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Systemic Approach to Combating Harassment

prepared for

Berks County SHRM

presented by

Jonathan A. Segal, Esq.

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PREVENTION

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Policy

1. Non-discrimination pledge is insufficient

Policy

2. Need a policy (or policies) specific to harassment:
 - a. Scope
 - i. Sexual harassment
 - ii. Other kinds of unlawful harassment (race, ethnicity, age, disability, etc.)
 - Define broadly
 - Include “catch all”

Policy

2. Need a policy (or policies) specific to harassment:
 - b. Options
 - i. One policy
 - ii. Two linked policies

The logo for the Duane Morris Institute (DMI) features the letters 'DMI' in a bold, white, sans-serif font. The letters are set against a dark blue rectangular background. This dark blue background is part of a larger header bar that has a green gradient at the top and a dark blue section at the bottom. A white dotted line forms a rectangular border around the 'DMI' text.

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Policy

3. Include practical examples (focusing on inappropriateness and not illegality)

Policy

4. Make clear policy's application to:
 - a. Electronic communications, include e-mail, text messages, social media, etc.
 - b. Off-duty but work-related events
 - c. Suppliers, vendors and other non-employees
 - i. Cannot let employees harass them
 - ii. Cannot let them harass employees

Complaint Procedure

1. Make explicit complaint procedure is available to employees to use to raise concerns about:
 - a. All kinds of unlawful harassment (discrimination and retaliation, too)
 - b. Conduct by employees and non-employees alike (including visitors, donors, volunteers, etc.) ✓

Complaint Procedure

2. Points of contact

- a. Supervisory by-pass provision
(minimum requirement)
- b. Multiple points of access (recommended)
 - i. EEO diversity
 - ii. Operational diversity
 - iii. Geographic diversity

Complaint Procedure

3. Non-retaliation statement

a. Coverage

- i. Complainants
- ii. Witnesses
- iii. Others participating in the investigatory process
- iv. Individuals associated with the complainant

b. Prohibited Acts (if retaliatory motive)

- i. Tangible employment actions
- ii. Material changes to terms and conditions of employment
- iii. Retaliation independent of the workplace

Complaint Procedure

4. Confidentiality

- a. Important but not absolute
- b. Need to know exception

Complaint Procedure

5. Corrective actions

- a. Make clear applies to not only unlawful but also inappropriate conduct, even if not unlawful
- b. Include reference to discipline, up to and including termination of the employment or other relationship

Complaint Procedure

6. Appeals procedure
 - a. How: limited “written” requirement
 - b. Provide limited wording necessary
 - c. To whom? Senior official or outsider designated by employer

Complaint Procedure

7. Disseminate (along with policy) to:
 - a. All employees
 - b. New hires

Supervisory Responsibilities

1. Refrain from
 - a. Unlawful harassment
 - b. Other inappropriate conduct of nature described below, even if not unlawful

Supervisory Responsibilities

2. Report to HR all complaints of unlawful harassment or other inappropriate conduct of nature described below, even if employee:
 - a. Requests that nothing be done
 - b. Asks for absolute confidentiality
 - c. Does not use legal buzz words
 - d. Do not think complaint has meritNote: Do not investigate on own.

Supervisory Responsibilities

3. Respond proactively to possible unlawful harassment or other inappropriate conduct of nature described below, even in the absence of a complaint
 - a. Silence equals tacit support
 - b. Consult with HR to discuss remedial action

Supervisory Responsibilities

4. Remedy unlawful harassment and other inappropriate conduct of nature described below (even if not unlawful)
 - a. Consult with HR
 - b. Focus on inappropriateness, not illegality

Supervisory Responsibilities

5. Refrain from unlawful retaliation

a. Applies to:

- i. Complainants
- ii. Witnesses
- iii. Others who participate in the investigatory process
- iv. Others who are associated with the complainant (e.g., spouse)

Supervisory Responsibilities

5. Refrain from unlawful retaliation (continued)
 - b. Covers not only tangible employment actions but also
 - i. Other material terms and conditions of employment
 - ii. Retaliation independent of the workplace

Supervisory Responsibilities

5. Refrain from unlawful retaliation (continued)
 - c. Fact that complaint lacks legal merit is almost never a defense to unlawful retaliation

Dating Guidelines

1. Risks in supervisor dating a subordinate colleague in today's legal climate:
 - a. Legal
 - b. Employee relations

Dating Guidelines

2. Approaches to risk:
 - a. Dissuade in training
 - b. Require report by supervisor to Human Resources
 - c. Prohibit

Dating Guidelines

3. If require a report and/or prohibit:
 - a. Focus on employment relationship rather than intimate relationship
 - b. Advance notice of requirement/restriction
 - c. Disengagement provision
 - d. Apply to all intimate associations, regardless of marital, civil union or domestic partner status
 - e. Enforce consistently

Employee Education

1. Focus on:
 - a. Right to be free from inappropriate/offensive behavior
 - b. Responsibility to speak up if uncomfortable/offended

Employee Education

2. With regard to inappropriate behaviors:
 - a. Define broadly
 - b. Focus on inappropriateness, not illegality

Employee Education

3. With regard to responding to inappropriate behaviors:
 - a. Direct confrontation
 - i. Offer strategies
 - ii. But make clear direct confrontation is an option, not a requirement

Employee Education

3. With regard to responding to inappropriate behaviors: (continued)
 - b. Complaint procedure
 - i. Explain options in the complaint procedure
 - ii. Stress non-retaliation and corrective actions

Employee Empowerment Vehicles

1. Complaint procedure
2. Annual policy reminder
3. Appraisal instrument
4. Exit interview

Volunteers

1. Application of policy without conceding that volunteers are employees
2. Importance of corrective action if inappropriate conduct by volunteer

Cross-References

1. Code of conduct/disciplinary policy
2. Performance appraisal instrument
3. E-mail and Internet policies
4. Social Media policy
5. Travel and reimbursement policies

Cross-References

6. New hire orientation checklist
7. New supervisor orientation checklist
8. List of reportable occurrences (that supervisors must report to HR)

Examples of Unacceptable Conduct (regardless of whether unlawful)

1. Linking any employment decision, benefit, etc. to a subordinate colleague's submission or refusal to submit to sexual advances [Always illegal]
2. Asking for sex and other sexual advances or propositions (even if no demand or threat)

Examples of Unacceptable Conduct (regardless of whether unlawful)

3. Engaging in sex while at work
4. Repeated request for dates [Initial request risky if supervisory-subordinate relationship]
5. Sexual flirtations, bantering, etc.

Examples of Unacceptable Conduct (regardless of whether unlawful)

6. Sexually explicit or suggestive conversations, comments, questions, stories, etc. (whether mixed gender or same gender)
7. Joking or speculating about an employee's sexual orientation

Examples of Unacceptable Conduct (regardless of whether unlawful)

8. Comments with regard to appearance of a sexual or suggestive nature or at inappropriate times or frequency
9. Sexual or physical assault [Always illegal]
10. Unwelcome and/or inappropriate touch, such as patting, pinching or brushing against someone

Examples of Unacceptable Conduct (regardless of whether unlawful)

11. Sexual or suggestive “jokes”
12. Racial, ethnic or religious “jokes” or “jokes” which make fun of, belittle or stereotype any other protected group

Examples of Unacceptable Conduct (regardless of whether unlawful)

13. Mimicking or making fun of someone's accent, disability, diction, gestures or manner of speech or religious, racial or ethnic attire or dress
14. Terms of "endearment"
15. Obscene, sexual or suggestive materials, cartoons, objects, etc., including calendars and other pin-ups

Examples of Unacceptable Conduct (regardless of whether unlawful)

16. Racist, sexist or other hate-based graffiti
17. Hate symbols, such as a noose, a swastika and a KKK symbol
18. Hate slurs/epithets which relate to any protected group, such as the “N” word and the “C” word

Examples of Unacceptable Conduct (regardless of whether unlawful)

19. Nicknames which relate to any protected group, such as “Grandma”
20. Stereotypic comments, such as “you don’t sound...”
21. Derogatory/unwelcoming messages (e.g., “Speak English or Go Home” sticker)

Examples of Unacceptable Conduct (regardless of whether unlawful)

22. Cursing and other foul language
23. Verbal or non-verbal innuendo of a sexual, suggestive or threatening nature
24. Hostile behavior targeted at employee because of his or her membership in protected group

Examples of Unacceptable Conduct (regardless of whether unlawful)

25. Other inappropriate or unprofessional conduct which relates to or is directed at a protected group

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Thank You!

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