



#METOO: KEEPING EMPLOYEES SAFE AND FREE FROM INAPPROPRIATE WORKPLACE CONDUCT

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TODAY'S PRESENTER

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TODAY'S AGENDA

The #MeToo
Movement

Unlawful vs.
disrespectful
conduct

Types of sexual
harassment

Employer
liability for
harassment

Steps to help
prevent
workplace
harassment

Q & A

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THE #METOO MOVEMENT



 **Alyssa Milano** ✓
@Alyssa_Milano

Follow

If you've been sexually harassed or assaulted write 'me too' as a reply to this tweet.

Me too.

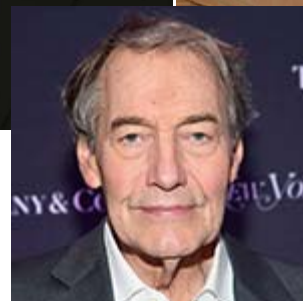
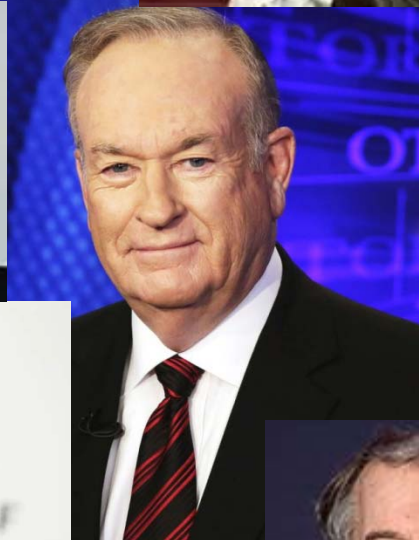
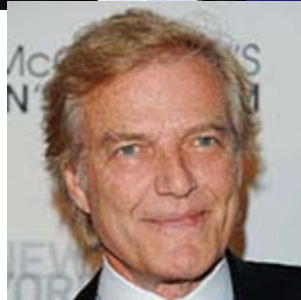
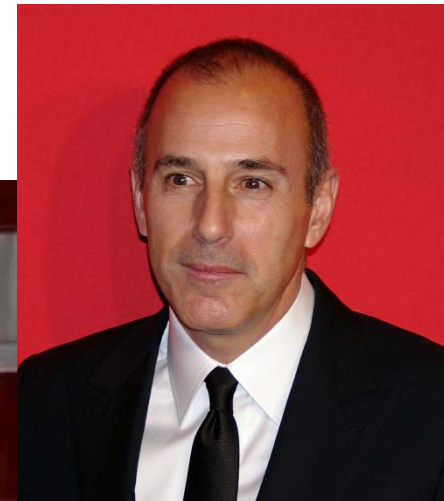
Suggested by a friend: "If all the women who have been sexually harassed or assaulted wrote 'Me too.' as a status, we might give people a sense of the magnitude of the problem."



THE SILENCE BREAKERS



ACCUSATIONS HITTING THE HIGHEST LEVELS



IS ALL RUDE CONDUCT UNLAWFUL?



WHAT DO YOU THINK?

Manager: “You’re lazy and stupid! My four-year-old could do better than you! I don’t know why you were hired, but I’m going to do everything in my power to make your life miserable!”



LAWFUL VS. UNLAWFUL CONDUCT

- Workplace behavior becomes unlawful when it is based on a protected characteristic and results in discrimination, harassment, or retaliation
 - Sexually explicit jokes, posters, gestures or remarks
 - Ethnic slurs
 - Mocking a person's religious practices or beliefs
 - Segregating workers based on race or gender

THREE SETS OF DISCRIMINATION LAWS

- **Federal**

- Created by U.S. Congress
- Enforced by EEOC and federal courts



- **State**

- Created by the state legislature
- Enforced by state fair employment agencies



- **County and/or City**

- Some local governments enact protections as well
- May expressly protect other classes

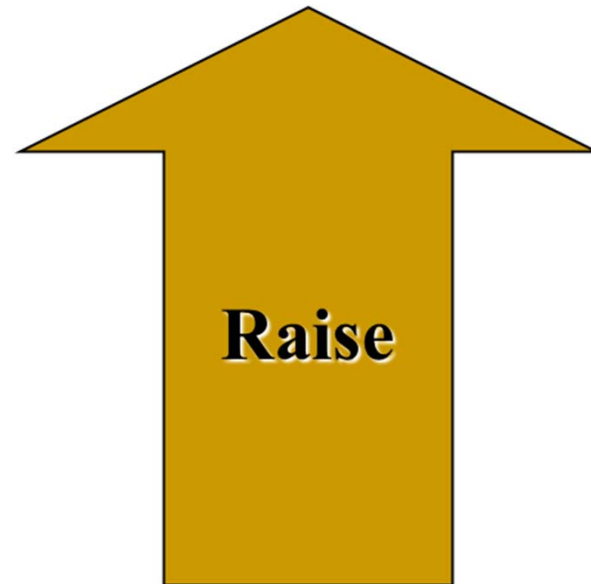
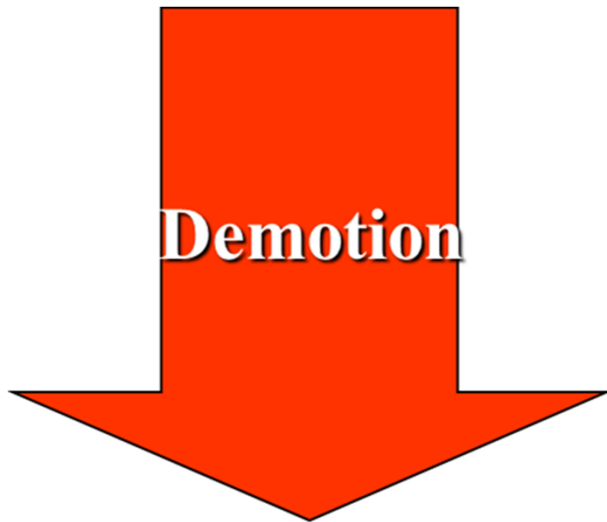


SEXUAL HARASSMENT – A BRIEF HISTORY

- Sexual harassment is a form of sex discrimination
 - 1964: Sex discrimination in employment prohibited by Civil Rights Act of 1964 (Title VII)
 - 1980: EEOC states that sexual harassment is a form of sex discrimination prohibited under Title VII
 - 1986: *Meritor Savings Bank v. Vinson* – landmark SCOTUS case recognizing hostile work environment sexual harassment

QUID PRO QUO HARASSMENT

- Sexual favors in exchange for job, advancement, etc. (or denial of same when rejected)
- Involves supervisors and managers



HOSTILE WORK ENVIRONMENT HARASSMENT

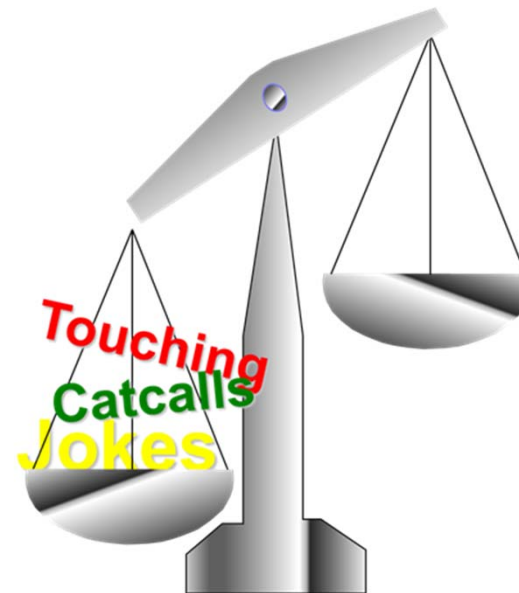
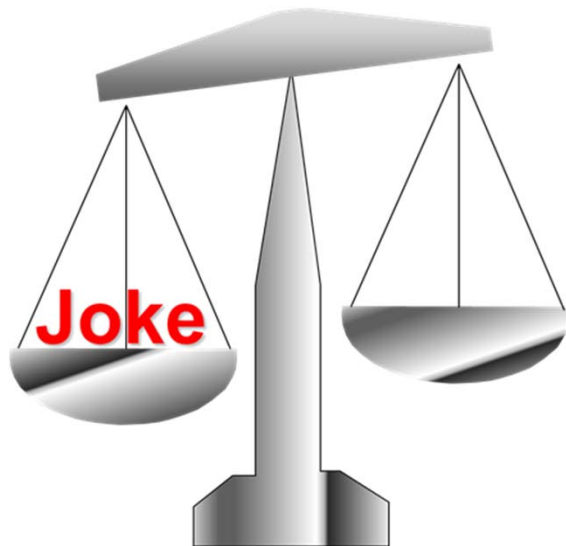
Harassing conduct becomes unlawful if it is:

1. unwelcome
2. based on a protected characteristic (e.g., sex)
3. severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive



SEVERE OR PERVASIVE

- Frequency
- Severity
- Physically threatening or humiliating vs. offensive utterance

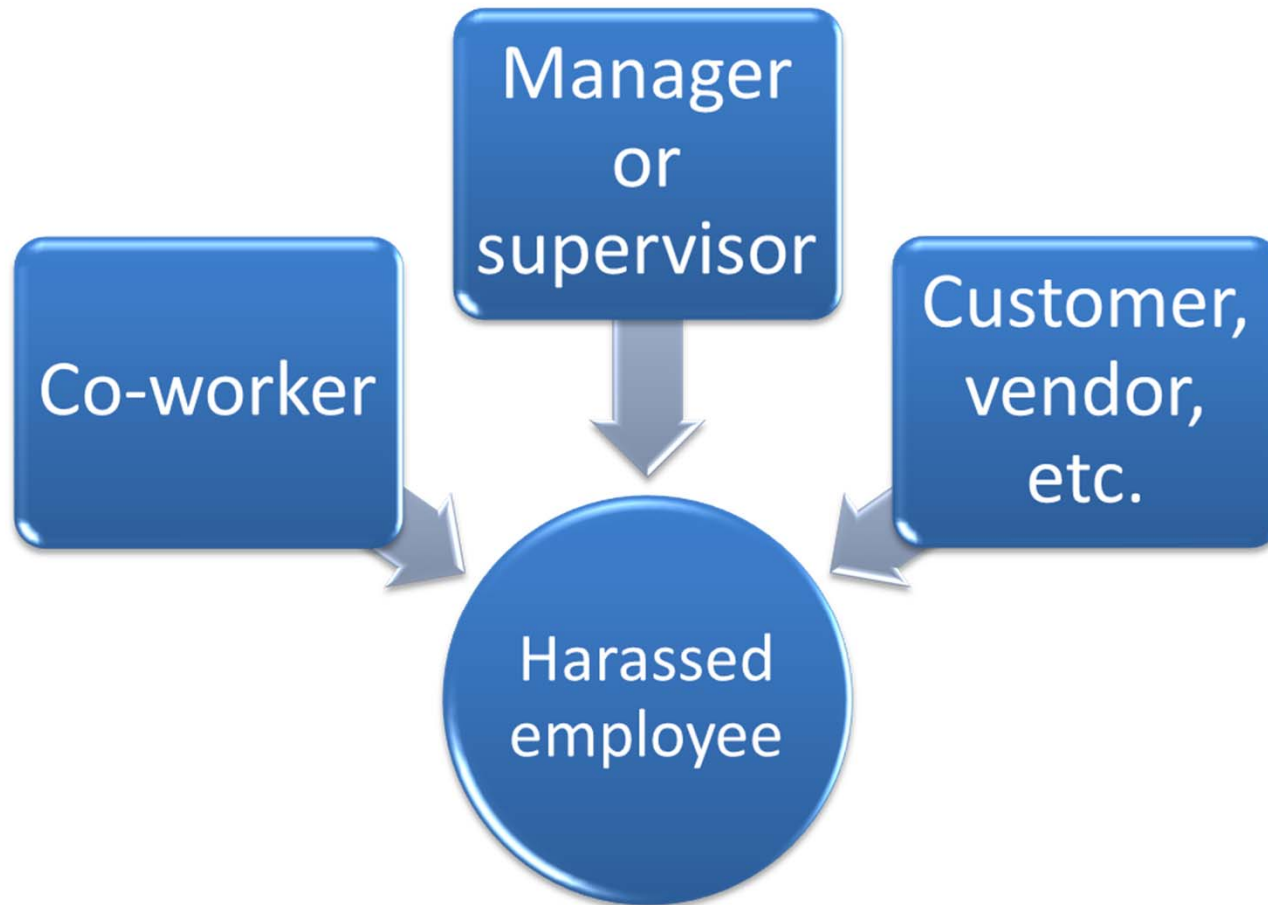


WHAT IS “OFFENSIVE?”

Reasonable Person
Find It Offensive?

Did This Person
Find It Offensive?

WHO CAN BE A HARASSER?



WHEN IS AN EMPLOYER LIABLE FOR HARASSMENT?

Supervisor Harassment

Tangible employment action

- **ALWAYS** liable

No tangible action

- Liable unless:
 - employer exercised reasonable care to prevent and promptly correct harassment, and
 - employee unreasonably failed to complain or avoid harm

WHO IS A SUPERVISOR?

- 2013 SCOTUS decision limits a “supervisor” for Title VII harassment cases to those who are employed by the employer to take tangible employment actions against the victim. *Vance v. Ball State Univ.*



LIABILITY FOR HARASSMENT BY NON-SUPERVISORS

An employer is liable for harassment by a co-worker or third party only if employer was negligent, meaning employer:

Knew or should have known of the conduct, and

Failed to take immediate and appropriate corrective action

IS THIS HARASSMENT?

- A female doctor flirts with a new male nurse at a meeting, saying “Oh boy, studying your anatomy is going to be fun!” Everyone laughs.



WHAT IF SHE ADDS:

- “Meet me after work and we’ll talk about how to put your career on the fast track.” She winks at him.



STEPS TO PREVENT SEXUAL HARASSMENT

- Establish culture free from harassment
- Highest levels of organization must lead
- No one gets away with sexual harassment, regardless of position or importance to the organization



STEPS TO PREVENT WORKPLACE HARASSMENT

- Have a written harassment policy
 - zero tolerance for workplace harassment
 - offer examples of unacceptable conduct
 - reporting mechanism with 2 or more channels
 - no retaliation



SEXUAL HARASSMENT TRAINING

- Train every employee
- Provide specialized training to supervisors and managers
- New hires and annual refreshers



INVESTIGATIONS

- Treat every complaint seriously
- Promptly and thoroughly investigate
 - Interview accuser, accused, potential witnesses
 - Review security cameras, time cards, other evidence
- Reach a conclusion – did it most likely occur?

TAKE APPROPRIATE ACTION

- Stop the harassment
- Remedy any adverse actions
- Discipline/terminate wrongdoer



BE CAREFUL WITH SETTLEMENTS

- Settling sexual harassment claims could send inconsistent messages, especially if the perpetrator is retained as an employee
- In addition, the recent tax reform bill includes a provision that no tax deduction is allowed for any settlement or payment related to sexual harassment or abuse if subject to a non-disclosure agreement



THANK YOU!

QUESTIONS?

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