Rebooting Workplace Harassment Prevention

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION



SELECT TASK FORCE ON THE STUDY OF HARASSMENT IN THE WORKPLACE

REPORT OF CO-CHAIRS CHAI R. FELDBLUM & VICTORIA A. LIPNIC

Highlights of the Report by Commissioner Chai Feldblum Acting Chair Victoria Lipnic

JUNE 2016

Purpose of The Select Task Force



Assess what we know now about the extent of harassment

Explore promising ways to prevent and remedy harassment

Come up with creative new ideas to prevent harassment

Diversity of Views and Expertise

Academic Representation

Sahar F. Aziz, Associate Professor of Law, Texas A&M University

Meg A. Bond, Professor of Psychology and Director of the Center for Women and Work, University of Massachusetts Lowell

Jerry Carbo, Associate Professor of Management and Marketing, Shippensburg University

Frank Dobbin, Professor of Sociology, Harvard University

Ariane Hegewisch, Study Director, Institute for Women's Policy Research

Employer Representation

Stephen C. Dwyer, General Counsel, American Staffing Association

Manuel Cuevas-Trisán, Vice President, Litigation, Data Protection & Employment Law, Motorola Solutions, Inc.

Jonathan A. Segal, Partner, Duane Morris and Managing Principal, Duane Morris Institute

Rae T. Vann, General Counsel,
Equal Employment Advisory Council
Patricia A. Wise, Partner,
Niehaus, Wise & Kalas; Co-Chair,
Society for Human Resource
Management Labor Relations Special
Expertise Panel

Employee Representation

Brenda Feis, Partner, Feis Goldy LLC

Fatima Goss Graves, Vice President for Education and Employment, National Women's Law Center

Christopher Ho, Senior Staff
Attorney and Director, Immigration
and National Origin Program, Legal Aid
Society - Employment Law Center
Thomas A. Saenz, President &
General Counsel, Mexican American
Legal Defense and Educational Fund
Joseph M. Sellers, Partner, Cohen

Angelia Wade Stubbs, Associate General Counsel, AFL-CIO

Milstein

"Harassment" in Report: Not Limited to Illegal Harassment



Harassment, for purposes of the report, is defined as unwelcome or offensive conduct in the workplace that:

(a) is based on sex (including sexual orientation, pregnancy, and gender identity), race, color, national origin, religion, age, disability, and/or genetic information;

AND

(b) is detrimental to an employee's work performance, professional advancement, and/or mental health.

Our Findings

Workplace harassment remains a persistent problem.

Workplace harassment too often goes unreported.



There is a compelling business case for preventing harassment.

The good news: We have some creative ideas.

Leadership and accountability can prevent harassment.



Workplace *risk*factors should
be evaluated.



Training is important, but it needs to be the right training.

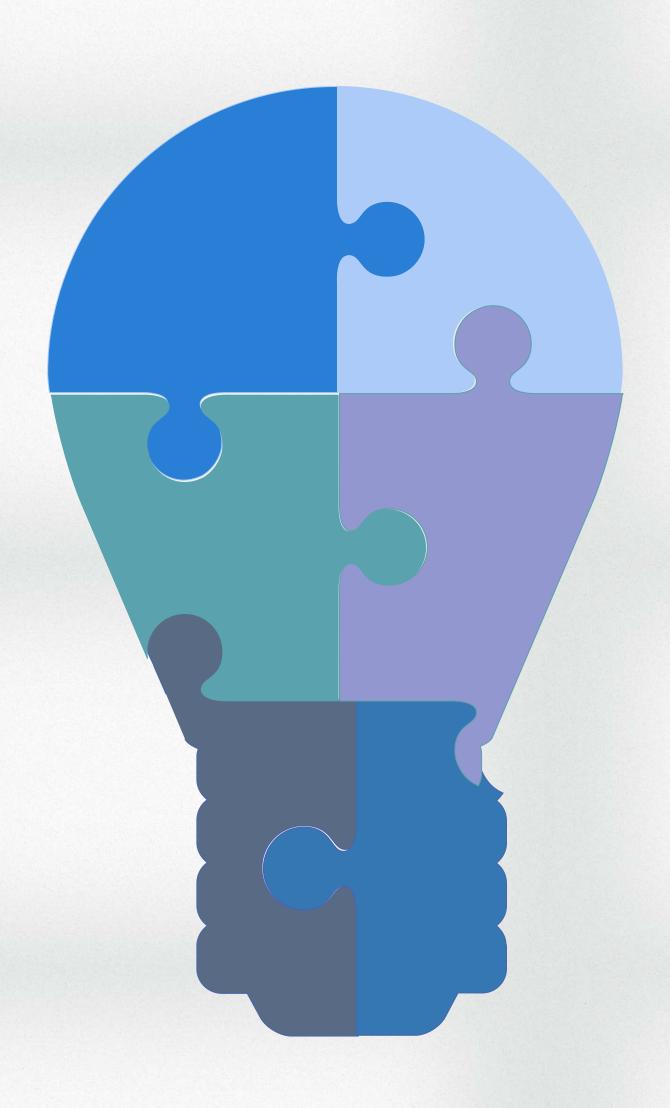


Employers
need
compliance
training that is
effective.
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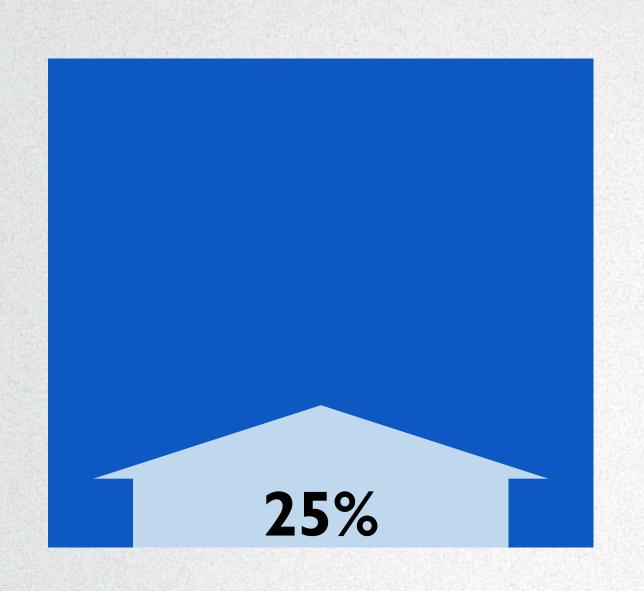
Employers should consider workplace civility training and bystander intervention training.

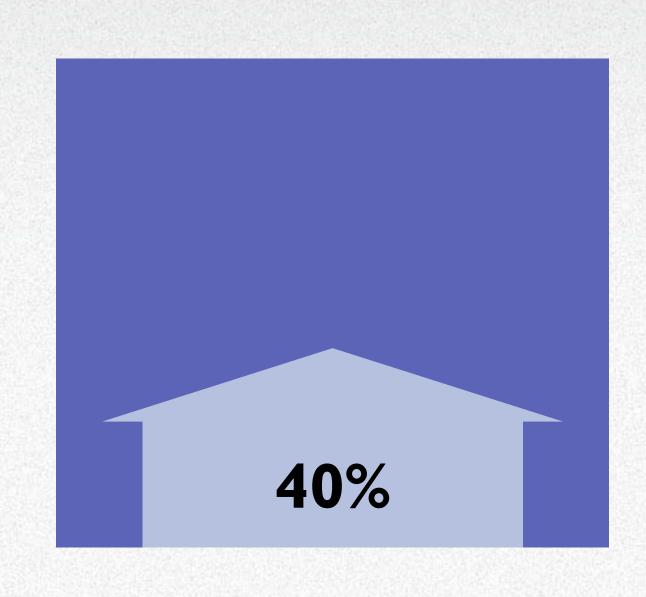
An It's On Us campaign in the workplace could be a game changer.

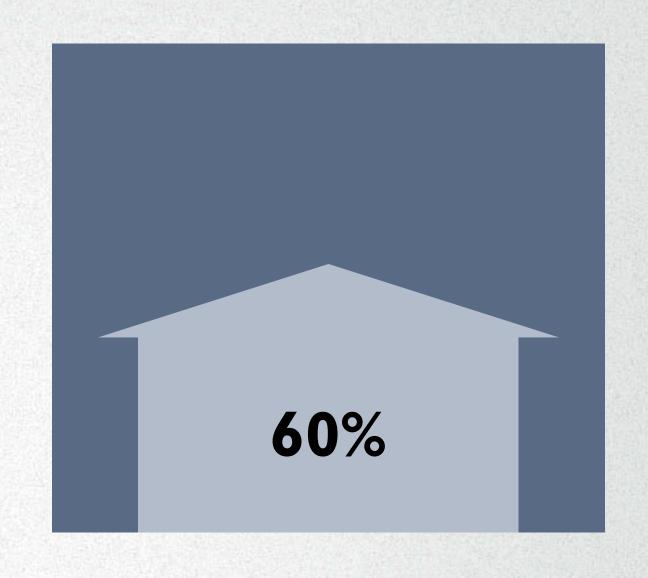
What do we know now?



Prevalence of Sex-Based Harassment: Varying Definitions







Most Conservative Estimate

25% of women experience "sexual harassment," if not defined in the survey.

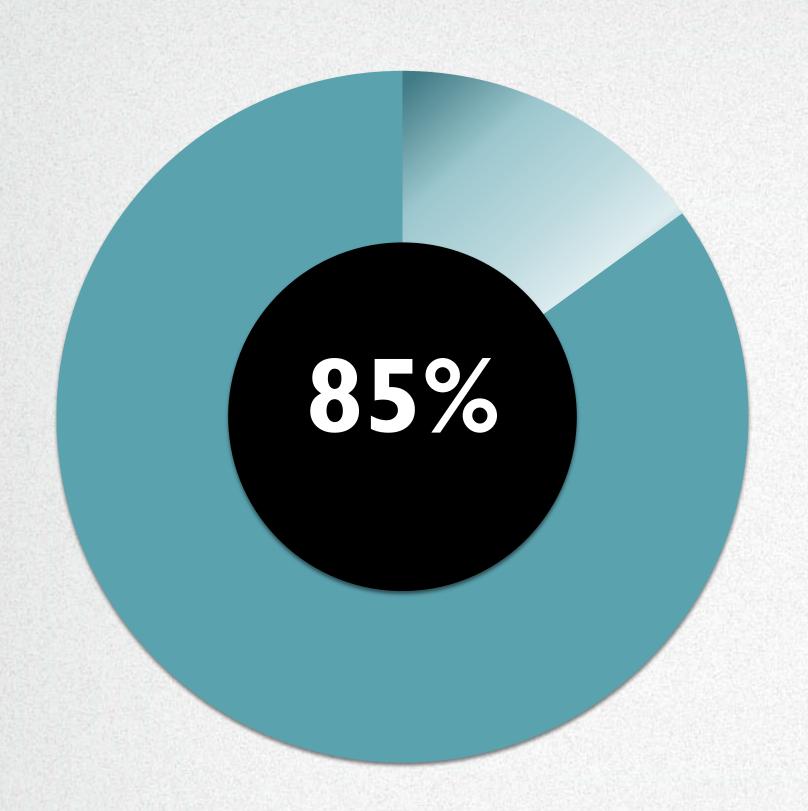
More Accurate Estimate

40% of women experience unwanted sexual attention or sexual coercion, even if they don't label it as "sexual harassment."

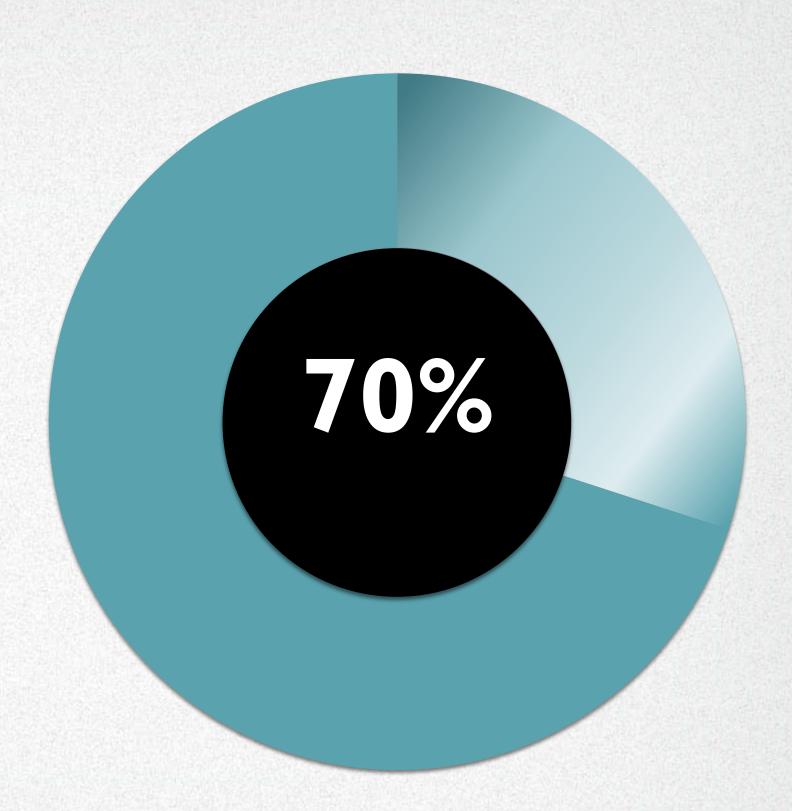
Most Accurate Estimate

60% of women experience unwanted sexual attention or sexual coercion, OR sexually crude conduct or sexist comments in the workplace.

Harassment is HUGELY UNDER-REPORTED



Upwards of 85% of people never file a formal legal charge.



Approximately 70% of employees never even complain internally.

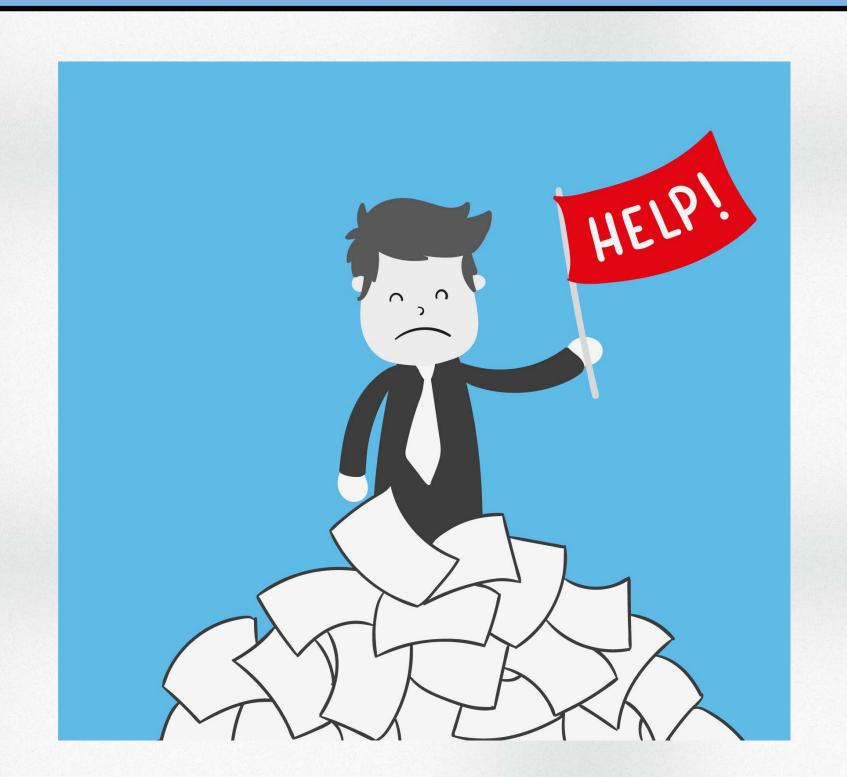
Why the Under-Reporting?



Fears of Retaliation Are Well-Founded

One study found that **75**% of employees who spoke out against workplace mistreatment faced some form of retaliation.





Other studies found that sexual harassment reporting is often followed by:

- -organizational indifference
- -trivialization of the harassment complaint
- -hostility and reprisals against the victims



The Perils of the Superstar Harasser



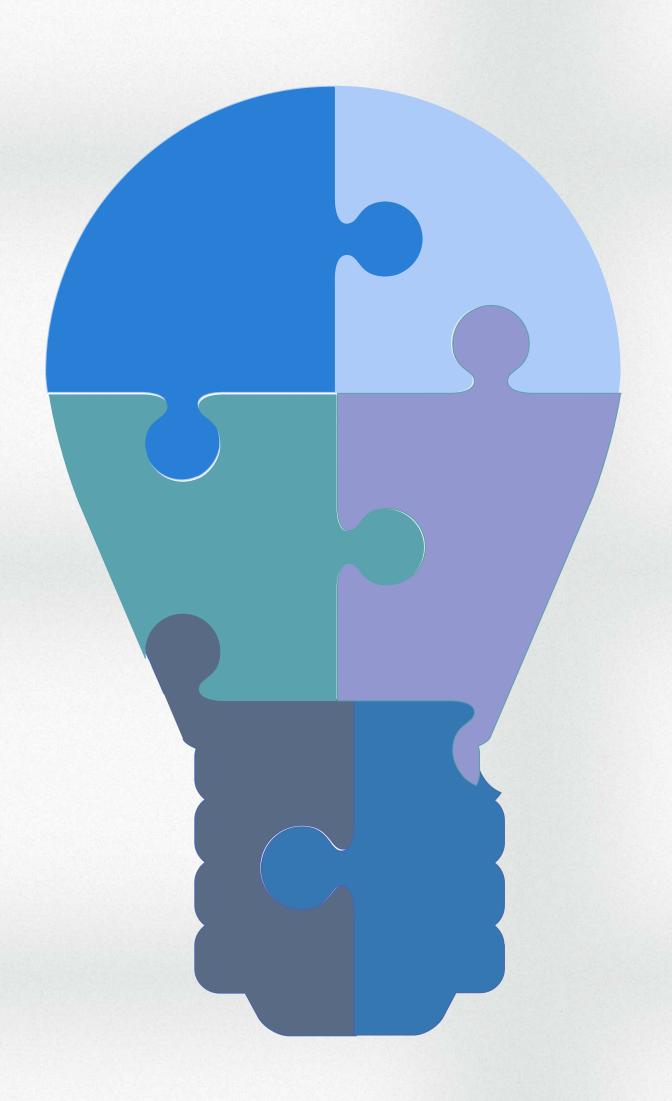


Employers often make a wrong cost-benefit analysis when faced with allegations of harassment against a highly valued employee.

Employers are often tempted to ignore misconduct for **fear** of **cost** to the **organization**.

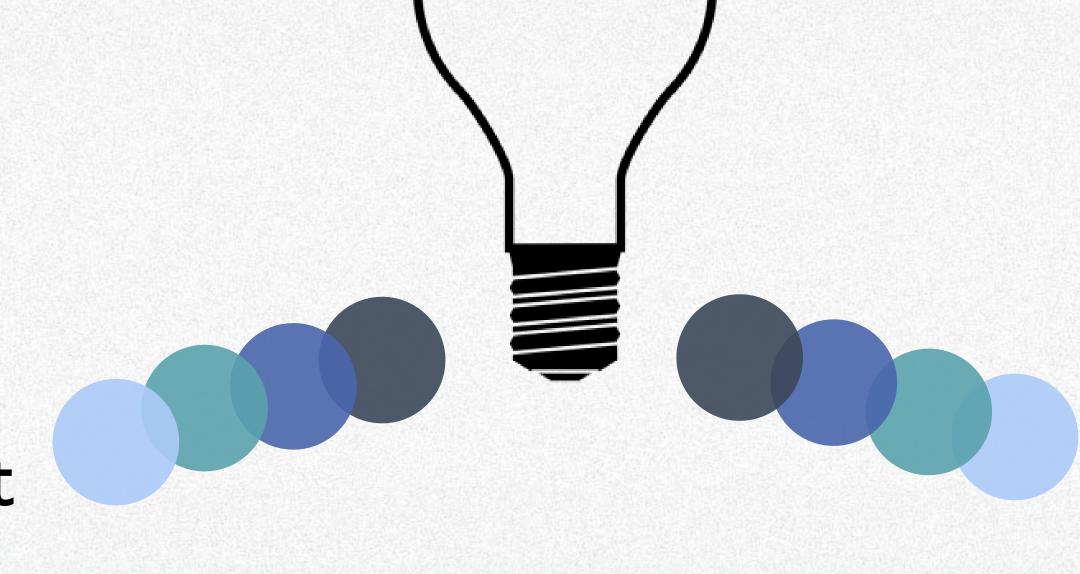
In reality, the cost of allowing harassment to **go unchecked is higher** than the cost of losing a highly valued employee.

What Can We All Do?



A common sense research finding

Workplaces that tolerate harassment have more of it.



And workplaces that are not tolerant of harassment have less of it.

Leadership: It Starts at the Top

Values: Leaders believe
harassment is wrong and
should not occur in the
workplace. Leaders convey a
sense of urgency in stopping
and preventing harassment.

Authenticity: Workers believe that leaders mean what they say.

Awareness: Leadership knows about the prevalence of workplace harassment: e.g., via climate surveys.

Accountability: Leaders address harassment in a swift, effective, and proportionate manner.

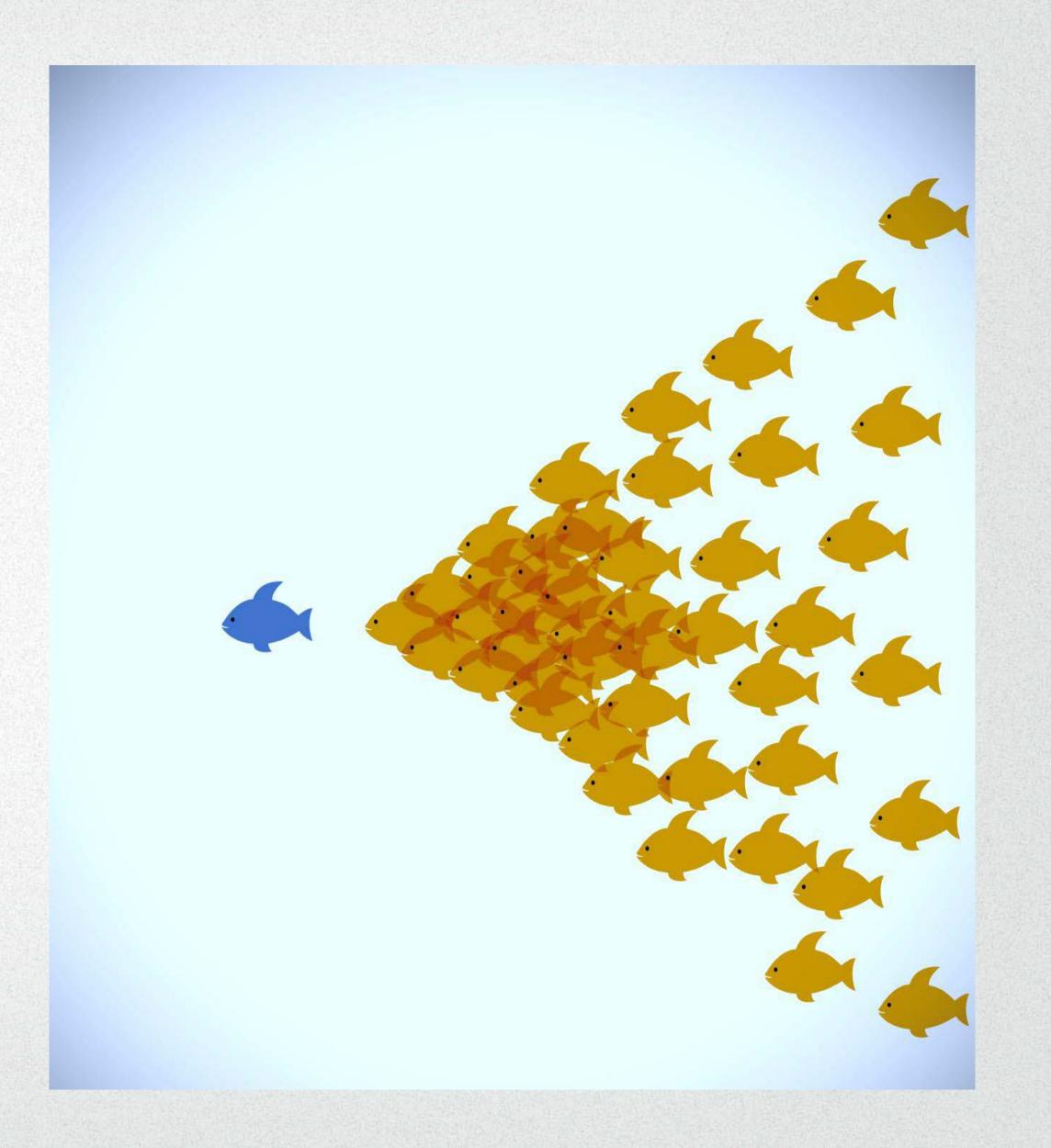
Leadership holds managers accountable for stopping harassment.

Frontline Management is Key

Frontline managers must be **trained on how to respond** to reports or
observations of harassment
in a swift and correct manner.

Frontline managers **must be held accountable** for their responses to
harassment – using discipline or accolades.

The extent of harassment in a manager's division is not necessarily best measured by the number of complaints from that division.



Check Out the Checklist on Leadership

Checklist One: Leadership and Accountability
The first step for creating a holistic harassment prevention program is for the leadership of an
organization to establish a culture of respect in which harassment is not tolerated. Check the box
if the leadership of your organization has taken the following steps:
\Box Leadership has allocated sufficient resources for a harassment prevention effort
☐ Leadership has allocated sufficient staff time for a harassment prevention effort
☐ Leadership has assessed harassment risk factors and has taken steps to minimize those risks
Based on the commitment of leadership, check the box if your organization has the following
components in place:
\square A harassment prevention policy that is easy-to-understand and that is regularly communicated to all
employees
\Box A harassment reporting system that employees know about and is fully resourced and which accepts
reports of harassment experienced and harassment observed
☐ Imposition of discipline that is prompt, consistent, and proportionate to the severity of the harassment, if
harassment is determined to have occurred
☐ Accountability for mid-level managers and front-line supervisors to prevent and/or respond to
workplace harassment
☐ Regular compliance trainings for all employees so they can recognize prohibited forms of conduct and
know how to use the reporting system
☐ Regular compliance trainings for mid-level managers and front-line supervisors so they know how to prevent
and/or respond to workplace harassment
Bonus points if you can check these boxes:
\Box The organization conducts <i>climate surveys</i> on a regular basis to assess the extent to which harassment
is experienced as a problem in the workplace
\Box The organization has implemented <i>metrics</i> for harassment response and prevention in supervisory
employees' performance reviews
☐ The organization conducts workplace civility training and bystander intervention training
\Box The organization has partnered with researchers to evaluate the organization's holistic workplace
harassment prevention effort

Workplace Risk Factors: Situational Awareness



- There are factors that may put a workplace at risk for harassment.
- While existence of a risk factor does not mean that harassment will occur, analyzing workplace risk factors is a good means of prevention.

Risk Factors for Harassment

Homogeneous workforces

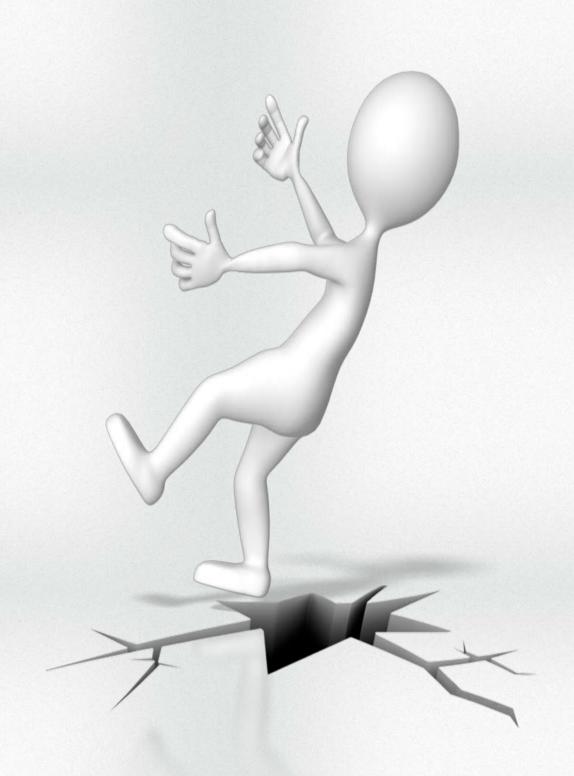
Cultural and language differences in the workplace

Workforces with many young workers

Workplaces that rely on customer service or client satisfaction

Isolated workspaces

Coarsened social discourse outside the workplace



Additional Risk Factors for Harassment



Workplaces where work is monotonous or consists of low-intensity tasks

Decentralized workplaces

Workplace cultures that tolerate or encourage alcohol consumption

Workplaces with significant power disparities

Coarsened social discourse outside the workplace

Isolated workspaces

Several-page chart on Risk Factors at end of report

APPENDIX C CHART OF RISK FACTORS AND RESPONSES

CHARLOL MISK LACTORS AND RESI CHSES				
Risk Factor	Risk Factor Indicia	Why This is a Risk Factor for Harassment	Risk Factor-Specific Strategies to Reduce Harassment*	
Homogenous workforce	Historic lack of diversity in the workplace Currently only one minority in a work group (e.g., team, department, location)	Employees in the minority can feel isolated and may actually be, or at least appear to be, vulnerable to pressure from others. Employees in the majority might feel threatened by those they perceive as "different" or "other," or might simply be uncomfortable around others who are not like them.	Increase diversity at all levels of the workforce, with particular attention to work groups with low diversity. Pay attention to relations among and within work groups.	
Workplaces where some mployees do not conform to workplace norms	"Rough and tumble" or single-sex- dominated workplace cultures Remarks, jokes, or banter that are crude, "raunchy," or demeaning	Employees may be viewed as weak or susceptible to abuse. Abusive remarks or humor may promote workplace norms that devalue certain types of individuals.	Proactively and intentionally create a culture of civility and respect with the involvement of the highest levels of leadership. Pay attention to relations among and within work groups.	
Cultural and language differences in the workplace	Arrival of new employees with different cultures or nationalities Segregation of employees with different cultures or nationalities	Different cultural backgrounds may make employees less aware of laws and workplace norms. Employees who do not speak English may not know their rights and may be more subject to exploitation. Language and linguistic characteristics can play a role in harassment.	Ensure that culturally diverse employees understand laws, workplace norms, and policies. Increase diversity in culturally segregated workforces. Pay attention to relations among and within work groups.	
Coarsened Social Discourse Outside the Workplace	Increasingly heated discussion of current events occurring outside the workplace	Coarsened social discourse that is happening outside a workplace may make harassment inside the	Proactively identify current events- national and local-that are likely to be discussed in the workplace.	

workplace more likely or perceived

as more acceptable.

Remind the workforce of the types

of conduct that are unacceptable in

the workplace.

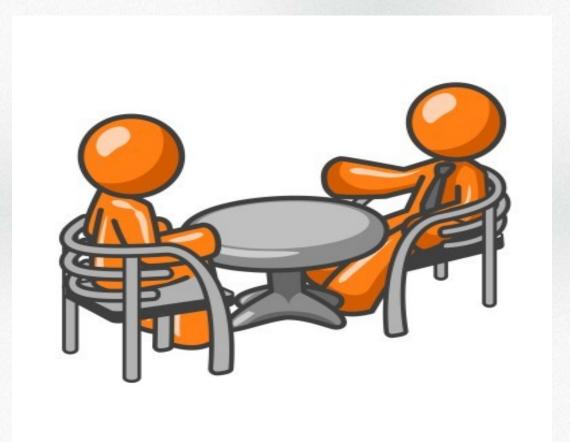
A Holistic Harassment Prevention Effort



Leadership



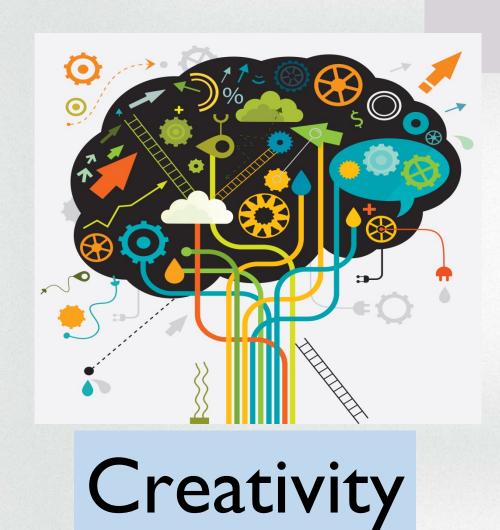
Policy



Reporting Procedures



Training



Anti-Harassment Policies

- Drafted in simple and clear language
- Clear explanation of prohibited conduct, including examples
- Protection against **retaliation** for employees who make complaints or participate in the investigation
- Clearly described **complaint process** with multiple, accessible avenues of complaint and a **prompt, thorough**, and **impartial** investigation
- Assurance that the employer will protect the **confidentiality** of harassment complaints to the extent possible
- Assurance that the employer will take immediate and proportionate corrective action and respond appropriately to behavior

Check Out the Checklist on Effective Harassment Prevention Policies →→→

Checklist Two: An Anti-Harassment Policy

An anti-harassment policy is a key component of a holistic harassment prevention effort. Check the box below if your anti-harassment policy contains the following

	An unequivocal statement that harassment based on any protected characteristic will
	not be tolerated
	An easy-to-understand description of prohibited conduct, including examples
	A description of a reporting system - available to employees who experience
	harassment as well as those who observe harassment - that provides multiple avenues
	to report, in a manner easily accessible to employees
	A statement that the reporting system will provide a prompt, thorough, and impartial
	investigation
	A statement that the identity of an individual who submits a report, a witness who
	provides information regarding a report, and the target of the complaint, will be kept
	confidential to the extent possible consistent with a thorough and impartial
	investigation
	A statement that any information gathered as part of an investigation will be kept
	confidential to the extent possible consistent with a thorough and impartial
	investigation
	An assurance that the employer will take immediate and proportionate corrective
	action if it determines that harassment has occurred
	An assurance that an individual who submits a report (either of harassment
	experienced or observed) or a witness who provides information regarding a report
	will be protected from retaliation from co-workers and supervisors
	A statement that any employee who retaliates against any individual who submits a
	report or provides information regarding a report will be disciplined appropriately
Ц	Is written in clear, simple words, in all languages commonly used by members of the
	workforce

Reporting and Investigation Procedures

- Well-resourced with well trained investigators
- Takes complaints seriously and offers a supportive environment
- Protects against retaliation and keeps information confidential to the extent possible
- Provides timely responses and investigations
- Is fair to all parties
- Consider **testing** your procedures to see how well they work in **practice**.



Check Out the Checklist on Reporting Procedures $\rightarrow \rightarrow \rightarrow$

A reporting system that allows employees to file a report of harassment they have experienced or observed, and a process for undertaking investigations, are essential components of a holistic harassment prevention effort. Check the box below if your anti-harassment effort contains the following elements: ☐ A fully-resourced reporting process that allows the organization to respond promptly and thoroughly to reports of harassment that have been experienced or observed ☐ Employer representatives who take reports seriously ☐ A supportive environment where individuals feel safe to report harassing behavior to management ☐ Well-trained, objective, and neutral investigators ☐ Timely responses and investigations ☐ Investigators who document all steps taken from the point of first contact and who prepare a written report using guidelines to weigh credibility \Box An investigation that protects the privacy of individuals who file complaints or reports, individuals who provide information during the investigation, and the person(s) alleged to have engaged in harassment, to the greatest extent possible ☐ Mechanisms to determine whether individuals who file reports or provide information during an investigation experience retribution, and authority to impose sanctions on those who engage in retaliation ☐ During the pendency of an investigation, systems to ensure individuals alleged to have engaged in harassment are not "presumed guilty" and are not "punished" unless and until a complete investigation determines that harassment has occurred ☐ A communication of the determination of the investigation to all parties and, where appropriate, a communication of the sanction imposed if harassment was found to have occurred

Checklist Three: A Harassment Reporting System and Investigations

Training, Oh Training 26

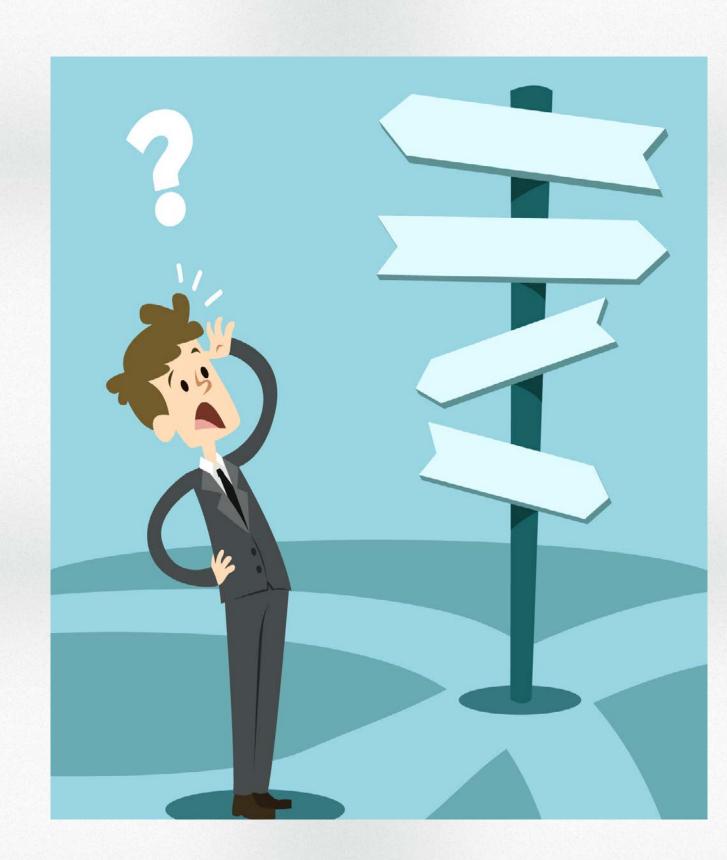
Traditional Training, Standing Alone, Is Not Enough

Problems with Traditional Harassment Prevention Training



- There is some really bad training out there.
- Training is sometimes done primarily to avoid legal liability.

Training is often done in a vacuum, not as part of a holistic harassment prevention effort.



Effective Training

- Compliance training is critical.
- Effective compliance training has certain essential components.
- There are other types of effective training worth exploring.



"Compliance training is not training to change your mind, it's training to keep your job."

-Jonathan Segal, Select Task Force Member

Good Compliance Training

Uses a live, interactive trainer

Explains
unacceptable
conduct, not illegal
conduct

Provides
examples
tailored
to the specific
workplace

Provides information to change behaviors, not attitudes

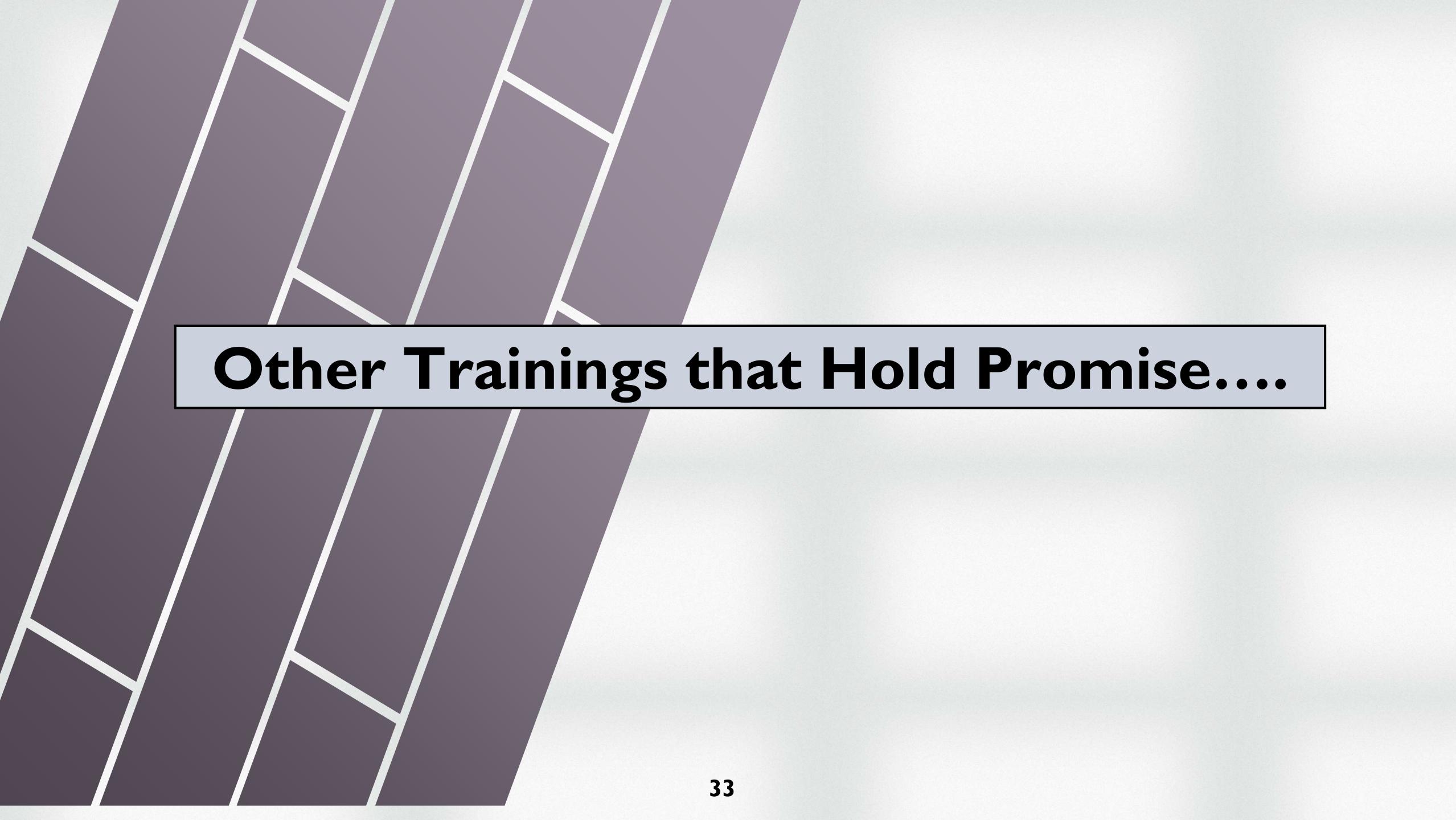
Explains easy steps on how to report unwelcome conduct

Teaches
managers how to
respond to
unacceptable
conduct,
including in hard
situations

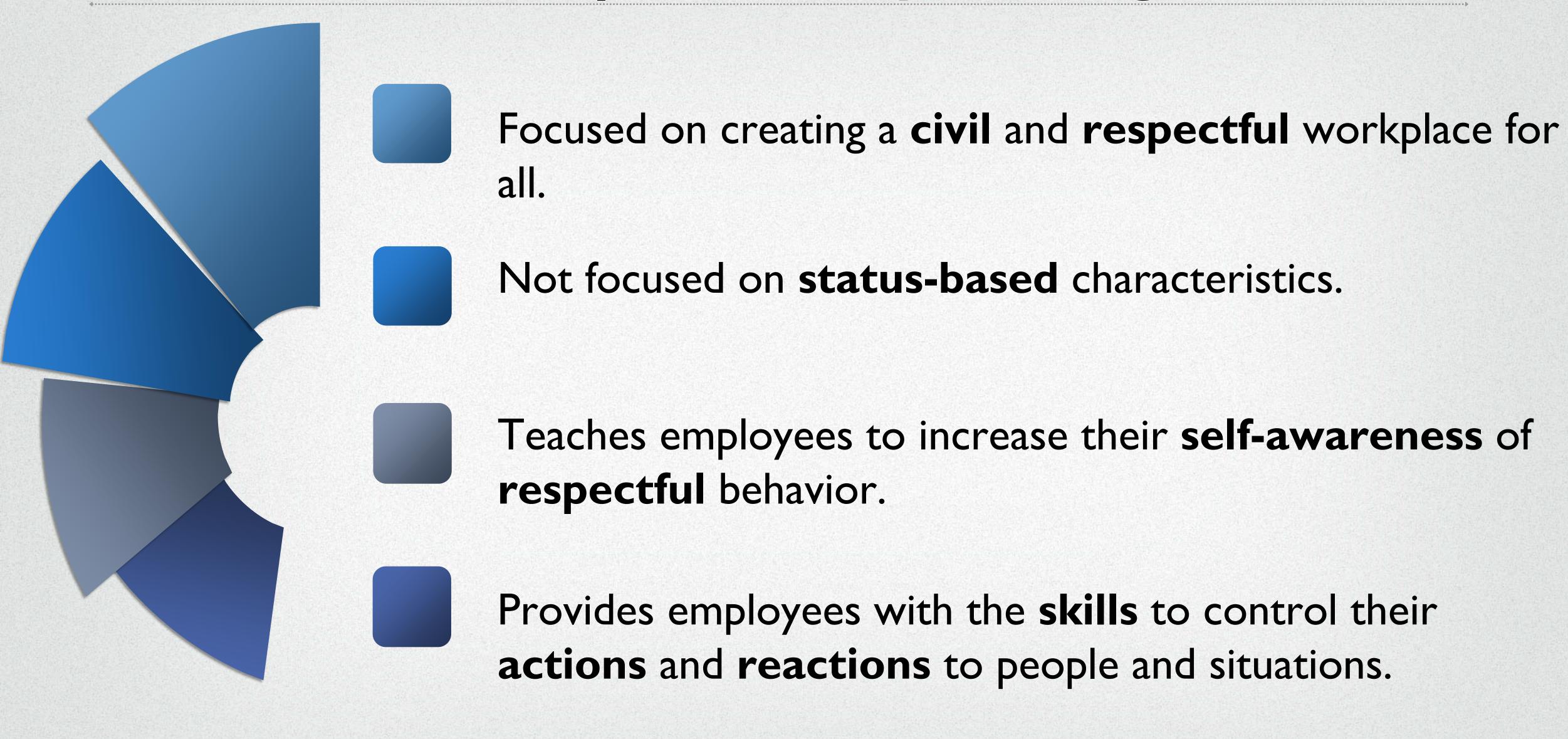
Check out the checklist on Compliance Training → → →

Checklist Four: Compliance Training

A holistic harassment prevention effort provides training to employees regarding an employer's
policy, reporting systems and investigations. Check the box if your organization's compliance
training is based on the following structural principles and includes the following content:
Structural Principles \square Supported at the highest levels
☐ Repeated and reinforced on a regular basis
☐ Provided to all employees at every level of the organization
☐ Conducted by qualified, live, and interactive trainers
\square If live training is not feasible, designed to include active engagement by participants
☐ Routinely evaluated and modified as necessary
Content of Compliance Training for All Employees Describes illegal harassment, and conduct that,
if left unchecked, might rise to the level of illegal harassment
\square Includes examples that are tailored to the specific workplace and the specific workforce
☐ Educates employees about their rights and responsibilities if they experience conduct that is not
acceptable in the workplace
☐ Describes, in simple terms, the process for reporting harassment that is experienced or observed
\square Explains the consequences of engaging in conduct unacceptable in the workplace
Content of Compliance Training for Managers and First-line Supervisors Provides easy-to-
understand and realistic methods for dealing with harassment that they observe, that is reported to
them, or of which they have knowledge or information, including description of sanctions for failing to
use such methods
\square Provides clear instructions on how to report harassing behavior up the chain of command,
including description of sanctions for failing to report
\square Encourages managers and supervisors to practice "situational awareness" and assess the
workforces within their responsibility for risk factors of harassment



Workplace Civility Training



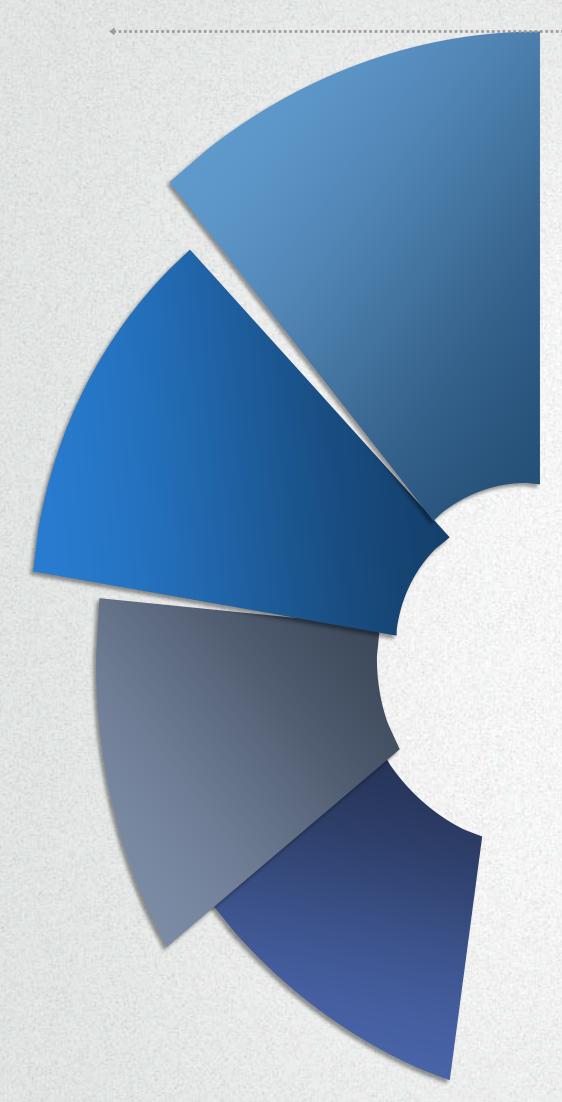
"Workplace incivility might act as a sort of 'gateway drug' to more egregious forms of abuse, including illegal harassment."

-Professor Lilia Cortina, University of Michigan

Testimony to the Select Task Force on the Study of Workplace

Harassment

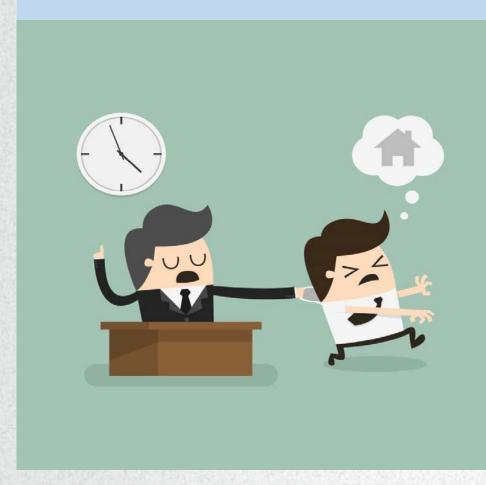
Bystander Intervention Training



- Deployed frequently on college campuses to reduce sexual assault.
- Teaches students to recognize warning signs of sexual assault.
- Creates a sense of collective responsibility and confidence to intervene.
- **Empowers** students by giving them the realistic, actionable options for intervention.

What would this look like in the workplace?

Unacceptable Behavior



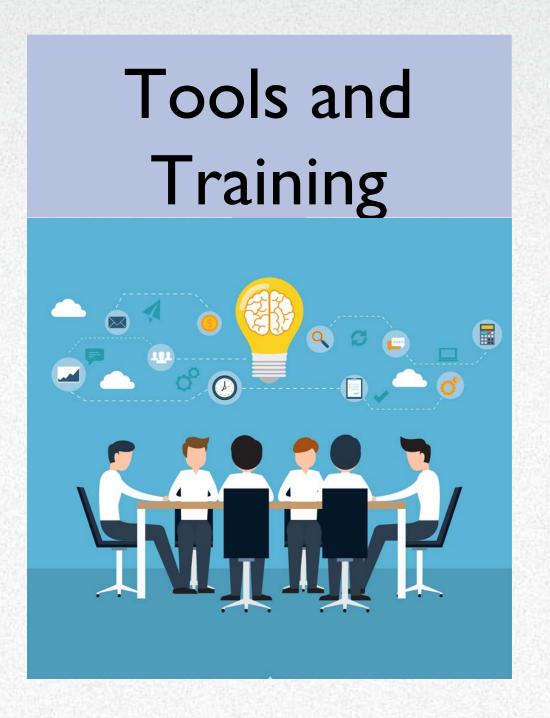
Workers would know what behavior is unacceptable.

(Check out Compliance Training)

Collective Responsibility



Workers would feel collectively responsible for having a harassment-free workplace



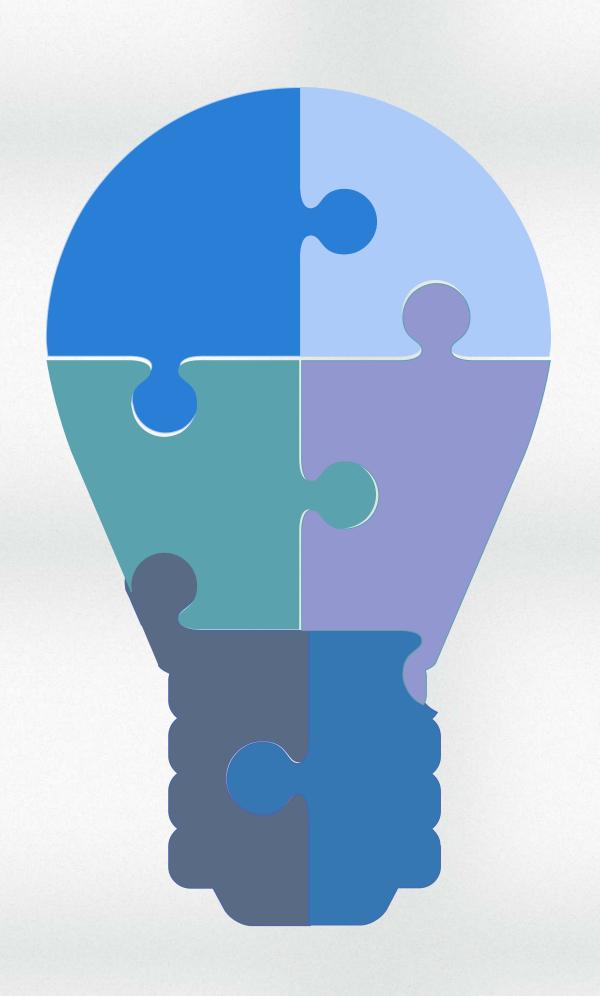
Workers would be given tools and training for intervention, specific to that workplace.

Rewards, not Retaliation



Workers who stop harassment would be rewarded, not retaliated against.

One Final Big Idea



An It's on Us campaign in the workplace.



It's On Us Campaign



- It's On Us is an awareness campaign aimed at ending sexual assault on college campuses.
- About 400,000 people have taken the It's On Us pledge and students have hosted almost 2,000 events on over 500 college campuses. The campaign has 95 partners, including businesses, non-profit organizations, and sports organizations.



IT'S ON US - IN THE WORKPLACE

IT'S ON

catalyst
to help launch an
"It's on Us" campaign
in the workplace.

Questions and Comments?

