s Policy

• There should be a policy prohibiting sexual harassment.

• It should also spell out examples of types of behavior that are not acceptable.

• Know this policy, know what you can and cannot do, and know what others can and cannot do.
If You See Something, Say Something

• Supervisors cannot be everywhere all the time.
• Sexual harassment often is not reported due to embarrassment or fear.
• Every employee should be reporting behavior that is inappropriate in order to help build a productive atmosphere.
Repercussions

• “Sexual harassment” encompasses many different types of behavior.

• Some behavior may warrant minor discipline, while others could lead to criminal liability.

• In general, employees can be liable in a professional capacity, a civil capacity, a criminal capacity, or any combination.
Professional Liability

• Improper conduct, even if not necessarily “sexual harassment” can lead to discipline up to and including discharge.

• Although not all allegations will lead to punishment—there should be a thorough investigation first—know that, at a minimum, you could face discipline for violations of your company’s policy.
Civil Liability

- Employees, in general, are not liable for claims of “sexual harassment.”
  - A claim of sexual harassment is brought against the company, not the individual.
Civil Liability (cont.)

• That being said, employees *are* liable under CT law, individually, if they “aid and abet” sexual harassment.
• “Aiding and abetting” occurs when a person “assist[s] the perpetrator of the crime while sharing the requisite intent.”
Civil Liability (cont.)

• Employees are also liable, individually, for civil wrongs that constitute sexual harassment.
  ◆ Examples: defamation, assault & battery, negligent/intentional infliction of emotional distress, etc.
Criminal Liability

• Some acts constituting sexual harassment may lead to criminal arrests and convictions.
  - Examples: assault, sexual assault, threatening, harassment, stalking, etc.
Where Do Sexual Harassment Laws Come From?
Evolution of Sexual Harassment Claims

• 1964 ➔ Title VII of the Civil Rights Act prohibits discrimination in employment based on sex and other protected categories.

• 1975 ➔ The phrase “sexual harassment” is coined by Working Women United at Cornell University.

• 1980 ➔ EEOC established guidelines construing sexual harassment as a form of sex discrimination prohibited by Title VII.
Evolution of Sexual Harassment Claims

• 1981 → Bundy v. Jackson recognized the idea of a sexually hostile work environment. First federal appeals court to rule that sexual harassment is sex discrimination prohibited by Title VII.

• 1986 → In Meritor Savings Bank v. Vinson the Supreme Court agreed that Title VII prohibited sexual harassment.
Connecticut Fair Employment Practices Act ("CFEPA")

- Prohibits harassment by employers with three or more employees
- Prohibits any person, whether an employer or an employee or not, from aiding, abetting, inciting, compelling or coercing the doing of any act declared to be a discriminatory employment practice or to attempt to do so
What Are the Protected Categories?

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What is Sexual Harassment?
Basic Elements

- Unwelcome
- Conduct of a sexual nature
- Severe or pervasive and
- Affects working conditions or creates a hostile work or educational environment
A Practical Definition

• An abuse of power sexually expressed
• Poor personal vs. professional boundaries
• Demeaning sexual or gender-based behavior calculated to diminish victim’s self-esteem
Breaking Down the Elements
Two Types of Harassment

• Quid Pro Quo (“this for that”)
• Hostile Work Environment
Quid Pro Quo Harassment

• This is considered the “paradigm” of sexual harassment.

• “[W]hen an employee’s expressed terms of employment, such as salary or continued employment, are conditioned upon compliance with the employer’s sexual demands.”

• In such a case, the sexual harassment explicitly alters the terms and conditions of employment.
Scenario #1

• Frank supervises Sally. One day, he asks her out on a date. When she refuses, he says that she should “consider” his offer if she wants to remain employed at the company.
Is this Quid Pro Quo Harassment?

A. Yes, he is conditioning her employment on acceptance of his date.
B. No, asking someone for a date is not “sexual”
C. No, he has not actually done anything to her yet.
D. No, he is her boss, he can do what he wants.
Hostile Work Environment Harassment

A hostile work environment exists “[w]hen the workplace is permeated with ‘discriminatory intimidation, ridicule, and insult,’ that is ‘sufficiently severe or pervasive to alter the conditions of the victim’s employment.’ ”

“Severe” or “Pervasive?”

• The Harassment must be either “severe” or “pervasive.”
  - Does not have to be both
  - One instance of extreme conduct can be “severe” enough to be considered sexual harassment.
    - Examples: groping, explicit verbal remarks, sexual assault.
  - Minor instances over a long period of time, although perhaps not “severe” may be considered “pervasive.”
    - Examples: sexual jokes every day for weeks, comments about coworker’s body every day for weeks.
Scenario # 2

Jan and Joe worked together as co-workers. Jan would often remark how Joe needed to find himself a wife, and would tell him, in a joking manner, that they should “go out” sometime. Jan would often flirt with Joe, make sexual jokes, and, on one occasion, sent him photos of her in a bikini. Joe felt uncomfortable with this attention, and told her on several occasions that he “just wanted to work” and asked if their relationship could remain professional. She continued the flirting, however.
How would you classify this behavior?

A. Severe
B. Pervasive
C. Neither
Sexual Conduct

- Behavior has to be of a “sexual nature.”
- Conduct can occur a variety of ways: physical, verbal/written, or non-verbal
Physical Conduct of a Sexual Nature

- Touching
- Patting
- Pinching
- Assault
Verbal Conduct of a Sexual Nature

- Sexual remarks about a person’s clothing, body, or sexual activities
- Sex-stereotyped or sexually-based jokes
- Unwanted phone calls or texts
- Emails of a sexual nature
Non-Verbal or Physical Conduct of a Sexual Nature

- Sexually suggestive looks, leering, or ogling of a person’s body
- Public display of sexually explicit materials
Scenario # 3

Sarah is a resident in a male dominated department. She complains to the medical director that her department chair attempted to hug her, which she felt was inappropriate. After making the complaint, she believes that her male colleagues were “shunning” her, and would not engage her in conversation other than in passing. She later applies for a permanent position in the department, but is told the “timing isn’t right”.
Is the initial hug “sexual” in nature?

A. Yes
B. No
C. Maybe
Is the shunning “sexual” in nature?

A. Yes
B. No
C. Maybe
Is the denial of the position “sexual” in nature?

A. Yes
B. No
C. Maybe
What Type of Conduct?

• “Welcome”
  ✓ Conduct is NOT sexual harassment if it is welcome

• “Unwelcome”
  ✓ Employees should communicate to the harasser that the conduct is not welcome and should stop
  ✓ But, is this always possible?
Unwelcome Conduct

• The sexual conduct must be both objectively and subjectively severe or pervasive and of a sexual nature

• That is, whether a reasonable person would think that the actions were sexual harassment, and whether the actual alleged victim perceived it as sexual harassment.

• This requirement is often expressed as the “unwelcome” requirement—the alleged victim cannot be a “victim” if he or she actually welcomed and liked the conduct.
Unwelcome Conduct (cont.)

• Stereotypes play no role in this evaluation—e.g., cannot just assume that all men will engage in “locker room talk.”

• Of course, someone saying “no” is a strong indicator of unwelcomeness, but is someone always able to say no?
Scenario # 4

Jane is the first woman to work in a factory. The men often have sexual discussions and tell dirty jokes to each other. Everyone engages in the conduct, including her supervisor. Jane thought this type of conduct might occur, but chose to work there anyway.
Is the conduct *objectively* sexual harassment?

A. Yes

B. No

C. Maybe
Is the conduct *subjectively* sexual harassment?

A. Yes  
B. No  
C. Maybe
Unwelcome Conduct (cont.)

• The standard for sexual harassment does not change based on the work environment!

• Some work environments tend to be dominated by men or women, that does not mean that the employees can behave as they see fit.
Scenario # 5

A female supervisor brought a group of female coworkers out one night for a “girls’ night out.” Management did not know that this event was occurring, and had no part in organizing or paying for the event. The group ended up at a sex shop, and one employee bought another employee a sex toy. One employee who was present felt uncomfortable with the whole situation, and later reported it to management.
Is this sexual harassment?

A. Yes, it was unwelcome severe sexual conduct
B. Yes, it was unwelcome pervasive sexual conduct
C. No, it was not severe or pervasive
D. No, it was not sexual conduct
Is there a claim against the employer even though it occurred after work and off the premises?

A. Yes, it does not matter where the conduct took place
B. Yes, if the conduct impacted the ability of the employee to do her job
C. No, employers are not responsible for conduct that occurs off-campus and off-hours
D. No, the employer did not know about it
Off-Duty Conduct

• Employers can be held liable for conduct that occurs off-duty in certain circumstances
  - If the event is sponsored by the employer
    ∂ Example: company picnics, holiday parties, etc.
  - If the event interferes with the terms and conditions of a person’s employment.
Off-Duty Conduct (cont.)

• Most importantly: EMPLOYEES are still liable for all their actions to the same extent as sexual harassment in the workplace
  - E.g., liable for crimes, civil wrongs, and aiding and abetting.
Filing Complaints

• With an understanding of what sexual harassment is, the next question is: how does someone raise concerns regarding sexual harassment?
  - Understand the procedure for filing complaints
Procedure for Filing Complaints

- Concerns should be brought to a supervisor whom you feel comfortable speaking with about these issues.
- Although your immediate supervisor is a logical starting point, if you feel uncomfortable speaking with them, then you should speak with another supervisor with whom you are more comfortable.
What Will the Supervisor Do?

• Understand that supervisors do not have discretion when it comes to investigating complaints of sexual harassment.

• The Supervisor cannot, and should not, ignore complaints, or “just listen” and not do anything.
Retaliation

• Under the Civil Rights Act and the CT Fair Employment Practices Act, an employer cannot take any adverse employment action against an employee for “engaging in protected activity.”

• “Protected activity” includes:
  - Refusing sexual advances;
  - Filing a complaint of harassment with either the employer, the CHRO, or filing a lawsuit;
  - Helping other alleged victims in any capacity;
  - Acting as a witness in an investigation or lawsuit;
  - Or any other activity in pursuit of protecting yourself from sexual harassment.
Retaliation and Filing Complaints

• Do not be afraid of adverse employment actions for reporting sexual harassment.

• Employers are prohibited from disciplining, terminating, or taking any adverse actions against your for making a good faith report of sexual harassment.

  ❖ Of course, if you make a *blatantly false* accusation, and the employer can prove so, then you can be disciplined for making a false accusation.
Outcome of Investigation

• Your employer will determine whether the conduct was in violation of policy and whether it warrants discipline.

• Depending on the findings, your employer may take disciplinary action equal to the offense.

• This action may include:
  ◆ Informal counseling, or
  ◆ Discipline “up to and including termination”
Scenario # 5 (revisited)

Sarah is a resident in a male dominated department. She complains to the medical director that her department chair attempted to hug her, which she felt was inappropriate. After making the complaint, she believes that her male colleagues were “shunning” her, and would not engage her in conversation other than in passing. She later applies for a permanent position in the department, but is told the “timing isn’t right”.
Is Sarah justified in filing a complaint?

A. No, it was in bad faith
B. No, she lied
C. Yes, she made a complaint in good faith
D. Yes, it was sexual harassment
Were the employees “shunning” her retaliation?

A. Yes, it was improper behavior
B. Yes, it was an adverse employment action
C. No, her employer did not take any action against her
D. No, it was not an adverse employment action
Was denying her a promotion retaliation?

A. Yes, it was an adverse employment action

B. Yes, it was an adverse employment action due to her filing a complaint

C. No, the employer may have had another reason for denying the promotion

D. No, it was not an adverse employment action
Scenario # 6

A supervisor and an employee have a romantic relationship. Neither has considered it a problem. They are quite open about it at work. Other employees in the department are complaining that the employee having the affair gets all the best assignments.
Is the relationship at work sexual harassment?

A. Yes
B. No
C. Maybe
Do the other employees have a potential claim for not getting work assignments?

A. Yes, they are being retaliated against for not engaging in sexual activity with a supervisor

B. Yes, the work relationship is sexual harassment

C. No, there may be other reasons why they are not getting the assignments

D. No, work relationships can never cause problems
Work Relationships

• Although frowned upon, relationships in the workplace are not necessarily illegal

• They can present problems, however, especially when one person is a supervisor.

• Best advice: avoid them.
Case Study # 1

• John and Sandy work on a team with six others. They had a team building event that everyone attended at Chelsea Piers.
• At the end of the evening, John and Sandy stay for another drink at the bar.
• Is this inappropriate?
Case Study # 1 (cont.)

• John began sending Sandy text messages, many times late at night and on weekends.
• He often asked her about her personal life, including if she was dating anyone.
• He invited her to join him for happy hour after work frequently, and to “meet up” with him on the weekends.
• Sandy was very uncomfortable with the attention, and eventually told him to leave her alone.
• She did not report any of these acts to management.
Is this a hostile work environment?

A. Yes

B. No, he stopped when she told him to leave her alone

C. No, she did not report the conduct

D. No, not yet
Case Study # 1 (cont.)

- John left the company but came back three years later to Sandy’s department.
- He told her that he missed her, and that he had dreams about working with her.
- He also told her that he was trying to get assigned to her team on an upcoming project because he enjoyed working with her.
- He again started texting her outside of work, but many times the texts were to a group that included other co-workers.
- On one occasion, he left her a card and a present on her birthday.
Is this a hostile work environment?

A. Yes

B. No, he still has not done anything “sexual”

C. No, the texting is happening outside of work and included other people

D. No, he is just being nice
Case Study # 1 (cont.)

• John commented on a regular basis that he liked the way that Sandy dressed.

• He also teased her that she was pretty smart “for a girl” and that she would have to pay more attention to sports if she wanted to fit in.

• On one occasion, John grabbed her hand as they were walking to a meeting and made a joke that she was his “work wife”.

• Sandy eventually confronted him and told him to stop paying so much attention to her.
Is this sexual harassment?

A. Yes, this is a hostile work environment
B. No, John is just teasing her and does not mean any harm
C. No, provided that John stops immediately
D. It depends on whether Sandy reports John
Case Study # 1 (cont.)

• Sandy complained to her boss, who immediately moved her and told John to have nothing but incidental conduct with her at work, and suggested that he not have any outside contact with her.

• The Company conducted an investigation and suspended John for “failure of good behavior” and “exercise of poor judgment”.

Was the Company’s reaction appropriate?

A. The Company got it right
B. The Company went too far and John should have only received a warning
C. The Company should have fired John
Case Study # 1 (cont.)

- What could John have done differently?
- Was there any of his conduct that was appropriate?
- What should the Company have done?
- Did John’s co-workers have any obligation to do anything?
- How would you handle this situation?
Li Yan’s coworker Ralph has just been through a divorce. He drops comments on a few occasions that he is lonely and needs to find a new girlfriend. Li Yan and Ralph have been friendly in the past and have had lunch together in local restaurants on many occasions. Ralph asks Li Yan to go on a date with him—dinner and a movie. Li Yan likes Ralph and agrees to go out with him. She enjoys her date with Ralph but decides that a relationship is not a good idea. She thanks Ralph for a nice time, but explains that she does not want to have a relationship with him. Ralph waits two weeks and then starts pressuring Li Yan for more dates. She refuses, but Ralph does not stop. He keeps asking her to go out with him.
Case Study # 2 (cont.)

- When Ralph first asked Li Yan for a date, this was sexual harassment. True or False?
- Ralph’s subsequent pestering for dates was sexual harassment. True or False?
- Li Yan cannot complain of sexual harassment because she went on a date with Ralph. True or False?
Case Study # 3

Tom is a computer technician and maintains the school’s network. One day when Tom is out sick, one of his female subordinates, Laurie, accesses Tom’s computer to work on the system, and finds that Tom has visited hundreds of pornographic websites while at work. Laurie is very upset with what she finds and immediately reports it to Human Resources prior to going home sick. Because Tom is technologically astute, the company had no prior notice of this activity.
Case Study # 3 (cont.)

• Does finding the pornographic material amount to a claim of sexual harassment?

• Is Laurie permitted to take sick time in this circumstance?

• What should Laurie do?

• What do you think the employer should do?
Best Practices

- Know the scope of your job description
- Report instances of even questionable behavior
- Do not cross boundaries
- Do not try to make jokes about sexual topics
The Bottom Line

• BE RESPECTFUL

• Everyone is entitled to a reasonable workplace. Things may not be perfect, but no one should have to tolerate workplace harassment.
Questions?

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