

Respect in the Workplace:



Judy Osborn, Attorney
www.judyosborn.com

Goals for everyone

- If you're doing it: STOP.
- If you're a victim: REPORT.
- If you're a bystander: INTERVENE.
- If you're a manager: MANAGE.



What characteristics are protected by law?



- Age
- Race
- Color
- Gender (sex)
 - Pregnancy
 - Sexual orientation
 - Gender identity
- Religion
- Disability
- Military status
- National origin
- Genetic information



What's new?

- Along with the @MeToo movement, Americans overwhelmingly support zero tolerance on sexual harassment.
- Evolving reactions:
 - Baby boomer: “Just put up with it. Smile because you can’t leave.”
 - Gen X: “I know the rules, but rarely report.”
 - Millennials: “I cannot believe that any of you would put up with that.”
- New credo: Stand up, speak up.



Two kinds of “harassment”

- **“Lawful but awful” harassment**
 - Inappropriate (rudeness, petty slights, annoyances)
 - Bullying (abuse of power to offend or humiliate)
 - Offensive, but not severe or frequent
 - Not based on a protected characteristic
- **Unlawful harassment**
 - Unwelcome
 - AND severe *or* pervasive
 - AND creates hostile or abusive working environment *or* involves tangible employment action against the victim
 - AND based on protected characteristic

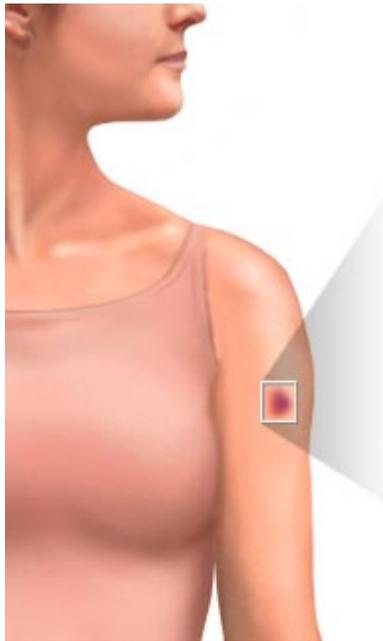
Definition: **Retaliation**

- Unlawful action to punish for exercising equal employment opportunity rights such as:
 - Complaining, assisting an investigation, or filing a charge, OR
 - Opposing an unlawful practice, such as resisting unwanted advances or speaking up



In harassment, “voluntary”
doesn’t mean “welcome.”





The secret bruise

Protected characteristics

- **Sex (gender)**
 - Being male or female
 - Pregnancy
 - Gender identity (who you are)
 - Sexual orientation (who you love)
- **50% of workplace harassment is based on gender.**
 - **17% of sexual harassment charges are filed by men.**



What is sexual harassment?

- Conduct, words or visuals that are:
 - Unwelcome,
 - Based on gender, and
 - Enduring the harassment is a condition of continued employment (“quid pro quo”) **OR**
 - the harassment is so pervasive or severe that it creates a work environment a reasonable person would find intimidating, hostile or abusive (“hostile work environment”)

Respect body bubbles.



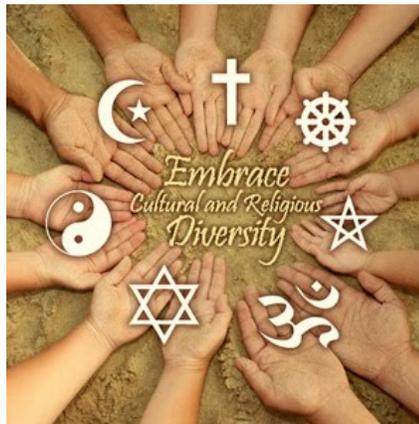
Protected characteristics

- **National origin (ethnicity)**
- **Race**
- **Color**



Protected characteristics

- **Religion**



Protected characteristics

- **Age**
 - Over 40
- *What does it look like?*
 - Hiring younger people because they will stay longer and be easier to train
 - Inquiring about age or plans for retirement
 - Using pejorative language
 - Basing termination on age



Protected characteristics

- **Military status**
 - Past (veterans)
 - Present (Reserve duty)
 - Future (right to reinstatement for five years)



Protected characteristics

- **Disability**
 - Actual disability
 - Record of a disability
 - Perception that one has a disability
- *Requires reasonable accommodation by an employer*



Protected characteristics

- **Genetic information**
 - Employee's genetic tests
 - Family medical history



Impact is what matters,
not intent.



Jerks at work

- Impact productivity, morale, and turnover; increase legal risks
- Almost always cross the line from being “equal opportunity” harassers to harassing unlawfully
- Attract claims and lawsuits



SPEAK UP

Stepping up stops harassment

- Ask questions of the harasser, but don't confront.
 - “Why do you say that?”
 - “Do you really mean what you just said?”
- Appeal to the harasser's principles.
 - “I've always thought you were fair-minded. It shocks me to hear you say something so biased.”
- Set limits; draw a line.
 - You can't control others but you can make others aware of what you will not tolerate.
- Disrupt the situation/support the target.
 - Engage the target in conversation or ask them to join you somewhere else. Say, “I notice that happened. Are you OK with that?” Offer to accompany them to Chief or HR.

What officers need to know

- Workplace harassment too often goes unreported.
 - 3/4 don't report because they fear disbelief, inaction, blame or retaliation.
- You are agents of the organization.
 - What you say, do and know is attributed to the District.
- Employees are watching you.
 - Respect and lawful behavior start at the top.

What do you do with an employee complaint?

- Be receptive. Treat every complaint extremely seriously.
 - 90% of complaints pursued externally were first reported internally.
- Inform Chief or HR immediately (or the Board President). They will assess and investigate as necessary.
- Avoid retaliation.

Complaint investigations

- Follow your harassment policy (and have it reviewed by legal counsel).
- Be prompt, objective and thorough.
- Be as confidential as possible.
- Discipline effectively.
- Follow up with the one who complained.

