



# Workplace Harassment Awareness, Prevention & Response

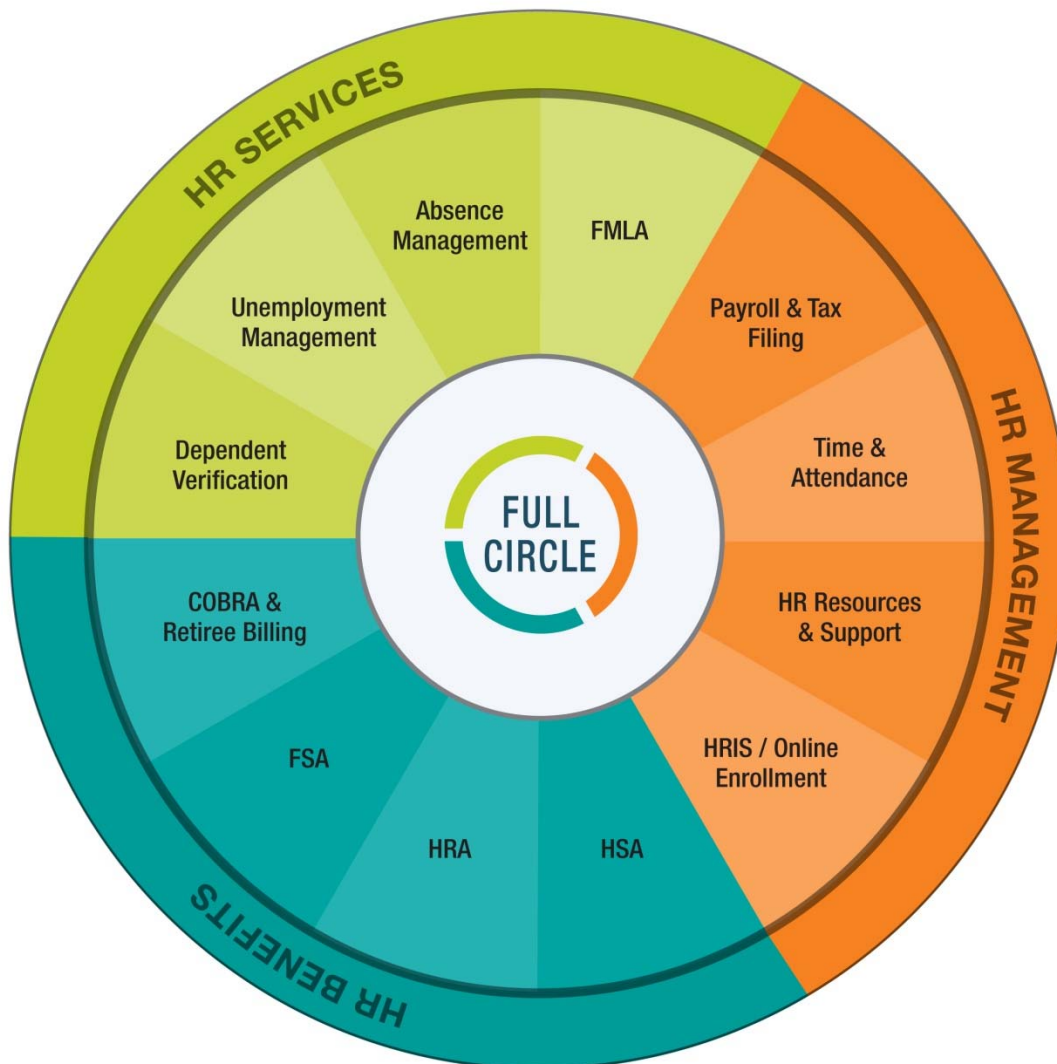
Presented by: Kit Goldman & Memo Mendez  
Workplace Training Network



- HR Benefits
- HR Management
- HR Services

We're proud to offer a full-circle solution to your HR needs. BASIC offers collaboration, flexibility, stability, security, quality service and an experienced staff to meet your integrated HR, FMLA and Payroll needs.

# HR Solutions Come Full Circle



HR solutions should be simple.  
**Keep it BASIC.**

BASIC is proud to offer a full-circle solution to your unique HR needs. Our suite of solutions offered independently or as an integrated platform allows you to maintain compliance and streamline your HR, FMLA and Payroll needs in a way that's efficient, secure, and most importantly simple.

# Welcome and Kudos for Being Here!



- The best defense against Harassment is an informed workforce!
- Warning: we are going to engage in some inappropriate behavior. We need to show it to talk about it!
- The fact you are here shows you understand the need!



# The Costs of Workplace Harassment



- ✓ Fines or settlements from litigation
- ✓ Time and resources spent on addressing legal issues
- ✓ Dysfunctional work relationships
- ✓ Loss of team unity
- ✓ Increased employee turnover
- ✓ Damage to the company's reputation



# Don't Be a Harassment Statistic



**\$52.3 Million**

**Penalties collected by the EEOC for sexual harassment  
violations in FY2011**

**11,364**

**Sexual harassment claims received by the EEOC, state  
and local agencies in FY2011**

**The number of incidents it takes to create negative  
consequences for your workplace...**

**1**



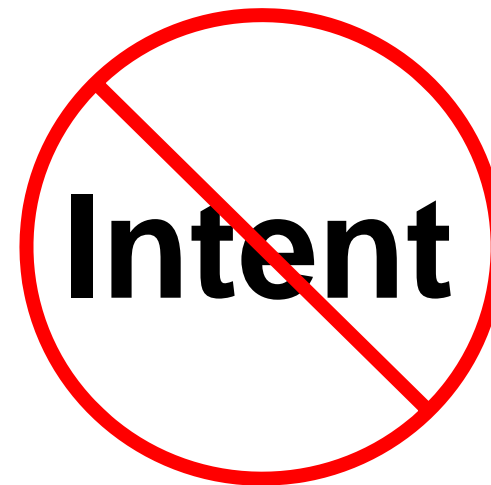
## Sample of EEOC Penalties (State & Local Agencies)



✓ Washington Electronics Retailer	\$2.3 million
✓ New Mexico Restaurant	\$2 million
✓ Memphis Office Supply Company	\$1.5 million
✓ New Mexico Restaurant Group	\$1 million
✓ Washington Saw Mill Operator	\$900,000
✓ New York City Steak House	\$600,000
✓ California Fire Department	\$494,150
✓ Construction Company	\$451,000
✓ Maryland Medical Practice	\$350,000
✓ National Eyeglasses Retailer	\$192,500



# Harassment is about...





## Harassment is Unwelcome Conduct



**Unwelcome to someone  
you're interacting with  
directly**

**OR**

**Others in the work  
environment**





# How Do We Know What's Welcome?



How do we know what's welcome?

Does **CONSENT** = **WELCOME**



## How Do We Know What's Welcome?



The law is about **WHAT IS WELCOME** and not necessarily about what is consented to!

People can (and do) consent to things they don't welcome!



## How Do We Know What's Welcome?



Supervisors must never call into question whether employees are consenting to what they don't welcome! Why might an employee do this?

- ✓ **For approval or job benefits**
- ✓ **Fear of retaliation**
- ✓ **Peer Pressure**

# Harassment Laws



Harassment laws apply to protected categories under Federal and State law.

**Sexual Harassment and other forms of Workplace Harassment are illegal under Title VII of the 1964 Civil Rights Act and other laws passed since then.**



# Protected Categories



- ✓ Race
- ✓ Color
- ✓ Religion
- ✓ National Origin
- ✓ Sex
- ✓ Age

- ✓ Disability
- ✓ Sexual Orientation
- ✓ Pregnancy
- ✓ Marital Status
- ✓ Veteran Status
- ✓ Genetic Make-Up



# Harassment Laws



Harassment is **conduct in the workplace.**

Harassment laws apply to **both work and school.**

# What is the Workplace?



Anywhere work-related activity takes place. This includes:

- ✓ **Company parties and other employer-sponsored social events**
- ✓ **Business travel, e.g. meetings and conferences**

# What is the Workplace?



For managers and supervisors...

The workplace is **ANYWHERE**  
**EMPLOYEEES ARE**  
**PRESENT!**



# Non-Work Related Conduct



Non-Work related conduct is conduct not needed to perform your job.

- ✓ **Can differ depending on the workplace**
- ✓ **Can differ within a single workplace**



# Individual Sensitivities



Harassment is not about majority rule. **Individual sensitivities must be respected!**

## Not About Beliefs or Morals



- ✓ Harassment is **not about morals, beliefs or attitudes** – only about respectful, appropriate conduct.
- ✓ Harassment can't be defended on the grounds of being acceptable in someone's home country or culture.

# Quid Pro Quo (Meaning “this for that” in Latin)



## Definition

**An exchange of sexual favors for a job benefit or basing employment decisions on an employee accepting, tolerating or participating in unwelcome conduct of a sexual nature.**

## Typical Quid Pro Quo

**A manager or supervisor basing a promotion, assignment, raise, or the job itself on a subordinate submitting to unwelcome sexual advances or putting up with inappropriate behavior.**



## Quid Pro Quo Sexual Harassment



- ✓ If proven, **employers have absolute liability**
- ✓ No legal defense
- ✓ Managers and supervisors have **personal liability**



## Hostile Environment Harassment



- ✓ **Unwelcome inappropriate, offensive or intimidating conduct**
- ✓ Ongoing, severe, pervasive
- ✓ Impedes job performance
- ✓ Verbal, visual or physical

# Verbal Harassment



- ✓ Offensive teasing, joking, banter, innuendoes
- ✓ Racial or ethnic slurs, stereotyping
- ✓ Profane or vulgar language
- ✓ Put downs involving a protected class
- ✓ Male or female bashing
- ✓ Homophobic comments
- ✓ Nicknames such as “honey,” “babe,” or “sweetie”



## Compliments & Verbal Harassment



**Personal compliments, such as compliments about appearance can be risky, especially for supervisors!**

**Repeated unwelcome requests for dates or social interactions is another common example.**



# Complaint Procedure



Educate employees regarding their options for informing management:

- ✓ **Let the immediate supervisor know**
- ✓ **Speak with Human Resources**
- ✓ **Speak to a member of management with whom they feel comfortable**
- ✓ **Call the employee hotline if available**



## Managers & Supervisors Mandatory Legal Duty



- ✓ Managers and supervisors are agents of the company
- ✓ The company and its agents have a mandatory legal duty to take **IMMEDIATE APPROPRIATE ACTION** if aware of possible harassment **EVEN IF ASKED NOT TO BY A COMPLAINANT**
- ✓ The company is responsible for protecting employees against harassment by non-employees, such as customers, vendors, and contractors

## Immediate & Appropriate Action for Managers & Supervisors



### If you witness harassment:

- ✓ Take action to stop it
- ✓ Document it
- ✓ Notify HR or management

### If you hear about harassment or get a complaint:

- ✓ Document it
- ✓ Notify HR or management

# Investigative Procedure



- ✓ Contact and meet with parties involved
- ✓ Take steps to insure any harassment stops immediately
- ✓ Emphasize importance of confidentiality to all concerned
- ✓ Determine appropriate investigative process
- ✓ Inform the parties of how things will proceed
- ✓ Investigate and document, including witness interviews if required
- ✓ Reinforce prohibition against retaliation to all involved
- ✓ Determine truth of the matter and take appropriate action
- ✓ Monitor situation for repetition or retaliation
- ✓ Inform complainant of outcome to the extent possible



**Complete confidentiality cannot be promised.**

**A promise you can keep: “I will keep what you tell me as confidential as possible and only share it on a ‘need to know’ basis.”**

# Visual Harassment



- ✓ Offensive gestures or suggestive posing
- ✓ Leering or ogling
- ✓ Inappropriate pictures, posters, calendars, cartoons or publications
- ✓ Inappropriate e-mails, text messages, screen savers, downloads
- ✓ Offensive messages or images on clothes or objects, or body art
- ✓ Unwelcome, offensive letters, notes, or cards
- ✓ Offensive comments about colleagues on social media

## Reasonable Person Standard



Could a **reasonable person** of the other person's gender and culture be offended?

# Physical Harassment



- ✓ Hugging
- ✓ Kissing
- ✓ Squeezing, grabbing, groping
- ✓ Back or bottom slapping
- ✓ Knee patting
- ✓ Aggressively invading “personal space”
- ✓ Neck or shoulder massages
- ✓ Blocking someone’s movement





# Live Action Scene 1



# “Go For the Gold”

# Scene 1 Discussion Points



- ✓ Quid pro quo
- ✓ Verbal, visual, physical hostile environment harassment
- ✓ Consent vs. welcome
- ✓ Intent vs. impact
- ✓ Severe & pervasive
- ✓ Supervisor responsibility
- ✓ Complaint procedure
- ✓ Retaliation
- ✓ Harassment by 3rd party non-employees



# Live Action Scene 2



“Back Off”

## Scene 2 Discussion Points



- ✓ Physical, verbal, visual hostile environment harassment
- ✓ Withdrawal of consent
- ✓ 3rd party harassment (others in the break room)
- ✓ Supervisor legal duty: immediate, appropriate action
- ✓ Gossip & the rumor mill
- ✓ Personal/professional overlap
- ✓ Harassment as a safety issue: potential for violence
- ✓ Citizenship in the workplace community



# Live Action Scene 3



**“Do or Die”**

## Scene 3 Discussion Points



- ✓ Workplace romance: perils and pitfalls
- ✓ FAVORITISM
- ✓ Welcome vs. consenting
- ✓ Abuse of power and authority
- ✓ Consequences



## U.S. Supreme Court Rulings: Harassment Policy & Training Essential



- ❑ 1998: Burlington Indus. v. Ellerith & Faragher v. City of Boca Raton
- ❑ Affirmative defense requires employers to prove:
  - \*They exercised reasonable care to promptly prevent and correct harassing behavior
  - \*Employee unreasonably failed to take advantage of preventive or corrective opportunities or to otherwise avoid harm
- ❑ Average punitive damages \$250,000, not counting attorney fees
- ❑ To avoid punitive damages employers must:
  - \* Have clear, well communicated anti-harassment policy
  - \* Provide effective training, including the complaint procedure
- ❑ Employers must conduct a prompt, thorough investigation of harassment claims and respond effectively to be protected.



# Questions



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# Contact Webinar Presenters



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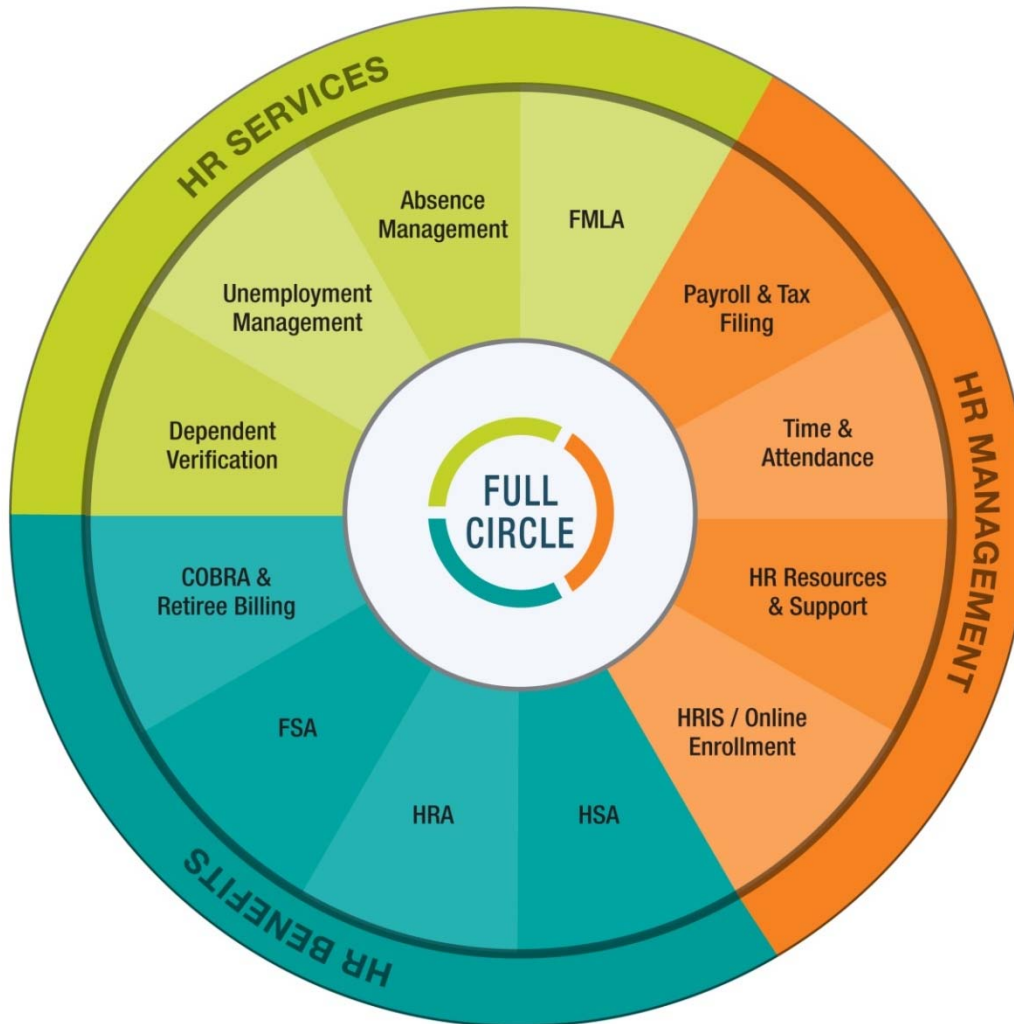
[www.workplacetrainingnetwork.com](http://www.workplacetrainingnetwork.com)



Kit Goldman and Memo Mendez are nationally acclaimed trainers, facilitators, and experts on human and legal issues in the workplace. [Click here to read the full bio.](#)



# Contact Us



HR solutions should be simple.  
**Keep it BASIC.**



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